

EMPLOYMENT ALERT

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CAN A SMALL MINORITY OF EMPLOYEES FORCE THE MAJORITY TO GO ON STRIKE?

It is not uncommon for a small number of employees at a workplace to induce their colleagues to strike in support of demands.

This could happen where the majority of employees would prefer not to go on strike. When employees strike they are not entitled to remuneration for the duration of the strike. The losses suffered by striking employees can sometimes outweigh the benefits obtained through last-minute concessions by the employer.

For the above reasons, it was long believed that the right to strike should follow a democratic process within trade union structures. In terms of s65(2)(b) of the previous Labour Relations Act, No 28 of 1956 (old Act), trade union members could not strike unless the majority of the union members at that workplace voted in favour of such strike action.

When the new Labour Relations Act, No 66 of 1995 (LRA) came into effect at the dawning of our new democracy, prevailing thoughts were that such a provision would unduly limit the right to strike and it was therefore omitted from the LRA.

Unfortunately, the right to strike without the buy-in of the majority of union members has arguably led to the abuse of this right. Intimidatory practices, violence and damage to property are commonly used (by mostly smaller groups) to compel others to strike.

The Labour Relations Amendment Bill (Bill), tabled by the Minister of Labour in April 2012, reintroduced the strike ballot requirement. It provided that a strike would only be protected if supported by the majority of the trade union members at a workplace.

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However, Parliament's Portfolio Committee on Labour has decided to once again exclude the balloting provision from the latest version of the Bill. This has been seen as a concession to the Labour union movement and its interest in excluding such a clause. The Bill will be voted on after Parliament's winter recess and continues to be vigorously debated.

The removal of this requirement is regrettable. The disruptive effects of industrial action could have been limited to those instances where there is a genuine large-scale feeling of discontent or disgruntlement. The absence of a ballot provision permits small interest groups to more readily manufacture disputes and disrupt operations. The long-term effect of this on employee relations could be detrimental to labour and business. The vehement debate that preceded the proposed removal of the ballot provision evidences the need for an alternative method of regulating the high number of strikes that are destabilising the South African markets.

Johan Botes and Wandile Sishi

AFRICA INSIGHTS ON EMPLOYMENT



VIEW FROM BOTSWANA

On 16 May 2011, a total of 2,934 public officers employed in essential services throughout Botswana were dismissed for failing to comply with an industrial court order.

The Court declared their strike for higher wages to be unlawful and interdicted them from continuing with the strike. On 16 September 2011 three trade unions representing the dismissed employees, together with one of their members, launched proceedings to have the dismissals reviewed and set aside. The application was successful. The matter was subsequently taken on appeal to the Court of Appeal of the Republic of Botswana.

In paragraph 78 of the judgment by the Botswana Appeal Court, the Court stated as follows:

"In Botswana strikes are not a common occurrence. We have no 'strike season', and violence and destruction to property during industrial action is almost unknown. Generally industrial relations are good, with mutually acceptable salary increases being sensibly negotiated from time to time, both in the private sector and the public sector. This is to be expected in a country that has enjoyed peace and stability for more than forty-five years since Independence. The public service, which is the backbone of the administration, enjoys a well-earned reputation for diligence and discipline which is difficult to match in the region. Botswana is also a country in which the rule of law is universally respected.

Court orders are to be obeyed, promptly and without debate, as every Motswana knows. Disagreement can be debated later, in an appeal. No exception is made in the case of strikers or their unions. Against that background, the public service general strike – the first in Botswana's history – came at an unpropitious time. Public officers had not had a rise in salary for a considerable period, and the cost of living had risen steadily. But this coincided with a worldwide recession from which Botswana was not immune. Diamond sales had slumped and there were severe budgetary constraints. This made salary negotiations extremely difficult.

We express no opinion as to whether the sentiments expressed by the Botswana Appeal Court are correct or valid. What is however interesting is the perception by the Botswana Appeal Court of the region. Is it not up to all of us to change such perceptions?"

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