

Is a picket and a strike the same thing?



The Labour Relations Act 66 of 1995 (“the LRA”) regulates the right to strike. It defines a ‘strike’ in section 213 as *“the partial or complete concerted refusal to work, or the retardation or 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”*.

Strikes in South Africa are synonymous with a picket (and, unfortunately, violence, but we digress), and a common misconception is to conflate the terms. Strikes and picketing are, however, two different concepts, regulated by different sections of the LRA.

A picket is a peaceful demonstration by striking employees in support and furtherance of a protected strike. Importantly, section 69(6C) of the LRA provides that no picket in support of a protected strike may take place unless picketing rules have been agreed to or have been determined by the CCMA. Section 69(5) of the LRA mandates the CCMA to determine picketing rules in circumstances where there is no collective agreement, or no agreement has been reached in respect of picketing rules.

The recent case of *South African Clothing and Textile Workers Union obo Members v KZN Marketing (Pty) Ltd* (2022) 33 SALLR 283 (LC) illustrates the difference between a strike and a picket. In this matter, the Union gave the employer 48 hours’ notice of a strike in terms of section 64(1)(b) of the LRA and its members embarked on a strike in circumstances where no picketing rules had been established. The employer contended, amongst other things, that the strike was unprotected as no picketing rules had

been established, and further that the establishment of picketing rules is a prerequisite for a protected strike. In determining the question before it, the Labour Court held, *inter alia*, that:-

"[30] So, in my view, picketing does not in and of itself constitute a strike. Of course, if employees stop work in order to picket, the stoppage will very likely be a strike and its lawfulness or otherwise will depend on whether it complies with section 64. Tellingly, it is not KZN Marketing's case that there is non-compliance with section 64. Therefore, the contention that, because there is a nexus between a strike and picket, then a picket is tantamount to a strike is fallacious. Clearly, while it is true that a picket constitutes an action in furtherance of a strike, the two actions are regulated separately. Any interpretation that conflates the two stands to be rejected as it does not accord with the structure, context and purpose of sections 64 and 69 of the LRA."

More recently, in *Fraser Alexander (Pty) Ltd v Association of Mineworkers and Construction Union & Others** (case no. 2024-105100, 18 September 2024), the Labour Court issued an order interdicting a picket in support of a protected strike until such time as picketing rules had been agreed to or determined by the CCMA, in accordance with section 69(6C) of the LRA.

In summary, a strike that complies with the procedural requirements set out in section 64 of the LRA cannot be declared unprotected on the basis that there are no picketing rules to regulate a picket.

However, where employees seek to embark on a picket in support of a protected strike, but picketing rules have not been agreed or determined, employers may approach the Labour Court for relief.

Picketing rules serve an important purpose. They regulate how, when, where a picket may take place and, if drafted properly, place obligations on various persons to ensure that the picket remains peaceful. Employers should therefore not overlook the importance of properly drafted picketing rules and should engage professional legal assistance well in advance of any possible strike taking place.

* CHM acted for the employer in this matter.