IN THE LABOUR COURT OF SOUTH AFRICA
(HELD AT JOHANNESBURG)

Case No.: J 2328/05

In the matter between:

PUBLIC SERVANTS ASSOCIATION OF SOUTH AFRICA (PSA)	**Applicant**
and	
SAFETY & SECURITY SECTORIAL BARGAINING COUNCIL (SSSBC)	**First Respondent**
SOUTH AFRICAN POLICE UNION (SAPU)	**Second Respondent**
POLICE & PRISONS CIVIL RIGHTS UNION (POPCRU)	**Third Respondent**
THE MINISTER OF SAFETY & SECURITY	**Fourth Respondent**

JUDGMENT

MOKGOATLHENG A.J.

Introduction

[1] The Applicant a Trade Union duly registered in terms of Section 96(7)(a) of Labour Relations Act no 66 of 1995, "The Act" has instituted an application in terms of section 56(5) ("the Act") for an order to be admitted as a member of the First Respondent, a bargaining council as contemplated in "the Act".

[2] The Applicant also seeks an order to amend paragraph 6(g) of the First Respondent's constitution which regulates the threshold for admission to the latter's membership.

[3] The First Respondent is the only entity opposing the application.

Factual Background

[4] In August 2005, The Applicant submitted an application to be admitted as a member of the First Respondent as contemplated in section 6(1)(b) of "the Act" read with the constitution of the First Respondent on the 17th October 2005. The First Respondent refused the application.

[5] The First Respondent's reasons for the refusal of the application are that;

(a) "after consideration of the application, it was decided not to admit the "PSA" (Applicant) because;

(i) clause 6.4 (g) of the Constitution of the SSSBC (the First Respondent) provides that a trade union applying for membership of the SSSBC must submit a declaration that the trade union satisfies the required threshold membership figure for admission contained in the collective agreement regulating thresholds for admission to the SSSBC,

(b) the collective agreement regulating the threshold for admission to the SSSBC is collective agreement 8/2000 which provides that the threshold is 30 000 members;

(c) the application did not comply with the requirements of the Constitution of the SSSBC and in particular clause 6.4(g) thereof, and

(d) the application further reflects that the membership of PSA is below the threshold set in collective agreement 8/2000".

The Applicants Reasons for Admittance as a Party to the First Respondent

[6] The Applicant contends that it is presently the second largest union within the entire public service with a total membership of 178517 and that such membership is growing.

[7] The Applicant alleges that it has 11397 members employed within the South African Police Services, whose employment is governed by the Police Act and says it represents 2351 members who are non – uniformed employees of the South African Police Service, whose employment is regulated in terms of the Public Service Act No, that this membership is a critical constituency of the South African Police Service.

[8] The Applicant contends that its membership is substantial and sufficiently representative to enable it to influence;

(a) negotiations.

(b) the financial interests of those engaged in the industry, and

(c) peace and stability within the industry or any section of the industry.

[9] The Applicant states that its admission as a party will not cause any inconvenience to the Fourth Respondent as an employer since it is a large organisation with a sophisticated financial system.

[10] The Applicant states that it is the principal union representing non–uniformed employees of the South African Police, and says it is an established member of the Public Service Co-ordinating Bargaining Council (PSCBC) which is the over-arching that body that designated the First Respondent, and says that it represents its member's interests therein.

[11] The Applicant alleges that it is the only union so handicapped in that its members fall within the sectorial ambit of both the First Respondent and the PSCBC, that as such the Applicant also represents a unique perspective since it is influential in the PSCBC, yet cannot finalise negotiations in the First Respondent.

[12] The Applicant contends that the business of the First Respondent is not self contained that, by its refusal of membership, it causes anomalies that are illogical and which are irreconcilable with the objectives enshrined in "the Act".

[13] The Applicant contends that it falls within the registered scope of the First Respondent, that it is desirable to make the First Respondent as reasonably representative as possible.

[14] The Applicant contends that it represents approximately 9.5 % of the total number of persons falling within the sectorial ambit of the First Respondent; and argues that the threshold requirement as contained in the collective agreement 8/2000 is unreasonable, *ultra vires*, and is contrary to the provisions of "the Act" and unconstitutional in that;

(a) the First Respondent's Constitution is more restrictive than that of the PSCBC;

(b) its threshold is unreasonably high and is inimical to that of the PSCBC;

(c) in other sectorial councils of the PSCBC the percentage membership threshold of 5% is the norm; and

(d) there is no justifiable reason for the first Respondent to apply a higher threshold.

[15] The Applicant contends that in the PSCBC and in the General Public Service Sectorial Bargaining Council, the Second and Third Respondents have utilised the lower threshold to exercise their rights of representation that they, however, steadfastly apply an unjustifiable and unreasonably high threshold in the First Respondent.

[16] The Applicant contends that the threshold was unreasonably altered upwardly by clauses 1 and 3 of the collective agreement 8/2000; and states that the collective agreement 12 of 1999 is still operative.

