

**Industrial relations and collective bargaining:  
Trends and developments in South Africa**

**Debbie Budlender  
Community Agency for Social Enquiry**

**Social Dialogue, Labour Law and  
Labour Administration Branch,  
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## Foreword

This paper is part of a comparative study examining industrial relations developments in different countries and regions of the world. It examines how industrial relations systems and practices have evolved and are adapting to meet contemporary labour market challenges. It is particularly interested in collective bargaining trends and in innovative agreements that contribute to employment security, social protection and the implementation of workers' rights. The study helps to fill a knowledge gap on industrial relations in developing countries. This gap is particularly apparent in Africa where Structural Adjustment Programmes have weakened industrial relations institutions and where the large number of workers in informal employment present distinct challenges for research in this area.

South Africa is perhaps unique in the continent in respect of industrial relations. It was not subject to a Structural Adjustment Programme and has relatively well developed industrial relations institutions with strong trade unions and employers' organizations. The democratic transition in 1994 ushered in a new legal and institutional framework for industrial relations, reinforcing the role of the social partners in labour market governance.

South Africa's new labour relations dispensation promotes voluntary self-governance by the social partners through collective bargaining. Appropriate legal and institutional intervention is available when the process does not go smoothly, through bodies such as the Commission for Conciliation, Mediation and Arbitration. In many industries, the social partners regulate their own conditions of employment through bargaining councils. The State underwrites this process by extending collective agreements reached at an industry level to non-parties, although some enterprises do apply for exemption from these agreements. Bargaining councils are responsible for monitoring the enforcement of their agreements and are involved in resolving disputes.

The State only intervenes in those sectors where worker and employer representation and collective bargaining are weak or non-existent. In such cases, conditions of employment are set through ministerial determinations. The State is able to focus its limited resources on monitoring the enforcement of wages and conditions specified in these determinations in sectors where workers tend to be more vulnerable.

As the paper shows, South Africa's sectoral bargaining system has been a particularly effective form of labour market governance – improving working conditions, redressing past inequalities and expanding social protection. The number of workers covered by bargaining council agreements has significantly increased. Still, a number of challenges require special attention, including the informalization of the employment relationship and the adequate representation of enterprises and workers. The paper's findings contribute to knowledge of trends and innovations in developing countries and provide examples of good practice for others to draw on.

I am grateful to Debbie Budlender of the Community Agency for Social Enquiry (Cape Town) for undertaking this study of the industrial relations system in South Africa, and commend the report to all interested readers.

May 2009

Tayo Fashoyin  
Director,  
Department for Industrial and  
Employment Relations



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## Acronyms

ANC	African National Congress
ASGISA	Accelerated and shared growth initiative for South Africa
BCEA	Basic Conditions of Employment Act
BEE	Black economic empowerment
CAESAR	Consolidated Association of Employers of Southern African Region
CCMA	Commission for Conciliation, Mediation and Arbitration
CMT	Cut-make-and-trim
COSATU	Congress of South African Trade Unions
CPIX	Consumer price index excluding mortgages
DENOSA	Democratic Nursing Organisation of South Africa
EPWP	Expanded public works programme
ESOP	Employee share ownership
FEDUSA	Federation of Unions of South Africa
GEAR	Growth, Employment & Redistribution
IMATU	Independent Municipal & Allied Trade Union
LFS	Labour force survey
LRA	Labour Relations Act
MTBPS	Medium-term Budget Policy Statement
NACTU	National Council of Trade Unions
NEDLAC	National Economic Development and Labour Council
NEHAWU	National Education, Health and Welfare Union
NUM	National Union of Mineworkers
OSD	Occupation-specific dispensation
PSCBC	Public sector central bargaining council
RDP	Reconstruction and Development Programme
SACCAWU	South African Commercial, Catering & Allied Workers Union
SACTWU	Southern African Clothing & Textile Workers Union
SALGA	South African Local Government Association
SALGBC	South African Local Government Bargaining Council
SAMWU	South African Municipal Workers Union
SATAWU	South African Transport & Allied Workers Union
SETA	Sector education and training authority
UASA	United Association of South Africa



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## Introduction

This paper is part of a multi-country study initiated by the International Labour Office in Geneva. The multi-country study seeks to examine:

- the role of the socio-economic and political context, the evolution of the bargaining structure, the institutional context, the strengths or weaknesses of parties and the role of public policy in determining the quality of labour relations;
- the role of collective bargaining in wage policy; and
- the role of collective bargaining in addressing contemporary issues such as HIV/AIDS and in contributing to effective labour market governance.

This paper draws on a review of the literature, interviews with key informants from business, labour, government and other organisations working on labour issues, and the personal knowledge and experience of the author. Persons interviewed for this particular paper are listed in the Appendix.

The paper is organised into four parts, as follows:

- Setting the context: a general but brief overview of the socio-economic and political environment.
- The legislative and institutional framework: a brief overview of key aspects of the law. This overview is supplemented by an appendix which gives more detail on the Labour Relations Act of 1995 which underpins the industrial relations system and collective bargaining. This section also provides facts and figures on key labour, employer and state institutions, and describes how collective bargaining and dialogue happen in the country.
- Collective bargaining and wages: describes the trends in wages and conditions determined both through collective bargaining and through the regulatory mechanism of sectoral determinations.
- Addressing the challenges: a set of case studies, spanning different parts of the economy, which highlight how a range of different issues and challenges have been addressed through collective bargaining.

The paper focuses on the period from the official ending of apartheid in 1994 to the installation of the first democratic government. However, while more than 14 years have now passed since the momentous 1994 elections, the socio-economic and political situation in South Africa still bears many elements which reflect the apartheid past. Most sections of this paper will thus refer to this past so as to point out where current patterns have been influenced. The paper does not, however, provide a comprehensive picture of the pre-1994 period, but instead highlights only those aspects that continue to shape the present.

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## 1. Setting the context

The general overview of the socio-economic and political environment presented in this section focuses on the twenty-first century, the period after the first years of transition. The overview does, however, include references to what happened during the apartheid era pre-1994 as, although the end of apartheid constitutes a distinct rupture, there are some important continuities from the earlier period. In addition, the particular political history of South Africa needs to be appreciated in order to understand some of the ways in which South Africa has deviated from the standard developments that occurred in many other African countries.

Of particular importance in the more recent evolution of the labour relations system is the fact that the Congress of South African Trade Unions (COSATU), the largest trade union federation in the country, was one of the partners in the tripartite alliance that convincingly won the 1994 elections and has triumphed in elections since that date. COSATU has sometimes complained that it is not given sufficient weight within the alliance, but its presence has certainly strongly shaped the development of laws, institutions and practices from macro to micro level. This has happened against a background of unemployment and income inequality rates that are unusually high in international terms and higher levels of poverty than would be expected given the overall level of economic development.

In terms of basic economic indicators, South Africa has performed relatively well since 2000. The recent Medium Term Budget Policy Statement (MTBPS) 2008 (National Treasury, 2008:1) notes that economic growth has averaged 5.1% annually between 2004 and 2007, after a lower 3.2% average in the previous three years. In 2007, gross domestic product thus stood at R1,996.9 billion, with the estimate for 2008 standing at R2,303.6 billion (National Treasury, 2008:8). The MTBPS notes further that “[b]uoyant investment and favourable terms of trade have contributed to rising incomes and employment”, and estimates that approximately two million jobs were created between 2003 and 2008. However, the same document notes that the immediate future does not look as bright, citing the imminent international economic downturn as well as local pressures of severe shortages of skilled labour and ageing infrastructure. Growth is thus projected at 3.7% for 2008 and 3.0% for 2009, with an upturn to 4% in 2010.

The country has a policy of inflation targeting, with the Reserve Bank attempting – primarily through interest rate control – to keep the consumer price index, after adjustment for mortgages (CPIX), between 3% and 6%. This target was achieved from the second half of 2003 through to early 2007. Since that time, however, inflation has pushed far beyond the target, reaching 12.9% for historical metropolitan and other urban areas in July 2008 (Statistics South Africa, statistical releases). The increases have been largely driven by sharp increases in food and fuel prices. Economists are divided on when a decrease to within the target can be expected. The National Treasury (2008: 13) forecasts an average of 6.2% for 2009, 5.3% for 2010 and 4.7% for 2011. Interpreting trends over coming months will be complicated by the decision by Statistics South Africa to change the method of calculating inflation, based on research that suggests, among others, that food has received far too high a weighting in calculations to date.

Interpreting trends in labour market statistics is similarly complicated by a recent methodological change in conducting labour force surveys. In 2008 Statistics South Africa announced the results of the first round of the “re-engineered” Quarterly Labour Force Survey. In addition to changing the periodicity of the survey from six-monthly to quarterly, Statistics South Africa now excludes non-market labour market involvement when measuring employment and unemployment. While non-market activities are not nearly as extensive in South Africa as in many other African countries, they are large enough to prevent easy comparisons across the two series. Statistics South Africa has generated a

backdated series of key indicators from previous labour force surveys, but the raw data for the new survey and the details of the method used for the backdating have not been made available. For the purposes of this paper, we therefore rely on data from the old labour force survey (LFS) series, which covers the period 2000 through 2007.

Table 1, based on LFS data, shows a total of 13.5 million employed people aged 15 years and above in September 2007, of whom 42.5% were female. (The total population was estimated at 47.9 million, of whom 68% were aged 15 years and above.) The survey yields an employment rate of 41.3% overall, and 49.7% for males compared to 33.7% for females. Unemployment stood at 22.5%, with a significantly higher 26.4% for females than the 19.6% recorded for males. The unemployment rate reflected here is the “official” one; it disregards discouraged workers who have given up active searching for work. If these people were included, the unemployment rate would be even higher, with the difference between the “expanded” and official measures larger for females than for males.

**Table 1. Employment status of population aged 15 yrs+, by sex, Sep. 2007**

Status	Male	Female	Total
Not economically active	5 967 745	9 244 744	15 225 649
Employed	7 751 027	5 748 749	13 511 805
Unemployed	1 888 698	2 063 526	3 954 765
Total	15 607 471	17 057 020	32 692 218
Unemployment	19.6%	26.4%	22.6%
Employment	49.7%	33.7%	41.3%

Note: In this and similar table total differs from sum of male and female because of small number of observations with unspecified sex

Table 2 provides similar information but this time disaggregated by population group. The table reveals continuing strong racial disparities, with the employment rate ranging from 3.9% among the privileged white group to 26.5% among the majority African group. Similarly, the employment rate varies between 58.9% of whites in this age group and 37.9% of Africans.

**Table 2. Employment status of population aged 15 yrs+, by population group, Sep. 2007**

Status	African	Coloured	Indian	White	Total
Not economically active	12 273 613	1 201 499	390 936	1 339 205	15 225 649
Employed	9 622 897	1 389 008	428 155	2 033 357	13 511 805
Unemployed	3 467 996	360 402	44 138	81 686	3 954 765
Total	25 364 505	2 950 909	863 229	3 454 248	32 692 218
Unemployment	26.5%	20.6%	9.3%	3.9%	22.6%
Employment	37.9%	47.1%	49.6%	58.9%	41.3%

Note: Total differs from sum of male and female because of exclusion of small number of observations with population group not falling within the four main groups

South Africa’s very high unemployment rate baffles many commentators both inside and outside the country. Its size relative to that recorded in many African countries is explained by low levels of engagement in subsistence or small-scale farming. Borat and

Kanbur (2007) claim that while South Africa's unemployment rate is very unusual compared to those in other regions, it is not an outlier when the comparison is restricted to other countries in Southern Africa.

Unemployment is currently lower than a few years ago. Thus the LFS of five years before, in September 2002, yielded an official unemployment rate of 30.2% and an employment rate of 37.6%. For women, unemployment stood at 34.5%, and for Africans at 36.4%. The decrease over the past few years should not, however, detract from the seriousness of the unemployment question in South Africa.

Some commentators suggest that South Africa's extensive grant system contributes to the high unemployment rate. The system is indeed extensive. In August 2008, for example, the grant database recorded a total of over 9 million beneficiaries, of which 2.3 million were recorded for the old age grant, 4.9 million for the child support grant, 1.4 million for the disability grant, and smaller numbers for the other grants.<sup>1</sup> (Some of these beneficiaries – in particular those receiving child grants – were receiving grants in respect of more than one person.) The link with high unemployment can be questioned on two grounds. Firstly, none of the grants target able-bodied people of working age. Secondly, research (Posel, 2004) has suggested that receipt of a grant within a household often facilitates work-seeking by other members – particularly younger women – rather than discouraging it.

Table 3 confirms the relatively small size of the informal sector in South Africa when compared to other African economies. Thus nearly three-quarters (72%) of employed people are recorded as working in formal businesses, 19% in informal businesses, and a further 8% work as domestic workers. The separate categorisation of domestic workers is used both because these workers number about a million of the total of 13.5 employed and because, with the increased regulation of recent years, they are no longer as solidly "informal" as they were previously. Disaggregation reveals domestic workers accounting for 16% of all female employed, but the percentage of male and female in the rest of the informal sector is similar for males and females.

**Table 3. Employed aged 15+, by sector and sex**

Sector of work	Male	Female	Total
Formal	78%	64%	72%
Informal	20%	19%	19%
Domestic workers	2%	16%	8%
Unknown	1%	1%	1%
Total	100%	100%	100%

As with other aspects of the labour market, there are sharp race patterns in terms of the sector of work. Among Africans, 65% of employed are recorded in the formal sector, 24% in the informal, and 10% in domestic work. The relatively small size of the informal sector is explained in part by the severe restrictions placed on Africans owning and running businesses during the apartheid years. These restrictions also, at least partly, explain the heavy dominance of trading activities within the informal sector.

