

No. R. 359

29 April 2011

LABOUR RELATIONS ACT, 1995**BARGAINING COUNCIL FOR THE CONTRACT CLEANING SERVICES
INDUSTRY (KWA-ZULU NATAL): EXTENSION TO NON-PARTIES OF THE
MAIN AND PROVIDENT FUND COLLECTIVE RE-ENACTING AND
AMENDING AGREEMENT**

I, MILDRED NELISIWE OLIPHANT, Minister of Labour, hereby in terms of section 32(2) of the Labour Relations Act, 1995, declare that the Collective Agreement which appears in the Schedule hereto, which was concluded in the Bargaining Council for the Contract Cleaning Services Industry (Kwa-Zulu Natal), and is binding in terms of section 31 of the Labour Relations Act, 1995, on the parties which concluded the agreement, shall be binding on the other employers and employees in that Industry with effect from9 May 2011..... and for the period ending 28 February 2014.

MN OLIPHANT
MINISTER OF LABOUR

SCHEDULE**BARGAINING COUNCIL FOR THE CONTRACT CLEANING SERVICES INDUSTRY****(KWA-ZULU NATAL)****AMENDMENT OF MAIN AND PROVIDENT FUND COLLECTIVE AGREEMENT**

In accordance with the provisions of the Labour Relations Act, 1995, made and entered into by and between the:

National Contract Cleaners' Association

(hereinafter referred to as the "employers" or the "employers' organization"), of the one part, and the

South African Transport and Allied Workers' Union (SATAWU)

National General Workers' Union (NAGEWU)

Health & Other Service Personnel Trade Union of SA (HOSPERSA)

(hereinafter referred to as the "employees" or the "trade unions"), of the other part, being the parties to the Bargaining Council for the Contract Cleaning Services Industry (Kwa-Zulu Natal).

1. SCOPE OF APPLICATION OF AGREEMENT

- (1) The terms of this Agreement shall be observed in the Cleaning Services Industry in the Province of Natal as it existed immediately prior to the date of commencement of the Constitution of the Republic of South Africa, 1993 (Act No. 200 of 1993).-
- (a) by all employers who are members of the employers' organisation and by all employees who are members of the trade unions; and

- (b) by all employers and employees, other than those referred to in paragraph (a), who are engaged in the Cleaning Services Industry in the area specified.

2. PERIOD OF OPERATION OF AGREEMENT

- (1) This Agreement shall only come into operation from the 1st day of the month following the date of promulgation and shall remain in force until 28th February 2014.
- (2) The parties agree to abide by clause 10.4 of the Council's constitution which reads as follows:
- “The parties agree that any agreement reached between them shall not be legally binding on any parties concerned unless such agreement has been reduced to writing, has been signed by all the parties, promulgated and extended to non-parties by way of the Government Gazette.”
- (3) The provisions of clauses 1(1) (a), 2 and 2A shall not apply to non-parties.

2A. SPECIAL PROVISIONS

The provisions contained in clauses 6, 11.3, 17.2 and 19 of the Agreement published under Government Notice No. R. 251 of 26 February 1999, as amended, extended and re-enacted by Government Notices Nos. R. 180 of 25 February, 2000, R.392 of 18 May 2001, R.241 of 1 March 2002, R. 1053 of 1 August 2003, R.250 of 27 February 2004, R. 1083 of 17 September 2004, R. 718 of 22 July 2005 and R. 53 of 26 January 2007 and R.100 of 18 February 2011, as further amended, extended, renewed and re-enacted from time to time, shall apply to employers and employees who are members of the parties to the collective agreement.

2B. GENERAL PROVISIONS

The provisions contained in clauses 3 to 5, 7 to 11.2, 11.4 to 16, 17.1, 18 and 20 to 34 of the Former Agreement (as further amended, extended, renewed and re-enacted from time to time), shall apply to employers and employees.

