School Principals Right to Freedom of Association and Labour Relations: A South African Perspective

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Abstract

This paper investigates the right of school principals to freedom of association. I interrogate their participation in organised labour activities – especially strikes organised by teachers' trade unions.I raised various reasons to argue that school principals'right to freedom of association should be reviewed in the interest of school effectiveness and efficient management. However, I conceded that because they are employees like all teachers they have the right to freedom of association entrenched in the Constitution Act No. 108 of 1996 and the Labour Relations Act No. 66 of 1995.The limitation of their right to freedom of association may be effected through laws of general application provided that such limitation is reasonable and justifiable. I pointed out that such limitation involves the weighing up of competing values and ultimately an assessment based on proportionality. I concluded that school principals' right to freedom of should be practiced with some limitation like practicing this right through an association that is exclusively established for and by them.

1. Introduction

Orientation

A school principal occupies a very critical and strategic position in the school. The nature of the principal's job makes him or her different from other staff members. As principals they are managers. Managerial work involves performing such activities as planning, organising, controlling, directing, and staffing. School principals occupy a central position at the local level of the system of education. They are the only members of management who interact face-to-face with the non-managerial employees. As such they are the go-betweens for management and those at the working level. On the one hand, they are responsible for implementing the policies and directives of management. On the other hand, they communicate the needs and desires of other employees to management (Comstock, 1994: 6). Consequently, school principals should always act fairly and consistently in communicating needs of other employees under their service. This requires them to assume a neutral stance in schools (Filer, Hamermesh and Rees, 1996: 416).

Because of the uniqueness of their position, school principals are key persons in every school. Their role is critical to the success of the school. Today, principalship is not that simple. Its complexity emanates from the proliferation of trade unions in education (Mothata, 1998: 61 and Maile, 1998: 150). The proliferation of trade unions means that teachers belong to different organisations and are divided along political ideologies.

As such, school principals are caught in the middle. On the one hand, they must respond to the directives and expectations of their superiors. On the other hand, they must be responsive to the needs and expectations of their staff members. These conflicting responsibilities often bring pressure from both above and below (Malepe, 1999: 36).

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Problem Statement

The job of the principal is not only complex, it is also the most difficult of all the managerial positions. The difficulty arises from the practices in this job that have to fall within a strict code of ethics and methods of procedure. Besides its scientific nature, its practice involves the application of fundamental principles. One of the fundamental requirements of principalship is to manage the organisation effectively even during crises times, for example during strikes. This becomes a problem given the fact that principals have the right to freedom of association and to labour relations. The contrast is that Regulation No. 327 seem to limit principals' rights to freedom of association and to labour relations which are guaranteed by the Constitution Act 108 of 1996 and protected by the Labour Relations Act No. 66 of 1995. The question is: whether the limitation is reasonable and justifiable in an open democratic society based on human dignity, equality and freedom as contemplated in section 36 of the Constitution.

The starting point must be that all workers should be treated equally and any deviation from this principle should be justified (Prinsloo, 1998: 70). It seems it is insufficient to classify principals as workers or employees. The uniqueness of their job suggest a different classification. They are a difficult category of employees who cannot be defined as in section 213 of the Labour Relations Act, 1995 which defines them as:

> '(a) any person, excluding an independent contractor, who works for another person or for the state and who receives, or is entitled to receive, any remuneration; and
> (b) any other person who in any manner assists in carrying on or conducting the business of an employer.'

This definition is very wide and fails to acknowledge the uniqueness of principalship (Piron and Piron, 1992: 84). However, in Brown v. Oak Industries 1987 (8) *ILJ* 510, the court declared that the mere fact that a person is a director should not exclude him or her from the ambit of the Act (Anderson and Van Wyk, 1997: 8).

The Regulation Regarding the Role of Managers Prior to Strike Action equates managers as:

> '... all public school principals, heads of colleges, further education and training institutions, adult basic education and training centres, early childhood developmental centres, all office based educators, heads of districts, circuits or regions.'

It appears this definition and the entire regulations seem to single out principals and preclude them from belonging to unions for the reasons given above. Strictly speaking it is legal for managers to belong to teachers' union. However, that will be self defeating and inconsistent to the notion of restoring quality teaching. They should belong to unions that have as their purpose the education of their members and the promotion of principalship as a profession. And this is only possible when principals have a union or association catering for them specifically.

