

**Schedule 4 of the Labour Relations Act 66 of 1995**

**DISPUTE RESOLUTION: FLOW DIAGRAMS**

This Schedule contains flow diagrams that provide guidelines to the procedures for the resolution of some of the more important *disputes* that may arise under *this Act*. This Schedule is not

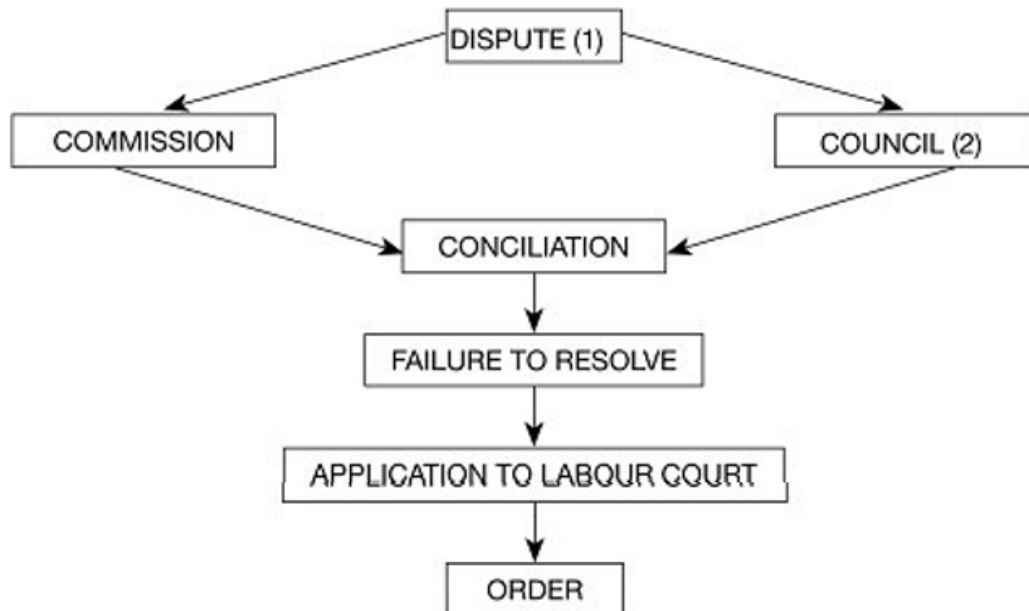
part of *this Act*. It does not have the force of law. The flow diagrams are intended only to provide assistance to those parties who may become involved in a *dispute*.

The flow diagrams do not indicate the rights that parties may have to seek urgent interim relief, nor do they indicate the right of review or appeal that parties have to the Labour Court or the Labour Appeal Court in certain cases. *This Act* sets out the circumstances in which these rights are available.

Awards and determinations by arbitrators are enforceable ultimately by the Labour Court.

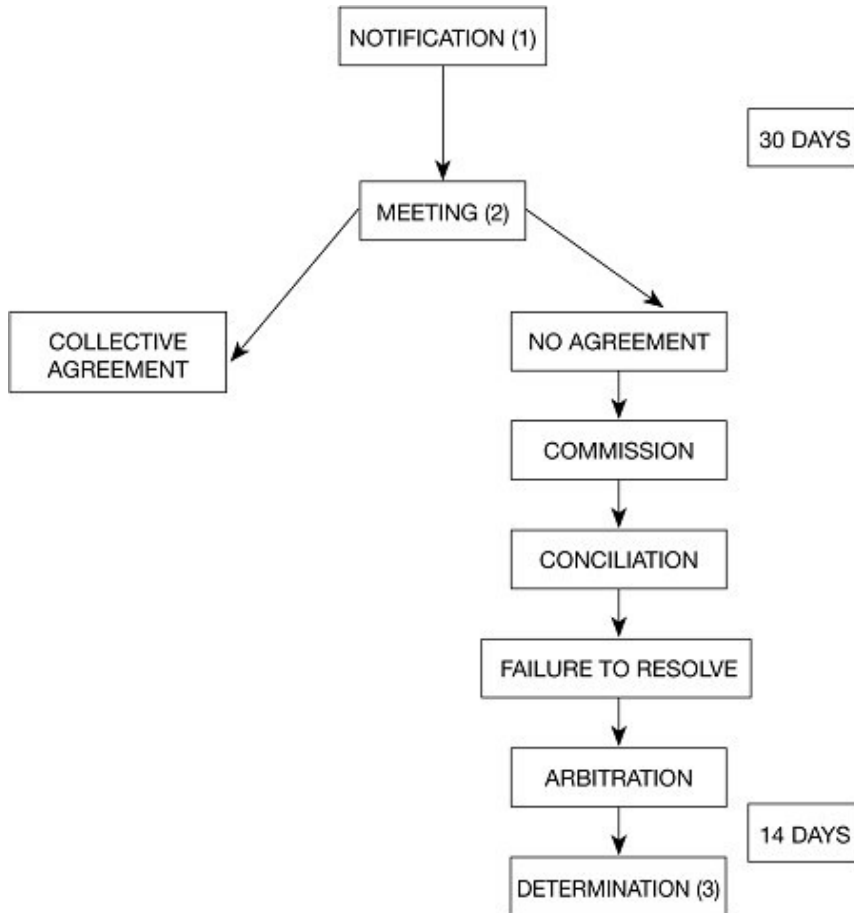
**FLOW DIAGRAM 1  
FREEDOM OF ASSOCIATION**

