



# **Unfair Labour Practice in an Institution of Higher Learning**

**By  
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**ABSTRACT**

This dissertation serves to investigate the existence of unfair labour practices (ULPs) in one institution of higher learning called X University, for reasons of confidentiality.

The problem of this research is that there is existence of unfair labour practice in the X University. The above problem gave rise to different sub-problems and the research hypothesis.

Literature review of this study surveyed different theories of labour relations. The theories reviewed include issues such as fair and unfair discrimination, the Labour Relations Act, discipline, Occupational Health and Safety and the role of the Labour Unions.

Research methodology of this dissertation is quantitative. Qualitative methods used was not dominant. There was a use of percentages and frequencies for computing data. Data collection was in the form of questionnaires administered to 100 subjects. Preferred way of dealing with the subjects was through purposive sampling. The sample of this research is 100.

It is through data that research subjects indicated that there is prevalence of ULPs in the X University. Sensitivity is exercised here, not to attribute the research findings to other organisations. The campus chosen has its own realities.

This dissertation based its recommendations on the findings. The study mainly recommended that ULPs could be minimised by adopting policy relating to labour practices of the university.

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## DECLARATION

I PHOMOLO SYLVIA DIMPE, declare that the dissertation for the Masters in Administration (Industrial Relations) at the North West University hereby submitted, has not been previously submitted by me for a degree at either this or any other university, that it is my own work in design and execution and that all materials contained herein have been duly acknowledged.

A handwritten signature in cursive script, appearing to read 'Phomolo', is written over a horizontal dotted line.

**PHOMOLO SYLVIA DIMPE**

## CHAPTER ONE: OVERVIEW

### 1. INTRODUCTION

For the second time in 20 years, the regulation of employment relations in South Africa has undergone far reaching change. The first occurred in 1979 following the recommendations of the 'Wiehahn Commission' which, for the first time in South Africa, incorporated black people within the definition of "employee" contained in the (then) Industrial Coalition Act of 1956. This effectively permitted black people to participate in normal trade union activities as well as protecting their job security by allowing access to the industrial court which could grant protection from arbitrary and unfair action (principally dismissals) under its 'unfair labour practice' jurisdiction ([www.gaffney.co.za](http://www.gaffney.co.za)).

The Industrial Conciliation Act became the Labour Relations Act. It has now been replaced by a completely new piece of legislation, passed by parliament in 1995, which came into operation on the 11<sup>th</sup> November 1996. It contains an inclusionary milestone, covering virtually all employees, in both the public and private sectors. The only exceptions are members of the South African National Defence Force, the Intelligence and Secret Services. Even prospective candidates for employment are covered by the Act's provisions which makes it an unfair labour practice to apply discriminatory criteria when selecting new candidates for employment (Ibid).

The fundamental purpose of the Labour Relations Act (LRA) is the maintenance, and where necessary, the restoration of industrial peace.

## **1.1 PROBLEM STATEMENT**

### **1.1.1 Main Problem**

Unfair labour practices occur regularly at an institution of higher learning (X University).

### **1.1.2 Sub- problems**

Unfair labour practices occur at institutions of higher because of:-

- a. lack of policy
- b. Where policy does exist, it is not enforced by management.
- c. The lack of a clearly described mandate to prevent ULP's by the Industrial Relations Officer who:-
  - does not train employees on Labour Relations matters.
  - does not communicate properly to the employees about labour relations matters.

**1.1.3 Unfair conduct by the employer is unattended to:-**

- a. Unfair suspension of employees is usually casting doubt on whether problems are solved amicably.

**1.1.4 ULP cases are usually referred to the CCMA, instead of attempting an internal resolution first.**

- a. Reinstatement policy of former employees (if any) is unknown to employees.
- b. Occupational Health and Safety (OHS) matters are unattended to.

**1.1.5 The role of the Staff Association is minimal in curbing ULP's at X University (XU)**

**1.1.6 Interfering with employees' rights**

- a. The XU is openly interfering with employees' legal rights.
- b. Employees are denied training in labour issues.
- c. Employees are forced to work overtime without any remuneration.
- d. Employees are overlooked when it comes to promotions.
- e. There is non-compliance with the Employment Equity Act.

## **1.2 HYPOTHESES**

According to De Vos (2001:116) a hypothesis is a conjectural statement of the relation between two or more variables. There are two criteria for 'good' hypothesis statements:

- Hypotheses are statements about the relations between variables.
- Hypotheses carry clear implications for testing the stated relations.

As defined by Keppel (1989:9) hypotheses are proposed answers to the question you hope to resolve conclusively by means of your research project.

### **1.2.1 The following are the hypotheses:-**

- a. The majority of employees in the X university do not have any knowledge of ULPs.
- b. Employees are discriminated against when they exercise their rights based on their union activities.
- c. There are instances of constructive dismissals - where the employee resigns due to circumstances which makes continued employment intolerable.
- d. Employees are unfairly overlooked when it comes to promotions.
- e. The employer does not consult employees concerning Occupational Health and Safety (OHS) matters.
- f. The role of the Staff Association is minimal in ULP's resolutions.

### **1.3 IMPORTANCE OF THE STUDY**

- a. The study could assist in minimising conflict between the employees and management by setting clear expectations, procedures and actions which apply to both parties.
- b. To bring to management of X University (XU) awareness about the causes of ULPs.
- c. To influence the attitudes of both management and employees concerning the management of employees' grievances and conflicts against the employer.

### **1.4 AIMS OF THE STUDY**

1.4.1 To identify unfair labour practices committed within the university.

1.4.2 To suggest ways of preventing ULPs.

1.4.3 To investigate whether the supervisors and employees are knowledgeable about issues relating to unfair labour practices as prescribed by the law.

## 1.5 RESEARCH DESIGN

### 1.5.1 Definition

According to Babbie (1995) a research design is the arrangement of conditions for collection and analysis of data in a manner that aims to combine relevance to the research purpose with economy of procedure.

This study will be dominantly quantitative in nature, but the findings thereof will also depend on some qualitative analysis. Maykut and Morehouse (1994) views qualitative research as the one which examines people's words and actions in narrative or descriptive ways more closely representing the situation as experienced by the participants. Data are collected from a population, or large samples that represent the population in a form that is easily converted to numerical indices. Quantitative researchers are most interested in describing the norm of the population sampled.

The research design will outline the context of the research, the population, sampling technique, data gathering tools and the statistical analysis method to be used for the research.

### 1.5.2 The research context (Organisation)

This research will be conducted at the X Institution. The institution is composed of five faculties, namely: -

- a. Faculty of Human and Social Sciences;
- b. Faculty of Education;
- c. Faculty of Agric, Science and Technology;
- d. Faculty of Commerce and Administration; and
- e. The Faculty of Law

The above faculties provide academic services to the university community through daily dialogue with the students who are clients. These faculties offer academic education which enable the University to have a broad relationship with the North-West Province, as well as with other provinces.

The administration section has the following departments: -

- a. Staffing department
- b. Admissions department
- c. Examinations department
- d. Student affairs department
- e. Library department
- f. Sports department
- g. Student ledgers department



- h. Finance department
- i. Academic development centre.
- j. Technical and Maintenance department
- k. Printing Unit
- l. Purchasing office
- m. Mail office
- n. Protection Service
- o. Bursaries' office
- p. Work Study programme
- q. Counselling centre

The administrative staff and support staff make a rich mixture of qualified professionals with different qualifications enabling them to do their work professionally.

### **1.5.3 Description of the Population and sample**

#### **1.5.3.1 The population**

According to Babbie (1995) population refers to the largest body of individuals or other units being researched and is limited to a particular time. It can also be defined as the entire group or collectivity about which information is being sought.

The population under focus here will be the administrative staff, academic and technical staff (skilled and unskilled). All in all The

administration, academic and technical staff offer a wide variety of characteristics suitable for this research, like a mix of gender, different levels of literacy and different job levels.

#### **1.5.3.2 Sampling**

Sampling is the element of the population considered for actual inclusion in the study (Arkava & Lane, 1983 in De Vos: 191).

The general purpose of sampling is to obtain information on a small number of individuals, or entities which can be generalised to a larger aggregate (population or universe) from which the sample came.

In as far as the selection and identities of the stakeholders in the university are concerned, the following groups are identified.

Table : 1.1

| STAFF CATEGORIES               | SAMPLE |
|--------------------------------|--------|
| Junior Lecturers               | 10     |
| Lecturers                      | 10     |
| Senior Lecturers               | 10     |
| Faculty officers               | 10     |
| Senior Administrative Officers | 10     |
| Administrative Officers        | 10     |
| Secretaries                    | 10     |
| Messengers                     | 10     |
| Cleaners                       | 10     |
| Protection Officers            | 10     |
| Total                          | 100    |

The data collecting tool will be the questionnaire within the university. The questionnaires, administered within the university. The questionnaires will be administered among all of the 100 respondents in the sample.

#### 1.5.4 Purposive Sampling

In purpose sampling a particular case is chosen because it illustrates some features on process that is of interest for a particular study though this does not simply, imply any case we happen to choose (Silverman, 2000; 104). In purposive sampling

he researcher must first think critically about the parameters of the population and then choose the sample case accordingly. Clear indication and formulation of criteria for the selection of respondents are, therefore of cardinal importance (Creswell (1998: 118).

The research for data must be guided by processes that will provide rich detail to maximise the range of specific information that can be obtained from and about that context Erlandson et al, 1993 in De Vos, 2002: 334-5. In the case of purposive sampling researchers purposely seek typical and divergent data.

This type of sample is based entirely on the judgement of the researcher, in that a sample is composed of elements that contain the most characteristic, representative or typical attributes of the population (De Vos et al, 2002: 207).

#### **1.5.4.1 Characteristics of an acceptable sample**

According to Babbie (1995), a good sample (probability sampling) is based on theory that it:

- provides ways to determine the number of respondents needed
- specifies the chance (probability) that any person or unit will

be included in the sample

- enables the researcher to estimate how much error results from dealing with a sample of people instead of approaching the entire population
- allows the researcher to determine the degree of confidence that can be placed in population estimates made from the sample.

An efficient probability sample, by practical definition, is therefore one that yields the desired information within expected but tolerable limits of sampling error at the lowest possible cost sample to be small reproduction of the community's characteristics (Wikipedia, the free encyclopedia).

#### **1.5.5 Questionnaire**

According to De Vos (2001) a questionnaire is a set of questions on a form which is completed by the respondent in respect of a research project. The questionnaire is useful to obtain information about reasonably big groups for instance, the X university.

One hundred questionnaires were distributed, and only 90 were received back.

## A. Types of questions

### I. Closed questions

Closed questions formats require the researcher to have a reasonable idea of the likely responses to the items in advance (Blynis, Breakwell, Hamond & Fife-Shaw, 1995: 177).

### II. Open ended questions

With open-ended the respondent is asked to write down the response to the question in any terms that he or she sees fit (Ibid: 177).

## B. Types of Questionnaires

### I. Personal questionnaires

In this case the questionnaire is handed to the respondent who completes it on his own, but the researcher is available in case problems are experienced.

### II. Questionnaire delivered by hand

Field workers deliver questionnaires by hand, so that respondents can complete them in their own time, and then

collect them again later.

Types of questions and types of questionnaires to be used in this research are the following: -

- Both open-ended and closed questions, and
- Questionnaires delivered by hand.

#### **1.5.6 Data analysis technique**

Smit (1983:212) sees descriptive statistics as the formulation of rules and procedures according to which data can be placed in useful and significant order ([www.petech.ac.za](http://www.petech.ac.za)). The basic principle for using descriptive statistics is the requirement of absolute representation of data.

Two major statistical techniques i.e. the descriptive and inferential statistics will be employed as a means of analysing the collected data. This is to make deductions or statements regarding the broad population as the samples from which the 'known' data are drawn.

SPSS 9.0 Version (Statistical package for Social Sciences) will be used as the convenient way to run the statistics.

## 1.6 CONCLUSION

This research project is based on investigating the existence of Unfair Labour Practices in the XU. It is the aim of this research to identify ULPs within the XU and suggest ways to alleviate these problems. This paper will dominantly depend on the outlined research context, literature exploration and the qualitative methods which are all hoped to create a combination of results. From the cited results, this study will single out main findings in the form of categories of data to be discussed.

The following chapter will deal with theoretical foundations of this research. The theoretical foundations will be based on literature related to the research question. Literature in this section will explain what unfair labour practice is, and point out other research elements related to the question, the problem and the hypotheses. Literature will help this investigation to have good results.



## CHAPTER TWO: LITERATURE REVIEW

### 2. HISTORICAL PERSPECTIVE

The term "Unfair Labour Practice (ULP)" was introduced to the South African labour law dispensation as a result of recommendations of the Wiehahn Commission, (Labour Relations Amendment Act 83 of 1988 s 1 (h)). The first definition of ULP to be found in legislation was a very open-ended and non-specific definition (Industrial Coalition Amendment Act 4 of 1979 s 1 (f)).

The ULP was defined as "any labour practice which in the opinion of the industrial court is unfair." (Industrial Coalition Amendment Act 95 of 1980 s 1 (g1))." In 1980 the legislature intervened and a new definition of ULP was introduced. It was a little more specific and the definition referred to four consequences that may arise as a result of an act or omission. In 1988 the definition was once again amended. This time it contained a list of specific ULP's with an omnibus clause which corresponded with the 1980 definition (LRA amendment Act 83 of 1988 s 1 (h)). Thus it was still open ended and open to interpretation. As a result of union opposition to the 1988 definition an agreement between COSATU, NACTU and SACCOLA was entered into in terms of which the 1991 definition was enacted. (Labour Relations Amendment Act 9 of 1991 s 1).

The 1991 definition reads as follows: -

"In terms of the labour Relations Amendment Act an ULP is defined as any act or omission, other than a strike or lock out, which has or may have the effect

that: -

- any employee or class of employees is or may be unfairly affected or that his or their employment opportunities 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 created or promoted thereby or
- the labour relationship between employer and employee is or may be detrimentally affected thereby.

Originally, the Residual ULPs were dealt with in part B of Schedule 7 to the Labour Relations Act (LRA). These included practices of discrimination. (Item 2 (1) (9) schedule 7) in the workplace, as well as other unfair acts arising between the employer and employee relating to promotion, demotion, or training, the provision of benefits, unfair suspension or any other disciplinary action short of dismissal, and the re-employ a former employee in terms of any agreement. (Item 2 (1) (d) schedule). It dealt with unfair discrimination in the work place, was later repealed by the Employment Equity Act 55 of 1998 and replaced by Section 6 of (Schedule 2 to the Employment Equity Act 55 of 1998) Le Roux R (2002 presentation).

The 2002 amendments have removed the remaining residual ULP provisions for part B of Schedule 7, which are now dealt with in the amended chapter 8 of the LRA. The new definition of ULPs is in Section 186 (2). The new definition of ULPs differs from the previous definition in only two regards. The first relates to protected disclosures which are now specifically included in the definition and the second relates to the inclusion of unfair conduct of an employer relating to probation, including disputes about dismissals for reasons relating to probation.

Unfair labour practice means "any unfair act or omission that arises between an employer and an employee", involving: -

- Unfair conduct by the employer relating to the promotion, demotion, probation (excluding disputes about dismissals for a reason relating to probation or training of an employee or relating to the provision of benefits to an employee.
- The unfair suspension of an employee or any other unfair disciplinary action short of dismissal in respect of an employee;
- A failure or refusal by an employer to reinstate or re-employ a former employee in terms of any agreement; and

An occupational detriment, other than dismissal, in contravention of the protected disclosures Act 2000 (Act No. 26 of 2000) on account of the employee having made a protected disclosure defined in that Act.

