IN THE LABOUR COURT OF SOUTH AFRICA

HELD IN BRAAMFONTEIN

CASE NO: J 510/06

In the matter between:

Security Services employees

Organisation ("SSEO") **1st**

Applicant

South African Security

Employers Association ("SANSEA") **2nd**
Applicant

South African Intruder

Detection Association ("SAIDSA") **3rd**
Applicant

Western Cape Security Association

("WECSA") **4th**

Applicant

Security Industry Association

Of South Africa ("SIASA") **5th**

Applicant

and

South African Transport and Allied

Workers Union ("SATAWU") **1st**

Respondent

Those Persons whose Names
Listed in Annexure "A" Hereto **2nd**
Respondent

JUDGMENT

CELE AJ

INTRODUCTION

[1] On 5 April 2006 the applicants approached this Court by way of rule 8 of the rules of this Court for an urgent relief. The matter was then unopposed. The application had been properly served to the respondents.

[2] Having considered the matter, I granted the order prayed for in the following terms:

> "1. A Rule Nisi is hereby issued calling upon the respondents to show cause on Wednesday 19 April at 10h00 or soon thereafter as the matter may be heard why an order should not be made in the following terms:
>
> 1.1 Declaring the strike by the second to further respondents *(" the individual respondents")* which commenced on 23 March 2006 *("the strike")* to constitute an unprotected strike as contemplated in section 68 of the Labour Relations Act No 66 of 1995 *("the LRA").*

1.2 Interdicting and restraining the individual respondents from participating in the strike:

1.3 Interdicting and restraining the first respondent *("the Union")* from inciting and or encouraging the individual respondents to participate in the strike;

2. Directing that the relief sort out in paragraphs 1.1 to 1.3 above operates as an interim order with immediate effect pending the finalisation of this application.

3. Directing that service of this order be effected on the respondents by telefaxing the order to the first respondent at its head office situated at six Floor, Marble Towers, 208-112 Jeppe Street, Johannesburg on telefax Number (011) 333-9199.

4. The costs are reserved."

[3] On the following day, 6 April 2006, the respondents served and filed a notice of anticipation of the return date together with an answering affidavit by means of which they were seeking a discharge of the *Rule Nisi*. Brief arguments were presented by both Counsel. At the instance of the applicants, I granted an order for the matter to stand over till 7 April 2006. This was to enable the applicants to serve and file their replying affidavits which they did in the morning of 7 April 2006. The respondents immediately served and filed their supplementary affidavit. Both counsel then proceeded to present their cases.

[4] At the very heart of this application is the question whether or not the first respondent, and therefore its members, are bound by the hand written addendum which the union parties added to the bargaining forum agreement for the Private Security Services Industry following upon a wage negotiation meeting held on the 25 November 2005. The wage negotiation meeting was between the employers' organisations and the trade unions. The meeting would be adjourned as and when the union parties needed to caucus so as to present a united front. Officials of the 15 organisations present at the meeting proceeded to sign the agreement reached. This included the first applicant. Officials of the 7 organisations present did not sign the agreement. The agreement signed was referred to as the addendum in the minutes and it reads:

> "This serves to confirm that parties who are signature (sic) to this document agree to negotiate and be bound by the terms of the attached document entitled "Constitution for the National Bargaining Council for the Private Security Services Industry", dated 08 September 1998, together with the Code of Good Practice Picketing", attached thereto as originally signed by some of the parties in 1998.

The parties further agree should any part of this agreement not be enforceable in a court of law for any reason this will not invalidate the reminder of the agreement which shall remain binding on the parties.

> Signed this 25th day of November 2005 for and on behalf of the following organisations:"

[5] Picketing rules and the issue of representivity were further discussed. Further deliberations resulted in a hand written addendum being added to the typed agreement. The additions were

authenticated by an indication of the organisations which agreed with it. Three organisations were indicated to have not attended the meeting when the hand written addendum was adopted. Two organisations were shown to have refused to sign for the addition. The latter included the first respondent.

[6] The hand written addendum reads:

> "The parties agree that clause 6 of the attached document does not apply & further agree that section 69 together with the code of good practice on picketing as contained in the LRA Act 66 of 1995 as amended will apply"

[7] Mr Harold Mdineka of Vasuwu confirmed in the meeting that the balance of labour would then sign the addendum as amended. The wording of the hand written addition was confirmed and Mr Mishack Ravuku who was the Facilitator confirmed that all parties had then signed the addendum, as well as having initialled against the amendment thereto. The real business of the day then proceeded.

[8] The next wage negotiation meeting between the employer organisations and the trade unions was held on 5 December 2005. Mr Jackson Simon of the first respondent tabled corrections to the minutes of the previous negotiation sessions, that is, one of 25 December 2005. On page 3, line 17 of the previous minutes he added the following corrections:

> "Satawu now states that they had not initialled against the

amendment to the addendum."

The meeting then proceeded after he had tabled all the corrections.

[9] The Bargaining Council for Private Security Services Industry which was formed by the employers' organisations and the trade unions was not registered due to a failure of the parties to resolve certain issues. Once a negotiated agreement is reached by the parties, it has to be submitted to the Minister of Labour for promulgation under the Basic Conditions of Employment Act 75 of 1997.

