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REPUBLIEK VAN SUID-AFRIKA

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No. 6686

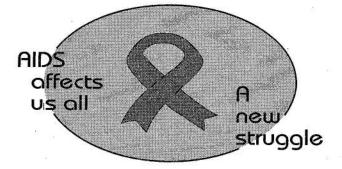
Regulasiekoerant

Vol. 414

PRETORIA, 10 DECEMBER 1999

No. 20681

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DEPARTMENT OF HEALTH

GOVERNMENT NOTICE GOEWERMENTSKENNISGEWING

DEPARTMENT OF LABOUR DEPARTEMENT VAN ARBEID

No. R. 1444

10 December 1999

LABOUR RELATIONS ACT, 1995

CLOTHING INDUSTRY, EASTERN PROVINCE: EXTENSION OF PROVIDENT FUND COLLECTIVE AGREEMENT TO NON-PARTIES

I, Membathisi Mphumzi Shepherd Mdladlana, Minister of Labour, hereby in terms of section 32 (2) of the Labour Relations Act, 1995, declare that the Collective Agreement which appears in the Schedule hereto, which was concluded in the Bargaining Council for the Clothing Industry, Eastern Province, 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 20 December 1999 and for the period ending 30 June 2000.

M. M. S. MDLADLANA Minister of Labour

No. R. 1444

10 Desember 1999

WET OP ARBEIDSVERHOUDINGE, 1995

KLERASIENYWERHEID, OOSTELIKE PROVINSIE: UITBREIDING VAN KOLLEKTIEWE VOORSORGFONDSOOREENKOMS NA NIE-PARTYE

Ek, Membathisi Mphumzi Shepherd Mdladlana, Minister van Arbeid, verklaar hierby kragtens artikel 32 (2) van die Wet op Arbeidsverhoudinge, 1995, die Kollektiewe Ooreenkoms wat in die Engelse Bylae hiervan verskyn en wat in die Bedingingsraad vir die Klerasienywerheid, Oostelike Provinsie, aangegaan is en kragtens artikel 31 van die Wet op Arbeidsverhoudinge, 1995, bindend is op die partye wat die Ooreenkoms aangegaan het, bindend vir die ander werkgewers en werknemers in daardie Nywerheid, met ingang van 20 Desember 1999, en vir die tydperk wat op 30 Junie 2000 eindig.

M. M. S. MDLADLANA

Minister van Arbeid

Nota: 'n Afrikaanse vertaling van die ooreenkoms by die Engelse kennisgewing is beskikbaar by die Raad.

SCHEDULE

BARGAINING COUNCIL FOR THE CLOTHING INDUSTRY, EASTERN PROVINCE

PROVIDENT FUND COLLECTIVE AGREEMENT

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

Eastern Province Clothing Manufacturers' Association

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

Southern African Clothing and Textile Workers' Union

(hereinafter referred to as the "employees" or the "trade union"), of the other part, being the parties to the Bargaining Council for the Clothing Industry, Eastern Province.

1. SCOPE OF APPLICATION OF AGREEMENT

- (1) The terms of this Agreement shall be observed in the Clothing Industry-
 - (a) by all employers who are members of the employers' organisation and by all employees who are members of the trade union;

- (b) within the Magisterial Districts of-
 - (i) Port Elizabeth, including that portion of Hankey which, prior to the publication of Government Notice No. 1515 of 4 October 1963, fell within the Magisterial District of Port Elizabeth, including that portion which was transferred by the publication of Government Notice No. 1687 of 5 September 1975 to Uitenhage and excluding that portion of Hankey which was transferred by Government Notice No. 1474 of 24 September 1980 to Port Elizabeth; and
 - (ii) within the Magisterial District of East London, including that portion which was transferred to Mdantsane by Government Notice No. 1481 of 27 August 1971, excluding those portions of the Ciskei which were transferred to East London by Government Notice No. 1877 of 4 September 1981 and Government Notice No. 1079 of 10 June 1988 and including that portion which was transferred to Ciskei by Government Notice No. 2354 of 5 October 1990.
- (2) Clauses 1 (1) (a) and 2 of this Agreement shall not apply to employers and employees who are not members of the employers' organisation and trade union, respectively.

