"MATTERS OF MUTUAL INTEREST" FOR PURPOSES OF A STRIKE

Vanachem Vanadium Products (Pty) Ltd v National Union of Metalworkers of South Africa [2014] 9 BLLR 923 (LC)

1 Introduction

The concept of "matters of mutual interest" is used in a number of sections and definitions in the Labour Relations Act 66 of 1995 (LRA). This is an indication that this is an important concept in labour law, and it is therefore imperative that it be properly understood. At times this concept is misunderstood to be synonymous with disputes of interest, however, that is not necessarily the case (Grogan *Collective Labour Law* (2010) 103). This concept is used, for example, in the definitions of both collective agreement and strike contained in section 213 of the LRA. It is also used in section 134 of the LRA which deals with dispute resolution. In spite of its importance, the LRA does not provide a definition for the concept. As a result the interpretation of this concept has raised some challenges as it will be seen from *Vanachem Vanadium Products (Pty) Ltd v National Union of Metalworkers of South Africa* ([2014] 9 BLLR 923 (LC)). In this matter, the court was required to determine whether certain matters were matters of mutual interest for purposes of strike action. Section 213 of the LRA defines "strike" as:

> "the partial or complete concerted refusal to work, or the retardation or obstruction of work, by persons who are or have been employed by the same employer or by different employers, for the purpose of remedying a grievance or resolving a dispute *in respect of any matter of mutual interest* (author's own emphasis) between employer and employee …"

Based on the above definition, the purpose of the refusal to work by employees must be to "remedy a grievance" or "resolve a dispute in respect of *matters of mutual interest* between the employer and employees". A dispute which does not fall under matters of mutual interest is therefore not covered for purposes of a strike. The correct interpretation of this concept in this context is important as it ultimately determines whether or not a trade union and its members may strike in support of a particular demand. This note will consider the concept of "matters of mutual interest" and the way it has been interpreted and then evaluate the finding in *Vanachem Vanadium Products v NUMSA* in order to determine whether the court was correct in its determination of whether disputes or demands raised by NUMSA for purposes of a strike were matters of mutual interest or not.

2 Facts

The respondent ("NUMSA"), a majority union, concluded a strike-settlement agreement with the applicant ("Vanachem") on 5 December 2012. Clause 1 of the agreement stated that the parties agreed that conditions of employment contained in annexure "A" to the agreement would be determined and based on the terms and conditions of the Metal and Engineering Industry Bargaining Council ("MEIBC") main agreement. In terms of clause 37(1) of the main agreement, MEIBC is the sole forum for negotiating matters contained in the main agreement. The strike agreement stated amongst others the following (926H–I):

> "1.1 Linkage with the Main Agreement
>
> The parties agree that variation of all conditions of employment contained in Annexure A shall be determined and be based on the terms and conditions of the signed MEIBC Main Agreement Settlement Agreement.
>
> The above linkages shall be binding on the parties and remain in force until such time that the parties to the MEIBC have concluded the process of establishing the House Agreement Chamber which shall facilitate the incorporation of the House Agreements into the Main Agreement."

It must be noted that the House Agreement Chamber as referred to above has not yet been established by the council. NUMSA submitted a number of demands to Vanachem in May 2013, however, Vanachem refused to accede to those demands and a dispute was referred to MEIBC in that regard. The demands by NUMSA included an end to outsourcing HRM, house-keeping, etc.; payment for transport to and from work; appointment of full-time shop stewards; payment of risk allowances (heat allowance; chemical allowance and dust allowance); and training of artisans (927; par 6). Vanachem sought an interdict arguing that some of the demands by NUMSA were regulated by the main agreement and the strike-settlement agreement and therefore were not capable of being subjected to a protected strike action and/or that the demands did not constitute "matters of mutual interest" for purposes of the definition of a strike in the LRA, while some were unfair and unreasonable (927B–E). In particular Vanachem contended that the first and third demands do not concern matters of mutual interest and that the second, fourth and fifth demands were matters regulated by the main agreement and the strike settlement agreement (927I–J).

