

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 41 31 JANUARY 2013 PAGES 4396 TO 4500

HELD AT

CIVIC CENTRE, RUSTENBURG, NORTH WEST PROVINCE



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1 [PROCEEDINGS ON 31 JANUARY 2013]
 2 [09:43] CHAIRPERSON: The Commission resumes. Mr
 3 Tip, you're going to call the witness, I believe?
 4 MR TIP SC: Thank you, Mr Chair. I call
 5 the next NUM witness, being Mr Senzeni Zokwana. A written
 6 statement prepared by him has been circulated quite some
 7 time ago, well before the end of the proceedings last year.
 8 Signed copies and the original were made available
 9 yesterday afternoon and I trust that the Commission has a
 10 copy of those. To the best of my knowledge all other
 11 parties have the copies. If anybody is lacking a copy
 12 today they can tell us, we have available.
 13 CHAIRPERSON: This is a signed – this
 14 must be the original. Mr Zokwana, would you please stand?
 15 Are you willing to take the oath or do you wish to affirm?
 16 MR ZOKWANA: So help me God.
 17 CHAIRPERSON: You're willing to take the
 18 oath?
 19 MR HANABE: Yes, he is.
 20 CHAIRPERSON: Will you swear that the
 21 evidence you will give before this Commission will be the
 22 truth, the whole truth and nothing but the truth? Please
 23 raise your right hand and say, I swear, so help me God.
 24 MR ZOKWANA: I swear.
 25 CHAIRPERSON: So help me God.

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1 MR ZOKWANA: So help me God.
 2 SENZENI ZOKWANA: d.s.s.
 3 CHAIRPERSON: Thank you, you may be
 4 seated. Mr Tip, the statement that you've given us will be
 5 marked as an exhibit. Ms Pillay, can you tell us what the
 6 next exhibit lettering will be? AAA, will it be?
 7 MS PILLAY: Chair, if I may request that
 8 we reserve AAA. We're putting together a compilation of
 9 the first –
 10 CHAIRPERSON: Okay, right.
 11 MS PILLAY: - set of videos. So it would
 12 be BBB.
 13 CHAIRPERSON: BBB or – what about AAA –
 14 oh, AAB. AAA is A-A-A. Logically the next exhibit would
 15 be AAAB, unless you just want to move on to the –
 16 MS PILLAY: No, we didn't do AB, if you
 17 understand.
 18 CHAIRPERSON: I see, okay. So this will
 19 be BB?
 20 MS PILLAY: This will be – no, this will
 21 be BBB.
 22 CHAIRPERSON: Yes, BBB1 or just BBB?
 23 MS PILLAY: BBB1.
 24 CHAIRPERSON: Okay, I've marked it BBB1.
 25 Are there going to be more exhibits that you may be handing

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1 in or –
 2 MR TIP SC: No –
 3 CHAIRPERSON: Is this just BBB?
 4 MR TIP SC: This will be the only
 5 document –
 6 CHAIRPERSON: I've marked it accordingly.
 7 MR TIP SC: Unless something arises in
 8 the course of the cross-examination that requires some
 9 additions. Mr Chair, may I proceed?
 10 CHAIRPERSON: You may.
 11 EXAMINATION BY MR TIP SC: Mr Zokwana,
 12 you have before you the statement which is now an exhibit,
 13 BBB1. That is your statement which you have signed,
 14 correct?
 15 MR ZOKWANA: Yes.
 16 MR TIP SC: Is it also correct that you
 17 have had the opportunity to read again through your
 18 statement with care and are you in a position this morning
 19 to confirm under oath that that statement is correct?
 20 MR ZOKWANA: Yes.
 21 MR TIP SC: What I propose to do, Mr
 22 Zokwana, now that the statement is properly before the
 23 Commission, is not to read it out and not to ask you to
 24 read it out. I'm going to deal with various paragraphs in
 25 a fairly summary fashion.

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1 MR ZOKWANA: Yes.
 2 MR TIP SC: And in the course of that, I
 3 will draw your attention to various matters that are not
 4 set out in any detail or dealt with in your statement, that
 5 have arisen particularly in the course of the past five
 6 days of this hearing during the cross-examination of the
 7 previous three NUM witnesses, Mr Gcilitshana, Mr Setelele
 8 and Mr Gegeleza. That – those additional portions will, to
 9 some extent, add a little more detail but they will be
 10 primarily directed to seeking to assist the Commission by
 11 giving further background in respect of NUM and its
 12 policies, in the first place – yes?
 13 MR ZOKWANA: Yes.
 14 MR TIP SC: I will also ask you to, as we
 15 go, to deal with the allegations that have been made during
 16 the cross-examination that NUM is not a caring union.
 17 MR ZOKWANA: Then I will ask you to give
 18 attention to the place of safety of RDOs and to try, with
 19 your experience, to give the Commission some additional
 20 understanding of what it is to be an RDO and also what NUM
 21 has sought to do for RDOs over the past several years.
 22 MR ZOKWANA: Yes.
 23 MR TIP SC: We will deal with the events
 24 at Marikana at which you were present and we will then
 25 conclude with some specific propositions relating to

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1 collective bargaining and matters that relate to it.
 2 MR ZOKWANA: Yes.
 3 MR TIP SC: Now, just to begin, we all
 4 know that we just need to place on record that you are the
 5 president of the National Union of Mineworkers, NUM.
 6 MR ZOKWANA: Yes.
 7 MR TIP SC: I know that you hold various
 8 other offices but the one that I'd like to place of record
 9 is the one that you were recently elected to, which is to
 10 be deputy president of a new global union federation called
 11 IndustriALL, is that correct?
 12 MR ZOKWANA: Yes, correct.
 13 MR TIP SC: I'll just spell that for the
 14 assistance of the transcribers, I-n-d-u-s-t-r-i – capitals
 15 - A-L-L. Now that is a federation, is it, of mining,
 16 energy and manufacturing industrial sectors across how many
 17 countries, Mr Zokwana?
 18 MR ZOKWANA: It is a global federation
 19 that will cover plus-minus 55 countries in the world, of
 20 plus-minus five million members.
 21 MR TIP SC: Thank you. Now, you've been
 22 the president of NUM since 2000 when you were first elected
 23 and you've been re-elected for subsequent terms, is that
 24 correct?
 25 MR ZOKWANA: Correct.

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1 MR TIP SC: Your history in the mining
 2 industry goes back to 1979 when you began work as an
 3 underground mining hand.
 4 MR ZOKWANA: That's correct.
 5 MR TIP SC: You subsequently worked in a
 6 range of underground and surface posts, including the
 7 position of miner, shift supervisor, health and safety
 8 officer.
 9 MR ZOKWANA: That's correct.
 10 MR TIP SC: We'll come to the position of
 11 RDOs a little later but is it so that you've also, although
 12 you've never been in the position formally of RDO, that
 13 you've done work of an RDO in order to establish for
 14 yourself just what that work entails, is that right?
 15 MR ZOKWANA: Yes, during the practical
 16 training to be a miner, you have to go through different
 17 skills and part of those was understanding and appreciating
 18 what the job entails.
 19 MR TIP SC: And would it be correct that
 20 in the course of the several years in the mining industries
 21 in a range of different capacities, that you have gained a
 22 great deal of experience and insight into the industry and
 23 the position of workers and the difficulties that they face
 24 and the role of trade unions in that environment?
 25 MR ZOKWANA: That's correct.

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1 MR TIP SC: In paragraphs 3 and 4 of your
 2 statement you deal with the fact that the union, NUM, has
 3 over the years done a great deal towards improving the lot
 4 of mineworkers – details are set out – but I want, in this
 5 regard, to make some additions to your statement and here
 6 we will have regard also to the allegations that NUM does
 7 not care.
 8 MR ZOKWANA: Yes.
 9 MR TIP SC: Now, Mr Zokwana, this of
 10 course is not a Commission which would at this stage have,
 11 want to hear too much detail about the mining industry.
 12 It's a very engrossing history so what I'm going to do is,
 13 just for the purpose of illustration, to place a few themes
 14 before you, a few topics and you can then briefly indicate
 15 why those are important and what NUM has done. Are you
 16 comfortable with that?
 17 MR ZOKWANA: I'm comfortable with that.
 18 MR TIP SC: Then let us first touch on
 19 the important topic of wages and benefits. Can you give us
 20 a brief sketch of what NUM has achieved in that regard and
 21 related to it?
 22 MR ZOKWANA: Thanks. NUM, from its
 23 inception, has a battle to make sure that it closes the
 24 wage gap. It deals with the low wages mineworkers were
 25 earning. It has to do that by engaging employers in

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1 negotiations at different levels and we have been able to
 2 make some strides in making sure that mineworkers earn a
 3 decent wage on which they can live. It has been a struggle
 4 that we have been engaging through negotiation, through
 5 declaring of disputes in some other – in instances and a
 6 few of those would be the 1987 – oh, sorry, sorry.
 7 Example, there was no leave pay for mineworkers, there was
 8 no pension for mineworkers. It was only in 1987 when we
 9 settled the strike 16-52 that for the first time
 10 mineworkers can look at a form of cover when they could no
 11 longer live. That has changed the life of mineworkers. It
 12 is a struggle NUM has been proud, because we believe that
 13 NUM gave dignity to mineworkers to be looked upon as other
 14 human beings who are part of the working force.
 15 MR TIP SC: Mr Zokwana, you'll just keep
 16 half an eye, without letting it distract you, on the
 17 interpreter next to you so that you pause at convenient
 18 times so that everything you say is properly translated and
 19 that everybody here today can hear what you're saying.
 20 Alright. You had just mentioned to the Commission the
 21 impact of improvements of that kind – pension funds and
 22 leave pay – on the dignity of mineworkers. Has that always
 23 been a concern of NUM?
 24 MR ZOKWANA: It is true, it is so that
 25 before NUM was formed, mineworkers would not participate in

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1 the process that would lead to increases. It was employers
 2 sitting on their own who would decide how much they would
 3 put on as increases. When NUM began to organise –
 4 MR TIP SC: Now, although we won't go
 5 into the details of the percentages of the increases that
 6 have been obtained, generally has NUM over the past many,
 7 many years, achieved above inflation improvements in wages?
 8 [10:03] MR ZOKWANA: NUM has been guided by a
 9 slogan of "For everything we do, mineworkers come first."
 10 And we took a decision that says that any agreement less
 11 than a double digit was not right or correct for
 12 mineworkers and we have then retained increases of between
 13 10 and 9% for the last three years within the industry.
 14 MR TIP SC: Is it also so that NUM has
 15 negotiated the establishment of a Mineworkers' Provident
 16 Fund and an employee share ownership scheme within the
 17 industry?
 18 MR ZOKWANA: It is true because before
 19 NUM was formed, as I've said earlier, mineworkers did not
 20 have any pension to look at and through the participation
 21 of NUM in the Mining Charter, one clause that was giving
 22 workers some benefit has been the creation of [inaudible]
 23 which, in some mining houses, especially in, in – at Anglo
 24 Platinum on the iron ore side, workers got in some
 25 dividends of half a million in some instances, improving

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1 their earnings and I can say that to this Commission, NUM
 2 has played that role and we believe that every and/or a
 3 member of NUM can attest to that. Sorry, can I make a
 4 correction? I heard now when the interpreter is
 5 interpreting. I meant Anglo American operations in the
 6 iron ore division.
 7 MR TIP SC: Mr Zokwana, I want to go on
 8 to a second topic under this general heading of what NUM
 9 has done and its approach to the care of its members and
 10 that is health, safety and compensation and again I'd like
 11 to ask you just to very briefly highlight a few aspects of
 12 what it is that NUM has done and achieved in that regard.
 13 MR ZOKWANA: At its formation NUM became
 14 aware of the high number of people who die or get sick
 15 within the industry and it has been a struggle we have been
 16 involved in and NUM have played a major role and make a
 17 very important submission during the Leon Commission,
 18 outlining not only the underground but also the living
 19 conditions of mineworkers. We formed a fully fledged
 20 structure at head office, manned by qualified people, to
 21 ensure that we have got a health and safety committee that
 22 takes into account any matter that arises that poses
 23 threats to lives of mineworkers or where they have been
 24 injured. We participated during the investigations on the
 25 [indistinct] disaster in which 103 mineworkers lost their

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1 lives and we had to incur costs as we hired the best legal
 2 brains to make sure that the truth was unveiled so that
 3 such does not happen again.
 4 MR TIP SC: Mr Zokwana, I'm going to
 5 interfere, if I may, just so that we keep the amount of
 6 detail at a level that'll be useful immediately for the
 7 Commission but generally is it so that there have been
 8 various commissions of inquiry and accident investigations
 9 that NUM has participated in consistently.
 10 MR ZOKWANA: Yes, that is true. NUM has
 11 been involved in almost all investigations, either into
 12 accidents or into the processes that deal with compensation
 13 of mineworkers and that has been done because we believe
 14 that the fate of mineworkers has been left unattended for
 15 many years and as a union we have made a point that we get
 16 the best legal brains, we make sure that we have got the
 17 expertise, that we shed light on those matters.
 18 MR TIP SC: Would it be so that in every
 19 instance where there is an accident on the mines at which
 20 NUM is involved, resulting in injuries or deaths or raising
 21 of safety, that NUM would become involved and take the
 22 matter up?
 23 MR ZOKWANA: That is true in every
 24 accident NUM will make sure that there are people to take
 25 part in that, in the loco inspection, in the inquiry

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1 following. NUM would make sure that its presence is there
 2 and the right skills are applied to make sure that the
 3 truth comes out and the families concerned can get what is
 4 due to them.
 5 MR TIP SC: Is it also so that NUM has
 6 been involved in matters of occupational hazards and
 7 occupational diseases – and I'm thinking here particularly
 8 of the problems associated with silicosis?
 9 MR ZOKWANA: It's true because NUM has
 10 been involved in such to make sure that the current formula
 11 used in paying workers is consistent with the levels of
 12 their problems and silicosis has been one of the diseases
 13 that has killed many members or many workers working
 14 exposed to higher dust levels underground and that has been
 15 a concern to NUM, the fact that workers were paid according
 16 to their grades, not according to the level of the disease
 17 that has been affecting them and it has been very –
 18 participating in that process.
 19 MR TIP SC: In relation to diseases such
 20 as silicosis, is it also so that NUM consistently
 21 participates in any official or administrative matters that
 22 relate to the operation of the compensation fund?
 23 MR ZOKWANA: That is true.
 24 MR TIP SC: It is so, is it not, Mr
 25 Zokwana, that a great many mineworkers who become afflicted

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1 with diseases of that kind are – leave the mine, I'll put
 2 it neutrally, and go back to their distant places where
 3 their homes are, which may be in a variety of Southern
 4 African countries and even beyond.
 5 MR ZOKWANA: Yes, it is so.
 6 MR TIP SC: Does NUM have any structures
 7 in place to ensure that there are follow-ups for such
 8 persons and that they get the necessary assistance to see
 9 medical persons, to process claims and the like?
 10 MR ZOKWANA: Yes, we do have such
 11 structures. In every region where NUM is organising we do
 12 have medical practitioners who will be used to make sure
 13 that they do examinations to determine the levels as well
 14 as to see if such people can have access to compensation,
 15 but more than that, we do have people who are able to visit
 16 anybody who may be outside the place of employment.
 17 MR TIP SC: Mr Zokwana, thank you. I
 18 want to turn to a different topic although I know there's a
 19 great deal more to be said about the ones that we've
 20 touched on already, and that topic is the issue of
 21 tribalism, racism, hostel living, faction fighting – that
 22 category of matters. Has NUM played a role in respect of
 23 issues of that kind?
 24 MR ZOKWANA: Thanks. Let me start with
 25 racism. When I joined this – the mine on the 17th of

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1 December when I took a contract –
 2 MR TIP SC: You'd better say that year?
 3 MR ZOKWANA: It was 1979 on the 17th of
 4 December at the age of 23, I was made to understand that
 5 being a black person, what was being employed was not my
 6 intellect, except my ability for work. I was stripped
 7 naked and a white lady was to examine my manhood. And I
 8 began to lose any dignity I could have had as a man and I
 9 saw other elder men who were stripped naked, walking around
 10 like kids and I began to know there was a fight to fight.
 11 And NUM had to fight and from there I could understand that
 12 there was a division of work. The colour bias was still
 13 very - the job, as a black person could only occupy jobs
 14 within group 1 to group 8. The highest you could go was to
 15 be a boss boy then, which is now called a team leader.
 16 NUM, on its inception, dealt with that very vigorously to
 17 make sure that black people should have dreams of
 18 acquiring, of ascending to higher offices in the industry.
 19 There were separate amenities on the mine. There were
 20 bathrooms for white people, there were washing – there were
 21 showering rooms for white people and even in offices as a
 22 black person you would stand at the window and only be
 23 addressed as you come. Worse was the fact that
 24 mineworkers, many mineworkers who are of my age would tell
 25 of instances where they'd been beaten by the white

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1 supervisors.
 2 MR TIP SC: Again Mr Zokwana, you'll
 3 forgive me. I know that there are a great, great many
 4 details relating to topics such as these –
 5 CHAIRPERSON: May I say I'm glad you've
 6 mentioned that because some of these matters are more
 7 relevant under the second phase and obviously NUM will get
 8 full opportunity to deal with those matters then, possibly
 9 by way of affidavits or written statements but it has some
 10 relevance in relation to phase 1 but more on the broad
 11 outline points than in the detail. So I take it you are
 12 going to have that in mind in what follows. I don't want
 13 to spend too much time on this. On the other hand, to be
 14 fair, the has been an attack on NUM already in phase 1 and
 15 they must be given an opportunity to defend themselves.
 16 [10:23] MR TIP SC: I'm indebted to you, Mr
 17 Chair, for that indication and perhaps I should just expand
 18 very briefly on what I said at the beginning. It is so
 19 that NUM has been attacked, it is so that NUM has been
 20 accused of being not caring but apart from that, we're
 21 addressing these sorts of details and the history of NUM as
 22 a matter we believe, in our submission, is directly
 23 relevant to phase 2 – I beg your pardon, phase 1 and it is
 24 –
 25 CHAIRPERSON: I haven't stopped you.

