

TRADE UNION CONSULTATION BY EMPLOYERS UNDER EMPLOYMENT EQUITY LEGISLATION

by Frank Horwitz*

1 INTRODUCTION

The challenge of globalisation and increasing competition has sparked a debate on whether national policy-makers and organisations are capable of ensuring that historically disadvantaged groups gain greater representation in organisations. A similar challenge is that of affording equality of opportunity to members of increasingly diverse labour forces in the global economy. The juxtaposition of the dual imperatives of competitiveness and high performance on the one hand, and workplace justice and equity on the other is especially challenging in an emergent market like South Africa. In this country a redress of past discrimination in the labour market in respect of skills development, and discriminatory employment practices has to take place without prejudice to the need for associated productivity improvement and increased global competitiveness (Webster & Omar 2003). These twin imperatives tend to be perceived as mutually exclusive by certain employers, but it is argued here that it is important to redress discrimination while at the same time boosting productivity if a high-skill economic model is to be followed. Particularly relevant is the nature and extent of trade union involvement in these processes, which is the focus of this study.

2 BACKGROUND

Employment relations in South Africa have undergone major changes over the past two decades. The Labour Relations Act of 1995 established a new labour court, a labour appeal court, and the Commission for Conciliation Mediation and Arbitration (CCMA). Industrial councils were transformed into bargaining councils. Over 70 per cent of the disputes referred to the CCMA are unfair dismissal cases. The CCMA handles both procedural and distributive or substantive justice in considering the fairness of a matter. The new Act sought to bring employment law in line with the constitution and with the ratified Conventions of the International Labour Organisation. A primary purpose of the Labour Relations Act is to enhance economic development, social justice, labour peace, and the democratisation of the workplace. It aims to give effect to and regulate the fundamental rights conferred by section 27 of the Constitution. Section 27 of the Constitution entrenches workers' rights to form

* Graduate School of Business, University of Cape Town and Visiting Fellow at the McMaster University, Canada & Donald Gordon.

and join trade unions, to strike for collective bargaining purposes, and their right to fair labour practices. Employers have the right to form and join employers' organisations and they have the recourse of lockout for the purposes of collective bargaining. Strike action is protected only if a specified dispute procedure is followed. The Labour Relations Act seeks to promote employee participation in decision making through workplace forums and employee consultation and joint decision making on certain issues. It provides for simple procedures for the resolution of labour disputes through statutory conciliation and arbitration, and through independent alternative dispute resolution services. Amendments to the Act came into effect on 1 August 2002. These amendments are designed to ease the strain on the CCMA caused by the large number of cases that have led to a backlog in arbitrations and to address other perceived shortcomings of the Act which are said to hinder investment. New forms of dispute resolution were developed to include pre-dismissal arbitration and one stop dispute resolution known as CON-ARB. Both unions and management have the power to request the CCMA to facilitate retrenchment negotiations in order to achieve constructive outcomes.

Although membership of the largest union federation the Congress of South African Trade Unions (COSATU), grew to 1,2 million members in the period 1979-2004, post-apartheid South Africa has seen a decline in union density in certain industries. The decline typically accompanied conditions of increased globalisation, organisational restructuring with consequential downsizing, increasing use of flexible non-core/non-standard labour with large job losses in formal sector firms in clothing and textiles, building and construction and mining for example.

A key challenge in employment relations is the need to shift from a legacy of adversarial relationships to employee participation and workplace co-operation; this in spite of an environment of increased employment insecurity. Without co-operation in the work place companies cannot compete in the market place. There is evidence in some sectors such as auto assembly that both parties understand this. We are increasingly seeing a blurring of the distinction between employment relations and HRM. The new agenda looks beyond the traditional collective bargaining items and adversarial dismissal disputes, to the nature and extent of trade union participation, for example in employment equity (EE) planning, enhancing workplace diversity and organisational transformation, to issues such as Black Economic Empowerment (BEE), performance improvement and human resource development. Trade unions have become more willing to take on employers on these issues. Finding a productive balance between equity and workplace justice imperatives on the one hand, and HR and employment relations strategies to enhance competitiveness on the other is a vital challenge for managers and unions in SA (Horwitz, Nkomo, & Rajah, 2004).

3 PURPOSE OF STUDY

In spite of all the debate on Employment Equity (EE) policy and practice, there is a paucity of research focusing specifically on trade union consultation in relation to EE or equal opportunity plans at the organisational level. While union movements have been consulted in the drafting of such legislation in South Africa and in a few other countries of which Canada is one, it is proposed in this investigation that their actual *de facto* participation in EE planning and implementation at organisational level is lower, notwithstanding statutory requirements for consultation with trade unions. The aim of this exploratory study is to gain a deeper understanding of trade union perspectives and involvement on consultation in the EE planning process in organisations.

4 BACKGROUND AND RATIONALE FOR EMPLOYMENT EQUITY

The policy and practice debate is very topical in South Africa, where the challenge is to address fairness in employment practices in order to create working environments in which employees can experience job satisfaction and also optimally achieve company objectives (Becker 1971). These are issues of critical importance in South Africa as it strives to compete in a global economy. Equality of opportunity, employment equity and related affirmative action policies that increasingly create diverse workforces have also become critical challenges for both public and private sector policy makers and managers (Jain, Sloane & Horwitz 2003). In South Africa workplace inequalities have historically been directed at the majority of the population. In 1999, 17 million people were estimated to comprise the South African labour force, with 34 per cent of the economically active population being unemployed (World Bank 2001).

Historically, the South African labour market was a distorted one, with access to education, skills, managerial and professional work based on race and ethnicity (Jain et al 2003). While statutory based racial discrimination has systematically been abolished since 1980 and significant labour law reforms have occurred in the last ten years, the apartheid labour market has left the majority of the economically active population of South Africa inadequately trained and economically disempowered, with the attendant effects of historical discrimination still evident today. According to the 2002-2003 annual report of the Commission for Employment Equity, the representation of Africans, Coloureds and Indians increased in top and senior management positions between 2000 and 2002, but the number of African, Coloured and Indian workers at the professional and middle-management levels grew more slowly over that period. This means that the pool from which to promote Africans, Coloureds and Indians into senior positions is declining, according to a report that appeared in *Business Day* on 14 July 2003. According to the report, Africans, Coloureds and Indians accounted for 19% and Whites 81% of all top

management positions. Africans accounted for 10% of top management positions (African males 8% and African females 2%), Coloureds 4% (Coloureds males 3% and females 1%), Indians 5% (Indian males 4% and females 1%) and Whites 81% (White males 71% and females 10%) of all top management positions (Commission for Employment Equity 2004:18). Africans accounted for 10% of top management positions in 2002 compared to 6,2 % in 2000. During the same period (2000-2002), there was an increase of 5,7% in the number of Africans, Coloureds and Indians and an increase of 1,3% in the number of females at top management level; an increase of 3,7% in the number of Africans, Coloureds and Indians and an increase of 0,6% in the number of females at senior management level; and a significant drop of 12,7% in the number of Africans, Coloureds and Indians and a drop of 12,3% in the number of females at the professionally qualified level (CEC: Annual Report 2002-2003 2004:ix). The South African Department of Labour (1999) notes that White people have a 104 per cent wage premium over Africans and that men earn approximately 43 per cent higher wages than similarly qualified women in similar industrial sectors and occupations. Accordingly, since 1994 the South African government has prioritised the redressing of years of workplace discrimination. In addition to introducing legislation aimed at protecting the rights of employees, the government has enacted laws aimed at eliminating unfair discrimination and promoting equity in the workplace as well as providing for a statutory levy-based system for skills development for working and unemployed people. While earnings differences for work of comparable worth can be identified at macro-level, in organisations one of the most difficult forms of unfair discrimination to prove is that of pay as there are factors other than race that could arguably account for differences in pay, such as experience and service or seniority. Trade unions, which have a direct interest in pay issues through collective bargaining, have been hard pressed, despite a legislated burden of proof on employers, to win labour court cases on claims of unfair discrimination, especially regarding pay (Horwitz, Jain, Steenkamp & Browning 2002).

