

# **UNIVERSITY OF KWAZULU-NATAL STAFF UNION**

## **CONSTITUTION**

2020

Amendments approved Department of Employment and Labour 2020

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It is hereby certified that on the date of registration the constitution of the

***University of KwaZulu-Natal Staff Union***

Complies with the requirements of subsection (5) and (6) of section 95,

of the Labour Relations Act, 1995 as amended.

Reference number: LR2/6/2/688

Date: 2020

\_\_\_\_\_  
Registrar of Labour Relations

## **CONSTITUTION OF THE UNIVERSITY OF KWAZULU-NATAL STAFF UNION**

### **1. NAME**

The name of the Union is: UNIVERSITY OF KWAZULU-NATAL STAFF UNION hereinafter referred to as UKSU or the Union

### **2. DEFINITIONS**

- 2.1 Any expression used in this Constitution and which is defined in the Labour Relations Act, 1995 (Act No. 66 of 1995 as amended), shall have the same meaning as in the Act.
- 2.2 The Office Bearers are the Chairperson and Deputy Chairperson of the Union.
- 2.3 The official of the Union is the UKSU Officer, who also serves as the secretary of the Union.
- 2.4 The Executive Committee comprises the Office Bearers and the UKSU Officer.
- 2.5 The Representative Committee comprises the elected representatives, including the Chairperson and Deputy Chairperson.

### **3. OBJECTS**

The objects of UKSU shall be:

- 3.1 to regulate relations between employees and the employer, including any employer's organisation;
- 3.2 to promote the interests of its members;
- 3.3 to plan and organise its administration and lawful activities;
- 3.4 to affiliate with and participate in the affairs of any national or international workers' organisation or the International Labour Organization;
- 3.5 to enter into any agreement of collaboration with any other organisation where such will be in the interest of members
- 3.6 to promote, support or oppose any proposed legislative or other measures affecting the interests of its members;
- 3.7 to use every legitimate means to induce those eligible for membership as per Clauses 5.1 and 5.2 to become members;
- 3.8 to provide legal assistance to its members in connection with their employment;
- 3.9 to facilitate the settlement of disputes between members and the employer or employer's organisations by conciliation, mediation or arbitration;
- 3.10 to do such lawful things as may appear to be in the interest of the Union and its members and which are not inconsistent with the objects or any issue specifically provided for in this Constitution;
- 3.11 to establish and administer funds for the benefit of its members;

- 3.12 to borrow, invest, lend, subscribe or make donations for the furtherance of the objects of the Union.

#### **4. STATUS OF THE UNION**

This Union shall be a body corporate with perpetual succession capable of entering into contractual and other relations and of suing and being sued in its own name and shall be an organisation not for gain.

#### **5. MEMBERSHIP**

- 5.1 Any employee of the University of KwaZulu-Natal (UKZN) or any employee of any of the University's affiliated units, research units, independently owned companies shall be eligible for membership of the Union.
- 5.2 Any employee of a labour broker or service provider, providing services to an employer in terms of Clause 5.1, where their employment meets the prescripts of section 198A of the Labour Relations Act, 1995 as amended, shall be eligible for membership of the Union.
- 5.3 Applications for admission or readmission to membership shall be lodged by completing the application form and submitting this to the UKSU Office or any member of the Representative Committee.
- 5.4 A member who has resigned or been expelled from the Union may be re-admitted as a member with or without conditions as the Representative Committee may determine.
- 5.5 All applicants will be notified of confirmation of their membership within 2 (two) weeks of receipt thereof.
- 5.6 The Representative Committee may refuse an application for membership where it believes such membership would not be in the interest of the Union or its membership, this includes applications for re-admission. The following process is then applicable.
- 5.6.1 The decision of the Representative Committee shall be conveyed to the applicant by the UKSU Officer, informing them of the reason for refusal of the membership application. The applicant concerned shall be informed they may appeal the decision to the membership and that during any appeal process they may only receive membership benefits if the fee is paid.
- 5.6.2 During the period until the appeal has been concluded, the applicant is entitled to the full benefits of membership but only on condition the membership fee has been paid. The Representative Committee may not refuse to accept the membership fee during this appeal period. The member may decide not to pay the membership fee during this appeal period but then would not receive any union benefits during this time.
- 5.6.3 Such an appeal shall be in writing and shall be submitted to the UKSU Officer within 10 (ten) working days after the decision of the Representative Committee has been communicated to the applicant.
- 5.6.4 Within 10 (ten) working days of receipt of the appeal, the UKSU Officer shall circulate an email message to all current members in the membership database, for the membership to consider the appeal. This message shall include the reason for the refusal of the application for membership, together with the applicant's appeal submission. The membership shall be informed they have 5 (five) working days to respond.
- 5.6.5 The membership's response will either confirm or reverse the decision of the Representative Committee. At least 10% (ten) of members entitled to vote shall have responded for the response to be validated. If the response is less than 10% (ten) of members entitled to vote, it will be considered a failed appeal.

