

# LEGISLATION AND EMPLOYMENT RELATIONS IN SOUTH AFRICA: A NARRATIVE OVERVIEW OF WORKPLACE DISPUTE

*Shadrack Themba Mzangwa\**

## Abstract

This paper provides an overview of legislative measures applied in handling grievances and disciplinary matters in the workplace from the South African perspective. South Africa is one of the unionised countries in the world and the involvement of trade unions in resolving disputes including grievances and disciplinary matters is crucial. Trade unions, employers' organisations and the state play an integral role in employment relations. Unions represent their members during dispute proceedings at various institutions where they (trade unions) are recognised. The country's statutory measures must always be adhered-to in the handling of grievances and disciplinary procedures. The author relates the manner in which grievances and disciplinary proceedings are handled in a unionised workplace environment.

**Key Words:** Trade Union, Employment Relations, Legislation, Code Of Good Practice, Grievances And Disciplinary Procedures

*\* Department of Economics, University of South Africa, South Africa*

## 1. Introduction

Based on statistics presented by Adcorp Employment Index in 2013, only one in four workers (i.e., 25.5% of the workforce) in South Africa are unionised. This very statistics indicates that 43% of the people who join the workforce for the first time join trade unions and this leads to the increasing number of union membership in the public sector (ADCORP, 2013). Trade unions represent their members in a number of disputes including issues of grievances and disciplinary proceedings in institutions where trade unions are recognised.

Trade unions are voluntary associations formed to protect the common interests of members and promote their interests in relation to employers. Their primary function is to see to it that employees are protected against unfair labour practices. Unions use their collective power to negotiate with employers on various issues that relates to their members. These issues may include employees' payments, job security, working hours, leave days and other equally important matters (Trade Union Readcast, 2009). Trade unions may even engage in political activities where legislation affects their members (Johnson, 2000).

To contextualise the practice of employment relations with direct reference to handling grievances and disciplinary procedures, a clear grasp of the context of labour legislation is required. Von Holdt and Webster (2005) argue that the approach to grievances and disciplinary actions taken in the

workplace is constituted through compliance to the legislation. The processes set out by the labour legislation must be followed by the employers and employees. African countries like Ghana, Nigeria, Kenya, Zambia and Mauritius, saw enactment of new legislation. The new legislation is destined to regulate employment relations as contained by democratic principles (Horowitz, 2007). The main attribute of new legislation is to emphasise and encourage dispute resolution through peaceful negotiations. Furthermore, new legislation simplifies statutory requirements for the establishment of new collective representation in a democratic manner as advocated by Koçer and Hayter (2011).

South Africa as one of the African countries with a young democracy since 1994 is not an isolate from countries such as the ones stated above (Wood, 1998). South Africa, regards the Constitution (Act 108 of 1996) as the supreme law of the country. The new labour legislation which regulates employment relations in South Africa is ratified on the constitution since 1996 (Mhango, 2014). This article aims to provide an overview of employment relations and the application of legislative measures in South Africa. Attention is given to the handling of grievances and disciplinary matters in a unionised workplace environment. The paper is arranged as follows: Conceptualisation of employment relations is presented in Section two then followed by the legislative framework regulating employment relations in Section three. Section four and five present the lodging of grievances and disciplinary

issues and the code of good practiced in the workplace respectively. A brief discussion of the participants on employment relations is presented in Section six before concluding remarks are summarised in Section seven.

## 2. Conceptualising Employment Relations and Elucidation of Grievances and Disciplinary Procedure

Nel and Holtzhausen (2008) state that the early attempt to define the field of industrial relations was made by Dunlop based on the work of various sociologists from the systems perspective. Nel and Holtzhausen (2008), regards the industrial relation system as follows:

“It is comprised of certain actors (managers, workers, and specialised government agencies), certain contexts (technological characteristics, the market and the distribution of power in the society), ideology which bind the industrial relations system together, and a body of rules created to govern the actors at the workplace and work community” (Nel & Holtzhausen, 2008:4).

According to Nel and Holtzhausen (2008), since the early primarily sociological perspectives, the focus has much been on rule-making and work-control processes in an employment context. Gradually, different perspectives developed as Nel and Holtzhausen (2008) further argue that, since the 1980s the definition and scope of industrial relations have attracted renewed interest and debate. Furthermore, in the early 1990s the debate was taken a step further when industrial relations or labour relations were termed employment relations (Nel *et al.*, 2012:1).

Gough *et al.* (2006) elucidate that any analysis of employment relations needs to be understood in a context of broader theories about society and organisation. Complex societies and organisations require human to understand employment relations with an open mind. The pluralists principle imply that employment relationships, as subsystems of the society, are the platforms in which the diverse and conflicting interests of employees and employers are harnessed towards compromise and consensus (Finnemore and Van der Merwe, 1996). Furthermore, Finnemore and Van der Merwe (1996) argue that the basic principles of pluralism in employment relations are considered as the backdrop to structuring grievances and disciplinary procedures in the workplace.

A grievance procedure, in the absence of union representation, may exhibit some weaknesses, allowing management to be both judge and plaintiff as Nurse and Devonish (2007) point out. Without union representation, the employee with a grievance is unlikely to find satisfaction. Fair management should recognise the existence of a union and its representatives, as they (union representatives)

represent and accompany members who are involved in a grievance or disciplinary matter (Nurse & Devonish, 2007).

