

The copyright of this thesis vests in the author. No quotation from it or information derived from it is to be published without full acknowledgement of the source. The thesis is to be used for private study or non-commercial research purposes only.

Published by the University of Cape Town (UCT) in terms of the non-exclusive license granted to UCT by the author.

**A study of four key aspects within five bargaining councils
over the period 1995 to 2010**

MME Holtzhausen
OSTMAG001

A dissertation submitted in fulfilment of the requirements for the award of the degree of MPhil

Faculty of the Humanities
University of Cape Town
2011

This work has not been previously submitted in whole, or in part, for the award of any degree. It is my own work. Each significant contribution to, and quotation in, this dissertation from the work or works of other people has been attributed, and has been cited and referenced.

Signature: _____ Date: _____

UNIVERSITY OF CAPE TOWN
GRADUATE SCHOOL IN HUMANITIES

**DECLARATION BY CANDIDATE FOR THE DEGREE OF
MASTER IN THE FACULTY OF HUMANITIES**

I, MME Holtzhausen of Pitts Ave 97, Weavind Park, Pretoria, 0184, do hereby declare that I empower the University of Cape Town to produce for the purpose of research either the whole or any portion of the contents of my dissertation entitled: "A study of four key aspects within five bargaining councils over the period 1995 to 2010" in any manner whatsoever.

CANDIDATE'S SIGNATURE

DATE

(STUDENT NUMBER: OSTMAG001)

ACKNOWLEDGEMENTS

I would like to express my sincere gratitude to:

The Almighty for affording me the opportunity and giving me the strength to undertake this research and complete it.

My children, Henri, Jozanne, Bendoline and Jolandi for their love, understanding and support. Your humour and wisdom kept me going. A special thank you to my daughters, Jozanne and Bendoline, for the sacrifices they had to make while I was studying, and for continuously reminding me of my capabilities.

Hans Verstrate, for always believing in me, my eternal gratitude.

My family and friends for their encouragement, support and belief in my abilities. A special word of thank you to my mom (and, in memory, my dad) for instilling in me the belief in, and the need to develop my talents.

My colleagues at Unisa, for their support.

The Centre for Business Management at Unisa, for their financial support.

Moya Joubert, for her professional assistance in language editing.

The management of the bargaining councils, employers' organisations and trade unions in the building, chemical, clothing, metal and engineering and motor industries, for giving me your time, and access to the information I needed for this research.

Finally, my sincere appreciation and gratitude to my supervisors, Prof Johann Maree and Mr Shane Godfrey, for their guidance, assistance, reassurance and encouragement, which have enabled me to achieve this milestone in my academic career.

ABSTRACT

The way collective bargaining is conducted globally changes over time. Internationally, collective bargaining is becoming more decentralised, with a decline in membership numbers and the ensuing power of the primary parties involved in the process. The question is whether these trends are also evident in South Africa or if a different picture of centralised collective bargaining emerges. The research focused on bargaining councils in five industries as statutory institutions for centralised collective bargaining. The purpose was to determine how bargaining councils adapted to the changing environment during the 15-year period from 1995 to 2010, with a particular focus on representivity, the main agreement (wages and conditions of service), benefit funds, dispute resolution and other related developments.

Subsequently, a literature review was undertaken, focusing on collective bargaining, and bargaining councils, pointing to unanswered questions and forming the basis for descriptive research. It built on a previous exploratory study, making comparative research possible. The research encompassed qualitative research methods which included conducting interviews and reviewing documents. The empirical research elaborated on how and why councils have changed in the ways they have (explanatory research).

The research indicated that councils are hardy robust institutions capable of surviving fundamental legislative, economic and political changes, even though many challenges still remain. It points to two main strengths in the current council system. Firstly, it indicates a positive change in all five of the councils in the last 15 years, namely the fact that the relationships between the parties have matured substantially (even though the approach that was followed to reach this point differed). Secondly, the research findings also suggest the possibility that the relative strength and success of the council system is to be found in the limited legislative (but voluntarist) framework governing bargaining councils, because this allows councils to address their diverse needs as they see fit. In other words, the main strength of the system is probably the ability of different councils to adapt differently to different dynamics and pressures in different sectors. One may thus conclude that the improved relationship between parties has allowed councils to do different things to help them remain stable – and the limited framework has accommodated these different approaches.

