

30 JANUARY 2017

EMPLOYMENT ALERT

Our programme on Conducting a Disciplinary Enquiry has been accredited by the Services SETA.

IN THIS ISSUE

ABSENT PROOF OF TRADE UNION MEMBERSHIP. NO STRIKE!

Strike action invariably demonstrates a union's ability to mobilise its members. However, it often occurs that unions are capable of mobilising more than just their members, particularly when non-members have something to benefit from the industrial action. This situation lends itself to a numbers game, where a striking union prefers large numbers and is less concerned with their loyal standing in relation to those participating non-members.



[CLICK HERE](#) to view our NEW Employment Strike Guideline

ABSENT PROOF OF TRADE UNION MEMBERSHIP. NO STRIKE!

Section 200 of the Labour Relations Act (LRA) states without any ambiguity that a trade union may act in capacities listed therein in a dispute to which any of its members is a party.

In an attempt to prove that the employees were its members, DEMAWUSA relied on the membership application forms submitted by the employees together with resignation forms terminating their membership with SAMWU.

Strike action invariably demonstrates a union's ability to mobilise its members. However, it often occurs that unions are capable of mobilising more than just their members, particularly when non-members have something to benefit from the industrial action. This situation lends itself to a numbers game, where a striking union prefers large numbers and is less concerned with their loyal standing in relation to those participating non-members.

Section 200 of the Labour Relations Act (LRA) states without any ambiguity that a trade union may act in capacities listed therein in a dispute to which any of its members is a party. Does this suggest that a trade union must prove the employees' trade union membership before it could embark on a strike?

In *Johannesburg Metropolitan Bus Service Soc Limited v DEMAWUSA and Others* (J2903/16) [2017] ZALCJHB 1 (6 January 2017), the Labour Court was faced with this question. In this case, DEMAWUSA had intended to embark on a strike on behalf of Metrobus' employees. Metrobus interdicted the strike on the grounds including, *inter alia*, that DEMAWUSA lacked *locus standi* to act on behalf of the employees.

SAMWU did not oppose the interdict but filed an affidavit as the second respondent in this matter confirming that on the date of the intended strike, the employees were its members as it was still deducting trade union subscription

fees from their remuneration. It was contended by SAMWU that the employees should be precluded from the strike action until DEMAWUSA had demonstrated their membership.

In an attempt to prove that the employees were its members, DEMAWUSA relied on the membership application forms submitted by the employees together with resignation forms terminating their membership with SAMWU. On this point, DEMAWUSA contended that SAMWU's constitution provides that an employees' membership terminates where such employee joins another trade union.

The Labour Court had to decide whether DEMAWUSA had proved the membership of the employees, which is necessary for it to have the requisite authority to act on their behalf. The Court found that DEMAWUSA's reliance on SAMWU's constitution did not prove the termination of the employees' membership with SAMWU, as employees were still paying their membership

ABSENT PROOF OF TRADE UNION MEMBERSHIP. NO STRIKE!

CONTINUED

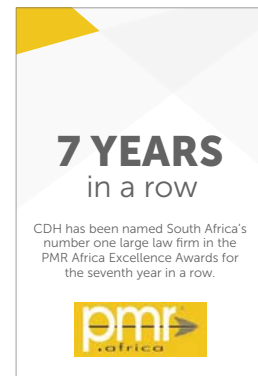
Although the court did not expressly state that the deduction of union subscription fees constitutes sufficient proof of membership, it is clear that this is an important factor in determining membership.

subscription fees. The court further found that the application forms could not be relied upon. In this regard, absent proof of DEMAWUSA's membership the Labour Court found it lacked the authority to act.

Although the court did not expressly state that the deduction of union subscription fees constitutes sufficient proof of membership, it is clear that this is an important factor in determining membership.

This judgment makes it clear that a trade union cannot embark on a strike on behalf of employees where such employees are not its members unless in solidarity action. Although the facts of this case are specific, the principle may be applicable in many instances where an employer is faced with a strike action especially where there is more than one trade union in the workplace. However, where the employer is aware that the union has a membership, other grounds to interdict a strike must be considered.

Fiona Leppan and Bheki Nhlapho



Employment STRIKE GUIDELINE

Our Employment practice's new
EMPLOYMENT STRIKE GUIDELINE
answers our clients' FAQs.

