

REPUBLIC
OF
SOUTH AFRICA



REPUBLIEK
VAN
SUID-AFRIKA

Government Gazette Staatskoerant

Regulation Gazette

No. 6334

Regulasiekoerant

Vol. 401

PRETORIA, 6 NOVEMBER 1998

No. 19425

GOVERNMENT NOTICE GOEWERMENTSKENNISGEWING

DEPARTMENT OF LABOUR DEPARTEMENT VAN ARBEID

No. R. 1406

6 November 1998

LABOUR RELATIONS ACT, 1995

ELECTRICAL INDUSTRY (KWAZULU-NATAL): EXTENSION OF 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 Bargaining Council for the Electrical Industry (KwaZulu-Natal) 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 from the period ending 31 January 1999.

M. M. S. MDLADLANA
Minister of Labour

No. R. 1406

6 November 1998

WET OP ARBEIDSVERHOUDINGE, 1995

**ELEKTROTEGNIJSE NYWERHEID (KWAZULU-NATAL): UITBREIDING VAN KOLLEKTIEWE OOREENKOMS
NA NIE-PARTYE**

Ek, Membathisi Mphumzi Shepherd Mdladlana, Minister van Arbeid, verklaar hierby, kragtens artikel 32 (2) van die Wet op Arbeidsverhoudinge, 1995, dat die Kollektiewe Ooreenkoms wat in die Bylae hiervan verskyn en wat in die Bedingsraad vir die Elektrotegniese Nywerheid (KwaZulu-Natal) aangegaan is en kragtens artikel 31 van die Wet op Arbeidsverhoudinge, 1995, bindend is op die partye wat die ooreenkoms aangegaan het, bindend is vir die ander werkgewers en werknemers in daardie Nywerheid, met ingang van 16 November 1998 en vir die tydperk wat op 31 Januarie 1999 eindig.

M. M. S. MDLADLANA**Minister van Arbeid**

Nota: 'n Afrikaanse vertaling van die ooreenkoms by die Engelse kennisgewing is op aanvraag beskikbaar by die Bedingsraad.

SCHEDULE**BARGAINING COUNCIL FOR THE ELECTRICAL INDUSTRY (KWAZULU-NATAL)****COLLECTIVE AGREEMENT**

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

Electrical Contractors' Association (South Africa)

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

South African Electrical Workers' Association**Metal and Electrical Workers' Union of South Africa**

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

being the parties to the Bargaining Council for the Electrical Industry (KwaZulu Natal).

ELECTRICAL INDUSTRY COLLECTIVE AGREEMENT**PART 1****1. SCOPE OF APPLICATION**

(1) The terms of this Agreement shall be observed by all employers and employees in the Electrical Industry who are members of the employers' organisation and trade unions', who are engaged or employed in the Industry in the Province of KwaZulu-Natal excluding any portions of that area falling within the former self-governing territory of KwaZulu; as it existed prior to the coming into operation of the Constitution of the Republic of South Africa, 1993 (Act No. 200 of 1993).

(2) Notwithstanding the provision of subclause (1), the terms of this Agreement shall apply to apprentices and trainees only in so far as they are not inconsistent with the provisions of the Manpower Training Act, 1981, or any conditions specified or any notices served in terms thereof.

(3) For the purpose of this Agreement, the "weekly wage rate" of apprentices prescribed under the Manpower Training Act, 1981, shall be taken to be the weekly wage of such employees, and the "hourly rate" shall be the weekly wage calculated as above, divided by the number of ordinary hours worked in the establishment concerned.

2. PERIOD OF OPERATION

This Agreement shall come into operation on the date fixed by the Minister of Labour in terms of section 32 of the Labour Relations Act, 1995, and shall remain in force until 31 January 1999.

3. EXCEPTIONS

The provisions of this Agreement shall not apply to non-parties in respect of clauses 1 (1), 2, 18, 22 (1) (d), 27, 37 (8), 50 and 51 of part 1 of this Agreement.

4. INDUSTRIAL ACTION

No person bound by the provisions of this Collective Agreement shall engage in or participate in a strike or lockout or any conduct in furtherance of a strike or lockout in respect of any matter regulated by this Agreement for its duration.

5. DEFINITIONS

Any expressions used in this Agreement that are defined in the Labour Relations Act, 1995, shall have the same meaning as in that Act, and any reference in this Agreement to an Act shall include any amendments to such Act; further, unless the context otherwise indicates—

"abscond" means the absence from work by an employee for a period in excess of five consecutive working days without informing or notifying the employer of the reasons therefor, or an employee deserting his employment for reasons unknown to the employer;

"Act" means the Labour Relations Act, 1995 (Act No. 66 of 1995);

"apprentice" means an employee serving under a written contract of apprenticeship registered with the Electrical Contracting Industries Training Board;

"Area A" means the Magisterial Districts of Camperdown, Chatsworth, Durban, Inanda, Lions River, Lower Tugela, New Hanover, Pietermaritzburg and Pinetown;

"Area B" means the Province of KwaZulu-Natal, excluding any portions of that area falling within the former self-governing territory of KwaZulu-Natal, as it existed prior to the coming into operation of the Constitution of the Republic of South Africa, 1993 (Act No. 200 of 1993);

"artisan" means an employee who has completed his training in terms of the Manpower Training Act, 1981, or is in possession of a certificate issued by the Electrical Contracting Industries Training Board recognising that he has received training sufficient to entitle such an employee to work as an artisan in the Industry;

"certificate" means a certificate of registration issued in terms of regulation 9 (2) of the Electrical Installation Regulations, 1992;

"civil disorder" means the concerted action of a number of people, not employed by the employer, to disrupt, for any purpose whatsoever, the normal activities of the employer at his place of business or any worksite, or to prevent employees either from reaching such place of business or worksite or from commencing or continuing to work;

"Council" means the Bargaining Council for the Electrical Industry (KwaZulu-Natal);

"domestic appliance mechanic" or **"refrigeration mechanic"** means an employee engaged on one or more of the following classes of work:

Diagnosing faults in, or directing or executing repairs or adjustments to, or servicing, assembling, erecting and/or installing ranges, refrigerators, washing machines, ironers, air-conditioning units and all other major electrical appliances, carrying out final tests or supervising of such operations but does not include an employee engaged on connecting refrigerators, ranges, or other domestic electrical appliances to existing outlets;

"domestic appliance repairer" means an employee engaged in—

- (a) the following operations when performed in the workshop of an establishment in connection with the repair of heating and/or drying and/or personal care appliances of a load not exceeding five amperes, except in the case of domestic heating appliances where the load does not exceed 15 amperes:
 - (i) Repairing and/or replacing heating elements on appliances;
 - (ii) repairing and/or replacing ceramic or other insulating spacers, including fixing;
 - (iii) repairing and/or re-assembling of heating element containers;
 - (iv) removing and/or replacing motors not exceeding 750 watts at the direction of an artisan, excluding final testing;
- (b) any or all of the following operations carried out in connection with the installation of burglar or other similar alarm systems:
 - (i) Connecting cables of electromechanical devices;
 - (ii) adjusting of vibration contacts to pre-set limits;
 - (iii) soft soldering by hand;
 - (iv) foiling windows;

"driver" means an employee engaged in driving a mechanical vehicle on a public road and who is in possession of a valid driver's licence issued under any road traffic ordinance;

"electrical construction operator, Level 1" (hereinafter referred to as an "Elconop 1") means an employee who has received on-the-job training by the employer, who undertakes any of the following tasks and who may use the tools necessary to perform such tasks:

- (a) Bending conduit;
- (b) cutting conduit to marks; and threading and reaming thereof;
- (c) attaching empty conduit accessories and trays to conduit;
- (d) installing and fixing wire ways*;
- (e) installing armoured and unarmoured surface cable, excluding the connection thereof;
- (f) fitting glands to PVC cables, but excluding any glands that require epoxy or similar filling;
- (g) operating a trenching machine once trained;
- (h) laying cables in trenches, ducts and racks, including securing such cables;
- (i) the work of a labourer;

- (j) assisting a master installation electrician, an installation electrician, an electrical tester for single phase, an electrician and an Elconop 2 or Elconop 3, but not performing any work individually, except as set out in (a) to (i) above;

(*Wire ways mean cable trays or any enclosed casing containing wires or cables)

"electrical construction operator, Level 2" (hereinafter referred to as an "Elconop 2") means an employee who is in possession of proof of proficiency as an Elconop 1 issued by his employer, and has undergone on-the-job training and been successful in the examination for an Elconop 2 at an institutionalised training centre accredited by the Electrical Contracting Industries Training Board, and who may be engaged in any or all of the following tasks, and may use the tools necessary to perform such tasks: Provided such tasks are carried out only on new installations or on major renovations to structures or buildings from which the power has been disconnected from the main supply, and are carried out under the supervision of a master installation electrician, installation electrician, electrician, electrical tester for single phase or artisan:

- (a) Cleating, including placing wires in cleats: Provided there is no tensioning;
- (b) placing or drawing conductors into wire ways*;
- (c) erecting and fixing luminaries, including the connection thereof;
- (d) installing light switches, socket outlets, cooker and water heater switch disconnectors, including the connection thereof;
- (e) installing systemised and/or innovative electrical installations, which means a pre-designed wiring system entailing work of a repetitive nature of which the components have been prepared off site to the lengths and sizes required, and includes connecting accessories thereto: Provided such employee may not connect the distribution board;
- (f) installing and fixing surface installations;
- (g) simple arc gas welding;
- (h) the work of a labour or Elconop 1;

"electrical construction operator, Level 3" (hereinafter referred to as an "Elconop 3") means an employee who has been employed in the Industry as an Elconop 2 for a continuous period of at least 12 months and has undergone the prescribed formal training and been successful in the examination for an Elconop 3 at an institutionalised training centre accredited by the Electrical Contracting Industries Training Board; and who may be engaged in any or all of the following tasks, and may use the tools necessary to perform such tasks: Provided such tasks are carried out only on new installations or on major renovations to structures or buildings from which the power has been disconnected from the main supply, and are carried out under the supervision of a master installation electrician, installation electrician, electrician, electrical tester for single phase or artisan:

- (a) Wiring and assembling distribution boards;
- (b) installing and connecting distribution boards;
- (c) tensioning cleat wiring;
- (d) complete tubing and wiring of houses, duplexes, simplexes and repetitive work of a similar nature on floors of office blocks, hotels and flats;
- (e) where necessary, performing the work of an Elconop 1 or Elconop 2;

"electrical contractor" means a person who is currently registered with the Electrical Contracting Board of South Africa as an electrical contractor and who undertakes to perform electrical installation work and/or the verification and certification of the construction, testing and inspection of electrical installations on behalf of any other person, but excludes an employee of such first-mentioned person;

"Electrical Contracting Board of South Africa" means the board established by organisations involved in the Electrical Industry, with the address PO Box 9683, Edenglen, 1613;

"Electrical Industry" or "Industry" means the industry in which employers and their employees are associated for any or all the following:

- (a) The design, preparation, erection, installation, repair and maintenance of all electrical equipment forming an integral and permanent part of buildings and/or structures, including any wiring, cable jointing and laying and electrical overhead line construction, and all other operations incidental thereto, whether the work is performed or the material prepared on the site of the buildings or structures or elsewhere;
- (b) the design, preparation, erection, installation, repair and maintenance of all electrical equipment incidental to the purpose for which a building and/or structure is used, including any wiring, cable jointing and laying and electrical overhead line construction, and all other operations incidental thereto, whether the work is performed or the material prepared on the site of the building or structures or elsewhere;
- (c) the design, preparation, erection, installation, repair and maintenance of all electrical equipment incidental to the construction, alteration, repair and maintenance of buildings and/or structures, including any wiring, cable jointing and laying and electrical overhead line construction, and all other operations incidental thereto, whether the work is performed or the material prepared on the site of the buildings or structures or elsewhere;

- (d) the installation and/or maintenance and/or repair and/or servicing of domestic television sets and/or other domestic electronic appliances and/or equipment, including the erection and/or repair of television antennas;
- (e) the design, preparation, erection, installation, repair and maintenance of all electrical equipment not covered by (a), (b), (c) or (d) above, including any wiring, cable jointing and laying and electrical overhead line construction, and all other operations incidental thereto, whether the work is performed on the material prepared on the site of the buildings or structures or elsewhere.

