In SERI’s Community Practice Notes we document the struggles of communities in different contexts in South Africa.

Abattoir Workers: unfair labour practices and anti-union strategies in Robertson
Making a Living Series

SERI’s fourth Community Practice Note series focuses on the struggles of poor and vulnerable people in precarious work. For many of these workers this is reflected in part-time or insecure employment, poor working conditions, long hours and low pay.

Changes in the labour market and South Africa’s high unemployment rates mean that many poor people remain trapped in systems in which they are extremely poorly paid. The rapid pace of casualisation of work has led to a decrease in wages, little job security, the loss of employment benefits and increased vulnerability of workers.

*Abattoir Workers: unfair labour practices and anti-union strategies in Robertson* is the first Community Practice Note in the series. It is a case study which illustrates that workers are frequently work more overtime than labour legislation permits. At the Abattoir itself some workers work up to 45 hours of overtime per week. The case also documents the anti-union practices and strategies of employers, which serve to keep workers disorganised, isolated and easily exploited.

Finally, the case highlights that despite progressive labour legislation, relief for vulnerable and precarious workers in the agricultural sector is often late and limited. Even with the assistance of unions and human rights lawyers, litigation is a time-consuming, protracted and potentially frustrating process.

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Abattoir Workers: unfair labour practices and anti-union strategies in Robertson

This Community Practice Note is the first in SERI’s Making a Living Series.

It provides a brief background to the Robertson Abattoir case. It addresses the events before the workers’ dismissal and their lived experiences and the difficulties during the litigation process. It shows the unfair labour practices and the anti-union strategies experienced by the workers.

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South Africa’s agricultural sector employs one of the most vulnerable and exploited workforces in the country. Many workers in the sector have little job security and high levels of casualised labour with low levels of unionisation. They often lack access to basic services such as water, electricity and sanitation, and many workers remain isolated on the urban periphery or in rural areas.

Robertson town is approximately a two hour drive from Cape Town’s city centre in the Western Cape. There are over 700 farms in the Robertson area comprising of both livestock and crop production, including seasonal fruit and wine farming. The number of workers employed on a farm often varies depending on the season. Other workers are employed in jobs in the agricultural sector that are related to farming. Some of the jobs done by workers in Robertson Abattoir are good examples of such employment. Many of the workers who were dismissed from Robertson Abattoir live in Nkqubela informal settlement adjacent to Robertson town, which is a predominantly African area with low educational levels and high poverty rates.

In 2010, 42 workers were locked-out of their jobs at Robertson Abattoir Farm, later renamed the South African Farm Assured Meat Group (SAFAM). Thirty-nine were subsequently dismissed. The workers were dismissed after a refusal to fulfil a demand for an increased slaughter rate. The workers refused because it would result in excessive working hours, in violation of labour legislation. For example Mr Dyasi Lungekile often endured a 17-hour working day, regularly worked over 30 hours of overtime in a week and once reported working up to 41 hours of overtime in a week. Figure 1 indicates how much overtime various workers were working the week directly before their dismissal.

When the workers challenged the extended working hours without a shift system in place, they were dismissed by means of a lock-out, and new workers were immediately brought in as replacement labour. The workers were locked out and then a sham disciplinary hearing was held.
Overtime hours worked per week prior to dismissal compared with BCEA

**Figure 1: Overtime hours worked per week prior to dismissal compared with BCEA**

**Source:** Owner’s submissions to Court over a seven month period.

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The dismissal took place despite farm workers seeking assistance from their union, the Commercial Stevedoring Agricultural and Allied Workers Union (CSAAWU). Prior to the lock-out instituted by the employer, workers say that they were told to leave their union or they would be in trouble. This deliberately anti-union stance is commonly experienced by workers affiliated to CSAAWU who sorely need the assistance and support of unions to protect their rights. As Ruben Domingo’s account below shows, farmers know that unions are a threat because they “[open] the eyes of farm workers” to injustices and unlawful conduct of employers.

After a long court case, in July 2014 the Labour Court ruled in favour of the Robertson Abattoir based on a technical legal point, because the workers could not prove the exact date they were dismissed. The ruling didn’t inquire into the substance of the unfair practices or the employer’s anti-union stance. Workers successfully appealed the judgment in the Labour Appeal Court. On 20 August 2016, the Labour Appeal Court upheld the workers appeal with costs, and referred the matter back to the Labour Court for full trial to determine if indeed this dismissal was unfair.

