

IN THE EXEMPTION APPLICATION OF:-

WASTE CONTROL (PTY) LTD

Applicant

and

**NATIONAL BARGAINING COUNCIL FOR THE
ROAD FREIGHT AND LOGISTICS INDUSTRY (Council)**

Respondent

DECISION

1. The Applicant applied for exemption from Wellness Fund as company has its own onsite scheme.

2. The matter appeared on the Agenda of the Exemptions Body meeting held on the 17th March 2014.

3. The following were present:-
 - 3.1 Mr Y. Nagdee - Chairperson of the Exemptions Body
 - 3.2 Mr G. Wessels - Member of the Exemptions Body
 - 3.3 Mr P. Mndaweni - Committee Secretary of NBCFRLI
 - 3.4 Ms J. Nel - Exemptions Officer of NBCRFLI
 - 3.5 Mr F. Matsepe - Senior Agent – NBCRFLI

4. Apologies were received from Ms R. Manning – Member of the Exemptions Body.

5. **APPLICANT'S SUBMISSIONS**

The Applicant submitted, inter alia, as follows:

"NATURE OF APPLICATION:

The Applicant company is seeking exemption in the following terms:

1. *Permanent exemption from the terms of Section 57, more specifically the provisions pertaining to the Wellness Fund of the Main Collective Agreement.*

STATEMENT OF MATERIAL FACTS:

The Applicant functions as a division in the group SA Metal (Pty) Ltd which is primarily active in the scrap metal industry. The group employs eight hundred & seventy (870) employees paid weekly and over two hundred (200) employees paid monthly. The companies are administered from one managerial, human resource, administrative and financial hub and effectively the various companies in the group function and operate as divisions.

Within the Waste Control Division (as defined) the Applicant has fifty six (56) employees who fall within the jurisdiction of the National Bargaining Council for the Road Freight Industry (hereinafter "NBCRFI") and have been duly registered since 1999.

During the course of 2000/2001 the Applicant sought an exemption from the provision of the payment of provident fund contributions in terms of the NBCRFI Collective Agreement due to the fact that registered employees were of such a small minority of the entire workforce and the Applicant already had an internal provident fund. This application was duly granted and the Applicant is exempt from these provisions.

During July 2007 certain amendments and additions were made to the NBCRFI Main Collective Agreement (hereinafter the “Main Agreement”). In particular the following additional funds were added to the bouquet of requirements:

- 1. Wellness Fund as governed by Section 57 of the Main Agreement.***

The Applicant company was successful in obtaining an exemption from Section 57 of the Main Agreement as set out hereinabove. In this regard, the exemption was granted for the period of 1 November 2009 to 28 February 2011.

In March 2011 Applicant applied for an extension on the exemption outlined in paragraph 8. In this regard, the exemption was extended to 31 May 2011 which was the date on which the amended Main Agreement came into effect.

In February 2013 Applicant applied for an extension on the exemption and this was granted and extended to 28 February 2014.

In this regard, it appears that no material amendments have been made to Section 57 save for those set out in the Council's written decision to extend Applicant's exemption, as discussed herein below.

The Applicant company herein applies for a further exemption from Section 57 for materially the same reasons on which it secured the initial and previous exemption as set out herein below.

Exemption: Wellness Fund

The Applicant company has an existing and fully functional medical clinic on site in terms of which primary medical assistance and chronic medical assistance (HIV, diabetes, blood pressure, heart conditions, etc) is offered to all employees of the Applicant Company free of charge. The clinic has been operational since 1997.

The medical clinic is staffed by four (4) full time occupational health nurses, one (1) of whom co-ordinates the clinic, and supported by three (3) medical doctors specialising in either primary health care and injuries on duty, occupational health care, or chronic health care. The medical doctors are rotated between the two (2) sites of the clinic, one at our Epping workplace and one at SA Steelworks. In addition two (2) of the nurses are full time at the Epping site while one (1) is fulltime at the SA Steelworks site. The clinic coordinator rotates between the sites.

In addition to these permanent staff, the Applicant company has two (2) outsourced organizations who attend its sites weekly and provide the employees with access to social workers and counsellors.

The medical clinic provides all medication free of charge including chronic medication.

