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Global Labour University

Research report

Precarious Workers, Their Power and the Ways to Realise It.

The Struggle of Heineken Labour Broker Workers

2017

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Declaration

I declare that this research report is my own unaided work. It is submitted for the degree of Master of Arts in Labour Policy and Globalisation at the University of the Witwatersrand, Johannesburg. It has not been submitted before for any other degree or examination at any other University.

ENGLERT THOMAS

(signature) ———————— (date)

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Abstract

The dissertation examines the power of precarious workers through the analysis of the campaign of labour brokered workers to be made permanent under equal conditions at Heineken Brewery in Sedibeng, South of Johannesburg. It contributes to the discussion on the growing importance of precarious work in the formal sector in South Africa through externalisation and the effect thereof on the labour movement and the institutions of labour relations. It examines how precarious workers rely on self organisation to mobilise power resources to disrupt the status quo. Taking an engaged approach, the work relies on workplace mapping to co-construct, with workers and organisers, an understanding of how different employers, working conditions and status are used to divide workers and fragment the workplace to enforce low labour costs and control at the Sedibeng Brewery. The map also emphasizes the central role these workers play in the production process. The dissertation then describes how the workers use the law – institutional power –, in particular the amended section 198 of the LRA to try and overcome their divisions. They do so with the help of the Casual Workers Advice Office, a labour NGO. The chapter emphasises the law as a terrain of contestation by showing that this approach is not without problems. In the final chapter, the interdependence of associational, institutional, societal and structural power underlines that the precarious workers at Heineken relied on power resources located outside the shopfloor to start mounting an effective challenge to the workplace order inside the brewery. The dissertation concludes that contrary to the often expressed view, at least in this case study, precarious workers do organise but that they do so outside of the established unions, a phenomenon that is understudied. Although the struggle of these workers is very much about integration, it connects with deeper narratives and struggles against inequality in post-apartheid South Africa. Finally, the case study raises the question of how these dynamics could affect the traditional model of industrial unionism in the future: revitalise or transform it.

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1 Introduction

In 2009, Heineken opened a brewery in Sedibeng, 40 km South of Johannesburg. This was an important step in its long-term strategy of re-establishing itself in South Africa, a major piece of the growing African beer market. Historically, South Africa has been the empire of South African Breweries (SAB). Heineken is thus a minor player in the South African market, owning only a small share of its premium segment.

With its 4.5 million litres capacity, the Sedibeng plant is amongst the most modern breweries across the continent (Van Beemen, 2016). It currently directly employs about 300 permanent workers. In addition, an estimated 450 to 600 workers work under different companies involved in the production and distribution activities. Furthermore, separate companies, employing about another 100 workers, manage security, gardening, cleaning, and canteen services (Workplace mapping).

In July 2017, a group of workers employed by different companies operating at the Sedibeng brewery, started a campaign to be recognised as Heineken permanent workers. They also demanded equalisation: to receive the same wages and benefits than their permanent counterparts. They acted with the support of the Casual Workers Advice Office (CWAO), a labour NGO, because they considered that the union active in the plant, the Food and Allied Workers Union (FAWU), was not servicing them properly. These workers argue that they are labour broker workers and all of them have been working at Sedibeng for over three months. Under section 198 of the Labour Relations Act (LRA)[1], labour broker workers are deemed permanent employees of the client company – Heineken in this case – after three months. As this study is based on their campaign, when this paper discusses the workers, it refers to these labour broker workers[2]. The permanent workers are referred to as the permanents. In addition, at times for clarity purposes, the workers organising the campaign are designated as worker leaders for lack of a better term.

[1] Unless otherwise stated, when referring to section 198 of the LRA, we refer to version after the 2014 amendments.

[2] As will be exposed in the work, Heineken contests that all the workers work for labour brokers. This study takes the workers' point of view.

Analysing the case of the Heineken workers campaign, the dissertation sets out to examine what power precarious workers have and how they can realise it. I argue that, in this case at least, that precarious worker do organise but that their power depends on strengthening and developing their informal collective's power to confront their employers in difficult conditions. In order to achieve this, the Heineken precarious workers and their allies used existing labour institutions to boost organisation despite them being traditionally ill-adapted to precarious workers' realities. The boost in confidence and organisation was also accompanied by a media campaign and eventually led to challenges to management inside the factory. The dissertation is structured around the workers use of different power resources[3] (Schmalz, Ludwig & Webster, 2018).

Firstly, chapter 2 frames precarious workers' struggles in the wider context of labour casualisation. It reflects on how the processes induced by globalisation have contributed to the rise of precarious workers in South Africa. In particular, it examines how externalisation allowed employers to maintain the essence of the apartheid workplace regime, even after 1994. In this regard, it is argued that precarious workers occupy an increasingly central position in the labour market and in the production process. This clearly emerges through the discussion of recent precarious workers struggles, which show how workers increasingly demand to be integrated into the South African labour relations institutions, in accordance with their central position within the labour market. The chapter then introduces the power resource approach as an analytical tool, and applies it to the investigated case, trying to insert the Heineken workers campaign into the wider debate on precarious workers' power.
Finally, the contradictory nature of institutions, such as the law and trade unions, is examined. The discussion of the latter opens a discussion on the role of alternative forms of organising. Their role is discussed before introducing the case of CWAO, an advice office supporting workers in their struggles.

Chapter 3 discusses the methodology adopted in the present research. It details participant observation as a method to document and contribute to the workers' struggle. In this regard, the present work unapologetically takes the workers' perspective and aims to recognise the primacy of their agency in reshaping the workers' movement as well as their workplace. A particular

[3] The reader can find a detailed timeline of the struggle in appendix I. The study does not lay out events chronologically, it is thus advisable to consult the timeline before going on.

tool was used in this context. Faced with the task of understanding the dynamics of a fragmented workplace, workers participated in workplace mapping workshops. These were used to draw a map of their workplace in order to ultimately understand the production process in which they were involved, while uncovering the working conditions across the brewery's different sections.

Building on the mapping exercise, chapter 4 describes the workplace. It documents the production process, in order to show how working conditions, wages, and different statuses are used to fragment the workplace and divide the workers. Such a system of workplace organisation is enforced through a business model where competing sub-contractors transfer pressure onto the workers. The resulting divisions create a level of complexity and instability in the workplace that make attempts to challenge the current managerial order extremely difficult. The high fragmentation also assumes a spatial dimension, which becomes functional to the employers' view of the workplace and to their defensive strategy against section 198. Ultimately, the conflict is waged around competing visions of the workplace.

Chapter 5 examines section 198 and the way workers employ it as a tool. As institutional power, the Labour Relations Act (LRA) was shaped by the compromises struck between organised labour and capital over the years. This resulted in a framework of industrial relations favourable to permanent workers, which largely excluded precarious workers (Theron 2014). However, recent struggles have yielded the 2014 amendments to the LRA, section 198 in particular. The way in which workers use these amendments to support their demands and organisation, as well as the obstacles they face, illustrate the contested nature of both institutional power and the law.

Finally, chapter 6 highlights how this group of workers, initially an informal collective, drew on different resources to confront the company and push their demands forward. The chapter will strongly underline the interactions between different types of power. This will ultimately shed light on the centrality of associational power and of the development of capabilities in articulating different forms of power within a divided workplace.

Through this specific case study, the study argues precarious workers not only have power but they organise and use it. It shows that with the help of CWAO, the Heineken workers try to use external power sources to overcome their difficulties in building structural and associational power in the workplace. These difficulties emanate mainly from a divided and segregated

workplace under an authoritarian management regime. These features show strong continuities between the Heineken brewery and the apartheid workplace regime.

2 Framework: context and theory.

This chapter places South Africa within the global trends shaping precarity worldwide. It highlights the continuities between precarious work generated by processes of externalisation in today's South Africa and the apartheid workplace regime.

Secondly, the chapter explores the literature on precarious workers and precarity. These workers are often represented as a peripheral group in the labour movement whose heightened vulnerability makes them difficult – or even impossible – to organise. This study will argue that precarious workers occupy an increasingly central position in the labour market and in the production process. As a consequence, recent struggles by precarious workers show how workers demand to be integrated into the official bodies of South African labour relations.

The chapter then introduces the theoretical framework adopted to analyse how Heineken workers sought to build power. For such purpose, the power resource approach is deemed to provide a useful framework to define different types of power and how workers may use them.

The work then turns to the contradictory nature of institutions, such as the law and trade unions. Indeed, institutions can be repositories of power as much as they can be guardians of the status quo. In this case study the law appears as the first while institutionalised unions appear as the second

As a result, it appears precarious workers might not be so difficult to organise but it could rather be that traditional working class organisations are failing to do so. This research project will therefore address the question of alternative forms of organising. The Casual Workers Advise Office is presented as one positive experience in this regard.

2.1 The world of work, South Africa in the global context

2.1.1 Global trends

South Africa's liberation came late. The post apartheid governments had to balance loyalty to the liberation movement and the desire to integrate into the global economy. South Africa's economic policies rapidly shifted in favour of global integration, resulting in privatisation, trade

liberalisation and fiscal rigour (Theron, Godfrey & Visser, 2007). The price to pay was to abandon increasing amounts of sovereignty as well as institutional capacity to organise society, and in particular the economy (Von Holdt & Webtser, 2005: 5-6).

Similarly, economic sectors either internationalised by incorporation into global supply chains and markets or, when this was not possible, were limited to a domestic market increasingly subjected to internationally determined norms and prices (Lambert and Webster, 2017). As a result, simultaneously to the expansion of the new democratic state apparatus, the primary sector lost importance, the manufacturing sector focused on export, and the tertiary sector expanded relatively rapidly (Von Holdt and Webster 2005; Schierup 2016). The labour market also underwent significant changes. Formal standard employment – in the form of a full time, permanent jobs on the employers' premises (Theron, 2014) – was increasingly reserved to semi skilled and skilled workers. Unskilled workers were pushed into the informal sector or to "[work] under conditions of informality in the formal economy, in a triangular employment relationship" (Theron et al. 2007: 8).

However, the global South and South Africa are not a carbon copy of the Global North. Indeed, the heritage of colonialism strongly contributed to shape the political, social, and economic reality we observe today. Contrary to West, there is limited social security and 'decent' work hardly existed. In the Global South, precarisation of work looks more like "continuity through change" (Bezuidenhout, in Von Holdt and Webster 2005: 19).

2.1.2 **The changing world of work?**

The apartheid workplace regime was based on migrant labour, casual contracts and brutal repression. Webster (1985: chap. 9) describes how under apartheid the workplace was divided between white workers with skilled jobs in permanent employment and regulated by a bureaucratic (rules based) system of control; "coloured" and Indian workers in semi skilled jobs with some security controlled by a closed shop system; and finally unskilled jobs reserved to black migrant workers under an arbitrary and authoritarian control system. For the black migrant workers, there was no training and no perspective of progression. They were put at the furnaces, and those that made it stayed, while the others where just fired. Such fragmentation of the workplace corresponded to a segmented labour market with a primary market for whites, a subordinate primary market for coloureds, and a secondary market for blacks. The struggles

of the South African labour movement in the 70's and 80's were mainly led by precarious, often migrant, African workers (Schierup, 2016: 1053).

Theron (2014) argues that the conceptualisation of the Labour Relations Act in 1995 aimed to institutionalise their achievements. It assumed, post apartheid labour relations would be based on a reciprocal relationship between an employer and an employee. The standard would be "continuous, full-time, and [taking] place at the workplace of the employer" (Theron, 2014: 6). What came to be defined as a Standard Employment Relationship (SER) (Von Holdt & Webster, 2005) would be regulated by collective bargaining at a sectoral level.

South African firms, however, responded to globalisation and increased competition through "casualisation, externalisation and informalisation" (Theron 2005). Firms searched for greater flexibility, lower costs, and capital mobility by focussing on their core business (Theron, 2011). The process resulted in the precarisation of growing parts of the workforce and the undermining of the fundamentals of the LRA. This research project will specifically focus on the role of externalisation within these broader developments.

Externalisation is a process through which the direct relationship between the employer and the worker is replaced by a triangular relationship. Through such process, the client company commercialises its relationship with the worker by relying on an intermediary. The client pays the intermediary and has no direct responsibility towards the worker, who is paid and officially employed by the intermediary. The intermediary can provide either a service or simply workers – the first is called outsourcing (also referred to as service provision), the second is labour brokering. A labour broker provides workers who work under the clients' supervision, contrary to a service provider who takes responsibility for an entire function supplied to the client. In practice, the process allows businesses to cut costs and increase control over their workers. Lower skilled workers are separated from skilled workers: they no longer work for the same employer and are often considered to be operating in different sectors. Externalisation also undermines sectoral collective bargaining.

Since precarious workers face a very different reality than their permanent counterparts, solidarity and unity become increasingly difficult to achieve (Kenny, 2007). In addition, the pressure arising from intense competition between supplying firms is transferred onto workers. For unskilled workers this means authoritarian management techniques (direct discipline and

high turnovers) to ensure high productivity under poor working conditions and low wages (Webster and Von Holdt, 2005).

Overall, externalisation has deeply undermined the founding principles of labour relations in South Africa. A significant number of workers were excluded from the gains promised by the LRA. As a result, precarious workers experienced a strong continuity between pre and post 1994 working conditions. Indeed, the conditions observed today for externalised workers are very similar to those described by Webster (1985) for black migrant workers in the foundries during apartheid – an analogy that can be extended to the labour market as a whole.

Von Holdt and Webster (2005) describe the South African labour market as made up of three concentric circles with a core of permanent employees in the formal economy, surrounded by a group of non-core workers, those in precarious working conditions within the formal sector, and finally the periphery composed of the informal and the unemployed. They show how these groups are "asymmetrically interdependent" (Webster, 2005: 57), thus challenging the idea of a dual economy constituted by a modern and an informal sector. On the contrary, the three concentric circles constitute a continuum between those that "earn a living" in the formal economy and those that have to invent their own means of subsistence – "making a living" – in the informal economy. Within such representation, the non-core is made up of those workers who, despite working in the formal sector, experience uncertain and perpetually changing working conditions, very similar to those proper to the informal sector. Although this representation undoubtedly adds valuable insights to the observed reality of the South African labour market, and more generally to an understanding of how modern capitalism relies on hyper-exploitation in the informal sector, it risks to understate the role of the "non-core" in the formal workplace. Indeed, as the foundry worker in 1985 played a fundamental role in the production process, precarious workers are at the core of the production process in 2018. In the same way, while Von Holdt and Webster (2005) highlighted the significance of the informal sector within globalised value chains, the present study argues that precarious workers are increasingly at the centre of the production of value.

Indeed, the available measurements show that precarious labour is gaining in importance in South Africa. Before looking at the numbers, it must be emphasised the statistics below should not be taken at face value. By nature, precarious employment is difficult to measure. For example, in the current statistical data, labour broker workers are counted as "business services"

within the financial sector, forcing researchers to extrapolate the part of TES (Bhorat et al. 2016; see also Budlender 2013 for a discussion of the TES sector). StatsSA on the other hand does not formally measure precarious contracts (part-time, temporary, seasonal, casual, outsourced, TES, domestic and others) but uses general measures of the length of the contract. In doing so the data thus ignores workers who, although in precarious employment, would have contracts that formally appear as permanent (in the outsourced or TES sector for example). In addition, for TES, some firms do not formally register as TES and thus don't appear in the statistics. Certain sectors in particular like retail, construction, logistics and manufacturing would thus gather a significant number of precarious workers that are likely to be accounted for as workers like any other within the sector. This example should underline the need to use the measures below as estimates of broad tendencies. From that perspective, all are consistent with a general picture: a severe increase in the magnitude of precarious work in the South African labour market.

Table 2.1 Core, non-core and periphery 2004-2017 (millions)

		2004		***2017***[4]		***Variation***	
		Millions	% of total	Millions	% of total	%	Millions
Core		6,6	33%	8,4	34%	+27%	+1,8
Non-core		3,1	15%	5,3	22%	+71%	+2,2
Periphery	Informal	2,2	11%	2,8	11%	+27%	+0,6
	Unemployed	8,4	41%	8'1	33%	-4%	-0,3
Total Economically active population		20,3	100%	24,6	100%	+21%	+4,3

Source: Von Holdt and Webster (2005) and Webster & Francis (2018)

For example, Bezuidenhout, Bischoff and Nthejane (2017: 53) estimate that over 20% of South Africa's workforce are precarious. For the Labour Broker sector, Bhorat, Cassim and Yu's (2016) use business services, as defined by Statistics SA's measures, as a proxy for labour broker employment. Such a category, taken from the financial sector, includes workers employed in TES, cleaning and security services. The sector has steadily gained over a million

[4] Unemployment numbers in Webster & Francis 2018 were changed to the expanded definition of unemployment to insure comparability with the 2004 number.

jobs between 2001 and 2017 (StatsSA, 2017). The authors estimate the size of the TES sector alone at just under 900,000 workers. The authors also point to the fact that these numbers are likely to fail to account for the high number of workers in manufacturing, retail or logistics. Indeed, if their employers are not registered as TES, they would be recorded directly in those sectors.

This dynamic picture of a rapid increase of precarious work is confirmed in Table 2.1. Von Holdt and Webster' (2005) and Webster and Francis' (2018) calculations shows that the number of non core workers increased by 71% in just over ten years, over two times faster than the formal and informal sectors (+27%). In other words, more than half of the drop in unemployment and rise in economically active population (4,6 million people) is absorbed into precarious employment. As a consequence, four out of ten workers in the formal sector (core and non-core) are estimated to be precarious. This underlines the growing importance of this group in the labour process and the economy as a whole.

Despite the shortcomings of the statistics and the precautions one needs to display in using approximations, in light of the above it is safe to underline the rise of precarious work. Overall, the large scope and increase of precarious employment makes it increasingly difficult to consider such employment relations as 'atypical'. Especially if the tendencies illustrated here continue in the future. In any case, 40% of the formal workforce represents a significant part of the economy, an essential part of the value creation. Indeed, the case study detailed in this work shows that this type of employment (and the workers in it) is at the centre of the production process.

2.2 Precarious workers: atypical 'vulnerable' workers?

So far, this chapter has shown how, under the pressure of globalisation, a growing part of the South African working class has been pushed into precarious working conditions. Through processes of externalisation these workers experience important continuities with the apartheid workplace. In this section, we will situate precarious workers as the subject of this study. We use it to build on the concept of non core workers, while taking some distances from the heavy handed approach to the precarity as theorised by Standing (2011; 2014).

2.2.1 **Precarious workers**

The definition of casual workers is an often vague and contested concept. The literature on the matter is extensive. Terms like casualisation, precarisation, non-standard employment or non-core workers cover different phenomena (Theron, 2005). The previous section built on Von Holdt and Webster's (2005) concept of non-core workers. The non core is defined as "in the zone of casualised and externalised work, […] compelled into less stable employment relations; sometimes they have temporary or part-time contracts with the core enterprise and at other times more precarious contracts with intermediaries such as labour brokers, informal factories or subcontractors." (Von Holdt and Webster, 2008: 338). All of these workers have a formal workplace, often working alongside permanent workers, but they do not enjoy the same working conditions such as written contacts, benefits, etc.

This definition resonates with Guy Standing's 'Precariat'. Standing defines the Precariat as a new class of workers deprived of some of the securities granted to permanent workers (the Salariat). In his view, this global group of working poor, affected by multiple insecurities, is "a new dangerous class". He considers them as having distinct and potentially contradictory interests to those of the Salariat. Accordingly, the author advocates for the creation of new organisations of the Precariat with their own political program (Standing, 2011; 2014). Standing's studies have brought together some of the global dynamics surrounding the dismantling of the SER and the fragmentation of the working class.

Although both the concept of non-core workers and that of the Precariat provide useful insights, the present work seeks to move beyond both approaches. Indeed, it seems inappropriate to define a group by what it is not. Non-core effectively situates a zone in the labour market but does not identify its subjects. The category of the Precariat, although more specific, creates a complex, multi-faceted definition, making it difficult to apply and allowing for a kind of 'a la carte' use. In addition, it has generated intense debates around class (Wright 2015) and the global range of the concept (Scully, 2016). Overall, Standing's radical rejection of historical working class organisations and their 'labourism' (Standing 2014, 2016) would take this study far beyond its scope.

The present study instead defines the workers as *precarious workers*. Indeed, externalised workers are in precarious working (and living) conditions. They face permanent insecurity and

are located between formality and informality. Like both definitions above highlight, these workers are the result of a deep fragmentation of the working class and are divided internally. Finally, their insecure conditions also imply a lower status in the workplace and in society.

2.2.2 **Too vulnerable to organise?**

Precarious workers are often described as vulnerable, and therefore difficult to organise (Horn, 2014; Personal archive, Vulnerable Workers Task Team, pamphlet 2014). However, not only do precarious workers organise but they often manage to wage effective struggles, at least in the short term.

The Marikana strikes, in which precarious - migrant workers played an important role, for example, were led by worker committees who had broken with their union. Despite brutal repression and the Marikana Massacre, their unprotected strike led to a significant victory (Sinwell & Mbatha, 2016). Wilderman (2017) describes how farm workers rose up in the Western Cape in 2012. Largely as a consequence of their increased precarisation, these workers used informal networks and temporary committees to wage an effective and impressive struggle. Webster and Ludwig (2017) describe how waste collection workers in Johannesburg mounted an effective campaign to challenge casualisation at Pikitup. Dickinson (2017 a & b) illustrates how labour broker workers from the South African Post Office (SAPO) led a long campaign to be made permanent, which culminated in covert and violent action, but eventually led to the achievement of permanent employment.

These different struggles reveal several similarities. First, with the exception of the Pikitup workers, such struggles arose from a disappointment with the established unions, or at least occurred without their active involvement. In the Pikitup case, SAMWU's contribution was ambiguous, as it appears to have failed to maintain internal solidarity. The Marikana strikes were organised by worker committees against the COSATU-aligned mineworkers' union, NUM. AMCU, a rival union, was only adopted by the workers later. In the SAPO struggle, workers abandoned the COSATU-affiliated union (CWU) because it was not representing them as they wanted. In the farmworkers uprising, FAWU only played a peripheral role in the late stages of the struggle. In other words, workers moved away from the institutionalised model of South African industrial relations because it failed to respond to their demands – a fact Dickinson examines in detail (2017b).

As a consequence, these struggles were all disruptive. The Marikana strikes were mostly unprotected and relied on 'violent solidarity' (Chinguno, 2015 quoted in Dickinson, 2017a: 3). The SAPO workers physically prevented SAPO from distributing mail. They also intimidated one of their managers at his home. The farmworkers' uprising relied on blocking roads. The Pikitup workers trashed the streets. All of these examples involved breaking with conventional and accepted ways of resolving industrial conflicts.

In doing so, workers mobilised different sorts of power and creative tactics. In addition to their ability to refuse to work (and stop others from doing so), Wilderman (2017) describes how workers relied on a strong narrative, to accompany the images of blocked roads, in order to build support for their struggle. The Pikitup campaign developed an anti-corruption discourse that allowed it to develop wider societal alliances. The SAPO workers relied on secrecy, intimidation and violence (Dickinson, 2017a). An additional emerging commonality seems to be the building up of relatively spontaneous committees and organisational structures, which rely on informal networks. The latter is particularly emphasised in the SAPO and farmworkers cases.

Additionally, these struggles show another commonality: workers demand to be integrated into the SER. These workers' main reason for confronting management is to improve their working conditions. But their demand for wages and stability is also one for status. Precarious workers experience a subaltern status to permanent ones. Kenny (2007) describes how labour broker workers in the retail sector are subjected to a lowering of status through deskilling, authoritarian management and various attempts to frustrate them. This considerably affects their relationship with the permanents and the ability to build solidarity. Kenny further links this with the role of permanent employment in establishing full workplace and political citizenship in South Africa.

This exclusion from full integration in the workplace contradicts the promises of the post apartheid narrative, generating anger and frustration (Barchiesi 2011; Schierup, 2016). Alongside the material demands of these workers, there is therefore an evident request for equal status. Such interconnectedness between social and political rights is also present in Standing's definition of the Precariat and his discussion of the 'denizens' (Standing, 2014). Dickinson (2017a) highlights this apparent contradiction: workers deploy strategies aimed at disrupting, sometimes quite aggressively, the normal course of institutionalised industrial relations, only

to then demand to be reintegrated within them. The SAPO and the Marikana workers re-joined a (different) union and the 'normal' institutional framework of industrial relations once they achieved (some of) their demands. Workers thus seem to believe that although the institutional framework does not function for precarious workers, it does for permanents.

Although these cases are limited, they show that precarious workers do organise and engage in struggle. Overall, the limited availability of case studies within the literature seems to be due to the difficulty of studying these phenomena, rather than the absence of available examples (Dickinson 2017a: 2).

Ultimately, we can highlight the apparent tension between institutionalised methods (the law) and more confrontational and sometimes illegal or violent tactics; the rejection of institutionalised (COSATU) unions and their replacement by flexible organisational forms and informal networks; and the development of a wider repertoire of action and power mobilisation, societal ones in particular.

As the overview of the few precarious struggles above have highlighted: although precarious workers suffer multiple insecurities it does not prohibit them from engaging in struggle. They seem to do so mainly to achieve incorporation into the SER and the institutional framework that surrounds it. In the process, precarious workers distance themselves from institutionalised unions. They appear to identify those organisations with the status quo that they wish to integrate. To transform, challenge, or simply access the status quo, workers need power. The next section focuses on analysing power. The remainder of the chapter will then return to the question of the relationship between precarious workers, unions, and legal institutions.

2.3 Analysing power: the power resources approach

The present study draws on the power resources approach to frame how "the workforce can successfully defend its interests by collective mobilisation of power resources" (Schmalz & Dörre, 2017). It seeks to account for how workers strategically choose to mobilise power (Gallas, 2016) in order to pursue their goals. It rests on four categories of power: structural, associational, societal and institutional. Schmalz and Dörre (2017) provide a good overview of such concepts.

Originally, power resources were conceived as flowing from workers' ability to disrupt the normal functioning of the workplace on the one hand, and to organise collectively into trade unions and broader social and political organisations on the other. The first refers to *structural power*, the latter to *associational power* (Wright, 2000; Silver, 2003).

Structural Power can be mobilised in the workplace through the workers' ability to control and/or stop production. Factories with highly integrated production chains give workers greater *workplace bargaining power* as stopping one unit paralyses the entire chain, and in some sectors the entire economy (e.g. transport). Structural power, though, can also take the form of *market bargaining power* meaning the ability for workers to leverage constraints on the labour market: specific skills, full employment. Structural power can furthermore be exercised outside of production. Logistical power derives from the military notion of organising supplies to support troops. Workers and activists exercise logistical power by disrupting the movement of goods, by blocking roads for example (Webster, Lambert & Bezuidenhout, 2011: 12-3). In some cases, workers can also affect the social reproduction of the workforce – in education for example. Exercising structural power often requires some form of organisation, i.e. associational power.

