
GOVERNMENT NOTICES
GOEWERMENTSKENNISGEWINGS

DEPARTMENT OF LABOUR
DEPARTEMENT VAN ARBEID

No. R. 792

5 October 2012

LABOUR RELATIONS ACT, 1995

**STATUTORY COUNCIL FOR THE SQUID AND RELATED FISHERIES OF SOUTH
AFRICA: EXTENSION OF MAIN COLLECTIVE AGREEMENT TO NON-PARTIES**

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 **Statutory Council for the Squid and Related Fisheries of South Africa** 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 from **15 October 2012** and for the period ending 31 December 2013.

**MN OLIPHANT
MINISTER OF LABOUR**

SCHEDULE:**In the Statutory Council for the Squid and Related Fisheries of South Africa****Collective Agreement on the Minimum Conditions of Employment**

In accordance with the provisions of the Labour Relations Act, No. 66 of 1995, made and entered into by and between:

the South African Fishermen's Trade Union (SAFTU)

and

the United Democratic and Combined Workers Union (UDF&CWU)
hereinafter referred to as the "employees" or "trade unions" on the one part

and

the Small Employers Association in the Squid Industry (SEASI)

and

the Employers Organisation for the Cephalopod and Associated Fisheries of South Africa (EOCAF)
hereinafter referred to as the "employers" or the "employers' organisations" of the other part

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1. APPLICATION**1.1. SCOPE OF APPLICATION**

The terms of this agreement shall be observed by –

- 1.1.1. all Squid Fishing Rights Holders and/or
- 1.1.2. all Squid Fishing Vessel Owners and/or
- 1.1.3. all employers / business enterprises and
- 1.1.4. all sea-going employees and
- 1.1.5. all land based employees,

who are involved in any way or means in or with the Squid and Related Fisheries of South Africa.

1.2. PERIOD OF OPERATION

This agreement shall come into operation;

- 1.2.1. in respect of employers who are members of an employer's association or organisation and employees who are members of a trade union, on the date as per the attestation below and
- 1.2.2. in respect of non-represented parties, on such date as determined by the Minister of Labour of South Africa and
- 1.2.3. this Agreement shall remain in operation until 31 December 2013.

1.3. AMENDMENTS TO AGREEMENT

This Agreement may be amended from time to time, as may be warranted and agreed upon by the parties to this agreement. Any amendment will only become effective on employers and employees, upon the date declared by the Minister of Labour.

2. PROVIDENT FUND**2.1. OBJECTS OF FUND**

The objects of the provident fund shall not be less than –

- 2.1.1. To provide a retirement savings plan for its members,
- 2.1.2. To provide a life and disability benefit for its members,
- 2.1.3. To provide an income replacement plan for its members; and
- 2.1.4. To provide funeral benefits for its members and their immediate family members, as per the rules of the fund.

2.2. MEMBERSHIP AND CONTRIBUTIONS

- 2.2.1. Membership to the provident fund shall be compulsory for all permanent employees in the Squid Fishing and Related Industries of South Africa.
- 2.2.2. Only a duly registered, accredited and Council approved service provider, which complies with the objects of the fund per 2.1. above, shall be considered to provide a provident fund service to the fishermen / employees in the squid industry.
- 2.2.3. Each member shall be issued with certificated proof that he is a member of a provident fund and shall be entitled to receive an annual statement of his benefits.
- 2.2.4. The minimum monthly contribution per member / employee shall not be less than R 125,00 per month.

