

https://dspace.org/

Precarious workers, the casual workers' advice office and the 2014 labour relations act amendments

Lenka, Lefa

2017

https://hdl.handle.net/10539/26014

Lenka, Lefa (2018) Disaggregating the precariat: precarious workers and the 2014 labour relations act amendments, University of the Witwatersrand, Johannesburg, https://hdl.handle.net/10539/26014

Downloaded from a DSpace repository. https://dspace.org/

UNIVERSITY OF THE WITWATERSRAND

SCHOOL OF SOCIAL SCIENCE

FACULTY OF HUMANITIES

Precarious workers, The Casual Workers' Advice Office and the 2014 Labour Relations Act Amendments.

Lefa Lenka

Declaration

I declare this thesis is entirely my own work except where otherwise indicated. It is submitted for the degree of Masters in Industrial Sociology to the University of the Witwatersrand.

This thesis has not previously been submitted for any other degree or examination to any other university or seat of learning.

Approximate number of words: 22223 (excluding Bibliography)

Lefa Lenka

15 October 2017

Acknowledgements

I would like to express my gratitude to workers who made it their mission to fight their own precarious conditions around the country and those who, despite a decline in confidence in their unions, chose to stand and fight for justice against their employers. Community Advice Offices and the Legal Aid offices play a very significant role in the lives of many workers and communities around the country and I would like to recognise their hard efforts in doing what they do and make it possible for the poor to access justice; this includes National Alliance for the Development of Advice Offices (NADCAO) and Alliance for Community Advice Offices of South Africa (ACAOSA). I would like to express my deepest and special gratitude to the CWAO director (comrade Ighsaan Shroeder), Bongani, Thabang, and all Casual Workers Advice Offices (CWAO) staff for the courage of their job, prompt assistance and warm welcome at CWAO. David Cartwright Attorneys play a very huge role at CWAO and I would like to recognise their work. More importantly, thanks to casualised workers at CWAO for their warm welcome, willingness to share their stories with me, for both formal and informal engagements we had and for making this research possible. I would also like to send my deepest gratitude to Carin Runciman and Komnas Poriatzis for their engagements and insights.

My special and deepest gratitude goes to my supervisor, Dr Paul Stewart, for his insightful feedback, guiding me throughout and making the shaping of this thesis possible and meaningful. I would also like to thank Dr Ben Scully for his meaningful advice and suggestions.

My greatest gratitude goes to workers from many companies who attend the meetings at CWAO for the courage they took in the face of oppressive employers. Your unity and courage inspired me and you have shown that power is in unity and knowledge. The legal struggles you have taken have inspired and given hope to many workers who had thought it was impossible. My special thanks to Ntombi Dladla whose story inspired many workers and shown that it is possible to make gains through the legal route.

1 Introduction 1
2 Literature Review 12
2.1 Flexibilisation and casualisation 12
2.2 The precariat vs permanent employment 15
2.3 Social distance and failure to organise precarious workers 16
2.4 Consequences of Social Distance 19
2.5 Workers Advice Bureaux and precarious workers 22
3 Ethical Issues 23
4 Conceptual Framework 25
5 Methodology 30
6 Labour developments leading to the 2014 LRA amendments 33
6.1 Historical background 33
6.2 The Wiehahn Commission 34
6.3 1993 labour inclusions 36
6.4 The LRA 1995 36
6.5 The LRA 2002 37
7 Findings 40
7.1 2014 Amendments 40
7.1.1 Deeming clause 41
7.2 Workplace challenges for precarious workers 44
7.2.1 Short contracts 44
7.2.2 Divisions between permanent and non-permanent workers 45
7.2.3 Divisions among the precariat 47
7.2.4 Working hours 48
7.3 Casual Workers Advice Office 49
7.3.1 Background to CWAO 49
7.3.2 CWAO Case Study and Worker Education 50
7.3.3The role of CWAO in the labour movement 52
7.4 Cases of Precarious workers 54

7.4.1 Ntombi and 200 precarious workers....55
7.4.2 Common struggles of workers at CWAO....58
7.4.3 Case of P&G workers....59
7.4.4 Case of United Pharmaceutical Distributors Workers....60
7.4.5 Pick n Pay Assist Bakeries case....62
7.4.6 General findings....63
8 Conclusion....66
9 Bibliography....70

1 Introduction

The legacies of colonialism, segregation and apartheid powerfully shaped South African labour relations. South African industrial relations had previously been governed by the corporatist Industrial Council system, but it was the bargaining rights that were afforded to the black trade union movement in the 1970s to early 1980s, leading to the Wiehahn Commission, which came to shape both late apartheid and post-apartheid South African labour relations. In the history of South African labour legislation, in attempting to accommodate certain categories of workers, there have always been certain categories of workers left out. The Wiehahn Commission was clearly the first step, under apartheid, in revamping South African labour relations (Lichtenstein, 2013). With the Wiehahn recommendations of 1979, however, certain sections of workers (such as farm and domestic workers) were not included in the definition of 'employee' and further categories such as educators and public service workers were not protected by subsequent labour laws. This remained the case after the Labour Relations Act of 1981.The further subsequent LRA Bill of 1987 was to reverse the rights previously won by black workers; however, this bill was met by massive resistance from the labour movement in staging a three day stay away opposing the proposed bill by the Department of Manpower (www.saha.org.za). The above categories of workers were only covered by the law in 1993, but domestic workers remained excluded even after 1993. It was only after 1994 that domestic workers were incorporated in the labour legislation (du Plessis and Fouché, 2012).

Section 198 of the 2014 Labour Relations Act extends rights to workers doing precarious work, however, workers in the informal economy such as street traders and those workers doing piece jobs/part-time working at different employers at different times remain excluded from legislative protection as they are not registered as employees. This is also because part-time workers who work less than 24 hours per month are automatically excluded from the provisions of the labour laws. Furthermore, although part-time workers have an employer and/or a single workplace, the majority of these workers engage in piece jobs, are paid on a daily basis and are not registered, nor have contracts of employment. This is often the case with domestic workers such as

gardeners who enter into a part-time form of employment but are not registered by that particular employer.

The post-apartheid government made attempts to address the exclusion of certain categories of workers by promulgating the Labour Relations Act 66 of 1995. This legislation was accepted by the labour movement and business. Prior to the promulgation of the LRA 66 of 1995, there had been economic restructuring in the 80's which created new categories of workers that came to be excluded from legislative rights and protection.

These legislative developments coincided with the global trend whereby capital began to adopt new methods to rejuvenate itself and to avoid legislative burdens in attempting to meet global competition. This included outsourcing, contracting, casualisation and labour broking. Due to these forms of atypical or non-standard forms of employment, organised labour was organisationally challenged and the question as to who constituted an "employee" came again to spark debates with the promulgation of the Labour Relations Amendments Acts of 2014 (Labour Relations Amendments Act of 2014). For while the Wiehahn recommendations were adopted to enable the skills shortage to be met through black cheap labour to meet the demands of capital and control growing unionisation and worker resistance, there were many reasons influencing the adoption of the Wiehahn Commission. The post 1973 "Durban moment" organisation of black workers, and the bulk of formally black workers' unions were finally accommodated after the Wiehahn Commission. While workers such as educators, public service, farm and domestic workers were all covered after the LRA 66 of 1995 and transition to democracy, not all workers were adequately covered and legally protected. Under this first LRA under democracy, before it was amended, not all workers were defined as 'employees' in terms of the LRA and hence were not protected, nor benefited from the rights and privileges as enshrined in the legislation. The LRA 66 of 1995 defines an employee as "any person, *excluding* an independent contractor, who works for another person or the State and who receives, or is entitled to receive, any remuneration"; and "any other person who in any manner assists in carrying on or conducting the business of an employer" (Labour Relations Act 66 of

1995: 216). Despite the broadness of this definition, many workers still found themselves vulnerable and excluded as a result of the ever-growing informalisation (Lichtenstein, 2013; Labour Relations Act Amendments, 2002; Kenny 2009). The definition of employee in the LRA of 1995 is the same as the one provided in the Industrial Conciliation Act 28 of 1956, except that the 1956 Conciliation Act explicitly expresses that it applies to "any person other than a native" (Industrial Conciliation Act, 1956).

This anomaly as to the definition of employee led to the 2002 amendments of the LRA No 66 of 1995 in providing seven rebuttable presumptions as to who is 'employee'. In terms of the 2002 amendments, if one or more presumptions applies to any worker, then that person will be presumed to be an employee of the person to whom he renders a service, unless that person proves otherwise. Nevertheless, the 2002 amendments of the LRA were seen as a step forward as they sought to include as many workers as possible in the definition of 'employee'. This is because, in many cases, one or more of the conditions provided by the 2002 amendments do apply to many workers. For example, the hours of work, tools of trade and the supervision of a worker are traceable except for a contractor, of course. On the provided presumptions, the 2002 amendments left loopholes in terms of the 5th and 7th presumptions on economic dependence of an employee and having one employer. The 2002 LRA amendments were, nevertheless, bypassed by a triangular employment relationship whereby companies could argue that a worker was hired and is compensated by the labour broker, thus, that particular worker is an employee of the labour broker rather than of the particular company. The seven rebuttable presumptions will be outlined below in chapter 6 (Labour Relations Act, 2002).

While trying to address the question as to who is an employee, the 2002 amendments did not consider certain categories of workers who needed the protection of the law, i.e. workers in the triangular employment relationship. This form of contractual relationship is in effect an alternative form of cheap labour designed to meet the demands of capital by the businesses and the State, and it is through this form of employment that

businesses could bypass the 2002 LRA amendments (Labour Relations Act, 1995 and Theron, 2003).

As will be shown below, 'the precariat' is defined against the standard relations of employment as well as to what the precariat lacks. All these characteristics, used to define 'the precariat' or 'precarity', allows for many sorts of employment to include home workers, labour broking, Temporary Employment Services (TES), part-time, workers in the informal economy, farm workers and domestic workers. Virtually all of these categories of workers, despite the *de facto* status of their permanent employment of many of these workers, remain poorly paid, work long hours, labour under poor working conditions affecting their physical and mental health and are, the literature suggests, not happy about their jobs (De Cuyper et al., 2009; Benach and Muntaner, 2007). However, the atypical or non-standard forms of labour relationship explored here are limited to three categories of workers; the part-time, contract and labour broker workers. These categories of worker are the groups of workers the 2014 Labour Relations Amendment Act sought to protect. These categories are the modern form of casualised labour.

Simply put, casualisation concerns the process by which companies increasingly change their workforce to part-time and temporary work, thus, diluting the standard form of employment. Part-time workers often have contracts of employment and a single employer but are not, by definition, full-time. On the other hand, contract workers work for a fixed period and have either verbal or written contracts of employment. Nevertheless many of these workers have been "permanent" temporary workers. However, when these workers are provided by the labour broker then contradictions emerge as a result of the triangular employment relationship because workers are employed by one employer, but offer their services to a different employer (Theron, 2003). Temporary workers, except part-time/contract workers, have an employer (labour broker) but provide their services and work at the premises of another employer. The employer to whom they provide their services does not recognise them as his/her employees. In sum, these members of the precariat are caught in the middle of two

employers, one employer who compensates the worker for providing services to a different employer.

As a result of the exploitation of casual workers, the government amended section 198 of the LRA. Section 198 amendments of 2014 Labour Relations Act sought to protect workers previously excluded by the Wiehahn Commission recommendations of 1979, the Labour Relations Act 66 of 1995 and the 2002 Labour Relations Amendments Act. Some workers, such as farm and domestic workers were covered and recognised by the LRA 66 of 1995; however, new forms of flexible labour were accelerating throughout this period. "Flexible labour" often concerns the breaking of employment tasks into simple tasks whereby even unskilled people can undertake them. Moreover, the tasks made simpler were, mostly, previously held by permanent workers but are now held by casual workers who are made to carry out unspecified tasks as a result of not having work contracts and/or job specifications and often with flexible hours of work. The 2014 amendments were designed to further extend protection and regulate workers in temporary employment services and contract work. Specifically, to repeat, it is the part-time, contract and labour broker workers which the 2014 amendments sought to protect (Labour Relations Amendments Act, 2014).

However, the 2014 amendments do not apply to workers who are on their first three months of employment and part-time workers whose employment contract is extended for more than 3 months subject to the provisions of the LRA. They do not apply to part-time workers where, generally, such employees work is part–time in nature and is remunerated on the completion of a task completed. In addition to the amended section 198 on temporary employment services, Section 198B, 198C and 198D, have been inserted in the Act (du Plessis and Fouché, 2012; Labour Relations Amendments Act,2014). Section 198A of the amendments deals with temporary employment services. Section 198B deals with fixed-term/contract work, while Section 19C deals with part-time work. Furthermore, the Act provides that even fixed-term/contract work can be extended beyond the initially agreed term/end date if justifiable grounds are provided for the extension of the contract. For example, a person employed for the building of a mall can have his/her contract extended until the mall is finished.

However, subsection 3 of section 198B provides the exceptions for the extensions of the contract.

Section 198 of the new Labour Relations Amendment Act (2014) has extended rights to labour broker, contract and part-time workers by having to be made permanent after three months of employment. Furthermore, these workers should be treated not less favourably to, and compensated equally to, permanent workers if they are doing the same job. There are some interesting aspects of the new amendments. The permanent employment of temporary (labour broker), part-time and contract workers must take place if that worker is still at work after his/her first 3 months of employment. If such a worker's contract of employment is terminated after having worked for three months, then it will be regarded as an unfair dismissal and the dispute can be taken to the Commission for Conciliation, Mediation and Arbitration (CCMA). However, if the nature of the work is temporary by nature, or that the worker is filling a space of someone who will be on leave, or is otherwise justified, then the worker can be expected to work for more than three months without having to be made permanent. The amendments further state that the employer may not force any employee to sign another fixed-term contract after the end of the first three months as a measure to avoid the provisions of these amendments. If an employer forces a worker to sign a new contract at the end of the first three months, such worker can instigate a case of unfair dismissal. The amendments further seek to make both the labour broker and the client company liable in cases of unfair labour practices and disputes relating to the LRA, in terms of the inserted Subsection 200B in principal of section 200A (Labour Relations Amendments Act, 2014).

The above provisions of the law have made a significant impact in the lives of those who already have exercised these rights, as is the case to be discussed with a group of workers at the Casual Workers Advice Office (CWAO). However, based on the precarity of many workers, the time they have to spend at work, fear of victimisation and the unaffordability of pursuing cases (that would drag on) as well as their lack of their minimal rights, the legal struggle of these workers seem impossible. This is why worker knowledge and sharing is important to reduce and end vulnerability of these workers.

One of the strengths workers hold when they are organised is to use the conventional methods of “go slows”, withdrawal of their labour and protected or unprotected strikes which, regardless of the employers obtaining court orders to halt strikes, still make their voices heard. With education on their rights, workers would possess even more power to tactically challenge employers on different levels. Nevertheless, employers also have the power to lock out workers and dismiss them if their strike is not protected. However, despite their ease of replacement, organised workers cannot always be replaced overnight and their dismissal would lead to inhibiting the operation of the company for another day or more, making a company lose business days.

Given the difficulty of organising precarious workers, the lack of protective rights for these workers and the precarity of these workers, many questions arise as to whether the new amendments will provide opportunities for organisation of precarious workers in their struggles. Now that these workers have won new rights through their endless struggles, will the new route to legal right provide solutions? Will this route produce fruits promised to the groups of workers these rights seek to protect? It is these questions which this thesis seeks to answer.

To anticipate the conclusion to this thesis, the new 2014 amendments of section 198 have, thus far, provided both opportunities and challenges for workers. While some employers implemented the new rights, for many workers, however, the amendments have caused troubles as employers do not either comply with the law and/or employ tactics such as retrenchments, victimisation and dismissals of workers who challenge them in the CCMA as the workers seek their legal rights for permanent employment. Nevertheless, prior to the effecting of these rights, workers have been shuffled between different labour brokers and different companies, made to work for shorter periods (two month contracts and even being made to sign new contracts every month), while those who worked for more than three months have been intimidated in companies that should they take legal action, to which they are entitled, they will face dismissal. Moreover, in some cases workers have challenged the company in the CCMA whereby employers would, after the award being granted for equalisation or permanent employment, challenge the award for a review.

