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RESEARCH REPORT: THE REVIEW OF RECRUITMENT POLICY IN THE PUBLIC SERVICE



TRADE UNION OBSERVER STATUS IN SHORTLISTING AND INTERVIEW PROCESSES

Tel: 012 644 8100 | Fax: 012 644 5834 | Email: info@pscbc.org.za
Address: 260 Basden Avenue, Lyttellton 0178

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1. Executive Summary

This research was conducted in response to PSCBC Resolution 2 of 2025 (Clause 3.1.3), that articulated the need to assess how the recruitment policy framework and actual practices dealt with the Trade Union observer status across the South African public service. The study used a comprehensive methodology combining legislative and policy reviews with in-depth stakeholder interviews to assess the alignment between existing recruitment policies and the implementation practices.

Systemic Inconsistency and Fragmentation in the implementation of Trade Union observer status

The research findings outline the inconsistencies in both policy provisions and practical implementation of Trade Union observer status across the public service:

Legislative Gap: The 2016 Public Service Regulations Section 67 does not articulate any clause related to Trade Union observer status during recruitment, creating a policy vacuum that allows discretionary and inconsistent practices. Only the education sector has addressed this gap through ELRC Resolution 1 of 2021, which provides clear parameters for union observer participation.

Provincial level differences in the implementation of the Trade Union observer status:

The findings highlight three provinces (Gauteng, Limpopo, and Northern Cape) with transversal policies fully embracing organised labour's participation across all departments. Other two Provinces (Western Cape, and KwaZulu-Natal) have never included in their recruitment policies the observer status across all departments. The Free State Province demonstrated having a different approach, where all departmental policies submitted to the study excluded the Trade Union observer status.

Other Provinces (Eastern Cape, Mpumalanga, North West) have departmental policies and each department applied its own standard with regard to the Trade union observer status. Other three provinces (Eastern Cape, Mpumalanga, North West) have departmental policies and each department applied its own approach with regard to Trade Union observer status.

Identified Categories of the Implementation of the Trade Union Observer status

Departmental practices fall into four distinct categories:

- a) **Category 1 (Policy-Practice Gap):** Recruitment policies include Trade Union observer status provisions, but with no unions invited .to the recruitment process.
- b) **Category 2 (Ad Hoc Engagement):** No formal recruitment policy provisions, but unions are sometimes invited .as and when needed.
- c) **Category 3 (Best Practice Compliance):** Existence of formal recruitment policies consistently implemented. with the inclusion of Trade Unions.
- d) **Category 4 (Complete Exclusion):** No policy provisions and no practical engagement.

The Departments under the Public Health Social Development Coordinating Bargaining Council (PHSDCBC)'s (health and education) demonstrated more consistent inclusion of Trade Unions in the recruitment process, while departments under the General Public Service Sectoral Bargaining Council (GPSSBC) excluded Trade Union observers.

Participants' Views on the Integrity of the implementation of the observer status during recruitment.

Trade Unions Perspective:

- a) The unions perceived that there existed strategic exclusion through selective invitations to favoured unions in some departments.
- b) In some cases, there existed compromised relationships where Trade Union observers develop "understandings" with departments.
- c) There were perceived manipulations of Employment Equity provisions to justify political interference in some departments.
- d) Systematic exclusion of the labour observers, from Senior Management Service (SMS) recruitment processes, where risks of corruption in the recruitment process are possibly the greatest.
- e) Predetermined outcomes evidenced by discrepancies between interview performance and final scoring.

Employer Perspective:

The employer's participants stated that:

- a) Observers overstep boundaries by attempting to influence scoring and decision-making.
- b) It is perceived that during recruitment process, the participation of Trade Unions could bring confidentiality breaches with information leaking before final approvals.
- c) There exists structural tension between Trade Unions' accountability to their structures and confidentiality requirements.
- d) In some cases, process disruptions by Trade Unions impact negatively on service delivery as the recruitment process is halted forcing re-advertisements of posts.
- e) Elements of intimidation can be experienced when managers threaten to not participate in the selection process if certain applicants were not part of the shortlisted.

Critical Operational Issues

Scope and Coverage:

- a) There have been inconsistent applications of the Trade Union observer status across departments at various recruitment stages, with many Trade Unions excluded from shortlisting.
- b) There was systematic exclusion of Trade Unions in the recruitment process of SMS positions (levels 13+) despite union arguments that senior appointments require greatest oversight.
- c) Variations exist within the same departments over time in how the observer status was operationalised.

Communication Protocols:

- a) Overall, there is no standardised point of contact during recruitment, with some departments across provinces, bypassing provincial union offices to contact shop stewards directly.

- b) Some power dynamics were experienced in some departments where junior shop stewards in some cases fail to effectively challenge senior panel members during the shortlisting and recruitment process.
- c) Timeline manipulation has been identified as a challenge with invitations sometimes sent or provided only on the day before or on the day of interviews.

Ambiguity of the role of Trade Unions during the recruitment process:

- a) There exists some level of confusion about what observers should and should not do.
- b) There are no standardised observation frameworks or checklists in place across departments.
- c) There are no clear intervention protocols in place when irregularities are suspected during the recruitment process.

Use of Cell phones during the recruitment process:

- a) There has been in some departments unrestricted mobile phones use by both panel members and observers creating suspected integrity risks that could lead to confidential information leaked before the process is finalised.
- b) Most departments do not have established rules and regulations regarding external communication during interviews.

Identified participants' Areas of commonality

Despite areas of disagreements on the recruitment process, on the challenges and their causes, both parties (employer and labour) recognised significant benefits of institutionalising observer status as listed below:

1. It would enhance accountability through compelling adherence to regulations.
2. It would lead to reduction in grievances by resolving concerns immediately rather than post-appointment.
3. It would prevent favouritism through deterrence and early detection.
4. It could lead to the right candidates based on merit selected by ensuring panels focus on candidate performance.

5. It would promote legal protection through credible documentation and witness capacity.
6. It could benefit the department by improving staff morale and organisational culture.

The employer and labour participants to the study, acknowledged that the value lies in the principle of Trade Union observer status and that, the problems arise in the implementation of the inclusion of Trade Unions in the recruitment process than in the development of the concept itself.