## 2.1 INDUSTRIAL RELATIONS

Bezuidenhout, Garbers and Potgieter (1998:5) sees industrial relations as the establishment, development and maintenance of an acceptable, mutually advantageous interaction system between employers and employees under the protection of the state. This summarises the essence of industrial relations, as the primary objective is to achieve peace in the workplace by means of developing and maintaining an acceptable system of interaction between the employer and the employee.

Industrial relations are concerned not only with work or with industrial society, but especially with the relationships established between the various participants; namely employers, employees and the state, while engaged in economic activity in an industrial society. According to Bendix (1992:4), the sphere of industrial relations encompasses the following relationships; the work situation and working man; and the problems and issues of modern industrialised society and of certain processes, structures, institutions and regulations. All of these occur within a specific social, political, economic and historical context and therefore none can, or should be, studies in isolation.

The concept "Unfair Labour Practice" has been defined in wide and varied terms by different authors. This term, as it will be defined hereunder, has undergone evolution until what it is known to be to date.

## 2.2 UNFAIR LABOUR PRACTICES (ULPs)

According to Bendix (1997:371) the concept ULP was originally defined in terms of the Labour Relations (LR) Amendment Act of 1999 as: -

'Any practice which in the opinion of the industrial court constitute an unfair and unfair labour practice'.

The above definition was, according to Bendix (1997) criticised widely as being too wide and evolved in 1980 to be Unfair labour practice which means: -

- a. Any practice or any change in labour practice, other than strike or a lockout, or any action contemplated in section 66 (1), which has or may have the effect that:-
  - (i) Any employee or class of employees is or may be unfairly affected or that his or their employment opportunities, work security or physical, economic moral or social welfare is or may be prejudiced or jeopardised thereby;
  - (ii) The business of any employer or class of employees is or may be unfairly affected or disrupted thereby;
- b. Any other labour practice or any other change in any labour practice which has or may have an effect which is similar or related to any effect

mentioned in para (a).

The definition of ULP further changed with time due to omissions deemed important. The periods of change include 1982 and 1988.

According to the 1998 amendment of the Act, ULP was defined as '... any act or omission which in an unfair manner infringes or impairs the labour relations of the employer and employee' Bendix (1997:373).

Du Toit (1995:429) shares the same sentiments with other authors regarding the definition of ULP. He asserts that ULPs under the old LRAs was a broad encompassing concept which has some omissions, and that the new act deals with the concept with reference to specifics. Du Toit (1995:429) introduced a further evolution of the concept ULP by asserting that:-

"What the Act retains of the ULP as a concept is termed 'residual unfair labour practices' specifying relevant provisions in schedule 7 of the Act (item 2)" Ibid:429).

Grogan (1997:174) endorse the above by asserting that "The new LRA contains no general 'open-textured' definition of an unfair labour practice, but has instead substituted for its specific statutory provisions which describe impermissible employer actions' (Ibid). The impermissible actions of the employer have been added to schedule 7 of the Act as 'Residual unfair labour practices'.



'Residual unfair labour practices' are defined by Grogan, with related terms as: - In the context of (IR) the concept fairness is complex - unless if it is defined within the confines of a certain specifics. In discussing about the labour relationships, Bendix (1997:17) alluded that ... a labour relationship not founded on trust will inevitably experience difficulties. (Bendix 1997:13) quotes Salamon states that "... there should be reciprocity and balance between the parties concerned, that there should be equitable exchange of both substance and behaviours..." Both parties should receive equal treatment and equal considerations... Finally our own industrial court has repeatedly indicated that the parties should be perceived to be acting fairly', In other words, the 'fair' is not 'fair' unless others perceive this fairness in action" (Ibid).

In terms of Sec 23 of the constitution: Everyone has the right to fair labour practices.

'Any unfair act or omission that arises between an employer and an employee, involving: -

- the unfair discrimination, either directly or indirectly, against an employee on colour, gender, sex, religion, conscience, belief, culture, language, family responsibility, status or any other arbitrary ground.
- The unfair conduct by an employer relating to the promotion, demotion or training of an employee or relating to the provision of benefits towards an employee;

- The unfair suspension of an employee or any other disciplinary action short of dismissal in respect of an employee;
- The failure or refusal of an employer to reinstate or re-employ a former employee in terms of any agreement.

### **2.3 UNFAIRNESS (In the context of the labour relationship)**

Grogan (1997:184) defines unfairness with reference to specific actions by employers and employees e.g., he coins, unfairness to conduct - in general.

"The residual unfair labour practice definition includes 'unfair conduct' relating to promotion, demotion or training and more widely, the provisions of benefits' to employees... Unfair conduct is a wider concept" (1998:184).

### **2.4 THE CAUSES AND EFFECTS**

According to the Pocket Oxford Dictionary (1990:110-111) the cause(s) "... thing that produces an effect; person or thing that occasions or produces something; reason or motive; justification... principle, belief, or purpose that is advocated or advanced (1990:111). This research will strive to search for the causes of the existence of ULPs and its effects.

The effects refer to "... the result or consequences of action... impression produced..." (1990:934).



## **2.5 THE LABOUR RELATIONS ACT (66 of 1995)**

The labour Relations Act provides for delegated legislation in the form of bargaining council agreements, unfair labour practice determinations and arbitration awards. These may establish conditions and rules more favourable than those obtaining under a contract at common law. The Labour Relations Act further establishes the parameters for the collective labour relationship. It provides for organisational rights, the registration of unions and employers' associations and the formation of bargaining and statutory councils. Provision has been made for workplace forums in an attempt to encourage consultation and co-determination on certain issues between employers and employee representatives. The Act also attempts to promote labour peace, by providing a dispute settlement process aimed at conciliation and third party intervention, and by not permitting a legal or protected strike or lockout unless the prescribed procedures have been followed. Furthermore, the Act has introduced a new dispute settlement body in the form of the Commission for Conciliation, Mediation & Arbitration and has replaced the Industrial Court with a Labour Court which has higher status and more extended functions. Finally, the Act prohibits victimization and any interference with the freedom of association Ehlers L and Associates: 47.

## **2.6 UNFAIR LABOUR PRACTICE**

According to Grogan, 2003:228, the courts acting under the 1956 Labour Relations Act identified a variety of employment practices, apart from dismissals, which they pronounced 'unfair' under the general definition of 'unfair

labour practice' then in force. Initially, a 'residual unfair labour practice' was tagged onto the Labour Relations Act in a schedule to catch unfair actions which would not be pigeon-holed in the Act itself. A recent amendment incorporates unfair labour practices into the body of the statute. Unfair discrimination, originally proscribed in paragraph (a) of the residual unfair labour practice definition, is now dealt with in the Employment Equity Act.

### 2.6.1 Unfair Conduct

The residual unfair labour practice definition also includes 'unfair conduct' relating to promotion, demotion or training and, more widely, the 'provision of benefits' to employees (Grogan, 1998:184).

Unfair conduct is a wider concept than unfair discrimination, because conduct may be unfair without being discriminatory. However, discrimination is clearly a species of unfair conduct. The difference may seem academic, but is important for establishing the correct forum to deal with the dispute. Employees who allege that they have been the victims of discrimination, as defined in the Constitution and the Employment Equity Act, are required to refer their disputes to the Labour Court or the civil courts for adjudication, unless they agree to arbitration. Employees who allege that they are victims of unfair labour practices, as defined in section 186(2), must refer their disputes to arbitration. Much depends on the manner in which the employee casts the dispute. If for example, unfair conduct relating to promotion is complained of, the dispute can probably be arbitrated even if the employer's refusal to promote the employee was motivated by reasons that amount to discrimination.

However, it is equally possible that an employee may claim discrimination that manifests itself in, say, a refusal to promote. In such a case, the Labour Court has jurisdiction (Grogan, 2003:229).

### 2.6.2 Promotion

The residual unfair labour practice definition expressly includes unfair conduct by an employer relating to the promotion of employees. It is significant that this aspect is not limited to discriminatory treatment. It is difficult to imagine, however that employees will have any basis for relief in this regard unless they can show that they are being overlooked for promotion on the basis of some unacceptable, irrelevant or invidious comparison, or if the employer is not following its own or agreed promotion policies and procedures. And it is submitted that the onus in this regard should rest on the employee. Employees may have a valid complaint if they can show that they have been overlooked for promotion where they possess objective attributes, such as experience or qualifications, which another person who has been promoted does not possess, and their employers cannot explain why they were overlooked. While such an employee may not be able to show that he or she has been discriminated against, it is possible that in the absence of a satisfactory explanation such conduct may be deemed to be unfair in itself. On the other hand, the Commission should tread warily in this area; there may be reasons for preferring one employee to another apart from qualifications and experience. But the employer should be able to say what those criteria are, and that they are reasonably related to the requirements of the post in question Grogan, 1998:185.

Employees who are overlooked for promotion when they qualify for preferential consideration in terms of their employer's rules will certainly have a valid ground for complaint. This would be so, when an employer appoints an outsider to a position to which serving employees were entitled to apply, without affording them an opportunity to do so. An employer will also be guilty of unfair conduct relating to promotion if it held out to an employee a reasonable expectation that he would be advanced and then, without adequate reason, frustrated it. So, too, has it been held to be unfair for an employer to advertise for a position, setting a prescribed minimum qualification, and then to appoint a person who did not possess it, or to create a position for a specific person without advertising it internally in accordance with agreed procedures Ibid.

### 2.6.3 Demotion

The demotion of employees without their consent constitutes repudiation of a contract and is impermissible at common law; in this sense, a demoted employee has a choice between upholding the contract and suing for damages (the difference between the salary the employee received after his or her demotion and the salary the employee would have received had no demotion occurred), or for an order compelling the employer to restore the employee to the original position (Grogan, 2003:232).

According to M P Olivier, RAU (notes) at common law the demotion of an employee amounts to breach of contract (unless the employee has agreed thereto), irrespective of whether the employee so affected retains the same remuneration (see *Groenewald v Cradock Municipality* 1980 (4) SA 217 (E)).



Even where the necessary agreement is present or consent been given, the demotion can still amount to an unfair labour practice if a valid and fair reason therefore is absent or a fair procedure has not first been followed.

Section 186(2)(a) clearly permits an employer to demote an employee, provided only that this is done fairly. Applicants complaining of unfair demotion must prove that they have actually been demoted. A demotion occurs if the change to the employee's terms or conditions of employment are such that they result in a material reduction of the employee's remuneration, responsibilities or status. The mere fact that an employee's title and remuneration remains the same is not necessarily proof of a demotion; something more is required. However, a demotion may occur even if the employee has not been formally appointed to the higher position. Demotions may be deemed fair if they are aimed at avoiding retrenchment or dismissal for incapacity, or if the employee is demoted as a disciplinary penalty imposed for a valid reason and after a fair procedure. However, when an employer advertised an employee's position, indicating that if the position were filled the employee would be demoted, this was found to constitute a potential unfair labour practice. So, too, was a demotion found unfair when it was imposed as a disciplinary penalty together with a transfer to another division of the employer's organisation (Grogan, 2003:232).

## **2.7 CONTRACTS OF EMPLOYMENT**

According to Ehlers (2003:66), a contract of employment comes into existence when both parties agree that the employee will enter into employment with the

employer, for an agreed period, rendering a specific type of work and receiving specified remuneration. A contract may be written, verbal, or it may be understood. Once a contract of employment has been entered into, whether in writing, verbally or tacitly, the courts will accept that the parties have by implication agreed to certain rights and duties at Common Law. These Common Law duties of the employer are the rights of the employee, and include the following: -

- To pay the employee
- To provide safe and healthy working conditions
- To provide work for the employee
- Not to make the employee do work junior to the status for which he was employed
- Not to contract the employee's services to another employer without the employee's consent.

In return, the employee will undertake the following duties (among others), which are the rights of the employer:-

- To perform his work faithfully and diligently,
- To obey reasonable orders given to him in the normal course of his employment,
- Not to deal dishonestly with the property of the employer, and
- Not to complete in his private capacity with the business of the employer.

### 2.7.1 The importance of the employment contract

The employment contract serves as the foundation for the relationship between an employee and that employee's employer, and it is the starting point for the entire system of labour law rules. All rules of labour law depend, at least initially, on there being a contract of employment which links the individual employee to the employer. It is only by looking at the contract that one can determine whether there is a relationship between two parties, and one may also be able to determine what the nature of that contractually-based relationship is. By carefully evaluating a given set of contractual terms, we may be able to ascertain whether or not a certain contractual relationship is based on a contract of employment, or, for example, a contract of partnership or even agency (Christianson, Le Roux and Strydom, 2000:21).

The duties of one party constitute the rights of the other. The employee therefore has the right to remuneration, to perform work, not to be demoted, not to work for any other employer but his own and the right to safe and healthy working conditions. On the other hand, the employer has the right to expect that the employee does his work to the best of his ability, that he obeys reasonable orders, that he is honest and that he does not compete with the employer's business. The employer has the right to select whomever he wishes for employment, the right to stipulate the method by which the work should be done and the right to dismiss the employee. By accepting the job the employee implies that he is competent to perform it and that he has an obligation to work for the employer for a certain period. In most cases employment periods are indefinite and will be limited only by the termination or breach of the contract

(Ehlers, 2003:67).

A contract of employment will normally define the following: -

- Hours of work, including maximum and minimum hours per week
- The duration of annual leave
- Provisions for sick leave, maternity leave and family responsibility leave
- Provision for contributions to a pension fund or medical scheme
- Notice periods on either side
- Payment and periods between payments
- Overtime, nightwork, standby and shift work provisions
- Restrictions on the employee
- A provision that the employee adheres to the rules of the company
- Any other matter agreed to by the parties.

## **2.7.2 The Lawful termination of the employment contract**

The importance of the concept of lawful termination is that it must be distinguished from the concept of a fair termination.

Lawful termination means either that the terms and provisions of the contract relating to the giving of notice have been complied with, or that the contract was summarily terminated on the grounds of a fundamental mal-performance of a duty.



If either party summarily terminates the contract of employment on the grounds of breach of contract, the breach of contract must indeed have been of a serious nature. If the breach is not serious enough to justify termination, the subsequent termination will be unlawful.

If all the contractual requirements for the giving of notice have been complied with, we say that the termination on notice is lawful, because that termination is in accordance with the contract. If the period of notice has not been complied with, and no pay in lieu of notice has been given, that notice of termination will be unlawful, as it will be a breach of contract. A very important fact is that no reason need to be given in the case of termination on notice in terms of the common law. The common law does not concern itself with the reason for the termination of employment. As long as the contractual or statutory provisions relating to notice have been complied with, the requirements of the common law are satisfied and the termination is regarded as being lawful (Christianson et al: 2000 :66).

## **2.8 BASIC CONDITIONS OF EMPLOYMENT**

The conclusion of a contract of service creates reciprocal rights and obligations between the employer and employee. Under the common law, the parties were free to agree to whatever terms and conditions of employment they wished, within the limits only of the law, good morals, and reasonableness. Over the years, however, the legislature has increasingly limited the contractual freedom of the parties by legislation that prescribed minimum conditions with which employers and employees must comply. Contractual freedom between individual

employers and employees has also been limited by collective agreements binding on particular employers and their employees, or on employers and employees in a sector of industry. The statute that sets basic conditions for all employees is the Basic Conditions of Employment Act 75 of 1997 (Grogan, 2003:61).

According to Ehlers (2003:67), the purpose of the Basic Conditions of Employment Act (BCEA) is to advance economic development and social justice by establishing and enforcing basic conditions of employment.

