IN THE INDUSTRIAL COURT HELD AT PRETORIA

CASE NO NH 11/2/3362

IN THE MATTER BETWEEN :

THE FOOD & ALLIED WORKERS UNION APPLICANT(S)

AND

ELPERORA (PTY) LTD RESPONDENT(S)

t/a FF MEAT PRODUCTS

A. SHOULD THE JUDGMENT/ORDER/REASONS BE CIRCULATED? YES

B. SECRECY PROVISION S 67(2)(a) - HAS APPLICATION BEEN MADE IN TERMS OF THIS SECTION? NO

C. DATE OF JUDGMENT : 14/9/90

D. NAME OF MEMBER OF THE COURT : D J PIENAAR

E. PERUSED BY AND DATE : 18/9/90

Jan, (a) Briefjies na partye wat nie verskyn het.

(b) Vonnis.

16/9/90

CASE NO NH 11/2/3362

IN THE INDUSTRIAL COURT

In the matter between

THE FOOD AND ALLIED WORKERS UNION — Applicant

and

ELPERORA (PTY) LTD t/a FF MEAT PRODUCTS — Respondent

CONSTITUTION OF THE COURT

Adv D J Pienaar — Senior Member

ON BEHALF OF

Applicants

Adv D I Berger — Instructed by Nicholls & Cambanis Attorneys

Respondent

Adv L van Schalkwyk — Instructed by Kallmeyer & Strime

PLACE AND DATE OF PROCEEDINGS

PRETORIA — 27 & 28 AUGUST 1990

CASE NO NH 11/2/3362

APPLICATION IN TERMS OF SECTION 46(9) OF THE LABOUR RELATIONS ACT, 28 OF 1956.

SUMMARY

Notice of deadlock - arguably two such notices in casu - which one to be regarded as the actual notice of deadlock

'Chairman' of conciliation board where board not convened

Refusal to negotiate with union of employees' choice where such union apparently representative is an unfair labour practice - Sentraalwes Koöperatief Bpk v Food & Allied Workers Union & Others (LAC) (unreported case no NH 11/2/1313/A dated 90-07-13) *applied*

Refusal to negotiate with union - reason: workforce regarded as part of a large family - such reason unacceptable and contrary to emphasis on collective bargaining in the Act

Costs - costs awarded on the attorney and client scale by reason of special considerations arising from the circumstances which gave rise to the dispute and the conduct of the respondent

JUDGMENT

Application was made in terms of section 46(9) of the Labour Relations Act, 28 of 1956, as amended ("the Act"), for a final determination of an alleged unfair labour practice.

The applicant prayed for an order in the following terms:

1. declaring the failure/refusal of the respondent to enter into recognition negotiations with the applicant to be an unfair labour practice;
2. directing the respondent to enter into recognition negotiations with the applicant;
3. further and/or alternative relief;
4. costs of suit.

Points in limine

The first point in limine raised by the respondent was that the applicant had sent the respondent a letter of deadlock on 8 June 1989 but that application for a conciliation board was only made on 15 August 1989. The application for a conciliation board was therefore not within the 21 days as is required by the Act and the establishment of the conciliation board was thus null and void. Accordingly, the matter could not have been referred to this court for determination.

The letter referred to above reads as follows:

Re : RECOGNITION OF OUR UNION

> We refer to our letter dated 1989/05/25 [in] which the union informed you that it has organised the majority of your employees, and proposed a meeting to negotiate recognition of the union. Your refusal to respond to our letter is regarded as unwillingness to recognise the union and a dispute exists.
>
> Notice is hereby given (in terms of section 27(1)(d)(i) section 35(3)(d)(i) of the Labour Relations Act 28, 1956 that a deadlock has been reached concerning the above mentioned dispute.
>
> We therefore request you to furnish us with possible dates in order to commence with our recognition agreement negotiations within 14 days period as from the date of this letter. Your failure to respond shall leave us with no other option but to pursue legal steps without any further notice.