CHAPTER II (Section 9)



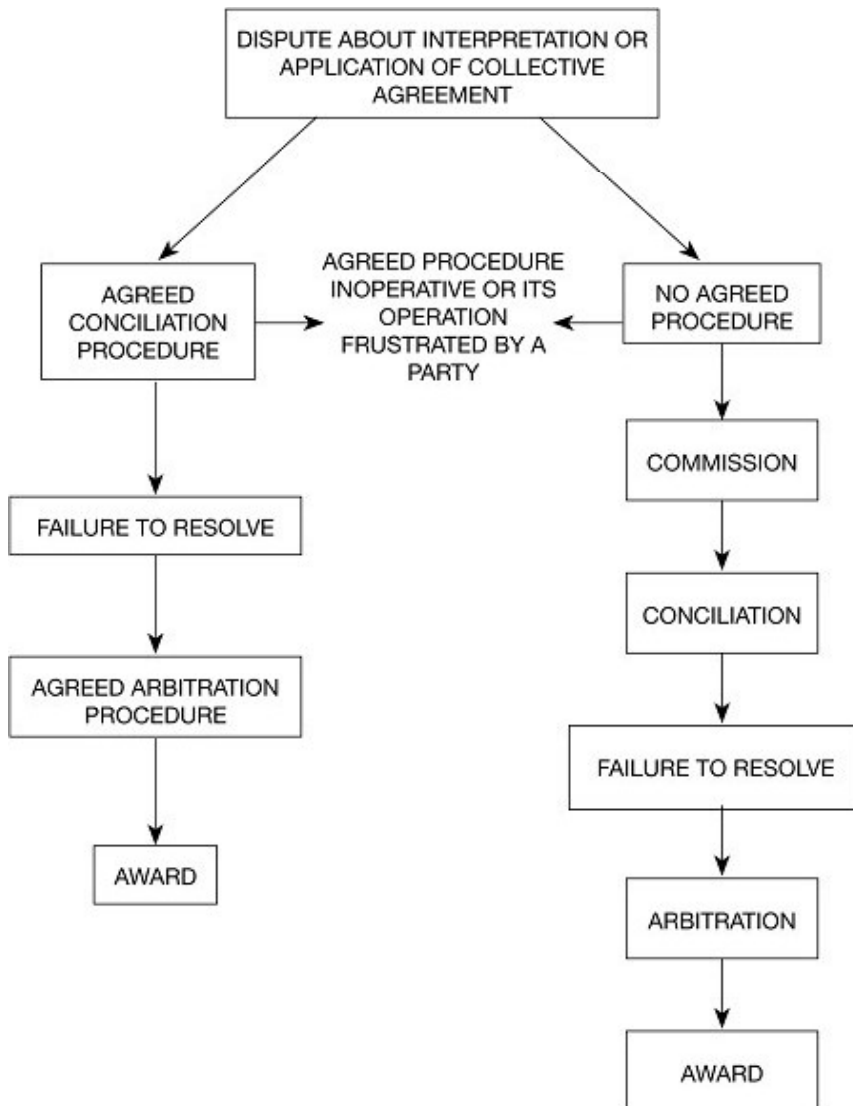
1. This procedure is relevant to the interpretation or application of Chapter II. For example, if an employer threatens to dismiss an employee unless the employee resigns from a trade union, that employee can enforce the rights conferred by this chapter in terms of this procedure. If a trade union threatens to boycott an employer, for example, because the employer institutes proceedings against the union, the employer can enforce its rights in the same way.
2. The dispute must be referred to a council if the parties to the dispute fall within the council's registered scope.

**FLOW DIAGRAM 2**  
**ORGANISATIONAL RIGHTS**  
 CHAPTER III (Section 21)



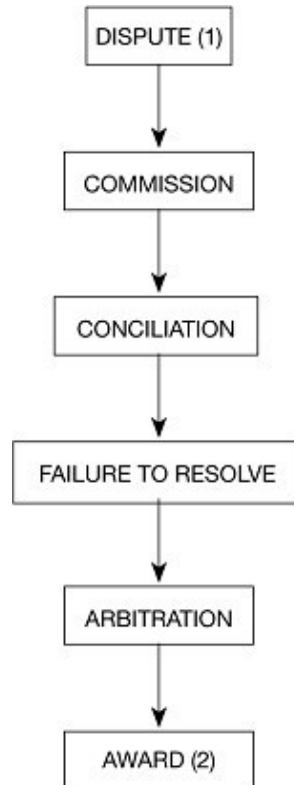
1. A registered trade union may notify an employer that it intends to exercise organisational rights. The content of the notice is described in s 21 (2). For example, if a registered trade union is sufficiently representative, it may notify the employer that it seeks to exercise the rights of access.
2. The object of the meeting is to conclude a collective agreement on the exercise of the organisational right. If there is no agreement, the trade union can elect to exercise a right to strike, or it can refer the dispute to the commission. If the trade union elects not to strike, it cannot refer a dispute over the organisational rights to the Commission for a period of 12 months.
3. The Act contemplates disputes and therefore determinations about the definition of a workplace, the representativeness of the union and the manner in which organisational rights are exercised.