- 5.6.6 The appeal by the applicant will be successful if the majority of the validated responses (minimum of 10%) support the applicant's appeal. If the majority of respondents support the decision of the Representative Committee, the appeal will have failed. The outcome of this process shall be final.
- 5.7 Every member shall notify the UKSU Officer, in writing, of their email address and any change thereof within 1 (one) week of the date on which the change occurred.
- 5.8 A member shall cease to be entitled to any of the benefits of membership, including the right to vote, in any of the following circumstances:
- 5.8.1 if the membership fees or other charges due by him/her to the Union are more than 3 (three) months in arrears;
  - 5.8.2 during any period whilst the member is under suspension by the Representative Committee in terms of this Constitution and is not submitting an appeal and continues to pay the fee;
  - 5.8.3 during any period whilst the member is appealing any decision of the Representative Committee, unless the member has elected to pay the fee during this period;
  - 5.8.4 during any period of unpaid leave granted by the employer, subject to clause 8.3;
  - 5.8.5 if the member ceases to be employed at the employer that qualified them for membership, subject to the particular circumstances contained in Clause 5.9.
- 5.9 After a staff member has ceased to be employed but there are disputes arising from the employment relationship, the member may remain a member if the Union continues to provide guidance and assistance, until the dispute has been dealt with to its conclusion. This will be an automatic continuation and will be at no cost to the member.
- 5.10 Section 97(2) of the Labour Relations Act, 1995 (Act No. 66 of 1995 as amended), provides that membership of the Union does not make the member liable for any of the obligations or liabilities of the Union.

## **6. MEMBERSHIP FEES**

- 6.1 A monthly membership fee of R50.00 shall be payable by each member of UKSU. The current membership fee must appear on the membership application form.
- 6.2 Such membership fee shall be reviewed annually and any increase approved at the annual general meeting.
- 6.3 For employees of UKZN, this fee shall be deducted from each member, monthly in arrears, by UKZN and paid into the UKSU bank account, as provided to UKZN by the Union.
- 6.4 The membership fee from those members who are not paid through the UKZN payroll, must be paid by debit order into the UKSU bank account within 7 days of the end of the month.
- 6.5 In addition to the membership fee, a member shall also be liable for the payment, in the same manner, of such other fees as may be prescribed in terms of the rules governing any fund established in terms of clause 3.11 and in terms of clause 18.8.
- 6.6 A member shall be exempt from the payment of the aforesaid membership fee in respect of any calendar month during which the member is unable to work due to illness for 30 (thirty) or more consecutive days, without remuneration, because their sick leave entitlement has been exhausted:

## **7. DISCIPLINE**

- 7.1 A member may be suspended, fined or expelled, as determined by the Representative Committee, if the member infringes any of the terms of this Constitution or acts in a manner which is considered detrimental to the interests of the Union and / or its members. The following process is then applicable. This process is not for removal from office, which is dealt with in Clause 15.
- 7.1.1 The decision of the Representative Committee shall be conveyed to the member by the UKSU Officer, informing them of the reason for the decision. The member shall be informed they are afforded an opportunity to state their case personally at a meeting of the Representative Committee or make a written submission for consideration by the Representative Committee. The member shall be informed that other than when a fine has been imposed they may continue to receive membership benefits as long as the membership fee remains paid during the appeal process subject to Clause 7.1.2.
- 7.1.2 During the period until the appeal has been considered, a member is entitled to the full benefits of membership but only on condition the membership fee has been paid. The Representative Committee may not refuse to accept the membership fee during this appeal period. The member may decide not to pay the membership fee during this appeal period but then would not receive any union benefits during this time.
- 7.1.3 A member who wishes to appear before or make written representation to the Representative Committee must notify the UKSU Officer within 10 (ten) working days after the decision of the Representative Committee has been communicated to the member.
- 7.1.4 The Chairperson must convene a special meeting of the Representative Committee within 5 (five) working days to consider the matter and all parties must be notified by the UKSU Officer of the date, time and venue. The matter with which the member is charged shall be set out in such notice.
- 7.1.5 A member shall be entitled to call witnesses in support of their case when attending a meeting of the Representative Committee. Following the member's appearance or consideration of the member's written representation, the Representative Committee shall either confirm or rescind its decision.
- 7.1.6 The UKSU Officer shall notify the member within 10 (ten) working days of the decision. If the Representative Committee confirms its decision, the member is advised they have a right of appeal to the membership. Should the member wish to appeal to the membership, they must notify the UKSU Officer within 5 (five) working days and provide written representation for consideration by the membership.
- 7.1.7 Within 10 (ten) working days of receipt of the written representation for consideration by the membership, the UKSU Officer shall circulate an email message to all current members in the membership database, for the membership to consider the appeal. This message shall include the reason for the Representative Committee's decision, together with the applicant's written representation. The membership shall be informed they have 5 (five) working days to respond.
- 7.1.8 The membership's response will either confirm or reverse the decision of the Representative Committee. At least 10% (ten) of members entitled to vote shall have responded for the response to be validated. If the response is less than 10% (ten) of members entitled to vote, it will be considered a failed appeal.
- 7.1.9 The appeal by the applicant will be successful if the majority of the validated responses (minimum 10%) support the applicant's appeal. If the majority of respondents support the decision of the Representative Committee, the appeal will have failed. The outcome of this process shall be final.

- 7.2 Upon expulsion of a member, all monies due to the Union by such member shall become payable. If payment thereof is not made within 30 (thirty) days the Representative Committee may take such steps as it deems necessary to secure a settlement.
- 7.3 Notwithstanding anything to the contrary contained in this Constitution, members of the Union shall not be disciplined or have their membership terminated for failure or refusal to participate in a strike, whether or not a strike ballot was held.

## **8. TERMINATION OF MEMBERSHIP**

- 8.1 A member may resign by giving 1 (one) months' notice in writing to the UKSU Officer. Provided that no resignation shall take effect until all monies due to the Union by the member concerned have been paid.
- 8.2 Membership shall automatically terminate when the membership fee is not received for 3 (three) months, unless for those staff of UKZN it was a payroll error.
- 8.3 Membership will be terminated during any period of unpaid leave. On return the member must re-apply for membership, unless the union fee is re-established.
- 8.4 If the member elects to continue to pay the Union fee, as per clause 7.1.2, during any disciplinary appeal process as per clause 7, membership shall automatically cease should the member's appeal fail.
- 8.5 The membership of any member who ceases to be an employee of UKZN or any affiliated unit or company (clause 5.1) or the labour broker (clause 5.2) will automatically terminate.

