
**RESOLUTIONS 2 TO 5 WITH REGARD TO THE ADOPTION OF A
CONSTITUTION FOR THE EDUCATION LABOUR RELATIONS
COUNCIL IN TERMS OF SECTION 9(1) OF THE EDUCATION
LABOUR RELATIONS ACT 146 OF 1993, AND MATTERS
INCIDENTAL THERETO**

RESOLUTION 2.

RESOLVED THAT:

1. The draft constitution annexed hereto as Annexure "A" be adopted as the constitution of the Education Labour Relations Council in terms of Section 9(1) of the Education Labour Relations Act 146 of 1993.
2. The secretary be instructed to make this constitution available to the Minister and all parties to the Council in terms of Section 9(3) of the said Act.

ANNEXURE A TO RESOLUTION 2

CONSTITUTION OF THE EDUCATION LABOUR RELATIONS COUNCIL

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1. Name and juristic personality and limitation of liability

- (1) The name of the council is the "Education Labour Relations Council".
- (2) The council is a juristic person.
- (3) Unless otherwise provided by this constitution, no employer organisation or employee organisation shall, by reason only of the fact that it is a party to the council, be liable for any of the obligations of the council.

2. Definitions

- (1) Unless the context indicates otherwise -
 - (a) "Act" means the Education Labour Relations Act, 1993 (Act 146 of 1993);
 - (b) "chamber" means a chamber of the council established in terms of clause 12 of this constitution, and section 9(1)(j) of the Act;
 - (c) "employee organisation" means an organisation who is a juristic person and whose membership consists mainly of employees, and includes a federation of employee organizations registered in terms of section 11 of the Act which is a party to the council;
 - (d) "employer" means any person, including the State, who employs or provides work for any employee, and who is a member of a party to the council;

- (e) "employer organisation" means an organisation who is a juristic person and whose membership consists mainly of employers, and includes a federation of employers organizations and the State, registered in terms of section 11 of the Act and who is a party to the council;
- (f) "party" means an employers' organisation, or employee organisation which is a party to the council;
- (g) "representative" means a person appointed as a representative of a party in terms of clause 7;
- (h) "State" means any department of State responsible for education;

(2) Unless the context indicates otherwise -

- (a) words used in this constitution shall have the same meaning as in the Act;
- (b) words in the singular shall include the plural; and
- (c) references to the male gender shall include the female gender and vice versa.

3. Constitutional scope

- (1) The constitutional scope of the council shall include the whole of the activities of employers and employees and the functions and activities of the council provided for in the Act and this constitution.

- (2) The contents of this constitution shall be supplementary to vested rights and legitimate expectations in terms of any other applicable law, convention or practice.

4. Objectives of the council.

The objectives of the council shall be within its constitutional scope, -

- (a) to maintain and promote labour peace in education;
- (b) to prevent and resolve labour disputes in education;
- (c) to provide mechanisms for the resolution of disputes between employers and employees and between employer organizations and employee organizations;
- (d) to provide for and to regulate collective bargaining;
- (e) to negotiate, to bargain collectively and to consult on matters of mutual interest and issues which affect or may affect the relationship between parties to the council or their members;
- (f) to consider matters of mutual interest between the parties or their members in accordance with the provisions of the Act and this constitution and to prevent and resolve disputes;
- (g) to conclude, supervise, enforce and administer agreements between the parties or their members;
- (h) to consider and deal with any other matters that may be of interest to the parties; and

- (i) to comply with its duties and functions in terms of the Act and this constitution.

5. Powers of the council

In addition to the powers conferred in terms of the Act, the council shall have the powers -

- (a) to conclude contracts and perform other juristic acts;
- (b) to mortgage, pledge or otherwise encumber any of its movable or immovable property;
- (c) to borrow, lend and invest money;
- (d) to take part in any form of consultation litigation, arbitration or other dispute resolution proceedings;
- (e) to establish a pension fund, provident fund, medical scheme and any other funds or schemes; and
- (f) to exercise any other power that may be necessary or desirable to achieve the objectives of the council.

6. Parties to the council

- (1) The founding parties to Council shall comprise those employer organisations and employee organisations as defined in the Act that -

- (a) attended the founding meeting; and

- (b) are signatories to this constitution; and
- (c) register in terms of section 11(2) of this Act.

(2) Application for admission of further parties to the council shall be made in writing in accordance with form A and shall be considered and decided upon at a meeting of the council according to the following criteria:

- (a) an applicant must be registered in accordance with the provisions of the Act;
- (b) the applicant must be sufficiently representative. In deciding whether an employer organisation or an employee organisation is sufficiently representative, the following factors must also be taken into account:
 - (i) the total number of employers or employees; or
 - (ii) the particular interest group and/or the total number of employers or employees that the organisation represents; or
 - (iii) the provincial distribution of (i) and (ii) above; or
 - (iv) the fundamental rights entrenched in section 5 of the Act; or
 - (v) the probable influence of the presence or absence of such applicant on effective, legitimate and representative negotiations

