TRANSCRIPTION OF THE

COMMISSION OF INQUIRY

MARIKANA

BEFORE TRIBUNAL

THE HONOURABLE MR JUSTICE FARLAM (RETIRED) - CHAIRPERSON
MR TOKOTA SC
MS HEMRAJ SC

HELD ON

DAY 41 31 JANUARY 2013 PAGES 4396 TO 4500

HELD AT

CIVIC CENTRE, RUSTENBURG, NORTH WEST PROVINCE

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[PROCEEDINGS ON 31 JANUARY 2013]

[09:43] CHAIRPERSON: The Commission resumes. Mr Tip, you’re going to call the witness, I believe?

MR TIP SC: Thank you, Mr Chair. I call the next NUM witness, being Mr Senzeni Zokwana. A written statement prepared by him has been circulated quite some time ago, well before the end of the proceedings last year. Signed copies and the original were made available yesterday afternoon and I trust that the Commission has a copy of those. To the best of my knowledge all other parties have the copies. If anybody is lacking a copy today they can tell us, we have available.

CHAIRPERSON: This is a signed – this must be the original. Mr Zokwana, would you please stand?

Are you willing to take the oath or do you wish to affirm?

MR ZOKWANA: So help me God.

CHAIRPERSON: You’re willing to take the oath?

MR ZOKWANA: Yes.

MR TIP SC: So help me God.

CHAIRPERSON: You’re willing to take the oath or do you wish to affirm?

MR ZOKWANA: Yes.

CHAIRPERSON: Will you swear that the truth, the whole truth and nothing but the truth? Please raise your right hand and say, I swear, so help me God.

MR ZOKWANA: I swear.

CHAIRPERSON: So help me God.

MR ZOKWANA: So help me God.

SENZENI ZOKWANA: d.s.s.

CHAIRPERSON: Thank you, you may be seated. Mr Tip, the statement that you’ve given us will be marked as an exhibit. Ms Pillay, can you tell us what the next exhibit lettering will be? AAA, will it be?

MS PILLAY: Chair, if I may request that we reserve AAA. We’re putting together a compilation of the first –

CHAIRPERSON: Okay, right.

MS PILLAY: - set of videos. So it would be BBB.

CHAIRPERSON: BBB or – what about AAA – oh, AAB. AAA is A-A-A. Logically the next exhibit would be AAAAAB, unless you just want to move on to the –

MS PILLAY: No, we didn’t do AB, if you understand.

CHAIRPERSON: I see, okay. So this will be BB?

MS PILLAY: This will be – no, this will be BBB.

CHAIRPERSON: Yes, BBB1 or just BBB?

MS PILLAY: BBB1.

CHAIRPERSON: Okay, I’ve marked it BBB1. Are there going to be more exhibits that you may be handing over?

CHAIRPERSON: I’ve marked it accordingly.

MR TIP SC: Unless something arises in the course of the cross-examination that requires some additions. Mr Chair, may I proceed?

CHAIRPERSON: You may.

EXAMINATION BY MR TIP SC: Mr Zokwana, you have before you the statement which is now an exhibit, BBB1. That is your statement which you have signed, correct?

MR ZOKWANA: Yes.

MR TIP SC: Is it also correct that you have had the opportunity to read again through your statement with care and are you in a position this morning to confirm under oath that that statement is correct?

MR ZOKWANA: Yes.

MR TIP SC: What I propose to do, Mr Zokwana, now that the statement is properly before the Commission, is not to read it out and not to ask you to read it out. I’m going to deal with various paragraphs in a fairly summary fashion.
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25           MR ZOKWANA:          That's correct.
24           MR TIP SC:          Now, Mr Zokwana, this of course is not a Commission which would at this stage have, want to hear too much detail about the mining industry.
23           MR ZOKWANA:          I'm comfortable with that.
22           MR TIP SC:          Mr Zokwana, you'll just keep half an eye, without letting it distract you, on the interpreter next to you so that you pause at convenient times so that everything you say is properly translated and over the years done a great deal towards improving the lot of mineworkers - details are set out - but I want, in this regard, to make some additions to your statement and here we will have regard also to the allegations that NUM does not care.
21           MR ZOKWANA:          I'm comfortable with that.
20           MR TIP SC:          Then let us first touch on the important topic of wages and benefits. Can you give us a brief sketch of what NUM has achieved in that regard and related to it?
19           MR ZOKWANA:          I'm comfortable with that.
18           MR TIP SC:          Then let us first touch on the important topic of wages and benefits. Can you give us a brief sketch of what NUM has achieved in that regard and related to it?
17           MR ZOKWANA:          I'm comfortable with that.
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12           MR TIP SC:          Then let us first touch on the important topic of wages and benefits. Can you give us a brief sketch of what NUM has achieved in that regard and related to it?
11           MR ZOKWANA:          I'm comfortable with that.
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9           MR ZOKWANA:          I'm comfortable with that.
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7           MR ZOKWANA:          I'm comfortable with that.
6           MR TIP SC:          Then let us first touch on the important topic of wages and benefits. Can you give us a brief sketch of what NUM has achieved in that regard and related to it?
5           MR ZOKWANA:          I'm comfortable with that.
4           MR TIP SC:          Then let us first touch on the important topic of wages and benefits. Can you give us a brief sketch of what NUM has achieved in that regard and related to it?
3           MR ZOKWANA:          I'm comfortable with that.
2           MR TIP SC:          Then let us first touch on the important topic of wages and benefits. Can you give us a brief sketch of what NUM has achieved in that regard and related to it?
1           MR ZOKWANA:          I'm comfortable with that.
25 part in that, in the loco inspection, in the inquiry

24 accident NUM will make sure that there are people to take

23 MR ZOKWANA: That is true in every

22 matter up?

21 NUM is involved, resulting in injuries or deaths or raising

20 of safety, that NUM would become involved and take the

19 instance where there is an accident on the mines at which

18 MR TIP SC: Would it be so that in every

17 best legal brains, we make sure that we have got the

16 the best legal brains, we make sure that we have got the

15 many years and as a union we have made a point that we get

14 that the fate of mineworkers has been left unattended for

13 mineworkers and as a union we have made a point that we get

12 their problems and silicosis has been one of the diseases

11 that has killed many members or many workers working

10 been involved in such to make sure that the current formula

9 MR ZOKWANA: It's true because NUM has

8 various commissions of inquiry and accident investigations

7 Commission but generally is it so that there have been

6 detail at a level that'll be useful immediately for the

5 interfere, if I may, just so that we keep the amount of

4 MR TIP SC: Mr Zokwana, I'm going to

3 lives and we had to incur costs as we hired the best legal

2 brains to make sure that the truth was unveiled so that

1 such does not happen again.

MR TIP SC: Now, although we won't go

into the details of the percentages of the increases that

have been obtained, generally has NUM over the past many,

many years, achieved above inflation improvements in wages?

[10:03] MR ZOKWANA: NUM has been guided by a

slogan of “For everything we do, mineworkers come first.”

And we took a decision that says that any agreement less

than a double digit was not right or correct for

mineworkers and we have then retained increases of between

10 and 9% for the last three years within the industry.

MR TIP SC: Is it also so that NUM has

negotiated the establishment of a Mineworkers' Provident

Fund and an employee share ownership scheme within the

industry?

MR ZOKWANA: It is true because before

NUM was formed, as I've said earlier, mineworkers did not

have any pension to look at and through the participation

of NUM in the Mining Charter, one clause that was giving

workers some benefit has been the creation of [inaudible]

which, in some mining houses, especially in – at Anglo

Platinum on the iron ore side, workers got in some

dividends of half a million in some instances, improving

their earnings and I can say that to this Commission, NUM

has played that role and we believe that every and/or a

member of NUM can attest to that. Sorry, can I make a

correction? I heard now when the interpreter is

interpreting. I meant Anglo American operations in the

iron ore division.

MR TIP SC: Mr Zokwana, I want to go on

to a second topic under this general heading of what NUM

has done and its approach to the care of its members and

that is health, safety and compensation and again I’d like

to ask you just to very briefly highlight a few aspects of

what it is that NUM has done and achieved in that regard.

MR ZOKWANA: At its formation NUM became

aware of the high number of people who die or get sick

within the industry and it has been a struggle we have been

involved in and NUM have played a major role and make a

very important submission during the Leon Commission,

outlining not only the underground but also the living

conditions of mineworkers. We formed a fully fledged

structure at head office, manned by qualified people, to

ensure that we have got a health and safety committee that

takes into account any matter that arises that poses

threats to lives of mineworkers or where they have been

injured. We participated during the investigations on the

[indistinct] disaster in which 103 mineworkers lost their

lives and we had to incur costs as we hired the best legal

brains to make sure that the truth was unveiled so that

such does not happen again.

MR TIP SC: Mr Zokwana, I’m going to

interfere, if I may, just so that we keep the amount of

detail at a level that’ll be useful immediately for the

Commission but generally is it so that there have been

various commissions of inquiry and accident investigations

that NUM has participated in consistently.

MR ZOKWANA: Yes, that is true. NUM has

been involved in almost all investigations, either into

accidents or into the processes that deal with compensation

of mineworkers and that has been done because we believe

that the fate of mineworkers has been left unattended for

many years and as a union we have made a point that we get

the best legal brains, we make sure that we have got the

expertise, that we shed light on those matters.

MR TIP SC: Would it be so that in every

instance where there is an accident on the mines at which

NUM is involved, resulting in injuries or deaths or raising

of safety, that NUM would become involved and take the

matter up?

MR ZOKWANA: That is true in every

instance where there is an accident on the mines at which

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1. with diseases of that kind are - leave the mine, I'll put it neutrally, and go back to their distant places where their homes are, which may be in a variety of Southern African countries and even beyond.
2. MR ZOKWANA: Yes, it is so.
3. MR TIP SC: Does NUM have any structures in place to ensure that there are follow-ups for such persons and that they get the necessary assistance to see medical persons, to process claims and the like?
4. MR ZOKWANA: Yes, we do have such structures. In every region where NUM is organising we do have medical practitioners who will be used to make sure that they do examinations to determine the levels as well as to see if such people can have access to compensation, but more than that, we do have people who are able to visit anybody who may be outside the place of employment.
5. MR TIP SC: Mr Zokwana, thank you. I want to turn to a different topic although I know there's a great deal more to be said about the ones that we've touched on already, and that topic is the issue of tribalism, racism, hostel living, faction fighting – that category of matters. Has NUM played a role in respect of issues of that kind?
6. MR ZOKWANA: Thanks. Let me start with racism. When I joined this – the mine on the 17th of December at the age of 23, I was made to understand that being a black person, what was being employed was not my intellect, except my ability for work. I was stripped naked and a white lady was to examine my manhood. And I began to lose any dignity I could have had as a man and I saw other elder men who were stripped naked, walking around like kids and I began to know there was a fight to fight. And NUM had to fight and from there I could understand that there was a division of work. The colour bias was still very - the job, as a black person could only occupy jobs within group 1 to group 8. The highest you could go was to be a boss boy then, which is now called a team leader. NUM, on its inception, dealt with that very vigorously to make sure that black people should have dreams of acquiring, of ascending to higher offices in the industry. There were separate amenities on the mine. There were bathrooms for white people, there were washing – there were showering rooms for white people and even in offices as a black person you would stand at the window and only be addressed as you come. Worse was the fact that of instances where they'd been beaten by the white supervisors.

