

THE MINeworkERS' UNPROCEDURAL STRIKE: SETTING THE PATH FOR REDEFINING COLLECTIVE BARGAINING PRACTICE IN SOUTH AFRICA

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Abstract: The propensity for workers in South Africa to undertake unprocedural industrial action has assumed a worrisome dimension in recent years. The author examines the current strike actions by workers, especially in the mining industry, in relation to the collective bargaining procedure recognised by the labour legislation. The emerging evidence suggests a radical departure by workers from the established collective bargaining and labour dispute resolution procedures stipulated by the Labour Relations Act no. 66 of 1995. The current trend is for workers to disregard requirements of the labour legislation, and to breach provisions of existing collective agreements duly executed by elected labour union officials by embarking on wildcat strike actions, in the process employing violence, arson, intimidation and threats in order to force employers to accede to their demands. This unconventional collective bargaining and dispute resolution mechanisms 'invented' by workers portend grave danger for a peaceful and harmonious industrial relations practice in the country.

Key phrases: *collective bargaining, dispute resolution mechanism, illegal industrial actions, labour relations legislation, wildcat strike*

1. INTRODUCTION

Industrial relations practice in South Africa is generally regulated by the provisions of the Labour Relations Act, no. 66 of 1995, which replaces the Labour Relations Act, no. 28 of 1956. The Labour Relations Act, no. 66 of 1995 (hereafter referred to as the LRA) is, in itself, guided by Section 27 of the Constitution of the Republic of South Africa (1996), which is the supreme law of the land. The LRA provides a framework for the resolution of labour disputes through established statutory structures such as the Commission for Conciliation, Mediation and Arbitration (CCMA), the Labour Court and the Labour Appeal Court. Procedures for recognised labour relation engagements such as industrial actions, lock-outs, trade disputes and dispute resolution are regulated by relevant provisions of the LRA through the statutory structures.

The primary intent and purpose of the LRA is the overall advancement of "economic development, social justice, labour peace and the democratisation of the workplace" (Bendix 2010:125). This primary function is intended to be achieved, for example, through:

- Provision of a framework in which employees and their unions, employers and employer associations can bargain collectively to determine wages, terms and conditions of employment and other matters of mutual interest;
- Promotion of orderly collective bargaining at sectoral level; and
- The effective resolution of disputes (Bendix 2010:125).

Salamon (1998:305) defines collective bargaining as “a method of determining terms and conditions of employment and regulating the employment relationship which utilises the process of negotiation between representatives of management and employees intended to result in an agreement which may be applied across a group of employees”. The concept of bargaining, according to Nel, Kirsten, Swanepoel, Erasmus and Poisat (2012:196) is a process of meeting; presenting demands, counter-demands and proposals; haggling; convincing; and, in many cases, threatening until agreement is reached.

The mutual understanding that is subsequently reached through the process of collective bargaining defined above is referred to as "Collective Agreement". Section 213 of the LRA defines a collective agreement as "a written agreement concerning terms and conditions of employment or any other matter of mutual interest between, on the one hand, one or more registered trade unions and the other, one or more employers, or one or more registered employers' organisations, or more employers together with one or more registered employers' organisations".

The LRA recognises and indeed specifically emphasises the importance of collective agreements as a major instrument that regulates relationships between workers and their employers in the workplace, and binds all parties to the agreement. The legislation further states that collective agreements shall also be binding, for the whole period of the agreement, on the members of the relevant trade unions or employers' organisations who were members when the agreement became binding or who became members after the agreement became binding. In other words, collective agreements are binding on both the present and future employees of the organisation.

1.1 Recognition of collective agreement

The LRA further extends the coverage of collective agreements to equally bind an employee who is not a member of a registered trade union which is a party to the agreement, but provided that the union represents a majority of employees in the organisation. In practical terms, this suggests that employers only need to conclude a single agreement (with a majority trade union) that covers all employees in their organisation. Operation of this particular provision of the LRA has over the time

attracted a lot of controversy within the trade union circle (particularly minority unions) and labour analysts, as it appears to place majority unions at an advantage over minority unions. However, the debate is outside the scope of this paper.