2. PERIOD OF OPERATION OF AGREEMENT

This Agreement shall come into operation—

- (1) in respect of the parties to this Agreement, on the date of signature;
- (2) in respect of non-parties, on the date fixed by the Minister of Labour, to be the effective date from which the Agreement shall be extended to become binding on non-parties;

and shall remain in operation for the period ending 30 June 2000.

3. DEFINITIONS

All expressions used in this Agreement, which are defined in the Labour Relations Act, 1995, shall have the same meaning as in that Act, any reference to an Act shall include any amendments of such Act and, unless the contrary intention appears, words importing the masculine gender shall include females; further, unless inconsistent with the context—

- "Act" means the Labour Relations Act, 1995 (Act No. 66 of 1995);
- "Clothing Industry" or "Industry" means, without in any way limiting the ordinary meaning of the expression, dressmaking, the making of all classes of outer and under garments, including night wear, and all classes of tweed and linen hats, caps and ties, and the making of all classes of garments to the order of any department of State or provincial administration, Transnet Administration or local authorities, but excludes tailoring which is made to order;
- "Council" means the Bargaining Council for the Clothing Industry, Eastern Province, registered in terms of the Industrial Conciliation Act, 1937 (Act No. 28 of 1937), deemed to have been registered in terms of the Labour Relations Act, 1995;
- "establishment" means any place in which any operation in connection with the Clothing Industry is carried on;
- "experience" means the total length of all periods of employment in the Industry of an employee in respect of whom wages are prescribed in the Main Agreement, and shall be deemed to be continuous from the time the employee enters his employer's service until the time such service is terminated: Provided that an employee whose services are terminated at the end of his employer's working year and who resumes work with his former employer within 14 days of the reopening of the employer's factory shall be deemed to have worked continuously;
- "fund week" means a week calculated from midnight between Friday and Saturday to midnight between the next Friday and Saturday;
- "Main Agreement" means the Agreement of the Council, published in terms of the Act, which prescribes wages for employees in the Industry;
- "member" or "member of the Fund" means any person who contributes or has contributed to the Fund as an employee in terms of this Agreement;
- "nominee" means any person appointed by a member to whom any benefits accruing to such member at the time of his death shall be paid;
- "redundancy/retrenchment" means the termination of the employment of an employee for any or all of the following reasons:
 - (a) The business activity of the company is decreasing because of a deteriorating economic situation, resulting in organisation changes whereby certain positions in the company will be eliminated on a permanent basis, and/or sufficient work is not available, thereby necessitating a cutback in the workforce;
 - (b) The operations of the company, or parts thereof are closing down or are undergoing changes because of-
 - (i) a relocation of facilities;
 - (ii) technological or technical changes;
 - (iii) automation;

- (iv) mergers and takeovers; or
- (v) any other event which may be deemed by the company and the trade union to be of such a nature that
 it warrants redundancy/retrenchment of employees;
- "retiral age" means the age of 60 years;
- "Secretary" means the Secretary of the Council and includes any official appointed to assist the Secretary;
- "wage" means the weekly wage (excluding overtime or any supplementary wage) prescribed in the Main Agreement.

4. PROVIDENT FUND

(1) The Fund established in terms of the Agreement published under Government Notice No. R. 607 of 20 March 1953, and known as the Provident Fund for the Clothing Industry, Eastern Province (hereinafter referred to as "the Fund"), is hereby continued for the purpose of providing benefits to employees in the Industry.

The Fund shall consist of-

- (a) any moneys standing to the credit of the said Fund as at the date of coming into operation of this Agreement;
- (b) contributions paid into the Fund in accordance with this clause;
- (c) interest derived from the investment of any moneys of the Fund;
- (d) any other moneys to which the Fund may become entitled.
- (2) The Fund shall be under the control of a Management Committee appointed by the Council, consisting of three representatives of the employers and three representatives of the union.

