



**CONCILIATION MEDIATION AND
ARBITRATION COMMISSION**

HELD AT MBABANE
386/13

REF NO: SWMB

In the matter between:

**WORKERS UNION OF SWAZILAND
TOWN COUNCILS**

APPLICANT

AND

**MUNICIPAL COUNCIL OF MBABANE
RESPONDENT**

Coram

ARBITRATOR : **VELAPHI Z. DLAMINI**

FOR APPLICANT : **ARCHIE SAYED**

FOR RESPONDENT : **ZWELI JELE**

ARBITRATION AWARD

1. DETAILS OF HEARING AND PARTIES

- 1.1 The arbitration hearing was held on various dates commencing on the 31st January 2014 and was completed on the 7th March 2014, at the office of the Conciliation, Mediation and Arbitration Commission (CMAC) at the first floor Asakhe House in Mbabane.
- 1.2 The Applicant is Workers Union of Swaziland Town Councils (WUSTC), a trade union registered in terms of Section 27 of the Industrial Relations Act 2000 (as amended), of Mbabane. The Applicant was represented by Mr. Archie Sayed, a Labour Law Consultant.
- 1.3 The Respondent is the Municipal Council of Mbabane, a body corporate established in terms of the Urban Government Act 8/1969 of Mbabane. The Respondent was represented by Mr. Zweli Jele, an Attorney from the Law Firm Robinson Bertram in Mbabane.

2. BACKGROUND FACTS

- 2.1 The Applicant and the Respondent are parties to a Recognition and Procedural Agreement in terms of which the Applicant, as the sole collective bargaining agent for unionizable employees of the Respondent, may engage in negotiations concerning all terms and conditions of employment including wages.
- 2.2 The parties commenced negotiations for cost of living wage adjustments for the period 2013/2014 on the 16th August 2013. Despite having held four meetings, the parties reached a deadlock on the 10th October

2013. At the time of the deadlock, the Applicant was demanding a cost of living adjustment of 10% across the board and the Respondent had made a final offer of 1% and a 5% once off payment.

- 2.3 By agreement the Applicant invoked Article 9 of the Recognition and Procedural Agreement resulting in the dispute for deadlock on cost of living adjustment being reported to the Commission on the 22nd October 2013.
- 2.4 The dispute was conciliated, however it remained unresolved and as such a Certificate of Unresolved Dispute No.679/13 was issued by CMAC. By virtue of the fact that the parties are engaged in an essential service, the Applicant referred the dispute to arbitration under the auspices of the Commission in terms of Section 96 (3) (b) of the Industrial Relations Act 2000 (as amended).

3. SURVEY OF EVIDENCE AND ARGUMENTS

- 3.1 The Applicant elected to rely on documentary evidence and the submissions made by Mr. Archie Sayed. On the other hand, the Respondent led the evidence of Mr. Benedict Gamedze and Mr. Nhlanhla Vilakati, the Strategic Planning and Budget Manager and Treasurer respectively. The Respondent submitted documentary evidence as well.
- 3.2 The following facts are common cause:
 - 3.2.1 It was agreed between the parties through collective bargaining that the basis for the cost of living adjustment would be a year by year official statistical data on inflation.

Moreover following negotiations it was agreed that the projected rate of inflation for the 2013/2014 financial year was 9%.

- 3.2.2 Wages and Salaries have not seen a cost of living increase for the past three years prior to the 2013/2014 financial year.
- 3.2.3 For the year ended 31st March 2013, the Respondent's Annual financial statements in particular the income and expenditure statement reflected that the Municipality had a surplus of E4 174 098.00.
- 3.2.4 The total personnel costs in 2013 stood at E33 million and the total revenue was E77 million.
- 3.2.5 The ratio of the total personnel costs to total revenue for the year 2013 was forty-two (42%) percent.
- 3.2.6 When setting the rates for the 2013/2014 financial year, the Respondent recommended a rates increase of 9%.
- 3.2.7 The Respondent had a performance management system in terms of which a performance reward and incentive was linked. Certain guidelines were applicable to the performance related salary increments. Depending on affordability, staff who were able to perform satisfactorily received increments ranging between 1% to 6.5%. This was the case in the 2013/2014 financial year.

