

DISPUTE RESOLUTION INTRODUCTION –

The SSSBC was registered as a Bargaining Council on the 28th of July 1999 which is the sectoral council that deals with all issues of the South African Police Service. This is the council where the majority of the membership of the organization is situated comprising of both police members and administrative staff in terms of the South African Police Service Act; and the Public Service Act.

The objectives of the Council are to promote:

- Labour peace in the sector
- A sound relationship between the employer and its employees
- Collective Bargaining in the sector
- The effective and expeditious resolution of disputes in the sector.

DISPUTE RESOLUTION INTRODUCTION –

ACCREDITATION

- ❖ The SSSBC is accredited by the CCMA to perform dispute function in terms of section 127 of the LRA.
- ❖ The SSSBC has been accredited by the CCMA to conduct conciliations and arbitrations including pre-dismissal arbitrations.

DISPUTE RESOLUTION INTRODUCTION –

- ❖ SAPS is in terms of the Labour Relations Act (section 71(10)) designated as an essential service.
- ❖ In terms of section 213 of the LRA essential service means a service the interruption of which endangers the life, personal safety or health of the whole or any part of the population .
- ❖ The right to engage in strike is prohibited by the Act.
- ❖ That the SAPS are defined as an essential services does not mean, however, that all persons employed by these services are prohibited from striking (SAPS v POPCRU [2011] 2 BLLR (CC) (89/10)).
- ❖ The LRA gives broad powers to Bargaining Councils. The SSSBC has discharged such statutory powers by providing conciliation and arbitration services, conducting fact finding exercises and making advisory arbitration awards.

ROUND TABLE DISCUSSIONS

SSSBC PRESENTATION:

THE APPLICATION OF THE PRINCIPLE OF CON-ARB PROCESS IN THE MANAGEMENT OF DISPUTES

by DISPUTE RESOLUTION MANAGER – SIPHO MASHIANE



OVERVIEW

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- **WHAT IS CON-ARB PROCESS**
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INTRODUCTION

- **Con-arb is a hybrid process which stands for conciliation –arbitration.**
- **The con-arb process was firstly introduced by the 2002 amendments to the LRA.**
- **The reasons why con-arb process was introduced was to:**
 - **reduce the backlogs and delays in resolution of disputes.**
 - **provides for a speedier dispute resolution process.**
- **The con-arb process is governed by section 191(5A) of the Labour Relations Act which permits Council and the CCMA to arbitrate disputes immediately if conciliation fails.**

INTRODUCTION

- **Section 191(5A) states that:**

(5A) Despite any other provision in the Act, the council or Commission must commence the arbitration immediately after certifying that the dispute remains unresolved if the dispute concerns –

- a) the dismissal of an employee for any reason relating to probation;
- b) any unfair labour practice relating to probation;
- c) any other dispute contemplated in subsection (5)(a) in respect of which no party has objected to the matter being dealt with in terms of this subsection.

WHAT IS CON-ARB PROCESS?

- Con-arb is a process that combines the conciliation and the arbitration phases with both processes happening on the same day.
- The Commissioner is moving straight into the arbitration phase if the conciliation has not been successful.
- Both conciliation and arbitration thus happen on the same day, whereas normally conciliation would take place first and thereafter a referral to arbitration would take place at a later date if conciliation has proved unsuccessful.
- This means that the employee is not required to apply for arbitration.

WHAT IS CON-ARB PROCESS?

- In terms of section 191(5A) the con-arb process can be used for any disputes concerning dismissals or unfair labour practices.
- However, the con-arb process is compulsory where the dispute concerns:
 - The dismissal of an employee for any reason relating to probation,
 - Any unfair labour practice relating to probation.
- Either Party may object in writing to the process being combined in unfair dismissal or unfair labour practice disputes.

