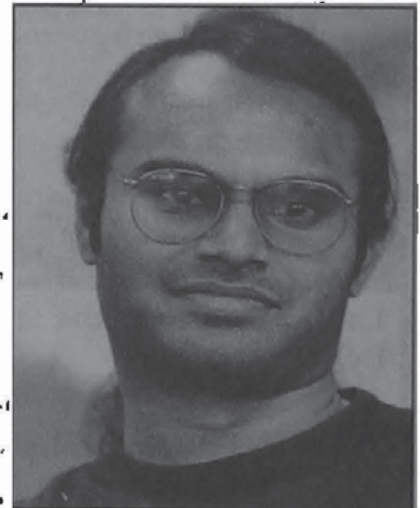


LABOUR
BROKERS

Labour broking: the smoke and mirrors industry

Labour brokers, long seen to be union bashers, are becoming a fact of life for permanent workers and their trade unions. Unions are being forced to face the challenge of labour brokers, but are doing so mostly on an individual and inconsistent basis. RAVI NAIDOO looks at the murky world of labour broking. He suggests that the issue should be tackled at a national level, and that all the major players — labour, government, consumers and business — could benefit.



LABOUR BROKING — described as a den of unmitigated crooks in a recent International Labour Organisation (ILO) press release — is becoming a headache for trade unions and permanent workers. As it exists now, labour broking is potentially harmful to many stakeholders in the economy, including companies themselves.

Currently, it is estimated that there are over 3 000 labour broking agencies in South Africa supplying over 100 000 temporary workers across industries at any one point in time; and the number of agencies is reported to be growing.

This growth is not peculiar to South Africa, but is part of an international trend. The number of temporary employment agencies in the United States, for example, has increased from 2 000 agencies in 1968 to over 14 000 companies with over 20 000 offices in 1993. The turnover of these temporary work agencies has increased thirtyfold between 1970 and 1992 to \$US20 billion. In Switzerland and the United Kingdom, the number of private work agencies is growing by 10% a year. This trend is now spreading to other countries too, and South Africa is particularly hard hit.

Beating the law

But what are labour brokers?

Simply put, the labour broker merely supplies the client (for example, a building contractor) with workers who the broker has "found". The client pays the labour broker, and the labour broker pays the workers and is also responsible for ensuring that all other legal requirements are met. The labour broker is deemed by the Labour Relations Act (LRA) of 1983 to be the employer, and the client is not. So companies can have people do their work without having to take on the responsibility of being their employer.

Traditionally, the letting out of workers causes great confusion both for the authorities and for the workers. Labour brokers have deliberately exacerbated the situation by using third parties to either find, or supply the worker. This is known as sub-letting which renders the current LRA definition of employer useless. Workers are also unsure about what their rights are or to whom their grievances should be addressed, and the authorities do not have the capacity to cope with all the complications.

Labour brokers have been in existence in South Africa for many years, but were only included in the LRA in 1983 in an attempt to regulate them. That attempt at regulation has failed dismally for a number of reasons.

The most important reason is that labour brokers have raised evading minimum standards to almost an art form. Secondly, labour brokers are aided and abetted by a grossly inefficient regulation and enforcement system (for example, the LRA did not foresee the use of sub-letting). Thirdly, there is often collusion with client companies who want to obtain cheap labour that they can easily dispose of. This provides these companies with considerable savings on wage costs, and other "burdens" imposed upon employers such as unemployment contributions and training requirements. Fourthly, the high level of unemployment has pres-


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ured many workers to take whatever they are offered and not to report abusive labour practices and non-compliance with minimum standards.

A million a month

The net effect of all this is that labour brokers can do what they want to, at a sizeable profit. Industry sources estimate that some labour brokers are able to realise net profits of almost a million rand (R1 000 000) in a month. On the other end of the scale, most temporary workers get far less than the minimum wage with no benefits to boot. Permanent workers (and their dependents) who are made redundant through the use of labour brokers lose even more. An example of the wage situation is set out in Table 1.

Table 1: Employer Savings from Sub-letting

	A	B	C	D
	Actual	IC minimum	Stamps	A/(B+C)
Craftsman	R700	R670	R275	74%
Artisan	R560	R488	R232	77%
Apprentice	R300	R270	R128	75%

NOTES

1. The above are minimum Transvaal Building Industrial Council (IC) and stamp rates, March 1994.
2. Wages on site are a rough estimate arrived at after telephonic interviews with union organisers and other industry sources.
3. The Transvaal IC calculates stamp contributions on a 40 hour week; all other rates are calculated likewise.

Column D is the important one in the Table. It represents what the labour broker actually pays as a proportion of what the industrial council (in this case the Transvaal Industrial Council [IC] for the Building Industry; March 1994) stipulates should be paid. In the above example, the labour broker was employing a craftsman for 74% of the IC minimum wage cost (minimum wage rate plus stamp contributions).

By completely avoiding the stamp system, labour brokers' clients are able to reduce their wage costs considerably. This is especially so in times of depressed labour demand when labour brokers do have to carry these workers on their books. The lower wage costs also reflect the use of prohibited employment. This is where underskilled workers are used

for skilled jobs. This is an illegal but not uncommon practice. The net effect for labour brokers and their clients is to place downward pressure on wage rates.

