**Memorandum from the Parliamentary Office**

**NATIONAL ASSEMBLY

FOR WRITTEN REPLY

QUESTION 3491**

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**(INTERNAL QUESTION PAPER 37 OF 2015)

Prof B Bozzoli (DA) to ask the Minister of Higher Education and Training;**(1) Does the East Cape Midlands Technical and Vocational Education and Training College (East Cape Midlands TVET College) intend to perform a membership audit of all of the unions representing employees at the specified college; if not, why not; if so, (a) when will the audit be conducted and (b) will the results inform the manner in which collective bargaining is undertaken at the specified college;

(2) a) why have approximately 66 former members of staff who received formal dismissal notices from the specified college for striking illegally, 33 of whom have serious criminal charges already laid against them, including arson, intimidation and attempted murder, been rehired by the specified college and (b) what are the terms of employment for the rehired staff members;

(3) were the relevant positions advertised; if not, why not; **if** so, what are the relevant details;

( 4) what is the total monetary value of the damage caused to property during the violent strike earlier in 2015? NW4153E **REPLY:**(1) Yes. The Eastcape Midlands Technical and Vocational Education and Training (TVET) college in conjunction with the Department of Higher Education and Training will be conducting a union membership audit as part of an annual requirement to determine which recognised unions have organisational rights within the College.

(a) The audit will be conducted during the last quarter of the 2015 academic year.

(b) No. Collective bargaining can only take place at a central level through the General Public Service Sectorial Bargaining Council (GPSSBC), Education Labour Relations Council (ELRC) and/or Public Service Coordinating Bargaining Council (PSCBC). It is envisaged that through the College Labour Relations Forum, many issues of rights can be discussed, which will improve and enhance employer-employee relations, as well as secure labour peace and stability.

(2) (a) The College, after seeking legal advice, realised that the dismissals could be declared null and *void* on procedural grounds. The College therefore agreed to a "re-hearing'', which meant the dismissals would be null and *void.* There is no concept of "re-hearing" in the labour relations regime and such a process would be highly contestable. The dismissals would have only been fully effective after their appeals were rejected, and even then they would have had the right to challenge the dismissals further through dispute resolution mechanisms, including the labour courts and other courts. The affected employees were not rehired but re-instated.

The inherent risks in waiting for the process to be concluded and based on the legal advice, the unprocedural actions by the College would have impacted on the normalisation of learning and teaching, as well as resources of the College. If the College was found to have acted "unprocedurally" during the hearings, the possibility existed that the employees could have returned to the College on their own terms which was something that the Department and College had to mitigate against. The re-instatement of the employees was part of a settlement agreement with the National Education, Health and Allied Workers' Union (NEHAWU).

(b) The terms and conditions of the settlement agreement are as follows:
• The employees were on leave without pay from the date of their dismissal to 6 September 2015;
• All employees who embarked on the unprotected strike will forfeit a month's salary and repay any payments made to them while they were part of the unprotecied strike. This is aligned to the principle of "no work no pay"; and
• Accept a twelve month final written warning not to engage in any misconduct activities. The final written warning indicates that if the employee is found guilty of any misconduct. it will lead to a call for their dismissal.

While there were a number of employees who faced charges related to acts of arson, intimidation and attempted murder, they remain innocent until found guilty of the charges in terms of the South African legal system. In South Africa, both criminal charges and disciplinary hearings can be undertaken in parallel. It should be noted that charges were laid/instituted by individuals and not the College. At this time, the Department and College are investigating all employees who embarked on the unprotecied strike for misconduct, which will soon be followed by disciplinary action.

(3) The positions were not advertised as there were appeal processes still to be completed. However, the College opted to appoint temporary lecturers to replace striking or dismissed lecturers in order for teaching and learning to continue.

(4) Since no single employee could be identified for causing any loss or damage, the College will be undertaking a forensic audit to accurately quantify the expenses and damage incurred or caused during the strike. According to estimated College calculations, the monetary value of expenses and damage caused to property is estimated at R4 297 180.16. The College intends exercising its right to claim these damages from NEHAWU and individuals who are found guilty after disciplinary hearings are completed. This excludes the expenses and damage caused to the vehicles and property of College personnel who were not on strike, as they have their right to claim damages reserved.

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REPLY TO QUESTION 3491 APPROVED/NOT APPROVED/AMENDED

Dr BE NZIMANDE, MP

MINISTER OF HIGHER EDUCATION AND TRAINING

STATUS:

DATE: