

**EDUCATORS EMPLOYED BY SCHOOL GOVERNING BODIES:
WHAT ARE THEIR LABOUR RIGHTS AND OBLIGATIONS?**

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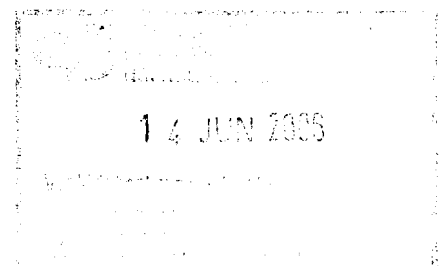
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PREFACE

A word of thanks to those who made this research possible:

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ABSTRACT

EDUCATORS EMPLOYED BY SCHOOL GOVERNING BODIES: WHAT ARE THEIR LABOUR RIGHTS AND OBLIGATIONS?

Few areas of the law have undergone more frequent and dynamic changes in recent years than the law relating to employment (Grogan, 2003:1). The situation with regard to labour relations in the education sphere is not very different. Litigation is on the increase as more educators are becoming aware of their labour rights.

The main aim of this dissertation is to clarify the most important labour relations that influence the daily life of School Governing Bodies and the educators employed by them.

It is becoming increasingly important for schools and educators to be thoroughly schooled in all the facets of labour relations. The law influences labour relations and ignorance of this area may be fatal for both schools and individual educators.

This study has been undertaken to provide an educational-judicial perspective of the employer-employee relationship between School Governing Bodies and educators employed by them by means of a literature study and an empirical non-experimental descriptive study.

The importance and the relevance of the study are highlighted in chapter one. In chapter two the various role players in this employment relationship are identified, as well as the important role each has to play.

The School Governing Body as employer and educators as employees are described with special emphasis on their direct labour relationship, based on interdependence. Various acts which have an influence on this unique labour relationship are identified.

The discussion in chapter three comprises of important information regarding the empirical design, research problem, and methodology used to collect and analyze data on the subject.

Chapter four provides the data analysis and an interpretation of the research results.

In chapter five certain recommendations are made according to relevant research findings in order to develop accountable, responsive and open employer-employee relationships at South African schools.

UITTREKSEL

ONDERWYSERS AANGESTEL DEUR SKOOLBEHEERLIGGAME: WAT IS HUL ARBEIDSREGTE EN VERPLIGTINGE?

Daar is weinig terreine van die reg wat soveel dinamiese veranderinge in die laaste jare ondergaan het as die reg aangaande arbeidsverhoudinge (Grogan, 2003:1). Die situasie met betrekking tot arbeidsverhoudinge in die onderwys is geen uitsondering nie. Litigasie is aan die toeneem namate meer onderwysers bewus word van hul arbeidsregte.

Die vernaamste doel van hierdie studie is om die belangrikste arbeidsverhoudinge wat die daaglikse lewe van Skoolbeheerliggame en onderwysers beïnvloed, te verduidelik.

Dit word toenemend belangriker vir skole en onderwysers om deeglik opgelei te word in al die fasette van arbeidswetgewing. Die reg beïnvloed arbeidsverhoudinge en onkunde in verband daarmee kan nadelige gevolge inhou vir skole, sowel as vir individuele opvoeders.

Hierdie studie is onderneem om 'n opvoedkundig-juridiese oorsig te verskaf aangaande die werkgewer-werknemerverhouding tussen Skoolbeheerliggame en onderwysers wat deur hulle aangestel word, deur middel van 'n literatuurstudie en 'n empiries nie-eksperimentele beskrywende studie.

Die relevansie en belangrikheid van die studie word uitgelig in hoofstuk een. Die vernaamste rolspelers, asook die belangrike rol wat elkeen speel word in hoofstuk twee geïdentifiseer.

Die Skoolbeheerliggaam as werkgewer en die onderwyser as werknemer word beskryf met spesiale klem op hul direkte arbeidsverhouding, gebaseer op die interafhanklikheid wat daar tussen hulle bestaan. Verskeie wette wat op hierdie unieke arbeidsverhouding 'n invloed het word geïdentifiseer.

Die bespreking in hoofstuk drie bestaan uit belangrike inligting aangaande die empiriese ontwerp, navorsingsprobleem en die metodiek wat gebruik is ten opsigte van die insameling en analisering van data aangaande die onderwerp.

Hoofstuk vier verskaf die data-analise, sowel as 'n interpretasie van die navorsingsresultate.

In hoofstuk vyf word sekere aanbevelings gedoen ooreenkomstig die relevante navorsingsbevindinge, ten einde verantwoordbare, simpatieke en oop werkgewer-werknemerverhoudings in Suid-Afrikaanse skole te bewerkstellig.

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CHAPTER ONE

ORIENTATION

1.1 INTRODUCTION AND PROBLEM STATEMENT

Humans, including educators and members of School Governing Bodies (hereafter referred to as SGBs), evolve through their participation in reality with other human beings and in dependence upon one another (*cf.* 2.4.1). Therefore humans continuously have to reconstruct the world they live in (Oosthuizen, Rossouw & De Wet, 2004:1).

Educators, who are employed by SGBs, stand in direct labour relationships with their employers. As a result of the various divergent roles the parties play in such a primary employment relationship, conflict, which must be solved, may arise on a regular basis (Venter, 2003:10; *cf.* 2.4.2 & 2.9.2).

While Rossouw (2004:v) was conducting his study on educators employed by the State, he recognised that *some of the main challenges in labour relations arise from those educators employed by the schools via SGBs.*

Labour relations in education are characterized by dynamic developments. The number of court cases and other settlements of disputes continue to escalate. For example:

- on the issue of gender: *Laerskool Hartswater v Die LUR vir Onderwys, Noord-Kaap*¹ and *The Association of Professional Teachers and another v Minister of Education and others*²;
- on issues of absenteeism: *Ntabeni v MEC for Education, Eastern Cape*³; and

¹ Case 864/CC of 3.10.2000 (NC)

² (1995) 16 ILJ 1048 (IC)

³ (2001) 22 ILJ 2619 (TK)

- on issues of dismissal: *SADTU v Minister of Education and others*⁴; *Fredericks & others v MEC for Education and Training, Eastern Cape & others*⁵.

Education in South Africa is so important that it was the focus point even during the negotiations between the different interest groups on the development of the Constitution in the early nineties. Since then dramatic changes have taken place in the field of education by virtue of new national and provincial legislation based on the education clause (sec. 29) in chapter 2 of the Constitution of South Africa, Act 108 of 1996 (hereafter referred to as the Constitution; SA, 1996a), for example, the National Education Policy Act, No. 146 of 1996 (SA, 1996c; cf. 2.8.9).

All education actions should now contribute to the realisation of the ideals of the Constitution for an open and democratic society (Oosthuizen *et al.*, 2004:65). Human rights enshrined in the Constitution (SA, 1996a), such as the right to just administrative action and fair procedure, the right to human dignity, and the right to fair practices pertaining to education, are now constantly being amplified in various court rooms throughout South Africa (Oosthuizen & Rossouw, 2003:Preface).

Cases involving allegations that employers acted unfairly by dismissing former employees are now brought to trial. Section 43 of the Labour Relations Act, No. 66 of 1995 (SA, 1995b; hereafter referred to as the LRA) provides the court with the power to make interim orders reinstating dismissed employees, while section 46(9) confers upon it the power to determine an alleged unfair labour practice in such manner as it deems fit, including an order for reinstatement or compensation of employees who have been unfairly dismissed.

⁴ (2001) 22 ILJ 2325 (LC)

⁵ (2002) 23 ILJ 81 (CC)

For example, in the case of *Simelela*⁶ it was decided that the High Court and the Labour Court have jurisdiction to determine claims of employees such as that a decision to dismiss them, violates their right to fair administrative action.

In cases such as the *Clarke*⁷-case, the court has rendered *all* dismissals subject to judicial scrutiny and stated that the court is concerned not merely with the legality of the employer's action in a dismissal case, but also with its fairness. Decisions emanating from such cases form a growing body of jurisprudence from which SGBs must learn what the prerequisites for valid dismissal of employees are (Grogan, 2002:v; *cf.* 2.8.2).

According to Valente (1980:v), anyone interested in Education Law must be impressed, if not overwhelmed, by the flood of new statutes, regulations and court decisions that constantly affect the operation of schools. This has been caused by the complex demands on schools, which necessitate ever increasing involvement in all phases of education (*Ibid.*).

Valente (*Ibid.*) states that the consequent re-examination of institutional policies and relationships places heavy burdens upon educators. Keeping up with *the law* and revising practices to satisfy that law promises to be more demanding in future.

The Education Labour Relations Council (*cf.* 2.9.3.7), an active national and provincial bargaining forum, daily attempts to reach agreements to the benefit of educators, departments of education and education as a whole (Rossouw, 2004:Preface).

In light of the above, it is of the utmost importance that educators be well informed (*cf.* 2.4.1) After all, their labour relations with SGBs affect their work, salaries, quality of life – their whole lives!

⁶ *Simelela and others v Members of the Executive Council for Education of the Eastern Cape and others* (2002) 23 ILJ 81 (CC)

⁷ *Clarke v Ninian & Lester (Pty) Ltd.* 1988 9 ILJ 651 (C)

Research done by Beckmann and Joubert (Rossouw, 2004:vi) proved that most educators and principals have only a vague, general understanding of human rights in particular. In this regard, Lumby, Middlewood and Koabwe (2003:5) state that changes to the system of education governance have resulted in school principals being underprepared for their new role (*cf.* 2.3.1).

According to Mbatha (quoted by Oosthuizen & Rossouw, 2003:1), there is currently a shocking ignorance among South African school administrators with regard to Education Law-related issues. One of the reasons offered for this is the lack of Education Law training (*cf.* 4.3.2).

On the other hand, more and more educators are becoming aware of their rights. The demand for training in Education Law is becoming so intense that at present Education Law is regarded as one of the fastest growing disciplines in South African education and training (Bray, quoted by Oosthuizen & Rossouw, 2003:1).

It is, however, necessary to look wider than at just education-specific Acts such as the Employment of Educators Act, Act 76 of 1998 (SA, 1998), as educators employed by SGBs are employed under the South African Schools Act, No. 84 of 1996 (hereafter referred to as the Schools Act; SA, 1996b; *cf.* 2.3.2.1 & 2.8.4).

The law influences all facets of education. Ignorance of the basic concepts and principles of contracts, Labour Law, and Education Law, with regard to educators' rights and obligations, may lead to frustration in the workplace, insufficient service, following incorrect procedures and even misconduct. It may be fatal for the school as an institution, as well as for the principal and the educator in person (Rossouw, 2004:vi). They are in danger of even being regarded as lacking in professional knowledge (Oosthuizen *et al.*, 2004:37).

One must remember that it is certainly not just the principal or the SGB who is subject to legal procedures and regulations or who has to apply disciplinary procedures in the correct and legal way – it affects all educators.

However, it remains the task of each SGB and educator to school themselves in the technique of effective education management and effective labour relations, which requires an in-depth knowledge of Education Law (Rossouw, 2004:vi), as well as of all other relevant legislation.

Education Law, a complex and dynamic area of the law, is one of the subject fields that are relatively new in comparison with other sectional disciplines in education sciences.

Furthermore, labour relations in education are unique because they comprise much more than just a service that brings wealth to the employer and gives the employee a salary. They are unique in the way that (Oosthuizen *et al.*, 2004:31, *cf.* 2.3.1):

- the educator is in direct contact with the most important clients in the business, i.e. the learners;
- educators work with human material and the result of their labour is of critical importance to the learner, the community, the broader society and the country as a whole;
- not only physical lives are at stake, but also and in particular, the psychological and spiritual lives of learners who are becoming adults; and
- the aspect of decentralization in the most recent legislation implies that the co-employer in the person of the principal becomes quasi-employer when disciplinary cases are at stake.

Up to now, government efforts at redressing education have been weakened by the worsening conditions of the economy. Educators are being laid off in some departments, while newly trained educators are experiencing difficulty in finding jobs. Educators' salaries continue to lag behind the rate of inflation, making the profession uncompetitive (Boister & Ferguson-Brown, 1993:68; *cf.* 2.3.5.1).

It is difficult, though, to imagine a court ordering the State to build new schools or to hire more educators!

Economics will be a larger feature of the proposed system in future, parents will be faced with higher education costs and schools themselves will be forced to increase fees and also raise funds in order to meet many expenses (*Ibid.*:70).

Considering the economical climate in South Africa, SGBs will increasingly employ educators on a contractual basis to ensure a good standard of education (*cf.* 2.3.3.1). Very recently, Merton published an article in *Beeld* (2005:1) stressing the fact that more than 40% of parents are unsatisfied with the current declining standards of education in South African schools (*cf.* 4.3.8).

It is against this background that the question must be asked: What are the labour rights and obligations of educators employed by SGBs?

1.2 RESEARCH QUESTIONS

Following from the above-mentioned the following questions need to be addressed:

- What are the current nature and scope of labour relations between SGBs and educators employed by them?
- Do educators have an in-depth knowledge of their rights and the laws protecting them in order to enter into fair individual employment contracts?
- Can theory be generated concerning this labour relationship?

1.3 AIMS OF THE STUDY

The overall aim of this study was to gain insight and knowledge regarding an open and responsive employer-employee relationship between SGBs and educators employed by them.

This overall aim was operationalized as follows:

- To review existing literature in order to gather information on the current nature and scope of labour relations between SGBs and educators employed by them.
- To explore the knowledge educators have concerning their labour rights and obligations, as well as the laws protecting them.
- To generate theory concerning this labour relationship.
- To empower such educators.

1.4 RESEARCH DESIGN AND METHODS

1.4.1 Introduction

Research, as defined by McMillan and Schumacher (2001:9), is a systematic process of collecting and logically analysing information for some purpose.

Educational research has gradually affected many ideas concerning education and the practices used to achieve objectives (*Ibid.*, 2001:3). The same authors are of the opinion that research suggests principles to guide educators in wise decision-making and to develop knowledge needed about education.

Research in education includes *scientific* and *disciplined inquiry* (*Ibid.*:8). *Scientific inquiry* is used to generate and verify theory (which predicts and explains natural phenomena) and to search for knowledge by using recognised methods in data-collecting, analysis and interpretation. *Disciplined inquiry* is constructed and reported in such a way that the argument can be examined painstakingly (*Ibid.*:10).

1.4.2 Research design

In this research a *non-experimental descriptive* study or survey was used with *quantitative* techniques within an *empirical research design*.

Non-experimental study describes something that has occurred without any direct manipulation of conditions that are experienced (McMillan & Schumacher, 2001:33).

By using a *descriptive* mode of inquiry, the researcher aimed at simply describing the employment relationship between educators and SGBs by using numbers to characterize this already existing phenomenon as it is (*cf.* 3.3).

Quantitative techniques (Ibid.:15-16):

- are usually based on some form of *logical positivism* which assumes that there are stable, social facts with a *single reality* separate from the feelings and beliefs of individuals;
- seek to establish relationships and explain causes of changes in measured facts;
- use an established set of procedures and steps that guide the researcher;
- employ experimental or correlation designs to reduce error, bias, and extraneous variables; and
- attempt to establish universal context-free generalizations.

An *empirical* design is guided by evidence (results from which interpretations or conclusions can be drawn) obtained from systematic research, rather than by suspension of personal experiences and beliefs (*Ibid.:12*).

1.4.3 Site or social network

The study was conducted among 71 randomly selected educators employed by SGBs of public schools in the Gauteng Vaal Triangle District 7 district for the purpose of firstly describing and analysing the participants' individual and collective social actions and interactions, beliefs, thoughts, knowledge and perceptions; and of secondly generating theory and empowerment.

In simple random sampling, subjects are selected from the population so that all members of the population have the same probability of being chosen (*Ibid.*: 170).

1.4.4 Role of the researcher

As with the ideal quantitative research approach, the researcher was detached from the study to avoid bias. An established set of procedures and steps that guide the researcher as part of the pre-established design before data collection was followed.

1.4.5 Probability sampling strategies

The researcher determined the target population within the geographic boundaries from which the sample was drawn by using the probability sampling method. Through this method, every element has a known, nonzero chance of selection and the elements are selected through a random procedure. While every member of the population need not have an equal chance of being selected, every element has at least some chance (*cf.* 3.4.2).

The number of educators employed by SGBs in the established geographic area for this research was 144. A random sample of 71 educators out of 144 gave each educator a chance or probability of selection of 0.493.

Probability of selection = $71 \div 144 = 0.493$ (Czaja & Blair, 1996:108).

1.4.6 Data collection strategies

Data were collected by way of a questionnaire consisting of closed-ended questions where respondents choose from a list of provided responses instead of answering questions in their own words (*cf.* 3.5). After the informal and formal pre-testing of the questionnaire, it was personally delivered to and collected from the participants.

The main goal of data-collecting was to identify the participants' opinions and knowledge with regard to their labour rights and obligations. After completion

of the data-collection process, the questionnaires were firstly edited and corrected if necessary, secondly coded and thirdly, analysed before a report was written.

1.4.7 Design limitations

Because of the multiple realities to be studied, the emphasis was placed on the rights and obligations of the participants limited to their particular labour relations with the various SGBs.

1.4.8 Ethical consideration

According to McMillan and Schumacher (2001:22), educational research is constrained by ethical and legal considerations in conducting research on human beings, the public nature of education, the complexity of educational practices and methodological problems.

In order to deal with the above-mentioned problems, all information was obtained and analysed as confidential, while anonymity was assured. Informed consent was obtained from each educator (participant) and the principal of each school (*cf.* 3.5.1).

1.5 FEASIBILITY OF THE STUDY

The study was conducted in the Gauteng Vaal Triangle District 7 district which was accessible to the researcher, while literature resources to be used for information-gathering were available.

The study is relevant to the current trends and dynamic changes in Labour Law and Education Law.

Against the background of South Africa's current socio-economical status, more educators may be appointed by SGBs who are in need of more information and knowledge in respect of their labour rights and obligations.

1.6 CONTRIBUTION OF THE STUDY

In light of South Africa's economical situation, educators employed by SGBs are here to stay. Because of the fact that educators, standing in classes today, were not trained in Education Law, or any other law for that matter, they are in desperate need of knowledge with regard to their relevant labour rights and obligations (*cf.* 4.3.2).

SGBs and educators employed by them must be able to enter into fair and legal individual contracts with one another, which must stipulate their mutual labour rights and obligations.

As ignorance of the law is not accepted as an excuse in court, it is the main aim of this study to empower SGBs and educators employed by them to deal successfully with their labour relations and problems arising from them in future.

The results of this study are related to developing educational knowledge and practice, since they:

- provide knowledge about an enduring practice;
- extend existing understanding of employment relationships to a broader phenomenon such as *security in education and effective teaching*;
- are related to current social issues of immediate concern such as the implementation of law and the proposed amendment to the Schools Act (SA, 1996b);
- evaluate a specific practice, namely the appointment of educators at a given site, by public schools via SGBs;
- are exploratory, explaining the field of labour relations between SGBs and educators employed by them;
- are designed to be generalized to different populations; and

- will influence the way educators and SGBs think and perceive their employment relationship.

1.7 CHAPTER DIVISION

CHAPTER 1: ORIENTATION

CHAPTER 2: A LEGAL FRAMEWORK

CHAPTER 3: EMPIRICAL RESEARCH DESIGN AND
METHODOLOGY

CHAPTER 4: DATA ANALYSIS AND INTERPRETATION

CHAPTER 5: SUMMATION, FINDINGS AND RECOMMENDATIONS

1.8 SUMMARY

This chapter has provided an orientation to the research, defining the problem, determining the objectives and demarcating the research method to reach these objectives. The chapter division has also been determined.

The next chapter will provide a legal framework within which the problem will unfold.

CHAPTER TWO

A LEGAL FRAMEWORK

2.1 INTRODUCTION

While conducting the literature review, the researcher concentrated on publications regarding Labour Law and labour relations in general, as well as on labour relations specifically in education, Education Law, legislation and court cases in order to establish the current nature and scope of labour relations between SGBs and educators employed by them.

This chapter starts with defining a list of concepts used in the text for clarification purposes. Thereafter the various role players in labour relations in education are identified, as well as the role adopted by each.

The direct labour relationship, based on interdependence, between the educator and the SGB is explored, as well as the conflict that may arise from such relationships.

Paragraph 2.5 focuses on the various aspects of the contract of employment, which will regulate and serve as the foundation of the entire employment relationship between the parties.

Then the appointment of educators by SGBs is dealt with, as well as the rights and duties of educators as employees of SGBs. The last two sections comprise a discussion on relevant legislation and set out the different resolution procedures through which grievances, conflict and disputes may be solved.

To simplify matters, the male reference will be used in this research. The female reference is *mutates mutandis* (with appropriate changes) included.

2.2 CLARIFICATION OF CONCEPTS

Some of the concepts that are used in this publication need clarification and definition.

Collective bargaining: A process whereby employers (employers' organizations) bargain with the employees' representatives (trade unions) about terms and conditions of employment and other matters of mutual interest (Basson, Christianson, Garbers, Le Roux, Mischke & Strydom, 1998: 53).

Common law: Unwritten legal traditions as derived from Roman-Dutch and English law of the seventeenth century (Rossouw, 2004:19).

Department of Education: The Department established in terms of Section 7(2) read with schedule 1 of the Public Service Act, 1994 (Proclamation 103/1994) responsible for education at national level.

Educator: Any person who teaches, educates or trains other persons or who provides professional educational services, including professional therapy and education psychology services, at any public school, and who is appointed in a post at any education establishment under the Employment of Educators Act, 76 of 1998 (SA, 1998b). This definition is also accepted by the Schools Act (SA, 1996b) in Chapter 1.

Employee: Any person, excluding an independent contractor, who works for another person or for the State and who receives, or is entitled to receive, any remuneration; and any other person who in any manner assists in conducting the business of an employer (Section 213 of the LRA; SA, 1995b).

Employers' organization: Any number of employers associated for the purpose, whether by itself or with other purposes, of regulating relations between employers and employees or trade unions (Section 213 of the LRA; SA, 1995b).

Employment relations: Refers only to the primary legal relationship between one or more employees and their employer(s), as well as the relationships

between employers (employers' organizations) and trade unions (or federations of trade unions). It may therefore be used in an individual and collective sense (Rossouw, 2004:3).

Individual employment relations: Refers to the relationship between a specific employer and a specific employee in a workplace. This is a primary relationship in labour relations and only exists on the micro level: the respective workplace (*Ibid*).

Labour Law: A set of objective legal principles that regulate the legal relationship between employers and employees on collective as well as individual levels between employees and fellow employees (*Ibid*:4).

Labour laws: Implementations by the State to regulate labour relations; establish certain agents like the Council for Conciliation, Mediation and Arbitration and labour courts; set structures to ensure that labour relations develop positively within the parameters of labour legislation and that disputes and grievances are solved effectively (*Ibid*:2).

Labour relation: Refers to all relations or relationships between employers and employees (or groups of each) and the State. It includes negotiations with regard to remuneration and other conditions of service and the prevention and settlement of disputes between employers and employees within the framework of the LRA (SA, 1995b).

Lock-outs: The expulsion by the employer of employees from the employer's workplace for the purpose of compelling the employees to accept a demand in respect of any matter of mutual interest between employer and employee, whether or not the employer breaches those employees' contract of employment in the course of or for the purpose of that exclusion (Section 213 of the LRA; SA, 1995b).

Strikes: The partial or complete concerted refusal to work or the retardation or obstruction of work by persons who are or who have been employed for the purpose of remedying or resolving a dispute in respect of any matter of mutual

interest between the employer and employee (Section 213 of the LRA; SA, 1995b).

Trade union: An association of employees whose principle purpose is to regulate relations between employees and employers, including any employers' organization (Section 213 of the LRA; SA, 1995b).

2.3 THE ROLE PLAYERS IN LABOUR RELATIONS IN EDUCATION

The spirit and success of any school lie with its people. It is the duty of everyone involved to make the education system work and to use the system in order to make a difference at each school (Lumby, Middlewood & Koabwe, 2003:ix).