The trial commences in December 2016 and on day four, the matter is settled by agreement between CSAAWU and Robertson Abattoir. The employer agrees to pay each of the dismissed workers approximately three months’ salary. The workers accept.
Figure 5: Robertson Worker and CSAWU Member outside the Labour Court, Cape Town
02
Key Events

August 2010
Robertson Abattoir workers join CSAAWU. CSAAWU starts engaging the employer on working conditions and organisational rights.

November 2010
Although negotiating with CSAAWU and workers, Robertson continues to demand that the new slaughter rate is met during negotiations. Workers continue to work in terms of the hours and targets set out in their employment contracts. Workers are threatened with disciplinary hearings for “insubordination”. Robertson Abattoir unilaterally raises the daily slaughter target from 600 to 850 animals. Some workers report having to work 17-hour days and up to 41 hours of overtime in a single week.

19
CSAAWU and Robertson Abattoir further engage and CSAAWU raises the workers’ concerns again including long work hours, high slaughter rates, inadequate overtime pay and being denied annual leave. Robertson Abattoir offers to pay workers an additional R150 per week if the workers meet the target of 850 animals per day. CSAAWU responds that the target can be met if a shift system is employed and their labour rights in terms of the legislation are not violated.

30
42 workers locked-out without notice. Other workers are brought in to replace them. Disciplinary hearings are held for 30 of these workers, which take place in their absence and in the absence of their union representative.

20
Labour Appeal Court upholds the appeal with costs and refers the matter back to the Labour Court.

18
Workers granted leave to appeal in the Labour Appeal Court.

August 2016

August 2015

Figure 3: Summary timeline
Certain types of dismissals are described by the Labour Relations Act (LRA) as “automatically unfair”. There are various legal consequences for automatically unfair dismissals including employees possibly being reinstated or compensation for up to 24 months. Prior to the 2014 amendment section 187(1)(c) of the LRA said that a dismissal was automatically unfair if it was to “compel the employee to accept a demand in respect of any matter of mutual interest between the employer and employee”. After the amendment it now says that a dismissal is automatically unfair if it is as a result of “a refusal by employees to accept a demand in respect of any matter of mutual interest between them and their employer”.

An interim legal step during a trial that requires further investigation before the trial may resume.
Upon hearing that a new union, the Commercial Stevedoring Agricultural and Allied Workers Union (CSAAWU), is organising in the Robertson area, Robertson Abattoir workers leave their previous union. They join CSAAWU in August 2010. CSAAWU engages with the workers about their concerns with Robertson Abattoir. On 16 September, CSAAWU submits a letter to Robertson Abattoir with the names of 31 Abattoir workers who have joined the union, and requests certain organisational rights and working conditions.

Over time Robertson Abattoir slaughter targets have been gradually and periodically increasing. Slaughter rates have always been high and workers have had to work hard and long and in conflict with labour legislation to meet them. By October 2010 the targets sit at the daily slaughter of 850 animals. Workers must work excessive amounts of overtime to meet this target, as is detailed in Figure 1 above.

With the support of CSAAWU the workers decide to stand up against these unlawful working hours and claim their labour rights. On the workers’ behalf, CSAAWU seeks to engage with Robertson Abattoir.
CSAAWU engages with Robertson Abattoir on 4 November on the illegal working hours and conditions imposed upon them. On 15 November, CSAAWU declares a dispute with Robertson Abattoir for changing the workers’ contracts without their consent. CSAAWU and Robertson Abattoir engage once again on 19 November. CSAAWU raises concerns of working hours relating to the increased slaughter target, as well as overtime pay and the denial of annual leave for some workers. Robertson Abattoir proposes paying workers an extra R150 per week if the workers can achieve the daily target of 850 sheep carcasses. At the meeting, CSAAWU and the workers make a counter-proposal to meet the target if a shift system is used and the BCEA is not violated. On 22 November, Robertson Abattoir ignores the shift system proposal and reiterates its offer of an extra R150 per week. Workers decline Robertson Abattoir’s offer.

Robertson Abattoir sends two warning letters to CSAAWU. The first letter dated 23 November, warns that the workers’ failure to meet the 850 daily target exposes the workers to disciplinary action. The second letter dated 25 November accuses workers of being on a “go–slow” and failing to comply with “the agreement” reached on 19 November in terms of which Robertson Abattoir would pay workers an additional R150 per week.

