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To: Deputy Directors-General, Chief Directors, Directors (Head Office and district offices), Deputy Directors, Circuit Managers, Heads: SLES Coordination and Advice, Principals and Chairpersons of governing bodies at public schools

Short summary: *Picketing rules and procedures during industrial action as published by the Education Labour Relations Council (hereinafter referred to as the ELRC), as outlined in Collective Agreement No.1 of 2017.*

Subject: Procedure for picketing during industrial action

1. Your attention is drawn to ELRC Collective Agreement No. 1 of 2017 which determines and outlines the procedure for picketing during industrial action (**Annexure A**).
2. Managers and educators are required to acquaint themselves with the contents of the agreement.
3. To ensure legislative compliance, heads of institutions/relevant managers are required to adhere to the contents of the agreement, especially in respect of the purpose of the agreement, the rights of employees affiliated to trade unions, conduct during such action, the process of picketing and the roles and responsibilities of all parties.
4. All new managers, educators and officials must be made aware of this circular upon their appointment at any of the Western Cape Education Department's educational institutions and offices.

SIGNED: BK SCHREUDER

HEAD: EDUCATION

DATE: 2019-03-09

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



**COLLECTIVE AGREEMENT
NO. 1 OF 2017**

20 JULY 2017

PICKETING RULES

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EDUCATION LABOUR RELATIONS COUNCIL
COLLECTIVE AGREEMENT NO. 1 OF 2017
PICKETING RULES

1. PURPOSE OF THIS AGREEMENT

- 1.1 To provide a procedure for picketing during industrial action;
- 1.2 To ensure peaceful and organised picketing; and
- 1.3 To demarcate areas where demonstration, assembly and / or picketing is to take place.

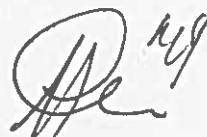
2. SCOPE

This agreement applies to and binds:

- 2.1 The Employer, as defined in the Employment of Educators Act 76 of 1998 as amended;
- 2.2 The Trade Unions in the Education Sector; and
- 2.3 All employees of the employer as defined in the Employment of Educators Act 76 of 1998, whether such employees are members of trade union parties to this agreement or not.

3. THE PARTIES NOTE AS FOLLOWS:

- 3.1 Section 69 of the Labour Relations Amendment Act (as amended) (LRA) provides for a process of concluding picketing rules.
- 3.2 The LRA code of good practice on picketing, provides a practical guidance on picketing in support of a protected strike or in opposition to a lock-out.
- 3.3 In order to complement the provisions of the Labour Relations Act (LRA), the parties hereby conclude this collective agreement.
- 3.4 Employees employed by the Department of Basic Education in terms of the Employment of Educator's Act are employed by the provincial departments and are merely placed in different schools and district / provincial offices.



- 3.5 Consequently the schools / provincial or district offices are merely work stations for such employees and not the workplace.

4. THE PARTIES AGREE AS FOLLOWS:

- 4.1 The Department recognizes the rights of the Unions and the Employees to picket. However, picketing in the Department's premises can only be allowed if it agrees to it. It is against this principle that the Department seeks to regulate the exercise of picketing rights by the Unions and the Employees within its premises.
- 4.2 Both parties acknowledge that the exercise of rights and the performance of obligations arising from this agreement shall not be abused so as to hinder the rendering of services by those not involved in picketing during that picketing; and
- 4.3 That this agreement shall be legally binding on all parties identified in this agreement, therefore the parties agree as follows:
- 4.3.1 that only a union may authorize a picket by its members and supporters for the purposes of peacefully demonstrating –
- (a) in support of a protected strike; or
 - (b) in opposition to any lock-out
- 4.3.2 that picketing may be in any place to which public has access but:
- (a) Where a picket takes place on the premise(s) of the employer, then the permission of the employer should be obtained first; and
 - (b) that the employer may not unreasonably withhold the permission referred to in clause 4.3.2(a).

Notice of picket

- 4.4 That the Employer be given 7 days' notice of the intention to picket;
- 4.5 Such a notice to contain the following information:
- 4.5.1 The place where picketing is intended to take place; request for such pickets to take place and the indication of the specific entrance to the institution;
- 4.5.2 The time it will start and the time it will end;
- 4.5.3 An estimate of the number of people who will participate in the picket;
- 4.5.4 The name and contact person or persons for purposes of commotion, during picketing;
- 4.5.5 The name of the organisers of the picket; and
- 4.5.6 The names of the marshals.

Conduct during the picket

4.6 The code of good practice will apply (Annexure A).

Times for Picketing

4.7 The employer only permits picketing inside its premises between 09h00 – 16h00.

4.8 The rationale behind these times is to ensure that no victimization and intimidation on the non-striking persons and or other persons leaving and or entering the Department's premises.

