

**EDUCATION LABOUR RELATIONS COUNCIL**  
*Established in terms of the LRA of 1995 as amended*



**elrc**

EDUCATION LABOUR  
RELATIONS COUNCIL

**COLLECTIVE AGREEMENT  
NO. 5 OF 2007**

**31<sup>st</sup> AUGUST 2007**

**FURTHER AGREEMENT ON THE TRANSFER OF  
EMPLOYEES FROM THE DEPARTMENT OF  
EDUCATION TO INDIVIDUAL FET COLLEGES**

*W.M.M.*

## EDUCATION LABOUR RELATIONS COUNCIL

### COLLECTIVE AGREEMENT NO 5 OF 2007

#### FURTHER AGREEMENT ON THE TRANSFER OF EMPLOYEES FROM THE DEPARTMENT OF EDUCATION TO INDIVIDUAL FET COLLEGES

##### **PREAMBLE**

*In terms of Section 29 of the Constitution of the Republic of South Africa, Act 108 of 1996, everyone has a constitutional right to have access to education.*

*The legislature has enacted the Further Education and Training Act No 98 of 1998 (**the FET Act**); the General and Further Education and Training Quality Assurance Act No 58 of 2001; and the Further Education and Training Colleges Act, No 16 of 2006 (**the FETC Act**) in order to promote the transformation of education in accordance with its constitutional obligations.*

*The parties concluded Collective Agreement number 4 of 2007 in the ELRC to promote the effective, efficient and fair implementation of the FETC Act.*

*The commencement of the FETC Act will have the effect of transferring the responsibility of governance and management of FET services to the College and the Principal of the College. The FETC Act further envisages the transfer of employees from the State to the Colleges.*

*Section 20 read together with section 54 of the FETC Act enjoins the Minister, the MECs and the HOD's in effecting the transfer of the FET function, and consequently the employees, from the Old Employer (departments of education) to the New Employer (Colleges) and to ensure that there are no disruptions or interference with the rights of the beneficiaries.*

*The parties recognise the importance of ensuring the smooth transfer of the services from the Old Employer to the New Employer and, as such, provide an undertaking that the transfer shall be free of disruption and that the employees are guaranteed continuity of employment (no break in service) with the Colleges.*

*This agreement is further to and supplements Collective Agreement No 4 of 2007 and should be read together with the provisions of the Labour Relations Act No 66 of 1995 as amended (the LRA) and with particular reference to Section 197.*

## 1. PURPOSE OF THE AGREEMENT

The purpose of this agreement is -

- 1.1 To ensure that the transfer of employees from the Old Employer to the New Employer in terms of section 20 and section 54 of the FETC Act, read with section 197 of the LRA, is conducted without disruption to the management and lecturing functions of the FET College;
- 1.2 To ensure the adequate protection of the rights of the transferred employees;
- 1.3 To ensure the smooth transfer of employees from the employ of the Old employer to the New employer;
- 1.4 To transfer employees in accordance with the provisions of section 197 of the LRA, the FETC Act and ELRC Collective Agreement 4 of 2007;
- 1.5 To finalise consultation with all relevant parties;
- 1.6 To give effect to the rights of the individual educators; and
- 1.7 To manage the process with the diligence and sensitivity it requires.
- 1.8 To develop a procedure for the absorption of employees who elect to remain with the Old Employer.

## 2. SCOPE OF THIS AGREEMENT

This Agreement binds –

- 2.1 The Old Employer;
- 2.2 The New Employer;
- 2.3 The Trade Unions who fall within the registered scope of the Council;
- 2.4 All employees of the Old Employer , as defined and appointed in terms of the Employment of Educators Act, 1998 (as amended) who are members of trade union parties in this agreement;
- 2.5 All employees of the Old Employer , as defined and appointed in terms of the Employment 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; and

- 2.6 All employees of the Old Employer , as defined and appointed in terms of the Employment of Educators Act 1998 (as amended) who are members of the trade union parties that are not signatories to this agreement but who are to be joined in this process.
- 2.7 This agreement is extended to all Employees of the Old Employer, as defined and appointed in terms of the Employment of Educators Act 1998 (as amended) and who are currently employed under a fixed term contract and who's services will continue after 31 December 2007.