On 24 November CSAAWU responds to Robertson Abattoir’s letter, rejecting the accusation that its members are engaged in a go-slow and again asks Robertson Abattoir to respond to the workers proposal to implement a shift system, if they are to reach the 850 daily target. CSAAWU warns that if Robertson Abattoir does not state its position on the matter in dispute, then it would refer the dispute to the CCMA.

On 26 November, CSAAWU again requests that Robertson Abattoir state its position on the resolutions proposed from the 19 November meeting stating that Robertson Abattoir is in contravention of the BCEA.
UNFAIR DISMISSAL OF WORKERS

On 29 November Robertson Abattoir rejects CSAAWU’s letter dated 24 November stating that CSAAWU is not “sufficiently representative” to claim organisational rights because it represents less than 50% of the workers employed at the abattoir. According to CSAAWU, it is clear that Robertson Abattoir disfavours the union and workers who are a part of unions.

At the end of the working day on 29 November, workers are told to report to work at 10 am and not 7 am the following day, without further explanation. The workers arrive at work at 7 am on 30 November, but are not allowed to enter the premises and to report for duty. Only workers who are not CSAAWU members are allowed onto the premises to work. New workers are recruited by Robertson Abattoir from the neighbouring town of Paarl.

CSAAWU sends a letter to Robertson stating that it is conducting an illegal lock-out. In total, 42 workers are locked-out of Robertson Abattoir of which 39 are not permitted to work again. The workers are dismissed from their employment through a lock-out.

Disciplinary hearings are held in the afternoon of 30 November for 30 of the 39 locked-out workers. The hearings are held in the absence of workers and their union representatives. The notices of dismissal are written on 1 December. The remaining 9 workers continue to go to Robertson Abattoir daily, but are not permitted to work. On 3 December, CSAAWU launches an urgent application in the Labour Court to allow workers back to the Abattoir. On 6 December, the Labour Court grants the workers an order which permits them back onto Robertson Abattoir. Robertson Abattoir is forced to allow them back, but the owner and management make the workers sit idle as new workers do their jobs.

Despite a court order mandating the owner to allow the workers to continue their work, Robertson Abattoir asks that the workers who show up for work sit behind the Abattoir building so that the public does not see them. Between 17 and 22 December the Abattoir workers

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4 The Labour Relations Act gives a “representative” or “majority” trade union in this position certain particular rights in some situations. These rights sometimes include the ability to conclude agreements with employers to which other unions will be bound.
report the unfair dismissal to the Commission for Conciliation, Mediation and Arbitration (CCMA). On 22 December, disciplinary hearings are held for the 9 remaining workers. They are given dismissal notices on 23 December. In total, the illegal lock-out by Robertson Abattoir leaves 39 workers without jobs.

2011

On 4 January, the unfair dismissal of workers is referred to the CCMA for the purposes of conciliation and arbitration. However, because it is an automatically unfair dismissal there is no need for the matter to be referred to conciliation or arbitration and it can be directly dealt with by the Labour Court.

CSAAWU starts a social media campaign to draw attention to the case of the Robertson Abattoir workers. Robertson sues CSAAWU for defamation. The Socio-Economic Rights Institute (SERI) is approached for assistance with the defamation case, which is eventually “not persisted with after SERI files opposing papers and argument. At CSAAWU’s request, SERI takes over the unfair dismissal case.

2013

DECEMBER

On 5 December, Robertson Abattoir is granted a postponement from the Labour Court.

2014

SEPTEMBER

On 8 September, the Abattoir files an interlocutory application before the matter is heard in the Labour Court. A referral to the CCMA must be after the date of dismissal. The Abattoir accepts that the 30 workers were dismissed before 17-22 December 2010, but argues that 9 of the employees were dismissed on 23 December 2010.

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5 An interim legal step during a trial that requires further investigation before the trial may resume.
The owner of the Abattoir argues that the referral of unfair dismissal to the CCMA on 17-22 December 2010 for the nine employees is premature and therefore invalid. If the referral to the CCMA is invalid the Labour Court does not have jurisdiction to decide on the case for those nine employees.

On 9 September, the Labour Court orders SERI to provide evidence that all 39 workers were dismissed on 30 November 2010 in the lock-out, and not 1 and 23 December 2010 as alleged by the owner.

