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SOUTH AFRICA



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## GOVERNMENT NOTICE

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### DEPARTMENT OF LABOUR

**No. R. 1319**

**6 November 1998**

LABOUR RELATIONS ACT, 1995

#### **LEATHER INDUSTRY OF SOUTH AFRICA: EXTENSION OF SICK BENEFIT FUND COLLECTIVE AGREEMENT TO NON-PARTIES**

I, Membathisi Mphumzi Shepherd Mdladlana, Minister of Labour, hereby in terms of section 32 (2) of the Labour Relations Act, 1995, declare that the collective agreement which appears in the Schedule hereto, which was concluded in the National Bargaining Council of the Leather Industry of South Africa and is binding in terms of section 31 of the Labour Relations Act, 1995, on the parties which concluded the agreement, shall be binding on the other employers and employees in that Industry, with effect from 16 November 1998 and for the period ending 10 May 1999.

**M. M. S. MDLADLANA**  
Minister of Labour

**UMNYANGO WEZEMISEBENZI****No. R. 1319****6 Novemba 1998**

UMTHETHO WEZEMISEBENZI, KA 1995

**IMBONI YEZIKHUMBA YASENINGIZIMU AFRIKA: UKWELULWA KWESIVUMELWANO SIKAWONKEWONKE  
NGESIKHWAMA SOMVUZO WOKUGULA KULABO ABANGA ZIMBANDAKANYI**

Mina, Membathisi Mphumzi Shepherd Mdladlana, uNgqongqoshe wezemiSebenzi, ngokwesigaba 32 (2) soMthetho wobuDlelwano kwezemiSebenzi, ka 1995 (*Labour Relations Act, 1995*), ngiyamemezela ukuthi isiVumelwano sikaWonkewonke esivelayo kwiSheduli yeSingisi exhunyiwe lapha, esahlanganiswa emkhadlwini kaZwelonke wokuXoxisana ngamaHolo eziMbonini zesiKhumba eNingizimu Afrika (*National Bargaining Council of the Leather Industry of South Africa*) futhi esiyisibopho ngokwesigaba 31 soMthetho wobuDlelwano kwezemiSebenzi, ka 1995 (*Labour Relations Act, 1995*), kulawo maqembu ahlanganisa isivumelwano leso, siyababopha nabanye abaqashi nabaqashwa kulowo mkhakha weziMboni, kusukela ngomhlaka 16 Novemba 1998 nangesikhathi sonke esiyophela mhla ziwu 10 Meyi 1999.

**M. M. S. MDLADLANA****UNgqongqoshe wezemiSebenzi**

**Qaphela:** Amakhophi alesi sivumelwano esiZulu ayatholakala uma eceliwe eMkhadlwini kaZwelonke wokuXosiana ngamaHolo eziMbonini zesiKhumba eNingizimu Afrika.

**SCHEDULE****NATIONAL BARGAINING COUNCIL OF THE LEATHER INDUSTRY OF SOUTH AFRICA****SICK BENEFIT FUND COLLECTIVE AGREEMENT**

in accordance with the provisions of the Labour Relations Act, 1995, made and entered into between the—

**South African Tanning Employers' Organisation (SATEO)**

**Southern African Footwear and Leather Industries Association (SAFLIA)**

and

**Association of South African Manufacturers of Luggage, Handbags and General Goods**

(hereafter referred to as the "employers" or the "employers' organisations"), of the one part, and

**National Union of Leather Workers**

and

**Southern African Clothing and Textile Workers' Union**

(hereafter referred to as the "employees" or the "trade unions"), of the other part,

being the parties to the National Bargaining Council of the Leather Industry of South Africa.

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## 1. SCOPE OF APPLICATION OF AGREEMENT