According to Jordaan and Stander (2004), employee dismissal in the workplace is a major concern of both unionised and non-unionised members. There are various matters that may lead to dismissals of employees from the workplace. Jordaan and Stander (2004) further emphasise that grievances and disciplinary procedures are processes that can be followed before an employee is dismissed and that the trade union's role is to represent its members who are involved in grievances and disciplinary actions against the management in the workplace.

Nurse and Devonish (2007) argue that a grievance procedure should be one of the prerequisites for a collective agreement. According to Nurse and Devonish (2007), in any conflict arising in the workplace between the employer and an employee, the grievance procedure should be regarded as an institutional device, as well as a better practice for handling and resolving conflict. Reinforcing their argument, Nurse and Devonish (2007) maintain that handling of a grievance matters has become institutionalised by management and employees in general, acknowledging the differences which derive from unavoidable conflict between employees and employers. Grievance procedures are thus specifically designed to resolve conflict and secure peace in the workplace. In defining grievance, Britton clarifies it as:

“Any dispute that arises between an employer and the employee which relates to the implied or explicit terms of the employment agreement or contract” (Britton, 1982:12)

A grievance is a formal complaint, which may be defined through a specific institution's policy on conflict resolution, as outlined by the formal process to address day-to-day complaints or problems (Hunter and Kleiner, 2004). Hunter and Kleiner (2004) also suggest that the rationale for making a grievance depend on whether or not there is just cause or reason for such a complaint.

In many countries, including South Africa, the collective agreement settled between labour organisations and the employers consists of terms and conditions governing the various stages in handling a grievance (Nurse & Devonish, 2007). This practice is applicable in both the public and the private sectors, though the distinct stages are more likely to be established in the unionised sectors and as more formalised systems.

A grievance may be filed by any employee who is a member of a labour organisation or association against or on behalf of such an organisation. The most commonly reported grievances from employees are complaints about a malfunctioning employment agreement between the two parties (employer and employee), unfair treatment by the employer, and defamation. For a grievance to be resolved

effectively, the employer is obliged to follow certain guidelines (HRA, 2011; Hunter and Kleiner, 2004). As stated by HRA (2011), the grievance procedure comprises a number of steps at various levels which need to be followed before the matter can be resolved. The first step is mainly informal, offering an opportunity for the worker and the line-manager to sort out the dispute with the assistance of a union shopsteward. The next step is a formal written grievance, in which the worker or the union appeals to the higher management of the organisation. If the matter remains unresolved after the second step, an appeal is made to a neutral arbitrator.

Hunter and Kleiner (2004), emphasise that, in most instances, grievances are resolved at the very first two steps of the procedure if all parties are willing to reach arbitration. This contention was confirmed by findings of a study conducted by Lewin and Peterson (1988) on grievance procedure at a specific company in New York, where the majority of cases reached arbitration. In particular, Lewin and Peterson (1988) found that expedited grievances reached settlements more rapidly.

Albrecht and Thompson (2006) define the disciplinary procedures as a structured approach which an employer uses to deal with ill-discipline at the workplace. The objective of the disciplinary procedure is to warn individuals whose conduct gives cause for dissatisfaction in the workplace, and this practice is applied in order to improve their behavior or their performance (Farnham, 2000).

Many institutions use criteria guided by policy and labour laws to determine how an organisation has to discipline an employee (BNA Editorial Staff, 1959-1987). According to Hunter and Kleiner's (2004) analysis, complaints by employers which most commonly lead to a disciplinary action against employees are absenteeism, misconduct, insubordination, and substance abuse, for example where employees are found drinking alcohol during working hours. Other complaints include unsatisfactory performance, as well as safety and health violations in the workplace. Warnings, temporary suspension from work, and permanent release from occupation are typical penalties imposed by management to discipline employees.

Folger and Cropanzano (1998) argue that implementation of the disciplinary code and procedures in an organisation entail the application of justice in the workplace. The implementation of the disciplinary code and procedures imply fairness concerning the methods, procedures, and processes that are used to determine fair outcomes on disciplinary issues. Concurring to this argument, Beugre (1998) indicates that organisational justice involves a consideration of what or which issues are perceived to be fair towards bringing changes in the workplace. These changes could be social or economic and may involve the employee's relations with the supervisors, co-workers and any other

workers generally in an organisation as a social system.

### **3. The Scope of Legislative Framework Regulating Employment Relations in South Africa**

The Constitution of the Republic of South Africa (Constitution) (Act 108 of 1996), the Labour Relations Act (LRA) (Act 66 of 1995), and the Basic Conditions of Employment Act (BCEA) (Act 75 of 1997) provide the context of the grievances and disciplinary procedures. Alongside their subsequent amendments, these three pieces of legislation constitute a guide to the application of the labour laws in South Africa. Employers are obliged to include details of any workplace grievances and disciplinary procedures in terms of employment of their employees. The Disciplinary Code and Procedure in the LRA set to promote respect as well as uphold the common law and statutory rights of both the employer and the employee in the workplace or the institution (Saundry *et al.*, 2008; Antcliff & Saundry, 2009).

Section 4(1) of the Code of Good Practice (Schedule 8) of the Labour Relations Act 66 of 1995 makes provision that investigations must be conducted by the employer so as to find out if there are justifiable reasons which prompt to the dismissal. The involved employee should be informed by the employer regarding accusations conducted against him or her in a form of language which is clearly understood by the employee. The involved employee should be given a chance to make his or her own statement pertaining allegations posed to him or her. Such employee is fully entitled to be given sufficient time to prepare a response towards the case and have a choice to get union representative or fellow employee's assistance. Once the enquiry has taken place and the decision has been taken, the employer must communicate the outcomes to the employee and the employee's representative. Most preferably, a written notification of the decision taken is expected in this regard (ULR, 2006a).