- 2.2.5. An employer shall contribute 60% of the monthly contribution to the provident fund due by an employee.
- 2.2.6. An employer shall pay the full monthly contribution due by an employee to the provident fund during official closed season/s for Squid fishing as may be determined from time to time by the Minister of Agriculture, Forestry and Fisheries. The contribution/s thus made, shall be recovered from the employee concerned at the earliest convenient opportunity once the Squid fishing season resumes.
- 2.2.7. An employer shall pay the full monthly contribution due by an employee, being the employee's contribution as well as the employer's contribution, according to the rules of the provident fund and on the day of the month specified by these rules.
- 2.2.8. It will be allowable for an employer to pay the total annual contributions due on a once off and annual basis for a 12 month period in respect of –
 - 2.2.8.1. only the employer's annual contributions (that being 60% of the total monthly contribution) or
 - 2.2.8.2. with the employee's written consent, the employee's annual contribution as well as the employer's annual contribution.
- 2.2.9. Contributions to the provident fund thus paid in advance by an employer on behalf of an employee, may, with the written consent of an employee, be recovered from the employee's monthly remuneration in equal monthly instalments or as otherwise agreed.
- 2.2.10. An employer will be responsible for the monthly payment of the risk portion of an employee's and employers monthly contribution to the provident fund in respect of an employee who is temporarily absent from work due to medical and / or other valid reasons.
- 2.2.11. An employee's portion of the monthly risk portion of the provident fund thus paid by an employer as per 2.2.10. may be recovered in full, over the same number of months as the number of months for which payment was made on behalf of the employee.
- 2.2.12. The council will not be held responsible for any –
 - 2.2.12.1. contributions deducted and any contributions made or due by and employer, which are not paid to the provident fund,
 - 2.2.12.2. claims in respect of any benefit, that may arise by an employee who is or an employee who is not, a member of the provident fund and
 - 2.2.12.3. any administrative function involving the provident fund.
- 2.2.13. Registration of an employee with the Provident Fund, shall be subject to a probationary period of not more than 3 (three) successive squid fishing trips with the same employer or employing company, except in such cases where an employee can provide sufficient proof of existing/prior registration/participation with a provident fund.

2.3. ENFORCEMENT AND COMPLIANCE

The council will be responsible for enforcement and compliance of all employers and employees regarding the provident fund.

3. EXCLUSIONS AND EXEMPTIONS

This Council shall consider and determine all applications for exemption received by it, in accordance with the conditions and criteria set out in clauses 3.1., 3.2. and 3.3. hereafter.

3.1. ADMINISTRATIVE REQUIREMENTS

- 3.1.1. All applications for exemption shall be made in writing and shall be addressed to the Secretary of the Council.
- 3.1.2. The Secretary of the Council shall place the application for exemption on the agenda of the next Council Executive Committee meeting, for consideration.
- 3.1.3. The Secretary of the Council shall provide the Council Executive Committee with details of the applications for exemption.
- 3.1.4. The Council Executive Committee shall consider and decide on all written applications and when requested by the applicants or objectors to do so, may interview applicants or any objectors at its following meeting, provided that the Council Executive Committee may refer a decision to a following meeting if additional substantiation, information or verbal representations are considered necessary to decide on the application for exemption.
- 3.1.5. Once the Council Executive Committee has decided to grant an exemption, it shall issue a certificate and advise the applicant(s) within 14 days of the date of its decision.
- 3.1.6. Should the Council Executive Committee decide against granting an exemption or part of an exemption requested, it shall advise the applicant(s) within 14 days of the date of such a decision and shall provide the reason(s) for not granting an exemption.
- 3.1.7. The applicant(s) shall have the right to appeal against the decision of the Council Executive Committee, not to grant an exemption or the withdrawal of such an exemption with an Independent Exemption Board.
- 3.1.8. All the costs of the appeal process set out in 3.1.7. shall be for the account of the applicant(s) for the exemption.

3.2. EXEMPTION CONDITIONS

All applications for exemption shall be substantiated and such substantiation shall include the following details:

- 3.2.1. The period for which the exemption is required.
- 3.2.2. The Agreement and clauses or sub-clauses of the Agreement from which exemption is required.
- 3.2.3. Proof that the exemption applied for has been discussed by the employer and his employees and their respective representatives. The responses resulting from such consultation, either in support or against the proposed exemption, are to be included with the application.

3.3. EXEMPTION CRITERIA

The Council Executive Committee shall consider all applications for exemption with reference to the following criteria:

- 3.3.1. The written and verbal substantiation provided by the applicant.
- 3.3.2. The extent of consultation with and the petition for or against granting the exemption as provided by employers or employees who are to be affected by the exemption if it is granted.
- 3.3.3. The terms of exemption.
- 3.3.4. The infringement of basic conditions of employment rights.
- 3.3.5. The fact that a competitive advantage is not created by the exemption.
- 3.3.6. The viewing of the exemption from any employee benefit fund or scheme or training provision in relation to the alternative comparable bona fide benefit or provision, including the cost to the employee, transferability, administration management and cost, growth and stability.
- 3.3.7. The extent to which the proposed exemption undermines collective bargaining and labour peace in the Squid Fishing Industry of South Africa.

