

# The IMSSA Review, number 1, November 1984

The IMSSA office will be circulating on a regular basis a review of this nature with information and news about events that have occurred during the previous period.

As this is the first of the IMSSA reviews it will be somewhat longer than those to follow as it provides an overview of events starting in Feb. 1984. IMSSA was established after a series of workshops, training sessions by overseas experts, seminars for unions and employer associations.

## OVERVIEW

### February 1984

During this month IMSSA employed Mrs. Dren Nupen on a full-time basis as the IMSSA Co-ordinator.

The IMSSA Steering Committee met at the Wits Graduate School of Business to finalise:-

- the registration of IMSSA as a Trust
- to plan the IMSSA fund-raising campaign.

### Members of the Steering Committee:

Mr Theo Heffer (Chairman)	Grinaker Holdings LTD
Mr. H. Botha	Institute for Industrial Relations
Mr Phiroshaw Camay*	Council of Unions of SA
Adv. Arthur Chaskalson, S.C.	Legal Resources Centre
Mr Loet Douwes Dekker (Convener)	University of the Witwatersrand
Mr. Fred Ferreira	Ford Motor Company of SA (PTY)LTD.
Mr Graham Giles	Legal Practitioner
Prof. Louis Kamfer	University of Port Elizabeth
Adv. Andre Lamprecht	Barlow Rand LTD.
Prof. Jim Leatt	Graduate School of Business, UCT
Ms. Lesley Liddell	Western Province Council of Churches
Mr Wells Ntuli	Anglovaal LTD.
Prof. Johan Piron	University of South Africa
Adv. Paul Pretorius (Alt.)	Legal Resources Centre
Prof. Lawrence Schlemmer	University of Natal
Prof. S.M Blackie Swart	University of Stellenbosch
Prof. Roux van der Merwe (Alt.)	University of Port Elizabeth
Mr. Ike van der Watt	SA Boilermakers' Society
Ms Loretta van Schalkwyk (Alt)	University of Natal

\* Mr Camay to confirm nature of future participation.



## **June 1984**

Up to this date IMSSA had been operating from the Wits Business School, whose support in providing facilities for the Service in its formative days IMSSA greatly appreciates, as well as the financial grant received from Ford Foundation.

In June IMSSA officially moved into its own offices.

In early June Dr. William P. Murphy, an arbitrator from the US visited South Africa. He addressed a group of people interested in I.R. on arbitration skills under the auspices of IMSSA. Later in the same month Mr. John Brand led a discussion on "Recognition Agreements" at the IMSSA office. The above discussions are part of a series that IMSSA is arranging on matters relating to relevant I.R. issues. The next meeting in the same series was in early November at the Graduate School of Business Administration. Mr. Loet Douwes Dekker discussed the following topic: "How can the authorised strike be institutionalised in S.A."

## **July 1984**

On the 12th July, the Steering Committee had its final meeting and discussed:

- fund-raising and the response received from companies to a fund-raising letter sent out by IMSSA to their I.R. personnel.
- the establishment of an arbitration panel which Mr. Paul Pretorius has undertaken to set up after a fact-finding tour of the USA and UK.

## **August 1984**

On the 13th August, the Board of Trustees, having replaced the Steering Committee, had their first formal meeting at the IMSSA office.

Mr Theo Heffer was elected Chairman of the Board and Mr. Loet Douwes Dekker the Deputy Chairman. The other members are: Mr. Ike van der Watt, Mr. John Brand, Adv. Tim Trollip, Mr. Andre Lamprecht and Adv. Paul Pretorius (the IMSSA panel rep.)

Issues discussed at the meeting:-

- to invite trade unions and employers to the IMSSA office for discussions, informal gatherings and workshops
- to set up a sub-committee to deal with education and an education programme for 1985
- to make contact with the Industrial Court and the Dept. of Manpower

- to pursue the establishment of the arbitration panel.