3. CLAUSE 3 OF THE FORMER AGREEMENT: DEFINITIONS

Substitute the definition “Contract Cleaning Industry” with the following:

“Cleaning Services Industry” means the industry in which employers and their employees are associated for the purpose of cleaning industrial and commercial premises and buildings, including flats let commercially, but excluding employers and employees engaged solely in the building industry

“Cleaner” means a person who is required to spend more than 50% of his/her time to perform any of the following: to clean or wash, by hand or machine, furniture, windows, carpets, doors, floors, ceilings, roofs, baths, showers, toilets, kitchens, tools, machinery, at the premises of a client, including but not limited to state, industrial, commercial, business premises, residential premises, hotels, markets, hospitals and flats, buildings and includes the maintenance of the gardens and grounds or roads or highways and the interior or exterior part of any air-planes, trucks, cars, buses, trains, ships, boats or any other vehicle requiring to be so cleaned or valet and/or to perform any work incidental thereto, which includes learnerships, but specifically excludes domestic worker.

Add the following definition:

“Domestic worker” means an employee who is employed by an individual, a temporary employment service or any other employer to undertake the domestic work of up to six private residences per week. The work carried on by the Domestic worker would be that of cleaning, washing, ironing, child minding and the preparation of food and the cleaning up thereafter at a private residence. For the purposes of this definition a private residence would be defined as a residence where one family unit resides. This would exclude the

common areas of any residential premises, hotels, commercial properties, flat buildings or residential developments.

4. CLAUSE 4 OF THE FORMER AGREEMENT: REMUNERATION

(1) Substitute the following for clause 4 (1):

An employer shall pay his employees for ordinary hours worked in the regions concerned at the following rates per hour (or part thereof), calculated on a pro rata basis for all employees:

4.1 a) the province of Kwa-Zulu Natal:

- i) With effect from the period of operation – R10.07 per hour.
- ii) With effect from 1st March 2012 – CPI plus 3%,
- iii) With effect from 1st March 2013 – CPI plus 3%,

4.1b) the CPI used to calculate the increases in clause 4.1a above will be that as declared by Statistics South Africa for the month of October, normally declared at the end of November.

4.1c) the total increases as per clause 4.1a ii, iii and iv above will be limited to a minimum of 4% and a maximum of 10% inclusive.

(2) Add the following paragraphs to sub clause 4.5

c) Definition of Full Calendar Month of Service:

- i) Current Employees who are currently in the service of employers and who do not ordinarily work on a Saturday, Sunday or Public Holiday will not attract a pro-rata penalty, for purposes of bonus calculations,

where the first day of the month falls on a Saturday, Sunday or public holiday.

- ii) New Employees who are engaged after the 1st day of the month will attract a pro-rata penalty when Annual Incentive Bonuses are calculated.
- d) Calculation of Annual Incentive Bonus on Old / New Rate during full Calendar Year that the Annual Incentive Bonus will be calculated on the prevailing rate during the months of January and February and on the prevailing rate during the months of March to December of each year during the currency of the existing Wage Agreement.
- e) Incentive Bonus Penalty due to Absence from Work
 - i) Any statutory absence from work in terms of the Basic Conditions of Employment Act 75 OF 1997 as amended ,in particular section 20 Annual leave, section 22 Sick leave, section 25 Maternity leave and section 27 Family Responsibility leave, the Main Agreement and Lay-Offs due to an Injury on Duty, will not attract a pro-rata penalty when calculating the Annual Incentive Bonus.
 - ii) All other absence from work, whether authorized or unauthorized, will attract a penalty when Annual Incentive Bonuses are calculated.
- f) Casual employees do not qualify for the Annual Incentive Bonus
- g) Clause 4.5 c) ii; 4.5 d); and 4.5 f) above, are subject to the employer's right to exercise his/her discretion to regard these clauses as minimums.

5. CLAUSE 19 OF THE FORMER AGREEMENT: SHOP STEWARDS' RIGHTS

Clause 19.4 ii) Shop stewards leave

Substitute 6 (six) for the number 4.

Add the following clause:

19.5 When a company has 600 members of a union who is party to the Council in any of the three designated regions as set out below, the union will be entitled to a full time shop steward of that union in the region where it has more than 600 members.

- a) The designated regions shall be:
 - i) Region 1 - the coastal area North of the Tugela river and 100 kilometres inland;
 - ii) Region 2 - the coastal area south of the Tugela river and 100 kilometres inland;
 - iii) Region 3 - any areas not in regions 1 and 2.
- b) Should there be more than one union which has more than 600 members in a region in that company then the union with the most members will secure the shop steward.
- c) The union will nominate five union members who are employed by the company and the company management will in its opinion select the most suitable one of those to take up the post.
- d) The company will have the discretion to set the work place, working hours which will be not less than thirty hours per week and any other duties as determined by management when not fully occupied with union business.

