



19 January 2018

To: Mrs Mongwadi Mary Ngwetjana
Deputy Registrar of Labour Relations
Department of Labour
Laboria House
215 Francis Baard Street
Private Bag X117
Pretoria
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Ref: Government Gazette No 41351
Notice No. R. 1470
Department of Labour
22nd December 2018

RE: Submission of Formal objection to the registration of the Statutory Council known as the Statutory Council for the Fast Food, Restaurant, Catering and Allied Trades (“**SCFFRCAT**”) to be recognised as a Bargaining Council in terms of s48, read with s29, of the Labour Relations Act, 66 of 1995 (as amended).

THE HOSPITALITY INDUSTRY OF SOUTH AFRICA - RASA

RASA is a non-profit organization that was formed in 2004, to act in the interest of the South African restaurateurs and to ensure that there was a lobby and a voice to speak on their behalf. The sole purpose of RASA is to represent; develop; educate and ensure sustainability for the restaurant industry. RASA is the port of call by government for all consultations relating to the restaurant industry and includes the transformation of the industry through job creation, skills development and capacity building.

RASA confirms that the views expressed herein are that of a diverse and broad nature. The observations, comments and proposals represent the views of rural, urban, group independent, established and emerging hospitality institutions all forming part of RASA. The aforementioned, *inter alia*, have a direct interest in the outcome of the proposed application.

OBJECTION TO THE APPLICATION:

In terms of the provisions under s48, read with s29, of the Labour Relations Act, 66 of 1995 (as amended) ("the Act"), as well as the aforementioned Government Gazette, any interested party may raise objection to the application. We therefore, as we hereby do, object to the application referred to herein as follows:

1. The Applicant has not complied with the provisions of s29 of the Act:

- 1.1. S29 provides that the Applicant need only submit the full application pertaining to a s48 registration to the Department of Labour. It is RASA's contention, however, that the members of RASA must be provided with a full copy of the aforesaid application to satisfy itself that the requirements in terms of s29 of the Act has been complied with.
- 1.2. Accordingly, RASA and its members reserve the right to supplement this objection submission at a later stage should it be found that the application in terms of s48 has not complied with the provisions and requirements of s29 (after such time as RASA has an opportunity to peruse and consider the complete formal application inclusive of the requisite annexures).

2. The sector and area in respect of which application is made is not appropriate:

- 2.1. The Applicant has described and defined the sector in respect of which the s48 application is made as the same sector in which SCFFRCAT was registered under s29. Whilst SCFFRCAT was successfully registered as a statutory council, it is RASA's contention that due to the varying degree in categories of business, as well as the diverse and unique labour enactments relating to each sector, the needs of the said categories of business will effectively need different methods of training, competency and skill. Due to the said differences, collective methods pertaining to training and benefits will need to be supplemented by various groups in an effort to standardise the bargaining and agreements within the sector/area. Thus, the application of agreements concluded by the proposed Bargaining Council will effectively place an obligation on businesses in the proposed area to increase their overheads and expenses in an effort to collectively administer the standards imposed by the proposed Bargaining Council. The varied scale of businesses in the proposed

sector/area will cause small to medium business to suffer under the current economic pressures, as well as those imposed by the proposed Bargaining Council. Furthermore, and due to the various degree of business enterprise and corporate and commercial footprint within the proposed area, the minimum standards and collective agreements pertaining to applicable businesses will cause either small-medium business to shatter under the pressure of the Bargaining Council's requirements or effectively render the benefits afforded to employees negligible due to the Bargaining Council's need to administer affordable benefits to all businesses falling within the proposed scope, thus providing a sub-standard and/or subpar benefits.