- (1) The terms of this Agreement shall be observed in the Leather Industry—
- (a) by all employers who are members of the employers' organisations and by all employees who are members of the trade unions, who are engaged and employed in the Leather Industry, respectively;
  - (b) in the Republic of South Africa, as it existed prior to the promulgation of the Constitution of the Republic of South Africa (Act No. 200 of 1993): Provided that, on the operations set forth in paragraph (6) of the definition of "Leather Industry" as contained in clause 3 of this Agreement, it shall be observed only in the Magisterial Districts of Bellville, including that portion of the Magisterial District of Kuils River which, prior to the publication of Government Notice No. 1683 of 7 August 1987, fell within the Magisterial District of Bellville, The Cape, Goodwood and Durban, including that portion of the Magisterial District of Chatsworth which, prior to the publication of Government Notice No. 501 of 8 March 1985, fell within the Magisterial District of Durban, but excluding that portion of the Magisterial District of Durban which, prior to the publication of Government Notices Nos. 1939 and 2067 of 10 September 1982 and 1 October 1982 respectively, fell within the Magisterial District of Inanda, and Johannesburg: Provided further that on the operations set forth in paragraph (7) (a) of the definition of "Leather Industry" as contained in clause 3 of this Agreement, it shall be observed only in the Magisterial Districts of Bellville, including that portion of the Magisterial District of Kuils River which, prior to the publication of Government Notice No. 1683 of 7 August 1987, fell within the Magisterial District of Bellville, The Cape, Goodwood and Durban, including that portion of the Magisterial District of Chatsworth which, prior to the publication of Government Notice No. 501 of 8 March 1985, fell within the Magisterial District of Durban, but excluding that portion of the Magisterial District of Durban which, prior to the publication of Government Notices Nos. 1939 and 2067 of 10 September 1982 and 1 October 1982 respectively, fell within the Magisterial District of Inanda: Provided further that on the operations set forth in paragraph (7) (b) of the definition of "Leather Industry" as contained in clause 3 of this Agreement, it shall be observed only in the Magisterial District of Wynberg: Provided further that on the operations set forth in paragraph (8) of the definition of "Leather Industry", it shall be observed in the Magisterial Districts of Bellville, including that portion of the Magisterial District of Kuils River which, prior to the publication of Government Notice No. 1683 of 7 August 1987, fell within the Magisterial Districts of Bellville, Germiston, Goodwood, Johannesburg, Middelburg (Mpumalanga), Pretoria, Roodepoort and The Cape: Provided further that on the operations set forth in paragraph (9) of the definition of "Leather Industry", it shall be observed in the Magisterial Districts of Bellville (including those portions of the Magisterial Districts of Goodwood and Kuils River which, prior to the publication of Government Notice No. 1683 of 7 August 1987, fell within the Magisterial District of Bellville), Paarl, Oudtshoorn, Wellington, George, Uitenhage, Port Elizabeth, King Williamstown and Pietermaritzburg.
  - (c) The terms of this Agreement shall not apply to non-parties in respect of clauses 1 (1) (a), 2, 7 (5) and 13.

## 2. DATE AND PERIOD OF OPERATION

This Agreement shall come into operation on such date as the Minister of Labour extends the Agreement to non-parties, and shall remain in force for the period ending 10 May 1999.

## 3. DEFINITIONS

All expressions used in this Agreement which are defined in the Labour Relations Act, 1995, shall have the same meaning as in that Act; and unless the contrary intention is indicated, words importing the masculine gender shall include the feminine. Further, unless inconsistent with the context—

**"Council"** means the National Bargaining Council of the Leather Industry of South Africa;

**"Footwear Section"** shall mean that part of the Leather Industry in which employers and employees are associated for the manufacture of all types of footwear from leather or any other material, but excluding bespoke made footwear;

**"Fund"** means the Sick Benefit Fund of the Leather Industry of South Africa;

**"General Goods Section"** shall mean that part of the Leather Industry in which employers and employees are associated—

- (1) for the manufacture, mainly from leather, of—
  - (a) attache cases, bags and all other containers designed to hold personal effects, sporting kit, tools and documents;
  - (b) harnesses, bridles, saddlery, saddle bags, leggings, girths, stirrup straps, military equipment other than clothing, ladies' bags, shopping bags, knitting bags, wallets, purses, watch straps, wrist straps, dog collars, dog leads, rugstraps, braces, belts, suspenders, garters, armlets, and all other like articles irrespective of their description but which are designed as substitutes for any of the aforementioned;
- (2) in establishments in which leather goods are also manufactured, for the manufacture, from materials other than leather, of the articles mentioned in paragraph (1): Provided that this paragraph does not include the manufacture of shopping bags made mainly of paper;
- (3) for the manufacture of travelling requisites, including trunks, mainly from leather, fibre, wood, cloth, canvas or fabric or any combination thereof;
- (4) for the manufacture—
  - (a) wholly or mainly from leather, of footballs, punchballs, netball balls, and boxing gloves;
  - (b) of leather-covered hockey and/or cricket balls;
- (5) in establishments in which leather goods are not manufactured for the manufacture from materials other than leather, of—
  - (a) attache cases, bags and all other containers designed to hold personal effects, sporting kit and documents;



- (b) harnesses, bridles, saddlery, leggings stirrup straps, shopping bags, wallets, purses, watch straps, wrist straps, rug straps, braces and all other like articles, irrespective of their description, but which are designed as substitutes for any of the aforementioned;
- (c) travelling requisites, including trunks, from materials other than leather, fibre, wood, cloth, canvas or fabric or any combination thereof;

Provided that paragraphs (a), (b) and (c) shall not be construed to include—

- (i) the manufacture of metal components and/or attachments;
- (ii) the manufacture of canvas bank bags, canvas kit bags, canvas rucksacks, canvas haversacks, canvas sampling bags and canvas explosive bags;
- (iii) the manufacture of any article from rubber;
- (iv) the manufacture of any article or the practice of any trade or occupation covered by the Printing Industry which, without in any way limiting the generally accepted meaning thereof, means that industry which, or undertaking in which employers and employees are associated in the production of printed matter of any nature whatsoever;
- (v) the manufacture of any articles from metal and of any kind of container (with or without metal parts) from fibre and/or cardboard (corrugated or otherwise) and/or paper or any compound of paper and/or any like material a constituent of which is fibre and/or cardboard and/or paper and/or any constituent of paper and/or plastics, but excluding the manufacture, wholly or mainly from fibre or plastic sheeting material, of trunks, attache cases, bags and all similar containers designed to hold personal effects, musical instruments and sporting kit:

