CONCILIATION, MEDIATION & ARBITRATION COMMISSION (CMAC)

HELD AT MANZINI **SWMZ 289/09**

In the matter between:-

SWAZILAND PROCESSING AND ALLIED WORKERS UNON (SPRAWU) APPLICANT

And

SOUTHERN TRADING COMPANY (PTY) LTD RESPONDENT

CORAM:

Arbitrator	:	Ms K. Manzini
For Applicant	:	Mr. S. Tsabedze
For Respondent	:	Mr. M. Sibandze

ARBITRATION AWARD

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1. PARTIES AND HEARING

The Applicant herein is Swaziland Processing and Allied Workers Union (SPRAWU). The Applicant's postal address is P.O. Box 1158, Manzini. I shall hereinafter refer to it as the Applicant, or the Union.

The Respondent is Southern Trading Company (PTY) LTD, a company duly incorporated in terms of the company laws of Swaziland. I shall hereinafter refer to it as the Respondent, the company, or the employer.

The Applicant was represented by Mr. S. Tsabedze, a union official from the Applicant, whilst Mr. M. Sibandze appeared or and on behalf of the Respondent. In the final stages of the matter, Ms L. Mngomezulu stood in for Mr. Sibandze, both of whom are attorneys from the offices of Currie & Sibandze Associates.

2. ISSUES IN DISPUTE AND HEARING

The dispute between the parties was reported to the Commission on the 23rd of June, 2009, in compliance with Sections 76 and 77 of the Industrial Relations Act, 2000 (as amended).

The parties failed to amicably resolve the dispute through conciliation; hence a Certificate of Unresolved Dispute was issued under Certificate Number 520/2009.

The bone of contention according to the certificate was that the Applicant alleged that the Respondent was refusing to grant it recognition as the sole employee-representative in the employer's undertaking.

I was then appointed as arbitrator, in terms of Section 42 (9) of the Industrial Relations Act (supra).

3. SUMMARY OF EVIDENCE

It was the Applicant's case that the Union was entitled to receive recognition from the employer as they clearly were in compliance with Section 42 (5) (a) of the Industrial Relations Act (supra) in that they had the requisite fifty percent membership of the unionisable workers.

The Applicant and Respondent agreed on the categories of employers that were the target of the union, and settled on the following:-

1) Drivers
2) Forklift Drivers
3) Labourers
4) Cleaners

5) Merchandisers
6) Clearance Clerks
7) Security Personnel
8) Invoice Clerks
9) Machine Operators

It was further agreed that this amounted to a total of forty-seven (47) unionisable workers. The Applicant further submitted thirty – nine (39) stop order forms as part of their evidence.

The Respondent's representative disputed that the Union had the requisite statutory percentage of the unionisable employees, and further alleged that some of the workers that the Union alleged were unionisable, had infact left the employ of the company.

After this, the Applicant applied that a head-count of the employees be conducted. This application was not opposed by the Respondent's representative. This was entirely in compliance with law as stated in Section 42 (6) of the Industrial Relations Act (supra); which provides that for purposes of determining if a trade union represents fifty percent of the unionisable workers, and there is disagreement on this issue despite the submission of stop-order forms, then a headcount shall be conducted.
The head count was conducted on the 18th of October, 2010, and the findings of that exercise clearly pointed out

that only seventeen (17) workers were members of the Union. A gentlemen by the name of Lucky Tfwala (forklift driver) was absent on this day, but a stop-order form containing his name and details had been submitted by the Applicant.

4. ANALYSIS OF EVIDENCE

Section 45 (5) of the Industrial Relations Act (supra) provides that:-

"The employer shall recognize a trade union or staff association that has been issued with a certificate if:-

a) **A fifty percent of the employee in respect of which the trade union or staff association seeks recognition are fully paid up members of the organization".**

The results of the verification count are indicative of the fact that of the seventeen (17) (or eighteen (18) if we were to include Mr. Tfwala who was absent from work on the day). Confirmed members of the union, this did not constitute fifty percent of the unionisable workers who were said to be forty-seven (47) in number.

The Applicant's representative during his closing submissions alleged that the 2010 amendment of the Act

provided that the union no longer needed fifty percent membership in order to be recognized by the employer. I have had occasion to peruse the said law, and have ascertained that it provides the following:-

"Section 42 of the Principal Act is amended-

a) ***By inserting, after subsection (5), the following sub-sections.***

(6) ***Where in an establishment employees are represented by more than two trade unions whose representative membership does not cover at least fifty (50) percent of the employees eligible to join the union, the employer shall grant collective bargaining rights to the Unions to negotiate on behalf of their members.***

(7) ***The exercise of the collective bargaining rights stated in sub-section (6) shall include, in instances where the unions represent employees in the same category, the negotiation by the employer with several trade unions at the same time, with a view to the signing of an agreement applicable to all workers."***

The wording of the amendment is clearly indicative of the fact that the law – giver only intended that the waiver of the fifty percent membership requirement should apply only in the cases that more than two trade unions were applying for recognition, or where the employees are represented by more than two trade unions.

In casu, it is only the Applicant that is supposedly representing the employees at the Respondent's undertaking. Indeed, it was stated in the certificate of unresolved that the issue in dispute was that the Applicant alleged that Respondent was refusing to grant the union recognition as the "sole" employee representative in its undertaking.

6. **AWARD**

After hearing both parties, and weighing the evidence submitted by them, I hereby find that the Applicant has failed to prove that they meet the statutory requirements for recognition by the Respondent.

The application for recognition is hereby dismissed.

THUS DONE AND SIGNED AT MANZINI ON THIS ……. DAY OF APRIL, 2011.

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KHONTAPHI MANZINI

CMAC ARBITRATOR