This is indicative of growing worker agency and goes against the commonly held perspective that precarious workers lack collective voice. Thus, there is a need of a shift in the conceptualisation of the precariat. With advice offices being accessible and offering free services, workers have found these re-emerging institutions helpful in their struggles and in fighting their precarious conditions (Wilderman et al., 2015).

In contextualising this study, the proliferating precariousness of workers and global economic restructuring has sparked debates among many labour scholars. At the height of the challenges posed by precarious labour, many South African scholars focused on the shortfalls of the unions with some blaming the unions for the neglect of precarious workers and Congress of South African Trade Unions' (COSATU) alliance having been a factor, amongst others, that makes it hard for COSATU to protect these workers (Hlatshwayo, 2012; Buhlungu and Tshoaedi, 2012; Kenny, 2007; Webb, 2017; Wilderman, 2014).

Furthermore, looking at apartheid South Africa, it is evident that the struggles of the 'precariat' are not new and the forms of struggles they have been undertaking have been happening in communities, and were facilitated by political parties, trade unions and Community Advice Offices (CAOs) during apartheid.

A number of CAOs ceased to exist with the transition to a democratic South Africa. However, CAOs have been re-emerging as a result of issues faced by communities, despite the resource limitations of these CAOs (Wilderman et al., 2015). While CAOs deal mostly in tackling community issues, with many CAOs dealing with small numbers of labour related cases/struggles, some CAOs emerged out of the need to address issues of workers and others focusing specifically on immigrant workers. Yet the significance of these organisations in the South African labour movement has been understudied and underplayed in South Africa. The study of Wilderman and others (2015) provides background to the significant role played by CAOs in the contemporary SA labour market in dealing with workplace issues and representation of workers unions' have not been able to reach and organise. Although it is evident that there is a need to organise precarious workers, there has not been much done to this problem.

Many CAOs and legal aid offices have been dealing with cases of precarious workers despite precarious workers' minimal legislative rights (Wilderman et al., 2015). The contemporary labour climate has shown the rise of precarious workers in their collective forms and in alliance with other stakeholders to show their agency and fight their own battles. This rise makes it interesting since the precariat is defined as lacking collective voice; it is interesting to begin to explore these new forms of struggles and alliances forged, and importantly, in what forms do these workers fight their battles. How do they organise and to what extent they have gone to fight their battles? From 2012, after a long wave of permanent mineworkers' and precarious workers' struggles and those who have shown a decline in confidence in unions, there is a need to understand the new forms of organisation of workers.

The CWAO case study provides a unique case of workers who use awareness campaigns and direct approaches to employers, but most importantly use the law in fighting the precarious conditions of workers. Many CAOs have been using the available general legislative rights of workers to fight the precariousness of workers, however, in the wake of the 2014 LRA amendments, there has been a heightened legal struggle of precarious workers at CWAO and it is via these amendments that workers at CWAO came to organise themselves. However, at the heart of success of this organisation has been the labour education and workshop training offered to these workers by CWAO. This study explores how worker education and the workshops the CWAO conducts for these workers help them in their struggles.

This research report shows that although the legal struggles have proven effective for many workers, there are still some challenges with regard to compliance from employers' side. The networks the CWAO have established with government structures have been very helpful, not only in providing education for workers, but in following up on the cases of workers. The contemporary South African labour market needs solutions that go beyond union organisation, as some observers have advocated (Wilderman et. al 2015; Fine, 2015). It goes beyond the strategies or methods used in organising precarious workers. Although organisational methods and strategies are important, it should be noted that there can be no single method that will apply in every

workplace, sector or industry in the current labour market. Some lessons can be learnt from other forms of organisation that take place outside the traditional union form, such as at the CWAO and many terms of the self-organisation of the precariat.

The research question informing this study is 'What are the implications of new labour law amendments for precarious workers?' This question will best be explored through the experiences of workers to understand the impact on workers and the impact on their organisation, which is best explored through the policies and activities they engaged in since the new amendments. A case study of CWAO, especially in the unfolding events of the 2014 LRA amendments, surfaces the impacts of the 2014 amendments both on workers and their organisation.

This study will show that workers at CWAO, after having being informed about their new rights, responded positively and were committed in attending meetings to learn more about their rights beyond the new amendments. Moreover, this thesis will explore if the new rights have won workers permanent employment for these workers. On this question, the study will show that although employers are reluctant to employ all workers on a permanent basis, many workers at the CWAO have won these rights and have become permanent under client companies and some under dual employers. The new amendments seek to protect part-time, contract and temporary employment service/Labour broker workers. However, although the majority of the labour force in precarious work has been covered, the prospects for part-time workers (especially as some workers get paid in cash after having completed their tasks while some work less than 24 hours/per month and are, thus, not covered by the legislation), are not promising. A further question relates to the implications of new (2014) amendments for organising precarious workers.

This study builds on the work of Dickinson (2015) and Wilderman (2014) on independent self-organisation of precarious workers. Although workers were organising themselves prior to the new amendments, this study will present a unique case of CWAO of self-organised workers who engage in legal struggles to fight their precarious conditions. Moreover, much has not been done by the unions in organising precarious workers. Workers have gone on to organise themselves. On the question of CWAO

officials' perceptions on the new amendments, this thesis will argue that the new amendments are a huge step forward, mostly for labour broker and contract workers, as their continuous and insecure temporary status is challenged. Moreover, the new rights have been working in favour of the workers in the cases taken to CCMA and also the labour court, however, both the commissioner and the CWAO director believes that organisation of workers will be key in the struggles of these workers to be permanent.

Furthermore, although there is no direct link between the pre-2014 self-organisation of precarious workers (such as workers at the South African Postal Office, the farm-workers at the Western Cape and many other workers around the country) and the 2014 LRA Amendment, it could be argued that these strikes were powerful enough to influence legislation and the subsequent struggles. In short, the 2014 amendments to the LRA came after a period of turmoil in the South African labour relations.

2 Literature Review

2.1 Flexibilisation and casualisation

South Africa is regarded to have one of the best labour law dispensations and constitution in the world. The rights granted to workers seem, however, not to have transformed the lives and conditions for most precarious workers and some aspects have been reversed due to flexibilisation and the casualisation of labour. Workers increasingly lack employment and labour market security. Over and above, workers are increasingly vulnerable to victimisation and dismissal at the face of hostile bosses who use labour brokers as a shield against workers and to avoid costs and legislation. With globalisation and rapid capital mobility came the flexibilisation of labour in the global world. Many scholars have contributed to debates on the growing flexibilisation of work, focusing mostly on how this affected the lives of workers, and thus the response of workers (Kenny 2009; Kenny 2007: Theron 2003). Different terms such as informalisation, casualisation, precarity or precarious work have been used interchangeably to refer to unfavourable working conditions that do not meet the standards of Decent Work, as set and defined by the International Labour Organisation (Aufderheied et al, 2013; Arnold Bongiovi, 2012). The three defining features of the precariat are work insecurities, uncertainties and shifted risks and costs from employers to workers with little or no benefits (Vosko, in Kalleberg and Hewison, 2013: 57).

Lightman and Gingrich (2013) conducted a comparative study of Canada and South Africa and found that there are different characteristics as to who is more likely to be precarious in the two countries. They found that, generally, being a female immigrant of less than 5 years in Canada and of the ages between 18 and 29 makes one more susceptible to non-permanent employment. On the other hand, Fauvelle-Aymar (2014) found that black international migrants have higher chances of being employed in South Africa, however, in informalised labour with poor working conditions, low wages and no benefits. Hlatshwayo (2012) explains this precarious employment of migrants as a result of neglect or inability of unions to organise migrant workers. Casualisation or flexible labour is, thus, used to resolve profitability problems and drive down the wages of workers.

Some of the labour broker workers, for instance, find themselves in a situation whereby they receive their wages after having been cut by two labour brokers. This is the case where the client company recognises one labour broker, but two labour brokers operate in that particular workplace. One labour broker supplies the other labour broker with workers while the latter labour broker serves as an outsourced company but also a labour broker to the client company as it provides it with workers who are not part of the outsourcing activities it was contracted to perform.

Among the other impacts of casualisation and flexibilisation, these workers have proved difficult for unions to organise and remain vulnerable to different forms of exploitation, deteriorating working conditions, low wages, individualisation and lack of mobility or recognition in terms of workers' services (Kenny, 2007). Most workers interviewed in this research, it will be seen, stated that no union had approached them since they had been working at their respective workplaces. In one instance a union refused to organise workers on the basis of their unstable employment status. Hlatshwayo (2012) argues that it is labour broking and the flexibilisation of labour, due to the weakness of the labour movement, which drives wages of the precariat downwards. Moreover, the burden of compliance with labour legislation, previously the responsibility of management, has been shifted to informal or non-standard workers who bear the risk of not getting compensated and protected in terms of labour laws.

The study of informal work in the retail sector by Bridget Kenny (2007) traces the contemporary informalisation, in contrast, to the agreements concluded by the unions in the early years of South African democracy. Informal work rests on the idea that the employment relationships between workers and employers are not permanent and formal as in the case of a normal standard employment relationship. The consultation of the unions by the state on the regulation of TES, crafted as new forms of employment, emerged and the agreements concluded thereof, came with unforeseen circumstances for the labour movement. As amended in 2014, Section 198A of the LRA amendments (2014:34) defines TES as "work for a client by an employee- (*a)* for a period not exceeding three months, (*b*) as a substitute for an *employee* of a client who is temporarily absent or (*c*) in a category of work and for any period of time which is

determined to be temporary service by a *collective* agreement concluded in a *bargaining council,* a sectoral determination or a notice published by the Minister, in accordance with the provisions subsections (6) to (8)". Although the definition is clear, many employers have come to use TES to avoid legislation and the costs.

TES came as an alternative form of cheap labour, with limited or no legal rights, protections and state benefits, and workers engaged in this form of labour found themselves to be the most vulnerable in the labour market. The labour movement had agreed to the regulated flexibility by sectoral determination, exacerbating poor working conditions and wages for non-unionised workers. Permanent workers came to enjoy sectoral legislative benefits but this legislation did little to protect the vulnerable section of workers that needed protection from the law. The latter categories of workers were, then, only protected by general laws of the state and do not enjoy collective bargaining benefits. In attempts to maintain protective measures and to retain the benefits for their members, unions argued that the permanent employees should be granted full rights and this left non-permanent workers marginalised and with diminished rights. Social protection as minimal protection was put in place through sectoral bargaining councils (Kenny, 2007). Before the 2014 amendments to the LRA, atypical workers were protected, but only by general laws and employment contracts. They lacked the benefits afforded to standard full-time employees as they were legally excluded from the definition of an employee in terms of the Labour Relations Act preceding the 2014 LRA amendments. The new (2014) amendments, thus, state that labour broker workers should be made permanent employees after three months of service and be treated not less favourably than other previously permanent employees if doing the same job, unless different treatment is justified. Nevertheless, these workers become permanent employees under the same employer or labour broker even after their first three months at work. In addition, many workers find themselves still caught up in dual employer situation, thus, remaining trapped in the triangular employment relationship they had hoped to do away with (Kenny, 2007).

Since the informalisation of work, many workers are excluded from the ambit and protection of the law. They could not engage in protected strikes as they do not have

secured contracts of employment, thus the employers/client company can lock them out and easily replace them. When engaging in protected strikes, even for permanent workers, employers have a right to lockout but often use scab labour (often casual but also permanent workers) and threats of dismissals to sabotage workers strikes.

2.2 The precariat vs permanent employment

Bridget Kenny (2007) has shown that the day-to-day living experiences of precarious workers are characterised by humiliation (from management and customers), mistrust from management and the burden of having to carry out unspecified tasks. Since the widespread introduction of 'casuals', workplaces have been riddled with tensions between permanent and casualised workers as permanent workers perceive the precariat as a threat to their jobs. Permanent workers enjoy the benefits of the labour legislation and can engage in protected strikes without fear of being dismissed. On the other hand, the labour broker workers may engage in strikes but the employers [client companies] can easily replace them for not showing up at work. This forces labour broker workers to go to work, thus, exacerbating the existing tensions between the precariat and permanent employees as the precariat comes to be associated with *amagundwane* (scab labour). Precarious workers are often described as "other", to connote the different experiences and/or their lack of industrial citizenship.

Deploying of previously permanent workers as TES/labour broker workers, as a result of informalised labour, leads to loss of benefits, security and other protections permanent workers used to enjoy. This is a way by which employers reduce wages and bypass the burden of labour laws. One previously permanent worker expressed that, over time, conditions got worse and workers no longer got certificates of recognition for being the best employee as they used to (as a result of the ever increasing labour brokers) when they were employed directly by the company (Kenny 2007). Moreover, evidence shows that contract workers, although being non-standard employees, described their conditions in different terms from those of temporary employees. Their concerns remained the lack of socioeconomic mobility and career progress (Kenny, 2007), however, the new 2014 amendments sought to provide equal opportunities for

precarious workers by stating that the three categories of workers, even when on extended contracts, should be offered opportunities for skills development and other opportunities for career mobility (Labour Relations Act Amendments, 2014). In the same study, workers also stated that they work like machines on an assembly line on a daily basis by packing shelves in one store and moving to another shop to do the same when done. Interestingly, these contract workers were not under constant supervision like temporary workers. They only signed in for work in the morning, and were left to carry on with their daily tasks as opposed to labour broker workers who would be pulled in different directions everyday (Kenny, 2007).

COSATU, when it negotiated for better wages and benefits of its members in permanent employment, also took part in negotiations or agreements to regulate labour broking. The consequence of these negotiations is questionable. Also, in negotiating for wages or other terms of employment, certain rights and conditions of employment tend to be lost, especially rights in terms of the Basic Conditions of Employment Act of 1997. For example, an employer may negotiate with the union for workers to work more hours or days when the business is flourishing during December, but cut back to fewer hours or compel workers to take leave in January when business is not flourishing.

2.3 Social distance and failure to organise precarious workers

Sakhela Buhlungu (2010) has analysed and explained the crisis of COSATU and how its involvement in state politics led to its loss of organisational power and the neglect of precarious workers. While not the focus of this thesis, the latest divisions within COSATU have, for instance, shown the social distance many scholars observed and the failure to organise precarious workers (Buhlungu, 2010; Chinguno, 2013; and Hlatshwayo, 2012). Although the alliance of COSATU with African National Congress and South African Communist Party was beneficial for workers and COSATU, this led to the social distance between COSATU and its members but, also, working conditions of workers have been reversed in post-apartheid South Africa (Buhlungu, 2010; Paret, 2015; Barchiesi, 2011). Hlatshwayo (2012) looked at COSATU and migrant workers

and argues that COSATU neglected migrant workers and workers in precarious employment. Although reasons may be related to the geographical locations of many of these workers, it does not provide sufficient reason for unions to claim the difficulty and that they only have limited resources when coming to organising precarious workers. On the one hand, unions played a very significant role under the oppressive apartheid regime whereby restrictions were the law and also did so with very limited resources. On the other hand, most worker centres are non-subscription organisations, such as the CWAO, but have managed to organise precarious workers despite the difficulty of resources. Also, seasonal workers have shown that it is not only through union strategies that organisation could be possible but also mobilising from townships (www.cwao.org.za; Wilderman, 2014).

