

## An Exploration Collective Bargaining Units in the Public Service

Keratilwe Bodilenyane<sup>1</sup>, Wilfred I. Ukpere<sup>2</sup>, Calvin Mabaso<sup>3</sup>

### Abstract

*Bargaining units and rights are the basis for collective bargaining. The aspect of collecting bargaining unit is intimately related to the aspect of bargaining rights and collective bargaining coverage. Workers with bargaining rights might not be included in the available bargaining units. However, employees that are not part of the available bargaining units, with or without negotiating rights; may still be impacted by default extension mechanism through the erga omnes effect (towards all effect). Thus, the primary goal of this study was to explore the current bargaining units and negotiating rights for various groups of public sector employees. It is important for parties to understand the breadth of their negotiating rights and units, as well as the ways in which they can extend them, such as through agency shop agreements and erga omnes processes. The study was premised on the pluralist approach to understand the agreements for bargaining units and rights. The study was qualitative in nature, to gather participants experiences, opinions, knowledge about the phenomenon of interest. Data was collected from a sample of fifteen purposively selected participants from the public service. Thematic analysis through the help of ATLAS. Ti. was used for data analysis. The study found that all public service employees save for the disciplined forces have bargaining rights. It was also discovered that, even though all public servants have these rights, only those in D1 scale are covered by the current bargaining unit. Employees on salary scales E and F are not included in the bargaining unit, because they are classified as management. It was also evident that the workers that are not part of the bargaining units are covered by collective bargaining agreements through default erga omnes effect of collective bargaining agreement. The study therefore recommends clear provisions for bargaining rights and units.*

**Keywords:** Bargaining Unit, Bargaining Rights, Collective Bargaining, Pluralist Approach, Public Service, Trade Unions, The Employer.

### Introduction

Bargaining units and rights are usually overlooked issues when it comes to research on collective bargaining, yet they are the basis for collective bargaining. There is little literature on collective bargaining unit and rights, and the few that is available is old literature. The aspect of collecting bargaining unit is intimately related to the aspect of bargaining rights and collective bargaining coverage. Employees may have bargaining rights, but that does not qualify them to be part of the available bargaining units. On the other hand, employees may not be part of the existing bargaining units but may be affected through extension mechanism or the erga omnes effect (towards all effect). Therefore, the main objective of this study was to explore the existing bargaining units and bargaining rights for different groups of workers in the public service. Bargaining units and rights are significant for parties to have a clear understanding of their scope, as well as available means to go beyond the bargaining unit, like extension mechanisms and agency shop agreement. According to ILO (2015a) the political and economic effects of bargaining unit determinants extend beyond the specific interests of the parties involved in the negotiating relationship and become significant issues for the public. In Botswana, collective bargaining is a very recent practice with scant documentation. There is a lack of information on worker groups that are members of the current public sector bargaining unit and those that have bargaining rights. Given the history of disagreements over bargaining rights and bargaining units in public service, this study is quite appropriate. The paper seeks to provide a theoretical as well as a practical guide for players to have an effective relationship on collective bargaining, especially on issues that concerns bargaining units and rights. Policymakers and the legal system will benefit greatly from the suggested tactics for successful collective bargaining, particularly about

<sup>1</sup> Department of Industrial Psychology and People Management, University of Johannesburg, South Africa; Email: ratibodiks@gmail.com.

<sup>2</sup> Department of Industrial Psychology and People Management, University of Johannesburg, South Africa; Email: wiukpere@uj.ac.za (Corresponding Author).

<sup>3</sup> Department of Industrial Psychology and People Management, University of Johannesburg, South Africa; Email: calvinm@uj.ac.za.

bargaining rights, the bargaining unit, employee groups covered by collective agreements and extension mechanisms.

The study is structured as follows; introduction to give an overview and background of the study and research objectives. The study will also present the theoretical foundations based on pluralist perspective and literature review on bargaining units and bargaining rights. Research methods used in the study are also well elaborated, followed by presentation and discussion of finding, and ultimately recommendations and conclusion of the study.

## Literature Review

This section looks at the pluralistic approach to industrial relations. When parties enter into agreements there should be on equal footing so that the bargaining units could have a good composition. This section also dives into literature review on bargaining units and rights.