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1. December when I took a contract -
2. MR TIP SC: You'd better say that year?
3. MR ZOKWANA: It was 1979 on the 17th of December at the age of 23, I was made to understand that being a black person, what was being employed was not my intellect, except my ability for work. I was stripped naked and a white lady was to examine my manhood. And I began to lose any dignity I could have had as a man and I saw other elder men who were stripped naked, walking around like kids and I began to know there was a fight to fight. And NUM had to fight and from there I could understand that there was a division of work. The colour bias was still very - the job, as a black person could only occupy jobs within group 1 to group 8. The highest you could go was to be a boss boy then, which is now called a team leader. NUM, on its inception, dealt with that very vigorously to make sure that black people should have dreams of acquiring, of ascending to higher offices in the industry. There were separate amenities on the mine. There were bathrooms for white people, there were washing – there were showering rooms for white people and even in offices as a black person you would stand at the window and only be addressed as you come. Worse was the fact that of instances where they'd been beaten by the white supervisors.

Page 4410
1. MR TIP SC: Again Mr Zokwana, you'll forgive me. I know that there are a great, great many details relating to topics such as these -
2. CHAIRPERSON: May I say I'm glad you've mentioned that because some of these matters are more relevant under the second phase and obviously NUM will get full opportunity to deal with those matters then, possibly by way of affidavits or written statements but it has some relevance in relation to phase 1 but more on the broad outline points than in the detail. So I take it you are going to have that in mind in what follows. I don't want to spend too much time on this. On the other hand, to be fair, the has been an attack on NUM already in phase 1 and they must be given an opportunity to defend themselves.

Page 4411
1. MR TIP SC: I'm indebted to you, Mr Chair, for that indication and perhaps I should just expand very briefly on what I said at the beginning. It is so that NUM has been attacked, it is so that NUM has been accused of being not caring but apart from that, we're addressing these sorts of details and the history of NUM as a matter we believe, in our submission, is directly relevant to phase 2 - I beg your pardon, phase 1 and it is relevant points than in the detail. I haven't stopped you.

Page 4412
1. MR TIP SC: No, no -
2. CHAIRPERSON: I'm just indicating that a lot of the detail of this part of the matter will be dealt with in phase 2, so it isn't that you won't get an opportunity -
3. MR TIP SC: No.
4. CHAIRPERSON: - to say what has to be said, on the other hand I understand the need to, as you perceive it, to put your case in outline at least at this stage already. That's why I'm not stopping you but I'm just indicating I want a brief outline and not great detail at this point.
5. MR TIP SC: That is certainly our approach but I just want to add for the benefit of the Commission and also for the parties so that they can understand what it is that we're doing. The Commission ultimately will have to form a view on what took place on the koppie and what led to the RDO strike, what led to the nature of the acts that were performed by various parties in the course of the events. And the hostility towards NUM that arose at that time was very apparent and the Commission already has indications of that.

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1. Now in order, in our submission and we'll develop this in due course, in order to understand how that kind of hostility arose, it will be fitting, we believe, to have
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regard to, in fact, what NUM has done over the years as an organisation and why, fairly abruptly, that shifted into an entirely different disposition. But we will bear in mind the need to present highlights rather than details. Mr Zokwana, you've followed that discussion?

MR ZOKWANA: Yes.

MR TIP SC: Thank you, Mr Zokwana. So what we'll do is we'll look at the remaining topics. I'd be glad if you can put sufficient detail so that it's not just a label, it gets some content, but not to go too extensively into detail. I would, under this particular topic of tribalism, racism and faction fighting, for you to deal briefly with the latter part of that - faction fighting, its significance and what NUM has done about that in particular over the years.

MR ZOKWANA: Thanks. When NUM was formed, the mineworkers were accommodated in single sex hostels on tribal lines and that resulted in mineworkers now and again fighting amongst themselves, divided on those tribal lines. And NUM has to make sure that a part of its programme was to unify mineworkers, make them understand that they must speak different languages but they remained the same and they should take each other as a brother and a friend. And I can say that NUM succeeded in doing that because for a long time we've been able to see mineworkers singing together, enjoying different cultural activities, without looking at them as not part of the whole system.

We won that battle through democratising the hostel system and also that mineworkers play a role in the election of structures in the hostel to make it more amenable, better to - and a change and workers are mixed in the way they live in the hostels, no longer on tribal lines or language groupings.

MR TIP SC: Thank you, Mr Zokwana. And in rather similar fashion, and we needn't go into detail, is it so that NUM has also addressed the issue of the nature of housing that is provided to employees throughout the mining industry?

MR ZOKWANA: Everybody who is employed in a mine where there is a hostel would never deny the fact that things are changing, things have changed. First we democratised hostels, secondly, we fought for their upgrading and also making sure that mineworkers have got access to their own housing, where possible. We're against this thing of where you've got 25 or 18 miners in one room because that was not good, it was not giving them - not giving them respect, not giving them privacy. So we fought against that, that - we make sure that hostels are transformed into units where people can have some privacy. Where people need housing, we were able to assist to make sure that people can access subsidies to make sure that they can be able to acquire such accommodation.

MR TIP SC: Mr Zokwana, thanks. I want to turn to a different aspect of what NUM does and the background to that is that NUM has set up a Mineworkers’ Investment Trust, which has been in existence for many years, is that so?

MR ZOKWANA: It’s true, because when we picked that the chances of kids of mineworkers joining the industry at the level where their fathers joined, was that high, as there were no major - I mean, improvement by companies to give bursaries. NUM said, we want to make sure that out of mineworkers we’ll produce engineers, doctors, lawyers, in different things - and we have achieved that or are in the process of achieving that. Up to date we have produced 800 graduates at a cost of 76 million. As I speak, 235 graduates or students are in different institutions of higher learning - through, and paid for, by that bursary scheme.

MR TIP SC: Mr Zokwana, I just want to put a name to that. That is the JB Marks Educational Trust Fund, is that correct?

MR ZOKWANA: That is correct.

MR TIP SC: Yes, and for the transcribers, that’s - Marx is M-A-R-K-S. And just to wrap that up, the beneficiaries, I understand, of all these bursaries are the dependants of mineworkers.

MR ZOKWANA: Anyone who is a mineworker who is a member of the union has a right, or his kids have a right to go to varsity if he has made an application. Even mineworkers themselves have been able to improve their academic qualifications through this bursary scheme.

MR TIP SC: Yes. And lastly, Mr Zokwana, on this subject - I just want to mention the Mineworkers’ Development Agency and that is a body generally devoted to seeking to uplift communities in various areas throughout the Southern African region, is that so?

MR ZOKWANA: That's correct.

MR TIP SC: Alright, well, let us leave that topic, Mr Zokwana, and I want to move on to paragraph 5 of your statement. There you set out generally the developments and the legislative framework that governs labour relations in this country and you say that NUM has played a significant role in bringing about those improvements to the point where we have a sophisticated Labour Relations Act and ancillary legislation today, is that right?

MR ZOKWANA: That's correct.

MR TIP SC: And I want to - I just want to read out the last two sentences of that paragraph and...
then I'll pose one or two questions to you that are of direct relevance to aspects of the proceedings in this Commission. Those, the legislative dispensation that we have now is the background and you say the following, “They entail lawfully organised union and employees entities, functioning within a bargaining environment that not only regulates their interaction but also provides the possibility of resort to lawful strike or lockout measures. Properly observed and applied, they provide certainty and stability for all parties.”

MR ZOKWANA: Yes, I agree with that.

MR TIP SC: Yes. Now against that statement, I'd like you please just to tell the Commission, in essence, what the role and importance is in a structure of this kind, of a mandate.

MR ZOKWANA: Before a union can engage any employer in any form of negotiations, you need a proper mandate from those on whose behalf you are negotiating. You must have the right to get their views. When we have gone through engaging with the employers in the course of give and take, you are able to go back and report and get a new mandate. Whenever you have to make a concession on one point or another, it must be through that mandating process. Without a mandate I don't foresee you claiming to represent anybody, for you rely upon them giving you the way forward. So mandating is part and key to any process of bargaining.

MR TIP SC: Thank you. Mr Zokwana, I want you then to apply those considerations to the context of Marikana, about which you – although you were not present personally, you are familiar with the essence of the history of the period before the decision by the RDOs to go on strike and the events leading up to the shootings on the 16th of August 2012 and even thereafter. The role of the mandate there, in relation to NUM's position vis-à-vis the RDOs who decided to strike, can you comment on that?

MR ZOKWANA: You can only get a mandate from people who have the trust in you. You can only get a mandate from people who believe that you are still their agent. With the case of Marikana, the RDOs took a decision that NUM was not going to be such an agent and the violent nature of the process would have meant that interaction between NUM and those strikers was impossible, as a lot of our local shop stewards had to go to hiding. There was no way then for NUM to get that mandate from people where violence towards the union, as shown by the incident of the 11th at the branch office.

MR TIP SC: Now Mr Zokwana, there have been suggestions in this inquiry thus far that NUM should nevertheless have taken an initiative, should have launched some kind of collective bargaining interaction, should have taken up some form of negotiations with the employer, with Lonmin. On the basis of the facts as you understand them, was that a viable option in terms of the collective bargaining framework?

MR ZOKWANA: The view of the NUM was that it was impossible because there was no way NUM would have been able to go to the koppie and meet with those strikers who were aggressive or who were not willing to talk to our shop stewards.

MR TIP SC: I want to turn to a different topic now and, as I indicated, Mr Zokwana, the role of the RDOs and the position of RDOs and the experiences of RDOs are all matters that are of great consequence to the Commission and all the parties here and I want to begin with you, if you would, by putting a little content to what it is that RDOs do. We've heard that their work is hard, that it is dangerous and that they are underpaid but if you could, from your own experience, present us with a little sketch of what it is really like for an RDO and what work he does.

MR ZOKWANA: Underground work is difficult but no work is difficult to match the job done on a daily basis by RDOs. An RDO on a daily basis can only perform his job if he is on the rock face. He has to drill, with oil dribbling on his body, his body shivering from the consistent vibration of the machine. If the miner, who was marking that morning would have made a misfire and marked on that hole, the machine driller in more instances would be blasted underground and many have died due to that process.

