



060001788U

North-West University
Mafikeng Campus Library

**THE IMPACT OF THE MERGER BETWEEN THE OFFICE
OF THE PREMIER AND NORTH WEST
COMMUNICATION SERVICES ON LABOUR
RELATIONS.**

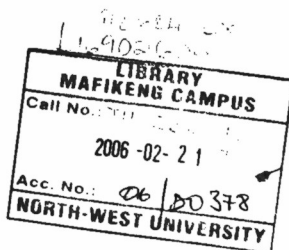
ISRAEL MMUSO TSELANGOE

**A mini dissertation submitted in partial fulfillment of the
requirements for the degree of Masters in Administration
(Industrial Relations) at the North West University.**

SUPERVISOR: PROFESSOR E.J. LOUW

MAFIKENG CAMPUS

MARCH 2005



ACKNOWLEDGEMENT

I wish to acknowledge the support, co-operation, guidance and the commitment throughout the research study from my supervisor, Professor E.J Louw. I also wish to acknowledge the support and encouragement I received from several people.

My heartfelt appreciation goes to my special friend, Mr Tebogo Molefe who assisted me in accessing documents and information on mergers. Special thanks to my manager Mr Solly Bokaba for allowing me to take time off as needed under trying circumstances to complete my research. A special word of gratitude goes to Ms Candice Morkels for assisting me with data analysis. I am also indebted to Mr Archie Dikola for ensuring that I have the required study material from the library.

I thank Mr Joel Moletsane, Head of Department of English at North West University for editing my research.

Lastly I thank my family for allowing me time to complete this project. I missed important family gatherings due to the tight schedule I worked under and also the deadlines that had to be met.

Above all, I thank God the Almighty for giving me the strength to undertake and complete my studies.

TABLE OF CONTENTS

CHAPTER 1

1.	Introduction	1
2.	Problem Statement	3
2.1	Main Problem	3
2.1.1	Sub Problems	3
3.	Descriptive Hypothesis	4
4.	Objective of the study	4
5.	Significance of the study	5
6.	Research Design	5
6.1	The Organisation	5
6.2	The Population	6
6.3	Sampling Technique	6
6.4	Data gathering technique	6
6.4.1	Interviews	7
6.4.2	Documents	7
6.5	Data Analysis	8
7.	Limitation of the study	8
8.	Conclusion	8

TABLE OF CONTENTS

CHAPTER TWO

1.	Introduction	10
2.	Definition of Concepts	10
3.	A brief historical Background of Mergers	11
4.	An overview of the Merging Institutions	13
4.1	North West Communication services	13
4.2	Office of the Premier	14
5.	Reasons for the merger	14
5.1	Maximisation perspective	15
5.2	Management perspective	15
6.	The Human Factor in Merger	16
7.	The role of Human Resource in mergers	17
7.1	The complex role of Human Resource during a merger	17
7.2	The role of Human Resource in the Pre-deal phase	18
7.3	The role of Human Resource in due diligence phase	18
7.4	The role of Human Resource during the Integration Planning	19
7.5	The role of Human Resource during the implementation phase	19
8.	The reasons why some merger fail	20
8.1	Poor implementation	20
8.2	Inability to maximize potential synergies	20
8.3	Inadequate assessment of cultural aspects of M&A's	20
8.4	Resistance to change	21
9.	The due diligence exercise prior mergers	21
9.1	Reasons for due diligence	21
9.2	Developing a shared plan of action	22
9.3	Creating a common vision and shared blue print	22
9.4	Limitations of due diligence	23
10.	Transfer of a business a going concern	23
10.1	The Labour Relations Amendment Act of 2002	24
10.1.1	The scope of regulation transfer	24

10.2	Procedure	26
10.3	Collective Agreement	26
10.3.1	Trade Union	27
10.4	Nchunu v University of Cape Town	29
11.	An overview of the Public service Act & Policies	29
11.2	Government Gazette: Rules for Grievance handling in the Public Service	30
11.3	Performance Management and Development System	31
11.3.1	The Performance Management Development System Cycle	32
11.4	Transport Policy	32
12.	Negotiation	34
12.1	The negotiation relationship	35
12.2	Finalising the agreement	35
13.	Dispute Resolution	36
13.1	Labour Dispute	36
13.2	Dispute resolution Procedure	36
13.2.1	Conciliation	37
13.2.2	Mediation	37
13.3.4	Arbitration	38
14.	Ways to ensure success in mergers	38
15.	Summary	40

TABLE OF CONTENTS

CHAPTER THREE

1.	Introduction	42
2.	Data gathering Instruments and Techniques	43
3.	Research Design	43
3.1	The organization under study	43
3.1.1	Targets Population	44
3.1.2	Sampling Techniques	44
4.	Data collection methods and procedure followed	44
4.1	Interview Techniques	45
4.2	Objectives of Interviewing	46
4.3	Developing questions for the interview	47
4.3.1	Personal Interview	47
4.3.2	Telephone Interview	49
4.4	Covering Letter	50
4.5	Structure and Questionnaire Content	50
5.	Data Analysis	51
6.	Summary	51

TABLE OF CONTENTS

CHAPTER FOUR

1.	Introduction	52
2.	Biographical data analysis	52
3.1	The management	54
3.2	The perception of management on Section 197 of Labour Relation Act	55
3.3	The Legitimacy of the Advisory Committee	56
3.4	Time taken for resolve grievances	56
4.	The advisory committee	56
4.1	The structure interview	
4.2	Communication method used to update NWCS staff about merger negotiations	58
4.3	The role of the advisory committee during merger negotiation	60 60
4.4	The Amended Labour Relations Act, section 197	
4.5	Grievances lodged by members of the committee on issues agreed with management	60
5.	The NWCS staff	
5.1	The structure interview	61
5.2	The opinion of the NWCS respondents regarding the role played by advisory committee	62
5.3	The respondents understanding of transfer of business as a going concern	63
5.4	The opinion of the NWCS respondents on the reason for the delay of the management in resolving the grievances	64
6.	The Union representative	
6.1	The structure interview	64
6.2	How were you elected to take part in negotiations	64
6.3	Explain your role during the merger negotiations	65
6.4	Opinion on the role played by the advisory committee during negotiation	65

7.	The absorption document	67
7.1	Conditions of services	67
7.2	Fringe Benefits	68
8.	The lodging of grievances	69
9.	Testing of hypothesis	70
10.	Summary	76

TABLE OF CONTENTS

CHAPTER FIVE

1.	Introduction	78
2.	Main findings	78
2.1	The negotiations were conducted in bad faith	78
2.2	Lack of preparation for negotiation by both parties	79
2.3	There is no formal agreement	79
2.4	Lack of sufficient union involvement in the merger negotiation contributed in post merger problems	80
2.5	The aggrieved NWCS staff did not follow proper procedure in lodging their grievances	80
3.	Recommendations	81
3.2	The need for a formal agreement	81
3.3	The assessment of NWCS staff	82
4.	Conclusion	82
	Bibliography	83

SUMMARY

The purpose of this study is to assess the impact of the merger between the Office of the Premier and the North West Communication Services on Labour relations with a view to provide recommendations to the management of the Office on how to resolve grievances and disputes arising from the merger. The study focuses on the Office of the Premier.

A qualitative research design which made use of data obtained from the Management of the Office, Advisory Committee, NWCS staff and a union representative was used in this study. The memoranda and other correspondence on the merger were analysed. The population in this study was confined to the Office of the Premier.

The investigation conducted showed that the grievances/dispute lodged by the NWCS staff arise out of the merger. The merger negotiations were conducted in an atmosphere that was not conducive to proper negotiations, which consequently had adverse effects on labour relations.

Employees who were absorbed from the NWCS into the Office of Premier had their benefits discontinued. This gave rise to litany of grievances/disputes wherein the grievants accuse the Management of the Office with unilateral change of terms of conditions of employment.

There is a need to re-negotiate the terms and conditions of employment of the employees affected by the merger to ensure a smooth completion of this process. The amended Labour Realties Act, Section 197, on transfer of a business as a going concern allows parties to the negotiation to enter into an agreement regarding new terms and conditions of employment. It is an option that the office is advised to pursue to bring the merger process to finality.

DECLARATION

I, Israel Mmuso Tselangoe, hereby declare that the research project of degree of Masters in Administration (Industrial Relations) at the North West University submitted, has not previously been submitted by me for a degree at this institution or any other university, that it is my own work in design and execution and that all material contained herein has been duly acknowledged.

.....

M.I. TSELANGOE

CHAPTER 1

BACKGROUND TO THE STUDY

1. INTRODUCTION

In recent years mergers and acquisitions have dominated the business and financial press that one can hardly pick up a newspaper these days without reading of a proposed bid or the announcement of a takeover or merger (Cartwright & Cooper, 1992:01). In South Africa the process of mergers and acquisitions has doubled since the advent of the new democracy.

Coffey, Garrow & Holbeche (2002:7) state that the logic of mergers and acquisitions since the mid-1990 is that of strategic focus. Public companies are looking at all their operations and reassessing their values in strategic terms.

According to Cartwright & Cooper (1992:01), mergers and acquisitions have been considered the exclusive domain of economists, market strategists and financial advisers. The financial and strategic aspects of the activity are well appreciated and have been extensively addressed and debated in management literature. In contrast, although mergers and acquisitions happen to people in organizations rather than to organizations in any abstract sense, the human aspects of the phenomenon have received relatively little attention. Consequently, people have come to be labelled the forgotten or hidden factor in merger success. There is a human side to mergers, whereby the lives of employees are likely to be changed with the stroke of a pen. Most organizations have been found to be ill-prepared for the scale of the problems that they invariably have to face.

In its endeavour to enhance its communication strategy, the South African government commissioned a task team (Comtask) to develop a framework within which to build a comprehensive communication strategy. The task team recommended that the government's communication system be better co-ordinated and more focused in its messages. Amongst others, the report of the task team advised that the communication system needs to be streamlined, be cost effective and highly

professional. Decentralised implementation through ministries, departments, provincial and local government was identified as a vehicle through which that synergy could be realized.

The North West Provincial Government was the only province that had a section 21 registered company operating in terms of the Companies Act no. 61 of 1973. It (NWCS) operated until 2002. The North West Communication Services (NWCS) handled all aspects of communications for the government. The office of the Premier, also had a Communication Directorate dedicated to fulfilling the government's communication function. The two units/organization performed function that had a similar content.

Emanating from the Communication Task Team (Comtask) report, it was inevitable that the intergration/merger between the Office of the Premier and the North West Communication services would be effected. Primarily the purpose of the merger was intended to transform the communication structure from a parastatal to a public service one and to coordinate the various communication structures in the different provincial departments. The intention was to streamline the communication structure and enhance the coordination of various communication structures in the North West Provincial Departments. The move was precipitated by the desire to strategically align the communication structure of the province with the recommendations of the Comtask report.

Throughout the merger process companies naturally focus on the media, investors and stock analysts yet this is a particular time to focus on their employees. Employees are likely to hear all kinds of information from the rumour mill and from the media. Yet this is the time companies are most likely to make mistakes when it comes to communicating with their employees (Lazar & Steinreich, 1999). Indeed this scenario depicts problems experienced by organizations and employees as a result of mergers.

The impact of the merger between the office of the Premier and NWCS has had an adverse impact on the labour relations in respect of employees from NWCS. The post merger period is characterized by a litany of grievances lodged by these employees. The grievances were not yet resolved by the time the researcher undertook this study.

This study is therefore undertaken to look at the impact of the merger on Labour relations and how grievances emanating from the merger may be resolved.

2. PROBLEM STATEMENT

Following the recommendations of the communications task report and pertinent subsequent deliberations, it was decided that the NWCS be merged with the Communication Directorate in the Office of the Premier. The Communication Directorate was thus elevated to a Chief Directorate with a broader mandate for the rest of the province. Upon the completion of the merger process a number of problems from a labour perspective began to surface in respect of the employees from NWCS.

The problems are listed here-under.

2.1 Main Problem

Due to the merger between the Office of the Premier and NWCs, employees from the NWCs feel disadvantaged in respect of the provision of the Labour Relations Amendment Act of 2002, section 197, regarding the transfer of business as a going concern. The employees argue that in terms of the stipulations of section 197, their benefits should not have been discontinued in the Public Service. As a result these employees accused the employer, the Office of the Premier, with the unilateral change of the terms and conditions of employment¹

2.1.1 Sub Problems

- (i) Employees not being assessed for performance for the period under review that coincided with the merger.

¹ The Researcher is employed at the Office of the Premier. The researcher therefore has first hand knowledge of the subject under study.

- (ii) Employees of the NWCS experienced a loss of fringe benefits for example, participation in government vehicle subsidized scheme, reduction in housing subsidy and traveling allowances.
- (iii) The Advisory Committee that represented employees from NWCS did not communicate adequately to their representatives.
- (iv) The problem of a loss of benefits that are not offered in the public service.

According to Hanaver (1997) "not all employees of the newly formed systems are pleased with the merger. Some are concerned that the merger will affect their salaries, pensions, paid time off, health insurance coverage and seniority rights". This statement aptly reflects the aftermath of the merger between NWCS and the Office of the Premier.

3. DESCRIPTIVE HYPOTHESES

The hypotheses to be tested in this study are:

3.1 Hypothesis 1

The advisory committee did not adequately consult its members.

3.2 Hypothesis 2

Different interpretation of policy and the Labour Relations Act by both parties.

3.3 Hypothesis 3

The indecisiveness of the management of the Office of the Premier to substantively deal with the grievance lodged by employees from NWCS.

4 OBJECTIVES OF THE STUDY

The objectives of the study are:

- 4.1 To establish whether the advisory committee had a mandate of NWCS staff to negotiate and agree on the terms of the take-over.

- 4.2 To investigate whether there was a clear understanding of the relevant government prescripts by both parties.
- 4.3 To investigate whether prescripts were accurately interpreted.
- 4.4 To establish whether the terms of agreement of the merger were substantively fair and in line with labour legislation.
- 4.5 To determine whether a union was properly and sufficiently consulted and agreed to the terms of the merger.
- 4.6 To investigate whether employees from NWCs signed new contracts of employment with the revised terms and conditions of employment upon absorption.

5 SIGNIFICANCE OF THE STUDY

Notwithstanding the fact that the merger has been completed for two years now, there are a litany of grievances that remain unresolved. A major concern of the absorbed employees is the alleged unilateral change of conditions and terms of employment by the employer. The importance of this study is therefore to provide management of the Office of the Premier with recommendations as to how the current problems emanating from the merger may be resolved. The findings will contribute positively in assisting the smooth completion of the merger process.