This letter should, however, be seen in its proper context. In a letter dated 25/5/89 the applicant asked to meet the respondent as it believed that it had recruited a majority of the respondent's employees. It was prepared to verify its membership to the respondent by means of either stop-orders or a secret ballot. The respondent replied to this letter on 5 June stating that the directors were overseas and that it would contact the applicant after their return. After receiving this letter, the applicant then enquired about possible dates when the parties could meet and the respondent replied that, as the directors had returned, a meeting would be possible on the 18th or 20th of July. (It is noteworthy that in this case it is the respondent that pro-

poses the dates for a meeting with the applicant, something it would hardly have done had it believed that deadlock had already been reached.) The applicant then confirmed that it would prefer the 20th. However, on the day before the meeting, the respondent's attorneys informed the applicant that the respondent was no longer able to attend the meeting. The applicant subsequently proposed further dates during the first week of August.

On 1 August the respondent's attorneys then informed the applicant:

> "Our client has instructed us that, motivated by the following undermentioned factors, it is not prepared to enter into any Recognition Agreement with yourselves.
>
> Our client instructs us that over the years the small workforce have come to be regarded as part of a large family. The Management has endeavoured to maintain good relations all round and have encouraged their staff to approach them directly with any grievances, problems and complaints.
>
> Accordingly, our client sees no reason to disturb the good relationship existing between the Management and staff."

The relevant portion of applicant's attorneys' reply of 10 August reads:

> "Notice is hereby given in terms of Section 35(3)(d)(i) of the Labour Relations Act, that a deadlock has been reached. Industrial Court/Conciliation proceedings will now commence."

It is this letter which the applicant regards as the true

letter of deadlock.

Should one agree with the respondent and regard the first letter as the decisive one, it would mean that once such a letter has been written no further possibility of negotiation exists for the party declaring deadlock would be unwilling to attempt to settle the matter because it may forfeit the right to apply for the establishment of a conciliation board should the settlement negotiations drag on for more than twenty-one days.

The fallacy of the respondent's argument is aptly demonstrated by the facts of this case. It is clear from the correspondence between the parties that they were seeking a solution right up to the moment the respondent formulated its "happy family" letter.

I therefore agree with the applicant that the decisive letter of deadlock is the one dated 1 August and that the application for the establishment of a conciliation board was thus well within the stipulated twenty-one-day period. The first point in limine is, accordingly, dismissed.

The second point in limine raised by the respondent was that the dispute had not been properly referred to the court. This was the case because it had not been referred by "the chairman of the conciliation board or a person designated by

him for that purpose" (see s46(9)(b)(ii) but by the Regional Director of Manpower. It was argued that as the respondent had not attended any meeting of the conciliation board, no chairman could have been elected and that the Regional Director of Manpower could not fulfill the functions of the chairman.

Section 39 of the Act provides for the procedure to be followed by conciliation boards and makes certain provisions which apply to industrial councils mutatis mutandis applicable to conciliation boards. One of these concerns the appointment of a chairman. Section 26(2) of the Act namely provides:

> "If the council fails to fill any vacancy which may exist in the office of chairman or vice-chairman, the Minister may, after the expiry of a period to be fixed by him and notified to the council, appoint as chairman or as vice-chairman any person selected by himself from amongst the members or otherwise: and any person so appointed shall hold office until a chairman or vice-chairman, as the case may be, shall have been chosen by the council."

According to the respondent it is this procedure that should have been followed and, as it was not, there was no chairman of the conciliation board who could have referred the dispute to the court and, accordingly, the court lacked jurisdiction in the matter.

In their book <u>The New Labour Relations Act</u> Cameron et al

are, however, of the opinion that in the case of a conciliation board it is not the Minister that would appoint the chairman but the inspector. At page 230 they state:

> "Section 26 confers this power on the Minister in respect of industrial councils but, given the fact that the minister's role in the establishment of conciliation boards has been transferred to inspectors, the application of the provision mutatis mutandis seems to compel such an interpretation."

