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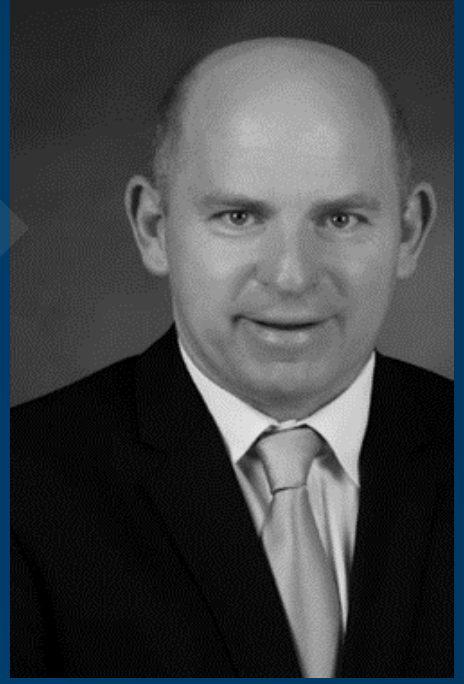
Labour Relations Act – Amendment Bill

Presented by: Johnny Goldberg

ABOUT OUR FACILITATOR…

JONATHAN GOLDBERG



Qualifications:

B. Com degree (Bachelor on Commerce) • LL.B (Baccalaureus Legum) degree • Honours in Business Administration (HBA) degree (cum laude) • Masters in Business Administration (MBA) degree (cum laude) • 4MAT Instructional Design Training (Michigan University, USA) • Chartered Director (SA) Institute of Directors

Memberships:

SABPP Master HR Practitioner • BUSA • CAPES • Institute of Directors • Border-Kei Chamber of Business • Employment Conditions Commissioner • World Presidents' Organization International • Patron South African Payroll Association • Tokiso Dispute Resolution Panel • Former Commissioner of the Commission for Conciliation, Mediation and Arbitration

Lectured for and speaker at:

Stellenbosch Business School • Da Vinci Institute of Technology • Wits Business School • Fort Hare University • Rhodes Investec Business School • Local and International conferences and events

Accolades:

2016 Chartered Director of the Institute of Directors (IOD) • 2012 Adcorp Chairman Award • 2012 Co-winner of the Business Person – Entrepreneur award: ABSA Jewish Awards • Federation of African Professional Staffing Organisations (APSO): Founders Cup Award • 2009 Business Person of the Year (Business) – Border Kei Chamber of Commerce and Daily Dispatch • 2009 Business of the Year Category C (turnover above 10 million) – Border Kei Chamber of Commerce and Daily Dispatch

Representation:

NEDLAC • Tokiso Dispute Resolution Panel • Former Commissioner of the Commission for Conciliation, Mediation and Arbitration • Commissioner of the Employment Conditions Commission • National negotiator lead in numerous sectors • representation of business at numerous forums including the Labour Market Chamber and NEDLAC • business representative on the Employment Services Board

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Amendment of section 32 of Act 66 of 1995, as amended by section 7 of Act 42 of 1996, section 2 of Act 127 of 1998, section 5 of Act 12 of 2002 and section 4 of Act 6 of 2014 continued …

(c) by the substitution in subsection (3) for paragraphs *(b)* and *(c)* of the following paragraphs respectively:

"(b) the registrar, in terms of section 49(4A)(a), has determined that the majority of all employees who, upon extension of the collective agreement, will fall within the scope of the agreement, are members of the trade unions that are party to the bargaining council; or

(c) the registrar, in terms of section 49(4A)(a), has determined that the members of the employers' organisations that are parties to the bargaining council will, upon extension of the collective agreement, be found to employ the majority of all the employees who fall within the scope of the collective agreement;";

(d) by the insertion after subsection (3A) of the following subsection:

"(3B) The Minister may make regulations on the procedures and criteria that a bargaining council must take into consideration when developing the criteria for the purposes of section 32(3)(dA), (e) and (f).";

Comment: This one is a major shift.

