

# The *New* Negotiator

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## **NEW DISPENSATION FOR TEACHING PROFESSION**

## **PARTIES TO ELRC REACH ANOTHER MILESTONE IN PUBLIC EDUCATION**

**By Cindy Foca and Heins Worst**

Nine months of intense deliberation, discussion and negotiations, has finally yielded results towards improving teaching and learning outcomes in public education.

Collective Agreement No 1 and 2 of 2008 on the "Framework for the Establishment of an Occupation Specific Dispensation" (OSD) for educators in the Public Education, was signed on the 3rd of April 2008.

The OSD will ensure a fair, equitable and competitive remuneration structure for identified categories of employees, which would provide for longer salary bands and substantial overlaps between salary levels to facilitate adequate salary progression to employees who choose to remain in the classroom instead of aspiring to move into supervisory or management posts.



**FROM LEFT: Mr Thulas Nxesi (CTU - SADTU), Mr Chris Klopper (CTU - SAOU), Mr Dhaya Govender (ELRC) and Mr Firoz Patel (DoE)**

With the OSD Agreement, a proper career pathing model that does not entail automatic increases but a forward looking plan to systematically increase salaries after pre-determined periods based on specific criteria such as performance, qualifications, competencies, scope of work and experience; would be put in place.

One of the areas that will be covered by the OSD will be the provision for dual career paths in terms of which professionals and specialists can progress to levels where they earn salaries that are equal to/or higher than that of managers without moving into management/supervisory posts. This would then ensure that good educators could be retained in the classroom.



When the Minister of Education signed the agreement she said "The Agreement is a milestone for public education. It sets out the parameters for quality education and incentives for improvement. Educators can now concentrate on the job at hand. There is no room for mediocrity in the teaching profession."

The OSD introduces a salary progression of 3% every two years based on "satisfactory performance" and the first payment will be made in July 2010.

Educators who perform at the level of "good" or "outstanding" will progress faster towards their maximum salary. These educators are eligible for an accelerated salary progression or adjustment of an additional 3% ("good performance") and an additional 6% ("outstanding performance") every second year. The first payment for good and outstanding performances will be made in July 2011.



**The Minister of Education, Ms Naledi Pandor (Middle), signs the OSD Collective Agreement. Left: Deputy Minister of Education, Mr Enver Surty**

The introduction of the OSD for educators would ensure that no educator would receive a salary (notch or package) that is less than what s/he received on 31 December 2007 prior to the implementation of the Agreement.

The salaries of educators will be upwardly adjusted based on the salary notches that applied on 1 July 2007 and then translated to the new OSD salary scales. The new OSD salary scales will be backdated to 1 January 2008.

A newly qualified educator entering the profession will earn R 115,276 per annum as compared to

R107, 700 per annum prior to the implementation of the OSD.



**The press conference for the signing of the agreement was held at the Kopanong Conference Centre in Benoni on the 3<sup>rd</sup> April 2008**

In ensuring the successful facilitation of the implementation of Collective Agreement 1 and 2 of 2008, Five Task Teams and a Co-ordinating Committee was established with the following terms of reference:

**Task Team 1** is charged with finalising key aspects of the agreement relating to EMS school-based and EMS office-based staff. **Task Team 2** will oversee aspects of the implementation of the Collective Agreement 1 and 2 of 2008.

**Task Team 3** will oversee aspects of the agreement relating to specialist educators; and evaluation, as well as amendments that may be required in other collective agreements.

**Task Team 4** will be required to deal with the formal recognition of experience; requirements for appointments, upgrading and promotions; and a set of miscellaneous issues relating to the above.

**Task Team 5's** mandate relates to the upskilling of educators and research.

The Coordinating Committee will drive the implementation process of Collective Agreements 1 and 2 of 2008.

The committee's mandate also relates to the planning of the study research visits and OSD for educator specialists (psychologist and therapist).

