

**NEW CHALLENGES:  
SHIFTING POWER IN  
UNCERTAIN TIMES**  
12-14 August 2009



**22<sup>nd</sup> ANNUAL LABOUR LAW CONFERENCE**

# **Case update: Collective and individual labour law**

Jointly organised by:



The Institute of  
Development and  
Labour Law,  
University of  
Cape Town



Centre for Applied  
Legal Studies,  
University of  
Witwatersrand



The Faculty of  
Law, University  
of KwaZulu-Natal

Facilitated by:



LexisNexis®



## ***Illegal contracts and unfair dismissal actions***

### ***Discovery Health Ltd v CCMA & others [2008] 7 BLLR (LC)***

- Foreign nationals working without work permits are EEs as defined by the LRA
- They may bring actions for unfair dismissals under the LRA.
- Immigration Act prohibits employing foreigners without a work permit. Only consequence of doing so is that the ER is guilty of an offence.
- To hold otherwise would frustrate the right of EEs to fair labour practices.



However:

**“Kylie” v CCMA & others [2008] 9 BLLR 870 (LC)**

- Sex workers EEs as defined by LRA, but statutory right not to be unfairly dismissed does not apply to them.
- Because of WHY their employment contracts are illegal.
- To reinstate unfairly dismissed sex workers and afford them rights under the LRA would:
  - draw arbitrators/courts into regulating an illegal industry;
  - encourage prostitution which is illegal.
- Exclusion of sex workers from LRA not unconstitutional because CC in *S v Jordaan & others* 2002 (6) SA 642 (CC) ruled that the prohibition of prostitution does not infringe sex workers’ rights to privacy and dignity

## *Unlawful entrapment*

NEW CHALLENGES:  
SHIFTING POWER IN  
UNCERTAIN TIMES  
12-14 August 2009



### ***NUMSA obo Kholoanyane & others v Wispeco (Pty) Ltd*** **[2009] 2 BALR (MEIBC)**

- Dismissed EEs unlawfully entrapped and as a result their dismissals for theft were unfair.
- However, further relief not appropriate because guilty of theft and theft is theft in whatever circumstances.

## ***Constructive dismissal***

NEW CHALLENGES:  
SHIFTING POWER IN  
UNCERTAIN TIMES  
12-14 August 2009



### ***Murray v Minister of Defence* [2008] 6 BLR 513 (SCA)**

- Naval officer [excluded from LRA] sued in HC for constructive dismissal.
- SCA did 2 important things:
  - developed the common law to incorporate constructive dismissal;
  - incorporated concept of ‘employer culpability’ or ‘blameworthiness’ in test for constructive dismissal.
- Held re (a): EEs may rely in civil claims on CD because EEs’ rights under the common law now virtually indistinguishable from their rights under labour legislation.



**Held, for CD, the EE must prove that:**

- s/he has terminated the employment contract;
- the conduct of the ER rendered the continued employment relationship intolerable;
- the intolerability was of the ER's making;
- s/he resigned as a result of the intolerable behavior of the employer;
- the resignation or termination of employment was a matter of last resort;
- s/he has not resigned voluntarily;
- s/he did not delay too long in terminating the contract in response to the ER's conduct.

**Added:- EE must prove ER is *culpably responsible* for the intolerable condition.**



### **Culpability inquiry [response of ER to the situation central]:**

- whether ER to blame for the untenable situation the EE finds himself in;
- if not solely to blame, whether its response to the situation was reasonable;
- whether EE gave ER a chance to, and whether ER took reasonable steps, to rectify the situation.

### **Assessing the EE's complaints:**

- Examine cumulative effect of various incidents
- Do not fragment EE's complaints & consider them one by one in isolation

### ***MEC for Department of Health, EC v Odendaal & others (P504/07)***

- ER stopped salary of EE who refused to accept new terms and conditions of employment. EE resigned
- Held: No CD because EE had repudiated the contract and thus ER had no obligation to pay.



## ***Automatically unfair constructive dismissal***

### ***Marsland v New Way Motor & Diesel Engineering [2008] 11 BLLR 1078 (LC)***

- M constructively dismissed in a manner that was automatically unfair.
- Why: Main reason for the intolerable treatment of M by his ER was his mental condition.

