



IMATUmail

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RETIREMENT OF A STALWART

From the IMATU archives:

"... .. the Executive Committee resolved that you be offered the position as advertised as from 1 June 1984"

Gawie Beukman, the IMATU Regional Manager (of our City of Cape Town Metro Region), has decided to proceed on retirement following an illustrious career at IMATU of more than 26 years.

Gawie was well known for, amongst various strong trade union attributes, his unfaltering passion for the trade union movement and his dedication towards fighting for the rights and protection thereof, on behalf of the IMATU members.

Gawie is, furthermore, recognised for his experience, hands on approach in leadership skills and abilities within IMATU, Local Government as well as the Medical Aid industry. He has guided the IMATU Branch in IR matters to the extent that the Cape Region has successfully contributed to labour law in the Courts. As a keen angler and golfer Gawie, now, will at long last have time to improve his game of 18 holes.

A leader and a man amongst men we bid Gawie and Jill a well deserved retirement, good health, prosperity and as the song goes:

*"As die wind gaan lê en die see is bes;
Sê die manne op die kaai
vir die vrouens koebaai;
Kan 'n man dan nie;
Meer groot visse vang nie".*



IMATU WINS IN LABOUR APPEAL COURT

National municipal legislation in 2000 required municipalities to disestablish and to merge with other municipalities in order to function as more effective service delivery units. 46 local authorities in the greater Durban area were compelled to amalgamate and formed the eThekweni Metropolitan Municipality. This resulted in different employees performing the same function while being paid differently. **Continues on next page**

EDITORIAL

IMATU - as an employer - does not often see staff leaving to go on pension. When this happens, we usually bid them a fond goodbye. We pay homage to one of the stalwarts of the union's staff, Gawie Beukman, who retired at the end of February. We also reflect on the impact of the law on Local Government, Parliamentary hearings on the Municipal Systems Amendment Bill, salary increases in 2011 and litigation in the Western Cape. Over the years, many Courts have made judgments in IMATU's favour. eThekweni Metro recently lost an important appeal that will enable IMATU to revisit the thorny issue of equality in remuneration, Nationally, Local Government elections are to be held on 18 May 2011 and IMATU will ensure that our message on overdue improved service delivery is heard by Councillors, Municipal Managers, and community leaders. To all our members that serve our municipalities and voters so diligently during the election time - a big "thanks". IMATU remains committed to our slogan: "Social transformation through sustainable Local Government" - the time is now! *Ke nako!*



This disparity created frustration because employees felt that they were not remunerated equally compared with other employees who performed the same function at the same municipality. IMATU and the municipality attempted to resolve the issues and entered into negotiations. An agreement was reached which resulted in the conclusion of the Divisional Conditions of Service Collective Agreement.

The municipality implemented the terms of the agreement during April 2007. After the implementation, it became apparent that the collective agreement did not adequately address the disparity and that some IMATU members would not receive the relief required. IMATU indicated its intention of withdrawing from the agreement. The municipality was not willing to cooperate, sticking to the terms and conditions of the divisional agreement.

IMATU approached the Labour Court with a request that the divisional agreement be declared null and void. The basis for this application was that in terms of the SALGBC Main Collective Agreement, certain issues such as annual and sick leave, retirement fund matters, and medical aid benefits can only be negotiated at a national level in the SALGBC. The divisional agreement addressed issues which were not permitted in terms of the main collective agreement. IMATU argued that the divisional agreement was null and void and had no force and effect. The Labour Court agreed with IMATU and declared the divisional agreement null and void. The municipality decided to appeal the judgment of the Labour Court on various grounds.

The Labour Appeal Court dismissed the grounds of appeal. It found that the dispute was not about the interpretation of a collective agreement but rather whether parties may engage in issues which were specifically excluded from negotiations at a divisional level.

The Court said that the issues were specifically excluded in the main collective agreement and that the Labour Court was correct in declaring the divisional agreement null and void and of no legal force and effect.

The effect of this judgment means that SALGA, and some of its unpredictable member municipalities have now been sent a clear message that they can not engage on a divisional level - as they often do - in national issues.

IMATU will use the judgment to compel SALGA and its member municipalities to deal with national issues at a national level. This will have the added bonus that all IMATU's members will receive the same benefits on issues such as leave, medical aid, and retirement fund benefits.

SALARY INCREASES 2011

This year the last of the three salary increases of the 3 year multi-term Salary and Wage Collective Agreement will be implemented. The salary increase for this year will be:

The CPI average for February 2010 – January 2011 plus 2%.