For the purposes of this definition—

(i) **“electrical equipment”** includes—

- (aa) electrical cables and overhead lines, and
- (ab) generators, motors, converters, switch and control gear (including relays, contactors, electrical instruments and equipment associated therewith), electrical lighting, heating, cooking, refrigeration and cooling equipment, primary and secondary cells and batteries, transformers, furnace equipment, radio sets and allied electrical apparatus, signalling equipment and other equipment utilising the principles used in the operation of radio or electronic equipment;

(ii) design, preparation, erection, installation, repair and maintenance does not include—

- (aa) the manufacture, installation, repair and/or maintenance of lifts, and escalators;
- (ab) the manufacture and/or assembly by the manufacturer of the aforementioned electrical equipment and/or components thereof;
- (ac) the wiring of or installation in motor vehicles of lighting, heating or other equipment or fixtures, whether permanent or otherwise;
- (ad) the manufacture, repair and servicing of motor vehicle batteries, the manufacture of lead-acid batteries and the repair, maintenance and installation of such batteries when performed by the manufacturers thereof;
- (ae) the installation and/or servicing and/or repair of stationary-type-lead acid batteries or component parts thereof when performed by the manufacturer of the battery or component thereof;
- (af) the installation and/or servicing and/or repair of motor vehicle batteries of the lead-acid type or components thereof when performed by the manufacturer of the battery or component part in terms of his manufacturer's guarantee;
- (ag) the sale, repair and/or servicing of typewriting machines and/or other mechanical office appliances;
- (ah) the assembling and/or servicing and/or installation and/or repair of any one or more of the appliances, equipment, devices or apparatus referred to in (ai);
- (ai) the marketing of appliances, equipment, machines, devices and apparatus, whether utilising manual, photographic, mechanical, electrical, electrostatic or electronic principles or any combination of such principles, primarily intended for use in accounting and/or business and/or calculating and/or office procedures, wherever such marketing is carried on in conjunction with any one or more of the activities referred to in (ah);
- (aj) the connection to the wiring of a building or structure of the appliances, equipment, machines, devices and apparatus referred to in (ai) other than by means of a socket or similar outlet provided for the purpose;

“electrical installation” means any machinery, in or on any premises, used for the transmission of electricity from a point of control to a point of consumption anywhere on the premises, including any article forming part of such an installation, irrespective of whether or not it is part of the electrical circuit, but excluding—

- (a) any machinery of the supplier related to the supply of electricity on the premises;
- (b) any machinery used for the transmission of electricity of which the voltage shall not exceed 50 V where such electricity is not derived from the main supply of a supplier;
- (c) any machinery that transmits electrical energy in telecommunication, television or radio circuits;
- (d) an electrical installation on a vehicle, vessel, train or aircraft.

“electrical tester for single phase” means a person who has been registered as an electrical tester for single phase in terms of regulation 9 of the Electrical Installation Regulations, 1992, made under the Occupational Health and Safety Act, 1993, and who has been approved by the chief inspector for the verification and certification of the construction, testing and inspection of electrical installations supplied by a single phase electricity supply;

“electrician” means an employee who has completed an apprenticeship in terms of the Manpower Training Act, 1981, in a trade relevant to the industry, or who has received training recognised by the Council as being sufficient to entitle him to work as an electrician in the industry;

“employee” means any person employed on any of the classes of work scheduled in this Agreement and/or the annexure thereto, and includes a person employed under a contract of apprenticeship recognised by the Council;

“employer” means any person who employs or provides work for any person and remunerates or expressly or tacitly undertakes to remunerate him, or who permits any person in any manner to assist him in the carrying on or conducting of his business, and includes temporary employment services as defined in the Act;

“electrical wiring” means the design, installation, alteration, repair or testing of any cable, conductor, fitting, apparatus or conduit used or intended to be used for purposes integral or incidental to the supply and/or consumption of electricity;

“establishment” means the place where the employer normally carries on his business and where his wage records are kept;

“foreman” means an electrician or artisan who has been appointed by his employer to supervise work scheduled in this Agreement: Provided that such employee may also be required to undertake electrical installation work himself if so required by his employer;

“installation electrician” means a person registered as an installation electrician in terms of regulation 9 of the Electrical Installation Regulations, 1992, made under the Compensation for Occupational, Health and Safety Act, 1993, who has been approved by the chief inspector for the verification and certification of the construction, testing and inspection of any electrical installation, excluding specialised electrical installations;

“labourer” means an employee who is engaged in any or all of the following tasks:

- (a) Loading or unloading materials;
- (b) digging holes and trenches, planting poles and laying cables in trenches;
- (c) cleaning office and workshop areas;
- (d) preparing refreshments;
- (e) chasing and cutting walls and concrete floors for conduit;
- (f) stripping redundant installations and equipment incidental thereto from which the supply cables have been removed;
- (g) assisting a master installation electrician, an installation electrician, an electrical tester for single phase, an electrician and an Elconop 1, Elconop 2 or Elconop 3, but not performing any work individually except as set out in (a) to (f) above: Provided that should an employee produce a certificate of service issued in terms of clause 30 of Part I of the Agreement, or other evidence acceptable to the Council indicating that he was previously employed in the Industry as a labourer Grade I or Elconop 1, he shall be employed as not less than an Elconop 1;

“master installation electrician” means a person who has been registered as a master installation electrician in terms of regulation 9 of the Electrical Installation Regulations, 1992, made under the Occupational Health and Safety Act, 1993, and who has been approved by the chief inspector for the verification and certification of the construction, testing and inspection of any electrical installation;

“piecework” means any system under which the minimum wage to which an employee is entitled is calculated solely on the quantity or output of work done, irrespective of the time spent on such work;

“premises” means any land and any building or structure, or part thereof, above or below the surface of any land, and includes any vehicle, aircraft or vessel;

“public holiday” means any public holiday as determined in the Public Holidays Act, 1994 (Act No. 36 of 1994);

“remuneration” means any payment in money arising out of the terms of this Agreement, made or owing to any person, which arises in any manner whatsoever out of employment, and “remunerate” has a corresponding meaning;

“retrenchment” means a termination of employment as a result of a shortage of work or the closure of the business;

“specialised electrical installations” means electrical installations in—

- (a) hazardous locations as contemplated in SABS 0108;
- (b) anaesthetising and similar locations as contemplated in SABS 051;
- (c) explosive atmospheres as contemplated in SABS 086; or
- (d) the petroleum industry as contemplated in SABS 089.

“shift” means a working day;

“specified formal training” means a system of modular training accredited by the Electrical Contracting Industries Training Board to meet the requirements of the tasks to be performed by the category of employee and carried out in training centres accredited by the Electrical Contracting Industries Training Board;

“suitable accommodation” means a hotel, boarding house, caravan or other suitable accommodation, and in the event of a dispute in regard to what is suitable accommodation the Council shall give a ruling;

“temporary employment services” means any person who, for reward, procures for or provides to a client other persons who render services to, or perform work for, the client, and who are remunerated by the temporary employment service;

"temporary labourer" means an employee who is employed on the following terms and conditions:

- (a) An employer shall have at least one labourer in his employ before he may employ a temporary labourer;
- (b) a temporary labourer may only be employed to perform work of a labourer for which no formal training is required;
- (c) the minimum rate of wages shall be not less than half the rate of wages prescribed in this Agreement for a labourer in the area where the temporary labourer is employed;
- (d) the working hours shall be the normal working hours of the establishment;
- (e) any overtime worked by a temporary labourer on a normal working day, a Saturday, Sunday or public holiday shall be paid in accordance with the provisions of clause 8;
- (f) a temporary labourer may be employed for not more than 20 consecutive working days, after which his services shall either be terminated or he shall be offered employment as a labourer on the terms and conditions specified in this Agreement;
- (g) from the commencement of employment of the temporary labourer he shall be reflected in the wage register and UIF returns of the employer, and the employer shall at all times ensure that the temporary labourer is covered by the Compensation for Occupational Injuries and Diseases Act, 1993;
- (h) no levies or contributions in terms of the Collective Agreement or Sick Benefit, Pension and Medical Aid Fund Agreements of the Council shall be payable in respect of a temporary labourer;
- (i) the employer shall pay wages due to a temporary labourer weekly, and where the services of a temporary labourer are terminated before the normal pay day as set out herein, he shall be paid all remuneration due to him on termination of employment;
- (j) all employers engaging temporary labourers shall advise the Council each month, on a form obtainable from the Council, of the names, ID Numbers and dates of employment of all temporary labourers employed by them during such months;

"trainee" means a person undergoing training as an artisan in terms of the Manpower Training Act, 1981;

"wage" means the hourly rate prescribed in clause 4 of Part II of this Agreement: Provided that where an employer regularly pays an employee an amount higher than that prescribed in the said clause, it shall mean such higher amount;

"working day" means any day, other than a Saturday, Sunday or a public holiday;

"working employer" means an employer or any partner in a partnership who does manual work in the Industry, a sole proprietor, working director or employer who is engaged in any work scheduled in the Agreement, and who shall be deemed to be an employee in respect of whom contributions are required to be made in terms of this Agreement, and if a partnership, a certified copy of the deed of partnership shall be lodged with the Council.

6. LEVELS OF BARGAINING

The Council shall be the forum for negotiating all matters pertaining to this Collective Agreement.

7. DAYS AND HOURS OF WORK

- (1) (a) Subject to the provisions of clause 8, no employer shall require or permit any employee to work—
 - (i) for more than eight hours in any one day, Mondays to Fridays;
 - (ii) for more than five days in any one week, Mondays to Fridays;
 - (iii) on a Saturday, Sunday or public holiday;
 - (iv) before 07:00 or after 17:00;
 - (v) (aa) for more than five hours continuously without an uninterrupted interval of not less than one hour, during which interval the employee shall not be required or permitted to perform any work: Provided that an employer may agree with a majority of his employees to reduce the length of the interval to not less than half an hour;
 - (ab) except as provided for in subparagraph (aa) or (ac) hereof, periods of work interrupted by intervals of less than one hour shall be deemed to be continuous;
 - (ac) when by reason of any overtime worked an employer is required to give an employee a second interval, such interval may be reduced to no less than 15 minutes.

(b) Notwithstanding the provisions of paragraph (a), an employer may, by declaration to the Council, within one month of the date of coming into operation of this Agreement, elect to change the hours of work (except if, under the previous Agreement an employer had informed the Council that he was working in excess of 40 hours, he need not inform the Council again), and thereafter such employer shall not require or permit any employee to work—

- (i) for more than nine hours in any one day;
- (ii) for more than five days in any one week, Mondays to Fridays;

- (iii) on a Saturday, Sunday or public holiday;
- (iv) before 07:00 or after 17:00;
- (v) (aa) for more than five hours continuously without an uninterrupted interval of not less than one hour, during which interval the employee shall not be required or permitted to perform any work: Provided that an employer may agree with a majority of his employees to reduce the length of the interval to not less than half an hour;
- (ab) except as provided for in subparagraph (aa) or (ac) hereof, periods of work interrupted by intervals of less than one hour shall be deemed to be continuous;
- (ac) when by reason of any overtime worked an employer is required to give an employee a second interval, such interval may be reduced to no less than 15 minutes.

(2) An employer may, to facilitate the keeping of a record of the starting and stopping time and hours of work of his employees, require them to clock in and out of work, and may before paying any employee any wages and/or remuneration for any period not recorded by the clock, require that employee to show satisfactory proof of having been at work: Provided that an employee shall be paid in terms of this Agreement for any time recorded by the clock that falls within the starting and finishing time of the shift for that day of the week, excluding meal intervals as notified by the employer to his employees in terms of clause 43 (3) of this part and for all time that he is required by the employer to work that does not fall within such starting and finishing times.

8. OVERTIME AND PAYMENT FOR WORK ON SUNDAYS AND PUBLIC HOLIDAYS

(1) Unless otherwise authorised by the Council, the maximum overtime that may be worked, including work on Sundays, shall not exceed 10 hours per week.

(2) Overtime shall be voluntary, and any employee who works any time in excess of or outside the hours as specified in clause 7 shall be paid at the rate of—

- (a) one and a third times his hourly rate of wages for every hour or part of an hour for the first three hours worked after ordinary hours of work on any day from Monday to Friday;
- (b) one and a half times his hourly rate of wages for every hour or part of an hour worked in excess of three hours of overtime worked on any day from Monday to Friday and for every hour or part of an hour for all hours worked on a Saturday;
- (c) double his hourly rate of wages for every hour or part of an hour for all hours worked on a Sunday;
- (d) for paid public holidays that fall on a day on which the employee would ordinarily work in terms of clause 22 (1) (b), his full day's wages plus his normal hourly rate of wages for every hour or part of an hour for the actual time worked on that day;
- (e) for paid public holidays that fall on a day on which the employee would not ordinarily work, double his hourly rate of wages for every hour or part of an hour for all hours worked.

(3) Notwithstanding the provisions of subclause (1) of this clause, where in any one week an employee absents himself from work during any or all of the ordinary hours of work as specified in clause 7 hereof, such ordinary hours not worked by the employee shall be deducted from the hours of overtime worked and the hours so deducted shall be paid for at the employee's ordinary rate: Provided that—

- (i) if the number of ordinary hours of work on which the employee is absent in any one week is in excess of the number of overtime hours worked, all such overtime hours shall be paid for at the employee's ordinary hourly rate;
- (ii) any overtime worked on a Saturday shall be deemed to be included for the purpose of this subclause;
- (iii) where an employee is absent from work with the permission of his employer or absent on account of sickness or circumstances beyond his control, the provisions of this subclause shall not apply, and the overtime hours worked in such case shall be paid for at the overtime rate applicable to the overtime hours worked: Provided that any employer may call on an employee for a medical certificate in proof of cause of absence.

(4) Any employee who is aggrieved by the application to him of any of the provisions of subclause (2) may appeal to the Council against the decision applied to him, and the Council may, after considering any reasons that may be submitted for such decision, confirm that decision or give such other decision as in its opinion ought to have been given in such case.

9. TIME AND WAGE RECORD

Every employee shall, on payment, be given a statement showing his total earnings, ordinary time and overtime payments, allowances and details of all deductions.

10. SHORTTIME

(1) (a) (i) An employer may require his employees to work for a lesser number of hours than the ordinary hours of work of his establishment owing to a shortage of work and/or materials in which case the employer shall give his employees two clear working days' notice of his intention to work shorttime, and shall, so far as is practicable, spread the work available among the employees affected.

(ii) Where the employee is expressly required by the employer to report at the establishment on anyone day for the purpose of ascertaining if work will be available, he shall receive not less than four hours' work, or pay in lieu thereof, in respect of such day.

