University of the Western Cape
Faculty of Law
Masters Programme
Research Paper

Name of Candidate: Joseph Williams
Student Number: 2117127
Supervisor: Craig Bosch
Programme: Law of Unfair Dismissal 2001
Masters in Labour Law (LLM)

Title:

The Right to Strike – Is it an effective component in regulating the South African Labour Market?

Presented in (Partial) fulfillment of the requirements for the degree Magister Legum in the Faculty of Law of the University of the Western Cape. May 2003.

Acknowledgements

The journey towards the completion of my Masters studies in the Law Faculty of the University of the Western Cape was made manageable through the assistance and support of others. I am very grateful to all who have encouraged me during this period and I owe special thanks to:

- The Southern African Clothing and Textile Workers Union (SACTWU) for granting me a bursary. This union pioneered a bursary fund, funded through the contributions of their members. This fund has enabled me as well as others within their ranks to further our studies.
- Advocate Tamara Cohen and Professor Evance Kalula for their guidance and assistance
- André Kriel, the Deputy General-Secretary of SACTWU for always granting advice and being helpful
- Blake Williams, my son, for keeping me on my toes.

ABSTRACT

This research paper presents an analysis of the right to strike in South Africa. It starts by providing a historical overview of labour relations in South Africa and the development of the right to strike. The discussion includes a look at the link between collective bargaining and the right to strike as promoted in the Constitution of 1996 and the Labour Relations Act of 1995. The relevance of International Law found in the International Labour Organisation's Recommendations and Conventions and relevant United Nations Conventions is also explored. As part of this analysis, is a critical look into how the courts have adjudicated the dismissals of strikers in granting the necessary relief, in terms of the old Labour Relations Act of 1956 and the new Labour Relations Act of 1995. Commentaries made on the right to strike and statistics of strikes in confirming that the right to strike is indeed a necessary component of labour market regulation are also provided.

TABLE OF CONTENTS

3) The international context with specific reference to the International Labour Organisation (ILO) Recommendations and Conventions as a source of international law, as well as other relevant instruments of law; and
4) The extent to which the judiciary has given effect to South Africa's Constitution in giving expression to the ILO Recommendations and international instruments in adjudicating dismissals of strikers.

In providing a comparative analysis, instruments governing the right to strike and collective bargaining that are given particular attention are,

1) the Labour Relations Act 66 of 1995;
2) the Constitution of 1996;
3) the Code of Good Practice on dismissals based on operational requirements;
4) the Code of Good Practice on picketing in promoting a framework that promotes orderly collective bargaining and labour peace; and
5) The Amendments to the Labour Relations Act 66 of 1995 in section 189A.

In conclusion, this research paper will determine whether the right to strike and to engage in collective bargaining leads to job losses and industrial unrest or whether the adoption of core International Labour standards is conducive to economic growth and efficiency in the labour market.

Through an in-depth literature review, the relevant information for this research paper was gathered. The secondary sources most heavily relied upon in this research, centred on past and recent debates around strikes and collective bargaining, international trends and comparative studies as well as related case law.

CHAPTER TWO
HISTORICAL PERSPECTIVE

It can be argued that the right to strike was never part of the labour relations' agenda of the Apartheid government. The right to strike and the protection afforded to workers came into being through the bitter struggles workers waged against employers and government, which led to various legal interventions by the court resulting in some relief for strikers. The working class ultimately used its power and strength to influence the current government in entrenching the right to strike in the Constitution.

Formalising Labour Relations

Early industrial relations legislation can be traced to the gold mining industry in 1907 when trouble in the mines resulted in the enactment of the Transvaal Disputes Act of 1909. This piece of legislation,

> "...produced the first proto-collective bargaining statute...It was designed to combat strikes in mining industry and it set out to do this by introducing a procedural bar to unilateral action. No changes could be made by employers to terms and conditions of employment, and no changes could be demanded by employees, unless one month's notice had been given to the other party. Moreover, were a party to invoke the newly-created statutory conciliation machinery in response to a proposed change, then the implementation of the change had to be stayed until 30 days after the board of conciliation had delivered its report. In return for protecting parties against precipitate changes to the employment relationship, the legislature demanded (upon pain of criminal sanction) that industrial action be delayed until the exhaustion of the prescribed procedures"[4].

This piece of legislation served as an introduction to the status quo remedy and ad hoc conciliation boards in dealing with industrial disputes in South Africa.