The Act prescribes minimum service conditions that applies to all employees in South Africa. Minimum wages are not prescribed in the Act, although the Minister of Labour is empowered by the Act to determine and promulgate minimum wages for certain industries and employee groups.

The BCEA does not distinguish between temporary and permanent workers. All employees working more than 24 hours a month are covered by the Act except members of the SANDF, NIA, SASS and unpaid charitable workers.

## **2.9 HEALTH AND SAFETY**

As an employer, there are many good reasons for creating a safe and healthy workplace. Obviously, healthy workers will be happier and more productive. There will be fewer disruptions of work schedules due to absenteeism. And health insurance costs may be reduced. An incidental benefit may be an improvement in worker efficiency; workers generally are more efficient in a safer workplace (Raycroft and Jordaan, 1992:316).

### **2.9.1 The occupational Health and Safety Act (85 of 1993)**

This Act enforces the Common Law principle that it is the employer's duty to provide healthy and safe working conditions. The State is ensuring that the employer performs this duty, by prescribing rules for health and safety in the workplace that should be followed by all employers. Employers who are found to have been negligent face heavy fines or prison sentences. In terms of this Act all employers must also ensure that safety representatives and safety committees are elected for the workplace Ehlers (2003:72).

The Occupational Health and Safety Act supersedes all agreements, which means that no parties can agree that work will be conducted in unsafe conditions. Since the Labour Relations Act is not mentioned, it is taken that the same applies to bargaining council agreements or to any regulations under the latter Act Ibid.

The Act applies to all employers and employees including agricultural workers, domestic servants, public servants and students - in effect, to almost all persons in employ, including those in private households. The only exclusions from the Act are labour brokers, mines, mining areas or any works defined in the Minerals Act.

### **2.10. RECRUITMENT AND SELECTION**

**Recruitment:** It can be viewed as a set of activities that a human resources manager uses to attract job candidates who have the skills and qualities needed

to help the organisation achieve its objectives (Nel, 1997:264).

**Selection:** The need to appoint a person to a specific post may arise from a variety of factors. Sometimes because of an expansion of the activities of the organization, an employer simply needs more personnel. In these situations, appointments will typically be made from outside the organisation, as the size of the existing workforce is simply not big enough to cope with its activities. The other often encountered scenario is where vacant posts arise as a result of natural turnover of employees (Ibid).

For many years applicants for employment enjoyed no protection in terms of the law. The appointment of an employee was seen to fall within the sole prerogative of the employer. This also implied that an employer was free (and this related to the whole process of selection and recruitment) to discriminate against employees. With the introduction of the Labour Relations Act of 1995, this has all changed. This Act includes "unfair discrimination" in the definition of an unfair labour practice and furthermore expressly provides that applicants for employment are also protected against unfair discrimination. This means that the established practice of employers in recruitment and selection has to be revised drastically in order to bring it into line with the requirement that applicants for employment may not be unfairly discriminated against (Bezuidenhout, Garbers and Potgieter, 1998:78).

The whole point of recruitment and selection is to find the best person for the job. But the remarks above mean that the danger of discrimination should inform and guide all decisions and practices concerned with recruitment and

selection.

The Residual Unfair Labour Practice now enables applicants to challenge their non-selection on the ground that they have been discriminated against.

Of particular importance to recruitment and selection is the concept of indirect discrimination. This concept relates to those instances where an employer seemingly uses a neutral criterion on which to base decisions, but the use of the criterion has a disproportionate impact on certain groups in society (1998:78). For example, if an employer specifies that all applicants for employment must be taller than 1.8m, there is a disproportionate impact on women, as most women are shorter than 1.8m. Another example, particularly important in South Africa, is the use of formal qualifications as a prerequisite for a job, or to use country, and the lack of decent education for black people, this may well, disproportionately disqualify members of the black population from competing on an equal footing for employment.

The important point is that employers will have to examine not only their treatment of (prospective) employees to avert charges of discrimination, but also the impact of the full employment decisions. It must also be said that it will be to no avail for an employer to argue that he or she had good intentions an employer may have the best of intentions, but still discriminate unfairly against certain employees.

Bendix (2000:89), of importance is the fact that, where discrimination is concerned, applicants for a position are also regarded as employees. This



happens nowhere else in labour except in those sections of the Labour Relations Act dealing with the freedom of association and the freedom of victimization. The significance is that any person applying for a position may question but the short listing of candidates and the actual selection of a candidate.

Because the onus of proof against an allegation of discrimination rests on the employer, those engaged in recruitment and selection have to prove that the short listing and eventual selection were conducted in terms of provable assessment criteria and that no person was unfairly advantaged or disadvantaged during the process. This also applies to advertisements, in which case the person planning the advertisements, should ensure that it reaches all possible candidates and that it does not discourage persons who might be suitably qualified from applying.

In the meantime, however, the prohibition of discrimination against applicants for employment on arbitrary grounds is enough to cover unjustified bars to appointment. *Swart V Mr Video* [1997] 2 BLLR 249 (CCMA) provides an example. The employer, seeking to staff a newly-opened store, placed an advertisement for a shop assistant under 25 years of age. Ms Swart, who was 28 at the time, was interviewed, but turned justified only if based on an inherent requirement of the job. If an applicant was prepared to work and not averse to accepting instructions from younger people, there was no reason why he or she should not be able to perform the work concerned. If compatibility between staff was the underlying objective, as the employer had claimed, it should have used criteria other than age to test for it (Grogan, 1998:181).

## 2.11 DISCRIMINATION

According to (Nel, 1997:268) discrimination means to treat persons or employees differently.

Labour market discrimination refers to the inferior treatment of some workers with respect to employment policy or practice, through factors not related to the labour market, such as being female or black (Barker & Holtzhausen, 1996).

Mc Connell and Brue (1989:314) describe economic discrimination as "Economic discrimination exists when female or minority (i.e. black) workers - who have the same abilities, education, training and experience as white male workers - are accorded inferior treatment to hiring, occupational access, promotion or wage rate".

Another definition by Fearn (1981:168) is that discrimination in the economic sense refers to, differences in treatment (for example, wages, employment, schooling) that are not based on cost or expected cost differences or differences in productivity or expected productivity.

According to Reynolds, Masters & Moser, Discrimination occurs whenever someone's opportunities are not based on his or her individual capabilities but are limited because of membership in a group. Discrimination can occur in many areas, including housing and education as well as the labour market. Labour market discrimination occurs when members of the group have lower earnings than another and when those earnings differentials cannot be attributed to any



productivity differences between the two groups.

Earnings differ across workers for many reasons. Some workers are more productive than others, often because they have invested more in education or on-the-job training. Some workers prefer to work many hours of overtime whereas others prefer part time work. Wage differentials can compensate for differences in the monetary attractiveness of jobs (Ibid).

The Bill of rights as described in Chapter 2 of the Constitution: -

## 2.12 EQUALITY

- Everyone is equal before the law and has the right to equal protection and benefit of the law
- Equality includes the full and equal enjoyment of all rights and freedoms to promote the achievement of equality. Legislative and other measures designed to protect or advance persons, or categories of persons, disadvantaged by unfair discrimination may be taken.
- The state may not unfairly discriminate directly or indirectly against anyone on one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour sexual orientation, age, disability, religion, conscience, belief, culture, language and birth.
- No person may unfairly discriminate directly or indirectly against anyone on one or more grounds in terms of subsection (3) National legislation

must be enacted to prevent or prohibit unfair discrimination.

- Discrimination on one or more of the grounds listed in subsection (3) is unfair unless it is established that the discrimination is fair.

There are, of course, a variety of reasons why an employer will choose to treat or want to treat employees differently. This may be based on educational qualifications, seniority or experience. It may also be based on certain characteristics of an employee. These characteristics may be unchangeable personal or physical characteristics, such as gender, race, colour or ethnic origin. It may also be based on other characteristics such as religion or political beliefs. The important point to be made is that all these characteristics may result in an employer treating a certain employee or group of employees differently to another employee or group of employees. In the employment context, such differential treatment may affect all aspects of employment from appointment to pay levels, the provision of fringe benefits and promotions, and even dismissals (Nel,1997:269).

#### **2.12.1 Types of possible labour market discrimination:**

- Employment discrimination occurs when some groups bear a disproportionate share of the burden of unemployment.
- Wage discrimination occurs exists when workers belonging to certain groups are paid less than workers belonging to other groups for doing the same work.

- Human capital discrimination is discrimination in respect of education and training, which could include impaired access to them or inferior quality education.
- Occupational discrimination occurs when specific groups are under-presented in skilled occupations, although they are as capable as other groups and also have the necessary qualifications (Barker, 1999:240).

### 2.12.2 Direct and Indirect discrimination

Indirect discrimination refers to certain rules or procedures that appear neutral but might disproportionately affect certain groups (i.e. women or blacks) (Barker et al: 1996).

If an employer sets a requirement for employment or promotion that has a differential impact on, for example blacks or women, it would be indirect discrimination even though it does not directly discriminate. An employer is allowed to present good business reasons for the particular requirement set (Ibid).

**Direct discrimination** means that the criterion used to distinguish is discriminatory (only men may apply for a certain position)

**Indirect discrimination** implies that although the criterion used to distinguish may be neutral in form, in this regard it is not required that the employer must have had the intention to discriminate.

Both the Constitution of 1996 and the Labour Relations Act (LRA) of 1995 outlaw not only direct discrimination, but also indirect discrimination.

Direct discrimination can best be understood by reference to the word 'treatment' - where an employer overtly bases differential treatment of an employee or group of employees on an arbitrary ground, the employer is discriminating directly. An example of direct discrimination is where the housing subsidy of an employer is available to all employees, with the exclusion of married women. In this case, the employer is treating certain employees differently on the basis of their gender and their marital status, discriminating directly on the basis of two criteria wholly irrelevant to the operational needs of the business or the ability of employees to do their jobs (Bezuidenhout, Garbers and Potgieter, 1998:80)

Legislation prohibits direct or indirect unfair discrimination against employees for any arbitrary reason such as race or gender. However, employers are not prevented from implementing employment practices to advance those employees who have been disadvantaged by past unfair discrimination, which may lead to labour unrest.

### **2.12.3 Preventing discrimination in general**

It is essential that all participants in Labour Relations review and adapt basic HR management practices to prevent unfair discriminatory labour practices, which may lead to labour unrest.

Figure 2.1 (pg42) indicates the most important activities in human resources management, in which discrimination and unfair labour practices can occur:-

Table 2.1: Preventing Discrimination in general: HRM

|                                                                                                                                                                                                                |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1. <b>FORMULATION OF ORGANISATIONAL OBJECTIVES</b>                                                                                                                                                             |
| 2. <b>FUNCTIONAL ANALYSIS</b> Determine what functions need to be performed in order to reach objectives.                                                                                                      |
| 3. <b>DETERMINE HR NEEDS</b> Establish the number and objectives of jobs that will be needed to achieve functional objectives.                                                                                 |
| 4. <b>JOB ANALYSIS</b> It is important to determine inherent (real) requirements.                                                                                                                              |
| 5. <b>JOB DESCRIPTION</b> It is important to describe the job in such a way that it reflects the inherent job requirements and suitably qualified persons unambiguously and clearly.                           |
| 6. <b>JOB EVALUATION</b> Use the job description to determine the relative worth of jobs through an objective method and structure the job in a hierarchy.                                                     |
| 7. <b>DETERMINE REMUNERATION</b> Use the job description to determine the remuneration package of each job by considering: Other jobs in the same category and Remuneration levels and trends in the industry. |
| 8. <b>RECRUITMENT</b> Use the job description to recruit candidates through appropriate mediums.                                                                                                               |
| 9. <b>SELECTION</b> Use the job description to select the most appropriate candidate through objective methods.                                                                                                |
| 10. <b>INDUCTION</b> Ensure that the new employee is aware of all relevant aspects of the job and organisation.                                                                                                |
| 11. <b>PERFORMANCE APPRAISAL</b> Use the standards specified in the job description to determine the level of success in the job, and provide feedback.                                                        |

If performance is satisfactorily or better, development and motivational techniques should be applied.

If performance is unsatisfactory, consider if it is due to:

|                     |                                 |
|---------------------|---------------------------------|
| <b>CAN'T DO</b>     | <b>WON'T DO</b>                 |
| - Review capability | - Investigate grievances        |
| - Review training   | - Consider attitude             |
|                     | - Consider discipline/Dismissal |

Adopted from Lukas Ehlers: 1998: Labour relations theory and practice.

## 2.12.4 Unfair discrimination

Section 5 of the Employment Equity Act provides for the elimination of requiring that "every employer must take steps to promote equal opportunity in the workplace by eliminating unfair discrimination in any employment policy of practice".



Section 6 prohibits unfair discrimination. Section 6 (1) No person may unfairly discriminate, directly or indirectly, against an employee, in any employment policy or practice, on one or more grounds, including gender, sex, pregnancy, marital status, family responsibility.

The residual unfair labour practice definition renders unfair any act or omission involving the 'unfair discrimination, either directly or indirectly' against any employee on various grounds. This could embrace any employment practice which has the effect of unfairly discriminating, in whatever way, and whatever the motive behind it. An intention to discriminate need not necessarily be present, for it is the impact of the discriminatory practice which is decisive Grogan (1998:175).

Whether an act is discriminatory is a relative question: it does not necessarily involve actual prejudice to the individual concerned. It is measured, rather, against the treatment accorded others. Unfair discrimination may therefore be said to exist where others are accorded benefits which the victim is denied, even though it entails no actual prejudice to the victim. Thus employees denied promotion lose nothing in an objective sense; they are merely denied benefits accorded to those who are promoted. The relative disadvantage becomes unfair only where there is no objective justification for so distinguishing the allocation of benefits. The distinction may then be said to be 'arbitrary', meaning that it is based on some irrelevant criterion Ibid.

The law does not prohibit discrimination per se. The law only prohibits unfair discrimination. In short, unfair discrimination is differential treatment which is based on an arbitrary ground. "Arbitrary" in this context means the employer bases decisions on criteria which have nothing to do with the operational requirements of the business, nor with the ability of employees to do their jobs. Examples of such arbitrary criteria are those listed in the Constitution of 1996 and in the Labour Relations Act of 1995; namely race, gender, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language, birth and political opinion (Bezuidenhout, Garbers and Potgieter, 1998:79).

Bear in mind that this list of seemingly unfair criteria is not exhaustive, discrimination may be unfair if it is based on any arbitrary ground. The fact that an employer discriminates on any of the listed grounds does not necessarily mean that the discrimination is, in fact, unfair. All it means is that a presumption of unfairness is created. An employer is still free to show that the differential treatment, even if based on one of the listed grounds, can reasonably and objectively be justified (i.e. that it was fair) or that the conduct of the employer falls under one of the exceptions to unfair discrimination to be discussed (Ibid).

#### **2.12.5 Exceptions to unfair discrimination**

The law prohibits only unfair discrimination. This means that an employer always has the option (however difficult it may be) to show that even though he or she discriminated, and even though such discrimination was on one of the



listed grounds, that his conduct is reasonably and objectively justifiable, i.e. that he acted fairly. Perhaps more practical importance is the fact that the Labour Relations Act of 1995 provides for two arguments employers may use to counter charges of unfair discrimination, namely that their conduct is based on the inherent requirements of a job or that they acted in the interests of affirmative action Bezuidenhout, Garbers and Potgieter (1998:80).

## **2.13. AFFIRMATIVE ACTION**

According to Adams, Affirmative Action (AA) refers to "racial preferential treatment for good reason". It could mean the redistribution of resources and opportunities. It may also refer to preferential financial assistance by business to institutions of those communities which have been traditionally disadvantaged.

