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## GOVERNMENT NOTICES GOEWERMENTSKENNISGEWINGS

### DEPARTMENT OF LABOUR DEPARTEMENT VAN ARBEID

**No. R. 1215****22 October 2004**

LABOUR RELATIONS ACT, 1995

## CANCELLATION OF GOVERNMENT NOTICES

**BARGAINING COUNCIL FOR THE BUILDING INDUSTRY (CAPE OF GOOD HOPE): EXTENSION OF  
COLLECTIVE AGREEMENT TO NON-PARTIES**

I, Membathisi Mphumzi Shepherd Mdladlana, Minister of Labour, hereby, in terms of section 32 (7) of the Labour Relations Act, 1995, cancel Government Notice Nos. R. 1735 of 28 November 2003 and R. 804 of 9 July 2004, with effect from 1 November 2004.

**M. M. S. MDLADLANA**  
Minister of Labour

**No. R. 1216****22 October 2004**

LABOUR RELATIONS ACT, 1995

**BARGAINING COUNCIL FOR THE BUILDING INDUSTRY (CAPE OF GOOD HOPE): EXTENSION OF  
COLLECTIVE AGREEMENT TO NON-PARTIES**

I, Membathisi Mphumzi Shepherd Mdladlana, Minister of Labour, hereby in terms of section 32 (2) of the Labour Relations Act, 1995, declare that the Collective Agreement which appears in the Schedule hereto, which was concluded in the Bargaining Council for the Building Industry (Cape of Good Hope) and is binding in terms of section 31 of the Labour Relations Act, 1995, on the parties which concluded the Agreement, shall be binding on the other employers and employees in that Industry, with effect from 1 November 2004 and for the period ending 31 October 2005.

**M. M. S. MDLADLANA**  
Minister of Labour

**SCHEDULE**  
**BUILDING INDUSTRY BARGAINING COUNCIL (CAPE OF GOOD HOPE)**  
**COLLECTIVE AGREEMENT**

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

**Boland Meestersbouers en Verwante Bedrywe Vereniging**  
**Master Builders and Allied Trades' Association, Cape Peninsula**

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

**Building, Wood and Allied Workers Union of South Africa**  
**Building Workers' Union**  
**National Union of Mineworkers (NUM)**  
**South African Woodworkers' Union**

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

being the parties to the Building Industry Bargaining Council (Cape of Good Hope).

#### 1. SCOPE OF APPLICATION

- (1) The terms of this Agreement shall be observed in the Building and the Monumental Masonry Industries—
  - (a) by all employers who are members of the employers' organisations and by all employees who are members of the trade unions;
  - (b) by all employers who are not members of the employers' organisations and by all employees who are not members of the trade unions;

- (c) in the Magisterial Districts of The Cape, Wynberg [including that portion of the Magisterial District of Somerset West which, prior to 9 March 1973 (Government Notice No. R. 173 of 9 February 1973), fell within the Magisterial District of Wynberg], Simonstown, Goodwood and Bellville, in those portions of the Magisterial Districts of Malmesbury and Stellenbosch which, prior to the publication of Government Notices Nos. R. 171 of 8 February 1957 and R. 283 of 2 March 1962, respectively, fell within the Magisterial District of Bellville, and in that portion of the Magisterial District of Kuils River which, prior to the publication of Government Notice No. R. 661 of 19 April 1974, fell within the Magisterial District of Stellenbosch but which, prior to 2 March 1962 (Government Notice No. R. 283 of 2 March 1962), fell within the Magisterial District of Bellville;
  - (d) in the Magisterial Districts of Paarl, Wellington, Stellenbosch, Kuils River (excluding any portions of the last-mentioned two districts which, prior to the publication of Government Notice No. R. 283 of 2 March 1962 fell within the Magisterial District of Bellville), Somerset West [excluding that portion which, prior to 9 March 1973 (Government Notice No. R. 173 of 9 February 1973), fell within the Magisterial District of Wynberg], Strand and Malmesbury (excluding that portion which, prior to the publication of Government Notice No. R. 171 of 8 February 1957, fell within the Magisterial District of Bellville).
- (2) Notwithstanding the provisions of subclause (1), the terms of this Agreement shall apply to—
- (a) employees in the Industry undergoing training consistent with the provisions of the Skills Development Act, 1998;
  - (b) temporary employment services, labour-only contractors, working partners, working directors, principals, contractors and working members of close corporations who do work in the Building Industry.
- (3) Notwithstanding the provisions of subclause (1) (a), the terms of this Agreement shall apply to—
- (a) clerical employees and administrative staff;
  - (b) university students and graduates in Building Science, and to construction supervisors, construction surveyors and other persons doing practical work in completion of their academic training;
  - (c) non-parties in respect of clauses 1 (1) (a), 2 and 2A of this Agreement.

## 2. PERIOD OF OPERATION OF AGREEMENT

This Agreement shall come into operation on the date fixed by the Minister of Labour to be the effective date from which the Agreement shall be extended to become binding on non-parties, or the date on which the Minister of Labour declines to extend the Agreement to non-parties, and the Agreement shall remain in force until 31 October 2005.

## 3. INDUSTRIAL ACTION

No person who is subject to the provisions of this Collective Agreement entered into by the parties shall engage or participate in a strike or lockout or any conduct in furtherance of a strike or lockout in respect of any matter regulated by this Agreement for its duration.

(1) Any expressions used in this Agreement which are defined in the Labour Relations Act, 1995, shall have the same meaning as in that Act, and any reference in this Agreement to an Act shall include any amendment to such Act; further, unless the context otherwise indicates—

**“Act”** means the Labour Relations Act, 1995;

**“Area A”** means the Magisterial Districts of The Cape, Wynberg [including that portion of the Magisterial District of Somerset West which, prior to 9 March 1973 (Government Notice No. 173 of 9 February 1973), fell within the Magisterial District of Wynberg], Simonstown, Goodwood and Bellville, in those portions of the Magisterial Districts of Malmesbury and Stellenbosch which, prior to the publication of (Government Notices Nos. R. 171 of 8 February 1957 and R. 283 of 2 March 1962, respectively, fell within the Magisterial District of Bellville, and in that portion of the Magisterial District of Kuils River which, prior to the publication of Government Notice No. R. 661 of 19 April 1974, fell within the Magisterial District of Stellenbosch, but which, prior to 2 March 1962 (Government Notice No. R. 283 of 2 March 1962), fell within the Magisterial District of Bellville];

**“Area B”** means the Magisterial Districts of Paarl, Wellington, Stellenbosch, Kuils River (excluding any portions of the last-mentioned two districts which, prior to the publication of Government Notice No. R. 283 of 2 March 1962, fell within the Magisterial District of Bellville), Somerset West [excluding that portion which, prior to 9 March 1973 (Government Notice No. R. 173 of 9 February 1973), fell within the Magisterial District of Wynberg], and Strand;

**“Area C”** means the Magisterial District of Malmesbury (excluding that portion which, prior to the publication of Government Notice No. R. 171 of 8 February 1957, fell within the Magisterial District of Bellville);

**“artisan”** means a person who is registered as such in terms of clause 7 (6) of this Agreement;

**“Building Industry”** or **“Industry”** means, subject to the provisions of any demarcation determination made in terms of section 76 of the Labour Relations Act, 1995, and without in any way limiting the ordinary meaning of the expression, the industry in which employers and their employees are associated for the purpose of erecting, completing, renovating, repairing, maintaining or altering buildings or structures and/or making articles for use in the erection, completion or alteration of buildings or structures, whether the work is performed, the material is prepared or the necessary articles are made on the sites of the buildings or structures or elsewhere: Provided that such manufacturing activities shall be limited to the specific manufacturing activities that are mentioned in the following trades or subdivisions thereof, and shall

further be limited to the carrying out of such activities by an employer who is associated with his employees for the purpose of erecting, completing, renovating, repairing, maintaining or altering buildings or structures for use by him in the conducting of building work, and includes all work executed or carried out by persons therein who are engaged in the following trades or subdivisions thereof, including excavations and the preparation of sites for buildings as well as the demolition of buildings, unless such demolitions were not carried out for the purpose of preparing the sites for building operations but does not include clerical employees and administrative staff, nor the wiring of or installation in buildings of lighting, heating or other permanent electrical fixtures and the installation, maintenance or repair of lifts in the buildings:

*Asphalting*, which includes covering floors or flat and/or sloping roofs, waterproofing or damp-proofing basements or foundations, whether or not with prepared roll roofing or asphalt sheeting having glazed or unglazed surfaces, whether or not using tar, macadam, neuchatel, limmer or any other type of solid or semi-solid asphalt, mastic or emulsified asphalt or bitumens, applied either hot or cold to such roofs, floors, basements or foundations;

*bricklaying*, which includes concreting and fixing glass bricks, concrete blocks, slabs or plates, tiling walls and floors, jointing brickwork, pointing, paving, mosaic work, facing work in slate, in marble and in composition, drainlaying, slating, roof tiling, cement-caulking earthenware pipes, bituminous work, asphalting and sheeting, and the erecting of prefabricated concrete structures or garden walls and/or boundary walls with posts or slabs;

*concrete work*, which includes the supervision of concrete being placed in situ and levelling the surfaces thereof;

*French polishing*, which includes polishing with a brush or pad, and spraying with any composition;

*glazing*, which includes the cutting and/or fixing of all kinds of glass or other like products into the rebates formed in wooden or metal doors, windows, frames or like fixtures, and all operations incidental thereto;

*joinery*, which includes the fixing of all wooden fittings and the manufacture of all articles of joinery incidental to such fittings, whether or not the fixing in the building or structure is done by the person making or preparing the article used, including cupboards, kitchen dressers or other kitchen fixtures which accrue to the building as a permanent part thereof;

*light-making*, which includes the manufacture and/or fixing of lead and/or metal lights and display signs, other than electric lights or signs and glazing related thereto;

*masonry*, which includes stone-cutting and building (also the cutting and building of ornamental and monumental stonework), concreting and fixing or building precast or artificial stone or marble, paving, mosaic work, pointing, wall and floor tiling, operating a Mall and Biax or similar type of portable spinner and flexible cutting, finishing and other stoneworking machine, stone-polishing machinery, and sharpening mason's tools, whether or not the fixing in the building or structure is done by the person making or preparing the article used;

*metal work*, which includes the fixing of steel ceilings, metal windows, metal doors, builder's smithwork, metal frames and metal stairs and architectural metal work, together with the manufacture and/or fixing of drawn metal and sheet and extruded metal, whether or not the fixing in the building or structure is done by the person making or preparing the article used;

*painting*, which includes decoration, paperhanging, glazing, distempering, lime and colour washing, staining, varnishing, graining, marbling, spraying, wall decoration, applying primer and undercoat, enamelling, gliding, lining, stencilling, wax polishing, and woodwork preservation, and which also includes paint removal, scraping, washing and cleaning painted or distempered walls and washing and cleaning woodwork when such removal, scraping, washing and cleaning are preparatory to any of the said processes;

*plastering*, which includes modelling, model-making, facing casts to moulds, making and fixing plaster board ceilings and fibrous plaster or other compositions, granolithic, terazzo and composition floor-laying, composition wall covering and polishing, operating a Mall & Biax or similar type of portable spinner and flexible cutting and finishing machine, precast or artificial stone work, wall and floor tiling, paving and mosaic work, metal lathing, acoustic spraying and all processes incidental to the completion of ceilings and walls, whether or not the fixing in the building or structure is done by the person making or preparing the article used;

*plumbing*, which includes brazing and welding, lead burning, gas fitting, sanitary and domestic engineering, drainlaying, caulking, ventilating, heating, hot and cold water fitting, fire prevention installation and the manufacture and fitting of all sheet metal work, whether or not the fixing in the building or structure is done by the person making or preparing the article used;

*shop, office and bank fitting*, which includes the manufacture and/or fixing of shop fronts, window enclosures, showcases, counters, screens and interior fittings and fixtures;

*steel reinforcing*, which includes the making and erecting of shuttering and supervising the bending, placing and fixing in position of steel;

*steel construction*, which includes the fixing of metal or steel roof sheeting and/or wall cladding, all classes of steel or other metal columns, girders, steel joints or metal in any form which forms part of a building: Provided that the on-site assembly, placing and fixing in position and erection of the metal or steel framework (excluding metal or steel roof sheeting and/or wall cladding) that is to form part of a building shall be excluded from this definition when such activities are carried out by the employees of an employer who manufactures such metal or steel framework;

**woodworking**, which includes carpentry and veneer panelling and the polishing and sandpapering of same, woodworking, the manufacture of fixtures to specification for installation in specified buildings and the manufacture of stocks, machining, turning, carving, fixing corrugated iron or asbestos tile, shingling and other roof coverings, sound and acoustic material, cork and asbestos insulation, wood-lathing, composition ceiling and wall covering, plugging walls, covering woodwork with metal and covering metal with woodwork, block and other flooring, including wood, linoleum, rubber composition, asphalt-based floor covering or cork, and the sandpapering of same, operating a Mall and Biax or similar type of portable spinner and flexible cutting, finishing and polishing machine, shuttering and/or preparing forms of moulds for concrete, cork carpeting and any class or kind of linoleum when fixed in any building or structure, and the application of asphaltic saturated felt or fabrics to floors and/or walls and/or roofs, whether or not the fixing in the building or structure is done by the person making or preparing the article used. For the purposes of this definition "structure" means structure in the nature of, or incidental to, a building;

**"cleaner"** means an employee engaged in general cleaning activities normally and customarily performed in the Building Industry;

**"continuous employment"** means any period during which an employee has been continuously employed by the same employer, and for this purpose periods of employment with the same employer broken by not more than 60 days from date of termination of employment to re-engagement of the employee owing to the discharge or retrenchment of the employee by the employer shall be deemed to be continuous service;

**"Council"** means the Building Industry Bargaining Council (Cape of Good Hope), registered in terms of section 29 of the Act;

**"driver"** means an employee who is engaged in driving a motor vehicle, and for the purposes of this definition, "driving a motor vehicle" includes all periods of driving and any time spent by the driver on work connected with the vehicle or the load and all periods during which he is obliged to remain on duty in readiness to drive; further, for the purposes of this Agreement, a driver shall be classified in one of the following categories:

- (a) Drivers of vehicles which require the driver to be in possession of a Code C1 licence or above;
- (b) drivers of vehicles which require the driver to be in possession of a Code A, A1 or B licence or below;

**"employee"** means—

- (a) any person, excluding an independent contractor, who works for another person and who receives, or is entitled to receive, any remuneration; and
- (b) any other person who in any manner assists in carrying on or conducting the business of the employer;

**"employer"** means any person who employs or provides work to any person and remunerates or expressly or tacitly undertakes to remunerate him or who permits any person in any manner to assist him in the carrying on or conducting of his business;

**"fixed-term contract"** means a contract terminating on a special date stipulated in the contract;

**"general worker"** means an employee not registered as a labourer, cleaner, driver/plant operator, trainee tradesman, tradesman, artisan, apprentice or security guard in terms of this Agreement;

**"industrial action"** means any action contemplated in terms of the definition of "strike" and "lockout", respectively, in the Act;

**"joinery assembler"** means an employee who is registered as a learner Class 3, in terms of clause 7(5) of this Agreement;

**"labourer"** means a worker who enters employment in the Building Industry for the first time: Provided that once 735 daily, benefits have been earned and recorded by the Council such worker shall automatically be promoted to 'general worker' as defined therein;

**"learner"** means an employee registered as a learner in terms of clause 7(4) of this Agreement;

**"learnership"** means a learnership registered with the Construction and Education Training Authority in terms of section 16 of the Skills Development Act, '98 which shall be subject to the regulations known as The Learnership Regulations 2001 published by Government Gazette No. 7043 of 3 April 2001, as amended;".

**"machine operator"** means an employee who is registered as a learner, Class 2, in terms of clause 7(5) of this Agreement;

**"manufacturing worker"** means an employee who is registered as a learner, Class 4, in terms of clause 7(5) of this Agreement;

**"normal working hours"** means the number of hours that a particular employer has contracted with an employee to be worked on any normal working day, but excluding all overtime hours worked on any day;

**"normal working day"** means any day that a particular employer has contracted with an employee to be a normal working day including public holiday that fall on a normal working day, but excludes all other days that do not fall on a normal working day, that are to be remunerated at overtime rate of pay;

**"period determined by the Council"** means a period prescribed to be not later than the 20th day of each month in respect of every employee employed by the employer during the preceding month;

**"plant operator"** means a person operating power-driven plant, and for the purposes of this Agreement, a plant operator shall be classified in one of the following categories:

- (a) Operators of plant which requires the plant operator to be in possession of a Code C1 licence or above;
- (b) operators of plant which requires the plant operator to be in possession of a Code A, A1 or B licence;

**"security guard"** means any employee who is engaged in protection or safeguarding property and/or premises in any manner, including but not limited to guarding, patrolling, watching over or security property and/or premises;

**"skills and education trust"** means the Skills and Education Trust, trust deed number IT1029/2001;

**"temporary employment service"** means any person who, for reward, procures for or provides to a person (hereinafter referred to as the 'client') other persons—

- (a) who render services to, or perform work for, the client; and
- (b) who are remunerated by the temporary employment services;

**"wage"** means the basic wage prescribed in terms of clause 9(1) of this Agreement in respect of the ordinary hours laid down in clause 8(1): Provided that if an employer regularly pays an employee a wage higher than the basic wage in respect of the ordinary hours, it shall mean such higher amount and the employee shall qualify for the equivalent amount of increase in the basic wage for that category of employee;

(2) Any person who works for or renders services to any other person is presumed, until the contrary is proved, to be an employee, regardless of the form of the contract, if any one or more of the following factors are present;

- (a) the manner in which the person works is subject to the control or direction of another person;
- (b) the person's hours work are subject to the control or direction of another person;
- (c) in the case of a person who works for an organisation, the person is a member of that organisation;
- (d) the person has worked for that other person for an average of at least 40 hours per month over the last three months.
- (e) the person is economically dependent on the other person for whom that person works or renders services;
- (f) the person is provided with tools of trade or work equipment by the other person; or
- (g) the person only works for or renders service to one person.

(3) Subclause (2) does not apply to any person who earns in excess of the amount determined from time to time by the Minister of Labour in terms of section 6(3) of the Basic Conditions of Employment Act, 1997,

(4) In this Agreement, unless the context indicates otherwise words importing the singular shall include the plural and vice versa, words importing any gender shall include the other gender and words importing persons shall include partnership and bodies corporate.

## 5. LEVELS OF BARGAINING

The Council shall be the forum for negotiating all matters pertaining to the Agreement.

## 6. REGISTRATION OF EMPLOYERS

(1) Every employer in the Industry to whom this Agreement applies shall register with the Council.

(2) An employer shall register with the Council by furnishing the required particulars to the Council on the prescribed form and shall warrant thereon that application has been made for registration with the South African Revenue Services for employee tax and value-added tax (if applicable), registration with the Unemployment Insurance Fund and registration under the Compensation for Occupational Injuries and Diseases Act.

(3) Every employer shall notify the Council in writing of any change in the particulars furnished on registration or of ceasing operations in the Industry within 14 days of such change or of ceasing operations.

(4) A certificate of registration signed by either the Chairman or the Secretary of the Council shall be issued to each employer registered.

(5) An employer who does not pay to the Council the levies and contributions payable by him and his employees each week on the due date as prescribed in this Agreement shall pay interest to the Council at the prime bank rate charged by the Council's bank plus 2%, calculated from the due date of payment.

(6) An employer shall keep employee records as prescribed by Chapter 4 of the Basic Conditions of Employment Act, 1997, and clauses 10 and 12 of this Agreement.

(7) The Council shall keep a register of compliant employers which shall be generally made known and be available to other employers on request.

(8) A newly registered employer shall be entitled to receive from the Council free orientation training on employment legislation, this Agreement and the preparation of wage records and assistance in registering for the National Certificate of Contracting learnership.

**CLAUSE 6A: COMPLIANCE BY EMPLOYERS, SUBCONTRACTING AND  
USE OF TEMPORARY EMPLOYMENT SERVICES**

- 6a. Compliance by employers, subcontracting and use of temporary employment services:
- (1) The Council shall keep a register of employers in good standing with the Council which shall be generally made known and be available to any person on request.
  - (2) An employer shall be in good standing with the Council for purposes of subclause (1) if the employer is registered with the Council in accordance with clause 6 and unless the employer has failed to comply with a compliance order and/or pay a penalty imposed in terms of clause 25(1)(d)(ii) of this Agreement.
  - (3) No person shall enter into an agreement to subcontract Building Industry work to another person unless, at the time of entering into the agreement, both persons are employers in good standing with the Council: Provided that, where persons conclude an agreement to subcontract such work on an indefinite basis or for longer than 12 months, the parties to such agreement shall be in good standing with the Council each time that work is subcontracted under the agreement. A person who, despite the foregoing, subcontracts Building Industry work to another person who is not in good standing with the Council at the relevant time shall be jointly and severally liable if the subcontractor, in respect of any of its employees, fails to meet any obligations that it has under this Agreement.
  - (4) No person shall enter into an agreement to utilize a temporary employment service for work in connection with the Building Industry unless, at the time of entering into the agreement, both the person and the temporary employment service are employers in good standing with the Council: Provided that, where persons conclude such an agreement on an indefinite basis or for longer than 12 months, the parties to such agreement shall be in good standing with the Council each time that the services of the temporary employment service are utilized under the agreement. The provisions of section 198 of the Act, shall apply to any person who enters an agreement to utilize a temporary employment service for work in connection with the Building Industry.

**7. REGISTRATION OF EMPLOYEES**

(1) All persons employed in the Building Industry shall be registered with the Council and each employee and the employer of such employee shall be jointly responsible for the registration of the employee with the Council within 60 days of commencement of employment.

(2) The Council shall issue to each registered employee a Bargaining Council identity card and the employee shall be required to retain that card at all times whilst engaged in work in the Building Industry.

(3) The Council shall bear the initial costs of the Bargaining Council identity card, but the employee shall be liable for the costs of the replacement of any identity card.

(4) **Learnership:** A registered employer or an employers' organisation acting in terms of a group scheme may employ a person as a learner under a contract of learnership in accordance with the Skills Development Act, 1998, and the Council shall register such person as a learner subject to the following terms and conditions:

- (a) The person has first been registered as a learner by the Construction Education Training Authority (CETA).
- (b) The learner shall be entitled to perform work in a designated trade only once the Council has received from the CETA a valid certificate of registration for the learner in respect such trade.
- (c) For purposes of his learnership, the learner shall be entitled to undergo training with his employer or under the auspices of any accredited training institution.
- (d) Upon successful completion by the learner of the necessary group of credits in respect of a course of training as provided for in subclause (5) below, the Council shall re-register the learner in the appropriate tradesman category.
- (e) A learner shall be entitled to the payment of wages in accordance with the wage prescribed in terms of clause 9 in respect of the category of tradesman in which he is registered from time to time.

**(5) Tradesman:**

- (a) A learner in a specified category shall be registered as a tradesman in that category in accordance with the following:
  - (i) In respect of Clause 4, where he has completed less than 55 per cent of the credits of the prescribed course.
  - (ii) In respect of Class 3, where he has completed 55 to 74 per cent of the credits of the prescribed course.
  - (iii) In respect of Class 2, where he has completed 75 to 99 per cent of the credits of the prescribed course.
- (b) Employers and trade unions shall endeavour to ensure that learners complete their training within the specified time.

- (c) Any person who has been employed outside the registered scope of the Council as a skilled worker, other than an artisan qualified in terms of subclause 6(b), shall be required to undergo a prior learning assessment with an accredited training provider in order to determine the unit standards in which he is competent and in respect of which he should be credited and, pursuant thereto, shall be registered as a tradesman in a particular category, as follows:

Proficiency	Class
(i) Below 55 per cent.....	4
(ii) 55–74 per cent.....	3
(iii) 75–99 per cent.....	2
(iv) Completed all credits.....	Artisan

(6) **Artisan:**

- (a) An employee shall be registered as an artisan once he has passed the trade test or has completed the number of credits that qualify him to work as an artisan.
- (b) An artisan shall be entitled to the payment of wages in accordance with the wage prescribed for his category in terms of clause 9.
- (c) If at any stage an employer is of the opinion that a registered artisan is not performing his duties to an acceptable level of proficiency, the employer may, at its own cost, require that artisan to undergo a proficiency test, in which case the artisan shall be obliged to undergo such test.

(7) In this clause, a credit means a credit as defined from time to time under the regulations made under the South African Qualifications Authority Act, 1995.

## 8. TERMS OF EMPLOYMENT

- (1) **Ordinary hours of work:** (a) No employee shall ordinarily be required to work more than the following hours:

Category	AREA A		AREA B AND C	
	Daily hours	Weekly hours	Daily hours	Weekly hours
(i) Security guard.....	9 hours	45 hours	9 hours	45 hours
(ii) Driver.....	8 hours 45 minutes	42 hours	9 hours	45 hours
(iii) General worker, cleaner and labourer.....	8 hours 30 minutes	41 hours	9 hours	44 hours
(iv) All other employees .....	8 hours	40 hours	9 hours	44 hours

(b) With the exception of security guards, who shall be required to work not more than six consecutive days in any week, ordinary hours shall be worked daily between 7:00 and 19:00, Mondays to Fridays.

(2) **Intervals:** (a) Every employee shall be entitled to daily meal and/or rest intervals totalling not more than 60 minutes, which shall not form part of ordinary working hours, and shall be at such times as agreed on with his employer.

(b) No employer shall require an employee to work for more than five hours continuously without an interval.

(3) (a) **Shift work:** An employer may require his employees to work shifts: Provided that no employee shall be required to work more than one 8-hour or 12-hour shift in any period of 24 hours.

(b) **Flexible working hours:** An employer and an employee may contract to work either a compressed working week or to average the hours of work as provided in sections 11 and 12 of the Basic Conditions of Employment Act, 1997.

(4) **Overtime:** (a) All time worked in excess of the number of ordinary working hours in one week shall be overtime.

(b) An employer may request, which request shall not be unreasonably rejected, an employee to work, overtime for a period not exceeding three hours daily, from Mondays to Fridays, and not exceeding eight hours on Saturdays or Sundays: Provided that the maximum number of hours' overtime worked in any week shall not exceed the maximum hours' overtime prescribed in the Basic Conditions of Employment Act: Provided further than an employer and any employee who is required to drive motor vehicles may agree and contract that a maximum of one hour's overtime prior to the commencement or ordinary hours of work and a maximum of one hour's overtime at the conclusion of ordinary hours of work each day be compulsory overtime for the purpose of transporting employees to and from their place of work.

(c) An employee who is engaged in a continuous process of work shall be obliged to work until that process has been completed and shall be paid at overtime rates, if applicable.

(5) **Public holidays:** The public holidays proclaimed in terms of the Public Holidays Act, 1994, shall be recognized as paid public holidays if they fall on a normal working day: Provided that the annual holiday payment made by the Council shall be inclusive of payment for all the public holidays that may fall on a normal working day during the three-week annual shutdown.

(5A) Notwithstanding anything contained in subclause (1) to (5) above, security guards are required to work shifts in accordance with the employer's operational requirements: Provided that no security guard shall be required to work more than 13 hours during a night shift and 11 hours during a day shift.

(6) **Annual leave:** (a) Every employee shall be entitled to annual leave during the annual Building Industry shutdown period, the dates of which shall be determined by the Council not later than 30 June every year.

(b) Notwithstanding the provisions of paragraph (a), an employee may agree with his employer to work during the annual leave period and shall be paid the basic wage laid down in clause 9(1) for any time worked during such period.

(c) Security guards and other employees who work during the annual leave period shall, by agreement with their employers, be granted leave equal to the period worked during annual shutdown.

(7) **Sick leave:** An employee shall be entitled to sick leave in accordance with the provisions of the Sick Pay Fund for the Building Industry and clause 15 of this Agreement, and to payment for the period of such sick leave in terms thereof.

(8) **Termination of contract of employment:** (a) An employer or employee who intends terminating a contract of employment shall give the other party at least one week's written notice of termination of such contract, which notice shall be given before 12:00 on any working day, and shall commence as from 08:00 on the following working day if such contract has been for up to six months, continuous employment and two weeks written notice if such contract has been for longer than six months' continuous employment.

(b) Notwithstanding the provisions of paragraph (a), either party shall be entitled to terminate the contract of employment without notice by making payment in lieu of the required notice.

(c) In the event of an employee's absconding, or not making the appropriate payment in lieu of notice, and where the employer has proven such, the employer shall be entitled to deduct the appropriate notice pay from any moneys due to the employee in terms of the Holiday Fund.

(d) Nothing in this subclause shall affect the right of an employer or employee to terminate a contract of employment without notice.

(e) A contract of employment shall be terminated automatically if an employee is absent from work without the employer's consent for a continuous period of five working days, unless the employee's absence is due to circumstances beyond his control: Provided that the employer shall investigate the absence of the employee and apply fair procedures to determine if the termination is to be made effective.

(9) **Lay-off and suspension:**

(a) An employer shall be entitled to lay off an employee temporarily—

- (i) on account of inclement weather;
- (ii) on account of a shortage of materials, due to circumstances beyond the employer's control: Provided that the employer shall pay the equivalent of two hours' wages for short notice before the lay-off period commences;
- (iii) on account of a temporary shortage of work: Provided that one day's written notice shall be given, and that such notice include the reason for the lay-off and the period of the lay-off: Provided further that the employer shall not be liable to pay the employee any remuneration except as specified above during a lay-off:

(b) An employee may be laid off for a continuous period not exceeding 20 working days and if at the end of such period the employer wishes to extend the lay-off period for a further 20 working days the employee shall first be given the option of being retrenched in accordance with the procedure laid down in subclause (10): Provided that if the employee opts for the second period of lay-off of 20 working days the employer shall commence the retrenchment procedure laid down in subclause (10) not later than 10 working days before the expiry of the second lay-off period: Provided further that employees shall be entitled to apply for unemployment benefits during the period of lay-off.

(c) No employer shall unilaterally suspend an employee from work for any period as a disciplinary measure.

(10) **Retrenchment:** (a) An employer who proposes retrenchment shall, not later than ten working days before the proposed date of notice of the termination of any employee's services, provide any of the trade unions of which, to his knowledge, prospective retrenchedes may be members, with the following information in writing:

- (i) The number of employees who may be retrenched, together with their names, duration of service, Council Holiday Fund numbers, and job categories;
- (ii) the proposed date of retrenchment;
- (iii) the reasons for the proposed retrenchment, including all alternatives which the employer has considered and the reasons for rejecting them;
- (iv) the proposed selection criteria in respect of retrenchedes;
- (v) the proposed date for consultations with the trade union(s) and/or employee(s) likely to be affected;
- (vi) the proposed severance pay; and
- (vii) the employer's proposals for assistance to retrenchedes, including the possibility of re-employment.

(b) In the event of an employee likely to be affected by the proposed retrenchment not being a union member, the information referred to in paragraph (a) shall be forwarded direct to that employee.

(c) The trade union(s) and/or the employee(s) shall provide the employer with a written response to its retrenchment proposals by not later than three working days before the proposed date of consultation, which shall include all of its/their proposals in respect of the retrenchment.

(d) The employer shall attempt to reach consensus with the trade union(s) and/or employee(s) on the retrenchment proposals through consultation: Provided that should consensus not be reached before the expiry of the ten-day period referred to in paragraph (a), the employer shall be entitled to implement its retrenchment proposals.

(e) The employer shall be entitled to implement its retrenchment proposals at any stage if the trade union(s) and/or employee(s) do not provide written responses or refuse and/or fail to consult with the employer in accordance with this subclause.

(f) An employee who is retrenched in terms of this subclause shall be entitled to severance payment of one week of that employee's current remuneration per completed year of continuous service with his employer: Provided that the employer has not been exempted from the provisions of this subclause in terms of the Act.

(11) **Performance standard contracts:** (a) An employer and an employee may enter into a written performance standard contract subject to agreement being reached at least five working days before the task is to commence.

(b) Remuneration under a performance standard contract shall not be less than the basic wage plus benefits prescribed for the particular category of employee in this Agreement for normal working hours and provided that all statutory provisions for employment contracts, including unemployment insurance, income tax deductions and all provisions of this Agreement shall be observed.

(12) **Probationary period:** Any probationary period for a contract of employment shall be dealt with in accordance with the act, and the Code of Good Practice, referred to in Schedule 8 of the Act, before termination of employment is to be made effective.

