



ESC PRESENTATION - SOCIAL CENTRES, OLD AGE HOMES, CHILDRENS HOMES AND CARE OF PEOPLE WITH DISABILITIES



ESSENTIAL SERVICES COMMITTEE (ESC) 2021



DESIGNATIONS (STATE)



The **WHOLE OF THE SERVICES** provided by
*old age homes,
children's homes and
places of care*
that are...;

State Owned

State Funded

State Subsidized

DESIGNATED ESSENTIAL SERVICES



- **Privately owned old age homes as well as nursing homes and institutions that care for assisted and frail care patients and that are not registered with the Department of Social Development or do not receive any financial assistance or subsidy from the State, as essential services:**
 - a) Nursing;
 - b) Care-giving - being the service of caring for an elderly assisted and or frail patients with the implied or express consent of that person and in support of nursing services and as set out in Section 17 of the Older Persons Act, 13 of 2006;
 - c) Pharmaceutical;
 - d) Dispensary;
 - e) Occupational therapy;
 - f) Rehabilitative support;
 - g) Physiotherapy; and
 - h) Catering
 - i) Laundry



RIGHT TO STRIKE

Every person has the right to strike in terms of the Constitution

BUT

In order to create balance

- ❑ Allow for essential services to continue (although affected)
- ❑ And make provision for the Constitutional right to essential services.....



The right to strike

- The LRA makes provision....



LEGAL CONSEQUENCES OF SERVICES DESIGNATED AS ESSENTIAL SERVICES



The Labour Relations Act states:

No person *may take part in a strike*
or in *any conduct in contemplation or furtherance of a*
strike

or a lock-out

if that person is engaged in

- (i) an Essential Service, or
- (ii) Maintenance Service



LEGAL CONSEQUENCES OF SERVICES DESIGNATED AS ESSENTIAL SERVICES



This means that generally, employees who are working in designated essential services **may not take part in strike action** and employers who conduct businesses within designated essential services **may not lock out employees.**

Unless:

There is an agreement in place – Minimum Service Agreement

Or

A Minimum Service Determination





DISPUTE RESOLUTION



✓ A MSA and/or MSD **MUST** be ratified by the ESC

In the absence of any **ratified** Minimum Service Agreement or Minimum Service Determination, the Dispute Resolution Procedure in matter of **interest** is as follows:

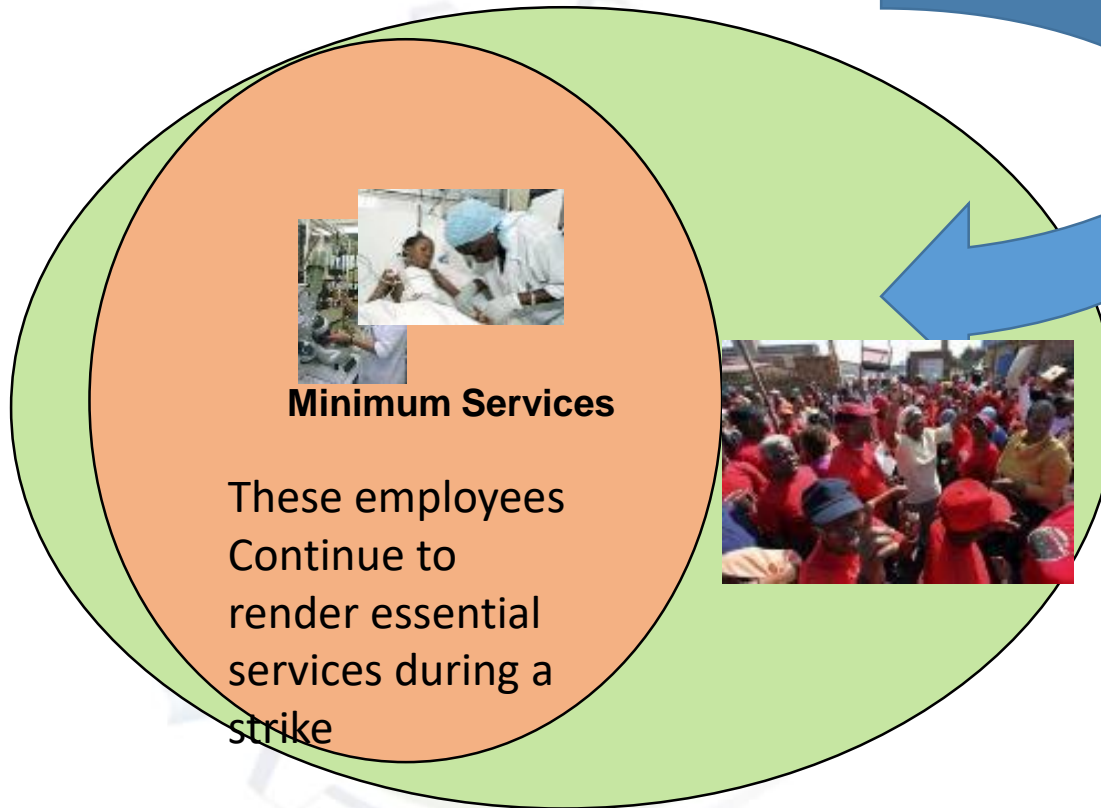
Dispute → Conciliation at CCMA or BC → Compulsory
Interest
Arbitration at
CCMA



