

Progress report on the work of the ELRC

17 October 2018



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LEGISLATIVE FRAMEWORK

- Labour Relations Act 66 of 1995 (as amended)
- ELRC constitution
- Constitution of the RSA
 - Section 23 :“Fair labour practices”
 - Section 28:“Rights of children are paramount”
- Supporting legislation
 - Children’s Act 38 of 2005 as amended

INTRODUCTION

- In giving effect to ELRC mandate, noteworthy partnerships established during 2018/19
- Critical agreements concluded in response to broader objectives of the country (NDP)

COLLECTIVE AGREEMENT NO. 2 OF 2018

- Outdated legislation, policies and Collective Agreements in PAM resulted in incorrect implementation of certain provisions of current Collective Agreements
- The PAM was consequently revised and gazetted by the Minister of Basic Education in February 2016
- As a way to further strengthen the provisions in the PAM to improve the conditions of service of educators, in line with NDP focus, CA 2 of 2018 was concluded

COLLECTIVE AGREEMENT NO. 2 OF 2018 (CONT.)

CA 2 of 2018: *Amendments to paragraph B 8.5.2 and B 8.5.3 of the Personnel Administrative Measures*

- **Purpose:** To amend measures regarding the re-appointment of educators after a break in service, as contained in paragraph B 8.5.2 and B 8.5.3 of the Personnel Administrative Measures (PAM).

COLLECTIVE AGREEMENT NO. 2 OF 2018 (CONT.)

PAM Provisions (2016)	Collective Agreement (2018)
B.8.5.2 Re-appointment to the same post level after a break in service	B.8.5.2 Educators who are reappointed after a break in service
<p>B.8.5.2.1 An educator who had a break in service who is re-appointed to the same post level, must be re-appointed to the same salary position (or equivalent salary position) that he/she occupied before the break in service, provided that the principle stated in paragraph B.8.5.3.1 (c) is applied. If the educator has improved his/her REQV during the break in service which has the effect that a new salary range becomes applicable, the appointment must be to the minimum of the new salary range or the same salary position occupied before, whichever is more beneficial to the educator.</p>	<p>B.8.5.2.1 An educator who is appointed after a break in service shall always be appointed to the entry level salary notch code of the salary band of the post to which he/she has been appointed under the following conditions:</p> <p>(a) Should an educator resign or retire and comes back in service on the same level and has more than 6 years of uninterrupted service on that particular post level, such an educator shall be awarded additional 6 notches to the minimum (entry) notch of the post which he/she is appointed.</p>

COLLECTIVE AGREEMENT NO. 2 OF 2018 (CONT.)

PAM Provisions (2016)	Collective Agreement (2018)
<p>B.8.5.3 Re-appointment to a lower post level/principal post on a lower grade after a break in service</p> <p>B.8.5.3.1 The following principles apply:</p> <p>(a) The salary of an educator who is re-appointed after a break in service to a lower post level must be decreased by at least 6 notches (6%) for each post level that his/her post level was higher before the break in service than his/her current post level, provided that the principle stated in paragraph B.8.5.3.1 (c) is applied.</p> <p>If the educator has improved his/her REQV during the break in service which has the effect that a new salary range becomes applicable, the appointment must be to the minimum of the new salary range or the same salary position occupied before, whichever is more beneficial to the educator. If such educator who has improved his/her REQV during his/her break in service is appointed to the same salary position occupied before the break in service, he/she will be entitled to a cash bonus. Refer to paragraph B.10.</p>	<p>B.8.5.2 Educators who are reappointed after a break in service (cont.)</p> <p>B.8.5.2.1</p> <p>(b) Should an educator resign or retire and comes back in service on the lower post level and has more than 6 years of uninterrupted service on any post level, such an educator shall be awarded additional 6 notches to the minimum (entry notch of the post which he/she is appointed.</p> <p>(c) Should an educator resign or retire and comes back in service on the same level and has less than 6 years of uninterrupted service on that particular post level, such an educator shall be appointed to the minimum (entry) notch of the applicable post.</p>

COLLECTIVE AGREEMENT NO. 2 OF 2018 (CONT.)