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1 MR TIP SC: No, no –
 2 CHAIRPERSON: I'm just indicating that a
 3 lot of the detail of this part of the matter will be dealt
 4 with in phase 2, so it isn't that you won't get an
 5 opportunity –
 6 MR TIP SC: No.
 7 CHAIRPERSON: - to say what has to be
 8 said, on the other hand I understand the need to, as you
 9 perceive it, to put your case in outline at least at this
 10 stage already. That's why I'm not stopping you but I'm
 11 just indicating I want a brief outline and not great detail
 12 at this point.
 13 MR TIP SC: That is certainly our
 14 approach but I just want to add for the benefit of the
 15 Commission and also for the parties so that they can
 16 understand what it is that we're doing. The Commission
 17 ultimately will have to form a view on what took place on
 18 the koppie and what led to the RDO strike, what led to the
 19 nature of the acts that were performed by various parties
 20 in the course of the events. And the hostility towards NUM
 21 that arose at that time was very apparent and the
 22 Commission already has indications of that.
 23 Now in order, in our submission and we'll develop
 24 this in due course, in order to understand how that kind of
 25 hostility arose, it will be fitting, we believe, to have

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1 regard to, in fact, what NUM has done over the years as an
 2 organisation and why, fairly abruptly, that shifted into an
 3 entirely different disposition. But we will bear in mind
 4 the need to present highlights rather than details. Mr
 5 Zokwana, you've followed that discussion?
 6 MR ZOKWANA: Yes.
 7 MR TIP SC: Thank you, Mr Zokwana. So
 8 what we'll do is we'll look at the remaining topics. I'd
 9 be glad if you can put sufficient detail so that it's not
 10 just a label, it gets some content, but not to go too
 11 extensively into detail. I would, under this particular
 12 topic of tribalism, racism and faction fighting, for you to
 13 deal briefly with the latter part of that - faction
 14 fighting, its significance and what NUM has done about that
 15 in particular over the years.
 16 MR ZOKWANA: Thanks. When NUM was
 17 formed, the mineworkers were accommodated in single sex
 18 hostels on tribal lines and that resulted in mineworkers
 19 now and again fighting amongst themselves, divided on those
 20 tribal lines. And NUM has to make sure that a part of its
 21 programme was to unify mineworkers, make them understand
 22 that they must speak different languages but they remained
 23 the same and they should take each other as a brother and a
 24 friend. And I can say that NUM succeeded in doing that
 25 because for a long time we've been able to see mineworkers

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1 singing together, enjoying different cultural activities,
 2 without looking at them as not part of the whole system.
 3 We won that battle through democratising the hostel system
 4 and also that mineworkers play a role in the election of
 5 structures in the hostel to make it more amenable, better
 6 to – and a change and workers are mixed in the way they
 7 live in the hostels, no longer on tribal lines or language
 8 groupings.
 9 MR TIP SC: Thank you, Mr Zokwana. And
 10 in rather similar fashion, and we needn't go into detail,
 11 is it so that NUM has also addressed the issue of the
 12 nature of housing that is provided to employees throughout
 13 the mining industry?
 14 MR ZOKWANA: Everybody who is employed in
 15 a mine where there is a hostel would never deny the fact
 16 that things are changing, things have changed. First we
 17 democratised hostels, secondly, we fought for their
 18 upgrading and also making sure that mineworkers have got
 19 access to their own housing, where possible. We're against
 20 this thing of where you've got 25 or 18 miners in one room
 21 because that was not good, it was not giving them - not
 22 giving them respect, not giving them privacy. So we fought
 23 against that, that – we make sure that hostels are
 24 transformed into units where people can have some privacy.
 25 Where people need housing, we were able to assist to make

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1 sure that people can access subsidies to make sure that
 2 they can be able to acquire such accommodation.
 3 MR TIP SC: Mr Zokwana, thanks. I want
 4 to turn to a different aspect of what NUM does and the
 5 background to that is that NUM has set up a Mineworkers'
 6 Investment Trust, which has been in existence for many
 7 years, is that so?
 8 MR ZOKWANA: It's true, because when we
 9 picked that the chances of kids of mineworkers joining the
 10 industry at the level where their fathers joined, was that
 11 high, as there were no major – I mean, improvement by
 12 companies to give bursaries. NUM said, we want to make
 13 sure that out of mineworkers we'll produce engineers,
 14 doctors, lawyers, in different things – and we have
 15 achieved that or are in the process of achieving that. Up
 16 to date we have produced 800 graduates at a cost of 76
 17 million. As I speak, 235 graduates or students are in
 18 different institutions of higher learning - through, and
 19 paid for, by that bursary scheme.
 20 MR TIP SC: Mr Zokwana, I just want to
 21 put a name to that. That is the JB Marks Educational Trust
 22 Fund, is that correct?
 23 MR ZOKWANA: That is correct.
 24 MR TIP SC: Yes, and for the
 25 transcribers, that's – Marx is M-A-R-K-S. And just to wrap

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1 that up, the beneficiaries, I understand, of all these
 2 bursaries are the dependants of mineworkers.
 3 MR ZOKWANA: Anyone who is a mineworker
 4 who is a member of the union has a right, or his kids have
 5 a right to go to varsity if he has made an application.
 6 Even mineworkers themselves have been able to improve their
 7 academic qualifications through this bursary scheme.
 8 MR TIP SC: Yes. And lastly, Mr Zokwana,
 9 on this subject – I just want to mention the Mineworkers'
 10 Development Agency and that is a body generally devoted to
 11 seeking to uplift communities in various areas throughout
 12 the Southern African region, is that so?
 13 MR ZOKWANA: That's correct.
 14 MR TIP SC: Alright, well, let us leave
 15 that topic, Mr Zokwana, and I want to move on to paragraph
 16 5 of your statement. There you set out generally the
 17 developments and the legislative framework that governs
 18 labour relations in this country and you say that NUM has
 19 played a significant role in bringing about those
 20 improvements to the point where we have a sophisticated
 21 Labour Relations Act and ancillary legislation today, is
 22 that right?
 23 MR ZOKWANA: That's correct.
 24 MR TIP SC: And I want to – I just want
 25 to read out the last two sentences of that paragraph and

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1 then I'll pose one or two questions to you that are of
 2 direct relevance to aspects of the proceedings in this
 3 Commission. Those, the legislative dispensation that we
 4 have now is the background and you say the following, "They
 5 entail lawfully organised union and employees entities,
 6 functioning within a bargaining environment that not only
 7 regulates their interaction but also provides the
 8 possibility of resort to lawful strike or lockout measures.
 9 Properly observed and applied, they provide certainty and
 10 stability for all parties.

11 MR ZOKWANA: Yes, I agree with that.

12 MR TIP SC: Yes. Now against that
 13 statement, I'd like you please just to tell the Commission,
 14 in essence, what the role and importance is in a structure
 15 of this kind, of a mandate.

16 MR ZOKWANA: Before a union can engage
 17 any employer in any form of negotiations, you need a proper
 18 mandate from those on whose behalf you are negotiating.
 19 You must have the right to get their views. When we have
 20 gone through engaging with the employers in the course of
 21 give and take, you are able to go back and report and get a
 22 new mandate. Whenever you have to make a concession on one
 23 point or another, it must be through that mandating
 24 process. Without a mandate I don't foresee you claiming to
 25 represent anybody, for you rely upon them giving you the

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1 way forward. So mandating is part and key to any process
 2 of bargaining.

3 MR TIP SC: Thank you. Mr Zokwana, I
 4 want you then to apply those considerations to the context
 5 of Marikana, about which you – although you were not
 6 present personally, you are familiar with the essence of
 7 the history of the period before the decision by the RDOs
 8 to go on strike and the events leading up to the shootings
 9 on the 16th of August 2012 and even thereafter. The role of
 10 the mandate there, in relation to NUM's position vis-à-vis
 11 the RDOs who decided to strike, can you comment on that?

12 MR ZOKWANA: You can only get a mandate
 13 from people who have the trust in you. You can only get a
 14 mandate from people who believe that you are still their
 15 agent. With the case of Marikana, the RDOs took a decision
 16 that NUM was not going to be such an agent and the violent
 17 nature of the process would have meant that interaction
 18 between NUM and those strikers was impossible, as a lot of
 19 our local shop stewards had to go to hiding. There was no
 20 way then for NUM to get that mandate from people where
 21 violence towards the union, as shown by the incident of the
 22 11th at the branch office.

23 [10-43

24 MR TIP SC: Now Mr Zokwana, there have
 25 been suggestions in this inquiry thus far that NUM should

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1 nevertheless have taken an initiative, should have launched
 2 some kind of collective bargaining interaction, should have
 3 taken up some form of negotiations with the employer, with
 4 Lonmin. On the basis of the facts as you understand them,
 5 was that a viable option in terms of the collective
 6 bargaining framework?

7 MR ZOKWANA: The view of the NUM was that
 8 it was impossible because there was no way NUM would have
 9 been able to go to the koppie and meet with those strikers
 10 who were aggressive or who were not willing to talk to our
 11 shop stewards.

12 MR TIP SC: I want to turn to a different
 13 topic now and, as I indicated, Mr Zokwana, the role of the
 14 RDOs and the position of RDOs and the experiences of RDOs
 15 are all matters that are of great consequence to the
 16 Commission and all the parties here and I want to begin
 17 with you, if you would, by putting a little content to what
 18 it is that RDOs do. We've heard that their work is hard,
 19 that it is dangerous and that they are underpaid but if you
 20 could, from your own experience, present us with a little
 21 sketch of what it is really like for an RDO and what work
 22 he does.

23 MR ZOKWANA: Underground work is
 24 difficult but no work is difficult to match the job done on
 25 a daily basis by RDOs. An RDO on a daily basis can only

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1 perform his job if he is on the rock face. He has to
 2 drill, with oil dribbling on his body, his body shivering
 3 from the consistent vibration of the machine. If the miner
 4 who was marking that morning would have made a misfire and
 5 marked on that hole, the machine driller in more instances
 6 would be blasted underground and many have died due to that
 7 process.

8 MR TIP SC: Just to pause there for a
 9 moment. Just to clarify in case it's not clear to
 10 everybody, the misfire – am I correct in understanding that
 11 a Miner, that's with a capital M, that's the senior person.

12 CHAIRPERSON: Yes, a certificated miner
 13 is really what, certificated Mine a capital, is a Miner
 14 with a blasting certificate.

15 MR TIP SC: A blasting certificate.

16 CHAIRPERSON: He's a certificated Miner.
 17 If you call him that then the difficulty falls away.

18 MR TIP SC: That would be a better way to
 19 put it, but the person who's been in charge of a previous
 20 drilling operation and the insertion into the drill holes
 21 of explosive charges which are to, of course, explode and
 22 to fragment the rock so that there can be an extraction, is
 23 that correct?

24 MR ZOKWANA: The issue I wanted to
 25 clarify is that the person who is a Miner is the one who

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1 has the certificate, who, after there's been an explosion
 2 in the hole and then where there will be the remains of the
 3 unexploded explosives. Legally, a Miner has to do what is
 4 called early morning examination and part of that is to
 5 ensure that after blasting you examine all the holes that
 6 could not have been blasted fully and extract any remnants
 7 of explosives.
 8 MR TIP SC: Yes. So what you are saying
 9 is if a Miner misses an unexploded charge and the RDO then
 10 comes along and begins to drill, there's every prospect
 11 that there will be a fatal explosion.
 12 MR ZOKWANA: Yes.
 13 MR TIP SC: And also, by definition, you
 14 have explained that they are at the rock face, that's at
 15 the very end of the mining stope where further excavation
 16 is being done, is that correct?
 17 MR ZOKWANA: Yes, it's true. A Miner
 18 will always be on the rock face and above him, with what we
 19 call in the mine, hanging wall. And that hanging wall will
 20 depend upon the blast the previous day as well as any
 21 geological changes in the rock structure and therefore
 22 sometimes Miners will mine under a brow that is not well-
 23 protected, thereby exposing their own lives and many have
 24 died in that process.
 25 MR TIP SC: Now, Mr Zokwana, has it ever

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1 been the view of NUM that RDOs are properly paid for the
 2 work that they do?
 3 MR ZOKWANA: NUM has fought and still
 4 believes that the rate at which RDOs are paid is very low
 5 as the current form of job grading done by the industry
 6 does not take into account the conditions, the kind of work
 7 a person performs.
 8 MR TIP SC: Mr Zokwana, as you know, Mr
 9 Gcilitshana, the chief negotiator at Lonmin, has given
 10 evidence. He has described that NUM was unable to persuade
 11 the employer to accept its proposals for remuneration for
 12 RDOs. He went on to say that that was a matter that had
 13 also been taken up at the more senior level by you and the
 14 secretary general of NUM.
 15 MR ZOKWANA: That's correct.
 16 MR TIP SC: Now, before I ask you to
 17 again just give an outline of what has happened, I wanted
 18 to draw attention to the fact NUM of course represents a
 19 great many mineworkers across various sectors within the
 20 mining industry as a whole and, in particular, that there
 21 are different structural arrangements in respect of, say,
 22 gold and coal mining on the one hand and platinum mining on
 23 the other.
 24 MR ZOKWANA: It is true. That's correct.
 25 MR TIP SC: In respect of the former

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1 category, there is the Chamber of Mines which has been in
 2 existence for a great many, many decades and bargaining
 3 takes place centrally through the Chamber in respect of,
 4 amongst others, all gold mines, is that correct?
 5 MR ZOKWANA: That's true.
 6 MR TIP SC: Then I'd like you – we'll
 7 come back to the question of the mining, the bargaining
 8 arrangements within the platinum mining sector, but in
 9 respect of the Chamber and that aspect of NUM's
 10 responsibilities, can you give us a brief account of what
 11 NUM has sought to do and achieve in relation to the
 12 position of RDOs through the Chamber?
 13 MR ZOKWANA: Thanks, yes. In 2005 there
 14 was a roll out of the category of machine drillers from
 15 group 4 to group 5, which meant some improvement in their
 16 basic wage, but in 2010 the general secretary of NUM met
 17 the senior negotiators of the Chamber and they raised the
 18 NUM concern on the remuneration of machine drillers in
 19 particular, which is the RDOs, and in 2011 negotiations a
 20 task team was formed whose report was tabled in 2012,
 21 resulting in an additional R500 on their basic pay so that
 22 it improves a bit what they earned, more than the 10% that
 23 was given to them in July.
 24 MR TIP SC: Just a few questions to
 25 complete that point and I just want to put this in context,

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1 you've referred to 2010 and the important developments
 2 there, is it so that those were pursuant to a concerted
 3 programme on the part of NUM which dated back to 1998?
 4 MR ZOKWANA: Yes, it's true. In 1998 we
 5 did put a demand to the Chamber and to the industry to
 6 change the grading system and we believe that the current
 7 grading that companies are fond of, does not address some
 8 of the aspects of the work miners are doing.
 9 CHAIRPERSON: By miners I take it you
 10 mean mineworkers, not just certificated Miners?
 11 MR ZOKWANA: Yes, it was including,
 12 Commissioner, the fact that all people who are underground
 13 and on the surface were not paid according to the
 14 conditions, the job they performed, but it was - the
 15 current grade recognise his authority – it doesn't matter
 16 what job, how difficult it is, as long as you don't have
 17 authority it does not pay you accordingly.
 18 MR TIP SC: And lastly – and Mr Zokwana,
 19 I'm going to ask you not to go into any detail of this, I
 20 just want to confirm that when NUM took up the matter in a
 21 concerted way in 1998 with the Chamber, it sent a
 22 delegation to Canada in order to receive advice on
 23 structural matters and how job arrangements could be done
 24 in the mining industry, is that correct, without –
 25 MR ZOKWANA: Correct.

