

RESOLUTION 3 OF 2023

ENFORCEMENT OF COLLECTIVE AGREEMENTS IN THE PUBLIC SERVICE

1. OBJECTIVE

To monitor and enforce the collective agreements of council in line with the provisions of section 33A of the Labour Relations Act 66 of 1995 as amended (the Act) and the constitution of Council.

2. SCOPE

This agreement binds the employer and the employees who:-

- 2.1. are employed by the State, and
- 2.2. fall within the registered scope of the Council.

3. NOTING THAT

- 3.1. Section 33 of the Act as amended, empowers the Minister of Employment and Labour at the request of a bargaining council to appoint any person as a designated agent of a bargaining council to monitor and enforce compliance with collective agreements concluded in a bargaining council;
- 3.2. Section 33A of the Act as amended, mandates a bargaining council to monitor and enforce compliance with its collective agreements;
- 3.3. Noting further that section 33A(2) of the Act states that for the purposes of this section, a collective agreement is deemed to include any basic condition of employment which in terms of section 49(1) of the Basic Conditions of Employment Act, constitutes a term of employment of any employee covered by the collective agreement and the rules of any fund or scheme established by the bargaining council; and

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- 3.4. Clause 4 of the constitution of the PSCBC empowers the Council to monitor and enforce its collective agreements and to exercise any other power or duty that may be necessary or desirable to achieve the objectives of the Council.

4. ENFORCEMENT OF A COLLECTIVE AGREEMENT

The parties to the Council agree to the following:

- 4.1. To request the Minister of Employment and Labour in line with section 33 of the Act as amended, to appoint one or more persons as designated agents in order to monitor and enforce the Council's collective agreements.
- 4.2. The designated agent may secure compliance with the Council collective agreements, publicise the contents of the collective agreements, conduct inspections, investigate complaints, issue compliance orders, and perform any other functions that are conferred or imposed on the designated agent.
- 4.3. To give effect to clause 4.2 the designated agent may:
- 4.3.1. Require the designated employee/s of a department to disclose information, either orally or in writing, and either alone or in the presence of witnesses, on a matter to which a collective agreement relates, and require that disclosure be under oath or affirmation;
 - 4.3.2. Question designated employee/s of a department about any record or document to which a collective agreement relates;
 - 4.3.3. Request a copy of any record or document or remove such to make copies or extracts, which relates to the implementation of a collective agreement;
 - 4.3.4. Require the designated employee/s of a department to produce or deliver to a place specified by the agent any record or document for inspection which relates to the implementation of a collective agreement; and
 - 4.3.5. Be accompanied by an interpreter and/or any other person that could be reasonably required to assist in conducting an inspection.

5. PROCEDURE TO ENFORCE A COLLECTIVE AGREEMENT AT THE COUNCIL

- 5.1. An employee or a trade union representing the employee may lodge a complaint to the Council by completing the relevant form.

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- 5.2. A party referring a complaint must satisfy the council that a copy of the complaint form has been served on the other party in line with the Rules for the Conduct of Proceedings before the PSCBC.
- 5.3. Upon receipt of a complaint, the Council shall assign it to an agent for investigation.
- 5.4. The agent shall finalise the investigation within 30 days from the date the complaint was received by the Council.
- 5.5. The 30-day investigation period may be extended by a further 30-days upon good cause shown to the General Secretary or his/her delegate.
- 5.6. The agent must issue an investigation report in respect of the complaint within 7 days after the conclusion of the investigation.
- 5.7. Where the investigation finds non-compliance, the General Secretary may issue a compliance order.
- 5.8. A party against whom a compliance order has been issued shall within 14 days of the date the compliance order was served, comply with the order and file proof of compliance with the Council.
- 5.9. The General Secretary or his/her delegate may at the request of the party against whom the compliance order has been issued extend the period prescribed in clause 5.8 by a further 14 days.
- 5.10. At the end of the 14 days or at the end of the extended period, the General Secretary or his/her delegate may refer an unresolved complaint concerning compliance with a collective agreement to arbitration.
- 5.11. An arbitrator conducting an arbitration concerning compliance with a collective agreement has the powers of an arbitrator in terms of Section 142 of the Act.
- 5.12. Section 138 of the Act read in context applies to an arbitration proceedings concerning compliance with a collective agreement.
- 5.13. An arbitrator may make an appropriate arbitration award, including ordering compliance, ordering a party to pay an amount owing in terms of a collective agreement, imposing a fine for failure to comply with a collective agreement, charging a party an arbitration fee, ordering a party to pay the costs of arbitration and confirming, varying or setting aside a compliance order issued or any award contemplated in section 138(9) of the Act.