What is the CPI and why should I know about it?

The CPI is the Consumer Price Index. We use the CPI in the Salary and Wage Agreements to make sure that your salary increase stays above inflation and does not lose value as the cost of living also increases.



The CPI measures the changes in the price of consumer goods (e.g. food and petrol) and services (e.g. Medical Services) purchased by all households. So, for example, if the price of food has gone up from one month to the next, the CPI measures that change. Statistics SA is the organisation that officially measures the changes in the CPI. This is done every month and it is then published as a percentage.

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How does the CPI affect my next Salary increase?

The CPI (month to month) for the period February 2010 until January 2011 was as follows:

Date	Feb 2010	Mar 2010	Apr 2010	May 2010	Jun 2010	Jul 2010	Aug 2010	Sep 2010	Oct 2010	Nov 2010	Dec 2010	Jan 2011	Ave- rage
Rate	5.7%	5.1%	4.8%	4.6%	4.2%	3.7%	3.5%	3.2%	3.4%	3.6%	3.5%	3.7%	4.08%

When these percentages are added up and divided by 12, we get the CPI average for the year.

As you can see, the CPI average is 4.08%.

Therefore your salary must increase this year by 6.08 % (4.08% + 2%).

Must we accept this increase or can we go back to the negotiating table?

No, technically speaking we are not bound to accept this increase. The Wage Agreement has an escape clause that allows us to "escape" from the agreement and re-open negotiations if the CPI falls lower than 5%.

So what are our options?

We can do any of the following:

Tell SALGA to deem the CPI at 5%. In other words, demand a wage increase at a CPI of 5% plus 2%, or else we will re-open negotiations; or

Directly re-open negotiations and see if we can get a better deal; or

Simply accept a salary increase of 4.08% plus 2%.

What is the way forward?

IMATU's NEC will take a final decision on what action to take at its next meeting in May. The matter will also be discussed at IMATU's Labour Relations Committee on 24 March 2011 where recommendations will be made for the NEC. IMATU members will be kept informed as this matter develops.

THE WESTERN CAPE REGION IS CURRENTLY IN LITIGATION IN VARIOUS MATTERS ON BEHALF OF MEMBERS.

Western Cape, like the Stormers and Province teams, believe that our members should receive the best possible service. The Region has referred a dismissal case based on medical incapacity to the Labour Appeal Court, after the Labour Court did not find in our favour. The matter was heard by three judges in November 2010, and we are awaiting judgement in the matter. Members should take note that the legal costs incurred in this matter, for Arbitration, Review to the Labour Court, and subsequent Labour Appeal hearing, are huge and impossible for an individual not belonging to a union, to bear on his own. In this matter the member's total legal costs were covered by the union. At Arbitration the member was represented by the union's inhouse legal advisor, and thereafter Counsel was appointed on behalf of the member.

The Region is currently busy with 4 review cases in the Labour Court, three reviews referred by ourselves, where we submit the Arbitrators' rulings against our members were incorrect, and one case where the Municipality is reviewing an award in favour of our members. In this matter we were successful in an arbitration where the employer failed to implement a scarcity allowance, which we submitted is a benefit in that it was contractually based. The Arbitrator agreed and a substantial financial award was made in favour of our members. We are confident that the Labour Court will find in our favour in the Review Application. In addition the Region is currently busy with various Arbitration matters on behalf of our members, including an Unfair Labour Practise based on protected disclosure. This matter will be heard in March 2011.

We were successful in a National Arbitration conducted by our Regional Manager, in which the Arbitrator ruled in our favour. The matter dealt with the question whether an employer has the right to refuse sick leave, based on a second medical opinion by the medical practitioner of the employer's choice. The Arbitrator ruled that an employee is entitled to sick leave if a certificate of a medical practitioner in compliance with the Basic Conditions of Employment Act, is tendered.

Once again IMATU is demonstrating that we will go to the utmost in protecting the rights of our members!!!

PARLIAMENTARY HEARINGS INTO THE NEW MUNICIPAL SYSTEMS AMENDMENT BILL

The Portfolio Committee on Co-operative Governance and Traditional Affairs hosted a round of public hearings into the new Municipal Systems Amendment Bill on 8 February 2010. IMATU attended the public hearings and we submitted our comments on the new Amendment Bill.

We stated that we supported the broad aims of the Bill which are to promote a more professional local government administration by way of better qualified senior management, depoliticising the administration by preventing office bearers of political parties from being appointed as senior managers, and preventing local government employees, dismissed from one municipality, being employed by other municipalities.

