



# **PHSDSBC**

**PUBLIC HEALTH AND SOCIAL DEVELOPMENT  
SECTORAL BARGAINING COUNCIL**

**RESOLUTION NO 1 OF 2019**

**AGREEMENT ON ORGANIZATIONAL RIGHTS WITHIN THE PUBLIC  
HEALTH AND SOCIAL DEVELOPMENT SECTOR**

## **1. OBJECTIVE**

- 1.1. To provide for a procedure regulating organizational rights in compliance with the provisions of the Labour Relations Act, 66 of 1995, as amended (“the LRA”); by ensuring a fair process in granting and exercising these rights within the Public Health and Social Development Sector.
- 1.2. To ensure mutual understanding of the rights and obligations of the parties to the agreement and to provide for the uniform implementation of organizational rights within the sector through the establishment and formalization of procedures across the sector.
- 1.3. The provisions of the PSCBC Resolution 2 of 2017 on the procedure regulating organizational rights within the public service takes precedents if any other agreement or this agreement is in conflict therewith.
- 1.4. This agreement will replace any other agreement regulating organizational rights within the Public Health and Social Development Sector.

## **2. SCOPE**

The agreement binds

- 2.1. the State as the Employer;
- 2.2. Trade Unions that are admitted to the Public Health and Social Development Sectoral Bargaining Council (“the Council”) and their members; and
- 2.3. Employees of the Employer who are not members of any trade union party to this agreement but who fall within the registered scope of the Council.

### **3. THRESHOLD OF REPRESENTATIVENESS**

- 3.1. The Council, in terms of its Constitution, establishes a threshold that registered trade unions in the public health and social development sector must meet to be admitted as parties to the Council (“the Admission Threshold”). The Admission Threshold may be varied by the Council in its sole discretion and in accordance with its Constitution from time to time.
- 3.2. The threshold of representativeness as contemplated in section 18 of the LRA for trade unions who are not admitted as parties to the Council as at the date on which this agreement becomes effective, but who seek to be granted organizational rights in the relevant workplace, shall be 75% of the Admission Threshold as determined in the Constitution of the Council from time to time. Trade unions who meet this threshold of representativeness shall be granted the organizational rights in sections 12, 13 and 15 of the LRA. In respect of trade unions who seek to be admitted as parties to the Council after the date on which this agreement becomes effective, the following shall apply:
- 3.2.1. A trade union that is admitted as a party to the Council and meets the Admission Threshold shall be granted the organizational rights in section 12, 13, 14 and 15 of the LRA in the relevant workplace.
- 3.2.2. Trade unions who are admitted as parties to the Council as a result of them acting jointly but who do not, in their own right as a single trade union, meet the Admission Threshold of the Council, shall be granted the organizational rights in sections 12, 13 and 15 of the LRA in the relevant workplace.
- 3.3. Trade unions who are not admitted as parties to the Council but who act jointly, each meet 75% of the Admission Threshold, shall be granted the organizational rights in section 12, 13 and 15 of the LRA in the workplace.

#### **4. PROCEDURE TO OBTAIN ORGANIZATIONAL RIGHTS**

- 4.1. Where a registered trade union seeks to be granted organizational rights, it must serve on the employer a notice requesting to exercise one or more of the organizational rights conferred by the LRA in a workplace within the public service. The notice must comply with the provisions of section 21(2) of the LRA.
- 4.2. The parties to this agreement agree that in order to achieve consistency in the granting of organizational rights, the Council shall be required to consider the notice and make a recommendation to the employer about whether the trade union meets the minimum requirements of this agreement, read with the LRA, for granting of organizational rights to it. Accordingly, the employer shall forward the notice together with all annexures, to the Council immediately once it has received it.
- 4.3. In considering the notice, the Council will verify the membership of the trade union in any manner it deems practicable. The Council may, for verification purposes, request a trade union seeking organizational rights to verify its representativeness within the relevant workplace in the public health and social development sector by submitting audited membership figures.
- 4.4. The Council must, within a reasonable time of receiving the notice contemplated in clause 4.1 above, inform the employer about whether the applying trade union complies with the minimum requirements of this agreement, read with the LRA, for the granting of one or more organizational rights to it, and give its recommendation to the employer.
- 4.5. The Council may provide reasons in writing to the employer for its recommendation.
- 4.6. For avoidance of doubt:
  - 4.6.1. the Council may only make a recommendation to the employer but the employer will make the final decision whether or not to grant one or more organizational rights to the trade union, provided that the trade union

complies with the minimum requirements of this agreement, read with the LRA.

4.6.2. an employer may not grant organizational rights to a trade union who does not meet the minimum requirements of this agreement, read with the LRA; and

4.6.3. any organizational rights granted to a trade union in breach of the provisions of this agreement, read with the LRA, shall be null and void and remedial action must immediately be taken by the employer.

4.7. The employer will inform the applicant trade union of the Council's recommendation within 30 days of the date on which the Council confirms its recommendation to the employer in writing.