On 23 March, the Labour Court finds insufficient evidence to prove that the workers were dismissed on 30 November 2010. Robertson workers lose their case before the court and Robertson Abattoir is granted absolution from the instance. The finding absolves Robertson from having to provide any evidence in respect of how it treated and later dismissed the workers.

Workers seek leave to appeal from the Labour Court on 15 April. The court denies the application for leave to appeal and orders CSAAWU to pay Robertson Abattoir’s legal costs.

In May, SERI files leave to appeal at the Labour Appeal Court, which was granted in August.

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6 A legal term that states the applicant has not sufficiently proved a basic case against the respondent and thus the respondent is freed from obligation to answer to the court further.
The appeal is argued before three judges of the Labour Appeal Court in May. The court hands down judgment on 20 August. The court upholds the appeal with costs. The court refers the matter back to the Labour Court for trial, agreeing that there is danger when formal and technical orders are granted, overlooking substantive or real life justice and fairness. The court finds that evidence presented by the workers in relation to the lock-out, and whether it constituted an unfair dismissal, needs to be carefully considered by the Labour Court.

In November 2016 Robertson Abattoir seeks to reopen and broaden its case. As a result of the Labour Appeal Court’s decision against it, it must now attempt to satisfy the court that the dismissal was fair both in its substance and procedure.

In December 2016 a trial on this case commences in Cape Town. On day four of the trial, the matter is settled between CSAAWU and Robertson Abattoir by agreement. Robertson Abattoir offers to pay each of the workers it has dismissed approximately 3 months’ salary and the workers accept this offer.
Working conditions at Robertson Abattoir

Abattoir workers start at 7am. By 10am, when they are given a 15 minute tea break, they must have already slaughtered hundreds of sheep. They have a 45 minute lunch break at 1pm and continue to work until 5pm, or until their bosses have said the daily target is met. Workers say that these breaks are the only time workers are allowed to speak to one another, use the bathroom and rest. Workers are reprimanded if they sing in the abattoir as a way to keep themselves motivated.

Jan Majoor, who was employed at Robertson Abattoir in different jobs between 2002 and 2010 describes his work experience in the following terms:

“On a farm you feel more free [than at Robertson Abattoir]. You can talk, you can sing, you can do anything and still work at the same time. At an abattoir, it feels like you are in a prison. There are strict rules, and if you step out of the line they will put you back on the line.”
Figure 5: Robertson Workers and CSAAWU Members outside the Labour Court, Cape Town
Process of slaughtering at Robertson Abattoir

The process of slaughtering is a highly specialised, labour intensive, and fast-paced process. Every minute an animal is added to the production line and slaughtered, skinned, boxed and inspected.

Workers grade the meat based on factors such as the age of the animal, the colour of its tongue and the condition of its teeth. Carcasses are separated when delivered to distributors.

Workers were divided into three groups. Under the increased slaughter rates, their working hours are as follows:

<table>
<thead>
<tr>
<th>Department</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Green</td>
<td>Workers in the green department worked long hours on every day of the week, including significant overtime well in excess of the 9 hour day they are contracted for. They unload the livestock from the trucks, count animal heads and process offal. They are usually – but not always – given leave on public holidays.</td>
</tr>
<tr>
<td>Red</td>
<td>Workers in the red department worked long hours on every day of the week, including significant overtime well in excess of the 9 hour day they are contracted for. They are skilled workers who slaughter the livestock. Their leave is dependent on finding temporary replacement employees for their positions. Despite being very skilled, workers in this department remain vulnerable. For example, a worker had taken a week of verbally approved leave to attend a family funeral, only to find that on his return his contract had been terminated and his position filled by a new employee.</td>
</tr>
<tr>
<td>White</td>
<td>Workers in the white department worked long hours on every day of the week, including significant overtime well in excess of the 9 hour day they are contracted for. They are responsible for the delivery of the meat. They include loaders, who are given no breaks at all. Workers leave is dependent on the farm’s work load and on the worker finding a stand-in if they wish to take leave.</td>
</tr>
</tbody>
</table>
Ruben Domingo says that employers do not treat workers with human dignity and too many workers are unaware of their rights.

Ruben lives in Nkquabela informal settlement in Robertson with his partner, who is unemployed, and their two-year-old child. Both of his parents are farmworkers and as a child he moved across many farms with them.