- 3.3.8. Any existing special economic or other circumstances which warrant the granting of the exemption.
- 3.3.9. Reporting requirements by the applicant and monitoring and re-evaluating processes.

4. DISPUTE RESOLUTION

Unless otherwise provided for in this collective agreement and ratified by the council, any dispute within the registered scope of the council must be resolved as set out herein, as per the collective agreement concluded on the Dispute Resolution Rules and Procedures of the Statutory Council for the Squid and Related Fisheries of South Africa, which may be amended from time to time.

4.1. ACCREDITATION OF COUNCIL FOR DISPUTE RESOLUTION

- 4.1.1. The council must apply for accreditation with the governing body of the CCMA for the purposes of dispute resolution in terms of section 52 read with section 127 of the Act.
- 4.1.2. In the event that the council fails to maintain such accreditation, the council may then enter into an agreement with the CCMA in terms of which the CCMA is to perform all dispute resolution functions on behalf of the council in terms of section 51(6) of the Act.

4.2. PANEL OF COMMISSIONERS

- 4.2.1. The council must appoint a panel of commissioners for the purpose of presiding over con-arb dispute hearings.
- 4.2.2. The commissioners are to be appointed to the council's panel for a period of one (1) year, but may be re-appointed at the expiry of the period of the appointment.
- 4.2.3. The council may remove a panellist from office for misconduct or for incapacity or if at least half of the employer representatives and half the employee representatives vote in favour of the removal of that member of the panel.
- 4.2.4. A panellist appointed to replace a panel member who leaves the panel for any reason other than due to the expiry of office, will serve on the panel for the remainder of the predecessors term of office.
- 4.2.5. An employee of the council, subject to accreditation by the CCMA, may be appointed to the panel of commissioners, provided that where there might be a vested interest in the dispute to be conciliated or arbitrated, the said employee of the council will not be eligible to conciliate or arbitrate the dispute.

4.3. DISPUTES INVOLVING PARTIES WHO ARE NON-REPRESENTED AT THE STATUTORY COUNCIL

- 4.3.1. Any dispute contemplated in terms of section 51(3) of the Act, where any party to the dispute is not a party or a member of a party to the council, must be resolved as follows:
 - 4.3.1.1. Any of the parties to the dispute may refer the dispute in writing to the council using the prescribed Council or CCMA dispute referral documentation (form LRA 7.11), setting out the nature of the dispute and the outcome sought.
 - 4.3.1.2. The applicant in the dispute must satisfy the council that a copy of the referral form has been served on all other parties to the dispute.
- 4.3.2. The Secretary of the council must appoint a member of the panel of commissioners who must attempt to resolve the dispute through conciliation and arbitration at the earliest opportunity as agreed between the parties.
- 4.3.3. The Secretary of the council must serve notice of the date, the time and the venue of the con-arb hearing of the dispute, on both the parties to the dispute.

- 4.3.4. During the conciliation part of the proceedings, the commissioner may –
 - 4.3.4.1. mediate the dispute,
 - 4.3.4.2. conduct a fact-finding exercise and/or
 - 4.3.4.3. make a recommendation to the parties to the dispute which may be in the form of a binding or non-binding arbitration award.
- 4.3.5. Representation of parties to a con-arb hearing must be in accordance with the rules of the council.
- 4.3.6. Whether or not the matter is resolved on the date scheduled for the con-arb hearing, commissioner who was appointed to resolve the dispute must issue a certificate indicating whether or not the dispute has been resolved.
- 4.3.7. Nothing in this agreement prevents an officer of the council from investigating the dispute in an attempt to resolve the dispute before a date is set down of a con-arb hearing and appointing of a commissioner to preside over a con-arb dispute hearing.
- 4.3.8. Subject to the provisions of the Act, an arbitration award made by a commissioner to resolve the dispute is final and binding on the parties to the dispute. The commissioner shall have power to vary, rescind or amend an award made by him/her on good cause shown, or of his/her own accord. Without limiting the generality thereof, the commissioner shall have the power if –
 - 4.3.9. The award was erroneously sought or erroneously made in the absence of any party affected by the award; or
 - 4.3.9.1. The award is ambiguous or contains an obvious error or omission; or
 - 4.3.9.2. The award was granted as a result of a mistake common to the parties to the proceedings. The council must serve the award together with written reasons given by the commissioner on all the parties to the dispute.
 - 4.3.10. Upon receipt of a written request from a party to the dispute, the Secretary of the council must apply to the Director of the CCMA to certify that the arbitration award is an award contemplated in section 143(1) of the Act.

