

# DEPARTEMENT VAN ARBEID

Hoofkantoor: Pretoria

# DEPARTMENT OF LABOUR

Head Office: Pretoria

Tel: (012) 309-4000 Faks • Fax (012) 320-2059



Manekraggebou  
Schoemanstraat 215  
Privaatsak X117  
0001 Pretoria

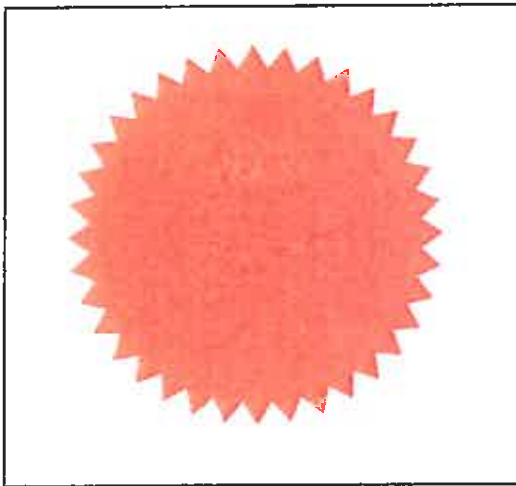
Manpower Building  
215 Schoeman Street  
Private Bag X117  
0001 Pretoria

It is hereby certified that on the date of registration the constitution of the

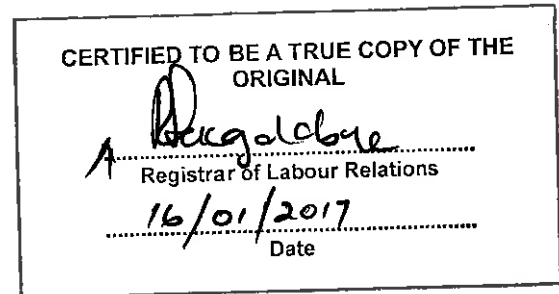
## *Public Health and Welfare Sectoral Bargaining Council*

complies with the requirements of section 30(1),

of the Labour Relations Act, 1995.




(Official stamp of Registrar)



Reference number: LR 2/6/6/144

Date: 28 July 1999

  
.....  
Registrar of Labour Relations

# CONSTITUTION OF THE PUBLIC HEALTH AND WELFARE SECTOR BARGAINING COUNCIL

1. **NAME**  
The name of the bargaining *Council* is the Public Health and Welfare Sector Bargaining *Council*.
2. **DEFINITIONS**
  - 2.1 Any expression used in *this constitution* which is defined in the Labour Relations Act, 1995 (Act no. 66 of 1995) shall have the same meaning as in *the Act* except that -
    - (a) "**arbitrator**" means an *arbitrator* appointed by the *PSCBC* to the panel of *arbitrators*.
    - (b) "**audited membership figures**," means *membership* figures of a trade union as reflected in stop orders or other auditable methods, verified by the registered auditor appointed by the *Council*.
    - (c) "**CCMA**" means the Commission for Conciliation, Mediation and Arbitration;
    - (d) "**this constitution**" means the constitution of the Public health Sector Bargaining *Council* and includes the Schedules to the constitution
    - (e) "**conciliator**" means a *conciliator* appointed by the *PSCBC* to its panel of *conciliators*.
    - (f) "**Council**" means the Public Health and Welfare Sector Bargaining *Council*
    - (g) "**dispute**", includes an alleged dispute and means :
      - (i) a *dispute* that is specific to the Public Health and Welfare sector; and
      - (ii) a *dispute* that the *employer* has the requisite authority to resolve.
    - (h) "**employee**" means the *employees* of the *employer* within the registered scope of the *Council*;
    - (i) "**employer**" means the State as *employer* within the registered scope of the *Council*;
    - (j) "**member**" means an *employee* who is a *member in good standing* of a trade union.



S.I.P  
1  
Peg


- (k) "**member in good standing**" means an *employee* who is not more than three months in arrears with the payment of his or her *membership* fees payable in terms of the said constitution.
- (l) "**Mutual interest**" means any matter of *mutual interest* in respect of which the *employer* may conclude collective agreements because :
  - (i) the matter has been assigned to the *Council* by the *PSCBC*; or
  - (ii) the matter is specific to the public health sector; and
  - (iii) the *employer* has the requisite authority to do so.
- (m) "**the Act**" means the Labour Relations Act, No. 66 of 1995
- (n) "**provincial health and welfare chamber**" means a provincial chamber established by *the Council* in terms of clause 12 of *this Constitution*.
- (o) the "**PSCBC**" means the Public Service Co-ordinating Bargaining *Council*.

3. SCOPE (per resolution of the PSCBC)

- 3.1 The public health and welfare sector means the State, as employer and its employees who fall within the registered scope of the PSCBC meaning:
- (a) employers and employees employed in:
    - (i) the department of health in the national sphere of government;
    - (ii) the nine departments of health in the provincial spheres of government;
    - (iii) the department of social welfare in the national sphere of government;
    - (iv) the nine departments of social welfare in the provincial spheres of government;
  - (b) all other employees who are employed in health and welfare facilities under the Public Service Act and the Correctional Services Act and their employers; and
  - (c) other health and welfare workers as defined in Schedule 1 attached to this constitution and employed under the Public Service Act and their employers.



MK: P  
5.11.99  
2



#### 4. OBJECTIVES

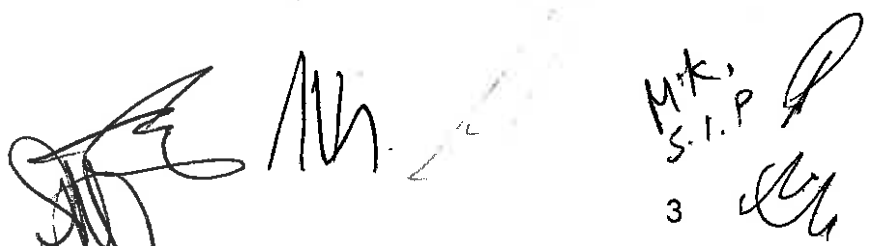
The objectives of the *Council* are to :

- (a) promote labour peace in the public health and social welfare sector;
- (b) promote and maintain sound relationships between the *employer* and its *employees*;
- (c) promote collective bargaining in the public health and social welfare sector;
- (d) Promote the effective and expeditious resolution of disputes in the public health and social welfare sector;
- (e) promote the effective delivery of services to the community;
- (f) promote effective communication between the employer, its employees and the trade unions in the public health sector.

#### 5. POWERS AND FUNCTIONS

The powers and functions of the *Council* are to perform those functions set out in section 28 of *the Act*, including:

- (a) negotiate collective agreements on matters of *mutual interest*
- (b) implement, monitor and enforce its collective agreements;
- (c) implement and monitor those collective agreements that have been concluded in the *PSCBC*;
- (d) implement and monitor those collective agreements that have been concluded in the *PSCBC*;
- (e) prevent and resolve labour *disputes* between;
  - (i) trade unions admitted to the *Council*; or
  - (ii) its *employees*
- (f) administer funds to be used for resolving *disputes*, collective bargaining and general administration of the *Council*;
- (g) raise, borrow, lend, levy and invest funds;
- (h) develop policy proposals that may affect the sector;
- (i) promote and establish training and education schemes; and
- (j) exercise any other power or perform any other function that may be necessary or desirable to achieve the objectives of the *Council*.

Handwritten signatures and initials at the bottom of the page. On the right, there are initials 'M.K.', 'S.I.P.', and a circled 'P'. Below these is the number '3' and another signature.

## 6. PARTIES TO THE COUNCIL

- 6.1 The founding parties to the *Council* are the *employer*, and the trade unions who are parties to *the PSCBC* and who have members in the health and welfare sector that meet the admission criteria set out in this constitution.
- 6.2 A registered trade union or two or more registered trade unions acting together may apply for admission to the *Council*. The *Council*:
- (i) must admit the applicant trade union if it has at least ~~10 000~~ ~~or 20 000~~ members in good standing in the public health sector; or
  - (ii) ~~may admit the applicant trade union if it represents a majority in any class of employees that would justify, taking into account the objectives of the Act, separate representation in the Council;~~<sup>1</sup>
- 6.3 If two or more trade unions acting together as a single party, each having organisational rights with an employer and having a combined membership of ~~10000~~ ~~or 20 000~~ those trade unions may be represented in the *Council* as a single party.
- 6.4 The *Council* shall within 90 days of receiving an application for admission, decide whether to grant or refuse the application and must advise the applicant thereof within 30 days of reaching such a decision.
- 6.5 The *Council* shall terminate the *membership* of a trade union if:
- (a) it receives a notice of termination of such *membership* from the trade union;
  - (b) the trade union dissolves or winds up in terms of its constitution;
- 6.6 The *Council* may terminate the *membership* of a trade union if:

<sup>1</sup> The following views were expressed by the parties:

- The employer supports the deletion of clause 6.2 (ii) and strongly supports a minimum threshold of 20000. The employer believes that any threshold lower than 20 000 will be problematic given that several smaller groups can be accommodated in other ways- by joining together with larger trade unions or by the council deciding to form subcommittees as the need arises to give smaller groups a voice. The employer also strongly supports the deletion of clause 6.2(ii) as the clause will allow separate representation based on specific professional characteristics, which may make it impossible for the council to function. If there are 90 different health professional groups, some only consisting of 50 to 150 persons, the retention of clause 6.2(ii) will put an impossible burden on the council to admit all such small groups. This will make the council unworkable and is not in accordance with the employer's view of how the council should operate. In any event, clause 6.3, the employer believes allows smaller groups to be accommodated
- NEHAWU supports a threshold of 20 000 and the deletion of clause 6.2(ii)
- DENOSA supports a threshold of 20000 and the inclusion of 6.2(ii);
- NUPSAW, NWU, PSA and HOSPERSA support a threshold of 10000 and the deletion of clause 6.2(ii), and
- PAWUSA supports a threshold of 10 000, which threshold should be reviewed annually, and supports the inclusion of clause 6.2(ii).

*[Handwritten signatures and initials]*

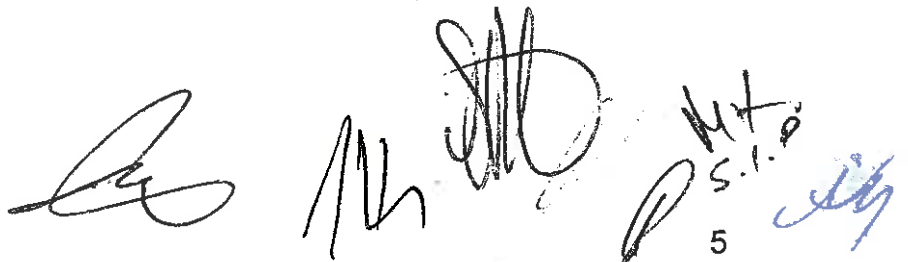
4

- (a) the trade union no longer complies with the admission requirements prescribed in *this constitution*; or
  - (b) the trade union's contributions to the *Council* are more than three months in arrears or it contravenes or fails to comply with a provision of *the Act* or *this constitution* that justifies termination of its *membership*;
- 6.7 Termination of a parties *membership* to the *Council* may be initiated by:
- (a) the Secretary following the annual review of *membership* figures as set out in clause 7; or
  - (b) any party to the *Council*
- 6.8 The *Council* must consider any initiation to terminate the *membership* of a trade union. In considering this the trade union must be afforded a reasonable opportunity to submit representations to the *Council* as to why its *membership* should not be terminated.
- 6.9 If the *membership* of a trade union is terminated and such a trade union *disputes* the termination, the *dispute* may be referred to arbitration in terms of the *Council's Dispute* Resolution Procedure set out in Schedule 3.