In late August, Mr Jim Power from the Federal Mediation and Conciliation Service in the US visited SA for the second time. His first visit was in 1982. The US State Department sponsored his trip and IMSSA arranged his schedule. Mr Power met with a wide cross-section of the I.R. community. He met with labour lawyers, representatives from the different unions in Natal and Transvaal, and company I.R. specialists.

Mr. Power held a mediation training workshop for IMSSA. IMSSA received 25 requests from people interested in training as part-time mediators; 18 of the applicants were selected for the 4-day workshop and 4 of the trainees have to date been invited onto the IMSSA panel of mediators. It is hoped that other persons who attended the workshop will also be invited onto the part-time panel when they have observed several mediations.

In general terms Mr. Power's visit was a success. His talks and discussions were well received. IMSSA was pleased by his input regarding the setting up of a mediation service infra-structure and the training of new IMSSA panellists.

Issues arising from the meetings held during Jim Power's visit:-

- a mediator's fee fixed at R400 per day
- an IMSSA administration fee of R50 per mediation
- a subsidy is available of up to R200 per day
- the status of panellists to be reviewed annually
- Mr. Paul Pretorius was nominated as the panel's representative on the Board
- mediators to meet annually and workshops to be arranged.

## **September 1984**

In late September, Mr. Loet Douwes Dekker travelled overseas to the US and UK for 3 weeks to study the additional services of FMCS and ACAS.

## IMSSA Review, number 5, June 1986

Ken Evans and Don Power came out to South Africa in **February** to run a pilot Relationships by Objectives (RBO) project for IMSSA. After meeting the representatives of the company and union involved, they conducted the three-day exercise together with three IMSSA mediators (Mark Anstey, Sylvia Gon & Julian Riekert) and IMSSA Deputy-Chairperson, Loet Douwes Dekker. All of the IMSSA participants were very impressed by the simplicity and effectiveness of the RBO technique and early reports from the workplace concerned were encouraging. It was noted that RBO is not a panacea for industrial relations ills but it could be highly effective if the parties are committed to improving their industrial relationship and if they recognise that there are no instant solutions to many industrial relations problems.

The RBO is, in essence, an extended mediation which employs a number of mediators. The two parties, management and union, spend four days at a suitable (preferably isolated) venue working in plenary and caucus sessions to identify the industrial relations problems in the workplace. When each party has produced an exhaustive list of problems the two parties meet in a plenary session to compile a combined, agreed list. Once this list has been prepared the parties separate again to amalgamate the listed solutions and to draw up a timetable for action. Specific individuals or groups will be given responsibility for taking the agreed action by the agreed deadline. By the end of this exercise the parties will have identified their industrial relations problems and drawn up a timetabled plan for remedial action.

That, however, is just the beginning and not the end. The real test of the exercise comes in the implementation of the action plan. This requires real commitment and determination from both parties for an extended time. If the parties have such commitment and determination the RBO offers an excellent prospect for ongoing solutions to problems and a general improvement in the industrial relations climate within their workplace.

Arnold Zack, a full-time private arbitrator from Boston, USA, visited IMSSA in **March** and ran a one-day seminar for IMSSA arbitrators. It was very well received and IMSSA looked forward to further training visits from Arnold Zack and his colleague and collaborator, Richard Bloch, who describe their joint training exercise as a travelling dog and pony show".

Charles Nupen was elected in a postal ballot to replace Paul Pretorius as the mediation panel's representative on the IMSSA Board of Trustees. At its **April** meeting, the Board of Trustees expressed its gratitude to Paul Pretorius for his enthusiasm, energy and many major contributions, including mediator training and the spadework for the introduction of the arbitration service, during IMSSA's early years.

The intervention figures for the first six months of 1986 were 70 mediation and 33 arbitrations. The IMSSA premises (Auto & General House, 1 Park Road, Richmond) had become very popular as a venue for both mediations and arbitrations. Comment in the IMSSA Review number 5 was that IMSSA welcomed the use of their premises by parties seeking a neutral venue but difficulties were experienced in catering for the increased demand for office space. Also, that third party intervention in industrial conflict appeared to be one of the growth areas in the South African economy.

