

CONCILIATION, MEDIATION AND ARBITRATION COMMISSION
(CMAC)

MNZ: 626/2006

In the Matter Between:

SMAWU

APPLICANT

And

UNIVERSAL MILLING
PATRICK B. MKHONTA

RESPONDENT
ARBITRATOR

HELD IN MANZINI

AWARD -19 MARCH 2007

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A. Details of Parties, Representation and Hearing

1. The Arbitration hearing was held on 2 February 2007 at 9.30 am at the Commission's offices in Manzini. The Applicant in this dispute is SMAWU of P.O. Box 2379 Manzini. I will, hereinafter, refer to SMAWU as the Applicant. The Respondent is Universal Milling of P.O. Box 4200, Manzini. I will, hereinafter, refer to Universal Milling as the Respondent or the employer.

2. I am the Arbitrator in this case having been appointed as such by the Conciliation Mediation and Arbitration Commission (CMAC), herein referred to as the Commission. I have jurisdiction over the dispute before me.

3. At the Arbitration hearing, the Applicant was represented by Chris Nene and Polycarp Stewart whilst Paul Dlamini represented the Respondent. The Applicant called two witnesses, namely Bongani Mamba and Sibusiso Maseko to give evidence in support of their position. The Respondent called no witnesses.

3. At the beginning of the arbitration, the parties confirmed that the dispute had been properly brought before the arbitration; agreed on the language to be used; reported on the number of witnesses they intended to call; the Arbitrator explained the arbitration process and proposed a procedure to be followed in the arbitration. The arbitration proceedings were recorded.

B. Background

The Applicant reported a dispute to the Commission, as per the provisions of the Act. Subsequently, the parties were invited for conciliation. Both parties participated in the conciliation meeting that took place in the month September 2006 at CMAC's offices in Manzini. However, the conciliation process was unsuccessful because the parties failed to reach a settlement. The dispute was declared an unresolved dispute on 27th September 2006. By agreement of the parties, this dispute was referred to arbitration.

C. Issues in Dispute

On the one hand, the Applicant (SMAWU) - an employee organization - alleges that they are active in the manufacturing industry and that the present dispute arises out of the refusal by the Respondent to grant them recognition as the sole representative of the workers at Universal Milling. The Respondent, on the other hand, alleges that the Applicant has not up to this day proved its claim that it is the sole representative of the workers at Universal Milling. The Respondent alleges that in fact the company's records indicate that its employees are represented by SPRAWU, a completely different union.

D. Questions to be decided

It must be determined whether the Applicant has fulfilled the provisions of section 42 (1) - (5) of the Industrial Relations Act 2000 (as amended) which stipulate the requirements for a union to gain recognition as the employee representative in an undertaking. It must then be determined whether or not SMAWU qualifies for recognition as the sole employee representative in the company.

E. Summary of Evidence and Arguments on the Merits

APPLICANT'S CASE

The Applicant submits that:

- (I) they made an application to the Respondent in terms of section 42 of the Industrial Relations Act 2000 (as amended) for recognition as the sole representative of the employees of the company. The present dispute arises out of the failure or refusal by the Respondent to grant the recognition sought;
- (II) the arguments that were advanced by the Respondent at an earlier stage to justify its refusal to recognize the union were irrelevant and not in conformity with the provisions of the Industrial Relations Act 2000 (as amended);

(Ill) the provisions of section 42 of the Industrial Relations Act require that once a union's application for recognition has been received, the employer must respond within a specified period. In this case the Respondent refused or neglected to respond. The Respondent's failure to respond within the time frame stipulated under section 42 (3) and section 42 (5) of the Act constituted a breach of the same provisions.

Section 42 (3) of the Act states that:

"If less than fifty percent of the employees in respect of which the trade union or staff association seeks recognition are fully paid up members of the organization concerned, recognition shall be at the discretion of the employer and the employer shall, within 30 days of the receipt of the application, reply in writing".

Section 42 (5) of the Act states that:

"If not less than fifty percent of the employees in respect of which the trade union or staff association seeks recognition are fully paid up members of the organization concerned, the employer shall, within 30 days of the receipt of the application and in writing -

(a) grant recognition to the organization; or

(b) if the employer is in doubt, and advises the applicant so in writing, the parties shall go for a verification count.

(c) if the employer decides not to grant such recognition, the employer shall lodge with the Court the reasoning for the refusal to grant recognition and serve a copy thereof on the industry union or industry staff association, as the case may be".