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Amendment of section 32 of Act 66 of 1995, as amended by section 7 of Act 42 of 1996, section 2 of Act 127 of 1998, section 5 of Act 12 of 2002 and section 4 of Act 6 of 2014 continued …

(e) by the substitution in subsection (5) for paragraph *(a)* of the following paragraph:

" *(a)* the registrar has, in terms of section *49(4A)(b),* determined that the parties to the bargaining council are sufficiently representative within the registered scope of the bargaining council;";

(f) by the substitution for subsection (5A) of the following subsection:

"(5A) When determining whether the parties to the bargaining council are sufficiently representative for the purposes of subsection *(5)(a),* the **[Minister]** registrar may take into account the composition of the workforce in the sector, including the extent to which there are employees assigned to work by temporary employment services, employees employed on fixed term contracts, part-time employees or employees in other categories of non-standard employment. "; and

(g) by the substitution in subsection *(6)(a)* for the words preceding subparagraph

Comment: The amendment shifts the obligation to the Registrar to determine sufficient representivity

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Amendment of section 32 of Act 66 of 1995, as amended by section 7 of Act 42 of 1996, section 2 of Act 127 of 1998, section 5 of Act 12 of 2002 and section 4 of Act 6 of 2014

(i) of the following words:

"After a notice has been published in terms of subsection (2) or (2A), the Minister, at the request of the bargaining council, may publish a

further notice in the Government *Gazette-";* and *(h)* by the deletion in subsection (6) of paragraph *(b).*

Insertion of section 32A in Act 66 of 1995 continued…

2. The following section is hereby inserted in the principal Act after section 32:

"Renewal and extension of funding agreements 32A. (1) For the purposes of this section-

(a) a "funding agreement" means a collective agreement concluded in a bargaining council, including a provision in such an agreement to fund-

Insertion of section 32A in Act 66 of 1995 continued…

(i) the operational and administrative activities of the bargaining council itself;

(ii) a dispute resolution fund referred to in section 28(1*)(e);*

(iii) a training and education scheme contemplated in section *28(1)(f);* or

(iv) a pension, provident, medical aid, sick pay, holiday and unemployment scheme any other similar scheme for the benefit of one or more parties to the bargaining council or its members as contemplated in section 28(1*)(g)*

(b) the renewal of an agreement means that it is-

(i) binding on the parties to the agreement; and

(ii) deemed to be an extension of the agreement to non-parties in terms of section 32(2).

(2) Subject to subsection (3), and where the Minister is satisfied that the failure to renew the funding agreement may undermine collective bargaining at sectoral level, the Minister may renew a funding agreement for up to 12 months at the request of any of the parties to a bargaining council if-

Comment: To prevent parties from blocking the money flows

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Insertion of section 32A in Act 66 of 1995

(a) the funding agreement has expired; or

(b) the parties have failed to conclude a collective agreement to renew or replace the funding agreement before 90 days of its expiry.

(3) The Minister must, before making a decision under subsection (2)-

(a) publish a notice in the Government *Gazette* calling for comment on the request within a period stipulated in the notice; and

(b) consider the comments received.

(4) Any review of the Minister's decision under subsection (2) must be determined by the Labour Court and any such decision remains in force until-

(a) set aside by the Labour Court; or

(b) if the decision is taken on appeal, set aside by the Labour Appeal Court or the Constitutional Court. as the case may be.“.

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Amendment of section 49 of Act 66 of 1995, as amended by section 11 of Act 12 of 2002 and section 5 of Act 6 of 2014

3. Section 49 of the principal Act is hereby amended—

(a) by the substitution for subsection (4) of the following subsection:

‘‘(4)A determination of the representativeness of a *bargaining council* in terms of this section is sufficient proof of the representativeness of the *council* for the **[year]** two years following the determination for any purpose in terms of *this Act,* including a decision by the *Minister* in terms of sections 32(3)*(b)*, **[, 32(3)*(c)*]** and 32(5).’’; and

(b) by the insertion after subsection (4) of the following subsection:

‘‘(4A) A determination made by the *registrar* in terms of— *(a)* section 32(3)*(b)* is sufficient proof that the members of the *employer organisations* that are party to the *bargaining council*, upon extension of the *collective agreement,* employ the majority of the *employees* who fall within the scope of that agreement; and

(b) section 32(5)*(a)* is sufficient proof that the parties to the *collective agreement* are sufficiently representative within the *registered scope* of the *bargaining council*.’’.