A concern by mid-1986 was that the increased demand for arbitration led the Board of Trustees to approve a proposal to employ a full-time arbitrator who would be available at short notice to conduct urgent arbitrations. The proposal was that the post would be filled on a "sabbatical" basis - whereby members of the arbitration panel would be offered a stint of full-time arbitration, ranging in duration from 6 months to a year. If the demand during the trial period justified it, a permanent appointment would be made.

By the end of 1986 134 mediations and 58 arbitrations had been conducted. In addition, the **balloting service** was used on four occasions, involving the polling of approximately 2 700 workers. All four ballots were to determine trade union representivity.

Plans were made to conduct more arbitrator and mediator training to increase panel capacity. IMSSA policy had established that anyone who is closely associated with a trade union or a company would not be eligible for membership of the IMSSA panel. Training for arbitration service user training was also planned all the major centres.

Tony Shepherd, Senior Industrial Relations Officer and conciliator trainer of the UK Advisory, Conciliation and Arbitration Service (ACAS), came to South Africa in **September** to run a series of mediation training courses. Courses were held in Durban, Cape Town, Johannesburg and Port Elizabeth. He was accompanied on his travels by Charles Nupen and Julian Riekert, who provided South African input for the courses.

Julian Riekert had attended a five-day course for foreign conciliators and arbitrators run by ACAS in Portsmouth, UK prior to the South African training. Also on the course were conciliators from Eire, Hong Kong, Gibraltar and ACAS UK regional offices. He reported that the course was both instructive and entertaining and provided an excellent opportunity for him to preview Tony Shepherd's training course and make suggestions for customising it for South African conditions. Julian Riekert's visit was made possible through financial support from the Foreign and Commonwealth Office, the British Council and the Joseph Rountree Charitable Trust.

The training courses followed the same format as previous ones, containing a mixture of theory and case studies. The emphasis was on practical

experience, however, and simulations were all recorded on video tape and then exhaustively (and exhaustingly!) analysed.

The training sessions were not just hard work, however. Both the trainers and the trainees seem to have enjoyed the experience. A special word of thanks is due to Tony Shepherd who conducted five courses in three weeks, including two "back-to-back" in Cape Town. His approach was almost identical to that used by ACAS in its Portsmouth training programme except that there was more time given to negotiation skills, at IMSSA's request. The Portsmouth courses are run at the Portsmouth Management Centre which has two fully-equipped CCTV studios, complete with technicians. If Tony was surprised by the makeshift "bring your own tripod" approach of at least one of the South African venues, he concealed it well.

ACAS's continued contact and co-operation with IMSSA was acknowledged by the Board of Trustees for which IMSSA was particularly grateful during a "vexed time".

The vexed time to which the Board referred was the state of emergency in place at that time. The state of emergency had had widespread negative effects on industrial relations throughout the country and had been strongly criticised by a number of business leaders for that reason. IMSSA's work was directly affected because many trade union leaders were in hiding and others in detention. A number of mediations and arbitrations had to be cancelled for those reasons. IMSSA had no way of knowing how many others had been frustrated by the rigid controls imposed under the state of emergency but expressed the hope for rapid progress toward normality.



## **IMSSA Review, number 6, February 1987**

In order to meet the rapid increase in demand for IMSSA services, training courses were held for mediators, arbitrators and balloteers between September 1986 and March 1987.

We are excited by these signs of growth and life and by the calibre of our panellists, both new and existing. But there is a more sombre side to the story. Increased use means increased expenditure and our funds were severely strained by the unanticipated spurt of activity in 1986. It is not generally appreciated that IMSSA makes no profit from mediations and arbitrations. The fees charged to the parties represent only a fraction of the true cost of maintaining its services. Our principal benefactor, the Ford Foundation, has indicated its inability to increase its funding during the next two-year period. Given the strengthening of the Rand against the dollar, let alone an official inflation rate of roughly 20 percent, it becomes quite clear that we will have to extend and diversify our sources of funding. Although we have concentrated on overseas fund-raising to date, we are very conscious of the fact that IMSSA is an indigenous South African institution. In 1987 we are going to go out to the South African industrial relations community with an appeal for much greater local support. This is also necessary because of the susceptibility of foreign donors to disinvestment pressures. We are confident that sufficient funds will be forthcoming to carry IMSSA to even greater levels of effective service in the undoubtedly vexing years that lie ahead of South Africa and all its people.