### 3. AGREEMENT

Having regard to what has been stated above, the parties agree, as set out hereunder, to effect the transfer of the employees as defined in terms of the Employment of Educators Act and who perform the managerial and lecturing functions, from the Old Employer to the New Employer in terms of the FETC Act and with specific regard to section 197 of the LRA.

**Now therefore** the Parties agree as follows –

#### 3.1 PRINCIPLES

- a) Such transfer and absorption of employees shall be carried out in a fair, equitable and transparent manner;
- b) The transfer and absorption of employees shall be subject to this agreement.

#### 3.2 TRANSFER OF EMPLOYEES

- a) The transfer shall not interrupt an employee's continuity of employment.
- b) All the rights and obligations between the Old Employer and the employee continue to be in force as if they had been rights and obligations between the New Employer and the employee.
- c) All transferring employees will enjoy all rights and protections afforded in this agreement;

- d) All employees who are transferred to the new employer shall be given an opportunity for Professional Development and re-skilling within the first 12 months of the transfer.
- e) The procedure in respect of employees who elect to be transferred to the New Employer shall be:
  - I. All affected employees must exercise their choice by 30<sup>th</sup> September 2007;
  - II. Transferring employees must sign the standardised contracts of employment between themselves and the New Employer by 31<sup>st</sup> October 2007.
  - III. The effective date for transferring of employees from the Old to the New Employer would be 1<sup>st</sup> January 2008.

### 3.3 MEMBERSHIP OF GOVERNMENT EMPLOYEES PENSION FUND

- a) All transferring employees may continue as members of the Government Employees Pension Fund and will be subject to the provisions of the Government Employees Pension Fund Act, 1996 and the Rules of the Government Employees Pension Fund.
- b) The transferring employees will continue to receive the same subsidy and benefits as all other public servants who are members of the Government Employees Pension Fund.

### 3.4 MEMBERSHIP OF GOVERNMENT EMPLOYEES MEDICAL AID SCHEME

- a) All transferring employees may continue as members of the Government Employees Medical Aid Scheme and will be subject to the provisions of the Rules of the Scheme, the laws and policy of such medical aid scheme, regulations promulgated thereunder and any amendments thereto; and
- b) The transferring employees will continue to receive the same subsidy and benefits as all other public servants who are members of the Government Employees Medical Aid Scheme.

### 3.5 MEMBERSHIP OF MEDICAL AID SCHEME

The transferring employees will, subject to section 197 of the LRA, continue to receive the benefit to an employer subsidy of contributions to any Medical Aid Scheme and will be subject to the provisions of the laws and policy of such medical aid scheme.

### 3.6 HOUSING ALLOWANCE

- a) All transferring employees, who have a housing allowance, shall continue to enjoy such housing allowance when transferred to the New Employer; and
- b) The transferring employees will continue to receive the same allowance and benefits as all other public servants.

### 3.7 CAPPED LEAVE

- a) The Old Employer shall audit, verify and calculate the capped leave due to each transferring employee, as at the date of transfer (1<sup>st</sup> January 2008);
- b) The Old Employer shall make available the information mentioned in paragraph (a) above to each transferring employee by 15th December 2007;
- c) The Old Employer shall make such payment to each transferring employee by 15th December 2008;
- d) The amount owing to each transferring employee shall earn interest from the 1st of January 2008 at the same rate as the rate prescribed from time to time in terms of Section 2 of the Prescribed Rate of Interest Act, 1975; and
- e) The Old Employer shall pay educators cash in lieu of their capped leave days. The payment shall be calculated as follows:

$$\frac{(A - B) + (C - D) + F}{261} \times E$$

Where

A = Educator's pro rata leave entitlement in respect of the previous leave cycle

B = Leave taken in the previous leave cycle

C = Pro rata leave entitlement in the current leave cycle

D = Leave taken in the current leave cycle

E = Educator's annual basic or pensionable salary as at the last day of duty at the end of the 6 months period.

F = Accrued leave credits retained in terms of applicable leave measure, less all leave taken from these accrued leave credits since 31<sup>st</sup> December 2001 in respect of institution-based educators.

### 3.8 DISCIPLINARY HEARINGS

Any disciplinary steps instituted or being considered against a transferring employee will be dealt with in terms of the prevailing provisions of the LRA and applicable collective agreements.