[10] In January 2006 the applicants and the trade unions met for this year's round of wage negotiations. The first respondent was in attendance as well. The parties were unable to reach an agreement concerning a wage demand of the unions. Then, the first respondent referred the dispute to the Commission for Conciliation, Mediation and Arbitration ("the CCMA") as contemplated in section 64 (1) (a) of the Act. The parties met at the CCMA but the dispute was not capable of resolution where-after the CCMA issued a certificate of non-resolution on 6 March 2006.

[11] On 15 March 2006 the first respondent addressed a notice in terms of section 64 (1) (b) of the Act ("the strike notice") to the applicants. It reads:

"*Re: Notice in terms of section 64 (1) (b) of the Labour Relations Act, No 66 of 1995 as amended*

Satawu as mandated by the Trade Unions as mentioned in terms

of certificate of outcome in terms of dispute of Matter of Mutual (sic) interest Case No: GAJB2396-06, Satawu and other unions v/s SANSEA and others, hereby give a notice in terms of section 64(1) (a) of the act.

The members of the unions mentioned in terms of the certificate of outcome in terms of the above mentioned case number will be embarking on a protected strike as follows:

The strike will commence on the 23-24 March 2006 with a day shift and a further strike will continue on 03 April 2006 until an agreement is entered into between the parties.

In all dates as above-mentioned, the strike action will commence with a dayshift at 06h00 as to persuade (sic) our members' demands.

Please find the attached copy of the certificate of outcome as annexure A and the demands of the unions as annexure B for easy reference"

[12] The strike notice was in keeping with the Constitution and the manner in which the parties to the constitution had conducted collective bargaining during previous wage negotiations.

[13] On 23 March 2006 the respondent together with eleven other trade unions and their members embarked on a strike in demand of a higher wage and other conditions of employment. The strike action was still in progress on 1 April 2006 when the applicants and the trade unions other than the first respondent, entered into a written agreement ("the wage agreement") concerning wages and other conditions of employment.

[14] Clauses 2.2 to 2.4 of the wage agreement state the following:

> "2.2 *Subject to clause 2.3 this agreement shall be legally binding on the parties as a collective agreement as contemplated by section 23 of the Labour Relations Act [66 of 1995];*
>
> *2.3 The parties agree that this collective agreement and its provisions shall become effective only upon the promulgation of a Sectoral Determination of no shorter than three years in duration. It is the intention of the particular (sic) that all clauses contained in this agreement be promulgated by the minister without variation or amendment, however should such Sectoral Determination stipulate conditions other that those contained in this agreement, then the parties agreed that they shall abide by the conditions as set out in such Determination. In any such instance, the provisions of the Sectoral Determination shall supersede any provision of this agreement. This clause shall operate as a suspensive condition, and as such this agreement shall not be binding until the discharge of such suspensive condition;*
>
> *2.4 Notwithstanding Clause 2.3 above, in the intervening time period between the signing of this agreement and the promulgation of a Sectoral Determination as envisaged in this clause, the parties shall continue to adhere to the provisions of Sectoral Determination 6: Private Security Sectoral as amended"*

[15] Once the other unions had signed the wage agreement, they then abandoned the strike action. The first respondent has refused to

sign the wage agreement and it continued with the strike action.

[16] Sectoral Determination 6 is the determination which is currently in operation. It is to be superseded by and when once the wage agreement concluded this year shall have been promulgated.

The issue

[17] The position taken by the first respondent and its members is that the wage agreement agreed to by the parties on 1 April 2006 is not binding on them.

Submission by parties

[18] Mr Brassey appeared for all the applicants while Mr Van der Riet appeared for all the respondents. The submission by the applicants is that the respondents are bound by the wage agreement because the bargaining forum of which they are a party makes agreements with a binding force in the forum if concluded by a simple majority. As a consequence, the applicants submitted that the respondents are precluded from striking by section 65 (3) of the Act as it prohibits participation in a strike by a person who is bound by any collective agreement that regulates the issue in dispute. The respondents take a contrary stance. They aver that, in accordance with clause 15 (3) (e) of the constitution they are not bound by the wage agreement signed between the other trade unions and the applicants. As a consequence they submit that they have an entitlement to a strike action in pursuance of their original demand. They place reliance on sections 31 and 32 of the Act.

Analysis

[19] Clause 6 of the constitution deals with the appointment of representatives according to the number of members who belong to the respective trade unions and employer organisations. It reads:

"**6 APPOINTMENT OF REPRISENTATIVES**

1. The council will consist of –
   a) 12 representatives of employer's organisations that are parties to the council; and
   b) 12 representatives of trade unions that are parties to the council.

2. The representatives will be allocated among the parties subject to the following formula:

$$\frac{X}{Y} \times 12 = \text{Number of seats}$$

(a) In the case of trade unions-

X = the number of members in good standing registered with the union

Y = the total number of members in good standing registered with all participating trade unions

(b) in the case of employer organisations -

X = the number employees of members in good standing of the employers organisation.