Employee participation in decision-making as well as obligations pertaining labour relations' issues are contained in the LRA. Employee participation is the influence which employees have on decision making, ranging from task centred to power centred forms as noted by Anstey (1997) and Salamon (1992). Employee participation promotes industrial peace while achieving social justice and employee protection. The LRA guided by the Constitution has a priority over other labour laws. The BCEA specifies the basic conditions of employment in order to protect the employees from malpractice possibly implied by the employers (Bendix, 1996).

The above mentioned legislation established the right to fair labour practice as well as the right to participate in the activities and programmes of a trade

union. Trade unions in South Africa have gained the recognition by the State and other institutions for their members. As such, trade unions are essential links between employer and employee in their relationship and in the regulation of labour relations. In this regard, trade unions play a pivotal role in the preservation of industrial peace and social progress (Frauenstein, 1993).

Through provisions of the LRA, bargaining councils are formed primarily to deal with collective agreements between employers and employees. Bargaining councils are formed by registered unions and employers' organisations. Amongst other responsibilities of the bargaining, is to handle disputes and make proposals on labour laws and policies regulating labour processes. Sectors which are excluded from the bargaining councils are the South African National Defence Force (SANDF), the National Intelligence Agency (NIA) and the South African Secret Service (SASS) (Moore, 2006).

Sections 85 and 86 of the LRA make provision for consultation between employer and employee and matters requiring joint decision-making within a workplace forum. Trade unions and employee organisations play an important role in the labour relations of large organisations. Much of the emphasis of labour relations in the current legislative climate in South Africa is on the facilitation of communication between employees and employers (Olivier, 1996; Nel, 2002).

The LRA also confers registered unions with the power to negotiate collective agreements. It accommodates both the employer and employees' right to negotiate employment relations, enabling unions to negotiate on behalf of their members. It is a legal requirements applied to engage on any matters in collective bargaining (Barry & May, 2004).

### **3.1 Conditions of Work**

The BCEA stipulates the minimum conditions of employment in order to protect employees against exploitation. It specifies the time an employee could work, overtime, time-off duty or leave days of an employee per annum. Thus, it covers the main conditions of employment and as such, when the organisation develops conditions of service, the management considers the BCEA. The BCEA confers power on labour inspectors to enforce basic conditions and compliance (Wille *et al.*, 2007). The BCEA of 1997 and subsequent amendments, forms the pivot of labour legislation in post-apartheid South Africa.

### **3.2 Legislation and the Role of Trade Unions**

Employers are obliged to include details of any workplace grievances and disciplinary procedures based on the legal requirements stipulated on the

LRA. In this regard, formal grievances and disciplinary procedures are common in most, if not all workplaces or institutions. Saundry *et al.* (2008) are of the view that the introduction of legal handling of the grievance procedures and applying dismissal in the workplace have permanently tighten and secured regulatory practice all over the industry. The unions' representatives are legally allowed to assist their members in many organisations and this principle is observed to be appropriate in dealing with grievances and discipline in the workplace.

In support of the assertion made above, Salamon (1998) argues that recognition of the trade union is possibly the most significant stage in the development of an organisation's employment relations system. He further states that acknowledgement of the unions bestow their (unions) recognition to exercise their rights and ensure their capacity in their role. Thus, the right to represent and protect union members' interest is acknowledged by the employers whilst they (employers) become involved in the control and practice of employment relations in the workplace.

When a union is recognised by the employer in the workplace, it is permissible to visit its members in various constituencies and gain access at ease to the premises. The recognition allows the union to discuss a variety of labour issues with their members without any difficulty in meeting their members. Feedback on resolutions taken between union and management are easily communicated amongst members and their mandate reach the union structures quite simple (Barry & May, 2004). Since the LRA makes provision to the statutory recognition procedure, an increase of trade unions' recognition agreement occurs as influenced by the LRA. It appears that the statutory model has encouraged capacity and unions' strengths to increase regarding engaging on discussions with employers (Wood, 2008; Moore, 2006).

When an employee is lodging a grievance matter, he or she has a right to consult fellow worker for assistance. Employees have the right to be accompanied to attend a disciplinary hearing. Any employee can choose to be accompanied by a co-worker or a union official. Often, the union official will be a workplace representative who is also a co-worker (BIS Acas, 2010). According to Barry and May (2004) the objectives of the Employment Relations Act (ERA) applied in New Zealand are similar to that of the LRA applied in South Africa.

An indication made by Von Holdt and Webster (2005) is that, the main focus of union is to look after its members and ensure that the members' mandate is carried as required. Von Holdt and Webster (2005) conclude that while unions appear not to have entirely satisfied their membership, unions have made their mark through championing in the labour policy planning, its control and the approach to engage employers. Thus, unions need to expand their communication channels and raise concerns

pertaining existing imbalances and inequalities in an attempt to eradicate dissatisfaction of their members and secure the rights of marginalised communities.

**4. Dispute Resolution and Lodging of Grievances and Disciplinary Issues**

The center piece of the dispute resolution system in South Africa is the Commission for Conciliation, Mediation and Arbitration (CCMA) as introduced through the LRA. The dispute resolution system provides a means whereby councils may become accredited to resolve various types of disputes in the public sector and various or any other types of workplace dispute by means of conciliation and arbitration. In this regard, the statutory council is established on application by either the representative trade union or the employers’ organisation. Thus, should a member of union have a dispute against employer, the union representative is allowed to accompany their member to declare their dispute to the CCMA with an aim to get the matter resolved externally (Godfrey *et al.*, 2010).