(b) (i) If the employer advises the employee on the working day immediately preceding the day on which he is not required to attend, or if unforeseen contingencies and/or circumstances beyond the control of the employer in the event of the foregoing circumstances, arise, the employer shall not be required to pay wages to his employees, except for the periods actually worked: Provided that where the employer believes that resumption of work can be effected and expressly instructs his employees to present themselves for employment on a particular day, they shall receive not less than four hours' work or pay in lieu thereof in respect of such day. Unforeseen contingencies and/or circumstances beyond the control of the employer referred to in this paragraph shall not include inclement weather, except as provided for in clause 11.

(ii) The employer shall within seven days of commencement of working short time notify the Council thereof in writing.

(2) Short shifts worked whole working short time shall count as shifts actually worked in order to qualify for the paid leave referred to in this Agreement.

11. INCLEMENT WEATHER

If as a result of inclement weather conditions it is not possible to commence or continue with normal work, the employer may decide to discontinue work for that day. In the event of a decision being made to discontinue work on any day owing to inclement weather, an employee shall be paid as follows:

- (a) If work has been stopped within four hours of the start of the normal working day, the employee shall be paid a minimum of four hours at his normal rate of pay and allowances.
- (b) Subject to the provisions of (a) above, if less than five and a half hours have elapsed since the normal starting time in the establishment and work is then stopped, the employee shall be paid the full pay and allowances for time worked.
- (c) If more than five and a half hours have elapsed since the normal starting time and work is then stopped the employee shall be paid the full pay and allowances paid on a normal working day.

12. CIVIL DISORDER

If, as a result of civil disorder, it is not possible to commence or continue with normal work, the employer may decide to discontinue work for that day. In the event of a decision being made to discontinue work on any day owing to such circumstances, an employee shall be paid as follows:

- (a) If work has been stopped within two hours of the start of the normal working day, the employee shall be paid a minimum of two hours at his normal rate of pay and allowances.
- (b) Subject to the provisions of (a) above, if more than two hours but less than five and a half hours have elapsed since the normal starting time in the establishment and the work is then stopped, the employee shall be paid the full pay and allowances for time worked.
- (c) If more than five and a half hours have elapsed since the normal starting time and work is then stopped, the employee shall be paid the full pay and allowances paid for a normal working day.

12. PAYMENT OF REMUNERATION

(1) (a) Remuneration shall be paid weekly, fortnightly or monthly as mutually agreed upon by the employer and at least 66 per cent of his employees. The employer shall notify the Council of the arrangement made for the payment of remuneration within 30 days of agreement being reached.

(b) Where the services of an employee are terminated after the closure of the pay week, all remuneration due to him after that closure shall be payable not later than the pay day on which the remuneration would normally have been paid or not later than seven days after the termination of employment, whichever is the earlier:

Provided that, at the request of the employee, such remuneration shall be forwarded to him, either in the form of a money order or a cheque, at an address provided by him.

(c) Every employee shall be given a statement of payment showing his total remuneration, ordinary time and overtime payments, allowances and deductions.

(2) (a) Except as otherwise provided in this Agreement, only the following deductions from remuneration may be made from the wages or earnings payable to any employee in terms of this Agreement:

- (i) For canteen services, where the deduction is authorised by stop-order terminable by the employee by giving not more than 28 days' notice of the termination of his agreement to such deduction being made;
- (ii) where an employee is absent from work, including absence during any unpaid holiday granted in extension of the paid holidays provided for in this Agreement, a pro rata amount for the period of such absence;
- (iii) with the written consent of the employee, deductions for insurance or any other funds approved by the Council;
- (iv) contributions to the benefit funds of the Council in terms of clause 29 of this Part of the Agreement;
- (v) deduction of any amount which an employer is legally or by order of any competent court required or permitted to make;

- (vi) where an employer, owing to a clerical, accounting or administrative error or miscalculation, pays an employee remuneration in excess of the amount legally payable, the employer shall be entitled to recover the amount of the overpayment by deduction from subsequent wages or earnings, but no one deduction may exceed 15 per cent of the employee's remuneration;
- (vii) deductions for subscriptions to the trade union;
- (viii) recovery of advances or loans as provided for in subclause 3 (3) of Part II of this Agreement.

(b) Notwithstanding the provisions of this clause relating to payment of remuneration, an employer may, by mutual arrangement with his employees, pay any amount due to an employee in terms of this Agreement by cheque or to the credit of such employee with a bank, or registered deposit-receiving institution nominated by the employee, such payment into a bank, or institution to include all payments due to the employee.

(c) In the event of the employment of an employee terminating before the ordinary pay day applicable in his case, all payments due to the employee in terms of this Agreement shall be paid in accordance with the relative requirements of this Agreement.

(d) Notwithstanding the provisions of clause 14 of this Agreement relating to payment of leave pay, payment of leave pay shall be made in accordance with the provisions of this clause in the same manner as that in which the employee is paid his earnings.

(e) *Monthly-paid employees:* (i) Foremen whose duties require them to supervise other artisans and employees may, upon notification to the Council, be remunerated on the basis of a monthly salary, which shall not be less than the remuneration prescribed for an installation electrician in this Agreement, for the number of hours per week, including overtime hours, permitted in terms of the Agreement.

(ii) All the provisions of this Agreement shall be applicable to a monthly-paid employee, including payment at overtime rates for all time worked in excess of the hours specified in the letter of appointment which shall be lodged with the Council.

(iii) A monthly-paid employee who has time off work with the permission of his employer, shall be paid for such time off.

(3) (i) Nothing in this Agreement shall operate to reduce the wage which was being paid to an employee immediately prior to, or to which any employee was entitled, at the date of the commencement of this Agreement while such employee is employed by the same employer.

(ii) The provisions of this subclause shall also apply in the case of any employee whose services are terminated by such employer subsequent to the date of commencement of this Agreement and who is re-engaged by such employer within a period of 30 calendar days.

14. ANNUAL LEAVE AND ANNUAL SHUTDOWN

(1) (a) (i) Every employee shall be entitled to three consecutive weeks' (15 consecutive working days') leave, payable at his ordinary rate of wages, after each completed cycle of 235 completed working days with any employer in the Industry, exclusive of overtime.

(ii) The leave specified in this subclause shall become due immediately after the completion of the 235th completed working day with an employer, and leave pay shall be paid before the employee proceeds on leave.

(iii) Where the employment of an employee is terminated before the completion of 235 completed working days with an employer, such employer shall pay him a pro rate amount in accordance with the following formula:

$$\frac{\text{Number of completed working days with employer in present cycle}}{235} \times 15 \times \text{ordinary daily remuneration}$$

(iv) Where the employment of an employee is terminated after the completion of 235 completed working days with an employer but before the annual leave has been granted to him, his employer shall—

- (aa) pay him the amount due in terms of subparagraph (i) hereof in respect of the period of leave that has accrued but was not granted before the date of termination of his employment; and
- (ab) pay him an amount calculated in accordance with the formula in subparagraph (iii) in respect of the period of employment completed after the date on which he became entitled to leave in terms of subparagraph (i).

(v) Notwithstanding the provisions of this clause, no employee shall be entitled to leave pay unless he has completed 25 working days with the same employer.

(b) (i) Every employee shall be entitled to and shall take his leave so as to commence within a period of four months from due date, unless exemption is granted by the Council.

(ii) The leave shall be granted by the employer so as to commence within a period of four months of the due date.

(iii) The leave specified in this subclause shall include four weekends and shall be for one unbroken period: Provided that the employee may, with the mutual agreement of the employer, be permitted to take his leave in two periods, of which one is not less than 10 days.

(iv) Where a public holiday falls on what would otherwise be a normal working day, the leave period shall be extended by one day for each public holiday falling within such leave period.

- (v) No employee shall engage in employment, whether for remuneration or not, during the leave period.
- (vi) Any period during which an employee is off sick in excess of two working days, up to a maximum of 43 working days per annum, shall count as qualifying period for leave: Provided that where it is required by the employer, a medical certificate shall be produced. Periods of absence on account of an accident arising out of and in the course of an employee's employment shall count for leave purposes if such accident has been admitted as falling within the provisions of the Compensation for Occupational Injuries and Diseases Act, 1993, and the periods of absence counting for purposes of the paid leave shall be the periods of disablement admitted by the said Act.
- (vii) Except as otherwise provided herein, employment for the purposes of this clause shall be deemed to commence from the date on which an employee enters the employer's service, or the date he last became entitled to the paid leave, whichever is the later, and shall include shifts that would normally have been worked during periods of absence on the additional week's paid leave or accumulation thereof in terms of clause 15 (1) (a) of Part I of this Agreement.
- (2) Notwithstanding the provisions of subclause (1) of this clause an employer may elect to observe an annual shutdown commencing in December of each year: Provided that the following provisions are observed:
 - (a) He shall pay his employees, prior to the date of the annual shutdown, the full amount of leave pay and leave bonus due to such employees who have qualified for paid leave in terms of this Agreement, and to employees who are not entitled to the full period of paid leave pay, leave pay and leave bonus proportionate to the qualification for the paid leave completed as at the date of the shutdown.
 - (b) Nothing contained herein shall operate to preclude an employer from cancelling the annual shutdown: Provided that—
 - (i) such cancellation has resulted from a change in the work schedule of the establishment; and
 - (ii) notice of such cancellation is given prior to 1 October of that year.
 - (c) Notwithstanding any other provision of this Agreement, an employee who has not qualified for leave pay or leave bonus at the date of the shutdown shall be paid a proportionate leave pay and leave bonus as in paragraph (a) above, irrespective of any qualifying period specified in this Agreement.

15. ADDITIONAL PAID LEAVE

- (1) (a) Every employee for whom wages are prescribed in this Agreement shall be entitled to one additional week's leave, payable at his ordinary rate of wages, on qualifying for his fifth and subsequent leave with the same employer: Provided that the additional leave specified in this subclause shall be taken at a time mutually agreed on between employer and employee and shall also count as part of the qualifying period for his next leave.
- (b) The leave specified in paragraph (a) may be accumulated up to a maximum of five weeks.
- (c) The employee may, by mutual agreement with the employer, take payment in lieu of the leave specified in paragraph (a). In the event of the employer and employee failing to agree, the matter shall be referred to the Council for a decision, which shall be final.
- (d) Where the services of an employee are terminated and such employee has accumulated leave in terms of paragraph (b) standing to his credit, the employer shall pay the employee in lieu of such accumulated leave.
- (e) Any person of employment in the categories referred to in paragraph (a) prior to the date of commencement of this Agreement shall count towards the qualifying period in terms of paragraph (a).
- (f) An employee shall not lose his qualification for the additional leave specified in paragraph (a) as a result of mergers or takeovers. The provisions of clause 25 shall apply.
- (2) Save as is otherwise provided herein, employment for the purposes of this clause shall be deemed to commence from the date on which an employee enters the employer's service or on the date on which he last became entitled to leave, whichever is the later.

16. LEAVE BONUS

Every employee for whom wages are prescribed in this Agreement shall, in addition to his leave pay, be paid a leave bonus equivalent to the wages he would normally be paid for the periods specified in Part II of this Agreement whenever he qualifies for leave in terms of clause 14 of this part, and such leave bonus shall be paid at the same time as his leave pay is paid:

17. FAMILY RESPONSIBILITY LEAVE

- (1) During each leave cycle, an employee shall be entitled to a period of three days' paid leave, which may be taken—
 - (a) when the employee's child is born;
 - (b) in the event of the death of a member of the employee's immediate family.
- (2) Before paying an employee for leave in terms of this clause, an employer may require reasonable proof of an event contemplated in subclause (1) for which the leave was taken.
- (3) An employee's unused entitlement to leave in terms of this clause shall expire at the end of the leave cycle in which it accrues.

(4) For the purposes of this clause, an employee's "immediate family" means—

- (a) the employee's spouse or any other person who cohabits with the employee; and
- (b) the employee's parent, adoptive parent, grandparent, child, adopted child, grandchild or sibling.

18. TRADE UNION REPRESENTATIVES' LEAVE

An employee who is an elected representative of one of the party trade unions shall be entitled to take five days' special leave per year during working hours on full pay for the purpose of performing the functions of that office.

19. PAID SICK LEAVE

(1) Whenever an employee is absent from work through sickness or injury (other than sickness or injury caused by his own misconduct), his employer shall grant him sick leave calculated as follows:

- (a) During the first 12 consecutive months of employment, not less than one working day in respect of each completed five weeks of employment with the employer;
- (b) in respect of continuous employment thereafter, not less than 10 working days in the aggregate during any succeeding period of 12 consecutive months of employment with the employer.

(2) An employer shall pay the employee for each day of absence as provided for in subclause (1) an amount of not less than the amount the employee would have received had he worked the ordinary hours of the shift for that day of the week: Provided that—

- (i) before making payment of any amount payable to an employee in terms of this subclause in respect of any period of absence from work of more than two consecutive days, the employer may require the employee to produce a medical certificate signed by a registered medical practitioner stating the nature and duration of the employee's illness or injury; and
- (ii) if during any period of up to eight consecutive weeks the employee has received payments for sick leave as provided for in this subclause on two or more occasions without producing a medical certificate as aforesaid, the employer may require him to produce such medical certificate in respect of any period of absence from work on account of sickness or injury occurring within a period of eight weeks, reckoned from the date of his last absence on sick leave; and
- (iii) the employer may require the employee to produce a medical certificate in respect of any absence from work on the working day immediately preceding and/or succeeding a Sunday or any of the public holidays specified in this Agreement.

