

PSCBC's 27th Annual General Meeting (AGM)



IN THIS EDITION

Page

- 1 PSCBC's 27th AGM
- 3 PSCBC DR Workshops
- 4 Lesotho Study Visit
- 6 PSCBC Participates in NEHAWU International Nurses Day Celebration
- 7 PSCBC Supports NAPTOSA Youth Conference
- 8 Important Judgement

On the 13th of June 2024, the PSCBC convened its 27th AGM in the picturesque town of Magaliesburg. This year's meeting held particular significance, following the successful hosting of the 2024 General National Elections that was held on the 29th May 2024, a landmark event coinciding with South Africa's commemoration of 30 years of democracy. The AGM was organised under the theme "30 years of democracy - towards labour peace, social justice & economic development."

The AGM saw a gathering of esteemed Trade Union Leadership, the Director General and Deputy Director General of the Department of Public Service and Administration (DPSA), Sector Bargaining Council leadership, and PSCBC Council members.



Ms. Dimo, who presided over the meeting, extended an official welcome to all members. The meeting commenced with a moment of silence as a remembrance of the late PSCBC Vice-Labour, Cde KC Matome, who passed away in December 2023. Mr. Frikkie De Bruin, the General Secretary of PSCBC, delivered a comprehensive annual report outlining the council's performance for the financial year. This was followed by the presentation of financials by the recently appointed external auditors, who announced the council's attainment of an unqualified audit report once again, this underscores the fair and transparent nature of the Council's financial matters.

The AGM adopted the annual report, financial statements, and vote weights. It also served as an occasion to bid farewell to a longstanding council member, Ms. Suzan Ntlatleng, the former Negotiator from HOSPERSA who was retiring. We wish Ms. Ntlatleng everything of the best as she enters a new phase in her life.

A highlight of the event was the re-election of the Chairperson, Vice-chairperson Employer, and nominations of Executive Committee members. During the election process for the Chairperson and Vice-Chairperson Employer, Ms. Dimo was re-elected as Chairperson, and Mr. Galorale was

re-elected as Vice-Chairperson Employer for the ensuing two years. The PSCBC would like to take the opportunity to wish the Chairperson and Vice-Chairperson every success and may they continue to lead the council in an excellent manner, upholding the principles of fairness and integrity that have come to define the PSCBC.

In the evening, a celebratory function was held to appreciate the work that was conducted by the Council over the year. At this function certain long serving staff members with over 10 years of service were acknowledged. The following staff members were recognised:

- Ms. Busi Makgaretsa (10 years)
- Ms. Evelyn Molaudzi (10 years)
- Mr. Wandile Mgbhozi (10 years)
- Mr. Oomang Parag (25 years)
- Ms. Petunia Bhengani (10 years)
- Ms. Bianca Singh (15 years)

Both the employer and labour representatives expressed their appreciation and commendation for Mr. De Bruin's exceptional leadership as the General Secretary of PSCBC, praising his continual stewardship of the secretariat. The 27th AGM of the PSCBC was a reflection on the past 30 years of democracy and a reaffirmation of the council's commitment to labour peace, social justice, and economic development in South Africa.

"Say no to Gender Based Violence."

PSCBC GS, Mr Frikkie De Bruin addressing delegates in Free State

PSCBC Dispute Resolution Workshops

During the month of May 2024, the PSCBC successfully concluded a series of provincial Dispute Resolution workshops in North West, Northern Cape, Free State, and KwaZulu-Natal. The primary objective of these workshops was to enlighten stakeholders on various resolutions, including the Enforcement of Collective Agreements (Resolution 3 of 2023), Grievance Procedure (Resolution 2 of 2002), and the unveiling of the latest tools, the e-referral and portal platforms. This initiative aims to collectively shape the future of Dispute resolution.

The workshops garnered participation from labour unions, government labour relations officers, and PSCBC chamber leadership. Ms. Dimo, the Chairperson, and Mr. Frikkie De Bruin, the General Secretary, played the prominent roles in presiding over and facilitating the workshops. Mr. De Bruin presented Resolution 3 of 2023 and Resolution 2 of 2002 and introduced the newly developed e-referral and portal platforms.

Moreover, the workshops provided an opportunity for presentations by Mr. Mbulayeni Netshifhefhe,

the Resident Panellist Manager, Ms. Bhengani, the Dispute Resolution Senior Manager, along with Ms. Mocheko, the Senior Officer, and Ms. Kok, the Resident Panellist.