MINIMUM SERVICE AGREEMENTS/MINIMUM SERVICE DETERMINATION



Designated Essential Service



A ratified Minimum Service Agreement or Determination ensures that a certain number of employees in an essential service may now strike, **unlike a workplace with no**

MSA/MSD

IMVUSELELO – THE REVIVAL, THE CCMA'S 2020/21 – 2024/25 STRATEGY

"I AM BECAUSE YOU ARE"



Negotiating a MSA: Practical steps



Designated Service	Post designation of employees essential	No. of employees per post	No. Of employees who must work during a strike	No. Of employees who may strike
EXAMPLE				
Care Givers	Senior Care Giver	2	1	1
	Care Givers	8	5	3
Nursing	Registered Nurse	1	1	0
	Nursing Assistant	3	2	1
Catering	Chef	1	1	0
	Kitchen assistants	4	3	1



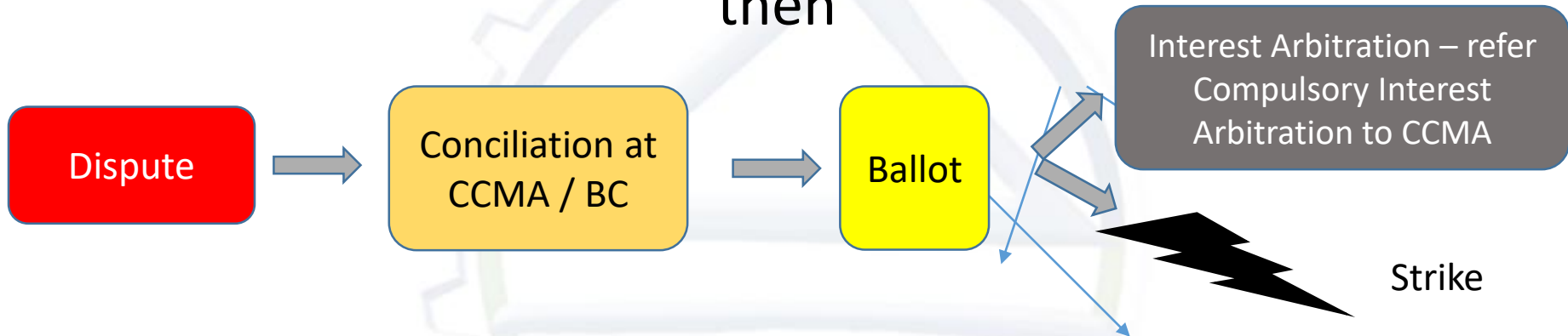
Dispute Resolution in relating to matters of Interest where there is a ratified MSA or MSD



If....there is a dispute of interest (wages, leave, etc)