The quality of education depends on the competencies of each role player while the redressing of South Africa's education and training is only possible if there is harmony between the vision for transformation and the day-to-day realities of those working in the system (*Ibid.*:4&13).

According to Botha, Greyling, Heyns, Loots, Schoeman, Van den Bergh and Van Zyl (2001:Preface), law regulates the complex network of relationships and determines each one's place in education. These authors stress the fact that each role player must have a clear view of his position in this network in order to address his rights and obligations.

Effective and harmonious relationships between people in the workplace are a key requirement for sound labour relations (Grobler, Warnich, Carrell, Elbert & Hatfield, 2003:486).

2.3.1 Introduction

There are five important role-players in the labour relationship where SGBs employ educators. They are the public school via its SGB as employer, the educator as employee, the State providing a legal framework, the environment and the parents or learner as the client – all having an important role to play (Nel, Swanepoel, Kirsten, Erasmus & Tsabadi, 2005:12).

According to Lumby *et al.* (2003:5), it is essential that the relationships between all stakeholders be clarified and that democratic governance be established in order to provide a strong and clear national policy framework which defines the functions and powers, areas of authority and spaces of participation for all role players.

The labour relationships in education are normally those between educators as employees and the Department of Education as the employer (Rossouw, 2004:vi). However, the educational sphere provides an interesting scenario with regard to labour relations. The employer–employee relationship differs from that in most other workplaces, as the employer may differ from one educator (the employee) to the next (*Ibid.*:28).

The different employers in education are crucial to the employment relation. They play an important role in the referral of labour disputes and labour court cases, particularly with regard to the citing of parties and *locus standi* (i.e. their exact position before the law) of such parties to entertain labour matters (Shaba, Campher, Du Preez, Grobler, & Looek, 2003:104).

Rossouw (2004:29) is of the opinion that the unique position of the principal also makes this relationship different. In a public school, as an educational institution, the principal acts as the representative of the employer. The principal may therefore be regarded as the *quasi-employer* of educators, especially in disciplinary matters where it is his duty to handle the informal phase of investigations.

According to Lumby *et al.* (2003:113), principals have to function in the transitional stages of education using only the knowledge and skills they currently possess, making principals more vulnerable than before (*cf.* 1.1). Important in this regard, is the fact that administrative decentralization produces self-managing schools, while political decentralization produces self-governing schools (*Ibid.*:7-8). The former are schools which have flexibility to take certain decisions locally, but whose staff are accountable to and are employed by the school systems. The latter are schools where the SGB employs staff and is accountable to parents of the school community (*cf.* 2.6).

According to Schalk (2004:296), decentralization implies that traditional beliefs, like job security and fixed salary in exchange for hard work and loyalty, are being replaced by other, often more unclear, mutual obligations between employer and the employee. Each of these should be scrutinized.

2.3.2 The employer

It is important to identify the parties involved in any labour relationship as well as the roles adopted by them, since labour legislation only applies to employers and employees (or groups of employers and employees) in an employment relation (Van der Linde, 1996:Abstract). In this regard, Valente (1980:4) states that courts will not hear a case unless the suing party has a legally recognized interest and stake in the subject matter and in the outcome of the particular case.

The following employers other than the Department of Education can be identified.

2.3.2.1 Public school via the SGB as employer

According to the Education Laws Amendment Act, Act 100 of 1997 (SA, 1997b), which amended the Schools Act (SA, 1996b), SGBs have particular powers and functions.

Subject to sections 20(4), (5), (7), (8) and (10) of the Schools Act (SA, 1996b), a public school may establish posts for educators and employ educators additional to the establishment as was determined by the Member of the Executive Council in terms of section 3(1) of the Educator's Employment Act, 76 of 1995 (SA, 1995a; *cf.* 2.8.2 & 2.8.4).

In labour relationships between a public school and educators appointed by the school, and not by the Department of Education, the public school via the SGB is thus the employer (Shaba *et al.*, 2003:5; *cf.* 4.3.8.1).

As such, it bears full responsibility. Section 20(10) of the Schools Act (SA, 1996b) namely states that, *despite section 60, the State is not liable for any act or omission by the public school relating to its contractual responsibility as*

the employer in respect of staff employed in terms of subsections 4 and 5. Section 20(11) of the Schools Act (SA, 1996b) states further that the State is not regarded as a joint employer of such staff (*cf.* 5.4).

In a paper read by Prinsloo (2005:3) at the South African Education Law and Policy Association's annual conference in September 2005, it was stated that the educational activities of SGB-appointed educators do not differ from those educators employed by the State. Therefore the State should also bear full responsibility for acts or omissions by educators employed by SGBs.

Moreover, in section 15 of the Schools Act (SA, 1996b), public schools are seen as legal persons. This implies that SGBs, as the executive organs, can fulfil legal actions on behalf of public schools and can sign contracts with educators to fill so-called contract posts in the name of the school.

In this regard, Visser (2003:111) points out that the applicable provisions in the Schools Act (SA, 1996b) do not present a coherent, comprehensive and systematic set of principles clarifying all issues regarding the contractual capacity of SGBs. The author (*ibid.*:116) is of the opinion that this problem should be addressed and an attempt be made to draft and develop more sophisticated and detailed provisions on SGBs' contractual capacity (*cf.* 2.5.1).

In a letter to *Beeld* (Pandor, 2005:12), Naledi Pandor, the Minister of Education, wrote that she supports SGBs as a democratic way of school management. According to her, more than 200 000 members of the community are involved with SGBs in South Africa (the biggest group of elected representatives in this country). She provided her assurance that SGBs' power would not be taken away, but that they would rather be empowered further in order to comply with their democratic mandate.

Contrary to the above statement, Pandor proposed an amendment to law, which would limit the power of SGBs with regard to the appointment of educators. According to this amendment, SGBs would in future recommend ~~three~~ ~~educators~~ for a post to the Department of Education. The Head of the

Department of Education in a province would then be able to appoint any one of the three candidates.

According to Professor Mayatula (2005:14), a member of the African National Congress, this amendment would create a balance between the rights of parents to recommend educators and the right of the Department of Education as employer to appoint educators.

However, Rademeyer (2005a:4) points out that the Head of the Department of Education may reject the candidates recommended by SGBs if recommendations are not made according to the criteria of *equity, affirmative action and representation* (cf. 2.6).

In another article, the same author (2005b:9) writes that Davies (Chief Executive of the Suid-Afrikaanse Onderwysunie) is of the opinion that this amendment is unacceptable in view of the original purpose of the School's Act (SA, 1996b) which aims at partnerships and participation in education. Certain power was given to parents and parents have delivered various inputs over the years, especially with regard to finances (cf. 2.3.6). In spite of this the State is now moving away from viewing parents as partners.

In response to the above-mentioned, Joubert (2005:1) points out that Helen Zille of the Democratic Alliance Party criticised the Minister of Education's commitment to quality education as being false and insisted that the minister was being driven by other priorities. In the same article, Joubert (*Ibid.*) maintains that Colditz, chairperson of the Federation of Governing Bodies of South African Schools, is of the opinion that the initiative should stay with parents (SGBs) when appointing educators (cf. 4.3.5). The proposed amendment would shift the power in education from the interested parties to bureaucracy.

In a paper read by Colditz (2005:9) at the South African Education Law and Policy Association's annual conference in September 2005, it was stated that there is no way in which the Head of Department can know what the requirements and needs of all schools or any particular school is regarding

any number of aspects to be considered in the appointment of educators (*cf.* 2.6).

Furthermore, according to Zille (as quoted by Rademeyer, 2005a:4), the amendment to law would make race the most important criteria for the appointment of educators in future. This would inevitably not lead to the appointment of the best candidates or to a high quality of education.

Although the new amendment only applies to the right of SGBs to recommend educators for appointment by the State, one cannot help but to wonder what is going to happen to an SGB's power to appoint educators in terms of section 20(4) of the Schools Act (SA, 1996b).

2.3.2.2 Employers' organizations

Section 20(3) of the Schools Act (SA, 1996b) empowers an SGB to join a voluntary association representing SGBs of public schools. The expressed intention of employers' organizations is to counter the power of trade unions or federations of trade unions. As members of employers' organizations, SGBs can put pressure on trade unions or government at the bargaining table (Venter, 2003:86).

An employers' organisation can assist an SGB by:

- developing strategies to deal with trade unions;
- representing its interests in wage negotiations, ensuring reasonable wage increases;
- determining benefits and levels of minimum wages with trade unions; and
- establishing policies and procedures explaining how to conduct labour relationships (*ibid.*:89).

2.3.3 The employee

It is important to identify the employee in this case, since this research concerns only those educators who are employed by SGBs.

2.3.3.1 The educator as employee

According to Shaba *et al.* (2003:6), educators employed by public schools via SGBs are seen as the employees in such labour relationships. They are not employed under the Employment of Educators Act, 76 of 1998 (SA, 1998b), since this Act is applicable only to educators employed by the State. SGBs pay their salaries and determine their conditions of service according to section 20(4) of the Schools Act (SA, 1996b; *cf.* 2.8.4).

Such educators are called *additional educators in non-subsidized posts*. They are employed on a contractual-basis, normally for a set period of time mainly due to the uncertainty of available funds (Oosthuizen *et al.*, 2004:37; *cf.* 2.5.2).

Due to their temporary status and their appointment by public schools via SGBs, such educators often experience less work security, receive smaller salaries and only the minimum benefits (Kleynhans, 2003:70). However, they usually share the same responsibilities, work the same hours and have the same administration tasks as educators employed by the Education Department (*cf.* 4.3.5).

It is important to acknowledge that all educators (employed by the State and by SGBs) are treated the same for the purpose of governance, but treated differently for the purpose of employment conditions of service. This is due to the fact that different legislation applies to them (Shaba *et al.*, 2003:28; *cf.* 1.1 & 4.3.4).

In an analysis of the employees' role in labour relationships, the active role of trade unions becomes the focus of discussion (Basson *et al.*, 1998:3). In this research, trade unions therefore merit special attention.

2.3.3.2 Trade unions

Trade unions are an important outflow of employees' legal fundamental rights.

2.3.3.2.1 Freedom of association

The right to freedom of association is one of the fundamental rights granted to South African citizens by section 18 of the Constitution (SA, 1996a). Freedom of association is also guaranteed by section 4(1) of the LRA (SA, 1995b) as it states that every employee has the right to participate in forming trade unions or federations of trade unions, and to join a trade union, subject to the Constitution (SA, 1996a).

If a contract of employment between educators and SGBs directly or indirectly contravenes or limits the freedom of association, section 5(4) of the LRA (SA, 1995b) provides that such a contractual provision will be invalid (*cf.* 4.3.7).

2.3.3.2.2 Rationale behind trade unions

Grobler *et al.* (2003:486) define a union as an organization of workers to further the economic and social interests of its members.

Although the reaction to trade unions is often hostile, trade unionism, collective bargaining and even strikes are accepted as important elements of a democratic society as they provide a means of expression for the educators' view on matters of society (Basson *et al.*, 1998:3, *cf.* 4.3.7).

In a labour relationship, educators as employees provide their services to SGBs as employers, in exchange for remuneration, which leads to economic dependency of the educator on the SGB (*cf.* 4.3.4). This creates, according to Venter (2003:71), a swing of power in favour of the employer (SGB), which can lead to the exploitation of employees.

Nel *et al.* (2005:11) point out that employers generally have more power in labour relations because they control most resources (*cf.* 4.3.3). The reality of this traditional power imbalance between employer and employee has led employees to join forces and form representative bodies (trade unions) to negotiate with employers on their behalf.

Other reasons for joining trade unions are, according to Grobler *et al.*, (2003:487-488), obtaining job security, fair wages and benefits, better working conditions, fair and just supervision and mechanisms to be heard.

By standing together through unions, educators can increase their power base, improve their chances of promoting greater organizational and social justice and ensure greater distributive, procedural and interpersonal justice (Basson *et al.*, 1998:2). As members of a trade union, educators will be served and protected as the union will bargain with employers or employers' representatives on their behalf, will challenge unfair managerial decisions and will protect them in interactive processes about their employment relation matters (*Ibid.*:2).

In this regard, Basson *et al.* (*Ibid.*:3) mention that trade unions enhance the dignity of employees and provide them with control over their working lives. Trade unions strengthen employees to such an extent that their negotiating force is often equivalent or superior to that of their employers. The advantages definitely outnumber the disadvantages.

2.3.3.2.3 The functioning of trade unions

According to Nel *et al.* (2005:40), trade unions are permanent informal organizations created by workers to (*cf.* 5.4):

- protect themselves at work;
- improve the conditions of their work through collective bargaining;
- seek better conditions concerning their lives; and
- provide a means of expression for the workers' view on matters of society.

Although trade unions may function without registration, only registered unions in terms of section 95 of the LRA (SA, 1995b), with sufficient representation of the employees in an organization, have bargaining and organizational rights.

These organizational rights as stated by Basson *et al.* (1998:38) are:

- the right of access to the workplace in terms of section 12 of the LRA (SA, 1995b) in order to recruit new members, to communicate and meet with members and to serve the interests of its members;
- the right to deduct their levies or subscription fees from the wages of its members (section 13 of the LRA; SA, 1995b);
- the right to elect and appoint union representatives in accordance with section 14 of the LRA (SA,1995b);
- the right to leave for representatives concerning union activities; and
- the right to the disclosure of relevant information by the employer.

2.3.3.2.4 The objectives of trade unions

According to Grogan (2003:275), the primary objectives of trade unions, are to:

- engage in the collective bargaining process;
- represent members in grievance or disciplinary matters;
- ensure employers' compliance with their statutory obligations;
- challenge unfair managerial decisions; and
- represent workers in interactive processes concerning their employment matters.

Lemmer (1999:36) acknowledges the existence of three major educators' unions:

- South African Democratic Teachers' Union (SADTU)
- National Professional Teachers' Organization of South Africa (NAPTOSA)
- Suid-Afrikaanse Onderwysunie (SAOU)

Each of these unions is related to the key role player: the State.

2.3.4 The State

Since the proper management of labour relations is of vital importance to society as a whole, the State will always be a key role player in any such a relationship (Steyn, 2002:268). The State creates a framework of policy and legislation in which parties can conduct their relationship.

Nel *et al.* (2005:12) state that the main aim of legislation is to:

- limit the potentially devastating effect that uncontrolled labour conflict could have on society and the economy;
- create prosperity and social justice;
- facilitate labour peace;
- enhance cooperation and participation between parties; and
- enable all role players to interact constructively.

The Department of Labour is the government institution involved in all labour relationships, as it is responsible for the execution of labour policy (*Ibid.*:36).

However, a school's environment should always be taken into account as a determining factor in its activities.

2.3.5 The environment

Since schools do not operate in vacuums and are part of specific communities, various environmental factors might influence their activities (De Bruyn & Kruger, 2002:36). In this regard Emener (2003:294) stresses the fact that schools play an extremely important role in our society, especially in terms of tomorrow's society.

The public school and its SGB are creations of the social environment and should adapt continually to changing circumstances to meet the expectations of the society. Public schools not only contribute to social change, but are also influenced by it. The educator, as employee, is a member of a certain social

group with its unique characteristics. SGBs must be fully aware of the social composition of its parents, educators and learners in order to establish the best advantage for both itself as employer and its employees (*ibid*).

An institution's service offering (education) is at the heart of marketing and, in a sense it is the heart of the institution. For this reason, institutions such as public schools are often perceived by the community in terms of their services and the way they deliver them (Jooste, Klopper, Berndt & du Plessis, 2002:ix; *cf.* 1.1 & 4.3.8).

2.3.5.1 Economic factors

Employment relations are influenced by economic factors (Venter, 2003:16).

Lemmer (1999:47) is of the opinion that unemployment among educators is one of the main reasons for educators' accepting SGB appointments on a lower remuneration scale. But are such educators prepared to give their best under service conditions that are insecure (*cf.* 2.3.6 & 4.3.5)?

Grobler *et al.* (2003:384) point out that employees expect their performance to correlate with the rewards received from employers. Important to this expectation, De Bruyn and Kruger (2002:35) put forward that the labour unit cost in South Africa is among the highest in the world and that there is no positive correlation between wage increases and productivity (*cf.* 2.5.3).

Lemmer (1999:47) feels that the future of SGB-appointed educators will depend on education being presented as a caring profession with a high potential for personal and job satisfaction and caring for the community, rather than being driven by economic inspirations. Moreover, the status, recognition, salaries and conditions of service of educators are currently under review, while retrenchment is commonplace (*ibid.*:33; *cf.* 1.1).

Such an economic dimension lies at the heart of inherent labour conflict since the employer seeks the most effective and efficient operation of its organization in order to deliver high standards of quality services, while

keeping labour costs as low as possible. However, employees seek maximum remuneration, benefits and work stability (*cf.* 4.3.5).

Unemployment is one of the biggest problems in the South African economy with economic (performance) and social (poverty) implications, according to Botha *et al.* (2001:209). The same authors are of the opinion that, when the labour market cannot absorb the growing labour force, individuals who are able and willing to work, will become unemployed. These authors (*Ibid.*:211) state that the current unemployment rate in South Africa, according to calculations, implies that approximately 5,6 million economically active persons are without employment and thus without any form of income.

In light of the above adverse conditions, Grobler *et al.* (2003:229) are of the opinion that employees have made sacrifices in order to maintain or gain jobs, which include benefit concessions and taking lower-level jobs at reduced pay.

According to Sparrow and Cooper (2003:Foreword), employees require new skills and competencies as well as high levels of commitment if they are to survive in a globalizing economy. They also have to meet rising employee expectations for challenging work and more attention being given to quality of life.

A shortage of economic funds hampers development and the building of long-term cooperative labour relationships in education which, according to Coutts (1996:47), leads to low morale, distress and uncertainty among educators. Emener and Hutchison (2003:311) are of the opinion that employees are feeling more suspicious and fearful of losing their jobs and that a *survival mode* has meaningfully lowered employees' job satisfaction and increased job frustration (*cf.* 4.3.5).

This does not augur well for those at the receiving end of the education set-up: the learners and their parents (*cf.* 4.3.8).

2.3.6 The clients: parents and learners

Parents have a dual role to play in the employment relationship between SGBs and educators. Some parents form part of the SGB as employer, while all parents can be seen as the clients of the school who must always be taken into account as they have a say in the education of their children (Coutts, 1996:47). Barnard (2004:425) emphasizes the fact that parents, as chosen members of SGBs, represent a liaison between the nurturing educational interest of the family and the planned and organized education of the school.

Valente (1980:3) stresses the fact that parents have a substantial interest in public education as citizen-taxpayers, as guardians of their children and as holders of constitutionally protected parental rights. Parents therefore have standing to challenge any educational decision that adversely affects the legal rights of their children (*Ibid.*:4; *cf.* 2.3.2.1).

Oosthuizen *et al.* (2004:28) show that the trend in South Africa is towards more parent and community power in schooling (*cf.* 4.3.8). According to Ehlers (2004:389), it is important for schools to promote positive attitudes on the part of parents, as the complete and optimum development of the child rests with the educative teaching partnership between parents and educators (*cf.* 2.3.2.1).

According to Van Wyk (1987:65), successful cooperation between parents and educators is only possible if educators know exactly what partnership with parents entails. They must know how parents may participate, when parental consent is required and when they are to make decisions on behalf of the parents. Van Wyk (*Ibid.*:72) further states that it is important for parents and educators to acknowledge and respect one another's authority and to work together to assist one another.

Parents are responsible for keeping the promise made at the christening of a child and are the primary educators of their children. They also make financial contributions to the school and have the right to demand accountability regarding their children's education and the spending of school funds (Barnard, 2004:430; *cf.* 2.3.2.1).

Moreover, in compliance with Section 29 of the Constitution (SA, 1996a), every learner has the right to a basic education, and the *in loco parentis* function of every educator leads to the concept of *duty of care* towards all learners. This implies a right to maintain authority, as well as an obligation to exercise caring supervision over the learner (Van Wyk, 1987:73), while the best interest of the learner (section 28 of the Constitution; SA, 1996a) should always be the main criterion in any matter relevant to the decision.

This is certainly at risk if the educator experiences lowered job satisfaction and increased job frustration (*cf.* 2.3.5.1, 4.3.4 & 4.3.5).

With regard to the position of the learner, De Waal (2000:160) stresses the fact that learners are obliged to submit to authority and discipline. Learners have the duty to subordinate themselves to the schools' code of conduct. The same author (*ibid.*) is of the opinion that learners share the education responsibility and that educators are obliged to take action if learners fail to obey them.

In light of the above, it is of vital importance that the partnership between parents and educators should remain firmly intact and that parents should retain their input through the SGB concerning the appointment of educators at their children's schools (*cf.* 2.3.2 & 4.3.8).

2.3.7 Conclusion

Changes to the functions and powers of these role-players will have a direct influence on the labour relations and matters within the labour relationship will have an impact on the role-players (Kleynhans, 2003:23).

Lumby *et al.* (2003:116) stress the fact that an individual cannot manage tensions created by changes and demands on education on his own. They need to be addressed by all role players. Emener (2003:291) underscores this by maintaining that all role players need to play a more decisive and responsive role in reducing tension. This will refer to tension in labour relationships also.

2.4 THE DIRECT LABOUR RELATIONSHIP BETWEEN THE EDUCATOR AND THE SGB

It is important to establish how parties interact in any labour relationship and why they interact in that matter (Van der Linde, 1996: Abstract).

The theory and practice of employment relations are concerned with the range of ways in which the parties arrange their relationship, organise and execute the work and distribute the fruits that occur from these productive processes. These two aspects are concerned with the fairness and justice of these arrangements, with the ways in which the parties integrate, regulate, balance and institutionalize their partly divergent and partly convergent interests and objectives, and with the formal and informal dynamics that go along with them (Nel *et al.*, 2005:10).

On entering a labour relationship, educators and SGBs have their own goals and interests at heart (Block, Berg & Belman, 2004:95). Yet within the relationship they will have to sacrifice some professional autonomy in favour of conforming to mutual objectives. To turn existing diversity into a constructive contributory factor of mutual understanding between the parties, Kleynhans (2003:16) states that the co-operation of both parties is necessary. This requires sensitivity towards differences, an open-mind to change, a sense of obligation, peaceful interchange and harmony (Delors, 1998:22).

The parties must create a new spirit which, guided by the recognition of their growing interdependence and common analysis of the risks and challenges of the future, would induce both parties as voluntary participants to implement common goals together and to manage inevitable conflicts in a peaceful way (*Ibid.*).

2.4.1 Interdependence

The interdependent nature of labour relationships has its roots in the interest that both parties have in the long-term survival of education: educators need to earn an income, while SGBs are dependent on them for their labour in order to render a service. This is why the parties willingly enter into the

employment relation, contributing energy and cooperation. This is the reason why there is a general tendency among them to interact in a constructive way of accepting one another and their individual responsibilities, to join problem-solving processes and to build mutual trust (Nel *et al.*, 2005:11).

Labour relations are characterized by the principles of labour democracy, which implies that employees have a greater say in the design (*cf.* 4.3.3). According to Bondesio and De Witt (2004:253), the SGB must formulate a mission, goals and objectives with the collaboration of all SGB staff members to realise effective teaching and learning. The same authors feel that educators must receive guidance and support and be fully aware of their rights and duties in order to enable them to cooperate and teach as effectively as possible (*cf.* 4.3.4).

According to Drucker (as quoted by Lumby *et al.*, 2003:34), the purpose of any institution is to enable ordinary people to do extraordinary things. It is thus up to the SGB to bring out whatever strength there is in its educators and to use each person's strength, while neutralizing individual weaknesses. Lumby *et al.* (*Ibid.*:35) point out that the approach of management should be guidance by example and valuing the developmental needs of staff and their involvement in policy-making. To these authors (*Ibid.*), the empowering of employees to aspire and achieve new heights of performance is of critical importance (*cf.* 5.4).

