

**IN THE EDUCATIONAL LABOUR RELATIONS COUNCIL HELD AT RIVERSDALE  
ON 24 JULY 2006 AT 10H00.  
CASE No PSES 2-06/07WC**

**In the matter between:**

**CTPA obo Conradie CE**

**Applicant**

**And**

**Department of Education - WC**

**Respondent**

—

**ARBITRATOR: L Matshaka**

**HEARD: 24 July 2006**

**DELIVERED: 14 August 2006**

**Summary: Labour Relations Act 66 of 1995 – Section 186(2)(a) – alleged unfair conduct relating to appointment or promotion.**

**DETAILS OF PROCEEDINGS AND REPRESENTATION**

The matter was set for Con/Arb process on 24 July 2006 at Langenhoven High School in Riversdale at 10h00. Mr. Faez Tassiem, Fulltime Shop Steward of Cape Teachers Professional Association (CPTA), represented the applicant, Mrs. Clara Conradie. In turn Mr. Colin Arendse, Labour Relations Officer, represented the Respondent, the Department of Education, Western Cape. Ms Neli Ntsadu, Labour Relations Official from the Department attended the proceedings.

The proceedings were mechanically recorded and witnesses gave evidence under oath.

**ISSUE IN DISPUTE**

I am required to determine whether the Respondent's conduct constituted an unfair labour practice or conduct in not appointing the Applicant to the Post (1752) of principalship.

**THE BACKGROUND TO THE DISPUTE**

The Applicant was appointed in 1983 at the first entry level 1 (one) post. In 1999 she was appointed at the Deputy Principal's level and still occupies the said post at Kairos Secondary School at Heidelberg. The principal's post became vacant and the Applicant occupied the post in an acting capacity for 1 (one) year 3 (three) months. In the interim period the post was advertised. The Applicant availed herself for the opportunity and she did make the shortlist for the candidates to be interviewed. In the end she was not successful in being nominated for the appointment to the post. The Applicant not being satisfied with the outcome of the interviewing process lodged a grievance procedure that led to the interviewing process being repeated for the initial shortlisted candidates including the Applicant. For the second time, the Applicant was

not successful. On the advice of her union, CPTA, the Applicant referred the matter to the Council for a hearing.

On the other hand the Department, following the initial grievance lodged by the Applicant, investigated the matter and came to the conclusion that the interviewing process had to be repeated due to procedural errors that came to light. As a consequence thereof the School Governing Board, the Applicant being still unsuccessful, has nominated one Mr. Jacobs to fill the vacancy. The matter is now before this Council for a hearing.

I must place on record that in accordance with the set down notice an attempt was made to conciliate the matter without success. The arbitration proceedings were therefore put in motion immediately thereafter

### **SUMMARY OF EVIDENCE AND ARGUMENT**

#### **Evidence on behalf of applicant**

The Applicant testified as follows:

She has 23 years of experience as an educator. She started teaching at primary school at a level 1 (one) post. She moved over to a secondary school (Bellar) at the same level. In 1989 she joined a secondary school at Riversdale. In 1994 she joined Kairos Secondary School in Heidelberg and became a head of department in 1996. In 1999 she was appointed as a Deputy Principal to-date. For a year and 3 (three) months she has acted as a Principal of the school. During the said period she has had no complaint against her. She has further maintained a good relationship with the circuit manager as well as her colleagues at the school.

In cross-examination the Applicant confirmed that she has acted as the principal for 1 year and 3 (three) months. She has further gone up the ranks and all this has come through hard work. She further confirmed that her acting capacity did not guarantee her the post in question.

The Applicant's witness, Mr. David Sympson, testified as follows:

He has as experience as educationist as well as serving the union. He has taught for the last 24 years. His current position is that of District Chairman of the union and previously served as a Regional Secretary of the union.