3.2.8 The Respondent was not a profit generating institution, but depended on rates to sustain its operations.

3.3 The following facts are in dispute:

3.3.1 The Applicant submitted that its demand of 10% was reasonable and fair because the average inflation based on official statistical data for the 2013/2014 year was 9.1%.

3.3.2 It was the Applicant's case that inflation for the past three years had eroded the wages and salaries of staff and this justified a cost of living increase which was above the 2013/2014 financial year's inflation rate.

3.3.3 The Applicant further argued that the Respondent had inflated its budgeted expenditures by the rate of inflation for 2013/2014 and since wages and salaries were expenditures, they ought to be increased by the same margin.

3.3.4 It was also submitted by the Applicant that in 2012, value added tax was introduced which escalated the costs of goods and services and these additional costs eroded the wages and salaries of the Respondent's staff.

3.3.5 The Applicant further contended that Councillors' retainer fees were increased by 9.2% per annum and as such at the very least staff should also enjoy a similar adjustment in their wages and salaries.

- 3.3.6 It was argued by the Applicant that the Respondent's top executives are highly remunerated and could afford a lavish lifestyle, however the same could not be said of the lower earning categories.
- 3.3.7 The Applicant submitted that the Respondent's debt collection policy established effective and efficient mechanisms to ensure the maximum collection of rates in the long term.
- 3.3.8 The Applicant also submitted that the performance rewards and incentives were not intended to adjust staff salaries based on cost of living factors. Moreover, the performance reward system was not equitable because it did not reward staff based on the principle of equal pay for equal work.
- 3.3.9 It was the Applicant's contention that Mr. Benedict Gamedze's evidence should not be held to be reliable because he had testified that the Respondent's personnel costs were at 60%, yet according to Respondent's own documents the ratio of personnel costs to revenue was 46% in 2012 and 43% in 2013.
- 3.3.10 The Applicant argued that despite the non-collection of 100% rates, the Respondent had acquired a surplus of E4 174 098.00, which was more than 12% of personnel costs.
- 3.3.11 The Applicant submitted that Mr. Nhlanhla Vilakati's evidence contradicted the annual financial statement for the year ended 31st

March 2013. According to the Treasurer, the Respondent had an overdraft facility of E2 million per month, however in terms of the annual financial statements the overdraft for the year was E1 585 089.00 as opposed to E24 million.

- 3.3.12 Finally, the Applicant argued that it had demonstrated that a 10% wage and salary increment would not result in the Respondent's financial prejudice and as such the Applicant prayed for an award in its favour.
- 3.3.13 On the contrary the Respondent argued that at the time of negotiations and deadlock in October 2013, the rate of inflation as determined by the Central Bank of Swaziland and the Central Statistics office was 4.7% and the yearly inflation average was 5.2%.
- 3.3.14 The Respondent also contended that while it acknowledged that it had an obligation to negotiate a salary increase with the Applicant on an annual basis, however increases were not automatic, but could only be effected if certain variables were in place.
- 3.3.15 According to the Respondent, the first variable which should be taken into consideration was the organisation's ability to finance the proposed increment. Secondly, since annual increments had a progressive effect, the organisation must have sustainable financial resources to be

able to maintain the payments for a foreseeable period.