LIST OF ABBREVIATIONS

AMSA	Apparel Manufacturing South Africa
ANC	African National Congress
BCEA	Basic Conditions of Employment Act
BIBC (CGH)	Building Industry Bargaining Council, Cape Good Hope
BWU	Builders' Workers Union
CCMA	Council for Conciliation, Mediation and Arbitration
CEPPWAWU	Chemical Energy Paper Printing Wood Allied Workers Union
DOL	Department Of Labour
DRC	Dispute Resolution Centre
FRA	Fuel Retailers Association
GB	Great Britain
ICA	Industrial Conciliation Act
ILO	International Labour Organisation
LMC	Labour Market Commission
LRA	Labour Relations Act
MEIBC	Metal and Engineering Industry Bargaining Council
MIBCO	Motor Industry Bargaining Council
MLC	Millennium Labour Council
MOL	Minister of Labour
NALEDI	National Labour and Economic Development Institute
NBCCI	National Bargaining Council for the Chemical Industry
NBCCMI	National Bargaining Council for the Clothing Manufacturing Industry
NEDLAC	National Economic Development and Labour Council
NMC	National Manpower Commission
NUMSA	National Union of Metalworkers South Africa
RDP	Reconstruction and Development Programme
RMI	Retail Motor Industry Organisation
SACTWU	South African Clothing and Textiles Workers Union
SEIFSA	Steel and Engineering Industry Federation of South Africa
SMME	Small and medium enterprises
UK	United Kingdom
USA	United States of America

LIST OF FIGURES

Figures		Page
Figure 3.1	Collective bargaining levels	31

University of Cape Town

LIST OF TABLES

Tables		Page
Table 2.1	Goals of research	6
Table 2.2	The population	10
Table 2.3	Characteristics of qualitative research	11
Table 2.4	Qualitative research issues	12
Table 3.1	Advantages and disadvantages of centralised bargaining	32
Table 3.2	Extension mechanisms in some European countries	37
Table 4.1	Bargaining council numbers	45
Table 4.2	Estimated bargaining council coverage, 1995 and 2005	46
Table 5.1	Registered parties' strength (includes non-parties)	88
Table 5.2	SACTWU membership numbers	89
Table 5.3	SEIFSA membership numbers	90
Table 5.4	NBCCI bargaining levels	93
Table 5.5	Number of employers and employees party to and covered by the main agreement	107
Table 5.6	Council funds	107

TABLE OF CONTENTS

DESCRIPTION	PAGE
Declaration	ii
Acknowledgement	iii
Abstract	iv
List of Abbreviations	v
List of Figures	vi
List of Tables	vii
Table of Contents	viii
<hr/>	
<u>CHAPTER 1: INTRODUCTION TO THE STUDY</u>	1
1.1 INTRODUCTION	1
1.1.1 Collective bargaining conceptualised	1
1.1.2 Main research focus	3
1.2 OUTLINE OF THE DISSERTATION	3
1.3 THE RESEARCH	3
1.3.1 Research questions, objectives and dimensions	3
1.3.1.1 <i>A comparative component</i>	4
1.3.2 The population	4
1.3.3 Importance of the research	5
1.3.4 Research methodology	5
1.4 CONCLUSION	5
<hr/>	
<u>CHAPTER 2: RESEARCH METHODOLOGY</u>	6
2.1 INTRODUCTION	6
2.2 RESEARCH GOALS	6
2.2.1 General	6
2.2.2 Research dimensions and question	7
2.2.2.1 <i>Exploratory research</i>	7
2.2.2.2 <i>Descriptive research</i>	7

2.2.2.3	<i>Explanatory research</i>	8
2.2.2.4	<i>A comparative component</i>	8
2.2.2.5	<i>In summary</i>	8
2.2.3	Population sample	9
2.2.4	Research techniques	10
2.2.4.1	<i>Quantitative versus qualitative data collection</i>	10
2.2.4.2	<i>Qualitative research</i>	11
2.2.4.3	<i>Research methods</i>	12
2.2.5	Validity and reliability	13
2.3	LIMITATIONS OF THE RESEARCH	14
2.4	CONCLUSION	14
<u>CHAPTER 3: COLLECTIVE BARGAINING</u>		16
3.1	INTRODUCTION	16
3.2	THE PLURALIST APPROACH	19
3.2.1	<i>An overview</i>	19
3.2.2	<i>A critical reflection on pluralism</i>	23
3.3	COLLECTIVE BARGAINING	25
3.3.1	<i>Underlying collective bargaining principles</i>	25
3.3.2	<i>Collective bargaining levels</i>	30
3.3.3	<i>The advantages and disadvantages of centralised collective bargaining</i>	32
3.4	COLLECTIVE BARGAINING IN SELECTED COUNTRIES	33
3.4.1	<i>Global union-employer-state relations</i>	34
3.4.2	<i>Global collective bargaining developments</i>	35
3.4.2.1	<i>A decline in trade union membership and power</i>	35
3.4.2.2	<i>Employers' organisations facing similar challenges to trade unions, reducing the services associated with (centralised) collective bargaining</i>	36
3.4.2.3	<i>A decline in collective bargaining as a mechanism to determine wages and conditions of service and an increase in the individual contract</i>	36
3.4.2.4	<i>A decline in the coverage of collective agreements, including coverage through extensions</i>	36
3.4.2.5	<i>A decline in the level at which collective bargaining</i>	