## **5. ACCESS TO THE WORKPLACE**

5.1. Registered and admitted trade unions must notify the employer in writing of all meetings to be held at least 3 days prior to the date of the meeting. The employer will provide the necessary authorization within 24 hours of the application for the meeting.

5.2. Registered and admitted trade unions are entitled, without being unreasonably denied, access to the employer's premises.

5.3. Representatives/ shop stewards/ union officials/ union office bearers of registered and admitted trade unions shall have the right of access to the premises of the employer during working hours, outside working hours and, during lunch breaks by prior arrangement, in order to:

5.3.1. recruit members

5.3.2. communicate with members

5.3.3. serve members interest (including representation of members) and

5.3.4. hold meetings.

5.4. All arrangements regarding access will be dealt with by the Human Resources/ Labour Relations component in the Department/ Hospital/ Clinic or any other applicable institution.

5.5. The employer shall endeavor to assist union representatives of registered and admitted trade unions in their recruitment efforts by providing venues and making available the use of designated notice boards where interviews with prospective members can be conducted. The members of a registered and admitted trade union are entitled to vote at the employer's premises in any election or ballot contemplated in that trade union's constitution.

5.6. The Head of the Department or his/ her delegates shall ensure that access to the work premises by organized labour is not unreasonably denied. If such a request is denied, it must be communicated timeously with the written reasons for such denial.

5.7. Access for purposes of consultation with a view of representing members shall be during working hours.

## **6. MEETINGS**

6.1. The employer shall provide venues for meetings.

6.2. The parties, however, agree that such access shall not threaten life or property and shall not result in undue disruption of work and shall always be subject to the following conditions:

6.2.1. Proper and timeous (at least 48 hours, unless urgency dictates otherwise with a full motivation of such urgency) notice, in writing, to management of the envisaged premises with details of the purpose, anticipated duration of the intended visit and names of trade union representatives.

- 6.2.2. A reasonable limit on the number of trade union representatives that may visit the premises at a given time.
  - 6.2.3. Access to the premises of the employer shall not be unreasonably withheld;
  - 6.2.4. Compliance with security and safety measures of the employer premises shall be ensured; and
  - 6.2.5. Access to members involved in essential service may involve special arrangements, so as not to affect the rendering of such services. In addition, the parties may also agree to the staggering of such meetings, to free up staff that is vital to the efficient maintenance of a continuous work process.
- 6.3. Subject to the provisions of 6.2 above, trade unions are entitled to hold meetings with employees during and outside working hours at the employer's premises.
- 6.4. General meetings:
- 6.4.1. Each individual trade union will be allowed to hold one (1) general meeting per month which will consist of lunchtime plus a further 45 minutes.
  - 6.4.2. The timeframe as above may be extended on request and approval by the employer before the meeting.
- 6.5. Special/ Emergency meetings:
- 6.5.1. A registered and admitted trade union may request the convening of a special general meeting 48 hours in advance, in line with clause 6.4 above. Such arrangements need to be communicated to management within the stipulated time limit.
  - 6.5.2. Any registered and admitted trade union requesting to convene an emergency meeting at short notice will arrange and agree on the time and duration of the meeting with management.

6.6. Registered and admitted Trade Union Representative Committee meetings:

6.6.1. Each individual registered and admitted trade union will be allowed to hold one (1) committee meeting every week that will not exceed one (1) hour per fortnight consisting of half-an-hour during working and half-an-hour outside working hours.

6.6.2. Arrangements for such meetings will be confirmed at bi/multilateral forums, or alternatively at special meetings convened in Departments, Institutions and Offices, between the employer and unions.

## **7. UTILISATION OF FACILITIES**

7.1. Where possible, the employer shall make available office space to a registered and admitted trade union for union business if so required. Where office space is not available for the sole use of a registered and admitted union, an arrangement may be made for the sharing of office space.

7.2. The employer shall allow registered and admitted trade unions the use of designated notice boards, provided that the registered and admitted trade unions undertake to utilize such in a responsible manner and prevent any damage or destruction to the employer's property.

7.3. By prior arrangement with the employer, access to a telephone shall be provided to representatives of registered and admitted trade union.

7.4. The employer must also grant representatives of registered and admitted trade union access to fax, email and photo copy facilities subject to the following conditions:

7.4.1. the availability of such facilities;

7.4.2. that such access shall not interfere with the normal functioning of the office/ institutions; and

7.4.3. on provision of any of the above facilities, the registered and admitted union agrees to enter into an agreement with the employer on control measures.

## **8. DEDUCTION OF UNION SUBSCRIPTIONS**

The employer will provide registered and admitted trade unions with monthly reports on subscription deductions from the payroll system in line with the requirements of section 13(5)(a) of the LRA.

