

No. R. 1323

12 December 2008

LABOUR RELATIONS ACT, 1995**ROAD FREIGHT INDUSTRY: EXTENSION OF AGENCY SHOP 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 National Bargaining Council for the Road Freight Industry 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 22 December 2008 and for the period ending 28 February 2013.

MMS MDLADLANA
MINISTER OF LABOUR

No. R. 1323

12 Desember 2008

WET OP ARBEIDSVERHOUDINGE, 1995**PADVAGNYWERHEID: UITBREIDING VAN WYSIGING VAN HOOF 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, dat die kollektiewe ooreenkoms wat in die Engelse Bylae hierby verskyn en wat in die Nasionale Bedingingsraad vir die Padvragnywerheid aangegaan is en kragtens artikel 31 van die Wet op Arbeidsverhoudinge, 1995, bindend is op die partye wat die ooreenkoms aangegaan het, bindend is vir die ander werkgewers en werknemers in daardie Nywerheid, met ingang van 22 Desember 2008 en vir die tydperk wat op 28 Februarie 2013 eindig.

MMS MDLADLANA
MINISTER VAN ARBEID

SCHEDULE**NATIONAL BARGAINING COUNCIL FOR THE ROAD FREIGHT INDUSTRY
AGENCY SHOP COLLECTIVE AGREEMENT**

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

Road Freight Employers' Association

(hereinafter referred to as the "employers" or the "employers' organisation"), of

the one part, and the

Motor Transport Workers' Union (South Africa)**Professional Transport Workers' Union of South Africa****South African Transport and Allied Workers' Union (SATAWU)**

and the

Transport and Allied Workers' Union of South Africa (TAWU)

(hereinafter referred to as the "employees" or the "trade unions"), of the other part, being the parties to the National Bargaining Council for the Road Freight Industry (NBCRFI).

1. SCOPE OF APPLICATION

- (1) The terms of this Agreement shall be observed -
- (a) throughout the Republic of South Africa; and
 - (b) by all the employers and employees in the NBCRFI who are members of the employers' organisations and the trade unions, respectively;

- (c) in the A Area, which consists of the Magisterial Districts of Alberton, Benoni, Boksburg, Brakpan [excluding those portions of the Magisterial Districts of Boksburg and Brakpan which, prior to the publication of Government Notice No. R. 1779 of 6 November 1964, fell within the Magisterial District of Heidelberg, and excluding those portions of the Magisterial District of Brakpan which, prior to 1 April 1966 and 1 July 1972 (Government Notices Nos. R. 498 and R. 871 of 1 April 1966 and 26 May 1972, respectively), fell within the Magisterial District of Nigel], Delmas, Germiston, Johannesburg, Kempton Park [excluding those portions which, prior to 29 March 1956 and 1 November 1970 (Government Notices Nos. R. 556 and R. 1618 of 29 March 1956 and 2 October 1970, respectively), fell within the Magisterial District of Pretoria], Krugersdorp [including those portions of the Magisterial Districts of Koster and Brits which, prior to 26 July 1963 and 1 June 1972 (Government Notices Nos. R. 1105 and R. 872 of 26 July 1963 and 26 May 1972, respectively), fell within the Magisterial District of Krugersdorp], Oberholzer (excluding that portion of the Magisterial District of Oberholzer which, prior to the publication of Government Notice No. R. 1745 of 1 September 1978, fell within the Magisterial District of Potchefstroom), Randburg (excluding that portion which, prior to the publication of Government Notice No. R. 2152 of 22 November 1974, fell within the Magisterial District of Pretoria), Randfontein

(including that portion of the Magisterial District of Koster which, prior to the publication of Government Notice No. R. 1105 of 26 July 1963, fell within the Magisterial District of Randfontein, but excluding the farms Moadowns 1, Holfontein 17, Leeuwpan 18, Ireton 19, Pahtiki 20, Bospan 21 and Rietfontein 48), Roodepoort, Springs, Vanderbijlpark, Vereeniging and Westonaria; and

(d) in the B Area, which consists of the rest of the Republic of South Africa, excluding the Magisterial Districts specified in paragraph (c).

(2) Notwithstanding the provisions of clause 1(a), the terms of this Agreement shall not apply to non-parties in respect of clauses 1(1)(b) and 2.

2. PERIOD OF OPERATION OF AGREEMENT

This Agreement shall come into operation on such date as may be fixed by the Minister of Labour in terms of section 32 of the Labour Relations Act, 1995, and shall remain in force until 28 February 2013.

2A. TERMS AND CONDITIONS

A separate Agency Shop Agreement in terms of section 25 of the Labour Relations Act (the Act) is hereby agreed to and the provisions of the Act shall apply to the Agency Shop Agreement. The object of the Agency Shop Agreement is to ensure that all employees and employers who receive the benefits of collective bargaining contribute towards its costs.

The Agency Shop Agreement shall be subject to the respective parties being representative, as required by section 25 of the Act, of employees or employers

who are covered by the Main Collective Agreement of the NBCRFI as verified by the Department of Labour from time to time. Accordingly, the application of the Agency Shop Agreement to either of the parties shall be subject to that party being representative.

