
GOVERNMENT NOTICES • GOEWERMENTSKENNISGEWINGS

DEPARTMENT OF LABOUR**NO. R. 507****08 MAY 2020****LABOUR RELATIONS ACT, 1995****BARGAINING COUNCIL FOR THE CIVIL ENGINEERING INDUSTRY (BCCEI):
EXTENSION OF DISPUTE RESOLUTION COLLECTIVE AGREEMENT TO NON-
PARTIES**

I, **THEMBELANI WALTERMADE NXESI**, Minister of Employment and 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 Civil Engineering Industry (BCCEI)** and is binding in terms of section 31 of the Labour Relations Act, 1995, on the parties which concluded the Collective Agreement, shall be binding on the other employers and employees in that Industry, with effect from the date of publication of this notice and for the period ending 31 August 2023.

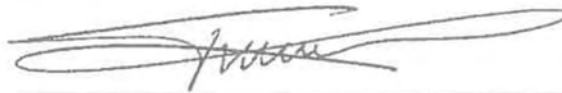


MR TW NXESI, MP
MINISTER OF EMPLOYMENT AND LABOUR
DATE: 29/04/2020

UMTHETHO WOBUDLELWANO KWEZABASEBENZI KA - 1995

**UMKHANDLU WOKUXOXISANA PHAKATHI KWABAQASHI NABASEBENZI
EMBONINI YONJINIYELA BEZOKWAKHIWA KWEMIGWAQO NAMABHULOHO:
UKWELULWA KWESIVUMELWANO SOKUXAZULULWA KWEZIMPIKISWANO,
SELULELWA KILABO ABANGEYONA INGXYENYE YESIVUMELWANO**

Mina, **THEMBELANI WALTERMADE NXESI**, onguNgqongqoshe Wezemisebenzi Nezabasebenzi, ngokwesigaba 32(2) soMthetho Wobudlelwano Kwezabasebenzi, ka-1995, ngazisa ukuthi isivumelwano sabaqashi nabasebenzi esitholakala kwiSheduli yesiNgisi exhunywe lapha, esenziwa uMkhandlu Wokuxoxisana phakathi Kwabaqashi Nabasebenzi Embonini Yonjiniyela Bezokwakhiwa Kwemigwaqo Namabhuloho, futhi ngokwesigaba 31 soMthetho Wobudlelwano Kwezabasebenzi, ka-1995 esibopha labo abasenzayo, sizobopha bonke abanye abaqashi nabasebenzi kuleyomboni, kusukela ngosuku lokushicilelwa kwalesisaziso kuze kube mhlaka 31 kuNcwaba 2023.



**MNUMZANE TW NXESI, MP
UNGQONGQOSHE WEZEMISEBENZI NEZABASEBENZI
USUKU: 29/04/2020**

SCHEDULE**BARGAINING COUNCIL FOR THE CIVIL ENGINEERING INDUSTRY
DISPUTE RESOLUTION COLLECTIVE AGREEMENT**

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

Employers' Organisation

Consolidated Employers Organisation (CEO)

South African Forum of Civil Engineering Contractors (SAFCEC)

(Hereinafter referred to as the "employer" or the "employers' organisations")
of the one party and the-

Trade Unions

Building, Construction and Allied Workers Union (BCAWU)

National Union of Mineworkers (NUM)


(Hereinafter referred to as the "employees" or the "trade unions") of the other part, being the parties to the Bargaining Council for the Civil Engineering Industry), to publish the Dispute Resolution Collective Agreement

APPLICATION AND INTERPRETATION OF AGREEMENT**1. Application of the agreement****1.1 This agreement binds:**

- (a) All employees in the Civil Engineering industry that are members of the employers' organisations that are party to this agreement; and
- (b) All employees in the bargaining unit, employed in the Civil Engineering industry who are members of the trade unions that are party to this agreement.

- 1.2 This Agreement must be applied in the jurisdiction of Bargaining Council for the Civil Engineering Industry throughout the Republic of South Africa.
- 1.3 Except as otherwise provided for in this Agreement, the BCCEI established a Committee to deal with applications for exemption from the provisions of the BCCEI's Collective Agreements.
- 1.4 This agreement applies to learners, only insofar as it is not inconsistent with the Skills Development Act, 1998.
- 2. Period of operation of agreement: -**
- 2.1 This agreement becomes binding on the employers and employees – refer to sub-clause (1.1), once it is extended by the Honourable Minister of Labour, in terms of Section 32 of the Act 66 of 1995, from a date determined by the Minister of Labour;
- 2.2 This agreement becomes binding on the employers and employees referred to in sub-clause 1.1 to 1.4 once it is extended to non-parties by the Honourable Minister of Labour and shall remain in force until 31 August 2023.

SIGNED AT BEFORDVIEW, for and on behalf of the parties, this day of 15/08/ 2019


Chairman of the BCCEI


Vice-Chairman of the BCCEI


General Secretary of the BCCEI



DISPUTE RESOLUTION COLLECTIVE AGREEMENT
for the
CIVIL ENGINEERING INDUSTRY

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**BARGAINING COUNCIL FOR THE CIVIL ENGINEERING INDUSTRY
DISPUTE RESOLUTION COLLECTIVE AGREEMENT**

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

Consolidated Employer's Organisation (CEO)

South African Forum of Civil Engineering Contractors (SAFCEC)

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

and the

Building Construction and Allied Workers Union (BCAWU)

National Union of Mine Workers (NUM)

(hereinafter referred to as the "employees" or the "trade unions"), of the other part

Being the parties to the Bargaining Council for the Civil Engineering Industry.