(13) **Maternity and family responsibility leave:** The provisions of sections 25 and 27 of the Basic Conditions of Employment Act, 1997, shall apply in the Building Industry.

(14) **Leave for trade union activities:** The provisions of section 15 of the Labour Relations Act, 1995, shall apply in the Building Industry.

## 9. REMUNERATION

(1) **Basic wages:** (a) The basic wages in the Industry shall be as follows:

Category of employee	Minimum wage – per hour		
	Area A	Area B	Area C
(i) Labourer.....	8,28	6,76	5,95
(ii) Cleaner .....	8,28	6,82	6,00
(iii) General Worker.....	12,83	10,52	9,24
(iv) Class 4 and scaffolder .....	13,76	12,21	10,71
(v) Class 3 .....	15,18	14,13	12,39
(vi) Class 2 and blocklayer.....	20,69	18,18	15,94
(vii) Drivers/Plant Operators of motor vehicles who require a code C1 licence or above .....	17,28	Per day 118,98	Per day 104,37
(viii) Drivers of all other vehicles who require a code A, A1 or B licence .....	13,00	88,04	77,27
(ix) Artisan .....	27,66	23,59	20,66
(x) Security guard.....	116,55	Per day 86,72	Per day 76,17

(b) Nothing in this clause shall prevent an employer from paying more than the prescribed basic wage: Provided that no party to this Agreement nor any employee shall be entitled to embark upon industrial action to compel an employer to pay more than the basic wage prescribed in this Agreement.

(2) **Overtime:** An employee shall be entitled to payment in respect of overtime worked in accordance with clause 8 (4) (a) as follows: Provided that in areas B and C the first hour of overtime worked Mondays to Thursdays shall be at the basic rate:

Days worked	Multiple of basic wage
(i) Mondays to Saturdays, inclusive.....	$1\frac{1}{3}$
(ii) Sundays.....	2

(2) **Public Holiday:** (a) An employee who is not required to work on a public holiday which would normally be a working day, shall receive his normal daily basic wage in respect of that public holiday.

(b) An employee who is required to work on a public holiday would normally be a working day shall, in addition to wages paid in terms of paragraph (a), be paid at a rate equal to his ordinary basic wage in respect of all hours worked on that day.

(b) An employee who is required to work on a public holiday which falls on a Saturday or Sunday shall be remunerated in accordance with normal overtime rates, and shall not be entitled to any additional payment on such a public holiday.

(4) **Shift work:** An employee who works any shift other than the shift during the ordinary hours of work shift shall receive the basic wage payable under subclause (1), plus 15%: Provided that the provisions of this subclause shall not apply to security guards.

(4A) Notwithstanding anything contained in subclauses (1) to (4) above, if a security guard's shift work includes work on a Sunday or public holiday, payment in respect of such Sunday or public holiday work shall be at the ordinary basic rate, unless it constitutes overtime in accordance with clause 8(4)(a) above in which case payment shall be at a rate of one and one third of the ordinary basic rate.

(5) **Dangerous work:** In addition to the wages prescribed in subclause (1), an employer shall pay his employee 10% of such wage in respect of each hour or part of an hour during which such employee is engaged in performing dangerous work. For the purpose of this subclause, "dangerous work" means any work classified as dangerous in any statute, provincial ordinance, municipal by-law or regulation relating to the Building Industry.

(6) **Allowances:** (a) The basic wage payable in terms of subclause (1) shall be deemed to include allowances for inclement weather, walking time and transport costs.

(b) An employee who is required to work away from his ordinary place of residence shall be paid a living-away allowance of R50,00 per day which amount shall be increased annually by the same percentage as the total average increase in basic wages for all categories or the employee shall be provided with suitable accommodation by the employer in respect of each night he is required to spend away from his ordinary place of residence.

(c) Notwithstanding the provisions of subclause (6)(a) employers shall not be compelled either to provide transport for employees or to pay any additional transport allowance: Provided that if an individual employer deems it necessary for operational or logistical reasons such employer may negotiate with employees on a specific site regarding transport arrangements or additional transport allowances where no public transport exists on such employees shall be entitled to trade union representation.

#### 10. WAGE PAYMENT PROCEDURE

(1) **Payment of wages:** (a) An employee shall receive payment of his wages at a time and place determined by his employer: Provided that payment shall be made—

- (i) at weekly, fortnightly or monthly intervals;
- (ii) in cash, by cheque or by means of electronic bank transfer, as agreed, between the employer and the employee; and
- (iii) not later than close of business on the final working day of each pay interval.

(b) With the exception of payment by means of electronic bank transfer, an employee's remuneration shall be paid to him on the site where he is employed, or at the office or workshop of the employer.

(c) An employee whose services are terminated shall receive payment of the appropriate wage on or before the date of termination of his services.

(d) Every employer shall provide each of his employees with a payslip indicating the employer's name, the name and occupation of the employee, and the period for which payment is made. The payslip shall indicate the calculation of the employee's gross remuneration, deductions, overtime payments, allowances and net remuneration.

(e) All payments made in cash shall be enclosed in a sealed envelope.

(f) An employer shall, at the time of payment of an employee's remuneration, make the requisite benefits payment to the Council via the autostamp system.

(2) **Deductions from wages:** An employer shall be entitled to make deductions from an employee's wages—

- (a) in respect of deductions prescribed in the following clauses:
  - (i) 14(4) in terms of the Pension Fund;
  - (ii) 17(1) in terms of the Council levy;

- (iii) 18 in terms of trade union subscriptions;
- (iv) 21 in terms of the WP Building and Allied Trades' Sick Fund;
- (v) 24(4) in terms of the Medical Aid Fund;
- (b) if he is entitled or required to do so by law; and
- (c) in respect of any other matter, with the employee's written consent.

#### **11. STORAGE AND PROVISION OF TOOLS**

- (1) Every artisan, learner or apprentice shall be required at all times to be in possession of such tools as are necessary to perform the designated category of work in respect of which he is registered, and shall further be required to maintain such tools in good working order and condition at all times.
- (2) Every employee shall be required to provide his own toolbox, which is capable of being securely locked, for storage of his tools when not in use.
- (3) An employer shall provide a suitable place to store an employee's toolbox at each site, and shall ensure that such place is locked at all times. This provision shall not apply to jobbing work.

#### **12. BENEFITS**

- (1) Every employee who works the full contracted number of normal working hours on a normal working day or who is entitled to be off duty on a public holiday that falls on a normal working day shall be entitled to receive benefits in terms of this Agreement, and shall for the purposes of this Agreement be deemed to be an eligible employee: Provided that an employee who works for an employer on any normal working day, but is prevented from working the full normal working hours owing to circumstances beyond his control, or for any good reason accepted by his employer, shall also be deemed to be an eligible employee in respect of that day: Provided further that an employee who has been laid off in terms of subclause 8(9) shall not be entitled to benefits.
- (2) An employer shall purchase benefits in the prescribed manner from the Council for the purpose of making the contributions prescribed in this Agreement in respect of eligible employees.
- (3) The Council shall retain each eligible employee's benefits record, and the benefits so purchased by the employer shall be indicated on the employee's payslip.
- (4) An employee who contracts to work compressed working weeks of less than five normal working days shall be entitled to benefits for five days for each compressed working week that is worked.

#### **13. HOLIDAY FUND**

- (1) The Holiday Fund is hereby continued and shall continue to be administered by the Council for the purpose of providing eligible employees with leave pay for the annual leave period in terms of clause 8(6). Moneys contributed to the Fund by employers shall be invested as provided for in terms of section 53(5) of the Act.
- (2) An employer shall contribute to the Holiday Fund on behalf of an eligible employee in respect of each normal working day that the employee remains in his employ ("a contribution day"), an amount which shall be calculated as follows:

Category of employee	Amount per day Rand		
	Area A	Area B	Area C
(i) Labourer.....	4,99	3,64	3,21
(ii) Cleaner .....	4,99	3,67	3,23
(iii) General Worker.....	7,73	5,67	4,98
(iv) Tradesman class 4, learner class 4 and scaffolder .....	8,09	6,58	5,77
(v) Tradesman class 3, learner class 3 .....	8,92	7,61	6,67
(vi) Tradesman class 2, learner class 2 and blocklayer.....	12,16	9,80	8,59
(vii) Drivers/Plant Operators of motor vehicles who require a code C1 licence or above .....	10,66	7,28	6,39
(viii) Drivers of all other vehicles who require a code A, A1 or B licence.....	8,02	5,39	4,73
(ix) Artisan.....	16,26	12,71	11,13
(x) Security guard.....	8,56	5,31	4,66

- (3) Every employer shall pay the contribution to the Council within the period determined by the Council for such purposes.

(4) The Council shall determine a date before the commencement of the annual leave period in terms of clause 8(6) upon which eligible employees shall receive payment of the amount standing to their credit in the Holiday Fund: Provided that no payment shall be made from the Holiday Fund—

- (a) in respect of benefits issued by an employer after 31 October each year, which benefits shall be deemed to have been issued during the following year;
- (b) in respect of benefits for more than 225 days in any single year ending on 31 October of that year;
- (c) if an employee fails to claim the value of the benefits within six months of the commencement of the annual leave period, unless the Council in its discretion decides otherwise, in which event the value of the benefits shall accrue to the general funds of the Council;
- (d) in respect of deductions made in respect of an employee's Holiday Fund entitlement in terms of clause 8(8)(c);
- (e) subject to the provisions of subclause (5), prior to the date determined by the Council in terms of this clause.

(5) In the event of an eligible employee's death, all amounts to his credit in the Holiday Fund shall be paid to his duly appointed nominee, if any. Should no nominee survive the employee, or should a surviving nominee fail to claim payment within 12 months of the date of the employee's death, the amount to his credit shall be paid into his estate.

(6) Subject to the provisions of subclause (5), the amount standing to an employee's credit in the Holiday Fund shall not be transferable, and any employee who attempts to assign, transfer cede, pledge or lend any benefits contribution shall forfeit the value to the general funds of the Council.

(7) Notwithstanding the expiry or cancellation of this Agreement, the Council shall continue to administer the Holiday Fund until such time as it is liquidated or transferred to any other fund created for the purpose of providing annual leave pay to employees.

(8) In the event of the Council being wound up or dissolved, the Holiday Fund shall continue to be administered by a committee appointed for such purpose by the parties before the winding up or dissolution of the Council, which committee shall consist of an equal number of employer and employee representatives. In the event of such committee being unable to carry out its duties for any reason, the parties shall appoint a trustee or trustees to carry out the duties of the committee and such trustees shall have the same powers as the committee for this purpose.

(9) In the event of there being no Council in existence at the time of expiry of this Agreement, the Holiday Fund shall be liquidated by the committee or trustee appointed in terms of subclause (8).

(10) In the event of the liquidation of the Holiday Fund in terms of subclauses (7) or (8) the moneys remaining after the payment of all claims against the Holiday Fund, including administration and liquidation expenses, shall be paid into the general funds of the Council. In the event of the Council having been wound up before the liquidation of the Holiday Fund the moneys remaining shall be distributed equally among the parties to the Council immediately prior to its dissolution.

#### **14. PENSION/PROVIDENT FUND**

(1) The Building Industry Pension Scheme (WP) (the "Pension Fund") and the Building Industry Provident Fund (Western Province) (the "Provident Fund") are hereby continued and shall continue to be administered by the Council in accordance with the provisions of the Act for the purpose of providing pensions to employees in respect of whom contributions are made in terms of this clause.

(1A) Every employee for whom a contribution is required in the table in subclause (3) below shall be a member of either the Pension Fund or the Provident Fund, subject always to the rules of the said funds.

(2) For the purpose of achieving the objects of this clause, the Council shall be entitled to enter into any agreements it deems fit and shall further be entitled to make rules in respect of the operation and administration of any fund established in terms of this clause, which may be amended from time to time.

(3) An employer shall contribute the following amounts to the Pension Fund or the Provident Fund, as the case may be, on behalf of each eligible employee in respect of each contribution day:

Category of employee	Amount per day Rand		
	Area A	Area B	Area C
(i) Labourer.....	5,43		
(ii) Cleaner .....	8,42	6,71	5,89
(iii) General worker .....	8,81	7,79	6,83
(iv) Learner class 4 and scaffolders.....	9,71	9,01	7,90
(v) Learner class 3 .....	13,24	11,60	10,17
(vi) Learner class 2 and blocklayer.....			
(vii) Drivers/Plant Operators of motor vehicles which require a code C1 licence or above .....	11,61	8,63	7,57

Category of employee	Amount per day Rand		
	Area A	Area B	Area C
(viii) Drivers of all other vehicles which require a code A, A1 or B licence .....	8,73	6,38	5,60
(ix) Artisan.....	17,70	15,05	13,18
(x) Security guard.....	9,33	6,29	5,52

(4) Every employer shall further deduct a contribution from the remuneration of each eligible employee in respect of each contribution day, which shall be calculated as follows:

Category of employee	Amount per day Rand		
	Area A	Area B	Area C
(i) Labourer.....			
(ii) Cleaner .....	5,09		
(iii) General Worker.....	7,89	6,71	5,90
(iv) Learner class 4 and scaffolder.....	8,25	7,79	6,83
(v) Learner class 3 .....	9,11	9,01	7,90
(vi) Learner class 2 and blocklayer.....	12,42	11,60	10,17
(vii) Drivers/plant operators of motor vehicles which require a code C1 licence or above .....	10,89	8,63	7,57
(viii) Drivers of all other vehicles which require a code A, A1 or B licence .....	8,19	6,38	5,60
(ix) Artisan.....	16,60	15,05	13,18
(x) Security guard.....	8,74	6,29	5,52

(5) Every employer shall pay the above contributions to the Council within the period determined by the Council.

(6) Subject to an eligible employee's right to nominate a beneficiary to receive any amounts which may become due in terms of the Pension Fund or Provident Fund in the event of his death before retirement, any pension benefits accruing to an employee in terms of this Agreement shall not be transferable, and may not be ceded or pledged.

(6A) When an employee fails to qualify for death, disability, and/or funeral benefits in terms of the Pension Fund and/or the Provident Fund because an employer has failed to pay contributions owing by it in respect of the employee's membership, such employer shall be liable to pay to such employee or his beneficiary an amount of money equal to the death, disability and/or funeral benefits that would have been payable to the employee under the rules of the applicable fund had the contributions been paid by the employer.

(6B) During the period of operation of this Agreement—

- (a) the Pension Fund and the Provident Fund shall be converted to defined contribution funds; and
- (b) a reduction of the retirement age to 60 years of age under the said funds shall be phased in.

(7) In the event of the Council's being dissolved, wound up or ceasing to operate during the currency of this Agreement, the parties shall appoint a trustee or trustees before such dissolution, winding up or ceasing to operate to perform the functions of the Council set out in this clause, and such trustees shall have all the powers vested in the Council for this purpose.

## 15. SICK PAY FUND

(1) The Sick Pay Fund for the Building Industry ("the Fund"), is hereby continued and shall continue to be administered by the Council for the purposes of recompensing employees during periods of absence from work due to incapacity, and paying gratuities to employees in the event of permanent disability, in accordance with the rules of the Fund.

(2) The fund shall be administered by the Council in accordance with the rules which it may make from time to time for this purpose ("the Rules"), and all moneys of the Fund shall be administered, invested and paid out in accordance with the Rules. Copies of the Rules shall be available for inspection at the offices of the Council.

(3) Every employer shall contribute to the Fund in respect of each normal working day that an eligible employee remains in his employ, an amount which shall be calculated as follows:

Category of employee	Amount per day Rand		
	Area A	Area B	Area C
(i) Labourer.....	0,85	0,74	0,65
(ii) Cleaner .....	0,85	0,75	0,66
(iii) General worker .....	1,32	1,16	1,02
(iv) Learner, class 4, and scaffolder.....	1,38	1,34	1,18
(v) Tradesman, class 3, and learner class 3.....	1,52	1,55	1,36
(vi) Tradesman, class 2, and learner, class 2, and blocklayer.....	2,07	2,00	1,75
(vii) Drivers/plant operators of motor vehicles which require a code C1 licence or above	1,81	1,49	1,30
(viii) Drivers of all other vehicles which require a code A, A1 or B licence .....	1,36	1,10	0,97
(ix) Artisan.....	3,87	3,63	3,18
(x) Security guard .....	1,46	1,08	0,95

(4) An employee shall receive payment in the amount set out in the table below in respect of each working day, including public holidays, that he is absent owing to illness or injury in a cycle of 365 calendar days:

Normal working days absent	Class of employee	% of minimum basic wage prescribed in clause 9(1)
1st—10th .....	All employees .....	75%
11th—130th .....	All employees .....	33%

(5) Subject to the Rules of the Fund, an employee shall not be entitled to sick pay—

- (a) until 130 consecutive days' contributions have been made to the Fund in respect of such employee: Provided that contributions interrupted by a period of unemployment or a change of employer shall be deemed to be consecutive;
- (b) for more than 130 days in any 365-day cycle, calculated from the first day in respect of which the employee is entitled to sick pay;
- (c) if he is absent from work owing to an accident compensatable under the Compensation for Occupational Injuries and Diseases Act, 1993;
- (d) if his absence from work is related to the use of alcohol or illegal drugs, or he is incapacitated through sickness owing to his own negligence or misconduct;
- (e) if he fails to observe the instructions of a medical practitioner, or has in the opinion of that practitioner aggravated his condition or retarded his recovery through his own actions;
- (f) if he suffers from an injury for which a third party is liable to pay or does pay compensation to him;
- (g) while he undergoes treatment prescribed by any person other than a registered medical practitioner;
- (h) if he fails to provide the Council with any relevant information which it may require;
- (i) if he is found by the Council to be fit to resume his employment or to be permanently disabled, in which event he shall cease to be entitled to sick pay from a date fixed by the Fund for this purpose; and
- (j) at any time when the amount to the credit of the Fund drops below R100 000,00 and until such time as the amount to the credit of the Fund exceeds R500 000,00.

(6) The Fund shall be entitled to recover any amount paid to an employee—

- (a) in consequence of false information furnished to the Fund or on behalf of such employee; and
- (b) if the employee fails to notify the Fund timely of any change in his circumstances which could lead to the amount of the benefits being reviewed or withdrawn, in which event the Fund may claim from the employee any money overpaid to him.

(7) In the case of any employee taking maternity leave, the Fund shall pay that employee 33% of her current wages for a maximum period of 120 days.

(8) The Fund shall continue to pay employer contributions to the Holiday Fund and the Building Industry Medical Aid Fund on behalf of an employee during a period of one or more consecutive days in any payweek that the employee receives sick pay in terms of this clause.

(9) In the event of the expiration of this Agreement, the dissolution or winding up of the Council or a cessation of its operations, the provisions of clause 13(7), (8) and (9) relating to the Holiday Fund shall apply equally to this Fund.

## 16. AUDIT AND ACCOUNTING

The Council shall ensure that proper books of account and records are kept in respect of each of the Funds administered by it, and that an annual audit of each of the Funds is performed in accordance with the provisions of the Act and the Council's Constitution.

## 17. EXPENSES OF THE COUNCIL

(1) Every employer shall deduct an amount of R0,75 per normal working day from the wages of each eligible employee and shall add an equal amount to the amount so deducted.

(2) Every employer shall pay the contributions referred to in subclause (1) to the Council within the period determined by the Council.

(3) The contribution paid to the Council in terms of this clause shall be utilized for the purpose of meeting its general expenses, and shall be administered in accordance with the provisions of the Council's Constitution.

## 18. TRADE UNION SUBSCRIPTIONS

Trade unions may opt for either one of the following mechanisms, in each case deductions of trade union subscriptions may be authorized only by the affected employee, in writing:

(a) (i) Each trade union shall be entitled to approach each employer in the Industry direct for the purpose of establishing stop-order facilities for the deduction of trade union subscriptions.

(ii) Every employer who grants such facilities shall be entitled to deduct a negotiated administration fee for the subscriptions so collected.

OR

(b) (i) Every employer shall deduct an amount of not more than 1% of the normal working day wage of an employee who is a member of a registered trade union and for whom wages are prescribed in clauses 9 of this Agreement.

(ii) An employer shall pay the amounts deducted by him in terms of paragraph (b) (i) to the Council within the period determined by the Council.

(iii) Each month the Council shall pay over to the trade unions all moneys so collected by the employers in terms of paragraph (b) (ii), less a collection fee of 2,5% on gross subscriptions which amounts shall accrue to the general funds of the Council.

## 19. SPECIAL MEMBERSHIP LEVY: EMPLOYERS

(1) Each member of an employers' organisation shall pay a membership levy to that employers' organisation in respect of each employee employed by such member entitled to benefits in terms of this Agreement.

(2) An employers' organisation shall be entitled to use the facilities of the Council for the collection of such levies, in which event the Council shall be entitled to an administration fee of 2,5% of the subscriptions so collected.

## 20. BUILDING INDUSTRY SKILLS AND EDUCATION TRUST

(1) Every employer shall pay to the Council the contribution prescribed by the Skills and Education Trust.

(2) The Council shall be entitled to deduct a 2,5% collection fee from the amounts received in terms of this clause, and shall pay the remainder to the Skills and Education Trust.

## 21. WESTERN PROVINCE BUILDING AND ALLIED TRADES' SICK FUND

Trade unions may opt for either one of the following mechanisms. In each case deductions of Sick Fund contributions may be authorized only by the affected employee in writing:

(a) (i) Each trade union shall be entitled to approach each employer in the Industry direct for the purpose of establishing stop-order facilities for the deduction of trade union sick fund subscriptions in respect of its consenting members.

(ii) Every employer who grants such facilities shall be entitled to deduct an administration fee of 2,5% of the subscription so collected.

OR

(b) (i) Every employer shall deduct an amount equal to 0,4% of the normal working day wage of an employee who is a member of a registered trade union and for whom wages are prescribed in clause 9 of this Agreement.

(ii) Each month the Council shall pay over to the Western Province Building and Allied Trades' Sick Fund all moneys so collected by the employers in terms of paragraph (b)(i) less a collection fee of 2,5% on gross subscriptions, which amount shall accrue to the general funds of the Council.

## 22. GENERAL

(1) **Exhibition of Agreement:** (a) The parties agree that the English version of this Agreement shall determine the meaning and the intention of the parties and the translations in Afrikaans and Xhosa shall be made available by the Council for inspection by any person during working hours at the offices of the Council.

- (b) Any person may acquire a copy of this Agreement by paying to the council the sum of R5,00.
  - (c) Each party to this Agreement shall receive two free copies of the Agreement and Constitution.
  - (2) **Value added tax (VAT):** All monetary values quoted in this Agreement are exclusive of value added tax.
  - (3) **Shelter and ablution facilities:** (a) At any site where the building operations are being carried out employers shall provide suitable accommodation—
    - (i) to serve as shelter for employees during wet weather; and/or
    - (ii) to serve as a change room: Provided that the provisions of this subclause shall not apply to jobbing work and on sites where fewer than ten employees are employed or where the circumstances peculiar to the site or the nature of the work in progress do not permit of accommodation for a change room.
 (b) Such accommodation may be any lockable shed, room or similar place constructed of walls and a roof composed of concrete, brickwork, wood, iron or any combination thereof or any other material approved by the Council and the whole to be so constructed as to provide a place for employees to change their clothes, to wash and to take shelter.
  - (c) Such accommodation may include clothes lockers or similar lock-up facilities in which employees can safely store changes of clothing and other personal possessions while at work.
  - (d) An employer shall provide proper and adequate sanitary accommodation on each job, which shall at all times be maintained in a hygienic and proper condition, and shall further conform to the legislation of the local authority in whose area the job is situated.
  - (4) **Trade union access:** Officials of trade union parties shall in the ordinary course of their duties have access to building sites and workshops during working hours, but shall not be allowed to interfere with the continued performance of work by any employee, or approach any employee without the prior consent of the employer or his duly authorized representative, which consent shall not unreasonably be withheld.
  - (5) **Protective clothing:** An employer shall supply to employees protective clothing in accordance with the requirements of the Occupational Health and Safety Act.
- 23. EXEMPTIONS**
- (1) All applications for exemption shall be in writing (on an application form as provided by the Council) and shall be addressed to the secretary of the Council.
  - (2) All applicants for exemption shall be substantiated, and such substantiation shall include the following details:
    - (a) The period for which the exemption is required;
    - (b) the Agreement and clauses or subclauses of the Agreement from which exemption is required; and
    - (c) proof that the exemption applied for has been discussed by the employer, his employees and their respective representatives, and the responses resulting from such consultation, either in support of or against the application, are to be included with the application.
  - (3) The Secretary of the Council shall place the applications for exemption on the agenda of the next Council meeting, for decision.
  - (4) Applications for exemption referred to the Council shall be considered by the Council in accordance with the exemption criteria set out in subclause (11) hereof, and the applicant(s) shall be advised, in writing, of the Council's decision within 14 normal working days following the meeting at which the applications were considered.
  - (5) Any non-party to which this Agreement has been extended in terms of section 32 of the Act, may apply to the Council for exemption from any of the terms of this Agreement—
  - (6) In terms of section 32 of the Act, the Council hereby establishes an independent body to be known as the "Exemption Board" to hear and decide any appeal brought against—
    - (a) the Council's refusal of a non-party's application for exemption from the provisions of this Agreement;
    - (b) the withdrawal of such an exemption by the Council.
  - (7) Within 14 consecutive days after having been advised of the Council's decision regarding an application for exemption, the non-party who feels aggrieved by the Council's decision may submit a written appeal against the Council's decision to the Secretary of the Council. Such an appeal shall be fully reasoned.
  - (8) The Secretary of the Council shall submit the appeal, together with the Council's decision regarding the application for exemption, to the Exemptions Board which shall as soon as possible hear and decide the matter with reference to the exemption criteria set out in subclause (11) hereof and when requested by the applicants or objectors to do so, may interview applicants or any objectors at its following meeting: Provided that the Exemptions Board may defer a decision to a following meeting if additional motivation, information or verbal representations are considered necessary to decide on the application for exemption.
  - (9) Once the Exemptions Board has decided to uphold the appeal and grant an exemption it shall issue a certificate and advise the applicant(s) within 10 normal working days of the date of the decision, clearly specifying—
    - (a) the terms of the exemption; and
    - (b) the reporting requirements by the applicant and the monitoring and re-evaluation processes.

(10) When the Exemptions Board decides against granting an exemption or part of an exemption requested it shall advise the applicant(s) within 10 normal working days of the date of such decision and shall provide the reason or reasons for the decision not to grant an exemption.

(11) **Exemption criteria:** The Exemptions Board shall consider all applications for exemption with reference to the following criteria:

- (a) The written and verbal substantiation provided by the applicant;
- (b) the extent of consultation and the petitions for or against granting the exemption as provided by employers or employees who will be affected by the exemption, if granted;
- (c) the terms of the exemption;
- (d) the infringement of basic conditions of employment rights;
- (e) the fact that a competitive advantage is not created by the exemption;
- (f) the effect of the exemption on any employee benefit fund or training provision in relation to the alternative comparable bona fide benefit or provision, including the cost to the employee, transferability, administration management and cost, growth and stability;
- (g) the extent to which the proposed exemption undermines collective bargaining and labour peace in the Industry;
- (h) any existing special economic or other circumstances which warrant the granting of the exemption;
- (i) reporting requirements by the applicant and monitoring and re-evaluation processes; and
- (j) cognisance of the recommendations contained in the Report of the Presidential Commission to Investigate Labour Market Policy.

#### 24. MEDICAL AID FUND

(1) The Building Industry Medical Aid Fund ("the Fund") is hereby continued and shall continue to be administered by the Council in terms of the Act for the purposes of—

- (a) assisting members in regard to the cost of medical services incurred by them or their dependants, as may be provided in the rules of the Fund;
- (b) taking such measures as the Council deems necessary for the prevention of sickness and for the improvement and promotion of health amongst members and their dependants;
- (c) contracting with any medical practitioner, hospital, nursing home, convalescent home or other similar institution, person or authority in respect of medical services; and
- (d) meeting the cost of such arrangements and the medical expenses of members or their dependants as provided in the rules of the Fund.

(2) The Fund shall be managed by the Council in accordance with the Rules which it may make from time to time for this purpose ("the Rules"), and all moneys of the Fund shall be administered, invested and paid out in accordance with the Rules, copies of which shall be available for inspection at the offices of the Council. The Council shall appoint auditors to audit the books of account of the Fund annually.

(3) An employee who is eligible in terms of the Rules to become a member of the Fund shall contribute half of the total contribution and his employer shall contribute the remaining half of the contribution for each normal working day that the employee remains in his employ, which contribution shall be as follows:

	Amount per day	
	Member employee	Employer
Artisan .....	R 10,72	R 10,72

(4) Every employer shall deduct a contribution from the remuneration of each eligible employee in respect of each contribution day and the employer shall add to it an equal amount.

(5) Every employer shall pay the above contributions to the Council within the period determined by the Council for such purpose.

(6) In the event of the expiration of this Agreement, the dissolution or winding up of the Council or a cessation of its operations, the provisions of clause 13(7), (8) and (9) relating to the Holiday Fund shall apply equally to this Fund.

#### 25. RESOLUTION OF DISPUTES

(1) **Procedure to enforce compliance with this Agreement:** The Council shall take all reasonable steps necessary to ensure compliance with this Agreement. If, whether through its own investigations or through any other source, it appears as if the provisions of this Agreement have been breached then the following procedure shall apply to enforce compliance:

- (a) The Secretary of the Council shall appoint an agent to investigate the alleged breach.
- (b) If, upon completion of the investigation, the agent has reason to believe that this Agreement has been breached, the agent may endeavour to secure compliance with the Agreement through conciliation.
- (c) At the end of the conciliation process the designated agent shall submit a report to the Secretary of the Council as to the result of the investigation, the steps taken to secure compliance with this Agreement through conciliation and the outcome thereof.
- (d) Upon receipt of the report, the Secretary of the Council may—
  - (i) require the designated agent to make further investigations; or
  - (ii) impose a compliance order and a penalty in terms of subclause 25 (1) (m); or
  - (iii) refer the matter to arbitration in terms of this Agreement if the respondent party does not consent to the compliance order or the penalty, in which case the respondent party may be ordered to pay the costs of the process; or
  - (iv) take such other steps as he may deem reasonable:
- (e) If the Secretary to the Council decides to refer the matter for arbitration, he shall appoint an arbitrator to hear and determine the alleged breach of this Agreement.
- (f) The Secretary, in consultation with all parties who may have a legal interest in the outcome of the arbitration, shall decide the date, time and venue of the arbitration hearing.
- (g) The Secretary of the Council shall serve notice of the date, time and venue of the arbitration on all parties who may have a legal interest in the outcome of the arbitration.
- (h) Any party who has a legal interest in the outcome of the arbitration shall have the right to—
  - (i) give evidence;
  - (ii) call witnesses;
  - (iii) question the witnesses of any other party;
  - (iv) address the concluding arguments to the arbitrator;
  - (v) be represented by a legal practitioner or co-employee or an office-bearer or official of his trade union or employers' organisation and, if the party is a juristic person, by a director or employee thereof.
- (i) The arbitrator shall have the following powers:
  - (i) To determine whether there has been a breach of this Agreement.
  - (ii) To make any appropriate award that gives effect to the Collective Agreement and to ensure compliance therewith.
  - (iii) To determine the appropriate form of and the procedure to be followed at the arbitration proceedings.
  - (iv) To make any order as to costs that he deems appropriate.
  - (v) To make an award in the absence of a party who is alleged to have breached the Agreement, if—
    - (aa) such party fails to appear in person or to be represented at the arbitration proceedings;
    - (ab) proof is presented that such party has been notified of the proceedings: Provided that notice of the arbitration proceedings shall be deemed to have been given if proof is presented that written notification has been forwarded to such party—
      - (A) by registered mail to such party's last-known address and 14 days have elapsed since such notification has been mailed; or
      - (B) by fax transmission to such party's last-known fax number; or
      - (C) by hand delivery to such party's last-known business or residential address;
    - (ac) *prima facie* evidence has been presented to the arbitrator that the party in question has failed to comply with this Agreement.
  - (vi) To vary, rescind or amend any arbitration award made by him or any arbitrator on good cause shown and without limiting the generality hereof the arbitrator shall have this power if—
    - (a) the award was erroneously sought or erroneously made in the absence of any party affected by the award;
    - (b) the award is ambiguous or contains an obvious error or omission, but only to the effect of that ambiguity, error or omission;
    - (c) the award was granted as a result of a mistake common to the parties to the proceedings.
  - (j) Any award made by the arbitrator, together with any reasons, shall be served on all interested parties by the Council.
  - (k) The Secretary of the Council may apply to make the arbitration award an order of the Labour Court in terms of section 158 (1) of the Act.