- (3) No further employer organisation or employee organisation shall be admitted as a party to the council, unless the parties to the council have agreed thereto in terms of clause 10: Provided that in the event of a dispute concerning whether a party should be admitted to the Council or not, the dispute shall be referred to arbitration in terms of clause 15 and the decision of the arbitrator shall substitute the decision of the Council and shall be final and binding: Provided further that the provisions of sub-clause 6(2) shall constitute the only terms of reference of the arbitrator.
- (4) The participation of a federation, association or other grouping of employer or employee organisations in the Council shall not preclude the participation or admission of individual employer organizations or employee organizations who are members of or affiliated to that federation, association or grouping in the Council: Provided that a party may vote only once as such or within as part of a federation, association or other grouping of employer or employee organization: Provided further that such party shall, at the request of the chairman, indicate before each vote, whether it is going to vote as an individual organization or through and as part of a federation of which it is a member organization.
- (5) (a) The membership of a party to the Council shall be terminated by the Council in accordance with section 10(4) of the Act.
- (b) The termination of the membership of a party to the council shall be effective from a date 90 days after the receipt of a written notice contemplated in section 10(4)(b) of the Act, of such termination by the council or a party as the case may be.

- (6) The secretary shall keep a record of all relevant information with regard to applications for admission to the council as well as current and past admitted employer and employee parties.

7. Appointment of representatives and substitutes

- (1) (a) The employer parties to the council shall be represented by such persons as such parties may from time to time appoint, subject to a maximum of one representative for each representative of an employee party to the council: Provided that an employer party shall be entitled to have a number of observers equal to its number of representatives, attend all meetings of the Council or its chambers at his own expense.

- (b) The employee parties to the council shall be represented by a minimum of one and a maximum of three representatives per 10 000 paid-up members or part thereof, each: Provided that an employee party shall be entitled to have a number of observers equal to the number of his representatives, attend all meetings of the council or its chambers at its own expense.

- (2) Attendance at any meeting of the council shall not require that all of the representatives of a party to the Council be present at any time nor that an equal number of representatives of the employer and employee parties be present at any time.

- (3) A party may appoint an alternate for each representative.

- (4) A party may at any time withdraw any of its representatives or alternates by written notice to the secretary.

- (5) In the event of a withdrawal in terms of sub- clause (4) such party shall as soon as possible, but not later than the next meeting of the Council, appoint a new representative or alternate, as the case may be.
- (6) A representative or alternate may resign by giving written notice to the secretary and the party who appointed him.
- (7) In the event of a resignation in terms of sub- clause (6), a new representative or alternate, as the case may be, shall be appointed as soon as possible, but not later than the next meeting.
- (8) Should a vacancy arise in the council as a result of the withdrawal, resignation, death or disqualification of a representative or an alternate, the vacancy shall be filled by the party who previously appointed the relevant representative or substitute.
- (9) Should a party's participation in the council be terminated, its representatives shall vacate their seats.
- (10) Parties to the Council may co-opt persons to give expert advice, assistance or evidence to the Council on matters being discussed in the Council or a chamber: Provided that-
 - (a) where reasonably possible, the secretary be given reasonable notice of such co-option, together with an indication of the matter on the agenda for which the co-option is intended;
 - (b) an employee organization or an employer or employer organization shall not be allowed to co-opt more than one

person at a time to address, advise or assist the Council on a specific matter; and

- (c) the person co-opted only be allowed to attend the proceedings when the specific matter for which he is being co-opted, is being discussed.

8. Chairman and vice-chairmen

- (1) The outgoing chairman shall preside over the annual general meeting of the council and shall call for nominations for a new chairman for the forthcoming term of office (when applicable) at the conclusion of such meeting.
- (2) A person other than a representative or alternate of the parties who has consented to his nomination may also be nominated as chairman.
- (3) A person to be nominated shall be duly proposed and seconded.
- (4) The person receiving the highest percentage of the total votes, shall be declared the duly elected chairman: Provided that in the event of a deadlock the secretary shall draw lots in accordance with sub-clause (13), to determine the duly elected chairman.
- (5) The chairman shall hold office for a term of 24 months unless removed by a decision of the council. The chairman so removed or any past chairman may be re-elected.
- (6) The provisions of sub-clauses (1) to (5) shall mutatis mutandis apply in respect of the election of two vice-chairmen of the council: Provided that one shall be elected by the employer

parties and the other by the employee parties: Provided further that the vice-chairmen shall be elected from the duly appointed representatives of the parties to the Council.

- (7) The chairman shall preside over all meetings of the council.
- (8) The chairman shall -
 - (a) preside over and enforce order at all meetings at which he is present in accordance with normal meeting procedure;
 - (b) sign the minutes of a meeting after confirmation;
 - (c) endorse accounts for payment and financial statements after approval by the council; and
 - (d) perform such other duties as by usage and custom pertain to the office of chairman.
- (9) Whenever the chairman is not available, the vice-chairman nominated by him shall be acting chairman and shall exercise the powers and perform the functions and duties of the chairman.
- (10) Whenever the chairman or the nominated vice- chairman is not available or unable to perform their duties, the second vice-chairman shall exercise the powers and perform the duties of the chairman, and if the chairman and the two vice-chairmen are absent from or unable to act at a meeting, the representatives present shall elect from their number someone to act as chairman at that meeting.

