

APPEAL AGAINST THE REGISTRATION OF THE LOCAL GOVERNMENT PENSION FUND

The appeal to the Financial Services Board (FSB) Appeal Board against the registration of the LGPF was heard on 7 August 2007. The appeal was essentially argued on four points (as most of these became common cause after the pre-trial hearing). These points were:

1. **The South African Local Government Association's constitution does not allow for the creation of pension funds other than for those employed by the Association. Their actions were therefore ultra vires (beyond their powers).**
2. **There is an existing moratorium in the SALGBC that prohibits the creation of new pension funds in the local government sector.**
3. **There is a provincial ordinance applicable in the KZN Region that prohibits the introduction of the fund in that province;**
4. SALGA submitted that it needed the fund to cater for some 30 000 employees that do not belong to any fund. This has proven to be false and is therefore against public policy.

The Registrar argued that its only obligation is to ensure that the provisions of section 4 of the Pension Funds Act are complied with and if so, then it must register a fund. The Registrar stated that he has very limited powers and that he could not subpoena witnesses or compel SALGA to submit proof of the motivation for the registration of the fund. However the FSB, does have

the power to properly interrogate the application.

It was clear that SALGA was requested to submit more information to the registrar, which SALGA failed or refused to furnish. Both legal teams stopped short of saying that SALGA acted with malice (or even dishonestly) by not putting all the facts before the Registrar.

Ultimately it was argued that the question was not whether the Registrar acted wrongly, but whether he would have acted in the same manner if he had all the information before him.

The Appeal Board was clearly focussed on the ultra vires argument and it was stated that if it is found that SALGA acted ultra vires then its conduct was null and void ab initio (from the beginning) and the matter should end there.

The one question posed by the Appeal Board that led to some difficulty was the question of what to do with the some 1 000 members of the LGPF if the Fund is deregistered. It was argued that if a vehicle is created in terms of an action that is illegal, then the status quo ante should be restored, which means effectively that the employees must be allowed to join one of the current recognized retirement funds.

The Appeal Board did not indicate how long it would take to make its findings but we hope that this will be done within the next few weeks.

Johan Koen General Secretary IMATU National Office

PROPOSED INTEGRATION OF METRO POLICE DEPARTMENT WITH THE SOUTH AFRICAN POLICE SERVICE

IMATU was concerned about the rumours that the National Police Commissioner intends to integrate the various Metropolitan Police forces throughout the country, with the South African Police Services (SAPS). IMATU met with the National Police Commissioner, Jackie Selebi on 2 May 2007 in order to seek clarity on these rumours. The meeting was attended by representatives of IMATU and SAMWU.



uniform rank structure and uniform disciplinary code must exist. IMATU stated categorically that the current disciplinary code applicable in local government (and thus also in respect of Metropolitan Police Officials) is the product of collective bargaining in the SALGBC, and as such, could only be amended/changed (which IMATU would be opposed to, in any event), by way of future collective bargaining within the SALGBC.

Commissioner Selebi informed the unions that he had no intention of formally integrating the respective Metro Police Departments with the SAPS. He was, however, of the view that he, as National Police Commissioner, should be in overall command and control of all police forces in the country. He also expressed the opinion that in order to achieve closer co-operation between the SAPS and Metropolitan Police forces, a

The meeting concluded with the National Police Commissioner undertaking to further engage with IMATU as and when the need arose. However, the rumours about the proposed integration have persisted and IMATU has requested a further meeting with Jackie Selebi. IMATU will monitor the situation and do everything lawful to protect the rights and interests of the members.

IMATU MAIL



General Secretary:
Johan Koen

OCT-NOV 2007 • Volume 8: Issue 4

National President:
Danie Carstens

Official newsletter of the Independent Municipal and Allied Trade Union • IMATU is not affiliated to any political party

VICTORY FOR WORKERS:

CONSTITUTIONAL COURT RULES THAT CCMA HAS THE RIGHT TO OVERRULE THE EMPLOYER



to the heart of the employer-employee relationship'.

Both the Labour Court and Labour Appeal Court agreed with the CCMA's decision. However, Rustplat then referred the case to the Supreme Court of Appeal (SCA) claiming that they had suffered an administrative injustice in terms of the Promotion of Administrative Justice Act (PAJA). The judge ruled that even though the Court must recognise

The Constitutional Court has ruled that a CCMA Commissioner (and by implication, a Bargaining Council Arbitrator) has the right to overturn an employer decision to dismiss an employee.