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Amendment of section 69 of Act 66 of 1995, as amended by section 20 of Act 42 of 1996 and section 9 of Act 6 of 2014 continued…

4. (1) Section 69 of the principal Act is hereby amended-

(a) by the substitution for subsections (4), (5) and (6) of the following subsections respectively:

"(4) **[If requested to do so by the registered trade union or the employer]** Unless there is a collective agreement binding on the trade union that regulates picketing, the **[Commission]** commissioner conciliating the dispute must attempt to secure an agreement between the parties to the dispute on rules that should apply to any picket in relation to that strike or lock-out before the expiry of the period contemplated in section 64(1)(a)(ii).

(5) If there is no collective agreement or no agreement is reached in terms of subsection (4), the **[Commission]** commissioner conciliating the dispute must [establish] determine picketing rules in accordance with any default picketing rules prescribed by the Commission under section 208 or published in any code of good practice, and in doing so must take account of-

(a) the particular circumstances of the workplace or other premises where it is intended that the right to picket is to be exercised; **[and]**

(b) any relevant code of good practice; and

Comment: Definate picketing rules. Excellent step forward

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Amendment of section 69 of Act 66 of 1995, as amended by section 20 of Act 42 of 1996 and section 9 of Act 6 of 2014 continued…

(c) any representations made by the parties to the dispute attending the conciliation meeting.

(6) The rules **[established]** determined by the **[Commission]** commissioner conciliating the dispute may provide for picketing by employees-

(a) in a place contemplated in **[section 69*(2)(a)]*** subsection *(2)(a)* which is owned or controlled by a person other than the employer, if that person has had an opportunity to make representations to the **[Commission]** commissioner conciliating the dispute before the rules are **[established]** determined; or

(b) on their employer's premises if the **[Commission]** commissioner conciliating the dispute is satisfied that the employer's permission has been unreasonably withheld.";

(b) by the insertion after subsection (6) of the following subsections:

"(6A) The commissioner conciliating the dispute must determine the picketing rules contemplated in subsection (5) at the same time as issuing any certificate contemplated in section 64(1*)(a),* unless the trade union fails to provide the prescribed information.

(6B) The Commission may determine picketing rules under subsections (5) and (6) on a direct application from a registered trade union and on an urgent basis if-

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Amendment of section 75 of Act 66 of 1995, as amended by section 22 of Act 42 of 1996

7. Section 75 of the principal Act is hereby amended by the addition of the following subsection:

"(8) A panel appointed by the essential services committee may in the prescribed manner vary or cancel the designation of the whole or part of a maintenance service on its own accord or on application by the employer or a registered trade union with members affected by the designation of a maintenance service.".

Amendment of section 95 of Act 66 of 1995, as amended by section 18 of Act 12 of 2002

8. Section 95 of the principal Act is hereby amended by the addition of the following subsection:

"(9) For the purpose of subsection (5), 'ballot' includes any system of voting by members that is recorded and in secret.".

Comment: This is a major step forward

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Amendment of section 99 of Act 66 of 1995

9. Section 99 of the principal Act is hereby amended by the substitution for paragraphs *(b)* and *(c)* of the following paragraphs respectively:

‘‘*(b)* the attendance register, minutes or any other *prescribed* record of its meetings, in an original or reproduced form, for a period of three years from the end of the financial year to which they relate; and

(c) the ballot papers or any documentary or electronic record of the ballot for a period of three years from the date of every ballot.’’.

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Amendment of section 108 of Act 66 of 1995

11. Section 108 of the principal Act is hereby amended by the addition of the following subsections:

"(4) The registrar and the deputy registrars are independent and, subject only to the Constitution and the law, they must be impartial and must exercise their powers and perform their functions without fear, favour or prejudice.

(5) No person or organ of state may interfere with the functioning of the registrar.".

Comment: Enhancing the independence to the Registrar e.g. CEPPAWU

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Amendment of section 116 of Act 66 of 1995

12. Section 116 of the principal Act is hereby amended by the addition of the following subsections:

"(4) The governing body may appoint any of its members to act as chairperson whenever-

(a) the chairperson is absent from the Republic or from duty, or for any reason is temporarily unable to perform the functions of the chairperson; or

(b) the office of the chairperson is vacant.

(5) An acting chairperson is competent to exercise and perform any of the powers of the chairperson,",

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Amendment of section 128 of Act 66 of 1995

(b) An accredited private agency may confer on any person who is accredited by the governing body and appointed by **[it]** the agency to resolve a dispute, the powers of a commissioner in terms of section 142(i) *(a)* to *(e),* (2) and (7) to (9), read with the changes required by the context.".

