



Federated Hospitality Association
of Southern Africa

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
0001

Email:

Copy forwarded to – CATRA: Attention Mr

Email: info@catra.co.za

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

The Federated Hospitality Association of Southern Africa (“**FEDHASA**”), established in 1949, is both a registered s21 company and an Employer’s Association, which represents the commercial interests of the hospitality market in respect of its profitable interests and employment environment. The Association has been mandated to submit this formal objection to the Deputy Registrar of Labour Relations, as addressed above, on behalf of its member establishments which fall within the ambit and scope of SCFFRCAT (this includes, but is not limited to, hotels, B&Bs, guest houses, back-packers, game lodges, restaurants, taverns , shebeens, pubs and conference centres).

FEDHASA 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 FEDHASA. 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 FEDHASA's contention, however, that the members of FEDHASA 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, FEDHASA 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 FEDHASA 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 FEDHASA'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. FEDHASA 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 FEDHASA'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 FEDHASA 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, FEDHASA 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. FEDHASA 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, FEDHASA 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 FEDHASA's contention that on that figures, as they stand, a Bargaining Council cannot be decidedly sufficiently representative. FEDHASA requests further documentation and clarity in this respect.
- 3.3. In amplification hereof, FEDHASA 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, FADHASA 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).

For reasons set out above, and in accordance with the Government Gazette 22 December 2017, FEDHASA 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).

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

FEDHASA