



REPUBLIC OF SOUTH AFRICA
THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG
JUDGMENT

Not reportable

CASE NO: J 325/13

In the matter between:

**SOUTH AFRICAN MUNICIPAL WORKERS UNION
 AMD 27 OTHERS**

APPLICANT

and

CITY OF JOHANNESBURG

RESPONDENT

Date of ruling: 11 April 2013 (in Chambers)

RULING: APPLICATION FOR LEAVE TO APPEAL

VAN NIEKERK J

[1] This is an application for leave to appeal against the whole of the judgment delivered by the court on 25 February 2013, after hearing an urgent application on 22 February. The facts that are material to the dispute between the parties are recorded in the judgment, and I do not intend to repeat them here.

[2] The test to be applied is well-established – leave is granted if there are reasonable prospects of success.

- [3] In so far as the grounds of leave to appeal attack factual findings made by the court, the court found that the collective agreement that applied on transfer of the affected employees allows for a discretion to change shifts. Clause 11.2 of the 2006 Conditions of Service pertaining to shift work expressly permits the general manager to determine shift times. That being so, in line with the applicable authorities a change to shift times does not in these circumstances amount to a change to terms and conditions of employment. The distinction between a work practice and a term and condition of employment was recently confirmed by the LAC in *Motor Industry Staff Association v Silverton Spray painters and Panel beaters (Pty) Ltd* (case no JA 5/2011, 31 December 2012), where a change in the manner in which a job is to be performed was clearly classified as a change to a work practice. This is consistent with the long-standing jurisprudence in this court to the effect that a change in shift patterns does not amount to a unilateral change to terms and conditions of employment not least where the change and the right to effect change is specifically contemplated by those terms.
- [4] The definition of 'lockout' does not extend to the conduct of the respondent in the present instance, a principle acknowledged and applied in identical circumstances more recently by Steenkamp J in *SATAWU v Bid Air Services (PTY) Ltd* (case no J 394/13, 7 March 2013).
- [5] I am not persuaded that the applicant has established reasonable prospects of success in any appeal to the LAC, and for that reason, the application stands to be dismissed.

I make the following order:

1. Leave to appeal is refused, with costs.

Andr  van Niekerk
Judge of the Labour Court