

The extension of collective agreements in the workplace

By Alex Davies

Collective agreements are entered into by parties in employment relationships on a regular basis, for a variety of reasons and in a variety of ways. Common types of collective agreements are recognition agreements or wage agreements, however there are others that exist as well.

Many large employers engage in collective bargaining with the representative unions in their organisation, this may be done on a centralised basis or at a specific level in the organisation, it may even be done through a mixture of both ways with certain terms and conditions determined at centralised bargaining and other terms and conditions determined at the level of an individual part of the organisation.

The Labour Relations Act (LRA), 66 of 1995, endorses the principle of majoritarianism. It provides for the extension of collective agreements concluded between an employer and representatives (unions) acting on behalf of the majority of the workers in the workplace, to the rest of the employees in the workplace.

This means that if an employer engages in collective bargaining with a union, or a number of unions, that represent the majority of the employees in the workplace then the collective agreement which the parties enter into, can be extended to the remainder of the Employees without consulting with those employees. All of the employees will as a result, be bound by the terms and conditions of the collective agreement.

The LRA provides for two mechanisms for the extension of collective agreements.

Firstly, agreements concluded between an employer and a representative union can be extended through the operation of section 23(1)(d) of the LRA. In order to extend a collective agreement in this way, the following criteria needs to be met:

1. The employees need to be identified in the agreement;
2. The agreement expressly binds the employees; and
3. The trade union(s) must represent the majority of the employees at the workplace.

Secondly, agreements concluded under the auspices of a bargaining council may be extended to non-parties to the collective agreement who fall under the jurisdiction of the specific Bargaining Council. This is done by way of an application made to the Minister who may exercise his discretion to extend the collective agreement.

Both types of extensions to non-parties have been upheld as constitutionally acceptable in the judgments of *AMCU vs The Chamber of Mines and Others* (constitutional Court case number CCT87/16) and *Free Market Foundation vs Minister of Labour and Others* 2016 (4) SA (GP).

The LRA provides for an organisation with two or more operations at different locations to be seen as one, unless the operations are independent of each other as a result of their size, function or operation.

The interpretation of the meaning of the term *workplace* is of crucial importance to whether a collective agreement can be extended to non-parties in terms of section 23(1)(d).

In the context of the *AMCU* judgment the dispute arose primarily as a result of the extension of the wage agreement concluded between the Chamber of Mines, acting on behalf of its members, and the majority of the representative unions across their mining operations. AMCU was a minority union at the time overall in the organisations, however it had obtained majority representation at certain mines. It was therefore argued that the term *workplace* should be interpreted to mean a specific mining operation and not the overall operations of the mining house. It was also argued that AMCU should not have been bound by the agreement and should have been permitted to engage in strike action at the mining operations where it had obtained majority representation.

The Constitutional Court rejected the arguments and confirmed that the factual test on a case by case basis must be utilised in order to determine the extent of what would constitute a *workplace* in accordance with the statutory prescripts.

It can now therefore be accepted that employers with multiple operations may undertake collective bargaining at a central level and extend any collective agreements concluded to the whole organisation unless portions of the organisation are factually independent from each-other as a result of their size, function or operation.