- 2.2. RASA would argue that the mere presence of collective agreements and bargaining does not automatically render the mechanism and administration of benefits fair and effective. Should SCFFRCAT be registered as a Bargaining Council in terms of s48, ineffective negotiations will render the Bargaining Council obsolete insofar as implementing meaningful change into the proposed employment sector.
- 2.3. It is RASA's contention that it is not financially viable to register the Bargaining Council for the proposed sector within the proposed area as the current economic climate and socio-economic challenges faced by employers and small-medium business entities do not allow for effective standardised agreements nor the equal and consistent application of same.
- 2.4. Due to the varied nature of the Industry comprising a wide spectrum of small entrepreneurial-type establishments to larger corporate entities. It is the view of RASA's that a centralised bargaining model is not in the best interests of both employer and employee. Enforcing such a model in a fully registered and regulated manner will ultimately lead to small to medium enterprises withdrawing from the market, which will lead to significant loss of employment opportunities.
- 2.5. As a result, RASA does not believe that the sector, in respect of which the application is made, is appropriate and objects to the application as a result.

3. The Applicant is *not sufficiently representative* in the sector and area in respect of which application is made:

- 3.1. RASA objects to the information produced and provided by SCFFRCAT insofar as the figures provided are presented without any source documentation and/or breakdown of the numbers and registered employers. To this end, RASA requests a full breakdown of the figures provided including the source of said figures and an opportunity to cross-reference said figures to that of the registered list of businesses for the proposed areas.

- 3.2. The figures presented are presented out of context and without any ratio, tally, percentage and/or argument to prove that SCFFRCAT is sufficiently representative. Without satisfying the requirement of illustrating to the Minister that SCFFRCAT is sufficiently representative, the figures presented lack any credibility and does not speak to the requirement of being sufficiently representative. It is RASA's contention that on that figures, as they stand, a Bargaining Council cannot be decidedly sufficiently representative. RASA requests further documentation and clarity in this respect.
- 3.3. In amplification hereof, RASA conservatively estimates that there are **not less than 55 000 businesses** located in the proposed area which fall within the scope and definition of "Hospitality, Restaurant and Catering Industry". As such, RASA confirms and reiterates that the requirement under s29 in respect of being sufficiently representative has not been satisfied, or reasonably satisfied, by the figures provided by SCFFRCAT in the Application in terms of s48 of the Labour Relations Act, 66 of 1995 (as amended).

4. The complex, costly and demanding administrative role of bargaining councils

- 4.1. The effect of the High Court ruling in RASA's case is that bargaining councils are administrative bodies engaged in administrative action. Accordingly, they and their members are subject to the far-reaching and demanding requirements of the administrative justice clause in the Bill of Rights (§33) and the Public Administration of Justice Act (PAJA) which gives effect to it.
- 4.2. Given the nature of the industry, ranging from informal micro-enterprises to sophisticated international chains, those concerned, especially at smaller end of the spectrum, cannot be expected to fulfil or take full account of the cost, procedural, analytical, jurisprudential and related implications of the law.
- 4.3. This is clear from the series of cases following the judgement involving NEASA and others (<https://neasa.co.za/collective-bargaining-and-the-free-market-foundations-case/>). The effect of upholding the judgement in one of the most sophisticated, experienced and well-funded sectors has been to bring it to its knees.
- 4.4. To be effective and to operate lawfully, councils must now be sophisticated and well-funded administrative structures. They must be both willing and able to publicise and communicate agreements under consideration to interested parties which, in this industry, includes thousands of diverse and disparate enterprises. They have to gather inputs, establish public interest implications of divergent scenarios, and be equipped to make and implement agreements that promote the public interest rather than their own interests.
- 4.5. It is respectfully submitted that this industry, by virtue of its inherent nature, cannot realistically be expected to fulfil the obligations specified in the judgement.

For reasons set out above, and in accordance with the Government Gazette 22 December 2017, RASA strenuously objects to the application to register SCFFRCAT as a Bargaining Council in terms of s48 read with s29 of the Labour Relations Act, 66 of 1995 (as Amended).

RASA reserves the right to supplement this Objection Submission as a later stage.

RASA

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