This paper's focus on industrial relations implies that our interest lies primarily with employees. If we exclude domestic workers, the LFS of September 2007 records a total of about 9.8 million employees, as compared to 2.0 million self-employed and employers, about 350,000 people working on their own plot, and under 54,000 unpaid family helpers. Of the non-domestic employees, 93% are recorded as working in formal businesses, i.e. they are part of the formal sector although some will be part of the informal economy

<sup>1</sup> Calculated from data provided by the South African Social Security Agency.

because they are employed, for example, on a casual basis. It is among these 9.1 million workers that one would expect to find most examples of collective bargaining. Of the 9.1 million, 43% are African males, 23% African females, 10% white males and 8% white females. Whites are thus over-represented among this grouping of workers, but Africans are in a very clear majority.

A range of policies, and the Employment Equity Act in particular, have been developed in an attempt to change the very skewed racial profile of the apartheid economy. Unfortunately, analysis of data submitted by employers in terms of the Employment Equity Act does not yield a reliable picture of the shifts over time, as reporting is only required of larger employers and many employers who are required to report do not do so. Instead of that source, we therefore compare the patterns revealed by the September 2000 and September 2007 LFSs in respect of employees in formal sector businesses.

Table 4 shows only the African and white percentages so as to simplify the picture. The table suggests a marked increase in the African percentage across all occupations except technical and associate professionals and operators, balanced by marked decreases for whites for these same categories as well as in elementary occupations. Part of this pattern can be explained by the increase in the overall presence of Africans among those employed in the formal sector (from 58% to 66%) and the overall decline in the white presence (from 23% to 17%). However, the table also suggests that there has been upward mobility of Africans in that the percentage increases are bigger at the top of the occupation hierarchy than at the bottom. Nevertheless, Africans still remain under-represented at the top given that this group accounted for an estimated 77% of people aged 15 years and above in September 2007.

**Table 4. Percentage composition of occupations by race, 2000 and 2007**

<b>Main occupation</b>	<b>African 2007</b>	<b>White 2007</b>	<b>African 2000</b>	<b>White 2000</b>
Managers	37%	45%	20%	63%
Professionals	48%	35%	33%	51%
Technical and associate professionals	54%	31%	51%	33%
Clerks	52%	27%	39%	37%
Service & sales workers	72%	13%	62%	20%
Skilled agricultural	81%	3%	65%	22%
Craft and related	72%	12%	64%	18%
Plant and machine operators	81%	4%	78%	5%
Elementary occupation	81%	2%	74%	3%
Total	66%	17%	58%	23%

If we look beyond the nature of the business, a large number of workers, while employed in formal businesses, nevertheless could be classified as part of the informal economy on account of other characteristics of their employment relationship. Thus, for example, only 76% of employees in formal businesses have permanent contracts, while 7% have fixed period contracts, 10% are employed on a temporary basis, and 6% regard themselves as casual workers. Just over four in five (83%) have a written contract. Especially important for our purposes, 36% are members of trade unions. Trade union membership is more or less equally likely for males and females. There are, however, significant differences in race terms, with membership standing at 39% for Africans, 36% for coloured and Indian workers, but only 28% among whites. Trade union membership patterns are discussed in more detail in a later section of this paper.

An article by the Department of Labour (2005) suggests that the extent of atypical work has increased as a result of three inter-related processes, namely casualisation, externalization and informalisation (unregulated). Externalisation is defined as instances where, instead of a labour contract, some form of commercial contract is entered into. Outsourcing, subcontracting, home-working and use of temporary employment services would fall in this category. Informalisation is defined as cases where the business operates informally, disregarding regulations. The latter would be similar to the informal sector, while the other two can occur within formal businesses. The article suggests that in September 2003 atypical workers accounts for 56% of all construction workers, 30% in agriculture, 26% in wholesale and retail trade and 24% in transport.

Table 5 gives some idea of the distribution of wages among formal sector employees. The table is intended as indicative rather than as presenting solid information as there are a number of weaknesses in the data. Firstly, as can be seen, monthly income is not provided for a substantial proportion of employees, particularly among the white group. The main reasons for this are refusal or lack of knowledge on the part of the household respondent. Secondly, it is well-known that income is generally under-reported. Thirdly, we cannot calculate trends in real income from the LFS because the brackets that are provided for reporting do not change over the years, making it difficult to discount the effect of inflation.

Despite these difficulties, the table does give a sense of the extent to which incomes cluster at the low level of R500 per month or less. The table confirms that women tend to earn less than men, and that Africans tend to earn less than white workers. The final column suggests some improvement between 2002 and 2007 in that 13% of workers report monthly income of R1,000 or less in 2007 compared to 17% in 2002. This comparison does not, however, take inflation into account.

**Table 5. Monthly income of formal sector employees, by sex and population group**

Monthly income	Total	Male	Female	African	White	Total 2002
R0-1000	13%	12%	16%	17%	10%	17%
R1001-R6000	59%	62%	54%	65%	38%	65%
R6001-R16000	17%	15%	20%	12%	22%	12%
R16001 plus	4%	4%	3%	1%	13%	1%
Unknown	7%	7%	8%	4%	18%	4%
Total	100%	100%	100%	100%	100%	100%

Table 6 is intended to indicate to what extent South African non-domestic employees have experienced “deindustrialisation” over the period 2000-07. This table, unlike previous ones, covers both formal and informal sectors. The most noteworthy shift is the increase in the percentage employed in trade, from 16.6% in 2000 to 19.5% in 2007, as well as an increase of nearly three percentage points of those employed in financial services. These patterns should be treated as indicative rather than exact, however, as the 5.7% of non-domestic employees reported as working in private households in September 2000 reveals that in the early years of the LFS there were inaccuracies in the coding.

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**Table 6. Non-domestic employees by industry, 2000-07**

Main industry	Sep. 2000	Sep. 2007
Agriculture, hunting, forestry and fish	9.6	8.8
Mining and quarrying	6.4	4.7
Manufacturing	16.3	15.7
Electricity, gas and water supply	1.0	1.2
Construction	6.0	8.7
Wholesale and retail trade	16.6	19.5
Transport, storage and communication	5.6	5.1
Financial intermediation, insurance, etc	9.9	12.7
Community, social and personal services	22.1	23.5
Private households	5.7	0.0
Total	100	100

South Africa has a relatively open economy, although it retains some exchange controls. The latter are, in fact, thought to have shielded the economy to some extent from the recent international economic and financial woes. Export earnings are still heavily dependent on commodities and, in particular, mining. Of manufactured exports, more than a third (36%) goes to the Group of Seven industrial countries, and only approximately 5% to Brazil, Russia, India and China (National Treasury, 2008: 17). Industrial policy has supported the development of some export-oriented sectors. The motor industry, in particular, has received strong support and will continue to do so in coming years. However, to date the support has not focused on labour-intensive industries. Meanwhile many sectors have been hard-hit by the opening up of the economy in the post-apartheid period. Clothing and textiles, in particular, have seen large numbers of job lost. The losses were exacerbated by the fact that the government moved faster than required by the General Agreement on Trades and Tariffs in lowering tariffs.

Moving on to politics, the “working class” is in a much stronger position in South Africa post-1994 than it was in the apartheid era. As noted above, COSATU is one of the three members of the tri-partite alliance, alongside the ruling African National Congress (ANC) and South African Communist Party. The ANC, representing the alliance, won close on two-thirds of all votes in the first democratic elections of 1994, and more than two-thirds of the votes in subsequent elections. Theoretically, this gives it the ability to make changes to the Constitution without support from other parties.

The three partners in the alliance have, however, not had equal powers. The ANC has clearly been the dominant partner. This position has been facilitated by the fact that the majority of COSATU members are probably also members of the ANC. Differences in position within the alliance have emerged at particular points. One noteworthy example was the announcement of the Growth, Employment and Redistribution (GEAR) macro-economic policy of 1996. This policy, despite its name, focused on growth, with the hope that employment creation and redistribution would automatically follow. The imposition of this policy, with no consultation, was seen as discarding the more redistributive Reconstruction and Development Programme (RDP) that formed the basis for electioneering in the 1994 election and subsequently became government policy.

After the first five years under President Mandela, the years under the presidency of Thabo Mbeki saw a move towards more conservative economic and social policies, as well as strong support for the growth of black business. This, too, drew criticisms from the trade union movement. More recently, an even clearer division emerged in the November 2007

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ANC Conference in Polokwane. At this conference, Jacob Zuma won the presidency of the ANC against the country's president, Mbeki, with strong support from both COSATU and the SACP. Mbeki was subsequently removed from office before the end of his term. At the time of writing, the direction of a future government is uncertain as Zuma, in particular, makes contradictory statements to different audiences as to whether or not there will be significant policy changes under the government that will be elected in 2009.

Unlike many other African countries, South Africa does have a Poverty Reduction Strategy Paper. It has not had pressure from donors to do so as donor funding is minimal – at less than 2% of the government budget. The RDP served as some sort of national plan or vision for the first few years after 1994. It was, however, quite general on many topics, and was seldom referred to once GEAR was put in place. GEAR was a macro-economic policy, with a focus on deficit reduction and inflation control, rather than a national plan. The 2005 Accelerated and Shared Growth Initiative for South Africa (ASGISA), while touted as a “new” economic policy, again focused primarily on economic growth, although the “shared” in the title was presumably intended to suggest that the benefits should be distributed to all sectors of the population. The government itself acknowledged that ASGISA was not a comprehensive development plan, but consisted instead a collection of interventions – many of them existing before 2005 – seen as likely to stimulate growth. In practice, it is not clear that ASGISA resulted in any significant new or strengthened actions.

It is difficult to say with certainty what proportion of the South African population is living in poverty as there is no agreement as yet on a national poverty line. Thus Woolard & Leibbrandt (2006: 51) show that for 2006 the level of the poverty lines ranged from R81 per capita in 2000 rands for the international US\$ 1 per day equivalent to R593 per capita for the upper bound proposed by Statistics South Africa.

On inequality, the most recent Human Development Report (United Nations Development Programme, 2007: 283) records South Africa as having a gini coefficient of 60.5. This places it at the upper end of inequality, lower only than Colombia, Bolivia, Botswana, Namibia, Lesotho, Haiti, the Central African Republic and Sierra Leone. This ranking must, however, be treated with some caution. Firstly, the year used for the estimate differs widely across countries (it is 2000 for South Africa). Secondly, many countries – including many in the Middle East – do not have any inequality estimate.

Seekings (2007), in summarising the literature, suggests that poverty levels and numbers may well have declined over the last few years, but inequality increased. This finding of worsening income inequality is found even by Van der Berg et al. (2006) who find – contrary to some other analysts – that poverty declined over the same period. While the picture in respect of income poverty is not clear, there is general agreement that there has been progress in respect of several non-income aspects of poverty, such as access to safe water and electricity. However, although there has been a relatively large-scale government-subsidized housing program, there has not been much success in bringing down the number of households lacking decent housing. The improvement in the income poverty situation, to the extent it has occurred, is linked more to expansion of the grant system than to increased employment or earnings.

## **2. The legislative and institutional framework**

As with the previous section, this one describes the development of the legislative and institutional framework since the early 1990s, as it was in the mid-1990s that some of the most important changes occurred. Once again, however, the description includes some references to the apartheid era as the new framework was built on the basis of the earlier

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one, which itself drew largely on the British framework, but with overt racial dimensions which were peculiar to South Africa.

## The legal framework

The LRA provides for registration of trade unions and employer organisations, and federations of these two types of organisation, with the Department of Labour. There are several benefits to registering. In particular, registered unions are guaranteed organisational rights if they can prove that they are “representative” and collective agreements between registered trade unions and registered employers organisations are binding on members.

The relatively simple requirements for registration resulted in a large number of unions and employer organisations registering after the promulgation of the Act. The LRA states that both types of organisation should have as their principal purpose regulating relations between employees and employers. It soon became clear that some organisations were registering for other purposes. In particular, some of the organisations were established by labour consultants to assist with unfair dismissals and other individual worker problems. In some of these cases, workers with complaints would only “join” and pay fees when consulting the “organisation”. An amendment to the Act in 2002 stated that the Department would only register “genuine” organisations. As seen below, this resulted in the de-registration of a substantial number already registered.

The LRA does not explicitly afford a right to collective bargaining but probably effectively accords enough related rights to satisfy the ILO definition and convention. The Act does not oblige employers to bargain. As Todd (2004: 42) explains, the Act thus encourages “process voluntarism”, but this is done against the background of other measures – in particular the Basic Conditions of Employment – that prescribe minimum standards.

The LRA does not prescribe at what level bargaining should occur. However, only registered unions and registered employer organisations can establish bargaining councils. The LRA allows for extension of agreements to non-members if the union/s who sign the agreement represent a majority of all employees in the workplace.

The LRA does not prescribe what issues can be covered by collective bargaining. However, Todd (2004: 55) notes that wages have tended to dominate, while other “important non-distributive matters” tend to get neglected. He attributes this in part to the importance of wages, and in part to the adversarial relationship that is common in negotiations and that he sees as discouraging discussion of non-distributive issues.

The LRA regulates strikes and lock-outs, describing in detail the substantive and procedural requirements for these events to be “protected”. Where a strike is protected, workers are not considered to have committed a breach of contract or delict and so cannot be dismissed simply on account of striking. However, employees in “essential services” do not have the same rights in respect of strikes as other workers.

Bargaining councils, which replace the industrial councils of the apartheid era, bring together employers or employer organisations and unions within a particular sector. The parties do not need to represent the majority of workers or employers within the sector to establish a bargaining council. The council’s constitution must, however, state how small and medium enterprises are to be represented.

Bargaining councils are responsible for enforcement of their own collective agreements, and can request the Minister to designate agents who fulfil this responsibility. Where this is done, the agents are accorded substantial powers, including the right to enter a workplace without a warrant and without giving prior notice. Godfrey et al. (2007) note that employers falling under the bargaining councils tended to have better knowledge of labour legislation and regulations than those outside the councils. They suggest that this is

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probably due to the more frequent inspections and monitoring, as well as the fact that the council can be used to answer queries.

