

# CONFEDERATION OF PUBLIC SECTOR UNIONS

G.P.O Box 1405, Suva, FIJI Phone: (679) 3311922 Fax: (679) 3301099 E-Mail: [fpsags@connect.com.fj](mailto:fpsags@connect.com.fj)  
Fiji Nursing Association (FNA), Fiji Public Service Association (FPSA), Fiji Teachers Union (FTU),  
Fijian Teachers Association, National Union of Public Employees (NUPE)

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27<sup>th</sup> September, 2017

The National Secretary  
Fiji Trades Union Congress  
32 Desvoux Road  
SUVA

Dear colleague,

## RE : REPORT

The following is a report prepared to be forwarded to ILO for their necessary action.

## RESTORATION OF TRADE UNION RIGHTS

### 1.0 INTRODUCTION

The Tripartite Agreement signed on 25<sup>th</sup> March, 2015, and the Fiji Joint Implementation Report (JIR) signed on 29<sup>th</sup> January 2016 has not been fully implemented.

The ILO Committee on Freedom of Association in its report released on 20<sup>th</sup> March, 2017 and adopted by the ILO governing body on 22<sup>nd</sup> March, 2017 has urged the Fiji Government to

- 1.1 Reinstatement all collective agreements that existed prior to the ENI Decree unless a new collective agreement has been reached.

- 1.2 That the Government will continue to show commitment to implement the JIR and the 2016 ERP Amendment.
- 1.3 To provide concrete information on the progress made in this regard in the near future.

## 2.0 COLLECTIVE BARGAINING IN PUBLIC SECTOR

One would expect that if the Parliament of Fiji had restored the principles of “collective bargaining” in Fiji, which were wrongly curtailed before, that the employment relations climate in the Public Sector would see a return to normality. Or at least a banishment of negativity that had prevailed under the draconian Decrees, however, regrettably it was not to be so.

By the very next Act #02 of 2016, the Govt formed a new Ministry for Civil Service. They used their catch phrase – “ongoing reforms” etc to justify it. They committed World Bank funds given by the bank for structural adjustments and engaged external consultants for this purpose. Secondly, they used their ironclad provisions in the Parliament to continue to reform and restructure the established civil service, and as a result upset the working careers of our members by dishing out fixed term contracts which has put civil servants socially behind others as they cannot get bank loans to own a home as no bank is prepared to lend to a customer who has 2 years fixed term contract.

Despite many efforts of the Public Sector Unions to enter into collective bargaining the denial to engage at any level by the government is more prominent than ever. They would rather make their own plans, conduct their own meetings with consultants, and implement their reforms. The unions are kept in the dark, and they as stakeholders have rely on the only channel of communication is a media statement or occasionally through a government statement in Parliament. The few meetings (*3 altogether in 3 years*) that the Minister for Civil Service held with the Public Sector Unions was the Job Evaluation Exercise which was more or less a window dressing when the subject at a very late stage was a fait accompli.

There is a consistent denial of Collective Bargaining in the public sector for the past ten (10) years. The legislation in force for civil servants are the existing 2010 General Orders, MCS Circulars (which are kept away from unions), Public Service Disciplinary Tribunal (PSDT) and the Public Service Regulations 1999 (re-issued 2004).

The Public Sector has been hit hardest with a blatant breach of right to bargain collectively. The public sector reform seems to be one of the reasons to deny the right to collective bargaining in the public service. Therefore, the role of the public sector unions now is confined to making representation on disciplinary cases through Public Service Disciplinary Tribunal (PSDT) and under ERP 2007 on disputes of rights only. The disputes of interest has been transferred to Arbitration court and it is unable to deal with cases by the very nature of its establishment. The Tribunal and staff are borrowed from judiciary. Although collective bargaining in the civil service is legislated under section 189 of the Employment Relations (Amendment) Act No.1 of 2016 it is patently absent in reality. Government has withdrawn from collective bargaining followed by all government entities. Fiji has ratified all eight (8) ILO core conventions which includes C87 and C98 and the government clearly stands in breach of its obligations to the ILO.

The International Labour Standards under Article (2) of the Collective Bargaining Convention 154 of 1981 indicates broadly the bargainable issues or negotiable items. Specifically this convention calls for negotiations to determine working conditions and terms of employment; regulate relations between employers and workers. Thus international standards clearly include relations and matters as well as economic issues as appropriate for bargaining. The ILO Declaration on Fundamental Principles and Rights at Work applies to all states belonging to the ILO, whether or not they have ratified the Convention.

Trade Unions exist with a purpose and one of the most fundamental purpose is the right to collective bargaining and this is enshrined in ILO Convention No.98. In the current environment in Fiji whilst there have been constant rhetoric of goodwill, give and take, nation building, sharing of country's wealth the union

movement has been emasculated with amended labour legislations and policies. It continues to come under constant assault and many of the existing legislations and practices are changed to suit the government and its entities e.g statutory authorities, government commercial companies and wherever the govt has shares in any organization.

Section 189 of the Employment Relations (Amendment) Act 2016 states that all workers in essential service and industry shall be entitled to engage in collective bargaining and to have their trade disputes adjudicated by the Arbitration Court.

As stated earlier in this submission the Arbitration Court has become a vehicle where disputes are reported but the adjudication of the disputes are a far cry. One hundred eighty six (186) cases some more than ten (10) years old are to be dealt with first before the recent important cases regarding pay rise and negotiations on collective agreements have their turn. It is believed that the recent cases will languish in the system for years thus union members will continue to suffer as a consequence.

Fiji Public Service Association (FPSA) has filed several disputes from 2016 which requires attention without delay as our members remain unprotected because the government and its entities do not have any intention to negotiate the collective agreements and similarly the log of claims for pay rise has been vehemently resisted by them as well.

### **3.0 ARBITRATION COURT**

The Act No.4 2015, if studied carefully is a fraud on the trade union movement. The “Bargaining Units” from ENI Decree has been re-tooled as enterprise unions and the dispute of interest has been taken away from the Employment Relations Tribunal and ER Courts functions and transferred to a new Arbitration Court and its existence is under spotlight by unions whose important cases such as pay claims are languishing from 2016. Furthermore, the “List of Essential Services”

was extended to encompass the whole of the public sector consisting of statutory authorities and other government entities.

The situation before us is that the Arbitration Court has become a vehicle where disputes can be reported but the adjudication has no time limit. We are unaware as to how many cases altogether has been resolved so far but our guess could be very few, if any.

The Fiji Public Service Association (FPSA) has several cases, the last count was 129 and majority of it goes ten (10) years back. Our members in service are agitating, and rightly so, regarding the current important issues of pay rise and negotiations on collective agreements.

FPSA has filed seven (7) very crucial and important disputes of interests on behalf of its members which requires urgent attention from the Arbitration Court without delay. The government entities in the seven (7) disputes do not have any intentions to negotiate the pay increase claims and collective agreements (CA). They have vehemently resisted any talks on them. The list of disputes filed in the Arbitration Court awaiting adjudication are as follows :

	<b>ENTITIES</b>	<b>AWAITING ADJUDICATION</b>	
1	Airports Fiji Limited	Collective Agreement	Pay Claim
2	Water Authority of Fiji	Collective Agreement	Pay Claim
3	National Fire Authority	Collective Agreement	Pay Claim
4	Fiji Revenue & Customs Authority	Collective Agreement	Pay Claim
5	Nasinu Town Council	Collective Agreement	Pay Claim
6	Labasa Town Council	Collective Agreement	Pay Claim
7	Ministry of Civil Service on behalf of the Confederation of Public Sector Unions – Pay Claim		Pay Claim

The Arbitration Court with its backlog has a formidable task to deliver and fulfill the purpose of its establishment. Unless a full time Court is established particularly to deal with backlog that emanated from the JIR the rest of the current disputes which has serious impact on the livelihood of our members could remain in the cue for years to come. An immediate attention is required to address this extremely important subject matter.

