

# Post office strike & future bargaining



*Cosatu's Mosanku Phutas Tseki addresses workers in Johannesburg.*

An unusual demand triggered a strike at the South African Post Office (Sapo). After being convinced by their colleagues that they were owed billions of rands by the employer, workers downed tools to claim that money. But instead, over 620 workers were dismissed in February and the Congress of South African Trade Unions (Cosatu) has now moved in to negotiate reinstatements, writes **Elijah Chiwota**.

**T**he source of the workers' demand for R37-billion was contained in a court order, which Sapo is disputing in court as a fake document. Questions are also being asked about the credentials of the lawyer who represented the workers' in the case. While unions doubt whether this is a proper lawyer, some workers see this as a smear campaign.

Bhekumuzi Nala and Zondi are the workers who brought the issue of the money to the front, and Sapo has since taken them to court on allegations of fraud. However, the duo has since been granted bail.

Despite workers' expectations, the Communication Workers Union (CWU) could not help in raising the bail money because the union felt that the reason for the duo's arrest had nothing to do with picketing, but a case of fraud. Union treasurer, Bonang Pitso, said

CWU was unable to assist because union financial principles did not cater for those who engaged in fraud.

Umnnyango (the door), a committee made up of the dismissed workers that strongly believes in the existence of the money, is the one said to be in possession of the documents confirming where the money is and is pursuing a single agenda: that of getting paid, taking the money and leaving the jobs. But CWU complains that Umnnyango has kept the documents about the money close to their chests, and therefore the union could not support the committee's demands in the absence of that information. For this reason, the CWU has been pursuing reinstatement and more realistic demands such as a salary restructuring that addresses differences and inequalities that exist on the current pay roll.

## NEGOTIATIONS

After the mass dismissal of the workers, Cosatu has been having meetings with the workers at Johannesburg's Beyers Naude (Library Gardens) in the Central Business District and also with the employer. The meetings with workers have been to get their mandate for the negotiations and also to strategise on how best to engage with the employer. The meetings have also been an opportunity for giving workers' feedback on what would have been discussed with the employer.

Cosatu's position has been for workers to be reinstated while the employer has been insisting on reemployment, which is subject to several conditions. These include that the numbers of those to be reemployed will depend on the crewing results that are based on the company's restructuring exercise. Additionally, workers will be



*Post office workers at a meeting in Johannesburg.*

employed on any available position and must be willing to be posted to any location which may be different from their previous ones. They may also be subject to interviews before reemployment, shifts may change depending on the needs of customers, and day and night shifts may be rotated. The employer is also not interested in reemploying workers who 'misled the dismissed employees'.

According to Cosatu Gauteng provincial chairperson, Mosanku Phutas Tseki, who has been reporting back to the workers, the federation is interested in a reinstatement process that leads to reintegrating workers and bringing stability to the workplace. As part of the strategy to bring 'industrial peace' Cosatu has agreed, with the consent of Umnyango, not to include the issue of the money owed to workers in the negotiations. Emphasizing the need for unity among the worker representatives Tseki says: 'Let's come together as one team, with one message, and speak with one voice'.

#### **REINSTATEMENT VERSUS REEMPLOYMENT**

The Labour Relations Act favours reinstatement instead of dismissal.

According to section 193(2) 'The Labour Court or the arbitrator must require the employer to reinstate or reemploy the employee unless:

- a) the employee does not wish to be reinstated or reemployed;
- b) the circumstances surrounding the dismissal are such that a continued employment relationship would be intolerable;
- c) it is not reasonably practicable for an employer to reinstate or reemploy the employee; or
- d) the dismissal is unfair only because the employer did not follow a fair procedure.'

If a dismissed worker is reinstated they will be paid backdated salaries from the date of dismissal. However, a reemployment order is only dated to the date of the award and the conditions of employment may not be the same as proposed by Sapo.

However, according to Cosatu, reemployment becomes the last option, as it gives the job back to the worker and is obviously better than being without a job. Tseki also emphasised that negotiation is give and take 'as you cannot expect to win all your demands in negotiations'.

