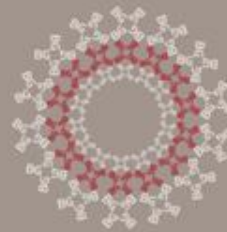


MARIKANA AND ITS LESSONS FOR CORPORATE SOUTH AFRICA

by John Brand
10 October 2012

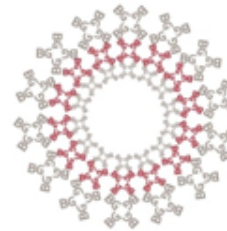


Lawyers
who see
the bigger
picture, and
the details.

INTRODUCTION

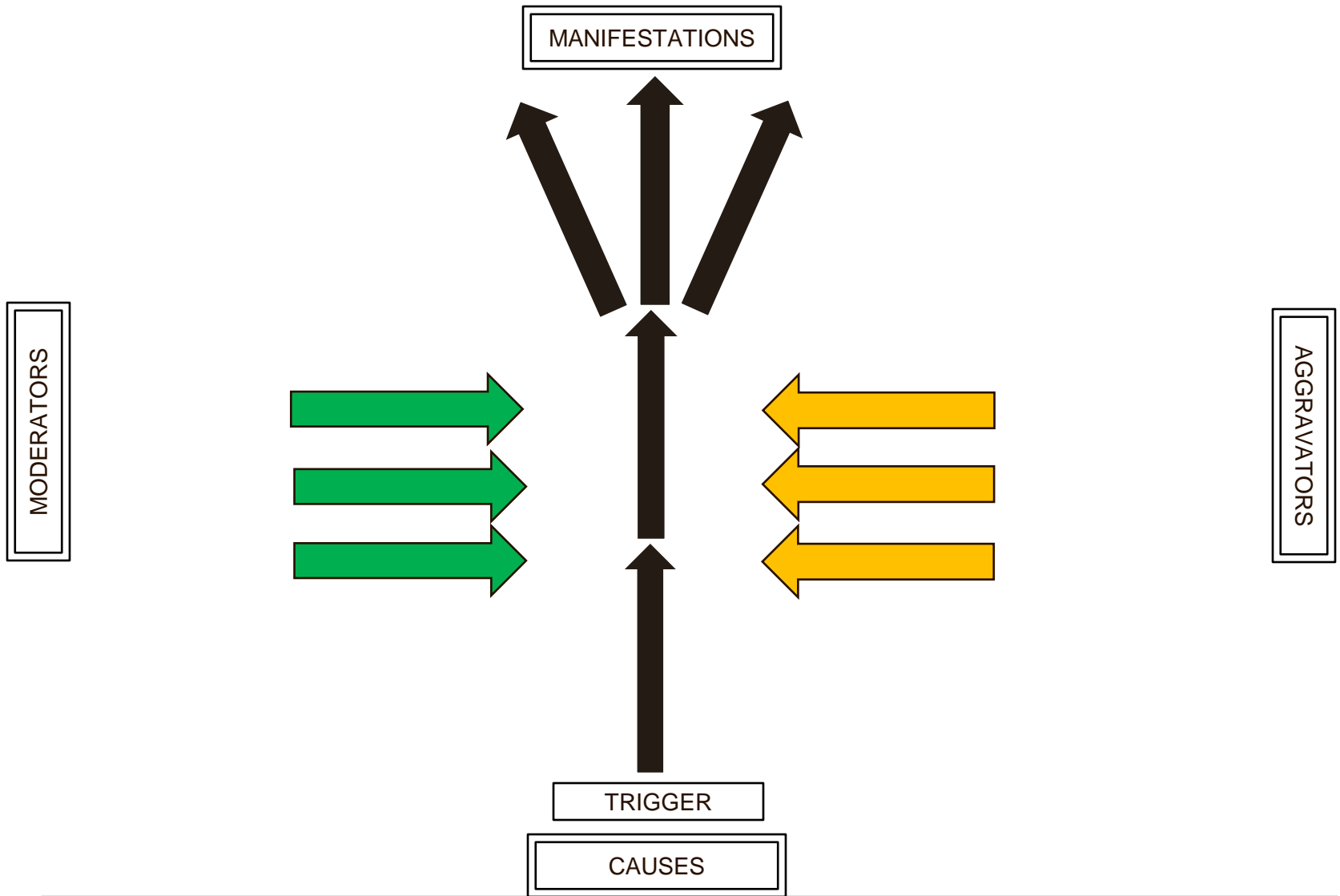
CONTENT

- The Marikana Conflict
 - Manifestations
 - Causes
 - Trigger
 - Aggravators
 - Moderators
- Some important facts
- Outcomes in public sector bargaining
- Outcomes in private sector bargaining
- The frequency and extent of strike action in South Africa
- International comparison of working days lost
- What can employers influence?
- What can employers do?