For more details on the OSD agreement, please visit our website - [www.erc.org.za](http://www.erc.org.za)

## **WAGE INCREASE FOR TEACHERS AS OF 1 JULY 2008**

**By Heins Worst**

The Minister of Public Service and Administration, Ms Gerladine Fraser-Moleketi announced in parliament on Tuesday 3 June 2008, that teachers like all other public servants will get a salary increase of 10.5% with effect from 1<sup>st</sup> July 2008. This is based on the implementation of PSCBC Collective Agreement 1 of 2007, which was signed after last year's protracted strike that closed schools and disrupted hospitals.

The prevailing wage agreement provided for an increase based on the projected CPIX for the period 1<sup>st</sup> April 2008 to 31<sup>st</sup> March 2009, plus an additional one percent real increase (CPIX+1%). The Resolution further determines that should the actual CPI-X be higher than the projected, the difference will be added to the 2009 general adjustments.

Some of the ELRC unions have responded to the announced increase as follows:

The **Suid-Afrikaanse Onderwysersunie (SAOU)** Standing Committee does not agree with the projected CPI-X as the present CPI-X for May 2008 is calculated as 10.4%, and further the PPI as 12.4%. In terms of the research of the SAOU, the projected CPI-X should be closer to an average of 12%. As a result of the fact that more than 90% of the unions in the PSCBC accepted the 10.5%, the SAOU has no other alternative but to accept it.

The **National Professional Teachers Organisation of South Africa (NAPTOSA)** says it accepts the Minister's proposed public service annual increase of 10.5%, due from the 1<sup>st</sup> July 2008. NAPTOSA President, Mr David Balt told the media that the union's position was to not dispute the 10.5% at this stage but rather appeal to Minister Naledi Pandor to have a rather accurate CPIX projection figure at the end of this year.

He further said that the salary adjustment of 10.5% was technically correct in terms of the collective agreement signed last year in the Public Service Co-ordinating Bargaining Council.

The **South African Democratic Teachers Union (SADTU)** says that the wage increase announcement was made in the legislature with no prior reference to the collective bargaining council – the PSCBC. The union added that the project rate of CPIX – 9.5% over the next year, “seriously underestimated” the rate of inflation and is unrealistic.

*The views and opinions expressed in this article do not necessarily present that of the General Secretary and/or the ELRC and is represented as was gathered from the press.*

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## **A CARING COUNCIL**

### **ELRC PARTIES ACTING JOINTLY AND AS ONE – SPEAKING OUT AGAINST XENOPHOBIC ATTACKS**



This international image of South Africa has become tarnished by recent violent attacks across the country on foreign nationals. The Education Sector condemned these xenophobic attacks and felt obliged to support actions addressing these violent attacks.

The Education Labour Relations Council (ELRC) on behalf of the seven teacher unions; CTPA, NAPTOSA, NATU, PEU, PSA, SADTU and SAOU, who all donated R10 000 each, a total of R70 000, together with the Department of Education, demonstrated their commitment by donating the money to the 'Gift of the Givers Foundation' who will administer these funds in support of those affected by these attacks.



**Mr Jeff Moshakga from the ELRC hands over the R70 000 to the Gift of the Givers Foundation on behalf of all the parties to Council**

The education sector not only acknowledges the important role foreign teachers play in rural areas in particular and the need to ensure access to education for all children, but also the role it needs to play in social integration by bringing learners of all backgrounds together. It is further envisaged that a curriculum that contains the rights afforded by the constitution plays an important role in education in order to promote diversity.



**Right: Mr Thulas Nxesi (General Secretary, SADTU) and his guest, Mr Peter Mabande (CEO, ZIMTA) from Zimbabwe on the left.**

Government has taken a firm stance and said that it condemns these attacks. It will do everything within the law to ensure safety of all citizens and foreign nationals irrespective of their status. It has set up an Inter-departmental Task Team to investigate all the possible causes of the attacks on foreign nationals and to make recommendations about actions to be taken in order to prevent the recurrence of this negative tendency.