The Marikana case is noted here in that it shows, amongst other things, the social distance between the union officials and its members and how this social distance led to some of the drastic effects in contemporary democratic South Africa but more importantly how workers lost faith in their representatives (Chinguno, 2015). Phakathi (2013) argues that dissatisfaction among NUM members at Marikana was not a new phenomenon, but that there were deep rooted dissatisfactions found in research conducted in 2007. Furthermore, workers felt the distance when the Shop Stewards entered into a deal without their mandate at the Chainpack in Germiston, where 200 workers were dismissed after questioning this deal. Such dissatisfactions could have been avoided. Workers at Chainpack had mandated the Chemical, Wood, and Allied workers Union for a R25 increase across the board, to which the union negotiated for an R2.20 increase per hour. At the end of the case 50 workers were jobless, with other workers being selectively re-employed and the case of these 50 workers later failed at the CCMA (www.cwao.org.za). Webb (2017) provides an interesting case that relates to this scenario whereby farmers did not want to recognise workers' committees. COSATU came to negotiate on their behalf. However, the negotiations showed the entrenched problem of social distance as they took place far away from workers and their committees, in the urban areas. Even post-Marikana, the problem of social distance increased as a result of COSATU's internal crises.

In general, however, COSATU has been slow to organise precarious workers. Its attention to its internal crisis has led to a social distance with its members. In 2014, COSATU kicked out 350 000 workers from the federation, with the expulsion of National Union of Metalworkers of South Africa (NUMSA). Further divisions occurred after the expulsion of NUMSA with its General Secretary Zwelinzima Vavi being expelled, which caused even further divisions when the Food and Allied Workers Union (FAWU) also left the federation (www.enca.com). COSATU has been defensive to many warnings about its future crisis. In the elections' survey on COSATU and democracy, Buhlungu and Tshoaedi (2012) found that many workers see Vavi as the icon of the workers. It was on this question that it was clear there would be possible divisions within COSATU with the expulsion of Vavi. The overwhelming majority of workers considered Vavi had the best interests of workers at heart and is reflected in the 2008 Survey (Buhlungu and Tshoaedi, 2012). Before the expulsion of Vavi, 8 COSATU unions were advocating for the readmission of NUMSA. The 8 unions had claimed to also leave COSATU to form another federation should NUMSA not be readmitted. This is when COSATU was supposed to have foreseen the consequences of its internal issues that were to seriously weaken it. It was in this period that the federation's crisis was to deepen. COSATU failed to take advantage of the new amendments to organise precarious workers.

Alongside this social distance, different forms of organisation have been emerging (Dickinson, 2015; Wilderman; 2014). The above evidence of social distance and the possibilities of organisation of precarious workers suggest that unions have not made enough attempts to organise precarious workers, COSATU is weakened by its internal crisis and have indirectly led to the further precariousness of workers in signing agreements on the regulation of labour brokers (Hlatshwayo, 2012; Kenny 2007; Webb, 2017).

With the challenges faced by the labour movement in the face of the proliferation of casualisation, COSATU then called for the banning of labour brokers but it was criticised for having taken part in voting for the adoption of the decision for the legislative regulation of labour brokers. President Jacob Zuma said that it was agreed

[by the tripartite alliance] that there would be legislative regulation of labour broking to avoid certain abusive labour practices and to ensure decent work for all, which has not yet been realised (Mail and Guardian, 2012). Moreover, Enoch Godongwana, the ANC head of economic transformation, rejected the call for the ban of labour brokers by COSATU in 2015, saying that it was unconstitutional (Letsoalo, 2015). He further said that everyone has a right to practice business and the government cannot infringe those rights but can regulate the practices of the businesses. This is supported by a political view that many workers will lose jobs should the labour brokers cease to exist as these agencies employ almost one million workers. At their conference in November 2015, Mildred Oliphant, the Minister of Labour lashed out at COSATU's leadership for having double standards over the issue of labour broking, saying the federation's leaders are financially benefiting from labour broking through partnering with companies that use labour broking as part of investment (Letsoalo, 2015). For the above reasons, COSATU was reneging on the stance they had taken in allowing labour broking to be legally regulated. However, there is another side to this analysis: that the ANC is reluctant to do away with labour brokers. Jacob Zuma's son, for instance, has been linked with an agency that provides workers to the mines (Webb, 2017). All this evidence is indicative of labour broking having a long existence and the government has not done much, if at all, in eroding labour broking or ensuring that labour broking practices are not exploitative to workers.

2.4 Consequences of Social Distance

The proliferation of flexibilisation of jobs and loss of permanent employment in the last two decades provides a new workforce that satisfies capital; less expensive labour than standard forms of employment and which is constituted by the large workforce of precarious workers (Kenny and Bezuidenhout, 1999). Despite the debates on the difficulty of organising precarious workers, many scholars have centred their attention on traditional trade union structures, their response to the proliferation of precarious employment and their organisational strategies in explaining the low level of unionised workers and the growing class of precarious workers who remain ununionised (Krestos,

2011; Buhlungu, 2010; Webb, 2017). However, contemporary literature shows that the organisation of a marginalised class of vulnerable and precarious workers is possible (Tartanoglu, 2015), as in the case of organising migrant workers by the Garment Worker Center in Los Angeles (Sullivan and Lee, 2008), and the case of precarious workers at CWAO. These studies show that despite many scholars having emphasised the need for new methods of organising precarious workers in the circumstances of changing economic restructuring, and the willingness of these workers to organise, unions can, this thesis shows, learn from Community Advice Offices. Furthermore, precarious workers have shown a willingness to organise either through self-organisation and fighting their own battles as in the case of South African Post Office labour broker workers (Dickinson, 2015) and farm workers at the Cape in 2012 (Wilderman, 2014), or through going to CAOs such as CWAO and Garment Worker Center in organising against precarious work in sweatshops, or through approaching unions before self-organisation (www.cwao.org.za; Sullivan and Lee, 2008; Wilderman, 2014; Dickinson, 2014). Generally, the literature suggests a strong need for the organisation of precarious workers but also the declining confidence in unions and union officials representing them.

The dissatisfaction of union members regarding their Shop Stewards and union officials is not a new phenomenon, but has been happening over a long period in the country and manifested itself in the case of Marikana (Phakathi, 2013). As a consequence of social distance between unions and their members and the feelings of neglect by the large workforce of precarious workers outside unions, workers are increasingly organising outside traditional forms of union structures. They have been developing different forms of organisation such as workers' committees and forums, though many have not been recognised by management as representative of workers. In addition, workers have been engaging in contentious politics with students, communities and CAOs to advance their workplace and broader interests (Dickinson, 2015; Wilderman, 2014; Wilderman et al., 2015; Mngambi, 2015; www.cwao.org.za).

Moreover, the contemporary literature shows that the labour movement is evolving in terms of organisation outside trade unions and that organised workers in unions have

been acting independently of their own unions (Dickinson, 2015; Wilderman, 2015; www.cwao.org.za). The new forms of organisation that have been emerging thus far includes CAOs, independent self-organisation, and formation of workers' committees and also the formations of workers forums. Although they would not be classified as precarious workers, the Marikana workers also formed a new kind of organisation whereby unions were not at the centre of their strike but workers wanted to represent themselves and rejected the National Union of Mineworkers (NUM) in 2012 (Vermaak, 2013). That was not the only case with outsourced workers. At the University of the Witwatersrand workers sought different struggles by fusing their struggles with the students and academic staff in fighting outsourcing at Wits (Wits Solidarity Committee, 2015). Some University of the Witwatersrand students and staff came out in solidarity with outsourced workers to fight for the insourcing of these workers (Wits Workers Solidarity Committee, 2015) and succeeded in this instance. Furthermore, workers, including union members, are increasingly going to advice offices for representation and advice (Wilderman, et al., 2015; www.ilo.co.za).

The study of Western Cape farm workers, SAPO and evidence from Chainpack, to be discussed, show that social distance between workers and their representatives, has led to mistrust of unions by workers, exploitation, the erosion of workers' rights and new emerging forms of resistance by both permanent workers and precarious workers (Webb, 2017; Dickinson, 2015; www.cwao.org.za). Workers often elected representatives who negotiate for their interests in their workplaces, who sometimes do so without workers' mandates with workers having become dissatisfied with union representation, as the Marikana and Chainpack cases have shown (Chinguno, 2013., and www.cwao.org.za). The social distance in these two occasions led to workers overtly rejecting their unions.

Lastly, despite workers' attempts to approach unions, and neglecting unions on other occasions, unions have not been positively responding to the expectations of these workers. The three cases discussed here are illustrative of the struggles of the precariat in contemporary South Africa. Recently, there have been new forms of struggle that diverge from the known violent forms of strikes to fight precarity.

Nevertheless, what has been central to the victories of these workers has been collective action and unity shown by these workers in dealing with their precarious employment.

2.5 Workers Advice Bureaux and precarious workers

There is evidence for the prominence of Community Advice Offices in dealing with precarious workers' issues around the world (Fine, 2006; Citizens Advice Bureaux, 2016; ACAOSA, 2016). In the United Kingdom, the Citizens Advice Bureaux annual report and accounts of 2015/16 show that labour has become a highly reported issue in the current era as employment relations issues are the third of the top five issues reported. The Citizen Advice Bureaux mostly helps people across England and Wales but also provides other long distance services through emails, telephones and through their website. The 2015/16 report shows that there were 36 million visits on their website, to which 8 million of those visits were, on the top five reported issues, employment related. The highest issue was for advice sought by consumers (12.3 million) and the lowest was relationships and family issues (5.5 million) (Citizens Advice Bureaux, 2016).

The preliminary data informing research observations of the Alliance for Community Advice Offices of South Africa (ACAOSA) and the National Alliance for the Development Community Advice Offices (NADCAO) show that CAOs are increasingly dealing with labour-related matters (ACAOSA, 2016). ACAOSA's observations show that the number of labour related cases has increased and is the largest single issue with which CAOs deal. The total number of reported cases is 120500, with labour-related cases totaling 33359 cases (ACAOSA, 2016).

There has then been a re-emergence of CAOs. In many instances, these offices (re)emerge as a result of specific issues that arose in particular communities. For example, The Garment Workers Center (GWC) emerged out of a need to organise migrant workers while the CWAO emerged out of a need to organise precarious workers (Sullivan and Lee, 2008; Wilderman, 2015). In the South African context,

CAOs existed in the apartheid regime and helped to deal with issues faced by communities under the oppressive government. With the transition to democracy, many CAOs ceased to exist. At the height of precariousness in South African industrial relations, the CWAO emerged as a special case, amongst other CAOs, with the aim of organising labour broker, part-time and contract workers as these workers were left out by unions. Janice Fine conducted an extensive study on CAOs and traced the existence of these in the 1970s and 1980s locally, but which can be traced back to 1939 in Europe, America and the United Kingdom (Citizen Advice Bureaux, 2016; Fine, 2006; Fine, 2015).

3 Ethical Issues

Because this research involves workers with controversial struggles against their employers and that research is conducted at CWAO, some ethical issues were considered. Because of my participation in the organisation's activities, I could not write anything about the organisation without the permission from the organisation. Therefore, the director of CWAO (Ighsaan Shroeder) was informed of my interest in the organisation's activities and that should he grant permission, such information will be available for the public as I intend to publish it for my academic research purposes. The director granted me permission to come to CWAO; however, I could not use any workers' information without their consent. Therefore, the director introduced me to CWAO and I was given an opportunity to explain my reasons and purpose of my study. I told workers that participation is voluntary and not because they are part of CWAO that they are obligated to participate.

During group discussions I chose groups to attend and sit in to listen to their stories, but permission was requested to record their discussions as well as during informal discussions. Workers were informed that what they are saying will be published for the purpose of fulfilling my academic requirements if they grant their consent. Further, individuals during interviews were informed of their voluntary participation, anonymity and confidentiality. Moreover, the use of tape recording for interviews and any other material and information was cleared by individuals and there is nothing that linked any

individuals with the tape records. The tape records were only used for listening to the discussions when writing this thesis and deleted after the use.

4 Conceptual Framework

The precariat has been generally conceptualised as a homogeneous group. However, the precariat can be divided into different categories of workers whom, despite their general status as the precariat, are in fact fragmented in different ways, as this research report shows. In this research I look, primarily, at the three categories of the precariat (part-time, contract and TES/labour broking) that the 2014 LRA amendments seek to protect, but also make links and show disparities between the categories. Different conceptualisations of the precariat have been used by different scholars by referring to casualisation, informalisation, atypical work, flexibilisation, vulnerable workers and precarious work - to refer to the unfavourable working conditions that do not meet the International Labour Organisation standards of Decent Work (Aufderheide et al, 2013., and Arnold and Bongiovi, 2012).

Burgess, Connell and Winterton (2013), however, do provide a clear distinction between vulnerability and precariousness. In their distinction, vulnerability relates to the relationship between the worker and the labour market in the sense that a person's characteristics, such as race, ethnicity, level of education, skills, work experience and age among others are factors. For them, workers and jobs have to be separated in one's discussion of vulnerability. On the other hand, precariousness relates to job/working conditions and lack of, or, contracts that are contingent, manifest a lack of security and stability as well as little mobility and skills development.

Atypical, precarious, vulnerable or informal labour has largely been defined with how such labour diverges from the formal and standard form of employment relationship. These forms of labour do not represent typical forms of employment within a standard employment relationship (Theron, 2003). Instead, workers suffer low income, job insecurity and the lack of or minimal protection and benefits from labour legislation (Standing, 2011; Kenny, 2009). These workers generally do not have a collective voice as they are very seldom unionised. Guy Standing (2011) provides a more extensive conceptualisation of precarity. The precariat lack income security, labour market security, employment security, job security and skills reproduction security.

Furthermore, although Standing (2011) provided a powerful identification of the precariat, he then falls into the same trap of perceiving the precariat as lacking collective voice. Contemporary events of the precariat are increasingly showing otherwise. The precariat cannot be thought of as a homogenous group of workers.

Instead of working purely within the existing conceptualisation of Standing, and Barchiesi, I choose to categorise the precariat into different categories that helps explore the opportunities and hindrances in their struggles. Standing (2011) was right that the precariat is the new dangerous class (as will be discussed below), however, his general characterisation of the precariat is questionable. Moreover, Barchiesi (2011) provides a pessimistic view of work in general in which the precariat has no hope. My categorisation is conceptualised within the notions of structure and agency to understand the contemporary precariat. This is illustrated by the collectivisation of cases of precarious workers and their tactics within the harsh system that suppress them with interdicts, dismissals, victimisation and individualisation.

Despite attempts to differentiate between vulnerable and precarious workers, the three categories of workers discussed here are both vulnerable (to keep up with the standard of living) and precarious (with regard to their workplace conditions). Nevertheless, my conceptualisation shows that the three categories of the precariat are presented with different opportunities and this may help unions and other organisations to map different strategies to organise them. This further lay basis on how these different categories could gain benefits using different methods. A transformative conceptualisation of the precariat is needed.

There are similarities between the categories of precarious workers but there are also unique disparities. For example, a part-time worker, if working less than 24 hours per month, is automatically excluded from the law and does not enjoy social benefits. They often do not have written but only verbal contracts of employment and the job may be rotational with no guarantees of being permanently employed and may work odd days as they may wait for a call of service for [a] particular day(s) in a week. Moreover, this category of workers is, arguably, the most precarious as not only are workers performing this kind of work deprived of social and legislative benefits, but have little or

no job, market and labour market security – as well as being denied chances of organisation. An example of such a worker may be a gardener who works once a week for an employer. However, part-time work also generally includes workers who work around 25-30 hours per week in comparison to full-time employees. Part-time workers with such hours may enjoy few social benefits but are generally poorly paid. Nevertheless, part-time workers often have a single employer, unless they are supplied by labour brokers.

Contract workers, on the other hand, have a fixed-term, written contract of employment and a single employer. This worker has contractual rights which he/she can enforce against the employer in times of breach of contract. Contract workers often get paid directly by the employer and do not have their wages cut by a middle man like labour broker workers.

