

MARIKANA COMMISSION OF INQUIRY

PANEL 2: BARGAINING ARRANGEMENTS IN PLATINUM

TOPIC: WORKERS BYPASSING UNIONS: HOW TO RESPOND?

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I would like to thank the Marikana Commission for taking the initiative in opening up issues for public debate that relate to the second phase of the Commission's inquiry. Many of the issues that the Commission will be considering require broad discussion and consideration by the wider public and, in particular, by the social partners in the labour relations arena, namely government, organised labour and organised business.

The question posed, 'Workers bypassing unions: how to respond?' should first of all be seen in context. The majority of workers in South Africa remain in the lower income groups in society, reside in residential areas where conditions and services are sub-optimal and many are still subject to treatment in the workplace that gives rise to dissatisfaction and that creates a basis for spontaneous worker action. There have certainly been major improvements and changes in the post 1994 period but a critical question posed by the Marikana incident in 2012 is whether change in the South African workplace has gone far enough.

Let me suggest that the question of workers bypassing unions clearly begs the prior question; why would workers bypass trade unions? One can identify a few situations where this may occur.

Firstly, workers bypass unions where unions are not able to represent workers in workplace processes and in collective bargaining. A trade union may not have enough members to negotiate access to a workplace and to organisational rights in the workplace. In such a situation, workers who are members of minority unions may engage in industrial action independently of their union. So, the degree of unionisation is important. Are we dealing with unionised or non-unionised workers? What rights do the unions have in certain situations? And is there contestation around these rights or not?

Secondly, workers may also choose to embark on a strike or stoppage spontaneously over some incident that happens in the workplace and where there is no time for union organisers to consult their members and channel grievances or disputes in the proper way. Such action was more common during the pre-1994 period when the non-racial, independent unions

were still in the process of becoming established and where conflict over day to day conditions were far more frequent than they are today. An example that comes to mind is that of workers confronting management over hostel conditions in a building products plant in the Western Cape in 1984. Workers had long standing grievances and dissatisfaction over conditions in the company hostels that related to frequent raids by Administration Board officials in search of “unauthorised” visitors, particularly wives and children of hostel residents; the hostel manager was autocratic and dictatorial in the way he controlled the hostel and the facilities and the quality of the food was unpalatable. Worker dissatisfaction had been communicated to management on many occasions by the union which was still in the process of negotiating a recognition agreement. Nothing was done and in April 1984, workers engaged in a work stoppage demanding the dismissal of the hostel manager and supervisor.

Finally, workers may bypass a union when they become disaffected with their union and its organisers. There was an element of this in the strike at Lonmin in 2012 that led to the Marikana shooting. Dissatisfaction with a trade union can have a number of causes and while the reasons vary, a common thread is the problems that face trade unionism in South Africa at present – problems to do with social distance between union organisers and members, weaknesses in union organisation and rivalry between trade unions. And sometimes these problems take on a particular character in certain sectors, such as mining. The sheer size of the workplace in mining companies complicate communication between union representatives and union members.

For workers to bypass unions and demand to negotiate with management directly on substantive issues like wages, is less common than workers bypassing unions to address specific grievances or trying to pressure management to respond to certain situation, for example, a health hazard in the workplace. While more research is probably needed to understand how common these actions are, it does seem that where collective bargaining is concerned, workers are in a weaker position where they try to negotiate directly with management rather than through a representative processes. There are certainly cases historically where workers who are not well organised or not well represented in collective bargaining become divided and end up in a weaker position in the bargaining process.

How should one respond to workers bypassing unions? Let me start by suggesting how not to respond. It certainly does not help, in my view, to respond by calling for legal intervention or state intervention. There was a tendency to call for legal changes after the Marikana situation in 2012, but I sense that there is greater consensus today that the law does not offer solutions to the issues that cause workers to bypass unions. Equally, the state can do

very little about what are essentially complex workplace and/or trade union organisational issues. Community issues and issues relating to migrant labour, for example, are also complex issues that would take time to address.

While government have certainly been involved and continue to be involved in disputes in the mining sector there is little government can do beyond facilitating talks, framework agreements, etc. And let me say that we do maintain a neutral position in relation to inter-union rivalry and union disputes. Our job is not to deregister trade unions, except where there are very good grounds for doing so relating to non-compliance with aspects of the Labour Relations Act.

There have also been rumblings about the process of registration of trade unions being faulty. We are aware of views that the process of registration is too easy and that the Department registers trade unions without proper scrutiny over the genuineness of an organisation, or its membership. While this may be a separate debate, we would want to defend the current framework for registration and how it is applied. It is perhaps important to remember the context in which the LRA was negotiated in the early 1990s. The previous dispensation was one in which there were excessive powers of the Registrar of Labour Relations and the executive to interfere in the internal regulation of trade unions, legal regulation of union finances and restriction on political activity of unions.

It is also important to bear in mind that South Africa is a signatory to the International Labour Organisations Convention on Freedom of Association and Protection of the Right to Organise (87 of 1948). The Convention requires public authorities not to interfere in trade union affairs. So, there is a strong rationale for the current legal framework and for a limited role for the state in the affairs of trade unions and, indeed, in workplace relations between management and trade unions.

What responses may be appropriate? I will suggest three areas in which responses could be forthcoming.

The first is in relation to processes of communication in the workplace. It is an old story but one that is worth revisiting in the wake of Marikana. Processes of communication between workers and their representatives, between union representatives and management and between workers and management need to be in place and should function well at all times. Does this mean revisiting workplace committee structures? This is another area that may require its own debate, but it will probably come down to the particular circumstances in a workplace. The workplace forum option in the LRA has clearly not worked. This is the provision for elected forums with a substantial role in consultation and joint decision-making.

The history of workplace committees being used as an alternative to union structures makes this a contested area. But there were and probably still are committees in operation in the mining sector which could play an important role in establishing lines of communication. Clearly where workers do bypass unions and try to engage management, the first response should be to establish communication with legitimate spokespersons of the workers and appropriate representatives of management. This includes engaging with a recognised trade union.

The second area relates to trade union renewal. The Marikana incident certainly highlighted how genuine, capable trade union organisation is in the public interest. Having said that it is up to the trade union movement to take the lead in this regard, to take forward the initiatives that do exist to strengthen trade union organisation and to accelerate a process of regeneration. The COSATU September Commission never really received the attention that it deserved. Perhaps it is time for an October Commission, one that is jointly initiated by all the country's major trade union federations. Government can certainly also do more to facilitate the capacity in trade unions for improved compliance with legal requirements.

Thirdly, the issue of majoritarianism does need to be re-considered/reviewed, not necessarily with a view to changing the model in the legal framework, but rather to examine any unintended consequences that may occur in practice. In the Framework Agreement for a Sustainable Mining Industry entered into by organised labour, organised business and the government there is a commitment to explore possible unintended consequences and how to deal with them. A task team has been formed at NEDLAC to take this discussion forward.

Finally, I think we will need another forum such as this to debate the report of the Farlam Commission, once it becomes publicly available.

I thank you.

Ian Macun

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Department of Labour

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