### *Pluralist Approach*

Using the pluralist approach to industrial relations the relationship between the employer and employee varies, and there is room for bargaining parties to agree or disagree. The study's foundation is a pluralist understanding of the interaction between organised labour and management. It operated under the presumption that the two parties to the employment relationship have an equilibrium of power. Any rights that organised labour desires must be agreed upon with employers. Any dispute that may occur due to divergent interests is seen as productive because it frequently sparks ideas that could be applied to workplace advancement (Bendix, 2000). Therefore, the pluralist viewpoint makes the presumption that disagreements between employers and employees are inevitable, common, and unavoidable (Salamon, 2000). The goal is to prevent potential conflict and strain between employers and trade unions. It is based on the idea that if parties negotiate honestly, sensibly, and in good faith, and if their offers and requests are reasonable, then it will bring about industrial democracy (Salamon, 2000). With this strategy, everyone may see each other as partners and be on an equal basis. There is no "big brother" mentality or paternalistic inclinations, which frequently result in decisions being made unilaterally. When parties see each other as partners, they will be forced to forge ahead towards a shared objective and refrain from making irrational demands, despite their differing interests and aspirations.

### *Bargaining Units and Bargaining Rights*

Bargaining unit refers to a group of workers represented by trade unions who are engaged in collective bargaining negotiations (ILO, 2015a). Closely related to bargaining units are the bargaining rights which refers to the obligation of an employer to collectively negotiate terms and conditions of employment with representatives of workers' or trade unions, as mandated by the relevant statutes (ILO, 2015a). There are different types of bargaining units, such as craft unit, employer unit, plant unit, single unit and multiple bargaining units (Tollen, 2001). ALBERTA (2008), advise that the following factors should be considered when deciding on appropriateness of a bargaining unit; community of interest, bargaining history, nature of employer's organization, viable bargaining structures, avoidance of fragmentation and agreement of the parties. However, this is not cast in stones, none of these factors alone dictate a result. In addition, to avoid confusion and misinterpretation between parties, the bargaining unit descriptions should be clearly defined. According to According to ALBERTA (2008), the guidelines for descriptions include among others:

- Restrictions based on the employer's operating divisions.
- Geographic limitations.
- Name specific exceptions.
- Exclude other bargaining units.

- Use generic job types not specific titles.
- Use function not qualification-based descriptions.
- Use standard term.
- Use standard descriptions.
- Avoid sexist terms.

Prior to 2008, the public service in Botswana had various employers, all with different status. Upon engagements with relevant stakeholders like trade unions, and employer organisations, the different employees for the public service were merged, and now the public service is regulated by Public Service Act of 2008. This therefore implies that Botswana has a unitary public service. The essence of this paper therefore is to establish the type/s of bargaining units that exist in the public service. This is crucial because bargaining parties in the public service have been embroiled on conflicts that boarder on issues of bargaining units, bargaining rights and bargaining coverage (Ifezue, 2016). It seems apparent between the bargaining parties that when negotiations are made it concerns and is applied to the bargaining unit. Important to note is that the bargaining unit is comprised of unionised and non-unionised workers. Track record in the public service demonstrates that there were instances where bargaining parties reached a deadlock, and the government as the employer awarded salary adjustment to some non-unionised workers who are part of the bargaining unit (Ifezue, 2016). This is even though Section 51 (2) (1) of the PSA clearly states that even though some workers may not be unionised they are still part of the bargaining unit. In addition, there are workers who are not part of the bargaining unit, to whom collective bargaining agreements are extended to. Employees that are not part of the bargaining unit, may be covered by collective agreements for the said bargaining unit, through extension mechanism or the erga omnes effect (towards all effect). This is noted by ILO (2018a) that despite the extent and content of bargaining coverage, there are issues of bargaining extensions, and or spill overs which have a bearing on unionisation and collective bargaining efficiency. ILO (2018a) argues that the spill overs or extension mechanisms may have implication for collective bargaining governance, and viability of trade unions. Extension of bargaining agreements in the public sector in Botswana was noted by Ifezue (2016) that the PSBC operates similar to a joint industrial council, meaning that its decisions and resolutions are obligatory for all public officers governed by the PSA, regardless of whether those officers belong to any of the unions affiliated with the PSBC. When negotiations are concluded in the public service, the agreements have sometimes been extended to workers without bargaining rights and workers outside the bargaining unit. Given these challenges there is need for proper coordination between the various bargaining units to uphold coherence for wages and working condition levels.