### 3.9 ORGANISATIONAL RIGHTS

- a) All the organisational rights between the respective Trade Unions and the Old Employer as at the date of transfer shall transfer to the New Employer and the respective Trade Unions;
- b) All parties to this agreement confirm that the ELRC shall create a bargaining unit for the FET sector, within the ELRC, and shall accordingly make provision for such to take effect from 1<sup>st</sup> January 2008;
- c) All parties to this agreement confirm that the ELRC shall be the bargaining and dispute resolution forum as envisaged in the LRA; and
- d) All organisational rights remain until such time that new organisational rights are negotiated in the FET bargaining unit of the ELRC.

### 3.10 PAYMENT OF SALARY AND BENEFITS

The payment of salaries and benefits of those employees transferring to the New Employer shall be paid by the Old Employer until such time that the New Employer has capacity to do so.

### 3.11 LIABILITY FOR ACCRUED EMPLOYEE BENEFITS

- a) The Old Employer agrees to compile a valuation of accrued benefits and payments as at the date of transfer in respect of transferring employees. A valuation of the Old Employer's liability in respect of the following benefits and payments will be transferred to the New Employer:
  - i. Accrued leave;
  - ii. Sick leave;
  - iii. Service bonus;

- iv. Long Service Awards;
  - v. Severance pay;
  - vi. Outstanding payments e.g. merit awards, overtime and any other benefits and allowances;
  - vii. Post Retirement Medical Assistance liability;
  - viii. Outstanding Payments related to Performance Measurements; and
  - ix. Any other terms and conditions of employment, inclusive of collective agreements reached in the PSCBC and the ERLC.
- b) Accrued benefits for the purposes of capped leave that have been paid must be paid back to the Old Employer by the transferred employee upon termination of service initiated by such employee through, *inter alia*, resignation or abscondment. This provision shall apply to all transferred employees for a period of 12 months from the effective date of transfer.
  - c) The Old Employer will be liable for any consequences including claims and damages associated with and arising from pending disciplinary matters, grievances and disputes which arose prior the date of transfer;
  - d) The Old and New Employers agree to the liabilities and payment thereof, should any employee become entitled to receive such payment. The liabilities may be apportioned where necessary.
  - e) With respect to any consequences including claims and damages associated with disciplinary matters, grievances and disputes related to or associated with the transfer process, the Old and New Employers will be jointly and severally liable for a period of 12 months from the effective date of transfer,

### 3.12 FUNDING ARRANGEMENTS - Guiding Principles

- a) The Old Employer agrees to ensure that adequate provision is made for all financial obligations arising during and from the transfer of employees.
- b) The Old Employer agrees to make the appropriate funds available for all future liabilities related to the transfer in respect of its responsibilities.
- c) A thorough analysis of the current and medium term budgets of the Old Employer will be done to ensure that funds are available to cover current and future obligations.



### 3.13 PROCEDURE IN RESPECT OF OTHER EMPLOYEES

- a) The procedure in respect of employees who elect to remain with the Old Employer shall be:
- I. The Old Employer shall publish a list of possible vacancies by 7<sup>th</sup> September 2007;
  - II. All affected employees must exercise their choice by 30<sup>th</sup> September 2007;
  - III. During the month of October 2007, the Old Employer shall, based on the requirements of the posts and in terms of experience, profile and qualifications of the employee, match and possibly place employees against these vacancies;
  - IV. Employees electing to remain with the Old Employer and who are not covered by the matching and placement process have to apply for posts as advertised in a closed vacancy list that would be published by the Provincial Education Department during the last quarter of the financial year 2007/8 (1<sup>st</sup> January 2008 to 31<sup>st</sup> March 2008);
  - V. The filling of posts would be conducted in terms of the applied rules and procedures as set out in ELRC Resolution 5 of 1998 (PAM); and
  - VI. Employees who for one or other reason could not be absorbed by either the matching and placement process or could not obtain appointment through the closed vacancy list absorption process may be offered an employee initiated severance package (Annexure A) by 31<sup>st</sup> March 2008.
- b) Procedure in respect of employees who elect to make no choice shall be:
- i. Such employees shall be automatically transferred from the Old Employer to the New Employer in terms of the FETC Act as from 1<sup>st</sup> January 2008.

