

RealTime Transcriptions

TRANSCRIPTION OF THE

COMMISSION OF INQUIRY

MARIKANA

BEFORE TRIBUNAL

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

HELD ON

DAY 36 24 JANUARY 2013 PAGES 3861 TO 3968

HELD AT

CIVIC CENTRE, RUSTENBURG, NORTH WEST PROVINCE



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1 [PROCEEDINGS ON 24 JANUARY 2013]
 2 [09:42] CHAIRPERSON: The Commission resumes.
 3 You're still under oath. Mr Budlender, I think you said
 4 you were going to start cross-examining, unless there's
 5 some housekeeping announcements that have to be made first.
 6 MR BUDLENDER SC: Not that I'm aware of,
 7 Chair. Thank you, Chair. Mr Gcilitshana, yesterday you
 8 told the Commission that on the morning of the 16th of
 9 August you attended a briefing at Middlekraal, and I would
 10 like to ask you for some more information about that.
 11 MR GCILITSHANA: I said it was at LPD.
 12 MR BUDLENDER SC: LPD, I apologise.
 13 MR GCILITSHANA: Yes.
 14 MR BUDLENDER SC: At what time did it
 15 start and how long did it last?
 16 MR GCILITSHANA: I may not have the exact
 17 time, simply because this meeting will start at half past
 18 7, sometimes they delay, they don't start exactly at half
 19 past 7, and I meant for one, for five minutes or 30
 20 minutes.
 21 MR BUDLENDER SC: What was the purpose of
 22 the briefing?
 23 MR GCILITSHANA: The meeting was, every
 24 day there were briefing of situation, what, of how the
 25 situation, what are the measures that are taken to protect

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1 those who are willing to go to work, also the figures of
 2 the people who have reported for work.
 3 MR BUDLENDER SC: Who did the briefing?
 4 MR GCILITSHANA: The security personnel
 5 will do the briefing, then the HR department will do the
 6 briefing on the attendance to work, [inaudible] more of the
 7 incident, if there were any incidents.
 8 MR BUDLENDER SC: I realise it's now some
 9 months ago, but can you remember who was present at that
 10 briefing on the morning of the 16th of August?
 11 MR GCILITSHANA: I won't recall, but what
 12 normally Mr Blaau from, Hendrik Blaauw from security will
 13 be the person who will lead, facilitate the meeting. Then
 14 the HR, as I indicate it will be Jomo Kwadi, Abie Kgotle
 15 from the HR, from the company, the leadership from the
 16 Solidarity and UASA. I'm not sure exactly that day, then
 17 it will be myself, leadership of Lonmin from different
 18 branches.
 19 MR BUDLENDER SC: Was anyone present from
 20 the police?
 21 MR GCILITSHANA: I don't recall anyone
 22 from the police.
 23 MR BUDLENDER SC: Did members of the
 24 police attend those regular morning briefings usually?
 25 MR GCILITSHANA: From the 13th, 13th and

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1 14th yes, because the briefings were held at Middlekraal,
 2 then on the 15th briefings were moved to LPD.
 3 MR BUDLENDER SC: Did the police usually
 4 attend the Middlekraal briefings?
 5 MR GCILITSHANA: Yes, they would attend,
 6 yes.
 7 MR BUDLENDER SC: And who would be the
 8 senior police person present at such meetings?
 9 MR GCILITSHANA: No, unfortunately I
 10 don't know them. I wouldn't know who was the person who
 11 was the senior.
 12 MR BUDLENDER SC: And are you saying that
 13 you can't recall whether any police were present on the 15th
 14 and the 16th, or what is the position as far as you can
 15 recall?
 16 MR GCILITSHANA: I recall the mine
 17 security personnel who were there. I remember two guys,
 18 Graham StClare and Henry Blaauw from the mine. I don't –
 19 MR BUDLENDER SC: Who?
 20 MR GCILITSHANA: Yes.
 21 MR BUDLENDER SC: Can you recall whether
 22 any police members were present on either of those two
 23 days, the 15th and the 16th?
 24 MR GCILITSHANA: No, I don't recall. I
 25 only recall having a meeting with the General Mpembe and

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1 General Annandale in the afternoon on the 15th, that meeting
 2 that I remember where we had them when we were together
 3 with the president, both president of AMCU and NUM.
 4 MR BUDLENDER SC: And if we are talking
 5 about the same meeting, then is that the meeting with
 6 Generals Mpembe and Annandale to discuss visits by the
 7 union presidents to the koppie?
 8 MR GCILITSHANA: That's correct.
 9 MR BUDLENDER SC: Just to come back to
 10 the briefing of the 16th of August, you told the Commission
 11 that the briefing was about two matters, about the security
 12 situation and about attendance at work. Is that correct?
 13 MR GCILITSHANA: Yes, that's what I can
 14 recall. In fact the figures that they will be, HR will
 15 report figures of people who have reported for work.
 16 MR BUDLENDER SC: What was reported about
 17 the security situation at that briefing on the morning of
 18 the 16th of August?
 19 MR GCILITSHANA: Which date again?
 20 MR BUDLENDER SC: The 16th, the morning of
 21 the 16th.
 22 MR GCILITSHANA: What I recall is that
 23 the discussion was about there will be the process of
 24 disarming, but that was not in detail.
 25 MR BUDLENDER SC: I'm not sure what you

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1 mean by that. Were you told that the strikers were going
2 to be disarmed that day?

3 MR GCILITSHANA: We were told that after
4 the visits there was an agreement that the workers will
5 disarm.

6 MR BUDLENDER SC: I understand, and were
7 you told what the police were going to do if the workers
8 did not hand over their arms?

9 MR GCILITSHANA: No, we were not told.

10 MR BUDLENDER SC: Thank you, and then you
11 also told the Commission yesterday that at 5PM that day you
12 attended a meeting at the Solidarity offices.

13 CHAIRPERSON: Sorry, Mr Budlender, have
14 you finished the meeting at 7:30 in the morning?

15 MR BUDLENDER SC: Yes.

16 CHAIRPERSON: Right, could I ask – I'd
17 like to ask a question too about that. How long did the
18 meeting last, the briefing meeting?

19 MR GCILITSHANA: I will not have the
20 actual, how long it lasted, but normally this meeting will
21 take 30 to 45 minutes.

22 CHAIRPERSON: Yes, now you see you handed
23 in exhibit XX2 contained in the bundle of documents and one
24 of them, and a substantial part of that bundle of documents
25 is a series of extracts from the Lonmin logbook, beginning,

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1 as far as I can see, at page 21. Now I just want to turn
2 to page 31. One sees what was being recorded at the time,
3 or immediately prior to the meeting, and I take it, it's a
4 fair assumption that what was reported at the meeting would
5 have been what's been recorded in the logbook. Would you
6 think that's a reasonable assumption?

7 MR GCILITSHANA: No, sorry Commissioner,
8 I didn't understand exactly which page.

9 CHAIRPERSON: Page 31. That's the Lonmin
10 logbook.

11 MR GCILITSHANA: Yes, I could see.

12 CHAIRPERSON: Now if one looks at page,
13 we start at page 31 but page 31 begins with an entry made
14 at 6:50, which is 10 to 7, on the 16th, and there are a
15 number of entries going down to 7:48, which would have been
16 an entry made at the time the briefing was taking place and
17 I'm asking you whether it's a fair assumption that what you
18 were told at the briefing would have been more or less what
19 was being recorded in the logbook at the time.

20 MR GCILITSHANA: Yes, correct.

21 CHAIRPERSON: Japie Van Achterberg - I
22 wonder, Mr Budlender, if you can see the point of interest
23 to me, whether it wouldn't be better for you to deal with
24 that.

25 MR BUDLENDER SC: Chair, I'm not sure

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1 which of these points is of particular interest to you.
2 I'm clearly being a bit obtuse –

3 CHAIRPERSON: Don't worry. Okay, I'll
4 deal with it. "Japie Van Achterberg called and said," this
5 is a quote, this is an entry at 6:50, "that Willem Ngoco
6 from the buses called him, informed him that a group of
7 people were gathering at EPL bus rank. They're not getting
8 on the buses. They're not sure what the situation is." It
9 looks like, "Kallie Milos," is it? "despatched Martin
10 Vorster to go and have a look." So was it reported that
11 there was, something was happening at the EPL bus rank,
12 that people were gathering there and not getting on the
13 buses?

14 MR GCILITSHANA: Normally such incident
15 will be reported. That was the usual operations. Such
16 incident will be reported. If I may also explain, our
17 leadership, because they would also do runs and the, at the
18 mine, they will tell us if there are any areas where there
19 are concerns of people who are not able to get in the
20 buses.

21 CHAIRPERSON: Then the next entry that I
22 would think would have been the subject of discussion at
23 the briefing, is the first entry for 7:48, is that "Abie
24 Kgotle called and said that at EPL hostel bus rank are a
25 group of people that want to use the buses to go to work,

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1 requesting an escort. Dirk Botes said that mining security
2 and SAPS are on their way, stopping at SAFIS first, there's
3 a group of people gathering at the shaft," they informed.
4 Was that something that was discussed or would have been
5 discussed at the briefing?

6 MR GCILITSHANA: I won't be able to be
7 specific but as I indicated, if there are such incident
8 they will come on the briefing, then the police will be,
9 the security, mine security will be directed to those
10 areas.

11 CHAIRPERSON: Then the next one, 7:48 as
12 well, "Dirk Botes requested that the water cars and the
13 medics be on standby to assist the SAPS and mining
14 security, if necessary." Was that mentioned at the
15 briefing?

16 MR GCILITSHANA: I don't recall this,
17 because more of the issues of the police were not dealt in
18 that meeting because the police would say they've got their
19 own area where they discuss their issues.

20 CHAIRPERSON: So did you at any stage
21 that morning know or hear that there had been a request
22 that the water cars and the medics be on standby to assist
23 the police and the mining security if necessary?

24 MR GCILITSHANA: No, I don't recall it.

25 CHAIRPERSON: Thank you, Mr Budlender,

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1 that was the point that I wanted to take up, but you'll
 2 move on now to 5PM that afternoon, I think.
 3 MR BUDLENDER SC: I'm moving on to post-
 4 briefing, yes Chair. Mr Gcilitshana, you told us you
 5 attended the meeting at 5 o'clock that afternoon at the
 6 Solidarity offices. What did you do between the briefing,
 7 which must have ended at about 8:30-ish, and the Solidarity
 8 office meeting at 5 o'clock that evening?
 9 MR GCILITSHANA: As I indicated that
 10 after the briefing session the branches will do their
 11 rounds to their shaft. Myself and the mining house
 12 coordinator, we waited for them to come back. That's
 13 where, that's when we had a briefing later at Middlekraal.
 14 Again I must indicate that the briefings, we had –
 15 CHAIRPERSON: Forgive me, I didn't hear
 16 correctly what you said. You said "We had a briefing later
 17 at," but I didn't hear what the word was.
 18 MR GCILITSHANA: I mean after the
 19 briefing in the morning the leadership make rounds in their
 20 operations, in their branches.
 21 CHAIRPERSON: Ja.
 22 MR GCILITSHANA: Then when they come back
 23 they do the debriefing of what was their observation in
 24 their areas. Then I didn't mean that we were at the
 25 briefing at half past 5. I said I left the office after 5

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1 o'clock and what I also indicate is that each day you will
 2 have two briefing sessions, one at half past 7 and there
 3 will be another one at 2 o'clock.
 4 CHAIRPERSON: That's what I didn't hear.
 5 So the second briefing was at 2 o'clock. Where was that?
 6 MR GCILITSHANA: It's normally called at
 7 the security, but I didn't, I never attended that one.
 8 CHAIRPERSON: I see.
 9 MS HEMRAJ SC: I think Mr Budlender's
 10 question was where did you go after the first meeting,
 11 after the first briefing.
 12 MR GCILITSHANA: As I recall, I went to
 13 Middlekraal with the mining house coordinator, where we
 14 waited for the comrades to come back.
 15 MR BUDLENDER SC: And so where did you
 16 spend the day? Did you spend the day at the LPD? I'm
 17 sorry, I'm not understanding where you were between 8:30
 18 and 5.
 19 MR GCILITSHANA: We spent the time at
 20 Middlekraal, yes.
 21 [10:02] MR BUDLENDER SC: Did you receive any
 22 information during that period as to what was happening at
 23 the koppie?
 24 MR GCILITSHANA: We got the information
 25 because at times we will sit in our cars as we wait,

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1 opening the radio. We got it from the radio.
 2 MR BUDLENDER SC: You didn't receive any
 3 information from anyone else other than radio reports?
 4 MR GCILITSHANA: Not as I recall that
 5 day, because even the 2 o'clock meeting was postponed.
 6 MR BUDLENDER SC: Why was the 2 o'clock
 7 meeting postponed?
 8 MR GCILITSHANA: We were told that the
 9 people who were supposed to attend the meeting are busy
 10 with other activities, therefore that meeting can't
 11 continue.
 12 MR BUDLENDER SC: That would be the
 13 Lonmin staff?
 14 MR GCILITSHANA: Yes.
 15 MR BUDLENDER SC: Were you told what
 16 other activities they were busy with?
 17 MR GCILITSHANA: No, they didn't tell us.
 18 MR BUDLENDER SC: And then if I
 19 understood correctly, you had a meeting at 5 or 5:30 that
 20 evening at Middlekraal?
 21 MR GCILITSHANA: No, I said I left the
 22 area around after 5 o'clock.
 23 MR BUDLENDER SC: Okay, I understand.
 24 When did you first hear about the shootings on the koppie?
 25 MR GCILITSHANA: As I indicated that one,

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1 I got it from the radio. Then on the following, that's, it
 2 was explained now on the following day in the briefing
 3 session.
 4 MR BUDLENDER SC: What did you do when
 5 you heard on the radio about the shootings at the koppie?
 6 MR GCILITSHANA: To me it was the shock
 7 and surprise.
 8 MR BUDLENDER SC: Did you do anything,
 9 did you respond in any way to that news?
 10 MR GCILITSHANA: I don't recall, but - I
 11 don't recall clearly, but as I remember we did phone the
 12 company to verify exactly, Jomo Kwadi, the HR, what is
 13 happening, we hear this thing, and then he confirmed that
 14 is the case.
 15 MR BUDLENDER SC: Did you take any action
 16 of any kind as a result of that information?
 17 MR GCILITSHANA: Not.
 18 MR BUDLENDER SC: Right, then I'd like to
 19 move on to one other topic. I want to talk for a moment
 20 about the negotiations of September 2012. Now you'll
 21 recall your evidence in that regard, those were
 22 negotiations between Lonmin and various trade union, AMCU,
 23 NUM, Solidarity, UASA, and also as I understand it, the
 24 delegation representing the strikers. Is that correct?
 25 MR GCILITSHANA: Yes, that's correct.

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1 MR BUDLENDER SC: This was a negotiation
 2 which took place outside the normal collective bargaining
 3 processes and structures?
 4 MR GCILITSHANA: Yes.
 5 MR BUDLENDER SC: And I take it that NUM
 6 and Lonmin agreed to this negotiation outside the normal
 7 collective bargaining processes and structures because it
 8 was clear that the dispute could not be resolved through
 9 the normal collective bargaining processes?
 10 MR GCILITSHANA: That's correct. We were
 11 trying to resolve the problem.
 12 MR BUDLENDER SC: Yes, and the normal
 13 collective bargaining processes were not a suitable
 14 mechanism for dealing with it because it couldn't be
 15 resolved because not everyone was there. Not everyone was
 16 involved in those processes?
 17 MR GCILITSHANA: Can you repeat your
 18 question?
 19 MR BUDLENDER SC: Sorry, that was a very
 20 clumsy question.
 21 CHAIRPERSON: Yes.
 22 MR BUDLENDER SC: The reason the normal
 23 collective bargaining processes couldn't be used was that
 24 not all of the parties to the dispute were adequately
 25 represented in the normal collective bargaining processes?