***Deemed dismissals – s 17(5) of the Public Service Act 1994 and s 14 of the Employment of Educators Act 1998***

NEW CHALLENGES:  
SHIFTING POWER IN  
UNCERTAIN TIMES  
12-14 August 2009



- Discharge of EEs under these provisions cannot be reviewed because by operation of law & does not require a decision by any official [*Phenithi v Minister of Education & others* [2006] 9 BLLR 821 (SCA)]

***Ndiki v Department of Agriculture* [2008] 6 BALR 505 (GPSSBC)**

- Doesn't mean that such terminations do not constitute dismissals under LRA.
- EEs deemed dismissed under these provisions may still pursue disputes under the LRA.
- Dismissal of Nkidi procedurally unfair under LRA because ER had not informed him of his right under section 17(5) to apply for reinstatement.
- Based on *Ndiki*, an ER's failure to consider or properly consider representations from the discharged EE re reinstatement may be challenged under the LRA dismissal provisions.

## ***Reviewing disciplinary decisions***

NEW CHALLENGES:  
SHIFTING POWER IN  
UNCERTAIN TIMES  
12-14 August 2009



### ***What may an ER do if dissatisfied with decision of a disciplinary hearing?***

#### ***(1) BMW (SA) (Pty) Ltd v Van der Walt [2000] 2 BLLR 121 (LAC):***

- Normally unfair and an infringement of the principle against double jeopardy for an ER to try an employee twice for the same offence.
- However, in labour law fairness is the test and in “exceptional circumstances” it may be fair to permit an ER to hold a 2nd inquiry; unless 2nd inquiry “*ultra vires* a binding disciplinary code.

#### ***(2) PSA of SA obo Venter v Laka NO & others [2006] 1 BLLR 20 (LC):***

- State ERs acquire the right from PSA to interfere with a sanction and substitute its own decision for that of the PO if the ruling was a recommendation or if the sanction was grossly unreasonable.



**(3) MEC for Finance, KwaZulu-Natal & another v Dorkin NO & another [2008] 6 BLLR 540 (LAC) held:**

- State ERs may take the decision on review because the PO's decision constitutes administrative action.
- *In casu*, the PO had not made a recommendation, but a ruling that was binding on the ER, so the ER could not substitute its own decision for that of the PO, but had to review it.
- Found: given the seriousness of the offence, the PO's decision to impose only a FWW was so aberrant that he must have failed to apply his mind to the matter.
- Warning replaced with an order that the appropriate sanction was dismissal.

# ***Interdicting disciplinary proceedings and suspensions***

NEW CHALLENGES:  
SHIFTING POWER IN  
UNCERTAIN TIMES  
12-14 August 2009



## ***SAMWU obo Abrahams & others v City of Cape Town [2008] 7 BLLR 700 (LC)***

- LC may intervene & interdict internal disciplinary proceedings in “exceptional circumstances”.
- Exceptional circumstances *in casu* were: a large number of EEs were facing serious allegations of misconduct that could result in dismissal and the disciplinary procedure the ER intended to use was in violation of a CA.

However:

## ***Booyesen v SAPS & another [2008] 10 BLLR 928 (LC)***

- LC did not have jurisdiction to intervene in, review or interdict internal disciplinary proceedings.
- LRA designed to allow EEs to challenge the fairness of dismissals at CCMA/BCs; not to obtain relief directly from the LC.
- s 191 & 193 [LRA] - only the CCMA/BCs have jurisdiction to determine the procedural and substantive fairness of dismissals for misconduct.
- LC does not have a ‘roving power to correct any injustice outside of the specific areas in which it was given jurisdiction’.



- Judicial oversight of disciplinary proceedings while in progress is costly, time-consuming and disruptive and may also be premature as the EE may not be dismissed.
- Once the disciplinary inquiry is completed, the procedural fairness of the inquiry as a whole can be determined, which may show that the purported procedural defect complained of did not render the inquiry, on the whole, unfair.

***Dladla v Council of Mbombela Local Municipality* [2008] 8 BLLR 751 (LC)**

- The possible tarnishing of an EE's reputation or loss of dignity is not the kind of prejudice that could justify an urgent application to the LC to set aside or uplift a suspension.

