

REPORT OF INVESTIGATIONS BY THE ESSENTIAL SERVICE  
COMMITTEE IN TERMS OF SECTION 70(2)(a) READ WITH SECTION 71  
OF THE LABOUR RELATIONS ACT 66 OF 1995 TO DETERMINE  
WHETHER THE PAYMENT OF SOCIAL PENSIONS IS AN ESSENTIAL  
SERVICE

## BACKGROUND

Section 20(1)(a) of the Public Service Labour Relations Act of 1994 listed the payment of social pensions and the services which support it as essential services.

In terms of item 24 of the Regulations No. R1734 of 01 November 1996 the payment of social pensions and the services which support it were deemed to be designated as essential services for a period of six (6) months from 11 November 1996. This period was extended to ten (10) months by Regulation R654 of 09 May 1997. Item 24 (2) as amended allows the committee to supplant the services deemed to be designated as essential services with its designations made in terms of Section 71(8) of the Labour Relations Act of 1995.

## ARRANGEMENTS

Notice of the investigation was published in Government Gazette No. R2094 on 20 December 1996. On 4 May 1997 and 16 May 1997 notice of the hearing was published in "The Sunday Times" and "The Weekly Mail" respectively. In addition, interested parties received notice of the hearing on or about 19 May 1997.

The hearing was held on 12 June and 3 July 1997 in room number 321, 3rd Floor, CCMA House, 20 Anderson Street, Johannesburg.

## **REPRESENTATIONS**

Representations were received from Cash Pay Master Services (Pty) Limited (CPS), the Department of Social Welfare and Population Development ("the Department"), the Federation of South African Labour Unions (FEDSAL), the Congress of South African Trade Unions (COSATU) and the National Education Health and Allied Workers' Union (NEHAWU).

CPS appended letters from the Department of Labour, the Department and the South African National Civic Organisation (SANCO) in support of its submissions.

At the conclusion of the representations on the first day of the hearing CPS and the Department had merely established that the interruption of pension payment services would amount to hardship. The information adduced was also insufficient to enable the committee to decide categorically that an interruption of pension payment would not endanger life, personal safety and health of a part of the population. The parties were requested to revert to the committee with better factual information which would create a more precise profile of pensioners.

## **The Expert Witness**

In the interim, the committee independently investigated the availability of expert testimony. Ms Frances Lund was approached to testify as an expert. Ms Lund is a senior research fellow/Senior Lecturer at the Centre for Social

and Development Studies at the University of Natal; Durban, and has a Masters Degree in Social Science from Natal and a Post Graduate Diploma in Community Development from the University of Manchester.

She has made extensive studies into the socio-economic conditions of rural communities. In October 1995 she consulted with the World Bank to investigate the relationship between social security systems and poverty alleviation measures. Ms Lund together with Elizabeth Ardington contributed to research on rural livelihood in association with the Institute for Development Studies at Sussex.

She chaired the National Committee of Enquiry on Child and Family Support which was established by the Department in 1996. She is currently researching the social security system and implications of state restructuring of welfare on service delivery with special reference to regionalisation and privatisation. Ms Lund is also a member of several development organisations in South Africa and internationally. She has published widely on social welfare and development.

The committee is satisfied that Ms Lund qualifies as an expert on the socio-economic conditions of those dependent on welfare and the payment of social benefits. Her submissions, which substantially support those of the Department and CPS, have been incorporated in this report.

## SUBMISSIONS

### Background

Historically, social pensions were racially based. Initially Africans were excluded from receiving pensions. When they were brought into the system in the mid seventies the ratio of payments to White : Indian / Coloured :

African: was 10 : 5 : 1. In 1993 the Government decided to equalise the system.

There are approximately three million pensioners in South Africa. In 1997 of the 2.8 million social security beneficiaries representing 7.6% of the population, 60% are pensioners. The bulk of the social welfare budget which accounts for 10% of the 1997/1998 national expenditure allocations is appropriated as pensions. Pensions and grants consumed amount to about R13 billion. In July 1997 pensions were increased to R470.00 per month per pensioner. Relative to international standards the 80% take up rate (ie the number of people who are eligible for old age pensions and who actually receive them) is high for Africans.

Pensions are paid via private agencies, banks and the post office. CPS, a subsidiary of First National Bank, is one of two companies contracted to the Department to pay social pensions and other grants in rural areas. CPS services six regions in South Africa namely KwaZulu-Natal, Mpumalanga, Gauteng, Western Cape, Northern Province and North West Province. It pays approximately R496 million per month to 1.05 million pensioners across 3200 pay points in remote areas. CPS therefore provides the bulk of the pension payment services in rural areas of South Africa.