An alternate may be appointed in respect of each representative. The Management Committee shall elect a chairperson and a vice-chairperson from among its members and shall specify its own rules of procedure. Should the Management Committee be unable to perform its duties for any reason, the Council shall perform such duties and exercise its powers.

- (3) The Management Committee shall have the power to make, amend and alter rules governing the administration of the Fund and copies of such amendments must be forwarded to the Department of Labour.
- (4) The Management Committee shall collect all revenue and shall have the power to invest moneys surplus to current requirements as set out in clause 4 (7) (b). The Management Committee shall have the power to appoint an auditor, an actuary, a secretary and staff on such terms and conditions as it thinks fit, and may vary such appointments.

CONTRIBUTIONS

- (5) (a) All employees for whom wages are prescribed in the Main Agreement of the Council, having not less than a total of six months' experience in the Industry, shall become members of the Fund and contribute on the following basis:
 - All employees earning an amount equal to or more than the weekly wage of a qualified machinist, shall contribute R5,95 per week.
 - (ii) All employees earning an amount less than the weekly wage of a qualified machinist, shall contribute R5,47 per week.
 - (b) Every employer shall on each pay day deduct from the wages of each of his employees who are members of the Fund, an amount in accordance with paragraph (a), and to the aggregate of the amounts so deducted the employer shall contribute the following:
 - (i) All employees who are earning an amount equal to or more than the weekly wage of a qualified machinist—R7,55 per week.
 - (ii) All employees who are earning an amount less than the weekly wage of a qualified machinist—R6,79 per week.

The employer shall forward the total amount to the Secretary by not later than the seventh day of the following month, together with a statement in such form as the Management Committee may from time to time specify.

- (bA) (i) The parties have agreed that the target Provident Fund contribution levels ("the target levels"), including insured benefits, shall be as follows:
 - (aa) Employer's contribution-7,5% of wages;
 - (ab) Employee's contribution—6% of wages.
 - (ii) The target levels shall be attained incrementally by agreement of the parties, by increasing the contribution levels of employers and employees.
 - (iii) The employer's increase in contribution levels shall form part of the total labour-cost increase negotiated each year.

- (bB) (i) There will be a 0,5% increase at such time that the Medical Aid cost for the Employer is reduced to R8,42 per week.
 - (ii) The existing contributions to the Provident Fund shall be increased by a further 1% of basic wage from 1 January 2000.
- (c) Contributions in respect of a member who receives wages for one day or more during a fund week shall be payable in respect of a whole week.
- (d) Where a member is employed by more than one employer in the Industry during a fund week, the employer by whom he is last employed during such week shall pay both his own contributions and those due by the member in respect of the whole week, and may deduct the contribution due by such member from his earnings as provided in clause 4 (5) (b), and no further contribution shall be payable by or in respect of such member in respect of that week.
- (e) An employer shall not deduct the whole or any part of his own contributions from the earnings of a member or receive any consideration from the member in respect of such contributions.
- (f) When a member is on leave on full pay or pay less than full pay, both his own and the employer's contributions shall be continued.
- (g) Where a member works short-time, both his own and his employer's contributions shall be continued in accordance with subclause (a) hereof.
- (h) If any contribution is made in error to the Fund, the Fund shall not be liable to repay that contribution after the lapse of six months from the date of such payment.
- (i) Whenever any benefit has been mistakenly paid to a member as a result of such member having made to the Fund payments which were not due, the Management Committee may set off the amount of benefits so paid—
 - against any sum claimed from the Fund as a repayment of such contributions which were not due;
 and
 - (ii) against any future benefits that may become due by the Fund to the said member.
- (j) Any member who re-enters the Industry after having left and received benefits in terms of clause 4 (6) (a) hereof, shall on production of evidence of previous membership of the Fund forthwith be readmitted to membership, but shall be regarded as a new member as from the date of readmission: Provided that if he repays to the Fund in cash the full amount which he received on leaving the Industry, the Management Committee shall have the power to reinstate him with credit for his previous period of membership.
- (k) A member who becomes re-engaged in the Industry without having received payment of benefits in terms of clause 4 (6) (a) hereof, shall immediately become disentitled to any benefits which might have been payable had he not so become re-engaged and shall have credit from his previous period of membership.

