



ARBITRATION AWARD

Case Number: FSBF1642-13

Commissioner: Jana Burger

Date of Award: 12 May 2014

In the ARBITRATION between

PSA obo Lebakeng Lelee

(Applicant)

And

Department of Police, Roads and Transport : Free State

(Respondent)

Union/Applicant's Representative: Mr. Greeff

Union/Applicant's address: P.O. Box 7673

Bloemfontein

9300

Telephone: 051 – 403 1300

Telefax: 051 – 403 1315 / 051 – 403 1319

E-mail: psabloem@mweb.co.za

Respondent's Representative: Absent

Respondent's address: P. O. Box 119

Bloemfontein

9300

Telephone: 051 – 409 8851 / 051 – 409 8861

Telefax: 051 – 409 8864 / 086 640 6060

E-mail: Unknown

DETAILS OF HEARING AND REPRESENTATION:

- [1] The Arbitration proceedings in the above matter were scheduled for the 12th of May 2014 at the CCMA Offices, Elizabeth Street, Bloemfontein.
- [2] The Applicant, Lebakeng Lelee, was represented by Mr. J Greeff, an official of PSA. The Respondent, Department of Police, Roads and Transport: Free State, failed to attend the proceedings. Notice of the hearing was sent to them by fax to fax number 051 – 409 8864 and 086 640 6060 on 15 April 2014.
- [3] I am satisfied that they received sufficient notice and we proceeded in the Respondent's absence.
- [4] The Arbitration proceedings were digitally recorded.

ISSUE TO BE DECIDED:

- [5] The Applicant referred a disclosure of information dispute in terms of Section 16 of the Labour Relations Act. The Commissioner is required to determine whether the information required is relevant and whether the information required is information contemplated in subsection 5 (c) or (d). The Commissioner is further required to determine whether the requested documents should be disclosed to the Applicant by the Respondent.

BACKGROUND TO THE ISSUE:

- [6] The Applicant, Lebakeng Lelee, is employed by the Respondent as a Deputy Director in Labour Relations. The Applicant applied for the position of Director: Labour Relations, but was not shortlisted to attend interviews. The Applicant referred an unfair labour practice dispute to the GPSSBC under case number 185/2014. This matter was conciliated and a certificate of non-resolution was issued. The Applicant referred that dispute to arbitration and were awaiting a date for arbitration.
- [7] The Applicant requested information and documentation from the Respondent to enable the union to perform their functions and to represent the Applicant's case during the arbitration. The Respondent failed to provide the Applicant with the requested information and the Applicant referred this dispute to

the CCMA. The Applicant requested that the Respondent be ordered to disclose the information as requested.

- [8] The Applicant submitted a bundle of documents which was marked bundle A with pages 1 – 8.

SURVEY OF EVIDENCE AND ARGUMENT:

SUBMISSIONS ON BEHALF OF THE APPLICANT:

- [9] I wish to state from the outset that not all evidence presented will be set out hereunder. Only a summary of the evidence is contained herein.

- [10] The following witness was called to testify on behalf of the Applicant:

- o Abraham Johannes Lukas Greeff

- [11] Mr. Greeff testified under oath that he was representing the Applicant in the matter relating to an unfair labour practice under GPBC185/2014 in the GPSSBC. They wrote a letter to the Respondent as contained in A8 and requested the following information in order for PSA to give effect to section 14 and 16 of the Labour Relations Act:

11.1 The criteria which was used to select the shortlisted candidates for the position of Director: Labour Relations;

11.2 The report of the short listing of the post Director: Labour Relations;

11.3 The names of the shortlisting panelists for the post Director: Labour Relations;

11.4 The CV's and qualifications of the shortlisted candidates for the post Director: Labour Relations.

- [12] He submitted that the Respondent failed to reply to their request. The information required was needed in order for PSA to give effect to section 14 and 16 of the Labour Relations Act during the representation of the Applicant in the arbitration in GPBC185/2014.

