



(1) Reportable: Yes/No
 (2) Of interest to other Judges: Yes/No
 (3) Revised

IN THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

Case No: 2024-098847

In the matter between:

CITY OF EKURHULENI METROPOLITAN MUNICIPALITY

Applicant

and

MECSU OBO MEMBERS

First Respondent

INDEPENDENT MUNICIPAL AND ALLIED TRADE UNION

Second Respondent

SOUTH AFRICAN MUNICIPAL WORKERS' UNION

Third Respondent

Heard: 6 September 2024

Delivered: 26 February 2026

JUDGMENT

KUMALO, AJ

Introduction

[1] The applicant, the City of Ekurhuleni Metropolitan Municipality (the City), approached this Court on an urgent basis seeking interdictory relief against the

first respondent, MECSU, together with its members and supporters. The City contends that MECSU is engaging, or intends to engage, in conduct constituting an unlawful and unprotected strike coupled with picketing activity and seeks an order restraining such conduct.

- [2] The City further seeks a declaratory order to the effect that the strike and picketing action foreshadowed in MECSU's correspondence dated 28 and 29 August 2024 is unprotected in terms of section 65 of the Labour Relations Act¹ (LRA). The application is opposed by MECSU.

Background

- [3] The dispute arose after MECSU, on 29 August 2024, served a strike notice on the City of Ekurhuleni, advising that its members intended to commence strike action upon expiry of the prescribed seven-day notice period. The notice was accompanied by proposed picketing rules. However, the notice did not indicate with whom, if anyone, such rules had been agreed. The City averred that no negotiations regarding picketing rules had been conducted with any of its officials. The notice enumerated seven demands said to underpin the intended industrial action, including issues relating to employee grading as well as claims concerning overtime, allowances and insourcing. It further stated that the strike and picketing would commence after the notice period and would continue indefinitely until the demands were met. The City expressed concern that the notice did not stipulate a definitive commencement date, which it regarded as rendering the communication vague.
- [4] The City contended that it remained amenable to engaging MECSU on the issues raised and that it extended an invitation to do so. It is alleged, however, that MECSU failed to engage constructively. The City further stated that the bulk of the demands were already being addressed through internal processes or were subject to extant statutory or collective bargaining mechanisms.

¹ Act 66 of 1995, as amended.

- [5] Against that backdrop, the City professed not to understand why MECSU elected to pursue what it characterised as unlawful and unprotected strike and picketing action. In the City's view, the grievances articulated by MECSU were either premature, improperly escalated, already regulated by internal and statutory dispute-resolution processes, or otherwise incapable of constituting a lawful basis for strike action.
- [6] By way of example, the demand for the upgrading of Traffic Wardens to Constable posts had, according to the City, not previously been raised with it. Any dispute pertaining to job functions or grading, it said, ought to be pursued through the Bargaining Council, the internal grievance procedure, or an HR job evaluation process.
- [7] The City averred that the second demand, relating to a ceremonial pass-out parade for Metro Police trainees, was in the process of being attended to, in that the City was processing certificates for staff who had undergone training. It argued that the union could not lawfully strike over a matter already receiving attention through administrative processes. The third demand, namely the implementation of a four-day-on, four-day-off shift cycle coupled with 40 hours' overtime, was said to fall within collective bargaining at the Local Labour Forum (LLF), where discussions were ongoing, and within the ambit of the Main Collective Agreement, which expressly regulates working hours.
- [8] The fourth demand concerned the encashment of annual leave days. The City maintained that this issue was *sub judice*, being the subject of an ongoing review application in this Court, and therefore not susceptible to lawful strike action. The fifth demand related to alleged non-compliance with the acting allowance policy. The City contended that this constituted an arbitrable unfair labour practice dispute which ought to be referred to the Bargaining Council. It added that budgetary constraints limited acting appointments to critical positions only.
- [9] The sixth demand, seeking retrospective pay for firefighters, was, on the City's version, procedurally defective because affected employees had not lodged

grievances nor utilised available internal dispute-resolution mechanisms. The seventh demand, namely the insourcing of Security Guards and Cleaners, was, according to the City, already the subject of formal Council processes. The City referred to Council resolutions directing feasibility studies and the development of funding models, and stated that progress reports had been presented, including on 29 August 2024, with further updates scheduled. It emphasised that MECSU's allegation that the City was refusing to insource was incorrect, as the matter was actively being processed through lawful Council channels.