4.9 Picketing outside of the above times, can be done outside of the Department's premises.

4.10 Picketing within the school premises during school hours will be limited to before and after school starts and ends and during school intervals in order not to disrupt teaching and learning of the students.

Place where the picketing is to be held and the Number of Picketers per designated area

4.11 Permission to picket outside of the Department's premises must be obtained from the Local Municipality.

4.12 Picketing at the Department's offices (National, Provincial, Regional, circuit or local) must be five (5) meters from the main entrance.

4.13 In order to allow easy access to non-striking employees, delivery trucks and all other vehicles and persons leaving and or entering the Department's premises, Picket Marshals must keep pathways including the side walk clear of any obstruction.

4.14 Picketing will only be allowed in the designated areas:

- a) Five (5) meters from the Main Door, by an unlimited number of Employees;
- b) In the car park, or any place at the Department's premises, agreed to by the parties;

4.15 If there are any petitions to be handed over, a time for such hand over will be agreed to by the Unions and the Department on the morning of the day of the hand over.

Access to the Employer's premises other than picketing

4.16 The employer will provide picketers with access to toilet facilities in a designated area, subject to picketers conducting themselves in an orderly and lawful manner.

The bottom right corner of the page contains two handwritten signatures in black ink. Below the signatures is the logo for the Education Labour Relations Council (elrc), which consists of a circular emblem with a gear and a scale, followed by the lowercase letters 'elrc' and the full name 'Education Labour Relations Council' in smaller text below it.

Modes of Communication between Marshals and the Employer

- 4.17 Marshals shall call the Departmental representative on their cell phones and / or shall request the Security Officers at the main gate to call designated members of the management team where and when a need arises.

Disciplinary Action

- 4.18 No disciplinary action shall be taken against any persons merely participating in a picket that is in accordance with the provisions of the LRA.
- 4.19 Should those participating in a protected picket commit misconduct in the course of a protected picket line, the employer will be entitled to take disciplinary action in terms of the EEA against those responsible for such misconduct.
- 4.20 The employer shall wait until the picket is over before instituting disciplinary action.
- 4.21 If the misconduct was conducted by a union official, the provisions in the LRA applies.

5. DISPUTE RESOLUTION PROCEDURE

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

6. DATE OF IMPLEMENTATION

This agreement shall come into effect on the date it is signed unless otherwise indicated in any paragraph of this agreement.

7. DEFINITIONS

- 7.1 "**Labour Relations Act (LRA)**": means the Labour Relations Act 66 of 1995 as amended.
- 7.2 "**Employer**": means the Department of Basic Educations and the nine Provincial Education Departments in terms of Section 3 of the Employment of Educators Act, No 76 of 1998 as amended.
- 7.3 "**Lockout**": means the exclusion by an employer of employees from the employer's workplace, for the purposes of compelling the employees to accept a demand in respect of a matter of mutual interest between employer and employee, whether or not the


employer breaches those employees' contracts of employment in the course of or for the purpose of the exclusion.

- 7.4 **"Strike"**: means the partial or complete concerted refusal to work, or the retardation or obstruction of work, by persons who are or have been employed by the same employer or by different employers, for the purpose of remedying a grievance or resolving a dispute in respect of any matter of mutual interest between employer and employee, and every reference to "work" in this definition includes overtime work, whether it is voluntary or compulsory.
- 7.5 **"Union"**: means a registered trade union that is recognised by the employer and admitted to the Education Labour Relations Council (ELRC).
- 7.6 **"Picketing"**: means a peaceful demonstration/s in support of a protected strike or to oppose a lockout often showing placards with their demands whilst singing, dancing and chanting at a strategic spot/s at or near their place of work.
- 7.7 **"Workplace"**: the workplace in education for employees employed in terms of the Employment of Educators Act (EEA) at the provincial level is the nine Provincial Departments of Education and at the national level, the Department of Basic Education.
- 7.8 **"Work station"**: means the schools / provincial or district offices as premises to where employees are stationed.