While for most sectors it is up to the employers and unions concerned to establish a bargaining council, the LRA itself established the Public Service Co-ordinating Bargaining Council (PSCBC), and further allowed for the establishment of separate councils for sectors within the public service. At the time of writing there are four public service sectoral councils. The PSCBC covers national and provincial government, but not municipal government as municipal employees are not considered to be public servants. The LRA does not explicitly provide for a separate council for local government, but such a council has been established.

The 1995 LRA also provided for workplace forums, which were intended to provide a non-adversarial workplace-based forum where employers and workers could discuss non-distributive issues. Very few of these were established. Unions, in particular, feared that these forums could serve to co-opt workers and reduce their willingness to oppose employer proposals.

Both the LRA and the Basic Conditions of Employment Act (BCEA) (see below) focus on employees. In response to increasing evidence of outsourcing, sub-contracting, home-working and other practices which do not have a simple employer-employee relationship, both of these acts were amended in 2002 to provide protection to workers in these “atypical” situations. In particular, there is now a presumption that a person is an employee rather than an independent employer unless a set of characteristics can be provided. The LRA also now makes anyone who engage workers through a labour broker or employment agency co-responsible for contravention of bargaining council agreements, sectoral determinations or similar measures.

There are a number of other laws which do not deal as directly with industrial relations and collective bargaining as the LRA, but which affect the context in which unions and employer organisations operate and collective bargaining occurs. Perhaps most important is the BCEA of 1997. As the name implies, the primary aim of the act is to set a floor of minimum conditions for all workers. Bargaining under the LRA then serves to improve those conditions where workers and employers are sufficiently organised to bargain. The sectoral determinations also focus on those sectors in which there are large numbers of less skilled workers, on the assumption that those with more skills will have greater bargaining power. The BCEA is thus seen as providing protection to “vulnerable” workers. The BCEA covers all employees except those working under 24 hours per month. It specifies conditions of work and contracts, but does not specify minimum wages. However, it provides for the promulgation of ministerial and sectoral determinations which generally specify both minimum wages and conditions. While there is some provision for “variation” of the minima specified in the BCEA, these variations should not result in a situation where the employees are worse off than they would be without variation.

In advising the Minister on sectoral determinations, the five-person Employment Conditions Commission established by the Act is required to consider the following criteria (section 54(3)):

- the ability of employers to carry out their business successfully
- the alleviation of poverty
- the cost of living
- the likely impact of any proposed condition of employment or minimum wages on current employment or the creation of employment
- the operation of small, medium or micro-enterprises and new enterprises
- wage differentials and inequality

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- the possible impact of any proposed conditions of employment on the health, safety and welfare of workers in the sector concerned
  - Any other information made available to the Commission.

The Employment Equity Act of 1998 is important in promoting the advancement of black people, women, and people with disabilities in the workforce. The Skills Development Act of 1999 provides for the structures and processes related to the National Skills Development Strategy, including a set of sectoral education and training authorities (SETAs) and the system of learnerships. The Unemployment Insurance Act provides for a contributory system of insurance against unemployment and maternity. The Compensation for Industrial Diseases Act provides for compensation for the injured or diseased person or their survivors in cases of work-related injury or disease. The National Economic Development and Labour Council (NEDLAC) Act of 1994 provides for the establishment of a forum which brings together government, employer and labour representatives and – to a lesser extent – community representatives to discuss economic and development policy which extends beyond a particular sector or workplace. NEDLAC is thus South Africa's foremost “social dialogue” forum for the traditional social partners.

Several observers suggest that the existence of separate laws and structures in relation to particular labour-related issues has discouraged the inclusion of these issues in collective bargaining. Thus, Godfrey et al. (2005) argue that although the Skills Development Act provides for officials of bargaining councils to be invited onto the boards of the SETAs, this seems to have seldom occurred, while training is now seldom included in general collective bargaining. They contrast this with the situation in the industrial councils which were the predecessors of the bargaining councils prior to the LRA, and note that some of these councils had training schemes or industrial training boards. Elsley's (2007) observation that skills development is almost never mentioned in the agreements that make up the large Labour Research Service collection provides support for this view.

Godfrey et al. note further that while the LRA provides for bargaining councils to make submissions to NEDLAC, for example on industrial policy, they know of no examples of where this has occurred. Similarly, Harisch et al. (2005) point out that although the Employment Equity Act specifies that employers must consult “designated groups” (i.e. black people, women and people with disabilities) through their representatives or union, employment equity has seldom become part of collective bargaining. In some cases employers create separate bodies for consulting on this issue, but these are often used for information sharing rather than involving workers in drawing up the plans. Nevertheless, the authors found some examples of unions using the fact that the employer needed their signature on the employment equity plan to extract some concessions.

A further problem with the Employment Equity Act is the way it allocates responsibilities. Thus the Act gives many of the tasks of monitoring progress to a specialised agency, the Commission on Employment Equity. However, it gives the responsibility of monitoring wage differentials to the Employment Conditions Commission. The latter is established in terms of the BCEA and has, as main responsibility, advising the Minister of Labour on minimum wages and conditions for “vulnerable” workers, and in particular on sectoral and ministerial determinations. This division of responsibilities, combined with resistance from some employers to providing information on wages, has resulted in serious neglect of monitoring of wage differentials. This is unfortunate as, with the Commission on Employment Equity having focused primarily on advancement into the top levels of the hierarchy, it means that the Act is of less relevance to other workers.

Beyond regular employment, Government sees the Expanded Public Works Programme (EPWP), introduced in 2002 as a five-year programme, as one of the key initiatives for addressing poverty and unemployment. The EPWP is relevant for our purposes to the extent that it allows for a form of employment that is not governed by the

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usual labour laws. The programme was, at its introduction, discussed in NEDLAC. The social partners agreed to the introduction of EPWP if a set of conditions were met, including that the employment would be short-term. The conditions were specified in a Code of Good Practice and Ministerial Determination for Special Public Works Programmes. However, there is evidence that those responsible for implementing EPWP are often aware of these measures, and – where they are aware – often do not comply with them. It seems further that the claim that the initiative has created one million jobs should not be interpreted as a huge success. Firstly, many of the “jobs” have been very short term. Secondly, it seems that the definition of “job” has been very loose, to include various forms of training.

South Africa thus has a set of policies and legislation that can appear impressive when each piece is viewed on its own. However, problems can arise in how they interact – or do not interact – with each other. The fact that a large number of policies have been introduced or reviewed over a relatively short period has contributed to the likelihood of lack of coordination. In particular, the plethora of institutions and bodies that have been created to take forward the policies and legislation can result in un-coordinated policy as it is very difficult for any individual actor or institution to know what all the other relevant actors are doing. The difficulties are increased when there is need for coordination across sectors. Further difficulties are caused when there are actual or potential conflicts between the objectives of different policies. Of especial importance for our purposes is the policy around black economic empowerment, which is often associated with promotion and incentives for small (black) businesses, and protection of the workers whom these businesses might employ.

In some circles it has become accepted wisdom that South Africa’s growth has been hampered by excessive labour regulation, which is also seen as a cause of the high unemployment rate. However, Godfrey et al. (2007) found that virtually all employer respondents to their investigation reported other factors as posing more of a threat to their business than labour regulations. Some explicitly acknowledged that labour regulations had certain benefits. Benefits included limiting competition on labour costs and thus discouraging labour unrest. In addition, all respondents agreed that it was necessary to have a floor of rights and standards.

## **Key actors**

Table 7 gives the number of unions and employer organisations registered with the Department of Labour, as well as the reported membership of the registered unions (Personal communication, Department of Labour). There are no figures for 2005 as the Department did not collate the information in that year. The Department also does not yet count the number of employers who are members of the employer organisations. The figures all show an upward trend up until 2002, followed by a sharp drop in 2003. The number of unions and employer organisations tends to decrease further in subsequent years, but the trend in the number of union members is less clear. In particular, while 2007 has by far the smallest number of unions, the number of members is similar to that for 2003. Simple division gives an average union size of 12,338 members in 2007, compared to less than 10,000 for each of the previous years. The sharp decrease in 2003 is explained by the Registrar’s deregistering about 150 unions after the 2002 amendment to the LRA introduced the criteria that unions and employer organisations must be “genuine”. The 3.2 million members of registered unions recorded for 2007 is not too different from the figure of 3.3 million union members recorded in the LFS.

**Table 7. Registered unions, membership and employer organisations, 2000-07**

Year	Unions	Membership	Employers' organisations
2000	464	3552113	252
2001	485	3939075	265
2002	504	4069000	270
2003	365	3277685	238
2004	341	3175910	225
2006	335	3049860	213
2007	261	3220245	201

The Department of Labour's annual report for the period April 2007 to March 2008 (2008: 38) notes that 99 applications for registration were received from trade unions and employer organisations over this period, but only 13 of these were approved.

The LRA also provides for registration of federations, although it says little further about how they will be regulated. In late October 2008, the Department had 21 union federations on its database. Of these, the more active were the Federation of Unions of South Africa (FEDUSA), National Council of Trade Unions (NACTU), COSATU, the Movement for Social Justice, Confederation of South Africa Workers Union, International Federation of Building and Wood Workers, Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied workers Union, and International Textile Garment and Leather Workers Federation Africa. The first three of these enjoy representation on NEDLAC. FEDUSA brings together unions that traditionally organised white, skilled workers. NACTU's history is aligned with the Africanist and black consciousness tradition, in contrast to COSATU's close alignment with the ANC.

The department had nine registered federations of employer organisations, of which two are more active, namely the Steel and Engineering Industries Federation of South Africa and Confederation of Employers of Southern Africa. The website of the latter ([www.cofesa.org.za](http://www.cofesa.org.za)) describes it as an employers' organisation rather than federation, although its members straddle a range of sectors. The description of services offered suggest that it focuses on providing advice and other support through a country-wide system of advisors rather than in building organisation among employers.

Business Unity South Africa, which represents employers on NEDLAC, is not registered as an employer federation under the LRA. Business Unity South Africa was formed in 2003 through the merger of the Black Business Council and white-dominated Business South Africa. Its website ([www.busa.org.za](http://www.busa.org.za)) states that it "represents South African business on macro-economic and high-level issues that affect it at the national and international levels."

Earlier we noted that in September 2007, 36% of those employed in formal businesses were members of trade unions. In contrast, only 7% of those employed in informal businesses are trade union members. Expressed differently, informal sector union members constitute only 1% of non-domestic employees who are union members. Among domestic workers, only 2% are recorded as belonging to trade union. Due, among others, to the differing interpretations of how to implement the definition of the informal economy, there are no reliable estimates of the extent of unionisation among informal employees in formal businesses. The rate would certainly be lower than that for formal workers.

COSATU has passed several resolutions about the importance of organising informal sector workers, and some COSATU affiliates have made some attempts to do so. Examples

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of this include the efforts of the South African Transport & Allied Workers Union (SATAWU) in respect of taxi drivers and those of the South African Clothing & Textile Workers Union (SACTWU) in respect of home-based workers. Moving beyond informal sector to informal employees, who might be in formal workplaces, Masondo (2008) describes how the South African Commercial, Catering and Allied Workers' Union (SACCAWU) has attempted to organise casual workers and won some benefits for them, including maternity and sick paid leave, provision of free workplace uniforms and ten years service awards. For some years, the Self-Employed Workers Union existed as a union that focused specifically on the informal sector, although many of its members were self-employed rather than employees. This Union no longer exists, and thus informal sector workers are now organised primarily – but scantily – from within mainstream unions.

We therefore, as before, focus below on the patterns within the formal sector which is where collective bargaining is most likely to occur, again relying on the LFS of September 2007. The discussion that follows is intended to give a picture both of the distribution of these workers by type of enterprise, industry and occupation, and the levels of trade union membership within each.

In terms of type of establishment, 74% of those employed in formal businesses report that they work for a private business, while 11% report working for provincial government, 4% each for local and national (central) government, and 3% for a government enterprise. Trade union membership is highest among provincial government employees, at 76%, followed by 63% in local government, 56% in national government, 43% in private enterprises, and 28% in private businesses. This is a very different pattern than would have been found during the apartheid years, when trade union membership was concentrated in the private sector. Despite the higher membership rates in government, because of the dominance of the private sector, 57% of union members are found in the latter sector.

Table 8 records the highest rates of union membership – at 76% - in mining, but this sector accounts for only 5% of all formal sector employees. The next highest rate is in community, social and personal services, where a large number of government employees are found. This is followed by manufacturing. Rates are lowest in agriculture and construction. The former was previously excluded from much of the labour legislation, and has remained a difficult area in which to organise. The latter includes many small businesses, with a large informal sector alongside the formal sector, and many short-term contracts, casual work, and other forms of informal employment. Membership rates are also relatively low in trade and financial intermediation, both of which were shown above to be sectors which are growing in relative importance in terms of numbers employed.

**Table 8. Formal sector employees by industry and union membership**

Main industry	Distribution	% members
Agriculture, hunting, etc	8%	11%
Mining and quarrying	5%	76%
Manufacturing	16%	38%
Electricity, gas, etc	1%	36%
Construction	7%	12%
Wholesale and retail trade	20%	24%
Transport, storage, etc	5%	36%
Financial intermediation	13%	27%
Community, social , personal services	24%	58%
Total	100%	36%

Table 9 shows far less variation in union membership rates across occupations than is found across industries. The rate ranges from 24% in elementary occupations to 48% among professionals. The higher rates among professionals and managers can be explained by high rates of unionisation among government employees, combined with the fact that managers are covered by public sector collective bargaining. The low rates among elementary workers, who could be argued to be those most in need of collective action, is of concern. Nevertheless, elementary workers account for a substantial 14% of all unionised workers.