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1 MR GCILITSHANA: Yes, that's correct,
 2 because if you could see, we talk of also the chiefs were
 3 there, also the Council of Churches was there.
 4 MR BUDLENDER SC: It wouldn't assist in
 5 September 2012 for NUM and Lonmin to reach an agreement
 6 through the normal processes about how the dispute could be
 7 resolved because the striking workers were not adequately
 8 represented by NUM at that time; they didn't have
 9 confidence in NUM.
 10 MR GCILITSHANA: It will be difficult for
 11 me to say yes or no on that one, but what I agree with you
 12 that there was loss of confidence to the NUM.
 13 MR BUDLENDER SC: Right, now let's turn
 14 back a month earlier to August 2012, before the shootings
 15 took place. Now we know, Mr Gcilitshana, that NUM was very
 16 worried about the assaults on its members and the murders
 17 of some of its members in August 2012.
 18 MR GCILITSHANA: That's correct.
 19 MR BUDLENDER SC: The striking workers
 20 had rejected the attempt by NUM to resolve the dispute when
 21 Mr Zokwana visited the area.
 22 MR GCILITSHANA: That's correct.
 23 MR BUDLENDER SC: The NUM had called on
 24 the police to bring an end to the violence.
 25 MR GCILITSHANA: I don't recall saying

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1 that the police must, and, but the police must call an end
 2 to violence, yes I recall that.
 3 MR BUDLENDER SC: Perhaps I didn't
 4 express it well. What the NUM were saying to the police,
 5 look here, our members are being assaulted and killed, it's
 6 your job to prevent that.
 7 MR GCILITSHANA: Yes, and to the
 8 violence.
 9 MR BUDLENDER SC: And thus far in mid-
 10 August 2012, let's say by the 15th of August 2012 the police
 11 had not been able to do that because the violence and
 12 intimidation had been continuing.
 13 MR GCILITSHANA: That's correct.
 14 MR BUDLENDER SC: Now I want to ask you
 15 this, to consider the following situation. What would the
 16 NUM response have been if the police had sat together with
 17 NUM and Lonmin, let's say the 15th or 16th of August, and
 18 said look here, there's a dispute about the RDO wages, it
 19 can't be resolved through the normal collective bargaining
 20 processes – I'm sorry, this is a long question. Perhaps I
 21 should stop there. What would have happened if on the 15th
 22 of August SAPS had got together with Lonmin and the NUM and
 23 the police had said the following – there's a dispute
 24 around the RDO wages and it seems that it can't be resolved
 25 through the normal collective bargaining processes, 10

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1 people have now lost their lives. There's a limit to the
 2 extent to which we can prevent this violence through normal
 3 policing activities. The rock drill operators have said
 4 they will leave the koppie if the management comes and
 5 talks to them. We think that you, Lonmin and NUM should
 6 agree that this dispute should be negotiated outside the
 7 normal collective bargaining processes. Now if the police
 8 had said that to NUM and Lonmin on let's say the 15th of
 9 August, what would NUM's attitude have been?
 10 MR GCILITSHANA: As NUM, as we indicated
 11 that even beyond the shootings we agreed to sit down. I
 12 believe that we would have agreed to sit down with the
 13 company and see how can we resolve the problem, as we were
 14 trying.
 15 MR BUDLENDER SC: Would you have agreed
 16 to an attempt being made to resolve the dispute outside the
 17 normal bargaining processes in mid-August 2012?
 18 MR GCILITSHANA: That's correct, as a
 19 process of trying to resolve the problem.
 20 MR BUDLENDER SC: In other words just as
 21 you agreed after the shootings, you would have agreed
 22 before the shootings?
 23 MR GCILITSHANA: Yes.
 24 MR BUDLENDER SC: And of course we know
 25 that if that had happened and the dispute had been resolved

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1 in mid-August outside the normal bargaining processes, 34
 2 people wouldn't have lost their lives.
 3 MR GCILITSHANA: I think so. I can't
 4 say, I can't be confident saying that would not have
 5 happened.
 6 MR BUDLENDER SC: Before the shootings of
 7 the 16th of August, was there any discussion between the
 8 police, Lonmin and NUM about the possibility of trying to
 9 resolve this matter outside the normal bargaining
 10 processes?
 11 MR GCILITSHANA: I don't recall.
 12 MR BUDLENDER SC: Are you saying you
 13 don't recall that any such discussions took place?
 14 MR GCILITSHANA: No, I don't recall.
 15 MR BUDLENDER SC: I take it that if there
 16 had been any such discussions you would have remembered
 17 them. They would have been very important.
 18 MR GCILITSHANA: As I indicate, maybe
 19 it's because of the timing. I don't recall.
 20 MR BUDLENDER SC: Mr Gcilitshana, there
 21 was a fairly ugly dispute going on in this mine and NUM had
 22 tried to resolve it and had not been successful.
 23 MR GCILITSHANA: Yes.
 24 MR BUDLENDER SC: You would surely
 25 remember if there was discussion amongst the parties and

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1 with the police about trying other methods to resolve the
 2 dispute?
 3 MR GCILITSHANA: If one can explain, as
 4 NUM we were not allowed to go and address the workers.
 5 They said they don't want to hear anything from NUM and by
 6 then there was no worker delegation that was nominated to
 7 come and engage.
 8 MR BUDLENDER SC: I understand. You
 9 don't recall that there was ever any discussion between
 10 yourselves, Lonmin and the police about Lonmin engaging
 11 with a worker delegation from the strikers to try to
 12 resolve the dispute?
 13 MR GCILITSHANA: I don't recall,
 14 Commissioner.
 15 MR BUDLENDER SC: That happened after the
 16 shootings and that process was in fact successful.
 17 MR GCILITSHANA: That's correct.
 18 MR BUDLENDER SC: Thank you, Chair, I
 19 have no further questions.
 20 CHAIRPERSON: Mr Semenya, are you ready
 21 to cross-examine, and do you wish to do so?
 22 MR SEMENYA SC: Mr Mathibedi will do it
 23 for us, but I'm advised that Mr Burger intends to go in
 24 first.
 25 CHAIRPERSON: Very well. Mr Burger,

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1 would you like to cross-examine now?
 2 MR BURGER SC: Mr Chairman, it's not as
 3 simple as that. I was asked yesterday to cross-examine
 4 first and I agreed to that. Ms Barnes this morning
 5 indicates to me that she would like to go first.
 6 CHAIRPERSON: I would think it's
 7 appropriate in the light of the evidence that Lonmin should
 8 cross-examine before AMCU, but the order we were following
 9 previously was that we gave the opportunity to the police.
 10 I was aware that you were asked to do so yesterday and I
 11 must confess, I'd forgotten it. But thank you for
 12 reminding me, and is it suggested then that after – Mr
 13 Semenya, after Mr Burger has cross-examined I take it you
 14 wouldn't object to Ms Barnes cross-examining then?
 15 Alright, so that's the order then of cross-examination for
 16 the moment, Mr Burger first for Lonmin and then Ms Barnes
 17 for AMCU. Is that acceptable to Ms Barnes? Okay, Mr
 18 Burger.
 19 MR BURGER SC: Mr Gcilitshana, may I say
 20 to you what I've said to Mr Mathunjwa, that asking
 21 questions for Lonmin does not mean that Lonmin does not
 22 understand and appreciate the importance of the trade
 23 unions acting in the workplace as a negotiation between the
 24 employees and the employer. They understand that and they
 25 appreciate that.

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1 MR GCILITSHANA: I accept that.
 2 MR BURGER SC: In fact, I'm told that the
 3 working relationship between NUM and Lonmin is a healthy
 4 one, a cordial one.
 5 [10:22] MR GCILITSHANA: That's correct.
 6 MR BURGER SC: And it's in that context
 7 that I'm going to ask you some questions on behalf of
 8 Lonmin. You understand that?
 9 MR GCILITSHANA: Okay.
 10 MR BURGER SC: I want to commence to
 11 debate the chronology with you. As I understand your
 12 evidence, the intimidation and violence at the Karee Shaft
 13 of Lonmin preceded the strike of the RDOs at Impala.
 14 MR GCILITSHANA: That's correct.
 15 MR BURGER SC: It really commenced in May
 16 of 2011 when Mr Steve and one of the other then NUM
 17 officials were relieved of their positions and that caused
 18 all sorts of havoc.
 19 MR GCILITSHANA: I think by May 2011 it
 20 was general workers, I don't, as I understand, as I recall,
 21 not the RDOs that went on strike.
 22 MR BURGER SC: No, that's quite right.
 23 In your statement which we've seen yesterday, that's XX1,
 24 you deal with that in paragraph 13. If I may just remind
 25 you, that's where you say, "As a result thereof," that's of

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1 the suspension, "thousands of employees at Karee Mine
2 embarked on an unprotected strike on the 18th of May 2011,
3 demanding the reinstatement of the Karee branch,
4 particularly Mr Steve, the former NUM branch chairperson.
5 The strikers included a significant number of RDOs."
6 MR GCILITSHANA: I recall.
7 MR BURGER SC: And that then led, as you
8 told us, to the notice that was sent out, which we find in
9 the NUM bundle at page 7, that notice of the 12th of May
10 2011, explaining to management what was happening in the
11 workplace.
12 MR GCILITSHANA: That's correct.
13 MR BURGER SC: And as put to you earlier
14 that that was accompanied by intimidation, as I understand
15 your evidence, that intimidation was directed at the
16 leadership and the membership of NUM. Correct?
17 MR GCILITSHANA: That's correct.
18 MR BURGER SC: Where did that come from?
19 Who was angry at NUM at that stage and who intimidated?
20 MR GCILITSHANA: I believe that people
21 who were angry is the people who were very close supporters
22 of branch committee that felt that when [inaudible] is
23 taken out, therefore they will be left unattended to.
24 MR BURGER SC: It was at that stage that
25 NUM and AMCU both launched a membership drive?

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1 MR GCILITSHANA: Before the strike of May
2 there was no presence of AMCU as one, as I recall.
3 MR BURGER SC: And within months of the
4 strike AMCU was the majority union at Karee?
5 MR GCILITSHANA: That's correct.
6 MR BURGER SC: And that process of
7 conversion of NUM majority to AMCU majority was again,
8 according to your statement, accompanied by violence at
9 Karee.
10 MR GCILITSHANA: That's correct.
11 MR BURGER SC: I'm trying to understand
12 where this comes from, and can I read with you again your
13 statement, paragraph 20 on page 5, and ask you a few
14 questions on that? You say in paragraph 20, "Incidents of
15 violence at Karee Mine continued over this period. Among
16 such incidents, on or about the 22nd of April 2012, several
17 employees were assaulted at different shafts at Karee, one
18 of whom later died in the hospital as a result of severe
19 head injuries." Now what was the cause behind this
20 intimidation, this violence?
21 MR GCILITSHANA: As one can recall, there
22 was a decision that was taken by leaders of AMCU that no
23 more overtime that should be worked in Karee, in fight for
24 those who have not been re-employed. That's what one, that
25 information that I got.

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1 MR BURGER SC: I'm not fully
2 understanding that answer. Would you try to assist me and
3 just elaborate?
4 MR GCILITSHANA: The information that I
5 got from the structures was that there was a mass meeting
6 and the decision at the mass meeting was, a mass meeting by
7 AMCU, and a decision was taken that no more overtime that
8 should be worked in support of those who were not re-
9 employed, that were dismissed.
10 MR BURGER SC: May we assume that during
11 this time of turmoil you were in regular contact with your
12 structures at Lonmin generally, and with Karee in
13 particular, to be kept abreast of what was happening?
14 MR GCILITSHANA: I will be in contact
15 with the branch. You know what, the structures at the NUM,
16 the branches would normally report issues to the region,
17 then the region will then escalate the issues to the head
18 office. That's why sometimes there are delays in terms of
19 getting information. Therefore I didn't have a direct
20 interaction with Karee itself.
21 MR BURGER SC: No, but I assume that you
22 were informed regularly of what was happening at Karee?
23 MR GCILITSHANA: Correct.
24 MR BURGER SC: I read on in your
25 paragraph 20, "In May 2012 the keys of the NUM offices at

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1 Karee Mine were forcibly confiscated from the possession of
2 one of the NUM branch leaders by a large group of workers."
3 Now we see this again in January of the next year at Impala
4 that the NUM office is being attacked, and we're going to
5 see it in August again at Lonmin that the NUM office is
6 marched upon – let me put it no higher than that. Can you
7 assist the Commission, do you have any explanation for
8 that, why workers would be angry at the NUM office?
9 MR GCILITSHANA: I explained yesterday
10 the situation at Impala, that after the unilateral decision
11 of giving 18% increase to the miners, that resulted to the
12 levels of mistrust to the NUM at Impala. At Karee, as I
13 got information, there's a, there is this group of workers
14 who came to the office and demanded the key, the keys of
15 the office. I don't know what was their motive behind
16 taking the keys of the office, but I suspect that it is
17 more of the competition at Karee because AMCU was there
18 already and NUM was there.
19 MR BURGER SC: We have some objective
20 facts in trying to understand this rivalry between the two
21 unions, but we don't know how to complete those facts.
22 Please help us. What I would like to understand is what
23 was the membership of NUM as opposed to AMCU before the Mr
24 Steve incident at Karee, and what was it thereafter? What
25 was the membership of AMCU before the intimidation started

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1 in 2011, and what is it today? So against that background,
 2 would you be able to help us or should I ask that to
 3 somebody else?
 4 MR GCILITSHANA: Before the suspension of
 5 Steve the membership of NUM was in majority at Karee, but
 6 after the workers were reinstated, or re-employed, yes, the
 7 membership of NUM – remember that everybody when, were re-
 8 employed in new conditions, no-one was still on, belonging
 9 to any union. Therefore AMCU made its initiatives to
 10 recruit. Then around that time I think as the records we
 11 were informed that they are about between 2 000 and 3 000
 12 AMCU, and NUM around 1 000 something.
 13 MR BURGER SC: And Mr Gcilitshana,
 14 speaking for Lonmin as a mine, what was the number of the
 15 NUM membership prior to the Mr Steve incident, and what was
 16 the number, say at the beginning of 2012, either in
 17 percentage or in number of members? How did that decrease
 18 over the period for NUM?
 19 MR GCILITSHANA: I may not have the
 20 correct figures, but we're above, NUM was about 55%. NUM
 21 was about 55%. Then around April we were told that NUM is
 22 at 45%, about 49 –
 23 MR BURGER SC: Which year? April which
 24 year?
 25 MR GCILITSHANA: April 2011.

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1 MR BURGER SC: 2011, yes? And by January
 2 -
 3 MR GCILITSHANA: 49. 49%.
 4 MR BURGER SC: And by January 2012?
 5 MR GCILITSHANA: I don't have the actual
 6 figures or percentage, but we were informed that at Karee
 7 AMCU is in majority.
 8 MR BURGER SC: And today, who is the
 9 majority trade union at Lonmin overall?
 10 MR GCILITSHANA: The information that
 11 one, that I got is that AMCU is leading in terms of
 12 membership, as much as I must also indicate that we are
 13 still contesting the verification of that membership.
 14 MR BURGER SC: I accept there may be
 15 technical debates. I'm just trying to understand what the
 16 flow was. Would that also be true for Impala that AMCU is
 17 today the majority trade union at Impala?
 18 MR GCILITSHANA: That's correct.
 19 MR BURGER SC: Would that also be true
 20 for Anglo?
 21 MR GCILITSHANA: No, I don't have that
 22 information with Anglo.
 23 MR BURGER SC: Let's say with Impala and
 24 Lonmin, and in that process they replaced NUM as the
 25 majority trade union?

