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**SA Labour Guide Conference: Case law Update 2017  
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**Collective Bargaining & Industrial Action: New Groundrules?**

**Presenters:**

**Patrick Deale: Labour Lawyer & Mediator, Deale Attorneys**  
**Bruce Robertson: Editor, Worklaw**

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# Collective bargaining & industrial action

## Time for a Change

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# Current situation

- **Collective bargaining**
  - Annual negotiation ritual is dysfunctional
  - Encourages confrontation - damages relationships
  - Produces predictable lose-lose outcomes
- **Industrial action**
  - High risks for small potential gains
  - Violence and aggression
  - Lose-lose outcomes – hollow “victories”
  - Procedural limits - protected vs unprotected

# Violence during protected strikes?

- [Tsogo Sun Casinos t/a Montecasino v Fosawu \(2012\) LC](#)

*“...when...the mob displaces the peaceful exercise of economic pressure as the means to the end of the resolution of a labour dispute, one must question whether a strike continues to serve its purpose and thus whether it continues to enjoy a protected status.”*

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# Violence during protected strikes?

- [NUFBWSAW v Universal Product \(2016\) LC](#)

*“.. This court will in appropriate circumstances declare an initially protected strike unprotected on account of levels and degrees of violence .....”*

[Betafence SA v Numsa & others \(2016\) LC](#)

Contempt - Court fines Numsa fined R1m

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# Overall conclusions

- Code - practical guidelines, but too long
- Compulsory arbitration?
- No strike ballots
- No stated sanctions for breach?
- Ammunition for interdicts / legal proceedings.
- Fertile ground for case law?
  - “*Protected and peaceful industrial action*”

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# *Kalipa Mtati v KPMG Services* (LC)

- An employer loses the right to discipline an employee 'after **resignation takes effect**'.

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# *Enforce Security v Fikile* (LAC)

- **Dismissal** requires an act by the employer that terminates the contract.
- Where the end of the fixed term is defined by a specified event (eg cancellation of a service contract), this automatically terminates employment - this does not constitute a 'dismissal'.



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# *AMCU v Piet Wes Civils* (LC)

- There is a dismissal when a service provider terminates employment contracts because the client has terminated its service contract.
- To interpret termination on a 'specified event' to include the cancellation of the contract by the client, goes beyond the intention of the legislature.

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# *Rural Maintenance v Maluti-A-Phofong Municipality (CC)*

- The definition of 'business' in section 197(1) of the LRA includes a 'service'.
- The business that supplies the service, and not the service itself, must be transferred.

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# *Bidserv Industrial Products v CCMA (LAC)*

- Although **long service** is usually a mitigating factor,
- certain acts of misconduct – eg gross dishonesty - are of such a serious nature that no length of service can save an employee from dismissal.

# Solidarity v Dept of Correctional Services (CC)

- Black & male / female candidates are also subject to the *Barnard principle*.
- **Targets** will not constitute **quotas** if there is provision for **deviations** from the plan.
- The basis for setting goals / targets must be authorised by **statute**.

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## Latest labour law news...

**Who is an employee in the gig economy?**  
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