Topics discussed include strikes, lock-outs and picketing.

 [CLICK HERE TO FIND OUT MORE](#)

CHAMBERS GLOBAL 2014 - 2016 ranks our Employment practice in Band 2: Employment.

Aadil Patel ranked by CHAMBERS GLOBAL 2015 - 2016 in Band 2: Employment.

Hugo Pienaar ranked by CHAMBERS GLOBAL 2014 - 2016 in Band 2: Employment.

Fiona Leppan ranked by CHAMBERS GLOBAL 2016 in Band 3: Employment.



Michael Yeates named winner in the **2015 and 2016 ILO Client Choice International Awards** in the category 'Employment and Benefits, South Africa'.



OUR TEAM

For more information about our Employment practice and services, please contact:



Aadil Patel
National Practice Head
Director
T +27 (0)11 562 1107
E aadil.patel@cdhlegal.com



Gillian Lumb
Regional Practice Head
Director
T +27 (0)21 481 6315
E gillian.lumb@cdhlegal.com



Fiona Leppan
Director
T +27 (0)11 562 1152
E fiona.leppan@cdhlegal.com



Hugo Pienaar
Director
T +27 (0)11 562 1350
E hugo.pienaar@cdhlegal.com



Nicholas Preston
Director
T +27 (0)11 562 1788
E nicholas.preston@cdhlegal.com



Thabang Rapuleng
Director
T +27 (0)11 562 1759
E thabang.rapuleng@cdhlegal.com



Samiksha Singh
Director
T +27 (0)21 481 6314
E samiksha.singh@cdhlegal.com



Gavin Stansfield
Director
T +27 (0)21 481 6313
E gavin.stansfield@cdhlegal.com



Michael Yeates
Director
T +27 (0)11 562 1184
E michael.yeates@cdhlegal.com



Anli Bezuidenhout
Senior Associate
T +27 (0)21 481 6351
E anli.bezuidenhout@cdhlegal.com



Kirsten Caddy
Senior Associate
T +27 (0)11 562 1412
E kirsten.caddy@cdhlegal.com



Samantha Coetzer
Senior Associate
Professional Support Lawyer
T +27 (0)11 562 1019
E samantha.coetzer@cdhlegal.com



Ndumiso Zwane
Senior Associate
T +27 (0)11 562 1231
E ndumiso.zwane@cdhlegal.com



Samantha Bonato
Associate
T +27 (0)11 562 1134
E samantha.bonato@cdhlegal.com



Sean Jamieson
Associate
T +27 (0)11 562 1296
E sean.jamieson@cdhlegal.com



Zola Mcaciso
Associate
T +27 (0)21 481 6316
E zola.mcaciso@cdhlegal.com



Anelisa Mkeme
Associate
T +27 (0)11 562 1039
E anelisa.mkeme@cdhlegal.com



Prinoleen Naidoo
Associate
T +27 (0)11 562 1829
E prinoleen.naidoo@cdhlegal.com



Bheki Nhlapho
Associate
T +27 (0)11 562 1568
E bheki.nhlapho@cdhlegal.com

BBBEE STATUS: LEVEL THREE CONTRIBUTOR

Cliffe Dekker Hofmeyr is very pleased to have achieved a Level 3 BBBEE verification under the new BBBEE Codes of Good Practice. Our BBBEE verification is one of several components of our transformation strategy and we continue to seek ways of improving it in a meaningful manner.

This information is published for general information purposes and is not intended to constitute legal advice. Specialist legal advice should always be sought in relation to any particular situation. Cliffe Dekker Hofmeyr will accept no responsibility for any actions taken or not taken on the basis of this publication.

JOHANNESBURG

1 Protea Place, Sandton, Johannesburg, 2196. Private Bag X40, Benmore, 2010, South Africa. Dx 154 Randburg and Dx 42 Johannesburg.
T +27 (0)11 562 1000 F +27 (0)11 562 1111 E jhb@cdhlegal.com

CAPE TOWN

11 Buitengracht Street, Cape Town, 8001. PO Box 695, Cape Town, 8000, South Africa. Dx 5 Cape Town.
T +27 (0)21 481 6300 F +27 (0)21 481 6388 E ctn@cdhlegal.com

©2017 1474/JAN