Critical Recruitment Policy Gaps identified

The study identified critical areas that could be addressed through an agreed collective agreement in the PSCBC:

- a) **Scope and Stages:** Clear definition of which recruitment stages permit observation.
- b) **Post Level Coverage:** Explicit determination whether SMS positions are included.
- c) **Role Definition:** Precise boundaries between observation and decision-making.
- d) **Communication Protocols:** Standardised, hierarchical invitation procedures.
- e) **Notification Timeframes:** Mandatory minimum notice periods with consequences for non-compliance.
- f) **Confidentiality Framework:** Comprehensive requirements acknowledging structural tensions.
- g) **Ethical Standards:** Code of conduct applicable to all participants.
- h) **Training Requirements:** Mandatory orientation for observers and panel members.
- i) **Information Access:** Clear guidelines on documentation availability during and after processes.

Further considerations in decision-making could be made by the authorities, through intervention protocols, and implementation of standardised mechanisms to ensure uniform application across all departments and provinces.

Recommendations

Primary Recommendation: Collective Agreement Approach

There was an overwhelming consensus, from both Trade Unions and employer in support, for the development of a standardised framework through a collective agreement at the Public Service Coordinating Bargaining Council (PSCBC). This approach offers an opportunity to:

- Enhance enforceability of the agreement through dispute resolution.
- Strengthen partnership and equal opportunities for all.
- Provide high levels of compliance where PSCBC resolution establishes binding standards for all recruitment policies.
- It will assist in eliminating variations across departments, at provincial, and national levels.

An existing example is the ELRC Resolution 1 of 2021 in education which provides a successful precedent for this sectoral approach.

2. INTRODUCTION

The parties to the Council adopted PSCBC Resolution 2 of 2025, which establishes an agreement on matters to be subjected to further research, investigation, and negotiation. Clause 3.1.3 of this resolution specifically addresses the recruitment policy framework in the public service. In accordance with this clause, the parties agreed to constitute a working committee tasked with reviewing current recruitment practices across various public service departments, with provision for observer status to be granted to Trade Union representatives. The purpose of this research is to provide the working committee with empirical evidence to support the formulation of informed recommendations to the Council.

This report comprises two distinct sections. Section 1 presents a legislative framework and policy overview, examining the recruitment policies as documented across different departmental policies. Section 2 presents the research findings on actual recruitment practices, with the objective of determining the extent to which the recruitment procedures stipulated in departmental policies are being effectively implemented in practice.

2.1 Methodology

This research used a comprehensive methodological approach comprising both secondary and primary research components. The secondary research involved a systematic review of the legislative framework governing public service recruitment and an analysis of recruitment policies across various public service departments.

The primary research component was designed to provide a holistic assessment of recruitment practices across different departments. This entailed conducting in-depth interviews with key stakeholders to determine the extent to which documented recruitment policies aligned with actual departmental practices. All interviews were conducted remotely via Microsoft Teams to facilitate accessibility and accommodate participants' schedules.

2.2 Sampling Strategy

The study utilised a purposive sampling method. Provincial Chairpersons were approached to identify and recommend suitable participants for the research based on their knowledge and experience in the recruitment processes. These recommendations included provision of contact details, which enabled the research

team to schedule and coordinate interview appointments with the identified participants. Respondents were interviewed from both stakeholders (Labour and Employer).



**LEGISLATIVE FRAMEWORK
AND POLICY OVERVIEW**

3. Legislative Framework & Policy Overview

Section 67 of the Public Service Regulations 2016 outlines that executive authorities must appoint selection committees to recommend appointments to posts. However, the regulation is silent on the inclusion of Trade Union observers in recruitment processes. This legislative gap has resulted in a fragmented approach where individual departments exercise discretionary powers to either include or exclude organised labour representatives from their recruitment and selection procedures.

This inconsistency undermines the principle of uniformity that should characterise public service operations. While some departments have proactively incorporated Trade Union observer provisions into their departmental recruitment policies, others operate without any such arrangements, creating an uneven landscape of labour participation in recruitment processes across government departments.

The example of the Education sector demonstrates how structured agreements can address this gap through the Education Labour Relations Council (ELRC) Resolution 1 of 2021. This resolution establishes clear parameters for recruitment and selection procedures for educators, specifically providing for one union representative per union party to the ELRC to serve as observers. The resolution comprehensively covers the entire selection process, stipulating that union representatives observe shortlisting procedures, interviews, and the compilation of preference lists.

This sectoral approach in education highlights both the feasibility of incorporating organised labour observers into recruitment processes and the benefits of having standardised procedures.

The working committee's mandate to review current recruitment practices therefore addresses this fundamental inconsistency to ensure equitable and uniform treatment of organised labour across all public service departments.

3.1. Overview of Provincial Policy Provisions

The recruitment policies across all nine provinces reveals significant differences and disparities in the recruitment process and the provision of organised labour observer status, highlighting the lack of uniformity. These inconsistencies manifest both in policy structure and implementation approaches.

3.1.1. Policy Structure Models

Provincial administrations employ two different structural models for recruitment policies:

Decentralised Model (4 provinces): Eastern Cape, Free State, Mpumalanga, and North West provinces have delegated policy development to individual departments, resulting in department-specific recruitment policies.

Centralised Model (5 provinces): Northern Cape, KwaZulu-Natal, Limpopo, Western Cape, and Gauteng provinces have recruitment policies that apply uniformly across their entire provincial administration.

3.1.2. Organized Labour Observer Status Provisions by Province

3.1.2.1. Provinces with Transversal Policies

Provinces providing observer status: Gauteng, Limpopo, and Northern Cape Provinces have incorporated organised labour observer status provisions into their transversal recruitment policies, ensuring consistent application across all departments.

Provinces excluding observer status: Western Cape and KwaZulu-Natal's provinces policies do not include provisions for Trade Union observer status, leading to a complete exclusion across provinces.

3.1.2.2. Provinces with Departmental Policies

Eastern Cape: Exhibits mixed recruitment policy provisions across departments. While the Department of Education lacks a submitted policy, it follows ELRC Resolution 1 of 2021 for school-based educator posts, which includes Trade Union

observer status. All other provincial departments provide for organised labour observer status through their individual recruitment policies.