- 3.3.16 Thirdly, the Respondent was not a profit - making entity. Its main source of revenue was rates and charges for services. The Respondent had no control of its revenue streams. It was the Ministry of Housing and Urban Development which had to approve any rates or service charges increments.
- 3.3.17 The Respondent submitted that it had made a full and proper disclosure of all relevant information, which was an integral part of good faith collective bargaining.
- 3.3.18 It was submitted by the Respondent that the offer it had made was motivated by the fact that its cash flow position remained suspect and simply could not sustain an increment. According to the Respondent, a wage and salary increase would place a severe strain on its finances.
- 3.3.19 The Respondent argued that the financial statements revealed that it simply did not have sufficient cash to be able to pay for the increase in personnel costs. It would have to raise the funds by borrowing, but it was generally untenable to borrow in order to fund a salary increment because the entity would face the added difficulty of having to repay the loan, whilst having to project for further increases in the following year.
- 3.3.20 It was Respondent's contention that its financial difficulties were caused by a

number of factors including its inability to effect a real rate increase in rates revenue for the past seven years. The Ministry of Housing and Urban Development has declined the increase of rates even in the face of double-digit inflation. Consequently, while the operating costs of the Respondent have increased, its main resource of revenue remained constant.

3.3.21 The Respondent submitted that the failure to increase rates has resulted in the Respondent not being able to meet its operational budget. The organisation was unable to meet expenditure for rehabilitation of roads infrastructure and other projects. Consequently, the Respondent was now dependent on funding from the World Bank which funding was accessible under stringent conditions.

3.3.22 According to the Respondent, one of the conditions for accessing the World Bank grant was that the Respondent's personnel costs should be at a ratio of 40% or less to the total revenue. This meant that the total cost of salaries should not exceed 40% of the total revenue generated by the Respondent. Currently and in respect of the year 2013, the ratio was 42% and any increase would increase the ratio thus jeopardizing the Respondent's chances of accessing the funding.

3.3.23 The Respondent conceded that presently it was overstaffed and needed to restructure its operations in order to be more efficient. The organisation had been seeking to

restructure its operations for the past thirty six months, however, the Applicant had frustrated the process. Had the restructuring been implemented, the heavy wage burden could have been trimmed resulting in efficient use of its resources.

3.3.24 It was also submitted by the Respondent that the economic down turn has had negative impact on the Respondent because the Swaziland Government which pays over 60% of the rates was unable to meet its obligation due to fiscal challenges. Where payments were made, these were late thus causing serious cash flow problems for the Respondent.

3.3.25 Moreover, it was argued by the Respondent that the economic down turn resulted in a number of businesses and individuals being unable to meet their rates obligations which in turn negatively affected the Respondent's income.

3.3.26 The Respondent also alleged that the economic downturn also saw a number of the city's residents losing employment which resulted in the increase in unemployment. This increase in unemployment resulted in an increase of the number of rates defaulters. In the end, this factor also negatively impacted the Respondent's financial position.

3.3.27 It was also argued by the Respondent that there were socio-economic factors that resulted in the increase of rates defaulters. The prevalence of HIV/AIDS pandemic has

resulted in child - headed households, widows and other vulnerable members of society being unable to pay their rates. The Respondent was unable to recover the rates through sale of these properties because it was unconscionable to sell property belonging to a child-headed household or a widow(er). This has also resulted in the Respondent's inability to meet the wage demand.

3.3.28 The Respondent argued that in order to maintain and improve efficiency, it had to incentivize those employees who were performing well above expectations. Consequently, employees of the Respondent who were members of the Applicant, who performed admirably, have received salary increases of up to 6%. It was only those employees who have not performed above expectation that had not received the increases.

3.3.29 It was submitted by the Respondent that perhaps in the future, premised on the fact that, the restructuring will be implemented in 2014, it may be in a position to increase the salaries in a meaningful way for the 2014/2015 financial year.

3.3.30 Finally, the Respondent prayed that the application for a 10% cost of living increment be dismissed and that it be determined that in the present circumstances, the 1% across the board increase was reasonable.