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1 MR TIP SC: And the result of that was to
 2 improve NUM's capacity to engage the chamber in respect of
 3 RDOs.
 4 MR ZOKWANA: Correct.
 5 MR TIP SC: Mr Chair, this would be a
 6 convenient moment for me to adjourn.
 7 CHAIRPERSON: Thank you, Mr Tip. The
 8 Commission will take the tea adjournment at this stage.
 9 [COMMISSION ADJOURNS COMMISSION RESUMES]
 10 [11:32] CHAIRPERSON: The Commission resumes.
 11 You're still under oath, Mr Zokwana.
 12 MR ZOKWANA: Yes.
 13 CHAIRPERSON: Mr Tip, would you wish to
 14 continue with your examination-in-chief?
 15 SENZENI ZOKWANA (CONTD):
 16 EXAMINATION BY MR TIP SC (CONTD): Thank
 17 you, Mr Chairperson. Mr Zokwana, just before the tea
 18 adjournment you had completed telling us the essential
 19 story of your efforts in the Chamber of Mines and the
 20 successes that you began to achieve from 2010 and I want to
 21 turn now to the platinum sector. We have all heard already
 22 that there is no collective bargaining structure equivalent
 23 to the Chamber of Mines.
 24 MR ZOKWANA: It is so.
 25 MR TIP SC: Has that fact had any effect

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1 on the capacity of NUM to address the position of RDOs
 2 within the platinum mines?
 3 MR ZOKWANA: It is so.
 4 MR TIP SC: Just explain briefly, please.
 5 MR ZOKWANA: It made it difficult for NUM
 6 to have proper co-ordination of the work that's taking
 7 place, as NUM was compelled to engage individual employers
 8 at different times, sometimes to find that people are
 9 scattered all over, whereas in the Chamber there is one
 10 single forum. If you reach an agreement, it binds all
 11 those companies that are bargaining there, in different
 12 mining houses. As a result, that would have got an
 13 inhibiting factor in how we co-ordinate properly the
 14 agreements that people were reaching, all those processes.
 15 CHAIRPERSON: Mr Zokwana, in one of the
 16 exhibits that's been put before us, an article which is
 17 exhibit XX8 by Ms Carol Paton, she deals with this aspect.
 18 Very shortly I'd just like to read it to you, if you could
 19 possibly, in the interests of shortening matters, you may
 20 be able to tell us whether what she says is correct. She
 21 talks about "Institutional weaknesses in the industrial
 22 relations system, this is the second page of the exhibit,
 23 which platinum employers can fix relatively easily. One is
 24 the absence of centralised bargaining for the platinum
 25 sector, which has led, in part, to the unstable competition

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1 around wage levels." And then she goes on to say, "The
 2 industry is now in favour of a centralised approach. This
 3 could make a difference in the future but won't have much
 4 impact on the current disputes." Is that statement
 5 correct? I see you have the article in front of you. What
 6 I was reading was from the second page in the third column,
 7 it's the extreme right hand side near the foot of that
 8 page, do you see, the paragraph beginning, "The Marikana
 9 incident also brought home." It's the extreme right hand
 10 column on the second page, the second page is the one
 11 that's got a picture of Mr Paul Dunn at the top.
 12 MR ZOKWANA: Yes.
 13 CHAIRPERSON: And his picture is at the
 14 top of column 3 on that page.
 15 MR ZOKWANA: Yes.
 16 CHAIRPERSON: And at the – near the foot
 17 of that column is a paragraph beginning, "The Marikana
 18 incident also brought home" and that's the passage I read
 19 you and it continues on to the next page, for three lines
 20 on the next page.
 21 MR ZOKWANA: Yes.
 22 CHAIRPERSON: The question is, I take it
 23 you agree with that summary of the situation?
 24 MR ZOKWANA: I would agree with it mostly
 25 because it's what gave rise to the 18% offer to miners by

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1 Impala because they're competing with the other competing
 2 companies. So without the Central Bargaining Forum the
 3 companies would tend to give different, I mean pay to their
 4 own employees, creating that imbalance of people not
 5 staying in one employer.
 6 MR TIP SC: Thank you, Chair, for that
 7 intervention. That very tidily deals with the questions I
 8 was going to put on that topic and we can move on. Mr
 9 Zokwana, in your statement you then have a series of
 10 paragraphs beginning at paragraph 6, running through to 11,
 11 where you set out your views on various aspects of the
 12 events at Lonmin, at Marikana during the relevant time.
 13 They're in your statement, I'm not going to take you
 14 through those in any substance, I'm just going to highlight
 15 one aspect of it. In paragraph 9 you say there that, "NUM
 16 also consistently urged Lonmin and the SAPS to take steps
 17 to prevent the unlawful conduct of the strikers and, in
 18 particular, to halt the numerous instances of intimidation
 19 and violence that were directed against non-strikers."
 20 CHAIRPERSON: Mr Tip, I think it may be
 21 helpful if you deal with paragraphs 7 and 8 because they
 22 really have to be put on, for the benefit of those in the
 23 auditorium, have to be brought out so that they can
 24 understand the thrust of what's contained in the rest of
 25 para 9 and para 10.

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1 MR TIP SC: Yes. Thank you for reminding
 2 me of that perspective, it is important to communicate.
 3 Perhaps, if I may Mr Zokwana, with the leave of the Chair,
 4 to take you back to paragraph 7 and perhaps it'll be most
 5 convenient – the most convenient and swift way of
 6 communicating this to the persons present will be for me
 7 just to read these paragraphs onto the record and if you
 8 follow and correct anything that needs correction.
 9 Firstly, paragraph 7, "It is the experience of NUM that
 10 unprotected strike in general potentially have very grave
 11 consequences for all parties, including the employees who
 12 participate in them. Not only do they lose the protection
 13 from dismissal, afforded by the constitutional right to
 14 strike, but such strikes are often plagued by significant
 15 levels of violence, intimidation and destruction of
 16 property. Employers often take advantage of unprotected
 17 strike to dismiss the strikers and thereafter re-employ
 18 them on a selective basis and even with reduced terms and
 19 conditions of employment." Mr Zokwana, do you confirm that
 20 those are the views of NUM?
 21 MR ZOKWANA: Yes, I confirm them, senior
 22 counsel.
 23 MR TIP SC: Then we go on with paragraph
 24 8, "It is for these reasons that NUM consistently urged its
 25 members at Lonmin not to associate with the unprotected

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1 strike and to continue reporting for duty. It likewise
 2 called for the strikers to return to work and for their
 3 demands to be channelled through established collective
 4 bargaining processes and procedures. NUM actively assisted
 5 its members, as well as other employees who wanted to
 6 report for work but who, for one or other reason, were
 7 finding it difficult to get there." If I may, Chair –
 8 CHAIRPERSON: Yes.
 9 MR TIP SC: - do the same with the
 10 following two paragraphs. Paragraph 8, the one I've just
 11 read, Mr Zokwana, do you confirm that, that that is the
 12 view of NUM, especially at your level of leadership?
 13 MR ZOKWANA: I do confirm that as the
 14 view of NUM.
 15 MR TIP SC: I'm going to paragraph 9 and
 16 I'm going to repeat the one question which I've already
 17 read because I want to follow it up with the remainder of
 18 that paragraph. "NUM also consistently urged Lonmin and
 19 the SAPS to take steps to prevent the unlawful conduct of
 20 the strikers and, in particular, to halt the numerous
 21 instances of intimidation and violence that were directed
 22 against non-strikers. Conduct of that nature is typically
 23 resorted to by strikers in order to bring about a further
 24 reduction in the number of workers reporting for duty and
 25 thus to decrease or stop production. This increases the

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1 pressure on the employer." The observation – sorry, Mr
 2 Zokwana, is that correct?
 3 MR ZOKWANA: Yes, that's correct, I
 4 agree.
 5 MR TIP SC: And the observations that are
 6 made in the latter part of that paragraph relating to the
 7 purpose for which strikers might resort to intimidation, do
 8 those allegations accord with your extensive experience
 9 within trade union activities in this country?
 10 MR ZOKWANA: It is so. You can only
 11 manage a strike that is peaceful, that is in order, if such
 12 a strike has been taken with the full mandate of those who
 13 participate in it. As a result, you don't need to use
 14 violence or coercion is people will own decisions to go and
 15 strike, but in cases like this where a group of workers
 16 decides not to go to work, it is given therefore that
 17 without that overall agreement, measures like this will be
 18 utilised.
 19 MR TIP SC: Would it be so, Mr Zokwana,
 20 that in instances of that kind where the strikers are not
 21 operating under the guidance of an established trade union,
 22 that the entire events and the potential for violence
 23 ensuing has been taken out of the established regulatory
 24 environment set up by the Labour Relations Act?
 25 MR ZOKWANA: It is so.

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1 MR TIP SC: Then I want, lastly, to read
 2 paragraph 10 and I'll ask you whether that sets out,
 3 generally, the view again of NUM's leadership at your
 4 level. "It is the view of NUM that its opposition to the
 5 unprotected strike gave rise to anti-NUM sentiment amongst
 6 the strikers and violence towards its members, officials
 7 and the union itself."
 8 MR ZOKWANA: Yes, it is.
 9 MR TIP SC: Now, Mr Zokwana, I'm going to
 10 turn to your description of the events of 12 August 2012
 11 when you came onto the scene at Marikana but before that, I
 12 just want to ask you, did you in the course of 11th of
 13 August 2012 receive any reports concerning the events at
 14 the NUM office on that day?
 15 MR ZOKWANA: No.
 16 MR TIP SC: Right, on the morning of
 17 Sunday, 12 August – I'm looking at paragraph 12 and perhaps
 18 I can again abbreviate these – well, let me just lead you,
 19 Mr Zokwana. On the Sunday the 12th of August did you
 20 receive a call reporting the events in the vicinity of
 21 Wonderkop hostel?
 22 MR ZOKWANA: Yes, it is so.
 23 MR TIP SC: And did you then decide to
 24 drive out to the mine?
 25 MR ZOKWANA: Yes, I did went to the mine.

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1 MR TIP SC: When you arrived, is it so
2 that you saw a burnt out vehicle in that area, being towed
3 away?
4 MR HANABE: A burnt out vehicle?
5 MR ZOKWANA: Yes, it is so.
6 MR TIP SC: And were you then given a
7 report by some of the local membership, some of the local
8 leadership?
9 MR ZOKWANA: Yes, it is so.
10 MR TIP SC: In the course of that, did
11 you hear that two Lonmin security guards had been killed?
12 MR ZOKWANA: Yes, I was given that
13 information.
14 MR TIP SC: And that it appeared that the
15 persons who had been involved in that killing had in fact
16 been on their way to the NUM office.
17 [11:52] MR ZOKWANA: That's the report I
18 received, yes.
19 MR TIP SC: Were you concerned at the
20 nature of that report?
21 MR ZOKWANA: I was shocked to the fact
22 that people were killed, burnt in their cars, because I
23 didn't take that as the culture that has existed in the
24 industry for some years back.
25 MR TIP SC: Yes, we'll come back to that

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1 topic a little later. Did you then contact Lonmin
2 management and arrange a meeting?
3 MR ZOKWANA: Yes, that's so.
4 MR TIP SC: And did you in fact then have
5 a meeting with a number of senior managers of Lonmin at the
6 Middlekraal area?
7 MR ZOKWANA: Yes, that's true.
8 MR TIP SC: Were there any other unions
9 involved in that meeting?
10 MR ZOKWANA: In my recollection it was
11 NUM and management.
12 MR TIP SC: And did you form an
13 impression of the level of anxiety or concern amongst the
14 members of management who attended the meeting, about the
15 event?
16 MR ZOKWANA: Yes.
17 MR TIP SC: And what was the level of
18 their concern?
19 MR ZOKWANA: They have raised the fact
20 that while they've tried to contact SAPS, they have not
21 received a quick response that would have quelled the
22 environment and the fact that their own personnel was not
23 enough to deal with the level of violence at that moment.
24 MR TIP SC: And did you personally, after
25 the meeting had come to an end, take any steps to contact

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1 the South African Police Service in order to see what you
2 could arrange?
3 MR ZOKWANA: Yes, I did.
4 MR TIP SC: Could you give the Commission
5 a brief outline of the persons to whom you spoke?
6 MR ZOKWANA: I spoke to an official in
7 the offices of the provincial commissioner and I was not
8 satisfied with the response I was given, they didn't have
9 enough manpower in the SAPS. Then I tried to get the
10 numbers of the Minister's office and I was able to talk to
11 somebody in his office and they left a message on his cell.
12 He called me back when I was on the way to Joburg and I
13 raised my concern to the fact that unless there were enough
14 number of SAPS personnel to restore law and order on the
15 mine, many lives will be lost.
16 MR TIP SC: And what was the response of
17 the Minister to your approach?
18 MR ZOKWANA: The Minister promised to
19 make all possible to ensure that there was a deployment of
20 SAPS on the mine to prevent further deaths to people.
21 MR TIP SC: I want to turn next to the
22 events of 15 August 2012, which began, for our purposes,
23 with the radio interview which had been hosted by Mr Xolani
24 Gwala and you were present with the president of AMCU, Mr
25 Joseph Mathunjwa and Mr Barnard Mokwena, I think, was on

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1 line.
2 MR ZOKWANA: Yes.
3 MR TIP SC: Yes. Now, towards the latter
4 part of that interview, the prospect that you and Mr
5 Mathunjwa would go to the koppie and address the workers
6 who were assembled there on that day and on previous days –
7 and seek to dissuade them from their course of action. Do
8 you recall that?
9 MR ZOKWANA: Yes, it's true.
10 MR TIP SC: Now, what – as at 15 August,
11 on the basis of the information that you had received and
12 the circumstances that you were aware of, what sort of
13 reception did you think that you would receive if you were
14 at the koppie with a view to addressing those persons?
15 MR ZOKWANA: It was clear to me that if I
16 were to go to the koppie, the reception would be bad
17 towards NUM, as the events that happened before and the
18 statement made, I mean allegedly during the process, could
19 have created an anti-NUM attitude towards those on the
20 koppie.
21 MR TIP SC: Despite that expectation, you
22 nevertheless agreed to go to Lonmin in order to address
23 them, to go to the koppie?
24 MR ZOKWANA: Yes, it is so.
25 MR TIP SC: And you will recall, as you

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1 set out in paragraph 18, that when you arrived at Lonmin,
2 you and Mr Mathunjwa and other union officials met with,
3 amongst others, General Mpembe of the South African Police
4 Service.