	<i>occurs</i>	38
	3.4.2.6 <i>Declining levels of detail in agreements</i>	38
3.5	CONCLUSION	39
<u>CHAPTER 4: BARGAINING COUNCILS</u>		40
4.1	INTRODUCTION	40
4.2	BARGAINING COUNCILS	40
	4.2.1 General	40
	4.2.2 Historical overview	41
	4.2.3 Bargaining councils' numbers and coverage	44
	4.2.4 A legal perspective	46
	4.2.4.1 <i>General</i>	46
	4.2.4.2 <i>Functions and powers of bargaining councils</i>	48
4.3	FOUR KEY AREAS	49
	4.3.1 Representivity	49
	4.3.1.1 <i>Determination of representation</i>	49
	4.3.1.2 <i>Admission of parties to councils</i>	49
	4.3.1.3 <i>Small firm representation</i>	50
	4.3.1.4 <i>Changing work patterns</i>	52
	4.3.2 The main agreement (wages and conditions of employment)	53
	4.3.2.1 <i>Collective agreements</i>	53
	4.3.2.2 <i>Flexibility arrangements</i>	54
	4.3.2.3 <i>Two-tier bargaining</i>	54
	4.3.2.4 <i>Bargaining chambers</i>	55
	4.3.2.5 <i>Extension of agreements to non-parties</i>	56
	4.3.2.6 <i>Exemptions from agreements</i>	58
	4.3.2.7 <i>Non-compliance and enforcement of agreements</i>	60
	4.3.2.8 <i>Labour rights and the changing workforce</i>	61
	4.3.3 Benefit funds	63
	4.3.3.1 <i>General</i>	63
	4.3.3.2 <i>Legislative changes</i>	64
	4.3.3.3 <i>Bargaining councils with funds</i>	64
	4.3.3.4 <i>Different types of bargaining council funds</i>	65
	4.3.4 Dispute resolution	67
4.4	CONCLUSION	70

CHAPTER 5: AN ANALYSIS AND DISCUSSION OF THE RESULTS	73
5.1 INTRODUCTION	73
5.2 COUNCILS RESEARCHED	74
5.2.1 The MEIBC	74
5.2.2 The NBCCI	74
5.2.3 The NBCCMI	74
5.2.4 MIBCO	74
5.2.5 The BIBC (CGH)	75
5.3 THE RESULTS	75
5.3.1 Threats and opportunities and subsequent changes	75
5.3.1.1 <i>Economic influences</i>	75
5.3.1.2 <i>The changing world of work</i>	77
5.3.1.3 <i>Level of cooperation between the respective parties</i>	78
5.3.1.4 <i>The need for councils</i>	80
5.3.2 Influencing factors	82
5.3.2.1 <i>Size of a council</i>	82
5.3.2.2 <i>Structure of the industry</i>	83
5.3.2.3 <i>Nature of the employment relationship in the industry</i>	83
5.3.2.4 <i>Nature and size of council parties</i>	84
5.3.2.5 <i>Age of the council</i>	86
5.3.2.6 <i>Financial circumstances of councils</i>	87
5.3.3 Key area 1: representivity	87
5.3.3.1 <i>General</i>	87
5.3.3.2 <i>Trade union membership</i>	88
5.3.3.3 <i>Membership of employers' organisations</i>	90
5.3.4 Key area 2: the main agreement (wages, conditions of service and related factors)	90
5.3.4.1 <i>Centralised versus decentralised bargaining</i>	91
5.3.4.2 <i>Flexibility arrangements</i>	92
5.3.4.3 <i>Time period of agreement</i>	96
5.3.4.4 <i>Level of detail contained in agreement</i>	97
5.3.4.5 <i>Two-tier bargaining</i>	98
5.3.4.6 <i>Minimum versus actual wages</i>	98
5.3.4.7 <i>Small firm representation</i>	99
5.3.4.8 <i>Extension of agreements to non-parties</i>	100
5.3.4.9 <i>Exemptions</i>	102
5.3.4.10 <i>Non-compliance and enforcement of agreements</i>	104