4. ANALYSIS OF EVIDENCE AND ARGUMENTS

4.1 In the case of **YKK Southern Africa (Pty) Ltd v Swaziland Manufacturing and Allied Workers Union (IC case No. 303/2004)**, the learned Judge President at page 13 cited with approval a statement made by Sonia Bendix in her book, *Industrial Relations in South Africa* 2nd edition at page 205, who made the following observation:

4.2 In the matter of **Durban City Council V Durban Intergrated Employees Society (1990) 11 ILJ 619**, the learned Arbitrator Mr. Brassey laid down the principles to be applied by an arbitrator when determining wage increment disputes. The learned Arbitrator stated as follows:

“Factors to be considered include statistical material concerning the cost of living although this material should not be mechanically applied, market forces, even where the enterprise is a municipality and does not compete in the commercial market; the effect of inflation on wages and wages paid by similar enterprises”.

4.3 It is common cause that the Respondent has not effected a wage increase for the past three years. The Respondent’s witnesses conceded that the cumulative or compounded inflation over the three year period had eroded the Respondent’s employees’ wages and salaries.

4.4 Although the rate of inflation was a basis for cost of living adjustments on the wages and salaries of the Respondent’s employees, this did not guarantee an automatic increase. A number of factors had to be taken into consideration. These included the peculiar

circumstances of the parties in each case and the general principles stated in the authorities cited above.

- 4.5 In its analysis of its financial position, the Respondent acknowledged the fact that it had turned around an operating deficit of E2.4 million in 2012 into an operating surplus of E4.2 million in 2013, but it argued that this did not mean that it had sufficient cash to back up the surplus. According to the Respondent the surplus represented cash and credit transactions.
- 4.6 The Respondent's position was that what determined whether or not it could meet wage increment demand was its statement of cash flows. According to it the cash flow statement painted a gloomy picture, which was that, the Respondent's liquidity and solvency was not sufficient to award a salary increase that exceeds its offer.
- 4.7 The Respondent stated that it used an overdraft facility to finance its operating costs. According to its analysis, the Respondent required E5.1 million per month to meet those costs. It had E3.1 million in its coffers on a month to month basis and the balance of E2 million is financed through the overdraft facility which may be called up anytime.
- 4.8 Regarding the Respondent's financial statements and analysis of same, I make the following observations:
 - 4.8.1 Despite indicating a negative value of net cash and cash equivalents of the sum of E2 281 724.00 in 2012, the statement of cash

flow, reveals that the net cash flow for the year 2011 was E29 899 221.00. Now in the year 2013, the net increase in cash and cash equivalents was E39 308 881.00 compared to the cash flow of E27 617 497.00 in the year 2012. This represents a net increase of cash flow of 42% year on year.

4.8.2 Although there was a moratorium on wage and salary increases and the creation of new positions, the Respondent increased the salary component of its personnel costs in 2012 from E16 million to E18 million, which represented a 12.5% increase.

4.8.3 Even in the year 2013, the Respondent again increased the salary component of its staff costs from E18 million to E19 million, thus representing a 5.3% increase. Over the 2012 and 2013 period, the Respondent increased its salary component by 17.8%.

4.8.4 While the salary component of the personnel costs received these above inflation increases, the wage component was stagnant at E14 million in the years 2012 and 2013. It is unlikely that the disparity in the salary and wage cadres over the two years was influenced by the performance management system because it was common cause that meritorious increases applied across the board.

4.8.5 Clearly the rise in the total personnel costs was caused by the steady and gradual increase of the salary component since 2011 to 2013. While the wages cadre had a

6.6% in 2011, there was a decrease of 6.6% in 2012.

- 4.8.6 In the absence of a reasonable explanation for the increase effected in the salary cadres, it seems to me that, it is not fair and equitable and does not promote harmonious industrial relations to declare a moratorium on wage and salary increases and the creation of new posts, but renege on that at the expense of a particular section of your workforce.
- 4.8.7 The Applicant did not dispute the fact that the monthly staff costs were E2.6 million and the cash receipts were E3.1 million per month. Moreover, it was not disputed by the Applicant that out of the total operating cost of E5.1 million per month, E2 million of that figure was financed through an overdraft facility.
- 4.8.8 Although the Respondent alleged that the operating surplus of E4.2 million did not mean that there was sufficient cash to back up that surplus, I hold the view that this bottom line demonstrates that the Respondent was a profitable entity, notwithstanding that it was not a profit making entity in accounting terms.
- 4.8.9 The Respondent did not disclose how the surplus was to be factored in to its operations. As a non-commercial operation, the Respondent has no shareholders to whom dividends would be paid.