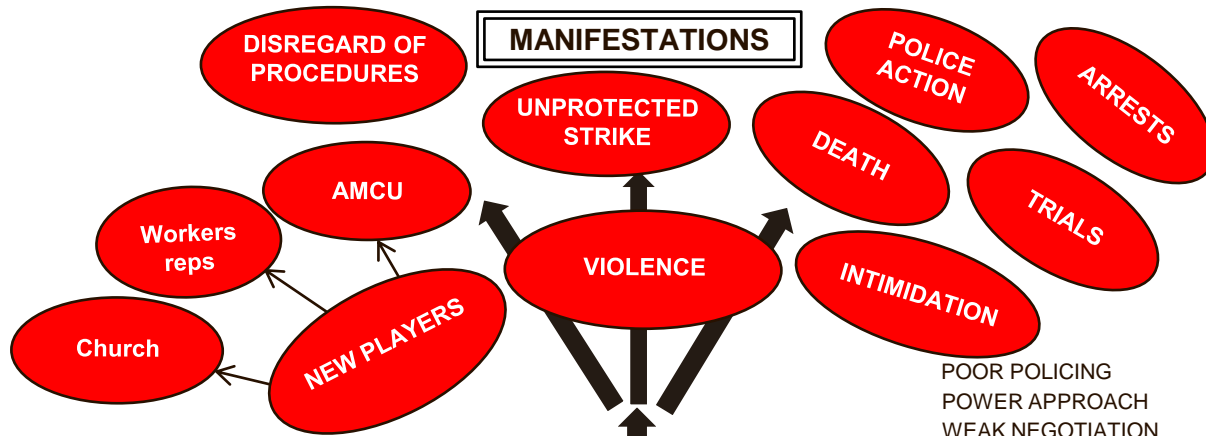


THE MARIKANA CONFLICT DYNAMIC

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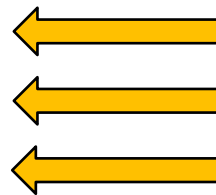
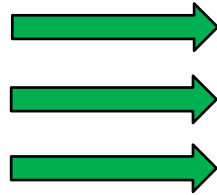


THE MARIKANA CONFLICT DYNAMIC



THE CHURCH

NEED FOR PAY



- POOR POLICING
 POWER APPROACH
 WEAK NEGOTIATION
 MISTRUST
 UNREALISTIC EXPECTATIONS
 INACCURATE PERCEPTIONS
 PAST UNRESOLVED CONFLICT
 DIVIDED CONSTITUENCIES
 ILLITERACY
 INNUNERACY
 IGNORANCE
 LANGUAGE BARRIERS
 FEAR
 WEAK DEMOCRACY
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 POLITICAL OPPORTUNISTS
 POOR LEADERSHIP
 COMPROMISED UNIONS
 MISREPRESENTATION
 THE MEDIA
 POLITICS