4.4. DISPUTE INVOLVING PARTIES REPRESENTED AT THE STATUTORY COUNCIL

For the purpose of this clause, a party to the council includes any registered trade union or any registered employer's organisation that is a party to the council.

- 4.4.1. If the dispute between the parties is one which arises from negotiations entered into for the purpose of concluding a collective agreement in the council, the Secretary must appoint a member of the panel of commissioners who must attempt to resolve the dispute through conciliation within thirty (30) days from the date when the dispute was referred to the council, or as soon as possible thereafter. If the dispute remains unresolved, the parties may exercise their rights in terms of the Act and / or any collective agreement concluded at the council.
- 4.4.2. Any other dispute between the parties to the council which the Act requires to be arbitrated, or which disputes would otherwise be adjudicated by the Labour Court, but which the parties to the dispute have agreed to arbitrate, including a dispute about the interpretation or application of the provisions of the disputes would otherwise be adjudicated by the Labour Court, but which the parties to the dispute have agreed to arbitrate, including a dispute about the interpretation or application of the provisions of this Agreement and / or any collective agreement between the parties to the dispute, must be resolved by the council in accordance with the procedures set out herein.

- 4.4.3. Upon receipt of a written request for arbitration of a dispute about the interpretation or application of the provisions of any collective agreement between the parties to a dispute, the Secretary must appoint a member of the panel of commissioners to arbitrate the dispute.

4.5. COMPLIANCE PROCEDURE AND ENFORCEMENT OF COLLECTIVE AGREEMENTS CONCLUDED AT THE COUNCIL

- 4.5.1. The Secretary / Compliance Officer / Designated Agent of the council shall be responsible for the monitoring and enforcing compliance with any collective agreement concluded at the council.
- 4.5.2. The council shall take all reasonable and necessary steps to ensure compliance with this agreement and with any collective agreements concluded at the council. If, whether through its own investigations or through any other source, it appears that the provisions of this or any other collective agreement may have been breached, the council shall invoke the following procedures to enforce compliance:
- 4.5.2.1. The Secretary shall investigate the alleged breach.
- 4.5.2.2. The Secretary will conduct an investigation and if Secretary has reason to believe that a collective agreement has been breached, the Secretary may endeavour to secure compliance with the collective agreement in terms of guidelines of, or decisions by the council, where these exists, by:
- 4.5.2.2.1. publicising the contents of the collective agreement,
- 4.5.2.2.2. conducting inspections,
- 4.5.2.2.3. investigating complaints,
- 4.5.2.2.4. conciliation and
- 4.5.2.2.5. issuing of a compliance order requesting any person bound by the collective agreement to comply with the collective agreement within a specified period, thereby indicating that a dispute exists.
- 4.5.2.3. In the event of an unresolved dispute, the Secretary of the council may refer the dispute to arbitration.
- 4.5.2.4. The Secretary of the council must –
- 4.5.2.4.1. Appoint a commissioner from the panel of commissioners to arbitrate the dispute.
- 4.5.2.4.2. Serve notice of the time, date and venue of the arbitration on the parties of the dispute giving at least twenty one (21) days' notice of such process.
- 4.5.2.5. If any party to such arbitration is not party to the council and objects to the appointment of a member of the council's panel of commissioners, the Secretary must approach the CCMA to appoint an arbitrator, in which case the objecting party must pay the arbitrator's fee to the council and the council shall pay the fee set by the CCMA.
- 4.5.2.6. The provisions regarding the handling of arbitration matters contained herein shall apply throughout, provided that the arbitrator may make any appropriate award including:
- 4.5.2.6.1. ordering a person to pay an amount owing in terms of a collective agreement;
- 4.5.2.6.2. imposing a fine for failure to comply with a collective agreement in accordance with item 29 of schedule 7 and section 33A(13) of the Act;
- 4.5.2.6.3. charging a party to the arbitration an arbitration fee;
- 4.5.2.6.4. ordering a party to the arbitration to pay the costs of the arbitration;

