

THE BOTSWANA PUBLIC SECTOR BARGAINING COUNCIL, A REALITY OR FALACY

Theophilus Tebetso TSHUKUDU*

Abstract: *This article endeavours to come up with strategies that can be used to build the broken trust between the Botswana government and Botswana Federation of Public Sector Unions (BOFEPUSO), being the unions' representatives in the bargaining council. In Botswana, the 2008 Public service Act called for the setting of a collective bargaining council for the public sector known as the Public Sector Bargaining Council with the composition of government of Botswana representatives and labour represented by Botswana Federation of Public Sector Unions (BOFEPUSO). Since its inception the BPSBC has been ridden by problems, with labour and other commentators observing that government is dragging its feet to start the bargaining council with a view to frustrate unions. The other major problem was non-adherence to Collective Agreement by President Khama whereby He addressed collective bargaining issues such as salary increment during his Kgotla(traditional gatherings) meetings. The current administration under President Khama has been militant and heavy handed on labour since 2008 and it did not come as a surprise when the President and his administration foiled Botswana Public Sector Bargaining Council (BPSBC) efforts to resume, resulting in loss of trust by union on government. There is a need, therefore, evaluate the relationship between government and BOFEPUSO as trade unions representative in the bargaining council and most importantly to come up with strategies that can help both parties re-establish trust in the relationship and that the collective bargaining processes are enhanced and industrial action, with its often negative consequences, is averted.*

Keywords: *Botswana Public Sector Bargaining Council; public service; trust*

1. Introduction

Since the inception of the Botswana Public Sector Act of 2008, which ushered collective bargaining between the employer and employees through the bargaining council, where both parties are represented, it is disappointing that government and some senior public service officials still want to bully employees and make unilateral decisions (Patriot 2015). Government has failed to embrace the concept of collective bargaining, or at the least engaging in meaningful consultation with trade unions or trade unions representative. This is despite the fact that the Botswana government is signatory to International Labour Organisation (ILO) convention 1949 (no 98), which protect the rights of employees. Instead government views trade unions representing public sector employees as enemies, and continuously seeks to side line them in major decisions directly affecting their conditions of service. Botswana as country has witnessed instances where in the

* University of Botswana, Department of Management, Faculty of Business. Gaborone, Botswana, Email: theophil700@gmail.com.

private sector employers are also taking the cue from the conduct of government to disregard bargaining structures thus undermining the rights of private sector employees. By so doing the Botswana government is contravening the Right to Organise and Collective Bargaining Convention, 1949 (no 98), Articles 5 and 6. One of the consequences of this contravention led to mistrust between the government and trade unions in Botswana.

According to Fashoyin (1998), the importance of collective bargaining in dealing with the enormous challenges in the economical environment of African can hardly be exaggerated. In southern Africa region, there appears to be understanding among governments and the social partners on the vitality of collective bargaining as a tool for constructing and implementation of social policy. He further notes Indeed Africa countries on archiving independence, introduced tripartite framework that is governed by the collective agreement of one type or the other as members of the ILO. As a result of the adoption of these frameworks, many government begun the introduction of Labour Advisory Councils Botswana been one of such countries. The biggest challenge therefore is the ineffectiveness of these bodies ensuring that Southern Africa countries adhered to the various ratified ILO conventions. Similarly, in Botswana, the LAC has been viewed as an extension of government with its composition been the most controversial of them all. The majority of the LAC members are former government senior officials and hence the question of neutrality on issues of collective bargaining process.

