

NOTICE 205 OF 2010**ANNEXURE**

TAKE NOTICE THAT the commissioner in the Metal and Engineering Bargaining Council Case No AB: 48/09, arbitrating a dispute about the interpretation and application of the Main Collective Agreement of the council, has referred a question contemplated in section 62 (1) (a) and (b) of the Labour Relations Act, 1995 to the CCMA for determination in terms of the said section 62.

TAKE NOTICE FURTHER THAT the particulars of the referral are as follows:

1. Polyoak Packaging (Pty) Ltd ("Polyoak") is a manufacturer of rigid packaging out of polymer and for different uses and its manufacturing operations fall within the scope of the Metal and Engineering Industries Bargaining Council ("MEIBC");
2. Until 31 July 2008 Polyoak did its own packing and until that date the applicants were employed by Polyoak as packers;
3. With effect from 1 August 2008 the wages of the applicants were paid by Inyameko Packaging (Pty) Ltd ("Inyameko");
4. Mr S.K. Zondi and nineteen others (the applicants) referred a dispute about the interpretation and application of the Main Collective Agreement of the MEIBC to the MEIBC for arbitration under Case No. AB: 48/09;
5. The arbitrating commissioner referred the matter to the CCMA in terms of section 62(3A) of the LRA for a demarcation;
6. The main question to be determined during the demarcation process is whether the applicants are employed or engaged in the metal and engineering sector and whether the Main Collective Agreement of the MEIBC applies to them;
7. The CCMA, the applicants, Polyoak and Inyameko agree that in order for the main question to be determined, rulings are required to be made on the following issues and that such issues are of such substantial importance that the CCMA should publish a notice in the Government Gazette in accordance with section 62 (7) of the LRA reflecting that the issues are:
 - (a) Whether with effect from 1 August 2006 Polyoak continued to perform its own packing function or whether the packing function was from then onwards performed by Inyameko;
 - (b) Whether the packing function falls within the scope of the MEIBC and whether the Main Collective Agreement of the MEIBC is binding on the employees performing the packing function and their employer including
 - whether the packing function is incidental to the manufacturing activity; and
 - what the effect thereof is that the packing is done in a separate area, if that is found to be a fact;
 - (c) Whether the applicants were employed by Inyameko with effect from 1 August 2008 or whether they continued to be employed by Polyoak;
 - (d) In the event of a finding that the applicants were employed by Inyameko,
 - whether Inyameko was a separate packing or packaging company to whom Polyoak had outsourced its packing operations; or
 - whether Inyameko was a temporary employment service that provided employees to Polyoak; and
 - whether such distinction has any effect on the applicability of the Main Collective Agreement of the MEIBC; and
 - (e) In the event of a finding that Inyameko is a temporary employment service and that the applicants were employed and/or engaged by them, whether the Main Collective Agreement of the MEIBC applies to them.

TAKE NOTICE FURTHER THAT the issues are to be determined under Case No. **KNDB8564-09** at the offices of the CCMA, 6th Floor, Embassy Building, 199 Smith Street, Durban on a date to be determined by the Registrar.

TAKE NOTICE FURTHER THAT any interested party may, within **21 days of date of publication** of this notice, make written representations envisaged by section 62 (7) and (9) in relation to the issues to be determined and that such written representations are to be directed to: **Ms Mayroon Dirksen**

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