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Amendment of section 135 of Act 66 of 1995, as amended by section 36 of Act 42 of 1996, section 8 of Act 127 of 1998 and section 26 of Act 12 of 2002 continued…

15. Section 135 of the principal Act is hereby amended by the insertion after subsection (2) of the following subsections respectively:

"(2A) If an extension of the 30-day period referred to in subsection

2) is necessary to ensure a meaningful conciliation process, the commissioner or a party may apply to the director in accordance with any rules made in terms of section 115(2A) for an extension of the period, which may not exceed five days.

(2B) The director may only extend the period referred to in subsection

(2A) if the director is satisfied that-

(a) an extension is necessary to ensure a meaningful conciliation process;

(b) the refusal to agree to the extension is unreasonable; and

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Amendment of section 135 of Act 66 of 1995, as amended by section 36 of Act 42 of 1996, section 8 of Act 127 of 1998 and section 26 of Act 12 of 2002

(c) there are reasonable prospects of reaching agreement.

(2C) Subsections (2A) and (2B) do not apply to where the State is the employer.".

Insertion of sections 150A, 150B, 150C and 150D in Act 66 of 1995 continued…

16. The following sections are hereby inserted in the principal Act after section 150:**"Advisory arbitration panel in public interest 150A.** (1) The director may appoint an advisory arbitration panel(referred to in sections 150A to 150D as the "panel") in the public interest to make an advisory arbitration award (referred to in sections 150 A to 150 D as the "award") in order to facilitate a dispute-

Comment: Big step forward for major strikes

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Insertion of sections 150A, 150B, 150C and 150D in Act 66 of 1995 continued…

(a) on the director's own accord or on application of one of the parties to the dispute;

(b) after consultation in the prescribed manner with the parties to the dispute; and

(c) in the prescribed manner setting out the panel's terms of reference as provided for in section 150C(1).

(2) The director must establish an advisory arbitration panel contemplated in subsection (1) to facilitate a resolution of the dispute at any time after a commissioner has issued a certificate of unresolved dispute under section 135(5)*(a)* or a notice of the commencement of the strike or lockout contemplated in section 64(1)*(b)*, *(c)* and *(d)*, whichever is the earlier—

(a) subject to subsection (3)—

(i) if directed to do so by the Minister; or

(ii) on application by a party to the dispute;

(b) if ordered to do so by the Labour Court in terms of subsection (4); or

(c) by agreement of the parties.

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Insertion of sections 150A, 150B, 150C and 150D in Act 66 of 1995 continued…

(3) The director may only appoint the panel in terms of subsection (2)*(a)* if the director has reasonable grounds to believe that any one or more of the following circumstances exists:

(a) The strike or lockout is no longer functional to collective bargaining in that it has continued for a protracted period of time and no resolution of the dispute appears to be imminent;

(b) there is an imminent threat that constitutional rights may be or are being violated by persons participating in or supporting the strike or lockout through the threat or use of violence or the threat of or damage to property; or

(c) the strike or lockout causes or has the imminent potential to cause or exacerbate an acute national or local crisis affecting the conditions for the normal social and economic functioning of the community or society.

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Insertion of sections 150A, 150B, 150C and 150D in Act 66 of 1995

(4) The Labour Court may only make an order requiring the director to appoint the panel in terms of subsection (2)*(b)*—

(a) on application made by a person or association of persons that will be materially affected by any one or more of the circumstances contemplated in subsection (4)*(b)* and *(c)*; and

(b) if the Court considers that there are reasonable grounds that any one or more of the circumstances contemplated in subsection (4)*(b)* and *(c)*exist.

(5) No person may apply to any court of law to stay or review the establishment or proceedings of an advisory arbitration panel until the panel has issued its award.

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Composition of advisory arbitration panel continued…

150B.(1) The panel contemplated in section 150A (1) must consist of-

(a) a senior commissioner as the chairperson of the panel; and

(b) subject to subsection (2)-

(i) an assessor appointed by the employer party to the dispute;

(ii) an assessor appointed by the trade union party to the dispute.

