



**Recommendations for a new labour relations framework  
for the Royal Swaziland Police – Submitted by the  
International Council of Police Representative  
Associations (ICPRA)**

**July 2008**

In February 2008, the Scottish Police Federation, a member of the International Council of Police Representative Associations, was requested to provide advice to the Director of Legal Affairs in the Royal Swaziland Police which may assist in the creation of greater social dialogue and labour harmony within the police. This advice was called for at a time when the police service management in Swaziland was reviewing the role and mandate of the existing police association. Information was also sought about broader issues of police industrial rights, collective bargaining processes and dispute resolution. This document, we hope, will provide some information in creating an improved labour environment within the Royal Swaziland Police. We are honoured to be able to make this input and the Royal Swaziland Police Legal Department for this opportunity.

In recent months there has been a fair amount of publicity both nationally and internationally about the attempts by police officers in Swaziland to improve their labour rights, in particular, their rights to unionise. The ICPRA has watched with great interest to see what the recent High Court decision would be, particularly given that in most liberal democracies police officers have undergone considerable struggle (mostly in the mid-twentieth century) to win a range of labour rights. The decision by the court to deny the police the right to unionise was expected given the current legislative and political environment in Swaziland. As we see it, there are real tensions between a very strong traditional political and social system and a constitutional arrangement which is in line with most liberal democracies. It is therefore important (and timely) in our view, for those in government in Swaziland to consider ways in which labour arrangements can be established for police officers that respect both the traditional and the liberal democratic characteristics of Swazi society.



In our view, the decision by the court to prohibit the establishment of a police union does not prevent the police organisation and the Government as employer from thinking about police labour/management frameworks that promote social dialogue and harmonious labour relations. What we hope to present below is a range of options for consideration by your office. We were very pleased to receive your request for information and advice on mechanisms for settling disputes, the formation of representative employee organisations, and collective bargaining rights.

The police labour relations environment internationally is very diverse. Each country has their own legislative framework and their own mechanisms for dispute resolution and bargaining. What all liberal democratic countries (including South Africa) seem to have in common is a commitment to creating a police service where officers from all ranks have the opportunity to engage constructively with one another to jointly negotiate agreements about working conditions and include the practitioners perspective in consultations about police service delivery programmes.

It is our strong view that police representative organisations which have collective bargaining rights and unfettered access to mediation and arbitration processes have positively contributed to improved working environments within police organisations. Having employee representative bodies with such rights has led to a far more harmonious labour environment because police officers have clear and predictable mechanisms for resolving disputes and for representing the collective and individual interests of police officers without fear of reprisal or reprimand. Police managers and employers have also benefited from a more equalized labour relations landscape because the emphasis, for both groups, is to reach and sustain joint agreements and frameworks.

Having said all of the above, we want to note that we support the view that the police are a unique occupation. Police officers are often placed in compromising situations, some of which are dangerous. Police organisations require a hierarchical structure in some command situations and a workforce that is disciplined and non-partisan. We also recognize that the public police are a 24/7 organisation- principally concerned in public safety and national security- which means that those who work operationally are most likely to be regarded as an essential service. All of these considerations impact considerably on the legal parameters of police labour rights, but also make the need for speedy dispute resolution and a harmonious working environment even

more imperative. Proper and mutually agreed upon labour relations frameworks and mechanisms allow for conflicts of interests to be resolved in ways that are structured, predictable and felt fair by all parties.

### **The basic assumptions that should inform a new labour relations framework in the police**

The collective knowledge of the members of the ICPRA is that where police officers have basic labour rights and where dispute resolution mechanisms are in place, improved relationships exist between police managers and rank-and-file police. While conventional hierarchical police structures do create a sense of discipline and obedience, they often create a working environment where discontent simmers below the surface of police organisations. The recent activities of the Swaziland Police Union and the reaction of Royal Swaziland Police tends to evidence this view.

Autocratic management systems and arbitrary disciplinary systems leave individual police officers feeling intimidated, powerless and that the relationships between police managers/employers are conflictual rather than constructive. When rank-and-file officers do not have proper representation or agreed upon grievance and negotiation procedures, they are more likely to feel that they can be harassed at the individual will of police managers/supervisors.

Furthermore, a lack of consultation and agreement processes/structures could translate into members feeling vulnerable in regard to the powers that senior police hold when it comes to deciding on matters such as transfers, promotions and training opportunities.

