IN THE LABOUR COURT OF LESOTHO

CASE NO LC 14/96

HELD AT MASERU

IN THE MATTER OF:

LESOTHO CLOTHING AND ALLIED WORKERS UNION
APPLICANT

AND

POLTEX GARMENTS (PTY) LTD RESPONDENT

# JUDGMENT

**This is an application in which the applicant union is seeking relief in the following terms:**

> **(a) An order declaring the refusal by management to negotiate with the union an act of unfair labour practice in terms of Section 198 of the Labour Code Order 1992 (the Code).**
>
> **(b) An order declaring the retrenchment of its members an unfair labour practice in terms of Section 196(1), (2) and (3) of the Code.**

**In its originating application the applicant union alleges that on the 7th July 1995 it submitted "substantive agreement proposal and a list of membership to the management of Poltex Garments for negotiations." A meeting for negotiations was allegedly scheduled for 13th September 1995. Such meeting could not however, take place as the management is alleged to have claimed that it had misplaced a copy of the agreement proposal previously given to it.**

**The union allegedly submitted another copy the following day and it was agreed between the parties that the meeting would be held on the 8th November 1995. On the agreed date of the meeting, the union negotiating team met with management for negotiations ".....but management refused to negotiate on the reasons that the company did not have management or the manager in Lesotho, so everything that the union wanted to discuss or negotiate should be dealt with Directors directly in South Africa."**

**In its Answer the respondent denies the applicant union's allegations and puts it to proof of same. The respondent, however, states that on the 19th June the union met with management to discuss grievances submitted by the union. Since the grievances were not exhausted the meeting was rescheduled for the 13th September 1995 for finalisation of the discussion. Even on that date the alleged substantive agreement proposal was never mentioned, the respondent contends.**

**According to the respondent's Answer the management received a copy of the proposed agreement through its security guard only on the 3rd November 1995. On the 6th November, Mr. Billy of the applicant union came to the company premises "....and pressed the manager to sign the proposed text, who refused saying the text is to be studied by management. The Union official was also requested to provide proof of majority membership within the workforce." The respondent concedes that a meeting took place on the 8th November 1995, but denies it had anything to do with the proposed agreement. According to the respondent the meeting was to discuss the grievances of two workers one Joalane and one Matsepe Montoeli. However, at that meeting the management reminded the union to provide proof of membership.**

**Mr. Billy adduced no evidence to support his union's allegations. The one witness he called into the witness box Lekhooa Sello, testified that the management of the respondent had good working relationship with the union until when the management sent supervisors to tell the workers to quit the union because it was useless. He stated under cross-examination that the applicant union of which he was a member was allowed access to the premises to confer with them (members). With agreement of management, they had even elected the union's branch committee which was an interlocutor between management and the workers.**

**In his evidence the manager of the respondent company Mr. Saoud Mauthoor said they had always had good relations with the applicant union which used to visit the company's premises to confer with its members and management. He stated that the problem only started in November when Mr. Billy wanted him to sign an agreement and he refused. Under cross-examination Mr. Billy put it to Mr. Mauthoor that they (management and the union) met several times about the proposed agreement and the witness's answer was a categoric denial. He reiterated his earlier evidence that they met about the agreement only in November i.e. 6th November 1995.**

**Apart from the allegation in the originating application that list of membership was submitted to management no evidence was adduced to support this claim. It will be recalled that the respondent denied it and put the applicant to proof of same. In his address Mr. Billy sought to impress on the court, from the bar that such list was infact submitted. When he was asked by the court for the copy of the list he submitted he said he never kept a copy as he was relying on trust. This is not acceptable. The applicant has been so detailed in his claim about the submission of the proposed agreement that each allegation is supported with a date of when what was done and when a meeting was to take place. The absence of the copy of the list can only point to one irresistible conclusion that such a list was never made, let alone submitted to management as required by the latter.**

**In our view the applicant union has failed to discharge the burden of proof that the respondent refused to confer with it contrary to the provisions of Section 198 of the Code. If anything evidence point to the existence of warm relations until when Mr. Billy of the applicant union sought to force the management to sign the proposed agreement before he complied with the conditionality placed by management that he must prove majority membership. The fixing of such a condition is infact part of the negotiating process and if the applicant union did not like it they should have negotiated their way out of it.**

**Regarding the retrenchment, it is common cause between the parties that in December 1995 some of the employees of the respondent were retrenched. The union alleges fifteen workers were retrenched while management says only fourteen were retrenched. According to respondent the other one resigned on her own. A letter of resignation by the said worker dated 6th November 1995 was attached to respondent's Answer as Annexure 5(2). The applicant union could not controvert this evidence consequently we are of the view that the correct version with regard to the number of workers retrenched is that given by the respondent.**

