

Resolution

No 7

EDUCATION LABOUR RELATIONS COUNCIL

RESOLUTION No. 7 OF 1997

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DISPUTE RESOLUTION PROCEDURES OF COUNCIL

Parties to Council AGREE to:

1. The Dispute Resolution Procedures as contained at Annexure A.
2. The Arbitration Agreement as contained at Annexure B.
3. Annexure A and Annexure B being included as an annexure to the Constitution of the Council.
4. In the event of any conflict existing between the provisions of this resolution and another, the provisions of this resolution shall prevail.
5. The provisions of Resolution No. 3 of 1997 are mutatis mutandis applicable and this resolution shall come into operation on the date that it is extended.
6. No amendment to this resolution shall be of any force or effect unless reduced to writing and approved by parties to Council.

Signed on this 3 day of NOVEMBER 1997 at PRETORIA.

On behalf of the employer parties

On behalf of the employee parties

Signature Party

Signature Party

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Resolution No. 7 of 1997 *At* *J. H. [Signature]* *Enck*

On behalf of the employer parties

On behalf of the employee parties

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ANNEXURE A

DISPUTE RESOLUTION PROCEDURES

1. DISPUTES OVER RIGHTS DEALT WITH BY THE COUNCIL

1.1 The disputes over rights listed in paragraph 1.2 must be dealt with through conciliation.

- a) Disputes dealt with in terms of an agreed upon grievance procedure must be submitted to the Executive Officer as soon as possible but in any event not later than 60 days following on the date when the parties failed to settle the grievance.
- b) Those disputes that do not emanate from the said grievance procedure, must be registered with the Executive Officer as soon as possible but in any event not later than 90 days from the date on which the dispute arose.

1.2 Disputes to be dealt with through conciliation:

- a) Freedom of association and general protections as contemplated in section 9(1) of the Act.
- b) Application of collective agreement as contemplated in section 24(2) of the Act.
- c) Application of lapsed collective agreement as contemplated in section 61(10) of the Act.
- d) Unilateral change to terms and conditions of employment as contemplated in section 64(4) of the Act.
- e) Disputes in essential services as contemplated in section 74(1) of the Act.
- f) Unfair dismissal as contemplated in section 191(1) of the Act.
- g) Severance pay as contemplated in section 196(6) of the Act.
- h) Unfair labour practices as contemplated in schedule 7, item 2(1) of the Act.

1.3 The Executive Officer must appoint a conciliator from an approved panel of conciliators within 10 days from the date of receipt of the dispute.

1.4 The conciliator must commence conciliation within 5 working days from the date of appointment and attempt to resolve the dispute within 3 working days from the date of commencement.

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- 1.5 At the end of the conciliation period the conciliator must issue a certificate within 2 working days stating whether or not the dispute has been resolved. Such certificate must be served on each party to the dispute and the Executive Officer.
- 1.6 Where conciliation has failed to resolve the dispute, any party to the dispute may as soon as possible but in any event not later than 4 working days from the date of issue of the certificate referred to in paragraph 1.4, request the Executive Officer in writing to refer the dispute to arbitration, except if the dispute is about an act or omission referred to in schedule 7, item 2(1)(a) of the Act, where any party to the dispute may refer this unresolved dispute to the Labour Court for adjudication.
- 1.7 Subject to the provisions of paragraph 9, the Executive Officer must within 10 working days from receipt of a request by any of the parties to the dispute refer the matter to arbitration and appoint an arbitrator from an approved panel of arbitrators. The said arbitrator must commence arbitration within 5 working days of appointment.
- 1.8 The arbitrator must complete the arbitration within 10 working days from date of commencement and submit a written award to the Executive Officer and the parties to the dispute within the specified 10 working days.

2. INTERPRETATION OF DISPUTES OVER MATTERS OF MUTUAL INTEREST, COLLECTIVE AGREEMENTS AND THE NATURE OF DISPUTES

2.1. A dispute:-

- a) on whether any particular matter is a matter of mutual interest ;
- b) as to the interpretation of a lapsed or existing agreement ;or
- c) as to the determination of the nature of the dispute,

must be referred by the Executive Officer for arbitration as soon as possible but in any event not later than 60 days from the date on which the dispute arose, or within such longer period as the parties concerned may agree to.