- (11) The chairman or the vice-chairmen, shall not be entitled to vote on any matter: Provided that if any of the vice-chairmen have not been replaced by another representative of that party to the Council, such vice-chairmen shall be entitled to vote on any matter and the same applies to a representative elected to act as chairman in the absence of the chairman or the vice-chairmen.
- (12) The term of office of a chairman or vice-chairman may be terminated by written notice of either such chairman or vice-chairman, or the council consequent to a resolution to that effect.
- (13) (a) Should an equal number of votes be cast for two or more candidates, the secretary shall, in the presence of the meeting, write the name of each candidate on a separate piece of paper and place such papers in a suitable container and shall draw one of the papers from the container.
- (b) The candidate whose name is so drawn shall be deemed to have been duly elected.
- (14) The council shall from time to time determine a honorarium payable to the chairman of the council provided that, should it become necessary or desirable to retain the services of the chairman on a full time basis, the council shall determine the salary and other conditions of employment of the chairman by agreement.

9. Officials

- (1) The council shall appoint a secretary.
- (2) The secretary shall -

- (a) attend the meetings of the council and record the minutes of the meetings;
 - (b) keep books of account in accordance with general accepted accounting practice and the instructions of the council;
 - (c) conduct all correspondence of the council;
 - (d) keep originals of letters received and copies of those despatched;
 - (e) bank all monies received on behalf of the council within 3 working days of receipt thereof;
 - (f) submit statements of the financial position of the council whenever required to do so by the council;
 - (g) countersign cheques on the council's banking account;
 - (h) perform such other duties and functions as the council may from time to time direct.
 - (i) keep a register of all employer and employee organizations registered in terms of section 11(5) of the Act, which must be made available for scrutiny upon request; and
 - (j) determine the voting percentages of member organizations as well as the quorum for each meeting.
- (3) the secretary shall keep in safe custody at the offices of the council

- (a) a copy of the approved minutes of every meeting of the council, duly signed by the chairman who presided at such meeting;
- (b) the statements referred to in clause 16(7) and all records in relation thereto; and
- (c) the current and all past constitutions of the council.

- (4) The secretary may appoint such other officials or personnel as he may deem necessary, with the prior approval of the council.
- (5) The terms and conditions of employment of officials and personnel shall be determined by the council.
- (6) The duties of the secretary may be exercised by any of the other appointed officials or personnel of the council acting under the directions of the secretary.

10. Meetings, resolutions and agreements of the council

- (1) The council shall meet at least four times per year, at such venue, date and time as may be determined by the chairman provided that one such meeting shall be the annual general meeting.
- (2) The council shall hold its annual general meeting during the month of ~~October~~ ^{March} of each year.
- (3) The following matters shall be dealt with at the annual general meeting:
 - (a) the election of a chairman and vice-chairmen should it be necessary;

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- (b) the appointment of a secretary should it be necessary;
 - (c) the appointment of auditors, should it be necessary;
 - (d) the financial statements¹⁹⁰ of the previous financial year;
which financial year will run from 1 Jan to 31 Dec;
 - (e) the report of the auditor in respect of the financial statements referred to in (d);
 - (f) the annual report of the Council;
 - (g) the determination by agreement between the parties of a panel of arbitrators and mediators for purposes of clauses 13 and 15 of the constitution;
 - (h) the approval of the budget;
 - (i) the levies to be imposed on the parties.
- (4) In addition the council shall meet at a date and venue to be determined by the chairman within 30 days, at the written request, setting out the reasons for such request, of any party to the council based on reasonable grounds, unless a meeting has already been scheduled to take place within 30 days as from date of such request and the urgency of the matter does not warrant such meeting.
- (5) Written notice of a meeting called in terms of sub-clause (1), (2) or (4), showing the business to be transacted, shall be given to the representatives by the secretary at least 14 days before the date of such meeting, unless this period cannot be accommo-

dated within the period of 30 days required by sub-clause (4), in which case reasonable notice shall be given.

- (6) the chairman may authorise shorter notice of a meeting should all the parties consent to such shorter notice.
- (7) It shall be deemed that due notice had been given to a party, if notice of the meeting was given by -
 - (a) effecting personal service of the notice on any representative of the party concerned;
 - (b) the posting of a registered letter containing the notice to the party at his office;
 - (c) telefaxing the notice to the office of the party provided that the telefax receipt shows that the notice has been transmitted to and received by the addressee.
- (8) A quorum of a meeting of the council shall be at least one of the employee parties and at least one of the employer parties: Provided that -
 - (a) proper notice in terms of sub-clause (7) has been given to all of the parties; and
 - (b) if, within 60 minutes of the time fixed for any meeting, only one party on either side is present, the meeting shall not commence until the sixty minutes have elapsed.
- (9) If, within a further 60 minutes after the 60 minutes referred in sub-clause (8) (b), of the time fixed for any meeting a quorum is not

present, the meeting shall stand adjourned to the same day in the week following, or in the event of such date being a public holiday, to the next working day, at the same time and place, and at such adjourned meeting, the parties present shall form a quorum; provided that notice of the adjourned meeting in the manner prescribed in sub-clause (7), shall again be given to all parties to the council.

