

Law enforcement failure behind SA labour broker furore

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There are a great many unacceptable labour practices throughout South Africa, many of them undoubtedly related to the treatment of workers supplied by labour brokers. But the source of the problem may lie not so much with how workers are recruited, but in the fact that the department of labour has proved next to useless in monitoring, let alone prosecuting breaches of labour law.

Trade unions too, should take some of the responsibility for not prosecuting more vigorously breaches not only of the law concerning wages and length of employment but, often even more importantly, issues of health and safety.

Regulations already exists; they are contained in the Labour Relations Act and the Basic Conditions of Employment Act. In fact, any worker in South Africa who labours for an employer for more than 24 hours a month is, in law, an employee and, as such, qualifies — proportionate to the hours worked — for all the rights and benefits of an employee.

These laws may often be ignored or may be inadequate. But this is where the debate should start.

Instead, in the often emotive furore about whether labour brokers should be banned, regulated or self-regulated, an impression is created that agencies supplying temporary or casual labour operate locally in a lawless and therefore anarchic environment. Clearly, they do not.

This is obvious in the welter of evidence about reports to the department of labour about of abuses of the law. However these result, all too often, in no action whatsoever.

Yet the department, the unions and the employers should all be aware that labour brokers, under the title “Temporary Employment Services (TES)” are covered by current labour legislation. In law, the end employer who hires a broker to supply labour, hires the employees of the broker. The broker is, therefore responsible, under the labour laws, for the pay and conditions of the workers outsourced to other companies.

But if laws exist, they are supposed to be enforced or else they become meaningless. And where laws that benefit the majority of workers are disregarded, it is always worthwhile examining why this should be so and who profits by this neglect.

It is not rocket science to understand that it is hirers of casual labour and unscrupulous suppliers who stand to gain most: the hirers because they take no responsibility for the workers, using them for as short or long a period as they wish; the unscrupulous suppliers — the labour brokers — because they also accept no legal obligations to the workers.

There are a number of large traders in human labour who may adhere, in general, to the law. But there are also a fair number of “quick buck” merchants who, even with as little as a telephone, fax and a pickup truck, have set themselves up as a TES, to provide usually cheap casual labour. Who hires this labour is an important question.

Construction companies large and small are obvious targets as the hirers of workers on a casual basis. In a recent report on work on soccer stadiums being built for the 2010 World Cup, University of Cape Town researchers Shane Godfrey and Pamhidzai Bamu found that such companies prefer to source their labour from brokers.

They note: “Using labour brokers dispenses with the problem of unfair dismissal and retrenchment costs and procedures.....Clients are not bound to keep workers for the stipulated periods, as labour brokers promise to replace a worker who the client is unhappy with.....”

The companies tend to insist that they receive assurances from the brokers that the laws are complied with. It is obvious, from numerous reports, that this is often not so; that workers enjoy no rights as employees and that brokers profit massively through the application of a “high rent, low pay” policy.

But the construction industry and other “seasonal work” private sector entities such as agribusiness are not the only large-scale users of such labour. Last week, for example, the SA Post Office released its annual report which made clear that it employed 11 labour brokers to provide 8 600 casual postal workers at an annual cost of some R350 million.

According to the Communication Workers’ Union, the hourly rate paid to the brokers of between R21 and R45, is more than double the pay received by the workers. Such disparity in incomes cannot be justified by the administrative and transport costs borne by the brokers.

A similar situation applies in the field of domestic work and commercial cleaning where it is not unusual for a company to charge R160 a day for an outsourced worker while paying that worker just R60. But worse examples of abuse are to be found in the outsourcing of skilled labour, something particularly evident in the garment industry, but also affecting various other sectors, including the editing functions of journalism.

In the current debate, the two problems often tend to be conflated, but they are different, although the employer rationale — to reduce labour costs — is the same. However, those agencies providing workers for secretarial or computer programming work on a casual basis also fall into the same category as the brokers supplying unskilled or semi-skilled labour to the Post Office or the construction sector.

Once these points — especially the policing of existing legislation — are clarified and the present system is found wanting, it should be possible to set to rights what might be wrong — or to debate which alternatives would best suit South African conditions.

To simply call for a ban or for regulation — let alone self regulation — as various unions are now doing, when laws already exist that are not enforced is problematic. A blanket ban in the present circumstances could well exacerbate the problem by driving labour broking underground. If current laws are widely ignored, how will a ban be enforced?

But with a probable unemployment rate of more than 40 per cent, something clearly must be done. And the unions have a role to play, especially having adopted the International Trade Union Confederation’s “Decent work, decent life” campaign “to ensure all people benefit equally from the process of globalisation”.