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GOVERNMENT NOTICE

DEPARTMENT OF LABOUR

No. R. 1322

6 November 1998

LABOUR RELATIONS ACT, 1995

LEATHER INDUSTRY OF SOUTH AFRICA: EXTENSION OF PROVIDENT 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. 1322****6 Novemba 1998**

UMTHETHO WEZEMISEBENZI, KA 1995

IMBONI YEZIKHUMBA YASENINGIZIMU AFRIKA: UKWELULWA KWESIVUMELWANO SIKAWONKEWONKE NG SIKHWAMA SOMKHUSU OZALAYO 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 nabaqashwa kulowo mkhakha weziMboni, kusukela ngomhla-ka 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****PROVIDENT FUND COLLECTIVE AGREEMENT**

in accordance with the provisions of the Labour Relations Act, No. 66 of 1995, made and entered into by and between the—

The Southern African Footwear and Leather Industries Association (SAFLIA)**The South African Tanning Employers Organisation (SATEO)****The Association of South African Manufacturers of Luggage, Handbags and General Goods**

(the “employers’ organisations”),

and

The National Union of Leather & Allied Workers**The Southern African Clothing and Textile Workers Union**

(the “trade unions”),

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

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1. SCOPE OF APPLICATION OF AGREEMENT

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 industry;
- (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 and 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 and 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 District 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 William's Town and Pietermaritzburg.
- (c) The terms of this Agreement shall not apply to non-parties in respect of Clauses 1 (1) (a), 2, 7.3 and 14.

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

Words used in this Agreement and 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.

"Act" means the Labour Relations Act, No. 66 of 1995, as amended.

"Agreement" means the Provident Fund Agreement.

"Council" means the National Bargaining Council of the Leather Industry of South Africa.

"Fund" means the Leather Industry Provident Fund which is continued in terms of this Agreement.

"Fund week" means a week calculated from midnight Friday to midnight the succeeding Friday.

"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, and 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;
 - (b) tanning of the cured or uncured hides and/or skins;
 - (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;
 - (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 to administer the Fund in terms of clause 7.

"Member" means any person who contributes or has contributed to the Fund as an employee in terms of this Agreement.

"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, over-time and bonus payments), it shall mean such higher amount.

4. MEMBERSHIP

(1) *Conditions of membership*

- (a) Only employees who have not yet attained the age of fifty-five years may become members of the Fund.
- (b) On admission to the Fund a member shall submit proof of age as is considered satisfactory to the Management Committee.

(2) *Employees paid according to prescribed wage rates*

Employees for whom Wages are prescribed in any agreement of the Council shall become Members of the Fund subject to the provisions of Rule 9.

(3) *Employees paid at non-prescribed wage rates*

- (a) An Employer may, by mutual agreement with any of his Employees for whom wages are not prescribed in any agreement of the Council, make application to the Fund for those employees to become members of the Fund.
- (b) Upon such application the Management Committee may agree to admit such employees as members of the Fund and the provisions of the Agreement shall thereupon, with the necessary changes, apply to the Employer and the Employees concerned.

(4) *Employees paid at non-prescribed wage rates due to transfer or promotion*

- (a) Where an Employee, who earned prescribed wages and was a member of the Fund, is transferred or promoted to an occupation for which wages are not prescribed, his membership with the Fund shall be terminated and he shall be entitled to the benefits payable in terms of the Rules of the Fund, unless the employee elects to continue as a member of the Fund, and his employer agrees to this.
- (b) In such event, the Fund must be notified of this event in writing within one month of the transfer or promotion in question.
- (c) Where an employee has elected to continue as a member of the Fund after his transfer or promotion as set out above, he may thereafter apply in writing to the Management Committee to terminate his membership with the Fund.

The Management Committee may accept the application for termination in which event the Member shall become entitled to the benefits payable in terms of the Rules of the Fund, provided that the Member become a Member of another provident, pension or retirement annuity fund and his benefit is transferred to that fund.

