



RULING ON REPRESENTATION

Commissioner: Willem Connan

Case No.: **WECT16465-26**

Date of Ruling: 01 September 2026

In the matter between:

PREMIER FMCG (PTY) LTD

(Applicant)

and

SOLIDARITY, AFADWU, NUFAS AND NON-UNION REPRESENTATIVES

(Respondent)

Applicant's representative: Hardus Hamman (Head of Group ER)

Respondents' representative: Nyaniso Gqalaqha (AFADWU official)

PARTICULARS OF PROCEEDINGS AND REPRESENTATION:

1. This matter arises from the section 189A large-scale facilitation process between the parties. At the second sitting on 26 August 2026, the Applicant raised a representation issue that the parties could not resolve. As the appointed facilitator, I heard the parties' submissions and must make a ruling.

ISSUE TO BE DECIDED:

2. I must decide the issue of representation in terms of CCMA Rule 25 and in particular with reference to the strict hierarchy of representation in large scale retrenchment facilitations.

ARGUMENT:

3. In brief, Nyaniso Gqalaqha, the AFADWU official, stated that, to his surprise, his shop steward was refused entry to the company premises on the morning of 26 August 2026 when they arrived for the facilitation meeting. His member later entered by clocking in through the company's biometric system, as requested by the Respondent. Mr Julie from NUFAS, although not directly concerned with the AFADWU representation issue, argued that Rule 25 refers to members, not employees.
4. Hamman responded that he had said the individual could use the normal clock-in process if he was an employee. Although the individual claimed to have clocked in, Hamman disputed this and stated that he believed the person entered the premises unlawfully, as he was apparently not registered as an employee and therefore could not have accessed the premises through the clock- in system.
5. If someone assisted him to enter the premises, the company must address that issue, as it could not allow any unauthorized person to gain access. Hamman explained that "clocking in" means entering through the company's biometric system. The referral states that all full-time employees at the plant are affected. The process does not include seasonal employees because the company does not currently employ any. Hamman further stated that, if a person is not an employee, they should not attend the facilitation. He also became aware that two former company employees who are members of NUFAS attended the first meeting and said he would address the issue. He also became aware that Mr De Bruyn, who represented himself as acting for AFADWU, was in fact representing COSATU.
6. Mr De Bruyn of COSATU stated that the venue was unsuitable for the process because, in his view, the employer sought to control who could attend, the space was cramped, and movement was

restricted. He submitted that the process belongs to the CCMA and all consulting parties. On his undisputed *locus standi* as a COSATU representative, it was argued that, because COSATU is a federation of trade unions and AFADWU is one of its members, AFADWU could second Mr De Bruyn to represent it in the process.

ANALYSIS:

7. CCMA Rule 25(d) sets out representation in large scale retrenchments as contemplated in section 189A(3) of the Act.
8. It states a party may appear in person or be represented by:
 - i.) a director or employee of the party, and, if a close corporation, a member or employee of that close corporation;*
 - ii.) any member, office bearer or official of that party's registered trade union; or***
 - iii.) any member, office bearer or official, of that party's registered union or registered employers' organisation.*
9. The purpose of representation in Section 189A facilitations ensures that the employer or affected employees' interests, rights, and views are protected and clearly presented during large-scale retrenchment consultations. This includes monitoring the consultation timeline (60days), ensuring statutory duties are met, and linking the CCMA-appointed facilitator with the workforce or management to improve communication and avoid deadlocks.
10. A person who is no longer employed by the company does not automatically have the right to act as an internal employee-nominated representative in an ongoing retrenchment process. In the absence of evidence that Siya is an employee of the company, he would lack the legal status required to act as a representative in this CCMA facilitation process.
11. It is procedurally irregular for a registered trade union official to, on their own initiative, introduce an outside union member who is no longer employed by the company, in a large-scale section 189A facilitation process as a representative without consulting the respondent. Trade Unions' representivity and right to represent derives from their membership, who comprises of employees employed by that entity. If Siya had been an office bearer, which was not the argument, it could have

been different. The initial onus rest on AFADWU (or Siya) to establish that a valid employment relationship exists, they failed to do so.

12. Considering the above, I accept that in the absence of proof that he is still an employee, Siya has no *locus standi* and therefore has lost his right to participate in this facilitation process.
13. With regards to **Malvern de Bruyn**, it is not disputed that the registered trade union AFADWU, who is a party to the facilitation process, had seconded him to represent them in the facilitation process. It is also not disputed that he is from COSATU.
14. COSATU, as a federation of trade unions rather than a registered trade union, therefore does not itself have standing under the Labour Relations Act 66 of 1995, as amended ("the LRA"). Its affiliated registered trade unions, however, may represent affected workers in large-scale retrenchment processes. Under the LRA, only a registered *trade union* or elected employee representatives may act directly as consulting parties in retrenchment proceedings, provided the employees are members and the workplace falls within the union's registered constitutional scope.
14. Having considered the criteria regarding representation under CCMA Rule 25(d), I find that Malvern de Bruyn, in the position he seeks to represent (as COSATU), lacks *locus standi* to represent AFADWU in the current section 189A facilitation process.
15. Regarding venue suitability, the CCMA determines the venue for the initial meeting. It is a consensus seeking process and ideally the consulting parties mutually agree on where the facilitation meetings will take place. If the parties cannot agree on venues for later meetings, the appointed facilitator makes the final and binding decision.
16. No other party raised concerns about the venue's suitability at the first sitting. I only asked the applicant to rearrange the seating layout to improve collaboration and active participation. Mr De Bruyn raised his dissatisfaction with the venue at the second sitting, stating that the venue was not conducive for reasons he provided. Where he lacks *locus standi*, I need not decide the venue issue. Unless there are objectively valid grounds to move the current venue, the meetings will continue to take place at the applicant's premises.

RULING:

1. Melvern de Bruyn does not have representation status and may not participate in this facilitation process.
2. Siya has no legal status to present the employees affected by this section 189A large scale facilitation process and cannot participate in the facilitation.
3. The status quo regarding the venue remains.

A handwritten signature in black ink, appearing to read 'Willem Connan', with a stylized, cursive script.

CCMA COMMISSIONER: WILLEM CONNAN