Free State: Demonstrates the most restrictive approach, with all submitted departmental policies excluding Trade Union observer status provisions. This appears to represent a standardised exclusionary practice across the province, though three departments (Cooperative Governance and Traditional Affairs, Human Settlements, and Sports, Arts, Culture and Recreation) have not submitted policies for verification.

Mpumalanga: Shows predominantly inclusive practices, with only two departments—Agriculture, Rural Development, Land Reforms and Environmental Affairs, and the Office of the Premier that exclude Trade Union observer status provisions. All other departments include organised labour observer status in their recruitment and selection policies.

North West: Demonstrates largely inclusive practices with notable variations. While the Department of Education has not submitted its recruitment policy, it follows ELRC Resolution 1 of 2021 for school-based educators, which includes observer status provisions. The Provincial Treasury provides a limited form of observer status, restricting Trade Union representatives to interviews only, excluding them from shortlisting processes. All other departments provide comprehensive observer status covering both shortlisting and selection processes.

3.1.3. Detailed Analysis of Inconsistencies

3.1.3.1. Inter-Provincial Disparities

The analysis of provincial recruitment policies reveals contrasts in provincial approaches to organised labour observer status. Three provinces (Gauteng, Limpopo, and Northern Cape) have policies that have fully embraced organised labour participation, ensuring that all departments within their provincial administrations provide observer status throughout recruitment and selection processes. This comprehensive approach demonstrates a commitment to transparent and inclusive recruitment practices.

In direct contrast, two other provinces (Western Cape and KwaZulu-Natal) with transversal policies adopted a complete exclusionary approach across the provincial departments, denying organised labour observer status. This creates a significant gap

in labour's participation in recruitment processes within these provincial administrations.

The Free State Province presents another restriction in their policies, where all submitted departmental policies consistently exclude Trade Union observer status. The absence of policies from three key departments (Cooperative Governance and Traditional Affairs, Human Settlements, and Sports, Arts, Culture and Recreation) further complicates the assessment of the province's true stance on this matter.

3.1.3.2. Intra-Provincial Inconsistencies

Within provinces that have delegated policy development to departments, significant internal contradictions emerge. Mpumalanga exemplifies this challenge, where the majority of departments have embraced organised labour observer status, yet two departments—the Department of Agriculture, Rural Development, Land Reforms and Environmental Affairs, and the Office of the Premier—have chosen to exclude such provisions. This creates an uneven landscape where prospective employees and organized labour representatives face different levels of transparency and participation depending on which department they engage with.

The North West Province presents a more complex variation, where most departments provide comprehensive observer status, but the Provincial Treasury has implemented a restricted model that limits organized labour participation to interviews only, excluding them from the shortlisting process. This partial inclusion approach creates procedural inconsistencies that may undermine the effectiveness of labour oversight in recruitment processes.

The Eastern Cape demonstrates another form of inconsistency, where the Department of Education operates without a submitted recruitment policy but relies on ELRC Resolution 1 of 2021 for school-based educators, while other departments maintain their own policies that include organized labour observer status. This reliance on external resolutions rather than coherent departmental policies creates potential gaps in coverage and understanding of procedures.

3.1.3.3. Procedural and Scope Variations

Beyond the binary question of inclusion or exclusion, the analysis reveals varying levels of organized labour participation where observer status is provided. The North West Provincial Treasury's approach of limiting observer participation to interviews while excluding organized labour from shortlisting represents a concerning precedent that could undermine the comprehensive oversight that observer status is intended to provide.

The reliance on ELRC Resolution 1 of 2021 for school-based educator positions in both the Eastern Cape and North West provinces, while it provides for the observer status, creates a fragmented approach where different categories of employees are subject to different recruitment oversight mechanisms within the same provincial administration.

SECTION 2

RESEARCH FINDINGS

4. General Overview of Provision and Compliance of Observer Status

Category	Status	Policy Provision	Practice	Characteristics
Category 1	Policy-Practice Gap	✓ Yes	X Not Implemented	Formal recruitment policies include provisions for Trade Union observer status, but Trade Unions are not invited to observe. It represents a compliance or implementation failure.
Category 2	Ad Hoc Engagement	X No	~ Inconsistent	No formal policy recognition, but Trade Unions are sometimes invited to observe. Invitations occur irregularly without clear criteria. Practice depends on discretion rather than policy.
Category 3	Best Practice Compliance	✓ Yes	✓ Fully Implemented	Recruitment policies formally endorse Trade Union observer status. Trade Unions are consistently invited to observe all recruitment processes. Policy and practice are fully aligned. Demonstrates transparent and collaborative approach.

Category 4	Complete Exclusion	X No	X No Engagement	No policy provisions for Trade Union observer status. Trade Unions are never invited to observe recruitment processes. Complete omission of Trade Union participation.
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Table 1: Overview of provision and compliance with observer status

The research paints a concerning picture of a system struggling with deep inconsistencies and unclear regulations. The most significant finding is how the observer status practices differ dramatically from one province to another, revealing the lack of consistency in involving Trade Unions in the recruitment processes.

Some provinces, particularly in the Department of Health, have developed a more thoughtful approach by inviting all Trade Unions admitted to the sectoral council to participate in both shortlisting and interviews. While this seems to be the right way forward to an inclusive approach that truly respects the role of Trade Union, this promising practice contrasts sharply with what is observed in departments under the General Public Service Sectoral Bargaining Council (GPSSBC), where, excluding unions has become standard practice in most places.

The Western Cape presents a particularly difficult situation, with all eleven departments under GPSSBC jurisdiction not offering observer status to Trade Unions, thus, a complete absence of participation.

KwaZulu-Natal's Department of Health illustrates a frustrating reality. While their policy does provide for observer status, unions have to actively apply rather than being automatically invited. This procedural hurdle essentially turns what should be a right into something unions must request, which undermines the very purpose of observer status while appearing to comply with participatory principles.

The education sector including both basic education and TVET colleges consistently takes the most welcoming approach across all provinces. This isn't by chance; it flows from Education Labour Relations Council (ELRC) Resolution 1 of 2021, which clearly mandates Trade Union observer status in school-based educator recruitment.

Interestingly, while TVET institutions aren't bound by this agreement, many seem to have embraced its provisions anyway.

The health sector have attempted to apply the observer status approach. However, the effectiveness of the implementation of the approach varies considerably.

