

Trade Union Recognition in the South African Workplace and the Canadian Bargaining Unit: Some Comparative Insights into Bargaining Constituencies

Wilhelmina Germishuys-Burchell

Associate Professor at the University of South Africa

Abstract:

The paper seeks to identify specific challenges surrounding the legal regulation of trade union recognition with specific reference to the 'workplace' as the constituency within which the majority rules. The definition of 'workplace' in the South African Labour Relations Act 66 of 1995 creates the potential for minority interests to be ignored, and it hinders even majority unions seeking recognition, especially where the workplace is dispersed across different locations. This predicament, and the harsh effect and the potential dangers of excluding minority voices in the labour context, has also been recognised by the Constitutional Court. In this context, this paper considers two factors central to the concept of the independently determined 'appropriate bargaining unit' in Canadian law. The first factor is how best to accommodate special or significant minority interests, and the second is how best to address recognition in the context of multi-location employers. Although the Canadian legal system (like the South African one) clearly favours majority unions, this paper ultimately seeks to show that Canadian law shows greater awareness of the potentially unfair (or harsh) effects of majoritarianism applied either without qualification or to an inappropriate constituency. The paper concludes with some insights from the Canadian approach for regulating trade union recognition more appropriately in South Africa.