(2) If the employer or trade union party to the dispute fail or refuses to appoint an assessor within the prescribed time period, the director must appoint an assessor from the relevant list of assessors determined in terms of subsection (3).

(3) NEDLAC must, in the prescribed manner, provide the director with two lists of assessors which shall consist of-

(a) the employer list of assessors which must be determined by organised business as defined in section 1 of the National Economic Development and Labour Advisory Act, 1994 (Act No. 34 of 1994); and

(b) the trade union list of assessors which must be determined by organised labour as defined in section 1 of that Act referred to in paragraph *(a)*.

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Composition of advisory arbitration panel continued…

(4) If the employer or trade union party to the dispute fails or refuses to participate in the proceedings of the panel established in terms of section 150A, the director must appoint a person with the requisite expertise to represent the interests of that party in the proceedings.

(5) The chairperson of the panel, after consultation with the assessors appointed in terms of this section, may-

(a) conduct the arbitration in a manner that the chairperson considers appropriate in order to make an advisory award fairly and quickly but must deal with the substantial merits of the dispute with minimum of legal formalities;

(b) exercise the powers of a commissioner under section 142;

(c) order the disclosure of all relevant information-

(i) subject to section 16(5), (10*),* (11),(12) and (13); and

(ii) only if that information is necessary in order to make the factual finding and recommendations contemplated in section 150C(1)(*a)* and *(b).*

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Composition of advisory arbitration panel

(6) The panel must conduct its proceedings and issue an award within seven days of the arbitration hearing or any reasonable period

extended by the director as the case may be, taking into account the urgency of a resolution of the dispute arising from the circumstances contemplated in section 150A(2)(a) to *(c).*

(7) The appointment of the panel does not interrupt or suspend the right to strike or the recourse to lockout in accordance with Chapter IV.

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Advisory Arbitration Award continued…

150C. (1) An award must be in the prescribed form and include-

(a) a report on factual findings;

(b) recommendations for the resolution of the dispute;

(c) motivation for why the recommendations ought to be accepted by the parties; and

(d) the seven-day period within which the parties to the dispute must either indicate acceptance or rejection of the award.

(2) If the chairperson is not able to secure consensus of both assessors in respect of the award contemplated in subsection (1), the chairperson must issue the award on behalf of the panel.

(3) The chairperson must serve the advisory arbitration award on the parties to the dispute to allow them to consider the award and consult and take such measures as may be necessary to ensure that the award is not made publicly available before the Minister has published the award in terms of subsection (6).

(4) A party to the dispute may apply to the chairperson in the prescribed form for an extension of the time period in subsection (1*)(d)* for no more than five days.

(5) *(a)* The parties to the dispute may indicate their acceptance or rejection of the award within the period contemplated in subsection (1)(*d).*

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Advisory Arbitration Award

(b) If a party to the dispute fails to indicate either its acceptance or rejection of the award within the period contemplated in subsection (1)(*d),* the party is deemed to have accepted the award.

(e) If a party rejects the award, it must motivate its rejection in the prescribed manner.

(6) An employers' organisation or trade union party to a dispute must, in accordance with its constitution, consult with its members before rejecting an award in terms of subsection *(5)(a).*

(7) The Minister must, within four days of the award being issued, publish the award in the prescribed manner for public dissemination.

(8) Nothing in this section may be construed to prevent any party to the dispute to request the panel to reconvene in order to seek an explanation of the award or to mediate a settlement of the dispute based on the award or a variation of the award.

Comment

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Effect of an advisory arbitration award continued…

150D. (1) An advisory arbitration award is only binding on a party and its members to the dispute if-

(a) one or more of the-

(i) trade unions party to the dispute has accepted or deemed to have accepted the award in terms of section *150C(5)(b)* or subsection (2); and

(ii) employer organisations party to the dispute has accepted or deemed to have accepted the award in terms of section *150C(5)(b);* or

(b) it is binding in terms of subsection (3) or *(5)(b).*

(2) Subject to subsection (3), the binding nature of an advisory award is determined in accordance with section 23 as if the award is a collective agreement for the purposes of that section.

