

Full Length Research Paper

South African Industrial Conciliation Act of 1924 and current Affirmative Action: An analysis of labour economic history

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This paper is directed towards making a comparison between the Industrial Conciliation Act (ICA) of 1924 and the current Affirmative Action (AA) in South Africa (SA), in order trace their respective impact to industrial relations in SA. First and foremost, it is necessary to give an overview of Industrial relations within the period of 1924 to 1948, and to identify three events that took place within that period and give a discussion of the events. Furthermore, the impact of those events on the labour legislation at that time, and its effect on the labour relationship will be analysed. Additionally, the different approaches used during these periods towards the labour relationship will be reviewed. Finally, an analysis will be made between Industrial Conciliation Act of 1924 and the current South African Affirmative Action.

Key words: Apartheid, affirmative action, Industrial Conciliation Act, industrial relations, labour unions.

INTRODUCTION

South Africa has a labour history that reflects a lot of controversial issues such as labour conflict, political conflict, apartheid as well as segregation in terms of race and class. South Africa is also a country with a diverse society with different cultures and values. Therefore, one cannot look at the labour relationship in isolation without looking at the societal aspect of the country. Industrial Relations should be seen as a jewel with many facets, such as power, collective bargaining, different approaches, conflict, employers, employees, trade unions and the relationship, of which the latter is the most important. It is of empirical importance that the power that exists between the employee-employer relationships should be balanced. Should an imbalance occur within the relationship, the consequences could result into strike action, from the point of the employee and wage discrimination on the part of the employer. The party that has the ultimate power to regulate and control this relationship is

the government. The extent, to which government will regulate and control the relationship, will depend on the form of the economic system that the country engages in, whether it is capitalism or socialism.

As aforementioned, this paper is directed to make a comparison between the Industrial Conciliation Act (ICA) of 1924 and the current Affirmative Action (AA) in South Africa (SA), in order trace their respective impact to industrial relations in SA. First and foremost, it is necessary to give an overview of Industrial relations within the period of 1924 until 1948, and to identify three events that took place within that period and give a discussion of the events. Furthermore, the impact of those events on the labour legislation at that time, and its effect on the labour relationship will be analysed. Additionally, the different approaches used during these periods towards the labour relationship will be reviewed. Finally, an analysis will be made between ICA and AA.

THE INDUSTRIAL CONCILIATION ACT OF 1924

In order to understand the passing of the Industrial

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Conciliation Act of 1924, a brief history of the event that led to the passing of the Act, needs to be reviewed. The strike on the Witwatersrand in 1922 gave rise to the passing of the Act (Bendix, 2000:31). After World War II, there was a period of depression worldwide and South Africa felt the effects of inflation at the time. As a result, mine owners were looking for ways to cut costs to keep their profits from declining and to prevent profitable mines from closing down (Webster, 2001:80). The solution for the mine owners was not to increase the wages of the mine workers, which in turn had a snowball effect in leading to various strikes during the 1920's (Webster, 2001:81).

However, in 1922, mine owners introduced labour-saving machinery, to be operated by black workers at the minimal wage, with the possibility of unemployment for white mine workers, which gave rise to the strike on the Witwatersrand (Callinicos, 1980:1). A total of 25, 000 white mine workers went on strike for two months. Approximately 5, 000 strikers were arrested, 500 people were injured and 150 people were killed ((Callinicos, 1980:1)). Although the striking workers lost the strike, that was the beginning of workers militancy. Nevertheless, the mine workers had to accept the lower wages and retrenchments, whilst the black mine workers took charge of the more productive work at the same minimal wages.

In spite of the fact that Mine owners and government won the strike of 1922, they were shocked by the camaraderie of the mine workers and became aware that trade unions have to be recognised in order to be regulated. These actions led to the birth of the Industrial Conciliation Act in 1924. The Bill was announced by F.S. Malan, the Minister of Mines and Industries at the time. The Bill made provision for the creating of employee-employer councils with the powers of negotiation and wage determination. The biggest complaint about the Bill was the fact that no provisions were made for employer associations (Webster, 2001; Nel, Swanepoel, Kirsten, Erasmus and Tsabadi, 2005). They further identified certain changes within the Act, such as:

1. Municipal workers were prevented from striking
2. The clause that made strike ballots compulsory was deleted. This was rather contrasting because unions could not call a strike unless they have a ballot of their members. By deleting this clause, government made sure that no strikes could take place.
3. Provision was made in the Act for employees to call a conciliation board; however no conciliation board could be called on behalf of individuals who opposed changes in wages, working conditions and piece rates.

