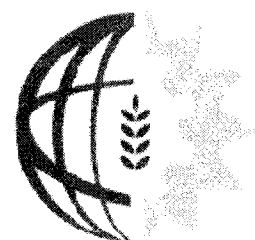


EDUCATION LABOUR RELATIONS COUNCIL

Established in terms of the LRA of 1995 as amended



elrc

EDUCATION LABOUR
RELATIONS COUNCIL

COLLECTIVE AGREEMENT

NO. 4 OF 2007

17TH JULY 2007

**IMPLEMENTATION OF THE FURTHER
EDUCATION AND TRAINING COLLEGES
ACT NUMBER 16 OF 2006**

EDUCATION LABOUR RELATIONS COUNCIL

COLLECTIVE AGREEMENT NO. 4 OF 2007

IMPLEMENTATION OF THE FURTHER EDUCATION AND TRAINING COLLEGES ACT

1. PURPOSE OF THE AGREEMENT

In the implementation of the Further Education and Training Colleges Act, 2006 this agreement identifies the process by which the employment contracts of educators currently appointed at FET institutions would be transferred from the State as employer to the council of the college.

2. SCOPE OF THIS AGREEMENT

This agreement applies to and shall bind:

- 2.1 The Department;
- 2.2 All employees of the Department, as defined in the Employment of Educators Act, 1998 (as amended) who are members of trade union parties in this agreement; and
- 2.3 All employees of the Department, as defined in the Employers of Educators Act 1998 (as amended) who are not members of the trade union parties that are signatories to this agreement but who are to be joined in this process.

3. THE PARTIES NOTE THAT:

The Act was promulgated on the 11 December 2006 under Government Gazette No. 29469.

- 3.1 A workshop which was held on 15 March 2006 agreed that there was a need for a consultative process with labour to promote the successful implementation of the Act.
- 3.2 The implementation of the Act is to be conducted in an efficient manner.

3.3 Section 197 of the Labour Relations Act No 66 of 1995 provides:

"(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 subsection (1)(a), unless otherwise agreed, all the rights and obligations between the old employer and each employee at the time of the transfer continue 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 will 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 subsection (1)(b), unless otherwise agreed, the contracts of all employees that were in existence immediately before the old employer's winding-up or sequestration 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 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 will be considered to have been done by the old employer.

(3) An agreement contemplated in subsection (2) must be concluded with the appropriate person or body referred to in section 189(1).

(4) A transfer referred to in subsection (1) does not interrupt the employee's continuity of employment. That employment continues with the new employer as if with the old employer.

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

4. OBJECTIVES OF THE CONSULTATIVE PROCESS:

- 4.1 To inform all parties of progress in the implementation of the Act.
- 4.2 To address concerns of affected parties and to remove any obstacles that may impede the implementation of the Act.
- 4.3 To reach agreement on all labour relations and human resources matters that affects the parties.
- 4.4 To ensure compliance with the Act and section 197 of the Labour Relations Act No 66 of 1995 as amended.
- 4.5 To engage in a meaningful joint consensus seeking process.

5. THE PARTIES THEREFORE AGREE AS FOLLOWS:

- 5.1 All CS educators currently employed by the State and appointed in posts at FET colleges in terms of the Employment of Educators Act 76 of 1998 shall be identified as potential transferees.

- 5.2 Such educators identified in paragraph 1 above shall have the option of having their employment contracts transferred from the State to the college.
- 5.3 Should such educators opt to retain employment with the State, the State shall endeavour to absorb such educators within the post establishment of the Department of Education either in educator or non-educator posts.
- 5.4 Should the potential transferees opt to have their employment contracts transferred to the college concerned, their terms and conditions of employment will not be reduced and they shall retain membership to the GEPF and GEMS.
- 5.5 Potential transferees may apply for a voluntary severance package should such package be offered by the State.

6. THE FACILITATION PROCESS

- 6.1 A series of meetings, facilitated by the ELRC, shall be convened to give effect to this consultation process, provided that the final meeting shall not be after 31 August 2007.
- 6.2 The facilitation process shall be as follows:
- (a) A national facilitator shall convene the facilitation under the auspices of the ELRC.
 - (b) Facilitation meetings must indicate the following:
 - (i) Information sharing
 - (ii) Determination of structures for implementation
 - (iii) Determination of obligations of each of the parties
 - (iv) Time frames for implementation
 - (c) A facilitator shall be appointed in each province/s in order to co-ordinate the transfer of employment contracts from the Provincial Departments of Education to the colleges.

7. DISPUTE RESOLUTION

- 7.1 If there is a dispute about the interpretation or application of this agreement the Council's dispute resolution procedures will apply.

10. UNDER THE AUSPICES OF THE ELRC, AS WITNESSED BY

GENERAL SECRETARY	ORGANISATION	SIGNATURE
M. Govender	ELRC	