3. DEFINITIONS

(1) Unless the contrary intention appears, any expression used in this Agreement which is defined in the Labour Relations Act, 1995, shall have the same meaning as in that Act, any reference to the singular shall include the plural and vice versa, any reference to any gender shall include the opposite gender, any reference to an Act shall include any amendment to such Act and further, unless inconsistent with the context -

"Act" means the Labour Relations Act, 1995 (Act No. 66 of 1995);

"Agency Shop Levy" means the fee set out in clause 4 of this Agreement;

"Council" means the National Bargaining Council for the Road Freight Industry;

"day", for the purposes of calculating a night-shift allowance, means a period of 24 hours from midnight to midnight, and in the case of a normal working day or of an employee who works shifts, it means a period of 24 hours reckoned from the time work commences;

"employer" means any person whomsoever who employs or provides work for any other person and who remunerates or expressly or tacitly undertakes to remunerate him or who, subject to section 3 of the Act, permits any other person whomsoever in any manner to assist him in the carrying on or

conducting of his business or undertaking and "employ" has a corresponding meaning;

"employment" has the meaning set out in clause 20(7) of the Main Collective Agreement;

"establishment" means any premises on or in connection with which one or more employees are employed in the Road Freight Industry;

"law" includes the common law;

"month" means a calendar month, which is one of the 12 named periods into which a year is divided;

"monthly wage" means an employee's weekly wage multiplied by four and a third;

"Road Freight Industry" or **"Industry"** means the Industry in which employers and employees are associated for the carrying on of one or more of the following activities for hire or reward:

- (i) The transportation of goods by means of motor transport;
- (ii) the storage of goods, including the receiving, opening, unpacking, packing, despatching and clearing or accounting for of goods where these activities are ancillary or incidental to paragraph (i); and
- (iii) the hiring out by temporary employment services of employees for activities or operations which ordinarily or naturally fall within the transportation of goods, irrespective of the class of undertaking, industry, trade or occupation in which the client is engaged as an employer; but

"transportation of goods" does not include the following:

- (aa) The undertakings, industries, trades or occupations in respect of which the Transnet Industrial Council was registered on 2 October 1991; the interests in respect of which that Council was registered being the undertakings, industries, trades or occupations of Transnet Ltd as engaged in by Spoornet, South African Airways, Autonet, Portnet, Transnet, Transwork, Promat and Protekon, or any other business, undertaking, industry, trade, occupation, unit, department or section of Transnet Ltd;
- (ab) the Motor Ferry Industry, which means the industry in which employers and employees are associated for the transportation of motor vehicles by road, sea or rail, between vehicle manufacturers and motor dealerships;

"temporary employee of a temporary employment service" means a temporary employee of a temporary employment service referred to in clause 18(1) of the Main Collective Agreement;

"temporary employment service" means any person who, for reward, procures for or provides to a client other persons who -

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

"wage" means the amount of money payable to an employee as a basic wage in terms of clause 7 of the Main Collective Agreement in respect of his ordinary hours of work as prescribed in clause 5(1) of the said Agreement and excludes any bonus: Provided that if an employer regularly pays an employee in respect of such ordinary hours of work a larger amount than that prescribed in clause 7, it means such larger amount;

"wage register" means the record required to be kept by an employer in terms of clause 42 of the Main Collective Agreement;

"working day" means any period of ordinary hours of work and overtime, as defined, and any meal intervals and rest intervals referred to in clause 5(2) and (3), respectively, of the Main Collective Agreement falling within a single 24-hour cycle and shall be deemed to commence at the time at which an employee commences work during such cycle;

"year", in respect of an employee, means any period of employment in the Industry extending over a period of 252 completed shifts.

- (2) The Council shall be the body responsible for the administration of this Agreement and it may, for the guidance of employers and employees, issue interpretations and rulings not inconsistent with the provisions hereof or of the Act.

4. AGENCY SHOP LEVY

4.1 EMPLOYEES

4.1.1 An Agency Shop Agreement in terms of section 25 of the Labour Relations Act is hereby introduced and the provisions of the Act shall prevail. The object of this Agreement is to ensure that all employees who receive the benefits of collective bargaining contribute towards its costs.

4.1.2 Subject to provisions of this clause a levy, to be known as an Agency Shop Levy, shall be deducted by employers from the wages of all employees who are employed in the Industry on scheduled activities covered by the National Bargaining Council for

scheduled activities covered by the National Bargaining Council for the Road Freight Industry Main Collective Agreement and who are not members of a trade union which is a party trade union to the Council.