In this regard, Grobler *et al.* (2003:8) point out that the management of human relations is moving towards an increase in institutional effectiveness and the satisfaction of each employee's needs as mutual and compatible needs. Emener (2003:291) states that satisfying educators' needs is complex, but essential to improving the performance of schools. That is why conflict management is extremely important.

2.4.2 Conflict

Conflict is one of the dynamic processes underlying human behaviour and an inevitable prominent part of labour relations because of the dynamic

interactions between the parties involved. It cannot be avoided (Rossouw, 2004:97).

According to Lumby *et al.* (2003:34), there are inevitable tensions between institutional demands for performance and the individual needs of employees. These tensions relate essentially to the need of management (SGBs) to be accountable for the overall performance of the school to a variety of *client constituencies* and, on the other hand, to liberate and mobilize the best effect of the professional autonomy of those working within the school. Care needs to be taken to balance the aspirations of the individual against the needs of the school in the achievement of its objectives (*Ibid.*)

As soon as conflict arises within the employment relationship, it implies a break or threat thereof between the parties. The mere existence of conflict may prevent schools from achieving their objectives (Lumby *et al.*, 2003:187). Therefore the causes of such conflict must immediately be identified and dealt with effectively (Bondesio & de Witt, 2004:305).

Girard and Koch (as quoted by Lumby *et al.*, 2003:188) maintain that disputes and differences of opinion do not constitute what is referred to as conflict, but may lead to conflict. Disputes involve issues that are negotiable, while conflict goes beyond the normal disagreements and confrontations that characterize usual differences.

The reasons why parties are in conflict are very complex and multidimensional. Visible conflict is often only the symptom of more intense problems. According to Nel *et al.* (2005:171), conflict may be caused by:

- different values, attitudes or perceptions;
- different objectives or methods of achieving objectives;
- differences in information or communication blockages;
- lack of resources;
- structural imbalances (skewed distribution of resources); and

- personality differences.

Conflict exists in a relationship (*ibid.*:20) when parties feel that their expectations or aspirations cannot be achieved simultaneously, or perceive a divergence in their values, needs, and interests and purposefully employ their power in an effort to eliminate, defeat, neutralize or change each other to protect or further their interests in the interaction. It is a process that begins when one party perceives that another party has negatively affected, or is about to affect, something that he or she cares about.

Swanepoel (1999:71) states that conflict is by nature also an emotional phenomenon which influences perceptions and often results in negative attitudes towards one another, such as antagonism, aggression, threats, hostility and lack of cooperation. It cannot be eradicated or *removed* and inclined to escalate when not resolved.

The general interpretation of conflict is that it is negative, destructive and undesirable. However, Nel *et al.* (2005:177) feel that it may be potentially healthy and even beneficial, as conflict is often the force underlying change, growth, transformation and development. Without conflict employment relations may tend to stagnate.

Conflict resolution processes will be dealt with in paragraph 2.9.

The next aspect of great importance, because it underlies the labour relationship between the educator and the SGB, is the contract of employment.

2.5 THE CONTRACT OF EMPLOYMENT

According to Honeyball (as quoted by Roehling, 2004:66), it is inevitable that contracts play a major part in any analysis of employment.

All employment rights and obligations rest upon the terms of the employment contract entered into by the parties (Valente, 1980:163).

2.5.1 Essential aspects

Oosthuizen *et al.* (2004:46) stress the fact that the SGB and the educator must draw up a contract of employment, which will regulate and serve as the foundation of their entire employment relationship (*cf.* 2.7 & 4.3.3). The parties have a freedom of contract, which means that they are free to *negotiate* a contract of employment to their mutual benefit (Basson *et al.*, 1998:2).

Browne (as quoted by Roehling, 2004:87) is of the opinion that *freedom to contract* is no longer operated between employers and their employees due to the increasing legal regulation of the employment relationship and that, as a result, the usefulness of the contract framework in understanding the employment relationship has been significantly undermined.

Roehling (*Ibid.*), on the other hand, does not agree with Browne's opinion. The former author feels that governmental regulation is a factor that may shape the nature of the employment relationship, but does not eliminate contracting behaviour.

According to Venter (2003:148), a contract of employment is a voluntary agreement between the SGB and the educator (*two legal personae*) in terms of which the educator (employee) undertakes to place his personal services at the disposal of the public school (SGB) as employer for an indefinite time or determined period in return for a fixed or ascertainable wage. This agreement entitles the employer to define the employee's duties and usually to control the manner in which the educator discharges them (*cf.* 4.3.3).

In such a contract of employment, the parties may agree to specific conditions of service that will regulate their individual employment relationship (Basson *et al.*, 1998:2). In this regard, Valente (1980:146) points out that, although contracts must comply with statutory terms, they may also add other terms to educator's rights and duties as long as those terms are not in conflict with written law. Christie (1996:171) defines specific terms in a contract as *promises agreed upon by the parties, which together make up the contract*.

According to Roehling (2004:68), regulatory schemes in all industrialized countries provide at least some *minimum standards* through statutes with which all employment contracts must comply. These *minimum standards* significantly constrain the freedom of employers and employees to agree upon whatever terms of employment they might negotiate.

In this regard, Grobler *et al.* (2003:53) stress the fact that the conditions of service contracted to in South Africa may not be less than the general minimum standards set by the Basic Conditions of Employment Act, 75 of 1997 (SA, 1997a; hereafter referred to as BCEA) as this take precedence over all forms of agreements (*cf.* 2.8.3).

Today, the conditions of employment of many workers are governed by *collective agreements* (*cf.* 2.9.3.4) negotiated between individual employers and trade unions, and the terms of such agreements are frequently incorporated into individual contracts of service (Swanepoel, 1999:108).

Collective agreements are binding on parties in the workplace and have thus diluted the contractual nature between employers and employees because of the fact that, in negotiating their contract of service, they must take into account the terms of any applicable collective agreement of minimum standards (Venter, 2003:169).

Basson *et al.* (1998:2) are of the opinion that employees often do not enjoy the same bargaining powers as employers. It may happen that educators do not have a choice of accepting or rejecting employment terms offered by SGBs as employers (Kelly, 2004:50; *cf.* 4.3.3 & 5.4). According to Jacqueline, Coyle-Shapiro, Taylor, Shore and Tetrick (2004:120), conflict stems from such an imbalance favouring the employer, resulting in inequalities in the exchange.

While educators employed by the Department of Education sign a formal standard contract of employment, educators appointed by SGBs must enter into individual non-standard contracts, which represent a form of flexibility and entrepreneurship that may be desirable, according to Roehling (2004:87; *cf.* 4.3.3).

Grogan (1993:18) states that the general principles of the law of contract apply *mutatis mutandis* (with appropriate changes) to the contract of employment. The most important aspects are the following:

- There must, at the time of contracting, be consensus between the parties in the sense that they have the serious intention to create mutual rights and duties to which they would be legally bound. The parties must also be aware of such intentions.
- Each party must have the capacity to act in the sense that they are legally capable of performing the act which gives rise to the formation of the contract.
- The rights and duties contracted to must be physically possible to perform.
- The rights created and duties assumed, must be permitted by law.
- If formalities are prescribed for the formation of the contract, they must be observed.

The same author (*Ibid.*) points out that the agreement between the parties:

- must be voluntary, thus freely entered into by both parties;
- concerns the nature of work: there are few limitations on their contractual freedom in this regard, provided that they remain within the bounds of legality and that it may not include any provision, which is illegal or *contra bona mores* (against the will of the community); and it
- is a binding source of legal obligations.

Section 29(1) of the BCEA (SA, 1997a) determines that a contract of employment must consist of the following aspects:

- The full names of the parties to the contract.
- The date on which the employee will commence his work.

- Descriptions of the employee's duties. These need not be enumerated in fine detail, especially where by custom of general usage, these duties spring automatically from employment in a particular capacity such as that of educators.
- Remuneration to be paid, as well as the method by which the remuneration will be calculated. Also the method of payment. It must be fixed or readily ascertainable by reference to some objective standard.
- Working hours and working days.
- Leave and other benefits.
- Termination of the contract.

Once the parties have agreed, expressly or implied, upon the two most important aspects of employment, namely the primary duties of the employee placing his personal service at the disposal of the employer, while the employer is to remunerate the employee, the contract is complete and legally operative (Roehling, 2004:67).

In this regard, it is important to note that once a party signs a contractual document, he thereby signifies satisfaction with the contents of the document, i.e. knows what the contract contains, and if these subsequently turn out not to be to his liking, he has only himself to blame and will be bound to it (Christie, 1996:195-196).

2.5.2 Duration

The contract of employment may be entered into for an indefinite period or for a fixed period only (*cf.* 4.3.3).

Educators and SGBs may, from the start, enter into an employment contract for an *indefinite period* of time. This occurs where they do not agree on a date of termination. Such contracts will endure until terminated by agreement, by giving of the contractually-stipulated or reasonable notice or until each party

elects to terminate the contract upon a fundamental breach by the other (Venter 2003:157).

Employment contracts between educators and SGBs are often for a *fixed period* of time (Grogan, 2003:30). Such contracts will endure for the specific period only, unless they are terminated earlier by agreement or by a fundamental breach, i.e. when one of the parties to the contract does not adhere to the essential terms of the contract (Grogan, 1993:21; *cf.* 2.3.3.1).

If, after the agreed period of time, the educator remains in service and remuneration is paid by the SGB, the contract may be tacitly relocated, provided that it is consistent with the parties' conduct. The relocated contract will continue to exist on exactly the same terms and conditions, except that the duration need not be the same as that of the original contract. Its duration must be determined in light of the particular circumstances of each case. In many cases, the new contract will be of indefinite duration, terminable by reasonable notice given by either party (*Ibid.*).

2.5.3 Remuneration

Venter (2003:16) states that, because labour is viewed as a major cost factor, extraordinary efforts may be made by employers to get as much as possible out of labour while minimizing the remuneration in return. This author (*Ibid.*) adds that it often leads to the fact that employees generally feel that their services are undervalued and often seek better remuneration (*cf.* 4.3.5).

Liden, Bauer and Erdogan (2004:226) show that there is a direct link between employees' perceptions of what they receive from their employers and their corresponding attitudes and behaviour towards their employers (*cf.* 2.8.3.5). These authors (*Ibid.*) further argue that it is these perceptions, rather than reality itself, that guide employees' loyalty.

According to Venter (2003:16), another source of wage disputes centres on the differentials in salaries and wages. Nonetheless, remuneration must ultimately be seen as a reflection of the relative worth of an employees' contribution to an institution (Marx, 2002:270). It would therefore seem more

prudent, according to Venter (2003:16), to make close comparisons of wages between individuals such as educators, filling similar positions across organizations to establish a sense of remuneration equity (*cf.* 4.3.6).

Lumby *et al.* (2003:101) point out that a study done in 1978 on the factors influencing the choice of education as a career among matric boys, revealed the struggle of educators for higher salaries as a main reason for not wanting to become educators (*cf.* 5.4).

Salariēs must usually be made market-related and be determined by means of job evaluation, which means that employees doing the same work must be remunerated similarly (Marx, 2002:269). According to Section 35 of the BCEA (SA, 1997a), remuneration must be to the extent that the employee is able to maintain a *reasonable* standard of living and can make sufficient provision for the future. Therefore remuneration must make provision for increases according to the rising cost of living (*cf.* 4.3.5).

2.5.4 Variation

According to Grogan (1993:23), neither party may unilaterally vary the fixed terms of a contract, unless the original contract provides for *variation*, once the parties have agreed thereto (*cf.* 4.3.3). Conditions may only be varied in the following ways (*Ibid.*):

- By mutual agreement between the two parties.
- Unilaterally by the employer after giving the employee lawful notice to terminate the existing contract. The change is then construed as an offer of re-engagement, which the employee may accept either expressly or tacitly by reporting for work on the new terms.

If an SGB verifies the conditions in a contract of service without adhering to the abovementioned provisions, the educator may, in terms of the LRA (SA, 1995b), sue for urgent relief (an interdict restoring the original conditions) or seek a declaration by the Industrial Court to the effect that the variation

constituted an unfair practice and an order compelling the SGB to restore the original conditions (Grogan, 1993:24).

2.5.5 Termination

With reference to the *termination of an employment contract*, Nel *et al.* (2005:130) point out that such a contract will be terminated:

- on expiration of the agreed period;
- by notice;
- by summary termination;
- by repudiation;
- by mutual agreement;
- by insolvency;
- by allowing the impossible to supervene;
- by State action; or
- by breach of contract by either party.

Termination by means of *notice* exists when any of the two parties terminates the contract by giving a statutory agreed to or reasonable notice to that effect. When an employer terminates the contract, it is called *dismissal* and if the employee terminates the contract, it is called *resignation*, but only if employers and employees elect to abandon the contract (Grogan, 2003:74).

Christie (1996:597) points out that the notice of cancellation must be both clear and unequivocal, and takes effect from the time it is communicated to the other party (*cf.* 1.1).

Termination of a contract by *summary termination* under section 37(6)(b) of the BCEA (SA, 1997a) arises when the employer or employee breaches a

material term of the contract (Venter, 2003:164), i.e. where there is a breach of a vital or essential term in the contract of employment.

According to Christie (1996:569), a sufficiently serious breach of a sufficiently important term, i.e. a term that goes to the root of the contract, will justify cancellation without the necessity to repudiate.

Under such circumstances the aggrieved party is, with immediate effect, no longer bound by the contract and can claim damages from the offending party.

Termination of contract by *repudiation*, according to Grogan (2003:76), arises when one of the parties stops performing its obligations, which entitles the other party to cancel the contract and to claim damages or specific performance. Christie (1996:597) points out that specific performance will almost certainly not be granted in cases such as contracts for personal services.

According to Valente (1980:182), a contract of employment can be terminated by *supervening impossibility of performance* if either of the parties becomes permanently unable to perform his educational tasks under the contract or is unable to perform those obligations for a period that is unreasonable as far as the other is concerned.

Termination by *State action* is described by Venter (2003:165) as occurring where official action by the state renders either party incapable of performing his obligations. This applies, for example, where an employee is sentenced to a long period of imprisonment.

Moreover, in labour law, the termination of a contract of employment need not necessarily terminate the employment relationship (Grogan, 2003:73). Christie (1996:597) explains that termination of the primary obligations of the contract does not terminate all secondary obligations, such as to pay damages for breach of contract or the obligation to abide by an arbitration clause in the contract.

According to Grogan (2003:73) educators in SGB posts who have an expectation of the renewal of their employment contract at the end of their term, but who are not re-employed, contrary to an agreement or on a selective basis, for example, may be deemed to have been dismissed at the time of the SGBs' refusal to re-employ them.

In the Appeal court case of *Traub*⁸ it was decided that the rules of natural justice should be extended to cases concerning *legal expectations* of employees. Judge Corbett decided that the law should reach out and come to the aid of persons prejudicially affected. The effect of this is that, if an employer has created reasonable expectations in the employee, such as through a promise, that expectation should be protected (Jordaan & Rycroft, 1994:115).

In this regard Valente (1980:178) points out that those who challenge a non-renewal on grounds of the abuse of discretion, have a heavy burden of proof since courts will not presume to second guess an SGBs' discretion, nor will they question the SGBs' good faith unless the educator can provide proof of bad faith.

2.5.6 Common law and the contract of employment

According to Roehling (2004:68), all employment relationships are, at least to some extent, regulated by common law principles.

Grogan (1993:9) states that a common law contract of employment exists when the agreement between the parties is such that the reciprocal rights and obligations expressly agreed upon or implied, confirm the essentials of the contract of employment (*locatio conductio operis*). This implies that the element of control, exercised by the employer over the employee, must exist, as well as all the other relevant factors such as remuneration and services rendered.

⁸ *Administrator, Transvaal v Traub* (1989) 10 ILJ 823 (A)

If no contract of employment exists between the parties, the onus will be on the employer to prove the terms of any existing oral employment agreements between the two parties (Kleynhans, 2003:133). In this regard, Christie (1996:171) states that the popular notion is that *he who asserts must prove*, meaning that the party who claims relief in terms of the contract must assert and prove the facts on which his claim is based.

However, Rossouw (2004:21 & 22) is of the opinion that common law has not kept abreast of modern developments and therefore there are certain deficiencies, as it:

- pays no attention to collective relationships;
- does not cater for the inherent inequality in bargaining power between the employer and employee;
- does not take into account the endurance nature of employment relations, giving the employee no inherent right to press for better conditions of employment;
- emphasises freedom of contract which encourages the exploitation of labour;
- does not provide participative management regarding employees having a say in decisions that affect their working conditions; and
- does not provide effective protection for job security.

Thus, the common law contract of employment has been adapted in numerous ways in different acts to provide for the needs of modern labour relations. However, the onus is still on the SGB and the educator rather to enter into a contract of employment, setting out the unique conditions of their labour relationship (Kleynhans, 2003:133; *cf.* 4.3.3).

Section 29(1) of the BCEA (SA, 1997a) stipulates that the SGB must provide an educator with particulars of employment in writing when employment starts. These particulars include the educator's ordinary hours of work, wage,

rate of pay for overtime work and leave (*cf.* 2.8.3). It is essential that educators receive this, as many cases fail in courts because of the fact that the employee cannot prove the terms agreed upon. It is also important for an educator to be aware of the exact conditions of service in order to enable him to render an effective professional service.

Grogan (1993:20) points out that a contract of employment is of such a peculiar nature that neither party may cede its rights under the contract to a third party without the consent of the other party to the contract.

The general discussion of employment contracts must now focus specifically on the SGB-appointment of educators.

2.6 APPOINTMENT OF EDUCATORS TO SGB-POSTS

Public schools via their SGBs may establish posts for educators and appoint additional educators in accordance with section 20(4) of the Schools Act (SA, 1996b). Educators employed under this section must comply with the requirements at public schools in terms of the LRA (SA, 1995b; *cf.* 2.8.2).

According to Bush (as quoted by Lumby *et al.*, 2003:13), the management of staff in self-managing schools is located with SGBs, principals and staff, which involve being responsible for such processes as selection, induction and deployment (*cf.* 2.3.1). Given the fact that people are the most important resource in educational institutions, appointing educators is the most important task that SGBs will undertake (*Ibid.*:58).

Every SGB must adopt a policy regarding its approach to filling such posts with well-trained and competent educators (Delors, 1998:31). Lumby *et al.* (2003:223) state that a staff recruitment and –selection policy, aiming at appointing staff that possess the potential to adapt to the school's work ethic, is seen as a means of eliminating the threat of conflict that will be detrimental to the accomplishment of the school's educational goals.

Fairness in appointments is crucial in establishing healthy employment relations (Steyn, Steyn & De Waal, 2001:132). The provision of effective

education and what is in the best interest of the learners is of paramount importance during the selection of educators (Oosthuizen *et al.*, 2004:13). In this regard Lumby *et al.* (2003:59) show that quality in selection based on merit and equity is essential to high labour performance and morale (*cf.* 2.3.2.1).

According to Oosthuizen *et al.* (2004:34), advertisements of vacancies should provide applicants with exact information as to what will be expected. Advertisements may stipulate specifications connected to the inherent requirements for the particular post. Certain minimum qualifications, i.e. skills, knowledge and ability, and extent of experience may be specified, as long as it can be proven essential (Grobler *et al.*, 2003:95).

By clearly defining the post, the employer provides a basis for subsequent selection procedures and decision-making (Lumby *et al.*, 2003:62). Agreed procedures based on consistency and transparency for advertising and appointing are likely to allay anxieties about possible unequal treatment and abuse of systems controlled by the individual school (*Ibid.*:29).

Section 9 of the Constitution (SA, 1996a) has direct influence on advertisements regarding aspects such as equality, non-discrimination and affirmative action. When appointing an educator, it is important for SGBs to remember that the LRA (SA, 1995b) allows no discrimination on the basis of gender, race, ethnic origin, culture, marital status, age, family responsibility, language, political opinion, religion, disability or HIV-status.

The Employment of Equity Act, No. 55 of 1998 (SA, 1998a) has further complicated the appointment of educators as it sets forward a number of criteria that have to be met by SGBs (*cf.* 2.8.5).

It is essential that SGBs appoint educators with the necessary skills and knowledge to meet the expectations of the school, learners, parents and community (Swanepoel, 1999:32). In light of frequent changes to education such as Outcomes Based Education, it is not easy to find educators with the correct qualifications or expertise. Characteristics such as the ability to show integrity and loyalty are also important (Van Wyk, 1987:54).

SGBs must remember that in terms of section 20(7) of the Schools Act (SA, 1996b) they may only employ educators in posts established under section 20(4) of the same Act if such educators are registered with SACE (*cf.* 2.8.8 & 4.3.1.6).

It is further important to remember that, according to section 20(8) of the Schools Act (SA, 1996b), staff contemplated in subsections (4) and (5) must be employed in compliance with the basic values and principles referred to in section 195 of the Constitution (SA, 1996a). The factors to be taken into account when making appointments include, but are not limited to, the ability of the candidate, the principles of equity, the need to redress past injustices and the need for representation (*cf.* 2.3.2.1 & 2.8.5).

Van Wyk (1987:54) points out that the screening of applicants is important. Lumby *et al.* (2003:229) stress the fact that interviews are subjective and can easily be abused. These aspects must be prevented by selecting interviewers who display integrity, are trained and are provided by agreed, consistent and understood criteria. A significant number of disputes over selection decisions declared in the Kwa-Zulu Natal provincial chamber of the Labour Relations Council, suggested fairly widespread perceptions that non-job-related factors had been allowed to influence selection decisions (*Ibid.*:60).

Attracting or appointing unsuitable or unqualified educators, is a costly waste of time, affects productivity negatively and does not add value to the school (Marx, 2002:259). Grobler *et al.* (2003:9) are of the opinion that mismatches may lead to poor performances, absenteeism, staff turnovers and other problems.

To avoid this, it is important for SGBs to do a job analysis specifying exactly what is needed and to appoint the most appropriate educators. McPherson's research (as quoted by Lumby *et al.*, 2003:60) draws attention to the limited understanding of vacancies on the part of selectors and the use of very restricted selection technology. According to Grobler *et al.* (2003:78), job analysis is a process by which employers systematically investigate the tasks, duties and responsibilities of the advertised post.

In return, SGBs must create the right work environment for educators to seek appointment with them and to want to stay with them for a long period, rather than to leave as soon as a next challenge shows up (*Ibid*:260; *cf.* 4.3.5).

This brings us to the core of this research: the labour rights and obligations of educators employed by SGBs.

2.7 THE RIGHTS AND DUTIES OF THE EDUCATOR AS EMPLOYEE OF AN SGB

Educators must bear in mind that they can only truly be empowered by the quality of their service, self-discipline and adherence to professional conduct. They must re-dignify the profession and not destroy it through an obsession with personal advantages (Coutts, 1996:8).

Oosthuizen *et al.* (2004:64) explain that one must also remember that rights and obligations are two sides of the same coin. Enjoyment of rights always implies obligations. Overemphasizing of either of these leads to unhealthy relations (*cf.* 4.3.3). Educators' mission must be to support school management by honouring the school's code of conduct and secondly promoting it by urging everyone to act accordingly. One ought therefore to move from grabbing power to sharing power.

Grogan (1993:42) stresses the importance of the following main duties of educators as employees:

- A duty to enter and remain in service (place their personal services at the disposal of the employer) until the contract ends. This is a prerequisite to their rights to claim remuneration.
- A duty to maintain reasonable efficiency. An educator will thus be bound to any representation that he makes to the SGB regarding his competence whether orally, written or by way of references or testimonials submitted.
- A duty to further the SGBs' business by employing their energy and skills to the advantage of the school. They must devote the working hours to the SGBs' business, may not simultaneously (without the employers'

permission) work for another employer during those hours and may not enter into a second contract at all if its interests are in conflict with those of the principle employer.

- An employee may not compete with the business of his employer or make prior arrangements to commence a competing business while still in employment. Such activities will lead to a breach of the employment contract.
- A duty of respectfulness and obedience towards their employer and to obey reasonable lawful instructions. Disobedience must be deliberate and serious in order to justify dismissal.

