

The rules of engaging with a new trade union



By [Verushka Reddy](#)

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The right to strike is entrenched in the Constitution. The recent strikes in the platinum industry raise the question of how an employer engages with a new trade union.



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The Labour Relations Act (LRA) spells out a trade union's rights to organise, and the process to be followed to exercise those rights. Organisational rights may only be enjoyed by registered trade unions which are representative of the workforce. 'Representative', in respect of some rights, has been interpreted to mean an average of 30% of employees at a workplace (minority rights).

The LRA, on the other hand, stipulates that other rights may only be exercised by a majority trade union, or two or more registered trade unions who, acting together, represent the majority of employees in a workplace, that is 50% plus one (majority rights).

Minority rights

A registered trade union should represent approximately 30% of an employer's workforce at a workplace to exercise the following right. It must be borne in mind; however, that 30% is not a percentage cast in stone.

- Access to the workplace. A union official may enter an employer's premises to recruit and to communicate with members or otherwise serve members' interests. The employer may set reasonable conditions for access to safeguard life or property and to prevent undue disruption to its operations.
- Deduction of trade union subscriptions. This requires an employer to deduct the union membership fee directly from an employee's remuneration and pay it over to the union. The members must provide written authorisation to the employer.
- Leave for trade union activities. An office bearer of a trade union or a federation of trade unions is entitled to time off work to attend to trade union activities. The number of days off and how many of those will be paid days off, are subject to agreement between the employer and the trade union.

Majority rights

The following rights are reserved for trade unions representing the majority:

- Trade union representatives. More commonly referred to as 'shop stewards', the LRA prescribes the minimum number of shop stewards who may be elected per number of employees at the workplace. Shop stewards enjoy a number of rights, including the right:
 - a. to represent employees in disciplinary and grievance hearings;
 - b. to monitor compliance with the LRA; and

- c. to report breaches of the LRA or the terms of a collective agreement.
- Disclosure of information. This entitles a trade union to relevant information required to exercise certain rights, such as the right to represent employees in disciplinary hearings and collective bargaining, and to monitor compliance with the LRA.
- The right to establish thresholds of representativeness. An employer and a majority trade union may agree on thresholds of representativeness to allow other unions to exercise the rights of access, trade union subscriptions and disclosure of information. The agreement will not be binding unless the thresholds are applied equally to every trade union seeking to exercise those rights.

The process

The steps are relatively simple. In terms of section 21 of the LRA a trade union seeking to exercise organisational rights must write a letter to the company stating the following:

1. The workplace at which it intends to exercise the organisational rights;
2. its representativeness at the workplace and the facts relied on to demonstrate that it is representative; and
3. the organisational rights that it wishes to exercise, as well as the manner in which it intends to do so.

The written notice must be accompanied by a certified copy of the union's certificate of registration.

Within 30 days of receiving a section 21 notice the employer and trade union must meet. The purpose of the meeting is to agree on how the organisational rights will be exercised. If the parties do not meet or cannot agree, either party may refer a dispute to the CCMA.

There are various reasons why an employer may choose not to engage with a trade union when it receives a section 21 notice. The most common reason is that the employer disputes that the trade union is representative. It is vital for an employer to establish whether the trade union has significant support because its employees may go out on strike in support of a demand that the trade union be allowed to exercise organisational rights.

Thus, it is critical not to refuse a meeting with the union out of hand. The employer must also be alive to the mood on its shop floor. If employees are disgruntled over one or other issue at the time, this may increase the risk of a strike. While the matter may also be referred to arbitration, employees who are aggrieved may see a strike as a more expedient way to exercise their muscle. If the requirements for a protected strike are met, an employer may not prevent a strike in support of organisational rights.

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