Associational power refers to the power that emerges from collectives that are able to mobilise power in various forms. Erik Olin Wright (2000) identifies three levels of associational power connected to specific actors: at a workplace level through workers' councils; at a sector level through unions; and within the political system through workers' parties. Each level is connected to specific types of power: in this case, workplace bargaining power, marketplace bargaining power, and societal power respectively. Associational power relies on the capability to manage numbers and mobilise power resources appropriately (Lévesque & Murray 2010, 2013) (see below).

Societal power originates from alliances with broader societal actors around shared issues. Societal power relies on the ability to forge coalitions and on developing narratives and discourses capable of framing a specific struggle as part of wider issues and tensions across society. Potential allies can be NGO's, religious institutions, social movements, community associations etc. Coalition building often depends on the cross over of members between both organisations. By developing these networks, workers' organisations can mobilise larger forces and shape the debate across society. This is largely inscribed in the myths and beliefs of a place

and time. In South Africa, for example, discourses on justice, exploitation and the struggle against apartheid are very important and present within contemporary labour struggles.

Institutional power represents the institutionalisation of past power (Webster & Ludwig 2017). It is a secondary resource because it is the product of a compromise resulting from the use of structural and associational power in a previous cycle of labour conflict. At the end of a cycle of conflict, institutions are created to enforce the compromise 'putting an end' to the conflict (Schmalz, Ludwig and Webster 2018). Laws and public or tri-partite bodies institute mechanisms of negotiation, cooperation and co-decision. For labour, they represent durable rights and power that should be guaranteed. For capital, this represents an attempt at predictability and institutionalisation of class conflict. From this point of view, institutional power represents a double edge sword: it can strengthen but also weaken labour. It is also the ossification of "a unique, one-off power balance between capital and labour" (Schmalz, Ludwig and Webster 2018: 121).

The ossification of power means that institutions are based on what was, rather than on what is. They rest on assumptions and principles informed by the realities on which preceding struggles were focussed (Theron 2014). As capital seeks to maintain surplus extraction and increase profits, it also tries to escape constraints and subvert the rules to its benefit. The process of struggle that follows, perpetually redefines reality and power relations until the institutional framework no longer corresponds to reality. For example, in South Africa, the current institutions regulating industrial relations – the LRA, the CCMA – emerged out of the compromise resulting from the balance of forces at the fall of apartheid. To escape the constraints, it institutionalised and maintain exploitative practices, capital developed externalisation practices in order to generate a precarious workforce falling outside of the protection of these institutions.

The double-edge sword refers to the fact that the rules and procedures are a trade-off. They generate protection and strength but also imply constraints. Institutional power is the result of a compromise. During a particular cycle of struggle, workers make demands and mobilise power. They negotiate with capital. When a compromise is reached, workers will gain some of their demands but will also accept some procedures, rules and limits to their actions. The latter will have an effect on primary power resources by curbing them into an institutional framework. Gallas (2016) argues that this can lead worker organisations such as unions, under certain

conditions, to serve the power of capital rather than that of the working class. For example, the eighties generated a movement based on sectoral bargaining. This was incorporated into the LRA. Today, the reliance on sectoral bargaining is an obstacle for unions to meaningfully engage precarious workers (see below). This South African example illustrates Gallas' argument that the effective use of power resources, and institutional power in particular, depends on understanding the constraints and opportunities – the specific conjecture – under which the strategic choices of power resource mobilisation operate (Gallas 2016: 204).

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Lévesque and Murray (2010) stress that power resources are not enough: organisations need to have the strategic capabilities to mobilise them effectively. They identify four main capabilities: intermediation, framing, articulation, and learning.

Intermediation refers to an organisation's ability to develop collective interests. Organising in the workplace is always about transforming individual problems into collective issues. However, in a globalised world, and faced with a fragmented working class, unions face an increasing number of potentially conflicting demands from inside and outside the union. Their ability to create a consensus for action is thus more crucial than ever. Framing refers to the ability to transform this collective interest into an articulated narrative. That narrative can then be the base for an autonomous strategy that can resonate with other groups and individuals within a broader context. This capability is connected to mobilising societal power. Articulation refers to the ability to manage different power resources, as well as different times and places for action. Indeed, as the world becomes more integrated and activists have to manage multiple

fields of action, the ability to articulate all of the different relevant elements of a specific campaign together – locally, nationally, and internationally – within a broader strategy becomes more important. Finally, learning relates to the capability of an organisation to analyse its own past actions. From this analysis, organisations can get insights on how to adapt their present and future actions and organisational practices in order to respond effectively to the changing conditions they find themselves in.

2.3.1 **Institutional and associational power in the hands of precarious workers**

The power resource approach will allow this research project to analyse how precarious workers, in the case study discussed in this dissertation, mobilise power and what type of power they use. In particular, the research will focus on the interaction between institutional and associational power.

This research project will take some distance from a conceptualisation of associational power that might be too limited to the reality of already established unions. Indeed, in this approach, associational power seems to appear only in formalised organisation. However, informal networks can also generate collective action based on collectively taken decisions and informal rules. As section 2.2.2 has illustrated, precarious workers seem to rely more on loosely constituted networks and committees rather than fully formalised structures. The next section argues that this is due to the incorporation of unions into the institutions of labour relations. This relates well with the above section's discussion of the complex and contested nature of institutional power.

2.4 Precarious workers and South Africa's industrial relations framework

The previous sections discussed how precarious workers have been excluded from the South African labour relations framework. These workers have limited access to the rights guaranteed to permanent workers by the LRA. As a result, they organise and struggle to be (re)integrated into that framework. In the examples detailed in section 2.2.2, precarious workers seem to have considered the institutionalised unions to be inappropriate tools in order to achieve their objectives. They wage their struggle by different means. Once they gained integration, they joined unions again (Sinwell & Mbatha, 2016) or created new ones (Dickinson 2017a). This

suggests that unions are seen by precarious workers as a labour relations institution: useful tools to use once on the inside, but largely ineffective to challenge the status quo. This section argues that the institutionalisation of unions is an important element to consider when analysing their difficulties in responding to precarious workers' demands. This relates to an apparent inability to see the contested, and thus dynamic, nature of the law. Indeed, the use of section 198 by precarious workers, discussed in chapter 5, contrasts with the unions' apparent inability to escape the constraints of the LRA.

2.4.1 **Institutionalised unions**

South African unions appear to have been largely unsuccessful in organising non SER workers (Paret 2015: 771-2). Indeed, it seems that they are increasingly relying on the support of a shrinking permanently employed membership (Buhlungu & Tshoaedi 2013). Despite efforts and calls to do so, unions have been largely unable to bridge the gap that separates them from the growing groups of precarious workers (Paret 2015; Webster, Britwum & Bhowmik, 2017). Such dynamics are facilitated and reinforced by the participation in, and reliance of unions on, institutionalised mechanisms of conflict resolution and power mobilisation. These processes have made some unions increasingly dependent on the status quo. A status quo they thus have to defend and become a part of in order to maintain their influence within it. Studies of COSATU membership have shown profound transformations of the historical South African federation. First, its members are increasingly situated in senior and supervisory positions. Second, unions organise almost exclusively workers in full time permanent employment. Third, the dominant sector within COSATU is the public sector (Satgar & Southall, 2015). As a result, total union representation has plummeted to 24% of the South African workforce. Issues of internal democracy and professionalization have also facilitated the increased fragmentation of the labour movement (Buhlungu, 2010). In conclusion, historical unions seem to represent a small part of mostly permanent workers in SER, in an increasingly divisive way. This picture is in deep contrast with the developments in the labour market (see section 2.1.2).

These trends also generate self-reinforcing dynamics. Permanent and precarious workers may not always have an *obvious or immediate* community of interests (Theron, 2005). Looking at the retail sector in South Africa, Kenny (2007) illustrates how their specific positions constructs identities that make common understanding and real solidarity between permanent and precarious workers difficult. As a result, unions risk taking positions privileging their

membership in the short run and excluding precarious workers in the long run (Buhlungu & Tshoaedi 2013). As a consequence, these workers are less likely to join, prompting further defensive positions of unions around their permanently employed membership. Kenny (2007) also shows how the South African labour movement's identity is built around the image of the permanent worker. As the union movement has been at the core of building democratic South Africa, workplace citizenship and full citizenship are connected. Inclusion and exclusion dynamics in the workplace and in society thus reinforce one another (Kenny, 2007; Barchiesi, 2011). In other words, continuing exploitation and exclusion in the workplace is associated with exclusion from democratic South Africa.

This interconnection has far reaching implications. Indeed, the South African Labour movement is as much the architect as it is the product of the South African labour relations framework. Undoubtedly, the workers' movement played an important role in building post apartheid South Africa, but it also became dependent on the institutions it built. Paret (2015) argues that the alliance with both the ANC and the SACP allowed COSATU to continue to secure significant gains despite its shrinking membership. The unforeseen consequence of not relying on active members and workplace organisation for power was an increasing dependency on institutions. Jane Barett (interview 06/12/17) points at how the mutation of the "one sector, one union" approach from a tactic into an unquestionable principle prevented unions from challenging externalisation meaningfully. For example, Theron (2014) highlights that sectoral bargaining is at the core of the 1995 LRA. As previous sections illustrated this rarely benefits precarious workers. Unions remain deeply attached to a framework that allows them to negotiate some (increasingly limited) gains for their members. Furthermore, for the employers the very same framework they bypass through externalisation, guarantees predictable industrial conflicts. This model actively contributes to dividing the workplace between those covered by sectoral agreements[5] and those who are not. In other words, the unions' dependency on sectoral bargaining contributes to the exclusion of precarious workers. Over time, the COSATU unions became trapped in the institutional framework they built, and by defending it they became the de facto proponents of a status quo that excludes precarious workers.

[5] Sectoral agreements are collective bargaining agreements that set the standards for all workers in a specific sector of the economy.

2.4.2 **The legal framework to industrial relations.**

An important part of the discussion around precarious workers' power concerns how the workers use the law. The law is a particular aspect of the labour relations framework in South Africa. On the one hand, the law is not specifically designed to support workers, quite the contrary. Webster (1984) underlines how by postulating an equal footing between workers and employers, the law privileges the latter.

In theory, labour law is designed to overcome the natural bias of society towards those who dominate it. Galvin (2017: 259) distinguishes labour law from employment law. The first refers to laws governing issues relative to organised labour (e.g. collective bargaining). Employment law on the other hand covers laws establishing minimum workplace standards and individual rights and protections. If the LRA can be considered predominantly to be labour law, the amended section 198 seems to be more of a piece of employment law. Indeed, it defines the right of an individual worker to be made permanent and equalised.

Galvin (2017) argues that employment law is traditionally seen as unfavourable to organising. Indeed, individual rights are difficult to enforce and require resources to pursue cases. The law can be complicated to grasp and activate, especially if it is viewed as a substitute to self-organisation and collective action. Rights based mobilisations can actually hamper solidarity and does not address the power imbalances in the workplace. All of these are applicable, although to different degrees, to section 198.

As chapter 5 will detail, the amendments to section 198 of the LRA, introduced in 2014, aim at introducing a specific protection for some types externalised employment. After the amendments, temporary work[6] should not exceed three months otherwise employees should be considered permanent employees of the client company and paid on similar bases. Any individual worker that can prove he or she has been employed more than three months at a client by a labour broker or in temporary work thus has the right to be deemed a permanent worker of the client company. By offering a pathway to some precarious workers to reintegrate the institutional framework, the 2014 amendments to the LRA have opened up the possibility

[6] Unless the work is genuinely temporary: replacement of a worker on maternity leave for example is not covered by section 198.

of encouraging and strengthening organisation and mobilisations of labour broker workers. Indeed, some were able to achieve significant victories through mobilisations based on section 198. In order to do so, though, workers have to overcome major obstacles. Some arise because the LRA does not grant these workers the same protections conceded to permanent workers and their organisations.

Workers thus use the law but are also constrained by it. The law is a space of contention between labour and capital. It contains elements of compromise, strengths, and constraints. Although it is not always the most dynamic sector in society, the law adapts to changing relations of production and to the relative strength of different groups in society. In this sense, chapter 5 will discuss how section 198 opened a contradiction inside the existing framework. As such it creates opportunities for precarious workers to organise but it also entails risks and difficulties that they will have to overcome.

2.5 Renewing organising

Section 2.2.2 illustrated how precarious workers create their own organisational tools to challenge the status quo. Self-organisation allows workers to escape the institutional limits imposed on institutionalised organisational forms. It allows them to adopt more creative approaches in mobilising power. However, this also has a price. Workers, and precarious workers in particular, do not have the same resources and capabilities than established unions. Ultimately, there is also a question of how well these workers are able to sustain these fights.

To fill this void, advice offices have re-appeared in South Africa in recent years (Ryabchuk, 2017; Wilderman, 2015). These organisations are primarily set up to give legal advice. Some focus specifically on workers. Advice offices seem to be faster in responding to workers demands than institutionalised unions (Ryabchuk, 2017). More importantly, they are free of the institutional constraints that have limited the ability of unions to challenge the status quo. One of the main issues faced by precarious workers' struggles, however, is the difficulty to sustain them in the long run (Wilderman, 2017), and thus to transform their claim for inclusion into the framework of institutionalised labour relations into a genuine challenge to the exclusionary dynamics of the status quo.

The Casual Workers Advice Office (CWAO) sees itself as an experiment to address such issues. Indeed, within the context of an advice office, it also tries to encourage new forms of workers organising. This mainly arises out of responses to workers' expressed disappointment with unions.

2.5.1 **CWAO**

The Casual Workers Advice Office was founded in 2011. It is situated next to the Germiston station in the East Rand. It aims to provide the growing number of precarious workers with legal advice, while at the same time acting as an incubator for worker (self)organisation. It focuses exclusively on workers' issues. The office offers free advice to any worker that walks through the door. It has also started providing education on workers' rights through pamphlets and workers' theatre. The office is also involved in advocacy activities, seeking to promote precarious workers' rights, in particular directed at the Commission for Conciliation Mediation and Arbitration (CCMA). Ultimately, however, CWAO's objective is to promote and support organisation amongst precarious workers.

Where possible, the centre encourages workers to build collective struggles, rather than individually pursuing their grievances. Very often workers show up to CWAO's offices as delegates from a larger group. Sometimes several hundred workers turn up together. Workers are then prompted to try and get more of their colleagues involved. Despite some strong cases, the first few years of CWAO experience did not yield the results organisers were hoping for in terms of reaching and organising precarious workers.

CWAO launched a new campaign in 2015. As the new labour amendments came into effect, the centre issued a pamphlet about these "big new rights". It distributed them at taxi ranks and public places. Workers started phoning in. Rather than seeing workers from different companies separately, they were all invited to attend a joint meeting, which eventually became the Simunye Workers Forum (SWF). This autonomous structure meets every second Saturday of each month. In 2017, it gathered an average of 169 workers from 28 to 31 different companies at every forum meeting (Rees, 2018: 50). Workers discuss the campaign and the issues they face at work. More experienced comrades share their knowledge with newcomers.

Indeed, much of the Forum's activity, mirroring CWAO's, is about workers' rights. Labour broker workers on average are young (Bhorat et al; 2016) and their knowledge of their rights is very limited (Ighsaan Schroeder, Interview, 06/06/17). The forum brings together mainly labour broker workers from different companies and different sectors. They share the objectives included in section 198: being made permanent and wanting the same working conditions as the other (permanent) workers. Other issues concern the amount of hours worked, discipline at work, dismissals, and organising in the workplace. Participants also decided to start a strike fund: workers give what they can or want. The money is counted in front of the assembly, and workers are given a copy of the bank statement showing the state of the strike fund at every meeting. At the end of each meeting, workers gather per company to discuss the immediate concerns on the shop floor. They are assisted by the CWAO organisers who are assigned to their company.

Access to both the SWF and CWAO is totally free. CWAO is a donor funded NGO. It has a staff of 13 people. There are five organisers tasked with going to companies and assisting with their (mainly CCMA) cases. The organisers are former workers who came into contact with CWAO through their struggles. Others have a history in the labour movement as shop stewards. CWAO also edits 'the New Worker", the SWF newspaper.

CWAO is thus an on-going experiment. It is a relatively modest experiment but one that has had an important impact on thousands of workers' lives and that is growing fast. It faces important challenges in confronting deeply divided workplaces and workers' problems.

2.6 Conclusion

This chapter has shown how in the specific South African context, global trends have reshaped the world of work. The pressures of globalisation and (neo)liberalisation have yielded an increase in the precarisation of work. In South Africa this has primarily meant processes of informalisation, casualisation and externalisation through which capital has sought to elude the post apartheid work order postulated by the LRA and the wider South African labour relations framework.

These dynamics have seen the rise of the importance of precarious work in the formal economy. A rising section of the working class is working under informalised conditions in the formal

sector. In other words, the standard employment relationship which the South African labour relations framework is built on can no longer be considered the norm and precarious work can no longer be seen as 'atypical'. In consequence, the system loses its potency as it 'works' for a shrinking group of workers. In addition, the latter form the base of a labour movement that built this framework and has become dependent on it. The resulting representational gap means that the once powerful union movement loses strength as precarious employment grows. These dynamics are reinforced by these unions', COSATU in particular, attempts to compensate membership through influence. The institutionalised unions' relevance is thus brought into question as the system of labour relations loses meaning for a growing part of the (formal) labour force.

Despite claims by some that precarious workers are difficult to organise, recent research and events seem to establish that this is not always the case. A few well documented cases show that these workers organise on their own. Often, they do so outside or despite established unions, disrupting the usual way of resolving industrial conflicts. In their demand to be integrated into the SER framework, they show creativity in rebuilding dynamic organisation by the use diverse power resources, connecting their issues to broader societal issues, questioning the post apartheid national narrative.

It is to these studies that this dissertation seeks to contribute. In the next chapters I will examine how the Heineken precarious workers and the Casual Workers Advice Office illustrate, understand and act within this context. Through the use of institutional power, they attempt to rebuild organisation to challenge the status quo. In doing so they contribute to building our understanding of it and show organising is happening.

3 Methodology

3.1 Study design

Responding to this dissertation's research question implied a mainly qualitative approach. To understand how workers mobilise power, one has to examine how they take collective decisions, build unity, take action and evaluate them. The approach thus had to be one that allowed the researcher to perceive and record these processes. However, in some aspects, the study did use quantitative data when available or useful to strengthen the analysis. More fundamentally, this research was based on building a relationship between the workers and the researcher. As theoretical debates are resolved in practice, the present work is intended to be a dialogue between the researcher and the workers. In this way, the study builds a shared knowledge based on a direct and immediate relationship between theory and praxis.

Monaco (2015a) uses a worker inquiry to study casualisation in India. The inquiry is based on the methods developed by Italian Workerism in the seventies: "The analysis of class composition and of dynamics of conflict occurs through practices of '*militant research*', such as '*co-research*' and methods proper to '*workers' inquiry*'[…] [grounding the relationship between worker and intellectuals] in the 'joint production of social knowledge from below' " (Monaco, 2015b: 225). The intention of co-research or militant research is to build knowledge with immediate and, maybe, longer term political use. In a second phase, the researcher still takes distance from the original findings, seeking to produce a scientific analysis. These processes resonate with the practice of "critical engagement" developed by SWOP in the 1980's and subsequently framed by Burawoy (2005) in his concept of "public sociology" (Arribas Lozano, 2018).

The process of course generates some constraints (see below) and could be seen as limiting the conclusions. However, I built a relationship that gave me access to the entirety of the organisational process, allowed me to reconstitute the production process and map a production site neither the organisers nor the researcher had access to. Additionally, the workers and organisers know what the researcher is looking for and why he is there while also seeing it as useful to them and their struggle. This builds a transparent relationship on mutual terms. Finally, aiming to generate knowledge produced by workers' struggle for struggle is in line with the spirit of the GLU programme.

3.2 Data collection

Data was collected through a process of participant observation during which two group sessions of workplace mapping were held. A questionnaire was also used. Finally, to confirm observations, semi-structured interviews were conducted.

3.3 Participant observation

Participant observation was chosen to respond to the framework described above. The research involved accompanying the workers and organisers in the construction of their struggles, participating when they deemed it useful and adapting the originally intended approach to the reality and needs of the workers.

This meant the researcher's presence was accepted at meetings and considered normal. Workers were clear about research motivations and saw the relation with the researcher as mutual. This allowed me to build a relationship with the workers and the CWAO organising team that would have not been accessible to a foreign white European in South Africa. I was able to record events as they unfolded and understand the decision- making processes that led to them. Finally, and maybe most importantly, the whole process allowed me to reshape the research in a way that was immediately relevant to the workers struggle.

This relationship meant greater access to all relevant documents workers gathered for their case and discussed (contracts, payslips, pamphlets). It also meant access to meetings between CWAO and the workers, at CWAO and between workers and their lawyers. Finally, it meant workers were familiar with the researcher's presence and considered it normal, even at CCMA and during bargaining council proceedings, when procedurally allowed.

Overall, this work is based on observing and participating in 32 formal meetings and events with workers and organisers over a period of four and half months. Twelve meetings and workshops with workers were held at CWAO in Germiston. These meetings were attended by groups of workers varying between 15 and 60 workers. They concerned the case, organisation and elements of more or less formal training (LRA, rights, negotiation tactics, democracy). 3 were gatherings following the Simunye Workers Forum general meetings in Germiston. Eight

meetings were held in Sedibeng, either in front of the factory's entrance, or at 'Marikana', name given to an empty field a few hundred meters away, where workers usually meet. These meetings were either general meetings (3) or smaller meetings concerning events inside the Brewery. They were attended by 50 to 300 workers depending on events. Three meetings were not directly attended but reported to the team and thus integrated in the study. In addition, a "tools down" gathering in front of the factory was attended, as well as one protest in front of the factory gates. Five formal meetings of CWAO organisers discussing the 'Heineken case' were also attended. This comprises only more formal meetings with an enlarged team and not the smaller and more informal discussions before and after meetings with workers. Two of these meetings were explicitly mapping groups. Four institutional events were also attended: 1 at the National Bargaining Council for Road Freight and the Logistics Industry (NBCRFLI) and 3 at the CCMA. One was not attended but the report to CWAO was integrated into this study. The researcher attended all of these with Meme Makhaula, the main CWAO organiser for the Heineken case. In almost all of these events, Dr Femke Brandt, anthropologist from UJ, was also present and assisted the campaign.

Most discussions in meetings were not in English but some parts were. In addition, some CWAO organisers responded in English and at times the organisers translated. Parts that were unclear were clarified later on during debriefs. Most of the time, general discussions and arguments workers were having were not too difficult to follow. Obviously, small details and subtleties were lost to me.

3.4 Workplace mapping

I had the opportunity to participate in a horizontal mapping exercise with the ENGAGE class of 2017. Horizontal mapping (HM) aims at situating different workers in a workplace, their demographics and employment characteristics and their attributes (Webster and Bischoff 2011: 13). It included the elaboration and administration of a questionnaire to the workers of the University of Witwatersrand. The workplace mapping described below deepens the mapping concept in three ways. First, in workplace mapping information emerges through a dialogue between workers and researchers, it thus casts a larger web. As a consequence, the produced knowledge is more dynamic and integrated within the struggle of the workers. The map also focusses more directly on power as it aims to recruit workers and to understand their position

within the productive process. Indeed, by drawing an actual map, the mapping exercise is directly related to the workplace and its reality. Finally, the workplace mapping is a collective process, it aims to bring workers to reflect together on their workplace reality, it thus produces a collective picture rather than an individual one. The process at the core of this work tried to implement workplace mapping to explore those exact specificities. A short questionnaire, similar to horizontal mapping was also administered (see next section).

Initially this study aimed to do "power mapping" with the workers. Power mapping is mainly an organising tool meant to systematise workers' knowledge of their own environment and the power relations that shape it. "Power mapping […] identifies key actors within a particular field of action, defines the power that these actors have in relation to particular decisions or resources, and assesses the relations of these actors to each other and with oneself" (Noy 2008: 4). The original idea came from Jane McAlevey's book (2014), in which power mapping is used during a campaign of the SEIU (USA). McAlevey kindly shared some notes of her forthcoming manual with me. Schiffer (2007) used power mapping during a campaign on natural resource management in Namibia. However, the reality of the field made clear that this was a step too far.

Indeed, what the workers and CWAO needed was a way to understand the production process, to locate and count workers in the brewery and to understand their different working conditions under different labour brokers. CWAO and labour broker workers are regularly confronted with fragmented workplaces which neither workers nor organisers manage to fully understand a deliberately divided and fragmented workplace. In addition, much of the section 198 of the LRA discussion focusses on legal arguments and on the reality of the production process. Understanding this was thus crucial.

After some research, the extensive idea of a power map including community organisations, media, churches and local government, for example, gave way to a simpler version based on union practices. Rob Rees's insights (Interview 22/06/17) and the project conducted by NALEDI at OR Tambo (NALEDI, 2014) airport informed many of the questions about the workplace and working conditions. Instead of mapping broad power relations, we started from mapping the workplace. Brooks, Singh and Winslow (2017: 96) refer to the objective of a power map as one of making power relations visible and of mapping the production flow. The objective, from an organiser's point of view, is to understand where workers are, how they

move, what their networks and groups are and potentially where the bottlenecks lie. Many unions have some kind of mapping technique on their websites or in their training manuals.

The mapping itself consists of drawing the workplace, the machines, kitchens, changing rooms etc. and then place workers on the map. In placing workers on the map, workers sympathetic to the cause will be identified, including managers etc. In the case of this study the focus was on understanding the production process, the role played by each type of worker (permanent, different labour brokers, etc.) and their employment conditions. The exercise was thus adapted.

Workers would start by drawing their department. Then they would explain where their workstation was located and who the other workers operating nearby were. Workers were given the colour green for Heineken workers, purple for Imperial Managed Logistics (IML), orange for the Labour Solutions Company (LSC), red for Bidvest-Vericon and blue for Bidvest Prestige. In the discussion, workers would have to reflect on their daily work, voice even problems that might have seemed trivial to them and importantly think about who else was there. In several occurrences, workers would forget to count workers. Typically, the cleaners were often left out. During one of the first discussions, workers remembered two assistant forklifts doing only dayshifts after 20 minutes. This highlights the fragmentation of the workplace. As well as the use of the tool as an organising tool.

For the purpose of the study, the mapping allowed to materialise the power relations in the workplace, it showed how production is fragmented, how workers are divided, and how different working conditions generate a divisive workplace hierarchy. In addition, understanding the working conditions highlighted the degrees and reality of precarity, status and insecurity in the workplace.