Olney & Rueda (2005) argue that because not all employees can bargain, there is little collective bargaining in the public sector. The majority of OECD and EU member states have minor or major restrictions on collective bargaining rights and the ability to strike (Jelle, 2015). The ILO Flagship Report (2022,) suggests that parties should define workers' employment status and "ensure that workers in diverse work arrangements enjoy the right to collective bargaining. Workers in the public sector, such as law enforcement, the disciplined forces, and those in charge of executive administration or policymaking, are not entitled to bargaining rights under Convention No. 98. There are significant variations in how the right to collective bargaining is enforced in various nations (Alby et al., 2005:10). Workers in several nations are excluded from Convention No. 98, including police officers, disciplined forces, and employees in charge of state administration (Zvobgo, 2019). Some employees who were refused the right to negotiate have been granted the ability to do so by other countries, such as "Colombia, Czechia, Mozambique, Panama, the Philippines, Tunisia, Turkey, and Uruguay" (ILO Flagship Report, 2022, p. 49).

## Methodology

This study is qualitative in nature. It is based on the ontological assumption that people's interpretations, experiences, and opinions of the phenomenon of interest vary depending on the situation. In contrast to quantitative research, which is typically objective and independent of the researcher, qualitative investigations are subjective (Creswell, 2007). Qualitative researchers study a phenomenon by actively engaging in a situation without a planned observation, playing a dynamic role in constructing and comprehending perspectives and draws conclusions about the reality (Denzin and Lincoln, 2011). They are numerous research design such as exploratory, explanatory, descriptive and comparative research design (Creswell, 2014). This study is an exploratory- descriptive research to explain the phenomenon of interests and gain a grasp of it. The study used primary data from fifteen participants that were purposively selected from the public service. With the aid of qualitative data analysis tools, ATLAS. ti., a the six-step thematic analysis procedure by Braun and Clarke (2006) was used. The study was ethical cleared by the University of Johannesburg Ethics Committee.

### *Findings of the Study*

The findings of the study are presented in this section. The study objectives sought to find out the participants opinions about the current bargaining units and bargaining rights in the public service.

### *Bargaining Unit and Bargaining Rights*

Analysis under this section concerns participants' views with regard to bargaining units, bargaining rights, and management's bargaining rights. From the views espoused by the participants, it was evident that bargaining units and bargaining rights have been areas of concern and, at times, used arbitrarily. The participants presented split views on the composition of the bargaining unit in terms of whether it includes other segments of workers like essential service workers and management. Table 4.1 below presents the participants' responses in this respect.

**Table 4.1:** Participants' responses on the bargaining unit

Participant	Response
Participant 1	<i>"Bargaining unit is provided in the controversial Section 45 of the PSA, which is highly debated. The bargaining unit for the current public service encompasses part of or all A grade up to ceiling of D1 scale".</i>
Participant 4	<i>"D1 scale downwards are part of bargaining unit".</i>
Participant 5	<i>"Bargaining unit is from D1 scale and below. The are allowed to join a trade union".</i>
Participant 6	<i>"Parties agreed that the trade unions can recruit from D1 scale and below. It's documented in a CLA".</i>
Participant 10	<i>"Bargaining unit keeps on changing. At one point it was those in E scale, then F Scale. At times, they say Directors are not management its only F scale. But, generally, its E scale upwards who are treated as the employer".</i>
Participant 10	<i>"It is not documented on which workers have and do not have bargaining rights. The challenge was even evident during the strike, where some workers will go for the strike, only to be told they are part of management. Ultimately, some workers who participated in the 2011 strike were blacklisted because they were labelled as management, yet they were not aware of such".</i>
Participant 12	<i>"All Government employees at D1 scale and below have the right to belong to a trade union</i>

---

*of their choice and, therefore, have the right to collective bargaining. E2 and above are regarded as management positions in the public service”.*

---

**Source:** Author’s fieldwork

The findings in Table 4.1 demonstrate that the bargaining unit comprises workers from D1 scale and below. The participants' views demonstrate that workers on the E and F scales are regarded as being management and are, therefore, not part of the bargaining unit. However, there is “goal post shifting”, as it is unclear, which workers are regarded as management. This is because there are instances where workers on the D1 scale are also regarded as management. The confusion was evident during the civil service strike in 2011, where some workers on the D1 scale were barred from participating in the strike because they are classified as being part of management. Parties should have a common understanding that workers in the bargaining unit have the right to participate in industrial action. Closely related to the bargaining unit, is the aspect of bargaining rights. One may have bargaining rights but not be part of the public service bargaining unit. The section below outlines participants’ responses concerning bargaining rights.

