

RESOLUTION NO 5 OF 2005

AMENDMENTS TO ANNEXURE A OF THE PSCBC CONSTITUTION: DISPUTE RESOLUTION PROCEDURE

Noting

1. Noting that a need arose to amend the PSCBC dispute resolution procedure to align it with new circumstances and changes to the legislative framework.

Scope

2. This agreement binds,
 - (a) the employer,
 - (b) the employees of the employer who are members of the trade union parties to this agreement; and
 - (c) the employees of the employer who are not members of any trade union parties to this agreement, but who fall within the registered scope of Council.

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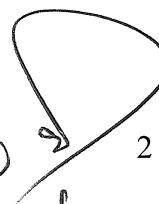
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Agreement

3. Therefore the Council resolves that the dispute resolution procedure, as registered by the Registrar of Labour Relations on 30 March 2003 to the constitution, be amended as per the attached Annexure A.
4. The dispute resolution procedure as per Annexure A takes effect from the date of its certification by the Registrar of Labour Relations in terms of section 57(4) of the Labour Relations Act 66 of 1995.
5. The Council will monitor the implementation of this agreement.

Dispute Resolution

6. If there is a dispute about the interpretation or application of this agreement any party may refer the matter to the Council for resolution in terms of the dispute resolution procedure of the Council.

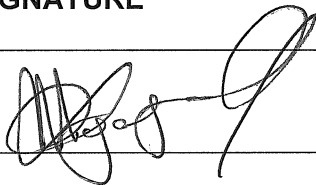
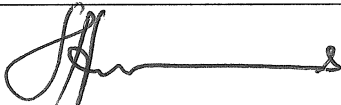
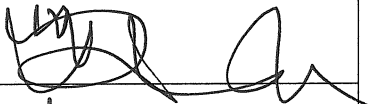
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31 DAY OF MARCH 2005

ON BEHALF OF THE GOVERNMENT AS EMPLOYER

	Name	Signature
	BN Nkomo	

ON BEHALF OF EMPLOYEE PARTIES

EMPLOYEE PARTY	NAME	SIGNATURE
DENOSA	JABU C. MAGAWA	
HOSPERSA/NUPSAW /NATU		
NAPTOSA	H. HENDRIKUS	
NEHAWU		
POPCRU	DHABHA MQINISENI	
PSA	C. J. Ker.	
SADTU	T. M. Nxosi	
SAPU	S. D. SIDA PIMAY.	




ANNEXURE A

DISPUTE RESOLUTION PROCEDURES OF COUNCIL¹

Application

- 1.1 *Sectoral Councils* may use these procedures to establish their own procedures. The procedures may be amended in accordance with the needs of that particular council.
- 1.2 These procedures apply to all disputes that arise within the *public service* in respect of those matters that:²
 - (a) are regulated by uniform rules, norms and standards that apply across the *public service*;
 - (b) apply to terms and conditions of service that apply to two or more *sectors*; or
 - (c) are assigned to the State as *employer* in respect of the *public service* that are not assigned to the State as *employer* in any *sector*.
- 1.3 Disputes may not be dealt with by the *Council* if a *Sectoral Council* has the requisite jurisdiction to deal with the dispute.
- 1.4 If there is a jurisdictional dispute between the *Council* and a *Sectoral Council* as to whether these procedures or the *Sectoral Council's* procedures apply, any party to the *dispute* may refer the *dispute* to the CCMA in terms of section 38 of the *Act* for conciliation and arbitration.

Mutual interest, Unilateral Change to Terms and Conditions of Employment and Refusal to Bargain disputes

- 2.1 A dispute of mutual interest includes a dispute:
 - a) that is declared by a *party to Council* in terms of clause 16.6 of the constitution;
 - b) between the *employer* and a party to the *Council* or the *employer* and a non party to the *Council*, which concerns a matter of *mutual interest* contemplated in section 134 of the *Act*.
- 2.2 The provisions contained in paragraph 4 apply to a dispute contemplated in paragraph 2.1 to 2.7.
- 2.3 If the *dispute* is not settled at conciliation, the parties to the *dispute* may exercise their rights in terms of the *Act*.