THE APPLICATION OF THE CON-ARB PROCESS BY THE SSSBC

- The con-arb process at the SSSBC is governed by clause 3.5 of the SSSBC Dispute Procedure.
- In terms of the clause 3.5.1 of the SSSBC Dispute Procedure the following disputes the Council jointly conciliates and arbitrates (con-arb):
 - Dismissals for misconduct, constructive dismissal and incapacity.
 - Unfair labour practice – promotion, benefits, demotion, training (excluding disputes concerning alleged discrimination).
 - Interpretation and/or application of a collective agreement concluded in Council.
 - Unilateral change to terms and conditions of employment.

THE APPLICATION OF THE CON-ARB PROCESS BY THE SSSBC

- In terms of clause 3.4.1 of the SSSBC Dispute Procedure the following dispute the Council only arbitrates:
 - Interpretation /or application of the SSSBC Constitution.
 - Matters of Mutual Interest.

THE APPLICATION OF THE CON-ARB PROCESS BY THE SSSBC

- In terms of clause 3.3.1 of the SSSBC Dispute Procedure the following disputes the Council only conciliates:
 - Dismissals for operational requirements
 - Automatically unfair dismissals
 - Refusal to Bargain

THE APPLICATION OF THE CON-ARB PROCESS BY THE SSSBC

- **The reasons why the SSSBC decided to use the con-arb process:**
 - Most of the disputes referred are Unfair Labour Practice and the con-arb process assist in the speedier resolution of these disputes.
 - SAPS employees who are employed in terms of the SAPS Police Act have been declared an essential service.

THE ADVANTAGES AND DISADVANTAGES ON THE APPLICATION OF THE CON-ARB PROCESS IN THE MANAGEMENT OF DISPUTES

■ The advantages of the con-arb process:

- Reduces the backlogs and delays in resolution of disputes.
- Provides for a speedier dispute resolution process.
- Arbitration takes place immediately if conciliation fails.

THE ADVANTAGES AND DISADVANTAGES ON THE APPLICATION OF THE CON-ARB PROCESS IN THE MANAGEMENT OF DISPUTES

- **The disadvantages of the con-arb process:**
 - Parties do not sometimes realized straight away that the case has been scheduled for con-arb
 - Some parties do not understand what con-arb means for them in practice
- **Parties do not begin immediately with preparations for the con-arb by failing to:**
 - collect and prepare documentary and other evidence,
 - respond to anticipated evidence that the opposing party could bring,
 - prepare case arguments and case law.

CHALLENGES THE SSSBC FACES ON THE APPLICATION OF THE CON-ARB PROCESS IN THE MANAGEMENT OF DISPUTES

- **High rate of postponements.**
- **Parties prefer getting an award from an arbitrator instead of settling a dispute.**
- **Lack of preparedness on the part of the parties**

STATISTICS

- **Total Cases Referred:**
- A total of 52 disputes were referred from the Northern Cape Province to the Council for the period April 2016 to March 2017. Out of the 52 cases referred 35 were properly referred, 17 were not properly referred, and 0 were condonation applications.

STATISTICS

■ Breakdown of Referred Disputes per Month:

PROVINCE	NUMBER
April	1
May	2
June	1
July	1
August	1
September	3
October	3
November	8
December	14
January	4
February	4
March	10
TOTAL	52