- [10] In sum, the City sought to demonstrate that MECSU had bypassed appropriate dispute-resolution fora, declined to engage meaningfully with the City, and nevertheless persisted with threatened industrial action notwithstanding that most demands were already subject to ongoing internal, bargaining, or statutory processes.
- [11] The City further contended that MECSU's right to strike was curtailed by section 65 of the LRA, principally because the issues raised were regulated by the Main Collective Agreement, were capable of arbitration in the Bargaining Council, and because many of MECSU's members performed essential services and were thus statutorily prohibited from striking. The City accordingly submitted that MECSU was not entitled in law to embark upon the intended industrial action. It maintained that it had established the requirements for the relief sought and prayed for the interdict to be granted.
- [12] MECSU's version was that it initiated an internal grievance on 5 May 2024 and thereafter referred a mutual interest dispute to the SALGBC on 9 May 2024. Conciliation took place on 2 July 2024 and remained unresolved as at 2 August 2024. A ballot was held on 28 August 2024 at which a majority of members supported the strike and adopted picketing rules. On 29 August 2024, MECSU served the City with the formal seven-day strike notice together with the picketing rules. The City thereafter invited MECSU to a meeting scheduled for 31 August 2024, which ultimately convened on 2 September 2024. At that meeting, the City

raised financial constraints, indicated that certain demands were being dealt with at the LLF or in this Court, and undertook to investigate the upgrading of traffic wardens and the alleged outstanding eight hours for firefighters, undertaking to furnish written reports by 5 September 2024.

- [13] MECSU asserted that, during the meeting, the City did not raise any concerns regarding employees performing essential services or the validity of the picketing rules. It further alleged that, while the meeting was still in progress, the City's attorneys transmitted a letter at 11h27 raising essential services considerations and the absence of consultation on picketing rules, and demanding undertakings failing which urgent interdictory relief would be sought. MECSU stated that it nonetheless provided a written undertaking and expressed a willingness to continue engaging. Notwithstanding this, the City proceeded to launch an urgent application seeking both final and interim relief. On 4 September 2024, MECSU requested that the City withdraw the application to enable further engagement on outstanding issues, but the City refused and persisted with the litigation.

Submissions

- [14] The City contended that it had no adequate alternative remedy other than approaching this Court on an urgent basis, on the footing that any delay would render the relief nugatory once the threatened strike commenced. It reiterated that it had a clear right to be protected from disruption arising from unlawful industrial action, particularly where, on its version, MECSU had threatened to strike without meaningful engagement. The City averred that the union's conduct gave rise to a reasonable apprehension of harm, in that essential municipal services could be compromised.
- [15] The City maintained that an interdict constituted the only effective remedy and that, absent immediate relief, it would suffer substantial operational prejudice. It accordingly sought a final interdict and, in the alternative, interim relief pending proper engagement between the parties. The City further contended that even on the test for interim relief, it satisfied the requisite elements, viz., a *prima facie*

right, a well-grounded apprehension of irreparable harm, that the balance of convenience favoured the granting of the interdict, and the absence of any adequate alternative remedy.

- [16] MECSU submitted that both the conciliation ruling and the certificate of outcome issued on 2 August 2024 confirmed that the seven demands fall within the realm of a mutual interest dispute. It argued that any objections the City wished to advance, whether concerning *locus standi*, essential services implications, or the role of the LLF, ought properly to have been raised before the Bargaining Council rather than in these urgent proceedings. MECSU accused the Applicant of forum shopping, pointing out that the Senior Commissioner had already rejected the Applicant's contentions regarding the nature of the demands during conciliation. MECSU further contended that the Applicant abandoned engagement processes, withdrew from negotiated discussions, and approached the Court prematurely "out of panic", particularly as no specific commencement date for the strike had yet been set.
- [17] MECSU further challenged the Applicant's reliance on essential services limitations, asserting that the City has no essential services agreement in place and did not raise essential services concerns during prior engagements. The union maintained that the City has delayed implementation of various Council resolutions, including those relating to the insourcing of security and cleaning personnel and the issuing of certificates to Metro Police trainees, while seeking to blame the union for alleged disruptions. MECSU denied that the City faced any irreparable harm, rejected the Applicant's assertion of a clear right warranting an interdict, and contended that the balance of convenience favoured the continuation of a lawful, protected strike. MECSU argued that it complied fully with all procedural requirements, conciliation, obtaining a certificate of non-resolution, conducting a ballot, and issuing the requisite notice, and submitted that the Applicant had alternative remedies through continued engagement rather than urgent litigation. Accordingly, MECSU contended that the strike is protected

and lawful, and that the Applicant has failed to establish grounds for interdictory relief.