MR TIP SC: Just to pause there for a moment. Just to clarify in case it's not clear to everybody, the misfire – am I correct in understanding that a Miner, that's with a capital M, that's the senior person.

CHAIRPERSON: Yes, a certificated miner is really what, certificated Mine a capital, is a Miner with a blasting certificate.

MR TIP SC: A blasting certificate.

CHAIRPERSON: He's a certificated Miner.

If you call him that then the difficulty falls away.

MR TIP SC: That would be a better way to put it, but the person who's been in charge of a previous drilling operation and the insertion into the drill holes of explosive charges which are to, of course, explode and to fragment the rock so that there can be an extraction, is that correct?

MR ZOKWANA: The issue I wanted to clarify is that the person who is a Miner is the one who
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3. gold and coal mining on the one hand and platinum mining on the other.
4. MR ZOKWANA: That's correct.
5. MR TIP SC: Now, Mr Zokwana, has it ever died in that process.
6. MR TIP SC: Yes. So what you are saying is if a Miner misses an unexploded charge and the RDO then comes along and begins to drill, there's every prospect that there will be a fatal explosion.
7. MR ZOKWANA: Yes. And also, by definition, you have explained that they are at the rock face, that's at the very end of the mining stope where further excavation is being done, is that correct?
8. MR ZOKWANA: Yes, it's true. A Miner will always be on the rock face and above him, with what we call in the mine, hanging wall. And that hanging wall will depend upon the blast the previous day as well as any geological changes in the rock structure and therefore sometimes Miners will mine under a brow that is not well-protected, thereby exposing their own lives and many have died in that process.

MR TIP SC: Now, Mr Zokwana, has it ever been the view of NUM that RDOs are properly paid for the work that they do?

MR ZOKWANA: NUM has fought and still believes that the rate at which RDOs are paid is very low as the current form of job grading done by the industry does not take into account the conditions, the kind of work a person performs.

MR TIP SC: Mr Zokwana, as you know, Mr Gcilitshana, the chief negotiator at Lonmin, has given evidence. He has described that NUM was unable to persuade the employer to accept its proposals for remuneration for RDOs. He went on to say that that was a matter that had also been taken up at the more senior level by you and the secretary general of NUM.

MR ZOKWANA: Yes, it was including, the senior negotiators of the Chamber and they raised the NUM concern on the remuneration of machine drillers in particular, which is the RDOs, and in 2011 negotiations a task team was formed whose report was tabled in 2012, resulting in an additional R500 on their basic pay so that it improves a bit what they earned, more than the 10% that was given to them in July.

MR TIP SC: Just a few questions to complete that point and I just want to put this in context, you've referred to 2010 and the important developments there, is it so that those were pursuant to a concerted programme on the part of NUM which dated back to 1998?

MR ZOKWANA: Yes, it's true. In 1998 we did put a demand to the Chamber and to the industry to change the grading system and we believe that the current grading that companies are fond of, does not address some of the aspects of the work miners are doing.

CHAIRPERSON: By miners I take it you mean mineworkers, not just certificated Miners?

MR ZOKWANA: Yes, it was including, Commissioner, the fact that all people who are underground and on the surface were not paid according to the conditions, the job they performed, but it was - the current grade recognise his authority - it doesn't matter what job, how difficult it is, as long as you don't have authority it does not pay you accordingly.

MR TIP SC: And lastly - and Mr Zokwana, I'm going to ask you not to go into any detail of this, I just want to confirm that when NUM took up the matter in a concerted way in 1998 with the Chamber, it sent a delegation to Canada in order to receive advice on structural matters and how job arrangements could be done in the mining industry, is that correct, without -
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25 para 9 and para 10.

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25 para 9 and para 10.

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Rustenburg

25 para 9 and para 10.

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25 para 9 and para 10.
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25 members at Lonmin not to associate with the unprotected
23 counsel.
22 counsel.
21 counsel.
20 counsel.
19 counsel.
18 counsel.
17 counsel.
16 counsel.
15 counsel.
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11 counsel.
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4 counsel.
3 counsel.
2 counsel.
1 counsel.

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1 MR TIP SC: Yes. Thank you for reminding
2 me of that perspective, it is important to communicate.
3 Perhaps, if I may Mr Zokwana, with the leave of the Chair,
4 to take you back to paragraph 7 and perhaps it'll be most
5 convenient - the most convenient and swift way of
6 communicating this to the persons present will be for me
7 just to read these paragraphs onto the record and if you
8 follow and correct anything that needs correction.
9 Firstly, paragraph 7, “It is the experience of NUM that
10 unprotected strike in general potentially have very grave
11 consequences for all parties, including the employees who
12 participate in them. Not only do they lose the protection
13 from dismissal, afforded by the constitutional right to
14 strike, but such strikes are often plagued by significant
15 levels of violence, intimidation and destruction of
16 property. Employers often take advantage of unprotected
17 strike to dismiss the strikers and thereafter re-employ
18 them on a selective basis and even with reduced terms and
19 conditions of employment.” Mr Zokwana, do you confirm that
20 those are the views of NUM?
21 MR ZOKWANA: Yes, I confirm them, senior
counsel.
22 MR TIP SC: Then we go on with paragraph
23 8, “It is for these reasons that NUM consistently urged its
24 members at Lonmin not to associate with the unprotected
25 strike and to continue reporting for duty. It likewise
24 called for the strikers to return to work and for their
23 demands to be channelled through established collective
22 bargaining processes and procedures. NUM actively assisted
21 its members, as well as other employees who wanted to
20 report for work but who, for one or other reason, were
19 finding it difficult to get there.” If I may, Chair –
18 CHAIRPERSON: Yes.
17 MR TIP SC: - do the same with the
16 following two paragraphs. Paragraph 8, the one I’ve just
15 read, Mr Zokwana, do you confirm that, that that is the
14 view of NUM, especially at your level of leadership?
13 MR ZOKWANA: I do confirm that as the
12 view of NUM.
11 MR TIP SC: I’m going to paragraph 9 and
10 I’m going to repeat the one question which I’ve already
9 read because I want to follow it up with the remainder of
8 that paragraph. “NUM also consistently urged Lonmin and
7 the SAPS to take steps to prevent the unlawful conduct of
6 the strikers and, in particular, to halt the numerous
5 instances of intimidation and violence that were directed
4 against non-strikers. Conduct of that nature is typically
3 resorted to by strikers in order to bring about a further
2 reduction in the number of workers reporting for duty and
1 thus to decrease or stop production. This increases the

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1 MR TIP SC: Then I want, lastly, to read
2 paragraph 10 and I’ll ask you whether that sets out,
3 generally, the view again of NUM’s leadership at your
2 level. “It is the view of NUM that its opposition to the
1 unprotected strike gave rise to anti-NUM sentiment amongst
2 the strikers and violence towards its members, officials
1 and the union itself.”
2 MR ZOKWANA: Yes, it is.
1 MR TIP SC: Now, Mr Zokwana, I’m going to
10 turn to your description of the events of 12 August 2012
9 when you came onto the scene at Marikana but before that, I
8 just want to ask you, did you in the course of 11th of
7 August 2012 receive any reports concerning the events at
6 the NUM office on that day?
5 MR ZOKWANA: No.
4 MR TIP SC: Right, on the morning of
3 Sunday, 12 August – I’m looking at paragraph 12 and perhaps
2 I can again abbreviate these – well, let me just lead you,
1 Mr Zokwana. On the Sunday the 12th of August did you
2 receive a call reporting the events in the vicinity of
1 Wonderkop hostel?
2 MR ZOKWANA: Yes, it is so.
1 MR TIP SC: And did you then decide to
2 drive out to the mine?
1 MR ZOKWANA: Yes, I did went to the mine.
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23 didn't take that as the culture that has existed in the environment and the fact that their own personnel was not enough to deal with the level of violence at that moment.
24 MR TIP SC: And did you personally, after
25 the meeting had come to an end, take any steps to contact...
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<td>1</td>
<td>set out in paragraph 18, that when you arrived at Lonmin, you and Mr Mathunjwa and other union officials met with, amongst others, General Mpembe of the South African Police Service.</td>
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<td>2</td>
<td>MR ZOKWANA:</td>
<td>Yes, that's so.</td>
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<td>3</td>
<td>MR TIP SC:</td>
<td>I just want to deal very briefly with two, two minor matters that arose out of the evidence of Mr Mathunjwa. First of all, he – there is an allegation that General Mpembe had said that he had identified four persons who were identified as leaders of those amongst the koppie, those on the koppie, and that two of those were NUM and two were AMCU. Do you recall that being said?</td>
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<td>MR ZOKWANA:</td>
<td>What I recall on that day was that we were made aware that of the group of strike leaders, they were from NUM and AMCU. That was said. I don't remember the numbers of, they were equal numbers, I don't remember that at all.</td>
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<td>MR ZOKWANA:</td>
<td>Yes, but the issue of leadership, you recall, was discussed and raised by General Mpembe?</td>
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<td>MR TIP SC:</td>
<td>And then also just at the level of a bit of detail, then we'll get on with the main narrative, it was said by Mr Mathunjwa that the NUM persons</td>
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<td>requested a caucus, they went out and even after 40 minutes, 45 minutes, they never returned to the boardroom. Do you agree with that?</td>
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<td>MR HANABE:</td>
<td>With all due respect to the Commission, I just feel that I'm so pressed and I've just asked Mr Mahlangu to stand in for me whilst I'm rushing to the men's room.</td>
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<td>9</td>
<td>MR TIP SC:</td>
<td>The question again, sir, was?</td>
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<td>10</td>
<td>MR TIP SC:</td>
<td>The question again was that Mr Mathunjwa had said that at the latter part of the briefing session, the NUM members present had said that they wanted a caucus, that they went out and that even after 45 minutes they had not returned to the boardroom where that meeting, where the briefing was taking place.</td>
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<tr>
<td>11</td>
<td>MR ZOKWANA:</td>
<td>Maybe it was Mathunjwa's memory lapse because after the caucus of NUM delegation we came back to give the response to what we went to caucus for.</td>
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<td>12</td>
<td>MR TIP SC:</td>
<td>And the response was that you would go to the koppie?</td>
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<td>13</td>
<td>MR ZOKWANA:</td>
<td>That's so.</td>
</tr>
<tr>
<td>14</td>
<td>MR TIP SC:</td>
<td>Now we've heard, Mr Zokwana, that you went to the koppie in police Nyalas, is that correct?</td>
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were you able to complete an address to these persons?

MR ZOKWANA: I tried, but the noise made by these people made it difficult to continue but I did say to people that they should disarm, allow the police to play their role, go back to their hostels, allow processes in dealing with grievances to take place after.

[12:12] MR TIP SC: And did, after some minutes, did the person in charge of the police, the officer in charge of the Nyala instruct that it should leave the scene?

