



The NUMSA scope is not limited only to the metal industry and any attempt to deny NUMSA and its members organisational rights is malicious and legally unsustainable
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Press Statement

The National Union of Metalworkers of South Africa (NUMSA) has taken note of the decision of the Constitutional Court in **AFGRI Animal Feeds (A Division of PhilAfrica Foods (Pty) Limited) v National Union of Metalworkers South Africa and Others [2024] ZACC 13**, in which the Honourable Court interpreted Sections 161 and 200 of Labour Relations Act 66 of 1995 and held that a trade union's constitution is definitive of the trade union's powers and the admission of members outside of its registered scope is ultra vires and invalid.

The aforesaid judgment effectively restated the principles already enunciated in **National Union of Metal Workers of South Africa v Lufil Packaging (Isithebe) (2020) 41 (ILJ)1846 (CC)**.

In **Lufil Packaging** the Honourable Constitutional Court had also stated the following:

“As a matter of common law and based on the LRA, NUMSA’s constitution precludes membership outside of those industries listed in Annexure B. Any admission of members outside the terms of the constitution is ultra vires and invalid.” (paragraph [56])

and

“NUMSA’s definition of its scope is binding upon it. It follows that it could amend its scope of membership, without limitation, provided it follows its prescribed amendment procedures.” (paragraph [48])

[underlining added]

Pursuant to and in accordance with the aforesaid statement of the Constitutional Court in Lufil, NUMSA's Central Committee had resolved on 25 May 2020 to amend the scope of the union, which it was empowered to do by virtue of Chapter 1, Section 1(2) of NUMSA's registered Constitution, which reads as follows:

“(2) *Scope*

The scope of the union is as per Annexure B of this document. The Central Committee may amend the scope from time to time.”

[underlining added]

The aforesaid amendment of NUMSA's scope did not constitute an amendment to NUMSA's Constitution but constituted the valid exercise of a power in terms of and pursuant to an express term in NUMSA's registered Constitution. As such it is not a legal requirement to have the amended scope first registered by the Registrar of Labour Relations before same is effective.

The correctness of the aforesaid approach has been confirmed by the recent decision of the Honourable Labour Appeal Court in **South African Clothing and Textile Workers Union v Bargaining Council for the Furniture Manufacturing Industry - KwaZulu-Natal and Others (DA9/22) [2024] ZALAC 20 (2 May 2024)**, where the following were stated:

“[50] ... In the current matter, the union's decision to expand its scope to the furniture industry was one taken in terms of and pursuant to an express term of its constitution which permitted this to be done by resolution. Given that the exercise of such a power was expressly provided for in clause 3.2.12 of the union's constitution, the Labour Court erred in finding that the resolution taken constituted a change envisaged in section 101 of the LRA, which required registration with the registrar in order to ensure publication.

[51] Undue limitations are not to be placed on an employee's right to join a trade union “subject to its constitution” or on a trade union's right

to determine its own “administration, programmes and activities” and organise. Had there been a change to the union’s constitution, section 96(3)(b) requires that the registrar “if satisfied that the applicant meets the requirements for registration, must register the applicant by entering the applicant’s name in the register of trade unions or the register of employers’ organisations”. Given that there was no change to the terms of the union’s constitution, the Act requires no action to be taken by the registrar. Further, where a union by resolution has expanded its scope in accordance with the terms of its registered constitution, the Act does not require such expanded scope to be either registered or published by the registrar. The inclusion of any such requirement in the Act is a matter reserved for the legislature and there exists no basis on which to find that any such requirement should be read into the law as it currently stands.”

Notice is accordingly hereby given to all interested parties that in terms of the Resolution of NUMSA’s Central Committee dated 25 May 2020, NUMSA’s scope is in fact the following:

“SCOPE OF THE UNION

1. The union shall be open to all workers in all the economic sectors of South Africa.

2. This includes, but is not limited to, those sectors, industries and activities set out below as well as any employers operating, in whole or in part, within the supply chain of these industries:

(1) All manufacturing and engineering related industries, including electrical engineering and contracting, automobile assembling and the manufacturing of products referred to below

(2) Scrap metal and recycling industries

(3) Lift and escalator industry

(4) Chemical Industry

(5) Plastics industry

(6) Motor industry, including fuel distribution and stations as well as the sale, assembly, manufacture, servicing of and repairs to motor vehicles

(7) Mining including quarrying, smelting and refining

(8) Energy sector, including electricity, gas, wind, water and solar, and renewable energy

(9) Building, construction and civil engineering

(10) Forestry and agriculture (including agricultural processing), timber, paper and packaging industries

(11) Agricultural manufacturing and processing, including sugar production and animal feeds

(12) Locksmithing trade

(13) Wholesale and retail industry, including distribution centres in the retail sector

(14) Security

(15) Cleaning, including laundry and dry-cleaning

(16) Transport and Logistics Industries, including passenger transport and the transportation of freight by road, rail, water or air

(17) Maritime sector

(18) Health services

- (19) Catering, including restaurants*
- (20) Broadcasting and broadcasting infrastructure*
- (21) Information technology and communication*
- (22) Education, including higher education institutions*
- (23) Business and professional services*
- (24) Finance and financial services*
- (25) Organs of state, including parastatals.”*

NUMSA sincerely trusts that the aforesaid will bring an end to the unfortunate disinformation which is being circulated based upon an incorrect (and in many instances deliberately so), interpretation of the law and the concomitant unacceptable attempts to deny workers their fundamental right to association and collective bargaining through NUMSA as their chosen trade union.

ENDS

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