5.3.5	Key area 3: benefit funds	106
5.3.5.1	<i>Bargaining council funds</i>	107
5.3.6	Key area 4: dispute resolution	108
5.3.7	General comments	109
5.3.7.1	<i>Factors contributing to the success of councils</i>	109
5.3.7.2	<i>Comments on the legal framework governing councils</i>	112
5.4	CONCLUSION	112
<hr/>		
	<u>CHAPTER 6: CONCLUSION</u>	114
6.1	INTRODUCTION	114
6.2	A SUMMARY OF THE PRINCIPAL FINDINGS	115
6.2.1	A global comparison	115
6.2.1.1	<i>Trend 1: a decline in trade union membership and power</i>	115
6.2.1.2	<i>Trend 2: employers' organisations facing similar challenges to trade unions and thus reducing the services associated with (centralised) collective bargaining</i>	116
6.2.1.3	<i>Trend 3: a decline in collective bargaining as a mechanism to determine wages and conditions of service, with a steady move towards the individual contract</i>	116
6.2.1.4	<i>Trend 4: a decline in the coverage of collective agreements through extensions</i>	117
6.2.1.5	<i>Trend 5: where there is collective bargaining, the level at which it is conducted, is diminishing – if at national level there is an apparent shift to industry level and then to plant level</i>	117
6.2.1.6	<i>Trend 6: a decrease in the level of detail in collective agreements – agreements at the highest level increasingly reflecting minimum standards and policy frameworks or objectives, with more operational flexibility possible at implementation level</i>	118
6.2.2	Influencing factors	119
6.2.2.1	<i>A council's size</i>	119
6.2.2.2	<i>The industry's structure</i>	120
6.2.2.3	<i>The nature of the industry's employment relationship</i>	120

6.2.2.4	<i>Nature and size of council parties</i>	121
6.2.2.5	<i>A council's age</i>	121
6.2.2.6	<i>Financial circumstances</i>	122
6.2.3	Four key factors	122
6.2.3.1	<i>Representivity</i>	122
6.2.3.2	<i>The main agreement</i>	123
6.2.3.3	<i>Benefit funds</i>	123
6.2.3.4	<i>Dispute resolution</i>	124
6.2.4	Reasons for Council's Adaptability	124
6.3	IN CLOSING	124
BIBLIOGRAPHY		127
APPENDICES		
Appendix A:	SCHEDULE FOR TRADE UNIONS AND EMPLOYERS' ORGANISATIONS	136
Appendix B:	SCHEDULE FOR BARGAINING COUNCILS	142
Appendix C:	INTERVIEW SCHEDULE AND DESIGNATION OF RESPONDENTS	150

CHAPTER 1 INTRODUCTION TO THE STUDY

1.1 INTRODUCTION

1.1.1 Collective bargaining conceptualised

Collective bargaining in its narrowest sense is the process through which employers (represented by management) and employees (represented by trade unions) enter into negotiations about matters of mutual interest in the workplace. The aim of this process is to reach an agreement perceived as fair and equitable by all parties. Finnemore and Van Rensburg (2002:223-224) summarise this narrower approach to collective bargaining's main objectives as

- providing institutionalised structures and processes to channel possible conflicts and resolve these in a controlled way – thereby reducing unnecessary disputes;
- creating conformity and predictability through developing and committing to collective agreements which establish common substantive conditions and procedural rules;
- promoting worker participation in managerial decision-making; and
- enhancing democracy, labour peace and economic development.

Steenkamp, Stelzner and Badenhorst (2004:943-945) describe the purpose of collective bargaining as a process whereby employers and employees negotiate in an effort to "... give effect to ... legitimate expectations for ... a stable and adequate form of existence".

However, Cordova (1985:307) provides a broader view of collective bargaining:

... [it is] a process of interest accommodation which includes all sorts of bipartite or tripartite discussions relating to labour problems and directly or indirectly affecting a group of workers. The discussions may take place in different fora, with or without the presence of governments, and aim at ascertaining a view of the other party, obtaining a concession, or reaching a compromise.