## ***Deviation from disciplinary codes***

NEW CHALLENGES:  
SHIFTING POWER IN  
UNCERTAIN TIMES  
12-14 August 2009



### ***Dell v Seton (Pty) Ltd [2009] 2 BLLR 122 (LC)***

- Right to appeal in ER's disciplinary code but EE denied such.
- Commissioner found EE's dismissal not procedurally unfair.
- RC noted that in disputes under the LRA, the LAC had held that a departure by an ER from its disciplinary code will render a dismissal unfair only where the procedure actually followed was unfair [*Highveld District Council* [2002] 12 BLLR 1158 (LAC); *Leonard Dingler* [1999] 5 BLLR 431 (LAC)].
- The commissioner could not have misdirected himself by following that approach and finding that the EE had suffered no prejudice from being denied an appeal.

## ***Retrospective reinstatement***

NEW CHALLENGES:  
SHIFTING POWER IN  
UNCERTAIN TIMES  
12-14 August 2009



### ***Equity Aviation Services (Pty) Ltd v CCMA & others [2008] 12 BLLR 1129 (CC)***

- Whether retrospective reinstatement must be limited to a maximum period of 12 months (& in automatically unfair dismissals, to a max of 24 months).
- IOW: whether ‘backpay’ is similar to compensation and must be limited to these periods.
- Held: the remedies of reinstatement and compensation are mutually exclusive; the ceilings on compensation do not apply to backpay to which reinstated employees are entitled. Backpay in an order of retrospective reinstatement was not compensation as contemplated in section 193(1)© or 194 of the LRA.



It was only when reinstatement or re-employment was not ordered that compensation in terms of s194 could be ordered and to a maximum of 12 or 24 months remuneration depending on the nature of the dismissal.

*Boxer Superstores (Pty) Ltd v Zuma & others* [2008] 9 BLLR 823 (LAC);  
*Shoprite Checkers (Pty) Ltd v CCMA & others* [2008] 12 BLLR 211 (LAC);  
compare with *Maepe v CCMA & another* [2008] 8 BLLR 723 (LAC):

- Where arbitrators find dismissals substantively unfair, they must give reasons for not ordering reinstatement/retrospective reinstatement; the reasons must be based on the exceptions to the rule in s 193(2)

## ***Right to legal representation at arbitrations***

NEW CHALLENGES:  
SHIFTING POWER IN  
UNCERTAIN TIMES  
12-14 August 2009



### ***Nederburn Engineering CC t/a Netherburn Ceramics v Mudau NO & others*** **[2009] 4 BLLR 299 (LAC)**

- **Constitutionality of the qualified exclusion of legal representation from statutory arbitrations concerning dismissals for misconduct or incapacity.**
- **Held:**
  - **Neither the common law nor PAJA confers an absolute right legal representation in domestic or statutory hearings;**
  - **So not necessary to consider whether the limitation was reasonable, because no right was limited by the rule.**
- **The limitation [in any event] rationally connected with the goal of inexpensive & speedy resolution of labour disputes.**

## ***Retrenchment – s 191(12)***

NEW CHALLENGES:  
SHIFTING POWER IN  
UNCERTAIN TIMES  
12-14 August 2009



Section 191(12) states:

- If an EE is dismissed by reason of the ER's operational requirements *following a consultation procedure in terms of s 189* that applied to that EE only, the EE may elect to refer the dispute either to arbitration or to the Labour Court.

***Rand Water v Bracks NO & others [2007] 28 ILJ 2310 (LC):***

- If an EE chose arbitration, he could challenge *only the reason* for the dismissal because the provision made procedural issues unchallengeable.
- Implied that ER's are not required to follow a fair procedure when retrenching only one EE.



## ***Schema Data Services (Pty) Ltd v Myhill NO & others* [2009] 4 BLLR 381 (LC):**

- ***Rand Water* is wrong in law and logic.**
- **s 189 & s 191(12) - the procedure set out in s 189 must be followed before an ER dismisses “one or more employees” for operational requirements.**
- **s 191(5)(b)(ii) & s 191(12) - an individual retrenchee may refer a dispute either to the LC or the CCMA whether the case is on procedural or substantive fairness, or both.**
- **Accordingly, the CCMA had jurisdiction to arbitrate retrenchments where it is alleged that the dismissal was procedurally unfair.**
- **Substantive and procedural issues often inextricably linked:**
  - **If ER fails to consult on possible alternative positions, it dismisses in circumstances where the dismissal might have been avoided, and this renders the dismissal substantively unfair.**

## ***Retrenchment – consulting parties***

NEW CHALLENGES:  
SHIFTING POWER IN  
UNCERTAIN TIMES  
12-14 August 2009



### ***Maluleke & others v Johnson Tiles (Pty) Ltd [2008] 11 BLLR 1065 (LC)***

- Where a collective agreement between a majority union and the ER provides that the ER must consult only the majority union in retrenchment processes, the ER is not obliged to consult with any party other than the majority union.
- The existence of an agency shop agreement did not alter this situation.

