



**CFU LABOUR DEPARTMENT
REPORT TO CONGRESS 2011**

1. Preamble

Wages are determined by supply and demand factors in a labour market. Most Labour markets are rigid and inflexible. Wage rates tend to increase more rapidly but decrease at a much slower pace. Ideal wage rates occur when the rate of increase in wages is below the rate of growth in labour productivity.

2. NEC Dues

During the course of the year we saw NEC Agriculture threatening to pursue the prosecution of farmers who had declined to remit NEC Dues in terms of Statutory Instrument 101 of 2010 which has since been challenged in the Labour Court. The case number is L C/rev/H/11. To all our members who have been threatened with Prosecution for failing to pay NEC dues are once again advised that whilst the matter is pending before the Labour Court (which has the equivalent status of the High Court) criminal proceedings in the Magistrates Court in terms of the Labour Act should not be instituted against them. However, we advise all members to keep these dues aside until the conclusion of this legal challenge.

The reasons for this are that there are seriously gross breaches of the financial and other provisions of the NEC Constitution by the NEC and its secretariat as follows:

1. The NEC has not produced an audited set of accounts for the past five years (This is in violation of Article 24 (2) of its constitution).
2. There has regularly not had an annual budget ratified by the full Council, or if so, not all the councilors were invited to attend the meeting where such ratification took place, nor have they had sight of such budget.(This is in violation of Article 22 (2) of the NEC Constitution).
3. The NEC has not recorded proper and accurate minutes of all the meetings of the council or the Collective Bargaining Processes (contravening Article 19 of the NEC Constitution).
4. No proper notice of meetings of the NEC is sent to all NEC councilors (see Article 16 (4) of the NEC constitution).
5. CBAs concluded at Sub-committee level are not ratified by the full council of the NEC before being forwarded to the Ministry of Labour for Registration (see Article 13(1) of the NEC constitution).
6. NEC councilors are being paid extravagant meeting allowances of USD 210 for every meeting they attend. Taking into account that NEC has been split into 5 sub-sectors and on average a sector will have 5 meetings, this is more than the salary of many civil servants.

How can any reasonable employer continue to remit funds to the NEC when its fundamental structures of governance and financial accountability have seemingly collapsed?

3. Wages

The CBA setting the General Agriculture wage at USD 44 per month, back dated to September 2009, was finally gazetted as a Statutory Instrument in the form of SI 25 of 2011. The publication of this Agreement as a Statutory Instrument is confusing because of the presumption against the retroactive application of legislation. Therefore it has been submitted that the SI does not oblige employers to make back payments. It is absurd to think that any legitimate employer would willingly agree to pay 7 months or more back pay in the current multi currency economy. This seriously undermines the viability of Agriculture.

On the 2nd of November 2010 NEC came-up with another agreement for the General Agriculture Sector effective 1st October 2010 to September 2011 setting the minimum at USD 55. This agreement is still yet to be gazette as the Ministry of Labour has developed a culture of gazetting agreements after its life span and this agreement is likely to be gazette in 2012. However, most employers are nevertheless implementing the latter CBA because of sustained pressure from Trade Unions in collaboration with the NEC and illegal strikes causing loss of production at critical times. The *de facto* mandatory implementation of CBAs prior to or without their registration and publication as a statutory Instrument by the registrar has become a feature which has undermined legal certainty in terms of labour relations in the Agricultural Industry. The legal position as to wages is clear in terms of section 79 and 80 of the Labour Act. CBAs are only legally binding once they have been registered and published a statutory Instrument.

It is the employer's discretion to implement an agreement that has not been registered or to implement when it is registered with back pay. **BACK PAY IS YOUR DISCRETION.**

4. Arbitrators

It is a cause of concern that somehow Arbitrators seem totally unconcerned about the financial viability of business and need to be internationally competitive. Most employers are in a financial loss situation and several face closure. Negotiations or Arbitral Awards are for minimum wages only, which effectively means unskilled workers. Arbitral award with back pay whilst goods have been costed and **sold** on existing wage levels does not encourage industrial growth but in encourages retrenchments with unemployment hovering around 80%. Back-pay is wreaking havoc on cash flows to the detriment of material and inputs purchases and some members are still to pay back-pay for last year as they do not have the resources. We encourage the Government to adopt the Botswana model where wages don't go above inflation, implying that any wage negotiation cannot allocate anything above inflation. From the CCZ (Consumer Council of Zimbabwe) calculated PDL (Poverty Datum Line; currently at USD500) it is remarkable to note that if items like rent, transport, school fees and utilities are removed what we are left is a PDL that is somehow in line with regional wage standards, if benchmarked.

5. Agro and horticulture sector

It has been reported that NEC has been trying to force farmers to implement agreements reached at NEC for the above two sectors even going so far as to make reports to the Zimbabwe Republic Police of contraventions of sections of the Labour Act. This is in spite of the fact that two separate challenges by the HPC and the ALB have been launched against this CBA. It is therefore improper for a docket to be opened against an employer until the Labour Court determines the dispute.

6. New NEC

Due to the dysfunctional NEC an application to register another NEC was submitted to the Ministry of Labour by the ALB. The structure of the current NEC does not adequately provide sufficient representation to all employers and employees in the Agricultural Industry we are significant players in the Agricultural Industry, but the current situation does not recognize that. The contributions from our membership by way of NEC dues to the running costs of NEC have arguably amounted to the major portion but that is also not recognized by allowing for much more equitable representation. The foundational principles of the New NEC are equitable representation for all stakeholders in the Agricultural Industry, good corporate governance and transparent financial dealings.

It was also stressed that these measures to withdraw from the current NEC and form an alternate NEC were absolute last resort. Significant efforts have been made to rectify the above mentioned short comings but have been ignored by the NEC secretariat and the remaining councilors of the NEC. There has been no recognition of the fact that the agricultural Sector is in a period of adjustment and recovery and needs harmony between employers and employees. The current situation is unacceptable and if allowed to continue unchecked will seriously undermine the viability of the entire Agricultural Industry and aggravate the possibility of harmonious relations between employers and employees.

7. Meeting with director of labour reference new NEC

On Thursday 30th June 2011 ALB was called by the Director of Labour and Administration reference its application of the new NEC. It came out clearly that whilst the Ministry has reservations about registering the new NEC, Ministry sees that the current NEC is not truly representative and there is need for restructuring.

The best strategy we can take is to ask representation base on budget contribution to NEC where the two employers organization will have to share the contribution 50% each. If either part failed to raise 50% of the budget then proportional representation will apply.

8. EMCOZ

Government, EMCOZ and ZCTU finally held a workshop which endorses a legislated Tripartite Negotiating Forum (TNF) under the administration of the Minister of Labour and Social Services. The purpose of the legislated TNF would be to provide for a mechanism for consultation, negotiation and cooperation on social and economic issues by government, organized business and organized Labour. The Union is a member of this organization (i.e. EMCOZ).

**T. Marodza
Commercial Farmers' Union Labour Adviser
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