- (10) Should any employer party be absent at any meeting, the voting power of such party shall be exercised pro rata by the employer parties present. Should an employee party be absent the above shall apply mutatis mutandis.
- (11) Unless it has been circulated beforehand, the minutes of the meeting held immediately prior to the relevant meeting, shall be read at the meeting by the secretary and shall be signed by the chairman immediately after confirmation thereof.
- (12) The chairman shall require that a proposal be submitted in writing and shall be read by him as a prerequisite to any debate or decision in respect thereof.
- (13) No proposal shall be considered unless it has been properly seconded.
- (14) The voting shall be by show of hands unless a party requests a ballot in which event the voting shall be by way of a secret ballot.
- (15) The secretary shall act as an electoral officer.
- (16) The parties having the right to vote at the meeting shall decide any procedural matters that are not regulated in this constitution.

- (17) A person who is not a representative may be allowed to address the council at the request of a party and with the concurrence of the Council.
- (18) Every meeting of the council shall be conducted in private unless the council otherwise decides.
- (19) The minutes of a meeting shall be forwarded by the secretary to all parties within a period of 20 days after a meeting.
- (20) No decisions taken at a meeting of the council shall be invalidated by the absence of any representatives of parties if notice in the manner prescribed in sub-clause (7), has been properly served on such party.
- (21) A resolution of the council shall -
- (a) be reduced to writing in the minutes;
 - (b) be taken by a simple majority vote provided that a simple majority shall be required amongst employer parties as well as amongst employee parties; and
 - (c) constitute an agreement between the parties to the council regardless of the fact that a party or parties may have voted against such resolution.
- (22) (a) All parties shall be entitled to vote.
- (b) The weight of the vote cast by any party shall be calculated in terms of the following formulae:

(i) Employee party formula:

$$\frac{x}{y} \times 100\% = \text{vote weight as a percentage of the total votes to which employee-parties are jointly entitled.}$$

Where x = the number of paid-up members of the relevant party less:

50 % of members who are members of one other employee party.

66,67% of members who are members of two other employee parties.

75% of members who are members of three other employee parties.

80% of members who are members of four other employee parties, etc.

Where y = the sum total of the calculated x factors for all employee parties.

(ii) For the purposes of the period from the date of the adoption of this constitution, until the date on which the secretary next determines paid-up membership in terms of sub-clause (22) (e) the values of the X- and Y-factors in sub-clause (22) (b) (i) shall be those communicated by the employee parties to the secretary on the date on which this constitution is adopted.

(iii) Employer party formula:

The number of votes of the employer parties shall be divided between them by agreement between them.

(c) For the purposes of this sub-clause (22), "paid-up member" shall mean a member as defined in the Act who:

- (i) is an employee; and
- (ii) is compelled by the Constitution of the employee organization of which he is a member, to make a monthly monetary contribution to such employee organization of a minimum amount as determined by the council from time to time, and does so by means of a stop order or other auditable method of payment.

"(d) for the purpose of this sub-clause (22), paid-up membership of parties shall be audited annually by the auditors officially appointed by the Council and each party shall submit its certified and audited records of their paid-up members, compiled by its own officially appointed auditors, to the secretary by not later than 31 January of each year, and for the purposes of such employee organisation audit, shall run concurrent with the financial year of the Council as referred to in sub-clause (3)(d) above; provided further that the certified membership audit shall also reflect the provincial membership of such employee organisation represented in each province."

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the paid-up membership thus determined shall be used to calculate the weight of the vote cast by any

party in terms of the above formulae until the next annual general meeting.

- (ii) Should an agreement between the employee parties as contemplated in (i) above require the secretary to perform specific administrative tasks in respect of an election by individual employees who are members of one or more employee parties as to which party should represent them in the council, the secretary shall perform such specific administrative tasks and the council shall pay all costs incidental thereto from its expenditure budget.
- (iii) For the purposes of (i) and (ii) above, a motion passed amongst the employee parties to the council shall constitute an agreement.
- (f) Any party aggrieved by the determination of the secretary in terms of sub-paragraph (e) shall be entitled to refer such determination to arbitration in terms of clause 15 of this constitution.
- (g) A party who is a federation, association or other grouping of employee organizations shall, for purposes of this sub-clause (22) be deemed to have as paid-up members, the total of paid-up members of the employee organizations comprising such federation, association of, or other grouping of employee organizations who have indicated in terms of clause 6(4) that they wish to vote within and as part of such federation, association of or other grouping of employee organizations.

- (23) Proceedings of the council shall be conducted in any of the official languages of the RSA; provided that the secretary shall at the prior request of any party employ the services of a translator.

11. Committees of the council

- (1) The council may from time to time establish committees in terms of section 9(1)(k) of the Act and may subject to such conditions as it may determine, delegate any of its functions to any such committee.
- (2) The council may establish an executive committee.
- (3) An executive committee established in terms of sub-clause (2), shall perform the following functions:
- (a) the management of the daily affairs of the council between meetings; and
 - (b) any other function delegated to the committee by the council.
- (4) The members of the executive committee shall consist wholly of representatives of parties to the council or their alternates.
- (5) Any committee established in terms of this clause, shall consist of equal numbers of representatives of employee and employer parties and shall elect its own chairman and vice-chairman and for this purpose the provisions of clause 8 shall apply mutatis mutandis.