Moreover, in the notice from the Regional Director of Manpower informing the parties as to the time, date and venue of the second proposed meeting of the conciliation board, the following paragraph was included:

> "In order to expedite the Constitution of the Board in the event of no nomination being made, it is proposed that the Regional Director or a person appointed by him, be nominated as Chairman of the Board in question. Should no other person be nominated as Chairman and no objection be received against the nomination of the said official of the Department before 05/11/1989 it will be assumed that the official concerned is acceptable to both parties."

It is common cause that neither the applicant nor the respondent raised any such objection although the respondent argued that that merely meant that someone had been *nominated* but not necessarily *elected* as chairman.

Finally, the definition of "chairman" in s1 of the Act might also throw some light on the matter:

> "'chairman' in relation to a trade union, employers' organization, federation, industrial

> council or a committee thereof, conciliation board or the National Manpower Commission or a committee thereof, includes any person who is responsible for the performance of any of the duties ordinarily performed by a chairman." (Court's emphasis.)

Where a conciliation board has failed to settle a dispute, in terms of s46(9)(b)(ii) "... the chairman of the conciliation board or a person designated by him for that purpose, shall (court's emphasis) ... refer the dispute to the industrial court for determination ...". The chairman of the conciliation board therefore has no choice in the matter but must refer the dispute to the industrial court. Even if the parties fail to convene the board, the dispute still has to be referred to the court (unless, of course, the parties agree that it should not be referred) and it may therefore be argued that, by complying with the Act, the person who referred the dispute to the court in the instant case was indeed the "chairman" of the conciliation board as he was responsible for one of the duties of such a chairman, ie the referral of the dispute to the industrial court for determination.

Bearing in mind what has been said above together with the maxim *omnia praesumuntur rite esse acta*, I am satisfied that this dispute has been properly referred to this court and that the respondent's second point in limine should also, therefore, be dismissed.[1]

The merits

The only witness to testify was Mr Panyane, the applicant's Johannesburg Branch organiser. He was responsible for communicating with the respondent throughout the period leading up to the dispute and also for all subsequent dealings with it. When asked by the respondent to provide proof that the employees on whose behalf it was acting ("the employees") were fully paid-up members, Mr Panyane was only able to produce receipts for subscriptions paid from May this year. Mr VAN SCHALKWYK then argued that this did not prove that they had actually been members from April to August 1989 when the dispute was declared and moved an application that the matter be postponed and the applicant be compelled to discover the relevant documentation to prove that the respondent's employees had been paid-up members during the period in question.

The applicant's constitution states:

> "Applications for admission to membership shall be made in writing to the Branch Secretary on the Union's application form and accompanied by the payment of one week's subscription or by a signed

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[1]See also Gilmore v Prime Cut Post Production (Pty) Ltd (1990) 11 ILJ 811 (IC) at 813C - 817F in which a similar point in limine was also dismissed.

> stop order authorisation form in favour of the Union for the payment of Union subscriptions, in which event one week's subscription shall not be paid.
>
> An applicant for membership shall be deemed to be a member of the Union on signature of the Union's application form, unless the Branch Executive Committee resolves to refuse membership to such applicant.
>
> Only paid up members shall be entitled to the benefits of membership, including the right to vote. ... "

It is common cause that all the respondent's employees on whose behalf the applicant purports to act in this matter, have signed the requisite application forms and stop orders, have not been refused membership and are, at present, paid-up members. It is also common cause that on the 22nd of August this year they all signed a form confirming their desire that the applicant should act on their behalf in the present matter.

Mr BERGER submitted that in terms of the applicant's constitution the respondent's employees had, at least, been deemed to have been members of the union during that period for which the applicant could not produce receipt books to prove that they had been paid-up members. In addition, there was nothing to prevent the applicant from assisting them even if they were not paid-up members[2] nor does the constitution state that they would then automatically be denied

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[2]See also s35(2)(d) of the Act, although, *in hoc casu*, the application for a conciliation board was brought in the applicant's name.

the benefits of membership. All it says is that paid-up members are entitled *as of right* to the benefits of membership. Moreover, when applying for the establishment of a conciliation board, the President and Assistant General Secretary of the applicant had certified that in making the application the union and its office bearers had observed all the relevant provisions of the constitution.