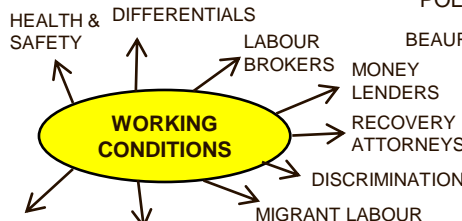
MODERATORS

AGGRAVATORS

IMPLATS

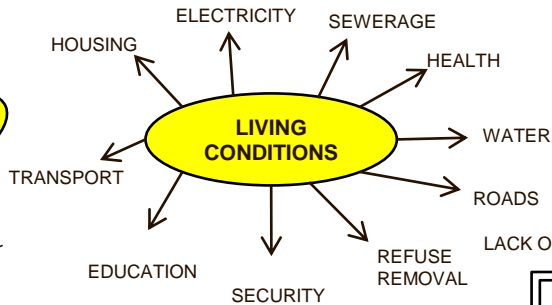
TRIGGER

WAGE DIFFERENTIALS

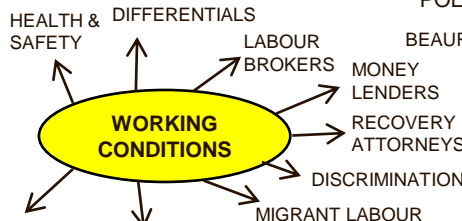


CAUSES

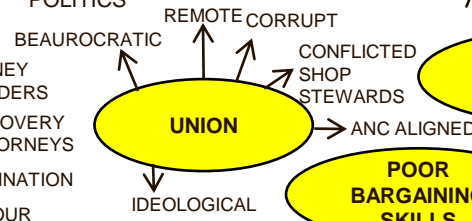
LIVING CONDITIONS



WORKING CONDITIONS



UNION



LACK OF TRI-PARTITE DIALOGUE

WEAK BARGAINING STRUCTURES

- OVER CENTRALISED
- UNDEMOCRATIC
- LACK OF TIERS

POOR BARGAINING SKILLS

- POOR PREPARATION
- NOT INTEREST BASED
- VERY ADVERSERIAL
- ILL-INFORMED

POLITICIANS

- CORRUPT
- CONFLICTED
- REMOTE

SOME IMPORTANT FACTS

SOME IMPORTANT FACTS

- The average South African worker earns R3 000 per month
 - 59% have pension
 - 40% have medical aid
 - 77% have UIF
- Few have all 3
- Rock drillers are in the top earning 25% of formal sector employees
 - The top 25% of formal sector employees earn R7 500 per month and more
 - The top 10% of formal sector employees start at R15 000 per month

SOME IMPORTANT FACTS (cont)

- Only 4 out of 10 adults work in South Africa
- 7 out of 10 adults work in the rest of the world
- Therefore only 7.3 million out of 32.9 million adults work in South Africa
- Therefore rock drillers are in the top 6% of adult earners in South Africa
- Rock drill operators earn more than entry level teachers in South Africa
- Greek teachers earn R8 392 per month
- Indian high tech employees earn R6000 per month

SOME IMPORTANT FACTS (cont)

- Lonmin workers did not get a 22% increase as a result of the strike
- Actually the maximum increase at Lonmin was 7.7% to the lowest grade
- The actual increase to rock drillers at Lonmin was 3%
- Lonmin workers lost +- 12% of annual wages in the strike due to no work no pay
- Some Lonmin workers received a R2 000 return to work bonus
- +- 9000 Lonmin contract workers got nothing
- All lost more in lost wages than they got in wage increases

OUTCOMES IN RECENT PUBLIC SECTOR BARGAINING

OUTCOMES IN PUBLIC SECTOR BARGAINING

| | PUBLIC SECTOR STRIKE | MUNICIPAL WORKERS STRIKE |
|---|---|---|
| Time period | 2010 | 2011 |
| Duration of strike | 3 weeks | 2 weeks 2 days |
| Wages lost (no work no pay)(2% per week) | 6% annual salary lost | 4.2% annual salary lost |
| Apparent gain (difference between employer offer at start of strike and settlement) | $(7.5 - 6.5) = 1\%$ "gained" | 0.0% |
| Actual gain/loss (diff. of wages lost and apparent gain) | $(1 - 6) = 5\%$ lost | $(0 - 4.2) = 4.2\%$ lost |
| Number of weeks/years for workers to recover actual loss using apparent gain | 156 weeks / 3 years | Never |
| Reported violence | Intimidation, rubber bullets, water cannons, death, dismissal | Service interruption, destruction of property, intimidation |
| Reported cost to employer | Estimated cost to South African economy R1 billion per day | - |