Therefore, it became a forgone conclusion that these changes to the Act are a means to control workers and the labour situation. The Industrial Conciliation Act, 1924 was aimed at two industrial groups, namely organised employers and organised white labour (Bendix, 2001:74).

This excluded black employees due to the fact that they were not included (then) in the definition of 'employee'.

Webster (2001:104) pointed out that the Industrial Conciliation Act of 1924, gave major impetus to the tendency towards separation within the country's labour activities, and therefore must be one of the major factors that gave rise to South Africa's partial labour movement. Although, separation's tendencies already existed, the Industrial Conciliation Act of 1924 strengthened and intensified it. It is therefore conclusive that the act intensified the division of employees into categories and decomposed labour by placing employees into different classes.

LABOUR LEGISLATION

According to Webster (2001:99) industrial and conciliation wage determination methods were already working under the Industrial Conciliation Act. The same government that passed the Industrial Conciliation Act of 1924 have passed the Wage Bill of 1925. Webster (2001:99) explains that the aim of the wage Bill of 1925 was to introduce a state Wage board with power to invest in certain conditions within specific industries, to issue minimum wages for certain job categories and not to discriminate on race. The latter is a contradiction of the intention of the Wage Bill of 1925, which leads to the question: "Was the Wage Bill of 1925 the intention of government to put black employees out of jobs in order to reserve jobs for white employees?" The answer to that question is a resounding yes. According to Webster (2001:99), in 1926 the Mines and Works Act were passed in order to reserve mine jobs for whites and coloureds, without due consideration of black workers. Callinicos (1987:221) posited that during those eras, white employees felt that it was a disgrace to have the same low living standards as black employees. The Minister of Mining and Industries at the time, (Callinicos, 2005), stated that:

"The aim of the Mines and Work Act of 1926 was to protect white workers against the advantages of using the native, since the native are more attractive source of labour supply".

Before these incidents- in 1924, a Pact government was formed under the leadership of Barry Hertzog, consisting of Afrikaner Nationalists and representatives of immigrant labour; which overpowered the Smuts regime (Vettori, 2005:14). According to Vettori (2005:14) the pact government was based on a common suspicion of the dominance of mining capital and the determination to protect the interest of white labour by intensifying discrimination against black employees. Vettori (2005:20) maintained that the Wage Act of 1925, allowed discriminations between sex and the race of workers, which laid

the foundation for discriminatory wage determinations. The Native Labour Regulation Act 15 of 1911, which prevented strikes by black employees, established the laws founded in the Mine and Works Act of 1926 (Vettori, 2005:20).

In 1951, the Building Workers Act was promulgated. Vettori (2005:22) elaborates that the Act allowed black workers to be trained as artisans within the building industry, which was previously reserved only for white employees. However, the black employees were only allowed to work within a specific area for blacks. Should the black employee perform any skilled labour in a white area, it would be seen as a criminal offence. It is therefore conclusive that the Industrial Conciliation Act, right from 1924, instigated the segregation of the South African industrial relationship through emphasising race and class (Vettori, 2005:22).

THE BANTU EDUCATION ACT OF 1953

The Bantu Education Act, which was passed in 1953, to create a Black Education department in the Department of Native Affairs, with the intention to create a syllabus according to the erroneous perceived nature and requirements of black people. Vettori (2005:22) maintained that, the author of the legislation, Dr. Verwoerd, wanted black people to receive an education structured to provide them with skills to serve their own people in homelands or to work in labouring positions under white employers. Thus, leading to a society where inequity and segregation were at the heart of economic activities.