BENEFITS

- (6) (a) If a member shall leave the industry permanently for any reason other than those under paragraph (b), (bA) and (c) hereof, he shall be entitled to the following benefits:
 - (i) if the total period of his contributions does not exceed one year, the total amount contributed by him;
 - (ii) if the total period of this contributions exceeds one year, the total amount contributed by him plus 10 per cent thereof;
 - (iii) if the total period of his contributions exceeds two years, the total amount contributed by him plus 20 per cent thereof;
 - (iv) if the total period of his contributions exceeds three years, the total amount contributed by him plus 30 per cent thereof;
 - (v) if the total period of his contributions exceeds four years, the total amount contributed by him plus 40 per cent thereof;
 - (vi) if the total period of his contributions exceeds five years, the total amount contributed by him plus 50 per cent thereof;
 - (vii) if the total period of his contributions exceeds six years, the total amount contributed by him plus 60 per cent thereof;
 - (viii) if the total period of his contributions exceeds seven years, the total amount contributed by him plus 70 per cent thereof;
 - (ix) if the total period of his contributions exceeds eight years, the total amount contributed by him plus 80 per cent thereof;
 - if the total period of his contributions exceeds nine years, the total amount contributed by him plus 90 per cent thereof;

(xi) if the total period of his contributions exceeds ten years, the total amount contributed by him plus 100 per cent thereof;

and the total amount shall be paid three months after his leaving the Industry: Provided that the Management Committee may pay moneys due to members in instalments over a period not exceeding six calendar months, should members so desire.

- If a member leaves the Industry on or after reaching retirement age, or if a member is compelled to retire from (b) work owing to incapacitation prior to reaching retirement age and the Management Committee is satisfied that such incapacitated member is totally unable to earn his living in the Industry, it shall grant such member benefits up to the full amount of his own and the employer's contributions.
- (bA) If a member leaves the Industry as a result of redundancy/retrenchment, and his employer submits proof to this effect acceptable to the Management Committee, the provisions of subclause (6) (a) shall not apply and he shall be entitled to the following redundancy/retrenchment benefits:
 - the total amount contributed by the member in terms of subclause (5) (a); plus
 - the total amount contributed towards the member's retirement benefit by the employer in terms of subclause (5) (a); plus
 - interest on the amounts referred to in subparagraphs (i) and (ii) hereof at a rate determined by the (iii) Management Committee and based on the report of the auditor upon the financial position of the Fund as at 31 December prior to the member's leaving the employer's service.
- On proof, satisfactory to the Management Committee, of the death of a member, the Fund shall pay a lump (c) sum equal to the aggregate amount of his own and the employer's contributions to a nominee appointed by the member before his death, or into the estate of the deceased member. In the event of the appointed nominee being dead at the time when payment of the benefit is due, such benefit shall be paid into the estate of the deceased member. If the nominee is a minor, the Management Committee shall pay the benefit to such minor's legal guardian.

On similar proof of the death of an employee who has retired from his employment, and was receiving benefits from the Fund, the Fund shall pay to a nominee or into the deceased's estate, as provided in the aforegoing paragraph, the difference, if any, by which the aggregate amount calculated in terms of clause 4 (7) (a) or (b) exceeds the total payments which have been made to the retired member.