### **Measuring Success**

"In order that people may be happy in their work, these three things are needed: They must be fit for it. They must not do too much of it. And they must have a sense of success in it." Ruskin's words can be applied to the life of the IMSSA mediator. We have no doubt that our mediators are fit for their work. We hope that they will not have to do too much of it. But how can we, and they, measure their success?

One way of doing this is by measuring the number of settlement agreements that they achieve under mediation. IMSSA used to use this criterion. But latterly we have found that this is too simplistic. It has emerged from discussions with some users that they felt that a mediation was a success although it did not result in a settlement in the presence of the mediator. Sometimes it clarifies issues. Sometimes it helped to remove misconceptions. With others it helped by providing an opportunity for a party to let off steam. On many occasions a settlement followed after only limited further discussion or negotiations.

This problem has also taxed other similar agencies, like ACAS in the UK. They have resolved it by using two categories: "disputes settled" and "disputes progressed" under mediation. This latter category is, of course, much more difficult to measure because in the normal course of events we are not notified of a subsequent settlement. However, in 1987 we intend to solicit this information from the parties at intervals after the conclusion of a mediation. We believe that in this way we will gain a more accurate insight into the effectiveness of the mediation process.

## First IMSSA Conference

Thanks to the dogged persistence of Charles Nupen, the mediators' representative on the IMSSA Board of Trustees, 1987 will witness an exciting new development for members of the mediation panel. The first IMSSA mediators' conference is to be held at the Mount Grace Country House Hotel, in the Magaliesberg, from **26 to 29 March 1987**. Although Mount Grace is one of the more delightful venues for a seminar in the greater Johannesburg area, life for our mediators will not be all beer and skittles. An exciting programme has been arranged for them, which includes a comprehensive course on the use and interpretation of company financial statements in collective bargaining, and a discussion, by experts in the field of job evaluation and its use in determining wage structures. There will also be ample opportunity for both formal and informal discussion between mediators from all the main centres. Indeed, we see this as one of the main benefits to be gained from the seminar, which we hope to make an annual event.

## User Training

Since we introduced a user training service last year it has become extraordinarily popular, both with management and unions. In fact we have also had requests to train mediation users in non-union areas, e.g. community mediation. There are two distinct modules to the training service, one on mediation and one on arbitration. Each takes one full day and works best if there are between six and twelve participants. We prefer to run these courses at the IMSSA office, but will do them in house if that is essential.



## **IMSSA Review, number 7, March 1989**

**1988** proved to be another year of growth for IMSSA. The organisation expanded on all fronts to meet the demands made by trade unions and companies for its services. Three hundred and thirteen mediations, 194 arbitrations, 23 ballots, 3 training courses and 2 RBOs were conducted in 1988.

The number of arbitrators on the IMSSA panel increased significantly following a training seminar held in Durban during March 1988. Richard Bloch led this seminar, as well as an advanced training seminar for members of the arbitration panel. He also conducted user courses for trade unionists and employers in Durban, Port Elizabeth and Cape Town.

**The membership of the arbitration panel now stands at 56.**

IMSSA has taken a decision to publish its arbitration awards in the form of a digest called "The IMSSA Arbitration Digest". Added to this, a selected number of awards will be published in the Industrial Law Journal.

Certain mediators will, in due course, be selected to be trained as RBO facilitators as IMSSA believes that this process will soon be in greater demand. Many requests for presentations of the programme have already been received.

### **Relationship by Objectives (RBO)**

The RBO, a new service provided by IMSSA, is a process designed to address and resolve a variety of problems which may exist between an employer and a union. It is conducted by at least two mediators who take shop stewards and trade union officials on the union's side and senior management on the employer's side through a highly structured programme over four days designed to identify and analyse difficulties in the relationship and to achieve consensus on a set of objectives to overcome them. Action plans are developed and the parties put on terms to execute them.