The second assumption that we should make is that police officers tend to view themselves as both professionals and as workers. As professionals they require a very particular set of skills and ethics, but with that comes the need to commit themselves to good service delivery. Where police conduct themselves as professionals, they should be awarded professional status by the communities they serve, their employer and their managers. This means that police members should work under the best possible conditions of service, should be treated as thinking members of an organisation who have discretion and who can

positively contribute (individually and collectively) to organisational policy and planning.

The third assumption is that in the daily operations of the police, command and control remains important. Commanders need to maintain managerial prerogative in regard to operations, particularly public order operations. Police associations/unions should not have the right to interfere with operational requirements, but should have the opportunity to influence improvements to operational practice. Linked to this, and given that police work is driven by crisis and emergency, the rights of police as workers can be limited as compared with other workers in the public and private sector. In most countries, though not all, police are provided all labour rights as stipulated by the International Labour Organisation, but are denied the right to withhold their labour (strike). The police service (or at least the uniformed operational component) could be defined as an essential service which would prohibit the right to strike and *may* (although this is not the case in South Africa, Belgium and many other liberal democracies) place restrictions on affiliations with other labour groups and on political activities.

Finally, police officers must realize that with rights come responsibilities. Police already have enormous powers in society, as compared with other civilians. They have the right to legally use force and to curtail individual freedoms. When awarded labour rights (as basic human rights) they need to bear in mind that as *citizens* in uniform they have a duty to respect the democratic and human rights of the communities that they serve. This means that they must respect and protect the rights of community groupings to freedom of speech, to collectively organize, and to protest and demonstration. They are also obliged to demonstrate loyalty to their employer and to the organisation that they are members of.

### **Establishing a legislative framework for police labour/management relations in Swaziland**

In our view the starting point of developing a new labour dispensation for the police is to legislate a new framework. This can be done in a number of ways. Firstly, the labour rights of the police can be included in existing Labour Relations Acts. This would mean, in many cases, a complete review of existing Labour Relations Acts. This was the route that was taken in South Africa when the new Labour Relations Act was developed

and passed in parliament in 1995. Police were included in the LRA and provided with equal rights to other workers aside from the right to strike.

A second route is for the police to develop their own separate set of Labour Regulations. This is a quicker and easier route and leaves the police organisation with the ability to define, according to its own particular standards and requirements, the precise rights of the police as well as the mechanisms available to the police in resolving disputes and in negotiating wages, benefits and working conditions.

A third possible route is to review or amend the existing Police Service Act to include a section on police labour/management relations. A statute in the Police Act would allow for a police association that has collective bargaining rights. This statute would also provide the police association and management with access to independent and impartial, third party dispute resolution issues.

In our view, the second or third route would probably best suit the needs of the police in Swaziland. At the minimum, we recommend that any new police labour regulations or statutes include the following:

- That police officers are able to form and join an ‘independent’, self-governed association
- That police members have the right to collective bargaining through their representative organisations
- That provisions are made for independent third party dispute resolution
- That there are agreed protocols established for the conduct of negotiations to be observed by all parties to such negotiations.
- That strikes, lock-outs and any such activities which are likely to lead to substantial compromise of public safety, are prohibited for all uniform and operational police members. (Whether the entire police service is deemed to be an essential service, is a point that can be debated by relevant interested parties and legal advisors in Swaziland).

### **Possible models for police employee representative organisations in Swaziland**

There are many different forms that police representative employee organisations can take. In some countries these organisations are called ‘police unions’ (like in South Africa, the Netherlands, Sweden, and parts of Australia). In South Africa, since 1995, almost all police officers below

the rank of Superintendent are organised into one of two main national police unions. An agency shop arrangement exists which means that all members of the police must be members of one of the recognized police unions and police members are therefore automatically represented in bargaining forums and agreements. The police sector is included in the Labour Relations Act and police employees have the same rights as other workers although they are prohibited from striking. While there was initial resistance to the establishment of police unions, there are now good relations between unions and police managers. A structured negotiating process provides certainty and predictability to both unions and police managers. These forums allow for joined planning and for shared visions about where policing is heading.

In other places they are called 'police associations' (such as in New Zealand, Canada and most of Australia). In Canada, in most provinces, police are declared essential services and are not allowed to affiliate with outside labour groups and may have restrictions on political activities. In one province, Saskatchewan, police are allowed to strike. However, police associations operate in a protected environment where neutral third-party dispute mechanisms are the norm. The associations may also play an active role in public policy debates and formulations concerning issues such as capital punishment, taxation or pensions.