**Table 9. Formal sector employees by occupation and union membership**

Main occupation	Distribution	% members
Managers	6%	37%
Professionals	9%	48%
Technical/ assoc professionals	12%	46%
Clerks	13%	33%
Service & sales workers	13%	35%
Skilled agricultural workers	1%	26%
Craft and related trades	13%	35%
Plant and machine operators	12%	46%
Elementary occupations	21%	24%
Total	100%	36%

The bargaining councils provided for in the LRA vary greatly in terms of their geographical and sectoral scope and, partly as a result, in terms of their size. Some councils are national, while others are restricted to a particular province, region or city. Some cater for a very specific industry, such as Canvas Bag Manufacturing, while the Metal & Engineering council covers a wide range of different products and has national scope. In terms of broad industrial sector, of the approximately 53 private sector bargaining councils active in late 2007:

- 20 were in manufacturing (motor, diamond cutting, clothing & related (4), furniture (6), sugar, canvas (2), tyre, bags, metal & engineering, jewellery, chemical, wood & paper)
- 15 in services (hairdressing (4), laundry (2), government (6), entertainment, contract cleaning)
- 6 in construction (all building industry)
- 5 in trade (hospitality (3), meat, commercial distributive)
- 4 in transport (road freight, Transnet, road passenger, motor ferry)
- 2 in agriculture and fishing (wheat, fishing)
- 1 in utilities (electrical).

In terms of coverage of total employees in each sector of the labour market, only manufacturing, transport and community services are relatively well covered. Good coverage of transport is largely the result of the council within Transnet, a parastatal. Within services, Godfrey et al. (2007) surmise that the councils for hairdressing and contract cleaning probably survive because employers see them as a way of regulating conditions of employment rather than as a reflection of trade union organisation. Indeed, the contract cleaning agreement specifies lower wages than the sectoral determination that covers contract cleaning in other parts of the country.

Godfrey et al. (2006) estimate that, of the approximately 9,5 million employees covered by the LRA and BCEA, about 25% are covered by bargaining council agreements. This estimate includes those covered because of extension of agreements to non-parties. Bargaining council coverage increases to just under a third of employees if the calculation is restricted to employees in occupational categories 4-9, namely clerks, service and shop workers, skilled agriculture and fishery workers, craft and related trades workers, plant and machine operators and assemblers, and elementary (unskilled) workers. Nearly 5% of the employees covered by councils have employers who are not members of employer associations party to the council, but who are registered with it.

Godfrey et al. (2006) estimate further that the nine sectoral determinations that came into effect between 1997 and 2006 covered approximately 36%, or about 3,4 million employees i.e. a significantly larger number than the councils. The number of workers covered by determinations would be even larger today with the addition of a determination for the hospitality sector.

Godfrey et al. (2006: 24) estimate that less than 5% of formal sector employees covered by bargaining council are in this situation as a result of extension of agreements. Bhorat et al. (2008) note further that almost 80% of applications for exemption are granted. These two estimates suggest that accusations that the bargaining council unfairly disadvantages those who do not want to be part of it are largely misplaced.

The number of bargaining councils decreased from 87 in 1995 to just over 50 in 2007. Part of this decrease is explained by mergers of regional and sub-sectoral councils into single, larger, national councils. Despite the decrease in the number of councils, the number of employees covered has increased over the same period. Godfrey et al. (2007) estimate that private sector councils covered 1,282,043 employees in 2004 as compared to 823,823 in 1995. If public sector workers are included, coverage in 2004 was estimated at 2,358,012.

Despite the mergers, there remain some very small councils. Macun (2008) points to the examples of hairdressing councils in three cities which between them cover about 2,200 employers and just over 7,000 workers. He notes further that the employee parties to the smaller councils tend to be independent (unaffiliated to any federation), while COSATU unions tend to dominate in the larger councils, often alongside other affiliated unions and independent ones.

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The LRA encourages employer and employee parties to govern themselves. Outside intervention is provided for when the process does not go smoothly, through bodies such as the Commission for Conciliation, Mediation and Arbitration (CCMA) and the labour courts. In addition, as noted above, the state – through the Minister of Labour’s issuing of sectoral and ministerial determinations – can specify minimum wages and conditions for “vulnerable” workers who are deemed unable to represent themselves adequately.

While bargaining councils are themselves responsible for enforcement of their collective agreements, and the state does not monitor enforcement of other collective bargaining agreements, it has a stronger role in enforcement of wages and conditions specified in the determinations. The Department bears responsibility for both monitoring and enforcement, with the general labour inspectorate, in particular, meant to play a key role. The inspectorate is organised on a provincial basis, and enforcement has varied across provinces. The extent to which the state has publicised and enforced the determinations also differs widely by sector. In the domestic worker sector, for example, there was a huge publicity campaign when it was first introduced, and provincial offices have done some monitoring since then. In the taxi sector, in contrast, there appears to have been minimal monitoring and enforcement. In this sector inspectors are probably (and understandably) afraid to venture onto some of the taxi ranks given the violence that recurs in this sector. In some other sectors, such as agriculture, the employer bodies have disseminated information, although this seems to have included dissemination and encouragement in terms of applying for variation (relaxation of specified conditions). In this sector, inspectors’ relative inaction could be due, among others, to employers’ known reluctance to have ‘strangers’ on their property. Legally, however, the employers do not have a right to prevent inspections.

## **Collective bargaining and social dialogue in practice**

This subsection describes the different ways in which collective bargaining happens; what structures are involved; what is covered in terms of sector, type of worker, type of employer, and issues negotiated; and relative power of different actors and institutions. The sub-section draws, among others, on the work of Godfrey et al. (2007). This very informative paper is based on in-depth interviews with nine bargaining councils, the three statutory councils, the nascent “quasi-statutory” centralised bargaining forums in security and cleaning, representatives of three more established non-statutory centralised bargaining forums, as well as actors in enterprise- or plant-level bargaining in retail trade and food manufacturing. The latter two were chosen as representing one example of a sector in which there is a sectoral determination and one example of a sector where there is no such determination. The interviews were complemented by interviews with a stratified sample of owners of small businesses.

The details in the paper by Godfrey et al. are not included here, but the overall finding of a wide range of different contexts and forms for collective bargaining must be stressed. This diversity could be seen as an indicator of the success of the voluntary approach implicit in South Africa’s industrial legislation. It does, however, complicate analysis and make it difficult to draw definite and firm conclusions on most trends.

The picture is further complicated by the fact that in some industries the same companies and unions are involved in several different levels of bargaining simultaneously. In particular, they may be part of a sectoral council but also engage in company- or workplace-level bargaining. Godfrey et al. (2007) suggest that in most cases the parties will agree not to bargain beyond operational issues at the level of the workplace. They give the example of the Metal and Engineering Bargaining Council as an example of this approach. It is not clear, however, that one can generalise from a few cases of relatively strong sectoral forums to what happens in the country as a whole. Even in this particular case, the unions only agreed to this restriction when employers agreed that wage

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increases would be added to the actual wage, rather than calculated on a minimum. This ensured that employees in companies being paid above the minimum continued to benefit from a premium. Similarly, while the agreement in the motor industry also restricts wage bargaining to central level, the agreement allows for workplace-based negotiation of incentive schemes, which could result in higher pay for workers. The motor industry agreement also provides for payment of workers according to skills gained rather than those actually being used in the current jobs, thus encouraging and rewarding involvement in skills programmes.

The COSATU unions which engaged in centralised bargaining acknowledge that this form of bargaining has both advantages and disadvantages. On the plus side, having one set of negotiations that covers the whole industry clearly requires far fewer time, staff, money and other resources than engaging in separate negotiations at each workplace. On the negative side, centralised bargaining can result in loss of contact with individual members. The latter is something that COSATU unions, with their strong shopfloor tradition, have traditionally emphasised. Unions have devised a range of ways of trying to minimise the disadvantages. These include holding bargaining conferences prior to negotiations, requesting inputs from members in other ways, leaving some things to be negotiated at lower levels, and allocating the responsibility for monitoring of implementation to branch level. These strategies have had varying success.

It might seem that multi-year agreements represent another way of cutting down on the time and other resources spent on bargaining over wages and conditions. Employers seem to have promoted this approach more than unions. Unions are wary, in particular, of negotiating wages for several years in a situation of relatively volatile inflation. One way in which this problem has been dealt with is by specifying that, if the inflation rate increases above a specified rate, the increases for future years will be renegotiated or adjusted according to a specified formula.

Moving beyond collective bargaining agreements, since the promulgation of the BCEA in 1997, ministerial and sectoral determinations have been issued in respect of agriculture, children in the performing arts, civil engineering, contract cleaning, domestic workers, forestry, hospitality, learnerships, private security, small business, minibus taxis and the wholesale & retail sector.

As noted above, sectoral determinations are intended for sectors in which workers are vulnerable and unable to protect themselves. The Commission tries to encourage employers and employees to organise so that their representatives can engage in collective bargaining to set wages and conditions themselves.

While employers are also sometimes not well organised, the employee side is generally markedly weaker in terms of the percentage of employees covered as well as the existence of a large number of unions as against one or two employer organisations. In civil engineering, for example, the single employers' association registered for the sector represents 60% of employers, while the two largest unions between them represent an estimated 20% of workers employed by the association's members. In contract cleaning there was one employer association but seventeen trade unions at the time when the Commission was reviewing the determination for the sector in 2004. In private security, 19 unions participated in the 2006 bargaining process, with SATAWU being the only one with members from all part of the country. Godfrey et al. (2007) note that in security there were also significant divisions among employers. In 2006, for example, there were seven employers' associations involved in the negotiations, with two of these representing the majority of organised employees.

Despite these low levels of organisation, several of the sectors covered by determinations have established bargaining forums in which they (attempt to) negotiate agreements. The Department and Commission encourage them to submit these agreements as input to the Commission's deliberations. Unfortunately, the negotiations are often delayed, causing problems for the Commission which needs to ensure that its

recommendations reach the Minister in time for a new determination to be published before the lapse of the period covered by the existing determination. Where the nascent forums provide the Commission with their agreement, the Commission tries to stay in line with what has been agreed. There have, however, been a few occasions in which the Commission, after discussion, has made a recommendation different from that in the parties' agreement. It has justified this action on the basis that the employees in particular, being poorly organised, are not always able to get fair and reasonable provisions in an agreement bargained with a much stronger employer party.

The above discussion describes where bargaining is happening, and how the state steps in when it is not. Here we add a short discussion of cases where the relationship breaks down, at least temporarily, between organised workers and employers. We use the trends in strikes and lockouts as an indicator of such breakdowns.

Strikes and lockouts should be reported to the Department of Labour. While some smaller incidents are undoubtedly not reported, the reported incidents are likely to include all the bigger incidents, whether in terms of duration or number of workers. The Department does not, in its own reporting, distinguish between strikes and lockouts on the grounds that it is often not clear which party is responsible for a stoppage.

Table 10 shows a steady increase in the number of working days lost over this period (Department of Labour, 2008b). This is, however, not matched by a steady increase in the number of strikes. This apparent anomaly is explained by the fact that strikes vary in terms of both duration and number of workers involved. The extremely large number of days lost in 2007 is explained primarily by the public service strike of June 2007, in which 323,887 national and provincial employees downed tools for approximately 25 days. This strike accounted for over 8 million working days, about 87% of total working days lost in that year.

**Table 10. Strike statistics, 2003-2007**

Year	Strikes	Days lost	Average duration
2003	62	979 780	11.1
2004	49	1 286 003	25.2
2005	102	2 627 953	6.3
2006	99	4 152 563	12.8
2007	75	9 528 945	10.4

Some strikes affect only one company, while others affect multiple companies. In 2007, 38 of the 75 strikes were single-company, 18 were multi-employer, and seven actions involved picketing. Only one example of a secondary strike was recorded in 2007. The breakdown of strikes by type year, however, varied substantially each year.

Strikes are the most obvious indicator of a dispute, but not necessarily the best one. More interesting, but more difficult, is the number of potential disputes that are averted, and disputes that are resolved before they result in a strike or lockout. In this respect, Macun (2008) reports that bargaining councils' ability to resolve disputes has improved considerably, from below 30% to more than 50%.

As noted above, the NEDLAC Act established NEDLAC as a forum for social dialogue between the social partners. NEDLAC played a big role in the development of the LRA and BCEA, and was also involved in the development of other labour-related legislation. Perhaps inevitably, once the major new laws were in place its role has become less prominent. An alternative, or supplementary, interpretation of the relative quietness compared to earlier years is that the South African government of the twenty-first century is less concerned about consultation than it was in the first years after 1994.

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### 3. Collective bargaining and wages

This section draws on existing research and databases in relation to collective bargaining through bargaining councils and at firm level to describe the extent of coverage, the profile of workers covered, and the level of settlements. The section tries to go beyond wages to discuss to what extent collective bargaining covers issues such as pension and provident funds, medical funds, leave, etc. The section also describes the extent to which wages and conditions are set through the alternative mechanism of the Employment Conditions Commission. The section includes a brief discussion of trends in executive earnings since this is sometimes raised as an issue in collective bargaining and discussions around wages. The discussion is especially important in light of the overall high levels of a range of different forms of inequality in South Africa.

The Labour Research Service's AWARD database is the most comprehensive one available of wages set through public and private bargaining council agreements, other collective bargaining agreements and sectoral determinations. Unfortunately, as at the time of writing the database was being re-developed. It therefore had not been fully updated for 2007 and beyond, making trend analysis unreliable. We therefore draw instead on Elsley's analysis as presented over the years in the South African Labour Bulletin. (Trenton Elsley works for Labour Research Service and is responsible for AWARD.) Even for the years for which fuller data are available, the trends should be taken as indicative as the addition of new bargaining units to the database means that the comparisons across years are not always comparing the same workplaces.

Elsley (2007) reports that in 2006 the median wage for the lowest paying occupations in collective bargaining was just under R2,400 per month. He notes that this was less than 80% of the monthly expenditure required by average household of five to maintain a modest low level standard of living, as calculated by the University of South Africa. Average settlement levels for minimum wages in 2006 were about two percentage points higher than CPIX but more or less equal to food price inflation, given that food inflation outstripped overall inflation by a significant margin over this period. Wages set through sectoral determinations had increased slightly faster than those set through other means. This could reflect a wider trend for increases to be better at the lower end. However, although such a trend could be expected to close wage gaps between lower- and higher-paid workers over time, this happens very slowly and a higher percentage increase for lower paid workers sometimes translates into a lower increase than for better paid workers in terms of actual rands.