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1 MR GCILITSHANA: In Lonmin NUM have not
 2 been taken out.
 3 MR BURGER SC: Is NUM still the majority
 4 at Lonmin?
 5 MR GCILITSHANA: I say AMCU is in
 6 majority, yes.
 7 MR BURGER SC: I see.
 8 CHAIRPERSON: You say that AMCU is in
 9 majority at Lonmin, or they claim to be the majority, but
 10 their claim to majority status is subject to verification.
 11 Is that correct?
 12 MR GCILITSHANA: Yes, that's correct.
 13 CHAIRPERSON: Does that mean that from
 14 the point of view of recognition NUM is still recognised as
 15 the majority union, subject to possible revision of the
 16 verification process establishes that AMCU are in fact the
 17 majority? Is that the position?
 18 MR GCILITSHANA: That's correct.
 19 MR BURGER SC: And throughout this period
 20 of vying for membership by the two unions, we saw violence,
 21 intimidation, and people dying.
 22 MR GCILITSHANA: That's correct.
 23 MR BURGER SC: In fact, Mr Gcilitshana,
 24 the tragedy is illustrated in your statement where we count
 25 no less than five bodies. If you have a look at paragraph

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1 47, you identify three NUM members and office bearers who
 2 lost their lives.
 3 MR GCILITSHANA: That's correct.
 4 MR BURGER SC: Paragraph 56, we see
 5 another NUM member losing his life in September last year.
 6 [10:42] MR GCILITSHANA: That's correct.
 7 MR BURGER SC: And inside this
 8 Commission, we see in paragraph 60, somebody who took part
 9 in the inspection in loco is no longer with us?
 10 MR GCILITSHANA: That's correct.
 11 MR BURGER SC: Would you agree with the
 12 submission which will be made at the end to the Commission
 13 that these deaths relate to the rivalry between AMCU and
 14 NUM?
 15 MR GCILITSHANA: I can't say yes or no,
 16 because as this incident happened, people were identifying
 17 themselves as strikers, not as AMCU or NUM.
 18 MR BURGER SC: I respect your answer and
 19 I think it's a very honest and an answer with a lot of
 20 integrity. So may I put it differently? If you have to
 21 express a view, would you not think that there's a
 22 relationship between these deaths and the trade union
 23 rivalry, as put to you?
 24 MR GCILITSHANA: As I indicated, it would
 25 be difficult for me to say yes or no in this incident,

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1 because as NUM, we have not been involved in any fighting.
 2 MR BURGER SC: I accept that. Can I get
 3 some indication of the quantum, the amount of membership
 4 dues arising at Lonmin in any given month? Would it be
 5 safe to assume that there are potentially 28 000 members of
 6 trade unions at Lonmin, because they have 28 000 employees?
 7 MR GCILITSHANA: That is possible.
 8 MR BURGER SC: And do I understand it
 9 correctly that union dues are deducted by way of a
 10 deduction from the monthly payslip of each worker?
 11 MR GCILITSHANA: That's correct.
 12 MR BURGER SC: Do you know what
 13 percentage is deducted of the wage?
 14 MR GCILITSHANA: I can talk for NUM, it's
 15 1%.
 16 MR BURGER SC: 1%?
 17 MR GCILITSHANA: Of the basic.
 18 MR BURGER SC: The next subject I want to
 19 broach with you is the different attitudes expressed by the
 20 two main trade unions to the violence which interrupted.
 21 Can I start off with NUM? Would it be correct to say, as a
 22 general proposition, that throughout the period May 2011
 23 right up to August 2012, NUM did its utmost to dissuade
 24 workers from unprotected strikes?
 25 MR GCILITSHANA: That's correct.

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1 MR BURGER SC: Violence?
 2 MR GCILITSHANA: That's correct.
 3 MR BURGER SC: And that there was a
 4 consistent effort to persuade members to go back to work?
 5 MR GCILITSHANA: That's correct.
 6 MR BURGER SC: In fact, NUM went so far
 7 as to call mass meetings to convey that message to its
 8 members?
 9 MR GCILITSHANA: That's correct.
 10 MR BURGER SC: Can I ask you in this
 11 context to have a look at the email which we find in your
 12 NUM bundle at page 77 – that's XX2, page 77. It comes from
 13 Mr Bongo, that is the person who passed away in the
 14 interim, is that correct?
 15 MR GCILITSHANA: That's correct.
 16 MR BURGER SC: And it's sent by certain
 17 officials, are those officials at Lonmin?
 18 MR GCILITSHANA: It also – it was sent,
 19 yes, to comrades in the region, that's the regional office.
 20 MR BURGER SC: Is this regional? Is this
 21 NUM to NUM?
 22 MR GCILITSHANA: Yes, it's regional
 23 office and then –
 24 MR BURGER SC: I'm sorry.
 25 MR GCILITSHANA: And then general

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1 secretary, Frans Baleni.
 2 MR BURGER SC: I was wrong to believe it
 3 was sent to Lonmin, it was then by NUM and it's in the
 4 context of a court interdict which was obtained by Lonmin
 5 in the 10th of August, do you see that? May I have your
 6 attention for the first paragraph, "The Lonmin RDOs had
 7 meeting on Friday last week, 3rd of August 2012, and
 8 Thursday, 9th of August 2012, where they take decision to
 9 not go to work, to send memorandum to management. The
 10 Western Platinum branch committee have done the following
 11 steps, trying to protect the NUM members," and then just
 12 the introduction to the third paragraph, "Some of them
 13 ignored all the above steps as they took the decision
 14 mentioned above on Thursday. Once we heard this decision,
 15 we took decision to wake up at 2:00 to accompany those
 16 willing to go to work that they may not be intimidated or
 17 assaulted." Was that the type of information you obtained
 18 from Lonmin as to actions taken by NUM to protect workers
 19 and to enable them to go back to work?
 20 MR GCILITSHANA: I didn't get your
 21 question clearly.
 22 MR BURGER SC: Does that correspond with
 23 information given through to you, where you were at head
 24 office, as what was being done in order to assist members
 25 of NUM during this tumultuous time?

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1 MR GCILITSHANA: That's correct.
 2 MR BURGER SC: To your knowledge and on
 3 the information you received back from your structures at
 4 Lonmin, what did AMCU do to calm emotions and to dissuade
 5 members from taking part in an unprotected strike?
 6 MR GCILITSHANA: I didn't hear anything,
 7 except on the 15th where we were together in a meeting
 8 together with the generals.
 9 MR BURGER SC: We have heard evidence of
 10 what was said between the AMCU president and Mr Barnard
 11 Mokwena. That's not what I'm interested in and we have
 12 that evidence. I'm interested to know, according to the
 13 reports you got from the grassroots at Lonmin, what was
 14 being done at membership level by AMCU to put water on the
 15 fire?
 16 MR GCILITSHANA: I didn't hear anything,
 17 except that there was rumours that – there are suspicions
 18 that AMCU might be involved in the strike.
 19 MR BURGER SC: In fact, if you have a
 20 look at XX2, that's the NUM bundle at page 76, which is the
 21 second page of that email from Mr Russo-Bello at which we
 22 looked yesterday, you'll see this is Friday the 10th of
 23 August, and the second paragraph from the top at page 76 he
 24 says, "I would like to say, and I've indicated as much to
 25 Bernard," that's Mr Barnard Mokwena, the Human Rights

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1 manager, "that this whole thing reeks of AMCU involvement
 2 and orchestration and is almost a carbon copy of what
 3 transpired at Impala." Do you have any comment on your
 4 rumours that you heard in this context?
 5 MR GCILITSHANA: I would not say yes or
 6 no, because it's the rumours that we got.
 7 MR BURGER SC: In fairness, those are
 8 questions I should put to Mr Steve when he gives evidence,
 9 and we've asked the evidence leaders to obtain his presence
 10 here, so let me leave that subject for him. Can I just
 11 list with you – and I'm going over to a new subject - the
 12 parallels between the Impala January 12 strike and the
 13 Lonmin August 12 strike, what was the same, if one looks at
 14 them, and if you can just briefly confirm with me firstly
 15 RDOs were involved in both these unprotected strikes?
 16 MR GCILITSHANA: That's correct, yes.
 17 MR BURGER SC: Both strikes were preceded
 18 by demands outside collective bargaining structures?
 19 MR GCILITSHANA: That's correct.
 20 MR BURGER SC: Both strikes were
 21 unprotected?
 22 MR GCILITSHANA: That's correct.
 23 MR BURGER SC: Both strikes were
 24 accompanied by high levels of violence and intimidation?
 25 MR GCILITSHANA: Yes, as the report that

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1 we got.
 2 MR BURGER SC: In both strikes the NUM
 3 offices were threatened and targeted?
 4 MR GCILITSHANA: That's correct.
 5 MR BURGER SC: Both strikes resulted in
 6 NUM losing membership and AMCU gaining membership?
 7 MR GCILITSHANA: That's correct.
 8 MR BURGER SC: Mr Gcilitshana, you'll
 9 also agree with me, I believe, that the Impala strike had a
 10 major effect on the Lonmin strike?
 11 MR GCILITSHANA: Yes, I would agree.
 12 MR BURGER SC: Okay. In fact, as you
 13 testified, what happened in Impala, raised expectations at
 14 the RDOs at Lonmin?
 15 MR GCILITSHANA: That's correct.
 16 MR BURGER SC: And I'm going to come to
 17 that in some more detail, but would it be correct then for
 18 the Commission to understand that what happened in Impala
 19 caused the RDOs at Lonmin wage-wise to fall behind – they
 20 were earning less after that strike than their brothers at
 21 Impala and their brothers in the surrounding areas working
 22 in platinum mines?
 23 MR GCILITSHANA: That is possible, yes.
 24 MR BURGER SC: And they live in a closed
 25 community; they talk to each other, especially on important

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1 things like soccer and money?
 2 MR GCILITSHANA: Yes, they do.
 3 CHAIRPERSON: When we reach the
 4 appropriate point in your cross-examination –
 5 MR BURGER SC: This is in fact
 6 appropriate, Chair.
 7 CHAIRPERSON: The Commission will take
 8 the tea adjournment.
 9 [COMMISSION ADJOURNS COMMISSION RESUMES]
 10 [11:27
 11 CHAIRPERSON: The Commission resumes.
 12 You are still under oath. And you are still cross-
 13 examining.
 14 MR BURGER SC: Thank you, Chair. Mr
 15 Gcilitshana, my next subject is to debate with you the
 16 interaction between Lonmin and the RDOs during June, July
 17 2012, Mr Da Costa, who spoke to the workers'
 18 representatives about their concerns. You were aware of
 19 Lonmin's policy of not speaking directly to workers but
 20 only talk wages through collective bargaining structures.
 21 You were quite aware of that?
 22 MR GCILITSHANA: Yes.
 23 MR BURGER SC: We don't have to go there,
 24 but it's in that context that you referred the Commission
 25 yesterday to XX3 and XX4, those statements issued by Lonmin

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1 at the time to say we will not negotiate outside
 2 established -
 3 MR GCILITSHANA: That's correct.
 4 MR BURGER SC: I have yesterday asked
 5 your counsel, and he has kindly agreed to ask you to read
 6 from a statement filed by Mr Da Costa of Lonmin, which has
 7 been filed with the Commission, in order to debate with you
 8 how it came about that there was a discussion between
 9 Lonmin and the RDOs during the period under discussion.
 10 Did you have an opportunity of reading paragraphs 3 and 4
 11 in particular of the Da Costa first statement?
 12 MR GCILITSHANA: Yes.
 13 MR BURGER SC: Chair, that statement
 14 appears in a bundle containing all the witness statements
 15 filed by Lonmin and the first one by Mr Da Costa appears
 16 from pages 66 to 89, and I've asked Ms Pillay to just for
 17 the convenience of the witness, give him a copy of that, so
 18 that if I deal with it, we may follow it in that statement.
 19 MS BARNES: If I might just mention, it
 20 is exhibit OO17.
 21 MR BURGER SC: I am indebted to my
 22 learned friend.
 23 MR GCILITSHANA: Yes, I've got the
 24 statement.
 25 MR BURGER SC: Yes, thank you. Mr

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1 Gcilitshana, I am aware that you were not personally
 2 involved in those negotiations, so I can't ask you whether
 3 what Mr Da Costa says is true or not, but what I want to
 4 ask you is, having read paragraphs 3 and 4, is there
 5 anything in there with which you differ, which does not
 6 accord with the reports you received during that period on
 7 this issue?
 8 MR GCILITSHANA: Yes, that's correct.
 9 MR BURGER SC: Do you want to say you
 10 agree with what he says, to the extent it's within your
 11 knowledge? Or you do not agree.
 12 MR GCILITSHANA: That will be a bit
 13 difficult, because it's a very long statement that you are
 14 referring to, but as I browse through, I understand that he
 15 was talking to the issues of collective bargaining and its
 16 procedures, that's what I fully agree with what he
 17 explained.
 18 MR BURGER SC: I see. I am going to put
 19 to you, after I've referred to some of the paragraphs, that
 20 Mr Da Costa had no option, he had to talk to these workers,
 21 but I can't put that to you without referring you to what
 22 he has done, so I am going to, with the leave of the
 23 Chairman, refer you briefly to the history of what he
 24 explains, and then pose that question to you. Mr
 25 Gcilitshana, do you agree with me that Mr Da Costa had to

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1 talk to these people; there had to be a debate between the
 2 two of them? Before I pose that question, let me deal with
 3 the statement with you. On page 67, in paragraph 3.1, he
 4 will tell the Commission that the first time he heard about
 5 the demand by the RDOs for a basic wage increase to 12 500
 6 was when a handwritten poster was seen by him in one of the
 7 shafts at Marikana. Now you won't know that, but I am just
 8 putting you into his state of mind. May I just, with your
 9 assistance, understand that demand. If you go to XX2,
 10 which is the NUM bundle, to page 5, and this is with
 11 reference to Impala. I just want to get a feel for what
 12 R12 500 basic means. Page 5 we have the management brief
 13 telling us the salary adjustment for rock drill operators
 14 in April 2012 at Impala and we see the rate current was
 15 4 935, and that was increased to 6 540.
 16 MR GCILITSHANA: Yes, I could see.
 17 MR BURGER SC: That gave them a total
 18 guaranteed pay of just under R10 000 per month, 9 991.
 19 MR GCILITSHANA: Yes, I could see.
 20 MR BURGER SC: Now I've made some
 21 calculations, and I'll explain it to the Commission in due
 22 course, assume that I've added up correctly. If you take
 23 the R10 000 approximately per month, and you assume that
 24 workers work on average 22 days per month, that gives them
 25 about R450 per month.