8. SIGNING OF THIS AGREEMENT

Thus done and signed at CENTURION on this day of 20 July 2017 by:

ON BEHALF OF THE STATE AS EMPLOYER

DEPARTMENT	NAME	SIGNATURE
EDUCATION	H.M. MWELE	

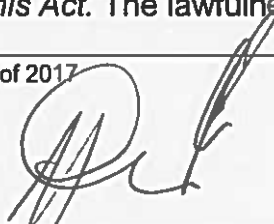
ON BEHALF OF THE EMPLOYEE PARTIES

TRADE UNION	NAME	SIGNATURE
SADTU	MUGWENA MALULEKE	
CTU "ATU"	JC KOPPER	

CODE OF GOOD PRACTICE: PICKETING

1 Introduction

- (1) This code of *good practice* is intended to provide practical guidance on picketing in support of any protected *strike* or in opposition to any *lock-out*. It is intended to be a guide to those who may be contemplating, organising or taking part in a picket and for those who as *employers or employees* or members of the general public that may be affected by it.
- (2) Section 17 of the Constitution recognises the right to assemble, to demonstrate, to picket and to present petitions. This constitutional right can only be exercised peacefully and unarmed. Section 69 of the Labour Relations Act, No. 66 of 1995, seeks to give effect to this right in respect of a picket in support of a protected *strike* or a *lock-out*.
- (3) This code does not impose any legal obligations and the failure to observe it does not by itself render anyone liable in any proceedings. But section 69(5)(d) of *this Act* provides that the *Commission* must take account of this code of *good practice* when it establishes picketing rules.
- (4) Any person interpreting or applying *this Act* in respect of any picket must take this code of *good practice* into account. This is the effect of section 203 of *this Act*. This applies to the *Commission*, Labour Court, the Labour Appeal Court, and the South African Police Services.
- (5) This code does not apply to all pickets and demonstrations in which employees and trade unions may engage. It applies only to pickets held in terms of section 69 of *this Act*. That section has four elements:
 - (a) The picket must be authorised by a registered *trade union*;
 - (b) Only members and supporters of the *trade union* may participate in the picket;
 - (c) The purpose of the picket must be to peacefully demonstrate in support of any protected *strike* or in opposition to any *lock-out*;
 - (d) The picket may only be held in a public place outside the premises of the employer or, with the permission of the employer, inside its premises. The permission of the employer is subject to overrule by the CCMA, if such permission is unreasonably denied.
- (6) If the picket complies with these four elements then the ordinary laws regulating the right of assembly do not apply. These laws include the common law, municipal by-laws and the Regulation of Gatherings Act, 205 of 1993.
- (7) A picket with purposes other than to demonstrate in support of a protected strike or a *lock-out* is not protected by *this Act*. The lawfulness of that




picket or demonstration will depend on compliance with the ordinary laws.

2. Authorisation

- (1) A picket contemplated in section 69 of *this Act* must be authorised by a registered *trade union*. The authorisation must be made in accordance with the *trade union's* constitution. That means that there must either be a resolution authorising the picket or a resolution permitting a *trade union official* to authorise a picket in terms of section 69(1). The actual authorisation should be formal and in writing. A copy of the resolution and, if necessary, the formal authorisation ought to be served on the *employer* before the commencement of the picket.
- (2) The authorisation applies only to its members and its supporters.

3. Purpose of the picket

- (1) The purpose of the picket is to peacefully encourage non-striking employees and members of the public to oppose a *lock-out* or to support strikers involved in a protected *strike*. The nature of that support can vary. It may be to encourage employees not to work during the strike or lock-out. It may be to dissuade replacement labour from working. It may also be to persuade members of the public or other employers and their employees not to do business with the employer.
- (2) *The strike* must be a protected *strike*. In normal cases, employees picket at their own place of work in support of their *strike* against their own employer. Cases do arise, however, where employees picket at their own place of work in support of a *strike* between another employer and its employees. This is what is contemplated in section 66 as a "secondary strike@. In this case, in order to be protected, the picket must further satisfy the requirements of a lawful secondary *strike* in terms of section 66 of *this Act*. This is because the definition of "secondary *strike*" in section 66 includes "conduct in contemplation or furtherance of a *strike*". A picket is "conduct in contemplation or furtherance of a *strike*."
- (3) The requirements for a protected secondary strike are-
 - (a) *the strike* that is to be supported by the secondary *strike* must itself be a protected *strike*;
 - (b) the employer of the employees taking part in the secondary strike must have received written notice of the proposed picket at least 7 days prior to its commencement; and
 - (c) the nature and extent of the secondary strike must be reasonable in relation to the possible direct or indirect affect that the secondary strike may have on the business of the primary employer.
- (4) If a picket is in support of an unprotected *strike*, the picket is not protected by section 69 of *this Act*.

- (5) Pickets may be held in opposition to a *lock-out*. Section 69(1) does not distinguish between protected and unprotected lockouts. This means that a picket may be authorised and held in opposition to a protected or an unprotected *lock-out*.

