

Granting minority trade unions majority rights

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The proposed amendments to s21 of the Labour Relations Act, No 66 of 1995 (LRA) bring about two fundamental changes in determining whether or not a registered trade union is "a representative trade union", which materially affects the granting of the rights contained in s12 to s16 of the LRA.

First, the amendments demand that a commissioner takes into account employees that fall into "categories of non-standard employment", such as temporary employment services or fixed termed contracts in determining whether a trade union is a "representative trade union". Following on from this consideration, the amendments allow trade unions that represent employees of temporary employment services to exercise their rights "in either the workplace of the temporary employment service or one or more of the clients of the temporary employment service".

Intrinsically linked to this first change to s21, is the second focus of the amendments, which is to regulate the rights given to minority interest trade unions. The two changes are linked, in that the employees of "non-standard employment" will be taken into account in determining whether a trade union is entitled to the rights as found in s12 to s16 of the LRA.

The conferral of rights to minority unions

Perhaps the most important change brought about by the amendments is the conferral of rights in terms of s14 and s16 to minority unions, which have in the past been given exclusively to majority unions. In addition, the amendments allow, if certain conditions are met, for a trade union that does not meet a threshold established by a collective agreement in terms of s18, nevertheless to be granted rights in terms of s12, s13 or s15 of the LRA.

To the benefit of minority trade unions, the amendments serve to circumvent the traditional representivity restrictions associated with s14, s16 and s18 of the LRA. Slight reprisal is given by the internal limitations created in the amendments as a theme of exclusivity runs through the granting of such rights. In other words, the rights may only be granted in circumstances where no other trade union is entitled to the same rights.

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