In the preface to trust and betrayal in the Workplace, Reina and Reina (2006) view trust as a universal element that is the foundation of all effective relationships. The authors further contend that trust is needed more today than ever before due to, inter alia, the growing complexity of business processes, the global market which poses increased demands on people that are often evidenced by downsizing or restructuring processes and the pressing need for workplace collaboration between employers and their employees. Nooteboom (2002, p. 6) sees the modern organisations as disintegrating into autonomous units of activity characterised by variety and flexibility. These units, where business is mostly conducted via the internet rather than face-to-face, usher in new issues of trust in the workplace. Dessler (2005, p. 5) views the changing environment in which the modern enterprise operates as triggering an avalanche of change where competitive advantage resides not in machines or patents but in an efficient and enthusiastic labour force. For this ideal to be sustainable, in the long term, a sound relationship needs to be developed between employees and their employers. In the preface to Trust: Forms, Foundations, Functions, Failures and Figures, Nooteboom (2002) warns researchers on the subject of trust that they are most likely to be met by an enormous amount of literature that he describes as —containing a confusing complexity of partly similar and partly different notions and aspects of trust. The Botswana Public Sector Bargaining Council was established primarily to:

- Negotiating , concluding and enforcing collective bargaining agreements between the employer and recognised public sector unions

- Preventing and resolving labour disputes
- Facilitating cooperation between the employer and public officers regarding matters affecting the public service in order to increase the efficiency of the service and the welfare of public officers
 - Exercising any power or duty that may be necessary or desirable to achieve the objectives of the bargaining council and
 - Facilitating better relations between governments as an employer, trade unions, based on mutual trust and respect (Mokgala & Maundeni 2012).

2. Background of the Industrial Relations in Botswana

In spite of poor development or little application of collective bargaining in some countries in Southern Africa, there is in all countries in the region, an acknowledgement that the machinery is the most ideal means of enlisting participation of employees in regulating conditions of employment and related issues (Fashoyin 1998). Fashoyin (1998) further alludes to the fact that this acceptance of the virtue of collective bargaining has enjoyed enhanced support as a result of political liberalisation and market based economic reforms which exist in most countries in one form or the other, more especially in the advanced economies such as South Africa and Nigeria. Botswana like most countries in the region has over the years had adversarialism manifesting for the past 50 years of independence under the four administrations of Seretse Khama, Masire, Mogae and the sitting President Ian Khama.

The government of Botswana has over the years adopted a more authoritative style of public sector management at this stage because employees have over the years realised the importance of trade unions and the need to unionism in the various sectors of the civil service. The Botswana case like other Southern Africa countries has been pronounced by union-government conflicts as the union seeks to force, often reluctant government to change unfavourable labour policies towards membership, or in response to what they perceive to be unfavourable environmental effects on their living conditions (Maree, 2006). The frequent occurrence of stay-away/strikes in Botswana is indicative of fundamental differences between the two sides on the nature and the scope of the change called for by the profound economic and political development in Botswana.

It must be noted that in some countries, collective bargaining has suffered abuse or perversion, but limited failures of this nature do not render collective bargaining absolute. The fact however remains, there is no satisfactory substitute for collective bargaining for the freedom of private decision making in the employment relation particularly in the public sector environment. Sadly, the position of President Khama's administration is that the newly established Botswana Public Service Bargaining Council can be replaced by a special Presidential appointed committee to take over the duties and responsibilities of the BPSBC. His

approach towards labour has been uncompromising and totalitarian tendencies particularly after the 2011 Botswana Public sector strike.

3. Problem statement

The Botswana Public Sector Bargaining Council was ushered in by the new Botswana Public Service Act No 30 of 2008. Since its inception; BPSBC has been facing many challenges from the onset. The majority of these challenges have been created by government as a part of the Bargaining Council primarily because of the government's scepticism and discomfort with the democratic and freedom of private decision on the part of trade unions. Some of the BPSBC problems caused by the government of Botswana include:

- From the onset, there has been unwillingness to set up the Bargaining Council as mandated by the new Botswana Public Service Act NO 30 of 2008;
- Intention to paralyse the BPSBC by insinuating and entertaining the idea that the council be replaced by special committee to negotiate public servants' salaries;
- Dismissal of essential services employees during the 2011 Public sector strike by government
- Subsequent pulling out of the Bargaining Council by government undermined the integrity of the Council and it is demonstration of the hate government has for work-place democracy and freedom of decision making process.
- General contravention of Botswana Labours Laws (e.g government's intention to deregistered BOFEPUSO), a federation representing trade unions under its umbrella.
- According to International trade Union Confederation (ITUC) Botswana is one of the worst countries in the region to be a worker and,
- Ultimate all the above led to loss of trust by unions towards government.