### 3.14 INTERPRETATION AND DEFINITIONS

In this Agreement, the following expressions shall, unless the context otherwise indicates-

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- a) **“The College”** means the College established in terms of the FETC Act;
- b) **“Agreement”** means this Agreement together with any annexure/s, as amended from time to time;
- c) **“Council”** means the Education Labour Relations Council;
- d) **“Department(s)”** means the National and/or Provincial Departments of Education, interchangeably referred to as “the old employer”;
- e) **“Employee(s)”** means an employee in the employ at the College, either on a permanent or fixed-term contract basis in terms of the Employment of Educators Act , of the Department whose jobs are affected by the transfer of the educational function to the College;
- f) **“MEC”** means a Member of the Executive Council responsible for education in a Province;
- g) **“Minister”** means the Minister of Education;
- h) **“New Employer”** means the College;
- i) **“Old Employer”** means the Department/s of Education;
- j) **“Parties”** mean parties to this agreement;
- k) **“Provinces”** means provinces as listed in section 103(1) of the Constitution;
- l) **“Services”** means the management and lecturing functions of FET services to be transferred to the College;
- m) **“Transfer”** means a change of employer by operation of law, namely, section 197 of the LRA, 1995 as amended;
- n) **“Effective date of transfer”** is 1<sup>st</sup> January 2008;
- o) **“Trade Unions”** mean registered recognised trade unions in the Council that are party to this agreement.

#### 4. DISPUTE RESOLUTION PROCEDURES

- 4.1 Any dispute about the interpretation or application of this agreement may be referred to the ELRC and shall be dealt with in terms of the dispute resolution procedures of the Council; and

- 4.2 Any dispute between the New Employer and transferred employees may be referred to the ELRC and shall be dealt with in terms of the dispute resolution procedures of the Council.

## 5. AMENDMENTS

There shall be no variations to this agreement unless it is reduced to in writing, after negotiations in the ELRC, and duly signed by parties.

## 6. EFFECT OF THIS AGREEMENT


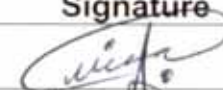
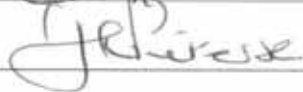
This agreement constitutes a collective agreement as contemplated in Section 197(2) and (6) of the LRA.

## 7. DATE OF IMPLEMENTATION

This agreement shall, in respect of parties and non-parties, come into effect on 31<sup>st</sup> August 2007.

## 8. SIGNATORIES TO THIS AGREEMENT

Thus done and signed at CENTURION on the 31<sup>st</sup> day of AUGUST 2007.

ON BEHALF OF THE OLD EMPLOYER		
State as employer	Name	Signature
DEPARTMENT OF EDUCATION	D. Huddle	
ON BEHALF OF THE TRADE UNION PARTIES		
Trade Union	Name	Signature
CTU-SADTU	W.M. MADISHA	
CTU-SAOU	J.R. PIETERSE	
ON BEHALF OF THE NEW EMPLOYER		
FET College	Name	Signature
Port Elizabeth FET		

