IN THE LABOUR COURT OF SOUTH AFRICA

(HELD AT JOHANNESBURG)

Case No:

J4694/01

In the matter between:

THE MUNICIPAL EDUCATION STATE HEALTH &

1st Applicant

THE AMALGAMATED MUNICIPAL EMPLOYEES

2nd Applicant

THE NATIONAL MUNICIPAL AND PUBLIC

3rd Applicant

THE MUNICIPAL PROFESSIONAL STAFF

4th Applicant

THE SOUTH AFRICAN ELECTRICAL WORKERS

5th Applicant

6th Applicant

THE NATIONAL UNION OF PUBLIC SERVICE & ALLIED

7th Applicant

and

THE SOUTH AFRICAN LOCAL GOVERNMENT

1st Respondent

THE INDEPENDENT MUNICIPAL & ALLIED

2nd Respondent

3rd Respondent

THE SOUTH AFRICAN LOCAL GOVERNMENT

4th Respondent

5th Respondent

THE KEMPTON PARK TEMBISA METROPOLITAN

6th Respondent

JUDGMENT (delivered on 14 February 2002)

REVELAS J:

1. On 15 November 2001, I granted an order in terms of a draft order, which read as follows:

"**1 That pending 30 June 2002:**

1.1_ members of the fourth respondent that had concluded recognition and/or collective agreements with the applicants that were in place prior to 31 October 2001, shall provide the applicant with all such organizational rights as they may have enjoyed under those agreements, and in particular to implement all shop order facilities in favour of applicants in respect of the applicants' member's union subscriptions.

1.2_ The members of the fourth respondent be interdicted and restrained from making an agency fee deduction in terms of the agency, shop agreement between the South African Local Government Association (the fourth respondent) on the one hand and the South Africa Municipal Workers' Union (the third respondent) and the Independent Municipal and Allied Trade Union (second respondent) on the other hand dated 18 July 200 ("the agency shop agreement") whether in its original form or amended, in respect of the applicants' members who are employed by the respective members of the fourth respondent.

2. Declaring that should:

2.1 a recently registered trade union consisting of those membership portions of either applicants or those of the applicants that fall within Local Government and which

fall within the aforesaid shops of the first respondent fail to make applications in writing to the first respondent for admission as a party to the first respondent by June 2002; or

2.2 the applicant fail by June 2002 to make an application to the Labour Court in terms of section 56(5) of the Labour Relations Act, 66 of 1995, for an order admitting the said applicants as parties to the first respondent, then the respondents hall have the right on then days' notice to the applicants, to set this matter down for an order that the order in 1.1 and 1.2 be discharged.

3. Declaring that should a newly registered trade union as contemplated by 2.1 make application as contemplated by paragraph 2.1 or alternatively should the applicants make application to the Labour Court in terms of section 56(5) as contemplated by paragraph 1.1 and 1.2 shall remain in force until the outcome of the application in terms of section 56(5) of the Act.

4. Costs in the event of opposition to the order."

2. The application was brought on an urgent basis and initially came before Jammy AJ on 29 October 2001. The relief sought then was somewhat different to that sought in the draft order. At the time the respondent filed an answering affidavit. The matter was postponed to 14 November 2001, when I heard the matter. Opposing papers were filed, but there was no appearance for the respondent on the day. The respondents now wish to apply for leave to appeal against the order and have requested reasons for the order.

3. The first applicant is the MUNICIPAL EDUCATION STATE HEALTH AND ALLIED WORKERS' UNION, whose members are employed by the fifth respondent, the Klerksdorp Local Municipality.

4. The applicants' membership comprises employees employed by Local

Government countrywide, and has approximately 5 084 members. The applicant was formerly known as the NATIONAL UNION OF PUBLIC SERVICE WORKERS ("NUPSW") and was established in 1986.

5. According to the first applicant, at all material times until 1 March 2001, it was recognised by a majority of local authorities in the provinces that made up the erstwhile Transvaal. Among the municipalities who recognized the first applicant was the fifth respondent, amongst whose employees the applicant has a significant presence. The first applicant stated that this recognition was enjoyed in terms of a recognition agreement based on the standard text that was negotiated between the MUNICIPAL EMPLOYERS' ASSOCIATION and the NUPSW. A copy of the recognition agreement was attached to the papers. The recognition agreement was not canceled. It gave the first applicant power to elect and establish structures for tits proper functioning as a representative of the fifth respondent's employees. It was entitled to negotiate standard conditions of employment within the workplace, to obtain stop order deductions, rights of access, and to participate in collective bargaining on a wide range on issues within Local Government, including wages. On 2 September 1997, agreement was concluded between the SOUTH AFRICAN LOCAL GOVERNMENT BARGAINING COUNCIL ("the SALGBC") and (the first respondent), the second and third respondents. The second and third respondents are two other municipal trade unions: SAMWU and IMATU. The agreement made provision for the establishment of the INTERIM SOUTH AFRICAN LOCAL GOVERNMENT BARGAINING COUNCIL, which was registered as a bargaining council under the Act on 1 March 2001. Before its registration it operated exclusively as an extra-statutory collective bargaining forum. Since its registration it has operated fully as a registered bargaining council under the statute. The second, third and fourth respondents were founding members. They remain the only parties to the council.