Ruben started working at the Abattoir in 2004 and worked there for a total of 6 years. His job was to pull the skin from the tail of the animal over its head at a rate of one carcass per minute.

Though Ruben was initially fascinated by the way the abattoir worked and pleased to have permanent employment, over time he began to notice that many practices at the Abattoir are not in accordance with the law. These include his experiences of not getting paid for overtime and being required to work extremely long hours which he describes as “unreasonable”.

Ruben is a member of CSAAWU and says he is proud of that because it plays an important role in “opening the eyes of farm workers” to recognise the injustices in their workplaces. He says that because of this employers across the Robertson area “feel threatened by the presence of CSAAWU”.

After being dismissed from Robertson Abattoir in 2010 Ruben continues to find work on farms in the area which he says are “not much better” in terms of working conditions and pay than Robertson Abattoir.
Family and social life

The long working hours at the Abattoir meant that workers would often wake up before their children in the morning and return home after their children are asleep. The workers find the situation emotionally difficult when their children would ask whether they lived elsewhere.

Many workers feel they had no choice but to accept the unfair working conditions as they are sole breadwinners and need to provide for their families. Their salaries at the time, approximately R105 for the contractually agreed 9 hours they worked in a day, is not enough to cover their household and monthly expenses.

Due to the harsh conditions and long overtime hours, workers also could not take on additional part-time work to supplement their monthly salary and needed to subsist entirely off of these salaries.

Being a union member

Most of the workers heard about CSAAWU from a fellow worker in 2009. They decided to join the union. They felt their previous union was ineffective and too closely aligned to the employers.

Interaction with CSAAWU is also not only important for workers themselves but also their families. CSAAWU acknowledges that it is key to “organise the entire family” around the struggles of workers.

However, workers feel that they are discriminated against because they are union members. During the dispute with Robertson Abattoir, its owner stated that he wanted “fokol” to do with the workers’ union and that workers should slaughter 850 sheep “finish en klaar”.

A worker, Petrus Ndevo, testified that he was told to leave CSAAWU or he would be in trouble. Other CSAAWU members explain that, because the farm owners are “not stupid”, they try to prevent the development of workers’ consciousness of the grievances.
Jan Majoor says working at the Abattoir “feels like prison because you cannot express yourself.”

Jan lives in Nkubela informal settlement in Robertson with his wife and 2 children. He used to earn R1400 per fortnight, and his expenses include paying off his home. He worked at Robertson Abattoir for three months in 2002 and then in 2008 he was given casual work at the Abattoir. He was responsible for counting cow and sheep heads. Jan used to count and transport up to 1000 heads every day, and oversee the sale of approximately 300 of those heads.

Contractually, Jan’s working hours were from 7am to 5pm (9 hours), but in reality sometimes he worked from 6am to 1 am (17 hours). Suffering from exhaustion, he developed anxiety about oversleeping and being late for work. Three late warnings led to a disciplinary hearing and possible dismissal.

Work at Robertson was hard and intense for Jan. There was no time for workers to talk during their shifts. But during his lunch breaks Jan learned about a new labour union organising in the Robertson area. Jan, along with 38 other Robertson workers, joined this union, CSAAWU, in 2009. Soon after CSAAWU began trying to enforce legal limits on Jan’s working hours Jan was dismissed.

Jan remained unemployed for 4 months. Other employers in Robertson refused to employ him. He did casual work such as plumbing and spray painting to earn a living.

Eventually, Jan found work at a fruit farm as a tractor driver 20km from his home. However, Jan says he was dismissed from this work on 16 June 2016, for attending the Labour Appeal Court hearing for the Robertson case. The fruit farm owner also refused to pay his outstanding wages for three weeks of work he completed before being dismissed.
Conclusion

The struggle of workers employed by Robertson Abattoir highlights the precarious nature of work in the agricultural sector in rural South Africa. Precarious work, performed in the formal or informal economy, is characterised by uncertainty and insecurity. This includes job insecurity often through lack of, or weak, employment contracts, lack of job benefits, low pay, low levels of unionisation and limited access to legal remedies.

This Community Practice Note demonstrates the anti-union labour strategies of employers, and intimidation of union affiliated workers. Despite union representation, workers remain vulnerable. Despite progressive legislation and legal representation, legal recourse through the courts is not always straightforward and simple, and it may take years before a matter is concluded.