

**IN THE ESSENTIAL SERVICES COMMITTEE
HELD AT JOHANNESBURG**

Case No.: ES 5-16

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

**Whether the services rendered by life guards at the beaches should be
designated as essential services**

Designation

Introduction

1. The Essential Services Committee ("the ESC") on its own accord initiated an investigation in terms of section 70B (1) (d) of the Labour Relations Act, 66 of 1995 (*"the LRA"*) with the view of determining whether the services rendered by life guards at the beaches should be designated as an essential service.
2. The gazetted terms of reference for the investigation were published in Government Gazette No 40930, Volume 468, dated 23 June 2017.

Details of Hearings

3. Public hearings were held at the follow venues:
 - (a) CCMA George – 13 July 2017

- (b) CCMA Cape Town – 14 July 2017
- (c) CCMA Port Elizabeth – 17 July 2017
- (d) CCMA East London – 18 July 2017
- (e) CCMA Durban- 21 July 2017
- (f) CCMA National Office – 24 July 2017
- (g) CCMA Polokwane – 21 April 2017

Background

- 4. Section 70B (1) provides that the powers and functions of the essential services committee are to –
 - (d) decide, on its own initiative or at a reasonable request of any interested party, whether to institute investigation as to whether or not the whole or part of any service is an essential service.
- 5. The Essential services committee identified the service offered by lifeguards as a service that needs to be investigated. A lifeguard is responsible for the safety of people in an area of water be it at the beaches, swimming pools or lakes. The Committee decided to specifically investigate this service as it is offered at the beaches across South Africa.
- 6. The service in South Africa is offered by the municipalities and to a large extent by volunteers.

Submissions by interested parties

- 7. The ESC received both written and oral submissions from various organizations, municipalities and unions.
- 8. Life Saving Western Cape submitted that it is a voluntary organization and offers a voluntary service of lifeguarding at the beaches in western Cape. It

was submitted that lifeguards' duties do not only involve rescuing people that are drowning. The service extends to being able to study the water and take action before the actual drowning occurs. Thus the life guards' duties involve ensuring that swimmers follow safety rules, making sure people stay in safe areas, rescuing swimmers in danger, giving first aid, monitoring sea conditions and setting up safety flags and a point of contact for people on the beach.

9. Lifeguards are always in training to keep their skills, knowledge and fitness sharp. They are required to keep certifications such as CPR and first aid up-to-date. Some are trained in advanced treatments like using oxygen or in the use of specialized equipment like defibrillators and personal watercraft. Further that they are the first to attend to the emergency situation so that when emergency services/ paramedics arrive the patient is already stabilized.
10. The City of Cape Town submitted that it employs lifeguards. It submitted that during peak season the number increases as there are many people visiting the beaches. However, it ordinarily employs twelve permanent guards.
11. On behalf of the City it was also submitted that the life guards also look after children who are lost and in the event that this service is interrupted lives may be lost.
12. These sentiments were echoed by Life Saving (EL),(PE),(KZN) and (Life Saving South Africa) South African Sea Rescue organization all supported the submission that life saving should be designated as an essential service. Buffalo City Metropolitan Municipality, Mandeni Municipality also submitted that the service should be designated as essential.
13. On behalf of Mosselbay municipality it was argued that the beaches in that area are not frequented by swimmers during off peak season. Therefore, it is not necessary to designate services as essential during this period. It was

further submitted that the service should be designated as essential only during peak season.

14. SAMWU in Western Cape submitted that whilst the service may be offered by the South African Police Services it was important that the service be declared essential. It was further submitted that the committee should then direct the parties to conclude the minimum service agreements.
15. IMATU submitted that the life guards are generally required to have strong swimming skills, observational skills, excellent levels of concentration, strong communication skills, especially in an emergency and the ability to keep calm and act quickly in emergencies.
16. They are trained rescuers who must be certified before they can be employed as such. Cardio-pulmonary resuscitation (CPR) and general first aid are standard requirements for them. Also, many are now both trained and certified to use advanced lifesaving tools such as external defibrillators and portable oxygen. According to the Medical Research Council of South Africa, over the past five years, a total of 3 000 deaths caused by drowning were recorded in the country. In its Burden of Disease report, the council noted that as children grew older, external causes such as road traffic injuries and drowning became more prevalent.
17. It was submitted further that the mortality statistics reveals a trend that places drowning as the second highest cause of accidental death, after road accidents, among children after up to the ages of 15 years.
18. Reference was made to statistics and incidence of drowning in South Africa where there were no lifeguards. It was submitted that given the high rate of drowning particularly amongst the children and the examples referred to in the

submissions where in some incidents people died because the guards were on strike, the service should be designated as an essential service.