If issues of grievances and disciplinary procedures are handled effectively by the employer and employee or employee representatives, that can help to minimise the number of cases referred to the

CCMA (Bendeman, 2001). Effective handling of grievances and disciplinary matters can also improve relationships in the workplace. A relationship between trade unions and management, though they may differ in their views is very important in the work environment. Management and trade unions are the key role players concerning labour matters and to resolve labour related conflicts and misunderstandings.

According to Antcliff and Saundry (2009), it is a statutory right and is important that an employee be accompanied within grievances and disciplinary hearings. Antcliff and Saundry (2009) are of the opinion that by providing access to workplace representatives, employees would be treated more fairly within grievances and disciplinary processes. A grievance can either be initiated by the employee or the supervisor. A supervisor should intervene when employees are unable to settle differences on their own and in such cases morale could be uplifted amongst the subordinates (ULR, 2006b). Table 1 below presents a standard form that must be completed by the complainant (aggrieved party). The other involved role-players must also complete the form before the grievance proceedings could unfold or take place.

**Table 1.** A typical template which is completed in reporting a grievance

<b>NAME:</b>		<b>EMPLOYEE NUMBER:</b>	
NATURE OF GRIEVANCE:		SOLUTION REQUIRED:	
Date on which grievance was reported: _____ 2014 (date) _____		To Supervisor (name):	
SIGNATURE OF AGGRIEVED EMPLOYEE:		Date of receipt by Supervisor: _____ 2014 (date) _____	
		SIGNATURE OF SUPERVISOR:	
<b>FOR USE BY SUPERVISOR HANDLING OF GRIEVANCE</b>			
DATE:	STEPS TAKEN:	SIGNATURE:	
<b>FOR USE BY LABOUR RELATIONS</b>			
Stage completed:	Code:	Duration:	
REMARKS		Step 1: Step 2: Step 3:	

Source: ULR (2006b) 1-4 Annexure 1 B-iv

Handling grievances successfully requires commitment. A situation where the conflict affects the productivity or service and morale of other employees is an indication of an escalation of the situation. A superior must then intervene where employees are not making an earnest effort to get the issue resolved, and are deadlocked. When employees are unable to resolve disputes and grievances on their own, it is the supervisor’s responsibility to take charge and implement the appropriate action.

A grievance could be filed by any member of staff who is permanently employed within an institution. Any other employees who are still on probation terms being newly appointed employees in the institution are subjected to complete their employee evaluation period first before the employees could qualify to file a grievance. In this regard, such employees do not yet have access to the grievance procedure for instance on problems corrective action or layoff as well as termination.

Filing a grievance is viewed as a practice whereby employees exercise their rights in their employment relationship without fear of retaliation, harassment or negative impact in the organisation (HRA, 2011).

When filing a grievance, there are time restrictions which are stipulated at each stage of the grievance proceedings which guides the complainant regarding the process. Any extensions to the time limits could only be done if both parties concur to the extension on time required. Importantly on time restrictions, the complainant must ensure to file the grievance in less than ten working days from when the incident he or she is complaining about happened. It can take three to seven days to seat for a grievance matter to be resolved and it could take more days

depending on the availability of the person who is supposed to oversee the process. Grievances must be presented in writing, and a grievance form is used. Any employee can get the grievance form from the Human Resources Office of his or her employer. After completion of the appropriate sections on the grievance form, it could be presented to the immediate supervisor or the line manager of that particular department (HRA, 2011).

Steps in grievance procedures are followed internally and if the matter happens not to be resolved internally, it could be referred to the external bodies. Table 2 below exemplifies steps followed during grievance proceedings.

**Table 2.** Diagrammatic representation of steps on grievance proceedings

		NOTES
<b>STEP 1</b> (Informal)	<b>SUPERVISOR</b>	The Supervisor investigates. Action must be taken within 3 working days of the grievance being reported. If the grievance remains unresolved, proceed to Step 2.
	↓	
<b>STEP 2</b> (Formal)	<b>SUPERVISOR'S LINE MANAGER</b>	The Supervisor's Line Manager investigates. Action must be taken within 3 working days of the referral of the grievance. If the grievance cannot be resolved by the person to whom it has been referred, proceed to Step 3.
	↓	
<b>STEP 3</b>	<b>LINE MANAGER'S IMMEDIATE SUPERIOR</b>	The Line Manager's immediate superior investigates. Action must be taken within 3 working days of the referral of the grievance. If the grievance cannot be resolved by the person to whom it has been referred, proceed to Step 4.
	↓	
<b>STEP 4</b>	<b>EXECUTIVE MEMBER; PERSONNEL MATTERS OR HIS/HER PROXY</b>	The Executive member responsible for Personnel matters or his or her proxy investigates. Action must be taken within 3 working days of the referral of the grievance. If the grievance cannot be resolved by the person to whom it has been referred, proceed to Step 5.
	↓	
<b>STEP 5</b>	<b>CCMA*</b>	
	<b>CONCILIATION</b>	
	↓	*Commission for Conciliation, Mediation and Arbitration
↘	<b>ARBITRATION</b>	
		<b>LABOUR COURT</b>

Source: ULR (2006b) 1-4 Annexure 1 B-i

Antcliff and Saundry (2009) argue that the crucial and significant representation of employees in the workplace primarily involves effective

representation. Effective employee representation reduces conflict and meanwhile making it feasible to resolve individual disputes successfully in the

workplace. The steps in disciplinary procedures are progressive as portrayed in table 3 shown below.