1.2 Universal recognition of collective bargaining practise

The platform for the right to recognise collective bargaining internationally was provided by the International Labour Organisation (ILO) which South Africa subscribes to. Art. 2 of the ILO Collective Bargaining Convention No 154 (cited in Sewervnski 2007:1) extends the definition of the term 'collective bargaining' "to include all negotiations which take place between an employer, a group of employers or one or more employers' organisations, on the one hand, and one or more workers' organizations, on the other, for: (a) determining working conditions and terms of employment: and/or (b) regulating relations between employers and workers."

However, the term 'negotiation' may be interpreted more widely, as was agreed in the preparatory work for ILO Convention No. 151 (cited in Sewervnski 2007:1) as including "any form of discussion, formal or informal, that was designed to reach agreement." Furthermore, in light of art. 3 of Convention No. 151, as well as of art. 5 of ILO Convention No. 135 on Workers' Representatives, it is clear that in the absence of a workers' organization, other workers' representatives could be a party to collective bargaining. In contrast to the various articles of the ILO Collective Bargaining Convention referred to above, which suggest that employers can enter into a binding collective agreement with non-union employees' representatives, the LRA seems to suggest otherwise, by placing emphasis on 'registered trade unions' as the only representative of workers that can enter into a binding collective agreement with employers or employers' organisations in the workplace.

For the purpose of this paper, collective bargaining will be discussed and understood within the context defined by Section 213 of the LRA.

2. TRADE UNIONS AS TRADITIONAL FORM OF EMPLOYEE REPRESENTATION IN COLLECTIVE BARGAINING

The right of trade unions to represent employees in collective bargaining within the work establishment is, in most cases, usually defined by a piece of legislation (for example, the LRA, no. 66 of 1995 in South Africa). The LRA creates a framework that

promotes constructive bargaining by 1) extending organisational rights to trade unions, such as right of access to an employer's property to conduct meetings and recruit new members, deduction of membership fees from employee members' salaries, paid leave for shop stewards to attend to union matters, workplace representativeness, and access to information that will assist unions during negotiations; and 2) establishing various bargaining forums such as bargaining councils, statutory councils, and workplace forums (Venter & Levy 2011:380).

The LRA did not make any provision whatsoever for any other form of worker representation for the purpose of collective bargaining outside the union structure. The position of the LRA in this regard is derived from the Constitution of the Republic of South Africa (1996) which grants the right to engage in collective bargaining to every employer, employers' organisation, and trade union (Section 23(5)). The practice in South Africa is consistent with those in some other countries (e.g., America, Canada, Poland, Japan and Belgium) where representation of employees for the purpose of collective bargaining remains the exclusive prerogative of union representatives.

2.1 The duty to bargain

In the South African context, prior to the promulgation of the LRA in 1995, a failure to bargain constituted an unfair labour practice under the South African Labour Law. This could be explained within the context of the spate of industrial unrest that characterised the South African labour relations landscape during the 1980s. For this reason, the courts imposed a general duty to bargain (Venter & Levy 2011:380). The LRA makes no provision for a general duty to bargain, however, the legislation did provide that, where a dispute centres on the refusal to bargain, such a dispute must be subjected to advisory arbitration, which eventually could lead to a protected strike action. It is also imperative for parties to bargain in 'good faith.'

Bargaining in good faith (Bendix 2010:307) means that the party concerned should display sincere intention to achieve resolution by not exhibiting behaviours that suggest a predetermined position. Both parties should make proposals and concessions that show willingness to reach a mutual agreement and not unilaterally institute changes or use delaying tactics, and should not set unreasonable preconditions for bargaining, and neither should either of the parties negotiate with unauthorised or unrecognised bargaining agents.

Further to the above meaning of bargaining in good faith, it is equally important that negotiating parties do not suddenly change bargaining conditions; rather, they should adopt a position based on sound arguments. It is generally recommended that neither the union nor management should unnecessarily withhold information and should never engage in insulting behaviour (Bendix 2010:307). While the LRA did not explicitly impose bargaining duty on the employer, Section 23(5) of the Constitution of the Republic of South Africa grants the right to engage in collective bargaining to every employer, employers' organisation, and trade union. This would technically imply that there is a corresponding duty on the other party in the collective bargaining process to engage in collective bargaining. However, in certain countries (e.g. USA, Poland, Hungary and Japan) an employer may be compelled by law to establish a collective bargaining relationship with a representative union (Sewerynsk 2007:3).