6 RESEARCH DESIGN

6.1 The Organisation

The Office of the Premier is a Provincial Department. The Office operates as a support functionary to the provincial Executive and also as coordinator of provincial activities throughout the various governance structures. The Office has five Chief Directorates as well as two Directorates headed by the Director General who is assisted by two Deputy Directors General. The two Deputy Directors General are responsible for two branches which are Corporate Support and Policy Coordination and Governance.

There are 34 members from senior management of which 11 are females and 23 males within the two branches of the office.

Overall the Office has a staff of 719 employees. Middle management has 117 members of which 63 are males and are 54 females. The remaining 568 officials occupy lower level positions including messengers and cleaners.

6.2 The Population

A population is the set of elements that the research focuses on and to which the obtained results should be generalized (de Vos, Strydom, Fouche & Delport 2002)

The population under study which consists of 36 persons at all levels was drawn from the Communication Chief Directorate, Corporate Service, Legal Services, Personnel Management Sub-directorate and the Head of the Department. The reason for drawing the sample from all these Units was because officials from the units were involved in one way or another in the merger process and subsequent post merger grievances. Other officials were involved in merger negotiations, some lodged the grievances and the last category comprise officials who were involved in the handling of the grievances.

6.3 Sampling Technique

Powers (in de Vos et al, 2002) states that "a sample comprises the elements of the population considered for actual inclusion in the study". He further maintains that we study the sample in an effort to understand the population from which it was drawn. Representativeness is a very important aspect of sampling that requires close attention. This means that the sample should have approximately the same characteristics as the population relevant to the research in question.

Purposive sampling techniques were used to draw a sample of eight officials from the different Directorates in the Office. The criteria used to choose the sample case were based on the role played by the chosen individuals during the merger process and selected employees who have lodged grievances. According to de

Vos et al (2002), in purposive sampling a particular case is chosen because it illustrates some feature or process that is of interest for a particular study. Clear identification and formulation of criteria for the selection of respondents are, therefore, of cardinal importance.

6.4 Data gathering technique

According to de Vos et al (2002) within the context of qualitative research, observation and interviewing are usually utilized to collect the relevant data. A third and fourth method of data collection is the study of documents and secondary analysis. In this study the following techniques will be employed to collect data: interviews and document analysis.

6.4.1 Interviews

Smith (1981) says that to plan for an interview, a good tactic is to start with a written, general plan of action. The plan must be used as a checklist for points to be covered, but not necessarily in the order of the list no matter how logically laid out. That is, one may not necessarily follow the order of the chronological set of questions. It calls for flexibility on the part of the interviewer during the interview.

Interviews were conducted with the affected staff at the two Chief Directorates and Senior Management of the Office of the Premier who were involved in the merger process.

The two types of interviews used were personal and telephonic interviews. The former is a two-way conversation initiated by the interviewer, who obtained information by asking respondents a number of structured questions, which they were expected to respond to. In the latter the interviewer used a telephone to contact some of the respondents who are located in the regional sub-offices of the Office of the Premier.

6.4.2 Documents

Bailey (1982) states that documents are another major source of data that contain information about the phenomena one wishes to study. He further maintains that these documents vary greatly and are categorized into primary and secondary documents. This study examined secondary documents which comprise minutes of meetings, inter office memoranda and applicable policies. The records on communiqués on the merger were scrutinized as well as the grievances lodged.

6.5 Data Analysis

Data was collected from the documented records on the merger and also during the interviews that were conducted with interviewees. Information gathered was analysed and other literature on the subject of mergers was scrutinized. Data collected through interviews was analysed, compared, interpreted and conclusion drawn. Content analysis method and basic descriptive statistical procedures was used to analyse data. Relationship of answers was tested to determine the hypotheses described in this chapter.

7 LIMITATION OF THE STUDY

The study is limited to the Office of the Premier in the North West Provincial Government. Therefore the findings and conclusion cannot be generalized to all organizations and institutions in the North West Province.

8 CONCLUSION

A brief insight into the merger in general and the merger between the NWCS and Office of the Premier in particular have been outlined in this chapter. Firstly an overview of the causes of merges was briefly discussed and the sequence of events that culminated in the merger under investigation were highlighted.

for merger, the human factors in merger, the role of HR in merger, the reasons why some mergers fail, due diligence exercise prior mergers, transfer of business as a going concern, An overview of Public Service Act and Policies and ways to ensure success in mergers.

1. INTRODUCTION

The purpose of this study is to assess the impact of the merger on Labour Relations in respect of employees from the erstwhile North West Communication Services who were absorbed into the Office of the Premier. The chapter, therefore, will focus on problems encountered during mergers in general and the amended Labour Relations Act of 2002, section 197, in particular. The Public Service Act of 1994 (PSA) and the following policies transport, Performance Management and Development System and Rules for Grievance handling in the Public Service will be analysed as their interpretation and application thereof affected labour relations in the post merger period.

2. DEFINITION OF CONCEPTS

Sudarsenam (1995:01) states that in a merger, the corporations come together to combine and share their resources to achieve common objectives.

According to Cartwright and Cooper (1992:31) an acquisition occurs when one organization acquires sufficient shares to gain control/ownership of another organization. Take-over bids are generally classified as being 'friendly' (when the first bid made is accepted.), "contested" (when there are specific issues which have to be debated) and "hostile" (when regardless of the context or the quality of the relationship between the negotiating teams, the merger on acquisition creates considerable uncertainty)".

A horizontal merger is when a company merges with one at the same level of production for example a brewery merging with another brewery (Merger and Takeover Worksheet, 2002).

Weatherseed (2001:08) states that a conglomerate is formed when two apparently unconnected companies merge.

The above definitions show that although the terms "merger" and "acquisition" are often used interchangeably they have precise connotations in a certain context. There are also different types of mergers that organizations may pursue.

3. A BRIEF HISTORICAL BACKGROUND OF MERGERS

The concept merger can be traced as far back as the late 1800's. The first merger in the United States was in gross domestic product, which occurred in the 1904. Horizontally the mergers occurred in basic manufacturing industries oil and telephone companies. Vertical mergers began to surface in the 1920's, which enabled manufacturers to control the distribution channels more effectively. Conglomerate mergers began in the 1960's and gained momentum in the 1980s (Weston & Weaver, 2001:9).

Cartwright and Cooper (1992) state that in the United Kingdom the merger and acquisition activity occurred in the 1920's and the second was in the 1960's and the early 1970's. The fourth and the biggest and most sustained move of mergers and acquisition occurred in the 1980's. This period indicates a peak of takeover activity in terms of value and average size of takeovers. The most recent upsurge in takeovers was in the period 1984 to 1989. During that period the average size of an acquisition increased from E9,64 million to E20.38 million. The second half of the 1980'S thus represented a qualitatively different period from the earlier periods of high takeover activity. The increase in merger and acquisition suggests a considerable amount of corporate restructuring in the UK economy in recent years.

Merger and acquisition activity appear to be on the increase especially in mature sectors such as manufacturing and financial services, which are ripe for consolidation.

Now M&A's are viewed as a respectable and legitimate tool for effecting change. Today's deals are more complex and teams of advisors are likely to include experts in the New Economy such as Internet Strategists. Management teams are making greater efforts than ever before to explain and justify their decisions to key stakeholders (Coffey et al 2002:7)

In South Africa the opening of the economy to foreign competition and investment resulting in a major restructuring of South Africa's mining sector, driven by global competitive pressure and a move towards greater mechanization. The mining houses are now looking for local and international joint venture, mergers, acquisitions and the scale of low quality, non-core assets to boost competitiveness (South African Commercial Guide -1999).

After the historic elections in April, 1994 the South African government embarked on a restructuring process. The ruling party inherited a fragmented economic activity that prevailed in the then home-land system. Consequently surveys were conducted to ascertain whether certain entities that were "Parastatals" were necessary and making the desired impact in terms of their mandate and objectives. The studies conducted found that some of these parastatals were not needed as they perform functions that are performed by government departments. This then triggered the mergers and takeover of those entities into the public sector domain.

There is no documented study on mergers embarked upon by the government since it came into power in 1994. The author has used his background knowledge to put the activities of mergers and acquisitions in public service into perspective.

The historical background of mergers leads the author to conclude that South Africa will experience a heightened merger and acquisition activity in the coming years. South Africa is a global player in the economic sphere, which means it cannot escape the M&As phenomenon. It therefore becomes imperative that a comparable study of

4. AN OVERVIEW OF THE MERGING INSTITUTIONS

4.1. North West Communication Services (NWCS)

It was formed during the previous Bophuthatswana government as an Information Services for the government (ISOB). Its primary purpose was to propagate the policies of the former homeland.

The homeland system in general was deemed to be decisive and perpetuated the Bantustan system, a system that denied blacks the South African citizenship. Consequently there was an onslaught on that system, liberation movements were discrediting the system and fighting for its demise. The ISOB was specifically designed to counter the threats posed by liberation movements and portray Bophuthatswana in a positive light, as a homeland that prospers under trying political conditions of that time.

In the advent of the new dispensation, ISOB was then changed to North West Communication Services (NWCS). In 1997 the then Member of the Executive Council, Dr Sehularo, commissioned a survey through Simeka Consultants to examine the effectiveness of the NWCS in fulfilling its purpose as Communication agent of the North West government to the public.

Its report, amongst others, found that there was no skill to deliver on its mandate and incapacity to manage NWCS. The budget was not spend appropriately in terms of increasing its ability to deliver an effective communication service in relation to the amount of money it has used. The existing structure was found not to be able to meet the communication requirements of the North West government. There were also no performance management system, as a result no action was taken against people who did not perform (Simeka report: 1997).

Communication Service Act, of 1992, and it (bill) introduced the Advisory Committee on Communication. The primary function of the committee was to advise the Premier in regard to all matters relevant to information strategy.

4.2. Office of the Premier

The Office of the Premier was established after the elections in 1994. At its inception it was named the Department of the Premier, it maintained its role as the centre of the provincial government. Its primary responsibility is to support the Provincial Executive and also to monitor, coordinate government activities throughout the North West Province.

The Communication Directorate was established within Office of the Premier. Its endeavour is to communicate to the public the provincial government's vision and how the government is implementing its mandate.

It also takes a leading role in developing the provincial communication policy and strategy as well as ensuring a common communication methodological framework across the North West Province.

In view of the above it is safe to conclude that NWCS and Communication Directorate in the Office of the Premier were performing similar functions. They were both engaged in providing information to the public regarding the activities of the North West government. It was thus inevitable that they would at some point have to merge.

5. REASONS FOR THE MERGER

Sudersanam (1995) says the immediate objective of an acquisition is self-evidently growth and expansion of the acquired assets, sales and market. He lists two perspectives that are reasons for acquisitions namely, shareholder wealth maximization and management perspective.

In this perspective firm decisions including acquisitions are made with the objective of maximizing the wealth of the shareholders of the firm. This means that the incremental cash flows from the decision, when discounted at appropriate discount rates should yield zero or positive net present value (Sudersanam 1995)

5.2. Management perspective

In this agency model, managers as agents may not always act in the best interest of the principal. Managers may act in disregard of their principal's interest in order to promote their own self-interest. A Manager may undertake acquisitions for the following reasons:

- To pursue growth in the size of their firm, since their remuneration, prerequisites, status and power are a function of firm size (the empire-building syndrome).
- To deploy their currently underused managerial talents and skills (self-fulfillment motive).
- To diversify risk and minimize the costs of financial distress and bankruptcy (job security motive).
- To avoid being taken over (job security motive).

Piana (2002) states the following as reasons for mergers:

- To improve finances.
- To gain access to a larger skill set.
- To enhance the organization's pursuit of mission.
- To get synergies.
- To reduce the impact of unnecessary competition.

The above reasons indicate that mergers are undertaken for different purposes.

6. THE HUMAN FACTOR IN MERGERS

Cartwrights and Cooper (1992) list two important human factors to mergers and acquisition success, which determine the speed and effectiveness with which integration can be achieved. These are:

- The cultural compatibility of the combining organizations, and the resultant cultural dynamics.
- The way in which the merger/acquisition integration process is managed.

In the absence of any human merger audit, or carefully formulated human merger integration plan, most organizations muddle through the merger process, moving from one organizational crisis to another, rather than proactively managing people and anticipating and confronting problems before they get out of hand. Understanding the likely effect of mergers and acquisitions on the people being taken over, is a precondition to sensitive and successful integration management.

Schmidt (2001:46) states that if employees are unaware of the current level of pay throughout the organization, you may be certain that they will be well informed within days or weeks of the announcement. This is likely to be a particular problem in power culture, because they tend to lack formalized reward policies. Pay becomes an important issue in mergers and acquisition because one cannot expect renamed organizational commitment to develop overnight, and so the attachment between the individual and company is likely initially to revert to an exclusively financial arrangement.

The above arguments clearly show that it is important to deal with the concerns of those members of the organizations that are most directly affected by the arranged marriage of the merging parties. The human factor in mergers should be considered at the first stage of the merger process.

7. THE ROLE OF HUMAN RESOURCE IN MERGERS

7.1 The complex role of HR during a merger

Figure 7.1 shows the complexity of a true Human Resource role during a merger. Human Resource may be viewed by the business as dealing with “soft” issues, but the hard issues risk taking over completely as beleaguered staff turn around a plethora of contracts, rewards systems, benefits and pension scheme Coffey et al (2002)

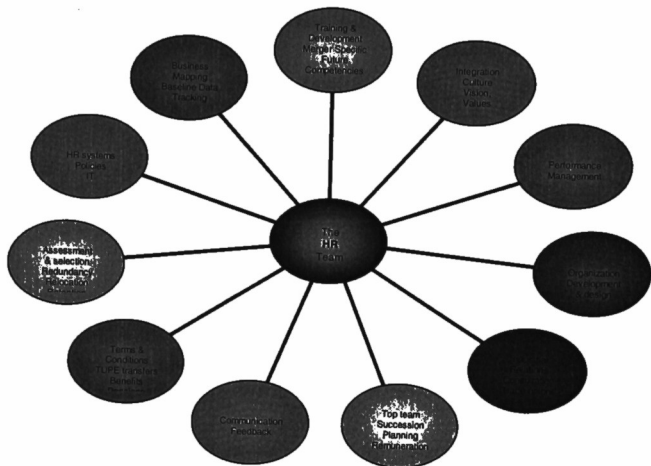


Figure 7.1 the role of HR

Source: Reaping the benefits of Mergers and Acquisitions (Coffey Garrow and Holbeche 2002).

One may thus argue that mergers can provide an opportunity for the Human Resource team to claim a strategic place in the organization. It is imperative for company

directors to recognize the critical role played by human resources professionals and embrace them as equal partners during merger processes.