Provided further that the word "plastic" as contained in paragraph (v) means any of the group of materials which consists of or contains as an essential ingredient an organic substance of a large molecular mass and which while solid in the finished state, at some stage in its manufacture has been or can be forced i.e. cast, calendered, extruded or moulded, into various shapes by flow, usually through the application, singly or together, of heat and pressure;

**"Handbag Section"** shall mean that part of the Leather Industry in which employers and employees are associated for the manufacture of ladies' and children's bags;

**"Leather Industry"** or **"Industry"** means the industry in which employers and employees are associated—

- (1) for the manufacture, mainly from leather, of—
  - (a) footwear, including all types, but not including bespoke made footwear;
  - (b) attache cases, bags and all other containers designed to hold personal effects, sporting kit, tools and documents;
  - (c) harnesses, bridles, saddlery, saddle bags, leggings, girths, stirrup straps, military equipment other than clothing, ladies' bags, shopping bags, knitting bags, wallets, purses, watch straps, wrist straps, dog collars, dog leads, rugstraps, braces, belts, suspenders, garters, armlets, and all other like articles irrespective of their description but which are designed as substitutes for any of the aforementioned;
  - (d) ladies' and/or children's handbags;
- (2) for the tanning, dressing and fellmongering of hides and skins;
- (3) in establishments in which leather goods are also manufactured, for the manufacture, from materials other than leather, of the articles mentioned in paragraph (1): Provided that this paragraph does not include the manufacture of shopping bags made mainly of paper;
- (4) for the manufacture of all types of footwear from material other than leather;
- (5) for the manufacture of travelling requisites, including trunks, mainly from leather, fibre, wood, cloth, canvas or fabric or any combination thereof;
- (6) for the manufacture of handbags from materials other than leather, in establishments in which leather goods referred to in paragraph (1) are not manufactured, but excluding the manufacture of handbags—
  - (a) wholly or mainly from metal;
  - (b) from cardboard (corrugated or otherwise) and/or paper or any compound of paper and/or any like material a constituent part of which is cardboard and/or paper and/or any constituent of paper;
  - (c) wholly or mainly from plastics other than plastic sheeting material;
- (7) for the manufacture—
  - (a) wholly or mainly from leather, of footballs, punchballs, netball balls, and boxing gloves;
  - (b) of leather-covered hockey and/or cricket balls;
- (8) in establishments in which leather goods are not manufactured for the manufacture from materials other than leather, of—
  - (a) attache cases, bags and all other containers designed to hold personal effects, sporting kit and documents;

- (b) harnesses, bridles, saddlery, leggings stirrup straps, shopping bags, wallets, purses, watch straps, wrist straps, rug straps, braces and all other like articles, irrespective of their description, but which are designed as substitutes for any of the aforementioned;
- (c) travelling requisites, including trunks, from materials other than leather, fibre, wood, cloth, canvas or fabric or any combination thereof:

Provided that paragraphs (a), (b) and (c) shall not be construed to include—

- (i) the manufacture of metal components and/or attachments;
- (ii) the manufacture of canvas bank bags, canvas kit bags, canvas rucksacks, canvas haversacks, canvas sampling bags and canvas explosive bags;
- (iii) the manufacture of any article from rubber;
- (iv) the manufacture of any article or the practice of any trade or occupation covered by the Printing Industry which, without in any way limiting the generally accepted meaning thereof, means that industry which, or undertaking in which employers and employees are associated in the production of printed matter of any nature whatsoever;
- (v) the manufacture of any articles from metal and of any kind of container (with or without metal parts) from fibre and/or cardboard (corrugated or otherwise) and/or paper or any compound of paper and/or any like material a constituent of which is fibre and/or cardboard and/or paper and/or any constituent of paper and/or plastics, but excluding the manufacture, wholly or mainly from fibre or plastic sheeting material, of trunks, attache cases, bags and all similar containers designed to hold personal effects, musical instruments and sporting kit:

Provided further that the word "plastic" as contained in paragraph (v) means any of the group of materials which consists of or contains as an essential ingredient an organic substance of a large molecular mass and which while solid in the finished state, at some stage in its manufacture has been or can be forced i.e. cast, calendered, extruded or moulded, into various shapes by flow, usually through the application, singly or together, of heat and pressure;

(9) for the—

- (a) preparation of cured or uncured hides and/or skins for tanning; for this purpose "preparation of hides and/or skins for tanning" without detracting from its ordinary or technical meaning, includes any of the following:

Washing, soaking, fleshing, deburring, liming, unhairing, dewooling, the removal of scales, deliming, bating and pickling; and

- (b) tanning of the cured or uncured hides and/or skins; and/or
- (c) retanning and/or dyeing and/or drying and/or softening and/or buffing and/or dressing and/or finishing and/or laminating of leather and/or the combing and/or shearing and/or ironing of hides and/or skins with the wool or hair on; and
- (d) cutting of upholstery panels from leather: Provided that, for the purposes of subparagraphs (a) to (c), "hides and skins" includes the following:

Pelts with or without the fur on; sheepskins with or without the wool on; game and goat skins with or without the hair on; all types of reptile skins, and bird skins with or without the feathers on;

**"Management Committee"** means the Committee appointed in terms of this Agreement for the purpose of controlling and administering the Fund;

**"normal week"** means the maximum period within the working week of the establishment which an employee may work without becoming entitled to payment for overtime;

