

# Report of the Public Consultations on the Labour Amendment Bills, dated 24 April 2012 held at the Protea Hotel, Kimberley

## 1. Introduction

This was the sixth scheduled session and a follow – up on the one held in Bloemfontein on 23 April 2012. There was a very late venue change.

The proceedings started at 10:00 am. The local chap, did not introduce himself, but rather introduced proceedings.

Parties present were introduced : Mr Mkalipi(Chief Director of LR); Ian Macun(Director-collective bargaining);Virgil Seafield(Director – Employment Standards).

Copies of the slideshow, programme as well as a disc were provided in a well set out pack upon signing in.

There was a poor turnout – perhaps 60-80 people, a number of which straggled in during the process.

It was made clear (again) from the outset that the purpose of the session was not to obtain input from stakeholders but only to provide clarity on the tabled Bills. Those not satisfied can go to Parliament. **The process is in Parliament and one can check their schedules for the public hearings.**

They hope to finish the other 2 bills by end May earliest or latest early June.

Mr Mkalipi then did a similar introduction as per the other areas, just more in depth on the background. As such it will not be repeated again. Focus as always was on the fact that there were two camps : 1)Maintain Labour Brokers ; 2) Ban Labour Brokers.

### Slideshow presentation:

This followed similar content as per the previous presentations. I will therefore not set out the same content again, however I will set out any additions/extra comments made by Mr Mkalipi. Additional points set out hereunder with own points of emphasis or interesting comments bolded and underlined:

- **Mr Mkalipi finally admitted that the change in previous bills effectively was a ban on labour brokers, this despite denying this throughout the roadshow last year. This was amended by the current proposals**
- Social benefits not given to labour broker employees,etc was again emphasised
- **6 months : not much discussion on this issue. Mr Mkalipi just sets out the two camps' views on this issue ito time period**
- A broad statement was made saying business does not support equal pay for equal work without providing business' basis or full view
- **Again it was emphasised that there are concerns on constitutionality of s145 : giving Labour Court 6 months to hear a case and 6 months to deliver judgment**
- The Minister may be challenged ito PAJA iro Bargaining council determinations, but the Department feels that by publishing it for comment it may do away with any challenges.
- **BUSA threatened to take the Department to court re : increase on basic, 4 years ago**

- Minister can impose Sectoral Determination where there is a Bargaining council, where Minister feels that sector is vulnerable
- Squid industry given as an example where this “ineffective” Bargaining Council can lead to violent strikes.
- Ballot : According to the Department of Labour, Business want the majority of people who are entitled to vote to vote in favour of a strike for a strike to be legal. The Department feels this must be majority of people who came out to vote(example of national elections process given by Mr Mkalipi)
- **COSATU is not happy with the ballot system. Mr Mkalipi questions the democratic approach of the union in this regard.**

**Questions/comments raised by floor and DoL feedback: One man one question allowed this time. Later this was changed to one question per person per round of questions.**

| Name, organisation and summary of question/comment   | Summary of DoL response   |
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| <p><b>Petersen Maleye</b></p> <p><b>NUM</b></p> <ul style="list-style-type: none"> <li>• S189 : ito period of 6 months. What measures are put in place in the Bill to ensure that employers only give worker 6 month contract (GW : error – was referring to 198 clearly)</li> </ul> | <ul style="list-style-type: none"> <li>• Abuse of 6 months. Only 2 ways employers can abuse : taking one worker 2 months then another,etc. In Bill we talk about on the job.6 month period refers to the job not the employee.</li> </ul> <p>Next area of abuse is where client moves from one LB to another(same response as Bloem session).</p> <p>The Dept feels that because the Bills make client responsible, it takes away</p> |

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|  | <p>the ability of clients to argue they had no knowledge of employee</p>  |
| <p><b>Patrick</b></p> <p><b>Provincial Secretary SATAWU – Northern Cape</b></p> <ul style="list-style-type: none"> <li>Issue of strike.Ballot. If we must ballot our 50 000 plus members in the security industry and get 50 plus one how long will it take to get ballot completed?</li> </ul>  | <ul style="list-style-type: none"> <li>You are exaggerating your membership of 50 odd thousand. There are only 20-30 odd thousand workers in the industry.</li> </ul> <p>Many ways you can deal with voting in your constitution as a union</p>   |
| <p><b>Thembi</b></p> <p><b>Legal Advisor Legislature</b></p> <ul style="list-style-type: none"> <li>We had debate where we didn't agree. Perhaps Parliament as essential services ?</li> </ul>   | <ul style="list-style-type: none"> <li>Parliament is essential services, not provincial. Provincial is legislature not parliamentary services</li> </ul>  |
| <p><b>Unidentified</b></p> <ul style="list-style-type: none"> <li>I don't want. Labour Broker company says I did not dismiss you but client said remove and no other site. How will this be dealt with?</li> </ul>   | <ul style="list-style-type: none"> <li>Not answered</li> </ul>  |
| <p><b>Nathan</b></p> <p><b>Employer's organisation</b></p> <ul style="list-style-type: none"> <li>Joint referral to CCMA. Frustration to employees.</li> </ul>   | <ul style="list-style-type: none"> <li>Dealt with in answer above</li> </ul>  |
| <p><b>Another question from one above</b></p> <ul style="list-style-type: none"> <li>Company A gets 3 yrs contract and employ employees on one year contract</li> </ul>  | <ul style="list-style-type: none"> <li>Not answered</li> </ul>  |
| <p><b>Grant Wilkinson</b></p> <p><b>CAPES and business</b></p> <ul style="list-style-type: none"> <li>Mr Mkalipi, in the sessions you keep saying that business is against equal pay for work of equal value and then refer to moving away from the apartheid area. There is a logic though to the concern and not a bad motive. 1)Performance Management linked increases could lead to differential ; 2)Migration to a lower level of pay rather than upwards,etc ; 3)As an</li> </ul> | <ul style="list-style-type: none"> <li>Bizarre situation at NEDLAC. Ss14-21 and saying for organisational rights. If a union has organisational rights then they must be entitled to s16.It should not matter if majority representative or not doesn't mean you can't bargain. Making changes about CCMA – bizarre argument from business stating that this would make trade unions weak.</li> </ul> |