Steyn (as quoted by Lumby *et al.*, 2003:115) argues that the key to effective school management is educator empowerment, which involves educators as leaders participating in all school affairs in which they have an interest (*cf.* 4.3.4).

The educator and the SGB need to come to an agreement on what their respective rights and duties will be within their labour relationship, according to Oosthuizen *et al.* (2004:46). Although they are free to contract unique employment conditions, they are still bound by existing legal specifications (*cf.* 2.5 & 4.3.3).

2.8 LEGISLATION

Lumby *et al.* (2003:58) state that, since 1994, personnel matters in the educational sector have become more uniformly regulated through both general and specific legislation. Obligations of employees are more generally prescribed through the LRA (SA, 1995b; *cf.* 2.5 & 2.8.2).

In labour matters, it is important to determine exactly which Acts protect or bind a specific individual (Rossouw, 2004:23). It is essential to determine the exact employment relation that exists. One has to decide, on the basis of the facts of each case, whether the employee's terms and conditions of employment are governed by any of the statutes or delegated legislation, by

common law, by a collective agreement or by a combination of the above-mentioned (Van der Linde, 1996:Abstract).

For example, educators employed by SGBs do not qualify for the Government Employment Pension Fund and SGBs are under no obligation to pay a contribution towards the Unemployment Insurance Fund with regard to such educators, according to Rossouw (2003:34).

However, education does not have its own exclusive law to rule its labour relations. Other laws apply to education whether teaching is taking place or not. As pointed out by Shaba *et al.* (2003:3), this results in educators being affected by legislation both during and after school hours, while on or off school grounds. Educators are affected by all aspects of the law, which are not necessarily educational, but which apply to education in some way or other. Their labour rights and obligations are ruled by legislation (*Ibid.*).

The following legislation has an impact on education:

- Constitution of South Africa, Act 108 of 1996
- Labour Relations Act, No. 66 of 1995
- Basic Conditions of Employment Act, No. 75 of 1997
- South African Schools Act, No. 84 of 1996
- Public Service Act, No.103 of 1994
- Employment Equity Act, No. 55 of 1998
- Skills Development Act, No. 56 of 1998
- Promotion of Administrative Act, No 3 of 2000
- Occupational Health and Safety Act, No. 85 of 1993
- Employment of Educators Act, No. 76 of 1998
- South African Council for Educators Act, No. 31 of 2000

- National Education Policy Act, No. 27 of 1996.

It must, however, be kept in mind that legislation is continuously being adopted to transform education with the aim of serving the needs and interests of all the people of South Africa and of upholding their fundamental rights. Nine of the above-mentioned Acts will now be highlighted.

2.8.1 Constitution of South Africa, Act 108 of 1996

The Constitution is the supreme law of South Africa (section 2; SA, 1996a) and offers guidelines according to which all legislation must be developed. This implies that any law or conduct contradicting it is unconstitutional and that new or existing legislation has to be changed, if provisions in it are in conflict with the Constitution.

According to the preamble one of the main objectives of the Constitution (SA, 1996a) is to lay the foundation for a democratic and open society in which government is based on the will of the people and every citizen is equally protected by the law.

Section 1 of the Constitution (SA, 1996a) determines that the Republic of South Africa is to be founded on the following values:

- Human dignity, the achievement of equality and the advancement of human rights and freedom.
- Non-racialism and non-sexism.

These values are relevant and of vital importance to education in order to direct people's actions in a specific direction to improve the life of one and all.

The Bill of Rights, as a cornerstone of democracy (chapter 2 of the Constitution; SA 1996a), enshrines a range of basic human rights. Section 7(1) emphasizes the democratic values of dignity, freedom and equality. Section 8(2) determines that legal persons (such as SGBs) are bound by its stipulations (*cf.* 2.3.2.1).

Section 9 states that everyone is equal before the law, all people must be entitled to equal protection of the law and there may be no discrimination against any person. In the *Hugo*⁹-case it was found that this does not imply that all differences between people have suddenly disappeared and that all schools should be treated identically, as identical treatment of everyone under all circumstances *does not necessarily constitute equality*.

Everybody still does not have the same talents and capabilities, which provides for differentiation. In the case of *Doreen Harris*¹⁰, arguments were raised for and against discrimination being justifiable and thus fair or unfair under certain circumstances.

There are a number of fundamental rights enshrined in Chapter 2 of the Constitution (SA, 1996a) that have direct implications for labour relations. Basic, most prominent labour rights are stipulated in section 23, which is the prime determinant of the principles of labour legislation.

These fundamental human rights which educators enjoy are as follows (SA, 1996a):

- The right to equality (and not to be discriminated against in any way) (section 9).
- The right to have their human dignity respected (section 10).
- The right to privacy (section 14).
- The right to freedom of religion and to confess and express their beliefs (section 15).
- The right to freedom of expression (section 16).
- The right to freedom of association (section 18).

⁹ *President of South Africa v Hugo*, 1997 6 BCLR 708 (CC).

¹⁰ *Doreen Harris v Minister of Education*, case no. 30218/2000 (T).

- The right to fair labour practices. This implies the right to join a union and the right to strike (section 23).
- The right to use and enjoy the language of their choice and to participate in the cultural life of their choice; to form, belong to and maintain religious, cultural and language associations of this nature (section 30).
- The right to administrative action, which must be lawful, reasonable and procedurally fair. This implies that an educator, whose rights have been adversely affected by the administrative action of an SGB, has the right in terms of section 33(2) of the Constitution (SA, 1996a) to be given reasons in writing for such an action and if the correct procedures have not been followed, a decision of the SGB could be declared null and void.

According to the limitation clause (section 36; SA, 1996a), one must always remember that fundamental rights are not absolute, they can be limited, depending on their nature, as long as such limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom. This is done while taking into account all the relevant factors. The basic principle is to weigh citizens' rights and interests against one another in a fair way within the framework of democratic values (*cf.* 4.3.2.2).

To show that fundamental human rights also apply to education, the unconstitutionality of corporal punishment at schools according to sections 10 and 12(1) of the Constitution (SA, 1996a), was established in cases such as *S v Williams*¹¹ and *Christian Education of SA v Minister of Education*¹². The first case had a strong influence on education legislation:

- Section 3(4)(n) of the National Education Policy Act (SA: 1996c; *cf.* 2.8.9) commissioned the National Minister of Education to determine national policy for the *control and discipline of students at educational institutions*

¹¹ *S v Williams* 1995 3 SA 623 (CC).

¹² *Christian Education of SA v Minister of Education* 1999 4 SA 1092 (SE).

to provide that no person shall administer corporal punishment or subject a learner to psychological abuse.

- Section 10 of the Schools Act (SA, 1996b; *cf.* 2.8.4) also prohibits corporal punishment being applied to a learner at school.

The importance that courts attach to human dignity (section 10, SA, 1996a) was shown in the case of *S v Makwayne & Mchunu*¹³, where it was held that the rights of life and dignity are the source of all rights. According to this case, other rights may be limited and may even be withdrawn and then granted again, but their ultimate limit is to be found in the preservation of the twin rights of life and dignity. Take them away and all other rights cease.

2.8.2 Labour Relations Act, No.66 of 1995 (LRA)

The organization of employment relations between educators and SGBs falls within the framework of the LRA (SA, 1995b), which shifts from confrontation to cooperation in the workplace. In accordance with the Schools Act (SA, 1996b), the LRA is the most important Act binding and protecting educators appointed by SGBs (Rossouw, 2004:25; *cf.* 2.3.2.1).

According to Grogan (2004:273), one of the policy's objectives underlying the LRA (SA, 1995b) is to provide a unified basis for regulating labour relations in all sectors of the economy in accordance with the Bill of Rights (Chapter 2 of the Constitution; SA, 1996a). The purpose of the LRA (SA, 1995b) is to advance economic development, social justice, labour peace and the democratization of the workplace (Grobler *et al.*, 2003:504). Therefore it is important to establish the way this Act reflects and confirms these rights.

The LRA (SA, 1995b) simplifies and streamlines labour procedures, especially dispute-resolution procedures, while it focuses on:

¹³ *S v Makwayne & Mshunu* 1995 3 SA 391 (CC).

- employers and employees' right to freedom of association; section 4(1) of this Act protects the rights of employees to join and form trade unions and the right of employers to form employers' organizations;
- protection of employees and persons seeking employment; section 5 especially protects them from victimization based on union status;
- promotion of collective bargaining as the desired method of setting wages and conditions of employment (Chapter 2);
- ruling of strikes (section 213) and lockouts (section 65);
- workplace forums to promote the interests of all employees, enhance efficiency and to participate in joint decision-making (schedule 2);
- registration, regulation and functioning of trade unions and employers' organizations in terms of section 96;
- dispute resolutions by means of Bargaining Councils and the Commission of Conciliation, Mediation and Arbitration (CCMA), as well as the Labour Appeal Courts in section 9; and
- labour dismissals in section 191 of the Act.

The *right to strike* is acknowledged by the Constitution (section 23(2)(c); SA, 1996a) and extended by the LRA (section 64(1); SA, 1995b) to every employee as an important part of collective bargaining. It is a last measure that trade unions can use to ensure that bargaining processes have credibility and to back up their demands during the process of collective bargaining.

A strike must be lawful and adhere to the rules of legislation in order to be protected. Sections 64 - 77 of the LRA (SA, 1995b) set the correct procedures to follow for strikes to be lawful. Unprotected strikes may be regarded as misconduct, which may lead to the dismissal of the employees involved.

The right to strike is limited by sections 64 and 65 of the LRA (SA, 1995b) in accordance with section 36 of the Constitution (SA, 1996a) in the interest of employers, employees and the public.

Although the right of employers' to *lockouts* is not included in the Constitution (SA, 1996a), the LRA (SA, 1995b) provides for such a right in section 64(1).

According to Venter (2003:184), the Labour Relations Amendment Act of 2002 also provides statutory recognition to the concept of *unfair labour practices*, sets up a special court structure to adjudicate over disputes concerning alleged unfair practices and grants special statutory remedies.

Unfair labour practices are defined under section 191 of the LRA (SA, 1995b) as any act or omission, other than a strike or lockout, which has or may have the effect that:

- any employee or class of employees is or may be unfairly affected or that his employment duties or work security is or may be prejudiced or jeopardized thereby;
- the business of any employer or class of employers is or may be unfairly affected or disrupted thereby;
- labour unrest is or may be promoted or created thereby; and
- the labour relationship is or may detrimentally be affected thereby.

Grogan (2003:124) mentions that ordinary courts have no power to adjudicate over unfair labour practices. Courts functioning under the LRA (SA, 1995b), are courts of equity as well as law, since they are concerned with considerations of fairness and of strict law. They require that the employer's actions must be both lawful and fair. For example, if the employer exercises his contractual right to terminate an indefinite period contract, it will not necessarily be sufficient *per se* in labour courts, as they may rule that the dismissal was unfair, depending on the circumstances (*Ibid.*:117; *cf.* 1.1).

The correct procedures to be taken in cases of disciplinary actions and fair dismissal of employees are set out in Schedule 8 of the LRA (SA, 1995b). Employees may be dismissed on account of incompetence, incapacity or misconduct. Before an employee may be dismissed, he must be given reasonable opportunity to correct his deficiencies. Grobler *et al.* (2003:546) state that it is important to note that dismissals must be both lawful and fair.

2.8.3 Basic Conditions of Employment Act, No. 75 of 1997

The BCEA (SA, 1997a) is important to educators employed by SGBs since their conditions of service stated by their employment contract must at least be in accordance with the minimum standards set out in this Act (*Ibid.*:53). The BCEA forms a prominent part of their contractual relationships, since it takes precedence over their agreement (Nel *et al.*, 2005:81; *cf.* 2.5.1).

Shaba *et al.* (2003:42) state that educators and SGBs may therefore contract to more favourable conditions of service. The BCEA (SA, 1997a) protects educators if SGBs try to exploit them by setting employment conditions lower than the set socially accepted standards.

This Act addresses and regulates the following employment aspects:

Working hours: These must be arranged by SGBs so as not to endanger educators' health or safety and with due regard for their family responsibilities. In section 9, this Act limits the amount of *working time* to 45 hours per week, 9 hours per day. Section 10 provides that for *overtime* (only by agreement) educators are entitled to increased wages of one and a half times their normal wage, or if agreed upon, to be granted a period of paid time equivalent to the value of the overtime pay. If educators are to work on *Sundays* (section 16), they will be entitled to double their normal wage.

Employers must provide employees who work continuously for more than 5 hours, a *meal interval* (section 14) of at least 60 minutes. Employees must be remunerated for a meal interval in which they are required to work or are required to be available for work. In terms of section 5(a) this may be reduced

by agreement to not less than 30 minutes or be dispensed of in the cases where employees work for fewer than six hours a day.

Night work (section 17; between 18:00 and 06:00), for example parents' evenings, may be required of educators since their working hours per day are reduced to 7 instead of 9 hours per day, providing that transportation is available.

An SGB may not require educators to work on *public holidays* (section 18(1)) unless agreed upon and thus they must be paid at double rates.

Leave: The leave provisions for educators, which are more favourable than those provided for by the BCEA (SA, 1997a), are obtained in Chapter F of The Personnel Administrative Measures as published in Government Gazette, Vol. 222 No. 20372 August.

Because of the school terms set by the State, educators' *annual leave* specifications are different from those of other employees. Institution-based educators will be regarded as being on annual leave during institution closure periods that are outside the scheduled working time, provided that the educator continues to prepare and plan his work in terms of workload measures without having to report at any workplace to perform such duties.

Educators are entitled to 36 working days' *sick leave* (section 22) with full pay within a three-year cycle. Unused sick leave cannot be accumulated.

Maternity leave (section 25) stipulates four months' leave on full pay to commence at least 14 days prior to the expected date of birth. *Adoption leave* for a maximum of 45 working days is available to educators who adopt a child younger than 2 years.

Educators may be granted *leave for family responsibility and urgent private matters* (section 27(5)) for a maximum period of 3 days at a time, provided that it does not exceed 12 working days per annual leave cycle. If an educator has used all his family responsibility leave and leave for urgent private affairs,

he could use any other form of leave, including accrued leave, if such matters still need attention.

Other types of leave: The measures also provide for special leave for quarantine purposes, professional and personal development or religious purposes, study and examination purposes, participating in sporting, cultural and other activities, and extraordinary circumstances.

Unpaid leave is applicable where educators have utilized all their accrued annual leave for a maximum of 184 days and if they are absent due to arrest, imprisonment or appearance in court on a criminal charge that leads to conviction.

Remuneration: The SGB must inform educators of their rights under the Act and remunerate them according to the agreement (section 32(1)). Only lawful deduction (section 34(1)) may be made from their remuneration, i.e. those required by law, order of court, collective agreements, arbitration award, or prior written agreement (Shaba, *et al.*, 2003:62).

An educator will be entitled to remuneration only if he works (no work – no pay). The reverse is also applicable, namely no pay-no work. An educator can refuse to work if the SGB does not remunerate him, without breaching his contract of employment (Grogan, 1993:31).

Termination of service: During the first 4 weeks of employment, an employment contract can be terminated in writing on one week's notice (section 36). The notice period during the remainder of the first year is 2 weeks, and 30 days for a longer period of employment (section 37(1)). The termination of employment by the SGB does not prevent an educator from challenging the fairness or lawfulness of the dismissal in terms of section 191 of the LRA (SA, 1995b).

It is important to notice that the requirements with regard to remuneration, deductions and termination do not apply to educators who work for fewer than 24 hours per month.

Administrative obligations: The SGB must (a) give all educators information concerning remuneration, deductions and working time with regard to their pay, (b) keep record of the time worked by each educator and (c) display at the school a statement of educators' rights under schedule 2 of the Schools Act (SA, 1996b).

Variation on the basic conditions of employment: A collective agreement concluded by a bargaining council or between an employers organization and trade union may, according to Grogan (2003:38), replace or exclude any basic condition of employment including working hours, leave, shorter notice periods, overtime worked and sick leave (*cf.* 2.9.3.4).

Monitoring, enforcement and legal proceedings: A dispute concerning the rights to the minimum standards set out by the BCEA may, in terms of section 51 of the LRA (SA, 1995b), be referred to a bargaining council or to the CCMA for conciliation. If this does not resolve the dispute, it may be referred to the Labour Court (*cf.* 2.9.3.2 & 2.9.3.8).

It must always be remembered that the BCEA (SA, 1997a) sets minimum standards for employment relations and that the SGB and the educator may always contract to more favourable conditions (*cf.* 2.5.1).

2.8.4 South African Schools Act, No. 84 of 1996 (Schools Act)

It is in compliance with this Act that SGBs are entitled to appoint additional educators (*cf.* 2.3.2).

Section 16 of the Schools Act (SA, 1996b) determines that the governance of every public school will be vested in its SGB. Decentralization of power rests upon the assumption that participation of all stakeholders can enhance the achievement of the desired transformation in education and lead to increased enthusiasm, interest, commitment and effectiveness among everybody (*cf.* 2.7).

In light of the above, the schooling system is now experiencing much more than the earlier crisis of trust, acceptance and legitimacy; what is now being

experienced is a crisis of authority, a shift of power to all stakeholders, for which most of the participants are not trained (Steyn, 2002:253).

Section 18(3) provides that each SGB must have a constitution of which a copy must be submitted to the Head of Department of Education, without which no SGB may operate. It does not, however, provide for the approval of the constitution by the Head of Department.

The SGB can only perform those functions contained in sections 20 and those allocated under section 21 of this Act (Grogan, 2003:2). Such functions are the governance of the school, the drawing up of a constitution, mission and code of conduct to learners, the planning of school hours, as well as payment for services rendered to the school.

An SGB of a public high school consists of the principal in his official capacity and democratically elected parents of learners of the public school, educators at the school, non-educator members of staff of the school and learners in the 8th grade or higher at the school (elected by the Learners' Representative Council). A parent who is employed at the school, via the State or the SGB may not represent parents in the SGB, but may represent educators (section 23 (2) of the Schools Act; SA, 1996b).

An SGB may co-opt members of the community to assist in discharging its functions. The SGB of schools that provide education for learners with special educational needs (LSEN schools) must co-opt persons with such expertise. Co-opted members do not have voting rights within the SGB (section 23(8)).

If the SGB ceases to perform its functions under this Act, the Head of Department may appoint persons to do so for an interim period not exceeding 12 months (section 25).

According to section 8, an SGB must adopt a code of conduct for learners in order to establish a disciplined and purposeful environment which facilitates effective education and learning at its school. This code must address aspects such as dispute mechanisms in cases of disciplinary action against learners, the due procedures to be followed in cases of misconduct, as well as

provisions on dealing with serious misconduct investigated by the police service and/or tried by the courts.

Section 36 states that an SGB must take all reasonable measures within its capacity to supplement the resources supplied by the State to improve the quality of education provided to all learners at the school. It is thus equally the responsibility of SGBs to supplement the government's efforts by whatever means necessary.

2.8.5 Employment Equity Act, No. 55 of 1998

The major purpose of this Act (SA, 1998a) is to promote equal opportunities and fair treatment to everyone through the elimination of unfair discrimination and to implement affirmative action measures to redress the disadvantages in employment experiences by designated groups in order to ensure their equitable representation in the workplace (Grobler, 2003:54).

Chapter 2 applies, according to section 4 of this Act (SA, 1998a), to all employers and employees and is therefore important to SGBs when appointing educators. Sections 5 and 6 of the Act prohibit unfair discrimination against employees on the grounds of race, gender, pregnancy, marital status, family responsibilities, ethnic or social origin, colour, sexual orientation, age, disability, religion, HIV status, conscience, belief, political opinion, culture and language (*cf.* 2.6). These sections also prohibit medical or psychological testing for employment purposes.

With regard to unfair discrimination, section 6(2) stipulates that it is not unfair discrimination to take affirmative action measures consistent with the purpose of this Act or to distinguish, exclude or prefer any person on the basis of an inherent requirement of a job.

According to Nieman (2002:336), the concept of affirmative action has developed negative connotations such as the stigma of quotas, on the basis of which it is often assumed that there are no more employment opportunities for white males and that unqualified people are hired just to make up the

numbers. The same author (*ibid.*) stresses the fact that this Act (SA 1998a) sets no quotas as such.

Disputes arising from the provisions of this Act must be referred in terms of section 51 of the LRA (SA, 1995b) to the CCMA for conciliation and, if necessary for arbitration although the Labour Court has the exclusive jurisdiction to determine any dispute about the interpretation of this Act (*cf.* 2.9.3.2 & 2.9.3.8).

2.8.6 Promotion of Administrative Act, No. 3 of 2000

As fairness is one of the most important components of the labour relationship between an educator and an SGB (Rossouw, 2004:20), this is an important Act to take note of. It seeks to give effect to administrative action that is lawful, reasonable and procedurally fair and the right to written reasons for administrative action as detailed in section 33 of the Constitution (SA, 1996a) in order to ensure that justice prevails between two subjects (Shaba *et al.*, 2003:66).

This Act clarifies the meaning of *administration action* as any decision taken or failure to take a decision by a natural or juristic person (public school) which exercises public power or performs a public function in terms of an empowering provision like the Schools Act (SA, 1996b) adversely affecting the rights of any person (in this case an educator) and which has a direct, external legal effect (Rossouw, 2004:20).

The Act further provides for judicial review of administrative actions (seeing that they are not-final and not-binding upon the parties as judicial actions), remedies, as well as the necessary procedures that should be followed. An educator, aggrieved as a result of administrative decisions such as promotion, for instance, may now use this Act to demand reasons for decisions in order to weigh the prospects and merits of a labour dispute on the matter.

2.8.7 Occupational Health and Safety Act, No. 85 of 1993

This Act covers the health and safety of employees, including the general public, who may be affected. It imposes the following duties upon the employee (educator) in section 14:

- to take reasonable care for the health and safety of himself and of other persons who may be affected by his acts or omissions;
- to cooperate with his employer (SGB in this regard); and
- to carry out any lawful order given to him and obey the health and safety rules.

In spite of the above-mentioned, the main responsibility for the health and safety of everyone within the workplace still rests with the employer (SGB).

2.8.8 South African Council for Educators Act, No. 31 of 2000 (SACE)

This Act (hereafter referred to as SACE; SA, 2000) applies to educators employed by SGBs who have to register with it in terms of sections 2, 3(b) and 21. Without registration with SACE, an educator may not be appointed by an SGB, according to section 20(7) of the Schools Act (SA, 1996b; *cf.* 2.6 & 4.3.1.6).

SACE is a professional body of educators that regulates the teaching profession regarding professional ethics. It is completely independent of the Department of Education and has links with both departments of education and trade unions on professional matters of mutual interest.

SACE promotes the professional development of educators in section 2 while it sets, maintains and protects ethical and professional standards for educators. It aims at increasing the integrity and prestige of educators and enhancing their professionalism as a whole by drawing up rules and principles to allow the teaching profession to regulate itself in the interest of transparency and greater accountability in the community that it serves (Lumby *et al.*, 2003:111).

The Code of Conduct (preamble 2; SA, 2000) requires educators to:

- acknowledge the noble calling of their profession;
- acknowledge that the attitude, dedication, training and conduct of the education profession determine the quality of education;
- acknowledge, uphold and promote basic human rights as embodied in the constitution;
- commit themselves to do everything within their power in exercising their professional duties, to act in accordance with the ideals of their profession as expressed in the code; and
- act in a proper and becoming way, such that their behaviour does not bring the education profession into disrepute.

SACE also provides the following guidelines for educators' conduct towards their employer in section 8:

- An educator should recognise the employer (SGB) as a partner in education.
- Educators should acknowledge that certain responsibilities and authorities are vested in the employer through legislation, and serve their employer to the best of their ability.
- Educators should restrain themselves from discussing confidential and official matters with unauthorised persons.

