



SOUTH AFRICAN LOCAL GOVERNMENT BARGAINING COUNCIL

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10 October 2022

To: All Municipal Managers
All Chief Financial Officers
HR Directors
All Employees

The Parties:

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SAMWU
IMATU

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Dear Sir / Madam,

CIRCULAR NO 11/2022

UPDATE: UNRECOGNISED MINORITY TRADE UNIONS SEEKING ORGANISATIONAL RIGHTS AT MUNICIPAL LEVEL

We refer to SALGBC Circular 9/2018, issued to the sector on 6 December 2018, which stated that municipalities may not enter into recognition agreements with unrecognised trade unions. Circular 9/2018 dealt largely with MATUSA and DEMAWUSA and their attempts to enter into recognition agreements at municipal level in order to obtain organisational rights.

The Executive Committee of the SALGBC resolved, on 7 March 2022, that SALGBC Circular 9/ 2018 must be updated in respect of another unrecognised trade union, MECSU, which entered the sector in October 2021. This is due to the fact that MECSU attempted, in three separate disputes, to have a number of the SALGBC's Collective Agreements declared invalid.

Accordingly, the parties to the SALGBC (SALGA, IMATU and SAMWU) wish to re-state the following:

- a) The threshold for recognition, and a trade union's right to conclude agreements on organisational rights, is a membership of **15%** of the total number of employees falling under the scope of the SALGBC, as per clause 4.2.2 of the Constitution of the SALGBC. This is a national threshold and

not a workplace threshold. Unrecognised trade unions must meet this threshold at national level, and not at municipal level, in order to qualify for recognition and collective bargaining rights.

- b) The recognised trade unions in the sector are IMATU and SAMWU. SALGA is the recognised employers' organisation in the sector. These parties are the founding parties to the SALGBC since its establishment and registration with the Department of Employment and Labour (DEL), in 2001.
- c) Municipalities should not enter into separate recognition agreements or any other agreement on organisational rights with any unrecognised minority trade union because the Main Collective Agreement regulates organisational rights in the sector. Municipalities are bound by the provisions of the Main Collective Agreement in terms of Section 23 of the LRA and Section 71 of the Municipal Systems Act 2000, as amended.
- d) The Constitutional Court judgement in *Police and Prisons Civil Rights Union v South African Correctional Services Workers' Union and Others* [2018] ZACC 24, does not create an obligation on any Municipality to enter into a recognition agreement or any other agreement on organisational rights with any unrecognised minority trade union.
- e) Unrecognised minority trade unions seeking statutory organisational rights in terms of sections 12, 13 and 15 of the Labour Relations Act (LRA) should seek those rights in terms of the dispute resolution provisions of section 21(c) of the LRA. The position of Municipalities in such disputes, should be guided by paragraphs (f) and (g) below.
- f) The SALGBC parties (SALGA, IMATU and SAMWU) oppose the proliferation of multiple trade unions and employer organisations in the sector, which is one of core objectives of the LRA.
- g) Municipalities should likewise oppose the proliferation of multiple trade unions in the sector as it presents a risk of increased industrial action and the erosion and destabilisation of centralised collective bargaining arrangements, painstakingly achieved in the sector since 1994.
- h) Municipal employees should take note that unrecognised minority trade unions such as MATUSA, DEMAWUSA, and MECSU cannot bargain collectively on their behalf. Collective Agreements on wage curves, wage increases and terms and conditions of employment etc. can only be negotiated and concluded with IMATU and SAMWU. Moreover, employees who join unrecognised minority trade unions are still liable to pay agency shop fees as well as the subscription fees to their unrecognised unions. This was confirmed in the Labour Court judgement of *Municipal and Allied Workers Union of South Africa v Central Karoo District Municipality and Others* (C 671/18) [2018] ZALCCT 34.
- i) MECSU previously referred three disputes to the SALGBC which sought to set aside the MCA and the Disciplinary Procedure Collective Agreement as well as the Gauteng Divisional Conditions of Service. It is unclear what MECSU's motives are in seeking to set aside collective agreements that play a crucial role in regulating the sector. Their actions are however worrisome, as the outcome of their disputes could have had the effect of cancelling leave provisions, maternity benefits etc. The arbitrator in these disputes ultimately ruled that MECSU has no standing to challenge the validity of the SALGBC's collective agreements and dismissed their disputes. Had they succeeded, MECSU could have potentially destabilized the sector.
- j) The SALGBC's collective agreements can only be negotiated and amended by the SALGBC parties themselves. No third party such as MECSU can cancel the SALGBC's collective agreements. The SALGBC parties call upon their members to defend the collective agreements, when unrecognised

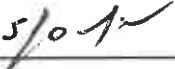
unions attempt to destabilize the orderly collective bargaining efforts of the SALGBC parties.

k) The SALGBC is required to regularly confirm to the DEL that the parties to the SALGBC are sufficiently representative. SAMWU and IMATU represent 96% of the employees in the sector, and this is confirmed in the most recent certificate of the SALGBC party representativeness as of February 2022, which states as follows:

- Total number of employees employed within the registered scope of the SALGBC is 271 308.
- Employees who were members of the trade union parties (SAMWU & IMATU) to the SALGBC, employed within the scope of the SALGBC is 259 123.
- 257 Municipalities represented by SALGA.

This circular must be published on all employee notice boards.

Yours faithfully



SS GOVENDER
GENERAL SECRETARY