## 7. ANNUAL REVIEW OF MEMBERSHIP FIGURES

The Secretary to the *Council* must review the annual *membership* figures of all trade unions admitted to the *Council*. This review must take place as soon as possible after 1 April of each year. The Secretary must report this decision to the *Council* by no later than 14 May of each year. For this purpose -

- (a) the *audited membership figures* of each trade union with regard to its *members* that fall within the registered scope of the *Council* as referred to in section 100(a) of *the Act*, must be submitted to the Secretary of the *Council* by 31 March each year;
- (b) the Secretary of the *Council* may afford a trade union which has not submitted its *audited membership figures* by 31 March of a specific year, the opportunity to submit such figures within 30 days; and
- (c) the *Council* may, after the 30 days referred to in sub-clause (b) has elapsed, request the trade union concerned to provide reasons for non-compliance with these requirements and decide to suspend the participation of such trade union in the proceedings of the *Council* until its *audited membership figures* have been received. If the *audited membership figures* of the trade union are not received by the *Council* within three months of the date of suspension, admission of the trade union to the *Council* will automatically terminate.



Handwritten signatures and initials at the bottom of the page, including a large signature on the left, a signature in the middle, and initials 'MT' and 'S.I.P.' on the right, with the number '5' below them.

## 8. APPOINTMENT OF REPRESENTATIVES AND ALTERNATES

- 8.1 The *employer* shall be represented in the *Council* by authorised representatives appointed by the Minister of Health and the Minister of Welfare, in consultation with the executing authorities representing the *employers* that fall within the jurisdiction of the *Council*
- 8.2 The trade unions in the *Council* may each be represented by two representatives for the first **threshold (10000/20000) members**, then one additional representative for every additional **20 000/10000 members or part thereof** up to a maximum of 5 representatives. A trade union may appoint any person to represent it in the *Council*, depending upon the issues that are to be discussed in the *Council* and up to the number designated to it in terms of this clause.<sup>2</sup>
- 8.3 The number of representatives accorded to each trade union will remain the same from one annual review of the trade union's *membership* figures, as set out in clause 7 to the next annual review.

## 9. DETERMINATION OF BASIS OF VOTES

- 9.1 The voting rights of an admitted trade union in the *Council* shall be determined on the basis of the number of *members* in good standing of such a trade union who are *employees* as on 31 December of the previous year in proportion to the number of *members* who are *employees* represented by all the trade unions in the *Council*.
- 9.2 The Secretary shall determine the number of votes of each admitted trade union in accordance with clause 7, which voting rights shall apply from one annual general meeting to the next annual general meeting. The Secretary shall, as soon as practicable after 31 March of each year, but by no later than 14 May of each year inform-
- (a) such trade union of the number of votes it has in the *Council*;
  - (b) the *Council* of the number of votes that each trade union has in the *Council*; and

<sup>2</sup> NEHAWU, PSA and HOSPERSA support the view that additional representatives on the Council must be calculated in accordance with the formula "one additional representative for every additional 20000 members, or part thereof, to a maximum of 5 representatives";  
The employer supports the view of NEHAWU, PSA and HOSPERSA. However, the employer strongly supports the removal of the words "or part thereof" from the clause. The employer wants the words "or part thereof" removed as it would allow a union with 20 001 members to have the same number of representatives (3 representatives) as a union with 40 000 members  
NUPSAW, DENOSA and NWU support the view that the additional representatives on the Council must be calculated in accordance with the formula "one additional representative for every additional 10000 members, or part thereof, to a maximum of 5 representatives."

- 9.3 Any party that *disputes* the determination of the Secretary in terms of clause 7, may refer such a *dispute* for conciliation and if the *dispute* remains unresolved, for arbitration. If referred to arbitration, any arbitration award shall substitute the Secretary's determination.
- 9.4 The *employer* shall have a number of votes equal to that of the admitted trade unions jointly and the voting rights in the *Council* shall at all times be divided on an equal basis between the trade unions collectively, on the one hand, and the *employer* on the other hand.
- 9.5 **If an agreement is entered into in the Council then**, in the case of negotiations regarding a particular matter the voting rights shall be limited to a trade union that can prove that it represents *employees* affected by such matter, determined according to the number of its *members* in good standing who are affected by the matter, in relation to the total number of *members* who are affected by the matter as represented by the trade unions admitted in the *Council*.<sup>3</sup>

## 10. CHAIRPERSON AND VICE CHAIRPERSONS

- 10.1 At the first meeting of the *Council*, the Chairperson and two vice Chairpersons shall be appointed in terms of the procedures set out in Schedule 4 attached to *this constitution*.
- 10.2 Future Chairpersons and future vice Chairpersons shall be elected during the annual general meeting of the *Council* in terms of the procedure provided for in this clause.
- 10.3 The outgoing Chairperson shall preside over the annual general meeting of the *Council* and shall call for nominations for a Chairperson for the forthcoming term of office (when applicable) at the conclusion of such a meeting.
- 10.4 A person other than a representative or alternate of the parties to the *Council*, who has consented to his/her nomination, may also be nominated as Chairperson.
- 10.5 A person to be nominated shall be duly proposed and seconded.
- 10.6 The person receiving the highest percentage of the total votes, shall be declared the duly elected Chairperson: Provided that in the event of a deadlock the Secretary shall draw lots in accordance with this clause to determine the duly elected Chairperson.
- 10.7 Should an equal number of votes be cast for two or more candidates, the Secretary shall, in the presence of the meeting, write the name of each candidate on a separate piece of paper and place such papers in a suitable container and shall draw one of the papers from the container.


3

The employer, NEHAWU and NUPSAW are of the view that the words in bold, "If an agreement is entered into in the Council then" should be inserted into this clause; and NWU, PSA, DENOSA and HOSPERSA support the inclusion of clause 9.5, without the phrase in bold.


Handwritten signatures and initials at the bottom of the page, including a large signature on the left, several smaller signatures in the middle, and initials 'M.C.P.' and 'S.I.P.' on the right, with a circled '7' below them.



- 10.8 The candidate whose name is so drawn shall be deemed to have been duly elected
- 10.9 The Chairperson shall hold office for a term of 12 months unless removed by a decision of the *Council*. Any past Chairperson may be re-elected.
- 10.10 The provisions on the election of the chairperson apply to the election of the two vice chairpersons: Provided that one shall be elected by the employer and that the other shall be elected by the admitted trade unions.
- 10.11 The Chairperson shall -
- (a) preside over and enforce order, which may include making rulings on the procedure to be followed, at all meetings at which the chairperson is present in accordance with normal meeting procedure;
  - (b) sign the minutes of a meeting after confirmation thereof by the *Council*;
  - (c) endorse accounts for payment and financial statements after approval by the *Council*; and
  - (d) perform such other duties as by usage and custom pertain to the office of Chairperson.
- 10.12 Whenever the Chairperson is not available, the vice-Chairpersons shall alternatively act as Chairperson and shall exercise the powers and perform the functions and duties of the Chairperson.
- 10.13 Whenever the Chairperson or the two vice Chairpersons are absent or unable to act at a meeting, their representatives present shall elect from their number someone to act as Chairperson at that meeting.
- 10.14 The Chairperson or the two vice Chairpersons are not entitled to vote on any matter. Provided that if any of the vice Chairpersons has not been replaced by another representative of that party to the *Council*, that vice Chairperson may vote on any matter and the same applies to a representative elected to act as Chairperson in the absence of the Chairperson or the vice Chairpersons.
- 10.15 The term of office of the Chairperson or the vice Chairpersons may be terminated by written notice of either such Chairperson, or the *Council* consequent to a resolution to that effect.
- 10.16 Where applicable, the *Council* shall from time to time determine a honorarium payable to the Chairperson of the *Council* provided that, should it become necessary or desirable to retain the services of the Chairperson on a full time basis, the *Council* shall determine the salary and other conditions of employment of the Chairperson by agreement.



Muk  
S.I.P  
8



11. SECRETARY AND OTHER PERSONNEL

11.1 The *Council* shall appoint a part-time or full-time Secretary or may request the *employer* that an *employee* be placed at its disposal, or be directed, to act as Secretary.

11.2 The Secretary shall –

- (a) conduct all correspondence of the *Council*;
- (b) keep originals of letters received and copies of those despatched;
- (c) attend the meetings of the *Council* and record the minutes of the meetings;
- (d) keep books of account in accordance with general accepted accounting practices and the instructions of the *Council*;
- (e) bank all monies received on behalf of the *Council* within three (3) working days of receipt thereof;
- (f) submit statements of the financial position of the *Council* whenever required to do so by the *Council* and in accordance with the provisions of *the Act* and *this constitution*;
- (g) submit the books of account of the *Council* to a public auditor once every calendar year for auditing;
- (h) countersign cheques signed by the Chairperson, on the banking account of the *Council*;
- (i) determine the number of votes in terms of clause 9; and
- (j) perform such other duties as the *Council* or Chairperson may direct or which is required by *the Act*.

11.3 The Secretary shall keep in safe custody at the offices of the *Council* -

- (a) the approved minutes of every meeting of the *Council*, duly signed by the Secretary and by the person who presided at such meeting;
- (b) the original signed agreements of the *Council*; and
- (c) the statements referred to in clauses 18.7 and 18.11 and all records in relation thereto.

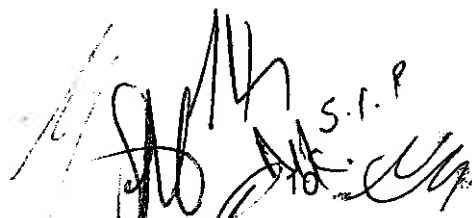
11.4 The Secretary may appoint such part-time or full-time personnel as the Secretary may deem necessary or may request that an *employee* be placed at the disposal of the *Council* or that such *employee* be directed to perform duties necessary for the administration of the *Council*, in all instances with the prior approval of the *Council*.

Handwritten signatures and initials at the bottom of the page, including a large signature on the left, a smaller signature in the middle, and a signature on the right with the initials 'M.A.P.' and the number '9' written above it.

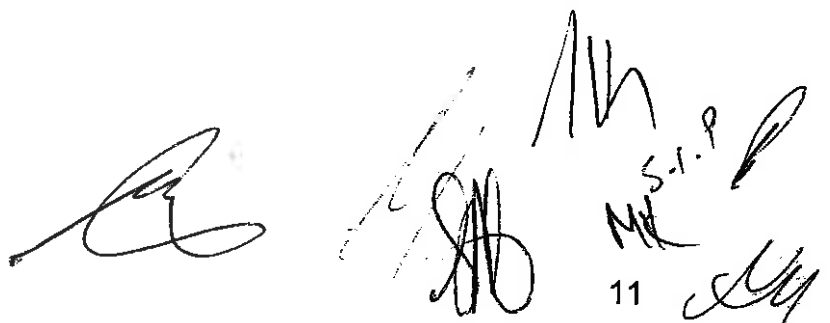
- 11.5 Where applicable, the salary and other conditions of employment of the Secretary and other personnel of the *Council* appointed in terms of *this constitution* shall be determined by the *Council*.
- 11.6 Where applicable, the employment of the Secretary and other personnel of the *Council* may be terminated on one month's notice on either side: Provided that such termination of services by the *Council* shall be done upon a decision of the *Council* as contemplated in clause 14: Provided further that the services of the Secretary or other personnel may be terminated without such notice for serious neglect of duty or misconduct.
- 11.7 The duties of the Secretary may be exercised by any of the other personnel of the *Council* acting under the directions of the Secretary.
- 11.8 The Secretary may at any time prior to a meeting of the *Council*, request the Chairperson to place on the agenda of such meeting, any matter concerning the administration or functioning of the *Council*.