As there were no agreements on the matter by the end of May, Cosatu announced that the issue will be taken to the Commission for Conciliation, Arbitration and Mediation (CCMA) in June.

#### **ORGANISING & REPRESENTATION**

It is interesting to note that the post office strike is similar to most strikes that came after the Marikana Massacre in that they are not only unprotected, but workers do not want the presence of unions during the industrial action. As a result, unions that organise in the sector, such as CWU and the Chemical Energy Paper Printing Wood and Allied Workers Union (Ceppwawu), were told to keep their distance and therefore were unable to give any advice to workers during the strike, remaining mere spectators.

However, if recent speeches by union leaders are anything to go by, trade unions have heeded the messages, and there seems to be a back-to-basics approach so workers can gain the confidence they have lost in unions.

Trenton Elsley, in the *Bargaining Monitor*, March

2013 argues that recent strikes are 'an opportunity to revisit trade union approaches to organising and representation'. He also mentions the social distance which recently union leaders have not been shy to mention. 'Social distance is a euphemism for poverty and inequality and how this plays out within organisations, even mass-based democratic organisations. Social distance is more complex to grapple with and includes perceptions of inequality, and marginalisation which can be just as powerful as material inequality. In this regard, the ability of trade unions to be seen to be fighting the fight of workers is just as important as winning the fight.'

Elsley adds that an area of work that trade unions should focus on is 'forms of employment'. 'It is the *reorganisation of employment relationships* and the separation that this engenders, reinforces and perpetuates which provides an important point of departure for any trade union that is serious about reflecting on their core "business", organising and representing workers'.

This analysis ties in well with Edward Webster's research on precarious work which describes how more sectors of the South African economy are adopting different forms of work that is poorly paid, casual and often with fewer benefits. The post office is one such workplace. Therefore, unions should 'resist the informalisation of worker rights and security by increasingly representing the interests of vulnerable workers,' says Elsley. <sup>LB</sup>

# Sactwu wins against short-time work

Employers cannot just wake up and put workers on reduced working time. If they do, they should also be prepared to pay for the lost time, writes **Andre Kriel**, as he welcomes a landmark case for South African workers.

**T**he Congress of South African Trade Unions (Cosatu)-affiliated Southern African Clothing and Textile Workers' Union (Sactwu) is pleased to announce that 58 clothing workers at Junit Manufacturing in KwaZulu-Natal will be receiving back pay, with interest, for three weeks that they were unlawfully placed on short-time. This follows a long legal battle with the company. The Supreme Court of Appeals recently pronounced on the matter. It is a precedent-setting judgment in favour of all South African workers.

When the workers were placed on short-time a few years ago, Sactwu referred a dispute for a claim for unpaid wages for the period of the short-time because, in our contention, the workers were placed on short-time illegally.

The matter then had to be arbitrated at clothing bargaining council level. Junit Manufacturing was of the view that the Clothing Industry Bargaining Council did not have jurisdiction to hear this dispute. The arbitrator ruled that the matter could be heard by the bargaining council, as the dispute was related to wages, which could be applicable to the main agreement and it was further found that the employees had to be paid wages from 12 January 2006 to 10 February 2006, as (in terms of the arbitrators ruling)

they had indeed been placed on unfair and illegal short-time.

The arbitration award was then taken on review by the employer. The review was successful. The impact of the judge's decision was, in our view, declaring that the bargaining council would not have jurisdiction to arbitrate short-time disputes, which would have had far reaching consequences for workers in the clothing industry. It meant a serious watering down of the powers of bargaining councils in general.

As such the matter had to be taken on appeal. Sactwu appealed the matter and has now won. The relief is that these 58 workers will now receive their three weeks' back pay with interest. But the important precedent-setting consequence of this matter is that short time disputes can now be referred to the bargaining council.

This Supreme Court of Appeals judgment therefore strengthens the powers and jurisdiction of all bargaining councils to deal with short-time disputes. It is a big blow for employers and organisations such as the Free Market Foundation who are intent on weakening bargaining councils. <sup>LB</sup>

*Andre Kriel is general secretary of Sactwu.*