

MISA eDATA

NEWS & VIEWS FOR MOTOR INDUSTRY STAFF ASSOCIATION MEMBERS | APRIL 2021



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For to be free is not merely to cast off one's chains, but to live in a way that respects and enhances the freedom of others.

NELSON MANDELA

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COLLECTIVE BARGAINING AND THE RIGHT TO STRIKE

By: Tiekie Mocke
Manager, MISA Legal Department

There is a tendency in the Retail Motor Industry for employees to embark on illegal strike action. MISA's Legal Department Manager, Tiekie Mocke, looks at why embarking on an unprotected strike is never a good idea and what collective bargaining means.

MISA is currently engaged in a Labour Court dispute in Durban, acting on behalf of 18 MISA members who have been dismissed for participating in an illegal strike. This dispute goes as far back as the beginning of 2018.

The employees at a prominent component manufacturing establishment were upset because the MIBCO annual increases, which became effective 1 September 2017, had not been implemented by the employer. With no prospect of a resolution by the end of May 2018, the employees embarked on an illegal strike resulting in the dismissal of most of the employees who partook in the illegal strike.

Unfair labour practice dispute

In a more recent incident in the same city, most of the employees at a prominent autobody repair establishment embarked on an illegal strike. In this case, the strike action was not confined to this specific establishment, as the employees marched to a sister company, also an autobody repair establishment, and forced those employees to participate. The illegal strike action was the result of 'short-time' discussions and the 10% salary reductions that had not yet been reviewed since June 2020.

Collective bargaining

Sources that codify some of your rights as an employee are, for instance, your Contract of Employment, the MIBCO Main Collective Agreement (Agreement), the Basic Conditions of Employment Act 75 of 1997 (BCEA), the Labour Relations Act 66 of 1995 (LRA), and the Constitution of the Republic of South Africa, Act 108 of 1996 (Constitution).

A dispute of right is initiated by a breach of a right in terms of one of the above-mentioned, such as unfair dismissal, unfair discrimination, or changes in benefits or underpayment. These disputes can be resolved through mediation, conciliation, arbitration or adjudication.

There are, however, facets of your employment that are not provided for in the above-mentioned, but that you as employee may demand.

For instance, an increase in your wages or salary or changes in working hours or shift work, are matters of mutual interest. This is where collective bargaining enters the playground.

“ Collective Bargaining is defined in the Code of Good Practice: Collective Bargaining, Industrial Action and Picketing (2018) (Code of Good Practice) as 'a voluntary process in which organised labour in the form of trade unions and employers or employer's organisations negotiate collective agreements with each other to determine, wages terms and conditions of employment or the matters of mutual interest'.

In the Retail Motor Industry minimum wages, in general, are negotiated and implemented for a three-year period. The 'organised labour', as per the definition above, in the retail motor industry under the auspices of the Motor Industry Bargaining Council (MIBCO) are the Retail Motor Industry Organisation (RMI), Fuel Retailers Association (FRA), National Union of Metalworkers of South Africa (NUMSA) and the Motor Industry Staff Association (MISA).



Refer www.misa.org.za/regulated-increases-mibco-main-collective-agreement/

MISA did not sign the 2019 agreement

MISA did not, during the 2019 negotiations, agree to or sign the Agreement reached, as the RMI failed to consider any of the demands tabled by MISA on behalf of our members, such as annual increases on actual wages or salaries.

However, the Agreement was still signed off by the Minister of Employment and Labour, Mr. TW Nxesi, on 12 March 2021 and extended to MISA members, non-union employees and all employers in the retail motor industry. This Agreement was published in the Government Gazette on 18 March 2021, and is binding on all employers and employees with effect from 29 March 2021.

Please bear in mind that some of the terms or rights published in the Agreement are not applicable to employees earning above the annual threshold of R211 596.30 (R17 633.03 p/m), excluding incentives, bonuses and commission and employees employed in an establishments or dealerships actively engaged in dealer's sales and distribution, such as Motor Vehicle Franchises, or employees who earn above the regulated minimum wages.

Mutual Interest Disputes

Annual increases, if not codified and enforceable, remain a bone of contention. MISA may, when you are not covered by the Agreement, raise a demand and engage in collective bargaining for higher wages or salaries with your employer, on shop floor level, on your behalf. The pitfall is that your employer may refuse to bargain.