The most significant gaps appear in government departments beyond education and health. Departments under the GPSSBC routinely exclude Trade Union observers, creating what essentially amounts to a two-tier system where a sector determines the participatory rights of Trade Unions. This pattern suggests something important: without specific guidance or mandates, departments tend to exclude rather than include unions in these processes.

5. The Compromised Integrity of Union Observer Status

The research reveals fundamental tensions in how observer status functions in practice, with perspectives varying significantly between Trade Union representatives and employers on the root causes of integrity concerns.

Trade Union representatives identify practices that fundamentally compromise the integrity of recruitment processes, transforming observer status from a transparency mechanism into a tool for selective influence and potential manipulation. Multiple instances emerge where only specific Trade Unions receive invitations, creating systems of favouritism that violate the principle of equal representation and undermine the legitimacy of the entire process.

More concerning is evidence suggesting that some departments have developed "an understanding with the observer," implying relationships that may influence recruitment outcomes rather than simply ensuring transparency. This transformation of observers from independent monitors into potentially compromised participants represents a fundamental disruption of the system's intended function. When observers become stakeholders in outcomes rather than guardians of process, the entire rationale for their inclusion collapses.

The practice of inviting individuals who claim union affiliation without verifying their representative status further compromises the observer system. This approach not only defeats the purpose of having legitimate Trade Union representatives observe

proceedings but may actually facilitate manipulation rather than prevent it. When observer status becomes available to any individual claiming union affiliation, the protective function of institutionalised labour representation is lost.

Additionally, the exclusion of senior positions, particularly director-level posts and above, from observer processes represents another form of selective implementation that limits transparency precisely where it may be also critical. Senior appointments carry greater influence and resource implications, making transparent oversight even more essential. The systematic exclusion of these positions is viewed as deliberate attempts to limit scrutiny of the most consequential recruitment decisions.

However, employer representatives offer different views and perspective on integrity challenges. They identify the fundamental confusion about the observer role itself as the primary integrity concern. Multiple employer respondents described situations where union representatives move beyond observation into active influence and decision-making, attempting to "decide who scored better" or "interfere in the scoring process." This suggests either unclear role definitions or inadequate enforcement of boundaries. When observers cross from observing to participating, they're no longer fulfill their intended function.

Employer representatives also highlighted that confidentiality breaches, represent a major integrity challenge. Information about recommended candidates frequently leaks before approval by the Accounting Officer, with both Trade Union observers and panel members being responsible. What's particularly noteworthy is the structural tension identified. Union representatives feel accountable to their structures and obligated to report back, which inherently conflicts with confidentiality requirements. This isn't necessarily malicious but represents a clash between two legitimate accountability frameworks.

This divergence in perspectives reveals a critical reality where both employer and labour perceive integrity threats but attribute them to different sources. Union representatives see the employer's manipulation and selective implementation as the core problems, while employer representatives view observer overreach and confidentiality violations as primary concerns. Any effective policy framework must address both sets of concerns simultaneously.

6. Scope and Stages of Trade Union Observation

6.1 Current Practices Across Departments

The research reveals significant inconsistencies in which recruitment stages allow Trade Union observation. Trade Union representatives reported that while some receive invitations for both shortlisting and interviews, a significant number indicated that unions are primarily invited only during the interview stage. This limited involvement falls short of union expectations and what they perceive as necessary for ensuring transparency and fairness in recruitment.

Employer representatives confirmed this varied landscape. The majority indicated that Trade Unions are generally allowed to observe key stages, particularly during shortlisting and interview sessions, though not all departments adopt this comprehensive approach. Some departments only invite unions to the interview stage, confirming the variation in practices that concerns union representatives.

The inconsistencies emerge as particularly problematic because they vary not only between different institutions but also within the same organisation over time. Several union respondents emphasised that meaningful participation should extend beyond interviews to include the shortlisting process, recognising this earlier stage as equally critical and important phase in determining which candidates progress through the recruitment process.

Trade Union representatives express concern that exclusion from shortlisting means *"key filtering decisions have already been made"* compromising the process limiting the ability to promote fairness throughout the entire process. This concern is echoed in reports of *"predetermined mandates"* and bias that become difficult to challenge when observers only enter the process at the interview stage.

6.2 Hierarchical Distinctions and SMS Positions

A particularly contentious issue involves the scope of observation by the post level. Union representatives specifically highlight that they are often excluded from observing Senior Management Service (SMS) positions, suggesting that higher-level appointments may be subject to different rules or less transparency. They view this exclusion as deliberate attempts to limit scrutiny of the most consequential recruitment decisions.

Employer representatives acknowledge this practice and provide context for it. Most departments indicate that Trade Union observers are allowed for posts up to salary level 12, which typically fall within the bargaining councils. However, SMS positions covering levels 13 and above are generally excluded from observer participation based on existing recruitment and selection policies, which limit union involvement to non-managerial or posts within the scope of PSCBC collective bargaining.

Importantly, employer representatives acknowledge that Trade Unions have expressed dissatisfaction with their exclusion from SMS-level recruitment processes, arguing that these higher-level appointments are where corruption and favouritism are more likely to occur, and therefore union oversight at these levels could enhance transparency and accountability. This represents a rare point of explicit agreement between the two groups on what constitutes a problem, even if they disagree on the solution.

Interestingly, one employer representative shared that in their department, **unions are permitted to observe at all levels**, including SMS posts, although this practice is sometimes questioned by management who feel that such posts fall outside the scope of organised labour representation.

7. Communication Protocols and Timeframes

7.1 The Protocol Problem

Trade Union representatives identify formal communication protocols as a critical concern. They report inconsistent practices of inviting departmental shop stewards directly, bypassing provincial offices. According to Trade Unions, this creates problematic power dynamics, as shop stewards are often junior to panel members, inhibiting their ability to challenge irregularities effectively.

Employer representatives confirm that there is no uniform point of contact across departments. Some send invitations through the Secretariat of Organised Labour at branch level, which then designates representatives to attend. Others direct invitations to shop stewards within the department, while some send them to regional or provincial offices of the unions, depending on how well unions are organised in specific regions. In some cases, departments adapt their approach based on the location or structure of the advertised post.

Trade Unions revealed that, this lack of standardisation in communication channels creates the exact vulnerabilities that union representatives identified. When shop stewards are contacted directly rather than through provincial structures, it circumvents the union's ability to deploy appropriately senior and experienced observers who can effectively challenge irregularities without fear of workplace repercussions.

