

CONCILIATION, MEDIATION AND ARBITRATION COMMISSION (CMAC)

HELD AT MANZINI MNZ 808/06

In the arbitration matter between:-

ASSOCIATION OF LECTURERS

AND ACADEMIC PERSONNEL (ALAP) Applicant

And

UNIVERSITY OF SWAZILAND Respondent

ARBITRATION AWARD

DATE OF ARBITRATION: 6th March 2007 and 7th March 2007

VENUE: UNISWA IDE SEMINAR ROOM AND MAIN UNISWA CONFERENCE ROOM, RESPECTIVELY

CORAM:

Arbitrator : CMAC Commissioner M.B. Mkhonta

For Applicant : J.M. Thwala - President and N.A Sukati - Secretary General (Employee Representative)

For Respondent: A.V. Gama - Deputy Registrar, B. Lukhele - Assistant Registrar and S.S. Vilakati - (Employer Representatives)

1. PARTIES AND HEARING:

The Applicant in this matter is the Association of Lecturers and Academic Personnel (ALAP) of Private Bag 4, Kwaluseni, represented by the J.M. Thwala (President) and N.A. Sukati (Secretary General). I will hereinafter refer to them as the Applicant or as the employees, or as ALAP.

The Respondent is the University of Swaziland of Private Bag 4, Kwaluseni, represented by A.V. Gama (Deputy Registrar), B. Lukhele (Assistant Registrar) and S.S. Vilakati (Registrar). I will hereinafter refer to the organisation as the Respondent, or the employer or simply as UNISWA.

2. REPRESENTATION

The Applicants were represented by their negotiating team led by the President, J.M. Thwala as spokesperson. The Respondents were represented by the management team led by A.V. Gama (Deputy Registrar) as spokesperson.

3. ISSUES IN DISPUTE

This dispute relates to payment of Cost Of Living (COL) adjustment/increase for the 2006/7 financial year, backdated to 1st April 2006. Applicants demanded a COL increase of 5.53% backdated to 1st April 2006. Respondent on the other hand, offered Applicants a COL of 3.8%, also backdated to 1st April 2006.

Parties began their negotiations in August 2006 wherein Applicants made an initial demand of a COL of 5.8%, which was later reduced to 5.53%, as an act of compromise on the part of ALAP. Respondent tabled an offer of 3.8%, which they maintained throughout the negotiation process. In terms of the submissions by Respondent, this offer was based on the approved Public Enterprise Unit (PEU) defined 'major' for 2006/7 of 3.8%.

As already noted hereinabove, Applicants revised their initial demand of 5.8% but Respondent maintained her offer throughout the internal negotiations. The lack of movement on the part of Respondent, led Applicants to declare a deadlock and to seek the assistance of the Conciliation Mediation and Arbitration Commission of Swaziland (CMAC) in resolving the dispute.

The dispute was therefore reported to CMAC in 26th October 2006 and was conciliated upon by CMAC on the 11th January 2007 with no success, resulting in CMAC issuing a Certificate of Unresolved Dispute, No. 013/07, dated 15th January 2007. Applicant then sought to have the dispute arbitrated under the auspices of CMAC which request was agreed to by Respondent, on the 11th January 2007. I was then appointed by CMAC to arbitrate the dispute on the 22nd January 2007.

4. BACKGROUND INFORMATION

The background information to this dispute is that ALAP submitted that Respondents COL offer of 3.8% was unacceptable because of the following reasons: -

- a) That Respondent had negotiated in bad faith in that it withheld the financial records of the UNISWA to substantiate her argument that it could only afford a COL of 3.8%;

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- b) That Respondents failure to share the financial records of UNISWA with Applicants was not consistent with the letter and spirit of Item 30 of the Code of Good Practice, Section 109 of the Industrial Relations Act (Amended), 2000, on 'disclosure of information'.
- c) That because of this, ALAP could not be in a position to ascertain the merits and/or truthfulness of UNISWA's arguments or position;
- d) That by deliberately withholding the said information, Respondent significantly contributed to the impasse which in turn led to the breakdown of the salary negotiations, resulting in Applicant resolving to declare a dispute and to then seek the intervention of CMAC with the aim of assisting the parties to resolve the interest dispute.