PAM Provisions (2016)	Collective Agreement (2018)
B.8.5.3 Re-appointment to a lower post level/principal post on a lower grade after a break in service (cont.)	B.8.5.2 Educators who are reappointed after a break in service (cont.)
<p>(b) The same principle as stated in (a) above, applied to an educator who, before the break in service, was appointed to a graded post (principal post) and is re-appointed to a graded post (principal post), which is on a lower grade than the post he/she occupied before the break in service, for example a P5 Principal (post level 4) is re-appointed as P2 Principal (post level 4).</p> <p>(c) An educator re-appointed to a lower post level or a post on a lower grade than the post he/she occupied immediately before the break in service, may not be appointed to a higher salary notch than as indicated below:</p>	<p>B.8.5.2.1</p> <p>(d) Should an educator resign or retire and comes back in service on the lower level and has less than 6 years of uninterrupted service on that particular post level, such an educator shall be appointed to the minimum (entry) notch of the applicable post.</p>

COLLECTIVE AGREEMENT NO. 2 OF 2018 (CONT.)

PAM Provisions (2016)	Collective Agreement (2018)
<p>B.8.5.3 Re-appointment to a lower post level/principal post on a lower grade after a break in service (cont.)</p>	<p>B.8.5.2.2 Recognition of actual experience for promotion purposes:</p> <p>a) The educator's years of actual experience will still be considered for promotion purposes. E.G. If a deputy principal applies for a promotion post of deputy principal again after a break in service, his/her actual years of service will still be recognised for promotion purposes.</p> <p>B.8.5.2.3 Appropriate experience obtained outside public education for determination of salary:</p> <p>The provisions as outlined in Chapter B.8.4.3.1 relating to the above-mentioned in the determination of salary will not apply to educators who have resigned or retired and reappointed.</p>

COLLECTIVE AGREEMENT NO. 2 OF 2018 (CONT.)

- Amendments seek to regulate the re-appointment of educators after exiting the system and provide some financial relief, as the current provision places a strain on the country.
- The agreement will serve as deterrent to the perceived abuse of the system (i.e. extensive media reporting on pension law reforms which allegedly resulted in educators exiting the system in great numbers)

COLLECTIVE AGREEMENT NO. 3 OF 2018

Collective Agreement No. 3 of 2018: *Providing for compulsory inquiries by arbitrators in cases of disciplinary action against educators charged with sexual misconduct in respect of learners*

Background

- Special cases referred to ELRC involve learners as victims of sexual misconduct or witnesses
- Parents refusal to expose learners to secondary trauma, resulting in offenders re-absorbed in the education system to commit repeat offences
- Inconsistencies in how matters were determined by Presiding Officers (e.g. 3 months suspension without pay, while EEA section 17 - dismissible offence)
- Delays in the issuing of outcome of appeals

COLLECTIVE AGREEMENT NO. 3 OF 2018 (CONT.)

- Collective Agreement 3 of 2018 provides for a singular process in sexual misconduct cases, to ensure that children are not exposed to secondary trauma.
- Currently three platforms in place:
 - the Provincial Department of Education's internal disciplinary hearing processes;
 - the SACE investigative process; and
 - the ELRC arbitration process
- **Challenge:** learners and parents are reluctant to testify afresh due to secondary trauma that learners are subjected to
- Absence of witnesses + lack of evidence = sexual offenders reinstated through ELRC arbitration outcome (award)/offenders not struck off the roll by SACE

COLLECTIVE AGREEMENT NO. 3 OF 2018 (CONT.)

- Collective Agreement No. 3 of 2018: one-stop process (arbitration) that replaces the Department's internal disciplinary hearing
- Only suitably qualified and experienced arbitrators have been appointed (special panel)
- Intermediaries have been appointed and trained to aid the child victim or witness to give evidence (utilisation of special venues, i.e. Children's courts with two-way mirrors)
- Judgement of an arbitrator shall be final and binding and has the same status as an arbitration award under the Labour Relations Act
- Agreement will play an instrumental role in ensuring that justice prevails in cases where educators are accused of sexual misconduct involving children
- ELRC has an obligation to fulfil its broader mandate and ensure that the principle of fairness is applied

COLLECTIVE AGREEMENT NO. 3 OF 2018 (CONT.)

