

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

Case No.: ES

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

**Whether the whole or part of disaster management in local government is an
essential services**

Designation

1. Introduction

- 1.1 As part of its program of assisting Municipalities to conclude Minimum Service Agreements (MSA's), the Essential Services Committee ("the ESC") noted that a number of Municipalities included disaster management as an essential service despite it not being designated as such.
- 1.2 The ESC, in line with Section 70B(1)(d) decided on its own initiative to institute an investigation as to whether the whole or part of disaster management in local government is an essential service.

2. Details of Hearings

- 2.1 On 24 May 2016, the ESC wrote to the South African Local Government Bargaining Council, and requested that the investigation on disaster management in local government be conducted through it, as it is the forum wherein, the parties in local government are represented.
- 2.2 The ESC advertised on the Sunday Times of the 19 June 2016, and on the government gazette of the 24 June 2016, inviting all interested parties to a public hearing on 15 July 2016 and requesting them to also make written submissions should they wish to.
- 2.3 On 22 June 2016, the SALGBC, through its General Secretary, Mr. B Govender, wrote to the ESC, advising it that its proposal had been discussed agreed to by all the parties at the SALGBC. The SALGBC requested that submissions for the investigation be made either on the 28 or 29 August 2016. Along with the proposal to utilize the SALGBC for the said investigation, the ESC thereafter decided to centralize the said investigation.
- 2.4 The ESC confirmed with the SALGBC that the public hearing for disaster management in local government would be held on the 29 August 2016 at its offices in Johannesburg.
- 2.5 On 26 August 2016, IMATU sent an email to the ESC advising that it will not be making oral representations, but would send written representations by the 30th of August 2016.
- 2.6 At the public hearing, the South African Local Government Association (SALGA) was represented by Mr. J van Zyl, and SAMWU was not represented. Mr. van Zyl was advised of the position of IMATU and advised that should he wish to make written representations he could do so by the 2nd September 2016.

- 2.7 On 31 August, the ESC received IMATU's written submissions. No representation were received from SALGA.

3. Legal Framework

- 3.1 It is necessary to set out the legislative context within which the ESC must make its designation.

The Labour Relations Act, 66 of 1995

- 3.2 An 'essential service' is defined in section 213 of the Act as:

"essential service" means –

- (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".*

- 3.3 In the above context, I am of the view that a service is an activity rendered, and not a coordination of a service or a conglomeration of services.

- 3.4 The first part of the definition of an "essential service" in the Act is:

"a service the interruption of which endangers the life, personal safety or health of the whole or any part of the population"

- 3.5 It is the view of the ESC that is a service that must be interrupted, the interruption of which endangers life, personal safety or health. Consequently the services need to be viewed individually and or separately

4. Written Representations made to the ESC

IMATU's submissions

IMATU argued that:

- a) Disaster Management is an umbrella term which is made up of fire fighting; ambulance services; paramedic services; emergency health services; municipal traffic services and policing; and municipal security. Further that these services, as individual services were declared as essential services by the ESC in 1997.
- b) Disaster management is not a service on its own.
- c) Further that it does not dispute that the above services, as individual services are essential services.
- d) Consequently, the ESC should either make no designation in this regard or if it defines disaster management as a service, designate it in relation to the services that have already been designated.

5. Survey of the Evidence

5.1 The Disaster Management Act 57 of 2002, defines disaster management as a continuous and integrated multi-sectoral, multi-disciplinary process of planning and implementation of measures aimed at -

- (a) preventing or reducing the risk of disasters;
- (b) mitigating the severity or consequences of disasters;
- (c) emergency preparedness;
- (d) a rapid and effective response to disasters; and
- (e) post-disaster recovery and rehabilitation;

5.2 Section 17(2) of the Disaster Management Act, lists as some of the information system that is required for disaster management, as:

- (i) police stations;
- (ii) hospitals, clinics and other health institutions;
- (iii) emergency medical services;
- (iv) school, church and public buildings and other facilities that could be used as emergency shelters or hospitals in the event of a disaster;
- (v) fire-fighting services; and
- (vi) airports, airstrips, harbours, seaports and railway stations.

5.2 I accept the argument tendered by IMATU that disaster management is not a service on its own, but a conglomerate of services. This conclusion is in my view in line with the definition of disaster management and the provisions of disaster management in the Disaster

Management Act. I am also satisfied that services that are required to respond to disaster management in local government have already been declared by the ESC.

- 8.3 The next question that arises is where a Municipality has a disaster management department but not individual departments for the services as declared by the ESC, ie a fire department, or police, etc. It stands to reason that given the ESC 1997 designation, such individuals although being part of the disaster management department, if they render any of the services as listed in the 1997 designation would be rendering essential services and their right to strike would be limited. Consequently such individuals would have to be included in the Minimum Service Agreement.

9. Designation

On the submissions made, the ESC therefore makes the following determination:

- a) Disaster Management is not a service and therefore cannot be designated;
- b) Employees rendering services designated as essential services in local government, whether working under a disaster management department or section, must be included in minimum service agreement under the banner of the services they render and not under disaster management.



Advocate Luvuyo Bono

Chairperson of the ESC

6 January 2017