

Do collective agreements with majority trade unions bind minority trade unions?

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19 Dec 2013

In the instance where a majority union enters into a collective union with an employer which clearly identifies and binds non-parties, such agreement will be binding upon minority unions.



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Court's decision

In the recent case of *POPCRU v Ledwaba NO & others* (JR 636/2012) [2013] ZALCJHB 244 (5 September 2013) POPCRU was the majority union representing the employees of the Department of Correctional Services ("DCS"). POPCRU had concluded a threshold agreement with the DCS wherein it agreed to the minimum representivity required for obtaining organisational rights. In addition, POPCRU was a member of the Safety and Security Sectoral Bargaining Council ("SSSBC").

SACOSWU, a minority trade union approached the DCS seeking basic organisational rights. As SACOSWU had insufficient membership it wished to accrue such rights by means of a collective agreement.

Remarkably the DCS entered into a collective agreement with SACOSWU. POPCRU in turn challenged the legitimacy of the DCS decision alleging that in doing so the DCS undermined its collective agreement with POPCRU. The arbitrator before the General Public Service Sectoral Bargaining Council found in favour of SACOSWU. POPCRU elected to review the decision before the Labour Court.

In upholding POPCRU's concerns the court made, among others, the following important findings:

- the issue in dispute is a balancing of the freedom of association in the one instance and the sanctity of collective agreements on the other hand;

- the aim of the granting of organisational rights in the Labour Relations Act 66 of 1996, as amended, ("LRA") is to facilitate the right to bargain and the conclusion of collective agreements;
- as such the terms of collective agreements can supersede the provisions of the LRA in certain instances;
- in addition, it was clear from the structure of the LRA that preference was given to the rights of majority unions;
- as such and where a majority union had entered into a collective agreement with an employer where organisational rights are regulated, minimum thresholds are expressly prescribed for organisational rights and such thresholds have been made binding on non-parties then the minority union is debarred from entering into a collective agreement with the employer. Rather, the minority union must seek to comply with the provisions of the majority trade union's threshold agreement if it wishes to obtain organisational rights;
- in the instance where there are two conflicting incompatible collective agreements in place the majority trade union's collective agreement will take preference.

Importance of the case

This case reconfirms the principle that the LRA favours a majoritarian approach to collective bargaining within the workplace. To that extent majority unions and employers can legitimately curtail and regulate the rights of minority unions to be granted organisational rights within the workplace.

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