(3) Where an employer is by law required to pay fees for hospital or medical treatment in respect of an employee, and pays such fees in respect of any illness or injury referred to in this clause, the amount so paid may be set off against the payment for sick leave due in terms of this clause.

(4) The provisions of this clause shall not apply to employers and employees who are required to contribute to a sick pay fund specified in an agreement for the Industry, or the employers and their employees who are participants in and members of a fund, organisation or scheme providing for paid sick leave on a basis that is not less favourable to the employee than that set out in the aforesaid agreement and in respect of which exemption has been granted or is granted by the Council from the provisions of the aforesaid agreement, while such fund, organisation or scheme continues to operate and both the employer and the employee are participants therein.

(5) Notwithstanding any other provisions of this clause, no employee shall be entitled to paid sick leave—

- (a) in respect of such periods of absence from work for which compensation is payable under the Compensation for Occupational Injuries and Diseases Act, 1993;
- (b) in respect of paid public holidays as specified in this Agreement, or in respect of any part of the paid leave referred to in this Agreement.

(6) For the purpose of this clause, "employment" includes any period during which an employee—

- (a) is on paid leave or additional paid leave in terms of this Agreement;
- (b) is on paid sick leave in terms of this clause;
- (c) is absent from work on the instructions or at the request of his employer.

20 INJURY ON DUTY ALLOWANCE

Where an employer in terms of section 47 (3) of the Compensation for Occupational Injuries and Diseases Act, 1993, is of a reasonable belief that an employee absent from work resulting from an injury on duty will be compensated under that Act and in respect of which a claim has been made under the Act, the employer shall pay an amount to the employee equivalent to 75% of the employees' ordinary hourly rate for such absence up to a maximum period of three months from the date of the accident. The employer shall recover this payment from the Compensation Commissioner.

21. EXTENSION OF INSURANCE COVER FOR INJURY ON DUTY

Every employer shall either arrange with the Compensation Commissioner to extend and maintain the cover provided by the Compensation for Occupational Injuries and Diseases Act, 1993, to all his employees who fall within the provisions of this Agreement or, alternatively, take out and maintain an insurance policy to provide fixed benefits basically at least equivalent to those provided by the Compensation for Occupational Injuries and Diseases Act in respect of his employees who fall within the provisions of this Agreement and whose earnings exceed the earnings ceiling specified in the said Act.

22. PAYMENT FOR PUBLIC HOLIDAYS

(1) (a) An employee may agree with the employer to exchange a public holiday for any other day, and if so agreed shall not be entitled to any additional payment on such a public holiday.

(b) Every employee shall, in respect of a public holiday, be paid at his ordinary rate of wages and allowances for the number of hours he would have worked on a normal working day (excluding overtime).

(c) The payment prescribed in paragraph (a) hereof shall be deemed to be full payment in respect of such public holiday, and subject to the provisions of clause 8 no employee shall be entitled to further compensation in respect of such public holiday.

(d) Notwithstanding the provisions of paragraphs (a) and (b) hereof, an employee who is required by his employer to work on the working day immediately prior to and/or succeeding a public holiday and who absents himself on such working day(s) shall not be entitled to payment for such public holiday: Provided that an employee shall be entitled to payment for such public holiday where the employer has given permission for such absence, or has condoned such absence, or where the employee was sick and can produce a medical certificate to prove it if required by the employer, or where the public holiday falls during the period of the annual leave of the employee.

(e) Where an employer dismisses an employee and the employment is terminated within a period of five working days prior to a public holiday, such employer shall pay the employee in respect of the public holiday.

(2) Any employee who is aggrieved by the application to him of any of the provisions of subclause (1)(d) may appeal to the Council against the decision applied to him, and the Council may, after considering any reasons that may be submitted for such decision, confirm that decision or give such other decision as in its opinion ought to have been given in such case.

23. RATIO OF CATEGORIES OF EMPLOYEES TO EACH OTHER AND RESPONSIBILITIES OF EMPLOYERS AND EMPLOYEES

(1) (a) The ratio of the maximum number of persons employed in the different categories by an employer to the number of skilled employees employed shall at no time exceed the following:

(i)

Operative levels	Number of skilled employees employed				
.....	1	2	3	4	5
Elconop 3	—	1	2	3	4
Elconop 2	1	2	3	4	No ratio shall apply
Labourer/Elconop 1	4	7	No ratio shall apply		

(ii) Thereafter for every additional skilled employee employed an employer may employ one additional Elconop 3.

(b) For the purposes of this subclause, the expression "skilled employee" shall mean a master installation electrician, an installation electrician, an electrical tester for single phase, an electrician, an artisan, and an apprentice who has qualified to undergo a trade test.

(2) Responsibility—No employer shall require or permit any Elconop 3, Elconop 2, Elconop 1 or labourer to perform any work other than that referred to in the definition of Elconop 3, Elconop 2, Elconop 1 or labourer, and likewise no master installation electrician, installation electrician, electrical tester for single phase, electrician, artisan, Elconop 3, Elconop 2, apprentice or trainee shall require or permit any Elconop 1 or labourer working under his control or supervision to perform any work other than that referred to in the definition of Elconop 1 or labourer in clause 5 of the Agreement.

24. TERMINATION OF EMPLOYMENT AND SEVERANCE PAY

(1) Not less than five clear working days' notice shall be given by the employer or the employee to terminate a contract of service, unless there is a mutual agreement between employer and employee for a different period: Provided that this shall not affect—

- (i) the right of an employer or an employee to terminate a contract of service without notice for any good cause recognised by law as sufficient;
- (ii) any agreement between an employer and an employee providing for a longer period of notice than five clear working days: Provided further that an employer may pay an employee wages for and in lieu of the specified or agreed period of notice.

(2) Whenever the contract of service is terminable by give clear working days' notice and the employee fails to give the notice or to work such notice period, the employer may deduct the wages for the notice period concerned. Should the employer fail to give the notice or to allow the employee to work such notice period, the employee shall receive wages for the notice period concerned.

(3) Whenever an employee is retrenched he shall be paid, in addition to any other moneys due to him, severance pay of one week's wages for each completed year of service up to a maximum of nine years' service with the same employer: Provided that the ceiling of nine years' shall not apply to employees of non party employers.

(4) Notwithstanding the provisions of subclause (1), not less than five working days' notice shall be given by the employer to the employee to terminate a contract of service, where such termination is as a result of retrenchment:

Provided that the employees affected, the Council and any trade union or unions which may represent such employees shall be informed at least 14 days prior to notice of retrenchment being given.

25. TRANSFER OF CONTRACT OF EMPLOYMENT

(1) A contract of employment may not be transferred from one employer (referred to as "the old employer") to another employer (referred to as "the new employer") without the employee's consent, unless—

- (a) the whole or any part of a business, trade or undertaking is transferred by the old employer as a going concern; or
- (b) the whole or a part of a business, trade or undertaking is transferred as a going concern—
 - (i) if the old employer is insolvent and being wound up or is being sequestered; or
 - (ii) because a scheme of arrangement or compromise is being entered into to avoid winding up or sequestration for reasons of insolvency.

(2) (a) If a business, trade or undertaking is transferred in the circumstances referred to in subclause (1)(a), unless otherwise agreed, all the rights and obligations between the old employer and each employee at the time of the transfer shall continue to be in force as if they had been rights and obligations between the new employer and each employee, and, anything done before the transfer by or in relation to the old employer shall be considered to have been done by or in relation to the new employer.

(b) If a business is transferred in the circumstances envisaged by subclause (1)(b), unless otherwise agreed, the contracts of all employees that were in existence immediately before the old employer's winding up or sequestration shall transfer automatically to the new employer, but all the rights and obligations between the old employer and each employee at the time of the transfer shall remain rights and obligations between the old employer and each employee and anything done before the transfer by the old employer in respect of each employee shall be considered to have been done by the old employer.

(3) An agreement contemplated in subclause (2) shall be concluded with the appropriate person or body referred to in section 189 (1) of the Act.

(4) A transfer referred to in subclause (1) shall not interrupt the employee's continuity of employment, which shall continue with the new employer as if with the old employer.

(5) The provisions of this clause shall not transfer or otherwise affect the liability of any person to be prosecuted for, convicted or, and sentenced for, any offence.

26. PENALTIES

Should any amount due or payable to the Council in terms of clauses 27(1), 27(2), 28(1) and clause 2(1) of Part II of the Agreement not be received by the Council by the 15th day of the month following the month in respect of which it is payable, or should any amount payable to the Council in terms of clause 31 (4) (a) of Part I, not be received by the Council within 15 days of the due date stated in the relevant clauses, the employer shall pay interest on such amount or on such lesser amount as remains unpaid, calculated at the rate of one and three quarter per cent per month or part thereof, from such final date specified in this clause until the day upon which payment in cash is actually received by the Council: Provided that the Council shall be entitled in its absolute discretion to waive the payment of such interest or part thereof.

27. TRADE UNION SUBSCRIPTIONS AND EMPLOYERS' ORGANISATION LEVY

(1) Every employer must deduct the amount of the subscriptions payable to a party trade union in respect of each week or part of a week of employment, including the period an employee is on leave in terms of clause 14 of Part I, from the earnings of every employee who is a member of a party trade union and shall forward the amount thus deducted, together with the form specified by the Council, to the Secretary of the Council, not later than the 15th day of each month following that in respect of which the deductions were made: Provided that a signed stop order is received from the employee indicating of which party union he is a member.

(2) Every employer who is a member of the employers' organisation shall forward the levy payable to the Association, in respect of each week or part of a week of employment of every employee for which wages are prescribed in this Agreement, including the period an employee is on leave in terms of clause 14 of Part I, to the Secretary of the Council, not later than the 15th day of each month following that in respect of which the payments are made.

(3) The appropriate party trade union and the employers' organisation shall indemnify the Council against any claim that may arise in respect of this clause, and when a deduction for subscriptions or the payment of the levy in terms of this clause has been made, irrespective of whether this amount has been paid over to the said trade union or employers' organisation, the employee or employer concerned shall be deemed to have paid his subscriptions or levy to the said trade union or employers' organisation.

(4) The Secretary of the Council shall pay all amounts paid in terms of subclauses (1) and (2) hereof to the parties concerned within 30 days of the month in which the amounts were received by the Council.

(5) The Council undertakes to render all reasonable services to give effect to this clause for which an amount of two and one-half per cent of all contributions and levies in terms of subclauses (1) and (2) shall be paid to the Council.

(6) A sole-proprietor, partner, working director or employer engaged in work specified in this Collective Agreement shall be deemed to be an employee in respect of whom contributions are required to be made in terms of subclause (2).

28. ELECTRICAL DEVELOPMENT AND TRAINING FUND

(1) Every employer shall, subject to the provisions of subclause (2), contribute to the Electrical Development and Training Fund, (hereinafter referred to as the "Fund") an amount as determined by the Council from time to time in respect of every employee for whom wages are prescribed in this Agreement.

(2) (a) Where an employee is employed by two or more employers during the same week, the payment for that week shall be made by the employer by whom he was first employed during the week for not less than eight hours.

(b) No contribution shall be made by an employer, in respect of an employee who works for less than eight hours during any week from Monday to Friday (inclusive) for an employer in the Industry.

(3) Every employer shall forward the contributions payable in terms of subclause (1), together with the form specified by the Council, to the Secretary of the Council not later than the 15th day of each month following that in respect of which the payments are due.

(4) The Council shall each month pay over to the Fund the total amount of contributions collected in terms of subclause (1) of this clause, less a collection fee of two and a half per cent, which amount shall accrue to the general funds of the Council.

(5) A copy of the Rules of the Fund and of any amendments thereto shall be lodged with the Council and the Director-General of Labour.

(6) True copies of the audited statements of revenue and expenditure and balance sheet of the Fund, countersigned by the Chairman of the Management Committee or his authorised representative, and of the auditor's report thereon, shall be tabled at the first meeting of the Council after receipt thereof.

(7) A sole-proprietor, partner, working director or employer engaged in work specified in this Agreement shall be deemed to be an employee in respect of whom contributions are required to be made in terms of subclause (1).

29. BENEFIT FUNDS

For the purpose of this Agreement, the Benefit Funds are as follows—

- (a) The Electrical Industry (KwaZulu-Natal) Sick Pay Fund;
- (b) The Electrical Industry (KwaZulu-Natal) Pension Fund;
- (c) The Electrical Industry (KwaZulu-Natal) Medical Aid Fund.

30. CLOSING OF ESTABLISHMENT ON AN ORDINARY WORKING DAY

Notwithstanding anything to the contrary in this Agreement, an establishment may, by mutual arrangement between the employer and not less than 66 per cent of his employees, be closed during any period of work specified for that establishment in terms of clause 7 of this Part. Where such an arrangement has been arrived at for each specific closing of the establishment, the Council shall be advised of such arrangements made.