Bendix (Steenkamp et al 2004:945) also emphasises this broader approach:

... the process of bargaining ... rests on the presuppositions that neither party is completely wrong, that concessions by either party do not necessarily signify weakness in that party, and that, while the individual goals of the parties may be important ... it should not occur at the cost of disrupting the organisation as a whole.¹

South Africa's Industrial Conciliation Act (ICA) of 1924 marked the reluctant recognition by both government and employers of the process of collective bargaining. The period following this Act and before the Wiehahn Commission's first report (1979), was dominated by centralised

¹ However, these conceptualisations of collective bargaining do not address the power dimension (see chapter 3), namely that it is a process that enables workers as a collectivity to be more powerful than they are when acting individually, even if this only helps to make the power imbalance less uneven.

sectoral collective bargaining. Collective bargaining was more focused on the narrower approach, with the emphasis on the enforcement of agreements.

The right to collective bargaining has been acknowledged internationally. Convention 98 (1949) of the International Labour Organisation (ILO) recognises this right, stating that methods would be undertaken to encourage and promote the full development and utilisation of machinery for voluntary negotiation between employers/employers' organisations and trade unions, with a view to regulating terms and conditions of employment by means of collective agreements. South Africa, which is a member country of the ILO, gave effect to the convention by protecting this right in the South African Constitution (s 23[5]), and by providing extensively for collective bargaining through labour legislation.

The provision of an enabling framework for the parties through which they can bargain collectively is an objective of the LRA (s 1[c][i]), whilst section 1(d) provides for the promotion of orderly collective bargaining at sectoral level in centralised bargaining forums (ie bargaining councils). A bargaining council is defined as "... a collective bargaining institution established in terms of the LRA, 1995, on a voluntary² basis by one or more registered employers' organisations, on the one hand, and one or more registered trade unions, on the other hand, in a specific sector and area" (Barker & Holtzhausen 1996:13).

Centralised collective bargaining and an approach based on formal, statutory and official approaches are evident in many South African industries. Bargaining councils are regarded as a viable option for structuring centralised collective bargaining in these industries, and have been in existence for 86 years - first as industrial councils until 1995, and thereafter as bargaining councils. According to the Department of Labour (DOL), the first council was established in June 1927. Having survived changes in empowering legislation and fundamental social and political change, bargaining councils are likely to remain a feature of the South African labour relations landscape. A possible explanation for the perceived lack of enthusiasm towards the industrial councils of the past is aptly summarised by Benjamin (Rycroft 1990):

One must not forget that, for the larger part of their existence, industrial [bargaining] councils were extraordinarily undemocratic, in that they allowed for the majority of employers, coupled with a minority and racially exclusive trade union grouping to set wages and working conditions for entire industries.

Although the number of councils is on the decline³, a number of new councils were established, and according to news reports (Pela 2005), even more sectors of the economy are considering formalising and institutionalising their collective bargaining arrangements by establishing a

² In practice, bargaining councils are often formed after long battles and huge hardships have been endured by the two primary parties, with the formation of the council the result of a lengthy struggle over a collective agreement (Holtzhausen & Mischke 2004).

³ According to figures calculated by Du Toit et al (2003:40), between 1992 and 2002, the number of bargaining councils decreased from 87 to 69. Of these deregistrations, 18 were as a result of amalgamations. This figure has decreased even further to a mere 41 councils currently registered with the DOL (soon to be 40 councils, as another council has filed for liquidation) (www.labour.gov.za).

bargaining council - the mining sector is a case in point. In both the private and public sectors, new councils registered with the DOL during the period under investigation (1995-2010)⁴.

1.1.2 Main research focus

The central aim of the study is to identify the trends in bargaining councils during the past 15 years. It examines and contributes to the pool of knowledge that is available on the councils. The research looks at how bargaining councils have developed and structured themselves over the last 15 years by studying factors that have remained the same or have changed. Identifying these trends makes it possible to see how South Africa's collective bargaining trends compare with those in other countries in the world, where they are the same and where they differ, and why. The next section explains this in more detail.

1.2 OUTLINE OF THE DISSERTATION

The dissertation is divided into two broad sections: a literature study followed by the empirical research.

The aim of the literature study is twofold. Firstly, chapter 3 focuses on the principle of centralised collective bargaining. It reviews the pluralist approach as being fundamental to this process, and as a framework that best provides for the necessary objectivity as it gives credit and legitimacy to all the roleplayers. It concludes with a brief comparison of international centralised collective bargaining trends. Secondly, in chapter 4, the major findings of the most influential research and writings on bargaining councils are presented, serving as the point of departure of the study.

