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Contract Staffing- A brave new world: The way forward

The main issue that arises here is how to make the union(s) a partner in progress with the employer- i.e. principal company or labour contractor.

It should be mentioned at this point that trade unions are formed primarily to protect workers' interests by ensuring *inter alia* ensuring that they are adequately remunerated, and work in a safe environment.

However as with all things human, it is subject to abuse and in several instances the power which unions wield can somewhat corrupt the officials/workers.

Properly educated and properly handled though, they can be partners in progress with employers to ensure that company objectives of productivity and profitability are met.

It need also be mentioned that employers are not slave drivers who are only interested in profiteering and exploitation of workers.

The fact remains that if there are no employers of labour there would be no workers, and if there are no workers there can be no unions, because the unions do not exist independent of the workers.

Note that whilst employment is a prerequisite for membership of a trade union, the reverse is not necessarily accurate; moreso as employment is a pre-condition for membership.

In view of the express provisions of the Guidelines we would therefore advice in the interest of peace, industrial relations harmony and to prevent complications which may subsequently arise should matters further escalate, that provided it is the proper union for the particular industry, then the Union(s) be recognised by Management at this point.

Stages/Staffing

At the exploration stage in the oil & gas industry more workers are usually required, when production subsequently commences there may be the need for a reduction in workforce, additionally with an increase in production more staff may be needed.

A likely issue is with respect to such staff as would need to be disengaged, should be properly disengaged subsequently or transferred to a properly registered recruiter as the case may be.

It is usually at this point that some companies begin to give serious thought to their staffing needs and the legal status of their staff, but this ought not to be the case.

Ideally a proactive approach should have been adopted, so that workers do not come away with the impression that Management regards them as disposable items because it has achieved its objective of striking first oil.

There may therefore be the need for clear rules on disengagement of staff at this stage; it may not be equitable that workers who have been with the company for a number of years will be let off with either a month's notice or a month's salary in lieu of notice.

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It is suggested that minimum pay-off at this stage be given force of law in the event that oil is struck and production commences; where however the venture was unsuccessful, the common law position may be allowed to operate.

Expectedly there would be resistance from the workers if prior to this time they had been direct employees of the company, and an attempt is now being made to transfer them to a labour contractor; thus Management ought to be proactive in this regard and it should have previously obtained proper staffing solutions advice.

Provided the requisite steps are taken, Section 10 Labour Act CAP L1 Laws of the Federation of Nigeria (LFN) 2004 provides:

"Transfer to other employment

10(1) The transfer of any contract from one employer to another shall be subject to the consent of the worker and the endorsement of the transfer upon the contract by the authorized labour officer"

The labour officer must however confirm that the transfer was freely consented to, and that such consent was not obtained by coercion, undue influence, misrepresentation or mistake.

The reasonableness of an offer of alternative employment is a matter of fact and determinable by the particular circumstances in that instant case. Resistance would also be anticipated because all over the world a by-product of casualization is perceived lack of job security and seemingly reduced levels of remuneration.

In several instances either letters of employment are not given or having been given, perhaps their appointments have not been confirmed.

Some employers do not issue letters of employment, and the workers themselves may be placed at a disadvantage if they are to demand for its issuance (see Section 7 Labour Act CAP L1 LFN 2004, which requires that within 3 months of commencement of employment, a written statement of details must be given to the employee) there is therefore need for greater vigilance by Federal Ministry of Labour & Productivity to ensure compliance with extant provisions of the Act.

In times past, unscrupulous employers have sought to hide behind either this charade or non-confirmation of employment, it must however be noted that persons who have been given letters of appointment and whose probation period has expired cannot be said not to be staff of the company, this is because in *OAU v. Onabanjo (1991) 5 N.W.L.R. (Pt 193) 549*, the Court of Appeal held that where the period for probation has expired and the company has given no indication that it intends to terminate the employment and instead goes on to continue paying salaries then such appointments have been confirmed by conduct and the company is estopped from so denying.

In the main, reservations about unionization of workers usually stem from apprehension about salary demands and collective agreements which have been reached between employers and employees in their capacities as bodies of certain institutions.

