



DEPARTMENT OF LABOUR

REPORT TO THE JUDGE PRESIDENT OF THE LABOUR COURT REGARDING THE METAL AND ENGINEERING INDUSTRIAL BARGAINING COUNCIL

1. INTRODUCTION

A meeting was called by the Judge President on 25 January 2017 with a number of the parties to the Metal and Engineering Industries Bargaining Council (MEIBC). The meeting was convened in light of the application by Solidarity (J2924/16) for a provisional order to be granted in terms of which a caretaker/curator shall be appointed to oversee the affairs of the MEIBC.

The Judge President indicated at the meeting that the Department should take the lead in developing a proposal to the parties to the Council to find a solution to the problems facing the MEIBC as highlighted by the Solidarity application. The Department indicated during the meeting that it had already initiated discussion with the parties to the Council. The Judge President therefore requested the Department to submit a Report to him by the 15th February 2017. The following report aims to deal what has transpired during the past three weeks.

2. THE DEPARTMENT OF LABOUR'S PROPOSAL

The Department had started engaging parties to the MEIBC prior to the 25 January 2017 to seek support for a proposal to place an "administrator" in the MEIBC to take over the running of the affairs of the Council. The discussion with the parties assisted in obtaining feedback and beginning to clarify different aspects of the Department's proposal.

The discussions continued until the end of January 2017. On 3 February 2017, the Department circulated a written proposal to all the parties to the MEIBC. The following are key features of the proposal circulated by the Department:

2.1 Objective

The broad objective of the proposal is to place an independent person (or persons) in an executive position in the Council to take responsibility for the management of the Council. The task of the administrator will be to bring stability to the Council and to make substantial progress in addressing problems in relation to the following areas:

- i. The relationship between the parties to the Council;
- ii. To return the Council to a position of solvency, and;
- iii. To improve the management and functioning of the Council.

2.2 Terms of Reference

The following terms of reference are proposed for the Administrator:

- That he/she is granted full management control of the Council in collaboration with the Management Committee (MANCO) but, in the event of a dispute, in substitution of the Management Committee.
- That he/she may delegate any management function to a person who is part of the existing management of the Council or to such other person that the Administrator deems appropriate in consultation with the MANCO.
- The Administrator is granted power to control the funds of the MEIBC and to take control of and to operate or close existing bank accounts of the Council.
- That the Administrator be required to develop a plan to return the Council to solvency and effective functioning within a period of four months.
- The Administrator shall be responsible for overseeing the recruitment of a new General Secretary of the MEIBC in consultation with the Manco and a Selection Committee appointed from amongst the members of MANCO.
- That the Administrator be authorised, at any time during his/her term of office, to apply to the MANCO, for an amendment or amplification of the powers

granted to the Administrator in the event that it is necessary to do so for the effective management of the Council.

- The term of office of the Administrator should not exceed a period of six months, but may be extended if agreed by the Manco, in consultation with the Department of Labour.

2.3 Financial Support

The Department outlined an expectation that the parties to the MEIBC conclude the following:

- i. a Budget for 2017-18 that will guide the financial affairs of the Council;
- ii. a revised Registration and Administration Expenses Collective agreement within a period of six weeks. The amendments to such an agreement must include levies that will be sufficient to secure an adequate income stream for the Council in line with the 2017-8 budget.

In addition, it was indicated that the CCMA will be expected to indicate the extent of its financial support for the dispute resolution functions of the MEIBC. The Department had communicated to the MEIBC that the CCMA 2017-18 budget had been increased to make provision for an extra case load from the MEIBC.

The Department's proposal indicated that the Administrator's remuneration should be funded by the MEIBC.

2.4 Candidates for Administrator

Five names were provided, together with CV's. It was noted that one person may not combine the skills required to return the MEIBC to solvency and effective functioning. The parties were therefore requested to select two names, but in the event of there being no agreement, the proposal indicates that the Department will choose the appropriate candidate(s).

3. FURTHER DEVELOPMENTS

The MEIBC Management Committee (MANCO) met on **9 February 2017**. What transpired at the meeting was that the trade unions indicated that they agreed with the proposal by the Department.

The trade unions and employers also agreed that Afzul Soobedaar should be responsible for relationship building between the parties.

It was further agreed that an appropriate approach would be to appoint one Administrator who should then be enabled to appoint additional persons to assist in stabilising the Council.

The Employers raised a few areas of concern relating, inter alia, to the budget, the process through which the Administrator should be decided on and the accountability of the Administrator to the MANCO of the MEIBC.

While there was broad agreement on the Department's proposal, the Employers indicated that they would not be able to sign off on the Terms of Reference on the same day but would prefer a small committee to deal with final details.

During the MANCO, the Employer's tabled a **Joint Employer Position** which indicated that they had reached a consensus position to return the Council to solvency and functionality which includes the approval of the proposed increases to the Administration, Dispute and the introduction of a Special Levy, but not the operational budget of the Council. This consensus position is conditional on the trade unions agreeing to five clauses that are set out in their Position.

After deliberation, it emerged that four of the five clauses could be agreed to by all parties, with minor modification. These clauses deal with:

- i. Collective Bargaining
- ii. General Secretary
- iii. Interim Structure/Individual to be decided upon
- iv. Financial controls.

The last three items overlap substantially with the proposal by the Department and were therefore not seen as sticking points between the parties. It was agreed that the approach to Collective Bargaining to be subjected to a process of engagement.

The points of disagreement were narrowed to the following two points in the first clause of the Joint Employer Position:

1. CONSTITUTIONAL AMENDMENTS (MEIBC constitution)

“Constitutional amendments to incorporate the following:

- 1.1. Employers will not support a request for extension of any agreement (including wage agreements) unless the following thresholds are met:
 - 75% vote in favour of the extension of the agreement by the duly elected employer representative present at a MANCO or an AGM; and
- 1.2. In respect of all other decisions, a 75% vote in favour by the duly elected employer representatives present at a MANCO or an AGM.”

The MANCO of 9 February adjourned with no agreement between the trade unions and the employers on the Constitutional Amendments put forward as a condition for Employer support for a process to return the Council to solvency and functionality. It was agreed to reconvene on Tuesday 14 February 2017 for further deliberation.

On **14 February 2017** time was spent exploring the possibility of reaching an agreement. An option put forward by the trade unions was for the employers to enter a Memorandum of Understanding on what would effectively be a way of functioning among the employer parties to the Council.

The Employers remained adamant that the requirement of a 75% vote on their side should be inserted in the constitution of the council in order to codify their position for now and into the future. The trade union side remain opposed to such provision being inserted in the MEIBC constitution.

4. CONCLUSION

The Department therefore regrets to inform Judge President Waglay that it has been unable to persuade the parties to the MEIBC to support a process whereby the Council could be stabilised and returned to solvency and effective functioning.

Despite substantial agreement on a process, the parties remain in disagreement on the inclusion of a Constitutional amendment that will bind the decision making among the employer organisations party to the MEIBC.

Finally, none of the employer or trade union parties put forward an alternative way in which the MEIBC may be stabilised and its collapse prevented. The only alternative currently is that linked to the application by Solidarity in case number J2924/16.