On the other hand, Respondent highlighted: -

- a) That UNISWA management had not acted in bad faith

throughout the salary negotiations; b) That UNISWA management did not withhold any information to the Applicant; c) That the 2006/7 financial report was only due after the end of the 2006/7 financial year in March 2007; and d) That its offer of 3.8%, was based on the PEU defined 'major' of 3.8%, which all parastatal organisations that were governed in terms of the Public Enterprises (Control and Monitoring) Act of 1989, were obliged to adhere to.

5. SUMMARY OF EVIDENCE AND ARGUMENTS Applicant's Version

In support of its demands and to justify its position, Applicants submitted the following evidence and arguments to the arbitration proceedings: -

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- a) An economic analysis of the 5.53% demand based on: Highlighting the need for COL negotiations to take into consideration economic indicators like inflation rates, COL indices, levels of economic activity, business cycles, industry trends, economic forecasts and unemployment levels. Reference was made to Case No. 303/2004, YKK Southern Africa (Pty) Ltd v SMAWU
- b) Inflation rates and Consumer Price Index values for the years 1990 to 2006;

- c) Arguments to deal with Respondents assertion that the PEU 'defined major' once set could not be exceeded. Proof that UNISWA had in the past exceeded the PEU defined major in respect to 2005 wherein UNISWA approved COL of 3.4% yet the defined major was 2.4%;
- d) Arguments to deal with the question of affordability. Reference was made to:
 - The 2006/7 budget submission by UNISWA to government,
 - The supplementary budget allocation of the 2006/7 financial year,
 - Other sources of revenue that UNISWA receives from the bookshop, refectory, rentals and investment income,
 - The question of surpluses posted by UNISWA from previous years as contained in the UNISWA report to Council of the 24th February 2006
 -
- e) Argument on favourable COL agreements by other parastatals that exceeded the PEU defined major as well as the recommendations of the Commission of Enquiry Report submitted to government under Legal Notice No. 20 of 2005;
- f) Arguments on the unfavourable negotiations environment that ALAP had been subjected to. In this regard, reference was made to:

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- Failure of UNISWA management to compromise beyond the PEU defined major,
- Bargaining in bad faith by refusing ALAP access to critical financial information and records so that they could evaluate the accuracy of UNISWA management's arguments on the question of affordability,
- The bad faith demonstrated by UNISWA management in respect to the 2005/6 COL negotiations,
- Inconsistencies by UNISWA management in respect to the issue of supplementary budget, and
- Unfulfilled undertaking by UNISWA management arising out of the Kobla Quashie salary review of 2003/4

Respondent's Version

Respondent on the other hand, submitted the following evidence and arguments in support of its position: -

- a) Documents detailing the UNISWA budget for the years 2000 to 2006,
- b) UNISWA's supplementary budget submission to government, for 2006/7,
- c) The PEU Act, confirming issues of compliance to the set defined major for parastatals,
- d) Governments response to UNISWA's supplementary budget submission,
- e) The KPMG salary review report, dated November 2005,
- f) Kobla Quashie salary review report, dated April 2002,
- g) Commission of Enquiry Report, under Legal Notice No. 20 of 2005,
- h) Audited Financial Statements for UNISWA for the years ending March 2006, March 2005, March 2004, March 2003, March 2002, and
- i) List of staff members who left UNISWA between the periods 2001 - 2006.

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6. ANALYSIS OF EVIDENCE AND ARGUMENTS

At the end of submission of evidence, the Arbitrator advised the parties that there may be an opportunity for conciliating the dispute and requested their consent to pursue this route and that if initial exploratory meetings proved difficult, arbitration proceedings would continue i.e. that parties would proceed to file formal closing statements. Both parties gave the Arbitrator permission to undertake 'conciliation within the arbitration proceedings' as agreement by mutual consent had been their primary goal and had only resorted to the arbitration route only after it became clear that negotiations were stalling.