Participants were asked about employees with bargaining rights and employees without bargaining rights. The responses demonstrate that all government employees, save for disciplined forces, have bargaining rights. The only variation involves unionism and the current bargaining unit for public officers. The current bargaining unit for public officers excludes management.

The participants' responses revealed that all public officers have bargaining rights, as provided in the Trade Union and Employers Organisation Act of 2004. However, this excludes the disciplined forces (Botswana Defence Force, Botswana Police Service, Local Police Service and Prison Service).

Participant 3 stated:

“Employees with bargaining rights are all public service officers, except those in the disciplined forces”.

Aligning with the above view, Participant 1 stated:

“When we look at the Trade Unions and Employers’ Organisation Act, as a matter of principle, generally, all employees have the right to collective bargaining, including essential employees. Essential employees have the right to join a trade union of their choice”.

Participant 7 also concurred that all public service workers have bargaining rights. In this regard, he stated:

“All public service employees have bargaining rights except the disciplined forces. Public Servants are regulated by the PSA, and the act is very clear in terms of Section 3, which deals with the application of the Act”.

Participant 9 concurred, saying:

“All employees have bargaining rights, except for disciplined forces

The participants' responses show that public service bargaining unit employees are D1 scale employees and below. Further analysis of participants’ responses revealed that management, which fall in the E and F scales category, are not part of the bargaining unit. However, all public officers, including management and essential workers, have bargaining rights. The only exception is the disciplined forces, namely the Botswana Defence Force, the Botswana Police Service, the Local Police Service and the Prison Service. Participants’ responses revealed that management have bargaining rights because they have the right to form their own trade unions. This is also provided for in the Trade Unions and Employers’ Organisation Act of 2004,

which states that all public officers have bargaining rights. However, management did not step up to unionise, because they represent the employer's interests.

#### *Disciplined Forces Not Part of Bargaining Unit*

Another highly contested group of workers is the disciplined forces. Though they form part of government workers, the study revealed that the PSA excluded the disciplined forces from other public officer categories. However, there are some workers within disciplined forces establishments who are regarded as public service employees and who are regulated by the PSA. When asked whether disciplined forces are part of the bargaining unit, all the participants stated that the disciplined forces are not part of the bargaining unit, as presented in Table 4.2 below.

**Table 4.2:** Participants' responses to the disciplined forces not being part of the bargaining unit

Participants	Response
Participants 1	<i>"The PSA is clear, as it provides that the Act shall not apply to members of the Botswana Defence Force, Botswana Police, Local Police Service and Prisons Service. So the disciplined forces are not regulated by the PSA, they have their own specific acts. However, you can find within disciplined forces non-uniformed employees who are regulated by the PSA".</i>
Participant 4	<i>"In terms of the PSA, the disciplined forces do not unionise, therefore, they are not covered by collective bargaining in the public service". "Disciplined forces are excluded from the PSA. In Botswana, it is not permissive for disciplined forces to unionise, including prison warders".</i>
Participant 10	<i>"The police, prisons and BDF are not part of the bargaining unit". The ILO says prison officers should have bargaining rights. It is always coming up in the agenda, where trade unions complain that government did not sort out the issue".</i>
Participant 3	<i>"Government unlawfully included prisons services as workers without bargaining rights, and we took the matter to the ILO. The ILO committee of application of standards have ruled against the government of Botswana to say they must allow prison officers to unionise, because they do not belong to categories of employees, which are prohibited from unionising.</i>
Participant 9	<i>"The disciplined forces are not covered by the PSA. Nothing stops the employer to award them an increment, or act to them anytime".</i>
Participant 8	<i>"The government is still refusing for prison officers the right to organise. There was the ILO resolution in 2017 for government to engage with trade unions to allow prison officers the right to organise, up to this day the government has not acted on the matter".</i>

**Source:** Author's fieldwork

The above proves that the disciplined forces are excluded from the public service; hence, they do not have bargaining rights and are not part of the bargaining unit. However, there are some establishments within the disciplined forces, especially the so-called 'non-uniformed staff', who are allowed to unionise. It was also evident that the government, as the employer, has wrongly classified prison service employees as workers without bargaining rights, which means that they cannot unionise. The matter was taken before the ILO Committee of Standards in 2017, where the government as the employer was ordered to work with the trade unions to allow prison service employees to unionise. However, to this day, the government has not allowed prison service employees to unionise. The government as the employer should comply with the restrictive definition of the ILO in terms of what constitutes essential services. According to the ILO (2015a), essential services constitute categories of workers who, when they do not render their services,



could cause loss of life and/or immense danger to society. It has been argued that the Prison Service does not belong in this classification; hence, the government employer should move fast to allow the Prison Service the right to unionise. The government employer's action of refusing the Prison Service to unionise is reducing the numbers in the bargaining unit. The trade unions may not rest until this matter has been resolved.