Labour broker/TES workers are the most exploited in the labour market, endure low-wage, poor working conditions and are least secure in terms of jobs and labour market security as companies use labour broking to solve profitability issues and avoid the legislation. Furthermore, labour broker workers often have shorter contracts and may be moved from one company to another. Most workers in this category sign contracts of employment, but they do not get to read them or come to possess a copy as one goes to TES and the other to client company. Workers in this category are caught between two employers who both want to get the most out of these workers. However, this category of workers is the most 'dangerous' (Standing, 2011: 1) as they are aware of their exploitation as they often work closely with permanent workers who often belittle them.

A further category of precarious workers includes outsourced workers. These workers, like labour broker workers, are employed by one employer but service another. While labour broker workers perform the core functions of the client company, outsourced workers perform the supposedly non-core functions of the client company. These two categories are not easily definable. While the 2014 LRA amendments seek to extend rights to the three categories of workers explained above, it does not cover the outsourced workers. Employers often claim that outsourced workers perform non-core

activities; however, this seem to be a tautological argument in which non-core is defined by the fact that the work is done by outsourced workers, rather than the fact the work is not essential to the overall work of the company. Recent struggles of outsourced and labour broker workers have been about being incorporated into client companies (Wits Solidarity Committee, 2015; Nkosi, 2016).

The distinctions between the above categories are clear; however, complexities arise when workers are supplied by the labour broker, thus making it difficult to define their relative degrees of precarity. However, all the above categories of workers are precarious, yet remain fragmented. Also, the different categories have shown, as will be intimated, different levels of worker agency.

As a result of this precarity and the reversed rights of workers in post-apartheid South Africa, as a result of the labour movement's involvement in party politics, Barchiesi (2011) portrays the precariat to have faded hopes. He provides a pessimistic perspective about waged work and proposes precarious liberation/detachment from work. Barchiesi is right that waged work has failed to take many people out of poverty and misery and that the promised future cannot be achieved by waged work [alone]. However, the reversed rights for workers are being slowly regained by workers. For Barchiesi to argue for the detachment from work, he makes a strong and unnecessary suggestion. Although waged work may not have taken many people out of misery and poverty, it is the small victories such as right to representation, permanent contracts and increase in wages that contemporary workers find self-worth. Moreover, waged work has been a vehicle towards transformation for people's lives. How we can better understand the contemporary contentious politics is through their own meanings, definitions and struggles. The precariat has become a modern 'dangerous' class that is advancing alongside society through wage labour and contentious politics with other social actors.

Precarious workers employ powerful tactics (both legal and illegal, such as strikes, violence, and threats of violence and/or murder) to challenge the status quo of their employment conditions (Dickinson, 2015; Kenny, 2007; Mngambi, 2015). The Post Office South Africa labour broker workers struggle was significant as it challenged the

government as an employer and as an institution. It can also be argued that the long struggle against labour broking in the country had an influence in what became the 2014 LRA amendments. Different forms of organisation, outside the normal union organisation, are emerging as a result of lack of union representation and increasing the mistrust of unions and union officials in pursuing workers interests.

What this thesis suggests is that precarious workers should not to be thought of as passive but rather as active agents who through self-organisation in solidarity and alliance with other organisations, movements and actors, have the potential power to influence policy, put necessary and sufficient pressure on employers, and can use the minimal legislative protections afforded to them to do this. Dickinson (2015), Wilderman (2012), Runciman (2016) and the case of CWAO provide empirical evidence of active agents of the precariat who engage in different forms of struggles that have successfully won them better working conditions and benefits. This also suggests a need to rethink the conceptualisation of the precariat.

5 Methodology

In pursuit of my study I began by trying to understand how scholars, both nationally and internationally, understood the role of CAOs in the contemporary broader labour movement. While there is little literature locally, with Wilderman et al (2015) providing the basis of understanding the role of CAOs in contemporary labour relations, international literature provided some significant insight into this study. To build on a theory that would address different aspects of this research a case study was a preferable methodology to provide such theory building. Moreover, precarity was a common concept in labour studies and in social movements alike, but little attention was paid to alternative forms of organisation. South Africa has been considered to have a progressive labour legislation than many other countries, but precarity also remained the issue in the labour market. It is in this regard that a case study helps in exploring these aspects of research.

This research report uses a qualitative approach as it seeks to understand the perceptions, views and experiences of workers and officials dealing with precarious workers' cases and more broadly the legal struggle of precarious workers, and more specifically workers who approached the CWAO. It further traces the organisational and legal struggles of precarious workers. This research in particular uses the 'extended case method' which Burawoy (1998:4) describes as "deploying participant observation to locate everyday life and historical context". The purpose of this was to observe and understand the deeper struggles of workers as CWAO provides a platform for them to share their experiences and it is at the premises of the CWAO that such a mood was captured. Moreover, because this study involves workers who are in clashes with their employers, such a study can perhaps only best take place outside the workplace of employees and it is at CWAO whereby these workers gather for different activities and experience sharing.

This method allowed for further details related in the findings of this research report, which would have not been captured using only positive science or interviews alone. My methodology began with Ethnography, participant observation in particular, through attending the meetings with workers at CWAO. Over a period of about two to three

meetings, I had already had informal conversations with the workers and became part of the group discussions they held in which they would present what the group found or suggest. The notes written in these group meetings were also captured in this study as well as their short biographies. Furthermore, attending the court case of the main case study of this thesis formed part of the methodology as it provided an insight into the power, commitment and the mood of these workers about their legal struggles. Although this methodology helps in exploring workers experience of and the activities of the CWAO, it is limited in terms of other precarious workers around the country who may be engaging in different forms of struggles as well as other CAOs that help represent precarious workers, yet to whose activities the findings here may be 'extended'. Nevertheless, this method is very significant in that it allows for theory building.

Participant observation allowed me to recognise and select main informants/case applicants (as most were the leaders in their workplaces) for in-depth information on the cases of these workers. In-depth interviews were used to collect data based on acquired information from the meetings and group discussions. Interviewees were allowed the time to narrate their stories with regard to their experiences/cases and then follow-up questions would be asked to probe for more information and the depth of the case. Qualitative in-depth interviews are the best methods used to explore the boundaries of a problem and may determine the spectrum of insights about a particular issue.

A case study is described by Abercrombie et al (in Flyvbjerg 2006:220) as a "detailed examination or a single example of class of phenomenon". Despite the criticisms against this method about its lack of generalisability, its bias regarding verification and its inability to contribute to scientific knowledge (Flyvbjerg, 2006), this case study approach provides the basis for theorisation in this regard as it looks particularly at the study with little literature but also the depth the case study provides in understanding the precariat through a prolonged engagement and study with these workers. Nevertheless, a case study allows for a concrete and deeper understanding of a phenomenon which will not be possible with other methods and allows the researcher to

explore different aspects of a particular case. A case study of CWAO informs this research. It provides an interesting and unique case study of a CAO which was formed with the aim of organising precarious workers, deals almost exclusively with labour related cases and builds long-term relationships with the workers who come to seek help at their offices. Moreover, the CWAO has been understudied, with one study of Wilderman et al. (2015). It is necessary to note that CWAO represents only a small number of precarious workers around the country with an average of about 150-160 attendants per meeting, however, it gives a deeper understanding on the legal struggles of precarious workers and the significance of this case study can provide for strong theorisation.

However, the richness of this study would not have been captured using a quantitative approach. Furthermore, a quantitative approach would have been restrictive for the purpose of this research and would not have provided an understanding of the dynamics happening around the workers. Moreover, since the focus of this thesis is on the topic with little literature, a case study provides a chance for a deeper understanding on the phenomenon that is being studied.

This research does not claim to project the entire precarity of workers in the country as it focuses only on the CWAO case study. Most precarious workers conditions of work and everyday life experiences, however, are more or less similar. Many other precarious workers do not go to Community Advice Offices or CWAO. However, the findings of this study provide significant insight into the studies of precarious workers and offer some direction as to how the organisation of precarious workers can win them some gains despite their minimal legislative protection. Furthermore, the findings of this thesis will provide a background for further studies on CAOs and precarious workers.

6 Labour developments leading to the 2014 LRA amendments

6.1 Historical background

This section of the paper looks at the developments of the labour legislation in South Africa, and how these developments led to the Labour Relations Amendments Acts of 2014, which aimed at extending rights and protection to temporary, part-time and labour broker workers.

The historical background shows that the labour legislation has always been exclusionary and based on the needs of a particular period. This report finds that the turning point of South African labour relations started in 1979 and early 1980s with the recommendations of Wiehahn in allowing the registration of black trade unions. However, not all workers enjoyed benefits of the law since then and many came to be included in a series of legislations passed in 1993 and after the Labour Relations Act 66 of 1995, as will be shown in 6.3 and 6.4. Furthermore, there have always been loopholes and anomalies in the law, thus, making it possible for capital to flourish at the expense of the workers. This study also finds that despite the new 2014 amendments to the LRA being a step in the right direction for the large and growing class of particularly TES workers, part-time and contract workers, there is more that is needed than just the law, particularly the organisation of these workers and the enforcement of the law for compliance and it is through the former that the latter can be achieved.

The problem explored here, which can be traced back to the Industrial Conciliation Act of 1956, is with regard to the status of black employees in terms of this legislation. Prior to the Wiehahn recommendations, only black workers who enjoyed permanent residence and were on a fixed employment contract were included in the definition of an employee. The Wiehahn Commission recommended that the restrictions on commuter and migrant workers be removed, but not racial restrictions. However, the status of a black worker as an employee with legal rights was to go a long way in determining who gets benefits and protections of the law, as well as who was legally excluded, and hence, marginalised (Wiehahn Commission, 1979). Historically, the democratic government has been amending labour relations law to accommodate the changing

nature of the times. The South African labour relations was drastically shaped by the recommendations of the Wiehahn Commission in 1979, however, huge impacts occurred with the adoption of legislation after 1994.

6.2 The Wiehahn Commission

Before the registration of trade unions and the recommendations of the Wiehahn Commission in 1979, black migrant, farming and commuter workers did not form part of the definition of an employee under the Industrial Conciliation Act No. 28 of 1956. Such workers were, thus, excluded from legislative protections and benefits afforded to employees. In an attempt to regulate labour legislation and to control the growing resistance of black unregistered trade unions, the Commission of Enquiry on labour legislation (Wiehahn Commission) was established to investigate every aspect of South African industrial relations. The Commission's reports entailed the suggestion that black trade unions be registered and workers be granted rights to join trade unions, however, with racial restrictions imposed on the unions. This sparked a debate and it was only in 1983 when the state gave in that the Federation of South African Trade Unions agreed to register (Friedman, 2011). The Wiehahn Commission resulted in industrial citizenship of black workers and marked a rupture in South African industrial relations.

Since the Wiehahn recommendations, however, trade liberalisation in the period of global and economic restructuring has increased competition among firms internationally and led firms to focus on efficiency and new markets. Part of this restructuring included major shifts in ideology, legislation and social organisation which would come to affect the South African labour market. In the period of the 1980s, for instance, many retrenchments and plant closures occurred and affected unskilled labour. The subsequent increased flexibility of labour was arguably shaped in the 1980s and deepened to become the norm and a primary percept among management to improve their competitiveness in the post-apartheid period (Theron, 2003 and Kenny, 2007).

Furthermore, in 1987, organised labour engaged in a 3 day stay away against the then proposed Labour Relations Amendments Act Bill that would reverse the rights granted in 1979. Unfair dismissal and retrenchments would be lawful in terms of this Bill. The bill aimed at preventing strikes and boycotts and further required the Minister of Labour to be the sole decider on what constitutes an unfair labour practice. This 3 day stay away of COSATU and the National Council of Trade Unions (NACTU) consisted of 3 million workers, leading to a loss of approximately R500 million for both the state and the businesses (www.saha.org.za). The Department of Manpower and the South African Consultative Committee on Labour Affairs called COSATU and NACTU into negotiations on the Labour Relations Bill of 1987. Nevertheless, the bill was passed into law on the 1st September 1988, despite the federations' opposition to it. This led to another stay away in March 1989, leading to the summit held by COSATU, eleven affiliates of NACTU and a further eleven independent trade unions. This summit was to call for unity and joint solidarity for the rejection of the adopted Labour Relations Amendments Act of 1988. An agreement was reached by COSATU, NACTU and another eleven unions to isolate and boycott products, both nationally and internationally, of the companies that would use the LRA amendments of 1988 against the workers (www.saha.org.za).

The need for sustaining the racialised system of South African capitalism led to black workers acquiring artisan skills but not all were equally acknowledged, nor benefitted from racialised laws and regulations. Most black workers, especially domestic workers, public service workers and farm workers, continued to be excluded even after the LRA Amendment No 57 of 1981 that abolished racial distinctions with regard to union membership. However, despite the granting of union rights to black workers, the issue of legal definition of an employee as new forms of employment occurred as a way to shift the burden of costs and the law from employers to workers.

6.3 1993 labour inclusions

Before the democratic transition of South Africa from the apartheid to a democratic regime, a number of sectors were still excluded from the Act and the new enactment of the laws took place to create a more encompassing regulatory law and accommodate those sectors. One of the enactments was the Education Labour Relations Act 146 of 1993 for teachers in the public schools and colleges employed by the Department of Education. Secondly was the Agricultural Labour Act 147 of 1993 to which, for the first time, farm workers came to be covered by the labour relations laws. The Public Service Labour Relations Act 102 of 1993 was also adopted in the same year, making state employees and all public service employees part of the employees who came to enjoy labour legislation protection. Although the majority of workers started enjoying labour laws' protections and benefits, there were still exclusions which came to be embodied in the new Labour Relations Act under the democratic South Africa. Specifically, domestic workers remained excluded by the 1993 enactment of laws that came to cover the majority of workers. Furthermore, private school teachers and university lecturers remained part of the exclusions (du Plessis and Fouché, 2012).

6.4 The LRA 1995

The 1990s was a decade of the revamping of the SA labour legislation as many workers came to be covered by the labour laws and the labour movement became part of the constituencies adopting the newly democratic Labour Relations Act 66 of 1995 and the Basic Conditions of Employment Act No. 75 of 1997. Several other pieces of legislation were also adopted in this period to protect workers. Importantly, the Labour Relations Act 66 of 1995 was democratically agreed upon to by both the government, business and the labour movement in consultation.

The Labour Relations Act 66 of 1995 became one of the most progressive and inclusive pieces of legislation adopted in the history of South African labour relations. It accommodated previously disadvantaged groups of workers, including black men and women, disabled people, curbed child labour and provided rights to workers but limited

the rights of others with an exclusionary legislation for workers in triangular employment relationship and workers who work for less than 24 hours per month, such as piece job workers, in terms of the BCEA of 1997 (Labour Relations Act, 1995; Basic Conditions of Employment Act of 1997). The definition of an employee in the new democratic legislation has also caused complexities; and as a result of the escalating exploitation due to flexible and informal labour, conflicts erupted, leading to industrial action that caused disruptions in both the economic, social and political spheres. Despite the accommodation of many workers, the loopholes and legislative and administration anomalies rendered many workers vulnerable as employers managed to avoid the legislation especially in the period of accelerated casualisation but also growing unemployment. However, even after the democratic transition and the introduction of the LRA of 1995, the question on the complexity of the definition of the employee has always been about avoiding business expenditure and the legislation. It was with the Labour Relations Amendments Acts of 2002 that the definition of an employee came under renewed scrutiny.

6.5 The LRA 2002

Under the 2002 amendments, an employee was anyone who met one or more of the seven presumptions, unless the 'deemed' employer could prove otherwise. Subsection (1) of 200A of the Labour Relations Act (2002: 209) provided the following presumptions to resolve the question as to who qualifies as an employee under the new 2002 legislative amendments;

1. The manner in which the person's work is subject to the control or direction of another person;
2. The person's hours of work are subject to the control or direction of another person;
3. In the case of a person who works for an organisation, the person forms part of that organisation;

4. The person has worked for that other person for an average of at least 40 hours per month over the last three months;
5. The person is economically dependent on the other person for whom he or she works or renders services;
6. The person is provided with tools of trade or work equipment by the other person; or
7. The person only works for or renders service to one person.