- [18] MECSU also disputed the Applicant's claim of a reasonable apprehension of harm, asserting that the Applicant placed no factual foundation before the Court to sustain such an allegation. It reiterated that it had complied with all statutory preconditions for a protected strike. MECSU added that the City, in its own version, conceded that the right it seeks to protect is uncertain, whereas MECSU's members enjoy the constitutionally entrenched right to strike, which cannot be limited on arbitrary or speculative grounds. The union further pointed out that adequate notice of the intended strike had been furnished and that the City had ample opportunity to engage before resorting to litigation. It concluded that the Applicant had not established the requirements for either final or interim interdictory relief and that the urgent application was unwarranted.
- [19] MECSU emphasised that section 64(1) of the LRA confers the right to strike once a dispute has been referred to the Bargaining Council or CCMA and either a certificate of non-resolution has been issued or 30 days have elapsed. It argued that section 65 does not limit the right to strike merely because picketing rules have not yet been finalised, and that section 69 expressly empowers a registered trade union to authorise a picket in support of a protected strike. According to MECSU, the absence of finalised picketing rules does not render a strike unlawful where a valid strike certificate has been issued. With reference to the requirement of a "reasonable apprehension of injury", MECSU submitted that the test is objective and must be supported by factual evidence establishing that harm is reasonably foreseeable.
- [20] MECSU reiterated the requirements for a final interdict, namely, a clear right, an actual or reasonably apprehended injury, and the absence of an adequate alternative remedy, and argued that the Applicant failed to meet any of these requirements. It is submitted that the Applicant had not demonstrated any unlawful conduct on the part of MECSU, nor a clear right that required protection.

MECSU further submitted that the Applicant had not shown, on a balance of probabilities, that a protected strike would cause harm or that harm was reasonably foreseeable. Accordingly, it argued that the Applicant had not provided a factual basis capable of satisfying the threshold for interdictory relief.

- [21] The City persisted in its assertion that the matter was urgent and denied that the urgency was self-created. It contended that MECSU's communications of 28 and 29 August 2024 provided clear notice that an unprotected and unlawful strike and picketing would commence within seven days, thereby creating an immediate threat that could not be resolved through ordinary Court processes. The City maintained that it had no option but to approach the Court urgently. It argued further that the matter met the established legal requirements for urgency, particularly because it would not obtain substantial redress at a later stage, given the imminent strike. The City rejected MECSU's assertion that the issues properly belong within bargaining council processes, submitting instead that the threatened unprotected strike, purportedly involving employees performing essential services, justified urgent judicial intervention.

Discussion

Urgency

- [22] The City relied on the seven-day strike notice served on 29 August 2024 and contended that, absent urgent relief, it would not obtain substantial redress, particularly given its assertion that the threatened action implicates essential municipal functions. MECSU disputes urgency, contending that the City was aware of the underlying demands since at least May 2024 through internal grievance and SALGBC processes, and that the City received the relevant conciliation ruling and certificate in early August 2024 but took no steps to challenge them. MECSU argues that the City thereby created urgency by delay and by litigating before the agreed reporting date of 5 September 2024, arising from the parties' engagement meeting.

[23] In assessing urgency, the Court must consider not only imminence but also whether substantial redress can be obtained in due course. Although the City had prior knowledge of the broader dispute, the seven-day notice constituted a concrete escalation which, on the City's version, threatened immediate operational disruption if the strike commenced. Importantly, the relief sought is directed at preventing the commencement of strike action; once strike action begins, subsequent relief risks being academic. On that basis, and mindful that urgency is fact-specific, the Court is satisfied that the matter warrants enrolment on the urgent roll. As to s 68(2), the City explained that the truncated timeframes made strict compliance impractical and that notice of its intention to approach the Court was given. In the circumstances, condonation for non-compliance with s 68(2) and the Rules is granted.

Merits

[24] The constitutional right to strike in s 23(2)(c) is undeniably a fundamental right, and the starting point of the enquiry is that it carries no internal textual limitation. As the Constitutional Court² held in *Moloto* that a statute purporting to regulate or limit the right must be interpreted in the least restrictive manner that remains consistent with the statutory text. However, it is equally settled that the right to strike is not absolute. It may be limited by a "*law of general application*" within the meaning of section 36 of the Constitution, provided that such limitation is reasonable and justifiable in an open and democratic society.