Significant partnerships initiated by the ELRC

- Partnership with the **Registrar of the National Sexual Offenders Register** to engage on the process of vetting of ELRC Intermediaries against the National Register
- Memorandum of Understanding (MOU) with the **Department of Justice and Constitutional Development (DoJCD)** for the utilisation of Children's Courts for special cases and recruitment of intermediaries
- Training has already been conducted for ELRC intermediaries & Commissioners by the Justice College (DoJCD) to deal effectively with special cases

COLLECTIVE AGREEMENT NO. 3 OF 2018 (CONT.)

Significant partnerships initiated by the ELRC

- Partnership with **SACE** to synchronise ELRC and SACE processes in relation to special cases where the child is involved and collaboration on an advocacy/awareness campaign
- Collaboration with **SAPS** (formal arrangement to report names of alleged perpetrators accused of sexual misconduct involving children)

IMPLICATIONS FOR THE SECTOR

- Reporting requirements: **i.t.o Children's Act 38 of 2005 as amended**
- **Section 120 (c) Finding persons unsuitable work with children**
 - “(1) A finding that a person is unsuitable to work with children may be made by...*
 - (c) any forum established or recognised by law in any disciplinary proceedings concerning the conduct of that person relating to a child.”*
- **Disputes concerning findings:** *the person in respect of whom the finding in terms of section 20 has been made may-*
 - (b) have the finding reviewed by a court, if the finding was made by a forum contemplated in section 120(1)(c)*
- **A REPORT TO BE SUBMITTED TO THE DIRECTOR-GENERAL (DOSD): ENTRY OF NAME TO PART B OF THE REGISTER**

IMPLICATIONS FOR THE SECTOR (CONT.)

- Reporting requirement :i.t.o of Criminal Law (sexual offences and related matters amendment Act 32 of 2007)

Section 54 Obligation to report commission of sexual offences against children or persons who are mentally disabled

(1)(a) A person who has knowledge that a sexual offence has been committed against a child must report such knowledge immediately to a police official.

(b) A person who fails to report such knowledge as contemplated in paragraph (a), is guilty of an offence and is liable on conviction to a fine or to imprisonment for a period not exceeding five years or to both a fine and such imprisonment.

A REPORT TO BE SUBMITTED TO SAPS

IMPLICATIONS FOR THE SECTOR (CONT.)

- Reporting requirement :i.to. **SACE Act 31 of 2000 (section 26)**
- **Section 26 - Information to be furnished to council**
 - (1) A higher education institution and the employer of an educator must furnish the council, at its request, with such information as is reasonably required by the council for the performance of its functions.*
 - (2) In each case where disciplinary steps are taken against any educator by the employer resulting in a sanction other than a caution or reprimand, a certified summary of the record of the proceedings at the hearing and of the sanction imposed must be forwarded to the council by such employer.*

CHALLENGE

- **Burden of proof – witnesses – evidence (absence thereof – despite the Internal DC & ELRC arbitration award's guilty outcome = SACE's inability to strike the educator off from the roll)**

SOLUTION REQUIRED TO ADDRESS THIS CHALLENGE

AREAS FOR CONSIDERATION BY VARIOUS ROLE-PLAYERS

- Review of appointment requirements to include SAPS clearance certificate
- Alignment of ELRC & SACE's processes to give effect to sect 120 of the Children's Act
- Collaboration with SGB's (public and the private schools)
- Review the accessibility of the Registers (B of the Children's Act & National Sexual Offender's Register) to operationalise the provisions of the relevant pieces of legislation i.e. the obligations of the employer in respect of the employees

COLLECTIVE AGREEMENT NO. 4 OF 2018

- **Collective Agreement No. 4 of 2018:** *The appointment and conversion of temporary educators to posts on the educator establishment*

Background

- Inconsistencies in the employment of temporary educators results in impasse between the employer and employee parties at provincial level.
- To address the challenges in the appointment of temporary educators in education and give effect to the Labour Relations Amendment Act 6 of 2014, Parties to the ELRC concluded Collective Agreement No. 4 of 2018.

COLLECTIVE AGREEMENT NO. 4 OF 2018 (CONT.)

- **Purpose:** to regulate the appointment of temporary educators to posts on the educator establishment of public schools and provides for the employment security of temporary educators
- Permanent appointment of temporary educators has been a contentious issue that has been the cause of disputes in selected provinces over the years
- The conclusion of this agreement is a historic achievement for public education and is in line with the 2015 amendments to the LRA and the courts' interpretation of the same

COLLECTIVE AGREEMENT NO. 4 OF 2018 (CONT.)