**"Secretary"** means the General Secretary of the Council;

**"Tanning Section"** means that part of the Leather Industry in which employers and employees are associated for the—

- (1) tanning, dressing and/or fellmongering of hides and skins;
- (2) (a) preparation of cured or uncured hides and/or skins for tanning; for this purpose "preparation of hides and/or skins for tanning" without detracting from its ordinary or technical meaning, includes any of the following:

Washing, soaking, fleshing, deburring, liming, unhairing, dewooling, the removal of scales, deliming, bating and pickling; and

- (b) tanning of the cured or uncured hides and/or skins; and/or
- (c) retanning and/or dyeing and/or drying and/or softening and/or buffing and/or dressing and/or finishing and/or laminating of leather and/or the combing and/or shearing and/or ironing of hides and/or skins with the wool or hair on; and
- (d) cutting of upholstery panels from leather: Provided that, for the purposes of subparagraphs (a) to (c), "hides and skins" includes the following:

Pelts with or without the fur on; sheepskins with or without the wool on; game and goat skins with or without the hair on; all types of reptile skins, and bird skins with or without the feathers on;

**"Wage"** means the wage prescribed for an employee in Column A of the wage provisions of the relevant agreement of the Council and, in the case of the tanning industry, the wage rate prescribed in the agreement for that industry: Provided that if an employer regularly pays the employee an amount higher than this prescribed rate (excluding incentives, overtime or bonus payments), it shall mean such higher amount.

#### 4. MEMBERSHIP OF THE FUND

(1) The Sick Benefit Fund (hereinafter referred to as "the Fund"), originally established on 3 September 1982 in terms of Government Notice No. R. 1792, is hereby continued.

(2) Subject to any exemptions in terms of this Agreement or by decision of the Management Committee of the Fund, all employees whose wages are prescribed in any agreement of the Council shall become members of the Fund.

(3) Where an employee whose wages are prescribed in a Council agreement is transferred or promoted to an occupation for which wages are not prescribed, he may elect to remain a member of the Fund; Provided that—

- (a) he has been a member and has contributed to the Fund for not less than five consecutive years; and
- (b) his employer agrees.

(4) Employees in the Industry whose wages are not prescribed by any Council agreement may apply, with the agreement of their employer, to be admitted to the Fund on such conditions as the Management Committee of the Fund may determine.

#### 5. CONTRIBUTIONS

##### (1) *Employees*

All employees who are members of the Fund shall contribute 1,5% of their basic wage rate to the Fund. An employer shall deduct this amount from an employee's wage on every pay-day.

(2) The term "basic wage rate" for calculation of the contributions shall mean the rate in Column A of the Council agreements which provide for an A-rate. For other employees it shall mean the actual rate earned during a normal week and shall exclude extra income such as overtime and incentive payments.

##### (3) *Employers*

An employer must contribute an equal amount to the total amount deducted from his employees in terms of (1), as well as a further levy, being 0,3% of the basic wage rate of every employee in his employment who is a member of the Fund for the purpose of funding the maternity leave benefit.

(4) An employer must pay the total amount deducted in terms of (1) and contributed in terms of (3) to the Fund at P.O. Box 23080, Port Elizabeth, 6000, on a monthly basis not later than the 15th of the following month.

##### (5) *Interest*

Overdue payments in terms of (4) shall attract interest at the discretion of the Management Committee at a rate which shall be calculated from the first day of the month on which payment became due until received.

#### 6. BENEFITS

##### 6.1 Sick pay benefits

(1) Subject to the terms of this Agreement, members who are absent from work due to illness are entitled to sick pay benefits in terms of this clause.

(2) For each week's contribution made, one day's sick pay benefit will accrue to a member up to a maximum of 50 days.

(3) Where an employee is absent from work due to illness during ordinary working hours, and can certify the reason for his absence with a medical certificate, he is, subject to the proviso in this clause, entitled to sick pay on the following basis:

- (a) For the first 10 working days of absence in a calendar year, 75% of his basic daily wage rate for each day of absence.
- (b) For days of absence after the first 10 days, R10 per day for the remainder of his accumulated days' benefits:

Provided that—

- (i) no sick pay shall be payable for the first day of absence due to illness, except where an employee is absent for three consecutive days or more;
- (ii) no payment for sick pay shall be made for days in excess of the total number accumulated in terms of (2);
- (iii) the term "day" for the purpose of payment of sick pay shall mean an ordinary day that the employee would have worked had he not been absent due to illness, regardless of whether the establishment concerned is actually working overtime or short-time on a particular day;
- (iv) no sick pay is payable for any paid public holidays or the annual leave period;
- (v) no sick pay is payable for absence due to illness for which the employee is receiving money in terms of the Compensation for Occupational Injuries and Diseases Act, 1993, as amended;

- (vi) no sick pay is payable to a female employee on maternity or confinement leave for which the employee is entitled to receive benefits in terms of this Agreement;
  - (vii) the sick pay payable to a night worker shall be calculated as though he was a day worker;
  - (viii) no sick pay is payable to unemployed members, except where an employee's service is terminated while he is receiving sick pay. In such cases he will continue to receive sick pay for the duration of his illness or until his accumulated benefit is exhausted, whichever occurs first. An unemployed member may, however, not receive sick pay when he is entitled to receive benefits in terms of the Unemployment Insurance Act;
  - (ix) no sick pay is payable unless a medical certificate is produced.
- (4) A member who becomes unemployed but finds further employment in the industry within 13 weeks, will not lose sick pay benefit days he had accumulated before becoming unemployed.
  - (5) The employer shall pay employees sick pay due in terms of this Agreement and then claim a refund from the Fund. Such claim shall be made to the Fund no later than the seventh day of the following month in the specified manner. The claim shall be accompanied by medical certificates and receipts signed by the employees for the amounts of sick pay received.
  - (6) The Management Committee may refuse to refund an employer who did not claim a refund in terms of (5) within two months after the date required in terms of (5).