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1 MR GCILITSHANA: 450 per?
 2 MR BURGER SC: Per day, I am sorry. R450
 3 per day, working day. Assume for the moment that we
 4 increase the rate, the 6 540 to 12 500, that was the
 5 demand, that would yield about R725 per working day. Now
 6 the question I want to ask you is, do you agree with me
 7 that the demand for 12 500 rate was an unrealistic demand?
 8 MR GCILITSHANA: It will be difficult to
 9 say, because I wouldn't know the coffers of the company at
 10 that time, whether they would be able to afford it or not.
 11 MR BURGER SC: Mr Gcilitshana, take off
 12 your union hat, and talk to me as a witness. It's clearly
 13 an unrealistic demand. People in this country work for, on
 14 average, far less than that. R725 per working day wage for
 15 an employee would have been unrealistic. Are you happy to
 16 accept that?
 17 MR GCILITSHANA: As I indicated, you know
 18 with Impala, we agreed at 10% and 18% came out. Now it
 19 will be difficult for me to say, no, it, they will come and
 20 could not, could not afford.
 21 MR BURGER SC: I understand why you are
 22 the chief negotiator at Lonmin. What next happens in the
 23 version by Mr Da Costa, we find at page 69, the date is the
 24 21st of June of last year and he explains to the Commission
 25 the first approach by the workers to him directly. Page

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1 69, and I am just going to refer to a few paragraphs.
 2 You've read them all. You'll remember in 3.8, he tell us –
 3 MR GCILITSHANA: Yes?
 4 MR BURGER SC: - he says, "A short while
 5 later, at about 5 o'clock on the 21st of June 2012,
 6 approximately 300 people marched on the area outside my
 7 office. I was alerted to their arrival by a member of
 8 Lonmin's security team. I was advised that the crowd
 9 requested me to meet them outside of my office, and to
 10 address them directly."
 11 MR GCILITSHANA: I could see.
 12 MR BURGER SC: He tells us then that he
 13 wouldn't go out, and an arrangement was made and
 14 representatives came in to him, representatives of the
 15 crowd outside, and that he tell us in 3.11. He says, "The
 16 two individuals so nominated were Messrs Makwebine and
 17 Mofokeng. I had not met them previously. Both are
 18 employed at the Karee Mine as RDOs. I've since ascertained
 19 that Mr Makwebine and Mr Mofokeng were both members of AMCU
 20 at the time of approaching me."
 21 MR GCILITSHANA: I could see.
 22 MR BURGER SC: You remember there is then
 23 a discussion between them first in English, then in
 24 Fanagalo, and on page 70, in 3.15, Mr Da Costa says the
 25 following, "I went on to explain to Mr Makwebine and

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1 Mofokeng that there were different ways of raising their
 2 concerns. By way of example, I indicated to them that the
 3 concerns they had, which they had not yet discussed with
 4 me, could have been raised with their line management and
 5 their respective unions. Makwebine and Mofokeng responded
 6 by stating that because I am the ultimate manager at Karee,
 7 I was the most appropriate person to deal with their
 8 concerns." You remember he then realises that they want to
 9 talk wages. He says to them, "You can't talk wages away
 10 from your unions," and they take an important stance, which
 11 now typifies their talking henceforth. They says, "We
 12 don't want the unions involved." That he tells us at page
 13 71, if I may read with you paragraph 3.19. "Makwebine and
 14 Mofokeng went on to express the view that trade union
 15 involvement would only be appropriate if the issue raised
 16 was one which affected the entire work force. They stated
 17 that the issue they came to see me about affected only RDOs
 18 at Karee and for that reason the unions should not be
 19 involved." The next important date is the 2nd of July. In
 20 the interim Mr Da Costa has referred the request to Mr
 21 Munro, he tells us that at page 73. Mr Munro is the
 22 executive vice-president for mining of Lonmin, and he
 23 called back these representatives to give them another
 24 opportunity to talk to him. He says in paragraph 3.26, "On
 25 2nd July 2012 and at my request, Makwebine and Mofokeng

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1 returned to my office. Three additional Lonmin RDOs came
 2 to the meeting with Makwebine and Mofokeng. Also present
 3 was Mr Nkisi," he is a human resources manager at Karee,
 4 and he then identified the other people who attended. They
 5 were both members of AMCU at the time, and at 3.27, perhaps
 6 I should allow the interpreter to interpret this portion,
 7 before reading that to you. Page 74, at 3.27, he told us
 8 of the discussion he had with the five workers, and he said
 9 he conveyed to them that in his view their demands were too
 10 high and it wouldn't be acceded to. But at the foot of
 11 that page 74, he advised them that despite his views, he'll
 12 give them a final answer from management as soon as that is
 13 available. An important development for purposes of NUM we
 14 find at page 76, paragraph 3.32, where Mr Da Costa says,
 15 "During the period 21st June to the 23rd of July 2012, I did
 16 not make any direct contact with either NUM or AMCU
 17 representatives. Nkisi did however during this period,
 18 advise Jerry Ndematse, the branch secretary of NUM, and
 19 Madiba Tswanile, the branch secretary of AMCU, that I had
 20 been approached by the RDOs for more money. Is that
 21 correct as far as NUM is concerned?
 22 [11:47] MR GCILITSHANA: Yes, I got from the
 23 Chair that he did meet with him.
 24 MR BURGER SC: Then in paragraph 34.35 Mr
 25 Da Costa explains what he is doing, why he communicates

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1 directly with the RDOs and he gives five reasons. Now
 2 you've read the five reasons, I want to ask you two
 3 question on that. Have you read the five reasons again?
 4 MR GCILITSHANA: Yes, correct.
 5 MR BURGER SC: Do you accept that Mr Da
 6 Costa honestly held those views as the reasons why he spoke
 7 to the RDOs?
 8 MR GCILITSHANA: That was upon his
 9 observation at that point in time.
 10 MR BURGER SC: And can you fault any of
 11 the reasons he advances to the Commission for talking to
 12 the employees?
 13 MR GCILITSHANA: Can I get the question
 14 again?
 15 MR BURGER SC: Do you disagree with any
 16 of those reasons?
 17 MR GCILITSHANA: Well, my take on the
 18 reasons that he's making here, is that the issue of not
 19 involving unions, that is the area of concern to me,
 20 because all the collective issues are done with the unions
 21 – recognised unions. And then with the understanding that
 22 issues that are involving – substantive issues are
 23 involving salaries are normally discussed at a central
 24 level. RDOs are not only in Karee – any decision that
 25 Karee will take would also have an implication to the

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1 entire Lonmin, because RDOs are based in all the operation.
 2 MR BURGER SC: Did Mr Ndimase convey
 3 those views to Lonmin when he was told that there were
 4 discussions with the RDOs?
 5 MR GCILITSHANA: As I got information,
 6 Ndimase – from Ndimase is that one, when he was approached,
 7 already the process was there and the matter also was
 8 already taken up to the senior management, therefore it was
 9 very difficult for him to say no or yes, because already
 10 the process was ongoing.
 11 MR BURGER SC: Does that mean that
 12 because the process was already ongoing, no concerns were
 13 raised by NUM?
 14 MR GCILITSHANA: As I recall from the
 15 information is that when Ndimase raised the matter that the
 16 company have already started the matter, involving the
 17 union at the middle of the process would be more dangerous,
 18 because already expectations have been created that the
 19 company have started negotiations.
 20 MR BURGER SC: Mr Gcilitshana, do you
 21 accept that the workers didn't want to work through NUM at
 22 that time at Karee, and I talk in particular of the RDOs?
 23 MR GCILITSHANA: Yes.
 24 MR BURGER SC: In fact, the NUM
 25 structures were all but non-existent at the Karee mine at

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1 that point in time?

2 MR GCILITSHANA: There was a branch in

3 Karee which was launched on the 7th of February.

4 MR BURGER SC: But it wasn't a functional

5 branch, Mr Gcilitshana. NUM had been unseated by AMCU at

6 Karee to a large extent.

7 MR GCILITSHANA: As much as AMCU was in

8 majority, but NUM continued to have members and they

9 continued to have meetings – mass meetings with their

10 members.

11 MR BURGER SC: Mr Da Costa will tell the

12 Commission that NUM, as a trade union, was conspicuous in

13 their absence during this period of discussion with the

14 RDOs. Do you differ from that?

15 MR GCILITSHANA: That could be his

16 opinion, because, as I indicated, that there was a

17 structure that was functioning, as far as I know.

18 CHAIRPERSON: I thought they'd been

19 forcibly evicted from their offices at Karee mine in May

20 already. In paragraph 20 of your statement, page 5 you

21 say, "In May 2012 the keys to the NUM offices at Karee mine

22 were forcibly confiscated from the possession of one of

23 NUM's branch leaders by a large group of workers." Now, if

24 that's correct, it would mean, I take it, that NUM no

25 longer had a functioning office at Karee mine, because

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1 they'd been effectively evicted from their office by the

2 workers and they'd presumably done nothing to get another

3 set of keys. Is that correct?

4 MR GCILITSHANA: If maybe I can explain

5 to the Commissioner, this incident occurred at Four Belt,

6 which is one of the shafts. It was not the branch

7 committee offices, it was one of the shafts as one

8 understood.

9 CHAIRPERSON: Well, the way you put in

10 your statement is the keys to the NUM offices at Karee mine

11 were forcibly confiscated. The keys to the offices, is

12 that not a correct statement, does that require

13 qualification or amendment?

14 MR GCILITSHANA: Yes, that's why I'm

15 qualifying, yes, Chairperson. And the office, even the one

16 at Four Belt, the matter was taken up and the office was

17 operational later.

18 MR BURGER SC: Mr Gcilitshana, the third

19 important date is the next meeting between Mr De Costa and

20 the RDOs, page 77, paragraph 4.1. It says, "On the 23rd of

21 July 2012, the five RDO representatives with whom I had met

22 on the 2nd of July returned to my office. EXCO had not yet,

23 by this date, concluded its deliberations on the matter.

24 The mood at the meeting from the RDO representatives was

25 more aggressive." I advised them that Lonmin would not

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1 agree in an increase in the basic salaries of RDOs to R12

2 500. During the course of our discussion, I could sense

3 the potential for strike action. I then advised the RDO

4 representatives that EXCO would consider paying an RDO

5 allowance and that the amount would be clarified at a later

6 stage. The representatives went out to give feedback to

7 the crowd of approximately 500 people who had marched with

8 them to my office. The RDO representatives had asked me to

9 address the crowd. Lonmin security personnel on the scene

10 were anxious about me doing so and even though I initially

11 refused to address the crowd directly, I then decided to

12 address the crowd.

13 He then ignores the advice of security and he

14 does go out and he addressed the crowd, and the reaction,

15 he explains to us in 4.3: "After I spoke," he says,

16 "various questions were posed to me from individuals within

17 the crowd. I was asked, what do we do tomorrow? I replied

18 the RDOs should return to work. I was then asked: how do

19 we return to work, when you've not given us what we want?

20 I stated that if the RDOs did not return to work, this

21 amount to an illegal strike." The decision by EXCO is

22 explained to us at page 79 and at paragraph 4.6 Mr Da Costa

23 says, "During my conversation with Munroe at senior

24 management I informed him that I told the RDOs of an RDO

25 allowance. Munroe was satisfied with this."

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1 Now, can I just put this to you, I'm told and

2 this was evidence before the Commission, that an RDO

3 allowance is a market allowance, it's not negotiated, but

4 it's an allowance given in the prerogative of management,

5 is that correct?

6 MR GCILITSHANA: If I can explain the

7 norm in Lonmin? Normally, we would have task teams that

8 work in different issues that may be have been outstanding,

9 including bonuses, because I believe bonuses are part – and

10 allowances, when there is a need to review, there will be a

11 task team that normally would be appointed, composed of

12 trade union and management, that would look on those

13 allowances and see how effective can be implemented and

14 communicated.

15 MR BURGER SC: Mr Gcilitshana, this

16 allowance was decided upon unilaterally by Lonmin.

17 MR GCILITSHANA: That's correct.

18 MR BURGER SC: This was not a function of

19 a negotiation between employees and employer?

20 MR GCILITSHANA: Yes, there was no

21 negotiations, but, as I indicated, that the norm –

22 normally, when even the bonuses are increased, there will

23 be a task team that will work on there, how that process is

24 going to be undertaken.

25 MR BURGER SC: In fact, we know this

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1 allowance was rejected by the RDOs?
 2 MR GCILITSHANA: Yes, we heard that.
 3 MR BURGER SC: At page 79 of Mr Da
 4 Costa's statement in 4.7 he says, "Prior to EXCO signing
 5 the decision, I made arrangements to meet with the trade
 6 unions at Lonmin. On the 28th of July and after receiving
 7 approval by EXCO, I met with representatives of UASA and
 8 Solidarity. Did you know that those meetings took place?
 9 MR GCILITSHANA: I heard about that, yes.
 10 MR BURGER SC: And you confirm the
 11 negotiation with NUM referred to in 4.8?
 12 MR GCILITSHANA: The information that I
 13 got, the union, it was not a negotiation, it was the
 14 briefing of the decisions that have been taken by EXCO.
 15 MR BURGER SC: What was Mr Elliot Moloi's
 16 position at NUM at the time?
 17 MR GCILITSHANA: He was the deputy
 18 regional chairperson of the NUM, the position that he still
 19 holds.
 20 MR BURGER SC: And may we accept that Mr
 21 Moloi was not adverse to the idea, but pointed out Mr Da
 22 Costa that Lonmin was going outside the wage negotiation
 23 protocol?
 24 MR GCILITSHANA: Yes, I could say.
 25 MR BURGER SC: I've suggested earlier to

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1 you that at this point in time and before the allowance was
 2 decided upon, the RDOs at Lonmin was lagging behind in
 3 wages, compared to their colleagues at the surrounding
 4 platinum mines, and you accept that, I think?
 5 [12:07] MR GCILITSHANA: I agree.
 6 MR BURGER SC: In fact market research
 7 was done, as we can see from the NUM bundle, XX2, at page
 8 69. The allowances were not guesses; the allowances
 9 followed as result of what is described there as a
 10 comprehensive marketing analysis on singlehanded RDO market
 11 allowances.
 12 MR GCILITSHANA: Yes, I could see.
 13 MR BURGER SC: And in that communication,
 14 which may I ask you, did this come to your attention at the
 15 time?
 16 MR GCILITSHANA: As I indicated even
 17 yesterday that I don't recall receiving the communication,
 18 but I did get information from our structures, but it might
 19 happen, I indicated that at times the communication will be
 20 sent directly to the general secretary.
 21 MR BURGER SC: Well, may we assume on
 22 probability that the NUM structures at Lonmin received this
 23 communication?
 24 MR GCILITSHANA: Yes, because they are in
 25 the system, in the email system of the company.

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1 MR BURGER SC: And do you accept the
 2 correctness of what Lonmin says in those two middle
 3 paragraphs on page 69, which I will now read to you. "The
 4 company has a two-year wage agreement. According to this
 5 agreement the company will pay wage increases ranging from
 6 8% to 10% in October 2012. Wage negotiations will
 7 therefore only take place in 2013."
 8 MR GCILITSHANA: Yes, I agree.
 9 MR BURGER SC: The second one, "The
 10 implementation of the abovementioned allowances does not
 11 constitute the reopening of the wage negotiations. Any
 12 demands for any part of the business will therefore not be
 13 tolerated."
 14 MR GCILITSHANA: I believe that anything
 15 that have to deal with money is a substantive matter that
 16 could be dealt with, as I indicated initially, that at the
 17 bargaining forum at a central level.
 18 MR BURGER SC: Mr Gcilitshana, these
 19 workers didn't want that. They didn't want to negotiate
 20 through the unions. Is that what you, make that
 21 suggestion?
 22 MR GCILITSHANA: I don't dispute that,
 23 but what I'm telling you, I'm telling the process normally
 24 how –
 25 MR BURGER SC: We understand the process.

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1 I'm dealing with the realities - at this point in time, and
 2 in order to give clarity to the people involved, if you
 3 page over at page 70, Lonmin then poses a number of
 4 questions which may be asked, and they give the answers for
 5 the benefit of the employees. Question 1, "Why is the
 6 allowance being paid?" The answer, "Following a market
 7 analysis on RDO allowances, the need to pay the allowance
 8 was determined in order to attract and retain singlehanded
 9 RDOs, given market development." You accept the truth of
 10 that statement and that answer?
 11 MR GCILITSHANA: Yes, I agree.
 12 MR BURGER SC: RDOs being a scarce skill,
 13 you told the Commission.
 14 MR GCILITSHANA: That's correct.
 15 MR BURGER SC: If you don't pay them
 16 market related rates, they'll go and work for the
 17 competitor who does that.
 18 MR GCILITSHANA: That's correct.
 19 MR BURGER SC: I also put to you if Mr Da
 20 Costa had not spoken to these people, there would have been
 21 an unprotected strike.
 22 MR GCILITSHANA: I can't say yes or no,
 23 but there was a threat.
 24 MR BURGER SC: On probabilities.
 25 MR GCILITSHANA: Yes.

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1 MR BURGER SC: Let's be realistic. On
 2 probability there would have been an unprotected strike if
 3 he refused to speak to them.
 4 MR GCILITSHANA: Yes, that's why I'm
 5 saying that it will be – ja, it's a threat.
 6 MR BURGER SC: An unprotected strike
 7 would probably have been accompanied by violence and
 8 intimidation.
 9 MR GCILITSHANA: That's correct.
 10 MR BURGER SC: So it's quite wrong if
 11 there is ever a suggestion that because Mr Da Costa spoke
 12 to the workers, there followed intimidation and violence.
 13 That's putting the cart before the horse. You agree?
 14 MR GCILITSHANA: It will be difficult to
 15 say because I wouldn't know whether those workers would
 16 really go to strike or not. It will be a bit difficult.
 17 As you say that will be possible that they will go to the
 18 strike and there will be this violence, they will, that is
 19 possible.
 20 MR BURGER SC: I've promised to ask you
 21 that question. I'm going to ask it now. We've done and
 22 looked at all the evidence and this is the simple question,
 23 simple proposition. Mr Da Costa really had no option; he
 24 had to talk to the workers.
 25 MR GCILITSHANA: Yes.