#### **4.0 INSTANCES OF BREACHES & INEQUITIES**

##### **4.1 Civil Service and Job Evaluation Exercise**

Job Evaluation Exercise (JEE) is currently being carried out by local and overseas consultants without the participation of public sector unions which is completely one sided, unilateral and improper. It takes away the long cherished values of transparency, dialogue, consultations and collective bargaining. Thus when implemented, JEE will be another unilateral imposition on the workers in the civil service.

The Evaluation Questionnaire prepared by the consultants in respect of teachers had been designed for the private sector and more than 90% of the questionnaire does not relate to the teaching profession.

It is believed, through the feedback from members that existing allowances in respect of civil servants will no longer be applicable as it will be deemed to be assimilated into salary scales.

##### **4.2 Dismissals in Land Transport Authority (LTA)**

The Land Transport Authority (LTA) is a government statutory authority and continues to delay negotiations on the collective agreement. It had meaningfully delayed the start/stop negotiations to bring itself under the protection of ERP 2007 which allows only year to reach an agreement after which the collective agreement expires (section 161 of ERP) and the employer is free to curtail the terms and conditions of service under the guise that there is no collective agreement. Recently, LTA has carried out 15 summary dismissals and in most cases they have not given any reason for the dismissals in breach of ERP, which

states that a reason must be given by the employer for dismissals. The Authority is citing an Employment Court judgment related to another employer where the Judge ruled that reasons are not required for summary dismissals. This ruling has not been challenged by the grievor in the Court of Appeal as such this orbiter statement is being used to dismiss the workers willy nilly.

#### **4.3 National Fire Authority (NFA)**

The above statutory authority sponsored an inhouse union in breach of Section 125(1)(f) of the ERP 2007 against the established Fiji Public Service Association. The Association had warned the Registrar of Trade Unions not to register the union but the Registrar succumbed to pressures from the powers, that be, and registered the in-house union and refused to divulge the basis on which it was registered. The matter is now in Employment Court. Simply put the Union was formed by the employer under its domination to oust an independent union and the Registrar failed to properly exercise its powers.

#### **4.4 Fiji Revenue & Customs Authority (FRCA)**

The management of the above authority has removed nineteen (19) of the Fiji Public Service Association members from rostered duty internally known as Pulling Duties which will deprive them of 30% of loading on their salaries as a standard remuneration at the Nadi Airport. Four other remaining Ports attract overtime payments and meal allowances.

The FRCA has refused to negotiate collective agreement and the log of claims for more than two (2) years now. The Association's dispute is lying dormant with the Arbitration Court.

#### **4.5 Airports Fiji Limited (AFL)**

The above government commercial company has refused to negotiate our log of claims and the collective agreement. Our dispute on the two (2) issues are languishing with the Arbitration Court. No other re-course is available under the current labour legislations.

#### **4.6 Ministry of Civil Service (MCS)**

A log of claim by the Confederation of Public Sector Unions (CPSU) has not even been acknowledged by the Ministry of Civil Service and the Permanent Secretary of the Ministry refuses to recognize the log of claims. The dispute by the Public Sector Unions is with the Arbitration Court without any action.

#### **4.7 Ministry of Local Government, Housing & Environment**

The above Ministry has refused to deal with the unions and in particular the experience of the Fiji Public Service Association will borne out the fact as follows:

The Association negotiated and agreed on a 10% pay increase with the Administrator of the Labasa and Savusavu Town Councils but it requires the approval of the Permanent Secretary with the agreement of his Minister. However, a written request for approval from the Ministry has drawn a blank. Letters from the Association are not even acknowledged so the response is unlikely to materialise. The matter has been reported as a dispute but as usual there is no response from the Arbitration Court.