OUTCOMES IN RECENT PRIVATE SECTOR BARGAINING

OUTCOMES IN PRIVATE SECTOR BARGAINING

| | NATIONAL ROAD FREIGHT STRIKE | METAL INDUSTRY STRIKE | CHEMICAL AND PETROLEUM INDUSTRY STRIKE | MINING INDUSTRY STRIKE (DIAMOND) | MINING INDUSTRY STRIKE (COAL) | MINING INDUSTRY STRIKE (GOLD) | CLEANER SECTOR STRIKE | MUNICIPAL WORKERS STRIKE |
|---|-------------------------------------|---|---|---|---|---|--|---------------------------------|
| | 2011 | 2011 | 2011 | 2011 | 2011 | 2011 | 2011 | 2011 |
| Duration of strike | 6 days | 2 weeks | 3 weeks | 2 weeks | 1 week 3 days | 4 days | 3 weeks | 2 weeks 2 days |
| Wages lost (no work no pay) | 2.1% annual salary lost | 4% annual salary lost | 6% annual salary lost | 4% annual salary lost | 2.3% annual salary lost | 2% annual salary lost | 6% annual salary lost | 4.2% annual salary lost |
| Apparent gain (difference between employer offer at start of strike and settlement) | (9 - 7.5) = 1.5% "gained" | (8 - 7) = 1% "gained" (10 - 7) = 3% "gained" | (8.5 - 7) = 1.5% "gained" (10 - 7) = 3% "gained" | (8 - 7.5) = 0.5% "gained" (10 - 7.5) = 2.5% "gained" | (10.5 - 6) = 4.5% "gained" (8 - 5) = 3% "gained" | (7.5 - 7) = 0.5% "gained" (10 - 9) = 1% "gained" | (8 - 6) = 2% "gained" (8.5 - 6.5) = 2% "gained" | 0.0% |

OUTCOMES IN PRIVATE SECTOR BARGAINING (cont.)

| | NATIONAL ROAD FREIGHT STRIKE | METAL INDUSTRY STRIKE | CHEMICAL AND PETROLEUM INDUSTRY STRIKE | MINING INDUSTRY STRIKE (DIAMOND) | MINING INDUSTRY STRIKE (COAL) | MINING INDUSTRY STRIKE (GOLD) | CLEANER SECTOR STRIKE | MUNICIPAL WORKERS STRIKE |
|--|------------------------------|--|---|---|--|--|--|--------------------------|
| Actual gain/loss (diff. of wages lost and apparent gain) | (1.5 - 2.1) = 0.6% lost | (1 - 4) = 3% lost (3 - 4) = 1% lost | (1.5 - 6) = 4.5% lost (3 - 6) = 3% lost | (0.5 - 4) = 3.5% lost (2.5 - 4) = 1.5% lost | (4.5 - 2.3) = 2.2% gained (3 - 2.3) = 0.7% gained | (0.5 - 2) = 1.5% lost (1 - 2) = 1% lost | (2 - 6) = 4% lost (2 - 6) = 4% lost | (0 - 4.2) = 4.2% lost |
| Number of weeks/years for workers to recover actual loss using apparent gain | 41.6 weeks / 8 months | Highest paid workers - 104 weeks / 2 years Lowest paid workers - 34.67 weeks / 6 months | Majority workers - 104 weeks / 2 years Lowest paid workers - 52 weeks / 1 year | Skilled workers - 208 weeks / 4 years Unskilled workers - 41.60 weeks / 8 months | Lowest paid employees - 18.49 weeks / 3 months All other employees - 27.73 weeks / 5 months | 41.60 weeks / 8 months - 83.20 weeks / 1 year 6 months | 78 weeks / 1 year 5 months | Never |