The Management Committee shall be advised in writing of the appointment of a nominee or of any change in regard to such appointment and of the address of such nominee. If a deceased member shall have failed to advise the Management Committee in writing of the name and address of his nominee in terms of this subclause, any benefit due in terms of this subclause shall be paid into the estate of such deceased

- (d) If a member has received benefits to which he is not entitled under the provisions of this Fund and the matter is not dealt with in the manner set out in clause 4 (5) (j), he shall be liable to repay the Fund the amount of the benefit so received: Provided that the if the Management Committee deems it inequitable in any particular case to demand repayment of the whole amount of the benefit, it may in its discretion demand repayment of any lesser amount or relieve such member of the repayment of the whole amount.
- Any member who leaves the industry while having an outstanding housing loan offered by the Fund Housing (e) Loan Scheme through a financial institution, the balance of the housing loan shall be deducted before the Provident Fund benefit is paid out to the member.
- Such as is provided in this subclause, no benefit or right to benefit shall be capable of being assigned or (f) transferred or otherwise ceded or of being pledged or hypothecated, nor shall any contribution made by a member or on his behalf be liable to be attached or subject to any execution under a judgment or order of a court of law, and if a member attempts to assign, transfer or otherwise cede or to pledge or hypothecate any benefit or right of benefit, payment of benefit may be withheld, suspended or entirely discontinued if the Management Committee so determines.
- Nothing contained in this Agreement shall in any way affect the right of any member or his dependents to (g) claim compensation or damages payable to workmen or dying from any accident arising out of and in the course of their employment; and the amount payable under this subclause shall not be reduced by reason of any payment that may be made under any other law.
- On admission to the Fund a member shall submit a bith certificate or such other proof of age as is satisfac-(h) tory to the Management Committee.

If any benefit due and payable, other than to a nominee appointed in terms of subclause 6 (c) of this clause, is not claimed within one year from the due date thereof, the Management Committee shall within three months of the expiration of the said period of one year cause a notice to be published in successive issues of two newspapers circulating in the Eastern Province, one of which shall be a newspaper circulating in the town in which the member to whom the benefit is due was normally resident at the time such benefits became due, stating that a list of all persons who have not claimed their benefits within the period of one year stated above, is available for inspection at the offices of the Council and of the trade union which is a party to the Agreement, and calling upon interested persons to submit claims for such benefits within a period of three months fromt he date of the last insertion of the advertisement and to furnish full details of the grounds on which such claims are made.

Such claims shall be met in accordance with the provisions of paragraphs (a), (b) and (c) of this subclause: Provided that the Management Committee may, if it deems fit, deduct the cost of advertising. In the event of no claim being made by or on behalf of the person whose name appears on the list, any benefits due to him shall be forfeited to the Fund: Provided that the Management Committee may at its discretion authorise the payment of benefits in the event of a claim being made after the benefits have been forfeited to the Fund.

FINANCE

- (7) (a) The moneys accruing to the Fund shall be paid into bank or banks or building society or societies on current or deposit account, and all cheques shall be signed by such persons as the Management Committee may appoint.
 - (b) Any moneys not required to meet current payments and are therefore surplus to the Fund's requirements, or the expenses of the Fund, shall be invested in—
 - (i) savings accounts, permanent shares or fixed deposits in any registered bank or financial institution;
 - (ii) internal registered stock as contemplated in section 21 of the Exchequer Act, 1975 (Act No. 66 of 1975);
 - (iii) a registered unit trust; or
 - (iv) any other manner approved by the Registrar.
- (7A) The Management Committee shall also have the power to furnish a guarantee in respect of a loan by some other person to a member for the purpose of a housing loan.
 - (8) An accountant shall, at such times as the Management Committee in its discretion may require, conduct investigations into the Fund and a valuation of the liabilities of the Fund, and shall make recommendations for the declaration as a bonus or the creation of a reserve for additional benefits.
 - (9) The Management Committee shall, if it deems fit, declare a bonus based on the recommendations of the accountant, and any bonus so declared shall be credited to the contributors' accounts and shall be payable to such members at the time and in addition to the benefits described in clause 4 (6) of this Agreement, or shall, if it deems fit, create a financial reserve for the payment of additional benefits to members who are compelled to retire from the Industry in terms of clause 4 (6) (b). Such additional benefits shall be based on a formula to be approved by the Council and related to the period of service in the Industry of such member.
- (10) (a) The Secretary of the Management Committee shall, as soon as possible after 31 December each year, prepare statements in a suitable manner showing the position of the Fund as at that date. The statements shall be audited by a public accountant appointed by the Management Committee and shall be submitted to the Council.
 - (b) The audited consolidated statements and the auditor's report thereon shall lie for inspection at the head office of the Council and copies of them shall be sent to the Registrar of Labour Relations within three months of the close of the period covered by it.
 - (c) All expenses incurred in the administration of the Fund shall be a charge upon the Fund.