It is conclusive, that the Industrial Conciliation Act of 1924 paved the way for all the discriminating Acts that was passed in the following fifty years of South African history. These discriminating Acts paved the way for the Apartheid regime, which discriminated on the grounds of race, sex, religion, class and made SA a segregated society, characterised by conflict, injustices, the violation of human rights, fear, an inheritance of hatred and of course guilt and revenge. More than that, the Industrial Conciliation Act of 1924 was used as a means by the ruling government of the time, to enforce segregation and apartheid, in order to restrict black employees from participating in the country's economic activities and their claim to political rights.

This experience has own feature in the context of South Africa, however, a similar kind of occurrence is also noticed in the context of education system in developing nation as discovered by Alam et al. (2010). Therefore, when the African National Congress came into power in 1994, it was time to redress the issues of the past. The ANC did this by promulgating the Interim Constitution of 1994 and the Affirmative Action Act as well as the Employment Equity Act. The Interim Constitution (Vettori 2005:29) stated that the commitment is expressed through the acknowledgement of the:

“Need to create a new order in which all South Africans will be entitled to a common South African citizenship in a sovereign and democratic constitutional state where there is equality between men and women and black people and all races, so that all citizens shall be able to enjoy and exercise their fundamental rights and freedoms.....” With this in mind the

Interim Constitution set out to embark on: “A historic bridge between the past and of a deeply divided society, characterised by strife, conflict, untold suffering and injustice, and a future founded on the recognition of human rights, democracy and peaceful co-existence and development opportunities for all South Africans, irrespective of colour, race, class, beliefs or sex”

Therefore, it can be argued that the legislation such as the Interim Constitution of South Africa and Affirmative action were used by the ANC as an antidote, to redress the issues of the past which was instigated by the Industrial Conciliation Act of 1924.

INTERACTIONS WITHIN THE LABOUR RELATIONSHIP IN SOUTH AFRICA

Rust (2005:6) has defined the labour relationship as a relationship between employers and employees, and not a personal relationship between the employer and the employee. However, Bendix (2000:3) has described Industrial relationships, as a dynamic, ever changing, and went further to argue that the relationship is based on current status, needs, attitudes and perceptions of the relevant policies. Ukpere (2009:9) has identified the interactions that influence the labour relationship as follows:

1. Commonality and cooperation
2. Conflict
3. Power
4. Political order
5. Economy
6. Society

Commonality and cooperation

The employee and employer has a common interest owing to the fact that both of them relies on the profitable existence of the organisation in order to achieve their primary goal of making a profit for the employer and better remuneration for the employee (Ukpere, 2009:9). In order to form a relationship, there has to be a certain degree of common ground and cooperation. After the passing of the Industrial Conciliation Act of 1924, the base of the employer and employee relationship was disrupted owing to the fact that mine owners were capitalistic oriented (Webster, 2001: 80). Capitalism refers to an economic

system whereby a country's businesses and industry are controlled and run for profit by private owners rather than government (Ukpere, 2007:9).

The commonality factor would refer to the facts that mine owners needed the employees' labour to manufacture their products, while the employees needed remuneration for survival. These facts are also asserted by the findings of Alam et al, (2010b). However, through the implementation of the ICA, government in conjunction with mine owners made it clear that mine owners and mine workers had nothing in common. The ICA ensured that mine workers knew that they were powerless to protest against the mine owners. Although the Act made provision for collective bargaining, to a certain extent, black male employees were excluded from the term "employee". Hence, all the above-mentioned incidences lead to an unwillingness of the mine worker to fully cooperate with the mine owners in terms of achieving the common goal of sustaining the economic opulence of the concern.