There are literally hundreds of reasons why the merger and acquisition failure rate is so high, but many can be traced to the exclusion of human resource professionals in the pre-deal planning phase and the functions last minute inclusion after the transaction has closed. It is a classic case of too little, too late (Clement and Greenspan 1999). They further argue that human resource professionals should be involved in the earliest stage of any acquisition involving people. This means that the human resource specialist must be familiar with the organizations strategic objectives and its business and marketing plans.

According to Case Study series (2003) there are four critical roles of Human Resource (HR) in mergers which are briefly discussed hereunder.

7.2 The role of HR in the Pre-deal phase

One of the first critical areas that HR can be involved is in assessing the potential compatibility of cultures. This could involve reviewing an array of things such as leadership style, mission, team strength, performance and reward management systems, customer focus and organizational capabilities.

7.3 The role of HR in due diligence phase

It is during the due diligence phase that HR professionals are expected to review the contracts of employment. This can include a wide range of activities such as:

- Ensuring contracts are in place
- Identifying any special terms or conditions for management.
- Identifying any benefit entitlement issues such as service leave.
- Identifying any terms that relate to contract for a specific period.

7.4 The role of HR during the Integration Planning

In this stage HR is usually involved in a wide range of planning issues such as:

- Talent management.
- Determine transition strategies to move people to new roles, provide training and reskilling.
- Appointment criteria for new positions.
- Determining the level and appropriateness of integration.

7.5 The role of HR during the implementation phase

During this phase HR is required to deliver on the plans developed during the integration planning phase as well as respond to unexpected and new requirements.

Other activities for HR are:

- Coordination of communication to staff
- Establishing financial and legal liabilities and compliance management.
- Issuing new employment contract with revised terms and conditions.
- Providing training and development
- Assisting with restructuring, job description, job evaluation and organizational section.

In view of the above, it is of paramount importance that HR professionals are involved at the initial phase of mergers to help ensure the organization maximizes employees engagement. This will assist in achieving the objectives of the merger or acquisition, since the human factor shall have been addressed at the initial stage of the merger and throughout the process.

8. THE REASONS WHY SOME MERGERS FAIL

There are many reasons why some mergers fail. Commentators on this subject advance various reasons why certain M&A's end up failing. A brief overview of these reasons are listed here-under.

8.1 Poor Implementation

According to Caughen (1999 : 48) poor implementation is common for a number of reasons. There is often a lack of commitment and energy from top management to take tough decisions or to drive through merger benefits. Typically there is little understanding of the people/cultural dimension of the merger and a lack of planning or process. Symptoms of poor implementation include poor intergration, little tracking or communication, cultural differences remaining unaddressed and lack of employee support.

8.2 Inability to maximize potential synergies

Coffely et al (2002) cites an unrealistic synergies, based on a inadequate information and checking in the due diligence process as a major cause of merger failure. All too often strategies are incomplete, focusing on requirements of the purchases, without integrating the different market demand on acquisition.

8.3 Inadequate assessment of cultural aspects of M&A's

The report on Sectoral Activities Programme 2001, states that interest is concentrated almost exclusively on the benefits of M&A with scant attention being paid to soft cultural and organisational considerations. Cultural differences have often been the root cause in the disappointing experience of extracting efficiencies in cross-border M&A's.

According to the International Consultant KPMG study in Sectoral Activities Programme, M&A's deals were 26 percent more likely than average to be successful if they paid satisfactory attention to cultural issues and those acquires who left

cultural issues until the post-deal period severely hindered their chances of deal success, compared with those who dealt with them early in the process. Early emphasis on cultural assessment and communication plans are particularly important.

8.4 Resistance to Change

David (1999) argues that the thought of change raises anxieties because people fear economic loss, inconvenience, uncertainty, and a breaking in normal social patterns. Almost any change in structure, technology, people or strategies has the potential to disrupt comfortable interaction patterns, for this reason people resist to change.

It is evident that change brings with it fears of the unknown which consequently lead to people resisting change. Out of this fear people may resort to resistance which may cause a merger to fail. Insufficient consideration of human factor and late consultation of HR professionals also lead to failure in mergers

9. THE DUE DILIGENCE EXERCISE PRIOR MERGERS

9.1 Reasons for due diligence exercise

Due diligence is a process that should be embarked upon before the merger or acquisition of organization/company. Due diligence investigations are used to investigate the viability of a myriad of deals including mergers and acquisitions, joint ventures and management buy-outs. Whatever the type of deal, the process of a due diligence should question the essential assumption underlying its final approval and implementation. The buyer's primary objective in conducting a due diligence investigation are to reduce or manage risk and to verify the claims of the seller in order to properly evaluate the target and negotiate on a reasonably even playing field (Seminar Paper Achievers 2000).

The above process encapsulates the reasons for conducting a due diligence exercise before mergers. A process which scholars are unanimous in their opinion about its significance in M&As.

Mac Knez (2002) lists four steps that characterize the smart due diligence process which are:

- Clarifying the acquisition logic.
- Identifying high – impact operating activities.
- Identifying integration risk factors, which has the following two elements.
 - i behavioural risk factors
 - ii Turnover risk factors
- Perform Intergration risk assessment

The four steps mentioned above are critical factors in due diligence exercise. Other factors to be considered in due diligence exercise are discussed below:

9.2 Developing a shared plan of action

Kendal Consulting Group (2000) maintains that once a vision and a blue point for the merger has been established, which takes into consideration important organizational differences and strategies objectives, the process for intergration must be clearly defined and communicated, early and often. They further list the following important steps to ensure a successful integration:

- Clarification on who will lead the new entity early on
- Appointment of an experienced leader for the intergration effort.
- Involvement of key managers and employees from both organizations at the outset.
- Building broad connection with multiple linkages at all levels.
- Communication

9.3 Creating a common vision and shared blue print

Kendal Consulting Group further (2000) states that for a merger to succeed, both merging companies should have a common vision of the organization that will result

from the merger. Further, the vision of the merging companies should include a holistic and well- balanced business system which should entail the following:

- Business processes.
- Structure of jobs and skills.
- Information Systems
- Culture, norms and beliefs
- Systems of managing the performance of employees.

Based on the above arguments it can be concluded that an important determinant for a successful merger lies in the ability and discipline to perform a due diligence assessment of the two organizations and to conceptualise a balanced and winning business system that can be created out of the merger.

9.4 Limitations of due diligence

Mac Knez (2002) states that one generally accepted limitation of due diligence is that the buyer is largely dependent on the quality and quantity of data supplied by the seller. The risk inherent in the limitation can, to some extent, be reduced by the conduct of intensive oral interview between the due diligence team and personnel/advisors of the company.

Whatever the limitation regarding due diligence before a merger, it remains an important mechanism that must be used to avoid getting into mergers or acquiring business that are not viable.

10. TRANSFER OF A BUSINESS AS A GOING CONCERN

In terms of common law, the rights and obligations regarding a contract of employment, may not be transferred from one employer to another without the consent of the employee. This is very much what the amended section 197 of the Labour Relations Act of 1995 seem to say.

According to Labour Update (2002) it is quite clear that the following aspects of the employment relationship between the old employer and the employee will survive the transfer unless amended by agreement.

- The contract of employment
- Rights and obligations between the old employer and the employee
- Anything done to the employee by the old employer
- The employee's length of service
- Terms and conditions of employment which are on the whole not less favourable to the employee
- Any organizational right granted to a trade union in respect of any workplace that is transferred
- Any collective agreement recognizing a trade union representing employees in respect of a workplace that is transferred.

10.1 The Labour Relations Amendment Act of 2002

The history and the development of section 197 of the LRA 1995 which is particularly relevant when dealing with mergers and acquisitions, is a glowing example of how employment law had a profound impact upon commercial transactions. Critics of the statutory regulation of employment rights in mergers and acquisitions content that the restriction, imposed by section 197 of the LRA unreasonably limit economic development (Seminar Paper Archives October 2002).

10.1.1 The scope of regulation transfer

The LRA regulates both solvent transfer (Section 197 of the Act) and insolvent transfer (Section 197 (A) of the Act. The Act only applies in instances where a business is transferred as a going concern. A business includes the whole or part of any business trade, undertaking or service.

Section 197, as amended, implies that the acquiring employer cannot employ employees from the acquired company/organization on different terms and condition of employment to that which they were employed upon by the target company. The transfer does not interrogate an employees continuity of employment and an employee's contract of employment continues with the new employer as if with the old employee.

According to Seminar Paper Archives: October (2002) the following critical factors are to be considered as imposed by section 197 of the LRA, as amended, during mergers.

- (i) Anything done before the transfer by or in relation to the old employer, including the dismissal of an employee or the commission of an unfair labour practice, or an act of unfair discrimination, is considered to have been done or in relation to the new employer.
- (ii) All rights and obligations between the old employer and each employee at the time of the transfer continue in force as if they had been rights and obligations between each employee and their new employer.
- (iii) Where the acquirer employs an employee upon transfer in terms of section 197 or section 197 (A) on conditions or circumstances at work that are substantially less favourable to the employee than those provided by the old employer, the employee may elect to terminate his/her new contract of employment and claim that such termination constitutes an unfair dismissal.

In a nutshell, the amended section 197 of the Act provides that, save where terms and condition of employment are determined by collective agreement, the new employer complies with all its obligations to accept employees in terms of the old employers contract of employment.

It is clear that the amended section 197 of the Labour Relation Act protects employees of merging companies and ensures that their terms and conditions of

employment are not substantially altered during mergers and acquisition processes.

10.2 Procedure

Section 197 (3) of the Labour Relations Act provides the link between the provisions regulating transfers of contracts of employment and the requirements regarding retrenchments. Grogan (2001) states that employees who refuse to accept transfer may not only be denied severance pay, but may also lose their jobs.

Section 197 (4) provides that the transfer of employment “does not interrupt the employees continuity of employment” and that “employment continues with the new employer as if with the old employer”. Grogan (2001) further points out that the employees concerned and their new employer are permitted to agree to enter into new contracts. He further maintains that according to the Labour Appeal Court, however, they cannot agree to waive the provision regarding non-interruption of continuity of service on transfer, because the length of an employee’s service is not a right or an obligation, but a fact. However, it does not follow that the new employer cannot alter some of the terms and conditions of employment by agreement with the transferred employees.

The above procedure clearly shows that the transferred employee’s length of service cannot be altered in mergers. It also indicates that employees who refuse to accept the transfer may lose their jobs. This may force employees who are not represented during negotiations to accept terms and conditions that are less favourable to the ones they enjoyed prior the transfer. Equally important is the fact that the Labour Relations Act allows parties to the employment relationship in mergers to agree on new terms and conditions of employment in a new business environment.

10.3 Collective Agreement

In terms of Section 213 of the Labour Relations Act a collective agreement is defined as “a written agreement concerning terms and condition of employment or any other matter of mutual interest concluded between one or more registered trade unions, on the one hand, and on the other hand, one or more employers, registered employers’ organizations, or a combination of employees and employers’ organizations. A collective agreement binds employees who are not members of the registered trade or trade union in the agreement.

Grogan (2001) states that only agreements entered into by registered trade unions and employees’ organisations receive statutory recognition. To fall within the statutory definition the terms of the agreement must relate to terms and conditions of employment or any other matter of mutual interest and be set out in writing.

10.3.1 Trade Unions

According to Nel (1999) a representative trade union means any registered trade union or two or more registered trade unions acting jointly. They must sufficiently be representative of employees employed. In any workplace with at least ten members of a representative trade union, those members are entitled to elect from among themselves:

- for 10 members of trade union employed in the workplace; one trade union representative.
- for more than 10 members of the trade union employed in the workplace; two trade union representatives.
- for more than 50 members of the trade union employed in the workplace; two trade union representatives for the first 50 members, plus a further one

representative for every additional 50 members up to a maximum of seven representatives.

Section 16 of the Labour Relations Act stipulates that an employer must disclose to a trade union representative all relevant information needed for the effective performance of his or her functions. Nel (1999) states that whenever an employer is consulting or bargaining with a representative trade union, the employer must disclose all information necessary for the representative trade union to engage in such consultation as collective bargaining.

Section 16 (5) of the act states the type of information that the employer may not disclose to a trade union representative that:

- Is legally privileged.
- The employer cannot disclose without contravening a prohibition imposed on the employer by any law or order of any court.
- Is confidential and, if disclosed, may cause substantial harm to an employee or the employer; or
- Is private personal information relating to an employee, unless that employee consents to the disclosure of that information.

In a dispute about what information to be disclosed in terms of this section, any of the parties may refer the dispute in writing to the commission. The party must satisfy the commission that a copy of the referral has been served on all other parties to the disputes.

Lastly an employer and a registered trade union of the majority of the employees of the employer in a workplace, or the parties to a bargaining council, may conclude a collective agreement establishing a threshold of representatives required in respect of the organizational rights.

In view of the above, it can be said that a collective agreement is a viable mechanism through which trade unions and employers can reach consensus on alteration of terms and conditions of employment during mergers. It is also important to note that the Labour Relations Act requires the employer to disclose all relevant information to a registered trade union to ensure that the consultative process is smooth.

The following case illustrates the protection that workers enjoy under the provision of section 197 of the Labour Relations Act as amended.

10.4 Nchunu V University of Cape Town CCT2/02 dated December 2002 unreported

The Labour Appeal Court (LAC) in a majority judgment, dismissed an appeal brought by NEHAWU against a decision of the Labour Court (LC) and had held that employees are only transferred to the new owner where there is proper agreement to that effect between the old employer and new employer. NEHAWU sought special leave to appeal from the Constitutional Court (CC) against this decision of the LAC's interpretation of section 197 failed to give effect to an employee's constitutional right to fair labour practice.

The CC held that the intended purpose of section 197 is to protect employees against the loss of their employment in the event of a transfer of a business as a going concern, and that section 197 was constituted for the benefit of both employer and employee, as it is intended to facilitate the transfer of business whilst protecting the interests of employees.

The ruling of the Constitutional Court validated the provision of section 197 in relation to the protection enjoyed by employees during acquisitions and mergers.

11. AN OVERVIEW PUBLIC SERVICE ACT & POLICIES

The Public Service regulations were formulated to regulate the relationship between public servants and the State as the employer.

11.1 Public Service Act

The Public Service Act 1994 (PSA) section 35 (1) states that, an officer or employee may lodge a complaint or grievance with the relevant executing authority under the prescribed circumstances, on the prescribed conditions and in prescribed manner. If that complaint or grievance is not resolved to the satisfaction of such an officer or employee, that executing authority shall submit the complaint or grievance to the Public Service Commission in the prescribed manner and at the prescribed time or within the prescribed period.