## ***S189A retrenchments***

NEW CHALLENGES:  
SHIFTING POWER IN  
UNCERTAIN TIMES  
12-14 August 2009



### ***Continental Tyres SA (Pty) Ltd v NUMSA [2008] 9 BLLR 828 (LAC)***

- **Where consultation *it* s 189 had almost reached its conclusion and there had been no challenge to the substantive reasons for the retrenchment, the ER is not obliged to halt this retrenchment process and include the workers affected therein in a section 189A process that unexpectedly arises.**

**More so, if the ER had not reached the stage of ‘contemplating’ retrenchments when it issued the s 189A notice.**

**In these circumstances the ER was not denying the prior affected workers their rights under s 189A, including the right to strike.**

## ***Unfair labour practice***

NEW CHALLENGES:  
SHIFTING POWER IN  
UNCERTAIN TIMES  
12-14 August 2009



### ***Polokwane Local Municipality v SALGBC & others [2008] 8 BLLR 783 (LC)***

- The EE applied to have her post upgraded and for an acting allowance on the basis that, over the years, additional responsibilities had been added to her post.
- ER refused. EE declared ULP dispute.
- RC held:
  - In demanding such, the EE had sought to create new rights since she had no contractual or statutory entitlement to these demands and therefore her dispute was a dispute of interest.

# Transfers

NEW CHALLENGES:  
SHIFTING POWER IN  
UNCERTAIN TIMES  
12-14 August 2009



Transfers are not included in the scope of ULPs listed in s 186(2) of the LRA which means that the CCMA/BC does not have jurisdiction to arbitrate alleged unfair transfers, unless the transfer concerns a dispute about the application or interpretation of a collective agreement.

*Nxele v Chief Deputy Commissioner, Corporate Services, Department of Correctional Services* [2006] 10 BALR (LC)

- Transfers which are regulated by legislation [and not contract] reviewable by LC because they are not included in the definition of ULP and the legislature could not have intended to take away an entitlement of public service EEs to challenge their transfers.
- *Nxele* decided before *Chirwa*, but arguably the restrictions in *Chirwa* are not applicable since *Chirwa* does not suggest that *all* acts by the State in its capacity as employer involve the exercise of contractual rather than administrative power.



***Nxele v Chief Deputy Commissioner, Department of Correctional Services & others* [2008] 12 BLLR 1179 (LAC)**

- Also held that transfers are reviewable by the LC; but under different grounds.
- The Correctional Services Act states that transfers must be done in accordance with the LRA.
- The LAC interpreted this to mean that transfers must not constitute a demotion without the employee's consent [s 186(2)(a)] and the ER's conduct in transferring the EE must not amount to the ER making 'continued employment intolerable for the EE' [s 186(1)(e)].

## ***Appointments – s 6(3) of the Employment of Educators Act 1998***

NEW CHALLENGES:  
SHIFTING POWER IN  
UNCERTAIN TIMES  
12-14 August 2009



### ***Kimberley Junior School & others v The Head of the Northern Cape Education Department & others (278/08) 2009 ZASCA (28/5/09)***

- In terms of s 6(3) of the Act, the HoD's discretion to make an appointment is dependent on the prerequisite of a proper recommendation by the SGB.
- s 6(3) requires the SGB to recommend at least 3 candidates. For the recommendation of a lesser number it must consult the HoD.
- *In casu*, there had been no proper recommendation by the SGB because it had put up the names of 3 candidates but had recommended only one.
- Consequently the HoD had no discretion to make any appointment at all.
- The appointment made by the HoD was set aside.

## ***Political appointments and external applicants***

NEW CHALLENGES:  
SHIFTING POWER IN  
UNCERTAIN TIMES  
12-14 August 2009



### ***Mlokoti v Amathole District Municipality [2009] 2 BLLR 168 (E)***

M, an external applicant, applied for the position of municipal manager. The SC ranked him the best candidate but recommended him and a Mr Z to the council. The ANC councillors, who made up the majority of the council, all voted for Z merely on the dictates of their party caucus. M approached the HC to review and set aside the appointment.