For 2007, Macun (2008) reports that increases within bargaining council agreements averaged 7.2% for the unskilled, 6.9% for semi-skilled, and 6.4% for skilled, confirming other evidence of higher increases at the lower end. He notes, however, that the more skilled workers are more likely to receive premia above the prescribed minima. Macun notes more generally that, despite increases that are generally above inflation, productivity growth has been higher than wage growth for some years i.e. output has increased faster than wages.

In addition to differences between occupations within a particular workplace, and differences across bargaining councils, sectoral determinations and company-based agreements, there are further disparities between industries. Thus the Labour Research Service noted in 2005 (Labour Bulletin, 2005) that the average minimum weekly wage for private sector bargaining councils was R380 per week, while for semi-skilled and skilled workers the average minima were R652 per week. The lowest minimum wage for unskilled workers in bargaining councils was R185 per week in electrical, while the highest, for metal and engineering, was R647. Finally, the average minimum across the sectoral determinations was R250 per week, substantially lower than the average minimum for private sector bargaining councils.

Table 11, which includes all instruments recorded on the LRS database, shows the trend in average monthly minimum wages by industry between 1998 and 2005 (Elsley 2007: 60). Average settlement levels were lower than inflation up until 2002, after which they equaled then rose above it. In wholesale and retail, which shows the lowest wages of the four sectors, increases lagged inflation up until 2004. In mining, which initially had wages only slightly higher than those for trade, minimum wage increases were consistently above inflation, and substantially so from 2001 onwards. Elsley notes that these increases occurred at a time when there was a marked recovery in metal prices. In services, for which the database includes a large number of municipal agreements, the minimum started below that for manufacturing but by 2005 was higher than in the other three sectors. But perhaps the most noteworthy aspect of the table below is the large differences between wages in trade and those in manufacturing and services.

**Table 11. Average monthly minimum wages by industry, 1998-2005**

Year	Manufacturing	Trade	Mining	Community services
1998	1658	n/a	1234	1524
1999	1758	n/a	1316	1667
2000	1884	1377	1416	1806
2001	1940	1425	1554	1923
2002	2031	1498	1784	2065
2003	2174	1576	2000	2265
2004	2291	1637	2325	2464
2005	2420	1736	2494	2680

Elsley's analysis of the previous year suggested that wage increases for 2005 were lower than the previous year for both bilateral and bargaining councils, but that the decrease was more noticeable for the latter. The lower increases could be explained by several years of relatively low inflation. Overall the increases, while lower than the previous year, were higher than inflation.

Elsley's (2007) article includes a strong plea for unions not to base their bargaining only on inflation, but also to consider things like company financial performance and directors' fees. Similarly, Humbulani Tshikalange of the National Union of Mineworkers is quoted as arguing that unions should look at the producer price index so as to be able to argue on the basis of other costs facing employers. Further, he argues that at times of low interest rates unions can argue about lower costs for borrowed money that could be used to increase wages.

On executive pay, Ndungu (2008) quotes journalists who reported that the "wage gap" between executive pay and employee wages was 700:1 in 2005 "and still expanding". He also quotes a study by Solidarity in 2005 that found remuneration for executives in the private sector was 53 times greater than that of ordinary workers. An earlier article by the Labour Research Service (2005) on directors' fees quotes a Financial Mail article of the previous year on the wide and increasing gap between what chief executive officers and average or low-skilled employees were being paid. The article notes that while company performance measured on pre-tax profit increased by 23% between 2003 and 2004, executive directors' fees increased by 38%. It estimates that it would take a mining worker 257 years to earn what the average executive director earns in one year, while food and beverage worker would take 115 years, a construction worker 138 years, and a retail worker 187 years.

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Ndungu (2008) also looks at wage gaps between the lowest and highest paid workers. His focus is on the public sector, where many managers are covered by the bargaining unit. He suggests that the manager: worker gap has, in fact, increased substantially in the post-apartheid era, from 16:1 in 1995, to 20:1 in 1999 and to 30:1 in 2006. This could be, at least in part, a result of the establishment of a senior management service, as discussed in the public sector case study below.

Narrowing our analysis to bargaining councils, in 2007, the Community Agency for Social Enquiry developed a basic database for the Department of Labour to record minimum wages prescribed in the bargaining council agreements. Comparisons are complicated as some agreements specify wages per hour, while others do so by week or by month. In addition, some agreements specify different minima for different areas or for different parts of the industry or sector covered.

The database reveals that in 2007 some agreements still specified a minimum wage for the unskilled that was less than R1,000 per month. These included Restaurant, Catering & Allied and Hairdressing & Cosmetology in Pretoria and semi-national. At the other end of the spectrum, the highest minimum for the lowest-paid unskilled workers was found in the agreement for Furniture KwaZulu-Natal, where the minimum was R2,791 per month.

The analysis by Bhorat et al. (2008) illustrates how the very large increase in public sector membership of bargaining councils over the last decade skews trend analysis of both wages and membership. In their introduction, the authors note that several previous studies have found that union membership tends to be associated with higher earnings, but do not investigate the impact of falling under a bargaining council. They point to a single previous study, but Butcher and Rouse in 2001, which found that in 1995 African workers covered by an industrial council agreement but who were not union members earned about 10% more than those not covered. If they were also union members, they earned 30% more than those not covered by a council.

Bhorat et al. develop their analysis by trying to match occupation and industry codes in the 1995 October household survey and 2005 LFS to those covered by bargaining councils. After correcting for the geographical areas covered by the council agreements, they then compare earnings across the two years, between those covered and not covered, and by public and private, occupation and industry, and level. A repeated finding is that the patterns that result can, at least in part, be explained by the coverage of the public sector in 2005, but not in 1995, and the occupational composition of the public sector, with its large number of professionals.

The coded and matched databases suggest that in 1995, 15% of formal sector employees (almost 1.2 million workers) were covered by bargaining council agreements, while by 2005 this had more than doubled in more percentage and absolute terms, to 32% (2.5 million workers). However, more than half of those covered by bargaining council agreements in 2005 were employed in national, provincial and local government departments. If these workers are included, coverage stood at 13% in 2005, or a little over 1 million workers. The number of professionals estimated to be covered by bargaining councils meanwhile increased from about 20,000 to more than 750,000, of whom 94% were in the public sector.

In terms of earnings, in the aggregate membership of a bargaining council was not associated with higher mean earnings. For African workers, however, there did seem to be an earnings premium associated with membership. Similarly, when disaggregated by industry, there is generally no statistical difference in earnings between those covered and those not covered. However, in 2005, workers falling under the public sector bargaining councils earned more than those in the private sector as well as formal sector employees falling outside of any bargaining council. This again probably reflects the large number of professionals as well as coverage of managers in the public sector.

Looking beyond wages, section 28 of the LRA gives bargaining councils the power “to establish and administer pension, provident, medical aid, sick pay, holiday,

unemployment and training schemes or funds or any similar schemes or funds for the benefit of one or more of the parties to the bargaining council or their members” (Budlender & Sadeck, 2007). These funds, like the main agreements, can be extended to non-parties.

In 2007, about two thirds (27) private sector councils had at least one fund (Budlender & Sadeck, 2007). These councils together covered over 800,000 employees and nearly 50,000 employers, but fewer employees are covered by funds as some funds do not cover all employees in the scope. In some instances, a particular benefit is covered by another fund. For example, in most instances disability and survivor benefits are provided through provident or pension funds. Overall, 13 councils had pension funds, 22 provident funds, 15 medical funds, 14 sick pay funds, 17 disability funds, 14 survivor benefits, and 14 leave pay funds.

Moving beyond bargaining, Table 12 gives the minimum wage prescribed for each sector covered by a sectoral determination under the BCEA as at mid-November 2007 (information provided by Antoinette Radue, Department of Labour). The table shows the wages specified for the lowest paid category of worker where wages are prescribed for more than one category, and for the lowest-paid area where different wages are prescribed for different areas. The Employment Condition Commission, which makes recommendations to the Minister of Labour in respect of the determinations, has a policy of not recommending wages below the level of the old age grant. However, the forestry minimum is currently below that level.

**Table 12. Minimum wages as at November 2007**

<b>Sector</b>	<b>Lowest minimum</b>
Agriculture	R989.80 per month
Civil engineering	R11.23 per hour
Contract cleaning	R7.40 per hour
Domestic workers	R5.24 per hour
Forestry	R836 per month
Hospitality	R1480 per month
Private security	R1500 pm; R5.05 ph
Taxi	R231.39 per week
Wholesale & retail	R293.98 per week

Specifying minimum wages is one thing. The question then arises as to whether the wage-setting minima are enforced. Some information on this is available in respect of domestic workers and agriculture, both of which are sectors for which minima were not specified until very recently. For domestic workers, the number of workers in this category is so large that the labour force sample provides a sufficiently large sub-sample for analysis. Comparison of labour force data from a few years after the introduction of the determination with data from immediately before the determination came into effect shows a marked upward trend in wages. However, it is also evident that many domestic workers were still being paid below the specified minimum.

In agriculture, a small survey (Naidoo & Manganeng, 2005) of 454 workers in the Eastern Cape about a year after the introduction of the sectoral determination found that there had definitely been improvements, but that the level of compliance was higher in respect of wages than in respect of other provisions such as pay-slips, payment for overtime and work on Sundays and public holidays, and deductions. The researchers also found that women earned wages that were noticeably lower than those for men, but noted

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that this was at least in part related to the types of jobs that they did. In particular, 42% of the women did domestic work on the farms.

There is evidence that agricultural employers are increasingly using labour brokers either to avoid having to deal with the bureaucracy themselves, or as a way of circumventing the law. In theory these strategies should not allow for non-compliance, as the law extends to labour brokers. However, detecting non-compliance and enforcing compliance could become more difficult.

Wage-setting instruments do not stipulate different wages for male and female workers in the same job, as was sometimes the case in wage determinations and industrial council agreements in the 1980s. Indeed, stipulation of different wages would today be unconstitutional. The absence of explicit discrimination does not, however, mean that women and men have equivalent earnings. In 2001, for example, mean hourly earnings of employed women in South Africa stood at R8.40 for African women and R9.73 for African men compared to R28.17 for white women and R39.92 for white men (Budlender, 47). Analysis of more recent data is likely to show a similar ranking. As in other countries, these differences are in part due to women and men tending to have different occupations and be employed in different industries, with the female-dominated occupations and industries tending to be remunerated at a lower rate relative to qualifications. The introduction of occupation-specific dispensations for nurses, teachers and social workers in public service will go some way in breaking this pattern for the workers concerned.

## 4. Addressing the challenges

This section presents a series of case studies of collective bargaining. The case studies focus on examples of collective bargaining that address a range of issues that arise in the South African context. Some of these are specific to South Africa, while others will be found in other countries. The examples are not meant to be representative of all collective bargaining. Indeed, an attempt has been made to include examples of unions and employer organisations that have extended the boundaries of bargaining. The studies are also not intended to be comprehensive, but rather highlight aspects of each case that are especially interesting for our purposes. Information for the case studies is drawn from interviews with and documents supplied by key informants as well as from existing literature. In particular, the South African Labour Bulletin provided the basis for a number of the cases.

### Bargaining in the public sector<sup>2</sup>

Any set of South African case studies would be incomplete without one on public sector bargaining, given both the size of the workforce that it covers, the fact that this part of the labour force has significantly increased its contribution to union membership in the country, and the often turbulent relationship between unions and government over recent years. The sector is also especially interesting because prior to 1994 there was virtually no collective bargaining in the public service. Post-1994, the bargaining process has pitted a single employer against large unions, from different federations, and with differing positions even within the same federation. The forum in which they bargain is also still a relatively new institution.

Hassen provides a history which explains the context in which negotiations in the public sector have taken place. He notes that the RDP document was ambiguous as to what would happen with the public service. It stated simply that the government would need to assess whether the service needed to be expanded or contracted. The White Paper on Transformation of the Public Service that followed provided for the minimum wage within

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<sup>2</sup> This case study draws on *Labour Bulletin*, June 2004; *Labour Bulletin*, Aug. 2004; *Labour Bulletin*, Mar. 2005; Hassen, Mar. 2005; Aroun & Essa, 2007; Hassen 2007.

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the public service to be increased to R1 500 by 1997, for the reduction of wage differentials, for development of career paths, and for improvement of conditions for women and people with disabilities.

The multi-year agreement that was signed in 1996 introduced voluntary severance packages that were intended to “right-size” (i.e. contract) the public service, with the savings obtained meant to allow for large salary increases over the three-year period. The right-sizing was, to some extent, needed because of the way the post-1994 government had had to accommodate employees from the 17 administrations that made up the balkanized apartheid South Africa. The desire to right-size must also, however, be seen in the context of a government moving towards adoption of the more conservative macro-economic policy of GEAR. For the following years, negotiations thus focused on both the size and shape of the public sector and the level of salaries. An underlying question in respect of size and shape was the extent to which employees should have a say in decision-making around these issues.

The 1996 multi-year agreement did not last more than a year as government said that the required savings had not been realized. Unions agreed to a reduction in planned wages, on the basis that there would be a joint government-union process of auditing skills, service delivery and personnel.

1999/2000 saw the first national public sector strike, which lasted for two days. The strike focused mainly on wages. Members of all 12 public service unions participated, including the traditionally white and more conservative unions. After the strike, the government unilaterally implemented wages. It also introduced the Senior Management Service, a flexible pay structure for managers and performance contracts, and withdrew from the audit processes claiming that these limited managerial autonomy. In response, unions demanded in the 2000/1 wage negotiations that there be a Public Service Jobs Summit. This duly took place in January 2001. The summit was interpreted as giving back to the unions some say over the planned restructuring. The negotiations of the next year saw government agreeing to create an additional 20,000 jobs.

In 2001, the parties entered into another multi-year wage agreement, with wage increases set at inflation plus agreed percentages. In terms of restructuring, however, the agreement gave management powers to reduce the workforce in relation to those “in excess of establishment”, the majority of whom were less skilled workers. Hassen notes that the overall size of the public sector had already decreased 11.4% between 1996 and 2001.