This Council (SACE) advises the Minister on matters relating to the education and training of educators, including minimum requirements for entry into the profession at all levels, standards and programmes of pre-service and in-service education training and requirements for promotion within the system. It may even assist with training programmes (section 5; SA, 2000).

SACE complies, maintains and reviews a code of professional ethics for educators registered with it. It determines a fair hearing procedure for

educators accused of contravening its Code of Conduct. It normally requires SGBs to deduct fees from the salaries of educators and to pay such fees to the council (Rossouw, 2004:70).

2.8.9 National Education Policy Act, No. 27 of 1996

This Act lays down principles and sets rules of action within the whole education sphere, of which the SGB-appointed educator is a part. It assists management to establish an ordered and consistent framework for the conduct of long-term labour relations.

This Act promotes the:

- delegation of authority;
- facilitation of decentralization;
- flexibility of management without forfeiting optimal uniformity;
- clarity of roles, and thus teamwork;
- consistent application and expression of strategy;
- establishment of required performance standards; and
- establishment of better understanding, training and relations in general.

All these Acts play an important role in the relationship between the educator and his employer. But what happens when a conflict of interest occurs?

2.9 RESOLUTION PROCEDURES

Some of the dynamics underlying resolution processes are discussed briefly as an in-depth analysis would be outside the scope of this research. Guidelines for resolution processes can be found in various Acts.

To prevent complaints and grievances to accumulate to conflict or conflicts to become disputes, parties turn to resolution mechanisms for their resolution. However, the mere existence of structures does not always ensure peace.

Poor communication skills and tactics used by parties often escalate problems (Van der Linde, 1996:Abstract).

Resolution mechanisms encompass the following aspects.

2.9.1 Grievance procedures

Grievances are formal complaints by an employee concerning a possible violation of the labour contract (Grobler *et al.*, 2003:524). They exist where rights, interests or privileges are violated or misinterpreted. A grievance *per se* is an occurrence, situation or condition that justifies the individual lodging of a complaint. In the usual context of the employment relations system, a grievance would constitute either a real, perceived or an alleged breach of the terms of the employment contract (Venter, 2003:285).

It is thus important for healthy channels to exist for the resolution of grievances before they accumulate to conflict. At schools, the upward-moving method of communicating grievances is normally used. This procedure ensures that attention is given to grievances immediately as it moves through the school's structure of supervision, with every supervisor getting directly involved in the eventual solving of the complaint. It avoids unnecessary litigation in bargaining councils and courts of law (Nel *et al.*, 2005:235).

According to Rossouw (2004:98) grievances can be raised orally without formal processes or formally within certain timeframes. A fellow employee or his trade union may, at any stage of the grievance procedure, represent the employee. The complaint must be heard in the presence of the principal. If the initial oral representation of the grievance is unsuccessful, a written complaint must be laid within 90 days of the date of the event that led to the grievance. Within 3 days of this written complaint, the principal and all parties involved must meet in an attempt to solve the problem to the satisfaction of all. If still unsolved after this, a formal dispute must be lodged with the Education Labour Relations Council (*Ibid.*; *cf.* 2.9.3.7).

2.9.2 Conflict resolutions

Lumby *et al.* (2003:198) stress the fact that it is not the presence of conflict that characterizes inefficient management. Ineffectiveness is rather characterized by failure to resolve conflict in a beneficial manner and prevent the occurrence of unnecessary conflict.

There are two basic methods for conflict resolutions within labour relations by (Nel *et al.*, 2005:174):

- establishing a person-to-person relationship based on interdependency and trust; or
- using mediators (3rd party intervention) to facilitate interaction.

The applicable method will depend on the (*Ibid.*):

- school's climate (the degree of interdependence and mutual trust);
- personality dynamics and culture of the participants;
- nature of the conflict; and
- environmental constraints.

2.9.2.1 The negotiation process

A process of negotiating is the coming together of parties to the employment relationship to try to resolve their differences and reach a mutually acceptable outcome (Venter, 2003:367). It is an interactive process that consists of three phases (Theron, 2003:202-203):

- the need to negotiate;
- face-to-face persuasive communication; and
- the implementation of the agreement.

Negotiating has its roots in a conflict of interests between parties who are usually interdependent upon one another for reaching their objectives or

satisfying their needs, such as educators and SGBs in their labour relationship (*Ibid.*:204; *cf.* 2.4.1).

The process of negotiating, according to Venter (2003:379), is central to both collective bargaining and dispute resolutions, and is thus a fundamental part of sound labour relations. By addressing issues deliberately in an open forum and actively seeking solutions, parties are better positioned to build an employment relationship based on trust and understanding.

Educators must be able to apply negotiating skills, in order to reduce or remove resistance and conflict within their labour relationship with SGBs. These skills consist primarily of statements of positions, demands, proposals and their counterparts, supported by reason, defended and justified. They must be able to apply argumentation, strategies and tactics to persuade the SGB to accept various proposals (Theron, 2003:215).

The process of negotiation ends when the parties reach consensus about solutions which are fair, reasonable, mutually accepted by both parties and formulate a win-win agreement.

2.9.3 Dispute resolutions

Regardless of how clearly and objectively a contract of employment is written, disputes will arise during its enforcement, according to Grobler *et al.* (2003:523). It is equally true that they should be resolved as effectively as possible and this is feasible by employing the following existing mechanisms.

2.9.3.1 Introduction

All labour disputes over *matters of mutual interest* must be resolved by an agreement between the parties involved (Venter, 2003:384). The LRA (SA, 1995b) requires virtually all disputes that arise between employer and employee to be subjected to a conciliation process before any other dispute resolution procedure is followed (*cf.* 2.8.2).

Available dispute resolution institutions are the CCMA, workplace forums, and Bargaining- and Statutory Councils (Nel *et al.*, 2005:382).

Disputes that must be resolved by the LRA (SA, 1995b) can be divided into two broad categories:

- Disputes by right, which must be arbitrated by the Council for Conciliation, Mediation and Arbitration (CCMA) or adjudicated by the Labour Court.
- Disputes by interest, which are subject neither to arbitration nor to adjudication by statutory bodies (Grogan, 2003:293).

To the first category belong matters of organizational rights, the interpretation and application of collective agreements, the disclosure of information, dismissal for misconduct or incapacity, promotion, demotion, suspension, training for the provision of benefits and other disciplinary action short of dismissal under the residual unfair labour practice protection.

To the second category belong disputes concerning the application and exercise of association rights, refusal to admit a party to a bargaining council, strikes, lockouts, breaches of picketing rules and protest action, strike dismissals, automatically unfair dismissals, discrimination under the residual unfair labour practice definition and dismissals on the grounds of operational requirements.

2.9.3.2 Council for Conciliation, Mediation and Arbitration (CCMA)

Central to the dispute resolutions scheme of the LRA (SA, 1995b), is the process of conciliation by the CCMA. According to Chapter 7 of the LRA (SA, 1995b), the CCMA is an independent body with jurisdiction in all provinces of the RSA (*cf.* 2.8.2).

The functions of the CCMA are (Grobler *et al.*, 2003:510):

- to attempt to resolve, through conciliation, any dispute referred to it in terms of the LRA (SA, 1995b);
- to arbitrate the dispute if it remains unresolved after conciliation, when the LRA (SA, 1995b) requires arbitration or when any party requests that the dispute be resolved through arbitration;

- to assist in the establishment of workplace forums; and
- to compile and publish information and statistics about its activities (*cf.* 2.8.3).

Nel *et al.* (2005:118) stress the fact that an arbitration award made by the CCMA is final and binding on the parties and may be made an order of the Labour Court unless it is only an advisory award.

2.9.3.3 Workplace forums

Workplace forums (chapter 5 of the LRA; SA, 1995b) are structures made up of the representatives of workers, excluding senior workers (as consultative bodies), in order to promote a more cooperative spirit in employment relationships through representation of co-employees (Venter, 2003:180).

According to Grobler *et al.* (2003:509), the aim of workplace forums is to promote the interests of all employees in the workplace, irrespective of whether they are part of a union or not, and to strive to enhance efficiency in the workplace. They attempt to resolve labour issues and to reach decisions. Workplace forums are an aspect of the South African government's desire to broaden democracy through worker representation in the workplace in the hope of enhancing cooperation and improving efficiency (Nel *et al.*, 2005:297).

Any trade union with majority representation at a school may register a workplace forum with the CCMA (Grogan, 2003:294).

The success of workplace forums hinges more on their interactive and interpersonal processes than on their structures (Nel *et al.*, 2005:302).

Shaba *et al.* (2003:58) mention that workplace forums in South Africa are, however, the exception rather than the rule in current labour relations. It is up to the educators' employee organizations and the Department of Education to decide on the actual nature of workplace forums in education. The LRA (SA, 1995b) requires the establishment of workplace forums only where there are more than 100 workers in a workplace.

Up to date there is no single workplace forum in education (*cf.* 4.3.2.2).

2.9.3.4 Collective bargaining

Collective bargaining is a product and an integral part of South African labour environment; it is the heart of all employment relations and limited to it (Nel *et al.*, 2005:178). Collective bargaining is a preferred method of securing social justice, labour peace and economic development. It consists of negotiations between employers (or employer organizations) and trade unions on matters of mutual interests in order to reach collective agreements on issues such as wages and benefits. It therefore regulates the terms and conditions of employment.

According to Basson *et al.* (1998:54), bargaining firstly involves conciliation and, if it fails, arbitration in terms of Section 24 of the LRA (SA, 1995b). One of the main advantages of this process of bargaining is that it endows the parties with equal status, thus eliminating exploitation of the employee (*cf.* 2.5.1 & 5.4). It also emphasizes the fact that the ultimate achievement of individual goals should not occur at the cost of disrupting the labour relationship as a whole.

Collective agreements reached after conciliation or arbitration are written agreements (not minutes of meetings) concerning terms and conditions of employment (Chapter 1 of the Employment Equity Act, Act 55 of 1998; SA, 1998a). According to Oosthuizen *et al.* (2004:35), collective agreements enjoy priority over an individual contract of employment (*cf.* 2.5.4 & 2.8.3).

Swanepoel (1999:108) stresses the fact that collective agreements are binding on the parties at the concerned workplace, on members of the trade union, as well as on members of the employees who are not members of the union, if the union has the majority of employees at the workplace as their members.

Collective labour law is concerned with the rights and duties of opposing interest groups consisting of employers (or employer organizations) and employees belonging to trade unions (Basson *et al.*, 1998:45).

According to Nel *et al.* (2005:117), it is important to note that the LRA (Act 66 of 1995b) does not impose a duty on employers to bargain. If employers, however, choose not to bargain, labour disputes may lead to strikes or will be submitted for mediation.

In the opinion of Nel *et al.* (*Ibid.*:163), collective bargaining has hitherto served as the most feasible and mutually beneficial method of resolving conflicts between parties in labour relationships.

2.9.3.5 Bargaining councils

Bargaining councils are established under section 29 of the LRA (SA, 1995b) by registered trade unions and employer organizations for a sector or area such as education, by adopting a constitution that meets the requirements of section 30 of the LRA (SA, 1995b). Their main functions according to section 28 of the LRA (SA, 1995b) are:

- to conclude and enforce collective agreements;
- to prevent and resolve labour disputes;
- to establish and administer a fund to be used for resolving disputes; and
- to determine, by collective agreement, the matters which may not be an issue in dispute for the purpose of a strike or lockout at the workplace.

Agreements reached by a bargaining council, bind only those parties to the council who are parties to the collective agreement, if not extended to others under section 32 of the LRA (SA, 1995b). Bargaining council agreements deal mainly with substantive issues such as wages and conditions of service, but may also deal with procedural issues such as job evaluation and job grading procedures for retrenchment, education and training (Swanepoel, 1999:111).

The Education Labour Relations Council (ELRC) is a bargaining council established for the education sector in terms of the LRA (SA, 1995b; *cf.* 2.9.3.7).

2.9.3.6 Statutory councils

In terms of sections 39 - 48 of the LRA (SA, 1995b), statutory councils may be established by one or more registered trade unions whose members constitute at least 30% of the employees in the sector or by one or more registered employer organizations whose members employ at least 30% of the employees in the sector.

According to Swanepoel (1999:112), statutory council agreements are procedural in nature and regulate items such as dispute resolution, education and training and the administration of pension and medical funds.

Employers and trade unions may decide to bargain outside these forums.

2.9.3.7 Education Labour Relations Council (ELRC)

The ELRC is a separate sectional bargaining council (*cf.* 2.9.3.5) established to promote collective bargaining in relation to all matters of mutual interest between the State as employer and educators employed under the Employment of Educators Act, 76 of 1988 (SA, 1998b). It does, however, have no jurisdiction to deal with disputes concerning non-parties to such a council (Lumby *et al.*, 2003:12; *cf.* 4.3.2.2). Thus disputes concerning educators employed by SGBs cannot be resolved by the ELRC without their consent, but must be referred to either the CCMA or to the Labour Court (Shaba *et al.*, 2003:113).

2.9.3.8 Labour Court and Labour Appeal Court

Sections 151-166 of the LRA (SA, 1995b) make provision for the establishment of a Labour Court. This is a senior court with authority and inherent powers equal to the Supreme Court (Grobler *et al.*, 2003:513). The Labour Appeal Court is the final court of appeal in terms of Section 167 of the LRA (SA, 1995b) in respect of all judgements and orders passed by the Labour Court. It is equal to the Appeal Division of the Supreme Court of Appeal (Nel *et al.*, 2005:118 & 121).

According to Section 158 of the LRA (SA, 1995b), the Labour Court has the following powers:

- It can make any appropriate order grant urgent interim relief such as an interdict, direct any particular act to remedy a wrong and give effect to the primary objects of the LRA (SA, 1995b);
- It can order compliance with any provision of the LRA (SA, 1995b);
- It can make any arbitration award or any settlement agreement, other than a collective agreement, an order of the Court;
- It can request the commissioner to conduct an investigation;
- It can determine a dispute between a registered trade union, a registered employer organization and one of its members about any alleged non-compliance with the constitution of that trade union or employer organisation; and
- It can deal with all matters necessary or incidental to performing its functions in terms of the LRA (SA, 1995b) or any other law (*cf.* 2.8.3).

2.10 SUMMARY

In chapter two the role players in the labour relationship between SGBs and educators were identified. The important role of the public school as employer was highlighted.

The direct labour relationship between an educator and an SGB is one of interdependence of which conflict is an inevitable prominent part. Educators employed by SGBs are often referred to as contract-appointments because of the fact that their entire labour relationship is ruled by their contract of service with the SGB. The main principles, characteristics and contents of contracts were discussed.

The appointment of educators by SGBs as well as their labour rights and obligations are governed by legislation. Attention was given to the legislation

most applicable to education, while brief references were made to the most relevant sections of each Act.

Resolution procedures were forthwith mentioned separately, as the effective solution of grievances, conflict and disputes are essential for sound labour relations to continue to the benefit of not only the parties involved, but also of the community as a whole.

In the next chapter, the focus will be on the research design and methodology used to answer the research question.

CHAPTER THREE

EMPIRICAL RESEARCH DESIGN AND METHODOLOGY

3.1 INTRODUCTION

The specific aim of the empirical research was highlighted in chapter one (*cf.* 1.3), namely to gather information on the current nature and scope of labour relations between SGBs and educators employed by them, to explore the knowledge educators have concerning their labour rights and obligations, to generate theory and to empower educators.

The literature review presented in chapter two formed the legal framework for an empirical study.

This chapter outlines the methodology used to collect, edit and analyse data and focuses on the quantitative research design, issues of measurement, and sampling methods used. The reliability and validity of the instruments of measurement are also discussed.

3.2 RESEARCH PROBLEM, DEFINITIONS AND KEY VARIABLES

This paragraph states the research question and explains how the researcher arrived at the specific question. The key concepts of the problem are provided and definitions of the relevant variables are given.

The research deals with a specific research question, namely *Educators employed by SGBs: what are their labour rights and obligations?* The researcher arrived at this question by the following means:

- casual observations in the education field as to the effects that labour relations practices have on educators employed by SGBs, and the routine ways of doing things based on authority lacking research evidence;

- related literature: Rossouw (2004:v) recognized that some main challenges in labour relations arise from those educators employed by schools via SGBs, so there was a need to study this field;
- current social and political issues such as frequent changes in the field, as well as newly proposed amendments to existing legislation;
- practical situations spelling out the need of SGB-appointed educators for more information regarding their labour relations and practical problems suggesting the evaluation of current educational policies and Acts, inspired focus on educational needs, informational needs and the implementation thereof; and
- personal experience and insight in the field.

The researcher used deductive reasoning to select a construct, variables and instruments for the research. In research, higher-level, abstract concepts are called *constructs*, which express the idea behind a set of particulars and are often derived from theory (McMillan & Schumacher, 2001:82). *Variables* refer to events, categories, behaviour or attitudes that express a construct and have different values, depending on how they are used in a particular study (Creswell, 2005:45).

The *knowledge with regard to labour rights and obligations* forms the *construct*, which is a complex abstraction that is not directly observable. Through logical reasoning, the following *variables* were chosen as indicators to measure or classify particulars of the construct: *educators employed by SGBs in accordance with section 20(4) of the Schools Act (SA, 1996b) in the Gauteng Vaal Triangle District 7*.

Since the researcher used a non-experimental quantitative design (*cf.* 1.4.2), these variables were not directly or indirectly manipulated. The subjects already possessed labour rights and obligations.

3.3 ISSUES OF MEASUREMENT

The research question gave rise to a survey or descriptive mode of inquiry (*cf.* 1.4.2) in order to investigate the attitudes and knowledge of groups (educators employed by SGBs) concerned with a practice (labour law).

Descriptive research is concerned with the current or past status of something through simply describing attitudes, behaviour or other characteristics of a group of subjects (McMillan & Schumacher, 2001:283).

The specific design describes the procedure for conducting the study, including from whom and under which conditions the data must be obtained, how the research is set up, what happens to the subjects and what methods of data collection should be used to provide the most valid and accurate answers to the research question.

An ordinal measurement scale was used to assign numbers to responses received from the subjects. This scale was chosen because of the following reasons (Creswell, 2005:166):

- It assumes that categories of the variable can theoretically be rank-ordered from the highest to the lowest.
- The research deals with attitude or knowledge data.
- Each value can be related to others as being equal to, greater than or less than.
- There is an inherent order to categories, for example ranking ideas from most important to least important, as well as the use of percentage ranks.

The observations obtained from the data collected, was organized in order to interpret the results correctly.

The data were graphically portrayed to provide visual representation through various graphs (*cf.* chapter 4).

3.4 SAMPLE DESIGN AND SAMPLING METHODS

In this paragraph, the sample design is discussed as well as the sampling techniques employed and the criteria used in the choice of the sample size.

3.4.1 Population

The sample was randomly selected from a larger group of persons, namely educators employed by SGBs in the Gauteng Vaal Triangle D7-district, identified as the population. The selected target population refers to a group of individual educators that conform to the specific criteria of being appointed by public schools via their SGBs, to which the researcher intends to generalise the result of the research (Creswell, 2005:145). In this regard the following delimiting variables were taken into account:

- the geographic boundaries of the Gauteng Vaal Triangle D7-district;
- educators appointed to public schools within the district; and
- educators appointed by SGBs in accordance with section 20(4) of the Schools Act (SA, 1996b; *cf.* 2.3.3).

3.4.2 Determining the sample size

In determining the sample, the probability sampling method (*cf.* 1.4.5) was used. This entails drawing subjects from a larger population in such a way that the probability of selecting each member of the population is known, though probability is not necessary equal and providing estimates of what is true for a population from a sample (McMillan & Schumacher, 2001:170).

The researcher used an appropriate formula for determining the sample size for a variable expressed as a percentage:

$$n = (1 - n/N) \times \frac{t^2(p \times q)}{d^2} \times \text{finite population correction} = \frac{\text{probability level} \times \text{variance}}{\text{confidence interval}}$$

where:

n = the sample size or the number of completed questionnaires

N = the size of the population

t = the squared value of the standard deviation score that refers to the area under a normal distribution of values

p = the percentage category for which the sample size is computed

q = $1 - p$

d = the squared value of one half the precision interval around the sample estimate

According to this formula, the sample size is an expression of a finite population correction factor $(1 - n/N)$ times the probability level for this sample occurrence, times the variance of the variability of said variable in the population divided by the size of the confidence interval that is needed for the estimate.

In order to set values for the various components to this formula and thus solve the equation, the researcher decided as follows:

N = the size of the population

- The population to be studied is limited to the Gauteng Vaal Triangle D7-district, being accessible to the researcher.
- The Department of Education was phoned to establish the number of public schools within this district. They provided the researcher with a list of 105 schools.
- In order to determine the number of educators employed by SGBs within the 105 schools, each school was contacted telephonically. From this enquiry it was established that there are 144 educators employed by these schools via their SGBs during the period of September to December 2005.
- The size of the target population for this study was thus established at 144.
- Therefore the value of N is 144.

t = the standard deviation score that refers to the area under a normal distribution of values

- In setting the value of t , a probability level is set for the sample result.
- The researcher decided that she wants to be 95% confident that the sample confidence interval includes the population value, and its score is thus 1,96.
- Therefore the value of t is 1,96.

p = the percentage category for which the sample size is computed

- The formula used, is for a variable expressed as a percentage. Typically this means that the researcher is interested in a variable expressed as two categories: the percentage of those educators who do and those who do not have sufficient knowledge regarding their labour rights and obligations. Each of these variables is expressed as a percentage.
- The researcher is mainly interested in a variable which has response categories of strongly agree, agree, disagree and strongly disagree. Since this study is interested in the proportion of subjects which agree with a statement, the variable was dichotomized. Therefore those who strongly agree and agree were combined into one category and those who disagree into a second category. The percentage in the final two categories must sum up to 1.0. The variance of a percentage variable is the product of the two percentages.
- In order to establish the number of educators who do have sufficient knowledge about labour rights and obligations, in order to determine the sample size, the researcher needed to estimate the percentage of educators before the study, as this estimate is a necessary component of the formula.
- In view of the above, the researcher made a conservative guess at the proportion of educators that have sufficient knowledge as being 10%.

- Therefore the value of p is .10.

$$q = 1 - p$$

- Since p is established as being 10%, and q equals 1 – p, q is equal to 90%. Thus the value of q is .90.

d = confidence interval

- The confidence interval relates to the margin of error that will be tolerated by the study. d is expressed as plus/minus and represents one-half of the range. Thus, if the researcher wants the probability or confidence level to be at 95% (value of t), the confidence interval will be plus/minus 5%.
- Therefore the value of d is 5% (0.05).

Putting the formula together

Formula:

$$n = (1 - n/N) \times \frac{t^2(p \times q)}{d^2}$$

where: N = 144, t = 1.96, p = .10, q = .90, and d = 0.05

$$n = \frac{(1.96)^2(0.10 \times 0.90)}{(0.05)^2}$$

$$n = 138$$

According to the formula, this study requires a sample size of 138.

But as the population in this study is very small (a population of 144) and the sample size of 138 represents more than 5% of the population, the total size of the population does affect the sample size and therefore the following formula is added to establish the relevant sample size for this study.

$$n = \frac{N}{1 + (n-1)/N} = \frac{138}{1 + (137/144)} = 70.769$$

The sample size is thus established at 71.

3.5 DATA COLLECTION METHODS

This paragraph provides detail on the data collection process, including gaining access to subjects, as well as the techniques and procedures used to collect data.

Data were collected from the sample (71 educators employed by SGBs in the geographic area) through a questionnaire to ensure that the research remain as objective as possible and to enable the researcher to generalize the findings from the sample to the larger population (Creswell, 1994:117).

A structured questionnaire (Annexure A; *cf.* 1.4.6) was selected as the appropriate data collection method, as:

- this is a study gathering existing quantitative information regarding the employment relationship of educators employed by SGBs;
- it is cost and time effective; and
- it is the best method to provide the necessary information to answer the research question.