## **9. MEMBER MEETINGS**

### **9.1 Annual General Meeting**

- 9.1.1 The supreme governing body of this Union shall be the annual general meeting, which shall consist of the Representative Committee and at least 10% (ten) of the Union's members who are entitled to vote.
- 9.1.2 In exceptional circumstances the Annual General Meeting may be held by alternative means such as electronically.
- 9.1.3 In the event there is no quorum, the meeting will be rescheduled to take place electronically and the members present at this rescheduled meeting shall form a quorum.
- 9.1.4 The annual general meeting shall be convened once every calendar year. Provided that the Representative Committee shall convene the annual general meeting for a particular year within a six-month period after the completion of the financial year.
- 9.1.5 Notice of its convocation shall be communicated by the UKSU Officer to members at least 4 (four) weeks before the meeting is held.
- 9.1.6 Such communication shall include a call for resolutions to be discussed at the AGM and for nominations for vacant Office Bearer and Representative Committee positions.
- 9.1.7 Nominations for vacant positions on the Representative Committee and resolutions from members shall be sent to the UKSU Officer and shall reach the office not later than 3 (three) weeks prior to the annual general meeting.
- 9.1.8 Copies of the resolutions, the agenda of the annual general meeting and the nominees for Office Bearers (where applicable) and the Representative Committee shall be distributed to all

members by the UKSU Officer not less than 10 (ten) working days prior to the annual general meeting.

- 9.1.9 The business of the annual general meeting shall primarily be:
- 9.1.9.1 the ratification of the outcome of the election process for Office Bearers and members to serve as representatives;
  - 9.1.9.2 the consideration of reports from the Chairperson, the financial report from the UKSU Officer and of any other special reports;
  - 9.1.9.3 the formulation of policy;
  - 9.1.9.4 the discussion of matters as per the agenda;
  - 9.1.9.5 the consideration of any appeals;
  - 9.1.9.6 confirmation of the annual membership fee increase;
  - 9.1.9.7 the appointment of the auditors for the following financial year.
- 9.1.10 The Chairperson or, in his / her absence, the Deputy Chairperson or, in the latter's absence a person appointed by the Representative Committee, shall preside over the proceedings at the annual general meeting.
- 9.1.11 Resolutions of the annual general meeting shall be adopted by a majority vote of members entitled to vote. Voting on a resolution shall be by show of hands unless the annual general meeting decides otherwise. The Chairperson or other presiding person shall have a casting vote only.

## 9.2 General Meetings

- 9.2.1 General meetings of members may be called whenever required to discuss general employment issues. Such meetings do not require a quorum of members to be present, as they are information sessions. Such meetings may be held on each campus separately on different days.
- 9.2.2 A special general meeting shall be convened by the Chairperson whenever the Representative Committee requisitions one, or whenever at least 50 (fifty) members request so in writing.
- 9.2.3 Should reasons of urgency be given in the notice, the Chairperson may authorise the calling of a special general meeting at short notice, being not less than 3 (three) working days.
- 9.2.4 Members shall be notified by the UKSU Officer of the convocation and agenda of a special general meeting by email as soon as possible.
- 9.2.5 If any decisions are required to be made at a general or special general meeting, the quorum shall be at least 10 (ten) % of the members entitled to vote. If meetings are held on each campus, attendance will be counted collectively across all campuses.
- 9.2.6 Any of these meetings may be conducted electronically.

## 10. **REPRESENTATIVE COMMITTEE: NOMINATIONS, ELECTIONS, COMPOSITION**

- 10.1 The management of the affairs of UKSU between annual general meetings shall be vested in a Representative Committee consisting of the Chairperson, the Deputy Chairperson and a maximum of 12 (twelve) other members of the Union. Consideration should be given to the number of representatives allowed by the Recognition Agreement and the Labour Relations Act, 1995 as amended.

- 10.2 Candidates for the Office-Bearer positions and for the Representative Committee shall be members of UKSU, nominated and seconded by members with voting rights.
- 10.3 Candidates for Office-Bearer positions shall have served on the Representative Committee for at least two years immediately preceding the nomination.
- 10.4 Members shall be eligible for re-election on termination of their period of office.
- 10.5 There is no restriction on the number of terms a member may serve as an Office Bearer or as a member of the Representative Committee.
- 10.6 Nominees for Office Bearer positions and the Representative Committee must provide a motivation and sign acceptance of the nomination and commitment to serve the membership. The detail in this regard, which will be included in the nomination form must be recorded in the by-laws as provided for in Clause 13.8.
- 10.7 If the number of nominations requires a ballot to be held, the motivation will be sent to the membership, together with the notice of the ballot process.
- 10.8 If the nominations are equal to or less than the number of vacancies, then the motivation will be shared with the membership at the AGM.
- 10.9 Elections for any Office Bearer position and for members of the Representative Committee, shall be conducted by electronic means as per Clause 17.3, concluded prior to the annual general meeting.
- 10.10 Members shall be notified by the UKSU Officer of how to vote and the opening and closing period for voting.
- 10.11 Those with the highest number of votes in the ballot up to the maximum number of vacancies shall be regarded as having been duly elected.
- 10.12 The Office Bearers and members of the Representative Committee shall hold office for two years and shall vacate their seat at the second AGM following their election.
- 10.13 If an Office Bearer vacancy occurs prior to the end of the term of office of the incumbent, the requirements of Clause 10.3 are applicable. The Representative Committee must nominate someone who qualifies, from within the Representative Committee, to fill the vacancy for the unexpired portion of the period of office of the predecessor.
- 10.14 There is no minimum number of persons to constitute the Representative Committee. When a vacancy occurs on the Representative Committee, the Representative Committee must resolve within two weeks of the vacancy, whether it intends filling the vacancy.
- 10.15 If the Representative Committee, as per Clause 10.14 resolves to fill the vacancy, the members of the union shall be notified in writing of such vacancy by the UKSU Officer within 2 (two) weeks of the date on which the Representative Committee decision was made.
- 10.16 Members shall be advised that they may propose a member of the Union to fill such vacancy. The Representative Committee shall co-opt the person to fill the vacancy as they so agree, taking into consideration any proposals received from the members. The co-opted person shall hold office until the next Annual General Meeting.
- 10.17 An office bearer or member of the Representative Committee shall vacate their seat in any one of the following circumstances:
- 10.17.1 on resignation from membership of the Union;