**Right: Mr Dave Balt (President, NAPTOSA) and Left: Mr Henry Hendricks (Executive Director, NAPTOSA)**

This task team will be convened by the Department of Home Affairs and will include the Department of Education and various other state organs.



**Mr Jacob Dikobo (President, PEU)**

Education Minister, Naledi Pandor said in a statement addressed to the Ministry of Education that the values of our Constitution reflect the intentions of the Freedom Charter, that 'South Africa belongs to all who live in it'. She said that over the past few days, schools and school communities have provided humanitarian support to those whose lives have been disrupted or destroyed by the violence.

It is with the spirit of Ubuntu in mind that the role players within the education sector pledges their support for the core values of tolerance, common human understanding and the fundamental that all human beings have a right to exist in peace and harmony.



**Left Mr Siphoh Mohoto (NATU) and members of the Gift of the Givers Foundation (Middle to right)**

## ***ELRC LAUNCHES PCTA PROJECT***

By Heins Worst



**Mr M Govender (GS, ELRC) and Ms. Jeanine Collins (Labour Officer, US Embassy)**

National and international leaders in education launched the ELRC PCTA project, an innovative initiative to mitigate the impact of AIDS on the Education Sector, on the 15th April 2008 at the ELRC National Office. The press conference was addressed by Mr. Duncan Hindle, (Director General, Department of Education), Mr. Nat LaCour, (Secretary Treasurer of the American Federation of Teachers) and Ms. Jeanine Collins, the Labour Officer from the US Embassy.



**Mr. Nat LaCour, (Secretary - Treasurer of the American Federation of Teachers) addresses the conference**

The ELRC through its initiation, management and governance, guides the project implementation through performance-based grants to education sector unions SADTU, NAPTOSA, NATU, and SAOU and technical assistance is provided by the Academy for Educational Development (AED) and the American Federation of Teachers Education Foundation (AFTEF). Teacher unions PEU and CTPA will become involved in year two of the programme.



**After Mr Henry Hendricks (Executive Director, NAPTOSA) welcomed everyone to the meeting, Mr Duncan Hindle (Director General, DoE) addressed the conference**



The ELRC-PCTA II project builds on the work and valuable lessons of a pilot project (PCTA I) which aimed to combat the spread of HIV and AIDS and to mitigate the impact of HIV and AIDS among teachers, students and the wider community in KwaZulu Natal, Mpumalanga and Eastern Cape between 2005 to 2007.



**The HIV & AIDS Ambassador, Ms. Johanna Bapela addressed the conference**

The ELRC-PCTA II aims to reach all primary and secondary educators in South Africa's government schools over the next 5 years with information on HIV prevention, healthy living, HIV testing, counselling and care and access to confidential anti-retroviral treatment. Our partner, the Tshepang Trust, offers testing, counselling and treatment services to educators and their families.



**After Ms Nomfundo Mkhulisi (Vice President Gender, SADTU) addressed the conference obo of Mr Thulas Nxesi (SADTU), Mr Kobus Pieterse (Executive Officer, SAOU) chaired the questions and answers session.**

The PCTA project is based on the findings of the research we reported in 2004, conducted by the Human Science Research Council, and supports the South African National AIDS Strategic Plan.

We would also like to extend a **Special Thanks** to **Ms Pat Keefer** for her immense efforts in the planning, launch and implementation of the

project. Without her, the project would never have been possible. **THANK YOU – YOU ARE A STAR!!**



**Ms Maggie Mogale hands over a token of gratitude to Ms Pat Keefer**

We also acknowledge and appreciate the support received from the U.S. government's President's Emergency Plan for AIDS Relief [PEPFAR] through the Centre for Disease Control and Prevention.

We thank our sponsor to the event, **PriceWaterhouseCoopers** for their contributions in making the launch a huge success. Once again you have proved your commitment in ensuring quality public education for all.