- 2.2 A party to a dispute referred to in paragraph 2.1. must register such dispute in writing with the Executive Officer and the procedures of paragraph 1.7 and 1.8 apply.
- 2.3 The parties to the dispute may agree to voluntary conciliation before the commencement of formal arbitration, in which case the procedures in paragraphs 1.3 to 1.5 apply.

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3. MEDIATION OVER MATTERS OF MUTUAL INTEREST OR REFUSAL TO BARGAIN

3.1 A dispute over:-

- a) matters of mutual interest as contemplated in section 64(1) & 134 of the Act; or
- b) the refusal of a party to bargain as contemplated in section 64(2) & 134 of the Act, or
- c) disputes in terms of the procedure for negotiating collective agreements,

must be referred by the Executive Officer for mediation.

3.2 On registration of the dispute referred to in paragraph 3.1 the Executive Officer must, subject to the provisions of paragraph 9, within 10 working days from the receipt of the request, appoint a mediator from an approved panel of mediators.

3.3 The mediator must commence mediation within 5 working days from the date of appointment and attempt to resolve the dispute through mediation. The mediator must compile a written report on the nature and scope of the dispute and make a proposal for the settlement of the dispute within 10 working days from the date of commencement.

3.4 Where the mediator failed to resolve the dispute any party may take such lawful action as contemplated by the Act, which may include voluntary arbitration and in which case the procedures in paragraphs 1.6 to 1.8 apply.

4. DISPUTES TO BE DEALT WITH BY THE CCMA

4.1 The following disputes must be dealt with by the CCMA in terms of the provisions of the Act:

- a) Disclosure of information as contemplated by section 16(6) of the Act.
- b) Collective agreement on organisational rights as contemplated by section 21(4) of the Act.
- c) Withdrawal of organisational rights as contemplated by section 21(11) of the Act.
- d) Interpretation or application of organisational rights as contemplated by section 22(1) of the Act.

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- e) Non-admission as party to closed-shop as contemplated by section 26(1) of the Act.
- f) Interpretation or application of ministerial determination as contemplated by section 45(1) of the Act.
- g) Interpretation or application of collective bargaining provisions as contemplated by section 63(1) of the Act.
- h) Picketing as contemplated by section 69(8) of the Act.
- i) Joint decision-making (workplace forum) as contemplated by section 86(4)(b) of the Act.
- j) Disclosure of information (workplace forum) as contemplated by section 89(3) of the Act.
- k) Interpretation or application of workplace forum provisions as contemplated by section 94(1) of the Act.

5. **CONDONATION OF NON-COMPLIANCE WITH TIME FRAMES**

- 5.1 Any late registration of a dispute may be condoned by council on good cause shown.
- 5.2 For the purpose of this paragraph when considering if good cause exist, the council must also take into account:
 - a) the time that has elapsed since the occurrence of the events which gave rise to the dispute;
 - b) the rights of any party which may be affected by the condonation of such late registration;
 - c) when the disputee became aware of, or with the exercise of reasonable care should have become aware of, the events that gave rise to the dispute and would have been in a position to register the dispute within the specified time.

6. **EXTENSION OF PERIODS**

- 6.1 Notwithstanding any time periods stipulated above concerning conciliation, arbitration or mediation, parties may, in consultation with the Executive Officer, agree to longer periods for the settlement of any disputes.

7. **DETERMINATION OF JURISDICTION**

- 7.1 Disputes which do not fall within the scope of the council, must be dealt with in terms of the provisions of the relevant legislation and/or any other provisions.



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- 7.2 Disputes which are not specifically dealt with in terms of this chapter and which fall within the scope of the council, the nature and procedure must be determined by the Executive Officer in terms of the provisions of this agreement.

8. REPRESENTATION BY PARTIES AT CONCILIATION; MEDIATION AND ARBITRATION PROCEDURES

8.1 AT CONCILIATION

- 8.1.1 Any party to the dispute may be represented by a trade union official and/or a management official.
- 8.1.2 In respect of non-parties, s/he or they, may be represented by a trade union official or another employee within that department and/or a management official

8.2 AT MEDIATION

- 8.2.1 In the case of an individual dispute:-

- a) any party to the dispute may be represented by a trade union official and/or a management official.
- b) In respect of non-parties, s/he may be represented by a trade union official or another employee within that department and/or a management official.