College	DULY SIGNED	<del>CLIVE</del> M JACK
East Cape Midlands FET College	S. J. VAN SOESTER	[Signature]
Buffalo City FET College	N. Fakavula	[Signature]
Lovedale FET College	F. Kolwe	[Signature]
King Sabata Dalindyebo FET College	M.S. Bovunyana	[Signature]
Ingwe FET College	IVENECIZELA	[Signature]
Ikhala FET College	GOOLO. H.N.	[Signature]
King Hintsa FET College	NDUNGE S	[Signature]
Goldfields FET College	M. MITHRIMO	[Signature]
Motheo FET College	D. T. TOOLO	[Signature]
Maluti FET College	DJ. HIRALE	[Signature]
Flavius Mareka	MI. Beteer	[Signature]
Tshwane South FET College	S.W.B. Klathe	[Signature]
Tshwane North FET College	E.P. MASHILO	[Signature]
Ekurhuleni West College	S.R. COETZEE	[Signature]
Ekurhuleni East FET College	MJOZI M. ANA	[Signature]
South West FET College	DULY SIGNED	CLIVE M JACK
Central Johannesburg	L.M. TRIVYANE	[Signature]
Western College FET	L. GERTZ	[Signature]
Sedibeng FET College	D. NKAIBENY	[Signature]
Mthashana FET College	S.A. TUSHI	[Signature]
Umfolozzi FET College	T.F. FAKAZI	[Signature]
Majuba FET College	D.B. MABUYAKHUBU	[Signature]
Mnambithi FET College	S.C. NKOSI	[Signature]
Elangeni FET College	S.M. MBILI	[Signature]
Coastal FET College (Mobeni)	MVELI MAVUNDIA	[Signature]
Thekwini FET College	B.D. MKHUTAYAZI	[Signature]
Umgungu-ndlovu FET College	M.S. SHAMA SE	[Signature]
Esayidi FET College	M. VAN WYK	[Signature]
Lephalale FET College	DULY SIGNED	[Signature]
Capricorn FET College	SENYATSI D.N	[Signature]
Waterberg FET College	MAREDI S.E	[Signature]
Vhembe FET College	✓ DULY SIGNED	[Signature]
Mopani South East FET College	BALOJI T.M	[Signature]
Letaba FET College	RASEKGALA M.A	[Signature]
Sekhu-khune FET College	RAMONYATSE F.L.	[Signature]
Ehlanzeni FET College	PAUL M. N. AMINAH	[Signature]
Nkangala FET College	S.P. QWABE	[Signature]
Gert Sibande FET College	M. SHAU FB	[Signature]

Northern Cape Urban FET College	<i>[Signature]</i>	<i>[Signature]</i> M.D. Mouton
Northern Cape Rural FET College	<i>[Signature]</i> A. Letters	<i>[Signature]</i>
Taletso FET College	DULY SIGNED	HERMAN BALLEZ
Vuselela FET College	<i>[Signature]</i>	
Orbit FET College	<i>[Signature]</i> P. A. MAAKS	<i>[Signature]</i>
West Coast FET College	Johanna Hendricks	<i>[Signature]</i> J. Hendricks
Boland FET College	DULY SIGNED	
South Cape FET College	FRANS JOSEPH	<i>[Signature]</i>
Northlink FET College	<i>[Signature]</i>	
College of Cape Town FET	MANGALISO MOLALO	<i>[Signature]</i>
False Bay FET College	LUZURU M. MDUNYELWA	<i>[Signature]</i>

elrc ELRC Building, 261 West Ave.  
Centurion, RSA 0046

APPROVED BY GENERAL SECRETARY

2007-09-11

*[Signature]*

M. BOVENDER

**ANNEXURE A:****EMPLOYEE INITIATED SEVERANCE PACKAGE*****GUIDELINES***

- a) These guidelines are introduced in order to assist the Employer in considering applications for the Severance Package in a uniform manner.
- b) For the purpose of the determination on the severance package, the term "employee" means educators who are appointed permanently in terms of the Employment of Educators Act.
- c) The granting of the package is not subject to a condition that such an educator may not accept or seek re-appointment in the public service.
- d) The employer must consider all applications.
- e) The employer will be responsible for the costs attached to the payment of the package, in terms of the attached determination in Annexure A.
- f) The employer will be liable for any additional liability to the Government Employees Pension Fund (GEPF) that arises from the granting of the employee initiated severance package.

**FORMULA AND PROVISIONS OF SEVERANCE PACKAGE**

Formula to be used for the application of a Severance Package to Employees who are affected by the transfer of Employees in terms of the FET Act of 2006.

**1 Pension benefits (in accordance with rules 14.8 and 20 of the Rules made in terms of the Government Employees Pension Law, 1996 (as amended))**

The following pension benefits are payable:

- a) Members of the Government Employees Pension Fund who have attained the age of 55 years and who have completed at least 10 years pensionable service, on written choice of the member:

- (i) A gratuity equal to his or here actuarial interest payable to the member in own right or into an approved retirement fund of the members choice; OR
- (ii) A gratuity and annuity determined in terms of the formula that applies to the member;

Without scaling down of pension benefits in terms of Rule 14.3.3(b) and without an addition of pensionable service in terms of Rule 14.2.4(b).

- (b) Members of the Government Employees Pension Fund who have not yet attained the age of 55 years, and members who have attained age 55 but have less that 10 years pensionable service.

