

Case Numbers
PSCBC 98 10/11,
138 10/11, 139 10/11

In the dispute between

PSA

1st Applicant

and

SAPU & NAPTOSA & HOSPERSA/NUPSAW/NATU

2nd Applicant

and

SADTU & POPCRU, DENOSA & NEHAWU

3rd Applicant

Department of Public Service & Administration
("DPSA")

RESPONDENT
Employer Party

RULING ON JURISDICTION AND JOINDER

Background

1. The Applicants are admitted union parties of the PSCBC. On 24 May 2010 during the course of national salary negotiations for financial years 2010/2011 in the PSCBC between all the admitted unions (and their associated unions) the PSA, and the 'acting together' union National Union of Public Service & Allied Workers (NUPSAW) referred a dispute about matters of mutual interest arising from the negotiations in the PSCBC. The South African Policing Union (SAPU) later joined.

2. On 25 May 2010 in the PSCBC the Employer expressed reluctance to continue negotiations with the unions which had declared a dispute and while the balance of the unions continued to negotiate with the Employer. The unions were called upon to withdraw the disputes. At first they indicated that they would withdraw conditionally which would have the effect that if the negotiations failed to produce a binding collective agreement the dispute which had already been declared would be reinstated with retrospective effect. This would clearly accelerate the statutory 30-day period for conciliation. The Employer refused to accept this and on that date the chairperson of the session in the PSCBC ruled that those parties which had declared a dispute about matters of mutual interest should recuse themselves from the meeting. Over the next few days all the unions which had declared a dispute withdrew but not the PSA.

3. After the PSA was excluded, the negotiations with the employer party continued with the remaining unions until 9 June 2010, when two disputes were referred to the PSCBC in identical terms: one from the COSATU unions: the SA Democratic Teachers Union (SADTU), the Police and Civil Rights Union (POPCRU), the Democratic Nurses Organisation of South Africa (DENOSA) and the National Health Education & Allied Workers Union (NEHAWU) and the other from the Independent Labour Caucus unions, South African Policing Union (SAPU), National Professional Teachers' Organisation of South Africa (NAPTOSA) and HOSPERSA/NUPSAW/ NATU.

4. Meanwhile the PSCBC had set the PSA matter down for conciliation on 18 June 2010 and I was appointed to conciliate the matter. On Tuesday 14 June 2010 the General Secretary of the PSCBC, in terms of Clause 26 of the PSCBC Rules consulted the parties on whether the matter that had been referred by the PSA on 24 May (PSCB 98 10/11) and by the other unions on 9 June 2010 under PSCBC Case No PSCB 138-10/11 (the COSATU unions) and PSCB 139- 10/11 (the SAPU & others dispute) should be consolidated and inviting the parties to notify the council of any objection. No objection was received and on 15 June 2010 the three disputes were consolidated for the purposes of conciliation.

5. At the conciliation meeting on 18 June 2010 the PSA accepted that it was within the scope of authority of the General Secretary of the Council in terms of clause 26 of the PSCBC Rules to consolidate all three matters for the purposes of conciliation. However, the PSA argued that as it had referred its dispute on 24 May 2010 the consolidation of that matter with the two disputes which were referred to the Council on 9 June 2010 could not automatically (as a matter of law) extend the statutory period of conciliation from 30 days, calculated from 24 May, the date of referral of the PSA dispute, to 30 days as calculated from 9 June 2010.
6. The Employer contended that on 24 May 2010 when the PSA referred a dispute to the Council for conciliation the PSA had acted prematurely and that the PSA could not both negotiate within in the PSCBC and be in dispute with the employer simultaneously.
7. In terms of Rule 13 the Employer has requested me to determine if the Council has jurisdiction to conciliate the PSA dispute and pertinently, whether the PSA dispute was defective because it was referred prematurely. I accept the PSA's argument that a 'dispute' within the meaning of the LRA includes an 'alleged dispute. On the issue whether it was premature or not, it is self-evident that the PSA and the Employer was in dispute and that dispute could not be resolved through negotiation in the PSCBC because the Employer and the majority of trade unions excluded the PSA from further participation. Consequently the PSCBC was required by its constitution to attempt to resolve the dispute as referred by the PSA through conciliation.
8. When the PSA and the other union parties to the Council met with the employer on 18 June 2010 little progress could be made on substantive issues because the PSA was determined to reserve whatever rights it may have acquired from having referred a dispute on 24 May 2010. However, the employer extended to the PSA the offer that it had made to the other union parties to the Council prior to 9 June 2010, without condition. The PSA agreed to take that offer back to its members and to revert to the Council before close of business on 23 June 2010.