This three-year agreement ran its course, necessitating new wage negotiations in 2004. In July 2004, after four months of negotiation, government declared a dispute after a failed conciliation process. Government had initially tabled an offer of 5.4%, which it subsequently increased marginally to 5.5% by shifting money from housing to wages. Unions had meanwhile dropped their demand far more substantially, from 10-12% to 8.5%. On 16 August the COSATU unions announced that they would embark on a programme of action in protest. Early the next year, Edwin Molahlehi, chairperson of the PSCBC, commented that the eventual signing of the multi-year agreement had been an important milestone, but “was not an easy task to achieve”.

In contrast to 2004, 2007 saw a major month-long strike that involved employees from across all 17 public sector unions and that resulted in an increase substantially higher than had been planned by government.

The 2004 agreement was due to lapse in July 2007. By October 2006 the unions had consolidated and submitted their demands. Government was meant to place its offer on the table in January 2008, but came with its first offer, which lacked detail, in February 2007. Government said that one reason for their delay was that they wanted to address the issue of recruiting and retaining professionals – an issue dealt with in the case study on the occupation-specific dispensation (OSD) for nurses. The unions, frustrated by the ongoing

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delays, declared a dispute in the hope that this would force the employers to provide more information more speedily.

The strike was successful to the extent that the state moved from its offer of 4% to a 7.5% basic increase outside of other benefits. The parties also entered in an agreement about the return to work, how pay would be docked, and developed a framework to conclude a minimum service level agreement. Aroun & Essa (2007) suggest that this settlement was the result of political intervention rather than collective bargaining. They quote the central executive officer of the metal and engineering bargaining council's view that government contributed to the problem by issuing ultimatums. Their informant noted that this tactic that was common during the apartheid years but was one that sectors with a more "mature" relationship tried to avoid.

Hassen (2007) observes that outsourcing has become a "strong feature" in the public service. He suggests that this is, at least partly, in response to relatively high entry-level wages for less skilled workers. Hassen states that unions perceive outsourcing as a disguised form of privatization. However, it seems that this issue has not been raised in a major way within public sector bargaining.

A problem that is to some extent peculiar to government bargaining is that the government budget is drawn up in advance of the bargaining process. This places limits on what government is able to offer in terms of increases, unless increases are balanced in reductions in the size of the workforce. The problem is not, however, insurmountable, as it is possible for government to introduce supplementary budgets to make up any shortfall.

### **Occupation-specific dispensation for nurses<sup>3</sup>**

In 2006 government announced that it would be introducing OSDs for selected categories of government employees. These dispensations were intended to address the fact that the standard salary packages negotiated in the PSCBC were not seen to be attracting and retaining sufficient workers in the targeted categories. Over the subsequent period, such dispensations have been discussed with unions representing a range of different categories, including nurses, teachers, social workers and prosecutors. This case study focuses on nurses. The shortages in this category have been exacerbated by the HIV/AIDS epidemic. The epidemic has both increased the demand for public sector nurses and exacerbated the pressures and difficulties faced by these workers. Public sector wages also have to compete with the higher wages in both the private sector within South Africa and a range of overseas countries eager to "poach" trained nurses.

As noted above, OSDs were mooted in the 2004 negotiations. They were officially announced in 2006 and it was clear from the start that nurses would be covered. However, negotiations commenced only in September 2007, as it took this time for government to develop the framework that would be used as the basis for the negotiations.

Nurses were the first group to reach agreement with government, and implementation began in March 2008, six months after originally planned by government. The nurses' agreement was followed in April 2008 by one with teachers. At the time of writing, social workers – who fall within the same Public Health & Welfare Sectoral Bargaining Council as nurses – had still not reached agreement with government and the issue had therefore gone for conciliation. One of the main stumbling blocks is that social workers feel that they should receive higher salaries than nurses.

A representative of the Democratic Nursing Organisation of South Africa (DENOSA) identified the five most important aspects of the new dispensation as follows:

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<sup>3</sup> J. "JC" Magagula and T. Gwagwa of the Democratic Nurses Organization of South Africa are thanked for their assistance with this case study.

- Extension of monetary rewards for qualifications beyond the few “scarce skills” previously covered to a wider range of specializations
- Development of a career path whereby nurses can move upwards further than through the small increases associated with the 15 notches previously provided for every salary level.
- Recognition and rewarding of years of experience, whether in the private or public sector, whereas previously only years in the public sector were recognised.
- Pay progression associated with two-yearly evaluations.
- Grade progression which allows a nurse to earn the salary of a higher level even without promotion to that level.

The introduction of the OSD resulted in a substantial increase for entry level nurses, from R86,000 per annum to R106,000. This increase was higher than initially proposed by government, which envisaged the starting salary of a nurse with a four-year qualification and one year of community service as being R90,000.<sup>4</sup> Government’s proposal for the entry level for those with specialities was R153,00 and this was revised to R160,000 through bargaining.

Every nurse already in employment was guaranteed some sort of increase. However, the extent of the increases varied widely depending, for example, on prior experience as well as specialisations. The OSD agreement, which has several long detailed tables, illustrates the complexity of the new system. The extent to which the pay progression will result in higher wages is not yet known as the first evaluations will only take place two years after implementation.

There are a total of around 110,000 nurses in the public sector, of which about 53,000 are members of DENOSA. About a further 40,000 work in the private sector or at municipal level, with a small number in the non-profit sector, giving a total of about 150,000 nurses registered with the South African Nursing Council as practising.

Five unions in total represent nurses in the bargaining council. The unions, for the most part, took similar positions in the OSD negotiations. Together, they were able to win a number of improvements to the original government proposal, in addition to the increase in the basic starting salary. Other gains included recognition of experience of those working in specialised areas without the necessary post-basic qualifications, rewarding of bridging courses for further qualifications, and expansion of the list of speciality qualifications from six to sixteen. The fact that the National Treasury (2008:49) had to allocate an extra R1 billion for implementation of the OSD in the middle of the financial year gives a sense of the real financial meaning of these improvements. One demand that the unions were not successful in winning was that the years spent doing nursing-type work before being registered with the South African Nursing Council would be counted.

In addition to union-employer disagreements, the unions had to deal with opposition from some of their members while the deal was being negotiated. In early 2008 there was, for example, a strike at Johannesburg hospital during which a DENOSA shopsteward was attacked. Members were angry that the OSD did not cater for specialities other than post-basic training. Other members of DENOSA and other unions were confused by the fact that the Minister of Health’s media statement had referred to an 88% increase, without making clear that this would apply only to those individuals who had a speciality and were currently on the basic entry level salary. Further, both the South African Democratic Nurses Union and NEHAWU claimed, at least in the first months, that some provinces were implementing the OSD incorrectly (Sowetan, 19 March 2008). In late October 2008, Business Day (28 October 2008) reported that some DENOSA members were still not getting the salaries to which they were entitled under the OSD.

<sup>4</sup> [www.info.gov.za/speeches/2007/07061811451001.htm](http://www.info.gov.za/speeches/2007/07061811451001.htm), downloaded 10 Aug. 2008.

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The OSD only applies to nurses in the public sector. However, once the OSD agreement was concluded in the public sector, one of the largest companies, Netcare, adjusted its own salaries in line with the OSD.

Overall, the OSD can be claimed as a success in giving greater rewards to a large, underpaid and largely female workforce that delivers a critical services. However, the OSD has not yet solved one of the main problems it was intended to address. Thus, in late October 2008, a response to a parliamentary question acknowledged that there were 16,362 vacant posts for professional nurses in public hospitals, 5,752 for staff nurses, and 10,403 for medical doctors (Business Day, 27 October 2008).

## **Collective bargaining and HIV/AIDS in the mining industry<sup>5</sup>**

The previous case study could be seen as a response to the HIV/AIDS epidemic from the point of view of service providers to the extent that the HIV&AIDS pandemic has increased the urgency of the need to address health worker shortages. This case study, of the mining industry, reflects a response from the point of view of affected workers. While the mining industry is not the only one in which there have been collective bargaining and agreements in respect of HIV/AIDS, it was one of the first to have these and, in some workplaces, to introduce anti-retrovirals for employees. And even today agreements on HIV/AIDS are not commonplace. Thus Elsley (2007) notes little evidence of workplace responses to HIV/AIDS in the large collection of agreements that are housed with the Labour Research Service, outside of road freight and clothing industries, and some of the larger employers who engage in decentralised bargaining.

The mining industry, like road freight, is one which has been even more severely affected by HIV/AIDS than many others, with the Chamber of Mines estimating that anywhere between 12.5% and 25% of employees are infected. This high rate is in part due to the industry's heavy reliance on an almost exclusively male and largely migrant workforce, among whom many live and work away from their families.

While the case study has HIV/AIDS as its focus, it includes a description of the collective bargaining set-up in the industry, as an example of centralised bargaining in an industry that is not at present covered by a bargaining council.

Godfrey et al. (2007) describe this system of non-statutory centralised bargaining that covers most of the gold and coal mining operations which make up a large part of the South African mining industry. The Chamber of Mines is the employer party to the bargaining forum, while unions are represented by the National Union of Mine Workers (NUM)(by far the largest), United Association of South Africa (UASA), Solidarity and the South African Equity Workers' Association. NUM, with a much larger membership than any of the others, plays the lead role on the employee side. Some smaller unions have members, and even recognition agreements, at specific mines, but are not represented in the bargaining forum. Within the forum, there are three bargaining units: 'category 3 to 8 employees', 'miners and artisans', and 'officials', with the first unit being far larger than the others.

Although there is a single forum, there is not necessarily a single agreement. A two-tier system of bargaining allows for unions and the Chamber to negotiate agreements at sectoral level, with further mine-level negotiations on operational as well as substantive issues. Especially for wages, Godfrey et al. (2007) suggest that employer companies often use the forum to assist in reaching separate agreements with unions operating at their mines. There are also, however, some centralised agreements on issues such as job grading and long service awards and a range of initiatives in respect of industry-wide or broader

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<sup>5</sup> This case study draws on interview with V. van Vuuren of Business Unity South Africa and F. Rander of the Chamber of Mines.

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socio-economic issues. The main agreement's scope also extends beyond the parties to the extent that it specifies that where sub-contracting occurs, the main employer, i.e. the contracting company, is responsible for health and safety standards. The contracting company must also ensure that sub-contractors, who are often small businesses, register under relevant laws and make related contributions.

In 2003, NUM – with support from Solidarity and UASA – tabled a demand for a single bargaining council covering gold, coal, platinum, diamonds and base metals. They hoped that such a council could harmonise benefits across all these sectors. The Chamber and unions agreed that there should be a joint investigation of centralised bargaining, including the possibility of establishing a bargaining council. This was duly done, but no firm decisions have as yet been taken. One of the biggest stumbling blocks is how to deal with smaller mining operations.

NUM recognises that there are both advantages and disadvantages to collective bargaining (Labour Bulletin, June 2004d). In particular, it has recognised that reaching agreement is not enough, but that this needs to be followed by careful monitoring to ensure that the agreements are monitored. Such monitoring had originally been left to branches, but in 2004 NUM estimated that seven-tenths of issues were not implemented with this approach. The union therefore resolved to supplement branch monitoring with other approaches.

NUM's initiative in respect of the industry's addressing HIV/AIDS go back to at least 1991, although already in 1985 a survey had been conducted to estimate prevalence levels among mining workers. NUM's initiative resulted in an agreement which set out principles on issues such as non-discrimination, confidentiality, training and benefits and pre-employment testing. In 1992/3 and in 1995 bilateral meetings were held to discuss the issue. These, in turn, resulted in a range of initiatives, including the establishment of an HIV/AIDS Committee within the Chamber of Mines. Meanwhile individual mining companies supported a range of initiatives, ranging from prevalence and knowledge-attitude-practice surveys, through home-based care programmes, training of nurse counsellors and peer educators, free condom distribution, awareness and education programmes, free treatment for sexually transmitted infections, and treatment of opportunistic infections. Companies also increasingly started making their HIV/AIDS programmes available to surrounding communities and making facilities available in partnership with government. Once anti-retroviral treatment became available, some mining companies began supporting employees to access treatment.

The Chamber of Mines estimates that mining companies spend between R220 and R480 annually per employee on workplace-based HIV/AIDS programmes. There is further expenditure on local community programmes as well, in some cases, as for antiretroviral treatment. These substantial expenditures have been encouraged by estimates of the cost to companies of the epidemic. For example, a 2003 estimate put the average cost per employee dying in service from HIV/AIDS at R185,000. More than half (59%) of this amount was attributable to medical costs, 22% to lost productivity, 15% to absenteeism, 3% to funeral leave, and 1% to training costs.

While many of the discussions as to what should be done occurred within the forum, the Chamber maintained from the start that health was not a bargaining issue, and that employers were obliged to do whatever was necessary to have a healthy workforce. From its side, NUM has placed health care for all and access to such care for dependents on the table in the two-yearly wage negotiations, but has put forward its HIV/AIDS-specific proposals in other forums and "platforms". Nevertheless, there seems to be general agreement that without pressure and ideas from NUM, the employer initiatives would not have been extensive as they are. Further, clauses on HIV/AIDS are included in the main agreements on wages and other conditions of employment. These agreements specify, among others, that there should be "clear and defined budgets" in respect of prevention, behaviour change initiatives, wellness programmes that include counselling, and awareness-raising. Both the coal and gold mining agreements also specify that joint

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HIV/AIDS partnership structures should interact with housing forums in an effort to accelerate provision of family accommodation. With this they recognise the link between single-sex hostels and the spread of HIV/AIDS.

In 2001 the Department of Mineral and Energy, the Chamber and NUM formed a tripartite committee on HIV/AIDS. The committee agreed that there would be two-yearly tripartite summits, with the first in 2003. At about this time, individual companies also began signing HIV/AIDS agreements with unions and the Chamber entered into an agreement with the centralised recruitment agency to provide home-based care for terminally ill miners who had returned to homes in rural areas.