6. During the first quarter of 2000 the first applicant made application to join the

fourth respondent, which was at that stage unregistered. The fourth respondent is the SOUTH AFRICAN LOCAL GOVERNMENT ASSOCIATION ("SALGA"). The application was refused by the Interim Council on the basis that the first applicant failed to comply with the requirements for admission (Inadequate representation). Now that the Council has become registered the first applicant intends renewing its application for membership.

7. During July 2000, an organizational rights agreement was concluded between the second, third and fourth respondents under the aegis of the first respondent. They also concluded an agency shop agreement in terms of which employees within the Local Government sector who are not members of one or other of the two trade unions (the second and third respondents), are obliged to pay an agency shop fee which amounts to R47.00 per month. It was pointed out by the applicants that this amount was nearly double the monthly subscription of R25.00 per month than paid by the applicants' members. The first applicant stated that neither it nor its members has adopted, ratified or otherwise assumed, obligations under the agency shop agreement. Towards the end of March 2001 the fifth respondent made deductions of the agency shop fee from members of the first applicant in its employ. The first applicant contends that these deductions were improperly and illegally made for the reason that it was in breach of s 25(3) of the Labour Relations Act, 66 of 1995 ("the Act") and that it was in breach of s 34 of the Basic Conditions of Employment Act, 75 of 1997 ("the BCEA"). Furthermore, according to the first applicant, the deductions were impermissible in terms of the agency shop agreement itself because the agreement had not yet come into operation.

8. The application was also brought on the basis that it was anticipated by the first applicant that the fifth and sixth respondents, as employers of the first applicant's members, would from 1 November 2001, deny the first applicant organizational rights that it had until then enjoyed in terms of a collective agreement, and that

simultaneously agency fee deductions would still be made. This had been conveyed in a letter to the first applicant before.

9. The applicants to this application have formed the MUNICIPAL EMPOYEES' ALLIANCE on the basis that they all operated on the Local Government sector and enjoy membership at workplaces at employers that are members of the fourth respondent. The applicants allege that in aggregate, they represent approximately 20 000 employees employed by the Local Government countrywide. This is denied by the respondents in their answering papers.

1. 10. The first applicant has previously launched two applications under Case Numbers J1197/01 and J1198/01, with the objective to secure certain organizational rights that were denied by the respondents. On 12 June 2001, and pursuant to the launch of the aforesaid applications, which were also brought on an urgent basis during April 2001 and June 2001, an agreement of settlement was concluded. The consolidation of the second to the seventh applicants as beneficiaries to the settlement agreement, according to the respondents arose by agreement between the parties to avoid further litigation.

11. It was recorded in the settlement agreement that:

"**1. Litigation is under way to:**

1.1_ contest the validity of the agency shop agreement dated 18 July 2000 concluded between the Independent Municipal and Allied Trade Union and the South African Municipal Workers' Union ("the respondent union") and the South African Local Government Association ("SALGA");

1.2_ enforce facilities agreements between the following trade unions being Amalgamated Municipal Employees' Union, National Municipal and Public Servants Workers' Union, municipal Education State and Allied Workers' Union, National Public Service Workers' Union, National Union of Public Service and Allied Workers' Union ("the applicant unions") as well as the Municipal

Professional Staff Association ("MPSA") and the members of SALGA, two of which have been individually cited int eh proceedings.

2. The parties desire to resolve the litigation in the expectation that:

2.1 the agency shop agreement is to be amended to bring it into conformity with the Labour Relations Act;

(a) SALGA members intended to give notice to terminate the facilities agreement in respect of the applicant union by the fluctuation of time;

(b) it is recorded that SALGA members have given due notice of termination of facilities agreement with MPSA.

(a)

3. It is recorded that the applicant unions and MPSA intend to make application for the admission tot he South African Local Government bargaining council on 15 June 2001 and/or bringing proceedings to contest the validity under the Constitution or otherwise of the agency shop agreement that has been concluded in its existing or amended form.