**Table 3.** Delegation of authority in respect of the imposition of disciplinary procedure

Disciplinary measure	Deputy Director & or Divisional Head of Department	Director	Chief Executive Officer, Executive Director
Verbal warning or reprimand	#	#	#
Written warning	#	#	#
Final written warning	Recommend	#	#
Suspension without pay	Recommend	Recommend	#
Demotion	Recommend	Recommend	#
Dismissal (including summary dismissal)	Recommend	Recommend	#

Source: LRC (2000)

First is a verbal or oral warning, followed by a written warning, then a final written warning, and lastly a dismissal or suspension without pay or demotion depending on the merits of the case. The hashtag (#) sign or symbol on the table shows the stages which the manager affected has the authority to execute or enforce the sanction concerned. In some instance it will depend on the type of an offence committed which could lead to dismissal, for example theft. Based on procedure, it is permissible that an employee could be entitled to get full payment while on suspension due to a pending matter still investigated against such employee. Disciplinary instances vary as each case has its own merits, thus there are more serious actions where dismissal could be declared at an earlier stage (LRC, 2000).

Effective employee representation could prolong further than narrow margins of accompanying workers to formal disciplinary hearings. An argument made is that, in resolving workplace disputes, effective management could assist. However, previous research, using data from Workplace Employment Relations Survey, found little association between management practices and unions regarding disciplinary outcome issues (Edwards, 1995; Knight & Latreille, 2000). Nonetheless, good work relations between employers and trade unions are underpinned by presence of fair management as Edwards (2000) suggests. He further argues that it is important to shape both formal notions of disciplinary procedures and the development of self-discipline.

**Table 4.** Disciplinary hearing proceedings (South African Labour Guide)

<p><b>Confidentiality:</b> Discipline is a confidential matter, therefore</p> <ul style="list-style-type: none"> <li>Hearings are held in camera, and</li> <li>Only those persons permitted in terms of the disciplinary procedure may be present</li> </ul> <p><b>Laying the charge:</b> During the 3 hearing steps, the employee is confronted with the relevant facts by</p> <ul style="list-style-type: none"> <li>Laying the charge(s)</li> <li>Calling of witnesses and</li> <li>Submission of any relevant documents</li> </ul> <p><i>The employee and his representative is given the opportunity to study any documents and cross-examine witnesses</i></p> <p><b>Presenting the defence:</b> The employee and his representative must be given the opportunity to</p> <ul style="list-style-type: none"> <li>Submit evidence</li> <li>Submit relevant documentation, and</li> <li>Call witnesses</li> </ul> <p><b>Returning a verdict of guilty</b></p> <p>If the employee is found guilty as charged, the chairperson of the hearing must advance reasons for finding the employee guilty as charged;</p> <ul style="list-style-type: none"> <li>Give the employee or representative opportunity to present mitigating circumstances;</li> <li>Decide on applicable disciplinary action to be taken against the employee;</li> <li>Furnish reasons for deciding on the disciplinary action; and</li> <li>Give the employer or representative opportunity to address him on the applicable disciplinary action</li> </ul>
---

Source: South African Labour Guide (2010)

The steps or stages in table 4 are the established and acceptable procedures in South Africa (SALG, 2010). All employees appointed by the institution must have access the policy and procedure document which contains clear guidelines regarding grievances and disciplinary procedures. The employer must ensure if the employees or the union are aware of the policy and procedures' document and that union representatives understand the content thereof.

It is stipulated in the disciplinary code and procedure document (ULR, 2006a) that every manager is responsible for the discipline of the staff members (subordinate – employees) who report to him or her. The responsibility of the manager includes the duty to act as chairperson in disciplinary inquiries concerning the employees reporting to such particular manager or superior at managerial position. Furthermore, where at all possible, disciplinary action should be initiated at the lowest level subject to delegation of management authority as set out in specific paragraph relevant to disciplinary in the document itself.

## 5. Code of Good Practice in the Workplace

A Code of Good Practice is applied in many organisations as a prerequisite of Schedule 8 of the LRA. The provision of Code of Good Practice is to guide employer, employees as well their representatives about the ethics which are applied and expected in an organisation. The general principles or ethics are predestined and functional in the use of grievances and disciplinary procedures. Clear guidelines on the application of grievance and disciplinary procedures, the best practice and effect of such procedures are outlined (LRC, 2000).

According to the SALG (2010), it is stipulated in Schedule 8 of the LRA under section 3 that "all employers should adopt disciplinary rules that establish the standard of conduct required of their employees." The Disciplinary Code and Procedure of an organisation must be made accessible and conveyed to all employees within an organisation. It must be made available in a form of writing as well as contain content of language that is clearly understood by employees. This is to avoid instances whereby employees are subjected to be disciplined for breaking a rule which they (employees) are absolutely not aware of, hence the employer have to make the organisational policies clear and accessible to all.

An emphasis is made that the management of an organisation must have clear policies on how to address and implement disciplinary measures where offences occur. Some of the commonly occurring offences in the workplace which employees commit or find themselves tempted to include but not limit to insubordination, absenteeism, fraud, consumption of alcohol on the organisational premises, consistent late coming at work, taking of legal forbidden substance

having a narcotic or and other offences (SALG, 2010).