Applicable Legal Principles

19. In determining whether a particular service should be designated as an essential service the ESC is guided by the legal principles as indicated herein below.

20. Section 23(2) of the Constitution of the Republic of South Africa, 1996 (*“the Constitution”*) states that... *“Every worker has the right ... (c) to strike.”*

21. The right to strike is a fundamental right and just like any other constitutional right it is not absolute. Section 36 (1) of the Constitution states inter alia that... *“The rights in the Bill of Rights may be limited only in terms of law of general application to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom”*.

22. The legislature has enacted the Labour Relations Act 66 of 1995 in order to give effect to the rights contained in the Constitution. Section 65 (1) (d) (i) of the LRA states that ... *“No person may take part in a strike ... if that person is engaged ... in an essential service”*.

23. An ‘essential service’ is defined in section 213 of the 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”*.

24. Strike action is also an important element underlying our collective bargaining system (See ***National Union of Metal Workers of SA and Others v Bader Bop (Pty) Ltd and another*, 2003(3) SA 513(CC)** at paragraph [13]).

25. Brassey (in *Commentary on the Labour Relations Act, Volume 3, Juta*) notes that an essential service is narrowly defined in our law; that the emphasis is on threats to safety and security, and that considerations of mere expense and inconvenience fall beyond the ambit of the definition of an essential service.

26. The Labour Court endorsed this view of Brassey in ***SA Police Service v Police & Prisons Civil Rights Union & Others (2007) 28 ILJ 2611 (LC)***, when it ruled that not all employees of the South African Police Service render an essential service which prohibits them from embarking on strike action. The Labour Court held that it is the service that is essential, not the industry. The suggestion that finance administrators, human resource personnel, tea ladies and cleaners render an essential service by reason only of being employed by the SAPS was, in the Court's view, difficult to comprehend. It could not be argued, on the definition of essential service in the Act, that the interruption of the service of the above workers would "*endanger the life, personnel safety or health of the whole or part of the population*".

27. This was confirmed by the constitutional Court in ***South African Police Service v Police and Prisons Civil Rights Union and Another [2011] 9 BLLR 831 (CC)*** said the following: -

"In order to ascertain the meaning of essential service, regard must be had to the purpose of the legislation and the context in which the phrase appears. An important purpose of the LRA is to give effect to the right to strike entrenched in section 23(2)(c) of the Constitution. The interpretative process must give effect to this purpose within the other purposes of the LRA as set out in Section 1(a). The provisions in question must thus not be construed in isolation, but in the context of the other provisions in the

LRA. For this reason, a restrictive interpretation of essential service must, if possible, be adopted so as to avoid impermissibly limiting the right to strike (footnotes excluded)”

28. Having regard to the above, it is clear that 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; and
- Essential and non-essential service workers may be found working side by side in the same institution.

29. Before the ESC can designate any service as essential, it must be satisfied that the interruption of the said service is likely to endanger life, personal safety or health of the whole or part of the population.

30. It is further trite that in view of the fact that the right that would be affected by such a designation limits or takes away a fundamental right, such designation must be reasonable and justifiable. Thus if the ESC finds that parts of the service are not essential the Committee is obliged not to designate such services, as such a designation would be unreasonable and unjustifiable


Analysis of Evidence

31. As indicated above this is an investigation initiated by the Committee. Having considered the oral and written submissions that were received it is apparent that all involved agree that the service rendered by the life guards is an essential service.

32. During the investigation the panel was shown a video that indicated how within a short space of time swimmers lives can be in danger, and swimmers would be oblivious to the dangerous situation around them. It was indicated how the proactive intervention of the life guards on duty on that day prevented more than one hundred and fifty bathers from drowning and losing their lives.
33. Although the service is sometimes offered on a voluntary basis it is clear that local government plays a pivotal role in providing the service. On its submissions IMATU referred to statics and incidences where people lost lives simply because the service was not offered or was interrupted due to industrial action.
34. The question that arises is whether the service should be partially designated or on the whole. Mossel bay municipality submitted that the service should only be designated as essential during peak periods. Most of the parties submitted that in winter months there is not much activity in the beaches and thus the number of lifeguards employed by various municipalities would be reduced during these periods.
35. Whilst it is so that the number of swimmers is significantly reduced during off season / peak, one cannot lose sight of the fact that there is nothing that prevents people from swimming during these periods and further that the climate would differ from one area to another. Therefore, the ESC is of the view that the service is essential at all material times when it is rendered. Accordingly, periodic/ partial designation would not be appropriate.
36. Having considered the written and oral submissions of the parties, as well as the applicable law referred to above, the Panel makes the following designation.

Designation

37. Life guarding and or life saving services at the beaches is designated as an essential service.

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Ms. Joyce Nkopane
ESC Panel Chairperson
2 October 2017