2.2 Non-union employees and collective bargaining

In most European countries, the right to conduct collective bargaining in order to conclude a collective agreement is usually reserved for trade unions. It would not be out of place to state that trade unions have a monopoly in this regard. This does not imply, however, that management should not accord non-union representation bodies within the organisation the right to represent employees in the process of information and consultation with the employer. In the United Kingdom, Sewerynski (2007:3) notes that legal provision for non-union representation is largely confined to statutory consultation mechanisms. While recognised unions also have preferential rights with respect to specific consultation procedures, the principal function of the recognised union is to conduct collective bargaining on behalf of the bargaining unit.

Recent thinking and events around the industrial relations landscape seem to bring the trade union monopoly over collective bargaining within the workplace into question. Sewerynski (2007:3) for example, argues that the right of employees to engage in collective bargaining in democratic countries with a market economy is a key instrument for shaping employment terms and conditions. This right has been known to be an exclusive preserve of trade unions.

However, the demographic composition of the workplace is rapidly changing, thus raising serious doubts about the continued ability of trade unions to exercise monopoly

over collective bargaining, especially when confronted with the decline in unionisation in many countries. While it is true that this phenomenon cannot be generalised as happening to the same degree in workplaces, it could be appropriate to hold that countries with a stably high percentage of unionised employees are rare (Sewerynski 2007:3).

This position reflects the recent labour unrests in the mining sector in South Africa in which employees renounced their membership of trade unions en masse, and chose to appoint their own representatives to enter into negotiations with management on their behalf. This particular event points to the necessity for the establishment of a parallel statutory structure of employee representation outside the trade unions, which are beginning to diminish, in some cases, in status, and are fast losing the confidence of their members in effectively representing their interests when negotiating with management.

2.3 Alternative to workers' representation

In light of the above arguments, contemporary thinking is beginning to point in the direction of an establishment of alternative, non-union forms of employee representation in collective bargaining practice within the workplace. This thinking could find support within the regulatory framework provided by the ILO regarding the right to bargain, to information and to consultation as not merely preserved rights of trade unions, but rather those of employees who require the freedom to choose the way in which to use those rights. This argument is reflective of the position canvassed in the Romanian labour legislation (Sewerynski 2007:4) which refers to the union or to the employees' representatives. In other words, those entitled to the right to social dialogue are not the trade unions, but the employees themselves, whether unionised or not.

Non-unionisation is not an obstacle to the exercise of any of the employees' rights to negotiation, information or consultation. This argument is also supported by the views expressed in the United Kingdom labour legislation regarding the role of democracy within the workplace. Sewerynski (2007:4) further provides insights to the right to consultation in European law which envisaged universal provision of employee representation in order to ensure compatibility with its requirements.

The single channel technique of confining representational rights to recognised trade unions alone is inconsistent with this aspiration since, in the absence of a recognised union, there would be no provision for consultation with employee representatives (Sewerynski 2007:4). The report further stressed that this aspiration to universality is quite natural, given the democratic rationale of the consultation procedure. Sewerynski concludes by arguing that the democratic right of all employees (including those not affiliated with trade unions) should be respected by involving all categories of employees in the decision making process, as they are affected by agreements concluded between management and trade unions.

Drawing from the literature presented above, and taking into consideration the recent spate of labour unrest in the South African labour relations environment, the overarching and fundamental research question to be addressed by this paper is: are workers moving away from established collective bargaining procedure to achieve their demands?

The objective of this paper is derived from the fundamental research question as stated above. This objective shall be to determine the implications and future direction of the collective bargaining practice in South Africa in view of the spontaneous wildcat strike actions, particularly by mineworkers, with disregard to specific provisions of the labour legislation.

3. PROCEDURES AND INSTITUTIONALISED LABOUR DISPUTE RESOLUTION MECHANISM IN SOUTH AFRICA

The South African labour legislation recognises the use of strike action by employees (except those on essential services) as a balance of power between them and their employers, while the latter also has recourse to lockout striking employees. However, strike and lock-out actions are not absolute and must be exercised within the prescribed legal framework before such industrial actions are protected by the law.

According to Section 64(1) of the LRA, the right to embark on a strike and lock-out actions by employees and employers respectively shall be subject to the following: every employee has the right to strike and every employer has recourse to lock out if the issue in dispute has been referred to a (Bargaining) Council or to the Commission (for Conciliation, Mediation and Arbitration) as required by this Act (LRA), and a

certificate stating that the dispute remains unresolved has been issued; or a period of 30 days, or any extension of that period agreed to between the parties to the dispute, has elapsed since the referral was received by the Council or the Commission.