Section 35 (2) further states that after the Commission has investigated and considered any such complaint or grievance, the Commission may recommend that the relevant executing authority acts in terms of a particular provision or particular provisions of PSA or any other law. If, having regard to the circumstances of the case, the Commission considers it appropriate to make such a recommendation.

One may therefore argue that the act empowers the commission to play a significant role regarding the facilitation of the handling of grievance in the government Departments.

11.2 Rules for Grievances handling in the Public Service

Government Gazette No. 25209 prescribes conditions and the manner in which grievances may be handled in the Public Services. In terms of the steps to be followed by agreed employees the gazette states that:

- (i) An employee may lodge a grievance with an employee designated to facilitate the resolution of grievance in the Department.
- (ii) The grievance may be resolved by any person within the relevant structure of authority who has the requisite authority to do so.

- (iii) If a grievance cannot be resolved the executing authority must inform the aggrieved employee accordingly.
- (iv) The Department has 30 days to deal with the grievance. The period may be extended by mutual agreement.
- (v) If after the aggrieved employee is informed of the outcome of the grievance and he/she remains dissatisfied:
 - (a) he/she must inform the executing authority thereof in writing within 10 days.
 - (b) The executing authority must in terms of section 35 (1) of the Public Service Act, 1994, forward the grievance and the relevant documentation to the Public Service Commission for a recommendation within five days of being informed by the aggrieved employee.

If there is failure on the part of the Department to respond to the grievance within the 30 days period, the aggrieved officer may lodge his/her grievance with the Commissioner.

- (a) In the case of an alleged unfair labour practice with the Public Service Coordinating Bargaining Council or the relevant sectoral council (whichever is applicable) in terms of its dispute resolution procedure.

The government gazette on rules for dealing with the grievances of employees in the Public Service provides employees with a clear procedure on how to lodge their grievances within their respective Departments and also directs how outside institutions can be utilized by aggrieved employees in an attempt to resolve their grievances.

11.3 Performance Management and Development System

Performance appraisal indicates how effectively employees execute their tasks. It also provides information about performance improvement, remuneration adjustments, placement decisions, training, career planning and faulty designs (Nel 1999: 270). Performance managerial and development system constitute all processes designed to manage the performance of an organisation. In its endeavour to manage performance of employees and realize its strategic objectives, the provincial government developed a Performance Management and Development System guide (PMDS) to appraise the performance of public servants.

11.3.1 The Performance Management Development System process/cycle

It begins with the performance planning session between the manager and subordinate wherein the vision, mission and strategic objectives of the Directorate are discussed. Central to this process is the development of a personal workplan, which serves as a performance contract. Individual objectives are captured on the workplan which are linked to the job description. The workplan contains individual objectives and performance targets for an assessment period, which runs up to twelve months.

At the end of the performance cycle an employee is subjected to performance review, using the annual assessment instrument. This is done to determine the overall level of performance of an employee during a particular year. The outcome of performance appraisal will determine whether the appraised employee deserves a reward and incentives or needs intervention programme due to under-performance.

Performance management Development system is important in that it assist the organization to achieve its strategic objectives, whilst at the same time it helps employees improve their performance. The PMDS explicitly indicates the period that employees must complete before being eligible for performance appraisal and it also places a workplan at the center of the evaluation process.

11.4 Transport Policy

The purpose of the transport policy is to regulate the participation of employees in the government subsidized vehicle scheme. In terms of the policy an officer will qualify for participation for scheme "A" if he or she travels, for job related purposes a minimum of 21 000 kilometers and not exceeding a maximum of 29 000 official kilometers per year. The provision of a subsidized vehicle to an officer is deemed a work facility, which enables them to undertake essential and approved official journeys in those cases where the use of other available transport is neither practical nor economical.

The concession for a qualifying officer to participate in the subsidized motor transport scheme is not a service benefit but a work facility which cannot be construed as a right. Further the policy outlines the following specific qualifying criteria.

- Employees whose duties necessitate the official use of a motor vehicle must submit the following information which is to be certified by the Head of the Directorate:

- a copy of the applicant's identity document, latest salary advice and drivers licence

- the kilometer and daily utilization of a government or outsourced vehicle for the previous six months; and or

- the kilometer utilization of a privately owned vehicle for approved official service for previous six months; and or

- the total projected official assigned kilometer that the official shall undertake, per month, which would be subject to changing circumstances that may occur.

The above information is required to ascertain the level of responsibility and scope of work for which the applicant is responsible.

for subsidized vehicle participate in the car scheme to enable them to execute their work efficiently.

12. NEGOTIATIONS

Nel (1999) defines negotiation as an interactive process aimed at a fair, reasonable and mutually acceptable positioning of one party in the interaction vis-à-vis the other party. During this process, various strategies and tactics may be followed, but the final goal is to reach a mutually acceptable contract where both parties win.

The core of the process of negotiation is persuasive communication directed towards movement of the other party to change its position. The positions are reflected by their respective proposals, claims, demand or offers which are different for parties. These positions are determined by the needs, ideals and goals of the parties and influenced by their different perceptions, opinions, attitudes and values (Swanepoel Erasmus & Nel: 1999).

Swanepoel et al (1999) state that planning and preparing for face-to-face negotiations, are the main activities during the negotiations. Preparation is a determining factor for success in any negotiation. Swanepoel et al (1999) further mentions the following steps as crucial during planning phase:

- Selection and training of negotiation teams.
- Assignment of roles to team members
- Collection of data and relevant information
- Analysis of information and generation of option and alternative solutions
- Development of a game plan
- Obtaining a mandate to negotiate as well as for positioning
- Arrangement of logistics

Swanepoel et al (1999) state that the relationship between the negotiating teams forms an integral part of the negotiation process. Depending on the nature and quality of the existing relationship, it can have a crucial influence on the progress (or lack progress) made as well as on the eventual outcome of the process. According to Nel (1999) of special importance is the level of trust (or mistrust) and mutual respect which exists between the parties. Successful negotiators are thoroughly aware of the important role relationships play during negotiations.

12.2 Finalising the agreement

According to Swanepoel et al (1999) after an agreement is reached, the following aspects should receive specific attention.

- A summary of what has been negotiated and the agreement reached.
- Clearing up of uncertainties
- Confirmation of the responsibilities of the various parties with regard to implementation (who must do what, with what and when); and
- Follow-up dates, venues and times for further meetings, if necessary.

Negotiations play an important role at all stages of the merger process. It must be pointed out that the negotiating parties must obtain a mandate from their respective representatives to legitimise the process. The nature and depth of the relationship between the parties will determine whether negotiations are conducted in good faith and the outcome is acceptable to both parties.

13.1 Labour Dispute

Bendix (2001) defines labour dispute as a continued disagreement between employers and employees or their union as regards to any matter of common interest, any work-related factor affecting their relationship or any process and structure established to maintain such relationship. Thus dispute may arise from failure to agree to the establishment of a relationship, disagreement, regarding procedures to be adopted, failure to agree on terms and conditions of employment, failure to abide by the terms of an agreement, negation of the rights of either side or poor treatment of one party by the other.

According to Ehlers (2002), there are two types of labour disputes namely, dispute of rights and dispute of interest. Dispute of rights exists if parties are in dispute because of different interpretation of the application of rights that are already defined in contracts, procedures, agreements or law for example unfair dismissal. On the other hand dispute of interest will exist where two parties are involved in negotiation with a view to define rights for example wage dispute.

This above definition shows that a dispute occurs as a result of disagreements between parties to the employment relationship, and that disputes may be classified into two categories namely: dispute of right and dispute of interest.

13.2 Dispute Resolution Procedure

Bendix (2001) states that employers and employees or their unions may decide among themselves on a procedure to be followed in the event of a dispute arising. Such a procedure is called in-house dispute resolution. However, for the purpose of this study the focus shall be on the General Public Service Sectoral Bargaining Council (GPSSBC) as a statutory structure for dispute resolution.

including, but not limited to, the enforcement of collective agreements and the provisions and primary objects of the Labour Relations Act. The GPSSBC provides for a basic steps/procedure which will apply whenever a dispute arise between parties to the employment relationship in the public sector, in the event the parties in dispute have not agreed to a private dispute procedure in a collective agreement which covers the issue in dispute. The steps are briefly discussed below.

13.2.1 Conciliation

Conciliation occurs when the parties in dispute get together with a third, neutral party, a conciliator. An attempt must be made to conciliate the dispute. A genuine attempt should be made to arrive at a resolution at this stage. The conciliation does not decide who is right or wrong but attempts merely to assist the parties to reach agreement. The Labour Relations Act states that conciliation can include mediation, fact finding or the making of a recommendation to the parties. It is up to the conciliator to decide on which is the more appropriate process (Ehlers 2001). The Commission must attempt to resolve the dispute within 30 days or the parties may agree to extend this period.

13.2.2 Mediation

Mediation entails the inclusion of a third party for the purpose of reaching a compromise. The mediator's function is to try through all means possible to achieve a settlement; to do this she/he will advice both parties on alternative stances, or possibilities and may even suggest possible alternative solution.

Mediation generally assists negotiation. It is effective if the parties have a strong desire to reach a settlement or if external pressures are extended on the parties. It is normally used in dispute of interest, for example when there is an impasse during wage negotiations.

Finnermore (1999) defines arbitration as a direct interaction process whereby a third person, the arbitrator, plays a decisive role in resolving a dispute between the two parties by conducting a fair hearing of argument and evidence, weighing up and making a final decision (award) to which the parties must adhere.

Finnermore (1999) further maintains that the general functions of arbitration are to create a structured process which provides:

- Opportunity for employees and employers to easily promote and defend their rights;
- A fair hearing of the dispute by an independent, well trained person;
- A means to avoid unnecessary labour unrest;
- Development of jurisprudence regarding the interpretation of labour legislation.

In view of the above outlined procedure it is evident that dispute resolution mechanisms are necessary as negotiation often do not proceed smoothly.

It is also important to note that if an aggrieved party is dissatisfied after arbitration process, the party can refer the award for review to the Labour Court. Further, parties may apply to the labour court for leave to appeal to the Labour Appeal Court (LAC) against any final order or judgment of the Labour Court. The LAC is the final court of appeal against decisions of the Labour Court.

14. WAYS TO ENSURE SUCCESS IN MERGERS

Palane (2001) says that it is to the advantage of merging companies to start engaging representative unions right from the beginning of the discussions on possibilities of merger or acquisition. This will ensure that the problematic areas are addressed when there is still sufficient time than to wait for such problems to arise at the time of

achieved on identified objectives of the arrangement.

The above clearly shows that consultation from the onset plays a critical role in ensuring success in mergers. The consultation should be amongst the relevant role players who are directly or indirectly affected by the proposed merger.

The Merger and Transformation Forum (2003) lists the following key practices that are necessary for a successful mergers and acquisitions:

- Ensure top leadership drives the transformation
- Establish a coherent mission and intergrated strategic goal to guide the transformation
- Focus on a key set of principles and priorities at the outset of the transformation
- Set implementation goals and a timeline to build momentum and show progress form day one.
- Dedicate an implementation team to manage the transformation process.
- Use the performance management system to define responsibility and assure accountability for change
- Establish a communication strategy to create shared expectations and report related progress.
- Involve employees to obtain their ideas and gain their ownership for the transformation.

Solomon (2001) states that communicating an acquisition or merger to employees is a delicate balance between strict confidentiality restraints and frank, honest dialogue with workers. He further maintains that the difference between a good and bad merger often comes down to the manner in which the news is communicated to external audiences as well as to employees. This demonstrates the significance of communication within an organization.

ensure that all employees are kept abreast of the developments as they unfold during merger and negotiations.

The United States has developed a Merger Notification and Procedure template (2002) which has following as its guiding principles:

- Merger notification and review materials.
- Authority or authorities responsible for merger enforcement
- Notification requirements
- Covered transactions
- Thresholds to notification
- Documents to be submitted
- Review and waiting periods
- Responsibility for notification/representation
- Confidentiality
- Judicial review
- Closing deadlines

The template assists in terms of procedural requirements for merger and ensures that the process of M&A's is smooth. It also helps in the regulations of M&A's by the state. Merging organizations that adhere to the above principles may avoid problems that characterize the aftermath of mergers.

Lastly the Competition Commission of South Africa can also play a pivotal role in ensuring that mergers are successful. The Commission has the duty and responsibility to ensure that the playing fields are leveled during the M&A's processes.

In a recent proposed merger between Harmony Gold and Gold fields the Competition Commission had categorically stated that it wants employment to be top priority in the merger process. The Commission's approval of the merger is conditioned on addressing the employment concerns that arise from the proposed merger. It (commission) also recommended regular monitoring such as quarterly reports by the

employment of the people who are affected by the merger. In the process it helps in that possible industrial actions are averted that could delay the implementation of the proposed merger.

The above steps, suggested by different authors, can assist merging organizations to avoid some of the problems that confront these companies after the merging period. The State through the Competition Commission also plays a critical role in ensuring that the playing fields are leveled during the merging period.

15. CONCLUSION

The spotlight in this chapter has been on merger phenomenon in general and particular attention was focused on pertinent topics in the context of this study. As a point of departure definitions of merger and different types of mergers were highlighted. An overview of the merging institutions was also given the attention they warrant. A historical overview, was highlighted. The reasons for the mergers were also visited, which demonstrated that mergers will be an ongoing activity. The human factor was discussed, a factor which the history of mergers has shown that it normally gets attention at the last phase of mergers with often adverse effects on post merger period. The role of the HR was brought to the fore, the role which many scholars believe is not getting the recognition it deserves in merger negotiations. Due diligence exercise was examined, and it revealed that if properly conducted it can produce a successful merger.

The transfer of business as a going concern, a critical factor in this study, was discussed. The discussion was largely on the amended section 197 of the Labour Relations Act, which is the relevant section regarding mergers. Government policies were summarized. The importance of negotiations in reaching an agreement in Labour matters was highlighted. It is evident that negotiations play a significant role in employment relations. Dispute resolution procedure and a statutory body GPSSBC, were discussed to demonstrate how disputes may be resolved. The GPSSBC plays an important role in the resolution of dispute in Public Service.

merger.

Chapter 3 will be dedicated to research methodology, with specific focus on the organization under study, research design, data gathering instruments and techniques.

RESEARCH METHODOLOGY

1. INTRODUCTION

Chapter three outlines the method of the study and the rationale behind the methodology used. Jankomics (1995) states that methodology is the approach to collect data. The approach must be systematic and orderly in nature. On the other hand techniques consist of procedures that will define the problem clearly and guide the analysis of collected data, and are linked with each other in a logical and systematic sequence.