## 6.2 Maternity pay

- (1) Female members of the Fund who take maternity or confinement leave shall be entitled to maternity pay amounting to 33% of their basic wage rate for a period of 13 weeks.
- (2) The employee must submit a medical certificate to the employer indicating the expected date of confinement.
- (3) For the purpose of calculating the maternity pay, "basic wage rate" means the A-rate where applicable in terms of an agreement, or means the actual wage that the employee normally receive in cases where the A-rate does not apply.
- (4) The employer must pay the maternity pay and claim a refund from the Fund in terms of clause 6.1 (5).

## 6.3 Medical benefits

- (1) The Management Committee may determine from time to time the medical benefits granted to members.
- (2) The Management Committee may establish such facilities and appoint such persons as deemed necessary in order to provide these benefits to members.

## 7. ADMINISTRATION

### (1) Management Committee

The Fund shall be under the control of a Management Committee consisting of equal number of representatives from the employer and employee parties to this Agreement and appointed in terms of the Council's constitution.

- (2) The Management Committee shall have the power to make, amend and replace rules to administer the Fund. The Rules shall form an integral part of the provisions regulating benefits for members.
- (3) Where the Management Committee is unable to perform its functions, the Council will assume its powers and perform its duties, but should the Council be dissolved or cease to function, the Fund shall be administered as provided for in clause 9.

### (4) Other committees

The Council may establish committees in terms of its constitution to assist with the administration and deal with any matters relating to the Fund. Such committees shall function on such terms as the Council may determine from time to time.

### (5) Agents

The Council may appoint agents to assist in giving effect to this Agreement. An employer must give such agents access to his establishment and permit them to examine such documents, books, wage records, pay envelopes and to question such individuals as may be required to establish whether this Agreement is complied with.

## 8. FINANCIAL MATTERS

### (1) The Fund shall consist of—

- (a) money standing to the credit of the Fund on the date of coming into operation of this Agreement;
- (b) contributions paid into the Fund in accordance with this Agreement;
- (c) interest derived from the investment of any money of the Fund;
- (d) any other money to which the Fund may become entitled.

(2) All money paid into the Fund shall be deposited in a special account in the name of the Fund at a bank approved by the Council.

- (3) All expenses incurred in the administration of the Fund shall be a charge upon the Fund.



(4) Payments made by cheque on the Fund's account shall be signed by two persons appointed by the Management Committee for that purpose.

(5) Payment of benefits shall cease whenever the amount standing to the credit of the Fund falls below an amount as determined by the Management Committee from time to time. Further payments shall only recommence when the amount standing to the credit of the Fund has risen above an amount as determined by the Management Committee from time to time. The Secretary shall advise employers immediately when either occurs.

(6) The Secretary shall prepare an annual statement of income and expenditure for the Fund as soon as possible after 31 December. Such statement shall be submitted for audit by an auditor appointed by the Council. The audited statements shall be submitted to the Council for approval and shall also be made available for inspection at the Council offices, and to the Registrar of Labour Relations.

#### **9. EXPIRY OF THE AGREEMENT OR DISSOLUTION OF THE COUNCIL**

(1) In the event of this Agreement or any extension thereof expiring, the Management Committee shall continue to administer the Fund until the Agreement is renewed, or until the Fund is liquidated or transferred by the Council to another fund constituted for the same purpose as this Fund.

(2) Where this Agreement is not renewed or the Fund is not transferred within 18 months of the expiry of the Agreement, the Fund must be liquidated according to the procedure as set out in clause 10.

(3) In the event that the Council is dissolved or ceases to function during the currency of this Agreement, the Management Committee or such other person as the Registrar of Labour Relations may designate, shall continue to administer the Fund.

(4) The members of the Management Committee who were members at the time that the Council ceased to function or was dissolved shall constitute the Management Committee for the purpose of this subclause.

(5) Any vacancy on the Committee at that time may be filled by the Registrar of Labour Relations by the appointment of employers and employees from the Industry so as to ensure an equality of employer and employee representatives on the Management Committee.

(6) Should such committee be unable or unwilling to fulfil their duties or a deadlock arises between members of the committee which makes the administration of the Fund impractical or undesirable in the opinion of the Registrar, he may appoint a trustee or trustees to carry out the duties of the committee.

(7) The trustee(s) will have all the powers of this committee for this purpose.

