IN THE LABOUR COURT OF SOUTH AFRICA

(HELD AT JOHANNESBURG)

CASE NO: J2236/07

CITY OF JOHANNESBURG METROPOLITAN MUNICIPALITY — **Applicant**

And

South African Municpal Workers Union (SAMWU) — **1st Respondent**

EMPLOYEES OF APPLICANT WHO ARE MEMBERS OF THE FIRST RESPONDENT — **2nd Respondent**

JAFTA MPHAHLANI N.O — **3rd Respondent**

SA LOCAL GOVERNMENT BARGAINING COUNCIL — **4th Respondent**

JUDGEMENT

AC BASSON, J

1] On 4 October 2007, the following order was made.

1. The Rules of the above Honourable Court relating to the forms and manner of service are hereby dispensed with and this matter is dealt with as one of urgency.

2. The 1st and 2nd Respondents are interdicted and restrained from calling, instigating, promoting, encouraging or participating in a strike by the members of the 1st Respondent employed by the Applicant pursuant to the 1st Respondent's notice dated 18 September 2007.

3. The 1st Respondent is directed to inform its members who are employed by the Applicant of the contents of this interim order, by issuing public statements to the media and in written circulars to the 1st Respondent's members, officials and office bearers and through such other means of communication as may be reasonable in the circumstances.

4. This order shall operate pending the final relief sought as set

out in Part B of the Notice of Motion.

5. Costs in respect of Part A of the Notice of Motion shall be reserved for determination at the stage of hearing the application in respect of Part B of the Notice of Motion.

2] I have indicated that I would provide my brief reasons for the order. Herewith my reasons:

NATURE OF THE DISPUTE

3] This was an application for interim relief on an urgent basis to interdict a strike by members of the First Respondent (hereinafter referred to as "SAMWU") who are employed by the Applicant (the City of Johannesburg Metropolitan Municipality – hereinafter referred to as the "Municipality"). The strike commenced on 1 October 2007. The interim relief is sought on an urgent basis[1] pending a final order[2] declaring that the strike is unlawful and pending the review of a certificate issued by the Third Respondent (hereinafter referred to as "the Commissioner") in terms of which the Commissioner purportedly certified that the dispute between the parties remained unresolved and that the members of SAMWU

1 Under **Part A** of the Notice of Motion.
2 Under **Part B** of the Notice of Motion.

were thus entitled to embark on a protected strike.

4] At this stage this Court is only called upon to deal with the application for urgent interim relief. [3] It is clear from the substantive prayers sought in the Notice of Motion that these prayers take the form of an interdict and a mandamus.

5] It is trite that the requirements[4] for interim relief are the following: (i) a *prima facie* right even if subject to some doubt; (ii) a well-grounded apprehension of irreparable harm if the interim relief is not granted and the ultimate (final) relief is eventually granted; (iii) the balance of convenience favours the grant of an interim interdict; and (iv) the applicant has no other satisfactory remedy.[5] It is trite

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3 Under **Part A** of the Notice of Motion.

4 See the well-known cases of *Setlogelo v Setlogelo* 1914 AD 221 at 227 and *Eriksen Motors (Welkom) Ltd v Protea Motors Warrenton* 1973 (3) SA 685 (A) at 691C – E.

5 *Ericksen supra* at 691F: "*The granting of an interim interdict pending an action is an extraordinary remedy within the discretion of the Court. Where the right which it is sought to protect is not clear, the Court's approach in the matter of an interim interdict was lucidly laid down by INNES, J.A., in Setlogelo v Setlogelo, 1914 AD 221 at p. 227. In general the requisites are -*

(a) a right which, 'though prima facie established, is open to some doubt';
(b) a well grounded apprehension of irreparable injury;
(c) the absence of ordinary remedy.

In exercising its discretion the Court weighs, inter alia, the prejudice to the applicant, if the interdict is withheld, against the prejudice to the respondent if it is granted. This is sometimes called the balance of convenience.

