



MINUTES OF MEETING

Meeting: Special Bargaining Meeting
Date: 9 November 2020
Time: 13H15
Venue: Via Video Conference (Zoom)

1. OPENING AND WELCOME

The meeting commenced at 13H19 with a welcome from Adv L Bono, the Chairperson.

2. ATTENDANCE AND APOLOGIES

2.1 Present

2.1.1 Attendance was as per attached register.

2.2 Apologies

None

3. FINALISATION OF THE AGENDA

3.1. The Employer moved and SADTU / CTU-ATU seconded the adoption of the agenda.

Decision 1:

The Agenda was unanimously adopted.

4. DRAFT COLLECTIVE AGREEMENT ON AMENDMENTS TO PART C OF THE ELRC CONSTITUTION

- 4.1. The General Secretary indicated the following:
- 4.1.1. That the Secretariat had initiated a discussion which was endorsed at the previous Bargaining meeting.
 - 4.1.2. That the Legal Sub Committee was convened, and the draft collective agreement is tabled for discussion and adoption by Council as a product of the Legal Sub Committee.
- 4.2. The Employer indicated the following:
- 4.2.1. That there were clauses that had been amended to Part C of the ELRC constitution was dealt in depth by the Legal Sub Committee.
 - 4.2.2. Suggested that Council go through clause by clause.
- 4.3. Council went through the amended clauses as follows:
- 4.3.1. Clause 9.1.4 *"In case of all other disputes, except those in 9.1.1 to 9.1.3, all other disputes must be referred no later than 90 days. Should the applicant lodge a dispute outside the 90-day period, such referral must be accompanied by a condonation application."*
 - 4.3.2. The Employer moved and SADTU / CTU-ATU supported insertion of clause 9.1.4.
 - 4.3.3. The Employer proposed the insertion of (including candidate attorneys) at the end of the sentence so that clause 17.4.1 should read: *"Subject to clause 17.4.2, an employee party to the dispute may appear in the arbitration proceedings in person and/or be represented by a legal practitioner (including Candidate Attorneys) or by a member, office-bearer or official of that party's Trade Union. In the case of the employer, the employer may be represented by a delegated employee of the employer and/or by a legal practitioner (including Candidate Attorneys)."*
 - 4.3.4. CTU-ATU and SADTU supported the proposal.
 - 4.3.5. Clause 17.4.2: *"If the dispute being arbitrated is referred in terms of section 69 (5), 73 or 73A of the BCEA or is about the fairness of a dismissal and a party has alleged that the reason for the dismissal relates to an employee's conduct or capacity, the parties are not entitled to be represented by a legal practitioner (including Candidate Attorneys) in these arbitration proceedings unless."*
 - 4.3.6. The Employer moved and SADTU / CTU-ATU supported the amendments to clause 17.4.2.
 - 4.3.7. Clause 17.6: *"Disclosure of documents"*
 - 4.3.8. Clause 17.6.1: *"At any time after the request for arbitration, but not less than fourteen (14) days prior to the hearing"*

- date, either party may request the other party to disclose any documents or material relevant to the dispute.”*
- 4.3.9. Clause 17.6.2: *“A commissioner/panellist may either before or during the proceedings on his/her own accord, or on application, make an order as to the disclosure of relevant documents or other evidence.”*
- 4.3.10. Clause 17.6.3: *“Notwithstanding the above, the parties may agree on the disclosure of documents or other relevant evidence.”*
- 4.3.11. Clause 17.6.4: *“Failure by parties to disclose or make documents available as so directed by the commissioner/panellist will lead to cost orders imposed against the party that did not comply with the directive or the order.”*
- 4.3.12. The Employer moved and SADTU / CTU-ATU supported insertion of clauses 17.6, 17.6.1, 17.6.2, 17.6.3, 17.6.4 and 17.6.5.
- 4.3.13. Clause 18.2: *“Failure by parties to disclose or make documents available as so directed by the commissioner/panellist will lead to cost orders imposed against the party that did not comply with the directive or the order.”*
- 4.3.14. The Employer moved and SADTU / CTU-ATU supported insertion of clause 18.2.
- 4.3.15. Clause 18.6.4: *“All awards of the Council will be subjected to quality control by the senior commissioners/panellists before being issued to parties.”*
- 4.3.16. The Employer moved and SADTU / CTU-ATU supported insertion of clause 18.6.4.
- 4.3.17. Clause 51.10: *“Application for a subpoena is limited to the level of Chief Directors/General Managers and/or Directors or Senior Managers in the Department and may not include the Head of Departments or Member of Executive Council.”*
- 4.3.18. Clause 51.11: *“The commissioner/panellists have the discretion to subpoena documents which may assist him/her to make a reasonable finding in resolving a dispute that is before him/her. A party which fails to produce a document if so directed by the commissioner/panellist will incur costs associated with the arbitration hearing.”*
- 4.3.19. The Employer moved and SADTU / CTU-ATU supported insertion of clauses 51.10 and 51.11.
- 4.3.20. Clause 63.9: *“If, for whatever reason, a commissioner/panellist is unable to conclude an arbitration hearing that is allocated to him/her, the General Secretary may appoint a different panellist to arbitrate the matter*