- (l) The provisions of this procedure shall stand in addition to any other legal remedy which the Council may apply to enforce a collective agreement.
- (m) (a) the arbitrator finds that any party to the dispute has failed to comply with a provision of any of the Council's Collective Agreements which are binding on that party, then the arbitrator may, in addition to any other appropriate order, impose a penalty on the non-compliant party in accordance with paragraph (6) below;
- (b) the maximum penalty that an arbitrator may impose for a failure to comply with a provision of a Collective Agreement—
- (i) not involving a failure to pay an amount due to an employee/party in terms of any provision, shall be the penalty determined in terms of Table One; or
  - (ii) involving a failure to pay an amount due to an employee/party, shall be the greater of the amount determined in terms of Table One or Table Two:

**TABLE ONE**

No previous failure to comply.....	R100 per employee in respect of whom the failure to comply occurs.
A previous failure to comply in respect of the same provision	R200 per employee in respect of whom the failure to comply occurs.
A previous failure to comply in respect of the same provision within the previous 12 months or two previous failures to comply in respect of the same provision within three years	R300 per employee in respect of whom the failure to comply occurs.
Three previous failures to comply in respect of the same provision within three years	R400 per employee in respect of whom the failure to comply occurs.
Four previous failures to comply in respect of the same provision within three years	R500 per employee in respect of whom the failure to comply occurs.

**TABLE TWO**

No previous failure to comply.....	25% of the amount due, including any interest owing on the amount at the date of the order.
A previous failure to comply in respect of the same provision within three years	50% of the amount due, including any interest owing on the amount at the date of the order.
A previous failure to comply in respect of the same provision within the previous 12 months or two previous failures to comply in respect of the same provision within three years	75% of the amount due, including any interest owing on the amount at the date of the order.
Three previous failures to comply in respect of the same provision within three years	100% of the amount due, including any interest owing on the amount at the date of the order.
Four or more previous failures to comply in respect of the same provision within three years	200% of the amount due, including any interest owing on the amount at the date of the order.

- (n) A cost award by an arbitrator may include the following costs or any costs which in the opinion of the arbitrator should be awarded:
- (i) Fee of the arbitrator including travelling and accommodation;
  - (ii) venue costs;
  - (iii) administration fee of the Council;
  - (iv) costs of issuing subpoenas;
  - (v) representative's fee which is to be taxed by the Labour Court;

(vi) cost of the designated agent or other staff of the Council who have to attend the arbitration.

(2) Procedure for the resolution of disputes about the application or interpretation of this Agreement: (a) Any person who falls within the registered scope of the Council may refer a dispute about the interpretation or application of this Agreement to the Council for resolution in terms of this Agreement.

(b) If a dispute is so referred to the Council, it shall attempt to resolve the dispute—

(i) through conciliation; and

(ii) if the dispute remains unresolved after conciliation, the Council shall appoint an arbitrator to arbitrate the dispute. The powers of the arbitrator shall be the same as in subclause (1) (i) above.

(c) The Secretary of the Council may apply to have an arbitration award made an order of the Labour Court in terms of section 158 (1) of the Act.

(3) Notwithstanding, the provisions of the clause the Council may utilise section 33A of the LRA 1995 (as amended) in conjunction with annexure "A" (Rules for conciliating and arbitrating disputes in the Building Industry Bargaining Council) to monitor and enforce compliance with its collective agreement and to conciliate and arbitrate LRA 1995 disputes.

## **26. POWERS OF DESIGNATED AGENTS AND APPOINTED CONCILIATORS AND ARBITRATORS**

(1) A designated agent appointed by the Minister in terms of section 33 (1) of the Act to attempt to resolve a dispute or to investigate any alleged contravention and for purposes of routine inspection to enforce compliance with this Agreement may—

(a) subpoena for questioning any person who may be able to give information or whose presence at the conciliation or arbitration proceedings may help to resolve the dispute;

(b) subpoena any person who is believed to have possession or control of any book, document or object relevant to the resolution of the dispute to appear before the designated agent to be questioned or to produce that book, document or object;

(c) administer an oath or accept affirmation from any person called to give evidence or be questioned;

(d) at any reasonable time, but only after obtaining the necessary written authorisation—

(i) enter and inspect any premises on or in which any book, document or object relevant to the resolution of the dispute is to be found or is suspected on reasonable grounds of being there;

(ii) examine, demand and production of, and seize any book, document or object that is on or in those premises and that is relevant to the resolution of the dispute; and

(iii) take a statement in respect of any matter relevant to the resolution of the dispute from any person on the premises who is willing to make a statement;

(e) inspect, and retain a reasonable period, any of the books, documents or objects that have been produced to, or seized by, the designated agent.

(2) A subpoena issued for any purpose in terms of subclause (1) shall be signed by the Secretary of the Bargaining Council and shall—

(a) specifically require the person named in it to appear before the designated agent;

(b) sufficiently identify the book, document or object to be produced; and

(c) state the date, time and place at which the person is to appear.

(3) The written authorisation referred to in subclause (1) (d)—

(a) if it relates to residential premises, may be given only by a judge of the Labour Court and with due regard to section 14 of the Constitution, and then only on the application of the designated agent setting out under oath or affirmation the following information:

(i) The nature of the dispute;

(ii) the relevance of any book, document or object to the resolution of the dispute;

(iii) the presence of any book, document or object on the premises; and

(iv) the need to enter, inspect or seize the book, document or object; and

(b) in all other cases, may be given by the Secretary of the Council.

(4) The owner or occupier of any premises that a designated agent is authorised to enter and inspect, and every person employed by that owner or occupier, shall provide facilities that a designated agent requires to enter those premises and to carry out the inspection or seizure.

(5) The appointed person shall issue a receipt for any book, document or object seized in terms of subclause (1).

(6) The law relating to privilege, as it applies to a witness subpoenaed to give evidence or to produce any book, document or object before a court of law, applies equally to the questioning of any person or the production or seizure of any book, document or object in terms of this clause.

(7) The appointed person shall pay the specified witness fee to each person who appear before him in response to a subpoena issued.

- (8) A person shall be in contempt of the designated agent—
- (a) if, after having been subpoenaed to appear before him, the person without good cause does not attend at the time and place stated in the subpoena;
  - (b) if, after having appeared in response to a subpoena, that person fails to remain in attendance until excused by the designated agent;
  - (c) by refusing to take the oath or to make an affirmation as a witness when a designated agent so requires;
  - (d) by refusing to answer any question fully and to the best of that person's knowledge and belief, subject to subclause (6);
  - (e) if the person, without good cause, fails to produce the book, document or object specified in a subpoena to a designated agent;
  - (f) if the person wilfully hinders a designated agent in performing any function conferred by or in terms of the Act;
  - (g) if the person insults, disparages or belittles a designated agent, or prejudices or improperly influences an investigation or improperly anticipates the designated agent's recommendations;
  - (h) by wilfully interrupting the conciliation or arbitration proceedings or misbehaving in any other manner during those proceedings;
  - (i) by doing anything else in relation to the designated agent which, if done in relation to a court of law, would have been contempt of court.

(9) The designated agent may refer any contempt to the Labour Court for an appropriate order.

(10) A designated agent may decline to investigate and follow up on a complaint made by an employee who reports the dispute to the Council more than 17 weeks after the dispute arose: Provided that the employer of the complainant shall be assessed for the full period of non-compliance including interest and penalties as prescribed in this Agreement.

(11) A designated agent may decline to investigate and follow up on a complaint made by a trade union if the trade union has not attempted first to resolve the alleged dispute directly with the employer party to the alleged dispute.

## 27. COMPLIANCE COMMITTEE

(1) The Council shall nominate a subcommittee to be known as the "Compliance Committee" that will be responsible for the effective investigation and enforcement action in respect of non-compliance with this Agreement.

(2) The Compliance Committee shall—

- (a) establish guidelines and principles covering all aspects of the enforcement of this Agreement, which are acceptable to the parties to this Agreement and which shall provide fair, cost-effective, unbiased and corruption free enforcement of this Agreement;
- (b) actively monitor and ensure that the guidelines and principles so established are adhered to by the agents of the Council;
- (c) provide open communication in regard to the actions of the Council or the Compliance Committee with all employers and employees interested in these actions;
- (d) investigate positive methods for promoting compliance especially amongst informal sector employers and employees and including the lobbying of all persons and institutions responsible for the preparation of tender documents to provide for compulsory compliance with this Agreement by the employers who are successful in winning such tenders;
- (e) provide for quick and cost-effective conciliation or arbitration of disputes between the Council and employers or employees.

## 28. NEGOTIATIONS BY AREA

If amendments to this Agreement specifically affect area B and area C the negotiation of such amendments shall be between the employers and the employees representing area B and area C.

Signed at Bellville this 15th day of July 2004.

R. H. M. JOHNSON

for the Master Builders' and Allied Trades' Association, Western Cape

W. C. CLIFT

for the Boland Meesterbouers en Verwante Bedrywe Vereniging

R. C. DAMON

for the Building Workers' Union

**H. KETSISE**

for the National Union of Mineworkers (NUM)

**T. NTSOMI**

for the Building, Wood and Allied Workers' Union of South Africa

**P. ROOLF**

for the South African Woodworkers' Union

#### **ANNEXURE A**

#### **RULES FOR CONCILIATING AND ARBITRATING DISPUTES IN THE BUILDING INDUSTRY BARGAINING COUNCIL (RULES)**

##### **ARRANGEMENT OF RULES**

##### **PART A: SERVING AND FILING DOCUMENTS**

1. Council addresses at which documents must be filed
2. How to calculate time periods
3. Who must sign documents
4. How to serve documents on other parties
5. How to prove that a document was served in terms of the Rules
6. How to file documents with the Council
7. Documents and notices sent by registered post
8. How to seek condonation for documents delivered

##### **PART B: CONCILIATION OF DISPUTES**

9. How to refer a dispute to the Council for conciliation
10. What notice the Council is to give of a conciliation hearing
11. Council may seek to resolve a dispute before a conciliation hearing
12. What happens if a party fails to attend or is not represented at a conciliation hearing
13. How to determine whether or not a Council commissioner may conciliate a dispute
14. Issuing of a certificate in terms of section 135(5) of the Act
15. Conciliation proceedings may not be disclosed

##### **PART C: CON-ARB**

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

##### **PART D: ARBITRATIONS**

17. How to request arbitration
18. When parties may be directed to file statements
19. When parties may be directed to hold a prearbitration conference
20. What notice the Council is to give of an arbitration hearing
21. How to determine whether or not a commissioner may arbitrate a dispute
22. How to postpone an arbitration

##### **PART E: RULES THAT APPLY TO CONCILIATIONS, ARBITRATIONS AND CON-ARBS**

23. Who may represent a party at the Council
24. How to join or substitute parties to proceedings
25. How to correct the citation of a party
26. When the Council may consolidate disputes
27. Disclosure of documents
28. What happens if a party fails to attend proceedings in rights disputes
29. What happens if a party fails to attend proceedings in interest disputes

##### **PART F: APPLICATIONS**

30. How to bring an application
31. How to apply to vary or rescind arbitration awards or rulings
32. How to refer a dismissal dispute to the Labour Court

**PART G: PRE-DISMISSAL ARBITRATIONS**

17. How to request a pre-dismissal arbitration in terms of section 188A of the Act

**PART H: GENERAL**

34. Unrepresented applicants without postal addresses and fax numbers
35. Condonation for failure to comply with the Rules
36. Recordings of Council proceedings
37. How to have a subpoena issued
38. Payment of witness fees
39. Taxation of bills of cost
40. What words mean in these Rules

**PART A****SERVING AND FILING DOCUMENTS****1. Council addresses at which documents must be filed**

- (1) The addresses, telephone numbers and telefax numbers of the offices of the Council are listed in Schedule 1.
- (2) Documents may be filed with the Council only at those addresses or telefax numbers listed in Schedule 1.

**2. How to calculate time periods**

- (1) For the purpose of calculating any period of time in terms of these Rules—
  - (a) a day means any day of the week including Saturdays, Sundays and public holidays, but excludes the days from the 16th of December to the 7th of January, both days inclusive.

**Example 1**

Rule 7 refers to seven days of the date the document was posted. If the document was posted on a Friday then the seven days would include the next Saturday and Sunday.

**Example 2**

Rule 7 refers to seven days of the date the document was posted. If the date of postage was on a Friday, the 12th of December, the first four days would be counted (the days before the 16th) and final three days would be counted from 7th of January, in other words the period would run from the 12th of December to the 10th of January.

- (b) the first day is excluded and the last day is included, subject to subrule (2).

**Example 3**

Rule 10 refers to a 14 days' notice period for conciliation. If notice was faxed on Thursday 10 October, the conciliation must be scheduled on Friday 25 October or any day thereafter.

- (2) The last day of any period must be excluded if it falls on a Saturday, Sunday, public holiday or any day between 16 December and 7 January.

**3. Who must sign documents**

- (1) A document that a party must sign in terms of the Act or these Rules may be signed by the party or by a person entitled in terms of the Act or these Rules to represent that party in the proceedings.
- (2) If proceedings are jointly instituted or opposed by more than one employee, documents may be signed by an employee who is mandated by the other employees to sign documents. A written list of the names of the employees who have mandated the employer to sign on their behalf must be attached to the referral document.

**4. How to serve documents to other parties**

- (1) A party must serve a document on the other parties to a dispute—
  - (a) by handing a copy of the document to—
    - (i) the person if that person is a party to the dispute;
    - (ii) a person authorized in writing to accept service on behalf of the party to the dispute;
    - (iii) a person who appears to be at least 16 years old and in charge of the party's place of residence, business or employment;
  - (b) by faxing or telexing a copy of the document to that party;
  - (c) by sending a copy of the document by registered post or telegram to the last-known address of the party or to an address chosen by the party to receive service.

**5. How to prove that a document was served in terms of the Rules**

- (1) A party must prove to the Council that a document was served in terms of these Rules, by providing the Council or a council commissioner with the following:
  - (a) A copy of proof of mailing the document by registered post to the other party;
  - (b) a copy of the telegram or telex communicating the document to the other party;
  - (c) a copy of the telefax transmission report indicating the successful transmission of the whole document to the other party; or
  - (d) if a document was served by hand—
    - (i) a copy of a receipt by, or on behalf of, the other party clearly indicating the name and designation of the recipient and the place, time and date of service; or
    - (ii) a statement confirming service signed by the person who delivered a copy of the document to the other party or left it at any premises.
- (2) If proof of service in accordance with subrule (1) is provided, it is presumed, until the contrary is proved, that the party on whom it was served has knowledge of the contents of the document.
- (3) The Council may accept proof of service in a manner other than prescribed in this rule, as sufficient.

**6. How to file documents with the Council**

- (1) A party must file documents with the Council—
  - (a) by handing the document in at an office of the Council;
  - (b) by sending a copy of the document by registered post to the Council; or
  - (c) by faxing the document to the Council.
- (2) A document is filed with the Council when—
  - (a) the document is handed to the office of the Council;
  - (b) a document sent by registered post is received by the Council; or
  - (c) the transmission of a fax is completed.

**7. Documents and notices sent by registered post**

Any document sent by registered post is presumed, until the contrary is proved, to have been received by the person to whom it was sent seven days after it was posted.

**8. How to seek condonation for documents delivered late**

- (1) This rule applies to any document, including a referral or an application, delivered outside of a time period prescribed in the Act or these Rules.
- (2) A party must apply for condonation, in terms of rule 30, when delivering the document to the Council.
- (3) An application for condonation must set out the grounds for seeking condonation and must include details of the following:
  - (a) The degree of lateness;
  - (b) the reasons for the lateness and degree of fault;
  - (c) the referring party's prospects and succeeding with the referral and obtaining the relief sought against the other party;
  - (d) any prejudice to the other parties; and
  - (e) any other relevant factors.

**PART B****CONCILIATION OF DISPUTES****9. How to refer a dispute to the Council for conciliation**

- (1) A party must refer a dispute to the Council for conciliation by completing the Council's referral form and serving it on the Council.
- (2) The referring party must—
  - (a) sign the referral form;
  - (b) attach written proof that the referral form was served on the other parties to the dispute;
  - (c) if the referral form is filed late, attach an application for condonation in accordance with rule 8.
- (3) The Council must refuse to accept a referral document until subrule (2) hereof has been compiled with.

**10. The notice the Council is to give of a conciliation hearing**

The Council must give the parties at least 14 days' written notice of a conciliation hearing, unless the parties agree to a shorter period of notice.

**11. Council may seek to resolve a dispute before a conciliation hearing**

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

**12. What happens if a party fails to attend or is not represented at a conciliation hearing**

If a party to a dispute fails to attend in person or to be represented at a conciliation hearing, the Council commissioner may deal with it in terms of rule 22.

**13. How to determine whether or not Council commissioner may conciliate a dispute**

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

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

A certificate issued in terms of section 125 (5) of the Act stating that the dispute has or has not been resolved, must identify the nature of the dispute as described in the referral document or as identified by the commissioner during the conciliation process.

**15. Conciliation proceedings may not be disclosed**

- (1) Conciliation proceedings must be treated as private and confidential and conducted without prejudice. No person may refer to anything said at conciliation proceedings during any subsequent proceedings, unless the parties agree to this in writing.
- (2) No person, including a commissioner, may be called as a witness during any subsequent proceedings in the Council or in any court to give evidence about what transpired during conciliation.

**PART C****CON-ARB****16. Conduct of con-arb in terms of section 191 (5A) of the Act**

- (1) The Council must give the parties at least 14 days' written notice that a matter has been scheduled for con-arb in terms of section 191 (5A) of the Act.
- (2) A party that intends to object to a dispute being dealt with in terms of section 191 (5A) must serve a written notice on the Council and the other party, at least seven days prior to the scheduled date in terms of subrule (1).
- (3) Subrule (2) does not apply to a dispute concerning—
  - (a) the dismissal of an employee for any reason related to probation; or
  - (b) an unfair labour practice relating to probation.
- (4) If the respondent party fails to appear or to be represented at a hearing schedule in terms of subrule (1), the Council commissioner must conduct the con-arb on the date specified in the notice issued in terms of subrule (1) or adjourn the proceeding until a later date.
- (5) Subrule (4) applies irrespective of whether or not a party has lodged a notice of objection in terms of subrule (2).
- (6) The provisions of the Act and these Rules that are applicable to conciliation and arbitration, respectively apply, with the changes required by the context, to con-arb proceedings.
- (7) If the arbitration does not commence on the dates specified in terms of the notice referred to in subrule (1), the Council must schedule the matter for arbitration either in the presence of the parties or by issuing a notice in terms of rule 2.

**PART D****ARBITRATIONS**

**[Part D does not apply to arbitrations in respect of failure to comply with the provisions of a collective agreement in terms of section 33A (4) of the Act]**

**17. How to request arbitration**

- (1) A party may request the Council to arbitrate a dispute by delivering a document in the form of Annexure LRA 7.13 ("the referral document").
- (2) The referring party must—
  - (a) sign the referral document in accordance with rule 3;
  - (b) attach to the referral document written proof that the referral document was served on the other parties to the dispute in accordance with rule 5; and
  - (c) if the referral document is served out of time, attach an application for condonation in accordance with rule 8.

- (3) The Council must refuse to accept a referral document until subrule (2) has been complied with.
- (4) This rule does not apply to con-arb proceedings held in terms of section 191 (5A).

**18. When parties may be directed to file statements**

- (1) The Council or a Council commissioner may direct—
  - (a) the referring party in an arbitration to file a statement of case within a specified time period; and
  - (b) the other parties to file an answering statement within a specified time period.
- (2) A statement in terms of subrule (1) must—
  - (a) set out the material facts upon which the party relies and the legal issues that arise from the material facts;
  - (b) be filed within the time period specified by the Council or the Council commissioner.

**19. When parties may be directed to hold a prearbitration conference**

The parties to an arbitration must hold a prearbitration conference dealing with the matters referred to in subrule 18 (2) above if directed to do so by the Secretary of the Council.

**20. What notice the Council is to give of an arbitration hearing**

The Council must give the parties at least 14 days' written notice of an arbitration hearing, unless the parties agree to a shorter period.

**21. How to determine whether a Council commissioner may arbitrate a dispute**

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

**22. How to postpone an arbitration**

- (1) The Council must postpone an arbitration without the parties appearing if—
  - (a) all the parties to the dispute agree in writing to the postponement; and
  - (b) the written agreement for the postponement is received by the Council more than seven days prior to the scheduled date of the arbitration; and
  - (c) there are compelling reasons to postpone.
- (2) Any party may apply in terms of rule 30 to postpone an arbitration by serving an application on the other parties to the dispute and filing a copy with the Council before the scheduled date of the arbitration.

**PART E****RULES THAT APPLY TO CONCILIATIONS, ARBITRATIONS AND CON-ARBS****23. Who may represent a party at the Council**

- (1) A party to the dispute may appear in person at any proceedings before the Council or be represented by—
  - (a) a legal practitioner;
  - (b) a member, official or office bearer of a registered trade union of which the party was a member at the time the dispute arose;
  - (c) an official or office bearer of a registered employers' organisation, or registered employer federation of which the party was a member at the time the dispute arose;
  - (d) a director, employee, trustee or partner in a partnership of that party;
  - (e) another party to the dispute if proceedings are brought or opposed by more than one party.
- (2) Notwithstanding subrule (1)(a), if the dispute is about the fairness of a dismissal and a party has alleged that the reason for the dismissal relates to the employee's conduct or incapacity, the parties are not entitled to be represented by practising lawyers in the proceedings unless—
  - (a) the Council commissioner and the other parties consent;
  - (b) the Council commissioner concludes that it is unreasonable to expect the party to deal with the dispute without legal representation, after considering—
    - (i) the nature of the questions of law raised by the dispute;
    - (ii) the complexity of the dispute
    - (iii) the public interest; and
    - (iv) the comparative ability of the opposing parties or their representatives to deal with the dispute.

**24. How to join or substitute parties to proceedings**

- (1) The Council or a Council commissioner may join any number of persons as parties in proceedings if their right to relief depends on substantially the same questions of law or fact.
- (2) A Council commissioner may make an order joining any person as a party in the proceedings if the party to be joined has a substantial interest in the subject matter of the proceedings.
- (3) A Council commissioner may make an order in terms of subrule (2)—
  - (a) of the Council commissioner's own accord;
  - (b) on application by a party; or
  - (c) if a person entitled to join the proceedings applies at any time during the proceedings to intervene as a party.
- (4) An application in terms of this rule must be made in terms of rule 30.
- (5) If in any proceedings it becomes necessary to substitute a person for an existing party, any party to the proceedings may apply to the Council for an order substituting that person for an existing party, and a Council commissioner may make such order or give appropriate directions as to the further procedure of the proceedings.
- (6) An application to join any person as a party to proceedings or to be substituted for an existing party must be accompanied by copies of all documents previously delivered, unless the person concerned or that person's representative is already in possession of the documents.
- (7) Subject to any order made in terms of subrules (2) and (5), a joinder or substitution in terms of this rule does not affect any steps already taken in the proceedings.

**25. How to correct the citation of a party**

If a party to any proceedings has been incorrectly or defectively cited, the Council may, on application and on notice to the parties concerned, correct the error or defect.

**26. When the Council may consolidate disputes**

The Council or a Council commissioner, of its own accord or on application, may consolidate more than one dispute so that the disputes may be dealt with in the same proceedings.

**27. Disclosure of documents**

Any party may request a Council commissioner to make an order requiring any other party to the dispute to disclose all relevant documents.

**28. What happens if a party fails to attend proceedings in rights disputes**

- (1) In a rights dispute, if a party to the dispute fails to attend or be represented at any proceedings before the Council, and that party—
  - (a) had referred the dispute to the Council, a Council commissioner may dismiss the matter by making an order; or
  - (b) had not referred the matter to the Council, the Council commissioner may—
    - (i) continue with the proceedings in the absence of that party; or
    - (ii) adjourn the proceedings to a later date.
- (2) A Council commissioner must be satisfied that the party had been properly notified of the date, time and venue of the proceedings, before making any decision in terms of subrule (1).
- (3) If a matter is dismissed, the Council must send a copy of the ruling to the parties.

**29. What happens if a party fails to attend proceedings in interest disputes**

- (1) In an interest dispute, if a party to the dispute fails to attend the conciliation hearing or be represented at the hearing, and that party—
  - (a) had referred the dispute to the Council, a Council commissioner may extend the conciliation period for another thirty days and notify the parties of the extension in writing; or
  - (b) had not referred the dispute to the Council, the Council commissioner may immediately issue a certificate stating that the dispute remains unresolved.
- (2) A Council commissioner must be satisfied that the party had been properly notified of the date, time and venue of the proceedings, before making any decision in terms of subrule (1).

**PART F****APPLICATIONS****30. How to bring an application**

- (1) An application must be brought on notice to all persons who have an interest in such application.

- (2) The party bringing the application must sign the notice of application and must state—
- (a) the title of the matter;
  - (b) the case number assigned to the matter by the Council;
  - (c) the relief sought;
  - (d) the address at which the party delivering the document will accept delivery of all documents and proceedings;
  - (e) that any party that intends to oppose the matter must deliver a notice of opposition and answering affidavit within 14 days after the application has been delivered to it;
  - (f) that the application may be heard in the absence of a party that does not comply with subparagraph (e);
  - (g) a schedule is included listing the documents that are material and relevant to the application.
- (3) The application must be supported by an affidavit that must clearly and concisely set out—
- (a) the names, description and addresses of the parties;
  - (b) a statement of the material facts, in chronological order, on which the application is based, in sufficient detail enable any person opposing the application to reply to the facts;
  - (c) a statement of legal issues that arise from the material facts, in sufficient detail to enable any party to reply to the document;
  - (d) if the application is filed outside the relevant time period, grounds for condonation in accordance with rule 8; and
  - (e) if the application is brought urgently, the circumstances why the matter is urgent and the reasons why it cannot be dealt with in accordance with the time frames prescribed in these Rules.
- (4) (a) Any party opposing the application may deliver a notice of opposition and an answering affidavit within 14 days from the day on which the application was served on that party.
- (b) A notice of opposition and an answering affidavit must contain, with the changes required by the context, the information required by subrules (2) and (3), respectively.
- (5) (a) The party initiating the proceedings may deliver a replying affidavit within seven days from the day on which any notice of opposition and answering affidavit are served on it.
- (b) The replying affidavit must address only issues raised in the answering affidavit and may not introduce new issues of fact or law.
- (6) The Council commissioner may permit the affidavits referred to in this rule to be replaced by a written statement.
- (7) In an urgent application, the Council or a Council commissioner may—
- (a) dispense with the requirements of this rule; and
  - (b) grant an order only against a party that has had reasonable notice of the application.
- (8) (a) The Council must allocate a date for a hearing of the application once a replying affidavit is delivered, or once the time limit for delivering a replying affidavit has lapsed, whichever occurs first.
- (b) The Council must notify the parties of the date, time and place of the hearing of the application.
- (c) Applications may be heard on a motion roll on a day determined by the Council.
- (9) Notwithstanding this rule, the Council or a Council commissioner may determine an application in any manner it deems fit.

### **31. How to apply to vary or rescind arbitration awards or rulings**

- (1) An application for the variation or rescission of an arbitration award or ruling must be made within 14 days of the date on which the application became aware of—
- (a) the arbitration award or ruling; or
  - (b) a mistake common to the parties to the proceedings.
- (2) A ruling made by a Council commissioner which has the effect of a final order, will be regarded as a ruling for the purposes of this rule.

### **32. How to refer a dismissal dispute to the Labour Court**

- (1) An application in terms of section 191 (6) of the Act to refer a matter to the Labour Court, must be made within 14 days of the dispute being certified unresolved in conciliation.
- (2) Notwithstanding subrule (1), a party that requests arbitration may not thereafter make an application in terms of section 191(6).
- (3) The application must state the grounds on which a party relies in requesting that the dispute be referred to the Labour Court.

- (4) If any party to the dispute objects to the matter being referred to the Labour Court, that party must state the grounds for the objection within seven days of receipt of the application.
- (5) The Council must notify the parties of its decision in terms of section 191(8) within 14 days of receiving the objection.

## PART G

### PREDISMISAL ARBITRATIONS

#### 33. How to request a predismissal arbitration in terms of section 188A of the Act

- (1) An employer requesting the Council to conduct a predismissal arbitration, must do so by delivering a completed referral form to the Council.
- (2) The employee must sign the referral form consenting to predismissal arbitration. If an employee has consented in terms of section 188A(4)(b)<sup>1</sup>, the referral form does not have to be signed by the employee, but a copy of the contract containing the consent must be attached to the form.
- (3) When filing the referral form, the employer must pay the prescribed fee to the Council. Payment of the fee may only be made by—
  - (a) bank guaranteed cheque; or
  - (b) electronic transfer into the bank account of the Council.
- (4) Within 14 days of receiving a request in terms of subrule (1) and payment of the prescribed fee, the Council must notify the parties to the pre-dismissal arbitration when and where the predismissal arbitration will be held.
- (5) Unless the parties agree otherwise, the Council must give the parties at least 14 days' notice of the commencement of the predismissal arbitration.
- (6) The Council will be required to refund a fee paid in terms of subrule (3), only if the Council is notified of the resolution of the matter prior to issuing a notice in terms of subrule (4).

## PART H

### GENERAL

#### 34. Unrepresented applicants without postal addresses and fax numbers

- (1) An unrepresented applicant who intends to refer a dispute to the Council and who does not have a postal address or fax number must hand-deliver the referral form to the Council.
- (2) If a referral form is received by hand delivery by an unrepresented applicant, the Council must provide the applicant with a case number and written instructions to contact the Council by telephone or in person, within seven days of the date of referral, in order for the Council to notify the applicant of the details of the hearing.
- (3) The administrator who notifies the applicant of the hearing in terms of subrule (2) must record on the case file and on the case management system that the applicant has been notified of the details of the hearing.
- (4) The record made in terms of subrule (3) will constitute proof that the applicant was notified of the hearing.

#### 35. Condonation for failure to comply with the Rules

The Council or a Council commissioner may condone any failure to comply with the time frames in these Rules, on good cause shown.

#### 36. Recordings of Council proceedings

- (1) The Council must keep a record of—
  - (a) any evidence given in an arbitration hearing;
  - (b) any sworn testimony given in any proceedings before the Council; and
  - (c) any arbitration award or ruling made by a Council commissioner.
- (2) The record may be kept by legible handwritten notes or by means of an electronic recording.

<sup>1</sup> Only an employee whose earnings exceed the amount determined by the Minister in terms of section 6(3) of the Basic Conditions of Employment Act (currently R115 572,00 per annum), may consent to predismissal arbitration in a contract of employment.

- (3) A party may request a copy of the transcript of a record or a portion of a record kept in terms of subrule (2), on payment of the costs of the transcription.
- (4) After the person who makes the transcript of the record has certified that it is correct, the record must be returned to the Council.

- (5) The transcript of a record certified correct in terms of subrule (4) will be presumed to be correct, unless the Labour Court decides otherwise.

**37. How to have a subpoena issued**

- (1) Any party who requires the Council or a Council commissioner to subpoena a person in terms of section 142 (1) of the Act, must file a completed subpoena form, requesting a subpoena together with a written substantiation setting out why the evidence of the person to be subpoenaed is necessary.
- (2) A party requesting the Council to waive the requirement for the party to pay witness fees in terms of section 142(7)(c) must set out the reasons for the request in writing at the time of requesting the Council to issue a subpoena in respect of that witness.
- (3) An application in terms of subrule (1) must be filed with the Council at least 10 days before the arbitration hearing, or as directed by the Council commissioner hearing the arbitration.
- (4) The Council or a Council commissioner may refuse to issue a subpoena if—
  - (a) the party does not establish why the evidence of the person is necessary;
  - (b) the party subpoenaed does not have a reasonable period in which to comply with the subpoena;
  - (c) the Council or a Council commissioner is not satisfied that the party has made arrangements to pay the witness fees and the reasonable travel costs of the person subpoenaed.
- (5) A subpoena must—
  - (a) be served on the witness subpoenaed by the person who has requested the subpoena or by the sheriff, at least seven days before the scheduled date of the arbitration;
  - (b) if so directed by the Council, be accompanied by payment of the prescribed witness fees for one day in accordance with the tariff of allowances published by notice in the *Gazette* in terms of section 142 (7) of the Act and the witnesses' reasonable travel costs.
- (6) Subrules 4(c) and 5(b) do not apply if the Council, in terms of section 142(7)(c), has waived the requirement for the party to pay witness fees.