5 MR ZOKWANA: Yes, that's so.

6 MR TIP SC: I just want to deal very
7 briefly with two, two minor matters that arose out of the
8 evidence of Mr Mathunjwa. First of all, he – there is an
9 allegation that General Mpembe had said that he had
10 identified four persons who were identified as leaders of
11 those amongst the koppie, those on the koppie, and that two
12 of those were NUM and two were AMCU. Do you recall that
13 being said?

14 MR ZOKWANA: What I recall on that day
15 was that we were made aware that of the group of strike
16 leaders, they were from NUM and AMCU. That was said. I
17 don't remember the numbers of, they were equal numbers, I
18 don't remember that at all.

19 MR TIP SC: Yes, but the issue of
20 leadership, you recall, was discussed and raised by General
21 Mpembe?

22 MR ZOKWANA: Yes, I agree with that.

23 MR TIP SC: And then also just at the
24 level of a bit of detail, then we'll get on with the main
25 narrative, it was said by Mr Mathunjwa that the NUM persons

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1 requested a caucus, they went out and even after 40
2 minutes, 45 minutes, they never returned to the boardroom.
3 Do you agree with that?

4 MR HANABE: With all due respect to the
5 Commission, I just feel that I'm so pressed and I've just
6 asked Mr Mahlangu to stand in for me whilst I'm rushing to
7 the men's room.

8 MR MAHLANGU: The question again, sir,
9 was?

10 MR TIP SC: The question again was that
11 Mr Mathunjwa had said that at the latter part of the
12 briefing session, the NUM members present had said that
13 they wanted a caucus, that they went out and that even
14 after 45 minutes they had not returned to the boardroom
15 where that meeting, where the briefing was taking place.

16 MR ZOKWANA: Maybe it was Mathunjwa's
17 memory lapse because after the caucus of NUM delegation we
18 came back to give the response to what we went to caucus
19 for.

20 MR TIP SC: And the response was that you
21 would go to the koppie?

22 MR ZOKWANA: That's so.

23 MR TIP SC: Now we've heard, Mr Zokwana,
24 that you went to the koppie in police Nyalas, is that
25 correct?

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1 MR ZOKWANA: That's correct.

2 MR TIP SC: And the arrangement was that
3 you would address the persons on the koppie first?

4 MR ZOKWANA: That's correct.

5 MR TIP SC: Can you describe to the
6 Commission the situation that was present there at the
7 koppie as you were approaching? What did you see, what did
8 you hear?

9 MR ZOKWANA: When we went to the koppie
10 in the Nyala, we saw a group of what may have been the
11 leaders of the strikers. They were sitting, crouching, I
12 mean forming a circle as if they were busy in a
13 conversation. When they were called upon to come forward
14 and engage the delegation in the Nyala – that was myself
15 and the NUM delegation and the police negotiators – nobody
16 came forward but they moved back and signed for us to come
17 forward nearer with the Nyala. But besides that, I picked
18 a song I used to understand that was sung soon after the
19 killing or the death of Chris Hani but today the words were
20 different. And the song was – [indistinct]. When we were
21 going forward by the Nyala, there was a row of stones and
22 the Nyala stopped. Two of the strikers came forward to the
23 Nyala and the request had been made to come out of the
24 Nyala and if I was afraid, I can come with five police guys
25 to guard me and I was ordered by the commanders of that

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1 delegation not to leave the Nyala. Then I began to address
2 them through the loudhailer and the song grew louder. The
3 song was saying, "How can we kill NUM, we hate NUM, how can
4 we kill Zokwana?" And it shocked me because, as I have
5 known mineworkers for years, I've never come across such an
6 aggressive, threatening attitude by mineworkers.
7 Mineworkers, for any reason, would have been angry for some
8 structures of the union but whenever they would see their
9 senior leadership, they would appreciate their coming.
10 More threatening was the way they were, as they were
11 singing they were using their assegais and pangas to make a
12 clicking sound as they were singing the song. In dealing
13 with situations like those, like faction fights and the
14 rest, I have not come across a group of workers so armed,
15 so threatening.

16 MR TIP SC: Mr Zokwana, the song and the
17 clashing together of the weapons, you've been shown a video
18 which you've been told has been played in the Commission.

19 MR ZOKWANA: Yes, I've seen that.

20 MR TIP SC: Which was recorded on the
21 following day, and was that the kind of singing and
22 clashing that you experienced on the 15th of August?

23 MR ZOKWANA: Yes, it was.

24 MR TIP SC: Chair, we don't propose to
25 show it again unless it would be of any assistance but –

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1 were you able to complete an address to these persons?
 2 MR ZOKWANA: I tried, but the noise made
 3 by these people made it difficult to continue but I did say
 4 to people that they should disarm, allow the police to play
 5 their role, go back to their hostels, allow processes in
 6 dealing with grievances to take place after.
 7 [12:12] MR TIP SC: And did, after some minutes,
 8 did the person in charge of the police, the officer in
 9 charge of the Nyala instruct that it should leave the
 10 scene?
 11 MR ZOKWANA: That's so.
 12 MR TIP SC: Now you've told us, Mr
 13 Zokwana, that in your long history and experience of union
 14 activities, even faction fights, you've never encountered
 15 anything like this. What was the impact of it, of that
 16 experience on you personally?
 17 MR ZOKWANA: I was so concerned about
 18 this threatening attitude of the strikers, I was so
 19 concerned, I was so concerned about the safety of other
 20 people to the extent that the following day – that would be
 21 the 16th – when I woke up I could not talk, my voice was
 22 gone.
 23 MR TIP SC: You've also been shown some
 24 photographs of some of the persons who were unfortunately
 25 put to death in the period between 12 and 14 August, that's

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1 in the police presentation –
 2 MR ZOKWANA: Yes.
 3 MR TIP SC: - prepared by them. Do you
 4 recall those photographs?
 5 MR ZOKWANA: Yes, that's –
 6 MR TIP SC: You'll recall that they
 7 include the killing, the bodies of the Lonmin security
 8 personnel killed on the 12th, the day that you came to the
 9 mine.
 10 MR ZOKWANA: Yes.
 11 MR TIP SC: In your experience of
 12 conflict related to the mines, have you ever seen anything
 13 of that nature?
 14 MR ZOKWANA: As I have said, I have been
 15 dealing with section 5s where miners may kill,
 16 unfortunately, other miners, but the viciousness, the
 17 cruelty I saw in those films shocked me and I could not
 18 understand how human beings could be so cruel as to kill
 19 somebody. But beyond killing, they deface him in the
 20 manner those pictures showed.
 21 MR TIP SC: Assume for a moment that
 22 amongst those on the koppie and amongst those who took part
 23 in acts of violence of that kind, that there were some
 24 persons who were NUM members, would such members have acted
 25 in accordance with the principles and the policies and the

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1 beliefs of NUM as an organisation?
 2 MR ZOKWANA: Not at all.
 3 MR TIP SC: Thank you, Mr Zokwana. Then
 4 just two last topics I want to deal with briefly. These
 5 also arise out of the cross-examination. On the basis of
 6 what you understand the position to have been at Lonmin
 7 during the relevant period, particularly before the
 8 shootings on the 16th of August, was it possible for NUM to
 9 initiate interaction of a bargaining nature with Lonmin on
 10 behalf of the RDOs?
 11 MR ZOKWANA: It was impossible. One, you
 12 can only negotiate for people who believe that you are
 13 their agent, because in negotiations you will need a
 14 mandate to go to whoever you are negotiating with. You
 15 will need to feed back. The incidents from the 10th onwards
 16 showed that the machine drillers were no longer – or the
 17 strikers, sorry, the strikers - had made it plain that they
 18 didn't want NUM to be their negotiating agent in this case.
 19 The intention to march and burn the NUM office, threatening
 20 the lives of NUM shop stewards, some shop stewards found
 21 murdered on the koppie and the local shop stewards having
 22 to leave the mine, it was clear that to negotiate in that
 23 scenario would have been impossible. In my view it was no
 24 longer a situation where you needed negotiations. It was a
 25 situation where you needed trained personnel to play their

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1 role to restore law and order.
 2 MR TIP SC: Now the last topic, Mr
 3 Zokwana. Subsequent to these events and also in the course
 4 of these proceedings at which you've been able to attend
 5 and to listen to the evidence of the NUM witnesses over the
 6 last few days, you have heard a good deal of information
 7 about the events of the 11th August episode in the vicinity
 8 of the NUM office.
 9 MR ZOKWANA: Yes.
 10 MR TIP SC: Now, I want to ask you
 11 slightly more generally from your experience, what would be
 12 the implications for NUM, the consequences for it being a
 13 viable union presence, if a substantial local office such
 14 as the one at Western Platinum were destroyed, was to be
 15 burnt down?
 16 MR ZOKWANA: Psychologically it would
 17 have made NUM members to be afraid of ever been seen as
 18 part of NUM. Two, it would have denied NUM to interact
 19 with its own members who were employees of Lonmin. I base
 20 this from the events that happened in Impala, where our NUM
 21 offices were shut down by the same situation like the one
 22 intended in Lonmin, our shop stewards being denied the
 23 right to be in the office and interact with members and
 24 service them as they have been doing. But if the office
 25 was burnt, not only would it have been the structure

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1 destroyed but the very crucial NUM documents and
 2 information could have been destroyed as well.
 3 MR TIP SC: Now, Mr Zokwana, you've heard
 4 here in these proceedings that a large group of strikers
 5 were proceeding – proceeded to the NUM office, that reports
 6 had been received already from, amongst others, Lonmin
 7 security personnel, that it was their intention to burn
 8 down the NUM office and also it had been said to the small
 9 number of NUM officials, shop stewards and members who were
 10 in the office, that Lonmin could not protect the office.
 11 MR ZOKWANA: Yes, I heard so.
 12 MR TIP SC: And you have heard that
 13 anything between 20 or 30 even, NUM persons decided that
 14 they were going to defend the office.
 15 MR ZOKWANA: Yes, I've heard that.
 16 MR TIP SC: There was then a
 17 confrontation in which certain NUM members fired gunshots
 18 and two persons were injured.
 19 MR ZOKWANA: Yes, I've heard that.
 20 MR TIP SC: Two of the strikers, to be
 21 precise, two of those attacking the office.
 22 MR MAHLANGU: I beg your pardon?
 23 MR TIP SC: Two of the strikers, just to
 24 be clear, two of the persons attacking the office.
 25 MR ZOKWANA: Yes, I've heard that

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1 information.
 2 MR TIP SC: And you have also heard the
 3 proposition being put to the NUM witnesses, particularly Mr
 4 Gegeleza, that the NUM persons there should have locked the
 5 office and should have fled.
 6 MR ZOKWANA: I've heard that proposition.
 7 MR TIP SC: What is your view of that
 8 proposition?
 9 MR ZOKWANA: I believe that those shop
 10 stewards were brave. I believe for them to think about
 11 what to do when they knew that the guys were coming closer
 12 to the office, could not have taken them enough time to
 13 analyse options. But what was supposed to happen was for
 14 those who were employed who are trained to deal with such
 15 situations, were supposed to be there to protect people,
 16 property and the rest.
 17 MR TIP SC: Ultimately, Mr Zokwana, from
 18 your perspective as the president of NUM, does NUM as an
 19 organisation stand with those who made the decision to
 20 defend the office on that day?
 21 MR ZOKWANA: In defending the NUM office,
 22 they defended the image of the organisation. We stand by
 23 them because we believe that nobody in this country has a
 24 right to threaten anybody's life or to threaten the
 25 destruction of property.

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1 MR TIP SC: Thank you, sir, those are our
 2 questions.
 3 CHAIRPERSON: Mr Madlanga, are you in a
 4 position to cross-examine the witness at this stage?
 5 MR MADLANGA SC: Mr Chairman,
 6 commissioners, there is just one aspect that I'm still
 7 following up. May I ask to come last? Thank you.
 8 MR BURGER SC: Chair, I wonder if I may
 9 ask for an indulgence. I'm not available tomorrow and
 10 although I'm not going to be long with the witness, I'm
 11 very loath to be caught this afternoon, not having
 12 finished.
 13 CHAIRPERSON: I was proposing to ask Mr
 14 Semenya next and then you and then Ms Barnes and then I was
 15 going to invite Ms Lewis and then Mr Mpofu and then Mr
 16 Power, that was the order that I had in mind. It seems
 17 sensible to do it that way because it would give the AMCU
 18 representatives and those of the families and the survivors
 19 a chance to deal with the evidence elicited in cross-
 20 examination by you and Mr Semenya. If Mr Semenya is
 21 prepared to allow you to cross-examine before him, then I
 22 won't have to decide which of the two of you should be
 23 given preference. Are you happy if Mr Burger cross-
 24 examines first, Mr Semenya?
 25 MR SEMENYA SC: I defer, Chair.

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1 CHAIRPERSON: Alright. Mr Burger?
 2 CROSS-EXAMINATION BY MR BURGER SC: I'm
 3 indebted to my learned friend. I didn't have the
 4 opportunity of asking him before. Mr Zokwana, you're going
 5 to be asked questions by a NUM of teams. I represent
 6 Lonmin and I'm going to ask you a few questions arising
 7 from the events of August of last year and I want to
 8 address four subjects with you. The first subject is the
 9 relationship between NUM and AMCU at the time of the events
 10 of the 9th to the 16th of August. In a media release of the
 11 14th of August, AMCU had suggested that NUM was behind the
 12 unrest at Lonmin. It is an exhibit before the Commission,
 13 it was referred to as OO2 and I just want to read you a
 14 paragraph from that in order to explain to you what was
 15 said and to ask for your comment. I told you it was on the
 16 14th of August that this media statement was issued and the
 17 first passage I read to you refers to what is alleged to
 18 have happened on Saturday, the 11th August. The media
 19 release is one by AMCU to the South African press and it
 20 says on the second page, the following. It refers to that
 21 stand-off between the people at the NUM office and the
 22 striking workers and it says, "We were told that people who
 23 came out of NUM office wearing NUM T-shirts opened fire to
 24 marchers and one worker was killed on the spot, while
 25 others were wounded." We know today nobody was killed in

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1 that incident.

2 The second statement on the same page, made by

3 AMCU, read as follows. "Without laying any blame to

4 anyone, but it is important to state that we also suspect

5 some sinister forces behind this situation. Before the

6 report about RDOs' demands, we learn that had NUM started

7 an intensive campaign where they said, 'Reclaiming Lonmin

8 back.'" Can I ask you, is that true?

9 [12:32] MR ZOKWANA: I'm not sure what I should

10 confirm as true. If the question is to check whether a lie

11 was told that one person was killed when none was killed,

12 as the Commission has heard, that is true.

13 MR BURGER SC: Yes.

14 MR ZOKWANA: If it can be that I must

15 confirm that NUM was responsible, I think this Commission

16 has to decide after listening to all evidence presented as

17 to who could have been responsible, but as NUM we believe

18 that we are more victims than being responsible, as shown

19 by the NUM of our shop stewards who were not only injured,

20 who had to run away from the mine, and those who were

21 killed. NUM believes in peaceful forms of recruiting

22 members. If you write a T-shirt that says "Reclaim back

23 Karee" as an area and you go there, engage people, show

24 them what is it that you will do on their behalf in

25 improving their conditions of employment, you don't

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1 threaten anybody. It's a normal form of recruitment. I

2 don't understand how could that be seen to be responsible

3 for the events that led to the killing.