This study provides a background to employment equity legislation in South Africa. It focuses on employee participation through trade unions and forms of consultation such as workplace forums, and on the legislative requirement for such consultation between unions and employers. This poses policy and practice implications for trade unions and managers as well as policy makers as they strive to promote employment equity progress.

5 LEGISLATIVE MEASURES

In the 1990s, South Africa enacted some progressive legislation impacting on the workplace, including the Labour Relations Act of 1995, the Employment Equity Act (EEA) of 1998, the Skills Development Act of 1998 and the

Promotion of Equality and Prevention of Unfair Discrimination Act of 2000. South Africa has patterned its Employment Equity Act and a part of the Constitution Act of 1996 such as section 9(2) of the Bill of Rights, on the Canadian Employment Equity Act and the Charter of Rights and Freedoms. The South African Employment Equity Act aims to redress historical workplace discrimination against Africans, Coloureds and Indians, as well as women and people with disabilities (all collectively referred to as the designated groups). The objective of the Act is to achieve equality in the workplace by the elimination of unfair discrimination and the promotion of equal opportunity through the implementation of positive and proactive measures (termed affirmative action measures) to advance members of the designated groups. The Act requires employers with fifty or more employees or those who have a certain specified financial turnover to undertake affirmative action measures. Such measures are aimed at ensuring that the designated groups have equitable representation and are consulted through their representative(s) or union in respect of such representation in all occupational categories and levels in an employer's workforce, consistent with their availability in the external labour market and their demographic representation within the economically active population. The Employment Equity Act requires that employers give due consideration to a "suitably qualified person" in the recruitment of members of designated groups. Such a person may have a combination of formal qualifications, prior learning, relevant experience or capacity to acquire, within a reasonable time, the ability to do the job. Capacity to acquire the ability to do the job may require training and support and the Employment Equity Act, along with the Skills Development Act, requires employers to provide training to members of designated groups. An employer is required to consult with a recognised trade union(s) on these decisions and on the Equity Plan as a whole.

6 ATTITUDINAL BARRIERS TO JOINT CONSULTATION ON EMPLOYMENT EQUITY

When considering government interventions to regulate labour markets, Walker (1993) notes that business leaders tend to be critical of such interventions. Opposition to employment equity legislation in South Africa has been manifested in arguments citing overregulation of the labour market, in a decrease in foreign and local direct investment and in willingness to engage in entrepreneurial initiatives, especially in the medium and small business sectors. Such sectors together contribute nearly 33 per cent of GDP and nearly 45 per cent of private-sector employment (Dickman 1998). Other arguments include those outlined in the following paragraphs (Thomas & Jain 2004).

Strategies to achieve employment equity, by definition, are meant to advantage those who have been most discriminated against historically. Inevitably such

beneficiaries have suffered disadvantage, not only in the workplace but also in obtaining access to other societal resources, principally education. The resultant shortage of skills in some sectors will make (primarily black) skills more expensive and unaffordable for smaller companies, further providing disincentives for investment and expansion. Added to this, it has been argued (Dickman 1998; Jafta 1998) that, rather than new jobs being created for new entrants to the labour market, employees will simply be shifted from some employers to others who can afford the higher wages. It is further argued (Dickman 1998; Jafta 1998) that heavy administrative costs in the private sector relating to compliance with the legislation will impact on company growth and, accordingly, on optimal growth in the private sector. The time and effort that will have to go into joint consultation and the potential divisiveness if employers consult designated groups only may raise workplace conflict potential. In addition, it is alleged that these kinds of costs to government, and hence the taxpayer, will be increased by the administrative burden of monitoring and enforcing the legislation. Legal structures would also be overburdened and unable to cope with cases where legal rulings will entail indirect opportunity costs through poor hiring decisions in order to reach the required employee targets. Jafta (1998) further argues that employment equity in South Africa may result in declining morale and loyalty among previously advantaged groups who, historically, have acquired skills relevant to achieving market competitiveness and who now feel they are not being consulted. She also notes that through the notion of designated groups, race classification will be heightened, promoting a social cost by reinforcing "negative stereotypes, racial tension and stigmatisation that thwarts efforts of members of the preferred groups to pursue their goals on merit and hard work rather than preferential treatment" (Jafta 1998:5). In addition, it is claimed by some that those from designated groups who still require training, development and consultation will have unrealistic short-term expectations that will further increase racial and social tensions within companies. Antagonistic perspectives on employment equity also assert that, because of the expectation of secured positions, a culture of entitlement "that undermines initiative, self confidence and self-reliance" occurs (Jafta 1998:5).

However, Jain (1999) argues that without government intervention in the form of employment equity legislation, less progress would be made by employers in redressing historical workplace inequalities. In support of this view, Thomas and Robertshaw (1999) note that, while business leaders recognised the implications of sociopolitical reform in the country as early as the 1980s, little change was evident over the ensuing years in terms of addressing workplace discrimination. Contrasting arguments are presented below to provide a coherent set of perspectives. In a country characterised by historical discrimination, employment equity legislation offers the possibility of helping to redress such unfair discrimination in the following ways:

- (1) Ensuring that employers focus on members of all designated groups, including Africans, Coloureds, Indians, women and people with disabilities and consult with their trade union(s) (Jain 1993).
- (2) Encouraging a greater number of employers to devise new and innovative measures proactively to recruit, promote and train people from designated groups. Such creativity would, hopefully, extend beyond the "poaching" of black employees by one employer from another (in order to achieve numerical targets only) to the systematic and holistic planning of staffing.
- (3) Motivating employers to develop comprehensive human resource information systems that could replace crude, unscientific and *ad hoc* practices so that charges of unfair discrimination could be addressed on a rational and scientific basis (Jain 1993).
- (4) Sensitising employers to labour market demographics pertaining to members of designated groups while developing their employment equity plans in consultation with trade unions (Jain 1993).
- (5) Black Economic Empowerment (BEE) is expected to further the achievement of EE goals and timetables (Thomas & Jain 2004).