7.2 Timeline Manipulation vs. Administrative Challenges

The issue of notification timeframes reveals one of the sharpest contradictions in perspectives. **Trade Union representatives** describe a deliberate pattern of strategic timing, where employer frequently delay invitations until the last moment, sometimes providing only one day's notice for interviews while completely excluding observers from shortlisting processes. This tactical approach, they argue, allows departments to claim compliance with observer status requirements while effectively neutralising oversight capacity. The lack of documented timeframes for invitations creates accountability gaps that enable these manipulative practices.

Employer representatives present a notably different picture. While acknowledging inconsistencies, they describe efforts to provide adequate notice rather than deliberate obstruction. Most indicate that Trade Unions are usually invited around the same time as panel members or candidates, typically within a 5 to 7 working day window, reflecting an effort to maintain fairness and allow sufficient time for unions to delegate their representatives.

However, employer representatives do acknowledge gaps in their systems. Some admit there are no fixed or formally documented timelines, with invitations often sent in line with the interview schedule rather than set policy. A few respondents also admit that while a seven-day notice period is the intended standard, operational pressures and administrative delays sometimes cause deviations.

The absence of formalised, binding timeframes creates space for both interpretations to coexist, with each side attributing different motivations to the same observable behaviour. What's clear is that the lack of standardised, enforceable timeframes creates problems regardless of intent, pointing to a concrete area where policy intervention could resolve.

8. Procedural Integrity and Transparency Challenges

8.1 Preparatory Activities and Hidden Processes

Trade Union representatives identify exclusion from critical preparatory activities as a major transparency concern. Respondents consistently report that activities such as question setting, and panel briefings occur without Trade Union observation. This exclusion from foundational stages creates opportunities for manipulation and predetermined outcomes that become difficult to challenge later in the process.

This concern extends to the broader issue of what Trade Union representatives describe as "predetermined mandates," where panel members appear to have decided outcomes before interviews begin. Observers consistently notice that candidates who perform poorly during interviews receive the highest scores, while those who demonstrate competence are scored unfavourably. According to the Trade Union representatives, this pattern suggests deliberate score manipulation that renders the interview process meaningless as an assessment tool.

Employer representatives do not directly address these allegations of predetermination but do acknowledge challenges with panel composition and scoring. They emphasise that observer involvement helps ensure "procedurally and substantively fair" processes and that observers "help detect wrongdoing by interview panels."

8.2 Panel Composition and Demographic Imbalances

Trade Union representatives note that recruitment panels frequently fail to achieve balanced demographic representation despite policy requirements. Respondents observed panels that either lacked diversity entirely or composed of same gender, such as all-female compositions, which still failed to meet the true demographic balance. This compositional bias extends to the selective invitation of certain Trade Unions while excluding others, introducing political dimensions that further compromise process integrity.

Employer representatives acknowledge the importance of "procedural consistency and policy alignment," including ensuring that standardised procedures are followed.

8.3 Technology and External Influence: A Mutual Concern

The issue of mobile phone use during interviews reveals great collective concerns, from the study participants identifying technology as a potential integrity threat while focusing on different actors.

Trade Union representatives raised concerns about unrestricted use of mobile phones by panel members during interviews, creating integrity concerns. Without established ground rules regarding external communication, observers could verify whether panel members were receiving outside influence or instructions that could compromise their independent judgment. This concern reflects broader union suspicions about predetermined outcomes and external manipulation of panel decisions.

Employer representatives raised similar concerns about Trade Union observers using their phones during interviews. They questioned whether observers might be sending interview questions or other confidential information to candidates who are still waiting to be interviewed, potentially giving some candidates unfair advantage.

What's particularly revealing is that both groups identified the same vulnerability of unrestricted mobile device use creating opportunities for inappropriate external communication. This mutual concern suggests that technology-related integrity risks are real and significant.

The absence of established ground rules regarding mobile phone use during interviews creates a policy vacuum where both sets of concerns could materialize. Without clear protocols, both scenarios remain possible.

8.4 Information Access and Evidence

Trade Union representatives reported that when unfair practices were suspected, the dispute resolution process was hampered by lengthy PAIA (Promotion of Access to Information Act) procedures that delayed access to critical evidence such as recordings or scorecards. This barrier effectively shields questionable practices from scrutiny and leaves affected candidates with limited recourse options.

Employer representatives acknowledged that "when observers were present and could comment on the process, they effectively validated the fairness of proceedings," suggesting they saw observer presence as reducing post-decision challenges.

9. Political Interference and Employment Equity Considerations

Trade Union representatives report frequent political interference where authorities introduce preferred candidates into processes. This interference is often disguised through misapplication of Employment Equity Act provisions, using legitimate policy frameworks as cover for nepotistic practices.

Employer representatives acknowledge this concern from a different angle, noting that "undue influence isn't unique to unions" and that "departmental officials also have preferred candidates and may try to influence outcomes." They position union presence as serving as a check and balance, helping ensure that processes are followed correctly and that qualified candidates aren't overlooked.

10. The Dual Nature of Observer Benefits

10.1 Areas of Strong Consensus

Both, the Trade Union and employer representatives expressed overwhelming support for observer status in principle, viewing it as meaningful for ensuring fairness, transparency, and accountability. The areas of consensus were significant:

Accountability and Compliance Enforcement: Union representatives emphasised that union presence compels adherence to regulations and policies, noting that panels "cannot do as they please" when observers are present. Employer representatives echo the sentiment, stating that observer status "enhances process transparency" and "helps ensure compliance with policy requirements," encouraging ethical behaviour throughout the recruitment process.

Reduction in Grievances and Disputes: Both groups identified this as a major benefit. Union representatives noted that observation helps distinguish valid from invalid grievances. Employer representatives specifically highlighted that concerns were "raised and resolved immediately rather than at a later stage," preventing disputes after appointments were made. When observers were present, they could later assure union members that procedures were conducted fairly, substantially reducing post-appointment challenges.

Prevention of Favouritism and Irregularities: Union representatives viewed the observation function as both preventative (deterring misconduct through presence) and corrective (identifying and opposing violations when they occur). Employer

representatives confirm this, stating that observer status serves as a safeguard against nepotism and unfair treatment, with observers helping to "detect wrongdoing by interview panels" and identify "irregularities, nepotism, or unfair treatment before the process is finalised."