- e) The terms and conditions of employment for the shop steward will be as per the Council's Main Agreement.

6. CLAUSE 34 OF THE FORMER AGREEMENT: FAMILY MEDICAL CRISIS PLAN

Substitute the following for clause 34:

34. FAMILY MEDICAL CRISIS PLAN

It is compulsory for all employers to enroll all their employees on the Family Medical Crisis Plan after having completed their probationary period with the company, with the exception of temporary employees. The employer will

- 34.1 deduct R54.00 from the employee's wages for the period of operation of this agreement;
- 34.2
 - a) the company will then pay an amount of R54.00 per month per employee to the administrators by the 7th of each and every month thereafter.
 - b) The Council shall consider any request for an increase in the premium in the Family Medical Plan from the administrator and should the premium increase be approved by the Council a minimum notice of one month shall be given to all employees and employers. The company shall deduct the adjusted premium and pay it across to the administrator of the fund.
- 34.3
 - a) Should an employee be on unpaid leave for whatever reason the employer will not deduct from the employee nor pay across the premium to the administrator. During this period the employee's entitlement to the Family Medical Crisis Plan will lapse;

- b) Should an employee be able to produce a certificate issued by a medical practitioner, each month for the period of the unpaid leave stating that he/she is unfit to work; the administrator will extend the Family Medical Crisis Plan to that employee for a period not exceeding four months. The employer shall notify and forward the medical practitioner's certificate to the administrator with the schedule as per clause 34.5 below;
- c) Should an employee be proceeding on maternity leave the employer must notify the administrator of the member's name and I.D. number 30 days prior to the impending maternity leave; the administrator will extend the Family Medical Crisis Plan to that employee for a period not exceeding four months.

34.5 The employer will send a schedule of all employees for whom the deduction has been made together with their I.D. numbers to reach the administrator by the 7th of each month.

34.6 Should the services of an employee be terminated for whatever reason the employer shall notify the administrator of the name and ID number of that employee and the date of termination."

7 CLAUSE 35. AGENCY SHOP AGREEMENT,

Add the following clause:

CLAUSE 35. AGENCY SHOP AGREEMENT

35.1 An Agency Shop Agreement in terms of Section 25 of the Labour Relations Act (the ACT) is hereby agreed to and unless agreed otherwise in this

Agreement, the provisions of the Labour Relations Act shall apply to the Agency Shop Agreement. The object of the Agency Shop Agreement is to ensure that all employees and employers, who receive the benefits of collective bargaining, contribute towards its costs.

35.2 The Agency Shop Agreement shall be subject to the respective parties being representative as required by section 25 of the Labour Relations Act of employees or employers respectively who are covered by the Main Agreement of the Council as verified by the Department of Labour from time to time. Accordingly the application of the Agency Shop Agreement to either of the parties will be subject to that party being representative.

35.3 Any existing agency shop agreement at company level shall be superseded by this agreement.

35.4 Employees

- a) Subject to provisions of this clause a levy, to be known as an Collective Bargaining Levy shall be deducted by employers from the wages of all employees who are employed in the Industry on scheduled activities covered by the Council and who are not members of a trade union which is a party trade union to the Council.
- b) The Collective Bargaining Levy applicable to non-party union employees shall be R30.00 (thirty Rand) per month of the employees' monthly wage, provided that such amount does not exceed the minimum monthly membership fee that is levied by party unions.

- c) An employer shall effect payment of the amount due in terms of sub clause 35.4 b) on the prescribed remittance form at the Office of the Council and shall also submit to the Secretary of the Council by not later than the 7th day of each month, a monthly return with the particulars in the form specified by the Council for this purpose, including each employee's full names, surname, date of birth and identification number.
- d) The Secretary of the Council shall deposit all monies received in terms of sub clause 35.4 c) into a bank account administered by the Council.
- e) The Secretary of the Council shall, within seven (7) days of receipt of monies as per clause 35.1 d) above, transmit to the trade unions which are party to the Council in proportion to the number of members of each trade union the collective bargaining levies received by the Council during the preceding month and the unions shall, on receipt, pay such amounts into a separate account administered by the respective unions.
- f) The levy may not be used –
 - i) to pay an affiliation fee to a political party;
 - ii) to make a contribution in cash or kind to a political party or a person standing for election to any political office; or
 - iii) for any expenditure that does not advance or protect the socio-economic interests of employees.