7 EMPLOYEE CONSULTATION AND PARTICIPATION

A conceptual framework for evaluating trade union participation is required. In this regard, Anstey (1997) and Salamon (1992) define employee participation as a range of influence employees may have on decision making, ranging from task centred to power centred forms. Joint consultation is seen within this framework as task centred, with some degree of power to influence but not to make, negotiate or co-determine workplace decisions. It is an indirect form of participation in that employee representatives or shop stewards participate by representing employees. This is sometimes known as representative rather than direct participation. Internationally, there has been a growing trend in the last four decades or more towards worker participation in management. Some of the forms of worker participation and joint consultation have included just-in-time initiatives, especially in manufacturing firms started by Japanese companies, quality circles, self-managed teams as in General Motors/Saturn, safety and health committees mandated by legislation in several countries, information sharing programs, joint labour-management committees, employee ownership programs, and workers' representation on corporate boards of directors (Du Toit et al 2003). As du Toit et al (2003) note, systems of worker participation internationally take a variety of forms. The systems which parallel South Africa's system are the German and Dutch systems of works councils. In South Africa, a growing number of enterprises have introduced voluntary structures

to involve employees in aspects of decision making in order to enhance cooperation between labour and management and to promote "employee stakeholding and involvement in the wealth creation process" (Anstey 1997). Much of the debate regarding employee participation involves issues of power sharing in the workplace. Employers might feel that it restricts their managerial prerogative and flexibility in decision making. Trade unions feel that it threatens to undermine trade unionism by blurring the distinction between management and employee interests. As Du Toit et al (2003) note, in practice the spectrum of participation ranges from systems that are extensions of management to those where there is full accountability to employees. In a number of European countries, statutory systems of employee participation have coexisted with independent trade union movements and the trade union movement has accepted the principle of employee representation on elected bodies (board of directors of a company) that are outside union control (Du Toit 2003). Employee participation as opposed to collective bargaining would be less adversarial and involve a lower social cost, but "forms of representational participation such as consultation fall short of joint-decision making in terms of influence ceded to employee representatives" (Klerck 2000: 8-10). In the South African context statutory workplace forums have not had trade union support (Kirsten & Nel 2000; Van der Walt 1999). Unions have historically preferred more independent and militant positions, being suspicious of potential co-option and erosion of class struggle, though these suspicions may be unfounded (Kester 2002). This begs the question of the extent to which such forums have been used for consultation and consensus seeking on EE matters. In the public sector, where part of this research was conducted, the promotion of EE is a constitutional obligation. Legislative measures such as the Employment Equity Act of 1998 as well as the Labour Relations Act of 1995, institutional mechanisms such as the White Paper on Affirmative Action in the Public Service, the Public Service Commission and the Department of Public Service and Administration, and the White Paper on Human Resource Management in the Public Service all contain provisions that promote EE in the public sector. Although trade union consultation is ostensibly a component of these measures, as evidenced in this study, this process is not properly utilised.

8 EMPLOYMENT EQUITY CONSULTATION BETWEEN UNIONS AND EMPLOYERS

Employers covered by the EEA are required to enter into consultation about the formulation and implementation of an EE plan with representatives of trade unions in their company as well as employees or their representatives. However, the EEA does not define the content of the duty to consult, unlike the Labour Relations Act (LRA) (Du Toit et al 2003: 599). Consultation under the LRA means the following:

- (1) putting proposals rather than finished decisions to unions/employees
- (2) disclosing all relevant information
- (3) allowing the trade union/employee representatives to respond to these proposals
- (4) responding to alternative proposals, and, if they are not acceptable to the employer, explaining the reasons for rejection (Du Toit et al 2003: 599).

The Employment Equity Act (EEA) contains significant provisions on employer consultations with trade unions and employee representatives. For instance, section 16 requires a designated employer to take reasonable steps to consult and attempt to reach agreement with a representative trade union representing members at the workplace and its employees or representatives nominated by them; or if no representative trade union represents members at the workplace, with its employees or representatives nominated by them. The nominated representative must reflect the interests of employees from all occupational categories and levels of the employer's workforce; employees from the designated groups; and employees from non-designated groups.

The designated employer in sections 17 and 19 is required to collect information and conduct an analysis of its employment policies, practices, procedures and working environment, in order to identify employment barriers which adversely affect people from designated groups. This analysis must include a profile of the designated employer's workforce within each occupational category and level in order to determine the degree of under-representation of people from designated groups in various occupational categories and levels in that employer's workforce. A designated employer is required to consult the parties in the preparation and implementation of the employment equity plan and the report submitted to the Department of Labour. According to section 18, when a designated employer engages in consultation, the employer must disclose to the consulting parties all relevant information that will allow the parties to consult effectively. In addition, the Code of Good Practice issued in 1999 suggests that consultation should include an opportunity to meet and report back; reasonable opportunity for employee representatives to meet with employers; the right to request, receive, and consider relevant information; and adequate time for all the above to take place. Hence, legislation and the good practice guides suggest that employers seek consensus instead of taking counsel (Du Toit et al 2003:599). Also, an employer who has an EE plan must make a copy of the plan available to its employees for "copying and consultation" (Du Toit et al 2003:610). Section 34 allows any employee or trade union representative to monitor compliance and bring an action for alleged violation of the Act. It is unfortunate that the protective role of trade unions is one of its prime reasons for existence; this extends in concept to protection against unfair discrimination and potential involvement of unions in policy determination and practices aimed at removing such discrimination (Jain et al 2003:171-172).

Thus, we define consultation in this study to mean that a) unions/employees are provided with sufficient information in order to understand the proposed plans and actions; b) appropriate contributions to the consultation process are permitted; c) a free and open discussion takes place; d) there is a clear indication that the employer gave careful consideration to the feedback provided by unions/employees. The EEA also requires the formation of a consultative forum, and where workplace forums exist, employers are required to consult and reach consensus with such forums. Workers' representatives are required to reflect all categories and levels of the workforce and include employees from both designated and non-designated groups (Du Toit 2003:600). The Code of Good Practice of the Commission for Employment Equity suggests that a consultative forum should be established for consultation with a designated group and other employees or else that an existing forum comprising employees from designated and non-designated groups could be utilised. The Act also requires employers to identify and remove any barriers in employment experienced by the three designated groups. Although employers are required to report on only four areas (ie wages, promotions, hiring and termination), barriers in employment can exist in a wide variety of employment systems. These include all aspects of the total remuneration package, opportunities for training and development (despite the Skills Development Act), conditions of employment and all the rules and procedures that govern the processes of layoffs, recall, disciplinary action, recruitment and selection, advancement and development opportunities and termination covered by the Act. With this in mind, it would be logical to assume that union involvement and cooperation is necessary in meeting the requirements of the Act and achieving equality of employment in the workplaces covered by the Act. But what is the nature and extent of unions' involvement in employment equity efforts?

9 TRADE UNION INVOLVEMENT IN EMPLOYMENT EQUITY

COSATU is the largest trade union federation in South Africa. It bemoaned "its exclusion from policy-making and governance decisions" in a central executive committee document prepared ahead of a tripartite alliance meeting as the union went into the 2004 summit with its political alliance partner the African National Congress (ANC) (Msomi 2004). The COSATU document complains about lack of overall consultation by government officials. As we will note, based on our interviews with COSATU officials, they are even more critical of lack of consultation by employers. While several organisations, especially some of the large ones, have various forms of employment equity plans or programs in place, documented evidence of union involvement in employment equity issues in the form of consultation or collaboration or the functioning of joint employment equity committees is almost non-existent. There are a number of reasons, some of which are discussed in the following paragraphs.

