SATU's success

landmark case on voluntary retrenchments

Can a company unilaterally offer voluntary retrenchment packages before consulting a union in terms of section 189 of the LRA? Can a company unilaterally offer voluntary retrenchment packages while consulting a union in terms of Section 189 of the LRA? The judgement from a landmark case that the South African Typographical Workers Union (SATU) took to the Labour Court says – NO!

Background

SATU, a FEDUSA affiliate, is the majority union in the Press Corporation of SA Ltd (Perskor). On 13 February 1998 SATU and management discussed a possible merger between Perskor and Caxton. On 24 February 1998 the parties discussed the possibility of retrenchments within the Perskor Group. Later, the company wrote a letter to SATU saying that there would be possible retrenchments and that it wanted to consult with the union in terms of Section 189 of the LRA.

Perskor sent a memo to affected employees on 14 April 1998. The memo included reasons for the proposed dismissals, alternatives that the company had considered, the number of employees likely to be affected, and the company's proposed severance pay. SATU, PPWAWU and MWASA (the three unions organised in Perskor) began to meet with management to discuss the proposed retrenchments.

Tanya van Meelis provides details on a case that SATU won on voluntary retrenchments.

SATU's concerns

SATU's general secretary, Martin Deysel, raised a number of concerns with the company. He raised these concerns in

Section 189 of the LRA

Section 189 of the LRA deals with 'dismissals based on operational requirements' - retrenchments. Its provisions include the following:

- when an employer contemplates retrenching it must consult the trade union;
- the consulting parties must try and reach consensus on amongst other things:
  - measures to avoid the dismissals
  - measures to minimise the number of dismissals
  - the severance pay for dismissed employees;
- the employer must allow the consulting party an opportunity to make representations about any matter on which they are consulting;
- the employer must consider and respond to the representations made, and if the employer does not agree, he or she must state the reasons for disagreeing.

meetings and in letters. The concerns included:

- SATU wanted the company to clarify the meaning of retrenchment and redundancy;
- SATU was concerned about the reasons for the retrenchments;
- SATU thought the retrenchments were not necessary, and made a number of suggestions to improve the financial situation of the company.

The union's suggestions to improve the financial situation of the company and avoid retrenchments included:

- stop using casual labour;
- restrict overtime to the minimum;
- implement proper control measures;
- engage SATU in the management of the company for a specific period;
- allow an external auditor to investigate allegations of mismanagement.

Unilateral action

The parties were in the process of consulting on the proposed retrenchments when management put voluntary retrenchment offers in employees' pay packets. In its letter, Perskor said that 'the voluntary package... is a once-off offer, and will not be repeated'.

When Deysel saw this he wrote to Perskor's managing director complaining that the union had not agreed to the voluntary retrenchment package offered. SATU demanded that management withdraw their unilateral offer and that the company comply with Section 189 of the LRA. Management responded by putting up a letter on all notice boards saying that the voluntary retrenchment offer was a unilateral offer by management and that it had not consulted any of the unions on the issue. It refused to withdraw the offer – management's view was that it did not have to consult with the union on the voluntary retrenchment package.

SATU advised all its members not to accept the package before it advised them to do so. Deysel spoke to members to ensure that the position of the union was strengthened and to minimise potential divisions: 'I spoke to our members and explained how the company was undermining the legal process of consulting properly. Members then realised that the whole process was happening too quickly. When they pushed for the packages I told them that if they took the package it would have to be their decision, but that the union could get them more money and make the company comply with the LRA.'

The union then made an urgent application to the Labour Court to order Perskor to:

- withdraw its 'voluntary retrenchment package';
- enter into consultations with SATU in terms of Section 189 of the LRA;
- allow any member who had accepted the voluntary retrenchment package to withdraw his or her acceptance.