The paper approach to demystifying the reality of the Botswana Public sector Bargaining council dysfunctional state and the void that has been created as a result of its ineffectiveness as result of government flamboyance in the relationship with trade unions is by breaking down the main research objective into the following sub-objectives.

4. Research methodology

Secondary data was collected when compiling this paper. The advantage of this methodology is that data is readily available for the researcher/author. It fasters to collect secondary data and the cost is minimal in terms of money and time (Zikmund et al (2013), Tharenou et al (2007) and Quinlain (2011)). The advent of

internet has even made data collection such a faster when it was done manually. The data for this paper was collected from government documents, internet sources, journals, policy documents, formal memos, and books.

4.1. Research objectives

- The main objective of this paper is to investigate the various challenges faced by the Botswana Public Sector Bargaining Council,
- To highlight the consequences of these challenges and how they impact on Trade Union- Government relationship, in terms of trust and
- To come up with strategies from the theoretical study that maybe used by the BPSBC to address these teething problems as regard the relationship between government and trade unions represented at the Bargaining Council.

5. Theoretical framework

Collective bargaining as enshrined in the convention of the International Labour Organisation (ILO) is basic labour standard provide to guide workers, the collective representation ad bargaining laws provide workers with an opportunity, in association with their fellows, to improve conditions under which they labour, it is self-help mechanism, facilitating the workers' voice, aiding industrial democracy and overcoming market failures which would otherwise leave workers with little individual capacity to impact their working conditions.

Collective bargaining in both the private and public sector plays fundamental valuable function which cannot be fulfilled by any other means. Moreover, it performs the function with our heritage of democracy than any other device or tool designed to regulate employment conditions. The fact, however remains that there is no substitute to collective bargaining. In order to ensure that this research study is manageable; the type of trust referred to herein is that which is interpersonal, inter-organisational and pertains, exclusively, to the employment relationship. It is the type that tends to exist between the primary role-players in respect of their particular performance of given roles within the workplace. The Botswana Collective Bargaining Council should ideally be a central National Bargaining council for all trade unions in the public service, as well as sectorial bargaining councils to address issues in various sectors of the public service. Given the foregoing statements, it can therefore be concluded that failure of the part of Botswana government to deal with bureaucratic bottlenecks that frustrate efforts to improve public sector bargaining has led to mistrust on the part of unions (Motsamai 2009).

Collective Bargaining is premised on the type of trust that, ideally, needs to exist between the trade union representatives and the management representatives, especially during collective bargaining processes. Trust is generally perceived as a state of mind or understanding that the people in the relationship will behave or respond in an honest, predictable, consistent and cooperative way. In workplace

relationships this can be indicated by the parties keeping to the spirit and wording of collective agreements, honouring intentions, respecting confidential information and accepting each other's role and objectives (Fukuyama, 1995; Nooteboom, 2002; Reina & Reina, 2006; Salamon, 2000).

Botswana like most Southern African countries, evidence that is battling with implementation of collective agreement as enshrined in the Collective Bargaining structures which affect public sector employees. If union is formally recognised, by and employer, it can negotiate with the employer over terms and conditions on behalf its members. For collective bargaining to work smoothly, unions and employers need to agree on how the arrangement is to operate. They might for example make agreements providing for the deduction of trade union subscriptions, workers representatives, and meeting dates and times. In countries such as South Africa and Nigeria, these arrangements have been codified thus ensuring predictability and consistency of the engagement. But the same cannot be said about Botswana.