First, the requirement to consult with employees' representatives or bargaining agents on issues related to EE does not specify the level of consultation or how and when such consultation should be carried out. As the Act is silent on what constitutes consultation with the bargaining agents, this requirement is difficult if not impossible to enforce. Second, obligations under the Act seem to be imposed only on the employer, which suggests a diminished role of trade unions in setting up and implementing such plans. A reporting requirement is imposed on employers and the onus of compliance rests solely on the employers. Third, as trade unions usually do not have a role to play in the recruitment and selection process, this may serve as an excuse for unions to avoid this difficult task and justify any non-participation in the achievement of employment equity. Moreover, promotions and terminations in unionised workplaces are usually governed by the "seniority principle", particularly in countries such as Canada and the United States, which may potentially clash with the equity principle. Most employment equity efforts begin with the setting up of an employment equity advisory committee and the appointment of an employment equity coordinator. The roles of unions, however, are often not clear or nonexistent in firms' employment equity policies. In general, larger organisations are more likely to have the resources to devote to EE efforts. "Larger organisations" would include major banks and parastatals like Transnet. The results in North American studies indicate that management usually sees union officials as hostile to EE. And some employers think that collective agreements actually hinder EE initiatives. In the years since the inception of the Act, few examples of joint union-management employment equity committees have been documented. COSATU was partly responsible for pushing the national government to enact the EEA. However, in interviews with the researchers, some of the COSATU unions indicated that they have not taken the EEA seriously and that EE has not been a part of collective bargaining with employers. Annual consultations between unions and employers are merely an opportunity for management to share the results of the reporting process. It is by no means clear what the contribution of trade unions to the achievement of employment equity has been so far. Most unions are in favour of the legislation as unions are institutions that have traditionally fought for workers' rights, especially during the apartheid era. Evidence on how unions have helped each of the three designated groups is sparse and probably dependent on the membership pattern in different regions or industries. It is, however, argued that for federations like COSATU, employment equity is meant to be part of a more integrated process of providing basic skills training for workers as part of a broader human resource policy (Collins 1994). Elements of this policy include integrated and certified education and training linked to economic planning and restructuring, paid education and training leave, retraining, skills-based pay with training linked to grading and remuneration, recognition of acquired skills and prior learning and career planning. The Southern African Clothing and Textile Workers' Union argues that affirmative action will need to involve the extension of collective bargaining beyond the agenda of wage rates and conditions of

employment (Patel 1994). Criticism has undoubtedly been voiced within the union movement on the lack of progress internally in respect of involvement, under-representation and unfair discrimination against women (Horn 1995; Orr, Daphne & Horton 1997; Von Holdt 1997). Several COSATU congresses have taken resolutions about the need for improved participation and representation of women in union leadership positions.

10 RESEARCH METHODOLOGY

Given the exploratory nature of this research and the mainly qualitative data type, a structured interview schedule with pre-set questions based on the literature and legislative requirements for consultation was chosen. Interviews with trade union officials and inspectors from the Department of Labour (DOL) were carried out together with a documentary analysis of Qualitative Assessment Reports filed by employers regarding union consultation. Focus group meetings with unions were also held in addition to direct individual interviews. The former were held with COSATU in Cape Town and Johannesburg, with HOSPERSA in Cape Town and Johannesburg, and with the South African Municipal Workers' Unions (SAMWU) in Cape Town. Focus group meetings with DOL inspectors in charge of EE enforcement in Cape Town and Johannesburg took place. Data were also obtained from Qualitative Assessment Reports filed with the DOL by selected employers. The use of content analysis is considered suitable where data have been transcribed in the course of interviews and the researcher is seeking common constructs, phrases or themes from the data (Cassell & Symon 1997:25; Saunders et al 2003:379). The focus is on interpretation rather than quantification and concern with context. Qualitative research is "less likely to impose a priori classifications on data collection and is also less likely to be driven by very specific hypotheses and categorical frameworks and is more concerned with emergent themes and idiographic descriptions and inductive research methods" (Cassell & Symon 1997:4). Five trade unions and union federations took part in our study. These were: (1) the Congress of South African Trade Unions (COSATU) with 1,9 million members, the principal federation of South African trade unions aligned with the African National Congress (ANC) and the South African Communist Party (2) HOSPERSA, the hospital Personnel Trade Union of South Africa. It has 60 000 hospital worker members and is affiliated with FEDUSA (the Federation of Unions of South Africa). It claims to be a politically independent federation with 540 000 members and 26 affiliated unions. HOSPERSA did not sign Resolution 7 of the Public Service, which concerns transformation and employment equity, because it views the conditions under which this document was signed as less favourable than those offered by the Labour Relations Act. (3) The Public Servants Association of South Africa (PSA), which has 200 000 members and is affiliated to FEDUSA. (4) The South African Municipal Workers' Union (SAMWU), which has 122 000 local government members and is

affiliated to COSATU. In our sample SAMWU officials representing the membership in Cape Town were interviewed. The focus of this study is on trade unions. Further research is required on comparative qualitative data on employer perspectives on EE consultation and on the analysis of perceptual and actual gaps between the parties in respect of consultation. There may be some degree of halo effect bias in probing union concerns about perceived inadequate consultation. Further research may reveal inconsistent opinions among these parties, with employers being likely to hold more positive opinions. Notably, however, such qualitative data "are based on meanings expressed through words, a collection of non-standardized data requiring classification into categories and analyzed through the use of conceptualization as an interactive process (Saunders et al 2003:378). This approach, which is based on grounded theory, firstly seeks a rough definition of the phenomenon to be explained (in this case, an understanding of the consultation process in respect of EE), and secondly, seeks possible explanations in relation to theory (such as that dealing with employee participation as a range of influence). Thirdly, it attempts to determine to what extent theory and data are aligned (Saunders et al 2003:379).

11 FINDINGS: ANALYSIS OF INTERVIEWS WITH TRADE UNIONS

This is an analysis of the interviews with SAMWU, HOSPERSA and COSATU, both in Cape Town and in Johannesburg. This summary focuses on consultation between unions and employers and attempts to determine whether employers consulted with their trade unions before submitting an EE plan to the Department of Labour. The problems experienced by the trade unions are identified, as well as the ways in which the trade unions dealt with these problems.

Consultation strategies used by unions

The different trade unions used different strategies in their dealings with different employers. However, a common feature in consultation was that a bargaining council or a consultative committee was set up or used for this purpose. Sometimes a smaller group was established by a union to deal with a particular employer. SAMWU established a working group in its dealings with the city of Cape Town. Half this group was drawn from the employer party and the other half from trade unions/employees. COSATU in Johannesburg established task forces with subcommittees to deal with certain big employers. However, these working groups or task forces did not have any decision-making powers. Decisions were subject to ratification by the bargaining council (in the case of SAMWU) and the national negotiating committee (in the case of COSATU), which came from four different provinces.

