

The right to strike – A matter of mutual interest

By Johanette Rheeder

In this article we will deal with strikes and the topics on which employees can strike, or put differently, when is the topic a rights dispute or when is it a matter of mutual interests. Strikes has changed dramatically in the last years and employers are increasingly faced with different tactics to increase the collective power on it, by unions and employees. One of those challenging issues is whether the union can strike to get its shop stewards appointed or recognised by the employer. Therefore, must the appointment of shop stewards in terms of section 14 of the LRA be referred to arbitration under section 21 of the LRA or, can it be the subject of a protected strike action? Therefore, is it a matter of mutual interest that can be resolved through collective action or not?

From the onset, section 64(2)(a) of the LRA should be considered. This section determines that:

“(a) Despite section 65(1)(c), a person may take part in a strike or a lock-out or in any conduct in contemplation or in furtherance of a strike or lock-out if the issue in dispute is about any matter dealt with in sections 12 to 15.

(b) If the registered trade union has given notice of the proposed strike in terms of section 64(1) in respect of an issue in dispute referred to in paragraph (a), it may not exercise the right to refer the dispute to arbitration in terms of section 21 for a period of 12 months from the date of the notice.”

In the matter of *Barder Bop*^[1], the Constitutional Court found that a union may strike over the appointment of shop stewards, even in the case of it being a minority union. This was also confirmed in the case of *Scaw*^[2], where the court found that the union may also call out a protected strike over the appointment of full-time shop stewards (not regulated by section 14), over and above the right to call out a protected strike over the appointment of shop stewards in terms of section 14 of the LRA.

It therefore seems that even in the case of the claim for shop stewards over and above what is allowed in section 14, a union can declare such a dispute as an interest dispute and call out a strike, as they did with regard the claim for a full-time shop steward, in the *Scaw* case.

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[1] *National Union of Metal Workers of South Africa and Others v Bader Bop (Pty) Ltd and Another* (CCT14/02) [2002] ZACC 30; 2003 (2) BCLR 182 ; 2003 (3) SA 513 (CC) ; [2003] 2 BLLR 103 (CC) (13 December 2002)

[2] *Scaw South Africa Pty Ltd v NUMSA and others* J911/213 - Reportable