Furthermore, Section 64(1) of the LRA stipulates that in the case of a proposed strike, at least 48 hours' notice of the commencement of the strike, in writing, has been given to the employer, unless the issue in dispute relates to a collective agreement to be concluded in a council, in which case, notice must have been given to that council; or (ii) the employer is a member of an employers' organisation that is a party to the dispute, in which case, notice must have been given to that employers' organisation; or in the case of a proposed lock-out, at least 48 hours' notice of the commencement of the lock-out, in writing, has been given to any trade union that is a party to the dispute, or, if there is no such trade union, to the employees, unless the issue in dispute relates to a collective agreement to be concluded in a council, in which case, notice must have been given to that council; or in the case of a proposed strike or lock-out where the State is the employer, at least seven days' notice of the commencement of the strike or lock-out has been given to the parties contemplated in paragraphs (b) and (c) of Section 64(1) of the LRA.

The following section will attempt an explanation of the conditions set out above by the LRA. The 'council' refers to a Bargaining Council or Statutory Council. A bargaining council is an organisation registered by the Ministry of Labour and comprising of one or more registered trade unions and one or more registered employers' organisations in an economic sector established to foster a smooth industrial relationship between employees and employers. Membership of bargaining councils is voluntary.

Thus, we have bargaining councils such as the Public Sector Coordinating Bargaining Council and the Education Labour Relations Council, amongst others. The Statutory Councils perform similar, but limited functions as those of the bargaining councils. Section 38 of the LRA essentially stipulates two basic functions to be performed by a bargaining council: a collective bargaining function and a dispute resolution function.

The Commission for Conciliation, Mediation and Arbitration (CCMA) was established in terms of the LRA to help settle labour disputes and assist in the conduct of labour relations. The commission performs conciliation, mediation and arbitration services in

respect of disputes referred to it by employees and employers. Membership is independent of the state, political party, union, employer, employers' associations or labour federation. All labour disputes must be referred either to a sectorial bargaining council having jurisdiction or to the CCMA.

When a dispute is referred to a council or the CCMA, the director of the commission appoints a commissioner to conciliate the dispute. The commissioner has a period of thirty days (or whatever period the parties may have agreed upon) to reconcile the parties' dispute. If conciliation fails, then the CCMA issues a certificate of non-dispute resolution to the parties. The party which intends to go on strike or lock-out must then wait for a period of 30 days, after which a 48 hour notice is given to the other party, or seven days if the employer is the state, of its intention to undertake industrial action. Any industrial action undertaken by any party outside the provisions of the above section will be considered illegal and no protection will be offered to the party in contempt of the LRA.

4. LIMITATIONS ON RIGHT TO STRIKE OR RECOURSE TO LOCK-OUT

Section 65(1) of the LRA provides that: "no person may take part in a strike or a lock-out or in any conduct in contemplation or furtherance of a strike or a lock-out if that person is bound by a collective agreement that prohibits a strike or lock-out in respect of the issue in dispute". Similarly, "no person may take part in a strike if that person is bound by an agreement that requires the issue in dispute to be referred to arbitration; or the issue in dispute is one that a party has the right to refer to arbitration or to the Labour Court in terms of this Act". Furthermore, Section 65(1) prohibits any person who is engaged in an essential service or a maintenance service from embarking on a strike. This category of workers falls within the definition of essential services – police services, fire services, air traffic controllers, health and medical workers, emergency services, power and water utilities, and others specified in the LRA. Any strike action by this category of workers could endanger lives and property of the citizens.

A collective agreement has been defined above in this paper and is accorded significant recognition by the LRA. Collective agreements have a stipulated date of expiry but may be terminated by either party upon service of reasonable notice

(Finnemore 1999:198). When a collective agreement stipulates that a dispute be referred to arbitration, then the parties may not embark on a strike action in defiance of the collective agreement. Collective agreements may additionally bind employees who are not members of a trade union or trade unions party to the agreement if the trade union is representative of the majority of employees in the workplace (Venter & Levy 2011:383). Arbitration services are provided by the CCMA, or an accredited bargaining council, or an accredited private agency.