The foregoing considerations are not individually decisive, but are interrelated; for example, the stronger the applicant's prospects of success the less his need to rely on prejudice to himself. Conversely, the more the element of 'some doubt', the greater the need for the other factors to favour him. The Court considers the affidavits as a whole, and the interrelation of the foregoing considerations, according to the facts and probabilities; see Olympic Passenger Service (Pty.) Ltd. v Ramlagan, 1957 (2) SA 382 (D) at p. 383D - G. Viewed in that light, the reference to a right which, 'though prima facie established, is open to some doubt' is apt,

that, in respect of the first requirement, the court will generally grant an interdict if it is satisfied that the applicant has established a *prima* facie right though open to some doubt: "*From the Appellate Division cases to which I have referred I consider that the law which I must apply is that the right to be set up by an applicant for a temporary interdict need not be shown by a balance of probabilities. If it is "prima facie established though open to some doubt" that is enough*."[6] In light of the fact that the applicant is only seeking temporary relief, the courts do not generally insist on the same degree of proof necessary in the case of an application for final relief.[7]

6] On behalf of the Applicant it was submitted that each of these requirements have been satisfied.

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flexible and practical, and needs no further elaboration.

6 *Webster v Mitchell* 1948 (1) SA 1186 (W) at 1188.

7 See *Van den Berg v OVS Landbou Ingeniers (Edms) Bpk* 1956 (4) SA 391 (O) at 398A-B: *"In die algemeen sal die Hof, myns insiens, minder hoë eise stel wat die bewys van sy beweerde reg betref aan 'n aansoekdoener wat aantoon dat die weiering van 'n interim interdik hom baie ernstige onherroeplike skade waarskynlik sal berokken, terwyl die respondent daardeur min of geen skade kan lei nie." See also Webster v Mitchell 1948 (1) SA 1186 (W) at 1189: "In the grant of a temporary interdict, apart from prejudice involved, the first question for the Court in my view is whether, if interim protection is given, the applicant could ever obtain the rights he seeks to protect. Prima facie that has to be shown. The use of the phrase "prima facie established though open to some doubt" indicates I think that more is required than merely to look at the allegations of the applicant, but something short of a weighing up of the probabilities of conflicting versions is required. The proper manner of approach I consider is to take the facts as set out by the applicant, together with any facts set out by the respondent which the applicant cannot dispute, and to consider whether, having regard to the inherent probabilities, the applicant could on those facts obtain final relief at a trial."*

BRIEF BACGROUND TO THE RELEVANT FACTS

7] SAMWU is recognised by the Municipality as a trade union representing the majority of employees employed by the Municipality. Various collective agreements have over the years been concluded between the Municipality and SAMWU. What is of relevance to this dispute is the fact that collective bargaining ordinarily takes place under the auspices of the Fourth Respondent (hereinafter referred to as "SALGBC". The Main Collective Agreement concluded with the Bargaining Council on 19 June 2007 and more particular Part C thereof deals with procedural matters. In terms of section 1 collective bargaining may take place either at the national or the divisional level of the Bargaining Council depending on the subject matter of collective bargaining.

8] On or about 22 July 2007, SAMWU submitted a request for conciliation of a dispute to the Bargaining Council. In paragraph 3 thereof it is stated that the parties "*have reached a stalemate*" in respect of the following **six issues**. These are:

(i) parity;

(ii) transport for workers;

(iii) performance management;

(iv) notch increase;

(v) fixed to lower employees;

(vi) casualisation of jobs.

DEFECTIVE REFERRAL FORM

9] In terms of paragraph 4 of this referral form it is stated that the dispute arose on 9 May 2007. It is clear from the papers (more specifically the referral form) that there is a space reserved under paragraph 6 (of the referral form) where the referring party is required to specify the desired result or outcome of conciliation. It is clear from the referral form served on the Municipality and SALGBC that this section of the form was not filled in by the referring party. On behalf of the Municipality it was submitted that, if regard is had to the Constitution of the Bargaining Council,[8] that it is important and peremptory to fill in this particular section and that it is further necessary for purposes of a proper ventilation and conciliation of the dispute that the Respondent party to the conciliation proceeding should know what relief is being sought by the referring party. On behalf of SAMWU it was argued that this

8 Clause 12.2 of the Constitution of the Bargaining Council.

technical approach should be rejected in that it would elevate form above substance and would frustrate the expeditions resolution of labour disputes. I am in agreement with the latter approach: Whilst I agree that parties should, as far as possible, comply with the instructions on the referral form, one should not be over technical and hold that a bargaining council does not have jurisdiction simply because the form has not been filled in to the letter. More in particular, it is not the case for the Municipality that this was an issue raised at the conciliation proceedings. I will return to the jurisdictional issues that were in fact raised on behalf of the Municipality. Moreover, it was not the case for the Municipality that it could not participate in the conciliation process as a result of this omission. What is required by section 64(3) of the Labour Relations Act 66 of 1994 (hereinafter referred to as "the LRA") is that the "*issue in dispute*" must be referred to the relevant dispute resolution body (the CCMA or the Bargaining Council) and that a certificate of non-resolution must be issued in the event the parties are unable to conciliate the "*issue in dispute*". It is trite that the parties must, in the spirit of the LRA, which is (*inter* alia) to advance labour peace and to promote orderly collective bargaining[9] endeavour to settle the dispute. Having said this, it should,