Two such exercises were conducted in 1988 and in both instances union and management participants were enthusiastic about the results. Follow up sessions are planned to measure progress. Certain mediators will, in due course, be selected to be trained as RBO facilitators as IMSSA believes that

this process will soon be in greater demand. Many requests for presentations of the programme have already been received.

## **Plans for 1989**

There is little doubt that both mediation and arbitration provided by IMSSA will continue to be required by both labour and management in their efforts to effectively manage the collective bargaining process. The time and effort which has gone into training further mediators and arbitrators will mean that the original core of mediators and arbitrators will no longer be so hardpressed to meet demand. Major training seminars for existing mediators and arbitrators are planned for April and May and international experts will be in attendance to assist.

IMSSA plans to offer training in mediation and arbitration techniques to users on a more systematic basis in 1989 so that parties can better prepare themselves when engaging in either mediation or arbitration.

IMSSA also plans to develop its research and library facilities and to expand the knowledge and skills of its panellists in aspects of conflict resolutions other than industrial mediation or arbitration. A community mediation workshop is planned for April.

To be able to do all this great efforts will obviously have to be made in the area of fund-raising. While IMSSA has traditionally relied on the Ford Foundation for financial assistance, its funding does not cover existing budgetary requirements. Both international and domestic fund-raising efforts have been initiated and much greater attention will have to be paid to this in future.

## **Office Staff and Facilities**

In the effort to maintain an optimum service level greater office space has been acquired, on the same premises, and a network of computer facilities is being installed. IMSSA will now be able to conduct several mediations and arbitrations at its premises at the same time.

The IMSSA staff complement has increased markedly in the last few months.  
The current staff complement comprises the following people:-

<b>Charles Nupen</b>	<b>Director</b>
<b>Pat Kirkman</b>	<b>Secretary</b>
<b>Felicity Steadman</b>	<b>Asst. to Director</b>
<b>Dren Nupen</b>	<b>Co-ordinator</b>
<b>Bontle Mpakanyane</b>	<b>Client Service</b>
<b>Zi Channing</b>	<b>Client Service</b>
<b>Anna Mariotti</b>	<b>Secretary</b>
<b>Jill Tucker</b>	<b>Bookkeeper</b>
<b>Soraya Delarey</b>	<b>Receptionist</b>
<b>Seth Phamuli</b>	<b>Interpreter</b>

### **The IMSSA Board of Trustees in 1988**

<b>Theo Heffer</b>	<b>Chairperson</b>
<b>Loet Douwes Dekker</b>	<b>Vice Chairperson</b>
<b>Andre Lamprecht</b>	
<b>Tim Trollip</b>	
<b>John Brand</b>	<b>Arbitration Panel Representative</b>
<b>Charles Nupen</b>	<b>Director</b>
<b>Clive Thompson</b>	<b>Western Cape Panel Rep.</b>
<b>Mark Anstey</b>	<b>Eastern Cape Panel Rep.</b>
<b>John Radford</b>	<b>Natal Panel Rep.</b>

## **IMSSA Review, number 8, August 1989**

The first six months of 1989 has proved to be as busy as predicted, and the demand for mediation and arbitration services has increased steadily during this period. Year on year, whereas there were some 120 mediations and 75 arbitrations during the first six months of 1988, there were 195 mediations and 117 arbitrations during the first six months of 1989.

This increase in demand may be attributed to a number of factors. In the first place, with the ever increasing unionisation of workers in South Africa, a wider range of parties are resorting to third party intervention to resolve disputes. Secondly, labour and management who have experience of mediation and arbitration, have continued to use third party neutrals to assist them in the process of dispute resolution. And thirdly, given the current political climate and the attitude of the major trade union federations to the current amendments to the Labour Relations Act, it is apparent that parties are turning with greater frequency to independent third party neutrals to assist them in resolving conflict. There are, for example, an increasing number of recognition agreements which require that conflicts of right be adjudicated through private arbitration under the auspices of IMSSA. Some German multinationals have, in accordance with the IG Metaal Code of Conduct for German investors in South Africa, agreed to refer disputes of right to private arbitration. IMSSA has for some time now been cited in the disputes procedures of many recognition agreements as the source of mediators.