For the purposes of fair use of the Code of Good Practice for both employees and the employers, clear definitions and descriptive aspects are outlined. The descriptions includes for instance, indications of what entails 'employee representative' which could either be a union representative or fellow colleague requested by an employee based on his or her choice. It includes indications like, which employees' organisation is eligible to represent a member, for example a registered trade union but not any other person or body unconnected with the organisation. The Code of Good Practice entails a number of stages that must be followed in handling a grievance and disciplinary matter. The processes or stage includes who can the employee report the matter to, for instance to his or her line manager in the first instance. And then escalate it further if the matter does not receive attention it deserves. Thus, depending on a particular reported matter, a number of steps involving more senior management structure of an organisation could be reached until the matter is resolved. This would be internal process of handling the matter. Failure to resolve the matter appropriately and or internally could result to the matter being referred to the third party or externally in accordance with the agreed arrangements (LRC, 2000).

For employees or employers to comply with the processes of the Code of Good Practice, the employer-employee relationship plays a role. In South Africa, the legislation makes clear provisions in this regard. There are countries whereby the relationship between the rule of law and the practice in employment relations has been debatable for a long time like in Great Britain. According to the British traditional "voluntarists" perspective, the law had no position in industrial operations. The voluntarists perceive the 'absence of law in industrial operations' to be what union and employers preferred (Howell, 2004). According to Moore (2006) citing Brown's (2004) analysis, collective bargaining was the most possible system than any other means of having minimal legal intervention in employment relations.

The disciplinary Code and Procedure of any institution should not set down rigid rules which could be applied unquestioned. It should make consideration of the working conditions as well as circumstances associated particularly with the organisation's commonly divergent activities (ULR, 2006a). Saundry *et al.* (2008) portend that the Code of Good Practice sets out principles of handling grievance proceedings and disciplinary hearings in a much straightforward approach to make it uncomplicated for the involved parties. Employees and employers should find it helpful to use the Code of Good Practice based on its clear guidelines and all general terms on how to handle various grievance or disciplinary matter. All members of the management of the institution on various levels as well as



employees, particularly union representatives are highly expected to familiarise themselves with the disciplinary code of their respective organisation. Everyone in the organisation or institution is obliged to adhere to the disciplinary code (LRC, 2000).

## **6. Discussion**

In South Africa, trade unions play an integral role in labour markets leading since the dawn of democracy in 1994 (Hirsch, 2004). The role of trade unions in the mediating processes has increased and unions continue to exercise substantial political influence in various platforms which involves the government (state) and employers (Wood, 1998). The trade unions, employers' association and the state, are the prominent participants in employment relations. Koçer & Hayter (2011) as well as Nel *et al.* (2012) concur and provide the interpretation of employment relations' role-players as follows:

### ***The state***

Koçer & Hayter (2011) elucidate that the state plays a major role in the regulation of labour market through laws and enforcement mechanisms. Koçer & Hayter (2011) are of the view that the most crucial role of the state in employment relations is the establishment of institutions for coordination and consultation processes to ensure that economic growth and sustainability are maintained countrywide.

### ***Trade Unions***

According to Pitcher (2007) and Stirling (2011) in Africa during the entire post war period trade unions have been crucial actors whose effect surpassed the domain of employment relations and their demands surprised the ruling elite. In the case of South Africa, it is argued that should it never have been for the trade unions' support towards the liberation of country, chances could have been slim to obtain South African democracy (Baskin, 1991; Innes, 1992). As a result of its role and for improving employment relations, the trade unions are even recognised in the Constitution of South Africa of 1996 as stipulated in section 23.

### ***Employers' Organisations***

Michael (1992) indicates that the employers' organisations have been established since the first half of the 20<sup>th</sup> century signaling the existence of vibrant private sector activities. Koçer & Hayter (2011) argue that in case of African situation, the African employers' organisation emerged lately than the 20<sup>th</sup> century and the African employers' organisations were established in response to the growing strength of trade unions. Employers' organisations has a crucial role to play in employment

relations in South Africa and as such, like the other two indicated employment actors above, these institutions form part of the role players in the National Economic Development and Labour Council (NEDLAC). NEDLAC is an institution established in the context of democratic transition in South Africa with an aim of promoting participation instead of unilateral decision-making (Friedman, 2002). NEDLAC played a major role through involvement of all stakeholders or rather most parts of the society in formulating policies to benefit the majority (Wood and Glaister, 2008).

Based on the pluralists' perspective, differences of interest and conflict do exist in many organisations and this situation is resolved through negotiations (Haralambos and Holborn, 2000). The existence of grievances and disciplinary procedures and the practice thereof indicates realism that differences occur in a workplace and such incident is unavoidable. In this regard, the role played by all three participants in employment relations is not just significant but it is a key factor in bringing about peace through negotiating in good terms. Koçer and Hayter (2011) argue that trade unions, given the emphasis put on dispute resolution, must seek ways to settle their issues without resorting to overt conflict.

## **7. Conclusion**

In concluding this discussion, the remarks expressed by Saundry *et al.* (2008) that the rationale of accompanying employees during grievances and disciplinary hearings is to promote equity and efficiency is worth noting. Saundry *et al.* (2008) also emphasise that employees receive the needed support and advice at a difficult time in the workplace. Those involved in making decision in the workplace, particularly employers should not be deterred in making excessive decisions if it's compliant to the legislation and is viewed to be beneficial to the organisation and its employees. Thus, involvement of union official or representative plays a major role in building a support towards representing members during grievances and disciplinary proceedings. The legislation in South Africa makes provision and allows such practice in the workplace.