The case arose after the CCMA ruled that Rustenburg Platinum Mine acted unfairly when a security guard was dismissed after surveillance footage showed that he failed to search people properly when they entered a facility dealing with precious metal. The CCMA based its ruling on the fact that the employee had been working for the employer for 15 unblemished years, that he thought that he was only required to carry out random searches and that the misconduct did not 'go

the constitutional objectives of the Labour Relations Act (LRA), the Court could not lose sight of the employer's constitutional right to administrative justice. The Court held further that the CCMA's arbitral decisions constitute administrative action and that therefore its actions may be reviewed in terms of PAJA. The judge found that the CCMA did not have the right to overrule the employer and ruled that the dismissal was fair.

This ruling by the Constitutional Court, the highest Court in the land, has now finally ruled out all doubts that the employee's right to fair labour practices is not secondary to an employer's right to 'administrative' justice.

FIRE AND EMERGENCY WORKERS: DISPUTE OVER PAYMENT FOR INJURIES ON DUTY



In March 2007, **IMATU**, **SAMWU** and the eThekweni Municipality entered into a collective agreement on Divisional Conditions of Service. The purpose was to attain a uniform set of conditions of service

for all employees in this municipality. **This document contained a specific clause (6.2) that stated that Fire and Emergency Issues would be dealt with separately.**

However, the Employer reneged on this and applied the entire set of conditions of service to uniform staff such as Fire and Police. As a result, the employer reduced the payment for Injuries On Duty (IOD) from 100% to 75% for the eThekweni fire and emergency staff.

IMATU declared a deadlock at the Bargaining

Council and referred the matter for resolution via the arbitration process.

IMATU also held four mass meetings in the different regions of the eThekweni Municipality and received a unanimous mandate to withdraw from the conditions of service collective agreement. This mandate was tabled at the last Bargaining Committee meeting and the Employer stated that they would persist in the implementation of the agreement. **IMATU** is exploring the various legal options available.

Some newspapers reported that the shop stewards were bribed to sign the agreement with the employer. There is no truth in these allegations -the only party who has acted in bad faith is the employer, who ignore Clause 6.2 of the collective agreement.

The pay rate for firefighters has been changed to 100% for three months pending further negotiations.

HOF BEVIND DAT WERKER KORREK OPGETREE HET MET BEKENDMAKINGS AAN DIE OUTDITEUR-GENERAAL

Wanneer 'n mens onregverdig behandel word, veral in jou beroep, is 'n mens geweldig emosioneel en dit is moeilik om perspektief te behou en te "baklei" vir jou regte. Privaat prokureurs kos baie geld en dit lyk partymaal na 'n makliker opsie is om maar te bedank en elders 'n nuwe begin te maak. Maar daar is 'n ander opsie: sluit aan **IMATU**! As jy ooit in so 'n situasie soos ek beland, gaan dit jou oneindig baie baat. **IMATU** help jou om op die saak te fokus en spel jou regte duidelik vir jou uit. As 'n mens weet wat jou regte is, voel jy veiliger en meer bemagtig en dit gee jou weer moed om uit te hou en aan te hou.

Die afgelope ±18 jaar was ek 'n amptenaar by Oudtshoorn Munisipaliteit, o.a. 7 jaar Departementshoof, Korporatiewe Dienste. Gedurende Augustus 2006 het die voormalige Munisipale Bestuurder my geskors, disiplinêr aangekla (9 klagtes) en aanbeveel dat my pos as Hoof: Beplanning en Ontwikkeling afgeskaf word, wat die Raad gedoen het! Hierdie beroepsbenadeling het plaasgevind nadat ek ingevolge die wet op Beskermde Bekendmakings (Wet 26 van 2000) wanadministrasie aan die Minister van Plaaslike Bestuur en Behuising, die Ouditeur-

Generaal en die Openbare Beskermer geopenbaar het.