- 4.8.10 Although the Respondent submitted that the E4.2 million surplus did not mean the organisation could sustain a double-digit salary increase, the bottom line provides a picture of an organisation capable of generating future cash flows. This conclusion is more compelling given the prospect of the restructuring.
- 4.8.11 The Respondent did not provide the ratio of the number of rates defaulters' attributable to child-headed households, widows and other vulnerable members of society compared to the number of businesses and individuals capable of meeting their obligations. It was alleged that the Swaziland Government was responsible for payment of over 60% of the rates and the Respondent was able to collect 65% of the rates. No data was produced to show the ratio of the rates actually paid by the Swaziland Government in 2012/2013 and 2013/2014 financial years compared to the total rates collected in the same period.
- 4.8.12 While the Swaziland Government was affected by the economic downturn, it is a matter of public record that the Central Bank of Swaziland has pronounced that in the last quarter of 2013 and first quarter of 2014 the economy shows signs of recovery than it was initially projected. It is also a notorious fact that, as a result of the economic recovery the Swaziland Government awarded civil servants a 5% cost of living increment in 2013/2014.

- 4.8.13 The economic recovery should result in the Swaziland Government being able to honour the obligations it has with the Respondent, this will in turn result in the increase of its revenue for the financial year 2014/2015. This economic recovery should result in the surplus that was realized in 2013 to be sustainable in the long term.
- 4.8.14 Despite the Respondent's position that, a cost of living adjustment for the 2013/2014 financial year was not sustainable, it proceeded to award performance based increases of between 1% to 6% to its staff.
- 4.8.15 The merit increment is commendable, however it was meant for staff that performed above expectations and not the workforce as a whole. The Respondent alleged that about 150 employees who were members of the Applicant received a 6% increase. No data was produced by the Respondent to show in total, how many employees received the merit increases. It is therefore difficult to ascertain the ratio of these increases to the total personnel costs.
- 4.8.16 While the Respondent has the prerogative to design systems that will maintain and improve the efficiency of its operations, the objective of the performance management system was not meant to replace cost of living related increases which the Respondent has an obligation to take into account in its annual planning.
- 4.8.17 Notwithstanding the fact that the Applicant did not challenge the Respondent's

assertions that, for it to access the World Bank funding, its personnel costs should be 40% or less of the total revenue, the Respondent did not produce any Memorandum of Understanding or Protocol between itself and the World Bank which provided for the terms and conditions thereof. In any event, it is unlikely that an institution such as the World Bank would want the wages and salaries of an essential service to be less competitive and not reflect the economic imperatives given the fact that there has been no cost of living increases for three years.

4.9 Taking into account the observations made above, the legal authorities, Respondent's financial statements, the analysis of the financial position of Respondent, official statistical data on inflation trends and levels and the parties submissions. I find that an award of 4% wage and salary increment across the board for the 2013/2014 financial year to the Respondent's employees in the Applicant's bargaining units is fair, equitable and reasonable in the circumstances.

4.10 The following order is made:

5. AWARD

5.1 An award of 4% wage and salary increment across the board for the 2013/2014 financial year to the Respondent's employees in the Applicant's bargaining unit is hereby made.

5.2 Section 96 (4) of the Industrial Relations Act 2000 (as amended) in relation to the costs of this arbitration shall apply.

DATED AT MBABANE THIS ____ DAY OF APRIL 2014

VELAPHI Z. DLAMINI
CMAC ARBITRATOR