## 12. COMMITTEES AND CHAMBERS

- 12.1 The *Council* may from time to time establish committees or chambers in terms of section 55 of *the Act* and such other conditions as it may determine, delegate any of its functions to any such committee.
- 12.2 Any decision or action of a committee or chamber shall be reported to the *Council* for consideration and may be ratified, set aside or varied by the *Council* unless the *Council* has specifically assigned the powers or functions to that committee or chamber.
- 12.3 The *Council*, by delegating any function, shall not divest any of its powers nor shall it be relieved of any function or duty that it may have delegated unless it expressly states the contrary.
- 12.4 Any committee or chamber established in terms of this clause, shall consist of equal numbers of representatives of the *employer* and the *employee* organisations collectively, as well as the Chairperson of the *Council* or a person designated by the *Council* to act as chairperson of such committee.
- 12.5 Secretarial or other services shall be rendered to a committee of the *Council* by the Secretary or other personnel of the *Council*.
- 12.6 *Provincial Health and Welfare Chambers*
- (a) *The Council* must, in every province referred to in section 103 of the Constitution, establish a *Provincial health and Welfare Chamber* that will be the bargaining or consultative forum in that province.
- (i) A *Provincial Health and Welfare Chamber* established in terms of sub-clause (a) is not a juristic person.



- (ii) A *Provincial Health and Welfare Chamber* will function in a specific province and deal with matters referred or delegated to it by *the Council*, as well as matters which fall exclusively under its jurisdiction.
- (b) The objectives of a *Provincial Health and Welfare Chamber* are to:
  - (i) maintain and promote labour peace;
  - (ii) prevent and resolve labour disputes;
  - (iii) perform dispute resolution functions;
  - (iv) promote collective bargaining within the scope of its powers;
  - (v) conduct research, analyse and survey education, subject to approval by the Council; and
  - (vi) promote training and build capacity.
- (c) The functions of a provincial Chamber are to:
  - (i) to deal with such matters and conclude agreements, referred or delegated to a Chamber by the Council;
  - (ii) to conclude agreements on matters which fall exclusively under its jurisdiction;
  - (iii) to deal with matters emanating from the agreed dispute resolution procedure of Council which fall within its competency; and
  - (iv) to refer matters which fall outside its scope, and which matters should be dealt with by the Council or the PSCBC, to the Secretary; and
  - (v) to refer agreements reached within the Chamber to the Council, for endorsement and/or extension. No collective agreement concluded at a Chamber will be of any force and effect until endorsed by the Council.
- (d) The parties to a Chamber shall be the *employer* and *trade unions* in the province, admitted to the Council.
- (e) The trade unions may each be represented by a maximum of two (2) representatives and will be entitled to have a maximum of two (2) observers.

The bottom of the page contains several handwritten signatures and initials. On the left is a large, stylized signature. In the center is another signature. On the right, there are initials 'M', 'S-I-P', and 'MK' written vertically, with a signature below them. At the bottom right, the number '11' is written, followed by another signature.

- (f) The employer must be represented in the Chamber by its authorised representatives. The *employer*, will be entitled to have a number of representatives equal to those of all the admitted trade unions. The *employer* will be entitled to have a number of observers equal to its number of representatives.
- (g) Should a party's membership of the Chamber or Council be terminated, its representatives shall vacate their seats.

### 13. EXECUTIVE COMMITTEE

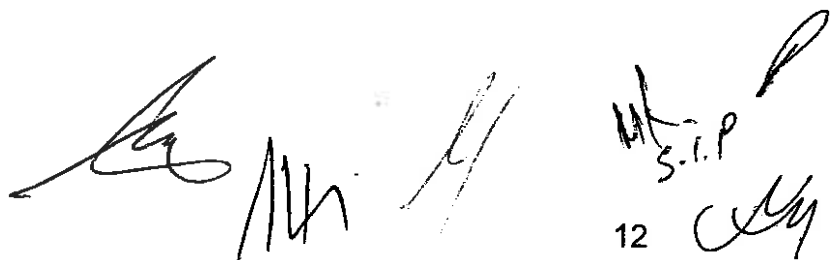
13.1 The Council must appoint an Executive Committee, which will be accountable to Council and will have the following functions:

- (a) to manage the day-to-day business of the Council;
- (b) to determine standing orders for all committees, including the Executive Committee, sub-committees and *ad hoc* sub-committees of the Council
- (c) to decide on the manner in which matters referred to the Council shall be dealt with and, if necessary, to refer matters to another committee or sub-committee for advice or recommendation(s) or to any other bargaining council;
- (d) to appoint sub-committees and *ad hoc* sub-committees of the Executive Committee;
- (e) to consider recommendations submitted to it by other committees, sub-committees and *ad hoc* sub-committees;
- (f) to identify research to be undertaken;
- (g) to consider all proposals submitted by parties when preparing the agenda and supporting documentation for meetings of Council and the Annual General Meeting; and
- (h) to deal with all matters relating to staffing.

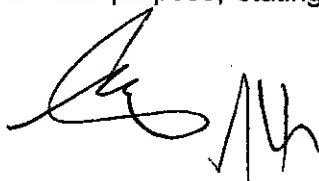
13.2 The executive committee will be made up of :

- (a) the Chairperson;
- (b) the two Vice-Chairperson;
- (c) three employer representatives; and
- (d) three employee representatives.

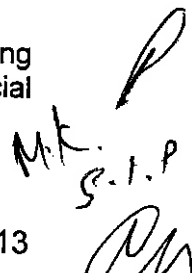
13.3 The Secretary shall attend meetings of the executive committee but shall not participate in the decision making of the executive committee.

Handwritten signatures and initials at the bottom of the page. On the left, there are three distinct signatures. On the right, there are initials 'M.S.P.' and a date '12' followed by another signature.

- 13.4 At the annual general meeting, the Council must appoint three employer and three employee members of the executive committee and an alternate for each of them. The members and their alternates must be representatives in the Council. Half of the members, as well as their alternatives must be appointed by the employer representatives in the Council, whilst the other half of the members, as well as their alternates must be appointed by the employee representatives in the Council.
- 13.5 A member of the executive committee will hold office for twelve months unless withdrawn by the party who appointed the member, and will be eligible for re-appointment at the end of that term.
- 13.6 A member of the executive committee whose term of office has expired and who is not re-appointed, may nevertheless continue to act as a member of the executive committee until the member's successor assumes office.
- 13.7 A member of the executive committee-
- (a) may resign from the committee at any time after having given at least 21 day's notice in writing to the Secretary;
  - (b) must vacate office immediately-
    - (i) in the case of resignation, when the resignation takes effect; or
    - (ii) upon ceasing to be a representative of the Council.
- 13.8 (a) If the seat of a member of the executive committee becomes vacant, the Council must fill the vacancy from the number of candidates nominated for that purpose by-
- (i) the employer representatives in the Council, if that seat had been held by a member representing the employees; or
  - (ii) the employee representatives in the Council, if that seat had been held by a member representing employees.
- (b) A member appointed to fill a vacant seat holds that seat for the unexpired portion of the predecessor's term of office.
- 13.9 The executive committee must hold a meeting at least once every 3 months.
- 13.10 A special meeting of the executive committee-
- (a) may be called at any time by the Chairperson with a view to disposing of urgent business; and
  - (b) must be called by the Chairperson within 10 days of receiving a request for that purpose, stating the purpose of the special meeting.



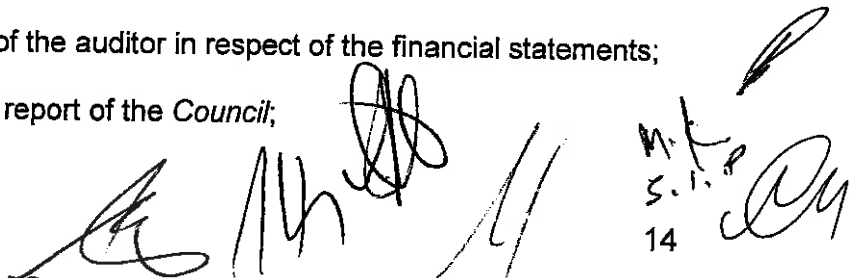
M.K.  
S.I.P.  
P.M.



- 13.11 The Secretary must prepare a written notice of every executive committee meeting showing the date, time and venue of the meeting and the business to be transacted. This notice must be sent to each member of the executive committee at least 7 days before the date of the meeting. However, the Chairperson may authorise shorter notice for a special meeting.
- 13.12 At least half of the members of the executive committee representing employers' and half of the members of that committee representing employees form a quorum and must be present before a meeting may begin or continue.
- 13.13 All decisions of the executive committee shall be taken by consensus. In the event of consensus not being arrived at, the matter shall be referred back to the Council for a decision.
- 13.14 The Secretary shall provide the parties to the Council with reports and minutes on all decisions taken by the executive committee.

#### 14 MEETINGS OF THE COUNCIL

- 14.1 The *Council* shall meet at least four times per annum in Pretoria, unless otherwise agreed, at such venue, date and time as may be determined by the Chairperson after consultation with the parties to the *Council*, provided that one such meeting shall be the annual general meeting.
- 14.2 Notwithstanding clause 13.1, any party to the *Council* may request the Chairperson in writing to convene a meeting of the *Council*, which meeting shall be convened within 21 days of the date of the request, after consultation with the Secretary, provided that no scheduled *Council* meeting falls within that period.
- 14.3 The *Council* shall hold an annual general meeting during the month of June of each year.
- 14.4 The following matters shall be dealt with at the annual general meeting:
- (a) the election of a Chairperson, should it be necessary in terms of *this constitution*;
  - (b) the appointment of a Secretary, should it be necessary in terms of *this constitution*;
  - (c) the appointment of auditors, should it be necessary in terms of *this constitution*;
  - (d) the financial statements of the *Council*;
  - (e) the report of the auditor in respect of the financial statements;
  - (f) the annual report of the *Council*;

Handwritten signatures and initials at the bottom of the page, including a large signature on the left, a smaller one in the middle, and a set of initials 'M.K. S.I.P.' with a date '14' and another signature on the right.

- (g) the approval of the budget of the *Council*;
  - (h) the levies to be imposed on the parties to the *Council*;
  - (i) a report as to the number of votes held by each party in the *Council*, as determined by the Secretary of the *Council*; and
  - (j) the appointment of the *members* of an exemptions board to consider and dispose of applications for exemption from the provisions of any collective agreement that may be concluded in the *Council*.
- 14.5 Written notice of a meeting called in terms of clause 13.1 or 13.2 showing the business to be transacted, shall be given to the *employer* and trade unions by the Secretary at least twenty-one (21) days before the date of such meeting.
- 14.6 The Chairperson may, in the case of an emergency, authorise shorter notice of a meeting should the *employer* and/or the majority of parties representing the trade unions concerned consent to such shorter notice.
- 14.7 It shall be deemed that due notice has been given to the parties, if notice of the meeting was given by -
- (a) effecting personal service of the notice on the party concerned; or
  - (b) the posting of a registered letter containing the notice to the office of the party concerned; or
  - (c) telefaxing the notice to the office of the party concerned provided that the telefax receipt shows that the notice has been transmitted to the addressee.
- 14.8 The *employer* side plus the number of trade unions which represent *employees* affected by the subject matter concerned<sup>4</sup> and who possess at least 50% of the number of votes allocated in terms of either clause 9.1 or 9.2, of *this constitution*, whichever is applicable, to the relevant trade unions in the *Council*, shall constitute a quorum at any duly constituted meeting of the *Council*.
- 14.9 A person who is not a representative or alternate may be allowed to address the *Council* subject to a decision to this effect being taken by the *Council*.
- 14.10 If, within thirty (30) minutes of the time fixed for any meeting, a quorum is not present, the meeting shall stand adjourned to such other time and place as determined by the Chairperson after consultation with the parties concerned, on condition that the

<sup>4</sup> See Footnote 3, should clause 9.5 be amended this clause will necessarily change in accordance with the amendments set out in clause 9.5. If clause 9.5 is not amended then this clause will remain as it is. In addition if the clause is retained the employer would like the deletion of the words "affected by the matter concerned".

Handwritten signatures and initials at the bottom of the page, including a large signature on the left, several initials in the center, and a signature on the right with the number 15 written below it.