MR ZOKWANA: That’s so.

MR TIP SC: Now you’ve told us, Mr Zokwana, that in your long history and experience of union activities, even faction fights, you’ve never encountered anything like this. What was the impact of it, of that experience on you personally?

MR ZOKWANA: I was so concerned about this threatening attitude of the strikers, I was so concerned, I was so concerned about the safety of other people to the extent that the following day – that would be the 16th – when I woke up I could not talk, my voice was gone.

MR TIP SC: You’ve also been shown some photographs of some of the persons who were unfortunately put to death in the period between 12 and 14 August, that’s in the police presentation –

MR ZOKWANA: Yes.

MR TIP SC: - prepared by them. Do you recall those photographs?

MR ZOKWANA: Yes, that’s –

MR TIP SC: You’ll recall that they include the killing, the bodies of the Lonmin security personnel killed on the 12th, the day that you came to the mine.

MR ZOKWANA: Yes.

MR TIP SC: In your experience of conflict related to the mines, have you ever seen anything of that nature?

MR ZOKWANA: As I have said, I have been dealing with section 5s where miners may kill, unfortunately, other miners, but the viciousness, the cruelty I saw in those films shocked me and I could not understand how human beings could be so cruel as to kill somebody. But beyond killing, they deface him in the manner those pictures showed.

MR TIP SC: Assume for a moment that amongst those on the koppie and amongst those who took part in acts of violence of that kind, that there were some persons who were NUM members, would such members have acted in accordance with the principles and the policies and the beliefs of NUM as an organisation?

MR ZOKWANA: Not at all.

MR TIP SC: Thank you, Mr Zokwana. Then just two last topics I want to deal with briefly. These also arise out of the cross-examination. On the basis of what you understand the position to have been at Lonmin during the relevant period, particularly before the shootings on the 16th of August, was it possible for NUM to initiate interaction of a bargaining nature with Lonmin on behalf of the RDOs?

MR ZOKWANA: It was impossible. One, you can only negotiate for people who believe that you are their agent, because in negotiations you will need a mandate to go to whoever you are negotiating with. You will need to feed back. The incidents from the 10th onwards showed that the machine drillers were no longer – or the strikers, sorry, the strikers – had made it plain that they didn’t want NUM to be their negotiating agent in this case.

The intention to march and burn the NUM office, threatening the lives of NUM shop stewards, some shop stewards found murdered on the koppie and the local shop stewards having to leave the mine, it was clear that to negotiate in that scenario would have been impossible. In my view it was no longer a situation where you needed negotiations. It was a situation where you needed trained personnel to play their role to restore law and order.

MR TIP SC: Now the last topic, Mr Zokwana. Subsequent to these events and also in the course of these proceedings at which you’ve been able to attend and to listen to the evidence of the NUM witnesses over the last few days, you have heard a good deal of information about the events of the 11th August episode in the vicinity of the NUM office.

MR ZOKWANA: Yes.

MR TIP SC: Now, I want to ask you slightly more generally from your experience, what would be the implications for NUM, the consequences for it being a viable union presence, if a substantial local office such as the one at Western Platinum were destroyed, was to be burnt down?

MR ZOKWANA: Psychologically it would have made NUM members to be afraid of ever been seen as part of NUM. Two, it would have denied NUM to interact with its own members who were employees of Lonmin. I base this from the events that happened in Impala, where our NUM offices were shut down by the same situation like the one intended in Lonmin, our shop stewards being denied the right to be in the office and interact with members and service them as they have been doing. But if the office was burnt, not only would it have been the structure...
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24 right to threaten anybody's life or to threaten the
23 them because we believe that nobody in this country has a
22 they defended the image of the organisation. We stand by
21 MR ZOKWANA: In defending the NUM office, does NUM as an
20 organisation stand with those who made the decision to
19 your perspective as the president of NUM, does NUM as an
18 to the office, could not have taken them enough time to
17 confrontation in which certain NUM members fired gunshots
16 and two persons were injured.
15 MR ZOKWANA: Yes, I've heard that.
14 TIP SC: There was then a
13 analyse options. But what was supposed to happen was for
12 to the office, could not have taken them enough time to
11 what to do when they knew that the guys were coming closer
10 stewards were brave. I believe for them to think about
9 number of NUM officials, shop stewards and members who were
8 down the NUM office and also it had been said to the small
7 security personnel, that it was their intention to burn
6 had been received already from, amongst others, Lonmin
5 were proceeding – proceeded to the NUM office, that reports
4 here in these proceedings that a large group of strikers
3 proposition being put to the NUM witnesses, particularly Mr
2 Gegeleza, that the NUM persons there should have locked the
1 information.

MR TIP SC: Now, Mr Zokwana, you've heard
here in these proceedings that a large group of strikers
were proceeding – proceeded to the NUM office, that reports
had been received already from, amongst others, Lonmin
security personnel, that it was their intention to burn
down the NUM office and also it had been said to the small
number of NUM officials, shop stewards and members who were
in the office, that Lonmin could not protect the office.

MR ZOKWANA: Yes, I heard so.

MR TIP SC: And you have heard that
anything between 20 or 30 even, NUM persons decided that
they were going to defend the office.

MR ZOKWANA: Yes, I've heard that.

MR TIP SC: There was then a
confrontation in which certain NUM members fired gunshots
and two persons were injured.

MR ZOKWANA: Yes, I've heard that.

MR TIP SC: Two of the strikers, to be
precise, two of those attacking the office.

MR MAHLANGU: I beg your pardon?

MR TIP SC: Two of the strikers, just to
be clear, two of the persons attacking the office.

MR ZOKWANA: Yes, I've heard that

information.

MR TIP SC: And you have also heard the
proposition being put to the NUM witnesses, particularly Mr
Gegeleza, that the NUM persons there should have locked the
office and should have fled.

MR ZOKWANA: I've heard that proposition.

MR TIP SC: What is your view of that
proposition?

MR ZOKWANA: I believe that those shop
stewards were brave. I believe for them to think about
what to do when they knew that the guys were coming closer
to the office, could not have taken them enough time to
analyse options. But what was supposed to happen was for
those who were employed who are trained to deal with such
situations, were supposed to be there to protect people,
property and the rest.

MR TIP SC: Ultimately, Mr Zokwana, from
your perspective as the president of NUM, does NUM as an
organisation stand with those who made the decision to
defend the office on that day?

MR ZOKWANA: In defending the NUM office,
they defended the image of the organisation. We stand by
them because we believe that nobody in this country has a
right to threaten anybody's life or to threaten the
destruction of property.
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1 that incident.
2 The second statement on the same page, made by
3 AMCU, read as follows. “Without laying any blame to
4 anyone, but it is important to state that we also suspect
5 some sinister forces behind this situation. Before the
6 report about RDQ’s demands, we learn that had NUM started
7 an intensive campaign where they said, ‘Reclaiming Lonmin
8 back.’” Can I ask you, is that true?
9 [12:32] MR ZOKWANA: I’m not sure what I should
10 confirm as true. If the question is to check whether a lie
11 was told that one person was killed when none was killed,
12 as the Commission has heard, that is true.
13 MR BURGER SC: Yes.
14 MR ZOKWANA: If it can be that I must
15 confirm that NUM was responsible, I think this Commission
16 has to decide after listening to all evidence presented as
17 to who could have been responsible, but as NUM we believe
18 that we are more victims than being responsible, as shown
19 by the NUM of our shop stewards who were not only injured,
20 who had to run away from the mine, and those who were
21 killed. NUM believes in peaceful forms of recruiting
22 members. If you write a T-shirt that says “Reclaim back
23 Karee” as an area and you go there, engage people, show
24 them what is it that you will do on their behalf in
25 improving their conditions of employment, you don’t

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1 threaten anybody. It’s a normal form of recruitment. I
2 don’t understand how could that be seen to be responsible
3 for the events that led to the killing.
4 MR BURGER SC: In fact, Mr Zokwana,
5 during the radio interview held on the 15th of August – we
6 have a transcript of that interview, it’s exhibit LL before
7 the Commission - you, in so many words, suggested that Mr
8 Mathunjwa was not telling the truth. Can I read to you
9 from that transcript, page 13? Line 9 you are quoted as
10 having said the following, “You know when people tell lies
11 after taking the lives of innocent people, men in uniform
12 gunned down, I’ve never seen that happen, Xolani, that as
13 we speak today we are so bold to tell lies when people” –
14 and Mr Gwala says, “Who is telling lies?” And you answer,
15 “I think AMCU is not telling the truth.” Do you confirm
16 that?
17 MR ZOKWANA: Yes.
18 MR BURGER SC: Mr Zokwana, all I’m trying
19 to confirm – and we really have evidence to that effect
20 already – is that the relationship between AMCU and NUM
21 leading up to the Marikana tragedy, was a very strained
22 relationship.
23 MR ZOKWANA: I won’t describe the
24 relationship as strained. It’s just that the two unions
25 were organising in Lonmin in the same environment and I

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1 would not describe them going to a place and recruit
2 members, should be seen to be an environment that is
3 hostile.
4 MR BURGER SC: No, but Mr Zokwana, the
5 relationship was strained because in that process AMCU used
6 violence.
7 MS BARNES: I object to that, Chair,
8 there’s no evidence of that.
9 MR BURGER SC: There’s a ripple of
10 laughter. Let me read you the page. It is from the
11 transcript LL, the radio programme “The Country is
12 Listening” and at page 32 the following appears. Line 17,
13 Mr Zokwana you’re speaking and you say, “There’s no problem
14 with NUM because we don’t regard AMCU as a problem to deal
15 with. Our task is to organise members and improve the” –
16 and it’s then indistinct – “of employment and always our
17 focus will be on the employer. AMCU have chosen, out of
18 their own volition, to use violence as a weapon and to use
19 intimidation. That caused a strain in the relationship.”
20 Do you accept that?
21 MR ZOKWANA: I see it but I think the
22 same view was shared by one of the Lonmin senior
23 executives, page 75.
24 MR BURGER SC: You may be in good
25 company.

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1 MR ZOKWANA: No, no, I’m trying to put
2 the point that the view that NUM could have believed that
3 AMCU is behind, is also said by a senior executive of
4 Lonmin in a letter written to the Lonmin then CEO, to the
5 fact that this process reeks of AMCU’s presence.
6 MR BURGER SC: Mr Zokwana, I think we
7 agree. What I’m putting to you is that what was done by
8 AMCU by way of seeking new memberships, caused a strain on
9 the relationship between AMCU and NUM.
10 MR ZOKWANA: What caused the situation to
11 be bad were methods used by those who were marching,
12 putting forward the demand, to force those who were not on
13 strike not to go to work and employ violence and if the
14 Commission comes to conclude that those were led by NUM or
15 maybe by AMCU, I think that will come at the stage when the
16 Commission establishes that.
17 CHAIRPERSON: Mr Burger, possibly the way
18 forward is, you’re trying to establish a strained
19 relationship. Ms Barnes correctly points out that there’s
20 no evidence at this stage to the effect that AMCU had
21 indulged in valence but what does appear from what you’ve
22 put is that that was certainly NUM’s belief at the time.
23 If there was such a belief, then I imagine that could
24 afford a basis for a strained relationship, so perhaps if
25 you could explore it on that line then I won’t have to rule
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25 coercion.