Mr BERGER also submitted that, in any event, the crucial date as to the employees' membership of the union was the day of the hearing and not the period up to the declaration of the dispute. This was so because the applicant was seeking an order compelling the respondent *to commence* recognition negotiations with it and the court would not consider granting such an order if the applicant was not *at present* representative of the respondent's workforce. The fact that it may have been so in the past would not be of much assistance to the court at present. The documentation proving that the employees had been paid-up members between April and August 1989 was thus irrelevant.

Having considered the submissions set out above and being of the opinion that such evidence was not of sufficient importance to interfere with applicant's legal representatives' right to decide what evidence they wish to lay before the

court, the application for the postponement of the matter was, accordingly, refused.

When Mr Panyane had completed his testimony, the applicant closed its case. The respondent then closed its case without leading any evidence at all.

Conclusion

Reference was made to a number of cases, the most important being Trident Steel (Pty) Ltd v John NO & Others (1987) 8 ILJ 27 (W), Food & Allied Workers Union v Spekenham Supreme (2) (1988) 9 ILJ 628 (IC), Food & Allied Workers Union v Sentraalwes (Koöperatief) Bpk (1989) 10 ILJ 1076 (IC), Stocks & Stocks Natal (Pty) Ltd v Black Allied Workers Union & Others (1990) 11 ILJ 369 (IC) and Sentraalwes Koöperatief Bpk v Food & Allied Workers Union & Others (LAC) (unreported case no NH 11/2/1313/A dated 90-07-13).

I intend dealing with the last-mentioned case first, for, if it is applicable in the present instance, I am naturally bound to follow it. In Sentraalwes Koöperatief Bpk v Food & Allied Workers Union & Others one of the unfair labour practices the union complained of was defined as follows in the

conciliation board's terms of reference:

> "To consider and determine a dispute concerning an alleged unfair labour practice between the Food and Allied Workers Union (of the one part) and Sentraalwes (Koöperatief) Beperk (of the other part), in the magisterial district of Kroonstad, arising out of the decision of the said company not to negotiate with the said union."

This particular dispute had arisen because the recognition agreement between the parties had lapsed and the appellant had refused to negotiate anew with the respondent. In the court *a quo* appellant's representative stated that it would be the appellant's case *inter alia* "... dat daar nie 'n verpligting bestaan het op respondent om die eerste applikant te erken of mee te onderhandel, daar die applikant nie - of die bestek van die registrasie nie die gebied of die bedryf waarin respondent opereer, of nie ten opsigte van daardie bedryf en area geregistreer was nie."

In hoc casu the reason given by the respondent for refusing to negotiate with the applicant was that "... over the years the small workforce have come to be regarded as part of a large family. The Management has endeavoured to maintain good relations all round and have encouraged their staff to approach them directly with any grievances, problems and complaints.

Accordingly, our client sees no reason to disturb the good

relationship existing between the Management and the staff."

Regarding the question as to whether the appellant's refusal to negotiate with the first respondent was an unfair labour practice, the learned judge stated:[3]