CPS's primary interest is to have the services rendered at the pay points declared essential. It concedes that its administration, marketing, public relations and business development components are not essential services. However, it regards the pay teams made up of tellers, pay masters, security, drivers, technical and maintenance staff as the providers of essential services.

The Department's position, supported by Ms Lund, was that the whole of the pension service should be designated as an essential service. Ms Lund's submissions were based substantially on the research she undertook initially

with Elizabeth Ardington (See "Pensions and Development: How the social security system can complement programmes of reconstruction and development" by E Ardington and F Lund published by the Development Bank of Southern Africa (1995)).

#### **Direct consequences of the non-payment of social pensions in rural areas**

- The beneficiaries would be deprived of cash which is critical to their survival and that of their families. Pensions are used to pay for transport, food, clothing, medical expenses, schooling and education. In many instances this is the only source of income for an entire family. Research by Ms Lund and Ms Ardington shows that about one quarter of all African households has a pensioner. Pensions are the primary source of income for about 30% of the poorest and a quarter of the poor households. For others it is an important secondary source of income. In households headed by elderly women in KwaZulu Natal, pensions constitute about 51.4% of all income.

Not only the pensioner as the recipient, but the entire household as the beneficiary of the pension will suffer. Households in rural areas are usually based on the extended family system. Pension households usually contain more children. Ms Lund referred to Case and Deaton's analysis of a survey by the Southern African Labour Development Research Unit (SALDRU) which established that of the twelve million African children below the age of sixteen years, thirty two percent live with a pensioner.

- As pensions are paid to lower income groups, to more women than men and in rural areas, the poorest and the disadvantaged will be hardest hit. Although pensions provide a reliable source of income, the mean and per

capita incomes are still lower in households with pension than those with other forms of income.

- Malnutrition which is prevalent in rural communities would be exacerbated. Pensioners and their dependants could face starvation. Pension households spend higher proportions of income on food. Small scale surveys done by McCormack in Soweto record that pensioners cited children as the persons most affected if pensions were stopped. Ms Lund's recent personal experience when visiting households in the Dukuduku area in Northern Natal showed that single pensioners were the source of income for a number of children under the age of six years. Despite the pension, the children manifested signs of malnutrition.
- With a deterioration in the nutritional status of individuals poverty related diseases would spread.
- They would also not be able to pay for transport if they required urgent medical or hospital treatment. Although health care for certain categories of people is free, transport to health services is not.
- Whilst acknowledging that there might be differences across time and regions, and accepting that interruption of the payment of pensions would not have the same immediate effect as would the interruption of the services of air traffic controllers or emergency medical services, Ms Lund submitted that an interruption of pension payment would have a devastating effect on the health and nutrition of very poor beneficiaries, including younger children, in the short term. Although no data is available presently to estimate the precise effects of an interruption on health, that there would be suffering is reasonably predictable. The direst consequences of an interruption would be in the poorest parts of the country in communities where options for alternative sources of income are severely limited. For the poor, as distinct from the poorest, they may

be able to beg and borrow temporarily using their pensions as collateral. Individual pensioners in regions such as Gauteng which is generally regarded as being better off would experience hardship. Through participation in surveys poor people have described their lives as hazardous and uncertain; a pension is one reliable life line to survival.

- The interruption of a reliable source of income means that pension households will not be able to smooth income over difficult times such as winter. They also could not gain access to other resources to engage in alternative income-generating activities.
- Non payment of pensions could lead to trauma and stress. The CPS video documents pension pay day as is a special event. Pensioners queue at the pay points from early hours of the morning to late in the afternoon. As the payment system is based on biometric testing, a pensioner has to come to the pay point personally for a finger print identification before payment is made. Pensioners can nominate proxies to receive the pension on their behalf, but many have learnt through bitter experience that proxies generally cannot be trusted.
- When payment has been interrupted in the past, pensioners have been so distressed that many could not bear to return home to face the hunger and misery of their families. Others had no means to return home as they might have borrowed or spent their last few rand on getting to the pay point in anticipation that they would use their pensions to find their way back home. Many have slept over a night or two at the pay points in the hope that the problems with their pensions would be cleared quickly.

Pensioners may not be notified timeously if payment is interrupted by industrial action. If an interruption in the service is anticipated for instance because there has been a robbery or computer failure CPS would, with the help of Welfare Officers who are employees of the Department, send

out urgent messages to the pensioners to prevent them from making the journey to the pay point in vain. In the absence of sophisticated forms of communication such as telephones, notification via Welfare Officers is not guaranteed.

