

EMPLOYMENT RELATIONS



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The Chamber's Employment Relations Department strives to make a positive contribution to the creation and maintenance of a stable employment relations environment in the mining industry, and to create practical and sustainable value for key mining industry stakeholders in the employment relations sphere by:

- Promoting and fostering sound and constructive relationships with key stakeholders, particularly government and labour
- Providing a credible platform for knowledge development and sharing in critical areas with potential impact on employment relations in the mining industry and South Africa generally
- Being the trusted voice of the mining industry on employment relations-related policy and legislative matters
- Identifying and addressing key issues with labour relations implications for the mining industry

WAGE NEGOTIATIONS

Gold

The three-year wage agreement signed in 2015 is in effect until 30 June 2018. During the year under review, the signatories to this wage agreement focused on implementing the various commitments contained in it.

The task team established to investigate extending the retirement age for mineworkers, and underground artisans and officials, from the current 60 years to 63 years agreed that the Mine Health and Safety Council (MHSC) should commission research to determine the health and safety impacts on employees who opt to extend their retirement age to 63 years. The MHSC has begun work on this research project and will provide the parties with progress reports.

The Association of Mineworkers and Construction Union (AMCU) chose not to be part of the 2015 wage agreements, challenging them on various grounds:

- Variations of the Basic Conditions of Employment Act No 75 of 1997, contained in the wage agreement and granted by the Department of Labour, will be heard in 2018.
- AMCU referred an alleged unfair discrimination case to the Labour Court, arguing that the differences in wages between Category 4 to 8 employees, miners, artisans and officials constituted unfair discrimination based on race. The parties argued their various preliminary points in court while the Chamber and UASA argued their exceptions to AMCU's pleadings. We await the court's decision on the preliminary points.

Coal

In 2017, for the first time, we negotiated and concluded a three-year agreement with the unions on wages, and terms and conditions of employment, on behalf of our participating coal members. With the exception of one company, this was achieved without strike action.

Most Category 4 to 8 employees received increases of R1,100 per month on basic pay for the first year, staggered over a period, and guaranteed increases of 7.5% for years two and three. Most employees in the higher categories received increases of 7.5% for each year of the wage agreement. Significant increases were also effected to the medical incapacity payment.

The wage agreement was signed by the National Union of Mineworkers (NUM), UASA and Solidarity. Regrettably, the National Union of Metalworkers of South Africa (NUMSA), which was participating in the coal negotiations for the first time, did not sign the wage agreement. NUMSA subsequently referred a dispute of mutual interest to the Commission for Conciliation, Mediation and Arbitration (CCMA) where it is being processed.

EMPLOYEE INDEBTEDNESS

Indebtedness remains a concern in all spheres of South African society, and is intensified as economic circumstances deteriorate

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and job losses rise. Ironically, mining employees are vulnerable to formal and informal lenders as they have a stable, good income, and access to banking systems and other documentation.

Chamber members continued to provide financial literacy programmes to address employee indebtedness, including retirement workshops to educate employees about financial planning and budgeting processes. These workshops were open to employees of all ages to encourage them to plan for retirement as early as possible. The financial programmes ran throughout the year and included assistance with legal queries, home loan applications, and budget and debt consolidation.

MIGRANT LABOUR

Stakeholder engagements on immigration challenges continued in 2017, focusing on the following key issues:

- Temporary residence permits: The Department of Home Affairs, the Chamber, TEBA, NUM and AMCU agreed to explore the possibility of TEBA being given the authority to issue temporary residence permit stickers at the ports of entry. This alternative temporary residence permit process would obviate the need for foreign mineworkers to apply for their permits at foreign missions in their countries of origin. This would result in massive cost savings, remove unnecessary delays and ensure that foreign employees report back at work on the agreed dates. The stakeholders also agreed to explore the feasibility of issuing temporary residence permits for a three-year duration instead of the current 12 months.

TEBA and the Department of Home Affairs have had continuous engagements to resolve issues concerning the integration of systems, and to ensure data security and integrity.

- Corporate visas: During the period under review, the various stakeholders explored mechanisms to simplify the corporate visa application process for the mining industry, given that it is a big employer of foreign migrant labour. The proposals included legal ways to avoid burdensome requirements for the granting of corporate visas. A draft memorandum of understanding was finalised and referred to the parties' principals for consideration.

LABOUR POLICY COMMITTEE

The Employment Relations Department oversees and co-ordinates the Chamber's Labour Policy Committee (LPC), a forum that

brings together senior employment relations and human resources managers from Chamber members across all commodities, including mining contracting companies.

The forum seeks to influence policy and legislation affecting the mining industry through advocacy initiatives, engagements and participation in relevant debates and processes. The LPC develops and mandates industry positions on relevant issues, which in turn feed into national debates and processes, either directly or through other structures such as Business Unity South Africa (BUSA) and the National Economic Development and Labour Council (Nedlac).

A number of key issues discussed and mandated by the LPC during the period under review include social security and retirement, migrant labour and Sunday work.