**The union alleges that the retrenchment was a ploy to get rid of members of the union. In their originating application they stated that at a meeting held on 17th November 1995 to report back to the members;**

> ***"union officials were informed that on 16th November 1995 the manager of Poltex Garment intimidated and threatened all union members and influenced them to resign from the union or face retrenchment at the end of December. The management went further to circulate a list of names of all employees and they were instructed to make a cross sign next to their names to show their resignation from the union."***

**The union states further that on the 15th December management's threats to retrench union members were implemented by retrenching those who refused to resign including some of the committee members.**

**In support of these claims Mr. Billy adduced the evidence of Mr. Lekhooa Sello, whose evidence failed to support the applicant union's claim of intimidation of its members. Lekhooa said instead that the manager called a meeting of supervisors at which he told the supervisors to go and tell workers in their sections to resign from the union because it (the union) was useless. According to Lekhooa the supervisors were told to inform the workers that those who were members of the union would be retrenched at the end of the year. When asked to explain how the manager knew who were union members and who were not he said the manager went around with a list of workers in his hand and a pen. He said those who were resigning from the union should make an x sign while those who were not were to tick a right sign.**

**In his Answer and in oral testimony Mr. Mauthoor says this was not the first time his company retrenched. The retrenchments started in 1992 as a result of introduction of a quota system by the Government of Lesotho; which regulated exports of each company. Since 1992, the quota allocated to his company was becoming lower and lower each year thereby necessitating a retrenchment.**

**With regard to the list he said the idea came from the union's branch chairlady one Mrs. Posholi. In an attempt to prove majority membership so that their proposed agreement could be signed she suggested that the list be drawn and employees who were union members were to tick a right sign while those who were not members were to make an x sign. He testified that the survey was done jointly by the union representative at the factory and management purely to determine whether the union had majority representation because despite management's request for the union to supply such proof the union had failed. As for the retrenchment the last in first out principle was used coupled with warnings regarding performance.**

**This court has difficulty with Mr. Lekhooa Sello's evidence as it contradicts itself on very major points. under cross-examination Mr. Sello retracted his evidence in chief that the manager went around with a list of workers asking them to indicate whether they were union members or not. He said the manager sent supervisors. When asked still under cross examination how he can prove that he was retrenched because he was member of the union he said his proof is that the manager "sent supervisors to tell us that the union is useless." By no stretch of imagination can this be construed as proof that one's retrenchment was as a result of membership of the union.**

**Furthermore Mr. Sello's evidence was at variance with the applicant union's claim that fifteen workers were retrenched. According to him all fifty seven (57) workers who were found to be union members by the union/management survey were retrenched. The witness was clearly being untruthful. In any event it is inconceivable how workers would still tick themselves as continuing with union membership when they already knew that to do so meant that they were all going to be dismissed. If they already knew that the purpose was to identify union members**

**with a view to retrench them as Mr. Sello alleges, they would all have ticked the x sign. In short we are inclined to see Mr. Sello's evidence as being full of fabrications and falsehoods.**

**On the other hand Mr. Mauthoor's evidence was quite impressive. He stated clearly that he had never had any problem with the trade union as indeed is evidenced by his allowing workers to elect a committee which he worked with. The difficulty if any was clearly the union's inability to successfully negotiate the signing of the recognition agreement. If trade union membership was the criterion for retrenchment clearly Mrs. Posholi who was the committee member would have been the first to go. But she was not retrenched. No evidence other than a generalisation that union membership was the basis, was adduced to show why in particular the fourteen retrenched workers would be singled out among the 57 workers who were proved to be members.**

**In the view of this court there is merit in respondent's evidence that trade union membership was not the criterion. Furthermore Mr. Billy himself agreed with Mr. Mauthoor during cross-examination that the December 1995 retrenchment was not the first. Each December in the previous years there had been retrenchments. Mr. Billy's understanding however was that workers were retrenched in December only to be reemployed afresh in January the following year. This Mr. Mauthoor denied and of course Mr. Billy himself could not prove it. In the premises we are of the view that there is no merit in applicant's claim as such this application is dismissed.**

**Costs shall be costs in the cause.**

**THUS DONE AT MASERU THIS 29TH DAY OF MAY, 1998.**

**L.A LETHOBANE**
**PRESIDENT**

**M. KENA**
**MEMBER** **I AGREE**

**K.G LIETA**
**MEMBER** **I AGREE**

**FOR APPLICANT : MR BILLY**
**FOR RESPONDENT : ADVOCATE VAN TONDER**