### **Interventions (see INTERVENTION HISTORY)**

### **Other Activities**

Besides the provision of arbitration, mediation, balloting and RBO services, IMSSA's staff and panellists have been involved in a number of activities aimed at upgrading their professional and administrative skills. IMSSA mediation and arbitration panellists took part in community mediation, mediation and arbitration seminars during April and May. International experts in both mediation and arbitration were invited to attend the seminars and to share with the panellists their experiences and views from a different perspective.

**Tom Colosi**, vice-president of the American Arbitration Association and widely reputed to be one of the finest negotiation skills trainers in the United States, attended the National Mediation Seminar. He ran a negotiation skills course specifically designed for mediators, and offered important insights into third party intervention in the collective bargaining process. Another valuable session involved representatives of trade unions and companies who regularly use mediation giving their perspectives on key problems in collective bargaining, information disclosure, positional bargaining and the authority of

the mediator in the process, and provided an opportunity for mediators and users to debate these issues vigorously and frankly.

**Professor James Oldham** from Georgetown University, Washington, and an arbitrator attached to the American Arbitration Association and the Federal Mediation and Conciliation Service, attended the National Arbitration Seminar. He contributed to debates on topics such as terms of reference, appropriate sanctions and remedies in discipline and dismissal disputes, the influence of external law on the arbitration process, expedited arbitration and interest arbitration.

**Dr. Kate O'Regan** of the Labour Law Unit at the University of Cape Town presented a thoroughly researched review of IMSSA arbitration awards which will be published in the near future.

As a result of discussions held at these seminars, the IMSSA Director and his Assistant have been mandated to provide a more comprehensive flow of information and documentation on developments in the industrial relations field to panellists and to make more regular and greater contact with the panellists in the Western and Eastern Cape and Natal. An outreach programme has already been arranged for August involving both company and union users, and panellists in the Natal and Cape regions. A logical development, over time, must be **the establishment of IMSSA offices in the major centres in these regions.**

The **IMSSA staff** has been substantially strengthened by the addition of an Assistant to the Director (Felicity Steadman) and a full-time Bookkeeper and also by the computerisation of its functions. All staff have attended a computer course and most work is now undertaken with the assistance of a comprehensive computer networking system. In addition, the IMSSA offices have been expanded to accommodate more mediation and arbitration events, as well as to accommodate an enlarged staff complement.

The structure and function of the **IMSSA Board of Trustees** is in the process of being reviewed and the views of the various constituencies involved in IMSSA have been taken into account in undertaking this task

As a non-profit service organisation operating in the public interest, the **financial security of IMSSA** has traditionally depended on the success of its fund-raising efforts, as it generates limited income through the provision of its services. A domestic and international fund-raising drive was initiated during May, the results of which are not fully known to date. Although there have been favourable indications that finance will be forthcoming, grants made are usually short term and fund-raising therefore remains an ongoing priority to ensure the long term viability of the organisation.

The next six months should prove to be as demanding as the last have been, however it is anticipated that this will not place unmanageable strain on the

organisation as internal expansion and planning over the last year have made it possible for IMSSA to provide an efficient service under even the most demanding conditions.

## **The IMSSA Board of Trustees in 1989**

<b>Theo Heffer</b>	<b>Chairperson</b>
<b>Loet Douwes Dekker</b>	<b>Vice Chairperson</b>
<b>Andre Lamprecht</b>	
<b>Tim Trollip</b>	
<b>Ike van der Watt</b>	
<b>John Brand</b>	<b>Arbitration Panel Representative</b>
<b>Paul Pretorius</b>	<b>Mediation Panel Representative</b>
<b>Clive Thompson</b>	<b>Western Cape Panel Rep.</b>
<b>Mark Anstey</b>	<b>Eastern Cape Panel Rep.</b>
<b>John Radford</b>	<b>Natal Panel Rep.</b>
<b>Charles Nupen</b>	<b>Director</b>
<b>Felicity Steadman</b>	<b>Assistant to the Director</b>



# IMSSA Review, number 9, February 1990

## INTRODUCTION

The 1980's drew to a close with some major disputes having been successfully settled and other still deadlocked. As with each of the five years before it 1989 was yet another year of growth for IMSSA.