- A short term withholding of labour of about a week could also lead to a long term interruption of payment of over a month as the information technology underpinning the delivery system has tightly fixed two or three monthly cycles of assessment, delivery and reconciliation.
- To find replacement labour or alternative methods of payment during strikes is not a realistic option. CPS has developed its systems and staff over a long period of trial and error, testing and training. Staff are trained to operate equipment and in the payment procedures. It would not be possible at short notice to find an adequate supply of labour competent to replace the trained staff. The lack of resources and infrastructure also makes it extremely difficult to access competent replacement labour and systems.
- Strikes which include security staff would render CPS and the pensioners more vulnerable to hijacking, muggings and armed attacks.

#### **Indirect consequences of an interruption in the payment of social pensions.**

A spin-off of the pension payment in rural areas has been the development of small business enterprises which promote employment opportunities. Non-payment of pensions deepens poverty and suffering which will in turn lead to increased crime, violence, discontent and even political unrest. The impact will extend beyond the pension household.



### **Submissions against declaring the service as essential**

It was submitted on behalf of COSATU and NEHAWU that a decision to strike by trade unions would not be taken lightly. Many trade union members and their families come from the very communities who benefit from the service. Furthermore, there is a historical alliance between such communities and trade unions. In the past they banded together to protest or resist injustices. Some communities would therefore empathise with strikers to an extent.

Employees want to participate in strikes which are procedural. The restrictions on the right to strike must be reasonable and justifiable, otherwise employees may strike anyway even if that means breaking the law. A blanket ban on industrial action would be inappropriate as most parts of the service clearly do not meet the definition of essential services.

The parties acknowledged that there are inefficiencies in the systems, such as mechanical and administrative breakdowns, which lead to interruptions. Because strikes may exacerbate the existing inefficiencies, it would be wrong to conclude that they should therefore be banned. Instead, the causes of the inefficiencies should be identified and removed. Besides, it was submitted, pensioners have become accustomed to enduring short interruptions.

Historically, the payment of salaries has not been treated as essential services (except in the case of public servants when they were denied the right to strike) despite the fact that they may be used for buying critically needed health and medical services. If people do not pay their rent they may be evicted in which case their lives, personal safety and health may be endangered. It was submitted therefore that pensions should not be distinguished from other forms of income.

It was suggested that the preferred approach should be to leave the parties to refer disputes to the committee whenever they arise in terms of Section 73 of the Labour Relations Act. The scope, duration and impact of industrial action can be better assessed when a dispute exists.

## INTERNATIONAL AND FOREIGN LAW

<sup>1</sup>In Canada, the payment of pensions and unemployment insurance is of federal jurisdiction. As federal public servants, the union and employer must

try to reach an agreement on essential services. Failing such agreement, the employer may request the Public Service Staff Relations Board to make a designation. The Board has no jurisdiction to determine the level or number of employees required in essential services during a strike; it may only make an overall designation or none at all. Therefore, if an overall designation is made, all the employees necessary to keep the service at a normal pace will be required. It has generally been agreed between the parties that the payment of pensions and unemployment insurance is an essential service as this is the only income of the beneficiaries.

The payment of welfare benefits is of provincial jurisdiction. In Quebec, public servants' unions have to negotiate with the employer to reach agreement on essential services. Failing an agreement, the Labour Court will decide what the minimum service should be. No decision of the Court exists because the parties have always agreed the minimum service. The level of the service is one-third the normal component in regional offices for emergency queries regarding welfare. However, all employees have agreed to be on call on the day when cheques have to be issued. This confirms that the pay day has been identified as the critical time of service delivery.

---

<sup>1</sup> Madeleine Lemieux, former chairperson of the Essential Services Council of Quebec.

The International Labour Organisation (ILO) recognises the need to provide minimum services during strike action in "services which are not essential in the strict sense of the term but where the extent and duration of a strike might be such as to result in an acute national crisis endangering the normal living conditions of the population".<sup>2</sup>

## ANALYSIS

The primary thrust of the submissions related to the impact of interruptions on pensioners in rural areas. Although poverty is concentrated in rural African communities for historical reasons, the committee cannot exclude the possibility that some pensioners in urban and peri-urban areas may also suffer similar levels of poverty. The difference though is that the latter have better access to the pay points which may be a bank, post office or the Department. Such pay points do not require the elaborate arrangements that pay points in rural areas do. Urban and peri-urban pensioners have greater access to information so that they can prepare themselves if there is to be an interruption.

Pensioners are distinguishable from those who receive unemployment insurance benefits, salaries or wages. The primary distinction is that pensioners often cannot help themselves because of their advanced age coupled with the lack of their own resources. They would therefore be more vulnerable whenever there is an interruption of their income than the recipients of other forms of income.