Problems experienced by trade unions in consultation

Degree of union participation

Unions argued that in most cases employers unilaterally drafted the EE plan. Once it was put together, there was no proper consultation with unions by the employers. COSATU found that only in a very few cases were the shop stewards actually involved in the drawing up of the document. It was shown to the trade union and they would be asked to counter-sign it. It was the general feeling that employers only did this in order to comply with the provisions of the EEA, thereby putting themselves in a "good light". However, unions argued that it did not appear that their input was seriously considered and included in revisions to the plan. SAMWU and COSATU felt that employers were more concerned with compliance in respect of submitting plans to the DOL than with the implementation of these plans. HOSPERSA indicated that employers thought that they did not have to consult the union at establishment level, and that it was sufficient for them to consult only their employees.

Different interpretations

Many problems associated with EE planning and implementation appear to be of an interpretative nature. A common problem appeared to be that the employers and trade unions had different understandings of certain pertinent terms. This hindered the consultation process. For example, some employers' conception of "consultation" was that it was enough to simply inform the union, and that "consultation" did not entail agreement or consensus. Trade union respondents generally did not consider that this was sufficient. SAMWU also found that employment equity was interpreted in the narrow sense of only referring to appointments. SAMWU felt that EE also encompassed sexual harassment, gender discrimination and even abuse, and HIV/AIDS. Similarly, COSATU found that equal representation on the committee was construed by the employer as referring primarily to racial representation on the committee. Gender appears to be a lower priority.

Another interpretative problem concerned the meaning of the term "Black" with reference to various groups and their demographic representation based on regional demographic variations. The term was understood by trade unions in a broad sense to include African, Coloured, and Indian people while SAMWU found that certain employers focused their EE plans and associated human resource practices such as recruitment and selection on Africans only. HOSPERSA argued that race is a sensitive issue in consultations. Its officials asked whether "black" meant "non-white" or whether a "black" person was an African speaking person? They said that employers tend to automatically employ an African person. SAMWU felt that in most cases the union representatives were more informed than the employer on EE matters such as

legislative provisions dealing with the need for consultation.

While it may be argued that interpretive differences may be due to different levels of knowledge about the law and therefore relate to education, it is concluded that the reasons for these differences are more deep-rooted. In some instances they are expedient or instrumental reasons in that there is a focus on groups with whom an employer is more familiar or which are more available in respect of market supply. A second and allied reason relates to supply side demographic differences in various regions of the country. This is coupled to skills and knowledge residing in some instances in certain groups more than others. A third explanation is an attitudinal one relating to cultural or social distance or proximity. Groups that are felt to be "more like me", possibly speaking the same language, although they may be of a different race, may have a closer affinity. The converse also occurs in South Africa because of Black Economic Empowerment requirements which specifically require Black African economic empowerment in various industry or sector empowerment charters. This also influences EE planning and allied human resource practices such as selection and recruitment and promotion policies.

Consultative structures

COSATU trade unions have encountered problems concerning membership of consultative committees. Employers, according to the unions would tend to load the committee with non-union members, thus undermining the influence of the union. These employees did not understand the policy and philosophy of the union and therefore did not advance the union's interests. According to the unions interviewed, this was a form of window-dressing, where an employer might prefer to talk with "tame" representatives rather than independent union representatives. COSATU also found that the employers refused entry to those unionists they perceived to be "trouble makers". However, this meant that employers were taking unilateral decisions as to who should be represented on consultative structures. In addition, the employer treated the union as though it was just there to share information, rather than to make inputs and contributions to the EE planning process. Hence in many cases the level of employee participation would seem to amount to the sharing of information rather than full joint consultation or joint planning and problem solving.

In this regard, all these unions found it difficult to gain access to EE information. SAMWU, for example, did not have the capacity to do so and this hindered progress. SAMWU wanted information from the employer concerning the staff complement so that it could make meaningful changes, but it was not getting this information. COSATU found that employers were reluctant to disclose information such as wage differentials. Therefore, it experienced difficulties in identifying selection and recruitment policies and discriminatory practices within the company and in closing the wage gap. COSATU also argued that employers

were reluctant to disclose information in general. Certain employers did not have the EE plan available on the website, nor on the company bulletin boards, even though this is a legal requirement. The employers argued that this information might be misinterpreted and create hostility, and only published non-contentious things such as mission statements and health and safety policies. Another problem related to shop stewards' roles. COSATU indicated that shop stewards were reluctant to raise concerns in respect of the EE plan for fear of victimisation.

Consultation agenda

During consultation, HOSPERSA felt that all the issues, including skills development and training, EE and gender issues, tended to be lumped together. HOSPERSA and COSATU argued that issues that were financially important to the company, substantive issues such as wages and conditions of employment and allied "bread and butter" issues tended to be discussed first. Important issues such as EE were relegated to a subcommittee and ultimately given a lower priority on the employment relations agenda in organisations. Allied issues like human resource development, technical skills training, learnerships, and career and human resource planning were not discussed with unions.

Funding of union participation and education

COSATU indicated that its affiliates experienced problems with funding. Money was needed for consultation with shop stewards and development of workers. Yet resources appeared to be channelled towards capacitating managers. SAMWU also tended to rely on membership fees and therefore needed other financial resources. It was a common view in COSATU and HOSPERSA that government should have done more to educate ordinary people when the EEA was promulgated. Since the DOL did not do enough to educate and empower trade unions to consult effectively, unions needed to do their own education and consultation, which was not always as effective as if the DOL had taken on the responsibility of educating unions. COSATU said that unions did not feel confident that if they approached the DOL with complaints they would get any satisfaction. This is clearly a contentious issue; and it might not be implausible for the DOL to hold that trade unions today too have an important educative and developmental role and not only a collective bargaining one. This would hold water since the employment relations agenda has widened beyond traditional wage bargaining to the vital areas of human resource development

Other consultative interests

COSATU felt that a major concern of the unions was the role of SDFs and consultants. In the Western Cape, 85% of the SDFs registered with the SETA were white males. These were allegedly people who had resisted transformation of the workplace in the past and the unions found it unacceptable that they were now expected to drive the process. Another concern, said COSATU, was the number of companies that engaged the services of consultants. Private consultants may have more than 40 companies on their books and consultants usually came up with the same or very similar EE plans for all employers. The process has arguably been commoditised and compliance-oriented rather than based on deep-rooted attitudinal and work culture change. There are, however, some differences between trade unions and federations on what the real priorities are. For example, a criticism leveled by HOSPERSA was that agreements by COSATU were not always concluded in the best interests of workers, but rather with a view to political stability (in the light of COSATU's alliance with the ANC).

Trade union strategies for dealing with consultation difficulties

It was a common theme for unions interviewed that when an employer needed the signature of the trade union on an EE plan, the trade union would use this as leverage to get something that it wanted. For example, HOSPERSA refused to sign a document concerning the rebate that the employer would receive under the Skills Levies Act, until the employer had developed a plan that included empowerment of, and skills development for, black people. The union says it needs a strategy to penetrate all sectors more fully. The union does not have this at the moment and claims that consultation committees for EE are non-existent in most workplaces. Therefore, according to HOSPERSA there is a need to develop workplace committees and capacitate them and link them up at regional and national levels. COSATU suggested that where the employer treated the union as though it was just there to share information, it would refuse to countersign anything. Another example was that a certain employer was meant to receive grants from the DOL to enhance development. It was agreed that if the employer submitted EE plans which SAMWU had not signed, the DOL would not pay the grants.