31. REGISTRATION OF EMPLOYERS

(1) (a) Every employer in the Electrical Industry shall, within 30 days of the date of coming into operation of this Agreement, register with the Council by forwarding to the Secretary of the Council the following particulars, on the form specified by the Council, together with the registration fee specified:

- (i) Full name of business;
- (ii) business address;
- (iii) full names of owners/partners/directors/members;
- (iv) residential address of owners/partners/directors/members;
- (v) a registration fee of R75,00, which may be varied by Council from time to time;
- (vi) the name of the accredited person who is employed on a full-time basis, in terms of the Compensation for Occupational Injuries and Diseases Act, 1993;
- (vii) the names of all other employees employed by him and, in respect of each individual employee or employer, such personal particulars as may be required by the Council;

- (vii) an electrical contractor's certificate of registration issued by the Electrical Contracting Board of South Africa, in terms of regulation 5 of the Electrical Installation Regulations, 1992, made under the Occupational Health and Safety Act, 1993;
- (ix) satisfactory proof of registration with the Unemployment Insurance Fund, Compensation Fund, the relevant Joint Services Boards or Metropolitan Councils, and the South African Revenue Service.

The requirements of this paragraph shall be maintained during the period of registration, and evidence of the continued validity thereof shall be produced at the request of the Council. If there is any change to the above requirements, the Council shall be notified within 30 days.

(b) An employer who has already, prior to the date of coming into operation of this Agreement, furnished the particulars required under this clause, shall be deemed to have complied with the provisions thereof and to be registered with the Council.

(c) Employers entering the Industry after the date of coming into operation of this Agreement, shall register with the Council and shall furnish the particulars required under paragraph (a) within 30 days of commencing operations.

(d) Should the business cease to exist, the Council shall be notified within 30 days and all certificates issued by the Council or the Electrical Contracting Board of South Africa shall be returned to the Council within the same period.

(2) Every employer to whom this Agreement applies, but who is not registered in terms of the provisions of subclause (1) (a) of this clause, shall be deemed to be registered from the date of commencement of his business and shall observe the provisions of this Agreement.

(3) All applications for registration shall be made directly to the Secretary of the Bargaining Council for the Electrical Industry KwaZulu-Natal.

The address of the Council is PO Box 722, Durban, 4000.

(4) (a) Every employer who has in his employ the categories of employees for whom basic minimum wages are prescribed in terms of clause 14 of Part II of this Agreement shall deposit with the Council an amount equivalent to the wage each such employee would receive in terms of clause 14, of Part I when proceeding on leave.

(b) The amounts paid to the Council in terms of paragraph (a) shall be deposited in a separate account and may be invested by the Council in paid-up shares, fixed deposits or savings accounts with any bank.

(c) In the case of insolvency of an employer, the Council shall pay leave pay that has accrued to the employees of the employer: Provided that the liability of the Council shall be limited to the amount of the deposit paid to the Council by the employer in respect of such employees: Provided further that the employee has ceded his claim to the Council and that the Council has the right to claim any amount, so paid out from the insolvent estate.

(d) All employers shall deposit the amount prescribed in paragraph (a) with the Council within 30 days from the date of coming into operation of this Agreement.

(e) All employers entering the Industry after the date of coming into operation of this Agreement shall deposit the amounts prescribed in paragraph (a) with the Council within 30 days of registration with the Council.

(f) An employer engaging an employee for whom a deposit is required in terms of paragraph (a) shall deposit the prescribed amount with the Council within 30 days of the employee entering his service: Provided that an employer may reclaim the money from the Council 30 days after the employee has left his service.

(g) Deposits made with the Council in terms of paragraph (a) may be transferred from one employee to another employee by the employer: Provided that the total amount of the deposit covers all the employees for whom deposits are required.

(h) Notwithstanding anything to the contrary contained in this subclause, the employer or the employers organisation may furnish to the Council a suitable guarantee that is acceptable to the Council in the place of the deposit required in terms of paragraph (a): Provided that all other provisions pertaining to the manner of payment of the deposit shall be applicable to the lodging of the guarantee.

32. REGISTRATION AND TRAINING OF EMPLOYEES

(1) All Elconops 1's, Elconops 2's, Elconops 3's and Labourers, other than temporary labourers, shall be issued with a registration card in the manner and form specified by the Council. Such registration card, for which a fee not exceeding R20,00 shall be payable, shall contain a photograph of the employee and his category of employment. Such card shall at all times during working hours be carried on the person of the employee.

(2) When an employer upgrades an employee from labourer to Elconop 1, he shall inform the Council within seven days from the date thereof, and apply to the Council for a new registration card to be issued to the employee.

(3) When an employer makes a written application to the Council to upgrade an Elconop 1, who is in his employ, to Elconop 2 he shall provide a certificate of proficiency as an Elconop 1 in respect of such employee. The Council shall thereafter arrange for the completion of the necessary formalities for the Elconop 1 to attend the specified formal training course at an institutionalised training centre accredited by the Electrical Contracting Industries Training Board. Should the Elconop 1 be successful in the examination, he shall from the date of undertaking such examination be promoted to Elconop 2 and the employer shall apply to the Council for a new registration card to be issued to such employee. Should the Elconop 1 not be successful in the examination, he shall, notwithstanding the provisions of subclause (4) immediately revert to employment on the previous terms and conditions applicable to him as an Elconop 1.

(4) For a period not exceeding three months prior to undertaking the specified formal training and with the written authority of the Council, which may include a temporary registration card or other form of identification, an employer shall be permitted to provide on-site training for the Elconop 1 and allow him to perform the duties of an Elconop 2: Provided that the employer shall not be required to pay the wages or to observe the conditions of employment of an Elconop 2 during the period the Elconop 1 is receiving on-site training.

(5) The provisions of subclauses (3) and (4) shall *mutatis mutandis* apply in upgrading an Elconop 2 to Elconop 3.

33. OUTWORK

(1) No employer shall require or allow any of his employees to undertake work in connection with the Electrical Industry other than to execute work in completion of an order placed with such employer.

(2) No employee while in the employe of an employer shall solicit, undertake or perform any work than on behalf of his own employer, in the Electrical Industry, whether for remuneration or not, during or outside of the ordinary hours of work or working days prescribed in clause 7, of this Part save that such employee may carry out work on his own premises outside of normal working hours.

34. PIECEWORK AND INCENTIVE PAYMENTS

(1) The giving out by employers or the performance by employees of work on a piecework basis is prohibited.

(2) Notwithstanding the provisions of subclause (1) of this clause, it shall be permissible, by mutual agreement between any individual employer and his employee, to introduce and to operate a system of incentive payments: Provided that the remuneration and other monetary benefits accruing to employees shall not be less than those prescribed in this Agreement as result of the introduction and operation of such system: Provided further that the other provisions of this Agreement shall be adhered to in every respect: Provided further that apprentices shall not be allowed to participate in such a system.

35. EMPLOYMENT OF PERSONS UNDER 15 YEARS OF AGE

No employer shall employ any person under the age of 15 years.

36. PROHIBITION OF CONTRACT WORK ON A LABOUR-ONLY

(1) No employer shall—

- (a) avail himself of the services of another person for the supply of labour to perform work covered by this Agreement on any basis that provides for remuneration benefits and allowances to be paid to a person other than the person performing such work;
- (b) in respect of work covered by this Agreement, pay remuneration, benefits and allowances to a person other than the person who, in terms of this Agreement, is entitled to such remuneration, benefits and allowances.

(2) No employee or any other person shall make his labour available to an employer on the basis of any contract or arrangement that precludes such employee or other person from exercising his rights under this Agreement to secure from the employer for whom he performs work the remuneration, benefits and allowances prescribed by this Agreement.

(3) No employer shall employ any employee of another employer in the Electrical Industry, whether for remuneration or not, during or outside of normal working hours or during any leave period of such employee.

(4) No employer shall hire any person, other than under the terms of this Agreement, nor shall he hire the services of any employee to or from any person unless such person is an employer engaged in the Electrical Industry and is engaged in any activity or activities falling within the Electrical Industry as defined in this Agreement and is registered with the Council.

37. TEMPORARY EMPLOYMENT SERVICES

(1) All temporary employment services (labour brokers), as referred to in section 198 of the Act, shall register with the Council if they provide to a client employees to perform any work falling within the definition of "Electrical Industry".

(2) No employer shall utilise the services of employees procured from a temporary employment service, unless such service provides sufficient proof of—

- (a) registration in terms of the Unemployment Insurance Act, 1966;
- (b) registration in terms of the Compensation for Occupational Injuries and Diseases Act, 1993;
- (c) registration with this Council; and
- (d) compliance with the provisions of this Agreement.

(3) An employer who procures the services of an employee or employees from a temporary employment service shall complete a form in the format specified by the Council in respect of each such employee, and such form shall be signed by both the employer and the employee concerned declaring that the particulars are correct.

(4) The form referred to in subclause (3) shall contain the following particulars:

- (a) The name, telephone number, residential address and identity number of the employee;
- (b) the business name, business telephone number and physical business address of the temporary employment service concerned;
- (c) the date from which the employer utilises the services of the employee and the expected termination date;

- (d) the site address where the services of the employee are to be utilised;
- (e) the anticipated normal working hours and overtime to be worked by the employee; and
- (f) the occupation in terms of the Agreement applicable to the employee.

(5) The employer shall submit the form referred to in subclause (3) to the Council within five working days after he has commenced using the services of the employee or employees.

(6) In terms of section 198 (4) of the Act, the temporary employment service and the employer shall be jointly and severally liable if the temporary employment service, in respect of its employees, contravenes any of the conditions of this Agreement.

(7) The temporary employment service shall be required to comply with all the terms and conditions of this Collective Agreement and the Pension Fund Agreement of the Council. However, upon application to the Council or the exemptions board in terms of clause 46 of this Collective Agreement an exemption from such requirements as may be determined may be granted.

(8) Should the temporary employment service be a member of an employers' organisation that is a party to the Council, the provisions relating to subscriptions and payment of employers' organisation levies will apply.

38. PROHIBITION OF CESSION AND/OR SETOFF

(1) No claim whatsoever by any employee against the Council shall be capable of being ceded and no purported cession thereof shall be binding upon the Council.

(2) Set-off between any amounts payable to an employee referred to in clause 13 of Part I of this Agreement and any amounts payable by such employee, the deduction of which is prohibited by that clause, shall not operate and is expressly excluded, and this provision shall be deemed to be a term of every contract of employment between employer and employee.

39. REFRESHMENTS

(1) Every employer shall allow employees a period not exceeding 10 minutes in the morning and again in the afternoon to partake of refreshments, the times for such intervals to be agreed upon between the employer and the employees. No employee may leave the position where he is working to partake of refreshments.

(2) Such rest interval shall be deemed to be part of the ordinary hours of work of the employee concerned.

40. FIRST-AID

Every employer shall provide and maintain in good order suitable first-aid equipment as prescribed in regulation 3 of the General Safety Regulations, 1986, made under the Occupational, Health and Safety Act, 1993, on any premises where employees are employed by him.

41. CERTIFICATE OF SERVICE

Every employer shall provide each employee, on the termination of his employment, with a certificate of service showing full names of the employer and employee, the nature of the employment, and the dates of commencement and termination of employment.

42. STORAGE, INSURANCE AND PROVISION OF TOOLS

(1) Lock-up facilities shall be provided by the employer on all sites and workshops, for locking up tools.

(2) (a) Every employer shall take out an insurance policy with a registered insurance company, insuring tools that are the private property of skilled employees in his employ against the loss or destruction or damage through fire or theft while on the employer's premises.

(b) The maximum cover under this clause shall be R1 500,00 per employee: Provided that 10 per cent of any loss or damages for which payment is claimed shall be borne by the employee: Provided further that an employer shall require a skilled employee, within seven days of the commencement of his employment, to submit to him an inventory of the tools in his possession, which shall comprise a minimum as detailed hereunder, and the skilled employee shall comply with such requirements as to enable the employer to effect the insurance specified above. The employer may verify such inventory from time to time.

(3) The tool kit of the skilled employee shall comprise: Electrician's pliers, long nose pliers, tape measure (6 m), hacksaw (junior and ordinary), cable knife, wire strippers, one 15 cm and one 30 cm shifting spanner, ballpeen hammer, spirit level, set square (15 cm), soldering iron, crimping pliers, side cutters (diagonal type), six assorted screwdrivers, carpenter's hammer, tin snips, six assorted standard flat and/or ring spanners, one small and one large wood chisel, one set allen keys and water pump pliers.

(4) (a) The employer shall, where such tools are necessary, provide: Flat and round files with handles, stocks and dies, chasing chisels, masonry drills, electrical testing instruments, geyser spanners, hole saws, benders, reamers, fish tapes, twist drills, die nuts, chassis punches and electric power tools: Provided that such tools shall remain the property of the employer. The employee shall exercise due care in the use of/and storage of tools provided by his employer.

(b) The employer shall be entitled to make a deduction from the remuneration payable to any employee for the loss of the employer's equipment signed for by such employee or the insurance excess payable on the loss of any such equipment.

(5) For the purpose of this clause, "skilled employee" shall mean a master installation electrician, an installation electrician, electrical tester for single phase, electrician, artisan, apprentice and elconop 3.

43. ADMINISTRATION OF AGREEMENT

- (1) The Council shall be the body responsible for the administration of this Agreement.
- (2) Every employer shall keep in his establishment, in a place readily available, a legible copy of this Agreement.
- (3) Every employer shall display in his establishment, in a place readily accessible to his employees, a notice stating the starting and finishing time of work.

44. DESIGNATED AGENTS

The Council shall request the Minister in terms of section 33 of the Act to appoint persons as designated agents to assist to giving effect to this Agreement. A designated agent shall have the powers conferred upon him in terms of section 142 of the Act.