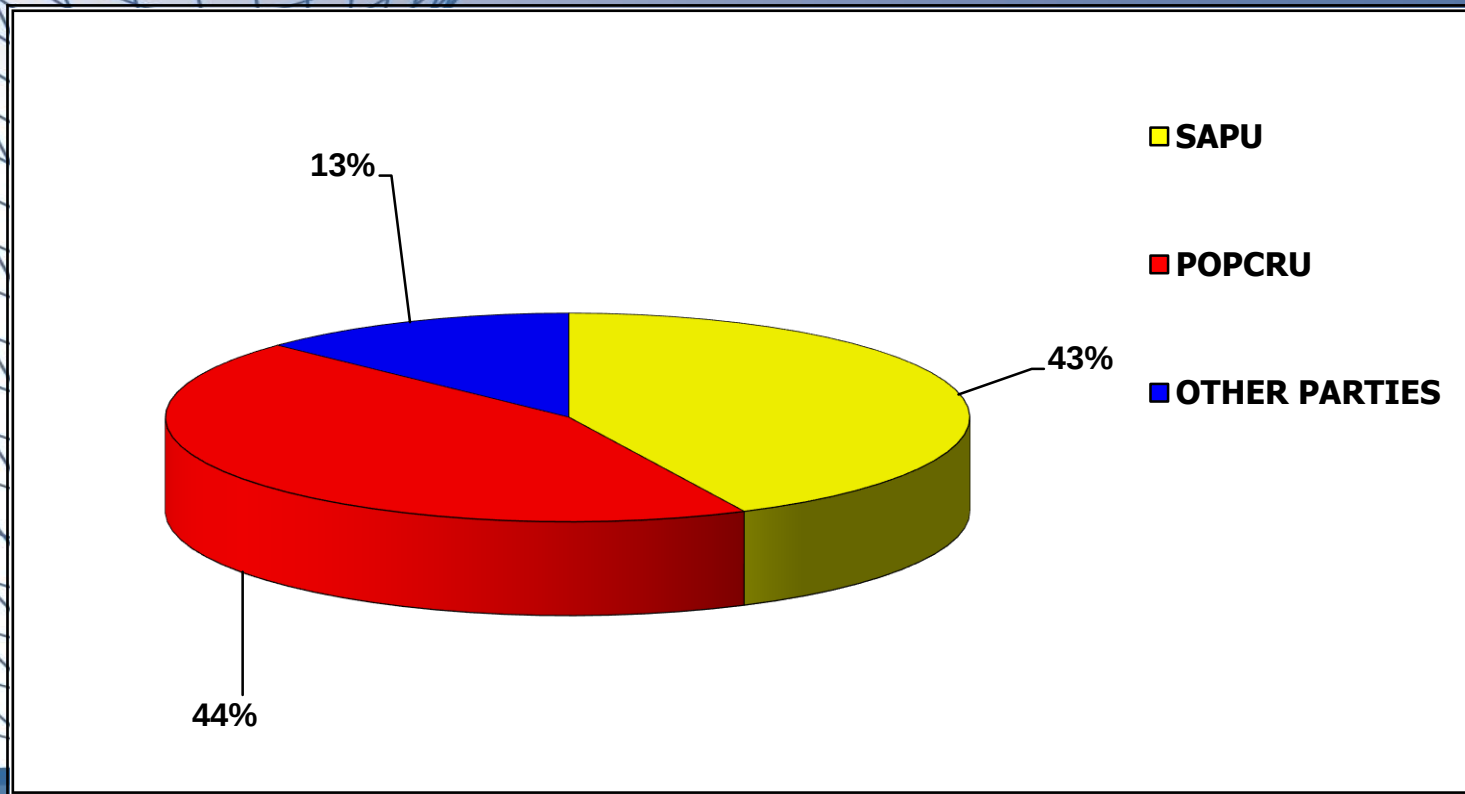
STATISTICS

- **Sources of Dispute Referrals:**

Of the 52 disputes, 30 were referred by SAPU, 31 were referred by POPCRU and 9 were referred by Other Parties.

STATISTICS

■ Percentage of Cases per Party



The breakdown of issues referred per party is as follows:

STATISTICS

■ Nature of Disputes Referred per Party

	UNFAIR LABOUR PRACTICE	UNFAIR DISMISSAL	INTERPRETATION & APPLICATION OF COLLECTIVE AGREEMENT	UNILATERAL CHANGE TO TERMS AND CONDITIONS OF EMPLOYMENT	TOTAL
SAPU	24	5	1	0	30
POPCRU	11	2	0	0	13
OTHER PARTIES	4	5	0	0	9
TOTAL	39	12	1	0	52