We have, however, raised our concerns with certain clauses in the Bill which gives the Ministry of Co-operative Governance and Traditional Affairs (CGTA) the power to regulate SALGA's mandate seeking process and collective bargaining procedures. We believe that this undermines collective bargaining and the ability of Municipalities as employers to conclude collective agreements.

We also indicated that we do not support clauses in the Bill that aim to regulate the accreditation of medical aid schemes and pension funds and to rationalise medical aid and pension fund contributions of municipal employees. Consequently we recommended that:

All clauses in the Bill seeking to regulate collective bargaining, medical aid and pension contributions, be scrapped. CGTA should rather focus on strengthening SALGA's collective bargaining capability. CGTA should first bring any problems it has with the collective bargaining process, medical aid and pension contributions to the attention of the SALGBC and allow the parties to deal with these problems ourselves rather than dealing with these matters by legislation.

CGTA has indicated that the Municipal Systems Amendment Bill is just the beginning and that other Bills designed to clean up local government would be introduced in the near future.

FUNCTIONING OF THE SALGBC DIVISIONS

It has become apparent over the past few years, that there are problems in the functioning of some of the SALGBC Divisions. These problems include a backlog of disputes, meetings not taking place, and the failure to conclude conditions of service collective agreements.

As a result of the above, the SALGBC Central Council has decided to establish a Task Team to monitor, intervene and assist in non-functioning Divisions of the SALGBC. It was also resolved that this Task Team will consist of four persons: (2 SALGA, 1 IMATU and 1 SAMWU).

At the first meeting of the Task Team, it was decided that the General Secretary of the SALGBC must obtain a report from all Regional Secretaries on the functioning of their respective Divisions. Once these reports are received, the Task Team will decide on what action is to be taken in each of the respective Divisions.

The SALGBC consists of a Central Council and thirteen Divisions. Certain levels of bargaining and functions were established for Divisions in the Main Collective Agreement.

In order for the SALGBC to function in terms of its objectives, a bargaining council levy was implemented. All employees of the municipality pay this levy. An amount is deducted from the salary of each employee and the municipality pays an equivalent amount per employee over to the SALGBC.

This levy is mainly used for dispute resolution processes in the SALGBC Divisions, and in the previous financial year, all the Divisions received and/ or dealt with the following disputes:

2398 Conciliations
1400 Arbitrations

NEW LABOUR

LEGISLATION

The Department of Labour has published new Amendment Bills for the Labour Relations Act (LRA), the Employment Equity Act (EEA), the Basic Conditions of Employment Act (BCEA), and a new Employment Services Bill.

The following are, in summary, the major areas of amendment in the Bills.

Labour Relations Amendment Bill

Regulating fixed term contract work: The Bill aims to stop the practice of repeated use of fixed term contracts. Employers will have to justify the use of fixed term contracts, instead of employing staff on a permanent basis.

Addressing the problem of labour broking: The Bill repeals previous sections of the LRA that allowed labour brokers to operate.

Defining the employer and employee: The Bill introduces a new definition of employer and employee to give greater certainty to the employment relationship.

Functioning of the CCMA: The Bill proposes a range of amendments to facilitate dispute resolution and enhance the efficiency of the CCMA's operations. These include:

Employees earning higher salaries may not refer disputes to the CCMA.

Con-arbs will be the preferred method to deal with all disputes. Employees earning higher salaries can be compelled to agree to pre-dismissal arbitrations instead of disciplinary hearings.

Basic Conditions of Employ-

ment Amendment Bill

Conditions of Service for Fixed Term Contract workers: Employers must give fixed term contract employees the benefits of similar or equal value to employees employed on a fixed term contract as those given to permanent employees.

Strengthening the powers of labour inspectors: Contraventions of certain provisions of the BCEA are criminalised and heavy penalties can be imposed for offences and contraventions, as well as the imposition of prison terms for employers that do not comply with the BCEA.

Assisting vulnerable workers: The Minister of Labour can set increases of actual wages instead of minimum wages for vulnerable workers by issuing sectoral determinations.



Employment Equity Amendment Bill

Equal pay for work of equal value: A new clause is introduced to ensure that employees who work for the same employer receive the same pay and conditions of service as other employees doing the same or substantially the same work.

Addressing the Wage Gap:

Employers must take steps to ensure that the gap between the lowest earning employee and the highest earning employee is

reasonable.

Employment Equity Plans: When developing employment equity plans, the employer must take the demographic profile of the national economically active population into account. (Previously employers had to take the regional and provincial economically active population into account). This is highly controversial.

