

# ORGANISATIONAL RIGHTS



## WHAT ARE ORGANISATIONAL RIGHTS?

Organisational rights are rights that a registered trade union may exercise in a workplace. The purpose of organisational rights is to enable unions to organise and represent workers at their workplaces. Organisational rights support a system of collective bargaining which is where a union (or unions) engage or negotiate with the employer (or employers) over terms and conditions of employment and other matters of mutual interest.

The Labour Relations Act 66 of 1995 (LRA) provides registered trade unions with the following organisational rights and the means to pursue them -

- (i) Access to the workplace for officials or “office bearers” of a trade union (Section 12).
- (ii) Deduction of trade union subscriptions or levies from an employee’s wage/salary (Section 13).
- (iii) The right of trade union members to elect representatives from amongst themselves (shop stewards) (Section 14).
- (iv) Leave for “office bearers” of trade unions for the purpose of performing that office (Section 15).
- (v) Disclosure of information to trade unions and/or trade union representatives for the purpose of negotiation, consultation or for the fulfilling of functions of shop stewards (Section 16).

**Note:** Registered trade unions who are parties to a bargaining council automatically have the rights contemplated in sections 12 and 13 in all workplaces within the registered scope of the council regardless of their representativeness in any particular workplace.

## WHO CAN OBTAIN ORGANISATIONAL RIGHTS?

Organisational rights can be obtained by registered representative trade unions. Section 11 provides that - “Unless otherwise stated representative trade union means a registered union, or two or more registered unions acting jointly, that are sufficiently representative of employees employed by an employer at the workplace.” In the case of Trade Union Representatives (Section 14) and Disclosure of Information (Section 16) the registered trade union(s) must have as members the majority of employees employed by an employer in a workplace. The commissioner must seek to minimise the proliferation of trade unions in any one workplace.

**NOTE:** The LRA does not define the term “sufficient representivity”, but lists a number of factors that are taken into account to determine whether a union is sufficiently representative. These factors are:

- the nature of the workplace;
- the nature of the organisational rights that the union seeks to exercise;
- the nature of the sector in which the workplace operates;
- the organisational history at the workplace; and
- the composition of the workplace taking into account the extent to which there are employees assigned to temporary employment services, employees employed on fixed term contracts, part time employees or employees in other categories of non-standard employment.

**Most representative:** A commissioner in arbitration proceedings may grant a registered trade union that does

not have majority representation at the workplace, similar rights conferred to a majority union, provided that it is sufficiently representative and that certain rights (in respect of trade union representatives and to disclosure of information) have not been granted to any other union in that workplace.

**Significant interest / substantial number:** A commissioner in arbitration proceedings may grant a registered trade union or two or more registered trade unions acting jointly, who do not have the required number of members as set out in a collective agreement the same rights as a sufficiently representative union, irrespective of the threshold requirements of a collective agreement, provided they represent a significant interest or a substantial number of employees in the workplace and the commissioner has applied his/her mind to the legal provisions concerning the granting of organisational rights. However, the parties to the collective agreement must be given an opportunity to participate in the arbitration proceedings.

## HOW DO UNIONS OBTAIN ORGANISATIONAL RIGHTS?

Section 21 of the LRA provides the procedure that must be followed in obtaining organisational rights prior to approaching the CCMA. This includes the union notifying the employer in writing that it seeks to exercise one or more rights in a workplace.

The notice referred to in subsection (1) must be accompanied by a certified copy of the trade union’s certificate of registration and must specify-

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- the workplace in respect of which the trade union seeks to exercise the rights;
- the representativeness of the trade union in that workplace, and the facts relied upon to demonstrate that it is a representative trade union, and
- the rights the trade union seeks to exercise and the manner in which it seeks to exercise those rights.

Within 30 days of receiving the notice, the employer must meet the registered union and endeavour to conclude a collective agreement. If the union wants to exercise organisational rights at a workplace where another person controls access to the workplace (for example where the workplace is situated in a business park or shopping mall), that person must be given an opportunity to participate in the arbitration proceedings.

**NOTE:** In determining the representativeness of the trade union for purposes of organisational rights, only those employees who are entitled to be members of the union in terms of its constitution may be taken into account (as per Constitutional Court decision in *NUMSA v Lufil Packaging & others*). While those employees may join the trade union, that membership will not be recognised for the purposes of entitlement to organisational rights.

## TEMPORARY EMPLOYMENT SERVICES (TES)

Where a trade union seeks to exercise organisational rights in respect of the employees of a temporary employment service (labour broker), it may seek to do so in either the workplace of the TES or the workplace of any of the TES's clients in which the TES employees are placed.

## DISPUTE RESOLUTION

The CCMA has exclusive jurisdiction to conciliate and, if necessary, arbitrate organisational rights disputes. Under certain circumstances, a registered trade union may elect to take strike action if the dispute remains unresolved.

## RELEVANT LEGISLATION

The Labour Relations Act 66 of 1995, as amended.