If one of the seven presumptions applied to any person, that person would then be presumed an employee of the company to which he would be rendering a service unless the company proves otherwise. While trying to address the question as to who is an employee, capital responded by revitalising itself through using temporary forms of service in place of permanent employment; casualisation, sub-contracting and informalisation. This rendered the 2002 amendments marred by loopholes in terms of its attempt to include all workers who needed protection of the law. The 2002 amendments were, for instance, bypassed by the triangular employment relationship which the recent (2014) amendments seek to address (Labour Relations Act, 1995 and Theron, 2003).

Nevertheless, the above definition in terms of the LRA of 1995 and its 2002 amendments as to who is an employee is problematic in itself. This is because the labour broker employee, although being employed by a labour broker, only has a remuneration relationship with the labour broker to which that remuneration can still be traced to the client company. After being recruited by the labour broker, the rest of the presumptions in terms of section 200A of the 2002 LRA amendments apply to the worker's relation to the client company; the labour broker employee would be performing the core functions of the client company in many instances. Outsourcing came as a solution to employers by placing the burden of other services and costs on to contracted companies. While this could be thought as initially for big businesses to focus on their mandate, which would be teaching and learning in the case of a university, outsourcing became a vehicle for exploitation of workers. Furthermore, contract workers can also be understood to be performing the duties which are, by

nature, not permanent despite the contemporary use of contract work as a disguise to avoid costs and legislation. Nevertheless, the 2002 amendments of the LRA were seen as a step forward in terms of the inclusion of precarious workers by outlining seven presumptions as to who is an employee.

7 Findings

7.1 2014 Amendments

With the continued vulnerability of informal and atypical workers lacking protection of the labour legislation, the new amendments bill was introduced and came into effect as the Labour Relations Amendment Act in April 2014. These amendments were designed to extend protection and regulate temporary employment service/labour broker, part-time and contract workers. When a labour broker provides workers to companies, it creates a triangular and complex employment relationship, making these workers vulnerable to super-exploitation. This is the case where the relationship becomes even more complex than dual employer or triangulation as will be discussed on the case of P&G, Sodexo and Workforce. Part-time workers who work less than 24 hours per month are automatically not covered by the BCEA and also due to the nature of their jobs, which is, by definition, part-time. As a result of the previous amendments that sought to protect workers who had about 40 hours working for someone for three months, part-time workers remain excluded but this depends of the hours of work performed. Contract workers are generally hired to work only for a specified period and until a project s/he was hired for comes to an end, despite the fact that companies have been hiring and rehiring these workers to do jobs that are not fixed in nature. Section 198 of the amendments further seeks to provide grounds for liability for both employers' (labour broker and client company) obligations in matters related to the LRA (Labour Relations Amendments Acts, 2014; Basic Conditions of Employment Amendment Act 2014). The attempt is to bring accountability and avoid the further expansion of the casualisation and/or flexibilisation of labour and, thus, provide securities and better working conditions and benefits to these groups of workers (labour broker, part-time and contract workers).

In terms of the 2014 LRA amendments, the employer may, therefore, not force any employee to sign a new fixed-term contract after three months of employment has lapsed (Labour Relations Amendment Act, 2014). However, the new rights have provided both opportunities and challenges for workers and, while some employers implemented the new rights, for many it has caused troubles, with employers not

complying with the law and employing tactics such as retrenchments, victimisation and dismissals for workers who seek to access these rights. The LRA is clear that these categories of workers will automatically be deemed permanent if they are still at work after three months of employment; however, when taken to the CCMA, employers would claim that they are still in the process to make these workers permanent.

The three categories which the new amendments seek to protect provide just a few among many other precarious workers. Many other workers in informal businesses and those working below the minimum hours covered by the legislation, remain excluded. For instance, workers who work less than 24 hours per month (piece jobs/part-time) remain excluded and would not get legislative benefits as the BCEA does not apply to them and the LRA 66 of 1995 as amended in 2002 protects workers who have worked for a particular employer for an average of 40 hours per month over the previous three months (Labour Relations Act, 2002). Nevertheless, the majority of the labour force in the formal sector has been covered by these new amendments as the part-time, contract and TES employees form the large part of workers these amendments sought to cover. Therefore, these amendments provide a huge step in the revamping of the South African labour relations. In an interview with Ighsaan Shroeder, CWAO director, he stated that the 'new rights for precarious workers are huge and it is not just about winning cases but organising the precarious workers that is important; it is only the organisation of these workers that can make these rights work for workers as the employers have the upper hand and are not complying with the law' (2016).

7.1.1 Deeming clause

The deeming clause in the 2014 LRA amendments has come to cause confusion in terms of interpretations of the law and has kept the triangular employment in force. In 2015, the acting Judge, Martin Brassey's judgment on the deeming clause states that employees of Temporary Employment Services do not become transferred to the client company, which the workers had expected, but remain the employee of TES. In this judgment, the *deeming clause* states that, carefully interpreted, *deeming* (by definition) does not mean a 'substitution'; it only states that you are deemed to be an employee of

the client company in cases of disputes in relation to the LRA. It means you are still the employee of the labour broker but *deemed* to be an employee of the client company. Therefore, both the client company and the labour broker will be held liable in terms of disputes relating to the LRA. Being effected in 2015, the amendments state that temporary workers should be made permanent after their first three months of employment have lapsed. In terms of this legislation then, temporary workers will be deemed permanent if they are still at work from the first day after the first three months have lapsed (www.dol.gov.za).

The new amendments have resulted in a number of benefits for some workers thus far but generally there are problems in terms of the *deeming clause* and anomalies in terms of the legislation and the administrative law, particularly, in terms of CCMA rule 25 as noted below. The deeming clause, as interpreted by Martin Brassey, is not what workers had expected it to be. It has brought disappointment and has caused confusion for workers who wanted to be employed by client companies and thus it is perceived to be an insult to precarious workers. It partially solved the problems faced by workers in the triangular employment relationship that has been so exploitative to them (Vittee, 2016). Over and above this, workers may win permanent contracts but still be paid by a labour broker and wear the uniform of the labour broker. This does not mean anything for workers if they do not instigate a case for equalisation.

To make this law work for these groups of precarious workers, as it will be shown below, CWAO and Simunye Workers' Forum have been fighting for the equalisation of salaries, treatment at the workplace and working conditions. Thus, the triangular employment relationship remains in place and this is problematic as the labour broker and client company contracts are not permanent. Moreover, equalisation cases were the next best thing as the permanent employment cases were often riddled with anomalies due to representation and the *deeming clause* judgment that was handed down by Martin Brassey in 2015. Due to contracts that may terminate at a particular point and anomalies of the law, TES employees remain exposed to insecurities as a result of anomalies of the law and this threatens their job stability. One of the most contentious issues has been with regard to the automatic termination clause that allows

for the termination of employment that does not constitute dismissal (Coetzer, 2017). Dismissal, in its definition as amended in section 186(*a*), means that "an employer has terminated [a contract of] employment with or without notice" (Labour Relations Act, 2014: 24). Moreover, the Act further requires that there should be a justifiable reason and procedure followed before the dismissal of any employee. In a case of *Enforce Security Group v Fikile & Others*, (in Coetzer, 2017), the Labour Appeal Court judge found that the automatic termination did not constitute dismissal because termination of employees' contract of employment was not terminated by the employer but rather was terminated due to service level agreements (Coetzer, 2017). The security company was providing service to the shopping centre. In hiring workers who would be stationed at the mall, the company included an automatic termination clause in the contracts of employment of workers should the service level agreement expire or be terminated by the client. Although section 198 of the LRA gave precarious workers hope for better employment conditions and security from unfair labour practices, the automatic termination clause could still pose a threat to their job security.

However, the judgment that was handed down by Martin Brassey in 2015 on the *deeming clause was* overturned by Labour Appeal Court Judge Pule Tlaletsi in July 2017, who ruled that labour broker employees become permanent employees of the client company, thus, solving the problem of dual employer situation (Saal, 2017). However, many workers at CWAO were pursuing the equalisation cases due to previous judgment.

Although equalisation cases had restored confidence in the law for workers who realised the benefits of such cases, despite some employers not complying with the law and workers having been subjected to tactical responses of the law, the new amendments are part of the solution for precarious workers.

7.2 Workplace challenges for precarious workers

7.2.1 Short contracts

The 2014 LRA has brought rights awareness to non-standard forms of workers but also posed them with multiple challenges. A worker informant expressed that 'although the new rights provide opportunities for us, they have [also] made us the enemies of the bosses'. Prior to the effecting of these rights, workers were made to work for many years through being shuffled under different labour brokers and/or working for one labour broker but under different companies. Moreover, many companies source workers from more than one labour broker. This creates competition among labour brokers to provide their clients with a more flexible and cheaper labour force but also makes the replacement of workers easy for client companies. The United Pharmaceutical Distributors (UPD) company, for example, sources workers from three labour brokers (Capacity, GP Retailers and Staff Logistics). With the effecting of new rights, many employers were shuffling workers to shorter, two months contracts, with some workers even being made to sign new contracts every month. Intimidation also became a factor under the new amendments as a worker informant stated that their employer told them that should they take an action to the CCMA against the company [with regard to section 198], they will face dismissal or retrenchment. In other cases, workers were told to renew their contracts but under a new labour broker as their labour brokers' contract with the company had expired. In some cases workers have taken the company to the CCMA where employers would, after an award was granted for equalisation or permanent employment, take the award to review. In the meantime, prior to the finalisation of the review, which would often be lengthy, the employer would victimise, dismiss and give workers final written warnings.

In many cases, workers do not get to read nor have a copy of their contract of employment. In triangular employment relationships, workers sign two contracts, one which will be kept by the labour broker and another by the client company. When being dismissed, in all the cases encountered, neither a notice nor warning is given to these workers. The managers would even tell them that they can be replaced at any time because they are not permanent. One worker stated that he feels that the company

wants to replace old workers with younger workers as many of the people he started working with at that company have been dismissed and almost every day the company hires and fires workers. After having heard of the new rights for contracts, TES and part-time workers, workers at UPD approached their management seeking their contracts of employment. They were told by their supervisors that they should talk to their labour brokers and that the company [UPD] signed a contract with their labour brokers. The supervisor further told workers that they have no rights at UPD.

7.2.2 Divisions between permanent and non-permanent workers

Byoung-Hoon and Frenkel (2004) shows that the discrimination and division between permanent and temporary workers can be influenced by many factors; however, some practices of management can also be a factor in the division and moral exclusions in the workplace. Furthermore, unions have been argued to contribute towards the divisions of permanent unionised workers and precarious workers (Byoung-Hoon and Frenkel, 2004). Furthermore, precarious workers would be subjected to condescending attitudes by permanent workers and even traditional Shop Stewards calling the labour broker workers with derogatory terms such as *shuttles* (Interview with Shroeder, 2016). As workers become aware of their rights and start trying to enforce them, they deepen the divisions already existing in the workplace between permanent and precarious workers. One worker interviewed expressed that management uses casual workers to divide workers. However, permanent workers are provided with the power to supervise non-permanent members, as in the case of Proctor & Gamble (P&G). In the worst scenario, as in the case of UPD workers, only supervisors are permanent employees of UPD. A worker from P&G stated that “you would not need to be a supervisor as a permanent worker to tell labour broker workers to stop what they would be doing and give them another task to do... and if you refuse to do it you will be served with a warning by management or called by your labour broker and you will be dismissed”.

The daily working life of a precarious worker is made more difficult as a result of different expectations and treatment by both management and permanent workers who are on the defensive. At the meetings and interviews conducted, this research report

found that precarious workers are used as a scapegoat by permanent workers. This tension has been increasing due to temporary forms of employment which threatens the job security of permanent workers. P&G has very strict rules which, an informant expressed, are only applied to labour broker workers and not to permanent workers. Also, at the bottom of the rule book of P&G, it states that "*Two Strikes and You are OUT"*. Precarious workers feel that they are being targeted by management not to strike despite the fact that procedural strikes are protected by legislation and one cannot be dismissed for participating in such a strike. These members of the precariat are trapped between the demands of management and permanent workers who think the precariat want to steal their jobs. Precarious workers at Rema company (Chamdor industrial area), for example, said that they are being forced to work like machines while permanent workers do [work] as they want. They work in producing rubber and are controlled by having to keep up with a machine that runs at a rapid pace. Rubber is a hot substance when being produced and these workers are not allowed to slow the machine down, or to stop it, because it will spoil the material and stop the whole process.

Many of the workers in formal employment (such as farm and domestic workers) have been included in the legislation and while having a right to join unions, they have not enjoyed this right as a result of their employers opposing unionisation. Like non-permanent workers, some of these workers' rights have been eroded by the nature of their employment. They share the same working conditions and low wages as many other precarious workers. The amending of the LRA has impacted differently on workers in different workplaces. The impacts of these amendments are seen by both the reactions and activities these workers undertook after hearing about the promised benefits of the amended LRA. They can also be heard from how these workers express their perceptions with regard to their stories, both in groups and individuals, who took the courage to challenge their employers. While many were at the forefront of the struggles to be made permanent, many were forced by high unemployment rates to avoid direct confrontation with management.

Many labour broker workers have won significant victories that improved their wages, for example, from around R22 to R66 per hour after equalisation cases while many have secured permanent contracts with client companies. These victories had a huge impact on their lives as one worker expressed that increase in wages of about two times the labour broker salary has not only helped financially but also in self worth. From such expressions we can understand the social meaning the workers attach to wages and their conditions of employment. For some, differences in wages with those who were permanent before them still exist as they are paid in terms of different grades, however, one worker said, “it is only a matter of time until we are all equal”. Increase in payment has not only uplifted the life of these workers but also impacted positively on their work. A worker from Barloworld stated that since equalisation, not only had their attitudes towards work changed for the better, but they also use taxis instead of trains and they now get to work on time.

7.2.3 Divisions among the precariat

Casual workers also still found themselves divided in workplaces between those who are fighting to win permanent contracts and those who fear victimisation and may not participate in the activities taken by other casual workers (Dickinson, 2015). Unity is still a challenge as some workers are not organised and still fear victimisation as they would not attend cases instituted by their colleagues at the CCMA against the employers, however, when pushed to the corner, workers tend to join together and fight for a common cause. In other cases, workers claimed that some workers had not signed the list required by the client company as to who will be employed permanently. Some of the reasons have been related to others having not been at the workplace anymore but for those who were still working at the company, the reason - one worker stated - is related to some workers ‘not having been on the list because they want to be on the side of management and not to be thought of as trouble-makers’ (Pepkor workers case meeting, 18/06/2016).

7.2.4 Working hours

One further aspect of the precarity of workers relates to their working hours. Working hours of some workers differ day by day depending on the amount of work. In explaining their long and variable working hours, one worker said that "management is saving their *golden boys* [permanent workers] by overworking the casual workers". This is one of the many scenarios happening around the Chamdor industrial area and, arguably, more broadly around the country. Excessive working hours for non-permanent but not permanent employees fuels the existing divisions between workers as non-permanent workers perceive this as management's favouritism towards permanent workers. Permanent employees of client companies often work normal hours and are paid for overtime work while non-permanent workers often work abnormal working hours and often not paid for overtime work. It is such treatment and different working conditions and treatment in the workplace regarding which workers expressed dissatisfaction. Above this, precarious workers are overworked and ill treated by both management and permanent workers. The favouritism of permanent workers by management in the workplace is, as many workers expressed, one of the factors fuelling anger among workers, but also other factors such as low wages, longer working hours and the general poor treatment of precarious workers.