- 10.17.2 on suspension or expulsion from membership of the Union, as per Clause 7;
- 10.17.3 on removal from office as per Clause 15;
- 10.17.4 when absent, without a reason considered valid by the Representative Committee, from 3 (three) consecutive meetings, including special meetings of the Representative Committee;
- 10.17.5 on resigning as a member of the Representative Committee by giving 1 (one) months written notice to the UKSU Officer;
- 10.17.6 If membership has automatically been terminated for failure to pay the membership fee;
- 10.17.7 when no longer employed by the employer that qualified them for membership.

## **11. EXECUTIVE COMMITTEE: ROLES, RESPONSIBILITIES**

The Executive Committee comprises the Chairperson, Deputy Chairperson and UKSU Officer.

### **11.1 Office-Bearers**

- 11.1.1 The Chairperson shall:
  - preside at all meetings at which present;
  - sign minutes of meetings after confirmation;
  - authorise payments subject to Clause 18.3;
 perform such other duties as by usage and custom pertain to the office.
- 11.1.2 The Deputy Chairperson shall:
  - exercise the powers and perform the duties of the Chairperson in the absence of the latter;
  - co-sign minutes of meetings after confirmation;
  - authorise payments, subject to Clause 18.3;
 perform such other duties as by usage and custom pertain to the office.
- 11.1.3 In the event of the Chairperson and Deputy Chairperson being unable, to chair any meeting, the Representative Committee shall appoint a member of the Representative Committee to act as Chairperson.
- 11.1.4 If either the Chairperson and / or Deputy Chairperson are temporarily or permanently unable to perform their duties, the requirements of Clause 10.3 apply.

### **11.2 UKSU Officer**

- 11.2.1 The official of the Union is the UKSU Officer, who also serves as the secretary of the Union.
- 11.2.2 The UKSU Officer does not have voting power in meetings of the Representative Committee but does have voting rights in meetings of the Executive Committee.
- 11.2.3 The UKSU Officer's responsibilities include:
  - Union meeting administration.
  - Making proposals to the Executive or Representative Committee on any matter of interest to them or over which they have oversight.
  - Provide guidance to members of the Representative Committee.
  - Perform the duties imposed by section 98 of the Labour Relations Act, 1995 as amended, by:
    - administering the finances of the Union;

- maintaining accounting records;
  - preparing the annual financial statements;
  - arranging the annual audit of the books and records of account and the financial statements.
  - Perform the duties imposed by section 99 of the Labour Relations Act, 1995 as amended, by maintaining the following records:
    - a list of the Union's members;
    - the minutes of all meetings for a period of three years from the end of the financial year to which they relate;
    - the ballot papers of each ballot for a period of three years.
  - Perform the duties imposed by section 100 of the Labour Relations Act, 1995 as amended, by providing to the Registrar of Labour Relations, Department of Employment and Labour:
    - by 31 March each year, a certified statement showing the number of members as at 31 December of the previous year;
    - by 31 March each year, a list of the members of the Union's Representative Committee;
    - within 30 days of receipt of the audited annual financial statement, submit a copy to the Department of Employment and Labour;
    - within 30 days of receipt of a written request from the Department of Employment and Labour, provide the requested response of anything relating to the statement of membership, the auditor's report or the financial statements;
    - within 30 days before a new address for service of documents takes effect, notice of the change of address.
  - Submit reports in regard to the financial position of the Union to the Representative Committee at each of its regular meetings.
  - Submit the annual financial report to all members and report to the annual general meeting.
  - Complete and submit referrals to the Commission and represent the Union at the Commission.
- 11.2.4 The UKSU Officer shall represent the Union at any meetings that require Union attendance, as directed by the Chairperson, Deputy Chairperson and / or Representative Committee.
- 11.2.5 The UKSU Officer may resign on giving 1 (one) months' notice in writing to the Representative Committee and his/her services may be terminated on a similar period of notice being given to him/her by the Executive Committee. The contract of service of the UKSU Officer shall be in writing.
- 11.2.6 Should the UKSU Officer temporarily be unable to perform the duties, the Chairperson may appoint a member of the Representative to act as a temporary UKSU Officer who shall act as UKSU Officer until such time able to assume duties. The provisions of paragraph 11.2.1 to 11.2.4 above shall *mutatis mutandis* apply to the temporary UKSU Officer.
- 11.3 Meetings of the Executive Committee
- 11.3.1 The Executive Committee shall meet as and when required.
- 11.3.2 The quorum for a meeting of the Executive Committee shall be two persons.
- 11.4 Responsibilities of the Executive Committee
- Apart from the specific duties listed above for the members of the Executive Committee, the Executive Committee shall have the following responsibilities:
- 11.4.1 to exercise oversight and supervision of all of the affairs of the Union