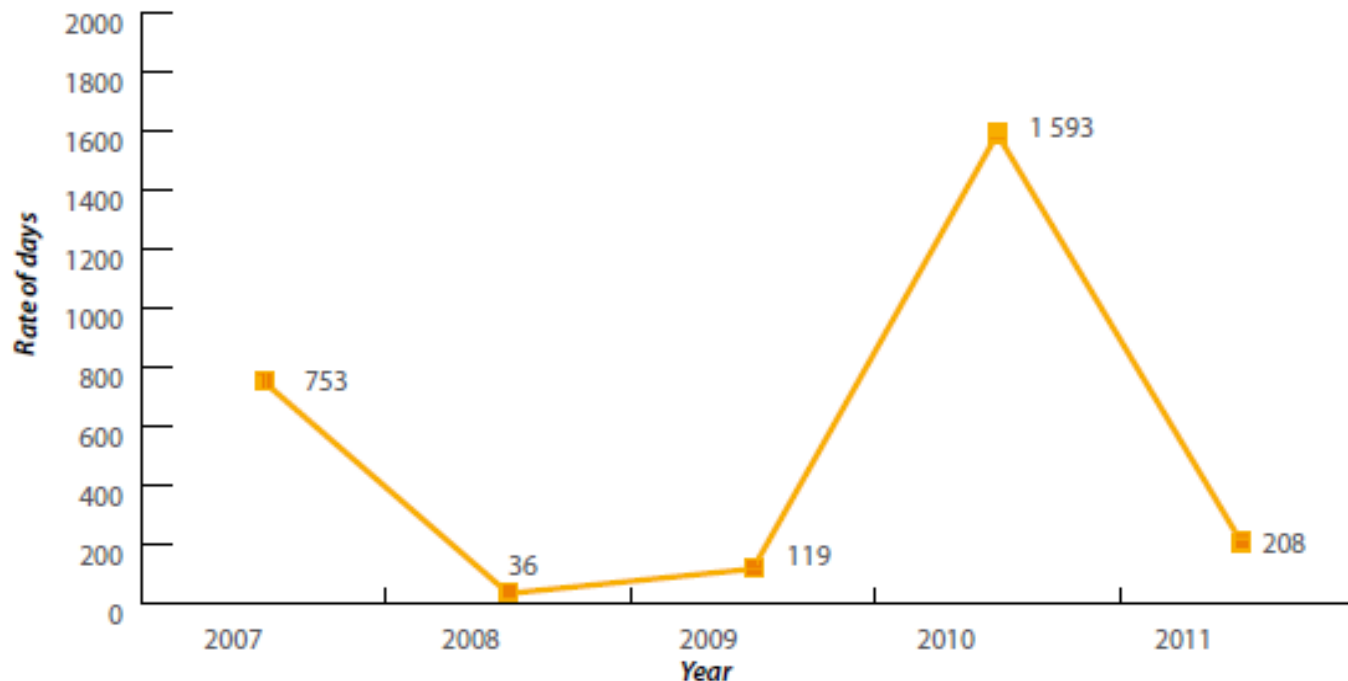
OUTCOMES IN PRIVATE SECTOR BARGAINING (cont.)

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|---------------------------|--|--|---|---|--------------------------------------|--------------------------------------|------------------------------|---|
| Reported violence | Petrol bombs, damage to property, intimidation, assault, rubber bullets, arrests, injury | Intimidation, malicious damage to property, assault, arrests, blockades, stone assault | Fuel shortages, violence, intimidation | Rubber bullets | - | - | Intimidation, assault | Service interruption, destruction of property, intimidation |
| Reported cost to employer | - | - | Fuel retailers R2 billion and taxi industry R35 million | - | - | \$25 million per day in output lost | - | |