The Rand Rebellion, as the 1922 strike was referred to, changed the nature of labour relations forever in South Africa. The government realised that it had to formalise labour relations and in

[4] Thompson and Benjamin. 1998. SA Labour Law (at A1-22)

1924 passed the Labour Conciliation Act. This statute provided for the establishment of Labour Councils and a conciliation board system to resolve disputes.

> "These bodies were (and are) designed not merely to play the dispute-settling role which is the hall-mark of the first-generation labour statutes but also to work pre-emptively and indeed constructively at modelling the work milieu. This they could achieve through the license to negotiate comprehensive industrial agreements which enjoyed the status of subordinate legislation and which had industry-wide application"[5].

Black workers were excluded form this industrial framework and had to wait until 1979 to enjoy the statutory protection of the statute.

The exclusion from these rights led to resistance on a number of fronts, particularly the organising of workers into trade unions. The State, in realising the importance of the emerging trade unions, enacted a number of important pieces of legislation in South Africa in the period 1945 to 1981 to curb the power of black workers. The government enacted several pieces of legislation as a response to the new milieu of worker militancy. These are as follows[6]:

- The Industrial Conciliation Act 28 of 1956 prohibited the registration of mixed unions and introduced formal job reservation. This allowed for the establishment of racially exclusive trade unions.
- The Black Labour Relations Act of 1973[7] provided for the establishment of the liaison committees for blacks at plant level. The Act was formulated to curb the rising militancy of black workers in South Africa.
- Industrial Conciliation (Amendment) Act 94 of 1979 redefined the term 'employee' to include Africans and other migrants, giving them access to the Industrial Council system. It provided for the establishment of an Industrial Court. While legal strike action by blacks was facilitated, the dispute had to be referred to the relevant Industrial Council. In the absence of a relevant Industrial Council, the parties could apply to the Minister of Manpower for the establishment of a Conciliation Board. Where the Minister refused to establish a Conciliation

---

[5] Ibid. (at A1-23)

[6] Wood, G. Trade Union Recognition: Cornerstone of the New South African Employment Relations. Johannesburg: Thompson Publishing 1998 (at 33-36)

[7] It was an amendment and renaming of the Native Labour Act 43 of 1953

black trade unions grew steadily, and it became clear that the formal system was increasingly bypassed as employers were forced to recognise and bargain with the unions. Furthermore, the government had to respond to various pressures. Among these were the Soweto uprisings of 1976 coupled with calls of disinvestment in South Africa from overseas.

This period can best be described as a time when black people had greater awareness of their social rights and were willing to give expression to these rights. A strong black trade union movement emerged, confident and eager to test their strength, resulting in industrial action. The government responded to the crises with the Wiehahn reforms in 1979 by the deracialisation of key Labour Laws. Key features of the Wiehahn Reform are:

- The Unfair Labour Practice Remedy (juridifying labour relations)
- Legal rights supervised by a specialised labour tribunal (Industrial Court)
- Protection against unfair dismissal
- Emergence of a duty to bargain
- Beginning of a protected right to strike

One of the major recommendations contained in the report of the Wiehahn Commission was that there should be a basic right to strike and it was further suggested that there should be a duty on the part of employers to refrain from conduct which infringes such a right[11].

> "The Wiehahn Commission regarded the right to withhold labour as a fundamental component of any labour dispensation...Its tentative suggestions on broadening or investigating further strike rights were tersely rejected by Government"[12].

The Wiehahn report and recommendations gave rise to many key amendments to the statute in 1997. These included the de-racialisation of the Labour Relations Act (LRA), the establishment of an Industrial Court and the introduction of the concept of the unfair labour practice to regulate both individual employment and collective labour relations. The amendments to the LRA, which was recommended in the Wiehahn report, can best be described as a revolution in industrial relations in South Africa. In an attempt to align our statute with international labour standards, it undoubtedly changed the labour market forever.

---

[11] Wiehahn Report. para 4.127.20 (at 567). Report of the Commission of Inquiry into Labour Legislation (RP 47/1979)

[12] Thompson C. Development of South Africa's Unfair Labour Jurisprudence in The International Journal of Comparative Labour Law and Industrial Relations 1993.

The ethos of modern labour law is best described by Kahn-Freud,

> "The purpose of labour law is the regulation of conflict between capital, which is always attempting to increase the rate of investment, and labour, which is always intent on increasing the rate of consumption and improving the workings of its members"[13].