¹ An italicised word or phrase indicates that the word or phrase is defined in clause 28 of the constitution or in paragraph 11 of this Annexure

² The following disputes are not dealt with by the Council but, must, in terms of the provisions of the Act, be dealt with by the CCMA:

- (a) disclosure of information - sections 16 and 89 of the Act
- (b) organisational rights - chapter III part A of the Act
- (c) agency shop disputes - section 25 of the Act
- (d) closed shop disputes - section 26 of the Act
- (e) interpretation or application of collective bargaining provisions - section 63(1) of the Act
- (f) picketing disputes - section 69 of the Act
- (g) workplace forum disputes - sections 86 and 94 of the Act
- (h) discrimination – section 10, chapter 2 of the EEA
- (i) learnership disputes – section 19 of the SDA

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- 2.4 If no collective agreements exist on (a) the establishment of a minimum service in any essential service or (b) rules about the conduct of a strike or lockout, the *conciliator* must attempt to obtain agreement thereon.
- 2.5 If a dispute is arbitrable, the provisions contained in paragraph 5 apply.
- 2.6 If the dispute is about a refusal to bargain, the provisions of paragraph 2.3 to 2.5 apply and the *conciliator* must issue an advisory award—
- (a) within 14 days of the request; and
 - (b) before notice is given in terms of section 64(1) of *the Act*.
- 2.7 If the dispute is about unilateral change to terms and conditions of employment, the provisions of paragraph 2.3 to 2.5 apply
- 2.8 Any employee party who refers a *dispute* to the *Council* that concerns a unilateral change to terms and conditions of employment may, in the referral, and for a period of 30 days
- (a) require the *employer* not to implement unilaterally the change to terms and conditions of employment; or
 - (b) if the *employer* has already implemented the change unilaterally, require the *employer* to restore the terms and conditions of employment that applied before the change.
- 2.9 The *employer* must comply with a requirement referred to in paragraph 2.8. within 48 hours of service of the referral on the employer

Disputes of right

- 3.1 In paragraphs 3.2 to 3.4 a “dispute” means any dispute, other than a *mutual interest* dispute contemplated in paragraph 2, that may be referred to the *Council* for—
- (a) conciliation;
 - (b) arbitration;³ or
 - (c) conciliation and arbitration.⁴
- 3.2 If the dispute is one that is contemplated in terms of paragraph 3(1)(a), the conciliation procedure contained in paragraph 4 applies.
- 3.3 If the dispute is one that is contemplated in terms of paragraph 3(1)(b), the arbitration procedure contained in paragraph 5 applies.
- 3.4 If the dispute is one that is contemplated in terms of paragraph 3(1)(c), the procedures contained in paragraphs 4 and 5 apply.

Conciliation by Council

- 4.1 A party to a *dispute* may refer a *dispute* in writing to the *Council* within the period stipulated in *the Act* (if any).
- 4.2 The party who refers a *dispute* to the *Council* must satisfy the *Secretary* that:

³ For example a dispute about the interpretation and application of the constitution (section 30(1)(h) of the Act).

⁴ For example a dispute about the interpretation or application of a collective agreement (section 24 of the Act), a dispute in an essential service (section 74);

- (a) a copy of the referral has been served on all the other parties to the dispute; and
 - (b) the internal procedures have been exhausted.
- 4.3 If the *Secretary* is satisfied that the referral has been properly served, the *Secretary* must—
- (a) appoint a *conciliator* to attempt to resolve the *dispute* through conciliation within 30 days of the date of the referral;
 - (b) decide the date, time and venue of the conciliation meeting; and
 - (c) notify the parties to the *dispute* of such details.
- 4.4 If the parties to a *dispute* have agreed on a particular *conciliator*, the *Secretary* must appoint the person agreed upon if that person is available to conciliate the *dispute* within the 30 day period or any agreed period. If the parties do not agree upon a *conciliator*, the *Secretary* must appoint a *conciliator*.
- 4.5 The *conciliator* appointed to conciliate the *dispute* must determine the process to attempt to resolve the *dispute* which may include—
- (a) mediating the *dispute*;
 - (b) conducting a fact-finding exercise;
 - (c) making a recommendation to the parties, which may be in the form of an advisory award
- 4.6 Any party to the *dispute* may, at least 5 *working days* before the date of the conciliation, inform the *Secretary* and any other party to the *dispute* in writing that it is not in position to settle the matter in conciliation. If so informed, the *Secretary* must request a *conciliator* to issue an outcome certificate indicating that the matter remains unresolved.