THE FREQUENCY AND EXTENT OF STRIKE ACTION IN SOUTH AFRICA

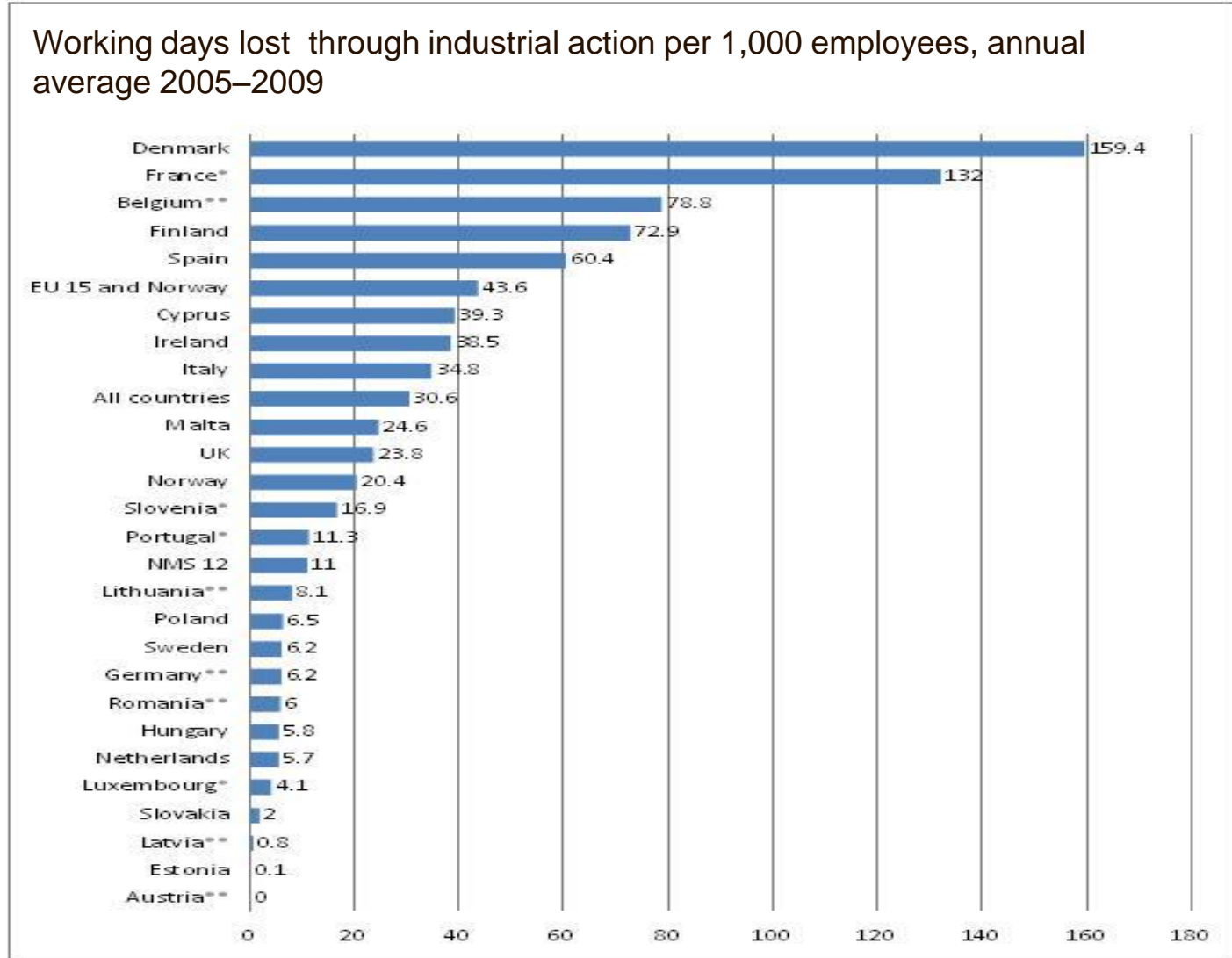
THE FREQUENCY AND EXTENT OF STRIKE ACTION (cont.)

Working days lost per 1000 employees



Source: Department of Labour, Strikes Statistics

THE FREQUENCY AND EXTENT OF STRIKE ACTION (cont.)