24 is competition that is fair and free of any form of

22 we can outdo it. And I'm sure there are words

21 saying how do you ensure that what NUM have done, all what

20 the NUM is doing? You don't have to kill but you are

19 it means compete. Compete would mean how do we outdo what

17 sung by those who believe in such things but I don't

16 I've never been to war, I don't know what songs would be

14 the way we sing songs, when you go to a funeral you have

13 trade unionist, Commissioner, I have endorsed the principle

12           MR ZOKWANA:          In my view, in my years as a

11 NUM, how are we going to kill it, this NUM? We hate NUM.”

10           MR BURGER SC:          It is – it would have been

 12           MR ZOKWANA:          Without assigning this view

 11 the Chris Hani song but it's now got NUM in it. “This is

 10 the Commission under oath that the song means, how does

 9 the Chris Hani song but it's now got NUM in it. “This is

 8 Mr Mathunjwa looks on, Mr Dumisane starts a song. That's

 7               MR ZOKWANA:               Let me put it that when we

 6               AMCU officials, I'm not sure.

 5 just, as a last proposition under this heading, take you to

 4 – I don't know whether he was meaning all those on the

 3 says, “How will we kill NUM? We hate NUM.” It means that

 2 longer a situation to negotiate. You needed trained

 1           MR BURGER SC:          Thank you, Chair. Can I

 0 that you were seeking.

 32 Page 4452
 33 Page 4453
 34 Page 4454
 35 Page 4455
to Lonmin, our view as the union is that for negotiations to proceed there should be an atmosphere of people being free to air their views, nobody being compelled to take a decision because he fears for his life. If your question is, therefore, were the conditions conducive for parties to negotiate, as a union we believe that for us to engage any employer there should be a process in which that it will allow to get mandates. I would not be able to check to say if the employer could have gone and negotiated - what I'm putting forward is this, that the condition as I saw it when I arrived at the koppie was quite volatile and as a person I don't foresee NUM being able to get the mandate, given the attitude of the strikers.

MR BURGER SC: Is this a convenient time, Mr Chair?

CHAIRPERSON: We will take the lunch adjournment at this stage.

[COMMISSION ADJOURNS COMMISSION RESUMES]


You're still under oath, Mr Zokwana. Mr Burger?

SENZENI ZOKWANA (CONTD):

CROSS-EXAMINATION BY MR BURGER SC (CONTD):

Thank you, Chair. Mr Zokwana, the third proposition I want to debate with you is that NUM would not have sat around the same negotiation table with AMCU during July and August.

of 2012 to negotiate wages at Lonmin because AMCU was not part of the structure then for negotiation. Do you accept that?

MR ZOKWANA: If the proposition is that AMCU was, could not have qualified to be in such negotiations, given its status then, I agree.

MR BURGER SC: Yes. But we don’t have to traverse the whole series of documents we have. May I just refer you to one document to confirm that? You’ll remember that on the afternoon of the 15th of August there’s a briefing session with General Mpembe before you go to the koppie?

MR ZOKWANA: That’s so.

MR BURGER SC: Exhibit OO4 is a transcript of that briefing and page 657 you say the following, if I may just read it with you. 657, it’s at typed page 11, you speak and you say, “Even if NUM, we have to consider in any form of meeting, we will not meet with AMCU together, we will not.” Before you –

MR ZOKWANA: Let me explain the context in which such a statement was made. Having been briefed by our local leadership, made aware of the gruesome killings of our shop stewards as well as threats made against [indistinct], they believed that meeting with AMCU would pose a threat to those who will be with me as well as the

fact that on the koppie songs were sung that were denigrating the image of the organisation and myself in person.

MR BURGER SC: And it is a few lines lower down, line 10, where you then say the following in what looks like a bit of a wider context. You say, “So if you would allow us to go, but what I’m saying, I’m saying now as NUM, we’re not going to the mountain and engage anybody but what you have said, we will need to go on their own but as NUM we cannot go to any forum together with AMCU because we have done, we have done that, go with them, then negotiate in Impala. When the deal is made they refuse to go and report with us because they are playing a game of winning the minds of the people and if they are the ones who will bring benefits, we cannot go there.”

MR ZOKWANA: Do I confirm that or -

MR BURGER SC: Yes. The only reason why I put that to you is, the president of AMCU has told the Commission that he had proposed on various occasions that Lonmin should engage a forum and try to address the unrest, the forum including AMCU. All I’m putting to you is NUM would not have gone into a forum at that stage in which AMCU had a voice.

MR ZOKWANA: The statement was made in the context of going with AMCU to the strikers, given the
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1 dispute and the refusal of NUM to go to the koppie. The
2 reason we wouldn't go to the koppie was because it was our
3 view that if we were to go to the koppie, we would not only
4 be exposed to ridicule but the lives of those who go to the
5 koppie would be exposed to danger - but if a meeting was
6 arranged, it is another scenario.
7
8 MR BURGER SC: Mr Zokwana, would NUM have
9 become involved in wage negotiations outside the structures
10 in place, the agreement in place between Lonmin and NUM in
11 that period of time where AMCU was present?
12
13 MR ZOKWANA: I have explained to the
14 Commission that NUM was disqualified to negotiate, given
15 that the strikers made it clear that they don't want NUM to
16 negotiate on their behalf. That was shown by the level of
17 violence directed at NUM. So the issue whether NUM would
18 have gone to negotiate or not is not an issue, in my view,
19 because you can only negotiate on behalf of people who
20 mandate you to do so.
21
22 MR BURGER SC: I accept that and we will
23 argue that the very proposition is unrealistic, but let me
24 then ask you on an assumption. Assume that NUM had a
25 mandate from the workers at Lonmin in that period of time
26 and, knowing that there is a collective agreement in place
27 between NUM as the majority union and Lonmin, all I put to
28 you is that you wouldn't have allowed wage negotiations

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1 then to take place with AMCU present, taking part in those
2 negotiations.
3
4 MR ZOKWANA: I think that participants in
5 negotiations are determined by the roles that are in the
6 agreement as to at what threshold should you - what it will
7 read to be a person to negotiate. It's not whether NUM
8 would have wanted AMCU or not. AMCU could have been there
9 if they had met that threshold. They could not be there if
10 - NUM could not decide whether AMCU is there or not. I
11 think that that will be played by - the role played.
12
13 MR BURGER SC: The fourth subject I
14 wanted to debate with you is the discretionary allowance
15 that Lonmin gave to the RDOs at Karee in the second half of
16 July 2012. Can I start off by reminding you that in
17 exhibit XX2, that's the NUM bundle at page 69 - if the
18 witness may perhaps just be shown that? It's a
19 communication issued by Lonmin, page 69. It deals with the
20 RDO allowance.
21
22 MR ZOKWANA: Yes?
23 MR BURGER SC: And it tells us that at
24 that point time, July 2012, the RDOs at Lonmin are earning
25 less than the RDOs in the neighbouring platinum mines -
26 less, for example, than the RDOs at Impala. You were aware
27 of that?
28 MR ZOKWANA: I may not have that

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1 knowledge but it also confirms our view that we said that
2 when you have got a decentralised bargaining forum -
3 MR BURGER SC: Yes.
4 MR ZOKWANA: - those are of such
5 consequences you get.
6
7 MR BURGER SC: Mr Zokwana, that's the
8 problem facing Lonmin at the time. They don't have a
9 central bargaining position, they have an individual
10 situation with RDOs earning less than neighbouring RDOs,
11 for example at Impala and it's a highly tradable commodity
12 - if you don't pay people enough you lose them, they go to
13 the opposition.
14
15 MR ZOKWANA: But obviously the forum to
16 address that could have been the same bargaining forum so
17 that the parties who have been engaged before are called
18 upon to engage, if that becomes a situation.
19 MR BURGER SC: Problem 2 facing Lonmin,
20 they can't get to the forum because the RDOs say they don't
21 want NUM, they want to speak individually. That's the
22 second problem facing the employer now. Do you accept
23 that? Do you accept that?
24 MR ZOKWANA: What I know is very well
25 that the machine - sorry, the RDOs have made it clear that
26 they don't want NUM to be their agent in these
27 negotiations.