- [13] He stated that the information required was not:

- (a) legally privileged;
- (b) information that the employer cannot disclose without contravening a prohibition imposed on the employer by any law or order of any court;
- (c) confidential and, if disclosed, may cause substantial harm to an employee or the employer; or

- (d) private personal information relating to an employee.

- [14] The Respondent failed to notify the Applicant whether the information was confidential and submitted that the information was public record. He requested disclosure of the said information by the Respondent.

SUBMISSIONS ON BEHALF OF THE EMPLOYER PARTY:

- [15] None submitted.

ANALYSIS OF EVIDENCE AND ARGUMENT:

- [16] Section 16 of the Labour Relations Act stipulates the following:

- "(2) Subject to subsection (5), an employer must disclose to a trade union representative all relevant information that will allow the trade union representative to perform effectively the functions referred to in section 14(4).
- (3)
- (4) The employer must notify the trade union representative or the representative trade union in writing if any information disclosed in terms of subsection (2) or (3) is confidential.
- (5) An employer is not required to disclose information-
- (a) that is legally privileged;
- (b) that the employer cannot disclose without contravening a prohibition imposed on the employer by any law or order of any court;
- (c) that is confidential and, if disclosed, may cause substantial harm to an employee or the employer; or
- (d) that is private personal information relating to an employee, unless that employee consents to the disclosure of that information.
- (6)-(9).....
- (10) In any dispute about the disclosure of information contemplated in subsection (6), the commissioner must first decide whether or not the information is relevant.
- (11) If the commissioner decides that the information is relevant and if it is information contemplated in subsection (5)(c) or (d), the commissioner must balance the harm that the disclosure is likely to cause to an employee or employer against the harm that the failure to disclose the information is likely to cause to the ability of a trade union representative to perform effectively the functions referred to in section 14(4) or the ability of a representative trade union to engage effectively in consultation or collective bargaining.

- (12) *If the commissioner decides that the balance of harm favours the disclosure of the information, the commissioner may order the disclosure of the information on terms designed to limit the harm likely to be caused to the employee or employer. "*

- [17] The information required in order for PSA to give effect to section 14 and 16 of the Labour Relations Act was the following:

17.1 The criteria which was used to select the shortlisted candidates for the position of Director:

Labour Relations;

17.2 The report of the short listing of the post Director: Labour Relations;

17.3 The names of the shortlisting panellists for the post Director: Labour Relations;

17.4 The CV's and qualifications of the shortlisted candidates for the post Director: Labour Relations.

- [18] The dispute under case number GPBC 185/2014 related to a promotion dispute which was referred to the council as an unfair labour practice dispute. I am satisfied that the information required is indeed relevant to enable the union to represent the Applicant during the Arbitration.

- [19] The information requested is not confidential and will not cause substantial harm to an employee or the employer. The CV's and qualifications of the shortlisted candidates for the post Director: Labour Relations was requested, and I must balance the harm that the disclosure is likely to cause to an employee or employer against the harm that the failure to disclose the information is likely to cause to the ability of a trade union representative to perform effectively the functions referred to in section 14(4) or the ability of a representative trade union to engage effectively in consultation or collective bargaining.

- [20] If the information requested is not disclosed, the trade union would not be able to present the Applicant's case in the Council. I therefore find that the balance of harm indeed favours the disclosure of the information.

AWARD:

- [18] The Respondent, Department of Police, Roads and Transport : Free State, is ordered to disclose the following information to the Applicant on/or before 31 May 2014 in order for the trade union to give effect to section 14 and 16 of the Labour Relations Act:

- 18.1 The criteria which was used to select the shortlisted candidates for the position of Director;
Labour Relations;
- 18.2 The report of the short listing of the post Director: Labour Relations;
- 18.3 The names of the shortlisting panellists for the post Director: Labour Relations;
- 18.4 The CV's and qualifications of the shortlisted candidates for the post Director: Labour Relations.

[19] No order as to costs is made.



Signature: _____

Commissioner: **Jana Burger**

Sector: **Public Service**

APPROVED

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