



# ARBITRATION AWARD

Case No: **PSHS44-25/26**

Commissioner: **M.A. Nozigqwaba**

Date of award: **30 August 2025**

In the matter between:

**PSA obo Chwayita Madikane**

Applicant

and

**Department of Social Development- Eastern Cape**

Respondent

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## DETAILS OF HEARING AND REPRESENTATION

1. This arbitration was held at Department of Social Development offices in Lusikisiki on 24 June 2025, and then in Mthatha on 14 August 2025. Ms Chwayita Madikane (applicant) was in attendance in both sessions and was represented by a PSA official, Mr Samkelo Mzuku. Department of Social Development- Eastern Cape (respondent) was represented by its labour relations deputy director, Mr Zimisele Sam.
2. This dispute was referred as interpretation and application dispute in terms of section 24(2)<sup>1</sup> and 24(5)<sup>2</sup> of Labour Relations Act 66 of 1995 as amended (LRA).

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<sup>1</sup> Subsection (2): 'If there is a dispute about the interpretation or application of a collective agreement, any party to the dispute may refer the dispute in writing to the Commission if-

(a) the collective agreement does not provide for a procedure as required by subsection (1);

(b) the procedure provided for in the collective agreement is not operative; or

(c) any party to the collective agreement has frustrated the resolution of the dispute in terms of the collective agreement.'

<sup>2</sup> Subsection (5): 'If the dispute remains unresolved, any party to the dispute may request that the dispute be resolved through arbitration.'

3. After completion of the proceedings, parties elected to do their closing arguments in writing and undertook to file them by not later than 21 August 2025. Both parties filed as agreed, and I have taken their arguments into consideration in penning this award.

### **ISSUE TO BE DECIDED**

4. I am required to determine whether in terms of clauses 3.1 and 3.4 of PHSDSBC Resolution 3 of 2011 (Resolution), the applicant who has been nominated by PSA to be its full-time shop steward (FTSS), is eligible to be appointed as a FTSS and thus be released by the respondent to render union duties and continue receiving her remuneration.
5. Should I find that indeed the applicant is eligible for appointment as a FTSS I will issue an appropriate remedy.

### **BACKGROUND TO THE ISSUE**

6. The applicant is a social worker stationed at Lusikisiki Service Delivery Point (SDP) and has been there since 2014. Lusikisiki SDP is under Ingquza Hill Area, which in turn is under OR Tambo Region. She is a PSA shop steward, and her union nominated her to be its FTSS. A request for her appointment to be confirmed and formalised in line with clause 3.4<sup>3</sup> of the Resolution was sent by PSA to the respondent on 18 December 2024.
7. The respondent responded on 25 March 2025 and turned down the union's request. The basis of its rejection was that the applicant (a social worker) is in terms of clause 3.1.4 of the Resolution holding a critical post and thus cannot be appointed as FTSS.
8. In determining whether a post is critical clause 3.1.5 provides as follows:  
    'In determining whether a post is critical, the following criteria should be considered:  
  
    3.1.5.1. The number employees performing similar work in the relevant Department;  
  
    3.1.5.2. The type of service provided;  
  
    3.1.5.3. The nature of work performed;  
  
    3.1.5.4. The current and expected allocation of resources; and  
  
    3.1.5.5 the non-availability of similar skills to replace the employee in the relevant Department.'

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<sup>3</sup> Clause 3.4 **'Appointment, Duration and Re-appointment of the FTSS**

3.4.1 Once the relevant department has received the notification, considered it and approved the release of the employee as a FTSS, the appointment of the FTSS will be confirmed in writing by the executing authority, or his or her delegate, to the relevant Trade Union.

3.4.2 Such appointment shall be by way of secondment to the respective Trade Union for deployment with provisions of 3.5.2..'

9. The dispute centres around the question of whether the applicant is in terms clause 3.1.5 of the Resolution holding a critical post and therefore not eligible for appointment as FTSS. The applicant's case is that a social worker position in the Department of Social Development is not a critical post, and therefore she is eligible for appointment as a FTSS. The respondent's case is that her post is a critical post and therefore she is not eligible for appointment.

