

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



**COLLECTIVE AGREEMENT  
1 OF 2023**

**25 JULY 2023**

**AMENDMENT OF PART C OF THE ELRC  
CONSTITUTION: *DISPUTE RESOLUTION  
PROCEDURES (BASIC EDUCATION AND TVET)* AS  
RATIFIED BY THE REGISTRAR OF LABOUR  
RELATIONS ON 21 JULY 2021**

*H. M. [Signature]*

# EDUCATION LABOUR RELATIONS COUNCIL

## COLLECTIVE AGREEMENT 1 OF 2023

### AMENDMENTS OF PART C OF THE ELRC CONSTITUTION: *DISPUTE RESOLUTION PROCEDURES (BASIC EDUCATION AND TVET) AS RATIFIED BY THE REGISTRAR OF LABOUR RELATIONS ON 21 JULY 2021*

#### 1. PURPOSE OF THIS AGREEMENT

The purpose of this agreement is to amend Part C of the ELRC constitution to bring it in line with the amended CCMA Rules and expedite dispute resolution processes.

#### 2. SCOPE OF THIS AGREEMENT

This agreement applies to and binds:

- 2.1 The employer;
- 2.2 All the employees of the employer as defined in the Employment of Educators Act, 1998 (as amended) whether such employees are members of trade union parties to this agreement or not;
- 2.3 All trade unions admitted to the Council whether such trade union is a party to this agreement or not; and
- 2.4 All trade unions not admitted to the Council, that utilise the services of the Council in terms of the certified ELRC Constitution.

#### 3. THE PARTIES TO COUNCIL NOTE AS FOLLOWS:

- 3.1 Collective Agreement Number 6 of 2016: ELRC Constitution as certified by the Registrar of Labour Relations on 25 November 2016.
- 3.2 Collective Agreement Number 3 of 2020: Amendment 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
- 3.3 Rules for the Conduct of Proceedings before the CCMA.
- 3.4 Section 69(5), 73 or 73A of the BCEA

3.5 Section 135 of the Labour Relations Act.

3.6 Amendment to the CCMA as published on 21 April 2023.

**4. THE PARTIES TO COUNCIL THEREFORE AGREE AS FOLLOWS:**

4.1 The parties to Council therefore agree that Part C "*Dispute Resolution Procedures (Basic Education and TVET)*" of the ELRC constitution is amended as follows:

"6.1.2 If the dispute relates to s64 of the LRA (right to strike and recourse to lockout), picketing rules must be established before a certificate of non-resolution is issued, unless a party provides a signed picketing rules agreement Ito s69(6A) of the LRA. This rule is introduced to cater for the establishment of picketing rules before issuing a certificate of non-resolution. The conciliating commissioner must determine picketing rules (if there is no collective agreement binding on the trade union that regulates picketing and the conciliating commissioner failed to secure a picketing agreement between the parties before the expiry of the 30 day time period or an extension thereof) at the same time as issuing the certificate of non-resolution.

7.2.1.2 a dismissal based on the *employer's operational requirements* as contemplated in Sections 189 and 189A of *the Act*;

7.2.1.3 The referring party should indicate whether facilitation has been included in s 189(3) notice by the employer.

7.3.2 The General Secretary must set down the dispute for Arbitration within 30 days from the date of receipt of the certificate of non-resolution and may utilise the expedited process referred to in clause 20 hereinafter.

12.1 When the conciliation proceedings are brought to a close, in the event that all or some aspects of the *dispute* remain unresolved, the *commissioner/panellist* conciliating the *dispute* must immediately facilitate a pre-arbitration meeting.