Source: EIRO

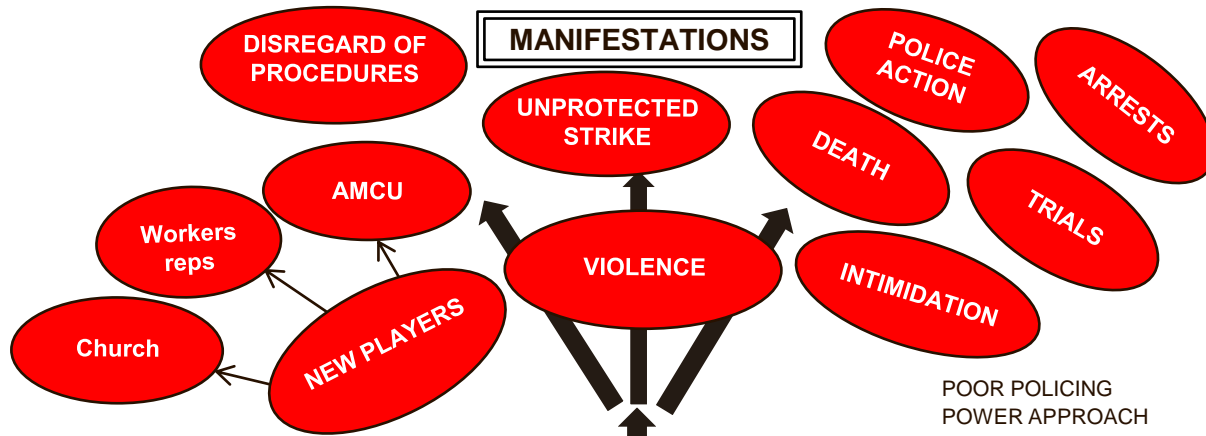
INTERNATIONAL COMPARISON OF WORKING DAYS LOST

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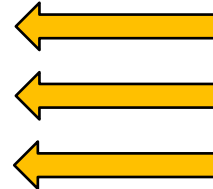
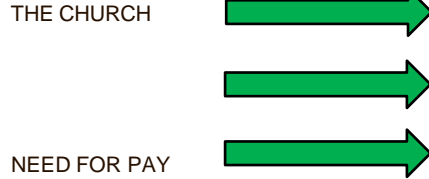
- All European countries 2005 – 2009
 - Average 30.6 working days lost per 1,000 employees
 - Maximum 159.4
 - Minimum 0
- South Africa 2006 – 2011
 - Average 507 working days lost per 1,000 employees
 - Maximum 1593
 - Minimum 36
 - Highest in the world
 - Most violent in the world

WHAT CAN EMPLOYERS INFLUENCE?

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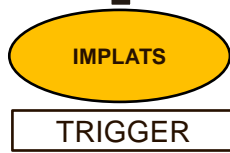


