

**GENERAL PUBLIC SERVICE SECTOR BARGAINING
COUNCIL**

**FURTHER EDUCATION AND TRAINING COLLEGES
BARGAINING UNIT**

COLLECTIVE AGREEMENT

**AGREEMENT ON THE TRANSFER OF THE PUBLIC FURTHER
EDUCATION AND TRAINING COLLEGES SUPPORT STAFF
FROM THE COLLEGES TO THE DEPARTMENT OF HIGHER
EDUCATION AND TRAINING IN TERMS OF FET COLLEGES
AMENDMENT ACT 3 OF 2012 AND SUBJECT TO SECTION
197 OF THE LABOUR RELATIONS ACT, 66 OF 1995 AS
AMENDED**

All correspondence must be addressed to the General Secretary

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**AGREEMENT ON THE TRANSFER OF FURTHER EDUCATION AND TRAINING
COLLEGES SUPPORT STAFF FROM THE PUBLIC FET COLLEGES TO THE
DEPARTMENT OF HIGHER EDUCATION AND TRAINING IN TERMS OF FET
COLLEGES AMENDMENT ACT 3 OF 2012 AND SUBJECT TO SECTION 197 OF THE
LABOUR RELATIONS ACT, 66 OF 1995 AS AMENDED**

1. PURPOSE OF THIS AGREEMENT

The purpose of this agreement is:

- 1.1 to give effect to the transfer of Further Education and Training Colleges Support staff from the old employer (Further Education and Training Colleges (FETC)) to the new employer (Department of Higher Education and Training (DHET)) in terms of section 12 of the Further Education and Training Colleges Amendment Act 3 of 2012 and subject to section 197 of the Labour Relations Act (LRA) 66 of 1995 (as amended).
- 1.2 to ensure that the transfer of these employees is carried out in a fair and transparent manner.

2. SCOPE OF THIS AGREEMENT

This agreement applies to and binds:

- 2.1 the old and new employer
- 2.2 the employees of the employer whether such employees are members of the trade union parties to this agreement or not.

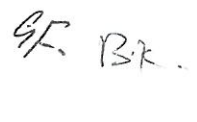
3. THE PARTIES TO COUNCIL NOTE AS FOLLOWS

- 3.1 The Further Education and Training College Amendment Act 3 of 2012 was assented on the 3rd May 2012 and subsequently followed by the Notice in a Gazette No. 35336 of 11

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May 2012 for the immediate operation of the Act with the exception of sections 11, 12, 13, 14, 28(3) and 32 (b).

- 3.2 Sections 12 and 13 shall apply once processes related to Section 197 of the Labour Relations Act 66 of 1995 (as amended) have been addressed.
- 3.3 The migration workshop that was conducted in the GPSSBC FETCBU in November 2012 wherein parties agreed that there should be a collective agreement to ensure the successful transfer of FET Colleges Support Staff.
- 3.4 The Further Education and Training Colleges Support Staff are currently appointed and employed by the FET Colleges in terms of the Further Education and Training Act, 16 of 2006 and their conditions of service fall within the scope of the GPSSBC FETCBU.

4. THE PARTIES TO COUNCIL THEREFORE AGREE AS FOLLOWS

Parties therefore agree, as set out hereunder:

- 4.1 Fundamental to the transfer of the college support staff shall be the analysis and audit of the **College Allocation versus the Wages Bill** with a view to make determination in line with Section 34(4) of the FET College Act, 3 of 2012: *“Any lecturer or member of the support staff employed by a public college in a post that is fully funded in terms of the norms and standards on 1 January 2012, must be verified by the Minister as fully funded posts, and the Minister must, subject to section 197 of the Labour Relations Act, transfer those posts to the organisational structure of the Department in accordance with the Public Service Act”*.
- 4.1.1 The Department shall conduct a verification of the College Allocation versus the Wages Bill with a view to make determination in line with Section 34(4) of the FET College Act, 3 of 2012.

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- 4.1.2 If it is established that the ratio of the College Allocation versus Wages Bill is 63% or less then all staff employed at the college should transfer to the DHET.
- 4.1.3 Terms and conditions of service will remain the same or similar as on the day immediately prior to the transfer to DHET, provided the conditions of service are not less than what is provided for in terms of the Public Service Act (PSA). In such a case the terms and conditions of service of the PSA will apply.
- 4.1.4 Support staff paid via the Persal system will continue contributing to the Government Employees Pension Fund (GEPPF), have access to the medical aid subsidy and housing allowance and be eligible for a service bonus.
- 4.1.5 Permanently appointed support staff, as well as Temporary / Contract support staff (with employment exceeding 6 months), who may have received 37% of their basic salary in lieu of benefits immediately prior to the transfer to DHET will in line with PSCBC Resolution 1 of 2007, commence contributing to the GEPPF, have access to medical aid subsidy and housing allowance and receive a service bonus.
- 4.1.6 Permanently appointed support staff, as well as Temporary / Contract support staff (with employment exceeding 6 months), who have been getting a medical aid subsidy for an open medical aid scheme, immediately prior to the transfer to DHET, will continue to receive the subsidy. In all other cases support staff will have to join GEMS in order to access the medical aid subsidy.
- 4.1.7 Temporary / Contract support staff paid via the Persal system will continue to or commence contribution to the Government Employees Pension Fund (GEPPF), have access to the medical aid subsidy and housing allowance and be eligible for a service bonus; OR will receive 37% in lieu of benefits, depending on the length of the contract of employment as provided for by PSCBC Resolution 1 of 2007.