- 14.1.2.1 File electronic dispute referral Form (ELRC Form E1) on the Dispute Management System Application (DMS APP) in accordance with clause 36;
- 14.1.2.2 Once form in 14.1.2.1. is submitted, automatic proof of service is sent to both parties. Such proof is also sent to the Case Management Officer responsible for the Province for filing.
- 14.1.2.3 if ELRC Form E1 is filed out of time, and no condonation application is filed, the Council must process the dispute and such condonation application must be resolved at conciliation;
- 14.1.4 Failure by the Applicant to sign the referral form does not render the dispute defective. The unsigned form may be ratified at the hearing.
- 14.3.2 decide the date, time and venue, which include virtual hearings of the conciliation meeting; and
- 14.7.1.3 making a recommendation to the *parties*, which may be in the form of an advisory award; and
- 14.7.2.2 if the *dispute* remains unresolved, issue the *parties* with a copy of ELRC Form E3 as provided in clause 14.9;
- 14.7.2.3 In issuing the certificate as contemplated in 14.7.2.2, the Commissioner must request the Applicant to confirm if s/he would like Case Management to process the dispute further for arbitration.
- 14.11.1 After the conclusion of the conciliation, the *Council* will not process any *dispute of mutual interest* any further, unless a request is received from all the *parties* to the *dispute* to further explore conciliation or voluntary arbitration through the *Council*.
- 14.11.2 If a person, other than the referring party, or an entitled representative signs the form, the referring party may be called upon to ratify his/her intention to refer the matter to arbitration.

- 15.1.2 The General Secretary or the *commissioner/panellist* may order *parties* to hold a pre-arbitration conference and submit the pre arbitration minutes within a specified period.
- 16.5.2 If the con-arb hearing is set down for a hearing, the Council must allocate a date for hearing and notify the parties accordingly once a replying affidavit or written statement is delivered or the time limit for delivering a replying affidavit or written statement has lapsed; and
- 17.1 *What the Council must do when it processes a dispute for arbitration process*  
Once the Applicant has confirmed that the dispute must be processed for arbitration on the certificate of non-resolution, , the *General Secretary* must register the *dispute* by recording it in a *Dispute Register* and thereafter:
- 17.1.1 appoint an *commissioner/panellist* to arbitrate the *dispute* within 45 days of the date on which the *Council* received the referral;
- 17.1.2 decide the date, time and venue, including virtual sittings of the arbitration; and
- 17.1.3 notify the *parties* in writing of an arbitration hearing at least twenty-one (21) days prior to the scheduled date, unless the *parties* agree to a shorter period or reasonable circumstances require a shorter. The time period of twenty-one (21) days runs from the date the notification is sent by the Council unless sent by registered mail, in which case an additional seven (7) days must be allowed
- 17.2.2 decide the date, time and venue, including virtual sittings of the arbitration; and
- 17.6 Disclosure of documents
- 17.6.1 *At any time after the dispute is processed 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.*

- 18.2 If a *party* fails to file a statement of case or an answering affidavit/written statement, as directed by the *commissioner/panellist* and within the stipulated time period, such failure will result in costs awarded against either *party*.
- 18.6.4 All awards of the *Council* will be subjected to quality control by the *Senior Commissioners/Panellists* before being issued to *parties*
- 19.5 If the *dispute* is one that must or may be referred to conciliation in terms of clause 19.1.1 of *these procedures*, the conciliation procedure of clause 14 applies. Commissioners may also allow parties to ratify the defects in the hearing.
- 19.6 If the *dispute* is one that must or may be processed to arbitration in terms of clause 19.1.2, the arbitration procedure of clause 17 applies.
- 33.1 The addresses, telephone number and email of the offices of the *Council* are listed in Schedule 2 of *this constitution*: Schedules (Part D).
- 33.2 Documents may only be filed with the *Council* at the addresses or email listed in Schedule 2 of *this constitution*: Schedules (Part D).
- 36.2 There is no requirement for signature on the digitized referral forms. A Commissioner must allow a party or representative to ratify any unsigned document at the hearing
- 37.1.1.3 a person who is in charge of the person's place of residence, business or place of employment premises at the time; or
- 37.1.3 by any other electronic means (including but not limited to email) permissible by law during the normal working office hours of the *party* on whom a document is being *served*, unless otherwise agreed to in writing by that *party*.
- 37.1.5 By email
- 37.1.6 A commissioner may direct or accept service in a manner other than the manner prescribed.