A.V. Thwala (President of ALAP) and S.S. Vilakati (Registrar) were mandated to engage the Arbitrator in the conciliation proceedings. An initial exploratory meeting was held on Thursday, the 8th March 2007, at Esibayeni Lodge at 1.30pm. At this meeting, the Arbitrator emphasized the value of a mutual settlement of the dispute through compromise, particularly given the nature of the dispute and the fact that the positions of the parties were not too far apart. What also became very clear during the arbitration proceedings was that the key underlying issue that had influenced the positions of the parties was the issue of the breakdown in trust leading the Applicant to level accusations of bad faith against the Respondent. This fact that was also borne by the nature of evidence led before the arbitration proceedings.

The Arbitrator then suggested two options to the parties to consider and to review with their respective negotiation teams: -

- a) Option A - an increase closer to 3.8% backdated to 1st April 2006;

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- b) Option B - an increase closer to 5.3% backdated to either 1st July 2006 or 1st October 2006. Both parties then undertook to consider these options and to revert back to the Arbitrator. A second meeting was then scheduled for Monday, 12th March 2007 at the University of Swaziland, 5.00pm. At the second meeting and after one-on-one sessions with the parties, the two options were then narrowed down to one option of 4.5% backdated to 1st April 2007 which Respondent highlighted could be a basis for agreement, should Applicants confirm its acceptability. Applicant's Representative, then undertook to go and consult finally with the ALAP negotiation's team and to revert back to the Arbitrator the following day. A third meeting was then scheduled for Tuesday, the 13th March 2007 again at the University of Swaziland, at 5.00pm. Feedback was then given to Arbitrator on the 13th March 2007 that ALAP had accepted the offer of 4.5% COL salary increase, backdated to 1st April 2006.

7. CONCLUSIONS

In view of the acceptance of the 4.5% increase backdated to 1st April 2006, a Memorandum of Agreement (copy attached) was then entered into by the parties, which signalled that the dispute had been successfully resolved by mutual consent. The terms of the agreement were:

- a) That the Respondent undertook to implement a 4.5% salary increase on the bargaining unit of ALAP, backdated to 1st April 2006, in respect to the 2006/7 financial year;
- b) That this salary increase was in full and final settlement of the salary negotiations dispute and that Applicant by accepting the increase, confirmed that they will no longer have any dispute with UNISWA whatsoever, arising out of the 2006/7 salary negotiations; and

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- c) That the salary increase including the related backpay to 1st April 2006 would be paid by the Respondent, on or before the 30th March 2007.

8. AWARD

Based on the Memorandum of Agreement and in terms of the details of the report of dispute, I hereby make the following award: -

- a) That the Respondent must implement a COL salary adjustment/increase of 4.5% salary increase on the bargaining unit of ALAP, backdated to 1st April 2006, in respect to the 2006/7 financial year;
- b) That this salary adjustment/increase is in full and final settlement of the salary negotiations for the 2006/7 financial year; and
- c) That the salary increase including the backpay to 1st April 2006 shall be payable on or before the 30th March 2007.

In addition and taking into cognisance the basis of the dispute i.e. breakdown in trust between the key stakeholders of this extremely vital institution, Respondent is ordered to facilitate a teambuilding session with the Applicants negotiating team, at its own cost. This will ensure that the issues highlighted by Applicants during the course of the arbitration, which factors to a large extent were valid and reasonable, are dealt with effectively.

The industrial relations climate within UNISWA has not traditionally been managed effectively particularly in respect to the recognition of ALAP and subsequent negotiations, have as a result, been clouded with suspicions and perceptions of bad faith and lack of trust. To a large extent therefore ALAP has borne the brunt of this reality and have certainly exercise restraint in the manner it has dealt with

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UNISWA management, for example, pursuing amicable settlements of dispute even where they had the opportunity and the right to strike action.

It is therefore in my view, in the best interest of the institution that UNISWA management sought to finally deal with past concerns and to lay the basis for effective employee/employer relationships. Without embarking on this process, there remains no guarantee that future dispute resolution will not become hostile, thus affecting the smooth running of the institution and future negotiations. To their credit, UNISWA management did note during the conciliation process, that this remained a key priority area.

Thus done and signed by me at Manzini on the date of 19th March 2007.

CMAC COMMISSIONER MAX MKHONTA ARBITRATOR

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