

## MEMORANDUM

### INTRODUCTION

1. There has been some confusion created by NEASA as to the ability of the council to enforce the wage schedules for the period 2012/13 and 2013/14.
2. The MEIBC differs with the position adopted by NEASA and maintains that it is in the position to legally enforce the wage schedules for the period 2012/13 and 2013/14. We set out in this circular a comprehensive justification for our position, as informed by our legal advisors.
3. We have developed the position below consistent with our legal responses to date.
4. The MEIBC aims to uphold the principles of social justice and economic development as stated in the LRA and in addition places great emphasis on its neutrality and responsibility to enforce agreements that are binding on the industry.

### THE BRIEF HISTORY

5. The Minister extended the collective agreement in issue to non-parties on 23 September 2011 for the period 26 September 2011 to 30 June 2014.
6. NEASA, and others, brought an urgent application to interdict the enforcement of the agreement pending the outcome of the review. This application failed. Van Niekerk J handed down judgment on 9 November 2011 under case number J2141/11. A copy of this judgement can be found on our website.
7. NEASA and others, then proceeded with a review application of the Main Agreement under Labour Court case number J 3062/2011. The judgment followed on 20 December 2012 where the learned Judge made the following orders:  
“(1) The decision by the first respondent in terms of which the collective agreement concluded on 18 July 2011 under the auspices of the second respondent was extended to non-parties who fall within the registered scope of the second respondent, is set aside.

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- (2) Government Notice R 748 published in the Government Gazette number 34613 on 23 September 2011 is declared invalid and of no force or effect.
- (3) Paragraphs 1 and 2 of this order are suspended for a period of four months to enable the first respondent to consider whether or not to make a decision to extend the collective agreement in terms of section 32 (5) of the Labour Relations Act, 66 of 1995. In the absence of any such decision within the period stipulated, this order shall lapse.”
8. All that was required for the judgment to remain suspended was a decision. The nature of the decision was not circumscribed.
9. On 1 February 2013, the Minister caused the Government Notice No. 69 in Government Gazette 36120 dated 1 February 2013 to be published which called *“for submissions by parties affected by the proposed extension in terms of section 32(2) read with section 32(5) of the main collective agreement re-enacting and amending agreement of the Metal and Engineering Industries Bargaining Council: Labour Court Case (JR3062/2011)*. The publication required the submissions to reach the Department by no later than Friday, 15 February 2013.
10. On 4 April 2013, the Minister adopted the following recommendations of the Director-General of the Department of Labour:
- 10.1. That the Minister regards the parties to the Council as sufficiently representative for the purpose of extending the agreement to non-parties;
- 10.2. That failure to extend the agreement would undermine collective bargaining at sector level;
- 10.3. That the Minister accepts that the Council has satisfied the requirements of section 32(2) read with section 32(5) of the LRA;
- 10.4. That, in terms of section 32(2) read with section 32(5) of the LRA, the Minister extends the whole of the agreement to the identified non-parties; and
- 10.5. That the existing collective agreement be cancelled.
11. On 12 April 2013, the Minister caused the following Government Notices to be published:
- 11.1. The Government Notice No. R. 267 in terms of which Government Notice No. R 748 of 23 September 2011 was cancelled with effect from the date of publication, being 12 April 2013; and
- 11.2. Government Notice No. R. 268 which declared, in terms of section 32(3) read with 32(5) of the LRA, that the attached collective agreement, being an agreement concluded in the Council on 18 July 2011 as amended on 14 January 2013 is extended to non-parties with effect from the date of publication, being 12 April 2013, until 30 June 2014.
12. On 26 April 2013, Government Notice No. R. 314 was published to effectively correct the reference of *“section 32(3) read with section 32(5)”* of the English Government Notice No. R. 268 with *“section 32(2) read with section 32(5)”*.
13. Parties and non-parties to the MEIBC, are legally bound by the Main Agreement, as the condition imposed by the Labour Court in order number three (as described