MODERATORS

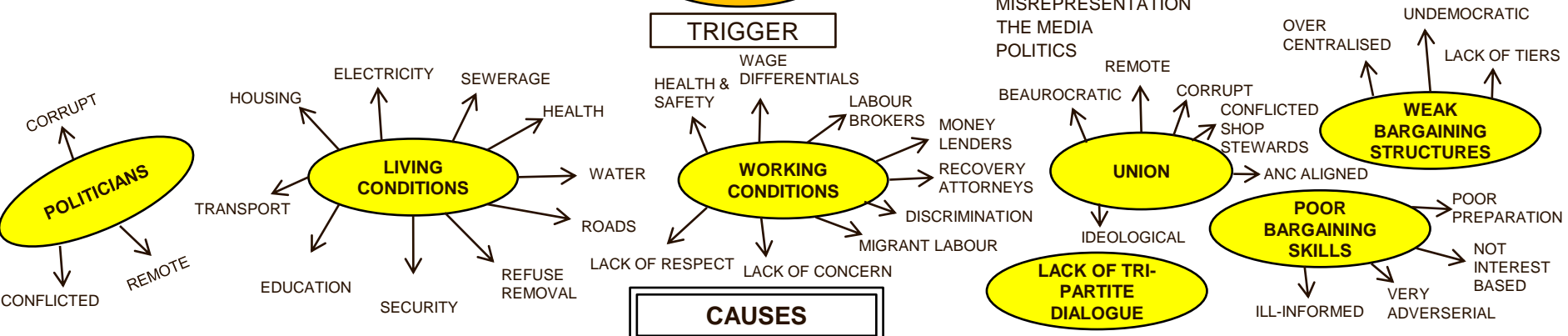


AGGRAVATORS

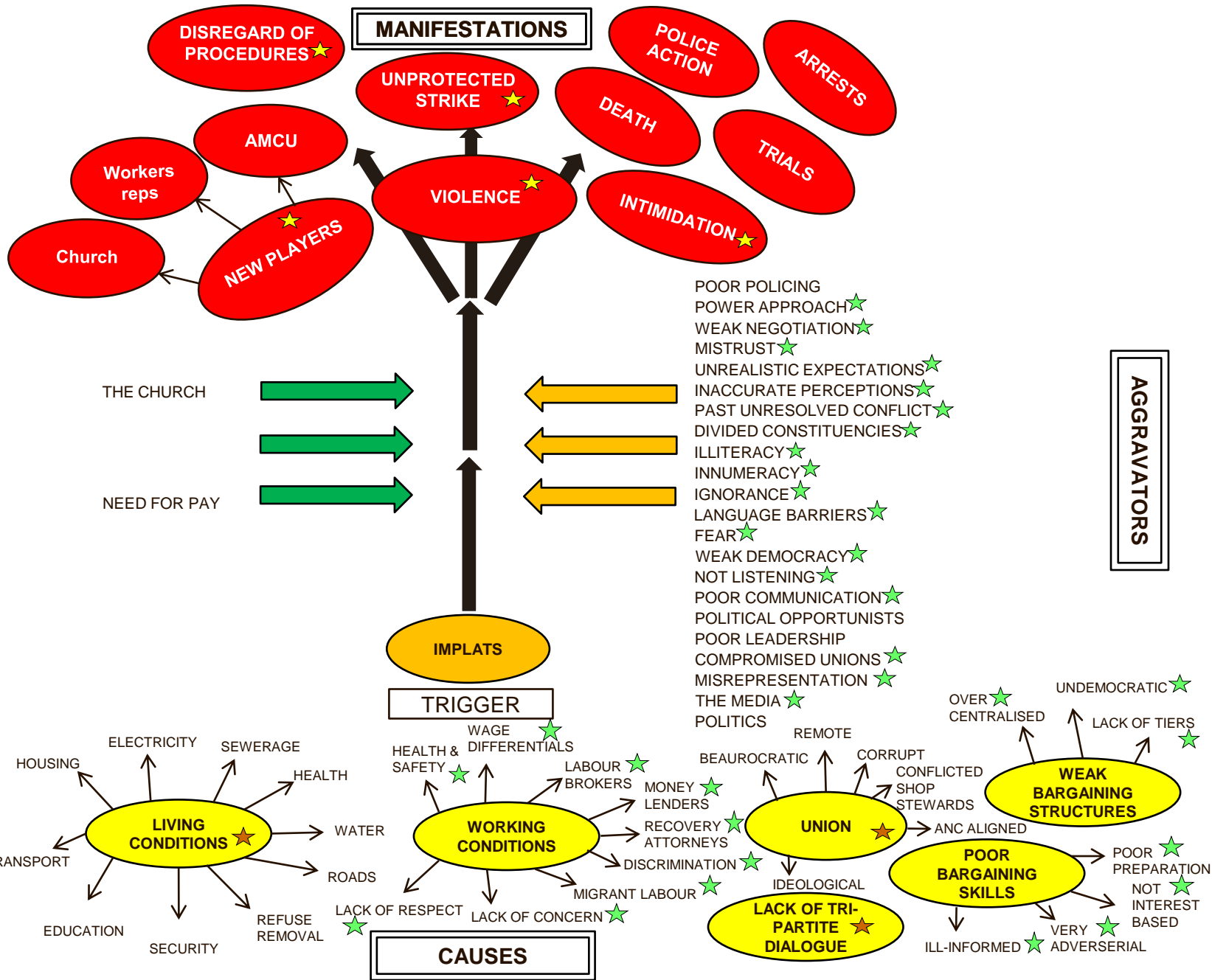
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- COMPROMISED UNIONS
- MISREPRESENTATION
- THE MEDIA
- POLITICS



CAUSES



WHAT CAN EMPLOYERS INFLUENCE?



REFLECTION

REFLECTION

- “Riots are the voices of the unheard”~ Martin Luther King
- “How many ears must one man have before he can hear people cry?” ~ Bob Dylan
- “You can fool some people sometimes but you can’t fool all the people all the time” ~ Bob Marley
- Insanity means “doing the same thing over and over again and expecting different results” ~ Albert Einstein
- *“Si vis pacem para bellum”* –

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- “*Si vis pacem para bellum*” – “If you wish for peace, prepare for war” – Publius Flavius Vegetius Renatus

WHAT CAN EMPLOYERS DO?

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- Consider what can be done about workers' living conditions – the social wage
- Talk truth to power
- Address workers' working conditions as close to source as possible
- Improve industrial democracy, particularly
 - access to that democracy – organisational rights
 - negotiation in appropriate bargaining units
 - engagement with appropriate communities of interest
- Improve collective bargaining skills
- Encourage social dialogue
- Address actual and perceived union corruption and beaurocracy when possible

WHAT CAN EMPLOYERS DO? (cont)

- Encourage review of labour laws
- Encourage improved mediation
- Moderate worker expectations and perceptions
- Address unresolved conflict when possible
- Address illiteracy and innumeracy
- Communicate effectively and understandably
- Correct media inaccuracies
- Manage manifestations effectively
- Introduce moderators



CLAIMER

+

CLAIMER

= MEDIOCRE / MEDIOCRE OUTCOME



CLAIMER

+



PROBLEM SOLVER

= GREAT/TERRIBLE OUTCOME



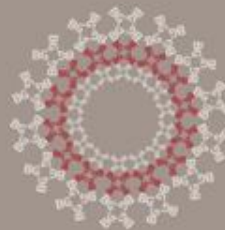
PROBLEM SOLVER

+

PROBLEM SOLVER

= GREAT/GREAT OUTCOME

BG Bowman Gilfillan



Thank you

Legal solutions that make business sense.