The Supreme Court of Appeal confirmed in SANDU v Minister of Defence & Others; Minister of Defence & Others v SANDU & Others 2007 (4) BCLR 398 (SCA) that the right provided in section 23(5) of the Constitution of the Republic of South Africa, Act 108 of 1996 (Constitution) namely that 'Every trade union, employers' organisation and employer has the right to engage in collective bargaining...', does not impose on employers or employees a judicially enforceable duty to bargain.



Recourse

(a) The Right to Strike

Strike action is one of many different components of Industrial Action, defined by Barker & Holtzhausen in Labour Glossary as 'an action by unions, employees or employers to pressurise the other party in the furtherance of an industrial dispute...It usually refers to strikes and lock-outs but could also include picketing, product boycotts, sit-ins, go-slow strikes and other actions which disrupt the productive process...'

The Constitution confirms in section 23 that '...every worker...has the right to strike'. A right confirmed in the LRA, section 64(1) '...every employee has the right to strike and every employer has recourse to lock-out if...' The Code of Good Practice defines the right to strike and the employer's recourse to lock-out as the right to cause economic harm (Item 16 (3)). A word of caution, there is a limit on this right to strike or to cause economic harm as this should be the last resort. This principle was confirmed in the Industrial Court as far back as 1993 in SACWU & Others v BHT Water Treatments (1993) 1 ICJ 9.1.8.

(b) Conditional Right to Strike

Section 64 of the LRA provides that 'every employee has the right to strike...if...'

The 'if in this context makes it clear that the right to strike is a conditional right and that strike action, once collective bargaining fails, is subject to:

1. The dispute being referred for conciliation to a Bargaining Council (MIBCO Dispute Resolution Centre) or the CCMA.
2. A certificate was issued stating that the dispute remained unresolved, or
3. 30 days elapsed from the date the dispute was referred.

The objects of conciliation, as per the Code of Good Practice, are:

1. To ultimately resolve the dispute amicably and to prevent strike action. The conciliator, during this process, must also provide alternative ways to resolve the dispute, which may include arbitration or advisory arbitration.
2. To capture the demands over which the workers, trade union, employer or employer's organisation intend to take industrial action, and
3. To agree to the way of communication as well as the strike and picketing rules.

The next step is to have a secret ballot as per the trade union's constitution, which is MISA's Constitution, to ascertain whether our members want to participate in strike action. The LRA in section 67(7) further provides that strike action without a secret ballot, in accordance with the MISA Constitution, will still be protected if all the other pre-requisites, as set out under (b), have been complied with.

Once conciliation failed, MISA must give at least 48 hours' written notice of the envisaged strike action to the employer. Should your employer wish to act on their recourse, namely lock-out, they must give at least 48 hours' notice to MISA before the commencement of the lock-out.

(c) Essential Elements of a Strike

LRA in section 213 defines strike as 'the partial or complete concerted refusal to work, or the retardation of obstruction of work, by persons who are or have been employed by the same employer or by different employers, for the purpose of remedying a grievance or resolving a dispute in respect of any matter of mutual interest between employer and employee, and every reference to "work" in this definition includes overtime work, whether it is voluntary or compulsory...'



In *Chemical Workers Industrial Union v Plascon Decorative (Inland) (Pty) Ltd* 1999 20 ILJ 321, the Labour Appeal Court engrained the three essential elements, in paragraph 22, which constitute a strike, namely:

- Refusal to work: The Labour Court in *Floraline v SASTAWU* 1997 9 BLLR 1223 (LC) acknowledges that the partial or complete refusal to work constitutes strike action. This was reiterated in *Simba (Pty) Ltd v Food & Allied Workers Union* 1998 19 ILJ 1593 (LC) as the Labour Court noted that the partial refusal to work, even though not for a lengthy period, can amount to a strike.
- Refusal must be undertaken by employees: The right to strike cannot be exercised individually as implied in the term 'concerted' as well as the plural form of 'persons' – it must be a collective action.
- For the purpose of remedying a grievance or resolving a dispute in respect of a matter of mutual interest between employer and employee: Remedy or resolve 'mutual interest issues' such as creating new terms and conditions of employment or changing existing terms. These are issues that cannot be resolved through legislation or litigation, it is a collective bargaining process.

Basson J in *Nkutha and Others v Fuel Gas Installations (Pty) Ltd* [2000] 2 BLLR 178 (LC) at paragraphs 69 – 72 held that in ascertaining whether the action of employees conform to strike action as defined in the LRA, 'the question must be answered: Is the collective refusal to work in response to the failure of the employer to perform its reciprocal obligations under the employment contract or is the purpose of the collective refusal to work to place pressure on the employer to remedy a grievance or to resolve a dispute? Only in the last-mentioned instance would such concerted refusal constitute a strike in terms of section 213 of the Act.'

