

# Secret ballots don't infringe on the right to strike

The Labour Relations Amendment Act 8 of 2018 (LRAA), despite what some unions are claiming, was not drafted to punish them or deny members their constitutional right to embark on industrial action, says Advocate Tertius Wessels, legal director of Strata-g Labour Solutions.



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“The amendments to the Labour Relations Act (LRA), which requires unions to conduct a secret ballot amongst their members before they can embark on a protected strike, is not only legal but displays utilitarianism and is logical. South Africa currently sits with a 29% unemployment rate. The economy is expected to slow down in the third quarter, after the 3.1% GDP increase from the second quarter. To grow the economy, amongst other things, the country must attract investors. Industrial unrest intimidates investors, therefore, having legislation that regulates that unrest is good for the country,” explains Wessels.

According to the Department of Labour and Employment's Industrial Action Report, in 2017 South Africa lost 59.2 working days per 1,000 workers. The global average is around 30.6 days. According to the report, 125,000 employees were involved in strikes across all industries, costing the economy R251-million in lost earnings in 2017, compared to R161-million in

2016.

Section 19 of the LRAA requires trade unions to amend their constitutions to provide for secret strike ballots prior to embarking on strike action and therefore, trade unions are legally required to first conduct a secret ballot before embarking on any strike action.

The effect of section 19 of the LRAA was more recently dealt with by the Labour Court, in the case of *Johannesburg Metropolitan Bus Services (SOC) Ltd and Democratic Municipal and Allied Workers Union*. The Labour Court held that a failure to comply with the requirements of section 19 of the LRAA amounts to a breach of the LRA. More specifically, the Labour Court held as follows:

“ I am inclined to concur that an obligation on a registered union to conduct a secret ballot of its members before engaging in strike action in conformity with a provision which it ought to have included in its constitution in any event does not impose a limitation on the right to strike. It remains entirely within the union's power to remedy the situation. ”

“The objective of section 19 of the LRAA is to test whether an intended strike has the support of the majority of members of a trade union. Trade unions and their members are not being denied their right to strike. The legislation merely ensures that unions follow the rules stipulated in the LRA. If they meet the requirements, their strike will be a protected strike and no law can inhibit them from taking industrial action,” say Wessels.

“While most employees may be disgruntled with their employer, they may not necessarily want to strike because employers enforce the principle 'no work, no pay'. However, trade union members have historically been reluctant to vote against a strike publicly,” concludes Wessels.

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