(1) Reportable: NO
(2) Of interest to other Judges: YES

01 June 2026
Signature Date

THE LABOUR COURT OF SOUTH AFRICA, CAPE TOWN

Case no: 2026-105465

In the matter between:

CBS GLOBAL **Applicant**

and

NATIONAL UNION OF METAL WORKERS SOUTH AFRICA OBO MEMEBERS **First Respondent**

FREEDOM DIBETSO obo NON-UNION MEMBERS **Second Respondent**

Heard: **14 May 2026**

Delivered: **1 June 2026**

JUDGMENT

LAGRANGE, J

Introduction

[1] This is an application for an urgent interdict to halt strike action. The applicant ('CBS') seeks final relief. The respondent is the union, NUMSA and its members employed by CBS, a company falling under the auspices of the Motor Industry Bargaining Council ('MIBCO').

[2] The matter was first enrolled for hearing on 11 May but the parties agreed to postpone the hearing to 14 May 2026 to permit the filing of a replying affidavit. At that hearing the parties agreed to await the outcome and NUMSA undertook that it would not embark on the planned strike action until and unless the court confirmed the strike would be a protected one.

[3] As the relief sought is final rather than interim, the evaluation of factual issues must be determined using the test in *Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd*[1]

Factual background

[4] The circumstances of the strike are somewhat unusual arising as it does at the final stage of retrenchment consultations.

[5] It is common cause that:

5.1 On 4 November 2025, the Applicant embarked on a retrenchment process in terms of Section 189A of the Labour Relations Act (LRA), which was facilitated by a CCMA facilitator. The s 189A notice introduced the rationale for the retrenchment in the following terms:

> *'1 . Please be advised that due to financial and economic pressures currently experienced by the company, the employer is compelled to consider reducing its payroll in order to remain operational and sustainable.*

[1] 1984 (3) SA 623 (A) at 634H-I: '*It is correct that, where in proceedings on notice of motion disputes of fact have arisen on the affidavits, a final order, whether it be an interdict or some other form of relief, may be granted if those facts averred in the applicant's affidavits which have been admitted by the respondent, together with the facts alleged by the respondent, justify such an order. The power of the Court to give such final relief on the papers before it is, however, not confined to such a situation. In certain instances the denial by respondent of a fact alleged by the applicant may not be such as to raise a real, genuine or bona fide dispute of fact …*'

The primary objective of this process is to align the company's wage structures with the applicable MIBCO rates to ensure long-term sustainability and competitiveness within the automotive sector.

This alignment has become necessary due to the significant financial and operational pressures currently faced by the business, as well as the need to standardise pay structures across all projects and divisions.

While the company's intention is not to cut jobs unnecessarily, the prevailing cost pressures have become unsustainable, and as part of the cost-reduction process, the e mployer is compelled to consider the possible retrenchment of employees whose positions may become redundant.'

(emphasis added)

CBS's wage levels exceed the minimum wages stipulated in the MIBCO agreement.

5.2 On 1 March 2026, pursuant to a settlement under case MIPT38276 concluded during a conciliation under the auspices of the Motor Industry Bargaining Council, 23 quality inspectors previously on fixed-term contracts were deemed permanent employees. Because their status had changed since the initial November 2025 retrenchment notices, the consultation process was extended to include them.

5.3 On 28 March 2026, NUMSA referred a dispute to the CCMA under case number GATW 4798-2026 concerning "matters of mutual interest". In describing the results required on the referral form, NUMSA stated *'Employer to stop the s 189. Stop the cut of[f] salaries. Stop the new recruits.'* In an annexure summarising the dispute attached to the referral form, the union set the dispute out in the following terms:

- *The employer to stop the s 189 as they recruited contract workers during the s 189*
- *The employer to stop the salary cut of the workers' salaries from R 87.32 to R 49.35.*

- *Employer to stop the new recruits and the process of sorting new recruits.*
- *Employer to stop the short-time.*

5.4 The conciliation on 14 April 2026 did not resolve the dispute, and the CCMA issued a certificate of non-resolution on 30 April 2026.

5.5 On 21 April 2026, before the certificate of outcome had been issued in dispute GATW 4798-2026, NUMSA addressed a letter of demand headed *'S 189A FACILITATED CONSULTATIONS/INTENTION TO TERMINATE OUR MEMBERS/ LETTER OF DEMAND'* In essence the letter complained that CBS had increased the number of affected workers from 12 members in the positions of Inspector and Staff Support to 50 employees across a number of departments, without any consultation having taken place regarding the 38 additional employees. The union gave the company an ultimatum to agree not to terminate the service of any employee in respect of whom no consultation had taken place since November 2025, failing which it would bring an urgent application in the labour court (presumably under s 189A(13)).