Judge's findings

Acting Judge Jali's findings included:

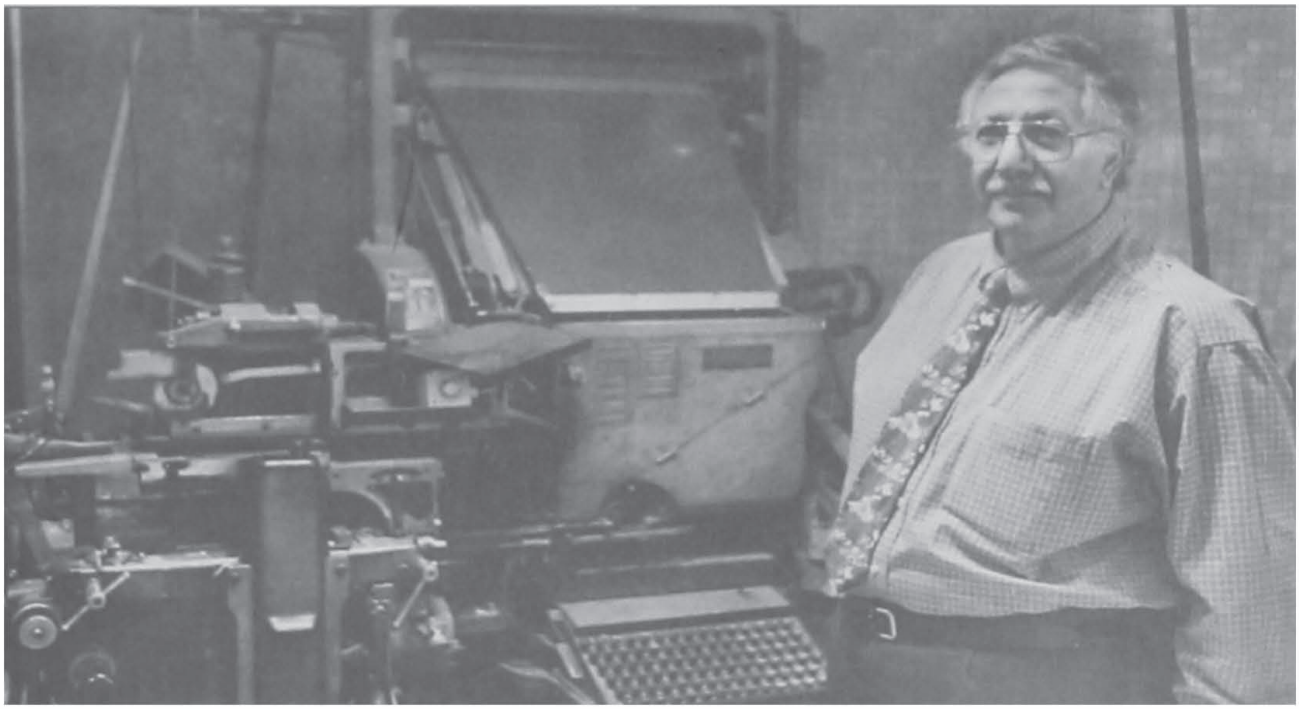
Diligent union

The union acted diligently when applying for an urgent interdict from the industrial court.

Threats and confusion

The letter offering the voluntary package may have confused employees. It may have created the impression that workers who did not accept the offer could be retrenched on less favourable terms. The company gave veiled threats to workers by:

- saying that the offer would not be repeated;



SATU has been organising workers in the packaging industries since 1898.

- setting a deadline for people to accept the offer.