- in paragraph 5 above) was complied with and therefore orders 1 and 2 (as described in paragraph 5 above) which were conditional on the Minister not making a decision within a four month period as from 20 December 2012 (the Minister having made a decision on 12 April 2013) fell away and have no legal standing.
14. The terms of the orders are clear. Paragraphs 1 and 2 of the order are suspended for a period of four months to enable the Minister to consider whether to make a decision to extend the collective agreement. The Minister made such a decision within the four-month period and therefore orders 1 and 2 fell away.
  15. The reasoning in the judgment makes it plain that the Court does not want to usurp the functioning of collective bargaining and wanted to put into place a process that would allow the Minister to make a proper decision while maintaining labour peace and economic development within the industry.
  16. Both the Labour Court order and the Minister's notices preserved accrued rights. The Labour Court's order was suspended and did not operate retrospectively. The text of the cancellation notice indicates that cancellation took effect from date of publication thus preserving all accrued claims. That notice has not been set-aside on review and there is no interdict to stop enforcement proceedings for accrued or indeed future claims.
  17. Without a Court Order interdicting the enforcement of the collective agreements, the MEIBC is at liberty to continue enforcing its agreements.
  18. NEASA and others has instituted further review proceedings to set aside the Main Agreement as extended by the Minister on 12 April 2013. This application is still pending before the Labour Court and no decision has yet been made. The MEIBC remains confident that the Labour Court will protect the sanctity of the Main Agreement.
  19. The MEIBC is of the view that the court process should not be used as a forum to resolve differences between parties based on dividing interests, power dynamics and their differences with government labour policies. Differences between parties are best resolved through the collective bargaining structures provided within the council and policy issues of government are properly dealt with through the political and government system.
  20. Our concern is that NEASA is aiming to protect through the legitimate interests of its members, which we understand to be mainly small businesses, through the overuse of the litigation process. We urge all parties to focus on the stability of the industry to ensure economic growth, job security and job creation. The vast some of money spent by all parties to the litigation could be better used to the benefit of the parties and non-parties to this industry.

## **THE WAGE SCHEDULES**

21. NEASA had not succeeded in its complaint that the Main Agreement does not provide for wage schedules for the period 2012/13 and 2013/14. However it has promoted non-compliance of payment of wage rates for the above-mentioned period through public announcements. This tactic has the desired result of creating confusion and instability in our industry.

22. We urge the industry to recognise that the wage rates are applicable for the years 2012/13 and 2013/14. In fact the majority of the industry has acted with care and responsibility and paid its employees the wage increases as required for this period. We urge those that may not be convinced, to pay the required wage rates for this period as is the right thing to do and necessary for maintaining labour peace in our industry.

## **THE FACTS**

23. The settlement agreement entered in to between the parties to the agreement on 11 July 2011 stated that “for the period between July 2012 and June 2014, Grade A will receive an increase of 7%” and “Grade H will receive an increase of 8%. However if the CPI (April figure published in May) is 8% or above then the actual wage adjustment will be based on the CPI (April figure published in May) plus 2% for the years 2012 and 2013.”
24. This agreement contains, inter alia, general wage increases for scheduled employees as defined in \_the MEIBC main agreement in the categories A (qualified artisans), AA6-AA (start), AB, B, C, D, DD, DDD, E, F, G & H. All those below A are unqualified employees.
25. The settlement agreement contemplated defined increases for the year 1 July 2011 to 30 June 2012. The parties agreed, thereafter, to increases ranging from 7% to category A and 8% to category H and in between AA6 and G to receive between 7 and 8%; 1% increase to be divided equally between AA6 and G for the period 1 July 2012 to 30 June 2013 and 1 July 2013 to 30 June 2014.
26. Unfortunately under schedule of wage increases from 1 July 2012 and 1 July 2013, being the adjustments in years 2 and 3 of the agreement and as set out in page 3 of the agreement, reference is made to Grade A and Grade H without clearly spelling out that it intended to mean Grade A to Grade H. NEASA has seized the opportunity of this common error on the parties to the settlement agreement to contend that the increases for the second and third years namely commencing 1 July 2012 to 30 June 2013 and 1 July 2013 to 30 June 2014 should only apply to categories A and H and there should be no minimum prescribed increases for employees in the remaining categories being AA 6, AA (start), B, C, D, DD, DDD, E, F and G.
27. The Minister published the extension of the agreement to non-parties in terms of section 32(2) of the LRA and making it binding in terms of section 31 of the LRA on 23 September 2011 in Regulation Gazette No 9590, Volume 555 No 34613. I do not attach the entire agreement save for the relevant page which incorporates the increase for the period 1 July 2012 to 30 June 2013 and thereafter 1 July 2013

to 30 June 2014, which incorporates increases for Grades A and H without making it clear that it ought to be Grades A to H.