Huotari and Iivonen (2004) explain that trust is an important factor for inter-individual and inter-organisational relations. The authors contend that in organisations there are factors that contribute towards trust-creation and those that are referred to as trust-minimising. Whilst acknowledging the impact of situational variables on the levels of trust between parties, the authors perceives traits such as being honest, inspiring, forward-looking, responsive, and professionally capable as those tend to inspire trust in people whereas trust-minimising factors tend to include telling lies, breaking promises, avoiding responsibilities and being disloyal. According to Bendix (2006, p. 18), no relationship functions in a vacuum and that every relationship is a product of time and place and is subject to the influences of the wider society in which it exists. The above scenarios and others of the same kind are antecedents of organisational conflict and have a potential to seriously damage existing goodwill and industrial peace.

According to Ngalo (2011), although a comparison of the number of strikes between the years 1977 to 2007 shows a marked decline (Venter & Levy, 2009, p. 509) there is still an unhealthy and substantially large percentage (over 50 percent) of strikes due to collective bargaining issues relating to wages and conditions of service. Public sector strikes, for example, have a potential of shutting down most government operations rendering the country ungovernable in certain areas. This envisaged strategic, high-trust labour relationship which aims at, inter alia, achieving honest and open communication between the collective bargaining agents will assist in the early identification of potential organisational conflicts and the effective prevention and or management thereof. Anstey (1989, p. 47) agrees that in spite of the tension that is inherent in the labour relationship, common interests in organisational health must be maximised and the tension reduced through measures to promote conciliation without organisational disruption.

This theory focuses on the nature and type of traits or trust dimensions that are ideal for organisational leadership to possess to create certain particular conditions that favour the possibility of trust to thrive. These traits are also characteristics of a

specific leadership style that tends to earn trustworthiness and, simultaneously, the converse characteristics are antecedents of distrust. The above simplified definition encompasses the dynamics and challenges of trust as it pertains to the employment relationship in that an organisation will, at times, during the collective bargaining processes place itself at the mercy of the employees, hoping that their common interest in the efficient operations and development of the organisation will prevent them from embarking on activities that may cause substantial harm to the business or what Nooteboom refers to as opportunity costs. Trust can contribute considerably to savings on transaction costs, speed up business processes and produce a work atmosphere which can be conducive to the innovativeness and creativeness of the organisation's management and workforce (Nooteboom & Six, 2003, p.66). If trust is as important for organisational success as so many people claim, why do we not see predominantly high-trust work relations? The author advances the following reasons for this anomaly:

- There exist misunderstandings and confusions about what trust is;
- There are several definitions and perspectives of what trust is.
- Trust-building in the organisational context is a reciprocal process;
- It takes two to tango;
- Trust requires action and opens one to vulnerability, and
- Trust needs constant nurturing and tending.

Recently, it has become paramount to understand how individuals react to understand managerial decisions and organisational actions. Similarly, in a labour relation setting, trade Unions and trade union representatives must fully understand what it means to be in a relationship with management or employer representatives such as government and how these interfaces ultimately influence the elements of trust in a relationship.

5.1. Components of the dominion trust

The literature reveals four distinct components of dominion trust. The four dimensions have been incorporated in the following definition of trust, founded on the notions of vulnerability. Trust is one party's willingness to be vulnerable to another party based on the belief that the latter is competent, open, concerned and reliable (1996). According to Damane (2015), scholars that have gained interest in the concept of trust have defined being vulnerable as taking action where the potential for loss exceeds the potential for gain. Without this element, this action is simply a rational calculation that leads to choosing the course of action because the risks within acceptable limits.

Strategy 1: Competent Trust

Within organisations, managers forms relationship with their subordinates and other colleagues based on trust, where trust is defined partly in terms of competence.

Leaders are characterised by how much their followers trust them to make competent decisions. At the organisational and inter-organisational dimension of trust is also observed in relation to exchange relations. In terms of the industrial relations, this is to say the degree of trust on government is proportional to the willingness by trade unions to competently deal with government on issues of mutual interest.

