

Employers may lock out non-strikers in a dispute of mutual interest

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Section 64 of the Labour Relations Act, 66 of 1995 (LRA), confers upon an employer the right to 'lock out'.



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The right to lock out may be utilised by the employer in an offensive or a defensive manner. In the case of offensive lock outs, the employer elects, of its own accord, to lock employees out in response to a dispute of mutual interest in accordance with the procedure set out in section 64(1) of the LRA. On the other hand, a defensive lock out occurs when an employer effects a lock out in response to a strike engaged in by its employees.

In the case of *PUTCO Proprietary Limited v Transport and Allied Workers Union of South Africa and others* (JA106/13) [2015] ZALAC 14 (5 May 2015), the Labour Appeal Court (LAC) pronounced upon the issue of whether an employer has the right to institute a lock out against all its employees in the relevant bargaining unit, including those employees who do not intend to strike and who are not a direct party to the negotiations regarding the dispute of mutual interest which gave rise to the strike and/or lock out.

Appeal case

The PUTCO case was an appeal against the decision taken by the Labour Court to interdict the appellant (PUTCO) from continuing with a lock out in respect of the first respondent's (TAWUSA) employees. Two other unions (SATAWU and TOWU) had declared a dispute of mutual interest against PUTCO and intended on embarking on a strike in respect of such dispute. TAWUSA was not a party to this dispute.

In response to the impending strike, PUTCO notified all three trade unions that it intended to engage in an offensive lock out of all the employees in the bargaining unit. TAWUSA argued that PUTCO had no right to lock out its members as its members were not participating in the strike.

Though TAWUSA was not a party to the relevant bargaining council structure under the auspices of which wage negotiations were under way and which gave rise to the dispute of mutual interest, the outcome of the collective bargaining process would have had an effect on TAWUSA given that the collective agreement concluded in the bargaining council structure would be extended to non-parties in the industry. As such, the matter of mutual interest would impact on the terms and conditions, and wages of the members of TAWUSA.

LAC's decision

The LAC in the PUTCO case accepted that an employer in a mutual interest dispute can lock out non-striking employees who are members of TAWUSA (a non-party union) in order to compel them to accept the employer's demand.

An employer may lock out non-striking employees in a dispute of mutual interest as a means of placing additional pressure on striking employees and trade unions. This right will bolster the employer's bargaining power.

Were it not for the right of the employer to lock out non-striking employees, an employer may experience economic loss occasioned by the employer having to remunerate the portion of its workforce that is not participating in a strike, but who may at any stage join the strike to the detriment of the employer and who will also benefit from the outcome of the collective bargaining engaged in by the striking employees.

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