9 Section 1 of the LRA.

however, not be inferred that parties who refer a dispute to conciliation may totally disregard the contents of the referral form. What is put foreward is that, as long as it is clear what the issue in dispute is and accordingly what it is that the parties have requested to be conciliated, a technical or undue formalistic approach to the contents of the referral form should not obscure the object of the LRA which is to promote the orderly; effective and speedy resolution of labour disputes.

10] The crux of the Municipalities objection to the validity of the conciliation process relates to the jurisdiction of the Commissioner to have conducted and/or to have proceeded with the conciliation process. It is common cause that Mr Dlamini (the Assistant Director: Labour Relations – hereinafter referred to as "Dlamini") raised an objection to the jurisdiction of the Commissioner and to the validity of the conciliation process. What is, however, in dispute is whether Dlamini had persisted with his objection (as submitted by the Municipality) or whether he had abandoned this point (as alleged by SAMWU). What is, however, not in dispute is that the Commissioner did not issue a ruling in respect of the jurisdictional point. Mindful of the fact that the Municipality only has to establish a *prima facie* case even if subject to some doubt, I am of the view

that, on this basis alone, it may be concluded that the Commissioner did not apply his mind and that, at least on a *prima facie* basis, that the Municipality's prospects of success in a subsequent review application is good. On this basis alone, I am of the view that the Municipality is therefore entitled to the relief as set out in its Notice of Motion under the heading Part A of the relief sought.

11] There is, however, in addition to this, point, a further point on which I am of the view that relief should be granted:[10] The issues that were referred to the Bargaining Council were not in fact "*issues in dispute*" as required and/or contemplated by section 64(1)(b) of the LRA and consequently these issues were not capable of being referred to conciliation at least at the stage when they were referred. I will now briefly give my reasons for this decision.

ISSUES IN DISPUTE

12] As already pointed out, SAMWU listed six issues as being issues in dispute in the referral form. It is common cause that Dlamini had raised an objection to the jurisdiction of the Commissioner

10 As sought in Part A of the Notice of Motion.

(although it is, as already pointed out in the aforegoing discussion, in dispute to what extent Dlamini persisted with his objection). In essence the basis of his objection was the following: Firstly, the referral of the alleged disputes to the Bargaining Council was premature and invalid in light of the fact that there was not in fact any issue in dispute capable of being referred to conciliation at that stage. Secondly, the allegation by SAMWU in the referral form that the parties have reached a "stalemate" in respect of the six issues was factually incorrect. Thirdly, only three of the issues listed in the referral form as being in dispute had in fact been raised in recent discussions between the Municipality and SAMWU but despite that, none of those issues (that were raised at a meeting held on 9 May 2007) could truly be regarded as "*issues in dispute*". These issues are: (i) the parity issue, (ii) the transportation issue and (iii) the casualisation issue. In respect of the remaining three issues which are (iv) the performance management issue, (v) the notch increases and (vi) the fixed to lower employees issues, it was submitted that because these three issues had not been raised at all during the meeting of 9 May 2007 between the parties, these three issues could not have generated an "*issue in dispute*" between the parties simply because there never had been any attempt at bargaining over these issues with the employer at any

level.

PERFORMANCE MANAGEMENT; NOTCH INCREASES; AND FIXED TO LOWER EMPLOYEES

13] At the outset I have to point out that I am in agreement with the submission on behalf of the Municipality that there did not exist an "*issue in dispute*" in respect of the following three issues: (i) the performance management issue, (iii) the notch increases; and (iii) the fixed to lower employees' issues. I have perused the minutes of 9 May 2007 and it is clear from the minutes and the transcript that these issues have never been raised by SAMWU and therefore these issues could not have been "*issues in dispute*" as contemplated by the provisions of section 64(1)(a) of the LRA. Consequently, I am in agreement that these three issues could not have formed the subject of a conciliation process under the auspices of the bargaining council simply because they were not "*issues in dispute*". I also did not understand counsel on behalf of SAMWU to seriously persist with the submission to the effect that these issues were indeed "*issues in dispute*", at least in May when SAMWU alleges the disputes arose.