Conflict in the labour relationship

Conflict arises when people or groups are in serious disagreement with each other. Bendix (2006:13) has noted that conflict will become problematic if it is not balanced by cooperation and handled in an appropriate manner. The conflict started with the 1922 strike on the Witwatersrand, when mine owners wanted to reduce costs by reducing the wages of mine workers, which gave rise to the strike and thus led to the passing of the Industrial Conciliation Act of 1924. Nel, et al (2005: 74), state that the primary purpose of the ICA was to control and prevent industrial conflict, through providing collective bargaining and conciliation in the event of a dispute. However, this is a contradiction because the ICA caused further conflict through job reservation for white employees and the segregation in terms of race, class and wages of the workforce at the time (Lipton, 1986:180). Therefore, the ICA provided absolute power to the mine owners over the mine workers, who had limited power to protest against the mine owners. Johnstone (cited in Lipton, 1986:183) argued that the "exploitation of colour bars", created by the capitalist oriented mine owners, made black labour vulnerable to exploitation, which also led to insecurity amongst white workers. According to Lipton (1986:135) the whites used trade union restrictive practices to systematically exclude blacks from competing with them for jobs. A well convinced argument made by Alam (2009) is that clearly, mine owners and mine workers saw themselves as opposition parties, with mine owners possessing more power (through government support) over mine workers. Therefore, it would not be incongruous to assert that the Industrial Conciliation Act resulted in endemic conflict amongst all parties involved in the labour relationship.

Power in the labour relationship

The passing of the Industrial Conciliation Act of 1924 was characterised by coercive power owing to the fact that the Act was passed to facilitate collective bargaining and conciliation but the Act led to the exclusion of black, male employees from these processes. Mine owners were in a position to withheld work opportunities from black miners and also the opportunity to earn a living wage. In other words mine owners were dictating the terms and conditions of employment. Bendix (2006:15) has pointed out that, the responsibility of balancing the power of management lies with the government. However, this argument was not in harmony with the Industrial Conciliation Act of 1924. The Pact government added to the power of the mine owners, through the exclusion of black employees from the term "employee". Although the ICA provided for the orderly conduct of the labour relationship, no black union representing black males could register under the Act (Bendix, 2006:61). Therefore, black unions were prohibited from organising legal strike action. During this event, power was in the hands of the employer and the government, leaving the black employees in a less favourable position in terms of organising strikes against employers.

Political order in terms of industrial relations

It is imperative that a positive relationship should exist between a country's economy, social and political order and their labour relationship (Ukpere, 2009:14). According to Bendix (2001:19) the governing party of a country will reflect the type of industrial relation system, which will influence the power balance between the employer and the employee. As a result of the strike on the Witwatersrand, the Smuts government collapsed, and a new Pact government was formed by the Labour Party and the Afrikaner National Party, which implemented the Industrial Conciliation Act. According to Davies, O'Meara and Dlamini (1987:246) the Pact regime attempted to promote the employment of poor whites, which manifested in lesser strikes by white employees. South Africa had a labour system that showed division clearly, which was caused by the division in government. The policies of the Pact government isolated the white wage earning classes, which strengthened the segregation of white employees from black employees to the benefit of the white mine owners. This resulted to a complicated labour relationship in South Africa.

Economy in terms of the labour relationship

The labour relationship and the state of the economy of a country are interdependent with each other as advocated by Alam, (2009) and Alam et al, (2009). Ukpere (2009:16)

points out that there is a correlation between the prices of products and the demand for higher wages by employees. When employees obtain increases in their wages, it leads to increase in the prices of commodities, which in turn leads to a new demand for the increase of wages, thus contributing to the high inflation rates.

The mining industry made a major contribution towards the Gross Domestic Product of South Africa, and bolstered employment, thus providing a considerable share of government revenue and over half of the total export earnings (Lipton, 1985:111). The fact that mine owners wanted to reduce costs in 1924 had a huge impact on the labour relations in South Africa. This action led to strikes by mine workers, because mine owners received more in profit, while the wages of the miners remained stagnant (Webster, 2001:81). Mine owners were faced with the closure of some mines, as a result of the sharp fall of the gold price in 1924, thus leading to the substitution of white labour with cheap African Labour. After the passing of the Industrial Conciliation Act, the number of white mine workers increased to 22 000 (Lipton, 1985:114), because the Act was used as an instrument to reserve jobs for white employees. Lipton (1985:114) is of the opinion that high white labour costs contributed to the reduction in international investments in South Africa from 1924 until 1932.

The Pact government of 1924 protected the manufacturing industry of South Africa through the introduction of heavy taxes and discriminating pricing policies on the mines. Due to the fact that mine owners made use of cheap African labour, South Africa also experienced a skill shortage, because supervisory positions were kept by white labour and the African labour did not have that type of skills. It can therefore be said that the economy of a nation will thrive as long as the labour relationship is intact.