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1 MR BURGER SC: The third reality Mr Da
2 Costa, the Lonmin man, faces – the man in charge of Karee -
3 he's approached by decent people with a good case, who say
4 to him, “Please help me and give our request through to
5 management.” The third reality is – or the fourth reality
6 is Lonmin, as all employers, is entitled to grant
7 discretionary allowances if it wishes to promote a certain
8 section. If artisans are in short supply, they're quite
9 entitled to say, for artisans this year we'll have a
10 discretionary allowance on top of the wage. It's
11 discretionary, it's not negotiated, it's granted - if the
12 workers do not want it, they don't have to accept it but
13 that is something which I'm instructed happens from time to
14 time at Lonmin. Do you know -
15 MR ZOKWANA: And I'm sure you will agree
16 with me that while that right the employers have is what
17 triggered the situation in Impala when miners were given an
18 increase outside the - the same that happened in Lonmin but
19 that right, as it may be the case, it has been the cause of
20 what triggered all these problems.
21 MR BURGER SC: Mr Zokwana, let us leave
22 the triggers to the Commission, that's their mandate. Let
23 you and I debate the facts on the ground, fair enough?
24 I've looked at the agreement between NUM and Lonmin. It is
25 in that little file XX at page 13. There's nothing in that
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1 agreement preventing Lonmin from granting a discretionary allowance, should they be so advised.
2 MR ZOKWANA: Yes.
3 [14:21] MR BURGER SC: If you have a look at that same bundle at page 93, that’s part of the September 2012 agreement when the parties had come together and reached an agreement. You’ll see in paragraph 3.3 that allowance is written in there but it’s not subject to escalation, it’s not part of wages, it’s a separate item, again agreed to by Lonmin in order to resolve the issues between the parties. Page 93 paragraph 3.3.
5 MR ZOKWANA: Yes, what am I expected to do? Am I expected to confirm that is the case?
6 MR BURGER SC: No, I’m going to ask you a question.
7 MR ZOKWANA: Alright.
8 MR BURGER SC: Against this background I put to you and I’ll submit to the Commission in due course that the responsible thing to do in these circumstances, for Lonmin, was to grant the discretionary allowance in July of 2012 in an endeavour to defuse the unhappiness of the RDOs.
9 MR ZOKWANA: I have put it before this Commission, the view that says when structures that are set for negotiations are undermined, what develops in most instances is other groups of workers developing the same interest for the same allowance given. It was the case in Impala, the case in Lonmin but the RDOs wanted more than the company had given.
11 MR BURGER SC: What do you think would’ve happened if Lonmin sent away the RDOs and said, we won’t talk to you? I know we can’t talk to NUM, they don’t have a mandate. I know we can’t talk to AMCU because they’re not a majority but we can’t talk to you, go away. Do you think that would’ve been the end of the problem?
13 MR ZOKWANA: Well, I’m not qualified to make an opinion on that because I would not be able to know what they would do.
14 MR BURGER SC: No, the 16th August [inaudible]. I want to end off with two questions - it’s not one of the four subjects I wanted to discuss with you - and want to see whether you can help the Commission. Why is it that workers at Lonmin in this time become so angry and violent at NUM and at their employer?
17 MR ZOKWANA: Without claiming to have an interaction with the workers or no, what could have been - and I don’t know if they hated the employer but I know they hated NUM, as shown by the number of people who were murdered as well as the attempt to burn our office or do damage to it. As leaders we set the tone that mostly our members follow and in this instance I’m saying if it is proven that some songs were sung up in the koppie, songs that speaks about killing the – killing NUM and hating it, the fact that stories of people being killed by NUM shop stewards were made, as I think the Commission heard earlier – such could have had an impact in those workers, their believing that NUM is their enemy at that time.
19 MR BURGER SC: The last question I want to ask you, is it pure coincidence that it is the NUM office at Impala which is attacked, yet it’s the NUM office at Karee which is closed down, it is the NUM office at WPL which is under attack? Is that coincidence or how do you explain that?
21 MR ZOKWANA: I think in our presentation we have made of the secretary, these occurrences seem to have similarities and the aim to me could have been to make sure that NUM has no interaction with its own members, but I think the Commission, in the course of its work, will be able to establish what would have happened.
23 MR BURGER SC: Thank you, Chair.
24 CHAIRPERSON: Mr Semenya?
25 CROSS-EXAMINATION BY MR SEMENYA SC: Thank you, Chair. Mr Zokwana, let us try and explore what has been discussed with you now. If you go to exhibit XX2 at page 93, as my learned colleague pointed you.

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1 instances is other groups of workers developing the same interest for the same allowance given. It was the case in Impala, the case in Lonmin but the RDOs wanted more than the company had given.
2 MR BURGER SC: What do you think would’ve happened if Lonmin sent away the RDOs and said, we won’t talk to you? I know we can’t talk to NUM, they don’t have a mandate. I know we can’t talk to AMCU because they’re not a majority but we can’t talk to you, go away. Do you think that would’ve been the end of the problem?
4 MR ZOKWANA: Yes.
5 MR BURGER SC: No?
6 MR ZOKWANA: Yes.
7 MR BURGER SC: Find clause 3.3 there.
8 MR ZOKWANA: Yes?
9 MR SEMENYA SC: Which deals with the allowances, do you see that?
10 MR ZOKWANA: Yes, I see it.
11 MR SEMENYA SC: And if you go to page 94 of this document you will find a whole lot of signatories to that agreement, correct?
13 MR ZOKWANA: Yes.
14 MR SEMENYA SC: The one thing that allowance is not, is a unilateral payment by Lonmin of a sector of the employment force, am I right?
16 MR ZOKWANA: Can you repeat that question again, sir?
18 MR SEMENYA SC: The one thing that it is not, it is not a unilateral allowance payment by Lonmin. It is agreed with the parties.
20 MR ZOKWANA: I would not agree with that proposition on the basis that Lonmin has made it clear more than once that it was their decision, taken without negotiations and NUM signing, and others, could have just
acknowledged that Lonmin has taken this decision, not that
they have mandated it.

MR SEMENYA SC: Maybe let us take it step by step. You’ll see the document is dated the 18th of September, this is long after the tragedy at Marikana.

MR ZOKWANA: Yes. Oh sorry, I referred on that document - I understand now -

MR SEMENYA SC: Oh yes.

MR ZOKWANA: Yes.

MR SEMENYA SC: And it does not pretend to be a unilateral anything, because if you look at clause 3 of page 93 you will see a heading there, that this is an amendment to the original agreement. So it was always possible for the parties to agree an allowance. There’s nothing unilateral about it, do you see that?

MR ZOKWANA: Yes.

MR SEMENYA SC: It doesn’t even to purport to be a discretionary allowance.

MR ZOKWANA: Yes, but this document was signed as – as a reason of the parties having met and if you read there you will find an agent that would not normally be part, a person signing on behalf of delegates, you don’t that in many agreements that there are people called delegates. Unions engage companies. That was, the agreement was reached after the process of discussing and negotiating agreement.

MR ZOKWANA: On the same vein, the reason you have what, a group of people called delegates, is because at that time NUM could not go to the koppie and get a mandate. Those delegates were people who were reporting back to those who were on the mountain.

MR SEMENYA SC: I agree with you. It is in within the capacity of players in the industry to resolve their disputes and find amicable solutions, whatever that takes.

MR ZOKWANA: In this case the anomaly is that you don’t get trade unions on behalf of their own constituencies. You have got workers called the delegates, meaning that there was a breakdown with the norm which will be the law where trade unions mandated will go and negotiate.

MR ZOKWANA: Yes. What I’m trying to say is, even if it takes an anomaly it is prudent to take an anomalous situation and stamp out the violence and restore industrial peace, correct?

MR ZOKWANA: Industrial peace may be
Mr ZOKWANA: NUM will never understand a protest that is violent. And also in Impala as well as in Lonmin, those protests were characterised by violence towards NUM, as I've shown before. Under normal circumstances, if workers voice their discomfort - it happened, by the way, with Lonmin in 2005 that workers were unhappy of the agreement reached there. We were able to intervene and change that, but it must not be - the manner of presenting it that has got this element of violence unleashed on other people is what NUM would not understand, especially if it is towards NUM as an organisation.

Mr SEMENYA SC: Maybe the question was a little inelegant. What I'm trying to emphasise is, that the RDOs at Impala were having a huge disquiet around there salary was not unexpected to NUM.

Mr ZOKWANA: No organisation, including NUM, under normal circumstances would expect that its own members decide to wake up and say, we don't want you to be our bargaining council. There was no way NUM would expect that to happen. But if members could have came to NUM and said look, we have got these following problems, we would like you to take them on board through the structures, NUM would have welcomed that and taken it up.

Mr SEMENYA SC: Maybe we're still speaking past one another. All I'm saying is, when the RDOs in Impala were showing their dissatisfaction with their salary, it did not come and could not have come as a surprise that this is a bone of contention for them.

Mr ZOKWANA: Raising the discomfort with the wages could not have been - the manner of raising it was a concern. As I've shown that whenever workers - in NUM, let me put it this way, in NUM before we sign any agreement we take mandate from those we negotiate on whose behalf and in all circumstances it is our members who will say, go and sign. And we expect, therefore, if there may be any discomfort arising for any other reason, the same members will come to us and say, we would like you to relook at this and then NUM will look at that. Sorry, Chairperson, I'm not trying to dodge the question but I'm trying to raise it that it's not easy to say NUM was not - was not surprised. NUM was surprised by the manner the demands were made that were accompanied by violence towards each other.

Mr ZOKWANA: Where? In Impala?
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MR SEMENYA SC: Mm.

MR ZOKWANA: In Impala. It's what we have been saying, that the agreement – that the position taken by Impala in negotiating outside the bargaining forums, not that we're against the offering to machine drillers, we appreciate that because those workers, we believed them, but that has got this unintended consequence that people at other mines would demand the same for the same work.

MR SEMENYA SC: Okay, we settled it. You became aware that they were paid more, right?

MR HANABE: You became aware that?

MR SEMENYA SC: Yes, the RDOs got paid more – at Impala then.

MR ZOKWANA: We were aware that the Impala management, under pressure from their own employees through the action taken, added pay on the RDOs, yes.

MR SEMENYA SC: And as NUM, I suggest to you, you should have known that there would be a contagion effect on Lonmin for the RDOs as well.

MR ZOKWANA: It is difficult to say yes, because these companies don't negotiate in the same bargaining forum.

MR SEMENYA SC: Now -

MR ZOKWANA: And it is not only workers

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from Lonmin and Impala who are in the platinum industry.

MR SEMENYA SC: Ah, Mr Zokwana, you know that the RDOs would be talking amongst each other that, hey, we are now being paid better here and the others would say, why not us, we're doing the same type of job?

MR ZOKWANA: It happened with miners. When they didn't pay properly miners left them and joined other mining companies.

MR SEMENYA SC: So the answer is yes, at NUM you did know the consequence of an Impala salary increase was bound to have some impact, some effect on other RDOs at Lonmin?

MR ZOKWANA: What we knew and we believed was going to happen was that the fact that the bargaining structures were undermined, the fact that methods that were not to have been in the industry – where people marched using violence, were accommodated without consequences – was going to have the very impact it had in Lonmin.

MR SEMENYA SC: Chair, would this be a convenient stage for the tea adjournment?

CHAIRPERSON: The Commission will take the tea adjournment at this stage.

[COMMISSION ADJOURNS COMMISSION RESUMES]

[15:17] CHAIRPERSON: The Commission resumes. Mr Zokwana, you're still under oath. Mr Semenya?
The question being that whether NUM was expecting this to happen in Lonmin?

MR SEMENYA SC: No. No, that NUM had a duty, a responsibility to make sure that this legitimate demand of the RDOs, which it acknowledges, should not manifest in a violent way as it did in Impala.

MR ZOKWANA: NUM can only fulfil that task to members who are willing to associate themselves with the union, as you would be able to interact with them. But once members decide to act in the manner that what happened in Lonmin, it is difficult for NUM to do what you are saying NUM could have done, that would be to say that if you want to strike for wages, don't use violence.

MR SEMENYA SC: I want to share with you why NUM did not see a negotiated road open for this dispute. I invite you to look at exhibit YY1, it's a statement of Mr Setelele. Do you have it?

MR ZOKWANA: I'm checking. Yes, I've seen that. Yes -

MR SEMENYA SC: If you read with me paragraph 4, this is how it will read, “The issue of this demand by the RDOs was discussed at various meetings by the NUM branches in Lonmin. NUM’s position was consistently put forward at these meetings, namely, that the wages of RDOs was covered in the two year collective agreement that had been concluded in December 2011, that it was a breach of this agreement for the RDOs to raise fresh wage demands during the term of that agreement and that NUM was opposed to unprotected and hence illegal strike action.” Do you see that?