Concurring to Koçer and Hayter (2011) it is appropriate to end this paper by recalling that employment relations' actors, especially trade unions, play a crucial roles in all transitions in contemporary history of South Africa. In this regard, it could be argued that it is accepted to expect trade unions to remain important in the future and represent their members on dispute matters including grievances and disciplinary matters provided that union representatives understand the legislation and strive to negotiate in good terms.

## References

1. ADCORP. 2013. Analysis: South Africa's trade unions in crises: Adcorp Employment Index. Report issued in May, 2013, 1-5. Retrieved from: (<http://www.adcorp.co.za/Documents/Adcorp%20Employment%20Index%20-20201305.pdf>) (Accessed on 8 April 2015)
2. Albrecht, K. & Thompson, N. (Ed.) 2006. *Business, the ultimate resource*. 2nd ed. Hong Kong. A & C Black Publishers.
3. Anstey, M. 1997. *Employee Participation and Workplace Forums*. Kenwyn, Juta & Company, 1-3.
4. Antcliff, V. & Saundry, R. 2009. Accompaniment, workplace representation and disciplinary outcomes in British workplaces - just a formality. *Journal of Industrial Relations*, 47(1): 100-121.
5. Barry, M. & May, R. G. 2004. Employee representatives: trade unions legislation. *Journal of Employee Relations*, 26(2), 203-223. Gold Coast, Queensland, Australia, Victoria University of Wellington, New Zealand.
6. Baskin, J. 1991. "Striking Back: A History of Cosatu." Johannesburg: Ravan Press.
7. Bendeman, H. 2001. A report on the Commission for Conciliation, Mediation and Arbitration. Pretoria: University of Pretoria.
8. Bendix, S. 1996. *Industrial relations in South Africa*. Kenwyn: Juta & Company.
9. Beugre, C.D. 1998. *Managing fairness in organisations*. Westport, CT: Quorum Books.
10. BIS (Business Information and Skills) Acas. 2010. *Work Effectively with Trade Unions Window: The Role of Trade Unions and Their Representatives*. Business Link Information Support Compliance: Department for Business, Innovation & Skills Retrieved from: <http://www.businesslink.gov.uk/bdotg/action/detail?itemId=1073792416&type=RESOURCE>. (Accessed on 5 March, 2011).
11. BNA Editorial Staff. 1959-1987. *Grievance Guide*. Washington DC: US Bureau of National Affairs.
12. Britton, R.L. 1982. *The arbitration guide*. Englewood Cliffs, NJ: Prentice-Hall.
13. Edwards, P.K. 1995. Human resource management, union voice and the use of discipline: an analysis of WIRS3. *Industrial Relations Journal*, 26, 204-220.
14. Edwards, P.K. 2000. Discipline: Towards trust and self-discipline. In S. Bach, & K. Sisson (Eds.), *Personnel management: Theory and practice*. London.
15. Farnham, D. 2000. *Employee relations in context*. 2nd ed. London: Short run Press Publishers.
16. Finnemore, M. & Van der Merwe, R. 1996. *Introduction to industrial relations in South Africa*. Johannesburg: Lexicon.
17. Folger, R. & Cropanzano, R. 1998. *Organisational justice and human resource management*. Sage, Thousand Oaks, CA.
18. Frauenstein, A. M. 1993. Perception of the role and function of trade unions amongst employees of the Cape Provincial Administration. Stellenbosch: University of Stellenbosch.
19. Friedman, S. 2002. Where to for an economic Codesa? *South African Labour Bulletin (SALB)*, 26(2), 53-56.
20. Godfrey, S., Maree, J., Du Toit, D. & Theron, J. 2010. *Collective bargaining in South Africa: Past, present and future*. Cape Town: Juta & Co.
21. Gough, R., Teicher, J. & Holland, P. 2006. *Employee relations management: Australia in a global context*. (2nd ed). Australia: Pearson Education.
22. Haralambos, M. & Holborn, M. 2000. *Sociology: Themes and perspectives*. (5th Edition. Hammersmith: Collins.
23. Hirsch, B.T. 2004. "What Do Unions Do for Economic Performance?". *Journal of Labor Research* 25(3), 416-455.
24. Horowitz, F. 2007. "Cross-Continental Trends and Issues in Employment Relations in Africa", in Wood, G. and Brewster, C. (eds). 2007. *Industrial Relations in Africa* (New York, Palgrave Macmillan), 219-234.
25. Howell, C. 2004. "Is there a third way for industrial relations?". *British Journal of Industrial Relations*, 42 (1), 1-22.
26. Human Resources Administration (HRA) 2011. *Human Resources Administration is recognised by the IUPUI Community as a partner in achieving organisational and individual success*. Learn-More, issued in May 2011. Retrieved from: <http://hra.iupui.edu/performance-management-module/index.html>. (Accessed on 21 May, 2011).
27. Hunter, S., & Kleiner, B.H. 2004. Effective grievance handling procedures. *Journal of Management Research News*, 27(1&2), 85-94.
28. Innes, D. 1992. "Labour Relations in the 1990's". In Innes, D, Kentridge, M & Perold, K (Eds). 1992. *Power and Profit: Politics, Labour, and Business in South Africa*. Cape Town: Oxford University Press, 184-193.
29. Johnson, A.G. 2000. *The Blackwell Dictionary of Sociology: A user's guide to Sociological language*. 2nd ed. Massachusetts, USA: Blackwell Publishers.
30. Jordaan, B. & Stander. 2004. *Dismissal: Principles, checklists and forms*. Claremont: South Africa, Siber Ink Publishers.
31. Knight, K.G. & Latreille, P.L. 2000. Discipline, dismissals and complaints to employment tribunals. *British Journal of Industrial Relations*, 38(4), 533-555.
32. Koçer, R.G. & Hayter, S. 2011. Comparative study of labour relations in African countries. Working Paper 116: Amsterdam Institute for Advanced labour studies. University of Amsterdam.
33. Labour Relations Commission (LRC). 2000. *Code of Practice Grievance and Disciplinary Procedures: The draft Code of Practice set out for the purposes of industrial relations in Ireland, Declaration Order 146 of 2000*, 1-6. Retrieved from <http://www.employmentrights.ie/en/media/CodeofPracticed> (Accessed on 13 March, 2011).
34. Lewin, D. & Peterson, R.P. 1988. *The modern grievance procedure in the United States*. New York: Plenum Press.
35. Mhango, M. 2014. "Is it time for a coherent political question doctrine in South Africa? Lessons from the United States". *Journal of Legal Studies* (7): 457-493. Leiden: Brill Nijhoff.
36. Michael, G.M. 1992. "Role of Trade Unions and Employers' Organizations in the Social and Economic Development of Africa", Fashoyin, T. (ed.). 1992. *Industrial Relations and African Development* (New Delhi, South Asian Publishers PVT LTD), pp. 28-51.
37. Moore, S. 2006. Assessment; collective bargaining; trade unions. *Journal of Employee Relations*, 28(4), 363-373. Working Lives Research Institute, London Metropolitan University, London, UK.

