



PARLIAMENT
OF THE REPUBLIC OF SOUTH AFRICA

RESEARCH UNIT

PO Box 15 Cape Town 8000 Republic of South Africa
Tel: 27 (21) 403 8273 Fax: 27 (21) 403 8118
www.parliament.gov.za

28 May 2018

SUMMARY OF SUBMISSIONS TO THE PORTFOLIO COMMITTEE ON COMMUNICATIONS BY SABC TRADE UNIONS

In April 2018, the Portfolio Committee on Communications (Committee) conducted an oversight visit to the Department's entities in Gauteng, namely the Media Development and Diversity Agency (MDDA), Films and Publications Board (FPB). The Committee further had engagements with Trade Unions operating at South African Broadcasting Services, namely, Media Workers' Association of South Africa (MWASA), Information Communication Technology Union (ICTU) (EMFLA), Communication Workers Union (CWU) and Broadcasting, Electronic Media and Allied Workers Union (BEMAWU). Subsequent to the discussions with the Trade Unions the Committee requested that Unions make written submissions to the Committee where they outline their issues in relation to conditions at the SABC. Only three Unions made written submissions, these are MWASA, EMFLA and BEMAWU. Summarily the submissions are captured below.

1. Organisational Rights for Trade Unions That Do Not Have a Majority

Both MWASA and EMFLA submissions contended that there was a need for the recognition of Trade Union even though it was not a majority union. Of importance was that one or more unions are granted permission to exercise acting jointly rights under sections 12 (access to the workplace), 13 (deduction of union fees by employer) and 15 (leave for trade union activities), provided the union(s) represent a significant interest or a substantial number of employees despite not representing a majority of employees at the workplace as outlined in the Basic Conditions of Employment. MWASA gives evidence dating as far back as 2011 of how under the direction of Hlaudi Motsoeneng, the SABC began deviating from the terms of agreement set out in the CCMA process and the Framework Agreement assented to by the SABC, CWU, BEMAWU and MWASA. The deal to undermine the GLG prerequisite reduction of 800 positions was fashioned with two unions and served as the base of the deleterious tenure of Motsoeneng. MWASA was openly excluded and after months of official SABC public relations programme to malign MWASA, to physically threaten members of the union and to literally force MWASA members to abandon the union, MWASA was finally 'derecognised' on 3 August 2011 after dismissing two members of the union who worked in SABC payroll. These dismissals were to



pave the way for the SABC Employee Relations to temper directly with membership applications to join MWASA. MWASA has been to the CCMA several times since and the Labour Court to challenge this direct interference with the Constitutional Right to Freedom of Association. The union has endured this throughout and is at this point sitting still with SABC "deducting membership for most...but not for all MWASA members" a deliberate ploy to deny MWASA the status of a recognized bargaining agent for its members.

2. Filling of critical vacancies

Amongst the three submissions, MWASA was the only union to raise concern around filling vacancies at executive management. The union noted with concern that as it stands the SABC only had one substantive Executive in the form of the COO. Whilst the rest were acting over prolonged periods after rising to these positions through what it called a compromised system that was the subject of the Ad Hoc Inquiry. It further noted that it was deeply concerning that severely compromised individuals remained in office presiding over what should amount to the undoing of their own interests. MWASA states that the Acting on Higher Grade policy of the SABC does not encourage that positions on the fixed establishment, and which are budgeted for, may remain vacant for longer than three months, or that acting on higher grade may continue on a consecutive basis beyond three months.

3. Understanding the mandate

MWASA was of the view that it was of paramount importance that full scale analysis of the SABC is conducted as a follow up to a similar study that was done by McKinsey and Co and the Ad Hoc Inquiry into the fitness of the SABC Board. The purpose of such an analysis would be to gain further insight into understanding what it meant to cost the public mandate and how "ring-fencing" of such funding occurs when as at the present moment there is no proper appreciation of the aggregation of the systems failures that are designed to leak resources at and through strategically arranged orifices throughout the value-chain of the SABC operations.

The union noted that there had been repeated calls from all quarters for the review of the funding model of the SABC whilst this call is not supported by evidence based research and analysis which looks at the operations of the SABC holistically.



4. Transparency, Accountability and Inclusive Communication.

All three submissions were clear with regard to issues of accountability, transparency and inclusive communications. While the above-mentioned matters are not exclusively related to the issue on medical aid fraud it just one example where there has been such problems. The Unions allege that the SABC has not adhered to its own Code of Conduct and has flouted labour legislation when dealing with the medical aid matter.