PARITY ISSUE, THE TRANSPORTATION ISSUE AND THE CASUALISATION

14] The question whether these three issues were "*issues in dispute"* and therefore issues that could have formed the subject matter of a conciliation process under the auspices of the bargaining council is, however, more difficult to answer and will, in my view, depend on an interpretation as to what is meant by "*issue in dispute*".

15] It is clear that a protected strike can only take place in support of a matter or issue which is "*in dispute*". This much is clear from section 64(1)(a) of the LRA. The "*issue in dispute*" must first be referred to conciliation and, if the "issue in dispute" cannot be resolved, must a certificate be issued by the Commissioner stating that the "*issue in dispute*" remains unresolved. The parties are then free to embark on strike action. The term "*issue in dispute*" is defined in section 213 of the LRA as follows:

> *"in relation to a strike or lock-out, means the demand, the grievance of the dispute that forms the subject matter of the strike or lock-out".*

16] For the dispute to exist, it must, as was accepted by Zondo AJ (as he then was) in *SACCAWU v Edgars Stores Ltd & Another*[11] "*postulate the notion of the expression by the parties, opposing each other in controversy, of conflicting views, claims or contentions".*[12] In *Estate Bodasing v Additional Magistrate, Durban and Another*[13] the Court held that a dispute must "*denote at least the positive state of the parties having disagreed".* Brassey in *Employment and labour Law, Vol : Commentary on the Labour Relations Act* states as follows:

> "… A dispute can exist only when the one person in effect says ' yea' and the other 'nay'; it requires, in other words, a clash in the stances adopted by contending parties. Normally they will communicate their respective standpoints by an exchange or words, but a dispute can arise by conduct and will typically do so when one party demands a concession and the other fails to make it by the appointed time."

17] See also *Leoni Wiring Systems (East London) (Pty) Ltd v National Union of Metalworkers of SA & Others*[14] where the Court held as

11 (1997) 18 *ILJ* 1064 (LC).
12 Ibid at 1348 *et seq* where Zondo referred with approval to the view of Silke, J.
13 1957 (3) SA 176 (D) at 180H.
14 (2007) 28 *ILJ* 642 (LC).

follows in respect of what is meant by an "*issue in dispute*":

> *"[27] When then would s 189A(9) apply? This section expressly deals with the situation when notice of the commencement of a strike may be given. There can be little, if any, doubt that no strike or recourse to a lock-out can, or will, take place in the absence of 'an issue in dispute'. Section 64 of the LRA makes it very clear that every employee has the right to strike and every employer has recourse to lock-out if the 'issue in dispute' has been referred to a council or to the commission as required by the LRA. I accordingly remain of the view that notionally it is possible for an employer to reach consensus with the other consulting parties within a day or days of having embarked on consultations after compliance with all the procedural requirements of particularly s 189(3) of the LRA. The employer will then be able to give notice of dismissal and in the absence of any issue in dispute strike action is, as I have said, not possible, nor can I think of any circumstances where a strike will, or may, in any event take place in the absence of an issue in dispute between the employer and the employee or its representative trade union. It is for this particular reason that I believe that it is always a*

requirement that, if anyone of the parties is in dispute with the other, such dispute should be stated clearly and not be clothed in such a way that, objectively viewed, the other side does not know that it is in dispute at all. I am firmly of the view that parties should not conduct themselves in any manner which may lead to a situation where the other side is left in doubt as to whether there is a dispute between them in relation to a particular issue. Likewise I hold the firm view that, if a dispute has arisen between parties, not only must the dispute be clearly stated and identified but also the outcome, or the solution, which a party requires to resolve the dispute should be unambiguously stated. The fact that a party is unhappy cannot be allowed to form the basis of that party later on alleging that it was, as a matter of fact, in dispute with the other side. I am of the view that a dispute only arises when the parties in fact express their differing views and assume different positions in relation to a specific factual complex. The mere fact that one party may be unhappy about a particular state of affairs does not give rise to a dispute. In this regard it has been most helpful to have had regard to what Zondo AJ (as he then was) had to say about the question when does a dispute arise in the matter of SACCAWU v Edgars Stores Ltd

