

RealTime Transcriptions

TRANSCRIPTION OF THE

COMMISSION OF INQUIRY

MARIKANA

BEFORE TRIBUNAL

THE HONOURABLE MR JUSTICE FARLAM (RETIRED) - CHAIRPERSON
MR TOKOTA SC
MS HEMRAJ SC

HELD ON

DAY 38 28 JANUARY 2013 PAGES 4082 TO 4205

HELD AT

CIVIC CENTRE, RUSTENBURG, NORTH WEST PROVINCE



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1 [PROCEEDINGS ON 28 JANUARY 2013]
 2 [10:07] CHAIRPERSON: The Commission resumes. Ms
 3 Pillay, I see you're the chief evidence leader this
 4 morning. You're still under oath and you were still
 5 leading your witness, Mr Tip.
 6 MR MSIMANG: Mr Chairperson, my name is
 7 Henry Msimang. Adv Mpofu, the leader of this team, will
 8 not be in today. He has asked me to put his apologies and
 9 I'll stand in for him. Thank you.
 10 CHAIRPERSON: Thank you for putting
 11 yourself on record.
 12 MR TIP SC: Mr Chair, before I move on to
 13 the next paragraph, there are some documents that we were
 14 able to complete in the course of the weekend, which we
 15 trust will be of assistance to the Commission and all the
 16 parties. Given that we are dealing with the events in and
 17 around the NUM office, we have prepared a set of three
 18 enlargements from the reliable source of Google and we'll
 19 hand those up and get an exhibit number. I will describe
 20 what they are – well, it will be more useful for me to
 21 describe it when you have them.
 22 CHAIRPERSON: If the acting chief
 23 evidence leader can tell us how to describe the exhibit,
 24 we'd be grateful.
 25 MS PILLAY: Chair, it would be YY2.

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1 MR TIP SC: Then may I suggest, Mr Chair,
 2 if the Commission has these photographs, that we make them
 3 YY2, 1, 2 and 3. The first one in the set is the one that
 4 gives the broadest overview and –
 5 CHAIRPERSON: Sorry, so –
 6 MR TIP SC: Yes, yes.
 7 CHAIRPERSON: Is it this?
 8 MR TIP SC: That is the one, Mr Chair,
 9 yes.
 10 CHAIRPERSON: If we stapled them
 11 together, if you could – what – if they're all in the same
 12 order we should possibly staple them together so they don't
 13 get out of sequence but you say the first one, which is –
 14 MR TIP SC: It's the one that gives the
 15 largest view. That is the one that extends from Wonderkop
 16 Stadium on the left hand side through to, inter alia, the
 17 NUM office towards the right hand side.
 18 CHAIRPERSON: It's a Google document and
 19 at the bottom it says "Imagery date 10/24/2011."
 20 MR TIP SC: It's a Google –
 21 CHAIRPERSON: So we'll call that YY2,
 22 YY2.1.
 23 MR TIP SC: Point 1.
 24 CHAIRPERSON: Right. Let's mark them now
 25 while we're about it.

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1 MR TIP SC: Mark them all, then I'll –
 2 CHAIRPERSON: The next one is, it looks
 3 like the Shagan workshop.
 4 MR TIP SC: It's got Shagan workshop and
 5 a closer, a better view of the roads around the NUM office
 6 and satellite -
 7 CHAIRPERSON: Is that –
 8 MR TIP SC: - police station.
 9 CHAIRPERSON: - YY2.2?
 10 MR TIP SC: That's correct, Mr Chair, and
 11 the third one we put in is a close-up. We put it in for
 12 completion of the immediate vicinity of the NUM office and
 13 satellite police station. Of course -
 14 CHAIRPERSON: Sorry, there's a little bit
 15 of confusion with the documents we've been given, so we're
 16 busy trying to sort them out here on the bench. When we've
 17 finished you can proceed because we'd like to listen to
 18 you, but am I right in saying that the one with Wonderkop
 19 Stadium on the left is YY2.1, the one with the Shagan
 20 workshop is YY2.2, is that right?
 21 MR TIP SC: That is correct, Mr Chair.
 22 CHAIRPERSON: Then we've got what looks
 23 like the same thing. It looks like a black and white copy
 24 of YY2.2. Perhaps the printer ran out of coloured ink or
 25 something. In fact we've got a number of –

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1 MR TIP SC: Mr Chair, what may have
 2 happened is that because they were e-mailed to the evidence
 3 leaders, they may have run off copies in black and white.
 4 CHAIRPERSON: Alright.
 5 MR TIP SC: The ones that we've handed in
 6 are in full colour.
 7 CHAIRPERSON: What the acting chief
 8 evidence leader has suggested is that we hand them all back
 9 to her and she will sort them out for us. It's not a task
 10 that chief evidence leaders normally perform but she's
 11 prepared to do it.
 12 MR TIP SC: Needless to say, we offer our
 13 assistance.
 14 CHAIRPERSON: Thank you. Alright, so you
 15 take them back for the moment while they're being sorted,
 16 put in the proper order, and she can mark them for us and
 17 possibly during the tea adjournment attempts can be made to
 18 ensure that everybody has got the same exhibit numbering on
 19 each photograph, so we won't have confusion. So shall we
 20 carry on with the witness in the meanwhile?
 21 MR TIP SC: There's one other matter, Mr
 22 Chair.
 23 CHAIRPERSON: Oh.
 24 MR TIP SC: The Commission raised, in the
 25 course of last week, the fact of the pointing out at the

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1 NUM office which was conducted on the 2nd of October and I
 2 undertook – 2nd of October last year –
 3 CHAIRPERSON: Yes.
 4 MR TIP SC: I undertook to see to it that
 5 a transcript would be prepared. That we have done. May we
 6 mark that YY3?
 7 CHAIRPERSON: Well, let's ask Ms Pillay
 8 for permission.
 9 MS PILLAY: It will be YY3.
 10 CHAIRPERSON: The transcript of
 11 inspection at NUM office on 2/10/12.
 12 MR TIP SC: 12.
 13 CHAIRPERSON: Okay and that's YY3.
 14 MR TIP SC: That is YY3 and it has been
 15 done by a professional transcriber service but that doesn't
 16 mean, of course, that if parties disagree with any aspect
 17 of it, they shouldn't raise it and we can then attend to
 18 that. I should also just point out, Mr Chair, that the
 19 transcribers - the very first portion which consists of two
 20 pages, that was the portion relating to the stage when
 21 somebody pointed out that a body had been put to death by
 22 assegai stabs in the vicinity of the bus stop, of course
 23 that comes after, you will recall, the pointing out at the
 24 NUM office itself. So the pages are out of sequence but
 25 otherwise I all follows.

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1 CHAIRPERSON: It's the section beginning
 2 "NUM office area," page 1 "NUM office area," that's where
 3 we start. The one that you're referring – that one is –
 4 MR TIP SC: Yes.
 5 CHAIRPERSON: The first part refers to
 6 the [inaudible], that's the one that relates to the place
 7 of the stabbings. The one that relates to the NUM offices
 8 and so on, is the one that begins "Video clip VTS02 Onetime
 9 70" –
 10 MR TIP SC: That's correct.
 11 CHAIRPERSON: 705-14/12.
 12 MR TIP SC: That's correct, Mr Chair, and
 13 it records you saying, "Is everybody ready?"
 14 CHAIRPERSON: Yes.
 15 MR TIP SC: So in other words that's the
 16 part that is chronologically before.
 17 CHAIRPERSON: So now that we've sorted
 18 that out, can we now have some evidence? I'd better remind
 19 you again, you're still under oath. Mr Tip, yes?
 20 MR TIP SC: Let me just add to that, Mr
 21 Chair. In the course of last week you did express some
 22 interest in perhaps watching the videos of the pointing
 23 out. We have set that up. We'll only play that at a stage
 24 that it would really be something that the Commission would
 25 wish to see, otherwise we can proceed.

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1 MALESELA WILLIAM SETELELE (CONTD):
 2 CROSS-EXAMINATION BY MR TIP SC (CONTD):
 3 Mr Setelele, we had reached the point at the conclusion of
 4 the proceedings at the end of Friday afternoon, of
 5 completing what you have said in paragraph 8 of your
 6 statement. We're moving on to paragraph 9 and again, Mr
 7 Chair, it may be swifter if, on aspects like this, I simply
 8 read the paragraph onto record. If there are any
 9 complaints –
 10 CHAIRPERSON: If it's not contentious
 11 then we can –
 12 MR TIP SC: It's not contentious. What
 13 you say there is the following, Mr Setelele, "At
 14 approximately 13H00, together with Bongo, I met with Mr
 15 Dietrich. By that time we know that the RDOs had marched
 16 to the main offices of Lonmin and that they were indeed on
 17 strike. I informed Mr Dietrich that the unprotected strike
 18 and the march to Lonmin had not in any way been organised
 19 or endorsed by NUM. I also requested permission to convene
 20 a mass meeting for workers at 2PM that day at C2 hostel,
 21 Wonderkop, so that we could inform the workers of NUM's
 22 position and encourage them not to participate in the
 23 unprotected industrial action. Mr Dietrich granted us
 24 permission to convene the meeting. Shortly thereafter I
 25 received a message from Mr Dietrich that the meeting should

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1 not take place because he had concerns about the
 2 possibility of violence. However, by that time NUM members
 3 had already been informed that a meeting was to take place
 4 and several of them had started gathering in that area.
 5 The meeting eventually started at around 4PM with about 500
 6 in attendance." Paragraph 11, "I informed them that the
 7 meeting had to be cancelled. I did, however, inform the
 8 members that the strike by the RDOs was unprotected, that
 9 it was not endorsed by NUM and that they should therefore
 10 continue to report for duty. I advised them also that
 11 should anyone encounter any difficulties in connection with
 12 the strike and reporting for duty, the NUM office should be
 13 notified and that assistance would be provided. The NUM
 14 office was to remain open throughout that night and I had
 15 arranged with the NUM shop stewards to be present in the
 16 office to assist employees as necessary." Let me just
 17 pause to say this, Mr Setelele, you've already confirmed
 18 under oath the correctness of this entire statement.
 19 MR SETELELE: You are correct.
 20 MR TIP SC: And I'm not going to ask you
 21 at the end of every paragraph whether you confirm that that
 22 is correct, but if you should detect that some inaccuracies
 23 have crept in, then you'll let us know.
 24 MR SETELELE: Alright.
 25 MR TIP SC: Good. Then paragraph 12,

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1 "After the meeting I returned to the office. At
 2 approximately 8PM a NUM member came to the office and
 3 informed me that two employees had been assaulted by an
 4 unknown group of people whilst on their way to work that
 5 evening." That's a typing error, it should be "way to
 6 work," not "work to work." "I referred this member to Mr
 7 Bongo with the request that the two employees be taken to
 8 the Andrew Saffi Hospital for treatment." Paragraph 13,
 9 "Apart from the occasions set out above, I was at the NUM
 10 office throughout the day of 10 August 2012. Even when I
 11 was absent, other NUM members were present there. They
 12 would have reported to me if anything of significance had
 13 occurred whilst I was not there. At no stage on that day
 14 was there any incident involving a group of strikers who
 15 were marching to or past the office. No shots were fired,
 16 no strikers were injured there, no strikers were killed
 17 there. I may add that the NUM office is not along the
 18 route between the Wonderkop Stadium and the Lonmin
 19 offices." Paragraph 14, "During the course of that
 20 evening, a number of NUM members and other employees
 21 arrived at the office with reports of intimidation and that
 22 the bus service had been stopped, with the result that
 23 employees were unable to travel to work. We responded to
 24 this by using the NUM vehicle, a Toyota Quantum, to
 25 transport to work throughout the mine and at various times

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1 throughout the night of 10/11 August." Just to clarify
 2 that, you were transporting employees to work, those who
 3 wished to report for duty but were having difficulty, is
 4 that correct?
 5 MR SETELELE: Correct.
 6 MR TIP SC: Then you go on to say, "I
 7 should explain that this vehicle was not owned by NUM but
 8 had been made available to us by Lonmin. The arrangement
 9 was that I was the person in NUM who was responsible for it
 10 and who had to see to it that it was properly cared for and
 11 used only for bona fide NUM business.
 12 MR SETELELE: Correct.
 13 MR TIP SC: Paragraph 15, "I accompanied
 14 the vehicle on several of these trips. From time to time I
 15 saw groups of people who were clearly not on their way to
 16 work, although I did not witness any incidents of
 17 intimidation. On one occasion, however, we drove past a
 18 group of people who had gathered at the intersection near
 19 the Wonderkop Stadium. They shouted at us in a threatening
 20 tone that we would be killed for transporting people to
 21 work whilst they were on strike."
 22 MR SETELELE: That's correct.
 23 [10:27] MR TIP SC: Paragraph 16, "I had also, in
 24 the early hours of 11 August 2012, used a loudhailer whilst
 25 driving around, to inform people that the strike was not

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1 endorsed by the NUM and that they should report for duty.
 2 I also arranged for other NUM members and shop stewards to
 3 do the same on foot in the hostel complex."
 4 MR SETELELE: You're correct.
 5 MR TIP SC: Paragraph 17, "I was at the
 6 NUM office at approximately 8:30 that morning" – which
 7 would be 11 August – "when two Lonmin security officers
 8 arrived at the office and told me that a group of strikers
 9 had started marching from the veld near the Wonderkop
 10 Stadium and that they were headed in the direction of the
 11 NUM office, carrying an assortment of weapons such as
 12 knobkerries and spears, et cetera. These officers said
 13 also that their information was that the marchers intended
 14 to burn down the NUM office and the vehicle that we were
 15 using to transport employees to work."
 16 MR SETELELE: Correct.
 17 MR TIP SC: Paragraph 18, "I decided that
 18 the vehicle should immediately be moved to the Andrew Saffi
 19 Hospital, which I hoped would be a safe place for it. I
 20 then left with Jeff, the NUM driver, to do so.
 21 MR SETELELE: Correct.
 22 MR TIP SC: "Because I was uncertain of
 23 where the marchers were at that time, I thought I best not
 24 to drive along the road leading directly to the hospital
 25 because the marchers would have seen it if they were

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1 already on the road going alongside the hostel." Mr Chair,
 2 those are, of course, cumbersome descriptions of the roads
 3 and perhaps just for cross-reference purposes, YY2.1 street
 4 B is the road leading to the hospital. Street A is the one
 5 leading down from Wonderkop Stadium to the T-junction.
 6 CHAIRPERSON: [Inaudible] – the A is?
 7 MR TIP SC: A is, street A is the one
 8 leading from Wonderkop Stadium on the left through to the
 9 T-junction –
 10 CHAIRPERSON: Yes.
 11 MR TIP SC: With street B.
 12 CHAIRPERSON: Yes, thank you.
 13 MR TIP SC: And whilst – you have those
 14 maps in front of you?
 15 MR SETELELE: Yes.
 16 MR TIP SC: And is it correct that the T-
 17 junction of streets A and B is the point that you feared
 18 that the marchers might spot your Quantum vehicle being
 19 driven?
 20 MR SETELELE: Correct.
 21 MR TIP SC: Then you go on with paragraph
 22 18 to say, "They would then have realised" – that is if
 23 they'd seen it – "that we were taking it to the hospital.
 24 We therefore drove away from the NUM office in the
 25 direction of Wonderkop township and used quite a long

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1 detour in order to come out at the back of the hospital.
 2 MR SETELELE: Correct.
 3 MR TIP SC: Just to illustrate that in
 4 relation to the same aerial – or not aerial photograph but
 5 the map – you would then have travelled along street B,
 6 roughly speaking, in a northerly direction or north-west.
 7 You'll see in the right hand top there is an "N" sign for
 8 north that Google provides on all its photographs, would
 9 that be right?
 10 MR SETELELE: Correct.
 11 MR TIP SC: Then to continue with your
 12 statement, "As already indicated, I was responsible for
 13 this vehicle and therefore decided that I should go with it
 14 to ensure that it reached a safe destination."
 15 MR SETELELE: Correct.
 16 MR TIP SC: Paragraph 10, "There were, at
 17 the time, a number of weapons such as knobkerries, sticks
 18 and spears at the NUM office. That was not usually the
 19 case. Ordinarily there would be none.
 20 MR SETELELE: Correct.
 21 MR TIP SC: Some of the weapons that were
 22 there that morning, had been taken away from strikers in
 23 the course of the night before. Others had been brought in
 24 by members who had gone home to fetch them in response to
 25 their experience of threats and intimidatory conduct by

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1 strikers when these members were assisting employees to get
 2 to work during the night."
 3 MR SETELELE: Correct.
 4 MR TIP SC: "I heard afterwards that the
 5 late Mr Bongo had distributed these weapons amongst those
 6 who decided to defend the NUM office against the
 7 approaching strikers."
 8 MR SETELELE: Correct.
 9 MR TIP SC: Paragraph 20, "By the time we
 10 had parked the vehicle at the hospital and walked back to
 11 the NUM office, the incident there had already taken
 12 place."
 13 MR SETELELE: Correct.
 14 MR TIP SC: "We met up with a group of
 15 NUM strikers who were marching down from the direction of
 16 the Wonderkop Stadium towards the NUM office."
 17 MR SETELELE: Correct.
 18 MR TIP SC: "They were singing. I
 19 received a short report on what had happened. It was clear
 20 that these members were very relieved that they had been
 21 able to disperse the attacking strikers."
 22 MR SETELELE: Correct.
 23 CHAIRPERSON: What were they singing?
 24 MR SETELELE: I don't remember correctly
 25 but it was a union song.