Arbitration is a direct intervention process whereby a third person (an arbitrator) takes on a decision-making role in resolving a dispute between two parties by conducting a fair hearing of argument and evidence, weighing it up and making a final decision (award) which is binding on both parties (Finnemore 1999:198). Parties in dispute voluntarily appoint an arbitrator after conciliation/mediation has failed. Arbitration processes take place outside the jurisdiction of courts, but they have a semblance of court hearings. After an arbitration hearing is concluded, an arbitration award is pronounced by the arbitrator and this is binding on both parties. However, arbitration awards can be reviewed at the instance of either party by the Labour Court subject to certain conditions prescribed by the LRA.

5. CHARACTERISTICS OF RECENT UNPROCEDURAL STRIKE ACTIONS IN SOUTH AFRICA

The use of strike actions by workers has shown an increasing trend over the last five years. The Department of Labour (cited in Sapa, 2013: Internet) released the strike statistics as presented in Table 1:

TABLE 1: SOUTH AFRICAN STRIKE STATISTICS

Year	Number of strikes
2008	57
2009	51
2010	74
2011	67
2012	99
2013	Unsure (2012 trend continues)

Source: Department of Labour (South Africa) - News24 September 2013.

The Department of Labour further reported that out of the 99 strike actions embarked upon by workers in 2012, about 45 were unprotected/illegal; all the strikes were

characterised by violence with a total of 241,391 workers participating while 3.3 million working days were lost to the strikes. Workers lost ZAR 6.6 billion in wages. The mining sector was particularly severely hit, with almost all the mining companies experiencing various degrees of strike action. The most prominent and dramatic among the mining industry strike actions in 2012 was the one by some mineworkers at the Lonmin Platinum Mine in Rustenburg. The nature of the strike will be discussed in the following section because of its potential to set a precedent that could fundamentally redefine the modus operandi of strike actions in South Africa in the future.

The August 2012 Lonmin Platinum mineworkers strike, commonly referred to as the 'Marikana massacre', set the pace for a plethora of similar strike actions within and beyond the mining industry. Most of the mineworkers were registered members of the recognised trade unions operating within the mining company – National Union of Mineworkers (NUM), the Association of Mineworkers and Construction Union (AMCU), and Trade Union Solidarity (TUS), with NUM having majority membership (as of then). It is important to mention here that the NUM (as the majority union) negotiated and signed a two-year collective agreement with the Lonmin Platinum Mine in October, 2011; the agreement remained binding on all the parties until its expiration in 2013. According to an official of the NUM, "Unions signed a two-year salary agreement with Lonmin last year, and we cannot negotiate now because of that". With this in mind, and in terms of the LRA, no wage negotiation could be contemplated until 2013 unless the parties to the subsisting collective agreement – i.e., the employer and unions – expressly agreed to re-open negotiation for that purpose. This was not the case at Lonmin Platinum mine.

Notwithstanding the subsisting collective agreement, about 3000 mineworkers sought to re-open wage negotiation by attempting a direct wage negotiation with the management of the mining company. The miners demanded an increase in salary earning of about ZAR 4000 (USD 480) to ZAR 12500 (about USD 1500) from the prevailing ZAR 4000. The workers, in apparent disregard of the collective bargaining procedure as stipulated by the LRA, appointed a 'Workers' Representative' with the mandate to present their demands to management and further negotiate on their

behalf, rather than the recognised trade unions. Members of the worker representatives, according to Mokgata (2012:Internet), reiterated that the strike action and protests embarked upon by the miners were not organised by any of the trade unions represented at the mining company, but rather coordinated under 'the hat' of the workers of Marikana. The management of Lonmin Platinum mine, as expected, declined to recognise or negotiate with the representatives appointed by the striking workers. This action by the Lonmin management further provoked the workers who regarded the latter as arrogant exploiters who are not interested in their (workers') economic well-being.

In the meantime, the striking workers defied various notices issued by management ordering them to return to work or face dismissals. The illegal strike and protest progressed consistently, displaying its characteristic violence and intimidation. The workers sustained the protest and escalated the violence in the passing days and this subsequently led to the death of at least 10 people, including two policemen and two security guards who were brought in by the mine management to provide security at the company (Chauke & Strydom 2012:Internet). This ugly development compelled the police authorities and trade union officials to approach the striking miners for negotiation, after the employers had obtained an interdict from the labour court declaring the strike action by the miners as illegal, thereby ordering them to return to work. This attempt, however, yielded no useful result as the striking miners gathered on a hill that overlooks the mine's western operations office.