Closed-ended questions were decided upon since they enable the respondents to choose from a list of provided responses, because:

- the researcher is interested in the attitudes and knowledge of the respondents;
- it is anticipated that many respondents will not want to complete a questionnaire that requires a lot of writing and time; and
- it facilitates the tasks of respondents, thus minimizing the reasons for not responding.

The questionnaire was divided into four sections (see Annexure A). Section A gathered biographic information, such as age, gender, the number of years both in education and in an SGB post, and training in Education Law. Section B aimed at gathering information on legal matters, while section C contained

seventy-two questions aiming at gathering information on the experience and perceptions of educators regarding their labour relationship with SGBs. The fourth and last part (section D) was aimed at establishing how educators employed by SGBs perceive themselves in relation to educators employed by the Department of Education.

Respondents were requested to answer questions in Section B by indicating *yes, no, or not sure*; and Section C according to a scale from 1 to 4, where 1 represented *strongly agree*, 2 *agree*, 3 *disagree* and 4 *strongly disagree*. The 4 point scale used in Section D included the choice between 1 *more*, 2 *the same*, 3 *less* and 4 *much less*.

Questionnaires were personally handed to each subject in order to:

- have personal contact with subjects;
- gain the cooperation of each subject;
- allow participants to complete the questionnaire within a location and time space convenient to them;
- gain insight into the atmosphere in which subjects work, and to be able to read non-verbal signs such as body language;
- provide for clarification if needed (although particular care was taken not to intimidate respondents into participating or into answering particular questions in a specific way);
- obtain a higher response rate; and
- limit reporting errors.

3.5.1 Question design

Introduction: As the questionnaire was personally delivered to the subjects, no written introduction was necessary. The study was introduced orally by prior notification of its purposes through making an appointment with the principal

of each school. Consent to distribute the questionnaire among staff members employed by the SGB was gained from the respective principals.

Before questionnaires were handed to the subjects, the importance of the study, as well as the nature, purpose and use thereof, was orally relayed to them so that each subject would take the study seriously and to provide complete and accurate responses. Another purpose for the introduction of the study to subjects was to obtain their informed consent prior to the completion of the questionnaire. During the introduction stage, each participant was ensured of the protection of confidentiality by the researcher herself. In view of this, no questionnaire was marked in any way to link answers to a particular individual (*cf.* 1.4.8).

Substantive questions were included in sections B, C and D of the questionnaire to address research goals.

Background questions were included in section A of the questionnaire to obtain background information on the respondents, since the analysis of the study requires this for comparative reasons.

Drafting of the questionnaire. The questionnaire was first pre-tested informally and then formally among education students and colleagues, in SGB-posts. The purpose of the pre-tests was to:

- make sure that respondents understand the questions asked;
- establish existing measuring and other problems;
- obtain feedback on individual items;
- to establish the time for completing a questionnaire; and
- test the effectiveness of the entire questionnaire as a method of collecting relevant data.

3.6 DATA CAPTURING AND DATA EDITING

After the completion of the data collecting process, the questionnaires were first edited. During the editing process, the researcher scanned each questionnaire by looking for skipped questions, incomplete information, incorrect, inconsistent and illogical entries. Problems found were then corrected with the cooperation of the respective subjects.

After this, the data had to be analysed and interpreted before a report could be drawn up. The collected data had to be coded and entered into a computer data file. This process is called data reduction and was done by the Statistical Consultancy Service of the North West University, Vaal Triangle campus.

Coding refers to assigning numbers to the responses to questions, which allows for the statistical analyses of the data. It also allows the researcher to estimate characteristics or look for patterns among variables.

Each subject was given a unique identification number between 001 and 071, which was entered into the data file at the beginning of his or her record. After the coding and entering, the data had to be checked or cleaned to ensure that it was correctly coded and entered.

Data are described by two descriptive summary measures, namely the measure of central tendency (the mean, median and mode) and the measure of variance (standard deviation). The *mean* represents the average value in a set of scores; the *median* is the middle score in a set of scores and the *mode* refers to the most frequent score in a test.

Since the study had a 100% response rate, the researcher did not need to be concerned about non-respondents changing the results. Therefore the statistical basis for projecting from the selected probability sample to the target population was by no means weakened. This also means that there was no potential effect of non-respondents at issue.

3.7 RELIABILITY AND VALIDITY

According to McMillan and Schumacher (2001:244) reliability refers to the consistency of measurement – the extent to which the results are similar over different forms of the same instrument of data collection. The same authors are of the opinion that the actual amount of error in test scores, or the reliability, is determined empirically through several types of procedures. Each type of reliability is related to the control of a particular kind of error and is usually reported in the form of a reliability coefficient.

The reliability coefficient is a correlation statistic comparing two sets of scores from the same individuals (Creswell, 2005:162). The reliability coefficient for this study was calculated by the Statistical Consultancy Services of the Vaal Triangle Campus of the North West University according to the *Cronbach alpha standardized test* as being 0.827. If the coefficient is as high as this, the scores obtained are highly reliable. An acceptable range of reliability in coefficients for most instruments is .70 to .90 (McMillan & Schumacher; 2001:245).

Validity is the extent to which inferences made on the basis of numerical scores are appropriate, meaningful and useful (Creswell, 2005:164). Validity is assessed on the purpose, population and environmental characteristics in which measurement takes place. To assure validity, the researcher needs to identify assumptions or make arguments to justify the inference or use for a specific purpose (McMillan & Schumacher; 2001:240). In this study the researcher argued in chapter 1 that educators employed by SGBs do not have an in-depth knowledge regarding their labour rights and obligations. Data was thus collected to either support or contradict this assumption (*cf.* 4.4.2).

3.8 DATA ANALYSIS

Descriptive statistics was used firstly to organize and analyze the quantitative data and secondly to summarize and reduce large numbers of information.

The reduction of data resulted in a few numbers, representing all observations in each group of interest. It portrayed and focused on *what is* with respect to the sample data.

Descriptive statistics were chosen as a method because it is the most fundamental way to summarize data and it is indispensable in interpreting the results of quantitative research (McMillan & Schumacher, 2001:205).

After using descriptive statistics to describe the sample, inferential statistics were used to estimate the true value of the information to the population.

3.9 SUMMARY

This chapter dealt with the research design, outlined the research problem, and addressed the issues of measurement, as well as with the reliability and validity of the instruments used in the study. A description was provided on how the sample was selected and how the sample size was determined. The questionnaire, as data collection method, was discussed and an explanation was provided on the capturing, editing and analysis of data.

The data analysis and interpretation will be dealt with in the next chapter.

CHAPTER FOUR

DATA ANALYSIS AND INTERPRETATION

4.1 INTRODUCTION

In chapter three, the research design and methodology, and the reliability and validity of the structured questionnaire were discussed.

Chapter four comprises the results drawn from the questionnaire as completed by the sample in order to answer the research question.

4.2 SAMPLE PROFILE

A sample of 71 educators employed by public schools via their SGBs in the Gauteng Vaal Triangle D7-district completed the questionnaire (*cf.* 3.3). The D7-district consists of 105 public schools and 144 educators in this district are currently employed via SGBs. Nine schools were randomly selected and all the educators employed by these schools were requested to complete the questionnaire on any given day.

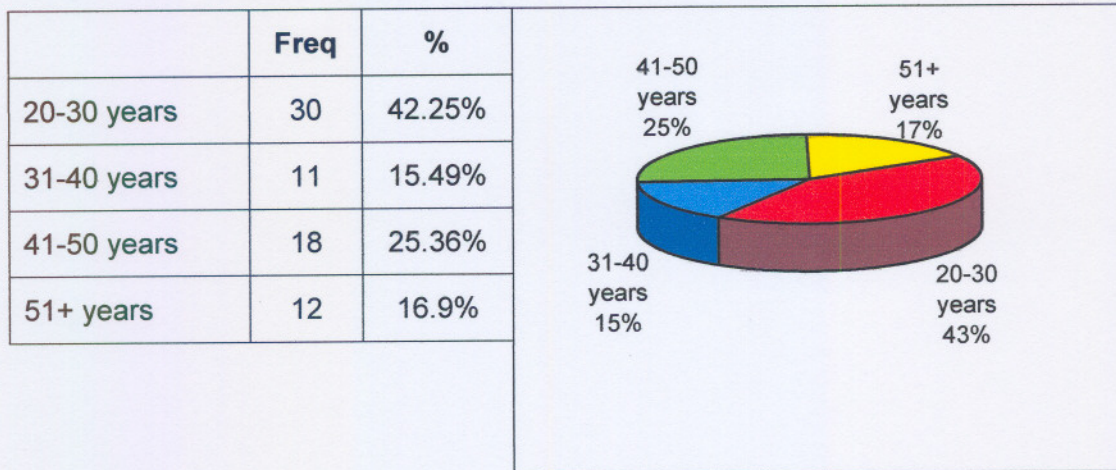
4.3 PRESENTATION AND DISCUSSION OF RESULTS

4.3.1 Biographic information

Data containing biographic information, collected from the sample through section A of the questionnaire will be discussed firstly.

4.3.1.1 Age

Table 4.1: Age of respondents

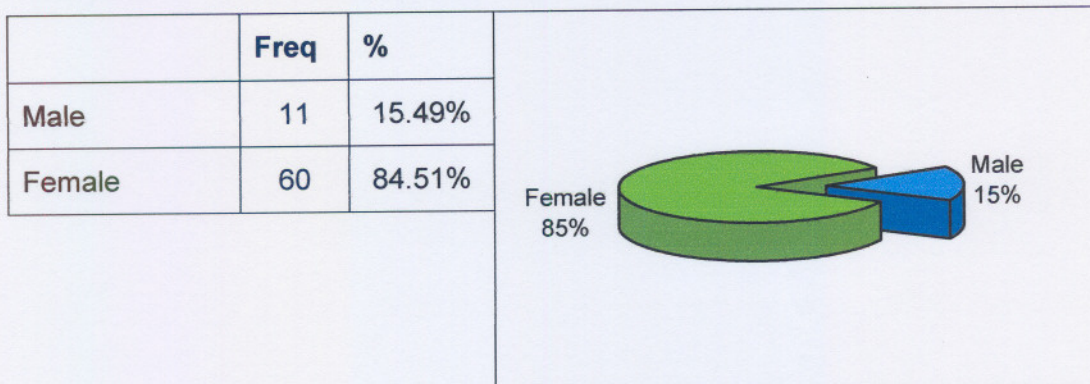


A majority percentage of 42.25% of the respondents, currently in SGB-posts, are between the ages of 20 and 30 years. This is followed by 25.35% between the ages of 41 and 50 years, 16.9% are 51 years or older, while 15.49% are between 31 and 40 years of age.

This could be an indication that younger educators tend to be in SGB posts before moving on to permanent posts with the Department of Education (*cf.* 4.3.5). The data also indicates a percentage of 25.36% (the second largest group) of educators between the age of 41 and 50, which must be seen against the trend in South Africa of educators who left the profession a few years ago due to retrenchments by the Department of Education and are now returning to education through SGB posts (*cf.* 4.3.1.4).

4.3.1.2 Gender

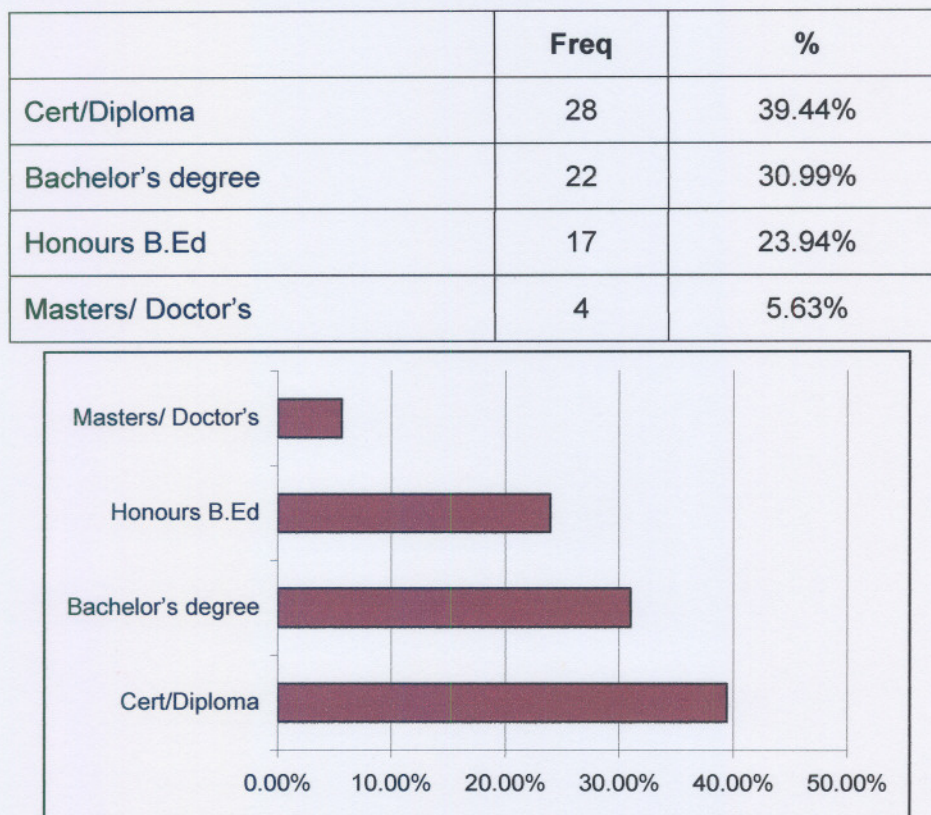
Table 4.2: Gender of respondents



The responses concerning gender indicate that 84.51% of the educators are female and only 15.49% are male, which was expected since the education profession is characterized as being a predominantly female occupation.

4.3.1.3 Qualifications

Table 4.3: Qualifications of respondents



The majority, 39.44% of the respondents, indicate that they possess either a certificate or a diploma in Education, 30.99% of the respondents have

completed a Bachelor's degree, 23.94% are in possession of an Honours B.Ed. degree, while 5.63% have completed a Master's degree or a Doctorate.

According to the data 66.2% of the respondents feel that their qualifications (*question D7*) are the same as those of educators employed by the Department of Education.

4.3.1.4 Teaching experience

Table 4.4: Teaching experience of respondents

As educator			In SGB post		
No of years	Freq	%	No of years	Freq	%
1-2 years	19	26.76%	0-1 years	23	32.39%
3-6 years	17	23.94%	2-5 years	34	47.89%
7-12 years	12	16.90%	5+ years	14	19.72%
13+ years	23	32.40%			

No of years	Freq	%
1-2 years	19	26.76%
3-6 years	17	23.94%
7-12 years	12	16.90%
13+ years	23	32.40%

No of years	Freq	%
0-1 years	23	32.39%
2-5 years	34	47.89%
5+ years	14	19.72%

The above table is a representation of SGB-employed educators' experience in education, as well as their number of years in an SGB post. From this data it is apparent that the majority (32.40%) of such educators have been in the profession for more than thirteen years, while the majority (47.89%) have been in a SGB post between two to five years.

This indicates that most educators, currently in SGB posts, have been in Departmental or other posts for at least a period of eight years (the minimum of 13 years in education minus the maximum of 5 in an SGB post) prior to their employment with public schools via SGBs (*cf.* 4.3.1.1).

The question which arises from the above facts, is: Why did these educators move to SGB posts? Could it be that they prefer SGB appointments to appointments by the Department of Education? This question was put to them (*Question C66*) in the questionnaire: *I prefer an SGB-appointment to an appointment by the Department of Education*, to which they responded as follows:

39.44% disagree

35.21 % strongly disagree

14.08% agree

8.45% strongly agree

2.82% did not respond to this question.

If we calculate those who either strongly agree and agree together, and combine those who strongly disagree and disagree together, we find that 22.53% of the respondents agree and, by far the majority, 74.65% disagree with the statement. Therefore the answer to our question is a definite “No”.

The data obtained in this section thus confirm the researcher’s interpretation of the data obtained through *question A1*: that educators who previously left the education profession are returning through SGB posts (*cf.* 4.3.1.1). The reason for their returning to the education profession could indicate that they left the education profession unwillingly, under pressure or due to being declared in excess or being retrenched by the Department of Education (*cf.* 2.3.5.1).

This data correlate with Lemmers’ view (1993:47, *cf.* 2.3.5.1) that unemployment among educators is one of the main reasons for educators’ accepting appointments by SGBs at lower remuneration scales.

4.3.1.5 Breadwinner

The respondents indicate that 69.01% are main breadwinners, while 30.99% are not. As 84.51% of the respondents are female (*Question A2*; *cf.* 4.3.1.2), this data needed further investigation. It was established that 3 out of the 11

male respondents indicate that they are not main breadwinners. The three respondents fall between the ages of 20-30 years.

Fifteen of the female respondents (60 in total) indicate that they are the main breadwinners of whom five are between the ages of 20-30 years, three between the ages of 31-40, three between 41 and 50 years and four 51 years and older.

This information is important when it comes to the payment of equal salaries to both male and female employees.

4.3.1.6 SACE

This question addressed the relevance of registration to SACE (SA, 2000; *cf.* 2.8.8), which applies to all educators, including educators appointed by SGBs. Since the aim of SACE (SA, 2000) is to regulate the teaching profession regarding professional ethics, it is essential that all educators are registered with the Council. This complies with the fact that no educators may be appointed by SGBs without registration to SACE, according to section 20(7) of the Schools Act (SA, 1996b).

In contrast to this provision, the respondents report that 32.39% are not registered at SACE and have thus been appointed illegally, since their appointments do not adhere to section 20(7) of the Schools Act (SA, 1996b). Could this mean that those educators who are not registered members, do not identify themselves with upholding the noble calling of the education profession, are not promoting basic human rights, do not act in a proper and becoming way not to bring the profession into disrepute and do not comply with the stipulations regarding misconduct? Are they co-responsible for the community's perceiving education as negative (*cf.* 4.3.6)?

4.3.1.7 Socio-economic status of areas

By analysing data received through this question (A8), it is clear that the majority of respondents (88.73%) are employed by SGBs in predominantly middle-income areas.

4.3.1.8 Employer

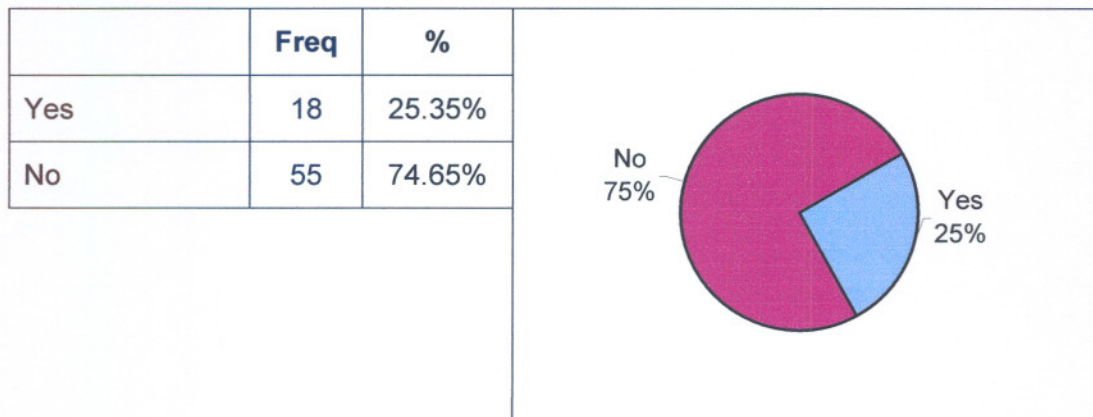
Although the majority of respondents indicate that they regard the SGB (95.65%, *question 9*) as their employer who also determines the conditions of their services (81.43%, *question 10*), it is interesting to note that 12.86% indicate that the principal is responsible for their working conditions. Observations made by the researcher and oral statements by the respondents during the completion of the questionnaire, emphasize the importance of the principal in the working lives of educators (*cf.* 2.3.1).

The rest of the data will be analyzed, not according to the numerical appearance of questions in the questionnaire, but in more or less the same sequence as the literature review (*cf.* 1 & 2).

4.3.2 The knowledge of educators employed by SGBs regarding their labour rights and obligations

4.3.2.1 Education Law as a subject

Table 4.5: Education Law as a subject



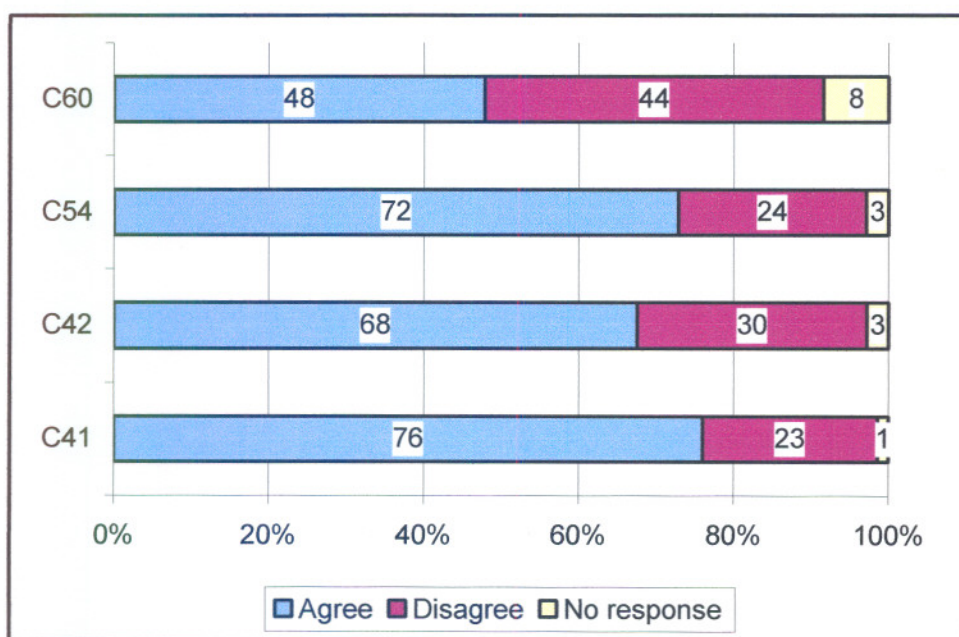
The above table shows that only 25.35% of the respondents had Education Law as a subject, which confirms the statement made by the researcher in chapter 1 (*cf.* 1.6), namely that educators standing in classes today are not trained in Education Law, hence the importance of this study.

4.3.2.2 Questions to test knowledge

Table 4.6: Questions to test knowledge

	C41	C42	C54	C60
Agree	76.06%	67.60%	71.83%	47.89%
Disagree	22.53%	29.58%	23.94%	43.66%
No response	1.41%	2.82%	4.23%	8.45%

Figure 4.1: Questions to test knowledge of labour laws



Questions C41, 42, 54 and 60 made statements regarding applicable aspects of labour principles to test the respondents' knowledge in order to establish whether the researcher's prediction concerning educators employed by SGBs not having sufficient knowledge, is true or false (*cf.* 3.7).

All four statements made in these questions were incorrect (*cf.* 2.8.1, 2.9.3.7 & 2.9.3.3) and therefore the respondents should disagree with the statements if they have in-depth knowledge regarding their labour relations. By analyzing the data, it was found that 76.06%, 67.60%, 71.83%, and 47.89% of the respondents agreed with the statements made in questions C41, 42, 54 and

60. The response rate of agreeing to the statements established a high majority in *questions 41, 42 and 54*.

If the non-respondents' (8.45%) responses are added to the 47.89% of those agreeing, a majority percentage of 56.34% is calculated for *question 60*. The researcher is of the opinion that the calculation is valid in establishing the educators' knowledge as the non-respondents indicated orally that they did not respond to this question because they can neither agree nor disagree with the statement because of a lack of knowledge.

Thus a majority of the respondents agree with the above-mentioned statements, from which the researcher can interpret that they do not have an in-depth knowledge of their labour relations. Therefore the researcher's prediction to this effect is confirmed (*cf. 3.7*).