Two sessions of mapping were conducted on 30 September and 22 November 2017. Both were done with a small group of workers from the same department. Sometimes workers from other departments sat in, often also commenting as they had previously worked in those departments. Both mapping sessions were conducted by the researcher. Dr. Brandt assisted and contributed to the workshops and brought significant inputs. One worker would draw on an A2 flip chart. He or she would explain while drawing. Other workers would comment or sometimes discuss (in isiZulu) when they disagreed or wanted to add something. The researchers would ask questions to clarify but mostly to make workers reflect on what other workers were there, on

problems and accidents and to understand working conditions. The sessions took between 30min and 1h30 per department. On the two sessions 4 departments were covered: bottle storage, returnables, dispatch and production. The last one was covered twice as it is split in two. The warehouse was covered indirectly by workers from production and dispatch but not directly by a worker from the department. Once the map (See appendix A) was completed workers commented and corrected certain aspects.

Several problems arose. They are mainly related to the difficulty finding reliable information. Part of the sessions inevitably became about making the researchers understand the production process. Some things are self-evident to workers as they see them every day. At times, this prevented a real discussion between workers. On the other hand, this disruptive element made it compulsory for workers to reflect on their workspace and take nothing for granted. Second, there is of course a language barrier and in some cases the workers had to discuss what we meant or what they wanted to say to make it clear. The sessions also encouraged workers to discuss problems and issues they experienced, which made sessions long and at times it blurred the objective of the exercise. Finally, the workplace is extremely complex and not a static place. The employers were actively reorganising in response to workers' activism. Some information remains unclear. In addition, the information workers provide is inevitably subjective. Since the process is collective however, information is triangulated.

All in all, it was not always evident to all workers what the exact purpose of the mapping was. However, with the result becoming visible and usable through the actual map, things became clearer. And we hope it will be useful to their campaign going forward.

3.5 Interviews and questionnaire

In addition, the research was supported by a questionnaire and some interviews. The questionnaire was designed by the organising team as a support to the workers' section 198 case. It was clear the employers would argue that IML is a service provider rather than a labour broker. It was thus decided to develop a questionnaire around the issue of who the real employer of the workers was, based on the seven conditions defined by the LRA to determine who the employer of a worker is.

The questionnaire (appendix J) focussed on the workers, their work, their working conditions and their employment history at Sedibeng. It inquired about contacts with Heineken workers, training and the tools they used as well as who enforces discipline at work. Finally, workers were given an opportunity to add anything they thought CWAO should know about. All questions were open-ended questions. The questionnaire was distributed at an open meeting on 30/10. Most workers filled in the questionnaire there, but some workers took copies to the factory and brought them back later. 142 workers completed the questionnaire. Most were self-administered but some questionnaires were recorded by CWAO organisers. The questionnaire was in English.

Some workers copied answers from each other and responded in exactly the same way. In some cases, workers responded to questions but when probed by organisers they doubted their own responses. Nonetheless, the questionnaires yielded important insights about the workers' reality. This process, more similar to horizontal mapping (see above), allowed to ask more targeted questions to a wider range of workers and allowed to construct more individualised information.

In addition to the questionnaires, interviews were conducted with CWAO organisers, workers, a FAWU shop steward and two external informants. Three interviews were conducted with workers. All interviews were conducted between the 7th and the 17th of December 2017. The researcher would pick up workers at work and drive them back to their homes. In this way, workers would not waste time. In addition, the car created a safe and comfortable space for a conversation. Workers were thoroughly informed on the purpose of the study, the use that would be made of the interview and their right to opt out at any time. All workers gave consent and two asked to remain anonymous. Interviews were recorded. They were designed to triangulate the observations and results from the mapping. They followed a semi-structured questionnaire to allow workers to orient the discussion (see appendix K). Workers were asked about their employment history and where they came from. Then workers were asked about their history at the Sedibeng brewery and their view of how the situation at the factory had evolved over time. The relation with FAWU was also addressed but also on why workers thought CWAO was different. In relation to CWAO, workers were asked how they found out about it and how they evaluated its action. Finally, workers were probed about previous experiences of organisation and their participation in other associations, churches or groups. Interviews lasted between 1h and 1h20 minutes.

Two interviews were conducted with CWAO organisers. They followed a semi-structured schedule (see appendix L). Organisers were asked about their history before CWAO and how they came to CWAO. They were asked about their views on the CWAO experience and how they viewed the Heineken case in that respect. The relationship with unions was also probed. Interviews lasted just under an hour and took place at CWAO offices. Organisers asked to remain anonymous. More interviews should have been conducted but due to external events that was not possible. As a consequence, the interviews have only been marginally used as it would be difficult to guarantee anonymity in this context. In addition, two interviews were held with Igshaan Schroeder, the director of the centre. One in May 2017 and one in June 2017. These interviews were unstructured as they were aimed at understanding CWAO, its context and functioning. They lasted about an hour; one took place in Johannesburg CBD at a restaurant, the other at CWAO offices.

On 27 September 2017, an interview was conducted with Prichett Makjola, a FAWU full-time shop steward at Sedibeng. The semi-structured interview focussed on FAWU's history at Sedibeng and its relationship with the different kinds of workers. It also addressed basic information on the permanents working conditions. The interview took place at FAWU's regional headquarters in Johannesburg CBD and lasted an 1h15.

Finally, two interviews were held with outside informants. An interview was conducted with Rob Rees on the 22nd of June 2017 at the NALEDI office in Braamfontein, Johannesburg. The interview addressed the issue of precarious work in general as well as technical issues about investigating the workplace. The interview lasted two hours. Finally, on the 6th of December 2017 an interview was conducted with Jane Barett in her capacity as former SATAWU secretary general and COSATU delegate to NEDLAC. The unstructured interview focussed on the relationship between unions and precarious workers and the informant's experience as a former secretary general and cadre of COSATU. In addition, the discussion addressed the making of section 198 as the informant was at NEDLAC at the time of its formulation. The one-hour interview took place in a coffee shop in Braamfontein, Johannesburg.

3.6 Ethics

The project for this study received the clearance of the Ethics committee of the University of Witwatersrand and was conducted in accordance with its guidelines. In particular, measures to

protect the anonymity of workers were taken. All data was aggregated. All names are pseudonyms. The pseudonyms do not respect the informants' genders per se.

The research project was explained to the workers on several occasions. Interviewees received an oral and written explanation of the research project. Once informants confirmed they understood what had been explained. Consent was given orally and through signed forms.

One of the possible problems in doing participatory observations is that workers might associate the research as a mandatory 'price' for being supported by CWAO. This was always clearly denied and explained. In addition, workers and organisers determined the agenda of what needed to be done. This guaranteed that the workers saw the research as done for them and not as an obligation. In the interviews however, workers might have refrained from criticising CWAO despite being allowed to do so and reassured on their anonymity.

As a white European man in South Africa, I have to acknowledge the importance of power relations of race, gender and class relations in doing this research. On the one hand, language and more deep structural barriers keep some aspects inaccessible. On the other, relationships with workers and organisers are affected by these systems of domination and how they structure society and social relations. The latter is particularly true in South Africa.

The researchers distance from the case was enforced through an extensive writing period and a conscious effort to use the theoretical and contextual framework to re-locate the case study in the wider body of existing literature.

3.7 Conclusion

The methodology produced used in this dissertation aimed at responding to the needs of the organising drive at Heineken. The aim was to produce immediately useful knowledge for the workers' struggle. The narrative that forms the backbone of this dissertation is thus that of the workers. Through this process, the researcher got access to the nitty gritty of the organising work. The workers also recognised the work as useful and in return accepted participated to the more academic parts of the research.

The workplace mapping revealed itself as a useful tool – for the workers and organisers as well as for the researcher – to make sense of a fragmented workplace and a divided workforce. It

provided an opportunity for collective reflections around these issues while contributing to the actual organising.

Of course this work has it limits, the map might have drowned out minority voices and the barriers of language, race and gender have probably limited my capacity to understand some of the inner dynamics in the workers' collective. In addition, the subjective approach based almost solely on the workers' voices implies that the narrative is dependent on what they understood, what they were willing to share and maybe missed what they hid. Finally, although the observed dynamics are not unique (see section 2.2.2) a case study offers limited prospects for generalisation. This being said, the methodology used proved effective in supporting the struggle while generating a large quantity of qualitative data allowing to examine and to answer the research question.

4 A segregated workplace

Understanding the workplace and the production process has been an important part of the organising at Heineken's Sedibeng brewery. Indeed, the workplace is fragmented between so called core activities and non-core activities; the latter are controlled by competing companies. These companies compete for contracts and transfer the pressure on workers. The result for the workers is a fragmented and divided workforce.

The chapter will situate Heineken in South Africa as a background to the description of the production process at the Sedibeng Brewery. Through this description it will show how hierarchy, competition, working conditions and status are used to divide the workers, control them and impose low wages and high work pressure. Finally, the chapter discusses how this workplace organisation prevents workers from uniting and hampers their capacity to build associational power. In conclusion, the segregation and fragmentation of the workplace are compared to the apartheid workplace regime (Webster & Von Holdt, 2005).

4.1 Heineken in South Africa.

Heineken has always been an international company. Through Dutch colonialism it built a historical link with South Africa and the wider continent. However, it has not been present in South Africa for a long time. Recently, increased competition and the rising importance of the African market have pushed Heineken to re-establish itself on the South African market. South Africa represents a key piece of the booming African beer market (Fick 2017).

Heineken presents itself as being committed to transformation on the continent. It puts forward a "Policy on workers and Human Rights", applicable to itself and its subsidiaries, guaranteeing –amongst others – at least minimum wages, a right to collective bargaining and freedom of association and safe and hygienic workplaces (Heineken, 2012). However, reports show that the company often pays significantly less than living wages, subjects workers to high workloads and increasingly uses outsourcing and labour brokering (Van Beemen, 2016). As a result, the African market, provides Heineken with high productivity at low wages and a growing part of Heineken's profits come from the continent (Van Beemen, 2016; Fick 2017). Until 2004, Heineken stayed away from South Africa, which was dominated by South African Breweries

(SAB). SAB had a licence to commercialise Amstel, one of Heineken main brands, in South Africa. This relationship was profitable: at the end of the nineties, Amstel's South African market share represented 9% in volume and 20% in value (Van Beemen 2016: 482). However, due to the restructuring of the global market, SAB and Heineken came on a collision course at the beginning of the new millennium. Heineken thus adapted its approach. In partnership with Diageo and Namibian Breweries, Heineken launched Brandhouse in 2004. Brandhouse was a distribution and marketing venture, designed to market and sell Heineken's beers, Namibian Breweries' popular Windhoek Beer and Diageo's liquors on the South African market. In 2007, Heineken won back the rights to Amstel in South Africa at an arbitration at the International Chamber of Commerce to everyone's surprise, including themselves (Van Beemen, 2016). SAB stopped producing it and Heineken had to import it to keep it available. This situation led to the building of the Sedibeng Brewery.

In the meantime, SAB developed an aggressive strategy with Castle light as well as other premium brands to tackle Amstel, and a program to offer shares and promotional material to Shebeen owners, securing its distribution network. Heineken fought hard to defend a small share of the premium market for Amstel and its other beers; only recently did the Dutch transnational company manage to obtain some significant gains on the market (Crotty, 2017). It also recently bought Soweto Gold, which it is progressively orienting towards the mass consumption market.

Heineken SA has about 940 workers on its payroll. The biggest department is sales with 400 workers. The brewery has 300 permanent workers. The remainder are in support functions like IT, HR or finance, at headquarters in Sandton. In addition, the sales department staff is doubled through the provision of 450 extra workers, supplied by, Sebenzela Market Solution (Pritchett Makjola, interview 27/09).

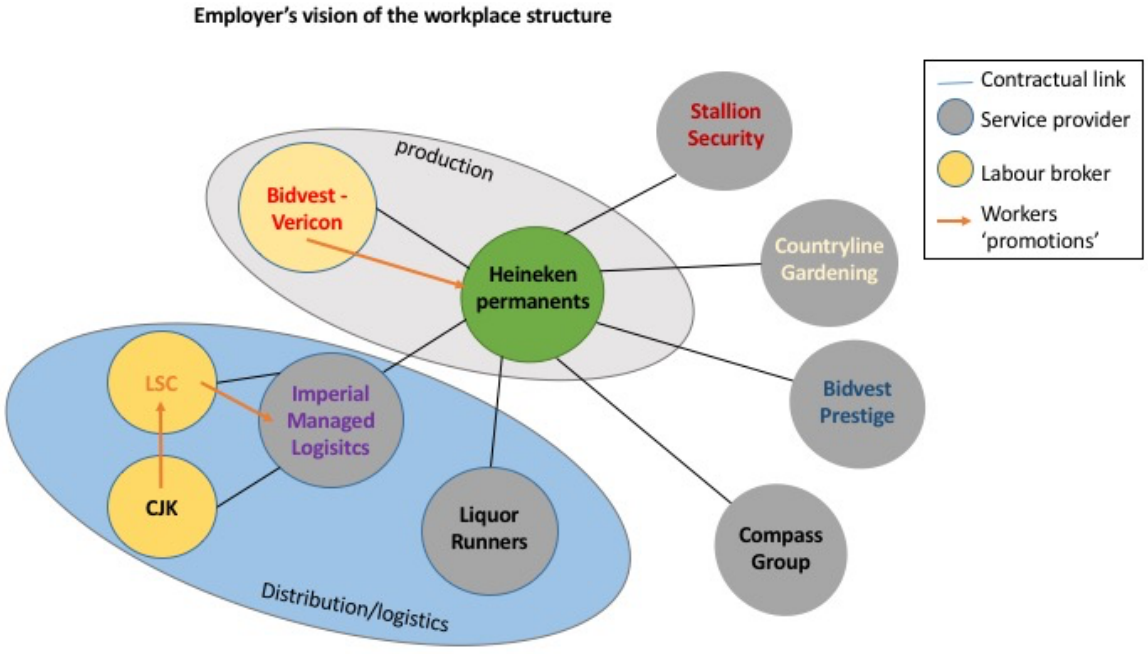
4.2 The Sedibeng Brewery Organisation of the plant

In May 2008, Heineken started to build a new state-of-the-art brewery in South Africa. The factory would be operational by July 2009. Next to Vereeniging, about 40 km South East of Johannesburg, it now has a yearly capacity of 450 million litres (Heineken, 2015). Sedibeng Breweries is currently owned at 75% by Heineken and 25% by Diageo and operates in parallel

of Brandhouse marketing operations. In 2015, the company brought Sedibeng Breweries and Brandhouse together into one entity, Heineken SA. The Sedibeng Brewery operates Heineken's main brands[7].

Management has separated the plant in different areas corresponding to different activities or functions as represented in Figure 4.1. Management separates the core activity, beer production, from distribution on the one hand and accessory activities on the other. The latter are outsourced to different subcontractors: Stallion Security for security, Countryline Gardening for the maintenance of the grounds, Bidvest-Prestige for cleaning and the Compass Group for the canteen. Their number is difficult to estimate. Prestige cleaners are about 60 and it is likely they are the biggest group. A reasonable estimate of the total 'outsourced' functions employees would be more or less a hundred workers. They play a marginal role in the 198 case.

Figure 4.1. Employer's representation of the workplace



Source: author based on workplace mapping and Interviews.

The core of the discussion is on the distinction management makes between production and distribution, between core and non-core activity, represented by the two circles in Figure 4.1. However, the distinction between the two is quite artificial. Production is constituted by the

[7] For an overview of products see appendix H

actual brewing and the bottling of the beers. The 300 permanent Heineken workers at Sedibeng work mainly in the brewing sector of the plant. They work as machine operators, lab and shift technicians, maintenance technicians, planners and brewers. In other words, they are the qualified workers. Directly alongside them, 34 workers worked for Bidvest-Vericon. In October 2017[8], these workers were taken on permanent contracts by Heineken through FAWU. This was meant to strengthen the distinction made by management between core and non-core activities. These workers were employed as process controllers (workers assisting operators at the machines), maintenance assistants, and forklift drivers. These labour broker workers were thus directly involved in the core activity alongside Heineken permanent workers.

Indeed, from management's perspective, Imperial Managed Logistics (IML) is a warehousing and logistics specialist who manages the warehouse and the distribution of the beer for Heineken. Roughly 150 workers work for Imperial. They are employed as forklift drivers, supervisors (also called side controllers), warehouse controllers, stock counters and checkers. Another subsidiary from the Imperial Group, LSC Masakhe operates under Imperial as a Labour Broker. An estimated 150-200 workers work for LSC. These workers are often under IML workers' supervision. They work as bottle sorters, forklift drivers, line checkers and load checkers. They constitute a flexible, semi-skilled workforce in between IML and CJK. A second company operates under IML in distribution. This labour broker, CJK, had about 100 to 200 workers working mainly on "projects". These are officially very short-term missions linked to the restructuring of some sectors, specific promotions, or a new kind of bottle needing to be moved to specific crates. They sort the bottles coming in as returnables, they do over-packing, cross-crating or load containers. They are thus concentrated in the lowest-skilled jobs. After their extreme working conditions were revealed in the press (Power FM, 6/09), CJK was rolled up in 72 hours and workers were given one month contracts under LSC. Most of them were later "stopped". They were told the projects were finished and given a document to sign in which they consent to being kept on retainer on a "no work, no pay" principle. Most of them have not worked since November. Liquor Runners, a fourth company, also operates within distribution but running smaller trucks. Their workers are in an owner-driver scheme.

In total, using the most conservative estimates, over 500 workers work alongside the permanent workers under 9 different companies. In theory, the four "distribution and logistics" companies

[8] We however present the factory as it was before this operation.

operate separately from the Heineken's brewing operation. However, the bottling department sees all of these workers work side by side, making the functional justification for fragmenting the brewery seem artificial, as the next sections will show.

4.3 The Production process.

Our view of the production process comes from the workplace map (see appendix A). The information gathered allows us to identify three different areas in the brewery. Brewing, bottling and distribution.

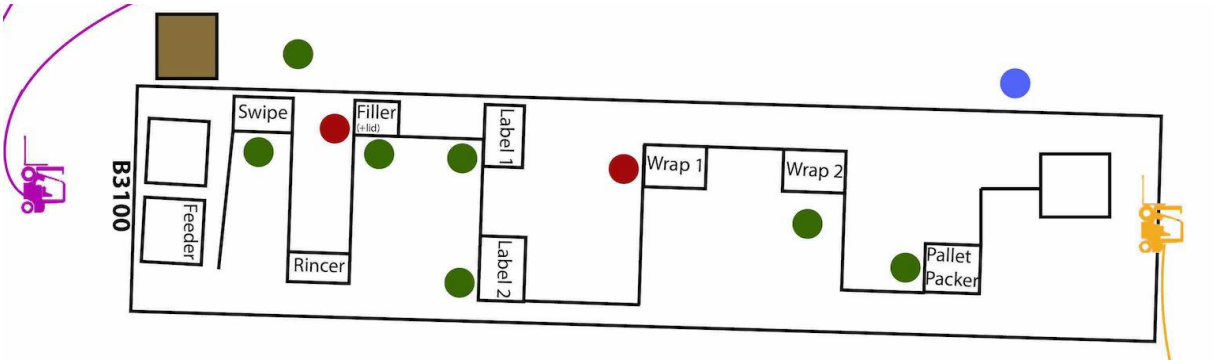
4.3.1 Brewing

The South East corner of the factory is where the brewing operation is. This is where mostly Heineken permanents work. Consequently, this area of the map is almost totally blank as the only workers who could have helped us understand it are the Vericon workers. In October, these workers were made permanents by Heineken. This was meant to strengthen Heinekens defence against the section 198 claim raised by the CWAO and the Heineken Workers Council. They subsequently left the campaign.

4.3.2 Bottling

The centre of the brewery is the bottling department (See map appendix B). Five production lines fill beer cans and bottles with beer. Three lines (B3100, B2100, B2200) are dedicated to cans and new bottles, mainly non returnable bottles (330, 440 650ml). New bottles come from the bottle storage department (Map see Appendix C). Two Imperial forklift drivers unload the trucks. A senior IML forklift driver is also the supervisor. They are assisted by two assistant forklift drivers that only work on day shifts. During day shifts, they feed the production lines. This means they transport the bottles inside the production area and deposit them along the walls, where the production forklifts will feed them to the lines.

Figure 4.2 Example of B31, 22,21 lines



Source: Author, Workplace map.

Note: On the map, dots represent workers and different colours their employers: green is Heineken, red is Vericon, purple is IML, yellow LSC and blue Prestige. The forklift drivers are represented by a forklift. Coloured lines represent the movements of workers.

Each line has a dedicated IML forklift to feed it and an LSC one to receive the pallets of filled bottles/cans at the other end. On the lines (see Figure 4.2), bottles/cans are swiped one by one, rinsed, filled, labelled, packed (wrapped) and 'loaded' on pallets. Most operations are managed by Heineken operators under the supervision of a Heineken team leader. In case of need, a reliever can replace one of them. Each line also has a Vericon Process controller (2 on the B3100 line, as adding the lid on the cans represents an additional operation) and a Prestige cleaner. The number of workers on these lines is summed up in Table 4.1.

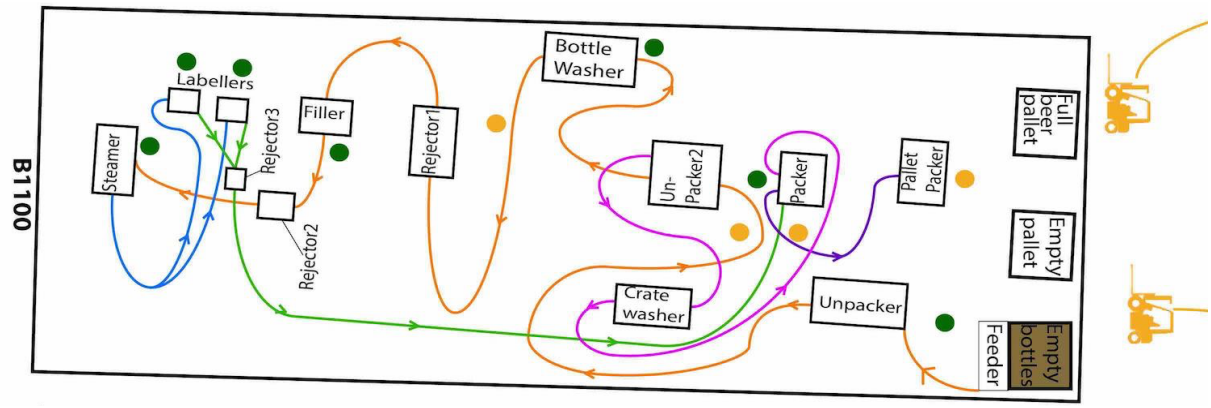
Table 4.1 Workers on production lines B31,21 & 22

	Heineken	*Vericon (line)*	*IML F/D*	*LSC (F/D)*	*Prestige*
B3100	7+1	2	1	1	1
B2100	7+1	1	1	1	1
B2200	7+1	1	1	1	1

Source: Author, Workplace map

The two other lines in production are the lines that clean and refill returned bottles. These lines are slightly different from the previous ones. They are bent (see Figure 4.3) to allow bottles to be fed into the lines on the side of the returnables department (see map). This means on the same side as the filled pallets are picked up by the forklifts bringing them to the warehouse. Both forklifts are LSC.

Figure 4.3 Example of B11 or B12 lines



Source: Author, Workplace map

Note: On the map, dots represent workers and different colours their employers: green is Heineken, red is Vericon, purple is IML, yellow LSC and blue Prestige. The forklift drivers are represented by a forklift.

These lines thus have additional steps as crates are taken off pallets and bottles are sucked out of them. Both the crate and the bottles are washed on the lines. These lines have 4 LSC checkers each. Table 4.2 shows the number of workers on each line.

Table 4.2 Workers on production lines B11 &B12

	Heineken	*LSC (line)*	*LSC (F/D)*	Prestige
B1100	7+1	4	2	1
B1200	7+1	4	2	1

Source: Author, Workplace map

In addition to this a maintenance team headed by Heineken engineers and assisted by Vericon assistants ensures the maintenance and repairs of the machines when needed. A Vericon worker also gathers the cardboard panels that separate the rows of new bottles or cans on the pallets fed to the B31, 21 and 22 lines.

4.3.3 **Distribution and warehousing**

The northern part of the factory is occupied by the warehousing and distribution centres. Three department compose this section: the warehouse, dispatch (Map see appendix D) and

returnables (Map see appendix E). The returnables department has 3 sub sections the offloading, sorting and projects.

The warehouse[9] is where the products leaving the lines are stored to await shipping. Officially the warehouse is fully managed by Imperial. Two Imperial and two LSC workers manage the stocks, during the day. Night shift would be only two workers in total. Pallets are stocked in bins by forklifts coming out of productions. The bins are three pallets high. They are stored by brand and container type (and probably per production date). Forklifts from the dispatch department take the pallets out to the trucks. The department is under the supervision of an IML supervisor.

Dispatch is the department where trucks are loaded with the pallets of full beer and where some of the raw materials arrive. There are 28 docks. 1 to 18 are for outgoing beer. 19 to 22 are receiving docks. 22 to 28 are docks managed by Liquor Runners. At the 1 to 18 docks, IML supervisors instruct forklift drivers on which trucks to load. 8 LSC forklift drivers work with two Imperial senior forklift drivers. Four LSC load checkers check the loads of the trucks before and after loading. At the receiving end, 1 IML supervisor and 1 LSC forklift driver unload the incoming trucks. A packing unit is broken, so one worker also wraps incoming pallets by hand.

The returnables department is where empty bottles (660 and 750ml) come back from the stores. The department has three sub-sections: offloading[10], sorting and projects. At offloading, three forklifts (LSC) and a clerk (LSC or IML) unload incoming trucks, called customers, with empty bottles. Bottles are stored in bins (C bins, see map) per customer. From the 'C Bins', customers are brought to sorting by three additional forklifts (LSC). A 'customer' is a stack of 6 pallets long and 2 pallets wide, it can be two or three pallets high. Every pallet is either 5, 6 or 7 crates high. Every crate contains 12x660ml beer bottles. In sorting, all work is manual - "we don't have machines; we are the machines" (LSC Sorter, Workplace mapping).

The work of the sorters is to take each crate of the pallet, check every bottle to see if it's whole and inside it for dirt, cigarette buds and sometimes urine. The waste is dropped on the floor. At the end of the shift the sorters do the clean-up and evacuate all the waste. Emptied bottles are

[9] Warehousing is a department where workers are scared and only marginally participate to the campaign.

[10] Not an official denomination

re-arranged, per brand, in the appropriate crates, which are then used to reconstitute full pallets, per brand again. These pallets will be stored in the D to J bins to be fed back into the B11 and B12 lines. The pallets fed into the line are always 6 crates high. When the sorters are finished a supervisor (LSC) checks how many of each bottles the 'customer' brought back and has to note and justify 'shortages'.