Society in terms of the relationship

The societal background of an individual has a direct impact on the labour relationship. For example, if society is divided by class and race, then it will reflect on the labour relationship of a country. However, if there is a gesture of goodwill between the role-players in the labour relationship as well as cooperation, then this will reflect on society. The society of South Africa was already divided through the fact that only black males had to carry passes, which determined their mobility in terms of where they could work. The Industrial Conciliation act strengthened the class and racial divide through the process of job reservation for whites.

ROLE PLAYERS IN THE RELATIONSHIP

Ukpere (2009:4) identifies various role-players within the labour relationship such as, employers, employees, management, trade unions, employer's associations and the

government. The specific role players who played a part during the passing of the ICA were the employers, the employees, the government and trade unions. The employers in this case would be the mine owners. Ukpere (2009:4) defines an employer as a person or organisation with entrepreneurial abilities and responsibilities who run a successful business. The employer provides the capital to start the business and therefore has the view that he has the right to control and make major decisions pertaining to the short and long term objectives of the organisation. The mine owners decided to cut back on labour costs by using cheap African labour in order to maximise the profitability of the mining industry.

The mine workers were the employees (black and white), although the black mine workers were excluded from the term "employee". However both white and black mine worker were exploited, in the sense that white mine workers were viewed as expensive labour and therefore laid off, while black miners received a meagre wage without being acknowledged as employees.

Trade unions were also present and active during the passing of the Industrial Conciliation Act. The ICA made provision for trade unions to register voluntarily under the Act and to establish industrial councils, in order for these organisations to be recognised by government (Bendix, 2001:61). The mining industry was the main stimulus for the promulgation of the ICA in 1924. However, the mining industry never established an industrial council and therefore, preferred to bargain in its own independent bodies. Registration for black union representation was restricted because the term "employee" excluded "pass-bearing" natives. Therefore, black trade unions were not allowed to join councils and they were prohibited from organising legal strikes (Bendix, 2001:61).

No matter what the economic policy of a country is, whether capitalistic or communistic or socialistic, the government will always have an empirical role to play in maintaining the relationship. Ukpere (2009:8) states that the government have the responsibility to try to ensure that conflict between employers and employees and between management and unions does not reach a level where the conflict will have an adverse effect on the economic activities of the country. However, the period of 1924 to 1948 was characterised by the government's control and interference in the labour relationship for their own gains. For example, the Pact government promulgated the ICA of 1924 to benefit mine owners and the government. While the mine owners obtained cheap black labour, the then ruling government reserved jobs for white employees in order to maintain Afrikaner nationalism.

APPROACHES TO THE RELATIONSHIP

According to Venter and Levy (2008:7) traditional Industrial Relations theory identified three approaches to the labour relationship namely, the unitary approach, the

pluralist approach and the radical approach. The manner in which the relationship is dealt with will depend on the approach adopted by the various parties within the relationship.

The approach that was prominent in the passing of the ICA was the radical approach. Bendix (2001:21) has declared that this approach is based on the formal public statement of Karl Marx pertaining to the “ills of private ownership of the means of production and the position of the employee within the capitalist system”. Marx states that the capitalist economic system creates political and legal structures which favour the employer, who has more power than the employee, the latter being continuously exploited (Bendix, 2001:22; Ukpere, 2009:64). This is exactly what occurred with the passing of the ICA in 1924. The Act was promulgated to benefit the employer, which also gave the mine owners more power over the mine workers, which led to the exploitation of mine worker by paying low wages and the exclusion of black mine workers from engaging in the collective bargaining process. It is evident that the ICA of 1924 did not resolve any conflict but only lead to the deterioration of the labour relationship in South Africa.

THE RISE OF LABOUR UNIONISM IN SOUTH AFRICA

The history of South African trade unions can be traced back to the period of protest during and after the First World War, a period that was marked by rapid inflation and accelerated labour migration. Salamon (2000:93) has defined a union as:

“any organisation, whose membership consists of employees, which seeks to organise and represent their interest both in the workplace and society, and in particular seeks to regulate their employment relationship through the direct process of collective bargaining with management”.

