

## INFORMATION SHEET

### INTRODUCTION

National Bargaining Council for the Chemical Industry (the NBCCI) is the regulatory body in the Chemical industry, in addition to governmental institutions, such as the Department of Labour, that regulates industrial relations in the Chemical Industry. The Council was officially registered on 3rd December 2001 and has three core functions, namely the negotiation of wages and conditions of service/collective bargaining, the prevention and resolution of labour disputes in the Industry and with the extension of agreements in the pipeline, the enforcement of negotiated agreements.

### BACKGROUND TO BARGAINING COUNCILS

Bargaining councils were previously known as industrial councils and have been a feature of South African industrial relations since 1924. The concept of an industrial council was, and still is, to promote what is termed “self-governance” in an industry by the representative employers’ organisations and trade unions in that industry.

The traditional functions of industrial councils have always been the negotiation and enforcement of agreements and the settlement of disputes – thus achieving the overall objective of labour peace in the industry concerned. The setting up and administration of various retirement and insurance funds for the benefit of employees have been other traditional functions of industrial councils.

The Labour Relations Act 66 of 1995 as amended has broadened the functions of industrial councils, now known as bargaining councils, to include input into policy and law. This is in line with other elements of government policy in terms of which a role is foreseen for bargaining councils to participate in national economic and industrial

policy formulation. The NBCCI, for instance, is specifically empowered to make submissions to NEDLAC.

The role of bargaining councils must be seen against the background of the primary objectives of the LRA, which include, amongst others, the promotion of orderly collective bargaining and collective bargaining at sectoral level. Bargaining councils can therefore be seen as a cornerstone of the South African system of labour relations.

Bargaining councils are established by agreement between employers' organisations and trade unions. The LRA requires both parties to be "sufficiently representative" of the interests and the area for which the council seeks registration. This requirement is aimed at ensuring that the organisations involved in setting up a bargaining council have at least a substantial portion of employers and employees in the industry concerned as members. The NBCCI, similarly, was granted registration on the basis of the parties being sufficiently representative of the Chemical Industry in South Africa.

## **ESTABLISHMENT OF THE NBCCI- HISTORICAL BACKGROUND**

The following employers' organisations and trade unions agreed to the establishment of the NBCCI in 2001:

### **Employers' organisations:-**

- Surface Coating Industry Employers' Association
- National Fast Moving Consumer Goods Employers' Association
- Explosives Industry Employers' Association
- National Speciality Chemicals Employers' Association
- Fertiliser Industry Employers' Association
- Labour Affairs Association of the Pharmaceutical Industry
- National Petroleum Employers' Association
- Glass Industry Employers' Association
- National Base Chemicals Employers' Association

These nine organisations were and still are representative of employers in the nine sectors in the Chemical Industry.

#### **Trade Unions:-**

- Chemical, Energy, Paper, Printing, Wood and Allied Workers' Unions (CEPPWAWU)
- South African Chemical Workers Union (SACWU)
- South African Workers Union
- Mynwerkersunie
- National Employees Trade Unions

Mynwerkersunie and the South African Workers Union have since 2001 merged to form the Solidarity trade union. Following a merger, the National Employees Trade Union was replaced on the Council by the United Association of South Africa (UASA). UASA significantly lost membership and no longer met the membership requirements of the Council and stopped being a party union some years ago.

The constitution of the NBCCI requires a trade union to have at least 2 000 members in the Chemical Industry to be admitted as a party. There are no such pre-conditions applicable to employers' organizations to be admitted as a party to the Council.

The General Industries Workers Union of South Africa (GIWUSA) was later admitted as a party trade union.

#### **CURRENT MEMBER TRADE UNIONS**

The current parties to the Council are still the nine founding employers' organisations. In November 2022, the Council admitted the National Union of Metal Workers of South Africa (NUMSA) as a member trade union. That decision led to an increase of trade unions in the industry. There are therefore five member trade unions, namely:

- CEPPWAWU,
- SACWU,
- Solidarity
- GIWUSA and
- NUMSA.

## LEVIES

Bargaining councils are funded by levies payable on a 50/50 basis by employers and employees in the industry for which the Council has been registered. The power to impose levies is contained in the constitution of a bargaining council.