On the 16 August, 2012, a leader of the AMCU, in an effort to persuade the striking miners to call off the illegal strike and return to work, announced that Lonmin management had given the unions an undertaking that it would not dismiss strikers, provided they reported for duty (Chauke & Strydom 2012:Internet). Chauke and Strydom reported further that the AMCU official told the striking miners that "we are pleading with you to consider the request to return to work, and that they are willing to listen to your demand". The striking workers could not be persuaded by the pleading from the union leader; rather, they confronted officers of the South African Police Service who were drafted to disarm and disperse the striking miners.

The confrontation that ensued between the police and striking miners eventually led to the death of 34 protesting miners, while another 71 were injured (Mokgata 2012:Internet). The undaunted striking miners disrupted operations at the company and intimidated those workers who chose not to join in the strike. Demanding that all work activities be halted at the mine, a spokesperson of the striking miners declared that “we are here to collect those who continue to work. We are here to show them and you a lesson. If this mine remains open, there will be blood. We will show you how serious we can be.” (Hosken 2012:Internet)

5.1 Necessity to re-open negotiation

As a result of the violent and protracted nature of the strike, the Ministry of Labour, together with the Commission for Conciliation, Mediation and Arbitration (statutory body responsible for labour relations practices), the management of Lonmin Platinum mine and labour unions at the company were forced to re-open negotiation with the representatives of the striking workers. This procedure was a clear departure from the collective bargaining process stipulated by the LRA. The striking workers appointed neutral persons, including clergymen, to lead negotiation with the parties mentioned above.

After a difficult and protracted negotiation, the management of Lonmin Platinum mine conceded a wage increase of 22% to the workers (possibly the highest ever in the entire economy). De Waal (2012:Internet) reports that management offered a 22% pay rise, which workers accepted, saying that they would be back at work on Thursday 20 September, 2012. “It's a huge achievement. No union has achieved a 22% increase before,” reported a worker representative at the mine. The Marikana strike was generally characterised by illegality, violence, intimidation, lawlessness and climaxed with casualties. Regardless of these irregularities in collective bargaining procedure and practice, the workers succeeded in their demand for a wage increase, thereby redefining the collective bargaining and dispute resolution mechanisms in the country, and thus setting a dangerous precedent for labour relations practice.

According to Peter Attard-Montalto, an emerging market economist at Nomura, the big concern amongst the mining sector now is that this unprecedented pay increase would

set a benchmark for the industry. "The key worry now is that 22% wage rises will be seen spreading across the mine industry. That is hardly affordable in an industry with such hefty cost pressures already." (De Waal 2012:Internet).

6. SPATE OF UNPROCEDURAL/ILLEGAL STRIKE ACTIONS AFTER THE MARIKANA LONMIN PLATINUM EPISODE

Taking a cue from the Marikana strike, as predicted by Peter Attard-Montalto, and indeed many other labour analysts, the illegal strike at Lonmin Platinum mine spread sporadically into other mining companies and across other sectors of the economy in South Africa. According to Dolan and Lakmidas (2012:Internet), about 100,000 workers in South Africa, mostly in the mining sector, have downed tools for better pay since August 2012. In the mining sector, 15,000 miners at Goldfields' KDC West shaft sent the officials of the National Union of Mineworkers packing in a fashion that is reminiscent of the Lonmin mine, demanding similar wage increases. This was followed shortly afterwards by some 24,000 miners at Anglo-Ashanti Gold equally demanding wage increases.

On 2 November 2012, Anglo-Ashanti Gold announced it was suspending operations at two of its mines. Striking Amplats workers barricaded roads linking Rustenburg to Marikana with rocks and burning tyres. The workers went on a wildcat strike on September 12 without following the procedures stipulated by the LRA, demanding a monthly salary of ZAR 16,000 (about USD 1,920) and allowances (Hedley 2012:Internet). Hedley reported that more than 8,000 of the striking workforce at KDC East were fired as a result of the unprotected strike action. The dismissals were appealed by workers and the appeals are pending (as at the time of reporting). Anglo-American Platinum has been forced to suspend its Rustenburg platinum operations in South Africa amid spreading unrest among miners calling for higher wages, Hedley concluded.