Between 1930 and 1955, the South African Trades and Labour Council was the largest body of trade unions (Callinicos, 1980:7), which consisted of:

1. Craft unions that organised semi-skilled white workers, such as iron moulders
 2. White industrial unions, such as the South African Iron and Steel Trades Association
 3. Racially mixed trade unions, such as the Garment Workers' Union
 4. Non-racial trade unions which organised all workers together, such as the Food and Canning Workers' Union
- Callinicos (1987:141) further identifies three types of unions that developed between the period of 1920 and 1930:

1. The general union of black workers, which was the

Industrial and Commercial Workers Union.

2. The white-only unions, whereby employees relied on the government to protect their jobs
3. The industrial trade unions, which came from the leather, clothing and furniture industries.

The Industrial and Commercial Workers Union

The largest black trade union to emerge from this period was the Industrial and Commercial Workers' Union. This union was founded in Cape Town in 1919 by Clements Kadalie and AWG Champion. According to Callinicos (1980:4) Africans, Coloureds and Indians came together under the banner of the ICU to voice their anger about their lives and their working conditions. By 1927, the ICU had a membership of one hundred thousand, therefore the largest trade union then on the African continent (Webster, 2001:114). Callinicos (1980:6) identified that the membership of the ICU consisted of teachers, small traders, rural farm workers and labour tenants. According to Bonner (Webster, 2001:115), the ICU had a huge membership but they had no significant formal achievements due to the fact that labour conditions showed little improvement and wages remained unchanged. The strategic objective of the ICU was that they wanted a basic redistribution of economic and political power (Webster, 2001:115).

However, the leadership of the ICU lacked the strategic skills of how to achieve the objectives. Clements Kadalie spent most of his time touring South Africa giving speeches, while neglecting industrial organisations. In 1927, membership of the ICU was increasing with branches established everywhere in South Africa. However, the expansion consisted mainly of labour tenants, working on white farms. At the same time, when various strikes hit Durban and Johannesburg, the ICU could not give their support.

Through this action the members lost confidence in the ICU, which resulted in the loss of credibility for the union. By 1931, the ICU disintegrated, due to financial instability, personal conflicts and the weakness of central organisation. Bearing all this in mind, one could state that the ICU laid the foundation for the emergence of the new industrial movements.

The White-only Unions

Labour processes in the workplace were racially divided; therefore unions were formed on the basis of race and class. According to Callinicos (1987:143) the Industrial Conciliation Act added to the racial division among the working class. The Act divided the employees through the exclusion of African employees from registered trade unions. White employees were a privileged class of the employees, while African employees were the most exploited. The white union officials were responsible to

themselves rather than the workers and developed closed relationships with the employers. As the racial division of trade unions became more marked, they assumed a more racial character. In addition, the government pushed registered and non-registered unions to break off all relationships in 1950.

Industrial trade unions

According to Callinicos (1987:1430) the industrial unions had a more open tradition due to the fact that under the conditions of mass production, the interest of black and white employees did not clash, both were productive and both were semi-skilled employees. An example of non-racial solidarity amongst workers was the 1928 strike that took place at the Ideal laundry in Johannesburg, where all the black employees went on strike in support of a white female employee who had been victimised. White employees realised that the way to improve their bargaining position was to unite with black employees, thus leading to the establishment of a joint committee where the black and white merged for a while in 1935.

In 1930 the Trade Council and the Cape Federation of Labour unions held a joint, multiracial meeting to form the South African Trades and Labour Council (TLC). Callinicos (1987:144) points out that the objective of the organisation was to demand that racial labour laws, such as the Native Administration Act and the racial clause in the ICA (which excludes black male employees from registered unions) be abolished. Cooperation and solidarity between registered and non-registered unions existed after the Depression in 1930, whereby the Transvaal Textile Workers Union passed a resolution at their meeting to organise all South African textile workers, irrespective of race, colour or class into one union (Callinicos, 1987:145).