4 MR BURGER SC: In fact, Mr Zokwana,

5 during the radio interview held on the 15th of August – we

6 have a transcript of that interview, it's exhibit LL before

7 the Commission - you, in so many words, suggested that Mr

8 Mathunjwa was not telling the truth. Can I read to you

9 from that transcript, page 13? Line 9 you are quoted as

10 having said the following, "You know when people tell lies

11 after taking the lives of innocent people, men in uniform

12 gunned down, I've never seen that happen, Xolani, that as

13 we speak today we are so bold to tell lies when people" –

14 and Mr Gwala says, "Who is telling lies?" And you answer,

15 "I think AMCU is not telling the truth." Do you confirm

16 that?

17 MR ZOKWANA: Yes.

18 MR BURGER SC: Mr Zokwana, all I'm trying

19 to confirm – and we really have evidence to that effect

20 already – is that the relationship between AMCU and NUM

21 leading up to the Marikana tragedy, was a very strained

22 relationship.

23 MR ZOKWANA: I won't describe the

24 relationship as strained. It's just that the two unions

25 were organising in Lonmin in the same environment and I

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1 would not describe them going to a place and recruit

2 members, should be seen to be an environment that is

3 hostile.

4 MR BURGER SC: No, but Mr Zokwana, the

5 relationship was strained because in that process AMCU used

6 violence.

7 MS BARNES: I object to that, Chair,

8 there's no evidence of that.

9 MR BURGER SC: There's a ripple of

10 laughter. Let me read you the page. It is from the

11 transcript LL, the radio programme "The Country is

12 Listening" and at page 32 the following appears. Line 17,

13 Mr Zokwana you're speaking and you say, "There's no problem

14 with NUM because we don't regard AMCU as a problem to deal

15 with. Our task is to organise members and improve the" –

16 and it's then indistinct – "of employment and always our

17 focus will be on the employer. AMCU have chosen, out of

18 their own volition, to use violence as a weapon and to use

19 intimidation. That caused a strain in the relationship."

20 Do you accept that?

21 MR ZOKWANA: I see it but I think the

22 same view was shared by one of the Lonmin senior

23 executives, page 75.

24 MR BURGER SC: You may be in good

25 company.

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1 MR ZOKWANA: No, no, I'm trying to put

2 the point that the view that NUM could have believed that

3 AMCU is behind, is also said by a senior executive of

4 Lonmin in a letter written to the Lonmin then CEO, to the

5 fact that this process reeks of AMCU's presence.

6 MR BURGER SC: Mr Zokwana, I think we

7 agree. What I'm putting to you is that what was done by

8 AMCU by way of seeking new memberships, caused a strain on

9 the relationship between AMCU and NUM.

10 MR ZOKWANA: What caused the situation to

11 be bad were methods used by those who were marching,

12 putting forward the demand, to force those who were not on

13 strike not to go to work and employ violence and if the

14 Commission comes to conclude that those were led by NUM or

15 maybe by AMCU, I think that will come at the stage when the

16 Commission establishes that.

17 CHAIRPERSON: Mr Burger, possibly the way

18 forward is, you're trying to establish a strained

19 relationship. Ms Barnes correctly points out that there's

20 no evidence at this stage to the effect that AMCU had

21 indulged in valence but what does appear from what you've

22 put is that that was certainly NUM's belief at the time.

23 If there was such a belief, then I imagine that could

24 afford a basis for a strained relationship, so perhaps if

25 you could explore it on that line then I won't have to rule

<p style="text-align: right;">Page 4452</p> <p>1 on Ms Barnes's objection but you may well obtain the answer 2 that you were seeking.</p> <p>3 MR BURGER SC: Thank you, Chair. Can I 4 just, as a last proposition under this heading, take you to 5 what happens on the 16th of August at the koppie? There are 6 at least two very senior AMCU officials speaking to the 7 strikers – one Mr Mathunjwa and one Mr Dumisane – and while 8 Mr Mathunjwa looks on, Mr Dumisane starts a song. That's 9 the Chris Hani song but it's now got NUM in it. "This is 10 NUM, how are we going to kill it, this NUM? We hate NUM." 11 What does that mean?</p> <p>12 MR ZOKWANA: In my view, in my years as a 13 trade unionist, Commissioner, I have endorsed the principle 14 of people who sell apples and oranges in the same vicinity. 15 When you sell oranges you don't speak about apples, you 16 sell what you have, so that those who buy believe that that 17 which you sell is good. Immediately if I'm selling 18 oranges, I became to blame apples, I am in a way 19 unwittingly inviting a confrontation. If what you have 20 read, in my view it could have been one of the fuelling of 21 anti-NUM attitudes towards people and I think that those 22 people, maybe the Commission will call those who sang those 23 songs as to what was their intention to sing such a song. 24 But NUM would never at any stage go to people to organise 25 by using people who don't agree with it to win members. We</p>	<p style="text-align: right;">Page 4454</p> <p>1 MR BURGER SC: Thank you, that was the 2 first issue that I wanted to discuss with you and the 3 second one we can do briefly before lunch and it is, I'd 4 like to have our view on Lonmin's attitude throughout the 5 unrest, that one cannot negotiate with workers in an 6 unprotected strike carrying dangerous weapons. You know 7 about that stance adopted by Lonmin throughout.</p> <p>8 MR ZOKWANA: We know that stance of 9 Lonmin.</p> <p>10 MR BURGER SC: In fact, that stance is 11 the same stance adopted consistently by NUM throughout the 12 unrest. Is that correct?</p> <p>13 MR ZOKWANA: NUM has been, but stating in 14 a way that was saying to workers, if you have got issues, 15 go back to work and allow processes to unfold where 16 parties, where there's a peaceful environment, can get 17 mandates and exchange ideas.</p> <p>18 MR BURGER SC: In fact, the justification 19 for that stance had increased by the afternoon of the 15th 20 of August when you spoke to the workers from the Nyala.</p> <p>21 MR ZOKWANA: Let me put it that when we 22 met with General Mpenbe, well, that was the position of NUM 23 all along. Both the AMCU president and myself agreed that 24 it was the message we'll carry to the koppie.</p> <p>25 MR BURGER SC: In fact, to use your words</p>
<p style="text-align: right;">Page 4453</p> <p>1 don't use such tactics, but if you want me to explain what 2 would that song mean, I think that is self-explanatory. It 3 says, "How will we kill NUM? We hate NUM." It means that 4 – I don't know whether he was meaning all those on the 5 koppie or where he was meaning them, on their capacity as 6 AMCU officials, I'm not sure.</p> <p>7 MR BURGER SC: No, Mr Mathunjwa suggested 8 to the Commission under oath that the song means, how does 9 one compete with NUM?</p> <p>10 MR ZOKWANA: It is – it would have been 11 insensitive for that song to be sung in that line, having 12 had six NUM leaders killed and you still have guts to sing 13 such a song and you claim that it meant this. I mean our – 14 the way we sing songs, when you go to a funeral you have 15 got songs that you would sing but unfortunately, anyway, 16 I've never been to war, I don't know what songs would be 17 sung by those who believe in such things but I don't 18 understand that song to mean – when you say kill somebody 19 it means compete. Compete would mean how do we outdo what 20 the NUM is doing? You don't have to kill but you are 21 saying how do you ensure that what NUM have done, all what 22 was here, we can outdo it. And I'm sure there are words 23 that there would be used to illustrate that, if the meaning 24 is competition that is fair and free of any form of 25 coercion.</p>	<p style="text-align: right;">Page 4455</p> <p>1 this morning in the Commission, Mr Zokwana, it was no 2 longer a situation to negotiate. You needed trained 3 personnel to restore law and order.</p> <p>4 MR ZOKWANA: As NUM we train our 5 personnel in the skills of negotiations, taking mandates 6 and feedback. We have no capacity to deal with law and 7 order and I believe in this country, as reflected by our 8 Constitution, when the environment prevails like the one in 9 Lonmin at that time, only law enforcement personnel were in 10 a capacity to deal with that situation.</p> <p>11 [12:52] MR BURGER SC: Now the proposition I want 12 to put to you, in conclusion. It would be quite naïve and 13 unrealistic to criticise Lonmin for failing to talk to or 14 negotiate with the striking workers on the afternoon of the 15 16th of August 2012 at the koppie.</p> <p>16 MR ZOKWANA: I'm not in a position to 17 make that judgment. I've made this judgment in as far as 18 NUM is concerned, that NUM could not be in that position 19 because to negotiate you needed a mandate to talk to those 20 strikers.</p> <p>21 MR BURGER SC: No, Mr Zokwana, I'd like 22 to have your personal view on this. You're a senior trade 23 union leader, your views may well be of assistance to this 24 Commission.</p> <p>25 MR ZOKWANA: Without assigning this view</p>

<p style="text-align: right;">Page 4456</p> <p>1 to Lonmin, our view as the union is that for negotiations 2 to proceed there should be an atmosphere of people being 3 free to air their views, nobody being compelled to take a 4 decision because he fears for his life. If your question 5 is, therefore, were the conditions conducive for parties to 6 negotiate, as a union we believe that for us to engage any 7 employer there should be a process in which that it will 8 allow to get mandates. I would not be able to check to say 9 if the employer could have gone and negotiated – what I'm 10 putting forward is this, that the condition as I saw it 11 when I arrived at the koppie was quite volatile and as a 12 person I don't foresee NUM being able to get the mandate, 13 given the attitude of the strikers.</p> <p>14 MR BURGER SC: Is this a convenient time, 15 Mr Chair?</p> <p>16 CHAIRPERSON: We will take the lunch 17 adjournment at this stage.</p> <p>18 [COMMISSION ADJOURNS COMMISSION RESUMES] 19 [14:01] CHAIRPERSON: The Commission resumes. 20 You're still under oath, Mr Zokwana. Mr Burger? 21 SENZENI ZOKWANA (CONTD): 22 CROSS-EXAMINATION BY MR BURGER SC (CONTD): 23 Thank you, Chair. Mr Zokwana, the third proposition I want 24 to debate with you is that NUM would not have sat around 25 the same negotiation table with AMCU during July and August</p>	<p style="text-align: right;">Page 4458</p> <p>1 fact that on the koppie songs were sung that were 2 denigrating the image of the organisation and myself in 3 person.</p> <p>4 MR BURGER SC: And it is a few lines 5 lower down, line 10, where you then say the following in 6 what looks like a bit of a wider context. You say, "So if 7 you would allow us to go, but what I'm saying, I'm saying 8 now as NUM, we're not going to the mountain and engage 9 anybody but what you have said, we will need to go on their 10 own but as NUM we cannot go to any forum together with AMCU 11 because we have done, we have done that, go with them, then 12 negotiate in Impala. When the deal is made they refuse to 13 go and report with us because they are playing a game of 14 winning the minds of the people and if they are the ones 15 who will bring benefits, we cannot go there."</p> <p>16 MR ZOKWANA: Do I confirm that or – 17 MR BURGER SC: Yes. The only reason why 18 I put that to you is, the president of AMCU has told the 19 Commission that he had proposed on various occasions that 20 Lonmin should engage a forum and try to address the unrest, 21 the forum including AMCU. All I'm putting to you is NUM 22 would not have gone into a forum at that stage in which 23 AMCU had a voice.</p> <p>24 MR ZOKWANA: The statement was made in 25 the context of going with AMCU to the strikers, given the</p>
<p style="text-align: right;">Page 4457</p> <p>1 of 2012 to negotiate wages at Lonmin because AMCU was not 2 part of the structure then for negotiation. Do you accept 3 that?</p> <p>4 MR ZOKWANA: If the proposition is that 5 AMCU was, could not have qualified to be in such 6 negotiations, given its status then, I agree.</p> <p>7 MR BURGER SC: Yes. But we don't have to 8 traverse the whole series of documents we have. May I just 9 refer you to one document to confirm that? You'll remember 10 that on the afternoon of the 15th of August there's a 11 briefing session with General Mpembe before you go to the 12 koppie?</p> <p>13 MR ZOKWANA: That's so. 14 MR BURGER SC: Exhibit OO4 is a 15 transcript of that briefing and page 657 you say the 16 following, if I may just read it with you. 657, it's at 17 typed page 11, you speak and you say, "Even if NUM, we have 18 to consider in any form of meeting, we will not meet with 19 AMCU together, we will not." Before you – 20 MR ZOKWANA: Let me explain the context 21 in which such a statement was made. Having been briefed by 22 our local leadership, made aware of the gruesome killings 23 of our shop stewards as well as threats made against 24 [indistinct], they believed that meeting with AMCU would 25 pose a threat to those who will be with me as well as the</p>	<p style="text-align: right;">Page 4459</p> <p>1 scenario I have outlined.</p> <p>2 MR BURGER SC: Yes. 3 MR ZOKWANA: And there was no forum 4 proposed where AMCU and NUM should come and negotiate. I'm 5 sure if the same attitude could therefore – at that moment, 6 given the report I got, it would have been not – it would 7 have been difficult for NUM to go to the mountain with 8 people it believed had been running a campaign of 9 denigrating its image and [indistinct].</p> <p>10 MR BURGER SC: You will remember that 11 that forum was suggested during the SAfm debate on the 12 Wednesday when Mr Mathunjwa said, "Our union did know about 13 this march. How we happened to know about it, it is 14 because Mr Barnard Mokwena himself, he phoned me personally 15 two weeks ago, saying to me that there are a group of 16 workers who are intending to serve them with a list of 17 demands. Then I told him, I said quickly arrange a high 18 level meeting with all the leaders of the union, including 19 NUM, ourselves" – speaking for AMCU – "Solidarity and UASA, 20 in order to look at those demands." So all I'm putting to 21 you is, there was no hope of that forum getting off the 22 ground because you wouldn't have sat in that forum with 23 AMCU at that point in time.</p> <p>24 MR ZOKWANA: I would like to draw a 25 distinction between a meeting between people who were in</p>

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1 dispute and the refusal of NUM to go to the koppie. The
 2 reason we wouldn't go to the koppie was because it was our
 3 view that if we were to go to the koppie, we would not only
 4 be exposed to ridicule but the lives of those who go to the
 5 koppie would be exposed to danger - but if a meeting was
 6 arranged, it is another scenario.

7 MR BURGER SC: Mr Zokwana, would NUM have
 8 become involved in wage negotiations outside the structures
 9 in place, the agreement in place between Lonmin and NUM in
 10 that period of time where AMCU was present?

11 MR ZOKWANA: I have explained to the
 12 Commission that NUM was disqualified to negotiate, given
 13 that the strikers made it clear that they don't want NUM to
 14 negotiate on their behalf. That was shown by the level of
 15 violence directed at NUM. So the issue whether NUM would
 16 have gone to negotiate or not is not an issue, in my view,
 17 because you can only negotiate on behalf of people who
 18 mandate you to do so.

19 MR BURGER SC: I accept that and we will
 20 argue that the very proposition is unrealistic, but let me
 21 then ask you on an assumption. Assume that NUM had a
 22 mandate from the workers at Lonmin in that period of time
 23 and, knowing that there is a collective agreement in place
 24 between NUM as the majority union and Lonmin, all I put to
 25 you is that you wouldn't have allowed wage negotiations

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1 then to take place with AMCU present, taking part in those
 2 negotiations.

3 MR ZOKWANA: I think that participants in
 4 negotiations are determined by the roles that are in the
 5 agreement as to at what threshold should you - what it will
 6 read to be a person to negotiate. It's not whether NUM
 7 would have wanted AMCU or not. AMCU could have been there
 8 if they had met that threshold. They could not be there if
 9 - NUM could not decide whether AMCU is there or not. I
 10 think that that will be played by - the role played.

11 MR BURGER SC: The fourth subject I
 12 wanted to debate with you is the discretionary allowance
 13 that Lonmin gave to the RDOs at Karee in the second half of
 14 July 2012. Can I start off by reminding you that in
 15 exhibit XX2, that's the NUM bundle at page 69 - if the
 16 witness may perhaps just be shown that? It's a
 17 communication issued by Lonmin, page 69. It deals with the
 18 RDO allowance.