Following the precedent already set by mineworkers at Lonmin mine, coupled with the hallmark wage increase achieved (without the initiative of trade unions), about 12,000 mineworkers from four Anglo Platinum (Amplats) mines near Rustenburg marched on NUM offices to withdraw their membership (Hedley 2012:Internet). On 30 October 2012, Hedley reported that, instead of returning to work, the miners at

Amplats barricaded the roads with rocks, logs and burning tyres, blocking fire engines and confronting a police helicopter, water cannons and several armoured vehicles. A power sub-station was set on fire at the Khuseleka shaft in Rustenburg and the NUM office was also targeted. "We won't go to work until we get what we want", one miner was reported saying. "Our kids have been shot at, our families have been terrorised and brutalised, but we are not going back to work" (Hedley 2012:Internet).

In the coal mining sector, workers at Forbes and Manhattan Coal and South African Coal Mining Holdings also went on an illegal strike in October 2012 to demand wage increases (Kirilenko 2012:Internet). Kirilenko further reports that the situation has recently been aggravated by another deadly outbreak of violence, resulting in the shooting of two striking workers by security guards at one of the mines owned by Forbes and Manhattan Coal on October 31st.

Similarly, drivers across the country demanded a 12% salary increase for each year while employers offered 8.5% for next year (2013), and another 0.5% the following year (2014). The unions involved are South African Transport and Allied Workers Union (SATAWU), the Professional Transport and Allied Workers' Union SA, and the Motor Transport Workers' Union. In the automotive sector, Toyota motor manufacturers also suffered a four-day wildcat outage at its Durban plant, although workers returned on Friday after securing a 5,4% pay rise (Kirilenko 2012:Internet).

6.1 The farm workers' strike action

Further inspired by the events at the Lonmin Platinum mine where miners succeeded in negotiating an unprecedented wage increase after a spate of violence, arson and intimidation, farmworkers in the picturesque Boland town of De Doorns, some 90 miles outside of Cape Town, went on an illegal strike to demand for a wage increase from ZAR 70 (USD 7.85) per day to ZAR 150 (USD 16.90) per day (Lumet & Qalam 2012:Internet).

The illegal strike, like those in the mining sector, was organised by the workers organised outside trade union structure. The strike was characterised by violence, intimidation, arson and killing. Farm properties were set on fire while a farm worker was killed (Lumet & Qalam 2012:Internet). One of the striking farmworkers was

reported to agree that as was the case at Marikana and other mines; workers have started to form their own representative groups and have started to steer away from the control of the existing unions like the Congress of South African Trade Unions (COSATU). "The unions can say what they want, but here we are all equal and every person wants the same thing, so each worker is a leader in his own right" (Lumet & Qalam 2012:Internet). Although the strikes were not organised by the trade unions, trade union officials nevertheless provided support and direction to the striking farmworkers.

In an attempt to bring the farmworkers strike to an end, the South African government and COSATU (Labour Federation) entered into negotiation with the striking workers and farm owners. The parties agreed to freeze the strike for two weeks while the sector's ZAR 70 minimum wage was being reviewed. However, protesters insisted that they would not return to the fruit-growing region's farms until they received a daily wage of at least ZAR 150. "It's not over for us. We are continuing no matter what. We are going forward no matter what. It's just a wish for them (for it) to be over." "The strike is not finished until we get a daily wage of ZAR150", reported a farm striker.

The ripple effects of these strikes are obvious. Security analyst David Davies (cited in Prinsloo & Marais 2012:Internet) states that "the fallout of these strikes will have a significant long-term effect on companies, individual employees and their dependants, associated industries, taxes and economic growth.

7. CONCLUSION

One major conclusion that can be derived from all the unprocedural and illegal strike actions described in this article (particularly the Lonmin Platinum mineworkers' strike) is that employers were 'compelled' (through intimidation, violence, arson and other forms of lawlessness) by workers to re-open negotiations against the provision of the LRA. Unfortunately, this unconventional practice adopted by workers in pursuing their demands is fast becoming fashionable, and an acceptable way of conducting collective bargaining practice by workers in both the private and public sectors of the economy, thereby seemingly re-defining the statutorily-defined collective bargaining practice and procedure in South Africa.