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| <p>example, FAWU recently reached a collective agreement in the Southern Cape regarding this with a company and are now themselves seeing the flaws in the system and have requested the company to change this back to the previous arrangement</p>  | <p>This is the same argument business is raising now. If one introduces equal work they raise this argument. We have progressive business worrying about lower wages – this is a bizarre argument from business.</p> <p>Issue of performance comes into the picture. You can have differentiation if 2 jobs are the same. It allows for equal work for equal value.</p> <p>Could be differentiation into length of service and performance.</p> <p>Everything being equal we don't think it will have an impact.</p> <p>Any union who has a problem with equal work for equal value can't represent employees</p> <p>Could be value based differentiation</p> |
| <p><b>Another question from NUM</b></p> <ul style="list-style-type: none"> <li>• Feels question not answered. You referring to a number of employees employed 6 months. Is it the intention of the law to not allow contract longer than 6 months</li> <li>• Reference to picketing with reference to picketing in malls. But from mining sector. Mine on farmer's land. What happens if farmer does not come to the party and not come to dispute between union and mine. What are implications outside of the negotiation?</li> </ul> | <ul style="list-style-type: none"> <li>• First question not answered</li> <li>• If you want picketing rules to affect third parties then must include them in the process. If farmer does not participate he is bound by collective agreement</li> </ul>  |
| <p><b>Kagiso</b></p> <p><b>Society of Family health</b></p> <ul style="list-style-type: none"> <li>• What is in place to deal with abuse and Unfair Labour Practices re:HIV</li> </ul>  | <ul style="list-style-type: none"> <li>• What could be the abuse of HIV in the workplace?<br/>Law – Employment Equity deals with Discrimination. We believe already covers this and sufficiently.</li> </ul> <p><b><u>Side comment(unrelated) : We make changes and business not agree to this- not part of this debate We say if earning R172000, you should be able to arbitrate at the CCMA on discrimination cases</u></b></p>  |
| <p><b>Pule Pule</b></p>   | <ul style="list-style-type: none"> <li>• Issue of acting – this is not temporal</li> </ul>  |

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| <p><b>Commission for Gender Equality</b></p> <ul style="list-style-type: none"> <li>• Temporary employee: acting in higher position. You work there 6 months or more and then they re-advertise the post and then hire someone else.</li> </ul>  | <p>employment</p> <p>Unions have agreed on how acting should be handled.</p>  |
| <p><b>Unidentified</b></p> <p>Question of citing respondent. Problem within 6 months and caused by client</p>  | <ul style="list-style-type: none"> <li>• Same example of security washing cars given yesterday. Therefore <b><u>even in 6 month period</u></b> you can cite the client.</li> </ul>  |
| <p><b>Premier's office</b></p> <p>S200B :I need understanding of protection of those employees</p>   | <ul style="list-style-type: none"> <li>• Not answered</li> </ul>  |
| <p><b>Melvin Jantjies</b></p> <p><b>POPCRU</b></p> <p>WRT the question of the labour courts having 6 months for a case to be heard and 6 months to issue judgment. Does the exceptional circumstances provision not allow employers to abuse the process?</p>  | <ul style="list-style-type: none"> <li>• The Court will have to answer this point after hearing argument from both sides</li> </ul>   |
| <p><b>Unidentified</b></p> <p>Refusal of employer or employee to allow CCMA intervention. What if the parties don't attend even if CCMA intervene?</p>   | <ul style="list-style-type: none"> <li>• We hope social partners are mature enough to respect the law. There is no provision to say if don't come this will happen. They may disagree now, but if it's law then it will be difficult for employer not to come because they will be seen as "spoilors" in the public eye.</li> </ul> |
| <p><b>Grant Wilkinson</b></p> <p><b>CAPES and business</b></p> <ul style="list-style-type: none"> <li>• Mr Mkalipi, yesterday you mentioned that OECD research contradicts the IMF, Sacci and other related research with regards to flexibility and job creation. Can you please direct me to that research, because according to us the OECD research back up our view?</li> </ul> | <ul style="list-style-type: none"> <li>• They say the SA labour regime is flexible enough. We agree they also say flexibility is important.</li> </ul>  |

Closure : Done by Esmerelda .

They have had stakeholders relevant to processes present and thank everyone for attending.

Mr Mkalipi, McCun and Seafield were thanked for the opportunity.

**Session closed**

Again there were cries of disbelief in the audience from the few business attendees throughout the presentation, but in the end no business people other than writer asked questions. Another reflection of the manner in which business is starting to show apathy to the process and it appears is throwing in the proverbial towel, alternatively – and I hope this is not the case – there may be a bit of arrogance and no care attitude from those in attendance who do not raise their voice or do not attend. If this is the case, there is a big problem and as representatives we need to ensure that this is investigated and if found to be correct, to provide a reality check and to get the support and buy-in of these groups

We as business representatives need to rapidly devise a plan to lift these flagging spirits and provide a central point of call for business to rally around and fight this. The time is now ladies and gentlemen. Failure to do this would be a failing on our part.

Again, I have constantly engaged the few employer organisations in the area to drum up support.

Next stop....Witbank on Thursday.

COMPILED BY GRANT WILKINSON

24/04/2011