**FLOW DIAGRAM 3**  
**COLLECTIVE AGREEMENTS**  
CHAPTER III (Section 24)



**FLOW DIAGRAM 4**  
**COLLECTIVE AGREEMENTS**  
**(Agency Shop and Closed Shop Agreements)**

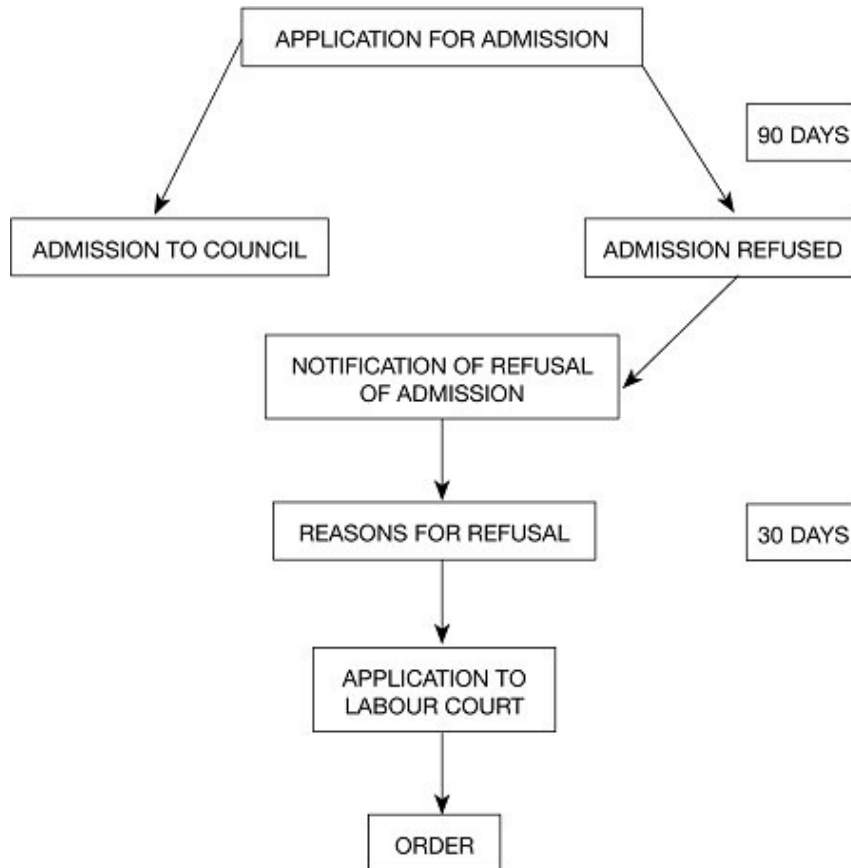
CHAPTER III (Section 24 (6) AND (7))



1. This procedure is about the interpretation or application of closed shop and agency shop agreements. For example, if the contributions deducted from wages in terms of those agreements are used for purposes other than those referred to in sections 23 (3) (d) or 26 (3) (d), that dispute may be referred to the Commission. Dismissal disputes involving closed shops are dealt with in Chapter VIII – see flow diagram No. 11.
2. Section 24 (7) confers a limited right of appeal to the Labour Court against some awards.

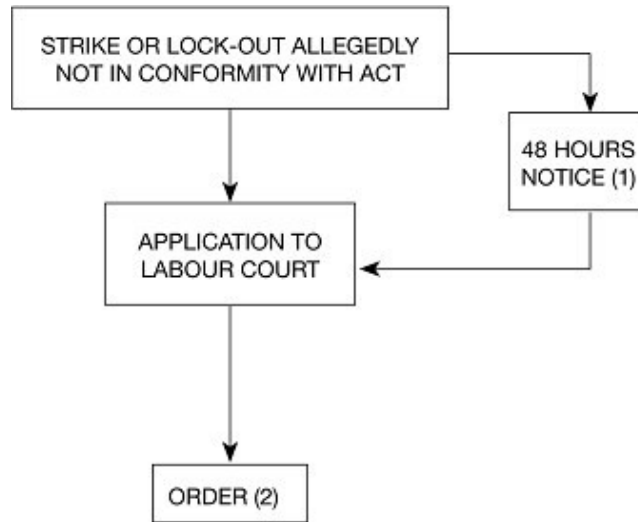
**FLOW DIAGRAM 5  
COUNCILS  
(Admission of Parties)**

CHAPTER III (Section 56)