The data received were analyzed further to establish whether those students who indicate that they had Education Law as a subject, have more knowledge than those who never had any training in Education Law. Eighteen respondents had Education Law as a subject. Fourteen agree with the statements: *According to the Constitution I may insist on identical treatment under all circumstances (questions C41; cf. 2.8.1)* and *The human rights granted by the Constitution are absolute (C42; cf. 2.8.1)*; 15 agreed with the statement: *I may lodge a formal dispute with the ELRC (C54; cf. 2.9.3.7)* and 10 with the statement: *There are Workplace forums in education (C60; cf. 2.9.3.3)*.

This data indicate that those educated in Education Law do not currently show more knowledge than those without any law training. The researcher is of the opinion that the statement regarding human rights as absolute (*cf. 2.8.1*) should have been recognized by Education Law students as incorrect. Therefore it may be concluded that very few educators in SGB positions have sufficient knowledge concerning their labour rights and obligations.

This conclusion is supported by the majority of scores (an average of 55.56%) with regard to questions *B6.1 to B6.9*, which indicate that respondents are not sure of the legislation applying to their labour relationship with SGBs (*cf. 2.8*).

4.3.3 The contract of employment

Table 4.7: Employment contract

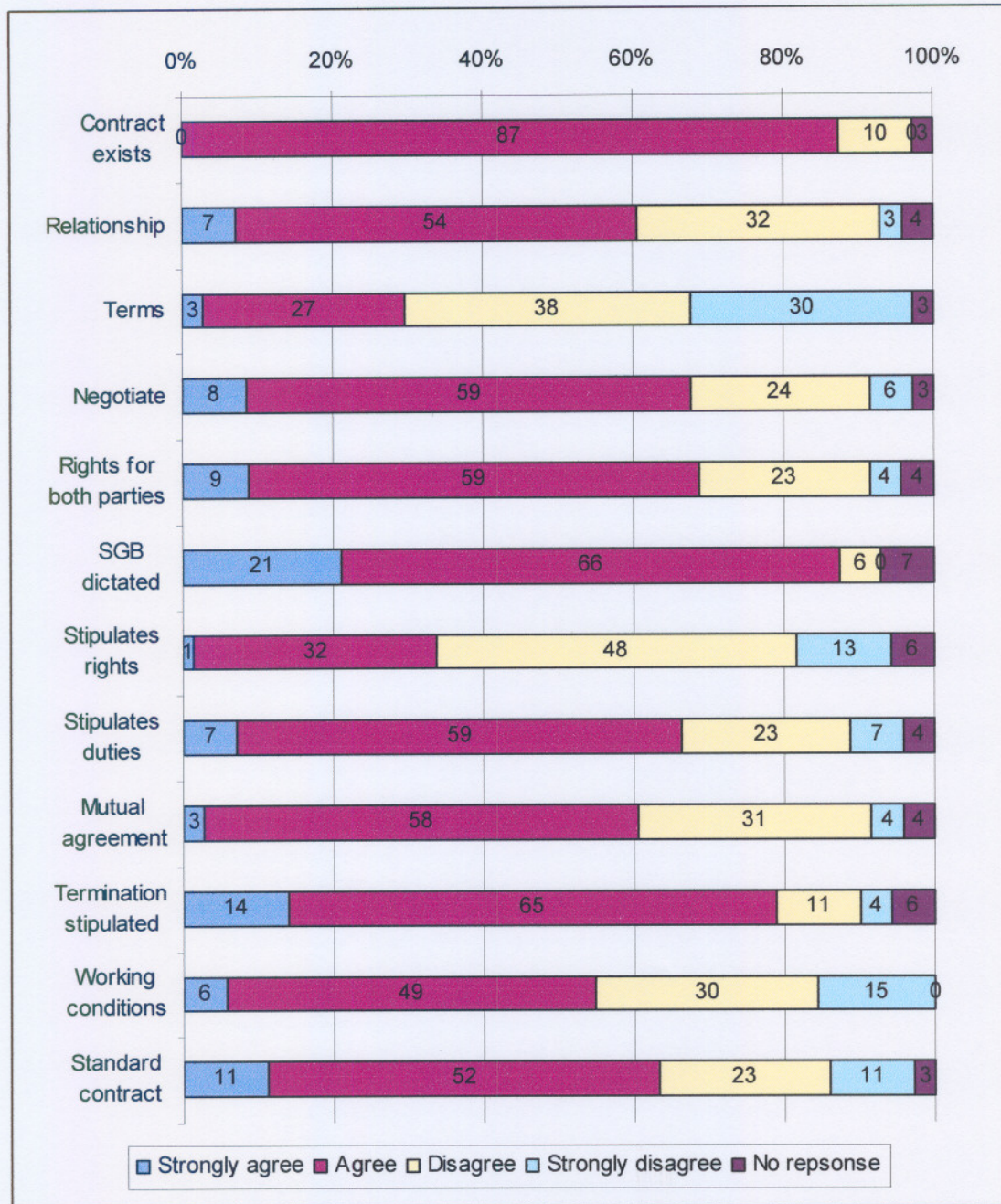
No	Statement	Strongly agree	Agree	Disagree	Strongly disagree	No response
B1	Employment contract exists	0.00	87.32	9.86	0	2.82
C15	Regulates the entire relationship	7.04	53.52	32.39	2.82	4.23
C16	I was free to negotiate terms	2.82	26.76	38.03	29.58	2.81
C19	Parties are free to negotiate unique conditions	8.45	59.15	23.94	5.63	2.83
C20	Creates rights for both parties	9.86	59.15	22.54	4.23	4.22
C22	The SGB dictated the terms	21.13	66.20	5.63	0	7.04
C24	Stipulates rights for employees	1.41	32.39	47.89	12.68	5.63
C25	Stipulates duties for employees	7.04	59.15	22.54	7.04	4.23
C32	Varied by mutual agreement	2.82	57.75	30.99	4.23	4.21
C34	Provides for the termination	14.08	64.79	11.27	4.23	5.63
C36	A say in working conditions	5.63	49.30	29.58	15.49	0
C67	A standard SGB contract	11.27	52.11	22.54	11.27	2.81

The above table indicates that a majority of 87.32% of the respondents have entered into a written contract with the SGB (B 1), which (according to 60.56%) regulates their entire labour relationship (B 15; cf. 2.5.1).

A majority of 67.60% of the respondents indicate that parties to an employment contract are free to negotiate unique conditions of employment (C19), and 60.57% agree that contracts may be varied by mutual agreement

(C32). To the contrary, 67.61% indicate that they are not free to negotiate the terms of their employment contract with the SGB (C16; cf. 2.5).

Figure 4.2: Employment contract



To emphasize this above-mentioned finding, 87.33% of the respondents indicate that SGBs dictated the conditions of their contract (C22). In this regard, respondents also indicate, with a majority of 63.38% (C67), that they entered into employment contracts which they regard as *standard* to all SGB posts, thus without any individual uniqueness (cf. 2.5.1).

These statistics confirm the opinion of Grobler *et al.* (2003:53) that employees often do not enjoy the same bargaining powers as employers and that it may happen that educators do not have a choice of accepting or rejecting employment terms offered by SGBs (*cf.* 2.5.1).

In order to establish whether the employment contract provides for the rights and duties of the parties to an employment relationship, *questions C20, C24 and C25* were analyzed. From the responses received, it became clear that contracts create rights for both parties (69.01% agreed with this statement).

However, the respondents indicate that they believe that contracts tend to stipulate employees' duties (66.19%) rather than their rights (33.80%). The overemphasizing of educators' duties can lead to conflict and thus unhealthy relations (*cf.* 2.7). This could also be related to SGBs' dictating employment contracts (*question C22*) as well as working conditions (*question C36*) to their own advantage without considering the rights of their employees, thus exploiting them (*question C7, cf.* 4.3.3).

The results obtained through *question C34* (78.87% agreed on their contract making provision for the termination thereof) correlate with the responses obtained in *question A11* where 77.46% indicate that their employment contract is for a fixed period only. Related to these data, respondents state that 56.34% (*question B3*) have an expectation of the renewal of their contract after its termination (*cf.* 2.5.5). The last percentage could even be higher if the non-respondents of 4.23% (those to whom this question is not applicable) are taken into account, as well as the 19.72% (who indicate that they are not sure).

4.3.4 The interdependent labour relationship

Table 4.8: The interdependent labour relationship

No	Statement	Strongly agree	Agree	Disagree	Strongly disagree	No response
B5	Assistance towards discipline	0	57.75	28.17	0	14.08
C2	Economically dependent	53.52	30.99	14.08	1.41	0
C5	Difficulty finding jobs	33.80	45.07	16.90	4.23	0
C7	Are being exploited	36.62	40.85	18.31	2.82	1.40
C9	A say in the formulation of mission and goals	15.49	60.56	19.72	4.23	0
C10	Guidance to teach effectively	7.04	42.25	32.39	18.32	0
C31	Shall not complain, hard-pressed for jobs	7.04	46.48	33.80	12.68	0
C36	Say in decisions affecting working conditions	5.63	49.30	29.58	15.49	0
C56	Free to discuss problems	16.90	40.85	26.76	14.08	1.40
C57	I know the SGB members	23.94	33.80	25.35	14.08	2.83
C64	Accepted as a full staff member	35.21	46.48	14.08	2.82	1.41
C71	Treated differently	15.49	25.35	39.44	18.31	1.41
C72	I have to work harder to prove myself	36.62	35.21	21.13	5.63	1.40

The principles of labour democracy (*cf.* 2.4.1) are being implemented by SGBs, according to the statistics in the above table. The statistics indicate that a majority of 76.05% educators in SGB posts have a say in the formulation of the mission, goals and objectives of the school (*question C9*).

Contrary to this, only a slight majority (54.93%) of the respondents indicate that they have a say in decisions that affect their working conditions (*question*

C36). The difference which educators experience in accordance with the amount of say they have in different matters may be related to the fact that all educators are treated the same for the purpose of governance (e.g. in formulating goals), but treated differently for the purpose of employment conditions of service (*cf.* 2.3.3.1).

However, respondents indicate (*question 64*) that they are accepted as full members of the staff (81.69%) and (*question C71*) that they are not being treated differently (57.75%) from educators appointed by the Department of Education.

Contradicting the answers in *questions C64* and *C71*, and thus agreeing with responses to *question C9*, educators indicate in *questions C7* and *C72* (with a majority of 77.47% and 71.83%) that they agree with the statements that they are being exploited and have to work harder than others in order to prove themselves (*cf.* 2.3.6 & 4.3.8).

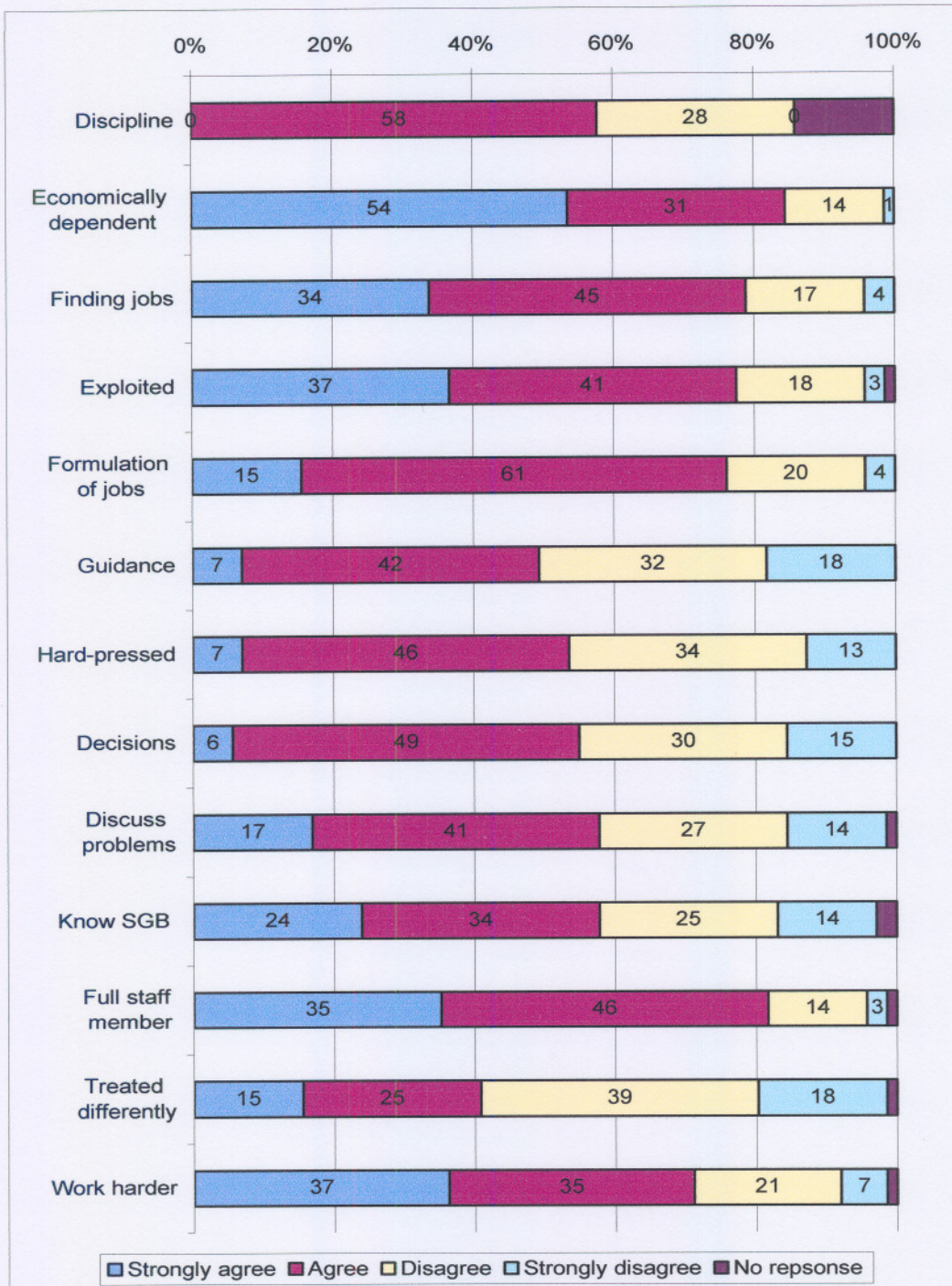
The table above indicates that educators employed by SGBs receive some guidance with respect to discipline (*question C56*: 57.75%), while 50.70% of the respondents disagree with the statement about receiving guidance to enable them to teach effectively (*question C10*; *cf.* 2.4.1).

Another fact, which can be concluded from the table above, is that employees and employers should be familiar with one another in order to work together harmoniously. In *question C57*, 57.74% indicate that they know exactly who the members of the SGB are, while 57.75% - nearly exactly the same percentage - indicate (*question C56*) that they feel free to discuss any problem with the SGB.

It is interesting to note that a majority of 84.51% of the respondents feel that they are economically dependent on SGBs (*question C2*), that 78.87% maintain that they are experiencing difficulty in finding jobs (*question C6*), and 53.52% indicate that they will not complain about working conditions because they are hard-pressed for the job (*question C31*).

This data confirms with information set forward in Chapter two regarding the interdependent nature of labour relationships (cf. 2.4.1), unemployment (cf. 2.3.5) and the imbalance of power (cf. 2.5).

Figure 4.3: The interdependent labour relationship

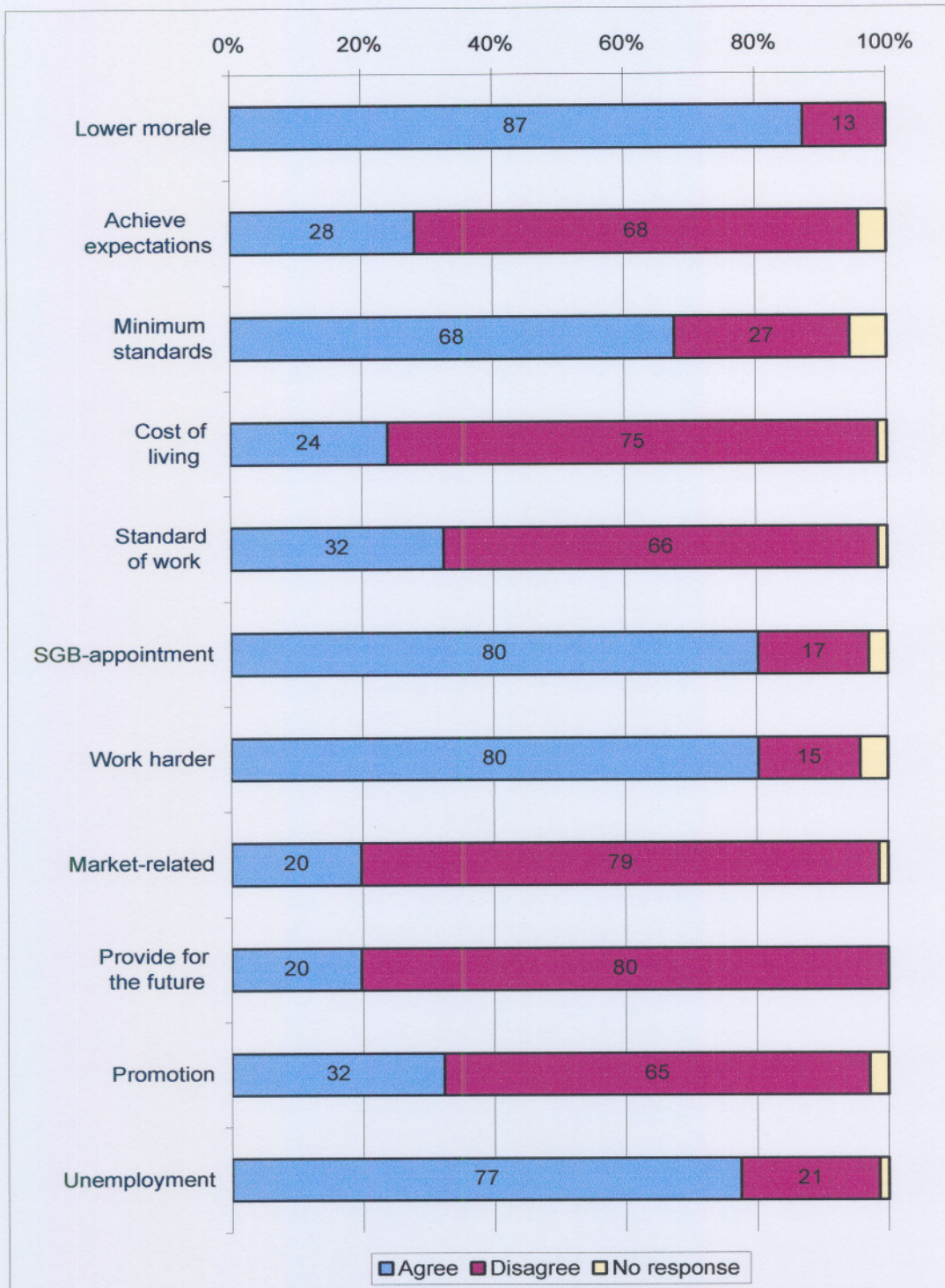


4.3.5 Economic factors

Table 4.9: Economic factors

No	Statement	Agree	Disagree	No response
C6	Lower salaries = lower morale	87.32	12.68	0
C12	Can achieve life expectations	28.17	67.61	4.22
C21	Minimum standards in BCEA followed	67.60	26.76	5.64
C23	Salary increase provides for rising cost of living	23.95	74.65	1.40
C26	Salary affects standard of work	32.40	66.19	1.41
C27	Other SGB-appointment with higher salary	80.28	16.90	2.82
C28	Work harder for permanent post	80.28	15.49	4.23
C29	Salary is market-related	19.72	78.87	1.41
C30	Salary enables me to provide for the future	19.72	80.28	0
C52	Equitable chance for promotion	32.39	64.79	2.82
C70	Afraid of unemployment	77.47	21.12	1.41

Figure 4.4: Economic factors



The following conclusions can be drawn from tables 4.9 and 4.10:

- 59.15% of the respondents indicate that their salary and benefits are much less than those of educators employed by the Department of Education (*questions D1 & D2*).
- 83.10% of the respondents indicate that they work the same hours (*question D3*), 88.73% maintain that they have the same administration tasks and 84.51% are of the opinion that educators employed by SGBs have the same responsibilities as educators employed by the Department of Education (*cf. 2.5.3*).
- 87.32% of the respondents agree that lower salaries lead to low morale (*question C6*), although 66.19% indicate that lower salaries do not affect their standard of work (*question C26*). This confirms statements made in chapter two (*cf. 2.3.5*) that employees have to make sacrifices in order to maintain or gain jobs, which include salary concessions.
- 80.28% of the respondents indicate that they are prepared to accept an appointment by another SGB at a higher salary (*question C27; cf. 2.5.3*). This must be viewed along with the fact that the majority of respondents indicate in *question 6* (*cf. 4.3.1*) that they are the main breadwinners and that employees seek maximum remuneration, benefits and work stability (*cf. 2.3.5.1*).
- 78.87% of the respondents feel that their salaries are not market-related (*question C29*), and 74.65% indicate that their contract does not provide for salary increases (*question C23*). These findings emphasize the fact that employers such as SGBs are trying to keep labour costs as low as possible, while seeking the most effective and efficient operation of their organization in order to deliver services (*cf. 2.3.5.1*).
- 80.28% of the respondents state that their salaries do not enable them to maintain a reasonable standard of living (*question C30*), while 67.61% indicate that their life expectations cannot be met through their current post (*question C12; cf. 2.5.3*). These statistics underline the fact that South

Africa's current economical status has a huge influence on employment relations in all sectors (*cf.* 2.3.5.1).

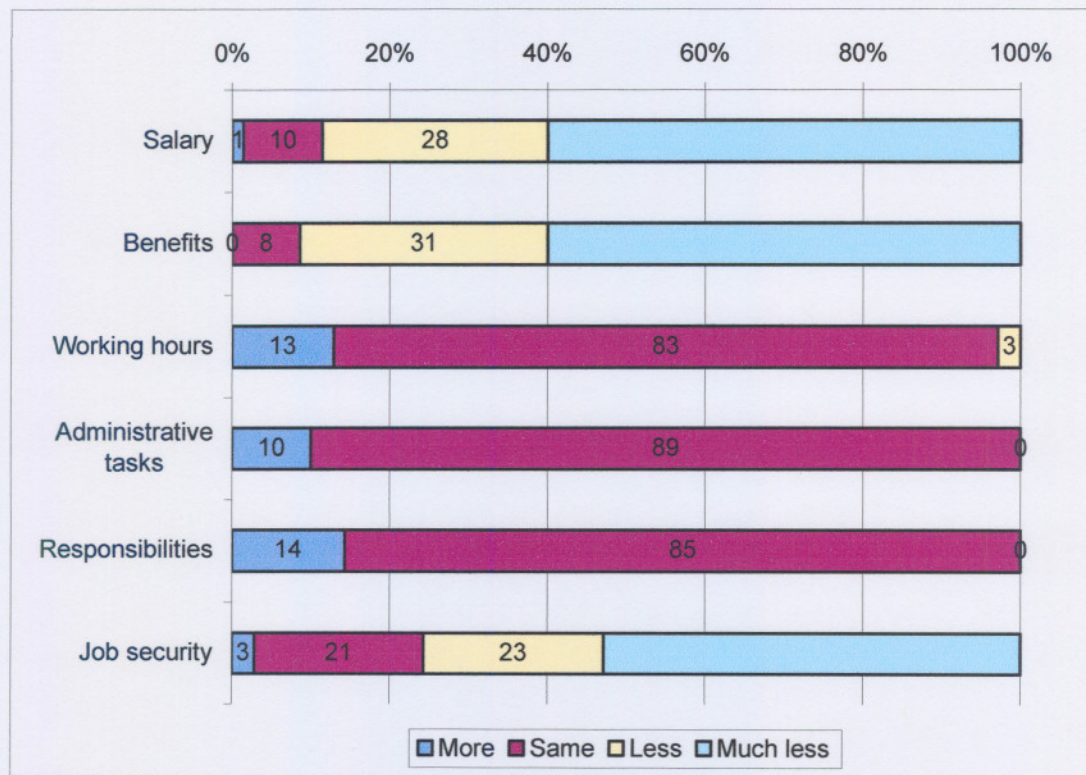
- 80.28% of the respondents indicate that they work harder in order to move to a permanent post (*question C28*), although 64.79% are of the opinion that they do not have an equal chance of promotion (*question C52*). The respondents thus confirm the fact that they are being exploited (*question C7, cf.* 4.3.4) and that they prefer an appointment by the Department of Education (*question C 66*).
- 77.47% of the respondents state that they are afraid of unemployment when their contract expires (*question C70*), while 52.11% indicate that they experience much less job security than educators in permanent jobs (*question D6; cf.* 2.3.5).