Various commentaries and arguments follow a similar line that modern labour should endeavour to institutionalise the conflict. This has been the aim of the LRA 1995, a central tenant of which is to foster the spirit of collective bargaining as a mechanism of resolving industrial disputes. Collective bargaining is a system that regulates conflict between capital and labour and ensures that such conflict remains within an acceptable framework. Collective bargaining is thought to fulfil three functions when it is successful:

> "First, it provides a partial means for resolving the conflicting economic interests of management and labour; second it greatly enhances the rights, dignity and worth of workers as industrial citizens; and third as a consequence of the first two functions, it provides one of the most important bulwarks for the preservation of the private enterprise system"[14].

The Development of Strike Law in South Africa: It's Formative Years

The development of strike law in South Africa was influenced by common law in the dismissal of striking workers. In terms of common law, an employer may regard a strike as a breach of the employment contract, which declares the employment contract null and void. This in turn justifies the dismissal of employees.

> "The Common Law sees all strikes (...) as misconduct. For it, the strike is just a deliberate refusal to work, at best deliberate absenteeism, at worst a dereliction of duty. Individualistic to the core, it can find no justification for the strike in the function it serves; on the contrary, it regards the intent to damage the employer as aggravating the offence and certainly sees dismissal as the proper response"[15].

---

[13] Kahn Freud. Labour and the Law: 2nd Edition 1977 (at 15)

[14] Cheadle in Brassey et al. The New Labour Law. Cape Town: Juta 1987 (at 243)

This was found in the case of *R v Smith* 1955 (1) SA 239 (C),

> "At Common Law the employer clearly has the right to dismiss a servant who refuses to work...If in the limited sense the strike is 'legal'...[I]t does not follow that an employer is deprived of his Common Law right to dismiss and employee who refuses to work"[16].

The court in giving effect to the unfair labour practice definition in the LRA 1956 set a precedent whereby it offered protection to strikers in Marievale Consolidated Mines where several hundred workers were dismissed for participating in an illegal strike. Here the court overruled the common law right to dismiss striking workers[17]. This Industrial Court decision was further upheld on review in the Supreme Court[18]. This decision changed the common law 'dismissal at will' landscape forever and enforced a new set of principles, which the court will examine in order to grant the necessary relief when dismissals of strikers take place.

In *SACWU v Sasol Industries (PTY) Ltd and Other*[19], the preponderate view of industrial relations' experts is that the employer's common law right to dismiss when the employment contract is breached ought to subordinate to industrial relations principles of collective bargaining[20]. In giving credence to the LRA over the common law, Brassey argues as follows,

> '[the Act] gives the collective precedent over the individual, and it acknowledges that the broader community also has an interest in industrial peace and stability. Where the common law sees only a bi-polar relationship between individuals, the statute sees a triangle of interests – capital, labour and society at large...Industrial peace, rather than adjustment of individual rights, is the legislature's goal.'[21]

It was held that the right to strike was permissible only after the issue in dispute was referred to a conciliation board or an Industrial Council for conciliation. No explicit guarantee on the right to strike in South African legislation prior to 1995 implicitly recognised the right to strike subject to

---

[15] Brassey M. 1990. The Dismissal of Strikers. 2 ILJ 213

[16] R v Smith 1955(1) SA 239 (C) (at 241H – 242B)

[17] National Union of Mine workers v Marievale Consolidated Mines (1986) 7 ILJ 123 (IC)

[18] Marievale Consolidated Mines v. The President of the Industrial Court and others (1986) 7 ILJ 152

[19] SACWU v Sasol Industries (PTY) Ltd and other (1989) 10 ILJ 1031

[20] Ibid. at 1048

[21] supra note 13 at 235

those limitations imposed by section 65 of the Act. In the case of *SACWU v Sasol Industries*[22] the court emphasised the fact that it regarded the right of workers to withdraw their labour as the most fundamental right of unionists[23]. This was a clear declaration of the right to strike to emanate from the Industrial Court.

Dismissal of Strikers

It was argued that the purpose of collective bargaining and the right to strike was not to repudiate or cancel the contract but to put pressure on the employer to vary one or more of its terms.

> 'It ought to be accepted...that it is unfair peremptorily to dismiss on the shortest of ultimatums, strikers who 1) strike for higher wages or better working conditions; 2) have observed the conciliatory procedures of the LRA; 3) have conducted themselves peacefully during a strike'[24].