In terms of the SABC's Disciplinary Procedure and Code of Conduct, disciplinary hearings must be conducted internally and by a panel of three SABC employees. The Collective Agreement and Disciplinary Procedure and Code of Conduct is then understood to be an agreement binding both parties. As such the SABC was prohibited to then, in the absence of an agreement, deviate from the Disciplinary Procedure and Code of Conduct and was compelled to strictly follow the Disciplinary procedure . BEMAWU states that when it heard of the contemplated disciplinary action against its members in respect of the medical aid fraud it approached the SABC in an attempt to enter into negotiations with the SABC on how to deal with these particular issues. A meeting was conducted by the then acting COO Hlaudi Motsoeneng and it was agreed that there will be a follow-up meeting by the SABC to decide on a way forward in respect of the disciplinary hearings of members so implicated.

Despite this undertaking by the Acting COO, the SABC proceeded to unilaterally appoint Thokiso, and external party with whom BEMAWU had no agreement, to chair the disciplinary hearings. BEMAWU noted that this was a unilateral deviation from the collective agreement and the SABC's disciplinary Code and Procedure and it had attempted to engage the SABC with no success.

The process that the SABC and Thokiso had agreed to, was a completely foreign process in South African Labour Law and employment practices to the extend that employees did not know who was going to chair their so-called Disciplinary inquiry. It was kept a secret.

On the contrary MWASA states that the SABC with its legal counsel decide to scam the SABC and strike deals with two unions CWU and BEMWU to facilitate deviations from the applicable policy. From as early as March 2015 the unions agreed to condone this deviation from the applicable Disciplinary Code and Procedure terms of which forms part of the employment contracts of all employees.



5. Long term Contracts for Freelancers

EMFLA raised the following concerns with regard to the conditions of freelancers.

1. At the SABC black workers have no rights in the workplace, and is in contravention of the legislations such as the Industrial Conciliation Act of 1924 excluding African workers from the legal definition of an “employee”.
 - Freelancer are kept on contract for years and have no rights to access the benefits of employees.
 - Long term contracts never translate to full time employee, below is the definition of employees;
 - a. The manner in which the person works is subjected to control or direction of another person
 - b. The person's hours of work are subjected to control or direction of another person
 - c. In the case of a person who works for an organization, the person forms part of that organization
 - d. The person has worked for that other person for an average of at least 40hours per month over the last three months
 - e. The person is economically dependent on the other person for whom he or she works or renders services
 - f. The person is provided with tools of trade or work equipment by the other person
 - g. The person only works or renders services to one person

Freelancers at the SABC we tick all the above boxes and meet this criterion

2. SABC is in contravention of the Labour relations act. No 66 of 1995 as amended hereafter referred to as LRA and basic conditions of employment act No 75 of 1997 referred to as BCEA.



- SABC must clarify the actual nature of the employment relationship they have with freelancers, since this cannot be defined by mere label attached to relationship in a contract.
 - Therefore a statement in a contract that we are not employees or we are independent contractors must not be taken as conclusive proof of the status of our employment or rejection thereto.
 - We cannot send a replacement in cases of ill-health
 - Freelancers are denied the rights to and excluded from participating in the economy of the country
3. It remains a puzzle as to why SABC robs its employees. Most of the works done by freelancers have life shelf of up to 20 years, yet when they retire they leave with nothing.
 4. With the inevitability of digital migration, the most skillful section of the workforce will be gone without proper skills development and transfer taking place.
 5. No security of tenure and no growth path instead those employees who retire are recruited back to the system to compete for the scarce work.
 6. Rates are ridiculously low and never increase with inflation.
 7. Benefits afforded to employees on duty do not apply to freelancers; subsistence and travel allowance are only claimed and paid a month in arrears.
 8. No workmen's compensation, SABC is exempted through indemnity contract forms. Those are some of the disparities that exist between an employee and an independent contractor.
 9. We call for the re-definition of the nature of our working relationship and state of employment. If we are indeed independent contractors we must be treated as such. And if we are employees, benefits afforded to employees must be offered to independent contractors as such.



6. Issues for the Committee to Consider

- It's important that the Committee does not create the impression that it is getting involved in daily operations at the SABC. Whilst the findings of the Adhoc Inquiry on the SABC Board Fitness to hold office and the public broadcaster's poor financial and non-financial performance requires the Committee's attention and involvement, labour (management) issues should be left to management.
- Submissions make clear allegations against individuals that were previously part of the SABC and some that are currently part of the organisation. It is important that the Committee shares the submissions with individuals mentioned.
- The issue of Freelancers being on long-term contract at the SABC has been a longstanding one. This however is not exclusive to the SABC only. The issue of Labour Brokers and prolonged casualization of labour has been on South Africa's agenda for a long time. On 22 February 2018 the Constitutional Court heard from Labour brokers that removing them from the employment equation when temporary workers are transferred on to permanent contracts would trample on the rights and protections of vulnerable employees. This follows a ruling in favour of NUMSA by the Labour Appeals Court which ruled that workers, who were contracted by temporary employment services, automatically become permanent employees if they work at a company for longer than three months. It is therefore important that the Committee takes cognisance of these matters.