(8) Should the Council no longer exist on expiry of this Agreement, the Fund shall be liquidated according to clause 10. If at the date of expiry of the Agreement the Council had already been wound up and its assets distributed, the balance of the Fund shall be distributed as provided for in the Council's constitution as if it formed part of the general funds of the Council.

#### **10. LIQUIDATION OF THE FUND**

(1) Should the Council wish to dissolve the Fund it shall convene a special general meeting for this purpose where a decision to dissolve the Fund shall be carried if not less than two thirds of the employer representatives and two thirds of the employee representatives present at the meeting vote in favour of dissolution.

(2) Should the required vote be attained, the meeting shall thereafter appoint a liquidator who shall liquidate the Fund in accordance with this Rule. (3) In the event of the meeting being unable to agree to the appointment of a liquidator the matter shall be reported to the Registrar of Labour Relations who shall be empowered to appoint a liquidator.

(4) After liquidation of the Fund, the money remaining to the credit of the Fund after payment of all claims against the Fund, including administration and liquidation expenses, shall be paid into the funds of the Council. In the event that the Council no longer exists at this point in time, the money shall be distributed in terms of the Council's constitution as if it formed part of the general funds of the Council.

#### **11. EXEMPTIONS**

(1) All applications for exemption from any provisions of this Agreement shall be in writing in the form required by the Council and lodged with the local office of the Council.

(2) The District Committee shall consider all applications from a party to this Agreement (which shall include the members of such party), and may, subject to subclause (6), and on giving its reasons therefor, grant an exemption on any conditions and for any period it considers appropriate.

(3) A party aggrieved by a decision of the Management Committee may appeal to the Council who shall consider the application subject to subclause (6) and on giving its reasons therefor, may grant an exemption on any conditions and for any period it considers appropriate. The decision of the Council shall be final.

(4) All applications for exemptions from non-parties shall be referred to the Independent Exemptions Body hereby established by the Council in terms of this clause.

(5) The Independent Exemptions Body shall consider all such applications in a manner it considers appropriate to determine the application fairly and quickly, which may be limited to a consideration of written motivation, or may include the hearing of evidence and arguments.

(6) When considering an application for exemption, an appeal against a District Committee decision or an application for the withdrawal of a licence of exemption, the Council or the Independent Exemptions Body, as the case may be, shall take into account the following (the order not indicating any form of priority):



- (a) Any written and/or verbal substantiation provided by the applicant;
- (b) fairness to the employer, its employees and other employers and the employees in the industry;
- (c) whether an exemption, if granted, would undermine this Agreement or the collective bargaining process;
- (d) whether it will make a material difference to the viability of a new business or a business previously outside the jurisdiction of the Council;
- (e) unexpected economic hardship occurring during the currency of the Agreement and job creation and/or loss thereof;
- (f) the infringement of basic conditions of employment rights;
- (g) the fact that a competitive advantage might be created by the exemption;
- (h) comparable benefits or provisions where applicable;
- (i) the applicant's compliance with other statutory requirements such as the Occupational Injuries and Diseases Act or Unemployment Insurance; or
- (j) any other factor which is considered appropriate.

(7) Having made a decision to grant or refuse an exemption application, the Independent Exemptions Body shall advise the applicants and the Council within 14 days of its decision, giving full reasons. The decision of the Independent Exemptions Body shall be final.

(8) The Council shall issue to every person granted an exemption in terms of this clause a licence of exemption setting out—

- (a) the applicant's name;
- (b) the provisions of the agreement from which exemption has been granted;
- (c) the conditions relating to the exemption; and
- (d) the period for which the exemption shall operate.

(9) The Council may withdraw a licence of exemption granted to a party to this Agreement by giving one week's notice to the party concerned, or may, in the case of a non-party, apply to the Independent Exemptions Body for the withdrawal of a licence granted.

## 12. DISPUTE RESOLUTION

(1) The Secretary of the Council may at any time require a designated agent to monitor compliance with the provisions of this Agreement.

(2) Any person may lodge a complaint or refer a dispute about the interpretation, application or enforcement of this Agreement to the Secretary of the Council for resolution in terms of this Agreement.

(3) The Secretary of the Council may require a designated agent to investigate the complaint or dispute.

(4) The designated agent shall investigate the facts surrounding the dispute and if the agent has reason to believe that a collective agreement has been breached, the agent may endeavour to secure compliance with the Agreement through conciliation.

(5) The designated agent must submit a written report to the Secretary on the investigation, the steps taken to secure compliance and the outcome of those steps.

(6) If in the course of performing a designated agent's duties, an agent discovers what appears to be a breach of the Agreement, the agent—

- (a) may investigate the alleged breach;
- (b) may endeavour to secure compliance with the Agreement; and
- (c) must submit a report to the Secretary on the investigation, the steps taken to secure compliance and the outcome of those steps.

(7) On receipt of the report, the Secretary may—

- (a) require the designated agent to make further investigations;
- (b) if further conciliation is indicated, appoint a conciliator from the Council's panel of conciliators;
- (c) refer the dispute for conciliation to the Disputes Committee of the Council;
- (d) issue a compliance order; or
- (e) refer the dispute to arbitration in terms of this Agreement.

(8) If a conciliator is appointed or the dispute is referred to the Disputes Committee, the Secretary must decide the date, time and venue of the conciliation meeting and must serve notices of these particulars on the parties to the dispute.