12. Chambers

(1) (a) The council shall have provincial chambers functioning in every province established in terms of section 124 of the Constitution of the Republic of South Africa, 1993, where an executive education department or a provincial government is an employer: Provided that the Council itself shall operate as the national chamber.

res 1/96 "(b) ~~The chairman or Secretary of the Council shall not be~~ an interim chairman for such a chamber shall be appointed ^{founding} by the Council at the meeting where the decision is made to establish such a chamber. *of the provincial chamber.*

(c) (i) A secretary shall be appointed by the secretary of the council for each chamber established by the council

res 1/9 "(ii) The secretary of a provincial chamber shall arrange a founding meeting of a provincial chamber of the ELRC in a province at any time provided at least 30 days notice of such founding meeting shall be given to all parties of the council; provided further that where such secretary has not been appointed in terms of clause 12(1)(c)(i) the secretary of the ELRC shall perform such function."

(u) (i) Any party admitted to the council may attend the meeting of a chamber: Provided that such a party is sufficiently represented in that province.

(ii) Parties present at the first meeting of the chamber shall be parties to that chamber: Provided that such parties must be members of the council.

res 1/96 "(iii) If a provincial chamber was established in a province prior to the adoption of Resolution 1 of 1996, and the secretary of such chamber *chamber*

period of ninety days after 16 September 1994, such period of ninety days shall be waived and such provincial chamber shall be deemed to be duly and constitutionally established."

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(2) Any party may be admitted as a party to a chamber upon application for admission in writing, provided that such party is sufficiently representative within that province.

(3) The application for admission shall be considered and decided upon at a meeting of the relevant chamber with due regard being had to:

(i) the total number of employers or employees within such province; or

(ii) the particular interest group and/or the total number of employers or employees that the party represents; or

(iii) the provincial distribution of (i) and (ii) above; or

(iv) the fundamental rights entrenched in section 5 of the act; or

(v) the influence of the presence or absence of such applicant on effective legitimate and representative negotiations.

(4) Only parties to a chamber may appoint representatives to that particular chamber: Provided that in the event of a dispute concerning whether or not a party should be admitted to a relevant provincial chamber or not, the dispute shall be referred to arbitration in terms of clause 15 and the decision of the arbitrator shall substitute the decision of the chamber and shall be final and binding: Provided further that the provisions of sub-clause 12(3) shall constitute the only terms of reference of the arbitrator

- (5) (a) A decision of a chamber at provincial level, shall apply only to the parties to that chamber and shall apply only in the relevant province.
 - (b) In order to determine whether or not a matter should be dealt with by a chamber at provincial level, the secretary shall make a decision based on the following criteria:
 - (i) matters concerning this Constitution, shall be matters dealt with by the Council; and
 - (ii) matters that apply to employees represented in one chamber only, shall be dealt with by that chamber.
 - (c) No agreement concluded by a chamber in respect of any matter shall be less favourable than those provided for in an agreement of the Council.
 - (d) Matters pertaining to the contribution of the national fiscus to the remuneration, compensation and service benefits of employees represented in more than one of the provincial chambers, shall be dealt with by the Council.
 - (e) In the event of a dispute concerning whether a matter shall be dealt with by a provincial chamber or the Council, the dispute shall be referred to arbitration in terms of clause 15 and the decision of the arbitrator shall substitute the decision of the secretary and shall be final and binding.
- (6) The provisions of clause 10 shall apply mutatis mutandis to meetings, resolutions and agreements of a chamber; provided that:

(a) resolutions of a chamber shall not be subject to resolutions of the council; and

(b) the weight of the vote cast by any party within a chamber shall be calculated in terms of the following formulae:

(i) employee party formula:

$$\frac{x}{y} \times 100\% = \text{vote weight as a percentage of the total votes to which employee parties to the chamber are jointly entitled}$$

Where x = the number of paid-up members of the relevant party employed within the provincial boundaries of the region less:

50 % of members who are members of one other employee party.

66,67% of members who are members of two other employee parties.

75% of members who are members of three other employee parties.

80% of members who are members of four other employee parties.

etc.

Where y = the sum total of the calculated x factors for all employee parties within the provincial boundaries of the region

(ii) For the purposes of the period from the date of the adoption of this constitution, until the date on which the secretary next determines paid-up membership in terms of clause 10 (22) (e) the values of the X- and Y-factors in sub-clause (6) (b) (i) shall be those communicated by the employee parties to the secretary on the date on which this constitution is adopted.

(iii) Employer party formula:

The number of votes of the employer parties shall be divided between them by agreement between them.

(c) For the purposes of this sub-clause (6) paid-up member shall have the same meaning as in clause 10(22)(c).

(d) A party who is a federation, association or other grouping of employee organization shall, for purposes of this sub-clause (6)(d) be deemed to have as paid-up members; the total of paid-up members of the employee organizations comprising such federation, association of, or other grouping of employee organizations who have indicated in terms of clause 6(4) that they wish to vote within and as part of such federation, association of or other grouping of employee organization.

(7) A resolution of any committee or chamber may at any time be set aside or varied by the council, provided that a resolution of a chamber may only be set aside or varied by a unanimous decision of the council.