- 11.4.2 to enforce observance of the Constitution of the Union;
- 11.4.3 to ensure the objects of the Union are met;
- 11.4.4 to provide leadership to the Representative Committee;
- 11.4.5 to approve correspondence and member messages;
- 11.4.6 to approve a matter being referred to UKSU's attorney for a member and to approve fees in excess of the fee agreed for individual members where an individual matter is considered of general interest for the union and where the outcome will not only have a bearing on the individual member.
- 11.4.7 Section 97(3) of the Labour Relations Act, 1995 (Act No. 66 of 1995 as amended), provides that office-bearers and officials cannot be held personally liable for any loss suffered by any person as a result of any act performed or omitted in good faith by the office-bearer or official whilst performing their functions for the Union.

## **12. MEETINGS OF THE REPRESENTATIVE COMMITTEE**

The Representative Committee comprises the Chairperson, Deputy Chairperson and elected representatives.

- 12.1 The Representative Committee shall ordinarily meet at least once every 3 (three) months, on a date to be fixed by the Chairperson.
- 12.2 Special meetings of the Representative Committee shall be called by the Chairperson whenever it is deemed necessary or upon a requisition signed by not less than 4 (four) members of the Representative Committee in which event the meeting shall be called within 5 (five) working days of receipt of the requisition by the Chairperson. Provided that shorter notice, being not less than 24 (twenty-four) hours, may in the discretion of the Chairperson be given in respect of an urgent special meeting.
- 12.3 Scheduled or special meetings may be held by alternative electronic means.
- 12.4 Members of the Representative Committee shall be notified in writing of the time and place of meetings by the UKSU Officer at least 3 (three) working days before the date of such meetings. To every notice of meeting an agenda shall be attached. All additional agenda items for consideration by the Representative Committee shall be decided on a motion duly seconded and voted upon by a show of hands at the commencement of the meeting.
- 12.5 The quorum for all meetings of the Representative Committee shall be 50%+1 of the number of current members of the Representative Committee. If within 30 (thirty) minutes of the time fixed for any meeting a quorum is not present, the meeting shall stand adjourned to a date and time as arranged by the Chairperson but no later than 10 (ten) working days following the date of the inquorate meeting. The date, time and place shall be informed to members by the UKSU Officer and at such reconvened meeting, the members present shall form a quorum. Written notice of such adjourned meeting shall be given to all Representative Committee members and organisers.
- 12.6 If between meetings of the Representative Committee any matter that can be dealt with through electronic mail, may be dealt with in this manner. This must be communicated to all members of the Representative Committee, enabling them a reasonable time to respond.
- 12.7 Decision making shall seek to reach consensus but when not possible then by a simple majority of those present.
- 12.8 The Chairperson shall not have a deliberative vote, but shall, in the event of a tie, have a casting vote.
- 12.9 Organisers attend Representative Committee meetings but do not form part of the quorum and do not have voting powers.

- 12.10 The UKSU Officer or a person appointed shall keep minutes of all meetings of the Representative Committee and of all general meetings.

### **13. REPRESENTATIVE COMMITTEE: POWERS, ROLES, RESPONSIBILITIES**

The Representative Committee shall, subject to the provisions of this Constitution, have power to:

- 13.1 nominate a Campus Co-ordinator for any of the campuses if deemed necessary, who shall be responsible for co-ordinating activities of the Union on the respective campus;
- 13.2 recommend the Union's participation in the establishment of a bargaining or statutory council and, subject to the constitution of any bargaining or statutory council, to determine the Union's representation thereon;
- 13.3 engage and dismiss, except where otherwise provided for in this Constitution, any employees of the Union, including the UKSU Officer, to fix their remuneration and to define their duties;
- 13.4 appoint, from time to time, such sub-committees as it may deem fit for the purpose of investigating and reporting on any matter referred to them by the annual general meeting;
- 13.5 institute legal proceedings on behalf of or to defend proceedings against the Union;
- 13.6 institute legal proceedings on behalf of or to provide legal assistance to members on matters affecting their employment and to institute legal proceedings against individual members;
- 13.7 open and operate a banking account in the name of the Union;
- 13.8 make and enforce by-laws relating to procedural, administrative and disciplinary matters which are not inconsistent with the provisions of this Constitution, the Labour Relations Act 1995 as amended, or any other law;
- 13.9 decide all matters of procedure on which this Constitution is silent;
- 13.10 do such other lawful things, which in the opinion of the Representative Committee appear to be in the interests of the Union or its members and which are not inconsistent with the objects set out in Clause 3 or any matter specifically provided for in this Constitution;
- 13.11 consider appeals;
- 13.12 delegate members of the Representative Committee to represent UKSU at various committees requiring representation;
- 13.13 facilitate the achievement of the objects;
- 13.14 appoint an organiser or organisers;
- 13.15 appoint administrative organisers to attend to specific tasks on a regular basis, such as the distribution of welcome packs and interpretation of messages;
- 13.16 appoint shop stewards to act as the liaison point between members and the Representative Committee at any campus, in the Divisions of Campus Management Services and Risk Management Services and in cleaning services in the Students Services Division.
- 13.17 The Union Representatives shall implement and give effect to decisions of general meetings and the Representative Committee, recruit members and generally promote their interests and represent members in matters before the Commission.