(9) Where a dispute is referred to conciliation, the conciliator or Disputes Committee must attempt to resolve the dispute within a period of 30 days or within an extended period as agreed by the parties to the dispute.

(10) Where a dispute is not resolved after a conciliation meeting, or after 30 days, or after any extended period as agreed between the parties, the Council must issue a certificate stating that the dispute was not resolved.

(11) Where the Act requires a dispute to be resolved through arbitration and a certificate has been issued in terms of subclause (10), any party may request the Council to appoint an arbitrator to resolve the dispute. Such request must be made within 30 days of the date of the certificate issued in terms of subclause (10). The parties to the dispute may agree to extend this period or the arbitrator may condone a late referral on good cause shown.

(12) If a compliance order is issued, that order must be served on the party allegedly in breach of the Agreement.

(13) The party on whom the order is served may object in writing. The objection must be served on the Council within 14 days service of the order.

(14) If a party objects, the Secretary may take any of the steps referred to in subclause (7) except the issue of another compliance order.

(15) If a party fails to object, the Secretary may, at any time, apply to have the order made an arbitration award.

(16) If the dispute is referred to arbitration, the Secretary must appoint an arbitrator from the Council's panel of arbitrators.

(17) The Secretary, in consultation with the arbitrator, must decide the date, time and venue of the arbitration hearing.

(18) The Secretary must serve notices of the date, time and venue of the arbitration on—

(a) the parties to the dispute;

(b) any person who may have a legal interest in the outcome of the arbitration.

(19) The arbitrator must—

(a) endeavour to conciliate the dispute; and

(b) if the dispute remains unresolved, resolve the dispute through arbitration.

(20) The arbitrator must conduct the arbitration in a manner that the arbitrator considers appropriate in order to determine the dispute fairly and quickly, but must deal with the substantial merits of the dispute with the minimum of legal formalities.

(21) Subject to the arbitrator's discretion as to the appropriate form of the proceedings, a party to the dispute, including the Council, may give evidence, call witnesses, question witnesses of any other party, and address concluding arguments to the arbitrator.

(22) The arbitrator may suspend the arbitration proceedings and attempt to resolve the dispute through conciliation if the Council and the parties to the dispute consent to this.

(23) In any arbitration proceedings, a party to the dispute may appear in person or be represented by a legal practitioner, or by a member, office-bearer or official of that party's trade union or employers' organisation and, if the party is a juristic person, by a director or employee.

(24) If the party who referred the dispute to the Council fails to appear in person or to be represented at the arbitration proceedings, the arbitrator may dismiss the matter.

(25) If a party, other than the party who referred the dispute to the Council, fails to appear in person or be represented at the arbitration proceedings, the arbitrator may—

(a) continue with the arbitration proceedings in the absence of that party; or

(b) adjourn the arbitration proceedings to a later date.

(26) The Secretary may refer disputes to expedited arbitration if the Secretary is satisfied that—

(a) six 1998a, 1998a compliance order has been issued and the party on whom the order has been issued has not objected to the order;

(b) the dispute is capable of being determined by written evidence only;

(c) the dispute is only about the interpretation of the Agreement; or

(d) the parties to the dispute agree.

(27) Notwithstanding the provisions of subclause (23), the arbitrator may determine the dispute and make the compliance order an award without hearing oral evidence if the arbitrator is satisfied that—

(a) the parties have been properly served; and

(b) it is appropriate in the circumstances to do so.

(28) Within 14 days of the conclusion of the arbitration proceedings—

(a) the arbitrator must issue an arbitration award with reasons, signed by the arbitrator; and

(b) the Council must serve a copy of that award on each party to the dispute.

(29) On good cause shown, the Secretary of the Council may extend the period in which the arbitration award and the reasons are to be served and filed.

(30) The arbitrator may make any appropriate award, including an order for costs, that gives effect to the collective agreement.

(31) An arbitrator may at his or her own initiative or as a result of an application by an affected party, vary or rescind an award—

- (a) erroneously sought or made in the absence of any party affected by the award;
- (b) in which there is ambiguity, or an obvious error or omission, but only to the extent of that ambiguity, error or omission; or
- (c) granted as a result of a mistake common to the parties to the proceedings.

(32) The Secretary of the Council may apply to make the arbitration award an order of the Labour Court under section 158 (1) of the Labour Relations Act.

### 13. AMENDMENTS TO THIS AGREEMENT

(1) Other than amendments to provisions relating to substantive terms and conditions of employment, amendments to this Agreement may be requested by any party to this Agreement during any period up to 30 June 1999, subject to the following:

- (a) Doubt or a dispute over the interpretation or application of the part requested to be amended must exist;
- (b) such doubt or dispute must be a consequence of the parties' attempts at rewording of such part during the simplification exercise; and
- (c) the doubt or dispute must be capable of being resolved by reference to the wording of the part in question as it had existed in terms of the Agreement prior to the simplification exercise.

(2) Any such dispute or request for amendments shall be referred to the Management Committee of the Council for resolution.

(3) The Management Committee shall resolve the relevant dispute by—

- (a) reverting back to the wording of the part in the Agreement prior to the simplification process;
- (b) by a consensual amendment of the wording of the part to give effect to the true meaning of the part.

