

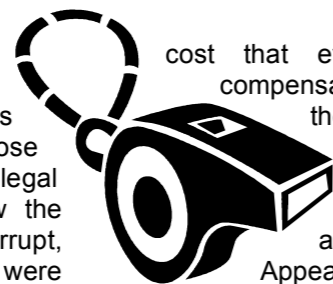
## PROTECTED DISCLOSURES ACT IS USELESS WITHOUT THE SUPPORT OF A POWERFUL UNION SUCH AS IMATU

The Protected Disclosures Act was heralded with huge fanfare in 2000 as a valuable tool in the fight against corruption. The Act was supposed to protect employees who disclose information about the employer's criminal or illegal actions. Workers were encouraged to 'blow the whistle' on the employers' fraudulent, corrupt, criminal or unfair actions. In return they were promised protection against 'occupational detriments' such as dismissal, disciplinary action, suspension, demotion and other forms of victimisation.

A protected disclosure is a disclosure made in good faith by an employee who has good reason to believe that the employer is involved in criminal, fraudulent, illegal or unjust activities, and that the employee believes that evidence will be concealed or destroyed and that s/he will be victimised if the disclosure was made to the employer.

Sadly, the lawmakers were naïve enough to believe that employers who face criminal charges or legal action will allow the whistle blower to remain in secure employment because they're scared of the CCMA or the Labour Court.

Employees who do not belong to strong unions such as IMATU have found to their cost that the Act provides only remedies, but no protection. The employee's only recourse is to refer the dispute to the CCMA, should they suffer an 'occupational detriment' for making a protected disclosure. However, unless whistle blowers have strong unions or substantial bank balances to count on, they will soon find to their



cost that even if the CCMA awards them compensation, the employer is permitted to refer the award to the Labour Court for review. If the Court should still find in favour of the employee, the employer still has the option of appealing the outcome at the Labour Appeal Court.

Dr Paul Theron was suspended from his post at Pollsmoor Prison because he dared to complain to the Inspector of Prisons about the dire conditions at the prison. In spite of the fact that the Act is supposed to 'protect' employees, the doctor was refused access to Pollsmoor Prison after the Labour Court ordered that he be reinstated. To add to his woes, the Minister for Correctional Services threatened to sue him for R500 000 because of his so-called defamatory remarks. The charges were eventually dropped, but Dr Theron has not been allowed to return to his former place of employment.

The legislator should urgently look at introducing measures whereby an employer can immediately be interdicted from victimising employees for making protected disclosures. Employers who fail to comply with the interdict should face swift criminal charges.

**In the meanwhile, IMATU urges all members to approach the union for guidance and advice if they feel that they need to make a protected disclosure.**

## THE DUTY TO COOPERATE WITH THE EMPLOYER

IMATU's role is to protect and promote the interests of the members. IMATU is also a responsible union, and part of that responsibility is to guide members.

Arrie Fourie recently represented a member who was charged with 'Failing to adhere to a legal instruction'. Although Arrie was successful in obtaining a 'not guilty' verdict, he would like members to be aware that they have a duty to cooperate with the employer.

This does not mean that the employee must blindly obey all orders, whether reasonable or not.

To quote from John Grogan, an advocate of the High Court, who publishes a new updated edition of Workplace Law every year:

*"The employee's duty of obedience applies only to work-related orders and, generally, during working hours and to those which are lawful and reasonable.*

*Employees are also entitled to disobey an instruction which would subject them to personal dangers not normally connected with the performance of their duties."*

IMATU cautions the members and shop steward not to interpret the above as advice from IMATU to refuse or to disobey instructions. Members should consult their IMATU structures and obtain detailed advice from their respective Regional Offices before they start on a collision course with management and their employer.

Never, ever act on the spur of the moment and refuse an instruction. You may think that the employer's order is unreasonable and find out later, to your cost, that it was not. When in doubt, obtain advice and if necessary lodge a grievance, which is a collective agreement under the auspices of the SALGBC.  
**Lionel van Zyl : IMATU North West**

# IMATU MAIL



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## NEW IMATU CHAIRPERSON'S DETERMINATION RESULTS IN MEMBER FINALLY BEING PROMOTED

One of Daleen Breytenbach's first tasks, after being elected the Chairperson of the IMATU Naledi Branch, was to investigate the Naledi Local Municipality's failure to promote an IMATU member.

The employer had promised to promote the member as soon as another member of staff had left the service, but this did not happen. However, IMATU's request that the employer honour its promise did not result in a promotion, but was met with political interference from the elected municipal councillors.

IMATU followed the necessary dispute resolution procedures, which culminated in a formal arbitration hearing in the South African Local Government

Bargaining Council. Arrie Fourie successfully argued the case on behalf of the member and convinced the Naledi Local Municipality's representative that the member should be appointed to the post, with full pay (plus 15.5% interest) backdated from the date the employee left the service. In addition, the member's salary increments, pension fund contributions, annual bonus and long service bonus were also backdated.