MR ZOKWANA: I see that, yes.

MR SEMENYA SC: So you agree this was the position NUM adopted around any fresh wage demands by the RDOs?

MR ZOKWANA: Thanks, Chairperson. In trying to show how, why I disagree with the question or the proposition, let me put it that NUM structures in Lonmin in 2005 came to an agreement that was giving Lonmin a five year agreement at CPIX plus, which was lower than the industry minimum. Members came to head office and came to us and reported their discomfort with the agreement. NUM was able to revisit that agreement and that agreement was overturned. The issue of five years was turned to two years like other companies. The point I'm putting is that had the RDOs put that to head office as an issue that they're not happy with or the answer given to them by their local leadership, national leadership could have seen it otherwise. We had intervened but what NUM would have been, was to promote an illegal strike for it should have been signed and agreed upon.

MR SEMENYA SC: Mr Zokwana, are you saying Mr Setelele is wrong if he says the issue of this demand by RDOs was discussed at various meetings at NUM branches at Lonmin, is he wrong?

CHAIRPERSON: I think that's ambiguous. What are you suggesting is wrong? Are you suggesting that the allegation that there was a discussion was wrong or are you suggesting that what was wrong was the NUM's position as stated at the meeting?

MR SEMENYA SC: No, the fact that it's stated there, Chair, by Mr Setelele that this issue of the RDOs was discussed at various meetings by the NUM branches in Lonmin. I want to know whether you are disputing that to be accurate or not.

MR ZOKWANA: I'm not going to say that he's wrong. the point I'm putting is that NUM has got different structures that take different decisions and I made the example that says that in 2005 our local branches in Lonmin, with their chief negotiator, came to a particular conclusion on wages but when the matter was referred to the head office level, were able to overturn that as we looked at the matter broadly. The point I'm putting is that NUM could not have encouraged an illegal strike.

CHAIRPERSON: Mr Zokwana, you told us about that but that's not what Mr Semenya is asking you about now. He's asking you in relation to paragraph 4 of Mr Setelele's affidavit, statement, asking you about the various parts of it and the first part he's asked you relates to the allegation by Mr Setelele that the issue of the demand by the RDOs was discussed at various meetings by the NUM branches in Lonmin and he's asking you, the next part deals with what NUM's position was and so on. The point he's asking you about at this stage of his cross-examination is do you dispute the suggestion or the allegation that this, the issue of this demand was discussed at various meetings by the NUM branches in Lonmin?

MR ZOKWANA: Thanks, Chairperson, I understand the question now. My answer to the question is, while that could have been the view of Mr Setelele and the branch committee and the branches of Lonmin, if the matter could have been brought to the attention of head office we could have taken the matter up.

CHAIRPERSON: I understand, but you say - you're still not answering the question. You're answering what you think is going to be the next question. That's never a good practice for a witness. What you're being asked at this stage is, was there such a discussion? The
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<td>1 question I think your counsel may object to it, so let's</td>
<td>1 answer to that, I take it, is you say you accept that there</td>
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<td>2 give him a chance to do so if he wants to.</td>
<td>2 was because you then go on to the next question about what</td>
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<td>3 MR TIP SC: Yes, Mr Chair, as usual I</td>
<td>3 Mr Zokelele said. So do I understand your evidence to be</td>
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<td>4 interrupt my learned friend's cross-examination with</td>
<td>4 the following - I don't dispute, I, Zokwana, don't dispute</td>
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<td>5 reluctance but it would appear to be fair that he should</td>
<td>5 that there was a discussion at various meetings by the NUM</td>
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<td>6 draw the witness's attention to that portion of the</td>
<td>6 branches in Lonmin on this issue but if the position as set</td>
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<td>7 paragraph that he has just read where Mr Gegeleza says -</td>
<td>7 out in the affidavit as being NUM's position, by Mr</td>
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<td>8 CHAIRPERSON: he read the whole</td>
<td>8 Setelele, was conveyed to the members, you don't agree that</td>
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<td>9 paragraph, so that if he'd stopped before the last sub-</td>
<td>9 that was NUM's position because if the matter had been</td>
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<td>10 clause I would have made him read to the end, but he did</td>
<td>10 referred to head office and not just dealt with locally at</td>
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<td>11 read to the end so the witness's attention was drawn to it.</td>
<td>11 Lonmin, there would have been a different result. Is that</td>
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<td>12 I don't think that's a good objection, if I may say so,</td>
<td>12 what you're saying?</td>
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<td>13 unless you want to address me further.</td>
<td>13 CHAIRPERSON: I'm saying just that,</td>
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<td>14 MR TIP SC: No, I'll leave it to the</td>
<td>14 Chairperson.</td>
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<td>15 witness.</td>
<td>15 MR ZOKWANA: I'm saying that,</td>
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<td>16 MR ZOKWANA: Well, my understanding of</td>
<td>16 MR SEMENYA SC: And you don't dispute</td>
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<td>17 the statement that has been made is that NUM, up to these</td>
<td>17 that this very position locally was put consistently to be</td>
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<td>18 days, has not been shown to have received any demands from</td>
<td>18 the position of NUM?</td>
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<td>19 companies to any negotiation is the fact that this two year</td>
<td>19 MR SEMENYA SC: And you don't dispute</td>
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<td>20 agreement is in place.</td>
<td>20 CHAIRPERSON: It could have been the case</td>
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<td>21 leadership of NUM was concerned, the one big stumbling</td>
<td>21 of that structure as they were negotiating with the</td>
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<td>22 block to any negotiation is the fact that this two year</td>
<td>22 employer or negotiating with [indistinct] members.</td>
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<td>23 agreement's in place.</td>
<td>23 MR SEMENYA SC: And also communicating</td>
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<td>24 MR ZOKWANA: Well, I saw that statement</td>
<td>24 with the RDOs that, oh, please don't raise that issue with</td>
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<td>25 from there, that would have gone to the head office. It is</td>
<td>25 us, we are bound by a two year agreement so don't even go</td>
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<td>1 MR ZOKWANA: Possible, yes.</td>
<td>1 what has happened before, it is what happened in 2005 and</td>
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<td>2 MR SEMENYA SC: In fact, if you look at</td>
<td>2 at the end of those interactions people got what they</td>
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<td>3 another document which is the statement of Mr Gegeleza, it</td>
<td>3 wanted.</td>
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<td>4 is marked ZZ2 -</td>
<td>4 MR SEMENYA SC: That may very well be so,</td>
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<td>5 MR ZOKWANA: Yes?</td>
<td>5 Mr Zokwana, all I'm saying is as far as the local</td>
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<td>6 MR SEMENYA SC: You will find on the</td>
<td>6 leadership of NUM was concerned, the one big stumbling</td>
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<td>7 document a paragraph 4 again.</td>
<td>7 block to any negotiation is the fact that this two year</td>
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<td>8 MR ZOKWANA: Oh, yes.</td>
<td>8 agreement's in place.</td>
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<td>9 MR SEMENYA SC: This is how it reads,</td>
<td>9 MR ZOKWANA: Well, I saw that statement</td>
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<td>10 “Before the strike began on 10 August 2012, I had heard</td>
<td>10 and I've read it, everything is true. There's nowhere in</td>
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<td>11 from some co-workers that the RDOs were demanding a wage</td>
<td>11 this document where machine drillers – sorry, RDOs - have</td>
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<td>12 increase to R12 500 and that this demand had emanated from</td>
<td>12 went to the NUM office and put forward a demand.</td>
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<td>13 the RDOs at Karee Mine. At the time I was well aware that</td>
<td>13 MR SEMENYA SC: Mr Zokwana, no, you're</td>
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<td>14 a two year wage agreement was already in place that covered</td>
<td>14 going to have to answer my question. I'm not suggesting</td>
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<td>15 the wages of RDOs. Accordingly, it was my belief that any</td>
<td>15 RDOs went to anybody. I'm saying the attitude of the local</td>
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<td>16 new wage demands should be raised and addressed only during</td>
<td>16 leadership in relation to this matter was that there is an</td>
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<td>17 the course of the next round of wage negotiations or on the</td>
<td>17 agreement in place, we can't be raising fresh demands for</td>
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<td>18 basis that the circumstances justified a negotiated</td>
<td>18 the RDOs. If you like, that is one of the attitudes they</td>
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<td>19 amendment of the two year agreement.” Do you see that?</td>
<td>19 held.</td>
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<td>20 MR ZOKWANA: I have seen that.</td>
<td>20 MR ZOKWANA: I have gone through these</td>
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<td>21 MR SEMENYA SC: So I want to suggest to</td>
<td>21 statements and both of them - but the point again I'm</td>
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<td>22 you, Mr Zokwana, that the reason NUM was not opening</td>
<td>22 saying is that the RDOs as well decided that we'll not</td>
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<td>23 negotiations on this issue had nothing to do with mandates.</td>
<td>23 approach NUM so that these issues – because I would</td>
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<td>24 MR ZOKWANA: Up to now I have not been -</td>
<td>24 understand if there had been a case went to RDOs and went</td>
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<td>25 CHAIRPERSON: Before you answer the</td>
<td>25 to NUM and said, we demand you to represent us and NUM said</td>
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1. No, we can’t because we’re hamstrung by the agreement.
2. Mr Semenya SC: Okay, I’ll ask this
3. question this way. Do you accept that I am not asking you
4. whether the RDOs did go or did not go to speak to the
5. leadership. Withdraw that answer. Now, let’s go back to
6. what I was asking. On the face of these two statements, do
7. you accept that the local branch, amongst others, thought
8. the agreement of two years precluded opening of
9. negotiations on the wages of RDOs?
10. Mr Tip SC: Mr Chair, I have to renew my
11. objection. I’ve allowed a full exchange. My learned
12. friend has read the paragraph, that’s fine but he is now
13. putting an interpretation on it. He says what these two
14. statements amount to is that the existence of a two year
15. agreement precluded any negotiations –
16. Mr Semenya SC: No, I didn’t say –
17. Chairperson: What he put was that, he’s
18. asking the witness whether he agrees, as I understand the
19. question, that the attitude of the local branch was that
20. there was this preclusion.
21. Mr Tip SC: Yes.
22. Chairperson: And then depending on the
23. answer he gets to that, he will then ask the next question,
24. unless the witness more suo has already answered that
25. question that hasn’t been asked yet.

