

**IN THE ESSENTIAL SERVICES COMMITTEE
HELD AT JOHANNESBURG**

Case No.: ES924

In re: Investigation in terms of Section 71 of the Labour Relations Act, 66 of 1995:

Variation of the of the designation rendered by the Committee on 18 November 2022, designating the services of (a) manufacture, supply and distribution of vaccines, and or biologicals; anaesthetics; antiretrovirals to treat HIV virus; immunosuppressants; covid 19 related products; and antibiotics; and (b) the manufacture and supply of chronic medicines.

Designation

1. On 18 November 2022, under gazette number 47526, The Essential Services Committee (ESC) designated the services of (a) manufacture supply and distribution of vaccines and/ or biologicals; anaesthetics; antiretrovirals to treat HIV virus; immunosuppressants; Covid 19 related products; and antibiotics; and (b) the manufacture and supply of chronic medicines.
2. The investigation that led to this designation was conducted at the time when there was a global pandemic. Whilst this was not the rationale for the institution of the investigation, it was a factor that was considered when the ESC ultimately rendered the designation.

3. Subsequent to the designation the ESC received a number of section 73(1)(a) and (b) referrals and the evidence in these proceedings indicated that there was a need to review the designation.
4. The ESC considered all the existing circumstances and on its own accord in terms of section 71(1) read with sections 70B (1)(d) of the Labour Relations Act 66 of 1995 as amended (LRA) initiated an investigation as to review the designation in order to balance the need to provide essential services without impermissibly limiting the right to strike.
5. The gazetted terms of reference for the investigation in terms of section 71 were **Notice is hereby given in terms of section 71(9) of the Labour Relations Act, 1995 (Act No 66 of 1995 as amended), on the possible variation of the of the designation rendered by the Committee** on 18 November 2022, the Essential Services Committee (ESC) designating the services of (a) manufacture supply and distribution of vaccines and/ or biologicals; anaesthetics; antiretrovirals to treat HIV virus; immunosuppressants; Covid 19 related products; and antibiotics; and (b) the manufacture and supply of chronic medicines as essential services.(See Government Gazette No 53986, GN3735 of 2026, dated 23 January 2026).

Details of the representation

6. The hearings were scheduled as per the notice published in the government gazette. Viz-
 - (a) 23 February 2026
 - (b) 24 February 2026
 - (c) 02 March 2026
 - (d) 04 March 2026
7. The parties who participated in the public hearings are-
 - (i) Pharmaceutical Task Group (PTG)
 - (ii) The Labour Affairs Association for the Pharmaceutical industry (LAAPI)

- (iii) National Bioproducts Institute (NBI)
- (iv) Medipost Holdings
- (v) Pharmaceutical Logistics Association of South Africa (PLASA)
- (vi) South African Health Products Regulatory Authority (SAHPRA)

Submissions

8. The interested parties identified above made presentations to the panel, either orally or in writing. The presentations that were made before the panel also demonstrated that the services if interrupted would endanger the health personal safety and lives of the population. For the purposes of this ruling the panel does not repeat all the submissions that were made as these are contained in the record of the proceedings. Only the salient features of the submissions would be highlighted.
9. The parties submitted that it is universally recognised that the services provided by doctors are essential services. In order to render these services effectively the doctors require medicines to maintain lifesaving interventions and continuity of care in emergency and routine clinical settings.
10. It was submitted that the unavailability of essential medicine places the patients at immediate risk of preventable complications, disease progression and death. Accordingly, production, storage, quality control and distribution of medicines is life saving and constitutes an essential service.
11. In relation to the supply and distribution of medicines it was submitted that the National Development Plan (NDP) 2030 and the World Health Organisation (WHO) recognise that well-functioning and effective health systems are the bedrock for attaining the health outcomes as envisaged in the NDP 2030.
12. The availability of medicines, scheduled substances and medical devices within arm's reach for healthcare practitioners does not happen by chance. There is a complex and highly regulated supply chain underpinning medicine availability that supports affordable access to all citizens of South Africa. Thus, the disruption of supply chains impacts the lives of ordinary South African citizens, whose medical

circumstances force them to rely on an uninterrupted supply of life-saving chronic medication for their very existence.

13. The submissions all indicated that despite the fact there was no pandemic the services remained essential.

14. There was however a concession that due to the fact that the investigation that led to the designation of the services took place during the Coronavirus pandemic, Covid 19 was a relevant factor and it was considered hence the inclusion of the Covid 19 products in the designation, there may be a reason to review that inclusion.

Legal Framework

15. In this matter the issue that the committee has to determine is whether the services of (a) manufacture supply and distribution of vaccines and/ or biologicals; anaesthetics; antiretrovirals to treat HIV virus; immunosuppressants; Covid 19 related products; and antibiotics; and (b) the manufacture and supply of chronic medicines should be reviewed? In determining the matter, it is important that one should set out the legal framework.

16. Section 23(2) of the Constitution of the Republic of South Africa, 1996 (“the Constitution”) states that... “Every worker has the right ... (c) to strike.”

17. Section 36 (1) of the Constitution states inter alia that... “The rights in the Bill of Rights may be limited only in terms of law of general application to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom”.

18. Section 65 (1) (d) (i) of the LRA states that ... “No person may take part in a strike ... if that person is engaged ... in an essential service”.

19. An ‘essential service’ is defined in section 213 of the Act as:

- (a) a service the interruption of which endangers the life, personal safety or health of the whole or any part of the population;

- (b) the Parliamentary service;
- (c) the South African Police Service”.