Throughout these workshops, the PSCBC received positive feedback from the delegates, who commended the General Secretary for organising and schooling them on the new developments within the PSCBC. Notably, over 700 delegates collectively attended these workshops, exemplifying the wide distribution and impact of PSCBC-branded promotional materials.

The successful completion of these workshops highlights the PSCBC's commitment to enhancing dispute resolution processes and empowering its stakeholders with the necessary knowledge and tools.



Lesotho Delegates together with council members at PSCBC

On the 8th & 9th May 2024, the PSCBC hosted a delegation from the Lesotho Ministry of Public Service and their labour counterparts. This two-day event was dedicated to a benchmarking exercise focused on the practice of collective bargaining within the public service sector in South Africa. The delegation sought to gain comprehensive insights into various critical aspects of collective bargaining, including funding models, constitutional formation, dispute resolution mechanisms, the scope of the public service, institutionalisation measures, and the identification of both successes and challenges.

The event commenced with Mr. Frikkie De Bruin, the General Secretary of the PSCBC, extending a sincere welcome to the Lesotho delegates. This was followed by an address from Mr. Alexio Musindi, the International Labour Organization (ILO) Director for the Country Office, and Mr. Limpho Mandoro, ILO's Social Dialogue and Labor Administration Specialist. They provided an overview of Lesotho's ratification of Convention 151: Labor Relations (Public Service), highlighting key areas such as freedom of association and the process of conducting collective bargaining in the

public service.

Mr. De Bruin then presented a detailed historical account of the PSCBC's development, the establishment of the PSCBC, the amendment of the Labour Relations Act of 1995, and the relevance of the Bill of Rights section 3 on labour relations. Subsequently, Ms. Valencia Kola, the PSCBC's Senior Manager of Collective Bargaining, provided a comprehensive overview of the PSCBC's constitution. Mr. Joseph Mahlalela presented on behalf of Ms. Sharlaine Oodit, General Secretary of the GPSSBC, focusing on sectoral-level collective bargaining, dispute resolution, and operational structure.

Following the conclusion of the first day's proceedings, a dinner was hosted in Centurion for the delegates, council members, and EXCO members.

The second day commenced with a welcome address from Ms. Ingrid Dimo, the PSCBC Chairperson, and brought forth in-depth discussions on public service bargaining councils. Insightful presentations conducted by PSCBC Vice-chairperson Labour,

Mr. Aubrey Zungu, Vice-chairperson Employer, Mr. Mompoti Galorale, Ms. Petunia Bhengani, Senior Manager of Dispute Resolutions, and Mr. Wandile Mgobhozi, Senior Manager of Finance and Support Services, stimulating further discussions.

The ILO and the Lesotho delegates expressed their appreciation to the PSCBC leadership for hosting

the informative sessions. The PSCBC extended its best wishes to the Lesotho delegation and expressed hope that the insights gained during the benchmarking exercise will contribute to the effective implementation of collective bargaining within the public service of Lesotho.





PSCBC Participates in NEHAWU International Nurses Day Celebration

On the 10th May 2024, the PSCBC participated in the NEHAWU International Nurses Day event at Thelle Mogoerane Hospital in Vosloorus in Gauteng. The event, themed “NHI now to free nurses of the psychosocial traumas of the two-tier healthcare system,” saw attendance from NEHAWU National Office Bearers (NOBs), dignitaries from the South African Nursing Council (SANC), PSCBC, and the Public Health and Social Development Sectoral Bargaining Council (PHSDSBC).

The programme was led by Cde Kgomotso Makhuphula. During the event, PSCBC General Secretary Mr. Frikkie De Bruin delivered a moving tribute, acknowledging the invaluable contributions of nurses to the public service. He expressed the PSCBC’s commitment to collaborating with NEHAWU to ensure equitable working conditions, adequate compensation, and professional development opportunities for all nurses. Mr. De Bruin emphasised the significance of the National Health Insurance (NHI) bill in alleviating the psychological trauma associated with the two-tier healthcare system, hailing it as a monumental victory for nurses in South Africa.

Following Mr. De Bruin’s address, Mr. Mike

Shingange, President of NEHAWU, commended the nurses for their dedication and highlighted the pivotal role of the NHI in the healthcare system of South Africa. He also acknowledged the historical challenges faced by nurses in advocating for fair labour practices.

The PSCBC’s exhibition stand garnered significant interest, enabling the distribution of over 180 promotional materials. The nurses appreciated the gifts and the PSCBC’s presence at the event, which further strengthened the council’s relationship with the nursing community and underscored its support for the NHI initiative.