Strategy 2: Open trust

Trust is key aspect of working relationships between managers and their subordinates, where trust defined in terms of perceptions of openness and honesty, among other dimensions. This dimension of openness and honesty is also a dimension of followers' trust in leaders. Trusted leaders are more effective in acquiring skills, retaining and attracting followers and promoting change and innovation. When it comes to issues of collective bargaining, the government takes a lead in building trust between her and all relevant stakeholders and that whatever changes a proposed, they are in good faith and meant to create homogeneous relationship.

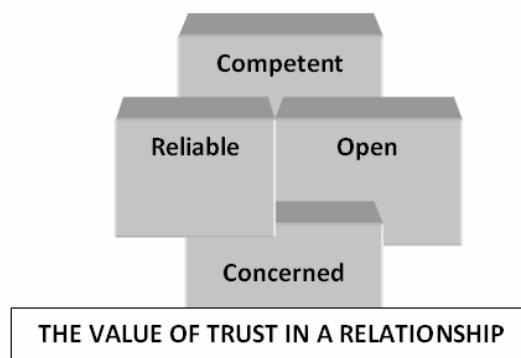


Figure 1. Components of Trust

Strategy 3: Concern trust

In its basic terms, this dimension of trust means that one party believes that it will not be unfairly taken advantage of by another. However, at a greater level it goes beyond believing that one party will not having genuine interest in another's welfare, exactly what the principle of collectivism is all about. In organisations, this can be demonstrated by managers showing concern in their employee's wellbeing, and taking cautious decision that will not result in negative consequences to them. It is worth noting also that trust in terms of concern does not only exist in hierarchical relationship, but also among individuals within the same level in the hierarchy (Damane 2015).

Strategy 4: Reliable Trust

The inconsistencies between words and action decreases trust, In Other words any form of contradiction brings about mistrust and can result in the other part in

the relationship develop cold feet and eventual pull out of the relationship. Trust between parties therefore can be defined in terms of expectations in terms of consistent or reliable behaviour. Judgement of trust in working relationships is also based on accumulations of interactions, specific incidents, problems, and events, where trust between parties is defined from a consistent behaviour perspective. The trustworthiness of any party in a relationship determines the state and longevity of the relationship. In a collective bargaining sphere, parties involved are equals and that reliable trust hinges on the reliability of each partner in the relationship.

6. Discussions

Given the evidence from the literature, collective bargaining is premised on a mutual trust between the government as an employer and trade union(s). Under the problem statement, it is clear that the Botswana has been authoritarian in its dealing with trade unions to an extent that they do not even respect the collective agreement they entered into when implementing the requirements of Collective Bargaining.

There is a school of thought to perceive that labour laws in Botswana are pro-employer and anti-workers. In the latest standoff between government and workers, it is widely known that a government Extra Ordinary Gazette was published on the 22nd June 2015 notifying Trade Dispute Bill of 2015. The Botswana Federation of Public Sector Unions (BOFEPUSO) and Botswana Federation of Trade Unions (BFTU) have teamed up to oppose the un-procedural enactment of the Trade Dispute Act Bill, mainly Sections 46 and 48 on Essential Services. This has forced government to defer the Bill pending further consultation. But we are aware that government has it in the past withdrawn some proposed amendments to other acts, only to sneak them back into parliament without any modifications to the original proposal.

The issue of Essential Services is not new in Botswana. Trade unions have always indicated disagreements with scheduling Essential Services, contained in the current Trade Dispute Act, re-enacted in 2005. Trade Unions have been consistently opposed to the existence of the whole schedule, and have recommended an alternative method of regulation, based on the ILO definition as a best practice. Similarly, the ILO Committee of Experts on the Application of labour Standards and the Committee on Freedom of Association have been repeatedly raised objections to the schedule and its inconsistency with the ILO definition on Essential Services. In recent years, ILO has objected to the inclusion of the Botswana Railway Services and Telecommunication services and has recommended for their removal from the schedule. Botswana has continuously resisted calls for the abolition and alignment of the Essential Services Schedule and conveniently promised to the ILO and the international community that is consulting social partner on the issue. No such consultation is taking place.

