



# JURISDICTIONAL RULING

Case No: **PSHS895-16/17**

Commissioner: **Thabe Phalane**

Date of ruling: **15 August 2019**

In the matter between:

**PSA obo Matjeke M.A**

Applicant

and

**Department of Health- Gauteng**

1<sup>st</sup> Respondent

**Department of Public Service and Administration**

2<sup>nd</sup> Respondent

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## DETAILS OF THE HEARING REPRESENTATION

1. An Arbitration hearing was held on 16 July 2019 at the Department of Labour, 77 De Korte Street, Braamfontein.
2. The Applicant attended and was represented by Mr Tshepo Mokoena, an Official of the Union, whilst the 1<sup>st</sup> Respondent was represented by Mrs Theron Makuya, the Respondent's Official. The 2<sup>nd</sup> Respondent is represented by Mr Braam Van Der Walt, the Respondents Official.
3. The Respondent was represented by a different representative and the point in limine raised now was not put to the Commissioner Matshaka for determination by him. The Respondent is now sitting with many similar cases where its employees are not contributing to the Council but referred their matters to the PHSDSBC.
4. The Respondent therefore raised an objection to the jurisdiction of Council although the Applicants' profession of a Counsellor is covered by the provisions of Resolution 2 of 2010, the Applicant was however not contributing to the Public Health and Social

Development Bargaining Council (PHSDSBC) but to the General Public Service Sectoral Bargaining Council (GPSSBC) and the Public Service Co-ordinating Bargaining Council (PSCBC).

5. The Applicant submitted that she was contributing to the Health Professional Council and the Resolution in dispute covers her profession.

### **ISSUE TO BE DECIDED**

6. I am required to consider whether the Council has jurisdiction to hear the matter or not and consequent thereon, to issue the appropriate ruling.

### **BACKGROUND TO THE ISSUE**

7. The Applicant referred a dispute about interpretation and application of a collective agreement to GPSSBC and they ruled that the Council did not have jurisdiction.
8. The Applicant referred to PHSDBC and Respondent raised a point *in limine* that the Council did not have jurisdiction, but Commissioner Lungile Matshaka ruled that the PHSDSBC did have jurisdiction because the Resolution is concluded at PHSDSBC.
9. The Respondent has again raised a point *in limine* that the Council does not have jurisdiction because the Applicant is not contributing to the Council but to GPSSBC and PSCBC and not PHSDBC.
10. The parties then submitted bundles of documents in support of their arguments, including the Resolution 2 of 2010, payslips and the Ruling previously issued when jurisdiction was initially challenged. I am therefore required to issue a ruling in this regard.

### **ANALYSIS OF SUBMISSIONS**

11. The Respondent has applied for a ruling on Council jurisdiction because the Applicant is not a member of the PHSDSBC and is not making any contribution to the Council.
12. The Applicant submitted that the Resolution in dispute, Resolution 2 of 2010, applies to her because she is a counsellor and the resolution covers her profession.
13. There is also a ruling that confirms her submissions and the Applicant should not be sent from one Council to another when the first Council that she referred to said that

there is no jurisdiction and the next one also says go back because this council has no jurisdiction as well.

14. I find that the Respondents objection here is an administrative issue in that the administration of the payments of the contributions of employees falls directly in the functions of the Respondent as the employer.
15. The reality of the fact is that there are overlapping powers of the different departments not entirely falling in the Health and Social Development Departments.
16. Where an overlap or concurrent jurisdiction occurs, the starting point should be to determine where the Resolution was concluded. Resolution 2 of 2010 which interpretation and application dispute is sought was concluded in the PHSDSBC and I therefore find that the Council will have jurisdiction to hear the matter.
17. I am therefore in agreement with the Ruling previously issued that the Council has jurisdiction, and the Respondent has to administratively identify and ensure that for those employees who are covered by resolutions concluded in different Bargaining Councils, their contributions are directed to the relevant Bargaining Council.

In light of the above I deem the following ruling competent.

## **RULING**

18. The Council has jurisdiction to hear the matter.
19. The Council must set down the matter for arbitration and advise the parties accordingly.
20. There is no order as to costs.



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Thabe Phalane (Panelist)