- 4.1.3 Any existing agency shop agreement at company level shall be superseded by this Agreement.
- 4.1.4 The Agency Shop Levy applicable to non-party employees shall be equivalent to 1% (one per cent) of the employees' weekly wage.
- 4.1.5 An employer shall effect payment of the amount due in terms of clause 4.1.4 at the Head Office of the Council at Fifth Floor, Road Freight House, 31 De Korte Street, Braamfontein, Johannesburg, and shall also submit to the Secretary of the Council at the same address, by not later than the 20th day of each month, a monthly return (Annexure D to the Main Collective Agreement), with the particulars in the form specified by the Council for this purpose, including each employee's full names, surname, date of birth and identification number.
- 4.1.6. The Secretary of the Council shall deposit all moneys received in terms of clause 4.1.5 into a bank account administered by the Council.
- 4.1.7 The Secretary of the Council shall, within seven (7) days of receipt of moneys in terms of clause 4.1.6 above, transmit to the trade unions which are party to the Council, in proportion to the number of members of each trade union, the Agency Shop Levies received by the Council during the preceding month and the unions shall, on

receipt, pay such amounts into a separate account administered by the respective unions.

- 4.1.8 The levy may not be used –
 - 4.1.8.1 to pay an affiliation fee to a political party;
 - 4.1.8.2 to make a contribution in cash or in kind to a political party or to a person standing for election to any political office; or
 - 4.1.8.3 for any expenditure that does not advance or protect the socio-economic interests of employees.
- 4.1.9 Once the Agency Shop Agreement has been implemented, any subsequent change in the Agency Shop Levy shall only be effected when parties to the Council reach an agreement which is subsequently promulgated and extended to non-parties.
- 4.1.10 The Agency Shop Levy shall be deducted by an employer for as long as the party unions remain representative, as required by section 25 of the Act, of the employees in the Industry covered by this Agreement provided that an employer shall cease to make the Agency Shop Levy deduction only upon withdrawal of the Agency Shop Agreement by the Minister in terms of section 32 of the Act.
- 4.1.11 Employees who are not members of the trade unions party to this Agreement are not compelled by the Agency Shop Agreement to become members of those trade unions.
- 4.1.12 The provisions of sections 98 and 100(b) and (c) of the Act apply, read with the changes required by the context, to the separate accounts referred to in clause 4.1.7.

4.2 EMPLOYERS

It is agreed that the Agency Shop Agreement contain clauses to the following effect in relation to employers and employers' organisations:

- 4.2.1 Every employer who is not a member of an employer's organisation party to the Council (a non-party employer) and who is engaged in the Industry as defined, shall pay a monthly collective bargaining levy to the Council in an amount calculated in terms of clause 4.2.2.
- 4.2.2 The employers' organisation/s shall charge all operators and temporary employment services a collective bargaining levy of R2 400,00 per annum, collected monthly at R200,00 per month: Provided that such amount does not exceed the minimum monthly membership fee that is levied by such employers' organisation.
- 4.2.3 Every non-party employer shall effect payment of the amount due in terms of clause 4.2.2 at the Head Office of the Council at Fifth Floor, Road Freight House, 31 De Korte Street, Braamfontein, Johannesburg, and shall also submit to the Secretary of the Council at the same address, by not later than the 20th day of each month, a monthly return (Annexure D to the Main Collective Agreement), with particulars in the form specified by the Council for this purpose, including each employee's full names, surname, date of birth and identification number.

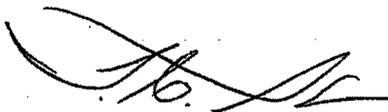
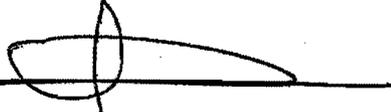
- 4.2.4 The Secretary of the Council shall within seven (7) days of receipt of the moneys referred to in clause 4.2.3 above, transmit to the employers' organisations, which are party to the Council in proportion to the number of employees that each employers' organisation represents, the collective bargaining levies received by the Council during the preceding month and the employer shall, on receipt, pay such amounts into a separate account administered by the respective employers' organisations.
- 4.2.5 The levy may not be used –
- 4.2.5.1 to pay an affiliation fee to a political party;
- 4.2.5.2 to make a contribution in cash or in kind to a political party or to a person standing for election to a political office; or
- 4.2.5.3 for any expenditure that does not advance or protect the socio-economic interests of their members.
- 4.2.6 The provisions of sections 98 and 100(b) and (c) of the Act apply, read with the changes required by the context, to the separate accounts referred to in clause 4.2.3.
- 4.2.7 Applications by non-parties for exemption from any or all of the provisions of this Agreement shall comply with the requirements prescribed by the Council's Exemptions and Dispute Resolution Collective Agreement published under Government Notice No. R. 1143 of 7 December 2007, as amended and extended from time to time.

The Independent Body established by the Council in terms of section 32 of the Act shall consider appeals against the refusal by the Council's Exemption Body to grant exemption.

- 4.2.8 Disputes about the interpretation, application or enforcement of this Agreement shall be resolved in accordance with the procedure prescribed by section 24 of the Act.

Signed at Johannesburg, for and on behalf of the parties to the Council,

this 17th day of OCTOBER 2008.

		
T.C. SHORT Chairman of the Council	J.J. DUBE Vice-Chairman of the Council	J. LETSWALO Secretary of the Council