**38. Payment of witness fees**

- (1) A witness subpoenaed in any proceedings in the Council must be paid a witness fee in accordance with the tariff of allowances published by notice in the *Gazette* in terms of section 142 (7) of the Act.
- (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 issue of the subpoena was not requested by a party or if the Council waives the requirement to pay witness fees in terms of section 142(7)(c).
- (3) Notwithstanding subrule (1), the Council commissioner may, in appropriate circumstances, order that a witness receive no fee or only part of the prescribed fee.

**39. Taxation of bills of cost**

- (1) The basis on which a Council commissioner may make an order as to costs in any arbitration is regulated by section 138 (10) of the Act.
- (2) The Secretary of the Council may appoint taxing officers to perform the functions of a taxing officer in terms of these Rules.
- (3) The taxing officer must tax any bill of costs for services in connection with proceedings in the Council, on Schedule A of the prescribed Magistrates' Courts tariff, in terms of the Magistrates' Courts Act, No. 32 of 1944, unless the parties have agreed to a different tariff.
- (4) At the taxation of any bill of costs, the taxing officer may call for any book, document, paper or account that in the taxing officer's opinion is necessary to properly determine any matter arising from the taxation.
- (5) Any person requesting a taxation must complete a referral form requesting taxation and must satisfy the taxing officer—
  - (a) of that party's entitlement to be present at the taxation; and
  - (b) that the party liable to pay the bill has received notice of the date, time and place of the taxation.
- (6) Notwithstanding subrule (4), notice need not be given to a party—
  - (a) who failed to appear or to be represented at the hearing; or
  - (b) who consented in writing to the taxation taking place in that party's absence.
- (7) Any decision by a taxing officer is subject to review by the Labour Court.

#### 40. What words mean in these Rules

Any expression in these Rules that is defined in the Labour Relations Act<sup>2</sup>, 1995 (Act No. 66 of 1995), has the same meaning as in that Act and—

**"Act"** means the Labour Relations Act, 1995 (Act No. 66 of 1995), and includes any regulation made in terms of that Act;

**"con-arb"** means proceedings held in terms of section 191(5A) of the Act, where an arbitration commences immediately after certifying that the dispute remains unresolved in conciliation;

**"Council"** means the Building Industry Bargaining Council registered in terms of section 29 of the Act;

**"Council commissioner"** means an individual appointed by the Council to resolve disputes;

**"deliver"** means serve on other parties and file with the Commission;

**"dispute of interest"** means any dispute concerning a matter of mutual interest; excluding any dispute that a party has the right to refer to arbitration or to the Labour Court under the Act, a collective agreement or an arbitration agreement.

**"dispute of right"** means a legal claim of which a party in the employment relationship is entitled by virtue of the employment contract, a collective agreement, a statute or the common law;

**"Director"** means the Director of the Commission appointed in terms of section 118 of the Act, and includes any person delegated by the Director to perform any of the functions of the Director;

**"file"** means to lodge with the Council in terms of rule 6;

**"Labour Court"** means the Labour Court established by section 151 of the Act and includes any judge of the Labour Court;

**"party"** means any party to proceedings before the Council;

**"legal practitioner"** means a practising advocate, a practising attorney and a candidate attorney;

**"public holiday"** means a public holiday referred to in section 1 of the Public Holidays Act, 1994 (Act No. 36 of 1994). These currently include—

1 January, New Year's Day

21 March, Human Rights Day

Easter Friday and Monday

27 April, Freedom Day

1 May, Worker's Day

16 June, Youth Day

9 August, National Women's Day

24 September, Heritage Day

16 December, Day of Reconciliation

25 December, Christmas Day

26 December, Day of Goodwill,

and any public holiday declared as such in terms of section 2A of the Public Holidays Act, 1994.

**"Rules"** means these rules;

**"Secretary"** means the secretary of the Council;

**"serve"** means to serve in accordance with rule 4 and "service" has a corresponding meaning; and

**"taxing officer"** means any competent person appointed by the Secretary in terms of rule 32.

#### SCHEDULE 1

The Secretary 133 Voortrekker Road BELLVILLE 7530	Private Bag X29 BELLVILLE 7535	Tel.: (021) 950-7400 Fax.: (021) 950-7405 E-mail: bibc@iafrica.com
Garlink Building 29 Lady Grey Street PAARL 7646	P O Box 323 PAARL 7620	Tel.: (021) 872-1505 Fax: (021) 872-2301
Back Section of Main Road 141C SOMERSET WEST 7130		Tel.: (021) 851-2160

**No. R. 1215****22 Oktober 2004****WET OP ARBEIDSVERHOUDINGE, 1995****INTREKKING VAN GOEWERMENTSKENNISGEWINGS****BEDINGINGSRAAD VIR DIE BOUNYWERHEID (KAAP DIE GOEIE HOOP): UITBREIDING VAN KOLLEKTIEWE OOREENKOMS NA NIE-PARTYE**

Ek, Membathisi Mphumzi Shepherd Mdladlana, Minister van Arbeid, trek hierby kragtens artikel 32 (7) van die Wet op Arbeidsverhoudinge, 1995, Goewermentskennisgewing Nos. R. 1735 van 28 November 2003 en R. 804 van 9 Julie 2004 in, met ingang van 1 November 2004.

**M. M. S. MDLADLANA****Minister van Arbeid****No. R. 1216****22 Oktober 2004****WET OP ARBEIDSVERHOUDINGE, 1995****BEDINGINGSRAAD VIR DIE BOUNYWERHEID (KAAP DIE GOEIE HOOP): UITBREIDING VAN KOLLEKTIEWE OOREENKOMS NA NIE-PARTYE**

Ek, Membathisi Mphumzi Shepherd Mdladlana, Minister van Arbeid, verklaar hierby kragtens artikel 32 (2) van die Wet op Arbeidsverhoudinge, 1995, die Kollektiewe Ooreenkoms wat in die Bylae hiervan verskyn, en wat in die Bedingsraad vir die Bounywerheid (Kaap die Goeie Hoop) aangegaan is en kragtens artikel 31 van die Wet op Arbeidsverhoudinge, 1995, bindend is op die partye wat die Ooreenkoms aangegaan het, bindend vir die ander werkgewers en werknemers in daardie Nywerheid, met ingang van 1 November 2004 vir die tydperk wat op 31 Oktober 2005 eindig.

**M. M. S. MDLADLANA****Minister van Arbeid****BYLAE****BEDINGINGSRAAD VIR DIE BOUNYWERHEID (KAAP DIE GOEIE HOOP)****KOLLEKTIEWE OOREENKOMS**

ooreenkomstig die Wet op Arbeidsverhoudinge, Wet No. 66 van 1995, gesluit deur en aangegaan tussen die

**Boland Meestersbouers en Verwante Bedrywe Vereniging****Master Builders and Allied Trades' Association, Cape Peninsula**

(hierna die "werkgewersorganisasies" genoem), aan die een kant, en die

**Building, Wood and Allied Workers' Union of South Africa****Building Workers' Union****National Union of Mineworkers (NUM)****South African Woodworkers' Union**

(hierna die "vakbonde" genoem), aan die ander kant,

wat die partye is by die Bedingsraad vir die Bounywerheid (Kaap die Goeie Hoop).

**1. TOEPASSINGSBESTEK**

- (1) Hierdie Ooreenkoms moet in die Bou- en die Monumentklipmesselnywerheid nagekom word—
  - (a) deur alle werkgewers wat lede van die werkgewersorganisasies is en deur alle werknemers wat lede van die vakbonde is;
  - (b) deur alle werkgewers wat nie lede van die werkgewersorganisasies is nie en deur alle werknemers wat nie lede van die vakbonde is nie;
  - (c) in die landdrosdistrikte Die Kaap, Wynberg [met inbegrip van die gedeelte van die landdrosdistrik Somerset-Wes wat voor 9 Maart 1973 (Goewermentskennisgewing No. R. 173 van 9 Februarie 1973) binne die landdrosdistrik Wynberg geval het], Simonstad, Goodwood, en Bellville, in die gedeeltes van die landdrosdistrikte Malmesbury en Stellenbosch wat voor die publikasie van onderskeidelik Goewermentskennisgewings Nos. R. 171 van 8 Februarie 1957 en R. 283 van 2 Maart 1962, binne die landdrosdistrik Bellville geval het, en in die gedeelte van die landdrosdistrik Kuilsrivier wat voor die publikasie van Goewermentskennisgewing No. R. 661 van 19 April 1974 binne die landdrosdistrik Stellenbosch geval het maar wat voor 2 Maart 1962 (Goewermentskennisgewing No. R. 283 van 2 Maart 1962) binne die landdrosdistrik Bellville geval het;
  - (d) in die landdrosdistrikte Paarl, Wellington, Stellenbosch, Kuilsrivier (uitgesonderd die gedeeltes van laasgenoemde twee distrikte wat voor die publikasie van Goewermentskennisgewing No. R. 283 van 2 Maart 1962 binne die landdrosdistrik Bellville geval het), Somerset-Wes [uitgesonderd die gedeelte wat voor 9 Maart 1973 (Goewermentskennisgewing No. R. 173 van 9 Februarie 1973) binne die landdrosdistrik Wynberg geval het], Strand en Malmesbury (uitgesonderd die gedeelte wat voor die publikasie van Goewermentskennisgewing No. R. 171 van 8 Februarie 1957 binne die landdrosdistrik Bellville geval het).

- (2) Ondanks subklousule (1) is hierdie Ooreenkoms van toepassing op—
- werknekmers in die Nywerheid wat opleiding ontvang ooreenkomstig die bepalings van die "Skills Development Act, 1998" (Wet op Vaardighedsontwikkeling);
  - werkverskaffingsdienste vir tydelike werkers, slegs arbeid-kontrakteurs, werkende vennote, werkende direkteure, prinsipale, aannemers en werkende lede van beslote korporasies wat in die Bouwyeerheid werk verrig.
- (3) Ondanks subklousule (1) (a) is die bepalings van hierdie Ooreenkoms nie van toepassing nie op—
- klerke en administratiewe personeel;
  - universiteitstudente en gegradeerde in Bouwetenskap, en op konstruksietoesighouers, konstruksieopmeters en ander persone wat besig is met praktiese werk ter voltooiing van hulle akademiese opleiding;
  - nie partye ten opsigte van klousules 1 (1) (a) en (2), 19 en 20 van hierdie Ooreenkoms.

## 2. GELDIGHEIDSDUUR VAN OOREENKOMS

Hierdie Ooreenkoms tree in werking op die datum wat die Minister van Arbeid vasstel as die inwerkingtredingsdatum waarop die Ooreenkoms vir nie partye bindend word, op die datum waarop die Minister van Arbeid weier om die Ooreenkoms tot nie partye uit te brei, en die Ooreenkoms bly van krag tot 31 Oktober 2005.

## 3. NYWERHEIDSOPTREDE

Geen persoon wat deur hierdie Ooreenkoms gebind word, mag vir die duur van die Ooreenkoms betrokke raak by of deelneem aan 'n staking of uitsluiting of enige optrede ter bevordering van 'n staking of uitsluiting ten opsigte van enige aangeleentheid wat by hierdie Ooreenkoms gereel word nie.

(1) Enige uitdrukking in hierdie Ooreenkoms gebesig wat in die Wet op Arbeidsverhoudinge, 1995, omskryf word, het dieselfde betekenis as in daardie Wet, en waar daar in hierdie Ooreenkoms van 'n wet melding gemaak word, word ook alle wysigings van sodanige wet bedoel; voorts, tensy onbestaanbaar met die sinsverband, beteken—

**"Wet"** die Wet op Arbeidsverhoudinge, 1995;

**"Gebied A"** beteken die landdrosdistrikte Die Kaap, Wynberg [met inbegrip van die gedeelte van die landdrosdistrik van Somerset-Wes wat voor 9 Maart 1973 (Goewermentskennisgewing No. 173 van 9 Februarie 1973), binne die landdrosdistrik Wynberg geval het], Simonstad, Goodwood en Bellville, in die gedeeltes van die landdrosdistrikte Malmesbury en Stellenbosch wat voor die publikasie van Goewermentskennisgewings Nos. R. 171 van 8 Februarie 1957 en R. 283 van 2 Maart 1962, binne die landdrosdistrik Bellville geval het, en in die gedeelte van die landdrosdistrik Kuilsrivier wat voor die publikasie van Goewermentskennisgewing No. R. 661 van 19 April 1974, binne die landdrosdistrik Stellenbosch geval het, maar wat voor 2 Maart 1962 (Goewermentskennisgewing No. R. 283 van 2 Maart 1962), binne die landdrosdistrik Bellville geval het;

**"Gebied B"** beteken die landdrosdistrikte Paarl, Wellington, Stellenbosch, Kuilsrivier (uitgesonderd enige gedeeltes van laasgenoemde twee distrikte wat voor die publikasie van Goewermentskennisgewing No. R. 283 van 2 Maart 1962, binne die landdrosdistrik Bellville geval het), Somerset-Wes [uitgesonderd die gedeeltes wat voor 9 Maart 1973 (Goewermentskennisgewing No. R. 173 van 9 Februarie 1973), binne die landdrosdistrik Wynberg geval het], en Strand;

**"Gebied C"** beteken die landdrosdistrik Malmesbury (uitgesonder die gedeelte wat voor die publikasie van Goewermentskennisgewing No. R. 171 van 8 Februarie 1957, binne die landdrosdistrik Bellville geval het);

**"ambagsman"** iemand wat as sodanige geregistreer is ingevolge klousule 7(6) van hierdie Ooreenkoms;

**"Bouwyeerheid "** of **"Nywerheid"** behoudens die bepalings van enige afbakeningsvasstelling gemaak kragtens van artikel 76 van die Wet op Arbeidsverhoudinge, 1956, en sonder om die gewone betekenis van die uitdrukking enigerwyse te beperk, die nywerheid waarin werkewer en werknekmer met mekaar geassosieer is met die doel om geboue en bouwerke op te rig, te voltooi, op te knap, te herstel, te onderhou of te verbou en/of om artikels te maak vir gebruik by die oprigting, voltooiing of verbouing van geboue en bouwerke, ongeag of die werk verrig, die materiaal voorberei of die nodige artikels gemaak word op die terreine van die geboue of bouwerke of elders: Met dien verstande dat sodanige vervaardigingsaktiwiteite beperk word tot die spesifieke vervaardigingsaktiwiteite wat genoem word in die hieropvolgende ambagte, of onderverdelings daarvan, en verder beperk word tot die uitvoering van sodanige werksaamhede deur 'n werkewer wat met sy werknekmers geassosieer is met die doel om geboue of bouwerke op te rig, te voltooi, op te knap, te herstel, te onderhou of te verbou vir sy gebruik in die uitvoering van bouwerk, en omvat dit alle werk wat uitgevoer of verrig word deur persone daarin wat werksaam is in ondervenomen ambagte of onderverdelings daarvan, met inbegrip van uitgravings en die voorbereiding van terreine vir geboue asook die sloping van geboue, tensy sodanige sloplings nie verrig word met die doel om die terreine vir bouwerksaamhede voor te berei nie, maar sluit dit nie klerke en administratiewe werknekmers, of die bedrading van of installering van verligting, verwarming of ander vaste elektriese toe-behore in geboue, en die installering, herstel of onderhoud van hysers in geboue, in nie:

**Asphaltwerk**, wat die volgende insluit: Die bedekking van vloere en plat en/of skuins dakke, die waterdigting of vogdigting van kelders of fondamente, hetsy met bereide roldakbedekking of asfaltvelle met geglasuurde of ongeglasuurde oppervlakte, en hetsy met gebruikmaking van teer, macadam, neuchatel, limmer of 'n ander tipe soliede of halfsoliede asfalt, mastik of emulsie-asfalt of -bitumen, wat óf warm óf koud op sodanige dakke, vloere, kelders of fondamente aangewend word;

*messelwerk*, wat die volgende insluit: Betonnering en dier aanbring van betonblokke, -blaale of -plate of glastene, die beteëling van mure en vloere, die voegstryking van steenwerk, voegvulling, plaveiwerk, mosaïekwerk, voorwerk met leie, met marmer en met komposisiemateriaal, rioollêwerk, leiwerk en pandekking, die sementkalfatering van erderiole, bitumenwerk, asfaltering en beplating; en die oprig van voorafvervaardigde betonstrukture of tuinmure en/of glasmure met pale of blaale;

*betonwerk*, wat insluit die toesighou wanneer beton op die perseel geplaas word, en die gelykmaak van oppervlakte daarvan;

*lakpolitoerwerk*, wat die volgende insluit: Poleerwerk met 'n kwas of kussinkie en bespuiting met 'n komposisiestof;

*beglasing*, wat die volgende insluit: Die sny en/of aanbring van alle soorte glas of dergelike produkte in sponnings in hout- of metaaldeure, -venters, -rame, of dergelike vaste toebehore, en alle werksaamhede wat daarmee in verband staan;

*skrynwerk*, wat die volgende insluit: Die aanbring van alle houtoebehore en die vervanging van alle skrynwerkartikels wat met sodanige toebehore in verband staan, ongeag of die persoon wat sodanige artikel vervaardig of voorberei het, die aanbringwerk in die gebou of bouwerk doen of nie, en sluit dit ook in rakkaste, kombuiskaste, of ander kombuistoebehore wat as 'n permanente deel van die gebou aangebring word;

*ruit-en-lood-werk*, wat die volgende insluit: Die vervaardiging en/of aanbring van ruite-in-lood en/of ruite in ander metaal en van vertoonglaswerk, uitgesonderd die elektriese toebehore wat daarmee gepaard gaan en die beglasing in verband daarmee;

*klipmesselwerk*, wat die volgende insluit: Klipkap- en klipbouwerk (ook die kap van klippe vir die bou van sier- en monumentklipwerk), betonwerk en die aanbring of bou van voorafgegiete of kunsklip of kunsmarmer, plaveiwerke, mosaïekwerk, voegvulling, muur- en vloerteëlwerk, die bediening van 'n Mall & Biax- of dergelike tipe verplaasbare toller, buigsame sny-, afwerk en ander klipwerkmasjienerie, klippoleermasjienerie, en die skerpmaak van klipmesselaarsgereedskap, hetsy die artikel wat gebruik word, deur die persoon wat dit gemaak of voorberei het, in die gebou of bouwerk aangebring word of nie;

*metaalwerk*, wat die volgende insluit: Die aanbring van staalplafonne, metaalvensters, metaaldeure, siermetaalwerk, metaalrame, metaaltrappe en boumetaalwerk, die vervaardiging en/of aanbring van getrokke metaal en plaat- en uitgedrukte; metaal, hetsy die artikel wat gebruik word, deur die persoon wat dit gemaak of voorberei het, in die gebou of bouwerk aangebring word of nie;

*verfwerk*, wat die volgende insluit: Versierwerk, muurplakwerk, glasering, distemperwerk, aflat- en kleurkalkwerk, beitswerk, verniswerk, vlamskilderwerk, marmering, bespuiting, muurversiering, die aanwending van grondverf en onderlaag, emaljering, vergulding, belyning, sjablonering, waspolering, en houtverduursaming, en ook die verwijdering van vert, skraping, die was en skoonmaak van geverfde of gedistemperde mure en die was en skoonmaak van houtwerk wanneer sodanige verwijdering, skraping, was en skoonmaak enige van genoemde prosesse voorafgaan;

*pleisterwerk*, wat die volgende insluit: Boetseerwerk, modelleerwerk, die aanbring van voorwerk in vorms vir stortsels, die maak van en aanbring van pleisterbordplafonne en vesel- of ander komposisiepleister, granolitiese, terrazzo- en komposisievloerwerk, komposisiemuurbekleding en die poleerwerk daarvan, die bediening van 'n Mall & Biax- of dergelike tipe verplaasbare toller en buigsame sny- en afwerkmasjienerie, voorafgegiete of kunsklipwerk, muur- en vloerteëlwerk, plavei- en mosaïekwerk, metaallatwerk, akoestiekspuitwerk en alle prosesse wat in verband staan met die voltooiing van plafonne en mure, hetsy die artikel wat gebruik word, deur die persoon wat dit gemaak of voorberei het, in die gebou aangebring word of nie;

*loodgieterswerk*, wat die volgende insluit: Sweisdeerwerk en sweiswerk, loodglaswerk, gasaanlêwerk, sanitêre en huisingenieurswerk, rioollêwerk, kalfaatwerk, ventileerwerk, verwarmingswerk, die aanlê van warm en koue water, die installering van brandsprinkelaars en die vervaardiging en aanbring van alle plaasmetaalwerk, hetsy die artikel wat gebruik word, deur die persoon wat dit gemaak of voorberei het, in die gebou aangebring word of nie;

*winkel-, kantoor- en bankuitrustingswerk*, wat die volgende insluit: Die vervaardiging en/of aanbring van winkelfronte, vensterafskortings, uitstaloste, toonbanke, skerms en binnenshuise los en vaste toebehore;

*staalwapening*, wat die volgende insluit: Die maak en oprigting van bekisting en toesighouding oor die buig, plasing en vassit in die regte posisie van staal;

*staalkonstruksie*, wat die volgende insluit: Die aanbring van metaal- of staaldakplate en/of -muurbekleding, alle klasse staal- of ander metaalsuile, lêers, staalbalke of metaal in enige ander vorm wat deel vorm van 'n gebou: Met dien verstande dat die inmekarsit, plasing en vasmaak in posisie op die bouperseel en die oprig van die metaal- of staalraamwerk (uitgesonderd metaal- of staaldakplate en/of muurbekleding) wat deel vorm van 'n gebou, van hierdie omskrywing uitgesluit is wanneer sodanige werksaamhede verrig word deur die werknemers van 'n werkewer wat sodanige metaal- en staalraamwerk vervaardig;

*houtwerk*, wat die volgende insluit: Timmerwerk, fineerpaneelwerk en die polering en skuur daarvan, houtwerk, die vervaardiging van vaste toebehore volgens spesifikasie vir installering in gespesifieerde geboue en die vervaardiging van voorrade daarvan, masjinering, draaiwerk, houtsnywerk, die aanbring van golfyster- of asbesteël-, dakspaan- en ander dagedekkings, klank- en akoestiekmaterial, kurk- en asbesisoliasie, houtlatwerk, komposisieplafonne en -muurbekleding, die boor van gate en die insit van muurproppe, die bedekking van houtwerk met metaal,

en die bedekking van metaal met houtwerk, blokkies- en ander bevloering met inbegrip van bevloering met hout, linoleum, rubberkomposisie, asfaltiese vloerbedekkings of kurk, asook die skuur daarvan met skuurpapier, die bediening van 'n Mall & Biax- of dergelike tipe verplaasbare toller en meerdoelige sny-, afwerk- en poleermasjinerie, bekisting en/of voorbereiding van vorms vir beton, kurktaptydstof en enige klas of soort linoleum wanneer dit in 'n gebou of bouwerk aangebring word en die aanbring van asfaltversadigde vilt of materiale aan vloere en/of mure en/of dakke, ongeag of die artikel wat gebruik word, deur die persoon wat dit gemaak of voorberei het, in die gebou of bouwerk aangebring word of nie. Vir die doeleindes van hierdie omskrywing beteken "bouwerk" 'n bouwerk van die aard van 'n gebou of bykomstig by 'n gebou;

**"skoonmaker"** 'n werknemer wat algemene skoonmaakwerksaamhede verrig wat gewoonweg en volgens gebruik in die Bouwyeheid gedoen word;

**"aaneenlopende diens"** enige tydperk wat 'n werknemer aaneenlopend by dieselfde werkewer werk, en vir doeleindes hiervan word dienstydperke by dieselfde werkewer wat onderbreek is deur hoogstens 60 dae vanaf die datum van diensbeëindiging tot herindiensneming van die werknemer as gevolg van ontslag of diensvermindering, beskou as aaneenlopende diens;

**"Raad"** die Bedingsraad vir die Bouwyeheid (Kaap die Goeie Hoop), geregistreer ingevolge artikel 29 van die Wet;

**"drywer"** 'n werknemer wat 'n motorvoertuig dryf, en by die toepassing van hierdie omskrywing sluit " 'n motorvoertuig dryf" alle tydperke in wat daar gedryf word en alle tyd wat 'n drywer aan werk in verband met die voertuig of die vrag bestee en alle tydperke wat daar van hom vereis word om op sy pos te bly, gereed om te dryf; voorts, vir die doeleindes van hierdie Ooreenkoms, word 'n drywer ingedeel in een van die volgende kategorieë:

- (a) Drywers van voertuie waarvoor daar vereis word dat die drywer in besit van 'n Kode C1-lisensie of hoër moet wees;
- (b) drywers van voertuie waarvoor daar vereis word dat die drywer in besit van 'n Kode A-, A1- of B-, of laer, lisensie moet wees;

**"werknemer"—**

- (a) enige persoon, behalwe 'n onafhanklike kontrakteur, wat werk doen vir 'n ander persoon en besoldiging ontvang, of geregtig is om besoldiging te ontvang; en

- (b) enige ander persoon wat op enige wyse help om die besigheid van 'n werkewer voort te sit of te bedryf;

**"werkewer"** enige persoon wat iemand in diens neem of werk verskaf aan 'n persoon, en die persoon besoldig, of uitdruklik of stilswyend onderneem om die persoon te besoldig, of wat enige persoon toelaat om hom op enige wyse by te staan in die voortsetting of bedryf van sy besigheid;

**"vastetermynkontrakte"** 'n kontrak wat eindig op 'n bepaalde datum in die kontrak gestipuleer;

**"algemene werker"** 'n werknemer wat nie as 'n arbeider, skoonmaker, drywer/kragaangedrewe-masjiener, kwekelingbouwerker, bouwerker, ambagsman, vakleerling of veiligheidswag ingevolge hierdie Ooreenkoms geregistreer is nie;

**"nywerheidsoptrede"** enige optrede beoog ingevolge die omskrywing van "staking" of "uitsluiting" in die Wet;

**"skrynwerkmonterer"** 'n werknemer wat geregistreer is as 'n leerling, Klas 3, kragtens klousule 7(5) van hierdie Ooreenkoms;

**"arbeider"** 'n werknemer wat die eerste keer in die Boubedryf in diens geneem word: met dien verstande dat sodra 735 daagliks byvoordele deur sodanige werknemer verdien is en deur die Raad aangeteken is, sogenaamde werknemer outomaties bevorder word tot "algemene werker" soos hierin omskryf;

**"leerling"** enige werknemer wat as 'n leerling geregistreer is kragtens klousule 7(4) van hierdie Ooreenkoms;

**"leerlingskap"** 'n leerlingskap geregistreer by die Construction Education and Training Authority ingevolge artikel 16 van die Skills Development Act, 1998, wat onderworpe is aan die regulasies bekend as The Learnership Regulations, 2001, soos gewysig, gepubliseer in Staatskoerant No. 7043 van 3 April 2001;

**"masjiener"** 'n werknemer wat, geregistreer is as 'n leerling, Klas 2, kragtens klousule 7(5) van hierdie Ooreenkoms;

**"vervaardingswerker"** 'n werknemer, wat geregistreer is as 'n leerling, Klas 4, kragtens klousule 7(5) van hierdie Ooreenkoms;

**"gewone werkure"** die aantal werkure wat 'n spesifieke werkewer by kontrak met sy werknemer ooreenkom op enige gewone werkdag gewerk moet word, uitgesonderd alle ure op enige dag oortyd gewerk;

**"gewone werkdag"** enige dag wat 'n spesifieke werkewer by kontrak met 'n werknemer ooreenkom 'n gewone werkdag te wees, insluitende openbare vakansiedae wat op 'n gewone werkdag val, maar uitgesonderd alle ander dae wat nie op 'n gewone werkdag val nie en wat as ure oortyd besoldig word;

**"kragaangedrewe-masjiener"** 'n persoon wat kragaangedrewe masjienerie bedien, en vir die doeleindes van hierdie Ooreenkoms word 'n kragaangedrewe-masjiener geklassifiseer in een van die volgende kategorieë;

- (a) Bedieners van masjinerie wat van die bediener vereis dat hy in besit moet wees van 'n Kode C1-lisensie of hoër;
- (b) Bedieners van masjinerie wat van die bediener vereis dat hy in besit moet wees van 'n Kode 1-, A1- of of B lisensie;

**"veiligheidswag"** enige werknemer wat gemoeid is met die beskerming of beveiling op welke wyse ook al van eiendom en/of persele, insluitende maar nie beperk nie tot bewaking, patrolling of beskutting van, of toesighouding of eiendom en/of persele;

**"kundigheids- en opvoedingstrust"** die Kundigheids- en Opvoedingstrust, trustaktnummer IT1029/2001;

**"werkverskaffingsdiens vir tydlike werkers"** persoon wat teen vergoeding, vir 'n ander persoon (hierna die "kliënt" genoem) persone verkry of verskaf—

- (a) wat aan die kliënt lewer of vir die kliënt werk doen; en
- (b) wat deur die werkverskaffingsdiens besoldig word;

**"loon"** die basiese loon voorgeskryf ingevolge klousule 9(1) van hierdie Ooreenkoms ten opsigte van gewone ure gewerk ooreenkomstig klousule 8(1): Met dien verstande dat as 'n werkewer 'n werknemer op 'n gereelde basis 'n bedrag hoër as die basiese loon betaal ten opsigte van gewone ure gewerk, sodanige hoër bedrag bedoel word en die werknemer kwalifiseer vir die ekwivalente bedrag van verhoging in die basiese loon vir daardie kategorie werknemer.

(2) 'n Persoon wat werk vir of dienste verskaf aan enige ander persoon, word vermoed, totdat teendeel bewys word, 'n werknemer te wees van daardie persoon, ongeag die vorm van die kontrak, indien enige van die volgende faktore aanwesig is.

- (a) Die wyse waarop die persoon werk, is onderworpe aan die beheer of leiding van 'n ander persoon;
- (b) die persoon se werkure is onderworpe aan die beheer of leiding van 'n ander persoon;
- (c) in die geval van 'n persoon wat vir 'n organisasie werk, maak die persoon deel van daardie organisasie uit;
- (d) die persoon het oor die afgelope drie maande gemiddeld minstens 40 uur per maand vir daardie ander persoon gewerk.
- (e) die persoon is ekonomies afhanklik van die ander persoon vir wie hy of sy werk of dienste lewer;
- (f) die persoon word deur die ander persoon van bedryfsgereedskap of werkstoerusting voorsien; of
- (g) die persoon werk vir of lewer dienste slegs aan een persoon.

(3) Subklousule (2) is nie van toepassing nie op enige persoon wat meer verdien nie as die bedrag wat die Minister van Arbeid ingevolge artikel 6(3) van die Wet op Basiese Diensvooraardes, 1997, bepaal,

(4) In hierdie Ooreenkoms, tensy uit die konteks anders blyk, sluit woorde wat die enkelvoud aandui, ook die meervoud in en omgekeerd, sluit woorde wat enige geslag aandui ook die ander geslag in en sluit woorde wat persone aandui, ook venootskappe en regspersone in.

## 5. VLAKKE VAN BEDINGING

Die Raad is die forum waar daar oor alle aangeleenthede aangaande hierdie Ooreenkoms beding moet word.

## 6. REGISTRASIE VAN WERKGEWERS

(1) Elke werkewer in die Nywerheid op wie hierdie Ooreenkoms van toepassing is, moet by die Raad geregistreer wees.

(2) 'n Werkewer registreer by die Raad deur die nodige inligting op die voorgeskrewe vorm aan die Raad te verskaf en moet daarin waarborg dat aansoek gedoen is om registrasie by die Suid-Afrikaanse Inkomstediens vir werknemerbelasting en belasting op toegevoegde waarde (indien van toepassing), registrasie by die Werkloosheidsversekeringsfonds en registrasie ingevolge die Wet op Vergoeding vir Beroepsbeserings en -siektes.

(3) Elke werkewer moet die Raad skriftelik in kennis stel van enige verandering in die besonderhede verskaf ten tyde van registrasie ofanneer hy werk in die Nywerheid staak, en wel binne veertien (14) dae ná sodanige verandering of staking van werk.

(4) 'n Registrasiesertifikaat onderteken deur óf die Voorsitter óf die Sekretaris van die Raad, moet aan elke geregistreerde werkewer uitgereik word.