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1 MR BURGER SC: I'm going to now deal with
 2 your statement, paragraph 38 and following. I just want to
 3 understand some of the detailed facts there. You'll
 4 remember your section here, which we find at page 11 of
 5 XX1, deals with the unprotected strike and the role of NUM,
 6 and in paragraph 39 you tell us about Friday, the 10th of
 7 August 2012, and in the second sentence you say, "NUM has
 8 since then consistently maintained its opposition to that
 9 strike." May I confirm with you, that was also the
 10 attitude adopted by Lonmin?
 11 MR GCILITSHANA: That's correct.
 12 MR BURGER SC: And Lonmin and NUM adopted
 13 that attitude because the strike was illegal.
 14 MR GCILITSHANA: That's correct.
 15 MR BURGER SC: As from the 10th of August
 16 it was in contempt of an order by the Labour Court.
 17 MR GCILITSHANA: That's correct.
 18 MR BURGER SC: It was soon accompanied by
 19 violence and criminal activity.
 20 MR GCILITSHANA: Yes, as I, that was
 21 reported, yes.
 22 MR BURGER SC: The striking workers were
 23 aggressive and were carrying dangerous weapons.
 24 MR GCILITSHANA: That's correct.
 25 MR BURGER SC: Both NUM and Lonmin had

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1 adopted the attitude that one does not negotiate with
 2 workers in those circumstances.
 3 MR GCILITSHANA: That's correct.
 4 MR BURGER SC: And would it be correct to
 5 suggest to you that after that march on the Friday, the 10th
 6 of August, there was an endeavour by the striking workers
 7 to prevent operations at the mine proceeding on Saturday,
 8 the 11th of August?
 9 MR GCILITSHANA: Yes, that's what had
 10 been reported, yes.
 11 MR BURGER SC: NUM in fact went out of
 12 its way to assist workers who wanted to go to work, to be
 13 able to do so.
 14 MR GCILITSHANA: Yes, that's correct.
 15 MR BURGER SC: It is that conflict which
 16 led to the march on the NUM offices on the Saturday.
 17 MR GCILITSHANA: Yes, I suspect that.
 18 MR BURGER SC: And that march was already
 19 not a peaceful one.
 20 MR GCILITSHANA: That's correct.
 21 MR BURGER SC: That's the version that
 22 you've given us on page 12, for example in paragraph 41 and
 23 42. Mr Gcilitshana, do you think it's coincidence that it
 24 would typically be NUM members who would be assaulted
 25 during this period? Is that just by chance, or is there a

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1 system to be identified here?
 2 MR GCILITSHANA: Yes, there might be
 3 something that led to that. I don't know.
 4 MR BURGER SC: There was also a
 5 suggestion before the Commission that one is dealing with a
 6 very peaceful gathering of people, the unprotected strike,
 7 and the whole atmosphere then changes when the shooting
 8 happens on the Saturday near the NUM offices. That's a
 9 theory which was propounded here.
 10 MR GCILITSHANA: No, as I understand it
 11 was reported that even on Friday night there were people
 12 that were fired at by the mine security around Wonderkop,
 13 again also the people that were assaulted near the NUM
 14 offices.
 15 MR BURGER SC: That theory is also
 16 difficult to reconcile with what you say in paragraph 44,
 17 because according to your information the strikers marched
 18 towards the NUM offices, armed with an assortment of
 19 dangerous weapons. Was that a report that you received?
 20 MR GCILITSHANA: That's correct.
 21 MR BURGER SC: Then I want to ask you a
 22 few general questions. Do you know the area around the big
 23 koppie?
 24 MR GCILITSHANA: I have seen it during
 25 the inspection in loco.

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1 MR BURGER SC: It may be then of limited
 2 assistance, but let me ask you and see whether you can help
 3 us. If you have a look at exhibit L, which is the police
 4 overview of events, the historical makeup, if you have a
 5 look at 194, that's slide 194 –
 6 MR GCILITSHANA: Yes, I've got it.
 7 MR BURGER SC: You've got it. That's an
 8 aerial view of what we've referred to as scene 1 and that
 9 is where the first shooting took place, near that kraal
 10 where we have the right arrow.
 11 MR GCILITSHANA: Yes, I could see.
 12 MR BURGER SC: Where is the informal
 13 settlement on this photograph?
 14 MR GCILITSHANA: I think that will be on
 15 the right-hand side of the photo.
 16 MR BURGER SC: Would you understand why
 17 the workers, if we believe for the moment that they
 18 followed the red arrow, why they were going in the
 19 direction of the red arrow if they were trying to go to the
 20 informal settlement?
 21 MR GCILITSHANA: I won't know the reason,
 22 but the way I look at the arrow, it was going opposite.
 23 MR BURGER SC: That's what's puzzling me,
 24 but you can't help us on that. In your statement you
 25 referred to a time-bomb. That's at paragraph 30.6. May I

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1 just try to understand that? XX1 is your statement, page
 2 10, paragraph 30.6. Just before I ask you to explain that
 3 time-bomb again to us, does an RDO in comparison to a Miner
 4 – with a capital letter – does he earn less or more, or is
 5 that not a sensible question?
 6 MR GCILITSHANA: The RDO earns lesser
 7 than the miner.
 8 MR BURGER SC: And what is the price
 9 difference between category 7 and category 4 approximately?
 10 What is the difference in salary scale?
 11 MR GCILITSHANA: I won't have the correct
 12 figures, but it might be around 2 000.
 13 [12:27] MR BURGER SC: Now let me try to
 14 understand the time-bomb. The deal that you negotiated for
 15 the RDOs, NUM was 10% in the first year and 9% in the
 16 second year, as I understand it?
 17 MR GCILITSHANA: We were negotiating for
 18 3%, that 10% and 9%, that's what we achieved.
 19 MR BURGER SC: Correct. And you tried to
 20 increase from a category 4 to a category 7, but that was
 21 not successful.
 22 MR GCILITSHANA: That's correct.
 23 MR BURGER SC: In the end the deal that
 24 could be negotiated, the 10%, the 9%, and the category 4
 25 was put to mass meeting?

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1 MR GCILITSHANA: That's correct.
 2 MR BURGER SC: That included the RDOs?
 3 MR GCILITSHANA: It's correct.
 4 MR BURGER SC: Having had a mass meeting,
 5 they gave you a mandate, they said we were happy, you can
 6 accept it?
 7 MR GCILITSHANA: That's correct.
 8 MR BURGER SC: I don't understand the
 9 time bomb. You had a long process, a thorough process of
 10 give and take over a period of time, you've got the best
 11 that you could in the circumstances achieve, you took it
 12 back to your constituency and they gave you a green light.
 13 MR GCILITSHANA: When I spoke of time
 14 bomb, as I indicated, that I was sensitising the management
 15 on the issue of – I was sensitising management on the
 16 sensitivity of the issue of RDOs. It was not only for the
 17 first time it was raised. On the 2009/2011 negotiations it
 18 was also there as a demand. That's why if – that's why
 19 there was a bit of increase that was – a bit above to other
 20 category 4 groups, because it was an issue, that's why I
 21 was saying there's time bomb, because it was not achieved
 22 in the 2009/2011 negotiations. Again in the 2011/2013
 23 negotiations.
 24 MR BURGER SC: Did you negotiate a better
 25 deal for the RDOs than for the miners?

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1 MR GCILITSHANA: The negotiations were
 2 inclusive of – not of the miners, because you know miners
 3 are on the collective bargaining. You have got your CBF1
 4 and your CBF2. Your CBF1 deals with category 3 to 9,
 5 that's where the RDOs falls. Then your CBF2 it will be
 6 your officials, your miners upwards, up to C5, supervisors.
 7 And RDOs, category 7 that we were proposing, it's also
 8 lesser than the miner.
 9 MR BURGER SC: Let me just conclude this
 10 subject to say to you I do not see an nexus between 2009,
 11 when there is no severance package available to an RDO and
 12 a time bomb in 2011. I don't think there's any
 13 relationship between the two, but you have an opportunity
 14 to explain that relationship to me. I can't hear the
 15 ticking.
 16 MR HANABE: Can you please, Counsel,
 17 repeat the question?
 18 MR BURGER SC: As I understand the
 19 witness's evidence-in-chief, he says the time bomb arose
 20 back in 2009 when the RDOs did not have the opportunity to
 21 choose a severance package when there was a dispute and
 22 that was then the reason for a warning of a time bomb as we
 23 have in the statement, and I don't see the nexus between
 24 the two.
 25 MR GCILITSHANA: In terms of RDOs who

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1 were not allowed to take a severance package, those RDOs
 2 remained taking because they were told that their job is
 3 very much – the role that they're playing, as RDOs, is very
 4 much important. That remained at the back of their minds
 5 that their skill also is essential. Therefore, if it's
 6 essential, they can be paid better.

7 MR BURGER SC: They know they're in high
 8 demand – their jobs?

9 MR GCILITSHANA: That's correct.

10 MR BURGER SC: Can I get clarity on the
 11 meeting you have on the 16th of August, you told us there
 12 was a meeting about security and attendance at work, and at
 13 that meeting you were told, after the visits of the two
 14 presidents to the koppie, that there was an agreement that
 15 workers would disarm. Was that, the suggestion that they
 16 would disarm, round about 9 o'clock on the morning of the
 17 16th of August?

18 MR GCILITSHANA: No, we didn't have time
 19 exactly when.

20 MR BURGER SC: Would that happen on the
 21 16th of August, as you recollect it?

22 MR GCILITSHANA: Yes, as I recall it, ja.

23 MR BURGER SC: And what would happen on
 24 that day? What was said would happen?

25 MR GCILITSHANA: I have no details of

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1 exactly how is it going to be done, which was a report that
 2 after the debriefing – because when we came back from the
 3 koppie, as both unions, there were debriefings, together
 4 with management and then security and the police. Then we
 5 went for separate debriefings. As I understand that that
 6 was a debriefing that came out from the debriefing with
 7 AMCU.

8 MR BURGER SC: On your recollection, was
 9 AMCU the spokesperson to tell the meeting of the agreement
 10 that workers would disarm?

11 MR GCILITSHANA: What we heard is that
 12 was the debriefing after the visit to the koppie on the
 13 15th.

14 MR BURGER SC: Listen carefully. Was the
 15 spokesperson, the party who told you about the disarmament,
 16 was that an AMCU person? Was that Mr Mathunjwa, or who
 17 said that?

18 MR GCILITSHANA: It was not AMCU people.

19 MR BURGER SC: Not AMCU involved.

20 MR GCILITSHANA: No, they were not in
 21 that meeting on the 16th.

22 MR BURGER SC: Who said –

23 MR GCILITSHANA: I can't recall properly
 24 between the Lonmin mine and the security as a briefing of
 25 the information that they have.

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1 MR BURGER SC: Then just finally on your
 2 evidence-in-chief, or to my learned friend, the evidence
 3 leader really, the negotiations in September last year,
 4 after the incident now, you've told us that that was
 5 outside normal structures, is it correct that the CCMA was
 6 involved?

7 MR GCILITSHANA: That's correct.

8 MR BURGER SC: And all the parties there
 9 had agreed that they would talk to each other?

10 MR GCILITSHANA: That's correct.

11 MR BURGER SC: It was clearly as a result
 12 of 44 people having lost their lives.

13 MR GCILITSHANA: That's correct.

14 MR BURGER SC: There was a very different
 15 atmosphere in September, if one compares that to the
 16 atmosphere, for example, on the 15th of August?

17 MR GCILITSHANA: Yes.

18 MR BURGER SC: Then finally, If I may
 19 just give you a few very brief comments by Mr Da Costa on
 20 your statement, Mr Gcilitshana, if you go back to XX1,
 21 paragraph 14, this is the Karee problem in the middle of
 22 2011 and in 14 you've said, "In response, Lonmin dismissed
 23 approximately 11 000 of the striking employees. Pursuant
 24 to negotiations between NUM and Lonmin management, the
 25 majority of these employees were reemployed." Mr Da Costa

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1 will say that management took that decision and NUM, as he
 2 put it, was conspicuous in their absence.

3 MR GCILITSHANA: In terms of the
 4 negotiations to reemploy those workers, we engaged the
 5 company. I remember it was myself and president who came
 6 to see Bernard Mokwena at Lonmin.

7 MR BURGER SC: Then in paragraph 17 you
 8 say, "By February 2012," – this is after the recruitment
 9 now, "NUM had recruited sufficient members at the Karee
 10 mine for it to launch a new branch, which it did on the 7th
 11 of February 2012." Mr Da Costa is of the view that there
 12 was – you had about a 12% of the workforce then subscribing
 13 as NUM members. Would that be correct?

14 MR GCILITSHANA: I won't know exactly
 15 about the SETAs, but really there was progress in terms of
 16 recruitment.

17 MR BURGER SC: Thank you, Chair.

18 CHAIRPERSON: Thank you, Mr Burger. Ms
 19 Barnes, do you wish to cross-examine the witness on behalf
 20 of AMCU?

21 MS BARNES: Yes, thank you, Sir.

22 MR GCILITSHANA: Good day.

23 MS BARNES: I'll start by asking you some
 24 questions about what happened on the 16th of August 2012.
 25 Now, you indicated earlier today that after the briefing at

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1 the LPD offices on the morning of the 16th you went to
 2 Middlekraal, is that correct?
 3 MR GCILITSHANA: Yes.
 4 MS BARNES: Could you just explain where
 5 at Middlekraal you were?
 6 MR GCILITSHANA: We requested space at
 7 the Solidarity offices, that's where we were.
 8 MS BARNES: So you spent the entire day
 9 in the Solidarity offices at Middlekraal, is that correct?
 10 MR GCILITSHANA: It will be in and out.
 11 As I indicated, that we do our own debriefing and comrades
 12 went to the shafts where they are operating and came back
 13 for feedback.
 14 MS BARNES: And you referred at some
 15 stage to sitting in your vehicle and hearing news on the
 16 radio, when did that take place?
 17 MR GCILITSHANA: As you know that on the
 18 SA Radio there will be hourly news. At that time, because
 19 of knowing that this strike that is broadcasted, you will
 20 go and listen exactly what is happening at that point in
 21 time.
 22 MS BARNES: The question is when on the
 23 16th were you sitting in your vehicle? Was at the end of
 24 the day on the 16th, or was it during the day?
 25 MR GCILITSHANA: It was during the day.