At maximum capacity the sorting area can contain up to 12 'customers', although that is rarely the case. Each customer is worked by 4 workers (one at each corner) sometimes 6. Originally, 36 LSC workers would work as sorters every day. But in periods of high pressure it can be over 40.[11] Sorters do only day shifts, Monday to Friday.

The projects are situated on the periphery in the North-East corner of the plant. They consist in tasks that are officially temporary. The workers there were under CJK. After being denounced in the media for their labour practices, CJK was rolled up in mid-September 2017 and the workers were taken on temporary contracts under LSC. Most of them were subsequently fired.[12]

Projects consists of tasks like over-packing for new bottles or cross-crating. Cross-crating means moving bottles from old crates to new ones. For example, under Sedibeng breweries, crates of returnables used to be 16 and not 12 bottles. Project workers are tasked with moving the bottles into the new crates. Other projects are linked to specific promotions, which entail moving bottles or cans from trays into boxes, with names like Heineken Project, Windhoek Project, Amstel one way… these are the less skilled jobs in the factory.

4.4 Hierarchical segmentation.

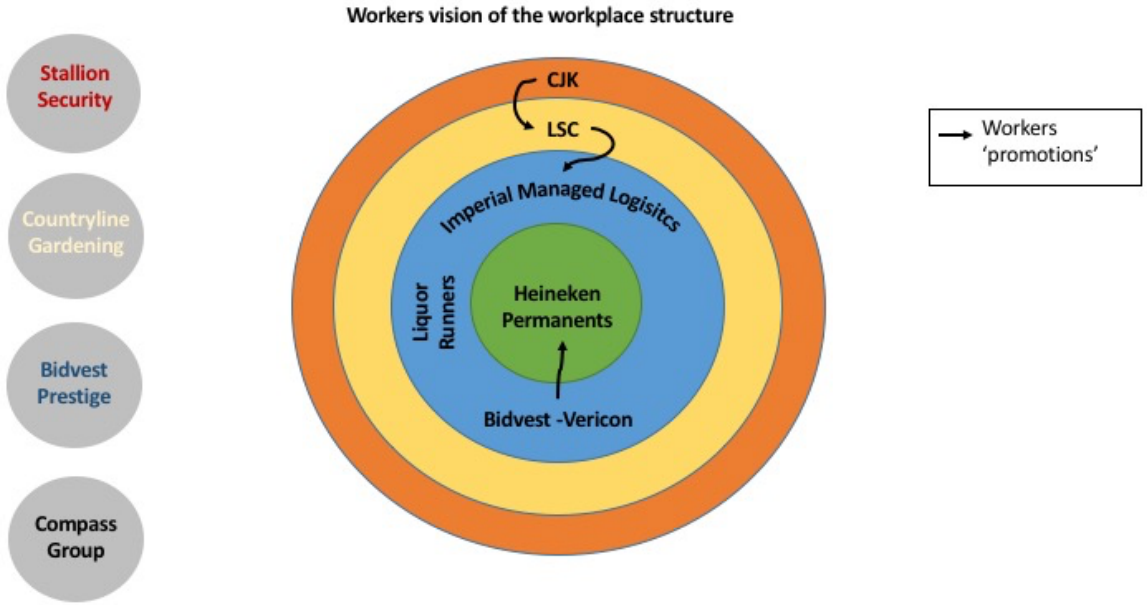
Despite some blank spots and probably some mistakes and approximations, the workplace map gives a good overview of the company and the workers. The map shows the artificial nature of the separation between production and distribution. In the bottling department, workers work

[11] Mapping was done in November, before the holiday period which is peak season. Some 'extra' workers could have been CJK workers in this period.

[12] Officially workers were stopped: they are not fired but returned to a labour pool under a *no work no pay* principle. In reality workers were effectively fired as they did not get work between mid-October and the beginning of February.

side by side. Moreover, all of these workers provide essential tasks to production. Finally, why are the Vericon workers different? A Vericon process controller does the same work as a LSC line checker. The same can be said about Vericon forklift drivers. The only difference is that they were predominantly working in production.

Figure 4.4 Workers representation of the workplace



Source: Author

Rather than a functional fragmentation, the workplace is divided across types of workers. The skilled workers are permanent under Heineken. The IML and Vericon workers occupy supervisory and senior positions within semi-skilled jobs. LSC workers constitute a flexible labour pool under the supervision of IML staff. They do similar and slightly lower skilled jobs.

All workers have to pass through sorting. This is where workers are trained to recognise different bottles but also to the very high workloads (see below). As they are on labour broker contracts the turnover is potentially high[13]. The size of the pool can also be easily adapted to demand. The most productive and obedient workers are promoted to better positions like the production line, forklifts or even to IML. CJK workers are at the bottom of the hierarchy. They barely have a contract and do completely unskilled work.

[13] This should be verified but it hints at a system were workers are trained on the job and selected based on the physically demanding activity in sorting (and projects). The high turnover thus replaces formal training.

In the above description, management was ignored. But as the map shows, in several places managers share offices. In production and decanting, managers brief the entire staff - no matter who the formal employer is - at the beginning of each shift. In dispatch, Heineken reorganised the system because IML was not meeting the quotas. A Heineken manager also supervises the activity and directs IML managers. These few examples suggest that the separation is more porous within management and that Heineken actively intervenes in all stages of the production process.

The reality of the factory is that different companies operate as sub-departments of the same hierarchical structure (as represented in Figure 4.4). The permanents are at the centre (the core activity) and the different companies are then organised around it. The further from the centre the less skilled and the worse the conditions of employment. Low skilled and semi skilled workers are 'promoted' from one to the other. The skilled permanents remain separated from the others. This organisation seems to cause some inefficiency. For example, workers report being given contradictory instructions by Heineken and IML managers. This raises the question of what the benefits of this structure are. In reality this structure allows Heineken to continuously pressure costs while intensifying control over the workers.

Firstly, through the commodification of some functions in the company, the client organises competition between subcontractors and labour brokers for those contracts. To push prices down and guarantee output in these labour intensive activities, companies will squeeze wages and pressure workers for higher productivity. Secondly, separating the lower skilled workers from the skilled, permanent workers also lowers wages. Since those workers are then considered as being in separate sectors, this prevents collective bargaining and creates separate pay scales. This also hinders solidarity between permanent and externalised workers de facto separating the workers with the most structural power from the others. This first segmentation is reproduced inside the groups of lower skilled workers. Indeed, workers are fragmented physically, as well as through their working conditions and status in the workplace.

4.5 Competition.

As Table 4.3 shows, when the brewery was launched in 2009, workers were hired directly by the company. After an experimentation phase in Bottle Storage/ Production, the dual model was generalised to the entire factory. It seems that Working Soluxions was a company created by Heineken managers that never formally existed. After a first audit by Heineken, it established an office in Alberton. "There was never anybody there" (Jacob, interview 05/12/17). It was eventually replaced with Vericon. The workplace organisation described in the previous section, was thus rolled out pretty fast after the brewery was launched. In addition, contrary to the workers, a relatively high turnover in terms of companies on site. Indeed, 40% of respondents to the questionnaire had been in the company before 2015. In the workers own words: "Imperial found us here" (Workplace mapping, 30/09).

Table 4.3. Successive Labour Brokers

	Returnables	**Bottle storage/Production**	**Dispatch**
2009	Sedibeng Breweries		
2010		Working Soluxions	
		Mvundli	
		TMS Vericon	
2010	LA Labour – UTI	LA Labour - UTI	LA Labour - UTI
2013	VDM Global - Imperial Retail Logistics (IRL)	Staff Elite- IRL	Isilumko staffing - IRL
			Staff Elite- IRL
2015	CJK-LSC-IML	LSC-IML	LSC-IML
2017	LSC - Imperial Managed Solutions (IMS)?		

Note: information is retrieved based on the workers' responses to the question on their labour history at Sedibeng. Information is thus indicative but subject to individual workers' history in the factory.

Source: Workers Survey

For the workers, this meant successive pay cuts and deteriorating working conditions. In 2010, under Sedibeng Breweries, Working Soluxions and Mvundi payslips indicate a R7333,33 salary for a forklift driver (Payslips, personal archive). The same year, under Vericon (Bidvest TMS group), the salary for a forklift driver is R 6081,04. By changing company, the workers lost the shift allowance and a salary portion, amounting to a total loss of R1333. A loss the workers still describe as "very painful". When IML arrived in 2015, hourly wages were cut from R23/h to R17/h.

In addition, the workers are also submitted to high pressures and sometimes defective or badly maintained machines. Workers report forklifts are not well maintained: in some the battery is apparent, the tyres are not changed, and some sidelights are defective. The latter is extremely dangerous at night. The pressure is particularly high on the forklift drivers. In production, they have to keep up with the lines. The B31, 21 and 22 lines consume over 700 pallets per shift. In other departments, forklifts are pushed by the rhythm of trucks. In dispatch, 8 forklifts are expected to load 100 trucks per day. The forklifts offloading the trucks in returnables have a target of 20 minutes' turnaround time per truck. They unload 22 to 38 trucks per shift, day and night. On an 11hours shift this means workers would sometimes have way less than 20 min per truck and that is without considering that pallets need to be moved to the bins. Forklift drivers are under continuous pressure. In all departments, managers repeatedly cut into workers' lunchtime. In production, forklifts can only take toilet breaks if the line stops.

Managers also push workers to ignore safety rules. In returnables, the sorters depend on the forklifts to move their pallets. These workers have a target of 10 pallets a day to meet, meaning they put pressure on the forklift drivers. "We have to push for them to meet their targets" (Forklift driver, Workplace mapping, 22/11). To "push" forklift drivers need to go over the maximum speed of 10km/h. "We obviously use more than that". They go up to 14 km/h depending on the forklift. If they don't, management will come and ask "why don't you push". This causes incidents: crates fall; bottles break… sometimes forklifts bump each other. Accidents also mean potential disciplinary measures and costs. A forklift driver in the warehouse tried to execute several operations at once and lost control of his forklift. The forklift and the pallet crashed. The driver was told he is responsible for the damages to the forklift and the broken pallet. A total of more than R30'000 (incident report, personal archive).

Forklifts are not the only ones facing high pressures. Sorters have to meet a 10 pallets a day target. This means 66 to 92 bottles/h. It is back-breaking work as one workers illustrates, comparing the induction video's instruction to his first days in returnables:

> *You have to get used to it to learn how not to be very tired […]. [When I started] I was wearing 34, but after three months I was wearing 30[clothe size] (workers laugh) …serious…only now (several years later) I am wearing 32, I haven't go back yet. […] When you get inside thing change [another worker adds: "it's a different story"]. They want you to work. Obviously you*

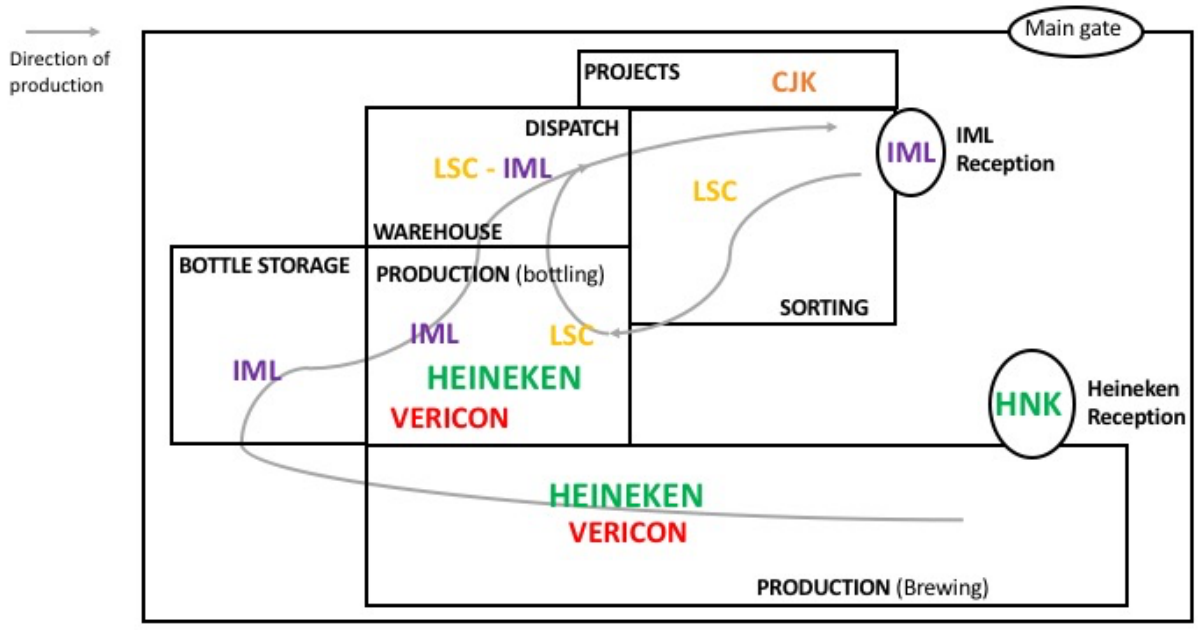
need a job so you work. […] On my first day there, when I got home I didn't want anything. I just bath and go to bed. I sleep like I was dead. […]

Lemo, workplace mapping 22/11/17

The business model applied by Heineken to its brewery has thus led to wage cuts, high pressure and to an unsafe working environment. To be able to maintain this kind of pressure on the workers, Heineken had to be sure workers would be unable to organise. The labour broker model, ensured a fragmented and complex workplace, dividing and preventing the workers from uniting.

4.6 Fragmenting the workplace, dividing the workers

Figure 4.5 Geographical segmentation of the workplace



Source: Author, workplace map.

Figure 4.5 schematically illustrates the geographical segmentation of the workplace. The permanents and labour broker workers use separate gates with the exception of the Vericon workers. This workplace segregation creates a distance effect between the workers. For example, when interviewed, a FAWU shop steward – a permanent worker – barely knew anything about the conditions or number of labour broker workers in the company. He however expressed solidarity for these workers: they "enter through the same gate", "eat at the same

place", and "contribute to the production in the same way" but are subjected to different working conditions (see below).
Besides the forklift drivers who have a limited freedom of movement in the company, labour broker workers and permanent workers are kept as separate as possible. They enter through different gates, have separate changing rooms and kitchens and work in separate spaces.
This vision is also supporting management's argument of a functional fragmentation of the workplace. This also explains why, with FAWU's support, the Vericon workers were incorporated into the permanent Heineken staff. Indeed once Vericon becomes Heineken in Figure 4.5, the only point of contact between permanents and labour brokers is in the bottling part of production.

Most workers work on shifts. Day and night shifts are 11h long (+1h of unpaid lunch). Most workers do a four-day shift, meaning they work two days, two nights and then have four days off. Some workers have a more complicated three-days shift. Managers and some departments, like sorting[14] or the assistant forklifts in bottle storage, work on a Monday to Friday slightly shorter day shift. The shift pattern, added to the geographical segregation means workers mainly know the workers from their shift, in their department. A fact that makes building a common identity and organisation even more complicated. However, the division of the workplace goes well beyond this spatial and temporal segregation.

4.6.1 **Working conditions and status: tools for division and hierarchy.**

Different material conditions of work are used to enforce divisions in the workplace. Workers are valued differently by Heineken and its subsidiaries. This makes building a common experience and building unity based on common interests difficult. Especially since material conditions also build into differences of status in the workplace, as the next section will show.

[14] This might vary in between peak and 'normal' season

Table 4.4. Overview of different labour conditions at Sedibeng Brewery

	Dept.	***Contract*** [15]	***Type of work***	***Salary***	***Benefits***	***Extra***
CJK	Projects	no	over-packing, cross-crating	R1000-R3000 Piece work	None	None
LSC	Sorting, Production, Dispatch, Warehouse	fixed and permanent	Sorters, Clerks Line checkers, Forklift drivers	R4000-R6500 Basic Salary	Overtime Provident fund UIF Pension Fund	Tea, Rare crates of beer(overdue)
Vericon	Production, Brewing Decanting	permanent	Process controllers Maintenance assistants Forklift drivers	R7000 Basic salary	Overtime, Provident fund, UIF, Pension Fund, Site allowance	Tea, Regular, crates Uniforms
IML	Bottle storage, Production, Dispatch, Warehouse	Permanent (senior positions)	Forklift drivers, Supervisors, Warehouse controllers, Stock checkers	R8000 Basic Salary	Overtime, Provident fund, UIF, Pension Fund, Site allowance, 13th Cheque, Target Bonuses	Tea Regular crates of beer Uniforms
Heineken	Brewery Production	Permanent	Machine operators, Lab, shift and Maintenance technicians (Engineers), Planners, Brewers	R17'200 -and up	Overtime, Provident fund, UIF, Pension Fund, Transport allowance, Medical Aid, Bonus vouchers	Free hot food at the canteen, Monthly min 2 crates of beer, Company Gym

Note: Contracts vary and some workers report being paid differently for similar tasks. Wage differential also exist between workers doing different jobs for the same employer. The table however reflects the general picture accurately.
Source: All information is aggregated from workplace mapping, the survey, interviews, contracts and payslips.

Table 4.4 above gives a good sense of how workplace fragmentation is enforced through working conditions. It confirms that different companies at Heineken are responsible for

[15] employment contracts

different types of workers in function of their skills. Less-skilled workers are subjected to more precarious working conditions. For example, CJK workers had very unstable salaries as they were paid by piece-work. The normal rate was R12 per pallet with a daily target of 10 pallets. However, since forklifts were often unavailable, a worker could finish a 12-hour night shift with R24 in pay (Personal archive, payslip). Other projects, however, paid up to R70/pallet. This exposed CJK workers to blackmail and punitive measures. For example, a manager was taking bribes and demanding sexual favours for jobs (Workshop 22/11).

In conjunction with their precarious contracts, these workers were thus exposed to an arbitrary and repressive form of management. Authoritarian management is also embodied in the disciplinary system based on yellow cards (warnings) and red cards (dismissal). The system is applied to all workers, but workers report it is enforced more brutally and arbitrarily onto CJK workers or LSC sorters. It is also often applied to them by IML senior personnel.

At the completely opposite end of the spectrum, permanent workers self-regulate in accordance to their job description. They are not subjected to the same high-pressure regime or to the arbitrary cuts in their lunch time LSC workers describe.

> *Because what I noticed for my first time working in the production, seeing the permanent workers working around, I thought maybe they're in shares because no one is telling them do this and do this. They just operate the machine by themselves. Go freely. Open up anything. If they want to go to lunch, they know their time if there are meetings they just lose the machines and go to the meetings. They are free like anything but doing their job properly. But you [the labour broker workers] can't do this. They leave when they want. I thought maybe they are in shares. I didn't think that they're just working like anyone*
>
> Edgar, interview 14/12/17

The division in working conditions and workplace regime creates a deeply divided workplace. It is difficult for workers to find a common ground as they are subjected to very different conditions and are physically kept apart. These divisions are also cemented through small extra benefits that consolidate the different statuses of workers. Accordingly, workers focus their demands on material working conditions but also on issues of status.

The smaller differences like access to hot tea, proper uniforms or crates of beer at the end of the month enforce and validate a hierarchy of value and status the workers perceive very well. It is difficult to believe management does not see that in differentiating between workers it establishes divisions that the workers themselves enforce and that has deep consequences on their way of interacting and their capacity to organise and unite.

CJK workers and some LSC sorters do not have access to proper uniforms, part or their personal Protective Equipment (PPE) is their own. Some workers thus wear reflectors from labour brokers not active at Sedibeng. Workers from CJK and LSC bring this issue along with the absence tea during night shift. A particular issue is that better-off workers – mainly IML and Vericon workers – receive crates of beer. It is still less than Heineken permanents but they still receive some. All of these issues are regularly brought up by workers.

Highlighting the status issue, a pamphlet workers issued was entitled: "Working for labour brokers means hiding in the toilets. We say Enough! "(Appendix F). The pamphlet referred to a story when "people from the Netherlands" had visited the factory and labour broker workers had been told to stay in the toilets not to be seen. The story embodied the exclusion their secondary status imposed on workers.

It is also interesting and important to note how such workplace divisions and segregation affect workers understanding of their situation. During one of the first CWAO meetings with workers (30/08), the workers continuously referred to status issues. The opposition between groups inside the workplace hierarchy was strong. LSC and CJK workers expressed anger at IML workers for feeling superior: "those people they are higher grades, we are lower grades". Vericon workers in the same meeting spent more time on the difference between them and the Heineken workers.

This highlights how the organisation of the workplace limits workers view to the worker standing next to them rather than the complete workplace hierarchy. CJK and LSC workers compared themselves to the IML workers as they barely come in contact with Heineken workers, who are also clearly part of another world. On the other hand, IML and Vericon workers compare themselves to Heineken permanents. This feeds division and animosity.

However, when questioned, the feeling of exploitation and injustice is a shared one and runs deep. When referring to the work pressure and the intense and unjust disciplinary system, workers regularly compare their working conditions to slavery, in a way that is not consistent with "the new South Africa" (tools down picket, 07/11). The demand for permanent employment with equal working conditions under Heineken also provided a demand with a unifying potential, orienting the workers' gaze upwards rather than to their immediate vicinity.

4.7 Conclusion: continuity through change?

Bezuidenhout (2005: 92) coins the expression of 'continuity through change' to identify the post-colonial workplace regime. Indeed, the workplace is reconfigured but much of this reconfiguration is about actually maintaining the logic of the apartheid regime. The description of the Heineken Sedibeng Brewery shows a deeply segregated and divided workplace, that is not without similarities with the apartheid workplace.

Webster (1985:195-202) describes "labour market segmentation in the foundry" in between a secondary, a subordinate primary and primary job market. In the secondary market, black workers are limited to physically taxing jobs requiring limited skills, which left no space for initiative or career progression. Employment was extremely precarious – no job security and extremely low pay - and training was replaced by a high turnover. Slow or vocal workers were immediately replaced. In the subordinate primary market, so called coloured workers, used a closed shop agreement to protect a better position while doing deskilled jobs. They still did routinized, repetitive, machine paced jobs but benefitted from a slightly better situation and status through union protection. Finally, in the independent primary market, white workers occupied the skilled jobs under significantly better conditions. A major aspect was the difference in systems of control: arbitrary and direct in the secondary market and bureaucratised in the first.

The above-described situation is very similar to the situation created by Heineken at Sedibeng. There is no racial element but CJK and LSC workers are in a relatively similar situation as the secondary market in Webster's (1985) classification. IML, Vericon and some LSC workers correspond to the subordinate primary market and the permanents to the independent primary market. A major difference of course is the commercialised nature of the contracts between

Heineken and the labour brokers. These are the tool through which the company managed to reproduce a fragmented labour market and the ensuing division and hyper exploitation in the brewery. They are thus at the core of the case. The next chapter will instead explore how the legal side of the case interacts with the workers' attempts to organise.

5 Workers and the law

The previous chapter established the dynamics of fragmentation and division at the Sedibeng Brewery. In this context, CWAO uses the law to try and strengthen workers' organisation and ultimately improve their working and living conditions. This chapter thus explores how the Heineken workers used the law to build their campaign.

As established in chapter two, the law is a space of contention that is not without contradiction in terms of workers' power. This chapter starts by examining how the LRA was established and how the dynamics of post-apartheid South Africa undermined its foundations. It then argues that the labour amendments of 2014 represented a first concession to the struggles of workers excluded from the LRA's protection. This makes these amendments, and section 198 in particular, an effective tool to challenge the status quo in favour of precarious workers. Ultimately, the chapter considers the Heineken workers' use of 198. It examines how the they deal with the contradictory nature of the law, where they managed to use it to their advantage, and the obstacles they faced. It concludes with the complex and sometimes contradictory relationship between institutional and other forms of power.

5.1 Externalisation and casualisation in South Africa and the law

As Theron (2014) shows, the 1995 LRA was the product of the South African labour movement's struggles of the 1980's. As such it was based on a series of assumptions. First, it assumed workers in the post-apartheid period would be in a binary relationship (Runciman and Webster, 2017: 22) with their employer. In addition, the standard employment relationship (SER) would be continuous, full time employment taking place at the employers' workplace (Theron 2014: 6). Finally, the LRA assumed the imbalance of power between workers and employers would be addressed mainly through sectoral collective bargaining conducted by strong unions.

As the previous chapters have shown, capital adapted to the new situation by reproducing its systems of control and value extraction through processes of externalisation, casualisation and informalisation (Theron 2005). Indeed, externalised and casual workers largely fall outside of the frame set out by the LRA. In the case of labour broking, employers establish "a triangular

employment relationship, where the worker remains the employee of the labour broker but works under the supervision of the client" (Runciman and Webster, 2017: 22). The tactic proved effective, the number of precarious workers rose consistently. Unions continuously lost members and influence despite calls to organise "vulnerable workers".

However, in 2010 new amendments to the LRA were proposed. They were adopted in 2014 and came into operation on January 1st 2015. Although the process started earlier, both Ighsaan Schroeder (Interview, 06/06/17) and Jane Barett (Interview, 06/12/17) link the reach of the labour amendments with Marikana. Indeed, the 2012 strikes and massacre saw a great number of unorganised and precarious workers challenge their union and more generally the traditional frame of industrial conflict. They are certainly not the only example of this dynamic (see chapter 2), but the scale and the massacre's international impact made Marikana impossible to ignore. In that sense, one can argue the 2014 labour amendments are the first to institutionalise the struggles and victories of South Africa's externalised workers into new institutional power. Moreover, business and the state accepted the amendments on the one hand because of how Marikana affected the power dynamics in South Africa but also because they thought this would not affect the status quo in a major way. In Ighsaan Schroeder's (Interview, 06/06/17) words, "because the labour movement is so weak, they did not expect the unions to use it, and they were right" (For actual numbers see Rees Unpublished).

As Theron underlines, the 2014 amendments, will not put an end to externalisation processes. They target only some forms of externalisation. Nonetheless, as the Heineken case and many others led by workers associated with CWAO and the SWF (Runciman and Webster, 2017; Rees, 2018) show, the amendments open a space in which these workers can start building power. By giving externalised workers a pathway to permanent employment, the 2014 amendments offer integration into the labour relations framework established by the LRA. In other words, since the LRA is based on binary full time permanent employment relationships and sectoral bargaining it de facto excludes workers in triangular and precarious employment. Section 198 provides an institutional pathway to becoming a permanent worker and thus being covered by the LRA.

5.2 Section 198

Although this chapter considers the Heineken workers' use of the law in general, they mainly used the amended section 198 of the LRA. This section will first provide a brief explanation of section 198. It will then focus on why it is important and how employers have tried to oppose it. In conclusion, the section analyses the opportunities section 198 offers and the obstacles workers face in applying it.