The aim of AA is to raise the quality of life of disadvantaged communities in South Africa, thus enabling them to compete on an equal footing. AA involves all the aspects that must be addressed to bring about ultimate equality. This includes:-

- Removal of unfair discrimination
- Actual development of previously disadvantaged groups
- Economic growth
- Increasing productivity
- The redistribution of wealth
- Reducing population growth and

- Promoting equality (Ehlers & associates).

AA is allowed in terms of the Constitution of 1996 and the Labour Relations Act of 1995, but there is nothing which forces an employer (other than a moral obligation or pressure by trade unions) to implement AA. This, however, may soon change if the proposed Employment Equity Bill is passed into law. As this bill now stands, certain employers (with more than 50 employees) will be obliged to implement AA plans and may be punished for not doing so. The basic requirements for any lawful and valid AA plan are the following Bezuidenhout, Garbers and Potgieter(1998:81).

- *Recognition that AA is a temporary measure.* The purpose of AA is to contribute to equal opportunities. Once this purpose has been reached, the justification for AA falls away.
- *The AA policy must have a rational basis.* The law requires that an AA policy must be "designed to achieve" the goal of equal opportunity.
- The law requires no more than that AA plans should be "adequate" in reaching or contributing to the goal of equal opportunity.  
Put differently, such plans must be realistic and portray the realisation that equal opportunity will not be reached over night.
- At present, the law does not specify who the beneficiaries of AA may be, although the Employment Equity Bill specifies black persons.

- *An employee may not be dismissed in the interests of AA.* In terms of the LRA of 1995, AA is not an exception to a discriminatory dismissal.
- *AA should not be implemented at the expense of efficiency.* The employer retains the right to select the best persons for the job although this freedom may be drastically curtailed by the Employment Equity Bill, which may well require the appointment of applicants at present lacking the ability to do the job, but with the capacity to acquire such ability.
- *AA may subject to other policies of the employer, such as a commitment to first consider applications for jobs from within the organization before outside appointments will be considered.*

AA is a recognised way of promoting the principles of equality of opportunities in societies where this principle has suffered as a result of discrimination or where less developed persons have to compete with more developed persons. It is recognised in international law as being non-discriminatory, so long as it is temporary and is not enforced against the will of the minority. In appropriate cases it does not amount to discrimination, since the fact that those who have lost their positions in a programme of AA properly executed do not actually lose anything they would have had in a fair race. Programmes of AA must be implemented with great care if reverse discrimination is to be prevented (Barker (1999:264).

### 2.13.1 Argument in favour of introducing programmes of AA

- The dismantling of discrimination cannot take place instantly, simply by getting rid of discriminatory legislation. After many years of such legislation, the people who were discriminated against are far behind in terms of ownership of the wealth of the country and the filling of skilled occupations Marshall et al. (1980:528)

Goldstone (1989:69) says, "I have no doubt that it will take many decades to ameliorate, let alone to obliterate, the many negative consequences of centuries of racial oppression in South Africa. If possible steps are not taken to bridge the racial gap, then South Africans will never live in harmony with each other and the economy will not have the manpower so necessary to drive it efficiently".

Africans should be provided "with the same boots and straps as you do whites before you should use the platitude 'pull yourself up by your bootstraps' to those who have neither boots nor straps" (Khoza, 1986:19). AA is not a form of reverse discrimination, but a method of providing reparation to benefit members of a group that has been discriminated against on account of race (Fandez, 1994:4).

From an economic point of view, the argument is that markets do not function properly. If discrimination is the result of, for instance, perceived reality, intervention of government in the form of AA might bring about a change in employers' perceptions that individuals from

certain groups are less productive than those from others.

If discrimination is caused by market imperfections, it will not be eliminated unless there is intervention by government. However, these arguments can be countered by the contention that although intervention to eliminate discrimination is necessary, this does not necessarily require Affirmative Action (Barker, 1999:265).

## **2.14 DISCIPLINE**

### **2.14.1 Approaches of discipline**

Unfortunately, many employees regard discipline as a negative and threatening instrument in the hands of management. However, it must be explained clearly that discipline has a positive side and that it can support morale, decrease labour turnover and create a more satisfied and efficient workforce in general. If the process of corrective discipline is properly applied, it may contribute to the achievement of organisational objectives. By ensuring the cooperation of employees. If, however, it is dealt with inefficiently, management will lose the respect and cooperation of employees and thus hinder the success of the undertaking. A reasonable manager should be able to get cooperation of the majority of employees under his control, without having to resort to punitive disciplinary action.



Salamon (1992:592) defines formal discipline as "action taken by management against an individual or group who has failed to conform to the rules established by management within the organization".

Discipline occurs when an employer makes a guiding intervention in an employee's work behaviour. The intervention is aimed at encouraging, assisting, prompting or forcing the employee to be committed and diligent disciple of the objectives of the employer. A degree of trust and acceptance exist between the two parties (Ehlers, 2003:174).

Disciplinary action is usually initiated by management in response to unacceptable behaviour on the part of employees. This is downward communication. When an employee has problems and initiates a grievance procedure, it is upward communication.

The way in which discipline is applied should always follow the principle of minimum force (Levy, 1992:69). Discipline is aimed at effecting an improvement in the conduct of the person who is being disciplined. Its aim is not to punish or to hand out retribution. For this reason the modern approach to discipline is called progressive. This implies that disciplinary action is taken in a progressive manner, from one level to another in a series of increasingly severe steps, in an attempt to bring the seriousness of the situation to the employee's attention.

A progressive disciplinary procedure will usually provide for steps that start with a verbal warning and progress to a written warning and then a final warning before reaching dismissal. The actual process is subject to the specific



situation, and serious transgressions may warrant immediate dismissal (Ibid).

#### 2.14.2 Discipline in the workplace

According to Rossouw et al, (1999) employers are entitled to satisfactory conduct and work performance from their employees. In order to achieve this employers have the power to prescribe rules of conduct for the workplace and to take disciplinary steps against an employee who fails to observe these rules. However, if there is a workplace forum in the company or business the employer must first consult and reach consensus with the workplace forum before implementing rules relating to the proper regulation of the workplace and disciplinary codes and procedures. Collective agreements, too, may contain disciplinary procedures.

The Code of Good Practice recommends that employers adopt disciplinary rules which set out the standards of conduct required of employees. The form and content of these disciplinary rules will vary according to the size and nature of an employer's business. The aim of disciplinary rules is to create certainty and consistency in the application of discipline. The standard of conduct expected of employees should therefore be made clear and available to employees in a manner that is easily understood. The existence of a disciplinary code will also ensure that managers do not implement disciplinary measures arbitrarily, but with the accepted framework of a disciplinary code (Ibid).

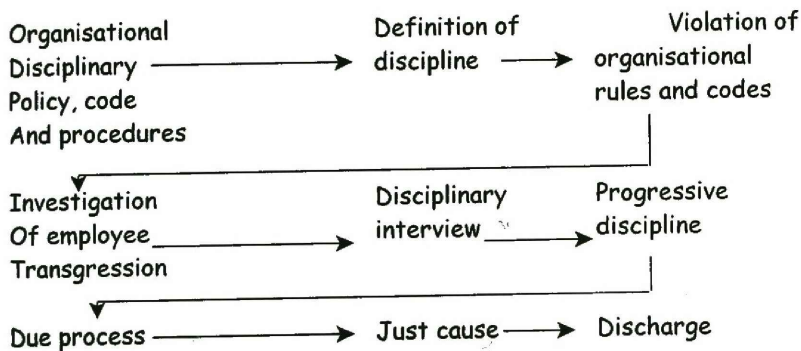
Employers need a comprehensive and effective discipline system to maintain control over the workforce. Otherwise, satisfactory employee attendance,

conduct, and productivity could not be achieved. A well-structured and uniformly enforced discipline program also may reduce employee discontent, along with any manager's tendency to treat employees in an arbitrary or biased manner. Employees are more satisfied when they know what consequences to expect from rule violations and when they see discipline procedures consistently administered (Carell et al, 2001:419).

The primary responsibility for preventing or correcting disciplinary problems rests with the employee's immediate supervisor. This person is best able to observe evidence of unsatisfactory behaviour or performance and to discuss the matter with the employee. Discussion is frequently all that is required to correct the problem, and in so doing, disciplinary action becomes unnecessary. However, when disciplinary action is needed, the supervisor should strive to adopt a problem-solving attitude. Causes underlying the problem are as important as the problem itself, and any attempt to prevent a recurrence will require an understanding of them (Bezuidenhout et al, 1998:196).

Disciplinary policies and procedures should extend to a number of important areas to ensure thorough coverage. Figure 2.2 presents a disciplinary model illustrating the areas in which such provisions should be established. The model also shows the logical sequence in which disciplinary steps must be carried out to ensure enforceable decisions.

**Figure: 2.2: Disciplinary Model**



From Sherman A. Bohlander G and Snell S. (1996:584)

### **2.14.3 Disciplinary Code**

Guidelines for the application of disciplinary sanctions are normally found in a disciplinary code. A disciplinary code specifies which forms of the employee behaviour the employer regards as misconduct. It further shows the type of disciplinary sanction the employer can apply in case of employee, breaching the disciplinary code.

The disciplinary code is often reflected in a matrix format in which each transgression is coupled to an appropriate sanction, or transgressions are simply listed under different headings which show the seriousness of the offence and possible disciplinary sanctions that may follow such a transgression (Ehlers L, 2003:175).

#### **2.14.4 Examples of a disciplinary code**

The following list merely provides general examples of transgressions that the organization views as transgressions that may cause disciplinary action in accordance with the disciplinary procedure.

#### **2.14.5 Category A: Very serious misconduct**

The following are examples of misconduct that are considered as very serious breaches of the disciplinary code and could lead to summary dismissal. Please note that the sanctions that are listed merely provide guidelines for disciplinary action and that the circumstances and merit of a transgression may call for more or less severe sanctions being applied. (Ibid)

**Figure: 2.3: Very serious misconduct**

| Transgression                                                                                                                                              | First offence           | Second offence |
|------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------|----------------|
| 1. Assault, inappropriate gesturing/touching.                                                                                                              | Serious written offence | Dismissal      |
| 2. Theft, Unauthorized possession of company property, dishonesty, fraud, forgery.                                                                         | Dismissal               |                |
| 3. Gross negligence or gross unprofessional conduct.                                                                                                       | Serious written warning | Dismissal      |
| 4. Absence without leave for more than five (5) days.                                                                                                      | Dismissal               |                |
| 5. Instigating or promoting violence, intimidation, victimization or illegal striking.                                                                     | Dismissal               |                |
| 6. Insubordination, serious disobedience or serious challenging of authority.                                                                              | Serious written warning | Dismissal      |
| 7. In possession on the company premises of, to be under the influence of substances which have a narcotic, intoxicating or abnormally stimulating effect. | Dismissal               |                |
| 8. Immorality, sexual harassment, racism.                                                                                                                  | Dismissal               |                |
| 9. Sleeping on duty.                                                                                                                                       | Serious written warning | Dismissal      |
| 10. Any other offence, which could lead to a permanent severing of the trust relationship between employer and employee.                                   | Serious written warning | Dismissal      |

Adopted from Lukas Ehlers, 2003:175)

The following are examples of serious breaches of the disciplinary code that could lead to dismissal after the issuing of warnings. Please note that the sanctions that are listed merely provide guidelines for disciplinary action and that the circumstances and merit of a transgression may call for more or less severe sanctions being applied.

Table 2.4: Serious misconduct

| Transgression                                                                                             | First offence   | Second offence          | Third offence           | Fourth offence |
|-----------------------------------------------------------------------------------------------------------|-----------------|-------------------------|-------------------------|----------------|
| 1. Unauthorized absenteeism, leaving workstation without permission.                                      | Counselling     | Written warning         | Serious written warning | Dismissal      |
| 2. Negligence or unprofessional conduct.                                                                  | Written warning | Serious written warning | Dismissal               |                |
| 3. Poor work performance, ignoring standard operating procedures.                                         | Counselling     | Written warning         | Serious written warning | Dismissal      |
| 4. Contempt of company regulations, damage to property.                                                   | Written warning | Serious written warning | Dismissal               |                |
| 5. Insolence or refusal to follow lawful instructions.                                                    | Written warning | Serious written warning | Dismissal               |                |
|                                                                                                           | Written warning | Serious written warning | Dismissal               |                |
| 6. Indecent action, slander or swearing. Unprofessional conduct, disloyalty.                              | warning         | written warning         |                         |                |
| 7. Horseplay, loitering, absenteeism of work without permission during working hours.                     | Counselling     | Written warning         | Serious written warning | Dismissal      |
| 8. Poor customer relations, disrespect for quality assurance procedures.                                  | Written warning | Serious written warning | Dismissal               |                |
| 9. Inappropriate use of company equipment, failing to secure company equipment.                           | Counselling     | Written warning         | Serious written warning | Dismissal      |
| 10. Any other serious office which would seriously damage the trust inherent in the service relationship. | Counselling     | Written warning         | Serious written warning | Dismissal      |

Adopted from Lukas Ehlers, 1998:101



## **2.14.6 Category B: Serious misconduct**

The overall objective of disciplinary action is to remedy a problem and to help employees achieve success in their work. It is to the advantage of both an organization and its employees that a smooth-functioning state of order is maintained. To maintain a state of order, an organization must have accepted standards of appropriate conduct, a fair procedure for evaluating behaviour, and a sequence of progressively severe penalties for those persons who violate rules Bezuidenhout, Garbers & Potgieter (1998:240).

The principle is upheld that the employees is entitled to challenge the fairness of discipline.

Procedures should be known to all employees and managers. Supervisors and managers who are closely involved with enforcing organizational rules, regulations and codes of conduct need to be carefully trained in the use and implementation of disciplinary actions, thus ensuring procedural fairness.

## **2.15. DISMISSAL**

Until about 20 years ago, South African law afforded no protection to employees who were unfairly dismissed. The only rights that dismissed employees could rely on were those established by their contracts of employment or by an applicable wage regulating measure. In most instances these required anything from 24 hours to a month's notice by one party to the other to terminate the contract. Provided that the employer gave the required

notice, there was little if anything that an employee could do to challenge the dismissal. If the employer refused or failed to give the correct notice, the employee's remedy was generally limited to payment of wages in lieu of notice Van Niekerk (2002:xiii).

According to Van Niekerk, dismissal means that an employer has terminated a contract of employment with or without notice. This is a form of termination of employment, a termination at the initiative of the employer.

Dismissal would take place where there is an irreparable breach in the trust relationship between an employer and an employee. The employee's behaviour in the relationship have clearly confirmed that the employee did not want to become or remain a disciple of that specific employer's objectives (Ehlers, 2003:174).

Section 186 consists of a statutory definition of the term 'dismissal'. According to this section, the following actions amount to dismissal for the purposes of the act.

- Where the employer has terminated a contract of employment either summarily (on good grounds) or by giving the required notice (termination of the employment contract).
- Where an employee reasonably expected that the employer would renew a fixed-term employment contract (an annual contract, for example), but instead the employer either did not renew it at all, or

offered to renew the contract on terms less favourable than the terms of the original fixed-term contract (failure to renew a fixed-term contract).