Unilateral action

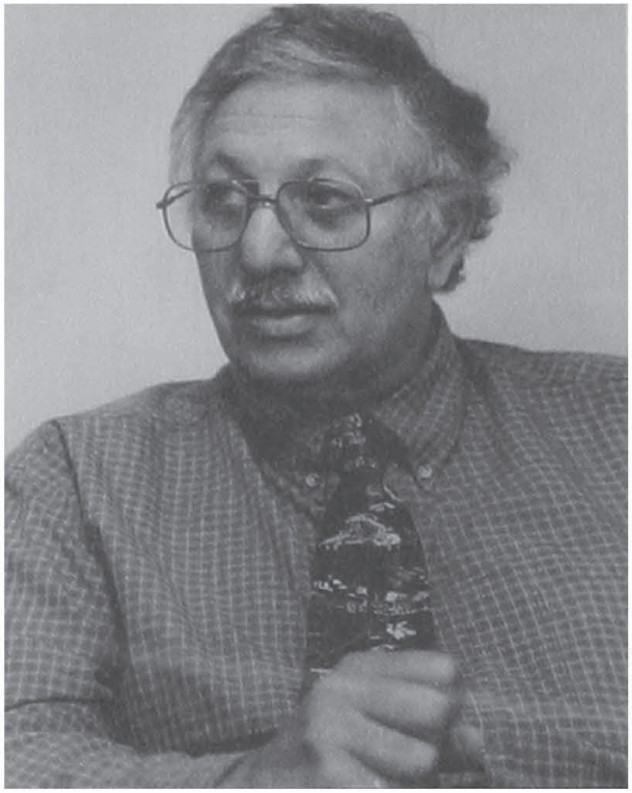
The company had known that it had to consult with the union. It did not satisfy the court why it did not consult with the union but had unilaterally offered the voluntary package. The company was not justified in unilaterally offering the voluntary retrenchment package because consultation with the union was still ongoing.

Negotiate voluntary retrenchments

The judge strongly believed that voluntary retrenchments fall under Section 189 of the LRA and must be an issue for consultation: 'The only party, who normally benefits from retrenchments which are implemented on the basis of the commercial rationale, is the employer. 'In this case... the employer stands to gain from the retrenchments, whether voluntary or compulsory, there is every reason for a consultation with the union at all stages of the process. Accordingly it would be inconceivable for any employer to be in a position to finalise a retrenchment package having not discussed the amount... with the representative union or the employees.'

The judgement stated that the union should have received the information it had requested from the company, before being able to agree on the voluntary retrenchments. Instead, the company did not respond to the union's requests and proposals but announced voluntary retrenchment packages. The judge stated that: 'In the circumstances... [Perskor's] failure to consult with the... [union] regarding the severance pay, alternatives to retrenchment and to follow the suggestions which had been made at the meetings regarding consultations with staff, made the entire consultation process in terms of Section 189 of the Act to be fatally flawed.'

The judge believed that the company acted in what borders on bad faith by not discussing the actual amount of the package with the union. He stated: 'The



SATU general secretary, Martin Deysel.

amount of the voluntary package, like the issues of wages or their increase, is an issue of conflicting economic interest between the employer and employees. It is also an issue to be negotiated between the employer and employee like the wages.'

The judge found that by acting unilaterally the company sought to undermine the unions' collective bargaining role (recognised in the LRA chapters 2 and 3):'This can't be encouraged as it is contrary to the objectives of the Act which are to try and achieve industrial peace.'

Factors for success

Martin Deysel identified the following things which helped ensure that the union took a strong case to the Labour Court:

- we kept clear records of conversations, letters etc;
- we made clear demands and gave clear motivations;
- we stuck to our word;
- we involved all regional secretaries but had one co-ordinator;
- we explained things to membership and had regular report-backs to ensure that we were united and could put forward clear demands.

Effects

SATU's application to the Labour Court was successful.The court ordered the company to:

- withdraw its 'voluntary retrenchment package';
- enter into consultations with SATU in terms of Section 189 of the LRA;
- allow any member who had accepted the voluntary retrenchment package to withdraw his or her acceptance.

After consulting on the proposed retrenchment, the union also managed to save 15 jobs; limit the voluntary retrenchment packages to the affected departments; and win better packages for members than those offered by the company in the voluntary packages – members got two weeks per year of service instead of the one week per year offered by the company.

About 260 people left through voluntary or forced retrenchments.Where departments were outsourced, the 'new' company took over all the people who had worked in Perskor's department.There was also no change in conditions of employment.

Reflecting on what had happened, Deysel comments:'I did what I thought was right. I could not accept that what the company was doing was right. I forced the company to put into practice what the Act envisages.'

Deysel also thinks that the court's findings had an impact on how the company treats the union:'Now in our industry, employers are very wary of what they do to us.They know that they have to consult.The court's findings will help ensure that employers do not undermine organisation and collective bargaining.' ★