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GOVERNMENT NOTICE GOEWERMENTSKENNISGEWING

DEPARTMENT OF LABOUR DEPARTEMENT VAN ARBEID

No. R. 1407

6 November 1998

LABOUR RELATIONS ACT, 1995

ELECTRICAL INDUSTRY (KWAZULU-NATAL): EXTENSION OF PENSION FUND COLLECTIVE AGREEMENT TO NON-PARTIES

I, Membathisi Mphumzi Shepherd Mdladlana, Minister of Labour, hereby in terms of section 32 (2) of the Labour Relations Act, 1995, declare that the Collective Agreement which appears in the Schedule hereto, which was concluded in the 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 for the period ending 31 January 1999.

M. M. S. MDLADLANA

Minister of Labour

No. R. 1407

6 November 1998

WET OP ARBEIDSVERHOUDINGE, 1995

**ELEKTROTEGNIËSE NYWERHEID (KWAZULU-NATAL): UITBREIDING VAN PENSIOENFONDS
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)****PENSION FUND COLLECTIVE AGREEMENT**

in accordance with the provisions of the Labour Relations Act, 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

and

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).

PART I**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' organisations and trade unions' respectively, 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 provisions 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 notice served in terms thereof.

(3) Clauses 1 and 2 of this Agreement shall not apply to employers and employees who are not members of the employers' organisations and trade unions, respectively.

2. PERIOD OF OPERATION OF AGREEMENT

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. DEFINITIONS

Any expressions used in this Agreement which 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—

"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;

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

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

- (a) The design, preparation, erection, installation, repair and maintenance of all electrical equipment forming an integral and permanent portion of buildings 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 is 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 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 is prepared on the site of the buildings 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 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 is 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 or television antennas.

For the purpose of this definition—

(i) "electrical equipment" includes—

- (aa) electrical cables and overhead lines;
- (ab) generators, motors, convertors, switch and control gear (including relays, contactors, electrical instruments and equipment associated therewith, but excluding radio sets and allied electrical apparatus, signalling equipment and other equipment utilising the principles used in the operation of radio or electronic equipment), electrical lighting, heating, cooking and cooling equipment, primary and secondary cells and batteries, transformers and furnace 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 by repetitive methods of the aforementioned equipment or component parts 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 and/or fabrication and/or assembly and/or rebuilding of lead acid type batteries and/or component parts 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 part;
- (af) the installation and/or servicing and/or repair of motor vehicle batteries of the lead-acid type or component parts 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 maintenance and/or repair of any one or more of the appliances, equipment, machines, devices or apparatus referred to in (ai) below;
- (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); or
- (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;

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

"Executive Committee" means the Executive Committee of the Council appointed in terms of its constitution;

"Main Agreement" means the Agreement in which wages and other conditions of service are specified for employees in the Electrical Industry (KwaZulu-Natal) as published in terms of section 32 of the Act.

4. DESIGNATED AGENTS

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

5. 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 response 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*.

6. EXHIBITION OF AGREEMENT

Every employer shall keep in his establishment, in a place readily accessible, a legible copy of this Agreement.

7. DISPUTES ABOUT INTERPRETATION, APPLICATION OR ENFORCEMENT OF AGREEMENT

- (a) The Secretary of the Council may at any time require a designated agent to monitor compliance with the provisions of the Agreement.
- (b) A dispute about the interpretation, application or enforcement of this Agreement may be lodged with or referred to the Secretary of the Council by any person, for resolution in terms of this Agreement.
- (c) The Secretary of the Council may require a designated agent to investigate the dispute.
- (d) The designated agent must investigate the facts surrounding the dispute and if the agent has reason to believe that a collective agreement has been breached, the agent may endeavour to secure compliance with the Agreement through conciliation.
- (e) The designated agent must submit a written report to the Secretary on the investigation, the steps taken to secure compliance and the outcome of those steps.
- (f) If in the course of performing a designated agent's duties, an agent discovers what appears to be a breach of the Agreement, the agent—
- (i) must investigate the alleged breach;
 - (ii) may endeavour to secure compliance with the Agreement; and
 - (iii) must submit a report to the Secretary on the investigation, the steps taken to secure compliance and the outcome of those steps.
- (g) On receipt of the report, the Secretary may—
- (i) require the designated agent to make further investigations;
 - (ii) refer the dispute for conciliation;
 - (iii) issue a compliance order; or
 - (iv) refer the dispute to arbitration.
- (h) If the dispute is referred for conciliation, the Secretary must decide the date, time and venue of the conciliation meeting and must serve notices of these particulars on the parties to the dispute.
- (i) If a compliance order is issued, that order must be served on the party allegedly in breach of the Agreement.
- (j) The Secretary of the Council may apply to make the arbitration award an order of the Labour Court under section 158 (1) of the Act.