Reacting to this emerging trend, Griffith (cited in Prinsloo & Marais 2012:Internet) asserts that “companies set a dangerous precedent when they reward ‘anarchy’ by offering illegally striking workers pay rises to get them back to work”. Consistently with Griffith’s opinion, Prinsloo and Marais reported that Impala Platinum mine, which lost ZAR 2.8 billion in revenue in an illegal and violent six-week strike, offered its workers another pay rise – in order to avert a strike – that would add 4.8% to the wage bill, the authors concluded. This dangerous trend no doubt poses a wide range of implications to the country's labour relations practice and socio-economic and political landscapes.

7.1 Implications

With the growing popularity of unconventional and unprocedural strike actions amongst workers, a peaceful and sustainable labour environment can no longer be guaranteed in the workplace. The unstable labour environment will therefore make strategic operational and financial planning difficult for management since it has become fashionable for workers to disrupt operations through unprocedural strikes in breach of the provisions of the Labour Relations Act and binding collective agreements. Sustained and significant loss of working hours to strike actions could have significant impacts on the productivity and profitability of these companies.

The costs of these often violent and disruptive strikes by workers on both the national economy and the finances of the organisations affected can be quite substantial. South Africa’s economy was built on mining and it remains an integral driver of growth. The sector employs about 500,000 workers (England 2012:4). According to the South African president Jacob Zuma, work stoppages by workers in the mining sector due to strike actions by workers during the period under review was close to ZAR 4.5 billion, while losses in the coal sector added another ZAR 118 million to the total (Williams 2012:Internet). The National Treasury (Humphrey 2012:1) estimated that the indirect impact of the strike actions in the mining industry, in addition to other work stoppages in other sectors of the economy, had subtracted about ZAR 3.1 billion from the country’s Gross Domestic Product (GDP). Mining and manufacturing sectors are the major contributors to the national GDP with mining alone contributing 20%. Within 42 days of the mineworkers’ strike at Lonmin Platinum, the mining

company had lost about ZAR 500 million, occasioned by a loss in production (Sibanyoni 2012:Internet). According to the Chief Executive Officer of the company (Simon Scott), it could cost the company about ZAR 2.3 billion to implement the mineworkers' demands. Investment experts estimated that Lonmin Platinum Company would need to raise USD 500 million in 2013 in order to buffer its balance sheet. (Prinsloo & Marais 2012:Internet)

Cumulative loss of productivity both at organisational and national levels could poorly impact on profitability and collectable revenue due to the government. This, by extension, could inhibit government's ability to effectively deliver on some of its social responsibilities such as provision of educational and health infrastructure, social grants and other welfare schemes. Such development could result in social unrest, with dire consequences. Furthermore, the mining sector in South Africa (particularly the platinum sector) was already experiencing negative returns, due to weak prices and lower demands from the international market. The strikes therefore aggravated their financial and operational situations, and this obviously has huge implications on the size of the sustainable workforce. In the wake of the Lonmin mineworkers' strike, Lonmin Platinum terminated the K4 mining contract shaft, resulting in the immediate loss of 1200 jobs. Many other mining companies have already indicated their intentions to retrench several thousands of workers as a direct consequence of the protracted illegal strikes, resulting in the review of their operations. This suggests that several thousands of people will join the already over-saturated unemployment market, thus increasing the level of poverty in the country, with its unconscionable attendant social consequences (crime, drugs, prostitution, etc.).

5.2 Final remark

All over the world, the relevance and power of the labour movement is anchored on the numerical strength of its membership. This factor is further reinforced by the loyalty of members to the authority of the union officials in anticipation that the latter (union officials) are capable of representing and negotiating better wages and other conditions of employment with the employers on their behalf.

However, contemporary unsanctioned strike actions in South Africa suggest that labour unions are fast losing the confidence of their members and workers are no

longer willing to trust the labour unions to negotiate better wages with their employers. Workers have variously accused labour union officials of being compromised by employers colluding with management to exploit workers' labour. This has resulted in almost all the strike actions embarked upon by workers being organised and coordinated by representatives appointed by workers themselves without involving the unions.

Many workers have renounced their membership of labour unions, a development that is clearly detrimental to the unity and ability of workers to act in solidarity in order to counter the massive economic power of the employer. A reduction in union membership will certainly adversely affect the financial strength and viability of the unions, and this again could inhibit the continued development of the country's labour movement. There is no doubt that a vibrant labour movement is essential for the further development of the country's constitutional democracy.

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