

THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Reportable

Case No: JR2444/21

In the matter between:

LEPADIMA PHUTHI CASBETH & 13 OTHERS

Applicant

And

SOUTH AFRICAN LOCAL GOVERNMENT

BARGAINING COUNCIL

First Respondent

RONALD MUDAU N.O.

Second Respondent

CITY OF TSHWANE METROPOLITAN MUNICIPALITY

Third Respondent

Heard: 14 August 2025

Delivered: 17 October 2025

JUDGMENT

RAMJI, AJ

Introduction

[1] The 14 applicants (the employees) referred a dispute to the first respondent (the Council). The dispute was referred as one concerning the interpretation and application of a collective agreement, and the certificate of non-resolution also recorded this.

[2] After the City raised a point *in limine* at the arbitration, the second respondent (the Commissioner) ruled that the Council does not have the jurisdiction to hear the dispute because ‘*the [employees] do not request an interpretation or application of a collective agreement, but rather that the outcome of the step 3 grievance by implemented which the Council does not have the jurisdiction to*

enforce... under the interpretation and application, section 24 of the LRA' (sic).

- [3] The question in this Court is whether the Commissioner was correct, i.e. whether the Council has jurisdiction to arbitrate the dispute. The outcome of the grievance procedure (in favour of the employees) must be accepted as correct, and its substance is not part of this review.
- [4] This judgment sets out: (a) a brief factual background; (b) the submissions in this Court; and (c) the City's reliance on section 33A.

The grievance process and outcome

- [5] The employees are permanently employed by the City as emergency medical care and ambulance service employees. They were appointed to permanent positions between 2012 and 2013.
- [6] Prior to their appointments, the Collective Agreement on Conditions of Service and the Collective Agreement on the Implementation of a Uniform Salary Grading Scheme for Emergency Medical Care and Ambulance Service Employees were concluded.
- [7] The employees were aggrieved by a decision taken by the City in 2013, which disqualified them from certain employment terms contained in the collective agreements (specifically, extra notches added to their salaries annually).
- [8] On 30 April 2020, the employees lodged a collective grievance on the prescribed form and in accordance with the City's Grievance Procedure.
- [9] On 25 November 2020, the employees were given notice of a '*Step 3 Meeting*' to investigate their grievance.
- [10] On 7 December 2020, the City issued a letter (Outcome Letter). Among other things, the letter recorded the following:

10.1. The Grading Scheme for Emergency Medical Care and Ambulance Services Employees was applicable to the employees.

10.2. An employee will qualify for a notch increment if he or she attains a 50% +1 performance rating.

10.3. An employee without the relevant driver's permit is not disqualified from the above notch increment.

10.4. An employee not having the relevant driver's permit or Health Professions Council registration is a disciplinary issue and not a performance issue.

[11] The Outcome Letter is essentially an interpretation of two collective agreements.

[12] The employees' dispute then escalated to a complaint that, even after the Outcome Letter, the City did not adjust their salary scales as required. They set out the years in which the City withheld their salary notch increments. For some, it was one year for which an increment was withheld, for others, over five years. This means that the City has allegedly not complied with its obligations under the collective agreements, as interpreted in the Outcome Letter. This is therefore a dispute about the collective agreements.¹

[13] The employees referred their case to the Council. They complained that the outcome of their grievance, which they referred to as a settlement agreement, had not been enforced. They sought an award directing the Council to '*enforce settlement agreement...*' There is no settlement agreement, strictly speaking. Instead, the applicants refer to and rely on the outcome of the grievance procedure, which was in their favour. The outcome of the grievance is recorded in a letter from the City dated 7 December 2020 and received by a shop steward, who recorded on the letter, '*Agreed*'.

[14] Following the City's failure to comply with the terms of the Outcome Letter, the employees referred a dispute to the Council seeking the enforcement of the findings detailed in the Outcome Letter.

¹ See: *Rukwaya & Others v Kitchen Bar Restaurant* (2018) 39 ILJ 180 (LAC) at paras 17 – 18, which ruled that claims for payment of outstanding salaries that are based on alleged contraventions of a collective agreement are to be dealt with by the provisions of the Labour Relations Act 66 of 1995, as amended (LRA) relating to collective agreements.

- [15] The City has remained silent on whether it is not complying with the Outcome Letter and, by extension, the collective agreements. Instead, it has limited itself to advancing only a technical argument on whether a section 24 referral was correct.

Section 24 or section 33A of the LRA

- [16] The employees argue that the Council has jurisdiction to arbitrate their referral in terms of section 24 of the Labour Relations Act² (LRA) because a '*dispute about enforcement of the collective agreement is tantamount to a dispute about the application of such agreement*'. In support of this argument, the employees' written submissions referred to the well-known decision of Revelas J from 2000 in which she held that –

‘.. “a dispute about a collective agreement” ... applies to the situation where there is non-compliance with a collective agreement and one of the parties wishes to enforce its terms.’³

- [17] There were other decisions to this effect during that period. In 2002, however, the LRA was amended to cater for the enforcement of collective agreements. Enforcement provisions are now separately contained in section 33A of the LRA.

- [18] The employees' submissions, unfortunately, did not address the debates on whether the decision of Revelas J remains applicable with the introduction of section 33A.