The second part of the dissertation comprises the empirical research. Chapter 2 discusses the chosen research methodology. Chapter 5 provides a detailed description and analysis of the findings on five bargaining councils over the 15-year period, whilst chapter 6 concludes the study.

1.3 THE RESEARCH

1.3.1 Research questions, objectives and dimensions

The research is based on the premise that the purpose of the LRA is to strengthen collective bargaining and specifically to provide a reformed framework for bargaining councils in order to solve some of the problems experienced by the earlier industrial councils. However, research indicates that challenges still exist in the current system.

With this in mind, the following research question was formulated for the study: How have bargaining councils adapted to the changing environment over the 15-year period from 1995 to

⁴ A list of bargaining councils is available on www.labour.gov.za.

2010, with particular focus on four key factors, namely representivity, the main agreement, benefit funds, dispute resolution and other related developments?

In order to answer this question and to gain a clearer picture of councils since the promulgation of the LRA, the research uses descriptive and explanatory research, and adds a comparative, component as discussed below. A previous exploratory study (Holtzhausen & Mischke 2004) is used as the basis for researching the four identified key areas and for evaluation purposes between two time periods.

1.3.1.1 A comparative component

Lastly, the centralised collective bargaining trends found in the five South African bargaining councils will be compared with the following international centralised bargaining trends as discussed in chapter 3, section 3.3:

- Trade union membership and power is declining.
- Employers' organisations are reducing the services associated with (centralised) collective bargaining.
- Collective bargaining as a mechanism to determine wages and conditions of service is declining, with a steady move towards individual contracts.
- The coverage of collective agreements through extensions is diminishing.
- Where collective bargaining does take place, the level at which it is conducted is diminishing – if at a national level, it seems to be shifting to an industry level, and again from industry level to plant level.
- The level of detail contained in national and industry level agreements is decreasing. Agreements at the highest level are increasingly reflecting minimum standards and policy frameworks or objectives, with more operational flexibility possible at implementation level.
- In most countries, collective bargaining is taking place at more than one level.

1.3.2 The population

The objective of this research was to choose some of the most significant bargaining councils and observe how they have adapted to and weathered the changes of the past 15 years in order to determine what assisted them and worked, and what did not. This was deemed to be more relevant than selecting a representative number of councils because of the importance of the councils chosen. Based on this and on the significance of previous research (Holtzhausen & Mischke 2004), five councils in the chemical, motor, clothing, building and metal and engineering industries were selected as the population of the study (see also chapter 2, sec 2.2.3).

The chosen sample differs with regard to the structure and nature of the industries in which the councils operate; all are significant councils found in some of South Africa's major industries; there is a mixture of old and new councils; and the councils are in diverse industries, each with its own unique strengths and weaknesses. Moreover, four of these councils (ie the metal and engineering, motor, clothing and construction industries) are the largest councils in the private

sector in terms of coverage of employers and employees (Bhorat, Van der Westhuizen & Gogo 2009:27). The research thus had an adequate cross-section of councils.

1.3.3 Importance of the research

The study enhances the knowledge and understanding of bargaining councils as centralised collective bargaining structures. It explains how councils have adapted to their changing environment over the past 15 years. It highlights challenges the councils face in the short and longer term. Moreover, it makes possible a comparison of South African versus global centralised collective bargaining trends.

1.3.4 Research methodology

The focus of the study is qualitative. In-depth semistructured interviews with open-ended questions provided most of the research data. The study was concluded against the framework of pluralism, and as such included all role-players the main employers' organisation and trade union involved with each of the councils and the council secretariat were interviewed. Interview schedules were based on the literature review and structured to address all the objectives of the study. Confidentiality was assured. Relevant documents were reviewed. Applicable existing statistics substantiated data when relevant. Methods to ensure validity and reliability were followed (see chapter 2).

1.4 CONCLUSION

Chapter 1 provided an overview of the study and briefly explained the research question, goals, method and population. Chapter 2 focuses on the research methodology applied in the study and as such expands on the above discussion, thereby clarifying the research focus, question and methods.

CHAPTER 2
RESEARCH METHODOLOGY

2.1 INTRODUCTION

This chapter aims to give a broad overview of the research methodology selected to investigate the research question elucidated in chapter 1. The research methods employed to obtain the data in this study was chosen against the background of the pluralist theoretical framework, which was drawn on to evaluate and interpret the data (discussed in chapter 3). A broad outline of the research methodology follows.