45. TRADE UNION ACCESS

- (1) Any office-bearer or official of the representative trade unions shall be entitled to enter the employer's premises in order to recruit members or communicate with members, or otherwise serve their interests.
- (2) A representative trade union shall be entitled to hold meetings with employees outside their working hours at the employer's premises.
- (3) The members of a representative trade union shall be entitled to vote at the employer's premises in any election or ballot contemplated by the trade union's constitution.
- (4) The rights conferred by this clause shall be subject to any conditions as to time and place that are reasonable and necessary to safeguard life or property or to prevent the undue disruption of work.

46. EXEMPTIONS

- (1) In terms of section 32 of the Act the Council hereby establishes an exemptions board to consider applications for exemptions from non-parties from any of the provisions of this Agreement for any good and sufficient reason.
- (2) All applications for exemption shall be in writing (on an application form as provided by the Council) and shall be addressed to the Secretary of the Council for consideration by the exemptions board appointed by the Council.
- (3) Any party to this Agreement or any member of a party to this Agreement, may apply to the Council for exemption from any of the terms of the Agreement.
- (4) All applications for exemptions shall be substantiated, and such substantiation shall include the following details:
 - (a) The period for which the exemption is required;
 - (b) the agreement and clauses or subclauses of the Agreement from which the exemption is required;
 - (c) proof that the exemption applied for has been discussed by the employer, his employees and their respective representatives. The responses resulting from such consultation, either in support of or against the application, are to be included with the application.
- (5) The Secretary of the Council shall in the first instance place the applications for exemption on the agenda of the next Council meeting, for comment.
- (6) The Secretary of the Council shall provide the exemptions board with details of all the applications for exemption.
- (7) The exemptions board shall consider and decide on all written applications and, when requested by the applicants or objectors to do so, may interview applicants or any objectors at its following meeting: Provided that the exemptions board may defer a decision to a following meeting if additional substantiation, information or verbal representations are considered necessary to decide on the application for exemption.
- (8) Once the exemptions board has decided to grant an exemption, it shall issue a certificate and advise the applicant(s) within 14 days of the date of its decision.
- (9) When the exemptions board decides against granting an exemption or part of an exemption requested, it shall advise the applicant(s) within 14 days of the date of such decision and shall provide the reason or reasons for not granting an exemption.
- (10) *Exemption criteria:* The exemptions board shall consider all applicants for exemption with reference to the following criteria:
 - (a) The written and verbal substantiation provided by the applicant;
 - (b) the extent of consultation with and the petition for or against granting the exemption as provided by employers or employees who are to be affected by the exemption if granted;
 - (c) the terms of the exemption;
 - (d) the infringement of basic conditions of employment rights;
 - (e) the fact that a competitive advantage is not created by the exemption;

- (f) the viewing of the exemption from any employee benefit fund or training provision in relation to the alternative comparable bona fide benefit or provision, including the cost to the employee, transferability, administration management and cost, growth and stability;
- (g) the extent to which the proposed exemption undermines collective bargaining and labour peace in the Electrical Industry;
- (h) any existing special economic or other circumstances that warrant the granting of the exemption;
- (i) reporting requirements by the applicant and monitoring and re-evaluation processes; and
- (j) cognisance of the recommendations contained in the *Report of the Presidential Commission to Investigate Labour Market Policy*.

47. ESTABLISHMENT OF A TRUST FUND ADVANCES FUND

Any leave pay or leave bonus vouchers issued to an employee in terms of the previous agreements shall be valid for a period of two years from the date of the last shift worked by such employee, and amounts standing to the credit of an employee in the books of the Council shall, on the expiration of such period, accrue to the Council. Amounts so accruing to the Council shall be credited to a fund designated the "Trust Fund Advances Fund", from which the Council in its absolute discretion may—

- (a) advance to employees the money equivalent of the paid leave entitlement forwardable to the Council in terms of Part I of the previous Agreement, or the money equivalent of the leave bonus entitlement forwardable to the Council in terms of Part II of the previous Agreements; or
- (b) pay the employee in whole or in part the money equivalent of any paid leave and/or leave bonus entitlement in cases where such moneys or part thereof would otherwise be lost to employees by reason of the insolvency or liquidation of any employer.

Provided that—

- (i) any amounts accruing to the Council in terms of paragraph (b) of this subclause as the Council may regard as being in excess of a sufficient reserve in the Trust Fund Advances Fund may be accrued to the Council funds but shall not be accrued to the Trust Fund Advances Fund or the Council funds until a further period of six months has elapsed after the expiration of the two-year period, and any claims presented during such six-month period shall be paid by the Council;
- (ii) the Council shall consider any claim that may be made by any employee after the expiration of such six-month period, and may in its discretion make ex gratia payments from the Trust Fund Advances Fund (or from such amounts accrued to the Council funds in the event of the depletion of the Trust Fund Advances Fund) to such employees as are referred to herein.

48. DISPOSAL OF LEAVE PAY AND LEAVE BONUS

(1) When an employee dies or in the course of his work is incapacitated from continuing working in the Industry, the amount due in respect of leave pay and leave bonus shall be payable to his estate or himself, as the case may be.

(2) After not less than 49 weeks have elapsed, reckoned from the date on which the period of employment covered by the vouchers commenced, any employee who has been furnished with a voucher in terms of Part I of the previous Agreement, and who produces documentary evidence that he is no longer employed in the Industry, shall be entitled, on presenting the voucher to the Council, to payment of any unpaid balance standing to his credit in the books of the Council.

49. GENERAL

No employer or employee may waive the provisions of this Agreement, whether or not the said provisions create a benefit or obligation on the employer or employee concerned. Every provision, subclause or clause shall create a right or obligation, as the case may be, independently of the existence of other provisions.

50. NEGOTIATING PROCEDURES

(1) Where any party to the Council wishes to initiate negotiations for the amendment of any existing Agreement or the introduction of a new Agreement, the party shall submit its proposals in writing to the Secretary.

(2) The Secretary shall immediately arrange for the proposal to be circulated to all interested parties and shall take steps to arrange a negotiating meeting within 45 days of receipt of the proposal. Where the Secretary in consultation with the Chairperson of the Council decides that the proposal relates to the negotiation of an Industry matter, the date of the first negotiating meeting shall be decided at the next meeting of the Council and such negotiating meeting shall be held within 30 days of the Council meeting.

(3) Further negotiating meetings may be held by agreement between the parties, who may also agree on any procedures, documentation, or any other matters for the purposes of assisting the negotiations.

(4) If the negotiations have not been concluded within 30 days of the first negotiating meeting held, or as otherwise agreed between the parties, any party to those negotiations may declare a dispute by notice in writing to the Council and shall satisfy the Council that a copy of the referral has been served on all other parties to the dispute. This service shall be effected by fax, hand or registered post.

(5) Industry disputes shall be processed in accordance with clause 51, and other disputes shall be processed in accordance with clause 52.

51. INDUSTRY DISPUTE SETTLEMENT PROCEDURE

(1) Should the Secretary, in consultation with the Chairperson of the Council, decide that a dispute declared in terms of clause 50 is an Industry matter, he shall arrange for the Council to meet within 14 days of the declaration of such dispute, for the purposes of considering the matter.

(2) The Council shall use its best endeavours to settle the dispute and shall meet as often as it deems necessary for this purpose. In the course of its deliberations the Council shall give consideration to the following:

- (a) Appointing a subcommittee to meet within a specified number of days, for the purposes of attempting to resolve the dispute or to recommend to the Council a process by which the dispute may be resolved; or
- (b) referring the dispute to conciliation in terms of clause 55; or
- (c) referring the dispute to arbitration in terms of clause 56; or
- (d) instructing the Secretary of the Council to issue a certificate stating that the dispute remains unresolved.

(3) If the dispute has not been settled within 30 days from the date on which the dispute was referred to the Council, and if the parties have not within that period agreed on a process to resolve the dispute, any party to the dispute shall be entitled to pursue whatever means are available in the Act to process that dispute.

52. GENERAL DISPUTE SETTLEMENT PROCEDURE

(1) Any dispute arising within the Council's jurisdiction that does not fall within the scope of clause 51 shall be dealt with in terms of this clause: Provided that—

- (i) disputes concerning dismissals shall be dealt with in terms of clause 53;
- (ii) disputes concerning the interpretation and/or application or enforcement of the Council's Constitution, and/or its Agreements shall be processed in terms of clause 54;
- (iii) disputes referred to in terms of Section 127 (2) of the Act shall, be referred by the Secretary to the Commission for Conciliation, Mediation and Arbitration (CCMA) for processing.

(2) A part that refers a dispute to the Council in terms of this procedure shall satisfy the Council that a copy of the referral has been served on all other parties to the dispute. This service may be effected by fax, hand or registered post.

(3) The Council shall arrange a meeting of the parties to the dispute within 10 working days of having received the declaration of the dispute. The parties shall use their best endeavours to resolve the dispute among themselves, and shall meet as often as they deem it to be necessary for the purposes of resolving the dispute.

(4) If the dispute remains unresolved, the parties shall give consideration to the following:

- (a) Appointing a subcommittee to meet within a specified number of days, for the purpose of attempting to resolve the dispute or to recommend to the parties a process by which the dispute may be resolved; or
- (b) referring the dispute to conciliation in terms of clause 55; or
- (c) referring the dispute to arbitration in terms of clause 56; or
- (d) instructing the Secretary of the Council to issue a certificate stating that the dispute remains unresolved.

(5) If the dispute has not been resolved within 30 days of the dispute having been declared, and if the parties have not within that period agreed on a process to resolve the dispute, any party to the dispute may utilise whatever means are available in the Act to process that dispute.

53. DISPUTES CONCERNING DISMISSALS

(1) Any dispute relating to the dismissal of one or more employees and referred to the Council, shall be dealt with in terms of this clause. Any such dispute shall be referred to the Council in writing within 30 days of the date of dismissal, save that the Council may condone the late referral of such a dispute on good cause shown.

(2) The party referring the dispute shall satisfy the Council that a copy of the referral has been served on all other parties to the dispute. This service shall be effected by fax, hand or registered post.

(3) The Council shall arrange a meeting for the parties to the dispute within 15 working days of receipt of notification of the dispute, for the purpose of attempting to resolve the dispute. In attempting to resolve the dispute, the parties may give consideration to privately appointing a mediator, arbitrator, or referring the dispute to any other agreed process, and may agree to meet as often as they deem it necessary in order to resolve the dispute. The cost of any process agreed between the parties shall be paid by them, in a manner agreed between themselves.

(4) If the dispute is not resolved at the meeting referred to in subclause (3) above or any further meetings agreed to by the parties, the Council shall appoint a conciliator in terms of clause 55 for the purposes of attempting to resolve the dispute: Provided that this shall not be necessary if the parties have agreed between them to appoint their own mediator.

(5) If the dispute has not been resolved within 20 working days from the date the dispute was referred to the Council, any party to the dispute may instruct the Council to refer the dispute to adjudication in terms of the Act. In terms thereof, disputes shall be processed as follows:

- (a) Through arbitration, either by consent between the parties to the dispute, or if the dismissed employee—
 - (i) has alleged that the reason for dismissal is related to his conduct or capacity, unless subclause (b) (iii) below applies; or
 - (ii) has alleged that the reason for dismissal is that the employer made continued employment intolerable; or
 - (iii) does not know the reason for dismissal.
- (b) By the Labour Court, if the employee has alleged that the reason for dismissal is
 - (i) automatically unfair; or
 - (ii) based on the employer's operational requirements; or
 - (iii) the employee's participation in a strike that does not comply with the provisions of the Act; or
 - (iv) because the employee refused to join, was refused membership of or was expelled from a trade union party to a closed shop agreement.

(6) Any arbitration in terms of subclause (5) above, shall be conducted in accordance with clause 56 of this Part. In any such arbitration proceedings, the employee must establish the existence of the dismissal, and the employer must then prove that the dismissal is fair.

54. INTERPRETATION AND/OR APPLICATION OR ENFORCEMENT

(1) In the event of any dispute arising that relates to the interpretation application or enforcement of the Council's Agreements it shall be processed in terms of this clause.

(2) A party wishing to lodge such a dispute shall notify the Council in writing, setting out the details of the dispute, and having served a copy of such notification on all other parties to the dispute. Proof of such service shall be provided to the Council, and may include service by fax, hand or registered post. The Council shall arrange a meeting of the parties to the dispute within 10 working days of the dispute having been referred in terms of this clause, unless otherwise agreed between the parties.

(3) If the dispute is not resolved at the meeting referred to in subclause (2) above, it shall be referred to arbitration in terms of this clause, unless otherwise agreed between the parties.

Arbitration in terms of this clause shall be of an expedited nature and the Council shall appoint an arbitrator who is available to commence the arbitration within 10 (ten) working days, and the arbitration shall take place accordingly. The arbitrator shall be granted the power to determine the procedure to be followed at the arbitration and to regulate any other matter incidental thereto.

The arbitrator shall normally be required to make a determination within 5 working days of the completion of the hearing.

(4) Subject to subclause (3) any arbitration in terms of that clause shall be in accordance with clause 56 of this Part.

55. CONCILIATION

(1) Any referral to conciliation in terms of this dispute procedure shall be referred in terms of this clause. Subject thereto, any conciliation proceedings shall be regulated by the Act.

(2) The Council shall establish a panel of conciliators, to whom matters shall be allocated at the discretion of the Secretary of the Council: Provided that—

- (a) in the event of the Council having a direct interest in any dispute being processed, it shall be conciliated by a member of the panel who is independent of the Council; and
- (b) in the event of the dispute involving a non-party to the Council, the Council shall ensure that the accreditation requirements of the Act are complied with.