(5) *Record Keeping*

Every Employer shall, within seven days of the date of engagement of an Employee, furnish the Secretary of the Fund in writing with the following details in respect of such Employee—

- (i) date of engagement;
- (ii) full name;
- (iii) maiden name, if applicable;
- (iv) provident fund number, if any;
- (v) gender;
- (vi) date of birth;
- (vii) occupation;
- (viii) wage;
- (ix) previous Employer;
- (x) factory number, if any;
- (xi) income tax number;
- (xii) identity number.

5. CONTRIBUTIONS

5.1 Contributions

- (1) Every Employer shall on each pay-day deduct from the wages of each of his Employees who is a Member of the Fund an amount equivalent to five per cent of the Employee's wage, rounded to the nearest cent.

- (2) To the aggregate of the amounts so deducted the employer shall add an equal amount and forward the total amount not later than the fifteenth day of the following month to the Secretary of the Fund together with a statement in such form as the Management Committee may determine from time to time.

(3) *Record of statements*

Every Employer shall retain a copy of the statement referred to above and keep it available for inspection for a period of not less than five years.

(4) *Interest*

Should any amount due in terms of this clause not be received by the Management Committee by the fifteenth day of the month following the month in respect of which it is payable, the Employer shall pay interest on such outstanding amount at a rate of interest determined by the Management Committee from time to time, subject to the provisions of the Limitation and Disclosure of Finance Charges Act, 1968.

(5) *Calculation of interest*

The interest shall be calculated from the first day of the month in which payment became due until the day upon which payment is actually received by the Management Committee.

(6) *Waiving of interest*

The Management Committee shall be entitled in its absolute discretion to waive payment of such interest or part thereof.

(7) *Personal liability*

If an Employer fails to make the deductions from the Wages of Employees or fails to account to the Fund for amounts deducted from the Wages of Employees, as required of him in terms of the Rules of the Fund, the Employer shall be personally liable to pay such Employee contributions to the Fund.

- (8) Where an employee receives wages for one day or more during any Fund week, contributions must be paid by both the employer and employee as though the employee earned a full week's wages.

- (9) Where a Member is employed by more than one Employer during a Fund Week the Employer by whom he was last employed during such Week shall pay both his own Contributions and those due by the Member in respect of the whole Week and may deduct the Contributions due by such Member from his earnings and no further Contribution shall be payable in respect of such Member in respect of that Week.

- (10) Where a Member leaves his employment on a Thursday his Employer shall deduct the Contributions due by such Member from his earnings and pay both his own Contributions and those due by the Member in respect of that Week.

- (11) An Employer shall not deduct the whole or any part of his own Contributions from the remuneration of a Member or receive any consideration from the Member in respect of such Contributions.

- (12) When a Member is on leave on full pay or works short-time, both his own and his Employer's Contributions shall be continued.

5.2 Incorrect payments

- (1) If a Contribution has been paid to the Fund in error, the Fund shall not be liable to repay such a Contribution after six months has lapsed from the date of such payment.

- (2) Whenever any benefit has been mistakenly paid to a Member as a result of such a Member having made payments to the Fund which were not due, the Management Committee may set off the amount of benefit so paid—

(a) against any sum claimed from the Fund as a repayment of such Contributions which were not due; and

(b) against any future benefits that may become due by the Fund to the said Member.

- (3) If a Member has received a benefit to which he is not entitled in terms of the Rules of the Fund and the amount is not set off in terms of the above subclause, the member shall be liable to repay to the Fund the amount of the benefits so received. The Management Committee, however, may in its discretion reduce such amount or completely waive repayment of such amount.

6. BENEFITS

The Fund provides benefits to members in accordance with the Rules of the Fund.

7. ADMINISTRATION OF THE FUND

7.1 Management Committee

- (1) The Fund shall be under control of a Management Committee which shall be appointed in terms of the Council's constitution and shall consist of an equal number of representatives of the Employers and Employees. Alternates may be appointed in respect of each representative.

- (2) The Management Committee shall elect a Chairperson and Vice-Chairperson from its members and shall specify its own rules of procedure, provided that a quorum for the committee shall be at least two representatives of the Employers and two representatives of the Employees.
- (3) Should the Management Committee be unable to perform its duties for any reason, the Council shall perform its duties and exercise its powers.