Following the 2011 BOFEPUSO strike, government extended the schedule, now to include Veterinary Services, Teaching Services, and Diamond sorting, cutting and selling services. BFTU and BOFEPUSO worked together to oppose the instrument, which was temporarily withdrawn by Parliament but eventually approved as is.

The highest court in the land (Court of Appeal) has declared that essential services schedule is invalid and of no force or effect. Government has arrogantly disregarded the court order, showing contempt for the judicial decision. Government through the Trade Dispute Bill of 2015 now seeks to extend its definition of Essential Services further and thereby limit further the right to strike. Government has increased the number of essential Services from 10 to 14 with an express power to the Minister to declare more services essential. Oddly the New Bill also extends the definition to support services in the listed services, in which case even a cleaner in a school will be an essential service cadre. The effect of this development is to curtail worker's right and in particular the fundamental right to strike. The right to strike is the only weapon that worker have at their disposal to back up demands during collective bargaining and in peaceful coercion of employers in a relationship which inherently unbalanced. Should the Bill pass with the current schedule; almost all unionised workers in Botswana will fall under the definition of Essential Services. Clearly this is a strategy by government to conveniently ban the right to strike. It would be un-lawful for workers in any sector to use strike action in furtherance of grievances with employers.

Sadly, it is alleged that a draft of the TDA was brought before the Labour Advisory Board (LAB) as per the requirements of the Public Employment Act of 2008, but the government never really wanted to consult on the issue before forging ahead with her intentions. The banning of the right to strike is an effective means to its achievement. In the absence to strike weapon trade unions will turned into welfare societies. It is also believed that Botswana as a member of ILO and as currently sitting member of ILO Governing Body is obliged to not only uphold but promote International Labour standards, not to undermine or work against them. Government's continued hard-line stance against trade union is counterproductive and only imagines the negative impact of having Botswana Government reported to ILO and related United Nations bodies for violating ILO Conventions 87 and 98 on the fundamental labour rights. Already there is lobbying to remove Botswana from the ILO Governing Body with immediate effect, for violating Conventions it should be overseeing and domesticating. The Botswana government should take a lead in showing other employers particularly in the private sector to cultivate healthy working relationships and meaningful bargaining with employees through mutual trust and integrity in the collective bargaining process.

7. Findings

Trust is complex and it involves several asymmetries in that trust and distrust are both contagious and depends on positive feedbacks reinforcing the initial behaviour; Trust builds gradually and incrementally, reinforced by previous trusting behaviour and positive previous experiences. There is no absolute certainty that when you trust that trust will be honoured; whilst it is difficult to prove trustworthiness, it is relatively easier to find evidence of untrustworthy behaviour. In this particular study, trust is, to an extent, based on predictability and perceived consistency of behaviour yet the Botswana collective bargaining mechanism is clouded with unpredictability of government in the whole negotiation process.

From the literature, it is clear that the Botswana government has dented trust and integrity the bargaining partner had in the relationship. The question the author poses is why is it important for us to be able to deal with trouble and distrust when we can focus our energies on improving our *ex ante* prevention of trouble. This is the context within which this research study is based. What type of strategies or institutional arrangements can the Botswana government use to enhance trust between the collective bargaining agents to ensure mutually benefiting outcomes and industrial peace?

8. Conclusions and managerial implications

The Botswana government should commit its self to the BPSBC through its representatives acting within the confines of the Collective Agreement provisions. Then current state of affairs where the government plays Big brother in the collective bargaining process, its and it will not help the relations between and the trade unions. Rules are important in the organisational context to develop trust needed for effective cooperation and to prevent chaos, yet when rule are not observed problems in labour relations landscape is the case with the Botswana government in the relationship. The Presidency on the other hand should respect agreements, rules and regulations governing the BPSBC as stipulated in the Revised Public Service Employment Act of 2008.

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