3 The finding by the court

The court noted that the main agreement established MEIBC as the sole forum for negotiating matters contained in the agreement. In relation thereto it referred to *CBI Electrical African Cables (Pty) Ltd v NUMSA* (J336/14), wherein Lagrange J, held that the exclusivity of central bargaining in clause 37(1) extended to only those matters contained in the main agreement; and not to a general prohibition against collective bargaining at plant level. He further stated that what matters is whether the demand in question is sufficiently closely related to an issue regulated by the main agreement to preclude plant level bargaining over it. He added that the main agreement does not provide that the bargaining council is a single forum for bargaining all matters affecting terms and conditions of employment – the exclusivity of

bargaining at central level is specifically limited to those matters "contained in the main agreement" (926E–G). The court noted that the phrase "matters of mutual interest" is not defined in the LRA, however, that it appeared in section 24(1) of the Labour Relations Act, 1956 which provided that industrial-council agreements could include "any other matter whatsoever of mutual interest to employers and employees". Reference was also made to *Rand Tyres & Accessories (Pty) Ltd v Industrial Council for the Motor Industry (Transvaal)* (1941 TPD 108 115), where it was held as follows:

> "Whatever can be fairly and reasonably regarded as calculated to promote the well-being of the trade concerned, must be of mutual interest to them; and there can be no justification for restricting in any way the powers which the Legislature has been the greatest pains to frame in the widest possible language."

The court found that "matters of mutual interest" means no more than what is of mutual advantage or benefit to employers and employees and therefore for the industry as a whole. According to the court the LRA does not use the term in relation to the competencies of sectoral level councils, but in a very different context, to define the scope of collective bargaining, dispute-resolution system and the scope of industrial action. The court referred to a few cases where the concept was given a wide and literal meaning (928–929). In *De Beers Consolidated Mines Ltd v CCMA* ([2000] 5 BLLR 578 (LC)), Pillay J, stated that "matters of mutual interest" must be interpreted literally to mean any issue concerning employment, since the phrase is not defined in the LRA. In *Ceramic Industries Ltd t/a Betta Sanitaryware v National Construction Building and Allied Workers Union* ((1997) 18 *ILJ* 716 (LC)) the court placed some emphasis on matters of mutual interest as matters calculated to promote the well-being of the trade concerned, and in *Itumele Bus Lines (Pty) Ltd t/a Interstate Bus Lines v Transport & Allied Workers Union of SA* ((2009) 30 *ILJ* 1099 (LC)) it was held that a demand by a trade union for an equity shareholding in the applicant concerned the matter of mutual interest as contemplated by the LRA.

Vanachem contended that in order for a matter to qualify as a matter of mutual interest it must have the following characteristics: (a) it must relate to the employment relationship between the employer and employee; (b) it must create new or destroy existing rights in the employment relationship and (c) it must be a matter in the interest of both employer and employee and must concern the common good of the enterprise. The court found that the approach used in (b) above is flawed as Vanachem confused disputes about matters of mutual interest and disputes of interest. The court held that disputes of rights and disputes of interests are subsets in the broader category of disputes about matters of mutual interest (929H–J). According to the court the interpretation of matters of mutual interest used by the applicant, ignored the provisions of the Constitution and section 3 of the LRA that any person applying the Act must interpret its provisions to give effect to its primary objects, in compliance with the Constitution and public international law obligations.

Regarding the outsourcing, appointment of shop stewards (*Digistics (Pty) Ltd v SA Transport and Allied Workers Union* (2010) 31 ILJ 2896 (LC); *Scaw*

South Africa (Pty) Ltd v NUMSA (J911/2013, 28 May 2013)) the payment of risk allowances and training of artisans, the court held that they were all work-related matters and therefore matters of mutual interest. With regard to the transport issue, the court found that the union was precluded in terms of clause 1 of the strike-settlement agreement and 17(1) of the main agreement, from raising the issue. Lastly in relation to the notice of motion in which Vanachem sought to interdict unlawful conduct in support of strike action, the court found that there was no sufficient factual basis laid in respect of any actual or anticipated acts of misconduct (933F).