## **SURVEY OF THE EVIDENCE AND ARGUMENTS**

### *Applicant's case*

#### *Applicant*

10. The applicant testified that after her nomination as PSA FTSS correspondence was sent by her union to the respondent's Head of Department (HOD) on 18 December 2024, wherein a request to release her in line with Resolution was sought. The respondent's HOD responded on 25 March 2025 and declined the request. The basis of declining the request to release her is that she is rendering social work services in Ingquza Hill, an area which is a hot spot for several social ills. Her service delivery point has lost five social workers due to death, promotion and transfer and the respondent is currently unable to fill vacant posts. The respondent is also saying that it invested valuable skills on her, and should she be released her workload would be shared amongst her team members potentially leading to stress and burn out to the said team members.
11. On the respondent's response (page 3 of applicant's bundle A, para 2.1.) that it had lost 5 social workers in Ingquza Hill Area, the applicant is saying she only knows of one social worker released on incapacity due to ill-health in 2024 / 2025 financial year. Another social worker was promoted to Flagstaff delivery point (which is still under Ingquza Hill Area). Nothing has been done to fill the post left because of incapacity.
12. The applicant understands the importance of a social worker in dispensing the respondent's mandate but what she disputes is that as an ordinary social worker, in Department where 80 % of the staff are social workers, her position as an ordinary social worker can be regarded as critical. She is not a social worker with particular specialisation that can be regarded as critical. The number of social workers employed has not in any instance been enough.
13. The respondent had previously released a social worker from Ingquza Hill Area (Mr Mangembe) for two consecutive terms of three years each. At the time of realising him it cannot be said that there were enough social workers in the area.
14. The respondent has just announced the resumption of recruitment for vacant posts in different areas of the province. The OR Tambo District (under which Ingquza Hill Area falls) is to be allowed to fill ten posts. This can address the shortage of social workers in their area.

15. If she would not be released social workers' interests in Eastern Cape Social Development sector will not be adequately represented. PSA is eligible to have two FTSS. It already has one from Department of Health-Eastern Cape, and if her nomination would not be confirmed it would mean that the second one must also come from Department of Health. Social workers' interests from applicant's Department would not be adequately represented.
16. On cross examination the applicant was referred to the Generic Norms and Standards for Social Welfare Services Policy (Generic Norms Policy) where it is reflected that ratio of a social worker to the population of a service delivery area is 1: 2 500 in rural areas. With Ingquza Hill Area population having been recorded in 2022 census as 354 573 it means in Ingquza Hill Area needs to have 142 social workers for the area to function optimally. In the 2016 census Ingquza Hill population was 303 379, and this means in that period 121 social workers were needed to fully service the area. Of the required 142 Ingquza Hill Area has only 52 social workers. Her response was that there have been social worker positions that have remained vacant and unfilled for a long time.

*Respondent's case*

*Ms Ntombifuthi Nothobela*

17. Ms Ntombifuthi Nothobela (Deputy Director- administration serving as Ingquza Hill Area manager) testified that the area she is managing comprises of Lusikisiki and Flagstaff SDPs. The applicant and her fellow colleagues were each allocated nine areas to service and realising her would mean that her work would have to be evenly distributed to her colleagues.
18. According to the Generic Norms Policy's 1: 2 500 social worker to the population ratio, Ingquza Hill Area needs 142 social workers in terms of the 2022 Ingquza Hill census population statistics of 354 573. In 2016 Ingquza Hill needed 121 social workers according to the then 303 379 recorded population for the area.
19. Ingquza Hill is a hot spot area for a variety of social ills such as murder and bullyism. Losing the applicant while in need of more social workers will put the area on a backfoot. About five social workers have recently been lost in the area.
20. The applicant has been nominated by her union (PSA) to be its FTSS. The HOD has declined her release based on what is mentioned in the response letter in pages 3- 4 of A. Chief amongst the mentioned reasons are the shortage of social workers, potential strain and burn out to fellow colleagues if she were to be released, and non-existent possibility of replacing her.
21. On cross examination it was put to her that social worker positions are ordinary positions in the Department and if they were priority positions, they would be categorised as such and be filled without delay. Her response was that she did her part of submitting formal request to have them filled. On recruitment being

re-opened she testified that they have been allocated only one social worker position while another is to be for a manager. She acknowledged that social workers comprise the majority of the respondent's staff compliment, with the rest being the support staff.

22. The witness also agreed that the shortage of staff was still in existence when Mr Mangembe was released for two consecutive terms to be a FTSS. On the question of whether social work position is a specialist position her reply was that it was not. She further agreed that if the applicant was to be released her duties would be shared amongst her colleagues as was done when Mr Mangembe was released for two consecutive terms.

