

Wednesday, 13 August 2014

OPEN LETTER TO NATIONAL EMPLOYERS' ASSOCIATIONS OF SA (NEASA)

1. I refer to your letter dated 12 August 2014.
2. I see no purpose in responding in detail to the allegations contained in your letter. This is given that your letter appears to be a precursor to pursuing a matter in court.
3. It is apparent now that you have every intent to stop the functioning of the MEIBC to resolve the issues that are necessary to finalise a new Main Agreement. This is unfortunately not a noble effort as it will have dire consequence to thousands of employees and employers in the industry who depend on the certainty of centralised bargaining and the protection it affords.
4. I have through our attorneys requested your attorney, Mr Bakker, to clarify your open letter sent to SEIFSA toward the end of July 2014 in which you perhaps reflect your belief and intentions. I quote a section here to remind you:

“There is only one way to get out of this mess and the strong hold NUMSA has on this Council and the South African economy: NEASA, SEIFSA and all the other organisations have to withdraw from this Council. For NEASA to do that, without the SEIFSA affiliated organisations doing the same, will serve no purpose. At least both of our organisations will have to withdraw. I hereby request you to seriously consider your position in this regard. The MEIBC stands in the way of everything that is important for this Industry. It might serve the interest of a particular employer or group of employers, and of cause radical trade unions, and especially those with a socialist agenda, but not the interest of employers and the Industry as a whole, and therefore not the interests of South Africa.” [my underlining]

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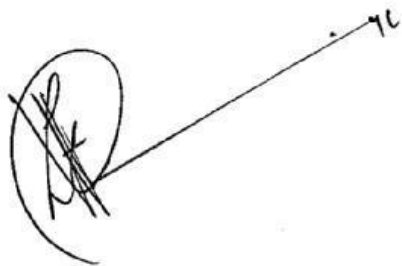
5. The persistent court actions brought by NEASA since 2011 have been the main reason for uncertainty and dissent within the industry. The Council has legitimate structures and as a party to the MEIBC you have the full and absolute right to use these structures to persuade your fellow party members to effect the changes you so desperately desire. However if your desire is to destabilise the bargaining council structures, or hold the views as expressed in your aforementioned newsletter, it cannot bode well for your ability to convince your party members or fit within the policy framework adopted by the current democratic dispensation. This must not be blamed on the council or its parties.
6. I also must remind you that NEASA has participated in the decision-making process at the AGM on 25 March 2014 and all subsequent MANCO, committee meetings and the negotiation process, which led to an agreement on aspects of the Main Agreement. Irrespective of whether NEASA representative's agreed to the decisions taken at these structures, they have participated in these lawful structures which have led to decisions being made that have affected the industry. I kindly request you to clarify as to why you have waited close on five months to stop the meeting of MANCO based on its invalidity?
7. In addition you are party to the arbitration process dealing with the long outstanding dispute in respect of finalising the challenges to the allocation of seats within the employer side of the Council. This matter has still not delivered an outcome.
8. In a letter from my attorney to your attorney on 31 March 2014, he reminded you of our understanding that your attorneys' letter dated 9 May 2013 confirmed that pending the outcome of the arbitration on the allocation of seats NEASA has consented to the proposal that the existing population of the Regional Councils and MANCO should continue. The allocation of employer seats on the Council as at date of your then letter was based on the interim agreement entered into between your client and the SEIFSA affiliated associations on 3 February 2012. NEASA and SEIFSA continue to participate in the Council based on this agreement and it is this very same agreement that was confirmed by the AGM of 25 March 2014.
9. NEASA had in 2013 complained that the 2013 AGM had not confirmed the Council representatives and as such the Council was in effect not correctly constituted. This was despite the 3 February 2012 agreement. The AGM of 2014 was constituted to deal with this very complaint from NEASA. Despite this NEASA continues to challenge the validity of the decision and MANCO.

10. Your letter of 6 August 2014 and your aborted urgent application to the Labour Court on 7 August 2014, to prevent the special general meeting from taking place on 8 August 2014, made clear your view that a MANCO was required to take place prior to any ballot or special general meeting was convened in terms of section 10 (3) of the constitution. In my letter to you dated 7 August 2014 I requested you to clarify whether you would hold the view that if a MANCO was held, as you complained was required to ratify the settlement agreement would you nonetheless still challenge the sitting of the MANCO. To date I have not received a direct reply to my query.
11. With respect, the positions NEASA have taken on these matters appear contradictory and reflect a desire to challenge the foundations of the MEIBC on every technical argument irrespective of its merit. I would like you to clarify your views in respect of these suspicions.
12. Given your views of the invalidity of every structure of the Council, I request you to clarify how then must the Council as you suggest rectify the issues, which are not clear from your letter, that you believe affect the validity of the MANCO.
13. I must clearly state that the MEIBC is intent on proceeding to MANCO meeting of 15 August 2014. As a party to the Council you have the full right to raise your complaints and affect the outcome of the meeting on any of the resolutions.
14. There is no urgent need to approach the court and incur unnecessary costs. There is no merit in your complaint, you have participated despite your complaints in the structures of the MEIBC, there is no urgency to your complaint as you in addition have tolerated the decisions of the MEIBC structures since 25 March 2014, you have provided no solution to rectify what you consider the present crisis and it appears that your motives are based on perceptions of the socialist leaning of the MEIBC.
15. I request you to take note of the resolutions attached to MANCO agenda. There is no resolution requesting the Minister to extend the agreement in terms of section 32 of the Labour Relations Act. The MANCO is to decide on ratifying the settlement agreement on the Main Agreement and Lift Engineering Industries agreement as the decision of the Council (and its parties) in terms of sections 8 and 10 of the MEIBC constitution and in addition to empower the office of the General Secretary to conduct a ballot in compliance with section 10 (3) of the constitution. Your representatives will have the right through this process to influence the outcome.

16. I am more than willing to engage you on any of these aspects to find an amicable way forward. I plead with you not to waste any more valuable resources in court disputes.

17. I remind you that the MEIBC's rights are fully reserved in respect of responding to any of the allegations you have raised and to defend any challenge you or any other party may pursue.

Yours faithfully,

A handwritten signature in black ink, consisting of a large, stylized initial 'T' followed by a surname, all enclosed within a circular scribble. A long, thin line extends from the right side of the signature towards the top right of the page.

Thulani Mthiyane

General Secretary