Arbitration by Council

- 5.1 A party to a *dispute* may refer the *dispute* in writing to the *Secretary* if—
- (a) the matter is a matter referred to in paragraph 3.1(b); or
 - (b) the *conciliator* appointed in terms of paragraph 4 issued an outcome certificate
- 5.2 A referral in terms of paragraph 5.1(b) must be made within 90 days after the date on which the certificate was issued
- 5.3 The party who refers a *dispute* to the *Council* must satisfy the *Secretary* that a copy of the referral has been served on all the other parties to the *dispute*.
- 5.4 Within 5 working days of the date of the referral the *Secretary* will notify the parties that they must hold a pre-arbitration meeting. This meeting must be held within 15 working days of the date of the notification.
- 5.5 If the respondent intends raising a jurisdictional point, a statement wherein the jurisdictional point is raised, must be served on all the parties to the dispute and on the *Council* within 5 working days of the conclusion of the pre-arbitration meeting.

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5.6 The following procedure will apply if a jurisdictional point is raised:

- (i) If the applicant wants to oppose the jurisdictional point taken by the respondent, he/she/the union may file the response on all the parties to the *dispute* and on the *Council* within 5 working days from receiving the Respondent's answer
- (ii) The Respondent may reply within 3 working days
- (iii) The Secretary will appoint an arbitrator to decide on the jurisdictional issue.
- (iv) The arbitrator may do so on the basis of the statements filed with the Secretary. The arbitrator may of own accord or on request of a duly motivated request of a party, allow the submission of affidavits or request the Secretary to convene a hearing with oral evidence in respect of the jurisdictional issue/s.
- (v) The arbitrator must issue a jurisdictional ruling within 5 working days.

5.7 In a pre-arbitration meeting the parties must attempt to reach consensus on:

- (i) nomination of an arbitrator which the secretary will appoint; depending on his/her availability
- (ii) any means by which the *dispute* may be settled;
- (iii) facts that are common cause;
- (iv) facts that are in *dispute*;
- (v) the issue/s that the *arbitrator* is required to decide;
- (vi) the precise relief claimed and if compensation is claimed, the amount of the compensation and how it is calculated;
- (vii) the sharing and exchange of relevant documents, and the preparation of a bundle of documents in chronological order with each page numbered;
- (viii) the manner in which documentary evidence is to be dealt with, including any agreement on the status of documents and whether documents, or part of documents, will *serve* as evidence of what they appear to be;
- (ix) whether evidence on affidavit will be admitted with or without the right of any *party* to cross-examine the person who made the affidavit;
- (x) which *party* must begin;
- (xi) the necessity for any on-the-spot inspection;
- (xii) securing the presence at the arbitration of any witness;
- (xiii) the resolution of any preliminary points that are intended to be taken;
- (xiv) the exchange of witness statements;

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- (xv) expert evidence;
- (xvi) any other means by which the proceedings may be shortened;
- (xvii) an estimate of the time required for the hearing;
- (xviii) the right of representation;
- (xix) whether an interpreter is required and, if so, for how long and for which languages; and
- (xx) A suggested date for the arbitration hearing

5.8 The parties must keep signed minutes of the outcome of the pre-arbitration meeting. The referring party must ensure that a copy of the minute of the pre-arbitration meeting is filed with the Secretary on or before the expiry date as set out in the notice from the Secretary referred to in paragraph 5.4.

5.9 If the Secretary is satisfied that:

- (i) the referral has been properly served;
- (ii) the minutes of the pre-arbitration meeting have been filed with no jurisdictional points being raised therein or the time period as set out in the notice from the Secretary referred to in paragraph 5.4 has lapsed, the Secretary must-
 - (a) appoint an *arbitrator* to arbitrate the *dispute*;
 - (b) decide the date, time and venue of the arbitration; and
 - (c) notify the parties to the *dispute* of these details;

5.10 If the parties to the *dispute* have not attended a pre-arbitration meeting, the *arbitrator* must first try to narrow the issues in dispute between the parties before commencing the arbitration.

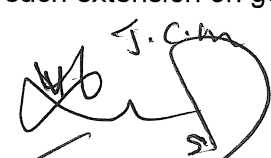
5.11 If all the parties to the *dispute* agree thereto, the *arbitrator* must suspend the arbitration and attempt to resolve the *dispute* through conciliation.

5.12 The *arbitrator* appointed to arbitrate the *dispute* must determine the procedure to be followed in the arbitration in order to resolve the *dispute* as fairly and quickly as possible, but must deal with the substantial merits of the *dispute* with a minimum of legal formalities in accordance with the rules of natural justice.

5.13 The *arbitrator* must issue an arbitration award with reasons signed by him/her within 14 days of the conclusion of the arbitration proceedings

5.14 The *Secretary* must serve a copy of the award on each party to the *dispute* or to the person who represented a party in the arbitration proceedings within 7 days of the arbitrator having issued the award.