When we became aware of a CCMA matter between one of the bargaining councils and a mining contractor working for some of the Chamber's members, we applied to the CCMA to join as a co-respondent as some of the issues presented for arbitration would have an impact on the mining industry and some of our members. The following arguments advanced in the arbitration were of particular concern to us:

- In order for a company to conduct business in the mining industry, the entity must participate in all four activities of "winning, extracting, processing and refining of minerals".
- Some activities classified in the bargaining council's Constitution, under civil engineering, were only of a civil engineering nature and character, and could therefore not fall under mining although also performed in the mining industry.

We presented written and oral arguments to the CCMA against the submissions mentioned above. The CCMA decided in our favour on both issues as follows:

- Where an employer performs activities closely related to the mining industry, the employer does not form part of the civil engineering industry even though the activities are of a civil engineering character.
- In order to be classified as mining, an entity need only perform any one of the four activities of "winning, extracting, processing and refining of minerals", and does not have to perform all four.

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The Chamber has representation on the Minerals and Petroleum Board. Most of the board's work is devoted to the processing of Section 52 notices. These notices are presented to the Minister of Mineral Resources when the profit to revenue ratio of mining companies falls below 6% or where the anticipated downscaling of operations is likely to result in the retrenchment of 10% of the workforce or 500 employees, whichever is the greater. In the period under review, the board processed 19 notices, conducted consultations and investigations, and prepared reports for the Minister of Mineral Resources on these notices.

The board also finalised terms of reference and guidelines for the Regional Mining Development and Environmental Committees (RMDECs) established in terms of the Mineral and Petroleum Resources Development Act No 28 of 2002 as committees of the board.

PARTICIPATION IN BUSA AND NEDLAC

In the execution of the Employment Relations Department's advocacy and lobbying functions, the department was involved in BUSA's Standing Committee on Social Policy and Transformation (SOCPOL) and Nedlac's Labour Market Committee (LMC).

During 2017, BUSA's SOPOL focused on various policy issues affecting business in general, including engagements with other social partners on the White paper on International Migration and the Private Members Bill, which culminated in the publication of the Labour Laws Amendment Bill 2017. The Bill seeks to introduce new forms of parental and adoption leave, and to increase the number of parental leave days.

The Chamber also represented overall business on the Nedlac Section 77 Committee, which hears and pronounces on applications by organised labour to participate in socio-economic protest action.

CAPTION

Kumba Iron Ore – Kolomela





CASE STUDY

TRANSFORMATION OF THE LABOUR RELATIONS ENVIRONMENT

The National Minimum Wage Panel drafted proposed legislation to implement a national minimum wage and the National Minimum Wage Act, 2017 is under discussion at Nedlac.

The Code of Good Practice: Collective Bargaining, Industrial Action and Picketing, as well as draft amendments to the Labour Relations Act No 66 of 1995 to address the issue of violent and protracted strikes, have been sent by the Department of Labour to the State Law Adviser for consideration. Once the State Law Adviser is satisfied with the code and the proposed Labour Relations Act amendments, the same will be referred to Parliament.

A multi-stakeholder Nedlac technical task team was created to implement the various objectives set out in the declaration. The Chamber's Employment Relations Department is involved in the task team, which began its work in January 2015 and was engaged in negotiations until the end of 2016. Labour pushed for a national minimum wage to be introduced. The then Deputy President, Cyril Ramaphosa, established a panel of experts tasked with the necessary research and preparation of a report with recommendations. The panel presented its findings to the Deputy President in December 2016 and inter alia recommended a national minimum wage of R3,500 per month. The findings will be considered by the Committee of Principals, including leadership of business and labour.

Following two years of negotiations through Nedlac, the task team ultimately developed codes of good practice on collective bargaining and on industrial action, aimed at promoting respectful and professional negotiations as well as peaceful industrial action. Amendments to the Labour Relations Act, providing for advisory arbitration by an independent panel in the event of prolonged and/or violent strike action, have also been drafted. These proposed amendments are supported by all the parties in Nedlac.

It is hoped that the proposed amendments to the Labour Relations Act will be passed by Parliament in the first half of 2017.

The Nedlac task team finalised and signed off its report in 2017.

The three Bills intended to deal with the national minimum wage, and violent and prolonged strikes, were tabled in Parliament and approved by Cabinet in 2017. The Bills were published for public comment in November 2017.

The National Minimum Wage Bill makes provision for the introduction of a minimum wage of R20 per hour.

The Basic Conditions of Employment Amendment Bill seeks to introduce amendments to the Basic Conditions of Employment Act in line with the provisions of the National Minimum Wage Bill. The primary amendments seek to repeal sections of the Act relating to sectoral determinations, and the powers and functions of the Employment Conditions Commission. The Bill also seeks to regulate monitoring and enforcement of the labour inspectorate to ensure compliance with the national minimum wage. The jurisdiction of the CCMA has been extended to include enforcement procedures and claims for underpayment in terms of the Basic Conditions of Employment Act and the national minimum wage.

The Labour Relations Amendment Bill seeks to strengthen collective bargaining and to introduce advisory arbitration mechanisms to resolve strikes that are intractable, violent or may cause a local or national crisis. The amendments to the Labour Relations Act will be accompanied by a Code of Good Practice on Collective Bargaining, Industrial Action and Picketing. The code is intended to provide practical guidance on collective bargaining, resolution of disputes of mutual interest and industrial action.

It is hoped that the Bills will be processed in Parliament as one package, as agreed at Nedlac.