9. On 24 June 2010 the PSA informed the Council that it did not accept the Employer's 18 June 2010 offer put to them in conciliation (6.5% as a general salary adjustment, R620 for housing allowance and the referral of the medical aid issues to a joint task team), and that accordingly the 30-day period for conciliation has passed. The PSA does not agree to extend the period of conciliation.
10. I consider that even if, on 24 May 2010 when the PSA referred its alleged dispute to the Council it was not clearly in dispute with the employer party in the sense that there was any determinable deadlock, the decision of the Council, pursuant to a request from the employer to exclude the PSA from further participation in the negotiation process created impasse. As a result the PSA was unable thereafter to participate in any bargaining with the employer party. Although the decision of the General Secretary of the Council to consolidate the disputes was intended to break the impasse between the PSA and the Employer it has not, thus far, succeeded.
11. The rest of the unions which are party to the PSCBC and the employer party agreed to meet again on Monday 28 and Tuesday 29 June 2010 to try to conclude a collective agreement to settle all outstanding differences between them. Despite the impasse that has been created it is hoped that the resumption of discussions on Monday 28 June will give the PSA an opportunity to engage with the rest of the labour caucus and with the employer party.
12. However PSA has on the 25 June 2010 formally informed the employer and the Council that its members have rejected the offer of the employer. Further that the 30 days required by S64 of the LRA, 1995, to conciliate the dispute of interest declared by them on the 24 May 2010 has expired. The PSA refuses to extend the conciliation period and has insisted that I issue a certificate of non-resolution.
13. On 25 June 2010 the Employer's Acting Chief Negotiator, Ms Melissa Ntshikila requested the Council in terms of rule 24 of the Rules of the PSCBC to join the PSA as an interested party in PSCB 138 10/11 and 139 10/11 as that clause 24 (2) provides that "the Secretary or a panellist may join any number of persons as

parties in proceedings if their right to relief depends on substantially the same question of law or fact.”

14. At the conciliation proceedings on Monday 28 June 2010 the employer’s negotiator contended that if the PSA were so joined it could not be in dispute with a certificate of non resolution in respect of its dispute under PSCBC 98 10-11 and remain an interested party in the continuing substantive conciliation proceedings and the Employer requested me not to issue a certificate of non-resolution.
15. The PSA opposed the application for joinder if it were to prejudice any rights they may have acquired as a result of having referred a dispute to the Council on 24 May 2010.
16. There is a distinction between joinder and consolidation. Joinder (in Rule 24) means that a party is added to a dispute that has already been declared and in respect of which determination by arbitration or adjudication is or may be pending. There are separate disputes between the parties but as the evidence and argument would be relevant to all the matters. Consolidation by the General Secretary in terms of Rule 26 which is what occurred in this matter recognised that there was one substantive set of issues between the parties. The consolidation of the conciliation of the PSA dispute with that of the other unions has no effect on any existing rights of any of the parties. But as there is only one dispute of substance between the parties - the matters that were consolidated into one on 15 June 2010 – the Employer’s request that the PSA be joined in the disputes between the rest of the Unions and the Employer makes no sense and is no longer relevant as the Council has already consolidated the disputes into one conciliation process in terms of Rule 26, and the request is accordingly refused.
17. Although the PSA has not agreed to an extension of the 30-day period for conciliation as it remains in dispute with the Employer and it is desirable that the PSA should continue to participate in this extended conciliation process. As there is ultimately only one dispute between all the union parties to the Council it

would not be appropriate for me to issue a certificate that this single substantive dispute remains unresolved with respect to the PSA and the Employer, whereas it continues with respect to the other union parties to the Council.

18. To the extent that the PSA as the referring party of the first dispute may have acquired the right to strike under s 64(1) (a) (ii) of the LRA even though no certificate has been issued because the Council is still endeavouring to resolve the substantive matters of mutual interest, the PSA's rights are unaffected by the continuing efforts of the PSCBC to conciliate in order to fulfill the objectives of the Council, the most important of which, in my view, is to maintain labour peace in the Public Service.

Dated at Centurion this 28th June 2010.



S.H. Christie
PSCBC Panelist