Once parties have reached an agreement on a levy, it is not necessary, in terms of section 34 of the Basic Conditions of Employment Act, for employees individually to specifically agree in writing to levy deductions from their salaries.

At the moment, the obligation to pay levies to the NBCCI only applies to so-called "parties" to the Council, i.e. those companies that are members of one of the nine employers' organisations which have been admitted as parties to the Council, and their employees.

The intention of the Council is eventually to cover all employers and employees in the Chemical Industry. A process is currently underway in terms of which the Council will seek the extension of its agreements to so-called "non-parties" in terms of section 32 of the Labour Relations Act. The Council has made good progress in this regard. The Glass sector was issued with the certificate of presentiveness and is awaiting the agreement to be gazetted.

When NBCCI agreements are eventually extended to all employers in the Industry, non-parties will also become liable to pay levies to the Council.

Levies are used to fund the operations of a bargaining council. This involves all normal operating expenses such as salaries for the administrative and case management staff, office expenses, meeting expenses, cost of dispute resolution and negotiation

expenses. The Labour Relations Act contains very stringent control measures regarding the finances of bargaining councils.

In practice not all employees of a company would benefit from all the services of a bargaining council. Employees at a more senior level, who are commonly not highly unionized, would for instance not benefit from the collective bargaining functions of a bargaining council. Their salaries and other conditions of service are commonly determined by management, based on job performance.

To cater for the fact that not all employees would benefit equally from the services of the Council, the NBCCI has introduced a differentiated levy structure, namely one for employees in the so-called bargaining unit and one for employees who do not fall within the bargaining unit.

The concept of a "bargaining unit" is not officially defined anywhere, not even in the Labour Relations Act. Basically it means that group of employees for whom wages and conditions of service are negotiated by the party trade unions. These employees therefore derive a "benefit" from the Council that employees outside the bargaining unit do not enjoy.

The founding parties to the Council agreed that 50% of the levy should be "allocated" to the wage bargaining benefit and the other 50% of the levy to the Council's dispute resolution benefit.

Employees falling within the bargaining unit of a company benefit from both the collective or wage bargaining services as well as the dispute resolution services of the Council while employees who are outside the bargaining unit only benefit from the dispute resolution services of the Council.

Employees falling outside company bargaining units therefore only pay “half” the levy.

It should be noted that there is as yet no common bargaining unit in either the Chemical Industry or in any of its sectors. At this stage, each company still has to define its own bargaining unit, which will be dependent on its own individual industrial relations situation, particularly the level of unionization in the company.

It is common for bargaining units to be regulated by plant level recognition agreements entered into between the company and the union or unions that have a substantial number of members in the company.

### **SCOPE OF REGISTRATION OF THE COUNCIL**

The scope of registration of the NBCCI, in terms of the certificate of registration issued by the Registrar of Labour Relations, is the Chemical Industry as defined, in the Republic of South Africa.

The Chemical Industry has **nine** sectors but for collective bargaining purposes, the following five sectors are grouped into a broader sector known as the Industrial Chemicals Sector:

- Base Chemicals
- Speciality Chemicals
- Surface Coatings
- Fertilizers and
- Explosives

The following four sectors bargain separately:

- Petroleum
- Pharmaceuticals
- Glass
- Fast Moving Consumer Goods

In practice up until the agreements are extended to non-parties, the jurisdiction of the Council only covers employers that are known as “party employers”, that is employers who are members of any of the nine party employers’ organisations referred to above, and their employees. The reason for this, as has been explained already, is that the Council does not yet have the powers to extend its agreements to non-parties as provided for in section 32 of the Labour Relations Act.

### **DISPUTE RESOLUTION IN THE CHEMICAL INDUSTRY**

One of the most important functions of a bargaining council is that of dispute resolution.

The NBCCI has jurisdiction only to deal with so called party-to-party disputes, namely disputes involving a “party” employer as explained above and an employee employed by a party employer.

Non-parties, namely employers who are not members of any one of the nine party employers’ organisations and their employees, must refer their labour disputes to the CCMA as if there is no bargaining council. Any non-party who refers a dispute to the NBCCI will be advised to refer the dispute to the CCMA. In practise, the cases that are erroneously referred to the NBCCI are transferred to the CCMA. If this does not happen, any party (the applicant or the respondent) can specifically request the CCMA to refer the dispute to the NBCCI. The staff of the NBCCI is always happy to assist parties in this regard.