## **9. TRADE UNION REPRESENTATIVES**

9.1. Each union will qualify to elect union representatives at a place of work as provided for in section 14 of the LRA as follows:

<b>Number of members at Department, Institution or Office</b>	<b>Number of union representatives</b>
10	1
11 – 50	2
51 – 100	3
101 – 150	4
151 – 200	5
201 – 250	6
251 – 300	7
301 – 400	8
401 – 500	9
501 – 600	10
601 – 800	11
801 – 1000	12

<b>Number of members at Department, Institution or Office</b>	<b>Number of union representatives</b>
1001 – 1500	13
1501 – 2000	14
2001 – 2500	15
2501 – 3000	16
3001 - 3500	17
3501 – 4000	18
4001 -4500	19
4501+	20

9.2. The constitution of the respective registered and admitted trade unions governs the nomination, election, term of office and removal from office of a trade union representative.

9.3. A registered and admitted trade union shall be entitled to elect representatives at the place of work based on the formula above.

9.4. Representatives of registered and admitted trade unions elected in terms of this agreement will be formally recognized once the union has informed management in writing of the names of the elected union representatives.

## **10. RIGHTS OF REPRESENTATIVES OF REGISTERED AND ADMITTED TRADE UNIONS**

10.1. A representative of registered and admitted trade union has the right to perform the following functions:

10.1.1. At the request of the employee in the place of work, to assist and represent the employee in grievance and disciplinary proceedings;

- 10.1.2. To monitor the employer's compliance with the provisions of the LRA, any law regulating terms and conditions of employment and any collective agreement binding on the employer.
- 10.1.3. To report any alleged contravention of provisions of the LRA, any law regulating terms and conditions of employment and any collective agreement binding on the employer to:
- a) Management
  - b) the union; and
  - c) any responsible authority or agency
- 10.1.4. To perform any other function agreed to between the union and the employer.
- 10.1.5. A representative of a registered and admitted trade union shall cease to be a representative when:
- a) he/ she is permanently transferred to a Department other than the department he/ she was elected to represent provided management gives written notice of such transfer.
  - b) he/ she ceases to be a member of the union.
  - c) he/ she ceases to be an employee of the employer at that workplace.
  - d) the term of office for which he/ she was elected expires.
  - e) he/ she ceases to be a trade union representative in terms of the constitution of the union.

## **11. LEAVE FOR TRADE UNION ACTIVITIES**

- 11.1. Representatives of a registered and admitted trade unions shall receive fifteen (15) working days paid leave per annum for activities related to his/ her union position, which shall be pooled as per the provisions of clause 8.4 of PSCBC Resolution 1

of 2012. The trade union must provide official correspondence when applying for such leave for record purposes.

- 11.2. In the event that representatives of registered and admitted trade unions exhausted the above leave days; the employer will not unreasonably deny requests for leave for union activities.
- 11.3. Prior arrangements must be made to obtain permission at all times from supervisors in the event of this right being exercised, which permission shall not be unreasonably withheld.
- 11.4. Duly completed leave forms and supporting documents must be kept of leave taken in this regard.
- 11.5. In order to qualify for this right, the following shall apply:
  - 11.5.1. the representative of a registered and admitted trade union must be a bona fide elected representative of a union; and
  - 11.5.2. the names of the elected representative of a registered and admitted trade union, the section/ organizational component they represent, and the duration of their term of office must be provided to the employer with their details, in writing, within seven (7) days.

## **12. DISCLOSURE OF INFORMATION**

- 12.1. The employer and registered and admitted trade unions shall disclose to each other all relevant information that will enable them to engage effectively in consultation or negotiations with due regard to the provisions of section 16(5) of the LRA which states that the employer is not required to disclose information, that:
  - 12.1.1. is legally privileged;
  - 12.1.2. would contravene a prohibition by any law or order of any court;

12.1.3. is confidential and if disclosed may cause substantial harm to an employee or an employer; and

12.1.4. is private, personal information relating to an employee, unless the employee consents to the disclosure of that information.

### **13. WORKPLACE**

13.1. For the purpose of this agreement, “workplace” means, as per the LRA, section 213:

in relation to the public service –

- i) for the purpose of collective bargaining and dispute resolution, the registered scope of the Public Service Co-ordinating Bargaining Council or a bargaining council in a sector in the public service, as the case may be; or
- ii) for any other purpose, a national department, provincial administration, provincial department or organizational component, i.e. Clinic as contemplated in section 7(2) of the Public Service Act, 1994 (promulgated by Proclamation 103 of 1994), or any other part of the public service that the Minister for Public Service and Administration, after consultation with the Public Service Co-ordinating Bargaining Council, demarcates as a workplace.

### **14. DISPUTE RESOLUTION**

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 procedures of the Council.

### **15. IMPLEMENTATION OF AGREEMENT**

15.1. This agreement shall come into effect on the date it enjoys majority support and shall remain in force unless terminated or amended by agreement in writing.

15.2. The Council will monitor the implementation of this agreement.

THUS, DONE AND SIGNED AT \_\_\_\_\_ ON THIS  
\_\_\_\_\_ DAY OF \_\_\_\_\_ 2019.

**ON BEHALF OF THE EMPLOYER**

State as the Employer	Name	Signature	Date

**ON BEHALF OF TRADE UNION PARTIES**

Trade Union	Name	Signature	Date
NEHAWU			
DENOSA			
PSA			
HOSPERSA			