2.2 RESEARCH GOALS

2.2.1 General

According to Neuman (2000:20), before a researcher can conduct a study, he or she should decide on a specific type of research, weighing up the advantages and disadvantages of each type. One of the many decisions a researcher should consider is the dimension of the research he or she intends conducting. Neuman (2000) explains that the purposes of social research may be organised into three groups based on what the researcher wishes to accomplish: exploration (exploring a new topic), description (describing a social phenomenon) and explanation (explaining why something is happening). Neuman (2004) summarises the goals of these as follows (table 2.1):

Table 2.1: Goals of research

Exploratory	Descriptive	Explanatory
Become familiar with the basic facts, settings and concerns.	Provide a detailed, highly accurate picture.	Test a theory's predictions or principle.
Create a general mental picture of conditions.	Locate new data that contradicts past data*.	Elaborate and enrich a theory's explanation.
Formulate and focus questions for future research.	Create a set of categories or classify types.	Extend a theory to new issues or topics.
Generate new ideas, conjectures or hypotheses.	Clarify a sequence of steps or stages.	Support or refute an explanation or prediction.
Determine the feasibility of conducting research.	Document a causal process of mechanism.	Link issues or topics with a general principle.
Develop techniques for measuring and locating future data.	Report on the background or context of a situation.	Determine which of several explanations is best.

* *It is the researcher's opinion that past data may also be confirmed and/or modified, and not only contradicted.*

Source: Neuman (2000:22)

As explained below, this study focuses on descriptive and explanatory research, and adds an international comparative component.

2.2.2 Research dimensions and question

As explained in chapter 1, the research question for the study is: How have bargaining councils adapted to the changing environment over the 15-year period from 1995 to 2010 with a particular focus on representivity, the main agreement (wages and working conditions), benefit funds, dispute resolution and other related developments?

To answer the question, the study identified research goals and dimensions as discussed below.

2.2.2.1 Exploratory research

Neuman (2000:21) explains that exploratory research investigates a new topic or issue in order to learn about it. If other researchers have written little about it, the researcher starts at the beginning, thereby exploring a relatively new field of study. The researcher's goal is to formulate further precise questions that future research can answer. Exploratory research is often the first stage in a series of studies because it makes it possible to design and execute a more systematic and extensive follow-up study. The research is often unpublished, but is incorporated into more systematic research that can be published later.

In this study, previous relevant research on councils (Holtzhausen & Mischke 2004) served as an exploratory study. This study helped identify key issues to research, and its findings were also used as a benchmark for comparison.

2.2.2.2 Descriptive research

The spectrum of descriptive studies includes a variety of types, but the common element of all of these is the researcher's goal, which is to describe that which exists as accurately as possible (Mouton & Marais 1988:43-44). Descriptive researchers use more data-gathering techniques such as surveys, field research and content analysis (Neuman 2000:21).

The research focus, namely how bargaining councils have changed over the past 15 years and its subsidiary themes are all descriptive and can therefore be regarded as the descriptive part of the study. The starting point for the descriptive research is a literature review of available research on centralised collective bargaining and its underlying principles, and the bargaining council system. This is done in chapters 3 and 4. As in the exploratory study, the literature review contributed extensively to the research because it helped to provide a theoretical framework within which to conduct the research, as well as a detailed description of existing data on bargaining councils.

2.2.2.3 Explanatory research

In explanatory research, the aim is to find reasons and give a deeper meaning to what was found in previous studies (eg exploratory research) and what has been described as accurately as possible (descriptive research). As Leedy (1993:215) so aptly puts it: "... the extraction of meaning from the accumulated data ... the interpretation of the data - is all important ..."

Thus, in order to explain and add depth to the results of the exploratory and descriptive parts of the study, explanatory research is necessary. The dissertation does this by relating it to specific characteristics of councils⁵ - such as their size, the structure and nature of the industry in which they operate, the nature of the employment relationship; the nature and size of the parties to the councils; and a council's age and financial strength. It was argued that these characteristics may be some of the variables that influence the way councils have adapted to their changing environment, and questions were thus posed to determine the effect of this. However, other factors or forces may also explain some of the changes councils have experienced –hence the discussion of relevant additional reasons.