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1 CHAIRPERSON: Thank you.
 2 MR TIP SC: Was it a song that expressed
 3 anything of a threatening nature in relation to any other
 4 party?
 5 MR SETELELE: It was just a song that I
 6 can say was not insulting anyone or that can hurt anyone
 7 actually, emotionally or whatever. It was just an ordinary
 8 NUM song.
 9 MR TIP SC: Thank you. Then paragraph
 10 21, "At the office I was further briefed on the
 11 confrontation. In the course of this I was told that some
 12 shots had been fired by NUM members and that a couple of
 13 the attacking strikers may have been injured as a result.
 14 I was also told that none of the strikers had been killed
 15 by these shots. I later established that two strikers had
 16 indeed been injured and that they had gone to Andrew Saffi
 17 Hospital for attention."
 18 MR SETELELE: Correct.
 19 MR TIP SC: Now, in addition to those
 20 reports that you received, Mr Setelele, from your own
 21 observations at the time that you were proceeding back to
 22 the NUM office, anywhere in the vicinity did you see any
 23 people who had been killed, bodies that were lying there?
 24 MR SETELELE: No.
 25 MR TIP SC: Then paragraph 22, "Shortly

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1 after our discussions at the office, Mr Bongo and I again
 2 went to meet Mr Dietrich in order to request permission to
 3 convene another meeting that afternoon."
 4 MR SETELELE: Correct.
 5 MR TIP SC: "As we were returning at
 6 about 2PM, I saw a group of singing NUM members coming down
 7 the road from the entrance to the Wonderkop hostel." Again
 8 let me just –
 9 MR SETELELE: Chairperson, I think there
 10 is a need for me to correct one thing here, but maybe it's
 11 the language that has – the people who were coming through
 12 the gate, in other words walking towards the stadium.
 13 MR TIP SC: In other words you're
 14 correcting the point, it was at the gate, not along the
 15 road leading from the stadium, is that right?
 16 MR SETELELE: Ja, along the road to the
 17 stadium.
 18 MR MAHLANGU: Not the hostel.
 19 MR SETELELE: No, not the hostel.
 20 MR TIP SC: Oh yes, I beg your pardon,
 21 I'm being slow. It's the stadium, not the hostel. In
 22 other words they were returning from the vicinity of the
 23 stadium towards the direction of the T-junction and NUM
 24 office, is that right?
 25 MR SETELELE: No, they were from the

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1 hostel towards the gate of – on the road to the stadium.
 2 If you can look at this exhibit YY2.1.
 3 MR TIP SC: Yes, point – that would be
 4 the best way, just point out the spot that you're referring
 5 to? You're looking at YY2.1.
 6 MR SETELELE: Ja, I just want to check, I
 7 just want to find the direction to the stadium on this map.
 8 Where is it? Okay, they were on the street, street A
 9 towards Wonderkop Stadium, right at the gate. then it's
 10 where I met them, before they come out of the gate towards
 11 the stadium.
 12 MR TIP SC: Perhaps you can just describe
 13 to us where the gate that you're talking about is.
 14 MR SETELELE: You see where is Wonderkop
 15 Stadium? On this exhibit YY2 there is writing there that
 16 says "Wonderkop Stadium."
 17 MR TIP SC: Yes.
 18 MR SETELELE: And IU is a white line
 19 towards street A and that is where the gate is.
 20 MR TIP SC: Yes. Would I be correct in
 21 saying this, that the gate is really at the point where the
 22 stadium buildings come to an end before you then move
 23 further along towards Wonderkop Stadium?
 24 MR SETELELE: Correct.
 25 MR TIP SC: Thank you, thank you for that

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1 correction, Mr Setelele. Then to continue with your
 2 statement, you say that "I met up with them" – that is
 3 these NUM members – "and was told that they had marched to
 4 the stadium to see whether there were any indications that
 5 the strikers were preparing another attack. They had not
 6 seen any indications of that kind."
 7 MR SETELELE: Correct.
 8 MR TIP SC: Paragraph 23, "Later that
 9 afternoon I addressed a meeting of about 1 000 workers in
 10 the veld near the Wonderkop Stadium."
 11 MR SETELELE: Correct.
 12 MR TIP SC: "I again outlined NUM's
 13 position that it opposed the strike which was unprotected,
 14 and that workers should report for duty. I further
 15 emphasised that a wage agreement was already in place and
 16 that any wage demands had to be addressed through the
 17 proper channels."
 18 MR SETELELE: Correct.
 19 MR TIP SC: "I stressed that employees
 20 who took part in illegal strike action may jeopardise their
 21 employment and urged them to think of their families and
 22 dependants before joining any such action. After this
 23 meeting we returned to the NUM office which I left at
 24 around 5:30PM and went home."
 25 MR SETELELE: Correct.

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1 MR TIP SC: Paragraph 24, "On the morning
 2 of 12 August 2012", that being the next day, "I received a
 3 call informing me that the NUM office had been set alight.
 4 I cannot now recall who called me." I immediately
 5 contacted Mr Dietrich who told me that it was not the NUM
 6 office that had been set alight, but a Lonmin security
 7 vehicle."
 8 MR SETELELE: Correct.
 9 MR TIP SC: "He told me also that this
 10 had happened next to the business terminus at Wonderkop
 11 hostel and two Lonmin security officers had been killed
 12 there."
 13 MR SETELELE: Correct.
 14 MR TIP SC: "He said that this had been
 15 done by a march of strikers and that they had been on their
 16 way to the NUM office. I could hear that he was very upset
 17 about this event."
 18 MR SETELELE: Correct.
 19 [10:47] MR TIP SC: Paragraph 25, "A little later
 20 there were some discussions about what the WPL branch
 21 should do. It was decided that, given these two attacks on
 22 the NUM office and the overall volatility of the situation
 23 at Marikana, the branch committee members should, for their
 24 own safety, be accommodated off the mine premises."
 25 Paragraph 26, "I am informed that on 14 August 2012 a

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1 meeting of members was arranged by the Eastern Platinum NUM
 2 branch, which was well attended. I understand that members
 3 of the regional leadership were also present and that NUM's
 4 position concerning the strike was once more conveyed."
 5 And paragraph 27, "I understand further that the meeting
 6 also condemned the acts of violence that had taken place at
 7 that stage, as well as ongoing acts of intimidation."
 8 MR SETELELE: Correct.
 9 MR TIP SC: Mr Chair, that concludes the
 10 evidence-in-chief of Mr Setelele.
 11 CHAIRPERSON: Mr Semanya, I take it you
 12 don't want to cross-examine at this stage, do you?
 13 MR SEMENYA SC: If there is anybody going
 14 first, that's alright, Chair.
 15 CHAIRPERSON: Mr Burger?
 16 MR BURGER SC: Thank you very much, I'm
 17 in the same position, Chair.
 18 CHAIRPERSON: Ms Barnes, you're here for
 19 AMCU.
 20 MS BARNES: Yes, I do have some
 21 questions, Chair.
 22 CHAIRPERSON: Yes, alright.
 23 MS BARNES: I had thought that it might
 24 be prudent for Mr Mpofu's team to cross-examine first,
 25 having regard to the statement of Mr Booi.

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1 CHAIRPERSON: Yes, yes, I follow.
 2 MS BARNES: And then I would have some
 3 questions after that.
 4 CHAIRPERSON: Are you going to cross-
 5 examine? Do you wish to cross-examine first?
 6 MR MSIMANG: No, in fact I would have
 7 preferred to be last.
 8 CHAIRPERSON: Well then, Ms Barnes I
 9 think in view of this reluctant debutante wants to come
 10 last, I'm not going to – then let him go last, but I think
 11 you'd better start.
 12 MR MSIMANG: Who, me Chairperson?
 13 CROSS-EXAMINATION BY MS BARNES: Mr
 14 Setelele, you testified that you attempted to persuade your
 15 members not to participate in the unprotected strike, is
 16 that correct? But nevertheless NUM members did participate
 17 in the unprotected strike, is that correct?
 18 MR SETELELE: Correct.
 19 MS BARNES: And in fact the majority of
 20 the people that participated in the unprotected strike were
 21 NUM members, is that correct?
 22 MR SETELELE: Partly correct.
 23 MS BARNES: Would you like to explain
 24 what you mean by partly correct?
 25 MR SETELELE: I thought that you will say

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1 some of them and maybe you were looking to the fact that
 2 how did they come, how did they went to the mountain or how
 3 did they went for strike. I think that the issue of
 4 intimidation also shall be part of your comment.
 5 MS BARNES: Well, evidence has been led,
 6 sir, that approximately 55% of the group were NUM members
 7 and 35% were AMCU members. You can't dispute that, can
 8 you?
 9 MR SETELELE: It may be possible, it may
 10 be possible because if a person was not on work on that
 11 day, that doesn't mean he's on strike. He may be, or she
 12 may be, at home because of threats that he came across.
 13 CHAIRPERSON: Ms Barnes, may I intervene
 14 and ask a couple of questions just to set the scene a bit?
 15 I don't think it'll interfere with the cross-examination
 16 you're going to be busy with. In your statement you tell
 17 us about the discussion you had with Mr Dietrich on the 12th
 18 of August, that's the Sunday, paragraph 24. Then in
 19 paragraph 25 you say, "A little later" – I take it that's
 20 on, that's the same day, Sunday the 12th – "there were some
 21 discussions about what the WPL branch should do" – that's
 22 Western Platinum Lonmin branch, I take it – "should do. It
 23 was decided that, given these two attacks on the NUM office
 24 and the overall volatility of the situation, branch
 25 committee members should, for their own safety, be

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1 accommodated off the mine premises." Now – and then you
 2 tell us about a meeting on the 14th, which is the Tuesday,
 3 but I take it you weren't there, is that correct?
 4 MR SETELELE: I was not there at the
 5 Eastern Platinum meeting.
 6 CHAIRPERSON: Right. You talk about
 7 arrangements being made for branch committee members being
 8 accommodated off the mine premises and you say that
 9 happened on the 12th. Do I understand that you weren't at
 10 the mine, on the mine premises, from the 12th onwards? Were
 11 you one of the members who was accommodated, for his own
 12 safety, off the mine premises?
 13 MR SETELELE: Ja, I think Chairperson, I
 14 need to explain. The decision to take the members of the
 15 branch committee out of the mine premises and the nearby
 16 villages, this took place of course on the 12th of –
 17 CHAIRPERSON: All I want to know is
 18 whether you were one of those people who were away from the
 19 mine premises from sometime on the Sunday the 12th?
 20 MR SETELELE: Correct.
 21 CHAIRPERSON: And when did you come back
 22 to the mine premises?
 23 MR SETELELE: Maybe I need to explain
 24 further so that, Chairperson, it must be clear for you –
 25 CHAIRPERSON: No – no, I'll try to keep

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1 it short. When did you come back? Did you come back on
 2 the 15th or the 16th or the 17th? When did you come back?
 3 MR SETELELE: Actually in the mine
 4 premises, I've been in the mine premises since the strike
 5 started and until today I used to be at the mine premises.
 6 What happened that I wanted to explain to Chairperson was
 7 that on Sunday the 12th, after hearing that there is a
 8 problem at Western Plat, most of the members of – the NUM
 9 officers were already fled away from the premises of the
 10 company and I heard they were on the veld somewhere. Then
 11 I fetched the very same Combi and go and collect them in
 12 the bush. I left them, I put them on a safe place in the
 13 bush, then I went directly to the Middlekraal where the
 14 president was already there, the president of NUM. Later
 15 then I went there at the bush again and take the people to
 16 a safe place where they were booked for a new residence.
 17 And every day I was at the mine premises, more especially
 18 at Middlekraal. Even though it's not all the days but most
 19 of the days I used to go to Middlekraal on a daily basis.
 20 CHAIRPERSON: I'm really interested in
 21 the WPL section of it. I take it that's Western Platinum?
 22 MR SETELELE: Ja, that's Western Plat.
 23 CHAIRPERSON: What I really tried to
 24 ascertain is, were you at Western Platinum after you left
 25 on Sunday the 12th and of course much later when you came

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1 back?

2 MR SETELELE: Yes, because Western Plat,
3 Middlekraal is also Western Plat. It's where we had the
4 meeting, it's where we met our president there.

5 CHAIRPERSON: How would you describe the
6 area that you were talking about earlier where the NUM WPL
7 office is and where the Wonderkop Stadium is? How would
8 you describe that area?

9 MR SETELELE: Next to – NUM offices is
10 next to the police station, satellite police station.

11 CHAIRPERSON: How far is that from
12 Middlekraal?

13 MR SETELELE: It may be five kilometres,
14 I'm not that much –

15 CHAIRPERSON: Now the area that you were
16 talking about earlier in your evidence – Wonderkop Stadium,
17 NUM office, WPL, satellite police station and so on – what
18 do you call that area? Do you call it Wonderkop or what do
19 you –

20 MR SETELELE: That is Wonderkop.

21 CHAIRPERSON: Okay, that's Wonderkop.
22 Now what I want to know from you is, were you away from
23 Wonderkop for some days after the 12th of August?

24 MR SETELELE: Sometimes I used to go to
25 Wonderkop.

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1 CHAIRPERSON: You see what I was
2 concerned about, Ms Barnes was asking you questions about
3 how many people were involved – about the people involved
4 in the strike and how many were NUM and how many were AMCU
5 and how many weren't members of unions at all and what I
6 want to know from you was, does your knowledge extend to
7 what happened after the 12th or is your knowledge primarily
8 based upon what you saw up to the 12th and particularly on
9 the 10th, 10th and 11th?

10 MR SETELELE: I need to be clear here,
11 Chairperson, whether the numbers that you asked me, is the
12 attendance of the people on these two meetings that I held.

13 CHAIRPERSON: What Ms Barnes was wanting
14 to know from you was how many people, the people who took
15 part in the strike and how many of those were, or what
16 percentage of those were NUM members, what percentage were
17 AMCU members and what percentage weren't members of any
18 union at all. Now, I'm interested to know, insofar as you
19 answer her question, is your – would your answer be based
20 upon what you saw on the 10th and the 11th or do you have
21 other knowledge of your own, based upon what happened
22 thereafter?

23 MR SETELELE: I'm not quite sure,
24 Chairperson, how many members of NUM who was on strike, but
25 I just only say that some of them they fled to home and

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1 some of them may not be at that strike but staying at their
2 homes.

3 CHAIRPERSON: A lot of the strikers were
4 rock drill operators, is that correct?

5 MR SETELELE: I agree.

6 CHAIRPERSON: And a number of the rock
7 drill operators were members of the NUM.

8 MR SETELELE: Of course.

9 CHAIRPERSON: Ms Barnes, I was actually
10 trying, unsuccessfully, to cut things short and help you to
11 focus your cross-examination. I wasn't successful but I
12 did try. Please carry on.

13 MS BARNES: Thank you, Chairperson. Sir,
14 if you could look at paragraph 25 of your statement.

15 MR MAHLANGU: Paragraph number?

16 MS BARNES: 25. You say there, "It was
17 decided that given these two attacks on the NUM office" –
18 presumably there you are referring to what you've just
19 described in relation to what happened on Saturday the 11th.
20 What else are you referring to there?

21 MR SETELELE: On paragraph 25 I'm saying
22 a little bit later, a little later there was some
23 discussion about the WPL branch, about what the WPL branch
24 should do. It was decided that, given these two attacks on
25 NUM offices and the overall volatility of the situation at

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1 Marikana, the branch committee members should, for their
2 own safety, be accommodated off the mine premises.

3 CHAIRPERSON: That's not what Ms Barnes
4 is asking you about. What she's asking about is your
5 statement that there were two attacks –

6 MR SETELELE: Ja.

7 CHAIRPERSON: - on the NUM premises. And
8 she's making the point that what you've told us about was
9 one attack on the NUM office –

10 MR SETELELE: Ja.

11 CHAIRPERSON: And one false report you
12 received – I must put it differently – one incorrect report
13 you received that the office had been set alight, which
14 turned out to be incorrect. So you've only actually told
15 us about one attack on the NUM office. That's why she says
16 where do you get two attacks from. Am I paraphrasing your
17 question correctly?

18 MS BARNES: That is quite correct, thank
19 you, Chair.

20 MR SETELELE: You're correct. However,
21 it would like to give further information. There were two
22 attacks. The Saturday I think is the one that is well
23 known, if I can put it that way. On Sunday after the
24 killing or the murdering of the policeman, they proceeded
25 to the NUM offices.

