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Undercurrents

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Education Departments across the country have put in place some strict measures relating to the appointment of staff between now and the end of the year. We have had several queries around their actions, and some disquiet has been voiced. Is there anything to be done?

ARE GOVERNING BODIES' ROLES IN THE APPOINTMENT OF STAFF BEING CHANGED?

The thin edge of the wedge?

A number of provincial education departments have come up with a strategy for dealing with the staffing situation in the country's schools for the coming academic year. The strategy is obviously aimed at resolving some of their biggest personnel problems, particularly in respect of the following:

- ⇒ reducing the number of staff in excess;
- ⇒ accommodating the remaining members of staff in excess;
- ⇒ accommodating new entrants to the profession, including bursary holders and those wishing to return after a break of more than one year;
- ⇒ making provision for staff in substantive posts, who have been appointed either temporarily or on contract.

In doing so, they are coming pretty close to what looks like ***making appointments on their own, and sidelining schools and governing bodies in the process.*** The question is to what extent they are entitled to do this, and whether their actions are legal.

Some positive issues

- ◆ In the first instance, the sooner we can get the matter of teachers in excess resolved the better for all concerned, and for education as a whole. Any sensible initiatives in this regard are therefore to be embraced and welcomed.
- ◆ When it comes to those in excess, they have generally been viewed in a very negative light, and schools were prepared to go to almost any lengths to avoid taking them on. There may well be some justification for this for very obvious reasons, but please recognise that in the present round, ***there could be a number of teachers declared in excess in accordance with the LIFO principle (last in, first out.) There could therefore be some pretty competent young teachers on the 'excess' list this time round, and they could well be worth giving a chance.***
- ◆ And thirdly, let's look at the bursary holders. Recent experience suggests that those doing the selection of bursary winners have made some excellent choices. The latest crop of bursary holders has included some quite outstanding young people. This has two outflows:
 - ◇ The first and most obvious is that there are probably some ***really competent young people, very valuable staff members for the future, among the bursary holders.*** You could be very lucky to get some of them.
 - ◇ Related to that is the fact that the South African teaching corps is relatively old. Some figures put ***those intending to retire within the next ten years at as high as 40% of all teachers.*** This means that in the fairly near future we are going to need to replace our excellent retirees with a whole new generation of teachers. It is surely ***in everyone's interests that we start getting this new generation into our schools sooner rather than later, mentor them carefully and get them ready to step into the breach in the years to come.*** We all had to start somewhere. It is surely only right and sensible that we give today's beginners the opportunity and training to become a really competent "next-generation" of teachers. We would hate the current generation to fail the next one in this!
- ◆ And finally, on the aspect of new entrants and returnees: you should realize that ***staff currently in SGB posts would be classified as either new entrants*** (if they have never held a state post) ***or returnees*** (provided they last held a state post more than a year ago). This opens up real possibilities for schools.

What of the legalities of the Departments' actions?

Whoever wrote the latest circulars did their homework and got matters pretty much spot on. While it is true that under normal circumstances "any appointment, promotion or transfer to any post on the educator establishment of a public school **may only be made on the recommendation of the governing body**", the departments are invoking the fact that the circumstances at the moment are anything but normal.

Excess teachers and bursary holders

Given the fact that there are considerable numbers of teachers "in excess" and also the large numbers of bursary holders that have not been placed in posts, the departments are invoking a special right which applies in such circumstances. Relevant law entitles the department to act as follows (*this is all laid out in the Employment of Educators Act, Act 76 of 1998, Chapter 3, Sections 6, 6A, 6B, 7 and 8.*):

- ◆ **Limit the choice of governing bodies by requiring the school to give preference** to teachers in excess, bursary holders, first-time entrants or those returning after a break of a year or longer.
- ◆ **Decide in its own right to place any one of the above four categories of teachers in a school**, after it has consulted the governing body, and provided it has satisfied itself that the person concerned matches the requirements of the post and has the necessary qualifications. (*This highlights a potential problem, in that it raises once again the hardy annual of distinguishing between 'in consultation with' [where both parties appear to have a roughly equal say], and 'after consultation with', [in which the senior party to the discussions has to listen to the views of the other party, but need not act in accordance with them.] Even in the 'after consultation' scenario, which is the one we are looking at here, SGBs need to make their views known forcibly and hold their ground during the consultation process: i.e. the consultation must be 'genuine'.)*
- ◆ Transfer an educator from one post to another **with the recommendation of the relevant governing body**.
- ◆ Transfer an educator from one school to another **without the recommendation of the relevant governing body**, provided that the transfer is for a fixed period, and that the staff member concerned vacates the post at the end of the fixed period. (*This is normally only done pending advertising, interviewing and the submission of a recommendation by the SGB—e.g. in the interim while awaiting the publication of a vacancy list. It is not envisaged that this will be used in the current setup.*)
- ◆ After consultation with the SGB, (*see bullet 2 above for an explanation of 'after consultation'*) convert a temporary appointment of someone on the staff into a permanent appointment, **without the recommendation of the governing body**.

This does not generally sit comfortably with principals or governors, but it is the law, and it may just be opening a door in terms of the renewal of the teaching profession by bringing in fresh young blood. In the meantime, what can and can't you do?

Advice in a nutshell

- ⇒ Understand that in most provinces this is not a problem that will go away after one round, so use the hints below to position your school effectively for the future.
- ⇒ Make sure that whenever you advertise a post or set up its profile, you **include all the important criteria**—you won't be able to change or expand on them later.
- ⇒ Get to the front of the queue when it comes to selecting bursary holders: advertise your posts timeously, run the proceedings efficiently and expeditiously, choose carefully and get your choices in to the department as soon as possible.
- ⇒ Source bursary holders as early as you can—check out who is studying what; get them to 'prac teach' at the school, if possible; source information about the top students and those with broad interests (don't neglect the extra-murals or the extent to which the candidates will fit the culture of the school).
- ⇒ Only accept a teacher sent to the school if he or she has an **official letter of appointment, outlining the post**, his or her position, the post to be filled, and all the relevant details.
- ⇒ Check very carefully that the person you have been sent does actually **fit the profile of the post and has all the relevant qualifications**.
- ⇒ If these last two matters bring to the fore any problems, **do not accept the person without reverting to the Department**. Some departments will be more forthcoming than others, but at least put your case and give them the opportunity to hear you.
- ⇒ If in the end you have to take on someone about whom you have doubts, manage them very carefully: for example:
 - ✓ give them two really good mentors (a social/admin one and an academic one);
 - ✓ put them alongside a strong 'lead teacher' who will be teaching the same work to another class in the same grade;
 - ✓ beware of giving them a really strong, really weak or ill-disciplined class;
 - ✓ in short, make sure of the three Ms - manage, monitor and measure carefully, sensibly and sensitively.

More information

Please note that this is an abbreviated version of a fuller document we have put together. The matter is complex and fraught with any number of issues. You have here the basics to keep you on the right legal track as you respond to the department, but if you want to know more about the intricacies, please go to the full document on our website. Login and then go to **DOCUMENTS—MEMBERS ONLY**; scan the drop-downs on the right of the page under **ADVICE ON GOVERNANCE** and then go to the alphabetically-listed documents and look for **APPOINTMENT OF STAFF FOR 2015**.