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CHAPTER 1

SCOPE AND APPLICATION OF AGREEMENT

1.1 Scope of application of agreement

This agreement is applicable in the Bargaining Council for the Civil Engineering Industry throughout the Republic of South Africa and binds

- (a) all employers in the civil engineering industry that are members of the employers' organisations that are party to this agreement;
- (b) all employees in the bargaining unit, employed in the civil engineering industry, who are members of the trade union that is party to this agreement;
- (c) apprentices or learners in the civil engineering industry, but only to the extent to which it is not inconsistent with the provisions of the Skills Development Act 97 of 1998 or any contract entered into or any conditions fixed hereunder;
- (d) trainees under training in terms of section 19 of the Skills Development Act 97 of 1998, but only in so far as it is not inconsistent with the provisions of the Act or any conditions fixed there under; and
- (e) in the event that this agreement is extended to non-parties in terms of section 32 of the Act, to all employees and all employers in the civil engineering industry.

1.2 Period of operation of this agreement

This Agreement shall come into operation on such date signed by the parties to this agreement, or as fixed by the Honorable Minister of Labour in terms of section 32 of the Act and shall remain in force until 31 August 2023 or until withdrawn or amended.

1.3 Definitions

Unless the context of this agreement indicates otherwise, any expressions, words or phrases used in this agreement shall have the same meaning as defined in the Labour Relations Act 66 of 1995 and any reference to an Act shall include any amendments to such Act and unless the contrary intention appears, words importing the masculine gender shall include females; further, unless inconsistent with the context-

'Act' means the Labour Relations Act of 1995 66 of 1995 as amended, and includes any regulation made in terms of that Act.

'Agreement enforcement disputes' refer to those disputes emanating from the Council's collective agreements.

'Associations' means any unincorporated body or persons.

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'DRC' shall mean the Council's 'Dispute Resolution Centre'.

'Collective agreement' includes –

- (i) any collective agreement signed under the auspices of the Council; and
- (ii) the rules of any fund or scheme established by the Council.

'Commission' or **'CCMA'** means the Commission for Conciliation, Mediation and Arbitration (CCMA), established in terms of Section 112 of the Act.

'Con-arb' means proceedings held in terms of Section 191(5A) of the Act.

'Council' means the Bargaining Council for the Civil Engineering Industry registered in terms of Section 29 of the Act.

'Commissioner' means an accredited individual appointed by the Council to resolve disputes.

'Deliver' means serve on other parties and file with the Council.

'Designated agent' means any person appointed as a designated agent in terms of section 33(1) of the Act.

'Dispute' includes an alleged dispute and means any situation where –

- (i) two or more parties are unable to reach agreement on a matter of mutual interest between them, and one or more of those parties advise the Council in writing that they are in dispute; or
- (ii) the Council by way of its designated agents or any other person so appointed by the Council, declares a dispute against an Employer and/or Employee for failure to comply with the provisions of one or more of the Council's Agreements. Notification of declaration of dispute shall be contained in a compliance order issued to the employer and/or employee in respect of the identified contraventions; or
- (iii) any dispute in terms of the Labour Relations Act 66 of 1995 which must be referred to the Council.

'Employer' means any person, including a temporary employment service (TES) as defined in section 198(1) of the Act, who employs or provides work to another person, other than a volunteer or an independent contractor, and who remunerates or undertakes, expressly or tacitly, to remunerate that person and who permits that other person to assist in any manner in the carrying on or conducting of the business.

'Establishment' is any premises or site wherein or whereon the Industry, or part thereof, as herein defined, is carried on.

'File' means to lodge with the Council in terms of Rule 7 of Annexure A.

'General Secretary' means the General Secretary of the Council appointed by the annual general meeting of the Council.

'Industry' means the Civil Engineering Industry in which employers (other than local authorities) and employees are associated for the purpose of carrying out work of a civil engineering character normally

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associated with the civil engineering sector and includes such work in connection with any one or more of the following activities:

- a) The construction of aerodrome runways or aprons; aqueducts; bins or bunkers; bridges; cable ducts; caissons; rafts or other marine structures; canals; cooling, water or other towers; dams; docks; harbours; quays or wharves; earthworks; encasements; housing or supports for plant, machinery or equipment; factory or works chimneys; filter beds; land or sea defence works; mine headgear/s; pipelines; piers; railways; reservoirs; river works; roads or streets; sewerage works; sewers; shafts or tunnels; silos; sports fields or grounds; swimming baths; viaducts or water treatment plants; and/or
- b) Excavation and bulk earthworks; bush clearing and de-stumping; topsoil stripping; drilling and blasting; preparation of bench areas, drilling pre-split holes and blasting and/or cast blasting; secondary blasting; loading, hauling and dumping of mineralized and/or waste material to waste dumps or processing plant feed (ROM Pad) stockpiles; production dozing of top soil, inter burden or waste material; pumping and dewatering of storm and/or contaminated water; construction and maintenance of access and haul roads, ramps, waste and processing plant feed (ROM Pad) areas, safety beams, high walls; benches, storm water systems, catch drains, bund walls, surge dams; trimming, scaling or chain dragging of batters, heap-leach pads, tailings dams; dust suppression of loading areas, haul roads and dumping areas; rehabilitation of earth work areas or waste dumps; topsoil spreading, hydro-seeding and watering and/or
- c) Excavation work or the construction of foundations, lift shafts, piling, retaining walls, stairwells, underground parking garages or other underground structures; and/or
- d) The asphaltting, concreting, gravelling, levelling or paving of parking areas, pavements, roads, streets, aerodrome runways or aprons, premises or sites

and further includes: -

- e) Any work of a similar nature or work incidental to or consequent on any of the aforesaid activities; and/or
- f) The making, repairing, checking or overhauling of tools, vehicles, plant, machinery or equipment in workshops which are conducted by employers engaged in any of the activities referred to in sub - clauses (a) to (f) inclusive;

but excluding: -

- i) Work in connection with any one or more of the activities specified in definition (iii) where such work, when undertaken in connection with the erection of structures having the general character of buildings and irrespective of whether or not such work involves problems of a civil engineering character, is carried out by the employers erecting such structures;
- ii) Work in connection with any one or more of the activities specified in definition (iii) when undertaken as an incidental operation in connection with the erection of

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structures having the general character of buildings or when undertaken by the employers erecting such structures;

- iii) Any work falling within the scope of any other industry, and
- iv) The Mining Industry which is defined as the industry where employers and employees are associated for the purpose, directly or indirectly, for the winning, extracting, processing and refining of a mineral in, on or under the earth or water or from any residue stockpile or residue deposit.