**FLOW DIAGRAM 6  
STRIKES & LOCK-OUTS  
(Not in compliance with the Act)**

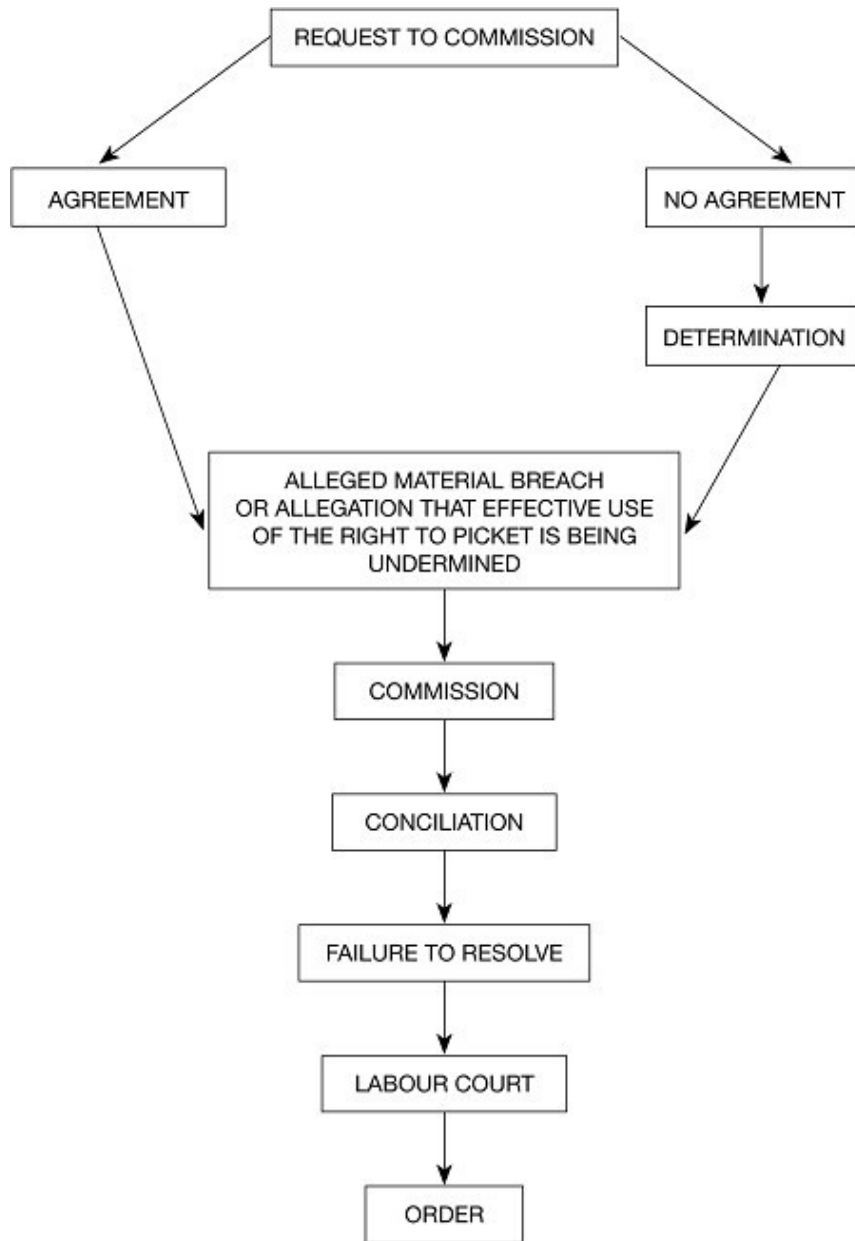
CHAPTER IV (Section 68)



1. The notice requirement is dealt with in s. 68 (2). Shorter notice may be permitted in the circumstances specified in that section. Notice is not required if the employees are engaged in an essential service or a maintenance service.
2. The orders that the Labour Court may grant include restraining orders and an order for the payment of compensation.

**FLOW DIAGRAM 7  
PICKETING**

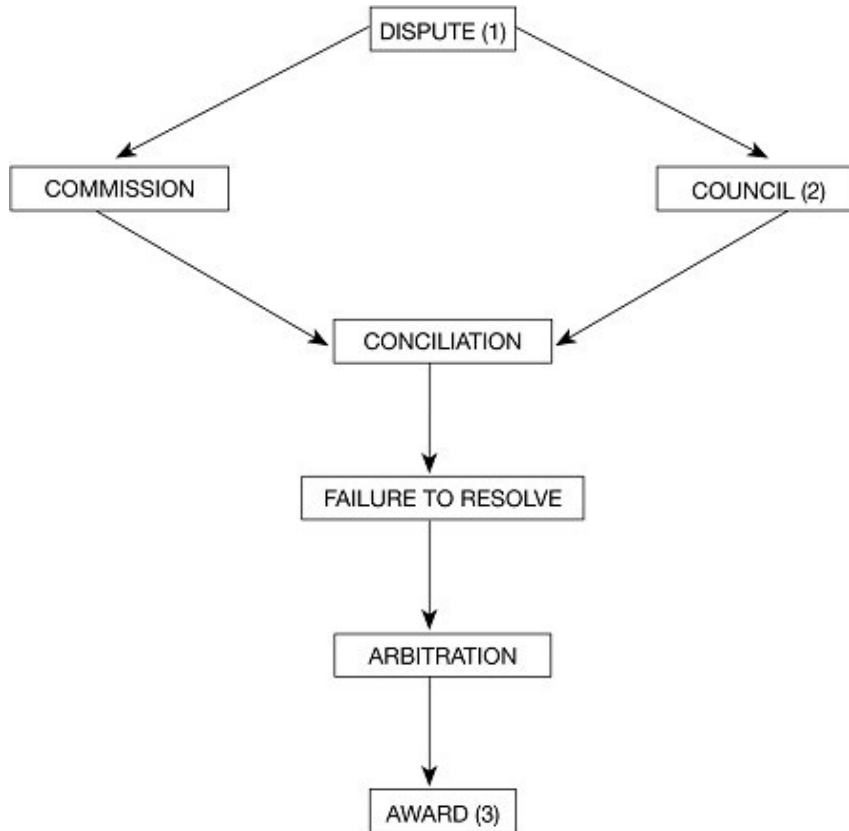
CHAPTER IV (Section 69)