[17] The Applicant contends that collective agreement 8/2000 is in conflict with collective agreement 12 of 1999, that the former restricts its guaranteed organisational rights enshrined in section 12, 13 and 15 of "the Act" and says that collective agreement no 12 of 1999 has not been amended and still binds the Respondents.

[18] The Applicant contends that the objective of a threshold requirement is to control and limit the proliferation of parties, and says that because the First Respondent only has two members, its admission will not prejudice the Second and Third Respondents, and would be beneficial to the functioning of the First respondent.

[19] The Applicant contends that the First Respondent's unreasonably high threshold conflicts with sections 4,8 and 19 of "the Act", and section 23 (4) of the Constitution of the Republic of South Africa Act No 108 of 1996.

[20] The Applicant submits that notwithstanding its failure to meet the threshold imposed by clause 6.4(g) of First Respondent's constitution it presently represents 17.8% of all public servants, and is sufficiently representative to be an effective member of the Third Respondent, that it would be just and equitable to be admitted it as the additional party of the First Respondent, that to deny it membership is illogical and as absurd anomaly considerating that it is the second largest member of the PSCBC.

[21] The Applicant states that its admission will substantially contribute to the promotion of uniform effective and orderly collective bargaining within the industry and will enhance organisational diversity within the registered scope of the First respondent,

[22] The Applicant argues that the First Respondent did not apply its mind adequately or at all to the meritorious components of the application, the Applicant's unique situation, the anomalies attendant the Applicants non-admittance, and says that the First Respondent adopted a formalistic inadequate policy and the impracticality of its constitution, in rejecting the application simply because the Applicant did not comply with the threshold requirement.

The collective agreement No 8 of 2000

[23] Clause 1 thereof provides that,

(1). Single party

The threshold for admission of a single registered trade union shall be a minimum of 30 000 members.

(2) Acting together

The threshold for admission of two or more registered trade unions acting together as a single party, shall be a total of at least 30 000

members, provided that the threshold for each registered trade union party acting together in agreement shall be a minimum of 15 000 members.

If the membership of one of the registered trade unions acting together, falls below the threshold of 15 000, the provisions of the Constitution pertaining to the termination of membership of the Sectorial Bargaining Council will apply to the party acting together.

(3) *Organisational Rights*

In terms of section 18 of the Labour Relations act 66 of 1995, a threshold of representativeness in respect of organisational rights referred to in section 12, 13 and 15 will be as follows; non-parties of the Council shall be at least 15 000 members for a single registered trade union, and a minimum of 15 000 members for each registered trade union acting together as a single party with a total threshold of 30 000.

The First Respondent's case:

[24] The First Respondent contends that it rejected the Applicant's application for admission as a party in terms of the applicable constitution and the collective agreement which regulate the threshold for admission, because the Applicant did not meet the threshold requirement.

[25] The First Respondent states that its members considered that the Applicant was not sufficiently representative to meet the threshold set in the collective agreement, that having regard to the existing stability in the collective bargaining and the effective functioning of the First Respondent they saw no reason to deviate from the *status quo* in terms of the threshold for admission set in the relevant collective agreement.

[26] The First Respondent states that there are approximately 140 000 employees in the South African Police Service, that the Second Respondent represents approximately 64 880 and the Third Respondent 67 825, that between them they represent in excess of 130 000 members this being in excess of 90% of the employees of the South African Police Service, and says that the Applicant only represent's approximately 13748 members, this being 10% of the total employees of the South African Police Service.

[27] The First Respondent disputes that the Applicant's membership is "substantial" or that it amounts to "a critical constituency" of the South African Police Service, or that the Applicant is the "principal" trade union representing non–uniformed members of the South African Police Service.

[28] The First Respondent states that the collective agreement no. 12 of 1999 was superceded on the 1st September 2005 by collective agreement no.3 of 2005.

[29] The First Respondent states that the Applicant was deregistered because its membership fell below the required threshold.

[30] The First Respondent denies that its threshold is unreasonable, *ultra vires*, or in conflict with the provisions of the "Act" or unconstitutional.

The Applicable legal Principles

[31] In ***Fuel Retailers Association of SA v Motor Industry Bargaining Council (2001) 22 ILJ 1164 (LC) at 1171 D-H*** Landman J sets out the

following as factors to be taken into account when a Court considers an application for admission to a bargaining council,

(a) whether the party seeking the admission falls within the registered scope of the council,

(b) the representativity of the council,

(c) whether the applicant is sufficiently representative to be an effective member of the council,

(d) stability in the industry,

(e) the reasons advanced by the existing parties to the council for objecting to the admission to the council,

(f) other advantages to the industry, the council or the parties to the council,

(g) whether the admission of the applicant would contribute to the promotion of orderly collective bargaining,

(h) the extent to which the applicant may disrupt the working of the council within its sector and area,

(i) the contribution which the applicant would make to the organisational diversity of the council within its sector and area, and

(j) the threshold for admission and other requirements set out in the constitution of the bargaining council.