The method to be used in this study is qualitative research. Leedy & Ormrod (1998) state that the term qualitative research encompasses several approaches to research that are, in some respects, quite different from one another. They further maintain that qualitative approaches first focus on phenomena that occur in a natural setting and second they involve studying those phenomena in all their complexity. Peshkin (cited in Leedy & Ormrod, 1998) states that qualitative research studies typically serve one or more of the following purposes.

- (i) Description. They can reveal the nature of certain situations, settings, processes, systems or people.
- (ii) Interpretation. They enable a researcher to (a) gain insights about the nature of a particular phenomenon, (b) develop new concepts or theoretical perspectives about the phenomenon and/or (c) discover the problems that exist within the phenomenon.
- (iii) Verification. They allow a researcher to test the validity of certain assumptions, claims, theories, or generalization within the real-world contents.

The method, employed, qualitative, will enable the researcher to describe, interpret, verify and evaluate certain claims surrounding the procedural flaws of the merger between the Office of the Premier and the erstwhile North West Communication Services.

2. DATA GATHERING INSTRUMENTS AND TECHNIQUES

According to De Vos, Fouche, Strydom & Delport (2002), within the context of qualitative research, observation and interviewing are usually utilized to collect the relevant data. A third and fourth method of data collection is the study of documents and secondary data analysis.

In this study personal interviews and telephonic interviews were used to obtain data. Official documents such as reports, minutes and memoranda were used in the document analysis. However, certain information that was perceived to be legally privileged was not given to the researcher, despite the fact that permission was sought and granted to conduct this study in the office. Access to such documentation may have enriched the analysis of the research problem, however it is not perceived that the information contained therein would have a great impact on the findings of the study.

3. RESEARCH DESIGN

3.1 The organization under study

The organization under study is the Office of the Premier in the North West Province in Mafikeng. The office operates as a support functionary to the Provincial Executive and also as coordinator of provincial activities throughout the various governance structures.

The target population comprised 30 employees who were absorbed into the Office after the takeover of the North West Communication Services. The representatives of the Office of the Premier during the merger process also constituted part of the target population.

3.1.2 Sampling Techniques

In this study purposive sampling was used. According to De Vos et al (2002 : 334), in purposive sampling, the researcher must first think critically about the parameters of the population and then choose the sample case accordingly. Clear identification and formulation of criteria for the selection of respondents are, therefore, of cardinal importance. Cresswell (cited in de Vos et al, 2002) states that "the purposeful selection of participants represents a key decision point in a qualitative study. Researchers designing qualitative studies need clear criteria in mind and need to provide rationale for their decisions". Researcher purposely seek typical and divergent data.

The sample, therefore, was representative of the advisory Committee from NWCs, management from the Office of the Premier, Union officials, employees of the erstwhile NWCs and personnel staff from Office of the Premier. The sampling is purposive to obtain divergent data on the aftermath of the merger. A sample of eight persons was interviewed.

4. DATA COLLECTION METHODS AND PROCEDURE FOLLOWED

In this study data gathering was mainly done through documentary analysis and interviewing respondents. De Vos et al (2002) state that qualitative research, depends on the presentation of solid descriptive data, so that the researcher leads the reader to an understanding of the meaning of the experience or phenomenon being studied. They further maintain that qualitative data analysis is a search for general statements about

build theory, and is known as the 'grounded theory' approach to data analysis. The method to be used to collect data and procedure will be outlined below.

4.1 Interview Techniques

De Vos et al (2002) state that the interview is the predominant mode of data or information collection in qualitative research. They further argue that during the interview the researcher should apply the following techniques and tips to ensure effective interviews.

- The participant must do 90% of the talking. An interview is not a dialogue. The whole point is for the participant to tell the story.
- Ask clear and brief questions. It is important to use words that make sense to the participants. Questions should be easy to understand, short and devoid of jargon.
- Ask truly open-ended questions. Truly open-ended questions do not predetermine the answers and they allow room for the participants to respond in their own terms.
- Avoid leading questions.
- Monitor the effect of the interview on the participant.
- Follow up on what the participant says.
- Start with questions that are not controversial.
- End the interview at a reasonable time.

abilities. Good interviewers do not shine, only their interviews do.

The above interview techniques served as a useful guide to the researcher to enable him/her to gather as much information as possible during the interview.

4.2 Objectives of Interviewing

According to Thomas (1995), even though interviews cannot lead a researcher directly to an event, or at least a completed accurate record of an event, they do enable him or her to learn about things that cannot be observed directly by other means. A researcher will interview persons only if their experience is central to the research problem in some way. They may be chosen for their expert insight, because they represent a certain status or categories, or because of critical events in which they have participated. The author further mentions the following objectives of interviewing:

- Learning about things that cannot be observed directly by other means.
- Verifying validating, or commenting on data obtained from other sources
- Testing hypothesis the researcher has developed
- Achieving efficiency in collecting data

The purpose of interviewing the persons selected was verify and ascertain the accuracy of the data collected from the records on the merger and also to solicit comments on information that is not sufficiently recorded on documented records. Central to the interviewing processes was the desire to test the hypothesis that have been developed in chapter one. The spotlight now falls on the interviewing techniques employed in this study.

According to De Vos et al (2002) when the researchers start developing questions they should realize that they are going through a process to clarify the problem, begin to identify the questions by brainstorming, prepare first draft questions by phrasing them, estimate the time needed for questions, get feedback from others by sharing, test the questions and revise. They further argue that researchers should always avoid asking “why” questions and keep questions simple. Giving examples during the formulation of questions should be avoided. It is also suggested that fewer than ten questions should be included in a questionnaire.

4.3.1 Personal Interview

Cooper & Schindler (1998) define the personal interview as a two-way conversation initiated by an interviewer to obtain information from respondents. The respondents are asked to provide information and have little chance of receiving any immediate or direct benefit from this cooperation. Like other techniques, it has both merits and demerits. McMillain & Schumacher (1993) list the following as the merits of Personal Interviews:

- (i) It is flexible and adaptable. Responses can be probed, followed up, clarified and elaborated;
- (ii) Non-verbal cues and verbal behaviour can be noted;
- (iii) It affords the opportunity to motivate the respondent;
- (iv) It has much higher response rate than questionnaires; and
- (v) Interviewers can note the conditions of the interviewees, probe with additional questions, and gather supplemental information through observation.

conducted properly. The merits will particularly be felt in the response rate of the respondents.

Cooper and Schindler (1998) list the following as demerits of personal interviews:

- (i) Many people have become reluctant to talk to strangers or permit visits in their homes.
- (ii) Costs are particularly high if the study covers a wide geographical area or has stringent sampling requirements.
- (iii) Interviewers are reluctant to visit unfamiliar neighbourhood alone, especially for evening interviewing.
- (iv) The results of personal interviewing can be effected adversely by interviewers who alter questions asked or in other ways bias the results.

Despite the above stated demerits, in this study implications are minimal as the study is limited to an office that is centrally located and only one interviewee is located in the sub-office in the region. The interviewees were known to the researcher, as they are colleagues and there was thus no reluctance to talk.

The interviews were conducted over a period of fourteen days. The researcher took notes during the interviews. In some instances the questionnaires were left with the participants to enable them to complete them at their free time. Upon completion the researcher collected the questionnaires and made follow ups via telephone when there was insufficient information provided by certain sample groups.

According to Barley (1987) the telephone shares with the mailed questionnaire the convenience of being non-intrusive, and it is quicker than the mail and less expensive than the face-to-face interview. He further states that it allows quick contact with geographically dispersed respondents and call backs can be done for clarity. Telephone interviewing has its merits and demerits just like personal interviewing as postulated by Gilbert, (undated) hereunder:

Merits

- (i) Interviewing from a central telephone unit lends itself to careful supervision and control.
- (ii) It enables data to be collected from geographically scattered samples more cheaply and quickly than by field interviewing.
- (iii) It is possible to avoid cluster sampling, which incurs unfavourable statistical design effects but has to be used in field survey designs to control interviewer travel costs.

The demerits of telephone interview are listed below:

- (i) A critical problem raised by telephone-based surveys is that of obtaining representative probability samples.
- (ii) Some of the general population do not have a telephone in their homes, and some of those who have telephones have ex-directory (unlisted) number.
- (iii) There is a division between approaches adopted by quota and random samples, but differences within quota cells between those who are reachable

The telephone interviewing was conducted with an interviewee who works in the Southern region of the Province. There were also subsequent telephonic follow ups to obtain more information from the participants in the office.

4.4 Covering Letter

According to Cooper & Schindler (1999) the influence of the covering letter on response rates has received almost no experimental attention, although it was considered an intergral part of the mail survey package. They further maintain that the covering letter is the most logical vehicle for persuading an individual to respond.

In this study the covering letter was produced prior to the commencement of the interview. It was primarily used to explain why the study was being conducted and explained why participants were chosen (Annexure "A").

4.5 Structure and Questionnaire Content

The questionnaire consists of three parts (Annexure "B"). Part A consists of the job title of the respondent. The purpose for this was to verify the different levels of officials represented that were affected by the merger and who were involved in negotiations. Part B comprises of 16 short statements in the format of a Likert Scale, providing interviewees with opportunities to either respond "yes", "no" or "not sure". The purpose was to investigate the understanding of Section 197 of the amended Labour Relations Act (LRA), to establish whether the Advisory Committee was elected to represent NWCS staff during the merger negotiations and whether there were sufficient union representatives. Part C comprises open ended questions. The purpose was to obtain as much information about the background knowledge of participants regarding the applicable laws and policies pertinent to the merger between the Office of

5. DATA ANALYSIS

Data collected from the documented records on the mergers in general and specifically on the merger between the Office of the Premier and NWCS will be analysed, in addition to information gathered during the interviews. The focus was also on the applicable laws and policies pertaining to this merger. Content analysis was mainly used in this study to determine convergences and divergences of opinion and perceptions about the merger, and their relation to these laws and policies. Descriptive statistics were used to analysis the responses to the statements in part B of the interview schedule (Likert Scale).

6. CONCLUSION

In this chapter the research design for the study has been outlined. It is evident that the telephone interview, personal interview and the collection of documented data on the merger between the office and NWCS were utilized to gather information. The denied access to certain information which is alleged to be legally privileged will not compromise the validity of the findings of this study.

Chapter four will be dedicated to the presentation and analysis of data. Each of the hypotheses and objectives will be scrutinized and findings explained.

1. INTRODUCTION

In this chapter the focus is on the results of the investigation conducted to determine the impact of the merger between the Office of the premier and NWCS on labour relations.

The qualitative nature of this study necessitated the use of analysis techniques that would elicit the most meaningful indicators of the perceptions of the respondents in relation to the problem statement, and specifically the research objectives and hypotheses. The instrument of data collection, though used as a guide in the interview process with respondents, also included a number of closed-ended questions, which required a more quantitative form of data analysis. However, due to the scope and intention of this study (to explain and describe an event/situation), a very basic descriptive analysis of these closed-ended questions was done. The qualitative data collected through the open-ended questions was subjected to a thorough analysis using contextualisation and categorization techniques. The researcher grouped responses according to similarity, as well as in categories in line with the research hypotheses and the research objectives. These categories of responses were further contextualised in terms of whether the research hypotheses could be accepted or rejected, and in determining the answers to the research objectives.

2: BIOGRAPHICAL DATA ANALYSIS

Number of respondents:

Percentage rounded off to the nearest 10.

RESPONDENTS	FREQUENCY	PERCENTAGE
Management of the Office	3	37.5%
Advisory Committee	2	25%
NWCS staff	2	25%
Union Representative	1	12.5%
TOTAL	8	100%

Out of 8 respondents 37,5% were the managers in the Office of the Premier. The Advisory Committee made up 25% of respondents as well as NWCS staff. The Union representative is 12.5%.

Table 2.2 Respondents' Positions

POSITION	FREQUENCY	PERCENTAGE
Director-General	1	12.5%
Deputy Director General	1	12.5%
Chief Director	1	12.5%
Deputy Director	1	12,5%
Assistant Director	2	25%
Secretary	1	12,5%
No Response	1	12,5%
TOTAL	8	100%

Table 2.2 represents the positions occupied by the respondents. The respondents were elected to represent the different job titles of the officials that were involved and affected by the merger. The main purpose was to get different views on the understanding of the applicable laws and policies regarding the merger. It was thus imperative that all level/categories are represented in the interviews.

questions asked to respondents. The response of the respondents will be presented firstly in respect of closed-ended questions and followed by response open-ended questions as per the category of respondents.

3. THE MANAGEMENT

3.1 The structured interview

Questions 1 and 2 relate to new contracts that were purportedly signed by the NWCS staff. First question was whether employees were given new contracts with revised terms and conditions of employment and whether they consented to the consents thereof. Management of the Office gave different answers: (yes), (no) and with 1 respondent not responding. The results indicate an uncertainty regarding the existence of new contracts of employment that are alleged to have been signed by NWCS staff. This is because the two members of the management team were not part of the merger negotiation.

The respondents indicated that it was properly explained that upon absorption to the Office of the Premier the NWCS staff would lose certain benefits that were not offered in the Public Service.

The respondents also agree that the amended Labour Relations Act was correctly interpreted regarding the benefits that were discontinued on absorption. This shows that the management of the Office is convinced that the provision of the Act has been adhered to regarding transfer of business as a going concern.

On the issue of grievances lodged by NWCS staff the management of the Office is unanimous in their response saying that the grievances lodged are not substantive. The management is however divided on the correctness of the procedure followed by NWCS staff in lodging, their grievances.

there was agreement to that effect. However, no documentary evidence could be found to substantiate the assertion that an agreement regarding the discontinuing of certain benefits was reached with representatives of the NWCS.

3.3 Legitimacy of the Advisory Committee

The management believes that the Advisory Committee was mandated by the NWCS staff to represent them during the merger negotiations. They also assert that the Committee was appointed in terms of North West Communication Service Act, 1992 and was thus a statutory body.

Management could not, however, prove that the NWCS staff had indeed elected the Advisory Committee to represent them in the merger negotiations.

3.4 Time taken to resolve grievances

The view of the management is that the grievants should have used appropriate mechanisms. The management contends that the delay is caused by the grievants by referring their complaints to the lawyers before exhausting local avenues. However, the researcher is of the view that management is hiding behind technicalities in an attempt to conceal its failure to timeously resolve the grievances.

4. THE ADVISORY COMMITTEE

4.1 The structured interview

This is the body that represented the NWCS staff during the merger negotiation. Two members of the committee were interviewed by means of a structured questionnaire.

Committee was properly elected by the NWCS staff.