2. Perspectives

Public policy choices and policy change

The derogation of the principals' rights to freedom of association and labour relations can be traced from the need to establish an ordered and consistent framework for the conduct of industrial relations. Policy makers in education have focussed on the transformation of the education system and labour relations in the form of redressing the imbalances created by apartheid. At the same time the education system had inherited a serious problem of dysfunctional schools (Sono, 1999: 155-183) which are characterised by power grabbing (Msengana, 1995: 10), prevention of school principals from doing their normal duties (Conradie, 1998: 78 and Fleisch, 1999: 60) and teachers realigning according to political ideologies and racial lines (Mothata, 1998: 61 and Sono, 1999: 173) as well as proliferation of strikes (Jayiya, 1999: 8; Maile, 1999: 150 and Govender, 1996: 56).

All these mean that policy makers have to make choices and changes and come up with a generic statement that reflects certain beliefs or values which is general and express the philosophy of education held by senior management (Swanepoel, Slabbert, Erasmus and Nel, 1999: 42-43). What emerges as a challenge is synchronisation

of all different levels of management so that employment relations and collectivism can be managed in an integrated manner.

Policy making is a complex process. I believe that decision makers are not simply forced by events, interest group pressures, or external agencies to make particular choices. Generally they have a significant range of options in the management of public problems – including at times, the option of not addressing them. Moreover, solutions to any given set of policy problems are not obvious because the impact of policy cannot be known in advance, because the logic of economics and the logic of politics frequently do not coincide, and because real effects are imposed on specific groups in society when policies and individual rights are altered. Hence, Grindle and Thomas (1991: 2) declare that all policy choices involve uncertainty and risk.

However, the dilemmas are real. Consider for example, that most principals are likely not to belong to militant and destabilising unions (Fleish, 1999: 60; Sono, 1999: 180-181; Mothata, 1998: 61 and Govender, 1996: 56) and yet they are the ones restricted from freedom of association. Nevertheless, policy makers could not escape considering the political wisdom of adopting and pursuing policy changes in the name of efficiency. As a result of the perceived crises and the need to transform education, policy makers are under pressure to reconsider labour rights of educators, especially school principals. Trade unionism commands the attention of senior policy makers. Hence their decision to limit principals' rights seems to be radical or innovative depending on one's perspectives.

My analysis of reforms in South Africa indicates that decision makers apply a series of criteria to the changes they consider, discuss, debate and plan. They weigh decisions in response to their understanding of the technical aspects of the policy area under consideration, the probable impact of their policies and bureaucratic interactions, the meaning of change for political stability and political support. Reforms reflect the perspectives shared among policy makers which can be summarised as:

- Decision makers are not fully constrained by the interests of social classes, organised societal interests, international actors, or international economic conditions, but have space for defining the content, timing, and sequencing of reform initiatives.
- Decision makers often have articulate and logical explanations of the problems they seek to resolve based on their experience, study, personal values, ideology, institutional affiliation, or profession training.
- Decision makers may alter their perspectives on what constitute preferred or viable policy options in response to experience, study, values, ideology, institutional affiliation, and professional training.
- Decision makers often take active and formative roles in shaping reforms to make them politically acceptable to divergent interests in society or in government.
- Bringing about changes in public policies and institutions is a normal and ongoing aspect of government and a normal and ongoing function of many officials (Grindle and Thomas, 1991: 19).

Managerial ethics

Ethical issues occur frequently in education management. They extend far beyond the commonly discussed problems of student unrest, assaults, intimidation, violence, child abuse, vandalism and strikes, reaching into such areas as professionalism in teaching and learning and effective management. Ethical issues involve the assertion to what is 'right' and 'proper' and 'fair'. Currently, the issue strikes is a managerial dilemma because it poses a conflict between an organisation's academic performance and its social performance (Hosmer, 1991: 3). The nature of managerial dilemmas is open to discussion, but most will agree with me that considering the compelling obligations there is a need to protect loyal employees from pollution (Thulo, 2000: 6).