**FLOW DIAGRAM 8  
ESSENTIAL SERVICES**

**(Dispute of interest in essential service)**

CHAPTER IV (Section 74)

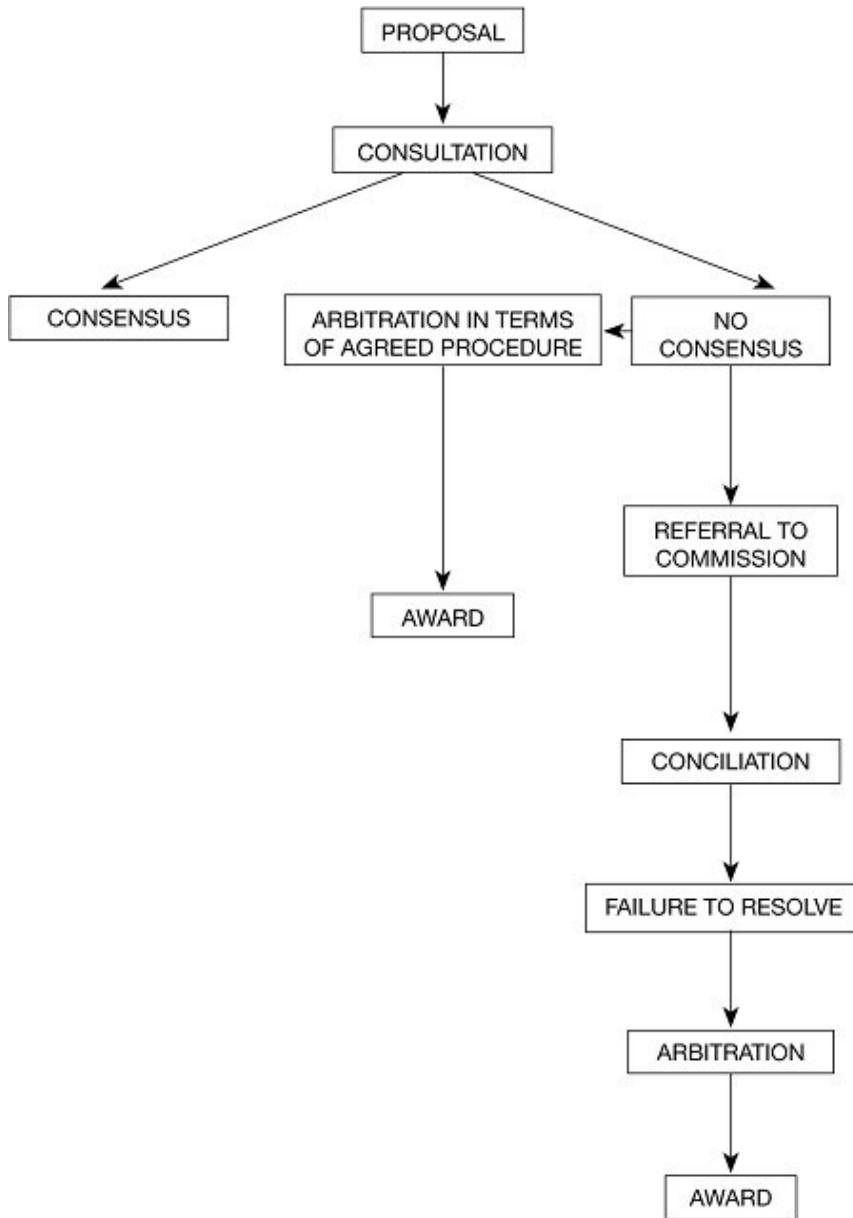


1. A dispute of interest in an essential service may, for example, include a dispute about wages. Because employees may not strike and employers may not lock out (see s. 65 (1) (d)) any party may refer the dispute to a council or the commission.
2. The dispute must be referred to a council if the parties to the dispute fall within the council's registered scope.
3. In the case of an award that binds the State and that has financial implications, special parliamentary procedures are prescribed (see s. 74 (5) to (7)).