And I have a ratified MSA/MSD

then



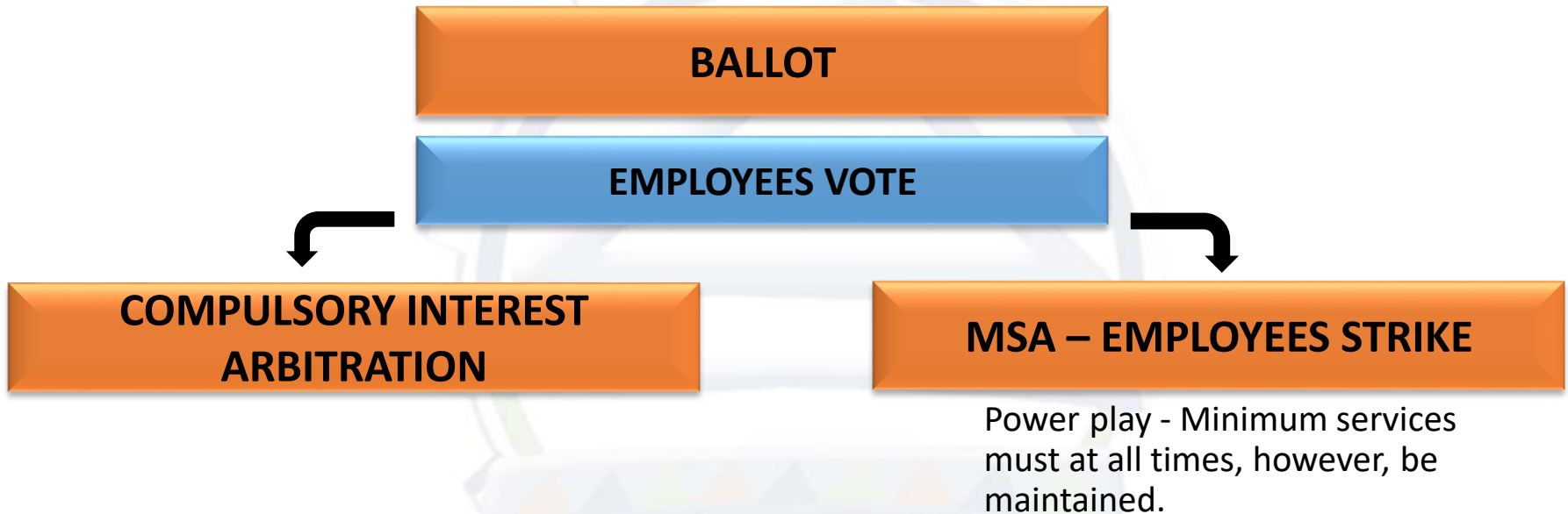
In the event that majority of the workers vote in favour of an interest arbitration, the matter may be referred to compulsory interest arbitration to the CCMA.





DISPUTE RESOLUTION IN RELATING TO MATTERS OF INTEREST WHERE THERE IS A RATIFIED MSA OR MSD (CONT'D...)

The importance of what happens if a Ballot takes place



***** If they issue a **STRIKE** notice before a **Ballot**, the case **CANNOT** be referred for Compulsory Interest Arbitration



CHALLENGES

What happens when the union takes us to the CCMA for a matter of mutual interest, eg wage increase?

- First thing is, when you go for conciliation please alert the CCMA Commissioner that you are rendering an essential service and the employees right to strike is limited
- The Second thing is; the Commissioner will ask if you have an MSA/MSD. If you have only the people allowed to strike in terms of the MSA/MSD will strike
- If the Commissioner does not do the above and erroneously issues a certificate sending all the workers to strike, Don't Panic, the employees first need to have picketing rules, in which case you need to alert the ESC that a certificate has been issued for the employees to strike.





Your Experiences

Have you had any cases of matters of mutual interest at the CCMA?

- How were they handled?
- Did the employees strike?
- How did you manage the situation?





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Q AND A





THANK YOU



NGIYA THOKOZA!

ro livhuwa!

ke a leboga!

ENKOSI!

dankie!

thank you!

udo livhuwa!

inkomu!

ke a leboga!

ngiyabonga!

siyabonqa!