There are some situations in which someone is going to be hurt or his or her rights limited to enhance the productivity of the organisation. The question is how to decide: how to find a balance between academic performance and social performance that a top management can say with some degree of certainty the action is right and proper and just. The dilemma increases when there are:
- extended consequences;
- multiple alternatives;
- mixed outcomes;
- uncertain consequences; and
- personal implications (Hosmer, 1991: 13-15).

As such ethical problems in management are complex, and are difficult to make when a person is directly involved in the situation. Ethical decisions are not simple choices between right and wrong; they are complex judgements on the balance between the economic performance and social performance of an organisation. The issue of making balanced choices invokes law as a guide to moral judgements (choices). The limitation of principals' right to freedom of association and labour relations should be looked at from a set of rules that reflect the collective choices of members of the society. Public opinion holds that teaching is a profession that calls for a sense of responsibility and welfare of pupils (Prinsloo, 1998: 69). Therefore, a strike in education is not like in the private sector where it often results in heavy financial losses. A teachers' strike only has a human cost (Pepin, 1990: 61). Because the employer does not suffer curing strike, but the child does – a party not even contemplated in the world of labour relations and is totally out proportion to the possible gains for the unions (Prinsloo, 1998: 76). That is why an ethical decision is needed and therefore the ethical choice is to consider:

- that the child's inalienable right to receive education cannot be denied by employees;
- all managers should carry out their mandate during strikes; and
- learners should be taught every time they are at school, even during strikes (Sono, 1999: 181).

These represent a set of norms, beliefs and values that should take precedence in exercising rights and should be interwoven with law. Hence the regulations gravitate towards the need to reduce and even do away with strikes in education.

3. The Right to Freedom of Association

The right to freedom of association is the cornerstone of democracy in the workplace. It is entrenched in Conventions of the International Labour Organisation (ILO) as contemplated in Article 2:

> 'Workers and employers, without distinction whatsoever, shall have the right to establish and, subject only to the rules of the organisation concerned, to join organisations of their own without previous authorisation.'

In addition, the Right to Organise and to Bargain Collectively Convention 98 of 1949 provides for the protection of any employee against discrimination by an employer on the ground of an employee's trade union membership. Consequently, it is the duty of the government to ensure that employers may not demand that an employee not be a member of a trade union before taking the employee into service. This provision is clearly reflected in our legislation. The Labour Relations Act No. 66 of 1995 provides in section 4 that:

'(1) Every *employee* has the right
(A) to participate in forming a *trade union* or federation of *trade unions*; and
(B) to join a *trade union,* subject to its constitution.

(2) Every member of a *trade union* has the right, subject to the constitution of that *trade union*
(A) to participate in its lawful activities;
(B) to participate in the election of any of its *office-bearers*, *officials* or *trade union* representatives;
(C) to stand for election and be eligible for appointment as an *office bearer* or *official* and, if elected or appointed, to hold office; and
(D) to stand for election and be eligible for appointment as a *trade union representative* in terms of *this Act* or any *collective agreement*.

(3) Every member of a *trade union* that is a member of a federation of trade unions has the right, subject to the constitution of the federation
(A) to participate in its lawful activities;
(B) to participate in the election of any of its *office-bearers* or *officials;* and
to stand for election and be eligible for appointment as an *office-bearer* or *official* and, if elected or appointed, to hold office.'

This provision clearly resonates with the Constitution Act No. 108 of 1996 section 23. I will explain this later.

Legislative provisions

The Constitution Act No. 108 of 1996

Freedom of occupation

It must be considered that the right to freedom of association is linked to the freedom of employee to join a trade union or to take part in the formation of a union. Trade unions vary according to industries, although federations seem to be unifying different industries. The idea of collectivism stems from individuals entering and pursuing a particular occupation. It means that freedom of trade, occupation and profession come first. This right is guaranteed by section 22 of Constitution of 1996 which provides that:

> 'Every citizen has the right to choose trade, occupation or profession freely. The practice of a trade, occupation or profession may be regulated by law.'

Occupational freedom has an element of individual autonomy and constitutes a basis for exercise of other rights and freedom. Occupation in this sense is seen in terms of its relationship to the human personality as whole. It is a relationship that shapes and completes the individual over a lifetime of devoted activity, it is the foundation of a person's existence through which that person simultaneously contributes to the total social product (De Waal, Currie and Erasmus, 1999: 370).