5.15 The *arbitrator* may apply to the *Secretary* to extend the period within which the award with reasons is to be issued. The Secretary may only grant such extension on good cause shown.

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Costs

- 6.1 The *Council* must, subject to paragraph 6.2, pay the fees and costs of the *conciliators* and *arbitrators* in the proceedings. Each party to the *dispute* must pay its own costs with regard to travelling, meals, legal representation (if applicable), witness fees (if applicable) and other related expenses.
- 6.2 Costs may be awarded on application of a party, or of the panellist's own accord after hearing the parties. Costs may be awarded on the following grounds:
- (a) If the panellist is satisfied that the referral was made or defended vexatiously or without reasonable cause; or
 - (b) Any time during the proceedings, where a party has caused unreasonable delays; or
 - (c) If the panellist is satisfied that a party, or a person who represented that party in the proceedings acted in a manner seriously compromising the proceedings; or
 - (d) If a proceeding is adjourned or dismissed because a party to the dispute failed to attend or to be represented at the proceedings; or
 - (e) Any other grounds specified in the PSCBC Rules for the Conduct of Proceedings
- 6.3 Costs awarded may include—
- (a) the costs of the hearing, including the panellist's fee;
 - (b) legal and professional costs of the parties;
 - (c) other expenses which a party has incurred in the conduct of the *dispute*; and
 - (d) expenses of witnesses.
- 6.4 If a party to a *dispute* withdraws a referral less than 5 workings days before the scheduled date of the conciliation or arbitration, that party must bear the cost of the *conciliator* or *arbitrator*, unless the withdrawal is the result of a settlement agreement.

Panel of *conciliators* and *arbitrators*

- 7.1 The *Council* must appoint a panel of *conciliators* and *arbitrators* to resolve *disputes* at a Council meeting.
- 7.2 If for any reason there is a need to appoint additional panellists, the *Council* may appoint a new member to the panel for the unexpired term of office.
- 7.3 In appointing the panel, the *Council* must ensure that the panellists—
- (a) are drawn from each of the 9 provinces having regard to the anticipated number of *disputes* that are likely to arise in each province and the number of *employees* employed in national and provincial departments in the various provinces;
 - (b) have skill and experience in labour relations, knowledge about the *public service* and knowledge or experience in conciliation and/or arbitration; and
 - (c) are broadly representative of South African society.
- 7.4 All *conciliators* and *arbitrators* will conduct themselves in accordance with the Code of Conduct in Addendum A.
- 7.5 A member of the panel, whose term of office expires, may be eligible for re-appointment.

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Time periods and condonation

- 8.1 Despite the time periods stipulated in this agreement, the parties may agree to longer time periods for the resolution of any *dispute*.
- 8.2 Late applications must be dealt with in terms of the PSCBC Rules for the Conduct of Proceedings

Postponements

9. Applications for postponements must be done in terms of the PSCBC Rules for the Conduct of Proceedings

PSCBC Rules for the Conduct of Proceedings

10. The PSCBC Rules for the Conduct of Proceedings must be regarded as supplementary to this Dispute Resolution Procedure. If there is any conflict between the Dispute Resolution Procedure and the PSCBC Rules for the Conduct of proceedings, the Dispute Resolution Procedure will take precedence.

Definitions

- 11.1 In this Annexure and the Appendix 1 hereto, unless the context otherwise indicates—
- “conciliator” means a conciliator appointed by the Council in terms of paragraph 4;
- “arbitrator” means an arbitrator appointed by the Council in terms of paragraph 5;
- “dispute” includes an alleged dispute and means—
- (a) a dispute that exists in respect of matters that—
 - (i) are regulated by uniform rules, norms and standards that apply across the public service;
 - (ii) apply to terms and conditions of service that apply to two or more sectors; or
 - (iii) are assigned to the State as employer in respect of the public service that are not assigned to the State as employer in any sector; or
 - (b) a dispute of right that must be referred to the Council for conciliation or arbitration or both
- “day” means a calendar day unless otherwise specified
- 11.2 Any other expression used in this Annexure not defined in paragraph 11.1 which is defined in the Labour Relations Act 66 of 1995 (the Act), the constitution of the Council or the PSCBC Rules for the Conduct of proceedings, has the same meaning as in the Act, the constitution of the Council or the PSCBC Rules for the Conduct of proceedings.