- **Annexure A** of agreement sets out procedures for appointing temporary educators to a funded, substantive and vacant level 1 post at a public school
- The agreement will also take precedence over all existing provincial agreements regulating the appointment and conversion of temporary educators, except for where the provisions in existing provincial agreements provide for more favourable conditions to those contained in the national agreement

COLLECTIVE AGREEMENT NO. 1 OF 2017

CA 1 of 2017: Picketing rules

Purpose: to provide a procedure for picketing during industrial action in an effort to ensure peaceful and organised picketing. The agreement further provides for the demarcation of areas where demonstration, assembly and/or picketing are to take place in order to minimise disruption of teaching and learning.

COLLECTIVE AGREEMENTS NO. 3 AND NO. 4 OF 2017

The overall national objective:

- As part of Council's efforts to contribute to the realisation of the NDPs broad objective on improvement of quality educational outcomes, which is based on:
 - Teaching and teachers (and learning) are critical to achieve the outcome
 - Management of schools
 - Management of the entire education system
- Teacher capacity is interdependent to the capacity of school leadership, capacity of the district and the department
- Council concluded **CA 3 of 2017**: Education Management Services (EMS) Performance Management and Development System for Office-Based educators and **CA 4 of 2017**: Job descriptions for office-based educators

ELRC EDUCATION INDABA

- Education Indaba was necessitated by the current PPN model not being responsive to needs of the sector
 - **PPN Research:**
 - *National study on the implementation of PPN 2013*
 - *International Benchmark Study Visits (February 2018) with HEDCOM members*
 - **ECD Research:** *Policy and conditions of service for the institutionalisation of Grade R Practitioners*
- 2017 Indaba objective: ELRC to assist sector in addressing two critical issues (Post Provisioning Norms (PPN) and the Universalisation of Grade R)
- 2017 Indaba achievements: training of provincial PEDs and development of a standardised training manual on the current model
- 2018 ELRC Education Indaba was a resounding success (second national gathering of Parties to ELRC) – principles for existing PPN were presented at Indaba. Indaba emerged with a new brief to radically transform the current PPN

ELRC EDUCATION INDABA (CONT.)

- Indaba initiated sound relations amongst parties to the Council (DBE, leaders of teacher unions) as well as the Provincial DoE (HEDCOM)

PPN Priorities for 2018/19

- Radical transformation of the PPN
- Consider three-stream model
- Policy dependencies
- Curriculum complexities
- School management
- Poverty variables

ELRC EDUCATION INDABA (CONT.)

ECD Priorities for 2018/19

- 0 to 4 considerations
- PED support
- Qualifications
- Infrastructure issues
- Policy alignment
- Conditions of service

FACILITATION

- In fulfilling its mandate to maintain labour peace, Council has played a proactive role by providing facilitation in provinces to avert labour unrest.
- Council has provided ongoing facilitation in the Eastern Cape from 2017 on post distribution and displaced educators.
- For the first time in the history of the Council, an invitation was extended to SGBs in the province to be part of the facilitation process. SGBs challenged this process through the courts in the past.
- Eastern Cape Collective Agreement No.1 of 2017: *Conversion of educators on contract into employment on a permanent basis in Eastern Cape Education Department*, was concluded as an outcome of the facilitation process.
- Management Plan for PPN and Human Resource Data Collection Tool for the Eastern Cape DoE was developed.

FACILITATION (CONT.)

- Facilitation in other provinces during 2018/19 period:
 - May 2018 - Free State impasse on non-payment of educators, impasse was resolved through ELRC intervention
 - June 2018 – Northern Cape impasse on non-payment of educators, impasse was resolved through ELRC intervention
 - October 2018 – Western Cape deadlock, Council is to meet with Parties to WC Chamber in November 2018 to find amicably solutions to resolve impasse

CONCLUSION

- Parties to the ELRC are commended for the collaborative spirit displayed to conclude essential agreements for the sector.
- The Council wishes to thank the Portfolio Committee on Basic Education for its ongoing support of its initiatives over the years.

Thank you.