Signed by the parties at Port Elizabeth on this 13th day of March 1998.

**D. J. F. LINDE**

**Member of the Council**

**A. A. VAN ROOYEN**

**Member of the Council**

**M. PAULSEN**

**Member of the Council**

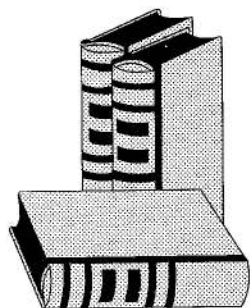
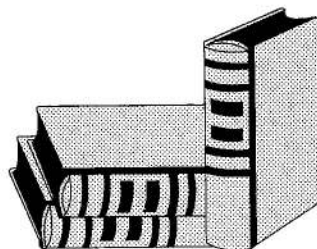
**L. VAN LOGGERENBERG**

**General Secretary of the Council**

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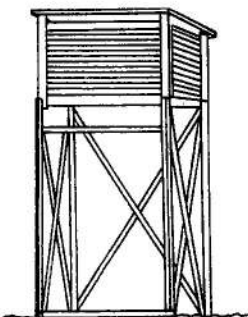
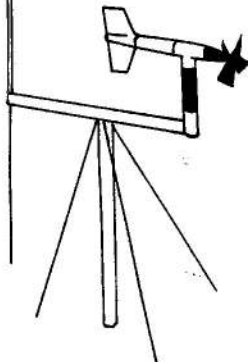
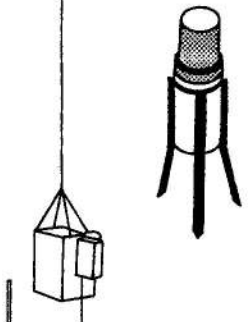
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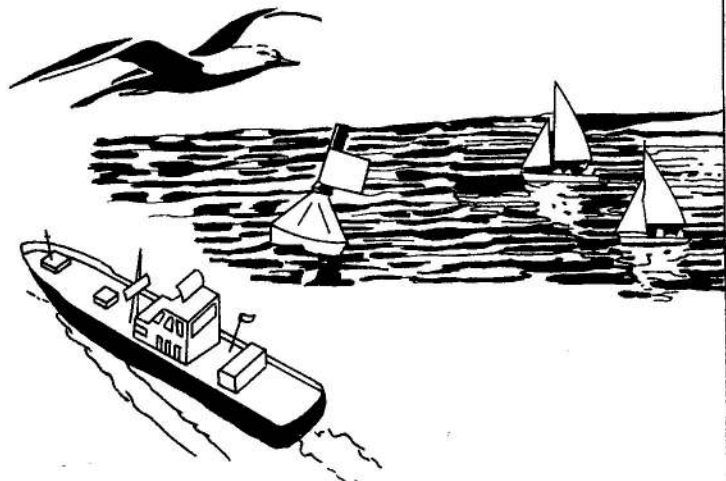
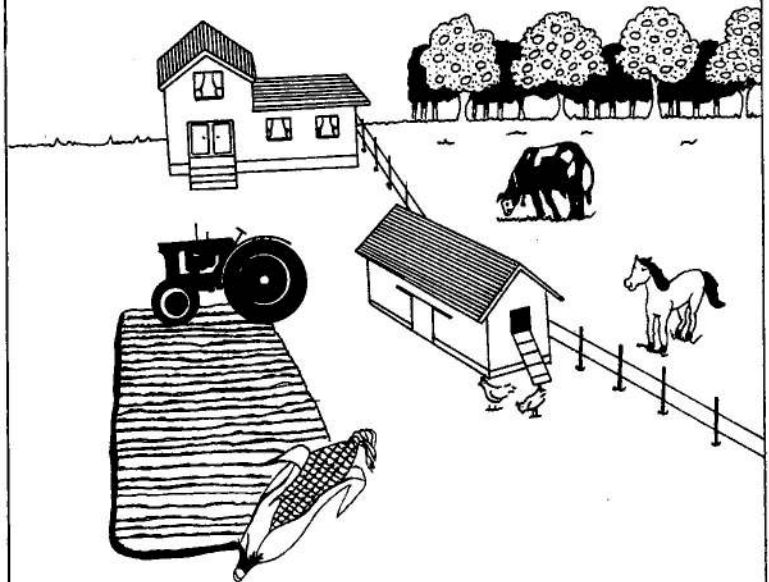
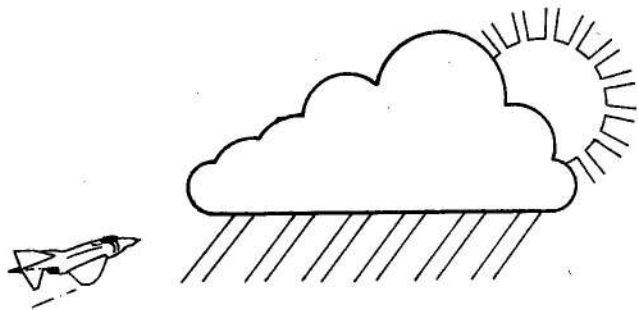


THE WEATHER BUREAU: DEPARTMENT OF ENVIRONMENTAL AFFAIRS AND TOURISM

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