

# ORGANISATIONAL RIGHTS



## WHAT ARE ORGANISATIONAL RIGHTS?

Chapter III Collective Bargaining, Part A Organisational Rights (sections 11-22) of the Labour Relations Act 66 of 1995 (LRA) provides registered trade unions with certain organisational rights and the means to pursue them. The rights in question are –

- (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).

## 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.

**NOTE:** The LRA does not define “sufficiently representative”.

## HOW DO UNIONS OBTAIN ORGANISATIONAL RIGHTS?

Section 21 (subsections 1-3) provides the procedure that must be followed in obtaining organisational rights prior to approaching the CCMA.

- (1) Any registered union may notify an employer, in writing, that it seeks to exercise one or more rights ... in a workplace.
- (2) 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-
  - (a) the workplace in respect of which the trade union seeks to exercise the rights;
  - (b) the representativeness of the trade union in that workplace, and the facts relied upon to demonstrate that it is a representative trade union, and
  - (c) the rights the trade union seeks to exercise and the manner in which it seeks to exercise those rights.
- (3) Within 30 days of receiving the notice, the employer must meet the registered union and endeavour to conclude a collective agreement as to the manner in which the trade union will exercise the rights in respect of that workplace.”

**NOTE:** An employer and a registered trade union with a majority membership, or parties to a bargaining council, may conclude a collective agreement in respect of thresholds of representativeness required to gain organisational rights (section 18), while registered trade unions that are parties to a council automatically have rights in respect of access to the workplace and deductions of trade union subscriptions and levies, irrespective of representivity in any particular workplace. (Section 19).

## HOW ARE DISPUTES OVER ORGANISATIONAL RIGHTS RESOLVED?

The CCMA has exclusive jurisdiction to conciliate and, if necessary, arbitrate organisational rights disputes. If a collective agreement is not concluded, either the registered union or the employer may refer the dispute to the CCMA. Should conciliation fail to resolve the dispute, the CCMA may arbitrate the matter. In the event that the dispute is in respect of rights conferred by sections 12 to 15 of the LRA, section 65 (2) permits the parties to pursue their dispute by means of a strike or lock-out provided that they are not bound by an arbitration award or collective agreement relating to the issue in dispute.

## WHAT DISCRETION DOES A CCMA ARBITRATOR HAVE IN ASSESSING REPRESENTATIVENESS?

The commissioner must seek to minimise the proliferation of trade unions in any one workplace. While taking cognisance of this principle, the commissioner may in certain circumstances, grant a trade union that does not have as members the majority of employees employed at the workplace, the right to provide for shop steward elections and the right to disclosure of information subject to the union in question having already acquired all other organisational rights on grounds of “sufficient representivity” and no other union having acquired the organisational rights in question.

A commissioner may also grant organisational rights relating to access, stop orders and leave for trade union activities to a registered trade union(s) that represents a “significant interest, or a substantial number of employees in the workplace” even where it does not meet the thresholds of representativeness established in a collective agreement.