

A REPORT ON THE LABOUR UNREST AT PHWEZI FOUNDATION FOR EDUCATION, TRAINING AND DEVELOPMENT IN RUMPHI DISTRICT.

I write to report that there was a strike at Phwezi Foundation Schools from the morning hours of 22nd February, 2012 to evening hours of 23rd February, 2012. I was informed about the strike by the Regional Labour Officer -North on 23rd February 2012. The Regional Labour Officer had been informed by the Labour Commissioner who had had gotten the report of the same from the employer. I therefore made a visit to the workplace on 23rd February, 2012 along with Mr Antony Kalagho, a Labour Officer.

We arrived at the workplace around 9:00 a.m. and found the striking employees mainly teachers, gathered and seated peacefully outside the office building of Phwezi girls' secondary school. Whereas students who were not in classes learning had also gathered separately around the foundation administration block next to Phwezi boys offices chanting and singing songs. Phwezi girls office building and Phwezi foundation administration block are being separated by the main road one (M1) from Mzuzu to Karonga which runs across in between. They are at a small distance apart.

We requested to engage into discussions with employees found and they accepted despite the fact that they had felt not to engage with us earlier on. Actual discussions started at around 10:34 am. Striking employees were being represented by a group of 31 employee teachers. They briefed us about their grievances that had led into their single summary demand which was a demand to have Mr Nyama - the Finance and Administrative Officer – removed / dismissed by the employer immediately and instantly for them to go back for their work. This was their only major demand that had led into their striking action.

The employees' grievances that had led into their summary demand were as follows:

1. demand for no tax on their bonus and allowance earnings.
2. demand for their right to have their contract agreements signed with the employer.
3. demand to have their gratuity paid in respect to those employees whose earlier contract periods had ended.
4. demand for decentralized power from the centralized power which is being viewed by them to be very oppressive.
5. demand for tax receipts in respect to their deducted taxes.
6. demand for transparency and accountability regarding the Foundation procurement processes involving forex, due to procuring of institution materials from Mbeya - Tanzania.
7. demand for urgent investigations into their perceived and alleged funds mismanagements
8. demand for Phwezi foundation to implement all projects recommended by the Ministry of education school inspectorate team.
9. demand for their concern surrounding the Foundation Authority and the foundation's contracted Auditing team – Graham Carr & Company to be addressed; and,
10. demand for clarification by the employer regarding the workplace hired service contractors replacing the redundant workers.

The striking employees, stated that they had started facing all the above issues contained in their grievance demand list because of the Finance and Administrative Officer – Nyama - who had to misguide the institution board while blocking themselves to forward and to have their grievances addressed by their employer – the Board - hence their summary demand to have the Administrator removed from his employment with Phwezi Foundation.

We presented all the employees' grievances to the board and the mediation process continued. The Board was fully constituted having the Board Chairperson – C.C. Mughogho, the Board General Secretary – H.M. Nyasulu and the Board Vice Chairman who is also the Schools Principal Headmaster – P.S. Nkhwazi, all being present.

The Mediation / Negotiation Process

The employees' demanded issues were being grouped into two categories: direct labour issues and non or indirect labour issues. Direct labour issues included 1, 2, 3, 5 and 10 from the demand list above whereas the rest were categorized as non or indirect labour issues which were also being tackled accordingly as they have a bearing to the direct issues and hence to the overall workplace problem.

On the demand for no tax on bonuses and allowances, the employer responded that the taxation process on these two sets of earnings had started on the direction from Malawi Revenue Authority (MRA). Employer further stated that it was indeed true that earlier on before the MRA's intervention, there was no taxation on each of those two earning sets as had been indicated by employees. The employer however argued that not all allowances are being taxed. He mentioned the night / duty allowances as one of the tax free income to Phwezi employees. On this issue, Labour Office's concluding comment was to cross check with MRA officials on the same and thereafter report back to both parties.

On the demand for employees' claim to have their contract agreement signed with the employer, the employer accepted to have not yet processed such documents and explained that they had delayed because they were being drafted by their lawyers. The employer therefore confirmed that the contract agreement forms were now ready and that an assurance and commitment was made for the signing process to be effected with all employees concerned as quickly as possible. The employer's idea to speed up on this task was welcomed by the employees. Thereafter, Labour Office commended the employer for his plan to urgently implement as promised / assured. Indeed, it is the employee's right to have his / her employment contract signed with the employer and that it is the employer's legal obligation to ensure that such an agreement is being executed as provided for under section 27 of the Employment Act No. 6 of 2000.

On the demand for unpaid gratuity, the employer responded that they had been advised that with the new pension law, employees were not supposed to be paid their gratuity but to transfer their funds to employees' new opened pension accounts with effect from first June 2011. The employer, further, accepted that employees' contract periods were automatically terminated on 1st June, 2011 as had been complained by the employees. On this issue, Labour Office differentiated two gratuity sets and advised accordingly. First set – employee's gratuity that fell due at the contract expiring date that occurred before the commencement of the new pension law. Second set – employee's accumulated gratuity for whose contract period was already running at the commencement date of the pension law.

We advised that the first set gratuity be paid immediately by the employer to concerned employees because it was already due and payable right at that time when the employee's contract expired before the commencement of pension law. The understanding and meaning here is that the employee had closed / ended up his / her employment relationship with the employer before the coming into force of the new pension law, hence no question of transferring such gratuity funds arises.