While in a few instances workers mentioned the issue of overtime work in their workplaces as one of their daily challenges in the workplace, those who did, as in the case of UPD workers, stated not only that their overtime is beyond the limits of the legislation but also that their overtime work is forced. The workers described their conditions as follows: "[sometimes] when you [have] knocked off and about to leave, the manager would tell you that there is still a lot of work to be done inside and we should go back inside [in the premises of the company] otherwise should we decide to leave we should not come back [report to work] the following day". This forced overtime goes to even beyond the allowed daily overtime in terms of the legislation. When there is stock arriving, these workers would work even up to 10pm, having had arrived at work at 8am in the morning. On such occasions, these workers would get home around 12am and latest at around 1am as the transport that takes them home has to go

through about more than three different townships, including Soweto, Katlehong, Kagiso and Orange Farm among others. Having arrived at home at around 12am, these workers would be expected to report to work in the morning at 8am.

It suffices to say that organisation of precarious workers and unity with permanent workers would have a very huge impact in the South African Industrial relations system for all workers. At the heart of this possibility is worker education for all workers, both permanent and temporary, stressing the power of unity among both groups of workers.

7.3 Casual Workers Advice Office

7.3.1 Background to CWAO

The Casual Workers Advise Office is situated at Germiston and was found in 2011. The director of CWAO (Ighsaan Shroeder) had worked with Non-Profit Organisations where he saw that there was a 'need to organise labour broker workers' (Interview with Shroeder, 2016). He also worked with GIWUSA, which used to organise labour broker workers. It was then that he founded CWAO on the premise that precarious workers are not being sufficiently organised. For many of the workers who were hopeless, it sounded too good to be true that there was an organisation that could help them offload the burden of precarity at a 'no-fee' cost. CWAO has been using the old methods used previously by traditional trade unions (community radio stations, pamphlets, newspapers and community meetings) to reach out to, and organise, these workers. CWAO was helping workers prior to the 2014 amendments, but it became more attractive to workers when it mobilised and launched section 198 campaign; the struggle to organise workers and fight for their new rights in terms of section 198 of the 2014 Labour Relations Act Amendments. Furthermore, this was appealing to workers as they wanted to be made permanent, but also that they could win this without having to pay fees and subscriptions.

The case study of CWAO provides continuity in the fight against precarity by using the minimal legislative rights the precariat have peaceful marches and, in few cases, engaging directly with management through CWAO and the Simunye Workers Forum to

reach agreements. Simunye is a forum established by workers at CWAO to which they have come to organise themselves under. It was formed after a lengthy period of discussion from April 2015 and has been debated as whether to form a union or a forum. Workers decided to open a forum, with the possibilities of turning it into a union in the future. Before the forum was formed, those who had advocated for a union rested on the idea of being able to be represented at the CCMA, as unions can represent their members. Around April 2016, Simunye was formalised as a workers' forum. Simunye Workers Forum is based, and organises, at CWAO. However, since Simunye is still a non-subscription fee organisation, its membership is recorded by signing a register of attendance at the meetings. The future of Simunye being turned into a subscription fee organisation, which could possibly turn into a union, remains to be seen. Simunye has an average of 183 workers, with slightly more men than women, who attend each meeting bi-weekly from a total of 27 companies.

7.3.2 CWAO Case Study and Worker Education

Workers at CWAO are engaging heavily in struggles trying to mobilise and organise other workers to attend meetings at CWAO where they are provided with knowledge they can use to fight their unfair labour practices and to be made permanent, thus, tackling the exploitative labour broking system. Having approached the CWAO either for advice or being recruited by their colleagues, precarious workers also acquired free worker education and training through meetings and workshops organised by CWAO and Simunye. For Simunye Workers Forum members, education and unity were the main issue that needs urgency in the workplace as most of them found their workplace to be divided between them [casuals/labour broker workers] and permanent workers, with many emphasising that knowing their rights has helped them against their bosses.

Once having attended meetings at CWAO, these workers often come back and attend meetings on a regular basis and engage on workplace issues through forming workers committees, even though most are still struggling to get their workers committees recognised by employers. Nevertheless, some groups of workers have expressed that employers are starting to recognise them and are willing to talk to them through their

workers committees, with Simunye Workers' Forum being increasingly recognised by employers.

In probing what these workers felt about the impact such education has, many workers saw such education to having had an impact in their daily lives at work as some have become worker leaders in their workplaces. Others have expressed how knowing their rights has made them feel less like victims than before because they can now tell their line managers about their rights when they feel mistreated. One group of employees managed to represent themselves at a CCMA case and won the case against their employer. If all workers could be supplied with such education, which has largely been enjoyed by Shop Stewards in the unions, many workers would be less dependent on unions and would even become more involved in pursuing their struggles in the face of hostile employers.

While permanent unionised workers are on the defensive of having to protect their jobs from the precariat and deal with their lack of confidence in their Shop Stewards, the precariat at CWOA is now on a mission to mobilise permanent workers and build unity at the workplace. Workers at CWAO have expressed the need for labour education for all workers as it is helping them. Many no longer just sign unlawful warnings at any moment the management serves them with. On the other hand, unions provide education and training only to their Shop Stewards and not members. Although there tend to be hostilities in the workplace between permanent and casual workers, many workers at CWAO have started to help their permanent colleagues on several occasions and forge unity in their workplaces. Could the precariat lead the formation of a united working class to end exploitative practices dominating the SA labour market? The extent to which to the precariat can lead and forge greater worker unity remains an open question.

CWAO and Simunye have taken the lead in trying to forge unity amongst workers and across different sectors. The extent to which other CAOs can also follow, also remains in question as many of them are struggling with resources (Wilderman et al, 2015). Because of lack of resources, and despite the growing number of labour-related cases among the CAOs, many of the CAOs do not keep long-term relationships with workers

but help workers about their cases. Workers may not come back until they have problems again. Organisation of the precarious workers, however, has proven to work for workers at CWAO. With sufficient resources, many CAOs could follow in organising precarious workers. CWAO, on the other hand, has managed to establish connections with other organisations, both nationally and internationally.

The case study of CWAO, following the event of the new amendments provides a strong case of the growing battle of the precariat against their precariousness. CWAO provides a slightly different but a very important case of precarious workers seizing the opportunity when presented with one. These workers have been denied an opportunity of decent work, living wages and to organise as they are left out by unions, thus, rendering them susceptible to all forms of exploitation. Many of them have approached unions, as in the case of SAPO workers. Workers found that the Communications Workers Union had failed them. Barloworld Equipment labour broker workers have also expressed a similar concern of NUMSA not wanting to organise them because they were not permanent employees (Dickinson, 2015).

The contemporary labour market restructuring and the hostile environment of unbearable working conditions and hours have put workers in a difficult position. Having heard about CWAO and that the new amendments says they have to be made permanent after 3 months, many workers flocked to CWAO and have been attracting many more workers as many work around the same industrial area, Chamdor.

7.3.3The role of CWAO in the labour movement

CWAO deals with both individual and group cases whereby workers of the same employer make a collective case against the company to where they work. Many collective cases are related to the amended section 198 of the Labour Relations Act of 2014. Group cases differ in the number of workers, depending on the number of precarious workers for a particular employer, with the largest having been a case of over 900 Shoprite workers (Schedule of cases for the month of July, 2016). Workers who bring individual cases in terms of the new 2014 amendments are often encouraged

to mobilise other workers at their workplace and file a collective case. Nevertheless, these cases end up showing a huge impact regardless of its outcomes. The case of *Ntombi and others v CCMA and others* (as discussed below) is one particular interesting case as, despite their employment status, and after their case having been dismissed at CCMA, it won all workers a right to representation at CCMA. It did not make sense not to allow CAOs to represent workers since the number of labour-related cases has increased so drastically at the CAOs, with 'employment' category cases totaling 27593, as shown by research observations of 2016 by ACAOSA. This number excludes farm workers, which are a separate category of 5766 cases (ACAOSA, 2016). It also does not make sense to say workers should be represented only by union officials or legal representatives in a country whereby around 70% of workers are not in unions and such workers cannot afford legal representation (www.cwao.org.za; African News Agency, 2016). Many of the labour broker workers have worked for labour brokers for around 3-4 years and in some extremes cases from seven to over 15 years (www.cwao.org.za; Dickinson, 2015).

CWAO brings labour institutions' officials from the CCMA, Department of Labour (DoL) and Unemployment Insurance Fund (UIF), amongst others, to the workers at its premises during the meetings. This service has helped many workers in making their long-instigated cases heard as they would raise such matters and ask questions related to their employment conditions. One of the matters raised in the meetings was related to the working conditions where the department of labour official attended to the issue the worker raised after the meeting and promised to keep the anonymity of the complainant and that they would send inspectors to his workplace. Furthermore, one of the interesting aspects workers suggested is that when the department sends inspectors at the workplaces, they should encourage them to speak to workers. Most of the time, workers felt they would see the car from the department of labour but the personnel would go to the offices and leave without having spoken to workers. The cooperation between labour institutions and workers, Fine (2015) argues, could be used as a mechanism to enforce employers' compliance with the legislation. With such a contact between workers and compliance enforcement structures of the government, workers could be able to report their workplace issues. Although section 198 campaign

is the number one priority so that they can become permanent, the precarious workers are still faced with many more challenges including their UIF not being paid, problems with these institutions established to help them and other workplace challenges. Many other issues affecting these workers are raised with the officials' visits at CWAO.

Furthermore, with the visit of Simon Makhubela from the CCMA, many workers raised the complaints they have, not only at their workplaces, but with the CCMA too. One worker indicated that they had instigated a case at Benoni CCMA and had not heard about their case for two years. They then decided to take their case to the Johannesburg CCMA in 2016. After the meeting, the workers queued outside giving the commissioner their case numbers to which the commissioner would respond to them by the following Monday. The visit of Mr Simon Makhubela was not only about following up on cases but it was educational in a sense of explaining the CCMA rules and procedures to workers, sharing his experiences as the Commissioner and also in encouraging worker organisation.

Furthermore, although the representation of workers was a big issue before the Labour Court case where the judge ordered the commissioners to use their discretion to allow any party to represent workers at the CCMA, many workers could still access free legal representation from David Cartwright Attorneys that helps in representing workers who came to seek for help at CWAO. Although NADCAO and ACAOSA have started to mobilising support and skills transfer for the CAOs nationally, many CAOs are still struggling with resources to operate on daily basis.

7.4 Cases of Precarious workers

The impacts of the 2014 LRA amendments can be understood in the context of the activities, narratives and perceptions of these workers about their struggles in the context of these amendments. In addition, although the impacts of self-organisation were apparent even before the 2014 amendments, as in the case of Maberete at SAPO, it was with the new amendments and organisation that followed that the impacts of these amendments can be noticed. Following the new forms of organisations we also

saw the impact the struggles of these workers had in policy interpretation and many anomalies that exist in the law and made it difficult for workers to access their rights were challenged.

A number of cases show the impacts the 2014 LRA amendments have had thus far for precarious workers. Many of their jobs became even more precarious as they had to sign new contracts every three months or less. For many, however, there were positive impacts such as the organisation of precarious workers, more job security and better wages as well as a sense of improved self-worth that can be drawn from the struggles of these workers in the context of the 2014 LRA amendments.

7.4.1 Ntombi and 200 precarious workers

Ntombi Dladla is a labour broker worker at Dickon Hall Pty Ltd and has been working there for about fifteen years. She forms part of the most excluded workers in terms of the state legislation, but once they [with her fellow workers] heard about the new rights for labour broker workers in terms of section 198 of the LRA, they jumped of the opportunity and organised themselves to challenge Dickon Hall [client company] at the CCMA. However, it seemed a bit early for precarious workers to access their rights as the CCMA rule 25 became an obstacle for them to access their rights. When approaching the CCMA to exercise their rights in terms of section 198 of the LRA, the commissioner only dealt with four cases out of 71 workers (plus another 200 workers who were working a day shift and could not go to CCMA due to fear of victimisation should they not show up for work) (Runciman, 2016). The commissioner could, then, not deal with other cases due to the anomaly, in terms of section 198 of the LRA (as amended in 2014) and rule 25 of the CCMA, that made it difficult for workers to be represented by CWAO or any other person of their choice.

The 2014 LRA amendments in relation to rule 25 of the CCMA on representation is an important one. This rule states that “in an arbitration hearing a party may appear in person or be represented by a legal practitioner, a director or fellow employee, office-bearer or official of the party’s registered trade union or registered employer’s

organisation" (www.ccma.org.za). Looking at the South African context and the nature of precarious workers, rule 25 of the CCMA is problematic. Firstly, only about 24% of workers are unionised in the South African labour market and most are in permanent employment. Secondly, the section of workers (contract, part-time and labour broker workers) the new amendments sought to protect are exploited/earn too little to afford lawyers or have access to union official/representation. As a result, it would be impossible for these workers to access their rights since they are not in unions and they cannot afford to pay lawyers to take up their cases. On the 20th of September 2016, CWAO, Simunye Workers' Forum and the Black Sash took to the Labour Court to challenge rule 25 of the CCMA. Honourable Justice Van Niekerk issued a certificate for CWAO to be able to represent Ntombi and her colleagues but also ordered that CCMA rule 25, in terms of this matter, should be read with rule 35. The latter rule gives the commissioner the discretion to allow any party to be represented by any other person (*The Casual Workers Advice Office and others v Commission for Conciliation, Mediation, and Arbitration:* Case No: J 645/16; African News Agency, 2016). The judge further advised that the case is reserved for postponement by any party should any party wish to take this case further. CWAO, however, wants to make it compulsory for workers to be represented by anyone or the organisation of their choice instead of the discretion resting on the commissioner. Despite her case not having had a proper hearing at CCMA, this was a victory for Ntombi and her colleagues, the CWAO and other precarious workers in the country.

Representation issues are not new in South African labour relations but can be traced from Section 45(9)(*c*) of the Industrial Conciliation Act 28 of 1956, which dealt with 'legal representation in the Industrial Court' (Brassey et al., 1986). Paragraph *c* of Section 45(9) of the Industrial Conciliation Act No 28 of 1956 states that "Any party to the dispute shall be entitled..... [only] if all the parties to the dispute consent, to be represented at those proceedings by one or more legal practitioners or by one or more members, office-bearers or officials of any registered trade union or employers' organisation which is not a party to the dispute" (Brassey et al, 1986: 18). The expression given by this law is that one cannot be represented as one wishes in terms of this Act, unless the other party has agreed to or receives similar representation. One

should bear in mind that this was at the time when black trade unions were not allowed to register and the overwhelming majority of black workers were not covered by the law and black workers were legally excluded from the definition of an employee. Just like rule 25 of the CCMA, this Act was challenged by Wiechers (in Brassey et al, 1986) and Baxter stating that some factors (including the factual and legal complexities of the case; the serious nature of the proceedings; ones knowledge, experience, standard of education and ability to understand the languages to which the proceedings take place; and to maintain balance between parties among others) have to be taken into consideration for a fair hearing and the court should exercise its discretion to either allow or reject such representation.

After a long struggle and the determination of Ntombi and her fellow colleagues, Dickon Hall finally gave in and negotiations started, with Dickon Hall cancelling its contract with the labour broker. Ntombi and her colleagues are now directly employed by Dickon Hall but not on the same benefits as permanent workers. This led to a three day, unprocedural strike by these workers in February 2017, but this issue remained unresolved by the time of writing this thesis despite the strike. The case of Ntombi has proven the strength of the legal struggle as the benefits of this case went beyond just a case of handful workers at Dickon Hall. But section 25 read together with section 35 of the CCMA, precarious workers around the country can now access their rights by being able to be represented by the organisation, formation or individuals of their choice, but this rests on the discretion of the Commissioner. This will give the legitimacy to workers committees and forums as they are legally recognised organisations of workers and the Commissioner may allow them to represent workers. Despite the refusal of employers to recognise them, and that commissioners tended to refuse their representation of workers, the CCMA may now be compelled to recognise them in representing workers. Although it has been a challenge that led to the Labour Court in Johannesburg, precarious workers now have a higher probability to represent one another, be represented by Casual Workers Advice Office, Black Sash and other Community Advice Offices. Overall, Ntombi and workers at Dickon Hall managed to do away with labour broking.