In Australia, in some States, police employee representative organisations refer to themselves as unions and in other states they refer to themselves as associations. Regardless, they have the same rights to collective bargaining and are very powerful groupings influencing police policy and setting standards for workplace conditions. The Police Federation of Australia (PFA), is made up of all the state unions. The PFA assists and supports its member associations/unions and is affiliated with the Australian Council of Trade Unions. 99% of police officers are members of their respective police associations. Unions/associations negotiate salaries and other conditions of employment on behalf of their members and also look after the daily needs of their members, including legal defense and other services.

Most of these organisations (unions and associations), regardless of what they are called, operate independently from the police organisation.

Exceptions are the Police Federations in each of the countries of the United Kingdom. These are institutionalised within the police service. They have limited autonomy from the police service and part of their operational funding is provided by the police service and central

government. The Federations are prohibited from affiliating to a trade union body and they are both prohibited from striking and would be criminalized were they to advocate industrial action. There is however, a long standing settlement under which police officers are held to be (for the Federated ranks-statutorily) members of their respective rank staff associations with many of the attributes and attitudes of independent trade unions, through which they engage in collective bargaining with their quasi-employers. The ban on Industrial action is widely agreed to be balanced by the provision of a statutory negotiation process, unilateral access to binding arbitration and by guarantees that police pay movements and conditions of service will keep up with those outside the service.

The Scottish Police Federation, like its' sister organizations elsewhere in the UK is the representative body to which all police officers up to and including the rank of Chief Inspector belong. The Federation has a statutory responsibility to represent its members, in all matters affecting their welfare and efficiency and has the statutory right to be consulted when any police regulations are made. It takes an active interest in a wide range of subjects, which affect the police service and puts forward its views on the members' behalf. Whenever possible it works co-operatively with the Association of Chief Police Officers and the Superintendents Association. It therefore not only acts as a staff association, but also as a professional body, able to influence not only living standards, through pay and other benefits, but also the development of professional standards.

In our view, it makes very little difference what the representative body is called. In fact, since there is already a police association in existence in Swaziland, it makes sense to continue to make use of this name and existing organisation. If the association is to be 'independent' as is the case in most liberal democratic countries, the association would comprise of police members representing police members within a certain rank demographic. The association would get the majority (if not all) of its operational funding from member fees/contributions.

What requires immediate attention is exactly what role the association should play in regards to bargaining, representation and policy formulation.

Drawing on international models, we believe that the association should:

- Embrace a forum where police labour rights can be discussed in a non-threatening way.
- Work together with police management with a shared concern for reducing crime, making communities safer and protecting the democratic rights of citizens and residents of Swaziland.
- Conduct research on police members' concerns and their levels of satisfaction with current disciplinary processes, workplace conditions and negotiating arrangements
- Establish the capability to bargain collectively on matters of mutual concern. In particular, the police association should be able to bargain on issues related to their compensation, health, safety and working conditions.
- Be able to participate in joint negotiation and consultation forums on key policy issues such as promotion procedures, criminal justice policy, policing plans.
- Be equal partners in all grievance and dispute resolution procedures.
- Have an equal role in determining who neutral third party arbitrators and mediators should be in dispute cases.
  
- Bring to the notice of police authorities and the Minister all matters affecting welfare and efficiency of the police
- Search for ways of improving working conditions and promoting the professional interests of police personnel and the public they serve in the national legislative and policy fields.
- Advocate for adequate and equitable police resources.
- Actively engage in debates and activities in support of police organisational reform.
- Comment and make recommendations on policing and criminal justice matters.
- Build relationships with local communities and community groupings.
- Play a watchdog role by ensuring that that police authorities, managers and rank-and-file members are properly implementing police policy and are not corruptible.
- Establish the capability to provide legal advice and assistance to police members for work related issues.

For police association representatives to adequately fulfill their role, the Royal Swaziland Police Service needs to think about ways in which key elected officials can be given time off to conduct the business of the

association. This needs to be considered both at the local level and at the national level.

Depending on how independent the association is from the Police Service, elected officials may carry out their Association functions on a full time basis, but with the right to re-enter the police service at the end of their period of office.

### **Mechanisms and processes for negotiations and joint agreements in the police**

Prior to describing and then establishing a landscape to enable agreements to be reached, the first task to be undertaken is the distinction of which matters are for bargaining and which for consultation forums.

Common aspects to be considered within a bargaining forum comprise: hours of duty; leave; pay and allowances; the issue, use and return of police clothing, personal equipment and accoutrements; and pensions i.e. those which are negotiable/arbitratable. This would mean that a very broad spectrum of general issues such as health, safety and welfare, training, promotion and conduct would fall within a separate consultation forum.