<p style="text-align: right;">Page 4110</p> <p>1 CHAIRPERSON: Do you know that from your 2 own knowledge? 3 MR SETELELE: I was told and the windows 4 were broken. 5 MS BARNES: Yes, you were not present 6 when that – when what you say happened, took place. Is 7 that right? You weren't there yourself? 8 MR SETELELE: I was not there, it was 9 reported by the stewards. 10 MS BARNES: If you could look please at 11 paragraph 17 of your statement, this is where you refer to 12 the Lonmin security guards coming to the NUM office and 13 warning you that the striking workers were headed towards 14 the office, do you see that? 15 MR SETELELE: You talk about – it talks 16 about the incident of the 11th, not the 11th. 17 [11:07] MS BARNES: Yes, I'm not talking about 18 the 12th of August, sir, I'm talking about what is written 19 in paragraph 17 of your statement. Are you with me now? 20 MR SETELELE: Correct. 21 MS BARNES: Isn't it correct that those 22 Lonmin security guards warned all the NUM officials in the 23 office to leave the office, isn't that correct? 24 MR SETELELE: You are correct. 25 MS BARNES: And then the altercation that</p>	<p style="text-align: right;">Page 4112</p> <p>1 MR MADLANGA SC: It's at paragraph 14, 2 yes. 3 MR SETELELE: You are correct. 4 MR MADLANGA SC: And you say that in 5 assisting people to go to work as a result of the 6 interruption of the bus service, at one stage whilst you 7 were doing that, people shouted at you and those that you 8 were with in a "threatening tone" that you would be killed 9 for transporting people to work whilst they were on strike. 10 That's in paragraph 15, do you see that? 11 MR SETELELE: Correct. 12 MR MADLANGA SC: I take it that - you 13 hold the position of the NUM chairperson at WPL - that you 14 are an experienced unionist, not so? 15 MR SETELELE: According to the years that 16 I've been in NUM I may say of course. 17 MR MADLANGA SC: In your experience as a 18 unionist, have acts of intimidation on occasion been 19 followed by killings? 20 MR SETELELE: I don't have that 21 experience. 22 MR MADLANGA SC: Did you take the reports 23 of intimidation that you received and which you referred to 24 at paragraph 14 and also the threat that you yourself 25 received whilst transporting workers, did you take those</p>
<p style="text-align: right;">Page 4111</p> <p>1 took place between the striking workers and the NUM 2 officials on Saturday the 11th, you didn't witness that 3 altercation, did you? 4 MR SETELELE: Correct, I was not there. 5 MS BARNES: I have no further questions, 6 Chair. 7 CHAIRPERSON: Would you like to ask 8 questions now? I don't – we used to have an argument as to 9 who should cross-examine first, now we're going to get into 10 an argument as to who's going to cross-examine last but 11 before I give you a chance to cross-examine next, I must 12 ask Mr Madlanga whether he wishes to ask any questions. 13 CROSS-EXAMINATION BY MR MADLANGA SC: Mr 14 Chairman, commissioners. Would you agree with me – and I'm 15 sure you would, Mr Setelele, that the safeguarding of human 16 life would be or is more important than the upholding of 17 labour laws with regard to unprotected strikes? Would you 18 agree with that? 19 MR SETELELE: Of course, safety first. 20 MR MADLANGA SC: In your statement, 21 paragraph 14, you say that you received reports of 22 intimidation and that the bus service was interrupted – 23 that is the bus service assisting people to go to work. Do 24 you see that? 25 MR MAHLANGU: Paragraph 14?</p>	<p style="text-align: right;">Page 4113</p> <p>1 seriously? 2 MR SETELELE: I think I took it 3 seriously. That is why I removed even the other leadership 4 on Sunday and gave them another alternative place of 5 safety. 6 MR MADLANGA SC: In short, you believed 7 that there was a danger that people might be injured or 8 even killed, not so? 9 MR SETELELE: Of course. 10 MR MADLANGA SC: And you did finally 11 receive a report that on the 12th of August 2012 people had 12 in fact been killed – two people, that is. 13 MR SETELELE: That's correct. 14 MR MADLANGA SC: Prior to the death of 15 those two people, that is the two security guards, your 16 stance as a union was to encourage workers to go to work 17 and to tell them that the strike was an unprotected strike 18 and therefore an illegal strike, not so? That was your 19 stance as the union. 20 MR SETELELE: You're correct. 21 MR MADLANGA SC: And indeed, and in line 22 with that stance, on the 11th of August 2012 in the 23 afternoon you addressed a meeting of about 1 000 workers 24 where you affirmed that stance. 25 MR SETELELE: Correct.</p>

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1 MR MADLANGA SC: Did this stance or
 2 attitude of yours – and by yours I'm referring to NUM at
 3 large, at least at the workplace – did that stance ever
 4 change at all?
 5 MR SETELELE: I think we always say,
 6 stand by that position that people should go to work and if
 7 there is any concern they must raise it through the
 8 relevant structures so that it can be addressed. And
 9 furthermore, in these two meetings that I held, if you can
 10 look into my message, it was clear that the strike was
 11 unprotected and we understand that if there is any issue
 12 they need to bring it forward so that we can look at how to
 13 get it solved. It was not only a matter of, go to work,
 14 the strike is illegal, go to work, the strike is illegal.
 15 It was to say if there is an issue, bring it forward so
 16 that we can get it sorted out.
 17 MR MADLANGA SC: That was your stance
 18 throughout, from the beginning.
 19 MR SETELELE: Ja.
 20 MR MADLANGA SC: My question is, did that
 21 stance ever change? You have not answered that.
 22 MR SETELELE: Yes, that was our stance.
 23 CHAIRPERSON: Did it ever change? We'll
 24 take the tea adjournment when we've got an answer to the
 25 question. Did that stance ever change or was it the stance

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1 of NUM throughout?
 2 MR SETELELE: You are correct, we didn't
 3 even change our stance. The only thing, if you can look
 4 into my statement is that we have even made an addition of
 5 talking about the families so that workers can see how
 6 important is their families, women and children.
 7 CHAIRPERSON: Yes, I understand that. At
 8 this point we'll take the tea adjournment.
 9 [COMMISSION ADJOURNS COMMISSION RESUMES]
 10 [11:38] CHAIRPERSON: The Commission resumes.
 11 You're still under oath.
 12 MALESELA WILLIAM SETELELE (CONTD):
 13 MR TIP SC: Mr Chair, if I may, before Mr
 14 Madlanga pursues the questions that he is putting at
 15 present, it would, with respect, be helpful to the witness
 16 and to us and perhaps others and the Commission, if the
 17 basis of these questions could be made perfectly clear
 18 because at the moment the witness is being asked did NUM
 19 change its stance and the basis for that question is that
 20 there was now a situation where there was a large group of
 21 persons who had embarked on unprotected strike action, who
 22 had embarked on a course of action involving acts of
 23 intimidation, had embarked on a course of action which, by
 24 the morning of the 12th, had resulted in deaths and quite
 25 brutal deaths. And is the proposition that underlies the

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1 question, that when one is confronted, a role player in the
 2 field of industrial relations managing that situation, such
 3 as NUM – when one is confronted by circumstances of that
 4 kind, that one is obliged to depart from one's ordinary
 5 principles and give way to those who have embarked on that
 6 course of action.
 7 CHAIRPERSON: - understand the question
 8 to imply an obligation but in view of the fact that you've
 9 posed it, in the interests of clarity and also possibly
 10 shortening matters, perhaps Mr Madlanga can give us the
 11 answer to the question and then carry on with his cross-
 12 examination.
 13 MR TIP SC: Thank you, Chair.
 14 MR MADLANGA SC: Chair, commissioners, I
 15 would rather not answer the question. In the absence of
 16 the suggestion by my learned friend that the witness is
 17 having difficulty for one reason or another, perhaps the
 18 question is misleading or the witness does not follow where
 19 I'm getting to, and so on, I do not understand the basis –
 20 CHAIRPERSON: Mr Madlanga, what he says
 21 is the question is unclear because it's not clear to him
 22 and presumably not clear to the witness, what exactly
 23 you're putting. He says are you putting that there was an
 24 obligation on NUM to change its stance because there had
 25 been violence and intimidation? I didn't understand you to

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1 be putting that but he asks whether that's what you are
 2 putting. You know, in other words, whenever there's
 3 violence and intimidation, do the ordinary basic structures
 4 have to be relaxed? That's what he's asking. I don't know
 5 whether that's what you want, what you're putting to the
 6 witness. As I say, I didn't understand you to be saying
 7 that but it might just help if you clarify what it is that
 8 you are putting because it may be that the witness shares
 9 Mr Tip's difficulty in understanding what precisely you are
 10 putting and if he doesn't understand what you're putting
 11 properly, then we won't get a meaningful answer that's
 12 going to take us any further.
 13 MR MADLANGA SC: Mr Chairman, even with
 14 that last clarification by you, I still do not agree that
 15 the questions themselves are not clear. It may well be
 16 that my learned friend doesn't know where I'm getting –
 17 that's something else altogether, but it does not follow as
 18 a matter of logic that my questions then do not or are not
 19 of such a nature that the witness follows them.
 20 Throughout, throughout, even the Chairperson appeared to
 21 follow the questions themselves. Hence the Chairperson
 22 even, even –
 23 CHAIRPERSON: Yes. Mr Madlanga, thank
 24 you for the "even the Chairperson understood," I – put the
 25 questions again as you framed them before and we'll carry

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1 on and if it's a question which even the Chairperson
2 doesn't understand, then I can do something about it.
3 MR MADLANGA SC: Thank you, Mr Chairman.
4 In fact, I was actually going to repeat my question but
5 just making sure that there is no confusion as to the
6 response that the stance or attitude never changed and this
7 is how I was going to ask it. Mr Setelele, in response to
8 my earlier questions around the issue of whether or not
9 NUM's attitude, which was that this is an unprotected
10 strike – and I will add the rider that you added which is
11 that that is not all that you said, you also said that if
12 there was an issue, the people should come forward. So in
13 response to my question whether that stance or attitude
14 ever changed and – you said it never did. Now, what I want
15 to make or what I want to be sure of is whether that
16 attitude or stance persisted up to and including the 16th of
17 August 2012, that is right up to the moment when the
18 strikers or protesters or, some of them at least, were
19 killed. Did it persist throughout, right up to that
20 moment?
21 MR SETELELE: Actually if you can get
22 what happened is that we stand on our position until at a
23 later stage whereby the workers really, there was a
24 negotiation table, it was opened and their demand was
25 addressed on the negotiating, negotiation table.

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1 MR MADLANGA SC: And the opening of the
2 negotiation table, as you put it, was only after the 16th of
3 August 2012, not so?
4 MR SETELELE: Of course.
5 MR MADLANGA SC: You referred to – or
6 rather you said you'd told the workers at the meeting of
7 the 11th in the afternoon, attended by about 1 000 workers,
8 you told them, amongst others, that if there is an issue
9 they must bring it forward. What sort of issue or issues
10 did you have in mind?
11 MR SETELELE: Obviously we already heard
12 that they are demanding a certain amount of money on their
13 wages.
14 MR MADLANGA SC: Yes, that was an issue
15 but that could not have been the issue that you had in mind
16 because you said if there was an issue they should bring it
17 forward. That one you were already aware of. What other
18 issue did you have in mind?
19 MR SETELELE: Actually as a union, people
20 bring in the demand at the mass meeting and so that we can
21 address that demand. So I had never had a meeting where
22 they have told us directly that how many demands do they
23 have. So I will never speculate what demand, what other
24 demand they had because remember, they even explained that
25 they don't want the assistance of a union when they demand

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1 this sort of money.
2 MR MADLANGA SC: Are you aware that as at
3 16 August 2012 about 10 people had already died as a result
4 of the protests or strike action?
5 MR SETELELE: Of course I heard.
6 MR MADLANGA SC: We now know, with the
7 wisdom of what actually happened, that the coming together
8 of all the people concerned around the negotiating table
9 and the discussion of all the issues, resulted in a
10 solution.
11 MR SETELELE: Yes.
12 MR MADLANGA SC: Would you discount the
13 probability that instead of being legalistic – legalistic
14 in the sense of just saying this is an unprotected strike,
15 go to work, if there's an issue come to us – would you
16 discount the probability that if NUM had been proactive and
17 taken an initiative at an early stage, many lives might
18 have been saved? Would you discount that probability?
19 MR TIP SC: Mr Chair, before the witness
20 answers, this proposition has been put on the basis of
21 there being a probability that –
22 CHAIRPERSON: Perhaps it should have been
23 framed as a possibility.
24 MR TIP SC: Well, perhaps it should.
25 CHAIRPERSON: If it's framed as a

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1 possibility, will you still object?
2 MR TIP SC: No, that – that would make a
3 very, very, substantial difference to the question.
4 CHAIRPERSON: Let's see what Mr –
5 MR BURGER SC: Chair, may I then raise an
6 objection?
7 CHAIRPERSON: Yes, you may.
8 MR BURGER SC: Whether that's a
9 probability or a possibility, with respect, is within your
10 jurisdiction, your Commission's jurisdiction. The witness
11 can't help us on that but it's an unfair question. It's no
12 good to put that question without explaining to the witness
13 that by the 16th of August one of the constituents to the
14 debate are armed, are threatening criminal action and as
15 part of an unprotected strike and the September debate
16 happens with unarmed people under the guidance of an
17 institution of state, the CCMA, and the role players are
18 all in a very, very different state of mind. So it's quite
19 an unfair question to put without those qualifications.
20 MR MADLANGA SC: Not that I don't have a
21 response to that, Chair, I will just leave the question on
22 the basis that it's better that one can argue ultimately
23 and -
24 CHAIRPERSON: One of the points is
25 whether the witness's answer would help us very much. I

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1 know he is the chairperson of the NUM branch at WPL and is
 2 ordinarily resident in Marikana West but possibly, if this
 3 question is to have any future, it's one that should be
 4 addressed to the president of the NUM. I take it he could
 5 be called to give evidence. And then there may be
 6 questions as to whether he's really able to help us by
 7 giving an answer, but if and when that position arises,
 8 we'll consider it but I don't think, with respect, that
 9 this witness can help us very much on that point. I can
 10 see where you're going with your question but –
 11 MR MADLANGA SC: Mr Chair, I've already –
 12 CHAIRPERSON: I think to get to the
 13 question you've actually got to close a number of other
 14 doors first but anyway, you've indicated you're not
 15 persisting with the question at this stage so any debate
 16 further on the matter at this stage would be academic. So
 17 perhaps let's move on to non-academic terrain.
 18 MR MADLANGA SC: May the Chair please
 19 bear with me. Do you know, Mr Setelele, who it is that
 20 took the decision that the NUM office should be defended –
 21 that is on the 11th?
 22 MR SETELELE: I don't know.
 23 MR MADLANGA SC: No further questions,
 24 commissioners.
 25 CHAIRPERSON: Mr Msimang, are you ready

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1 to ask questions now?
 2 MR MSIMANG: I can come –
 3 CHAIRPERSON: Mr Semenya, would you like
 4 to question now?
 5 MR SEMENYA SC: Yes, I can put my
 6 questions, Chair.
 7 CROSS-EXAMINATION BY MR SEMENYA SC: Mr
 8 Setelele, we are told by Mr Gcilitshana that NUM's position
 9 that these RDOs are underpaid. Was that a sentiment shared
 10 by NUM across the board?
 11 MR SETELELE: Correct.
 12 MR SEMENYA SC: In fact, in two
 13 negotiating periods you have always held that view that
 14 they are unpaid, as NUM, correct, the RDOs?
 15 MR SETELELE: Correct, but not RDOs
 16 alone.
 17 MR SEMENYA SC: In fact you were saying
 18 it is particularly the RDOs that are underpaid.
 19 MR SETELELE: You are correct.
 20 MR SEMENYA SC: So NUM did know that the
 21 complaints of these RDOs are legitimate.
 22 MR SETELELE: Of course they were.
 23 MR SEMENYA SC: And as their
 24 representative, you are the one to assert it within the
 25 industrial framework of labour relations, am I right?

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1 MR SETELELE: Of course, that's what we
 2 did.
 3 MR SEMENYA SC: And yet you couldn't
 4 satisfy their claim for higher wages, could you?
 5 MR SETELELE: I think so.
 6 MR SEMENYA SC: Now just help me
 7 understand because when I read the collective agreement it
 8 then says, on those issues where you don't agree, the two
 9 parties will deem those issues to be settled. Correct?
 10 MR SETELELE: You are partly correct.
 11 However, I would like to explain one thing. Before we can
 12 sign any agreement, all the workers affected will agree and
 13 give us a way forward, that we must sign or not. Meaning
 14 that the salary increase that the RDOs got on that previous
 15 agreement was correct to them, they give us that we must
 16 sign. We don't have right.
 17 MR SEMENYA SC: Do you have the agreement
 18 in front of you?
 19 MR SETELELE: No, no.
 20 [11:58] MR SEMENYA SC: It is in the bundle of
 21 documents of NUM, exhibit XX2. Do you have it in front of
 22 you now?
 23 MR SETELELE: No.
 24 MR MAHLANGU: We've got it now.
 25 MR SEMENYA SC: If you go to page 19 of

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1 that bundle and in particular clause 12.3 of that
 2 agreement, I would like to read it to you.
 3 CHAIRPERSON: Correct, I've got it now.
 4 MR SEMENYA SC: It says, "All proposals
 5 and demands on which agreement was not reached, or which
 6 were withdrawn by the unions or the company, are regarded
 7 as having been settled and may not be subject to strike
 8 action until this agreement lapses on the 30th of September
 9 2013." Do you see that?
 10 MR SETELELE: Yes, I can see that.
 11 MR SEMENYA SC: And one of the demands is
 12 the RDOs' salary increase.
 13 MR MAHLANGU: Sorry, the question was?
 14 MR SEMENYA SC: About which there was no
 15 agreement. I'm saying one of the demands on which there
 16 was no agreement between the parties must have been the
 17 RDOs' salary increase?
 18 MR SETELELE: Correct.
 19 MR SEMENYA SC: So just help me here
 20 because now you have people whose demands you consider
 21 legitimate, correct?
 22 MR SETELELE: Correct.
 23 MR SEMENYA SC: The collective agreement
 24 negotiated and signed by both parties does not answer that
 25 legitimate demand, am I right?

<p style="text-align: right;">Page 4126</p> <p>1 MR TIP SC: Chair, forgive me, I 2 interrupt with reluctance but it is important, with 3 respect, for the propositions to be put with accuracy and 4 that there shouldn't be any illusion between the notion of 5 a demand, an agreement and a component that may have been 6 part of the demand that hasn't become an agreement, but the 7 agreement is there and – 8 CHAIRPERSON: I think you'll find if we 9 are patient, if you and I are patient and we give Mr 10 Semenya a chance to finish this line of questioning, I 11 suspect you'll find that he's going to address that 12 problem. If he doesn't, then you and I can take him on but 13 let him finish this line of questioning first before we 14 tackle him further because it may not be necessary for us 15 to do so. 16 MR TIP SC: My concern, of course, is not 17 to tackle Mr Semenya, it's merely that the questions that 18 Mr Semenya put – 19 CHAIRPERSON: I'm speaking 20 metaphorically. 21 MR TIP SC: No – 22 CHAIRPERSON: I mean talking in relation 23 to a valid upholdable objection to the questions he's 24 asking. 25 MR SEMENYA SC: Can we try again, Mr</p>	<p style="text-align: right;">Page 4128</p> <p>1 must assist them. However, what I would like to explain 2 further is that remember that this demand of R12 500 was 3 not brought to the attention of NUM. In other words, NUM 4 was not clearly aware where does this 12 500 come from. 5 That is why NUM want the RDO or any other people to come 6 forward and bring that demand to NUM so that NUM can look 7 into that. Currently, myself I cannot say 15 000, I mean 8 12 500 is correct or incorrect because as my colleague 9 yesterday – if not yesterday, before yesterday - has 10 mentioned that before we make a demand, a salary increase, 11 we look into things like inflation and so on but I'm not at 12 that level of looking into the inflation issues. 13 MR SEMENYA SC: For two ways of 14 negotiations, as NUM you knew they were underpaid, these 15 RDOs, so it's not a surprise. 16 MR SETELELE: You're correct. 17 MR SEMENYA SC: And to already have the 18 benefit of Amplats strike action there – 19 CHAIRPERSON: No, I think it was Implats 20 and then Impala. 21 MR SEMENYA SC: You already have the 22 benefit of what the type of complaint they have resulted in 23 unrest at Impala, that you already know. Correct? 24 MR SETELELE: Partly correct but however, 25 you need to also look at – I'm a branch chairperson, I'm</p>
<p style="text-align: right;">Page 4127</p> <p>1 Setelele? We have tied it up that NUM considers this 2 demand for higher salaries of RDOs as a very legitimate and 3 a pressing one. We have gone past that point, haven't we? 4 MR SETELELE: Of course. Maybe I don't 5 understand you clearly but I think they had to raise the 6 issues so that, as a union, to look in that, in those 7 issues. 8 MR SEMENYA SC: And it is one of the 9 demands that you as a union take up with the employer in 10 these wage negotiations, right? 11 MR SETELELE: Correct. 12 MR SEMENYA SC: And it is about one of 13 those on which the parties could not agree. 14 MR SETELELE: Correct. 15 MR SEMENYA SC: And by agreement it is 16 one of those issues which cannot be the subject matter of a 17 strike, a protected strike. 18 MR SETELELE: Correct. 19 MR SEMENYA SC: So help me understand 20 now. The poor RDOs have a union that can't press any 21 further on a demand that they and the union are in 22 agreement is legitimate and pressing. 23 MR SETELELE: Actually there is nothing – 24 if I understand your question, there is nothing that they 25 can do on their own. It is the representative union which</p>	<p style="text-align: right;">Page 4129</p> <p>1 not Lonmin branch chairperson and some issues of Impala, I 2 won't know them as a chairperson from Impala. Some of them 3 come to me as a rumour. I will give you an example of 4 those rumours. 5 MR SEMENYA SC: No – no [inaudible]. No, 6 but correctly speaking now, we know that these RDOs and the 7 unrest at Impala had a profound impact on the mining 8 sector. That you know, even as a chairperson of WPL. 9 MR SETELELE: You're correct. 10 MR SEMENYA SC: Resulting in some 11 adjustment of the payment to RDOs in Impala, that you knew. 12 MR SETELELE: Correct, I've heard. 13 MR SEMENYA SC: Which aggravates the 14 situation – which aggravates the condition of your RDOs at 15 Lonmin. 16 MR SETELELE: I think it may be possible. 17 MR SEMENYA SC: Now, that's what I'm 18 trying to push to – knowing that their claim is legitimate, 19 knowing that the industry is changing, knowing that Impala 20 is paying better now, knowing that that claim is pressing, 21 you knew that they cannot look to you as a union for 22 resolution of that problem, am I right? 23 MR SETELELE: I don't know whether - 24 MR BURGER SC: Chair - 25 MR SETELELE: I don't know whether Impala</p>

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1 is – sorry.