It was generally accepted that to prohibit dismissal of strikers, altogether, would disturb the balance of power that underpins the collective bargaining process. A dismissal is only "considered as a solution to the problem until the level of tolerance is reached after efforts for a negotiated settlement have been exhausted"[25]. The court in a number of cases upheld this position, for example:

- In *NUM v Marievale Consolidated Mines*[26], the court held that it could not be expected that an employer endured a strike forever. It was found where a strike situation has reached a point of no return an employer may be entitled to dismiss employees.
- In *SACWU v Pharma Nature (Pty) Ltd*[27], the court expressed the following:

  > "This court has held on more than one occasion that applicants who take the law into their own hands have a slim chance of obtaining the relief sought"[28].
- In *NUM v Marievale Consolidated Mines*[29] legality was described as essential for protection against dismissals.

---

[22] supra note 17
[23] supra note 17 at 1032
[24] supra note 17
[25] supra note 21
[26] NUM v Marievale Consolidated Mines (1986) 7 ILJ 123 (IC)
[27] SACWU v Pharma Nature (Pty) Ltd (1985) 6 ILJ 520
[28] Ibid. at 528 E
[29] supra note 24

Protection for Striking Workers

It is argued that striking is a temporary suspension of the employment relationship, whereas dismissals is a permanent termination. Immediate dismissals are thus a disproportionate response to striking and should, therefore, be checked[30]. It was generally found that an employer may only dismiss workers on the following grounds: for misconduct, operational requirements and whether the strike was conducive to collective bargaining. Dismissals could only be effected where it was found that the proper procedures had been followed prior to the dismissals.

In commenting on the case of *SACWU v Sentrachem*[31], Dennis Davis emphasised that employers will have to follow the prerequisite procedures relating to the following: hearings, treating employees alike in the same situation and complying with a disciplinary code before dismissing workers[32].

The development of this unfair labour practice jurisdiction by the court in adjudicating strike disputes was a gradual and cautious process, but it eventually culminated in a qualified right of workers to strike lawfully without having to fear dismissal. In adhering to the framework developed by the court, it served as a precondition for the granting of protection for striking workers.

The court realised that in certain circumstances it would have to protect illegal strikers. In *Themba v Nico van Rooyen Tuksiedermie*[33], the court reinstated dismissed workers that had been provoked into illegal strike by the employer. The court found,

> "[I]n several decisions the industrial court has held that it was unfair for an employer to dismiss strikers when his own wrongful act provoked the strike; and even illegal strikers have been held to deserve protection if immediate industrial action was the only reasonable way to resist the harm caused by the employer's wrong"[34].

In *SACWU v Cape Lime Ltd*[35], the court developed an argument, which served as a protection for illegal strikers,

---

[30] supra note 13 at 237

[31] SACWU v Sentrachem (1988) 9 ILJ 410

[32] Davis D. 'Right Track' in Finance Week March 10 – 16 1988, 43

[33] Themba v Nico van Rooyen Tuksiedermie (1984) 5 ILJ 245

[34] supra note 13at 224

[35] SACWU v Cape Lime Ltd (1989) 9 ILJ 441 (IC)

"...that illegal strike action may be justified when it can be shown that the employer acted unfairly"[36].

It is clear from the above that the court, in developing a set of jurisprudence in coming to the assistance of strikers, examined the following criteria in granting relief:

a) were circumstances giving rise to the strike legitimate and conducive to collective bargaining;
b) were other avenues available to the strikers;
c) were conditions such that striking was the only option open to them; and
d) were there compelling reasons in granting relief to dismissed strikers.

The industrial court has also made use of administrative principles, such as *audi alterem partem*, to protect striking workers. In giving expression to the *audi alterem partem* principle in the case of *Langeni and Others v Minister of Health and Welfare*[37], the dismissal of striking workers was upheld where the *audi alterem partem* principle was explored. It was found that since the employees were only temporary workers and could be dismissed on 24 hours notice, they were not entitled to a hearing or reasons for their dismissal.

In giving effect to the *audi alterem partem* in *Pact v Paper Printing Wood and Allied Workers Union*[38], the court lists the following requirements which would comprise a fair ultimatum when an employer contemplates dismissal:

- The ultimatum must be communicated to the employees in a medium, which they understand, and further in a clear, unambiguous language.
- The terms of the ultimatum must state what is demanded of the strikers, when and where they are required to comply and the sanction to be imposed if the terms of the ultimatum are not met.
- Sufficient time must lapse after the issuing of the ultimatum, so as to allow employees an opportunity to make an informed decision on whether to adhere to or reject the ultimatum.

Strikers also enjoyed the protection against selective dismissals where the selection 'was premised on trade union affiliation of workers concerned, constituted victimisation'[39].

