

# Bargaining council exemptions

The National Association of Bargaining Councils (NABC) was formed during 1994 at a time when much criticism was leveled at centralised bargaining. Currently, 51 of the 75 bargaining councils in the private sector are members of the NABC.

The NABC formed an Independent Exemption Board for Gauteng during June 1998 in terms of the LRA (1995).

The wording of the Act at that time, implied that the independent exemption body should deal with all exemption applications by non-parties. The wording of clause 32(3) (e) to (g) reads as follows:

- (e) the collective agreement establishes or appoints an independent body to grant exemptions from the provisions of the collective agreement as soon as possible;
- (f) the collective agreement contains criteria that must be applied by the independent body when it considers applications for exemptions, and that those criteria are fair and promote the primary objects of this Act; and
- (g) the terms of the collective agreement do not discriminate against non-parties.

The NABC made representation to the government on these clauses. It pointed out that the referral of all non-party exemption applications to an independent outside body will be costly and may also be slow due to the many applications.

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Statistical analysis indicated that more than 80% of all exemption applications are granted by councils.

The NABC suggested that non-members should first apply directly to bargaining councils for an exemption and only in cases where the application is refused, refer to the independent outside panel.

## Current law

The NABC had success and government amended the LRA (1995) to give effect to the NABC's suggestion. The current clause 32 (3) (e) to (g) reads as follows:

- (e) provision made in the collective agreement for an independent body to hear and decide, as soon as possible, any appeal brought against -
  - (i) the bargaining council's refusal of a non-party's application for exemption from the provisions of the collective agreement
  - (ii) the withdrawal of such an exemption by the bargaining council;
- (f) the collective agreement contains criteria that must be applied by the independent body when it considers an appeal, and that those criteria are fair and promote the primary objects of this Act; and

- (g) the terms of the collective agreement do not discriminate against non-parties.

This clause was published on 2 December 1998 in *Government Gazette* 19 542.

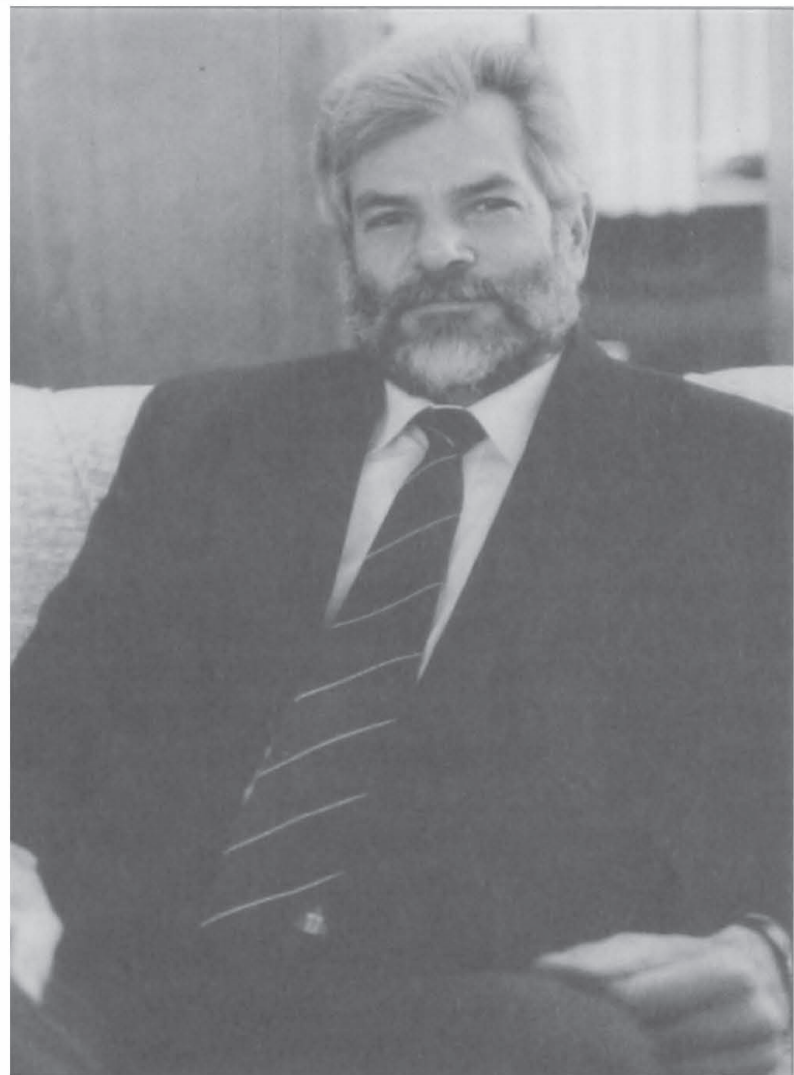
### Independent panels

A number of our member councils formed their own independent panels. Our Gauteng Panel dealt with 70 exemption applications from August 1998 to July 1999. Of this total, 60% were granted and 40% refused. Analysis of the reasons for either granting or refusing applications indicated the following factors as important.

#### Granted

An analysis of exemptions granted brought out the following reasons for exemptions being granted:

- firms working more outside the area of jurisdiction than inside and having their own benefits in place;
- support by employees to be exempted



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- for a limited period;
- no unfair competition would be created if the exemption was granted;

### NABC statistics on exemptions

Exemptions	1993 (30)	%	1994 (31)	%	1995 (38)	%	1996 (37)	%	1997 (37)	%
Granted	6 903	87,2	4 555	87,5	5 823	81,3	6 498	78,4	5 432	83,5
Refused	718	9,1	472	9,1	1 118	15,6	1 476	17,8	841	12,9
Under consideration	295	3,7	176	3,4	220	3,1	318	3,8	235	3,6
<b>Total</b>	<b>7 916</b>		<b>5 203</b>		<b>7 161</b>		<b>8 292</b>		<b>6 508</b>	



*The Metal and Engineering Industries Bargaining Council is one of 75 bargaining councils in South Africa.*

- the company only does a low percentage of work in a specific industry;
- single employee application with special circumstances, for example short duration work permit.

#### ***Not granted***

An analysis of exemptions not granted showed the following reasons:

- no support by employees;
- very little motivation as to reasons for application for exemption.

#### **Conclusion**

The exemption provisions in the previous LRA (28 of 1956) made it difficult for non-party members to get an exemption once their application to a council was denied. Section 51 of that LRA set out a lengthy procedure to be followed to appeal to the

minister to try and obtain an exemption. Under that Act, a lot of criticism was leveled against councils, especially by the smaller employers.

Once the exemption provisions in the current legislation becomes widely known and utilised, very little criticism should be left.

We do however, still find employers entering a specific sector where the only way of beating the competition is by paying lower wages than the minimum prescribed and not paying any fringe benefits provided for in bargaining council agreements. ★

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