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Metal and Engineering Industries Bargaining Council

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PRESS RELEASE

13 May 2016

RE: MEIBC RESPONSE TO NEASA INDUSTRY ALERT DATED 9TH MAY 2016.

1. We refer to the above matter, in particular the alert issued by NEASA on Monday, 9th May 2016 in response to the Free Market Foundation ("FMF") judgment delivered by the full bench of the Pretoria High Court on Wednesday, 4th May 2016 wherein the High Court confirmed that section 32 of the Labour Relations Act as amended ("the LRA or Act") is constitutional.

2. The High Court did not award costs to the Respondents but dismissed FMF argument that the system of collective bargaining in South Africa, in particular section 32 of the LRA is unconstitutional and again did not make any reference or finding in respect of parties to a collective agreement concluded in a bargaining and extended to non-parties lacking a right to apply for exemption as alleged by NEASA.

3. In response to NEASA alert as referred above, the council does not intend to respond to each and every allegation contained in the alert and failure to respond (or do so) should not be construed as an admission of facts thereof.

4. It should be noted that this is an important judgement to those who think that the court will conform to their political agenda by diving the workers who enjoy great protection from the principle of centralised collective bargaining.

5. In addressing the issue whether signatories to a collective agreement are entitled to apply for exemption, the question should be answered by looking at the objects of the LRA. It is common cause that the purpose of the LRA is to advance economic development, social justice, labour peace and democracy in the workplace by fulfilling the primary object of the Act as guaranteed in the Constitution.

6. Although the Act only refers to non-parties in section 32(3)(dA) and (e) it does not expressly exclude parties. Our understanding is that the emphasis is on non-parties due to the fact that the collective agreement is extended to them.

7. It has been an established and an accepted practice by all parties within the industry that any employer is free to apply for exemption as and when it deems fit. Accordingly clause 23(1)(a) of the council's Main Collective Agreement attests to this as follows: ***"Any person bound by this agreement may apply for exemption"***. This particular clause mentioned above is mindful of the fact that parties are bound in line with section 31 of the LRA as much as non-parties are bound in terms of section 32 of the LRA and accordingly includes everyone.

8. NEASA's assertion that because Seifsa acting on behalf of its associations concluded a collective agreement within the industry and therefore its members are not entitled to apply for exemption for whatever reason is clearly baseless and unfounded. It should further be mentioned that an application for exemption by member(s) of any Seifsa association, as the case maybe, is based on the practice agreed by parties and existed before NEASA was accepted as a party to the council.

9. The council remains firm to enforce all collective agreements concluded within the council and if there is any party that is not happy with a particular practice or council conduct in administrating its affairs, such party is free to raise the matter through the proper channels as outlined in the constitution.

10. The council wish to reiterate that it remains impartial to the parties and is committed to implement and administer parties' decisions as per the council constitution.

Issued by the MEIBC
13 May 2016