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1 MS BARNES: When did you learn that the
 2 second briefing, which is normally scheduled for 2 o'clock
 3 in the afternoon, had been postponed?
 4 MR GCILITSHANA: I think it was after 3
 5 o'clock.
 6 MS BARNES: Now, you testified that at
 7 the time of the unprotected strike that took place at the
 8 Karee mine in 2011, that was in May 2011, AMCU had no
 9 presence at that stage. Is that correct?
 10 MR GCILITSHANA: That's my knowledge.
 11 MS BARNES: And arising out of that
 12 strike many thousands of people were dismissed and then
 13 reemployed, is that correct?
 14 MR GCILITSHANA: That's correct.
 15 MS BARNES: If you could look at page 15
 16 of your statement? I beg your pardon, it's paragraph 15 of
 17 your statement. That's at page 4. You state there that
 18 Lonmin took a decision not to reinstate people but to re-
 19 employ them, is that correct?
 20 [12:47] MR GCILITSHANA: Yes, that is correct.
 21 MS BARNES: If they had been simply re-
 22 instated, they would've remained NUM members, is that
 23 correct?
 24 MR GCILITSHANA: That will depend on the
 25 argument between the company and the NUM if they were paid

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1 – become re-instated as members or not.
 2 MS BARNES: What would normally happen?
 3 MR GCILITSHANA: Yes, normally they will
 4 return to NUM, they will belong to NUM. All the conditions
 5 will be the same
 6 CHAIRPERSON: I don't understand that.
 7 If an NUM member loses his job, does he cease to be an NUM
 8 member? An NUM member is working, say for Lonmin. He
 9 loses his job, he's dismissed. Does he, at that moment,
 10 cease to be an NUM member? Does he have to rejoin NUM if
 11 he is re-employed or does he remain a member as between NUM
 12 and himself?
 13 MR GCILITSHANA: If the person is
 14 expelled, and the NUM is taking up his case, he remains a
 15 member illegible for any other benefits and a member for a
 16 period of 3 months.
 17 CHAIRPERSON: The reason I asked the
 18 question was when they were re-employed, they weren't re-
 19 instated, they were re-employed. The suggestion is they
 20 then had to elect whether they wish to rejoin NUM or
 21 perhaps join AMCU or not be a member of a union at all? Do
 22 I understand correctly?
 23 MR GCILITSHANA: Yes, I understand, and
 24 that's correct, if the decision of the worker to remain
 25 when he get re-employed or re-engaged, to remain with NUM

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1 or go for another union –
 2 CHAIRPERSON: - If he had ceased to be a
 3 member when he was dismissed, then he doesn't – when he
 4 get's re-employed, he doesn't decide to remain, he actually
 5 has to rejoin, because of he ceased to be member, and he
 6 wants to come back, he's got to rejoin surely. And that's
 7 effectively what you were saying here in paragraph 15.
 8 MR GCILITSHANA: Yes.
 9 MS BARNES: So, it was as a result of the
 10 decision by Lonmin, that workers be re-employed, that it
 11 happens that there was rivalry between AMCU and NUM. Is
 12 that correct?
 13 MR GCILITSHANA: That is possible.
 14 MS BARNES: As he earlier indicated, if
 15 employees had been re-instated in the normal course, they
 16 would've remained NUM members. Is that correct?
 17 CHAIRPERSON: It doesn't sound as if they
 18 would've remained. It sounds as if they would've been re-
 19 instated as NUM members as well. If they were re-instated
 20 in the employment, according to what the witness says, they
 21 will then be re-instated as members of NUM, according to
 22 him, they ceased to be members of NUM when they were
 23 dismissed. So, remaining doesn't seem to be the right
 24 word. I think I know where you are going, so carry on.
 25 MS BARNES: Perhaps I can rephrase the

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1 question. If they had been re-instated as employees of the
 2 company, they would've remained, their stop orders would've
 3 remained and they would've remained members of NUM as they
 4 had been before they had been dismissed. Is that correct?
 5 MR GCILITSHANA: It is not automatically,
 6 as I indicated that you engage with the company. If the
 7 company agrees, it's yes, they will be, but if the company
 8 does not agree to re-instate the membership, it does not
 9 agree.
 10 CHAIRPERSON: It sounds to me as if the
 11 position is this. If the company agrees to re-instate
 12 them, then in effect the old contract stands, the stop
 13 order they signed in favour of the trade union stands,
 14 everything carries on as before. If you can't persuade you
 15 union - can't persuade the company to re-instate them, and
 16 the company re-employs them, then you're back to the
 17 starting point and each employee, once he rejoins, has to
 18 sign a new stop order in favour of the trade union of his
 19 choice, if he's a member of a trade union. Is that
 20 correct?
 21 MR GCILITSHANA: The company will agree
 22 on re-instatement, then the issue of membership is another
 23 line of negotiation, whether they would be re-instated with
 24 their membership, or not. That is another line that also
 25 union have to pursue.

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1 MS BARNES: If the employees had been re-
 2 instated, as opposed to be re-employed, you would've taken
 3 the issue out as NUM with Lonmin management and would've
 4 negotiated for people to remain NUM members and for their
 5 stop orders to remain. Is that correct?
 6 MR GCILITSHANA: That is correct.
 7 MS BARNES: Chair, I see it's almost 1
 8 o'clock. I'm about to go into a fairly lengthy topic.
 9 Perhaps this could be a convenient time?
 10 CHAIRPERSON: The commission will adjourn
 11 until 2 o'clock.
 12 [COMMISSION ADJOURNS COMMISSION RESUMES]
 13 [14:10] CHAIRPERSON: I'm sorry, we were involved
 14 in a meeting which took longer than we thought. I
 15 apologise that we're resuming late. You're still under
 16 oath, Sir, and Ms Barnes, you were moving on to a new
 17 point.
 18 MS BARNES: Thank you, Chairperson. Sir,
 19 is it correct that NUM as a trade union is committed to
 20 collective bargaining?
 21 MR GCILITSHANA: That's correct.
 22 MS BARNES: And critical for collective
 23 bargaining is negotiations, negotiation in good faith
 24 between the parties. Isn't that correct?
 25 MR GCILITSHANA: That's correct.

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1 MS BARNES: And NUM is committed to
 2 negotiating in good faith in the workplace, correct?
 3 MR GCILITSHANA: That's correct.
 4 MS BARNES: Now NUM negotiates for better
 5 wages and better terms and conditions for its members. Is
 6 that correct?
 7 MR GCILITSHANA: That's correct.
 8 MS BARNES: In addition to that, if there
 9 were to be a conflict or a dispute in the workplace, NUM
 10 would use negotiation in an effort to resolve such a
 11 conflict or dispute. Is that correct?
 12 MR GCILITSHANA: That's correct.
 13 MS BARNES: And where negotiation have
 14 resulted in an agreement between two parties, it is not
 15 correct for one party to change that agreement
 16 unilaterally. Is that correct?
 17 MR GCILITSHANA: That's how it works,
 18 yes.
 19 MS BARNES: In fact, in the collective
 20 bargaining environment in South Africa it is highly unusual
 21 for a party that has negotiated an agreement with another
 22 party, to make a change to such an agreement unilaterally.
 23 Isn't that correct?
 24 MR GCILITSHANA: That's correct.
 25 MS BARNES: And you gave evidence

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1 yesterday about what happened at Impala Platinum, and we'll
 2 get to that in a little more detail in due course, but at
 3 this stage isn't it correct to say that what management at
 4 Impala Platinum did is they made a unilateral change to a
 5 negotiated agreement? Is that correct?
 6 MR GCILITSHANA: That's correct.
 7 MS BARNES: And you indicated that as NUM
 8 you were very unhappy about that. In fact, in response to
 9 a question from the chairperson you said that NUM was in
 10 fact outraged. Is that correct?
 11 MR GCILITSHANA: Yes, I said we were
 12 unhappy about the processes, but not about workers getting
 13 money.
 14 MS BARNES: Of course not. It's about
 15 the unilateral change that I was referring to, correct?
 16 MR GCILITSHANA: That's correct.
 17 MS BARNES: If there is a difficulty with
 18 an agreement and it needs to be amended, then what needs to
 19 happen is that both parties need to sit down and
 20 renegotiate the agreement and reach agreement on the
 21 changes. Is that correct?
 22 MR GCILITSHANA: In the collective
 23 agreement there will be always a dispute resolution that is
 24 part of the agreement, therefore any party that has got a
 25 problem, they will go to, through the process of the

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1 dispute resolution.

2 MS BARNES: Yes, the agreement will

3 generally indicate how difficulties are to be dealt with,

4 and we'll get to this agreement a little later, but isn't

5 it correct that management at Impala Platinum ought to have

6 followed the procedures laid down in the agreement in the

7 event that they sought to make a change?

8 MR GCILITSHANA: That's correct.

9 MS BARNES: And so we're going to, as I

10 said, come to what happened at Implats in some detail a

11 little later, but you indicated that – well, you told us

12 yesterday what had happened there, in general terms, in

13 late 2011 and 2012. Is that correct?

14 MR GCILITSHANA: Correct.

15 MS BARNES: You indicated that you got

16 this information from the chief negotiator for NUM at

17 Implats. Is that correct? Whom you know.

18 MR GCILITSHANA: Yes.

19 MS BARNES: So you would have got this

20 information from that gentleman while the events at Impala

21 were unfolding. Would that be correct?

22 MR GCILITSHANA: Yes.

23 MS BARNES: Now you testified yesterday

24 that the trigger for the Implats strike was management's

25 decision, unilateral decision to give an 18% increase to

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1 the miners. Is that right?

2 MR GCILITSHANA: That's correct.

3 MS BARNES: And you testified that during

4 the strike there was a widespread and extreme anti-NUM

5 sentiment. Is that correct?

6 MR GCILITSHANA: That's correct.

7 MS BARNES: So much so that the NUM

8 offices had to be closed and the leadership had to be

9 removed from the premises. Is that correct?

10 MR GCILITSHANA: Yes.

11 MS BARNES: I'm going to put it to you

12 that there was in fact an additional trigger for the

13 Implats strike and that was this, it was that Impala

14 management during the salary negotiations at Implats,

15 proposed that RDOs at Implats be given a salary adjustment,

16 and NUM rejected that proposal. Are you aware of that?

17 MR GCILITSHANA: I'm not fully aware of

18 that. I heard about that, after the strike, that there was

19 that proposal.

20 MS BARNES: So you don't dispute that

21 that happened?

22 MR GCILITSHANA: I won't agree or

23 disagree with you.

24 MS BARNES: Well, perhaps before I ask

25 the next question, I can introduce as an exhibit an

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1 article, it's an article by a Mr Gavin Hartford –

2 CHAIRPERSON: I take it you've got copies

3 for us?

4 MS BARNES: We do indeed, Chair.

5 CHAIRPERSON: And have you got someone to

6 hand them around, because it's a bit embarrassing to have

7 to ask Ms Pillay –

8 MS BARNES: My attorney is going to take

9 care of that. Perhaps Ms Pillay can give us the exhibit

10 number.

11 CHAIRPERSON: - object to that. Article

12 by Gavin Hartford. You get useful experience as article

13 clerks. Exhibit –

14 MS PILLAY: Chair, it would be XX7.

15 CHAIRPERSON: XX7. Where does this

16 article come from?

17 MS BARNES: Chair, I'm afraid I'm not

18 entirely sure where this article was published. We are

19 planning to call Mr Gavin Hartford as a witness in phase 2,

20 so I'm sure he will tell us. He will then be able to

21 confirm the contents of this article.

22 CHAIRPERSON: The reason I ask, that if

23 the article is published and there'd been no attempt to

24 refute or deny what is said, then it will obviously have

25 far more evidential value, but the mere fact that Mr

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1 Hartford said this in a possibly unpublished article

2 doesn't take it very much further, but if you do, because

3 you're going to call him anyway and he can then confirm it,

4 I suppose it's sensible to proceed as you are.

5 MS BARNES: Chair, it has been published

6 and we will find out where, but in addition to that he is

7 going to be a witness in this Commission.

8 CHAIRPERSON: Is there a particular page

9 in the article, or passage in the article that's relevant,

10 because it seems, I see it's 11 pages and it could be that

11 I only see the relevance of it in relation to page 2, but

12 not now.

13 MS BARNES: Yes, Chair, it's not

14 necessary to look at the whole thing, but only page 4. If

15 the witness could go to page 4 of the article.

16 CHAIRPERSON: Okay, is that the Implats

17 trigger strike?

18 MS BARNES: That's correct, and if the

19 witness could have a look at the second paragraph, perhaps

20 it will be best if I might, with the Commission's leave,

21 read that paragraph into the record and I can then ask the

22 witness to comment on it. So this is now Mr Hartford,

23 you'll see at the end of the first paragraph he poses the

24 question, how did the strike come about, and he's referring

25 there to the Lonmin strike, and one of the causal effects

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1 according to Mr Hartford is Implats triggers strike, and he
 2 then goes on to paragraph 2 to explain what happened, and
 3 he says, "Bargaining wages at Implats in 2011 was
 4 protracted, commencing in late April and finally being
 5 concluded in October last year when a two-year collective
 6 agreement was signed." Perhaps I can let the interpreter
 7 interpret up to there. "During the 2011 negotiations
 8 Implats management had recommended additional adjustments
 9 to RDOs, but this was rejected by NUM negotiators who
 10 preferred uniform increases across all employee bands,
 11 irrespective of job function. After the conclusion of the
 12 wage negotiation, within a month of signing the collective
 13 agreement the management decided, after a consultation with
 14 NUM, to unilateral adjust miners' - minus the first line
 15 supervision of mining work teams allocated to every face
 16 panel and not typically NUM members within the bargaining
 17 unit - wages by a total of 18% to stem a high labour
 18 turnover of miners, in particular to competitive companies.
 19 This adjustment was implemented in January 2012, mid-way
 20 into the currency of the first year of the newly signed
 21 collective agreement. This unilateral adjustment to
 22 miners' pay packets, after consultation with the NUM during
 23 the currency of a collective agreement, was a highly
 24 unusual and ill-considered act that sent a very clear
 25 message to every mining work team that the company,

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1 notwithstanding the settlement of the wage agreement, had
 2 additional cash to spare for certain categories of workers
 3 within the bargaining unit."
 4 Then I will read just portions of the next
 5 paragraph. "It is not at all unlikely that the RDOs would
 6 have heard that the NUM negotiators were resistant to any
 7 differentiated increase that benefited RDOs directly,
 8 during wage negotiations." Mr Hartford then goes on to
 9 talk - and I don't need to read it all out - about the fact
 10 that the NUM chair people of both the south and the north
 11 branch happen to be miners, and you gave evidence about
 12 that yesterday, so we're all in agreement as to that fact.
 13 So I'm going to move on to further down that paragraph.
 14 "There is no doubt that they," they being a reference to
 15 the RDOs, "would have left the mine for the Christmas
 16 shutdown, deeply aggrieved by a perception of unfair
 17 treatment they had suffered at the hands of the management
 18 and the NUM leadership. On the hills of Lusikisiki and
 19 Flagstaff they planned to take the law into their own hands
 20 when they return to work in January. Not unsurprisingly,
 21 the strike committee elected by the workers at the
 22 commencement of the industrial action was composed entirely
 23 of amaPondo, with the exception of one woman, and equally
 24 unsurprisingly management reported that commencing at 14
 25 Shaft and all the shafts thereafter, the industrial action

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1 of the 12th of January had only two demands - R9 000 net
 2 pay, which was equivalent to the miners' net pay after the
 3 18% adjustment, and the second demand, no negotiations with
 4 NUM." Now you told us yesterday in your evidence, Sir,
 5 about the first trigger, that was management's action at
 6 Impala, but you didn't tell us about the second trigger,
 7 and that was NUM's attitude in the negotiations. Is that
 8 correct?
 9 CHAIRPERSON: Ms Barnes, shouldn't you
 10 first get him to agree that NUM did behave as is set out in
 11 the passage you put to him?
 12 MS BARNES: Perhaps I should give you an
 13 opportunity to comment first on what we've read.
 14 [14:40] MR GCILITSHANA: Yes, I agree that the
 15 company took a general decision on the issue of engaging
 16 with the workers. On the issue of raising increase for the
 17 miners. On the issue of NUM refusing the increase - extra
 18 increase for RDOs, I'm not informed. Again on the issue of
 19 the chairperson of the South and North, I agree that's what
 20 we also presented. The last area on the meeting in
 21 Lusikisiki flagstaff, I'm not aware.
 22 MR TIP SC: I'm reluctant - I don't want
 23 to intervene, this is not my witness - Chair, I don't want
 24 to intervene or interrupt, it's not my witness, but could
 25 we ask - could the witness be asked whether he agrees that

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1 NUM were consulted to - consulted about and agreed to the
 2 increase in the miners' wages.
 3 CHAIRPERSON: That was the point that I
 4 wanted covered, because it seemed to me that that's the
 5 foundation of the cross-examination to follow, and if he
 6 doesn't accept that, maybe because he doesn't know, then
 7 the cross-examination following thereon would have to be
 8 reserved for another witness who can deal with the point.
 9 MS BARNES: The specific question would
 10 be, the reference in this article to the fact that there
 11 was consultations with NUM in relation to the adjustment
 12 that was given to miners, are you aware of that?
 13 MR GCILITSHANA: No, there's a difference
 14 between consultation and negotiation. I'm not aware, I
 15 won't agree or disagree with you whether NUM was consulted.
 16 MS BARNES: So you don't dispute that NUM
 17 was consulted?
 18 MR GCILITSHANA: As I indicated, that I
 19 won't agree or disagree with you.
 20 CHAIRPERSON: Ms Barnes, I don't have to
 21 tell you as a trained lawyer, that there's a difference
 22 between after consultation and in consultation, and what he
 23 said here is after consultation.
 24 MS BARNES: But the second specific
 25 question that I need to ask you, Sir, is whether you were