'Labour Court' means the Labour Court established by Section 151 of the Act and includes any judge of the Labour Court.

'Party' means --

- (i) the Council;
- (ii) any or all of the employers' organisation(s) and/or trade union(s) listed as members of this Council;
- (iii) any employers' organisation(s) and/or trade union(s) not listed as a member of this Council; and/or
- (iv) any employer and/or employee and/or any of the organisations referred to in (ii) or (iii) hereof acting on their behalf.

'Rules' means the rules for conciliation, arbitration and other proceedings before the Council, as contained in Annexure A and includes footnotes appearing in any rule.

'Public holiday' means a public holiday referred to in section 1 of the Public Holidays Act 36 of 1994.

'Serve' means to serve a document in accordance with Rule 5 of Annexure A and "service" has a corresponding meaning.

CHAPTER 2 DISPUTE RESOLUTION

2.1 Preamble

- 2.1.1 The Council has been accredited, in terms of section 127(5) of the Act, to conciliate or conciliate and arbitrate disputes provided for in this agreement.
- 2.1.2 Notwithstanding this agreement, parties may agree to meet in an attempt to resolve any dispute between them. They may give consideration to appoint, at their own cost, a mediator or arbitrator or referring the dispute to any other process, as agreed between them.
- 2.1.3 Notwithstanding the provisions of this agreement, nothing prevents the parties to a dispute to establish, by agreement, their own, private dispute procedures.

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2.2 Disputes to be conciliated and arbitrated as provided for in the Act (commonly known as disputes of right)

2.2.1 Disputes in terms of this clause which arise in the registered scope of the Council must be referred to the Council for resolution and the Rules in Annexure A apply.

2.2.2 The arbitrating Commissioner, in determining a dispute, shall take into account –

- (a) any code of good practice that has been issued by NEDLAC in accordance with the provisions of the LRA; and
- (b) the purpose and effect of the Council's collective agreements relevant to the matter being considered in the arbitration proceedings.

2.3 Mutual interest disputes (commonly known as disputes of interest)

2.3.1 Matters of mutual interest that are subject to negotiations are resolved through conciliation and industrial action, subject to clause 2.3.2.

2.3.2 Where the dispute concerns a refusal to bargain, as defined in section 64(2) of the Act, an advisory award must be issued at the conclusion of the conciliation process before notice of industrial action is given.

2.3.3 In order to refer a dispute concerning any matter in clauses 2.3.1 and 2.3.2 to the Council for conciliation, the relevant provisions of the Rules for the Conduct of Dispute Resolution Proceedings, contained in Annexure A to this agreement, applies with the changes required by the context.

2.3.4 The conciliating commissioner may, in addition to the powers given to a conciliator in the Act, require the parties to appoint a sub-committee elected from the National Negotiating Forum, to meet within a specified number of days for the purposes of attempting to resolve the dispute, and/or advise the parties to refer the dispute to advisory or binding arbitration.

2.3.5 Industry disputes shall be processed and dealt with in accordance with this agreement.

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2.4 Disputes concerning unilateral amendments to conditions of employment

Disputes about an employer unilaterally amending employment conditions will be dealt with in accordance with section 64(4) of the Act and the relevant provisions for referring a dispute to conciliation and otherwise dealing with a dispute in conciliation, as contained in the Rules for the Conduct of Dispute Resolution Proceedings in Annexure A, apply.

2.5 Interpretation and application disputes

2.5.1 Any dispute concerning the interpretation or application of this agreement will be resolved by way of conciliation and arbitration.

2.5.2 Any dispute concerning the interpretation and application of any other of the Council's collective agreements will be resolved by way of conciliation and arbitration.

2.5.3 The Rules for the Conduct of Dispute Resolution Proceedings in Annexure A to this agreement apply.

2.6 Demarcation disputes

Demarcation disputes must be referred to the CCMA in terms of section 62 of the Act.

2.7 General

2.7.1 The Council shall comply with the accreditation requirements set by the CCMA.

2.7.2 The Council shall establish and maintain a panel of conciliators and arbitrators to conduct conciliations, arbitrations and all related proceedings in terms of this agreement. The Council may at any stage decide to remove a person from a panel for whatever reason it considers appropriate, including but not limited to incapacity or serious misconduct.

2.7.3 The Council shall maintain in safe-keeping all arbitration awards and rulings given under its jurisdiction, which shall be available to all parties within the industry.

2.7.4 Without in any way detracting from the rights and obligations emanating from this agreement, it shall be interpreted and applied in a manner that promotes effective dispute resolution.

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CHAPTER 3

ENFORCEMENT OF AND COMPLIANCE WITH COLLECTIVE AGREEMENTS

- 3.1 The Council is entitled to monitor, investigate and enforce compliance with its collective agreements in terms of this clause or a collective agreement concluded by the parties to the Council.
- 3.2 A designated agent of the Council must investigate and attempt to resolve a dispute/complaint that comes to his/her attention in the course of performing his/her duties.
- 3.3 A designated agent of the Council is authorised to issue a compliance order, requiring any person bound by the Councils' collective agreements to comply with the collective agreements within the time frame determined by the designated agent.
- 3.4 The Council may refer any unresolved dispute concerning compliance with any provision of a collective agreement to arbitration by completing the prescribed form and serving it on all parties concerned.
- 3.5 The provisions of the Act and the rules in Annexure A to this agreement pertaining to arbitrations apply, with the necessary changes, to arbitrations conducted in terms of this Chapter.
- 3.6 An arbitrator conducting an arbitration in terms of this clause may make any appropriate award, including –
- (a) ordering a person to pay any amount owing in terms of a collective agreement;
 - (b) imposing a fine for a failure to comply with a collective agreement in accordance with Tables One and Two as set out hereunder as Annexure B;
 - (c) charging a party an arbitration fee;
 - (d) ordering a party to pay the costs of the arbitration;
 - (e) confirming, varying or setting aside a compliance order issued by a designated agent; or
 - (f) any award contemplated in section 138(9) of the Act.
- 3.7 Interest on any amount that a person is obliged to pay in terms of a collective agreement accrues from the date on which the amount was first due and is payable at the rate prescribed in terms of the Prescribed Rate of Interest Act 55 of 1975, unless the arbitration award provides otherwise.