A gratuity equal to his or her actuarial interest payable to the member in own right or into an approved retirement fund of the member's choice,

Without scaling down of pension benefits in terms of Rule 14.3.3(b) and without an addition of pensionable service in terms of Rule 14.2.4

## 2. Severance pay

Two weeks basic salary for every full year of the qualifying periods of service will be paid with a minimum payment of R15 000. The following formula will be used:

### Step 1

Calculate the following:

Basic annual salary	X	qualifying period of service
26		

### Step 2

If the result of the calculation is less that R15 000, an amount of the R15 000 must be paid. If the result of the above calculation exceeds R15 000, the calculated amount must be paid.

Service that may be recognized for severance pay purposes include the following service periods:

- a) Service in statutory bodies provided that affected employees were transferred to Public Service in terms of section 15 of the Public Service Act, 1994 or a similar legislative provision.

- b) Service in former Development Boards provided the affected employees were transferred to the public Service in terms of the Abolition of Development Bodies Act, 198, or similar legislation.
- c) Service under a former provincial ordinance provided that the affected employees were transferred to the Public Service in terms of the provincial Government Act, 1986, as amended.
- d) By virtue of section 2(5)(b) of the Public Service act, 1994 as amended, service in institutions referred to in section 236(1) of the Interim Constitution must be recognized for severance pay purposes.

In determining the qualifying period of service, the provisions of section 84 of the Basic Conditions of Employment Act, 1997, apply. For this purpose, previous employment with the State as employer must be taken into account if the break between the periods of employment is less than one year and occurred after 1 December 1998, i.e. the date of implementation of section 41 (severance pay) of the Basic Conditions of Employment Act 1997, in respect of the public service.

#### **Example**

Mr A was in service from 1 January 1997 until 31 December 1999 (a full three years) when he resigned. He was re-appointed on 1 July 2000 (a break in service of 6 months) and will leave the service with a severance package on 30 September 2005. Since the break in service was less than 12 months, the three year period until 31 December 1999 must be added to the period of service that commenced on 1 July 2000 to calculate his severance pay. Note that only full years may be used and the severance pay due to Mr A will be calculated on eight years.

### **3. Leave pay**

All unused days accumulated until 30 June 2000 (capped leave) as well as all unused days in respect of leave due to employees under the leave dispensation that became effective on 1 July 2000 must be paid according to the formulas contained in paragraphs 7.4 and 8.4 of the Directive on leave of absence in the Public Service issued by the Minister for the Public Service and Administration.

Leave must be audited before any leave payments may be made to an employee. In respect of capped leave, the Head of Department shall determine whether there are periods that cannot be audited due to a lack of records. In such instances, an affected employee's leave payout shall be on the basis of 6 working days per completed year of service up to a maximum of 100 days in respect of unaudited periods.



#### 4. Compensation for medical and housing benefits

- (a) Employees aged 55 and older on the date of service termination who have been members of registered medical schemes for the year ending with service termination, will qualify for post retirement medical assistance as follows.
- (i) Employees with less than 10 years of actual service; An amount equal to 12 times the employers monthly contribution as at the date of service termination will be paid to the employee directly by Pensions Administration.
  - (ii) Employees with at least 10 years but less than 15 years of actual service: An amount equal to 36 times the employer's monthly contribution as at the date of service termination will be paid to the employee directly by Pensions Administration.
  - (iii) Employees with at least 15 years of actual service: Employees who continue to be members of registered medical schemes will qualify for a continued employer contribution. The employer contribution will be two-thirds of membership fees limited to a maximum employer contribution. The employer contribution will be paid directly to the medical scheme by Pensions Administrations.
- (b) All other employees, namely-
- all employees who are younger than 55 at the date of service termination; and
  - employees who are 55 and older who do not qualify for the above post retirement medical assistance benefits, (e.g they are not members of registered medical scheme) must be paid a once- off all inclusive amount of R9 000 by the employer directly. This amount is in lieu of medical and housing benefits regardless of an employee's participation in the benefits before service termination. These employees do not qualify for post retirement medical assistance in future.

#### 5. Service Bonus

A pro rata service bonus calculated according to the formula in paragraph 1.2 of the Financial Manual for purposes of the Calculation and Application of Remunerative Allowances and Benefits will be paid

#### 6. Contractual obligations

Employees are to be released from contractual obligations that require from then to remain in service.