(3) Any conciliator appointed in terms of this clause shall have the powers granted to a commissioner who is empowered to conciliate in terms of the Act. Any conciliator so appointed shall determine a process to attempt to resolve the dispute, which may include:

- (a) mediating the dispute; or
- (b) conducting a fact-finding exercise; or
- (c) making a recommendation to the parties, which may be in the form of an advisory arbitration award.

(4) In any conciliation proceedings, a party to the dispute may appear in person or be represented by a representative of his choice.

(5) By no later than the end of the 30-day period calculated from the appointment of the conciliator, or any further period agreed between the parties, the conciliator shall provide all parties to the dispute with a copy of a certificate stating whether or not the dispute has been resolved: Provided that the conciliator may, prior to the expiry of this period, confirm that conciliation has failed, in the event that he believes no further purpose would be gained by continuing with the process.

56. ARBITRATION

(1) In the event of any dispute being referred in terms of this Agreement, it shall be done in accordance with this clause. Parties to a dispute may at any stage agree to involve the arbitration provisions of this Agreement.

(2) The Council shall establish a panel of arbitrators, to whom matters shall be allocated at the discretion of the Secretary of the Council: Provided that—

- (a) in the event of the Council having a direct interest in any dispute being processed, it shall be arbitrated by a member of the panel who is independent of the Council; and
- (b) in the event of the dispute involving a non-party to the Council, the Council shall ensure that the accreditation requirements of the Act are complied with.

(3) After consultation with the parties and their appointed arbitrator, the Secretary shall serve notice of the date, time and venue of the arbitration on the parties to the dispute.

(4) The arbitrator may conduct the arbitration in a manner that he 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. Subject to this, a party to the dispute may give evidence, call witnesses, question the witnesses of any other party, and address concluding arguments to the arbitrator.

(5) The appointed arbitrator may at any stage prior to or during the arbitration proceedings attempt to resolve the dispute through conciliation with the consent of the parties to the dispute. If appropriate, the arbitrator may refer the dispute to be conciliated by another conciliator.

(6) In the event that the arbitrator attempts conciliation prior to the commencement of arbitration, any party to the dispute may prior to the commencement of the arbitration object to that person continuing to arbitrate the dispute, by written notice to the Secretary of the Council. In that event, the Secretary shall appoint another arbitrator from the Council's panel as soon as possible.

(7) In any arbitration proceedings, a party to the dispute may appear in person or be represented in accordance with sections 138 (4) and 140 (1) of the Act. For the purposes of applying section 140 (1) of the Act, the arbitrator shall have the powers granted to a commissioner in terms of that section.

(8) (a) Any arbitration in terms of this clause shall be conducted in terms of the Arbitration Act, 1965.

(b) Arbitration awards may be delivered other than in the presence of the parties, thereby enabling arbitrators to deliver awards to parties by fax, post or other similar means.

(9) If the party who referred the dispute to the Council fails to appear in person or to be represented at the arbitration proceedings, after having been given written notification thereof, the arbitrator may dismiss the matter. Subject to subclause (15), the arbitrator's decision shall be final and binding on all parties to the dispute.

(10) 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.

(11) Within 10 working days of the conclusion of the arbitration proceedings, the arbitrator shall issue a signed arbitration award with reasons and Council shall, as soon thereafter as possible, serve a copy of that award on each party to the dispute. The award shall be final and binding on all parties to the dispute.

(12) On good cause shown by the arbitrator concerned the Secretary of the Council may extend the period during which the arbitration award is to be issued.

(13) The arbitrator shall take into account any relevant code of goodpractice established in terms of the Act and may make any appropriate award including, but not limited to, an award—

- (a) that gives effect to any collective agreement;
- (b) that gives effect to the provisions of the primary objects of the Act;
- (c) that includes, or is in the form of, a declaratory order.

(14) The arbitrator may not include an order in the arbitration award for costs incurred by the parties, unless a party, or the persons who represented that party in the arbitration proceedings, acted in a frivolous or vexatious manner.

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

- (a) erroneously sought or erroneously made in the absence of any party affected by the award; or
- (b) in which there is an ambiguity, or any 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.

(16) The Secretary or any of the parties may apply to make the arbitration award an order of the Labour Court under section 158(1) of the Act.

(17) Review proceedings may be instituted in terms of Section 33 of the Arbitration Act, 1965.

PART II**1. ALLOWANCES**

Travelling and subsistence allowances: (a) Whenever a job is situated outside a radius of 15 km of the employer's own place of business where the employee is normally required to report, but within the area to which this Agreement relates, and the employee can reasonably be said to be able to and does return to his home every day, any time occupied by an employee in proceeding to or from the working site, shall be one way in his own time and the other way during the normal working hours specified in clause 7 of Part I of this Agreement: Provided that time spent in travelling between jobs during that day shall be in the employer's time.

(b) An employer shall be entitled to provide suitable transport both ways or to pay for transport in respect of the said distance at rates laid down by the Council from time to time. The Council shall determine the rates in January of each year and such rates shall become effective on the first Friday after 15 January of each year.

(c) An employer shall pay any employee entitled to transport the allowance as provided for in paragraph (b) at the same time as he is paid his normal remuneration.

(d) Where an employee can reasonably be said to be able to return to his home every day, but is precluded from availing himself of transport as contemplated by paragraph (b) in consequence of being required to report at his employer's place of business before proceeding to the job and/or at the conclusion of the day's work, such employee shall be paid for every hour travelled outside the ordinary working hours in compliance with such requirement at 50 per cent of his hourly wage.

(e) (i) Where the employee can reasonably be said to be unable to return to his home daily, he shall be entitled to suburban railway fare or second-class main-line railway fare to and from the place of work at the beginning and termination of such work, respectively. Time occupied in travelling during the ordinary working hours shall be paid for at the hourly rate of wages of the employee concerned. Bedding and normal meals on main-line trains, when required, shall be paid for by the employer.

(ii) Where an employee who, by reason of employment, is away from his usual working place and is required by his employer to live away from his usual domicile, meals and lodging shall be paid for or provided on the job by the employer. Where no hotel or other suitable accommodation is available within a reasonable distance of the working place and accommodation is supplied on site, the employee shall be paid a subsistence allowance of R50 for each night he is required by his employer to live away from his usual domicile.

(iii) Accommodation supplied on site shall include a bed and a mattress.

(iv) Where meals are supplied by the employer on site, he shall not be required to pay a subsistence allowance, but the standard of the meals provided shall be commensurate with the subsistence allowance that would have been paid in terms of this subclause.

2. EXPENSES OF THE COUNCIL

The funds of the Council, which shall be vested in and administered by the Council, shall be provided for in the following manner:

- (1) Every employee and every employer shall contribute to the Funds of the Council on the following scale:

AREAS A AND B

Wage group or class of employee	A Employee's contribution (cents per week)	B Employer's contribution (cents per week)
Master installation electrician	176	176
Installation electrician	176	176
Electrical tester for single phase	176	176
Electrician, artisan and DAM	154	154
Elconop 3	128	128
Elconop 2	106	106
Elconop 1	84	84
Domestic appliance repairer	84	84
Driver	84	84
Apprentice	84	84
Labourer	56	56

- (2) The amounts shown in Column B of the table shall be deducted by employers from the wages of their employees.

- (3) To the amounts thus deducted from the wages of his employees, every employer shall add the amount shown in Column C of the table and forward the total sum, together with a covering statement, to—

The Secretary, Bargaining Council for the Electrical Industry (KwaZulu-Natal), P.O. Box 722, Durban, 4000.

- (4) In any instance where no contributions are payable as provided for in subclauses (1), (2) and (3) hereof, and the total amount under subclause (3) is less than R45, the total amount referred to in subclause (3) shall be supplemented by the employer by such sum as to make a total of R45 in each month.
- (5) Regardless of whether any amount is payable to the Council in terms of this clause, every employer shall, by no later than the 15th day of each month, forward to the Council in respect of the preceding month and in the manner indicated therein, the statement referred to in subclause (3).

3. WAGES AND/OR EARNINGS

(1) Every employee who, prior to the date of coming into operation of this Agreement, was in receipt of a higher rate than that prescribed in the Agreement for the class of work on which he is employed, shall continue to receive not less than such higher rate while he is employed by the same employer on the same work or any other work for which a minimum rate is prescribed in the Agreement.

(2) No employee shall be employed in more than one occupation scheduled in this Agreement at different rates of pay, in any one week, including any overtime worked, or in a higher-paid occupation, unless payment is made as if such employee had been employed for the whole of that week in the highest paid occupation: Provided that if an employee who normally performs the work of a labourer performs the work of a driver, such employee shall be paid at the higher rates only in respect of time actually engaged in the occupation of a driver; except that if such labourer performs the work of a driver for more than three hours in any one day, he shall be paid at the higher rates for the whole of such day.

(3) (a) Whenever an advance or loan is made by an employer, at the request of an employee, the employer may, on receipt of a stop order, signed by the employee, make such deductions from subsequent wages or earnings, but no one deduction shall exceed 15 per cent of the remuneration from which it may be deducted.

(b) If the service of an employee are terminated, for any reason, before the loan or advance has been paid in full, the employer may appeal to the Council for reimbursement of the amount owing from the moneys for leave pay and bonus that the employer may have lodged with the Council in respect of the employee, in terms of this Agreement. The Council may, after considering any reasons that may have been submitted, uphold the appeal or give such other decision as the Council deems fit.

(4) Where moneys have been advanced to the employee to expend in the course of his duties for his employer, he may be required to render a satisfactory account of expenditure to his employer. Should the services of the employee be terminated and such moneys not have been refunded, the employer shall be entitled to recover the amount of the refund from the wages or earnings: Provided that an employee who is aggrieved by the application to him of this clause, may appeal to the Council against such a decision applied to him and the Council may, after considering any reasons that may be submitted for such decision, confirm that decision or give such other decision as in its opinion ought to have been given in such case.

4. SCHEDULE OF WAGES AND/OR EARNINGS

With effect from the date of coming into operation of this Agreement, no employer shall pay and no employee shall accept wages at rates lower than the following: Provided that where an employer carries out work in an area for which higher wages are prescribed than those which apply for the area in which his business is situated, his employees shall be paid no less than the minimum wages prescribed for such higher-rated area for the duration or period during which such an employee works in such higher-rated area:

	AREA A (cents per hour)	AREA B (cents per hour)
Master installation electrician	2 865	2 435
Installation electrician	2 638	2 241
Electrical tester for single phase	2 408	2 046
Electrician, artisan and DAM	2 292	1 947
Elconop 3	1 668	1 148
Elconop 2	1 414	1 202
Elconop 1	872	741
Domestic appliance repairer	1 076	915
Driver of a vehicle, the unladen mass of which is—		
(a) up to 3 500 kg	959	814
(b) from 3 501 kg to 9 000 kg	1 134	964
(c) 9 001 kg and over	1 261	1 070
Labourer	752	637

4. GUARANTEED MINIMUM INCREASES AND OFFSET

(1) Every employee for whom wages are prescribed in this Agreement and who on the date on which this Agreement comes into operation is employed by an employer in the Industry shall, while in the employ of the same employer and whether or not his actual rate of pay immediately prior to the said date was in excess of the rate prescribed for him in this Agreement, shall receive a wage increase of not less than 5% of the actual wage rate he was receiving immediately prior to the said date.

(2) The guaranteed minimum increase referred to in subclause (1) shall be subject to the provisions that any increase granted on or after February 1998, may be offset by the employer when calculated the guaranteed minimum increase.

6. LEAVE BONUS

(1) Every employee for whom wages are prescribed in this Agreement shall, in addition to his leave pay, be paid a leave bonus of an amount equivalent to the wages he would normally be paid for the period specified below, whenever he qualifies for leave in terms of clause 14 of Part I, and such leave bonus shall be paid at the same time as his leave pay is paid:

AREAS A & B

Master installation electrician	20 working days
Installation electrician	20 working days
Electrical tester for single phase	20 working days
Electrician, artisan and DAM	20 working days
Elconop 3	15 working days
Elconop 2	15 working days
Elconop 1	15 working days
Driver of a vehicle, the unladen mass of which is:	
(a) up to 3 500 kg	15 working days
(b) from 3 500 kg to 9 000 kg	15 working days
(c) 9 001 kg and over	15 working days
Labourer	10 working days
Apprentice: first years leave qualification	15 working days
subsequent years' leave qualification	20 working days

(2) Any period of employment prior to the date of coming into operation of this Agreement, shall count as part of the qualifying period in terms of subclause (1).

(3) Any employee whose category changes from a lower to a higher category during any leave cycle shall, on qualifying for leave, receive a leave bonus calculated on a prorata basis on the number of days completed in each category.

(4) When an employee for whom wages are prescribed in this Agreement voluntarily resigns from his employment after completing at least 150 shifts in the current leave cycle with the same employer, in areas "A" and "B" the employer shall pay him a prorata leave bonus in accordance with the following formula:

$$\frac{\text{Number of completed working days with employer in present leave cycle}}{235} \times \text{Leave bonus applicable to such employee} \times \text{ordinary daily remuneration}$$

(5) Notwithstanding the provisions of subclauses (3) and (4), no employee for whom wages are prescribed in this Agreement shall be entitled to leave bonus if he has absconded or is dismissed following a fair disciplinary enquiry: Provided that should such employee have completed 235 shifts with the same employer, but absconds or is dismissed before his annual leave is granted to him, his employer shall pay him the leave bonus due in terms of subclause (1).