## INTERVENTIONS (see INTERVENTION HISTORY)

IMSSA has quite clearly secured an important niche in the developing South African industrial relations system. The role of professionals in private alternative dispute resolution is an increasingly important one. It is anticipated that while the demand for mediation and arbitration will continue to grow, interest in a variety of other forms of alternative dispute resolution will develop. In a developing climate of negotiation it is anticipated that IMSSA will be called upon to extend its dispute resolution services beyond those currently offered.

We plan in this Review to give you an indication of **developments which have taken place over the past twelve months.**

## Mediation

The figures indicate a 52% increase in the use of mediation during 1989 as compared with 1988.

IMSSA mediators mediated major disputes in the mining, manufacturing, retail, metal, motor, food, hotel, health, chemical, transport, textile, and tyre and rubber industries during 1989. Mediation was used in a number of significant disputes. In some cases industrial action had already been initiated by either the trade union or management. In the majority of cases however, the parties resorted to mediation once a dispute had been declared and various unsuccessful attempts had been made to resolve the dispute through dispute meetings or statutory mechanisms.

While IMSSA does not place any restrictions on the timing of mediation, its experience is that mediation works best when there is a very real pressure on the parties to settle. That pressure is often created by the imminent prospect of industrial action in the event of a failure to settle. In the light of this, many mediations occur after a Conciliation Board or Industrial Council Dispute Settlement Committee has met but failed to settle the dispute. A premature resort to mediation, in circumstances where collective bargaining has not been thoroughly exhausted, may leave the parties frustrated and disappointed in the process.



IMSSA mediators are sometimes requested to chair Conciliation Board meetings. They act in this capacity as a mediator would under any other circumstances.

Most mediations during 1989 concerned disputes of interest including wages and conditions of service and recognition although issues of direct socio-political relevance increasingly came on to the bargaining table. Racial discrimination issues and matters relating to the State of Emergency were often raised during mediations. In some cases these matters were resolved by the formulation of detailed procedural arrangements which provided for joint monitoring committees to be formed and for expedited dispute resolution mechanisms to be used.

There was a marked increase in the use of mediation in disputes of right including discipline and dismissals, and retrenchments.

Between 60% and 70% of disputes referred to mediation were settled during mediation. Many other disputes were settled in the post mediation phase prior to industrial action as a direct result of the mediation intervention. Mediators increasingly see their role not only as moving the parties from the point of conflict of settlement but also to assist parties in rethinking their approach to collective bargaining in a manner which builds and strengthens their relationship. There is some evidence in mediation proceedings to suggest that the parties have developed greater skill in the collective bargaining process and in the use of the mediation process. All too prevalent however is the "positional bargaining" syndrome where parties go through the motion of bargaining according to predetermined inflexible strategies, adjusting positions to the outer limits of their mandates without seriously engaging each other on the interests, expectations and concerns which inform and dictate positions adopted at the bargaining table.

The vast majority of mediations still occur in the Transvaal although it is anticipated that this trend will change as IMSSA develops a presence in the other provinces. Many mediations involved disputes between companies and unions who negotiate in national bargaining forums. These mediations obviously involve union and company representatives from around the country and have industry wide implications.

IMSSA's experience is that most substantive collective bargaining occurs between June and November and that as a consequence these were the busiest months for the organisation. The average mediation in 1989 lasted one day and the cost to the parties was approximately R1 000. This charge included the mediator's fee, the IMSSA administration fee and sundry travel and accommodation costs which might have been incurred by the mediator. The usual practice is that each party is responsible for half of these costs.