Merit-Based Selection:

Union representatives believed union oversight ensures "the best candidate is appointed" and helps departments "obtain the best talent," connecting fairness to organisational effectiveness. **Employer representatives** agree, noting that observer involvement encourages interview panels to concentrate on candidate performance and merit rather than personal connections or other irrelevant factors.

Legal Protection and Documentation:

Union representatives noted that observers can "protect the employer" by endorsing fair processes. **Employer representatives** expand on this, explaining that when observers sign off on the process or their comments are formally recorded, this creates credible documentation that can serve as evidence if fairness is later questioned, with unions able to "serve as credible witnesses if fairness is challenged".

10.2 Enhanced Organisational Outcomes

Both groups recognised broader organisational benefits. **Union representatives** viewed observation as strengthening unions' representational capacity, enabling them to provide informed advice to members and engage more effectively in dispute resolution. **Employer representatives** noted that the presence of observers boosts staff morale by demonstrating the organisation's commitment to fair practices, contributing to a more positive workplace culture where employees feel their interests are represented and protected.

Both groups recognised the value in observer status; the problems arise in how it can be operationalised rather than whether it should exist.

11. The Challenge Paradox: Different Interpretations of Similar Problems

11.1 The Core Tension: Observation vs. Influence

The most striking divergence emerges around the fundamental nature of the observer role. Employer representatives described this as their most prominent concern when

union representatives attempts moving beyond observation into active influence and decision-making. When observers "attempt to decide who scored better" or "interfere in the scoring process," employers argue, they're no longer observing but participating. This suggests either unclear role definitions or inadequate enforcement of boundaries.

Trade Union representatives did not frame their role as interference but as necessary intervention against predetermined outcomes. When they observed candidates who performed poorly receiving high scores while competent candidates were scored unfavourably, they viewed speaking up not as overstepping but as fulfilling their oversight function.

11.2 The 'Chilling Effect' Debate

Employer representatives outlined that in some cases, managers were reluctant to serve on recruitment panels due to fear of pressure or intimidation. This was concerning to them because it suggested the observer system may be undermining rather than strengthening recruitment processes. When managers feel "coerced into certain decisions" or make choices that "favour the Trade Unions," the integrity of merit-based selection is compromised.

Trade Union representatives argue that managers' reluctance stems not from legitimate oversight but from discomfort with being held accountable for following proper procedures. If managers are making decisions based on merit and following regulations, they should have nothing to fear from observation.

11.3 Confidentiality: A Structural Dilemma

Employer representatives identified confidentiality breaches as a major challenge, noting that information about recommended candidates frequently leaks before approval. They recognised a structural tension where union representatives feel accountable to their structures and obligated to report back, which inherently conflicts with confidentiality requirements.

Interestingly, some employer representatives suggested that internal shop stewards might maintain confidentiality better than external regional delegated Trade Union officials which directly contradicts the union's preference for provincial-level deployment precisely because shop stewards face workplace pressures that compromise their independence.

11.4 Process Disruptions: Sabotage or Necessary Intervention?

Employer representatives described significant operational impacts when observers halt processes, with grievances causing delays and forced re-advertisements affecting the department's ability to fill critical vacancies within required timeframes, ultimately impacting service delivery. They referenced school-based posts as particularly challenging, where the intersection of high stakes, large numbers, and strong union presence creates a "perfect storm for disputes."

From the union perspective, halting flawed processes isn't disruption but necessary correction. If procedures are being violated or manipulated, allowing the process to continue would compound the injustice. The delay caused by proper challenge is preferable to the permanent damage of an improper appointment.

11.5 Context and Power Dynamics

Employer representatives noted that undue influence isn't unique to unions, with departmental officials also having preferred candidates and potentially trying to influence outcomes. In this light, union presence serves as a check and balance. This acknowledgement that the issue isn't observer status itself but how it's implemented and managed is crucial.

Trade Union representatives emphasised power imbalances between employer and organised labour, arguing that without formal negotiation structures, workers are "at the mercy of the employer." They view challenges to observer status not as resistance to legitimate concerns but as attempts to protect employer prerogatives from accountability.

12. The Path Forward: Standardisation Through Collective Agreement

12.1 Overwhelming Consensus on Mechanism

Despite sharp disagreements on problems and their causes, a striking consensus emerged regarding the solution mechanism. All union representatives advocated for collective agreements as the preferred approach over unilateral policy formulation by employer or government departments.

Employer representatives, while not universally endorsed this approach, show significant openness to it. Several advocated for standardising the observer status process across all government departments to ensure fairness and consistency, with

one innovative suggestion to formalise this through a collective agreement via bargaining councils, similar to what was done in the education sector through the ELRC.

12.2 The Enforceability Argument

The fundamental argument underlying union preference for collective agreements centres on enforceability. Multiple union respondents emphasise that collective agreements "hold more power" and "can be enforced through the dispute resolution process," highlighting a critical weakness they perceive in current policy-driven approaches. This enforcement mechanism appears to be a primary motivator, as participants express frustration with departments' ability to "exploit loopholes" when they formulate their own policies without meaningful oversight or accountability structures.

Employer representatives who supported this approach recognise that formalising through collective agreement could "comprehensively regulate the entire recruitment process" and potentially be incorporated into official regulations through ministerial decision. This would create clear obligations and establish a more robust accountability chain than currently exists.

12.3 Partnership and Equality

Union representatives consistently framed the issue in terms of partnership and equality, arguing that collective agreements ensure "both organised labour and employer will be equal partners in the negotiation of the terms." This contrasts sharply with their perception of unilateral policy formulation, which they viewed as concentrating excessive power in the hands of employers while leaving workers "at the mercy of the employer."

Employer representatives similarly recognised that negotiated agreements may have superior legitimacy and durability compared to imposed policies. When both parties participated in developing standards, there's greater likelihood of respect and proper implementation than with unilaterally developed policies.

12.4 Hierarchical Compliance Framework

Union representatives envisioned a system where PSCBC resolution would establish binding standards that must be reflected in all subsequent policies, whether developed at departmental, provincial, or national levels. This hierarchical approach

addresses concerns about inconsistency and selective implementation across different government entities. **Employer representatives** similarly seek to eliminate variations between departments, provinces, and levels of government that create opportunities for inconsistent application.

