



**PHSDSBC**

PUBLIC HEALTH AND SOCIAL DEVELOPMENT  
SECTORAL BARGAINING COUNCIL

# RECUSAL RULING

Case No: PSHS1263-17/18

Commissioner: THABE PHALANE

Date of ruling: 12 SEPTEMBER 2017

In the matter between:

**NEHAWU obo Members**

(Union/Applicant)

and

**Department of Health- Northern Cape**

(Respondent)

---

## 1. DETAILS OF THE HEARING REPRESENTATION

- 1.1 An Arbitration hearing was held on 30 August 2017 at the Kimberley Hospital, Kimberley Hospital Complex, Kimberley.
- 1.2 The Applicant appeared in person and was represented by Mr R Cronje, the Union Official, whilst the Respondent was represented by Mr J Tswaile, the Respondent's Official.
- 1.3 The Applicants raised an objection to the same Commissioner who issued the Certificate of non-resolution to be the same Commissioner who arbitrates the dispute.
- 1.4 The Respondent did not have the same reservations.

## **2. ANALYSIS OF EVIDENCE AND ARGUMENTS**

- 2.1 The Applicants have not submitted that they will experienced any bias however they are concerned that the matter was conciliated and certain issues were submitted in confidence.
- 2.2 There is no requirement that the applicant must suffer actual bias to render the proceedings unfair and the perception is more real than reality.
- 2.3 The reasons advanced by the Applicant were reasonable and it was only fair to issue recuse myself to allow the dispute to proceed without the Applicants doubting if the process and outcome will be fair or not.
- 2.4 The matter will therefore proceed before a different Commissioner at a date to be determined by the Council.
  
- 2.5 Having evaluated the submissions before me I therefore make the following ruling,

## **3. RULING**

- 3.1 The application for recusal is granted.
- 3.2 The Council is directed to set the matter down before another Commissioner and advise the parties accordingly.
- 3.3 There is no order as to costs.

Panellist: THABE PHALANE

Signature: \_\_\_\_\_