- Where an employer refuses to allow an employee to return to work after she took maternity leave as provided, in terms of any law, a collective agreement or her contract of employment (failure to allow an employee to return to work after pregnancy).
- Where an employer, dismissed a number of employees for the same or similar reasons and has offered to re-employ one or more of them but at the same time refused to re-employ another employee or employees (selective non-re-employment).
- Where the employee terminated the employment contract (by resigning) by giving the required notice or summarily, because the employer made continued employment intolerable for the employee (constructive dismissal) (Brand, Lotter, Mischke & Steadman 1997:219)

### **2.15.1 Fair reasons for dismissal allowed by the Labour Relations Act (LRA)**

There are, in principle, three grounds that may justify the dismissal of an employee. These are set out in section 188 of the LRA and they are all potentially fair reasons for dismissal. Section 188 provides that if a dismissal is not automatically unfair, it is unfair if the employer fails to prove that the dismissal is for a fair reasons related to the employee's conduct of capacity or based on the employer's operational requirements and that the dismissal was effected in accordance with a fair procedure (Van Niekerk, 2002:35).

In order for a dismissal to be fair, there has to be both substantive and procedural fairness. Substantive fairness refers to the reason for the dismissal, while procedural fairness refers to the procedures that are to be followed when dismissing. According to the Labour Relations Act there are three broad categories of reasons, that can be deemed to be fair reasons for dismissal:

- Dismissals for misconduct (bad behaviour)
  - Dismissals for incapacity (including inability to do a job due to ill health)
  - Dismissals for operational requirements (e.g. retrenchments)
- (File:/C:\DOCUMENT)

### **2.15.2 Dismissal for misconduct**

There are three broad standards to be observed before one can be dismissed for misconduct.

- It must not qualify as automatically unfair.
- There must be a valid reason for dismissal i.e. it must be substantively fair.
- The procedure to dismiss must be fair.

#### **a. Fair Procedure**

Employers must keep records for each worker, which say what offences a worker committed, what disciplinary action was taken, and why the action was taken.

If there is repeated misconduct, the employer must give the worker warnings. A final warning for repeated misconduct or serious misconduct must be given in writing.

**There must be a fair hearing**

- If the worker is a shop steward, the employer must first inform or consult the union.

- The worker must know in advance what the charges are against him or her.
- The worker must be given enough time to prepare for a hearing.
- The worker must be allowed to be represented at the hearing by shop steward or co-worker.
- The worker must be allowed to see documents and cross-examine evidence used against him or her.
- The employer should bring all witnesses against the worker to the hearing. The worker should have a chance to cross-examine witnesses called against him or her.
- The worker should be allowed to call witnesses.
- The worker must be given reasons for any decisions taken [www.paralegaladvice.or.za](http://www.paralegaladvice.or.za)

According to Rossouw and Conradie, Once the employer has clarified and proved its reason for dismissal (i.e. substantive fairness) the employer must prove that it has acted reasonably in forming its conclusion on the facts, and that its decision to treat those grounds as sufficient for dismissal is reasonable in the circumstances (i.e. procedural fairness).



### **2.15.3 Dismissal for incapacity**

Where an employee is not performing, or is not able to perform, his/her work according to appropriate or expected work standards the possibility of the employee being dismissed for incapacity arises. These types of dismissals are also known as 'no fault' dismissals because the dismissal generally arises from circumstances for which the employee is not to blame. This is an important point to be taken into account in distinguishing incapacity from misconduct. Where there is an element of culpability in the form of intention, or wilful negligence, the incident in question should probably be treated as a disciplinary offence in accordance with the guidelines set out in chapter 3. The Code of Good Practice distinguishes between incapacity in the form of poor cases the code sets out guidelines for determining the fairness of a dismissal as well as the procedure to be followed in implementing a dismissal.

#### **a. Fair reasons**

A dismissal for incapacity can be for:

- poor work performance
- Physical disability or ill health
- Incompatibility

When deciding whether a dismissal for incapacity was fair or not, the following must be considered:

- Whether the worker failed to work to a required standard
- Whether the worker was aware of the standard
- Whether the worker was given a fair chance to meet the standard
- Whether dismissal is the right punishment for failing to meet the standards

**b. Fair procedure**

Dismissals for poor performance will only be fair if the employer:

- Has given the worker proper training, instructions, evaluation, guidance and advice
- Assessed the worker's performance over a reasonable period of time
- Investigated the reasons for continued poor performance
- investigated ways of solving the problem without resorting to dismissal
- Gave the worker a chance to be heard before deciding to dismiss.

Dismissals for (temporary/permanent) ill health or disability will only be fair if the employer:

- Investigated the degree and duration of the injury or incapacity
- considered ways of avoiding dismissal, for example getting a temporary worker until the sick worker is better
- Tried to find alternative work for the worker to do
- Tried to adapt the work so that the worker could still do it
- Gave the worker chance to be heard before deciding to dismiss.

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#### **2.15.4 Dismissal for operational requirements**

A dismissal for a reason based on the employer's operational requirements is a 'no fault' dismissal. In these circumstances, it is the employer's exigencies rather than any act or omission on the part of the employee that causes the termination of employment. For this reason the law is more prescriptive, in terms of both substance and procedure, than in the case of a dismissal for misconduct or incapacity. If there is any discernible purpose to the prescription, it is to effect a balance between the promotion of the social good of preserving employment and the preservation of the efficiency of the employer's enterprise Van Niekerk (2002:67).

**a. Fair reasons**

An employer is allowed to retrench workers for 'operational requirements' based on the employer's 'economic, technological, structural or similar needs'. For example, maybe the employer says the business is losing money (economic reason), the employer is getting a machine to do work that workers did by hand before, or the employer's new machines need different skills to operate them than the existing workers' skills (technological reasons), or the employer is restructuring the business by combining two departments so she doesn't need two Heads of Departments anymore (structural reason) [www.paralegaladvice.org.za](http://www.paralegaladvice.org.za).

**b. Fair procedure**

When an employer considers retrenchment, he or she must consult:

- Whoever a collective agreement says must be consulted, or if none exists:
- The workplace forum, or if none exists:
- The union, or if none exists:
- The workers themselves

The employer must issue a written notice inviting the other party to consult with it and make all the relevant information available in writing at the consultations, including:

- Reasons for retrenchment
- Alternatives considered including redeployment
- Number of workers to be retrenched
- How it will be decided which workers to retrench
- When the dismissals will take place
- Severance pay
- What other help the employer will give to the workers who will be retrenched
- Possibilities of future re-employment for these workers
- Number of workers employed by the employer
- Number of workers the employer has retrenched during the past 12 months'

#### **2.15.5 UNFAIR DISMISSAL**

According to Van Niekerk, (2002) Section 187 of the LRA lists a number of reasons for dismissal that, if established, are 'automatically unfair'.

This means that the dismissal of the employee is unfair simply by virtue of the reason for the dismissal, and it is not open to the employer to justify its decision to dismiss the employee. In other words, once it has been proved that an employee was dismissed for one of the automatically unfair reasons listed in section 187, the employer will not be afforded the opportunity to discharge the onus of showing that the dismissal was fair, and the proceedings must move directly to a consideration of the remedy to which the employee is entitled.

The Act similarly also covers any person seeking work. It is made quite clear that an employer who prevents an employee or prospective employee from participating in any proceedings or exercising any of the rights in terms of the freedom of association clauses of the act may be charged with 'automatically unfair dismissal' of the employees concerned (Sundaytimes.co.za).

The following reasons for dismissal are invalid. The dismissal will be regarded as automatically unfair if the worker is dismissed for:

- Exercising any of the rights given by the LRA or participating in proceedings in terms of the Act.
- Taking part in lawful union activities.
- Taking part in a legal strike or other industrial action or protest action



- Refusing to do the work of someone who was on strike
- Being pregnant, or any reason related to pregnancy
- Refusing to accept a change in working conditions
- Reasons that are due to arbitrary discrimination (except that an employer may retire someone who has reached the normal or agreed retirement age, or if the reason is based on an inherent requirement of the job, for example being able to speak a certain language in order to do the job properly).

## **2.16 TRADE UNIONS**

### **2.16.1 Definition**

A trade union can be defined as "any number of employees in a specific enterprise, industry, trade or occupation who are united with the purpose, either solely or together with other objectives, to arrange relations between them or some of them and their employers or some of their employers in that enterprise, industry, trade or occupation" (Ehlers, 2003:79).

A trade union is therefore a worker representative institution or organisation. Workers have the right to freely associate with any union of their choice, and will join a trade union which will - in their own mind -

best represented their interests in the workplace.

All workers, however, do not belong to trade unions, and it should be noted that workers also have the right to abstain from union membership and represent themselves. Labour rights are also applicable to employees who are not trade union members Ibid.

#### **2.16.2 Freedom to Associate**

Freedom to associate is a positive right while freedom not to associate is often viewed as a negative right. The former right is the right of an employee to join a trade union; the latter right is a right not to join a trade union Tayob's notes:9.

Tayob further states that, this right therefore means that he cannot be compelled to join a trade union. This is an extremely controversial aspect of the right of freedom of association and usually arises in the context of a "closed shop agreement". It frequently happens that an employer and a trade union enter into a collective agreement in terms of which the employer agrees that it will only retain in its services employees who have joined the union and remained members thereof. This means that employees are compelled to join a union in order to acquire or retain a job. This infringes an employee's right not to associate.

The main reason why an employer would want to infringe an employee's right in this way is because he wishes to maintain a uniform policy of pay

scales and other conditions of employment within the workplace.

For example; The Staff Association which is the collective mouthpiece of most of the staff at the X University has a recognition agreement signed by the University that all issues pertaining to University staff shall be negotiated with it on behalf of the staff. Each registered member of the Staff Association pays R30,00 per month as his membership contribution to the Union. When the Union collectively bargains with the University and succeeds in getting some benefits i.e. an increase in salary, the University invariably gives this benefit to all staff including non-members. The Staff Association stated it was unfair that its members are required to pay for their services whilst non-members don't pay but enjoy the same benefits. They then asked the University to only retain as its staff those persons who are registered as members and who pay. An alternative option has been for the Union and employee to enter into an agency shop agreement. This does not compel employees to become members of a Union. However, any employee who is not a member of such union has an amount equal to the Union dues (membership fee) deducted from his wages and are paid into a separate fund to the union. The Union then uses it to pay for some of its disbursements i.e. travel and other costs incurred during the collective bargaining process.

### **2.16.3 Union members participation**

Carrell (2000:66) views union members participation as crucial for the development of the union strength. Union participation is in all instances

determined by the commitment of its members. Pro-union attitudes are generally developed over several years and are influenced by external factors like family members, work history, the media and direct observation.

#### **2.16.4 Union members problems**

Union members have different needs and expectations to be fulfilled. Finnemore (1999:80) says that unions have challenges of planning its goals to be in line with members' needs and aspirations. The dynamic nature of organizational needs as well as employees' needs, need a constant readjustment of union goals. Finnemore (1999:81) states that: -

... unions also receive contradictory signals from their own members. Workers are divided and contradictory. They are collectively oriented, yet individual and instrumental in expectations to their own standards of living (Torres, 1995).

Finnemore (1999:81) states that workers join trade unions for economic, social and political needs fulfillment; Adding to that are the reasons for job security and regulations, as well as self fulfillment reasons. If the union acts contrary to the expectations of the members, a variety of problems may arise. Schreiner (1999) asserts that: -

Levels of service to members are solely wanting. Union leadership has tended to apply short-term solutions which had little impact on

the problems at hand. Members have expectations dashed on my occasions - often in the name of broader anti-apartheid initiatives. In the current period there is likely to be less tolerance of the failure to meet such expectations, and in order to survive, unions will have to prioritise the realization of shop floor bread-and-butter demands.

#### **2.16.5 Reasons why employees join trade unions**

Individual workers normally have very little power to influence management decisions. By belonging to a trade union the individual members ensures the support of others in a similar predicament. There are more workers than job opportunities. This may mean that should a worker resign as a result of dissatisfaction, the employer will find it easier to get a replacement than the worker to find another job. An employee needs job security, and does not want to be at the mercy of the employer. Each day that he does not work he will have less money (Ehlers, 2003:79).

Ehlers (2003:79) states that: -

... It is clear that an employer has more power than an individual worker. However, if employees unite in a group, the power balance becomes more equal. If all the workers of an employer simultaneously decide to strike the employer will not find it easy to replace his workers so quickly. By uniting

the workers therefore strengthen their position. One of the most common reasons why workers therefore join trade unions, is to obtain greater job security.

Trade unions will also attempt to ensure that workers receive fair remuneration and service conditions, through collective bargaining initiatives. As union members, workers may air grievance against various levels of management without the fear of victimisation by management. Trade union membership to such workers also implies that they can enforce the necessary respect and recognition by management and other workers. Trade union members feel that union membership is worthwhile, because they can participate indirectly in management decisions.

Chapter 3 will be about the research methodology. The chapter will cover research aspects such as data gathering techniques, research design and data analysis technique.



## CHAPTER THREE: RESEARCH METHODOLOGY

### 3. INTRODUCTION

Under the quantitative paradigm, Kerlinger (1979) in Mwanje 2001: 83-84 defined a theory to be a set of interrelation constructs (variables) definitions and propositions that presents a systematic view of phenomena by specifying relations among variables, with the purpose of explaining natural phenomena.

In strategy in quantitative study is to test or verify a theory as opposed to developing it. Hence the theory constitutes the research framework and is developed within the context of the deductive mode. The process in this mode starts by the researcher testing the theory from which testable hypotheses or research questions are derived. Once this is done, the salient concepts or variables (as deducted from the theory) are operationalised before suitable instruments are applied to measure the study variables. Mwanje, 2001:84.

This is the preferred approach for this study. This is so because of the following:-

- The study investigates the existence of unfair labour practices in the X university.
- It is hypothesized that there is an existence of unfair labour practices, which warrant investigation.

This chapter will present the following:-

- The organisation of research
- The population
- Sampling technique
- Data gathering technique, and
- Statistical analysis method.

### 3.1 SURVEY

A survey is a commonly used research method, usually taking the form of using questionnaires or structured interviews. Its object is to obtain information about present personnel practices or approaches and so to determine the underlying causes of problems.

To conduct survey, the following steps are necessary:-

- Establish certain hypothesis (scientific assumptions) around which survey questions can be phrased. These are based on the aim or purpose of the research.
- Determine the criteria (standards) which can be established to judge the correctness of these hypothesis, such as which workers will be used as subjects, how many subjects are needed, the types of control groups.

- Then collect the data from a group of persons selected to take part in the research by using questionnaires or tests or interviews;
- Following this, the data is interpreted. The hypothesis is either accepted or rejected;
- And the recommendations are made to management regarding the problem that was investigated.

## **3.2 RESEARCH DESIGN**

### **3.2.1 The Organisation**

The organisation of study is one institution of higher learning called X University. The total number of students' enrollment to date, is 8700. The staff establishment of the X university is 750. All staff members will form the population from which the sample will be extracted. The establishment of the X university of higher learning broadly consists of lecturers, administration staff, support staff, protection staff, and gardeners. The lecturing staff service the students, while the administration staff and other categories serve the general staff including students, with a variety of services.

All staff members are subjected to the rules and regulations of the South African Labour Services, as laid down in the South African Labour Relations Act of 1995.

It is against this background that this research purports to investigate the existence of unfair labour practice (ULP) in the XU.

### **3.2.2 The population**

All stratum of the university staff have homogenous characteristics in relation to what is investigated in this study. This is so because all staff members' workplace practices and procedures are subjected to the South African Labour Relations Act of 1995 and ensuing policies. It is supposed that the subjects who have, and who have not been victims of ULP will provide information regarding ULPs at the X University (XU).

Full time employees of the XU are 750 in number. This is the population of the XU. The targeted respondents for the study are the following:- academic staff, administrative staff and technical staff (skilled and unskilled). These are males and females of different nationalities, different ages and different educational qualifications.

### **3.2.3 Sampling Technique**

Leedy (1989:99) considered explaining sampling designs as categorised into two broad categories i.e. probability sampling and non-probability sampling. Probability sampling has sub-divisions such as simple random sampling, stratified random sampling, proportional stratified sampling, cluster sampling, and systematic sampling.