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- 4.1.8** Support staff paid by the college will commence contributing to the Government Employees Pension Fund, have access to medical aid subsidy and housing allowance and receive a service bonus. This includes, but is not limited to, support staff who may have received 37% of their basic salary in lieu of benefits immediately prior to the transfer to DHET, or are members of a private pension fund to which the Old Employer was contributing immediately prior to the transfer to DHET. In all other cases support staff will have to join GEMS in order to access the medical aid subsidy.
- 4.1.9** The New Employer will provide support staff with confirmation of transfer and copies of other relevant documents, for example Code of Conduct for Public Servants, grievance and dispute procedures and disciplinary procedures, within a reasonable time. Transferring employees, who wish to remain with the FET College(s) hereby referred to as the Old Employer, shall do so in writing to the College Principal by completing a form, and there will be discussions with the Old Employer about funding within the FET College.
- 4.1.10** Guidance in terms of the transfer process will be as outlined in the Management Plan (Annexure 1)
- 4.2** *The Transfer of permanently appointed FET Colleges support staff paid via PERSAL or College payroll*
- 4.2.1.** Should the number of filled college paid posts exceed the number of substantive funded posts as determined through the process outlined in par. 4.1 (4.1.1, 4.1.2 and 4.1.3) above, the following procedure would apply:
- 4.2.1.1.** At a formally convened meeting in the college, management will identify the fully funded posts and support staff to be transferred to DHET, taking organisational requirements, curriculum needs of the college and uninterrupted service in the employ of the college (including service rendered to provincial departments of education) into account.
- 4.2.1.2.** This process shall be monitored by the National Implementation Task Team to be

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constituted by both the New Employer and Organised Labour.

4.2.1.3. All permanent posts that are found to be outside of the budgetary provisions of the State as outlined in par. 4.1 (4.1.1, 4.1.2 and 4.1.3) shall be funded by the College.

4.2.3. Employees who are transferred to the DHET, will have all the rights and obligations between the old employer and the employee retained and in effect as if they had been rights and obligations between the new employer and the employee.

4.3 **Transfer of permanently appointed FET Colleges support staff paid via PERSAL who are employed in terms of the FETC Act 16 of 2006 and whose profile in the contract of employment at the college is not the same profile as in PERSAL.**
(Description: The above refers to Persal-paid staff receiving top-ups for authorised and approved appointments, Persal-paid staff appointed permanently but receiving 37% in lieu of benefits instead of actual benefits i.e. GEPP, GEMS, Persal-paid staff not properly captured in relation to their appointments i.e. post levels and rank descriptions, or discrepancy between post and salary level)

4.3.1 Permanently appointed FET Colleges support staff paid via PERSAL who are employed in terms of the FETC Act 16 of 2006 and whose profile in the contract of employment at the college is not the same profile as in PERSAL shall be identified as potential transferees, subject to the verification and validation on the legitimacy of the variances, and also as per par. 4.1 (4.1.1, 4.1.2 and 4.1.3) above. If any variance is found to be legitimate and valid, the support staff will have their profile on Persal corrected. Should this translation result in salary adjustment, such adjustment will come into effect on the effective date of the transfer.

4.3.2 The employees identified in 4.3.1 will have their employment contract transferred to the DHET hereby referred to as the New Employer. This transfer will be subject to provisions of section 197(2) of the Labour Relations Act, 1995 (Act No. 66 of 1995), from the FET College (Old Employer: Council), to the DHET (New Employer: Minister)

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as contemplated in section 12(1) (a) of the Further Education and Training Colleges Amendment Act, 2012 (Act 3 of 2012) (FETCA Act).

- 4.3.3 Employees who are transferred to the DHET will retain all the rights and obligations between the old employer and the employee as if they had been rights and obligations between the new employer and the employee.

4.4 *Transfer of temporary/contract appointed FET Colleges support staff paid via PERSAL or College payroll*

- 4.4.1 Temporary/contract appointed FET Colleges support staff paid via PERSAL or College payroll, employed in terms of the FETC Act 16 of 2006 shall be identified as potential transferees, subject to par. 4.1 (4.1.1, 4.1.2 and 4.1.3) above.