GENERAL

- (11) If an employee is transferred or promoted to an occupation the wages for which are not specified, he shall cease to contribute to the Fund and shall be entitled to the benefits of clause 4 (6) (a).
- (12) Upon the expiration of this Agreement or any extension thereof, and in the event of no subsequent agreement being negotiated for the purpose of continuing the operation of the Fund within 12 months from the expiration of this Agreement or any extension thereof, the Fund shall continue to be administered by the Management Committee and, in the event of a subsequent agreement not being negotiated within a period of 12 months from the expiration of this Agreement or any extension thereof, the Fund shall be either liquidated as though the employees in question had left the Industry, or transferred by the Council to any other Fund constituted for the same purpose as that for which the original Fund was created.

(13) In the event of the dissolution of the Council or in the event of it ceasing to function in the period during which this Agreement is binding in terms of section 32 of the Act, the Management Committee shall continue to administer the Fund, and the members of the Committee existing at the date on which the Council ceases to function or is dissolved shall be deemed to be members thereof for such purposes: Provided, however, that any vacancy occurring on the Committee may be filled by the Registrar of Labour Relations from employers or employees in the Industry, as the case may be, so as to ensure an equality of employer and employee representatives and/or alternates in the membership of the Committee.

In the event of such Committee being unable or unwilling to discharge its duties or a deadlock arising with regard to such duties which renders the administration of the Fund impracticable or undesirable in the opinion of the Director: Collective Bargaining, Department of Labour he may appoint a trustee or trustees to carry out the duties of the Committee and such trustee or trustees shall possess all the powers of the Committee for such purpose. If there is no Council in existence upon the expiration of this Agreement, the Fund shall be liquidated by the Committee or the trustees, as the case may be, in the manner set forth in clause 5.

5. LIQUIDATION

Upon liquidation of the Fund in terms of clause 4 (12), and the payment of moneys due to members in terms of that subclause, the moneys remaining to the credit of the Fund after payment of all claims against the Fund, including administration and liquidation expenses, shall be paid into the funds of the Council. If the affairs of the Council have already been wound up and its assets distributed, the balance of this Fund shall be distributed as provided for in section 59 (5) of the Act as if it formed part of the general funds of the Council.

6. AGENTS

The Council shall appoint one or more persons as Agents and, in terms of section 33 of the Act, request the Minister of Labour to appoint persons as designated Agents regarding the non-parties, to assist in giving effect to the terms of this Agreement. It shall be the duty of every employer and employee (party and non-party) to permit such Agents to enter his establishment to institute such enquiries and to examine such documents, books, wage sheets, pay envelopes and pay tickets and to interrogate such individuals as may be necessary for the purpose of ascertaining whether the provisions of this Agreement are being observed.

7. EXEMPTIONS

Applications for exemption from the Agreement or appeals against decisions of the Council regarding exemptions, shall be disposed of in terms of clause 14.4 of the Main Agreement published under Government Notice No. R. 1204 of 29 October 1999.

8. DISPUTES ABOUT THE INTERPRETATION, APPLICATION AND ENFORCEMENT OF THIS AGREEMENT

Any dispute about the interpretation, application or enforcement of this Agreement shall be referred to the Council and shall be dealt with in accordance with the provisions contained in clause 14.6 of the Main Agreement published under Government Notice No. R. 1204 of 29 October 1999.

Signed at Port Elizabeth, on behalf of the parties, on 13 July 1999.

B. DAMONS

Chairperson of the Council

J. HELLIWELL

Employer Representative

T. HEUGH

Acting Secretary of the Council

CONTENTS

No.

Page Gazette No. No.

No.

INHOUD

Bladsy Koerant No. No.