With the second gratuity set, it was clarified to both parties that such gratuity funds are not payable but transferable to the employee's opened new pension account after 1st June 2011. The employer

was furthermore advised not to terminate or not to have terminated those employees' contracts which were running at the starting date of the new Pension law – 1st June, 2011, but to treat their accumulated gratuity transferable as indicated above. This means that all alleged terminated employees' contracts after 1st June 2011 need to be treated as not terminable contracts by that time and this should be reflected in the employer's ready contractual agreement forms to be signed soon. Both the employer and employees welcomed Labour Office's advice regarding this issue of gratuity.

On the demand issue for tax receipts, the employer responded that tax receipts were not forthcoming from MRA as before despite their remittance of taxes timely to MRA. The employer thereafter allowed that employees are free to visit MRA offices in Mzuzu and ask for their tax receipts. This was to clear the employees' fears of having their collected taxes not being remitted to MRA.

On the demand issue about the workplace hired contractor replacing some redundant workers, the employer's response was to find out from labour office on whether the engagement of contractor was wrong or right according to Malawian labour laws. We advised by clarifying to both the employer and employees that both the contract of employment and the contract for employment are recognized by labour laws. We further pointed out that the hired contractor was on contract for employment with Phwezi Employers as an independent contractor hence the employer had not contradicted any labour law. However, since the contractor issue was linked to some redundant employees, then we were quick to inform the employer with a review of the Government's accepted redundant procedures that include a thorough involvement of employees at the early deciding stage; writing / informing labour office for information as well as recognizing some redundant employees as first priority in case the employer plans to recruit more other workers following the employees redundant period.

On the non labour issues, we urged / advised the employer to institute an investigation involving all employees to generate the required information to help address them. We noted that some of these issues seem to have caused serious impact / repercussions towards the disagreements the employees were / are having with their employer. For instance, the using of Graham Carr and Company Auditing firm by Phwezi Foundation whose Mr Nyama – now the Phwezi Finance and Administrative officer is its former Senior employee but still in interaction with the firm's current employees auditing Phwezi as alleged by striking employees would be a serious issue tantamount to be in contradiction with the country's auditing laws regarding conflict of interest. A good development regarding this issue of Auditing is that the employer was quick to accept and to state that the situation is under an advanced checking and that Graham Auditing firm will soon be terminated by Phwezi Foundation.

The Strike Resolution

After every demand issue was discussed and clarified, the employees were thus requested to consider calling off their strike and go back for work. However, they still maintained their summary demand while acknowledging good effort and work by labour office. Their maintained stand was communicated to the employers who thereafter sat as a board and decided that the Administrator – Nyama - be sent on leave pending investigations. The employers' decision was communicated to the employees who accepted such employers' decision and told Labour Officers mediating that their strike was thus declared resolved and that they were to go back for work the following day. It was exactly **17:45 pm** when the strike was declared resolved.

Following the resolution of the strike, we finally advised the employer to adopt and use full consultative approach involving teachers to give in their relevant inputs for the whole investigation

process to be transparently done in objective manners. The employer's reply to this advice was positive. He indeed agreed and assured that the whole process will be done as per Labour Office's advice. We left the workplace back home at 18:00 pm.

On 1st March, 2012, I made a telephone contact with one of the employee leaders to find out the situation following the resolved strike. I was told things were normal and that every employee was working.

Nearly all employed Phwezi Foundation teachers were involved in the strike except few of them. Phwezi Foundation Schools comprise of Phwezi Boys Secondary School, Phwezi Girls secondary School, Phwezi Polytechnic and Phwezi Women institution. Only 2 man days were lost during the strike period. No any job was / is being reported-lost during and immediately following the strike.

Observations / Recommendations.

Sections 44 and 46 of the Labour Relations Act No.16 of 1996 provide for the strike or lockout procedures. If such set procedures are not complied with, any party is not allowed to strike or to lockout otherwise the strike / lockout actions would be declared unlawful. Phwezi striking employees did not follow such set procedures. All employees were sensitized on this requirement.

The striking employees were well united and organized to the effect that they had to maintain peace and order through out the negotiation process. They were keen to listen and to take Labour office's advice seriously. Likewise, the employers were also very accommodating. Hence it is hoped that every consultative engagement process between them (parties) thereafter is bound to be concluded positively with benefits to both parties.

It was further observed that school students were in total support of the striking teachers to have the Administrator removed from work to the extent that they had to openly demand to the board chairperson through their head-prefects for his quick decision about the fate of the Administrator and not otherwise. This was confessed to us by the board chairperson himself. This situational trend calls for the Board to handle every single case and event at their workplace very professionally otherwise students too in their large numbers may resort into causing some unknown damages and havocs.

It was also observed and made clear to both the employees and the employers that it is not in the interest of government to have one employee fired from work due to demand pressure of other employees but that the same could become possible only with or based on justifiable reasons that can be established through the execution of a well procedure as provided for under Sections 57 and 61 of the Employment Act No.6. of 2000.

Finally, it was recommended that the employers – the Board – should exercise every step and action towards addressing each of the issues discussed as recommended or advised so that their workplace differences get ironed out for good.

Witten by Kalani Malema
District Labour Officer –Rumphi.