- 8.2.2 In the case of a collective dispute:-

- a) any party to the dispute may, subject to the Act, be represented by trade union officials and legal representative/s.
- b) In respect of non-parties, provided it is a recognised organisation within the education sector, they may, subject to the Act, be represented by trade union officials or elected officials of the organisation and legal representative/s.

8.3 AT ARBITRATION

- 8.3.1 In the case of an individual dispute:-

- a) any party to the dispute may, subject to the Act, be represented by a trade union official and/or a management official and legal representative/s.

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- b) In respect of non-parties, s/he may, subject to the Act, be represented by a trade union official or another employee within that department and/or a management official and legal representative/s.

8.3.2 In the case of a collective dispute:-

- a) any party to the dispute may, subject to the Act, be represented by trade union officials and legal representative/s.
- b) In respect of non-parties, provided it is a recognised organisation within the education sector, they may, subject to the Act, be represented by trade union officials or elected officials of the organisation and legal representative/s.

9. PANELS OF CONCILIATORS, MEDIATORS AND ARBITRATORS

9.1 The Council may at its Annual General Meeting appoint:-

- a) a panel of conciliators to conciliate disputes declared in terms of the provisions of this resolution.
- b) a panel of mediators to mediate disputes declared in terms of the provisions of this resolution.
- c) a panel of arbitrators to arbitrate disputes declared in terms of the provisions of this resolution.

9.2 The term of office of all panelist are 12 months

9.3 If for any reason there is a vacancy in a panel, the Council may appoint a new member to the panel for the remaining part of the year.

9.4 The Council may remove a member of a panel:-

- a) for serious misconduct;
- b) for incapacity; or
- c) by resolution of Council.

9.5 If the Council does not appoint these panels of conciliators, mediators or arbitrators, then it must appoint an accredited agency or agencies to perform the Council's dispute resolution functions.

9.6 Appointment of conciliator, mediator or arbitrator:-

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- a) Prior to the appointment of a conciliator, mediator or arbitrator, the Executive Officer must consult the parties to the dispute, except in the case of individual disputes where the Executive Office appoints from the relevant panel.
- b) Failing agreement between the parties, the Executive Officer shall appoint a conciliator, mediator or arbitrator from a panel or an accredited agency approved by Council.

10. LODGING OF DISPUTES

- 10.1 All disputes must be lodged with the Executive Officer or the secretary of a provincial chamber,
- 10.2 Before the dispute is dealt with in terms of the provisions of this resolution, the Executive Officer must ensure that:-
 - a) the other party to the dispute has been informed by the disputee, and
 - b) the dispute is submitted together with the relevant forms.

COSTS

- 11.1 Each party to the dispute shall pay its own costs with regard to travelling, meals, legal representation and other related expenses.
- 11.2 The cost of the conciliator, mediator or arbitrator, venue and other related expenses are to be borne by the Council.

12. DEFINITIONS

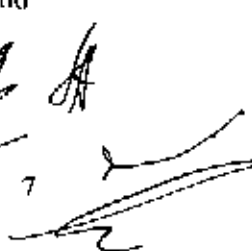
- 12.1 "Act" means the Labour Relations Act, 1995 (Act No. 66 of 1995). All terms in this resolution have the same meaning as in the Act and the Constitution of Council.
- 12.2 "Arbitration" is a process by which the resolution of a dispute between two or more parties is adjudicated by a neutral third party with the aim to resolve the dispute by making an award which is binding on such parties.
- 12.3 "Conciliation" means a process by which the resolution of a dispute between two or more parties is facilitated by a neutral third party, which process is not binding on any party, and is aimed at resolving the dispute between such parties without presenting a formal settlement proposal at the end of the process.



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- 12.4 "Executive Officer" means the official appointed as the Secretary of the Council in terms of the Constitution of the Council.
- 12.5 "Mediation" means a process by which the resolution of a dispute between two or more parties is facilitated by a neutral third party with the view to resolving the dispute, which may include fact finding by the same facilitator and includes a formal written report on the nature and scope of the dispute including a confidential settlement proposal. Such proposal is not binding on any party
- 12.6 "Secretary" means the official appointed in a provincial chamber in terms of the provisions of the Constitution of the Council.