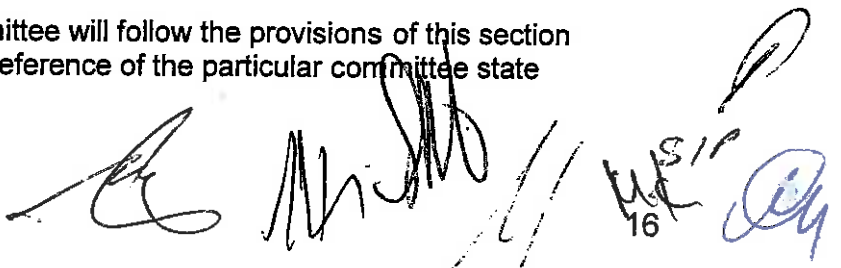


Secretary notify the relevant parties accordingly, and at such a reconvened meeting, the parties present shall form a quorum.

- 14.11 Should the representative of a trade union be absent at any meeting and no alternate is present, the voting power of the *employer* shall be reduced as may be necessary to achieve parity of votes between the *employer* and the trade unions present.
- 14.12 Copies of the minutes of the meeting held immediately prior to the relevant meeting, shall be made available to the parties concerned at least 7 days prior to the said meeting, and shall, after confirmation by the meeting, be signed by the Secretary and Chairperson.
- 14.13 Copies of the minutes of all meetings shall be forwarded by the Secretary to all parties concerned within a period of 30 days subsequent to a meeting, unless the *Council* determines a shorter period at such meeting.
- 14.14 Every meeting of the *Council* shall be conducted in private unless the *Council* otherwise decides.

## 15. DECISIONS OF THE *COUNCIL* OR COMMITTEE

- 15.1 Subject to *the Act* and *this constitution*, all matters that form the subject of a proposal shall be decided by the vote of the *employer* together with a majority of votes on the *employee* side.
- 15.2 Voting in the *Council* shall be by show of hands by the chief spokesperson of each party who shall carry the votes of the party, unless a party requests a secret ballot.
- 15.3 The Secretary shall act as electoral officer.
- 15.4 The parties having the right to vote at a meeting shall decide any procedural matters that are not regulated in *this constitution* by way of a majority of votes on both the *employer* and *employee* sides.
- 15.5 No decisions taken at a meeting of the *Council* shall be invalidated by the absence of any party concerned if it has been properly notified of such meeting.
- 15.6 If any issue which the Secretary considers to be extremely urgent arises between meetings of the *Council*, and it is possible to answer the question by a simple 'Yes' or 'No', the Secretary in consultation with the Chairperson may cause a vote of the representatives on the *Council* to be taken by telefax. A proposal subjected to a telefax vote may be adopted only if it is supported by at least two thirds of the *employer* and the trade union representatives who are entitled to vote. Any decision made by a telefax vote of the *Council* must be ratified by the parties admitted to the *Council* in a *Council* meeting.
- 15.7 Decisions of a committee will follow the provisions of this section unless the terms of reference of the particular committee state otherwise.



Handwritten signatures and initials at the bottom of the page, including a large signature on the left, a smaller signature in the middle, and initials on the right.

## 16 PROCEDURE FOR NEGOTIATING COLLECTIVE AGREEMENTS

- 16.1 Any party to the *Council* may submit proposals for the conclusion of a collective agreement in the *Council*. These proposals must be submitted to the Secretary of the *Council*, provide a motivation for the proposal and attach any relevant documentation.
- 16.2 Within 7 days of the submission of the proposals the Secretary must serve copies of the proposals on the parties to the *Council*.
- 16.3 At the beginning of each quarter, which dates shall be agreed upon by the *Council*, the Chairperson of the *Council* must call a meeting of the *Council*. If the proposals submitted to the Secretary are urgent the chairperson shall call a special meeting of the *Council*, within 10 days of the Secretary receiving the proposals.
- 16.4 The *Council* must decide on a process for negotiating the proposals, which may include:
- (a) the introduction of counter proposals;
  - (b) the establishment of a negotiating committee;
  - (c) the appointment of a *conciliator*, if necessary, to facilitate the negotiations and chair the meetings; and
  - (d) the time table for negotiations.
- 16.5 If no negotiation process is agreed by the *Council*:
- (a) the Secretary must appoint a *conciliator* to facilitate negotiations and the conclusion of a collective agreement;
  - (b) the *Council* or a negotiating committee established for this purpose must meet at least twice within 30 days of the referral of the proposals to the Secretary of the *Council* with the aim of concluding a collective agreement.
- 16.6 No party shall prior to the expiry of the 30-day period referred to in clause 16.5(b) above, declare a dispute.
- 16.7 If the parties cannot conclude a collective agreement, a party may declare a dispute. The Secretary must convene a meeting, which a *conciliator* shall conciliate. If at the conclusion of the dispute meeting no collective agreement is concluded the parties must consider the following issues:
- (a) whether further conciliation meetings should be scheduled;
  - (b) whether the dispute should be referred to voluntary arbitration or in the case of an essential service to compulsory arbitration;
  - (c) in the case of either voluntary or compulsory arbitration, the appointment of an *arbitrator*. If the parties cannot agree to the appointment of the *arbitrator*, the Secretary must appoint an *arbitrator* to hear the dispute;;

Handwritten signatures and initials at the bottom of the page, including a large signature on the left, a signature in the middle, and initials 'MA SIP' and 'PM' on the right, with the number '17' below them.

- (d) the existence of any minimum service agreement;
- (e) rules about the conduct of a strike or lockout, if applicable; and
- (f) picketing rules, if applicable.

16.8 If no collective agreement is concluded in the course of the negotiating process the parties to the Council may:

- (a) agree to refer the dispute to arbitration;
- (b) resort to a strike or lockout that conforms with the provisions of chapter 4 of the Act;
- (b) in the case of a party whose members are engaged in an essential service refer the dispute of those employees and the employer engaged in that service to arbitration.

## 17 DISPUTE PROCEDURES

Other than disputes arising out of the negotiations of collective agreements, all other disputes must be dealt with in terms of the provisions of Schedule 2

## 18 FINANCIAL MATTERS OF THE COUNCIL

18.1 The expenses of the *Council* shall be met from a fund approved by the *Council*.

18.2 All monies received shall be deposited by the Secretary to the credit of the *Council* within three days after receipt at a bank to be decided upon by it, provided that any surplus funds which are not for the time being required for the purpose referred to in clause 18.3 of this clause may be invested in terms of the financial policy of the *Council*.

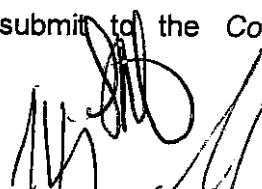
18.3 Travelling, subsistence and other expenses of representatives and observers shall be for the parties' own account unless otherwise agreed.

18.4 All expenses to be made from the fund of the *Council* shall be approved of by the Chairperson and shall be paid by cheque signed by the Chairperson and countersigned by the Secretary, unless the procedure is amended by the *Council*.

18.5 Funds required for a petty cash account shall -

- (a) be kept safely in such a manner as the *Council* may determine from time to time;
- (b) be provided by the drawing of a cheque; and
- (c) not exceed an amount determined by the *Council*.

18.6 The Secretary shall every six months submit to the *Council*,



statements of the income and expenditure that reflect the financial position of the *Council*.

18.7 The Secretary shall, prior to the Annual General Meeting of each year, in respect of the financial year ending on 31 March of that specific year prepare a statement, according to generally accepted accounting practices, principles and procedures, which shall include but not be restricted to-

- (a) a statement showing -
  - (i) monies received; and
  - (ii) expenditure incurred under the following headings:
    - (aa) salaries and other payments to personnel;
    - (bb) office accommodation;
    - (cc) printing and stationery; and
    - (dd) miscellaneous expenditure; and
- (b) a statement indicating the assets and liabilities of the *Council*.

18.8 The financial year of the *Council* shall be from 1 April of a particular year to 31 March of the following year.

18.9 The statements referred to in clause 18.7 -

- (a) shall be countersigned by the Chairperson; and
- (b) shall be submitted for audit to a public accountant and auditor appointed by the *Council*.

18.10 Certified copies of the audited statements and of the audit report thereon shall be made available for inspection at the office of the Secretary.

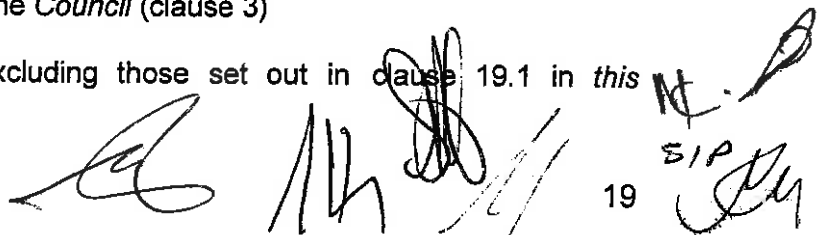
18.11 Certified copies of the audited statements and the auditor's report shall be transmitted to the Registrar, Department of Labour, within 30 days after the close of the period covered by the statements.

## 19 AMENDMENT OF THE CONSTITUTION OF THE COUNCIL

19.1 The following clauses in *this constitution* may not be amended by way of a decision of the *Council* but require the approval and ratification of the *PSCBC*:

- (a) the definitions of *mutual interest* (clause 2.1(l))
- (b) the scope of the *Council* (clause 3)

19.2 All other clauses excluding those set out in clause 19.1 in *this*

Handwritten signatures and initials are present at the bottom of the page, including a large signature on the left, several initials in the center, and a signature with 'SIP' written below it on the right.

*constitution* may be amended by way of a decision of the *Council* provided the *employer* on the one side, together with 66% of votes on the *employee* side vote in favour of amending the constitution.

- 19.3 No amendment shall be considered unless at least 30 days prior notice of the proposed amendment has been given to the Secretary, unless otherwise agreed by the *Council*.<sup>5</sup>
- 19.4 Such notice shall be transmitted to all representatives at least two weeks prior to the meeting at which it is to be considered.
- 19.5 The *Council* may, by unanimous vote, amend the constitution without notice.
- 19.6 Any amendment of or addition to *this constitution* shall have no force or effect until certified by the Registrar in terms of section 57(3) of the *Act*.

## 20 WINDING UP

The *Council* may only be wound up by the *PSCBC* in accordance with the following procedures set out in its constitution:

- 20.1 The *Council* may be wound up if it has been resolved by majority of votes at a meeting specially called for that purpose to wind up its matters. The Secretary of the *Council* shall as soon as possible after such resolution had been taken, apply to the Labour Court for an order giving effect to the said resolution.
- 20.2 The liquidator appointed by the Labour Court in terms of section 59(3) of the *Act* shall call upon the last appointed Secretary of the *Council* to deliver to his/her the *Council's* books of account showing the *Council's* assets and liabilities and also to hand over any unexpended funds to the *Council*;
- 20.3 The liquidator shall take the necessary steps to liquidate the debts of the *Council* from its unexpended funds and any other monies realised from any asset of the *Council* and if the said funds and monies are insufficient to pay all creditors after the trustee's fees and the expenses of winding up have been met, the order in which the creditors shall be paid shall be the same as that prescribed in any law for time being in force relating to the distribution of the assets of an insolvent estate, and the trustee's fees and expenses of winding up shall rank in order of preference as though he/she was a trustee of an insolvent estate and as though the expenses were the costs of sequestration of an insolvent estate.
- 20.4 For the purpose of this clause the liability of the parties to the *Council* shall be limited to their unpaid liabilities (if any) to the *Council* as at the date on which the resolution for winding up was passed or the date as from which the *Council* was unable to continue to function.

---

SIP  
20

20.5 A committee or chamber may only wind up in consultation with the Council

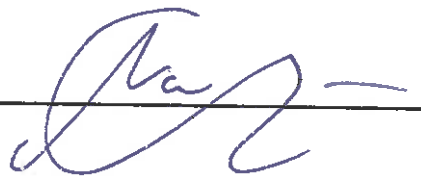
20.6 If all the liabilities of a committee or chamber have been discharged any remaining assets shall be transferred to the Council and in the event of the winding up of the Council any remaining assets shall be transferred to the PSCBC.