Die Streeksbestuurder van **IMATU**: Wes-Kaap, Etienne Bruwer, het prokureur Minnaar Niehaus, aangestel om 'n voorlopige interdik (Rule Nisi) aan te vra in terme van die Wet op Beskermde Bekendmakings by die Arbeidshof: Wes-Kaap. Die interdik is suksesvol toegestaan gedurende Oktober 2006. Op 25 Mei 2007, nadat ek nege maande met volle besoldiging geskors was, het **IMATU** weereens suksesvol die Arbeidshof genader en is 'n Bevel toegestaan dat ek korrek opgetree het volgens bogenoemde Wet en is die beroepsbenadeling, skorsing en klagtes opgehef. Ons het direk voor die verhoor n skikking bereik met the werkgewer om my 'n skeidingspakket te betaal and ook 'n groot gedeelte van **IMATU** se regskostes.

Ek wil alle Munisipale amptenare, insluitend senior bestuurslede aanmoedig om by IMATU aan te sluit. As 'n krisis ontstaan is hulle daar om u te ondersteun en te beskerm.

Dankie IMATU: Anton Bekker

HIGH COURT RULES AGAINST CAPE JOINT PENSION FUND AND EMPLOYER IN FAVOUR OF EMPLOYEES

The Cape High Court has ruled that the Cape Joint Pension Fund and the Bophirima Municipality must pay redundancy/retrenchment benefits to 100 former employees. **IMATU** referred the case to the High Court when the employer and Cape Joint Pension Fund refused to pay the employees the redundancy/retrenchment benefits provided in the Fund's rules.

The case arose in 2001 when the Bophirima Municipality terminated an agency agreement to carry out road maintenance functions on behalf of the Provincial Roads Department (and later the Dept of Public Works and Roads, North West Province). As a result of the termination of the agreement, the Bophirima Municipality was no longer responsible for carrying out road maintenance, therefore the 100 employees were transferred to the Dept of Public Works and Roads ('The Dept').

The applicants were all members of the Cape Joint Pension Fund at the time they were transferred to the Dept. The rules of the fund provided that should a member's services be terminated because he was retrenched, or his post became redundant, such a member would be entitled to a redundancy/retrenchment benefit in terms of the fund's rules.

IMATU submitted that the employees were entitled to this benefit as their former posts at the municipality became redundant on 30 June 2001.

Judge Davis focussed on the main issue that needed to be determined, namely whether the applicant employees' services were terminated as a result of being declared redundant. He found that the manner in which the contractual relationship between the employees and the municipality ended complied with the circumstances described in Rule 7.1 A (1) of the Cape Joint Pension Fund. In other words, the employees became redundant when the agency agreement came to an end as from 1 July 2001.

The Judge ordered that the Bophirima Municipality should pay the Cape Joint Pension Fund the sum of the redundancy/retrenchment benefit payable to the applicant employees in terms of the Funds rules, plus interest, and that the Fund should pay the individual employees as soon as they receive the payment from the municipality.

The Cape Joint Pension Fund and the Bophirima Municipality were ordered to pay the applicants' costs, including the costs of two counsel.

PROPOSED SINGLE PUBLIC SERVICE: LATEST DEVELOPMENTS

It has been previously reported that the Department of Public Service and Administration is investigating the possibility of creating a Single Public Service, which would result in local government employees being transferred to the Public Service. The Minister for the Public Service and Administration had previously given her assurance that **IMATU** would be engaged in the process once clarity was obtained on the way forward.

Over the past five years, government has taken no tangible steps to engage the unions in local government on the SPS. Danie Carstens, **IMATU**'s National President, succeeded in bringing the matter to the fore at FEDUSA and, subsequently the NEDLAC structures during 2007. As a result, NEDLAC appointed a Single Public Service Task Team. **IMATU** was allocated two positions on this team (the President and General Secretary). The Task Team has met only once, where our delegates used the opportunity to state our opposition to the SPS and to try and convince Business and Communities of our

position.

IMATU has raised its objections to the proposed Single Public Service (SPS) at various levels, including a meeting with Minister Fraser-Moleketi during December 2006. At this meeting **IMATU** presented the Minister with our views on the role and responsibility of local government in South Africa.

Our main reasons for objecting to the SPS is the negative impact this would have on service delivery and poverty alleviation, the infringement of the S.A. Constitution, the adverse impact on employee benefits, pension funds, the negative impact on local government's geographical integrity, etc.

The NEC has resolved that the SPS process be resisted. Our attorneys are busy with a legal strategy to approach the Constitutional Court if necessary. The NEC has also engaged other strategists to assist with the formulation of an action plan to resist the SPS process.