38. Nel, P.S. 2002. South African employment relations: Theory and practice. 4th ed. Pretoria: Van Schaik.
39. Nel, P.S. & Holtzhausen, M. M. E. 2008. South African employment relations: Theory and practice. 6th ed. Pretoria: Van Schaik.
40. Nel, P.S., Kirsten, M., Swanepoel, B.J., Erasmus, B.J. & Poisat, P., 2012. South African Employment Relations: Theory and Practice. 7th Seventh Edition. Pretoria: Van Schaik.
41. Nurse, L. & Devonish, D. 2007. Grievance management and its links to workplace justice. *Employee Relations' Journal*. 29(1), 89-109.
42. Olivier, M. 1996. Workplace forum; critical questions from a labour law perspective. *Industrial Law Journal*, 17(5), 803-814.
43. Pitcher, M.A. 2007. "What has happened to organized labor in Southern Africa?", *International Labor and Working Class History*, No.72, Fall 2007, 134-160.
44. Salamon, M. 1992. *Industrial Relations: Theory and Practice* (2nd Edition). New York: prentice Hall, 341-343.
45. Salamon, M. 1998. *Industrial relations: Theory and practice*. London: Prentice-Hall.
46. Saundry, R., Antcliff, V. & Jones, C. 2008. Accompaniment and representation in workplace discipline and grievance. Research Paper Ref: 06/08, on behalf of Acas Research and Evaluation Section. University of Central Lancashire: Acas Research Publications.
47. South Africa (Republic). 1995. *Labour Relations Act (Act 66 of 1995)*. Pretoria: Government Printers.
48. South Africa (Republic). 1996. *Constitution of the Republic of South Africa (Act 108 of 1996)*. Pretoria: Government Printers.
49. South Africa (Republic). 1997. *Basic Conditions of Employment Act (Act 75 of 1997)*, Pretoria: Government Printers.
50. South African Labour Guide (SALG). 2010. *Your guide in labour law in South Africa: Disciplinary code and procedure*. Labour Guide Online. Retrieved from: <http://www.labourguide.co.za/workplace-discipline/> (Accessed on 20 April, 2011).
51. Stirling, J. 2011. "Trade Unions in a Fragile State: The Case of Sierra Leone", *Industrial Relations Journal*, 42:3, 236-253.
52. Trade Union Readcast. 2009. *Recommendation of National Commission on Labour for strengthening trade unions*. Document issued in May, 2011, 1-38. Retrieved from: <http://www.scribd.com/doc/24982888/Trade-Unions> (Accessed on 21 May, 2011).
53. Unit for Labour Relations (ULR). 2006a. *Disciplinary code and procedure for employees: Annexure to the recognition agreement*. Pretoria: University of Pretoria.
54. Unit for Labour Relations (ULR). 2006b. *Grievance procedure: Annexure to the recognition agreement*. Pretoria: University of Pretoria.
55. Von Holdt, K. & Webster, E. 2005. *Work restructuring and the crisis of social reproduction: A South African perspective*. In E. Webster & K. von Holdt (Eds.), *Beyond the Apartheid workplace: Studies in transition*. Scottsville: University of KwaZulu Natal press.
56. Wille, G., Du Bois, F., Bradfield, G., (Ed.) & Du Bois, F. 2007. *Wille's Principles of South African Law*. Cape Town: South Africa. Juta & Co.
57. Wood, G. 1998. *Trade Union Recognition*. Johannesburg: International Thompson Publishing Southern Africa (Pty) Ltd., South Africa.
58. Wood, G. & Glaister, K. 2008. *Union power and new managerial strategies: The case of South Africa*. *Industrial Relations Journal*. 30(4), 436-451. Sheffield: University of Sheffield.