19 MR ZOKWANA: Yes?

20 MR BURGER SC: And it tells us that at
 21 that point time, July 2012, the RDOs at Lonmin are earning
 22 less than the RDOs in the neighbouring platinum mines -
 23 less, for example, than the RDOs at Impala. You were aware
 24 of that?

25 MR ZOKWANA: I may not have that

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1 knowledge but it also confirms our view that we said that
 2 when you have got a decentralised bargaining forum -

3 MR BURGER SC: Yes.

4 MR ZOKWANA: - those are of such
 5 consequences you get.

6 MR BURGER SC: Mr Zokwana, that's the
 7 problem facing Lonmin at the time. They don't have a
 8 central bargaining position, they have an individual
 9 situation with RDOs earning less than neighbouring RDOs,
 10 for example at Impala and it's a highly tradable commodity
 11 - if you don't pay people enough you lose them, they go to
 12 the opposition.

13 MR ZOKWANA: But obviously the forum to
 14 address that could have been the same bargaining forum so
 15 that the parties who have been engaged before are called
 16 upon to engage, if that becomes a situation.

17 MR BURGER SC: Problem 2 facing Lonmin,
 18 they can't get to the forum because the RDOs say they don't
 19 want NUM, they want to speak individually. That's the
 20 second problem facing the employer now. Do you accept
 21 that? Do you accept that?

22 MR ZOKWANA: What I know is very well
 23 that the machine - sorry, the RDOs have made it clear that
 24 they don't want NUM to be their agent in these
 25 negotiations.

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1 MR BURGER SC: The third reality Mr Da
 2 Costa, the Lonmin man, faces - the man in charge of Karee -
 3 he's approached by decent people with a good case, who say
 4 to him, "Please help me and give our request through to
 5 management." The third reality is - or the fourth reality
 6 is Lonmin, as all employers, is entitled to grant
 7 discretionary allowances if it wishes to promote a certain
 8 section. If artisans are in short supply, they're quite
 9 entitled to say, for artisans this year we'll have a
 10 discretionary allowance on top of the wage. It's
 11 discretionary, it's not negotiated, it's granted - if the
 12 workers do not want it, they don't have to accept it but
 13 that is something which I'm instructed happens from time to
 14 time at Lonmin. Do you know -

15 MR ZOKWANA: And I'm sure you will agree
 16 with me that while that right the employers have is what
 17 triggered the situation in Impala when miners were given an
 18 increase outside the - the same that happened in Lonmin but
 19 that right, as it may be the case, it has been the cause of
 20 what triggered all these problems.

21 MR BURGER SC: Mr Zokwana, let us leave
 22 the triggers to the Commission, that's their mandate. Let
 23 you and I debate the facts on the ground, fair enough?
 24 I've looked at the agreement between NUM and Lonmin. It is
 25 in that little file XX at page 13. There's nothing in that

<p style="text-align: right;">Page 4464</p> <p>1 agreement preventing Lonmin from granting a discretionary 2 allowance, should they be so advised. 3 MR ZOKWANA: Yes. 4 [14:21] MR BURGER SC: If you have a look at that 5 same bundle at page 93, that's part of the September 2012 6 agreement when the parties had come together and reached an 7 agreement. You'll see in paragraph 3.3 that allowance is 8 written in there but it's not subject to escalation, it's 9 not part of wages, it's a separate item, again agreed to by 10 Lonmin in order to resolve the issues between the parties. 11 Page 93 paragraph 3.3. 12 MR ZOKWANA: Yes, what am I expected to 13 do? Am I expected to confirm that is the case? 14 MR BURGER SC: No, I'm going to ask you a 15 question. 16 MR ZOKWANA: Alright. 17 MR BURGER SC: Against this background I 18 put to you and I'll submit to the Commission in due course 19 that the responsible thing to do in these circumstances, 20 for Lonmin, was to grant the discretionary allowance in 21 July of 2012 in an endeavour to defuse the unhappiness of 22 the RDOs. 23 MR ZOKWANA: I have put it before this 24 Commission, the view that says when structures that are set 25 for negotiations are undermined, what develops in most</p>	<p style="text-align: right;">Page 4466</p> <p>1 members follow and in this instance I'm saying if it is 2 proven that some songs were sung up in the koppie, songs 3 that speaks about killing the – killing NUM and hating it, 4 the fact that stories of people being killed by NUM shop 5 stewards were made, as I think the Commission heard earlier 6 – such could have had an impact in those workers, their 7 believing that NUM is their enemy at that time. 8 MR BURGER SC: The last question I want 9 to ask you, is it pure coincidence that it is the NUM 10 office at Impala which is attacked, yet it's the NUM office 11 at Karee which is closed down, it is the NUM office at WPL 12 which is under attack? Is that coincidence or how do you 13 explain that? 14 MR ZOKWANA: I think in our presentation 15 we have made of the secretary, these occurrences seem to 16 have similarities and the aim to me could have been to make 17 sure that NUM has no interaction with its own members, but 18 I think the Commission, in the course of its work, will be 19 able to establish what would have happened. 20 MR BURGER SC: Thank you, Chair. 21 CHAIRPERSON: Mr Semenya? 22 CROSS-EXAMINATION BY MR SEMENYA SC: 23 Thank you, Chair. Mr Zokwana, let us try and explore what 24 has been discussed with you now. If you go to exhibit XX2 25 at page 93, as my learned colleague pointed you.</p>
<p style="text-align: right;">Page 4465</p> <p>1 instances is other groups of workers developing the same 2 interest for the same allowance given. It was the case in 3 Impala, the case in Lonmin but the RDOs wanted more than 4 the company had given. 5 MR BURGER SC: What do you think would've 6 happened if Lonmin sent away the RDOs and said, we won't 7 talk to you? I know we can't talk to NUM, they don't have 8 a mandate. I know we can't talk to AMCU because they're 9 not a majority but we can't talk to you, go away. Do you 10 think that would've been the end of the problem? 11 MR ZOKWANA: Well, I'm not qualified to 12 make an opinion on that because I would not be able to know 13 what they would do. 14 MR BURGER SC: No, the 16th August 15 [inaudible]. I want to end off with two questions - it's 16 not one of the four subjects I wanted to discuss with you – 17 and want to see whether you can help the Commission. Why 18 is it that workers at Lonmin in this time become so angry 19 and violent at NUM and at their employer? 20 MR ZOKWANA: Without claiming to have an 21 interaction with the workers or no, what could have been – 22 and I don't know if they hated the employer but I know they 23 hated NUM, as shown by the number of people who were 24 murdered as well as the attempt to burn our office or do 25 damage to it. As leaders we set the tone that mostly our</p>	<p style="text-align: right;">Page 4467</p> <p>1 MR ZOKWANA: 93? 2 MR SEMENYA SC: Page 93, yes. 3 MR ZOKWANA: Yes. 4 MR SEMENYA SC: Page 93, yes. You will 5 find clause 3.3 there. 6 MR ZOKWANA: Yes? 7 MR SEMENYA SC: Which deals with the 8 allowances, do you see that? 9 MR ZOKWANA: Yes, I see it. 10 MR SEMENYA SC: And if you go to page 94 11 of this document you will find a whole lot of signatories 12 to that agreement, correct? 13 MR ZOKWANA: Yes. 14 MR SEMENYA SC: The one thing that 15 allowance is not, is a unilateral payment by Lonmin of a 16 sector of the employment force, am I right? 17 MR ZOKWANA: Can you repeat that question 18 again, sir? 19 MR SEMENYA SC: The one thing that it is 20 not, it is not a unilateral allowance payment by Lonmin. 21 It is agreed with the parties. 22 MR ZOKWANA: I would not agree with that 23 proposition on the basis that Lonmin has made it clear more 24 than once that it was their decision, taken without 25 negotiations and NUM signing, and others, could have just</p>

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1 acknowledged that Lonmin has taken this decision, not that
 2 they have mandated it.
 3 MR SEMENYA SC: Maybe let us take it step
 4 by step. You'll see the document is dated the 18th of
 5 September, this is long after the tragedy at Marikana.
 6 MR ZOKWANA: Yes. Oh sorry, I referred
 7 on that document – I understand now –
 8 MR SEMENYA SC: Oh yes.
 9 MR ZOKWANA: Yes.
 10 MR SEMENYA SC: And it does not pretend
 11 to be a unilateral anything, because if you look at clause
 12 3 of page 93 you will see a heading there, that this is an
 13 amendment to the original agreement. So it was always
 14 possible for the parties to agree an allowance. There's
 15 nothing unilateral about it, do you see that?
 16 MR ZOKWANA: Yes.
 17 MR SEMENYA SC: It doesn't even to
 18 purport to be a discretionary allowance.
 19 MR ZOKWANA: Yes, but this document was
 20 signed as – as a reason of the parties having met and if
 21 you read there you will find an agent that would not
 22 normally be part, a person signing on behalf of delegates,
 23 you don't that in many agreements that there are people
 24 called delegates. Unions engage companies. That was, the
 25 agreement was reached after the process of discussing and

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1 trying to end the strike. I understand the point now.
 2 MR SEMENYA SC: So all parties, acting
 3 responsibly, are able to avert further escalations of
 4 trouble and protest and unrest by sitting down and
 5 negotiating agreement.
 6 MR ZOKWANA: On the same vein, the reason
 7 you have what, a group of people called delegates, is
 8 because at that time NUM could not go to the koppie and get
 9 a mandate. Those delegates were people who were reporting
 10 back to those who were on the mountain.
 11 MR SEMENYA SC: I agree with you. It is
 12 in within the capacity of players in the industry to
 13 resolve their disputes and find amicable solutions,
 14 whatever that takes.
 15 MR ZOKWANA: In this case the anomaly is
 16 that you don't get trade unions on behalf of their own
 17 constituencies. You have got workers called the delegates,
 18 meaning that there was a breakdown with the norm which will
 19 be the law where trade unions mandated will go and
 20 negotiate.
 21 MR SEMENYA SC: Yes. What I'm trying to
 22 say is, even if it takes an anomaly it is prudent to take
 23 an anomalous situation and stamp out the violence and
 24 restore industrial peace, correct?
 25 MR ZOKWANA: Industrial peace may be

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1 achieved but in this case, as a union, we can claim that no
 2 peace was achieved because two of our leaders were murdered
 3 before the document was signed. In terms of - it means
 4 that - that there may have been peace [indistinct] going
 5 back to work, but in as far as solving the state of
 6 violence and murder, NUM lost two of its own leaders, one
 7 of which was shown here presenting and pointing out the
 8 spot during the loco inspection.
 9 MR SEMENYA SC: No, I accept that the
 10 restoration and justice will take a little while after a
 11 scar of the nature that has happened, that I accept. Now
 12 what I want to know is, in your history with Lonmin have
 13 you ever seen a policy document giving Lonmin a
 14 discretionary allowance to pay allowances unilaterally?
 15 MR ZOKWANA: What I know is that
 16 companies have practised this, as the case was shown with
 17 Impala. They don't have to have an agreement with us as
 18 NUM, it is what they may have as a policy themselves, that
 19 they do not sit and negotiate with us.
 20 MR SEMENYA SC: No, the question was,
 21 have you seen a document like that?
 22 MR ZOKWANA: My answer is no.
 23 MR SEMENYA SC: Okay. Can I travel with
 24 you the distance we have with the other NUM witnesses and
 25 see whether that accords with your own appreciation of the

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1 facts? NUM seems to have appreciated the underpayment of
 2 RDOs.
 3 MR ZOKWANA: That has been presented by
 4 NUM, yes.
 5 MR SEMENYA SC: Their harsh working
 6 conditions were appreciated by NUM.
 7 MR ZOKWANA: Yes, we have detailed that.
 8 MR SEMENYA SC: In the two last sessions
 9 of negotiating this bargaining agreement, NUM pressed the
 10 necessity for relooking the salaries of RDOs in an upward
 11 fashion, right?
 12 MR ZOKWANA: We have – I have stated the
 13 fact that NUM as far back as years ago has been pressing on
 14 RDO issues, hence I showed that where there is a central
 15 bargaining within the Chamber there was a sub-committee
 16 that sat to look at the issue of RDOs. That culminated in
 17 them being given almost 10% of what was given before, but
 18 the problem in platinum is that such a bargaining forum
 19 where all companies are together, didn't exist.
 20 [14:41] MR SEMENYA SC: So the higher, the demand
 21 for a higher salary for RDOs is a demand which NUM
 22 considered legitimate.
 23 MR ZOKWANA: Yes, NUM have been
 24 understanding that RDOs deserve to be paid appropriately.
 25 Hence we believe that if we could have adopted another

<p style="text-align: right;">Page 4472</p> <p>1 model of creating jobs, looking at the conditions, the kind 2 of work people do - accidents, a better package could have 3 been achieved but out of the current grading system where 4 you look at authority, then RDOs were disadvantaged. 5 MR SEMENYA SC: So when the RDOs in 6 Impala went on a protest, it was one that was unwelcome but 7 understood by NUM. 8 MR ZOKWANA: NUM will never understand a 9 protest that is violent. And also in Impala as well as in 10 Lonmin, those protests were characterised by violence 11 towards NUM, as I've shown before. Under normal 12 circumstances, if workers voice their discomfort – it 13 happened, by the way, with Lonmin in 2005 that workers were 14 unhappy of the agreement reached there. We were able to 15 intervene and change that, but it must not be – the manner 16 of presenting it that has got this element of violence 17 unleashed on other people is what NUM would not understand, 18 especially if it is towards NUM as an organisation. 19 MR SEMENYA SC: Maybe the question was a 20 little inelegant. What I'm trying to emphasise is, that 21 the RDOs at Impala were having a huge disquiet around there 22 salary was not unexpected to NUM. 23 MR ZOKWANA: No organisation, including 24 NUM, under normal circumstances would expect that its own 25 members decide to wake up and say, we don't want you to be</p>	<p style="text-align: right;">Page 4474</p> <p>1 MR SEMENYA SC: I'm not agitating that 2 any demand must be accompanied by unrest or violence and I 3 can understand that you were not – you were surprised that 4 that demand was accompanied by violence. All I'm trying to 5 get your attention on is that that they complain about 6 their salary being low could not have come as a surprise to 7 you as NUM. 8 MR ZOKWANA: NUM – I mean I have shown 9 that, yes, the wages of mineworkers, especially drillers, 10 are still very low but it is difficult for me to say I 11 either welcomed or understood the manner this was – 12 MR SEMENYA SC: I'm not talking about the 13 manner, Mr Zokwana. 14 MR ZOKWANA: Yes. 15 MR SEMENYA SC: I'm not talking about 16 their manner of raising that demand, absolutely not. I'm 17 merely saying that they have that type of demand could not 18 have come to NUM as a surprise. 19 MR ZOKWANA: Yes, the reason we always 20 negotiate - is because members are complaining about wages. 21 Yes, on that score I would say it was supposed to happen 22 that workers would say, we're not satisfied. 23 MR SEMENYA SC: Yes. Now, and that 24 demand, rightly or wrongly, gets met by Impala with an 25 increase of 18%.</p>
<p style="text-align: right;">Page 4473</p> <p>1 our bargaining council. There was no way NUM would expect 2 that to happen. But if members could have come to NUM and 3 said look, we have got these following problems, we would 4 like you to take them on board through the structures, NUM 5 would have welcomed that and taken it up. 6 MR SEMENYA SC: Maybe we're still 7 speaking past one another. All I'm saying is, when the 8 RDOs in Impala were showing their dissatisfaction with 9 their salary, it did not come and could not have come as a 10 surprise that this is a bone of contention for them. 11 MR ZOKWANA: Raising the discomfort with 12 the wages could not have been – the manner of raising it 13 was a concern. As I've shown that whenever workers – in 14 NUM, let me put it this way, in NUM before we sign any 15 agreement we take mandate from those we negotiate on whose 16 behalf and in all circumstances it is our members who will 17 say, go and sign. And we expect, therefore, if there may 18 be any discomfort arising for any other reason, the same 19 members will come to us and say, we would like you to re- 20 look at this and then NUM will look at that. Sorry, 21 Chairperson, I'm not trying to dodge the question but I'm 22 trying to raise it that it's not easy to say NUM was not – 23 was not surprised. NUM was surprised by the manner the 24 demands were made that were accompanied by violence towards 25 each other.</p>	<p style="text-align: right;">Page 4475</p> <p>1 MR ZOKWANA: No. My understanding is 2 that Impala in December offered its miners an increase of 3 18% effective in Jan. And our belief therefore as NUM, we 4 put it that that offer on miners got attention of the RDOs 5 who believed that they were underpaid and that sparked the 6 demand, but I'm still repeating – we don't support the 7 manner it was brought up. It was fine that they were 8 angry, it's fine that they wanted to get more, but to 9 target that anger towards NUM as their organisation is what 10 surprised me. 11 MR SEMENYA SC: Now I'm moving from the 12 surprise now. As a matter of fact, Impala paid the RDOs 13 better, am I right? 14 MR ZOKWANA: I think that supposition 15 also confirms the anomaly when you negotiate by individual 16 companies. You end up competing on what you can afford to 17 pay and that relates a discomfort because two brothers in 18 one family can make a different mine and do the same job, 19 but earning differently. So in this case it means that 20 when the Impala paid his machine drillers after the strike, 21 could have influenced the workers in Lonmin. 22 MR SEMENYA SC: NUM did become aware that 23 the RDOs are now being paid better. That's a simple 24 statement. Is it factual or not? 25 MR ZOKWANA: Where? In Impala?</p>