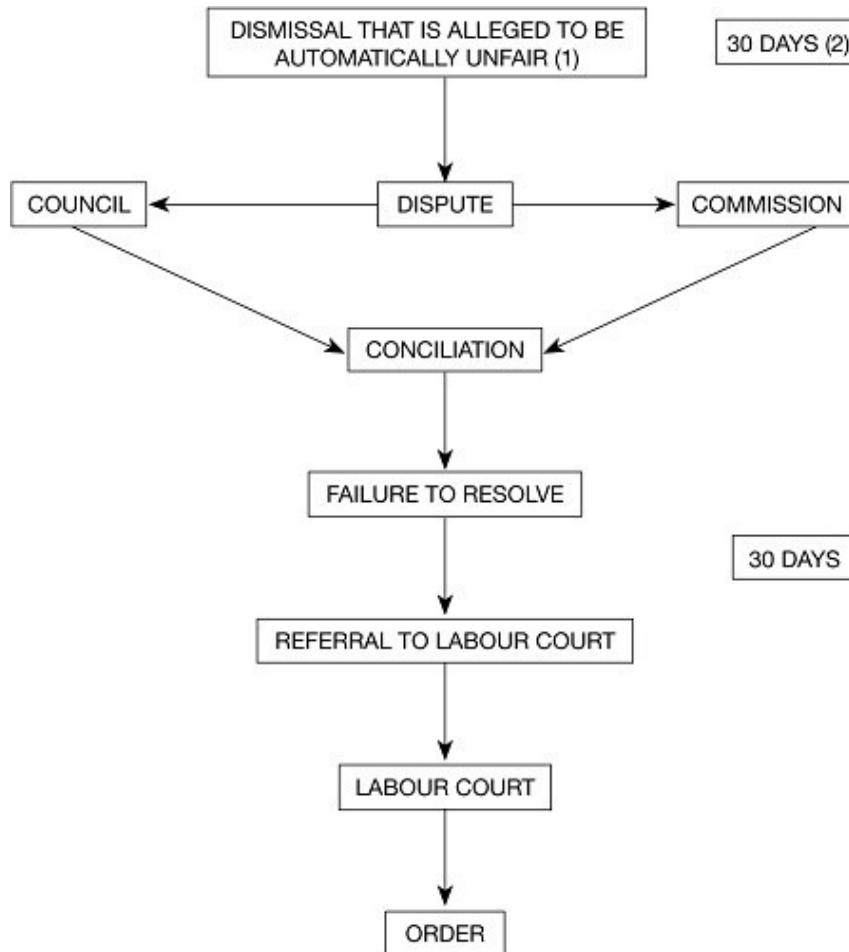


**FLOW DIAGRAM 9  
WORKPLACE FORUM (1)**

CHAPTER V (Section 86)



**FLOW DIAGRAM 10**  
**UNFAIR DISMISSAL (1)**  
**(Automatically Unfair Reasons)**  
 CHAPTER VIII (Section 191)

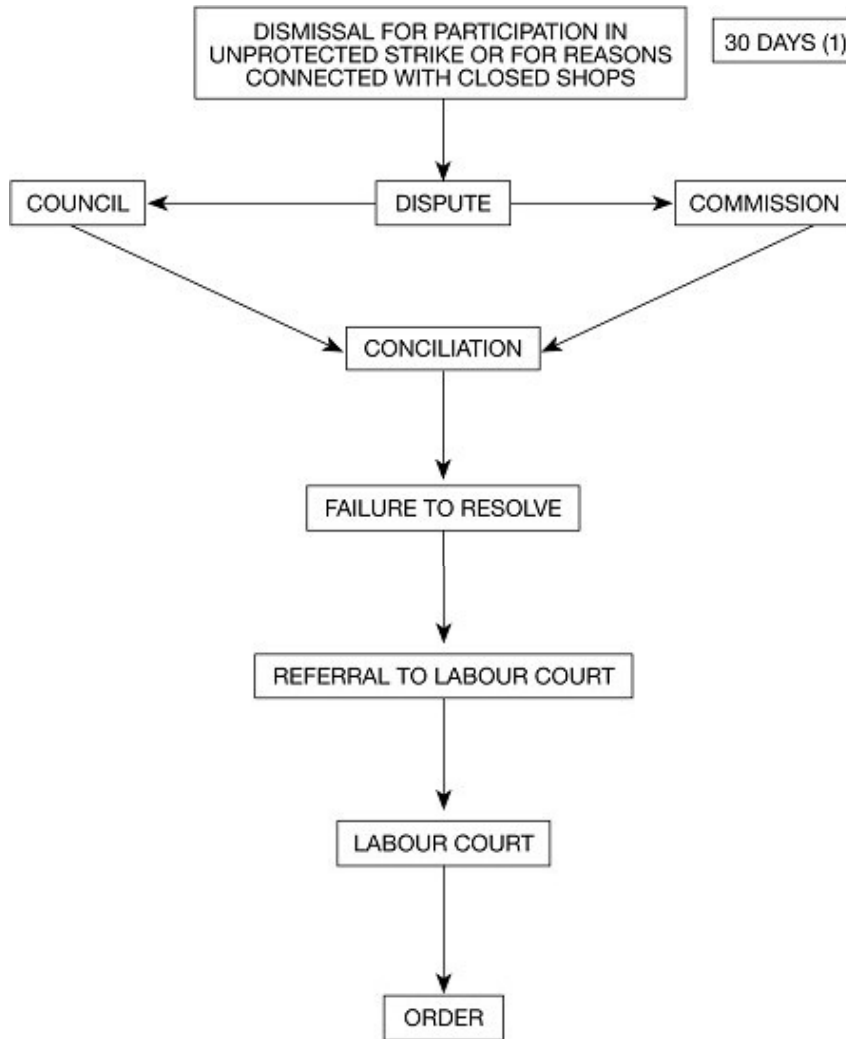


1. Examples of dismissals that are automatically unfair include dismissal for participation in a protected strike, dismissal on account of pregnancy and dismissal that amounts to an act of discrimination.
2. The time limit is designed to ensure that disputes are dealt with as soon as possible. Condonation can be granted if there is good cause to do so.