The right to economic activity does not include unprofessional activities. It means that freedom to occupation is regulated to establish the professionality required. This was demonstrated in Society of Advocates of Natal v. De Freitas 1997 (4) SA 1134 (N). The rule prevents advocates from taking work 'off the streets' without intervention of an attorney. The internal qualifier to this right (section 22):

> 'the practice of trade, occupation or profession may be regulated by law'

applies to measures that regulate occupational freedom without denying choices of or access to an occupation. For example, restriction of school principals' participation in strikes is done to protect the interest of the general public. This is also demonstrated in S v. Lawrance 1997 (4) SA 1176 (cc); 1997 (10) BCLR 1348 (cc) that:

> 'Certain occupations call for particular qualifications prescribed by law and one of the constraints of the economic sphere is that persons who lack such qualifications may not engage in such occupations. For instance, nobody is entitled to practise as a doctor or a lawyer unless he or she holds the prescribed qualifications, and the right to engage freely in economic activity ... should not be construed as entitling persons to ignore legislation regulating the manner in which particular activities have to be conducted.'

In conclusion it should be noted that the practice of an occupation may be restricted by reasonable regulations predicated on consideration of the common good. The freedom to choose an occupation, however, may be restricted only insofar as an especially important public interest compellingly requires – and only to the extent that protection cannot be accomplished by a lesser restriction on freedom of choice (Maile, 2000: 4(b)).

Freedom of association

Like international instruments mentioned above, the Constitution of 1996 entrenches the workers' right to freedom of association, as contemplated in section 18 that:

> 'Everyone has the right to freedom of association.'

The important aspect of this provision is that employees have the right to join trade unions without prohibition not join trade unions by employers. Freedom of association is related to, but must be distinguished from the right to organise, the right to collective bargaining and the right to strike. The freedom of association is denied collective bargaining is undermined. Conversely, freedom of association would remain ineffective if the right to collective bargaining and the right to strike were not recognised. This right balances the power between employers and employees (Swanepoel, Slabbert, Erasmus and Brink, 1999: 223 and Barker, 1995: 76).

Finally, it can be stated that the right to freedom of association protects individual's rights and amounts to the protection of the union's right to freedom of association. Otherwise employers would have been unfairly advantage. Then new labour laws recognises and grants extensive protection to the rights (Wood, 1998: 86).

Labour relations

From the above it appears that rights complement each other. The right to freedom of association complement the right to labour relations. For instance the right to join a trade union, participate in union activities or to strike is not practicable without the right to freedom of association. Hence section 23 of the Constitution Act No. 108 of 1996 provides that:

'(1) Everyone has the right to fair labour practices
(2) Every worker has the right
  (a) to form and join a trade union;
  (b) to participate in the activities and programme of a trade union; and
  (c) to strike.
(3) Every employer has the right
  (a) to form and join an employers' organisation; and
  (b) to participate in the activities and programmes of an employers' organisation
(4) Every trade union and every employers' organisation has the right
  (a) to determine its own administration, programmes and activities;
  (b) to organise; and
  (c) to form and join a federation.
(5) Every trade union, employers' organisation and employer has the right to engage in collective bargaining. National legislation may be enacted to regulate collective bargaining. To the extent that the legislation may limit a right in this Chapter, the limitation must comply with section 36(1).
(6) National legislation may recognise union security arrangements contained in collective agreements. To the extent that the legislation may limit a right in this Chapter, the limitation must comply with section 36(1).'

This provision protects employees from unfair labour practices. This is dealt with in details in the Labour Relations Act (LRA) Part B scheme 7. Residual unfair labour practices include any unfair act or omission that arises between an employer and employee involving for instance unfair discrimination against an employee. Unfair discrimination is described in the Labour Relations Act, 1995 as discrimination on any arbitrary ground, either directly or indirectly, including but not limited to race, gender, sex, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, political opinion, culture, language, marital status or family responsibility.