- 4.4.2 Should the number of filled college paid posts exceed the number of substantive funded posts as determined through the process outlined in par. 4.1 (4.1.1, 4.1.2 and 4.1.3) above, the following procedure would apply:

- 4.4.2.1. At a formally convened meeting in the college, management will identify the fully funded posts and support staff to be transferred to DHET, taking organisational requirements, curriculum needs of the college and uninterrupted service in the employ of the college (including service rendered to provincial departments of education) into account.

- 4.4.2.2 This process shall be monitored by the National Implementation Task Team to be constituted by both the New Employer and Organised Labour.

- 4.4.3 All employees that shall have been identified in terms of the above process as occupying fully funded posts shall have their employment contract transferred to the DHET hereby referred to as the New Employer.

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- 4.4.4 Employees who are transferred to the DHET will retain all the rights and obligations between the old employer and the employee as if they had been rights and obligations between the new employer and the employee.

4.5. *Disciplinary hearings*

- 4.5.1 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.

4.6. *Organisational rights*

- 4.6.1 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.

4.7. *Payment of salaries, benefits and conditions of service*

- 4.7.1 The payment of salaries and benefits of the transferees shall be paid by the Old Employer (in the case of support staff on the college payroll) and the relevant provincial department of education as per agency agreement / memorandum of agreement (in the case of Persal paid support staff) until such time that the function relating to Section 14 of the FETC Amendment Act 3 of 2012 is fully transferred to the New Employer.
- 4.7.2 Due to the complexities related to the migration of the FET College staff, including access to persal and employee benefits, a phased approach will be adopted to manage the transfer of these staff to the DHET.

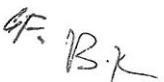
4.8. *Liability for accrued employee benefits*

- 4.8.1 The Old Employer agrees to compile a valuation of accrued benefits and payments as at the date of transfer in respect of the transferees in relation to the following:

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- 4.8.1.1 Vacation and capped leave;
 - 4.8.1.2 Sick leave;
 - 4.8.1.3 Service bonus;
 - 4.8.1.4 Long Service Awards;
 - 4.8.1.5 Severance pay;
 - 4.8.1.6 Employee Initiated Severance Package
 - 4.8.1.7 Outstanding payments e.g. merit awards, overtime and any other benefits, allowances;
 - 4.8.1.8 Post Retirement Medical Assistance liability;
 - 4.8.1.9 Outstanding Payments related to Performance Measurements; and
 - 4.8.1.10 Any other terms and conditions of employment, inclusive of collective agreements reached in the PSCBC and the GPSSBC.
- 4.8.2 The Old Employer will be liable for any consequences/liabilities including claims and damages associated with and/or arising from pending disciplinary matters, grievances and disputes which arose prior the date of transfer.
- 4.8.3 The Old and New Employer agree to the liabilities and payment thereof, should any employee become entitled to receive such payment. The liabilities may be apportioned where necessary.
- 4.8.4 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 Employer will be jointly and severally liable for a period of 12 months from the effective date of transfer.

5 DATE OF IMPLEMENTATION

- 5.1 The provision of this agreement shall take effect at the date that Section 12 of the FETC Amendment Act 3 of 2012 as it relates to non management staff, is effected through the gazette notice to be published by the Minister.

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6 INTERPRETATION AND APPLICATION

- 6.1 In the event of any conflict between the provisions of this agreement and any other Agreement of Council, the provisions of this agreement shall take precedence.
- 6.2 No amendments to this agreement shall be of force or effect unless reduced to writing and agreed upon by parties to the Council as a Resolution of Council.

7. DISPUTE RESOLUTION

- 7.1 Any dispute about the interpretation of this agreement shall be resolved in terms of the dispute resolution of the council.

Thus done and signed at Centurion on this 14th day of April 2014.

8. DEFINITIONS

- 8.1 “**Council**” means the General Public Service Sector Bargaining Council.
- 8.2 “**Department**” refers to the Department of Higher Education and Training (New Employer).
- 8.3 “**Employer**” means the employer as defined in the Further Education and Training Colleges Act 16 of 2006. This refers to a Further Education and Training College represented by the Further Education and Training Colleges’ Organisation (Old Employer).
- 8.4 “**Support staff**” refers to a staff employed to perform a support function.

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- 8.5 **“Valid contract”** means contract of employment entered into between the employer and the college council or its delegate (i.e. Principal).
- 8.6 **“College Allocation”** means the conditional grant from the department as well as the contributions from the student fees according to the norms and standards.
- 8.7 **“Salary”** means remuneration as per the contract of employment.

ON BEHALF OF THE PUBLIC FET COLLEGES AS EMPLOYER

Employer	Name	Signature
FURTHER EDUCATION AND TRAINING COLLEGES EMPLOYERS ORGANISATION ON BEHALF OF COLLEGES (OLD EMPLOYER)		
DEPARTMENT OF HIGHER EDUCATION AND TRAINING (NEW EMPLOYER)	CF QONDE	

ON BEHALF OF EMPLOYEE PARTIES

Trade union	Name	Signature
NEHAWU	B.K. Soko	
PSA		
POPCRU	UNATHE KA THELEDA	

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