4. Picketing rules

- (1) The registered trade union and employer should seek to agree to picketing rules before the commencement of the strike or picket.
- (2) A collective agreement may contain picketing rules. When they negotiate an agreement the following factors should be considered-
- (a) the nature of the authorisation and its service upon the employer;
 - (b) the notice of the commencement of the picket including the place, time and the extent of the picket;
 - (c) the nature of the conduct in the picket;
 - (d) the number of picketers and their location;
 - (e) the modes of communication between marshals and employers and any other relevant parties;
 - (f) access to the employers premises for purposes other than picketing e.g. access to toilets, the use of telephones, etc;
 - (g) the conduct of the pickets on the employer's premises; and
 - (h) this *code of good practice*.
- (3) The factors listed in subparagraph (2) apply to the determination of picketing rules by a commissioner.

5. Pickets on the employer's premises

- (1) A picket may take place on the employer's premises with the permission of the employer. The permission may not be unreasonably withheld. In order to determine whether the decision of the employer to withhold the permission is reasonable, the factors which should be taken into account include-
- (a) the nature of the workplace eg. a shop, a factory, a mine etc;
 - (b) the particular situation of the workplace eg. distance from place to which public has access, living accommodation situated on employer premises, etc;
 - (c) the number of employees taking part in the picket inside the employer's premises;
 - (d) the areas designated for the picket;
 - (e) time and duration of the picket;
 - (f) the proposed movement of persons participating in the picket;
 - (g) the proposals by the trade union to exercise control over the picket;
 - (h) the conduct of the picketers.

6. Conduct in the picket

- (1) The registered *trade union* must appoint a convenor to oversee the picket. The convenor must be a member or an official of the *trade union*. That person should have, at all times, a copy of section 69 of *this Act*, a copy of these guidelines, any *collective agreement* or rules regulating pickets and a copy of the resolution and formal authorisation of the picket by the registered *trade union*. These documents are important for the purposes of persuading the persons participating in the picket to comply with the law. These documents may also be important to establish the lawfulness and the protected nature of the picket to the employer, the public and in particular to the police.
- (2) The convenor must notify the employer, the responsible person appointed in terms of section 2(4)(a) of the Regulation of Gatherings Act, 1993 and the police of the intended picket. The notice should contain:
 - (a) notification that the picket is in compliance with section 69 of this Act;
 - (b) the name, address and telephone number of the trade union and the convenor;
 - (c) details of the picket, including the details of the employer being picketed, the date of the commencement of the picket, the location of the picket, etc.
- (3) The employer must, on receipt of the notification, provide the convenor with the name, address and telephone number of the person appointed by the employer to represent it in any dealings arising from the picket.
- (4) The registered *trade union* should appoint picket marshals to monitor the picket, they should have the telephone numbers of the convenor, the *trade union* office and any persons appointed to oversee the picket, in the absence of the convenor. The marshals should wear arm bands to identify themselves as marshals. The trade union should instruct the marshals on the law, any agreed picketing rules or where no agreed rules exist any picketing rules that have been stipulated by the CCMA, this Code of Conduct and the steps to be taken to ensure that the picket is conducted peacefully.
- (5) Although the picket may be held in any place to which the public has access, the picket may not interfere with the constitutional rights of other persons.
- (6) The picketers must conduct themselves in a peaceful, unarmed and lawful manner. They may-
 - (a) carry placards;
 - (b) chant slogans; and
 - (c) sing and dance.
- (6) Picketers may not –

- (a) physically prevent members of the public, including customers, other employees and service providers, from gaining access to or leaving the employers premises;
- (b) commit any action which may be unlawful, including but not limited to any action which is, or may be perceived to be violent.

7. Role of the police

- (1) It is not the function of the police to take any view of the merits in particular of the dispute giving rise to a *strike* or a *lock-out*. They have a general duty to uphold the law and may take reasonable measures to keep the peace whether on the picket line or elsewhere.
- (2) The police have no responsibility for enforcing the Labour Relations Act. An employer cannot require the police to help in identifying pickets against whom it wishes to seek an order from the Labour Court. Nor is it the job of the police to enforce the terms of an order of the Labour Court. Enforcement of an order on the application of an employer is a matter for the courts and its officers, although the police may assist officers of the court when there is a breach of the peace.
- (3) The police have the responsibility to enforce the criminal law. They may arrest picketers for participation in violent conduct or attending a picket armed with dangerous weapons. They may take steps to protect the public if they are of the view that the picket is not peaceful and is likely to lead to violence.

8. General rights, obligations and immunity

- (1) A person who takes part in a picket protected in terms of *this Act* does not commit a delict or a breach of contract. This means that the employer may not sue a person or a union for damages caused by a picket.
- (2) The employer may not take disciplinary action against an employee for participating in a lawful picket. Where the employee's conduct during a picket constitutes misconduct the employer may take disciplinary action in accordance with the provisions of this Act.

