
LIMITING ORGANISATIONAL RIGHTS OF MINORITY UNIONS: *POPCRU V LEDWABA* 2013 11 BLLR 1137 (LC)

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SUMMARY

The *Labour Relations Act* 66 of 1995 unequivocally promotes the policy choice of majoritarianism, in furtherance of orderly collective bargaining and the democratisation of the workplace. The majoritarian model aims to minimise the proliferation of trade unions in a single workplace and to encourage the system of a representative trade union.

Section 18(1) of the *Labour Relations Act* enables majority unions to enter into collective agreements setting thresholds of representivity for the granting of access, stop-order and trade-union leave rights to minority unions. In furtherance of the majoritarian framework, collective agreements concluded between majority unions and employers can be extended to non-parties to the agreement in terms of section 23(1)(d) of the *Labour Relations Act* provided specified requirements are satisfied. In *Police & Prisons Civil Rights Union v Ledwaba* 2013 11 BLLR 1137 (LC) (*POPCRU*) the Labour Court was required to consider if the collective agreements concluded between the employer and the majority union could be relied upon to prohibit the minority union from securing organisational rights. In so doing, the Labour Court had to reconcile the fundamental principle of freedom of association and the right to fair labour practices (to organise and engage in unfettered collective bargaining) within the context of the majoritarian framework. The Labour Court in *POPCRU* held that the collective agreement concluded with the majority union must have preference over the organisational rights of minority unions, in keeping with the principle of collective bargaining hierarchy and the legislative framework.

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This case note argues that, while the finding of the labour court in *POPCRU* is correct on the facts and is in keeping with the principle of majoritarianism, the legislative model may no longer be suitable within the context of the current socio-economic and political landscape. Strike violence, loss of confidence in existing bargaining structures, and the alienation of vulnerable employees from majority unions has resulted in minority unions taking up the cudgels of frustrated and disempowered employees, as witnessed in the Marikana experience. The note suggests that in the light of the changing dynamics of the collective bargaining environment, it may be time to revisit the majoritarian model.

KEYWORDS: organisational rights; minority union; majoritarianism; collective agreement; *Labour Relations Act*.