– Held:

- *Chirwa* did not apply since M an external applicant and therefore had no remedy under the LRA and had not pleaded unfair discrimination.
- A municipality's policy, including its recruitment policy, may be executive in nature, but its implementation constituted administrative action.
- [The municipality had argued that the appointment decision was a political, rather than an administrative one, and therefore not subject to review].
- The process was unlawful and procedurally defective because the ANC councillors had abdicated their responsibilities in merely following the dictates of an external body and the council's decision had been taken without any formal vote.

## ***Protected promotion***

NEW CHALLENGES:  
SHIFTING POWER IN  
UNCERTAIN TIMES  
12-14 August 2009



### ***KwaDukuza Municipality v SALGBC & others [2008] 11 BLLR 1057 (LC)***

- Commissioner granted “protected promotion” to EE who was denied the chance to apply for a promotional post because the municipality failed to advertise it.
  
- RC held:
  - Protected promotion is recognized by the Public Service Code, but such relief unreasonable where the EE had failed to prove that he would have been successful had he applied for the post [damages].
  
  - Relief of protected promotion is a disguised form of indefinite compensation not recognized by LRA.
  
  - Impermissible for a commissioner to substitute her own decision for that of an employer in promotion disputes [the decision to appoint falls within management prerogative].

## ***The right to affirmative action***

NEW CHALLENGES:  
SHIFTING POWER IN  
UNCERTAIN TIMES  
12-14 August 2009



### ***Dudley v City of Cape Town & another [2008] 12 BLLR 1155 (LAC)***

- An individual EE from a designated group does not have the right to demand preferential treatment in terms of the EEA.
- Designated EE can't claim *discrimination [against]* if ER does not favour him/her by appointing or promoting a non-designated EE
- By not being favoured, the EE is being treated equally.
- Re designated ERs' obligations to draw up equity plans and implement AA measures: the EEA prescribes a process of monitoring and enforcement of such through the DOL by means of written undertakings and compliance orders. Where an ER fails to comply with a compliance order, the DG of the DOL may institute proceedings in the LC to compel compliance.



- An individual EE has no right to approach the LC on *a claim* that the ER has failed to implement AA measures *before* the aforementioned monitoring and enforcement process by the DOL has been exhausted.
- If an ER is failing in its AA obligations, an aggrieved EE must report the matter to the Department of Labour
- Q that arises - is an individual entitled to institute such a claim at some stage *after* the DOL processes.
- LC – Chpt 111 – designated ER’s AA obligations - complaint based on numbers, time schedules, policies – no focus on individual EE.

## ***Equity plans and the defence of affirmative action***

NEW CHALLENGES:  
SHIFTING POWER IN  
UNCERTAIN TIMES  
12-14 August 2009



Must an ER have an equity plan before it can raise the defence of AA?

***Gordon v Department of Health: KwaZulu-Natal*** [2008] 11 BLLR 1023 (SCA)

- Constitution is committed to substantive equality and permits unequal treatment where the objective is to promote equality.
- But such unequal treatment must be effected by means of 'measures designed to achieve' adequate protection and advancement of designated groups.
- Decisions to appoint or promote designated candidates simply because they are such are irrational, arbitrary and unfair.



- **AA measures and decisions must be rationally connected with the purpose of ensuring equitable representation of suitably qualified EEs from designated groups in the workplace.**
- **To be rationally connected with this purpose, affirmative action must be applied in terms of a properly formulated equity plan**
- **LC was incorrect to conclude that it was not a requirement for the Department to have an equity plan first before appointing an AA candidate on the basis of race.**
- **Gordon's non-appointment amounted to unfair discrimination on the basis of race.**

## ***When AA targets have been reached***

NEW CHALLENGES:  
SHIFTING POWER IN  
UNCERTAIN TIMES  
12-14 August 2009



### ***Reynardt v Unisa [2008] 4 BLR 318 (LC)***

- Where an ER has achieved its AA targets and equitable representation, decisions based on AA amount to unfair discrimination.
- Also amounts to a breach of the ER's equity plan if the plan provides that where a department had achieved equitable representation, the ER would apply the principle of 'the most suitable candidate' in filling of vacancies.