7.2 Specific powers of the Management Committee

(1) *Appointments*

The Management Committee shall have the power to appoint an Auditor, an Actuary, a Secretary and staff on such terms and conditions as it thinks fit, and to vary such appointments.

(2) *Investment Powers*

The Management Committee shall collect all revenue and, subject to any requirements of the Registrar of Labour Relations, shall have the power to deal with money surplus to current requirements, to invest, put out at interest, place on deposit, grant loans and furnish guarantees on behalf of Members for housing purposes, or otherwise deal with such moneys upon such securities and in such manner as it may from time to time determine, and to realise, vary, reinvest or otherwise deal with such securities and other investments as it may from time to time determine; provided that—

- (a) if any money not required to meet current expenditure are invested in housing loans to Members, the amount utilised for this purpose shall not exceed 10% of the total assets of the Fund: provided further that loans granted in terms of this sub-paragraph shall be subject to such conditions as the Management Committee may, with the approval of the Registrar of Labour Relations, determine from time to time;
- (b) sound investment principles shall be applied at all times.

7.3 Agents

- (1) The Council shall designate one or more of its agents to assist in giving effect to the terms of this Agreement and the Rules of the Fund.
- (2) It shall be the duty of every Employer to permit such persons to enter his establishment and to institute such enquiries and to examine such documents, books, wage-sheets, pay envelopes and pay tickets and to question such individuals in order to ascertain whether the provisions of this Agreement and the Rules of the Fund are being complied with.

8. RULES OF THE FUND

The Fund shall be administered in accordance with the Rules of the Fund and the Council shall have the power to prescribe, supplement, amend and revoke Rules relating to the administration of the Fund.

9. INDEMNITY

- (1) Except in cases of wilful and fraudulent wrongdoing, the members of the Management Committee, the Council and their alternates shall not be liable for any loss to the Fund arising out of any of the following:
 - (i) Improper investments made in good faith;
 - (ii) any act in their bona fide administration of the Fund;
 - (iii) the negligence or fraud of any agent or employee who may be employed although the employment of such agent or employee was not strictly necessary;
 - (iv) any act or omission made in good faith by such members or alternates; or
 - (v) any other matter or circumstance.
- (2) Any such member or alternate shall be reimbursed by the Fund for any reasonable costs incurred by him in defending any proceedings, whether civil or criminal, arising out of an allegation involving bad faith in which judgement is given in his favour or in which he is acquitted.

10. 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 Management Committee.
- (2) The Management Committee shall consider all applications from a party to this Agreement (which shall include 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 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.

11. 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 employer's 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) a compliance order has been issued and the party on whom the order has been issued has not objected to the order;
 - (b) 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 15 (1) of the Labour Relations Act.

12. ADMINISTRATION OF THE FUND ON EXPIRY OF THE AGREEMENT

(1) (i) Should this Agreement or any extension thereof expire and no subsequent agreement is negotiated within twelve months from the expiry date for the purpose of continuing the operation of the Fund; or

(ii) in the event of the Council being dissolved or ceasing to function at any time prior to the expiry of the said period of twelve months,

the Management Committee or such other persons at the Registrar of Labour Relations may designate shall continue to administer the agreement until expiry of the aforementioned period.

(2) The members of the management Committee at the date of expiry of the agreement or any extension thereof, or at the date at which the Council ceases to function or is dissolved shall be deemed to be members of the Committee for the period mentioned in subclause (1) for the purpose of administering the agreement.

(3) Any vacancy occurring on the Management Committee may be filled by the Registrar of Labour Relations from employers and employees so as to ensure an equality of employer and employee representatives in the Management Committee.

(4) In the event of the management Committee being unwilling or unable to discharge its duties which, in the opinion of the Registrar of Labour Relations, renders the administration of the Fund impractical or undesirable, he may appoint trustees to continue the function of the Fund.

