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GOVERNMENT NOTICE

DEPARTMENT OF LABOUR

No. R. 1321

6 November 1998

LABOUR RELATIONS ACT, 1995

LEATHER INDUSTRY OF SOUTH AFRICA: EXTENSION OF THE FOOTWEAR SECTION: TECHNOLOGICAL 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 2003.

M. M. S. MDLADLANA
Minister of Labour

UMNYANGO WEZEMISEBENZI**No. R. 1321****6 Novemba 1998**

UMTHETHO WEZEMISEBENZI, KA 1995

IMBONI YEZIKHUMBA YASENINGISIMU AFRIKA: UKWELULWA KWESIVUMELWANO SIKAWONKEWONKE SESIKHWAMA SOBUCIKO BOBUCHWEPHESHE SENGXENYE YEZINTO ZOKUGQOKA EZINYAWENI 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 emkhandlwini 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 kulowo mkhakha weziMboni, kusukela ngomhlaka 16 Novemba 1998 nangesikhathi sonke esiyophela mhla ziwu 10 Meyi 2003.

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

Qaphela: Amakhophi alesi sivumelwano esiZulu ayatholakala uma eceliwe eMkhandlwini kaZwelonke wokuXoxisana ngamaHolo eziMbonini zesiKhumba eNingizimu Afrika.

SCHEDULE**NATIONAL BARGAINING COUNCIL OF THE LEATHER INDUSTRY OF SOUTH AFRICA****FOOTWEAR SECTION: TECHNOLOGICAL FUND COLLECTIVE AGREEMENT**

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

Southern African Footwear and Leather Industries Association (SAFLIA)

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

National Union of Leather and Allied Workers

and

Southern African Clothing and Textile Workers Union

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

being 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—

- (a) in the Republic of South Africa, as it existed prior to the promulgation of the Constitution of the Republic of South Africa, 1993 (Act No. 200 of 1993);
- (b) by all employers who are members of the employers' organisations and who are engaged in the Footwear Section of the Leather Industry and by all employees who are members of the trade unions and who are employed in the Footwear Section of the Leather Industry;
- (c) the terms of this Agreement shall not apply to non-parties in respect of clauses 1 (1) (b) and 2.

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 2003.

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 appears, words importing the masculine gender shall include the feminine. Further, unless inconsistent with the context—

“Act” means the Labour Relations Act, 1995;

“Council” means the National Bargaining Council of the Leather Industry of South Africa;

“Footwear Section” means 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;

“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 leaders, 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.

"Main agreement" means the agreement of the Footwear Section of the Industry in operation at the time.

4. FOOTWEAR SECTION TECHNOLOGICAL FUND

(1) The Fund, known as the Footwear Industry Technological Fund (hereinafter referred to as "the Fund"), originally established on 3 September 1982 in terms of Government Notice No. R. 1790, is hereby continued. The Council hereby authorises the collection of levies for the purpose of implementing the objects of the Fund as stated in its constitution. Such collection shall take place in accordance with the procedure as set out in this clause.

(2) Every employer engaged in the Footwear Section shall pay to the Fund a monthly levy in respect of each employee for whom wages are prescribed in the Main Agreement.

(3) The amount of the levy shall be calculated on the basis of twelve percent of the total monthly contributions payable to the Provident Fund of the Bargaining Council of the Leather Industry of South Africa in terms of the Provident Fund Agreement. For the purpose of this subclause, total monthly contributions means the contributions payable by both employers and employees in terms of the relevant provisions of the Provident Fund Agreement.

(4) The amount payable each month in terms of this Agreement shall be forwarded to the General Secretary of the Council, P.O. Box 23080, Port Elizabeth, 6000, not later than the 15th day of the month immediately following the month to which it relates, together with a statement in such form as may be specified from time to time.

(5) Should any amount due in terms of subclause (4) not be received by the Council on the due date, the employer shall pay interest on such amount or on such lesser amount as remains unpaid, at a rate of interest determined by the Council from time to time, subject to the provisions of the Limitation and Disclosure of Finance Charges Act, 1968.

(6) Interest on overdue amounts shall be calculated from the first day of the month in which payment became due until the day on which payment is actually received by the Council. The Council shall, in its absolute discretion, be entitled to waive payment of such interest or part thereof.

(7) In the event of the employer failing to submit the amount payable in terms of subclause (4), the Council shall, for the purpose of instituting legal proceedings, calculate all outstanding levies payable based on the last amount submitted by the employer.

(8) The Council shall, at the end of each month, remit to the Fund the total amount of contributions collected in terms of Agreement.

(9) Copies of the Constitution of the Fund, its audited annual accounts and balance sheets shall be lodged with the Registrar of Labour Relations. The Constitution shall include any amendments to the Constitution as may be adopted from time to time.

5. 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 Management 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 therefore, 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 employee 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.

6. 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—
- may investigate the alleged breach;
 - may endeavour to secure compliance with the Agreement; and
 - 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—
- require the designated agent to make further investigations;
 - if further conciliation is indicated, appoint a conciliator from the Council's panel of conciliators;
 - refer the dispute for conciliation to the Disputes Committee of the Council;
 - issue a compliance order; or
 - 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—
- the parties to the dispute;
 - any person who may have a legal interest in the outcome of the arbitration.
- (19) The arbitrator must—
- endeavour to conciliate the dispute; and
 - 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—
- continue with the arbitration proceedings in the absence of that party; or
 - adjourn the arbitration proceedings to a later date.

- (26) The Secretary may refer disputes to expedited arbitration if the Secretary is satisfied that—
- (a) a 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 of 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 on order of the Labour Court under section 158 (1) of the Labour Relations Act.

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. M. VAN LOGGERENBERG

General Secretary of the Council

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