## Discussion of Results

This section discusses the findings of the study to answer the research objectives. It also looks at the relationship of the current findings with existing literature and the pluralist theory.

### *Bargaining Unit and Bargaining Rights*

According to Olney & Rueda (2005), there is minimal collective bargaining in the public sector because not all workers have bargaining rights. The same was supported by Jelle (2015) that most OECD and European Union (EU) member States have slight or significant limitations on collective bargaining privileges and the right to strike. However, this is not the case in Botswana, as the current study found that all public service workers have bargaining rights save for disciplined forces who are excluded from PSA. The findings of the current study revealed that all public service employees have bargaining rights. This is also provided in the PSA Part XI Section 45 (1), that, "Every public officer shall have the right to belong to a trade union of his or her choice for the purpose of collective bargaining". This include essential service workers like nurses and doctors, who are allowed freedom to organise. The essential workers like the nurses and doctors have a trade union called Botswana Nurses Association (BONU) and the newly formed and registered Botswana Doctors Union (BDU) respectively. Evidence from the current study's findings showed that, the law does not prohibit essential workers to unionise and enjoy collective bargaining, thus they have bargaining rights. Aligning with the above view, Participant 1 stated that:

"When we look at Trade Unions and Employer's Organisation Act, as a matter of principle generally all employees have the right to collective bargaining, including essential employees. Essential employees have the right to join a trade union of their choice".

The only hamper or prohibition for essential service workers is the right to engage in strike. This is stated in PSA, XII (4) and Trade Dispute Act, Part VII Section 47 and 48). According to Trade Dispute Act Part VII Section 47,

"(a) No employee in essential services shall take part in a strike; and

(a) No employer in essential services shall take part in a lockout".

Whereas other workers can participate in a strike, the essential service employees cannot engage in a strike. However, the Trade Dispute Act provides mechanisms to compensate for workers without the right to strike, as provided in Part XII Section 50. This includes the right to go for arbitration if it is a dispute of interest or Industrial Court for anything which can be classified as a dispute of right.

The aspect of bargaining rights is closely related to issues of the bargaining unit. The ILO flagship Report (2022, p. 134) advises that parties should clarify workers' employment status and "ensure that workers in diverse work arrangements enjoy the right to bargain collectively". It is also important for parties to have a pluralistic perspective on deciding the appropriateness of the bargaining units. Aspects such as bargaining history, nature of Employer's Organization, Viable Bargaining Structures, avoidance of fragmentation, agreement of the parties should be taken into consideration. The bargaining landscape or history in Botswana has been marred with conflicts and resistance to collective bargaining by the employer (Tshukudu, 2021), hence a need to take that into consideration and ensure that many workers are part of the current bargaining unit. The bargaining unit for the PSBC encompasses the majority of employees in the public service. The findings of the current study revealed that, not all workers provided for in the PSA X1 Section 45 are part of the current bargaining unit. The PSBC bargaining unit has been a subject of

debate. The findings of the current study are in line with the findings by Ifezue (2016) that the scope of bargaining unit is such that whether one is unionised or not, as long as they are in the category of D1 salary scale and below they are part of the bargaining unit. This was confirmed by Participant 5, when he stated that:

“D1 salary scale and below its bargaining unit for PSBC. You can choose to unionise or not”.

Therefore the current study found that the scope of the current bargaining unit is D1 salary scale and below. This of course includes essential service workers, they are part of the bargaining unit. The next section elucidate further on other segments of workers with bargaining rights.

The current study's findings further revealed that management have bargaining right but cannot join trade unions of their junior counterpart. Management is prohibited from participating in industrial action. This is provided in PSA Part XII Section 47: "Notwithstanding the provisions of Section 48 (1), a person in senior management of the public service shall not engage in a strike or action short of a strike". This aligns with ILO Convention on employees responsible for government administration. According to ILO Convention No. 151 Article 1 (2): "The extent to which the guarantees provided for in this Convention shall apply to high-level employees whose functions are normally considered as policy-making or managerial, or to employees whose duties are highly confidential, shall be determined by national laws or regulations". Though managerial workers are not permitted to join trade unions for junior employees, and they are not part of the PSBC bargaining unit, they do have bargaining rights as provided in PSA Part XI Section 45 (1): "Every public officer shall have the right to belong to a trade union of his or her choice for the purpose of collective bargaining". Management go to PSBC as employer representative, hence they are not allowed to join trade unions for junior employees. PSA Part XI Section 45 (2) provides that by stating: "Notwithstanding any provision of this Act, no member of management shall be represented by a negotiating body in respect of matters bearing upon relations between his or her employer and those employees thereof or therein who are members of management unless the negotiating body represents only members of management and no other employees". Therefore, the current study found that management does have the bargaining rights and that they cannot join trade unions that represent the interest of the junior employees; the only hamper for management is the privilege to strike.