## **Bargaining in local government<sup>6</sup>**

As noted elsewhere, municipal government employees are not currently considered part of the public service. The 284 municipalities and their employees are therefore not covered by the public service bargaining councils. This case study therefore supplements the one above on public sector bargaining.

The COSATU-aligned South African Municipal Workers Union (SAMWU) is the majority union at the municipal level. It was formed in 1987 and in the early 1990s was the fastest-growing union in the country. By 1995 it had 100,000 members. Today it has close on 122,000 members. The union initially had mainly blue collar members. As blacks moved into higher positions and management, the union began to gain members among these ranks as well.

During apartheid there were two types of industrial councils at municipal levels, namely in-house arrangements in eight cities and two provincial-level councils that covered smaller towns (Mawbey, 2007). As the major changes in local government came about post-1994, SAMWU used the opportunity first to establish an informal national bargaining forum and subsequently, in 1997, to establish centralized bargaining through the South African Local Government Bargaining Council (SALGBC). SAMWU also attempted to influence the shape of local government in the new dispensation by nominating people to represent COSATU in the National Local Government Negotiating Forum which developed the framework for the three-stage transition to democratic local government.

The Independent Municipal and Allied Trade Union (IMATU) is the second union party in SALGBC. It was formed through a merger of the old South African Municipal Employees association, two city-based white unions in Durban and Johannesburg and a union representing black managers from black local authorities. After its formation, many coloured and Indian workers also gravitated to it and in later years IMATU has recruited some more black managers, as well as some blue collar workers. The change in membership has been accompanied by a shift in the union's stance. For example, whereas IMATU did not earlier participate in SAMWU's strikes, it has done so in more recent years. The SALGBC's constitution states that agreements require a two-thirds majority. This clause gives IMATU an effective veto in any disagreement.

Over its ten-year history, SALGBC has seen collective agreements reached on wages, conditions of service, job evaluation, organisational rights, medical aid, disciplinary and grievance procedures, an essential services framework, agency shop, levels of bargaining, levies, and rules for conducting proceedings. In 2007, most of these were consolidated into what became the "main" agreement, which was extended to non-parties by the Minister of Labour. The provisions in respect of organisational rights are more generous than in many other sectors. In addition to the rights provided in the LRA, the SALGBC agreement provides for 15 days time-off annually for shop steward training,

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<sup>6</sup> This case study draws on an interview with J. Mawbey of SAMWU.

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constituency meetings during working hours, full-time shop stewards (by district for smaller municipalities), additional time-off for office bearers and local labour forums.

The fact that the SALGBC, unlike the PSCBC, is not explicitly provided for in the LRA has allowed employers to threaten to withdraw from the council when they have not agreed with a union position. This happened in 2003, when the employer party, the South African Local Government Association (SALGA), was unhappy about SAMWU's opposition to a proposed amendment that would have excluded entities that had been commercialised or privatised from the bargaining unit (Labour Bulletin, June 2004b). This is an important issue at local government level, where there have been many examples of various forms of privatisation, commercialisation, outsourcing, and use of EPWP and other forms of "community" employment to provide services which standard municipal employees would otherwise provide. On the issue of the 2003 proposed amendment, SAMWU declared a dispute through the CCMA. SALGA finally agreed to an amended definition of the scope of the council that includes commercialised municipal entities, but still excludes private sub-contracts and labour brokers. The debates around the wages and conditions of workers in commercialised, privatised and otherwise outsourced forms of provision have continued until today.

A further issue of debate is which workers should be included when calculating the wage gap and determining the appropriate wage curve. SAMWU's current position on this is that the wages of casual and contract workers as well as the salaries of municipal managers should be considered when negotiating wages. SALGA opposes this and, in particular, is concerned to protect managers' salaries from regulation, despite extensive evidence of excessive packages and performance bonuses. At present managers' remuneration is covered by Department of Provincial and Local Government regulations. The union had hoped that the SALGBC could regulate this.

Another recent issue is how the OSD for nurses will affect the wage curve as some municipalities have health services that employ nurses. SAMWU does not organise in the public sector and was therefore not part of the negotiations around the OSD. But the increases in salaries of public sector nurses have led to demands from some municipal nurses that they be transferred to provincial employment.

These debates are connected to another issue that has received ongoing attention within the SALGBC, namely SAMWU's attempts to reduce what were significant disparities in wages, conditions and benefits across the different municipalities. Some of these municipalities covered poorer areas which had not had local government at all during the apartheid years. Others covered wealthy urban agglomerations that had sophisticated administrations for white areas during apartheid, but after 1994 were extended to cover the black townships and informal settlements.

When the SALGBC was established, many municipal employees were earning less than R1,000 per month. Today, the bargaining council agreement sets the minimum wage at R3,350. This represents a 350% increase on the lowest wages over a period that saw inflation increase by 80%. Wages for employees in metropolitan areas and those who earn above the minimum in other areas have increased at a slower pace, but have also outstripped inflation. Similar patterns of substantial improvements for the worst off alongside smaller improvements for the relatively advantaged are observed in the subsidiary agreements that cover non-wage issues. In a few cases, the best-off workers have lost some of their previous advantages. For example, the introduction of a standard medical aid subsidy was of great benefit to the large number of workers who previously did not have such a subsidy or could not afford the required member contribution. In the Ekurhuleni municipality, some workers for whom the municipality previously contributed 100% of the membership fee must now contribute 40% themselves. Similarly, agreement on a 40-hour working week meant longer hours for some administrative staff in large cities whose hours of work had previously been shorter than this.

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When SALGBC was established, the parties agreed that a databank would be established that would record wages and conditions in each municipality, as well as other information, such as that relating to municipal budgets. A specific agreement of February 2003 provided a more detailed list of the information that municipalities should submit to the data bank. Such a data bank would have allowed for more informed, “evidence-based” bargaining. However, municipalities stopped submitting regular data when the facility to upload data from their payrolls at any point in the year was removed. SALGBC has thus not been able to establish the hoped-for consolidated data bank. This has hampered moves towards aligning wages and conditions.

## **Black economic empowerment**

As discussed above, black economic empowerment (BEE) has been an important policy thrust in post-apartheid South Africa, especially during the Mbeki years. As also discussed, the promotion of small business that is part of this thrust has in some cases presented obstacles to achieving improvements in employee wages and working conditions. This sub-section presents two case studies of black economic empowerment initiatives that have attempted to benefit substantial numbers of ordinary employees, as well as a third case study related to the 2010 World Cup, which is scheduled to take place in South Africa.

The first example concerns the agreement announced by AngloGold Ashanti, one of the major mines, with unions NUM, USASA and Solidarity, and black empowerment company Izingwe Holdings (Fine, 2007). The agreement involved the parallel establishment of an employee share-ownership (ESOP) scheme and a black economic empowerment transaction. Fine, an employer representative, argues that this agreement was unique in terms of scope as well as the lengthy union-employer consultation and negotiation which preceded it. As he explains:

It is, and was, the logical extension of the company’s overall approach to labour relations. That approach is based, in essence, on a recognition and appreciation of the value to the company of strong collective bargaining processes where potential conflicts of interest need to be dealt with, such as in the distribution of ‘surplus’ between shareholders and workers, and cooperative management/labour relationships in areas where employee and employer interests would both be advanced by these. (Fine, 2007: 40).

In 1988 Anglogold had established an ESOP with which Solidarity and UASA were comfortable but NUM was not. NUM’s opposition was heightened by the fact that the deal came soon after the large strike of 1987. NUM saw the benefits gained by some employees through the ESOP as an attempt of co-opting workers and weakening the unions.

In the early 2000s the issue emerged again when Anglogold was assigned “new order” mining rights under a new mining dispensation. The Department of Minerals and Energy stipulated that the company must, within two years, enter into combined ESOP/BEE transaction equivalent to 6% of its South African operations in order to gain these rights.

In February 2004, management was invited to participate in a pre-congress NUM strategic workshop. At the subsequent congress, NUM reversed its anti-ESOP position, which it had held for 16 years. Nevertheless, in the negotiation around the new ESOP that followed, NUM continued to express concerns as to how an ESOP would affect collective bargaining. The main concern in this and other similar cases was how the fact that workers might benefit from “profit” would affect negotiations as to how much should be allocated in terms of wages. The ESOP Shop, a consultancy run by a former trade unionist, was brought in to advise the parties, as were financial institutions. Fine argues that these negotiations were not collective bargaining in the narrow sense, as they were not distributive bargaining. Nevertheless, they involved intense negotiation, and the terms of the agreement between Ashanti and the unions were recorded in a collective agreement.

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The ESOP that emerged involved more than 30,000 employees, most of whom were in lower job grades and had very limited savings. All those benefiting from the management share scheme were excluded. Because of the immediate relatively poverty-stricken situation of most workers, it was agreed that there should be tangible benefits within a reasonable time period. But it was also recognised that the ESOP could be a good basis for long-term savings for pensions. It was agreed that each worker would receive benefits in five equal annual tranches between the end of years three and seven, and that they would be encouraged to put the money into long-term savings.

The second BEE example involves the transfer, in 2006, of 43.6% of the ownership of bus company Putco to blacks (Barrett, 2006). The deal is particularly intriguing as Putco is the largest bus operator in the country, with its main business involving provision of public transport for the working class. In this deal, the South African Transport and Allied Workers Union (SATAWU), Retail and Allied Workers Union, National Union of Metal Workers of South Africa and Solidarity were the union partners and Putco's bargaining unit, covering 3,376 of the total of 3,700 Putco employees, was used as the locus for negotiations.

Putco was previously listed on the Johannesburg Stock Exchange in 2005, but delisted in 2005 to make the black economic empowerment deal possible. When a proposed deal with the first black company, Safika, fell through, SATAWU demanded that workers in the bargaining unit be included. The ESOP Shop was again brought in to advise, and agreement eventually reached that 16.8% of the company's shares would go to workers within the bargaining unit. A further 14.5% was allocated to employees from supervisors upwards outside of the bargaining unit. The agreement included part-time workers, and also required that all those who were employed casually without good reason should immediately be made permanent. In addition to the 31.6% of shares allocated for employee ownership, a further 12% was allocated for outside groups, including black women and black disabled investors.

Workers had to pay 1c per share, with a further R1.25 funded by a loan from the former owners of the company. Ten days after the agreement had been signed, 90% of employees had signed up.

Before concluding the agreement, workers met four times to discuss what having an ESOP would mean for the power of the union and in terms of the impact on wage bargaining. The final agreement alleviated concern over the latter point by stipulating that 66% of annual profits would revert to the company and be available for wages, with the remaining 33% used to repay the loan from the previous owners and to pay dividends.

The third case study (Grawitzky, 2008) is more adversarial and involves attempts by employees to gain better wages and working conditions when building stadiums for the 2010 World Cup. The case is relevant from a BEE perspective because many of the sub-contracts for these stadiums have been purposefully awarded to black-owned companies. This example also highlights a potentially more negative side of BEE.

The case study described here again involves NUM, which engaged on this issue after a series of illegal strikes. One of the issues raised by striking workers was that employees of sub-contracting companies often worked alongside workers of the main contractor doing similar work but with different, inferior wages and conditions. When workers raised this issue, the BEE companies argued that they should get concessions because they were black. In a subsequent legal strike at Moses Mabhida Stadium in eThekweni, one of the demands was again that sub-contractors pay workers same rate as those employed by main contractors.

The size of the wage gap was large, in that the employees of the main contractor were represented by NUM and received wages of R11.90 per hour, as specified in the civil engineering agreement while some of the employees of sub-contractors were covered by the sectoral determinations statutory agreements for security and cleaning. Yet others were not covered by any measure. Their pay varied between R5.50 and R6.00 per hour i.e. only

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about half of the amount received by the main contractor's employees. Very few of the sub-contracted workers were union members when they originally embarked on the strike. By the end of the strike, NUM had recruited 98% of the workforce.

The dispute eventually had to be referred to the CCMA. The final agreement provided for two lump sum payments, of R2,000 and R4,000 respectively, to be paid to workers if the contract was completed on time. The CCMA also subsequently tried to engage with those involved in World Cup projects at an early stage to try to provide a recurrence of similar situations.

## **Collective bargaining in the clothing industry<sup>7</sup>**

This case study describes several aspects of the bargaining strategy of the South African Clothing & Textile Workers Union (SACTWU). It focuses on the clothing sector, although SACTWU also organises workers in textiles, leather and footwear. It pays particular attention to the issue of narrowing wage gaps and productivity bargaining.

Virtually all aspects of bargaining in this sector are affected by the fact that the clothing industry has been particularly hard hit by the post-apartheid South African government's swift tariff reductions. Greenburg (2005) estimates that 80,000 clothing workers lost their jobs in the 1990s as inexpensive clothing and textiles were imported from East Asia. A Labour Bulletin article of 2005 (Labour Bulletin, 2005) quotes a SACTWU estimate that 30,000 jobs had been lost over the previous two years in clothing, textile, footwear and leather, and that clothing imports from China alone were four times their value in 2002. SACTWU's report to its 10 National Congress observes that it had records of 38,435 clothing jobs lost and 170 factories with 21,121 workers closing down over the preceding three years. As a result of these closures, the total number of workers registered with the bargaining council fell from 99,128 in July 2004 to 72,571 in July 2007, while the number of workplaces fell from 1,119 to 1,015 (SACTWU, 2005:32).

These pressures have resulted in the union developing a bargaining strategy that seeks to balance improved wages and conditions with protecting jobs. To support their non-bargaining efforts on the latter count, the union has also tabled demands for information on local and foreign customers of manufacturing and where made-up garments are sourced. This is used to strengthen the union's "buy local" campaign. Beyond the bargaining council, the union submitted an application to NEDLAC to hold a protest demanding that retailers agree to source goods locally (Labour Bulletin, 2004: 17). The union has also worked with the Department of Trade and Industry and employers to develop a plan for the industry. To address the outsourcing and under-cutting that has been encouraged by the pressures on the industry, SACTWU played a key role in getting the LRA amended to cover so-called "independent contractors" and to strengthen the powers of bargaining councils in enforcing compliance with gazetted agreements. The union has also made efforts to organise workers in the cut-make-and-trim (CMT) operations that constitute one form of outsourcing. Indeed, Greenburg (2005) found that in one of the CMT operations she visited, the workers were SACTWU members and enjoyed the correct wages, benefits and conditions of work.