#### **4.8 TEACHER UNIONS (FTU & FTA)**

The two (2) robust Teachers Unions are facing immense challenges with Collective Bargaining with the Ministry of Education. The Ministry does not recognize the unions as stakeholders in the formation, implementation and review of education policies. The disciplinary procedures are unilaterally made which smacks of victimization at best.

### **5.0 SUBSTANCE OF THE COMPLAINT**

The complaint relates to two (2) issues in particular :

The denial and absence of collective bargaining in the public sector which strikes at the very foundation of industrial relation and operations of the public sector unions. The rights, freedoms and obligations are codified in the international

instruments of the UN and ILO including : **4.2 Open Merit Recruitment Selection (OMRS)**

Colleagues, the old menace of “contract” appointments as alluded to earlier in my address continue to affect the service conditions of our long serving Members. Under the Constitution and the MCS guidelines, the Permanent Secretaries have now gained unusual and extra powers. In one area where they are exercising it extensively is in appointments. The OMRS has really spread fear in the public service about the future prospect of employment of our members as Annual Performance Appraisal requires overall eighty (80) percentage point for renewal of contract or else the post is re-advertised with little hope of the incumbent getting the job. The job insecurity such as this was never seen before in the civil service.

Let me give some examples of some handiwork going on in the civil service.

Firstly, everyone is aware of the Open Merit Recruitment System (OMRS). This is being touted as the fairest system of appointments and promotions but the fact of the matter is that the Permanent Secretaries have the final say after the internal board has gone through their process and identified a candidate. The board itself is nothing new, it is, as same as, the years old staff Boards. With a slight amendment the aggrieved officers have been given a chance to appeal the decision of the Permanent Secretary within 5 days but not on merit but on the procedural error in the process. This provision is a window dressing at best. The cardinal rule of the Appeal is that it must address the issue of merit.

Let me give you an example of OMRS process in a large government ministry. A post was advertised and six candidates applied for the position. However, a candidate from outside the Ministry was offered the position but the five internal candidates were not informed that position has been offered to someone else. It was known through the grapevine that particular candidate was going

through Police Clearance and Medical. Till now no formal notification has been given to the 5 candidates in order for them to appeal if they so desire. Moreover, until they are informed how could they appeal and when would their 5 days start for the appeal process to kick in. We await further interesting development in this case.

- - The United Nations Declaration on Human Rights.
  - ILO Conventions : 87 & 98, Freedom of Association and Right to Organise and Collective Bargaining.
- Delay by the Arbitration Court to address extremely important current disputes on collective agreements and pay rise issues.

## 6.0 CONCLUSION

This submission relates to breach of labour legislations and relevant ILO Conventions. Almost all statutory authorities and government entities have no desire, whatsoever, to deal with the unions in the public sector. As such they have closed doors for any collective bargaining.

The Ministry of Employment and the line Minister of National Fire Authority do not consider unions as stakeholders and continue to undermine independent established unions. Infact their attitude and action patently shows abhorrence against the union, in particular the FPSA.

There is no collective bargaining for wage fixing in the public sector. It is at the whim of the government and it only promotes public sector reform with the help of the World Bank. The public service salaries are in the states annual recurrent budget under Segment 1. Since there is no collective bargaining salaries and wages in the public sector are fixed.

Fiji government is wearing a mantle of responsible leadership in the Pacific trying to make a mark internationally and proclaiming itself as a caring society with a slogan that no one should be left behind economically. It cannot be a role model without embracing the cause of labour in its own country and enlisting

the cooperation of the trade unions. The negative policies and restrictive labour legislations should be repealed and a meaningful collective bargaining be guaranteed in the interest of workers.

We respectfully submit this complaint to the ILO for the breaches and inequities mentioned above so as to remind the Fiji Government to restore the trade union rights without any further delay.

Yours in Solidarity,

R Singh

**SECRETARY-GENERAL**