It is unlikely that on balance, the mere interruption of pension payments could, on its own, result in the death of pensioners. However, their age and frailty does make them more vulnerable in times of hardship.

---

<sup>2</sup> Freedom of Association : Digest of decisions and principles of the Freedom of Association Committee of the Governing Body of the ILO, Fourth (revised) Edition, 1996.

That there is a degree of malnutrition amongst the poor is not disputed. While a short term interruption may not be a danger, a long term interruption could endanger the life and health of those already suffering from malnutrition. In determining what would amount to short and long term in this context, the committee takes into account that :

- unavoidable interruption of payments do occur periodically and pensioners are able to muster the resilience to withstand such a temporary hardship;
- an interruption of a week in those parts of the service responsible for the administration, as opposed to those responsible for direct payments at the pay points in rural areas, will result in a delay of more than a month;
- an indefinite interruption would impair the ability of pensioners to secure credit against their pensions as collateral.

The employees engaged in the actual payment of pensions at the pay points in rural areas perform the more vital functions. The pay points are a concentration of activity over a limited and prearranged period. It is the moment of the most direct form of service delivery. An interruption of a day may result in payment only being effected by the next scheduled pay day the following month, unless emergency measures such as overtime and special arrangements to notify pensioners are implemented.

The delays caused by an interruption in the administration of social pensions and maintaining a data base can be remedied more easily than an interruption at the actual pay point in rural areas as there is greater flexibility to re-deploy or supplement administrative staff, or to work overtime as the pensioners will not be involved in the implementation of such emergency measures.

Whenever there is an interruption of the service such as when trucks break down or there is a computer failure CPS is able to put into operation contingency plans to ensure that pensions are paid. The suggestion that similar steps should be implemented during industrial action is not practical as the scale of industrial action is generally greater than that of mechanical breakdowns.

Industrial action which interrupts pension payments for a month would cause hardship but generally would not endanger life, personal safety or health. Furthermore, if there is certainty that pensions will be paid within a defined and reasonable period, pensioners would still have access to credit during short interruptions.

Ms Lund suggested that the workers' right to strike should be balanced against the right of the poor to receive their entitlement. Her view was that the differing capacity of the groups to organise and draw on alternative resources or have access to appeal mechanisms, should result in a tilting of the balance in favour of pensioners. It is doubtful that such a balancing of interests falls within the terms of reference of the committee. What is a consideration is that individual pensioners might have great difficulty in restoring their pensions if they were to be interrupted. Undisputed evidence was received that this had happened in the past.

Trade union representation within CPS is insignificant. CPS has no organised collective bargaining partner. Whenever strikes have occurred in the past they were usually spontaneous and in reaction to a dismissal. Within the Department, trade unions enjoy a stronger presence. The absence of organised bargaining is not a guarantee against industrial action. At times, it is known to have been the cause of it. The patterns of collective bargaining are a factor in determining the scope of the interruption of services and thereby the consequences for the public.

CPS's monopoly as the exclusive agent for the payment of pensions in particular rural areas makes it especially vulnerable. The impact of industrial action could be widespread affecting more than a million pensioners. A protracted interruption would deepen the crisis. The extent and duration of the interruption, with or without the domino effect of an interruption on, for example, the non-payment of rent and service charges, could cause an acute national crisis which would endanger the normal living conditions of the pension dependent population.

The suggestion that no designation should be made until a dispute is referred to the committee in terms of section 73 of the Labour Relations Act of 1995 is resisted as it encourages disputes having to be resolved in the heat of the moment. Besides, the committee is obliged to make a decision as to whether or not a service is essential once it has investigated it. In view of the findings of the committee above it cannot decide not to designate the payment of social pensions as an essential service and thereby leave the door open to the parties to approach it in terms of section 73. The section 73 approach is appropriate for some services; however this is not so in the case of a national public service.

Finally, it must be noted that the Department is the source of the funds and the administration which underpins the service. Other role-players who complete the service delivery include CPS, the banks and the post office. Together, all the role-players collaborate to deliver social pension payment services.

20 AUG. 1997 16:38

CCMA HEAD OFFICE  
CCMA DEN 0315003403

NO. 6398 P. 2  
NO. 6333 P. 15

DESIGNATION : PAYMENT OF SOCIAL PENSIONS 20 AUGUST 1997

16

## DESIGNATION

The committee has designated as an essential service the payment of social pensions one month after they fall due.

DATED :

20 August, 1997

MS DHAYA PILLAY (CHAIRPERSON)



PROFESSOR KATE JOWELL



MR SUNIL NARIAN