**FLOW DIAGRAM 11  
UNFAIR DISMISSAL (2)**

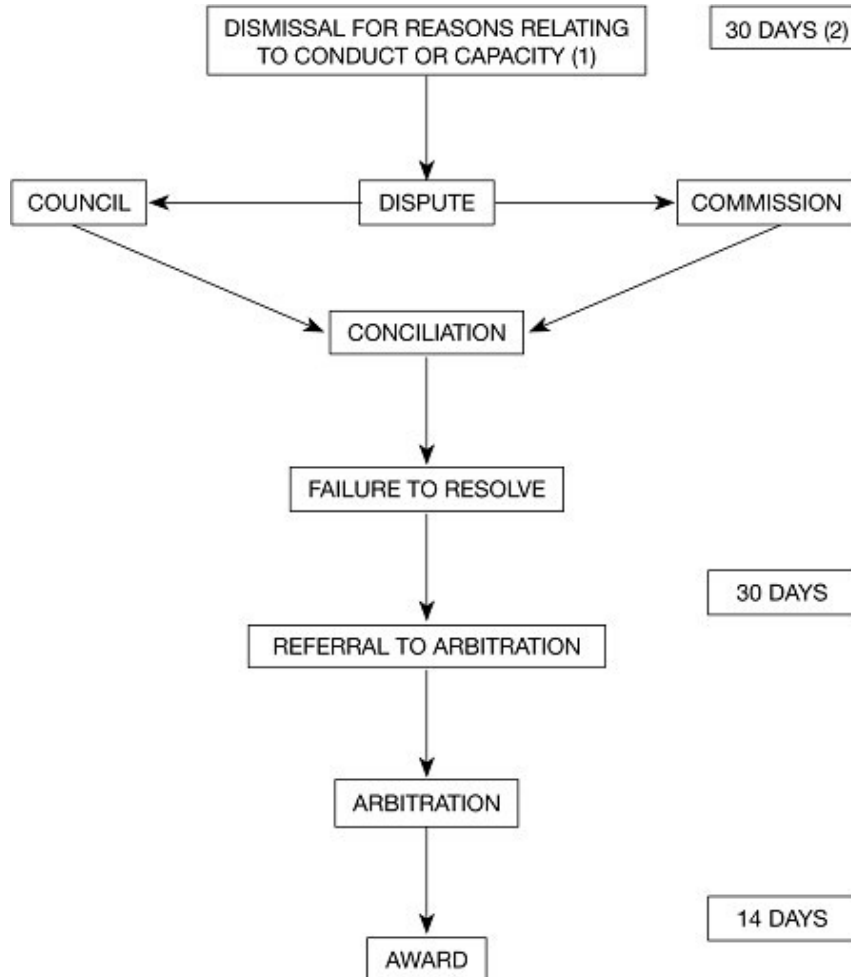
**(Strikes and reasons related to closed shops)**

CHAPTER VIII (Section 191)



1. The time limit is designed to ensure that disputes are dealt with as soon as possible. Condonation can be granted if there is good cause to do so.

**FLOW DIAGRAM 12**  
**UNFAIR DISMISSAL (3)**  
**(Misconduct/Incapacity)**  
 CHAPTER VIII (Section 191)

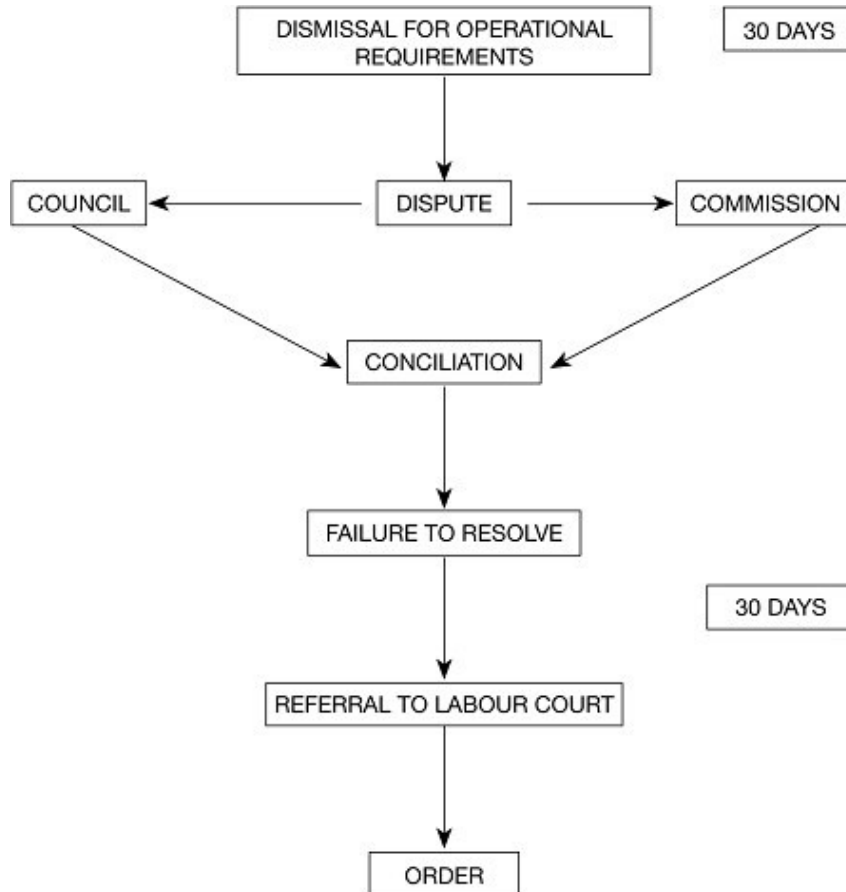


1. Dismissal for misconduct and incapacity is dealt with in the Code of Good Practice. Dismissal in Schedule 8.
2. The time limit is designed to ensure that disputes are dealt with as soon as possible. Condonation can be granted if there is good cause to do so.