(d) Picketing

Once the notice of the intention to strike is given, MISA may authorise its members to picket for the purpose to support a protected or legal strike or to oppose any lock-out implemented by an employer in terms of section 69 of the LRA subject to the MISA Constitution. The following four elements must be complied with:

1. The picket must be authorised by the registered union.
2. Participation of the picket is limited to members and supporters of the registered trade union.
3. The purpose of the picket must be to peacefully demonstrate.
4. The picket must be held in public places outside the employers' premises or inside the premises, if the employer permits.

[No picketing can take place in the absence of agreed or determined picketing rules.](#)

(e) A Word of Caution

It should be clear by now that strike action does not happen overnight: there is a process that needs to be followed. Failure to comply with the procedural requirements will render the strike action unprotected or illegal. Schedule 8: Code of Good Practice – Dismissals in item 6 deals with inter alia dismissals as a result of an unprotected or illegal strike and confirm that participation in a strike that does not comply with the procedural aspects of a strike, as set out in the LRA, is misconduct and might lead to dismissal.

CONCLUSION

MISA does not stand indifferent to the economic challenges our members are facing. Not all our members are bound by the Agreement in terms of the scope and the application of the provisions contained therein. In fact, most of our members are employed in an Establishment or Dealership actively engaged in dealer's sales and distribution such as Motor Vehicle Franchises (sector 6). As a result, you are not covered in terms of guaranteed annual increases. But you are also not prevented by the Agreement's Peace Clause to engage, via MISA, in collective bargaining for higher wages or salaries on shop floor level. Do not engage in unprotected or illegal strike action, as you might find yourselves facing dismissal for misconduct.

There is a process to be followed.

ASSERTIVE COMMUNICATION, A CORE SKILL AND BENEFIT

The Cambridge dictionary describes an assertive person as “Someone who ...behaves confidently and is not frightened to say what they want or believe”.

By: Thandeka Phiri
National Training Manager, MISA

Being assertive is a core communication skill. Assertiveness can help you express yourself effectively and stand up for your point of view or for the rights of others in a calm and positive manner without being either aggressive, or passively accepting 'wrong doing'.

In the process, one is able to get their point across without upsetting others, becoming upset themselves, or disrespecting the rights and beliefs of others. Therefore, it presents a balance in the communication.

Being assertive can also help boost your self-esteem and earn the respect of others. This can no doubt aid with stress management, especially if you tend to take on too many responsibilities because you have a hard time saying no to others.

Assertive communication is direct and respectful. It gives you the best chance of successfully delivering your

message. Communicating assertively involves the “what” and “how” of communication.

Not achieving the correct balance in communication styles can lead to conflict and thus increase stress levels. If you communicate in a way that's too passive or too aggressive, your message may get lost as people may be too busy reacting to your delivery rather than to the actual message being conveyed.

Aggressive and passive communication is stressful and can lead to resentment, with either one of the parties involved generally ending up feeling humiliated, threatened, disregarded, angry or victimised.

Good communication is the bridge between confusion and clarity. - Nat Turner.



- Passive behaviour or communication usually results either from shyness, being overly easy-going, or a need to avoid conflict at all costs. Passivity leads to stress and resentment, and sometimes even lashing out in the end.
- While aggressive people may seem to get what they want, they may come across as bullies and self-righteous. The resultant cost of the aggressiveness is diminished trust and mutual respect. It may lead to the aggressor being resented and either avoided or opposed.
- On the other hand, those whose communication styles or behaviour is passive-aggressive (i.e. those who show their anger and feelings through their actions or negative attitude rather than confronting the issue directly) are at a risk of damaging relationships as the mutual trust and respect with others will be eroded overtime.

For some people assertiveness comes naturally. The good news is that it is a learned behaviour, so you can learn to communicate in healthier and more effective ways.



Confidence

- Believe in your ability to handle a situation.
- Maintain proper eye contact as it shows interest and sincerity.
- Use the correct body language as it will improve the significance of the message. Act confident even if you are not feeling it. Keep your posture open and relaxed.
- Use suitable gestures to help in adding emphasis. Be sure that your facial expressions are aligned with the message being conveyed.

Clear

- The message being relayed needs to be clear and easy to understand.
- Manage the content of your communication effectively: when, where and how you choose to comment is sometimes more important than what you say.