4 Matters of mutual interest

The discussion that follows will deal with the concept of "matters of mutual interest" in general as interpreted by courts and as used in legislation. This concept was first introduced in South Africa through section 24(1) of the Industrial Conciliation Act 11 of 1924. This section listed matters which could be included in an industrial-council agreement. The section went further to include "any matter affecting or connected with other terms or conditions of employment of all employees or of members of any class or classes of employees whether remunerated according to time worked or work performed or on any basis or as to any matter whatsoever of mutual interest to employers and employees". Although the *Rand Tyres & Accessories v Industrial Council for the Motor Industry* decision of 1941 is an old decision, it also remains an important decision in as far as the interpretation of this concept is concerned. In terms of this decision, "whatever can be reasonably regarded to promote the well-being of the trade concerned must be of mutual interest". The view in *Rand Tyres & Accessories v Industrial Council for the Motor Industry* was confirmed by courts in subsequent cases (*Graaff-Reinet Advertiser (Pty) Ltd v Beckman* 1949 (1) SA 600 (E); and *Mustapha v Receiver of Revenue* 1958 (3) SA 347 (A)). It has also been held that matters of mutual interest include any matter that fairly and reasonably could be regarded as affecting the common interests of the parties concerned (*SACCAWU v Bredasdorp Spar* (1998) *ILJ* 947 (CCMA). The above interpretations, it is submitted, indicate that the concept of "matters of mutual interest" has been given a broad and wide meaning both before and after the introduction of the LRA (see also *Ceramic Industries v NCBAWU supra*; *SASBO v Bank of Lisbon International Ltd* (1993) 14 *ILJ* 394 (IC); and *De Beers Consolidated Mines Ltd v CCMA supra*).

As stated in the introduction, this concept is used in a number of definitions and sections under the LRA. Firstly, it is used for purposes of a collective agreement. A collective agreement is defined in section 213 of the LRA as:

> "a written agreement concerning terms and conditions of employment or any *matter of mutual interest* (my emphasis*)* concluded between one or more registered trade unions on the one hand and or more employers or registered employers' organisations on the other hand".

In view of the above definition, a matter of mutual interest must be a matter which can be regulated through a collective agreement (see also Mischke "What are Matters of Mutual Interest" 2001 10(9) *CLL* 89). A

collective agreement is a product of collective bargaining. Collective bargaining is the process by which employers and organised groups of employees seek to reconcile their conflicting interests and goals through mutual accommodation (see in this regard Grogan *Collective Labour Law* 99). Matters of mutual interest may therefore cover collective-bargaining issues such as wages; working hours, leave, physical working conditions, discipline, *etcetera*. The concept of "matters of mutual interest" has also been explained to include terms and conditions of employment as well as matters of direct relevance to the workplace and the job security of employees, such as health and safety issues, the dismissal of workers and the negotiation of disciplinary grievance (*The Media Workers Association of SA v Facts Investors Guide (Pty) Ltd* (1986) 7 *ILJ* 313 (IC)) and retrenchment procedures (Basson, Christianson, Dekker, Garbers, Le Roux, Mischke and Strydom *Essential Labour Law* (2009) 310). Thompson and Benjamin (*South African Labour Law* AA1-135) state as follows regarding the concept of matters of mutual interest:

> "it brings the complete array of employment and labour relations matters within the scope of collective agreements. Almost anything in which the qualifying parties have an interest – shared or opposing – and which is capable of joint and autonomous regulation, is fit for inclusion in a collective agreement".

It is again evident that this concept is broadly interpreted even where collective agreements are concerned, however, it must be noted that collective agreements can only deal with activities which are lawful and employment-related (*SASBO v Standard Bank* (1993) 14 *ILJ* 706 (IC)), and which can be inserted into the agreement by the decision of a judge or arbitrator or form the subject matter of industrial action (Thompson and Benjamin *South African Labour Law*). Negotiations may also not cover matters which are in conflict with any statutory provision (*Photocircuit SA (Pty) v De Klerk* (1991) *ILJ* 289 (A); and *Standard Bank of SA Ltd v SASBO* (1994) ILJ 564 (LAC)), or are unreasonable and unfair (*SACCAWU v Transkei Sun International Ltd* (1993) *ILJ* 867 (TkA); and *NUMSA v Samancor Ltd* (1) (1993) *ILJ* 718 (IC)), or legally and physically impossible to execute (*SASBO v Bank of Lisbon International supra*). In *Minister of Defence v SANDU* ((2007) 28 ILJ 828 (SCA) par 11) the SCA noted that the constitutional right to engage in collective bargaining does not entitle a trade union to engage in collective bargaining on any issue at large. It, however, guarantees the right to engage in bargaining on "legitimate labour issues".