afresh and shall provide the parties to the dispute with reasons for such replacement.”

- 4.3.21. The Employer moved and SADTU / CTU-ATU supported insertion of clause 63.9.
- 4.3.22. Clause 69.6: *“Despite clause 69.5 an educator may refer a dispute to the ELRC concerning the failure to pay an amount owing to that employee in terms of the Basic Condition of Employment Act; the Employment of Educators Act; the Personnel Administration Measures (PAM), or any regulations or subordinate legislation promulgated by the Minister of Basic Education or MEC for Education in a respective Province where an educator is employed as it relates to conditions of service, a collective agreement and a contract of employment.”*
- 4.3.23. Clause 69.7: *“The ELRC must appoint a commissioner/panellist in terms of section 135 of the Labour Relations Act to attempt to resolve by conciliation any dispute that is referred to the ELRC in terms of clause 69. The ELRC must commence the arbitration of a dispute referred in terms of this sub-clause immediately after certifying that the dispute remains unresolved in terms of section 135 (5).”*
- 4.3.24. The Employer moved and SADTU / CTU-ATU supported insertion of clauses 69.6 and 69.7.
- 4.3.25. Clause 70.: *“Virtual Hearings”*
- 4.3.26. Clause 70.1: *“In order to adapt to the advancement of technology, Council may determine to conduct conciliations and/or arbitrations via various forms of online or virtual platforms to expedite conciliations as well as arbitration hearings.*
- 4.3.27. Clause 70.2: *“All conciliation hearings may be scheduled and conducted through virtual means.”*
- 4.3.28. Clause 70.3: *“Upon receipt of the application for arbitration, the Council may set the matter down for it to proceed through virtual hearings.”*
- 4.3.29. Clause 70.4: *“All data associated with virtual hearings will be borne by the parties to the dispute.”*
- 4.3.30. Clause 70.5: *“Parties to the dispute must have their own technological tools such as smart phones, computers/laptops or tablets, etc to access or connect to the ELRC video-conferencing platform.”*
- 4.3.31. Clause 70.6: *“The following must have been agreed to in pre-arbitration minutes by parties, where applicable:”*
- 4.3.32. Clause 70.6.1: *“Parties may agree to shorter notice periods for subsequent hearings, if required.”*
- 4.3.33. Clause 70.6.2: *“The applicable video conferencing facility to be utilised for the arbitration hearing.”*