21. GENERAL

The domicilium executandi of the Council shall be  
c/o Dr. S Hendricks  
Room 2601  
Civitas Building  
Cnr. Andries and Struben Streets  
Pretoria

Signed at PRETORIA on behalf of the State as employer all signatories being duly authorised thereto, on the 17 day of February 1999

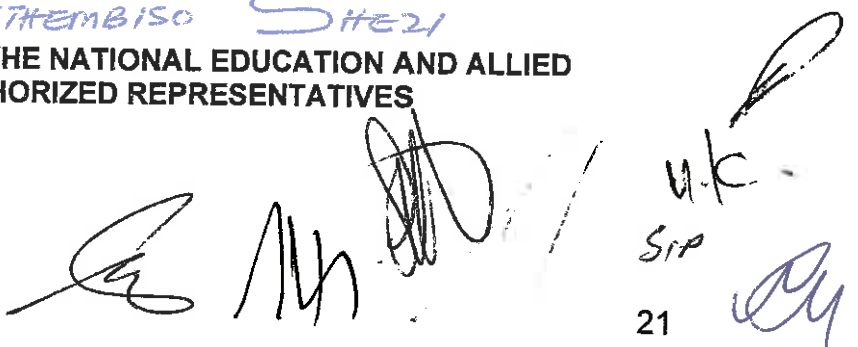

NAMES AND SIGNATURE OF THE EMPLOYER PARTIES' AUTHORIZED REPRESENTATIVES

NS MAKGETLA  
State as employer 

NAME OF AUTHORIZED REPRESENTATIVE:

Signed at PRETORIA on behalf of the NATIONAL EDUCATION AND ALLIED WORKERS UNION being duly authorised thereto, on the 17 day of FEBRUARY 1999 <sup>(SIP)</sup> HEALTH

Phazi SITHEMBISO SITHI  
NAMES AND SIGNATURE OF THE NATIONAL EDUCATION AND ALLIED WORKERS UNION AUTHORIZED REPRESENTATIVES

  
u.k.  
SIP  
21 

**NAME OF AUTHORIZED REPRESENTATIVE:**

Signed at CENTURION on behalf of the **DEMOCRATIC NURSING ORGANISATION OF SOUTH AFRICA** being duly authorised thereto, on the 25<sup>th</sup> day of FEBRUARY 1998.

*M. K. K. G. ... ; M. K. ...*

**NAMES AND SIGNATURE OF THE DEMOCRATIC NURSING ORGANISATION OF SOUTH AFRICA UNION AUTHORIZED REPRESENTATIVES**

**NAME OF AUTHORIZED REPRESENTATIVE:**

Signed at CENTURION on behalf of the **PUBLIC SERVANTS ASSOCIATION** duly authorised thereto, on the 25 day of FEBRUARY 1998.

*[Signature]*

*H. N. DE CLERCK*

**NAMES AND SIGNATURE OF THE PUBLIC SERVANTS ASSOCIATION AUTHORIZED REPRESENTATIVES**

*H. N. DE CLERCK*

**NAME OF AUTHORIZED REPRESENTATIVE:**

Signed at CENTURION on behalf of the **PUBLIC AND ALLIED WORKERS UNION OF SOUTH AFRICA** being duly authorised thereto, on the 26<sup>th</sup> day of FEBRUARY 1998.

*[Signature]*

**NAMES AND SIGNATURE OF THE PUBLIC AND ALLIED WORKERS UNION OF SOUTH AFRICA AUTHORIZED REPRESENTATIVES**

**NAME OF AUTHORIZED REPRESENTATIVE:**

*[Signatures]* M. K. SIP 22 *[Signature]*

Signed at Pretoria on behalf of the **NATIONAL UNION OF PUBLIC SERVICE AND ALLIED WORKERS** being duly authorised thereto, on the 26 day of FEB 1999

*[Handwritten Signature]*

*[Handwritten Initials]*

**NAMES AND SIGNATURE OF THE NATIONAL UNION OF PUBLIC SERVICE AND ALLIED WORKERS AUTHORIZED REPRESENTATIVES**

**NAME OF AUTHORIZED REPRESENTATIVE:**

Signed at PRETORIA on behalf of the **HOSPITAL PERSONNEL TRADE UNION OF SOUTH AFRICA** being duly authorised thereto, on the 2nd day of MARCH 1999

P Pillay *[Handwritten Signature]*

**NAMES AND SIGNATURE OF THE HOSPITAL ASSOCIATION PERSONNEL OF SOUTH AFRICA AUTHORIZED REPRESENTATIVES**

**NAME OF AUTHORIZED REPRESENTATIVE:**

Signed at Pretoria on behalf of the **NATIONAL WORKERS UNION** being duly authorised thereto, on the 1<sup>st</sup> day of FEB 1999

*[Handwritten Signature]*  
**NAMES AND SIGNATURE OF THE NATIONAL WORKERS UNION AUTHORIZED REPRESENTATIVES**

*[Handwritten Signature]*  
**NAME OF AUTHORIZED REPRESENTATIVE:**

*[Handwritten Signature]*

*[Handwritten Signature]* M.K. *[Handwritten Signature]*



**SCHEDULE 1**

**Clinical Photographer**  
**Orthopaedic Shoemaker**  
**Management Echelon (Medical and Dental Specialists)**  
**Community Development Officer**  
**Clinical Psychologist**  
**Psychologist**  
**Supplementary Diagnostic Radiographer**  
**Biokinetician**  
**Chiropodist**  
**Dietician**  
**Health Therapist**  
**Emergency Care Practitioner**  
**Staff Nurse**  
**Nursing Assistant**  
**Professional Nurse**  
**Nutritionist**  
**Emergency Services Officer (certain categories)**  
**Social Auxiliary Worker**  
**Community Liaison Officer**  
**Child and Youth (Care) Worker**  
**Social Worker**  
**Probation Officer**  
**Medical officer**  
**Medical/Dental Superintendent**  
**Specialist**  
**Dentist**  
**Pharmacist**  
**Forensic Analyst**  
**Medical Physicist**  
**Air Pollution Control officer**  
**Medical Natural Scientist**  
**Medicine Control Officer**  
**Radiation Control officer**  
**Radiation Scientist**  
**Medical Orthotist and Prosthetist**  
**Medical Technologist**  
**Clinical Technologist**  
**Medical Technical Officer**  
**Industrial Technician**  
**Environmental Health Officer**  
**Dental Technician**



S.I.P



14



## SCHEDULE 2

### DISPUTE PROCEDURE FOR THE PUBLIC HEALTH AND WELFARE SECTOR BARGAINING COUNCIL

#### A: APPLICATION

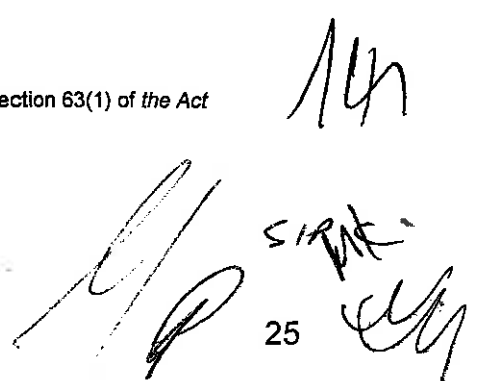
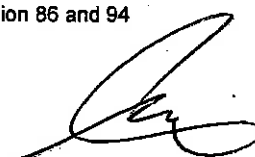
#### 1 APPLICATION

- 1.1 This procedure applies to all *disputes*, which arise within the registered scope of the *Council*, including *disputes* between parties and non-parties to the *Council*<sup>6</sup>:
- 1.2 In the event of there being a *dispute* about:
- (a) the application or interpretation of any collective agreement concluded in the *Council*;
  - (b) the application or interpretation of the constitution of the *Council*
- the *dispute* procedure provided for in this agreement shall apply.
- 1.3 Jurisdictional *dispute* between the *Council* and any other bargaining *Council* must be referred to the *Dispute* Resolution Committee established in terms of section 38(1) of *the Act* for conciliation and arbitration, which shall be conducted in accordance with the procedures set out in clauses 6 and 7.
- 1.4 Any *dispute* over a matter of mutual interest that arises in a provincial chamber may be referred to the *Council*, 7 days after the *dispute* arose. The *Council* must consider the *dispute* and attempt to resolve the *dispute*. If the *Council* does not resolve the *dispute*, any party may refer the *dispute* for resolution in terms of the provisions of this constitution.

---

<sup>6</sup> The following *disputes* must, in terms of the provisions of *the Act*, be dealt with by the CCMA:

- 1 disclosure of information -sections 16 and 89 of *the Act*;
- 2 organisational rights - chapter III part A of *the Act*
- 3 agency shop *disputes*- section 25 of *the Act*
- 4 closed shop *disputes* - sections 26 of *the Act*
- 5 interpretation or application of collective bargaining provisions - section 63(1) of *the Act*
- 6 picketing *disputes* - section 69
- 7 workplace forum *disputes* - section 86 and 94



14h  
SIR  
25

## B: DISPUTES OF INTERESTS

### 2. PROCEDURE FOR MUTUAL INTEREST DISPUTES

2.1 In this clause a *dispute* means any *disputes* of interest, other than one contemplated in clause 15 of the constitution, between the *employer* and a party to the *Council* or the *employer* and a non party to the *Council*, which concerns a matter of *mutual interest* contemplated in section 134 of *the Act*.

2.2 If there is a *dispute* about whether or not a the matter is a matter contemplated in section 134 of *the Act* the *dispute* must be referred to expedited arbitration in terms of the following procedure:

- (a) A party to a dispute may refer the dispute in writing to the Secretary.
- (b) The party who refers a dispute to the *Council* must satisfy the Secretary that a copy of the referral has been served on all the other parties to the dispute.
- (c) If the Secretary is satisfied that the referral has been properly served the Secretary must appoint an *arbitrator* to arbitrate the dispute.
- (d) If the parties to a dispute have agreed on an *arbitrator* the Secretary must appoint the person agreed upon.
- (e) An *arbitrator* appointed by the Secretary to arbitrate the dispute may, should all the parties to the dispute agree, attempt to resolve the dispute through conciliation, and if unsuccessful, proceed with the arbitration.
- (f) The Secretary must decide the date, time and venue of the arbitration hearing meeting and must notify the parties to the dispute of these details.

2.3 If the dispute is about a refusal to bargain, a party to the dispute may refer the matter for conciliation in terms of the following procedure:

- (a) A party to the dispute may refer the dispute in writing to the Secretary of the *Council*.
- (b) The party who refers a dispute to the *Council* must satisfy the Secretary that a copy of the referral has been served on all the other parties to the dispute.
- (c) If the Secretary is satisfied that the referral has been properly served, the Secretary must:



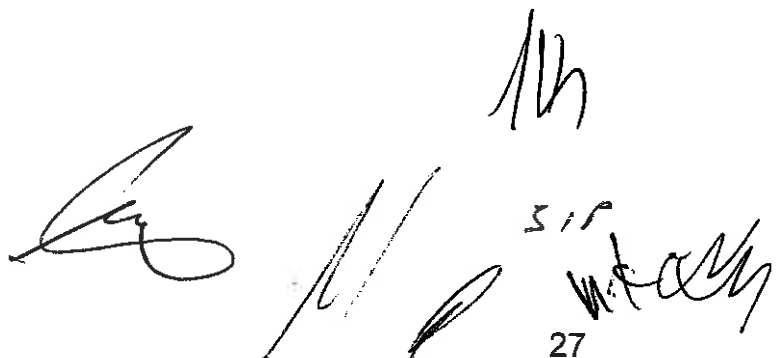
51P



26



- (i) appoint a *conciliator* to attempt to resolve the dispute through conciliation within 30 days of the date of the referral;
  - (ii) decide the date, time and venue of the conciliation meeting; and
  - (iii) notify the parties to the dispute of these details.
- (d) If the parties to a dispute have agreed on a particular *conciliator*, the Secretary must appoint the person agreed upon if that person is available to conciliate disputes within the 30 day period or any agreed period.
- (e) If either party requests the *conciliator* to issue an advisory award the *conciliator* must issue the advisory award within 14 days of the request. Neither party may give notice in terms of section 64(1) of the Act until the advisory award has been issued.
- 2.4. If the parties do not conclude a collective agreement by the expiry of the 30-day period, any party may declare a dispute. The Secretary must convene a dispute meeting, which the *conciliator* must conciliate. If the dispute is not settled at that meeting, the conciliator must try to get agreement on:
- (a) further conciliation meetings to settle the dispute;
  - (b) the referral of the dispute to voluntary arbitration;
  - (c) if the dispute must be referred to arbitration, the appointment of the arbitrator;
  - (d) the establishment of a minimum service in any essential service, if applicable;
  - (e) rules about the conduct of a strike or lockout; if applicable, and
  - (f) picketing rules, if applicable.
- 2.5 If the dispute is not settled, the parties to the dispute may resort to a lawful strike or lockout; unless the parties are part of an essential service in which case they must refer the dispute to arbitration in terms of the following procedure:
- (a) A party to a dispute may refer the dispute in writing to the Secretary.



