



# THE OUTCOMES OF THE PSCBC ARBITRATION PROCESS HELD ON 27TH JULY 2020

## AUGUST 2020

On 17th July 2020 the national union issued a report on the outcomes of the application that was lodged by both DPSA and National Treasury whose attempt was to prevent the enforcement of an agreement which the State voluntarily entered into, this being Resolution 1 of 2018, in particular clause 3.3. The matter was argued on 10 July 2020 as directed by the Labour Court and judgement was reserved. On 16 July 2020 the court dismissed the State's urgent application.

Amongst other reasons, the court stated that in instances where the LRA has a "purpose built framework" for enforcing compliance in the form of section 33A of the LRA, which is expeditious and in line with the objectives of collective bargaining to stay such a process would be to go against the spirit of collective bargaining.

The Labour Court disagreed with the State and expressed that the so-called Constitutional issues must first be raised at the arbitration for the commissioner to determine them and at this stage there is no exceptional circumstances that warrant the Labour Court to intervene more especially because there is "purpose built remedy" for parties in terms of the LRA. It is on that basis that the Labour Court ordered that the arbitration ought to proceed and the application to stay the arbitration be dismissed.

Parties then reconvened for the arbitration on the 27th July 2020 and it was already clear going to that arbitration that DPSA and National Treasury were intending to delay the process further and as such in the arbitration they both (DPSA and National Treasury) raised two jurisdictional points:

1. The fact that there is a leave to appeal and it has the effect of staying the arbitration proceedings because the judge never dispensed with his interim order of staying the arbitration proceedings.
2. That the council does not have jurisdiction because of the Constitutional issues that they wish to raise.

The Commissioner noted that the jurisdictional issues must first be dealt with before the arbitration can go ahead and therefore directed parties as follows:

1. The DPSA will file its formal objection by 31st July 2020.



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2. Treasury will file its further objection by 5 August 2020.
3. The Unions will file their answering submissions by 10 August 2020.
4. DPSA and Treasury would then reply by 13 August 2020.

Then the oral arguments will be done on 28 August 2020 provisionally to be confirmed on 28 July 2020 after determining the availability of all counsels on the said date. The Commissioner will then make a ruling on the two jurisdictional points raised considering the submissions in writing and orally that would have been made by the parties.

Members must note that parties are still to argue the application of the resolution and for now the legal representatives of the state are still playing around with legal avenues that are in their disposal.

The union will report further on the matter after the ruling by the Commissioner at the beginning of September 2020. We have included this matter in the list of issues that must be raised during the campaign of the National Program of Action as adopted by the Special National Executive Committee of the 25th July 2020.

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