& another (1997) 18 ILJ 1064 (LC); [1997] 10 BLLR 1342 (LC) at 1348 et seq as well as the authorities referred to therein. Zondo AJ referred, it would appear with approval, to what was said by Silke J in the matter of Durban City Council v Minister of Labour & another 1953 (3) SA 708 (D) where he, at 712A, said the following relating to the question of whether a dispute had existed:

> *'I think it unnecessary - and it certainly would be unwise - to attempt a comprehensive definition of the word "dispute' as used in s 35(1) of the Industrial Conciliation Act. But whatever other notions the word may comprehend, it seems to me that it must, as a minimum, so to speak, postulate the notion of the expression by parties, opposing each other in controversy, of conflicting views, claims or contentions.'*

[28] Having regard to some of the other authorities quoted in the Edgars Stores case, supra, I believe that one can say that some of the further indicators as to whether a dispute did exist could be to have regard to the fact that 'no difference of opinion, and, a fortiori, no controversy, as to the (issue allegedly in dispute) can arise until some opinion is

expressed'. Further analyses of the authorities would reflect that it has been stated that 'a dispute exists when one party maintains one point of view and the other the contrary or a different one'.

[29] What is apparent is that as the existence of a dispute is not always a simple and determinable event, it underscores the proposition I made earlier, namely that it is important that, if parties arrive at a point where the one or the other forms the view in its mind that it is now in dispute with the other, it should say so and do so in the clearest of terms possible so as not to leave any doubt, as I said, about what it is in dispute about and what resolution it demands."

18] I am of the view that, although it is not a pre-requisite that one of the disputing parties must formally or even expressly declare a dispute (as was the case under the previous Labour Relations Act), at the very least the issue referred to conciliation must be an issue over which the parties have reached a "*stalemate*" in the sense that the employer have had the opportunity to reject or accept a demand put forward by the employees or their representative. To hold otherwise may, in my view, give rise to a situation where employees may refer any issue to conciliation without first having afforded the employer an opportunity to formulate a negative response or to reject a demand or grievance put foreward by the employees or their representative. At the very least the employer should know what the dispute is about and what is required to

resolve the demand or dispute.[15] I am of the view that this is in accordance with the purpose of the LRA which is to promote orderly collective bargaining and is in accordance with the spirit of the LRA which is to promote the effective resolution of disputes. Once the employer has rejected or indicated through its conduct that it is not willing, for whatever reasons, to acceded to a demand, then, the parties will have reached a stalemate to the extent that it may be concluded that there is now "*an issue in dispute*" between the parties which is capable of being conciliated and if unsuccessful, be the subject matter of strike action.[16]

19] I will now turn to the facts in order to determine whether the three remaining issues may be viewed as "*issues in dispute*" for purposes of conciliation and possible strike action.

TRANSPORT ISSUE

20] On behalf of the Municipality it was contended that the transport issue was referred to and resolved thought a process of adjudication by means of arbitration and to that extent the strike

15 *Leoni supra* ad paragraph [29].
16 See *Chamber of Mines of SA v NUM and Another* 1987 (1) SA 668 (A) where the Court held that a strike was impermissible on the basis that the union had not been entitled to refer the matter for conciliation at a time when management had not yet responded t the demand and the deadline for such a response had not yet expired.

would be prohibited in terms of section 65(1)(c) and (3)(a)(i) of the LRA. In terms of this section a strike is prohibited where a party is bound by an arbitration award. I am not persuaded that the arbitration award dated 27 June 2005 and annexed to the papers has dealt with the issue allegedly in dispute between the parties. The arbitration award dealt with an unfair labour practice dispute in terms of which it was alleged that the employer had committed an unfair labour practice dispute when it unilaterally withdrew transport benefits from certain employees without consultation. The Commissioner concluded that the employer (the City of Johannesburg) did not act unfairly in withdrawing transport benefits from certain employees.

21] The subject matter of the arbitration award was a rights dispute and was confined to a limited number of employees. The award certainly did not make a determination in respect of transport benefits of all employees of the City of Johannesburg.

22] On behalf of the Municipality it was argued that even if it is found that the issue of transportation was a new issue in the sense that SAMWU is seeking to secure transport benefits for all its members, that issue was not tabled or discussed during the meeting in May

2007 and consequently not an "issue in dispute".

23] I have perused the minutes of the meeting in May 2007 and am in agreement that transport was not an issue at that time and thus cannot be characterised as an "*issue in dispute*". At the meeting SAMWU raised a concern that workers are not provided with transport "*to attend funerals*". The issue raised at conciliation concerned "transport" in general – an issue that was not discussed or even raised at the meeting of 9 May 2007.