COSATU objected to what it termed "sham consultation" in one case that involved a big employer and its union. A union official had planned to raise an issue of inadequate consultation with the directorate of employment equity to ensure that this employer was investigated nationally. HOSPERSA felt that it could remedy the situation by making its own submissions to the employer and attempting to get the employer to agree. Since EE committees were non-existent in most workplaces, HOSPERSA thought that it should try to establish committees which then had to be capacitated. SAMWU had made proposals

and tabled a document setting out its targets for the next five years. COSATU felt that the company should approach the union at the initial stages of implementation and that a plan should be developed through consultation. COSATU also thought that the unions should come down harder on the DOL. COSATU said that the unions needed to empower themselves with the details of engagement, and that National Office should have been engaging unions so that awareness was created at an affiliate level. There therefore appear to be different perspectives within the union movement on how to address the lack of a coherent approach within the union movement, but also in relations between the unions and the DOL. There is clearly a general lack of strategic thinking in relation to union participation in EE planning. Trade unions will need to place EE higher on their own agenda, especially if they are to move the agenda beyond traditional collective bargaining matters to the critical imperative of human resource development and arguably a more strategic need in relational to national development needs.

12 VIEWS OF THE DEPARTMENT OF LABOUR ON EMPLOYMENT EQUITY CONSULTATION

Twelve inspectors of the DOL in Johannesburg and Cape Town were also interviewed. Inspectors felt that their training by the DOL was too short and dealt with procedural rather than substantive matters. They felt that the DOL wanted them to play an advocacy rather than an enforcement role regarding the EEA. They claim they were led to believe that the EEA was still “new” and that the focus should be on advocacy and that inspectors should not be policemen. The inspectors also felt there were too few of them, especially in a large province like Gauteng, to cope with the very large number of companies in the province. They submitted that not all of them could carry out sufficient EE inspections to make this a meaningful process. Inspectors also thought that there ought to be a separate EE Inspectorate. Inspectors felt that trade unions tended to confuse the terms “consensus” and “negotiations” and that if there was no consensus an employer had the right to continue the consultation process. They also argued that trade unions were not playing a meaningful and strong role in EE. They asserted that shop stewards need to be trained by unions and the DOL and that they should not be put on EE committees prior to proper training in EE.

Procedural rather than substantive training of inspectors

Inspectors were interviewed in focus groups. They indicated that they used an inspection checklist and concentrated on procedural issues such as whether

- (1) there was consultation with union/s and or employees
- (2) there was an EE plan the manager had signed the EE plan
- (3) there was an EE forum

In addition, inspectors covered all the points under section 36 of the EEA whereby they were able to get an undertaking from employers on consultation with union/s and or employees. Regarding trade unions, typically the inspector would inquire from the unions about the nature of consultation by employers, the role played by the union, barriers they experienced, their involvement in drafting the EE plan, and the employer's policies on EE. On the basis of the checklist, which included all inspection aspects including some issues dealing with EE, inspectors attempt to investigate 16 to 24 cases a month in Western Cape Province. Inspectors felt that in most cases there was no proper consultation on EE by employers; some government agencies and parastatals/SOEs did not even engage in consultation with unions. A commonly prevalent reason (excuse) given by employers for not consulting with unions/employees or complying with EEA was that company restructuring was taking place and the CEO was unavailable during EE planning time.

Enforcement

Advocacy versus prosecution appears to involve a basic conflict of principle for inspectors. According to the inspectors, a directive was believed to have been issued by their head office with an instruction "not to prosecute." As a result, most inspectors in Gauteng were under the impression that they should not enforce the law aggressively. In addition there was a perception among some inspectors interviewed in both Johannesburg and Cape Town that, as noted previously, the legislation was still "new" and that the focus should be on advocacy and that inspectors should not be policemen (in spite of the fact that the "three year" plans and reports had expired in June 2003 for big companies with 150+ employees) and expired in October 2003 for smaller employers (those who opted to have three-year or shorter plans rather than instead of four/ five-year plans).

Regarding guidelines for enforcement, inspectors felt that clear guidelines should be provided on what enforcement meant at practical level (that is, if an employer did not have an EE plan, they (inspectors) would need to know what powers they were permitted to use; if targets were not met, what action should be taken by an inspector, and what kind of undertaking should be forthcoming from the employer; Also, the EEA, according to some inspectors, was unclear on targets. It was difficult for inspectors to challenge targets set by employers.

With respect to training, inspectors complained that the training was done by outside consultants (over two days) and it was not really a practical or relevant preparation. According to some inspectors, training focuses on procedural

enforcement.

The definition of an employer was not always sufficiently clear for inspectors. For example, some felt that the EEA did not clearly distinguish between holding companies and subsidiaries. In other words should the EE report submitted by a large banking group be for the group as a whole or for each of its branches? They felt that branches often hid behind the targets and EE plans of a head office. For instance, a retail company branch in Sandton with 60-70 employees might not be "designated" and hence did not have to comply. Some inspectors felt that the distinction should be made on the basis of turnover.

There was a concern that too few inspectors had been appointed. In Gauteng there were 120 inspectors to cope with all the companies in the entire province (Greater Johannesburg, Sandton and southern suburbs, East Rand and West Rand); and not all of them could carry out EE inspections. Some inspectors spoke of and envisaged separate EE inspectorate. However, the DOL had been through an integration process and the inspectorate had merged. At present the idea of a separate EE inspectorate was being revived. Regarding the matters of seeking consensus or negotiated agreements/plans, some inspectors thought that trade unions tended to confuse the terms "consensus" and "negotiation". According to them, the EEA stated clearly that even if there was no consensus, employers had the right to continue the consultation process with unions. Inspectors suggested that unions were not playing a role in EE; unions often confused the terms "grievances" and "job barriers" in the workplace. According to the inspectors, shop stewards ought to be trained prior to serving on the EE committees. They felt the training ought to be provided by both the unions and the DOL.

In addition to the need for trade unions to re-assess what role they are to play and what influence they might have in EE planning, the key issue of EE enforcement is evidently limited by what seems to be a lack of role clarity among inspectors, and by capacity and resource problems. There is also the question of what contribution they could make to educating the parties on the legal requirements regarding the processes and powers of the parties in relation to EE consultation.

13 SUMMARY OF MAIN ISSUES IN CONSULTATION

Lack of consultation and difficulties experienced

There is lack of consultation by employers with unions. Once the EE plan is sent to the DOL, many employers, according to unions, believe they do not need to do anything further. Shop stewards experience difficulty in getting management to talk about some of the issues relating to EE. Employers say

that there is EE when there are faces of colour on the EE Committee. Employers have separated Skills Development and EE when in fact they should be integrated. Perhaps because the onus is legally on the employer to submit an EE plan to the DOL, the employer tends to take charge of the entire process and treats the union as though its role is largely to be informed. As a result unions may refuse to countersign the EE plan. This has proved a fairly successful tactic. Employers are reluctant to disclose information on wage differentials. It is difficult for shop stewards to identify recruitment and selection practices and discriminatory practices within the company. Union officials felt that shop stewards must know what the EE law is and what their rights under the law are. Unions argue that they ought to challenge the employer when it appears the employer is not carrying out his obligations under the legislation. Shop stewards at the ground level do not have the necessary capacity. They are often unable to interact and engage meaningfully regarding policies within their companies; they cannot pinpoint the elements that need serious attention. Victimisation by employers is a factor.