> "This refusal commenced whilst the Old Act[4] was in operation and continued after the New Act became operative on 1 September 1988. It seems to me that a failure to negotiate with a union, as representative as first respondent, is, in the absence of circumstances justifying such failure, a "labour practice ... which has or may have the effect that ... any employee or class of employees ... may be unfairly affected or that his or their employment opportunities, work security or ... economic ... welfare ... may be prejudiced or jeopardized thereby," that "labour unrest ... may be created thereby," and that "the relationship between employer and employee ... may be detrimentally affected thereby". Thus the requirements for an "unfair labour practice" set out in clauses (a)(i), (iii) and (iv) of the definition of that term in the Old Act are satisfied. The Industrial Court has found such failure to negotiate to be an unfair labour practice under the Old Act (see SA Chemical Workers Union and Others v Control Chemicals (1988) 9 ILJ 606 at 618E-F) and under the New Act (see Stocks and Stocks Natal (Pty) Ltd v Black Allied Workers Union and Others (1990) 11 ILJ 369 at 375F). Clauses (o)(i), (iii) and (iv) of the definition in the New Act are substantially in accordance with the clauses from the Old Act which I have quoted, and I have no doubt that under the New Act too, such failure is an unfair labour practice.
>
> It is quite clear that appellant was the one refusing to meet and negotiate and that this stance was persisted in even when appellant's representative, just before leading evidence, informed Duff M of what appellant's case would be. Since there was no justification for appellant's

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[3]At pp 34 - 35 and 37 of the typed judgment.
[4]Ie the LRA before the 1988 amendments.

refusing to negotiate it follows that its refusal was an unfair labour practice."

With regard to the learned judge's reference to the representativeness of the first respondent, it is not clear what weight, if any, he attached to it. In the present instance the court has no means of considering this aspect as the respondent did not see fit to divulge the size of its workforce. The court can only speculate that the number of employees who are members of the respondent form a substantial portion of the workforce as the respondent did intimate that should all of them be called to give evidence, its business would come to a virtual standstill.

Insofar as the respondent's sole reason for not negotiating with the applicant is concerned, there is no doubt in my mind that in the present day and age such a reason is totally unacceptable. To regard such a reason as justification for a refusal to negotiate with the union of the employees' choice and which is clearly representative of the workforce, would be tantamount to a complete disregard of the emphasis placed on collective bargaining in the Act.

Taking into account what has been quoted above as well as the circumstances of the present case, I am of the opinion that Sentraalwes Koöperatief Bpk v Food & Allied Workers Union & Others, supra, is clearly applicable in the present

instance and that the respondent committed an unfair labour practice by refusing to negotiate with the applicant.[5]

With regard to the order he made to negotiate in good faith, the learned judge stated:[6]

> "Duff M ordered the appellant and first respondent 'to hold a meeting and commence bona fide negotiations within sixty days from the date of this determination, concerning a recognition agreement between the parties as well as wages and conditions of employment of the individual applicants'. In their Rule 25 statements respondents merely sought an order that appellant negotiate with first respondent in good faith. It seems to me that Duff M's order simply narrows the ambit of what was sought. I also think that whilst the order may present some difficulty of enforcement it can nevertheless be properly granted."

With this in mind, I am of the opinion that the relief sought by the applicant, ie directing the respondent to enter into recognition negotiations with it, should be granted.

Costs

The applicant prayed that it should be awarded costs, such costs to include costs on the attorney and client scale.

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[5]See also SA Woodworkers Union v Rutherford Joinery (Pty) Ltd (1990) 11 ILJ 695 (IC) at 700C-G in which it was held that there is an enforceable general duty upon an employer to bargain with a trade union representing its employees in respect of all matters concerning its relationship with its employees.

[6]At p 41 of the typed judgment.

The competence of this Court to award costs in respect of an application brought in terms of section 17(11)(a) or section 46(9) of the Act is set out in section 17(12) of the Act read with Rule 18 of the rules of this Court. It would appear that it was the intention of the legislature to bring the matter of costs in regard to such applications more in line with that pertaining to applications brought in the ordinary courts. There the basic rule is that all costs are in the discretion of the Court. It is a matter of fairness to both sides and under normal circumstances costs follow the event.

However, I agree with the opinion expressed by MARITZ AM in Combined Small Factory Workers Union & Others v Aircondi Refrigeration (Pty) Ltd (unreported case no NH 12/3/145 at p 4) that, by their very nature, the matters brought before this court warrant extreme caution in applying the general rule as to the award of costs. Whereas this court regards the reconciliation of the parties as one of its priorities, it would indeed be unfortunate if parties were to become reluctant to approach it for relief because of a fear of an award of costs being made against them. It would appear to me that to reach its goal of reconciling parties wherever possible, the award of costs in this Court should continue to be the exception rather than the rule.