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1 MR SEMENYA SC: Mm.
 2 MR ZOKWANA: In Impala. It's what we
 3 have been saying, that the agreement – that the position
 4 taken by Impala in negotiating outside the bargaining
 5 forums, not that we're against the offering to machine
 6 drillers, we appreciate that because those workers, we
 7 believed them, but that has got this unintended consequence
 8 that people at other mines would demand the same for the
 9 same work.
 10 MR SEMENYA SC: Okay, we settled it. You
 11 became aware that they were paid more, right?
 12 MR HANABE: You became aware that?
 13 MR SEMENYA SC: As NUM, you became aware
 14 the RDOs got paid more – at Impala then.
 15 MR ZOKWANA: We were aware that the
 16 Impala management, under pressure from their own employees
 17 through the action taken, added pay on the RDOs, yes.
 18 MR SEMENYA SC: And as NUM, I suggest to
 19 you, you should have known that there would be a contagion
 20 effect on Lonmin for the RDOs as well.
 21 MR ZOKWANA: It is difficult to say yes,
 22 because these companies don't negotiate in the same
 23 bargaining forum.
 24 MR SEMENYA SC: Now -
 25 MR ZOKWANA: And it is not only workers

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1 from Lonmin and Impala who are in the platinum industry.
 2 MR SEMENYA SC: Ah, Mr Zokwana, you know
 3 that the RDOs would be talking amongst each other that,
 4 hey, we are now being paid better here and the others would
 5 say, why not us, we're doing the same type of job?
 6 MR ZOKWANA: It happened with miners.
 7 When they didn't pay properly miners left them and joined
 8 other mining companies.
 9 MR SEMENYA SC: So the answer is yes, at
 10 NUM you did know the consequence of an Impala salary
 11 increase was bound to have some impact, some effect on
 12 there RDOs at Lonmin?
 13 MR ZOKWANA: What we knew and we believed
 14 was going to happen was that the fact that the bargaining
 15 structures were undermined, the fact that methods that were
 16 not to have been in the industry – where people marched
 17 using violence, were accommodated without consequences –
 18 was going to have the very impact it had in Lonmin.
 19 MR SEMENYA SC: Chair, would this be a
 20 convenient stage for the tea adjournment?
 21 CHAIRPERSON: The Commission will take
 22 the tea adjournment at this stage.
 23 [COMMISSION ADJOURNS COMMISSION RESUMES]
 24 [15:17] CHAIRPERSON: The Commission resumes. Mr
 25 Zokwana, you're still under oath. Mr Semenya?

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1 SENZENI ZOKWANA (CONTD):
 2 CROSS-EXAMINATION BY MR SEMENYA SC (CONTD):
 3 Thank you, Chair. Mr Zokwana, I just want to read to you
 4 what Mr Gcilitshana said to the Commission. It would
 5 appear as a document marked XX1. That's the statement of
 6 Mr Gcilitshana, can you see that?
 7 MR ZOKWANA: Yes.
 8 MR SEMENYA SC: If you go to paragraph 4,
 9 which starts on the very first page, this is what appears
 10 there.
 11 MR ZOKWANA: Yes?
 12 MR SEMENYA SC: "NUM submits that the
 13 events that unfolded at Marikana are, to a significant
 14 extent, rooted in earlier events at the nearby Impala
 15 Platinum Mine where a protracted and unprotected strike,
 16 arising out of an RDO wage dispute, occurred at the
 17 beginning of 2012."
 18 MR ZOKWANA: Yes.
 19 MR SEMENYA SC: So I'm saying as NUM you
 20 should reasonably have expected that whatever happened at
 21 Impala was just coming to Lonmin and if you can avoid it,
 22 you would.
 23 MR ZOKWANA: Yes, let me say this in
 24 answer to that question, as the paragraph you have referred
 25 to shows. What the paragraph, to myself, shows, it shows

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1 the character of the uprising in as far as it is led by
 2 RDOs and is conducted with some violence as well as some
 3 level of intimidation. Between the two there are
 4 similarities.
 5 MR SEMENYA SC: And there would have been
 6 a desperate need by NUM to make sure that this demand is
 7 not presented in the same manner as it was at Impala.
 8 MR ZOKWANA: The statement made by Mr
 9 Brown, or Setelele, the branch chairperson of Lonmin, shows
 10 what steps NUM took to make sure that this process does not
 11 resemble the situation at – at Impala, when the dispute or
 12 the grievances became apparent. But if you ask the
 13 question as whether NUM expected its own members in any
 14 other mine to do what members in Impala did, in the fashion
 15 of their demands, NUM never expected that -
 16 MR SEMENYA SC: No, I'm not asking that,
 17 Mr Zokwana, I'm very careful. I'm saying that, as NUM, you
 18 should have known that it was important that this type of
 19 demand, if it manifests in Lonmin or any other place where
 20 you are in charge, does not have to manifest in the manner
 21 of violence and unrest. That's what I'm putting as a
 22 proposition to you.
 23 MR ZOKWANA: We expected NUM to raise
 24 their demands in a manner that conforms to our norms.
 25 MR SEMENYA SC: And the answer to my

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1 question?

2 MR ZOKWANA: The question being that

3 whether NUM was expecting this to happen in Lonmin?

4 MR SEMENYA SC: No. No, that NUM had a

5 duty, a responsibility to make sure that this legitimate

6 demand of the RDOs, which it acknowledges, should not

7 manifest in a violent way as it did in Impala.

8 MR ZOKWANA: NUM can only fulfil that

9 task to members who are willing to associate themselves

10 with the union, as you would be able to interact with them.

11 But once members decide to act in the manner that what

12 happened in Lonmin, it is difficult for NUM to do what you

13 are saying NUM could have done, that would be to say that

14 if you want to strike for wages, don't use violence.

15 MR SEMENYA SC: I want to share with you

16 why NUM did not see a negotiated road open for this

17 dispute. I invite you to look at exhibit YY1, it's a

18 statement of Mr Setelele. Do you have it?

19 MR ZOKWANA: I'm checking. Yes, I've

20 seen that. Yes -

21 MR SEMENYA SC: If you read with me

22 paragraph 4, this is how it will read, "The issue of this

23 demand by the RDOs was discussed at various meetings by the

24 NUM branches in Lonmin. NUM's position was consistently

25 put forward at these meetings, namely, that the wages of

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1 RDOs was covered in the two year collective agreement that

2 had been concluded in December 2011, that it was a breach

3 of this agreement for the RDOs to raise fresh wage demands

4 during the term of that agreement and that NUM was opposed

5 to unprotected and hence illegal strike action." Do you

6 see that?

7 MR ZOKWANA: I see that, yes.

8 MR SEMENYA SC: So you agree this was the

9 position NUM adopted around any fresh wage demands by the

10 RDOs?

11 MR ZOKWANA: Thanks, Chairperson. In

12 trying to show how, why I disagree with the question or the

13 proposition, let me put it that NUM structures in Lonmin in

14 2005 came to an agreement that was giving Lonmin a five

15 year agreement at CPIX plus, which was lower than the

16 industry minimum. Members came to head office and came to

17 us and reported their discomfort with the agreement. NUM

18 was able to revisit that agreement and that agreement was

19 overturned. The issue of five years was turned to two

20 years like other companies. The point I'm putting is that

21 had the RDOs put that to head office as an issue that

22 they're not happy with or the answer given to them by their

23 local leadership, national leadership could have seen it

24 otherwise. We had intervened but what NUM would have been,

25 was to promote an illegal strike for it should have been

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1 signed and agreed upon.

2 MR SEMENYA SC: Mr Zokwana, are you

3 saying Mr Setelele is wrong if he says the issue of this

4 demand by RDOs was discussed at various meetings at NUM

5 branches at Lonmin, is he wrong?

6 CHAIRPERSON: I think that's ambiguous.

7 What are you suggesting is wrong? Are you suggesting that

8 the allegation that there was a discussion was wrong or are

9 you suggesting that what was wrong was the NUM's position

10 as stated at the meeting?

11 MR SEMENYA SC: No, the fact that it's

12 stated there, Chair, by Mr Setelele that this issue of the

13 RDOs was discussed at various meetings by the NUM branches

14 in Lonmin. I want to know whether you are disputing that

15 to be accurate or not.

16 MR ZOKWANA: I'm not going to say that

17 he's wrong. the point I'm putting is that NUM has got

18 different structures that take different decisions and I

19 made the example that says that in 2005 our local branches

20 in Lonmin, with their chief negotiator, came to a

21 particular conclusion on wages but when the matter was

22 referred to the head office level, were able to overturn

23 that as we looked at the matter broadly. The point I'm

24 putting is that NUM could not have encouraged an illegal

25 strike.

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1 CHAIRPERSON: Mr Zokwana, you told us

2 about that but that's not what Mr Semenya is asking you

3 about now. He's asking you in relation to paragraph 4 of

4 Mr Setelele's affidavit, statement, asking you about the

5 various parts of it and the first part he's asked you

6 relates to the allegation by Mr Setelele that the issue of

7 the demand by the RDOs was discussed at various meetings by

8 the NUM branches in Lonmin and he's asking you, the next

9 part deals with what NUM's position was and so on. The

10 point he's asking you about at this stage of his cross-

11 examination is do you dispute the suggestion or the

12 allegation that this, the issue of this demand was

13 discussed at various meetings by the NUM branches in

14 Lonmin?

15 MR ZOKWANA: Thanks, Chairperson, I

16 understand the question now. My answer to the question is,

17 while that could have been the view of Mr Setelele and the

18 branch committee and the branches of Lonmin, if the matter

19 could have been brought to the attention of head office we

20 could have taken the matter up.

21 CHAIRPERSON: I understand, but you say -

22 you're still not answering the question. You're answering

23 what you think is going to be the next question. That's

24 never a good practice for a witness. What you're being

25 asked at this stage is, was there such a discussion? The

<p style="text-align: right;">Page 4484</p> <p>1 answer to that, I take it, is you say you accept that there 2 was because you then go on to the next question about what 3 Mr Setelele said. So do I understand your evidence to be 4 the following – I don't dispute, I, Zokwana, don't dispute 5 that there was a discussion at various meetings by the NUM 6 branches in Lonmin on this issue but if the position as set 7 out in the affidavit as being NUM's position, by Mr 8 Setelele, was conveyed to the members, you don't agree that 9 that was NUM's position because if the matter had been 10 referred to head office and not just dealt with locally at 11 Lonmin, there would have been a different result. Is that 12 what you're saying? 13 MR ZOKWANA: I'm saying just that, 14 Chairperson. 15 CHAIRPERSON: Mr Semenya? 16 MR SEMENYA SC: And you don't dispute 17 that this very position locally was put consistently to be 18 the position of NUM? 19 [15:37] MR ZOKWANA: It could have been the case 20 of that structure as they were negotiating with the 21 employer or negotiating with [indistinct] members. 22 MR SEMENYA SC: And also communicating 23 with the RDOs that, oh, please don't raise that issue with 24 us, we are bound by a two year agreement so don't even go 25 there.</p>	<p style="text-align: right;">Page 4486</p> <p>1 question I think your counsel may object to it, so let's 2 give him a chance to do so if he wants to. 3 MR TIP SC: Yes, Mr Chair, as usual I 4 interrupt my learned friend's cross-examination with 5 reluctance but it would appear to be fair that he should 6 draw the witness's attention to that portion of the 7 paragraph that he has just read where Mr Gegeleza says – 8 CHAIRPERSON: - he read the whole 9 paragraph, so that if he'd stopped before the last sub- 10 clause I would have made him read to the end, but he did 11 read to the end so the witness's attention was drawn to it. 12 I don't think that's a good objection, if I may say so, 13 unless you want to address me further. 14 MR TIP SC: No, I'll leave it to the 15 witness. 16 MR ZOKWANA: Well, my understanding of 17 the statement that has been made is that NUM, up to these 18 days, has not been shown to have received any demands from 19 machine drillers. What these statements are outlining are 20 the normal processes of what should happen. If, therefore, 21 I would have been shown a case where machine drillers went 22 to the NUM office and the NUM shop stewards refused to 23 listen to them, obviously machine drillers would have gone 24 to the regional office. If they don't get a good answer 25 from there, that would have gone to the head office. It is</p>
<p style="text-align: right;">Page 4485</p> <p>1 MR ZOKWANA: Possible, yes. 2 MR SEMENYA SC: In fact, if you look at 3 another document which is the statement of Mr Gegeleza, it 4 is marked ZZ2 – 5 MR ZOKWANA: Yes? 6 MR SEMENYA SC: You will find on the 7 document a paragraph 4 again. 8 MR ZOKWANA: Oh, yes. 9 MR SEMENYA SC: This is how it reads, 10 "Before the strike began on 10 August 2012, I had heard 11 from some co-workers that the RDOs were demanding a wage 12 increase to R12 500 and that this demand had emanated from 13 the RDOs at Karee Mine. At the time I was well aware that 14 a two year wage agreement was already in place that covered 15 the wages of RDOs. Accordingly, it was my belief that any 16 new wage demands should be raised and addressed only during 17 the course of the next round of wage negotiations or on the 18 basis that the circumstances justified a negotiated 19 amendment of the two year agreement." Do you see that? 20 MR ZOKWANA: I have seen that. 21 MR SEMENYA SC: So I want to suggest to 22 you, Mr Zokwana, that the reason NUM was not opening 23 negotiations on this issue had nothing to do with mandates. 24 MR ZOKWANA: Up to now I have not been – 25 CHAIRPERSON: Before you answer the</p>	<p style="text-align: right;">Page 4487</p> <p>1 what has happened before, it is what happened in 2005 and 2 at the end of those interactions people got what they 3 wanted. 4 MR SEMENYA SC: That may very well be so, 5 Mr Zokwana, all I'm saying is as far as the local 6 leadership of NUM was concerned, the one big stumbling 7 block to any negotiation is the fact that this two year 8 agreement's in place. 9 MR ZOKWANA: Well, I saw that statement 10 and I've read it, everything is true. There's nowhere in 11 this document where machine drillers – sorry, RDOs – have 12 went to the NUM office and put forward a demand. 13 MR SEMENYA SC: Mr Zokwana, no, you're 14 going to have to answer my question. I'm not suggesting 15 RDOs went to anybody. I'm saying the attitude of the local 16 leadership in relation to this matter was that there is an 17 agreement in place, we can't be raising fresh demands for 18 the RDOs. If you like, that is one of the attitudes they 19 held. 20 MR ZOKWANA: I have gone through these 21 statements and both of them - but the point again I'm 22 saying is that the RDOs as well decided that we'll not 23 approach NUM so that these issues – because I would 24 understand if there had been a case went to RDOs and went 25 to NUM and said, we demand you to represent us and NUM said</p>

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1 no, we can't because we're hamstrung by the agreement.
 2 MR SEMENYA SC: Okay, I'll ask this
 3 question this way. Do you accept that I am not asking you
 4 whether the RDOs did go or did not go to speak to the
 5 leadership. Withdraw that answer. Now, let's go back to
 6 what I was asking. On the face of these two statements, do
 7 you accept that the local branch, amongst others, thought
 8 the agreement of two years precluded opening of
 9 negotiations on the wages of RDOs?
 10 MR TIP SC: Mr Chair, I have to renew my
 11 objection. I've allowed a full exchange. My learned
 12 friend has read the paragraph, that's fine but he is now
 13 putting an interpretation on it. He says what these two
 14 statements amount to is that the existence of a two year
 15 agreement precluded any negotiations –
 16 MR SEMENYA SC: No, I didn't say –
 17 CHAIRPERSON: What he put was that, he's
 18 asking the witness whether he agrees, as I understand the
 19 question, that the attitude of the local branch was that
 20 there was this preclusion.
 21 MR TIP SC: Yes.
 22 CHAIRPERSON: And then depending on the
 23 answer he gets to that, he will then ask the next question,
 24 unless the witness more suo has already answered that
 25 question that hasn't been asked yet.

