MEIBC
Metal and Engineering Industries
Bargaining Council

National Office
Union Corporation Building • 1st Floor
77 Marshall Street • Johannesburg 2001
PO Box 9381 • Johannesburg 2000
Telephone: (011) 639 8000 • Facsimile: 086 636 8690
www.meibc.co.za
VAT No.: 4470117989

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MEIBC MEDIA RELEASE ON JUDGEMENT JR860/13

1. Acting Justice Watt-Pringle delivered his judgement at the Labour Court in case number JR860/13 on 17 December 2014. The judgement sets aside the Ministers 12 April 2013 extension of the Main Agreement 2011/ 2013. This judgement has no bearing on the current Main Agreement 2014/17, which remains valid.

2. The judgment wrongly declares the Ministerial extension of the agreement a nullity. This means that there is/was no basis for the payment or receipt of wages paid according to the wage rates under the agreement as it applied to non-parties or for any enforcement proceedings relating thereto. Despite this we urge members of the industry who have paid these wage rates to refrain from creating any instability in the industry.

3. The MEIBC is in the process of applying to the Labour Court for leave to appeal to the Labour Appeal Court against the whole of the judgment and orders. The MEIBC is advised that it has reasonable prospects of success in its appeal to the Labour Appeal Court.

4. The MEIBC is of the view that the judge erred in aspects of fact, law and reasoning. Most importantly the judge failed to consider the substantial effect of setting aside the extension of the Main Agreement after the very agreement had expired. The grounds for appealing the judgement are crafted in detail in our leave to appeal, however a few points are highlighted below:

    a. The Labour Court heard the application for review of the Main Agreement 2011/14 after the agreement had expired on 30 June 2014. The learned judge held that it is unlikely that the deceleration of invalidity would have any meaningful impact. Accordingly, the matter was academic, and did not require a decision setting aside the agreement;

b. The learned judge erred in his analysis on compliance with section 32(1) of the LRA, by giving precedence to "form over substance" which ought to have been "substance over form".

c. The learned judge further failed to have sufficient or any regard that it could never have been the common intention of the parties to exclude the grades between A and H.

d. The learned judge failed to apply the provisions of section 206 of the LRA, which is designed to protect agreements of bargaining councils from being set aside on technical challenges such as those raised by NEASA.

e. The learned judge should have found that the members of the bargaining council had voted for the extension and that the jurisdictional requirements of section 32 were met as:

   i. The applicant's management committee meeting resolution of 18 July 2011, found valid and enforceable by Van Niekerk J in his judgment dated 9 November 2011, remained valid and enforceable.

   ii. The applicant's management committee meeting of 22 May 2012 duly resolved, *inter alia*, that errors of the wage scales be correctly implemented in the subsequent communication on wage increases and that the office be authorised to do whatever is legally necessary to ensure the observance of the 2012/2013 industry wage increases by the parties and the extension of the wage increases to all other non-parties.

   iii. Pursuant to the letters of the Minister that invited submissions on the extension of the collective agreement, SEIFSA; Kwa Zulu Natal Engineering Industry Association; Port Elizabeth Engineers' Association; NUMSA; Solidarity; and Cape Engineers & Founders Association submitted their written representations during January 2013 that constituted a majority vote in favour of the extension of the collective agreement as contemplated by section 32(1).

   iv. The applicant's management committee meeting of 26 March 2013 duly resolved by the trade unions whose members constitute the majority of the members of the trade unions that are party to the applicant <u>and</u> the employers' organisations whose members employ the majority of the employees employed by the members of the employers' organisations that are party to the applicant that The Minister be requested to publish the agreed wage tables (for 2013/2014) and to amend and extend the collective agreement concluded in the applicant to non-parties falling within the scope of the collective agreement within its registered scope.

   v. The postal vote of 4 April 2013 that was conducted in terms of clause 10(3) of the applicant's Constitution rendered a binding outcome in

adoption of the amendment and extension to the collective agreement. The outcome of the postal vote accordingly bound all of the Council representatives.

vi. The learned judge erred in finding that *"[T]he minute neither reflects the conclusion of the agreement amending the 2011 agreement, nor a resolution requesting the Minister to extend any such agreement to non-parties"*[1] when the following relevant text of such meeting relied upon and quoted in the judgment[2] indicates the contrary:

"*Main Agreement*

It was noted that the wage tables for 2013/2014 had been calculated in terms of the wage model in the 2011/2014 Settlement agreement providing for a 7% increase Rate A and 8% at Rate H with an agreed intermediate percentage wage spread between the grades.

- *The wage tables for 2012-2013 had been calculated on a similar basis and issued to the industry.*
- *It was also agreed that both wage tables be gazette. (sic)*
- *Both wage tables had been calculated in terms of the wage models in the 2011-2014 Settlement Agreement, which has been gazette. (Sic)*
- *It was accordingly resolved to request the Minister of Labour to publish the wage tables and to amend and extend the Main Collective Agreement concluded in the Bargaining Council to non-parties falling within the scope of the Collective agreement within its registered scope.*"

  [own emphasis as underlined]

f. The learned judge erred in holding that the decision was invalid and that any order of invalidity must operate retrospectively and in effect did not grant a just and equitable remedy in the circumstances. The declaration of nullity has disproportionate or inequitable consequences.

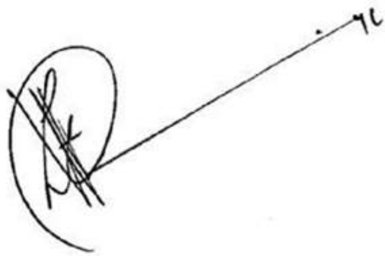
g. The learned erred in finding that "*[I]t is in my view unlikely that the declaration of invalidity which follows will have any meaningful impact on those to whom it was intended to apply.*"[3] In these circumstances, it is respectfully submitted that the learned judge ought to have found that any retrospective declaration of invalidity will *inter alia* grossly impact on those employers and employees to whom the agreement applied - which are far reaching; undermine collective bargaining at a

[1] Judgment: para 30
[2] Judgment: para 28

sectoral level as a whole; impact economic development; promote unfair wage discrimination and possibly destabilize labour peace within the relevant industries.

5. The MEIBC requests members of the industry to contact our offices in the event of any queries. We will ensure that we will assist the industry to manage the effects of this judgement pending the appeal.

6. We again urge members of the industry to do everything within their ability to ensure stability within the industry.



Thulani Mthiyane
General Secretary

[1] Judgment: para 65