REPORTABLE

IN THE LABOUR COURT OF SOUTH AFRICA
SITTING IN DURBAN

CASE NO **D664/2001**

DATE 2001/05/30

In the matter between:

ENFORCE GUARDING Applicant

and

NATIONAL SECURITY Respondent

JUDGMENT DELIVERED BY THE HONOURABLE MS JUSTICE PILLAY ON 30 MAY 2001

TRANSCRIBER
SNELLER RECORDINGS (PROPRIETARY) LTD - DURBAN

J U D G M E N T

PILLAY J

The employer obtained an urgent interim interdict restraining the union and certain of its members from striking and certain other relief. The application for confirmation of the rule today is now opposed. The Court records its gratitude to the parties for complying with the short time limits for the exchange of pleadings and for providing heads of argument. Furthermore, the matter has been succinctly narrowed down to determining whether the issue in dispute is determinable in accordance with a collective agreement in terms of section 65(1)(a) and (b) of the Labour Relations Act No 66 of 1995 (the LRA).

The issue in dispute which was referred to conciliation was summarised as follows:

"The company had implemented unilateral change to terms and conditions of employment without any consultation."

In issuing the certificate of the outcome of the dispute the commissioner characterised the dispute as "a matter of mutual interest and relates to the payment of overtime".

The employees had been working shifts which allowed them 60 ordinary hours per week. From 6 March 2000 a ministerial determination in terms of section 55 of the Basic Conditions of Employment Act, No 75 of 1997, the BCEA, came into effect. It gradually reduced the ordinary hours from 55 to 45 hours per week. Currently the ordinary hours are 50 hours per week. The determination resulted in a reduction of working hours and accordingly the remuneration of the employees.

For the employer changes needed to be made to the shifts for operational reasons. No changes were made to the shifts during the first period of the determination. During the second period the employer purported to renegotiate the shifts with the shop stewards. The validity of that agreement was disputed. Nevertheless, the employer implemented its proposal, namely a 50 hour week ordinary time plus 10 hours' overtime. The union demands the retention or restoration of a 60 hour

week.

Mr **Pammenter** for the employer submitted that the demand was, firstly, the subject of a collective agreement between the employer's organisation and several trade unions. The relevant paragraphs of the agreement provide as follows. Clause 2: "Ordinary hours of work were reduced to

1 55 hours per week from date of implementation of the determination;
2 50 hours per week twelve months after implementation;
3 45 hours per week twenty-four months after implementation."

Clause 7 reads:

"Overtime extension.

The maximum permissible overtime will be as per the BCEA."

The intentions of the parties in concluding Clause 7 may be several and varied. There is no ambiguity in the clause, therefor it must be given its ordinary meaning.

The demand, read in the context of the agreement, means that the employees seek to secure a 50 hour ordinary time plus 10 hours' overtime work per week, making a total of 60 hours, which is the maximum provided in the BCEA and accordingly also in terms of Clause 7 of the agreement.

Mr **Pammenter** submitted that the employees did not have a right to claim the maximum amount of overtime in terms of Clause 7. I agree. For if they did, then the issue in dispute would have been dealt with in the collective agreement which would have prohibited the applicant from striking. Conversely to Mr **Pammenter**'s submission, the employer too does not have a right not to provide overtime work. The only right or obligation that each party has secured in terms of Clause 7 is precisely what the clause states, that is the maximum permissible

overtime will be as per the BCEA. Any overtime less than that, that is less than ten hours, is a matter for negotiation and collective bargaining. As such, the dispute must be characterised as one of mutual interest. The strike is not prohibited on this ground.

The second ground on which the proposed strike is challenged is that the constitution of the bargaining council provides, at Clause 15(3)(d) as follows:

"The following timetable and basis for negotiation shall be observed:

(d) any issues or matters which have been negotiated between the parties shall not be negotiable at regional or company level."

As the agreement referred to above was negotiated by the employer organisation and several trade unions, presumably at a national level, the issue of hours of work, it was submitted, should not have been negotiated at regional or company level. It is common cause that the bargaining council has not been established yet. Accordingly, the machinery for processing disputes in terms of Clause 15 is not operational. Furthermore, as the employer initiated the changes without referring them to the structures provided for in the constitution, the union was entitled to defend its members' rights. In the circumstances, on this ground too the strike is not prohibited.

In the circumstances I find, for the reasons dealt with in this application, the strike is not prohibited. The application for an interdict is refused with no order as to costs.