[25] It is well-established that section 65 of the LRA constitutes such a law of general application. It is directed not at depriving workers of the right to strike, but at channelling certain categories of disputes into specific dispute-resolution mechanisms, arbitration or adjudication, where the Legislature has determined that industrial action is either inappropriate or potentially harmful to broader societal interests. The purpose of section 65 is to protect the integrity of the LRA's structured dispute-resolution system and to ensure that protected strike action

² *South African Transport and Allied Workers Union (SATAWU) and Others v Moloto NO and Another* [2012] 12 BLLR 1193 (CC) at para 52.

remains confined to matters that properly fall within the terrain of collective bargaining.

- [26] In applying the provisions of section 36 of the Constitution, three factors are particularly important in this case. First, the nature of the right, although a strike action is fundamental, the LRA does not contemplate a right to strike over matters that the Act itself designates for arbitration or that fall outside the employment relationship altogether. Second, the purpose and importance of the limitation. Which is, prohibiting strikes over arbitrable disputes is necessary to prevent the circumvention of binding statutory processes, to ensure orderly labour relations, and to avoid destabilising strikes over issues the law declares to be rights disputes. Third, the availability of less restrictive means, employees retain the right to pursue these disputes through grievance procedures, bargaining council arbitration, or this Court adjudication, depending on the nature of the dispute. These mechanisms are not only less restrictive than a blanket prohibition but expressly provided to give effect to rights conferred elsewhere in the LRA.
- [27] Against that backdrop, the limitations imposed by s 65(1)(a), (c) and (d) do not extinguish MECSU's right to strike; they channel it appropriately. Where the dispute is arbitrable, as in first, second, fourth, fifth and sixth demands, the limitation is minimal, and employees may still vindicate their rights through a specialised statutory forum designed to afford expeditious and inexpensive relief. Where the issue is regulated by a collective agreement, *i.e.* third demand, the limitation serves the constitutionally endorsed principle of majoritarianism, which promotes orderly bargaining. Lastly, where the issue falls entirely outside labour relations, *i.e.* seventh demand, the limitation merely recognises that the right to strike does not extend to matters that are not matters of mutual interest.
- [28] Accordingly, any limitation imposed by section 65 on the right to strike in respect of these demands is reasonable and justifiable under the provisions of section 36 of the Constitution, and no constitutionally-permissible interpretation of the LRA

can expand the right to strike to matters statute has expressly placed outside the scope of protected industrial action. Section 1(a) of the LRA makes clear that one of the primary purposes of the Act is to give effect to, and regulate, the fundamental labour rights guaranteed in section 23 of the Constitution. In this respect, the LRA affirms and protects the constitutional right to strike by insulating participants in a protected strike from adverse legal consequences. At the same time, the Act imposes procedural requirements that must be met for a strike to acquire protected status, and it restricts the scope of protected strikes to matters that do not fall within dispute-resolution mechanisms, such as arbitration or adjudication, provided for elsewhere in the Act.³

- [29] MECSU's right to strike is, however, subject to limitation by a law of general application to the extent that such limitation is reasonable and justifiable in an open and democratic society founded on human dignity, equality and freedom. This requires consideration of various factors, including whether less restrictive means exist to achieve the purpose of the limitation.
- [30] In that regard, the City argues that section 65(1)(a), (c) and (d) of the LRA constitutes such a law of general application, and that it reasonably and justifiably limits the exercise of the contemplated right. In particular, the City contends that: (a) MECSU is bound by a collective agreement that precludes strike action on the issues raised; (c) the dispute is one capable of being referred to arbitration; and (d) the employees involved perform essential services.
- [31] It is trite that, where final relief is sought on affidavit and disputes of fact arise, the Court must apply the *Plascon-Evans* rule. In such circumstances, final relief may be granted only if the facts stated by the applicant, together with the facts admitted by the respondent, justify that relief; and where material disputes of fact exist, the respondent's version must generally prevail unless it is so far-fetched, clearly untenable or implausible that it may be rejected on the papers. This approach is reinforced by the principle that a genuine dispute of fact exists only

³ *Ceramic Industries Ltd t/a Betta Sanitaryware & another v NCBAWU & others* [1997] 6 BLLR 697 (LAC) at para 700.

where the party raising it has seriously and unambiguously engaged the facts said to be disputed; bare denials are ordinarily insufficient where the disputing party must necessarily possess the relevant knowledge and could provide a meaningful answer.