In Textile Workers Union (Transvaal) v Alice Manufacturing (Pty) Ltd t/a General Sewing & Embroidery Co (1989) 10 ILJ 299 (IC), at 306B-E, EHLERS P (as he then was) also advised extreme caution in respect of the granting of an order as to costs and went on to state (at 307F-G):

> "It cannot be ignored that by virtue of s 17(12)(a) this court 'may make an order as to costs according to the requirements of the law and *fairness*' (court's emphasis). The aspect of fairness should obviously therefore also be taken into account and not only the requirements of the law. It might even have been the legislature's intention that the emphasis should be on fairness as this is deemed to be a court of equity. However it can probably be inferred from this provision that this court need not necessarily follow the approach adopted by the other courts in respect of orders as to costs."

This court will, therefore, only award costs in unusual or exceptional circumstances. (See, for example, Langeberg Foods Ltd (Boksburg) v Food & Allied Workers Union & Others (1989) 10 ILJ 1093 (IC), Chamber of Mines of SA v Council of Mining Unions (1990) 11 ILJ 52 (IC) at 73E-79C and Karos Hotels (Pty) Ltd v Hotel & Restaurant Workers Union (1990) 11 ILJ 186 (IC).)

In Chamber of Mines of SA v Council of Mining Unions (1990) 11 ILJ 52 (IC) at 79A-C, Basson AM reached the following conclusion:

> "It is clear from the aforegoing discussion that the general rule that costs follow the event should be approached with caution when the industrial court exercises its judicial discretion to award party and party costs. It is also clear that the industrial court will even be more 'conservative' than the Supreme Court in awarding costs on

> the attorney and client scale. In fact, the industrial court will usually require that 'special considerations' are indicated before awarding even party and party costs, mindful that public policy demands that the court be easily accessible and that prohibitive orders as to costs might prevent this. On the other hand, 'special considerations' which favour an order as to costs (apart from those already discussed above which are peculiar to the circumstances of the industrial court) may indeed include those enunciated by the Supreme Court, that is, the circumstances which gave rise to the action and the conduct of the losing party."

With regard to attorney and client costs in particular, Basson AM (at 77A) referred to the following dictum from Nel v Waterberg Landbouwers Ko-op Vereniging 1946 AD 597 at 607:

> "The true explanation of awards of attorney and client costs not expressly authorized by Statute seems to be that, by reason of special considerations arising either from the circumstances which give rise to the action or from conduct of the losing party, the Court in a particular case considers it just, by means of such an order, to ensure more effectually than it can do by means of the judgment for party and party costs, that the successful party will not be out of pocket in respect of the expense caused to him by the litigation."

Basson AM then continues:[7]

> "It is clear that an award of attorney and client costs is not lightly awarded by the Supreme Court. Such an award is made, however, where vexatious, unscrupulous, dilatory or mendacious conduct on the part of an unsuccessful litigant may render it unfair for his or her harassed oponent to be out of pocket in the matter of attorney and client costs. Where an unsuccessful litigant's attitude towards the court is deplorable and highly contemptuous, or an attempt is made to trifle with the court, the court may award costs on the

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[7]At 77B-D.

attorney and client scale against him (see *The Law of South Africa* vol 3 paras 800, 803)."

In the present case there are a number of special considerations which lead me to believe that this is one of those instances when this court should set aside its reluctance to award costs. Firstly, there is the reason (as set out in a letter from its attorney) profferred by the respondent for its refusal to negotiate with the applicant:

> ""Our client has instructed us that, motivated by the following undermentioned factors, it is not prepared to enter into any Recognition Agreement with yourselves.
>
> Our client instructs us that over the years the small workforce have come to be regarded as part of a large family. The Management has endeavoured to maintain good relations all round and have encouraged their staff to approach them directly with any grievances, problems and complaints.
>
> Accordingly, our client sees no reason to disturb the good relationship existing between the Management and the staff."