- 13.18 In terms of section 14(4) of Labour Relations Act, 1995 as amended, the Union representatives shall:
- 13.18.1 at the request of a member, represent the member in any grievance or disciplinary proceedings;
  - 13.18.2 monitor the employer's compliance with any law regulating terms and conditions of employment;
  - 13.18.3 report any alleged contravention of any law regulating terms and conditions of employment to the employer, Union or any responsible authority or agency;
  - 13.18.4 perform any other functions in line with the objects of the Union and / or as the Representative Committee may direct.
- 13.19 acquire, either by purchase, lease or otherwise, any movable or immovable property on behalf of the Union, and to sell, let, mortgage, or otherwise deal with or dispose of any movable or immovable property belonging to the Union. Provided that no immovable property shall be acquired or sold, nor shall it be mortgaged, let or leased for a period longer than ten years, unless at least 3 (three) weeks written notice of the intention to do so has been given to each member of the Union by the UKSU Officer. If during this period not less than 50% of the members demand that a ballot of the entire membership be taken on the proposed action, an electronic ballot shall be taken.
- 13.20 Section 97(3) of the Labour Relations Act, 1995 (Act No. 66 of 1995 as amended), provides that no Union representative can be held personally liable for any loss suffered by any person as a result of any act performed or omitted in good faith by the representative whilst performing their functions for the Union.
- 14. ROLE OF ORGANISERS & SHOP STEWARDS**
- 14.1 Organisers may attend Representative Committee meetings but do not have any fiduciary responsibility. Organisers do not have voting powers on the Representative Committee.
- 14.2 The main duties of an organiser / organisers are, to enrol members, to investigate complaints from members regarding their employment, to represent members in hearings, to represent the Union and its members at the Commission, attend meetings on behalf of UKSU and to perform such other duties as the Representative Committee may direct.
- 14.3 Administrative organisers attend to specific tasks on a regular basis, such as the distribution of welcome packs and interpretation of member messages. Administrative organisers do not attend Representative Committee meetings.
- 14.4 Shop stewards will assist in membership recruitment and the investigation of complaints from members regarding their employment, which complaints must be reported to the Representative Committee. Shop Stewards may represent members in hearings only with the permission of the Representative Committee if doing so on behalf of the Union. Shop stewards may perform any other duties as the Representative Committee may direct. Shop stewards do not attend Representative Committee meetings.
- 14.5 Organisers, administrative organisers and shop stewards may resign on giving 1 (one) months' notice in writing to the Representative Committee and their services may be terminated on a similar period of notice being given by the Representative Committee.
- 14.6 Organisers will be included in the Representative email group but administrative organisers and shop stewards will not be included.
- 14.7 Section 97(3) of the Labour Relations Act, 1995 (Act No. 66 of 1995 as amended), provides that no organiser can be held personally liable for any loss suffered by any person as a result of any act performed or omitted in good faith by the organiser whilst performing their functions for the Union

## **15. REMOVAL FROM OFFICE**

- 15.1 The Representative Committee may remove from office any office-bearer, official, representative, organiser or shop steward if it considers they have:
- 15.1.1 infringed any of the provisions of this Constitution;
  - 15.1.2 acted in a manner, which is considered detrimental to the interests of the Union and / or its members;
  - 15.1.3 acted in a manner that the Representative Committee considers has brought or has the potential to bring the Union into disrepute.
- 15.2 No office bearer, official, representative, organiser or shop steward may be removed from office unless afforded an opportunity to respond to the allegation/s.
- 15.3 The decision of the Representative Committee shall be conveyed to the member by the UKSU Officer, including the reason for the decision. The member shall be informed they are afforded an opportunity to state their case personally at a meeting of the Representative Committee or make a written submission for consideration by the Representative Committee.
- 15.4 A member who wishes to appear before or make written representation to the Representative Committee must notify the UKSU Officer within 10 (ten) working days after the decision of the Representative Committee has been communicated to them. The Chairperson must convene a special meeting of the Representative Committee within 5 (five) working days to consider the matter and all parties must be notified by the UKSU Officer of the date, time and venue.
- 15.5 A member shall be entitled to call witnesses when attending a meeting of the Representative Committee. Following the member's appearance or consideration of the member's written representation, the Representative Committee shall either confirm or rescind its decision.
- 15.6 The UKSU Officer shall notify the member within 10 (ten) working days of the decision. If the Representative Committee confirms its decision, the member is advised they have a right of appeal to the membership. Should the member wish to appeal to the membership, they must notify the UKSU Officer within 5 (five) working days and provide a written representation for submission to the membership.
- 15.7 Within 10 (ten) working days of receipt of the written representation for consideration by the membership, the UKSU Officer shall circulate an email message to all current members in the membership database, for the membership to consider the appeal. This message shall include the reason for the Representative Committee's decision, together with the applicant's written representation. The membership shall be informed they have 5 (five) working days to respond.
- 15.8 The membership's response will either confirm or reverse the decision of the Representative Committee. At least 10% (ten) of members entitled to vote shall have responded for the response to be validated. If the response is less than 10% (ten) of members entitled to vote, it will be considered a failed appeal.
- 15.9 The appeal by the applicant will be successful if the majority of the validated responses (minimum 10%) support the applicant's appeal. If the majority of respondents support the decision of the Representative Committee, the appeal will have failed. The outcome of this process shall be final.
- 15.10 When an office-bearer, official, organiser, shop steward or Union representative is removed from Office, they may remain a member of the Union. Should the Representative Committee's decision as per Clause 15.1, include that the member should be expelled, this must be conveyed as per Clause 15.3.