## ***Unfair Discrimination***

NEW CHALLENGES:  
SHIFTING POWER IN  
UNCERTAIN TIMES  
12-14 August 2009



### ***Ditsami v Gauteng Shared Services Centre (JS746/06)***

- An EE is entitled to claim damages for unfair discrimination under the EEA *after* successfully instituting action for unfair dismissal under the LRA. The second action is not *res judicata* as the relief and cause of action is located in different legislation.

### ***Chizunza v MTN (Pty) Ltd [2008] 10 BLLR 940 (LC)***

- Pleading mere arbitrary treatment is not sufficient to constitute unfair discrimination in terms of the EEA.
- There must be a link between the alleged differentiating conduct and a listed ground and, where the discrimination on an unlisted ground is alleged, the applicant EE must prove the differentiation amounted to ‘discrimination [*Harksen v Lane NO 1998 (1) SA 300 (CC)*].



### ***Zabala v Gold Reef City Casino* [2009] 1 BLLR 94 (LC)**

- In discrimination claims the EE must first prove that s/he had been treated differently from other EEs and explain the basis of the comparison.

## ***Rights and interests disputes***

NEW CHALLENGES:  
SHIFTING POWER IN  
UNCERTAIN TIMES  
12-14 August 2009



### ***NPA & others v PSA & others [209] 4 BLLR 362 (LC)***

- **Facts: *ito* the Public Service Regulations of 2001, posts in the NPA were upgraded. However, the regs provided that salary increases for upgraded posts could only be granted if the department had funds for the increases, which the NPA did not have and the Treasury refused to give funds.**
- **What was to happen once the job grading process was completed was that those EEs whose jobs were upgraded would be entitled to a wage increase.**
- **This brought into the dispute a major component of a rights dispute because the legislation provided a legal impediment to the demand.**
- **Thus disputes in which EEs seek to create fresh rights [in this case a wage increase] are not necessarily interest disputes.**

## ***Non-parties to Bargaining council's right to strike***

NEW CHALLENGES:  
SHIFTING POWER IN  
UNCERTAIN TIMES  
12-14 August 2009



### ***Bravo Group Sleep Products (Pty) Ltd & another v CEPPWAWU & others*** **[2009] 2 BLLR 114 (LC)**

- Where a Main Collective Agreement on wages is concluded between parties to a BC and has not as yet been extended to non-parties by the Minister or in terms of the council's constitution, the agreement is binding only on signatories to the agreement and non-party unions may strike over issues covered by the agreement.

## ***Lawful Strike demands***

NEW CHALLENGES:  
SHIFTING POWER IN  
UNCERTAIN TIMES  
12-14 August 2009



### ***City of Johannesburg Metropolitan Municipality v SAMWU & others (J60/09)***

- Strike in support of a demand for the *lawful* suspension of managers protected because the LRA does not require such demands to be referred for arbitration or adjudication.
- The demand does not prevent the ER from satisfying itself on all aspects of a fair suspension.

## ***No rewards for non-strikers***

NEW CHALLENGES:  
SHIFTING POWER IN  
UNCERTAIN TIMES  
12-14 August 2009



Section 5 of LRA – ERs may not discriminate or victimize EEs for exercising their right to engage in a protected strike.

### ***NUM v Namakwa Sands Ltd***

- Making extraordinary payments and granting extraordinary overtime to non-strikers to do the work of protected strikers constitutes a breach of section 5 and impermissible power play.
- However the court was not prepared to order the company to pay the strikers an amount equal to that earned by the non-strikers during the strike.

## ***Minimum service agreements***

NEW CHALLENGES:  
SHIFTING POWER IN  
UNCERTAIN TIMES  
12-14 August 2009



### ***Eskom Holdings (Pty) Ltd v NUM & others [2009] 1 BLLR 65 (LC)***

ER refused to conclude minimum service agreement with union. Union referred a dispute to the CCMA, requesting it to conciliate, failing which arbitrate with a view to determining the terms of a minimum service agreement for ratification by the ESC.

LC held:

- CCMA lacked jurisdiction to entertain the dispute.
- *Ito* LRA, ERs and EEs in ES may conclude CA relating to minimum services for ratification by the ESC.
- Where the parties engaged in ES are unable to resolve disputes by collective bargaining, they must refer the dispute for compulsory arbitration.
- The result of this process can only be an “award”, not a “collective agreement”
- Thus the only forum that may intervene in such disputes is the ESC.