Secondly, the concept of "matters of mutual interest" is used in the definition of strike (defined under par 1 above; see also section 213 of the LRA). According to the definition of strike, in order for a "refusal to work" to qualify as a strike, it must relate to resolving a dispute regarding "matters of mutual interest" between employer and employee. It must, however, be noted that the fact that a matter is of mutual interest does not necessarily mean that it is automatically a matter over which employees may strike. The first question in this regard is whether a dispute relates to the employer and employee or is a socio-economic matter. If it is a socio-economic matter, then employees may pursue that matter though protest action (see s 213 of the LRA for the definition of protest action) and not strike action. The second question is whether the matter is attainable by the employer, if not, then it is

not a matter of mutual interest for purposes of a strike. Political issues are therefore also excluded (Grogan *Workplace Law* (2014); and Grant "Political Stay-aways: The Dismissal of Participants" (1990) 11 *ILJ* 944). The intention to include the concept of matters of mutual interest in the definition of strike was an attempt to limit matters over which employees may strike; otherwise there would be industrial action almost every day. Although workers have a right to strike, the right is not absolute as it can be limited. The definition of strike in itself is a limit to this right. There are also other limitations in terms of section 65 of the LRA. It must, however, be noted that statutory limitations on the right to strike, do not change a matter from being of mutual interest (Mischke 2001 *CLL* 89). Employees may, for example, not strike over disputes concerning freedom of association; the interpretation and application of collective agreements; workplace-forum disputes concerning matters reserved for joint-decision-making (s 86 of the LRA); dismissals and unfair labour-practice cases (*Afrox Ltd v SA Chemical Workers Union* (2) (1997) 18 ILJ 406 (LC); and *Vista University v Botha* (1997) 18 *ILJ* 1040 (LC)). However, matters for consultation with the workplace forum provided for in section 84 of the LRA (including restructuring of the workplace, transfer of ownership, education, training and export promotion), and those in section 28 of the LRA over which bargaining councils may develop proposals may be regarded as matters of mutual interest for purposes of strikes (*SASBO v Bank of Lisbon International supra*). According to Brassey the phrase "mutual interest", refers to "the industrial or economic relationship between employer and employee" (Brassey *The New Labour Law* (1987) 246). Strikes fall under industrial action by employees and are also seen as an exercise of economic power by employees.

From the above it is evident that a matter of mutual interest is the one in which the trade union and the employer have a material and simultaneous interest. There is an element of mutuality in the phrase, which means that each of the parties (employer and employees) must have an interest in the matter at more or less the same time (Mischke 2001 *CLL* 88). If there is no mutuality, then the matter cannot be one of mutual interest. If the employer cannot do anything about the matter, for example, if the matter relates to the education policy or e-tolls, then the matter cannot be one of mutual interest between the employer and employees. The determination of whether a matter is of mutual interest will depend on the nature of the matter itself. The matter must relate to the employment relationship in order to be of mutual interest between the employer and employee (*Itumele Bus Lines v TAWUSA supra*). This requirement does not mean that interests must be identical or the same; coincidence is sufficient (Mischke 2001 *CLL* 89), because at times employers and employees have conflicting interests. A dispute between a trade union and its members is not a matter of mutual interest between a trade union and an employer (*Mzeku v Volkswagen SA (Pty) Ltd* [2001] 8 BLLR 857 (LAC) which was upheld in *Xinwa v Volkswagen of SA (Pty) Ltd* [2003] 5 BLLR 409 (CC)). It was held in *Itumele Bus Lines v TAWUSA* (*supra*) that employees' demand for equity shareholding in the employer's business may constitute a matter of mutual interest but on the same matter. In *Pikitup (Soc) Ltd v SAMWU* [2014] 3 BLLR 217 (LAC) the court upheld its decision that merely because a breathaliser test falls within the scope of managerial prerogative does not automatically exclude it from the class of

matters of mutual interest. This is an issue over which employees could bargain collectively and strike.

Thirdly, the concept of "matters of mutual interest" is used in the context of disputes (s 134 of the LRA). Under the old LRA a distinction was made between disputes of right and disputes of interest. Disputes of right arise from breaches of rights contained in statutes, collective agreements and contracts of employment (*MWU v AECI Explosives and Chemicals Ltd* [1995] 3 BLLR 58 (IC)). Such disputes are dealt with through arbitration under the LRA. Disputes of interest relate to proposals for the creation of new rights or the diminution of existing rights (*SADTU v Minister of Education* (2001) *ILJ* 2325 (LC) par 43). Disputes of interest are subject to collective bargaining. These disputes are dealt with through negotiation or industrial action (Grogan *Collective Labour Law* 103). Section 65(1)(c) of the LRA prohibits strikes over any issue that a party has the right to refer to arbitration or to the Labour Court in terms of the Act. In *HOSPERSA v Northern Cape Provincial Administration* ((2000) 21 *ILJ* 1066 (LAC)) the court stated the following regarding disputes of right and disputes of interest:

> "broadly speaking, disputes of right concern the infringement, application or interpretation of existing rights embodied in a contract of employment, collective agreement, or statute, while disputes of interest (or economic disputes') concern the creation of fresh rights, such as higher wages, modification of existing collective agreements, etc".