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- 3.8 If an employer files an application to review and set aside an arbitration award that was issued in a compliance arbitration, any obligation included in the award to pay a fine is suspended pending the outcome of the review.


CHAPTER 4

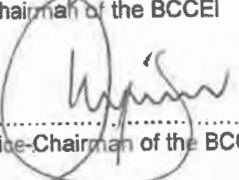
EXEMPTIONS

All exemption applications and any appeal or dispute that may arise as a result of an exemption application must be dealt with in accordance with the "Exemptions Collective Agreement".

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Signed for and on behalf of the parties at Johannesburg on _____ 2019


.....
Chairman of the BCCEI


.....
Vice-Chairman of the BCCEI


.....
General Secretary of the BCCEI

ANNEXURE A

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CHAPTER ONE SERVICE AND FILING OF DOCUMENTS

1. Contacting the Council

- (1) The addresses, email addresses, telephone and telefax numbers of the offices of the Council are contained in Schedule 1.
- (2) All documents must be filed with the Council at the Johannesburg office or at the regional office in the region in which the dispute arose.

2. Office hours of the Council

- (1) For the purposes of these Rules, the offices of the Council will be open every day from Monday to Friday, excluding public holidays, between the hours of 8:00 and 16:00, or as determined by the Council from time to time.
- (2) Documents that are handed in at one of the offices of the Council must be filed on the days and during the hours referred to in sub-rule (1). Documents may be faxed or e-mailed at any time during a day, whether during or outside the office hours of the Council.

3. Calculation of time periods

- (1) For the purpose of calculating time periods provided for in these Rules –
 - (a) "day" means a calendar day; and
 - (b) the first day is excluded and the last day is included, subject to sub-rule (2).
- (2) The last day of any period must be excluded if it falls on a Saturday, Sunday, public holiday or on a day during the period between 16 December and 7 January.

4. Persons who may sign documents

- (1) A document that a party must sign in terms of the Act or these Rules must be signed by him or her personally or by his or her representative.
- (2)(a) Where proceedings are jointly instituted or opposed by more than one employee, all documents must be signed by all the employees or by their representative or by one of the

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employees if mandated to sign on behalf of all the other employees. If an employee has been so mandated, the mandate must be attached to the document.

- (b) A written list of the employee or of all employees who are instituting or opposing the proceedings must be attached to all documents. The list must contain the full names, identity numbers and telephone numbers of all the employees and, where possible, also their physical and e-mail addresses.
- (3) The onus is on all parties to any proceedings before this Council to advise the Council of any changes in their personal and/or contact details.

5. Service of documents on other parties

- (1) A party must serve a document on the other party or parties –
 - (a) by handing a copy of the document to –
 - (i) the party or parties concerned;
 - (ii) a representative authorised in writing to accept service on behalf of the party or parties;
 - (iii) a person who is in charge of the party's place of residence, business or place of employment and who appears to be at least 16 years of age.
 - (b) by leaving a copy of the document on the main door or other visible area at the address chosen by the party to receive service;
 - (c) by faxing a copy of the document to the party's fax number or to a fax number chosen by that party to receive service;
 - (d) by e-mailing a copy of the document to the party's e-mail address or to an e-mail address chosen by that party. The relevant provisions of the Electronic Communications and Transactions Act 25 of 2002 are applicable to service by e-mail;
 - (e) by sending a copy of the document by registered mail to the last known postal address of the party or to a postal address chosen by the party to receive service;
- (2) A document may also be served on –
 - (a) a company or other body corporate by handing a copy of the document to a responsible employee of the company or body corporate at its head office, its principal place of business within the Republic or its office where the dispute arose;

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- (b) on an employer by handing a copy of the document to a responsible employee of the employer at the workplace where the employee(s) involved in the dispute ordinarily work or worked;
 - (c) on a trade union or employers' organisation by handing a copy of the document to a responsible employee or official at the head office of the union or employers' organisation or its office in the magisterial district in which the dispute arose;
 - (d) on a partnership, firm or association by handing a copy of the document to a responsible employee or official at the place of business of the partnership, firm or association or, if it has no place of business, by serving a copy of the document on a partner, the owner of the firm or the chairperson or secretary of the managing or other controlling body of the association, as the case may be;
 - (e) on a municipality by serving a copy of the document on the municipal manager or any other person authorised to accept service;
 - (f) on a statutory body by handing a copy to the secretary or similar officer or member of the board or committee of that body or any person acting on behalf of that body; or
 - (g) on the State or a province, a state department or a provincial department, a minister or a member of the executive committee of a province by handing a copy to a responsible employee at the head office of the party or to a responsible employee at any office of the State Attorney.
- (3) The Council or a commissioner may order service of a document in a manner other than prescribed in this Rule.
- (4) The Council may, if so requested by an unrepresented employee earning less than the threshold prescribed by the Minister under section 6(3) of the Basic Conditions of Employment Act of 1997, provide administrative assistance to that employee to serve any notice or document in respect of any proceedings in terms of the Act or these Rules, provided that the employee remains responsible in law for any such service.

