

The political settlement delivered by negotiation in South Africa has won the admiration of the world. The related arts of mediation and arbitration have achieved similarly spectacular success, writes SUE KING.

# A decade of solutions

**T**HE Independent Mediation Service of South Africa (Imssa) has been instrumental in resolving 7 787 conflicts, mainly in the industrial arena, since it was founded in 1984. Initially offering only industrial mediation and arbitration, Imssa has grown enormously over the last decade to meet the increasing demand for the range of neutral third-party interventions it offers.

As management and unions were increasingly exposed to this kind of intervention, their misgivings about it were largely allayed. Mediations (in which a third party helps groups settle a matter) and arbitrations (in which the third party rules on a matter) became accepted as a collective bargaining resource, an established component of the South African industrial relations system and a credible alternative to the Industrial Court.

By 1990 collective bargaining in South Africa was well-established. During July of that year, about 160 000 workers were either on strike, involved in strike ballots, or had recently returned to work after industrial action. Imssa was asked to intervene in almost every major industrial dispute of this period.

This trend continued into 1991, with mediators again involved in the settlement of a number of highly charged industrial disputes. The vast majority of mediations in this period occurred over wages and substantive conditions of employment.

A shift from position-based bargaining to interest-based bargaining began at this time. Common interests began creating the capacity for mutually acceptable settlements. This trend continued and is very evident today.

The 1990s have seen increasing use of arbitration. Many of the over 2 000 industrial arbitration awards delivered by Imssa arbitrators can be found in its publication, *Arbitration Digest*. Arbitrations rose steadily from 430 in 1991, to 656 in 1992, 859 in 1993 and 520 up until September 1994.

This increase may be due to the greater sophistication of the parties who do much of the negotiation themselves, going to arbitration only over unresolved issues.

By contrast, the demand for mediations has fluctuated since 1990. Mediation figures tapered off slightly each year, from 621 in 1991, to 464 in 1993. This trend appears to be reversing again, with the number of mediations increasing to over 400 so far this year.

At this stage it is too early to determine the reason for the increased call for mediation. One possibility is the recent expansion of industrial rights beyond the traditional enterprise structures, to include the public and agricultural sectors. Many recent interventions have involved these new entrants to the collective bargaining system.

A second reason might be that adversarial industrial relationships are being tempered by a growing recognition of the strategic need to build consensus around industrial renewal and growth. Although fundamental industrial conflicts remain, there is a growing demand for integrative bargaining around issues of industrial restructuring and expansion.

Debates dominating the agenda relate to industrial and economic policy and growth. Tripartite engagements between the state, trade unions and employers, inconceivable in the recent past, are now evident. Traditional bargaining issues are being expanded to include questions of industrial restructuring, productivity, human resource development, participation, job creation and employment security. Parties appear to be turning to mediators to help them in these areas.

In line with this trend, there have been an increasing number of requests for joint management and union training by Imssa in negotiation and mediation skills and arbitration processes. Imssa training courses are directed at building capacity and self-reliance in conflict management among unions and employers, peace structures, community and political organisations, other non-governmental organisations and state structures. The need for neutral third party intervention still exists, however, as recent industrial events have shown.

Compared with the early days, mediators are now required to be more sophisticated and to have more content knowledge. Process

skills alone are not sufficient to carry them through. Imssa mediators continue to participate in major dispute-settling interventions and have facilitated groundbreaking agreements on job flexibility, picketing guidelines, productivity, training and job security. These developments indicate a broadening focus in industrial relations, beyond distributive bargaining to a whole range of collaborative issues.

The boundaries between industrial, political and community conflicts are often blurred. Many disputes cannot be addressed in isolation. Since Imssa expanded into the area of community and political conflict resolution in 1992, it has been involved in almost 300 interventions.

Mediators, arbitrators and facilitators brought with them the dispute resolution skills used in industrial disputes. But they were challenged to adapt these to the unique requirements of community and political intervention, while still maintaining their reputation of non-partisanship and integrity earned in the industrial sphere.

Community disputes in South Africa exist in an extremely unstable political environment. While this is also true of labour disputes, there is usually a marked difference of degree between the community context and the labour context.

Unlike industrial disputes, parties and issues in community disputes are seldom clearly defined. The areas of dispute are often broad and complex. There are usually few, if any, established procedures for dealing with such conflict, which is often further complicated by violence.

The challenge has been to develop innovative ways of basing dispute resolution skills in the communities themselves. This has entailed a shift from reactive involvement to sustainable, consensus-building initiatives. The move from crisis intervention to construction is evident in the projects now underway in the education sector, the taxi industry and the police-community sphere. ■

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