**SPONSORED BY:**



**TEMPORARY EDUCATORS IN MPUMALANGA GET A REPRIEVE**

**By Nomsa Madonsela**

After months of protracted negotiations that saw both the employer and the employee parties tabling draft collective



agreements that sought to permanently appoint contract educators, the parties to the Mpumalanga provincial chamber finally concluded collective agreement 1 of 2008, on the permanent appointment of temporary educators in vacant substantive posts, in a special meeting that was held on the 9<sup>th</sup> of May 2008 at the ELRC offices in Nelspruit.

The province currently employs about 3 757 educators who are currently employed on closed temporary contracts. The implementation of the collective agreement is expected to convert the status of about 3 250 educators to permanent. This will go a long way in reducing the number of contract educators, promoting labour peace and enhancing the provision of quality public education in the province.

The parties to the chamber have once more demonstrated their continued commitment to labour peace and the provision of quality public education in the province.



From Left: Ms Etrisiar Raubenheimer (CTU-SAOU), Mr Solwako Mahlangu (CTU-SADTU), Mr Mlandu Mnguni (CTU-SADTU) and Mr AW Kutumela (DoE).

## **A PROMISING MOMENT FOR THE EASTERN CAPE CHAMBER**

By Nosisa Siwendu

After years of a stalemate that has been characteristic of the Eastern Cape



Chamber, Parties to the Chamber (*ECDoE, Top Management, and their counterparts - Teacher Unions' Provincial Leadership*) went through a rigorous three- day session with the sole objective: reflect on what best should be done to bring life to the Provincial Chamber.

It has been common knowledge to all those involved that the Eastern Cape Chamber had become dysfunctional for some time, owing to strained relations between Employer and Employee Parties. This had to a greater extent, compromised the ability of the Chamber to deliver on its constitutional mandate.

The Relationship Building by Objective Exercise (**RBO**) as the process is commonly referred to, has culminated in a series of activities / tasks to be carried out monitored by a Task Team comprised of Parties' representatives. To these "Tasks", the Head of the Eastern Cape Department has been allocated an oversight function. All Parties seemed very committed to see the process being a success in ensuring that Chamber functions and its performance improves.

Of note is the fact that the cornerstone to the process yet to unfold lies in the "What is to be done, by whom and when?" The strength of the process hinges on the extent to which all role players (*Office of the HOD ECDoE, Mandatory Structures, Parties' representatives to the Chamber and PELRC Staff*) honour and discharge responsibilities assigned to each in terms of the RBO decisions.

The event may be seen as one of the major milestones in the life of the Provincial Chamber.

A word of gratitude goes to the ELRC General Secretary, the CFO, and Senior Manager: Negotiations, for support rendered in the period building up the RBO. The said support is equally appreciated in advance as arduous work still lies ahead in view of the commitment Parties have shown in nurturing the rediscovery of the importance of investing in building good working relations. Central to this is the extent to which Parties realise the importance of managing points of difference between themselves.

This has given hope of a new dawn for the EC-PELRC.

## **LEGAL FRAMEWORK FOR PPN CONSULTATION PROCESS BETWEEN THE MEC, HOD AND EDUCATOR UNIONS**

**By Leon Pillay (former Provincial Secretary  
KZN – Currently Partime CCMA Commissioner  
and General Secretary, SCPNPI)**

*This is a discussion article intended to contribute to the PPN consultation process that occurs in provinces between the HOD and the MEC for Education on the one hand, and the Educator Unions, School Governing Bodies etc on the other.*



### **Definition of Consultation**

Whilst the LRA does not define the term 'consultation' in s 213, jurisprudence in terms of section 189 of the LRA together with the 2002 amendments describe it as a **joint, meaningful, consensus-seeking exercise now a definition in 4.3 of ELRC DRP annexure B.**

This means that the consultation is a **collaborative effort by both the employer and the unions.** The objectives of the parties are not divergent and as a result consensus is possible. The provision of classrooms, educators, learning materials, etc., is inextricably linked, as educators, without classrooms or learner support material, would undoubtedly be frustrated. A balance in the distribution of funds for the various needs in education is a common object shared by all parties.