The case of Ntombi provides some of the broader impacts of the 2014 Labour Relations Act Amendment and also provides a context in which both impacts on organisation and experiences of the precarious workers can be understood.

7.4.2 Common struggles of workers at CWAO

The working history of these workers is closely tied to the shuffling of workers around labour brokers and companies. One of the interviewees was born at Kwa-Zulu-Natal in 1985, he came to live at Thembisa, at the outskirts of Johannesburg where he started and finished his secondary school. He was a herd boy, looking after his grandfather's cattle until he came to Thembisa. He started to work in 2007 under LA labour broker until May 2016 but in three different companies. He heard about the CWAO from his colleagues and started attending meetings in May 2015. Many people like him remain in such vulnerable jobs because of the lack of jobs. As he said, he has 'always held on to his jobs under labour broker because it is difficult to find a job now'. For this worker, labour brokers help in terms of finding you another job when a company you are working for retrenches/cuts workers. After having worked for a labour broker for almost 9 years, he says CWAO came to his rescue as, in the very same month, a year after he joined CWAO, he won case of equalisation. His life has now changed. He is now happy that his job is more secure than before and his salary is much better than what he earned before the equalisation case. Although labour broking is viewed as exploitative, it has workers whom it provides with jobs over a long period despite their finite contracts with their clients. The calling of the banning of labour broking has been argued to having possibilities of drastic impacts on workers in terms of job losses. However, a serious intervention of government in forcing both labour brokers and their client companies to comply with the law is a serious and much needed intervention.

His story is similar to many other workers who come to the CWAO from different companies. Many of the workers have a similar story of having worked for a labour broker for many years in different companies, or for one company for many years under different labour brokers, as in the case of another worker who worked under Transman labour broker for 7 years and only came to be permanent in May 2016.

7.4.3 Case of P&G workers

Other findings of this research relate to the complex scenario of workers at P&G who worked for over 3 years under Workforce (labour broker). Workforce has a contract with Sodexo. Sodexo is a catering company contracted by P&G. Workforce does not have a contract with, and is not recognised by, P&G. However, Workforce employees work at the premises of P&G. On the other hand, Sodexo is recognised by P&G and it [Sodexo] acts as a broker between P&G and Workforce by sourcing workers from Workforce and supplying them to P&G. This complex relationship has drastic effects for Workforce employees. Generally, non-standard employees earn less than standard employees. In this relationship, P&G pays Sodexo, which in turn pays Workforce. This makes Workforce employees to be the third recipients of payment after it has been cut by two brokers, but also because P&G would not pay wages to contractors similar to its employees, hence it uses labour brokers. Thus Workforce employees are extremely vulnerable to exploitation due to such a relationship. Since Workforce employees work at the premises of P&G, they instigated a case in terms section 198 of the LRA at the CCMA saying they want to be made permanent by P&G. In this case, both Workforce and P&G were tactically avoiding the legislation, with P&G saying it would employ all workers as permanent, but under Sodexo as it [P&G] does not recognise Workforce. Workforce did not attend hearings at the CCMA. Sodexo, on the other hand, attended the meetings but the proceedings could not take place without Workforce and P&G. Workers did not want to be employed by Sodexo but by P&G directly. What adds to the complexity is that even Sodexo employees are not permanent. So it hence sounded like being sold a dream when P&G claimed that Workforce workers could be permanent under Sodexo. While Workforce had missed two appearances at the CCMA in the case its employees had instigated, the organising worker leader of Workforce employees was suspended and dismissed before the case was heard at the CCMA. His employer, Workforce, alleged that he produced a fraudulent license for the Power Pallet Truck (PPT) and that he should also not be present at the CCMA case as he is no longer an employee.

Many workers in different companies have also raised this point of companies wanting to shuffle them instead of making them permanent. Following the dismissal of their leader, the Workforce employees at P&G have shown solidarity by contributing the little they had towards their colleague to be able to attend meetings at CWAO and the cases at the CCMA. When meeting at the CWAO during his suspension, it gave them time and space to discuss their case and to update him on the situation in their workplace. This sign of solidarity has been also practiced by other workers. When this case was discussed at the meeting at CWAO, workers suggested opening a trust fund for helping the victimised workers for dealing with their cases while suspended and waiting for hearings. This case show evidence of victimisation, with regard to dismissal, and shuffling of workers across labour brokers and making workers sign new contracts for shorter periods. Workers have been shuffled across different labour brokers in the same company on the one to two months' contracts since the 2014 amendments while some have worked for about 15 years (Runciman, 2016).

Tactical responses by companies since the 2014 LRA amendments have brought terrible experiences for precarious workers and made them targets for voicing their concerns. This case, although is within the context of the amendments discussed here, also suggests the everyday experiences of precarious workers around the country.

7.4.4 Case of United Pharmaceutical Distributors Workers

The case of UPD workers provides evidence of other avenues explored by precarious workers. UPD casuals approached the management on the 22nd June 2016 asking for a R10 increase in addition to the R20 they were earning per hour for 9 hours per day. The following day these workers were told to see management during lunch whereby 16 of them were dismissed. Management alleged that they were insubordinate and had engaged on an illegal strike. These workers worked in sorting and packaging bulk products (medication) they receive on daily basis to be distributed to pharmacies around the country.

The workplace challenges faced by UPD workers extend beyond their attempts to be made permanent to include both physical and psychological abuse, humiliation, racism and threats on a daily basis. Workers expressed, for instance, that one of their fellow colleagues was once assaulted by managers until he bled through his ears and nothing happened to those managers. Furthermore, workers are still subject to regular racial and verbal assault, including being called *Kaffirs* on a daily basis at their workplace and one of their managers would always say "try me" when they speak or ask about their contracts of employment and tell the manager they will take the company to CCMA. The evidence of this case is of extreme exploitation, victimisation, and avenues explored by workers when put to a corner.

UPD workers found themselves trapped and in need of help with their case as a matter of urgency. The workers approached CWAO on the 25th June 2016 for assistance in their case. They also wanted CWAO to write about their story and be taken to the press, as CWAO has used media in exposing companies that exploit workers. The following Monday, 27th June 2016, they approached the Human Rights Commission as they were advised that their case went beyond a labour issue as it included racism and assaults. In seeking a speedy solution that could also help change their employment conditions in the workplace, these workers stated that they have also approached the Economic Freedom Fighters for whom they were still waiting for the lawyers to contact them (Focus Group with workers from United Pharmaceutical Distributors, 2016).

Although many workers have emphasised that having known their rights has helped them, for UPD casual workers, this is far from reality. When approaching a more senior manager, he would tell them that they are not permanent and even if they knew their rights, this would not help them because their rights do not apply at UPD. These workers are vulnerable as a result of the need to secure their jobs, their unorganised nature and being on the margins of the labour market.

7.4.5 Pick n Pay Assist Bakeries case

The retail sector is one of many employers relying largely on flexible labour. In 2015, CWAO and Isando Pick n Pay Assist Bakeries' workers challenged Pick n Pay at the CCMA. Pick n Pay workers were supposed to be equalised in 2015 after they won a case at the CCMA. The company did not apply the award but called for a review of the matter. The review case took too long and many workers had been dismissed and others victimised since then. Workers at Pick n Pay formed a workers' council but it was not afforded proper recognition by management. The management did not want to negotiate with the workers' council but, instead, victimised leaders and made further threats against participation in the activities of the councils formed by workers.

Simunye then organised a march. Many of the workers who took part in that march were dismissed, given final written warnings and told to 'watch themselves' by management. Following the consequences of the march for these workers, a second march was organised by Simunye to Pick n Pay head offices. Solidarity was called on from workers attending meetings at CWAO and the political party, the Economic Freedom Fighters (EFF), was also called to support the march. The plan was to occupy big Pick n Pay supermarkets and disrupt their daily operations. To avoid further victimisation of these workers, workers at CWAO had agreed on ensuring enough support so that workers who work at Pick n Pay stores to be disrupted do not appear on cameras, nor were to be seen as having taken part in those disruptions. Since the beginning of this case in 2015, 72 workers have been dismissed, of which 12 of them are from the workers council at Assist Bakeries/Pick n Pay. From Tuesday, 28th February 2017, Assist Bakeries' workers took to the streets to strike. Management continued to counter them with harsh tactics. An urgent interdict being was obtained by management to restrain workers from picketing in front of the company premises, particularly not within 500 metres from the premises. The company used scab labour instead of negotiating with workers. With the support of Simunye, these workers had drafted their list of demands. The strike dragged on for five weeks until workers decided to go back to work even though their demands were not met as a result of the effects of the five weeks long strike and loss in salaries (Bohatch and Pertsovsky, 2017).

7.4.6 General findings

From 2012 to 2013, South Africa experienced a new wave of precarious workers' violent industrial action as well as those who were not satisfied with their union representatives and had rejected their unions. Since the effecting of the 2014 amendments, in 2015, another wave of precarious workers legal struggle has emerged. Unlike the previous struggle whereby workers had to go to the streets, battle with the police and risk being arrested and dismissed due to unlawful activities that may occur during the strike, workers can now use the law to advance their demands. However, with the extension of rights, sufficient knowledge of their rights and support from CWAO, precarious workers have challenged their employers in the CCMA using the law. Moreover, many of the precarious workers at CWAO took to organising other precarious workers in the same industrial area but also those from elsewhere. Simunye Workers Forum is an umbrella to which these workers organise under and it organises across different sectors.

Another finding of this study was that despite the lack of trust in unions by precarious workers, they still do join unions when they become permanent employees, but for various reasons. Although one of the respondents had said NUMSA never wanted to organise them because they were not permanent, he nevertheless joined NUMSA after winning their case at the CCMA. He emphasised the reason to be related to burial policy and the bursary but mainly representation at the workplace and other conflict resolution structures such as the CCMA that he joined a union. This was at a time when Simunye was still battling the CCMA at Labour Court over representation case.

The new amendments, despite the concerns raised above, have generally been embraced by CAOs, unions and workers. Labour brokers used to protect their contracts with clients at the expense of the workers. When the CCMA Commissioner visited CWAO, one worker asked "what should I do if a manager of a client company tells me that my labour broker wants to see me and when I get there the labour broker tells me that the client does not want me anymore?". This is a case of unfair labour practice and unfair dismissal, however, the Commissioner said "the labour broker would defend their contract with the client at the expense of the employee…the labour broker would tell

you that his 'hands being tied' if the client does not want a particular employee anymore" (Meeting, 23/07/2016). However, with the new amendments, both the client and the labour broker will be held liable.

Despite some gains for workers from the 2014 amendments to the LRA, employers have often been bringing new methods of reducing working hours, forcing workers to sign 3 months contracts under different labour brokers, victimising, dismissing and retrenching them. One worker stated that he has been working for one company for 5 years as a casual. Once they have been made permanent, the company reduced their working hours from 40 to 25 hours per week which drastically reduced their wages and this maintained the status quo of getting paid low wages than their previously permanent counterparts. Their new employer would argue that they have their own sectoral determination which sets their wages to justify their payment difference with other permanent workers. On this account, workers would then ask for an increase to which the company responded by telling workers they were still new employees despite some workers having worked for the company for 5 years and longer.

Labour brokers have also been engaged in this form of tactical response to the new labour relations amendments of 2014. In the case of P&G discussed above, Workforce had not attended the CCMA cases and this made it difficult for the proceedings to take place the workers who instigated a case are Workforce employees and neither Sodexo nor P&G employees. Many cases take place over long periods of time to be resolved because either the labour broker or the client company does not attend meetings at the CCMA.

Industrial action, when it is procedural, happens within the ambit of the law and processes are long, costly and exhausting. Thus, sometimes we see unprotected, prolonged and violent strikes as workers lose patience with the law. When such industrial action happens, whether protected or unprotected, it does not hurt only the businesses financially but also the state and the workers. When strikes are prolonged, workers are likely not to be compensated for the days they did not work while taking part in industrial action. The business loses in profits and business days and the state loses in terms of GDP. Even the unions have always used both the law, conflict

resolution structures, and industrial action. However, industrial action has always been an alternative when employers do not want to meet the demands of workers. The legal route procedures are exhausting as three steps have to be followed before a strike could be protected. The 2012 LRA bill had included the 4th step in this process whereby workers vote whether to strike or not (du Plessis and Fouchie, 2012).

As a result of the processes that had to be followed, the unsuccessful nature of their cases in the conflict resolution structures, and the hostilities of employers, many precarious workers had lost hope in the law. Client companies were not obligated to conform to the law on any matters related to TES workers and this made these workers vulnerable to abuses from all sides of their employment; labour broker, client company and the law. The issues that would be raised by TES workers have always been met with victimisation, dismissal and the use of scab labour by both the client company and the labour broker. Furthermore, police presence in times of strike had forced workers to engage in tactical and violent action to make their voices heard.

Considering the vulnerability of the categories of workers to whom the 2014 amendments sought to extend rights, the complexity of the law, the lack of requisite knowledge of the law and not being afforded knowledge of their minimal rights, precarious workers were left in a vulnerable position to undertake complex struggles against companies. This is further exacerbated by fear of losing their jobs, unaffordability of labour costs and time, as well as not having equal opportunities of representation at the conflict resolution structures such as CCMA and the courts. Chances of succeeding in their struggles were limited in this regard. However, CAOs appear to be playing an increasingly important role for workers access to these rights by offering free services, thus reducing the burden of costs but also preparing workers to be able to be independent. The CWAO, in addition, provides workers with education they need to be able to represent themselves in the workplace and at the CCMA. Workers are taught about labour legislation, share with other workers about their daily struggles at work; and those who have won significant victories against their employers, also share their victories as well as ideas of solidarity to strengthen their struggles.

8 Conclusion

Precarious workers have always been the most vulnerable segment of the labour force. This is a result of labour legislation loopholes and anomalies, neglect by the unions, and the demands of capital. The development of the legislation, however, extended rights and social benefits to other workers previously excluded in the apartheid legislation. It was the 1995 LRA, however, that extended rights to most of the black labour force. As a result of growing competition, new forms of flexible labour emerged as a way to avoid the legislation and labour costs. This form of employment reversed the rights for many workers, resulting in a group of workers who were increasingly marginalised in terms of job security, labour market security and who enjoyed no legislative rights and benefits.

The above factors, including high unemployment rate rendered the precariat vulnerable to multiple forms of abuses and exploitation. Section 198 of the 2014 LRA amendments extended the rights to previously excluded categories of workers. Despite this inclusion, drawing from Dickinson (2015) and Wilderman (2014), it is clear that precarious workers had already started fighting their precariousness prior to amendment of section 198 of the LRA. However, with these amendments, new forms of struggles began to emerge. While farm workers at the Western Cape and Post Office workers engaged in the known repertoires of contention, workers at CWAO primarily used the law to fight their precarious conditions. Furthermore, students and staff of Wits University were in solidarity with outsourced workers to fight for their insourcing.

While the new amendments provided opportunities for precarious workers to organise and fight to be permanent, they have also posed these workers with multiple challenges. While some client companies absorbed the precariat into permanent employment or equalised their wages with those of permanent workers, many are reluctant to comply with the law and they have been victimising the leaders of the workers who seek access to, and implementation of, their new rights. While there are mixed feelings within workers about their cases, with others having won their cases and others having been pulled side by side by their employers, there is no doubt that section 198 amendments of the LRA are a huge step forward for these workers. However, although the 2014 amendments provide a step forward in terms of accommodating

precarious workers legally, there is still a long way to go in terms of ensuring workers access to their rights as they cannot afford legal costs. Thus, a question one ought to ask is not a legal question but that of power as employers have the upper hand against the workers and do not comply with the law. Benoni CCMA commissioner, Simon Makhubela, confirmed that thus far the rights have been working in favour of workers they were intended to help; however, the CCMA had only received a small number of cases relating to section 198 at their office. This is because, he argued, workers are afraid to instigate cases against their employers. This suggests the lack of awareness and/or organisation of the precariat.