**FLOW DIAGRAM 13  
UNFAIR DISMISSAL (4)**

**(Operational requirements – small scale retrenchments)**

CHAPTER VIII (Section 191)



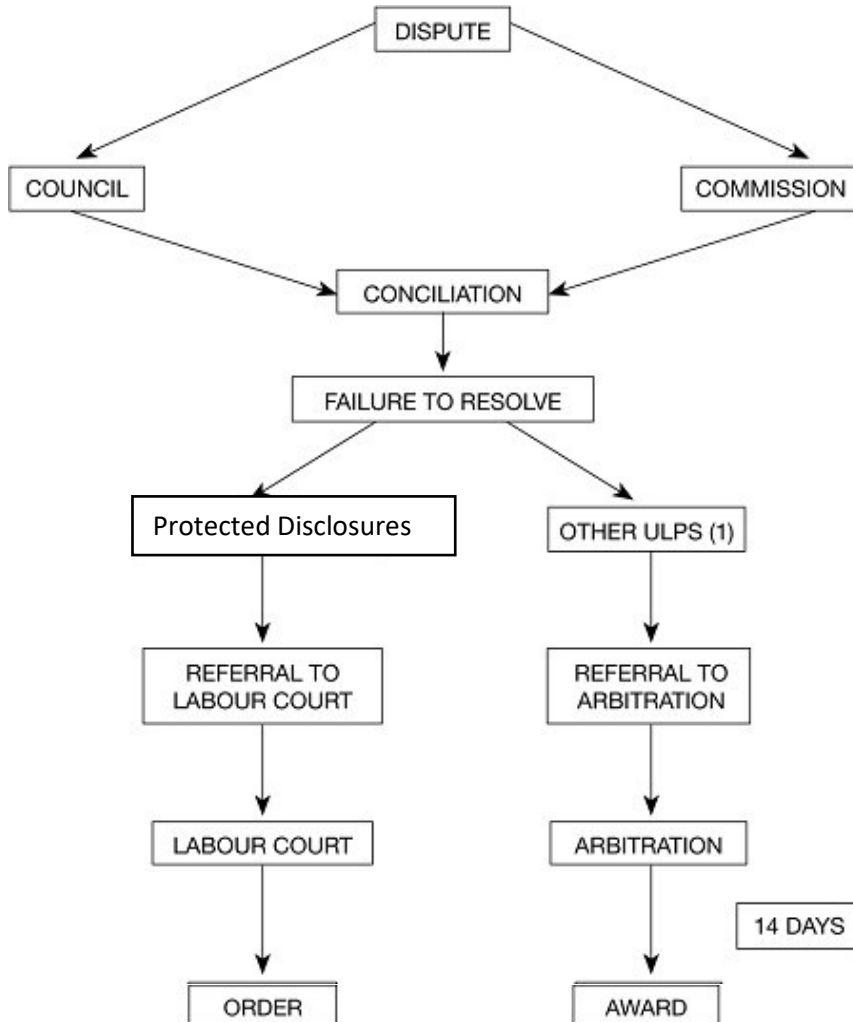
1. Section 191 (12) of the LRA

“An *employee* who is dismissed by reason of the employer’s *operational requirements* may elect to refer the *dispute* either to arbitration or to the Labour Court if—

- (a) the employer followed a consultation procedure that applied to that *employee* only, irrespective of whether that procedure complied with section 189;
- (b) the employer’s *operational requirements* lead to the *dismissal* of that *employee* only; or
- (c) the employer employs less than ten *employees*, irrespective of the number of *employees* who are dismissed.

[Sub-s. (12) added by s. 46 (i) of Act No. 12 of 2002 and substituted by s. 35 (b) of Act No. 6 of 2014.]”

**FLOW DIAGRAM 14**  
**UNFAIR LABOUR PRACTICE**  
 CHAPTER 7 (Item 2)



1. Other unfair labour practices include unfair conduct by the employer relating to promotion/demotion, training or the provision of benefits, unfair suspension, the failure to re-instate or re-employ an employee in terms of any agreement (see Item 2, Schedule 7).

2. Section 191(13) of the LRA

“(a) An *employee* may refer a *dispute* concerning an alleged unfair labour practice to the Labour Court for adjudication if the *employee* has alleged that the *employee* has been subjected to an occupational detriment by the employer in contravention of section 3 of the Protected Disclosures Act, 2000, for having made a protected disclosure defined in that Act.

(b) A referral in terms of paragraph (a) is deemed to be made in terms of subsection (5) (b)

[S. 191 amended by s. 46 (a) of Act No. 12 of 2002. Sub-s. (13) added by s. 46 (i) of Act No. 12 of 2002.]”