6. Proof of service

- (1) A party must prove to the Council or to a commissioner that a document was served in accordance with Rule 5 by providing the Council or a commissioner with -

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- (a) a copy of the registration slip that the document was sent by registered mail to the other party;
- (b) a copy of the fax transmission report indicating the successful fax transmission of the whole document to the other party. The Council may request an affidavit from the person who sent the fax to confirm that the whole document was successfully transmitted and that the number to which it was sent was the correct number of the recipient;
- (c)
 - (i) if a document was served by e-mail, with a copy of the sent e-mail, indicating the successful transmission of the document and all attachments to the other party;
 - (ii) the Council may request an affidavit from the person who sent the e-mail to confirm that the document was successfully sent and that the e-mail address to which it was sent was the correct address of the recipient;
 - (iii) the relevant provisions of the Electronic Communications and Transactions Act 25 of 2002 are applicable to service by e-mail.
- (d) if a document was served by hand –
 - (i) with a copy of a receipt signed by, or on behalf of, the recipient which clearly indicates the name and job title of the recipient and the place, time and date of service; or
 - (ii) with an affidavit, confirming service, signed by the person who delivered a copy of the document to the other party or left it at the premises of the other party; or
 - (iii) with a copy of the referral form with an official company stamp and the name and job title of the recipient, as well as the place, time and date of service.

7. Filing documents with the Council

- (1) A party must file documents with the Council –
 - (a) by handing the document to a responsible person at the Council's Johannesburg office or at the regional office in the region in which the dispute arose, as per Schedule 1, and obtaining the signature of the recipient as confirmation of receipt of the document; or
 - (b) by sending a copy of the document by e-mail, fax or registered mail to the Council at its Johannesburg office or the regional office in the region where the dispute arose, as contained in Schedule 1.

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- (2) A document has been filed with the Council when –
- (a) the entire document has been handed to a responsible person at one of the offices of the Council, as contained in Schedule 1;
 - (b) an entire document sent by registered mail has been received by the Council;
 - (c) an entire document has been successfully transmitted by fax to the Council; or
 - (d) an entire document has been successfully transmitted by e-mail to the Council, as provided for in the Electronics Communications and Transactions Act 25 of 2002.
- (3) A party must file the original of a document which was faxed if requested to do so by the Council or a commissioner within seven (7) days of the request. If not filed within seven (7) days, as requested, the faxed copy of the document may be rejected.

8 Notice of proceedings before the Council

The Council must give notice of a conciliation or arbitration hearing or any other proceeding before it by means of any of the methods of service provided for in Rule 5 or may give notice by means of short message service (SMS).

9. Documents and notices sent by registered mail

Any document or notice sent by registered mail by a party or the Council is presumed, until the contrary is proved, to have been received by the person to whom it was sent seven (7) days after it was mailed.

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CHAPTER TWO CONCILIATION OF DISPUTES

10. Referring a dispute to the Council for conciliation

- (1) A party must refer a dispute to the Council for conciliation by filing a completed LRA Form 7.11 (the "referral document") and serving a copy thereof on the other party or parties.
- (2) The referring party must –
 - (a) complete the LRA Form 7.11 fully by filling in all the spaces on the form;
 - (b) sign the referral document in accordance with Rule 4;
 - (c) attach to the referral document written proof, in accordance with Rule 6, that a copy of the referral document was served on the other party or parties to the dispute; and
 - (d) if the referral document is filed out of time, attach an application for condonation. The application for condonation must be done in accordance with Rule 35 and must meet the requirements of Rule 24(3).
- (3) The Council must accept, but may refuse to process a referral document until sub-rule (2) has been complied with.

11. Notice by the Council to the parties of a conciliation hearing

- (1) The Council must notify the parties in writing of a conciliation hearing at least fourteen (14) days prior to the scheduled date, unless the parties agree to a shorter period or justifiable circumstances require a shorter period of notice.
- (2) Despite the provisions of Rule 3, the time period of fourteen (14) days runs from the date the notification is sent by the Council, but if notification is sent by registered mail an additional seven (7) days must be allowed.

12. Pre-conciliation proceedings

The Council or a commissioner may contact the parties by telephone or other means, prior to the commencement of a conciliation hearing, in an attempt to seek to resolve the dispute.

13. Jurisdiction of the Council to conciliate a dispute

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If a jurisdictional issue is raised during the conciliation proceedings the commissioner must require the referring party to prove that the Council has jurisdiction to conciliate the dispute, provided that any jurisdictional challenge requiring evidence may be deferred to arbitration.

14. Issuing of a certificate in terms of section 135(5)

- (1) A certificate of outcome, issued in terms of section 135(5) that the dispute has or has not been resolved, must identify the nature of the dispute and the parties as described in the referral document or as identified by the commissioner during the conciliation proceedings;
- (2) If the dispute that has been referred to the Council for conciliation has not been enrolled for conciliation within the 30-day conciliation period, as envisaged in section 135(2) of the Act, a certificate of non-resolution will be issued after expiry of said 30-day period in accordance with section 135(5) of the Act.

15. Conciliation proceedings are confidential

- (1) Conciliation proceedings are private and confidential and are conducted on a "without prejudice" basis. No person may refer to anything said at conciliation proceedings during any subsequent proceedings, unless the parties agree in writing to disclosure or if ordered to do so by a court of law.
- (2) No person, including a commissioner, may be called as a witness during any subsequent proceedings in the Council or in any court of law to give evidence of what transpired during conciliation, unless ordered to do so by a court of law.

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**CHAPTER THREE
CON-ARB IN TERMS OF SECTION 191(5A)**

16. Conduct of con-arb in terms of section 191(5A)

- (1) The Council must notify the parties in writing of a con-arb hearing at least fourteen (14) days prior the scheduled date, unless the parties agree to a shorter period or reasonable circumstances require a shorter period. Despite the provisions of Rule 3, the time period of fourteen (14) days runs from the date the notification is sent by the Council, unless sent by registered mail in which case an additional seven (7) days must be allowed.
- (2) A party who intends to object to a dispute being dealt with in terms of section 191(5A) must deliver a written notice of objection to the Council and the other party or parties at least seven (7) days prior to the scheduled date.
- (3) Sub-rule (2) does not apply to a dispute concerning the dismissal of an employee for any reason related to probation or to an unfair labour practice relating to probation.
- (4) If a party fails to appear or be represented at a hearing scheduled in terms of sub-rule (1) the Commissioner must conduct the conciliation on the date specified in the notice of set down.
- (5) Sub-rule (4) applies irrespective of whether a party has lodged a notice of objection in terms of sub-rule (2).
- (6) The provisions of these Rules that apply to conciliations and arbitrations, including rules on representation, apply with the changes required by the context to the conciliation and arbitration parts of con-arb proceedings respectively.
- (7) If the arbitration does not proceed or is not concluded on the scheduled date, the Council must schedule the matter for arbitration or for continuance of the arbitration by notifying the parties in accordance with Rule 20.

