

The Birth and Demise of a Trade Union under the Labour Relations Act 66 of 1995

The registration and deregistration of a trade union.

Trade unions play a very important role in the South African labour relations.

Registration

A registrar of the labour relations designated on the strength of section 108 of the Labour Relations Act 66 of 1995 (hereinafter "LRA") is charged with a duty to keep a register of registered trade unions and employers' organisations as contemplated by section 109 (1)(a).

Requirements for registration of trade unions are listed in section 95 of the LRA.

It is desirable for a trade union to be registered, however, registration is not strictly required in terms of the LRA. The LRA make registration desirable in that it gives certain organisational rights only to registered trade unions. These organisational rights include, but are not limited to, the right to access to a workplace to recruit new members and to consult with existing members, and also the right to have an office space within the workplace with telephone and facsimile facilities, depending on whether the union is the majority union with majority of members when compared to other unions within the workplace.

For a trade union to be registered, the union has to complete a registration form and file it with the registrar together with a copy of the trade union's constitution. There are certain requirements that the union must comply with, the union's constitution must also address certain issues. Once all the requirements have been met to the satisfaction of the registrar, the registrar will register a trade union or an employers' organisation. After registration a certificate of registration is then issued by the registrar. This certificate of registration is sufficient proof that a trade union or registered employers' organisation is a body corporate (section 97(1) LRA).

After registration, the trade union may function fully as a union by representing its members against the employer, conclude collective agreements as defined in the LRA, authorise a picket by its members, represent its members at the Commission for Conciliation, Mediation and Arbitration (CCMA), apply for the establishment of a workplace forum as well as bargaining council.

The union continues to function until, it is wound up (sections 103 and 104 LRA), it is declared that the trade union is no longer independent in terms of section 105 of the LRA or until the cancellation of its registration under section 106 of the LRA.

Cancellation of Registration

The life of a trade union ends when the trade union is deregistered in terms of section 106 of the LRA. The registrar has very little discretion under section 106, subsections 106(1) and (2) are peremptory.

Section 106(1) provides that the registrar of the labour court must notify the *registrar (of labour relation)* if the court –

- (a) In terms of section 103 or 104 has ordered a registered trade union or a registered employers' organisation to be wound up; or
- (b) In terms of section 105 has declared that a registered trade union is not independent.

(2) When the *registrar* receives a notice from the Labour court in terms of subsection (1), the *registrar* “must” cancel the registration of the trade union by removing its name from the appropriate register

(2A) the *registrar* may cancel the registration of a trade union or employers’ organisation by removing its name from the appropriate register if the registrar –

- (a) Is satisfied that the trade union or employers’ organisation is not, or has ceased to function as a genuine trade union or employers’ organisation, as the case may be; or
- (b) Has issued a written notice requiring the trade union or employers’ organisation to comply with section 98, 99 and 100 within a period of 60 days of the notice and the trade union or employers’ organisation has, despite the notice, not complied with those sections.

In *National Entitled Workers Union (NEWU) v The Ministry of Labour and 4 Others*, NEWU, the appellant appealed against the decision of the registrar of labour relations to deregister NEWU. The registrar had found that the appellant was not operating or had ceased to operate as a genuine trade union as envisaged in the Labour Relations Act. The Registrar’s conclusion was because NEWU’s audited financial statements in 2002, 2003 and 2004 contained irregularities which have not been explained by the appellant despite being given an opportunity to do so, that it was operating for gain of individuals and was not functioning in terms of its constitution.

After arguments by the parties and after the court applied its mind and considered the reasons given by the registrar for deregistering the appellant. The court found that the registrar has considered the representations made by the appellant - he court is satisfied that the registrar, when he invoked the provisions of section 106 of the LRA provided the appellant with more than sufficient opportunity to make representations. The court further found that the conduct of the registrar constitutes a fair and lawful administrative action which was based on transparent and fair process. The court held that, the registrar’s decision to invoke section 106 of the LRA was indeed not capricious and/or motivated by ulterior purpose. The appeal was dismissed with costs.

In conclusion, it follows that, the registrar in deregistering a trade union or a registered employers’ organisation is exercising an administrative action and that this administrative action has to be guided by the law and be just. The aggrieved trade union or employers’ organisation may challenge the registrar’s administrative action via available legal routes provided for in our administrative laws.