GOVERNMENT NOTICE

Labour, Department of

Government Notice

R. 1444 Labour Relations Act (66/1995): Clothing Industry, Eastern Province: Extension of Provident Fund Collective Agreement to Non-parties.....

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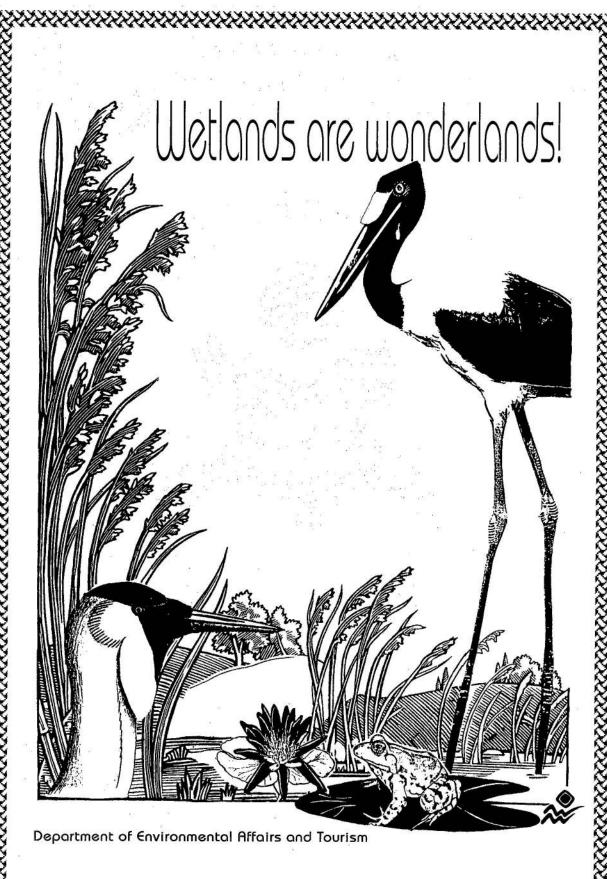
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Arbeid, Departement van

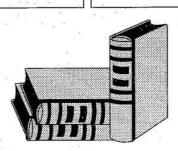
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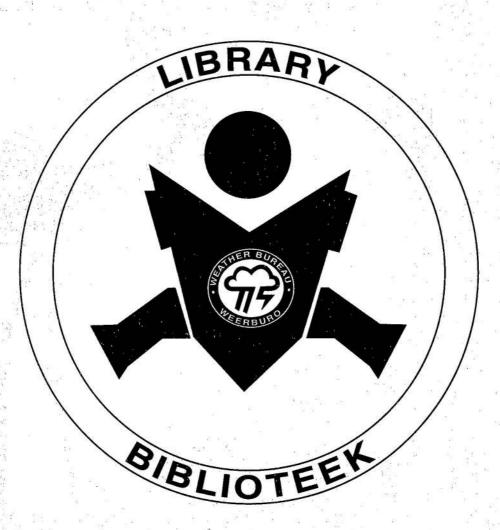
R. 1444 Wet op Abeidsverhoudinge (66/1995): Klerasienywerheid, Oostelike Provinsie: Uitbreiding van Kollektiewe Voorsorgfondsooreenkoms na Nie-partye..............