---

[36] Ibid. at 1051

[37] Langeni and others v Minister of Health and Welfare (1988) 9 ILJ 389 (W)

[38] 13 ILJ 1439 (LAC) 1992

The role of the Industrial Court in adjudicating dismissal during strike action is one where the court will attempt to remedy a situation that has already occurred. 'Protection' by the Industrial Court should therefore always be seen in this context.

In *SACWU v Sasol*[40], it was further argued that the ability to go on a protected strike could not counterbalance the employer's ability to dismiss. Classen argues that when consensus cannot be reached, there comes a stage when a temporary impossibility becomes a permanent one. The point at which this stage occurs will depend on the facts of each case[41].

A common factor that will come into play in these dismissals is whether a reasonable amount of time has passed during a dispute and whether the strike was conducive in achieving its collective bargaining objectives.

The Influence of Foreign Instruments on the South African Judiciary before the Enactment of the new LRA 1995

The judiciary serves as a major source in developing law when adjudicating disputes relating to labour and industrial relations. It is argued that the judiciary – judge-made law – draws its legal sources from international law, constitutional law, statutes and collective agreements[42].

The development of labour law in South Africa, it is argued, has involved a process of drawing from foreign legal models. By South Africa being a member of the British Empire in 1909, it turned to the Canadian model of compulsory negotiations and its settlement of disputes through conciliation via the Industrial Dispute Regulation Act in Transvaal of 1909[43].

The Bargaining Councils, formerly known as Industrial Councils, use a system of self-regulation in a particular industry/trade that was based on the British Whitely Councils' model. In dealing with disputes in this industry, it uses a compulsory conciliation mechanism and a 30-day statutory

---

[39] Cameron et al. The New Labour Relations Act: The Law after the 1988 amendments. Juta: Cape Town. 1989 (at 93)

[40] supra note 17

[41] Claasen J.Y. Stakingsreg: 'n Nuwe Teorie. 1978. (3-4) TRW1

[42] Blanpain R et al. Comparative Labour Law and Industrial Relations: Kluver Law Publications 1982 (at 303)

[43] supra note 4

cooling-off period before any party/parties to a dispute can institute industrial action[44]. The Wiehahn Commission strongly advocated that South African labour law and industrial relations laws align itself in harmony with international conventions, recommendations and other instruments[45].

The labour court armed with the concept of the unfair labour practice was established to regulate both individual employment and collective relations. This enabled the labour court to serve as a catalyst in transforming the law relating to labour and industrial relations in South Africa in drafting "foreign" labour authority into our law.

In commenting on the development of South Africa's unfair labour practice jurisprudence, it was argued that,

> "Labour law in South Africa today represents a *melange* of foreign and indigenous precepts. The borrowing and grafting process has featured prominently in the legal revolution and, while not unproblematic, has in the circumstances delivered a reasonably coherent jurisprudence. Perhaps almost uniquely, the accelerated reception of foreign notions has proceeded through the judicial process rather than the legislative one, although the latter provided the scope for the former"[46].

In *Bleazard v Argus Printing and Publishing Co.*[47], the court at 77 issued a status quo order, which required the employer parties in the dispute to return to a long established bargaining forum so that negotiations there could be resumed. In embracing foreign precedent in this dispute, the court found,

> "[A]lthough particular statutory provisions specify the detail of the concept in some overseas countries as is the case in the United States, it does not seem inappropriate to take cognisance of what is happening in such countries...It may be important to note that in the United States the court succeeded in enforcing the obligation on the parties to bargain collectively in good faith. It would therefore not seem improbable that n order by this court with similar objective should likewise be enforceable[48].

---

[44] supra 5

[45] Wiehahn report part I at 3.13.1

[46] Thompson, C. The Development of South Africa's Unfair Labour Practice Jurisprudence. The International Journal of Comparative Labour Law and Industrial Relations 1993 (at 183)

[47] Bleazard v Argus Printing and Publishing Co. (1983) 4 ILJ 60 (IC)

[48] Ibid. at 71A and 78D

The Labour Court made extensive use of legal transplants in giving legal clarity to a number of precedent cases. In *United African Motors and Allied Workers Union and Others v Fodens (SA) (Pty) Ltd*[49], the court ordered the company to recognise the union and to commence negotiations in good faith with the representative union. The court based its findings in this case by citing a number of ILO Conventions and English industrial tribunal decisions in arriving at this landmark decision[50].