## **16. STRIKE BALLOTS**

- 16.1 In terms of Section 95(5)(p) of the Labour Relations Act, 1995 as amended, a strike may only be called after a secret ballot has been conducted amongst those members in respect of whom the strike is called.
- 16.2 A ballot may also be conducted amongst members outside of the bargaining unit and / or non-members within the bargaining unit. In such instances the ballot must be conducted and recorded separately from the ballot of those members within the bargaining unit.
- 16.3 In terms of Section 95(5)(q) of the Labour Relations Act, 1995 as amended, no members may be disciplined or have their membership terminated for failure to or refusal to participate in a strike if no ballot was held or where the majority of the members who voted did not vote in favour of the strike.
- 16.4 Section 95 (9) of the Labour Relations Act, 1995 as amended, provides that a ballot includes any system of voting by the members of a trade union, as long as it is a secret ballot and is recorded. Strike ballots shall be conducted by electronic means
- 16.5 Members must be given three days' notice by email, to the email address on record, regarding the holding of the strike ballot. The notice must specify the format of the ballot and the period the ballot will be open for members to cast their ballot.
- 16.6 A strike ballot will only be valid if 10% of the membership participate in the ballot. The decision shall be determined by the majority of responses received by the specified date and time given in the notice.
- 16.7 A strike ballot shall be conducted electronically in the following manner:
  - 16.7.1 The voters' roll of those members who are in good standing in terms of the Union's Constitution shall be derived from the Union's membership records, which reflects the email address of members.
  - 16.7.2 When a ballot is being conducted amongst non-members within the bargaining unit, such notice may be given via the University Notice System.
  - 16.7.3 The information provided with the ballot must be clear and consistent with the terms of the dispute referral.
  - 16.7.4 Whilst the membership voters' roll identifies which members are entitled to vote, the ballot shall not have any requirement for the name, staff number or any other information that would make it possible to identify voters.
  - 16.7.5 The UKSU Officer shall administer the ballot and be the scrutineer.
  - 16.7.6 The Representative Committee shall be bound to act according to the decision of the majority of the members voting in such ballot.
  - 16.7.7 The records of the voting process must be retained for a period of three years. These records include the voter's rolls, appropriate electronic records and any documents used to calculate the outcome of the ballot.

## **17. BALLOTS (excluding STRIKE BALLOTS)**

- 17.1 In addition to those cases in respect of which the taking of a ballot of members is compulsory in terms of this Constitution, an email ballot on any question shall be taken if the Representative Committee so decides, and shall also be taken if demanded in writing by not less than 10% of the members of the Union.

- 17.2 All ballots, on any matter and by any format, will only be valid if 10% of the membership participate. The decision shall be by the majority of responses received by the specified date given in the notice.
- 17.3 Any ballot, including for the election of Office Bearers and members to the Representative Committee, shall be conducted in the following manner:
- 17.3.1 The ballot shall be conducted electronically. The voters' roll of those members who are in good standing in terms of the union's constitution shall be derived from the union's membership records and must reflect the email address of the members.
  - 17.3.2 The notice of the ballot opening and closing dates and times must be sent to all members via their email address.
  - 17.3.3 The manner in which to record a vote must be clearly provided in the notice.
  - 17.3.4 The UKSU Officer shall administer the ballot and be the scrutineer.
  - 17.3.5 In a ballot for the election of Office Bearers and members to the Representative Committee, the candidates, up to the required number, who receive the highest number of votes shall be declared elected.
- 17.4 Voting on any matter may take place at a general meeting and at the Annual General Meeting, if there are 10% of members present. Such votes will be by a show of hands and decision of the majority will be the outcome. The Annual General Meeting may decide on an alternative voting method to a show of hands, as per Clause 9.1.11.
- 17.5 The Representative Committee shall ordinarily be bound to act according to the decision of a majority of members voting in any ballot, as in the case with a strike and election ballot. In the case of other ballots, the Representative Committee must consider the ballot outcome within the context of the situation before deciding on how to proceed.
- 17.6 Electronic questionnaires may be conducted for any matter requiring a mandate or when the Representative Committee needs to understand the view of the membership on any point. The notice of such, including the opening and closing dates and times must be sent to all members via their email address, allowing members a reasonable time to respond.

## **18. FINANCES**

- 18.1 The funds of the Union shall be applied to the payment of expenses and to the acquisition of property, towards the attainment of the objects specified in Clause 3 and for such other lawful purposes as may be decided upon by the Representative Committee or by members voting by ballot.
- 18.2 The funds received by the Union shall be administered in such bank account as decided upon by the Representative Committee. The UKSU Officer shall keep books and records as required by section 98(1)(a) of the Labour Relations Act, 1995 as amended.
- 18.3 Four signatories shall be appointed by the Representative Committee, with such appointees including the Chairperson and Deputy Chairperson. All disbursements require prior authorisation by the two Office Bearers. In instances when an Office Bearer is the recipient, then the other authorises the disbursement together with one of the other nominated signatories.
- 18.4 The Representative Committee may retain some funds in a University cost centre account.
- 18.5 The Representative Committee shall have the power to invest surplus Union monies in such a manner that the Union stands to benefit from the investments.
- 18.6 Professional expenses and legal fees for general matters shall be borne by the Union.