- [32] In this matter, disputes exist on, *inter alia*, whether urgency is self-created, whether the City meaningfully engaged, whether essential-services concerns were raised earlier, and whether certain demands were pending in other fora. These disputes do not need to be resolved to decide the core question, namely, whether section 65 bars strike action on the “true nature” of each demand, the Court can decide the matter on legal characterisation. Where factual findings are necessary, the *Plascon–Evans* approach is applied.
- [33] Accordingly, in determining whether the contemplated strike is protected, and whether the statutory limitations in section 65 apply, the Court proceeds based on those facts that are common cause, those admitted, and, where disputes exist, the version of MECSU unless that version is not *bona fide* or is clearly untenable on the papers. The Court’s enquiry into the “true nature” of each demand (the issue in dispute) is, however, a legal characterisation drawn from the factual matrix, and it remains the Court’s duty to determine whether, on the accepted facts, the issue falls within a substantive limitation in section 65 notwithstanding procedural compliance with section 64 of the LRA.
- [34] Before turning to the application of section 65 to each of the demands, it is necessary to address severability. A strike notice may contain multiple demands. The fact that some demands may be impermissible (because they fall within a limitation in section 65, or are otherwise not strikable) does not, without more, extinguish the right to strike in pursuit of a permissible demand. Conversely, the presence of a permissible demand does not immunise impermissible demands from interdiction. The proper approach is to determine, demand by demand, whether the strike is protected in relation to each issue in dispute, and then to tailor relief accordingly.

- [35] MECSU emphasised that a mutual-interest dispute was conciliated under SALGBC auspices and that a certificate permitting strike action was issued; it contends that the City's arguments were raised there and rejected, and that the present proceedings amount to forum shopping absent a review. The existence of conciliation processes and a certificate is relevant to procedural compliance under section 64 of the LRA.
- [36] However, the Court's enquiry does not end there. This is because section 65 creates substantive limitations on protected strike action; procedural compliance cannot convert into a protected strike conduct which the LRA substantively prohibits. The Court must therefore determine the "true nature" of each issue in dispute and whether section 65 applies, notwithstanding a certificate. That said, MECSU's forum-shopping submission underscores the need for careful, demand-specific characterisation and for tailored relief through severability, rather than broad-brush interdiction where any demand is potentially strike-competent. A court may interdict a strike action in respect of impermissible demands while allowing protected strike action to proceed in respect of any severable permissible demands.
- [37] In the present matter, the Court has accordingly considered each of the seven demands separately to determine whether it can ground protected strike action. Where all demands fall within statutory prohibitions, severability does not alter the outcome, but if any demand were strike-competent, the interdict should be confined to those issues that are unprotected and should not extend to protected strike action in respect of any permissible demand.
- [38] The first demand relates to the upgrading of Traffic Wardens to Constable posts. This ground implicates section 65(1)(c). Accordingly, the City bears the onus of establishing that the dispute is one which the law requires to be resolved by arbitration, thereby precluding strike action. The City submits that the matter had never previously been raised and should properly be pursued through the grievance process, a job evaluation mechanism, or arbitration, rather than

through industrial action. MECSU, on the other hand, maintains that the issue formed part of the mutual interest dispute conciliated at the South African Local Government Bargaining Council, and points out that the City undertook, during the meeting of 2 September, to investigate the matter and report back, an undertaking it says is inconsistent with the City's claim of urgency.

- [39] Beyond these competing averments, little has been set out to substantiate that the demand falls within the category of disputes for which a referral to arbitration is available under s 65(1)(c) of the LRA. The Labour Appeal Court⁴ has made it clear that a court must ascertain the true nature of the issue in dispute by examining its substance rather than the label attached to it by either party. As the Court has observed, the way a dispute is described is not determinative, as such characterisation may mask the real issue requiring determination. This enquiry is essential because section 65 of the LRA prohibits strike action where the underlying dispute is one that the Act prescribes must be referred to arbitration or adjudication. The "issue in dispute" for purposes of this analysis is the demand, grievance or dispute that forms the subject matter of the intended strike. The task of the Court is therefore to identify the actual nature of that issue to determine whether the intended strike enjoys statutory protection.
- [40] In this case, the City has, in my view, established that the issue is arbitrable. Properly construed, the dispute advanced by MECSU constitutes an unfair labour practice as contemplated in section 186(2)(a) of the LRA, in that it concerns promotion or the conferral of benefits. As such, it is a dispute that may competently be referred to arbitration. It follows that section 65(1)(c) of the LRA operates to prohibit MECSU from embarking upon the contemplated strike in respect of this demand.
- [41] In opposing the interdict, MECSU relied on its compliance with section 64(1) of the LRA. However, it is well established that section 65 delineates substantive limitations on the right to strike or lockout, and these provisions must be read

⁴ *Coin Security Group (Pty) Ltd v Adams & others* [2000] 4 BLLR 371 (LAC) at para 17.