The agreement was made an arbitration award.

**A word of special thanks to Daleen for believing in the merits of the case and for obtaining the necessary information -- and to Arrie – Re a leboga!!**

## SUCCESS THROUGH DETERMINATION AND SKILL AT DISCIPLINARY ENQUIRY: TSWAING LOCAL MUNICIPALITY (DELAREYVILLE)

An IMATU member and his supervisor (a member of SAMWU) were charged with two counts of theft and dishonesty, and suspended from duty. The enquiry was postponed twice and eventually took place in the absence of the SAMWU member and his representative.

Paul Barnard, an IMATU North West Region full time shop steward, represented the IMATU member at the hearing. At the onset of the hearing he raised five legal and technical issues (points in *limine*) regarding the charges. The prosecutor asked for the necessary adjournment in order to investigate the merits of the points raised by Paul. When the hearing restarted, the

prosecutor announced that all charges against the IMATU member had been withdrawn.

Congratulations to Paul Barnard (from our IMATU Madibeng/Brits Branch) for the very professional way in which he handled his first disciplinary enquiry in his capacity as an IMATU full time shop steward. Paul is very experienced in handling disciplinary hearings and has successfully represented many IMATU members in Madibeng and in the Limpopo province.

Wel gedaan Paul!!

## EMPLOYER IN BREACH OF COLLECTIVE AGREEMENT ON ACTING ALLOWANCES

The IMATU Free State Region recently took up the case of one of our members from Dihlabeng Local Municipality (Bethlehem) who acted in a higher position without receiving an acting allowance.

IMATU lodged a dispute with the SALGBC on the grounds that the employer was in breach of the collective agreement regarding acting allowances.

**'Local Government Undertaking: Conditions of Employment Agreement: Orange Free State 8.3 Acting allowances: If an employee, by resolution and at the total discretion of the council, acts in a higher**

*post for a period of not less than 15 (fifteen) consecutive working days, an acting allowance equal to the difference between his salary and the minimum notch of the salary scale pertaining to the post in which he is acting shall be paid to such employee in addition to his salary for the period during which he is acting: Provided that the council may pay an acting allowance for any such shorter period.'*

The employer eventually conceded that its actions were contrary to the collective agreement and the member was paid R80 474-00 for the period during which he acted. **Paul Greyling: Regional Manager Free State**

## SIX MEMBERS RECEIVE A TOTAL OF R122 310 PLUS INTEREST, FOR UNPAID LOCOMOTION ALLOWANCES, THANKS TO IMATU

A senior member of staff employed by the Lekwa-Teemane Local Municipality failed to adhere to the collective agreement that governs locomotion allowances. As a result, six **IMATU** members did not receive the allowances they were entitled to in terms of the agreement.

The members wrote numerous letters to the senior staff member and requested that they be paid the allowances in terms of the collective agreement, but their efforts were in vain.

**IMATU** submitted a request for formal arbitration to the South African Local Government Bargaining Council in

order to compel the employer to comply with the collective agreement. However, prior to the arbitration hearing, the Lekwa-Teemane Municipality resolved to agree to **IMATU**'s demands by implementing the correct monthly locomotion allowance with full back pay and interest. This was done in terms of section 75 of the Basic Conditions of Employment Act 75 of 1997. The agreement was made an arbitration award.

As a result of **IMATU**'s efforts the six **IMATU** members were paid a total of R122 310 plus interest. Arrie Fourie represented the **IMATU** members. Congratulations Arrie on another sterling job!!

## MONEY OR THE BOX: THE DIFFERENCE BETWEEN PROMOTION AND DEMOTION

Klerksdorp, Orkney, Stilfontein and Hartbeestfontein amalgamated and formed the KOSH Municipality. About 8 months after the amalgamation an **IMATU** member, who was a senior member of staff on level two at the Klerksdorp Municipality, was informed that his application for his former post of Deputy, (now a fixed term contract on a higher salary level) was unsuccessful. The employer offered our member a post of Assistant (reporting to the Deputy) on level three of the staff establishment, albeit on a higher salary level.

**IMATU** advised the member that even though the post was offered a higher salary, it was in fact a demotion because his status had been lowered.

The dispute was referred to the Bargaining Council for arbitration. The employer submitted six points in limine (technical and legal arguments) at the hearing. The arbitrator dismissed these arguments and instead

focused on the history of the dispute, the merits, employment contract and relevant case law.

The arbitrator ruled that the member should be reinstated to his original post on level two of the fixed establishment. Sadly, the matter did not end there. The employer failed to implement the arbitration award and filed a review application with the Labour Court, which was submitted 24 days after the cut-off period. Furthermore, the employer failed to apply to have the late submission condoned.