2 MR BURGER SC: Chair, as a proposition of

3 contract law, that's not correct. There's a non-variation

4 clause if the two parties to an agreement is willing to

5 amend that agreement, to agree it, they can do it. So

6 there's no impossibility here.

7 CHAIRPERSON: I think that you weren't

8 here when we heard that the fate of a similarly phrased

9 clause in an earlier agreement, when the inflation rate

10 rose dramatically, beyond the increase provided for in the

11 agreement, NUM was prepared to go back to the employer and

12 seek to get that changed, despite an agreement, a clause

13 like the one we're busy with, so –

14 MR BURGER SC: I heard that -

15 CHAIRPERSON: You were here –

16 MR BURGER SC: And that being the basis

17 of my observation, that it could've been done.

18 CHAIRPERSON: Yes. Alright, you've heard

19 the point taken by Mr Burger –

20 MR SEMENYA SC: No, it's not a good

21 point, Chair –

22 CHAIRPERSON: I'm not saying it's a good

23 point, I'm saying you heard it. Can you accommodate it in

24 your question?

25 MR SEMENYA SC: Indeed. Your attitude to

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1 this unprotected strike is that there is a wage agreement,

2 you as NUM can't press it any further, what they are doing

3 would be an unprotected strike, it would hurt their family,

4 it would hurt them personally by losing jobs, is that

5 right?

6 MR SETELELE: Yes, we advised them that

7 they will lose jobs and their families will be thereafter –

8 MR SEMENYA SC: What you don't do is what

9 Mr Schalk Burger says, you don't say because it is

10 legitimate, but because we have the right to amend our own

11 agreement, we'll go to Lonmin and say, now, these are

12 circumstances necessary for us to revisit our agreement.

13 Correct?

14 MR SETELELE: Firstly, I don't know

15 whether I'll be answering your question. First of all, I'm

16 the chairperson of Western Plat, not of the whole Lonmin.

17 And secondly, I don't know how much Impala pays the RDOs

18 compared to Lonmin. And the issue of the RDOs, more

19 especially the RDOs' salaries, we say they are earning less

20 than compared to the work that they do. We raised this in

21 our previous wage negotiations. We [inaudible] make an

22 addition of, I mean a certain percentage to their salary

23 and at the end of the day we meet in the mass meeting and

24 they agreed that this is the percentage that we can sign

25 now. The same I think, the same thing must happen when

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1 they want another percentage on top of the percentage they

2 got, they must just come to us so that we can engage

3 management on that. So they choose to exclude us.

4 MR SEMENYA SC: I'm going to repeat my

5 question. As NUM, NUM, you don't, with the benefit of what

6 you then know, go to Lonmin and say, we do have an

7 agreement, it is binding until 2013 but there are

8 circumstances now that would compel us to relook at that

9 agreement and see whether or not we cannot negotiate this

10 industrial dispute.

11 MR SETELELE: We actually go to the

12 management with a mandate from the workers.

13 MR SEMENYA SC: Mr Setelele, I'll ask it

14 in an open-handed fashion. With the escalating tension of

15 RDOs going to the mountain in what you know to be an

16 unprotected strike, but knowing that their demands are

17 legitimate, you as NUM do not go to Lonmin and say can we

18 re-negotiate this agreement to accommodate this legitimate

19 and pressing demand.

20 MR SETELELE: I think if you can,

21 somebody can remember, during the strike when people were

22 on the mountain, we tried to engage with management to look

23 into how to get the problems get solved and I think you

24 will remember that management said people must climb off

25 the mountain and go to work so that we can sit down and

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1 address the issue. And most of the time I attended most of

2 the meetings when the RDOs were on strike. For myself just

3 to state my role as the chairperson of Western Plat, what I

4 did, I can mention this.

5 [12:18] MR SEMENYA SC: Okay, just assist me

6 then. On the 9th you see the RDOs are on what you call an

7 unprotected strike - they are only having kieres – about

8 something you yourself concede is a legitimate demand by

9 them and there has been –

10 MR TIP SC: Mr Chair, I have to – I have

11 to object to that. The demand that was made was for R12

12 500. The witness has thus far spoken about the fact that

13 there demands during the negotiations for improvements in

14 the RDOs' wages. It never was in the realm of R12 500.

15 The witness has made it clear that there is a process

16 within NUM for the vetting of demands and it's not correct,

17 with respect, to say that you've already conceded that this

18 was a legitimate demand of 12 500.

19 MR SEMENYA SC: Chair, I have never even

20 put a rand value on the demand, never, since I started

21 cross-examining. The objection on 12 500 has no relevance

22 to what I'm raising with the witness.

23 CHAIRPERSON: Well, repeat the question

24 and if you put a rand value on it Mr Tip's point will have

25 a validity and if you don't, it won't.

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1 MR SEMENYA SC: I don't put any rand
 2 value, I'm just talking about an RDO demand for a higher
 3 wage, no higher. So on the 9th, while these protesters are
 4 just carrying kieres and on a good song and they're not
 5 militant in any way, they raise a demand which you
 6 legitimately find properly placed, they need to be paid
 7 higher, right?
 8 MR SETELELE: I don't know the issue of
 9 the matter because it was a holiday and I heard that they
 10 held a meeting and I think they were not marching. I don't
 11 know whether they even sang or what.
 12 MR SEMENYA SC: Okay, let's make it the
 13 10th then, if you like. You still don't know that they are
 14 having these demands which you can engage them on and go to
 15 Lonmin to have them resolved.
 16 MR SETELELE: We would only go to Lonmin
 17 if we had a mandate.
 18 MR SEMENYA SC: By that you must mean you
 19 would have spoken to your union members, you would have
 20 chiselled out the nature of the concerns they have, they
 21 would then give you a mandate to go and engage Lonmin on
 22 it. Is that what you say?
 23 MR SETELELE: The difficulty was that
 24 they were not ready to give us the mandate and their
 25 demands.

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1 MR SEMENYA SC: We have repeatedly been
 2 told all these people wanted was to say, bring the
 3 employer, we want to discuss these matters, but you are the
 4 union who's supposed to be doing it for them – for which
 5 you take a subscription of 1% of their salaries -
 6 MR SETELELE: I think, Chairperson, here
 7 I'm asked a question that gives me a problem also. The
 8 reason is, if [inaudible] says – we have no access to talk
 9 to the work - the RDOs. The president of this union NUM
 10 was chased away from the mountain, so it becomes very
 11 difficult to say you have the RDOs mandate and deal with
 12 that mandate whereas you know that no-one has sent you to
 13 deal with it.
 14 MR SEMENYA SC: The president was not
 15 chased on the 10th. So let's just deal with your approach
 16 as a representative union in respect of a claim you accept
 17 to be legitimate. There's industry shift, I don't
 18 understand what could be a compelling difficulty in
 19 approaching Lonmin and saying, can we negotiate this
 20 problem away?
 21 MR SETELELE: It was difficult also to
 22 talk to management. That is why you see that 750 and 250
 23 and 500 rand was not negotiated, it was the offer that was
 24 issued by management and need no comment from any union.
 25 And the - management, as I understand, was that the people

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1 must go back to work and then they will ask, they will get
 2 to negotiations thereafter.
 3 MR SEMENYA SC: So you are saying that
 4 management was very difficult to constructively engage with
 5 the problem.
 6 MR SETELELE: I cannot say management
 7 gave us a problem.
 8 MR SEMENYA SC: What do you mean then
 9 management was difficult?
 10 MR SETELELE: I'm trying to say
 11 management, the position of management was that they will
 12 never negotiate or get into negotiations of salary
 13 increases as long as people are still at the mountain.
 14 MR SEMENYA SC: But they could talk to
 15 the union leaders and say, well, if we can resolve the
 16 mountain problem amongst ourselves as negotiators here,
 17 they will get off the mountain.
 18 MR SETELELE: I don't think that was the
 19 solution, that we must talk to management and even from
 20 this management, that immediately you can open negotiations
 21 then people will climb off the mountain – because they
 22 didn't tell us that if they can get that money then they
 23 will climb off the mountain. What I know is that they said
 24 they don't want NUM there.
 25 MR SEMENYA SC: Did you or did you not,

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1 as NUM, before the problem escalated, say to Lonmin, please
 2 let us sit down, re-negotiate this impasse away, or you
 3 didn't?
 4 MR SETELELE: Always when we go to the
 5 meeting or the briefings, we were there to get the
 6 solution. The calling of the meeting with the RDOs or the
 7 workers was to get the solution.
 8 MR SEMENYA SC: Mr Setelele, did you as
 9 NUM, before the problem got out of hand, go to Lonmin and
 10 say, can we negotiate this problem away? It's either a
 11 fact or it's not, you can tell us if I'm wrong or if I'm
 12 right.
 13 MR SETELELE: When you say, before –
 14 maybe I must ask clarity. When you say before, which day
 15 do you specifically refer to?
 16 MR SEMENYA SC: Let's work on the 9th, on
 17 the 10th if you like.
 18 MR SETELELE: From the 10th until the
 19 negotiations, we were there negotiating with management and
 20 engaging with management.
 21 MR SEMENYA SC: Are you saying as fact,
 22 on the 10th of August 2012 NUM engaged Lonmin with a view to
 23 negotiate the impasse? Are you saying that?
 24 MR SETELELE: If you look into my
 25 statement you'll see that I said on the 10th I met the VP to

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1 say I arranged a meeting with the workers. The issue of
2 salaries of the RDOs is a long term issue.

3 MR SEMENYA SC: So do you refuse to
4 answer my question now?

5 MR SETELELE: If you remind me that
6 question, yes.

7 MR SEMENYA SC: Are you making a
8 statement of fact that on the 10th NUM approached Lonmin
9 with a view to negotiate this problem away?

10 MR SETELELE: Not the increase.

11 MR SEMENYA SC: The one that caused the
12 people to go to the mountain, you are not talking about
13 that?

14 MR SETELELE: How can you talk about
15 something that you don't have a mandate of?

16 MR SEMENYA SC: Where are you going to
17 take that feedback, because people on the mountain don't
18 want you. The only thing that I think is going to be a
19 better thing is to call a meeting and talk to the people to
20 say, go to work, we are here as NUM and we are prepared to
21 assist you on your concern. We don't even know what
22 informed 12.5.

23 MR SEMENYA SC: Did you care to know?

24 MR SETELELE: Ja, they were not prepared
25 to talk to us.

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1 MR SEMENYA SC: On the 9th?

2 MR SETELELE: They have told us on the 8th
3 that they will deal this issue by themselves.

4 MR SEMENYA SC: That –

5 MR SETELELE: On the 10th and the 11th was
6 only to show them, to advise them, to guide them.

7 MR SEMENYA SC: We're going to argue that
8 as NUM, even if earlier, the 9th or the 8th or the 10th, you
9 knew that these demands of the RDOs are legitimate, you
10 were contractually able to open this discussion with
11 Lonmin, you elected not to until lives were lost.

12 MR SETELELE: I think it's your views.

13 MR SEMENYA SC: No, but if you have some
14 compelling logic or argument or answer, please square up
15 with that argument.

16 MR SETELELE: As I'm saying, there was no
17 demand brought to NUM branch committee of Western Plat.
18 What I know is that they've said they don't want to bring
19 it to the NUM's attention.

20 MR SEMENYA SC: And we'll argue it's a
21 demand you've always known.

22 MR SETELELE: But you cannot take – those
23 were the rumours, because you are not given to deal with it
24 and you are told to get away from that.

25 MR MAHLANGU: You were?

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1 MR SETELELE: We were told that we must
2 leave the RDOs dealing with their own demands.

3 MR SEMENYA SC: No –

4 MR SETELELE: So the problem that we were
5 in was that we were trying to talk to them to say, however
6 you have a demand, we are saying go back to work and we
7 will sit down and collect your demand and see how to deal
8 with your demand.

9 MR SEMENYA SC: Mr Setelele, this I my
10 last question on this point and I want to put this
11 proposition to you. I'm going to argue that your answer
12 cannot be correct. Mr Gcilitshana, NUM chief negotiator,
13 called it a ticking bomb for a very long time, it's not
14 something new.

15 MR SETELELE: You're correct.

16 MR SEMENYA SC: I know. Now you say or
17 you reported –

18 CHAIRPERSON: Are you moving on to
19 another point or are you still busy with this one?

20 MR SEMENYA SC: Yes, Chair.

21 CHAIRPERSON: Moving on to another point?

22 MR SEMENYA SC: Yes, I was going to go to
23 another point.

24 CHAIRPERSON: I'd like to ask a question
25 on the point you're busy with. I understood you to say

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1 that your – the attitude of NUM was that the RDOs must go
2 back to work, raise the matter with NUM and NUM would then
3 raise it with the employer. Do I understand you correctly?

4 MR SETELELE: Correct.

5 CHAIRPERSON: That doesn't seem to be
6 consistent with what appears in para 4 of your statement.
7 Let me read it to you. "The issue of this demand" – that's
8 the demand for R12 500 – "by the RDOs was discussed at
9 various meetings by the NUM branches in Lonmin. NUM's
10 position was consistently put forward at these meetings,
11 namely, that the wages of RDOs was" – it should be "were" –
12 "covered in the two year collective agreement that had been
13 concluded in December 2011, that it was a breach of this
14 agreement for RDOs to raise fresh demands during the term
15 of that agreement and that NUM was opposed to unprotected
16 and hence illegal strike action."

17 MR SETELELE: You're correct.

18 [12:38] CHAIRPERSON: I haven't got a problem
19 with your statement that NUM was opposed to unprotected and
20 hence illegal strike action and in fact it's clear that
21 this demand could not have been the subject of strike
22 action because it was governed by clause 12.3 of the
23 agreement to which you refer, but I have got a problem with
24 previous part of that sentence, that it was NUM's position
25 that – let me remind you of what you said – that it was a

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1 breach of this agreement for RDOs to raise fresh demands
 2 during the term of that agreement. Let me tell you why.
 3 As was pointed out, paragraph – clause 12.4 of the
 4 agreement provide that there can be amendments of the
 5 agreement during the period of its operation, provided both
 6 parties agree and the variation is reduced to writing and
 7 signed by all the parties. It wasn't, therefore, a breach
 8 of the agreement for fresh demands to be raised during the
 9 term of the agreement. All that would've been a breach of
 10 the agreement would've been strike action if these demands
 11 were not satisfactorily dealt with. Do you understand the
 12 point I'm putting to you?
 13 MR SETELELE: I understand.
 14 CHAIRPERSON: The point is – let me just
 15 put it, make it clear. The point is, you said it was NUM's
 16 position that it was a breach of the agreement for the
 17 demand to be raised. That means, as I understand it, that
 18 what you were saying was that NUM's attitude, position was
 19 that until the end of the agreement it was not possible for
 20 any demand even to be raised for an increase despite the
 21 fact that the whole climate had changed because of what
 22 happened at Impala. Now we know that when the climate
 23 changes it is possible, despite the fact that there's an
 24 agreement, for the union to go back to the employer and say
 25 look here, for example, we've agreed on an increase of so

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1 much, so much per cent, inflation has gone beyond that
 2 amount, therefore the climate has changed, it's appropriate
 3 for us to revisit it. That's the point that's been dealt
 4 with already. Therefore it would've been possible for NUM
 5 to have gone back to Lonmin, to have said, we want to raise
 6 this demand again, despite the fact that the agreement is
 7 still operative, because of this change brought about by
 8 what happened at Impala. Isn't that correct?
 9 MR SETELELE: You're correct.
 10 CHAIRPERSON: In doing so, NUM would not
 11 have been acting in breach of the agreement.
 12 MR SETELELE: You're correct.
 13 CHAIRPERSON: So why did you say that it
 14 was – that NUM's position was, it was a breach of the
 15 agreement for RDOs to raise fresh demands during the term
 16 of that agreement? That statement was not correct, was it?
 17 MR SETELELE: I think the statement is
 18 not correct since the agreement says, is stating against my
 19 statement. However, I was giving the people also the
 20 opportunity to say however the agreement is saying
 21 something that is against what you demand – if it was so
 22 that you can meet with management, it's also appearing in
 23 my statement –that means, Chairperson, there was a room for
 24 NUM to go and take the demands to the management.
 25 CHAIRPERSON: What did you tell the RDOs

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1 at the meeting? Did you tell them there's room for us to
 2 take this demand to management, or did you tell them that
 3 by raising this demand you're acting in breach of the
 4 agreement?
 5 MR SETELELE: I've told them that if they
 6 have a demand they must bring the demand to us.
 7 CHAIRPERSON: But did you tell them what
 8 you say here in your statement, that it was a breach of the
 9 agreement for the RDOs to raise fresh wage demands during
 10 the term of the agreement? Did you tell them that?
 11 MR SETELELE: Yes, I've told them.
 12 CHAIRPERSON: Mr Semenya, do you want to
 13 move on to your next point?
 14 MR SEMENYA SC: Thank you, Chair. But it
 15 compounds the problem, Mr Setelele. We are told that
 16 Lonmin also has what it calls a discretionary power to deal
 17 with allowances outside the agreement. Did you know that
 18 power they have?
 19 MR SETELELE: No.
 20 MR SEMENYA SC: You have never seen any
 21 documented policy of Lonmin that gives them the power to
 22 offer allowances outside the agreement?
 23 MR SETELELE: In most of that time there
 24 are positions or the levels where they can talk about a
 25 certain amount of money but not the salaries.