In human resource management unfair discrimination means treating persons differently from others without proper justification in a manner that involves some notion of injustice or prejudice (Beckmann, Bray, Foster, Maile and Smith, 1999: 44). It follows then that it is not unfair discrimination to selectively restrict principals' freedom of association? The answer is that given the nature of their job and performance imperatives the limitation is a necessary requirement. However, this limitation is justiciable (Swanepoel, e.a., 1999: 282 and Du Plessis, Fouché, Jordaan and Van Wyk, 1994: 223-224). Generally all the employees are also conferred the right to strike. The Labour Relations Act, 1995 Chapter 4 balances the right of employees to strike with the right of employers to lock out. However, the right to strike is limited. There are conditions and procedures to follow before a strike is declared. Section 65 of the Labour Relations Act, 1995 imposes limitations on the right to strike or recourse to lock-out. These limitations may be categorised as both procedural and substantive. The procedural limitations are the stipulated requirements entrenched in the Labour Relations Act No. 66 of 1995. Substantive limitations include:

- strikes that are prohibited in respect of disputes on issues that are subject to peace clause contained in a collective agreement;
- strikes in respect of a dispute that is regulated by a collective agreement;
- prohibition of a strike as a result of a binding by collective agreement that requires the issue in dispute to be referred to arbitration;
- strike action which might have the effect of endangering life, health or safety of other persons;
- strikes in maintenance services;

- right dispute.

The issue of limitation of rights invokes section 36 of the Constitution Act No. 108 of 1996, which is discussed below.

The Labour Relations Act No. 66 of 1995

The right to form and join a trade union

The Labour Relations Act (LRA), 1995 protects the employee's freedom of association. Section 4 contemplates that employees have the right to participate in forming a trade union or federations of trade unions and to join trade union. However, the right to join a trade union may be restricted by a union's constitution which may define who qualifies to join. Equally, the right to participate in union activities is also regulated by the constitution of the union concerned (Basson, Christianson, Garbers, Le Roux, Mishke and Strydom, 1998: 26-27).

Protection of freedom of association

The LRA not only protects the freedom of association of employees, but also affords employees protection against discrimination and victimisation for exercising this right. This is contemplated in section 5(1) of the LRA which provides that:

> 'No person may discriminate against an employee for exercising any right conferred by the Labour Relations Act, 1995.'

It means that no employer would harass an employee because the employee has joined a particular union, or participated in union activities. This limitation on the side of employers is extended to recruitment and selection practices.

In conclusion one can say principals, given the position of trust that they occupy in a community and the influence that they have on the school may also have their freedom of association curtailed. The restriction of some rights to employees does not constitute unfair discrimination.

Regulations regarding the role of managers prior to strike action

Responsibilities of managers

This regulations reaffirms the child's inalienable right to receive education. It imposes the duties and responsibilities on the employers, through its appointed managers, to ensure the functioning of schools during strike action. This provision reconfirms the arguments I raised earlier that principals occupy critical and strategic positions, therefore should abstain or be restricted from union activities. This represents a change in their conditions of employment (Maile, 2000: 342(c)).

However, they may participate in strikes provided they communicate in advance their intention to embark on such action.

Procedure prior to strike action

School principals should communicate their intention to participate in a strike to district/area managers in order to enable the employer to make arrangements to meet its constitutional obligation to provide education. This must be done within 48 hours prior the strike.

The district or regional managers shall send the written response of school managers to the Head of Department, or to the Director-General. Upon receipt of the notice of intention to strike, the employer shall make temporary appointment of substitute or replacement labour as contemplated in section 76 of the LRA.

Procedure during strike action

Replacement (labour) managers will act as manager for the period of the strike and will perform duties of striking manager. The manager available during strike shall:

(a) keep an accurate record of the situation at the institution;
(b) maintain a register;
(c) organise the learners in such a manner that there is effective control; and
(d) take responsibility for management of the institution.

What is crucial at this time for managers is to be accountable and use the available resources to maximise the gains of education (Maile, 2000: 2(a)). This involves enforcement of learning and teaching principle, theories and models that undergird appropriate decisions. There is a need for a commitment to monitoring and do what is best for the learners. And lastly, managers need to be answerable for what happens in the school during strikes to avoid disciplinary action in accordance with Employment of Educators Act No. 76 of 1998.