As indicated earlier, COSATU unions contend that employers make unilateral decisions as to who should be on EE committees. This undermines union influence. Unions are also concerned that the *DOL* is focusing on advocacy rather than on enforcement. Arguably COSATU has not utilised the services of the *DOL* fully. The federation could have more regular meetings with *DOL* officials. The unions and *DOL* can potentially play a key and perhaps joint role, but some unions are not confident of getting satisfaction if they go to the *DOL* since there are often unforeseen delays. Both HOSPERSA and COSATU felt that government has resources and should have done more to educate workers. However, this might facilitate increased awareness, but might not necessarily empower shop stewards at ground level. Many unions express the view that no concerted measures have been put in place by the government to ensure implementation of the EEA. They see this as the State's role, rather than theirs. Nonetheless union officials felt that COSATU was at the forefront of the development of EE and skills development legislation. However, once the legislation was enacted it seems to have played a less active part at organisational level and during collective bargaining negotiations, EE issues may be relegated to a secondary place once the bread-and-butter issues become apparent. EE issues come to the bargaining table but are given to a subcommittee and may not be properly concluded. One reason appears to be lack of capacity.

14 HUMAN RESOURCE DEVELOPMENT, CONSULTATION AND CAPACITY BUILDING

There are not enough people, especially shop stewards, capacitated to monitor EE compliance. In most unions interviewed officials felt that their unions were failing to prevent the separation between EE and skills development, which are

two areas that should be integrated. In the case of Netcare, HOSPERSA has decided to pursue EE and skills development jointly. Besides there not being enough time to divorce these processes, skills development is considered necessary to achieve EE. It is HOSPERSA's view that a union skills development strategy should look at national qualifications. The entry levels are 1-6. There is an emphasis on lower-level workers, but it does depend on the sector as well. There is a shortage in the health care sector and the union is trying to achieve a balance between all levels, from the lowest to the highest. The union is participating on the sectoral education and training authority for the SETA. In addition to the policy, the union says that it needs an actual agreement in respect of EE. A draft proposal has been prepared in the case of Netcare, but has not been signed by the employer. The proposal includes the employer's national profile of its employees and the union's response to this and its requests, for example that the 84% of employees who are black should be considered. Submissions were also made in response to the employer's recruiting 90% white people. The employer claims that they've tried certain people at senior management level and executive management level and that these appointments were not successful. According to HOSPERSA its consultations with Netcare reflect one of the more successful attempts in this regard, but that leverage by the union is not happening in other sectors.

There is clearly a need for trade union engagement with an employer at the early stages of the development and implementation of an EE plan. The employer should get the union's opinions so that the process is an inclusive one and the plan is developed jointly.

SAMWU: Case experiences of consultation and internal capacity building

The Cape Town branch of SAMWU has 27 000 employees, of which only about 6 000 are women. In Cape Town black membership (including Coloureds, Asians, and Africans) forms a majority. However, the largest number of managerial positions at the City Council are held by white people, especially white males. SAMWU believes that it can help through implementing employment equity. However, due to historical inequity there have been stumbling blocks. SAMWU has furthered its cause by building up a complement of shop stewards. There used to be seven municipalities in the Metropolitan area, each with its own employment equity officer. They did not make much progress because there was not much support within the municipalities and resources were not given to disadvantaged people. There is now only one municipality which has been negotiating EE since 1996/97. It has not achieved very much. The current EE officer of Cape Town was appointed in Dec 2002. There tend to be stumbling blocks concerning the application of EE since the Employment Equity Act does not always favour trade unions. SAMWU is a member of COSATU. There is a centralised bargaining council in local government. The employer party to this bargaining council is the South African Local Government

Association (SALGA). It is made up of councillors. There are divisions in the nine provinces and SAMWU is bargaining in the Western Cape Division of SALGA. Under the auspices of that bargaining council, SAMWU has established a working group which consists of 50% of the employer party and 50% of trade unions/employees – SAMWU and IMATU (Independent Municipal Association of Trade Unions) being the two unions with the majority representation. There are five representatives from the employer and five from the trade unions, of which SAMWU has three. The working group has no decision-making powers. Any agreement reached in the working group must be ratified by the bargaining council and any dispute must be referred back to the bargaining council. It is currently negotiating on EE. The working group has existed since 2003. Each working group elects a chairperson. This is on a rotation basis. One year the employer chairs and the next year, the trade unions. SAMWU has made proposals and tabled an EE document. The major points of this document are from the old affirmative action policy document and it includes procedures on how to implement (affirmative action) and how to achieve the target. It sets out what the targets are for the next five years. Council has also tabled a policy document. This proposal is used as the basis for these negotiations. SAMWU has ensured that its document will be an addendum to the policy document.

There are some barriers, however. These include a lack of full communication on the employer side in terms of the people responsible for actual implementation. There has been resistance from officials in getting a skills audit done. The skills audit process was different to what was agreed upon in the bargaining council. SAMWU objected because the Skills Development Act was not considered in conjunction with EE and the employer had submitted EE reports without fully consulting the union. The union feeling was that the plan was drawn up to comply with the (legal) provisions, but not really with a view to full implementation. When the DA (Democratic Alliance) came into power in 2000 they had their own concept of what EE is. The employers took a different view and the whole process became bogged down. In 2002 the employer party changed because the ANC (African National Congress) and NNP (New National Party) formed a coalition and there were new people to negotiate with. According to SAMWU, there has been conflict with the employer, who wanted to discuss placements for leadership under the Act outside the bargaining council. The employer eventually agreed that these placements could be discussed in the bargaining council. It has been agreed that the employer party will make changes in its representatives. Some appointments made are regarded as EE action ones and according to the union these people do not receive enough assistance and support.

In applying EE, the employer advertises the post and invites previously disadvantaged people. However, the union argues that no mechanisms were put in place to determine whether a person is competent or has the capacity to

do his or her job. SAMWU supports EE and tries to ensure that EE candidates are placed at the managerial level so that they can advance the agenda of the union. SAMWU and other unions interviewed argue that employers look at EE and skills development independently although it is vital for EE to be supported by comprehensive skills development plans. In most cases union representatives are more informed in this regard than the employer is. However, SAMU contends that it is difficult for the union to get information, and that this is hampering progress. SAMWU has (nationally) approached the DOL and the Department of Local Government in respect of problems with implementation. As with COSATU, the union and employer have different understandings of "consultation". The employer thinks that it is enough to inform while the union does not think that this is sufficient. The union's capacity and resources are limited and stretched. For example, a union like SACTWU (the clothing industry), while it acknowledges the importance of EE, has to make employment sustainability its main concern in a sector losing thousands of jobs. SAMWU acknowledges that it needs to raise awareness concerning EE beyond the limited interpretation of concentrating on appointments only. SAMWU relies only on membership fee income. It therefore needs other financial resources and these resources must be distributed equally to enable priorities such as EE planning and EE consultation to be addressed.