conjunctively with section 64. The effect is that even full compliance with the procedural requirements of section 64 cannot render lawful a strike that falls within any of the prohibitions in section 65. Put differently, a strike certificate cannot override the statutory limitations set out in section 65. Only a constitutional challenge, alleging that the restrictions imposed by the LRA unjustifiably limit the constitutional right to strike, could potentially displace those statutory prohibitions.⁵

- [42] It follows that MECSU's compliance with the procedural requirements of section 64 is of no consequence in circumstances where it has been unable to rebut the City's contention that the issue is justiciable and therefore falls within the statutory prohibition on strike action. Beyond denying that it is bound by the collective agreement and pointing to review proceedings pending before this Court, MECSU has not demonstrated how this dispute qualifies as a mutual interest dispute that is not justiciable.
- [43] Even accepting that a matter of mutual interest may encompass what is conventionally understood as both a rights dispute and an interest dispute, since either may legitimately form the basis of a union demand and may, in appropriate circumstances, support protected strike action, no such interest dispute is discernible from the facts.⁶ On the contrary, the facts confirm the absence of an interest dispute that would lawfully ground a protected strike.
- [44] The second demand concerns the holding of a ceremonial pass-out parade and the issuing of certificates to Metro Police trainees. The City stated that the certificates are in the process of being finalised and that any dissatisfaction regarding delays ought properly to be pursued through the grievance procedure or as an unfair labour practice. MECSU, however, contended that the trainees completed their qualifications in November 2023 and that the City's failure to issue certificates for approximately ten months justifies resort to industrial action.

⁵ *Vodacom (Pty) Ltd v CWU* [2010] 8 BLLR 836 (LAC) at para 10.

⁶ *UIS Analytical Services (Pty) Ltd v Independent Democratic Union of South Africa obo Members* [2025] 2 BLLR 207 (LC) at para 18.

- [45] In this instance as well, the right to strike is reasonably and justifiably limited by section 65(1)(c) of the LRA. The dispute clearly falls within the ambit of section 186(2)(a), rendering it justiciable. Apart from attributing the delay to the City, MECSU has advanced no basis upon which to conclude that the matter constitutes anything other than a rights dispute. The City, by contrast, has demonstrated that the issue is operational in nature and is already receiving administrative attention.
- [46] The fourth demand concerns the encashment of annual leave. The City submitted that the matter is *sub judice*, as it forms the subject of pending review proceedings before this Court, and is therefore not amenable to strike action. MECSU replied that it is neither a party to those review proceedings nor bound by them, and that the demand was legitimately included in the conciliated dispute. Clearly, this, too, is a matter in respect of which strike action is precluded by section 65(1)(c) of the LRA. This is because the issue concerns the payment of a benefit, which falls within the scope of section 186(2)(a) of the LRA, and is therefore a dispute that the LRA requires to be resolved through arbitration. That conclusion is fortified by the fact that similar disputes have been referred to arbitration and ultimately adjudicated by this Court. Such conduct unmistakably demonstrates that the issue is justiciable.
- [47] The fifth demand relates to the implementation of the acting-allowance policy. The City maintained that this is an unfair labour practice dispute capable of being referred to arbitration and explained that financial constraints have limited acting appointments to critical posts. MECSU contended that the City is merely reiterating arguments rejected during conciliation and that the issue forms part of a properly protected mutual-interest dispute. It is well-established that the granting of an allowance constitutes a discretionary benefit of the employer, although it is regulated by section 186(2)(a) of the LRA. Accordingly, this issue likewise attracts the prohibition in section 65(1)(c), and strike action in respect of this demand is therefore impermissible.

- [48] The sixth demand relates to the retrospective payment of eight hours per month to firefighters. The City contended that this issue was never raised through internal channels and could appropriately have been dealt with either by way of a grievance or by referral to arbitration, rather than through the threat of strike action. MECSU, however, maintained that the demand formed part of the mutual-interest dispute conciliated at the SALGBC and asserts that the City expressly undertook during the meeting of 2 September 2024 to investigate the matter and provide a report before resorting to litigation.
- [49] This demand, properly analysed, concerns an alleged existing entitlement to remuneration in the form of retrospective pay. It therefore constitutes a rights dispute. In such circumstances, section 65(1)(c) of the LRA precludes strike action, as disputes concerning unfair labour practices, including claims for remuneration or benefits purportedly already due, fall to be resolved through arbitration. Because the issue is justiciable, the statutory prohibition on strike action is triggered, rendering the contemplated strike in respect of this demand unprotected.⁷
- [50] This accords with the principle that a court must determine the true substance of a demand. Where the real issue concerns the enforcement of an existing right or entitlement, rather than the negotiation of new terms and conditions of employment, the matter falls outside the scope of protected strike action and must instead be pursued through the statutory dispute-resolution mechanisms established by the LRA.⁸
- [51] This conclusion reinforces the principle that where the LRA prescribes a specific dispute-resolution mechanism for a particular type of dispute, parties may not circumvent that process by resorting to strike action. In such circumstances, any contemplated strike is unprotected because the statutory scheme takes

⁷ *Vista University v Botha & others* [1997] 5 BLLR 614 (LC) at 617.