- (8) A resolution or settlement of a chamber shall be regarded as a resolution or settlement of the council within such region until set aside or varied in terms of sub-clause (7), or by the relevant chamber itself.
- (9) A chamber shall meet on such dates and at such venues as the chamber may determine, provided that at least four meetings shall be held every year.
- (10) Reports on the activities of each chamber of the council shall be submitted to the council not later than 30 days before the annual meeting, for inclusion in its annual report.

13. Dispute procedures with regard to unfair labour practices

- (1) Should a dispute arise between any of the parties, the procedures set out in subsections (2) or (3) may apply.
- (2) The following procedure may be followed in the case of a dispute between

- an employee member or any member of such employee member; and
- an employer member

concerning any suspension or termination of employment, retrenchment, any refusal of re-employment or any disciplinary action taken by an employer member:

- (a) The aggrieved party or its member, may declare a dispute by written notification to the secretary and the other party concerned.
- (b) The secretary shall refer the dispute to arbitration and shall forthwith after consultation with the parties appoint an arbitrator who is available, from the panel of arbitrators agreed to by the council.
- (c) The arbitrator shall commence with the arbitration within 21 days as from the date upon which the secretary has been notified of the dispute, and, subject to this constitution, the arbitration shall be conducted in terms of the Arbitration Act, 1965 (Act 42 of 1965).
- (d) The arbitrator shall determine the procedure to be followed at the arbitration, including the manner in which evidence shall be led, and regulate any other matter incidental thereto in a manner he believes fair, reasonable and expedient in the circumstances.
- (e) The arbitrator shall have the power to determine the dispute and make any award that he considers appropriate in the circumstances including but not limited to reinstatement with compensation, with or without retrospective effect, and any award with regard to the costs of the arbitration: Provided that in determining the dispute the arbitrator shall also take into account the specific education environment.
- (f) An award made by an arbitrator in terms of this sub-clause (2), shall be binding on the parties to such arbitration from the date on which the award was made until such time as

it is replaced by a final adjudication by the Industrial Court or the Labour Appeal Court in terms of section 18 of the Act: Provided that should neither of the parties apply to the Industrial Court for a determination in terms of section 18 of the Act within a period of 30 days from the date on which the award is made by the arbitrator, the arbitration award shall become final and binding on the parties and neither party shall be entitled to apply for a determination by the Industrial Court in terms of section 18 of the Act after the expiry of the said period of thirty days from the date of the arbitrator's award.

- (3) Unless otherwise agreed to in writing, the following procedure shall be followed in the case of a dispute concerning an alleged unfair labour practice other than a suspension or termination of employment, retrenchment, refusal of re-employment or disciplinary action:
- (a) An aggrieved party shall within 180 days as from the date of the alleged unfair labour practice refer the dispute in writing to the secretary and the other party to the dispute, which referral shall set out adequate particulars of the alleged unfair labour practice provided that the 180 day period may be extended by the council on good cause shown.
 - (b) The secretary shall within 7 days from the referral arrange a meeting of the parties to the dispute committee.
 - (c) The dispute committee shall attempt to settle the dispute within 7 days as from their first meeting.

- (d) Should the dispute committee wish to employ the services of a mediator, the secretary shall after consultation with the parties, appoint a mediator who is available from the panel of mediators, to mediate in the dispute.
 - (e) The mediator shall commence with the mediation within 14 days as from the date of the first meeting of the dispute committee.
 - (f) Should the above steps fail to settle the dispute within 30 days of the referral of the dispute to the council the council would be deemed to have failed to settle the dispute and any party may refer the dispute for determination in terms of section 18 of the Act.
 - (g) The dispute committee shall comprise no more than 6 members appointed by the parties to the dispute, provided that if there are more than two employee members to the dispute, the number of committee members shall be increased by two additional members for every additional employee member.
 - (h) One half of the members of the dispute committee shall be appointed by the employer members who are parties to the dispute and the other half by the employee members who are parties to the dispute.
- (4) If a dispute contemplated in section 18(1) of the Act has been referred to the Council, and at least one of the parties to the said dispute is not a party to the Council, the procedure contained in clause 13(3)(a) to (h) shall apply mutatis mutandis.

14. Negotiation procedures on matters of mutual interest

- (1) Should any party wish to initiate negotiations for the amendment of an existing agreement or the conclusion of a new agreement, whether at national or regional level, such party shall submit its proposals to the secretary in writing.

- (2) (a) The secretary shall immediately transmit the proposal to all interested parties and shall take all necessary steps to ensure that the first negotiation meeting be held within 30 days of receipt of the proposals.

(b) The parties shall consider the proposals, assess the nature thereof and thereafter determine whether the matter is a matter of mutual interest as defined in the Act.

- (3) Where a party makes a counter proposal in response to an initial proposal, such counter proposal shall be made available to all parties by the secretary at least 7 days before the first negotiating meeting.

- (4) At the conclusion of each negotiation meeting the parties may decide on the date on which the next negotiating meeting is to be held and agree on such further documentation as may be required.

- (5) Where one or more parties to the council decides that further negotiations will not secure an agreement, the party or parties may advise the council that they are in dispute in which event, unless such parties specifically agree to the contrary, the secretary shall, within 7 days appoint a mediator who is available, from the panel of mediators agreed to by the council to mediate in the

dispute: Provided that such dispute shall not preclude the remaining parties from concluding an agreement: Provided further that, although such agreement shall be binding on a party or parties in dispute, the existence of such agreement shall not preclude the latter parties from pursuing the dispute or disputes as set out in this constitution or the Act and such ~~and~~ agreement shall be deemed not to be an agreement for the purposes of section 15(1)(a) of the Act, in respect of the latter parties.

