

RESOLUTION No.1 OF 1998

AGENCY SHOP AGREEMENT

1. *Noting* that section 25 of the Labour Relations Act, No 66 of 1995 (the LRA) enables an employer and representative trade union/s to conclude an agency shop agreement;
2. The parties to the Public Service Co-ordinating Bargaining Council (the PSCBC) hereby resolve to conclude an agency shop agreement, which agreement is attached to this resolution (Schedule 1).
3. This agreement binds :-
 - (i) The employer;
 - (ii) The employees of the employer who are members of the trade union parties to this agreement; and
 - (iii) The employees of the employer who are not members of any trade union parties to this agreement, but who fall within the registered scope of the Council.
4. This agreement shall come into effect on the 1st of July 1998.

Schedule 1

AGENCY SHOP AGREEMENT

- 1) This is an *agency shop*¹ agreement for the purposes of section 25 of the LRA. The object of this agreement is to ensure that all *employees* who receive the benefits of collective bargaining contribute towards its costs.
- 2) (1) Subject to subclause (2), this agreement applies to the *employer* and all *employees*-
 - (a) employed by the State; and
 - (b) who fall within the registered scope of the *Council*.(2) This agreement does not apply to the *employer* and those *employees* covered by an *agency shop* agreement-
 - (a) concluded in a *sectoral council*; and
 - (b) approved by the *Council*.
- 3) The *employer* must-
 - (a) bring the provisions of this agreement to the attention of-
 - (i) its *employees*; and
 - (ii) all applicants for employment; and
 - (b) enable each new *employee* to meet with the *trade union* representatives of each of the *trade unions* that have members in the national department or the provincial administration, as the case may be.
- 4) The agency fee is equal to 1% of the *employee's* basic salary², to a maximum of R60 - 00.
- 5) Each month the *employer* must deduct the agency fee from the basic salary of each of its *employees* who are not members of any one of the *trade union* parties to the *Council*.
- 6) The *employer* must pay the amounts deducted for the month to the Secretary of the *Council* on or before the 14th day of each month. The payment must be accompanied by a schedule stating the date of the deduction and the total amounts deducted.
- 7) A schedule listing the names, PERSAL or PERSOL number and the amount deducted as at 31 December of each year in respect of each *employee* shall be given to the Secretary of the *Council* who shall present this Schedule at the annual general meetings of the *Council*.
- 8) The Secretary must divide the amounts received in terms of clause 6 between the *trade unions* in proportion to the number of members of each *trade union* who are members in good standing as at 31 December of the previous year. Should a *trade union* apply for membership to the *Council*, and such application is successful, the *trade union* will acquire a proportionate share of the monthly amount from the date on which it became a member of the *Council*.
- 9) The Secretary of the *Council* must deposit the amounts allocated in terms of clause 8 into the respective bank accounts contemplated in clause 10.

¹ Words that are italicized are defined in clause 18 of this agreement

² This amount has been agreed upon in terms of Section 25(3)(b) of the LRA, which is equal to, or less than the highest amount of any subscription payable by the members of any one of the *trade unions*.

- 10) Each *trade union* must open a separate bank account for the purpose of this agreement and the money in that account may be used only for the collective bargaining expenses of the *trade union*. Those expenses may include costs of dispute resolution and the training of *trade union* representatives but may not be used -
 - (a) to pay an affiliation fee to a political party;
 - (b) to make a contribution in cash or kind to a political party or a person standing for election to any political office; or
 - (c) for any expenditure that does not advance or protect the socio- economic interests of *employees*.
- 11) The *trade unions* must keep books and records of their respective bank accounts in accordance with generally accepted accounting practices, including statements of income and expenditure and the balance sheets indicating the assets, liabilities and financial standing of the account.
- 12) The bank accounts referred to in clause 10 must be audited annually, which audited accounts will be open to any party to the *Council*, or any *employee*, for inspection.
- 13) Any *employee* may apply in writing to the *Council* for an exemption from the provisions of this agreement on the grounds that the *employee* conscientiously objects to being associated with or paying contributions to secular associations.
- 14) If an exemption is granted to an *employee* who is a conscientious objector, the *employee* may request that the agency fee be paid into-
 - (a) the general account of the *Council*; or
 - (b) a fund administered by the Department of Labour.
- 15) Any exemption to this agreement must be granted by an agreement of the *Council*.
- 16) If less than 50% of the *employees* employed by the *employer* belong to the *trade unions*, the *Council* must notify the *trade unions* of this fact and give them 90 days within which they must establish that they represent the majority of the *employees*.
- 17) If the *trade unions* fail to establish that they represent the majority of the *employees* within the 90 day period, the *Council* must give 30 days notice of the termination of the agreement.
- 18) If there is a dispute about the interpretation or application of this agreement any party may refer the matter to the *Council* for resolution in terms of the dispute resolution procedure of the *Council*.
- 19) For the purpose of this agreement-
 - (a) “*agency shop*” means the compulsory deduction in terms of clause 4 and 5 of the agency fee from the basic salary of *employees* who are not members of the *trade union* parties to the *Council*;
 - (b) “*Council*” means the Public Service Co-ordinating Bargaining Council;
 - (c) “*employer*” means the State as employer;
 - (d) “*employee*” means a person-
 - (i) employed by the State; and
 - (ii) who is eligible for membership of the *trade union* parties to the *Council*;

- (e) “*LRA*” means the Labour Relations Act, No 66 of 1995;
- (f) “*sectoral council*” means a council-
- (i) established by the *Council*, or the President, in terms of section 37 of the *LRA*; or
 - (ii) deemed to be a *sectoral council* in terms of item 16 and 18 of Schedule 7 to the *LRA*;
- (g) “*trade union*” shall carry the definition as set out in the Act and shall also mean :
- (i) a trade union having organisational rights with an employer falling within the registered scope of the Council; or
 - (ii) two or more registered trade unions having organisational rights with an employer falling within the registered scope of the Council, acting together as a single party.
- (h) “*workplace*” is deemed to be the public sector as a whole including all places where *employees work*³, unless a Minister contemplated in the definition of “*workplace*” in section 213 has determined differently.

³ The Minister for Public Service and Administration must determine this meaning of the *workplace* for the purpose of section 23 and 24 of the *LRA*.

The Minister of Education will have to determine that the education sector is a single *workplace* for the purpose of section 23 and 24 of the *LRA*.

The Minister for Safety and Security will have to determine that the police sector is a single *workplace* for the purpose of section 23 and 24 of the *LRA*.