

IN THE ESSENTIAL SERVICES COMMITTEE
HELD AT JOHANNESBURG

Case No.: ES 258

Investigation in terms of Section 71 of the Labour Relations Act, 66 of 1995:

Whether the service of detecting and reporting forest fires is an essential service?

Designation

BACKGROUND

1. The Essential Services Committee ("ESC") received an application from **Envirovision Solutions, t/a Systems (Pty) Ltd**, the applicant, to declare the service of **detecting and reporting forest fires** an essential service.

2. A notice was published by the ESC in terms of Section 71 of the Labour Relations Act, 1995 Act No 66 of 1995 as amended (the LRA), declaring its intention to proceed with an investigation by way of public hearings, as to whether the service of detecting and reporting forest fires is essential.
3. The public hearings were held at the CCMA offices on the following dates:
 - i) 10 December 2018: Johannesburg
 - ii) 11 December 2018: Durban
 - iii) 12 December 2018: Cape Town
 - iv) 13 December 2018: Port Elizabeth
4. The application was unopposed.
5. At the said Section 71 investigation hearings, the only presentation made was from EnviroVision Solutions in Durban on 11 December 2018. A copy of the said presentation slides was provided to the Essential Services Committee.

SUMMARY OF THE APPLICANT'S SUBMISSION

6. The Applicant operates a special geo-referencing visual system which detects and provides an early warning of fires and track the path that the fire would take. The Applicant would then report the fire and its track to the relevant authorities for the purposes of an early response by firefighters.
7. It was highlighted to the Committee that in majority of wildfires that have taken place, especially in the Western Cape area the casualties are mainly not at the point where the fire had begun but further along the path of the fire. In these instances, shack dwellers are particularly at risk.
8. Not all fire-fighting authorities are currently using this system, however, efforts are being made to have as many fire-fighting authorities to make use of this early warning detection system.

9. The forest watch & city watch technicians, operators and response staff currently work 24/7 on an 8-hour shift system.
10. The service providing operators are involved with monitoring early detection, reporting, monitoring the position of the fire and updates.
11. The current usage operates and covers a huge area.
12. The late detection of a fire and uncontrolled wildfires may create environmental disasters and are a biggest threat to lives.
13. It became apparent during the presentation that the early warning detection and early response system was not only limited to forest fires but would be applicable to all fires, such as shack fires etc.

Analysis

14. An 'essential service' is defined in section 213 of the Labour Relations Act as:
 - (a) a service the interruption of which endangers the life, personal safety or health of the whole or any part of the population;
 - (b) the Parliamentary service;
 - (c) the South African Police Service".
15. It is trite that strike action is an important element of collective bargaining and it is recognised as a primary mechanism through which workers exercise collective power (See ***Ex-Part Chairperson of the Constitutional Assembly in re: Certification of the Constitution of the Republic of South Africa, 1996 (4) SA744 (CC) at paragraph [66]***).
16. Our law requires essential services to be restrictively interpreted, and that this means, *inter alia*, the following:

- It is the service which is essential, not the industry or the institution within which the service falls;
- Only those employees who are truly performing an essential service, may be prohibited from striking. (see **South African Police Service v Police and Prisons Civil Rights Union and Another (CCT 89/10)**)

17. The ESC panel in determining this matter considered whether the applicant was truly rendering a service which was capable of being designated as essential or whether this is a case where a designation is sought in relation to a system? As indicated above the applicant in its presentation indicated that it operates a special geo-referencing visual system which detects and provides an early warning of fires. The applicant indicated that it employs technicians who monitor system and if a fire is detected, it will be tracked and reported. Thus whilst the system would detect the possibility that there is a fire, the service of monitoring the system and interpreting the results and ensuring that there is a proper response is performed by these employees.

18. Accordingly, whilst the applicant does not render the service of putting out any fires as this service is rendered by the fire fighters, and fire fighting as a service is already designated as an essential service ear, the applicant renders a service that can be said to be complementary to the service of fire fighting.

19. As indicated the application requested the service of detection of forest fires to be designated as essential services and the question that arises is whether it can be said that if this services is interrupted will there be an endangerment of life personal safety of health of the whole or part of the population? The Committee is of the view that the answer should be in the affirmative. This is so because in most cases wild fires tend to spread over long distances and if detected early and there is rapid response this could prevent the fire spreading to nearby settlements.

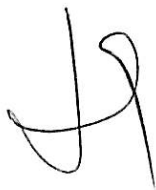
20. Fire fighters respond to a fire when such is reported and in most cases when the report is made the fire has already spiraled out of control. Thus early detection coupled with rapid response serves as an aid to fire fighting and saving lives.

21. The evidence of the applicant which is not disputed is that its technicians work 24 hours a day and seven days a week. The fact that the service is not offered to municipalities does not necessarily mean that is not an essential service. In fact, given the density of the dwellings in informal settlement and the fact that most informal settlement are built near these forests it is important that this service should be designated as an essential service.

22. Having considered the submissions by the applicant the Committee makes the following determination:

DETERMINATION

23. The services of early detection, reporting and response to fires is designated as an Essential Service.



Ms. Joyce Nkopane

ESC Panel Chairperson

25 March 2019