On the issue of negotiations, questions 4 and 5, the Committee is unanimous in its assertion that negotiations were conducted in bad faith and there was no agreement on the revised terms and conditions of employment. However, the respondents are divided on whether there was any agreement signed regarding the new terms and conditions of service. The reason for the different responses is that the other respondent was referring to the employment letters that the NWCS staff was apparently forced to sign prior absorption to the Office of the Premier.

The respondents further indicated that there was no common understanding of the provision of section 197, of the amended Labour Relations Act. Although the management indicated that this matter was explained to the Committee, the response given by the Committee clearly shows that there was no consensus on the stipulation of section 197 of Labour Relations Act regarding mergers. The difference of opinion on this contentious issue is due to the fact that parties to the negotiation process held divergent views on the provision of section 197.

The respondents on question 9 and 10 feel that the grievances lodged by NWCS staff are genuine and that correct procedure has been followed in raising the grievances. This indicates a difference of opinion with management regarding the grievance lodged and the manner in which they were lodged. It is worth noting that the respondents say that the management is not adequately addressing their grievances.

The committee differs with management on the substantive fairness of the grievances lodged because, according to them, there was no agreement that could have waived the benefits that were enjoyed by the NWCS staff prior absorption. They, therefore, argue that management unilaterally changed their terms and conditions of employment.

assessment. However, it is interesting to note that different responses were given. One respondent asked whether the staff was assessed whilst employed at NWCS. An enquiry by Simeka that was commissioned to probe the feasibility of NWCS had found amongst others that there was no performance appraisal system in place. It is thus the considered view of the researcher that the other respondent was being deceitful when saying they were assessed at NWCS.

The response on reporting back to NWCS staff shows that the Committee gave feedback to NWCS staff regarding the merger process. According to the respondents therefore the NWCS staff was kept abreast of the developments during the merger negotiations.

Lastly the respondents say that they were aware that once absorbed to the Office they could be subjected to the provision of Public Service Act.

The focus shall be on open-ended questions

4.2 Communication method used to update NWCS staff about merger negotiations

The respondents indicated that staff meetings were mainly used to communicate the progress made during the NWCS staff. They also mentioned that a series of meetings were held to convey information to the staff on a regular basis. Further that meetings were turned into an open forum where everybody's view and concerns were taken into consideration.

Regarding their representation of the NWCS staff in merger negotiation, the respondents say that they were nominated by virtue of being heads of component and management team. They further said that the Advisory Committee was endorsed during a general staff meeting. This, therefore, means that the participation of the Committee in the merger negotiation was supported by the NWCS staff.

According to the respondents, the responsibility of the Committee was to ensure that the merger negotiation was conducted in a transparent and fair manner. To ensure that every member of the former NWCS staff is absorbed and to generally assist in the winding up of the NWCS affairs. This shows that the role of the Committee was broad.

4.4 The Amended LRA, Section 197

The respondents maintain that in terms of section 197 they should not have had their benefits discontinued because the take-over of their entity by the Office is classified as a going concern. They stated that the Office took over the assets of NWCS and to a large extent the Office, Communications Chief Directorate, still services the same clients that NWCS used to serve. This clearly illustrates that the take over was indeed a going concern.

4.5 Grievances lodged by members of the Committee on issues agreed with management

The respondents say that there was no total agreement with the new employer. They stated that their set of proposals to management was intended to serve as a guide on absorption and that management did not engage them thereafter. According to the respondents there was no negotiation on new terms of services and everything was imposed with an ultimatum to sign or lose their jobs.

The above clearly indicate that there was no agreement entered between the Advisory Committee and the Management of the Office regarding the new terms and conditions of employment. Further that the employment letters signed by NWCS staff was an act of coercion by Management of the Office of the Premier.

5.1 The structured interview

Two members of the NWCS staff were interviewed.

Question 1 was to determine whether the NWCS staff was represented by a union during merger negotiation. The responses given was (yes) and (no). The different answers show that the union representivity was never clearly articulated to the NWCS staff. It also shows that there were no meetings to solicit inputs from the NWCS staff in preparations for the negotiations.

The two respondents answered (yes) when asked about their knowledge of the Advisory Committee. As it was a statutory body that represented the employer at NWCS it is obvious that all staff members could know about its existence. However, that does not legitimize the committee's role in representing the NWCS staff. A mandate is a prerequisite for anyone who claims to represent people in negotiation.

The respondents were unanimous in the answer that they gave (no) on whether the Advisory Committee was elected by the NWCS staff. Again, the response was (no) when asked whether the Committee kept the NWCS staff abreast of developments during the merger negotiations. This contradicts the assertion by the respondents from the Committee that the Committee was elected and provided feedback regular to the NWCS staff.

The researcher requested minutes of the meeting where the election of the committee to represent NWCS staff took place and also the minutes of the meetings that were regularly held to appraise the staff on the developments about merger negotiations. The minutes of such meetings could not be provided.

The respondents answered (yes) when asked whether they signed a new contract of employment with revised terms and conditions of employment. On investigation by the

out.

The questions 8, 9 and 12 elicited a (no) response from the respondents. The questions pertain to the relevant laws that were applicable to the situation that the respondents had found themselves in. This indicates that there was no forum wherein issues of this nature were explained to the general NWCS staff. This further lends credence to the assertion by the respondents that there were no regular meetings between NWCS staff and the Advisory Committee.

When the respondents were asked whether they were appraised on their performance the answer was (no). This contradicts what one respondent said from the NWCS respondents that staff was assessed. The respondents, from NWCS, therefore confirm what the Simeka report had remarked about the performance appraisal systems at NWCS.

Lastly, only one respondent said that management of the Office of the Premier is not adequately addressing their grievances. The other respondent did not respond to the question. On a follow-up by the researcher, it emerged that the respondent is not part of a group that lodged the grievances and was thus not able to give an opinion.

The focus shall now be on open-ended questions.

5.2 The opinion of the NWCS respondents regarding the role played by Advisory Committee

- There was no transparency.
- The process left most of the people behind
- It was a toothless body manipulated by Government representatives who committed many errors during the process

- The Advisory board had said during the absorption process that it was just there for formality sake
- The guiding absorption document was not signed by the government representative
- We were instructed to sign our letters of appointment without an opportunity to go through the letters properly or to consult. Failure to sign these letters on the said date would mean to have forfeit your job.
- We were led to believe that this process of transfer was not finality but that special arrangements would be made in the event of serious casualties.

The above responses show that there was not sufficient consultation between the NWCS staff and the Committee. This also indicates that there was no mandate to negotiate on behalf of the NWCS staff and consequently no agreement had been entered into between the staff and office of the Premier. Management did not commit itself to the guiding absorption document from the Committee, as it did not sign the document.

Lastly the appointment letters with new revised terms and conditions of employment were signed by the NWCS staff to avoid dismissals. It is evident that a promise was made that thorny issues will be addressed as and when they arise in the post merger period.

5.3 The respondents understanding of a transfer of business as a going concern

It means that no employee should be stripped of his/her benefits during the transfer from one employer to the new employer, which means salary and benefits should be one package.

The response clearly shows that the respondents understand the concept of transfer of business as a going concern. The response comes from one respondent from the NWCS staff. On further probing questions directed at the respondent it emerged that

5.4 The opinion of the NWCS respondent on the reason for the delay of the management in resolving the grievances

- The management didn't take the employees' interest into heart.
- Lack of interest and skills to make an informed decisions and marginalisation of former NWCS employees.

The response is from one respondent. The response indicates a sign of hopelessness and bitterness at the perceived lack of commitment of the management of the Office to deal substantively with grievances lodged by NWCS staff.

6 THE UNION REPRESENTATIVE

6.1 The structured Interview

There were two site stewards representing the union during the merger negotiations. The researcher was able to locate only one site steward who participated in the negotiations.

The respondent said that there was an endorsement from the union regarding his participation in the merger negotiations.

The respondent on questions 2 and 3 answered (yes) when asked whether there were meetings between him, the committee and NWCS staff, to strategize before negotiations. However, the respondent could not produce documentary proof (minutes) to show that indeed the meetings did take place. This also contradicts what the respondents from the NWCS said about such meetings.

On the questions of agreement to the new terms and conditions of employment and a copy of the agreement thereof, the respondent gave a positive answer (yes). The

regularly to strategize prior to negotiation sessions answered (no) when asked whether they agreed to the new terms and conditions of employment. Even the management of the office was divided on this question, with 1 saying (yes) 1 unsure and 1 not responding. On request, the researcher could not find a copy of the agreement. It is therefore the thoroughly considered view of the researcher that such a document does not exist.

The respondent says that the NWCS staff signed new contracts of employment with revised terms and conditions of employment. On further investigation it emerged that the respondent was referring to the letters that NWCS staff signed allegedly under duress.

When the respondent was asked whether he knew that upon absorption to the Office of the Premier NWCS staff would lose certain benefits, the respondents answered yes. On probing the matter further it emerged that the respondent based his answer on the strength of the contents of the employment letters that were given to NWCS staff to sign upon absorption to the Office of the Premier. This, therefore, indicates that the respondent had based his assertion on the contents of appointment letters as opposed to the agreement that was supposedly entered into between the Office and NWCS staff.

On the question of whether the union was properly and sufficiently represented in the merger negotiation the respondent answered (yes). However, the respondents from NWCS staff answered (no) on the same question and the respondents from Advisory Committee answered (yes) 1 and (no) 1. The dissenting respondents strongly feel that top leadership of the union should have been involved in merger negotiations rather than site-stewards.

Lastly, on the question of whether the NWCS staff was assessed the respondent answered no. This confirms the finding of the Simeka Report and also the answer given by the respondents from the Advisory Committee.

6.2 How were you elected to take part in negotiations?

- As an Allied Sector Coordinator (coordinating print and electronic media sector) I was tasked to oversee and guide on processes in the NWCS.

There is no mention of NWCS staff members electing the respondent to represent them in the merger negotiations

6.3 Explain your role during the merger negotiations

- Mainly guarded and reported to the union Provincial Executive Committee of which I was a member. Most items were therefore discussed at NEC meetings and provided feedback.

The response does not show that there were meetings with the Advisory Committee to strategize for the negotiations. It also does not indicate that feedback was provided to NWCS staff about developments as they unfolded during the merger negotiations.

6.4 Opinion on the role played by the Advisory Committee during negotiation

- Establishment of the committee was a just a formality. In any case government knows where it wants to go and must be supported.

The response clearly indicates that the respondent supported whatever the management representative put on the table without critically engaging in debate and reaching consensus.

Most of the responses from the union representative contradict answers given by respondents from the advisory Committee and the NWCS staff. It could have been

questions posed to the respondent.

7 THE ABSORPTION DOCUMENT

The absorption document was developed and signed by members of the Advisory Committee. The document was intended to facilitate the absorption of NWCS staff into the Office of the Premier. It contained a set of recommendations that constituted a basis upon which the Committee and the management of the Office of the Premier would engage. The contents of the document are briefly analyzed hereunder.

7.1 Conditions of Service

The document explicitly acknowledges that the conditions of service in the public service are uniform and do not generally provide for exception or flexibility. It further points out that it would not be possible to appoint and transfer the employees of NWCS with their current benefits and allowances for example petrol cards, motor vehicle and housing allowance.

The above statement forms part of the recommendation that were developed by the Advisory Committee. It is an acknowledgement on the part of the committee that certain benefits were going to be discontinued once absorption is completed. In the interview the respondents from the Advisory Committee responded that they were aware that once absorbed into the Office of the Premier they would be subjected to the provision of the Public Service Act (PSA). The above paragraph supports the answers given by the respondents.

The absorption of the NWCS staff was done in line with PSA section 15.1 which states that "A person holding a pensionable appointment in a department under any law other than this Act or in any institution or body established by or under any law and which

appointed in, a post in A or B division.

7.2 Fringe Benefits

The introductory part of the absorption document puts into perspective the issue of benefits that are offered in the Public Services as outlined in sub-heading 8.1 paragraph 1.

The document suggests that a proposal be made to Executive Council, the supreme decision making body, that all contracts in respect of motor vehicles valid as at 1 March 2002 be transferred into the government motor vehicle scheme with the proviso that the Transport Policy would apply once owners have finished payment of their cars.

The Management of the Office of the Premier undertook to take over the payment of all cars of the NWCS staff who participated in the defunct NWCS car scheme until paying off the said vehicles. This understanding was fulfilled by the management of the Office and on completion of the payment the provision of Transport Policy was applied in terms of participation on government subsidized motor vehicle scheme.

On housing allowance the recommendation was that the allowance shall lapse with effect from the date of absorption and a once off transitional allowance of six months would be paid before absorption took place. Once absorbed, therefore, the applicable criteria for housing allowances in the public service shall apply to these employees.

Again other allowances such as group life benefits, occupational allowance petrol / maintenance cards for scheme vehicles shall cease with effect from the date of absorption of each employee. The applicable criteria and policies in respect of this allowance in the public service shall apply.

The recommendations outlined above clearly indicate the position and willingness of the Advisory Committee to forfeit certain benefits that were not offered in the Public Service.

The intents and purposes of the absorption document articulate a realization on the part of the Advisory Committee that the status quo would not be sustained once absorbed into the Office of the Premier.

8 THE LODGING OF GRIEVANCES

The post merger period was not as smooth as the management of the Office had envisaged. A closer scrutiny of the response of the sampled respondents reveals a divergent of views on the merger and to some extent difference of opinion in the interpretation of the applicable laws and policies namely Labour Relations Act particularly Section 197 of the amended Labour Relations Act of 2002.

As indicated, on sub-heading 7.2, that management undertook to pay for the vehicles of the NWCS staff until payment was over, the first grievance to surface was around participation on the government vehicle subsidised scheme. The complainant argued that he should participate in the car scheme as he previously enjoyed the benefit at NWCS. He however, did not qualify in terms of the transport policy. The basis for his complaint was that he never signed any agreement that waived the benefits that he enjoyed at NWCS. The grievant also maintain that the level he occupies is lower than the level he held at NWCS and that he took a salary cut.

The grievant, dissatisfied with the outcome of his grievance from the management of the Office, declare the dispute at the General Public Service Sectoral Co-ordinating Bargaining Council (GPSSCBC) citing violation of his employment contract. The Commissioner ruled that he has no jurisdiction on the dispute. The official then referred the matter to the Labour Court.

The dispute lodged by the complainant opened a floodgate of grievances from other former NWCS staff. The grievants cited Section 197 of the amended Labour Relations Act as prohibiting the new employer from tempering with their benefits. Their grievances were therefore lodged on the 25 February 2004 at the Director General's

staff.

Dissatisfied with the response they got from the management of the Office, the grievants acting as a collective, secured the services of a law firm. Again for some reason they ditched their lawyers and declared a dispute at the GPSSCBC. The GPSSCBC informed them that their dispute would not be heard due to the lapsed time frames. They were therefore advised to apply for a condonation, which they duly did and are currently awaiting the response from the Council.