Non-probability sampling consists of convenience sampling, quota sampling and purposive sampling. This research employs non-probability sampling, with the purposive approach as preference.

In purposive sampling, people or other units are chosen, as the name implies, for a particular purpose. For instance, we might choose people whom we have decided are "typical" of a group or those who represent diverse perspectives on an issue (Leedy, 1989:206).

Leedy (1989:206) further says that the researcher should always provide a rationale explaining why he or she selected the particular sample of participants. Purposive sampling is chosen by considering the following:-

- Certain strata of X University employees are chosen because it is assumed that ULP in the X University are rife among this group.
- A larger percentage of the chosen group is actively involved in the Staff Association and its affairs.

The sample of this research are administration staff, academic staff and service staff. These are 100 in number, as presented hereunder:-

Figure: 3.1 The Sample

| ACADEMIC STAFF     |                 |          | SERVICE STAFF |           |          | ADMINISTRATION STAFF |               |             |            |
|--------------------|-----------------|----------|---------------|-----------|----------|----------------------|---------------|-------------|------------|
| Senior Lecturer    | Junior Lecturer | Lecturer | Securities    | Gardeners | Cleaners | Admin Assist         | Admin Officer | Secretaries | Messengers |
| 10                 | 10              | 10       | 10            | 10        | 10       | 10                   | 10            | 10          | 10         |
| 30                 |                 |          | 30            |           |          | 40                   |               |             |            |
| TOTAL SAMPLE = 100 |                 |          |               |           |          |                      |               |             |            |

### 3.2.4 Data Collection

#### 3.2.4..1 Definition

According to Birley et al (1999:40), data collection is not just a process of collection, it is also a process of creation, of using information in unique ways related to the purposes of the study. There is a wide variety of data collecting methods available to researchers, and deciding which to use will depend on:

- The particular methodology that has been selected (objectivist or constructivist, qualitative or quantitative of both).
- What is feasible on a given research situation.
- What is likely to yield the most appropriate information.



#### **3.2.4.2 Questionnaire**

The type of questionnaire used for this research is of self administered type. Both open and closed questions were used in this research. It is thought that these questions will yield good results because Bless and Higson-smith (1995:108) regard the questionnaire as "... definitely a non-personal method of gathering data."

The questionnaire in this case were designed in such a way that it would guarantee anonymity and confidentiality of the respondents. The questionnaire has a covering note on the first page to this effect.

The same questionnaire was translated in Setswana for the service staff, (cleaners, gardeners and security officers) because most of them have a minimal level of literacy.

#### **3.2.5 Statistical analysis**

A computer aided statistical analysis was employed in this study. The computation of the results were conducted through the statistical package for the social sciences (SPSS) programme. The respondents' descriptive data was computed in this study. The following statistical analysis techniques will be used:- frequencies, percentages, means and standard deviations.

### 3.3 CONCLUSION

This chapter served the purpose of laying down how this research will be carried out i.e. research methodology. The chapter discussed factors such as the research organization, the population, sampling, data gathering, and the intended statistical method of research. This was the route map of research. Techniques used have been so chosen with a certain degree of relevance by considering the problem and research questions. The above have to a certain degree dictated the choosing of research methodology.

The next chapter will present and analyse research data, as collected by the questionnaires.

## **FOUR: PRESENTATION AND ANALYSIS OF DATA**

### **4. INTRODUCTION**

This chapter presents the data, analyse it, and interpret it. Raw data collected will be presented in the form of tables, graphs and matrixes - for simplicity. Mouton (2003:108) says that ... all fieldwork culminates in the analysis and interpretation of some set of data... Analysis involves "breaking up" the data into manageable themes, patterns, trends and relationships. All is with the aim of understanding various constitutive elements of one data. The contents of this chapter are as follows.

#### **4.1 PRESENTATION AND ANALYSIS OF A DATA COLLECTION TOOL**

##### **4.1.1 Biographic Data**

Biographic data include demographic factors of employees. Ivancevich (1996:120) define demographic factors as:

"... a term used to include a number of individual differences that influence behavioral choices. Those include such factors as .... Educational attainment level, age, race and sex..."

**Table: 4.1.1****GENDER**

| Gender | Frequency | Percent |
|--------|-----------|---------|
| Male   | 56        | 62.2    |
| Female | 34        | 37.8    |
| Total  | 90        | 100.0   |

More males 62 percent participated in this study. All questionnaires distributed were 100 and this study had 34 females' participation. The above will be determined by other factors of research.

**Table: 4.1.2****MARITAL STATUS**

| Marital Status | Frequency | Percent |
|----------------|-----------|---------|
| Single         | 18        | 20.0    |
| Married        | 64        | 71.1    |
| Widowed        | 4         | 4.4     |
| Divorced       | 4         | 4.4     |
| Total          | 90        | 100.0   |

Seventy one percent of participants were married. Marital status can determine the level of maturity. Only matured people are allowed to marry, and this factor can determine the reliability of certain factors.

**Table: 4.1.3 POSITION AT WORK**

| Position at work     | Frequency | Percent |
|----------------------|-----------|---------|
| Lecturer             | 10        | 11.1    |
| Junior Lecturer      | 9         | 10.0    |
| Senior Admin Officer | 5         | 5.6     |
| Admin Officer        | 10        | 11.1    |
| Admin Assistant      | 8         | 8.9     |
| Secretary            | 10        | 11.1    |
| Security Officer     | 8         | 8.9     |
| Technicians          | 10        | 11.1    |
| Gardener             | 10        | 11.1    |
| Cleaner              | 10        | 11.1    |
| Total                | 90        | 100.0   |

More lecturers, Administrative officers, Secretaries, Technicians, Gardeners and cleaners participated in this study. This has a likelihood of offering a variety of variables necessary for the study.

**Table: 4.1.4 AGE**

| Age   | Frequency | Percent |
|-------|-----------|---------|
| 21-30 | 6         | 6.7     |
| 31-40 | 35        | 38.9    |
| 41-50 | 35        | 38.9    |
| 51-60 | 14        | 15.6    |
| Total | 90        | 100.0   |

Certain factors have been picked for analysis here. The factors are reflecting high and low percentages, and others are surprise variables. The

age categories are not surprising to reflect 39 percent of employees between 31-40 and 41-50. The above reflects that employees at the university are mature, and therefore could - to a certain extent, reflect the true situation concerning ULPs. Lefton (1992: 327) asserts that the above age category is for the matured adults. Maturity can also be clustered with the marital status. The researcher found out that 71 percent of employees are married, and could hypothetically be regarded as mature.

**Table: 4.1.5 WORK EXPERIENCE**

| Work Experience   | Frequency | Percent |
|-------------------|-----------|---------|
| Less than 5 years | 1         | 1.1     |
| 5-9 years         | 30        | 33.3    |
| 11-14 years       | 28        | 31.1    |
| 15-19 years       | 26        | 28.9    |
| 20 years and more | 5         | 5.6     |
| Total             | 90        | 100.0   |

It is surprising to find out that 33 percent reflect that they have 5-9 years working experience, while 29 percent said that they have 15-19 years work experience. The difference is marginal and therefore warrant a further probe.



**Table: 4.1.6 EDUCATIONAL QUALIFICATIONS**

| Qualifications       | Frequency | Percent |
|----------------------|-----------|---------|
| Masters              | 15        | 16.7    |
| Honours              | 9         | 10.0    |
| Junior degree        | 8         | 8.9     |
| Diploma              | 10        | 11.1    |
| Standard 10          | 22        | 24.4    |
| Standard 8-9         | 11        | 12.2    |
| Standard 7 and below | 15        | 16.7    |
| Total                | 90        | 100.0   |

One other surprising factor is the level of qualifications. Employees with Matric reflected the highest percentage of 24. This is surprising because most employees at the university have been employed on the basis of possession of tertiary qualifications (as posts advertisements would usually require). It could be explained that since most employees in sectors reflected a lot of experience, advertisements of certain posts in the past did not have tertiary education of prospective employees as the inherent job requirement. All the above factors would be of assistance in the interpretation of the data.

**Table: 4.1.7 RACE**

| Race     | Frequency | Percent |
|----------|-----------|---------|
| Black    | 89        | 98.9    |
| Coloured | 1         | 1.1     |
| Total    | 90        | 100.0   |

The issue of race in the X University does not reflect equity - as emphasized by the Employment Equity Act (55 of 1998), that

"...the purpose of the Act is to achieve equality in the workplace by:-

a. promoting equal opportunity and fair treatment in employment

through the elimination of unfair discrimination; and

b. implementing affirmative action measures to redress the

disadvantage in employment experienced by black people, women and people with disabilities, in order to ensure their equitable representation in all occupational categories and levels in the workforce.

It has been found out that blacks are dominant over other racial groups. It is surprising that there is not even a single white employee who has participated in this study. This reflects that the university might not be in line with equity principles accepted widely in South Africa.

#### **4.2 KNOWLEDGE OF EMPLOYEES ABOUT UNFAIR LABOUR PRACTICE (ULP)**

The following table presents the category probing about unfair labour practices.

**Table: 4.2.1 Knowledge about ULPs**

| Knowledge of ULP.             | Frequency | Percent |
|-------------------------------|-----------|---------|
| Yes                           | 61        | 67.8    |
| No                            | 29        | 32.2    |
| Total                         | 90        | 100.0   |
| Knowledge of document of ULP. | Frequency | Percent |
| Yes                           | 41        | 45.6    |
| No                            | 48        | 53.3    |
| Total                         | 89        | 98.9    |
| Missing System                | 1         | 1.1     |
| Total                         | 90        | 100.0   |
| Whether trained about ULP.    | Frequency | Percent |
| Yes                           | 16        | 17.8    |
| No                            | 74        | 82.2    |
| Total                         | 90        | 100.0   |
| Want to know about ULP.       | Frequency | Percent |
| Yes                           | 75        | 83.3    |
| No                            | 15        | 16.7    |
| Total                         | 90        | 100.0   |

The 68 percent reflecting that they knew what ULP is, is casting doubts. This is so because 53 percent asserted that they did not know about any document relating to ULPs and further that 82 percent have not been trained about ULPs. If 82 percent of employees reflect that they would like to know more about ULPs, it is a sure indication that the hypothesis stating that employees do not know about unfair labour practices is valid. Van Dyk (1997: 518) emphasise that employees must always be trained in labour relations issues. The programme must be broad and reflect all sensitive issues affecting employees.

### 4.3 WORKPLACE DISCRIMINATION

This table represent the questionnaire category determining the degree of workplace discrimination.

**Table: 4.3.1 Workplace discrimination**

| Discrimination against employees based on union activities.     | Frequency | Percent |
|-----------------------------------------------------------------|-----------|---------|
| Yes                                                             | 41        | 45.6    |
| No                                                              | 36        | 40.0    |
| no idea                                                         | 13        | 14.4    |
| Total                                                           | 90        | 100.0   |
| Union members forced to refrain from union activities.          | Frequency | Percent |
| Yes                                                             | 30        | 33.3    |
| No                                                              | 46        | 51.1    |
| no idea                                                         | 14        | 15.6    |
| Total                                                           | 90        | 100.0   |
| Employees discriminated when participating in protected strikes | Frequency | Percent |
| Yes                                                             | 37        | 41.1    |
| No                                                              | 41        | 45.6    |
| no idea                                                         | 12        | 13.3    |
| Total                                                           | 90        | 100.0   |
| Rejection of contract renewal as a result of ULP.               | Frequency | Percent |
| Yes                                                             | 16        | 17.8    |
| No                                                              | 45        | 50.0    |
| no idea                                                         | 29        | 32.2    |
| Total                                                           | 90        | 100.0   |

Table 4.3.1 continue...

| Period of current grade                                  | Frequency | Percent |
|----------------------------------------------------------|-----------|---------|
| 1-11 months                                              | 6         | 6.7     |
| 1-5 yrs                                                  | 24        | 26.7    |
| 6-10 yrs                                                 | 20        | 22.2    |
| 11-15 yrs                                                | 19        | 21.1    |
| 16 and above                                             | 21        | 23.3    |
| Total                                                    | 90        | 100.0   |
| Were you promoted since assumption of duty               | Frequency | Percent |
| Yes                                                      | 19        | 21.1    |
| No                                                       | 70        | 77.8    |
| Total                                                    | 89        | 98.9    |
| Missing System                                           | 1         | 1.1     |
| Total                                                    | 90        | 100.0   |
| Have you felt unfairly discriminated in this institution | Frequency | Percent |
| Yes                                                      | 27        | 30.0    |
| No                                                       | 62        | 68.9    |
| Total                                                    | 89        | 98.9    |
| Missing System                                           | 1         | 1.1     |
| Total                                                    | 90        | 100.0   |

The Labour Relations Act (66 of 1995) forbid employers to subject employees to ULP. ULPs could be evident in employees i.e why they are subjected to workplace discrimination. Although employees discrimination is clustered as unfair and fair discrimination, some employers do state the discrimination fairness and unfairness of certain practices. Effects of workplace discrimination cannot be overemphasized.

It is evident from the following percentages that employees discrimination is present at the XU. Forty six percent state that there is discrimination based on one's involvement in Staff Association affairs. That 51 percent reports that the employer often force employees to refrain from union

activities and that there is no protection of employees participating in protected strikes. Data 21 percent reflects that there are those employees who have been in the same grade for 16 years, and a further 77 percent asserting that they have not been promoted since assumption of duty 15-16 years back. Though the above factors are dominant, there is only one surprising assertion 62 percent that there was no feeling of being discriminated against. Given the nature of dominant factors stated above, the researcher concludes unhesitatingly that there is prevalence of unfair labour practices in the X University. This validifies the hypothesis stating that there is prevalence of ULPs in the X University.

#### 4.4 SPECIFIC CASES OF UNFAIR LABOUR PRACTICES

Hereunder follows percentages and frequencies (responses) relating to specific cases of unfair labour practices.

**Table: 4.4.1 Cases of ULPs**

| Overtime without agreement    | Frequency | Percent |
|-------------------------------|-----------|---------|
| Yes                           | 22        | 24.4    |
| No                            | 68        | 75.6    |
| Total                         | 90        | 100.0   |
| Overtime without remuneration | Frequency | Percent |
| Yes                           | 23        | 25.6    |
| No                            | 67        | 74.4    |
| Total                         | 90        | 100.0   |

**Table 4.4.1 continue ...**

| Conditions of work are bad                                          |        | Frequency | Percent |
|---------------------------------------------------------------------|--------|-----------|---------|
| Yes                                                                 |        | 24        | 26.7    |
| No                                                                  |        | 60        | 66.7    |
| Total                                                               |        | 84        | 93.3    |
| Missing                                                             | System | 6         | 6.7     |
| Total                                                               |        | 90        | 100.0   |
| Disciplinary code not reflect fair and equal treatment o employees. |        | Frequency | Percent |
| Yes                                                                 |        | 51        | 56.7    |
| No                                                                  |        | 33        | 36.7    |
| 3                                                                   |        | 2         | 2.2     |
| Total                                                               |        | 86        | 95.6    |
| Missing                                                             | System | 4         | 4.4     |
| Total                                                               |        | 90        | 100.0   |
| Employees are dismissed fairly                                      |        | Frequency | Percent |
| Yes                                                                 |        | 35        | 38.9    |
| No                                                                  |        | 31        | 34.4    |
| no idea                                                             |        | 24        | 26.7    |
| Total                                                               |        | 90        | 100.0   |
| Knowledge: document of disciplinary procedures                      |        | Frequency | Percent |
| Yes                                                                 |        | 30        | 33.3    |
| No                                                                  |        | 47        | 52.2    |
| no idea                                                             |        | 12        | 13.3    |
| Total                                                               |        | 89        | 98.9    |
| Missing                                                             | System | 1         | 1.1     |
| Total                                                               |        | 90        | 100.0   |
| Employees are victimized when lodging complains                     |        | Frequency | Percent |
| Yes                                                                 |        | 40        | 44.4    |
| No                                                                  |        | 26        | 28.9    |
| no idea                                                             |        | 24        | 26.7    |
| Total                                                               |        | 90        | 100.0   |
| Employees' grievances are dealt with fairly                         |        | Frequency | Percent |
| Yes                                                                 |        | 27        | 30.0    |
| No                                                                  |        | 36        | 40.0    |
| no idea                                                             |        | 27        | 30.0    |
| Total                                                               |        | 90        | 100.0   |



There was a combination of factors regarding specific case of ULPs. There are no employees 76 percent forced to work overtime, 74 percent of employees do not work overtime without remuneration, and conditions under which workers do their work are good 71 percent.