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1 aware of the fact that NUM rejected the proposal by Impala
 2 Platinum management to give RDOs a salary adjustment.
 3 MR TIP SC: I object to that, Mr Chair,
 4 even this article, which at this stage of course is
 5 entirely hearsay, does not say that NUM rejected a salary
 6 adjustment, it says that NUM preferred salary increase to
 7 be across the board and that it, in that context, didn't
 8 agree to an additional payment to RDOs. It doesn't say
 9 that it rejected an adjustment of RDO salaries.
 10 CHAIRPERSON: What it does say is that
 11 NUM negotiators were resistant to a differentiated increase
 12 that benefit RDOs, and then the further point is made by
 13 way of innuendo almost, that the NUM negotiators, were
 14 almost, to a person, the most skilled employees and the
 15 chairperson to both the North and South branches were both
 16 miners who would benefit from the additional increase.
 17 Now, that's the thrust of it, so – yes, no I understand,
 18 you're referring to the passage in the second paragraph,
 19 what I read to you was the passage in the fourth, which
 20 does take it a little bit further, but perhaps Ms Barnes
 21 can take a step and then two steps forward, and then
 22 reformulate her question in a way that will pass muster
 23 even with you.
 24 MS BARNES: Perhaps you can tell us, Sir,
 25 whether you were aware of the fact that Impala Platinum

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1 management proposed during the salary negotiations at
 2 Impala that RDOs speak of an adjustment.
 3 MR GCILITSHANA: No.
 4 MS BARNES: I take it then that you
 5 wouldn't have been aware of NUM's attitude to such a
 6 proposal?
 7 MR GCILITSHANA: Normally, the branch
 8 would sit down and check whether that will be the right
 9 thing to do or not the right thing to do, then they will
 10 take decision, on the probability of balances. Then they
 11 will take a view on the matter.
 12 CHAIRPERSON: Would you mind if I
 13 intervened at this stage and asked a question on this
 14 point? You told us that you were aware of the fact that
 15 the workers were angry with NUM at Impala. They felt that
 16 NUM had let them down. They felt, according to your
 17 evidence, that NUM had been a party to misleading them,
 18 telling them that the company couldn't afford the increase
 19 they asked for, whereas in fact the company could, because
 20 a short time after the agreement, the increase was given to
 21 the miners. You remember the evidence you gave? So you
 22 were aware of the fact that the workers at Impala were
 23 angry with NUM?
 24 MR GCILITSHANA: That's correct.
 25 CHAIRPERSON: So that information you

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1 must have got from the NUM people at Impala?
 2 MR GCILITSHANA: That's correct.
 3 MS BARNES: Now, what Ms Barnes is
 4 suggesting to you is that there was another reason why the
 5 workers at Impala were angry with NUM, and that reason was
 6 the reason that's set out in the paragraphs that were read
 7 to you. Now, do I understand you to say that this is the
 8 first time that you ever heard the suggestion that that was
 9 the reason or a reason, perhaps an additional reason, why
 10 the workers at Impala were angry with NUM?
 11 MR GCILITSHANA: As I indicated that, to
 12 me, it's for the first time. I didn't recall getting that
 13 information before. As I indicated that we normally share
 14 notes, it might have been shared, but I don't recall it
 15 now.
 16 MS BARNES: In addition to the article
 17 that I have referred to now, Sir, these matters were also
 18 widely referred to in the press. Are you telling this
 19 Commission that you also didn't see reference to this fact
 20 in the press at the time?
 21 MR TIP SC: Mr Chair, I just object to
 22 that. This is now a broad allegation that there were
 23 reports of a similar kind in the media. There is not one
 24 specific detail about what media and where.
 25 CHAIRPERSON: Well okay, what she's

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1 putting is, did you not see reports within the press?
 2 MR TIP SC: Yes.
 3 CHAIRPERSON: And the answer is obviously
 4 going to be no. If she can then show that there were
 5 reports, then the witness may have difficulty. If of
 6 course she can't show it, then the point will fall away,
 7 but I think we can let her carry on for the moment. If
 8 there are real double questions that's cause for prejudice,
 9 you can alert me to it and I'll consider the objection, but
 10 I think we can let her carry on for the time being.
 11 MR GCILITSHANA: I don't recall.
 12 MS BARNES: Chair, I do have an article,
 13 a press article that I'd like to hand up at this stage.
 14 CHAIRPERSON: To Mr Tip's objection.
 15 MS BARNES: Chair, happily I do know that
 16 this was reported in the Mining News, it's an article by
 17 Carol Paton. Sorry, Chair, I didn't get that?
 18 CHAIRPERSON: Oh, it is XX8. You told me
 19 the name of the journal, but I didn't write it down.
 20 What's it?
 21 MS BARNES: It's the Mining News, and
 22 it's the September/October 2012 edition and the article is
 23 by the journalist Carol Paton.
 24 CHAIRPERSON: Now, can you tell us, Sir,
 25 do you read the Mining News?

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1 MR GCILITSHANA: Not as often, unless
 2 there's something that I should look at.
 3 CHAIRPERSON: Well, this particular
 4 article is by a well-known journalist and it's about the
 5 Marikana tragedy. So it's a matter that was – that would
 6 have directly concerned you, and can we assume that it's
 7 the sort of article you would have read, regard being had
 8 to your fields of interest and activity?
 9 MR GCILITSHANA: Really, I don't recall
 10 seeing this article.
 11 CHAIRPERSON: Do you have sessions at NUM
 12 where you discuss matters of importance in the industrial
 13 field and particular articles that appear in the main
 14 journals?
 15 MR GCILITSHANA: There's a department –
 16 our media department, that deals with everything that has
 17 to do with news release and stuff, that type of related to
 18 media.
 19 MS BARNES: I'd like to read from the
 20 last line on the first page of the article. It says, "From
 21 January to March, Impala workers held an illegal strike
 22 over wages, only after a month their union, the NUM, has
 23 signed an agreement that the increase coming into effect on
 24 2012 would be 9% and 10% for underground workers. Impala
 25 management, says executive director, Paul Dunne, had

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1 suggested to NUM that rock drill operators who have the
 2 hardest job of all underground – or the hardest job of all
 3 underground machine operators, rather, be given a
 4 differential increase, but the union had refused. We
 5 recognised that we were out of set with the rest of the
 6 industry both in job grading and in pay. We wanted to give
 7 the rock drill operators a higher increment, but the
 8 suggestion never found its way into the final agreement,
 9 said Dunne."
 10 So do you still maintain that this is for the
 11 first time today you hear about this issue at the Implats
 12 salary negotiations?
 13 MR GCILITSHANA: I don't recall getting
 14 this information.
 15 MS BARNES: If it is correct that this
 16 happened, it would explain the widespread and extreme anti-
 17 NUM sentiments at Impala, wouldn't it?
 18 MR GCILITSHANA: It could be possible
 19 that it could be contributing factor.
 20 MS BARNES: Now, I'm going to move onto
 21 another topic. In your evidence-in-chief you – Yes?
 22 CHAIRPERSON: The article, I'd like to
 23 ask a couple of questions about it if I may. Page 2 of the
 24 article – well, it's actually, it's the second page of the
 25 article, it's actually page 35 of the article. There are

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1 two statements I want your comment on. The first is the –
 2 and the first column, the first paragraph beginning on that
 3 column, "Impala management, says executive director, Paul
 4 Dunne, had suggested to NUM that rock drill operators who
 5 have the hardest job of all underground machine operators,
 6 be given a differential increase, but he union had
 7 refused." I think you dealt with that. Do you say it's
 8 not true that the union refused, or did you not know
 9 whether the union had refused that a differential increase
 10 be given to rock drill operators?
 11 MR GCILITSHANA: No, I don't recall it
 12 happened.
 13 CHAIRPERSON: See, the next point that I
 14 want to ask you about is in the middle column, about
 15 halfway down, there's a quotation from a statement
 16 allegedly made by the NUM general secretary, Mr Baleni. Do
 17 you see that?
 18 [14:50] MR GCILITSHANA: Yes.
 19 CHAIRPERSON: It starts, "One reason for
 20 the vulnerability, says NUM General Secretary Frans Baleni,
 21 is that NUM's negotiating strategy has been to raise the
 22 wages of lowest paid workers at the expense of
 23 differentiation between skill categories." Now is that
 24 correct? I take it you don't know whether Mr Baleni said
 25 that, but is it correct that NUM's negotiating strategy has

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1 been to raise the wages of lowest paid workers at the
 2 expense of differentiation between skill categories?
 3 MR GCILITSHANA: That's correct.
 4 CHAIRPERSON: If that was NUM's policy,
 5 then one can quite understand why NUM would have refused
 6 that a differential increase be given to the rock drill
 7 operators, who had the hardest job of all underground
 8 machine operators.
 9 MR GCILITSHANA: As much as I'm not the
 10 author of the statement, my understanding –
 11 CHAIRPERSON: No, no, I wasn't interested
 12 in the statement. I wanted to know whether that was the
 13 policy, which is report Mr Baleni is alleged to have said
 14 it was the policy, and I asked you whether it was the
 15 policy and you conceded that it was, or confirmed that it
 16 was. Now if that is the policy, then we go back to the
 17 situation at Impala and one can then understand why, if it
 18 is so, NUM refused to allow, or refused to agree to the
 19 rock drill operators being given a differential increase,
 20 because that would have been in line with the policy that
 21 you say has been the policy of NUM. Or don't I understand
 22 the position correctly?
 23 MR GCILITSHANA: I won't know why the
 24 comrade at that level could not agree. I must indicate
 25 that the issue of closing the gap, as I understand the

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1 statement, it's more of the categories because more, the
 2 officials are more paid than the lower categories. That's
 3 why those who are at lower level, normally the agreement
 4 that we have seen, you have got your 10% in lower
 5 categories, your 8%, 9%, 8% on upper categories.
 6 MS BARNES: Now in your evidence-in-
 7 chief, Sir, you explained how NUM's negotiating process
 8 works and how it goes about obtaining its mandates.
 9 Correct?
 10 MR GCILITSHANA: Yes, that's correct.
 11 MS BARNES: And you said the shop
 12 stewards' councils are convened, together with their
 13 constituencies, and it's there that the workers' demands
 14 are obtained. Do I have that right?
 15 MR GCILITSHANA: That's correct.
 16 MS BARNES: And then there are mass
 17 meetings held at which the mandate is refined and
 18 confirmed. Is that correct?
 19 MR GCILITSHANA: That's correct.
 20 MS BARNES: Now those shop stewards'
 21 councils are NUM members, correct?
 22 MR GCILITSHANA: Yes.
 23 MS BARNES: And the constituencies too
 24 would be the NUM members, correct?
 25 MR GCILITSHANA: Yes.

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1 MS BARNES: Also when mass meetings are
 2 held, those are mass meetings of NUM members. Is that
 3 correct?
 4 MR GCILITSHANA: The mass meetings are
 5 meant for NUM members, but even those non-NUM members, they
 6 do attend, because you don't check the payslip of a person
 7 on membership when they attend a mass meeting.
 8 MS BARNES: So it's not verified that the
 9 people attending the mass meetings are in fact NUM members.
 10 Is that what you're saying?
 11 MR GCILITSHANA: Can you repeat it again?
 12 MS BARNES: You don't verify that
 13 everybody at a mass meeting is actually a NUM member;
 14 that's unnecessary, correct?
 15 MR GCILITSHANA: Yes, we don't verify.
 16 MS BARNES: But NUM doesn't have any
 17 separate processes for consulting with people that are not
 18 NUM members, but that form part of the bargaining unit. Is
 19 that correct?
 20 MR GCILITSHANA: No, it won't take -
 21 we'll talk to those, with our members.
 22 MS BARNES: Chairperson, I see it's 3
 23 o'clock. Would this be a convenient time?
 24 CHAIRPERSON: If it's a convenient stage
 25 in your cross-examination -

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1 MS BARNES: It is.
 2 CHAIRPERSON: - we'll take the tea
 3 adjournment.
 4 [COMMISSION ADJOURNS COMMISSION RESUMES]
 5 [15:19] CHAIRPERSON: The commission resumes, we
 6 came back a little bit later than we originally had
 7 intended because a statement has been forthcoming from
 8 Lonmin and was given to Ms Barnes and she was given an
 9 opportunity to read it before continuing with her cross-
 10 examination. You are still oath, sir. Ms Barnes, I take
 11 it you have still got questions to ask?
 12 MS BARNES: Yes, I do, Chair thank you.
 13 Now sir, isn't it correct that two year wage agreements
 14 were a common feature in the relationship between NUM and
 15 Lonmin?
 16 MR GCILITSHANA: That's correct.
 17 MS BARNES: And although the time period
 18 of the agreement is two years and the wage increases are
 19 set out over a two year period, you agree with me that it
 20 is possible in terms of, it was possible in terms of those
 21 agreements generally to amend them by agreement between the
 22 parties if necessary?
 23 MR GCILITSHANA: Yes, it is possible.
 24 MS BARNES: The important point is that
 25 it would have, the parties would have to sit down together

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1 and they would have to reach agreement and then that would
 2 have to be recorded in writing and signed by both parties,
 3 in this case NUM and Lonmin, would that be correct?
 4 MR GCILITSHANA: Yes, that will be done.
 5 MS BARNES: And isn't this correct that
 6 this had happened on occasion in the past in Lonmin where
 7 two year wage agreements were amended by the parties?
 8 MR GCILITSHANA: I can recall on the, I
 9 can't recall the year because of the inflation rate, the
 10 inflation was at 12% whereas the agreement lesser than
 11 that. There was that time, that was agreed upon.
 12 MS BARNES: Yes, that accords with my
 13 instructions. The two year agreement provided for an
 14 increase which I think was 9% and inflation went into
 15 double digits in respect of the second year and so the
 16 party sat down and they amended the agreement to increase
 17 the percentage, is that correct?
 18 MR GCILITSHANA: That's correct.
 19 MS BARNES: And just to be absolutely
 20 clear in the agreement at issue in this case, it appears in
 21 the NUM bundle of documents which is Exhibit XX2, if you
 22 could go to page 13 and that's the beginning of the
 23 agreement, the wage agreement. That was applicable during
 24 the relevant time, is that correct?
 25 MR GCILITSHANA: This is 2011, 2012

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1 agreement.

2 MS BARNES: Yes, that was until 2013?

3 MR GCILITSHANA: Yes.

4 MS BARNES: And if you go to page 19 it's

5 the last page of the agreement, if you could read paragraph

6 12.4 into the record please or clause 12.4 into the record?

7 Thank you.

8 MR GCILITSHANA: "No addition to or

9 variation, consensual, cancellation or notation of this

10 agreement and no waiver of any right arising from the

11 agreement or it's breach of termination shall be of any

12 force or effect unless reduced to writing and signed by all

13 parties or their duly authorised representatives".

14 MS BARNES: Is it correct that it was in

15 terms of such a clause or a similar clause that the

16 agreement that we referred to just now was amended in the

17 past?

18 MR GCILITSHANA: That's correct.

19 MS BARNES: And isn't it correct that

20 that was exactly what was eventually done in September

21 2012, this agreement was amended in terms of an addendum

22 which gave an increase to the rock drillers, is that

23 correct?

24 MR GCILITSHANA: That's correct.

25 MS BARNES: Now you testified in your

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1 evidence-in-chief that NUM takes great care to ensure that

2 workers demands are not out of kilter with industry and

3 market norms and standards, is that correct?

4 MR GCILITSHANA: That's correct.

5 MS BARNES: And this is important for a

6 credible collective bargaining process?

7 MR GCILITSHANA: That's correct.

8 MS BARNES: It's also important not to

9 create unrealistic expectations in the minds of workers and

10 your members, is that correct?

11 MR GCILITSHANA: That's correct.

12 MS BARNES: And you explained that NUM

13 has annual bargaining conferences which deal with this

14 issue each year, is that correct?

15 MR GCILITSHANA: That's correct, on the

16 year of negotiations as we talk of normally two year

17 agreements.

18 MS BARNES: Now just to check that I

19 understand your evidence correctly, the rock drillers

20 demand that they be rolled up from grade 4 to grade 7.

21 That demand existed in 2009, is that right?

22 MR GCILITSHANA: That's correct.

23 MS BARNES: And NUM attempted to achieve

24 that for the rock drillers at that set of the negotiations

25 in 2009 and was unsuccessful, is that correct?