The Applicant company has a full HIV/Aids program facilitated by the clinic and includes the following:

- 1. Regular education programs in respect of HIV and includes aspects relating to behavioural change.***
- 2. Provides professional counselling and testing for HIV.***
- 3. In terms of employees diagnosed as HIV positive the following confidential interventions are made:***
 - 3.1 Free anti retro viral (ARV) medication is provided to all staff members diagnosed with HIV/Aids.***
 - 3.2 Access to the Employee Assistance Program (EAP) which involves free confidential counselling and support from outsourced social workers whom offer weekly services to HIV affected staff on site or as arranged.***

I am further aware that prior to our initial application for exemption, an agent from the Respondent organization visited and inspected the Applicant Company's premises and encouraged us to apply for exemption from these particular provisions.

Further the Applicant company does not intend to rely on the provisions of Section 57(6) as the service is already provided free of any contribution from the employee body.

In the circumstances the internal services provided by the Applicant company duplicate if not exceed with services as catered for in terms of Section 57 of the Collective Main Agreement. We accordingly, as envisaged by Section 57(5), seek full exemption from these provisions particularly those as detailed in Section 57(3).

In this respect the Applicant company is already exempted from the provision pertaining to the Respondent Provident Agreement and accordingly this aspect we submit would also fall to be exempted.

The relevant amendments made in the current Main Agreement were the subject of discussion in the Council's written decision to extend Applicant's exemption until the conclusion of that agreement, namely that the Wellness Fund now includes basic medical insurance for a period of 2 (two) years at no extra cost to either the employer or employee. In this regard it is respectfully submitted that the Council's determination regarding the impact of Applicant's exemption on the new provision is correct. Namely, the additional benefit is open to all employees in the industry and thus the employees of employers who

are exempt from the Wellness Fund would also receive this benefit without the employer making any contribution to the fund.

It is respectfully submitted that the amendments to the Main Agreement have not materially changed the position of the Applicant or its employees other than to add additional benefits which will not be impacted by the exemption Applicant is seeking.

With respect to the past record there is nothing in terms of the Applicant's past record that should have any negative bearing on the decisions pertaining to the exemptions as described. More specifically the very existence of a medical clinic suggests, if anything, that Applicant is a responsible employer. Applicant has at all times endeavoured to comply with the Main Agreement, any relevant ancillary agreements, and all Exemption Certificates.

In terms of precedent created and pertaining to the exemption we do not believe that any undesirable precedent would be created save to encourage employers to go over and above the Main Agreement in providing health care and wellness to its employees.

In terms of the considerations pertaining to the interests of the industry we cannot see any unfair advantage being created by the exemption. The Applicant is already exceeding expectations in terms of its medical facilities.

With respect to the interest of the employees we do not believe that there could conceivably be any negative consequences as the medical services are already comprehensively supplied at no cost to the employee.

Lastly, with respect to the interests of the company the failure of the exemption would, respectfully, make no sense as the Applicant and employee would have to contribute to a fund which is already internally provided for.”

6. COUNCIL'S SUBMISSIONS

The Council submitted, inter alia, as follows:

- “1. The Applicant has a good compliance history with Council’s Agreement and is compliant with the provisions of the previous exemption relating to Wellness Fund that was granted to Applicant that expired 28/02/2013 – EB04/2012.***

- 2. The Applicant is registered with Council since 08/12/1999 and is situated in Cape Town. Applicant has an existing and fully functional medical clinic on site which is operational since 1997.***

- 3. Respondent is unable to support exemption application relating grant period permanently as per request from Applicant. Applicant will have to apply on a yearly basis due to that exemption may only be granted during the subsistence of current agreement which expires on 28/02/2015. Next duration***

will be 01/03/2015 to 28/02/2016.

4. ***The Exemptions Body is guided by Schedule 4 of the Main Collective Agreement and Clause 4(8) of the Exemptions and Dispute Resolution Agreement. We therefore trust that the panel will make their decision accordingly.***

7. **ANALYSIS**

- 7.1 The submissions made were carefully considered. The Applicant has its own onsite scheme. The Exemptions Body is satisfied the Applicant has met the requirements for the granting of an exemption application.

8. **DECISION**

- 8.1 The Applicant is granted an exemption for the period 1st March 2014 to 28th February 2015.

DATED THE 31 DAY OF MARCH 2014 AT BRAAMFONTEIN, JOHANNESBURG.



MR. Y. NAGDEE

Chairperson of the
Exemption Body



MR G. WESSELS

Member of the
Exemption Body

I agree