5.2.1 What is 198?

The amended version of section 198 of the LRA aims at introducing a specific protection for three specific types of "non-standard work": part-time, fixed term contract and labour broker employment but not those working for a subcontractor. Section 198 considers that "genuine and relevant temporary work" should not exceed three months. Unless an exception applies, beyond that period, employees should "be deemed" employees of the client company for the purpose of the LRA (S198 A & B). Moreover, the amendments consider that workers in temporary employment should be treated "on the whole not less favourably than an employee of the client doing the same or similar work" (LRA, S198 A, B &C). Section 198 A deals with labour brokering, Section 198 B with fixed term contract employees, and 198 C with part-time employees. 198 D deals with dispute resolution and the application of 198 A-C. Interestingly, section 198D considers that it is the sector of the client that determines which bargaining council (or the CCMA) has jurisdiction to treat with section 198 cases. The next section expands briefly on section 198A.

Section 198 A focuses on labour brokers or temporary employment services (TES) in terms of the act. It requires employment via a labour broker to be genuinely temporary (CCMA 2017). Section 198 defines a temporary service as any person who for a reward, procures for, or provides to, a client other persons who perform work for the client and are remunerated by the temporary employment service. Indeed, the amended LRA still recognises the TES as the employer of the persons provided.

One of the main issues is thus to define what temporary work is. In regards of the act, to be temporary, services must respect one of the following conditions:

- last less than 3months;
- be in replacement of an employee of the client who is temporarily absent;
- be in a specific category of work which has been qualified as being a temporary service by a BCA, a Sectoral Determination or a Ministerial Notice.

Only in these cases can the TES be considered the employer. If not the worker "is *deemed the employee of the client company for the purpose of the LRA"* (198A (3)(b)). In addition, the act considers that the employee must be treated not less favourably than the client's employees doing the same or similar work unless there is a justifiable reason (seniority, qualifications…) for a different treatment.

5.2.2 **Why is Section 198 important?**

> *The main thrust of the amendments is to restrict the employment of more vulnerable, lower-paid workers by a TES to situations of genuine and relevant 'temporary work', and to […] to protect workers employed in this way.*
>
> (Memorandum of Objects on the Labour Relations Amendments Bill, 2012: 21-22)

Section 198 thus aims to address part of the imbalance created by the increasing use of non–standard employment and to extend part of the protection of the LRA to the workers this affects. Although it still recognises Labour brokers as employers, it recognises "the exploitative practices of labour brokers" (Runciman and Webster, 2017: 22). The amendments do not put an end to externalisation nor to labour brokering, but they represent an important step forward.

In particular, the amendments to section 198 recognise the main demands made by precarious workers: incorporation into the industrial relations framework, security and wages. By recognising their right to permanency under the client, the LRA recognise the right for workers to stable employment under the responsibility of the company they actually produce for. In addition, equalisation responds to the claim made by workers that they should be paid at the same rate than any other worker in the same company. Chapter 4 showed how central this problem is to the Heineken workers. The amendments recognise the existence of 'atypical' workers and set out specific provisions for those workers. In doing so it implicitly recognises the LRA was not providing those workers with the same rights it did permanent workers.

This constitutes a shift in the labour relations framework of South Africa. It opens up a pathway for some excluded workers to access and use the law to their advantage and to build rights based campaigns. Maybe this explains why, despite section 198 being only marginally used by the union movement (Rees, unpublished), employers fought back hard.

5.2.3 **Employers fighting back.**

Soon after the new rights came into effect in January 2015, the CCMA started deeming workers permanent. In September 2015, the labour court reviewed on a CCMA ruling on a case between workers[16], Assign Services (the labour broker), and Krost (the client). Acting judge Brassey ruled that the workers would remain employed by the labour broker while simultaneously being 'deemed' employees of the client. The 'Brassey judgement' thus added up employers, creating a dual employer situation The case was overturned at the labour appeals court[17] and is now awaiting a constitutional court ruling..

In practice, 'Brassey' meant that workers who won at the CCMA saw no difference at work, as they remained employed and paid by the labour broker. Employers have since regularly refused to implement CCMA rulings in favour of making workers permanent, arguing they were waiting for the constitutional court ruling. CWAO put out a Pamphlet – "The Bosses are Lying" – to refute the legality of that argument.

While the Brassey judgment has allowed employers to ignore 198 rulings in some cases it is only their first line of defence. The biggest shortcoming of the 2014 amendments is that they only consider some forms of externalisation and ignore others. In particular, the amendments do not address the issue of subcontracting. As early as 2013, Hugo Pienaar and Andrea Taylor, respectively director and associate at Clyffe Decker Hofmeyr (a law firm involved in representing employers in many 198 cases since), highlighted this as a possible strategy:

[16] Represented by NUMSA

[17] Assign Services v Krost Shelving and Racking (Pty) Ltd/Numsa (2015) Case No ECEL 1652/15 (CCMA); NUMSA v Assign Services & others (2017) Case No 96/15, 10 July 2017 (LAC)

> *It is suggested that the only reasonable alternative to traditional labour broking would be to revise the whole concept and to move into the sphere of genuine subcontracting. […]This alternative concept would mean that labour brokers will have to establish a new legal entity, which will render a sub contractual service to the client.*
>
> (Pienaar & Taylor, 2013)

This is consistent with what CWAO organisers are describing as a concerted strategy by employers. In an increasing number of cases, companies are arguing that they are not labour brokers but service providers. To support their argument, the labour broker workers are concentrated in specific areas of the factory. The 'service providers' claim that they are providing expertise to execute a particular function – distribution and warehousing for example – more efficiently than the client could. Should the constitutional court rule in favour of reversing the Brassey judgement; it is very likely that the number of labour brokers in South Africa would radically diminish to the advantage of subcontracting companies. Lucky Kolobe, one of the IML managers, highlights this when he states that the consequences of the workers asking to be made permanent by Heineken amounts to "taking the position [that] there should be no labour broking at all!" (CCMA PreArb, 22/01/18).

In conclusion, although Section 198 opens a window to fight the abuse and exploitation externalised workers face, it is not a magic bullet. Indeed, as the above responses from employers illustrate, having workers' rights recognised is not straightforward. Workers can benefit from 198 but also face many obstacles.

5.3 Using the law to challenge the status quo?

As the previous sections have highlighted, section 198 is opening a pathway for some precarious workers to integrate the framework of South African labour relations. In that sense, 198 A is a legal resource for labour broker workers. This section will thus detail how workers interacted with the law in trying to build their case and gain permanent employment. By highlighting where the law played in favour of workers and where it did not, this section will discuss it as a space of contention.

5.3.1 **An external power source**

198 gave the Heineken workers access to an external source of power. Indeed, as chapter 4 has shown, these workers have to deal with extremely precarious working conditions in a fragmented and divided workplace. They also face an authoritarian management constantly reminding them that "the gate is open" and they can easily be replaced. These workers can thus feel vulnerable and unable to affect the power balance in the workplace. The legal route then offers them a source of power outside of the company.

This is best illustrated by the workers' reaction meeting with the first lawyer they saw. Ten workers met with the lawyer at his Sandton Office to discuss the upcoming conciliation at the CCMA. The workers were excited about the case moving forward. However, the lawyer told the workers that they should prepare an individual file for each of the 293 workers in the case. He added that since this would be difficult and the case would likely take years, they should really wage this fight inside the company. He told the workers to join a union and go on strike. Workers left the meeting demoralised. One of them commented: "it's finished". Workers' hopes in the legal route were undermined by the gargantuan administrative task the lawyer had described. More importantly, they felt incapable of pulling off the workplace action the lawyer advised. They were relieved when CWAO advised them to turn to Lawyers for Human Rights (LHR). The LHR lawyer was more careful to work with the workers. He also had a better sense of what was doable in the workers' reality. He met with the workers a few days later and suggested they argue the case based on the testimonies of a few workers who would be representative of the wider workplace reality.

This example highlights how the law represented, for these workers, a source of external power and a safer route than to organise their own industrial power. For some workers, this is the only way to go. These workers consistently attend the CCMA and preparatory meetings for the case, but give less importance, ignore and sometimes even oppose, other aspects of the struggle such as organising inside the company and more confrontational actions (see chapter 6). For most workers however, the law is a source of confidence and a way to build unity.

5.3.2 **Confirmation and confidence**

Section 198, validates the workers' demands. It confirms they are entitled to the security and wages that they are demanding. By law, they are entitled to be full participants in the workplace

regime. When workers came to CWAO in June 2017, they came after having tried for a long time to get FAWU, their union, to take care of their issues. "The main problem is the money. […] They [FAWU] promised us to make us permanent under imperial but imperial they found us at Heineken, and one day they are going to leave, what is going to happen to us then" (Nthabi, meeting at CWAO, 30/08/17). CWAO organisers confirmed these demands were legitimate by explaining to the workers what section 198 entails. Organisers used 198 as a source of strength; in a discussion about new contracts the company was proposing: "why would we negotiate when 198 says you <u>are</u> permanents of Heineken".

A worker recalls this discussion:

> *Edgar: For the first time, even if the welcoming of us […]. It was the first time I see people who take care of people like that. We just told them that we've got this and this problem and this problem. […]. Do you know about this section 198? This 198, you know? You don't know. […]*
>
> *Interviewer: So maybe more generally, what do you think is different in CWAO from FAWU?*
>
> *E: The difference is huge because if a person come to you and open up your eyes, telling you things that you don't know and the real things, that is a big difference.*
>
> Edgar interview, 14/12/17

The first official meeting about the case was a conciliation meeting at the NBCRFLI on September 14th 2017. None of the employers named in the case attended but the commissioner still took the time to hear out the workers. She explained she could only say that the workers were indeed workers of Heineken in the eyes of the law but could not do anything else than give a certificate of non-reconciliation so workers could proceed to arbitration (where employers would have to appear). Workers came out of the meeting with mixed feelings. The commissioner had confirmed their rights but the employers didn't show.

A proposal from Heineken management to meet later that same day was rejected: "if we go when they didn't come here, we look desperate" (Edgar, meeting outside of NBCRFLI 14/09/17). The workers who attended decided to call a meeting with all the affected workers to report. The meeting confirmed the conflicted assessment. The workers were worried that the

employers not showing up was a sign they were not being taken seriously. At the same time, the confirmation they were supposed to be permanent workers of Heineken not only gave confidence but also began to address the divisions in the workplace. Being permanent Heineken workers was something all workers, including the better off IML workers, could look forward to. By raising workers' expectations and confirming their demands 198 thus also contributed to uniting the workers. All the pamphlets (See appendix F) that workers would send out from then on would remind their colleagues that the law considers them permanent workers of Heineken.

The confirmation of the legal basis of their demands also gave workers more confidence and strength to start challenging management's hold on the workplace. Indeed, employers exploit workers' ignorance of their rights – a fact workers are acutely aware of. During workshops at CWAO, workers demanded copies of the LRA. Knowledge of their rights gave them confidence to stand up to the managers because they felt backed up.

> *Now we got the book […]. Before, Kolobe [IML Manager] was saying 'once this thing is done he does not want to see this Simunye people anymore.' […] we open section 97 that says […] that as long as a group of workers [organise to bargain with their employer they are a union]*
>
> Senzi, meeting, 2/11/17

During the process, workers also become more confident in claiming their rights. Because they know them better but also because they feel stronger through the campaign. For example, on December 4th, the CCMA held a conciliation meeting for a second group of 199 workers who applied to be deemed permanent under 198. The CWAO organiser was excluded from the meeting (see below). The only company who attended, LSC, then started arguing they were the only labour broker involved in the case. While the manager was explaining LSC does not work for Heineken but for IML, a worker cut their explanations short. He calmly said the case was simple: the workers did not work for "these people [LSC] who make money out of other people". The companies were making complexities but in reality they just change names, the workers are the ones who stay at Heineken and they want to work for Heineken. The worker concluded: in the end, "it is Heineken who runs the show".

This again illustrates a deeper understanding of the workplace and the law, as well as the confidence to interrupt a manager and explain the case to the commissioner. This situation was

radically different from only a few weeks before, when one of the workers had to exit a conciliation meeting at CCMA (2/11/17) to confirm with his comrades what their demands were.

These few examples show how workers find strength in the law to validate their demands to be integrated into the workplace on equal terms. Section 198 can thus give workers the confidence to demand their rights and start organising for them to be enforced.

5.3.3 **An excuse to organise.**

CWAO's approach to the law is based on the idea it can kick-start organisation. As the example after the NBCFRLI conciliation meeting shows, workers use the legal proceedings to strengthen their collective bargaining power. Workers involved in the campaign – worker leaders – started calling formal meetings to keep their colleagues up to date on the case. The meetings were used to update workers about the developments in the case, to sign lists and documents, but also to inform them about their rights. The meetings also addressed workplace issues and how to respond to them.

For example, at the first mass meeting at Marikana - an empty field a few hundred meters from the brewery -, workers reported on the NBCRFLI conciliation. Workers then spent quite some time discussing the latest developments in the brewery. First, the employer was making them sign new contracts without explaining why. Second, a long discussion was also dedicated to how FAWU's action could interfere with the case. Workers had started resigning from the union not to be implicated in a deal it could make in their name. The union was clearly seen as colluding with management (see next chapter). Worker-leaders circulated sign-up sheets for workers to put down their names and contact details to participate in the campaign and be represented by their comrades. Simultaneously, a petition stating that FAWU could not sign a deal in their name was circulated. The petition also denied legitimacy to new contracts the company was making workers sign. These were the first steps formalising the workers' self-organisation, which would eventually lead to the formation of a Heineken Workers' Council (HWC).

Worker-leaders were also well aware that some workers attended to be sure they were part of the legal proceedings. When meetings were not well attended, it was suggested to say the next

meeting was about being part of the case to insure all would attend. This again shows how the use of 198 can support organisation. It however also highlights the possibility of the law being seen as a substitute rather than a complement to organisation.

5.4 Using the law or be used by it?

Despite the strengths of 198, the law is not written by, and rarely for, workers. Previous sections have illustrated how the LRA was imagined for permanent workers, de facto excluding precarious workers from most LRA rights. In consequence, using the law also includes many difficulties. The legal world is a technical domain and largely out of the workers control. Following the rules blindly does not allow to question the status quo, a fact that can halt or hinder organising efforts in favour of adopting more passive, 'legalistic' positions. In particular, technicalities and procedures favour those with the time, skills and resources to use them. From that point of view, employers are in a position of strength. Indeed, legal proceedings can drain a lot of energy and time that could otherwise be spent in industrial action and organising.

5.4.1 **A technical process**

The employers are careful to use technicalities to their advantage. IML, LSC and Heineken systematically had the CWAO organiser excluded from conciliation meetings on the grounds they were not a registered union. The commissioners complied although CWAO successfully challenged this rule (CCMA rule 25) at the labour court (Karim 2016). The commissioners argued CWAO should make a written application, after which a ruling could or could not grant them representation.

Workers were thus briefed to represent themselves. In the first conciliation meeting at CCMA Vaal on the 2nd of November, this was done on the spot and workers were evidently not confident. The organiser insisted they stay focussed on the group's demands - their mandate- and that they could walk out at any time to talk to their comrades. In front of their managers, however, workers did get confused at some point. They came out to check if they were applying 198 to Heineken or Imperial. It is also important to highlight the legal case greatly depends on convincing the commissioner thus explaining the complex and fragmented workplace situation to him/her.

Employers exploited this confusion as much as they could. Managers in the workplace consistently told workers that CWAO was misleading them. They told them procedures would take years. The procedure is long and complicated and the employers did everything they could to make it longer and more complicated.

5.4.2 **An uneven playing field.**

The law ignores power relations (see Section 2.4.2). In the case of the proceedings at the CCMA, the employers did everything they could to prolong the case and wear out workers. Workers were prepared to argue the content of the case but the employers kept raising procedural points successfully. For CWAO organisers (Cwao organiser meetings June, July, August 2017) this highlighted the bad quality of commissioners. In their view, labour institutions are supposed to counter the power imbalance between workers and employers to insure labour regulations have a meaning and effect. The commissioners are supposed to assist workers in the process and use their powers to investigate; not behave like judges between equal parties.

During the first conciliation at the CCMA, which was set for the 2nd of November, a first group of 293 workers referred a dispute against Heineken, IML, LSC, Vericon and CJK. This time, representatives for Heineken, IML and LSC attended. IML was leading the proceedings. Heineken intervened as little as possible. FAWU attended with letters from four ex-Vericon workers stating they did not want to be represented in this matter. They were party to the case when it was referred to the CCMA but withdrew once Heineken offered them permanent employment through FAWU.

The employers used FAWU's intervention to question the validity of the list of names submitted by CWAO and the workers. The hand written list contained some names that were difficult to read and some names appeared twice. Although the commissioner did not accept the employers' argument that the list was a fake, he gave the workers one week to resubmit a typed list. Subsequently, employers kept raising the list issue, stalling the case from November 2nd (2017) until a pre-arbitration meeting on January 22nd (2018). At every CCMA meeting the employers would keep raising procedural point about the list, despite retyping the list two times, then having it signed again by workers.

Interestingly, at this point there was talk amongst the workers about corruption at the CCMA. Workers did not trust the commissioner staying alone with the employers; they were worried they would slip him an envelope. Workers even went to the CCMA in Benoni on their own because "they smelled a rat in Vaal".

The employers raised several other points. In addition to the list, the employers repeatedly questioned the right of CWAO and the lawyer to represent the workers at the CCMA. They also argued condonation. Indeed, section 198 D states that workers have six months to apply for 198. The employers argued the referral was 25 months late, since the statutory period would have been six months after 31st March 2015 to refer the case. In addition, LSC and IML kept questioning the jurisdiction of the CCMA. Since, in their view, no labour broker was working for Heineken, the client company and Vericon should be withdrawn from the case: IML and LSC should face their workers at the bargaining council. The commissioner dismissed the representation and condonation issues. He further accepted that the claim of jurisdiction was not a procedural issue since the question of IML being either a labour broker or a service provider was at the core of the case.

Nonetheless, the list issue allowed employers to keep the case going for almost three months. During that time, they moved the workers' focus away from the events in the company and their organising efforts. Workers were spending all their energy on getting the list signed – a nearly impossible task in the face of numerous different shifts, some workers being dismissed and a fragmented workplace. In the meantime, management was reorganising the workplace, imposing new contracts and moving key organisers to different departments (mainly outside of production) to the periphery of the company.

5.4.3 **A difficult tool to control.**

The events above highlight the difficulty for workers and organisers to keep control over the legal proceedings. This difficulty materialises at several levels. Firstly, the relationship with the technician, the lawyer, is a complicated one. The meeting with the first lawyer already highlighted the problems that can occur when a lawyer does not recognise the workers' reality and their leadership in managing their struggle. This came to light again, this time with the second lawyer, around the issue of the fated list. At the pre-arbitration meeting on January 22nd,

the commissioner decided to acknowledge only the workers who had signed the retyped list – a group of nearly 500 claimants was thus cut back to 268. Without consulting the workers, and ignoring the CWAO organiser, the lawyer accepted this. Workers were upset. Indeed, this was potentially a highly divisive move. The way the lawyer took control of the situation and did not refer to the workers to take a crucial decision was also a problem. Indeed, from a legal point of view it may well be that the number of workers on the list is not crucial. If you win for the first group, you open the way for the others. However, from an organisational point of view, this was highly problematic.

Second, although the workers initiated the legal proceedings, the employers' strategy allowed them to control the timing. In doing so, they moved the case beyond the peak period of the holiday season. They also used their stronger position in the workplace to disorganise the workers. While the case was focused on the list, employers forced workers to sign new contracts. The contracts were of different nature. In September, CJK workers were told to sign one-month contracts with LSC while waiting to be made permanent under LSC in November. Perhaps unsurprisingly, once the LSC one-month contract expired in mid-October, workers started getting "stopped". They were not fired but signed an agreement to be kept in a pool on a "no work, no pay basis" while waiting for "new projects to come in". LSC and Imperial workers were told they would also sign new contracts under Imperial Management Solutions by beginning of November. As would become clear, only some workers - "core staff"- would be made permanent. This yielded a lot of debate in meetings, CWAO advised not to sign anything that was not 198. Called in one-by-one, workers were uncertain about whether their organisation was strong enough to make sure no one would sign the new contracts. Workers were advised to write "not agree" on contracts. The petition also served to demonstrate contracts were signed under duress. The tension an uncertainty put an extra strain on workers' unity and organisation.

Finally, institutional power is a double-edged sword. Indeed, section 198 and knowledge of their rights gives workers strength and confidence, but it can also push workers into passivity, expecting the solution to come from outside, almost by itself. This led to tensions within the collective when workers opted for more confrontational tactics (see next chapter). Some of the worker-leaders dismissed and opposed action because "it would harm the case" and they should "do things in the rules" (Senzi, interview 06/12/17). In that sense, some workers got trapped in the same logic as FAWU. The union organised permanent and labour broker workers separately

because the ‘law’ said they belong to separate sectors. The next chapter explores this issue further.

5.5 Conclusion

This chapter illustrates how workers can use the law to validate their demands. Section 198 provides an opportunity to unite behind the claim for better employment conditions and security. By using a rights based discourse workers feel empowered and validated in their struggle to question an oppressive and authoritarian workplace. They are not demanding a hand out but claiming something that is rightfully theirs in “the new South Africa”.

Section 198 gives a sense of pride and entitlement that allows workers to challenge management and the workplace’s order. It is also a powerful tool to counter the secondary status those workers a constantly put in by co-workers and managers alike (see chapter 4). From being hidden in the toilets, workers moved to lecturing their managers about their rights. Undoubtedly, this process helped workers to unite and to challenge the way things were done at Sedibeng. As it is located outside the workplace, the 198 case at the CCMA allows the workers to find a battlefield that seems more favourable than the workplace where “the gate is always open”.

However, the procedures are slow and complex. A fact that gives employers an advantage, allowing them to reorganise production, dismiss workers, and destabilise worker organisation. Heineken workers thus faced important difficulties in using the law. At this stage, it is unclear if the workers will manage to overcome these difficulties. One certainty is that the law can help organising efforts but is not sufficient on its own.

The process has clearly generated positive results in strengthening workplace organisation and bringing forward capable worker-leaders to organise and represent their comrades. It has also prompted changes of attitude from managers and permanent workers towards those they used to ignore or belittle. Going forward the Heineken labour broker workers actively explored ways to build power as a group inside and outside of the factory. The next chapter will show how.

6 Organisation

Chapter 4 highlighted the fragmented nature of the workplace and the divisions workers faced. Chapter 5 started showing how mobilising the law allowed workers to mobilise some power, institutional power, and try to overcome these divisions. This chapter will examine workers' ability to form a collective and use it to mobilise power. Workers at Sedibeng operated as an informal group for quite some time. Faced with substantial wage cuts a group of workers decided to join FAWU in 2012. They called on others to join them. However, their experience with FAWU revealed to be a disappointing one. This is when they turned to CWAO. For the sake of clarity, we will call them worker-leaders. CWAO assisted worker-leaders to launch a 198 case and use it to recruit, organise and unite more workers. This also meant building the capabilities necessary to try to overcome the issues they faced. CWAO also tried to help the workers to formalise their organisation into a workers' council with an elected committee. Finally, they assisted the workers collective access and articulate different sources of power.

This chapter thus focuses on organising for power and the obstacles –and successes – the workers face in doing so. In the first section, the chapter examines the workers as a self organised collective. Section two deals with the interactions between that collective and FAWU. Section three looks at the recent campaign through the collaboration with CWAO.

6.1 A self-organised collective

An important part of workers' power lies in their ability to come together and establish some form of cohesion to challenge the status quo. At Sedibeng Brewery, it seems workers got together on their own before joining any organisation. It is this informal network that will be the basis for the building of associational power at Sedibeng

6.1.1 Organising in a divided workplace

During interviews, workers describe how they decided to join FAWU in 2012. Wages were cut every time workers were transferred from one labour broker to another. As a response, workers got together and started looking for a way to put a stop to it. "We then joined the union. To get the money" (Edgar, Interview, 14/12/17). The workers who have been in the company for a

long time have thus been part of a long-term collective. Although the exact structure is unclear their organisation responded to the the challenges of a fragmented workplace.

Workers mainly rely on small groups – "like a group of friends" (Jacob, Interview 05/12/17) – to update each other. They meet with colleagues of their shift in their department. To communicate across shifts, workers meet on their way out and update the incoming workers. This of course does not leave much space or time for long debates. It also tends to push workers to focus on 'their group'. For example, when discussing a date for action, one of the worker-leaders argued for a specific day rather than another because that day 'his guys' were working – those he trusts (Lemo, meeting 18/11/17). Coordination relies on those who know or talk to people in different departments. These worker-organisers are often those who can move around the brewery, because of their specific task or status. As a result, when a group of workers came to CWAO for the first time in June 2017, there were CJK, LSC and Vericon workers. The workers-leaders had thus managed to overcome divisions to some extent and to build a collective. However, overcoming divisions and difficulties in communication is difficult and often temporary, especially when resisting an authoritarian and repressive management.

Ensuring meaningful communication is difficult. Indeed, workers do not see nor know many of their co-workers. It is therefore difficult for them to build trust and enforce collective decisions. When dealing with new contracts, the workers, advised by CWAO, decided not to sign (see Chapter 5). They failed to implement the decision, partly because they were afraid of what others were doing. In the absence of clear lines of communications, workers are also exposed to rumours and distorted information. In their own words: "rumours are fighting against us" (Tshepo, meeting 20/10/17).

At several moments during the campaign, divisions in the workplace reappeared. When discussing the way forward in a workshop (4/11/17), ex-CJK workers reminded the others that they were the ones who pushed for the campaign to happen. Even late in the campaign, workers 'denounced' IML workers for behaving like they were better than their colleagues (even when some IML workers were attending). This means that although organisation exists it is relatively fragile and potentially vulnerable to divisions. Workers continue identify with 'their group' rather than the larger collective. In addition, workers-leaders are acutely aware of the precarity of their position: "we are scared because the gate is always open" (Nosi, workshop 04/11/17).

In this context, although workers talk and seek solutions to their issues they do not feel strong enough to challenge the climate of fear enforced by an authoritarian management.

For example, on November 13th 2017, IML management called a meeting. They ordered worker representatives to attend. The worker leaders, members of the newly formed interim committee (see below) attended. By chance, 'stopped' CJK workers were reporting for work the same morning since Heineken kept claiming in the media no one had been dismissed. A CWAO organiser was with them. The organiser called the committee members to come and explain what this meeting was about. They came out explaining that the managers had said that supporting the 'stopped' workers was a losing battle. A discussion with the dismissed workers followed. While workers were debating the issue, managers were calling the representatives on their cell phone: they had allowed only a 15 minutes' break. The committee members were anxious to go back in. They had to be reminded that as representatives they should take their mandate from the workers, not obey management. Eventually, they were instructed to go back to the meeting to ask if the 'stopped' workers could go back to work, yes or no. The workers had insisted that they should not discuss anything else and leave if they didn't get an answer. The representatives came back after more than an hour. Management had dismissed their demands. They claimed new workers had been hired for the projects. It had taken an hour because the representatives had to wait until the end of the agenda to address their issue.