Mr. Sympson further testified that he was familiar with the guidelines of the interviewing process in accordance with Resolution 5 of 1998. He went on to highlight the following:

- ❑ The Department of Education handles the initial sifting process and then forward the envelope containing the applications to the institution concerned;
- ❑ The envelope is supposed to be opened prior to the setting of the criteria by the interviewing committee established for this purpose;
- ❑ The School Governing Board (SGB) is required to call a meeting where a criteria must be determined;
- ❑ Core criteria comes out of the vacancy or advert document;
- ❑ Additional criteria will be determined according to the needs of the school;
- ❑ It is important to note that additional criteria must flow out of the core criteria;
- ❑ It is further important to note that all the candidates must be treated alike and nobody must be prejudiced;

- ❑ After the criteria are set, then the envelope is opened and 5 candidates are short-listed.
- ❑ SGB must notify the short-listed candidates at least 5 working days prior to the date of the interview;
- ❑ During the interview the interviewing committee is required to give each candidate an equal chance to answer questions posed to them;
- ❑ The Chairperson must introduce each candidate to the panel after which questions are posed to the candidate;
- ❑ The purpose of the questions is to get the most suitable for the post;
- ❑ It is further important to note that the same questions are posed to all the candidates;
- ❑ In terms of Resolution 5 of 1998 the interviewing committee must take into account all the points, discussions and consensus decisions and thereafter candidates are ranked from 1 to 5.

Mr. Sympson further testified that on 27 March 2006 he attended a grievance meeting at Kairos Secondary School. The minutes of the interviewing committee were requested and these were provided. Few disparities or irregularities were found. Discussion of the interviewing process took place and certain things did come to light. As her representative at the time, Mr. Sympson informed the union that the Applicant had a reason to pursue the dispute procedure.

In cross-examination Mr. Sympson confirmed that he was not present at the interview. He further confirmed that all his observations emanated from the grievance procedure meeting he attended. It was his view that the SGB did not want the Applicant to become the principal of the school because of the previous decision regarding equity plan. Mr. Sympson conceded that this was his own conclusion.

### **Evidence on behalf of the Respondent**

The Respondent's witness, Dr Galant, testified as follows:

He has been the Circuit Manager for the last 12 years in Western Cape Education Department. He confirmed that Mrs. Conradie was not happy with the outcome of the interviewing process. As the representative of the Department he was satisfied with the interviewing process and its outcome in terms of the nominated candidate for the post in question. He further confirmed that scoring was only meant to initiate discussion and consensus. His role was merely to see that the process is done according to set guidelines.

In cross-examination Dr. Galant confirmed that the interviewing committee used the same criteria as before. He further confirmed that the additional criteria were used to narrow down or sift the candidates further. He conceded that it could be used as an eliminating factor. However, the interviewing committee approached the matter in a holistic manner. Dr Galant further conceded that the SGB could not just make a nomination without taking into account the equity plan of the school. Further, the SGB drew up the questions with his assistance an hour before the interviewing process. Dr Galant further conceded that not all the candidates were asked all the questions. This was primarily due to the fact that a candidate/s had already answered a particular question.

The second Respondent's witness, Mr. Raymond Saayman, testified as follows:

He was general foreman and caretaker at the school. He confirmed that he was part of the interviewing process to select the best candidate for the job. He had listened to

all the candidates how they answered questions put to them. After listening to them, he allocated points. No one told him how many points to allocate to each candidate. There was further a time limit given to each candidate. He further confirmed that no one explained the Resolution No. 5 of 1998 to him. Mr. Saayman could not remember how much time was given to each candidate, as the interviews took place some time ago.

### **Closing Arguments**

In her closing arguments Applicant submitted that educators are employed in terms of Employment of Educators Act under PAM Chapter B, 3.4, that reads:

“That the employing department must make the final decision (to appoint) subject to (i) satisfying itself that agreed upon procedures were followed.”

The Applicant further submitted that with reference to B1 (In terms of 3.7 in Schedule 1 of Resolution 5 of 1998) the purpose of questions during an interview process is to assist the interviewing committee to determine the best or suitable candidate that meets the set criteria. In that regard the Applicant took the view that question 1 has no relation to the requirements for the post. Further, no interview question establishes to test high level of management skills, knowledge of OBE (Outcome Based Education) and knowledge of FET (Further Education Training). It was on the above basis that the Applicant submitted the SGB did not comply with the said requirement.