(5) Elke werkewer wat nie elke week op die keerdatum voorgeskryf in hierdie Ooreenkoms aan die Raad die nodige heffings en bydraes betaalbaar deur hom en sy werknemers betaal nie, moet rente teen die primakoers deur die Raad se bank gehef, plus 2%, soos bereken vanaf die keerdatum tot die datum van betaling, aan die Raad betaal.

(6) 'n Werkewer moet die nodige werknemerrekords hou, soos voorgeskryf by hoofstuk 4 van die Wet op Basiese Diensvooraardes, 1997, en klousules 10 en 12 van hierdie Ooreenkoms.

(7) Die Raad moet 'n register van geregistreerde werkewers hou, wat algemeen bekendgemaak en op versoek aan ander werkewers beskikbaar gestel word.

(8) 'n Nuut geregistreerde werkewer is daarop geregtig om van die Raad kosteloos oriëntasie-opleiding te ontvang ten opsigte van arbeidswetgewing, hierdie Ooreenkoms en die opstel van loonrekords en hulp met registrasie vir die "National Certificate of Contracting"-leerlingskap.

6a. Nakoming deur werkgewers, subkontraktering en gebruik van werkverskaffingsdienste vir tydelike werkers:

- (1) Die Raad moet 'n register hou van alle werkgewers van goeie aansien by die Raad. Hierdie register moet algemeen bekendgemaak word en op versoek beskikbaar wees vir ander werkgewers.
- (2) 'n Werkewer het vir doeleindes van subklousule (1) goeie aansien by die Raad as die werkewer ooreenkomsdig klousule 6 by die Raad geregistreer is en nie versuim het om enige nakomingsbevel na te kom en/of enige boete te betaal wat ingevolge klousule 25(1)(d)(ii) van hierdie Ooreenkoms opgelê is nie.
- (3) Geen persoon mag 'n ooreenkoms gemik op die subkontraktering van Bounywerheidswerk met 'n ander persoon aangaan nie, tensy beide persone werkgewers is wat ten tyde van die aangaan van die ooreenkoms goeie aansien by die Raad het: Met dien verstande dat waar persone ooreenkoms om vir 'n onbepaalde tydperk of vir 'n tydperk langer as 12 maande werk te subkontrakteer, die partye by so 'n ooreenkoms goeie aansien by die Raad moet hê, elke keer as gesubkontrakteer word ingevolge die ooreenkoms. 'n Persoon wat, ten spyte van die voorgaande, Bounywerheidswerk aan 'n ander persoon subkontrakteer wat op die bepaalde tydstip nie goeie aansien by die Raad het nie, is gesamentlik en afsonderlik aanspreeklik indien die subkontrakteur, ten opsigte van enige van sy werkemers, versuim om enige van die verpligtinge ingevolge hierdie Ooreenkoms of 'n bindende arbitrasietoekenning waarby diensvoorraadese en -bedinge ooreenkomsdig die Wet op Basiese Diensvoorraadese, 1997, gereel word, na te kom.
- (4) Geen persoon mag 'n ooreenkoms aangaan vir die gebruik van 'n werkverskaffingsdiens vir tydelike werkers met betrekking tot Bounywerheidswerk nie, tensy beide die persoon en die werkverskaffingsdiens tydens die aangaan daarvan werkgewers met goeie aansien by die Raad is: Met dien verstande dat waar persone so 'n ooreenkoms vir 'n onbepaalde tydperk of vir 'n tydperk langer as 12 maande aangaan, die partye by so 'n ooreenkoms goeie aansien by die Raad moet hê by elke geleentheid wat die diens van die werkverskaffingsdiens benut word kragtens die ooreenkoms. Die bepalings van artikel 198 van die Wet is van toepassing op enige persoon wat 'n ooreenkoms aangaan om 'n werkverskaffingsdiens vir tydelike werkers te benut vir werk in die Bounywerheid.

## 7. REGISTRASIE VAN WERKNEMERS

(1) Alle persone werksaam in die Bounywerheid moet by die Raad geregistreer wees en welke werkemmer en die werkewer van sodanige werkemmer is gesamentlik verantwoordelik vir die registrasie van die werkemmer by die Raad binne 60 dae na die werkemmer se diensaanvaarding.

(2) Die Bediningsraad moet aan elke geregistreerde werkemmer 'n Bediningsraadidentiteitskaart uitrek en die werkemmer moet die kaart te alle tye byderhand te hê wanneer werksaam in die Bounywerheid.

(3) Die Raad dra die aanvanklike koste van die Bediningsraadidentiteitskaart, maar die werkemmer is verantwoordelik vir die koste van die vervanging van 'n verlore identiteitskaart.

(4) **Leerlingskap:** 'n Geregistreerde werkewer of 'n werkewersorganisasie wat ingevolge 'n groepskema optree, mag 'n persoon as 'n leerling ingevolge 'n leerkontrak ooreenkomsdig die Skills Development Act, 1998, in diens neem en die Raad moet, onderworpe aan die volgende voorraadese, so 'n persoon as 'n leerling registreer:

- (a) Die persoon moet geregistreer wees as 'n leerling ingevolge die Construction Education and Training Authority (CETA).
- (b) Die leerling is daarop geregtig om werk in 'n aangewese ambag te verrig slegs wanneer die Raad vanaf die CETA 'n geldige sertifikaat van registrasie ten opsigte van daardie ambag vir die leerling ontvang het.
- (c) Vir die doeleindes van sy leerlingskap het die leerling die reg om opleiding te ondergaan by sy werkewer of onder beskerming van enige geakkrediteerde opleidingsinstansie.
- (d) Wanneer die leerling die nodige groep krediete ten opsigte van 'n opleidingskursus, soos bepaal in subklousule (5) hieronder, afgehandel het, moet die Raad die leerling herregstreer in die toepaslike ambagkategorie.
- (e) 'n Leerling is daarop geregtig om 'n loon te ontvang ooreenkomsdig die loon voorgeskryf in klousule 9 ten opsigte van die ambagkategorie waarin hy van tyd tot tyd geregistreer is.

(5) **Bouwerker:**

- (a) 'n Leerling in 'n gespesifieerde kategorie word as 'n bouwerker in daardie kategorie geregistreer ooreenkomsdig die volgende:
  - (i) Ten opsigte van Klas 4, indien hy minder as 55 persent van die krediete in die voorgeskrewe kursus voltooi het.
  - (ii) Ten opsigte van Klas 3, indien hy 55 tot 74 persent van die krediete in die voorgeskrewe kursus voltooi het.
  - (iii) Ten opsigte van Klas 2, indien hy 75 tot 99 persent van krediete in die voorgeskrewe kursus voltooi het.
- (b) Werkewers en vakbonde moet poog om te verseker dat leerlinge hul opleiding binne die gespesifieerde tydperk afhandel.

(c) Enige persoon wat buite die geregistreerde bestek van die Raad in diens is as 'n geskoolde werker, uitgesonderd 'n ambagsman gekwalifiseer ingevolge klousule 6 (b), is verplig om evaluering van vroeëre leer te ondergaan by 'n geakkrediteerde opleidingsverskaffer om die eenheidstandarde te bepaal waarin hy bekwaam is en ten opsigte waarvan hy krediet moet ontvang en ingevolge waarvan hy daarna geregistreer moet word as 'n bouwerker in 'n spesifieke kategorie, soos volg:

	Bekwaamheid	Klas
(i)	Onder 55 persent .....	4
(ii)	55–74 persent .....	3
(iii)	75–99 persent .....	2
(iv)	Alle krediete voltooi .....	Ambagsman

(6) **Ambagsman:**

- (a) 'n Werknemer word geregistreer as 'n ambagsman sodra hy die ambagstoets geslaag het of die aantal krediete voltooi het wat hom kwalifiseer om as ambagsman te werk.
- (b) 'n Ambagsman is daarop geregtig om betaling te ontvang ooreenkomsdig die loon vir sy kategorie van ambagsman voorgeskryf in klousule 9.
- (c) As 'n werkewer te eniger tyd van mening is dat 'n ambagsman nie sy dienste op 'n aanvaarbare vaardigheidsvlak kan verrig nie, kan daardie werkewer op sy eie koste daarop aandring dat die ambagsman 'n vaardigheidstoets ondergaan en die ambagsman is dan verplig om die toets te ondergaan.

(7) In klousule 7 beteken 'n krediet soos van tyd tot tyd omskryf in die regulasies uitgevaardig ingevolge die Wet op die Suid-Afrikaanse Kwalifikasie-owerheid, 1995.

## 8. DIENSVORWAARDES

(1) **Gewone werkure:** (a) Gewoonweg mag daar van geen werknemer vereis word om meer as die volgende ure te werk nie:

Kategorie	AREA A		AREAS B EN C	
	Daagliks ure	Weeklikse ure	Daagliks ure	Weeklikse ure
(i) Veiligheidswag .....	9 uur	45 uur	9 uur	45 uur
(ii) Drywer .....	8 hours 45 minutes	42 uur	9 uur	45 uur
(iii) Algemene werker en skoonmaker	8 uur 30 minute	41 uur	9 uur	44 uur
(iv) Alle ander werknemers .....	8 uur	40 uur	9 uur	44 uur

(b) Met uitsondering van veiligheidswakte word gewone ure daagliks gewerk tussen 07:00 en 19:00 van Maandae tot Vrydae. Veiligheidswakte mag nie op meer as ses opeenvolgende dae in 'n week werk nie.

(2) **Ruspouses:** (a) Elke werknemer is geregtig op daagliks ete- en/of ruspouses wat altesaam nie meer as 60 minute is nie, wat ook nie deel van sy gewone werkure uitmaak nie en wat geneem word op die tye ooreengeskryf met sy werkewer.

(b) Geen werkewer mag van 'n werknemer vereis om meer as vyf aaneenlopende ure sonder ruspouse te werk nie.

(3) (a) **Skofwerker:** 'n Werkewer kan van sy werknemers vereis dat hulle skofte werk: Met dien verstande dat daar nie van enige werknemer vereis word om meer as een 8-uur of 12-uur skof te werk tydens enige tydperk van 24 uur nie.

(b) **Buigsame werkure:** 'n Werkewer en 'n werknemer kan ooreenkomaan om 'n saamgeperste werkweek te werk of om die werkuregemiddeld te bereken soos bedoel in artikels 11 en 12 van die Wet op Basiese Dienstvoorwaardes, 1997.

(4) **Oortyd:** (a) Alle ure wag gewone werkure in enige week oorskry, word geag oortyd te wees.

(b) Enige werkewer kan versoek, welke versoek nie onredelikerwys geweiier mag word nie, dat 'n werknemer oortyd werk vir 'n tydperk van hoogstens as drie uur daagliks, Maandae tot Vrydae, en hoogstens agt uur op Saterdae of Sondae: Met dien verstande dat die maksimum aantal ure oortyd gewerk in enige week, nie die maksimum ure oortyd soos voorgeskryf in die Wet op Basiese Dienstvoorwaardes oorskry nie: Met dien verstande voorts dat 'n werkewer en enige werknemer wat motorvoertuie moet dryf, kan ooreenkomaan en 'n kontrak kan sluit dat 'n maksimum van een uur oortyd voor die aanvang van gewone werkure en 'n maksimum van een uur oortyd aan die eiende van gewone werkure elke dag verpligte oortyd is vir die doel om werknemers na en van hul werkplek te vervoer.

(c) 'n Werknemer betrokke by 'n deurlopende werksproses, is verplig om te werk totdat daardie proses voltooi is, en ontvang oortydbetaling, waar van toepassing.

(5) **Openbare vakansiedae:** Die openbare vakansiedae, soos geproklameer ingevolge die Wet op Openbare Vakansiedae, 1994, word erken as betaalde openbare vakansiedae as dit op 'n gewone werksdag val: Met dien verstande dat die betaling wat deur die Raad gemaak word as besoldiging vir die jaarlikse vakansie, betaling insluit vir al die openbare vakansiedae wat op gewone werkdae gedurende die drie weke jaarlikse sluitingstydperk val.

(5A) Ondanks enigets vervat in subklousules (1) tot (5) hierbo, moet veiligheidswagte skofte werk ooreenkomstig die werkgewer se bedryfsvereistes: Met dien verstande dat geen veiligheidswag meer as 13 uur gedurende 'n nagskof en 11 uur gedurende 'n dagskof mag werk nie.

(6) **Jaarlike verlof:** (a) Elke werknemer is geregtig op jaarlike verlof tydens die jaarlike sluitingstydperk van die Bouwverheid, waarvan die datums deur die Raad bepaal moet word teen nie later nie as 30 Junie elke jaar.

(b) Ondanks die bepalings van paragraaf (a), kan 'n werknemer met sy werkgewer ooreenkomm om tydens die jaarlike verloftydperk te werk, waarvoor hy betaling moet ontvang soos bepaal in klousule 9(1) vir die tyd tydens daardie tydperk gewerk.

(c) **Veiligheidswagte** en ander werknemers wat tydens die jaarlike verloftydperk werk, moet verlof toegestaan word, soos met hulle werkgewers ooreengekom, gelyk aan die tydperk gewerk tydens die jaarlike sluitingstydperk.

(7) **Siekteverlof:** 'n Werknemer is geregtig op siekteverlof ooreenkomstig die bepalings van die Siekgefonds vir die Bouwverheid en klousule 15 van hierdie Ooreenkoms, en op betaling vir die tydperk van sodanige siekteverlof ingevolge die bepalings daarvan.

(8) **Beëindiging van dienskontrak:** (a) 'n Werkgewer of werknemer wat van voorneme is om 'n dienskontrak te beëindig, moet die ander party een week skriftelike kennis gee van beëindiging van die kontrak, welke kennis ingedien moet word voor 12:00 op enige werkdag, en vanaf 08:00 op die volgende werkdag in werking tree as sodanige kontrak vir tot ses maande aaneenlopend was, en twee weke skriftelike kennis as sodanige kontrak langer as ses maande aaneenlopend was.

(b) Ondanks die bepalings van paragraaf (a) is enige party daarop geregtig om die dienskontrak sonder kennisgewing te beëindig deur betaling van 'n bedrag in plaas van die voorgeskrewe kennisgewingtydperk.

(c) In die geval waar 'n werknemer dros, of nie die voorgeskrewe betaling doen in plaas van die kennisgewingtydperk nie, en waar die werkgewer dit kan bewys, is die werkgewer daarop geregtig om die toepaslike kennisgewingtydperkbetaling te verhaal uit enige gelde aan die werknemer verskuldig uit die Vakansiefonds.

(d) Niks in hierdie klousule tas die reg van 'n werkgewer of werknemer aan om die dienskontrak sonder kennisgewing te beëindig nie.

(e) 'n Dienskontrak word outomatis beëindig as 'n werknemer sonder die werkgewer se toestemming vir meer as vyf aaneenlopende werkdae afwesig is, tensy die werknemer afwesig is as gevolg van omstandighede buite sy beheer: Met dien verstande dat 'n werkgewer die afwesigheid van 'n werknemer ondersoek en billike prosedures toepas om te bepaal of diensbeëindig moet plaasvind.

#### (9) **Tydelike ontslag en skorsing:**

(a) 'n Werkgewer is daarop geregtig om 'n werknemer tydelik te ontslaan—

- (i) as gevolg van gure weer;
- (ii) as gevolg van 'n tekort aan materiale weens omstandighede buite die beheer van die werkgewer: Met dien verstande dat die werkgewer die ekwivalent van twee uur se loon vir kort kennisgewing voor die tydelike ontslag 'n aanvang neem, aan die werknemer betaal;
- (iii) as gevolg van 'n tydelike tekort aan werk: Met dien verstande dat een dag skriftelik kennis hiervoor gegee is, en dat sodanige kennisgewing die rede vir die tydelike ontslag gee, asook die tydperk van die ontslag: Met dien verstande voorts dat die werkgewer, behalwe soos hierbo genoem, nie verplig is om 'n werknemer enige betaling te gee gedurende sodanige ontslag nie.

(b) 'n Werknemer mag tydelik ontslaan word vir 'n aaneenlopende tydperk van hoogstens 20 werkdae en indien die werkgewer aan die einde van die tydperk verlang dat die tydelike ontslag vir 'n verdere 20 werkdae verleng word, moet die werknemer eers die keuse gegun word om permanent afgelê te word ooreenkomstig die prosedure bepaal in subklousule (10): Met dien verstande dat indien die werknemer kies om vir 'n tweede tydperk van 20 werkdae tydelik ontslaan te word, die werkgewer die personeelafleggingsprosedure soos uiteengesit in ubklousule (10) nie later nie as 10 werkdae voor die verstryking van die tweede tydperk van 20 werkdae tydelik ontslag in werking moet stel as die werkgewer weet dat daar geen moontlikheid is dat die werknemer na die verstryking van die tweede tydelike ontslag weer in diens geneem sal word nie: Met dien voorwaarde voorts dat die werknemers geregtlik is daarop om aansoek te doen om werkloosheidsvoordele gedurende die afleggingstydperk.

(c) Geen werkgewer mag as 'n dissiplinêre maatreël 'n werknemer eensydig vir enige tydperk uit die werk skors nie.

(10) **Personeleaflegging:** (a) 'n Werkgewer wat beoog om personeel af te lê, moet minstens tien werkdae voor die beoogde datum van kennisgewing van die werknemer se diensbeëindiging, aan die betrokke vakbond waarvan die moontlike afleggingskandidate volgens sy kennis is daarop lede is, skriftelik die volgende inligting gee:

- (i) Die aantal werknemers wat afgelê kan word, tesame met hulle name, dienstydperk, Vakansiefondsnommer van die Beddingsraad en werkskategorieë;
- (ii) die beoogde datum van aflegging;
- (iii) die redes vir die beoogde aflegging, insluitende alle opsies wat die werkgewer oorweeg het om die afleggings te vermy asook die redes waarom dit nie aanvaar is nie;
- (iv) die beoogde sittingskriteria ten opsigte van die persone wat afgelê moet word;

- (v) die beoogde datum van oorlegpleging met die vakbond(e) en/of werknemer(s) wat moontlik geraak sal word;
- (vi) die beoogde afleggingsbetaling; en
- (vii) die werkgewer se voorstelle ten opsigte van bystand aan die afgelegdes, wat die moontlikheid van herindiensneming insluit.
- (b) Indien 'n werknemer wat moontlik geraak sal word deur die beoogde afleggings, nie 'n vakbondlid is nie, moet die inligting bedoel in paragraaf (a), regstreeks aan sodanige werknemer verskaf word.
- (c) Die vakbond(e) en/of werkenemer(s) moet skriftelik reageer op die werkgewer se afleggingsvoorstelle, minstens drie werkdae voor die voorgestelde datum van oorlegpleging, wat al sy/hulle voorstelle ten opsigte van die aflegging moet insluit.
- (d) Die werkgewer moet poog om deur middel van oorlegpleging konsensus met die vakbond(e) en/of werknemer(s) te bereik ten opsigte van die afleggingsvoorstelle: Met dien verstande dat indien konsensus nie voor die verstryking van die tiendaetydperk bedoel in paragraaf (a) bereik kan word die werkgewer daarop geregtig is om sy afleggingsvoorstelle in werking te stel.
- (e) Die werkgewer is daarop geregtig om sy afleggingsvoorstelle te eniger tyd in werking te laat tree as die vakbond(e) en/of werknemer(s) nie skriftelik reageer nie of weier en/of in gebreke bly om met die werkgewer oorleg te pleeg ooreenkomsdig hierdie subklousule.
- (f) 'n Werknemer wat afgelê is ingevolge hierdie subklousule, is geregtig op 'n afleggingsbetaling van een week van sodanige werknemer se huidige basiese loon vir elke voltooide jaar van aaneenlopende diens by sy werkgewer: Met dien verstande dat die werkgewer nie kragtens die Wet vrygestel is van die bepalings van hierdie subklousule nie.
- (11) **Kontrakte vir prestasiestandaarde:** (a) 'n Werkgewer en 'n werknemer kan skriftelik 'n kontrak vir prestasiestandaarde aangaan mits ooreenstemming daaroor minstens vyf werkdae voordat die taak 'n aanvang neem, bereik word.
- (b) Betaling ingevolge 'n kontrak vir prestasiestandaarde mag nie minder wees nie as die basiese loon plus voordele vir die gewone werkure vir die beplaarde kategorie werknemer voorsgekryf in hierdie Ooreenkoms, mits alle statutêre bepalings vir dienskontrakte, met inbegrip van werkloosheidversekering, aftrekkings vir inkomstebelasting en die beplaings van hierdie Ooreenkoms, nagekom word.
- (12) **Proeftydperk:** Enige proeftydperk vir 'n dienskontrak is soos in die Wet voorgeskryf word, en die Goeie Praktykskode genoem in Bylae 8 van die Wet moet nagekom word voordat diensbeeindiging van krag word.
- (13) **Kraamverlof en verlof vir gesinsverantwoordelikheid:** Die beplaings van artikel 25 en 27 van die Wet op Basiese Diensvoorraades, 1997, moet in die Bouwerywerheid toegepas word.
- (14) **Verlof vir vakbondbedrywigheide:** Die bepalings van artikel 15 van die Wet op Arbeidsverhoudinge, 1995, moet in die Bouwerywerheid toegepas word.

## 9. BESOLDIGING

- (1) **Basiese lone:** (a) Die basiese loon in die Nywerheid is soos volg:

Kategorie van werknemer	Minimum loon– per uur		
	Area A	Area B	Area C
(i) Arbeider .....	R	R	R
(ii) Skoonmaker.....	8,28	6,76	5,95
(iii) Algemene werker .....	8,28	6,82	6,00
(iv) Bouwerker, Klas 4, en leerling, Klas 4.....	12,83	10,52	9,24
(v) Bouwerker, Klas 3, en leerling, Klas 3 .....	13,76	12,21	10,71
(vi) Bouwerker, Klas 2, leerling, Klas 2, en bloklêer .....	15,18	14,13	12,39
(vii) Drywer/kragaangedreve-masjiënbediener wat 'n kode C1- of hoër lisensie benodig .....	20,69	18,18	15,94
(viii) Drywer wat 'n kode A-, A1- of B- lisensie benodig .....	17,28	Per dag 118,98	Per dag 104,37
(ix) Ambagsman .....	13,00	Per dag 88,04	Per dag 77,27
(x) Veiligheidswag .....	27,66	23,59	20,66
	116,55	Per dag 86,72	Per dag 76,17

(b) Niks in hierdie klousule verhinder 'n werkgewer om meer as die voorgeskrewe basiese loon te betaal nie: Met dien verstande dat geen party by hierdie Ooreenkoms of enige werknemer daarop geregtig is om nywerheidsoptrede te gebruik om 'n werkgewer te dwing om meer as die basiese loon voorgeskryf in hierdie Ooreenkoms, te betaal nie.

(2) **Oortyd:** 'n Werknemer is soos volg geregtig op betaling ten opsigte van oortyd gewerk ooreenkomsdig klousule 8 (4) (a): Met dien verstande dat in gebiede B en C die eerste uur oortyd wat op Maandae tot Donderdae gewerk word, teen die basiese loon vergoed word

Dae gewerk	Veelvoud van basiese loon
(i) Maandae tot en met Saterdae.....	$1\frac{1}{3}$
(ii) Sondae .....	2

(2) **Openbare vakansiedae:** (a) 'n Werknemer wat nie op 'n openbare vakansiedag moet werk wat gewoonlik 'n werksdag is nie, moet sy gewone daagliks basiese loon ontvang ten opsigte van daardie openbare vakansiedag.

(b) 'n Werknemer wat op 'n openbare vakansiedag moet werk wat gewoonlik 'n werkdag is, moet bo en behalwe die betaling ingevolge paragraaf (a), ook betaal word teen 'n skaal gelyk aan sy gewone basiese loon ten opsigte van alle ure gewerk op daardie dag.

(d) 'n Werknemer wat op 'n openbare vakansiedag moet werk wat op 'n Saterdag op 'n Sondag val, moet betaal word volgens die gewone oortydbetaling, en is nie geregtig op enige bykomende betaling ten opsigte van sodanige openbare vakansiedag nie.

(4) **Skofwerk:** 'n Werknemer wat 'n ander skof werk as die skof gedurende gewone werkure, moet sy gewone basiese loon ingevolge subklousule (1), ontvang plus 15%: Met dien verstande dat die bepalings van hierdie subklousule nie op 'n veiligheidswag van toepassing is nie.

(4A) Ondanks enigiets vervat in subklousules (1) tot (4) hierbo, moet 'n veiligheidswag wie se skofwerk 'n Sondag of openbare vakansiedag insluit, die betaling ten opsigte van so 'n Sondag of openbare vakansiedag teen die gewone basiese koers ontvang, tensy dit neerkom op oortyd ooreenkomsdig klausule 8(4)(a) hierbo, in welke geval betaling moet geskied teen 'n koers van een en 'n derde die gewone basiese koers.

(5) **Gevaarlike werk:** Bo en behalwe die lone voorgeskryf in subklousule (1), moet 'n werkewer aan sy werknemer 10% van sodanige loon betaal ten opsigte van elke uur of gedeelte daarvan, dat hy betrokke is by die verrigting van gevhaarlike werk. Vir die doeleindes van hierdie klausule beteken "gevaarlike werk" enige werk wat as gevhaarlike werk beskryf word in 'n wet, provinsiale ordonnansie, munisipale verordening of regulasie wat op die Boubedryf van toepassing is.

(6) **Toelaes:** (a) Die basiese loon betaalbaar ingevolge subklousule (1) word geag toelaes ten opsigte van gure weer, looptyd en vervoerkostes in te sluit.

(b) 'n Werknemer wat weg van sy gewone woonplek moet werk, moet daagliks 'n afwesigheidstoelae ontvang van R50 ten opsigte van elke nag wat die werknemer weg is van sy gewone woonplek en hierdie bedrag moet jaarliks verhoog word met dieselfde persentasie as die totale gemiddelde verhoging in basiese lone vir alle kategorieë werknemers, of die werkewer moet toepaslike slaapakkommodesie voorsien vir elke nag wat die werknemer weg van sy gewone woonplek moet deurbring.

(c) Ondanks die bepalings van paragraaf (a) mag werkewers nie gedwing word om aan werknemers of vervoer te verskaf óf addisionele vervoertoelaag te betaal nie: Met dien verstande dat indien 'n individuele werkewer dit om bedryfs- of logistieke redes nodig ag, hy vir 'n spesifieke terrein waar daar nie publieke vervoer is nie, kan onderhandel met werknemers in verband met vervoerreëlings of addisionele vervoertoelaes, en sodanige werknemers is geregtig op vakbondverteeenwoordiging.

## 10. LOONBETALINGSPROSEDURE

(1) **Betaling van lone:** (a) 'n Werknemer moet sy loon ontvang op 'n tyd en plek deur sy werkewer bepaal: Met dien verstande dat die betaling gemaak word—

(i) met weeklikse, tweeweeklikse of maandelikse tussenproses;

(ii) in kontant, per tjak of deur middel van 'n elektroniese bankoorplasing, soos ooreengekom tussen die werkewer en die werknemer; en:

(iii) nie later nie as sluitingstyd op die laaste werkdag van elke betaaltydperk.

(b) Met uitsondering van betaling deur middel van elektroniese bankoorplasing, moet die werknemer se loon aan hom betaal word op die terrein waar hy in diens is, of by die kantoor of werkswinkel van die werkewer.

(c) 'n Werknemer wie se dienste beëindig is, moet die toepaslike loon ontvang op of voor die dag van sy diensbeëindiging.

(d) Elke werkewer moet aan elkeen van sy werknemers 'n betaalstrokie voorsien wat die werkewer se naam, die naam ek werkskategorie van die werknemer, en die tydperk ten opsigte waarvan betaling gemaak word, aandui. Die betaalstrokie moet toon hoe die werknemer se bruto besoldiging, aftrekkings, oortydbepalings, toelaes en netto loon bereken is.

(e) Alle betalings wat in kontant gemaak word, moet in 'n verseêlde koevert wees.

(f) 'n Werkewer moet ten tyde van die betaling van die werknemers besoldiging die voorgeskrewe voordelebepaling aan die Raad doen via die outoseëlstelsel.

- (2) **Aftrekkings van lone:** 'n Werkewer is daarop geregtig om aftrekkings van 'n werknemer se lone te maak—
- ten opsigte van enige aftrekkings voorgeskryf in die volgende subklousules:
    - 14(4) ten opsigte van die Pensioenskema;
    - 17(1) ten opsigte van die Raadsheffng;
    - 18 ten opsigte van vakbondledegeld;
    - 21 ten opsigte van Siekefonds vir die Westelike Provinse Bou- en Aanverwante Ambagte; en
    - 24(4) ten opsigte van die Mediese Hulpfonds;
  - indien hy wetlik daartoe geregtig of verplig is; en
  - ten opsigte van enige ander saak, met die werknemer se skriftelike toestemming.

## 11. BERGING EN VOORSIENING VAN GEREEDSKAP

(1) Elke ambagsman, leerling, bouwerker of vakleerling moet te alle tye in besit wees van sodanige gereedskap as wat nodig is om die aangewese kategorie van werk te verrig ten opsigte waarvan hy geregistreer is, en hy moet sodanige gereedskap te alle tye in goeie werkende toestand hou.

(2) Elke werknemer moet sy eie gereedskapskas, wat behoorlik gesluit moet kan word, verskaf vir die bering van sy gereedskap wanneer dit nie in gebruik is nie.

(3) 'n Werknemer moet 'n gesikte plek vir die bering van die werknemer se gereedskapskas op elke terrein voorsien en moet verseker dat sodanige bergingsplek te alle tye gesluit is. Hierdie bepalings is nie op los werk of stukwerk van toepassing nie.

## 12. VOORDELE

(1) Elke werknemer wat die volle aantal gewone werkure op 'n gewone werkdag werk of wat daarop geregtig is om op 'n openbare vakansiedag wat op 'n gewone werkdag val, van diens af te wees, is daarop geregtig om voordele ooreenkomstig in hierdie Ooreenkoms te ontvang en word vir doeleindes van hierdie ooreenkoms geag 'n geregtigde werknemer te wees: Met dien verstande dat 'n werknemer wat vir 'n werkewer op enige gewone werkdag moet werk, maar wat verhoed word om die volle aantal gewone werkure te werk as gevolg van omstandighede buite die werknemer se beheer of om enige ander goeie rede wat vir die werkewer aanvaarbaar is, word geag 'n geregtigde werknemer ten opsigte van daardie werkdag te wees: Met dien voorwaarde voorts dat 'n werknemer wat ooreenkomstig klousule 8(9) afgelê is, nie op voordele geregtig nie.

(2) 'n Werkewer moet voordele aankoop op 'n wyse deur die Raad voorgekryf om bydraes soos bepaal in die Ooreenkoms ten opsigte van geregtigde werknemers te doen.

(3) Die Raad moet elke werknemer se voordelekonding hou, en die voordele aldus aangekoop deur die werkewer, moet op die werknemer se betaalstrokie aangedui word.

(4) 'n Werknemer wat ooreenkomm om 'n saamgeperste werkweek van minder as vyf gewone werkdae te werk, is geregtig op voordele vir vyf werkdae vir elke saamgeperste werkweek wat gwerk is.

## 13. VAKANSIEFONDS

(1) Die Vakansiefonds word hierby voortgesit en gaan voort om deur die Raad geadministreer te word met die doel om geregtigde werknemers te voorsien van verlofbetaling vir die tydperk van die jaarlike verloftydperk ingevolge klousule 8(6). Geld deur die werkewers bygedra tot die Fonds, moet belê word soos bepaal ingevolge artikel 53(5) van die Wet.