Strengthening enforcement and compliance: Employers who contravene the Employment Equity Act can face fines of a percentage of their annual turnover. These fines start with 2% for first the contravention and escalate to a maximum of 10% for repeated contraventions.

Employment Services Bill

Employment Services Board: This Bill establishes a Government Employment Agency which will provide services free of charge to all South Africans. All unemployed persons can register with the Board and all employers will be required to register all vacancies with the Board. The Board will then assist unemployed people to find work by providing a list of available candidates to employers who have vacancies.

Sheltered Employment Factories: Will be established to promote the employment of people with disabilities.

Employment promotion schemes: Will be established to prevent retrenchments, layoffs and company closures, in times of economic recession.

The employment of foreign workers: Will be prohibited under certain circumstances and may not compromise South African citizens' opportunity for employment.

NEW SETA LANDSCAPE/ NATIONAL SKILL DEVELOPMENT STRATEGY III (NSDS III)

On the 3rd of November 2010, the Minister of Higher Education and Training, announced the new SETA landscape which is effective from the 1st April 2011. The announcement followed on the May 2010 launch of the NSDS III five (5) year strategy for 2011/12 to 2015/16.

The gist of the NSDS III is to guide the development of Sector Skills Plans (SSP's)

SSP's are five year skills development reports prepared by SETA's aimed at identifying:

The skills needs of industry or economic sectors; and

Possibilities and constraints in the effective utilisation and development of skills in relation to the Government's priorities and strategies. (www.timeline.co.za)

The purpose of the NSDS III is to contribute to the achievement of the country's economic growth and social development goals. It must examine the skills requirements of each of these priorities and support the development of the skills base on which the achievement of these goals will depend. To this end, the new strategy presents an ideal opportunity in supporting the broader goals of government in reducing unemployment, poverty and inequality. It furthermore underpins national efforts in the areas of job creation, local economic development, industry competitiveness, rural economic development and infrastructural

expansion.

The Minister, in ensuring that the performance of SETA's are enhanced and deliver consistent governance standards across the 21 SETA's, has standardised the constitutions of the SETA's in order to address, amongst various matters, the following new measures:

- Introducing independent chairpersons
- Limiting the number of Board meetings to a reasonable number
- Reducing the size of Boards
- Participation of the Minister in the appointment of Board members
- Having a standard remuneration rate for Board and Committee members
- Holding accountable Board members who do not carry out their duties as required
- The Minister's participation in the appointment of SETA CEOs and other members of the Executive Committees of Councils, in line with similar practices in relation to public entities.

These measures will ensure that there is improved governance of SETAs and will free up the Boards to focus on strategy and sector skills development priorities.

The goals of the NSDS III are:

- Establishing a credible institutional mechanism for skills planning.
- Increase access to occupationally directed programmes.
- Promoting the growth of public Further Education Training (FET) college system that is responsive to sector, local, regional and na-

tional skills needs and priorities.

- Addressing the low level of youth and adult language and numeracy skills to enable additional training.
- Encouraging better use of workplace-based skills development.
- Encouraging and supporting co-operatives, small enterprises, worker-initiatives, Non Governmental Organisation (NGO) and community training initiatives.
- Increase public sector capacity for improved service delivery and supporting the building of a developmental state.
- Building career and vocational guidance (vocational guidance is essential for young people who have no idea where their real interest lies, or about what opportunities are available to them).

"This is the first time we have seen a national skills development strategy that articulates into the South Africa's broader economic strategy and policy framework. The strategy is clearly located in, or connected to, the New Economic Growth Path, IPAP (2) and the Human Resources Strategy for South Africa (HRDSA), which perhaps indicates that the talk of integration is not mere lip service. This collaborative approach must, however, be demonstrated and supported beyond the policy framework so that it is reflected in the implementation of the strategy". (Fiona Camera – Brown) (www.dionysus.co.za)

NEW REGULATIONS ON THE PARTICIPATION OF MUNICIPAL STAFF MEMBERS AS CANDIDATES FOR NATIONAL, PROVINCIAL AND MUNICIPAL ELECTIONS

The Ministry of Co-operative Governance and Traditional Affairs (CGTA) has recently published new Draft Regulations in terms of the Local Government: Municipal Systems Act.

The new Regulations establishes limits and conditions for municipal staff members who wish to participate as candidates in National, Provincial and Municipal elections. Restrictions are also placed on the use of municipal equipment, facilities, data and information as well as the assistance of other municipal staff members for personal gain during the elections of any of the three spheres of Government.