The current study's findings revealed that management who are workers in E and F salary scale are not part of the existing bargaining unit. The current study noted gaps and 'shifting of goal posting' when it comes to management being part of the bargaining unit. They noted that in some instances, someone at the management level, for example Deputy Director or Chief Administrative officer may be classified as part of the bargaining unit in one Ministry, and not part of the bargaining unit in another Ministry. This was demonstrated during the 2011 civil servants industrial action when the government as the employer dismissed some of the employees on the basis that they are part of management, and by virtue of being part of management they cannot take part in strikes. In line with above, Participant 10 observed that:

“...The challenge was evident during strike, where some workers will go for strike, only to be told that they are part of management. Ultimately some workers who participated in the 2011 strike were blacklisted because they were labelled to be management, yet they were not aware of such”.

Majority of workers lost their jobs during the civil service strike, and this included those purported to be in management, yet they were part of the bargaining unit. According to BLLAHWU (2022:73), a total of 2,460 employees lost their jobs, among others this include, “1,850 who were dismissed from Ministry of Health, 58 employees from the Ministry of Minerals, Energy and Water Resources were sacked, 252 from Local Authorities, being employees from fire, sewerage, and electrical services were dismissed, 174 employees from the Ministry of Infrastructure, Science and technology and 38 civilian personnel from the Botswana Defence Force”. As it is, some workers on D salary scale classified as management were fired. The above was confirmed by Participant 1, who observed that:



“Some workers in D scale especially Chief officers, are part of bargaining unit, but they are not allowed to participate in industrial action”.

It is worth noting that these workers are union members and part of the bargaining unit, yet they are not permitted to take part in the industrial action, as they are regarded as management. In view of that, Participant 5 lamented:

“I am torn between being part of management and part of bargaining unit”.

All other participants from the public service shared similar sentiments. This demonstrates that, though the study's findings revealed that only E and F salary scale are classified as management, there are also workers on D salary scale who are arbitrarily classified as management. This is against the pluralistic way of doing things. The government as the employer should treat trade unions and or workers as partners that should be involved and consulted in deciding the appropriateness of the bargaining unit.

The research findings demonstrate that all public service workers have bargaining rights, but not all are part of the current bargaining unit. Workers in the current bargaining unit are those in D1 salary scale and below. However, the current study's findings revealed that, there are instances where workers who are part of the bargaining unit, are classified as management. The confusion became evident during the 2011 civil service strike when some of workers who are part of the bargaining unit were blacklisted, on the basis that they are part of management. Learning from the 2011 civil servants industrial action, the government should put it in black and white to state which workers in management positions are part and not part of the current bargaining unit for PSBC. Bargaining parties should work jointly to come up with the description of the bargaining unit. According to ALBERTA (2008), the guidelines for descriptions should cover among others, the restrictions based on the employer's operating divisions, include geographic limitations, name specific exceptions, and exclude other bargaining units. This will go a long way in providing a guide on which employees are excluded from the bargaining unit, as opposed to just relying on salary scales as the basis for description for the bargaining unit.

#### *Disciplined Forces not Part of Bargaining Unit*

The current study found that the disciplined forces are not part of public service. In line with the above, Participant 1 remarked:

“The PSA is clear, as it provides that, the Act shall not apply to members of Botswana Defence Force, Botswana Police, Local Police Service and Prisons Service. The disciplined forces are not regulated by PSA, they have their own specific Acts. However, you can find within disciplined forces non-uniformed employees who are regulated by the PSA”.

The above enjoys support from PSA Section 5(3): “The provisions of this Act shall not apply to the members of the (i) Botswana Defence Force; (ii) Botswana Police Service; and (iii) Prisons Service”. Though excluded from public service by the PSA, the current study's findings discovered that the disciplined forces are covered by some collective agreements through extension mechanisms.