(2) 'n Werkewer moet bydra tot die Vakansiefonds namens 'n geregtigde werknemer ten opsigte van elke normale werkdag wat daardie werknemer in sy diens is (" 'n bydraedag"), welke bedrag soos volg bereken word:

Kategorie van werknemer	Bedrag per dag Rand		
	Area A	Area B	Area C
(i) Arbeider .....	4,99	3,64	3,21
(ii) Skoonmaker .....	4,99	3,67	3,23
(iii) Algemene werker .....	7,73	5,67	4,98
(iv) Bouwerker, Klas 4, en leerling, Klas 4 .....	8,09	6,58	5,77
(v) Bouwerker, Klas 3, en leerling, Klas 3 .....	8,92	7,61	6,67
(vi) Bouwerker, Klas 2, leerling, Klas 2, en bloklêer .....	12,16	9,80	8,59
(vii) Drywer/kragaangedreve-masjienbediener wat 'n kode C1- of hoër licensie benodig .....	10,66	7,28	6,39
(viii) Drywer wat 'n kode A-, A1- of B1-lisansie benodig .....	8,02	5,39	4,73
(ix) Ambagsman .....	16,26	12,71	11,13
(x) Veiligheidswag .....	8,56	5,31	4,66

- (3) Elke werkgever moet die bydrae aan die Raad betaal binne die tydperk wat die Raad vir dié doel bepaal.
- (4) Die Raad moet voor die aanvang van die jaarlike verloftydperk ingevolge klousule 8(6) 'n datum bepaal waarop geregtigde werknemers betaling moet ontvang van die bedrag wat tot hulle krediet in die Vakansiefonds staan: Met dien verstande dat geen betaling uit die Vakansiefonds gemaak mag word nie—

- (a) ten opsigte van voordele deur die werkgever uitgereik na 31 Oktober elke jaar, welke voordele geag word ten opsigte van die volgende jaar uitgereik te wees;
- (b) ten opsigte van voordele vir meer as 255 dae in een jaar wat op 31 Oktober daardie jaar eindig;
- (c) indien 'n werknemer versuim om die waarde van sy voordele binne ses maande na die aanvang van die jaarlike verloftydperk te eis, tensy die Raad na goeddunke anders besluit, in welke geval die waarde van die voordele die algemene fonds van die Raad toeval;
- (d) ten opsigte van aftrekkings gemaak ten opsigte van 'n werknemer se Vakansiefonds-aanspraak ingevolge klousule 8(8)(c);
- (e) behoudens subklousule (5), voor die datum bepaal deur die Raad ingevolge hierdie klousule.

(5) In die geval van 'n geregtigde werknemer se dood moet alle gelde tot sy krediet in die Vakansiefonds, aan sy behoorlik benoemde bevoordeelde betaal word, indien enige. Indien geen benoemde bevoordeelde die werknemer oorleef nie, of indien die oorlewende bevoordeelde in gebreke bly om die betaling binne 12 maande vanaf die datum van die werknemer se dood te eis, word die bedrag tot sy krediet aan sy boedel betaal.

(6) Behoudens subklousule (5) hierbo, is die bedrag tot die werknemer se krediet in die Vakansiefonds nie oordraagbaar nie, en enige werknemer wat poog om sy voordelebydrae af te staan, oor te dra, te sedeer, te verpand of uit te leen, verbeur onmiddellik alle reg op die waarde van sodanige voordele, wat dan die algemene fondse van die Raad toeval.

(7) Ondanks die verstryking of kansellasie van hierdie Ooreenkoms, gaan die Raad voort om die Vakansiefonds te bestuur, totdat dit gelikwiede of oorgeplaas word na enige ander fonds wat vir die doel van die voorsiening van jaarlikse verlofbetaling aan werknemer geskep is.

(8) Indien die Raad ontbind of ophou om te funksioneer, moet die Vakansiefonds voortgaan om bestuur te word deur 'n komitee vir daardie doel deur die partye aangestel voor die ontbinding of sluiting van die Raad, welke komitee bestaan uit 'n gelyke aantal werkgever- en werknemerverteenwoordigers. Indien sodanige komitee om enige rede nie in staat is om sy pligte na te kom nie, moet die partye 'n trustee of trustees aanstel om die pligte van die komitee te vervul, en vir hierdie doel het sodanige trustees dieselfde bevoegdhede as die komitee.

(9) Indien daar geen Raad bestaan ten tyde van die verstryking van hierdie Ooreenkoms nie, moet die Vakansiefonds gelikwiede word deur die komitee of trustees aangestel ingevolge subklousule (8).

(10) In die geval van die likwidasie van die Vakansiefonds ingevolge subklousules (7) of (8) hierbo, moet die oorblywende gedeelte van die gelde, na die betaling van alle eise teen die Vakansiefonds, met inbegrip van die administrasie- en die likwidasie-uitgawes, oorbetaal word in die algemene fonds van die Raad. Indien die Raad ontbind word voor die likwidasie van die Vakansiefonds, moet die oorblywende gelde eweredig verdeel word tussen die partye by die Raad, soos hulle bestaan het onmiddellik voor die ontbinding.

#### 14. PENSIOEN-VOORSORGFONDS

(1) Die Pensioenfonds vir die Bouyweryheid (WP) ("die Pensioenfonds") en die Bouyweryheid-Voorsorgfonds (Westelike Provincie) ("die Voorsorgfonds") word hierby voortgesit en moet steeds deur die Raad bestuur word ooreenkomsdig die Wet met die doel om pensionlede te voorsien vir werknemers ten opsigte van wie bydraes gemaak word ingevolge hierdie klousule.

(1A) Behoudens die reëls van die Pensioenfonds of die Voorsorgfonds moet elke werknemer ten opsigte van wie 'n bydrae vereis word volgens die tabel in subklousule (3) hieronder, 'n lid van een van genoemde fondse wees.

(2) Vir die doel van die berekening van die doelstellings van hiedie klousule, is die Raad daarop geregtig om na goeddunke ooreenkomsdig te sluit en is verder daarop geregtig om reëls ten opsigte van die bedryf en administrasie van enige fonds ingestel ingevolge hierdie klousule, op te stel wat van tyd tot tyd gewysig kan word.

(3) 'n Werknemer moet die volgende bydrae tot die Pensioenfonds of die Voorsorgfonds, na gelang van die geval, ten opsigte van elke geregtigde werknemer ten opsigte van elke bydraedag:

Kategorie van werknemer	Bedrag per dag Rand		
	Area A	Area B	Area C
(i) Arbeider .....			
(ii) Skoonmaker.....	5,43		
(iii) Algemene werker .....	8,42	6,71	5,89
(iv) Bouwerker, Klas 4, en leerling, Klas 4 .....	8,81	7,79	6,83
(v) Bouwerker, Klas 3, en leerling Klas 3 .....	9,71	9,01	7,90

Kategorie van werknemer	Bedrag per dag Rand		
	Area A	Area B	Area C
(vi) Bouwerker, Klas 2, leerling, Klas 2, en bloklêer .....	13,24	11,60	10,17
(vii) Drywer/Kragaangedrewen-masjienbediener wat 'n kode C1- of hoër licensie benodig .....	11,61	8,63	7,57
(viii) Drywer wat 'n kode A-, A1- of B-lisensie benodig .....	8,73	6,38	5,60
(ix) Ambagsman .....	17,70	15,05	13,18
(x) Veiligheidswag .....	9,33	6,29	5,52

(4) Elke werkgewer moet verder 'n bydrae van die betaling van elke geregtigde werknemer ten opsigte van elke bydraedag aftrek, wat soos volg bereken moet word:

Kategorie van werknemer	Bedrag per dag Rand		
	Area A	Area B	Area C
(i) Arbeider .....			
(ii) Skoonmaker.....	5,09		
(iii) Algemene werker .....	7,89	6,71	5,90
(iv) Bouwerker, Klas 4, en leerling, Klas 4.....	8,25	7,79	6,83
(v) Bouwerker, Klas 3, en leerling, Klas 3 .....	9,11	9,01	7,90
(vi) Bouwerker, Klas 2, leerling, Klas 2, en bloklêer .....	12,42	11,60	10,17
(vii) Drywer//kragaangedrewen-masjienbediener wat 'n kode C1- of hoër licensie benodig .....	10,89	8,63	7,57
(viii) Drywer wat 'n kode A-, A1- of B-lisensie benodig .....	8,19	6,38	5,60
(ix) Ambagsman .....	16,60	15,05	13,18
(x) Veiligheidswag .....	8,74	6,29	5,52

(5) Elke werkgewer moet bogenoemde bydraes aan die Raad betaal binne die tydperk wat die Raad bepaal.

(6) Behoudens 'n geregtigde werknemer se reg om 'n bevoordeelde te benoem om enige bedrae te ontvang, wat aan hom betaalbaar mag word ingevolge die Pensioenfonds of die Voorsorgfonds in die geval van sy dood voor aftrede, is enige pensioenvoordele wat 'n werknemer toeval ingevolge hierdie Ooreenkoms, nie oordraagbaar nie, en mag die nie gesedeer of verpand word nie.

(6A) Wanneer 'n werknemer nie kwalificeer vir sterfte-, ongeskiktheids- en/of begrafnisvoordele ingevolge die Pensioenfonds en/of Voorsorgfonds nie omdat 'n werkgewer nagelaat het om bydraes verskuldig ten opsigte van die werknemer se lidmaatskap te betaal, is daardie werkgewer aanspreeklik vir die betaling aan die werknemer of sy bevoordeelde van 'n bedrag geld gelyk aan die sterfte-, ongeskiktheids- en/of begrafnisvoordeel wat betaal sou word ingevolge die reëls van die toepaslike fonds indien die bydrae deur die werkgewer betaal is.

(6B) Gedurende die geldigheidsduur van die Ooreenkoms—

- (a) moet die Pensioenfonds en die Voorsorgfonds omskep word tot vastebydraefondse; en
- (b) 'n verlaging van die aftreeouderdom tot 60, in genoemde fondse ingefaseer word.

(7) Indien die Raad ontbind word, gelikwiede word of sy werksaamhede staak tydens die geldigheidsduur van hierdie Ooreenkoms, moet die partye voor sodanige ontbinding, likwidasie of staking van werksaamhede van die Raad 'n trustee of trustees aanstel om die funksies uiteengesit in hierdie klousule, te vervul, en sodanige trustees beskik dan vir hierdie doel ook oor die bevoegdhede wat die Raad gehad het.

## 15. SIEKEFONDS

(1) Die Siekefonds vir die Bouwerywerheid ("die Fonds") word hierby voortgesit en gaan voort om deur die Raad bestuur te word vir die doel om werknemers te vergoed gedurende tydperke van afwesigheid van die werk as gevolg van ongeskiktheid, en die betaling van vergoeding aan werknemers in die geval van algehele ongeskiktheid, ooreenkomstig die Reëls van die Fonds.

(2) Die Fonds word deur die Raad bestuur ooreenkomstig die reëls ("die Reëls") wat hy van tyd tot tyd vir hierdie doel maak, en alle gelde van die Fonds moet bestuur, belê en uitbetaal word ingevolge die Reëls. Afskrifte van die Reëls moet by die Raad se kantore ter insae lê.

(3) Elke werkgewer moet 'n bedrag tot die Fonds bydra ten opsigte van elke gewone werkdag wat 'n geregtigde werknemer in sy diens is, welke bedrag soos volg bereken word:

Kategorie van werknemer	Bedrag per dag Rand		
	Area A	Area B	Area C
(i) Arbeider .....	0,85	0,74	0,65
(ii) Skoonmaker.....	0,85	0,75	0,66
(iii) Algemene werker .....	1,32	1,16	1,02
(iv) Bouwerker, Klas 4, en leerling, Klas 4 .....	1,38	1,34	1,18
(v) Bouwerker, Klas 3, en leerling, Klas 3.....	1,52	1,55	1,36
(vi) Bouwerker, Klas 2, leerling, Klas 2, en bloklêer .....	2,07	2,00	1,75
(vii) Drywer/kragaangedrewe-masjienveldiener wat 'n kode C1- of hoër benodig .....	1,81	1,49	1,30
(viii) Drywer wat 'n kode A-, A1- of B-lisensie benodig .....	1,36	1,10	0,97
(ix) Ambagsman .....	3,87	3,63	3,18
(x) Veiligheidswag .....	1,46	1,08	0,95

(4) 'n Werknemer ontvang betaling volgens die bedrae in die tabel hieronder uiteengesit ten opsigte van elke werkdag, met inbegrip van openbare vakansiedae, wat hy as gevolg van siekte of besering afwesig is gedurende 'n sirkus van 365 kalenderdae:

Gewone werkdae afwesig	Klas van werknemer	% van minimum basiese loon voorgeskryf by klousule 9(1)
1ste—10de .....	Alle werknemers .....	75%
11de—130ste .....	Alle werknemers .....	33%

(5) Behoudens die Reëls van die Fonds, is 'n werknemer nie geregtig op siektebetaling nie—

- (a) totdat 130 aaneenlopende daagliks bydrae gemaak is tot die Fonds ten opsigte van sodanige werknemer; Met dien verstande dat bydrae wat onderbreek is deur 'n tydperk van werkloosheid of verwisseling van werkgewer, geag word aaneenlopend te wees;
  - (b) vir meer as 130 dae en enige tydperk van 365 dae, bereken vannaf die eerste dag ten opsigte waarvan die werknemer geregtig is op siektebetaling;
  - (c) indien hy van die werk afwesig is as gevolg van 'n ongeluk waarvoor hy vergoed sal word ingevolge die Wet op Vergoeding vir Beroepsbeserings en -siektes, 1993;
  - (d) as sy afwesigheid van werk verband hou met die misbruik van alkohol of onwettige verdowingsmiddels, of as hy vir werk ongeskik is as gevolg van siekte weens sy eie nalatigheid of wangedrag;
  - (e) as hy in gebreke bly om die opdragte van 'n mediese praktisyne na te kom, of indien hy volgens die mening van daardie praktisyne sy toestand vererger of sy herstel vertraag het as gevolg van sy eie toedoen;
  - (f) as hy ly aan 'n besering ten opsigte waarvan 'n derde party aanspreeklik is vir vergoeding of wel vir hom daarvoor vergoed;
  - (g) terwyl hy behandeling ondergaan soos voorgeskryf deur enige ander persoon as 'n geregistreerde mediese praktisyne;
  - (h) indien hy in gebreke bly om die Raad te voorsien van sodanige tersaaklike inligting as wat die Raad aanvra;
  - (i) indien die Raad bevind dat hy geskik is om sy werk te hervat of dat hy permanent ongeskik is, in welke geval hy ophou om geregtig te wees op siektebetaling vanaf 'n datum deur die Fonds vir hierdie doel bepaal; en
  - (j) op enige tydstip wanneer die bedrag tot krediet van die Fonds onder R100 000,00 val en tot op sodanige tydstip daarna wanneer die bedrag tot krediet van die Fonds weer R500 000,00, oorskry.
- (6) Die Fonds is daarop geregtig om enige bedrag aan 'n werknemer betaal te verhaal—
- (a) as gevolg van vals inligting aan die Fonds verskaf deur of ten behoeve van sodanige werknemer; en
  - (b) indien die werknemer versuim om die Fonds betyds te verwittig van enige verandering in sy omstandighede wat daartoe kon geleid het dat die bedrag van die voordele heroorweeg of gestaak sou word, in welke geval die Fonds enige gelde wat aan 'n werknemer te veel betaal is, kan terugseis.
- (7) Indien 'n werknemer kraamverlof neem, betaal die Siekefonds aan so 'n werknemer 33% van haar huidige loon vir 'n maksimum tydperk van 120 dae.

(8) Die Fonds moet voortgaan om die werkgewerbydraes tot die Vakansiefonds en die Mediese Hulpfonds van die Boubedryf ten behoeve van die werknemers te betaal tydens 'n tydperk van een of meer aaneenlopende dae in 'n betaalweek waarvoor die werknemer siektebetaling ingevolge hierdie klousule ontvang.

(9) In die geval van die verstryking van hierdie Ooreenkoms, die ontbinding of likwidasie van die Raad of 'n staking van sy werksaamhede, is die bepalings van klousule 13(7), (8) en (9) betreffende die Vakansiefonds ook van toepassing op hierdie Fonds.

## 16. AUDITERING EN BOEKHOUDING

Die Raad moet verseker dat behoorlike rekeningboeke en rekords gehou word ten opsigte van elkeen van die Fondse wat deur hom geadministreer word en dat 'n jaarlikse audit van elkeen van die Fondse gedoen word ooreenkomsdig die bepalings van die Wet en die Raad se Konstitusie.

## 17. UITGAWES VAN DIE RAAD

(1) Elke werkgewer moet 'n bedrag van R0,75 per gewone werkdag van die loon van elke geregtigde werknemer aftrek en 'n gelyke bedrag byvoeg by die bedrag aldus afgetrek.

(2) Elke werkgewer moet die bydraes bedoel in subklousule (1) aan die Raad betaal binne die tydperk deur die Raad bepaal.

(3) Die bydraes aan die Raad betaal ingevolge hierdie klousule, moet gebruik word om die algemene uitgawes van die Raad te dek en moet geadministreer word ooreenkomsdig die bepalings van die Raad se Konstitusie.

## 18. VAKBONDLEDEGELD

Vakbonde kan kies om een van die volgende mechanismes te gebruik. In elke geval kan aftrekkings vir vakbondledegeld alleenlik skriftelik gemagtig word deur die betrokke werknemer.

(a) (i) Elke vakbond is daarop geregtig om elke werkgewer in die Nywerheid regstreeks te nader vir die doel om aftrekorderfasiliteite in te stel vir die aftrekking van vakbondledegeld.

(ii) Elke werkgewer wat sodanige fasiliteite toestaan, is daarop geregtig om administrasiegeld waarop ooreengekom word, te verhaal vir die bydraes aldus geïn.

OF

(b) (i) Elke werkgewer trek 'n bedrag af wat gelyk is aan hoogstens 1% van die daaglikse loon van 'n werknemer wat 'n lid van 'n geregistreerde vakbond is en vir wie lone voorgeskryf word in klousule 9 van hierdie Ooreenkoms.

(ii) 'n Werkgewer moet die bedrae deur hom afgetrek ingevolge paragraaf (b)(i) aan die Raad oorbetaal binne die tydperk deur die Raad bepaal.

(iii) Elke maand betaal die Raad aan die betrokke vakbond oor alle gelde aldus ingevorder deur werkgewers ingevolge paragraaf (b)(ii), min administrasiegeld van 2,5% van bruto lediegeld, welke bedrag in die algemene fonds van die Raad gestort word.

## 19. SPESIALE LIDMAATSKAPHEFFING: WERKGEWERS

(1) Elke lid van 'n werkgewersorganisasie moet 'n lidmaatskapheffing aan daardie werkgewersorganisasie betaal ten opsigte van elke werknemer in sy diens wat geregtig is op voordele ingevolge hierdie Ooreenkoms.

(2) 'n Werkgewersorganisasie is daarop geregtig om die fasiliteite van die Raad te gebruik vir die invordering van sodanige heffings, in welke geval die Raad geregtig is op administrasiegeld van 2,5% van die lediegeld aldus ingevorder.

## 20. VAARDIGHEIDS- EN OPLEIDINGSTRUST VIR DIE BOONYWERHED

(1) Elke werkgewer moet aan die Raad 'n bydrae betaal soos van tyd tot tyd deur die Vaardigheids- en Opleidingstrust bepaal.

(2) Die Raad is geregtig op administrasiegeld van 2,5% van die bedrae ontvang ingevolge hierdie klousule, en moet die oorblywende bedrag betaal aan die Vaardigheids- en Opleidingstrust.

## 21. SIEKEFONDS VIR DIE WESTELIKE PROVINSIE BOU- EN VERWANTE AMBAGTE

Vakbonde kan kies om een van die volgende mechanismes te gebruik. In elke geval kan aftrekkings vir die Siekefondsbydraes alleenlik geskied met die skriftelike toestemming van die betrokke werknemer.

(a) (i) Elke vakbond is daarop geregtig om elke werkgewer in die Nywerheid regstreeks te nader met die doel om aftrekorderfasiliteite in te stel vir die aftrekking van vakbondsiekefondsbydraes ten opsigte van lede wat hulle toestemming daartoe gee.

(ii) Elke werkgewer wat sodanige fasiliteite toestaan, is daarop geregtig om administrasiegeld van 2,5% van die bydraes aldus ingevorder, af te trek.

OF

(b) (i) Elke werkgewer trek 'n bedrag af wat gelyk is aan 0,4% van die loon vir 'n normale werksdag van 'n werknemer wat 'n lid van 'n geregistreerde vakbond is en vir wie lone voorgeskryf word in klousule 9 van hierdie Ooreenkoms.

- (ii) Die Raad moet elke maand aan die Siekefonds vir die Westelike Provinse Bou- en Verwante Ambagte oorbetaal, alle gelde aldus ingevorder deur werkgewers ingevalgelyke paragraaf (b)(i), min administrasiegeld van 2,5% van die broto ledegeld, welke bedrag in die Raad se algemene fonds inbetaal moet word.

## 22. ALGEMEEN

(1) **Vertoning van Ooreenkoms:** (a) Die partye kom ooreen dat die Engelse weergawe die betekenis en bedoeling van die partye bepaal en dat die vertalings in Afrikaans en Xhosa deur die Raad by sy kantore beskikbaar gestel sal word vir insae deur enige persoon gedurende werksure.

- (b) Enige persoon kan 'n afskrif van hierdie Ooreenkoms bekom deur betaling van 'n bedrag van R5,00 aan die Raad.  
 (c) Elke party by hierdie Ooreenkoms ontvang twee gratis afskrifte van die Ooreenkoms en Konstitusie.

(2) **Belasting op toegevoegde waarde (BTW):** Alle geldbedrae in hierdie Ooreenkoms genoem, is sonder belasting op toegevoegde waarde.

(3) **Skuiling en ablusiefasilitete:** (a) Op enige bouperseel waar boubedrywighede plaasvind, moet werkgewers gesikte akkommodasie voorsien om—

- (i) as skuiling te dien vir werknelmers tydens gure weer; en/of  
 (ii) as kleedkamer te dien: Met dien verstande dat hierdie subklousule nie van toepassing is op stukwerk nie en op persele waar minder as tien werknelmers in diens is of waar omstandighede wat eie is aan die terrein of die aard van die werk wat uitgevoer word, nie ruimte vir 'n kleedkamer laat nie.

(b) Sodanige akkommodasie kan bestaan uit 'n skuur, kamer of soortgelyke plek wat gesluit kan word en wat opgerig is met mure en 'n dak van beton, baksteenwerk, hout, yster of 'n samestelling daarvan of ander materiaal goedgekeur deur die Raad, en die geheel moet op so 'n wyse opgerig wees dat dit kan dien as plek waar werknelmers kan verkle, kan was en kan skui.

(c) Sodanige akkommodasie kan toesluitkaste vir klere of soortgelyke toesluitgeriewe insluit waar werknelmers skoon klere en ander persoonlike besittings met veiligheid kan bêre terwyl hulle werk.

(d) 'n Werkewer moet behoorlike en toereikende sanitêre geriewe op elke werkplek verskaf wat te alle tye in 'n skoon, higiëniese en behoorlike toestand gehou moet word en wat voldoen aan die wetgewing van die plaaslike owerheid in wie se gebied die werkplek geleë is.

(4) **Vakbondtoegang:** Amptenare van vakbondpartye het in die gewone uitvoering van hul pligte gedurende werkure toegang tot bouterreine en werkswinkels, maar word nie toegelaat om in te meng met die volgehoud werkverrigting van 'n werknelmer nie of om 'n werknelmer te nader sonder dat die toestemming van die werkewer of sy behoorlik gemagtigde verteenwoordiger vooraf verkry is nie, en sodanige toestemming mag nie sonder redelike gronde geweier word nie.

(5) **Berskermende klere:** 'n Werkewer moet aan werknelmers beskermende klere ooreenkomsdig die vereistes van die Wet op Beroepsgeondheid en Veiligheid, 1993, verskaf.

## 23. VRYSTELLING

(1) Alle aansoeke om vrystelling moet skriftelik (op die aansoekvorm voorsien deur die Raad) wees en moet gerig word aan die Sekretaris van die Raad.

(2) Alle aansoeke om vrystelling moet behoorlike gemotiveer wees en sodanige motivering moet die volgende besonderhede insluit:

- (a) Die tydperk waarvoor vrystelling benodig word;  
 (b) die Ooreenkoms en klousules of subklousules van die Ooreenkoms waarvan vrystelling gevra word;  
 (c) bewys dat die vrystelling waarvoor aansoek gedoen word, bespreek is deur die werkewer, sy werknelmers en hul onderskeie verteenwoordigers. Die reaksies voortspruitend uit sodanige oorlegplegings, het sy ten gunste van of teen die aansoek, moet by die aansoek ingesluit word.

(3) Die Sekretaris van die Raad moet die aansoeke om vrystelling op die sakelys van die volgende Raadsvergadering vir 'n beslissing.

(4) Aansoeke om vrystelling wat na die Raad verwys word, word deur die Raad oorweeg aan die hand van die vrystellingskriteria uiteengesit in subklousule (11) hiervan, en die applikant moet skriftelik van die Raad se beslissing verwittig word binne 14 gewone werkdae na die vergadering waarop die aansoeke oorweeg is.

(5) Enige nieparty na wie hierdie Ooreenkoms ingevalgelyke artikel 32 van die Wet uitgebrei is, kan by die Raad aansoek doen om vrystelling van enige van die bepalings van hierdie Ooreenkoms.

(6) 'n Onafhanklike liggaam wat as 'n "Vrystellingsraad" bekend staan, word hierby deur die Raad ingestel ingevalgelyke artikel 32 van die Wet om enige appèl aan te hoor en beslis wat aangeteken word teen—

- (a) die Raad se weiering van 'n nieparty se aansoek om vrystelling van die bepalings van hierdie Ooreenkoms;  
 (b) die intrekking van so 'n vrystelling deur die Raad.

(7) Binne 14 opeenvolgende dae nadat die nieparty van die Raad se beslissing aangaande sy aansoek om vrystelling verwittig is, kan die nieparty wat ontevrede is met die Raad se beslissing, 'n skriftelike appèl teen die Raad se beslissing by die Sekretaris van die Raad indien. Sodanige appèl moet volledig gemotiveer wees.

(8) Die Sekretaris moet die appèl, tesame met die Raad se beslising rakende die aansoek om vrystelling, aan die Vrystellingsraad voorlê, wat die aangeleenthed so spoedig moontlik moet aanhoor en daaroor moet besluit met inagneming van die vrystellingskriteria uiteengesit in subklousule (11) hiervan, en wat, indien daar toe versoek deur die applikante of beswaarmakers, onderhoude kan voer met die applikante of enige beswaarmakers tydens sy eersvolgende vergadering: Met dien verstande dat die Vrystellingsraad 'n beslissing tot 'n volgende vergadering kan uitstel indien addisionele motivering, inligting of mondelinge getuienis nodig geag word ten einde oor 'n aansoek om vrystelling te besluit.

(9) Indien die Vrystellingsraad besluit het om die appèl te handhaaf en om 'n vrystelling toe te staan, moet hy 'n vrystellingsertifikaat uitreik en die applikant(e) binne 10 gewone werkdae na die datum waarop die besluit geneem is, inlig deur duidelik te spesifiseer—

- (a) wat die bepalings van die vrystelling behels; en
- (b) wat die terugvoerbepalings is wat deur die applikant nagekom moet word, asook die moniterings- en herevaluasiebepalings.

(10) Indien die Vrystellingsraad 'n aansoek om vrystelling in sy geheel of gedeeltelik afgekeur het, moet hy die applikant binne 10 gewone werkdae na die datum waarop die besluit geneem is, daarvan verwittig en ook die rede of redes vir die weiering van die vrystelling verstrek.

(11) **Vrystellingskriteria:** Die Vrystellingsraad moet alle aansoeke om vrystelling oorweeg aan die hand van die volgende kriteria:

- (a) Die skriftelike en mondelinge motivering deur die applikant voorsien;
- (b) die mate van raadpleging met en die vertoë vir of teen die verlening van vrystelling soos verskaf deur werkgewers of werknemers wat deur die vrystelling geraak sal word, indien toegestaan;
- (c) die bepalings van die vrystelling;
- (d) die inbreuk op regte betreffende basiese diensvoorraarde;
- (e) die feit dat 'n mededingingsvoordeel nie geskep word deur die vrystelling nie;
- (f) die uitwerking van vrystelling of enige werknemervoordelofs of opleidingsbepaling die uitwerk in verhouding tot die alternatiewe vergelykbare *bona fide*-voordeel of -bepaling, met inbegrip van die koste vir die werknemer, oordraagbaarheid, administrasiebestuur en -koste, groei en stabiliteit;
- (g) die mate waarin die voorgestelde vrystelling kollektiewe bedeling en arbeidsvrede in die Bouwirtschaft ondermyne;
- (h) enige bestaande spesiale ekonomiese of ander omstandighede wat die verlening van die vrystelling regverdig;
- (i) die verslagdoeningsvereistes deur die applikant asook die moniterings- en herevaluasieprosesse; en
- (j) die inagneming van die aanbevelings vervat in die Verslag van die Presidiële Kommissie van Ondersoek na die Arbeidsmarkbeleid.

#### 24. MEDIESE BYSTANDFONDS

(1) Die Mediese Bystandfonds vir die Bouwirtschaft ("die Fonds") word hierdeur voortgesit en gaan vooort om deur die Raad geadministreer te word ingevolge die bepalings van die Wet met die doel om—

- (a) lede by te staan met betrekking tot die koste van mediese dienste deur hulle of hulle afhanglik aangegaan, soos bepaal deur die Reëls van die Fonds;
- (b) sodanige maatreëls as wat die Raad nodig ag, te tref ter voorkoming van siekte en ter verbetering en bevordering van gesondheid tussen lede en hulle afhanglik;
- (c) kontrakte aan te gaan met enige mediese praktisyn, hospitaal, verpleeginrigting, hersteloord of enige ander soortgelyke inrigting, persoon of owerheid ten opsigte van mediese dienste; en
- (d) die koste van sodanige reëlings en die mediese onkoste van lede en hulle afhanglik te betaal ingevolge die reëls van die Fonds.

(2) Die Fonds word bestuur ooreenkomsdig die Reëls wat hy van tyd tot tyd maak vir hierdie doel ("die Reëls") en alle geldie van die fonds word bestuur, belê en uitbetaal ooreenkomsdig die Reëls, waarvan afskrifte ter insae beskikbaar is by die kantore van die Raad. Die Raad moet ouditeurs aanstel om die rekeningboeke van die Fonds jaarliks te ouditeer.

(3) 'n Werknemer wat ingevolge die Reëls geregtig is om 'n lid van die Fonds te word, moet die helfte van die totale bydraes bydra en die werkewer moet die ander helfte van die bydrae bydra vir elke gewone werkdag wat die werknemer in diens is van sodanige werkewer, welke bydrae die volgende is:

	Bedrag per dag	
	Lid-werknemer	Werkewer
Ambagsman .....	R 10,72	R 10,72

(4) Elke werkewer moet die bydrae van die besoldiging van elke geregtigde werknemer ten opsigte van elke bydraedag aftrek en 'n gelyke bedrag daarby voeg.

(5) Elke werkewer moet bogenoemde bydraes aan die Raad betaal binne die tydperk wat die Raad vir dié doel bepaal.

(6) Indien die Ooreenkoms verstryk, die Raad ontbind hy of sy werksaamhede staak, is klousule 13(7), (8) en (9) betreffende die Vakansiefonds ook op hierdie Fonds van toepassing.