(3) If the parties to the dispute are parties to a bargaining council-

(a) the binding nature of an award is determined in accordance with section 31 as if the award is a collective agreement for the purposes of that section;

(b) the bargaining council may, subject to paragraph *(c),* apply to the Minister to have the award extended in accordance with section 32 as if the award is a collective agreement for the purposes of that section, to persons who-

(i) are not members of the parties to the council; or

(ii) have rejected the award in terms of section 150C(4)(c);

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Summary of key amendments to the LRA

Some of the more important amendments to the LRA

- S32 – extension of a collective agreement concluded in a bargaining council
- S69 – picketing and picketing rules
- S72 and S75 – ratification of a minimum service agreement plus definition
- S128 – CCMA Governing Body powers to accredit BC and private agency dispute resolution panelists
- S135 – extension to the 30-day period
- S150 A-D – Appointment of an advisory arbitration panel

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S32 – extension of Bargaining Council collective agreements

- Extension to the period within which the Minister must extend a collective agreement if the parties to the agreement are only sufficiently representative.
- Improved representativeness requirements for the extension of collective agreements under s32(2) of the LRA. Focus is on whether an agreement applies to the majority of employees in the sector or the scope of application of the agreement.
- Minister given power to make regulations on the procedures and criteria that BC's must comply with when determining exemptions from collective agreements.
- The Minister, on request from a party to the BC, may renew and extend a funding agreement for up to 12 months if the agreement has expired or where the parties to the agreement have failed to conclude an agreement or renew or replace it 90 days before it expiry.
- Decision taken by the Minister must consider whether the failure to renew the funding may undermine collective bargaining at sectoral level.
- Decision is reviewable by the Labour Court.

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S69 – Picketing and Picketing Rules

S69 (4) "Unless there is a collective agreement biding on the trade union that regulates picketing, the commissioner must attempt to secure agreement between the parties to the dispute on rules that should apply to any period contemplated in section 64(1)(a)."

Note: Section 64(1)(a) contemplates a 30 day period of conciliation from date of referral to the issuing of a certificate.

Code of Good Practice; Collective Bargaining Industrial Action and Picketing

The Code was drafted in response to a series of violent strikes.

Stakeholders in the labour market concluded that measures are needed to include a behavior change in the way that trade unions and employers and employer's organisations engage with each other in the pre-negotiation, negotiation and industrial action phases if collective bargaining.

1) In line with the Ekurhuleni Declaration the purpose of this code is to-

   a) Strengthen and promote orderly collective bargaining by –

      I. Promoting trust and mutual understanding and constructive engagement;

      II. Promoting the maximum involvement of workers and worker representatives in negotiations

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S69 – Picketing and Picketing Rules

b) Recognise the important of workplace democracy and dialogue and promote employee participation in decision-making in the workplace.

c) Promote, proactive, effective, constructive and speedy resolution of labour dispute;

d) Promote the peaceful resort to strike or lockout fees of intimidation and violence; and

e) Proactively promote steps to avoid or prevent prolonged or violent strikes or lockouts.

The Code recognizes that the purpose of a picket is to peacefully encourage non-striking employees and members of the public to oppose a lockout or support a protected strike. The nature of the support can vary. It may be to peacefully encourage employees not to work during the strike or lockout. It may be to peacefully dissuade replacement labour from working. It may also be to persuade members of the public or other employers and their employees not to do business with the employer during the strike. The Code provides practical guidance on how this may take place.

The aim of the amendments to section 69 of the Act is to prohibit a picket unless there are picketing rules in place. Accordingly, the amendments to the section requires a commissioner (or a bargaining council conciliator) conciliating a dispute that may lead to industrial action to determine picketing rules if there is no existing agreement between the parties or collective agreement regulating picketing, or the commissioner has failed to secure an agreement on picketing before the expiry of the conciliation period.

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S69 – Picketing and Picketing Rules Continued…

The commissioner is determining the picketing rules must take into account representations made by the parties attending the conciliation or a person, other than the employer if that person controls the premises where the picketing is contemplated to take place. The commissioner in determining the rules must also take into account Annexure B of the Code of Good Practice; Collective Bargaining, Industrial Action and Picketing which provides guidelines on default picketing rules.