PARITY

24] The issue of parity was a matter raised some years ago and arose when employees who had previously been employed by other municipalities had to be incorporated into and placed by the Municipality. At a meeting in March SAMWU had raised a concern that what the employer (the Municipality) was implementing, was not parity. It does not appear from these minutes that SAMWU then made a demand in respect of parity. A further meeting was held on 9 May 2997 (the date on which SAMWU alleges that the dispute arose). It appears from the minutes that SAMWU again raised a concern that what was being implemented by SALGA was not parity. SALGA responded that it was of the view that parity has

been implemented and that "*if there are new requests, they should be done formally and they are willing to engage*".[17] The minutes then recorded that it was resolved that: *"SAMWU would go and consult on SALGA's proposals and will report back*". I am in agreement, after careful consideration of the minutes, that it cannot be concluded on the papers that the parties have reached a stalemate in respect of the issue of parity at the meeting of 9 May 2007 to the extent that it could be concluded that the parity issue had become an "*issue in dispute"* which may be referred to conciliation. On 9 May 2007 it was merely resolved that SAMWU would consult with its membership in relation to SALGA's proposal so that SAMWU could formulate a demand in respect of the parity issue to enable SALGA to consider it and respond to it. Accordingly, it is concluded that, at the conclusion of the meeting of 9 May 2007, the parties have not yet reached a stage where SAMWU had even formulated a demand and which demand has been rejected by the employer.

CASUALISATION

25] It was contended on behalf of the Municipality that the issue of casualisation is currently the subject of a pending Labour Court

17 Ad paragraph 5.4 of the typed minutes of the meeting on 9 May 2007.

application and that this issue can therefore not be an "*issue in dispute*". What is pending before the Labour Court is, *inter alia*, an application to declare a settlement to be not binding on the applicants in that matter (including the City of Johannesburg Metropolitan Municipality). In terms of the settlement agreement it was agreed between IMATU together with SAMWU and SALGA that SALGA members will not "*Offer employment to and / or appoint or place persons on fixed term contracts of employment without having agreed with the applicants what would happen to the relevant persons upon the expiry of the fixed term contracts; or …".* SAMWU argued that the dispute pending before the Labour Court is completely unrelated to the issue in dispute which relates to causalisation. On the papers before me it is difficult in the absence of the award that was made and which is now the subject matter of a pending application before the Labour Court, to determine whether or not the current issue of causualization is affected by the settlement agreement currently the subject matter of proceedings before this Court. On behalf of the Municipality it was argued that even if that is so, this issue of causalisation was not, at the meeting of 9 May 2007, an issue in dispute as contemplated by the LRA. Again, if reference is had to the minutes, it does appear to support the contention advanced on behalf of the

Municipality namely that the parties have not reached a stage in their discussion at which it can be deduced that they were at loggerheads in respect of the issue of causalisation.

26] In light of the aforegoing it does appear that *prima facie* the Commissioner firstly, committed a gross irregularity by failing to deal with the jurisdictional objection raised by Dlamini and that he therefore committed a reviewable act by failing to make a ruling in respect of the objections raised. Secondly, it appears from the papers that the Commissioner *prima facie* lacked jurisdiction to undertake the process of conciliation in light of the fact that there was no "*issue in dispute"* as contemplated by the LRA. I am thus satisfied on the papers that the Municipality has made out a *prima* facie case to the effect that the certificate that was issued by the Commissioner falls to be reviewed and set aside in terms of the relief set out in Part B of the Notice of Motion. I am further satisfied that the Municipality has shown that it would suffer irreparable harm if the strike is permitted to continue and that it has no adequate alternative remedy in the circumstances but to approach this Court on an urgent basis. In light of the aforeoging it is also clear that the balance of convenience also clearly favours the granting of the relief.

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BASSON, J

DATE OF PROCEEDINGS: 3 OCTOBER 2007
DATE OF ORDER: 4 OCTOBER 2007
DATE OF REASONS: 15 OCTOBER 2007

FOR THE APPLICANTS:

P KENNEDY SC

ADV W MOKHARE

INSTRUCTED BY: WERKSMANS ATTORNEYS

FOR THE RESPONDENTS:

ADV RG LAGRANGE

INSTRUCTED BY: CHEADLE THOMSPOSN & HAYSOM INC