The Findings of the current study revealed that the government of Botswana has unlawfully denied the Prison Service bargaining rights. The above was noted by Participant 3:

“Government unlawfully included prisons services as workers without bargaining rights, and we took the matter to ILO. The ILO committee of application of standards have ruled against government of Botswana, to say they must allow prisons officers to unionise, because they do not belong to categories of employees which are prohibited from unionising”.

The government continue to classify Prisons Service as part of disciplined forces. According to PSA Part I Section 3 (d): “The provision of this Act shall not apply to members of the (d) Prison Service”. The Same applies to Trade Dispute Act Part I Section 2(1) and Trade Union and Employers Organisation Act, Part

I Section 2 excludes Prison Services. The ILO Committee of Application of Standards ordered the government of Botswana to consider changing these provisions but it has been pending up till now. The above was confirmed by Participant 8, who observed that:

“The government is still refusing for Prisons officers the right to organise. There was ILO resolution in 2017 for government to engage with trade unions to allow prison officers the rights to organise, up to this day,, the government has not acted on the matter”.

The current study's findings revealed that the government as the employer is tempering with bargaining rights and unionisation of these groups of workers. They are lessening the voice and reducing the numbers of the bargaining unit. This has been noted by Zvobgo (2019) that workers in several nations are excluded from Convention No. 98, including police officers, disciplined forces, and employees in charge of state administration. However the participants observed that the Prisons Act which denies Prison Services the right to strike, does not classify Prison Services as armed forces. According to BLLAHWU (2022, p.24), the ILO Committee stated that “the Prison Services cannot be considered to be part of the armed forces or the police for the purposes of exclusion under Article 5 of the Freedom to Association Convention”. Hence the government of Botswana, should move in line with other countries such as Colombia, Czechia, Mozambique, Panama, the Philippines, Tunisia, Turkey, and Uruguay" (ILO Flagship Report, 2022, p. 49), where some employees who were refused the right to negotiate have been granted the ability to do so.

## Conclusion and Recommendations

In conclusion, the research indicated that all public service employees possess bargaining rights. Additionally, it was found that, although all public service employees have these rights, the existing bargaining unit is limited to those on the D1 salary scale and lower. Findings from the current study showed that employees on salary scales E and F are excluded from the bargaining unit as they are categorized as management. In addition, essential service workers have bargaining rights and are part of the bargaining unit, however, they are prohibited from striking. Workers in managerial positions, which is E and F salary scale do have bargaining rights, but they are not yet unionised, and are not part of the current bargaining unit. It was also evident that the disciplined forces are not part of the public service as they are excluded from the PSA. The findings revealed that the government has classified the Prison Service under the disciplined forces, even though they should not be classified as armed forces. The trade unions complained about this matter, and the government as the employer has not yet rectified the matter.

The study, therefore, recommends for parties to collectively come up with clear provision for bargaining rights and bargaining. The negotiating parties need to reach a mutual understanding about which groups of employees have bargaining rights and which groups are included in the bargaining unit. As advocated by a pluralist approach, this should be done on an equal footing, taking note of both parties' interests. The employer must outline the decision-making channels available to employees who possess bargaining rights but are not included in the bargaining unit. The employer should clearly identify which employees are designated as management. This clarity will prevent scenarios where certain employees on the D1 salary scale, who should be included in the bargaining unit, are mistakenly classified as management. Having explicit provisions and descriptions of the bargaining unit will minimize litigation, as all parties will have a defined understanding of bargaining rights and the bargaining unit.

Another aspect worth considering is to come up with Management Associations. Employees identified as management possess the right to engage in collective bargaining. The Public Service Act does not clearly state whether those in management positions can create their own trade unions or if unions are solely intended for public service administrators. Management individuals are not dependent on the outcomes affecting their junior colleagues. It is essential for the employer to establish appropriate frameworks for collective bargaining that cater for employees classified as management. Since all public service employees, including management, hold bargaining rights, it is reasonable for them to also have a management association or employer organization.

