

SWELLENDAM MUNICIPALITY

A proposal to register the ILGM as an employee association representing Section 56 and 57 Employees plus Senior Management appointed in the offices of the Municipal Managers and Mayors

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ESSENCE OF THE PROPOSAL

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- The ILGM general membership must pass two resolutions to commence the process of becoming an employee association
 - The third resolution is that it must then resolve to register as an association.
 - The fourth resolution is that it must resolve to secure first recognition at the Public Sector Bargaining Council as a member representing employee interests, along with IMATU and SAMWU
 - And then it needs to achieve an ordinary majority (50% plus 1) of Section 56 and 57 employees to apply for bargaining rights and thus to represent the employees at the negotiation table.



FIRST DECISION

- First resolution – All paid up members of the ILGM must first pass a resolution that it is prepared to be considered as an employee organization in terms of the Labour Relations Act, Section 95 (7).
 - The act is unclear and seems to propose or allow two options. All ordinary paid up members at an open meeting of its members can so resolve to register as an employee association, however, regulations provide for a virtual decision making process as well. The ILGM's constitution seems to provide for both options. What is not clear is whether it will require an ordinary majority (50% plus 1) or some other threshold. It is clear that where the ILGM constitution does not provide for a clear majority decision it may at an AGM or other formally constituted meeting of its members amend its constitution to make a proposal of what it decides is a majority decision. It can thus pass a resolution on what the majority requirement is before passing a resolution on whether to register as an employee association (as the ordinary members)
- If a majority so resolves, then it may apply to the Registrar for recognition rights. If needs be the ILGM constitution must be amended to define what its roles will be in terms of representing the rights of S 56 S57 appointees – the employee association functions and activities.

EXPANSION ON THE FIRST DECISION

- My emphasis – The establishment process or the decision making process for the ILGM to become an employee association must take into account the number of persons participating from the sector and that the selection process for the nomination and selection of office bearers is free and fair. In this regard it is critical to determine whether the ILGM meets a threshold for it to be considered an employee organization. Section 95 places the onus on the applicant to demonstrate representation.
- It is a requirement that each ILGM member must have completed an application form.
- The ILGM may also opt to pass a resolution to create a special category membership to drive member registration (this may be an important tactic to say ask R 100 membership fee just to get over the threshold of member numbers)
- Each ILGM (or an ordinary majority) member must consent to becoming a member of the employee organization.
- Each member must have the right to vote

EXCERPTS OF THE ACT PLUS EMPHASIS

- **The Definition of a Trade Union**

- 5.The LRA defines a trade union as follows: "An association of employees whose principal purpose is to regulate relations between employees and employers, including any employers' organisations."
- 6.Therefore, an organisation cannot be registered as a trade union or continue to, operate as a registered trade union unless - it is in fact an association of employees;
- (Hence the need for membership forms in which members confirm that they are employees in association with one another.)
(b) the principal purpose of the activities is to regulate relations between its members and their employers (or employers organisations representing those employers).
- (we could easily argue that ILGM is similar in footing to IMATU and SAMWU in that it represents the interests of the Section 56 and 57 appointees and that SALGA and the Ministry are the employer representatives)
- It will therefore be necessary to raise and examine the actual process of forming a trade union, its composition and membership and the activities it undertakes on behalf of its members

EXCERPTS FROM THE ACT

- the means by which the constitution of the trade union was drafted and adopted;
- A constitution would need to be drafted. This may require a drafting committee.
 - the election of an executive committee or council of members and the election of office-bearers.
- A chairperson, deputy chairperson, secretary general, treasurer and spokesperson would need to be elected.
- The crucial issue that must be addressed is whether the formation of a trade union involved employees associating with one another to establish an organisation to regulate relations with their employees).
- This is simple enough a requirement to achieve.