Controlled

- Deliver information in a calm and controlled manner.
- Ensure that your communication is direct and respectful as this gives you the chance of delivering your message successfully with the correct tone. If you communicate in an aggressive manner, your message may get lost.
- Do not exhibit hesitation through your voice, keep it friendly and relaxed.
- Keep your emotions in check and work on remaining calm and keep your voice even and firm.

Assertive communication means being okay with saying exactly what you mean and want, but doing it in such a way that it doesn't hurt the other person's feelings. This might mean rejecting things you decide are not a good fit for you, but then explaining exactly why you have rejected them. The word "because" is a powerful game-changer in communication. If you give strong reasons and say them with determination, no one will be upset that you gave them a negative answer.

Be willing to discuss matters further until you find a solution. Being assertive means continuing - in a calm and respectful manner - until the issue is resolved. It might require asking more questions, listening more carefully, or getting creative and exploring more options. This way, in the end, both parties feel good and no one ends up with hurt feelings.

Be present and be mindful of what the other person is trying to say - listen actively to everything they are saying in order to be able to respond effectively.

If you are not an assertive person, you can **rehearse** inculcating this behaviour, and which is always possible with time, circumstances and some behavioural changes. Learning assertiveness so that it comes naturally can take years of practice, but it makes a person confident.

RETIREMENT

MOTOR INDUSTRY RETIREMENT FUNDS' INVESTMENT STRATEGY AND PERFORMANCE THROUGH THE COVID-19 PANDEMIC

The Covid-19 pandemic affected each of us globally and measures had to be implemented in all sectors of society and business. Needless to say, the financial sector was one such sector.



During March 2020, global stock markets experienced one of the largest crashes in history, losing approximately 30% of their value overall. Fear and panic set in across the world, not just the fear of becoming gravely ill, but also economic fears, including the fear of losing years of retirement savings.

Amazingly, markets began to recover by the end of April due, in part, to the fact that governments quickly announced sizeable economic rescue packages.

We are now one year on and it has been a good year for the members of the Motor Industry Retirement Funds (MIRF) who were able to take full advantage of the markets last year. The Funds provided members with a return of 34% for the 11 months from the 1st of April 2020 to the end of February 2021.

According to the Principal Officer of the retirement funds, Radesh Maharaj, members can look forward to above-average returns on their retirement savings and the Funds continue to strive to reduce overall costs and increase efficiencies compared to other retirement funds in the country.

What did we learn in the last 12 months?

The Chief Investment Officer of RisCura, Jarred Glansbeek, summarises the building blocks of the Funds' successful investment strategy in the last 12 months.

The structure of the Funds are sound

The new long-term strategic asset allocation, as defined in 2018, fully implemented by March 2020 and which determines the type of investments (and in what proportion) the Funds should hold, is valid through any kind of market turmoil. Using this strategy as a guide enabled the Funds to navigate through the crash and beyond.

Strong communication is imperative

Through the volatility caused by the pandemic, we

learned that trustees needed to be available at a moment's notice to manage the Funds' investments and risks; to implement changes and to capitalise on market movements and investment opportunities as they arise.

Taking action is vital

When markets have this much volatility, it is important to act, instead of "riding it out" or delaying making the necessary decisions. The swift action of the trustees to make small changes to the asset allocations and managers has added to the excellent performance of the Funds over this time.

Capitalising on investment opportunities

The market turmoil caused by COVID-19 created many excellent long-term investment opportunities. Many assets suddenly went on 'sale' (became much cheaper) and given the long-term nature of the Funds' portfolios, taking advantage of these opportunities will contribute to the long-term performance and stability of the Funds.

Tight risk management

Managing risk through the volatile periods included investing in assets that were struggling and potentially liquidating assets that did well. Risk management of the portfolios included adjusting both listed and unlisted assets contemplating the time horizon of the Funds, which requires cashflows for the next 70+ years, was value adding. This needed immediate and prompt action by trustees.

Looking forward

Currently, MISA's principal trustee is Martlé Keyter, the MISA CEO (Operations), and the alternate trustee is Thandeka Phiri, MISA's National Training Manager.

In terms of the rules of the Funds, trustees can only serve a maximum of two terms (five years each) to be transparent and safeguard the Funds.

MISA is very proud and supportive of our industry funds and how they performed during the Covid-19 pandemic. There seems to be prospects of a further movement upwards, which can only be good for our member's investment portion towards retirement.

MISA members outside of the industry funds

Not all MISA members belong to the Motor Industry Retirement Funds, as some are exempt and may belong to so called in-house funds. This is particularly the case with members employed at larger establishments, which falls under dealership groups.

