



Dear Members

With spring on the horizon, we're embracing the season of growth and new beginnings. In this edition, we'll uncover the latest developments in Labour Law and bring you the latest news and updates from HASEA. Join us as we explore these vital topics, offering insights to keep you informed and engaged with our community.

LABOUR NEWS

This month, we feature a dialogue between Peter Holmes and Alan Mengel, discussing the topic "Navigating Union Negotiations: Insights on strikes and Arbitration Procedures" in the newsletter. If you have any questions or need guidance, feel free to reach out to us without hesitation.

Navigating Union Negotiations: Insights on Strike Action and Arbitration Procedures

Peter: Hi Everyone 2 questions. If a union official has indicated verbally at Conciliation that the Commissioner should issue a certificate of non resolution so they may go to Arbitration and now the union indicates that they want to meet as a precursor to a strike. May they make such a change. The certificate has ticked Arbitration as a choice. Secondly may the company consider a lock out using the same certificate of non resolution or must we have applied and been for Conciliation on our own 7.11 application?

Peter: Hi Alan I trust you and Annatjie are well. Could you possibly assist me with an answer to my 2 questions. I posted them on the HASEA Western Cape WhatsApp group.

Peter: Hi Alan, the meeting the union is calling for is one to discuss picketing rules etc. before they embark on strike action.

Alan: Hi Peter. An interesting one. Have experienced a similar situation previously where it was a choice matter of organisational rights the applicant, a union to refer a matter of organisational rights to the arbitration, then referred it to CCMA to arbitrate.

The certificate of non resolution issued by the CCMA also listed arbitration as the next step. Now if you look at section 22 of the LRA it says that if a dispute about organisational rights remains unresolved then a party may (note "may") request the dispute to be resolved through arbitration as soon as possible.(see section 22 (4).

But then the CCMA referred us to section 65(1)(c) of the Labour relations act where a party has the right to refer a dispute to arbitration or the labour court which then section 65(2)(a) states that despite what is said in section 65(1)(c) a person may take part in a strike or lockout if the issue in dispute is about matters dealt with in sections 12 to 15 of the LRA which is organisational rights. So yes if the dispute conciliated affords to a party the right to strike they may make that choice. It does seem that this contradicts section 22 (4) .

It was said to us that it doesn't matter what is ticked on the certificate of non resolution, what matters is has the matter been conciliated, a certificate of non resolution issued and does the LRA then afford to the parties to the dispute the right in terms of section 65 (2)(a) the right to participate in a strike or lock out.



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Turning to your second question because a certificate of non resolution has been issued the company may institute a lock out provided that you have concluded a picketing agreement.

You may reach an agreement in terms of the picketing rules without the assistance of the CCMA which is then deemed to be a collective agreement between the parties but if there is no agreement then the commissioner conciliating the dispute must attempt to secure an agreement. If no agreement is reached either between the parties or at conciliation then the commissioner will determine the picketing rules.

To sum up if the dispute is about sections 12 to 15 of the LRA a trade union may call for a strike or the employer institute a lock out, but neither may do so in the absence of picketing rules.

Either party may refer an application to the CCMA for purposes of picketing rules.

I personally would agree to meet with the union to discuss picketing rules and frustrate the process so that it must go to the CCMA for them to assist the parties.

I appreciate you requesting of me to assist with the "tamalekie".

The union must list the members/employee's who they claim to have joined the union so that if there is an eventual strike or lockout the employees that form part thereof are recorded.

Do sincerely hope that this is of assistance to you.

Fondest Regards

Alan

Alan: Hi Peter. I am just realising now that this matter you are dealing with is the matter you previously discussed in the zoom meeting.

I took it for granted it has to do with the union seeking organisational rights.

Was I right in my assuming that it's that same matter?.

If not then please provide me with more details and I will gladly help with more advice should you require. Don't know everything, still learning every day but what I know I will share.

Bottom line is that even if arbitration is ticked on the certificate the union still has a discretion in terms of what the LRA affords them.

Peter: Hi Alan. No it's not the same matter. Different member. This is Southern Ambition t/a Crime Watch. So it's in the private security bargaining council. They are trying to force the company to change their roster schedule to increase time off and overtime.

Alan: Oh my Peter. That being the case they cannot strike.

The security industry SIRA is regulated by a collective agreement and therefore section 65 (3) applies which states no person may take part in a strike

If that person is bound by a collective agreement that regulates the issue in dispute.

Conditions of employment are regulated by SIRA and therefore in my opinion the dispute must be lodged with the Security Industry Regulations Authority SIRA. The matter should at best go to arbitration where a commissioner will be appointed to hear the matter and issue an award.

Look at section 65 (3) of the LRA.

Peter: Great. We were at the NBCPSS for Conciliation yesterday. They never mentioned that the union who is very large and active in many private security companies and the companies are regulated as you say by PSIRA rules and the NBCPSS collective agreement

Peter: Yesterday the union spoke about going to Arbitration today they asked to meet to discuss picketing rules before going to strike action.



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Alan: If the matter is regulated by a collective agreement then the answer is simply no to strike. It must go to arbitration. The LRA is clear on this matter. So obviously you will refuse to meet to discuss picketing rules and tell them that the matter is one listed in limitations on strike action.

ORGANISATIONAL NEWS

As HASEA is a National Organisation with branches in various provinces, we are very proud to announce the following member that have been added to the HASEA family:

August:

Camarque Body Corporate: Durban

At HASEA, we prioritise growth and have also selected organisers in various provinces to ensure our service level remains exceptional!

For more information regarding our services, you can visit our website www.hasea.co.za or email us: admin@hasea.co.za / accounts@hasea.co.za