Unlike in many other bargaining councils, where the employer side consists of far fewer parties than the employee side, in clothing the clothing agreement is between SACTWU, on the one hand, and six employer organisations. Of the latter, five are specific to the clothing industry, while the sixth is the Consolidated Association of Employers of Southern African Region (CAESAR). CAESAR is known for its strong support for small businesses. SACTWU represents more than three-quarters of workers covered by the council.

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<sup>7</sup> This case study draws, among others, on interviews with W. van der Rheede and F. Abrahams of the Southern African Clothing & Textile Workers Union, as well as the report to the SACTWU's 10th national congress (2007).

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The current single national council resulted from the amalgamation of several regionally based councils which produced seven different agreements. The single council, while still having geographical chambers, produces a single “main” agreement. The amalgamation reflects a more general SACTWU campaign to move to centralised bargaining within each of the sectors in which it operates. At the time of writing, the union bargained in three national bargaining councils, three regional bargaining councils and two national distribution forums which together covered almost 90% of the union’s membership.

The 2008/09 agreement provides for a 9% increase in total labour cost for workers in metropolitan areas, of which 0.5% is allocated for plant-level productivity incentive schemes. In other areas, there is a higher increase. The highest increase stands at 14.24% for general workers in non-metro B area. There is no provision for productivity incentive schemes in non-metro areas. These areas have been excluded from the incentive scheme at this point because of the need to concentrate on closing the wage gap. It was therefore agreed that the scheme should be piloted in the metro areas where SACTWU has more of a presence, and can later be rolled out.

The differential increases found in the 2008/09 agreement were also present in previous agreements. The report to the 2007 congress notes that, despite the efforts to close gaps, wage settlements for metro workers over the previous three years more or less kept pace with inflation while those for other workers beat inflation, sometimes by substantial amount.

As another example of attempts to have parity among workers, the agreement states that all contract employees with more than 12 months employment must be converted into permanent employees, and that all contract workers are entitled to a pro-rata share of all statutory payments. Contract workers employed at the end of November are entitled to full pay for public holidays over the Christmas/New Year period.

The 2007/08 agreement makes provision for the introduction of the Industry Protection Fund where it does not already exist. Both employer and employee are required to pay a minimum of 10 cents to this fund each week, which is included as part of total labour costs. The agreement also includes an annexure containing a Code of Good Practice on Key Aspects of HIV/AIDS and Employment. This begins with a statement recognising that “women more vulnerable to infection in cultures and economic circumstances where little control over their lives” – an important statement in a heavily female-dominated industry.

In respect of the productivity incentive, the agreement specifies that a bank account must be established into which the employer must pay the 0.5% weekly. Each workplace is given two months to reach agreement on how the incentive scheme will work. If this has not been done within two months, the money must be paid out to workers until there is such agreement. The agreement specifies further that all workers must benefit from the scheme, and that it may not entail downward variation.

The 2005/06 agreement already included a productivity provision, and also made provision for a “twilight shift” to help with job creation. In 2007/08 there was again a productivity provision. Alongside providing for productivity initiatives in these agreements, the union has engaged with employers in several processes facilitated by outsiders which have attempted to reach agreement on productivity schemes. The second such process resulted in an agreement in May 2007 that the parties would initiate pilot incentive-based productivity schemes over the next few months at selected companies and use the results to introduce, if agreed, industry-wide productivity arrangements from 2008. However, to date there have been very few examples of anything beyond simple incentives related to absenteeism and coming early to work that exist in many of the larger metro-based companies.

Levi Strauss stands out as an example of a company with which SACTWU has, since 2004, very successfully collaborated with the employer in developing a productive

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incentive scheme. This has been a strong factor in ensuring that the Cape Town factory is one of the five remaining Levi-owned factories in the world. Indeed, the factory has moved from being the 13th most profitable Levi operation to third place in 2005, and experienced a 25% increase in turnover in the space of one year. Workers, meanwhile, can earn “30 percent above industry norms”<sup>8</sup>. From the workers’ side, there was initially some level of distrust with the computer-based system that calculated their bonus. To address this, the factory reverted to a manual system which is easier to understand.

However, as at the time of interview, no workplaces had come forward with proposals for productivity incentive schemes in response to the provisions in the 2007/08 agreement. This is a disappointment to the union, which had got a mandate from members to include the 0.5% provision. The union had hoped that the provision would encourage employers to abandon a “defeatist approach” to the problems facing the industry.

SACTWU has also not had an easy ride in taking forward other initiatives to protect workers in the industry. Some of the employer attacks have focused on weakening the bargaining council and the protection it affords. In December 2005, SACTWU collaborated with the council and Minister of Labour in a legal battle against the non-metro based employer associations who were trying to interdict the Minister of Labour from gazetting and extending the 2005 clothing wage agreement to all non-party companies. This would have broken a practice that extended back to before the 1990s of the agreement being extended to non-members. The employers, on the advice of their attorneys, settled before the court proceedings started and paid part of the legal costs incurred by the bargaining council, Department of Labour and SACTWU. In 2006, the employer associations again refused to agree to extend the gazetted main agreement. SACTWU declared dispute and, following arbitration in August 2006, the agreement was extended.

SACTWU has collaborated with the bargaining council to refute arguments that it represents only big businesses through annual analyses of the size of registered companies. In July 2006, the analysis showed that of all party employers, 17% were large, 7% micro (1-5 workers), 9% very small (6-10 workers), 37% small (11-50), and 30% medium-sized (51-200). Of non-party employers, 8% were large, 18% micro, 13% very small, 41% small and 19% medium-sized. The number of large companies among party employers fell by three percentage points between 2005 and 2006.

## **Collective bargaining in small workplaces in agriculture**

Godfrey et al. focus on some of the more established and better known actors in their case studies of collective bargaining, although they also refer to the simple agreements that are found in small retail establishments. The report to congress (Sikhula Sonke, 2008) of the secretary of Sikhula Sonke, a woman-led union that organises agricultural workers in the Western Cape, gives some further sense of the small end of the scale. At the time the report was compiled, the union had a total membership of 3,644 members, and represented the majority of workers on 116 farms, on 100 of which it had established farm committees. The union had 57 recognition agreements with employers, 6 of which had been signed in 2005, 21 in 2007 and 30 in 2008. All these agreements entitled shop stewards to paid time off for union activities, and all covered health and safety in the workplace. In the twelve month period covered by the report, the union had entered into 20 collective bargaining agreements. All provided for collective bargaining, three-quarters stipulated that toilets must be provided in the vineyards, half provided for an annual bonus, half provided for paid maternity leave, and three provided for day-care facilities for children. The workers covered by these agreements would also have been covered by the sectoral determination for agriculture. However, the report notes that the local Department of Labour lacked capacity to enforce its provisions.

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<sup>8</sup> <http://www.agoa.info/?view=.&story=news&subtext=663>

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## Wage-setting in the retail sector<sup>9</sup>

The retail sector is interesting because of the way it combines a mix of different forms of wage-setting, including a relatively recent sectoral determination. This diversity, and the failure to establish a single bargaining council that covers the full sector, is not surprising given the extreme diversity within the sector. At the one end of the spectrum are the large multi-national supermarkets such as Pick 'n Pay, Spar and Shoprite-Checkers. At the other end are small, informal family businesses.

The COSATU-aligned SACCAWU is the largest union in the sector. It estimates that its collective agreements cover about 150,000 employees in the sector. If one adds a small further number for other, smaller unions, only about 20% of all workers in the sector are organised. Again, this is not surprising given the extremely large number of small enterprises.

In 2007, SACCAWU was involved in bargaining at 32 national groups, at approximately 250 medium-sized firms, and at 150 small firms. Most of the large firms engaged in national-level bargaining that covered all branches that they fully owned. These agreements did not, however, cover their franchise operations. The extent of franchising has increased over recent years. SACCAWU has risen to the challenge and managed to organise many of the employees in franchised branches. The sectoral determination for the sector also provides some protection by its lack of distinction between franchised and other operations and by including merchandising.

Protection of casual workers has been an issue both within bargaining forums and in the drawing up of the sectoral determination. The latter categorises most casual workers as flexi-timers. These workers are covered by the determination, although there is no premium for shorter hours as found in the domestic worker determination. Within the bargaining arena, some employers have objected to casuals being included in the bargaining unit. SACCAWU has committed to organising and including flexi-timers in all bargaining units despite the difficulties in doing so. Godfrey et al. (2007) speculate that the provision for flexi-timers in the determination encouraged some employers to agree to their being included in the bargaining unit.

Pick 'n Pay is unusual in including productivity and training in the collective bargaining agreements. Most other employers have separate committees for dealing with skills development and employment equity.

Godfrey et al. (2007) compare the scope and complexity of agreements reached with major retailers with those that SACCAWU entered into with smaller retailers. They find that the latter are often very short, sometimes handwritten, and generally deal only with wages and annual bonuses. However, agreements with medium-sized employers are more substantial.

The sectoral determination does not differentiate between large and small businesses. This contrasts with the approach taken in the later hospitality determination where a lower wage was specified for businesses with fewer than ten employees. The danger in specifying a single minimum is that this can become the maximum as well as the minimum. Where there is strong union organisation, this effective "downward variation" of wages in better-paying firms can be avoided. This might be the case in the larger retail firms.

## Collective bargaining on gender issues

SACCAWU also provides our example of explicit engagement on gender issues in collective bargaining. The union began making women-specific and gender-related collective bargaining demands in the 1980s and has continued these efforts up to the

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<sup>9</sup> This case study draws heavily on Godfrey et al. (2007).

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present. In particular, the union has attempted to include maternity leave and parental rights in agreements for all companies in which it organises, and to improve these rights in existing agreements. While significant progress has been made, this has at times been hampered by the fact that male-dominated negotiating teams do not always see this as a priority issue while some employers feel that these are private issues that should not be addressed through the workplace.

The union has gender structures that have spearheaded the work on parental rights through campaigns, educational programmes and policies, and development of a parental rights model proposal which is used as the basis for negotiations. The model proposal includes paid maternity and paternity leave, ante and postnatal care paid leave, social security provisions as well as adoption leave, stillbirth, miscarriage and abortion leave. Many of these provisions have already been achieved at both big and small companies. A recent strategy that has contributed to the union's achievements in respect of parental rights has been the election of company-based (female) gender co-ordinators who sit on the national negotiating teams from where they ensure that gender demands are included in the list of demands submitted to management.

In Ellerines, a large clothing chain, the parental rights proposal remained a secondary issue for 13 years. Agreement was concluded with the company after women shopstewards who had been part of the union's three-year gender empowerment programme took leadership positions on the national negotiating team. This company also has a national company-based gender co-ordinator. A further factor contributing to the success was that the union official responsible for the company is a gender-sensitive person who believes that all demands are equal in status.

Parental rights are generally negotiated as a separate process, given the number of issues that need to be negotiated and the level of attention needed. On average, it takes about a year to conclude an agreement, with three to four sittings of the negotiations team. There are both advantages and disadvantages to having a separate process. The advantage is that it is not linked to wages and other issues and trading off of parental rights is thus not an option. Separate negotiations also permit sufficient attention and time to be given to ensure a good agreement. The disadvantage is that because of the long process involved it can easily be neglected and forgotten.

SACCAWU has over the years demonstrated its belief that women and gender demands are trade union demands and has committed the necessary resources to ensure that this is taken forward. The union's experience demonstrates the role that gender-conscious woman can play in ensuring that these issues are addressed.

## **Concluding remarks**

The first sections of this report describe the context in which collective bargaining and industrial relations more generally currently occur in South Africa. The discussion describes the historical evolution of the system into the current relatively robust set-up. The preceding section illustrates how this system has been used in a range of different situations to address issues that include wages but extend quite far beyond them. The examples span both government and private sector, and primary, secondary and tertiary sectors. Issues directly addressed either by these examples or covered in the preceding text include improved wages and conditions, the size of the employed workforce, social security, and various aspects of inequality. The examples in the preceding section also illustrate how the wage and other negotiations address or are affected by issues such as the HIV&AIDS pandemic, black economic empowerment, international trade competition, and gender. Race is a recurring theme, which is sometimes implicit and sometimes explicit. In particular, the attempts across several of the case studies to minimise wage gaps between lower- and higher-paid within a sector is, in reality, simultaneously an attempt to diminish

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racial gaps given that the lower-paid occupations are still dominated by blacks while whites are over-represented in the higher-paid jobs.

The earlier sections reveal that only a relatively small proportion of employees are currently covered by collective bargaining agreements even if, in theory, virtually all are covered by the LRA. One of the causes of limited coverage is that the organisations on both the employer and employee sides cover only a relatively small proportion of potential members. There are also repeated references to the challenges posed to collective bargaining by informalisation in the form of contracting out, use of labour brokers, and the like. Some attempts have been made to address this problem, but it remains a threat to decent wages and conditions. The current economic crisis will add to existing challenges, as actors will need to ensure that the efforts to save jobs do not undermine wages and conditions. However, overall this paper suggests that the current South African system provides significant opportunities for actors with determination and imagination to address many of the issues that affect them and their members.



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## Appendix: Interviews

- Fachmy Abrahams Southern African Clothing & Textile Workers Union
- Thandeka Gwagwa Democratic Nursing Organisation of South Africa
- Jabulani Magagula Democratic Nursing Organisation of South Africa
- John Mawbey South African Municipal Workers Union
- Patricia Nyman-Appolis South African Commercial Catering & Allied Workers Union
- Faizel Randera Chamber of Mines
- Vic van Vuuren Business Unity South Africa
- Wayne van der Rheede Southern African Clothing & Textile Workers Union