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1 MR SEMENYA SC: So if Lonmin's version is
 2 to be believed, they too could have just spoken to NUM and
 3 said, we'll use our discretionary power and deal with this
 4 impasse.
 5 MR SETELELE: They have done that on 750.
 6 MR SEMENYA SC: No, before the loss of
 7 life, damage to property, injury to people and mayhem. So
 8 it is your view that they could have, if they had elected
 9 to do so – before the loss of life.
 10 MR SETELELE: I don't understand your
 11 question.
 12 MR SEMENYA SC: It was within Lonmin's
 13 remit or within their competence or within their power,
 14 prior to the loss of life, damage to property, to use this
 15 discretionary power to resolve the problem.
 16 MR SETELELE: The 750 allowance came
 17 before the strike.
 18 MR SEMENYA SC: And – what, sir?
 19 MR SETELELE: I mean even they were given
 20 750 but the strike should keep on going.
 21 MR SEMENYA SC: And it is not a matter
 22 you as a union take up for the workers?
 23 MR SETELELE: We actually, after being
 24 updated on this allowance, we went to the mass meeting and
 25 addressed this to the workers and they've said no, we don't

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1 want this money, all what we want, we want to go for
 2 ourselves and seek money.
 3 MR SEMENYA SC: I thought you said you
 4 didn't discuss this matter with the strikers or your
 5 members, that you don't know where the 12 500 comes from.
 6 MR SETELELE: The issue of 12 500 was not
 7 I mean discussed or being mandated by the workers as a
 8 demand. When management come with that 750, we went to the
 9 workers and told the workers how was management saying as
 10 an allowance and management also told us that we've got no
 11 room to negotiate this. And still on that allowance,
 12 they're showing the management that it's a small sum of
 13 money.
 14 MR SEMENYA SC: Oh, this is before the 9th
 15 of August?
 16 MR SETELELE: Ja, before the 9th and the
 17 mass meeting was on the 8th.
 18 MR SEMENYA SC: And to tell management,
 19 look, this allowance you want to pay is not enough.
 20 MR SETELELE: Correct.
 21 MR SEMENYA SC: Did you put a proposal of
 22 what would constitute a correct amount?
 23 MR SETELELE: Sorry, sir?
 24 MR SEMENYA SC: Did you put a proposal of
 25 what would constitute a proper amount?

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1 MR SETELELE: We couldn't because we've
 2 got no mandate.
 3 MR SEMENYA SC: You're confusing me. Did
 4 you go to negotiate an allowance with management for and on
 5 behalf of the members?
 6 MR SETELELE: No.
 7 MR SEMENYA SC: You could have.
 8 MR SETELELE: If we got the mandate.
 9 MR SEMENYA SC: Just explain to me what
 10 is a mandate?
 11 MR SETELELE: By mandate in the union we
 12 talk about being told by the mass that you represent, what
 13 to do. And before you change anything on that mandate you
 14 need to go back to those people who gave you that mandate
 15 to tell what does the management propose – until the
 16 workers say it's correct, you may sign for that amount.
 17 This is a mass meeting to a mandate.
 18 MR SEMENYA SC: Did NUM seek the mandate
 19 of the RDOs on their demand?
 20 MR SETELELE: Always if we want a
 21 meeting, a mass meeting for mandate, new issues may come
 22 there, then we carry that mandate as we are given.
 23 MR SEMENYA SC: And Mr Setelele pretend
 24 that I'm Judge Farlam, because you've agreed when he was
 25 asking you, that your attitude in that meeting was, you're

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1 not negotiating anything, it would be a breach of
 2 agreement.
 3 MR SETELELE: You're correct.
 4 MR SEMENYA SC: Now you can assume I'm
 5 Judge Farlam. And now –
 6 MR SETELELE: I don't know whether you
 7 want to change your surname or not.
 8 MR SEMENYA SC: Because I find your
 9 approach to questions put by the Judge quite sensible,
 10 direct and accurate, but anyway I put it to you that you
 11 could not have advanced the claim of the RDOs at the same
 12 time that you're holding the position that it would be in
 13 breach of the agreement.
 14 MR SETELELE: This is what we said.
 15 However, there was a room also, in my statement there is a
 16 room that shows that even though it's a breach of an
 17 agreement, we would still engage with management if we are
 18 given the mandate or the demand. You see, what I would
 19 like also to add on that is that I don't know whether
 20 management with that R750 was responding to the, I mean the
 21 demand of the RDOs directly on the meetings that they held
 22 or not, but according to me there were demands from workers
 23 that they don't want to include NUM and there was some –
 24 there was an allowance that comes with the management. But
 25 management said this 750, they wanted to be on the same

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1 level with the other companies' RDOs as they are people
 2 with a scarce skill and they are aware that most of them
 3 are the old people.
 4 MR SEMENYA SC: Chair, would this be a
 5 convenient stage for the lunch adjournment?
 6 CHAIRPERSON: [Inaudible]
 7 [COMMISSION ADJOURNS COMMISSION RESUMES]
 8 [13:35] CHAIRPERSON: The Commission resumes.
 9 You are still under oath. Mr Semenya, is there more cross-
 10 examination? Do you want to take your jacket off first?
 11 MR SEMENYA SC: I was tempted to, Chair.
 12 CHAIRPERSON: You can.
 13 MALESELA WILLIAM SETELELE (CONTD):
 14 CROSS-EXAMINATION BY MR SEMENYA SC (CONTD):
 15 Thank you, Chair. Mr Setelele, as labour and capital, you
 16 don't need the Council, South African Council of Churches
 17 to resolve labour disputes, do you?
 18 MR SETELELE: My answer will be, if we
 19 have a sort of problem then we will need everybody who can
 20 come with a solution.
 21 MR SEMENYA SC: Do you seriously say
 22 that?
 23 MR SETELELE: Maybe I need to give an
 24 example. Am I allowed?
 25 MR MAHLANGU: He's asking if he's allowed

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1 to make, to give an example.
 2 CHAIRPERSON: I suppose it depends what
 3 the example is, but if it's a relevant example you can give
 4 it.
 5 MR SETELELE: For an example, people of
 6 Wonderkop they used to have a problem on taxis. We used to
 7 interact with the councillors and so on to get the problem,
 8 get solved. We even got to the extent where people around
 9 Lonmin were on strike of unemployment, then we were part of
 10 trying to get the solution. In other words, we work with
 11 the community most of the time.
 12 MR SEMENYA SC: You don't need the South
 13 African Council of Churches to resolve payment of RDOs.
 14 MR SETELELE: I think we'll need them if
 15 necessary, but per our collective agreement there is
 16 nowhere where it says we need South African Council of
 17 Churches. That will depend on the stakeholders, whether
 18 they agree on that.
 19 MR SEMENYA SC: The point I'm making is,
 20 we have a very effective legal framework for these type of
 21 disputes, correct?
 22 MR SETELELE: Correct.
 23 MR SEMENYA SC: So you don't need the
 24 South African Council of Churches to help you resolve the
 25 payment to RDOs.

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1 MR SETELELE: I don't think there was one
 2 time a need for us to call them and even those who were,
 3 who were present during the strike, were not called by NUM
 4 or maybe consulted NUM before they came here.
 5 MR SEMENYA SC: I don't want to argue
 6 against - surely you can, as the union and the employer,
 7 resolve your industrial disputes without the intervention
 8 of the South African Council of Churches?
 9 MR SETELELE: Yes, we've got ways to
 10 resolve our problem but if it went to that extent that we
 11 would need the assistance from other parties, then we will
 12 agree on it. Then it was the first time South African
 13 Council of Churches came to the wages.
 14 MR SEMENYA SC: So you'll allow me to
 15 argue at the end that the parties, that is labour and
 16 capital, acting responsibly, can resolve within the
 17 framework of the law, industrial disputes without the
 18 intervention of parties like the South African Council of
 19 Churches.
 20 MR SETELELE: As I've said, it's the
 21 first time I see the members of the South African Council
 22 of Churches in the wages.
 23 MR SEMENYA SC: So your answer is yes, if
 24 parties to an industrial dispute act responsibly you do not
 25 require external agents like the South African Council of

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1 Churches to help you resolve that problem.
 2 MR SETELELE: I don't think the presence
 3 of the South African Council of Churches was that we cannot
 4 solve our own problem until their intervention. Therefore
 5 I cannot say the problem of Lonmin was resolved by the
 6 South African Council of Churches. Whatever what I can say
 7 is that they were there when the problem was - we were
 8 trying to get the solution about the problem.
 9 MR SEMENYA SC: In fact, you have the
 10 tools and the facility to involve structures like the CCMA
 11 to help mediate industrial disputes where they're needed,
 12 correct?
 13 MR SETELELE: Most of the time the CCMA
 14 will come in as a facilitator or a mediator.
 15 MR SEMENYA SC: It doesn't have to be
 16 after the death of 44 people, correct?
 17 MR SETELELE: I can't say it wants us to
 18 wait for death. Actually we are against any sort of death.
 19 MR SEMENYA SC: Again I ask the question,
 20 you're able to resolve that as labour and capital, without
 21 the loss of 44 deaths?
 22 MR SETELELE: Correct.
 23 MR SEMENYA SC: You also don't even need
 24 the intervention of the South African Police Service to
 25 resolve a labour dispute, do you?

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1 MR SETELELE: You're correct.
 2 MR SEMENYA SC: All parties acting
 3 responsibly, would help the police go and deal with other
 4 issues in crime control, correct?
 5 MR SETELELE: Correct.
 6 MR SEMENYA SC: Can I invite you to look
 7 at XX2, page 89, and that is the peace accord, right?
 8 MR SETELELE: Got it.
 9 MR SEMENYA SC: You will see that this
 10 peace accord deals with the adjustments of the workers on
 11 the schedule which is page 93 of exhibit XX2. Can you go
 12 to that page?
 13 MR SETELELE: Ja, I got it.
 14 MR SEMENYA SC: You will see there that
 15 there is clause 2 which says, "The terms and conditions of
 16 this agreement shall be binding upon the parties, namely
 17 the company, company management, the unions, delegates, as
 18 well as all the employees that they represent and all
 19 employees not represented by any of the unions and
 20 delegates." Do you see that?
 21 MR SETELELE: Yes.
 22 MR SEMENYA SC: And then it says in
 23 clause 2.2, "The terms and conditions of this agreement
 24 shall be applicable to the Marikana operation only."
 25 MR SETELELE: I can see it.

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1 MR SEMENYA SC: Most significant is
 2 clause 3 which says, "This is an amendment to the original
 3 agreement." Do you see that?
 4 MR SETELELE: Correct.
 5 MR SEMENYA SC: So the parties did know
 6 all this time that they can amend that original agreement.
 7 MR SETELELE: Correct.
 8 MR SEMENYA SC: And if you look at the
 9 adjustment under paragraph 3.2, "All rock drill operators
 10 will be promoted from Paterson grade A4 to B1, effective 1
 11 October 2012."
 12 MR SETELELE: Correct.
 13 MR SEMENYA SC: And which was an increase
 14 from what they were earning at the time before the strike.
 15 MR SETELELE: Correct.
 16 MR SEMENYA SC: Just confirm these
 17 figures with me. The effect of the accord and the
 18 amendment, it meant that the general underground workers
 19 were now going to earn 900 and – 9 600. Is that figure
 20 more or less correct?
 21 MR SETELELE: I don't see those figures
 22 you talk about here.
 23 CHAIRPERSON: The figures aren't in the
 24 agreement. What's in the agreement is they were promoted,
 25 all the service and underground general workers were

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1 promoted from Paterson grade A3 to A4, but what Mr Semenya
 2 wants to know from you is can you tell us what that means
 3 in money and he put to you that it's over R9 000 and he
 4 says are you able to confirm from your own knowledge that –
 5 MR SETELELE: What I can confirm is that
 6 there will be an increase but I can't be specific on how
 7 many thousands in terms of money, unless I will be
 8 referring to the document I'd say they will be increased
 9 from this amount to another amount. What I can only
 10 confirm for now are the percentages and the A4, group A, I
 11 mean category A3 and A4 and B1, that there'll be a
 12 movement.
 13 MR SEMENYA SC: In fact, Mr Setelele, it
 14 can't be a correct attitude to say this agreement will
 15 require the deaths of people before union and capital can
 16 conclude it on their own.
 17 MR SETELELE: I'm saying we are
 18 condemning death, whether it's of a worker or a police or
 19 anyone.
 20 MR SEMENYA SC: No, focus on my question.
 21 We intend to argue at the end of the Commission that it was
 22 competent for labour, that's yourself, and Lonmin as the
 23 employer, to reach this agreement without the loss of life.
 24 MR SETELELE: I don't know whether I can
 25 say it was possible or not but what I can tell you is that

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1 we were there present and looking at how to sort the
 2 problem and the company by that time was saying people must
 3 go to work first so that we can sit down and amend. In
 4 other words there is no way I can say the union failed.
 5 MR SEMENYA SC: Whatever the attitude of
 6 the union is or was, and whatever the attitude of Lonmin is
 7 or was, it is possible – it was always possible for both
 8 you as union and Lonmin as employer to reach this agreement
 9 without the loss of life. It was always within your
 10 capacities to do it.
 11 MR SETELELE: I don't agree, if you look
 12 at what was the reason that NUM didn't call the meeting or
 13 meet with workers at the mountain. And if NUM was able to
 14 go to the mountain and engage with workers, I think that it
 15 would be possible but when we were denied to talk to
 16 workers, I don't think possibility of reaching this
 17 agreement before.
 18 MR SEMENYA SC: People don't have to go
 19 to the mountain for capital and labour to resolve an
 20 industrial dispute.
 21 [13:56] MR BURGER SC: Chair, with respect, this
 22 is an unhelpful debate. We have time constraints. The
 23 debate is that what is capital and labour going to do, but
 24 there are other parties to this agreement. In September
 25 there's a constituency called the workers. Does my learned

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1 friend suggest that this agreement should've been reached
 2 on the koppie or off the koppie, with arms or without arms?
 3 What is the argument of the police on this?
 4 MR SEMENYA SC: We'll make the argument
 5 at the right stage, Chair.
 6 CHAIRPERSON: Mr Burger's entitled to say
 7 that these questions, phrased as they are, are not terribly
 8 helpful and unless one factors in the other parties, the
 9 non-unionised RDOs who were obdurate – at one point the
 10 position was firmly stuck in concrete, 12.5 or nothing and
 11 they were prepared to resort to violence in order to
 12 achieve it. So the questions as you framed them don't
 13 really help us very much. And I know you're going to argue
 14 the point further later but if you're busy with questions
 15 it would be helpful if you asked questions that produced
 16 dividends.
 17 MR SEMENYA SC: Yes, Chair, and the
 18 question is, it does not require anything else, it was
 19 always within the competence of labour and capital to
 20 resolve a dispute such as this one. We don't need to
 21 reinvent the wheel, do we?
 22 CHAIRPERSON: I think the witness has
 23 conceded that, so perhaps you can move on.
 24 MR SEMENYA SC: My next question is, it
 25 could still have been achieved before the 9th of August.

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1 MR SETELELE: Correct.

2 MR SEMENYA SC: And that it was remiss of
3 either capital or labour in not resolving it the way they
4 should.

5 MR SETELELE: That's not correct.

6 MR SEMENYA SC: So capital was not remiss
7 in not resolving the problem before the 9th?

8 MR SETELELE: We can also include the
9 attitude of the RDOs by that time because you'll also
10 remember that they used to give their demands directly to
11 the union so that the union can deal with, and the NUM by
12 that time we've got no enough grounds to convey the demands
13 of the RDOs to the company and taking the response from the
14 management to the workers themselves. In most of – in
15 mostly, or all the times when we deal with the demands, we
16 take the demand from workers to the company, from the
17 company's response to the workers, so that we can put our
18 signature. We don't take a decision in their absence
19 without their comment. They will – they are the last
20 people to say we must sign or not, or we must refer to the
21 CCMA. So always the solution of the problem in terms of
22 the salaries will be taken by the mass. So in other words
23 the union and the management cannot reach a solution in the
24 absence of the workers. The workers need to comment and
25 decide. Ours is only to guide the workers in terms of some

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1 other labour issues like -

2 MR SEMENYA SC: So this peace accord
3 could, if the parties wanted to, have been signed before
4 the 9th of August, as mandated – this peace accord together
5 with the addendum could have been signed, with appropriate
6 mandates, before the 9th of August 2012.

7 MR SETELELE: I think if you can look
8 into this peace accord, there were unions there and I think
9 the representatives of workers also were there.

10 MR SEMENYA SC: I'll ask you if I want to
11 –

12 MR SETELELE: So in other words, if I'm
13 not interrupting with you, in other words there was a link
14 between the workers and the unions who were sitting there
15 in the peace accord.

16 MR SEMENYA SC: Now the point I'm making
17 is, that link could still have been achieved by all the
18 parties to this agreement before the 9th of August 2012.

19 MR SETELELE: I think it's possible.

20 MR SEMENYA SC: Let's deal with something
21 different, Mr Setelele. Floor crossing, the ability of
22 workers to move from one union to the other, that should be
23 possible to do without creating hostilities and inter-union
24 rivalry, am I right?