[32] It is trite that:

> *"A court may also take into account the primary objects of "the Act", the organisational diversity in the sector or the principle of proportional representation in the absence of fair and reasonable criteria." The Court also has to consider the First Respondent's reasons for refusing to admit the Applicant."*

[33] Brassey *et al* in his Commentary on the Labour Relations Act *vol 3 at A3-135* states that "*in determining this question the Court will doubtless seek to give effect to the primary object of 'the Act' so as to assure that the council represents the organisational diversity within the sector and area. It would also consider the attitudes of the parties on the council and the extent to which the new party might disrupt its workings*".

[34] Section 56(5) of the Act must be interpreted to promote the primary objective of the Act amongst which is the promotion of orderly collective bargaining.

[35] Landman J: Fuel Retailers Association of SA (Supra) held that "collective bargaining through the medium of a bargaining council envisages a measure of self government. It is one of the few instances where corporate bodies also have a franchise. This self government, because of the ability to have collective agreements extended and made biding on employer and employee who are not parties to the council, permits the council to impose obligations, confer rights and levy fees on non parties. It is understandable and in keeping with the Legislative intent that those who we subject to the jurisdiction of a bargaining council should be elevated to the position of a Lawmaker or contracting party. The applicant should conform to the requirements of the council for admission but where admission is refused this Court applies a slightly different test"

[36] The First Respondent contends that it is a creature of its own constitution, and can only exercise powers expressly conferred on it by its constitution.

[37] The First Respondent argues 6.4(g) is peremptory, that trade union wishing to be admitted as a party to it, must submit a declaration stating that it meets the threshold for membership, failing the First Respondent

lacks the authority to grant admission. The First Respondent submits that there are sound reason why the threshold is not reduced.

[38] The Applicant was formerly a party to the First Respondent because it had previously met the threshold of 30 000 members. It lost its membership to the First Respondent because its membership fell below the threshold prescribed by paragraph 6.4(g) of the First Respondent's constitution.

[39] Paragraph 6.5 of the First respondent's constitution provides that,

> *"The council may admit the Applicant trade union if it meets the admission criteria set out in paragraph 6.4 above".*

[40] The First Respondent submits that if an Applicant meets its membeship threshold that, it does not follow that its admission is a *fait accompli*, the First Respondent say it still has a discretion to admit an Applicant as a party depending on other factors.

[41] The Applicant does not dispute the First Respondent's contention that only 13 748 of its members are employed by the South African Police Service, that the Second and Third Respondents represent approximately

64 880 and 67 825 members respectively out of approximately 140 000 employees, this being the total number of persons employed by the South African Police Service.

[42] The Second and Third Respondents between them represent in excess of 130 000 members, this being in excess of 90% of the employees in the South African Police Service, that the Applicant represents 13748 employees of the South African Police Service, which is approximately 7.7% of the total members of 178 517 in the Public Service.

[43] In 1999 the Applicant's South African Police Service membership was approximately 16 596, this number that has declined by 17% to its current figure of 13 748.

[44] The Applicant as a founder member of the First Respondent seemingly agreed to be bound by the threshold of 30 000 members, which it now considers out of kilter with other thresholds.

[45] The threshold of 30 000 is approximately 21% of the persons employed in the sector. The Applicant's represents 13 748 members in the South African Police Service, it follows that as a founder member, its South

African Police Service's membership has decreased by at least 16252 members which is more than 50% of the threshold of 30 000 members.

[46] There is no substantive evidence that there is instability in the sector since the de-registration of the Applicant as a party to the First Respondent or that there is no effective collective bargaining in the First Respondent.

[47] The Applicant argues that it represents a critical constituency in that its non-uniformed members fall under the Public Service Act, these members number 2457, and has other 11 377 members falling within the South African Police Service under the Police Act.

[48] In my view the Applicant's non-uniform members numbers are insignificant to justify the contention that their attributes would enable the Applicant to bring or contribute to organisation diversify within the First Respondent.

[49] The Applicant as a founding party to the First Respondent was a signatory to the collective agreement 12 of 1999, and was a party to the adoption of the First Respondent's constitution.

[50] The First Respondent states that there is stable collective bargaining in the sector, that South African Police Service, SAPU and POPCRU have high levels of representivity, it is essential to co-operate in order to achieve common objectives.

[51] In my view the Applicant admission as a party is unlikely to influence decision making within the First Respondent's deliberations.

[52] The Court is in interpreting section 56(5) obliged give effect to the primacy of the collective agreement and promote the principle of voluntarism and majoritariasm as the essence of collective bargaining. The First Respondent is sufficiently representative without the admission of the Applicant.

[53 In the premises the application is dismissed with costs.

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MOKGOATLHENG A.J.

ACTING JUDGE OF THE LABOUR COURT OF SOUTH AFRICA

Appearances

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