MINORITY TRADE UNIONS ARE BOUND BY EXTENDED COLLECTIVE AGREEMENTS

The Labour Relations Act, No 66 of 1995 (LRA) endeavours to promote and facilitate collective bargaining at sectoral level and in the workplace.

The outcome of negotiations in the workplace is often embodied in a collective agreement concluded by the employer and majority trade union(s) which may, amongst other things, regulate wages and conditions of employment.

Section 23(1)(d) of the LRA caters for the extension of these collective agreements to non-parties of the agreement, provided that certain requirements are met. The requirements are that the:

- employees must be identified in the agreement;
- agreement expressly binds the employees; and
- trade union(s) have as their members the majority of employees employed by the employer in the workplace.

Should the requirements be satisfied, minority trade unions and non-unionised employees will be bound by collective agreements extended in terms of this section.

In the case of Chamber of Mines of South Africa acting in its own name and obo Harmony Gold Mining Company Ltd and another v Association of Mineworkers and Construction Union (AMCU) and others [2014] 3 BLLR 258 (LC), the court held that AMCU, as a minority trade union, was bound by the collective agreement concluded by the employer and three other trade unions who, acting jointly, had as their members the majority of employees employed by the employer in a workplace.

The basis for the application was that AMCU members were bound by a collective agreement entered into by the Chamber of Mines and the majority trade unions which regulated wages and other terms and conditions of employment (which agreement extended to all employees in the sector) and, among other things, prohibited a strike by those bound by the agreement over issues which were regulated by same.

AMCU alleged that their members were not bound by the agreement as it would constitute an infringement of their members’ constitutional right to strike in support of demands for more generous terms and conditions of employment.

The very purpose of s23(1)(d) of the LRA is to bind non-parties in the workplace in respect of collective agreements concluded by the majority trade union(s). Similarly, the purpose of s65(1)(a) of the LRA is to prohibit these persons from embarking on a strike if the issue in dispute is regulated by a collective agreement. There is no less restrictive means of achieving the applicable purposes. What would also remain is the ordinary common law principle that contracting parties are bound by their agreements.

Section 23(1)(d) of the LRA allows employers to prevent minority trade unions from sabotaging wage negotiations at the workplace. Further, it ensures that these trade unions are bound by collective agreements entered into by the employer and the majority trade union(s) thereby precluding them from embarking on a strike where the issue in dispute is regulated by the agreement.

Hugo Pienaar and Joloudi Badenhorst

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