15 CONCLUSIONS

Although progress has been made in enhancing racial and gender representation in the South African workplace, this is an incremental process that has to be supported by coherent human resources development priorities through consultation and cooperation by unions and changes in organisational culture. Trade union participation in EE planning appears to be at the "information giving" or "basic consultation" level, where the union may be asked for its inputs but the employer takes the decision. In Anstey's (1997) and Salamon's (1992) conception of participation, there is a low level of union influence and use of power in EE planning. Arguably, traditional adversarial collective bargaining based on positional negotiations may limit *de facto* engagement and joint decision making on EE matters. But there is still little evidence of direct engagement with trade unions with a view to seeking consensus (Du Toit et al 2003: 599-601). The law does not require co-determination or joint decision making and does permit both consultation and negotiation with trade unions on EE. Hence, the consultative process is at best rudimentary. Legislative measures include a national integrated human resources development strategy, legislated de-racialisation of business ownership in the private sector and national targets that include land ownership and equity participation in the economic sectors. Regarding employment equity, the union should be setting targets for senior and executive management in private-sector companies rather than supporting the setting of targets by

company management themselves. The legislation and a flurry of industry and employer announcements following the address of South African President Thabo Mbeki to Parliament in 2003 offer a significant policy basis for improving access to capital, skills and economic empowerment for the majority of South Africans. These overall measures, along with the progress in implementing employment equity and attendant workplace practices, it is suggested, will greatly improve the chances of the black majority of having their just share in the South African economy.

In this regard, employment equity must be viewed from both macro- and micro-perspectives. Changes have to occur at macro-policy levels. Equally, business leaders are required to comply, at a company level, with the provisions of both BEE and EE legislation, especially regarding consultation with unions and employees. However, it is becoming clear that legislative compliance alone cannot create necessary mindset changes, organisational commitment and cultural transformation by engaging proactively with employees and their trade unions in what is a deep and profound change management process. On a macro-level, employment equity needs to be supported by prioritising human resource development and education in the skills and competencies needed in a society in transition. This reality has been recognised by the government, and we have seen the rapid emergence of skills development legislation and Black Economic Empowerment legislation and industry-wide BEE charters with regard to enhancing economic growth through state-driven measures to ensure black participation in the mainstream economy.

Although there are differences in trade unions' approaches to EE, and interpretive variations in respect of designated group prioritisation, there is consensus on two key areas. First, that unions are not properly consulted by employers on EE planning and associated human resource practices that are important for implementation, and second, that employers often appear to separate the areas of EE and human resource development, failing to see the their key interrelationship for human capital development and planning. It is also concluded that trade unions themselves do not place EE as high on their employment relations agenda as traditional collective bargaining matters and disputing unfair dismissal cases. This may in part be explained by a tendency to rely on government to address the need for discriminatory redress, including expecting DOL inspectors to play a more aggressive role, and on employers on whom there is a legislative onus to have EE plans with targets and timetables and to submit these to the DOL. These interpretations are supported by the paucity of union disputes on unfair discrimination which have reached the labour court. There is a need for trade unions to re-prioritise their engagement in the EE process, notwithstanding their concern that employers are tardy in this regard. As mentioned by several union respondents in this study, the extension of the employment relations agenda to focus beyond remuneration-related collective bargaining items and conditions of employment to EE and human

resource development could put trade unions on a more strategic path in their relationship with employers.

REFERENCES

- Anstey, M. 1997. *Employee participation and workplace forums*. Kenwyn: Juta:1-3.
- Becker, GS. 1971. *The economics of discrimination*. Chicago, Ill: University of Chicago Press.
- Bowmaker-Falconer, A, Horwitz, F, Jain, H & Taggar, S. 1998. Employment Equity programmes in South Africa: current trends. *Industrial Relations Journal* 9(3):223–33.
- Breakwater Monitor Project (2000) Millennium Edition*. Cape Town: Graduate School of Business, University of Cape Town. Accessed: www.labourgov.za
- Cassell, C & Symon, G. 1997. *Qualitative methods in organisational research*. London: Sage:2-7, 25-26.
- Collins, D. 1994. Affirmative action: tokenism or transformation. *South African Labour Bulletin*, 18(4): 40-44.
- Dickman, J. 1998. Employment Equity Bill: SACOB's viewpoint. *Accountancy SA*, July:13-15.
- Horn, P. 1995. Self-employed workers' union – the class-gender intersection. *South African Labour Bulletin* 19(6):33-37.
- Horwitz, F, Nkomo, S, & Rajah, M. 2004. HRM in South Africa, in *Managing human resources in Africa*, edited by K Kamoche, Y Debrah, F Horwitz & G Muuka. London: Routledge: 6-7.
- Horwitz, F, Jain, Steenkamp, & Browning. 2002. *Pay discrimination in South Africa: overcoming the apartheid legacy*. *International Journal of Human Resource Management* 13(7):1042-1063.
- Jain, H, Sloane, PJ., Horwitz, F. 2003. *Employment Equity, Affirmative Action: an international comparison*. New York: Sharpe:171-175.
- Jafta, R. 1998. The high cost of Affirmative Action. *Focus*, April.

- Kester, G. 2002. Democratic participation in Africa. *South African Journal of Labour Relations*, Spring:75.
- Kirsten, M & Nel, P. 2000. Workplace forums and worker participation in South Africa. *South African Journal of Labour Relations*, Winter:28, 50-53.
- Klerck, G. 2000. Mapping the terrain of participation. *South African Journal of Labour Relations*, Winter: 8-10.
- Msoni, S. 2004. "COSATU asks for bigger role in government". *Sunday Times*, 18 July:2.
- Orr, L, Daphne, J & Horton, C. 1997. Preserving privilege. *South African Labour Bulletin* 21(6):17.
- Salamon, M. 1992. *Industrial relations: theory and practice*. 2nd edition. New York: Prentice-Hall: 341-343.
- Saunders, M, Lewis, P & Thornhill, A. 2003. *Research methods for business students*, London: Prentice-Hall: 378-379.
- Seria, N. 2004. White males still on top at work-report. *Business Day*, 14 July:2.
- Thomas, A & Jain, H. 2004. Employment equity in Canada and South Africa: progress and propositions. *International Journal of Human Resource Management*, 15, February:36-55.
- Thomas, A & Robertshaw, D. 1999. *Achieving Employment Equity: a guide to effective strategies*. Randburg: Knowledge Resources: 2-34.
- Van der Walt, R. 1999. Workplace forums: efficiency and democracy? *South African Labour Bulletin* 23(1):69-71.
- Von Holdt, K. 1997. The September Commission. *South African Labour Bulletin* 21(6):14.
- Walker, A. 1993. Attitudes of Europeans towards age. *Ageing International* 20(4):20-4.
- Webster, E, & Omar, R. 2003. Work restructuring in post-apartheid South Africa. *Work and Occupations* 3(x):3-22.
- World Bank (2001) World Development Indicators.
Worldbank.org/data/wdi2001.