

## Chapter 3

# Organisational rights

Organisational rights assist a union to recruit and service members, and to operate democratically.



## Organisational rights provided by the Act

The Act provides for the following organisational rights:

- Trade union access to a workplace. This includes the right of unions to:
  - ▲ enter an employer's premises to recruit or meet members;
  - ▲ hold meetings with employees outside their working hours at the employer's premises; and
  - ▲ conduct elections or ballots among its members on union matters.
- Deductions from employees' wages of trade union subscriptions by the employer for the trade union (stop-order facilities).
- Election of trade union representatives at a workplace. The more members the trade union has, the more representatives it can elect. The trade union representative can:
  - ▲ assist and represent employees in grievance and disciplinary proceedings;
  - ▲ monitor the employer's compliance with labour laws, for example, sectoral determinations and health and safety regulations or any collective agreement, and report any contravention to the employer, union or any responsible authority; and
  - ▲ perform any other function agreed to between the union and the employer.
- Leave for trade union activities during working hours. Union representatives are entitled to reasonable time off with pay during working hours to:
  - ▲ perform their functions as union representatives; and
  - ▲ receive training in the functions of union representatives.

Union office bearers who are employees may take off reasonable time to perform their union duties. The amount of time to be taken, as well as the number of days' paid leave, is a matter for negotiation between the union and the employer.

# How does a trade union acquire organisational rights ?

The LRA sets out procedures to be followed by a union wishing to gain organisational rights in a workplace.

## Step one

A registered union can write to an employer requesting some or all of the organisational rights listed in the Act. The notice to the employer must specify:

- the workplace for which the rights are requested;
- the extent to which the union is representative of employees in that workplace; and
- the evidence relied on to demonstrate that support.

The union must attach a certified copy of its registration certificate with the request.

Within 30 days of receiving the request, the employer must meet the union and attempt to conclude an agreement on how the union will exercise the rights it has requested. If an agreement is concluded the process stops here.

## Step two

If no agreement is reached, the union or employer may refer the matter to the CCMA in writing and send a copy to the other party. A CCMA commissioner then attempts to resolve the dispute through conciliation.

## Step three

If conciliation is unsuccessful, either party can ask for the dispute to be settled by arbitration. Often the dispute concerning organisational rights is about how much support the union has among employees at the workplace. To resolve this dispute, the arbitrator may conduct a ballot or make other investigations.

If the commissioner is satisfied that the union is sufficiently representative to enjoy certain organisational rights, he or she can make an award requiring the employer to grant the union those rights and specify how those rights are to be exercised.

### *Industrial action as an alternative to arbitration*

A union can choose to strike rather than to follow the route of arbitration, except for disclosure of information disputes. If the union embarks on strike action, it has to wait one year before it can turn to the CCMA to obtain organisational rights. In other words, the union has a choice of using the CCMA procedure or the route of industrial action (after following the correct procedures for protected strike action). However, it must live with the consequences of its choice for at least a year if it chooses strike action. See chapter 7 in this Guide for further details on strike procedure.

## Organisational rights and union membership

### Majority membership

If the applying union, or unions acting jointly, have majority membership in the workplace, they must be granted all the organisational rights provided for by the Act.

### No majority membership

If the registered union is not a majority union but it is at least 'sufficiently representative' it can apply for the following rights:

- access to the workplace for union organisers;
- deductions from employees' wages of trade union subscriptions by the employer for the trade union (stop-order facilities); and
- time off for trade-union activities for union office bearers who are employees.

The Act does not specify a fixed percentage of membership which will count as 'sufficiently representative'. Rather, this can vary according to the circumstances of a particular workplace.

In deciding if a union is sufficiently representative, a commissioner must take into account:

- the type of workplace;
- the sector in which the workplace falls;
- the organisational history of that workplace or other workplaces of that employer; and
- the type of rights the union wants to exercise.

### Examples:

In *SACTWU v WN Eachus & Co (Pty) Ltd*<sup>5</sup> it was held that 15.6% was not sufficiently representative despite SACTWU being a major player in the industry and representing 83% of employees at sectoral level. However, the arbitrator said that in some situations 15.6% might be sufficiently representative.

In *UPUSA v Komming Knitting*<sup>6</sup> the Commissioner found that the union was sufficiently representative with 22.5% because the union had demonstrated that it was capable of recruiting a majority but had lost a number of members as the business had a very high turn over.

One of the key issues an arbitrator must decide in determining whether a union is “sufficiently representative” is whether different branches or outlets of a company should be regarded as a “workplace” or whether representivity should be assessed across the company as a whole.

### Example:

In *OCGAWU v Woolworths*<sup>7</sup>, OCGAWU enjoyed 22% support in Woolworths’ branches in the Western Cape, with over 50% support in some branches, but almost no support elsewhere in the country. This meant that its national support was only about 6%. The arbitrator held that the individual branches of Woolworths could not be regarded as “workplaces” and that the 6% OCGAWU enjoyed nationally could not make it sufficiently representative to be given organisational rights.

<sup>5</sup> (1997) 1 CCMA 4.7.14 (on the IRNetwork)

<sup>6</sup> [1997] 4 BLLR 508 CCMA

<sup>7</sup> [1997] 7 BLLR 813 CCMA

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The threshold of representativeness may also be set by agreement between a majority union and an employer. This agreement must then be applied equally to all registered trade unions.

### Example:

In *OCGAWU v Volkswagen SA*, OCGAWU<sup>8</sup> applied to the CCMA for certain organisational rights. Before the matter went to arbitration, however, NUMSA, which was the majority union at VW, and VW, entered into an agreement setting the threshold for representation at 40%. The arbitrator upheld the validity of this agreement which had the effect that OCGAWU was not granted organisational rights as it did not have 40% support.

## Members of bargaining or statutory councils

Unions that are members of a bargaining or statutory council automatically enjoy access, meeting and stop-order rights.

## Disclosure of information

A union has a right to disclosure of information by an employer on a range of workplace issues. Only a registered majority union (or group of unions acting jointly which form a majority) in the workplace is entitled to this organisational right.

Employers can be asked to disclose to a trade union representative information which is relevant:

- for grievance and disciplinary proceedings;
- for monitoring of workplace-related provisions of the Act;
- for monitoring any law concerning working conditions;
- for monitoring any collective agreement;
- for reporting alleged contraventions of collective agreements and labour laws;

<sup>8</sup> (1999) 8 CCMA 4.7.4 (on the IRNetwork)

- for performing any other function the employer agreed that employees' representatives could do, eg helping an injured employee to claim compensation;

and to a representative trade union information which is relevant:

- for collective bargaining, eg wage negotiations; and
- for consultations, eg before retrenchments.

### When may an employer refuse to give information?

An employer may only refuse to give information for one of the following reasons:

- the information is legally privileged;
- the information is such that a law or order of court bans disclosure;
- the information is confidential and would cause substantial harm to an employee or employer if disclosed;
- the information is private and personal and the employee concerned does not agree to it being disclosed; and
- the information concerns the employer of a domestic worker.

### Can an employer be required to disclose information?

If there is a dispute about the disclosure of information, the employer or the trade union or trade union representative concerned may write to ask the CCMA to conciliate, and if the dispute is not settled, to arbitrate. Only the CCMA can deal with this type of dispute.

## Further information

### Relevant sections in the Act

Sections 11 - 22: Organisational rights

Schedule 7 Part C

### Forms to fill in

No forms