- 39.1.3 by e-mailing the document to the *Council* at a number listed in Schedule 2 of *this constitution: Schedules (Part D)*.
- 40A. Any document or notice is sent by a *party* or the *General Secretary* through the portal is presumed received when acknowledgement of receipt has been sent to the other party.
- 40B. Any document or notice is sent by a party or the *General Secretary* through e-mail is presumed received when a letter of acknowledgement of receipt has been sent to the party who has sent the referral.
- 40.2 A *party* must apply for condonation, in terms of clause 57, when delivering the document to the *Council*. The *General Secretary* may require the *parties* to do so on ELRC Form E2. Failure by a party to file condonation may be resolved at the hearing.
- 45.1.1 by written agreement between the *parties* where the *commissioner* is satisfied that there is written conformation to postpone by both *parties*; or
- 49.4 Where such witness is an *employee* of the State, such witness shall not be paid an allowance for the time that the witness was required to be available to give evidence during such proceedings, unless the witness can show that he/she will not be paid for such time. Such a witness may, however, claim the prescribed fees regarding travel and subsistence expenses. Payment must be made only by electronic transfer into the bank account of the ELRC.
- 51.1 Any *party* who requires the *commissioner/panellist* to subpoena a person in terms of section 142(1) of the Act, must file a completed Form ELRC E10 together with a written motivation setting out why the evidence of the person to be subpoenaed is necessary. A subpoena may be served by emailing a copy of it to the email address of the person subpoenaed.

- 51.6 If a subpoena is *served* upon the witness by way of fax, the person requesting the subpoena shall ensure that that witness is telephoned or otherwise contacted to establish whether the subpoenaed person has received the subpoena, and shall *serve* a written statement/affidavit to this effect with the *General Secretary* and the *commissioner/panellist*. This note must include the date of the call, details of the person making the call and of the people to whom the person spoke in this regard, and of the content of the call.
- 59.1 An application to have an arbitration award certified in terms of section 143(3) read with section 51(8) must be made on or contain the information LRA Form 7.18A.
- 59.2 An annexure with list of all employees affected by the award to be certified must accompany LRA Form 7.18A. A delegated commissioner may also certify the arbitration award.
- 59.4.2 orders the performance of an act other than the payment of money may be enforced by way of contempt proceedings instituted in the Labour Court. For the purposes of this clause **Error! Reference source not found.**, an arbitration award includes an award of costs, a taxed bill of costs in respect of an award of costs and any arbitration fee that the *Council* may charge. Payment of fees to be done by electronic transfer into the bank account of the ELRC.
- 61 Variation and rescission of arbitration awards as per the provisions of LRA
- A dismissal ruling in terms of s138(5)(a) of the LRA, may not be rescinded ito s144 of the LRA."

## 5. DISPUTE RESOLUTION

Any dispute about the interpretation or application of this agreement shall be resolved in terms of the dispute resolution procedure of the Council.



## 6. DEFINITIONS

6.1 "**constitution**" means the constitution of the Education Labour Relations Council.

6.2 "**Council**" means the Education Labour Relations Council.


## 7. DATE OF IMPLEMENTATION

The provisions of this Collective Agreement shall take effect on the date of signing.


## 8. SIGNING OF THE COLLECTIVE AGREEMENT

Thus done and signed at Centurion on the 25 day  
of July 2023

### ON BEHALF OF THE STATE AS EMPLOYER

DEPARTMENT	NAME	SIGNATURE
BASIC EDUCATION	H.M. Mamele	

### ON BEHALF OF THE EMPLOYEE PARTIES

TRADE UNION	NAME	SIGNATURE
SADTU	MUGWENA MALULEKE	
CTU-ATU	B.L. Manuel	