The Garment Workers Union remained democratic and militant up until World War I through the utilisation of the strike weapon and government laws to improve working conditions and wages. After World War II the militancy declined because factories grew and the labour composition in mass production changed due to the fact that white males joined the army and more black employees joined the factories, while the women took up clerical posts in organisations (Callinicos, 1987:145). However, as time went by, the racial division of labour became more marked, and the trade unions adopted a more racial character, whereby black unions were completely alienated from white trade unions through the white minority government. To shorten long a story, racial discrimination stemming from the ICA weakened the bargaining power of black employees in terms of wages, working and living conditions and could also be blamed for the intensification of poverty amongst the black South African communities- a situation that could only be redressed by a countervailing force, such as Affirmative Action.

AFFIRMATIVE ACTION

Affirmative Action (AA) as part of the Employment Equity Act, No. 55 of 1998 was adopted by the African National Congress (ANC) in 1994 to redress the inequities of the past pertaining to race, gender and disability. After the fall of apartheid and the triumph of true democracy, South Africa adopted an American model of Employment Equity. Nel et al (2008:164) noted that the Employment Equity Act is a replica of Chapter 23 of the Canadian Constitution, whereby “nearly everything”, from “designated groups” to “employment equity plans” and the concept “employment equity” itself was adopted from Chapter 23 (Second Supplement) of the Constitution of Canada. One of the main objectives of the Employment Equity Act is to ensure that the workplace is free from discrimination, with the purpose of promoting equal opportunity and fair treatment in employment through the elimination of unfair discrimination. (Nel, van Dyk, Haasbroek, Schultz, Sono, Werner, 2008:155).

It is a requirement according to Chapter 3 of the Labour Relations Act that employers should consult with unions and employees to ensure that Affirmative Action plan is adopted by every organisation (Nel et al., 2008:156). However, it should be noted that South Africa’s largest trade union, COSATU, which has a membership of 1.9 million in 2008, is a strong ally of the ruling party, ANC (Makgetla, 2009:8). This implies that the Affirmative Action plan will be accepted unanimously. Employers are compelled to comply in terms of the EEA, irrespective of the objectives of the organisation in order to acquire Black Economic Empowerment (BEE) deals from the government.

Denton and Vloeberghs (2003:6) states that Affirmative Action (AA) often requires employers to fairly discriminate against better or equally qualified South Africans in terms of legislation. One of the concerns that were raised by business leaders was that reversed discrimination will impart negatively on skill retention of some South African employees, particularly the whites (Thomas 2002:2). However, the United Nations Economic and Social Council and the ILO have both defined affirmative action as a “coherent packet of temporary measures, aimed at correcting the position of the target groups to obtain effective equality”(Solidarity, 2005). In other words, AA was supposed to be temporary and aimed at solving a problem within some specific time range.

Within the past few years Affirmative Action has been associated with certain negativity, namely reverse discrimination by various entities and individuals like the union Solidarity and former president F. W. De Klerk. It has also become obvious that whites South African and new political parties trying to woo white votes are currently speaking out about the negative aspects of AA in terms of job applications and promotions within the workplace. This raises the question of ethics about affirmative action and clearly lays the basis of why some section of

White South African perceives AA as reversed discrimination. This perception has to an extent, resulted in the migration of many white skills to other countries for better career prospects. South Africa is currently facing a shortage of skilled employees, which could be linked to the exodus of skilled and semi-skilled white citizens owing to Affirmative Action. However, the ruling party completely denies that there is a correlation between Affirmative Action and the skills shortage in South African. Phumzile Mlambo-Ngcuka, (IOL, 2007) has stated:

“Stop blaming affirmative action for South Africa’s skills shortages... the current skill shortage was the result of robust growth in the local economy”. Mantashe (2008) maintained that, “AA cannot be blamed for South Africa’s skills shortage... if you blame apartheid you are barking up the wrong tree... linking the two issues was polarising the debate”.