Although section 198 of the LRA provided workers with opportunities to organise and claim their rights to be permanent, unions have generally been slow to organise precarious workers. Instead, there has been a decline in confidence in unions among permanent and precarious workers as this thesis has shown. However, one of the findings of this research is the eagerness of the precariat to organise, however, unions failed to take advantage of these amendments to organise precarious workers. CWAO has taken initiative to mobilise and organise the precariat and has been playing a significant role in accessing the rights of these workers in their struggle to become permanent.

The role CWAO plays in the labour movement is very important at both a practical and strategic level. It has established links with other organisations both nationally and internationally. With more resources, support and skills transfer for all the CAOs, many CAOs could also follow in organising precarious workers and contribute towards the broader labour movement. Worker education is very important in the struggles of contemporary complex labour relations. With sufficient knowledge and education, many workers have proven to engage in struggles against precarious employment. Many workers stated that knowing their rights has helped in terms of dealing with their employers but also be in a position to represent themselves in conflict resolution structures. Unions have been providing such knowledge only to Shop Stewards, leaving many workers to rely on Shop Stewards, to whom many have lost confidence. One could look at these legal struggles as a stepping stone towards further struggles of

collectivised workers as many would be able to join unions if being made permanent and can engage in broader struggles without fear of victimisation or being replaced. While the precariat at CWAO used the law primarily to win their struggles to be permanent, at the heart of their struggles was organisation, solidarity and education. Once many workers become permanent, there is a possibility not only for unionisation but also building broader solidarity with other workers and can engage in secondary strikes, thus, revitalising the national and international labour movement. Knowledge and skills transfer and sharing would create a class of self-confident workers who would contribute very meaningfully to SA labour relations but also in tackling the socio-economic ills faced by our societies.

Moreover, precarious workers need not to be thought of as a class of workers to be saved by unions only but the focus of contemporary scholars should embrace the broader labour movement and the fusion of other struggles into the broader advancement of the precariat. *The New Worker*, a publication on which workers stories are share from CWAO meetings and cases, describes *The New Worker* as the kinds of workers created by the 'capitalist system of labour broking and these workers are aware of the period in which they live; a period of exploitation; a period of divisions amongst workers, nevertheless, a period in which unity is a necessity; and a period of a need for new practices for a global labour movement (The New Worker, 2017: 4). The contemporary labour movement should not only focus on the unions but also CAOs, broader role of social movements and emerging forms of self-organised workers. However, this is not to discredit unionisation as it has always been a powerful tool for workers. The struggle against exploitation of workers by capital should embrace all struggles and it is only if unions recognise other forms of struggles and embrace them that the ideal of the global labour movement can be realised.

Finally, much of the literature has treated precarity as a homogenous group of workers. By looking at the different categories of workers in terms of section 198 of the LRA, this thesis has highlighted the fragmentation within the broad work of the precariat. As this thesis shows, the precariat needs to be rethought in its contemporary form and context. Moreover, the precariat needs not to be thought as a defenseless 'class' of workers but

workers with agency and who, at the height of their exploitation, have been shown to organise and revolt against their precariousness to regain their dignity as workers. Work, both waged and non-waged, is central to human beings despite the exploitative forms of work. Moreover, work is a vehicle of social change. The popular conceptualisation of the precariat has been of the hopeless worker who cannot change their precarity. Workers are agents of socio-political change and it is through small victories that many have defines their own progress and change in terms of their own understanding. The precariat needs not only to be thought of as a class lacking certain securities but, following Standing (2011: 1), a 'dangerous' class of workers, whom, presented with opportunities or at the height of dissatisfaction, is forced to mobilise against precariousness.

9 Bibliography

ACAOSA, 2016. ACAOSA Capacity building collective: Preliminary data informing research observations.

Arnold, D. and Bongiovi, J. 2012. *Precarious, Informalizing, and Flexible Work: Transforming Concepts and Understandings*. Chapel Hill: Sage Publications.

Aufderheide, M.Voigts,C. Hülsebusch, C. Kaufmann, B (2013) *Decent work?: How self-employed pastoralists and employed herders on ranches perceive their working conditions*. Kassel: University of Kassel.

Barchiesi, F. 2011. *Precarious Liberation*: *Workers, the State, and Contested Social Citizenship in Postapartheid South Africa* (Albany: State University of New York Press; Pietermaritzburg: University of KwaZulu-Natal Press).

Basic Conditions of Employment Act No. 75 of 1997. Accessed on 16 May 2016. Available at: http://www.gov.za/sites/www.gov.za/files/.

Benach, J. and Muntaner, C., 2007. Precarious employment and health: developing a research agenda. *Journal of Epidemiology & Community Health*, *61*(4), pp.276-277.

Black Sash. 2016. Prejudicial rules of representation at the CCMA challenged in court by the Casual Workers Advice Office, the Black Sash and others. Available at: http://www.blacksash.org.za/index.php/media-and-publications/media-statements/1675-prejudicial-rules-of-representation-at-the-ccma-challenged-in-court-by-the-casual-workers-advice-office-the-black-sash-and-others.

Bohatch and Pertsovsky, 2017 Five week Pick n Pay bakers' strike ends. *GroundUp.* Available at: https://www.groundup.org.za/article/five-week-pick-n-pay-bakers-strike-ends/. [Accessed 12 October 2017].

Brassey, M. Cameron, E. & Cheadle, H. [Eds]. 1986. 'Legal Representation in the Industrial Court'. *Industrial Law Journal* including Industrial Law Reports. Johannesburg: Juta & Company. Part 1, Vol 7: 18-21.

Buhlungu, S., and Tshoaedi, M. [Eds]. 2012. 'A contested legacy: Organisational and political challenges facing COSATU' *Contested Legacy: South African Trade Unions in the Second Decade of Democracy*.

Buhlungu, S. 2010. *A paradox of victory: COSATU and the democratic transformation in South Africa*. University of KwaZulu-Natal Press.

Burgess, J. Connel, J., and Winterton, J. 2013. 'Vulnerable workers, precarious workers and the role of trade unions and HRM'. The *International Journal of Human Resource Management*. Vol. 24, No. 22 [4083-4093].

Casual Workers Advice Office. 2016. [Accessed on 27 March 2016]: Available at www.cwao.org.za.

CCMA. Available at: http://www.ccma.org.za/FAQView.asp?ID=16.

CCMA, 2016.Rules and Legislation. Available at: http://www.ccma.org.za/Advice/Knowledge-Hub/Downloads/Rules-Legislation. [Accessed on 12 October 2016].

Citizens Advice Bureaux, 2016. Citizens Advice Annual Report and Accounts 2015/16: Trustees' Report. Available at: https://www.citizensadvice.org.uk/Global/CitizensAdvice/Governance/CAB347_Annual_Report_v9_WEB%20FINAL.pdf. [Accessed on February 04 2017].

Citizen Advice Bureaux. 2016. History of the Citizens Advice service: Helping to solve problems since 1939. Online. Accessed at: https://www.citizensadvice.org.uk/about-us/how-citizens-advice-works/who-we-are-and-what-we-do/history-of-the-citizens-advice-service/.[Accessed on: 07 March 2016].

Citizen Advice Bureaux. 2017. Annual Report and Accounts 2015/16. Available at: https://www.citizensadvice.org.uk/Global/CitizensAdvice/Governance/CAB347_Annual_Report_v9_WEB%20FINAL.pdf. [Accessed 04 February 2017].

Chinguno, C. 2013. "Marikana Massacre and Strike Violence Post-Apartheid". *Global Labour Journal:* Vol. 4: Iss. 2, pp 161-162.

Chinguno, C. 2013. Marikana and the post-apartheid workplace order. Johannesburg: Society, Work and Development Institute (SWOP), Working paper, (1).

Coetzer, N., et al. 2017. South African Labour Guide [*email*]. Available at: https://mail.google.com/mail/u/0/#inbox/15a1bc5fac38dd50. Received and retrieved on 08 February 2017.

Crossman, A. 2016. Understanding Purposive Sampling. [Online: Accessed on 16 May 2016]. Available at: cociology.about.com/od/Types-of-samples/a/Purposive-sample.htm.

De Cuyper, N. Notelaers, G., & De Witte, H. 2009. 'Job Insecurity and Employability in Fixed-Term Contractors, Agency Workers, and Permanent Workers: association with job satisfaction and affective organizational commitment'. *Journal of occupational health psychology,* 14(2), p. 193.

Dickinson, D. 2015. Fighting their own battles: The Mabarete and the end of labour broking in the South African Post Office. Johannesburg*: Society, Work and Development Institute* (SWOP) Working Paper, (2).

Enca News Online, 2016. Cosatu not surprised by Fawu exit. Available: http://www.enca.com/south-africa/cosatu-not-surprised-by-fawu-exit. [Accessed: 25 August 2016].

Fauvelle-Aymar, C (2014) Migration and employment in South Africa: An econometric analysis of domestic and international migrants (Quality Labour Force Survey (Quarter 3) 2012). Johannesburg: African Centre for Migration and Society, University of the Witwatersrand.

Fine, J. 2006. *Worker centers: Organizing communities at the edge of the dream*. Cornell University Press.

Fine, J. 2015. 'Alternative labour protection movements in the United States: Reshaping industrial relations?' *Industrial Law Review.* Vol. 154 (1), pp 15-24.

Flyvbjerg, B. 2006. 'Five misunderstandings about case-study research.' *Qualitative inquiry*, *12*(2), pp.219-245.

Friedman, M. 2011. 'The Future is in the Hands of the Workers'*: A History of FOSATU: Historical Papers Archives Project*. Mutloatse Arts Heritage Trust.

Hlatshwayo, M. 2012. 'COSATU's attitudes and policies towards external migrants.' *COSATU's Contested Legacy: South African Trade Unions in the Second Decade of Democracy*, Cape Town: HSRC Publications. pp 228-258.

Interview with Ighsaan Shroeder, 13/12/2016.

Kalleberg, A.L. and Hewison, K. 2013. 'Precarious work and the challenge for Asia.' *American Behavioral Scientist*, *57*(3), pp.271-288.

Kenny, B. 2007. 'Claiming workplace citizenship: "Worker" legacies, collective identities and divided loyalties of South African contingent retail workers.' *Qualitative Sociology*, *30*(4), pp.481-500.

Kenny, B. 2009. 'Mothers, Extraordinary Labor, and Amacasual: Law and Politics of Nonstandard Employment in the South African Retail Sector.' *Law & Policy*, *31*(3), pp. 282-306.

Krestos, L. 2011. 'Union responses to the rise of precarious youth employment in Greece'. *Industrial Relations Journal*, 42 (5) pp 453-472.

Labour Relations Act Amendments. 2014. [Accessed on 16 May 2016]. Available at: http://www.gov.za/sites/www.gov.za/files/a127-98.pdf.

Letsoalo, M. 2015. 'ANC rejects Cosatu's call for a ban on labour brokers.' Mail and Guardian. [Online Accessed on October 2016] Available at:http://mg.co.za/article/2015-11-26-anc-rejects-cosatus-call-for-a-ban-on-labour-brokers.

Lichtenstein, A. 2013. From Durban to Wiehahn: Black workers, employers, and the state in South Africa during the 1970s. *Wits Institute for Social and Economic Research (WISER), University of the Witwatersrand*, *25*.

Lightman, N. and Gingrich, L.G., 2013. The intersecting dynamics of social exclusion: Age, gender, race and immigrant status in Canada's labour market. *Canadian Ethnic Studies*, *44*(3), pp.121-145.Mngambi, X. 2015. 'Wits students fight on to end outsourcing', *Enca*, 29 October. Available at: https://www.enca.com/south-africa/wits-students-continue-struggle-insourcing.

Nkosi, N. 2016. #OutsourcingMustFall founders reject TUT agreement. *Pressreader.* Available at: https://www.pressreader.com/south-africa/pretoria-news/20160203/281608124466814. [Accessed on 03 December 2016].

Paret, M. 2015. 'Precarious labor politics: Unions and the struggles of the insecure working class in the United States and South Africa.' *Critical Sociology*, *41*(4-5), pp.757-784.Phakathi, S. 2013. 'Membership-Leadership Conflict within Trade Union on a South African Gold Mine: A Worker Perspective and Reflection on Marikana.' *Global Labour Column.* 140 June 2013.

Proctor & Gamble Rule Book. (2016).

Runciman, C. 2016. 'CCMA rule denies right to precarious workers'. *Saturday Star.* 30 April. p18.

Saal, P. 2017. 'Huge court victory for workers hired by labour brokers.' *TimesLive.* Accessed 27 August 2017. Available at: https://www.timeslive.co.za/news/south-africa/2017-07-13-huge-court-victory-for-workers-hired-by-labour-brokers/.

Section 198 Fact Sheet, 2016. Available at Casual Workers Advice Office.

Schedule of cases for the Month of July 2016: Master List. Available at Casual Workers Advice Office.

Simunye Workers Forum Meeting 18/06/2016

Simunye Workers Forum Meeting 25/06/ 2016

Simunye Workers Forum Meeting, 09/07/2016

Simunye Workers Forum Meeting, 23/07/2016

Simunye Workers Forum Meeting 03/09/2016

Simunye Workers Forum Meeting 01/10/2016

South African History Archives: 'Crushing the Labour Relations Act.' [Accessed on 12 May 2016].Accessed at: http://www.saha.org.za/workers/one_and_many_workers_unite_for_a_living_wage.htm.

South African History Online: 'History of Labour Movements in South Africa.' [Accessed on 12 May 2016].Accessed at: http://www.sahistory.or.za/topic/timeline-labour-and trade-union-movements-south-africa-1980-1990.htm.

Standing, G. 2011. *The Precariat: The New Dangerous Class*. London: Bloomsburg Academic.

Sullivan, R., and Lee, K. 2008. 'Organizing Immigrant Woman in America's Sweatshops: Lessons from the Los Angeles Garment Worker Center.' *Signs*: Journal of Woman in Culture and Society, 33 (3) pp 527-532.

Tartanoglu, S. 2015. 'Beyond informality: effectiveness of a new actor for representing call centre workers in Turkey.' *Industrial Relations Journal,* 46 (5-6), pp 381-397.

The Casual Workers Advice Office and others v Commission For Conciliation, Mediation, and Arbitration: Case No: J 645/16. 20 September, 2016.

The New Worker, 2017. The New Worker: issue 4. Nov-Dec 2017. Page 4.

Theron, J. 2003. 'Employment is Not What it Used to Be'. *Industrial Law Journal*. 24.

Vermaak, M. 2013. 'Marikana workers did not want us - NUM official', *IOL*, 25 January. Available at: http://www.iol.co.za/news/special-features/mining-crisis/marikana-workers-did-not-want-us---num-official-1458682.

Vittee, K. 2015. 'Labour Court ruling on the 'deeming' clause: The TES is the employer beyond three months.' Available at: http://www.polity.org.za/article/labour-court-ruling-

on-the-deeming-clause-the-tes-is-the-employer-beyond-three-months-2015-09-11. [Accessed on: 25 August 2016].

Webb, C. 2017. 'Between Precarity and Paternalism: Farm Workers and Trade Unions in South Africas Western Cape Province.' *Global Labour Journal [Online],* 8 (1) (2017).

Wilderman, J. 2014. *Farm Worker Uprising in the Western Cape*: A Case Study of Protest, Organising, and Collective Action. Research Report. University of the Witwatersrand.

Wilderman, J., Grawitzky, R., Lenka, L., Morris, C., Munakamwe, J. & Ryabchuk, A. 2015. *Worker advice offices in South Africa: Exploring approaches to organising and empowering vulnerable workers*. Johannesburg: Chris Hani Institute and National Labour & Economic Development Institute.

Wits Workers' Solidarity Committee 2015. Workers, students and staff in solidarity for decent work conditions. Available at: http://witsworkerssolidaritycommittee.blogspot.co.za/. Accessed on 26 November, 2016.