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**CHAPTER FOUR
ARBITRATIONS****17. Referring a dispute to the Council for arbitration**

- (1) A party who wants to refer an unresolved dispute to the Council for arbitration must deliver a completed LRA Form 7.13 by filing the form with the Council and serving a copy thereof on the other party or parties.
- (2) When delivering an LRA Form 7.13, the referring party must –
 - (a) ensure that LRA Form 7.13 has been fully completed by filling in all spaces and that all attachments have been annexed to LRA Form 7.13;
 - (b) that LRA Form 7.13 and all attachments have been signed in accordance with Rule 4;
 - (c) when filing the referral document with the Council, attach to it written proof that a copy of LRA Form 7.13 and all attachments were served on the other party or parties to the dispute in accordance with Rule 6; and
 - (d) where LRA Form 7.13 is filed out of time, attach an application for condonation which must be done in accordance with Rule 35 and which meets the requirements of Rule 24(3).
- (3) The Council must accept an LRA Form 7.13 even if sub-rule (2) has not been complied with, but may refuse to process the referral until the requirements in sub-rule (2) have been complied with.
- (4) This Rule does not apply to con-arb proceedings held in terms of section 191(5A).

18. Statements of case

- (1) The Council or a commissioner may direct –
 - (a) the referring party in an arbitration to deliver a statement of case; and
 - (b) the other parties to deliver an answering statement.
- (2) A statement in terms of sub-rule (1) must –
 - (a) set out the material facts upon which the party relies and the legal issues that arise from the material facts; and

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(b) be delivered within the time period specified by the Commissioner or the Council.

- (3) The Commissioner has a discretion to continue with the arbitration despite non-compliance with a directive to deliver a statement of case and answering statement, but any non-compliance must be taken into account when considering costs at the conclusion of the arbitration hearing.

19. Pre-arbitration conference

- (1) The parties to an arbitration must hold a pre-arbitration conference, dealing with the matters referred to in sub-rule (3), if directed to do so by the Council or a commissioner.
- (2) The parties to an arbitration may agree to hold a pre-arbitration conference and, when doing so, must deal with the matters referred to in sub-rule (3).
- (3) In a pre-arbitration conference the parties must attempt to reach consensus on the following:
- (a) any means by which the dispute may be settled;
 - (b) facts that are agreed between the parties;
 - (c) facts that are in dispute;
 - (d) the issues that the arbitrating commissioner is required to decide;
 - (e) the relief claimed and if compensation is claimed, the amount of the compensation and how it is calculated;
 - (f) the sharing and exchange of relevant documents and the preparation of bundles of documents in chronological order with each page numbered;
 - (g) the manner in which documentary evidence is to be dealt with, including any agreement on the status of documents and whether documents, or parts of documents, will serve as evidence;
 - (h) whether evidence on affidavit will be admitted with or without the deponent of the affidavit testifying and the other party cross-examining him or her;
 - (i) which party must begin;
 - (j) the necessity for any on-the-spot inspection;
 - (k) securing the presence of any witness at the venue appointed by the Council;
 - (l) the raising and/or resolution of any preliminary points that are intended to be taken;
 - (m) the exchange of witness statements;
 - (n) expert evidence;
 - (o) any other means by which the proceedings may be expedited;
 - (p) an estimate of the time required for the hearing;
 - (q) the right of representation; and

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- (r) whether an interpreter is required and, if so, for how long and for which of the official South African languages.
- (4) Unless a dispute is settled, the parties must draw up and sign a minute, setting out the issues referred to in sub-rule (3) and indicating their agreement or disagreement on those issues.
- (5) The referring party must ensure that a copy of the pre-arbitration conference minute is filed with the Council within seven (7) days of the conclusion of the pre-arbitration conference or as directed by the Council or Commissioner.
- (6) The Council or Commissioner may, after receiving a pre-arbitration minute –
 - (a) enroll the matter for arbitration;
 - (b) direct the parties to hold a further pre-arbitration conference; or
 - (c) issue any other directive to the parties concerning the conduct of the arbitration.

20. Notice by the Council to parties of an arbitration hearing

The Council must notify the parties in writing of an arbitration hearing at least twenty-one (21) days prior to the scheduled date, unless the parties agree to a shorter period or reasonable circumstances require a shorter period. Despite the provisions of Rule 3, the time period of twenty-one (21) days runs from the date the notification is sent by the Council, unless sent by registered mail in which case an additional seven (7) days must be allowed.

21. Jurisdiction of the Council to arbitrate

If, during the arbitration proceedings it appears that a jurisdictional issue has not been determined, the Commissioner must require the referring party to prove that the Council has jurisdiction to arbitrate the dispute.

22. Postponement of an arbitration or any hearing other than conciliation

- (1) An arbitration must be postponed, and there is no need for the parties to appear, if all the parties to the proceedings agree in writing to a postponement and the written agreement is filed with the Council at least seven (7) days before the scheduled arbitration date.
- (2) Where the parties agree to a postponement, but fail to file their written agreement to postpone at least seven (7) days before the arbitration date, as required in sub-rule (1), the parties will not be required to appear on the scheduled arbitration date, but may be

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held liable, in equal portions, for the arbitration costs incurred by the Council in respect of the day of the arbitration, unless good cause can be shown why the written agreement was filed late. The parties will be required to submit written representations to show good cause, which will be considered and determined by an independent commissioner.