We urge those members to ascertain the performance of their respective funds in order to keep abreast of performance, as MISA can only provide feedback relating to the performance of the industry funds.

Acknowledgement to the Principal Officer of MIRF, Radesh Maharaj, and the Chief Investment Officer of Riscura, Jarred Glansbeeck, for their contribution to the article.



MISA MEMBERSHIP CARDS, PLEASE TAKE NOTE OF THESE CHANGES

MISA will no longer automatically print membership cards for new members.

Members will need to download the MISA Mobile App link upon receiving the SMS confirming that their membership is active, included in the SMS for easy reference.

Should the member require a printed membership card, kindly contact MISA to request this.

The red cards for Technical members will, however, still be printed and mailed.

For more information, kindly contact Braam.Cilliers@ms.org.za.

Insuring student assets

Investing in your
child's future



News from Aon

INSURING STUDENT ASSETS

Your baby has flown the nest and has officially entered one of the most exciting times of their lives – student life!

While you're dealing with the inevitable emotional turmoil of cutting the apron strings, there is also the financial reality of managing the hard costs that come with tertiary tuition and especially expensive student assets - tablets, phones, laptops, text books, sports gear, clothing, furniture and appliances for their res and possibly their first car.

It's all an investment into your child's future that's hopefully going to be paying dividends for many years to come, so make sure that you insure your student child's assets appropriately and protect your pocket against the financial impact of an accident, theft or loss of valuable assets.

Mandy Barrett of insurance brokerage and risk advisors, Aon South Africa, offers parents the following invaluable tips when it comes to insuring student assets:

Portable assets

"It's easy to underestimate the combined value of your child's portable assets - gadgets such as tablets and smart phones and watches, sports gear and apparel as well as branded kit, uniforms, text books and stationery soon add up to a hefty sum. You need a holistic insurance plan in place to mitigate the risk of theft, accidental damage or loss which could leave you seriously out of pocket, so talk to an expert insurance broker whether such items can be insured on your policy and especially to review and understand the "All Risks" section of your household contents cover," explains Mandy.

Policies vary from insurer to insurer. Some require that you specify the items to cover under All Risks that are typically removed from your home such as smart phones, smart watches, laptops and so on. Remember that household contents cover is applicable to items that stay within your home. But as soon as an item is removed from your home for whatever reason, it ceases to be covered unless specified under 'All Risks'.

"There is a common misconception that the contents of students' residences are uninsurable because it is regarded by insurers as a 'communal area', presenting a much higher risk. While this may be true with more basic insurance policies, it is possible to arrange affordable cover for these risks linked to your household contents cover. It's advisable to discuss your insurance needs with your broker who will be able to advise you and arrange the most appropriate insurance cover for these needs," says Mandy.

Student vehicle is every young person's dream and every parent's nightmare – the keys to your child's first car. "There are very important insurance considerations with being a young and inexperienced driver," says Mandy.

Aon offers the following important tips:

- **Comprehensive motor insurance** is the widest level of motor insurance cover available, covering accidental damage to your vehicle in addition to third party, fire and theft. If you have basic comprehensive cover, you may need to 'buy up' for additional cover such as towing fees, hail damage, roadside assistance and so on.
- **Adhere to the provisions of your insurance cover** such as security requirements - a tracking system, immobiliser and parking in a safe, locked premises at night.
- **Don't get sucked into low premium pitfalls** - while premiums may be cheaper, the catch comes in with a very high excess in the event of a claim – getting slapped with a R25k excess for a premium saving of R180 won't make sense if you don't have that cash readily available. Always talk to your broker to obtain insurance advice on what's practical for your specific circumstances.
- **Consider additional personal liability top up cover**, given the risk of major claims in the event of an accident or incident where the young driver is proven to be negligent.
- **Don't buy a high-powered, expensive first car** as an inexperienced driver is unlikely to handle the power and speed. Safety and reliability should be a primary consideration, so be sensible in your choice of car for your child.
- **Zero tolerance on drinking and driving.** Besides being illegal and a serious risk to yourself and others on the road, an accident caused under the influence of alcohol or a drunk driving charge could wreck your child's future. Make sure they have access to Uber and never drink and drive.

"When it comes to protecting your child's portable assets and car, a professional insurance broker has the experience and specialist knowledge to help you find the best cover that's the right fit for your needs and unique circumstances. Consult your broker today to ensure your child is off to a smooth and safe student journey – it's likely to be one of the most exciting times of their lives, so make sure that mishaps don't spoil their memories," concludes Mandy.