### *Arguments*

23. For the applicant it was argued that the dispute centres around the interpretation of clause 3.1.5 of the Resolution. With the clause properly interpreted the applicant would have been released to services her union and members as a FTSS. The post of generic social worker she holds is by no means a critical position as contemplated in clause 3.1.5. Two social worker positions have been prioritised for Ingquza Hill area, but no processes have commenced as proof that filling them is of utmost priority. The respondent has released a social worker before for two consecutive terms of three years each. It has not been proven that applicant's post is critical as contemplated in clause 3.1.5 and therefore the respondent had no basis for refusing to release the applicant to render FTSS duties. The respondent is to be ordered to release the applicant to serve as FTSS.
24. For the respondent it was argued that the applicant's position is, as contemplated in clause 3.1.5 of the Resolution, a critical post. The respondent dispenses a section 27 Constitutional mandate of providing social assistance to communities and social workers are its essential agents for ensuring that such is realised. She applicant is assigned to work with nine villages in Lusikisiki, notorious for several social ills. Vacant posts have not been easy to fill because of budgetary constraints. It cannot be correct to perpetuate the incorrect decision of having previously release a social worker to be a FTSS. The Ingquza Hill Area is servicing communities with social workers that are far below than the set 1: 2 500 ratio set in respondent's Generic Norms Policy. PSA should consider nominating as FTSS, from its pool of members, a person who is not a social worker. The decision to decline confirming the appointment of the applicant as FTSS was therefore fair and rational and should not be interfered with.

### **ANALYSIS OF EVIDENCE AND ARGUMENTS**

25. This is an interpretation and application dispute in terms of section 24 of the LRA and of substantial interest to the applicant and her union (PSA who has referred the dispute on her behalf in terms of section 200(1)(b)) is to have the applicant, nominated by the union to be its FTS, appointed in terms of clause 3.4 of the

Resolution. In *Skulpad v Department of Health (Eastern Cape) and Others*<sup>4</sup> dictum the Labour Court had the following to say on the locus standi issue:

'[36] Thus depending on the nature of the section 24 dispute, sometimes employees will have a legal interest and sometimes both will have a legal interest.'

In the case at hand, it is in the applicant's interest and that of her union that she be appointed as the full-time shop steward in terms of clause 3 of the Agreement, which they seek to have it interpreted and applied. The Labour Court went further to say that what the arbitrator is enjoined to do when interpreting and applying the substantive aspects of the agreement (or resolution) is to interpret and apply it to the circumstances argued and proven by parties.

26. At issue in this dispute is whether the applicant's social worker post, stationed in an understaffed service Lusikisiki SDP (under Ingquza Hill Area), is to be regarded as a critical post as contemplated in clause 3.1.5 of the Resolution.
27. It is an established principle that where the wording in the agreement is clear and unambiguous it should be given its ordinary meaning in the context of the agreement, without reliance to external evidence to demonstrate the intention of the parties to the resolution. Also, of importance when interpreting collective agreements is to recognise, as was held in *SAMWU v SALGBC*<sup>5</sup>, that they operate within the framework of the LRA and must be interpreted in accordance with the purpose of the LRA, which is that of striking a balance of fairness between parties.
28. The applicant's position is that of social worker in a department whose staff complement is mostly social workers. The functionaries of the respondent carrying its mandate, deployed in various service centres are social workers. They carry out the core business of the respondent. In consideration of clause 3.1.5.1 (the number of employees performing similar work in the relevant Department) it has been proven that ordinary social workers comprise the majority of the respondent's staff complement. The clause calls for consideration of the number of employees performing similar work in the Department and not in an area or service centre. The type and nature of service and work provided and performed (clauses 3.1.5.2 and 3.1.5.2) is that of social work services performed by all ordinary social workers in various service centres and is not specialist social work service. Then there is current and expected allocation of resources (clause 3.1.5.4) consideration. In the case at hand, it is a fact that the applicant's service centre and area are understaffed when consideration is made to the Norms and Standards ratio. The situation has always been this way even when the respondent released Mr Mangembe to be FTSS for two consecutive terms. The respondent had distributed the work of the appointed official to the remaining colleagues. The non-

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<sup>4</sup> (2025) 46 ILJ 193

<sup>5</sup> [2012 BLLR 334 (LAC)]

availability of similar skills (clause 3.1.5.5) to replace the employee in the relevant Department is another consideration. The consideration is made in the relevant Department and not in the relevant service centre or area. The respondent is generally understaffed, but ordinary social work skill is a skill that cannot be said to non-available in the Department. The proper interpretation of clause 3.1.5 is by no means assigning a recognition of critical post to ordinary social worker position.

29. On the striking of a fair balance between parties, in line with the LRA purpose, I hold a view that it cannot be fair for social workers who are the majority of the respondent's employees to be expected to settle for an arrangement of having their interests represented and advanced by a person who is not a social worker. In the circumstances I find that the applicant's post is not a critical post as contemplated in clause 3.1.5 and the respondent has no justifiable reasons to refuse to endorse and confirm her appointment in terms of clause 3.4.

### **AWARD**

30. I therefore make the following award:

- 30.1. The applicant's social work position is not a critical post as contemplated in clause 3.1.5 of Resolution 3 of 2011 and her categorisation as such is contrary to what is provided in the Resolution.
- 30.2. The respondent is ordered to immediately confirm the applicant's appointment as PSA's FTSS in line with what is provided for in the Resolution.



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**M.A. Nozigwaba**