A legislated for collective bargaining process should seek to ensure that police managers, employers and employee associations come together to negotiate conditions of service most usually with the facilitative influence of an Independent Chair and Secretariat . These negotiations can take place in a structured negotiating forum, such as is the case in South Africa, Australia and the United Kingdom. Regular dates are set during each year for bargaining to take place. In some countries this occurs once a year, in other countries more often and in either case, where major workforce reforms are being undertaken bargaining is undertaken on an ongoing basis and often alongside those “consultation only” matters described above.

Bargaining forums can also be extraordinarily convened where issues emerge that require all key actors in the police organisation to come to expeditious agreement.

At the beginning of a bargaining process, all parties must agree to operate in good faith and with a shared commitment to achieve agreements. Tactics sometimes deployed by either side, i.e stalling, can be considered as acting in bad faith however, such expressions are less likely where a participative and Independent Chair has control of the proceedings.

Police bargaining or negotiating forums can either be part of a broader public service bargaining forum, or can operate separately. A separate bargaining chamber/forum is likely to emerge if police labour regulations are legislated in police Acts or statutes rather than in the more general labour relations Acts.

Police labour and employers should be equally represented in collective bargaining forums. A bargaining forum is different from a consultation forum where police managers look toward the association for comment, suggestions and recommendations and approval of new plans and policies. A consultation forum, may have many of the features of the bargaining structure, and should be designed to reach consensus wherever possible but should be ongoing and can occur independent of the prescribed bargaining process

Aside from the regular collective bargaining forums and those consultative forums facilitated by police managers, a legislated model can also identify a means for the association to bring issues forward directly to the Police Minister. For example, a new law relating to firearms is about to be legislated and the police association has strong views on this matter, they may call a meeting to express their views and recommendations to the relevant government authorities.

Once an agreement or an award is reached and signed it is binding on all participant organisations and the members they represent. The final language in the collective agreement, negotiated and agreed to by both parties or resolved by an arbitrator, essentially forms the basis for dispute resolution when there is disagreement and a grievance is brought forward by either party. This collective agreement is effectively a contract between employer and employees that defines the intent of the parties when they agreed on the language specific to a particular workplace proposal. In the event of a formal grievance, an independent arbitrator will listen to the evidence of both parties and make a neutral and binding decision based on the language in the disputed article or section of the agreement. In most circumstances, the collective agreement language will prevent disputes and grievances. The employee

and the first or second line supervisor, often with input from an association representative, can read the collective agreement language and very often come to a satisfactory resolution at the lowest level, without engaging the grievance process and also avoiding bad feelings by one or both parties.

### **Dispute resolution mechanisms and processes for the police**

There are times when “failures to agree” are reached within negotiations or when disputes are declared. For example, in pay negotiations the association may be demanding a higher yearly increase than police employers are prepared (or able) to agree to. In cases like this, a neutral third party arbitrator may be required. However prior to this step being engaged it is helpful to identify whether the will exists on both sides to enter conciliation talks, most usually facilitated by the Independent Chair involved in the discussions thus allowing a short period of reflection and maintaining the emphasis to achieve agreement within the “bargaining chamber”

Where such is deemed by either side to be unlikely to produce agreement or has been exhausted without agreement, an arbitration (board or) commission may be established whose role it is to undertake the arbitration processes. The Arbitration Commission should be a neutral body and should never become involved in the issues between the parties in the police negotiation forum. Parties should strive for mutually agreed upon arbitrators. Where they can not agree, there can be provision for each party to submit a preferred individual or list of individuals and the Commission or other appointed individual or agency chooses the arbitrator. The arbitrator makes the final decision on the way to resolve the conflict/dispute and for both parties to move forward. The arbitrators award is binding. This process should also be enshrined in the legislation.

### **Conclusion**

The RSPS and the government of Swaziland seem genuinely interested in providing a better form of employee representation and negotiating framework for police service employees. Additionally, the application of positive attitudes and behaviours on behalf of the police association and RSPS is more likely to achieve a negotiating equilibrium which respects government policy, management rights, the operational needs of the police service and the needs and rights of employees in the workplace.



The ICPRA and its member organisations is more than willing to provide any further information or advice if required. We are committed to assisting police managers, employers and employees in developing optimal workplace arrangements within police organisations. We are also committed to building the professionalism of police organisations and their representative organisations, across the world. We wish to make a contribution to making police organisations more democratic internally, and in their conduct toward to the public in delivering policing services.

We are confident that the Royal Swaziland Police share our objectives and we wish you all of the very best in your sincere attempts to create labour harmony within the Royal Swaziland Police.

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