(5) Such trustees shall have the following power and shall administer the Fund in the following manner:

(i) Pay to members leaving the Industry the benefits laid down in the rules on condition that the trustees shall not have the right to pay moneys due to such members in instalments, except that the periodical payments of benefits already being paid shall be continued until the amounts to such member's credit have been exhausted:

(ii) control and invest moneys accruing to the Fund and to prepare such statements and pay such administrative expenses as may be required in terms of the rules.

(6) Should the Registrar of Labour Relations be of the opinion that the Fund should be dissolved he shall appoint a liquidator who shall liquidate the Fund's assets and liabilities in accordance with Clause 13.

13. DISSOLUTION AND LIQUIDATION OF THE FUND

(1) Should the Council wish to dissolve the Fund it may 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 or their respective alternates present at the meeting vote by a show of hands in favour of dissolution.

(2) Should the required vote be attained, the meeting shall thereafter appoint a liquidator who shall commence liquidating the assets and liabilities of the Fund in accordance with this clause.

(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) The liquidator appointed shall take the necessary steps to liquidate the debts of the Fund from its unexpended funds and any moneys realised from the assets of the Fund.

(5) If the accumulated assets are insufficient to meet the claims of all creditors after deduction of the liquidator's fees including the costs of administration and general expenses for winding up the Fund's affairs, the order in which creditors shall be paid shall be as prescribed in the law relating to the distribution of the assets of an insolvent estate; Provided that for this purpose the liability of members and employers shall be limited to the amount of contributions due by them as at the date of dissolution.

(6) After payment of all the amounts due in accordance with the above, any remaining funds shall be distributed as follows:

(i) Where the residue is insufficient to meet the withdrawal benefits of all members, calculated as at the date of dissolution, a distribution shall be made proportionate to each member's withdrawal benefits;

(ii) where the residue is sufficient to meet the withdrawal benefits of all members, calculated as at the date of dissolution, a distribution shall be made equal to each member's withdrawal benefits;

- (iii) should there be a residue after the distribution in terms of the preceding sub-clause, such residue or part thereof shall be allocated on the basis of Early Retirement Benefits calculated as at the date of dissolution; Provided that where such residue is insufficient to meet the total amounts due on that basis, the amount which shall be allocated to each member shall be the amount which would have been allocated had the residue been sufficient reduced by the percentage of such shortfall:
- (iv) should there be any residue remaining after the distribution of the assets in terms of the above, such residue shall be distributed to each member porportionate to his benefits as calculated above.
- (7) The investments of the Fund shall be realised as and when this is possible and expedient in the Council's opinion and the liquidator shall be empowered to pay the amount, if any, due to each member in instalments as and when moneys become available.
- (8) No interest shall be payable on any amounts due to a member.
- (9) When instalments are paid to members an equal percentage of the amount due shall be paid to each member.
- (10) The Management Committee or the Fund or the Council or its members or the liquidator shall not be liable for any bona fide distribution made in accordance with these provisions and no claims shall fall due to a member or nominee or dependant or any other person who has not been paid by reason of the fact—
 - (i) that his identity at the time of payment was not known or unascertainable; or
 - (ii) that he had not been included in the distribution but had failed to draw the attention of the liquidator to his non-inclusion prior to the final distribution having been made.
- (11) In any event the Management Committee of the Fund, the Council or its members or the liquidator shall not be held liable concerning any aspect of the liquidation and/or distribution process after the final distribution of all the assets of the Fund, which shall be the date the liquidator certifies that such final distribution has been made.
- (12) The benefits and the amounts to be distributed shall be calculated as at the date of passing of the resolution to dissolve the Fund in terms of this clause.
- (13) In the event of the death of a member after the date of passing of the resolution to dissolve the Fund, the liquidator shall pay the Death Benefit, but where the Fund is liquidated in terms of clause 12 (6) the benefits payable in respect of a deceased member shall only be equal to the withdrawal benefit as provided for in the Rules of the Fund.