What this example illustrates, is that the workers-leaders did not know how to say no to management. They accepted to be called into a meeting they had no mandate for, neither did they know or agree to what the agenda was. Even when questioned and mandated by their peers they still failed to challenge the rules set by management.

To address some of these issues, CWAO tried to assist workers in formalising their workplace organisation by creating a Heineken Workers Council (HWC). On October 20th 2017, an interim committee was selected during a workshop. Their mandate was to deal with the 198 case while workers organised a proper general meeting to formally elect a committee and adopt a constitution. The idea behind the council was to help workers-leaders to start thinking in explicit terms about organising and mobilisation. However, some of the core aspects of the council were pushed to the side as the workers had to stay focussed on the immediate issues coming from the CCMA case and management's backlash against workers. In practice, the interim committee represented the worker-leaders of the informal organisation pre-existing in

the workplace. It is not clear at the time of writing whether workers managed to move from their "small groups of friends" to a more formalised attempt to organise all workers and establish a network across the factory.

6.1.2 **Different groups, different visions.**

Building a formal association also generated issues in terms of tactics. Some workers were attached to keeping everything within the law with the objective to negotiate with management. In other words, their focus is to build power outside of the workplace and to a certain extent to avoid open conflict. Others however did not shy away from a more confrontational approach. The first approach seemed to be favoured by better off workers such as forklift drivers and workers who have been in the company for many years. The second group was mainly (but not exclusively) located amongst the worse off workers, the ex-CJK workers, who were stopped. Finally, a few workers in the committee seemed to feel their responsibility is to articulate both.

Many workers used to call the CWAO organisers "the lawyers". At meetings, it was noticeable some workers were especially worried about signing documents and be sure "their name was on the list". This does not mean they were not paying attention to organisational issues but it shows workers were looking for a solution provided from the outside. CWAO organisers spent quite some energy on calling on the workers to "own their struggle".

At times, this came in conflict with more confrontational approaches. When workers put down tools (07/11/2017), most of the workers who advocated for "winning through the CCMA" (Edgar, interview, 05/12/17) were not present. On the eve of the protest, members of the committee were anxiously debating not implementing the decision taken the day before. The same divide reappeared on November 24th. Heineken and Imperial management ditched a planned meeting at the last minute arguing too many workers were present. Workers were outraged and angry. In retaliation, they blocked the factory gates stopping trucks from entering. Some workers left and others stood some 15-20 meters aside, denouncing the action as counterproductive – "this is going to backfire on the case".

As these tensions rest on real material differences in working conditions, it echoes the fragmentation of the workplace and opens gaps in a difficult to maintain unity. It highlights the difficulty in designing a commonly accepted and understood strategy. Mostly this has been

resolved through a flexible organisation, alternating who drives the campaign. At the beginning the CJK workers were at the forefront pushing for the case to go forward. Once those workers got integrated into LSC, workers in better positions took over. Then after a new increase in tension around workers being dismissed, talk about the integration of only core-personnel and the technicalities of the CCMA, the ex-CJK workers and new leaders came to the forefront again. The workers coming to the CCMA or leading the protest at the factory gate are not the same. It is very noticeable different workers and leaders see different modes of actions as important. Only a few worker-leaders attend and actively took responsibility in both types of action.

6.2 The union

When the workers came to CWAO in June 2017, most workers were FAWU members. They had been since 2012. They came to CWAO because they felt the union was not taking their demands forward. Workers consistently designated FAWU as a part of the problem, while management regularly advertised and defended its good relationship with FAWU (for example Power FM, 06/09/17). It is thus important to examine FAWU's history at Sedibeng, as well as its vision of the workplace and the workers.

FAWU has been present at Sedibeng since 2010. It signed its first recognition agreement in 2011. The union's main focus is on the permanent Heineken workers. FAWU has a separate recognition agreement with Imperial (Pritchett Makjola, Interview 27/09/17). When asked, one of FAWU's full time shop stewards claimed that the IML and Heineken FAWU structures "work together because we know it's the same struggle" (Pritchett Makjola, Interview 27/09/17).

The labour broker workers tell another story. They report FAWU was giving them less importance than the permanent workers. Workers-leaders also claim FAWU barred them from attending meetings with permanents or making demands on Heineken directly (Interviews Edgar, Jacob & Senzi). Apparently, FAWU and Imperial had been promising the LSC workers that they would be made permanent by Imperial since 2015. FAWU is consistently denounced as an ally of management standing in the way of the labour broker workers demands. FAWU acted– consciously or not – as a guardian of the status quo and is perceived as such by the workers and management alike.

Workers joined FAWU in 2012 over wage issues. But worker leaders complained that the FAWU organiser only dealt with small issues like unfair dismissals and individual cases refusing to meaning fully engage with the larger, collective issues:

> *I remember one day telling this lady [the FAWU organiser], No, the money that we are getting is not right. You know what did she say? She said to me, "You're much better because other companies outside, the workers, they are getting less, even R2,000 a month". That's where I started seeing with another eyes that this is not good. Something is wrong here. […]*
>
> Edgar, Interview, 14/12/17.

When workers demanded to be serviced better, the FAWU organiser told them their low dues didn't pay for more. "You think I can go up and down for it"? (Edgar, Interview, 14/12/17). The workers replied they were paying the same dues as everyone and if their salaries went up so would their dues[18]. When worker-leaders confronted the senior FAWU shop steward, he told them to confront management on their own. Management told them that as labour broker workers they were paid at bargaining council rate. Workers then sent a delegation to FAWU head office. According to the official they met, Heineken labour broker workers should understand the organiser, who was responsible for the whole region, which was not easy. He promised them an additional organiser, that never came.

In a meeting from 2016, FAWU shop stewards complained to the IML management that they were not notified that LSC Staff were given short-term contracts. Management answered that IML can't afford other contracts and to "let them [the staff] know that it is our [IML and LSC staff's] attitude and performance that is currently holding us back" (IML, 2016). It is unclear whether this message was conveyed to the workers, but it does highlight there was not much pressure on IML to address the labour broker workers' situation. In addition, workers-leaders report that the organiser was often unreachable and that even when their issues were taken on, things were slow (Edgar, Interview 14/12/17). Generally, one can see why the workers did not think that FAWU was on their side.

[18] FAWU dues are 1.4% of salary with a min of R35 and a max of R120.

This perception was heightened by the relationship FAWU had with management. The union is seen as being too close to management. Some workers accuse the union organiser of being corrupt:

> *Jacob: Yes. Yes, to the FAWU president, head office. We demanded another organizer because the organiser, she were very corrupt. According to our experience, the organiser, she was not escalating our complaints from workers to the seniors, as well as the head office to knows about that so that they can come up with another way how to resolve it, you see. So, but that it was showing that maybe she's getting a bribe.*
> *Interviewer: You think she was getting money from the company?*
> *J: Yes. She was getting money because the job that she were there for, she was not doing it. […] Instead, she was always visiting the management. You see her with the management, […]*
> *I: And she would talk to the permanents?*
> *J: Yes. She can talk to the permanent, but not during that time she's visited the management, you see. Yes. It means the management; she was receiving bribe from the management.*
>
> Jacob interview 05/12/17

Although this does not prove the organiser was actually bribed, it does show workers did not trust the union. The management on the other hand insisted on several occasions that FAWU was the only recognised union (Heineken letter to CWAO 06/10/17). They also insist on their "healthy" relationship with FAWU (Zodwa Velleman, PowerFM, 06/09/17) A LSC representative went as far as to present a FAWU representative as their "strategic partner" (CCMA Conciliation, 2/11/17). This of course reinforced the workers' hostility towards FAWU. When asked if management had a strategy to defeat their efforts to become Heineken permanents, one worker answered "using FAWU to divide us" (Senzi, interview 06/12/17).

What the workers refer to is that FAWU accepts the status quo. The union recruits the workers in distribution and warehousing because "they do not turn workers away" (Pritchett Makjola 27/09/17), but they consider that they are part of different sectors and organise them separately. This affects the interpretation of 198. FAWU accepts IML is a service provider from the logistics sector and outside of Heineken's 'core business'.

> *So the Imperial shop steward, it's been a while that they've been dealing with the issue of labour brokers, to say that Imperial must absorb these people permanently. Because Imperial, according to definition, is not a labour broker, it's a service provider, […].*
>
> Interview Pritchett Makjola 27/09/17

The shop steward then says he of course would like to see all workers as permanent workers under Heineken but the law is the law and "we don't always get what we want". The union accepts the legal framework set by the company, rather than starting from the workers' demands and lived reality. CWAO's 'fighting interpretation' of 198, in contrast, responds to the workers' demands.

In addition, FAWU also plays into the fragmentation of the workplace. It does so passively and actively. It does so passively by not questioning the reality of the workplace. Labour broker workers have their own gate controlled by imperial workers. As a result, with the exception of the Vericon workers, permanent workers barely interact with the other workers in the company. In fact, at the end of September, right after the first radio interviews accelerated the campaign at Heineken, the FAWU full time shop steward barely knew the labour broker workers existed let alone anything about their working conditions (Pritchett Makjola interview 27/09/17). However, as early as November 15th 2016 IML shop stewards knew about CJK (IML, 2015). This raises questions about how seriously IML and Heineken shop stewards really collaborated and corroborates the labour broker workers' feeling that their issues were treated as secondary by FAWU.

> *And then that lady, she even don't follow up the case. You report the things, she write down. When she come back after three months, she wants to take the very same statement back, all of those things. Same thing over again and over again, so that's why we can see that those people they don't care about it.*
>
> Senzi, interview 06/12/17

The union does not try to bridge the division between workers, quite the contrary. Indeed, permanent workers and labour brokers never met together.

.

> *Interviewer: So you had meetings together, all the workers of Heineken?*
> *Worker: No. We always get a meeting separated. And […], 'why these people, they don't want us to be in their same meetings?' We were asking ourselves. Even if when we ask the senior, the senior shop steward, 'Why do we not meet sometimes and discuss about things?'. He will say, "We have to be separated because we are permanent and now you are working for Labour brokers."*
>
> Edgar, interview 14/12/17

The union thus reproduced the divide and rule strategy of management. They also actively contributed to management's defence strategy in response to the 198 case. Indeed, at the end of September, after the campaign started, FAWU sent a memorandum in the name of 34 Vericon workers to the company (Author's archive). Under section 198, it asks that those workers – and those workers alone – be made permanent workers of Heineken. By doing so, the union actively supported and implemented Heineken's response to the workers 198 claim. It integrated the labour broker workers directly active in production reinforcing Heineken's argument that IML is a service provider. The deal was signed and implemented shortly after.

CWAO organisers anticipated this move and told workers in a meeting, on September 8th, that they should decide then and there how to deal with FAWU. If the union struck a deal acknowledging IML as a service provider while they were members, they would lose access to 'the legal route'. Either they felt they could call on FAWU to take and respect a mandate from the workers or they should resign. Workers immediately started signing resignation letters. There would be occasional talk of returning to FAWU after that but mainly because workers felt the only way to be recognised by the company as a bargaining unit was through a union. This shows the union is perceived as a necessary institution for industrial relations purposes but not as a valid vehicle for labour broker workers demands.

The workers' relationship with the union is thus very much shaped by FAWU falling on "the double edged sword" of institutional power. FAWU's behaviour illustrates Gallas' (2016: 200) point that under specific circumstances institutional power can lead a union to behave against workers' interests.

6.3 CWAO and the workers

After meeting the FAWU leadership and seeing no change, workers started to look for alternative solutions to their problems. They considered finding a labour lawyer (interview Jacob 05/12/17). A former Brandhouse worker, now employed at Nampak Glass (one of Sedibeng's suppliers), told the worker-leaders about CWAO. Indeed, CWAO has an active campaign at Nampak. The workers gathered and discussed the matter, since others had heard about it, they decided to send a delegation. But workers were quite sceptical:

> *they were not sure because now you know if you are disappointed from the union, how are you going to trust another union or any organisation?*
>
> (Edgar, interview 14/12/17)

In coming to CWAO workers were rapidly convinced it was something different. Workers also appreciated that their issues were taken on immediately which they saw as an indication that CWAO "was serious" (Jacob interview, 05/12/17). Workers also highlighted the importance of CWAO respecting their leadership.

> *And what I like with CWAO, this business of not going to the management alone but wanting us to be there. That's a very nice thing that I never thought it will happen.*
>
> Jacob, Interview 05/12/17

Worker-leaders consider their interaction with CWAO has helped them face management and be clearer about the issues. "Those that are more shy" are now seeing they are being cheated out of their rights and "they are wild" (Edgar Interview14/12/17). Even without a concrete victory, organising resulted in a change in their status, the way they were treated, and developed a perspective for change.

> *[…] because now there is some changes. Now they treating us like others, and then what makes change is-- we are now speaking freely and with the hope that there will be a change. There will be a change because the way they've started to work with us, we did experience a lot of changes-- a lot of*

changes, and you can face them one-on-one. You see, you can challenge them to the court, so we can see that this is true.

Jacob, Interview 05/12/17

Some workers report they thought that CWAO being free was suspicious. But in the end, the fact that CWAO spent time and resources to be alongside them, confirmed that they are really their allies.

Despite being prompted several times and assured this was completely anonymous, workers insisted there was nothing CWAO could have done better or different in dealing with their case. One worker said CWAO should have told workers not to engage in blocking the company (Senzi, interview 06/12/17). This should of course be taken with a lot of caution. Firstly, the interviewer was likely to be seen by the workers as a member of CWAO, even though the distinction was explained. Secondly, this interview is taken in the middle of an ongoing struggle at a moment of relative strength. It was thus unlikely that workers would bring forward criticism. Nonetheless, the workers' feedback shows CWAO responds to the workers demands because it starts from their lived problems. Section 198 but also the fact workers are present at every step has helped to build the confidence and trust needed to challenge the workplace order.

Workers managed to build a collective. It allowed them to voice concerns even if they were largely ignored. Faced with a divided and authoritarian workplace, workers consistently looked for outside help. As the previous section illustrate, they thought CWAO might be what they had been looking for

6.4 Building capabilities?

CWAO's objective is to assist workers to mobilise the power needed to realise their demands. In that sense they help workers building capabilities as defined by Lévesque and Murray (2010; 2013). CWAO certainly understands its action as educational. The most basic educational approach is simply to inform workers about their rights. Workers are also in need of this kind of information as it helps them stand up to management (see chapter 5).

More generally, CWAO responds to problems faced by workers. For example, after the IML meeting the committee members attended without mandate (12/11/17, see above), a workshop was organised on how to negotiate with management. Workers role-played the scene and discussed it. After several attempts, workers arrived to "negotiations" with their own agenda, were attentive to their body language, and manoeuvred to keep control of the meeting. A change in attitude that was reflected in how workers behaved in subsequent meetings and confrontations with management.

During the building of the Heineken campaign, a large amount of energy went into intermediation. When workers came to CWAO, although they came as a group of different labour broker workers, they tended to see only their immediate environment. In short, a LSC worker did not want to be a CJK worker but aspired to have what IML workers had and so forth (see chapter 4). In a document workers brought to CWAO, LSC forklift drivers denounced IML forklift drivers as being "not feed (sic) to load trucks. But they get paid by basic salary of R9000" (Personal Archive, workers demands, 30 August 2017). As chapter 5 has shown, section 198 allowed workers to see beyond their immediate competition and unite behind the idea of permanent employment for Heineken. This gave workers a basis on which to build unity and start thinking about collective action. As of the time of writing, intermediation remains very much an on-going struggle. Time will tell if the workers will be able to keep finding ways to mediate tensions and contending interests despite the pressure from management.

The process of intermediation then allowed workers to take control of their struggle and *frame* a narrative giving the workers a focus on their shared experiences and aspirations. The demand to be made permanent under Heineken with equal conditions offered exactly that. Their first pamphlet (see appendix F) highlighted shared frustrations to strengthen the common demand for permanent employment, alongside the wages and benefits that come with it. In subsequent pamphlets (see appendixes F), the campaign continued to repeat that all workers were Heineken workers and deserved to be treated the same. This also provided a strong narrative of exploitation and injustice workers would articulate in the media.

The previous sections have shown that workers saw different actions as useful. Articulating the different levels of action remains a difficult issue. The tension between better and worse off workers in terms of strategy described in section 6.1.2 illustrates this. Indeed, as worse off workers got dismissed, they pushed harder for immediate action, while simultaneously workers

with better established positions were more hostile to action inside the company. Only some workers inside the workers' council were committed to both groups and to both types of action. The following section will explore the relation between CWAO and the workers in articulating different forms of power.

6.5 Articulating different forms of power

CWAO assisted workers in developing an action plan, drawing on the different power resources at hand. In particular, it helped workers access the media and guided them in their access to the bargaining council and the CCMA. Simultaneously workers could use these developments to build their collective strength. This in turn gave workers the confidence and means to experiment with their structural power as essential elements of Heineken's production.

6.5.1 **Associational power**

Workers were an embryonic collective when coming to CWAO. But this collective faced numerous obstacles and its informal nature limited its actions (see above). The task as set out by CWAO staff has thus been to assist the workers in expanding and then formalising their collective: building associational power focussed on clear communication and collective decision making.

As early as the end of August 2017, workers were encouraged to call their comrades to join the campaign for all Heineken labour brokered workers to be recognised as permanents and equalised under Heineken. A first pamphlet started building the narrative calling on workers to raise their expectations and to unite (See appendix F). Rapidly after, workers were encouraged to hold meetings at the factory to inform all workers of what was going on and discuss the issues. After the first 'conciliation' at the NBCRFI, workers-leaders decided that they needed to inform workers of what happened. They thus called for a mass meeting on Sunday September 17th.

This meeting was to be the first of a long series of Sunday morning meetings. They mostly occurred at 'Marikana', an empty field where trucks stop at the entrance of the industrial area where the brewery is located. Meetings are at 6 or 7 in the morning, when the day shift takes

over from the night shift. Attendance to the meetings was variable: from over 300 workers to a dozen. The average has been between 100 and 150 workers. Large sections of the exiting shift thus attended the meetings as well as some workers that were off and came on purpose. Some workers also attended the meetings during their shift. The meetings served several purposes. Committee members and the CWAO organiser would generally introduce the meeting with an update about the 198 case. Workers would then discuss the way forward. Inevitably, problems they faced in the workplace would also come up.

The issue of what to do about new contracts, for example, was debated at length on multiple occasions. At the meeting held on September 24th, CWAO organisers explained the different forms of contracts and told workers they could refuse to sign. Workers debated if this was possible or not. They were angry about being moved to again to a new company and about the new contracts including a probation period. Others did not question that the contracts were insulting and not what they wanted, but doubted that they could refuse to sign when called in individually by management.

In these discussions, CWAO's role is always ambiguous. Their presence is necessary to assist workers in understanding the issues and providing advice on legal issues. But, at times, this transforms the collective moment into an information session where workers ask questions to the CWAO organisers. Indeed, the CWAO organisers are bearers of information and knowledge that puts them in a position of power. In fact, the workers called CWAO organisers "the lawyers". However, with time, workers make the distinction between CWAO providing advice and them taking a decision. For example, on November 7th (See below) workers decided to gather outside the factory gates rather than inside ignoring CWAO organisers advice.

The engine of the organisation drive is the 198 case. Meetings are thus also used to complete lists and other legal documents. Its the case that brings workers to the meetings but it also takes time and energy away from building a collective able to take, implement, and enforce collective decisions. Some workers attend the meeting only to make sure 'their name is on the list'. Despite some problems and sometimes wavering attendance, the meetings established lines of communication between workers and brought them together. Meetings allowed the workers collective to move beyond talking to friends on the same shift quickly in the locker room or during a break.

In fact, the meetings were clearly seen as a threat by management. When meetings took place on the brewery grounds, IML managers tried to break them up on several occasions. The organiser reminded the IML manager that it's not his grounds and that he therefore cannot ask them to leave. Only Heineken can do that – "one of the few good things about externalisation". On one occasion, workers were stopped from going to meet the organisers as managers locked workers inside during their lunch break.

The meetings represented a first step towards strengthening associational power. The second one was to try and create a more formalised structure. Indeed, after leaving FAWU workers were worried, "they had nothing" (Workshop 4/11/17). Managers had told the workers they would only talk to FAWU and denied them access to meetings. With a new structure came a discussion about the need for representatives. Some workers thought having representatives was necessary to establish a dialogue with Heineken. Those workers were generally the same ones who wanted to avoid confrontation and to rely on the institutional process. On the other hand, after being warned by CWAO organisers, workers were afraid that representatives could be bought or victimised.

Mid-October, a lengthy discussion resulted in the formation of the Heineken Workers Council. Workers adhered simply by signing a register. CWAO submitted a template constitution to the workers telling them they could amend it as they wished. However, under pressure from the CCMA agenda, the constitution was never really discussed nor proposed to a formal general assembly. Similarly, worker-leaders composed an interim committee mandated with following the 198 case until a formal election could be organised. Several months later they are still in place. This created a de facto leadership without formalising a controlling structure for the 'base'. Representatives took their mandate from meetings of course but nothing forced them to either. Representatives attending a meeting with management without a mandate (12/11/17, see above) or not attending actions are good illustrations of this. It also exposed some workers to victimisation. In fact, two of them got dismissed at the beginning of February 2018 (see below).

In the formalisation of their associational power, workers were thus pressured by an agenda not set by them but by the CCMA case on the one hand and retaliation from management to the campaign on the other. This is not to say members of the interim committee were not committed to a mandate from the workers, but the situation prevented workers to go all the way in

formalising their collective decision-making. In the long run, this might weaken the campaign, and could also become more difficult to correct.

6.5.2 **Institutional power**

Chapter 5 has already extensively dealt with the question of institutional power. This section will thus only briefly highlight how institutional power interacts with other forms of power. Indeed, the engine of the process facilitated by CWAO is the dialogue between associational and institutional power. The process is of course not without contradictions as the previous chapter and section 6.5.1 have highlighted. Here we simply restate the articulation between institutional and associational power. Schmalz, Ludwig and Webster (2018) emphasize the relational aspect of power resources. Indeed, any group theoretically has associational power but it is because a group can –strategically – mobilise other forms of power that it can be effective in attaining its objectives.

When workers came to CWAO, they came as a group. They had been one for quite some time without managing to change their situation. Under FAWU, the law and the framework of labour relations had been used in a way that disempowered the group. Workers were separated in the name of sectoral differences and told wage negotiations were useless since their working conditions were managed by a bargaining council agreement (see section 6.2). Despite the workers having a level of self-organisation and trying to push for improvements, the reliance of the union on institutional power *alone* served as a deterrent to action and capacity building. This "institutional isolation" depoliticises conflict and empties it of its emancipatory potential (Schmalz, Ludwig and Webster, 2018: 121).

CWAO's approach, to the contrary, tried to exploit the relationship between different sources of power. Indeed, when workers came to CWAO, they were informed about the law and trained to know their rights. From that point of view, section 198 confirmed the validity of their claims which built confidence and gave them strength. CWAO organisers used this strength to push workers to organise others and build associational power. For example, when having to make a list for the CCMA case, workers were pushed to talk to each other and bring as many workers as possible into the fold. This triggered discussions about unity and helped overcome part of the divides in between different groups of workers. Similarly, when the employer challenged the first list at the CCMA, workers and organisers aimed –with limited success – to bring more

names to the CCMA to show strength. In a way, the institutional process allowed workers to get a boost by tapping into a reservoir of power. In doing so it strengthened the dynamics of association building. Workers were drawn to the dynamic because it offered a direct claim on an improvement of their reality. It helped to overcome the divisions of the workplace by giving them a common objective. Finally, as will be illustrated below, it is in response to the institutional process that workers will attempt to mobilise structural power.

Institutional power also made associational power more necessary. Workers came together to build the case as well as to resist the employers' retaliation. Moreover, as the case progressed it became clearer to the workers that the struggle could not be won at the CCMA alone, which emphasised the need to put pressure on the company through other means. These dynamics emphasize the point that despite strong contradictions (see section 5.4), institutional power is really useful if connected to associational (and structural power). In the words of one of the lawyers at the CCMA, "employers are not in a hurry to resolve conflicts because it has no impact on production" (CWAO, strategy meeting, 13/02/18).

6.5.3 **Societal power**

Heineken is an international oriented TNC. As it targets the consumer directly, it is sensitive to threats to its image. As one of the workers puts it "breaking the business is quicker than building it" (Jacob, Interview, 05/12/17). In the Netherlands, Heineken presents itself a company contributing to development in the Global South. In South Africa, the Heineken brands occupy a premium segment; clients are mainly emerging black upper and middle classes. This public is sensitive to the transformation of the country and could react badly to the exploitation of black workers by a Dutch company.

At the beginning of September, CWAO issued its first media pack. It focussed on the working conditions of CJK workers. The story was picked up by PowerHour, a radio show on PowerFM. On September 6th (PowerFM, 06/09/17), it Featured a CWAO organiser and the corporate affairs director for Heineken - Zodwa Velleman. FAWU was also interviewed on the show. Velleman claimed that no one *working for* Heineken worked for a labour broker or was paid on piece rate. This was to consistently be Heineken's position: labour brokers work for imperial not for them.

CWAO cultivated the relationship with the radio show and several other shows followed. On the 12th (PowerFM ,12/09/17), workers intervened – anonymously – on the show. This made the situation difficult for Heineken. Indeed, workers simply reported their daily life in the factory, which contrasted strongly with Velleman's corporate talk. Heineken brought IML no doubt to try to shift the attention to the 'service provider'. This first media episode was articulated around conciliation at the NBCRFI on September 14th. For a third show (PowerFM, 21/09/17), Heineken sent a written statement repeating their investigation had just revealed the situation to them and that they were dealing with it. They also expressed 'regret' at CWAO not meeting with them. CWAO's media officer responded that Heineken seemed to want to meet everyone but their workers. Why else did Heineken not come to the NBCRFI?

Workers went back to PowerHour on November 7th (PowerFM, 7/11/17), the day of the first downing of tools at the factory, as well as on December 13th (PowerFM, 13/12/17) to discuss the CCMA case. The workers simply denounced their working conditions but in effect challenged Heineken's credibility. For example, Heineken continuously wrote and said it did not fire any workers. 'Stopped' workers responded live that they had not been allowed to work for weeks.

The workers also used the media to pressure Heineken in meeting them. They published an open letter on Facebook challenging what had been claimed by Heineken in the November 7th show. The letter concluded that since Heineken wanted to meet, the workers were available. Heineken yielded and proposed to meet on November 24th (see below).

