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THE RIGHT TO STRIKE AND THE FUTURE OF COLLECTIVE BARGAINING IN SOUTH AFRICA: AN EXPLORATORY ANALYSIS

Abstract:

Section 23 of the Constitution of the Republic of South Africa confers on every worker the right to strike. It further provides that every trade union, employers' organization and employer has the right to engage in collective bargaining, and goes on to provide that national legislation may be enacted to regulate the process. The Labour Relations Act of 1995, enacted specifically to give effect to these constitutional rights, gives effect to the right to strike by providing procedures for the exercise of the right, and protections for strikes in the collective bargaining context. Interestingly, the Act does not provide for the duty to bargain. With the current wave of industrial action sweeping across the South African labour industry, the issue of the interplay between the workers' right to strike and to bargain collectively with the employer remains one of the topical issues in the South African labour law discourse. The critical question that this paper seeks to address is whether the right to collective bargaining extends to an entitlement for workers to exercise collective power by striking, in the event that the bargaining process reaches impasse. This paper thus seeks to explore these concepts in an attempt to see what is at stake in deriving an entitlement to strike from what looks like a very abstract entitlement to bargain. The results of this exploration will then be brought to bear on some particular problems to do with the scope of the right to strike in South Africa. The paper argues that the current constitutional and statutory framework on collective labour dispute resolution in South Africa is flawed, and calls for urgent attention.

Keywords:

Constitution; right to strike; collective bargaining; labour law

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