⁸ *Imperial Cargo (Pty) Ltd v Democratised Transport Logistics and Allied Workers Union and others* [2019] 10 BLLR 1005 (LAC) at paras 12 -14.

precedence over a union's preferred method of exerting pressure.⁹ Accordingly, the issue constitutes an arbitrable rights dispute rather than a negotiable interest dispute and is therefore barred from strike action by virtue of s 65(1)(c) of the LRA.

- [52] The third demand concerns the introduction of a four-day-on/four-day-off shift roster together with additional overtime. The City contended that shift configurations fall squarely within the domain of structured collective bargaining at the LLF and that the matter is presently receiving attention in that forum. MECSU disputed this, asserting that the demand was fully canvassed during conciliation and formed part of the dispute for which a strike certificate was issued.
- [53] It must be accepted, however, that the provisions of section 65(1)(a) of the LRA are unequivocal. They recognise that parties may, through a collective agreement, elect to remove certain issues from the realm of industrial action. Where such a collective agreement exists, section 65(1)(a) prohibits strikes and lockouts in respect of issues the parties have agreed shall not be pursued through industrial action.¹⁰
- [54] As the provisions of section 65(1)(a) prohibit strike action where *“that person is bound by a collective agreement that prohibits a strike or lock-out in respect of the issue in dispute”*. The inquiry therefore has two components: (i) whether a collective agreement regulates the issue, and (ii) whether MECSU and its members are bound by that agreement. The evidence establishes that working hours, shift systems and overtime arrangements are expressly regulated in the Main Collective Agreement concluded within the local government sector. The City placed this agreement before the Court and demonstrated that the

⁹ See *Chamber of Mines of South Africa acting in its own name and obo Harmony Gold Mining Company Ltd and another v Association of Mineworkers and Construction Union and others* [2014] 3 BLLR 258 (LC).

¹⁰ *County Fair Foods (Pty) Ltd v FAWU & Others* [2001] 5 BLLR 494 (LAC) at para 13.

provisions governing normal hours, shift arrangements and overtime are negotiated centrally and form part of binding collective-bargaining structures.

- [55] MECSU does not dispute the existence of the Main Agreement or its regulatory content; its position is limited to asserting that it is not a party to the agreement. The principle of majoritarianism in labour law is, however, well-established and requires no elaboration. In terms of this principle, collective agreements concluded by trade unions representing the majority of employees in a workplace bind all employees within the scope of the agreement, including those who are not members of the majority union and who did not accede to the agreement. The effect is that minority unions may be bound by the terms of a collective agreement irrespective of their participation in its conclusion.
- [56] This means that the legal question is not whether MECSU is a signatory, but whether its members are bound. In this respect, the LRA adopts the majoritarian model of collective bargaining. S 23(1)(d) provides that a collective agreement concluded with a majority union binds all employees within its scope, irrespective of union membership. The Constitutional Court in the *Chamber of Mines*¹¹ confirmed that such an extended application of collective agreements is constitutionally permissible and central to orderly sectoral bargaining.
- [57] In the local government context, MECSU did not demonstrate that the Main Collective Agreement was not concluded by majority unions, nor that the agreement was inapplicable to the workplace or bargaining unit at issue. Given that (i) the Main Collective Agreement regulates working hours and shift arrangements, (ii) it applies to the relevant employees through the majoritarian system, and (iii) it contains provisions restricting industrial action on issues reserved for collective bargaining, the conclusion follows that MECSU is bound by the agreement within the meaning of s 65(1)(a). As a result, MECSU may not call a strike in respect of the third demand, because the Main Agreement assigns

¹¹ *Chamber of Mines of South Africa and Others, ibid.*

this issue to structured collective bargaining and expressly removes it from the realm of industrial action.