Labour broking is easier to introduce where complete jobs are broken down into small parts. Each of those small parts may only require one particular skill or can be done (often poorly) by those who have no training. In these situations, permanent employment declines and labour brokers, and other providers of temporary labour, fill the gap. In the construction industry, for example, where it is relatively easy to fragment the work process, most actual labour is done by temporary and labour broker supplied labour. As a result, construction companies have reduced their permanent workforce to a minimum.

Caught In the loophole: the story of Japie Jop

Unionists trying to organise workers employed by labour broker point to the bad deal these workers usually get. One such story provided by the National Construction Development Union (NCDU) is that of former labour broker employee, Japie Jop. Sasol, which utilises labour brokers extensively, hired a labour brokerage firm, Hydra Arch, to perform certain jobs at their plant in Secunda. Japie Jop, a welder, was employed by Hydra Arch.

Japie was paid R22 per hour, but to allow the labour broker to save on tax and other wage related costs, his wage was registered as R9 per hour. This is apparently a common practice, whereby the worker is paid a flat rate amount, in this case R22 per hour, meant to be for everything, including any overtime or public holiday work.

In September 1994, an accident occurred at Secunda. While doing work that was outside his job description, a heavy welding machine fell on Japie's back. As a result of the accident, Japie was paralysed from his waist down.

Sasol, the client company, immediately distanced itself from any responsibility for the accident, as Japie was not their employee. (Apparently, this accident is not the worst to happen to workers employed by labour brokers at Sasol — recently a worker burnt to death in a fire, caused by employer negligence, says the union.) Japie, without medical or any other insurance, found that his Workman's Compensation claim was based on R9 per hour, not R22. In the meantime, Japie Jop's place in the labour broking firm was filled almost immediately.

Now permanently in a wheelchair and with an unemployed wife and three children, Japie Jop's case seems desperate. Unfortunately, there are many Japie Jops out there.

Temporary workers get organised

The recently formed NCDU works to improve the conditions of temporary workers. Started by exploited former employees of labour brokers, NCDU now has a membership of about 5 000, and is growing. The union has a system of permanent shopstewards — workers who will be the shopstewards on whatever site they happen to be working on.

Shopstewards are normally among the most skilled of the temporary

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workers, and supposedly least likely to be victimised by the labour brokers .

One of the problems that the new union has faced is hostility from unions representing more permanent workers. Traditionally, the stance of established unions has been to refuse to accept the existence of labour brokers — and a “labour broker union” such as the NCDU.

But now that appears to be changing, with temporary workers being referred to NCDU by COSATU unions and the Department of Labour . Moreover, federations such as FITU and FEDSAL have shown an interest in the union which, according to one estimate, has a potential membership of three million.



▲ Unemployed workers... targets for labour brokers

With the reduction in the permanent workforce, the influence of organised labour also comes under pressure; this is at least a secondary motive for companies to utilise labour brokers.

How everyone (except the labour broker) loses

Labour broking would not be a problem if it contributed to effective job creation. Instead it erodes permanent jobs and minimum standards. Moreover, labour brokers pose a serious threat to organised labour: where minimum standards for permanent workers are good or increasing, labour brokers could be used to undermine them.

But labour broking is not only a problem for trade unions and workers. Firstly, consumers lose through poor product quality. This is especially where the workers are inadequately skilled, as is often the case as labour brokers try to use cheaper underskilled workers for skilled jobs.

Secondly, competing through lower wages and not better product quality is a guaranteed loser. Companies which try to put wage savings ahead of product quality are likely to lose market share in the medium to long term — and increase the potential for industrial conflict.

Thirdly, the government loses on many fronts including:

- lost potential tax revenue from illegal labour brokers;
- having to support aged/disabled workers who did not contribute towards benefits; and
- having minimum standards undermined.

Fourthly, temporary workers/unemployed lose out because they are being exploited, and totally at the mercy of the labour broker.

Setting up national registers

So what can be done about all this?

One idea is that of establishing national registers. Labour brokers and the temporary workers they employ will be listed on separate national registers. Compliance with existing regulations can be better monitored, and companies are only allowed to use such registered labour brokers.

Registered labour brokers have contracts virtually guaranteed, and workers will benefit by receiving training, etc when they are not employed.

Secondly, there is a need to amend the LRA. The nub of any attempt to better regulate the labour broking industry is to make the companies using labour brokers jointly liable for compliance with minimum standards. Presently, these client companies are not legally required to ensure that labour brokers comply with minimum standards. Complicity in evasion of minimum standards is often the result. By making the client jointly liable for compliance, the problem of fly-by-night labour brokers is reduced, and the ability to effectively regulate becomes easier.

Deregulationists who may be horrified by all this regulation should remember that lack of regulation effectively shifts costs of employment and injury from employers to society. This makes society at large a cross-subsidiser of private employers.

Moreover, some labour brokers who do not want to be included in the den of unmitigated crooks or undercut by illegal labour brokers may see the need for better regulation. And there is no better time to deal with the problem than now. ☆