Strike register

Every manager shall keep a register in which:

(a) the names of educators participating or not participating in the strike action for the duration of such a strike action, shall be recorded.
(b) an indication of the exact number of days, including parts of a working day, during which no service was rendered as a result of the strike action;
(c) the attendance of learners during the period of the strike action;
(d) any form of violence or intimidation during the strike action including but not limited to, the names of individuals involved in such violence or intimidation; and
(e) any damage to property including the names of persons suspected of having caused such damage in instances where such persons are known.

Limitation of Rights

Fundamental rights and freedoms are not absolute. Their boundaries are set by the rights of others and by the legitimate needs of society. Generally, it is recognised that public order, safety, health and democratic values justify the imposition of restrictions on the exercise of fundamental rights. Section 36 of the Constitution sets out specific criteria for the restriction of fundamental rights in this way:

'(1) The rights in the Bill of Rights may be limited only in terms of law of general application to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom, taking into account all relevant factors, including
  (a) the nature of the right;
  (b) the importance of the purpose of the limitation;
  (c) the nature an extent of the limitation;
  (d) the relation between the limitation and its purpose; and
  (e) less restrictive means to achieve the purpose.
(2) Except as provided in subsection (1) or in any other provision of the Constitution, no law may limit any right entrenched in the Bill of Rights.'

It seems the regulation infringes principal's rights. However, the infringement is not unconstitutional because it is effected for a reason that is recognised as justification for limiting rights in an open and democratic society based on human dignity, equality and freedom. In other words, not all limitation of fundamental rights are unconstitutional. Where a limitation can be justified in accordance with the criteria in section 36 it will be constitutionally valid (De Waal, Currie and Erasmus, 1999: 141 and Rautenbach and Malherbe, 1998: 14-15).

It must be noted that the existence of this clause does not mean that rights can be limited for any reason. It is not simply a question of determining whether the benefits to others of a limiting measure will outweigh the cost to the right-holder. If rights can be overridden simply on the basis that the general welfare will be served by the restriction then there is little purpose in the constitutional entrenchment of rights. The reasons for limiting a right need to be exceptionally strong. The limitation must serve the purpose that most people would regard as particularly important. Thus, in our case the limitation is probably justifiable because it will enable the state to fulfil its obligation to provide education.

In 1995, in State v. Makwanyane 1995 (3) BCLR 391 (CC) the Constitutional Court found the death penalty unconstitutional for its inconsistency with the right to life and dignity. The court also made an important pronouncement on the approach to be adopted in determining whether a limitation of a guaranteed right is indeed reasonable and justifiable in a democratic society. This determination involves the weighing up of competing values, and ultimately an assessment based on proportionality. This is what is known as the proportionality test. This test entails that no absolute rules can be laid down, and much depends on the circumstances of a particular case (Jeffery, 1997: 133).In this regard relevant principles may be elucidated and involve balancing of interests. In balancing the interests relevant consideration include the nature of the right that is limited, its importance in an open and democratic society based on freedom and equality, the purpose for which the right is limited and the importance of that purpose to such a society, the extent of the limitation and its efficacy. This was upheld in Park-Ross v. The Director, Office for Serious Economic Offences 1995 (2) BCLR 198 (C). The Cape of Good Hope Provincial Division of the Supreme Court held that section 33 of the Constitution Act No. 108 of 1996 permits reasonable and justifiable limitations wrought by laws of general application. The onus of showing that these requirements are satisfied lies with the Department as the employer. Four criteria must be satisfied (Jeffery, 1997: 134).The criteria stipulate that:

- the provision must have an objective 'sufficiently important' to justify limiting a fundamental right;
- there must be a 'rational connection between the provision and the objective pursued';
- the provision must impair the right 'no more than is necessary to achieve the objective'; and
- the provision should not have 'a disproportionately severe effect' on those to whom it applied.

In assessing the proportionality the relevant party must ensure that the provision adopted is carefully designed to meet the objective in question, the provision must impair the right as little as possible and there must proportionality between the effect of the limitation and the objective being pursued.