- g) The collective bargaining Levy shall be deducted by an employer for as long as the party unions remain representative as required by section 25 of the Labour Relations Act of the employees in the industry covered by this Agreement provided that an employer shall only cease to make the collective bargaining levy deduction upon withdrawal of the Agency Shop Agreement by the Minister in terms of section 32 of the Labour Relations Act.
- h) Employees who are not members of the party trade unions are not compelled by the collective bargaining Agreement to become members of those trade unions.
- l) The provisions of sections 98 and 100(b) and (c) of the Labour Relations Act apply, read with the changes required by the context, to the separate accounts referred to in sub clause 35.4.e
- j) If the collective bargaining levy agreement is terminated, the provisions of sub clause 34(4) (e) (f) and (i) apply until all the collective bargaining levies in the separate account is spent

35.5 Employers

- a) Every employer who is not a member of an employer's organisation party to the Council (a non-party employer) who is engaged in the industry as defined, shall pay a monthly collective bargaining levy to the Council in an amount calculated in terms of sub clause 35.2 c).
- b) Every employer and/or temporary employment service who are not members of the party employers' organization/s will pay a collective

bargaining levy of R1.30 per employee per month, with a minimum amount of R65.00 per month; provided that such amount does not exceed the minimum monthly membership fee that is levied by such employers' organization.

- c) Every non-party employer shall effect payment of the amount due in terms of sub clause 35.5 (b) on the prescribed remittance form at the Office of the Council and shall also submit to the Secretary of the Council by not later than the 7th day of each month, a monthly return with particulars in the form specified by the Council for this purpose, including each employee's full names, surname, date of birth and identification number.
- d) The Secretary of the Council shall deposit all monies received in terms of sub clause 35.5(c) into a separate bank account administered by the Council.
- e) The Secretary of the Council shall within seven (7) days of receipt of monies as per clause 35.5 d) above, transmit to the employer organizations, which are party to the Council in proportion to the number of members that each employers' organization represents, the collective bargaining levies received by the Council during the preceding month and the employer organizations shall, on receipt, pay such amounts into a separate account administered by the respective employers' organizations.
- f) The levy may not be used –

- i) to pay an affiliation fee to a political party;
 - ii) to make a contribution in cash or kind to a political party or a person standing for election to an political office; or
 - iii) for any expenditure that does not advance or protect the socio-economic interests of their members.
- g) The provisions of sections 98 and 100(b) and (c) of the Labour Relations Act apply, read with the changes required by the context, to the separate accounts referred to in subsection 35.5 e.
- h) The collective bargaining Levy shall be paid by an employer for as long as the party employers' organization/s remain representative as required by section 25 of the Labour Relations Act of the employees employed by party employers' organisations in the industry covered by this Agreement provided that an employer shall only cease to make the Collective Bargaining Levy deduction upon withdrawal of the collective bargaining Agency Shop Agreement by the Minister in terms of section 32 of the Labour Relations Act.
- i) Employers who are not members of the party employers organisation are not compelled by the Collective Bargaining Agreement to become members of those employers' organisations.
- j) If the collective bargaining levy Agreement is terminated, the provisions of sub clause 34(5) (e), (f) and (g) apply until all the collective bargaining levies in the separate account is spent.

- 34.6 Once the Agency Shop Agreement is implemented, any subsequent change in the Collective Bargaining Levy shall only be effected when parties to the Council reach an agreement which is subsequently promulgated and extended to non-parties.

Signed at Durban on the 16th March 2011.

P Judkins

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For the National Contract Cleaners Association

N Mnthungwa

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For South African Transport and Allied Workers' Union (SATAWU)

FM Msomi

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For National General Workers' Union (NAGEWU)

.MA Zuma

.....
For Health & Other Service Personnel Trade Union of SA (HOSPERSA)

EI Williams

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As witness: Secretary of the Bargaining Council