The NEHAWU International Nurses Day celebration was a testament to the collaborative efforts aimed at improving the working conditions and well-being of nurses in South Africa. The PSCBC’s participation reaffirmed its commitment to supporting initiatives that advance the interests of healthcare workers and enhance the public healthcare system.





PSCBC Supports NAPTOSA Youth Conference

PSCBC Delegates and NAPTOSA Leadership at NAPTOSA Youth Conference

On the 27th June 2024, PSCBC participated in the inauguration of the NAPTOSA Youth Conference and the launch of their youth desk at the OR Tambo Garden Court in Gauteng. This event, marking Youth Month, focused on critical issues such as mental health, gender-based violence awareness, school safety, marginalised groups, and teacher professionalism.

Mr. Thabo Manne, President of NAPTOSA, underscored the significance of engaging and diversifying the youth. He emphasised the youth desk's role in promoting honesty, integrity, and the personal and professional development of NAPTOSA youth, particularly in addressing mental health challenges in schools.

Representing the PSCBC, Senior Officer Dispute Management Ms. Koketso Mocheko and Officer Chambers Mr. Tseke Mphahlele attended the event on behalf of the General Secretary, Mr. Frikkie De Bruin. The representatives expressed the council's support for the NAPTOSA Youth Desk, aligning with the council's mission for youth inclusivity. They further highlighted the PSCBC's efforts in advancing youth development, particularly the development and empowerment program at Stanza Bopape School and the employment of

eight young interns.

Additionally, Mr. Basil Manuel, the Executive Director of NAPTOSA, discussed the organisation's significant contributions to the curriculum and labour relations, emphasising their positive involvement in the BELA bill.

The event attracted prospective teachers from various provinces, who expressed the need for more advanced digital teaching administration and procedures. The PSCBC commended the leadership of NAPTOSA and its youth desk on a successful inaugural youth conference, further indicating our support by sponsoring the event with branded materials.

The PSCBC remains committed to supporting initiatives that foster youth development and inclusivity, recognising the crucial role young educators play in shaping the future of education in South Africa.

JUDGEMENT: EDUCATION LABOUR RELATIONS COUNCIL and DEPARTMENT EDUCATION GAUTENG

Summary: Jurisdiction - The Education Labour Relations Council has jurisdiction to arbitrate a dispute between an educator and the Department of Education.



[1] This is an unopposed appeal against an order of the Labour Court in which it reviewed and set aside an arbitral award, made by a Commissioner, under the auspices of the Education Labour Relations Council (ELRC). The award was set aside pursuant to the Labour Court's finding that the Commissioner lacked jurisdiction to arbitrate the dispute. The appeal is with the leave of that Court.

[2] Mr Betane and Ms Motoma are educators at the Pholosho Secondary School (School). On 17 December 2015, the Department of Education (DoE) placed an advertisement for the filling of vacant posts in Gauteng Schools, including that of a Deputy Principal at the School. Both applied, were shortlisted and interviewed for the post. During the interview, Mr Betane and Ms Motoma scored 92 and 90 points respectively. The selection panel recommended to the School Governing Body (SGB) that Mr Betane be recommended for appointment by the DoE. The SGB ratified the decision, and, accordingly recommended Mr Betane for appointment to the post.

[3] The DoE decided not to follow the SGB's recommendation and appointed Ms Motoma. The primary reason for rejecting the SGB's

recommendation was that it overlooked the gender imbalance at the school. Having considered the gender imbalance at the school it decided to appoint a female.

[4] Dissatisfied with the DoE's decision, Mr Betane referred an unfair labour practice dispute to the ELRC, in terms of section 186(2)(a) of the Labour Relations Act (LRA). Conciliation was unsuccessful and he referred the dispute to arbitration.

[5] At the arbitration, the Commissioner found, for various reasons which are irrelevant for present purposes, that the conduct of the DoE constituted an unfair labour practice with regard to the promotion of Mr Betane. He ordered the DoE to appoint Mr Betane to the post, and, he resultantly set aside Ms Motoma's appointment.

[6] Aggrieved by the arbitral award, the DoE launched a review application in the Labour Court. The Labour Court found that the conduct of the DoE constituted administrative action as defined in s1 of the Promotion of Administrative Justice Act (PAJA). It stated that administrative action may only be reviewed by a Court or tribunal, and, concluded that since the ELRC is neither a Court nor a tribunal,

it had no jurisdiction to arbitrate the dispute.

[7] The Labour Court relied on *Head, Western Cape Education Department and Others v Governing Body, Point High School and Others* (Point High School) as authority for its conclusion. In *Point High School*, the SGB had launched an application to review and set aside the decision of the Education Department. The SGB instituted the review in terms of PAJA and it was adjudicated on that basis. This matter is on a different footing because the employee brought the review in terms of the LRA.