- [19] The City argued:

‘The enforcement of a collective agreement is not provided for in terms of section 24 of the LRA. Rather the enforcement of the collective agreement is provided for under section 33A of the LRA.’

- [20] The City was careful not to expressly state that the employees should have referred a dispute in terms of section 33A.

² Act 66 of 1995, as amended.

³ *NUCW v Oranje Mynbou en Vervoer Maatskappy Bpk* [2000] 2 BLLR 196 (LC) at para 9.

The scope of section 33A

- [21] At the hearing, I asked the parties whether the Council had jurisdiction, in any event, to arbitrate this dispute in terms of section 33A of the LRA, given the failure by the employees to comply with its prescribed procedures.
- [22] This was primarily a question for the City, which had relied on the existence of section 33A to persuade the Commissioner that he did not have jurisdiction under section 24 of the LRA. The City's argument might have implied that the employees' problems would be solved if they referred a dispute in terms of section 33A.
- [23] Both parties were given the opportunity to make further submissions by 29 August 2025. On 26 September 2025, I received further submissions from the City. I have not received submissions from the employees.

Finding on section 33A

- [24] Although the dispute was conciliated, I find that section 33A would still not give the Commissioner jurisdiction to arbitrate this dispute for the following reasons:
- 24.1. Section 33A is intended to give bargaining councils the primary responsibility to oversee compliance with collective agreements.⁴
- 24.2. The procedure envisioned does not entail arbitration following referral to conciliation by aggrieved employees, and a certificate of non-resolution.
- 24.3. Instead, section 33A(3) first envisions an aggrieved person approaching a '*designated agent*' for a '*compliance order*'. There appears to be no restriction on who may seek a compliance order and I therefore agree with the City's further submissions when they write that seeking a compliance order '*could have resolved the matter...*' and that a '*mechanism existed within the enforcement framework which ought to have been utilised before the matter was escalated*' (that is, referred

⁴ Section 33A(1) of the LRA.

to the Council). The Council's Main Agreement sets out the designated agent and the compliance order process.

24.4. It is only if there is '*an unresolved dispute concerning compliance with any collective agreement*' that the dispute may be referred to arbitration.⁵ I agree with the City that the subsection only permits the Council, as the guardian of its agreements, and not the individuals subject to the agreements, to refer a dispute to arbitration.⁶

24.5. An individual who is a party to the arbitration may object to the appointment of an arbitrator, but there is no provision for an individual or a party to the dispute to make the referral to arbitration in the text of section 33A(4) or in the context of section 33A as a whole.

[25] The section 33A explanatory memorandum explains that after the LRA decriminalised non-compliance with collective agreements, compliance disputes were being referred to conciliation and, where necessary, arbitration. It noted a gap in that the LRA did not '*deal expressly with those disputes in which a bargaining council is a party (whether to claim payments on behalf of an employee or payments such as levies that are due to the council or contributions to funds established by councils)*'⁷ (own emphasis). It explained that section 33A was being introduced '*to provide an explicit statutory basis for arbitrations dealing with the enforcement of bargaining council collective agreements.*'⁸

[26] It is therefore for the employees to place the City's alleged non-compliance with the collective agreement, as interpreted according to the Outcome Letter, at the Council's door by seeking a compliance order in terms of section 33A(3) of the LRA. If the City still fails to comply, it will be for the Council to preserve the integrity of its agreements by referring the dispute for arbitration in terms of section 33A(4) of the LRA. The Commissioner will not only have

⁵ Section 33A(4) of the LRA.

⁶ See for example: *National Bargaining Council for the Clothing Manufacturing Industry v J 'n B Sportswear CC & Another* (2011) 32 ILJ 1950 (LC) at para 1; *Skulpad and Another v Department of Health, Eastern Cape and Others* (2025) 46 ILJ 193 (LC) at para 65.

⁷ Labour Relations Amendment Bill, 2000 Explanatory Memorandum 2000 ILJ 2195 at p 2212.

⁸ Cited in *Innovative Staffing Solutions (Pty) Ltd and Others v National Bargaining Council for the Road Freight and Logistics Industry and Others* (2025) 46 ILJ 336 (LAC) at para 12.

the jurisdiction under section 33A(4) to arbitrate the issue of compliance, and should the employees succeed in showing non-compliance, the Commissioner will further have the power to make an award '*that gives effect to [the] collective agreement[s]*'.⁹

Conclusion

[27] For this reason, the review application must fail. The employees have relief under section 33A(3) of the LRA.

Costs

20. There is an ongoing relationship between the parties, and the applicants have already incurred expenses of legal representatives and relied on their advice in trying to protect their interests. Should they continue to pursue their case, they also have a long road ahead of them. Therefore, although this review application had no merit from the outset, a costs order in favour of the successful party is not warranted.

Order

1. The review application is dismissed.
2. There is no order as to costs.

B. Ramji

Acting Judge of the Labour Court of South Africa

⁹ Section 138(9)(a) of the LRA.

Appearances:

For the Applicant: Adv B Lukhele

Instructed by: Mketsu & Associates

For the Third Respondent: Ms Patience Ndlovu, Leepile Attorneys

LABOUR COURT