The above discussion has shown that indeed the concept of "matters of mutual interest" is generally given a broad interpretation and this makes the list of matters which may fall under this category endless and this usually makes it difficult to determine which matter should not be included as a matter of mutual interest or not.

5 Evaluation of the court's finding

The discussion that follows will consider the court's finding in order to determine whether it was correct. Firstly, the court was correct in stating that clause 37(1) of the MEIBC main agreement covered only matters contained in the main agreement, and was not a general prohibition against collective bargaining at the plant level (*CBI Electrical African Cables v NUMSA supra*). Based on this, MEIBC was therefore the sole forum for only matters contained in the main agreement. Annexure A to the strike-settlement agreement which linked to the main agreement also contained specific matters which would be determined based on the main agreement and this, it is submitted, meant that matters not specifically mentioned in the agreement were excluded. It must be noted that, although the LRA promotes collective bargaining at sectoral level, bargaining can still take place at the plant level (*SALGA v IMATU* [2014] 6 BLLR 569 (LAC)). It is upon the parties to decide at which level they would like to bargain (*SAWU v Rutherford Joinery (Pty) Ltd* (1990) 11 ILJ 695 (IC); and *Rainbow Farms (Pty) Ltd v NUFBWSAW* [2008] JOL 21761 (LC)).

With regard to the meaning of the concept of "matters of mutual interest" in relation to demands which NUMSA submitted to Vanachem, it is submitted that the court was correct in relying on section 24(1) of the 1956;

the finding in *Rand Tyres & Accessories v Industrial Council for the Motor Industry* (*supra*) and various relevant provisions of the LRA, as this concept is not defined by the LRA. As stated by the court, the LRA uses the concept of 'matters of mutual interest' to define the scope of collective bargaining, dispute resolution and industrial action. As discussed above it is evident from the meaning provided by both section 24(1) and *Rand Tyres & Accessories v Industrial Council for the Motor Industry* (*supra*) that the concept of "matters of mutual interest" has been given a wide interpretation. As long as a matter is of mutual interest or is of mutual advantage or benefit to the employer and employees, it would be regarded as a "matter of mutual interest" between the parties. If a matter concerns employment (*De Beers Consolidated Mines Ltd v CCMA supra*) and the well-being of the trade (*Ceramic Industries v NCBAWU supra*), it would also be covered under this concept. In view thereof, the court was correct in finding that Vanachem's contention that, in order for a matter to qualify as a matter of mutual interest, it must create new or destroy existing rights in the employment relationship, was flawed. This was based on the fact that Vanachem confused disputes about matters of mutual interest and disputes of interest and that its interpretation of the concept ignored provisions of the Constitution and section 3 of the LRA. Section 3 of the LRA requires that anyone applying the Act must give effect to its primary objects in compliance with the Constitution and public international law obligations. Both the Constitution and the LRA protect the right to engage in collective bargaining and the right to strike in support of collective-bargaining demands. Disputes of interest as stated above relate to proposals for the creation of new rights or the diminution of existing rights (*SADTU v Minister of Education supra*; and *MWU v AECI Explosives supra*), whereas disputes of right relate to the interpretation of existing rights. Section 134 of the LRA refers to "matters of mutual interest" and this includes any dispute between the employer and employees, including both disputes of right and disputes of interest (Grogan *Collective Labour Law* 103).

Now the focus will be on specific demands by NUMSA, in order to determine whether they were indeed matters of mutual interest. As stated above, NUMSA and its members could not participate in a strike which had as demands matters which were either regulated by the main agreement or the strike-settlement agreement. The demand relating to transport was regulated in terms of clause 1 of the strike-settlement agreement and clause 17(1) of the main agreement and therefore the court was correct in stating that NUMSA was precluded from striking in support of the demand (932B). Section 65(1)(a) of the LRA discourages strikes where there is an agreement in place which regulates an issue in dispute. This is, however, applicable to matters regulated by the agreement during its operation (*South African National Security Employers Association v TGWU* [1998] 4 BLLR 364 (LAC)). Furthermore section 65(3)(a)(i) of the LRA prohibits employees from embarking on a strike where they are bound by a collective agreement which regulates the issue in dispute. Parties who concluded a collective agreement regarding a particular matter should be bound by the terms of such agreement and not be allowed to try to attain a more favorable outcome through a strike (Basson *et al Essential Labour Law* 294). The purpose of these two provisions (s 65(1)(a) and 65(3)(a)(i) of the LRA) is to