Handwritten signatures and initials at the bottom of the page, including a large signature on the left, a smaller one in the middle, and several initials and a signature on the right. The number 27 is written at the bottom right.

- (b) The party who refers a dispute to the *Council* must satisfy the Secretary that a copy of the referral has been served on all the other parties to the dispute.
- (c) If the Secretary is satisfied that the referral has been properly served the Secretary must appoint an *arbitrator* or, when requested to by any of the parties, three arbitrators, to arbitrate the dispute.
- (d) If the parties to a dispute have agreed on an *arbitrator* the Secretary must appoint the person agreed upon.
- (e) An *arbitrator* appointed by the Secretary to arbitrate the dispute may, should all the parties to the dispute agree it upon, attempt to resolve the dispute through conciliation.
- (f) The Secretary must decide the date, time and venue of the arbitration hearing meeting and must notify the parties to the dispute of these details.

### C: DISPUTES OF RIGHT

#### 3. DISPUTES ABOUT ALLEGED UNFAIR DISMISSALS AND RESIDUAL UNFAIR LABOUR PRACTICES

3.1 In this clause a *dispute* means any *dispute*, other than a *mutual interest dispute* contemplated in clauses 2 that must be referred to the *Council* for-

- (a) conciliation<sup>7</sup>; or
- (b) arbitration<sup>8</sup>; or
- (c) conciliation and arbitration<sup>9</sup>

3.2 Prior to any dispute of right being referred to the *Council*, the aggrieved employee must have exhausted all internal procedures.

3.3 If the dispute is one that is contemplated in terms of clause 3(1)(a), that is a dispute that the council will only conciliate, the following procedure applies:

<sup>7</sup> *Disputes* contemplated are those that must be conciliated by the *Council* and may be referred to the Labour Court for adjudication. For example: dismissals for operational requirements or automatically unfair dismissals or dismissals for participating in an unprotected strike- section 191(5)(b); Schedule 7, item 2(1)(a) unfair labour practice *disputes*.

<sup>8</sup> *Disputes* concerning the interpretation and application of the constitution and clauses 7 and 9 of this constitution

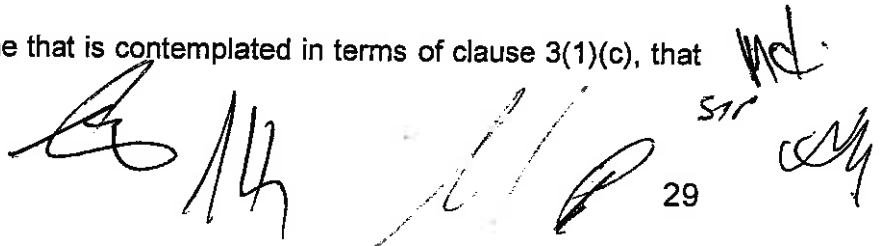
<sup>9</sup> *Disputes* contemplated are those *disputes*, which the *Council* must conciliate and arbitrate. For example, dismissals for misconduct and incapacity - see section 191(5)(a) item 2(1)(b) to (d) of Schedule 7- unfair labour practice *disputes*. Section 23 - the interpretation or application of a collective agreement

- (a) A party to the dispute may refer the dispute in writing to the Secretary of the *Council*.
- (b) The party who refers a dispute to the *Council* must satisfy the Secretary that a copy of the referral has been served on all the other parties to the dispute.
- (c) If the Secretary is satisfied that the referral has been properly served, the Secretary must:
  - (i) appoint a *conciliator* to attempt to resolve the dispute through conciliation within 30 days of the date of the referral;
  - (ii) decide the date, time and venue of the conciliation meeting; and
  - (iii) notify the parties to the dispute of these details.
- (d) If the parties to a dispute have agreed on a particular *conciliator*, the Secretary must appoint the person agreed upon if that person is available to conciliate disputes within the 30 day period or any agreed period.

3.4 If the dispute is one that is contemplated in terms of clause 3(1)(b), that is a dispute that the council will only arbitrate, the following procedure applies.

- (a) A party to a dispute may refer the dispute in writing to the Secretary.
- (b) The party who refers a dispute to the *Council* must satisfy the Secretary that a copy of the referral has been served on all the other parties to the dispute.
- (c) If the Secretary is satisfied that the referral has been properly served the Secretary must appoint an *arbitrator* or, when requested to by any of the parties, three arbitrators, to arbitrate the dispute.
- (d) If the parties to a dispute have agreed on an *arbitrator* the Secretary must appoint the person agreed upon.
- (e) An *arbitrator* appointed by the Secretary to arbitrate the dispute may, should all the parties to the dispute agree it upon, attempt to resolve the dispute through conciliation.
- (f) The Secretary must decide the date, time and venue of the arbitration hearing meeting and must notify the parties to the dispute of these details.

3.5 If the dispute is one that is contemplated in terms of clause 3(1)(c), that

Handwritten signatures and initials are present at the bottom of the page. On the left, there is a large signature that appears to be 'A. 14'. To its right, there are several other signatures and initials, including 'SIR' and 'M.C.'. The number '29' is written at the bottom right of the page.

is dispute that the council will conciliate and if not resolved at conciliation arbitrate, the following procedure applies:

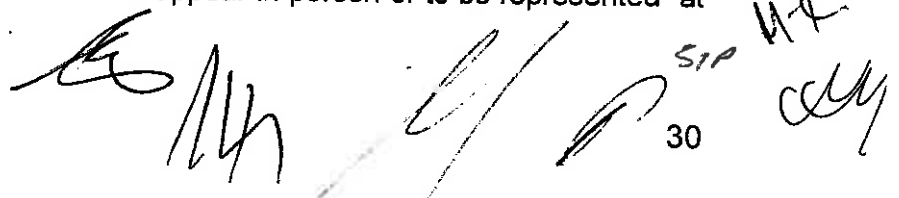
- (a) A party to a dispute may refer the dispute in writing to the Secretary.
- (b) The party who refers the dispute must satisfy the Secretary that a copy of the referral has been served on all the other parties to the dispute.
- (c) If the Secretary is satisfied that the referral has been properly served, the Secretary must-
  - (i) appoint an arbitrator to arbitrate the dispute;
  - (ii) set the matter down for arbitration with 30 days of the referral;
  - (iii) appoint a conciliator to attempt to settle the dispute prior to the arbitration; and
  - (iv) set the matter down for conciliation no later than 4 days before the arbitration.

3.6 If the dispute concerns an alleged unfair dismissal, the dispute must be referred to the Secretary within 30 days of the date of the dismissal.

### C: CONCILIATION & ARBITRATION PROCEDURES

#### 4. CONCILIATION BY THE COUNCIL

- 4.1 The *conciliator* appointed to conciliate the *dispute* must determine the process to attempt to resolve the *dispute* which may include-
  - (a) mediating the *dispute*;
  - (b) conducting a fact-finding exercise;
  - (c) making a recommendation to the parties, which may be in the form of an advisory award; and
  - (d) arbitrating the *dispute* immediately if the parties request the *conciliator* to do so.
- 4.2 In the conciliation proceedings a party to the *dispute* may appear in person or be represented only by a *co-employee* or by a *member*, an office bearer or official of that party's trade union or by an *employee* of any national department or provincial administration.
- 4.3 If a party to the *dispute* fails to appear in person or to be represented at

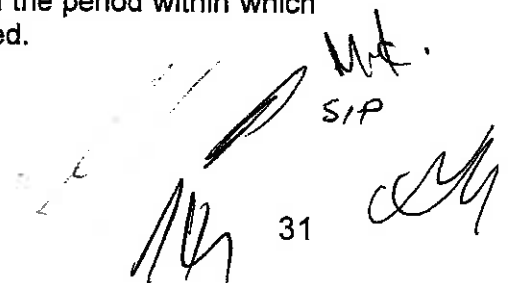
 SIP 30

the conciliation, the *conciliator* may-

- (a) dismiss the matter; or
- (b) continue with the conciliation in the absence of the party; or
- (c) adjourn the conciliation to a later date.

## 5. ARBITRATIONS BY THE COUNCIL

- 5.1 An *arbitrator* appointed by the Secretary to arbitrate the *dispute* may, should it be agreed upon by all the parties to the *dispute*, attempt to resolve the *dispute* through conciliation.
- 5.2 The Secretary must decide the date, time and venue of the arbitration hearing meeting and must notify the parties to the *dispute* of these details.
- 5.3 The *arbitrator* appointed to arbitrate in the *dispute* must determine the procedure to be followed in the arbitration in order to resolve the *dispute* as fairly and quickly as possible, but must deal with the merits of the *dispute* with a minimum of legal formalities. The procedure must be in accordance with the rules of natural justice.
- 5.4 In any arbitration proceedings, a party to the *dispute* may appear in person or be represented only by a legal practitioner, a *co-employee* or by a *member*, office bearer or official of that party's trade union or an *employee* of a national department or a provincial administration.
- 5.5 If the party to the *dispute* fails to appear in person or to be represented at the arbitration proceedings the *arbitrator* may-
  - (a) dismiss the matter; or
  - (b) continue with the arbitration proceedings in the absence of the party; or
  - (c) adjourn the arbitration proceedings to a later date.
- 5.6 Within 14 days of the conclusion of the arbitration proceedings-
  - (a) the *arbitrator* must issue an arbitration award with reasons signed by the *arbitrator*;
  - (b) the Secretary must serve a copy of the award on each party to the *dispute* or to the person who represented a party in the arbitration proceedings.
- 5.7 On good cause shown, the Secretary may extend the period within which the arbitration award and the reasons are to be filed.