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1 MR TIP SC: That's not the core of my
 2 objection. My learned friend is under a duty to put
 3 propositions that arise out of these paragraphs fairly and
 4 what he has not given any attention to, although he has
 5 read it, is the portion I was going to refer to previously
 6 in Gegeleza's paragraph 4, where he says – and may I read
 7 it – "Accordingly, it was my belief that any new wage
 8 demands should be raised and addressed only during the
 9 course of the next round of wage negotiations or on the
 10 basis that the circumstances justified a negotiated
 11 amendment of the two year agreement." Now, that very
 12 clearly contemplates something different from what is being
 13 put, which is that there was an absolute preclusion and
 14 that must be put in a balanced and fair way, with respect
 15 to the witness.
 16 MR SEMENYA SC: No, Chair, I am very
 17 careful with the way I ask the question. I said –
 18 CHAIRPERSON: The point's being made by
 19 Mr Tip, he has now put the point to the witness which he
 20 says you didn't put, which would make it fair and in view
 21 of the fact that he has put the point, any question you ask
 22 him hereafter cannot be unfair, on the basis that that
 23 point was mentioned, which Mr Tip's mentioned already. So
 24 I suggest you proceed.
 25 MR SEMENYA SC: No, one of the attitudes

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1 that the local branch of NUM adopted around the
 2 negotiations for increased salaries of RDOs was that the
 3 two year agreement precluded it.
 4 MR ZOKWANA: There is that view but as
 5 well as, if you read Gegeleza's statement, the paragraph
 6 you didn't read that says that under certain circumstances
 7 such issues can be raised if they're brought appropriately.
 8 MR SEMENYA SC: Even with that education,
 9 I'm still going to come to it. Can we tidy up the first
 10 one? In these two statements there is one evident attitude
 11 that NUM takes. There is another, we'll come to it later
 12 if you want me to break it down that way. The first one
 13 is, the two year agreement precluded opening those
 14 negotiations. Do you accept that to be accurate?
 15 MR ZOKWANA: This is the view that is
 16 expressed by both but the last one says that yes, the last
 17 one says that, Chairperson, there may be circumstances
 18 arising that may require such amendments be made and I
 19 think that what these two are saying is that as there's the
 20 agreement signed, you can't take issues agreed upon to a
 21 strike but there's nothing wrong in raising any issue in
 22 the agreement, if circumstances arise.
 23 CHAIRPERSON: Mr Zokwana, it's not as
 24 simple as that because the two statements deal with
 25 different things. Mr Setelele's statement deals with the

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1 position put forward at the meetings. Mr Gegeleza's
 2 statement deals with what was his belief and what Mr
 3 Semenya is concerned with, is not so much what Mr Gegeleza
 4 says he believed but what Mr Setelele says was the position
 5 put forward at the meetings. So there is that distinction.
 6 So perhaps in the light of that distinction you might wish
 7 to elaborate on your previous answer.
 8 MR ZOKWANA: I take note of these views
 9 but I want to put it that in NUM, even after signing the
 10 agreement, nothing cannot be revisited if circumstances
 11 arise.
 12 CHAIRPERSON: May I ask you another
 13 question before Mr Semenya continues? We know that the
 14 market in relation to remuneration of RDOs had altered
 15 because of Impala's decision to raise the wages. Now,
 16 would that have been – would head office have regarded that
 17 as a change in circumstances which would justify an attempt
 18 by NUM to re-negotiate the wages of the RDOs, despite the
 19 fact that the two year agreement was still operating?
 20 MR ZOKWANA: Thanks, Chairperson. I
 21 agree with you but I wanted to, I put this point in this,
 22 that where there was a central bargaining forum like the
 23 Chamber, immediately these occurrences happened, NUM was
 24 able to meet with the Chamber – for which an extra R500 was
 25 given to RDOs – but the problem and the challenge that NUM

<p style="text-align: right;">Page 4492</p> <p>1 has been faced with was reluctance of employers to belong 2 to a central bargaining council. And it was therefore 3 difficult, therefore, to co-ordinate what individual 4 negotiators could have been doing.</p> <p>5 MR SEMENYA SC: Mr Zokwana, I want to pin 6 the argument for SAPS on accurate evidence. I want to be 7 able to say what your answer was to my question. I'm 8 repeating the first part to which you said that you note 9 the difference between the two statements. I'm not asking 10 you for the difference. I'm saying, do you accept this was 11 the attitude of the local branch of NUM, that one of the 12 reasons they're not going into opening negotiations is 13 because there's a two year agreement?</p> <p>14 MR ZOKWANA: Thanks, Chairperson. The 15 reason I've been trying to answer in this way is because Mr 16 Setelele is the chairperson of the Western Plat NUM branch. 17 There are other chairpersons of other branches. I've not 18 been afforded the views of the collective branch or the 19 minutes of such meetings that would support the view that 20 it was the decision of the branches that they took 21 together.</p> <p>22 MR SEMENYA SC: No, Mr Zokwana, I thought 23 we were past this point. We read paragraph 4, first line, 24 "The issue of this demand by the RDOs was discussed at 25 various meetings by the NUM branches in Lonmin."</p>	<p style="text-align: right;">Page 4494</p> <p>1 MR ZOKWANA: Whose demand? Sorry, 2 Chairperson, whose demand?</p> <p>3 MR SEMENYA SC: RDOs.</p> <p>4 MR ZOKWANA: In my recollection, in all 5 the statements I've gone through there was never a demand 6 to NUM by RDOs.</p> <p>7 CHAIRPERSON: Before you – the problem 8 with your question, by "the demand" it sounds as if you're 9 referring to a demand for 12 500. Maybe that was too much 10 but the question is whether it was appropriate to go to 11 Lonmin and say, look here, the market's changed, Impala 12 have raised the market price, as it were, for the services 13 of RDOs, it's therefore appropriate to re-negotiate. That 14 would be one issue. The 12 500 is another one. Now let's 15 leave the 12 500 out for a moment. You're busy really with 16 the question of whether it would've been appropriate for 17 the head office of NUM, if they'd been aware of these facts 18 – as they were aware of what was said at the branch level – 19 they were aware of what happened at Impala, would they have 20 gone to Lonmin and sought re – to amend the agreement on 21 the basis of those facts. Is that what you're busy with?</p> <p>22 MR SEMENYA SC: Three sectors, Chair. 23 You have mentioned one. The second sector is that the 24 inherent legitimacy of their claim for higher salary is 25 acknowledged. The third element is that Impala has now</p>
<p style="text-align: right;">Page 4493</p> <p>1 [15:57] MR ZOKWANA: I don't dispute that, that's 2 all, but the point I'm putting is that unless we were able 3 to see a reduced version of these discussions – because 4 it's easy for me to say in my statement, I was in a meeting 5 of NUM, unless maybe in most cases this could have been 6 shown because, as I've said, that nationally we accept that 7 agreement may be reached at any level but the fact that you 8 have signed the agreement does not preclude the matter 9 being raised. And I've shown examples that –</p> <p>10 MR SEMENYA SC: Okay, let's treat this 11 matter now. I'm going to explore with you the attitude of 12 head office and Mr Gegeleza's second belief.</p> <p>13 CHAIRPERSON: Mr Semenya, it's about two 14 minutes to four now. If you can deal with it briefly 15 before we take the adjournment, do so. If you feel that 16 it'll take some time then it'll be appropriate to take the 17 adjournment. You must tell me what you think is best.</p> <p>18 MR SEMENYA SC: Thank you, Chair. I'll 19 just give it a shot and if it doesn't work I might have to 20 revisit it. The second proposition, you say if NUM is 21 aware that if there are circumstances that justify 22 reopening the agreement, you would do it. Right?</p> <p>23 MR ZOKWANA: Yes.</p> <p>24 MR SEMENYA SC: We had agreed, you 25 recognise the demand as legitimate?</p>	<p style="text-align: right;">Page 4495</p> <p>1 also paid these individuals. Are those not sufficient 2 circumstances to justify revisiting the agreement?</p> <p>3 MR ZOKWANA: I have said that whenever 4 NUM receives a demand from members, if the answer is – had 5 the RDOs approached NUM on these demands, requesting NUM to 6 negotiate, the answer is yes, NUM was supposed to have 7 taken the demands to the employer, but none reached the 8 NUM.</p> <p>9 MR SEMENYA SC: Chair, we'll take this up 10 tomorrow morning.</p> <p>11 CHAIRPERSON: Before we adjourn until 12 tomorrow, there was an arrangement with Mr Mpfu that if 13 the NUM evidence ended today, we would not sit tomorrow, to 14 enable him to have consultations with his witnesses who 15 would be testifying from Monday. We haven't finished the 16 NUM evidence today. We have to sit tomorrow. Therefore I 17 propose that we should not sit on Monday to enable Mr Mpfu 18 and those appearing with him, to consult with their 19 witnesses. If we don't finish the NUM evidence by the end 20 of tomorrow, which will be 3 o'clock tomorrow, then I still 21 think that we – still propose that we should not sit on 22 Monday, to enable Mr Mpfu and his colleagues to do the 23 necessary consultations but we will then finish the NUM 24 evidence, presumably on Tuesday morning, after which I 25 would expect Mr Mpfu to be ready to call his witnesses.</p>

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1 I'm just announcing that now so that people can make
 2 arrangements and know what's going to happen.
 3 MR MPOFU: Thank you, Chair. Can we
 4 revisit that tomorrow because the only caveat I'll put is
 5 whether – is if I'm cross-examining at that time then it
 6 will bring a new factor into the mix, but we can revisit it
 7 tomorrow, Chairperson.
 8 CHAIRPERSON: We've got to be able to
 9 plan ahead.
 10 MR MPOFU: Yes.
 11 CHAIRPERSON: Mr Burger, do you want to
 12 comment on it?
 13 MR BURGER SC: No, absolutely. I'd like
 14 to have finality today as to what's happening. Also, I
 15 support that, Chair.
 16 CHAIRPERSON: No, the agreement was, as
 17 I've stated. The amendment that I'm suggesting I think is
 18 perfectly fair. The mere fact that Mr Mpofu might still be
 19 cross-examining at the end of tomorrow doesn't mean that
 20 he's unable to consult with his own witnesses on Monday and
 21 resume his cross-examination on Tuesday.
 22 MR MPOFU: No, it doesn't, Chair. All
 23 I'm saying is that the arrangement that I had requested
 24 from you, which we had agreed in chambers, was different
 25 from the one you are proposing now and that arrangement, as

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1 I understood it, was simply this, that whenever the NUM
 2 evidence finishes, we would like a day in order to
 3 precognize our witnesses. I do accept that you are
 4 amending it now, I'm just raising the possibility of it not
 5 serving the purpose for which it was originally requested.
 6 CHAIRPERSON: I'm sorry, I don't
 7 understand that. My understanding was, when we were
 8 talking about tomorrow - but the amendment that I'm
 9 stating, doesn't prejudice anybody because you get a full
 10 day to consult with your witnesses. If you're still busy
 11 cross-examining, it doesn't matter. You won't have to
 12 cross-examine on Monday, you can start with your witnesses,
 13 carry on with your cross-examination on Tuesday. I think
 14 in fairness to everybody they should know, sooner rather
 15 than later. That's why I'm announcing it now, what I
 16 propose doing. So that's what is going to happen. We will
 17 now adjourn.
 18 MR TIP SC: Chair –
 19 CHAIRPERSON: - for a moment, give Mr Tip
 20 a chance to say something.
 21 MR TIP SC: Mr Chair, what is now unclear
 22 to me is the status of Mr Mpofu's undertaking that we will
 23 be provided tomorrow with the statements of his witnesses
 24 and I just need to be certain that that is still in place.
 25 CHAIRPERSON: I didn't know that you

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1 hadn't got the statements yet.
 2 MR TIP SC: We haven't.
 3 CHAIRPERSON: He was – he was going to
 4 consult with, or precognize his witnesses tomorrow but I
 5 assumed that that would be done after the statements had
 6 already been furnished. Do you mean to say you haven't
 7 furnished your statements yet?
 8 MR MPOFU: Chairperson –
 9 CHAIRPERSON: Do I understand correctly?
 10 MR MPOFU: No, you don't understand
 11 correctly –
 12 CHAIRPERSON: Alright, well, please let
 13 me –
 14 MR MPOFU: Can I explain the position to
 15 you, please?
 16 CHAIRPERSON: Please do.
 17 MR MPOFU: Yes. The position is that our
 18 witness statements, as has been said on the record, were
 19 given on the 3rd and the 5th of December 2012, okay. Now
 20 what has happened, which I had discussed with Mr Tip, was a
 21 proposal by which, for the convenience of the Commission,
 22 instead of bringing those witnesses, we would bring the
 23 witnesses that relate to the 11th – while, in everybody's
 24 mind, the NUM issues are still fresh. And that was the
 25 proposal we did ourselves voluntarily for the convenience

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1 of the Commission. The question about the statements, it's
 2 got nothing to do with Mr Mpofu's undertaking. Everybody
 3 was ordered by you, Chairperson, in a meeting, that by
 4 tomorrow, on the 1st of February the statements should be in
 5 – not Mpofu.
 6 CHAIRPERSON: Mr Madlanga, have you got
 7 any comments to make in regard to this aspect? Do I
 8 understand that everybody's statements, including Mr
 9 Mpofu's, are going to be in by tomorrow?
 10 MR MADLANGA SC: Mr Chair, that would be
 11 my understanding. My understanding is, Mr Mpofu indicated
 12 that he would not be calling only the witnesses whose
 13 statements were submitted last year but that at some later
 14 stage - but not now when he calls his witnesses now – at
 15 some later stage he will be calling other witnesses. My
 16 understanding is that the arrangement is that the
 17 statements of the witnesses to be called at that later
 18 stage must come in tomorrow, like as is the arrangement
 19 with everybody else or with regard to everybody else.
 20 CHAIRPERSON: There's no basis for
 21 differentiating between Mr Mpofu's witnesses' statements
 22 and anybody else's witness statements, I take it.
 23 MS PILLAY: Sorry Chair, just a matter of
 24 clarity, I think. Everybody's witness statements had to be
 25 by last week Friday. Mr Mpofu was allowed a special

1 dispensation to file all of his statements by tomorrow, and
2 his witnesses.

3 CHAIRPERSON: Well, we expect your
4 statements tomorrow, Mr Mpofu, all of them.

5 MR MPOFU: Not everybody, Chair.

6 CHAIRPERSON: Alright, it seems that
7 there is, on this issue at least there's [inaudible].

8 [COMMISSION ADJOURNED]

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