However collective agreements are not intended or capable of giving individual employees a right to litigate over an alleged breach of their terms as may be conceived by them to have affected their interest, nor are they meant to supplant or even supplement their contract of service; this is because for such collective agreement terms to be enforceable, both

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employer and employee have to expressly adopt the contents of the collective agreement as forming part of the employee's terms of employment, either in the letter of appointment or in subsequent communication varying the terms of employment, the doctrine of privity of contract is also applicable, see *UBN Ltd v. Edet (1993) 4 N.W.L.R. (Pt 287) 288*, *Chukwuma v. Shell (1993) 4 N.W.L.R. (Pt 289) 512*, and *Nwoboisi v. ACB (1995) 6 N.W.L.R. (Pt 404) 677*.

Thus oil & gas collective agreements cannot be unilaterally imposed on a company, there has to be a formal request- the charter of demands- submitted by the union(s), which would be considered by Management. Over a series of meetings the requested terms could be accepted, varied or rejected before a mutually acceptable/beneficial resolution is adopted contingent on the company's ability to pay.

Even where a collective agreement has been formally adopted, it would seem that failure to observe same would lead to further negotiations between an employer and the union, failing which a strike action may be called by the union or an industrial dispute declared by the employer, because a collective agreement is not justiciable thus it cannot be sued upon.

While it may seem that removal (termination of appointment) of the Union officials is a probable solution, it would appear that such an approach would only yield short term benefits as some other persons would subsequently fill those positions; equally important is that it would attract negative attention from the relevant bodies including Nigeria Labour Congress (NLC) and Trade Union Congress of Nigeria (TUC), which said attention would be a distraction to the company; also important is a possible backlash that such an action would have on the work environment and employee loyalty.

Moreover one cannot correctly forecast if subsequent occupants of the positions would be better or worse than the incumbents as it is impossible to accurately predict human behavior, seeing that no one can say with certainty how an individual would act in response when bestowed with the influence or power which authority in a trade union seems to confer; the same principle would also apply to persons who were in dire straits when offered employment but having obtained same turn unpleasant.

Hence it is important that the right processes are put in place to avoid a situation where the viability of the operating model is dependent on the allegiance/reasonability of persons rather than the integrity of systems, this is however not to discount the importance of cordial relations between Company/Union or employer/employee.

Further issues

Communication is the life blood of every relationship; as such it is essential that parties keep the lines open at all levels.

Interactive sessions are thus necessary to properly intimate the workers on the realities of commerce which is that companies are in business to make profits, hence if the dynamics of cost/expenditure and income do not result in positive earnings then the enterprise is not viable, and if bankruptcy is to be avoided ultimately the solution would be that informed choices be made for enlightened self-interest and delayed gratification, hence the need for patience and understanding.

Due to the assumed profitability of the oil & gas industry there are certain personal expectations regarding working conditions and remuneration which the workers expect to be met; however in fairness to the company, the timing may not be exactly appropriate.

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Because if a principal company has previously expended significant sums of money (running into hundreds of millions of dollars) on exploration activities during which period it received no income, then the proper thing is not to make demands immediately first oil is struck; rather such demands should take into consideration the requirement that costs incurred prior to this time be reimbursed and a reasonable profit made, whilst simultaneously seeking to meet staff expectations on remuneration within reasonable limits; there may also be the need for assurances on job security.

Thus there has to be a balance between the various contending simultaneous demands:

- Bank loans/interest payments have to be catered for in order to reduce further financial burden.
- Review of conditions of service.
- A fair profit has to be earned by the Company.

Also while the Company operates globally it is important that local peculiarities of its operational environment be taken due cognisance of, as what may be acceptable in one locale could be prohibited in another.

Organisational charts and organograms may also need to be drawn up to formally stipulate reporting lines and hierarchy; hence guaranteeing organisational structure.

At the same time it is advised that as a matter of policy, steps be embarked upon, to crystallize workers' rights and obligations, hence avoiding the assumption that it is only by industrial agitation/crisis that workers' expectations can be met.

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