**Meaningful consultation** can occur only if all the parties have all the necessary information prior to the consultation. The information to be provided would be all the statistics, reports, surveys, budgets, etc. that is used by the employer to justify and support its proposal. Other parties must therefore have the same information in order to make alternative proposals, comments, etc.

Meaningful consultation would imply that the proposals, comments and input by the unions must be seriously considered by the employer. Should unions make submissions in writing to the

employer, such submissions should receive written response detailing the extent to which alternatives proposed by unions would be acceptable or unacceptable. The employer must be able to objectively justify its decision especially if such decisions adversely affect the employees.

**Consensus-seeking** suggests that parties are enjoined to seriously consider the other party's proposal and to identify as many aspects of such a proposal that could be accommodated. Such an attempt must be structured and deliberate.

Section 3 of the Code of Good Practice on Dismissal Based on Operational Requirements states that the 'purpose of consultation is to enable the parties, in the form of a joint problem-solving exercise, to strive for consensus, if that is possible.' The same section also states that 'the employer, should in all good faith keep an open mind throughout and seriously, consider the proposals put forward.'

Whilst it is trite that an agreement is not a precondition for the process to continue, the LRA has significantly extended the meaning of consultation well beyond its dictionary definition, i.e. 'to seek advice or information from.'

**The relevant legislative prescripts and guidelines. (The full text of the relevant sections cited is contained in the resource packs)**

### **Employment of Educators Act, 76 of 1998**

Section 5(1) (b)

- post establishment - creation by the MEC  
Section 5(2)

- post distribution by the Head of  
Department

### **Regulation, in terms of the National Education Policy Act 27 of 1996, on National Policy Regarding Instructional Time for School Subjects.**

*G.N. 1473 of 1999 as published in Government Gazette (GG) No. 20692 dated 10 December 1999*

The post establishment must ensure that sufficient educators are available for the provision of the full curriculum in each of the phases in each school.

### How does this impact on post provisioning?

Whilst larger schools may have sufficient educators to ensure that all learning areas and subjects within each of the learning areas are accommodated, small secondary schools that qualify for few educators may find that, unless educators are adequately qualified in many subjects and learning areas, the full curriculum cannot be offered or may be offered by educators not appropriately qualified in all of the disciplines.

Additional educators may therefore be required either in a shared or full-time capacity.

Such statistics are necessary to determine the magnitude of the problem and its impact on service delivery in the classroom.

### **Regulation, in terms of the South African Schools Act, 84 of 1996, on the National Norms and Standards for School Funding.**

*G.N. 2362 of 1998 as published in GG No. 19347 dated 12 October 1998. Sections 24 to 44 impact directly of post provisioning.*

The ratios indicated below are the result of research both locally and internationally.

S 26 sets the optimum ratio for **personnel: non-personnel funding at 80%: 20%**.

S 27 sets the target for 2005, in terms of above ratio, **at 85%: 15%**

S 29 indicates that personnel costs must be further separated into **teaching personnel costs and non-teaching personnel costs**. The targeted ratio must be **85%: 15%**.

S 30 requires the Provinces, with the assistance of the National Department, to use databases to track the number and location of personnel engaged in teaching and non-teaching activities in order to plan towards achieving the **85%: 15%** as indicated above in section 29.

S 35 contemplates **non-teaching support staff at institutions**, especially for those historically disadvantaged institutions, to ensure administrative efficiency. No norms have been prescribed.

S 39-44 implores provinces to target expenditure for **redress, equity and quality**. This incorporates both redressing the infra-structural backlogs and the curriculum transformation backlogs. The survey on the 'Schools Register of Needs' is essentially based on the infra-structural backlogs. Allocation of additional posts for curriculum transformation however, must be linked to the capacity of the institution, in terms of infra-structure, equipment, etc, to offer 'new' programmes to transform the curriculum.

