



FORUMNEWS

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Another milestone in the CHWs' struggle for recognition

On 10 September more than 200 Community Healthcare Workers (CHWs) packed the second floor of the House of Movements in Johannesburg to listen to a battle over their future status as employees of the Department of Health. The arbitration hearing in the case between the CHWs, led by the Gauteng Community Health Care Forum (the Forum), and the Gauteng Department of Health (GDoH) in the Public Health & Social Development Sectoral Bargaining Council (PHSDSBC) finally got underway. For a while, even at this late stage, there was fear that the GDoH would stall the proceedings and engage in a tactic they had successfully applied for two years.



The dispute between the CHWs and the Department has been running for just over two years. On 1 August 2016 CHWs launched a dispute in the Bargaining Council (PHSDSBC), arguing that they should be deemed to be permanent workers of the GDoH. The dispute in terms of Section 198B of the Labour Relations Act (LRA) followed a ruling in the Labour Court earlier in the year, on 18 March, that five CHW applicants of the GDoH were not volunteers as the Department claimed, but were indeed employees of the Department.

As expected, the conciliation held in terms of the LRA between the two parties on 26 August 2016 failed to reach any agreement, and the stage was set for

the arbitration that would decide whether CHWs were permanent employees of the Department, or whether they would remain employees on short-term contracts. This time, a larger number of CHWs, over 800, joined the dispute and became applicants. At stake was not only the fate of about 9 000 CHWs in Gauteng. Both the CHWs led by the Forum, and the Gauteng Department of Health, understood that the outcome of this battle would affect almost 70 000 CHWs across the country.

The Department did everything in its power to frustrate the process and to ensure that CHWs do not win this battle. The first trick up the sleeve of the Department was to create a "new employer" for the CHWs. A company that had been given a tender to be a payroll administrator, SmartPurse Solutions, suddenly became an "employer" of all Gauteng CHWs. In all subsequent arguments the Department advanced the story that since April 2016 it did not employ any CHWs, and that CHWs were employed by SmartPurse.

CHWs take to the Streets

The CHWs sensed that the Department introduced SmartPurse in order to deny them their victory in the Labour Court. For a year following the introduction of SmartPurse the battle shifted to the streets and the clinics around Gauteng as the Forum mobilised CHWs against signing contracts with SmartPurse. In this period the Forum organised mass meetings in clinics, shut down SmartPurse and Department events where CHWs were to sign the new contracts,

organised a march by over 3000 CHWs in the centre of Johannesburg, and organised a successful shutdown of World AIDS Day (WAD) in which then Deputy President Cyril Ramaphosa was meant to speak. Due to the strong showing of Forum-led CHWs at the WAD, Ramaphosa promised to attend to the demands of the CHWs for permanent employment and for them to be included in the National Minimum Wage. Although President Ramaphosa did not honour this promise, the CHWs had demonstrated their power.

A Tactical Retreat

By the beginning of 2017 the mobilisation of CHWs began to show signs of exhaustion. Many CHWs had not been paid for over seven months and the pressure began to show as individual CHWs started signing contracts with SmartPurse. At this point the leadership of the Forum, meeting in a five-day planning meeting in January 2017, decided to beat a tactical retreat and called on Forum members to sign with SmartPurse. Although it was executed successfully in many regions, in the City of Tshwane it left a bitter legacy. There the Department refused to let SmartPurse sign CHWs in Region Seven (7) and Five (5). These CHWs, many of whom are applicants in the Bargaining Council (PHSDSBC) arbitration for permanent employment, have endured two and a half years with no salary. CHWs who had refused to sign with SmartPurse until early 2017 have still not been paid for the months they worked between April 2016 and March 2017.



The Department Lies to CHWs

All these bitter struggles came to a head in a number of arbitration hearings in 2017 and 2018. In each of these hearings the Department found one or other reason to postpone the arbitration hearing. In one such case, in September 2017, the Department's lawyers admitted that they have no argument against the CHWs Section 198B claim, and asked for the arbitration to be postponed so that they can make a settlement offer to the CHWs. An order drafted by both lawyers and agreed to by the Presiding Officer

Advocate Matshekgga stated that the Department would present a settlement offer to CHWs by 9 October. True to form, the Department did not honour its commitment made to the Presiding Officer and did not present an offer. It also ensured that the arbitration was further postponed.



Another tactic employed by the Department to stall the case was its refusal to hand over any documents requested by the lawyers of the Forum, as is the usual practice in such cases. Since 2016 right up to the arbitration in September 2018, the Forum lawyers have asked for important documents that would have shown that the CHWs should be declared permanent employees of the Department. Even after the Presiding Officer ruled that the Department should hand over these documents the Department still refused to do so. At one point the lawyers of the Department even threatened the Presiding Officer with a court interdict if he forced them to hand over the documents. This illegal behaviour on the part of the Department showed how desperate they were to refuse CHWs' permanent status.