## 25. BESLEGTIGING VAN GESKILLE

(1) **Prosedure om die nakoming van hierdie Ooreenkoms te verseker:** Die Raad moet alle redelike maatreëls tref om te verseker dat hierdie Ooreenkoms nagekom word. Indien die Raad, het sy deur sy eie ondersoek of uit enige ander bronne, vasstel dat die bepalings van hierdie Ooreenkoms oortree is, moet die volgende prosedures in werking gestel word om nakoming af te dwing:

- (a) Die Sekretaris van die Raad moet 'n agent aanwys om die beweerde oortreding te ondersoek.
- (b) Indien, na voltooiing van sodanige ondersoek, die agent van mening is dat 'n oortreding van hierdie Ooreenkoms begaan is, kan die agent probeer om nakoming van die Ooreenkoms te verkry deur middel van versoening.
- (c) Na afloop van die versoeningsproses moet die agent 'n verslag aan die Sekretaris van die Raad voorlê wat die uitslag van die versoening uiteensit en die stappe aandui wat gedoen is om nakoming van die Ooreenkoms te verseker deur versoening en die uitslag darvan.
- (d) By ontvangs van die verslag kan die Sekretaris van die Raad—
  - (i) van die agent vereis om verder ondersoek in te stel;
  - (ii) 'n nakomingsbevel uitrek en 'n boete ople kragtens subklousule 25(1)(m) hiervan; of
  - (iii) die saak na arbitrasie verwys ingevolge hierdie Ooreenkoms as die respondentparty nie toestem tot die nakomingsbevel of boete nie, in welke geval 'n kostebevel moontlik teen die respondentparty uitgereik kan word; of
  - (iv) sodanige ander stappe doen as wat hy as redelik sou beskou.
- (e) Indien die Sekretaris van die Raad besluit om die aangeleentheid na arbitrasie te verwys, moet hy 'n arbiter aanstel om die saak aan te hoor en oor die beweerde oortreding te beslis.
- (f) Die Sekretaris moet in oorleg met al die partye wat 'n regsbelang by die uitslag van die arbitrasie het, die tyd, datum en plek vir die arbitrasieverhoor bepaal.
- (g) Die Sekretaris van die Raad moet kennisgewings wat die tyd, datum en plek van die arbitrasieverhoor aandui, beteken aan alle partye wat 'n reg belang het by die uitslag van die arbitrasie.
- (h) Enige party wat 'n regsbelang by die uitslag van die arbitrasie het, het die reg om—
  - (i) getuies te lewer;
  - (ii) getuies te roep;
  - (iii) die getuies van enige ander party te ondervra;
  - (iv) slotaanmerkings aan die arbiter voor te hou;
  - (v) verteenwoordig te wees deur 'n regspraktisy of medewerker of 'n ampsdraer of beampie van sy vakbond of werkewersorganisasie en, indien die party 'n regpersoon is, deur 'n direkteur of werknemer daarvan.
- (i) Die arbiter beskik oor die volgende bevoegdhede:
  - (i) Om te bepaal of daar 'n oortreding van die Ooreenkoms was.
  - (ii) Om 'n toepaslike toekenning te maak wat uitvoering aan die Kollektiewe Ooreenkoms gee en nakoming daarvan verseker.
  - (iii) Om die toepaslike vorm van en die prosedure vir die arbitrasieverhoor te bepaal.
  - (iv) Om die kostebevel te gee wat hy as toepaslik beskou.
  - (v) Om 'n toekenning te maak in die afwesigheid van die party wat na bewering die Ooreenkoms oortree het as—
    - (aa) sodanige partye in gebreke gebly het om die verhoor by te woon of daar verteenwoordig te word;

- (ab) bewys gelewer is dat sodanige party in kennis gestel is van verrigtinge: Met dien verstande dat kennis van die arbitrasieverrigtinge geag word gegee te gewees het indien bewys gelewer kan word dat skriftelike kennisgewing gegee is aan sodanige party—
- (A) per geregistreerde pos verend na sy laasbekende adres en 14 dae verstryk het vandat sodanige kennisgewing gepos is; of
  - (B) deur middel van faksversending na sodanige party se laasbekende faksnommer; of
  - (C) per hand afgelewer by sodanige party se laasbekende besigheids- of woonadres;
- (ac) *prima facie*-bewyse aan die arbiter voorgelê is dat die betrokke party in gebreke gebly het om aan die vereistes van hierdie Ooreenkoms te voldoen.
- (vi) Om enige arbitrasietoekenning deur hom of enige ander arbiter gemaak, te wysig of te herroep by aanvoering van gegrondte redes. Sonder om die algemeenheid hiervan te beperk, het die arbiter hierdie bevoegdheid indien—
- (a) die toekenning verkeerdlik aangevra of verkeerdlik gemaak is in die afwesigheid van die party wat daardeur geraak word;
  - (b) die toekenning dubbelsinnig is of oorglopend verkeerd of gebrekbaar is, maar alleenlik in die mate van die dubbelsinnigheid, fout of weglatting;
  - (c) die toekenning gedoen is as gevolg van 'n gemeenskaplike fout van die partye by die verrigtinge.
- (j) Enige toekenning wat deur 'n arbiter gemaak is, saam met enige redes daarvoor, moet deur die Raad aan alle belanghebbende partye beteken word.
- (k) Die Sekretaris van die Raad kan by die Arbeidshof aansoek doen om die arbitrasietoekenning 'n Arbeidshofbevel ingevolge artikel 158 (1) van die Wet te maak.
- (l) Die bepalings van hierdie prosedure is bykomend by enige ander regsmiddel wat die Raad kan gebruik om 'n kollektiewe ooreenkoms af te dwing.
- (m) (a) Indien die arbiter bevind dat enige party in die geskil versuim het om te voldoen aan die bepalings van enige van die Raad se Kollektiewe Ooreenkomste wat bindend is vir daardie party, kan die arbiter, benewens enige ander toepaslike bevel die party in versuim 'n boete ople ooreenkomstig paragraaf (b);
- (b) die maksimum boete wat 'n arbiter kan ople vir versuim om 'n bepaling van 'n Kollektiewe Ooreenkoms na te kom—
- (i) uitgesonderd gevalle waar 'n bedrag verskuldig aan 'n werknemer/party ingevolge enige bepaling nie betaal is nie, is die boete betaalbaar ingevolge Tabel Een;
  - (ii) in gevalle waar 'n bedrag nie aan 'n werknemer/party betaal is nie, is die grootste van die bedrae betaalbaar soos bepaal ingevolge Tabel Een of Tabel Twee:

**TABEL EEN**

Geen vorige oortreding nie .....	R100 per werknemer ten opsigte van wie versuim is om aan die bepaling te voldoen.
'n Vorige geval van versuim om te voldoen aan dieselfde bepaling	R200 per werknemer ten opsigte van wie versuim is om aan die bepaling te voldoen.
'n Vorige geval van versuim om te voldoen aan dieselfde bepaling binne die voorafgaande 12 maande, of twee vorige gevalle van versuim ten opsigte van dieselfde bepaling binne drie jaar	R300 per werknemer ten opsigte van wie versuim is om aan die bepaling te voldoen.
Drie vorige gevalle van versuim om te voldoen aan dieselfde bepaling binne drie jaar	R400 per werknemer ten opsigte van wie versuim is om aan die bepaling te voldoen.
Vier vorige gevalle van versuim om te voldoen aan dieselfde bepaling binne drie jaar	R500 per werknemer ten opsigte van wie versuim is om aan die bepaling te voldoen.

## TABEL TWEE

Geen vorige oortreding nie .....	25% van die bedrag verskuldig, insluitende enige rente verskuldig op die bedrag soos op datum van die bevel.
'n Vorige geval van versuim om te voldoen aan dieselfde bepaling binne drie jaar	50% van die bedrag verskuldig, insluitende enige rente verskuldig op die bedrag soos op datum van die bevel.
'n Vorige geval van versuim om te voldoen aan dieselfde bepaling binne die voorafgaande 12 maande, of twee vorige gevalle van versuim ten opsigte van dieselfde bepaling binne drie jaar	75% van die bedrag verskuldig, insluitende enige rente verskuldig op die bedrag soos op datum van die bevel.
Drie vorige gevalle van versuim om te voldoen aan dieselfde bepaling binne drie jaar	100% van die bedrag verskuldig, insluitende enige rente verskuldig op die bedrag soos op datum van die bevel.
Vier of meer vorige gevalle van versuim om te voldoen aan dieselfde bepaling binne drie jaar	200% van die bedrag verskuldig, insluitende enige rente verskuldig op die bedrag soos op datum van die bevel.

- (n) 'n Toekenning deur 'n arbiter rakende koste kan die volgende koste of enige ander koste insluit wat na die arbiter se mening toegeken moet word:
- (i) Die vergoeding van die arbiter, met inbegrip van vervoer en verblyf;
  - (ii) die vergaderplekkoste;
  - (iii) die Raad se administrasiekoste;
  - (iv) die koste vir die uitreiking van dagvaardings;
  - (v) die koste aan verteenwoordigers, wat deur die Arbeidshof getakseer moet word;
  - (vi) die koste van die aangewese agent of ander personeel van die Raad wat die verhoor moet bywoon.

(2) Prosedure vir die bylê van geskille oor die toepassing of vertolking van hierdie Ooreenkoms: (a) Enige persoon wat binne die geregistreerde bestek van die Raad val, mag 'n geskil wat te doen het met die vertolking of toepassing van hierdie Ooreenkoms na die Raad verwys vir beslissing ingevolge die bepalings van hierdie Ooreenkoms.

(b) As 'n geskil aldus na die Raad verwys word, moet hy poog om die geskil te besleg—

- (i) deur versoening; en
- (ii) indien die geskil na versoening onbesleg bly, moet die Raad 'n arbiter aanwys om die geskil te besleg.  
Die bevoegdhede van die arbiter is dieselfde as in subklousule (1) (i) hierbo.

(c) Die Sekretaris van die Raad kan aansoek doen om die arbitrasietoekenning 'n bevel van die Arbeidshof te laat maak ingevolge artikel 158 (1) van die Wet.

(3) Nieteenstaande die bepalings van hierdie klousule mag die Raad gebruik maak van artikel 33A van die Wet op Arbeidsverhoudinge, 1995, tesame met Aanhangesel A (Reëls vir Versoening en Arbitrasie in Geskille in die Bedingsraad vir die Bouwverheid) om nakoming van die Kollektiewe Ooreenkoms te monitor en af te dwing en om WAV-Geskille te versoen en te arbitreeer.

## 26. BEVOEGDHEDEN VAN AANGEWESE AGENTE EN AANGESTELDE VERSOENERS EN ARBITERS

(1) 'n Aangewese agent wat deur die Minister kragtens artikel 33(1) van die Wet aangestel is om te poog om geskille te besleg of beweerde oortredings te ondersoek en met die doel om roetine-ondersoeke uit te voer om nakoming van hierdie Ooreenkoms af te dwing, kan—

- (a) vir ondervraging enigiemand dagvaar wat moontlik inligting kan verskaf of wie se teenwoordigheid by die versoening of arbitrasie kan bydra om die geskil te besleg;
- (b) enigiemand dagvaar wat moonlik in besit of in beheer is van enige boek, dokument of voorwerp wat tersaaklik is vir die beslegting van die geskil, om voor 'n aangewese agent te verskyn om ondervra te word of om daardie boek, dokument of voorwerp te oorhandig;
- (c) 'n eed afneem of 'n plegtige verklaring aanvaar van iemand wat geroep is om getuenis te lewer of om ondervra te word;

- (d) op enige redelike tyd, maar slegs nadat skriftelike magtiging ontvang is—
- (i) 'n perseel binnegaan en ondersoek waarop of waarbinne enige boek, dokument of voorwerp tersaaklik vir die beslegting van die geskil gevind kan word of waar daar 'n redelike vermoede bestaan dat dit daar is;
  - (ii) aandring op die oorhandiging en nagaan van enige boek, dokument of voorwerp wat op of binne daardie perseel is en wat tersaaklik vir die beslegting van die geskil is of daarop beslag lê; en
  - (iii) ten opsigte van enige aangeleentheid tersaaklik vir die beslegting van die geskil 'n verklaring afneem van enigiemand op die perseel wat gewillig is om 'n verklaring af te lê;
- (e) enige boeke, dokumente of voorwerpe wat oorhandig is, of waarop daar deur 'n aangewese agent beslag gelê is, nagaan en vir 'n redelike tydperk behou.
- (2) 'n Dagvaardiging wat vir enige doel ingevolge subklousule (1) uitgereik is, moet deur die Sekretaris van die Bedingsraad onderteken wees en moet—
- (a) uitdruklik van die persoon daarin genoem, vereis om voor 'n aangewese agent te verskyn;
  - (b) die boek, dokument of voorwerp wat oorhandig moet word, voldoende identifiseer; en
  - (c) die datum, tyd en plek waar die persoon moet verskyn, vermeld.
- (3) Die skriftelike magtiging bedoel in subklousule (1)(d)—
- (a) mag, indien dit betrekking het op woonpersele, slegs deur 'n regter van die Arbeidshof uitgereik word, met inagneming van artikel 14 van die Grondwet, en dan slegs op aansoek van die aangewese agent, wat onder eed of deur 'n plegtige verklaring die volgende inligting uiteensit:
    - (i) Die aard van die geskil;
    - (ii) die tersaaklikheid van enige boek, dokument of voorwerp vir die beslegting van die geskil;
    - (iii) die teenwoordigheid van enige boek, dokument of voorwerp op die perseel; en
    - (iv) die noodsaaklikheid om die perseel binne te gaan om die boek, dokument of voorwerp na te gaan of daarop beslag te lê;  - (b) mag in alle ander gevalle deur die Sekretaris van die Raad uitgereik word.
- (4) Die eienaar of bewoner van enige perseel wat 'n aangewese agent gemagtig is om te betree om ondersoek in te stel, en enige persoon wat in diens is van daardie eienaar of bewoner, moet die geriewe verskaf wat 'n aangewese agent benodig om daardie perseel binne te gaan om die nodige ondersoek of beslaglegging te doen.
- (5) Die aangestelde persoon moet 'n kwitansie uitreik vir enige boek, dokument of voorwerp waarop beslag gelê is ingevolge subklousule (1).
- (6) Die reg met betrekking tot privilegie, soos van toepassing op 'n getuie wat gedagvaar is om in 'n gereghof getuenis te lewer of 'n boek, dokument of voorwerp voor te lê, is insgelyks van toepassing op die ondervraging van enige persoon of op die voorlegging of beslaglegging van enige boek, dokument of voorwerp ingevolge hierdie klousule.
- (7) Die aangestelde persoon moet die voorgeskrewe getuiegeld betaal aan elke persoon wat voor hom verskyn as gevolg van die dagvaardiging aan hom uitgereik.
- (8) 'n Persoon maak hom skuldig aan minagting van die aangewese agent—
- (a) indien die persoon gedagvaar is om te verskyn en sonder goeie rede afwesig is op die tyd en plek vermeld in die dagvaardiging;
  - (b) indien die persoon verskyn het soos vereis by die dagvaardiging en versuim om teenwoordig te bly totdat die persoon deur die aangewese agent verskoon is;
  - (c) deur te weier om 'n eed af te lê of 'n plegtige verklaring te maak as 'n getuie wanneer die aangewese agent dit vereis;
  - (d) deur te weier om vrae volledig en na sy of haar beste van wete en oortuiging te beantwoord, onderworpe aan subklousule (6);
  - (e) as die persoon, sonder goeie rede, versuim om 'n boek, dokument of voorwerp vermeld in die dagvaardiging, aan die aangewese agent te oorhandig;
  - (f) indien die persoon opsetlik die aangewese agent verhinder om enige funksie uit te voer aan hom opgedra deur of ingevolge die Wet;
  - (g) indien die persoon die aangewese agent beleidig, neerhaal of verkleineer, of 'n ondersoek benadeel of onbehoorlik beïnvloed of op onbehoorlike wyse die aangewese agent se aanbevelings vooruitloop;
  - (h) deur opsetlik die versoenings- of arbitrasieverrigtinge te onderbreek of deur enige onbehoorlike gedrag tydens sodanige verrigtinge;
  - (i) deur enigets te doen met betrekking tot die aangewese agent wat, indien dit gedoen sou word met betrekking tot 'n Hof, as minagting beskou sou word.
- (9) Die aangewese agent kan enige minagting na die Arbeidshof verwys vir 'n gepaste bevel.

(10) 'n Aangewese agent kan weier om 'n klagte te ondersoek wat deur 'n werknemer ingedien is meer as 17 weke nadat die geskil ontstaan het: Met dien verstande dat die werkgever van daardie werknemer vir die volle periode van nienakoming, met inbegrip van rente en boetes voorgeskryf in hierdie Ooreenkoms, aangeslaan word.

(11) 'n Aangewese agent kan weier om 'n klagte wat deur 'n vakbond ingedien is, te ondersoek indien die vakbond nie eers gepoog het om die beweerde geskil regstreeks met die werkgewerparty te besleg nie.

## 27. NAKOMINGSKOMITEE

(1) Die Raad moet 'n komitee, genoem die "Nakomingskomitee", aanstel wat verantwoordelik sal wees vir die doeltreffende ondersoek van klages en doeltreffende adwingingsoptrede in die geval van die nienakoming van die Ooreenkoms.

(2) Die Nakomingskomitee moet—

- (a) riglyne en beginsels stel wat alle aspekte van die nakoming van die Ooreenkoms dek, wat aanvaarbaar is vir alle partye by die Ooreenkoms en wat billike, kostedoeltreffende, onpartydige en korruptievrye adwinging van hierdie Ooreenkoms teweeg sal bring;
- (b) die riglyne en beginsels aldus gestel daadwerklik moniteer en verseker dat die agente van die Raad dit nakom;
- (c) die optrede van die Raad of die Nakomingskomitee vryelik aan die werkgewers en werknemers wat daarin belangstel, mededeel;
- (d) ondersoek instel om positiewe metodes te vind om nakoming te bevorder, veral onder werkgewers en werknemers in die informele sektor, en om die steun te werf van alle persone en instellings verantwoordelik vir die voorbereiding van tenderdokumente om sodoende verpligte nakoming van hierdie Ooreenkoms deur werkgewers aan wie tenders toegeken word, te verseker;
- (e) voorsiening maak vir spoedige en kostedoeltreffende versoening of arbitrasie van geskille tussen die Raad en werkgewers of werknemers.

## 28. GEBIEDSONDERHANDELINGE

Indien wysigings van hierdie Ooreenkoms spesifiek Gebied B en Gebied C raak, moet die werkgewers en die werknemers wat Gebied B en Gebied C verteenwoordig, oor sulke wysigings onderhandel.

Op hede die 15de dag van Julie 2004 te Bellville onderteken.

**R. H. M. JOHNSON**

**vir die Master Builders' and Allied Traders' Association, Western Cape**

**W. C. CLIFT**

**vir die Boland Meesterbouers en Verwante Bedrywe Vereniging**

**R. C. DAMON**

**vir die Building Workers' Union**

**H. KETSISE**

**vir die National Union of Mineworkers (NUM)**

**T. NTSOMI**

**vir die Building, Wood and Allied Workers' Union of South Africa**

**P. ROOLF**

**vir die South African Woodworkers' Union**

## AANHANGSEL A

### REËLS VIR VERSOENING EN ARBITRASIE IN GESKILLE IN DIE BEDINGINGSRAAD VIR DIE BOUNYWERHEID (REËLS)

#### INDELING VAN REËLS

#### DEEL A: BETEKENING EN INDIENING VAN DOKUMENTE

1. Raadsadresse waar dokumente ingedien moet word
2. Hoe om tydperke te bereken
3. Wie dokumente moet teken
4. Hoe om dokumente aan ander partye te beteken
5. Hoe om te bewys dat 'n dokument ooreenkomsdig die Reëls beteken is
6. Hoe om dokumente by die Raad in te dien

7. Dokumente en kennisgewings per geregistreerde pos gestuur
8. Hoe om kondonasie aan te vra vir dokumente laat ingedien

#### **DEEL B: VERSOENING IN GESKILLE**

9. Hoe om 'n geskil na die Raad te verwys vir versoeningsverrigtinge
10. Watter kennis die Raad moet gee van versoeningsverrigtinge
11. Raad kan poog om 'n geskil by te lê voor die versoeningsverrigtinge
12. Wat gebeur as 'n party nie versoeningsverrigtinge bywoon of daarby verteenwoordig is nie
13. Hoe om te bepaal of 'n Raadskommissaris 'n geskil mag versoen
14. Uitreiking van 'n sertifikaat kragtens artikel 135(5) van die Wet
15. Versoeningsverrigtinge mag nie openbaar gemaak word nie

#### **DEEL C: VERSOENINGSARBITRASIE**

16. Voer van versoeningsarbitrasie kragtens artikel 191(5A) van die Wet

#### **DEEL D: ARBITRASIE**

17. Hoe om arbitrasie te versoek
18. Wanneer partye gelas kan word om verklarings in te dien
19. Wanneer partye gelas kan word om 'n voorarbitrasiekonferensie te hou.
20. Watter kennis die Raad van arbitrasieverrigtinge moet gee
21. Hoe om te bepaal of 'n Raadskommissaris 'n geskil mag arbitreer
22. Hoe om arbitrasie uit te stel

#### **DEEL E: REËLS VAN TOEPASSING OP VERSOENING, ARBITRASIE EN VERSOENINGSARBITRASIE**

23. Wie 'n party by die Raad mag verteenwoordig
24. Hoe om partye te voeg of te vervang
25. Hoe om die sitasie van 'n party te korrigeer
26. Wanneer die Raad geskille mag konsolideer
27. Blootlegging van dokumente
28. Wat gebeur as 'n party versuim om verrigtinge in geskille oor regte by te woon
29. Wat gebeur as 'n party versuim om verrigtinge in geskille oor belangte by te woon

#### **DEEL F: AANSOEKE**

30. Hoe om 'n aansoek in te dien
31. Hoe om aansoek te doen om arbitrasietoekennings of – beslissings te wysig of te herroep
32. Hoe om 'n ontslaggeskil na die Arbeidshof te verwys

#### **DEEL G: ARBITRASIE VOOR ONTSLAG**

17. Hoe om arbitrasie voor ontslag te versoek kragtens artikel 188A van die Wet

#### **DEEL H: ALGEMEEN**

34. Onverteenwoordigde applikante sonder posadresse en faksnommers
35. Kondonasie van versuim om aan die Reëls te voldoen
36. Opneem van Raadsverrigtinge
37. Hoe om 'n dagvaardiging te laat uitrek
38. Betaling van getuiegeld
39. Taksasie van kosterekeninge
40. Wat woorde in hierdie Reëls beteken

#### **DEEL A**

##### **BETEKENING EN INDIENING VAN DOKUMENTE**

###### **1. Raadsadresse waar dokumente ingedien moet word**

- (1) Die adresse, telefoonnummers en faksnummers van die kantore van die Raad word in Byvoegsel 1 verstrek.
- (2) Dokumente mag slegs by die adresse of faksnummers in Byvoegsel 1 gelys, by die Raad ingedien word.

## 2. Hoe om tydperke te bereken

- (1) Vir doeleindes van die berekening van tydperke ooreenkomstig hierdie Reëls—  
 (a) beteken 'n dag enige dag van die week, met inbegrip van Saterdae, Sondae en openbare vakansiedae, maar uitgesonderd die dae van 16 Desember tot en met 7 Januarie;

### Voorbeeld 1

Reël 7 meld sewe dae na die datum waarop die dokument gepos is. As die dokument op 'n Vrydag gepos is, sluit die sewe dae die eersvolgende Saterdag en Sondag in.

### Voorbeeld 2

Reël 7 meld sewe dae na die datum waarop die dokument gepos is. As die dag waarop dit gepos is, Vrydag, 12 Desember was, word die eerste vier dae getel (die dae voor 16 Desember) en die laaste drie dae word getel vanaf 7 Januarie—met ander woorde die tydperk loop van 12 Desember tot 10 Januarie.

- (b) word die eerste dag uitgesluit en die laaste dag ingesluit [JDM1], behoudens subreël (2).

### Voorbeeld 3

Reël 10 meld 'n kennistydperk van 14 dae vir versoening. As die kennisgewing op Donderdag, 10 Oktober gefaks word, moet die versoening geskeduleer word vir Vrydag, 25 Oktober of enige dag daarna.

- (2) Die laaste dag van enige tydperk word uitgesluit as dit op 'n Saterdag, 'n Sondag, 'n openbare vakansiedag of enige dag tussen 16 Desember en 7 Januarie val.

## 3. Wie dokumente moet teken

- (1) 'n Dokument wat 'n party ingevolge die Wet op hierdie Reëls moet teken, kan getekend word deur daardie party of deur iemand wat kragtens die Wet of hierdie Reëls bevoeg is om die party in die verrigtinge te verteenwoordig.  
 (2) As verrigtinge gesamentlik deur meer as een werknemer ingestel of bestry word, kan die dokumente getekend word deur 'n werknemer wat deur die ander werknemers gemagtig is om dokumente te teken. 'n Skriftelike lys van die name van werknemers wat die betrokke werknemer gemagtig het om namens hulle te teken, moet aan die verwysingsdocument vasgeheg word.

## 4. Hoe om dokumente aan ander partye te beteken

- (1) 'n Party moet 'n dokument aan die ander partye beteken—  
 (a) deur 'n afskrif van die dokument te oorhandig aan—  
 (i) die persoon, as die persoon 'n party in die geskil, is;  
 (ii) 'n persoon wat skriftelik gemagtig is om betekening te aanvaar namens die party in die geskil;  
 (iii) 'n persoon wat skynbaar minstens 16 jaar oud is en in beheer van die party se woon- besigheids- of werkplek is;  
 (b) deur 'n afskrif van die dokument aan daardie party te faks of te telefaks;  
 (c) deur 'n afskrif van die dokument per geregistreerde pos of per telegram te versend na die jongste bekende adres van die party of 'n adres deur die party vir die aangewende aarding van betekening gekies.

## 5. Hoe om te bewys dat 'n dokumente ooreenkomstig die Reëls beteken is

- (1) 'n Party moet aan die Raad bewys lewer dat 'n dokument ooreenkomstig hierdie Reëls beteken is, deur die Raad of 'n Raadskommissaris te voorsien van die volgende:  
 (a) 'n Afskrif van die bewys dat die dokument per geregistreerde pos aan die ander party versend is;  
 (b) 'n afskrif van die telegram of teleks wat die dokument aan die ander party kommunikeer;  
 (c) 'n afskrif van die faktransmissieverslag wat die suksesvolle versending van die hele dokument aan die ander party aandui;  
 (d) indien die dokument per hand beteken is—  
 (i) 'n afskrif van 'n ontvangstbewys deur of namens die ander party wat duidelik die naam en ampsbenaming van die ontvanger en die plek, datum en tyd van betekening toon; of  
 (ii) 'n verklaring wat betekening bevestig, onderteken deur die persoon wat 'n afskrif van die dokument aan die ander party afgelewer of dit by enige perseel gelaat het.  
 (2) Indien bewys van betekening ooreenkomstig subreël (1) gelewer is, word vermoed, totdat die teendeel bewys is, dat die party aan wie die dokument beteken is, kennis dra van die inhoud daarvan.  
 (3) Die Raad kan sodanige ander bewys van betekening as wat voorgeskryf is aanvaar as wat voldoende is.

## **6. Hoe om dokumente by die Raad in te dien**

- (1) 'n Party moet dokumente by die Raad indien deur—
  - (a) die dokumente by 'n kantoor van die Raad in te lewer;
  - (b) 'n afskrif van die dokument per geregistreerde pos aan die Raad te stuur; of
  - (c) die dokument aan die Raad te faks.
- (2) 'n Dokument is by die Raad ingedien wanneer—
  - (a) die dokumente by 'n kantoor van die Raad ingelewer is;
  - (b) 'n afskrif van die dokument per geregistreerde pos deur die Raad ontvang is; of
  - (c) die faksversending voltooi is.

## **7. Dokumente en kennisgewings per geregistreerde pos gestuur**

Daar word vermoed dat 'n dokument wat per geregistreerde pos versend is, sewe dae nadat dit gepos is, ontvang is deur die persoon aan wie dit gestuur is, tensy die teendeel bewys word.

## **8. Hoe om kondonasié aan te vra vir dokumente laat ingedien**

- (1) Hierdie reël is op enige dokument van toepassing, met inbegrip van 'n verwysing of 'n aansoek, wat afgelewer word ná 'n tydperk voorgeskryf in die Wet of hierdie Reëls.
- (2) 'n Party moet, wanneer hy of sy die dokument by die Raad aflewer, aansoek doen om kondonasié ooreenkomsdig reël 30.
- (3) 'n Aansoek om kondonasié moet die gronde daarvoor uiteensit en moet die volgende besonderhede bevat:
  - (a) Die graad van laatheid;
  - (b) die rede waarom dit laat is en die mate van skuld;
  - (c) die verwysende party se vooruitsigte om met die verwysing te slaag en die regshulp te kry wat teen die ander party gevra word;
  - (d) enige benadeling van die ander partye; en
  - (e) enige ander toepaslike faktor.

## **DEEL B**

### **VERSOENING IN GESKILLE**

#### **9. Hoe om 'n geskil na die Raad te verwys vir versoening**

- (1) 'n Party verwys 'n geskil vir versoening na die Raad deur die Raad se verwysingsvorm in te vul en dit aan die Raad te beteken.
- (2) Die verwysende party moet—
  - (a) die verwysingsvorm teken;
  - (b) skriftelike bewys aanheg dat die verwysing aan die ander partye in die geskil beteken is;
  - (c) indien die verwysingsvorm laat ingedien word, 'n aansoek om kondonasié ooreenkomsdig reël 8 aanheg.
- (3) Die Raad kan weier om 'n verwysingsdokument te aanvaar totdat daar aan subreël (2) voldoen is.

#### **10. Watter kennis die Raad moet gee van versoeningsverrigtinge**

Die Raad moet die partye minstens 14 dae skriftelike kennis gee van versoeningsverrigtinge, tensy die partye tot 'n korter kennistydperk instem.

#### **11. Raad kan poog om 'n geskil by te lê voor die versoeningsverrigtinge**

Die Raadskommissaris kan voordat die versoening begin, telefonies of op 'n ander wyse met die partye in verbinding tree ten einde te poog om die geskil by te lê.

#### **12. Wat gebeur as 'n party nie versoeningsverrigtinge bywoon of daarby verteenwoordig is nie**

Inndien 'n persoon versuim om persoonlik versoeningsverrigtinge by te woon of daarby verteenwoordig te word, kan die Raad dit ooreenkomsdig reël 22 hanteer.

#### **13. Hoe om te bepaal of 'n Raadskommissaris 'n geskil mag versoen**

Indien dit gedurende versoeningsverrigtinge blyk dat 'n jurisdiksionele vraagstuk nie uitgemaak is nie, moet die Raadskommissaris van die verwysende party vereis om te bewys dat die Raad jurisdiksie het om die geskil te versoen.

#### **14. Uitreiking van 'n sertifikaat kragtens artikel 135 (5) van die Wet**

'n Sertifikaat uitgereik kragtens artikel 135 (5) van die Wet wat verklaar dat die geskil besleg is, al dan nie, moet die aard van die geskil vermeld soos in die verwysingsdokument beskryf of soos deur die Raadskommissaris geïdentifiseer gedurende die versoeningsproses.

**15. Versoeningsverrigtinge mag nie openbaar gemaak word nie**

- (1) Versoeningsverrigtinge moet as privaat en vertroulik behandel en sonder vooroordeel gevoer word. Niemand mag tydens enige latere verrigtinge melding maak van enigets wat op versoeningsverrigtinge gesê is nie, tensy albei partye skriftelik daartoe instem.
- (2) Niemand, ook nie die Raadskommissaris nie, mag tydens enige latere verrigtinge in die Raad of in 'n hof as getuie geroep word om getuenis te lewer oor wat tydens die versoeningsverrigtinge gebeur het nie.

**DEEL C**

**VERSOENINGSARBITRASIE**

**16. Voer van versoeningsarbitrasie kragtens artikel 191 (5A) van die Wet**

- (1) Die Raad moet die partye minstens 14 dae skriftelike kennis gee dat 'n aangeleentheid ingevolge artikel 191 (5A) vir versoeningsarbitrasie geskeduleer is.
- (2) 'n Party wat voornemens is om beswaar te maak teen die hantering van 'n geskil ingevolge artikel 191 (5A), moet minstens sewe dae voor die datum vasgestel kragtens subreël (1) 'n skriftelike kennisgewing te dien effekte aan die Raad en die ander party beteken.
- (3) Subreël (2) is nie van toepassing nie op 'n geskil betreffende—
  - (a) die ontslag van 'n werknemer om enige rede in verband met proef; of
  - (b) 'n onbillike arbiedspraktyk in verband met proef.
- (4) Indien die responderende party versuim om by verrigtinge geskeduleer kragtens subreël (1) te verskyn of daarby verteenwoordig te word, voer die Raadskommissaris die versoeningsarbitrasie uit op die datum vermeld in die kennisgewing uitgereik ingevolge subreël (1), of verdaag die verrigtinge tot 'n later datum.
- (5) Subreël (4) geld ongeag of 'n party 'n kennisgewing van beswaar kragtens subreël (2) ingedien het, al dan nie.
- (6) Die onderskeie bepalings van die Wet en hierdie Reëls wat op versoening en arbitrasie van toepassing is, is met die nodige aanpassings wat die konteks vereis, op versoeningsarbitrasie van toepassing.
- (7) Indien arbitrasie nie begin op die datums gespesifieer in die kennisgewing bedoel in subreël (1) nie, moet die Raad die aangeleentheid óf in die teenwoordigheid van die partye óf deur uitreiking van 'n kennisgewing kragtens reël 20 vir arbitrasie skeduleer.