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Collective Bargaining

The Code's guidelines include the following principles of good faith bargaining –

I. Negotiations should be conducted in a rational and courteous manner and disruptive or abusive behavior must be avoided

II. Parties should be prepared to modify demands and responses during the course of negotiations;

III. Mandating processes should be conducted in facilities that are conductive to collective bargaining. Employers should assist this mandating process by providing facilities where possible and time off as per the LRA or any collective agreement for trade union officials or worker representatives to meet and if need be ballot members provided for in the LRA; and

IV. The parties should remain open to continue negotiations after the dispute has been declared.

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Workplace Democracy and Dialogue

The Code recognizes that the objective of workplace democracy and dialogue is to develop a culture of mutual respect and trust between those who manage the enterprise and those who work for it. Dialogue with a view to consulting employees in the decision-making process on issues other than those pertaining to collective bargaining. The promotion of employees and trade union involvement in consultative forums should not undermine collective bargaining or existing workplace arrangements.

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Industrial Action: Strike and Lockouts

The Code recognizes that unlike most other rights in the Bill of Rights, the right to strike and the recourse to lockout is a rights to cause economic harm. While acknowledging that the right to engage in collective bargaining implicitly recognizes the right of the parties to exercise economic power, the Code also recognizes that prolonged and violent strike have a serious detrimental effect on the strikes, the families of the strikers, the small businesses that provide services in the community of those strikers, the employer, the economy and community. Workers exercising the right to strike or protest action and employers exercising the recourse to a lockout must, therefore, recognize the constitutional rights of others.

The Code stresses the importance of conciliation in mutual interest disputes and that the primary objective of conciliation is to settle the matter failing which the commissioner or conciliator must propose alternative means to do so, such as arbitration, including advisory arbitration.

The Code recognizes the need for notice to be given prior to industrial action taking place and states that since the objectives of the notice is to allow the other party to put its house in order, the parties should, notwithstanding the minimum periods set out in the Act, that is of sufficient duration to allow the employer to shut down its plant or services without damage to property and to allow employees to make arrangements to face a period of no income.

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Resolution of dispute through conciliation (Section 135)

The amendment to section 135 of the LRA allows for an extension of the 30 –day conciliation period in order to ensure a meaningful conciliation process. The commissioner conciliating the dispute or a party to the conciliation may apply to the Director of the Commission for an extension provided that the period does not exceed 5 days.

The Director may only extend the period if satisfied that the extension is necessary to ensure a meaningful conciliation process, a party's refusal to agree to the extension is unreasonable, and that there are reasonable prospects of reaching agreement.

Not extension is permitted by the Director where the State is the employer.

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Secret Ballots

By the introduction of section 95(9) to the Act a ballot is now defined as including “any system of voting by members that is recorded and in secret”. The LRA requires trade unions and employer organisations that seek registration to have a provision in their constitutions requiring a ballot of members before embarking on industrial action.

The LA does not require the conduct of a ballot as a requirement for a strike or lockout. Section 67(7) of the LRA explicitly states that no litigation affecting the protected status of a strike may arise from a failure to conduct a ballot.

Transitional provisions apply to the provision of a recorded and secret ballot in the constitution of a registered trade union and employers organisation.

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Establishment of an advisory arbitration panel

The introduction of sections 150A to 150E have he purpose of seeking to strikes that are intractable, violent or may cause a local national crises.

The amendments provide for the establishment of an advisory arbitration panel to investigate the cause and circumstances of the strike or lockout and make an advisory award in order to assist the partied to resolve the dispute.

The Director of the CCMA may establish an advisory arbitration panel on the Director's own accord, on application by a party to the dispute or by agreement between parties and if directed to do so by the Minster of Labour or the Labour Court, but only if the Director has reasonable grounds to believe that any one or more of the following circumstances exist-

I. The strike or lockout is no longer functional to collective bargaining in that it has continues for a protected period of time and no resolutions of the dispute appears period to be imminent.

II. There is an imminent threat that constitutional rights may be or are being violated by persons participating in or supporting the strike or lockout through the threat or use of violence or the threat of or damage to property; or

III. The strike or lockout cause, or has the imminent potential to cause or worsen, an acute national or local crises affecting conditions for the normal social and economic functioning of the community or society.

An advisory award is only binding if a party to the dispute has accepted or is deemed to have accepted the advisory award.

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Other Summary

Amendments have been made to section 32 of the LRA relating to requirements for the extension of collective agreements to non-parties to a bargaining council and with the insertion of section 32A “renewal and extension of funding agreement”.

Relevant Legislation

Labour Relations Act Amendments Bill, 2017.

Questions?

Thank you
Regards
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