31

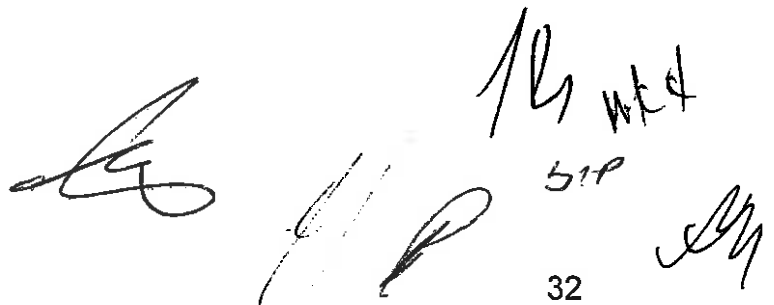


## 6. COSTS

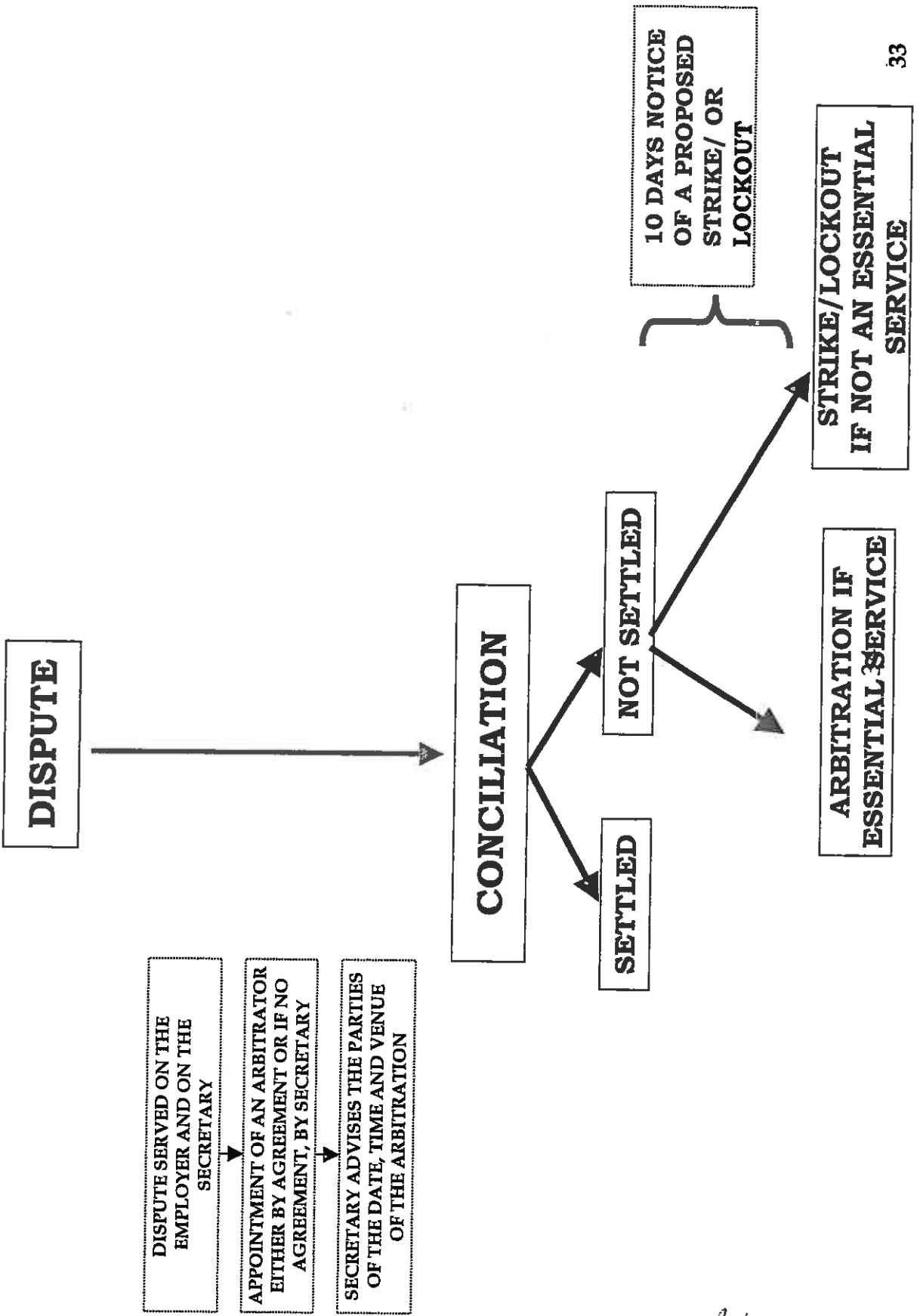
- 6.1 The *Council* shall pay the costs of the *arbitrator* or *conciliator*. Each party to the *dispute* must pay its own costs with regard to travelling, meals, legal representation (if applicable) and other related expenses.
- 6.2 If at the conclusion of an arbitration, the *arbitrator* is satisfied that the referral to arbitration was made vexatiously or without reasonable cause, the *arbitrator* may, on application by either party, make an appropriate order for costs against the referring party including the costs of the *arbitration*.
- 6.3 Costs awarded by an *arbitrator* may include-
- (a) the costs of the arbitration;
  - (b) legal and professional costs and disbursements;
  - (c) other expenses which a party has incurred in the conduct of the *dispute*; and
  - (d) expenses of witnesses.

## 7. TIME PERIODS AND CONDONATION

- 7.1 The Secretary must appoint an *arbitrator* to consider any application for condonation for the late referral of a *dispute*, which must be done in writing and served on all other parties to the *dispute*. Condonation may only be granted on good cause shown.
- 7.2 Notwithstanding the time periods stipulated in this agreement, the parties may agree to longer time periods for the resolution of any *dispute*.

Handwritten signatures and initials at the bottom of the page. On the left is a large, stylized signature. In the center is another signature. On the right, there are several initials and a date: '16 MAR', 'SIP', and 'SM'. The page number '32' is printed at the bottom right.

**DISPUTE OVER A MATTER OF MUTUAL INTEREST  
BETWEEN THE EMPLOYER AND A NON PARTY TO  
COUNCIL**



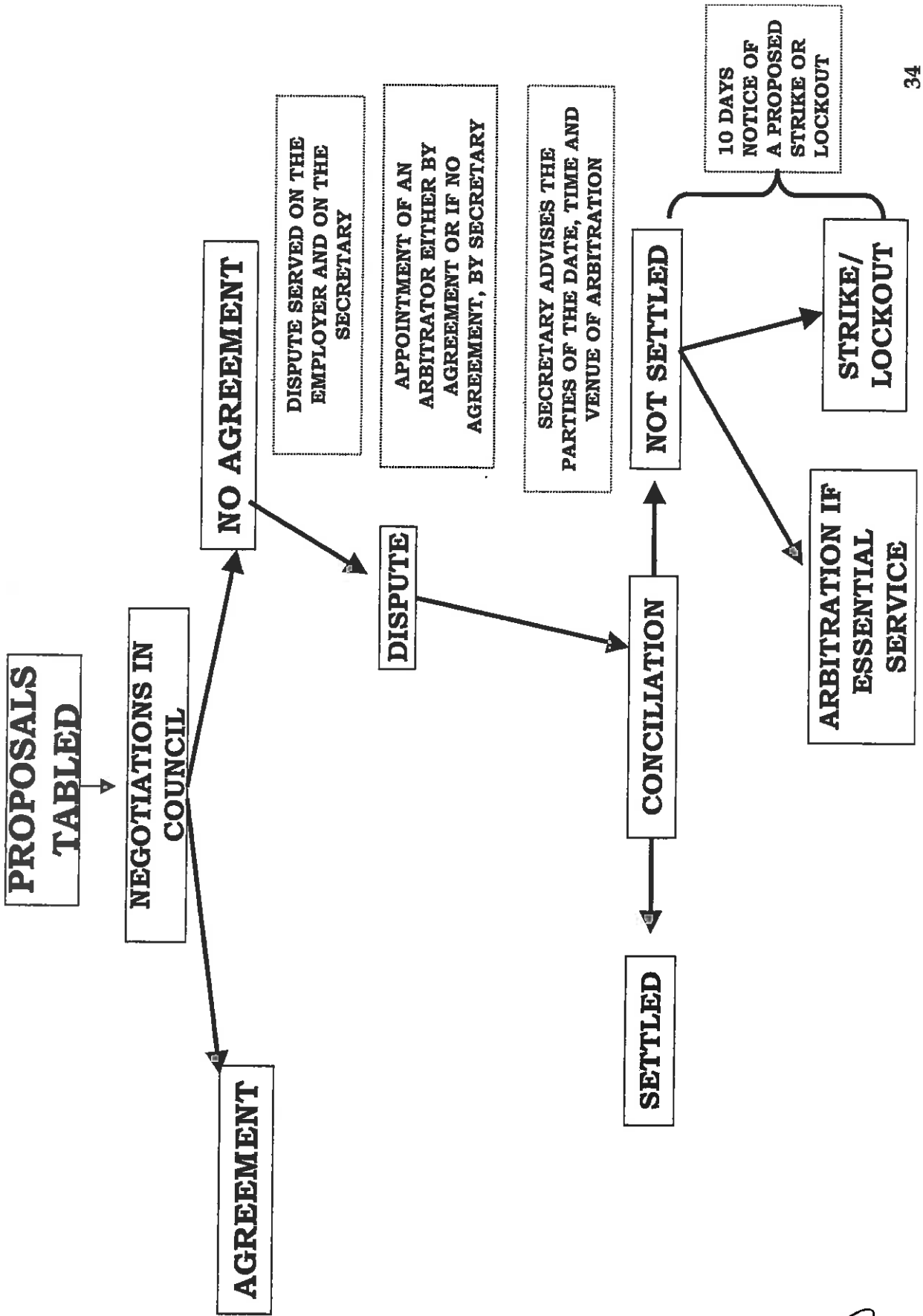
DISPUTE SERVED ON THE EMPLOYER AND ON THE SECRETARY

APPOINTMENT OF AN ARBITRATOR EITHER BY AGREEMENT OR IF NO AGREEMENT, BY SECRETARY

SECRETARY ADVISES THE PARTIES OF THE DATE, TIME AND VENUE OF THE ARBITRATION

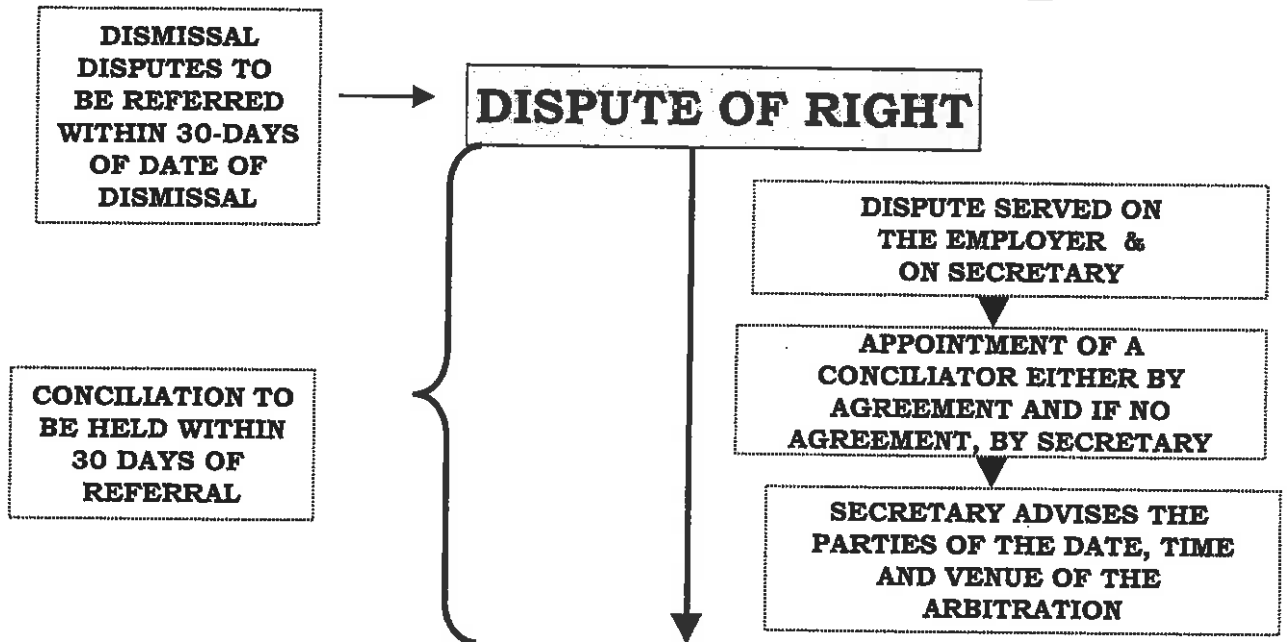
*[Handwritten signatures and initials]*  
SIP M.kk

