

Sectoral collective bargaining system upheld by Court

The North Gauteng High Court in a judgment on 27 November upheld the system of sectoral collective bargaining under the auspices of Bargaining Councils.



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"In the matter of Confederation of Associations in the Private Employment Sector and others v Motor Industry bargaining Council and others (Case 46476/2011), the Court dismissed an application to have certain provisions of the Mibco Main Agreement, limiting the use of labour broker employees in the motor industry, declared unlawful," says Faan Coetzee, executive consultant in the Employment Practice at Cliffe Dekker Hofmeyr.

Coetzee explains that the Court held that these provisions do not constitute a trade boycott, the agreement itself is not too vague to be implemented, the provisions legitimately form part of collective bargaining, and the provisions are not in breach of the constitutional rights to freely exercise a trade or profession and fair labour practices.

Statutory role of councils

In dismissing the application the Court emphasised the statutory role that Bargaining Councils play in the various sectors.

"The applicants also challenged the constitutionality of Section 32 of the Labour Relations Act that empowers the Minister of Labour to extend a Bargaining Council agreement to employers who are not parties to the Bargaining Council, but operate within the jurisdiction of the Council. The argument that Councils in terms of S32 are given unrestricted delegated powers to legislate to private enterprise was rejected by the Court.

"The mechanisms in place before an agreement is extended and the requirement of an independent exemption body that non-parties may approach are sufficient protection. Section 23(5) of the constitution protects collective bargaining which is

regulated by the Labour Relations Act. The Bargaining Councils are created by the Act and give effect to Section 23(5) of the constitution. The judgment upholding the right of the Minister to extend agreements to non-parties is of the utmost importance to the very existence of Bargaining Councils," Coetzee says.

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