- 4.3.34. Clause 70.6.3: *“The admission of evidence using the video conferencing facility.”*
 - 4.3.35. Clause 70.6.4: *“If a witness does not have access to video conferencing facilities, agreement on how such evidence will be adduced.”*
 - 4.3.36. Clause 70.6.5: *“Admission of evidence by affidavit or by a statement that may be confirmed, if so required by the commissioner/panellist.”*
 - 4.3.37. Clause 70.6.6: *“Any other information the ELRC or a commissioner/panellist may require in order to exercise a discretion as to how the matter is to be dealt with and that will eliminate or limit the risk of physical proximity among the persons involved.”*
 - 4.3.38. Clause 70.6.7: *“A party that does not agree to the arbitration being heard through video conference must indicate so within seven (7) working days of receipt of the arbitration notice. Late applications will not be entertained by the Council and costs will be awarded against the party which failed to do the application.”*
 - 4.3.39. Clause 70.6.8: *“An applicable form for consent regarding 70.6.7 will accompany the notice of arbitration.”*
 - 4.3.40. Clause 70.7: *“Agreements reached in terms of 70.6 above must be recorded in writing and submitted to the ELRC by the arbitrating commissioner/panellist.”*
 - 4.3.41. Clause 70.8: *“Before the virtual arbitrations can commence, commissioners/panellists may direct parties to exchange documents. Once such instruction/directive is issued, parties must comply with it. A party that fails to comply with the commissioner/panellist directive will incur the costs of the arbitration process.”*
 - 4.3.42. The Employer moved and SADTU / CTU-ATU supported insertion of clauses under 70 “Virtual Hearings”
- 4.4. SADTU enquired what the rationale was to exclude the Head of Departments from being subpoenaed as indicated in clause 51.10.
 - 4.5. SADTU (Legal Sub Committee member) responded that the rationale was that the Head of Departments the authority to delegate those responsibilities to the relevant officials.
 - 4.6. CTU-ATU suggested that there be training regarding the virtual arbitrations as they had experienced some challenges in that regard.
 - 4.7. The Employer moved and CTU-ATU / SADTU seconded the adoption of Collective Agreement 4 of 2020: “ Amendments of Part C of the ELRC Constitution: *Dispute Resolution Procedures (Basic Education and TVET)* as Ratified by the Registrar of Labour Relations on 29 November 2016”

4.8. The Employer proposed that training be conducted for the provinces on the amended clauses through virtual means in the first week of December 2020.

4.9. SADTU and CTU-ATU supported the proposal.

Decision 2:

- 1) Council unanimously adopted Collective Agreement 3 of 2020: Amendments of Part C of the ELRC Constitution: *Dispute Resolution Procedures (Basic Education and TVET)* as Ratified by the Registrar of Labour Relations on 29 November 2016.
- 2) Training to be conducted on the amended clauses through virtual means to provinces in December 2020.

5. LIMPOPO COLLECTIVE AGREEMENT 2 OF 2020: “AMENDMENTS OF LIMPOPO’S COLLECTIVE AGREEMENT NO 1 OF 2008: GUIDELINES FOR SIFTING, SHORTLISTING AND INTERVIEW PROCEDURE FOR SCHOOL AND OFFICE BASED EDUCATORS

5.1. The General Secretary tabled the memorandum on the ratification of Limpopo Collective Agreement 2 of 2020 and highlighted the following:

- 5.1.1. That the Secretariat had complied with the provisions of the ELRC constitution that directs the General Secretary to obtain a legal opinion on the agreement before submitting it to Council for ratification.
- 5.1.2. That the legal opinion noted the following:
 - 5.1.2.1. That the Collective Agreement in question is an amendment to an existing Collective Agreement (No. 1 of 2008).
 - 5.1.2.2. That whilst the National Collective Agreement No. 5 of 1998 was the overarching agreement, this agreement has not been updated and what Limpopo seeks to do is to bring their 2008 collective agreement in line with the PAM in relation to the guidelines for sifting, shortlisting and interview procedure for school and office based educators.
 - 5.1.2.3. That although the contents of the agreement are not peculiar to the province, it would be unreasonable to hold the Limpopo Chamber in this process, as the law has overtaken their provisions in this regard.
- 5.1.3. That Limpopo Provincial Chamber Collective Agreement 2 of 2020: “*Amendments of Limpopo’s Collective Agreement No. 1 of 2008: Guidelines for sifting, shortlisting and*

interview procedure for school and office based educators” was recommended for ratification by Council.

- 5.2. The Employer indicated the following:
- 5.2.1. That it was a pity that the Limpopo Collective Agreement did not recognise the conversion process under the noting part of the agreement.
 - 5.2.2. That the collective agreement was aligned with the PAM and was a good agreement.
- 5.3. The Employer moved and CTU-ATU / SADTU seconded the ratification of Limpopo Provincial Chamber Collective Agreement 2 of 2020.

Decision 3:

Limpopo Provincial Chamber Collective Agreement 2 of 2020: “*Amendments of Limpopo’s Collective Agreement No. 1 of 2008: Guidelines for sifting, shortlisting and interview procedure for school and office based educators*” was unanimously ratified by Council.

6. CLOSURE

The meeting closed at 13H45 with a vote of thanks from the Chairperson.

CHAIRPERSON

GENERAL SECRETARY

DATE