## OUR VIEW

28. The main agreement provided for general wage increases for 2011 for the various grades in the table under the heading wage adjustments. These wage schedules are clearly discernible from the main agreement itself.
29. The table provided for wage increases between 8 - 10 % for the various grades. The lowest grade H received 10% and the highest grade A received 8% for the first year. Insofar as the second and third years are concerned, 7% increase goes to category A and 8% increase to category H and 1% is divided between categories AA6 to G, thus AA6 to G received 7% plus a proportionate share of the 1%.
30. The formulae for the second and third years are as follows:
  - 30.1. The yearly wage adjustments are calculated per each Rate as follows:
  - 30.2. The wage spread between Rate A and H (as is the case in 2012 with Rate A receiving 7% and Rate H receiving 8% amounting to 1%) is divided equally through the Rates to ensure that every Rate receives an equal pro rata increase.
  - 30.3. The 1% wage spread is divided equally between the 13 Rates.
  - 30.4. Mathematically one calculates 12 'differences' between the 13 Rates to obtain an exact split between the 13 Rates (i.e. one takes 1% and divides it by 12 which equates to 0,0833 % pro rata per grade cumulative).
  - 30.5. Starting with the 7% increase for Rate A, one adds 0,0833%, which results in a 7,08% increase for Rate AA (6), add 0,0833% for Rate AA (start), which equates to 7,17%, add 0,0833% for Rates AB which equates to 7,25%,
  - 30.6. This exercise is repeated through each grade up to Rate H which, as per the wage spread, receives the agreed 8%
  - 30.7. This methodology ensures (mathematically speaking) that each Rate receives an equal and correct pro-rata increase as per the wage spread between Rate A and Rate H.
31. Like its predecessor the main agreement provided that the future wage increases from 1 July 2012 to 1 July 2013 as follows:

	<b>JULY 2012</b>	<b>JULY 2013</b>
<b>ATB</b>	<b>GRADE A: 7%</b>	<b>GRADE A: 7%</b>
	<b>GRADE H: 8%</b>	<b>GRADE H: 8%</b>

*“The above adjustments will be applied in years two and three of this agreement. However, if the CPI (April figure published in May) is 8% or above then the actual wage adjustment will be based on CPI (April figure published in May) plus 2% for years 2012 and 2013 respectively.”*

32. There was regrettably no specific indication as to the increases in respect of the grades between A to H. The trade union parties to MEIBC as well as the employer organizations party to the MEIBC confirm that the common intention of the parties was that the increase will be spread between categories A to H not exclusively to A and H. NEASA, takes a different view.
33. We submit that the view adopted by NEASA as to the meaning of what was intended in respect of the increases for years 2 and 3 of the main agreement will result in absurdity and it is not only repugnant but also inconsistent with the rest of the agreement. Such an interpretation undermines the purpose of the LRA, inter alia, to provide a fair framework within which employees and their trade unions, employers and employers organizations collectively bargain to determine wages.
34. The contention of NEASA is repugnant to the concept of fairness in the labour relations environment in South Africa. It undermines collective bargaining and is inconsistent with the values of our Constitution. It amounts to a proposition that what was contemplated was only an increase granted in relation to categories A and H but not to the remaining employees in the bargaining unit. There is no justification for such a distinction.

## **OUR ACTION TO CORRECT ANY MISUNDERSTANDING**

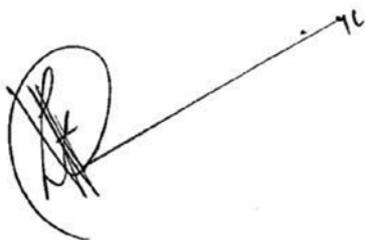
35. The Management Committee of the applicant (MANCO) met on 22 May 2012. This is representative of the parties to the MEIBC confirmed that the wage increases applied to all the grades and not only grade A and H. The subsequent circular issued to the industry on 14 June 2012 is contained on our website.
36. At the MANCO meeting of 26 March 2013 all parties except for NEASA confirmed that the main agreement contained a wage model that could be applied to the years 2012, 2013 and 2014 for grades A and H, “with an agreed intermediate percentage wage spread between the grades”. In addition the MANCO confirmed that the wage tables for 2012/2013 and 2013/2014 had been calculated on the wage model contained in the main agreement. The MANCO thus agreed that both wage tables be gazetted.

37. The MANCO 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.
38. The MEIBC has consistently applied the practice of requesting the minister to gazette the wage tables for the subsequent years where the parties have entered in to a multi-term settlement agreement.
39. The application to the Minister to gazette the wage tables for 2013/2014 as such was done in compliance with this practice and to clarify any uncertainty in the industry created by NEASA.
40. In addition a clarification note has been inserted to the Main Agreement as extended on 12 April 2013 which makes clear that the wage rates are intended to be increased for the years 2012/3 and 2013/4 across all the grades.
41. The contractual benefit of paying the increases to the employer's employees across all grades is sensible, practical and in the interest of stability in the industry.

**IN SUMMARY:**

42. The main agreement (in its original and re-enacted format) is sufficient to enforce the wage rates between grades A and H for the years 2012/3, 2013/4.
43. The Ministers contemplated publication of the wages schedule in the Government Gazette is a practical and prudent step that will be in the interest of providing certainty, where confusion has been created by NEASA.
44. Such publication in itself does not constitute a new extension of the wage rates.

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 bottom right of the signature towards the top right of the page.

Thulani Mthiyane  
**General Secretary**