- (3) An arbitration may be postponed on application. Where the parties do not agree to a postponement in writing, any party to the dispute may apply for a postponement. The application must be done in accordance with Rule 35 and the time periods in Rule 35 apply.
- (4) The Council will appoint a commissioner to consider the application for postponement on the papers and the commissioner so appointed will issue a written ruling before the scheduled arbitration date.
- (5) If an application for postponement is not delivered within the prescribed time, the parties have to attend the arbitration proceedings, at which time condonation for the late delivery and the postponement will have to be argued. Parties must be prepared to continue with the arbitration in the event that postponement is not granted.

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**CHAPTER FIVE
RULES THAT APPLY TO CONCILIATIONS, ARBITRATIONS AND OTHER
PROCEEDINGS**

23. Venue of proceedings

The Council determines the venue for any and all proceedings, which will be conducted in the region in which the dispute arose, unless the Council determines otherwise.

24. Condonation for the late filing of documents or failure to comply with the Rules

- (1) This Rule applies to all referral documents, applications and other documents which are delivered outside of the applicable time period prescribed in the Act or these Rules.
- (2) Condonation must be applied for in accordance with Rule 35 when a document is filed late with the Council or as soon as the party who has filed a document becomes aware that the document was filed late.
- (3) An application for condonation must set out the grounds on which condonation is sought and must include details of at least the following:
 - (a) the degree of lateness;
 - (b) the reasons for the lateness;
 - (c) the referring parties' prospects of succeeding with the referral and obtaining the relief sought against the other party;
 - (d) any prejudice to the other party; and
 - (e) any other relevant factors.
- (4) The Council or a commissioner may condone, on good cause shown, any failure to comply with any time period provided for in the Act or these Rules.
- (5) In deciding whether or not to grant condonation, the Council or commissioner may act in such a manner as is deemed expedient in the circumstances in order to achieve the objectives of the Act. In doing so, regard shall be had to substance rather than form.

25. Representation

- (1) In conciliation proceedings—

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- (a) an employee or ex-employee¹ may appear in person or can be represented by an office bearer, official or member of his or her registered trade union, provided that the employee was a paid-up member of that trade union at the date the dispute arose;
 - (b) an employer who is a sole trader may appear in person or can be represented by any of its employees;
 - (c) an employer who is a partnership can be represented by any of the partners or by any employee of the partnership;
 - (d) an employer who is a close corporation (CC) can be represented by any member or any employee of the CC;
 - (e) an employer who is a company can be represented by a director or an employee of that company;
 - (f) a government department, municipality or any organ of state can be represented by any one of its employees;
 - (g) an employer who is an association, organisation or other entity can be represented by one of its board members or by an employee;
 - (h) despite the provisions in (b) – (g), an employer can be represented by an office bearer, official or member of its registered employers' organisation;
 - (i) a registered trade union that is a party to a dispute can be represented by an office bearer, official or member of the trade union if authorised to do so in writing, which written authorisation must be handed up to the presiding commissioner at the commencement of the proceedings;
 - (j) a registered employers' organisation that is a party to a dispute can be represented by an office bearer, official or member of the employers' organisation if authorised to do so in writing, which written authorisation must be handed up to the presiding commissioner at the commencement of the proceedings;
- (2) In arbitrations or any proceedings, other than conciliations, a party to the dispute may appear in person or be represented by a person as set out in sub-rule (1) or by a legal practitioner, subject to sub-rule (3).
- (3) If an arbitration concerns the dismissal of an employee as a result of the employee's alleged misconduct or incapacity, a party is not entitled to be represented by a legal practitioner in the arbitration hearing,² unless -
- (i) the commissioner and all the parties consent; or

¹ An "ex-employee" for the purposes of this Rule means an employee who alleges an unfair dismissal and who is challenging the fairness of the dismissal or an employee whose services were terminated and who alleges, in terms of section 186(2)(c) of the Act, that the employer has refused or failed to reinstate or re-employ him/her in terms of an agreement.

² For the purposes of this rule "arbitration hearing" means the actual arbitration and does not include other hearings or proceedings related to or flowing from the arbitration, such as jurisdictional challenges, other preliminary issues and applications.

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- (ii) on application, which application must be done in accordance with Rule 35, and if the commissioner considering the application concludes that it is unreasonable to expect a party to deal with the dispute without legal representation, after considering –
 - a) the nature of the questions of law raised by the dispute;
 - b) the complexity of the dispute;
 - c) the public interest; and
 - d) the comparative ability of the opposing parties or their representatives to deal with the dispute.
- (4) No representative other than a legal practitioner may charge a fee or receive any financial benefit in consideration for representing a party in any proceedings before the Council.
- (5) If a party to the dispute objects to the representation of another party to the dispute or if the Commissioner suspects that a representative does not qualify to appear in terms of this Rule, the Commissioner seized with the matter must determine the standing of that representative.
- (6) In determining whether a representative qualifies to represent a party in terms of this Rule, the Commissioner may call upon the representative to show why he or she should be permitted to appear in terms of this Rule and may direct the representative to tender any documents, including but not limited to, constitutions, pay-slips, contracts of employment, recognition agreements and proof of paid-up membership of a registered trade union or registered employers' organisation.
- (7) Despite the provisions relating to employer representation in this Rule, a commissioner may exclude an employer's representative if that representative joined an employers' organisation for the sole purpose of representing an employer in Council proceedings or if the participation of that representative may unfairly advantage the employer.

26. Correcting the citation of a party

- (1) If a party to any proceedings has been incorrectly or defectively cited, the Council may of its own accord or by consent of the parties or on application and on notice to the parties concerned correct the error or defect.
- (2) An application to have a citation corrected must be made in accordance with Rule 35.

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27. Consolidation of disputes

- (1) The Council, of its own accord, or a commissioner, of his or her own accord, may consolidate more than one dispute so that the disputes are dealt with in the same proceedings.
- (2) Parties may agree to have disputes consolidated, in which case a commissioner must issue a written ruling in which the consolidation is confirmed or the parties may file a written and signed agreement to confirm the consolidation.
- (3) Any party to a dispute may apply for the consolidation of disputes, in which case an application must be made in accordance with Rule 35 and a commissioner must issue a written ruling, allowing or dismissing the application.