**DISPUTE OVER A MATTER OF MUTUAL INTEREST  
BETWEEN THE EMPLOYER AND A PARTY TO COUNCIL**



*[Handwritten signatures and initials]*

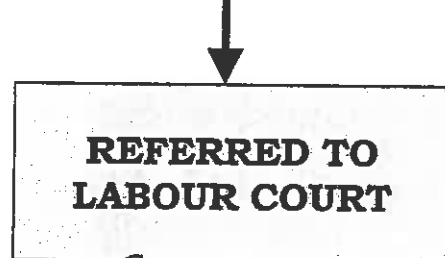
# DISPUTES OF RIGHT THAT THE COUNCIL ONLY CONCILIATES (1)



**CONCILIATION**

**POWER OF CONCILIATOR:**

- **MEDIATE**
- **FACT FINDING**
- **ADVISORY ARBITRATION**
- **ARBITRATE IMMEDIATELY IF REQUESTED TO DO SO BY THE PARTIES**

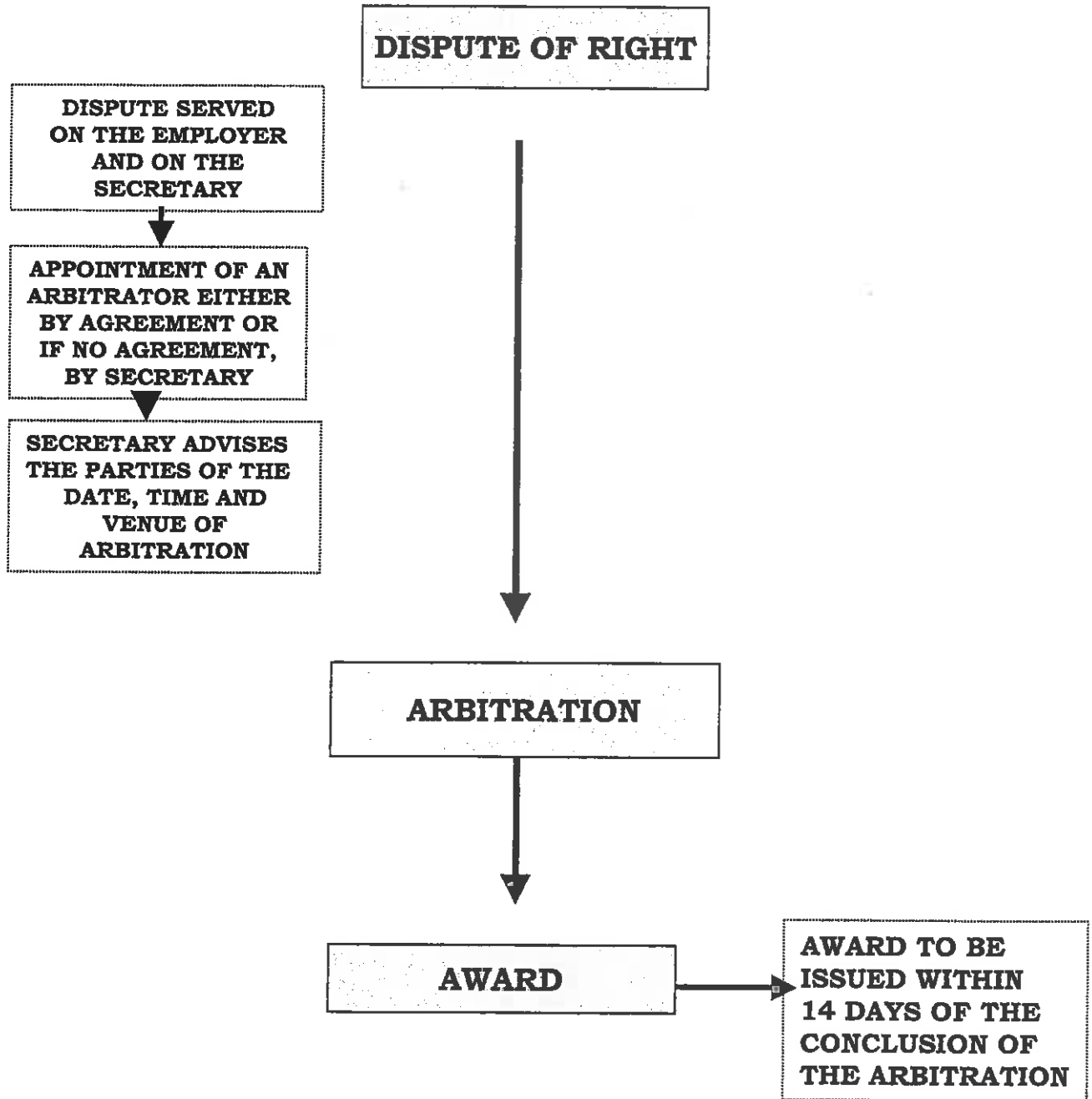


(1)

**DISPUTES THAT THE COUNCIL ONLY CONCILIATES ARE:**  
 DISMISSALS FOR OPERATIONAL REQUIREMENTS  
 AUTOMATICALLY UNFAIR DISMISSALS  
 DISMISSALS FOR PARTICIPATING IN AN UNPROTECTED STRIKE  
 UNFAIR LABOUR PRACTICE DISPUTES  
 (SCHEDULE 7, ITEM 2(I)(a))

(THESE DISPUTES GO TO THE LABOUR COURT FOR ADJUDICATION)

# DISPUTE OF RIGHT THAT COUNCIL ONLY ARBITRATES



**DISPUTES OF RIGHT THAT THE COUNCIL ONLY ARBITRATES:**

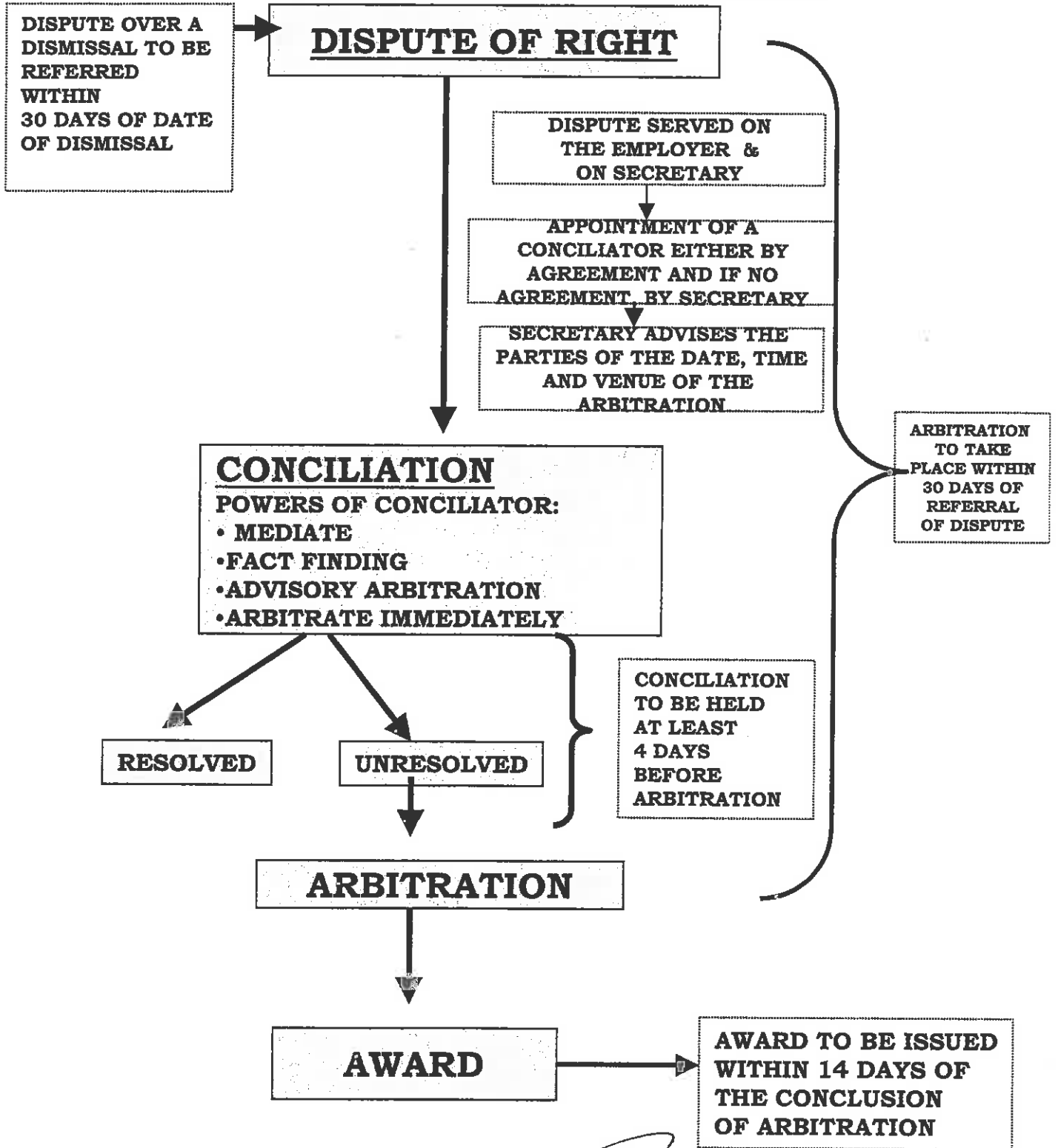
- DISPUTES OVER THE INTERPRETATION AND APPLICATION OF THE CONSTITUTION

*[Handwritten signatures and initials]*

SP

36

# DISPUTES OF RIGHT THAT THE COUNCIL CONCILIATES AND ARBITRATES



*[Handwritten signatures]*

SIA *[Signature]*  
37 *[Signature]*

### SCHEDULE 3

#### TRANSITIONAL SCHEDULE TO THE CONSTITUTION OF THE PUBLIC HEALTH SECTOR BARGAINING COUNCIL

1. **APPOINTMENT OF THE FIRST CHAIRPERSON OF THE COUNCIL**
  - 1.1 The Chairperson of the *PSCBC* will convene the first meeting of the *Council* which will be held within 6 weeks of the issue of a certificate of registration by the Registrar.
  - 1.2 At the first meeting of the *Council*-
    - (i) the Chairperson of the *PSCBC* will act as the Chairperson of the *Council* until the Chairperson is appointed;
    - (ii) the Chairperson of the *PSCBC* will call for nominees for the position of Chairperson of the *Council*. Any person nominated shall be duly proposed and seconded;
    - (iii) the person receiving the highest percentage of the total votes, shall be declared the duly elected Chairperson: Provided that in the event of a deadlock, the Chairperson of the *PSCBC* shall draw lots in accordance with clauses (iv) and (v) below, to determine the duly elected Chairperson;
    - (iv) Should an equal number of votes be cast for two or more candidates, the Chairperson of the *PSCBC* shall, in the presence of the meeting, write the name of each candidate on a separate piece of paper and place such papers in a suitable container and shall draw one of the papers from the container; and
    - (v) The candidate whose name is so drawn shall be deemed to have been duly elected.
  - 1.3 The Chairperson elected as the first Chairperson, shall hold office until the second annual general meeting of the *Council*.
- 2 Notwithstanding the admission criteria the founding parties to the *Council* are entitled to be *members* of the *Council* for a period of three (3) months from the date of establishment of the *Council*, whereafter the parties will have to comply with the admission requirements set out in the Constitution.
- 3 Notwithstanding the provisions regarding the amendment of *this Constitution*, the parties to the *Council* will not amend the provisions of clause 6.2, for a period of 12 months from the date of registration of *the Council*.
- 4 The dispute resolution procedures of the *Council* will apply at a date agreed upon by the *Council*.
- 5 The dispute resolution procedure contained in item 15 of Schedule 7 of *the Act* will continue to apply until the date referred to in clause 3 of this Schedule is determined by the *Council*.



510  
M.A. 38