I have already commented on the unacceptability of such a reason.

Secondly, the respondent's failure to agree to and to attend meetings with the applicant is indicative of its totally negative attitude towards sound industrial relations. For example, whilst the respondent itself had proposed that a meeting take place on 20 July 1989, it had its attorneys send the following telefax which was received by the applicant at 15:56 on the 19th:

> "We regret to advise that we, or our client, will be unable to attend the meeting proposed by yourselves on the 20th instant.
>
> We hope to be in a position to revert to you shortly."

The first conciliation board meeting having been postponed to a mutually convenient date, the respondent's attorneys sent the following telefax to the applicant at 14:59 on the day prior to the meeting:

> "We have been advised by our client that nobody is available to attend at the Conciliation Board meeting scheduled for 09h00 on the 9 November 1989.
>
> The writer has left messages and would appreciate if your Mr Pillay would return her calls in order that suitable arrangements can be made regarding the postponement."

The applicant refused to postpone the meeting once again and the respondent then had the guile to use its non-attendance as the basis of a point in limine attacking the validity of the referral of the dispute to this court.

As has been noted above, the Respondent chose to close its case without leading any evidence. Although it is obviously the prerogative of a party to decide whether it wishes to call any witnesses and then have to expose them to cross-examination by the other party, the respondent in this case did not even put its version to the applicant's witness so that he could comment thereon. Nor is the respondent's

Statement of Defence of much assistance in this regard. The court and the applicant have, therefore, been left largely in the dark concerning the respondent's version of the circumstances surrounding the dispute.

In this regard it was stated in Small v Smith 1954 (3) SA 434 (SWA) at 438:

> "It is, in my opinion, elementary and standard practice for a party to put to each opposing witness so much of his own case or defence as concerns that witness and if need be to inform him, if he has not been given notice thereof, that other witnesses will contradict him, so to give him fair warning and an opportunity of explaining the contradiction and defending his own character. It is grossly unfair and improper to let a witness' evidence go unchallenged in cross-examination and afterwards argue that he must be disbelieved."[a]

I am, therefore, of the opinion that an order as to costs, including attorney and client costs, is warranted.

Determination

Having taken note of the papers and other documents placed before it, having listened to the evidence of the applicant's witness, having had regard to the submissions of the

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[a]Cited in Pick 'n Pay Ltd (Kroonstad, OFS Branch) v Commercial Catering & Allied Workers Union of SA (1990) 11 ILJ 862 (ARB) at 868I in which it was held that there is a duty on a cross-examiner to put his own version to the witness under cross-examination.

parties' representatives, and having carefully considered all of these, the court deems it equitable to make the following determination in terms of s46(9) of the Act:

1. Declaring the refusal of the respondent to enter into recognition negotiations with the applicant to be an unfair labour practice;

2. Directing the respondent to enter into recognition negotiations with the applicant within sixty days of the date of this determination;

3. The respondent shall pay the costs of the application, such costs to be calculated on the Supreme Court scale and to include costs on the attorney and client scale.

MADE and SIGNED at PRETORIA on 14 SEPTEMBER 1990.

Adv. DJ PIENAAR
SENIOR MEMBER : INDUSTRIAL COURT

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GESERTIFISEERDE POS/CERTIFIED MAIL

NH 11/2/3362

Krish Naidoo & Co
P O Box 8694
JOHANNESBURG
2000

18 September 1990

Ref.: KP/F15/89

Gentlemen

WET OP ARBEIDSVERHOUDINGE, 1956/LABOUR RELATIONS ACT, 1956

FAWU (RECOGNITION) / ELPERORA (PTY) LTD t/a F F MEAT PRODUCTS

Aangeheg 'n afskrif van die Hof se uitspraak/bevel/redes in die bogemelde verband./Attached please find a copy of the Court's judgment/order/reasons.

Die uwe/Yours faithfully

GRIFFIER/REGISTRAR

RECEIVED 2[illegible] SEP 199[illegible]