25 MR SETELELE: That is freedom of choice.

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1 MR SEMENYA SC: Just educate me. How is
2 that encouraged in an employment environment like this
3 where there are competing unions for membership?

4 MR SETELELE: Maybe I would like to
5 understand your question clearly, if you can repeat the
6 question.

7 MR SEMENYA SC: Are there systems within
8 the unions, are there protocols, are there agreements which
9 make it possible for people to move from one union to the
10 other without creating union rivalry or hostility?

11 MR SETELELE: I think there is nowhere
12 where NUM experienced or launched a fight against the other
13 union based on the floor crossing. We take that as a
14 freedom of choice. If a person wants to go to another
15 union, he's free to do so and we will not call that union a
16 rivalry union.

17 MR SEMENYA SC: Was it a concern, or not,
18 of NUM that it was losing members to AMCU, the competing
19 union?

20 MR SETELELE: That is actually worrying
21 when it happens on, during the strikes, but what I can
22 confirm is that that was a different situation during the
23 strike and what I can say now is that members of, who had
24 crossed floor before, are now coming back in numbers,
25 rejoining NUM. And I think, if I'm not going to waste your

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1 time, I think the reason is that we are honest with them.
2 We can do what we can do. We can't do what we can't do and
3 we are straightforward on that. And I don't think for our
4 member to cross floor to another union is because we don't
5 give them a proper service. It was only a situation of
6 that time.

7 MR SEMENYA SC: Mr Gcilitshana told us
8 that, or considered that there is some tension at
9 membership level between the two unions. Do you confirm
10 that?

11 MR SETELELE: I remember him saying there
12 is no tension on the level, on the level of – on his level.

13 MR SEMENYA SC: But I didn't ask you
14 that.

15 MR SETELELE: And as I again recall, he
16 said he doesn't know at the lower level where sometimes a
17 person like me is working.

18 MR SEMENYA SC: Are you going to
19 seriously contend –

20 MR SETELELE: And –

21 MR SEMENYA SC: Do you want to say
22 something?

23 MR SETELELE: No, just only to give you
24 an example. Since I've been here with this [inaudible] I
25 never saw a complaint from other unions which are here

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1 complaining about NUM.
 2 MR SEMENYA SC: No, I'm sure the
 3 Commission would be interested to make recommendations if
 4 you were able to identify the causes of the tensions that
 5 were there between the members at the lower level of
 6 unions. Now I'm asking, were you aware that there such
 7 tensions between members, at least at the lower level of
 8 officials?
 9 MR SETELELE: What I can say is that
 10 there is an intimidation that is taking place at the
 11 working places.
 12 MR SEMENYA SC: Causes?
 13 MR SETELELE: I think there are some
 14 other people belonging to other unions that are giving
 15 challenge or maybe intimidating NUM members.
 16 MR SEMENYA SC: About what?
 17 MR SETELELE: In most of the time, giving
 18 you an example, if you wear a T-shirt of NUM then you'll be
 19 in danger.
 20 MR SEMENYA SC: But that's precisely why
 21 we're here, that it cannot be that you wear a T-shirt and
 22 you are in danger. That's not a proper labour environment.
 23 That's why I'm asking for your assistance. My clients
 24 don't want to bring water cannons because somebody is
 25 wearing a T-shirt. Tell us what's the cause of the

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1 tensions.
 2 MR SETELELE: You know, the issue of
 3 intimidation may come in many ways, though I can't be
 4 specific that why people are intimidated – why NUM members
 5 are intimidated.
 6 MR SEMENYA SC: You're not able to help
 7 us?
 8 MR SETELELE: I say I don't know the
 9 reason. What I see is that we have cases of intimidation,
 10 of tearing the NUM T-shirt – that one is a fact, we have
 11 those, we have those cases.
 12 MR SEMENYA SC: NUM has not launched an
 13 investigation to see the underlying causes for these
 14 tensions?
 15 MR SETELELE: Not on my level.
 16 MR SEMENYA SC: Are you aware of a level
 17 higher than where you are?
 18 MR SETELELE: I'm not aware.
 19 MR SEMENYA SC: In your statement you
 20 mention that NUM members fired shots at the protesters, do
 21 you remember?
 22 MR SETELELE: Correct.
 23 MR SEMENYA SC: And these are the members
 24 that you left in the office when you drove away, right?
 25 MR SETELELE: Correct.

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1 MR SEMENYA SC: Who shot them?
 2 MR SETELELE: Who?
 3 MR SEMENYA SC: Who shot them?
 4 MR SETELELE: Mr Chairperson, I think
 5 I've written here a transparent statement and for the sake
 6 of safety I would like to make a request that - comrade
 7 Daluvuyo Bongo has been killed after being involved with
 8 the loco, the loco inspection, so I'm prepared to give the
 9 names of the people whom I was told they make shots, but my
 10 request is that not in this forum. I would like to make a
 11 request to Mr Chairperson that I'm prepared to give names
 12 and look into the relevant place where I can give names of
 13 those comrades. So we have made, we have followed that
 14 after the allegations of shooting, so I got names.
 15 MR SEMENYA SC: No, I don't want to
 16 compromise you in any way. Chair, those are the questions
 17 we have for the witness.
 18 [14:16] CHAIRPERSON: Thank you. Mr Msimang, are
 19 you now ready or did Mr Burger want to cross-examine?
 20 MR MSIMANG: I am ready, Mr Chairman, and
 21 thank you for the indulgence.
 22 CROSS-EXAMINATION BY MR MSIMANG: Mr
 23 Setelele, you are the Chairperson of NUM.
 24 MR SETELELE: The chairperson of Western
 25 Platinum branch committee.

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1 MR MSIMANG: Your statement says
 2 chairperson of the NUM branch at WPF –
 3 MR SETELELE: You're correct.
 4 MR MSIMANG: Western Platinum, so you are
 5 the chairperson of that branch. I see in your statement in
 6 front of you, you state that before the strike in August
 7 2012 you had become aware of a demand that had been made
 8 during July by the rock drill operators for the salary
 9 increase of 12 500.
 10 MR SETELELE: Correct.
 11 MR MSIMANG: You continue to say, "I was
 12 aware that I was" – "I was aware also that these demands
 13 began at Karee Mine and then being taken up by RDOs at
 14 other Lonmin operations."
 15 MR SETELELE: Correct.
 16 MR MSIMANG: You go on to say, "I am,
 17 however, able to state that it did not" – I want you to
 18 underline that – "it did not in any way emanate from within
 19 the NUM or its structures at Lonmin."
 20 MR SETELELE: Correct.
 21 MR MSIMANG: Would I be correct then to
 22 interpret what you're saying [inaudible] as saying that
 23 this demand for R12 000, R12 500, emanated from the Karee
 24 Mine?
 25 MR SETELELE: Would I also be correct if

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1 I say the majority members at Karee Mine belong to AMCU?
 2 MR SETELELE: You're correct. However,
 3 it doesn't mean it was AMCU who held meetings of the RDOs.
 4 CHAIRPERSON: He didn't ask you that. I
 5 suggest you confine your answers to the questions that are
 6 asked, otherwise it will prolong matters exceedingly. It
 7 won't help us. If he wants to know about that, he'll ask
 8 you and you can then answer.
 9 MR SETELELE: Point taken.
 10 MR MSIMANG: Is it correct that the
 11 majority of members in Karee Mine are members of AMCU?
 12 MR SETELELE: Correct.
 13 MR MSIMANG: Would I be correct that if
 14 it did not – if these demands did not arise from NUM
 15 structures within Karee Mine, then it's likely to have
 16 arisen within NUM structures, within the AMCU structures or
 17 AMCU members in Karee?
 18 MR SETELELE: I can't say that.
 19 MR MSIMANG: But doesn't logic dictate
 20 that?
 21 CHAIRPERSON: If the majority are members
 22 of AMCU, unless we know that the demand emanated from the
 23 majority, then it doesn't follow because there might have
 24 been a minority of 25 of non-union people who raised this
 25 point and the others then liked it – so I don't think that

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1 question takes us any further.
 2 MR MSIMANG: I'll rephrase the question.
 3 You go on – I'll come back to that issue – you go on to say
 4 you became aware, in fact you start off by saying that
 5 before the strike in August you had become aware of a
 6 demand by the workers. When exactly did you become aware
 7 of such demand?
 8 MR SETELELE: Even though I cannot be
 9 specific, in some meetings that we had, branches meeting
 10 that we had, we heard that there were mine, I mean RDOs who
 11 hold meetings and discussing their salary increases.
 12 MR MSIMANG: So according to you, RDOs
 13 within NUM have made a demand for some increase, even
 14 though it's not R12 500?
 15 MR SETELELE: I don't know whether you
 16 ask in the meetings, or where the question faces.
 17 MR MSIMANG: I'm asking when did you
 18 become aware of the demand by RDOs within NUM?
 19 MR SETELELE: It's for – before even we
 20 can go, every time when we go to the negotiations RDO gives
 21 their demands also as RDO. Then that is why we say the
 22 salaries of the RDOs and the other groups are not
 23 satisfactory to them.
 24 MR MSIMANG: According to Mr Gcilitshana
 25 in his statement TT1, he has already stated there that as

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1 early as – according to him, at least – the 22nd of November
 2 2011, he at that stage intimated that there's a time bomb
 3 ticking, related to the issues of the RDOs.
 4 MR SETELELE: I've heard this statement.
 5 MR MSIMANG: Do you agree with that
 6 assertion, that around November 2011 NUM was aware of a
 7 ticking time bomb relating to the RDOs?
 8 MR SETELELE: I think he was referring to
 9 the issue of taking the RDO from category A4 to 7 and the
 10 agreement – in our agreement we were unable to reach that,
 11 what they requested us to, that was their mandate. And he
 12 was trying to say if – as I understood him, he was trying
 13 to say since the RDOs are not taken to, I mean group,
 14 category 7, then that is a time bomb because they will be
 15 always sitting, having a concern of their salaries.
 16 MR MSIMANG: Will you agree with me that
 17 there were RDOs within NUM who wanted to be upgraded and
 18 who felt that the salary or remuneration they received from
 19 the employer was not sufficient?
 20 MR SETELELE: I agree.
 21 MR MSIMANG: The plight of the RDOs was
 22 not a new thing within the NUM.
 23 MR SETELELE: I agree.
 24 MR MSIMANG: You said to the Chairperson
 25 you told the RDOs in your meeting that there was an

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1 argument with the employer and that no new demands could be
 2 made to the employer in respect of the RDOs, do you recall
 3 that?
 4 MR SETELELE: I recall.
 5 MR MSIMANG: What I want to know is, is
 6 that your own interpretation at the time, was that your own
 7 interpretation at the time that NUM cannot move outside the
 8 argument with the employer, the collective agreement, and
 9 was that the view held by NUM, the entire structure of the
 10 NUM, that once there is an agreement with the employer it
 11 cannot be changed until the date when it has expired?
 12 MR SETELELE: That was my view.
 13 CHAIRPERSON: According to your
 14 statement, as the position of NUM – so it wasn't just your
 15 own view. On your understanding it was the position of NUM
 16 itself, is that right?
 17 MR SETELELE: You're correct.
 18 MR MSIMANG: I just want to also refer
 19 you to XX1 once more in the statement of Mr Gcilitshana,
 20 paragraph 33 he says, "On the 20th and 31st July Lonmin
 21 issued an internal communication to its employees stating
 22 that the management would not entertain any approaches from
 23 groupings of employees concerning wage increases, given the
 24 existing two year wage agreement.
 25 MR SETELELE: No, I don't recall.

<p style="text-align: right;">Page 4170</p> <p>1 MR MSIMANG: That's evidence that has 2 been led, that there has been such a communiqué, but what I 3 want to know from you is that if there was such a 4 communiqué, the way I read the communiqué it says 5 management would not entertain any approaches from 6 groupings of employees and – concerning wage increases. In 7 fact what I wanted to know – maybe you are not the correct 8 person to answer that, maybe – or maybe the question is put 9 to a wrong person but was that the understanding, according 10 to you, of Lonmin, that Lonmin as well understood that you 11 cannot go outside the agreement? 12 CHAIRPERSON: I don't know that you can 13 ask the witness what Lonmin understood. You can ask him 14 about what he understood insofar as is relevant, but 15 Lonmin's understanding is something you can take up with 16 the Lonmin witnesses when they come. 17 MR MSIMANG: Exactly Mr – maybe the 18 question was clumsily put. Basically what I want to know 19 from you is that when you told the employees that the RDOs 20 cannot re-negotiate outside the agreement, are you aware of 21 any interpretation, according to you at least, now that you 22 say you shared it, are you aware if Lonmin shared the same 23 interpretation? 24 MR SETELELE: I was not aware. 25 MR MSIMANG: Today, and after all the</p>	<p style="text-align: right;">Page 4172</p> <p>1 management. 2 MR MSIMANG: You told the employees, the 3 RDOs, that they cannot negotiate outside the agreement. 4 [14:36] MR SETELELE: I agree. However, it's not 5 the end of my statement. And the other thing, Chairperson, 6 if you may allow me, the meeting of the RDOs at Western 7 Plat in front of the stadium was not their first meeting. 8 If you can look back you'll see that they've already 9 engaged with management in the absence of the union. And 10 the other thing I would like to also highlight, that I'm 11 the chairperson of Western Plat and again to highlight that 12 we are four branches at Western – I mean at Lonmin. So 13 some other questions of other branches, we are equal in 14 terms of our protocol wht other chairpersons of their 15 branches. So some other questions become difficult for me 16 to respond on behalf of other chairpersons of the branches. 17 So Western Plats was the first time the people hold a mass 18 meeting there. 19 MR MSIMANG: I understand your lengthy 20 answer and if you could please restrict yourself to the 21 questions that I put. The question is, when you told the 22 RDOs that they cannot, NUM cannot negotiate outside the 23 agreement, that was wrong. 24 MR BURGER SC: That question is wrong, 25 with respect Mr Chair. My learned friend formulates badly,</p>
<p style="text-align: right;">Page 4171</p> <p>1 cross-examination by the Chairperson and all the people, do 2 you still – 3 CHAIRPERSON: Chairpersons don't cross- 4 examine, they ask questions. I'd like you to withdraw 5 that. Counsel ask questions. 6 MR MSIMANG: I'm sorry, I withdraw that 7 but after the cross-examination today that you've gone 8 through and the clarifications that you had to give to the 9 Chairperson and after you yourself over the time had had a 10 reflection, do you still share the view that you could not, 11 or NUM could not at that stage negotiate with the employer 12 outside the agreement? Is that what you'd still tell the 13 employees today if you are asked the same question? 14 MR SETELELE: I won't say that again but 15 the only thing that I will say, I will say however outside 16 that, but I've accommodated you to bring forward your 17 concerns and your demands so that they can be addressed. 18 MR MSIMANG: In view of your response, do 19 you agree with me that when RDOs were told that they 20 cannot, NUM cannot negotiate outside the agreement and that 21 they would have to wait for 2013, that information given by 22 NUM and yourself to the employees was incorrect? 23 MR SETELELE: I don't think, Chairperson, 24 I've stated the issue of 2013. I've said they must bring 25 forward their demands so that we can engage with</p>	<p style="text-align: right;">Page 4173</p> <p>1 that's why the witness is struggling. It's incorrect to 2 suggest that they couldn't negotiate outside the agreement 3 and that that's of wrong. Of course they cannot negotiate 4 outside the agreement. I think what my learned friend 5 wants to ask is, should they not have negotiated inside the 6 agreement but made use of the non-variation clause and 7 changed that. The witness has never suggested what my 8 learned friend says. The witness was taken to task because 9 he had suggested that it would be in breach of the 10 agreement for the RDOs to make a demand and he's quite 11 fairly conceded that that was wrong, but the difficulty 12 arises from the question, not from the answer. 13 MR MSIMANG: I'll rephrase the question. 14 When the RDOs approached you and NUM for an increased wage 15 or to ask the employer to increase their salaries – 16 MR TIP SC: Mr Chair – 17 CHAIRPERSON: Is it correct that they 18 ever approached the NUM for an increased wage? That's not 19 correct. The whole tenor of the evidence is that they were 20 paddling their own canoe and they didn't want any 21 assistance from the union. So I don't think the way you're 22 formulating the question is correct. There was going to be 23 an objection from Mr Tip. What's your objection, Mr Tip? 24 MR TIP SC: It was precisely that, Mr 25 Chair, and I just wanted to add also that there's a</p>