However, F.W. De Klerk refers to affirmative action as *unbalanced* because it has achieved the opposite of what it was meant to achieve, namely promotion of ‘equity’ (Du Plessis 2009:2). AA according to Buys (2005) was meant to correct inequalities in the labour market, without creating new inequalities in the process. Buys (2005:13) further noted that the losers in the AA process will be blacks at the bottom of the socio-economic levels, who wait for unfulfilled expectations and the bottom levels of young white South Africans job seekers, who feel victimised. According to Kodwa (2007:2) young whites South Africans are of the view that race, rather than merit determines their future and wonder why they should pay for an apartheid system in which they had no part. In a recent opinion poll done by Stellenbosch University and Markinor, 53% black and white South African youths, felt that the youths should be exempted from affirmative action (Kodwa, 2007:2). Owing to the increase in unemployment, more than 10% of white South Africans have become extremely poor according to the 2001 Census. Although, black unemployment continues to be higher than white unemployment, however, white South African unemployment has increased by 150% since 1991 according to the University of South Africa’s Bureau for Market Research (Buys, 2005:1). From another context, the Congress of the People (COPE) has expressed their concerns about the manner in which AA has been implemented:

“...Because of the skills distortions in the economy, policies intended to redress the past, notably affirmative action, have generated unintended consequences, such as nepotism and cronyism in the public service, exclusion of minorities in the public service and using race as a sole criterion of employment rather than looking at the potential” (Mail and Guardian online, 2008:1).

Nevertheless Membathisi Mdladlana, (Mail and Guardian online, 2007) stated that

“... AA will never be phased out in South Africa, but on the contrary, will be sharpened”

However, the manner in which AA is sharpened should be clarified. In any case, there is a need to inculcate some humanistic flavour in this sharpening process.

ANALYSES AND CONCLUSION

South Africa has passed through a difficult and turbulent labour economic history. During the industrialisation period of 1924, the Pact government was the predominant political party in terms of the labour relationship, while the ANC is the predominant political party as far as the labour relationship is concerned since the first democratic elections in 1994. In 1924, the Pact government, which consist of Afrikaner Nationalists and representatives of immigrant labour, was formed after defeating the Smuts regime. The action of the Pact government was based on a common suspicion of the dominance of mining capitalists, which prompted the government to protect the interest of white labour by intensifying discrimination against black employees. The Wage Act of 1925 paved the way for the discrimination between sex and the race of workers, which laid the foundation for discriminatory job and wage determinations. The Native Labour Regulation Act 15 of 1911 prevented black employees from industrial actions, which was latter incorporated into the Mine and Works Act of 1926. These and other measures by previous ruling class amounted to injustice on the majority of the ruled class.

In 1994, the African National Congress (ANC) was voted into power in South Africa’s first multi racial democratic election. The first thing the new government did was to embark on transforming all organisations to make them representative of the demographics of South Africa. This initiative was made possible with the promulgation of the Employment Equity Act, no 55 of 1998, and Affirmative Action (a clause within the Act, which has become a rather controversial issue) was adopted to redress the legacy of apartheid. The new orthodoxy proclaimed that as long as the ANC is the ruling political party, AA will continue to get fatter and bigger. However, the non-existence of a sunset clause in terms of affirmative action raises the question: “How long will it take the current ruling orthodoxy to redress the imbalances of the past?” South Africa has indeed been a democratic country for the past 15 years, and it is high time to find equilibrium in the labour relationship and the possibility of putting a sunset clause on Affirmative Action, since it is perceived as injustice by some new ruled class.

From the above analysis it is evident that political dominance in South African will always be a vital factor in determining the labour relationship. The father of the

nation, Madiba, has previously advised that South Africa belong to all who live in it- Black or White. In that case, every South African deserves an equal opportunity based on merit, irrespective of race, colour or class, because nothing is more destructive of hope and more inhibitive of effort than a feeling that the accident of birth is likely to come in the way of a capable person rising in life in terms of economic and social status (Ukperere, 2007).

The time has come for South Africa to reconnect to the words of wisdom of President Nelson Mandela in 1994:

“...Our daily deeds as ordinary South Africans must produce an actual South African reality that will reinforce humanity's belief in justice, strengthen its confidence in the nobility of the human soul and sustain all our hopes for a glorious life for all”.

Therefore, South Africans should be able to sustain and maintain a harmonious labour relationship, which is based on equity, justice and love for humanity, in order to achieve a sustainable economic growth for future generations.

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