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1 MR GCILITSHANA: That's correct, we could

2 not agree to category 7 at least there was an addition to

3 RDO's who are at category 4 to others, operators who are at

4 category 4.

5 MS BARNES: Was this an issue before 2009

6 or did this demand, this RDO demand exist before 2009?

7 MR GCILITSHANA: Yes, as I recollect.

8 MS BARNES: Can you tell us in which year

9 the demand first arose in a wage negotiation?

10 MR GCILITSHANA: It started on the wage

11 negotiations of 2009 with Lonmin, as I recall.

12 MS BARNES: And the rock drillers demand,

13 was this a subject at the annual bargaining conference of

14 NUM in the relevant year? Would it have been 2009, the

15 conference?

16 MR GCILITSHANA: It is possible that we

17 did, because we deal with a lot of issues. As I recall

18 there have been discussions internally of how do we handle

19 issues of the RDO's about their wages.

20 MS BARNES: And it would have been, if

21 that demand had been considered to be unreasonable at that

22 annual bargaining conference, it would have been altered is

23 that correct? Or steps would have been taken to adjust it,

24 is that correct?

25 MR GCILITSHANA: Yes, the demand will be

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1 put forward, yes.

2 MS BARNES: Sorry sir, I didn't get your

3 answer.

4 MR GCILITSHANA: I'm saying that the

5 demand will be put forward for negotiations.

6 MS BARNES: No Sir, the question relates

7 to the annual bargaining conference where you say that NUM

8 looks at demands and checks that they are not out of kilter

9 with the market. Now this RDO demand has been around for a

10 long time. The same demand since 2009. What I'm saying to

11 you, is that isn't it correct that if it was NUM's view

12 that that demand was unreasonable that would have been

13 communicated to the workers, is that correct?

14 MR GCILITSHANA: That's correct.

15 CHAIRPERSON: Would it not have been

16 covered by clause 12.3 of the agreement, at page 19,

17 Exhibit XX2? It correctly ruins the point you just made

18 but it might well have been -

19 MS BARNES: I beg your pardon, Chair,

20 that was clause?

21 CHAIRPERSON: 12.3 on page 19.

22 MS BARNES: Yes, I see that, Chair. I'm

23 making a slightly different point. During the 2011

24 negotiations and if I can take you to your statement in

25 this regard, if you will just give me a moment to find

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1 that. Well perhaps I need to go back one step, you
 2 testified that in addition to the annual bargaining
 3 conference that is held annually in the year of wage
 4 negotiations demands also go through NUM's market research
 5 department in order to vet them, to make sure that they are
 6 not completely out of kilter with market norms, is that
 7 right?

8 MR GCILITSHANA: That's correct.

9 MS BARNES: Because you say in your
 10 statement on page 7 at paragraph 28, you say in this case
 11 NUM's demands passed muster and then the General-Secretary
 12 submitted them to Lonmin in 2011?

13 MR GCILITSHANA: That's correct.

14 MS BARNES: So in other words NUM, you
 15 were entirely satisfied as NUM that the rock driller's
 16 demand that they be rolled up from grade 4 to grade 7 was
 17 an entirely reasonable and market related demand, is that
 18 correct?

19 MR GCILITSHANA: That's correct.

20 MS BARNES: Even the salary increase that
 21 they would get, would amount to approximately R2 000 as you
 22 indicated earlier today, correct?

23 MR GCILITSHANA: The 2 000 I meant when
 24 they will be moved from category 4 to category 7. That's
 25 correct, if that is then the understanding.

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1 MS BARNES: Indeed, that would be the
 2 effect of that, of that upgrading. So it follows that rock
 3 drillers were being dramatically underpaid and had been
 4 dramatically underpaid for some years, is that correct?

5 MR GCILITSHANA: Yes.

6 MS BARNES: And that is why you said at
 7 that final negotiation meeting with Lonmin in 2011 that if
 8 this was not addressed it would be a time bomb, is that
 9 correct?

10 MR GCILITSHANA: As I cited before that
 11 it was more what the RDO's, some of them were not allowed
 12 to leave during the VSP because of the scarcity of their
 13 skill and also the hard work that they do.

14 MS BARNES: And that's why you persisted
 15 in two rounds of negotiations with the demands that they be
 16 rolled up three categories effectively?

17 MR GCILITSHANA: That is correct.

18 MS BARNES: Now since you weren't able to
 19 achieve the upgrading that you sought for the rock
 20 drillers, the time bomb as I think you conceded yesterday
 21 continued to tick in December 2011, is that correct?

22 MR GCILITSHANA: I did know that it was a
 23 ticking, it remained after the settlement. Yes, it
 24 exploded.

25 MS BARNES: It eventually exploded didn't

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1 it, sorry what was your answer?

2 [15:39] MR GCILITSHANA: What I'm saying is that
 3 we, as much as we said that it's going to be a time bomb,
 4 we didn't know that it is going to happen, but it happened
 5 at the, in December.

6 MS BARNES: Now we know that the NUM
 7 branch at Karee Mine at Lonmin had been dissolved in May
 8 2011. Is that correct?

9 MR GCILITSHANA: That's correct.

10 MS BARNES: And that after that there
 11 were a minority of NUM members, when people joined unions
 12 later in the year there was a minority of NUM members at
 13 that Karee Mine, correct?

14 MR GCILITSHANA: That's correct.

15 MS BARNES: Which meant that the majority
 16 of the workers at the Karee Mine were not part of the NUM
 17 consultations, or the NUM mandate in relation to wages. Is
 18 that correct?

19 MR GCILITSHANA: I won't say yes or no,
 20 simply because I indicated that we would normally agree
 21 with the company to send buses to Karee and people would
 22 all take the transport to the stadium to Wonderkop when we
 23 address the mass meeting on wages to hear. Wages
 24 generally, majority of people have interest on wages; the
 25 stadiums are always full when we negotiate wages.

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1 MS BARNES: Yes, but we've earlier agreed
 2 that the NUM processes are, essentially cover NUM members.
 3 We've gone through that earlier, correct?

4 MR GCILITSHANA: That's correct.

5 MS BARNES: So do you agree with me that
 6 we have a ticking time-bomb in respect of RDO wages, and in
 7 respect of the Karee Mine we have that ticking time-bomb in
 8 a context in which the employees there are not part of the
 9 bargaining process? Is that correct?

10 MR GCILITSHANA: As we indicated that
 11 there were people from Karee who have been attending the
 12 mass meetings, because they did come with the buses.

13 MS BARNES: But you can't confidently
 14 tell this Commission that the employees at Karee all
 15 attended the NUM processes, can you?

16 MR GCILITSHANA: Not all the employees,
 17 correct.

18 MS BARNES: Now in addition to the fact
 19 that RDOs are underpaid, and in addition to this
 20 unrepresented group at Karee, we then have the events at
 21 Implats. Is that correct?

22 MR GCILITSHANA: I won't agree that it
 23 was because of the Karee situation that had an impact in
 24 Karee – in Impala, because the issue of, issues of RDOs
 25 started at Impala.

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1 MS BARNES: Yes, and I think you've
 2 misunderstood me. The first fact is that we have RDOs that
 3 are underpaid. The second fact is that we have employees
 4 at Karee that are not represented by a union that can
 5 bargain for them. Agreed?
 6 MR GCILITSHANA: The agreement is a
 7 central agreement. It's negotiated for all Lonmin
 8 employees, regardless whether it's in Karee, it's in
 9 Western Platinum, or LPD.
 10 MS BARNES: I do understand. I agree
 11 with you, Sir, they are part of the bargaining unit. The
 12 point I'm making is that they're not necessarily part of
 13 the consultative processes.
 14 MR GCILITSHANA: Yes, in the official
 15 meetings there have been no representative from Karee.
 16 MS BARNES: So that is the situation in
 17 December 2011, and then in January 2012 we have an
 18 unprotected strike at Implats, which you became aware of as
 19 it was unfolding, you said earlier. Is that still right?
 20 MR GCILITSHANA: That's correct.
 21 MS BARNES: And the strike at Implats was
 22 characterised by distrust of management and distrust of
 23 NUM. Is that right?
 24 MR GCILITSHANA: That's correct.
 25 MS BARNES: There was violence and

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1 intimidation, which left I think 60 people injured and four
 2 dead. Is that correct?
 3 MR GCILITSHANA: That's what, the report
 4 that we got, yes.
 5 MS BARNES: Workers, or RDOs
 6 specifically, took matters into their own hands and
 7 ultimately they secured a very significant increase for
 8 themselves at Implats. Isn't that correct?
 9 MR GCILITSHANA: Yes.
 10 MS BARNES: You've admitted in your
 11 evidence that all of this, or rather obviously created
 12 expectations at Lonmin. Isn't that correct?
 13 MR GCILITSHANA: Yes.
 14 MS BARNES: So what I'd like to ask you,
 15 Sir, as chief negotiator for NUM at Lonmin, is if you had a
 16 time-bomb in December 2011, what did you have in April
 17 2012?
 18 MR GCILITSHANA: We had our discussions
 19 internally on how do we handle the issue, these issues, as
 20 I indicated, having seen that we could not succeed in the
 21 process of negotiations, knowing that people who are
 22 negotiating, they get source mandate from their seniors.
 23 Our discussions internally was how do we engage the
 24 captains of the industry so that we can sensitise them
 25 about this issue, since we don't get joy in the

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1 negotiations.
 2 MS BARNES: So you agree with me that you
 3 were on notice in a sense; after what happened at Implats
 4 you knew that it was very likely that a similar thing was
 5 going to happen at Lonmin. Isn't that right?
 6 MR GCILITSHANA: Yes, the fact that it
 7 could happen in other mines, like also in Anglo Platinum,
 8 there was that, also attempt, but NUM was engaged in the
 9 award process.
 10 MS BARNES: Shouldn't you, Sir, have
 11 approached Lonmin at that stage and said, "Look, we need to
 12 reopen this agreement; we know that RDOs at Lonmin have
 13 been, and are underpaid. They've been underpaid since
 14 2009. We've seen what's happened at Implats. We cannot
 15 let that happen here. Let's sit down and revisit this
 16 agreement and reach agreement with regard to an amendment."
 17 Shouldn't you have done that?
 18 MR GCILITSHANA: That's why I said we had
 19 discussions internally. Our approach was to discuss with
 20 the captains of industry, because we could not reach it at
 21 the negotiations, for two positive negotiating terms.
 22 MS BARNES: Did you approach Lonmin and
 23 say let's amend the agreement in order to give rock
 24 drillers a decent increase? Did you do that?
 25 MR GCILITSHANA: No.

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1 MS BARNES: Was there anything preventing
 2 you from doing that?
 3 MR GCILITSHANA: As I indicated that
 4 there were still discussions within the organisation.
 5 MS BARNES: What discussions are you
 6 referring to?
 7 MR GCILITSHANA: Of engaging the captains
 8 of industry, because it would not be an issue only for
 9 Lonmin. As I indicated that also it raised up at Anglo
 10 Platinum.
 11 MS BARNES: It's an RDO issue –
 12 MR GCILITSHANA: Correct.
 13 MS BARNES: Did you say to the captains
 14 of industry that we need to sit down and amend agreements
 15 and give RDO's an increase? Did you do that?
 16 MR GCILITSHANA: I'm not sure whether
 17 that had been started before this event in Lonmin, because
 18 that was, normally will be handled by the general secretary
 19 and the president, because deal with very senior management
 20 of the industry.
 21 MS BARNES: So the general secretary
 22 and/or the president may have done that. Is that correct?
 23 MR GCILITSHANA: What I'm saying, that
 24 normally such meetings, that president and general
 25 secretary are the people who normally engage the CEOs or

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1 the presidents of the organisations, and I won't confirm
 2 whether before the incident of, in Lonmin, that have
 3 started or not.
 4 MS BARNES: So there would have been
 5 nothing wrong in principle in your view with making such an
 6 approach to management to amend the agreement as necessary?
 7 MR GCILITSHANA: Yes.
 8 MS BARNES: So now we're still at April
 9 2012, before things actually start happening at Lonmin, as
 10 expected. I'm going to go now to those events. The first
 11 indication that something was brewing at Lonmin was in June
 12 – well, we'll get the date in a short while because there's
 13 some confusion, but the first indication would be march by
 14 Karee employees to Mr Da Costa's office. Is that right?
 15 MR GCILITSHANA: Yes.
 16 MS BARNES: And you testified that you
 17 became aware of that march a few days after it happened?
 18 MR GCILITSHANA: That's correct.
 19 MS BARNES: You would have been very
 20 concerned, I would presume, to have heard about the march.
 21 Presumably this would have been the sort of thing that you
 22 feared might happen at Lonmin, and you would have then kept
 23 a very close watch on things after you heard about the
 24 first march. Is that right?
 25 MR GCILITSHANA: Yes, it was a concern.

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1 MS BARNES: And you would have followed
 2 things very closely from this point?
 3 MR GCILITSHANA: Yes, through the local
 4 leadership.
 5 MS BARNES: Now that march to Mr Da
 6 Costa's office, it appears that that in fact happened on
 7 the 21st of June 2012, and not the 21st of July 2012, as you
 8 say in your statement.
 9 MR GCILITSHANA: Because I was not party
 10 to those events, I won't be sure exactly about the date,
 11 whether it was 21, but that, this date is in the entry of
 12 the security by Lonmin.
 13 MS BARNES: It's in Mr Da Costa's
 14 statement, I'm not sure that it's necessary to take you to
 15 it, but he says it was the 21st of June and he gives quite a
 16 detailed account and quite a number of days. Do you accept
 17 that you're mistaken and that the correct date would be as
 18 Mr Da Costa says, 21st of June?
 19 MR GCILITSHANA: It is possible, because
 20 I was not involved. Mr Da Costa was the person who was
 21 dealing with these people.
 22 MS BARNES: The other thing in Mr Da
 23 Costa's statement - and I can take you to the passage, if
 24 necessary - is that the offer made by Lonmin to the RDOs in
 25 respect of the allowance was made on the 30th of July 2012.

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1 [15:59] MR GCILITSHANA: That is possible but the
 2 information that I got is that – took decision before that
 3 then it was communicated on a later date.
 4 MS BARNES: So we are really dealing with
 5 a period of about 6 weeks from the date of the 1st March to
 6 the date on which Lonmin made the offer to the RDOs. Do
 7 you accept that?
 8 MR GCILITSHANA: Yes.
 9 MS BARNES: In your statement, if you
 10 could just look at your statement at page 11 paragraph 34
 11 and 35 it looks as though those events happened in the
 12 space of three days. Do you accept that, that's not
 13 correct?
 14 MR GCILITSHANA: As I said that it is
 15 possible because I was not party to this exercise.
 16 MS BARNES: It seems highly improbably
 17 that all the –
 18 MR TIP SC: Mr Chair, sorry, forgive me
 19 for interrupting but in fairness these questions ought to
 20 be put on the basis that has regard, properly has regard to
 21 what the witness has said about the dates that are referred
 22 to in the statement being reflected precisely in the Lonmin
 23 occurrence books against those dates.
 24 CHAIRPERSON: If you refer to page 21 of
 25 Exhibit XX2 you will see at the top of the page there is a

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1 logbook entry, 21st July at 10 o'clock. "RDOs first illegal
 2 march to the general office at Karee." It may be that the
 3 earlier march to which Mr Da Costa refers in his statement
 4 couldn't really have been characterised as an illegal
 5 march. But it does appear from the logbook, of course you
 6 will say the logbook could be wrong, does appear from the
 7 logbook that there was a march which is stigmatised as
 8 illegal on the 21st July. So it may be that the witness
 9 isn't quite as wrong as you suggest he is. But I see it is
 10 nearly 4 o'clock, you may want to round off this point, in
 11 which case please do so. Alternatively you may think it
 12 appropriate for us to take the adjournment now so you can
 13 go into the matter and refreshed, return to the charge on
 14 the morrow at 9:30. I am in your hands, you tell me what
 15 you prefer?
 16 MS BARNES: This would be a convenient
 17 time, Chair, thank you.
 18 CHAIRPERSON: The commission will adjourn
 19 until 09:30 tomorrow morning.
 20 [COMMISSION ADJOURNED]
 21 .
 22 .
 23 .
 24 .
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