Specific issues determined to be existing as ULPs are as follows:-

- The disciplinary code and procedures are not applied fairly (59%)
- Employees do not know the disciplinary code and procedures (53%)
- Employees are victimized when lodging complaints (44%)
- Employees grievances are not dealt with fairly and consistently (30%).

The above emphasise the validity of the hypothesis stating that of unfair labour practices exist in the X university.

#### **4.5 OCCUPATIONAL HEALTH AND SAFETY (OHS)**

Occupational health and safety environment of the organisation was probed by the following.

**Table: 4.5.1 OHS in the NWU**

| The UNW has OHS policy                            |        | Frequency | Percent |
|---------------------------------------------------|--------|-----------|---------|
|                                                   | SDAG   | 16        | 17.8    |
|                                                   | DAG    | 6         | 6.7     |
|                                                   | NS     | 36        | 40.0    |
|                                                   | AG     | 21        | 23.3    |
|                                                   | SAG    | 10        | 11.1    |
|                                                   | Total  | 89        | 98.9    |
| Missing                                           | System | 1         | 1.1     |
| Total                                             |        | 90        | 100.0   |
| The OHS policy is necessary                       |        | Frequency | Percent |
|                                                   | Sdag   | 6         | 6.7     |
|                                                   | Ns     | 13        | 14.4    |
|                                                   | Ag     | 13        | 14.4    |
|                                                   | Sag    | 57        | 63.3    |
|                                                   | Total  | 89        | 98.9    |
| Missing                                           | System | 1         | 1.1     |
| Total                                             |        | 90        | 100.0   |
| Consultation concerning OHS                       |        | Frequency | Percent |
|                                                   | SDAG   | 36        | 40.0    |
|                                                   | DAG    | 8         | 8.9     |
|                                                   | NS     | 21        | 23.3    |
|                                                   | AG     | 16        | 17.8    |
|                                                   | SAG    | 9         | 10.0    |
|                                                   | Total  | 90        | 100.0   |
| Office space provides healthy working environment |        | Frequency | Percent |
|                                                   | SDAG   | 11        | 12.2    |
|                                                   | DAG    | 15        | 16.7    |
|                                                   | NS     | 24        | 26.7    |
|                                                   | AG     | 30        | 33.3    |
|                                                   | SAG    | 10        | 11.1    |
|                                                   | Total  | 90        | 100.0   |

Table 4.5.1 continue ...

| Computer safe for my eyes.    | Frequency | Percent |
|-------------------------------|-----------|---------|
| SDAG                          | 10        | 11.1    |
| DAG                           | 16        | 17.8    |
| NS                            | 14        | 15.6    |
| AG                            | 18        | 20.0    |
| SAG                           | 9         | 10.0    |
| Total                         | 67        | 74.4    |
| Missing System                | 23        | 25.6    |
| Total                         | 90        | 100.0   |
| Garden environment good       | Frequency | Percent |
| SDAG                          | 17        | 18.9    |
| DAG                           | 17        | 18.9    |
| NS                            | 25        | 27.8    |
| AG                            | 24        | 26.7    |
| SAG                           | 7         | 7.8     |
| Total                         | 90        | 100.0   |
| Photocopier safe to use.      | Frequency | Percent |
| SDAG                          | 6         | 6.7     |
| DAG                           | 16        | 17.8    |
| NS                            | 13        | 14.4    |
| AG                            | 30        | 33.3    |
| SAG                           | 8         | 8.9     |
| Total                         | 73        | 81.1    |
| Missing System                | 17        | 18.9    |
| Total                         | 90        | 100.0   |
| Gardens machinery safe to use | Frequency | Percent |
| SDAG                          | 8         | 8.9     |
| DAG                           | 9         | 10.0    |
| NS                            | 41        | 45.6    |
| AG                            | 10        | 11.1    |
| SAG                           | 15        | 16.7    |
| Total                         | 83        | 92.2    |
| Missing System                | 7         | 7.8     |
| Total                         | 90        | 100.0   |

Table 4.5.1 continue...

| NWU vehicles are in good conditions | Frequency | Percent |
|-------------------------------------|-----------|---------|
| SDAG                                | 13        | 14.4    |
| DAG                                 | 17        | 18.9    |
| NS                                  | 34        | 37.8    |
| AG                                  | 10        | 11.1    |
| SAG                                 | 10        | 11.1    |
| Total                               | 84        | 93.3    |
| Missing System                      | 6         | 6.7     |
| Total                               | 90        | 100.0   |

| The NWU environment is disabled friendly | Frequency | Percent |
|------------------------------------------|-----------|---------|
| SDAG                                     | 20        | 22.2    |
| DAG                                      | 8         | 8.9     |
| NS                                       | 26        | 28.9    |
| AG                                       | 23        | 25.6    |
| SAG                                      | 12        | 13.3    |
| Total                                    | 89        | 98.9    |
| Missing System                           | 1         | 1.1     |
| Total                                    | 90        | 100.0   |

Adhering to, and lack of adhering to OHS standards would often reflect the level of fairness or unfairness of the employer's labour practices.

Grobler et al. (2002:468) emphasize the importance of Occupational Health and Safety Act by saying that it provides for:

- The health and safety of persons at work and those in connection with the use of plant and machinery;
- The protection of other persons from hazards to health and safety caused by the activities of persons at work;

- The establishment of an Advisory council.

It has been found out that 40 percent of respondents are not sure if there is OHS policy of the university. This explains much and deserves attention from the authorities. Sixty four percent assert that OHS policy is necessary, and that 40 percent strongly disagreed that they have been consulted concerning OHS policy.

Although the above so asserts, certain issues designed by the researcher as a test for OHS issues have shown a combination of factors. The following have been found to be positive:

- Office space and a healthy work environment (33% AG)
- Safety of computer use (27% AG)
- Cleanliness of toilets (31% AG)
- Clean garden environment (27% AG) and
- Safe use of photocopier (41% AG)

The following factors cast doubt, as respondents were not sure about prevalence thereof:

- Safety use of garden machinery (50% NS)
- Conditions of vehicles (41% NS) and
- Disabled friendly environment (29% NS)

The 29 percent not sure about the friendly nature of the university towards the disabled is not reflecting the true nature of the situation. As the researcher is the employee of the NWU, personal experience has shown that the environment of the university is not friendly towards the physically challenged:

- The design of the building has no up going ramps for the disabled. These are only in a few places, which suggests that movement of the disabled is confined to selected places.
- The university has no facilities for the blind. There are not Braille facilities for employees and students.

#### 4.6 THE ROLE OF THE STAFF ASSOCIATION IN PREVENTING THE UNFAIR LABOUR PRACTICES

The following table represent responses regarding the role of the Staff Association in preventing unfair labour practices.

**Table: 4.6.1 The role of the Staff Association**

| Intervention of staff association in cases of ULP |        | Frequency | Percent |
|---------------------------------------------------|--------|-----------|---------|
| Yes                                               |        | 74        | 82.2    |
| No                                                |        | 7         | 6.7     |
| Not sure                                          |        | 8         | 8.9     |
| Total                                             |        | 89        | 98.9    |
| Missing                                           | System | 1         | 1.1     |
| Total                                             |        | 90        | 100.0   |
| Did Staff assoc. intervened in your case if ULP.  |        | Frequency | Percent |
| Yes                                               |        | 34        | 36.7    |
| No                                                |        | 50        | 55.6    |
| not sure                                          |        | 5         | 5.6     |
| Total                                             |        | 89        | 98.9    |
| Missing                                           | System | 1         | 1.1     |
| Total                                             |        | 90        | 100.0   |



**Table 4.6.1 continue...**

| Cases referred to CCMA instead of resolved at staff association first. |        | Frequency | Percent |
|------------------------------------------------------------------------|--------|-----------|---------|
| Yes                                                                    |        | 35        | 38.9    |
| No                                                                     |        | 43        | 47.8    |
| not sure                                                               |        | 10        | 11.1    |
| Total                                                                  |        | 88        | 97.8    |
| Missing                                                                | System | 2         | 2.2     |
| Total                                                                  |        | 90        | 100.0   |
| Minimal role of staff assoc. in handling ULP cases,                    |        | Frequency | Percent |
| Yes                                                                    |        | 46        | 51.1    |
| No                                                                     |        | 30        | 33.3    |
| not sure                                                               |        | 10        | 11.1    |
| Total                                                                  |        | 86        | 95.6    |
| Missing                                                                | System | 4         | 4.4     |
| Total                                                                  |        | 90        | 100.0   |
| Employees dismissed without the satisfaction of staff association      |        | Frequency | Percent |
| Yes                                                                    |        | 34        | 37.8    |
| No                                                                     |        | 37        | 41.1    |
| not sure                                                               |        | 17        | 18.9    |
| Total                                                                  |        | 88        | 97.8    |
| Missing                                                                | System | 2         | 2.2     |
| Total                                                                  |        | 90        | 100.0   |

Like any other labour union, the Staff Association has the responsibility of:

- Representing the employees in the workplace
- Improving the conditions of employment

- Collective bargaining
- Regulating workers in terms of labour issues
- Articulate and ensure freedom of association for / of the employees, Cashway (2000), Nel (1999), and Ehlers (1999)

It has been endorsed with 83 percent yes responses that the Staff Association intervenes in cases of ULPs. The above is surprisingly contra to the assertion of 56 percent that the Staff Association did not intervene in certain ULPs cases. The 36 percent yes responses could complement the assertion that the Staff Association do intervene in such cases. Seventy one percent yes responses confirms that employees of the university have confidence in the Staff Association. It therefore goes to say that the hypothesis stating that the role of the staff association is minimal, is valid.

Fourty nine percent confirmed the role of the Staff Association by saying that there has been no case that was referred to the CCMA that was to be easily solved by the Staff Association. This research rejects the 53 percent response asserting that the role of the Staff Association is minimal in handling ULP cases. It could maybe be that certain employees do not bring cases of ULPs to the attention of the Staff Association.

## 4.7 THE CAUSES AND EFFECTS OF UNFAIR LABOUR PRACTICES

The following table is relating to the causes and effects of unfair labour practice.

**Table: 4.7.1 The causes and effects of ULPs**

| Deviation from rules and regulations by employer |  | Frequency | Percent |
|--------------------------------------------------|--|-----------|---------|
| Yes                                              |  | 55        | 61.1    |
| No                                               |  | 10        | 11.1    |
| Not sure                                         |  | 16        | 17.8    |
| Total                                            |  | 81        | 90.0    |
| Missing System                                   |  | 9         | 10.0    |
| Total                                            |  | 90        | 100.0   |
| Unagreed upon conditions of service              |  | Frequency | Percent |
| Yes                                              |  | 54        | 60.0    |
| No                                               |  | 13        | 14.4    |
| Not sure                                         |  | 15        | 16.7    |
| Total                                            |  | 82        | 91.1    |
| Missing System                                   |  | 8         | 8.9     |
| Total                                            |  | 90        | 100.0   |
| Discrimination in the workplace                  |  | Frequency | Percent |
| Yes                                              |  | 60        | 66.7    |
| No                                               |  | 12        | 13.3    |
| Not sure                                         |  | 10        | 11.1    |
| Total                                            |  | 82        | 91.1    |
| Missing System                                   |  | 8         | 8.9     |
| Total                                            |  | 90        | 100.0   |
| Employees lack of cooperation with the employer  |  | Frequency | Percent |
| Yes                                              |  | 25        | 27.8    |
| No                                               |  | 26        | 28.9    |
| Not sure                                         |  | 28        | 31.1    |
| Total                                            |  | 79        | 87.8    |
| Missing System                                   |  | 11        | 12.2    |
| Total                                            |  | 90        | 100.0   |

Table 4.7.1 continue ...

| Non-adherence to employment equity principles and policies. |  | Frequency | Percent |
|-------------------------------------------------------------|--|-----------|---------|
| Yes                                                         |  | 38        | 42.2    |
| No                                                          |  | 15        | 16.7    |
| Not sure                                                    |  | 24        | 26.7    |
| Total                                                       |  | 77        | 85.6    |
| Missing System                                              |  | 13        | 14.4    |
| Total                                                       |  | 90        | 100.0   |
| Employees constant absenteeism                              |  | Frequency | Percent |
| Yes                                                         |  | 51        | 56.7    |
| No                                                          |  | 16        | 17.8    |
| not sure                                                    |  | 11        | 12.2    |
| Total                                                       |  | 78        | 86.7    |
| Missing System                                              |  | 12        | 13.3    |
| Total                                                       |  | 90        | 100.0   |
| Communication breakdown between employer and employee       |  | Frequency | Percent |
| Yes                                                         |  | 35        | 38.9    |
| No                                                          |  | 33        | 36.7    |
| not sure                                                    |  | 12        | 13.3    |
| Total                                                       |  | 80        | 88.9    |
| Missing System                                              |  | 10        | 11.1    |
| Total                                                       |  | 90        | 100.0   |
| Turmoil in the organisation                                 |  | Frequency | Percent |
| Yes                                                         |  | 48        | 53.3    |
| No                                                          |  | 19        | 21.1    |
| not sure                                                    |  | 12        | 13.3    |
| Total                                                       |  | 79        | 87.8    |
| Missing System                                              |  | 11        | 12.2    |
| Total                                                       |  | 90        | 100.0   |
| Employees belonging to many labour unions                   |  | Frequency | Percent |
| Yes                                                         |  | 20        | 22.2    |
| No                                                          |  | 40        | 44.4    |
| not sure                                                    |  | 15        | 16.7    |
| Total                                                       |  | 75        | 83.3    |
| Missing System                                              |  | 15        | 16.7    |
| Total                                                       |  | 90        | 100.0   |

The causes and effects of ULPs in the XU have been seen as:

- Deviation from set rules and regulations (68% Y)
- Un-agreed upon conditions of service (66% Y)
- Discrimination in the workplace (73% Y)
- Non-adherence to employment equity principles and policies (49% Y)
- Employees constant absenteeism (65% Y)
- Breakdown in communication between the employer and employees (44% Y)
- Turmoil in the organization (61% Y)

#### **4.8 CONCLUSION**

This chapter presented and analysed data. It was deemed necessary to condense data and present it in the form of tables and graphs. Analysis concentrated on high and low responses only. In this chapter, it was found out that unfair labour practices are rife, as indicated by different high percentages.

The following chapter will deal with research findings, recommendations and a report on research hypotheses.