28. Joinder or substitution of parties

- (1) The Council or the Commissioner seized with a matter may, at any time prior to the conclusion of an arbitration hearing, join any person as a party to the proceedings if that person's right to relief depends on substantially the same question of law or fact.
- (2) The Commissioner seized with a matter may, at any time during any proceedings, order the joining of any person as a party to the proceedings if the person to be joined has a substantial interest in the subject matter and/or outcome of the proceedings.
- (3) The Commissioner may make an order in terms of sub-rule (2) –
 - (a) of his or her own accord;
 - (b) on application by a party; or
 - (c) on application by a person who has an interest in the matter before the Council and who is entitled to be joined to the proceedings.
- (4) When making an order in terms of sub-rule (2), the Commissioner may –
 - (a) give appropriate directions as to further procedures in the proceedings; and
 - (b) make an order of costs in accordance with these Rules.
- (5) If in any proceedings it becomes necessary to substitute a party with another person, any party to the proceedings may apply to the Council for an order substituting that party with the other person and the Commissioner may make such order and/or give appropriate directions as to the further procedures in the proceedings.

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- (6) An application to join a person or to substitute a party may be made at any time prior to the conclusion of an arbitration hearing and must be made in accordance with Rule 35.
- (7) An application to join a person as a party to proceedings or to substitute an existing party with another person must be accompanied by copies of all documents previously delivered, unless the person concerned or his or her representative is already in possession of the documents.
- (8) Subject to any order made in terms of sub-rules (4) and (5), a joinder or substitution in terms of this Rule does not affect any steps already taken in the proceedings.

29. Discovery of documents

- (1) At any time after the request for arbitration has been delivered, either party may request the Commissioner seized with the matter to make an order as to the discovery of relevant documents or other evidence.
- (2) The parties may agree to the discovery of documents or other relevant evidence.

30. Failure to attend proceedings

- (1) If both the referring party and his or her representative fail to attend conciliation proceedings, the commissioner must conclude the proceedings by issuing a certificate to the effect that a dispute remains unresolved.
- (2) If the party opposing the dispute and its representative fail to attend the conciliation proceedings, the Commissioner must issue a certificate to the effect that the dispute remains unresolved or, in the case of a mutual interest dispute, postpone the proceedings to a later date, provided that such a postponement falls within the 30-day conciliation period as provided for in section 135(2) of the Act and provided, further, that there is a compelling reason for such a postponement.
- (3) If the referring party and his or her representative fail to attend an arbitration hearing or any proceedings before the council other than conciliation, the Commissioner must dismiss the matter, unless the referring party or his or her representative has provided, before the commencement of the proceedings, justifiable and acceptable reasons for not attending the proceedings.

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- (4) If the party opposing the dispute that has been referred to arbitration or opposing any issue that has been referred to the Council for proceedings other than conciliation or arbitration, the Commissioner may continue with the proceedings in the absence of the opposing party and his or her representative or may, on good cause shown, postpone the proceedings to a later date.
- (5) Any postponement or dismissal of a matter in terms of this Rule must be confirmed by the Commissioner in writing and the written ruling must be served by the Council on the parties.

31. Subpoenas

- (1) Any party who requires the Council or a commissioner to subpoena a person in terms of section 142(1) of the Act must file a completed LRA Form 7.16, together with a written motivation, setting out why the evidence of the person to be subpoenaed is necessary, as well as proof of payment of the witness fees.
- (2) A party requesting the Council to waive the requirement of paying witness fees in terms of section 142(7)(c) of the Act must set out the reasons for the request in writing at the time of requesting the subpoena. The Council's decision to waive or not waive the witness fees must be provided in writing to the party who requested the waiver before the subpoena is served on the person to be subpoenaed.
- (3) An application in terms of sub-rule (1) must be filed with the Council at least fourteen (14) days prior to the scheduled date of the proceedings, or as directed by the Commissioner seized with the matter.
- (4) The Council must refuse to issue a subpoena if –
 - (a) the party requesting the subpoena does not establish why the evidence of the person is necessary;
 - (b) the witness who is being subpoenaed does or will not receive the subpoena at least seven (7) days prior to the scheduled date of the proceedings;
 - (c) not satisfied that the party requesting the subpoena has paid the prescribed witness fees and reasonable travel costs and subsistence expenses of the person subpoenaed, unless the witness fees has been waived by the Council in terms of sub-rule (2).
- (5) A subpoena must be served on the witness –

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- (a) by the person who has requested the issuing of the subpoena or by the Sheriff at least seven (7) days prior to the scheduled date of the proceedings; and
 - (b) must be accompanied by proof of payment of the prescribed witness fees and reasonable travel and subsistence expenses for one day. The fees in the Council are the same as the fees in the CCMA, which are published in the *Government Gazette* from time to time.
- (6) Sub-rules (4)(c) and (5)(b) do not apply if the Council, in terms of section 142(7)(c), has waived the requirement to pay witness fees.

32. Expert witnesses

- (1) A party intending to call an expert witness shall give seven (7) days' notice, prior to the date of the proceedings, to the Council and the other party or parties of its intention to call an expert witness.
- (2) Such notice shall be accompanied by—
 - (a) a summary of the evidence the expert witness will give;
 - (b) any document on which the expert witness will rely; and
 - (c) the basis upon which the witness is regarded to be an expert.

33. Payment of witness fees

- (1) A witness who has been subpoenaed in any proceedings before the Council must be paid a witness fee in accordance with the tariff as published by the CCMA in the *Government Gazette*.
- (2) The witness fee must be paid by —
 - (a) the party who requested the Council to issue the subpoena; or
 - (b) the Council, if the issuing of the subpoena was not requested by a party but by a commissioner or if the Council has waived the requirement to pay witness fees in terms of section 142(7)(c) of the Act.

34. Costs orders in arbitration proceedings

- (1) In any arbitration proceedings or proceedings arising out of or in the course of an arbitration, the Commissioner may make an order for the payment of costs according to the requirements of law and fairness and, in doing so, should have regard to —

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