- 4.5.2.6.5. confirming, varying or setting aside a compliance order issued;
- 4.5.2.6.6. any award contemplated in terms of section 138(9) of the Act which gives effect to the objectives of the Act, the council's constitution or this or any collective agreement reached at the council;
- 4.5.2.6.7. any award in relation to interest or penalties payable on any amount that a person is obliged to pay in terms of a collective agreement.
- 4.5.2.7. Subject to the provisions of the Act, an award in an arbitration concluded in terms of this procedure is final and binding on the parties to the dispute.
- 4.5.2.8. The Secretary of the council may apply to the Director of the CCMA to certify that an arbitration award issued in terms of this procedure is an award contemplated in terms of section 143(1) of the Act.
- 4.5.2.9. The provisions of this procedure stand in addition to any other legal remedy through which the council may enforce a collective agreement.

5. DEFINITIONS PERTAINING TO THIS AGREEMENT

Any term used in this collective agreement which is defined in the Act has the same meaning as in the Act;
Any reference to an Act includes any amendment of such an Act and unless the contrary intention appears, words importing the masculine gender, includes the female;
Further unless inconsistent with the context –

- “Act” means the Labour Relations Act of 1995 as amended.
- “agreement” means an agreement entered into between the parties to the council and which is binding upon the members of those parties in the Squid fishing and Related industries of South Africa in accordance with the provisions of the Act.
- “council” means The Statutory Council for the Squid and Related Fisheries of South Africa
- “employer” means the holder of Squid fishing rights issued to a company or closed corporation by the Minister of Agriculture, Forestry and Fisheries (Branch: Marine and Coastal management) or an agent acting on behalf of such a fishing rights holder.
- “land based employee” is an employee involved with any working activity which does not involve that employee having to go to sea to fish for squid.
- “sea based employee means a fisherman or other employee involved in the act of catching squid or any other sea based duties on the vessel”
- “employer’s representative” means any person who acts on behalf of an entity that has been allocated Squid fishing rights in managing a Squid fishing vessel.
- “party” means any registered employer’s organisation or trade union which is a party to the council.
- “public holiday” means a public holiday as defined in terms of the Public Holidays Act, No. 36 of 1994.
- “dispute resolution procedures” means the collective agreement concluded at the council in this regard.
- “SCSI” means The Statutory Council for the Squid and Related Fisheries of South Africa.
- “SAFTU” means the South African Fishermen’s Trade Union.
- “UDF&CWU” means the United Democratic Food and Combined Workers Union.
- “EOCAF” means the Employers Organisation for the Cephalopod and Associated Fisheries of South Africa
- “SEASI” means the Small Employers Association in the Squid Industry

6. ATTESTATION

We the undersigned, being mandated and authorised by our respective organisations, hereby attest to the above:

Thus done and signed at PORT ELIZABRETH on the 16th day of APRIL 2012

Vitalis Cele

.....

Name



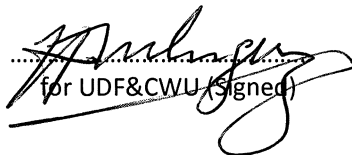
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for SAFTU (Signed)

Hamilton Mlunguzi

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Name



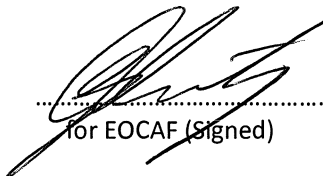
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for UDF&CWU (Signed)

Greg Christy

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Name



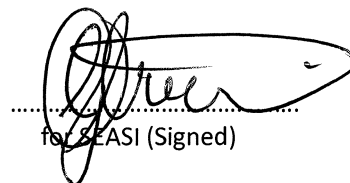
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for EOCAF (Signed)

Gerrie Olivier

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Name



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for SEASI (Signed)

Tony Edmeades

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Name



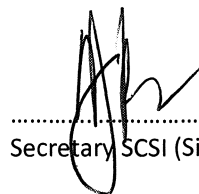
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Vice-Chairman SCSi (Signed)

Andre Grobler

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Name



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Secretary SCSi (Signed)