Y = the total number of employees members in good standing registered with all participating employers organisation.

3. Each trade union shall require a minimum membership of 5 000 to qualify for a seat…"

[20] The implication of the formular is that an organisation with the highest number of registered members in good standing will be allocated more seats at council. In their supplementary affidavit the respondents say that members of the first respondents in the security sector are approximately 34360. The respondent says these figures and records thereof were submitted to the Department of Labour and have since not been queried. The first respondent further says that the combined total of the unions' audited figures taking in to account only those who signed the wage agreement, is R 27 182. The applicants have not disputed the figures given by the respondent. The first respondent is consequently, by far, the majority union in the security industry.

[21] It is beyond doubt that the minutes of the wage negotiation meeting of the 25 November 2006 were visited by a number of mistakes. In the subsequent council meeting of 5 December 2005 council

members agreed or acquiesced to the proposed corrections which were tabled.

[22] I am unable to agree with Mr Brassey when he submitted that the correction: "Satawu **now** (my emphasis) state that they had not initialled against the amendment to the addendum" meant that only in the meeting of 5 December 2005 was such fact stated. The **now** is a periodical factor which as Mr Van der Riet, correctly submitted, related to the meeting of 25 November 2005. The agreement which all parties signed on the 25 November evidences this fact beyond doubt. Where officials of the first respondent appended their signatures, there is an entry that they refused to sign for the hand written amendment to the agreement.

[23] In the minutes of 25 November 2005, Mr Ravuku, the facilitator, is recorded as having confirmed that all parties had then signed the addendum, as well as having initialled against the amendment thereto. An examination of the document in question proves otherwise. Three organisations are recorded as having not attended when the amendment was effected. Two organisations are recorded as having refusal to sign. These were the first applicant and Tawu.

[24] A reading of the minutes of the council meetings of 25 November 2005 and 5 December 2005 in my view, leaves no room for any doubt that the first respondent refused to agree to the amendment of the agreement or addendum which it had already signed. Such refusal accords with logic as the effect of the amendment was to diminish the strength of the first respondent at council when it came to voting. *Ex facie* the minutes, there does not appear to have

been any *rationale* for the first respondent to agree to the amendment. The effect of the amendment was clearly to change the voting regime by introducing a one person one vote system.

[25] Paragraph 8 of the supplementary affidavit was read by Mr Brassey to mean that the first respondent, if not bound by the amendment, acquiesced thereto. It reads:

> "At the same meeting, the employees expressed their concern at having to negotiate with 15 unions and, at some meetings, in the region of 50 representatives. The union therefore caucused and elected four representatives. The other unions recognised SATAWU as the majority union and agreed that it would therefore be entitled to its own representative. The other unions requested that the kind of arrangement referred to in sub-clause 6 (4) of the constitution also applied to the unions. Because precise membership figures were not available, and because SATAWU did not wish to scupper negotiations or endanger the eventual promulgation of a Sectoral determination, SATAWU agreed with this proposal. All the other unions where therefore to be represented by three joint representatives. The unions' negotiating team would henceforth be composed of these four representatives.

[26] In my view, the position taken by the first respondent was of an *ad hoc* nature. Seen against a clear refuttal of the amendment, it can not reasonably be used as a change of the principle position which the first respondent eloquently took.

[27] When the first respondent indicated its rejection of the amendment to the addendum, council ought to have resolved the issue. Council

firstly adopted the addendum. The consequence of this is that clause 6 kicked in. A simple majority vote could not, in my view, be used to replace clause 6. This is effectively what council sought to do when they adopted the amendment to the addendum. Accordingly, the attempt by the council to adopt the amendment was procedurally defective and none consequential. The first respondent is therefore not bound by the amendment to the addendum. In my finding, clause 6 remains effective.

[28] Mr Brassey has referred me to a decision by Commissioner Christie in **Sansea v Nusog (1997) 4 BLLR 486 (CCMA).** On page 493 of her judgment the commissioner had this to say:

> "NUSOG did not resign and continues to be a member of the NIC although a non-participating member. Even if NUSOG had resigned it would have been bound by the outcome of the negotiations which started while he was a member. Our law does not allow a union to change the rules of collective bargaining half way through negotiations on substantive issues. To take any other view would mean that individual members of a trade union caucus could undermine collective bargaining and give themselves what amounts to a veto power. I reject this view."

[30] I uphold the principle espoused by the Commissioner only to the extent that it does not absolve a compliance with any prescribed procedural formalities as a basis for collective agreements.

[31] Accordingly the following order will issue:

1. The rule Nisi is discharged

2. The applicants are ordered to pay costs to include those of counsel. The applicants are jointly and severally liable for such costs.

CELE AJ

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Date of hearing : 6 APRIL 2006

Date of Judgment: 8 March 2006

Appearances

For the Applicant : MR BRASSEY S.C

(APPEARING WITH MR VAN AS)

Instructed by : MOODIE & ROBERTSON

For the Respondent: MR VAN DER RIET S C

Instructed by : CHEADLE THOMPSON & HAYSOM