Further, the Applicant noted that Resolution 5 of 1998 requires that the employer through its representative in the SGB must ensure that accurate records are kept of proceedings dealings with the interview, decisions and motivation relating to preference list. It is therefore the submission of the Applicant that the SGB did not comply with the said regulations.

Further, the Applicant noted that the minutes reflects that matric results could not be credited to her and that the parents were unhappy of the high failure rate of grade 9 and 10 pupils. She took a view that the said motivation was unacceptable, irrelevant and completely bias. This also goes for the fact that she did not show good relations with staff and that school would not function properly if she should be the principal.

In turn the Respondent in its closing argument submitted that it is important to note that the following, as per the Employment of Educators Act 76 of 1998, the Head of Department (HOD) may only deviate from the recommendation of SGB or Council of the further education and training, if:

- (i) any procedure collectively agreed upon or determined by the Minister for the appointment, promotion or transfer has not been followed;
- (ii) the candidate does not comply with any requirement collectively agreed upon or determined by the Minister for appointment, promotion or transfer;
- (iii) the candidate is not registered, or does not qualify for registration, as an educator with the South African Council for Educators;
- (iv) sufficient proof exists that the recommendation of the said governing body of council, as the case may be, was based on undue influence;
- (v) the recommendation of the said governing body or council, as the case may be, did not have regard to democratic values and principles referred to in section 7(1).

The Respondent further submitted that the process for the filling of the post no. 1752 as advertised in Vacancy List 2/2005, was conducted according to agreed upon guidelines, prescribed regulations and was fair and correct as concluded by the legally constituted SGB of Kairos Secondary School.

It is therefore the Respondent's submission that the process for the filling of the vacant post No. 1752 as advertised in Vacancy List 2/2005 was conducted according to agreed guidelines as per Resolution 5 of 1998 and that it was correct and fair as concluded by the legally constituted SGB of Kairos Secondary School. Further, that there was no deviation by the SGB in terms of the Employment of Educators Act 76 of 1998 as it relates to the Filling of Vacancies within the Western Cape Education Department.

### ANALYSIS OF THE EVIDENCE AND ARGUMENT

It is common cause that the Applicant applied and was shortlisted for the post No. 1752 advertised in Vacancy List 2/2005. It is further common cause that the Applicant failed to be nominated for the said post following the interviewing process conducted in accordance with regulations stipulated in Resolution 5 of 1998.

The Applicant now contends that the nomination made by the School Governing Body (SGB) of Kairos Secondary School was procedurally and substantively incorrect. On the other hand the Respondent submits that the process for the Filling Post No. 1752 was conducted according to agreed upon guidelines, prescribed regulations and was fair and correct as concluded by legally constituted SGB of Kairos Secondary School.

The Respondent has further drawn my attention to the fact that the South African School's Act 94 of 1996 has given the SGB the power to recommend suitable candidates for appointment, subject to the guidelines of Resolution 5 of 1998 which briefly states that:

- A. The Advert must be accessible to all who may qualify or are interested in applying for such post(s)
- B. An interview committee shall be established at educational institutions where there are advertised vacancies.
- C. The interview committee may conduct shortlisting subject to the following:
  - 1.6.1 The criteria used must be fair, non-discriminatory and in keeping with the constitution of the country.
  - 1.6.2 The curricular needs of the school.
  - 1.6.3 The obligations of the employer towards serving the educators.
  - 1.6.4 The list of shortlisted candidates for interview purposes should not exceed five (5) per post.
- D. The interviews shall be conducted according to agreed upon guidelines. These guidelines are to be jointly agreed upon by parties to the provincial chamber.
- E. All interviewees must receive similar treatment during the interviews.
- F. At the conclusion of the interviews the interviewing committee shall rank their candidate in order of preference, together with a brief motivation, and submit this to the SGB for their recommendation to the relevant employing department.