- 18.7 The legal fee contribution for matters of individual members will be paid on a sliding scale basis depending on length of membership. This scale shall be set by the Representative Committee and reviewed from time to time. The Representative Committee will decide on the process to be followed for members to receive assistance. The process and contribution will be recorded in the by-laws as per Clause 13.8.
- 18.8 The Representative Committee may at any time, with a view to securing funds for the purpose of unforeseen expenditure, impose a levy on each member for a designated period. Provided that notice of the proposed levy has been given to all members. Provided further that should 10% (ten) of members demand that a ballot of members of the Union be taken on the subject, this is carried out as provided in clause 17.3.
- 18.9 A member who resigns or is expelled from membership shall have no claim on the funds of the Union.
- 18.10 Statements of income and expenditure reflecting the financial position of the Union shall be prepared by the UKSU Officer and submitted to all regular Representative Committee meetings.
- 18.11 The financial year end shall be 31 December of each year. In accordance with the provisions of section 98(1)(b) of the Labour Relations Act, 1995 as amended, the UKSU Officer shall prepare a statement of income and expenditure and balance sheet in respect of the financial year.
- 18.12 The UKSU Officer shall arrange for an annual audit by the audit firm appointed by the Annual General Meeting. Such audit shall be conducted in accordance with the provisions of section 98(2) of the Labour Relations Act, 1995 as amended. Such audit must be concluded and presented to the membership within six months of the financial year-end.
- 18.13 The UKSU Officer shall be responsible for furnishing all members with a copy of the annual financial statement via electronic mail and presenting a financial report of the Union's latest audited financial position to the annual general meeting.

## **19. REPRESENTATION ON BARGAINING & STATUTORY COUNCILS**

- 19.1 The Representative Committee may at any time recommend that the Union shall become a party to a bargaining or statutory council established in terms of Labour Relations Act, 1995 as amended.
- 19.2 Representatives and their alternates shall be appointed by the Representative Committee.
- 19.3 Representatives or their alternates on a bargaining or statutory council may be removed by the members voting at a general meeting, and may resign on giving 1 (one) month's notice to the Representative Committee or such notice as may be prescribed in the constitution of the committee concerned.
- 19.4 In the event of the resignation or death of a representative or an alternate or removal by a general meeting the vacancy shall be filled by the Representative Committee.
- 19.5 Representative or their alternates shall have full power to enter into agreements on behalf of the Union, and such agreements shall not be subject to ratification by the Representative Committee or general meetings of the Union.

## **20. CHANGING OF CONSTITUTION**

- 20.1 Any of the provisions of this Constitution may be repealed, changed or added to in any manner by resolution of the Representative Committee of the Union.
- 20.2 Subsequent to the resolution of the Representative Committee, the membership must be notified of the proposed change(s) and be provided 10 (ten) working days' notice to comment on the proposed change/s.

- 20.3 If within that period 10% (ten) of the members demand that a ballot of the whole Union be taken on the matter, such a ballot shall be taken.
- 20.4 The Representative Committee must take into consideration all of the comments received and possibly amend its proposed change/s.
- 20.5 Should there be a need to amend the proposed changes, the membership must be provided with the further amendments as per Clause 20.2.
- 20.6 The amended Constitution must then be submitted to the Registrar, Labour Relations at the Department of Employment and Labour.
- 20.7 No changes or additions shall have any force or effect until certified in terms of section 101 (3) of the Labour Relations Act, 1995 as amended.

## **21. WINDING-UP**

- 21.1 The Union shall be wound up if at a ballot conducted in the manner prescribed in the Constitution not less than three-fourths of the total number of members of the Union vote in favour of a resolution that the Union be wound up.
- 21.2 If a resolution for the winding-up of the Union has been passed or if for any reason the Union is unable to continue to function the following provisions shall apply:
- 21.2.1 The last-appointed Chairperson of the Union, or if not available, the available members of the last-appointed Representative Committee of the Union, shall forthwith transmit to the Labour Court a signed statement setting forth the resolution adopted or the reasons for the Union's inability to continue to function, as the case may be, and request the Labour Court to grant an order in terms of section 103 of the Labour Relations Act, 1995 as amended.
- 21.2.2 The liquidator appointed by the Labour Court shall call upon the last appointed office-bearers of the Union to deliver the Union's books of accounts showing the assets and liabilities together with the register of members showing, for the 12 (twelve) months prior to the date on which the resolution for winding-up was passed or to the date as from which the Union was unable to continue to function, as the case may be, (hereinafter referred to as the date of dissolution), the membership fees paid by each member and contact details as at the said date.
- 21.2.3 The liquidator shall also call upon the said office-bearers to hand over all unexpended funds of the Union and to deliver the Union's assets and the documents necessary to liquidate the assets.
- 21.2.4 The liquidator shall take the necessary steps to liquidate the debts of the Union from its unexpended funds and any other monies realised from any assets of the Union. If the said funds and monies are insufficient to pay all creditors after the liquidator's fees and the expenses of winding-up have been met, the order in which creditors shall be paid shall be the same as that prescribed in any law in force relating to the distribution of the assets of an insolvent estate. The liquidator's fees and the expenses of winding-up shall rank in order as that of an insolvent estate and as though the expenses were the costs of sequestration of an insolvent estate.
- 21.2.5 After the payment of all debts in accordance with Clause 21.2.4, the remaining funds, if any, shall be distributed among the remaining members of the Union on the basis of membership fees actually paid during the 12 (twelve) months prior to the date of dissolution, excluding any members who have left the union during this 12 (twelve) month period.

- 21.2.6 After the payment of all the liabilities, any assets that cannot be disposed of in accordance with the provisions of this clause shall be realised by the liquidator and the proceeds paid to the Commission for Conciliation, Mediation and Arbitration (in accordance with section 103(5) of the Labour Relations Act, 1995 as amended).
- 21.2.7 The liability of members shall for the purpose of this clause be limited to the amount of membership fees due by them to the Union in terms of this Constitution as at the date of dissolution.

**AMENDMENTS APPROVED BY THE REPRESENTATIVE COMMITTEE: 4 JUNE 2020**

  
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