Unions collaborate with the Department

Lies and illegal acts in this struggle against CHWs were not enough. The Department also mobilised the assistance of trade unions to frustrate the struggle for permanent employment. Unions in the Bargaining Council (PHSDSBC) were mobilised to confuse CHWs about this struggle. Rumours were circulated that the Forum was not going to win this struggle and in this way CHWs were discouraged from the struggle. The next tactic was for unions to dangle the carrot of R3 500 in front of CHWs to shift their focus from the struggle for permanent positions. The Department knew that if CHWs become permanent it will have to pay them way above the R3 500 including benefits like pension funds, medical aid and housing allowance. The unions and the Department knew that CHWs are

paid poverty wages and that they would grab any opportunity to get more money no matter how little. Whatsapp messages were circulated among CHWs by unions to take them away from the struggle for permanent employment, and union officials visited clinics accompanied by Department officials in order to discourage CHWs from persevering in this struggle. The tactics of the unions and the Department were successful in a small way. From over 800 applicants some CHWs were convinced by these unions to withdraw themselves as applicants, so that as the September 2018 arbitration date approached there were only 571 applicants.



Following the tactic of lies in September 2017, the Department did all in its powers to prevent the case from being heard. The Department ensured that the arbitration would not go ahead on three more occasions in 2018, until the Presiding Officer dismissed their last attempt to postpone the arbitration on 10 September. Not to be deterred, even while the arbitration was underway in the week of 10 to 14 September, the Department tried its luck by saying its witnesses had inhaled smoke, and another was pregnant. This time the Presiding Officer had had enough of delaying tactics and the arbitration went ahead and was completed on the 14 September.

The Department shows it has no case

During the arbitration the Department tried to argue that the reason CHWs could not be made permanent was that they were funded from grants and not from government revenues. The Department did not introduce one single document to back up this claim, and its lone witness contradicted herself several times and agreed that she was also paid from the same fund that CHWs are paid from, but that did not stop her from being permanently employed!

The case of the Department against the CHWs was not only weakened by its own officials and by its lack of any documentation. The victory of workers in the Constitutional Court in the case of NUMSA vs Assign labour brokers in July this year was another nail in the coffin of the Department. The Constitutional Court ruled that even if workers were employed by an organisation such as SmartPurse, as long as they worked for more than three months for another employer like the Department, they will become the employees of the employer where they do the actual work, and not of the employer that signs employment contracts with them. This means that even though CHWs sign contracts with SmartPurse, they work in clinics of the Department and so after three months they become employees of the Department on a permanent basis.

An important moment for workers in South Africa

The arbitration award that will be delivered on or before 28 September 2018 is a major event in the struggles of thousands of CHWs across the country. The award will not only affect CHWs. The government is the largest employer of workers it refuses to recognise and that it calls “volunteers”. Over half a million workers are employed in so-called ‘public works programmes’, as workers in hundreds of NGOs funded by various government departments, and as ‘independent contractors’ in many departments. Like CHWs, many of these workers are classified as “volunteers” and are paid poverty wages and have no benefits.

For the last two years CHWs have been at the forefront of a struggle that has hundreds of thousands waiting to join it. A victory in this struggle opens the doors for more than half a million to join the struggle.

The beginning and not the end of a struggle

A victory for CHWs in this arbitration will be very important, but it will not be the end of this bitter struggle. The state can be expected to try every trick in the rule-book and outside the rule-book to frustrate this victory. The South African government is notorious for not respecting the laws it passes and for not respecting the courts that it claims are crucial to democracy. The state has ignored many important court rulings that seeks to improve the lives of the working class majority. It only respects court rulings when these affect the rich and the powerful.

The Forum and the CHWs it leads will need to know that their struggle will not be over on 28 September. The Department will fight tooth and nail to oppose the extension of this victory beyond the 571 applicants to all CHWs in Gauteng. This will be the first struggle that will need to be fought after 28 September. Next the Department may try to co-opt the leaders of the Forum and those 571 who were part of the case. It may try to isolate them from the rest of the 9 000 CHWs in Gauteng and the almost 70 000 nationally. The Forum and the CHWs will have to develop strategies on how to counter these moves by the Department.



In memory of William Mokoena

Since the beginning of this struggle many CHWs and their families have endured hunger. They have endured humiliation at the hands of Department officials. Many have died. Some of the CHWs who were applicants in 2016 are no longer alive. CHWs are exposed to deadly diseases on a daily basis as they serve their communities. CHWs are exposed to depression and many other ailments. This important step in a long struggle will be in memory of all those who have endured hunger, humiliation and those who have died. In particular, it will be in memory of **William Mokoena**, a militant of the CHWs and the Forum, who was led to take his own life by a country that does not value working class people and the immense contributions they make to society. As the Forum and CHWs enter this next phase of struggle, they will have to carry the memory of their comrades in their minds and hearts.

Oupa Lehulere



In addition to all this, the Department may challenge the outcome of the arbitration and take it on review. As in many cases this may delay the case for a number of years as the case goes to the Labour Court, then to the Labour Appeal Court, and finally to the Constitutional Court. It is not just the court battles that have got the CHWs to where they are now, to a position where they are at the forefront of a battle for the recognition of hundreds of thousands of workers in South Africa today. The Forum and CHWs got to this point through struggle, sacrifice and determination. These are the qualities that will be required in the next phase of the struggle.



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