14. 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 dispute must be consequence of the parties' attempts at the 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 existed in terms of the agreement prior to the simplification exercise.
- (2) Any such dispute or request or amendment 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; or
 - (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. M. VAN LOGGERENBERG

General Secretary of the Council

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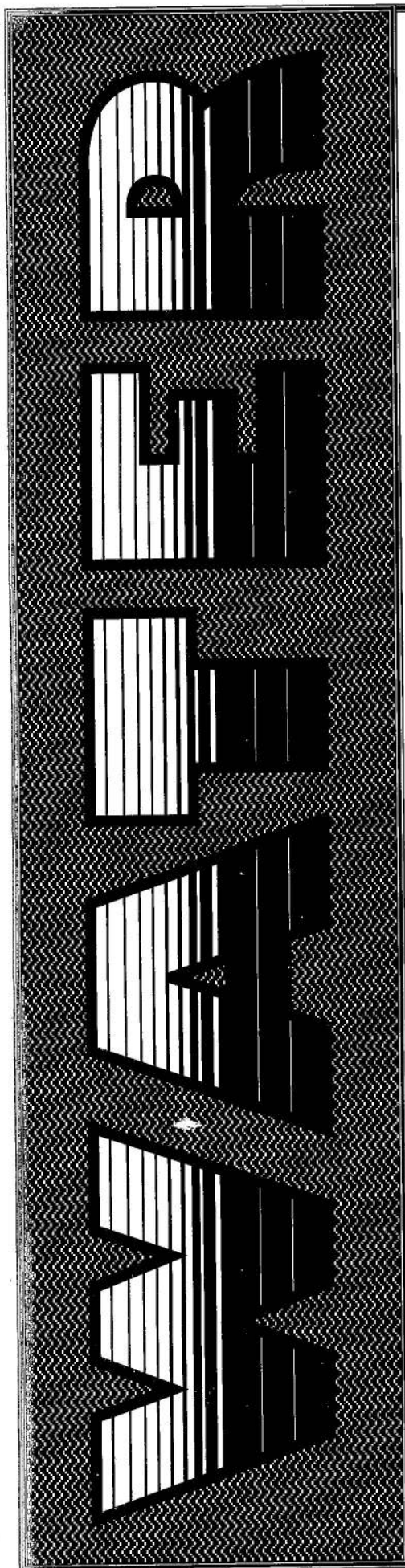
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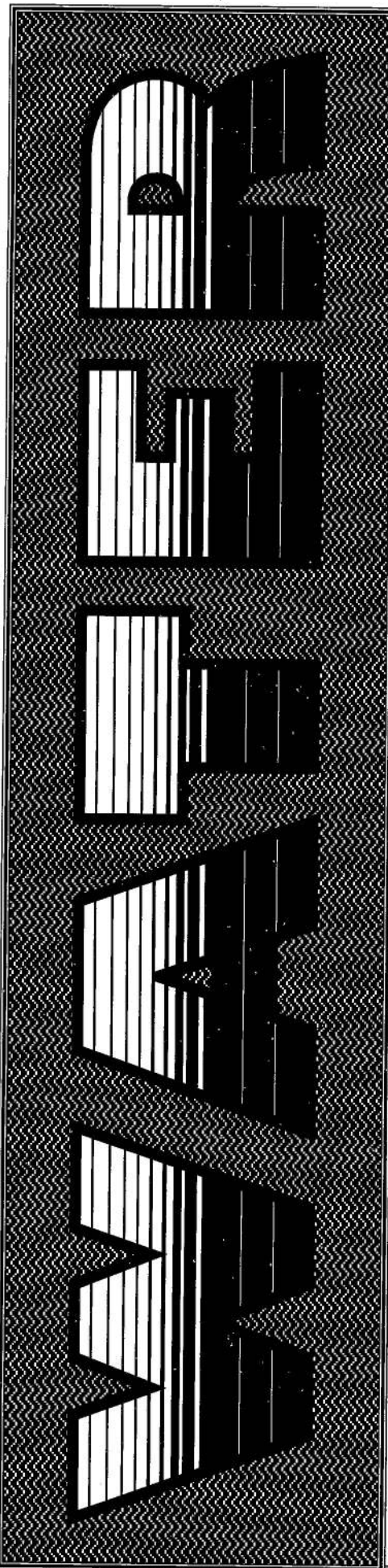
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