EXCERPTS CONTD

- **Formation of a trade union**
- 7. The process followed to form a trade union can give important indications as to whether an organisation is a genuine trade union. Key aspects of the process that should be examined include -
 - - the number of founding members who attended the inaugural meeting(s) to establish the trade union and who completed signed registers indicating their Names, ID numbers, Places of Work, Employment organisations and confirms that they are S 56 and S 57 appointees

EXCERPTS

- 8. In terms of section 95(5)(b) of the LRA, the constitution of a trade union must prescribe the qualifications for membership. There is no requirement in the LRA that a trade union confine its membership to employees in a particular sector or sectors of the economy or a particular geographical region. However, the failure to place appropriate qualifications on membership may indicate, together with other factors, that the trade union is not a genuine trade union.
- It needs to be determined if the sole membership requirement is whether the person appointed is a section 56 or 57 appointee. One could argue that there are a number of senior management appointees who are not section 56 or 57 who may wish to become members. This could be a third category of membership in the organization. **As long as we can define the membership requirements and these are specific enough we should be able to attract at least the first two levels of executive management and possibly at least the 3rd and or fourth levels in municipalities. However our first aim is to get to the representation threshold.**

SECOND DECISION (APPLICATION TO THE REGISTRAR)

- In terms of section 95(7) of the Labour Relations Act, the Registrar may only register a trade union or an employers' organisation if the Registrar is satisfied that it is a genuine trade union or a genuine employers' organisation.
- 3. In order to determine whether an organisation is genuine, it will be necessary for the Registrar to examine the actual operation of the organisation. In the case of an applicant, **particular attention will have to be paid to the manner in which the organisation was established and formed.**
- **In the case of an existing organisation, attention will have to be paid to its actual activities and functioning.** In evaluating whether a trade union or employer's organisation is genuine, the Registrar must take into account all relevant factors. (it is unclear what the relevant factors are)
- Having registered as an employee organization it obtains recognition rights by applying to the PSBLGC for such recognition (this gets ILGM a seat at the table)

EXCERPTS FROM THE ACT PLUS NOTES

- 9. **The LRA does not create any membership threshold that trade unions must meet to register.** Nevertheless, the size of the membership may be an indication that a trade union is not a genuine trade union. It is legitimate for trade unions to restrict their membership to small groups of workers; for instance, the employees of one employer or within one bargaining unit or a small trade or profession. However, an extremely small membership in relation to the number of employees qualified to join, may indicate that the trade union is not a genuine trade union.
- 10. When evaluating the membership of a trade union, attention should be paid to its history. The fact that the membership of a trade union with a long history of representing its members' interests has declined to small numbers is not an indication in itself that it has ceased to be a genuine trade union.

EXCERPTS AND NOTES

- 11. The primary purpose of a trade union is to regulate relations between employees and employers (or employers' organisations). In particular, this includes the regulation of these relationships through collective bargaining. **A trade union will only be able to seek organisational rights in terms of the LRA or demand collective bargaining where it recruits members from the employees of particular workplaces or bargaining units.**
- **In order to gain organisational rights the ILGM will have to recruit as many current members of local municipalities that are Section 56 and 57 appointments. The target would be 50% plus 1, however that number is determined.**
- The fact that a trade union has not sought to gain a critical mass of members in any particular workplace or bargaining unit that would allow it to gain organisational rights may be an indication that the trade union is not a genuine trade union.

THIRD DECISION – APPLICATION FOR BARGAINING RIGHTS

- Having passed the previous two resolutions and having obtained recognition of the Registrar of Unions, the next step is to obtain negotiation rights (the holy grail)
- (The challenge for representation is to determine what the threshold is for negotiation rights representation. We must assume that all current Section 56 and 57 appointees qualify. This equates to 257 municipalities with an average of 5 or 6 section 56 and 57 appointees. This approximates to 1285 individuals or 1542 individuals. **The membership requirement for representation as an employee body is 50% plus 1 for it to be uncontestable. I understand that 30% is the lesser threshold and places it at the discretion of the employer body to grant it recognition. This the more qualified members register the more likely negotiation rights are to be granted.** This means therefore that the membership threshold is 643 to 771 depending on the actual number of appointees. This is the first threshold to accomplish. I think it may be possible to do this electronically as long as the members agree to register online and make this process a virtual one but which is auditable based on a unique registration number per member to ensure that the process is transparent to both the registrar and the employers body

CONCLUSION

- The sequential nature of these decisions will determine if the ILGM is prepared to follow the process as set out.
- The first decision though is if the current membership (paid up) is prepared to consider that the ILGM become an employee association. Thus the current members have the option to exercise this decision only. The option can be put to the floor for decision/
- Do the Aye's or the Nays have it?