1. Mr Tip SC: That’s not the core of my
2. objection. My learned friend is under a duty to put
3. propositions that arise out of these paragraphs fairly and
4. what he has not given any attention to, although he has
5. read it, is the portion I was going to refer to previously
6. in Gegeleza’s paragraph 4, where he says – and may I read
7. it – “Accordingly, it was my belief that any new wage
8. demands should be raised and addressed only during the
9. course of the next round of wage negotiations or on the
10. basis that the circumstances justified a negotiated
11. amendment of the two year agreement.” Now, that very
12. clearly contemplates something different from what is being
13. put, which is that there was an absolute preclusion and
14. that must be put in a balanced and fair way, with respect
to the witness.
15. Mr Semenya SC: No, Chair, I am very
16. careful with the way I ask the question. I said –
17. Chairperson: The point’s being made by
18. Mr Tip, he has now put the point to the witness which he
19. says you didn’t put, which would make it fair and in view
20. of the fact that he has put the point, any question you ask
21. him hereafter cannot be unfair, on the basis that that
22. point was mentioned, which Mr Tip’s mentioned already. So
23. I suggest you proceed.
24. Mr Semenya SC: No, one of the attitudes

1. that the local branch of NUM adopted around the
2. negotiations for increased salaries of RDOs was that the
3. two year agreement precluded it.
4. Mr Zokwana: There is that view but as
5. well as, if you read Gegeleza’s statement, the paragraph
6. you didn’t read that says that under certain circumstances
7. such issues can be raised if they’re brought appropriately.
8. Mr Semenya SC: Even with that education,
9. I’m still going to come to it. Can we tidy up the first
10. one? In these two statements there is one evident attitude
11. that NUM takes. There is another, we’ll come to it later
12. if you want me to break it down that way. The first one
13. is, the two year agreement precluded opening those
14. negotiations. Do you accept that to be accurate?
15. Mr Zokwana: This is the view that is
16. expressed by both but the last one says that yes, the last
17. one says that, Chairperson, there may be circumstances
18. arising that may require such amendments be made and I
19. think that what these two are saying is that as there’s the
20. agreement signed, you can’t take issues agreed upon to a
21. strike but there’s nothing wrong in raising any issue in
22. the agreement, if circumstances arise.
23. Chairperson: Mr Zokwana, it’s not as
24. simple as that because the two statements deal with
25. different things. Mr Setelele’s statement deals with the

1. position put forward at the meetings. Mr Gegeleza’s
2. statement deals with what was his belief and what Mr
3. Semenya is concerned with, is not so much what Mr Gegeleza
4. says he believed but what Mr Setelele says was the position
5. put forward at the meetings. So there is that distinction.
6. So perhaps in the light of that distinction you might wish
7. to elaborate on your previous answer.
8. Mr Zokwana: I take note of these views
9. but I want to put it that in NUM, even after signing the
10. agreement, nothing cannot be revisited if circumstances
11. arise.
12. Chairperson: May I ask you another
13. question before Mr Semenya continues? We know that the
14. market in relation to remuneration of RDOs had altered
15. because of Impala’s decision to raise the wages. Now,
16. would that have been – would head office have regarded that
17. as a change in circumstances which would justify an attempt
18. by NUM to re-negotiate the wages of the RDOs, despite the
19. fact that the two year agreement was still operating?
20. Mr Zokwana: Thanks, Chairperson. I
21. agree with you but I wanted to, I put this point in this,
22. that where there was a central bargaining forum like the
23. Chamber, immediately these occurrences happened, NUM was
24. able to meet with the Chamber – for which an extra R500 was
25. given to RDOs – but the problem and the challenge that NUM
25 various meetings by the NUM branches in Lonmin."

MR SEMENYA SC: Mr Zokwana, I want to pin the argument for SAPS on accurate evidence. I want to be able to say what your answer was to my question. I'm repeating the first part to which you said that you noted the difference between the two statements. I'm not asking you for the difference. I'm saying, do you accept this was the attitude of the local branch of NUM, that one of the reasons they're not going into opening negotiations is because there's a two year agreement?

MR ZOKWANA: Thanks, Chairperson. The reason I've been trying to answer in this way is because Mr Setelele is the chairperson of the Western Plat NUM branch. There are other chairpersons of other branches. I've not been afforded the views of the collective branch or the minutes of such meetings that would support the view that it was the decision of the branches that they took together.

MR SEMENYA SC: No, Mr Zokwana, I thought we were past this point. We read paragraph 4, first line, "The issue of this demand by the RDOs was discussed at various meetings by the NUM branches in Lonmin."

[15:57] MR ZOKWANA: I don't dispute that, that's all, but the point I'm putting is that unless we were able to see a reduced version of these discussions – because it's easy for me to say in my statement, I was in a meeting of NUM, unless maybe in most cases this could have been shown because, as I've said, that nationally we accept that agreement may be reached at any level but the fact that you have signed the agreement does not preclude the matter being raised. And I've shown examples that –

MR SEMENYA SC: Okay, let's treat this matter now. I'm going to explore with you the attitude of head office and Mr Gegeleza's second belief.

CHAIRPERSON: Mr Semenya, it's about two minutes to four now. If you can deal with it briefly before we take the adjournment, do so. If you feel that it'll take some time then it'll be appropriate to take the adjournment. You must tell me what you think is best.

MR SEMENYA SC: Thank you, Chair. I'll just give it a shot and if it doesn't work I might have to revisit it. The second proposition, you say if NUM is aware that if there are circumstances that justify reopening the agreement, you would do it. Right?

MR ZOKWANA: Yes.

MR SEMENYA SC: We had agreed, you recognise the demand as legitimate?

also paid these individuals. Are those not sufficient circumstances to justify revisiting the agreement?

MR ZOKWANA: I have said that whenever NUM receives a demand from members, if the answer is – had the RDOs approached NUM on these demands, requesting NUM to negotiate, the answer is yes, NUM was supposed to have taken the demands to the employer, but none reached the NUM.

MR SEMENYA SC: Chair, we'll take this up tomorrow morning.

CHAIRPERSON: Before we adjourn until tomorrow, there was an arrangement with Mr Mpofu that if the NUM evidence ended today, we would not sit tomorrow, to enable him to have consultations with his witnesses who would be testifying from Monday. We haven't finished the NUM evidence today. We have to sit tomorrow. Therefore I propose that we should not sit on Monday to enable Mr Mpofu and those appearing with him, to consult with their witnesses. If we don't finish the NUM evidence by the end of tomorrow, which will be 3 o'clock tomorrow, then I still think that we – still propose that we should not sit on Monday, to enable Mr Mpofu and his colleagues to do the necessary consultations but we will then finish the NUM evidence, presumably on Tuesday morning, after which I would expect Mr Mpofu to be ready to call his witnesses.
I'm just announcing that now so that people can make arrangements and know what's going to happen.

MR MPOFU: Thank you, Chair. Can we revisit that tomorrow because the only caveat I'll put is whether – is if I'm cross-examining at that time then it will bring a new factor into the mix, but we can revisit it tomorrow, Chairperson.

CHAIRPERSON: We've got to be able to plan ahead.

MR MPOFU: Yes.

CHAIRPERSON: Mr Burger, do you want to comment on it?

MR BURGER SC: No, absolutely. I'd like to have finality today as to what's happening. Also, I support that, Chair.

CHAIRPERSON: No, the agreement was, as I've stated. The amendment that I'm suggesting I think is perfectly fair. The mere fact that Mr Mpofu might still be cross-examining at the end of tomorrow doesn't mean that he's unable to consult with his own witnesses on Monday and resume his cross-examination on Tuesday.

MR MPOFU: No, it doesn't, Chair. All I'm saying is that the arrangement that I had requested from you, which we had agreed in chambers, was different from the one you are proposing now and that arrangement, as I understand it, was simply this, that whenever the NUM evidence finishes, we would like a day in order to precognize our witnesses. I do accept that you are amending it now, I'm just raising the possibility of it not serving the purpose for which it was originally requested.

CHAIRPERSON: I'm sorry, I don't understand that. My understanding was, when we were talking about tomorrow - but the amendment that I'm stating, doesn't prejudice anybody because you get a full day to consult with your witnesses. If you're still busy cross-examining, it doesn't matter. You won't have to cross-examine on Monday, you can start with your witnesses, carry on with your cross-examination on Tuesday. I think in fairness to everybody they should know, sooner rather than later. That's why I'm announcing it now, what I propose doing. So that's what is going to happen. We will now adjourn.

MR TIP SC: Chair -

CHAIRPERSON: - for a moment, give Mr Tip a chance to say something.

MR TIP SC: Mr Chair, what is now unclear to me is the status of Mr Mpofu's undertaking that we will be provided tomorrow with the statements of his witnesses and I just need to be certain that that is still in place.

CHAIRPERSON: I didn't know that you hadn't got the statements yet.

MR TIP SC: We haven't.

CHAIRPERSON: He was – he was going to consult with, or precognize his witnesses tomorrow but I assumed that would be done after the statements had already been furnished. Do you mean to say you haven't furnished your statements yet?

MR MPOFU: Chairperson –

CHAIRPERSON: Do I understand correctly?

MR MPOFU: No, you don't understand correctly –

CHAIRPERSON: Alright, well, please let me –

MR MPOFU: Can I explain the position to you, please?

CHAIRPERSON: Please do.

MR MPOFU: Yes. The position is that our witness statements, as has been said on the record, were given on the 3rd and the 5th of December 2012, okay. Now what has happened, which I had discussed with Mr Tip, was a proposal by which, for the convenience of the Commission, instead of bringing those witnesses, we would bring the witnesses that relate to the 11th - while, in everybody's mind, the NUM issues are still fresh. And that was the proposal we did ourselves voluntarily for the convenience of the Commission. The question about the statements, it's got nothing to do with Mr Mpofu's undertaking. Everybody was ordered by you, Chairperson, in a meeting, that by tomorrow, on the 1st of February the statements should be in - not Mpofu.

MR MADLANGA SC: Mr Chair, that would be my understanding. My understanding is, Mr Mpofu indicated that he would not be calling only the witnesses whose statements were submitted last year but that at some later stage - but not now when he calls his witnesses now – at some later stage he will be calling other witnesses. My understanding is that the arrangement is that the statements of the witnesses to be called at that later stage must come in tomorrow, like as is the arrangement with everybody else or with regard to everybody else.

CHAIRPERSON: There's no basis for differentiating between Mr Mpofu's witnesses' statements and anybody else's witness statements, I take it.

MS PILLAY: Sorry Chair, just a matter of clarity, I think. Everybody's witness statements had to be by last week Friday. Mr Mpofu was allowed a special
1 dispensation to file all of his statements by tomorrow, and
2 his witnesses.
3 CHAIRPERSON: Well, we expect your
4 statements tomorrow, Mr Mpofu, all of them.
5 MR MPOFU: Not everybody, Chair.
6 CHAIRPERSON: Alright, it seems that
7 there is, on this issue at least there’s [inaudible].
8 [COMMISSION ADJOURNED]
I've kept track of the justifying process. It's a major issue in the language of the legislation. The majority of the workers are lacking in proper training. The level of motivation in the market is low. The language of the legislation is an issue. The level of motivation in the market is low. The language of the legislation is an issue.
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