The Labour Court, in its policy formulations,

> "borrowed liberally from other jurisdictions: for instance, its approach to redundancy owes much to the law in Britain; its approach to regulating of collective bargaining drew heavily on the USA"[51].

In regulating strikes, the new LRA of 1995 is an extension of the pre-1995 strike law. Chapter IV of the Act, which regulates and allows for strikes, is complemented by the ILO's Conventions 87 and 98[52]. It is clear from the above that the legislature found it necessary to borrow from other legal sources in developing the laws that govern the South African labour market.

---

[49] United African Motors and Allied Workers Union and others v Fodens (SA) (Pty) Ltd (1983) 4 ILJ 212 (IC)

[50] supra note 44 at 197

[51] Benjamin, Paul. Union-made law? The regulation of collective bargaining and worker participation in post-apartheid South Africa in Kluver Law International 2000 (at 518)

[52] Du Toit D et al. Labour Relations Law: A Comprehensive Guide. Third Edition. Butterworths 2000 (at 223)

CHAPTER THREE

THE RIGHT TO STRIKE: THE SOUTH AFRICAN LANDSCAPE

This chapter discusses a number of events that had a profound impact on the development of the 'right to strike' within South African labour law.

The Importance of 'Trade Union-Made' Law

It is a well-known fact that unions used their bargaining skills to engage both the business community and the state in negotiations, not only over labour law and industrial relations, but also on the restructuring of the economy as well[53]. The events described below undoubtedly influenced the right to strike as codified in the Act.

The signing of the South African Employers Consultative Committee on Labour Affairs (SACCOLA), COSATU and NACTU accord was where employers and unions agreed to negotiate major changes to the LRA in May 1990. This was followed by the sit-in by COSATU representatives in Pretoria, which culminated in the signing of the Laboria Minute. The Laboria Minute called on the government, business and labour to find ways of implementing the SACCOLA Accord in September 1990. On the 3rd and 4th of August 1992, COSATU and its allies embarked on a general strike demanding a worker friendly LRA and a say in the restructuring of the economic and social order in South Africa. This action resulted in the adoption of the COSATU Platform of Worker Rights held at its Special Congress on 10-12 September 1993, and called for the following organisational rights[54]:

(1) Basic organisational rights, which acknowledges that all workers have the right to join trade unions and organise, bargain collectively and strike and picket on all social and economic matters;

(2) Collective bargaining rights, whereby a new framework should include centralised bargaining through industry forums; and

---

[53] Thompson C. Strategy and opportunism: trade unions as agents for change in South Africa. International Industrial Relations Association Ninth World Congress, Sydney 31 August – 4 September 1992.

[54] SACTWU Shop Stewards Bulletin no. 10. April 2001 – May Day Special (at 59-61). Full text of the Resolution.

(3) International Law applicable to the South African labour market calling on the new government to sign International Labour Law Conventions of the ILO concerning Freedom of Association, Collective Bargaining, and any other Conventions dealing with fundamental worker rights.

The COSATU Platform for Workers Rights laid the foundation for the right to strike in South Africa. This platform of workers rights formed part of the policy formation for a new South Africa in the Tripartite Alliance Reconstruction and Development Programme (RDP). When the new government came into power in 1994, the RDP formed the base document for the amendments of the new LRA. The brief given to the Ministerial Legal Task Team[55] "was to draft a Labour Relations Bill, which would –

- give effect to government policy as reflected in the RDP
- give effect to the ILO Conventions 87, 98 and 111 and the findings of the ILO's Fact Finding and Conciliation Commission;
- comply with the Constitution;
- entrench the constitutional right to strike subject to the limitations which are reasonable and justifiable in an open and democratic society based on values of freedom and equality, and regulate lock-outs in a similar manner; and
- provide for the decriminalisation of labour legislation"[56].

The Bill further noted the high level of unprocedural strikes and called for effective mediation to resolve disputes[57].

International Conventions and Recommendations as a source of law in promoting the right to strike in South Africa

The International Covenant on Economic, Social and Cultural Rights (ICESCR) in Article 8(d) explicitly recognises the right to strike. The ICESCR formed part of the Universal Declaration of Human Rights (UDHR) and is elevated to the status of an 'International Bill of Rights'. Human Rights Treaties and Resolutions of the United Nations play an important role in the promotion of

[55] The Ministerial Task Team was lead by Professor H Cheadle and other experts notably the ILO's Professor B Hepple and Professor M Weiss.

[56] Explanatory Memorandum Government Gazette 10 February 1995 (no. 16259)