20. The Constitutional Court in *South African Police Service v Police and Prisons Civil Rights Union and Another* (CCT 89/10) said the following: -

“In order to ascertain the meaning of essential service, regard must be had to the purpose of the legislation and the context in which the phrase appears. An important purpose of the LRA is to give effect to the right to strike entrenched in section 23(2)(c) of the Constitution. The interpretative process must give effect to this purpose within the other purposes of the LRA as set out in Section 1(a). The provisions in question must thus not be construed in isolation, but in the context of the other provisions in the LRA. For this reason, a restrictive interpretation of essential service must, if possible, be adopted so as to avoid impermissibly limiting the right to strike (footnotes excluded)”.

21. It is trite that strike action is an important element of collective bargaining, and it is recognised as a primary mechanism through which workers exercise collective power (See *Ex-Part Chairperson of the Constitutional Assembly in re: Certification of the Constitution of the Republic of South Africa, 1996* (4) SA744 (CC) at paragraph [66]).

22. In *SATAWU & Others V Moloto NO and Another* 2012 (6) SA 249(CCC) the Constitutional Court stated that:

“The right to strike is protected as a fundamental right in the Constitution without any express limitation. Constitutional rights conferred without any express limitation should not be cut down by reading implicit limitations into them and when legislative provisions limit or intrude upon those rights they should be interpreted in a manner least restrictive of the right if the text is reasonably capable of bearing that meaning”

23. Having regard to the above, it is clear that our law requires essential services to be restrictively interpreted, and that this means, inter alia, the following:

- It is the service which is essential, not the industry or the institution within which the service falls;
- Only those employees who are truly performing an essential service, may be prohibited from striking; and
- Essential and non-essential service workers may be found working side by side in the same institution.

24. Before the ESC can designate any service as essential, it must be satisfied that the interruption of the said service is likely to endanger life, personal safety or health of the whole or part of the population.

25. It is further trite that in view of the fact that the right that would be affected by such a designation limits or takes away a fundamental right, such designation must be reasonable and justifiable. Thus, if the ESC finds that parts of the service are not essential the Committee is obliged not to designate such services, as such a designation would be unreasonable and unjustifiable.

26. In making its determination the ESC also has an obligation to consider other constitutional rights that may be impacted. In this regard the ESC considered the provisions of section 11 of the constitution which guarantees the right to life. The Panel also considered section 27 which guarantees the right to access health care services including reproductive health.

Analysis of the submissions

27. In this instance the Committee had already designated the services of (a) manufacture supply and distribution of vaccines and/ or biologicals; anaesthetics; antiretrovirals to treat HIV virus; immunosuppressants; Covid 19 related products; and antibiotics; and (b) the manufacture and supply of chronic medicines as

essential services. The ESC on its own accord initiated this investigation after it considered the timing and the prevailing circumstances when the designation was made.

28. The ESC's purpose in reviewing this designation was to ascertain whether with changed circumstances is it still necessary to have the designation in its current form. This was mainly to ensure that the designation does not impermissibly limit the right to strike in circumstances where such limitation cannot be justified.
29. On the submission of the parties, it appears that the manufacture supply and distribution of vaccines and/ or biologicals; anaesthetics; antiretrovirals to treat HIV virus; immunosuppressants; and antibiotics remains essential as these medicines are life saving.
30. Further that the manufacture and supply of chronic medicines remains an essential services despite the fact there is no pandemic. It was submitted further that the complex and highly regulated nature of supply chain of medicines require that the service as it is should remain essential in order to ensure that there is no endangerment to lives and health of the population. It is also an accepted fact that the interruption or any disruption to the service would negatively impact the lives of millions of South Africans who rely on the provision of this service.
31. As indicated above a designation of a service as essential limits a fundamental human right which is a right to strike, such a limitation should only be imposed in circumstances where it is demonstrable that an interruption of the service would endanger life personal safety or health of the whole or part of the population. Further that such endangerment should not be remote. The inclusion of the Covid 19 related products in the designation was informed by the circumstances at the time.
32. It is common cause that these circumstances have changed as there is no global pandemic currently related to corona virus. Whilst Covid 19 still exists the magnitude has subsided. The panel therefore accepts the submission by the parties that

indicates that this, like any other disease or condition can adequately be managed and that to the extent that hospitalisation is required it can be managed at that level.

33. Having considered the submissions made by SAHPRA the panel finds that it would be impermissible to include in the designated service of the manufacture, supply and distribution of Covid 19 products as such an inclusion would impermissibly limit the right to strike in circumstances where there is a real alternative.

34. Accordingly, the panel rules that the services of the manufacture, supply and distribution of Covid 19 products should be excluded from the designation

Determination

35. In the premise the following determination is made-

35.1. The ESC designation made 18 November 2022 under GG 47526 is hereby varied and replaced with the following designation :-

35.1.1. The Essential services designates services of:

- a) manufacture supply and distribution of vaccines and/ or biologicals; anaesthetics; antiretrovirals to treat HIV virus; immunosuppressants; and antibiotics;
- b) the manufacture and supply of chronic medicines as essential services.

36. The parties rendering all/ or either of these services are directed to negotiate and conclude a minimum service agreement/s within 90 days of the designation.

A handwritten signature in black ink, consisting of a stylized 'J' and 'N'.

Ms. Joyce Nkopane
ESC Deputy Chairperson
31 March 2026