**DEEL D**

**ARBITRASIE**

[Deel D is nie van toepassing op arbitrasie in verband met versuim om aan die bepalings van 'n kollektiewe ooreenkoms kragtens artikel 33A (4) van die Wet te voldoen nie]

**17. Hoe om arbitrasie te versoek**

- (1) 'n Party kan die Raad versoek om 'n geskil te arbitreer deur 'n dokument in die vorm van Aanhangsel LRA 7.13 ("die verwysingsdokument") af te lewer.
- (2) Die verwysende party moet—
  - (a) die verwysingsdokumente ooreenkomstig reël 3 teken;
  - (b) skriftelike bewys dat die verwysingsdokument aan die ander partye beteken is ooreenkomstig reël 5, by die verwysingsdokument aanheg; en
  - (c) indien die verwysingsdokument ná die voorgeskrewe tydperk beteken word, 'n aansoek om kondonasié ooreenkomstig reël 8 aanheg.
- (3) Die Raad mag nie 'n verwysingsdokument aanvaar nie, tensy daar aan subreël (2) voldoen is.
- (4) Hierdie reël is nie van toepassing op versoeningsarbitrasieverrigtinge gevoer kragtens artikel 191 (5A) van die Wet nie.

**18. Wanneer partye gelas kan word om verklarings in te dien**

- (1) Die Raad of 'n Raadskommissaris kan—
  - (a) die verwysende party in 'n arbitrasie gelas om binne 'n gespesifieerde tydperk 'n saakstelling in te dien; en
  - (b) die ander partye gelas om binne 'n gespesifieerde tydperk 'n antwoordende stelling in te dien.
- (2) 'n Uiteensetting ingevolge subreël (1) moet—
  - (a) die wesenlike feite waarop die party steun, en die regsvraagstukke wat uit die wesenlike feite ontstaan, uiteensit;
  - (b) ingedien word binne die tydperk gespesifieer deur die Raad of die Raadskommissaris.

**19. Wanneer partye gelas kan word om 'n voorarbitrasiekonferensie te hou**

Die partye in 'n arbitrasie moet 'n voorarbitrasiekonferensie oor die aangeleenthede bedoel in reël 18 (2) hou, indien daar toe gelas deur die Sekretaris van die Raad.

**20. Watter kennis die Raad van arbitrasieverrigtinge moet gee**

Die Raad moet die partye minstens 14 dae skriftelike kennis van arbitrasieverrigtinge gee, tensy die partye tot 'n korter tydperk instem.

**21. Hoe om te bepaal of 'n Raadskommissaris 'n geskil mag arbitreer**

Indien dit gedurende die arbitrasieverrigtinge blyk dat 'n jurisdiksionele vraagstuk nie uitgemaak is nie, moet die Raadskommissaris van die verwysende party vereis om te bewys dat die Raad jurisdiksie het om die geskil te arbitreer.

**22. Hoe om arbitrasie uit te stel**

- (1) Die Raad moet sonder dat die partye verskyn, 'n arbitrasie uitstel indien—
  - (a) al die partye in die geskil skriftelik tot die uitstel instem; en
  - (b) die skriftelike toestemming tot die uitstel die Raad meer as sewe dae voor die vasgestelde datum van die arbitrasie bereik; en
  - (c) daar dwingende redes is om uit te stel.
- (2) Enige party kan kragtens reël 30 aansoek doen om uitstel van 'n arbitrasie deur voor die vasgestelde datum van die arbitrasie 'n aansoek aan die ander partye in die geskil te beteken en 'n afskrif by die Raad in te dien.

**DEEL E****REËLS VAN TOEPASSING OP VERSOENING, ARBITRASIE EN VERSOENINGSARBITRASIE****23. Wie 'n party by die Raad mag verteenwoordig**

- (1) 'n Party in 'n geskil kan persoonlik in verrigtinge voor die Raad verskyn of kan verteenwoordig word deur—
  - (a) 'n regspraktisy;
  - (b) 'n lid, amptenaar of ampsdraer van 'n geregistreerde vakbond waarvan die party lid was toe die geskil ontstaan het;
  - (c) 'n lid, amptenaar of ampsdraer van 'n geregistreerde werkgewersvereniging of geregistreerde werkgewersfederasie waarvan die party lid was toe die geskil ontstaan het;
  - (d) 'n direkteur, werknemer, trustee of vennoot in 'n vennootskap van daardie party;
  - (e) 'n ander party in die geskil, indien die verrigtinge ingestel of bestry word deur meer as een party.
- (2) Indien 'n geskil handel oor die billikheid van ontslag en 'n party beweer dat die rede vir die ontslag verband hou met die werknemer se gedrag, geskiktheid of bekwaarmheid, is die partye, ondanks subreël (1)(a), nie daarop geregtig om deur praktiserende regspraktisyrs verteenwoordig te word nie, tensy—
  - (a) die Raadskommissaris en die ander partye daar toe instem;
  - (b) die Raadskommissaris tot die gevolgtrekking kom dat dit onredelik is om regsverteenwoordiging, nadat hy of sy die volgende oorweeg het:
    - (i) die aard van die regsvrae wat deur die geskil geopper is;
    - (ii) die ingewikkeldheid van die geskil;
    - (iii) die openbare belang; en
    - (iv) die betreklike vermoë van die opponerende partye of hulle verteenwoordigers om die geskil te hanteer.

**24. Hoe om partye te voeg of te vervang**

- (1) Die Raad of 'n Raadskommissaris kan enige aantal persone as partye in verrigtinge voeg indien hulle reg op regshulp op wesenlik dieselfde reg- of feitevraag berus.
- (2) 'n Raadskommissaris kan 'n bevel gee wat enige persoon as 'n party in verrigtinge voeg indien die party wat gevoeg staan te word, 'n wesenlike belang by die onderwerp van die verrigtinge het.
- (3) 'n Raadskommissaris kan 'n bevel kragtens subreël (2) gee—
  - (a) uit eie beweging;
  - (b) op aansoek deur 'n party; of
  - (c) indien 'n persoon wat daarop geregtig is om in die verrigtinge gevoeg te word, te eniger tyd gedurende die verrigtinge aansoek doen om tot die verrigtinge toe te tree.
- (4) 'n Aansoek kragtens hierdie reël moet gedoen word ooreenkomsdig reël 30.

- (5) Indien dit in enige verrigtinge nodig word om 'n persoon in die plek van 'n bestaande party te stel, kan enige party by die Raad aansoek doen om 'n bevel wat daardie persoon in die plek van die bestaande party stel, en 'n Raadskommissaris kan sodanige bevel gee of gepaste lasgewings doen met betrekking tot die verdere prosedure van die verrigtinge.
- (6) 'n Aansoek om enige persoon as 'n party in die verrigtinge te voeg of in die plek van 'n bestaande party te stel, moet vergesel gaan van afskrifte van alle dokumente wat voorheen afgelewer is, tensy die betrokke persoon of sy of haar verteenwoordiger reeds in besit van die dokumente is.
- (7) Behoudens 'n bevel kragtens subreëls (2) en (5) raak 'n voeging of indieplekstelling kragtens hierdie reël nie enige stappe wat reeds in die verrigtinge gedoen is nie.

#### **25. Hoe om die dagvaarding van 'n party te korrigeer**

Indien 'n party in enige verrigtinge foutief of gebrikkig gedagvaar is, kan die Raad, op aansoek en met kennisgewing aan die betrokke partye, die fout of gebrek korrigeer.

#### **26. Wanneer die Raad geskille mag konslideer**

Die Raad of 'n Raadskommissaris kan, uit eie beweging of op aansoek, meer as een geskil konsolideer sodat die geskille in dieselfde verrigtinge hanteer kan word.

#### **27. Blootlegging van dokumente**

'n Party kan 'n Raadskommissaris versoek om 'n bevel te gee wat 'n ander party in die geskil verplig om alle toepaslike dokumente bloot te lê.

#### **28. Wat gebeur as 'n party versuim om verrigtinge in geskille oor regte by te woon**

- (1) Indien 'n party in 'n geskil oor regte versuim om enige verrigtinge voor die Raad by te woon of daarby verteenwoordig te word, en daardie party—
  - (a) die geskil na die Raad verwys het, kan 'n Raadskommissaris die aangeleentheid van die hand wys deur 'n bevel te gee; of
  - (b) nie die geskil na die Raad verwys het nie, kan die Raadskommissaris—
    - (i) met die verrigtinge voortgaan in die afwesigheid van daardie party; of
    - (ii) die verrigtinge tot 'n later datum verdaag.
- (2) 'n Raadskommissaris moet oortuig wees dat die party behoorlik in kennis gestel is van die datum, tyd en plek van die verrigtinge voordat hy of sy 'n besluit kragtens subreël (1) neem.
- (3) Indien 'n aangeleentheid van die hand gewys word, moet die Raad 'n afskrif van die reëling aan partye stuur.

#### **29. Wat gebeur as 'n party versuim om verrigtinge in geskille oor belang by te woon**

- (1) Indien 'n party in 'n geskil oor belang versuim om die versoeningsverrigtinge by te woon of daarby verteenwoordig te word, en daardie party—
  - (a) die geskil na die Raad verwys het, kan 'n Raadskommissaris die tydperk vir versoening met nog 30 dae verleng en die partye skriftelik van die verlenging in kennis stel; of
  - (b) nie die geskil na die Raad verwys het nie, kan die Raadskommissaris onverwyld 'n sertifikaat uitrek dat die geskil onbesleg bly.
- (2) 'n Raadskommissaris moet oortuig wees dat die party behoorlik in kennis gestel is van die datum, tyd en plek van die verrigtinge voordat hy of sy 'n besluit kragtens subreël (1) neem.

### **DEEL F**

#### **AANSOEK**

#### **30. Hoe om 'n aansoek in te dien**

- (1) 'n Aansoek word gebring met kennisgewing aan alle persone wat 'n belang by sodanige aansoek het.
- (2) Die party wat die aansoek bring, moet die kennisgewing van aansoek teken en moet die volgende vermeld—
  - (a) Die titel van die aangeleentheid;
  - (b) die saaknommer deur die Raad aan die aangeleentheid toegeken;
  - (c) die regshulp verlang;
  - (d) die adres waar die party wat die dokument aflewer, aflewering van alle dokumente en prosesstukke sal aanvaar;
  - (e) dat enige partye wat voornemens is om die aangeleentheid te bestry, binne 14 dae nadat die kennisgewing van aansoek aan hom of haar afgeliever is, 'n kennisgewing van bestryding en 'n antwoordende verklaring moet aflewer;

- (f) dat die aansoek aangehoor sal word in die afwesigheid van 'n party wat nie aan paragraaf (e) voldoen nie;
  - (g) dat 'n bylae ingesluit word wat die dokumente lys wat wesenlik is vir en ter sake is by die aansoek.
- (3) Die aansoek moet gesteun word deur 'n beëdigde verklaring wat die volgende duidelik en bondig moet uiteensit—
- (a) Die name, beskrywing en adresse van die partie;
  - (b) 'n uiteensetting van die wesenlike feite, in chronologiese volgorde, waarop die aansoek berus, in voldoende besonderhede om enige party in staat te stel om op die dokumente te antwoord;
  - (c) 'n uiteensetting van die regsvraagstukke wat uit die wesenlike feite ontstaan, in voldoende besonderhede om enige party in staat te stel om op die dokument te antwoord;
  - (d) indien die dokument ná die toepaslike tydperk ingedien word, die gronde vir kondonasié ooreenkomsdig reël 8; en
  - (e) indien dit 'n dringende aansoek is wat gebring word, die omstandighede wat die aangeleentheid dringend maak en die redes waarom dit nie ooreenkomsdig die tydperke voorgeskryf by hierdie Reëls gehanteer kan word nie.
- (4) (a) 'n Party wat die aansoek bestry, kan binne 14 dae vanaf die datum waarop die aansoek aan daardie party beteken is, 'n kennisgewing van bestryding en 'n antwoordende verklaring aflewer.
- (b) 'n Kennisgewing van bestryding en 'n antwoordende verklaring moet, met die nodige aanpassings wat die konteks vereis, die inligting vereis by subreëls (3) en (4) bevat.
- (5) (a) Die party wat die verrigtinge inisieer, kan binne sewe dae vanaf die datum waarop 'n kennisgewing van bestryding en antwoordende verklaring aan hom of haar beteken is, 'n repliserende verklaring aflewer.
- (b) Die repliserende verklaring moet slegs kwesies wat in die antwoordende verklaring geopper is, behandel en mag nie nuwe feite- of regsvrae opper nie.
- (6) 'n Raadskommissaris kan toelaat dat die beëdigde verklarings beoog in hierdie reël vervang word deur skriftelike verklarings.
- (7) In 'n dringende aansoek kan die Raad of 'n Raadskommissaris—
- (a) afsien van die vereistes van hierdie reël; en
  - (b) 'n bevel toestaan slegs teen 'n party wat redelike kennis van die aansoek gekry het.
- (8) (a) Die Raad moet 'n datum bepaal vir die aanhoor van die aansoek nadat die repliserende verklaring afgelewer is, of nadat die tydperk vir die aflewing van 'n antwoord verstryk het, wat ook al die eerste is.
- (b) Die Raad moet die partie in kennis stel van die datum, tyd en plek van die aanhoor van die aansoek.
- (c) Aansoeke kan op 'n dag deur die Raad bepaal, op 'n mosierol aangehoor word.
- (9) Ondanks hierdie reël kan die Raad of Raadskommissaris 'n aansoek beslis op enige manier wat hy of sy gepas ag.

### **31. Hoe om aansoek te doen om arbitrasietoekennings of -beslissings te wysig of te herroep**

- (1) Aansoek om wysiging of herroeping van 'n arbitrasietoekenning of -reëling moet gedoen word binne 14 dae ná die datum waarop die applikant bewus geword het van—
- (a) die arbitrasietoekenning of -reëling; of
  - (b) 'n gemeenskaplike fout van die partie in die verrigtinge.
- (2) 'n Reëling deur 'n Raadskommissaris wat die uitwerking van 'n finale bevel het, word vir doeleindes van hierdie reël geag 'n reëling te wees.

### **32. Hoe om 'n ontslaggeskil na die Arbeidshof te verwys**

- (1) Aansoek kragtens artikel 191(6) van die Wet om 'n aangeleentheid na die Arbeidshof te verwys, moet gedoen word binne 14 dae nadat gesertifiseer is dat die geskil nie deur versoening besleg is nie.
- (2) Ondanks subreël (1) mag 'n party wat arbitrasie versoek, nie daarna aansoek kragtens artikel 191(6) doen nie.
- (3) Die aansoek moet die gronde vermeld waarop die party steun om te versoek dat die geskil na die Arbeidshof verwys word.
- (4) Indien enige party beswaar maak daarteen dat die aangeleentheid na die Arbeidshof verwys word, moet daardie party binne sewe dae ná ontvangs van die aansoek die gronde vir die beswaar verstrek.
- (5) Die Raad moet binne 14 dae ná ontvangs van die beswaar die partie in kennis stel van sy besluit.

**DEEL G****ARBITRASIE VOOR ONTSLAG****33. Hoe om arbitrasie voor ontslag te versoek kragtens artikel 188A van die Wet**

- (1) 'n Werkewer wat die Raad versoek om arbitrasie voor ontslag te verrig, doen dit deur 'n ingevulde verwysingsvorm aan die Raad af te lewer.
- (2) Die werknemer moet die verwysingsvorm waarby hy of sy instem tot arbitrasie voor ontslag, teken. Indien 'n werknemer kragtens artikel 188A(4)(b)<sup>1</sup> ingestem het, hoef die verwysingsvorm nie deur die werknemer geteken te word nie, maar 'n afskrif van die kontrak wat die instemming bevat, moet by die vorm aangeheg word.
- (3) By indiening van die verwysingsvorm moet die werkewer die voorgeskrewe geldte aan die Raad betaal. Betaling van die geldte geskied slegs deur—
  - (a) 'n bankgewaarborgde tjek; of
  - (b) elektroniese oordrag na die bankrekening van die Raad.
- (4) Binne 14 dae ná ontvangs van die versoek kragtens subreël (1) en die betaling van die voorgeskrewe geldte, moet die Raad die partye in kennis stel van waar en wanneer die arbitrasie voor ontslag sal plaasvind.
- (5) Tensy die partye anders ooreenkom, gee die Raad die partye minstens 14 dae kennis van die begin van die arbitrasie voor ontslag.
- (6) Die raad moet die geldte betaal ingevolge subartikel (3) terugbetaal slegs indien hy voor die uitreiking van die kennigewing ingevolge subreël (4) in kennis gestel word dat die aangeleentheid geskik is.

**DEEL H****ALGEMEEN****34. Onverteenwoordigde applikante sonder posadresse en faksnommers**

- (1) 'n Onverteenwoordigde applikant wat voornemens is om 'n geskil na die Raad te verwys en nie oor 'n posadres of 'n faksnummer beskik nie, moet die verwysingsvorm per hand by die Raad aflewer.
- (2) Indien 'n verwysingsvorm per hand deur 'n onverteenwoordigde applikant afgelever word, moet die Raad 'n saaknommer en skriftelike opdrag om, binne sewe dae ná die datum van die verwysing, telefonies of persoonlik met die Raad in verbinding te tree, aan die applikant verskaf sodat die Raad die applikant in kennis kan stel van die besonderhede van die aanhoor van die geskil.
- (3) Die administrator wat die applikant van die aanhoor van die geskil in kennis stel ingevolge subreël (2), moet op die saaklike en die saakbestuurstelsel aanteken dat die applikant in kennis gestel is van die besonderhede van die aanhoor van die geskil.
- (4) Die aantekening gemaak ooreenkomsdig subreël (3) is bewys daarvan dat die applikant in kennis gestel is van die besonderhede van die aanhoor van die geskil.

**35. Kondonasié van versuim om aan die Reëls te voldoen**

Die Raad of 'n Raadskommissaris kan, by aanvoering van gegronde redes, enige versuim om te voldoen aan die tydperke gestel ingevolge hierdie Reëls, kondoneer.

**36. Opneem van Raadsverrigtings**

- (1) Die Raad moet 'n rekord hou van—
  - (a) enige getuenis gelewer in arbitrasieverrigtinge;
  - (b) enige beëdigde getuenis gelewer in verrigtinge voor die Raad; en
  - (c) enige arbitrasietoekenning of -reëling deur 'n Raadskommissaris.
- (2) Die rekord kan gehou word in leesbare, handgeskrewe aantekeninge of deur middel van elektroniese opnames.

<sup>1</sup> Slegs 'n werknemer wie se verdienste die bedrag deur die Minister bepaal ingevolge artikel 6(3) van die Wet op Basiese Dienstvoorraarde, 1997 (tans R115 572,00 per jaar), mag in 'n dienskontrak instem tot voorontslagarbitrasie.

- (3) 'n Party kan, by betaling van die koste van die transkripsie, 'n afskrif aanvra van die transkripsie van die rekord of 'n gedeelte van 'n rekord gehou ingevolge subreël (2).
- (4) Nadat die persoon wat die transkripsie van die rekord maak, gesertifiseer het dat dit korrek is, word die rekord aan die Raad terugbesorg.
- (5) Daar word vermoed dat die transkripsie van 'n rekord wat ingevolge subreël (4) as korrek gesertifiseer is, korrek is, tensy die Arbeidshof anders beslis.

**37. Hoe om 'n dagvaarding te laat uitrek**

- (1) 'n Party wat wil hê die Raad of 'n Raadskommissaris moet 'n persoon dagvaar kragtens artikel 142 (1) van die Wet, moet 'n ingevulde dagvaardingsvorm indien, tesame met 'n skriftelike motivering wat uiteensit waarom die getuenis van die persoon wat gedagvaar moet word, nodig is.
- (2) 'n Party wat die Raad versoek om af te sien van die vereiste dat die party getuiegeld ooreenkomstig artikel 142(7)(c) betaal, moet die redes vir die versoek skriftelik uiteensit wanneer hy of sy die Raad versoek om 'n dagvaarding ten opsigte van daardie persoon uit te reik.
- (3) 'n Aansoek kragtens subreël (1) moet by die Raad ingedien word minstens 10 dae voor die arbitrasieverhoor of soos gelas deur die Raadskommissaris wat die arbitrasie aanhoor.
- (4) Die Raad of 'n Raadskommissaris kan weier om 'n dagvaarding uit te reik indien—
  - (a) die party nie bevestig waarom die getuenis van die persoon nodig is nie;
  - (b) die gedagvaarde party nie 'n redelike tydperk het om aan die dagvaarding te voldoen nie;
  - (c) die Raad of 'n Raadskommissaris nie oortuig is dat die party reëlings getref het om die getuiegeld en die redelike reiskoste van die gedagvaarde persoon te betaal nie.
- (5) 'n Dagvaarding moet—
  - (a) minstens sewe dae voor die datum vasgestel vir die arbitrasie, aan die gedagvaarde getuie beteken word deur die persoon wat die dagvaarding aangevra het of deur die balju; en
  - (b) indien die Raad dit gelas, vergesel gaan van die betaling van die voorgeskrewe getuiegeld vir een dag ooreenkomstig die toelaetarief gepubliseer by kennisgewing in die *Staatskoerant* ingevolge artikel 142(7) van die Wet, asook die getuie se redelike reiskoste.
- (6) Subreëls (4)(c) en (5)(b) is nie van toepassing nie indien die Raad kragtens artikel 142(7)(c) afgesien het van die vereiste dat die partye getuiegeld betaal.

**38. Betaling van getuiegeld**

- (1) 'n Getuie wat gedagvaar is om in enige verrigtinge voor die Raad te verskyn, moet getuiegeld betaal word ooreenkomstig die toelaetarief gepubliseer by kennisgewing in die *Staatskoerant* ingevolge artikel 142(7) van die Wet.
- (2) Die getuiegeld moet betaal word deur—
  - (a) die party wat die Raad versoek het om die getuie te dagvaar; of
  - (b) die Raad, indien die uitreiking van die dagvaarding nie deur 'n party versoek is nie of indien die Raad afsien van die vereiste dat die getuiegeld ingevolge artikel 142(7)(c) betaal word.
- (3) Ondanks subreël (1) kan die Raadskommissaris in gepaste omstandighede gelas dat 'n getuie geen getuiegeld of slegs 'n deel van die voorgeskrewe getuiegeld ontvang.

**39. Taksasie van kosterekeninge**

- (1) Die grondslag waarop 'n Raadskommissaris 'n kostebefel in enige arbitrasie kan gee, word gereël by artikel 138(10) van die Wet.
- (2) Die Sekretaris van die Raad kan taksasiebeamptes aanstel om die werkzaamhede van 'n taksasiebeampte kragtens hierdie Reëls te verrig.
- (3) Die taksasiebeampte moet enige kosterekening vir dienste gelewer in verband met verrigtinge voor die Raad takseer ooreenkomstig Bylae A van die voorgeskrewe landdroshoftarief, ingevolge die Wet op Landdroshowe, 1944 (Wet No. 32 van 1944), tensy die partye op 'n ander tarief ooreengekom het.
- (4) By taksasie van die kosterekening kan die taksasiebeampte enige boek, dokument, papier of rekening aanvra wat, na sy of haar mening, nodig is om enige aangeleentheid wat uit die taksasie voortspruit, behoorlik te beslis.
- (5) 'n Persoon wat taksasie versoek, moet 'n verwysingsvorm wat taksasie versoek, invul en die taksasiebeampte oortuig—
  - (a) van daardie party se aanspraak om by die taksasie aanwesig te wees; en
  - (b) dat die party wat vir die betaling van die rekening aanspreeklik is, kennis gekry het van die datum, tyd en plek van die taksasie.
- (6) Ondanks subreël (4) hoef kennis nie gegee te word aan 'n party—
  - (a) wat versuum het om by die verrigtinge aanwesig te wees of daarby verteenwoordig te wees nie; of
  - (b) wat skriftelik ingestem het dat die taksasie in sy of haar afwesigheid kan plaasvind.
- (7) 'n Beslissing deur 'n taksasiebeampte is onderworpe aan hersiening deur die Arbeidshof.

#### 40. Wat woorde in hierdie Reëls beteken

In hierdie Reëls het enige uitdrukking wat in die Wet op Arbeidsverhoudinge, 1995 (Wet No. 66 van 1995), omskryf is, dieselfde betekenis as in daardie Wet en beteken—

- “aflewer” om aan ander partye te beteken en by die Raad in te dien;
- “Arbeidshof” die Arbeidshof ingestel by artikel 151 van die Wet, en ook ‘n regter van die Arbeidshof;
- “beteken” om ooreenkomsdig reël 4 te beteken, en het “betekening” ‘n ooreenstemmende betekenis;
- “Direkteur” die Driekleur van die Kommissie aangestel kragtens artikel 118 van die Wet, en ook enigiemand aan wie die Direkteur die werkzaamhede van die Direkteur gedelegeer het;
- “geskil oor belang” ‘n geskil oor ‘n aangeleentheid van gemeenskaplike belang, met uitsondering van ‘n geskil wat ‘n party geregtig is om na arbitrasie of die Arbeidshof te verwys kragtens die Wet, ‘n kollektiewe ooreenkoms, ‘n wet of die gemene reg;
- “geskil oor regte” ‘n regsvordering waarop ‘n party in die diensverhouding geregtig is uit hoofde van ‘n dienskontrak, ‘n kollektiewe ooreenkoms, ‘n wet of die gemene reg;
- “indien” om by die Raad in te dien ooreenkomsdig reël 6;
- “openbare vakansiedag” ‘n openbare vakansiedag bedoel in artikel 1 van die Wet op Openbare Vakansiedae, 1994 (Wet No. 36 van 1994), wat tans die volgende is:

- 1 Januarie, Nuwejaarsdag
- 21 Maart, Menseregdag
- Goeie Vrydag
- Gesinsdag
- 27 April, Vryheidsdag
- 1 Mei, Werkersdag
- 16 Junie, Jeugdag
- 9 Augustus, Vrouedag
- 24 September, Erfenisdag
- 16 Desember, Versoeningsdag
- 25 Desember, Kersdag
- 26 Desember, Welwillendheidsdag

en enige openbare vakansiedag wat as sodanig verklaar is ingevolge artikel 2A van die Wet op Openbare Vakansiedae, 1994;

- “party” ‘n party in verrigting voor die Raad;
- “Raad” die Beddingsraad vir die Bouwverheid geregistreer kragtens artikel 29 van die Wet;
- “Raadskommissaris” ‘n individu deur die Raad aangestel om geskille by te lê;
- “Reëls” hierdie Reëls;
- “regspraktisyn” ‘n praktiserende advokaat, ‘n praktiserende prokureur of ‘n kandidaatprokureur;
- “Sekretaris” die Sekretaris van die Raad;
- “taksasiebeampte” ‘n bevoegde persoon deur die Sekretaris aangestel kragtens reël 39;
- “versoeningsarbitrasie” verrigtinge gevoer kragtens artikel 191(5A) van die Wet, wanneer arbitrasie begin onmiddellik nadat gesertifiseer is dat die geskil steeds onbesleg deur versoenig is; en
- “Wet” die Wet op Arbeidsverhoudinge, 1995 (Wet No. 66 van 1995), en ook enige regulasie kragtens die Wet.

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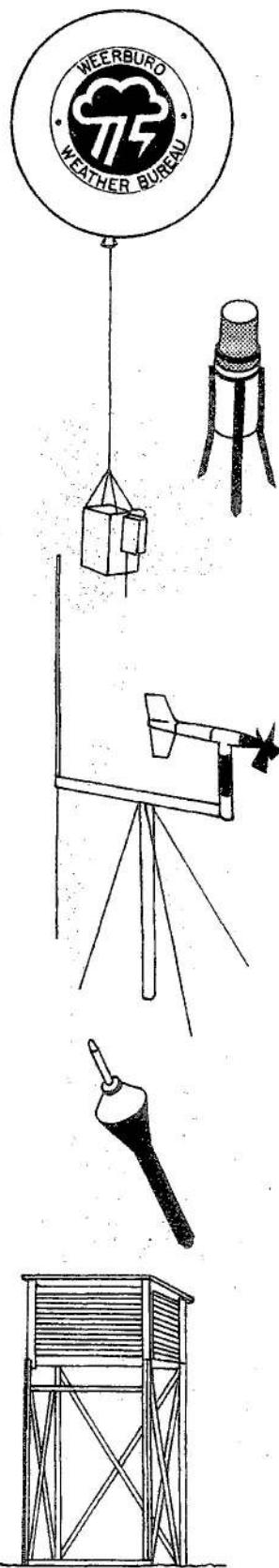
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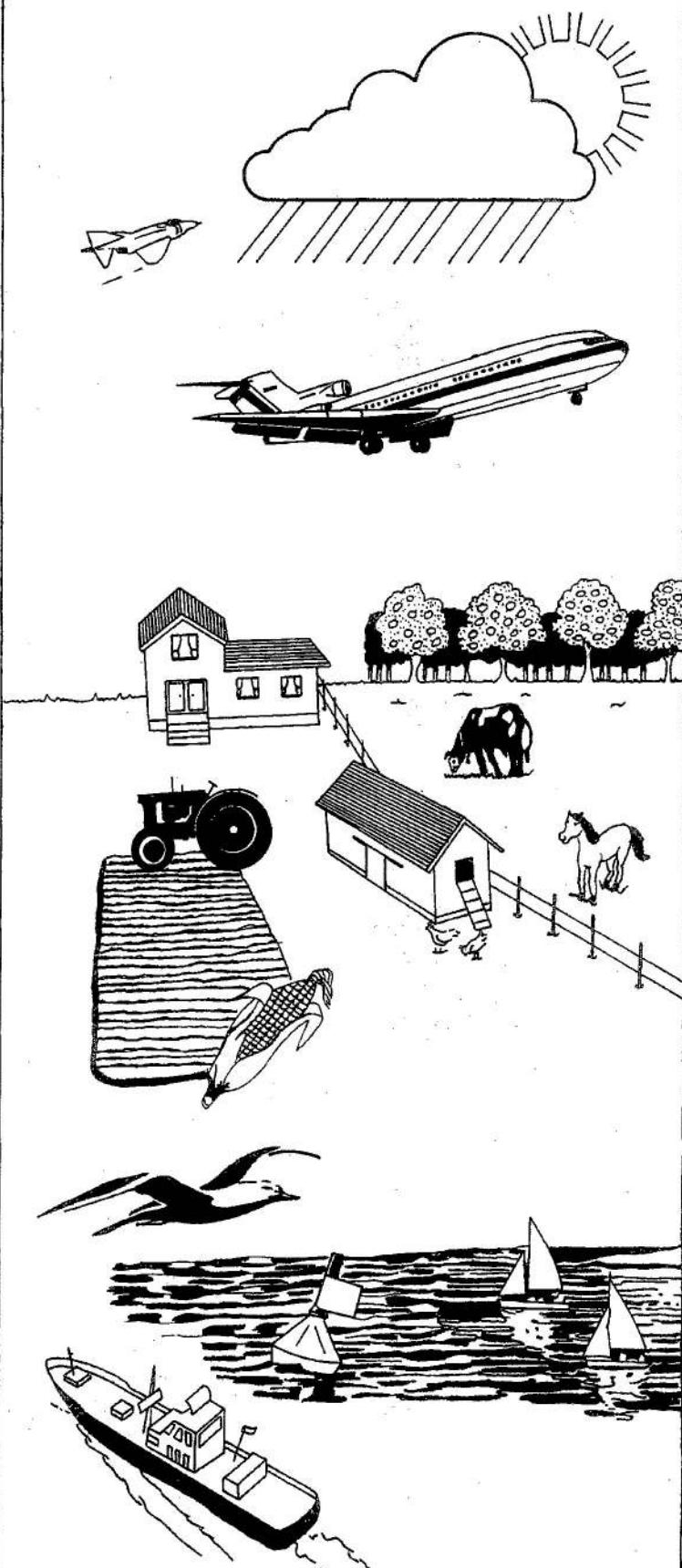


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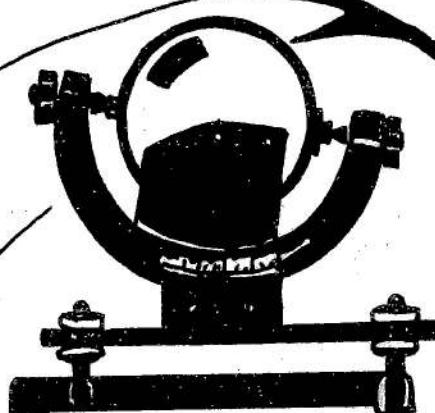


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