The media process thus effectively pressured the company. As was the case for the legal proceedings, it relied largely on CWAO. The office proposed and initiated the media campaign. A series of articles were also published on Dutch online newspapers. Those were written by Dr. Femke Brandt, a Dutch researcher working at UJ and assisting in the Heineken campaign (Brandt, 2017 a;b;c&d) . The media process was thus not completely the workers doing. However, the workers rapidly expressed themselves directly on the radio and in the papers.

> *Interviewer: […] what are the best things CWAO does? The most positive ones in your experience.*
> *Edgar: Even if this thing of taking us to the radio, it was my first time. Yes.*
> *[…]*

I: You enjoyed that?

E: Yes. […] I've become more brave every day because I used to be very shy and be scared of meeting the management. Not knowing that what I want to say, but it was difficult. But now I can see that there is a progress each and every day.

Edgar, Interview 14/12/17

Although access to the media is clearly identified as coming from CWAO, the process is ultimately owned by the workers as they tell their own story. This process contributes to building confidence to face management.

In addition, the radio shows made the workers struggle visible to others. People calling in to the show shared similar experiences and linked labour brokering with modern slavery. A Mail & Guardian journalist picked up the story (Smit, 2017). At the end of October, CWAO was contacted by the Left Student Forum. They had heard the radio shows and wanted to help. On October 28, the group published a poster with the heading "Heineken is Black pain" on its Facebook page (Figure 6.1). The poster was a big success. It was shared almost 2000 times and reached well over a 100,000 people in only a few days. The poster was accompanied by a short text, explaining the situation, referencing one of the radio shows and calling for a boycott of Heineken. It is unclear if this had any effect on Heineken sales but it clearly got Heineken's attention.

Figure 6.1 LSF's 1st Facebook Post



On November 1st, Heineken SA, published a short comment saying they had reached out to the LSF and linked to a statement on their website (See appendix G). The statement reiterated Heineken's position: Heineken does not employ labour brokers. The CJK situation was resolved by offering all workers permanent employment under IML. Heineken's relation with Vericon 'had evolved" to a labour brokering one. Vericon workers were thus made permanent workers

of Heineken. The LSF stood by the workers. They had nothing to say to Heineken. If Heineken had anything to say, it should talk to its own workers. A second poster, a distorted Heineken ad, had less impact. The main difference between the two posters was that the first tapped into the Fees Must Fall repertoire. The students connected the Heineken struggle with their own political framework and received a response going well beyond what CWAO could have achieved alone. Heineken's response showed that the students are an important part of its (future) market, prompting the company to reply publicly.

The media campaign established a challenging narrative for Heineken. Especially during the first weeks, the company was completely taken aback and repeatedly had to correct its statements. The pressure was perceptible inside the factory as managers were under visible pressure. The campaign allowed workers to put out their story and to connect with broader social forces. The exploitation of the black working class, the lies of big companies and the links with apartheid connected the Heineken struggle with broader issues in South African Society. The students articulated this into their own political references, generating a powerful statement.

6.5.4 **Structural power**

Without us, no beer, no profit (General Meeting 28/10/17*)*

Although the labour broker workers are in a precarious position, mapping the workplace has shown they are a fundamental component of Heineken's productive process. Some of the workers – the forklift drivers in particular - are aware of their importance. However, they are also very scared to lose their jobs. In the process of claiming their rights, workers gained confidence and got angry. The workers made three collective attempts at exercising structural power.

At the end of October 2017, tensions at Sedibeng were running high. Workers had been growing anxious and angry about the new contracts the company wanted them to sign. The employers' attitude at the first CCMA meeting (2/11/17) only added to the anger and frustration. At a workshop (4/11/17) organised at CWAO to plan the strategy going forward, workers discussed a timeline of past events and actions. Then workers split up in groups to discuss and propose

an action plan for the future. All of them came back proposing a strike. Most were worried about how to get a protected strike.

On November 6th, IML managers addressed workers about the new contracts. The company announced that, by December 1st, "core" LSC staff would be made permanent under IML. After the meeting, workers gathered outside to discuss the situation. About 135 workers attend but none of the members of the interim committee were present. They were kept inside by a discussion with managers. Several CWAO organisers had also come to the factory, at the workers request. The ex-CJK workers and the 'non-core staff' were particularly angry.

They were discussing the situation when one of the main IML managers, Dada[19], interrupted the meeting and tried to intimidate the CWAO organisers into leaving. He told "his workers" not to stay there. Workers were so angry they decided to have a 'tools down' the next day. They would demand to talk directly to Heineken about the new contracts and about workers being moved to other workstations. The CWAO organisers explained the risks of an unprotected strike. The workers decided they would assess their strength in the morning. Depending on the effectiveness of their action, they would decide how to respond to the company's ultimatum. Against CWAO's advice, they also decided that the day and night shifts would gather outside the company gates, rather than inside, during the changing of shifts. The CWAO organisers decided that they would not arrive at 6am but a little later in order to let workers own their action and establish their picket before CWAO support arrived.

Two members of the interim committee came to the CWAO organiser after the meeting to explain why they would not attend the strike the next day. The organiser told them that they had to be there. Later some members circulated messages calling not to go through with the tools down. Workers referred to a previous strike under 'staff elite' were people got dismissed and said it would hurt 'the case'.

The next morning about 200 workers attended the strike. Although the strike evidently impacted production, some forklift drivers had gone to work. This made workers anxious: "we look divided". Workers displayed very different attitudes, some workers were chanting while others were staying as much out of sight as they could. Most members of the interim committee were

[19] Workers said he had been transferred to sedibeng to break the campaign.

absent. Some of them, however, were taking their responsibilities and going back and forth between management and the workers. After some discussion about receiving representatives, management denied them access to the grounds. Moments later, at 9.45am, the company issued an ultimatum giving workers 15 minutes to return to work. This statement generated panic. Leaders and CWAO organisers called on the workers to take a collective decision. While workers discussed the situation, some immediately hurried back in. The decision was to go back as a group singing, but managers forced them to go through the gate one by one. Later on, they tried to make workers sign warnings, which most of them refused.

This first mobilisation was a partial victory. The council showed they had a real capacity to call workers to action. But at the same time they failed to mobilise part of those who have the most workplace power: the forklift drivers. Workers understood that they had also shown divisions to management. Nonetheless, they had disrupted production by downing tools without getting fired. It is unclear if all the workers interpreted it as a victory. Fear and division seemed to have been the main lesson for most (but certainly not all of them). All in all, it was a first step and a long way from the frightened and divided workers who reported hiding in the toilets a few months before.

The second attempt at workplace power was a more spontaneous event. On November 24th, Heineken management and worker representatives had agreed on a meeting. Heineken had organised the meeting at a luxury estate about 15km from the brewery. About 80 workers went to the meeting. The ten representatives set up in the meeting room while other workers sat outside. Heineken management, although on the parking lot accompanied by IML and LSC managers, did not make it to the meeting room. After waiting for almost an hour, the owner of the venue appeared. She told the workers Heineken managers had left the venue without saying anything. After gathering back at Marikana, workers went to the factory gate and blocked the entrance. They demanded to meet Heineken management. After some negotiations, a local Sedibeng Heineken HR manager agreed to meet with the workers if they cleared the road. The meeting did not yield much. The Heineken manager refused to meet without the LSC and IML managers. After some discussion, the workers decided to leave. This second episode was an explosion of anger. Workers blocked the company doors for a short period and then waited for a long time for their representatives to come back. Divisions appeared again as a group of ten to twenty workers rapidly broke off and some later denounced the action for being unruly. Workers inside the factory did not come out.

A last action was held in January. Night and day shift workers met in the Heineken canteen to hear from their representatives what had happened at the pre-arbitration meeting at CCMA the day before. They refused to go back to work and demanded a meeting with Heineken. They were read an ultimatum for embarking on an unprotected strike. Managers also told them that the 198 case would take five years so this was really unnecessary. Workers returned to work and the night shift workers left. A few hours later, workers gathered again, they wanted an explanation for what had happened at CCMA. After management's intervention workers returned to work once more. A few hours later, two of the workers' representatives were accused of instigating the three 'strikes'. They were called to a hearing a week later. Both workers were dismissed mid February 2018 and have filed a case for unfair dismissal.

This last episode highlights two other aspects of the workers exercise of structural power. Firstly, the balance of forces had shifted. The end of January is a slower period. The festive season's peak has passed. Moreover, the media attention on the company had died down. This contrasted with a heightened sense of confidence in the workers. By striking spontaneously rather than in a prepared and planned way workers potentially misjudged their strength. This gave the company an opportunity to eliminate two of the core activists in the workplace.

The workers have thus experimented with the fact that they do have structural power in the workplace but have also been confronted with the deep running fear within the workforce. Moreover, they have not completely bridged the internal divisions regarding tactics. Finally, they learned the hard way that timing a strike and preparing it are as important as convincing people to lay down their tools.

6.6 Conclusion

The ongoing sequence of events at Heineken SA's Sedibeng brewery shows the interdependence between power resources. Informal associational power seems to be the first power resource workers used. With CWAO's assistance they strengthened it by mounting a campaign around section 198. Using the reinforcing dynamics between associational and institutional power, workers developed capabilities. Societal power in this instance is relatively external to the workers' immediate agency although the narrative remains under their control.

In the end, these dynamics did allow workers to deploy their power inside the workplace in small and bigger ways. Firstly, workers gained the confidence to challenge managers' decisions and the way they present events. Ultimately, workers felt strong enough to lay down tools. An expression of structural power most descriptions of "vulnerable workers" view as very difficult or impossible. This flowed out of the process of gaining confidence but also through acknowledging that these workers occupy a central position within production.

7 Conclusion

This report examines the ongoing struggle of labour-brokered workers at Heineken's Sedibeng Brewery. They demand to be made permanent and employed under equal working conditions with permanent workers at the plant. Through this specific case, the dissertation questions how precarious workers mobilise power, what kinds of power and to what end.

This case study confirmed many elements presented by the limited literature on precarious struggles (outside of institutionalised unions) (Dickinson 2017a). Workers respond to precarisation and externalisation through organising for integration into the SER framework. They do so in a way that challenges the established unions and the wider labour relations framework. This challenge to the status quo also disrupt employers' expectations of pacified and predictable engagement with the unions, in this case FAWU. As they are forced outside of the established framework of labour relations the workers are forced to rebuild organisation and mobilise power in creative ways. Finally, an essential part of discovering that power is the realisation that precarious workers represent a significant – a majority at Sedibeng – section of the workforce and that they play a central role in the production of value. The labour broker workers at Heineken's Sedibeng plant, as in other cases, demand permanent employment by the client for whom they work. They also demand that their working conditions be equalised with those of the permanent workers already under Heineken contracts. In other words, they struggle for full integration into the workplace and into the wider protective framework of South African labour relations. All these observations, are consistent with the trends exposed in the literature review (see chapter 2). Although a case study is exactly that, one case, this leads us to suggest that the dynamics at play at Sedibeng are part of a larger phenomenon.

If this is correct, then precarious struggles happening outside of the pacified and reasonably predictable framework of industrial conflict, and the study thereof, will gain in importance. I took a clear position of engaged research, wanting to produce knowledge and material that was of immediate use to the workers' struggle. The workplace map has been essential from that point of view, and I dare hope it might prove useful in the future for organising and research in this context. Indeed, faced with an extremely divided and fragmented workplace and workforce, the map provided an opportunity for a collective discussion on the production process. In doing so we produced a visual representation of the divisions engineered by management. This gave

workers, organisers and the researchers a real basis on which to start building power. First, because illustrating division made the case for unity. The map literally shows how all the workers are part of the same production process, a basis for the discussion on unity. In addition, understanding the production of value is an important part of building structural power since it showed how each worker contributes to the production of wealth *for Heineken*. Finally, the discussions around the map revealed enormous amounts of information on the working conditions and the day to day reality of the workers. This was important for the organisers and the research but also for the workers themselves by explicitly acknowledging that their plights were shared by others. In other words, the map, besides being a very interesting research tool, contributed actively to building associational and structural power. This of course should not erase some of the limitations of the tool and its implementation. In addition, it should be emphasised that we do not argue that it is a tool that can be used in any situation. It responded to a specific situation, one that is certainly not unique.

The workplace map revealed a deeply fragmented and segregated workplace. Years of companies competing for contracts at Heineken have pushed working conditions down and pressure on the workers up. The pressure is passed onto the workers by an authoritarian management. A strict hierarchy divides the workplace as workers under different companies experience different working conditions and statuses. In addition, workers are segregated in time and space: different companies are assigned different departments and work is organised around shifts, making communication in the workplace difficult. The externalisation of a large part of the Sedibeng workforce generates a system of aggressive surplus extraction and control. By having different employers for skilled, semi-skilled and unskilled workers, Heineken formally separates these workers from each other. The company then uses these divisions to justify different pay scales. In doing so it successfully avoids that the strong (i.e. skilled) workers lift up the working conditions of all, effectively preventing the kind of solidarity at the basis of the labour movement. In addition, by dividing the workers and pressurising the managers, Heineken insures the workers see no other solution but to accept continuously deteriorating working conditions while competing amongst each other for a larger piece of the crumbs. This situation produces a workplace and daily realities for the workers that show important continuities with the apartheid workplace. The Sedibeng Brewery is not racially segregated but workers are actively kept apart and divided in order to maintain the intense exploitative practices that bare strong resemblances with the exploitation of black migrant labour before 1994.

However, the usual assumptions that these workers are 'atypical and vulnerable', when analysing the Heineken Brewery, appear inaccurate and maybe even disempowering. Indeed, the labour broker workers are all but atypical. In fact, they represent a majority in the plant and the workplace map has shown how their work is central to Heineken's production of value. Correspondingly, these workers are not as helpless as they might seem. Workers are vulnerable in so far as they are on precarious contracts and that most –but not all of them- do relatively low skilled work. This makes confronting an agressive management difficult and dangerous but does not mean those workers are impossible to organise. Quite the contrary. Paradoxically, it seems the fragmentation of the workplace is what pushed workers to come together. It was mainly to address successive wage cuts that workers started to build associational power.

Workers continuously struggle to find ways to improve their situation. However, the divisions sown by the employers remains a persistent and resilient obstacle in the workers' way. This means building a collective and confronting an authoritarian management in the workplace is a difficult task. Associational and structural power are more difficult to build for these precarious workers. Through their alliance with CWAO the workers accessed external power sources: the law, the media and wider societal support. In addition, CWAO offered the workers training and support to develop the capabilities necessary to build unity, frame their narrative and start articulating a strategy. These in turn boosted workers' confidence and strength, feeding back into the construction of associational and workplace power. This role of connecting workers with a wider repertoire of power and helping them build the capacity to mobilise and use it would justify a discussion in itself. One that would play a role in the larger debate on the revitalisation of worker organising from below but that goes beyond the scope and ambitions of this research report.

Chapter 5 underlines how in the drive for organisation and unity, the use of the law, institutional power, played a central role. Section 198 validated the workers demands and gave them a way forward. In designating Heineken as the target, it raised the bar favouring unity and the confidence to come together and claim their rights. The legal process thus acted as a catalyst, giving workers access to power they did not think they had in the workplace. The legal process very much acted as the backbone of the process that allowed the workers to stop hiding in the toilets and to start confronting their employers, lecturing them on their rights, quoting articles of the LRA. However, the law is not designed for workers' power. It recognises only

individuals and ignores relations of power between groups. Moreover, it relies on procedures and rules that tend to give the advantage back to the employer. In addition, the law assumes workers are in a SER. In the end, the legal sphere appears as an area of conflict between competing interests. Hence, the law is a useful source of power but cannot be seen as sufficient to challenge the status quo.

Indeed, in the last chapter of this dissertation, I tried to emphasize the interdependence of different power resources. It was the informal network of workers that formed the basis of the workers campaign. But it was only when they managed to find a way –under CWAO's guidance – to use the law to help them grow and formalise their collective that their struggle started gaining trust. In conjunction with a national and international media strategy that allowed to mobilise larger societal forces, these external power sources effectively pressured the different employers. More importantly, they boosted the workers' confidence and fed into their organisational efforts inside the workplace. The workers used the legal proceedings to recruit other workers and strengthen their associational power. However, this was not sufficient to bring Heineken to make concessions. Indeed, if management was (initially) running behind the 198 case and trying to control the narrative in the media, managers remained strongly in control in the workplace.

Structural power remains the most difficult to mobilise for precarious workers. Despite a fragmented workplace and deep divisions, the difficult communication and authoritarian management, workers did manage to lay down their tools on three occasions. But even in the most effective one, internal solidarity and confidence were not sufficient for workers to feel strong enough to push the challenge forward. Arguably, the weakness in wielding structural power was compensated by the use of external power sources – societal and institutional. But it is the difficulty in completing their organisational structure – associational power – that undermined workers' ability to plan and execute united sustained workplace action.

To conclude, two maybe more theoretical points must be high lighted. Firstly, in this case, associational power occupies a central place. The process at Sedibeng starts and ends with the workers' collective. However, this challenges the definition given to associational power by the power resource approach. Indeed, Wright's (2000) definition of associational power seems to focus exclusively on formalised associations. I would argue this is a consequence of a too narrow focus on organisations (parties and unions) that were formed over a century ago and

have largely institutionalised. Indeed, it ignores how these associations were born. In a context of precarity, where organisation needs to be built from the ground up, ignoring looser organisational networks and their potential to articulate demands and mobilise power seems a shortcoming. This would also be of importance to the study of power in a Southern context where these organisations are often more recent.

The issue of the institutionalised unions' role, as it emerges from this case study, is related to the previous point. Indeed, if the Heineken labour broker workers have to rebuild associational power it is because the union doesn't help them and actually opposes them. I argue this is a consequence of the unions overreliance on institutional power, on their former glory. As capital restructured under the pressure of globalisation to use the labour relations institutions in order to circumvent their initial purpose, it successfully undermined the foundation of the union movement's power: their workplace organisation and capacity to halt profits. As unions became more reliant on the law and political influence, they became de facto defenders of a particular status quo, excluding a growing number of precarious workers and ignoring the balance of forces that yielded the institutional compromise on which they were standing was crumbling. As a result, those workers see the unions as an element of the institutional framework: useful as long as on the inside, but an obstacle to their actual integration.

CWAO's action aims at "rebuilding a new workers' movement across sectors". Partly as a consequence of the realities described in this study, it sees precarious workers as the dynamic element that has no choice but to challenge the status quo enforced by the institutionalised unions. It focusses on strengthening the loose associational power most of these workers already have. In doing so and as this case study shows, precarious workers' organise and mobilise power but they do so outside or on the fringe of a system that excludes them almost by definition.

These conclusions cannot be blindly generalised but they undoubtedly speak to a larger picture. The success of the – one-time – connection with the Fees Must Fall movement speaks to the resonance of these workers' struggle in wider South African society. Similarly, the growth of precarious work and the potential multiplication by precarious workers of demands to be integrated into the society they have been excluded from, bears with it the question of how long the system can bear the pressure and integrate those that break through. Similarly, the revitalisation of worker organisation from below brings with it questions for the model of

industrial unionism that has dominated the South African labour movement for at least thirty years. It could be renewed or replaced, it seems to be to soon to tell and one case study does provide a sufficient basis for such a discussion. However, it seems quite clear that it is and will be challenged.

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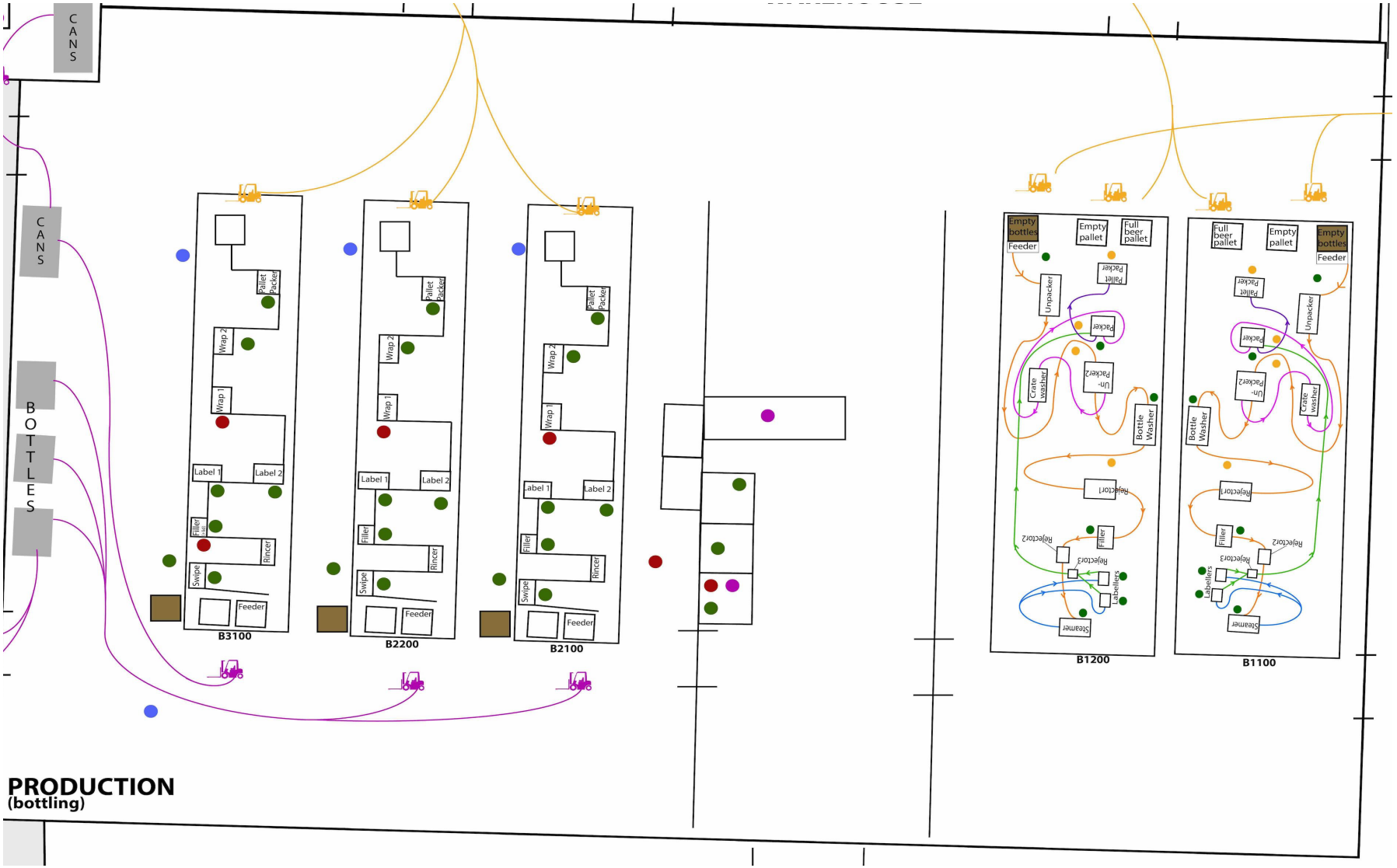
Appendix A: Workplace map[20]



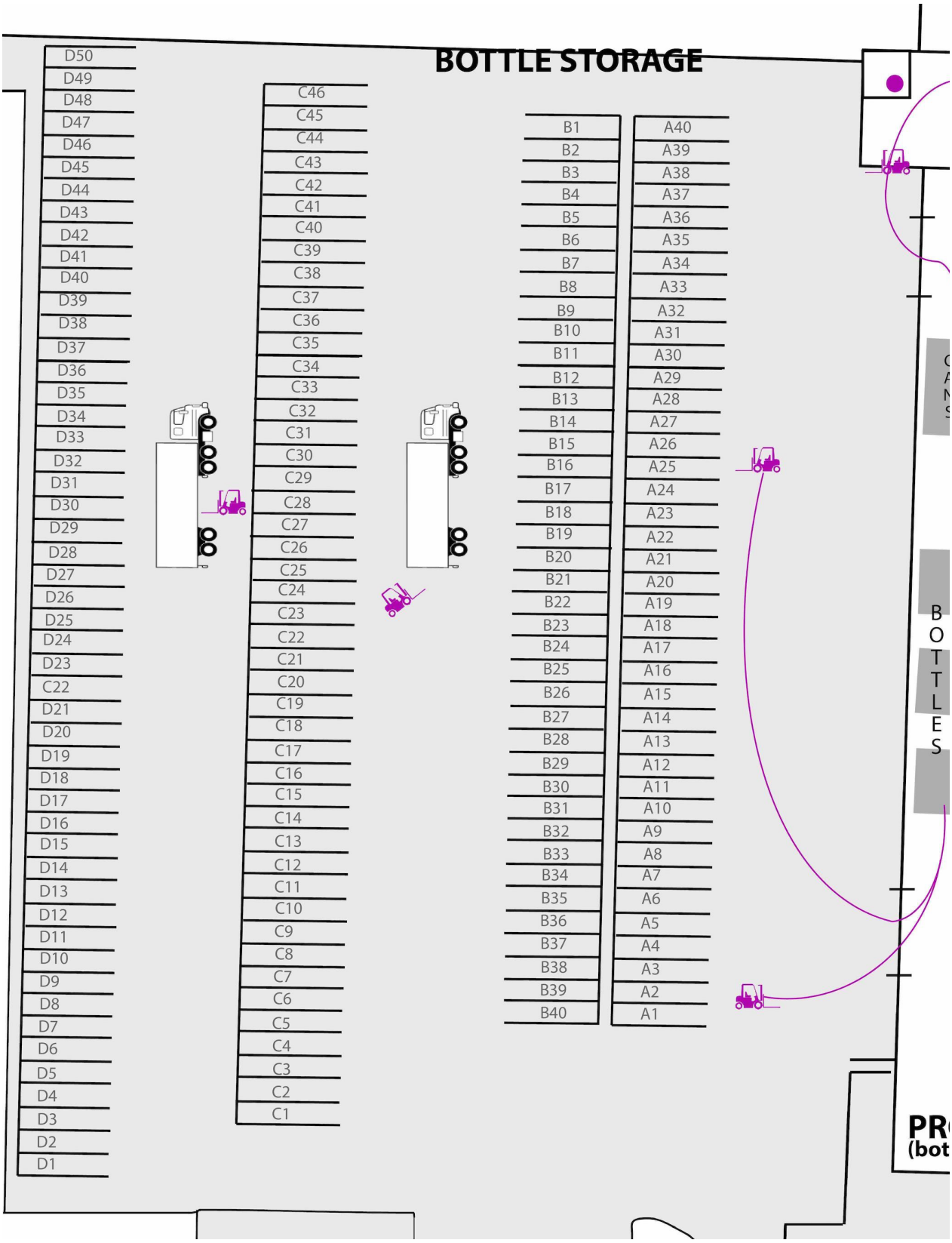
Englert 2017
Source: recomposed from workplace mapping sessions with heineken workers