### **Regulation, in terms of the Employment of Educators Act 76 of 1998, on the Creation of Educator Posts in a Provincial Department of Education and the Distribution of Such Posts to the Educational Institutions of such a Department**

*G.N. 1676 of 1998 as published in Government Gazette (GG) No. 19627 dated 18 December 1998 and as amended by G.N. 1451 of 2002 as published in GG No. 24077 dated 15 November 2002*

1(c) (ii)

#### **(aa) The budget of the provincial department of education.**

The budget caters for all the needs of the department, including but not limited to post provisioning, learning material, new schools, training, nutrition programme, infra-structure backlogs, etc.

Whilst it is obvious that the all needs cannot be addressed within a single year, the various needs must be determined and a management plan developed for

- the incremental eradication of backlogs that may exist and
- the achievement of the respective optimums

This would require targets to be set and achieved on an annual basis and that progress is made in meeting the constitutional obligations of the state regarding the provision of education.

Whilst the various needs may be addressed to differing degrees within a single year, the allocation of funds must be balanced and justifiable and must be based on the areas of priority and the various regulatory prescripts as identified above.

**(bb) The effect that the post establishment would have on the employment security of educators**

Should there be sufficient funds to maintain or improve on the number of posts created, all serving educators to whom the department has an obligation, would generally be assured of continued employment within the post establishment.

It is accepted that fluctuations in learner numbers, curriculum changes, change in grading, etc. at institutions, may necessitate movement of educators to other institutions to accommodate changes. Such movement of educators shall occur within the context of section 6(3) (a), section 2.4 of Chapter B of PAM (Personnel Administration Measures) and the relevant collective agreements reached within the ELRC that address such matters.

Within the above context, employment security of educators must be addressed.

**(cc) Need for redress in the implementation and promotion of curriculum policy in keeping with the basic values and principles set out in section 195 of the constitution**

This has been discussed to a limited extent above, under the National Education Policy Act and the South African Schools Act.

Further to the above, it is accepted that schools that do not offer Mathematics, Science and Technology, etc. must, as a matter of urgency, introduce such subjects in their curriculum.

An investigation/survey on the curriculum offered by the various institutions must be conducted and the needs quantified so that adequate provision can be made in order to

address such needs. Such a survey, together with the infra-structural capacity of the school to offer such subjects must precede the allocation of additional posts to such institutions; e.g. it would be futile to allocate an additional educator for computer studies whilst the school has no electricity or computers. (This excludes additional posts in terms of poverty redress)

The need for curriculum transformation posts cannot be over-emphasized. In order to introduce a subject at school, the introduction must occur at a lower level and each year the class progresses to the next level and a new class starts at the introductory level. Since it is the learner numbers within a subject/learning area that justifies the number of educators required for that subject/learning area, the learner numbers for the 'new' subject would be sufficient to justify an educator only after a few years (approximately 3+). It is therefore necessary, in the initial years, to provide the school with an additional post in order to transform the curriculum.

It is also necessary to monitor curriculum transformation posts to ensure that they are used for the purpose intended and not to retain another educator who may be in surplus or to decrease the workload of other educators.

**(dd) Division of expenditure between personnel and non-personnel costs has been discussed above.**

**(ee) Division of expenditure between educator and non-educator personnel costs has been discussed above.**

The South African Schools Act, as discussed above, distinguishes between teaching personnel and non-teaching personnel whilst in this section there is a distinction between educator and non-educator personnel. Personnel classified as educators are not necessarily classroom-based practitioners. Many occupy office-based posts. It would be necessary to cost such posts separately as they are certainly non-teaching personnel and would need to be considered as a part of 15% in the 85% : 15% ratio referred to above, i.e. for teaching personnel : non-teaching personnel costs.



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