<p style="text-align: right;">Page 4174</p> <p>1 repeated refrain in the questions that are being put – 2 CHAIRPERSON: That's not an objection, 3 you're making – 4 MR TIP SC: No, no, it's an objectionable 5 refrain. My learned friend – 6 CHAIRPERSON: When the refrain comes 7 again, you can object then but you're objecting now to a 8 specific question – 9 MR TIP SC: It's part of the proposition, 10 Mr Chair. He's saying when NUM addressed the RDOs – and 11 that conveys the impression that there was a distinct 12 meeting of the RDOs that NUM addressed and that is not the 13 position. There were mass meetings at which information 14 was conveyed about the position of the RDOs and it should 15 be put precisely, with respect. 16 CHAIRPERSON: At which RDOs were present. 17 MR TIP SC: At which RDOs were present. 18 CHAIRPERSON: But not solely, the people 19 present were lot solely RDOs. 20 MR TIP SC: Correct, Mr Chair. 21 CHAIRPERSON: Right, I think those two 22 points are correct, so I think you must go back to the 23 drawing board and reformulate your question correctly. 24 MR MSIMANG: Thank you, Chairperson. Let 25 me refer you to paragraph 4 - which you have already</p>	<p style="text-align: right;">Page 4176</p> <p>1 RDOs were consistently told that it's not possible to 2 revisit the agreement and if they believed that, then it 3 would mean that going through the structures of NUM would 4 not assist. Would you agree with me? 5 MR SETELELE: I think before I can come 6 to answer, I would like to advise one thing. There were 7 several meetings held by the RDOs at Karee before the 9th 8 and – the 9th of August, where they even approached 9 management at their unit at Karee. So it's before I can 10 even address the meeting at Western Plats on the 11th, on 11 the 10th and 11th, so you can see that there's no influence 12 of my statement that I said to the people, to the RDOs. 13 They already took that decision of not including NUM in – 14 CHAIRPERSON: Yes, but that's not the 15 question. Do me a favour, answer the question. Don't 16 answer other questions you haven't been asked because you 17 only then make difficulties for yourself. Answer the 18 question. The question was, never mind what had happened 19 before, once they were consistently told at all these 20 meetings you refer to in paragraph 4, that it wasn't 21 possible for them to negotiate or to bring wage demands to 22 Lonmin, would that not have conveyed to them that there was 23 no point in asking NUM to do anything for them because NUM 24 regarded its hands as tied and it wasn't able to help. The 25 answer to that must be yes, I would've thought. Do you</p>
<p style="text-align: right;">Page 4175</p> <p>1 clarified to the Chairperson – of your statement. In that 2 you say, "The issue of these demands by the RDOs was 3 discussed at various meetings by NUM branches in Lonmin. 4 NUM's position was consistently put forward at these 5 meetings, namely that the wages of RDOs was covered in the 6 two year collective agreement that had been concluded in 7 December 2011, that it was a breach of these RDOs for the 8 demand to raise fresh wage demands during the term of that 9 agreement and that NUM was opposed to unprotected and hence 10 illegal strike action." Will I be correct in interpreting 11 this paragraph in your statement to say that what you were 12 conveying to the RDOs was that it was not possible to re- 13 approach the employer for negotiation? Am I correct or, if 14 I'm not correct, how do you – what meaning should I place 15 to this? 16 MR SETELELE: That is incorrect. 17 CHAIRPERSON: What you were then asked by 18 Mr Msimang was, if it was incorrect what was the correct 19 interpretation of what you said? I think that was the 20 second half of his question which you haven't answered yet. 21 MR SETELELE: The truth was that the 22 agreement should be, they can – we can amend the agreement 23 and provided they bring forward their demand. 24 MR MSIMANG: I wonder if you'll be able 25 to answer this and I'm trying to constrain myself. If the</p>	<p style="text-align: right;">Page 4177</p> <p>1 agree? 2 MR SETELELE: I don't think so. 3 CHAIRPERSON: I put it to you again. At 4 a number of meetings the RDOs were told, or the people at 5 the meetings were told that it was a breach of the 6 agreement for RDOs to raise fresh wage demands during the 7 term of the agreement. Now that surely would've conveyed 8 to them that it was in breach of the agreement for this to 9 happen, you won't, you can't expect NUM to try to do it for 10 you. Doesn't that follow? 11 MR SETELELE: I don't think so. 12 CHAIRPERSON: Oh. 13 MR MSIMANG: Whether you believe in that 14 assertion or not, do you agree with me that if the RDOs 15 believed that the hands of the NUM were tied, they were 16 then entitled to say if you, if the union can't assist us, 17 we can approach the employer ourselves? 18 MR SETELELE: I don't agree. 19 MR MSIMANG: Would you say – 20 CHAIRPERSON: Would you agree? Let's 21 assume that after one of your meetings that you talked 22 about, an RDO, a rock drill operator had walked outside and 23 someone had come up to him and said, look here, don't you 24 think it's a good idea for us to get NUM to take our 25 request or our demand to Lonmin? Isn't it obvious that the</p>

<p style="text-align: right;">Page 4178</p> <p>1 RDO chap would've said, don't be silly, you're wasting my 2 time, you heard what they say, they say it can't be done, 3 it's a breach of the agreement. Isn't it the logical 4 consequence of what you've said the RDOs were told in the 5 meeting? Can you imagine an RDO operator seriously 6 accepting a proposal that, despite what he's been told in 7 the meeting, that he should rather go to NUM and ask them 8 please to take this demand to the employer? Does that make 9 sense?</p> <p>10 MR SETELELE: No, I don't see it in that 11 way, Chairperson. The reason is the RDO has took that 12 decision to meet with management before this statement.</p> <p>13 MR MSIMANG: I won't pursue that -</p> <p>14 CHAIRPERSON: No, I think that point has 15 been taken as far as it can go and possibly a little bit 16 further. I think you might like to move on to the next 17 point.</p> <p>18 MR MSIMANG: Then you go on in your 19 statement to say, "On the 8th of August 2012 an NUM report 20 back meeting was held on this at 16H00. This meeting had 21 been convened by Daluvuyo Bongo to report back to the 22 members concerning the allowances that had been decided 23 upon by Lonmin."</p> <p>24 MR SETELELE: Correct.</p> <p>25 MR MSIMANG: This meeting, this report</p>	<p style="text-align: right;">Page 4180</p> <p>1 MR MSIMANG: You go on to say, "NUM 2 nevertheless made it clear at the meeting that it did not 3 support and resort to unprotected strike action and it 4 cautioned the RDOs of the risks involved in any such 5 action."</p> <p>6 MR SETELELE: Correct.</p> <p>7 MR MSIMANG: Will you agree with me that 8 the RDOs referred to in this paragraph are RDOs that 9 belonged to NUM?</p> <p>10 MR SETELELE: I don't agree because the 11 mass meetings are attended by everybody.</p> <p>12 MR MSIMANG: Would you agree that there 13 would have been some NUM RDOs that would have taken that 14 stance?</p> <p>15 [14:56] MR SETELELE: It may be possible.</p> <p>16 MR MSIMANG: If I may refer you to the 17 statement of Gcilitshana on the same subject because it 18 also says, "A report back meeting had been arranged for the 19 8th August 2012 at 16H00."</p> <p>20 CHAIRPERSON: Paragraph 38, page 11.</p> <p>21 MR MSIMANG: Did the Chairperson say 22 anything?</p> <p>23 CHAIRPERSON: I said paragraph 38, page 24 11</p> <p>25 MR MSIMANG: Thanks, Chairperson. The</p>
<p style="text-align: right;">Page 4179</p> <p>1 back meeting, can you elaborate further because I'm trying 2 to understand who was reporting back to whom?</p> <p>3 MR SETELELE: On the 8th of August it was 4 a meeting whereby the branch should report to the 5 management about the R750.</p> <p>6 MR MAHLANGU: Report to the management?</p> <p>7 MR SETELELE: To report to the workers.</p> <p>8 MR MSIMANG: In the other statement of Mr 9 Gcilitshana at paragraph 38 he also makes reference to 10 these meetings. He says, "A NUM report" – paragraph 38 –</p> <p>11 CHAIRPERSON: That's not an answer to the 12 question. Repeat the question please, Mr Msimang?</p> <p>13 MR MSIMANG: The question simply is the 14 report back on the 8th of August, who was reporting back to 15 whom?</p> <p>16 MR SETELELE: The branch committee was 17 reporting to the mass meeting concerning the 750 which was 18 proposed by management as an allowance.</p> <p>19 MR MSIMANG: Maybe before I go to the 20 other statement, I should go on with what you say here. 21 You go on to say, "At this meeting some of the RDOs 22 indicated that they would approach management directly 23 concerning their 12 500 wage demand and that they did not 24 want to talk to NUM about it."</p> <p>25 MR SETELELE: Correct.</p>	<p style="text-align: right;">Page 4181</p> <p>1 convenor thereof was the late Mr Daluvuyo Bongo. At that 2 stage it was clear to NUM that there was an imminent 3 prospect of an unprotected strike. The opportunity was 4 taken at this meeting to caution RDOs against action of 5 that sort and to warn them of the dangers thereof.</p> <p>6 MR SETELELE: Correct. The workers were 7 talking amongst themselves, were commenting against the 8 RDOs who want to go for strike. Actually according to my 9 knowledge they were not talking about the strike, they said 10 they will go on their own and the others showed them what 11 is the correct way to take.</p> <p>12 MR MSIMANG: That statement refers to two 13 e-mails, to e-mails between – it says between Mr Bongo and 14 Larry Diederich. In fact there are three e-mails at page 15 71, 72 and 73. Unfortunately I do not have page 73.</p> <p>16 CHAIRPERSON: You don't need page 73 17 because page 73 contains an e-mail which was sent on – 18 sorry, I beg your pardon, I was wrong. Page 73 contained 19 an e-mail –</p> <p>20 MR MSIMANG: Chairperson, Chairperson – 21 CHAIRPERSON: - which reads – 22 MR MSIMANG: Excuse me, Chairperson. 23 CHAIRPERSON: Yes? 24 MR MSIMANG: In fact it's 72, if I can 25 read that of 72. I've got 71 and 73.</p>

<p style="text-align: right;">Page 4182</p> <p>1 CHAIRPERSON: 72, as I see it, doesn't 2 help. 72 contains a request for the mass meeting from the 3 branch committee. That's at the foot of page 72. That's 4 an e-mail sent on the 2nd of August. Then there's an e-mail 5 on the 6th August on the same page, approving the meeting. 6 And then on 71 there is an e-mail sent at 7.40PM on the 8th 7 August by Mr Bongo to Mr Trollip, Mr Hamman and Mr Dietrich 8 saying, "Mass meeting went peaceful. Attendance was very 9 good. We educated the RDOs and showed" – I think it's 10 supposed to be – "the danger they will achieve in their 11 wrongdoing. Some NUM members advised them as well." And 12 that e-mail is repeated on page 73. I think those are the 13 relevant e-mails, are they? That's followed on page 73 by 14 an e-mail from Mr Hamman to Mr Bongo, sent at 8.13PM on the 15 8th of August saying, "Thanks Daluvuyo for the feedback. 16 Hope" – I think it should be "they" – "understand and get 17 back to adding value at the shaft. The rumour is they will 18 not be at work tomorrow. Hope your influence is 19 effective." And then there's something else which is 20 presently irrelevant. Those are the relevant e-mails, 21 aren't they? 22 MR MSIMANG: That's correct, Chairperson. 23 CHAIRPERSON: But now I've read them, 24 it's clear what they're about, I suggest we take the tea 25 adjournment at this point and you can return to the charge,</p>	<p style="text-align: right;">Page 4184</p> <p>1 they could have approached – I don't want to take you 2 through that. At that stage at least the NUM could have 3 done something. 4 MR SETELELE: I think the issue of 5 education is one of those routes. 6 MR MSIMANG: Would I be correct in my 7 mind, in view of all the events up until the 16th, 8 particularly where the NUM through its various officials 9 would say, we don't have members at the mountains there, 10 would I be correct in my assumption that the NUM was in 11 denial about the plight of these RDOs? 12 MR SETELELE: I don't remember NUM saying 13 its members is not at the mountain. 14 MR MSIMANG: If that was said by NUM, 15 would you agree that the NUM was washing its hands from the 16 RDOs? 17 MR SETELELE: I may agree, or saying – as 18 I'm not quite sure that they did that, I can't say they 19 were washing their hands. 20 MR MSIMANG: I'll move on. I see your 21 statement, including those – that one of Mr Gcilitshana, 22 you talk about the 8th and the next paragraph you move on to 23 the 9th, to the 10th. Where were you on the 9th and what 24 happened on the 9th? 25 CHAIRPERSON: The 9th was a public</p>
<p style="text-align: right;">Page 4183</p> <p>1 if that's the right word, after the adjournment. 2 [COMMISSION ADJOURNS COMMISSION RESUMES] 3 [15:20] CHAIRPERSON: The Commission resumes. 4 You're still under oath. Mr Msimang, are you ready now to 5 ask your question based on the e-mails you looked at before 6 the adjournment? 7 MALESELA WILLIAM SETELELE (CONTD): 8 CROSS-EXAMINATION BY MR MSIMANG(CONTD): 9 Thanks, Mr Chairperson, I am ready. Do you agree with me 10 that on the 8th of August NUM was aware that there may be an 11 imminent strike by members, by the RDOs? 12 MR SETELELE: We got that rumours. 13 MR MSIMANG: Do you also agree with me 14 that NUM tried to dissuade the members at the meeting not 15 to go onto an unprotected strike? 16 MR SETELELE: Correct. 17 MR MSIMANG: In fact, it went further 18 than that. The e-mail of the 8th to Mr Dietrich by Bongo, 19 Daluvuyo, actually assured Lonmin that – to use the words, 20 to be precise – that "we educated the RDOs and showed the 21 dangers, the danger they will achieve in their wrongdoing." 22 MR SETELELE: I agree. 23 MR MSIMANG: At that stage at least the 24 NUM should have followed the other avenues which appear in 25 terms of the agreement - as was pursued by Mr Semenya, that</p>	<p style="text-align: right;">Page 4185</p> <p>1 holiday, you remember. 2 MR MSIMANG: Yes indeed, but there were 3 activities. 4 MR SETELELE: I think in the early hours 5 I was at home. 6 MR MSIMANG: Do you know what happened, 7 were there any activities on the 9th and what were those 8 activities? 9 MR SETELELE: If I can recall, I was at 10 home on the 9th. 11 MR MSIMANG: Was there a meeting by the 12 RDOs on the 9th? 13 MR SETELELE: Yes, I was told. 14 MR MSIMANG: Would you, have you also 15 been told where was the meeting and what was discussed? 16 CHAIRPERSON: Mr Msimang, is this going 17 to help us? We've already got the logbook which has been 18 put before us as part of XX2, page 21, which tells us that 19 the RDOs gathered at 10 o'clock in front of the Wonderkop 20 Stadium, at least 300 workers gathered. The group 21 eventually dispersed peacefully and the information was 22 that workers will not report for duty tomorrow and that by 23 7 o'clock they were marched to the LPD. SAPS informed, all 24 stakeholders informed of this information. That's 25 basically what happened. He wasn't there, he says he was</p>

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1 at home, so is there any point in asking him about what he
 2 heard? I mean those are the basic facts, they are before
 3 the Commission. I don't know that he can throw any light
 4 on what happened on the 9th, so are you not wasting time?
 5 MR MSIMANG: Thanks, Mr Chairperson,
 6 thanks for putting on record what actually happened. The
 7 question then is, if on the 9th there was a meeting and the
 8 RDOs in that meeting have decided that they would not be
 9 going to work tomorrow, doesn't that tell you that the RDOs
 10 have decided that they are going to take, to strike
 11 officially?
 12 MR SETELELE: I think the decision for
 13 them to make a strike was depending on the response of the
 14 management on the 10th.
 15 MR MSIMANG: I won't pursue that any
 16 further. On the 10th, it appears that the RDOs did not go
 17 to work and officially there was a strike, will you agree
 18 with me?
 19 MR SETELELE: Correct.
 20 MR MSIMANG: What did NUM do immediately
 21 in the morning when they knew that there was a strike
 22 officially taking place?
 23 MR SETELELE: Our branch requested a mass
 24 meeting with workers at C2.
 25 MR MSIMANG: And you do know, of course,

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1 that the workers did march to the offices of the employer?
 2 MR SETELELE: Correct.
 3 MR MSIMANG: Where were you then?
 4 MR SETELELE: I was – it was a working
 5 day, I was in the NUM offices, the branch offices.
 6 MR MSIMANG: Did anyone – did the
 7 employer contact any of the NUM officials to say that there
 8 are people on strike that you know of?
 9 MR SETELELE: I don't recall.
 10 CHAIRPERSON: It's the other way around
 11 really, isn't it? If you read the statement, which he's
 12 already confirmed and we don't have to go through it in
 13 detail – he received information that there was going to be
 14 a strike, that they'd marched to the main offices of Lonmin
 15 and he then informed Mr Dietrich about that at his meeting
 16 at one o'clock. Does the point that you've now sought to
 17 raise take the matter any further?
 18 MR MSIMANG: Do you know what happened
 19 when the workers – did they speak to the employer, the
 20 workers, do you know?
 21 MR SETELELE: I heard that they've
 22 approached the employer. However, I don't know exactly how
 23 their mass meeting was addressed.
 24 MR MSIMANG: So you wouldn't know if the
 25 employer addressed or spoke to the employees at all or not?