APPLICANT'S EVIDENCE Evidence of Bongani Mamba

The Applicant called Bongani Mamba as the first witness to provide evidence in support of their case. In his evidence Bongani Mamba testified that:

(I) he is an Assistant Miller at Universal Milling and has worked for the company since August 28 2004. He is familiar with union activities at the Company because he is the chairperson of the works council at Universal Milling, a position he has held since 2006;

(II) his works council is the official mouth piece of the workers at present. When having discussions or engaging in negotiations

with management, the works council acts on its own initiative and no other union attends the meeting to support it;

(III) he is aware that there was once a union at Universal Milling. He knows this because when he joined the company, the Swaziland Processing and Refining Allied Workers Union (SPRAWU) acted as the representative of the employees. The aforementioned union is no longer active. It stopped representing company employees in 2004 when its members (the employees of the company) were dismissed from work;

(IV) Of the approximately 60 employees in the company, more than 40 are now members of the Swaziland Manufacturing and Allied Workers Union (SMAWU);

(V) the employees who are now members of the union (SMAWU) all paid E 5.00 joining fee and received membership cards and pay E10.00 per month as subscriptions;

Evidence of Sibusiso Maseko

The Applicant called Sibusiso Maseko as the second witness to give evidence in support of their case. In his evidence Sibusiso Maseko testified that:

(I) he is an employee of Universal Milling and a member of the works council;

(II) When he first joined the company in 2004 there was a union at Universal Milling i.e. SPRAWU. The company employees who were members of SPRAWU were all dismissed. In consequence SPRAWU stopped operating at the company. When it became clear that SPRAWU was no longer active, a vacuum was created which paved the way for the current employees of the company to organize themselves into a works council. Many of them have joined SMAWU. Approximately 56 of the employees at Universal Milling are members of SMAWU

(III) the employees who joined SMAWU pay subscriptions and have membership cards. He is sure about the figure of 56 because he counted those who have not yet joined. Of all the employees at the company only ten (10) have not yet joined SMAWU;

(IV) Over fifty percent (50%) of the company employees are members of SMAWU.

APPLICANT'S PRAYERS

Based on the above submissions and evidence, the Applicant submits that they have fulfilled the provisions of section 42 of the Industrial Relations Act.

Therefore, the Applicant prays that:

- (I) the union (SMAWU) be granted recognition as the sole employee representative at Universal Milling;
- (II) that the Respondent starts effecting deductions as per the provisions of section 43 of the Industrial Relations Act and remit same to the union within 3 days; and
- (III) that the Respondent be ordered to pay arrear subscriptions for delaying the recognition process;

RESPONDENT'S CASE

The Respondent submits that:

- (I) the company records show that the only union that was ever active at Universal Milling is SPRAWU;
- (II) the company has not seen evidence that proves that the situation has changed or that its workers are now members of a union other than SPRAWU;
- (III) the Applicant must be held for strict proof of its claims;

F. ANALYSIS OF FINDINGS

The arbitration seeks to determine whether there is any substance to the claims made by the Applicant i.e. that as a union they have satisfied the provisions of section 42 of the Industrial Relations Act of 2000, as amended. In this arbitration the Applicant has through the evidence of Bongani Mamba and Sibusiso Maseko, sought to prove that the majority of the workers at the company have joined SMAWU.

In their evidence, both Mamba and Maseko submitted that more than fifty percent of the employees at the company have joined SMAWU and have paid their joining and subscriptions fees. Both also submitted evidence which sheds light concerning the historical background of union activity at the company. From their evidence it can be deduced that when they joined the company in 2004 SPRAWU was active as a union representing the interest of workers at Universal Milling. This explains the argument advanced by the Respondent that the company records indicate its workers ought to be represented by SPRAWU. It is clear, however, from the evidence of both Mamba and Maseko that the group of employees who were members of SPRAWU were dismissed, thus bringing to an end the involvement of SPRAWU in employee-union activities at the company. With the departure of those workers and the

disappearance of SPRAWU, a vacuum was created which paved the way for the workers to form a works council and to join SMAWU. The evidence of both Mamba and Maseko indicates that the majority (more than 50%) of the workers at the company are members of SMAWU. Evidence has also been led by both the aforementioned witnesses to the effect that those who claim to be members SMAWU now have membership cards by virtue of having paid joining and subscription fees. The evidence of Bongani Mamba and Sibusiso Maseko is consistent and corroborative. I have no reason not to accept their evidence. The Applicant drew my attention to Case No. 94/04, heard at the Industrial Court: Swaziland Processing and Refining Allied Workers union (Applicant) and Swaziland Paper Mills (1st Respondent) and Swaziland Manufacturing and Allied Workers Union (2nd Respondent) Applicant's Prayers. In this ruling the Court ruled in favour of the Applicant (SPRAWU) having found that it has attained 62% of all the unionisable employees at company (Swaziland Paper Mills) owned by the first respondent. The first Respondent was advised to de-recognise the second Respondent (SMAWU) which had claimed to be the representative of the workers. The main import of this ruling is that there ought to be one employee representative i.e. the union that proves that it has fulfilled the provision of section 42 of the Act.

G. Conclusion

1. The Applicant has proved that it has fulfilled the provisions of section 42 of the Act in that not less than fifty percent of the unionisable employees at Universal Milling are fully paid up members of the Applicant.

2. It is not for this arbitration to make a ruling regarding the second and third prayers made by Applicant. In relation to this aspect, the parties should refer to the relevant provisions of the Act.

H. Award

Having considered all the evidence before me, I now make the following ruling: The Applicant's first prayer is granted. The Respondent must recognise the Applicant by 10 April 2007.

19 MARCH 2007

PATRICK MKHONTA ARBITRATOR