

## RESOLUTION NO \_1\_ OF 2007

### AGREEMENT ON THE TRANSFER OF EMPLOYEES FROM THE DEPARTMENT OF EDUCATION TO INDIVIDUAL FURTHER EDUCATION AND TRAINING COLLEGES

#### 1. Scope:

This agreement binds:

- 1.1 the employer;
- 1.2 the employees of the employer who are members of the trade union parties to this agreement; and
- 1.3 the employees of the employer who are not members of any trade union party to this agreement, but who fall within the registered scope of Council.

#### 2. Purpose:

The purpose of this agreement is-

- 2.1 to give effect to the transfer of employees from the old employer to the new employer in terms of section 20 and section 54 of the Further Education and Training Colleges Act 16/2006 (FETC), read with section 197 of the Labour Relations Act 66/1995 as amended (LRA).
- 2.2 to ensure that the transfer of employees are carried out in a fair, equitable and transparent manner.

#### 3. Agreement:

Parties therefore agree, as set out hereunder-

##### 3.1 Transfer of employees-

- (a) All the rights and obligations between the old employer and the employee continue to be in force and effect as if they had been rights and obligations between the new employer and the employee.
- (b) The effective date for transferring of employees from the old employer to the new employer will be 1<sup>st</sup> January 2008.

All correspondence must be addressed to the General Secretary

Public Services Bargaining Centre  
260 Basden Avenue, Lyttelton, 0176  
PO Box 16663, Lyttelton, 0140

Tel: +27 12 644 8132, Fax: +27 12 664 8749  
Web: www.gpsbc.org.za

**3.2 Membership of Government Employees Pension Fund (GEPF)-**

- (a) All transferring employees will continue as members of the GEPF and remain subject to the provisions of the Government Employees Pension Fund Act, 1996 and the Rules of the GEPF.
- (b) The transferring employees will continue to receive the same subsidy and benefits as all other public servants who are members of the GEPF.

**3.3 Membership of Government Employees Medical Aid Scheme (GEMS)-**

- (a) All transferring employees, who are currently members of GEMS, will continue as members of the GEMS and remain subject to the provisions of the Rules of the Scheme, the laws and policy of such medical aid scheme, regulations promulgated there under and any amendments thereto; and
- (b) The transferring employees will continue to receive the same subsidy and benefits as all other public servants who are members of GEMS.

**3.4 Disciplinary Hearings-**

Any disciplinary action instituted or under consideration against a transferring employee will be dealt with in terms of the prevailing provisions of the LRA and the applicable collective agreements.

**3.5 Organisational Rights-**

- (a) All the organisational rights between the respective Trade Unions and the Old Employer as at the date of transfer shall transfer to the New Employer and the respective Trade Unions;
- (b) All organisational rights remain until such time that new organisational rights are negotiated in the FET bargaining unit.

**3.6 Payment of Salaries and Benefits-**

The payment of salaries and benefits of those employees transferring to the New Employer shall be paid by the Old Employer until such time that the New Employer has operational capacity to do so.

**3.7 Liability for Accrued Employee Benefits-**

- (a) The Old Employer agrees to compile a valuation of accrued benefits and payments as at the date of transfer in respect of transferring employees. A valuation of the Old Employer's liability in respect of the following benefits and payments will be transferred to the New Employer:

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- i. Vacation and capped leave;
  - ii. Sick leave;
  - iii. Service bonus;
  - iv. Long Service Awards;
  - v. Severance pay;
  - vi. Outstanding payments e.g. merit awards, overtime and any other benefits and allowances;
  - vii. Post Retirement Medical Assistance liability;
  - viii. Outstanding Payments related to Performance Measurements; and
  - ix. Any other terms and conditions of employment, inclusive of collective agreements reached in the PSCBC and the GPSSBC.
- (b) The Old Employer will be liable for any consequences including claims and damages associated with and arising from pending disciplinary matters, grievances and disputes which arose prior the date of transfer;
  - (c) The Old and New Employers agree to the liabilities and payment thereof, should any employee become entitled to receive such payment. The liabilities may be apportioned where necessary.
  - (d) With respect to any consequences including claims and damages associated with disciplinary matters, grievances and disputes related to or associated with the transfer process, the Old and New Employers will be jointly and severally liable for a period of 12 months from the effective date of transfer.

### **3.8 Funding Arrangements - Guiding Principles**

- (a) The Old Employer agrees to ensure that adequate provision is made for all financial obligations arising during and from the transfer of employees.
- (b) The Old Employer agrees to make the appropriate funds available for all future liabilities related to the transfer in respect of its responsibilities.
- (c) A thorough analysis of the current and medium term budgets of the Old Employer will be done to ensure that funds are available to cover current and future obligations.

### **3.9 Transitional arrangements-**

#### **Collective Bargaining-**

- (a) All parties to this agreement confirm that the GPSSBC shall create a bargaining unit for the FET sector, within the GPSSBC, and shall accordingly make provision for such to take effect from 1<sup>st</sup> January 2008;

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- (b) All parties to this agreement confirm that the GPSSBC shall be the bargaining and dispute resolution forum as envisaged in the LRA.

3.10 **Interpretation and Definitions-**

In this Agreement, the following expressions shall, unless the context otherwise indicates-

- a) **“The College”** means the College established in terms of the FETC Act;
- b) **“Agreement”** means this Agreement together with any annexure/s, as amended from time to time;
- c) **“Council”** means the General Public Service Sectoral Bargaining Council (GPSSBC);
- d) **“Department(s)”** means the National and/or Provincial Departments of Education, interchangeably referred to as “the old employer”;
- e) **“Employee(s)”** means an employee in the employ at the College, either on a permanent or fixed-term contract basis in terms of the Public Service Act, of the Department whose jobs are affected by the transfer of the educational function to the College;
- f) **“MEC”** means a Member of the Executive Council responsible for education in a Province;
- g) **“Minister”** means the Minister for Public Service and Administration;
- h) **“New Employer”** means the College;
- i) **“Old Employer”** means the Department/s of Education;
- j) **“Parties”** mean parties to this agreement;
- k) **“Provinces”** means provinces as listed in section 103(1) of the Constitution;
- l) **“Services”** means the (management and administration) management and lecturing functions of FET services to be transferred to the College;
- m) **“Transfer”** means a change of employer by operation of law, namely, section 197 of the LRA, 1995 as amended;
- n) **“Effective date of transfer”** is 1 January 2008;
- o) **“Trade Unions”** mean registered recognised trade unions in the Council that are party to this agreement.



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4. **Dispute Resolution Procedures:**

Any dispute about the interpretation or application of this agreement may be referred to the GPSSBC and shall be dealt with in terms of the dispute resolution procedures of the Council; and

5. **Amendments:**

There shall be no variations to this agreement unless it is reduced to in writing, after negotiations in the GPSSBC and duly signed by parties.

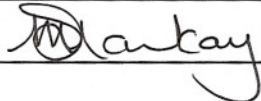
6. **Date of Implementation:**

This agreement shall, in respect of parties and non-parties, come into effect on the date of signing unless indicated otherwise by the context.



7. **Signatories to this Agreement:**

Thus done and signed at **Centurion** on the **27<sup>th</sup> day of September 2007**.

**ON BEHALF OF THE EMPLOYER PARTY**

	Name	Signature
State as Employer	M. Ntshikila	

**ON BEHALF OF TRADE UNION PARTIES**

Trade Union	Name	Signature
NEHAWU	CLEMENT MARULE	
POPCRU	M. QHISENI KA-DIABANA	
PSA		

*fcc.*