[8] The Labour Court unfortunately overlooked relevant decisions of the Constitutional Court. In *Chirwa v Transnet Ltd & Others*, Skweyiya J held that “the LRA is the primary source in matters concerning allegations by employees of unfair dismissal and unfair labour practice irrespective of who the employer is, and includes the State and its organs as employers”. Ngcobo J elaborated in a separate judgment and stated that:

‘Consistently with this objective, the LRA brings all employees, whether employed in the public sector or private sector under it, except those specifically excluded. The powers given to the Labour Court under s 158 (1)(h) to review the executive or administrative acts of the state as an employer gives effect to the intention to bring public sector employees under one comprehensive framework of law governing all employees. So too is the repeal of the legislation such as Public Service Labour Relations Act and the Education Labour Relations Act. One of the manifest objects of the LRA is therefore to subject all employees, whether in the public sector or in the private sector, to its provisions except those who are specifically excluded from its operation.’

[9] In *Gcaba v Minister of Safety and Security and Others*, Mr Gcaba, the Grahamstown station commissioner, applied, was shortlisted and

interviewed for a promotion to the upgraded post of station commissioner. He was unsuccessful and a Mr Govender was appointed instead. Gcaba approached the High Court with an application to review and set aside the decision not to appoint him to the upgraded post. The High Court held that it was an employment matter and dismissed the application for want of jurisdiction. The Constitutional Court held that the failure to promote and appoint Mr Gcaba was a quintessential labour-related issue, based on the right to fair labour practices. It concluded that:

‘The applicant’s complaint was essentially rooted in the LRA, as it was based on conduct of an employer towards an employee which may have violated the right to fair labour practices. It was not based on administrative action.’

[10] The ELRC is a bargaining council established in terms of the LRA for the education sector. In *Mthashana FET College v Education Labour Relations Council and Others*, this Court said:

‘The primary function of bargaining councils is to regulate relations between management and labour in the sectors over which they have jurisdiction by concluding collective agreements. The bargaining councils are also entrusted with the responsibility to settle disputes between parties falling within their registered scope. A Constitution of a bargaining council should capture a set of fundamental principles which governs it. A bargaining council derives its jurisdictional mandate, to resolve and/or [determine] disputes referred to it, from its Constitution.’

[11] In terms of the Constitution of the ELRC ‘employee’ means an educator as defined in the Employment of Educators Act (EoEA) and ‘employer’ means the State in its capacity as employer as defined in the EoEA. The EoEA defines ‘educator’ as “any person who teaches, educates or trains other persons or who provides professional



educational services, including professional therapy and education psychological services, at any public school, departmental office or adult basic education centre and who is appointed in a post on any educator establishment under this Act”. An employer in respect of an educator in the service of a Provincial Department of Education means the Head of Department (HoD).

[12] In terms of clause 7.3 read with clause 70.10 of the ELRC’s Constitution, it may resolve disputes – in respect of matters that are assigned to the State as employer in the education sector - with regard to promotions insofar as it affects the right of educators to a fair labour practice, when the HoD has made a decision. It is, inter alia, for this reason that the ELRC adopted Collective Agreement 3 of 2016 (ELRC Guidelines: Promotion Arbitrations). This collective agreement specifically states that its purpose is to “ensure that parties and panellists understand what is expected of them in relation to unfair labour practice disputes concerning promotions”. The parties to whom this agreement

applies bestowed the power to determine promotion disputes in the education sector on the ELRC.

[13] In my judgment, the ELRC had jurisdiction to arbitrate the dispute between Mr Betane and the Gauteng Provincial Education Department. The order of the Labour Court ought to be set aside and the matter referred back to that Court for the proper adjudication of the review application.

[14] I accordingly make the following order:

- 1. The appeal is upheld with no order as to costs.**
- 2. The order of the Labour Court is set aside and the matter is remitted to the Labour Court to adjudicate the review application.**

“I am bent, but not broken. I am scarred, but not disfigured. I am sad, but not hopeless. I am tired, but not powerless. I am angry, but not bitter. I am depressed, but not giving up.”

HEALTHY MIND - PRODUCTIVE WORKFORCE.

VISION

“ensuring workplace democratization, economic development,
social justice and labour peace for the public service”

MISSION

“embracing the future of work by advancing and protecting centralised collective bargaining, ensuring effective dispute management and good governance, empowering women, persons with disabilities and youth”

VALUES

Integrity
Efficiency
Accountability
Good governance
Equity

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