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- 5.14. Any amount a party is ordered to pay in terms of clause 5.13, accrues interest from the date the amount was due and payable as per the award at the prescribed interest rate in terms of section 1 of the Prescribed Rate of Interest Act, 1975.
- 5.15. An arbitration award concerning compliance with a collective agreement is final and binding and may be enforced in terms of Section 143 of the Act.
- 5.16. If the Employer upon whom a fine has been imposed in terms of the arbitration award files an application to review and set aside an arbitration award, any obligation to pay a fine is suspended pending the outcome of the review application.
- 5.17. The Council may from time to time determine the maximum amounts that may be imposed as a fine by an arbitrator for non-compliance with collective agreements or repeated breaches of collective agreements in with the provisions of the Labour Relations Act 66 of 1995 as amended or the Basic Conditions of Employment Act 75 of 1997 as amended.

6. GENERAL

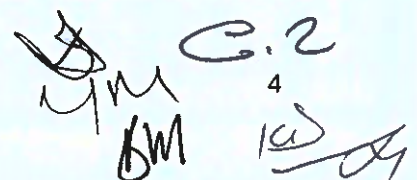
- 6.1. Rules for the Conduct of Proceedings before the Council apply when an unresolved complaint concerning compliance with a collective agreement is referred to arbitration.
- 6.2. The General Secretary may apply to the Labour Court to make an arbitration award issued in terms of this agreement an order of the Labour Court in terms of section 158(1) of the Act.
- 6.3. The provisions of this agreement stand in addition to any other legal remedy through which parties to Council may enforce collective agreements.

7. DISPUTE RESOLUTION

If there is a dispute regarding the interpretation or application of this agreement, any party may refer the matter to the Council for resolution in terms of the Council dispute resolution procedure.

8. IMPLEMENTATION OF AGREEMENT

- 8.1. This agreement shall come into effect on the date it enjoys majority support and will remain in force unless terminated or amended by agreement.
- 8.2. In the implementation, interpretation and application of this agreement, words used in the agreement and defined within the constitution of the Council will have the meaning as defined in the constitution.

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8.3. The Council will monitor the implementation of this agreement.

9. **DEFINITIONS**

9.1. **"Arbitrator"** means an arbitrator appointed by the Council in terms of paragraph 5 of the Dispute Resolution Procedure of the Council;

9.2. **"Council"** means the Public Service Co-ordinating Bargaining Council;

9.3. **"Day"** means a calendar day unless otherwise specified;

9.4. **"Designated agent"** means a person appointed in terms of section 33 of the Act;

9.5. **"Employee"** means—

9.5.1. any person, excluding an independent contractor, who works for the Employer and who receives, or is entitled to receive, any remuneration; and

9.5.2. Any other person who in any manner assists in carrying on or conducting the business of the Employer;

9.6. **"Employer"** means the State as employer falling within the registered scope of the Council;

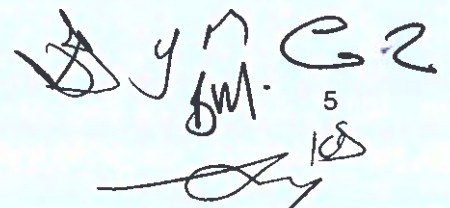
9.7. **"General Secretary"** means the General Secretary of the Council appointed in terms of clause 14.1 or any person appointed as acting General Secretary in terms of clause 14.2(1) or 19.4(e);

9.8. **"Party"** means any party to the proceedings before the Council and/or any other party authorised to appear in terms of Rules for the Conduct of Proceedings before the PSCBC; and

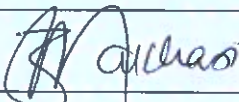
9.9. **"The Act"** means the Labour Relations Act 66 of 1995 as amended.

THIS DONE AND SIGNED AT CENTURION OF THIS 13TH DAY OF

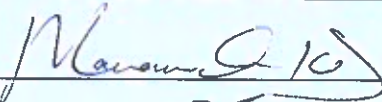



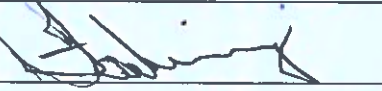
JULY 2023.

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ON BEHALF OF THE EMPLOYER

	Name	Signature
State as Employer	Y. Malchasi	

ON BEHALF OF THE TRADE UNION PARTIES

Trade Union	Name	Signature
DENOSA	K. I. Manamele	
HOSPERSA	S. D. McGLADDERY	
NAPTOSA	B. L. Manuel	
NEHAWU	C. Z. Mando	
POPCRU		
PSA	J. H. Oosthuizen	
SADTU		
SAPU		