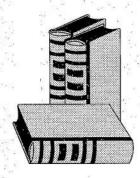
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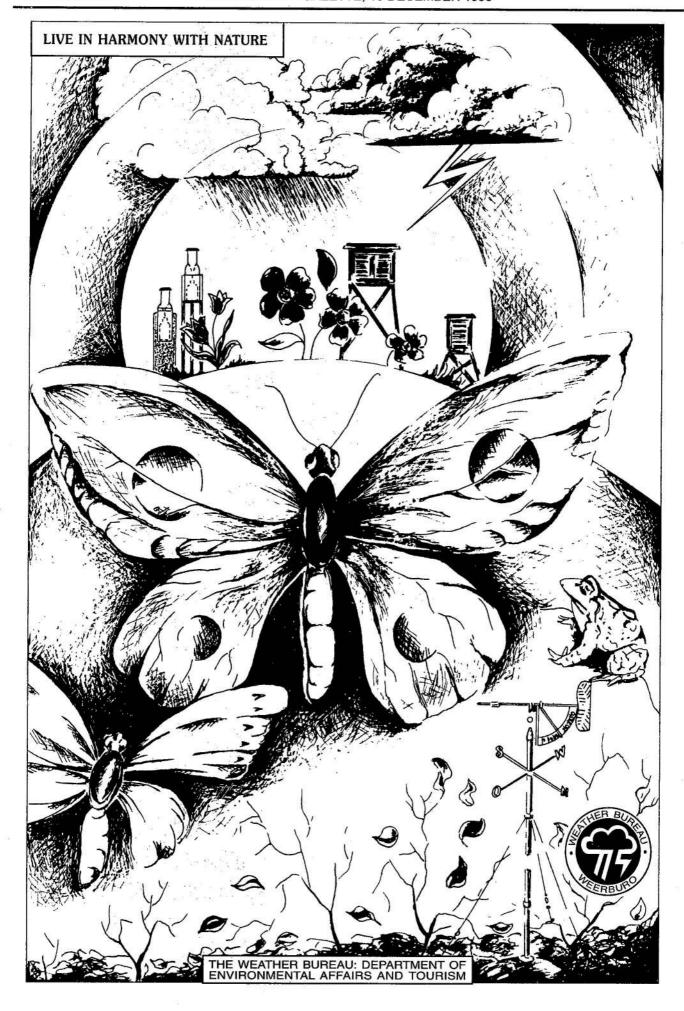






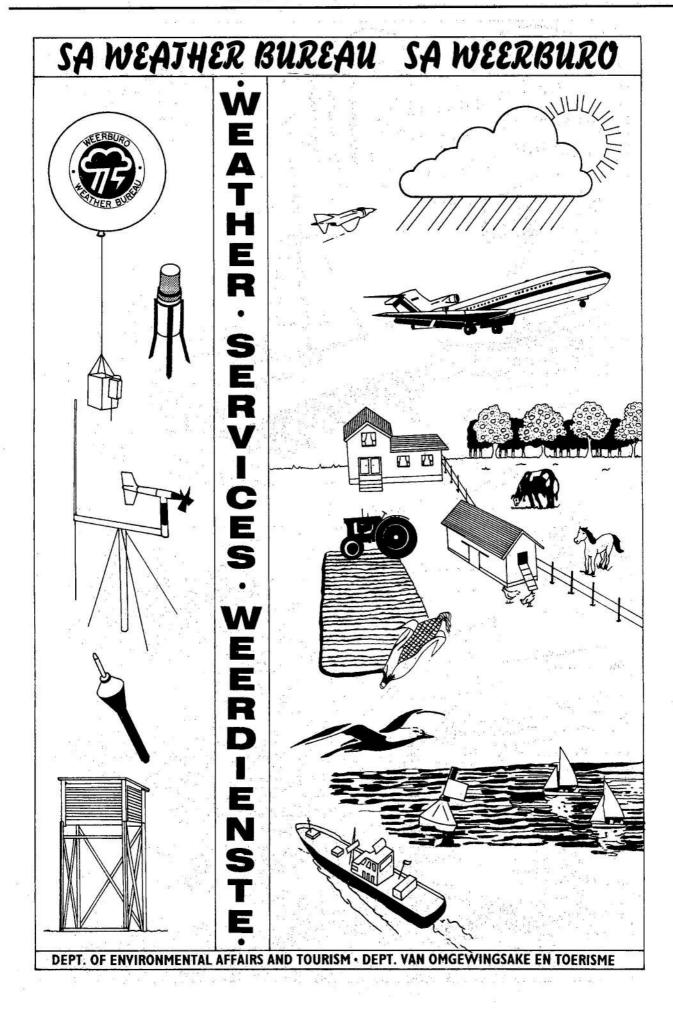
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Department of Environmental Affairs and Tourism Departement van Omgewingsake en Toerisme









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