It should be noted, however, that in terms of section 147 of the LRA, there are certain circumstances where the CCMA can assume concurrent jurisdiction of a case even where there is a bargaining council and then deal with the matter itself.

The NBCCI is accredited with the CCMA to deal with all party-to-party disputes, whether conciliation or arbitration. The NBCCI has not been accredited to handle the following types of disputes, therefore such must be referred to the CCMA as bargaining councils do not have jurisdiction to deal with them:

- Disclosure of information
- Organisational rights
- Agency shops
- Closed shops
- Interpretation or application of collective agreements
- Picketing
- Workplace forums
- Operational requirements facilitation

All the employees of a party employer, whether they fall inside or outside the employer's bargaining unit, are covered by the dispute resolution function of the NBCCI, i.e. from the highest to the lowest level of employee and whether they are members of a trade union or not.

The NBCCI has adopted the rules of the CCMA so that the dispute procedures in both the CCMA and the Council are very similar. The NBCCI also makes use of the CCMA's case management system.

The Council has appointed its own panel of conciliators and arbitrators to deal with labour disputes referred to it. These panellists are all accredited with the CCMA and therefore comply with all the necessary criteria regarding qualifications and experience. Panellists are expected to comply with the Council's Code of Conduct and their performance is monitored on a continuous basis.



Disputes in the Johannesburg area are usually heard at the Council offices in Johannesburg. In other areas the local CCMA offices or those of other bargaining councils are commonly used.

## **LEVELS OF BARGAINING**

Collective bargaining in the Chemical Industry takes place at three levels, namely plant level, sector level and industry level. The constitution of the NBCCI contains Annexure's which spell out which items/issues are to be negotiated at each of these three levels.

The main focus tends to be on sectoral bargaining concerning wages and conditions of service, which usually takes place on an annual basis. With effect from 2009, there has been multi-year agreements of at least two years. The constitution of the Council contains detailed procedures regulating these negotiations. Additional guidelines are also issued by the Council.

Sectoral wage bargaining takes place in five "chambers" or sectors, namely:

- Industrial Chemicals
- Pharmaceuticals
- Petroleum
- Fast Moving Consumer Goods
- Glass

Five separate collective agreements are negotiated and signed by the employers' organization and the trade unions active in the particular sector. At this stage, wage agreements only apply to employees in the bargaining unit of the respective party employers.

Sectoral wage agreements are ratified by a full meeting of the Council, thereby conferring on the agreements the status of fully fledged Council agreements. All agreements are filed and kept as part of the Council's official records.

Because the Council does not as yet have powers of extension, negotiated wage agreements only bind those employers who are specifically signatories to the agreements. Other employers, the so-called "non-party" employers are not legally bound by these agreements.

It is possible for a company to obtain an exemption from the provisions of a collective agreement, e.g. from granting the increase that was negotiated with the unions. This takes place in terms of the prescribed exemptions procedure.

There are three basic steps in the exemptions procedure, namely plant level Consultation, Arbitration by a Council appointed facilitator drawn from the Council's Exemptions Committee and Appeal by the Independent Appeals Committee. A company seeking an exemption from a collective wage agreement must be prepared to disclose full financial information to the Council's Exemptions Committee. Exemptions Procedures makes provision for the attendance of an Accountant as a Panel member of both the Exemptions Committee or the Independent Appeals Committee.

Any exemptions agreement negotiated by parties during the consultation or facilitation stage or any arbitration award made by the Exemptions Committee/Independent Appeals' Committee is kept as part of the Council's official records.

## **MANAGEMENT OF THE COUNCIL**

The constitution of the NBCCI contains detailed provisions regarding the management, administration and finances of the Council.

Various policies and procedures have also been developed over time to regulate the day-to-day business of the Council.

The Council has a full time secretariat, headed by the General Secretary, to perform the various functions of the Council.

The most important principle regarding the management of the Council is that employers and trade unions have a 50/50 say in the governance of the Council. In practice this means that the parties to the Council are represented on all Council committees and other structures on a 50/50 basis and that the parties have an equal vote in the running of the affairs of the Council.

## **CONTACT DETAILS OF THE COUNCIL**

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