8. DISSOLUTION OF THE COUNCIL

In the event of the dissolution of the Council or in the event of its ceasing to function during the currency of this Agreement, the Registrar of Labour Relations may appoint trustees to perform the Council's functions. The trustees so appointed shall have all the powers vested in the Council for the purposes of this Agreement. Payment (if any) for the services rendered by the trustees shall form a charge upon the general funds of the Council.

PART II**1. CONTINUATION OF PENSION FUND**

- (1) The Electrical Industry (Natal) Pension Fund and the Supplementary Scheme (hereinafter referred to as the "Pension Fund" or the "Fund"), originally established in terms of Government Notice No. R. 2043 of 13 October 1978, are hereby continued. The Pension Fund has been constituted from the amalgamation of the former Electrical Industry (Natal) Pension Fund and the Supplementary Scheme.
- (2) The Pension Fund shall consist of—
- (a) moneys accruing from contributions prescribed in clause 3 of this Part; and
 - (b) any other sum to which the Pension Fund may be or may become entitled.
- (3) The objects of the Pension Fund shall be to provide members with death and retirement benefits through the Council's securing the best conditions possible.

2. MEMBERSHIP

- (1) Membership of the Fund shall be compulsory for the following categories of employees from their dates of engagement:

Master installation electricians;
installation electricians;
electrician testers for single phase;
electricians domestic appliance mechanics and other artisans;
Elconop 3's;

Elconop 2's;
Elconop 1's;
domestic appliance repairers;
drivers of a vehicle, of which the unladen mass is—

- (a) less than 3 500 kg;
- (b) between 3 501 kg and 9 000 kg;
- (c) 9 001 kg and over;

apprentices, stage 1;
apprentices, stage 2;
apprentices, stage 3;
apprentices, stage 4;
labourers.

(2) (a) Membership of the Fund shall be compulsory for all labourers and Elconop 1's after 13 weeks' service in the Industry: Provided that if an employee can supply proof of previous employment in this Industry, contributions to the Fund shall commence from the date of engagement.

(b) However, during the first 13 weeks' service, the employees shall be covered for death benefits, the cost of which shall be borne by the employer.

(3) An employer may, in respect of his employees employed in the Industry whose wages are not specified in the Main Agreement but who otherwise comply with the provisions of the Agreement, by mutual agreement, apply to the Fund to accept contributions from himself and such employees (or any of them) in accordance with the provisions of clause 3 of this Part. Upon receipt of such application, the Council may agree to receive contributions from that employer and the provisions of the Agreement shall thereupon *mutatis mutandis* apply to the employer and the employees concerned and be observed by them as though clause 1 of Part I applied.

3. CONTRIBUTIONS

(1) The Council shall determine and advise every employer of the weekly amount payable to the Pension Fund in respect of each of each category of employee, which amount shall be calculated at the undermentioned percentage of the specified wage payable in terms of the Main Agreement, taken to the next higher 10 cents:

Contribution at percentage of prescribed weekly wage: 14%.

In respect of labourers and Elconop 1's in the first 13 weeks of service in the Industry, the Council shall determine and advise every employer of the weekly amount payable in respect of the death benefit cover.

(2) Every employer shall pay the amount determined in terms of subclause (1) to the Council in respect of such employees: Provided that the employer may deduct 40 per cent of the amount payable from the remuneration of such employees.

(3) The amount payable each month in terms of this clause shall be forwarded to the Secretary of the Council, P.O. Box 722, Durban, 4000, by not later than the 15th day of the month immediately following, together with a statement in such form as may from time to time be specified by the Council.

(4) Contributions calculated in accordance with the provisions of subclause (1) may, at the discretion of the employer, be deducted from the earnings of those employees falling under the provisions of clause 2 (3) of this Part at their written request: Provided that such employees are receiving a wage that is more than the specified minimum payable to a labourer as scheduled in the Main Agreement.

(5) Should any amount due in terms of this clause not be received by the Council by the 15th day of the month following the month in respect of which it is payable, the employer shall pay interest on such amount or on such lesser amount as remains unpaid calculated at the rate of two per cent per month or part thereof from such 15th day 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.

4. BENEFITS

(1) Benefits payable to a member of the Pension Fund shall be as specified in the rules of the Fund for which provision is made in clauses 6, 7, 8, 9 and 10 of the said rules.

(2) Benefits accruing under the Pension Fund shall not be transferable and may not be ceded or pledged: Provided that any member may nevertheless nominate a beneficiary to receive the proceeds of his policy in the event of his death prior to retirement.

5. ADMINISTRATION

The Pension Fund shall be administered in accordance with rules approved by the Council. Such rules shall not be inconsistent with this Agreement or the provisions of the Act and a copy of the rules and any amendments thereto shall be lodged with the Director-General of Labour.

Signed at Durban on this 3rd day of February 1998.

Z. CINDI

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

B. CARR

Vice-Chairperson of Council and for the Electrical Contractors Association of South Africa

C. GREAGER

Council Member and for the Electrical Contractors Association of South Africa

M. VAN WYK

Council Member and for the South African and Electrical Workers Association

R. REDFERN

Secretary of Council

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