Turning to the Applicant's evidence in chief, other than portraying a capable and competent educator, up to her acting capacity in the post in question, who should have been nominated for the position, in essence the procedure followed is not in dispute. The Applicant relies on her past experience and the good relationship both with the staff and the circuit manager of the district. This to me seems to explain why she was shortlisted. Other than what has just been highlighted on her evidence alone, I have not been able to detect any irregularity both procedurally and substantively. That the Applicant was ranked at No. 5 out of 5 applicants interviewed says it all.

The Applicant's only witness, Mr. Simpson, mainly highlighted the guidelines as stipulated in the Resolution of 1998 already referred to above. It must be pointed out he was not part of the interviewing process and therefore he is unable to express an opinion either for or against it. I have noted that Mr. Simpson attended a grievance meeting in respect of the present matter. I have further noted that following a grievance lodged by the Applicant in relation to certain irregularities confirmed by the department, the interviewing process had to be repeated. The Applicant was unsuccessful again; hence the matter in the end was referred to this Council.

I have to mention the fact that in his own words Mr. Simpson took the view that the Applicant had grounds to pursue the matter further. Further, in his view, the union drew an inference that the SGB did not want the Applicant to become the principal of the school because of a previous decision regarding equity issue. At the said meeting it was decided that the next head of department (HOD) must be a female. In that regard the Applicant had already fulfilled that role on her present post (level 3).

I have further noted that in addition to the core criteria emanating from the advertisement pertaining to the post, the SGB in consultation with the Departmental representative and Union representative drafted the additional criteria. Naturally, the SGB members are individuals in their own right, with their own perceptions and ideas, their own discretion and judgement. The key point to note here is that all is done in consultation with the relevant stakeholders. It therefore does not make sense for an argument that certain or all the questions do relate key performance areas of the job. Further, in the light of above exposition, I am inclined to endorse the Respondent's submission. The Department of Education is well positioned to ensure and make certain that all appointments, especially the key ones, meet the standard and set requirements.

I have had a difficulty in understanding the Applicant's (representative) argument or language in respect of an issue of "motivation". She argued that she was overlooked on the basis "as per motivation" of some unacceptable, irrelevant or invidious comments. I could only presume that the Applicant meant unacceptable. Another instance: "the SGB is banned by the process as outlined in res. 5/98 together with its common understanding i. to collective agreement 1 of 2001. Further, the Applicant goes on: "There is a nor or limited indication that the panel indicated or referred to the criteria for the post in there discussion/motivation as per the "ACCURATE MINUTES".

Nevertheless even if I would go on trying to make a sense of what is being conveyed as per most of the Applicant's closing arguments, I am more than convinced that it would not change the overall picture. It is understandable that the Applicant would feel aggrieved in not being nominated having acted in the very post for 1 year and 3 months. It came out loud and clear under cross-examination that her acting capacity did not guarantee her the appointment to the post. The Applicant conceded to that,

otherwise the whole interviewing process would have been a futile exercise if not a mockery.

On the balance of probabilities I am satisfied that the guidelines set out above in accordance with applicable legislation as well as regulations mentioned were complied with. The Applicant as a direct participant in the process hardly revealed an irregularity of any significance. That the Applicant, following a grievance procedure duly lodged and pursued leading to the revisit of the interviewing process, is a testimony that whatever flaws, perceived or real, were addressed and rectified.

Therefore, I am satisfied that the process for the filling of the post No. 1752 as advertised in Vacancy List 2/2005, was conducted according to agreed upon guidelines as per Resolution 5 of 1998, that it was correct and fair as concluded by the legally constituted SGB of Kairos Secondary School and that it was both procedurally and substantively fair. I am further satisfied that there was no deviation by the SGB in terms of the Employment of Educators Act 76 of 1998 as it relates to the Filling of Vacancies within the Western Cape Education Department.

### AWARD

In the premises I make the following order:

1. The Applicant has failed to discharge the onus of proving that the Respondent's conduct constituted an unfair labour practice in terms of section 186(2)(a) of the Labour Relations Act No. 66 of 1995 in that, following an interviewing process, she was not nominated for the post No. 1752 as advertised in Vacancy List 2/2005.
2. The matter is hereby dismissed.
3. No order as to costs is made.

**Lungile Matshaka**  
**Arbitrator/Panellist: ELRC**