[20] A digital version can also be viewed here: https://drive.google.com/file/d/1uYCVPRz04BgC2Z-_zMJtOe9xctm8Lo-W/view?usp=sharing

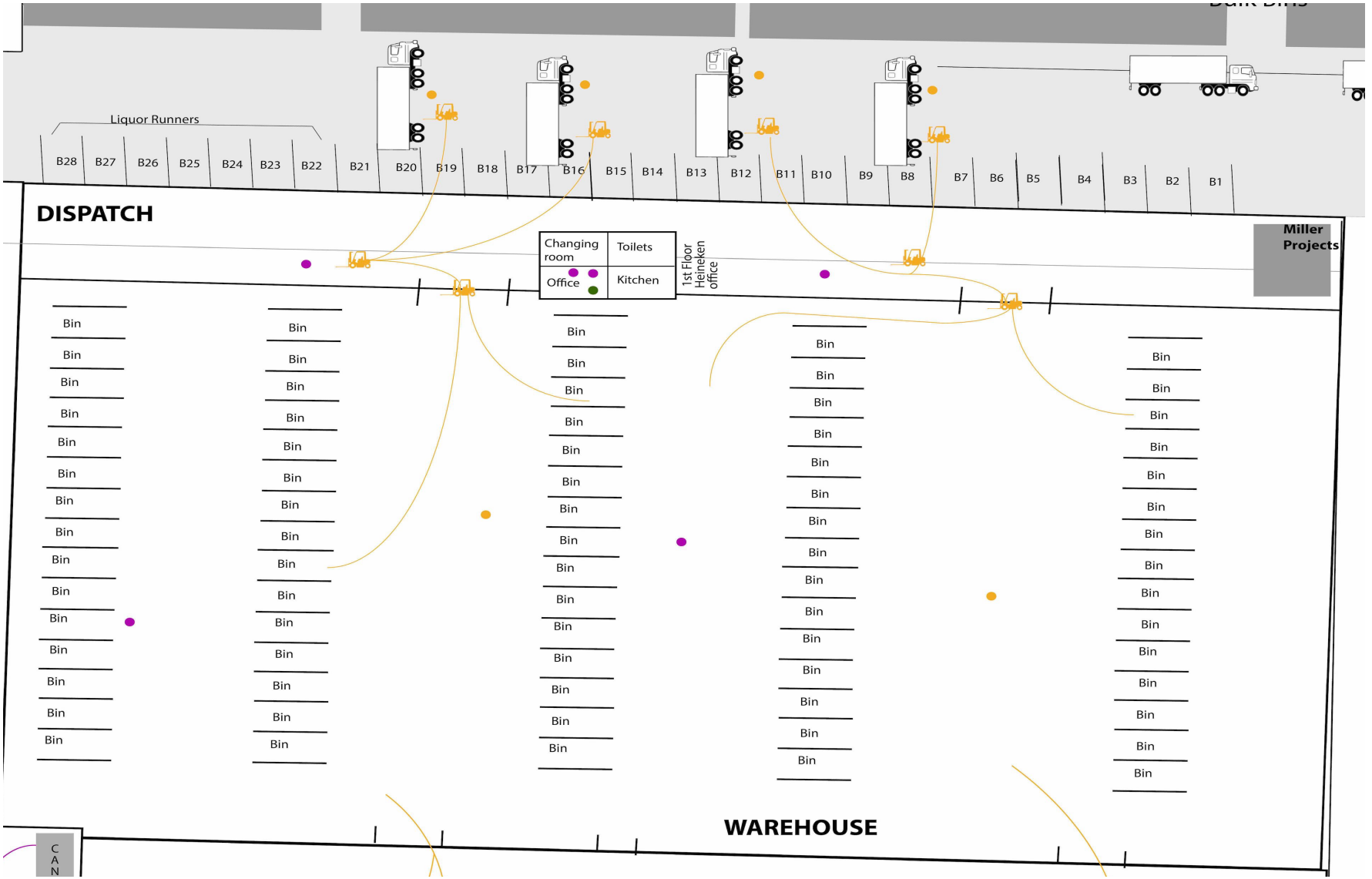
Appendix B: Map Bottling section



Appendix C: Map Bottle storage



Appendix D: Map – Warehouse & Dispatch



Appendix E: Map – Returnables



Appendix F: Pamphlets

Pamphlet #1

WORKING FOR LABOUR BROKERS MEANS HIDING IN THE TOILETS! We say ENOUGH!

LSC, CJK, Vericon, Equal Runners and even Imperial we are sick to be forced to hide, to work for smaller wages without all the benefits permanent workers have. We are tired to spend most of our salary just to come to work. We all know what it means when they hide us from visitors. They are ashamed of how they treat us, because they know it is wrong.

WE ARE ALL HEINEKEN WORKERS, WE WANT TO BE TREATED AND PAID THE SAME.

They give us different uniforms and salaries to divide us but we suffer the same problems. All forklift drivers suffer under the pressure because we are too few to do all that needs to be done. All overpackers wait for the pallets to come. We all fear the yellow card.

Some of us have been at Heineken for years, under different Labour Brokers but always under Heineken. We don't want to be offered fake promotions from one labour broker to another. They keep us apart with crumbs, when **we should all simply be permanents**. The law (section 198 of the Labour Relations Act) says that if we have worked three months for Heineken they must make us permanent under the same conditions as the permanents.

We don't want to hide anymore, we demand that Heineken respect the law. All workers must join this campaign. No more divisions, united we are strong! Talk to your comrades, share your demands, and organise.

PHANSI LABOUR BROKERS PHANSI!

MAKE ALL LABOUR BROKER WORKERS PERMANENT WORKERS OF HEINEKEN NOW!

Join the campaign contact us: 079 561 59 03.

Pamphlet #2: 17 September

MASS MEETING

FOR ALL LABOUR BROKER WORKERS AT HEINEKEN

DATE: SUNDAY 17 SEPTEMBER
TIME: 10 A.M.
WHERE? HEINEKEN ENTRANCE

We call on all workers from **Imperial, Bidvest Vericon, CJK, LSC Masakhe, Liquor Runners** and any other labour brokers to a mass meeting.

EVERY LABOUR BROKER WORKER MUST JOIN THE CCMA CASE TO BE MADE PERMANENTS OF HEINEKEN!

Section 198 of the LRA says that after three months of work all labour broker workers must be made permanent workers of the client company only. We have worked at Heineken for much longer than three months! The time is now for all labour broker workers to unite to demand that Heineken obey the law and recognise us their permanent employees!

The bosses are scared because the media has exposed Heineken's exploitation. The bosses are now trying to make us sign new contracts with different labour brokers. They are lying when they call them "service providers". We must demand contracts with Heineken only!

WE MUST BE TREATED AND PAID THE SAME AS HEINEKEN'S PERMANENTS!

Section 198 also says we must be paid the same as Heineken's current permanent employees. At the mass meeting we will collectively draw up a list of demands to be equalised with Heineken's permanents.

SIMUNYE WORKERS FORUM

BUILDING UNITY ACROSS SECTORS TOWARDS A NEW WORKERS MOVEMENT

Pamphlet #3 creation of the HWC (mid October)

HEINEKEN WORKERS COUNCIL:

OUR VOICE FOR A UNITED STRUGGLE

Since we demanded our full rights as permanents of Heineken, a lot is happening at the Sedibeng plant. Heineken is restructuring the workplace. Workers are stopped from working, dismissed, and transferred. We want this to stop.

We are not members of FAWU. FAWU cannot have meetings with Heineken in our name. FAWU only represents a minority of the workers. We want to represent ourselves. That is what we will do on the **2nd of November, when we present our case at the CCMA.**

The boss says we are not recognised. This is a lie. The Labour Relations Act (LRA) says that **"any group of workers who joins together in order to engage the bosses is a 'trade union'".** We, the labour broker workers, are organised to represent ourselves: we form the **Heineken Workers Council**. Soon we will elect our representatives and adopt our constitution. **Any decision affecting us must be taken to our Council!**

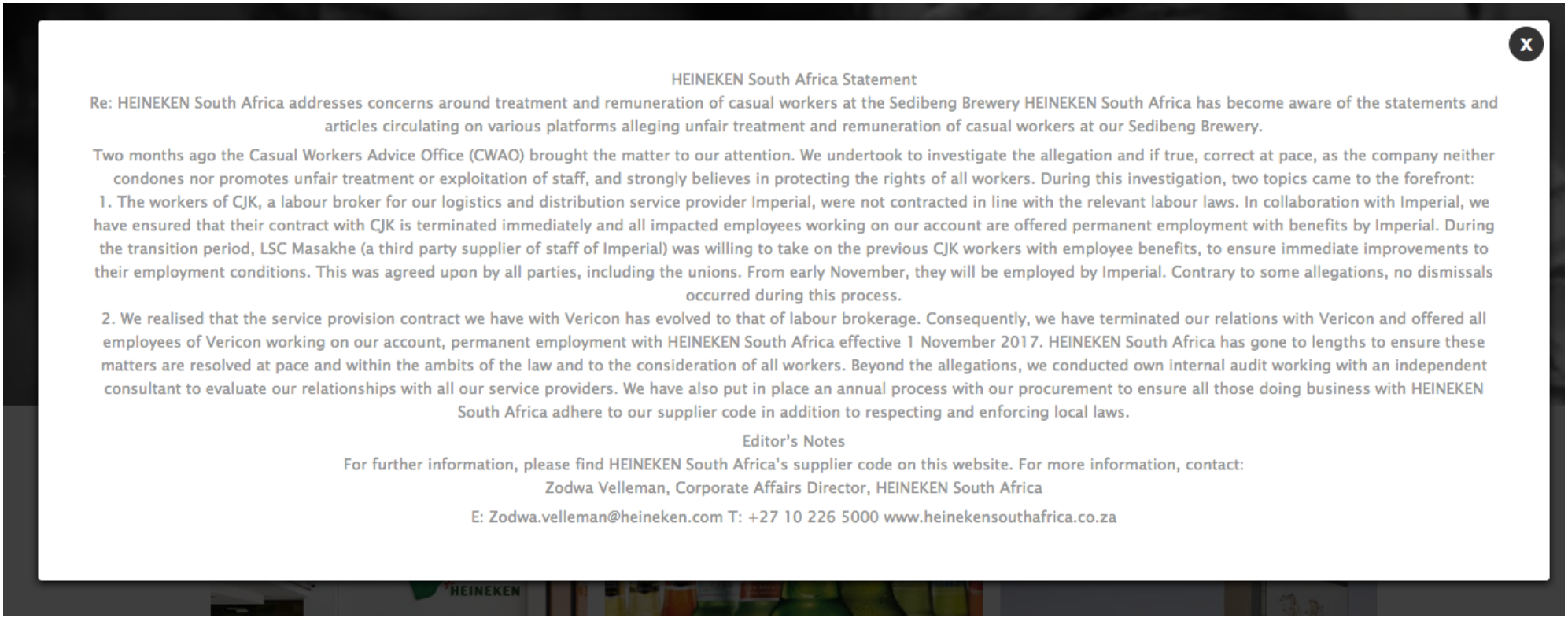
In the meantime, the Council has an interim committee to engage Heineken on urgent issues. Most importantly, we want an end to comrades being stopped and moved. We stand together in solidarity with comrades who are targeted!



We are Heineken workers. Heineken must respect Section 198 of the LRA and recognise us as permanent workers.

Join the Workers Council. United we are strong. Say no to division! Forward with the struggle! 100% permanent Heineken workers and nothing else!

Appendix G: Heineken statement (1 Nov 2017)



HEINEKEN South Africa Statement

Re: HEINEKEN South Africa addresses concerns around treatment and remuneration of casual workers at the Sedibeng Brewery HEINEKEN South Africa has become aware of the statements and articles circulating on various platforms alleging unfair treatment and remuneration of casual workers at our Sedibeng Brewery.

Two months ago the Casual Workers Advice Office (CWAO) brought the matter to our attention. We undertook to investigate the allegation and if true, correct at pace, as the company neither condones nor promotes unfair treatment or exploitation of staff, and strongly believes in protecting the rights of all workers. During this investigation, two topics came to the forefront:

1. The workers of CJK, a labour broker for our logistics and distribution service provider Imperial, were not contracted in line with the relevant labour laws. In collaboration with Imperial, we have ensured that their contract with CJK is terminated immediately and all impacted employees working on our account are offered permanent employment with benefits by Imperial. During the transition period, LSC Masakhe (a third party supplier of staff of Imperial) was willing to take on the previous CJK workers with employee benefits, to ensure immediate improvements to their employment conditions. This was agreed upon by all parties, including the unions. From early November, they will be employed by Imperial. Contrary to some allegations, no dismissals occurred during this process.

2. We realised that the service provision contract we have with Vericon has evolved to that of labour brokerage. Consequently, we have terminated our relations with Vericon and offered all employees of Vericon working on our account, permanent employment with HEINEKEN South Africa effective 1 November 2017. HEINEKEN South Africa has gone to lengths to ensure these matters are resolved at pace and within the ambits of the law and to the consideration of all workers. Beyond the allegations, we conducted own internal audit working with an independent consultant to evaluate our relationships with all our service providers. We have also put in place an annual process with our procurement to ensure all those doing business with HEINEKEN South Africa adhere to our supplier code in addition to respecting and enforcing local laws.

Editor's Notes

For further information, please find HEINEKEN South Africa's supplier code on this website. For more information, contact:

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E: Zodwa.velleman@heineken.com T: +27 10 226 5000 www.heinekensouthafrica.co.za

Appendix H: Brands at Sedibeng

		Can (ml)			Bottles (ml)					Kegs			
		330	440	500	330	440	650	660	750	5l	20l	30l	50l
Heineken		V	V		V		V			V	V	V	
Windhoek	Draught		V			V		V			V		V
	Lager	V	V		V			V					
	Light	V			V								
Amstel	Lager	V	V		V			V			V	V	
	Lite	V	V		V			V					
Miller Genuine draft				V	V								
Smirnoff	Pine Twist					V							
	Spin							V					
	Storm							V					
Strongbow	Dry		V		V								
	Gold		V		V								
	Red Berries		V		V								
Soweto Gold				V					V				
Tafel			V		V								
Sol					V								

Source: Heinekensouthafrica.com, worker checklist and workplace mapping

Appendix I: timeline

Date	Institutional	Structural and associational	Societal	Company
2009				
	launch of Sedibeng operations			
2010				
				first labour brokers introduced. Bidvest Vericon takes over the workers at Sedibeng workers loose R1300 wage
2011				
2012				
		Workers join FAWU to protest too low wages		salary reduced from 23R/h to 17r/h in passing to Imperial retail solutions
2013				
	NBCRFI case against Staff Elite following unfair dismissal for demanding their wages - workers are reinstated with back pay (never paid)			
2014				
2015				
				arrival of IML and LSC
2016				

2017				
FEBRUARY				
				permanents strike
JULY				
???		Workers come to CWAO		
AUGUST				
		factory visits?		
30-Aug		meeting on working conditions and strategy at cwao: decision to launch a case, a media pack and boost organisation		
SEPTEMBRE				
02-Sep		SWF 1st pamphlet: "hiding in the toilet"		
06-Sep			Meme M (CWAO), Zodwa V (Heineken) & Katishi M (FAWU) on Power fm	
07-Sep			first article dutch media "de bittere nasmaak van Heineken"	

08-Sep		Meeting at sedibeng: workers decide to leave FAWU		
10-Sep			second article dutch media "wantoestanden in brouwerij"	
12-Sep			Ronald W (CWAO), 2 workers, Zodwa V (Heineken), K Masemola (FAWU) on Power fm	
14-Sep	Conciliation at NBCRFI employers don't show up. No live dispute, 198 is your right	debrief with present workers and discussion about meeting Heineken the same day		
15-Sep				FAWU starts a process to have 34 Vericon employees made permanent
16-Sep		SWF workers debrief the latest events and decide to call a mass meeting for Sunday 24 sep (second pamphlet) at Sedibeng (Marikana). Workers worry about unity in the face of new contracts, Vericon and CJK rollup		IML starts presenting new 'permanent' contracts to workers
19-Sep		CWAO: Decision to shift away from NBCRFI to be submitted to the workers		CJK fired from the company. workers offered 1month temporary contracts with LSC
20-Sep		CWAO organisers meet with 80 workers to discuss the new contract issue. They decide to wait for the mass meeting		management tries to sabotage the meeting (change lunch hour etc.)

21-Sep		CWAO strategy meeting: letter to IML--> live dispute, discuss the FAWU/Vericon situation--> petition	Ronald Wesso (CWAO) alone to Power Fm + written statement by Heineken SA: respect the law, IML service provider, in dialogue with CJK, audit of service providers	
24-Sep		first mass meeting at Marikana Sedibeng: difference between 197 to IML and 198 to Heineken, not signing new contracts or write don't agree. Not FAWU --> by being a group you are TU. Service provider issue		
30-Sep	Letter to Heineken: live dispute.	Mapping exercise.		
OCTOBRE				
06-Oct				Letter saying Heineken deals only with FAWU
09-Oct			Second article in Dutch media: "bittere nasmaak heineken deel 2"	
13-Oct	Case referred to CCMA			
14-Oct		SWF: workers worried about IML and FAWU striking a deal. Workers being moved around. Discussion on ways to put pressure outside of the long legal process unity, communication, not rely on CWAO)		company moves workers around especially out of 'production'.

16-17-Oct		CWAO discusses the need of helping workers to stand on their own and not think CWAO brings the answer --> organising workshop		reports of corruption and sexual favours in exchange for jobs
				ex-cjk workers are being "stopped": labour pool, no work no pay
20-Oct		Workshop on organising and the need for an formal association: creation of the Heineken Workers Council and appointment of an interim committee pending elections and adoption of constitution		
22-Oct		Pamphlet: Heineken Workers Council		unsure of exact date, Vericon workers permanent under Heineken
25-Oct	Meeting with attorney 1: puts pressure on the workers doesn't listen, workers discouraged			
26-Oct	CWAO meeting with LHR. Accepts to take on the case.			
28-Oct	distribution of a questionnaire aiming at collecting information about the employment relations and their history at Sedibeng breweries	Meeting at Sedibeng: 50 workers attend. Representative from cleaners (prestige). Discussion on the upcoming conciliation (lists) at CCMA and need for action. First mention of strike and mass protests. Some division around stopped workers.	LSF FB post: Heineken is black pain poster with call for boycott (2000 shares over 100'000 reached)	

30-Oct	Wayne meets workers. Share their employment history and working conditions to prepare testimonies for CCMA			
NOVEMBER				
01-Nov			Mail and guardian publishes an article online on the conflict at Heineken and the working conditions. Paper version next day (without section on FAWU) second LSF post: Santa has elves, Heineken has slaves	Heineken SA releases a statement on its website and responds to LSF on FB (does not condone unfair treatment of LB workers). CJK now permanent under IML, Vericon became LB thus made permanent. Officially workers are to be made permanent under IML on this day
02-Nov	Conciliation at CCMA Vaal: company contests the list accuses CWAO of making a fake. Says IML is service provider. Refuse CWAO presence + FAWU brings letters from 4 workers not wanting to be in the case. Commissioner asks for a clean list within 7 days	Workers are angry about the company raising technicalities. The ne contracts contain probation periods when they have worked there for years.		
04-Nov		Strategy meeting: based on a timeline workers examine what has been done, how the company responded. Workers discuss the need for a protected strike		

06-Nov		Workers meet outside with CWAO organisers to discuss the situation. The project workers (ex-cjk, non-core staff) are angry. Workers decide for a strike the next day		Company gathers all workers from day and then from night shift and announces the 'core' staff will be made permanent under IML. IML manager (dada) tries to break up the CWAO meeting outside.
07-Nov		Part of the Day shift refuses to enter the factory and is joined by exiting night shift. 200 workers in front of the gate. At 9.45 ultimatum, workers go back inside. Given warnings most don't sign them	CWAO, Heineken, IML & two workers on power fm	
09-Nov	cleaned up list at CCMA			
11-Nov		SWF: mostly stopped workers anxious about not getting work? Decide to show up for work on Monday. CWAO will come to assist. Decision to write an open letter to Heineken		New workers hired for projects (first report) date unclear.
12-Nov		open letter to Heineken denouncing what was said by Zodwa Velleman and Lucky Kulube on power fm on the 7th + accepting a meeting	discussions with LSF on how to continue campaign	

13-Nov	referral of second case to CCMA Vaal.	CWAO organisers accompany stopped workers to work. With the support of CWAO, workers call their representatives to order for attending a meeting without mandate.		Try to chase CWAO organisers away. IML and LSC management call in worker representatives, impose an agenda for a meeting ("normal" workplace issues) and tells them to abandon the stopped workers case. IML refuses to let the stopped workers on site, DADA (IML says no projects have come in but they will come soon .
15-Nov		Workshop on the HWF: focus on mandates and internal democracy. Role play of negotiation with management.	4th article in Dutch media: "de bittere nasmaak van Heineken in ZA deel 3"	
17-Nov				Heineken accepts to meet by responding to the open letter on the CWAO Facebook page
18-Nov		Meeting at Sedibeng (Marikana): 35-50 workers. Main discussion is how to deal with the Heineken meeting		
21-Nov				The core staff are offered new contracts under Heineken. They are told if they don't sign they will be dismissed.

22-Nov		Workplace mapping. Workers prepare for the 24th and discuss what they want from Heineken. 3 demands 1) all workers permanent under Heineken with equalisation. Immediately: 2) reinstate all stopped workers with back pay 3) suspend the manager who trades job for money and sexual favours		
24-Nov		meeting with Heineken: 80 workers accompany their 10 representatives. Workers meet 1h before. After being ditched workers gather at Marikana then decide to protest and demand Heineken meet them. After blocking the gate for a short time, a Heineken HR accepts to meet them. When they refuse to meet without IML, workers leave.		Heineken accompanied by IML moves the meeting to a lodge 15 km from the factory. When they realise workers came with supporters they leave without telling the workers
25-Nov		debrief 24th + planning the way forward.		
28-Nov		15 workers meet at CWAO, prepare to go to Heineken HQ to demand their jobs.		
30-Nov	LSC objects to arbitration for the first case.	Stopped workers go to Sandton and get a meeting with Heineken SA Personal assistant.		

DECEMBER				
04-Dec	Conciliation second case. Only LSC shows up. workers fend for themselves; while LSC brings up same arguments as first case: service provider, list, jurisdiction	15workers attend		
07-Dec		preparation meeting for arbitration first case, go over testimonies and prepare posters		
08-Dec	conarb (LSC opposed to arbitration). Employers bring up list again. About 80 workers present. Heineken and LSC preliminary points: authenticity list, CCMA no jurisdiction, representation, service provider; Resolution commissioner: new consolidated list (with signatures) by 19th of December			
13-Dec			Three workers go on power fm	
19-Dec	new consolidated list			
2018				

JANUARY				
15-Jan				Worker dismissed (refused to sign new contracts)
19-Jan		11.00 Sedibeng meeting		
23-Jan	12.00 PRE-ARB s198 case: Only 268 workers are in the case. Service provider issue for arbitration.	70 workers attended		IML manager threatened worker because she came while she had to be at work. Says she will be fired
24-Jan		Work stoppage Sedibeng: workers demand Heineken (zodwa) come and explain what is going on at the CCMA		gives an ultimatum. Later in the day gives two workers get a notification for a hearing
25-Jan		Lunchtime meeting Sedibeng		
FEBRUARY				
thu 25		Visit OVB		
Fri 2				Disciplinary hearing W1
Sun 4		CWAO meeting with workers		
Fri 9		Sedibeng meeting		Workers locked in
				W1 dismissed according to date report (she is only notified the 19th)
Tue 13		CWAO meeting about Heineken case		W2 disciplinary hearing

Appendix J: Survey

Heineken Workers 198 Information sheet			
We have to show you have worked at heineken for a long time and that in fact is heineken who organises your work (tools, discipline, ...). We Also try to compare your working conditions with heineken workers because 198 says you should be treated equally with someone who does a similar job than you.			
Name		Surname	
Adress			

Department		Job (forklift, checker, sorter,...)	
Salary		Benefits you receive	

Are there permanent Heineken workers who do similar work as you? Or do you sometimes do the work of permanent Heineken workers (during lunch, when someone is sick or on break,...)?
What tools (forklifts, helmets, scanners, ...) and equipement do you use? Who do they belong to?

Employment history at Sedibeng/ Heineken	
When did you start working at Heineken Sedibeng brewery	

Can you make a list of all the companies you worked under since you are at Sedibeng with dates?
example: I started for Heineken in 2009 then Working solutions in 2010 then Vericon in 2012 then Imperial in 2015

Did you get any training? When and by who?
example: I got security training from a heineken trainer in2010. Forklift training by vericon teacher in 2014.

Can you list all the people who give you orders at work and who they work for?
example: At the begining of every shift Willem the heineken team leader briefs us. During the shift Tshepo from Heineken takes pictures. My team leader is Sizwe from LSC but the heineken team leader always tells me something else. When I have a problem I go to the imperial site manager. And so forth
Who disciplines you and who do they work for?
Who checks if you respect all rules, Gives you yellow cards, who is there when you need to explain yourself?

Is there anything else you think is important and we should know about?

Appendix K: Interview schedule Workers

Where were you born?

Where did you go to school?

Where did you before coming to Heineken?

How did you start working at Heineken?

What kind of jobs did you do?

Did the organisation of the brewery change since you started?

Can you tell me a bit about your experience with FAWU?

Is CWAO different (if yes how)?

How did you find ou about CWAO?

Is there anything you think CWAO should have done differently?

What is management's strategy to counter the case in your opinion? What do you think is the workers best strategy to win?

Did you participate in other protests before?

Are you a member of any associations or groups in your community (church, sports club, political,…)

Do you have any questions?

Appendix L: Interview schedule CWAO organisers

Since when do you work at CWAO? How did you come to work here?

Can you tell me a bit about what you did before?

How would you define CWAO and can you tell me a bit of its history as you lived it?

How does CWAO work? What is your role in the CWAO project?

Why do you think CWAO is different?

Do you think the workers that come here are different from others? Why?

What does CWAO bring to those workers?

How do you approach organising? Do you have specific techniques?

What's your best experience with CWAO?

What's your worst experience with CWAO?

How do you see trade unions? And CWAO relationships with unions?

What do you see as the things to strengthen CWAO in the future?

What are the biggest problems/threats?

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Interviews:

- **Workers:**

Jacob, worker interview, 05/12/17
Senzi, Worker Interview
Edgar, worker interview, 14/12/17

- **Informants:**

Ighsaan Schroeder, CWAO, Interview, 11/05/17
_____, 06/06/17
Rob Rees, NALEDI, interview, 22/06/17
Prichett Makjola, FAWU, interview, 27/09/2017
Jane Barett, WIEGO, interview, 06/12/17