- (6) The mediator shall commence with mediation within 7 days from his appointment, in terms of the following procedure:
- (a) The mediator shall conduct a thorough investigation into the dispute, and for the purposes of this investigation, the mediator shall hear argument and/or evidence on behalf of all the parties to the dispute.
 - (b) After hearing argument and/or evidence, the mediator shall:
 - (i) make a finding on any disputes of fact; and
 - (ii) ~~st~~ express a view as to what, in his opinion, would constitute the most equitable settlement of the disputes before him.
 - (c) The mediator shall only disclose his finding on the disputes of fact and his opinion as to what would constitute the most equitable settlement to either of the parties on the date on which it is deemed that the dispute is incapable of settlement by the council referred to in (7) below.

- (d) This finding merely expresses an opinion and will not be regarded as an award on the dispute which is the subject of the mediation.
- (7) Should the above steps fail to settle the dispute within 30 days of the declaration of a dispute the council would be deemed to have failed to settle the dispute and any party may take such further lawful action as it deems fit.
- (8) The parties in dispute may agree to fact finding or bilateral negotiations during the periods referred to above.

15. Arbitration on certain matters

- (1) Should any dispute arise between any parties to the council in respect of -
 - (a) the interpretation of this constitution;
 - (b) the implementation of this constitution;
 - (c) representation or vote of a party in the council or a chamber;it shall be and is hereby referred to arbitration in terms of this clause at the instance of any party to the dispute.
- (2) The arbitrator shall be a person who is willing and able to perform his duties in terms of this constitution and shall be
 - (a) agreed upon between the parties, or failing such agreement;

(b) appointed by the secretary from a panel of arbitrators agreed upon by the parties at the annual general meeting for such purpose.

(3) (a) The arbitrator shall commence with the arbitration within 14 days as from the date upon which the secretary has been notified of the dispute, and, subject to this constitution, the arbitration shall be conducted in terms of the Arbitration Act, 1965 (Act 42 of 1965).

(b) The arbitrator shall determine the procedure to be followed at the arbitration, including the manner in which evidence shall be led, and regulate any other matter incidental thereto in a manner he believes fair, reasonable and expedient in the circumstances.

(c) The arbitrator shall have the power to determine the dispute and make such an award as he considers appropriate in the circumstances including but not limited to reinstatement with compensation, with or without retrospective effect, and any award with regard to the costs of the arbitration.

(d) The arbitrator shall make an award within 14 days of the commencement of the arbitration.

(e) The parties shall have the right to legal representation at any dispute or arbitration in terms of this constitution.

16. Financial matters of the council

(1) The budget of the council shall be met from a fund which shall be raised by agreement between the parties determined annually, and any donations or other assets received: Provided that in

principle all employers' organizations and employees as defined shall contribute to the said fund.

- (2) All monies received on behalf of the council shall be deposited to the credit of the council with a registered bank appointed by the council, provided that any surplus funds that are not required for the purpose referred to in subclause (3), may be invested on such terms and conditions as the council may determine and subject to any applicable law.
- (3) The fund shall be applied to the payment of expenses arising from the administration of the affairs of the council and to the promotion and development of sound labour relations in education and the furtherance of the objectives of the council.
- (4) All disbursements to be made from the funds of the council shall be budgeted for and in that form be approved by the council and shall be paid by cheque.
- (5) Funds required for a petty cash account shall -
 - (a) be kept safely in such a manner as the council may determine from time to time;
 - (b) be provided by the drawing of a cheque; and
 - (c) not exceed the limit determined by the council.
- (6) The secretary shall prepare and submit statements of the income and expenditure that reflect the financial position of the council.

- (7) The secretary shall prior to the annual general meeting of each year in respect of the previous financial year prepare the financial statements of the council in accordance with accepted accounting practice.
- (8) The financial year of the council shall be from 1 April of a particular year to the last day of March of the following year.
- (9) These statements shall -
 - (a) be countersigned by the chairman;
 - (b) be submitted for audit to a chartered accountant appointed by the council.
- (10) Certified copies of the audited statements and of the auditor's report thereon, shall be made available for inspection at the office of the council to the parties who shall be entitled to make copies of both the statements and of the auditor's report.
- (11) All the statements as well as the auditor's report shall be included in the annual report of the council in terms of section 8(5)(a) of the Act.

17. Amendment of constitution

- (1) The constitution may be amended by way of a resolution of the council.
- (2) No amendment shall be considered unless at least 30 days prior notice of the proposed amendment has been given to the secretary.

- (3) Such notice shall be transmitted to all representatives at least two weeks prior to the meeting at which it is to be considered, provided that the council may at any time amend the constitution on the unanimous vote of all the representatives of the parties to the council without the required notice being given.

18. Interpretation

Any dispute concerning the interpretation of the constitution, shall be resolved by the unanimous vote of the council and failing such vote, shall be referred to arbitration in terms of clause 15.