- [58] In this matter, the City has demonstrated that the Collective Agreement applies to the workplace, and not only to those unions or employees who are signatories to it. Accordingly, because this demand is regulated by the Collective Agreement, section 65(1)(a) of the LRA operates to preclude the use of industrial action in respect of this issue.
- [59] The seventh demand concerns the insourcing of security guards and cleaners. The City contended that this issue is already being addressed pursuant to Council resolutions and ongoing feasibility-study processes. MECSU, however, alleged that the City has failed to implement the 2022 Council decision, that the feasibility study was inadequately conducted, and that outsourcing continues in defiance of Council directives.
- [60] It must be accepted that the insourcing of security guards and cleaners flows from a 2022 Council resolution. The City's evidence indicates that the matter is currently being advanced through internal Council structures, including the completion of feasibility studies, development of funding models, and reporting to Council committees. The City asserted that MECSU's claims of non-implementation are misplaced, as the issue is under active institutional consideration. The City is therefore correct in characterising the demand as one regulated by statutory and municipal governance processes, rather than a negotiable workplace matter capable of grounding strike action.
- [61] Unlike the other demands, the evidence clearly shows that the insourcing issue does not arise within the domain of labour relations as governed by the LRA. The affidavits from both parties confirm that the issue originates from a Council resolution and is being processed through municipal administrative structures, namely, feasibility studies, internal reporting mechanisms, and decision-making carried out under the authority of the Council, rather than through employment or HR-related channels.

- [62] The City's position is correct that insourcing is proceeding through formal Council governance mechanisms involving financial modelling and service-delivery planning, rendering it a public-administration function rather than a matter for workplace negotiation. Also, MECSU has not identified any employment-related right or condition of service that has been infringed; instead, it alleges that the City has been slow or ineffective in implementing the Council resolution. This supports the conclusion that the issue does not constitute a "matter of mutual interest" capable of being pursued through strike action. Disputes that fall within institutional governance processes, rather than relating to employment conditions, are not strikable issues within the contemplation of the LRA.¹²
- [63] It must be emphasised that it is the substance of a demand that determines whether it may legitimately ground strike action. Where the issue is one that legislation or institutional frameworks assign to a specific decision-making process, it cannot be pursued through industrial action. Trade unions may not deploy strikes as a means of circumventing or displacing formal governance mechanisms where the law prescribes an alternative process. Accordingly, in this instance, the insourcing of security guards and cleaners constitutes a service-delivery and procurement decision of the municipal Council, falling outside the collective-bargaining framework established by the LRA. It therefore cannot lawfully sustain a protected strike.

Conclusion

- [64] In conclusion, the City has demonstrated sufficient grounds to justify urgency and non-compliance with the statutory time periods, given that an imminent unprotected strike posed the risk of substantial prejudice to its operations. While MECSU's constitutional right to strike is acknowledged, the LRA imposes reasonable and justifiable limitations on that right where the underlying disputes are arbitrable, regulated by collective agreements, or fall within the scope of essential services.

¹² *Vista University supra.*

- [65] Having examined each of MECSU's demands, it is evident that the majority concern unfair labour practice or rights-based disputes, such as promotions, the issuing of certificates, leave encashment, acting allowances, and retrospective pay for firefighters. These matters are required to be resolved through arbitration and are therefore expressly barred from forming the basis of strike action under s 65(1)(c) of the LRA.
- [66] The demand relating to the shift system is likewise prohibited by section 65(1)(a) on account of an applicable collective agreement regulating the issue. The insourcing demand, in contrast, falls entirely outside the sphere of labour-relations bargaining, as it originates from a Council resolution and is being advanced through municipal governance processes rather than employment-related mechanisms. In the result, none of the demands cited by MECSU can lawfully sustain a protected strike, and the contemplated industrial action falls to be interdicted as unprotected.
- [67] In the premises, the following order is made:

Order

1. The applicant's non-compliance with the time periods, forms and manner of service is condoned, and the matter is heard as one of urgency.
2. The applicant's non-compliance with section 68(2) of the LRA is condoned.
3. The First Respondent is interdicted and restrained from calling, inciting, promoting, encouraging, instigating, or participating in strike action and any conduct in contemplation or furtherance of strike action, including picketing, insofar as such action is in pursuit of any of the seven demands set out in the strike notice served on 29 August 2024 and/or the correspondence dated 28 and 29 August 2024, which strike action is declared unprotected.

4. The Respondent is directed to take all reasonable and immediate steps to inform its members that the intended strike action is unprotected and that they are prohibited from participating in such industrial action.
5. There is no order as to costs.

M. Kumalo

Acting Judge of the Labour Court of South Africa

Appearances

For the applicant:

S.F. Sibisi,

Instructed by:

Saljee Govender Van der Merwe Incorporated

For the first respondent:

V. Hlungwana, union official of MECSU

LABOUR COURT