13. Comprehensive Policy Considerations for Standardised Framework

Based on input from both Trade Union and employer representatives, the following considerations should guide development of a standardised recruitment policy or collective agreement:

13.1 Scope and Stages of Union Observation

Consideration: Clearly define at which stages of the recruitment process Trade Unions have observer rights.

Key Issues Identified:

- a) Current ambiguity about whether unions can observe shortlisting, interviews, or both (Union concern).
- b) Need for explicit inclusion of shortlisting stage in observer status (Union concern).
- c) Variation in practice between departments (Both groups).
- d) Clarification of whether observation extends to final decision-making discussions (Union concern).
- e) Some debate about the extent of participation throughout the process (Employer concern).

Policy Requirement: The need to specify at each recruitment stage (advertising, shortlisting, interviews, recommendations) and indicate which stages permit union observation. Address whether observers should be present "throughout the process, from shortlisting to recommendations" or have more limited but clearly defined participation points.

13.2 Post Level Scope

Consideration: Determine whether observer status applies to all post levels or only certain categories.

Key Issues Identified:

- a) Current exclusion of SMS positions (levels 13 and above) in most departments (Both groups acknowledge).
- b) Union view that senior appointments are where corruption and favouritism are most likely, requiring oversight (Union perspective).
- c) Employer interpretation that SMS posts fall outside organised labour representation scope (Employer perspective).
- d) Some departments allow observation at all levels (Both groups note).

Policy Requirement: Explicitly state whether observer status extends to SMS positions and provide clear rationale for any exclusions. If SMS positions were excluded, an explanation was needed to address union concerns to promote transparency at senior levels. If included address employer concerns about representation scope.

13.3 Clear Role Definition and Boundaries

Consideration: Precisely define what observers can and cannot do during recruitment processes.

Key Issues Identified:

- a) Union representatives moving beyond observation into decision-making (Employer concern).
- b) Ambiguity about what observers are expected to do (Union concern).
- c) Need for meaningful participation beyond passive presence (Union concern).
- d) Observers attempting to interfere in scoring processes (Employer concern).
- e) Lack of clarity on observer authority and limitations (Both groups).

Policy Requirement:

- a) Define observer mandate clearly (observe, monitor, report) with explicit boundaries.
- b) Specify that observers do not participate in scoring or candidate selection decisions.
- c) Establish what observers can and cannot do during the process.
- d) Clarify the difference between legitimate questioning of procedural irregularities and inappropriate interference in decision-making.
- e) Provide observers with standardised observation checklists or rating frameworks to evaluate the recruitment process itself.
- f) Define how and when observers may raise concerns or objections during proceedings.

13.4 Formal Communication Protocols

Consideration: Establish standardised, hierarchical communication channels for observer invitations.

Key Issues Identified:

- a) Inconsistent practice of inviting departmental shop stewards directly, bypassing provincial offices (Union concern).
- b) Shop stewards being junior to panel members, creating power dynamics that inhibit challenging irregularities (Union concern).
- c) Lack of uniform point of contact across departments (Employer acknowledgement).
- d) Some departments adapt approach based on location or post structure (Employer practice).
- e) Suggestion that internal shop stewards might maintain confidentiality better (Employer perspective).

Policy Requirement:

- a) Mandate whether all observer invitations must be directed to Trade Union provincial offices or whether circumstances allow direct contact with shop stewards.
- b) If provincial-level contact is required, specify that provincial offices have authority to nominate and deploy observers.
- c) Alternatively, clearly define circumstances under which different communication channels are appropriate.
- d) Establish formal, written invitation procedures with clear paper trails.
- e) Address the tension between union preference for provincial deployment (to ensure observer independence) and employer suggestion about shop steward confidentiality.

13.5 Timeframes for Notification

Consideration: Set mandatory minimum notice periods for extending observer invitations.

Key Issues Identified:

- a) Late invitations preventing effective union participation, sometimes only one day's notice (Union concern).
- b) Perception of deliberate tactical delays in sending invitations to neutralise oversight (Union perspective).
- c) No fixed or formally documented timelines in many departments (Employer acknowledgement).
- d) Typical practice of 5-7 working days in departments with informal standards (Employer practice).
- e) Operational pressures and administrative delays causing deviations (Employer explanation).
- f) Non-standardised timeframes causing logistical challenges (Union concern).

Policy Requirement:

- a) Establish minimum notice period (with input from both parties on realistic and adequate timeframes).
- b) Define consequences for non-compliance with notification timeframes.
- c) Address employer concerns about operational pressures while ensuring unions receive adequate notice.
- d) Specify whether notice period applies equally to all recruitment stages or varies by stage.

13.6 Confidentiality Framework

Consideration: Develop comprehensive confidentiality requirements that acknowledge structural tensions.

Key Issues Identified:

- a) Frequent information leaks about recommended candidates before final approval (Employer concern).
- b) Both union observers and panel members responsible for breaches (Employer observation).
- c) Structural tension between union accountability to structures and confidentiality requirements (Employer analysis).
- d) Current confidentiality forms insufficient (Employer view).
- e) Union obligation to report back to structures (Employer recognition of union perspective).

Policy Requirement:

- a) Go beyond simple confidentiality agreement signing to establish robust protective measures.
- b) Clearly define what information is confidential and what may be shared with union structures.
- c) Establish clear consequences for confidentiality violations.

- d) Address the structural tension between union accountability and process confidentiality.
- e) Define appropriate boundaries for observer reporting back to union structures.

13.7 Ethical Framework and Code of Conduct

Consideration: Establish comprehensive ethical standards for all participants in recruitment processes.

Key Issues Identified:

- a) Concerns about observers "attending with bad intentions" (Employer concern).
- b) Need for accountability measures for violations (Employer concern).
- c) Reports of political interference and preferred candidates (Union concern).
- d) Acknowledgement that departmental officials also try to influence outcomes (Employer acknowledgement).
- e) Need to address conflicts of interest (Both groups).

Policy Requirement:

- a) Develop ethical code of conduct applicable to union observers, panel members, and appointing authorities.
- b) Address conflicts of interest for all parties.
- c) Establish professional conduct expectations.
- d) Create disciplinary measures for violations.
- e) Include dispute resolution mechanisms.
- f) Cover both employer-driven political interference and union-driven pressure.
- g) Establish clear procedures for reporting and investigating ethical violations.