## **CHAPTER 5: FINDINGS AND RECOMMENDATIONS**

### **5. INTRODUCTION**

The focus of this chapter is on the research findings and recommendations. This research is the investigation of the existence of unfair labour practices in the X University, specifically on employees, and with a purposive exclusion of management. This chapter presents the findings and recommendations based on the problem research questions, and formulated research hypotheses. Presentation of this chapter will be as follows. The main findings (and others - where the necessity may arise) and the recommendations based on the findings. It is also deemed necessary to report on research hypotheses.

#### **5.1 THE MAIN FINDINGS**

The following are the main findings of this dissertation:

- There is a prevalence of ULPs in the XU, as indicated by high percent responses.
- Employees of the X University do not have sufficient knowledge about ULPs.
- Certain cases of ULP are unattended to.



- The role of the Staff Association in curbing ULP is minimal.
- Lack of knowledge about OHS policy by employees pose a problem.
- There is discrimination in the XU.
- Employment equity conditions are neglected at the XU.

The above assert and confirm the problem of research which states that ULPs occur regularly in the XU. In elaborating the above, this research has found out certain factors confirmed by respondents, which are central to the research questions, the problem and hypotheses. The accounts are as follows:

**Prevalence of ULPs:** The first point to confirm that there is prevalence of ULPs in the XU is that most accounts asserted that:

- They do not know about any document relating to ULPs
- If 82 percent of employees assert that they have a keen interest in knowing about policies and regulations regarding ULPs; it means there is a problem somewhere.
- Workplace discrimination has been indicated by factors such as a neglect of employment equity principles, unknown promotion criteria, and that employees grievances are not dealt with fairly.

It is proper for this dissertation to make a report on research hypotheses - for clarity.

## **5.2 REPORT ON RESEARCH HYPOTHESES**

- A. The majority of employees in the X University do not have any knowledge of ULPs.**

This hypotheses is valid. This is due to the fact that 53 percent of the respondents indicated that they do not know of any document emphasizing unfair labour practices. A further 82 percent indicated that they have a dire need to be trained in issues related to unfair labour practices. Knowledge about unfair labour practices have been articulated by different authors like Buzuidenhout (1998), Grogan (2003), Barker (1999), Bendix (2000), and the superceding Labour Relations Act of No.66 of 1995. The mentioned authors deliberated on issues such as:

- Discrimination (fair and unfair)
- Recruitment and selection practices
- Dismissals and misconduct
- Basic conditions of employment, and
- Occupational health and safety issues.

- B. Employees are discriminated against when they exercise their rights based on their union activities.**

This hypotheses was proved to be invalid. This dissertation was unable to (clearly) establish whether the rights of employees - based on union activities were trampled upon. This dissertation failed to probe deep into this issue. The other unrelated discovered variables could also not be clearly linked to this variable.

- C. There are instances of constructive dismissals - where the employee resigns due to circumstances which makes continued employment intolerable.**

It has not been proved that there were instances of constructive dismissals. Collected data could not clearly prove regarding any instance of making continued employment intolerable. Sporadic cases only indicate cases of unfair labour practices. This hypotheses is invalid.

- D. Employees are unfairly overlooked when it comes to promotions.**

This hypotheses is valid. Employees are unfairly overlooked when it comes to promotions. Firstly, the employees indicated that they do not know the promotions criteria, secondly it has been proved that 30 percent of employees had experience of 11-19 years, and that 78 percent show that they have since not been promoted.

**E. The employer does not consult employees concerning Occupational Health and Safety (OHS) matters.**

This hypothesis is valid. Data collected have shown that the employer have not consulted employees on matters affecting themselves like occupational health and safety. Forty percent assert not to be sure about the OHS policy. Sixty three percent indicated with strong agreement that there is a necessity of knowledge about OHS. All the above confirms the validity of the stated hypothesis.

**F. The role of the Staff Association is minimal in ULP's resolutions.**

This hypothesis proved to be invalid. Eighty three percent of responses indicated that the Staff Association intervenes in cases of ULPS. Carrell (2000: 66) points out that union members also have a responsibility. Members participation is crucial for the development of union strength. The strength of the union is determined by members participation. Pro-union attitudes are generally developed over several years, and are influenced by external and internal factors. Finnemore (1999: 81) also states that, unions also receive contradictory signals from their own members. Workers are divided and contradictory. They are collectively oriented, yet individual and instrumental in expectations to their own standards of living.

### **5.3 RECOMMENDATIONS**

Based on the findings of this dissertation, the following are recommendations. Since it has been found out by this research that there is prevalence of ULPs, the first recommendation is that the X University must have labour relations policy, and have it known and practiced by all and sundry. Based on the model of labour relations policy outlined by Ehlers (2003: 148), this research adopts the policy due to the following:

#### **5.3.1 Adoption of Labour Relations Policy:**

- Clarify management's labour relations objectives.
- Confirm the relationship with and interest in the employees
- Indicate the means and the practices by which this relationship can be maintained
- Ensure that labour relations are conducted within the applicable laws of a society, and
- Ensure harmony with environmental influences.

Ehlers (2003: 148) says that, "a policy can be compared to a torch providing a ray of light in the dark. It will shine its light on our destination but you must still make an effort to get to our destination. The rays of light from

the torch will however light up your path, helping you to avoid pitfalls and to remain on its relationship with employees". A labour relations policy may be viewed as a clear and unambiguous management statement for the guidance of management. It leads to consistency in standards and ensured equitable conduct in labour relations matters. A labour relations policy should be described in a written document.

### **5.3.2 Workshop**

Given the above recommendation, continuity should then be realized by a series of workshops in which both management and employees should be engaged in labour related issues such as:

- Management and labour rights
- Objectives of collective relationship
- Structures / procedures for collective relationship
- Determination of wages and service conditions
- Human Resource management approaches
- Conflict resolution: grievances and disputes
- Discipline, dismissal, retrenchment
- Health and safety
- HIV/AIDS
- Equity and non-discrimination
- Affirmative action
- Social responsibility and parental rights
- Training and development

- Productivity and quality.

## 5.4 CONCLUSION

This chapter outlined the research findings, recommendations, and further managed to outline a report on the research hypotheses. The research findings and recommendations were based on what was arrived at, at the analysis stage. In this research it was found out that there is prevalence of unfair labour practice in X University.

Intervention deemed suitable for alleviating the existing problems include formulation of XU labour relations policy. This policy should be formed collectively (management and employees), there should be knowledge about this policy, and further workshops to sustain policy measures. The XU Staff Association and management should take a lead in such processes - for the betterment of workplace in the organization.



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Dear Respondent

I am studying Masters of Administration in Industrial Relations (MA ADMIN - IR) at the North-West University in the Department of Industrial Psychology. I am supposed to conduct a research/dissertation to fulfill the requirements of the mentioned degree.

As stated above, the purpose of this dissertation is for academic reasons. I therefore humbly request you to participate in completing the attached questionnaire. Information filled will not be published anywhere, and will be confidential.

Thank you in advance.



.....

P.S. DIMPE

## INSTRUCTIONS

1. Please answer all the questions.
2. Kindly answer the questions by crossing X on the appropriate block.
3. The questionnaire is for administrative staff, general workers, security officers and lecturers.
4. Your response will be of utmost importance
5. You need not write your name on the questionnaire.
6. Your input is confidential.

## SECTION A

### 1. BIOGRAPHICAL AND DEMOGRAPHIC DATA

1.1 What is your age?

|              |  |
|--------------|--|
| 20 and below |  |
| 21 - 30      |  |
| 31 - 40      |  |
| 41 - 50      |  |
| 51 - 60      |  |
| 61 and above |  |

1.2 Marital status

|           |  |
|-----------|--|
| Single    |  |
| Married   |  |
| Widowed   |  |
| Divorced  |  |
| Separated |  |

1.3 Gender

|        |  |
|--------|--|
| Male   |  |
| Female |  |



1.4 Position in your work

|                      |  |
|----------------------|--|
| Lecturer             |  |
| Junior Lecturer      |  |
| Senior Admin Officer |  |
| Admin officer        |  |
| Admin Assistant      |  |
| Secretary            |  |
| Security Officer     |  |
| Technicians          |  |
| Gardener             |  |
| Cleaner              |  |
| Others               |  |

1.5 Work Experience

|                   |  |
|-------------------|--|
| Less than 5 years |  |
| 5 - 9 years       |  |
| 11 - 14 years     |  |
| 15 - 19 years     |  |
| 20 years and more |  |

1.6 Highest qualification

|                      |  |
|----------------------|--|
| Doctorate            |  |
| Masters              |  |
| Honours              |  |
| Junior degree        |  |
| Diploma              |  |
| Standard 10          |  |
| Standard 8 - 9       |  |
| Standard 7 and below |  |

1.7 Race

|          |  |
|----------|--|
| Black    |  |
| White    |  |
| Coloured |  |
| Asian    |  |

SECTION B

Please answer with a "yes" or "no"

2. KNOWLEDGE OF EMPLOYEES ABOUT UNFAIR LABOUR PRACTICES.

2.1 Do you know exactly what an unfair labour practice is?

|     |  |
|-----|--|
| Yes |  |
| No  |  |

2.2 Do you know about the document containing Unfair Labour Practice?

|     |  |
|-----|--|
| Yes |  |
| No  |  |

2.3 If "yes", give the name of the document.

.....

2.4 Have you ever been trained about Unfair Labour Practices?

|     |  |
|-----|--|
| Yes |  |
| No  |  |

2.5 If yes, was this in the form of a workshop or just an information through circulars or other sources?

.....

- 2.6 Would you like to know more about Unfair Labour Practices?

|     |  |
|-----|--|
| Yes |  |
| No  |  |

- 2.7 Give one example of an unfair labour practice.

.....

.....

.....

.....

## SECTION C

### 3. WORKPLACE DISCRIMINATION

- 3.1 There is discrimination against employees, based on their Staff Association activities.

|         |  |
|---------|--|
| Yes     |  |
| No      |  |
| No idea |  |

- 3.2 Are Staff Association members often forced by employers to refrain from union activities.

|         |  |
|---------|--|
| Yes     |  |
| No      |  |
| No idea |  |

- 3.3 Are workers discriminated against by the employer when participating in protected strikes?

|         |  |
|---------|--|
| Yes     |  |
| No      |  |
| No idea |  |

- 3.4 Is there any contract renewal which was rejected as a result of what you suspect to be unfair labour practice?

|         |  |
|---------|--|
| Yes     |  |
| No      |  |
| No idea |  |

- 3.5 How long have you been in your current grade?

|               |  |
|---------------|--|
| 1 - 11 months |  |
| 1 - 5 yrs     |  |
| 6 - 10 yrs    |  |
| 11 - 15 yrs   |  |
| 16 and above  |  |

- 3.6 Were you promoted since your assumption of duty in this grade.

|     |  |
|-----|--|
| Yes |  |
| No  |  |

- 3.7 If the 3.6 answer is "no", please state the reason why you were not promoted?

.....

.....

.....

- 3.8 Have you ever felt unfairly discriminated against in this institution?

|     |  |
|-----|--|
| Yes |  |
| No  |  |

- 3.9 If yes, tell us what happened.

.....

.....

.....

.....

## SECTION D

### 4. SPECIFIC CASES OF UNFAIR LABOUR PRACTICES

- 4.1 I am often forced to work overtime without any formal agreement.

|     |  |
|-----|--|
| Yes |  |
| No  |  |

- 4.2 I work overtime without any extra remuneration.

|     |  |
|-----|--|
| Yes |  |
| No  |  |

- 4.3 The conditions under which I am working are bad.

|     |  |
|-----|--|
| Yes |  |
| No  |  |

If "yes" state the conditions : .....

.....

.....

- 4.4 What do you consider to be Unfair Labour Practice committed by management of this University?

.....

.....

.....

- 4.5 The application of the disciplinary code and procedures does not reflect a fair and equal treatment for all employees.

|     |  |
|-----|--|
| Yes |  |
| No  |  |

- 4.6 Employees are dismissed fairly.

|         |  |
|---------|--|
| Yes     |  |
| No      |  |
| No idea |  |

- 4.7 Do you know about the document containing the disciplinary code and procedure?

|         |  |
|---------|--|
| Yes     |  |
| No      |  |
| No idea |  |

- 4.8 Employees are victimised when lodging complains.

|         |  |
|---------|--|
| Yes     |  |
| No      |  |
| No idea |  |

- 4.9 Employees' grievances are dealt with fairly and consistently.

|         |  |
|---------|--|
| Yes     |  |
| No      |  |
| No idea |  |

## SECTION E

### 5. OCCUPATIONAL HEALTH AND SAFETY (OHS)

KEY: Strongly agree (SAG) 5  
Agree (AG) 4  
Not sure (NS) 3  
Disagree (DAG) 2  
Strongly disagree (SDAG) 1

Please mark with an X in the appropriate box.

|                                                                 | SAG<br>5 | AG<br>4 | NS<br>3 | DAG<br>2 | SDAG<br>1 |
|-----------------------------------------------------------------|----------|---------|---------|----------|-----------|
| 5.1 The NWU has the OHS policy.                                 |          |         |         |          |           |
| 5.2 The OHS policy is necessary                                 |          |         |         |          |           |
| 5.3 I have been consulted concerning OHS                        |          |         |         |          |           |
| 5.4 My office space is providing a healthy working environment. |          |         |         |          |           |
| 5.5 The computer I am using is safe for my eyes.                |          |         |         |          |           |
| 5.6 The toilets are always clean.                               |          |         |         |          |           |
| 5.7 The garden environment is good.                             |          |         |         |          |           |
| 5.8 The photocopier is safe to use.                             |          |         |         |          |           |
| 5.9 Our garden machinery is safe to use.                        |          |         |         |          |           |
| 5.10 The NWU vehicles are always in good conditions.            |          |         |         |          |           |
| 5.11 The NWU environment is disabled friendly.                  |          |         |         |          |           |



**SECTION F****6. THE ROLE OF THE STAFF ASSOCIATION IN PREVENTING THE UNFAIR LABOUR PRACTICES.**

|                                                                                                                                | YES | NO | NOT SURE |
|--------------------------------------------------------------------------------------------------------------------------------|-----|----|----------|
| 6.1 The Staff Association usually intervenes in cases of unfair labour practice.                                               |     |    |          |
| 6.2 Did the Staff Association once intervened in your case, concerning what you consider unfair labour practice?               |     |    |          |
| 6.3 Do you have confidence in the Staff Association's intervention in unfair labour practice cases?                            |     |    |          |
| 6.4 Has any case been referred to CCMA, which in your opinion was to be easily resolved at the level of the Staff Association? |     |    |          |
| 6.5 I strongly feel that the role of the Staff Association is minimal in handling unfair labour practice cases.                |     |    |          |
| 6.6 Employees are dismissed without the satisfaction of the staff association.                                                 |     |    |          |

## SECTION 6

### 7. THE CAUSES AND EFFECTS OF UNFAIR LABOUR PRACTICE.

7.1 What are the causes of ULP. (Tick or cross the appropriate block/s).

|                                                                | YES | NO | NOT SURE |
|----------------------------------------------------------------|-----|----|----------|
| a. Deviation from set rules and regulations (by the employer). |     |    |          |
| b. Unagreed upon conditions of service.                        |     |    |          |
| c. Discrimination in the workplace.                            |     |    |          |
| d. Employees lack of co-operation with the employer.           |     |    |          |
| e. Non-adherence to employment equity principles and policies  |     |    |          |

7.2 The following is/are considered to be the effects of unfair labour practice.

|                                                                       | YES | NO | NOT SURE |
|-----------------------------------------------------------------------|-----|----|----------|
| a. Employees constant absenteeism.                                    |     |    |          |
| b. Breakdown in communication between the employees and the employer. |     |    |          |
| c. Turmoil in the organization.                                       |     |    |          |
| d. Employees belonging to many labour unions.                         |     |    |          |