promote orderly collective bargaining and to prevent employees to resort to strikes where it was agreed that it would not be proper to use industrial action (Van Niekerk, Christianson, McGregor, Smit, van Eck *Law@work* (2011) 406). Employees cannot strike in support of a demand already agreed upon or regulated by a collective agreement (*Cape Gate (Pty) Ltd v NUMSA* [2007] 5 BLLR 446 (LC)). An agreement may establish a substantive rule regarding an issue or create a process for resolving the issue (Du Toit, Godfrey, Cooper, Giles, Cohen, Conradie and Steenkamp *Labour Relations Law: A Comprehensive Guide* (2015) 353) In terms of section 28(1)(i) of the LRA a bargaining council may also through a collective agreement determine matters which may not be issues in dispute for purposes of a strike in the workplace. If such an agreement exists, it will be given precedence in respect of matters covered in the agreement. Therefore, in the present case, NUMSA could not strike on matters regulated in terms of the MEIBC main agreement or the strike-settlement agreement.

However, other demands relating to outsourcing; the appointment of shop stewards; payment of risk allowances and training; were not regulated by either the main agreement or the strike-settlement agreement. The enquiry that follows will determine whether these demands were indeed matters of mutual interest between the employer and employees. It is submitted that the court was correct in finding that these matters were matters of mutual interest. These demands can reasonably be regarded to promote the well-being of the trade (*Rand Tyres & Accessories v Industrial Council for the Motor Industry supra*); are of direct relevance to the workplace and of mutual advantage and benefit to the parties. They are matters which could be fairly and reasonably be regarded as affecting the common interests of the parties (*SACCAWU v Bredasdorp Spar supra*). Although opposing interests, both NUMSA and the employer, have an interest in all the demands and at more or less the same time. The trade union and the employer have a material and simultaneous interest in the demands. There is therefore an element of mutuality from both parties in the demands (Mischke 2001 *CLL* 88). All the above demands, it is submitted, are matters of mutual interest between the employer and employees.

The last determination is whether NUMSA and its members could strike over the demands. The definition of strike requires that a refusal to work must be for the purpose of resolving a dispute in respect of a matter of mutual interest between employer and employee. For this purpose the demand must relate to the employment relationship and be attainable by the employer, otherwise, it will not be a matter over which employees may strike. It must be a matter between the employer and employees (*SA Post Office Ltd v TAS Appointment and Management Services CC* [2012] 6 BLLR 621 (LC)). The employer must be the target of the dispute. It is submitted that all matters mentioned above are not only matters of mutual interest, but are also matters which relate to the employment relationship and attainable by the employer. Furthermore, there is no limitation or prohibition on the right to strike in as far as all these demands are concerned, as they are neither regulated in terms of the main agreement and/or the strike-settlement agreement (*SANSEA v TGWU* [1998] 4 BLLR 364 (LAC)). The court was therefore correct in finding that members of NUMSA could strike in support of the above demands.

6 Conclusion

It is evident from the discussion above that the concept of "matters of mutual interest" is usually given a broad interpretation (*Rand Tyres & Accessories v Industrial Council for the Motor Industry supra*; *Ceramic Industries v NCBAWU supra*), and therefore the debate on whether a matter is of mutual interest between employers and employees will continue. The use of the concept by the LRA is also broad and often brings confusion as to what is covered and what is not. Its scope seems limitless and it may be open to different interpretations. This may result in employees and their trade unions becoming unreasonable and at times making impossible demands to employers (*Greater Johannesburg Transitional Metro Council v IMATU* [2001] 9 BLLR 1063 (LC)). Given this, there is therefore a need for legislation to provide a definition of the concept. However, in the meantime it is pivotal for employees to take note that they are allowed only to make demands and engage in strikes on legitimate labour issues (*Minister of Defence v SANDU supra*). If a demand relates to political or socio-economic interests of employees or is regulated in terms of a collective agreement, employees cannot use strikes and pressure employers into changing agreed terms and conditions of employment while such agreement is still in operation.

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