The time that the grievants took to declare a dispute raises a concern. The response gathered from the sample group, some of whom constitute the grievants, indicated that they had been aware of the provision of Section 197 of the Labour Relations Act, regarding mergers. They do not provide convincing answers for lodging their grievances late. The grievants further did not follow proper procedure by engaging the services of legal practitioners despite the availability and accessibility of dispute resolution mechanism in the Public Service.

The focus shall now be on the hypotheses and objectives that are stated in chapter one and they will all be subjected to tests.

9 TESTING OF HYPOTHESES

- (i) **Hypothesis 1: The Advisory Committee did not adequately consult NWCS staff.**

The hypothesis is accepted, based on the unanimous response given by the NWCS that there were generally no meetings to consult prior the merger negotiations. Further, there are no minutes available to show that consultation with NWCS staff occurred on a regular basis. The respondents regarding question 4 and 5, on the legitimacy of the Committee, indicate that there was no election of the Committee and feedback on the developments

specific matter and exchange ideas. The fact that there are grievances about benefits that were discontinued lends credence to the hypothesis. If NWCS staff was consulted on this issue, they could not have lodged grievances on lost benefits.

(ii) Hypothesis 2

Different interpretation of policy and the amended Labour Relations Act of 2002 by both parties affected labour relations in respect of employees from NWCS.

This hypothesis is accepted based on the response from the Advisory Committee. The respondents said that there was no common understanding of the provision of section 197 of the amended Labour Relations Act. The grievances lodged by the NWCS staff and the dispute lodged by an individual from NWCS centers around the interpretation of this section, 197, in relation to mergers.

Further the management of the Office is of the view that certain benefits like participation in government subsidized vehicle, as stipulated in the transport policy cannot be offered to members of the NWCS staff. However, the official who lodged a dispute believes that he is entitled to participate in government car scheme. This is evidence of different interpretation of the transport policy that regulates participation on government car scheme by Public Servants.

(iii) Hypothesis 3

The management of the Office of the Premier failed to substantively deal with the grievance lodged by employees from NWCS.

This hypothesis is accepted based on the fact that there is a case at the Labour Court and the grievances lodged by NWCS staff still remain unresolved.

The respondent from the advisory committee, answered (no) when asked whether the management is adequately addressing the grievances lodged. A respondent from the NWCS says management shows lack of interest on grievances lodged by NWCS staff and lacks the skills to make informed decisions on the post merger problems. The management has not categorically come out clear with regard to the grievances lodged.

Objectives

The focus fall on objectives listed hereunder:

- (i) To establish whether the advisory committee had a mandate of NWCS staff to negotiate and agree on the terms of the take over.

The respondents from NWCS say that they did not elect the committee to represent them in merger negotiations. This shows that the committee did not have a mandate of the NWCS staff to negotiate and enter into any agreement with the management of the Office of the Premier. There is no documentary proof to show that the advisory committee had a mandate from the staff to negotiate on their behalf.

- (ii) To investigate whether there was a clear understanding of the relevant government prescripts by both parties.

The grievances lodged by NWCS staff indicate that they believe that they are entitled to the benefits they enjoyed at NWCS. The management of the office asserts that policies regarding housing allowances, medical aid scheme and participation in government car scheme should apply to NWCS staff as they are governed by the Public Service Act (PSA)

Whereas the NWCS staff argue that in terms of Section 197 of the amended Labour Relations Act they should not have forfeited their benefits, the management maintains PSA regulates the employment of all Public Servants and since these people are absorbed

the Act and all applicable policies that are subordinate to the PSA.

The investigation therefore reveals that the contention is not necessarily the lack of understanding of government prescripts by both parties, it is rather the interpretation of the amended Labour Relations Act, regarding transfer of business as a going concern that gives rise to apparent lack of understanding of government policies on the part of the NWCS staff.

(iii) To establish whether prescripts were accurately interpreted

The respondent from the management on the understanding of the amended Labour Relations Act, section 197, regarding transfer of business as a going concern said, "you take over the business lock, stock and barrel". The response shows that the interpretation of Section 197 prohibits the Office from discontinuing benefits enjoyed by NWCS staff prior absorption.

The PSA regulates the terms of employment of the Public Servants in the Public Service. The policies that have been developed for public servants are subordinate to the Act and therefore apply to all public servants. It therefore becomes apparent that all public servants would be subjected to the provisions of the Act and accompanying policies. When subjecting NWCS staff to the provisions of PSA and its policies they then have to forfeit certain benefits that are not offered in the Public Service.

The above arguments clearly show that prescripts were accurately interpreted. However the problem emerged on the application of the amended Labour Relations Act regarding the transfer of business as a going concern Section 197. The management of the office seems not to have treated the transfer of NWCS to the Office of the Premier as a going concern.

10. The response from the NWCS staff is unanimous in that they do not think that the union was properly and sufficiently represented in merger negotiations. The sentiments are echoed by one respondent from the advisory committee

The response from the union representative indicates that there was an agreement regarding the terms and conditions of employment of NWCS staff. However, the response from the advisory committee contradicts this by stating that there was no agreement regarding the new terms and conditions of employment. The investigations by the researcher to get the agreement were fruitless, as it could not be found.

Based on the above, therefore, it is evident that the union was not sufficiently and properly represented and also there was no agreement in writing, regarding the terms of the merger.

- (v) To investigate whether employees from NWCS signed new contracts of employment with revised terms and conditions of employment upon absorption.

The response from management, shows different answers on whether the NWCS employees were given new contracts with revised terms and conditions of employment, with one saying (yes), one being unsure and one not responding.

The response from Advisory Committee shows different answers on the same question with one saying (yes) and one saying (no). The response from NWCS shows that one says (yes) and other one says (no) on having signed new contracts with revised terms of conditions and employment. The response from union representative is (no) on the same question.

The investigation revealed that there were letters of appointment with new terms and conditions of service, that apply to Public servants, that were signed by NWCS staff upon absorption to the Office. The new terms and conditions of service seem not to have been agreed to by the NWCS staff. The employees were given an ultimatum to sign the letters or be left out of the process of absorption, which could have resulted in them being unemployed.

The contention is therefore that indeed there were new contracts in the form of employment letters with revised terms and conditions of employment signed by NWCS staff, notwithstanding the allegations that this was done under duress.

- (vi) To establish whether the terms of agreement were substantively fair and in line with labour legislation.

In terms of the levels that NWCS staff was absorbed into the office, some were placed on the same salary scale that was equivalent to the level they previously occupied at NWCS. The benefits that were not offered in Public service were discontinued once absorbed in the Office. Therein lies the crux of the problem of the post merger period. Some employees were placed on levels that were lower than the ones they occupied at NWCS with a cut in salary packages.

The finding on this objective is that in the absence of the agreement regarding the revised terms of employment, the employer acted unilateral and in disregard of the provision of Section 197 of the Labour Relations Act.

- (xii) To investigate why the management of the Office of the Premier failed to address the grievances lodged by NWCS staff.

grievances is that the grievants used inappropriate mechanism.

The grievants lodged their complaint with the Office of the Director General. The grievances were referred to the Corporate Support Branch to facilitate the resolving of the grievances. The Office of the Deputy Director General: Corporate Support wrote back to the complainants seeking clarity on certain aspects of the grievances lodged.

The grievants then referred their complaints to a firm of lawyers instead of responding to the letter sent to them. The attorneys wrote to the Office on behalf of the grievants to inform the employer that they shall represent the complainants and requested a meeting with management of the Office. There were an exchange of letters between the attorneys and the Office regarding the grievances lodged. In the middle of the process of these exchanges of letters, the complainants ditched their lawyers and reverted to the avenues available in the Public service to pursue their grievances.

Based on the above it is clear that the management of the Office felt that the grievances raised by the NWCS staff are issues that were dealt with and agreed on during the merger negotiations. According to the management there was no substance on the grievances lodged by the NWCS staff. This explains the reluctance of management to deal with the complaints raised.

CONCLUSION

The focus of this chapter was on the findings of the study undertaken to determine whether the impact of the merger between the Office of the Premier and NWCS affected labour relations.

The findings reveal that employees from NWCS were not satisfied with the revised terms and conditions of employment. It is evident that the signed letters of

were not agreed to by parties to the negotiation process.

It is worth noting that there are discrepancies in answers from the advisory committee and the union representative on issues that they supposedly strategised on during the negotiation with the employer.

Lastly, there was generally a lack of communication between the advisory committee, the union representative and the NWCS staff. There was mistrust between the committee and the management of the office during the negotiation. It also emerged that the office of the Premier was represented by a single individual in negotiations of such a magnitude.

In chapter five the main findings and recommendations will be given the attention they warrant to fulfill the purpose of this study.

CONCLUSIONS AND RECOMMENDATIONS

1. INTRODUCTION

It was stated from chapter one that the main aim of this study was to investigate the impact of the merger on labour relations in the Office of the Premier and how grievances emanating from the merger may be resolved. In chapter three the methodology employed was utilized to extract as much information regarding the merger as possible. The techniques used to collect data enable the researcher to gather data that was pertinent to the dynamics that characterize the post merger period in relation to Labour problems that confront the Office. The data collected was presented and analysed in chapter four of this study. This chapter, therefore, provides some concluding remarks about the study that was undertaken, as well as some recommendations that emerged from an analysis of data presented in chapter four.

2. MAIN FINDINGS

2.1 The negotiations were conducted in bad faith

There are inconsistencies and discrepancies regarding issues that were agreed to, during the merger negotiations. Management insists that there was an agreement on the contentious issue of the revised terms and conditions of employer. The advisory committee says there was none. However, the union representative says there was an agreement albeit a copy thereof cannot be found.

Central to the process of successful negotiation is the element of trust. (cf. 12.1 Chapter 2). Trust and mutual respect determine the negotiation relationship which is crucial for eventual outcome of the process. The contention is, therefore, that both parties did not trust each other. This explains why there is no end to the problems

2.2 Lack of preparation for negotiation by both parties

Preparation is a determining factor for success in any negotiation. It entails certain steps that are crucial during planning phase (cf. 12. Chapter 2).

Perhaps tellingly is the fact that due diligence exercise was conducted a year after the completion of the merger period. This demonstrates lack of planning on the side of the Office of the Premier. During the due diligence exercise the Human Resource Directorate would have dealt with issues like contract of employment and other employment issues that were likely going to affect employees from NWCS (cf. 7.2 Chapter two).

A single individual represented the Office of the Premier during the merger process. Scholars on this subject emphasize the importance of a team with each team member assigned a role that he/she is conversant with. It is thus not possible for a single individual to play the role of specific specialists that constitute a team during negotiations. Some of the matters to be discussed are bound to fall by the way side and the incumbent might be overwhelmed by the prolonged negotiation period (cf. 7.1 chapter two). Officials from the office were brought in very late in the merger negotiation.

The advisory committee also did not meet often enough to strategize with the union and NWCS staff. As a result they did not present a united front during negotiations.

In view of the above it is apparent that there was no preparation for the merger process.

The response from the Advisory Committee indicates that there was no formal agreement entered into during the negotiation.

The transfer of a business as a going concern as contemplated in Section 197 of the amended Labour Relations Act implies that employees affected by take over should not be employed on different terms and conditions of employment to that which they were employed upon by the target company (cf. 10.1.1 chapter 2).

It is actually the absence of an agreement to alter the terms and conditions of employment of NWCS staff that is at the center of grievances lodged. Agreements that are concluded in instances like mergers are reduced in writing and naturally have dispute resolution provision to deal with any disagreement that may arise.

2.4 Lack of trade union involvement in the merger negotiation contributed in failed negotiations

Trade Unions have skilled negotiators who acquire the negotiating skills through the period that they engage with employers on labour related issues. It would have then been wise to delegate a full time union leader with the requisite skill to participate in the merger negotiation. A site steward may not necessarily possess the appropriate negotiation skills. Unions tend to demand information from the employers to ensure successful engagement during negotiations

Because of the nature and complexity of the issue that was negotiated, merger, it could have been prudent to have people who did not directly have an interest on the issues being discussed. (cf. 10.3.1 Chapter 2).

The grievants lodged their grievances with the Head of the Department. When they were not satisfied with the response from the management they referred their grievances to a firm of attorneys. There are institutional mechanisms in the Public Service that are specifically designed to assist in the handling of grievances and the resolution of disputes (cf. 11.1 and 11.2 chapter 2). These should have been exhausted by the grievants, though it must be mentioned that the grievants have since seen light and referred their dispute to the General Public Service Sectoral Co-ordinating Bargaining Council (GPSSCBC) (cf 13, chapter 2).

3. RECOMMENDATIONS

The following recommendations are proposed to the management of the Office of the Premier (OOP) to assist in the speedy resolution of the disputes and bring the post merger problems to finality.

3.1 The need for a formal agreement

It is recommended that the management (OOP) consider the possibility of entering into an agreement with the unions of the aggrieved parties. The terms and conditions of employment cannot, under any circumstances, be changed without the consent of the affected employees (10.2 and 10.3 Chapter 2).

It is not late to re-negotiate on this issue rather than to wait for the outcome of the court to dictate to the Office what the office could have done or avoided. It is important that an agreement be reached on this matter as all grievances and disputes lodged hinges on the non-availability of an agreement that was purportedly entered into. The Labour Relations Act allows parties to the employment relationship to enter into new contracts in these situations.

It is recommended that the Human Resource Directorate investigates the possibility of how best the assessment of NWCS can be conducted, for the duration of the period that coincide with the merger.

Cognizance should be taken of the fact that the NWCS staff were never assessed and did not have records on the performance of the staff. Another impeding factor could be that the period for performance review has long passed and in the absence of the records it would not be easy to reconstruct performance records of the past three years (cf. 11.3.1 chapter 2).

3. CONCLUSION

On the basis of the evidence presented in this study it safe to conclude that the post merger period experience profound labour relations problems that emanate from the merger process. It is however without a shred of doubt that the merger was necessary (cf. 4.1 chapter 2).

Perhaps as scholars on the subject postulate, it is the human factor that always never gets the attention it warrants at the initial stage of merger negotiations (cf. 6. chapter 2). Evidently this is what occurred in this merger. The human factor is always considered when problems arise.

Lastly, central to the post merger problems is the absence of an agreement that would form a basis upon which the smooth absorption of employees would have been facilitated. The recommendations hereof suggest the exploration of an agreement between management and the affected NWCS staff to bring the merger process to finality.

