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PAC OF AZANIA
SUBMISSION TO THE TECHNICAL COMMITEE ON
CONSTITUTIONAL MATTERS
REGARDING THE DEBATE ON THE CIVIL SERVICE

COMMENTS AND PROPOSALS ON THE DOCUMENT SUBMITTED BY THE ANC AND THE S.A. GOVERNMENT

GENERAL COMMENTS

In the past civil servants were denied the benefits of an enlightened labour relations structure because they were excluded from the provisions of the Labour Relations Act,no 28 of 1956.This means that civil servants could not approach the Industrial Court and could not rely on the unfair labour practice provisions of the Labour Relations Act,including unfair dismissals.

Recently the government promulgated the Public Service Labour Relations Act [PSLRA] no 102 of 1993,which legislation introduces the concept of the unfair labour practice as far as the civil service is concerned.What constitutes an unfair labour practice is subject to both the precedents of the industrial court and the 'fundamental principles' that are set out in the PSLRA.The 'fundamental principles' inter alia states that there will be no discrimination on the basis of 'race,colour,sex,religion'etc.No provisions are being made for affirmative action.In our view r eading the PSLRA alone,one comes to the conclusion that affirmative action will amount to discrimination and an unfair labour practice.

A careful reading of the ANC\gvt document and constitutional matters already agreed upon, will bring one to the conclusion that existing labour relations provisions will persist during the transitional stage and will not be affected by the proposed interim Bill of Rights.In spite of at
tempts to prove otherwise,the ANC\gvt document and the interim Bill of Rights DOES NOT require affirmative action in the form of placing a duty on employers,it merely permits it.A cursory glance of the ANC/Gvt document will prove that the document lends itself stronger in favour of protection of jobs of the current civil service than allowing for affirmative action.It is only insofar as new appointments are concerned that a new government seems to be safe in implementing affirmative action.The Labour relations Act makes provision for fair dismissals and fair retrenchments but affirmative action cannot be said to constitute a fair dismissal as the criteria for fair dismissals does not apply in respect of affirmative action.Affirmative action further cannot constitute a fair retrenchment as it is not based on the normal operational requirement of an undertaking.Affirmative action removes or discriminates against a [white] person on the basis of colour quite apart from normal operational reqirements.Given this scenario,how is the industrial court to determine whether a civil servant has been unfairly

treated in a massive national

restructuring of the civil service exercise,and which exercise politically reduces 16 government structures to 9 or 10 structures in an extraordinary exercise with necessary rationalisation consequences apart from affirmative action? Why should the industrial court be burdened with deciding whether the Transvaal Provincial Administration should be collapsed into a particular province and which departments and employees should be 'fairly' so affected? This is not the normal function of the industrial court but purely political matters to be worked out between politicians and the consequences discussed with the civil servant organisations.

Politicians must not be allowed to run away from facing the civil servants squarely on this matter and to work out proper job loss packages in a matter that is acceptable to the organisations of civil servants.Merely referring them to the industrial court in an attempt at shifting the responsibility to that court to work out how the civil service structure should be correctly structured is politically and legally clumsy and irresponsible. it leads to the establishment of a juristocracy instead of a democracy.
The constitutional guarantee of employment against dismissals by the Gvt\ANC is unheard of in labour relations terms.This is plain dishonesty as the rationalisation of 16 government departments into 9 or 10 departments must necesarily lead to some job losses.This is designed to make the industrial court look like the bad guys when they rule that this is improper in industrial relations terms and shift the blame awy from dishonest politicians.

COMMENTS ON SPECIFIC PROVISIONS OF THE GVT/ANC DOCUMENT

1.[b] add after 'representative'
'of the people of South Africa'
add after 'promote'
'of all catogories of employees'

Section 185 [2] [b]
redraft as the constitutional guarantee against dismissals is unheard of in labour relations terms as even the conditionality contained in the clause confirms our contention.

Section 183 [4].after 'transfer concerned' add
'affirmative action in line with the provisions of
this constitution'

Section 185 [4]
after 'Constitution' [6th line] add
'and all employees in the top 5 employment catagories irrespective of length of service'

Section 185 [7] [a]
New paragraph to read

'In order to give effect to section 119,provision shall be made by law for for the establishment of a Civil Service

Restructuring Commission including members of the Commision for Administration, employee bodies and other appointed members to make recommendations to the Negotiating Council, its succesor or the transitional government on the structure,rationalisation,job loss packages and the filling of posts of the top 5 catogories of employees.The Commission will conclude its task by 30 September 1994 after which restructuring and otherlabour practices will be subject only to the normal provisions of the Constitution and fair labour practices.

Section 185 [7] [c]

delete the whole paragraph as the restructuring of the intire constitutional order and its implications for the civil service is primarily a political matter outside the jurisdiction of the industrial tribunals.

add new paragraph.
'Civil servants shall have the right to strike'

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