

Questions and comments on labour broking

At the Labour Research Service's negotiators conference **Jan Theron** engaged trade union participants on labour broking.

Unionist: When you go to the CCMA (Commission for Conciliation Mediation and Arbitration) with a dismissal the labour broker says, "I did not dismiss, the client did not want this employee. There is nothing I can do as I have a contract with the client to provide decent services". You can see from this that the only way to protect workers is to ban labour brokers.

Jan: Banning may not solve the problem. Broking is part of something bigger. It is hard to define what broking is. It is complex. In truth labour brokers are not employers, they are just intermediaries supplying workers to the main company.

If I thought banning would solve the problems, I would be for it. We are not only talking about labour brokers but also other contracts as the case of Robert showed (see pg 7). They are all dependent on the core plant and broking is just one extreme of this kind of employment.

The CCMA likes to say that it conciliates and arbitrates X number of cases but what it never talks about is how many cases are dismissed as being 'out of jurisdiction'. For the CCMA to consider a dismissal, the worker has to be an employee as defined by the LRA (Labour Relations Act).

Often the core business says, "Michael was not dismissed by us as he was never employed by us. His contract ended." It is these 'contract' cases that the CCMA refers to as out of jurisdiction.

Unionist: We have this problem of fixed-term contracts. These are very short contracts. The labour broker signs a contract every month with workers which means there is no job security.

Jan: Employers have strongly brought back the contract and labour broking is definitely an abuse of the contract. It must be challenged. You must engage these employers and say, "At our workplace we will not tolerate this. We are workers and we want decent work in our workplace."

Unionist: What is the test for who the employer is in a broking situation?

Jan: What is confusing is that there is no clear contract of employment which locates the labour broker. We need to look into the fairest way of conducting an employment contract.

Unionist: I think we can win a case if both the broker and the main client are identified as part of the dismissal.

Jan: This is a legalistic response and

if you go with legalism you will get nowhere. There are always better lawyers.

The test that the courts apply does not help the broking situation. Courts are conservative. Even the Namibian High Court which said it would uphold the banning of labour brokers cited outdated models of employment. The judges did not approach it in a useful way even if they upheld the banning of brokers.

Also the legal terrain is not familiar to unionists. It is not our business. Legal outcomes are unpredictable. The emphasis on contracts is anti-worker. South African law has tried to take us away from this form of employment and we are being dragged back to it.

Most employees do not have the resources to fight cases and bring both employers to court. It requires an exceptional CCMA commissioner who will say "This contract is a bogus contract" and if the commissioner rules in this way, employers take the ruling to the labour court. The solution lies in organising workers.

Unionist: The Communications Workers Union's experience in the post office/Telkom is that when you resign they don't advertise the position but they use brokers to replace you. In the post office, we organised

William Matlala



temporary workers and struggled to get recognition. When these workers raised problems they were dismissed. Telkom turns people into objects, “I can take you and use you”.

Jan: In the post office it sounds like you came up against a brick wall. The client will always say, “This is a private arrangement and the agreement with me and the broker is no business of the union”. But as organised labour we don’t have to accept this because it is threatening everyone’s employment security including your own.

The Labour and Enterprise Project is willing to help fight these things. It is a great help in these situations if you can give us the agreement or describe it if you can’t get hold of it. The wage in the contract is decided between the client and the broker. Unionists need to challenge this on the grounds that you have the right to bargain as it affects your members. This is especially so in cases where there are very long temporary contracts, like ten years. This can certainly be challenged.

Employers are pragmatic, they

will respond in the end. The more you hassle them over their employment practices, the more they will avoid those practices.

Unionist: In the National Union of Mineworkers we demanded that contractors insist on the same conditions of employment in a workplace, but they argued that the contract is fixed so they can’t negotiate over it further.

Jan: These contracts are not complicated. Simply put, capital is trying to make more profit. First they did it through machinery and now through commodifying labour to ensure high profits. This is a struggle of the working class that it needs urgently to fight. We don’t have to make it complicated.

Unionist: We keep recruiting temporary and contract workers over and over again as they are moved around. We must talk about human rights. No union must accept this middleman. We need Cosatu and the government to fight this. We can’t do it as an individual union.

Jan: What breaks my heart as a

former unionist is that workers are working side by side with different conditions. What have you as unionists been doing all this time? Fighting is a question of how you are going to fight. It is more complicated than just banning labour brokers as there will definitely be a challenge to a legal judgement which will go on forever because brokers have the finances to pay lawyers.

This is the commodification of labour, so you must also fight it globally. But the best way is to organise the workers that are affected in your workplace. Yes, it is hard because these people are moved all over. Government could make it easier by forming bargaining councils in all sectors so agreements can be extended. At union federation level you need to promote the extending of agreements.

But government is also part of the problem. At a local level it is a huge user of brokers. In the late nineties the government adopted the policies of GEAR (Growth Employment and Redistribution) and this led it to advocate public/private partnerships in local government. National government cut money to municipalities so local government was forced to engage contractors to reduce costs. It is clear that government fiscal policies have accelerated the tendency to outsource and employ contractors.

Deal first with your own workplace. If there is a demand for banning brokers, make this demand. LB

Jan Theron is a former unionist and researcher at the Labour and Enterprise Project at the University of Cape Town. His discussion with unionists took place at the Labour Research Service’s ‘Negotiators Conference 2009’.