

MEDIA STATEMENT-FOR IMMEDIATE RELEASE

NEHAWU WELCOMES CONSTITUTIONAL COURT JUDGEMENT ON MATTER BETWEEN NEHAWU AND DEPARTMENT OF HOME AFFAIRS

Friday May 05, 2017

The National Education Health and Allied Workers' Union [NEHAWU] welcomes the judgement handed down by the Constitutional Court yesterday on the matter between the Unions and the Department of Home Affairs.

The judgement was handed down by Judge J. Froneman on behalf of 11 other judges including Chief Justice Mogoeng Mogoeng and his Deputy Chief Justice. The matter was heard on February 28 and the judgement only handed down yesterday [May 4, 2017]. The matter relates to the deadlock that occurred between the union and the Department of Home Affairs in relation to the introduction of Saturday Work by the Department.

The Department refused to remunerate the Saturday work and also blatantly refused to put mechanisms in place to help workers to perform their duties when they report for duty on Saturdays. This led to a protracted disputes between the two parties that also involved both the Labour Court and the Labour Appeal Court. The matter ultimately ended at the Constitutional Court. The leave to appeal was brought about by the Department of Home Affairs to the Constitutional Court after the union won its review application in the Labour Court and the Labour Appeal Court.

Delivering the ruling Judge J. Froneman said that *"Disputes about matters of mutual interest may be referred to conciliation by a commissioner or a bargaining council under the LRA. Work practices and their alteration by management lie at the heart of employment relationships and a dispute about them would certainly qualify as matters of mutual interest capable of being referred to conciliation under the LRA"*.

The Court held that invoking the right to strike may relate to a matter of mutual interest and therefore confers a right to recourse to arbitration or the Labour Court under section 65(1) (c) of the LRA, however this determination is separate and does not define the jurisdiction of a conciliator, nor prevent this conciliator from attempting to reconcile the dispute, or in failing to do so certify that this dispute remains unresolved.

The Court also dismissed the application submitted by the Department of Public Service and Administration for leave to intervene as a second applicant, on the basis that its explanation for late intervention was inadequate, its arguments were similar to those of the DHA, and evidence tendered did not comply with the Court's. It has always been our view that the application by DPSA was just a time delaying tactic and that it was just a waste of state resources.

Noting the fact that leave to appeal has been dismissed by the Constitutional Court, the Bargaining Council can then proceed and conciliate the matter and issue a

certificate of none resolve if parties cannot resolve the dispute at conciliation. This then means that NEHAWU can then take its members to strike over the introduction of Saturday Work by the Department of Home Affairs.

NEHAWU will be corresponding to the council to urgently convene the conciliation to attend to demands that were presented to the employer, which are:

- Provision of child care facilities,
- Transport and other safety measures for all employees working on Saturdays and Sundays
- Shift Allowance,
- Reversal of all disciplinary findings and reimbursement of all employees who were subjected to leave without pay.

In the event that the employer fails to concede to our demands then we will be left with no option but to withdraw our labour power. In this regard the union will soon be convening Provincial meetings to appraise members of the recent developments and seek or confirm mandate with members at the Department of Home Affairs.

Issued by NEHAWU Secretariat

Bereng Soke (General Secretary) at 082 455 2713; Zola Saphetha (Deputy General Secretary) at 082 558 5968; Khaya Xaba (NEHAWU Media Liaison Officer) at 011 833 2902 - 082 455 2500 or email: khaya@nehawu.org.za Visit NEHAWU website: www.nehawu.org.za