

Major Labour Court victory for new forms of worker-organising

By Simunye Workers Forum

Release date: 25 June 2023

The Simunye Workers Forum (SWF) is delighted to have won a major victory in the Labour Court in Johannesburg yesterday (21 June 2023). SWF's appeal against the Registrar of Labour Relations' refusal to register SWF as a union succeeded. The Registrar was ordered to register the union within 14 days and pay costs.

This means that the SWF, which already functions as a union (mainly for casualised workers), will now be formally registered as a trade union with a constitution and structure that is radically different from traditional trade unions. Registration will also put a decisive end to bosses' and CCMA commissioners' constant refusal to allow SWF activists to represent SWF members in disputes and in wage negotiations.

The Registrar had refused to allow SWF to register as a trade union, claiming falsely that the SWF was too dependent on the Casual Workers Advice Office for support, and this meant the SWF was not independent. The Registrar's second excuse was that because the SWF has chosen not to elect a general secretary and president every five years who can easily be corrupted, instead electing representatives far more democratically at each mass meeting, that the SWF did not qualify under the Labour Relations Act to be a union.

This incorrect reasoning has now been overturned by the Labour Court and workers' forums, which exist all over the country (also mainly organising casualised workers and farm workers), and who follow a similar model to SWF, now have the green light to register as trade unions.

Key points from the judgment:

- All the activities of SWF are "indicative of a genuine trade union".
- The judge said it would be unconstitutional for the Registrar to insist that all unions had to elect the same kind of office-bearers (president, general secretary etc) as traditional trade unions, as such a rule would "present an unjustifiable inroad into the applicant's [the union's] autonomy".
- New forms of worker organisation can "better serve the interests of the more vulnerable", the judge said.

- The judge dismissed the Registrar's assertion that the LRA does not allow for new models of much more democratic and transparent unions, and if a new union applies for registration, its application must therefore be dismissed. The judge said instead that "the emergence of trade unions that eschew traditional trade union structures is inevitable".
- The judge said that section 95 of the LRA must be interpreted to give effect to the Constitution and international principles which allow workers to freely form unions (freedom of association). Freedom of association is "an essential value" that must be "interpreted generously", and that it must not be overly restricted.
- The judge said the LRA section 95(8) is not "a checklist of mandatory requirements" that organisations must meet in order to register as unions. It is a guideline to help the Labour Relations Registrar decide if unions applying for registration are genuine workers' organisations.
- The judge specifically stated that the LRA s95(8) guidelines were drawn up to prevent nefarious people or companies, such as financial or insurance brokers, from registering as unions for the sole intention of charging workers steep fees to represent them in the CCMA. The guidelines were never intended to prevent genuine organisations of workers from registering as trade unions.
- The judge dismissed the Registrar of Labour Relations assertion that the SWF must not be registered because it is not independent of the Casual Workers Advice Office (CWAO), because the CWAO provides it with training and meeting facilities. The judgment states that s95(2) says unions cannot be controlled by employers, and clearly the SWF is not under the control of or influenced by any employer.
- "There is nothing untoward in a trade union obtaining services from or working in collaboration with a community advice office", the judgment says on page 20.

The judgment brings to an end the tyranny the Department of Employment and Labour has long imposed on worker organisations seeking registration. It also marks

a critical step forward for new forms of worker organisation to emerge. The SWF welcomed the judgment but served notice that the CCMA'S ongoing refusal to allow the majority of the country's workers representation at its dispute hearings will be challenged next. The CWAO also welcomed the judgment.

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This press statement was released by Simunye Workers Forum and Casual Workers Advice Office on 22 June 2023.