Furthermore, the court upheld in State v. Makwanyane that rights can be limited where it is necessary. This entails that such a limitation must be 'particularly closely scrutinised'. It means that the usual test for proportionality would first have to be satisfied. A further factor to consider includes whether the desired ends could reasonably be achieved by other means less damaging to the right in question. This was upheld in Holomisa v. Argus Newspapers Ltd 1996 (6) BCLR 836 (W). The court 's decision introduced an approach which requires the balancing of conflicting rights. Where one of the rights in issue (such as the right to freedom of association and labour relations) was shielded by common law rules which bore on another guaranteed right (such as the child's right to education) the court should begin by determining the meaning and content of the right sought to be asserted. Thereafter it should assess whether the rules of the common law which protected one right, curtailed or infringed the other right, and if so ,whether in the light of the constitutional scheme overall and relative place of competing right in it could be justified in accordance with the provisions of section 33 of the Constitution Act No. 108 of 1996.

The duty to provide education to the society cannot be achieved if people saddled with the responsibility to manage the mandate are involved in activities that have no relationship with the compelling mandate. Clearly there is a relationship between the limitation and the purpose. It seems the limitation is justifiable, and there is proportionality between the infringement and the beneficial purpose that the regulation is meant to achieve. This limitation is justified even if one sees it within the equality clause. The state as the employer is not prevented from making classification and from treating some people differently to others. This is because the principle of equality does not require everyone to be the same. The employer may therefore classify people and treat them differently to other people for a variety of legitimate reasons (De wall, e.a., 1999: 196). In this instance the reason is to provide education. Therefore, not every differentiation amounts to unequal treatment or unfair discrimination.

Consequently, not all discrimination is unfair. There is a fair discrimination. This was demonstrated in President of the Republic of South Africa v. Hugo 1997(4)SA 1 (CC)1997 (6) BCLR 708 (CC). The respondent argued that the President's order to grant remission to all mothers amount to unfair discrimination. However, those principals who feel their right to freedom of association has been unfairly restricted must show that the infringement has taken place. They must prove facts. Then the courts will declare the regulations unconstitutional and inconsistent.

Regard must be had to the fact that the decision to limit certain rights is based on the principle of legality, which requires decisions to be made by the application of known and general principals of law. However, there is little guidance in this regard. Only recently did the courts attempt to define the essence of the rule of law. For instance in the case Fedsure Life Assurance Ltd v. Greater Johannesburg Transitional Metropolitan Council 1998(6) BCLR

671 (SCA) the court decided that the exercise of power is only legitimate where lawful. The centrality of this principle in our legal system means that the legislature and executive are constrained by the principle that they may exercise no power and perform no function that conferred upon them by law.

Thus, the rule of law at least include the principle of legality according to the *Fedsure* case. Legality means that the government, including the courts, must act in accordance with the legal principles and rules that apply to it. The principle of legality also entails that the government derives its authority to act from the law. In other words, there can be no extra-legal powers in a state founded on the rule of law. Whenever the government exercises power, it must be able to point to the source its authority in the Constitution or the other laws of the country. The rule of law contains both procedural and substantive components. The procedural component forbids arbitrary decision-making. The substantive component dictates that the government must respect the individual's basic rights. Although it is not yet clear whether the right to freedom of association is protected by the rule of law, it seems logical for the right to be protected by this principle (De Waal e.a., 1999: 10-12).

Finally, it must be emphasised that unions are not the only means to exercise rights. The rights of workers are protected by various Acts in the labour legislation. Workers can consult attorneys or labour consultants for assistance (Nel, Erasmus and Swanepoel, 1998: 101). Workers like principals must restrain themselves from importing debilitating political undercurrents from outside into the school through trade unions.

4. Conclusion

It has been established from the foregoing discussion that rights are not absolute; they can be limited in one way or the other. It was established that the limitation of rights starts with the treat of all workers equally, making the limitation reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom. It has become clear that sound policies are a prerequisite for enlightened and effective management, organisational effectiveness and employee commitment. However, it must be acknowledged that the significant problems we face cannot be solved at the same level of thinking we were at when we created them.

The same applies to restrictions put on employment rights and labour relations rights accorded certain categories of employees. Due to the nature of their positions, school principals must abstain from the mainstream trade unionism in order to attain the desired outcomes of the organisation. The nature of their position requires this. Joining trade unions is contradictory to their role of guardianship to schools. There is nothing sinister in that, but a deliberate call for professionalism in education management. This professionalism should be reflected on the way managers manage schools. The regulations and the programme provide a sound basis for professional management and managers should develop their plans along these guidelines or adopt the entire programme.

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