(6) An employee who absconds or is fairly dismissed and who is aggrieved by the application to him of the provision of subclause (5) may appeal to the Council against the decision applied to him and the Council may, after considering any reasons that may be submitted for such decision, confirm that decision or give such other decision as in its opinion ought to have been given in such case.

(7) (a) Periods of absence on account of sickness aggregating not more than 43 shifts in any one qualifying period shall be included in calculating the leave bonus shall count for the leave bonus: Provided that an employer shall be entitled to call upon the employee for a medical certificate as proof of cause of absence.

(b) Periods of absence on account of an accident arising out of and in the course of the employee's employment shall count for leave bonus purposes if such accident has been admitted as falling within the provisions of the Compensation for Occupational Injuries and Diseases Act, 1993, and the periods of absence counting for purposes of the leave bonus shall be the periods of disablement admitted by the said Act.

Signed at Durban this 7th day of April 1998.

Z. CINDI

Chairperson of Council & for the Metal & Electrical Workers Union of South Africa

B. CARR

Vice Chairperson of Council & for the Electrical Contractors Association of South Africa

C. GREAGER

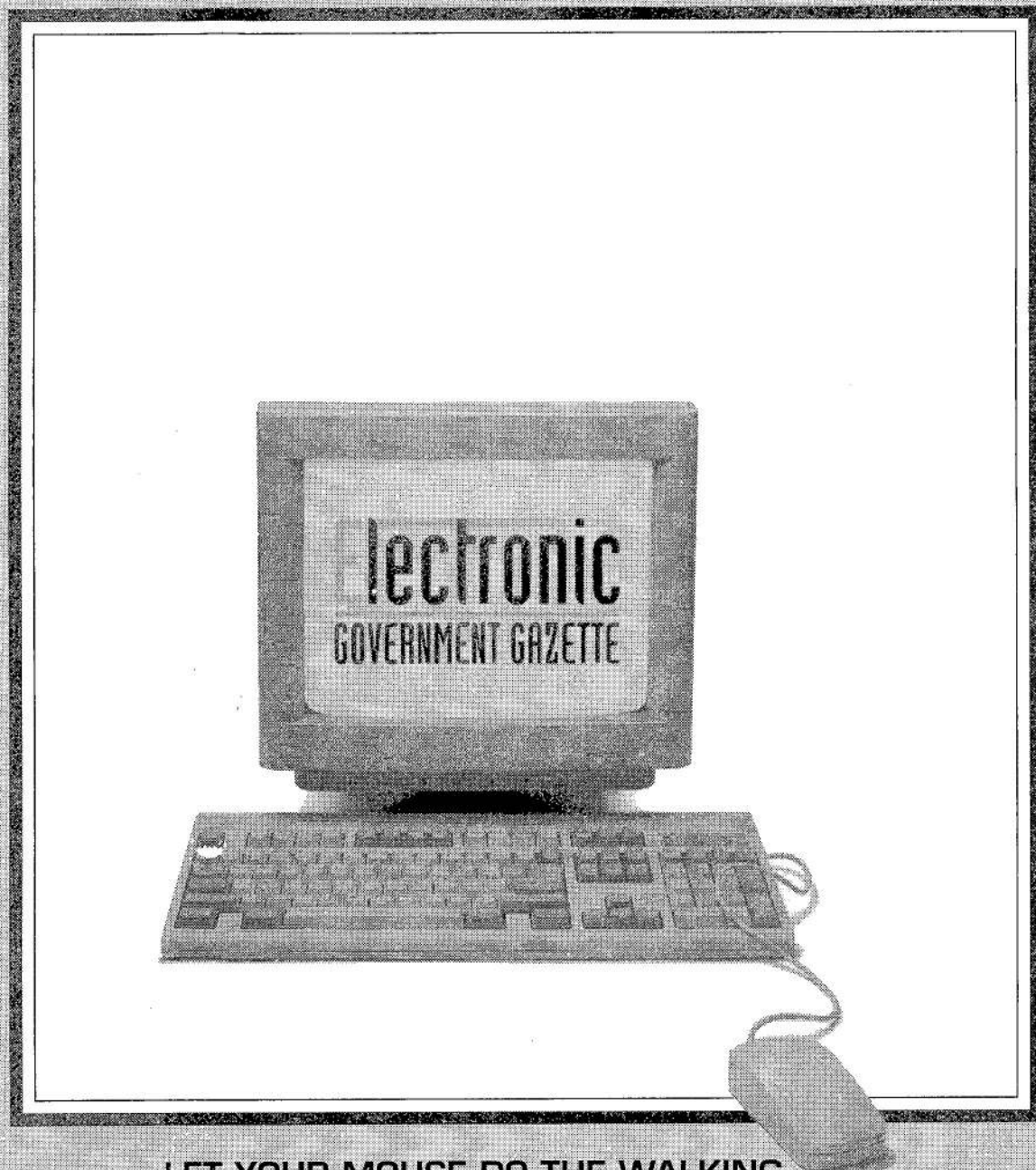
Council Member & for the Electrical Contractors Association of South Africa

M. VAN WYK

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R. REDFERN

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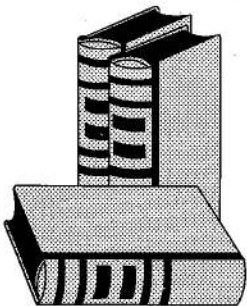
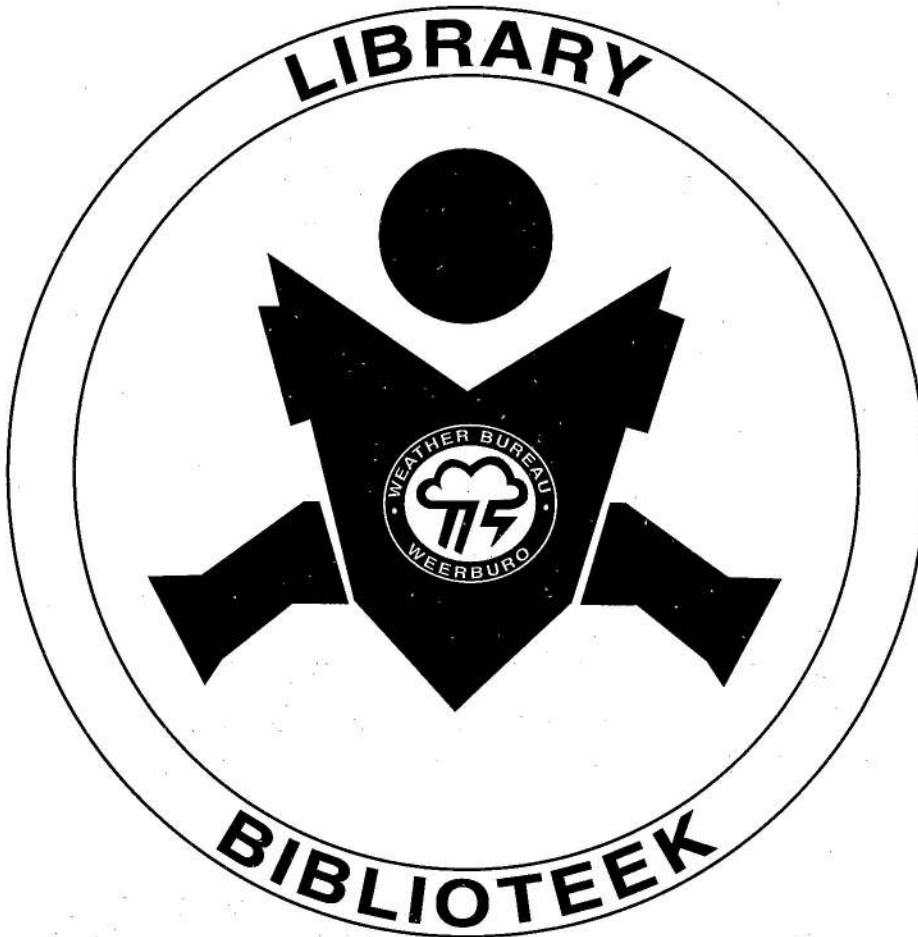
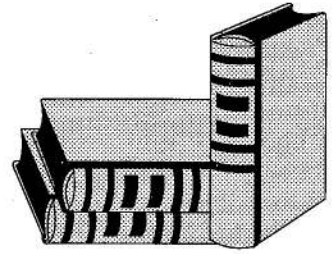
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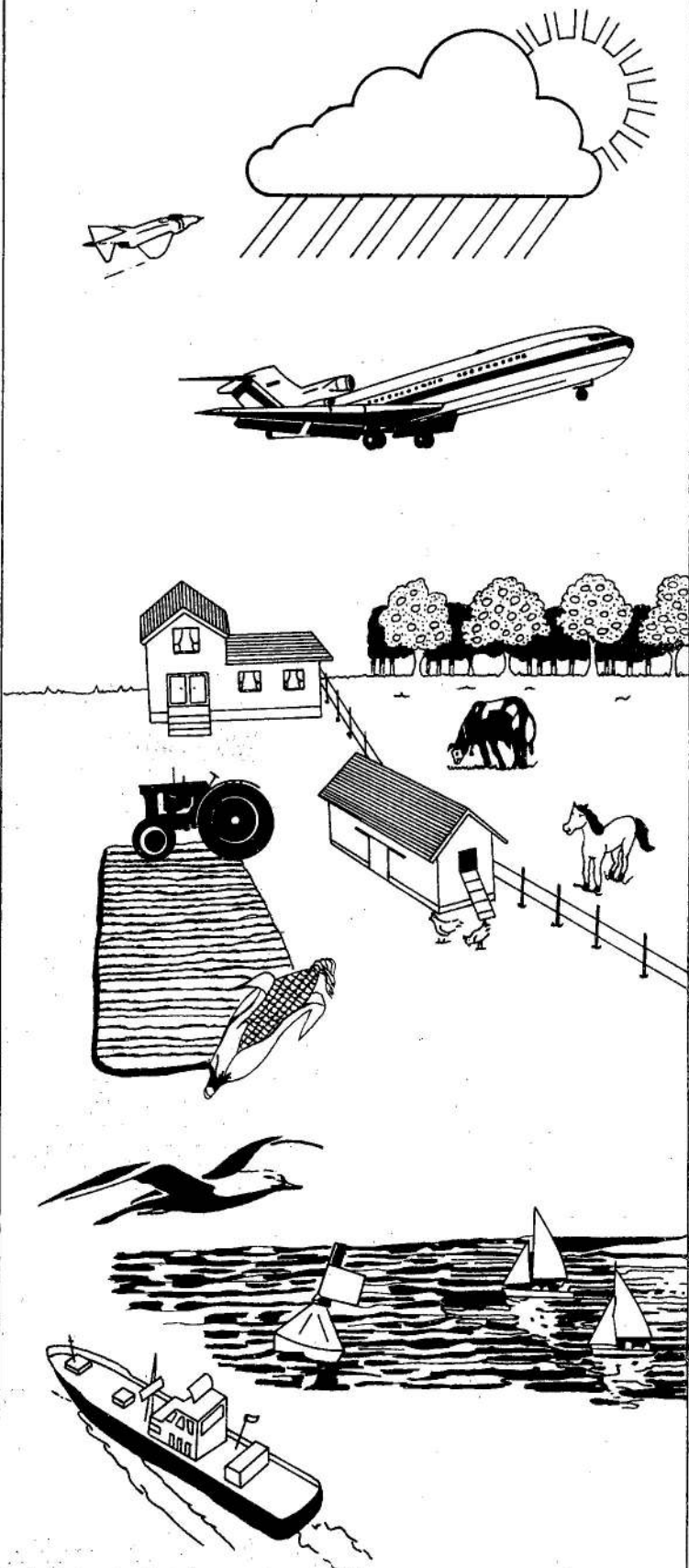
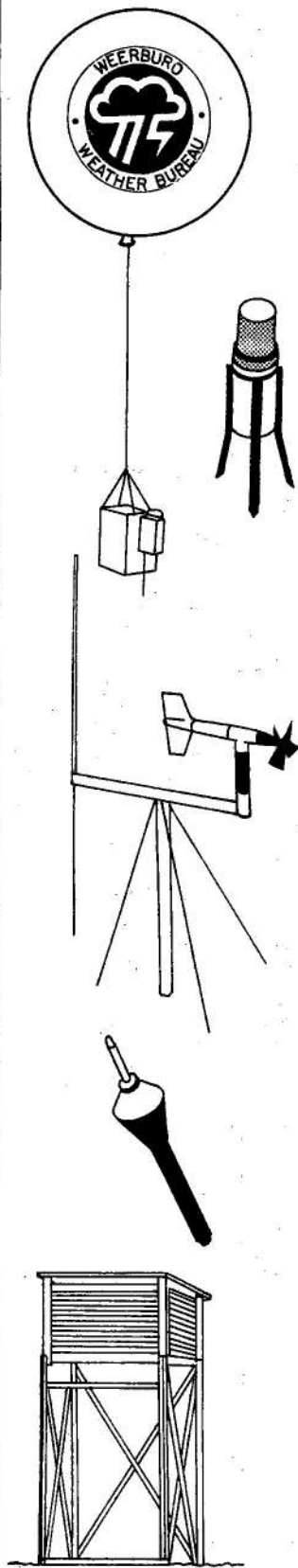
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