**IMATU** has opposed the application to have the award reviewed in its entirety and also raised the fact that the employer's submission for review was filed too late.

A court date is awaited

Lionel van Zyl represented the member and shall represent the member in the Labour Court

## IMATU OBJECTS TO CITY OF CAPE TOWN WISHING TO TAKE EMPLOYEES' FINGERPRINTS



The City of Cape Town has recently announced that they are implementing an electronic clocking system to monitor the employees' attendance, sick leave and leave records. The employer discussed the system with **IMATU**

and **SAMWU**, but did not reveal that the employees would be required to have their fingerprints taken.

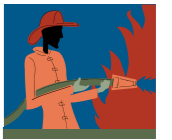
**IMATU** has written to the City Manager to object to members being fingerprinted and has asked for the matter to be discussed at the next Bargaining Council meeting.

## SALGA OPPOSES THE TRANSFER OF LOCAL GOVERNMENT EMPLOYEES TO THE PUBLIC SERVICE

SALGA, at its provincial conference on Friday 8 March 2008, has expressed major concerns about the effect that the government's proposed plan to transfer municipal employees to the public service would have on service delivery, accountability and finances. SALGA has commissioned a study which has shown that governments in other countries have tended to de-centralise functions, therefore the government is going against international trends.

SALGA is also concerned about the effect the transfer would have on employee benefits and have resolved to negotiate that municipal staff should have a separate bargaining council. SALGA also stated that it was very worried about government's proposals to establish regional electricity distributors, which will substantially reduce local government income.

## IMATU TAKES UP THE CASE ON BEHALF OF THE FIRE FIGHTERS OF SOUTH AFRICA



**IMATU** has gone on record in the press and on radio about the serious staff shortages in South Africa's Fire & Emergency services. This was done in an effort to make the public aware that local government has failed to fill vacancies, train employees and buy adequate equipment. Stephanie Gray, **IMATU**'s Deputy General Secretary and Etienne Bruwer, Regional Manager: Western Cape, were interviewed by a number of radio stations about the growing crisis in the Fire & Emergency Services.

The simple truth is that councillors do not consider Fire & Emergency Services a priority, which is why almost every local authority in the country is short staffed and ill equipped.

International standards, which were officially adopted in South Africa, require that the crew attending a rescue must consist of at least five, and that at a minimum of two officers must enter a burning building. However because of the staff shortages, municipalities have resorted to sending out crews consisting of only two fire fighters. As a result there is no one to tend to the fire engine and regulate the hoses and water supply whilst the fire fighters are trying to put out the fire.

**IMATU** is aware that a number of fire stations have been closed because of staff shortages. This is having a profound and negative impact on response times and the staff's ability to put out fires and provide other services, such as training communities in how to prevent fires and protect themselves against fire hazards.

**IMATU** is very concerned that fire fighters, who risk their lives daily to protect people and property, are facing increasing dangers because there simply is not enough trained staff to deal with emergencies. Many Fire & Emergency workers are stressed, demoralised and deeply unhappy about their working conditions. In June 2007, Cape Town's Fire Services Task Team reported that it needed 600 more firefighters. Various councillors expressed their grave concerns and undertook to 'do something about it. Their 'efforts' resulted in 70 new firefighters being appointed during 2007. The situation is the same in other municipalities.

Fire & Rescue workers are not allowed to go on strike because they are considered essential service employees. However, the fact that they perform essential services should be valued and rewarded by local government, not exploited.

## IMATU APPEALS TO THE MINISTER OF MINERALS AND ENERGY TO RECONSIDER RESTRUCTURING THE ELECTRICITY DISTRIBUTION INDUSTRY



31 January 2008

Dear Minister Sonjica

The ever worsening electricity crisis in South Africa has necessitated us approaching you directly, as we hereby respectfully do, in order to pose certain critical questions and statements to yourself, as representative of Government on the issue.

We are of the strong view that, given the grave problems currently facing Government and Eskom regarding the failure/inability of Eskom to generate sufficient power to meet the demand of South African businesses, households and essential services such as hospitals, the efforts and resources of Government should be solely focussed on addressing the generation crisis, and that the proposed restructuring of the distribution industry should be put on hold until such time as generation issues have been adequately addressed.

Ours is certainly not the only voice being raised at this point regarding the serious and possibly irreparable

harm being done to the South African economy as a whole, not to mention the devastating effect on the lives of everyday citizens, by the shortage of electricity.

We firmly believe that the restructuring of the distribution industry can in no way serve to alleviate the shortage of electricity, and we urge Government to put a stop to the process, and focus instead on tackling the far more serious aspect of generation of electricity.

We would welcome and appreciate an opportunity to address yourself or representatives of your Department in person, regarding our concerns.

We furthermore wish to confirm our commitment towards economic growth in the country, and the creation of permanent and quality jobs for all.

Yours faithfully

**Johan Koen**  
General Secretary