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1 MR SETELELE: I don't have that knowledge
 2 but according to me, I think they did.
 3 MR MSIMANG: Your indulgence, Chair, with
 4 the question I want to put because I don't have this
 5 statement. If there's an objection I won't ask the
 6 question. That in fact the employer in fact refused to
 7 address the employees on the basis that they should bring,
 8 they will talk to them through the unions.
 9 CHAIRPERSON: Does the witness know this?
 10 If the witness doesn't know, what's the point of asking the
 11 question? At best for you, at best for you, he may give
 12 you some hearsay evidence on it but surely we're going to
 13 get direct evidence in due course from Lonmin and from the
 14 workers themselves who were involved and that'll be far
 15 better and more valuable, won't it?
 16 MR MSIMANG: Then I'll leave it like
 17 that, Chairperson. That would conclude evidence of what
 18 happened on the 10th. Your statement, you go on to say what
 19 happened on the 11th. You state that on the 11th –
 20 CHAIRPERSON: You don't have to repeat to
 21 him what he said. We heard it when he gave it. We have
 22 the statement in front of us and remember the people in the
 23 auditorium have heard it as well. Let's cut to the chase,
 24 deal with the points on the 11th that are relevant.
 25 MR MSIMANG: I'm cutting to the chase,

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1 Chairperson. On the 11th NUM received a report that the
 2 RDOs were going to - approaching the office and they were
 3 armed. I just want your indulgence, Chairperson, I know
 4 I've seen it somewhere – that they were approaching the
 5 office and they were armed. They were actually approached
 6 by a security official. That's what –
 7 CHAIRPERSON: - statement.
 8 MR SETELELE: You're correct.
 9 MR MSIMANG: Did you see any of these
 10 employees that were armed or did you see any weapons?
 11 MR SETELELE: I didn't see those people.
 12 MR MSIMANG: You go on to say that, on
 13 paragraph –
 14 CHAIRPERSON: We know what he went to
 15 say. Just ask him a question about it, if it's relevant to
 16 your case.
 17 MR MSIMANG: That in fact the weapons
 18 that you've seen were at the NUM offices.
 19 MR SETELELE: You're correct.
 20 MR MSIMANG: Were these weapons used by
 21 NUM members?
 22 MR SETELELE: I think they were – they
 23 were from, they were on their possession because they were
 24 in our offices.
 25 CHAIRPERSON: The question is whether you

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1 know whether these weapons were used by the NUM members.
 2 MR SETELELE: I was not aware.
 3 MR MSIMANG: You testified that there
 4 were shots that were fired by members of NUM.
 5 CHAIRPERSON: He testified he was told
 6 there were shots. He didn't hear them himself, am I
 7 correct?
 8 MR SETELELE: You're correct, sir.
 9 CHAIRPERSON: This is hearsay again. I
 10 mean I don't know what the point of traversing the hearsay
 11 is. Presumably there'll be direct evidence, I hope,
 12 dealing with these matters. I mean what's the point of
 13 asking, getting hearsay from him?
 14 MR MSIMANG: The point I'm asking is that
 15 from the cross-examination of Mr Semenya you testified that
 16 you may be aware of people who may have used firearms.
 17 MR SETELELE: I was responding on the
 18 issue of shots fired.
 19 CHAIRPERSON: I understood his evidence
 20 to be that he'd been told about it. He was presumably
 21 told, or may well have been told the names of the person
 22 who fired shots. He was unwilling to give their names in
 23 public because he's afraid they might have the same fate as
 24 Mr Bongo.
 25 MR MSIMANG: There were two case dockets

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1 opened in Marikana. Would you volunteer whatever
 2 information you have to the police?
 3 CHAIRPERSON: Is that going to help us
 4 answer the questions that we have to determine for the
 5 purposes of our work as a Commission? Whether he's going
 6 to give information to the police, how does that take our
 7 work any further?
 8 MR MSIMANG: I'll leave that one,
 9 Chairperson. You also testified that on the 10th – I
 10 forgot, I missed that one – you actually were given a Combi
 11 by Lonmin management and you were ferrying employees to and
 12 from the shaft.
 13 [15:40] MR SETELELE: That's incorrect.
 14 MR MSIMANG: So you never ferried
 15 employees to various shafts on the 10th?
 16 MR SETELELE: We did.
 17 CHAIRPERSON: Your question was to and
 18 from. The statement that he made, which he's confirmed,
 19 says "to", in effect.
 20 MR MSIMANG: At what stage on the 10th did
 21 you engage management or were you given that vehicle by
 22 management at all, or –
 23 CHAIRPERSON: He doesn't say that in his
 24 statement. What he says is they had this vehicle which had
 25 been – which was not owned by NUM but had been made

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1 available to them by Lonmin, for which he was responsible
 2 and which could only be used for bona fide NUM business. I
 3 didn't understand him to say it was given to them on the
 4 10th, was I correct? It is a longstanding arrangement
 5 whereby - in terms of which Lonmin made the vehicle
 6 available. Is that correct?
 7 MR SETELELE: You are correct, sir.
 8 MR MSIMANG: That will be all, Mr
 9 Chairperson.
 10 CHAIRPERSON: Thank you, Mr Msimang. Mr
 11 Burger, do you want to cross-examine?
 12 MR BURGER SC: No, thank you, sir.
 13 CHAIRPERSON: Anyone else who wishes to
 14 cross-examine? Re-examination, Mr Tip?
 15 RE-EXAMINATION BY MR TIP SC: Thank you,
 16 Mr Chair, I have a few points. Mr Setelele, just in
 17 relation to the version, the proposition that was put to
 18 you that there was an exhibit which showed that the
 19 majority of people who were on the koppie on the 16th of
 20 August were NUM members. You were asked one or two
 21 questions about that and it wasn't made clear to you. I
 22 just wanted to make it clear to you that that exhibit is a
 23 list that had been prepared by Lonmin of persons, of RDOs
 24 who were absent for whatever reason, from service. Do you
 25 follow?

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1 MR SETELELE: Correct, I'm listening.
 2 MR TIP SC: And that schedule also
 3 records what Lonmin's records were at a particular time of
 4 who was registered as being a NUM member, who was an AMCU
 5 member and who was neither.
 6 MR SETELELE: I hear.
 7 MR TIP SC: I just want to ask you one or
 8 two questions. I just want to inform the Chair and the
 9 commissioners that we're in the process of analysing that
 10 list in conjunction with other sources in order to produce
 11 a more, what will hopefully be a more useful picture but I
 12 just want to take up and clarify with you one or two things
 13 that you said in relation to those questions. You said
 14 that during this period some NUM members had gone home, do
 15 you recall that?
 16 MR SETELELE: Yes, I recall.
 17 MR TIP SC: And when you said home in
 18 that context, were you referring to Marikana or the Ikaneng
 19 settlement or were you referring to places like Lusikisiki
 20 and Flagstaff?
 21 MR SETELELE: Most of them – those, the
 22 others have went home in Eastern Cape and the others in
 23 Polekwane, if I remember, as far as they were not around
 24 Rustenburg, most of them.
 25 MR TIP SC: Is that something, in your

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1 experience, that miners and other employees who work on the
 2 mine do at times of strife, in order to maintain their own
 3 safety?
 4 MR SETELELE: You're correct.
 5 MR TIP SC: And you've referred, you said
 6 to the Commission already that some of the NUM members –
 7 well, NUM members and other employees were unable to get to
 8 work, were unable to report, correct?
 9 MR SETELELE: You are correct.
 10 MR TIP SC: And those persons would've
 11 been recorded on that list by Lonmin as being absent, does
 12 that mean that they would necessarily have been on strike
 13 or at the koppie?
 14 MR SETELELE: No.
 15 MR TIP SC: Then the second topic, you've
 16 been asked a number of questions around the theme of
 17 negotiation by NUM on behalf of the RDOs and a number of
 18 questions were put to you querying why NUM had not done
 19 that and your attention was drawn to the fact that a peace
 20 accord and an addendum to the collective agreement had been
 21 concluded in the course of September 2012. Do you recall
 22 all those questions?
 23 MR SETELELE: I recall.
 24 MR TIP SC: Now, I just want to take you
 25 first of all to the peace accord which was signed on, by

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1 those who signed it, on the 1st of September 2012 and the
 2 page I want to refer you to particularly is page 89 of
 3 exhibit XX2. Do you have that?
 4 MR SETELELE: Yes, I've got it.
 5 MR TIP SC: And you will see that
 6 paragraph 1 sets out the various stakeholders who had an
 7 interest in endorsing an environment of social harmony and
 8 peace, do you have that paragraph?
 9 MR SETELELE: Yes, I can see it.
 10 MR TIP SC: Paragraph 1.1.1 stipulates
 11 that one of the stakeholders that's defined was the
 12 delegation of the striking employer which was referred to
 13 as "the delegation."
 14 MR SETELELE: Yes, I can see it.
 15 MR TIP SC: And below that is NUM and
 16 other unions – Solidarity, UASA, AMCU and then Lonmin, the
 17 employer. Do you see all that?
 18 MR SETELELE: Yes, I can see it.
 19 MR TIP SC: Although, for whatever
 20 reason, that delegation didn't see fit to sign the peace
 21 accord on that day, it is apparent –
 22 CHAIRPERSON: Neither did AMCU, it
 23 appears from page 91.
 24 MR TIP SC: That is correct, Mr Chair.
 25 It is clear from that definition of the stakeholders that

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1 the delegation of the striking employees was there as a
 2 distinct entity, do you agree?
 3 MR SETELELE: I agree.
 4 MR TIP SC: Then I want to take you to
 5 the addendum which was signed on the 18th of September by
 6 all parties and if you'd look first of all at page 92 of
 7 that bundle XX2.
 8 MR SETELELE: Correct, I can see it.
 9 MR TIP SC: And you will see there that
 10 it describes itself, of course, as being an addendum to the
 11 category 3 to category 9 substantive wage agreement
 12 concluded in October 2011 and then it sets out the parties,
 13 between Lonmin – I'll just abbreviate, so that we move on –
 14 between Lonmin, and then you'll see that there's a grouping
 15 of unions which are described all together – that is NUM,
 16 UASA, Solidarity and AMCU, they're all described as the
 17 unions. You see that?
 18 MR SETELELE: Yes, I can see it.
 19 MR TIP SC: And then below that again you
 20 see "and the striking workers delegates" as a distinct
 21 entity.
 22 MR SETELELE: Yes, I can see it.
 23 MR TIP SC: And at page 94 the
 24 signatories to the addendum are displayed.
 25 MR SETELELE: Yes, I can see.

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1 MR TIP SC: It runs from Lonmin at the
 2 top, through all those unions again and then again at the
 3 foot, the last signatory is one that is made on behalf of
 4 the delegates and it says in brackets, "duly authorised".
 5 MR SETELELE: Yes, I can see.
 6 MR TIP SC: Now, having regard to the
 7 structure of these documents, I just want to ask you –
 8 CHAIRPERSON: Before you proceed, perhaps
 9 you should put to him paragraph 2.1 on page 93 which takes
 10 the point further.
 11 MR TIP SC: Yes. I'm indebted to you, Mr
 12 Chair. If you'd go back, please Mr Setelele, to page 93
 13 and heed the terms of paragraph 2.1 and I'll just read it
 14 onto the record. This is under the heading of "Application
 15 of the agreement" and it says, "The terms and conditions of
 16 this agreement shall be binding upon the parties, namely,
 17 the company, company management, the unions, the delegates,
 18 as well as all the employees that they represent" – in
 19 brackets – "and all employees not represented by any of the
 20 unions and delegates." Do you see that?
 21 MR SETELELE: I see.
 22 MR TIP SC: And having regard to that
 23 particular clause it is apparent also, is it not, that the
 24 delegates were indeed participants in the discussions that
 25 had led to the addendum, as representatives of all the

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1 striking employees.
 2 MR SETELELE: You're correct.
 3 MR TIP SC: Now having regard to all
 4 those circumstances I really have just one question to ask
 5 and that is, in light of all the circumstances, was there –
 6 was it in any way feasible for NUM to put itself forward as
 7 the representative of the striking employees for the
 8 purpose of negotiations with Lonmin and the conclusion of
 9 this addendum?
 10 MR SETELELE: No.
 11 MR TIP SC: Then thirdly and briefly, in
 12 respect of your statement, Mr Setelele, you have already
 13 accepted, properly, that in paragraph 4 you did not
 14 correctly reflect the terms of paragraph or clause 12.3 of
 15 the two year collective agreement. You will recall the
 16 questions that were put to you and your acceptance that
 17 that was a shortcoming.
 18 MR SETELELE: Yes, I recall.
 19 MR TIP SC: And in particular you
 20 accepted that merely to speak about a breach of the
 21 agreement did not properly recognise the provision in
 22 clause 12.3 that there could be discussions on terms and
 23 conditions, but no strike action, is that right?
 24 MR SETELELE: You're correct.
 25 MR HANABE: Can you repeat the question

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1 again, senior counsel?
 2 MR TIP SC: Yes, of course. Yes, I will,
 3 with pleasure – that the effect of what you accepted there
 4 was that insofar as you spoke only about a breach of this
 5 agreement, you did not indicate in that paragraph that
 6 there was scope for discussion between parties during the
 7 term of a collective agreement, if circumstances warranted
 8 it, but that there could not be strike action. There could
 9 be discussion, there could be negotiation, but no strike
 10 action, in short.
 11 MR SETELELE: You're correct.
 12 MR TIP SC: And in the course of your
 13 evidence today you did, on a few indications, indicate that
 14 the door was in fact not entirely closed and I just want
 15 to take you to paragraph 23 of your statement. Just to put
 16 it in context, you were dealing there with a meeting that
 17 you addressed on the afternoon of 11 August 2012 and I'll
 18 just read the first few sentences and then ask you about
 19 that very briefly. "Later that afternoon I addressed a
 20 meeting of about 1 000 workers in the veld near the
 21 Wonderkop Stadium. I again outlined NUM's position that it
 22 opposed the strike which was unprotected, and that workers
 23 should report for duty." And then you go on to say this,
 24 "I further emphasised that a wage agreement was already in
 25 place and that any wage demands had to be addressed through

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1 the proper channels."
 2 MR SETELELE: You're correct.
 3 MR TIP SC: And when you set that out in
 4 that paragraph, did you have in mind that wage demands
 5 could be addressed only at the very end of the collective
 6 agreement or that they could be addressed during the
 7 collective agreement?
 8 [16:00] MR SETELELE: I was aware that at any
 9 time we can meet with management and get the solution over
 10 the matter that was existing at that time.
 11 MR TIP SC: Mr Chair, we've run a minute
 12 or so past 4 o'clock. I've only one last set and I'll deal
 13 with that briefly.
 14 CHAIRPERSON: - sit a little bit longer
 15 if it will enable this witness to finish.
 16 MR TIP SC: It will, thank you, Mr Chair.
 17 The last point, Mr Setelele, you've drawn attention to the
 18 – in the context of the attitude of the RDOs, you've drawn
 19 attention to the meeting, the report back meeting of the 8th
 20 of August 2012, that was a NUM meeting. You recall that?
 21 MR SETELELE: Yes, I recall.
 22 MR TIP SC: You've explained that the
 23 particular point that was raised at that report back
 24 meeting concerned the allowances that Lonmin had wished to
 25 pay to the RDOs.

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1 MR SETELELE: Yes, I recall.
 2 MR TIP SC: Now going back in time from
 3 the 8th of August over many weeks, say through the whole of
 4 July as well, were there any NUM meetings at which the
 5 position of RDOs was addressed – in the context of the
 6 demand that they were formulating at the time, which
 7 ultimately came to be identified as 12 500.
 8 MR SETELELE: No.
 9 MR TIP SC: Now against that, I want to
 10 just take you to a few paragraphs of a statement that has
 11 been filed in these proceedings in respect of Mr Da Costa.
 12 It's in – Mr Chair, it's in the Lonmin bundle.
 13 CHAIRPERSON: It's part of OO17 and it's
 14 page 66 and following.
 15 MR TIP SC: And Mr Da Costa, you know who
 16 Mr Da Costa is?
 17 MR SETELELE: Yes, I know him.
 18 MR TIP SC: 3.8 of that paragraph,
 19 there's no need to turn to it, I'm just referring it – it
 20 identifies a date on which he met certain representatives
 21 of the RDOs, being 21 June 2012 and in paragraph 3.17 he
 22 identifies that the representatives said that they required
 23 a salary increase to 12 500, you accept that?
 24 MR SETELELE: I can agree and I agree
 25 that there were meetings at Karee and then I'm residing at

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1 Western Plat. What I know is that there were some meetings
 2 that Mr Da Costa used to hold with the workers.
 3 MR TIP SC: Then Mr Chair, I have an idea
 4 that this has already been read onto the record, paragraph
 5 3.18, and I'm just going to abbreviate it, if I may, just
 6 to draw to your attention, Mr Setelele, that the two
 7 representatives told Mr Da Costa that they were after this
 8 increase and Mr Da Costa says he realised that it was a
 9 wage issue and then he says the following, "I consequent
 10 told Matlabine and Mofokeng that there was a procedure for
 11 negotiating salaries and that the issue that they were
 12 raising should be dealt with through the established
 13 central bargaining structures. They objected to dealing
 14 with the matter in this way because, so they told me, they
 15 did not want any union involvement in the matter."
 16 MR SETELELE: I hear that.
 17 MR TIP SC: And it's – their position was
 18 set out and evidently among the unions that they had no
 19 wish to deal with in respect of their demand, would've been
 20 NUM. Would that be apparent to you from that statement?
 21 MR SETELELE: I think they include NUM.
 22 MR TIP SC: As I said, that was as early
 23 as 21 June 2012 and I just want to ask you this, Mr
 24 Setelele, the position that Mr Da Costa set out in those
 25 terms, did that accord with your later experience of the

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1 position and the attitude of RDOs insofar as you heard what
 2 it was?
 3 MR SETELELE: That's correct.
 4 MR TIP SC: Mr Chair, that concludes the
 5 re-examination.
 6 CHAIRPERSON: Thank you for your
 7 evidence, you'll be excused. tomorrow, what are you going
 8 to do tomorrow, Mr Tip, if I ask –
 9 MR TIP SC: With your leave, we have a
 10 second – well, a third NUM witness available.
 11 CHAIRPERSON: Do you have a statement to
 12 give us –
 13 MR TIP SC: A statement was circulated
 14 yesterday but we do have hard copies. Could we -
 15 CHAIRPERSON: If I can study this tonight
 16 – you don't have to give it to me now. We'll adjourn and
 17 you can give it to me before I leave.
 18 MR TIP SC: We'll see to it, yes.
 19 CHAIRPERSON: So we can study it tonight.
 20 MR TIP SC: Yes.
 21 CHAIRPERSON: What's the witness's name?
 22 MR TIP SC: It's Gegeleza, Mr Alfred –
 23 Sasiso Albert, I beg your pardon, Gegeleza.
 24 CHAIRPERSON: And just shortly in one
 25 sentence-

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1 MR TIP SC: Very shortly.
 2 CHAIRPERSON: What's he going to testify
 3 about?
 4 MR TIP SC: He was present during the
 5 confrontation on the 11th of August.
 6 CHAIRPERSON: And then do you propose –
 7 thank you – do you propose showing the video clip, asking
 8 us to look at the video clip and going through the
 9 transcript of the inspection before or after you call the
 10 witness? How long will the video clip take?
 11 MR TIP SC: Oh, it's short. It's a
 12 matter of five minutes or so. It would be desirable to do
 13 that before he starts.
 14 CHAIRPERSON: No, but what I was leading
 15 up to –
 16 MR TIP SC: Yes.
 17 CHAIRPERSON: So tomorrow morning we'll
 18 start with the video clip and the – which will involve, we
 19 have the transcript of what was said –
 20 MR TIP SC: Yes.
 21 CHAIRPERSON: And we'll see what was
 22 happening.
 23 MR TIP SC: Yes.
 24 CHAIRPERSON: And then you'll call your
 25 witness, Mr Gegeleza.

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1 MR TIP SC: Yes.
 2 CHAIRPERSON: And after that?
 3 MR TIP SC: Well, when his evidence is
 4 finished, we'll have available the president, Mr Zokwana.
 5 CHAIRPERSON: We have already a statement
 6 from him, I think.
 7 MR TIP SC: There is a statement. I may
 8 say at this stage that arising out of the cross-examination
 9 that we've had thus far, I will do what – similarly to what
 10 I did with Mr Gcilitshana, which is, in respect of certain
 11 paragraphs to take Mr Zokwana's attention to other aspects
 12 that he can assist the Commission on.
 13 CHAIRPERSON: Thank you, Mr Tip. I have
 14 a clearer understanding of what tomorrow holds for us. The
 15 Commission will adjourn until 9.30 tomorrow morning.
 16 [COMMISSION ADJOURNED]
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