5.6 In addition, on the same day NUMSA referred another dispute to MIBCO which it also described as a mutual interest dispute. The dispute was described thus: *'Employer wants to give old existing employees new contracts of employment, NUMSA demands that the employer should not do so',* and wanted the contracts to remain as they were.

5.7 CBS responded, *'without prejudice'*, to NUMSA's letter on 23 April 2026. Amongst other things it stated that all of its 212 employees were affected by the retrenchment process and the retrenchment notices issued to employees likely to be affected were in the following job categories *'Business Administration - all projects; Project Administration & operations - all projects, and Inspectors - all projects'*. It further recorded that the last consultation under the CCMA had taken place on 13 April at which *'…it was agreed that alternative positions of employment within the Employer would be presented to the affected employees for their consideration'* and *'(i)t was also initially agreed that the deadline for the acceptance or*

rejection of the aforementioned offers of alternative employment by the affected employees was to be communicated to the Employer by no later than Friday the 17th of April 2026.'

5.8 The letter went on to confirm that CBS was in the process of finalising the retrenchment process relating to the first two job categories mentioned above, but that it was willing to extend the process of consultation as far as the inspectors were concerned. It asserted that CBS believed that the dispute referred under case number GATW 4798-2026 concerned matters of mutual interest which was an attempt to *'illegally force issues which currently forms part and parcel of the retrenchment process into a dispute relating to matters of alleged mutual interest'*, and warned it would approach this court if necessary if the union embarked on strike action.

5.9 On 29 April, CBS request for further facilitation by the CCMA under s189A relating to the 23 inspectors.

5.10 The following day, the certificate of outcome was issued for the first dispute (case no GATW 4798-2026). A few days later, on 6 May, NUMSA issued a strike notice to CBS notifying it that a strike would commence on Monday, 11 May 2026.

5.11 The strike demands were expressed in the opening paragraph of the notice:

> *'Please note that NUMSA obo Members and potential strikers hereby resume the strike regarding the change of rate of pay from 1. R87-R 70,2. Stopping short-time. The strike will start on the 11th of May 2026 at 06:00.'*

(*Sic)*

5.12 On 7 May, CBS responded to the strike notice. It reiterated its view that the alleged mutual interest demands of the union were made in bad faith because the subject matter of the demands was addressed during the s 189 consultation process and the process had been extended for inspectors. It claimed that '*All other affected employees employed is being dealt with in accordance with the agreement reached during the last*

consultation process in front of the CCMA facilitator (as also conveyed to you in our aforementioned letters)'. Further, the letter asserted that: '*(a)s was previously communicated to you, your actions herein amount to being vexatious, and furthermore, your intended strike action is premature in that the aforementioned issues which now ostensibly form the basis of your intended strike action were discussed during the retrenchment consultation process, and will be further addressed during the next consultation in front of the CCMA conciliator'* (*sic*).

5.13 On 8 May, CBS again wrote to NUMSA to draw its attention to the peace clause in clause 3 of the MIBCO Main Collective Agreement[2], which provided that bargaining takes place at centralised level and no two-tier bargaining on any matter of mutual interest can take place.

[6] Material issues in dispute are the following:

6.1 NUMSA avers that short-time and the reduction of hourly wages did not originate as issues in the retrenchment consultations. It contends that short-time work was implemented unilaterally by the Applicant back in February 2025 and a proposal to reduce pay from R87.32 to R49.35 per hour was introduced in July 2025, long before the retrenchment consultations. Hence the union insists that the demands concern independent mutual interest disputes and have no structural relationship to the reasons behind the Section 189/189A process. Correspondence from NUMSA dating from mid-May 2025 expresses concerns about the perceived unfair allocation of short-time work and emails to CBS in October 2025 reiterate the concern.

6.2 CBS did not dispute this claim, but points out that short-time and the wage reduction are issues which have featured in the consultation process and *'fall squarely within'* its operational requirements. It does not dispute that a

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[2] Clause 3 reads:

'*3.CENTRALISED BARGAINING*

Bargaining within the Motor Industry, as defined in the Main Collective Agreement, takes place at centralized level. There shall be no two-tier bargaining on any matter of mutual interest, other than in Sector 6 where the Parties may engage in plant level negotiations on actual wages.'

meeting specifically on the short-time question was held between the parties on 4 February 2026, after NUMSA had addressed a letter to CBS on 24 January 2206 demanding that it end the short-time. NUMSA agrees that short-time and the wage reduction demand of CBS was discussed in the course of the retrenchment consultation but contends the issues are unrelated to the rationale for the retrenchment.