4.3.6 Comparison with Department of Education employees

Table 4.10: Comparison with Department of Education employees

No	Statement	More	Same	Less	Much less
D1	Salary	1.41	9.86	28.17	59.15
D2	Benefits	0	8.45	30.99	59.15
D3	Working hours	12.68	83.1	2.82	0
D4	Administrative tasks	9.86	88.73	0	0
D5	Responsibilities	14.08	84.51	0	0
D6	Job security	2.82	21.13	22.54	52.11

Figure 4.5: Comparison with Department of Education employees



4.3.7 Trade unions

Since trade unions are an important outflow of employees' legal fundamental rights, *questions B2, C1, C3 and C61* on trade unions were included in the questionnaire. It was established that only 33.80% of the respondents belong to trade unions (*question B2*), although 76.06% indicate that their contract of employment allows them to join trade unions (*question C3; cf. 2.3.3.2.1*), and 74.65% feel that trade unions strengthen employees negotiation force (*question C1*). This could imply that the reaction towards trade unions in South Africa is still hostile (*cf. 2.3.3.2.2*).

Contrary to the responses received on *question B2*, that only 33.80% of the respondents belong to unions, 56.33% of them indicate that they do have a collective relationship with the SGB (*question C61*). Since collective relationship refer to those between employers or employers' organizations and trade unions only, the response to *question C61* confirm, once again, the

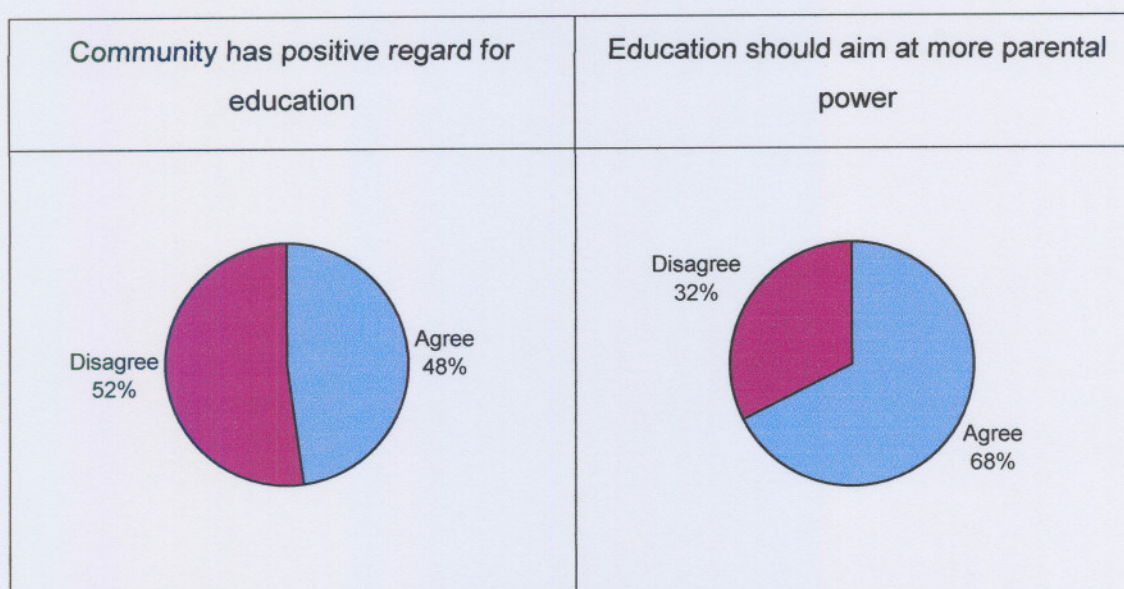
researcher's assumption that educators employed by SGBs do not have sufficient knowledge regarding their labour rights and obligations.

4.3.8 Education as a whole

Table 4.11: Education as a whole

No	Statement	Agree	Disagree
C4	Community has positive regard for education	47.89	52.11
C8	Education should aim at more parental power	67.60	32.40

Figure 4.6: Education as a whole



From the above table it is evident that the respondents disagree with the statement that the community perceives education as a positive profession (C4; *cf.* 2.3.5 & 4.3.1) and that 67.60% believe that the trend in education should be towards more parental power (C8; *cf.* 2.3.6).

The fact that the respondents indicate that they believe that education are perceived as negative by the community may be an indication that the services rendered by public schools are not up to standard. This underscores the opinion Merton (2005:1; *cf.* 1.1) that parents are unsatisfied with the current declining standards of education in South African schools.

However, there are two sides to this reality. Educators who experience lowered job satisfaction and increased job frustration due to insecurity, low remuneration and exploitation cannot render efficient services (*cf.* 2.3.6).

The view of the respondents towards more parental power conforms to the opinion of Colditz (*cf.* 2.3.2.1) that the initiative in education should stay with the parents.

In accordance with the above, the response to *question C65* indicates that 78.87% of the respondents believe that SGBs' power to employ educators will continue to exist in future although the Minister of Education is initiating important amendments regarding the power of SGBs (*cf.* 2.3.2.1).

4.4 SUMMARY

In this chapter an analysis and an interpretation of some of the empirical data were undertaken.

Chapter five will provide a summary, recommendations, as well as a conclusion on the main aspects of the research.

CHAPTER FIVE

SUMMATION, FINDINGS AND RECOMMENDATIONS

5.1 INTRODUCTION

This chapter comprises of a summary of the previous chapters, followed by specific findings that have become clear from the research. Finally recommendations are made, aimed at ensuring knowledgeable educators empowered to initiate harmonious labour relations.

5.2 SUMMATION

In chapter one, the problem which instigated the research was expounded. Moreover, the objectives of the research were determined, the research method was demarcated and the chapter divisions were finalized. The research method consisted of:

- a literature review based on primary and secondary legal and educational sources;
- a non-experimental descriptive study with quantitative techniques within an empirical research design, in order to collect data through a structured questionnaire. Descriptive statistics were used to organize and analyze the data.

Chapter two provided a legal framework for studying the different role players in labour relations in education, the direct labour relationship between educators and SGBs, the contract of employment, the appointment of educators to SGB posts, the rights and duties of educators employed by SGBs, relevant legislation and various resolution processes with regard to grievances and conflict.

Chapter three provided an insight into the empirical design by discussing the research problem and key variables. This chapter elaborated on the issues of

measurement, the sample design and sampling methods, data collection methods, reliability and validity, as well as on the capturing, editing and analysis of data.

Chapter four consisted of a data analysis and interpretation. The sample profile was expounded, the findings were presented and the results of the research were discussed.

5.3 FINDINGS

5.3.1 Findings based on objective 1: To review existing literature in order to gather information on the current nature and scope of labour relations between SGBs and educators employed by them

The following notable findings regarding the current nature and scope of labour relations between SGBs and educators employed by them have been made:

- There are five role players in the labour relationship where SGBs employ educators, namely the SGB or employer organization, the educator or trade union, the State, the community, and the parents and learners. Each stakeholder has an important role to play in making the education system work effectively (*cf.* 2.3).
- The different employers in education, the Department of Education and SGBs, play important roles in the referral of labour disputes and Labour Court cases, particularly with regard to the citing of parties and *locus standi* of such parties to entertain labour matters (*cf.* 2.3.1).
- Principals have a unique position concerning labour relations since they are regarded as *quasi-employers*, especially in disciplinary matters (*cf.* 2.3.1).
- Political decentralization produces self-governing schools where the SGBs employ educators and are accountable to parents of the school community (*cf.* 2.3.1). The SGB is thus the employer and the educator the employee.

- Public schools may establish posts for educators and employ educators additional to the establishment determined by the Member of the Executive Council (*cf.* 2.3.2.1).
- According to section 20(10) of the Schools Act (SA, 1996b), the State is not liable for any act or omission by the public school concerning to its contractual responsibility as the employer in respect of staff employed (*cf.* 2.3.2.1).
- Educators employed by SGBs are employed under the Schools Act (SA, 1996b). Their conditions of service are determined by SGBs.
- Although educators employed by SGBs share the same responsibilities and work the same hours as those educators employment by the Department of Education, they receive smaller salaries and minimum benefits (*cf.* 2.3.3.1).
- All educators are treated the same for the purpose of governance, but treated differently for the purpose of employment conditions of service (*cf.* 2.3.3.1).
- Trade unions are becoming the focus of discussion when the role of employees in labour relationships is analysed because of the *active* role they play (*cf.* 2.3.3.2).
- Employment relations are influenced by economic factors (*cf.* 2.3.5.1).
- Learners and parents must share in the education responsibility, and the trend in South Africa should be towards more parental power in schooling (*cf.* 2.3.6).
- SGBs and educators employed by them stand in a direct labour relationship towards one another, characterized by an interdependent nature (*cf.* 2.4.1). The parties to such relationships should apply the principles of labour democracy.

- Conflict is inherent to any labour relationship and should be dealt with effectively (*cf.*2.4.2).
- The contract of employment must make provision for certain essential aspects (*cf.* 2.5.1) such as the remuneration (*cf.* 2.5.3), duration (*cf.* 2.5.2), variation (*cf.* 2.5.4) and termination (*cf.* 2.5.5) thereof. Common law principles influence the employment contract (*cf.* 2.5.6).
- Every SGB should adopt a policy regarding its approach to filling jobs with well-trained and competent educators with regard to advertising for, recruiting and appointing educators (*cf.* 2.6).
- The educator and the SGB need to come to an agreement about what their respective rights and duties are within their labour relationship (*cf.* 2.7).
- Legislation through various Acts contains legal specifications to which the SGB and educator are bound (*cf.* 2.8). Sufficient knowledge of this legislation will empower all parties in the labour relationship to agree on unique conditions of service and to resolve grievances or conflict which may arise from it (*cf.* 2.8 to 2.9).

5.3.2 Findings based on research objective 2: To explore the knowledge educators have concerning their labour rights and obligations as well as the laws protecting them

Based on the empirical research findings (*cf.* 4.3), the following points emerged:

- Very few educators had Education Law as a subject during their studies.
- Most respondents are not clear on what their labour rights and duties are as well as on which legislation applies to their labour relationships with SGBs. They do not have sufficient knowledge concerning legal specifications applicable to contracts of employment or which procedures to follow under circumstances of being treated unfairly or in the case of solving grievances or conflict that may arise.

- SGBs as employers are dictating working terms and conditions.

5.4 RECOMMENDATIONS

The following recommendations are made towards developing educational-judicial guidelines in an effort to ensure an accountable, responsive and open employer-employee relationship between SGBs and educators employed by them:

- Education as a profession should be made more attractive and acceptable for males to enter the profession. As educators are regarded as role models with whom learners can associate, it is essential that learners, especially male learners, have the opportunity to associate with male role models. Research should be done on how to make education more attractive and acceptable, followed by the practical implementation of such findings.
- Educators should be paid according to their qualifications, experience and the work they do, not according to being in an SGB or a Departmental post. Educators in SGB posts should not be exploited or have to work harder in order to prove themselves. Research showed that they have the same qualifications and experience as those educators paid by the Department of Education. They should therefore not to be treated unequally when it comes to remuneration.
- If available funds are the only concern, educators employed by SGBs should be excluded from certain duties or work fewer hours in accordance with the remuneration they receive.
- SGBs should recognise the need to support and guide educators in order to enable them to teach as effectively as possible and thus improving the overall performance of schools. This could be achieved through in service training programmes and the implementing human relation management strategies successfully.

- Educators should be registered with SACE, in order to be aware of and to follow ethical standards. Educators should know how to conduct themselves in a professional manner and how to follow principles in order to regulate themselves in the interest of transparency and greater accountability in the community that they serve. Registration with SACE is a prerequisite for an appointment by an SGB according to section 20(7) of the Schools Act (SA, 1996b) and therefore SGBs should not appoint educators who are not registered with SACE.
- Principals in public schools play a very important role in the sense that they act as representative of the employer. According to section 23(1)(a) of the Schools Act, principals are also members of SGBs in their official capacity. Therefore principals should be empowered to fulfil this role sufficiently. This could be done effectively in the various provinces.
- Care should be taken that educators become fully conversant with the capabilities, labour rights and obligations bestowed on themselves, SGBs, the State and principals. This could be done by compiling a set of comprehensive regulations in a Compendium with regard to all legal labour rights and obligations and the prescribed procedures contained in labour matters which have to be followed by educators employed by SGBs.
- The educator employed by an SGB should be trained regarding exactly what he may expect from the SGB as his employer and what may be expected from him in such a labour relationship. The educator should also be trained as to which legislation applies to such an employment relationship. This could be done by including Education Law, with relevant Labour Law as a sub division, as a compulsory subject in the completion of an education degree or diploma. Basic labour principles should also be introduced as part of current in-service-training programmes.
- Employees still do not enjoy the same bargaining powers as employers in establishing employment contracts to mutual benefit. Educators as employees should be encouraged and empowered to be able to agree to more unique service conditions to suit their individual circumstances. This

could be done by encouraging a mutual understanding and trust, better cooperation and peaceful interchange between concerned parties by ways of implementing the principles of labour democracy.

- Educators are being appointed by SGBs for a fixed period only, which leads to low morale, uncertainty and job insecurity. It also leads to high staff turnovers at schools, which are not in the learners' best interest. SGBs should move towards appointing educators on a permanent basis. This would imply that SGBs should plan and manage their budgets accordingly.
- Educators employed by SGBs should have an equal chance of promotion. Promotion schedules and appointments should be changed accordingly. SGBs should be made aware of such educators' qualities and important inputs. This could be done by educators joining trade unions who could press for equal opportunities through collective bargaining with SGBs
- The trend in education should be towards more parental power. This should be done through the amendment of existing legislation in order to empower parents to have a greater say in the education of their children.
- Section 20(10) of the Schools Act (SA, 1996b) should be amended in accordance with section 60 of the same act to make provision for liability of the State for educators employed by SGBs. Education is a State activity according to section 29 of the Constitution (SA, 1996a), whether conducted by educators employed by the Department of Education or educators employed by SGBs. Educators are engaged in the same activities, and they should be the State's responsibility.

5.5 CONCLUDING REMARKS

An accountable, responsive and open employer-employee relationship is vested in the clear demarcation of the educator and the SGB's capacities, labour rights and obligations. It is in this regard that the onus rests with the educator to educate himself and stay abreast of changes in the labour environment.

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ADDENDUM A QUESTIONNAIRE

EDUCATORS EMPLOYED BY SCHOOL GOVERNING BODIES: WHAT ARE THEIR LABOUR RIGHTS AND OBLIGATIONS?

Kindly answer the questions by making a cross in the appropriate block.

SECTION A

Biographic information

A1	Age	20-30 years	31-40 years	41-50 years	50+ years	
A2	Gender	Male	Female			
A3	Qualifications	Certificate/ Diploma	Bachelor's Degree	Hons B.Ed.	Master's/ Doctorate	
A4	Number of years in Education	1-2 years	3-6 years	7-12 years	13+ years	
A5	Number of years in an SGB-post	0-1 years	2-5 years	6+ years		
A6	Are you the main breadwinner?	Yes	No			
A7	SACE	Registered member	Not a registered member			
A8	Predominant socio-economic status of the area	Lower income group	Middle income group	Higher income group		
A9	My employer is:	School	SGB	Principal	State	Dept. of Education
A10	My conditions of service are determined by:	School	SGB	Principal	State	Dept. of Education
A11	My contract of employment is for...	a fixed period only		an indefinite period		
A12	Did you have Education Law as a subject?	Yes		No		

SECTION B

LEGAL MATTERS

Question matrix: For questions B1-6 use the following response scale:

1 = Yes

2 = No

3 = Not sure

		Yes	No	Not sure
B1	Do you have a written contract of employment ?	1	2	3
B2	Do you belong to a trade union?	1	2	3
B3	If your contract is for a definite period only, do you have an expectation of the renewal thereafter?	1	2	3
B4	Does your SGB have a Code of Conduct?	1	2	3
B5	Does the SGB assist you in disciplinary aspects of learners?	1	2	3
B6	Do the following Acts apply to you?			
B6.1	Labour Relations Act, No. 66 of 1995	1	2	3
B6.2	SA Schools Act, No. 84 of 1996	1	2	3
B6.3	Employment of Educators Act, No. 76 of 1998	1	2	3
B6.4	Basic Conditions of Employment Act, No. 75 of 1997	1	2	3
B6.5	The Public Service Act, No. 103 of 1994	1	2	3
B6.6	Employment Equity Act, No. 55 of 1998	1	2	3
B6.8	Promotion of Administrative Act, No. 3 of 2000	1	2	3
B6.9	South African Council for Educators Act, 31 of 2000	1	2	3

SECTION C

Question matrix: For questions C1 – 72 use the following response

scale:

		Strongly agree	Agree	Disagree	Strongly agree
C1	Trade unions strengthen employees' negotiation force.	1	2	3	4
C2	I am economically dependent on the SGB.	1	2	3	4
C3	My contract of employment allows me to join a trade union.	1	2	3	4
C4	The community perceives education as a positive profession.	1	2	3	4
C5	Educators are experiencing difficulty finding jobs.	1	2	3	4
C6	Lower salaries for SGB-appointed educators lead to low morale.	1	2	3	4
C7	SGB-appointed educators are being exploited.	1	2	3	4
C8	The trend in education should be towards more parental power in schooling.	1	2	3	4
C9	Each educator has a say in the formulation of the mission, goals and objectives of the school.	1	2	3	4
C10	I receive guidance and support from the SGB to enable me to teach effectively.	1	2	3	4
C11	Conflict is inherent in every relationship, it cannot be avoided.	1	2	3	4
C12	I feel that my expectations in life can be achieved in my current post	1	2	3	4
C13	Conflict is always negative, destructive and undesirable.	1	2	3	4

		Strongly agree	Agree	Disagree	Strongly agree
C14	Conflict may be potentially healthy, as it is often the force underlying change, growth and development.	1	2	3	4
C15	My contract of employment regulates my entire employment relationship.	1	2	3	4
C16	I was free to negotiate the terms of my contract of employment with the SGB.	1	2	3	4
C17	My contract creates duties for the SGB and myself.	1	2	3	4
C18	All duties created by my employment contract are permitted by law.	1	2	3	4
C19	The parties to a contract of employment are free to agree to unique conditions of service to regulate their individual labour relationship.	1	2	3	4
C20	My contract creates rights for the SGB and myself.	1	2	3	4
C21	The minimum standards set out by the BCEA are applicable to my employment relation.	1	2	3	4
C22	The SGB dictated the conditions of my contract of employment.	1	2	3	4
C23	My salary makes provision for increases according to the rising cost of living.	1	2	3	4
C24	My contract of employment stipulates my exact rights.	1	2	3	4
C25	My contract stipulates my exact duties.	1	2	3	4
C26	My salary influences my standard of work.	1	2	3	4
C27	I am willing to accept an appointment by another SGB for a higher salary.	1	2	3	4
C28	I work harder than other educators in order to move to a permanent post.	1	2	3	4

		Strongly agree	Agree	Disagree	Strongly agree
C29	My salary is market-related.	1	2	3	4
C30	My salary enables me to maintain a reasonable standard of living and to make sufficient provision for the future.	1	2	3	4
C31	I shall not complain about my conditions of employment, as I am hard-pressed for a job.	1	2	3	4
C32	The terms of my contract may be varied by mutual agreement.	1	2	3	4
C33	My employment contract is governed by collective agreements.	1	2	3	4
C34	My contract provides for the termination thereof.	1	2	3	4
C35	The Labour Relations Act permits me to seek relief even after having been lawfully dismissed by the SGB.	1	2	3	4
C36	I have a say in decisions that affect my working conditions.	1	2	3	4
C37	I am aware of my exact conditions of service.	1	2	3	4
C38	I may cede my rights under the contract to another qualified educator.	1	2	3	4
C39	I contribute monthly to the Unemployment Insurance Fund.	1	2	3	4
C40	I qualify for the Government Employment Pension Fund.	1	2	3	4
C41	According to the Constitution, I may insist on <i>identical</i> treatment under all circumstances.	1	2	3	4
C42	The human rights granted by the Constitution are absolute.	1	2	3	4

		Strongly agree	Agree	Disagree	Strongly agree
C43	The advertisement of my current post provided exact information of what will be expected of me.	1	2	3	4
C44	The advertisement of my current post provided all the necessary qualifications expected of applicants.	1	2	3	4
C45	My contract of employment applies only to my conduct during school hours and while I am on the school grounds.	1	2	3	4
C46	I have the right to strike if dissatisfied with my working conditions.	1	2	3	4
C47	According to law, I may be expected to attend parents' evenings without extra remuneration.	1	2	3	4
C48	According to law, I may be expected to attend parents' evenings without extra remuneration.	1	2	3	4
C49	According to law, I may be expected to attend sports days on Saturdays without extra remuneration.	1	2	3	4
C50	Temporary incapacity leave with full pay should be granted to all educators who have exhausted their sick leave credit.	1	2	3	4
C51	I may demand reasons from the SGB for administrative actions such as promotions.	1	2	3	4
C52	I have an equitable chance of promotion.	1	2	3	4
C53	I may be represented by a legal representative at any stage of grievance procedures.	1	2	3	4
C54	I may lodge a formal dispute with the Education Labour Relations Council whenever necessary.	1	2	3	4
C55	I may use mediators (third parties) to solve labour conflicts.	1	2	3	4

		Strongly agree	Agree	Disagree	Strongly agree
C56	I feel free to discuss any problems with the SGB.	1	2	3	4
C57	I know exactly who the members of the SGB are.	1	2	3	4
C58	The CCMA is an independent body with jurisdiction to resolve labour disputes.	1	2	3	4
C59	A CCMA arbitration award is final and binding.	1	2	3	4
C60	There are workplace forums in education to promote a cooperative spirit in employment relationships.	1	2	3	4
C61	I have a collective employment relationship with the SGB.	1	2	3	4
C62	I have access to Bargaining Councils to resolve labour disputes.	1	2	3	4
C63	I have access to Statutory Councils to resolve labour disputes.	1	2	3	4
C64	My colleagues accept me as a full member of the staff.	1	2	3	4
C65	SGBs' power to employ educators will continue to exist in future.	1	2	3	4
C66	I prefer an SGB-appointment to an appointment by the Department of Education.	1	2	3	4
C67	My contract of employment is standard to all other SGB appointees.	1	2	3	4
C68	I know the exact procedures to follow if I am dissatisfied with my working conditions.	1	2	3	4
C69	SGB-appointed educators do not have to participate in extracurricular activities.	1	2	3	4
C70	I am afraid of unemployment when my contract expires.	1	2	3	4

C71	I am being treated differently from educators appointed by the Department of Education.	1	2	3	4
C72	I have to work harder in order to prove myself.	1	2	3	4

SECTION D

School Governing Body positions versus Department of Education positions

Question matrix: For questions D1-7 use the following response scale:

1= More 2= The same 3= Less 4=Much less

In relation to educators employed by the Department of Education,

		More	The same	Less	Much less
D1	my salary is...	1	2	3	4
D2	my benefits are...	1	2	3	4
D3	my working hours are...	1	2	3	4
D4	my administrative tasks are...	1	2	3	4
D5	my responsibilities are...	1	2	3	4
D6	I experience job security.	1	2	3	4
D7	my qualifications are...	1	2	3	4

Thank you for your cooperation.