13.8 Mandatory Training and Orientation

Consideration: Implement comprehensive preparation programs for union observers and panel members.

Key Issues Identified:

- a) Union representatives lacking understanding of observer role (Employer concern).
- b) Need to improve professionalism (Employer view).
- c) Unclear boundaries leading to overstepping (Employer concern).
- d) Observers needing to understand their rights and limitations (Both groups).

Policy Requirement:

- a) Mandate orientation for all union representatives before they participate in any recruitment process.
- b) Cover role boundaries, confidentiality requirements, ethical standards, and dispute procedures.

13.9 Information Sharing Protocols

Consideration: Establish clear guidelines on information access during and after recruitment processes.

Key Issues Identified:

- a) Difficulty accessing score sheets and process documentation post-observation (Union concern).
- b) Current requirement to use PAIA provisions creating lengthy delays (Union concern).
- c) Uncertainty about what information observers can access (Union concern).
- d) Need for credible documentation (Employer interest).
- e) Observers needing access to validate fairness (Both groups).

Policy Requirement:

- a) List specific documents observers can access (job descriptions, selection criteria, interview questions, score sheets).
- b) Define information that remains confidential (personal candidate information beyond recruitment relevance).

- c) Distinguish between information available during the process and information available after completion.
- d) Create clear procedures for requesting and receiving information.
- e) Balance transparency with legitimate confidentiality concerns.

13.10 Decision-Making Authority and Panel Recommendations

Consideration: Clarify relationship between panel recommendations and final decision-making authority.

Key Issues Identified:

- a) Final decision rests with one delegated authority, potentially overriding panel consensus (Union concern).
- b) Panel recommendations becoming "redundant" (Union concern).
- c) Lack of transparency in how final decisions are made (Union concern).
- d) Disconnect between interview performance and final scoring (Union observation).

Policy Requirement:

- a) Define the weight of panel recommendations in final decisions.
- b) Require written justification when delegated authority deviates from panel recommendations.
- c) Establish checks and balances on sole decision-maker authority.
- d) Consider whether observers should receive notification of final decisions and rationale.
- e) Create accountability for decisions that override panel consensus.
- f) Establish timeframes for final decisions after panel recommendations.

13.11 Observer Terms of Reference and Active Quality Assurance

Consideration: Transform observer role from passive presence to active quality assurance function while maintaining appropriate boundaries.

Key Issues Identified:

- a) Current observer status perceived as token gesture (Union concern).
- b) Need for meaningful participation beyond passive presence (Union concern).
- c) Risk of observers overstepping into decision-making (Employer concern).
- d) Need for observers to validate processes (Both groups).
- e) Desire to make observation status substantive and impactful (Union concern).

Policy Requirement:

- a) Develop standardised observation checklists aligned with recruitment regulations.
- b) Require observer sign-off or formal observation reports.
- c) Establish procedures for observers to raise concerns during proceedings.
- d) Clarify difference between validating process integrity and influencing candidate selection.
- e) Provide framework for documenting observations that serves both accountability and evidence purposes.

13.12 Process Disruption and Intervention Protocols

Consideration: Establish clear procedures for when and how concerns raised during recruitment can halt or modify processes.

Key Issues Identified:

- a) Processes being halted causing delays and service delivery impacts (Employer concern).
- b) Forced re-advertisements affecting vacancy filling (Employer concern).
- c) Union view that halting flawed processes is necessary correction, not disruption (Union perspective).
- d) Need to balance procedural integrity with operational efficiency (Both groups).

Policy Requirement:

- a) Define circumstances under which recruitment processes can be halted or modified.
- b) Establish authority for making such decisions (panel chair, observer, consensus, escalation?).
- c) Create escalation procedures for resolving disputes during active recruitment.
- d) Distinguish between major violations requiring immediate halt and minor concerns requiring documentation but allowing process completion.

13.13 Standardisation and Consistency Mechanisms

Consideration: Ensure uniform application across all departments, provinces, and other levels of public service.

Key Issues Identified:

- a) Variation in practice between departments (Both groups).
- b) Inconsistency within same department over time (Union concern).
- c) Different departments having different standards (Both groups).
- d) Fragmented approach creating opportunities for manipulation (Union view).
- e) Need for fairness and consistency (Both groups).

Policy Requirement:

- a) Establish binding standards that apply to all government departments and levels.
- b) Consider whether collective agreement through PSCBC provides an appropriate mechanism for binding standardisation of the recruitment process.

14. CONCLUSION

This research reveals a system where Trade Union observer status in recruitment processes is simultaneously highly valued and deeply problematic. Both unions and employers recognise significant benefits from observer participation, including enhanced transparency, reduced grievances, prevention of irregularities, and

improved selection outcomes. Yet both also identify serious implementation challenges that undermine these potential benefits.

The core tension is not whether observer status should exist, there is broad consensus that it should, but how to operationalise it so that it achieves transparency and fairness without creating new problems of inappropriate influence, confidentiality breaches, or process disruption.

The contradictory perspectives between union and employer representatives reflect different positions within power structures, different accountability relationships, and different experiences of the system's functioning. Union representatives experience a system where they are strategically excluded, deliberately delayed, and systematically prevented from exercising meaningful oversight, particularly at senior levels where corruption risks may be greatest. Employer representatives experience a system where observers overstep their roles, breach confidentiality, and pressure panels toward union-preferred outcomes.

These perspectives are not easily reconciled because they reflect genuinely different experiences shaped by different positions within the system. Yet they share enough common ground which is agreement on core benefits, recognition that problems exist and support for standardisation.

15. RECOMMENDATIONS

The path forward requires moving beyond the current fragmented approach to a standardised framework developed through genuine partnership via collective agreement. This framework must address all the considerations identified in this research which include the scope of observation, communication protocols, timeframes, role definitions, confidentiality requirements, information access, and accountability mechanisms.

Success will require clarity over ambiguity, balanced consideration of all legitimate concerns, robust enforcement mechanisms, comprehensive training, and genuine commitment to cultural change from both parties. It will require acknowledging that threats to recruitment integrity come from multiple sources and creating safeguards against all of them, not just those emphasised by one party.