6.3 On the question whether the parties had reached agreement on offers of alternative employment at the consultation on 13 April, namely that alternative positions of employment would be presented to the affected employees for their consideration. NUMSA explicitly denies that there was any such agreement. It claims it specifically and directly rejected the proposal to change the positions, contracts, or work of any employee as a supposed alternative to retrenchment and refers to an email dated 21 April rejecting the proposed contracts. CBS responded by asserting that whether or not agreement was reached on 13 April to present affected employees with alternatives that was irrelevant to the intended strike.

Evaluation

[7] CBS contends that the intended strike will be unprotected for the following reasons:

7.1 The wage reduction proposal and the question of short-time are matters which are part of the retrenchment consultation process. As such any strike action on those issues would be act in bad faith to disrupt the consultation and would be premature while the issues are still under discussion. It contends that the two demands are not truly matters of mutual interest but a subterfuge to undermine the retrenchment consultations.

7.2 In any event, the peace of obligations of the MIBCO main agreement prohibit two-tier bargaining and any form of industrial action relating to a dispute over wages or conditions of employment.

[8] The peace clause in the MIBCO main agreement reads:

'4. PEACE CLAUSE

4.1. The Parties agree not to embark on and/or participate in any form of industrial action as a result of any dispute on wage and/or salary adjustments and other conditions of employment relating to any sector or chapter in this Agreement: Provided that an employer has implemented the wage and/or salary adjustments and other agreed conditions of employment matters on or before promulgation. Participation in any form of industrial action after the date of the settlement Agreement until 31 August 2025 shall be unprotected.

4.2. Provided further, that Bargaining within the Motor Industry, as defined in the Main Collective Agreement, takes place at centralized level. There shall be no two-tier bargaining on any matter of mutual interest, other than in Sector 6 where the Parties may engage in plant level negotiations on actual wages which negotiations shall be governed by the provisions of the LRA and shall not be conducted under the auspices of MIBCO. In particular, this clause shall not impact on the DRC jurisdiction to entertain disputes referred to it, arising out of such negotiations at plant level in respect of Sector 6 establishments.'

(emphasis added)

[9] CBS places considerable reliance on the judgment of this court in *Arcelormittal SA Ltd v National Union of Metalworkers of SA & others* [3]. It argues that the facts of that case are similar to this. In that matter, retrenchment consultations had begun in June 1990 arising from the impact of the Covid-19 pandemic. In the course of the consultations alternatives to retrenchment including wage cuts and further short time work were discussed. In August 1990, NUMSA referred a mutual interest dispute to the relevant bargaining council. The issue in dispute was the employer's refusal to conclude a long-term agreement guaranteeing a very substantial retrenchment packages for workers dismissed for operational

[3] (2021) 42 *ILJ* 1099 (LC)

reasons, which NUMSA had first tabled in 2019 in a prior retrenchment process. The demands arose again during the s189A consultation process in 2020 and the union, as in this matter, claimed they were unrelated to that ongoing consultation process, but to the demands made in 2019. Eventually, the union issued a strike notice relating to the demands.

[10] The employer argued that the strike was premature as the demands related to the ongoing retrenchment process and since no termination notices had been issued under s 189A(7)[4] of the LRA, they could not embark on protected strike action under that section. Further, it contended that the union and its members were bound by the provisions of a collective agreement which contained a retrenchment policy and fixed the amount of severance pay. Consequently, the strike would be in contravention of s 65(1)(a)[5] of the LRA. Lastly, the employer submitted that the collective agreement also required the parties to engage in discussions on substantive issues before referring a dispute to conciliation, which it claimed had not occurred[6].

[11] The court held that it could not distinguish between the demands made by NUMSA in the latest consultation process and its demands articulated during the 2019 retrenchment consultations. It found they were '*intertwined with the sole objective being to improve the employees' retrenchment package'* and it agreed with the employer that *'the inescapable conclusion to be reached is that*

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[4] Section 189A(7) reads:

'(7) If a facilitator is appointed in terms of subsection (3) or (4), and 60 days have elapsed from the date on which notice was given in terms of section 189 (3)-

(a) the employer may give notice to terminate the contracts of employment in accordance with section 37 (1) of the Basic Conditions of Employment Act; and

(b) a registered trade union or the employees who have received notice of termination may either-

(i) give notice of a strike in terms of section 64 (1) (b) or (d); or

(ii) refer a dispute concerning whether there is a fair reason for the dismissal to the Labour Court in terms of section 191 (11).'