1. Amended Performance Management and Development system Guide: 2004. North West Provincial Government.
2. Babbie, E. 1989. *The Practice of Social*. 5th Edition. Belmont CA. Wadsworth.
- 4 Bailey K. D. 1982. *Methods of Social Research*. New York: Macmillan Publishing Co.
- 5 Bendix, S 2001. *Industrial Relations in South Africa*, 4th Edition: Juta & Co.
- 6 Borg L.G & Gall M.D. 1989. *Educational research an introduction*. New York: Longman
- 7 Cartwright S. and Cooper C.L. 1992. *Mergers and Acquisition: The Human Factor*. Butterworth – Heinemann Ltd: Oxford.
- 8 City Press: *Eusiness*, 13 February 2005
- 9 Coffey, J. Garrow, V and Holbeche, L. 2002. *Reaping the benefits of mergers and acquisition: Butterworth. Heinemann. Ltd. Oxford*.
- 10 Companies Act no. 61 of 1973.
- 11 Communications 2000: A vision for communication in South Africa: (Comtask report) <http://www.gcis.gov.za/docs/comtask/execsum.htm>.
- 12 Cooper, D.R & Schindler, P.S. 1998. *Business Research Methods* Irwin; McGraw-Hill.
- 13 David La Piano 2002. *Nonprofit Mergers*.
- 14 de Vos A.S. Strydom, H. Fouche, C. B. & Delpont C.S.L. 2002. *Research at Cross Roots* (2nd ed) Van Schaick. Pretoria.
- 15 Ehlers Lukas 2002. *Labour Relations Practice in South Africa*, 1st Edition. EAMS: Pretoria.

- 17 Gaughan, P. 1991. Mergers and Acquisitions. Harper Collins
- 18 Grogan, J. 2002. Workplace Law: 6th Edition. Cape Town: Juta & Co
- 19 Government Gazette 2003. Rules for grievance handling in the Public Service. No. 25209.
- 20 Harrigan, K.R. 1983. Strategies for Vertical Intergration. USA.
- 21 International Labour Organisation 2001. Sectoral Activities Programmes.
- 22 Jankomics, I.D. 1995. Business Research Project. International Thomson Press.
- 23 Johan Mouton 2001. How to succeed in your Masters and Doctoral Studies. Pretoria. Van Schaick
- 24 Kendall Consulting Group. 2000 Organisational Due diligence: The key to profitable mergers and Acquisitions
- 25 Knez March 2002. Smart due diligence. beating the odds in mergers and acquisitions
- 26 Leedy P.D. & Ormrod J.E. 1998. Practical Research: Planning and Design. New Jersey.
- 27 Labour Relation Act of 1995.
- 28 Labour Update: September 2002. Deney/Reite Attorneys: South African Corporation and Communication.
- 29 Mergers & Takeover Worksheet: 2002.
- 30 Mergers and Transformation forum 2003. December, Washington, DC.
- 31 Merger Notification and Procedure Template 2002. United States.
- 32 McMillian, J.H. & Schumacher, S. 1993. Research in Education: a Conceptual Introduction. New York: Harper.
- 33 Nel, P.S. 1999. Industrial Relations, Theory and Practice. Van Schaick, Pretoria
- 34 North West Communication Services: Annual Report 2001-2002.
- 35 NEHAWU v University of Cape Town CCTs/02 dated 6 December 2002.
- 36 Palane Archie 2001: Presentation on mergers and acquisitions to the Wits Business School.
- 37 Public Service Act, 1994.
- 38 Simeka report: 1997.

- 40 Schimdt J. 2001 Making mergers work, the society for Human Resource Management.
- 41 Seminar Paper Achieves: October 2002. Internet: <http://www.deneysveitz.co.za/publications/Seminar/asp?> This Cat = 6& This Item=108.
- 42 Seminar Paper Archives: November 2002. Internet://www.deneysveitz.co.za/publications/Seminar/asp? This Cat = 6& This Item = 110.
- 43 Solomon H. Breaking the News to the Merged and Acquired, Chicago March 26. Tribune – on line Edition.
- 44 The role of HR in Mergers and Acquisition 1/2003: Case Study Series.
- 45 Transport Circular of 2003.
- 46 Trade Compliance Centre: South Africa Commercial Guide – 1999.
- 47 Weatherseed S. 2001. “What Makes a successful merger” Insight Newsletter, May 2001.
- 48 Weston, J.F. Weaves, S.C. 2001. Mergers and Acquisitions McGraw-Hill Co, Inc: US.
- 49 Weston, J. F. and Weaver 2001. Mergers and Acquisitions McCaraw Hil - USA

MANAGEMENT OF THE OFFICE**PART A****WHAT IS YOUR JOB TITLE?**

(a)	Head of Department	
(b)	Deputy Director General	
(c)	Chief Director	
(d)	Director	
(e)	Deputy Director	
(f)	Assistant Director	
(g)	Senior Administrative Officer	
(h)	Administrative Officer	
(i)	Secretary	
(j)	Messenger	
(k)	Cleaner	

PART A**WHAT IS YOUR JOB TITLE?**

(a)	Head of Department	
(b)	Deputy Director General	
(c)	Chief Director	
(d)	Director	
(e)	Deputy Director	
(f)	Assistant Director	
(g)	Senior Administrative Officer	
(h)	Administrative Officer	
(i)	Secretary	
(j)	Messenger	
(k)	Cleaner	

GENERAL QUESTIONS

Kindly indicate whether the following statements reflect what transpired during the merger process

Make use of the following scale:

1. Yes	2. No	3. Not Sure
--------	-------	-------------

1.	Were the NWCS employees given a new contract with revised terms and conditions of employment?	1	2	3
2.	Did they agree and sign the new contracts?	1	2	3
3.	Were the NWCS staff informed that upon absorption to the Office of the Premier they would be subjected to the provision of the Public Service Act?	1	2	3
4.	Was it explicitly stated that once absorbed they would lose certain benefits?	1	2	3
5.	Was section 197 of the amended Labour Relations Act adequately explained to the Advisory Committee?	1	2	3
6.	Do you think that the Advisory Committee enjoyed the support of its representatives?	1	2	3
7.	Do you think that the grievance lodged by NWCS staff are valid?	1	2	3
8.	Do you think that they have followed the correct procedure in lodging their grievances?	1	2	3
9.	Is management adequately addressing their grievances	1	2	3
10.	Do you think that the union was sufficiently represented in the merger negotiations?	1	2	3
11.	Are the NWCS employees entitled to assessment?	1	2	3
12.	Can they be subjected to Performance Management Development System to appraise their performance?	1	2	3
13.	Is the office justified in discontinuing certain benefits of the employees from NWCS?	1	2	3
14.	Was the amended Labour Relations Act interpreted correctly regarding the benefits that were discontinued?	1	2	3
15.	Do you think that the Advisory Committee negotiated the terms of the merger in good faith?	1	2	3

OPEN ENDED QUESTIONS

1. What is your understanding of the amended Labour Relations Act, section 197, regarding the transfer of business as a going concern?

.....
.....
.....
.....
.....
.....
.....
.....
.....

2. Do you think the Advisory Committee had a legitimate mandate from the people it represented and why?

.....
.....
.....
.....
.....
.....
.....
.....
.....

3. Why is the management of the office taking long to resolve the grievances lodged by NWCS employees?

.....
.....
.....
.....
.....
.....
.....
.....
.....

EMPLOYEES FROM NWCS**PART A****Make use of the following scale**

1. Yes	2. No	3. Not Sure
---------------	--------------	--------------------

1.	Were you represented by a union during the merger negotiations? If yes name the union.	1	2	3
2.	Where you informed of the merger	1	2	3
3.	Did you know about the existence of the Advisory Committee?	1	2	3
4.	Did you elect the committee to represent you in merger negotiations?	1	2	3
5.	Were you kept abreast of the developments during the negotiations process? If yes how?	1	2	3
6.	Had there been meetings between you and the Advisory Committee?	1	2	3
7.	Did you sign a new contract of employment with revised terms and conditions of employment?	1	2	3
8.	Were you familiar with the Public Service Act?	1	2	3
9.	Were you aware of the government policy on vehicle subsidy?		2	3
10.	Were you aware of the government policy on housing subsidy?	1	2	3
11.	Are you familiar with the Labour Relations Act of 1995?	1	2	3
12.	Do you understand the provision of the Labour Relations Act regarding mergers/takeovers?	1	2	3
13.	Were you appraised on your performance at NWCS?	1	2	3
14.	Did you know about grievance procedure in the Public Service?	1	2	3
15.	Do you think that the union was properly and sufficiently represented in the merger negotiations?	1	2	3
16.	Do you think management of the office of the Premier is adequately addressing your grievances?	1	2	3

PART C

OPEN ENDED QUESTIONS

1. **What is your opinion regarding the role played by the Advisory Committee during the negotiation process in the merger?**

.....
.....
.....
.....
.....
.....
.....
.....
.....

2. **What is your understanding of the amended Labour Relations Act, Section 197 regarding the transfer of business as a going concern?**

.....
.....
.....
.....
.....
.....
.....
.....
.....

3. **Why do you think is the reason for the delay by the management of the office in resolving your grievances?**

.....
.....
.....
.....
.....
.....
.....
.....
.....

NWCS STAFF**PART A****WHAT IS YOUR JOB TITLE?**

(a)	Head of Department	
(b)	Deputy Director General	
(c)	Chief Director	
(d)	Director	
(e)	Deputy Director	
(f)	Assistant Director	
(g)	Senior Administrative Officer	
(h)	Administrative Officer	
(i)	Secretary	
(j)	Messenger	
(k)	Cleaner	

ADVISORY COMMITTEE

PART B

Kindly indicate whether the following statements reflect what transpired during the merger process

Make use of the following scale:

1. Yes	2. No	3. Not Sure
--------	-------	-------------

1.	Were you elected to represent employees of NWCS during the merger negotiations?	1	2	3
2.	Did the majority of the NWCS agree to your representativity?	1	2	3
3.	Were you part of the negotiations at all times	1	2	3
4.	Do you think that the negotiations were conducted in good faith?	1	2	3
5.	Did you agree to the new terms and condition of employment?	1	2	3
6.	Did you sign anything to that effect?	1	2	3
7.	Has the employer reneged from any agreement that you entered into?	1	2	3
8.	Was there a common understanding of the provision of section 197, of the amended Labour Relations Act?	1	2	3
9.	Do you think that the grievances lodged by NWCS staff are valid?	1	2	3
10.	Do you think that they have followed the correct procedure in lodging their grievances?	1	2	3
11.	Is the management adequately addressing their grievances?	1	2	3
12.	Do you think that the union was sufficiently represented in the merger?	1	2	3
13.	Are the NWCS employees entitled to performance assessment?	1	2	3
14.	Were they assessed at the NWCS	1	2	3
15.	Were their performance assessment records kept?	1	2	3
16.	Did you give feedback to NWCS staff regarding the merger process?	1	2	3
17.	Were you aware that once absorbed in the Office of the Premier the Public Service Act would regulate your employment?	1	2	3

PART C

OPEN ENDED QUESTIONS

1. What method of communication did you use to inform NWCS staff about the development of the merger?

.....
.....
.....
.....
.....
.....
.....
.....

2. How did you elicit response from NWCS staff and reach consensus on pertinent issues regarding the merger.

.....
.....
.....
.....
.....
.....
.....
.....

3. What was the criteria used to elect you to represent NWCS staff during the merger?

.....
.....
.....
.....
.....
.....
.....
.....

4. Briefly explain your role during the merger negotiations?

.....
.....
.....
.....
.....
.....
.....
.....

5. What is your understanding of section 197 of the amended Labour Relations Act regarding the transfer of business as a going concern

.....
.....
.....
.....
.....
.....
.....
.....

6. Why do you lodge grievances on issues that you agreed to during the merger negotiations?

.....
.....
.....
.....
.....
.....
.....
.....

UNION REPRESENTATIVE**PART A****WHAT IS YOUR JOB TITLE?**

(a)	Head of Department	
(b)	Deputy Director General	
(c)	Chief Director	
(d)	Director	
(e)	Deputy Director	
(f)	Assistant Director	
(g)	Senior Administrative Officer	
(h)	Administrative Officer	
(i)	Secretary	
(j)	Messenger	
(k)	Cleaner	

UNION REPRESENTATIVE**PART B****Make use of the following scale:**

1. Yes	2. No	3. Not Sure
---------------	--------------	--------------------

1.	Which union did you belong to?	1	2	3
2.	Did the union endorse your participation in the merger negotiations?	1	2	3
3.	Had there been meetings between you and the advisory committee?	1	2	3
4.	Did you meet with the NWCS staff to strategise for the merger negotiation?	1	2	3
5.	Did you give the NWCS staff feedback on the developments regarding the merger negotiations? If yes how?	1	2	3
6.	Was there an agreement regarding the terms and conditions of the NWCS staff? If yes is a copy thereof available?	1	2	3
7.	Was the NWCS staff appraised on their performance prior the merger?	1	2	3
8.	Did the NWCS staff sign new contracts of employment with revised terms and conditions of employment?	1	2	3
9.	Were you aware that upon absorption in the Office of the Premier NWCS staff would lose certain benefits that were not offered in the Public Service?	1	2	3
10.	Do you think that the union was properly and sufficiently represented in the merger negotiations?	1	2	3
11.	Do you understand the provision of the amended Labour Relation Act, section 197, regarding mergers/take?	1	2	3
12.	Were you familiar with the Public Service Act?	1	2	3
13.	Did you know about grievance procedure in the Public Service	1	2	3

OPEN ENDED QUESTIONS

1. How were you elected to take part in the negotiation process during the merger?
.....
.....
.....
.....
.....
.....

2. Briefly explain your role during the merger negotiations?
.....
.....
.....
.....
.....
.....

3. What is your opinion regarding the role-played by the Advisory Committee during the negotiation process of the merger?
.....
.....
.....
.....
.....
.....

4. What is your understanding of the amended Labour Relations Act, section 197 regarding the transfer of business as a going concern.
.....
.....
.....
.....
.....
.....

MAFIKENG CAMPUS

Private Bag X2046

MMABATHO

2735

01 MARCH 2005

Dear Participant

RE: REQUEST TO COMPLETE THE ATTACHED QUESTIONNAIRE.

You are hereby requested to complete the attached questionnaire. The questionnaire forms part of a study that I am conducting towards the fulfillment of a Masters in Administration (Industrial Relations) degree.

A purposive sampling has been used to select you to participate in this study. The information that you provide will remain strictly confidential and your name will not be singled out for analysis.

The completion of the questionnaire and your participation in the interview will be valuable since this study is of significance to the office of the Premier.

Thanking you in anticipation of your co-operation.

Yours faithfully

.....
MMUSO ISRAEL TSELANGOE