## References

- ALBERTA Labour Relations Board. (2008). #9 Bargaining Unit Descriptions. Information Bulletin #9 – March 13, 2008, Page 2.
- Alby, P., Azam, J.-P., & Rospabé, S. (eds). (2005). Labor Institutions, Labor-Management Relations, and Social Dialogue in Africa. The World Bank. Azam\_25812.pdf (ut-capitole.fr).
- Botswana Land Boards, Local Authorities and Health Workers Union (BBLAWU). (2022). Legal Aspects of Labour Markets in Botswana. BBLAWU: Gaborone.
- Bendix, S. (2000). The basics of labour relations. <https://books.google.com/books?hl=en&lr=&id=NREHDmHdXpAC&oi=fnd&pg=PA1&dq=Bendix,+S.+2006.+The+basics+of+labour+relations&ots=V6cv-SoS8V&sig=97Jsc7TTqdsCmtuGZZjXB72UbNg>.
- Braun, V., & Clarke, V. (2006). Using thematic analysis in psychology. *Qualitative Research in Psychology*, 3(2). <https://doi.org/10.1191/1478088706qp063oa>.
- Creswell, J. (2014). Research Design: Qualitative, Quantitative and mixed Methods Approaches. SAGE Publications. [https://scholar.google.com/scholar?hl=en&as\\_sdt=0%2C5&q=Creswell%2C+J.+W.+%282014%29.+Research+Design%3A+Qualitative%2C+Quantitative+and+mixed+Methods+Approach&btnG=](https://scholar.google.com/scholar?hl=en&as_sdt=0%2C5&q=Creswell%2C+J.+W.+%282014%29.+Research+Design%3A+Qualitative%2C+Quantitative+and+mixed+Methods+Approach&btnG=).
- Creswell, J. W. (2007). Qualitative inquiry and Research Design: Choosing Among Five Traditions (2nd ed.). SAGE Publications, Inc.
- Denzin, N. K. & Lincoln, Y. S. (2003). Introduction. The discipline and practice of qualitative research. . In Denzin, N. K. & Lincoln, Y. S. (Ed.), Collecting and interpreting qualitative materials. SAGE Publications. [https://scholar.google.com/scholar?hl=en&as\\_sdt=0%2C5&q=Denzin%2C+N.K.%2C+and+Lincoln%2C+Y.S.+%282003%29.+Introduction.+The+discipline+and+practice+of+qualitative+research.+&btnG=](https://scholar.google.com/scholar?hl=en&as_sdt=0%2C5&q=Denzin%2C+N.K.%2C+and+Lincoln%2C+Y.S.+%282003%29.+Introduction.+The+discipline+and+practice+of+qualitative+research.+&btnG=).
- Government of Botswana. (2008). Botswana - Public Service Act (Act No. 30 of 2008) (Cap. 26:01). Gaborone: Botswana Government Printers.
- Government of Botswana. (2004). Trade Union and Employers Organisation Act of 2004. Gaborone: Botswana Government Printers.
- Ifezue, G. O. (2016). Bargaining in Bad Faith in the Botswana Public Service – A Review of the BOFEPUSU and BLLAHWU Judgments. *University Of Botswana Law Journal*, 219–232.
- ILO Flagship Report. (2022). Social Dialogue Report. Collective bargaining for an inclusive, sustainable, and resilient recovery. <https://ilo.org>.
- ILO. (2015a). Collective Bargaining: A policy guide. International Training Centre of the ILO.
- ILO. (2018a). Quick Guide on Source and Uses of Collective Bargaining Statistics. International Labour Office Publications. [www.ilo.org](http://www.ilo.org)
- Jelle, V. (2015). Data base on Institutional Characteristics of Trade Unions, Wage Setting , State Intervention and Social Pacts, 1960–2014 (ICTWSS).
- Olney, S., & Rueda, M. (2005). Convention No. 154 Promoting collective bargaining Collective Bargaining Convention, 1981 (No. 154) D I A L O G U E. [www.ilo.org/publns](http://www.ilo.org/publns).
- Salamon, M. (2000). Industrial Relations: Theory and Practice. - Google Search (3rd ed.). Pearson Education.
- Tollen, R. W. (2001). When Is a Multiemployer Bargaining Unit a 'Multiemployer Bargaining Unit'?" *The Labor Lawyer*, 17(1), pp. 183–200. JSTOR, <http://www.jstor.org/stable/40862758>. Accessed 14 Feb. 2025.
- Tshukudu, T.T. (2021). Collective Bargaining in Southern Africa: reflections in Botswana, Lesotho and Namibia. *European Journal of Social Law*, pp 163–178.
- Tshukudu, T. T. (2020). The Botswana Public Sector Bargaining Council, A Reality or Fallacy. *European Journal of Social Law/Revue Européenne du Droit Social*, 47(2).
- Zvobgo, T. J. (2019). Collective bargaining and collective agreements in Africa Comparative reflections on SADC (No. 11).