[5] Section 65(1)(a) reads:

'65 Limitations on right to strike or recourse to lock-out

(1) No person may take part in a strike or a lock-out or in any conduct in contemplation or furtherance of a strike or a lock-out if-

(a) that person is bound by a collective agreement that prohibits a strike or lock-out in respect of the issue in dispute;…'

[6] At paragraph 15 of the judgment.

the subject and substance of the demands for the long-term agreement are matters governed by the parties' collective agreement. These issues are the subject of the ongoing consultation process as facilitated under the CCMA, thus making the strike impermissible under the provisions of s 65(1)(a) of the LRA'[7].

[12] The *ratio* of the judgment is that the court found that the demands relating to severance pay related to a matter governed by the collective agreement and hence a strike over the demands would contravene s 65(1)(a) of the LRA. The question that needs to be answered is whether NUMSA's demands in this instance fall foul of that provision as well.

[13] The first point to make is that it is apparent that the wages paid by CBS are in excess of the minimum wages prescribed in the MIBCO agreement and it is clear that one of its objectives is to reduce premium wages it pays. The wages stipulated in the agreement are minimum wages. CBS has not provided any evidence that the main agreement deals with the issue of whether premium wages can be reduced, which is what it is proposing and NUMSA is resisting. On what has been placed before the court, there is no basis for concluding that the main agreement regulates the issue of whether there can be a downward revision of wages which are higher than the minimum, subject of course to the obvious exception where the employer is attempting to reduce wages below the agreement minimums.

[14] NUMSA cites the judgment of this court in *Auto-X (Pty) Ltd v National Union of Metal Workers of South Africa* [8], in which the interpretation of the peace clause was considered. The facts of the dispute giving rise to the intended strike were unusual. The employer had relocated its premises some 27 kilometres from the original premises which, unsurprisingly, had inconvenienced a number of employees. The union had demanded that workers who found it difficult to work at the new location should be offered voluntary severance packages and various other demands such as relocation and transport allowances. The employer contended that a strike in support of that demand would be in breach

[7] At paragraph 25.

[8] (D450/2024) [2024] ZALCD 31 (11 September 2024), unreported.

of the prohibition against clause 4.1 and 4.2 of the peace obligation in the MIBCO agreement. The court held that:

> *'[14] Whilst it is evident that the parties to the Main Agreement intended to curtail the right of workers bound thereby to strike, it is not evident that the clause was intended to operate as an absolute prohibition. Properly construed, the prohibition contained in clause 4.1 relates to wage and salary adjustments as well as other conditions of employment, but only to the extent that such other conditions of employment are, in fact, regulated by the Main Agreement itself. This is evident from the wording, 'relating to any sector or chapter in this Agreement.' Whilst it was accepted by the respondents that they are employed within a sector governed by the Main Agreement, they did not accept that the issues in dispute were dealt with or governed by any chapter therein. The applicant contented itself with arguing for a meaning that accorded with a blanket ban on industrial action and did not endeavour to demonstrate that the respondents' demands related to issues which were, in fact, regulated by the Main Agreement. On the facts of the matter, this court is satisfied that the origin of the demands had been the relocation of the applicant's premises and the demands were therefore not demands for increased wages, disguised as something else.'*
>
> (emphasis added)

[15] I agree with the court's interpretation that the prohibition against striking under the MIBCO agreement is not absolute but was to prevent a duplication at plant level of negotiation of issues which have been negotiated at centralised level. To succeed in demonstrating that the intended strike will be unprotected CBS had to show that the demands related to terms and conditions of employment already regulated by the MIBCO agreement. Merely because a demand of mutual interest bearing on a condition of employment is made, is not sufficient. It must be demonstrated that the subject matter of the demand is regulated by the main agreement, before strike action in support of that demand will be declared unprotected.

[16] It does not matter that the demands concerned issues also traversed in the consultation process. There is no prohibition on pursuing a demand over a matter of mutual interest simply because it has also been discussed during retrenchment consultations.

Conclusion and Costs

[17] In conclusion, CBS has not demonstrated that NUMSA's demands concern matters of mutual interest that cannot be pursued at plant level in terms of the MIBCO agreement and the strike called by NUMSA on 6 May 2026 is protected.

[18] There is no reason to make any cost award, as the parties have an ongoing relationship and the dispute is a *bona fide* one about the protected status of a strike.

Order

1. The strike initiated by NUMSA under the strike notice dated 6 May 2026 is not in breach of S 65 of the Labour Relations Act, 66 of 1995.

2. The application to interdict the strike on the basis it is unprotected is dismissed.

3. No order is made as to costs.

R Lagrange

Judge of the Labour Court of South Africa

Appearances:

For the Applicant:	--- FW Birkholtz
Instructed by:	--- Hayton Attorneys Incorporated
For the First Respondent:	--- V Shezi, Legal Officer, NUMSA
For the Second Respondent:	--- No Appearance