19. Dissolution and winding-up

- (1) The council may be dissolved at any time by its own resolution to that effect upon any party giving one month's notice in writing to the secretary and all other parties.
- (2) Upon such dissolution or at any time if for any reason the council is unable to continue to function, it shall be wound-up and the following provisions shall apply to such winding-up:
 - (a) The chairman of the council or, if he is not available, the available representatives to the council, shall forthwith transmit to the minister a statement signed by him (or them) setting forth the resolution adopted or the reason for the council's inability to continue to function, as the case may be, and the available parties to the council shall appoint a liquidator to carry out the winding-up.

- (b) The liquidator shall not be a representative on the council and shall be paid such fees as may be agreed upon between himself and the available parties to the council.
- (c) Should the parties fail to agree upon the fees to be paid, the minister will determine the basis upon which payment shall be made to the liquidator.
- (d) The appointment of the liquidator shall be subject to confirmation by the minister before he assumes his duty.
- (e) The liquidator so appointed shall call upon the last appointed secretary to deliver to him the books of accounts showing the assets and liabilities and also to hand over to him any unexpended funds of the council.
- (f) The liquidator shall take the necessary steps to liquidate the debts of the council from its unexpended funds and any other monies realised from any assets of the council. If the said funds and monies are insufficient to pay all creditors after the trustee's fees and expenses of winding-up have been met, the order in which creditors shall be paid, subject to the provisions of subclause (h) shall be the same as that prescribed in any law applicable at the time relating to the distribution of the assets of an insolvent estate and the liquidator's fees and expenses of winding-up shall rank in order of preference as though he was a trustee of an insolvent estate and as though expenses were the costs of sequestration of an insolvent estate.
- (g) After the payment of all debts in accordance with subclause (f), the remaining funds if any shall be dealt with by the

liquidator in accordance with the applicable provisions prescribed in any law at the time relating to the distribution of the assets of an insolvent estate.

(h) For the purpose of this clause the liabilities of the parties to the council shall be limited to their unpaid liabilities to the council as at the date on which the resolution for winding-up was passed or the date as from which the council was unable to continue to function.

(i) Upon the completion of the dissolution or winding-up of the council, all records of the council shall be forwarded to the Minister.

(j) This clause does not preclude the liquidation of the council in terms of any applicable law.

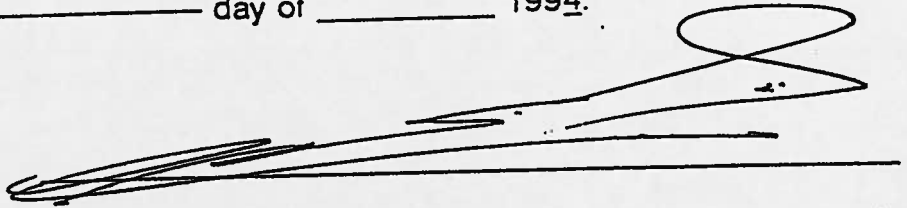
20. Duty to bargain

A party shall not fail or refuse to bargain in good faith on matters of mutual interest with an employer or employee party within the council or any relevant chamber thereof.

21. Seat of the Council

The Council shall be situated in Pretoria.

Signed at _____ on behalf of the
employer parties and the employee parties, all signatories being duly authorised
thereto, on the _____ day of _____ 1994.



Employer

Organised Teaching Profession

Employer parties to the council

Employee parties to the council

Jacogate
.....
Cape Province Parents' Association

[Signature]
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Association of Education Officers in the RSA

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.....
Department of Education and Culture (House of Assembly)

.....
Association of Education Specialists

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Department of Education and Culture (House of Delegates)

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Cape African Teachers' Union

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Department of Education and Culture (House of Representatives)

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Cape Teachers' Professional Association

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Department of National Education

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CEEA

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Department of Education and Training

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National Professional Teachers' Organization of South Africa

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Die Federasie van Ouerverenigings in Suid-Afrika

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Natale Onderwysersunie

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Federation of Parents' Association of South Africa

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Natal African Teachers' Union

André Kayman
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Natal Teachers' Society

M.T. van Loggerenberg
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OVS Onderwysersvereniging

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Parents' Association of Natal

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Orange Free State African Teachers' Association

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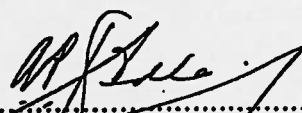
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Teachers' Federal Council


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Transvaal Association of Teachers

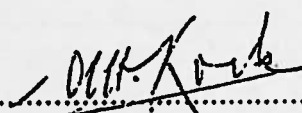
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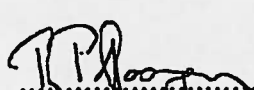
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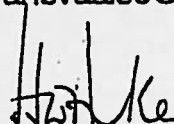
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South African Democratic Teachers'
Union

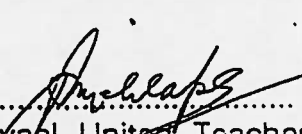

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Society of Natal Teachers



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Transvaal Teachers' Association


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Transvaal United Teachers' Asso-
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Union of Democratic Educators


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Union of Teachers Associations of
South Africa

59.

André Spang

Vereniging van Ondersteunende
Opvoeders

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