4. The South Africa Local Government Bargaining Council ("the SALGBA") and its member parties are willing to give the applicant unions and MPSA a limited amount of time to -

4.1 make application for admission to the said bargaining council; and/or

4.2 to launch proceedings referred to"

11. The agreement also recorded that the first applicant would withdraw Cases Nos J1197/01 and J1198/01. The SALGBC (the first respondent) and its members undertook, in terms of the agreement:

"3.1 Not to make agency fee deductions in terms of the agency shop agreement, whether in its current form or as amended, in respect of the members of the applicant unions as well as those of MPSA until the earlier of -

3.1.1 one month after decision by SLGBC on the application for admission to the

bargaining council as aforesaid; or

3.1.2 31 October 2001"

12. 31 October 2001 was the date referred to as the termination date in terms of the agreement. Until the termination date, the members of SALGA would continue to observe facilities agreements concluded with the applicant unions as at March 2001. Until the termination date the members of SALGA would adjust the monthly remuneration payable to the members of the applicant unions and the MPSA by including in such remuneration, by way of a refund, an amount equivalent to any deductions made from them under the agency shop agreement. The monthly remuneration would be adjusted by SALGA until the implementation date to members of the applicant unions by deducting such union dues as should have been paid to the applicant unions but were not, o the assumption that the said facilities agreements were and remain of full force and effect.

13. The settlement agreement was made an order of court.

14. During June 2000 the applicants acted together and formed an alliance known as the MUNICIPAL EMPLOYEES' ALLIANCE ("the MEA") and applied for membership of the first respondent. On 28 December 2001 the first respondent, in writing, refused the application brought by the MEA for membership of the first respondent. The application was turned down on the basis that s 57 of the Act does not make provision for an alliance to apply for membership of a bargaining council and, even if it were accepted, that the membership figure supplied by the applicants were correct, they fell far short of the minimum threshold required by the first respondent in terms of its consitution.

15. In terms of the constitution of the first respondent, the first respondent has the power, *inter alia*, -

"**regulate through collective agreements, the thresholds for representivity for the**

exercise of organizational rights by trade unions within the sector"

and to -

"enter into collective agreements on organizational rights and on agency shop or closed shop agreements within the sector"

16. In paragraph 33 of the applicants' founding papers, the applicants state that they are in the process of amalgamating and it is expected that when application is made to this Court in terms of s 56(6) of the Act, this application will be made by way of only one new registered trade union, which union will constitute an aggregation and amalgamation of the present applicants. The applicants further state (in paragraph 6 of the founding papers) that by the time of the application in terms of s 56(5) the applicants shall be able to verify that their membership would not fall short of the representivity threshold set by the first respondent and that it would be equal, if not greater, than the 15% required by the first respondent's constitution.

17. At this stage, I must point out that it is not possible to determine the membership at this stage since several municipalities are to be considered in the calculation of the total amount of employees.

18. The applicants also contend that the threshold for its representivity of 15% set by the first respondent is to high, and the threshold is both contrary to the express object and provision of the Labour Relations act that it offends those sections of the Constitution which provides for freedom of association and the right to form trade unions and to participate in the activities and programs of a trade union and that every trade union has the right to engage in collective bargaining [sections 9(2), 18, 23 of the Constitution].

19. I agree with the contention contained in the respondents' answering affidavit that the application was based on facts which are at this stage speculative. The order

was made pending a date in June 2002; it was granted on the basis of urgency even though the applicants could not verify, at this interim stage, what their numbers were, the applicants made out a case on the papers for the granting of the relief granted. If the relief was not granted, the applicants' rights to freedom of association would be seriously affected, and there would be no opportunity given to ventilate the matter as it should be with regard to the application in terms of s 56(5) of the Act.

20. The applicants applied for an extension of the agreement on 15 October 2001, which was refused. Not granting interim relief would have had the effect that stop order facilities would have been terminated immediately in favour of the applicants, which would deprive them of their source of income; the future existence of the applicants would have been placed in jeopardy and union officials in the employ of the applicants would have to be retrenched. The applicants would have ceased to exist and the situation would be exacerbated by the fact that the fifth and sixth respondents and other local authorities, by depriving applicants of all organizational rights, would render them unable to communicate with their membership and securing payment of their union membership fees. The proposed monthly agency fee of R47.00 is greater than the monthly union subscription fees of the applicants. The applicants correctly made the point that the effect of implementation of the fee would mean either mass resignation from the applicants by the membership or a refusal by the applicants' members to pay their membership fees.

21. In the circumstances I granted the order.

22. At this stage it is necessary to point out that there was an error in the draft order. The order in respect of costs read "*costs only in the event of opposition*". Although the respondents did not appear on the day of the hearing, they nonetheless filed affidavits, therefore the respondents are obliged to pay the applicants' costs.

_____

_____

E. Revelas

cants': Mr. G Higgins

SAMPSON OKES & HIGGINS

ATTORNEYS