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ARBITRATION AGREEMENT

1. **AREA AND SCOPE OF AGREEMENT**

1.1 This agreement shall apply to all parties to the Council and all those within the registered scope of the Council.

2. **THE ARBITRATOR'S TERMS OF REFERENCE**

2.1 The terms of reference of the arbitrator shall be to arbitrate any dispute referred to him/her, and to award a remedy which he/she considers fair and/or appropriate in order to settle the dispute.

3. **SELECTION OF THE ARBITRATOR**

3.1 The arbitration proceedings shall be conducted by an arbitrator to be appointed by the Executive Officer after receiving a request in terms of the Dispute Resolution Procedures, from the aggrieved party.

3.2 The arbitrator shall be chosen from an approved panel, or from the panel of arbitrators of the accredited agency/ies approved by the Council.

4. **VENUE FOR THE ARBITRATION**

The arbitration shall be conducted at any suitable venue agreed upon by the respective parties. In the event there is no agreement, the venue shall be determined by the Executive Officer.

5. **PRE-ARBITRATION PROCEDURES**

5.1 The Executive Officer may, on reasonable notice, but at least five (5) days before the hearing, require the parties to attend a pre-arbitration meeting with a view to considering ways in which the arbitration proceedings may be curtailed.

5.2 At the pre-arbitration meeting or at any stage prior to the arbitration:-

a) each party shall provide the other party with all relevant documents which it intends to use or rely upon at the arbitration; and

b) either party may request the other party to make available prior to the arbitration copies of documents other than those originally provided.

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6. **PRESENTATION OF THE EVIDENCE**

The parties shall, prior to the hearing, agree which party shall present its evidence first, failing which the arbitrator shall make a decision based on the particular case. The fact that a party starts adducing its evidence first, shall not imply that the particular party has assumed onus.

7. **ARBITRATOR'S POWERS**

The arbitrator shall have the power to determine the procedure which shall be followed at the hearing. This power shall include, but not limited to:-

- 7.1 the power to disallow the calling of unnecessary witnesses by the parties;
- 7.2 the power to make an interim award in relation to any point raised by either party if such an award would curtail the proceedings; and
- 7.3 the power to determine the rules of evidence, if any, which shall apply at the arbitration. The parties shall, however, be entitled to lead any evidence which is relevant and the arbitrator shall be entitled to have regard, inter alia, to evidence which would not normally be admissible in a court of law. The weight to be attached to such evidence, if any, shall be determined by the arbitrator at his/her sole discretion.

8. **LEGAL REPRESENTATION**

Parties may be legally represented at the hearing, unless otherwise agreed to by the parties, prior to the arbitration.

9. **COST AWARD**

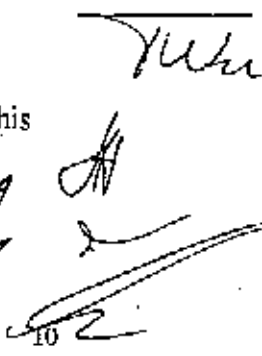
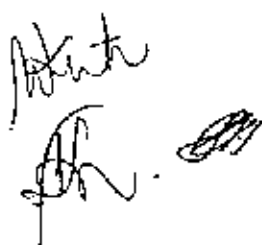
The arbitrator shall be entitled to award costs only in circumstances where he/she is of the view that any wasted costs are caused by the conduct of either of the parties.

10. **ARBITRATION COSTS**

- 10.1 Each party shall pay its own costs incurred in this matter, with regard to travelling, meals, legal representation and other related costs.
- 10.2 The cost of the arbitrator, the venue and any other ancillary costs are to be borne by the Council.

11. **RECORDING OF THE ARBITRATION**

A recording of the proceedings of the arbitration shall be kept. The cost of this service shall be borne by the Council.



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12. ARBITRATION AWARD

- 12.1 The arbitrator shall make his/her award and give reasons for his/her decision as soon as possible, but not later than ten (10) working days after the date of the conclusion of the arbitration.
- 12.2 The arbitrator's award shall be final and binding and shall be carried into effect immediately.
- 12.3 The arbitrator shall deliver the award by telefax and/or by hand to each of the parties to the dispute and the Executive Officer on the date of the written decision.

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