2.2.2.4 A comparative component

Lastly, the study aims to compare the trends found in the five South African bargaining councils with international centralised bargaining trends (discussed in chapter 3, sec 3.3). It is argued that this component adds further depth to the study by not only focusing on the bargaining council institution, but also giving a broader view of centralised collective bargaining in South Africa.

Consequently, questions were asked to compare South African trends with international trends:

- Are trade union membership and power declining?
- Do the same challenges exist in employers' organisations?
- Is collective bargaining as a mechanism for determining wages and conditions of service declining?
- Is the coverage of collective agreements through extensions declining?
- Where collective bargaining does take place, is the level at which it is conducted diminishing?
- Is the level of detail contained in national and industry level agreements decreasing?
- Is collective bargaining occurring at more than one level?

2.2.2.5 In summary

Hence for this study to be meaningful and to provide a detailed accurate picture, the research seeks to examine, describe and explain how bargaining councils in South Africa have changed over the past 15 years, specifically with regard to the four identified key areas. It does this by

⁵ These same characteristics are used to select the population for the study (see sec 2.2.3).

incorporating an earlier study (Holtzhausen & Mischke 2004) (exploratory research); by conducting a detailed literature review of the principles of centralised collective bargaining, international collective bargaining trends and bargaining councils (descriptive research); and by examining a variety of variables that may influence councils and thus explain why councils have changed in the way they have (explanatory research). This combination results in insightful, valuable and quality research.

2.2.3 Population sample

According to Leedy (1993:198-206), “the results of a survey are no more trustworthy than the quality of the population or the representativeness of the sample”. Careful consideration of the total population is critical. However, Neuman (2003:196) states that qualitative researchers may concentrate less on a sample’s representativeness, or on detailed techniques for drawing a probability sample, and focus instead on how specific events, cases and actions can clarify and deepen understanding. The relevance of the sample to the research topic is thus more important than the representativeness of the sample.

Mainly two reasons determined the choice of councils to be researched. Firstly, councils were selected from a diverse range of bargaining councils where the differences between them were meaningful. As a result of this approach, councils specific to areas of interest, but with varying characteristics⁶, were selected. The characteristics included the following:

- size (eg regional versus national councils)
- the structure of the industry (eg serving overwhelmingly small versus large organisations)
- the nature of the industry (eg manufacturing versus construction)
- the nature of the employment relationship (eg fairly standardised contracts of employment versus labour brokering)
- the nature and size of the parties to councils (eg small versus large powerful unions)
- the age of the council
- the financial strength of the council

Secondly, if the same selection of councils had been researched again, as in a previous study (Holtzhausen & Mischke 2004), comparisons would have been possible, adding depth to the current research. Accordingly, five councils were chosen in the chemical, clothing, building, metal and engineering and motoring industries, as explained in table 2.2 below.

⁶ As explained above, these characteristics were also used as variables in determining why councils have changed the way they have.

Table 2.2: The population

Bargaining council	Characteristics
National Bargaining Council for the Chemical Industry (NBCCI)	<ul style="list-style-type: none"> ● A relatively new national council ● Strong subsectoral orientation ● Main agreement not yet extended ● A relatively stable but extremely diverse industry
National Bargaining Council for the Clothing Manufacturing Industry (NBCCMI)	<ul style="list-style-type: none"> ● Previously regional councils, now a newly amalgamated national council ● Still a strong regional orientation ● Non-compliance challenges ● A council potentially in crisis ● New dynamics on employers' side ● A crisis industry
Building Industry Bargaining Council (Cape of Good Hope) (BIBC CGH)	<ul style="list-style-type: none"> ● Regional council ● Most other construction councils having collapsed ● Cyclical industry
Metal and Engineering National Bargaining Council (MEIBC)	<ul style="list-style-type: none"> ● Strong and stable national council ● An older council ● An industry under pressure
Motor Industry Bargaining Council (MIBCO)	<ul style="list-style-type: none"> ● Large stable national council ● Excellent dispute resolution system ● Relatively stable industry

The table above shows that the chosen sample differed with regard to the structure and nature of the industries they are in; all were significant councils; most were old, but one relatively new council was included; they were in diverse industries; and each had its own unique strengths and weaknesses. The population consequently covered a satisfactory cross-section of councils.

Although it cannot be claimed that this selection of councils is representative of bargaining councils in South Africa, they constitute most of the major councils in the private sector and therefore provide an adequate reflection of bargaining council trends.

2.2.4 Research techniques

2.2.4.1 Quantitative versus qualitative data collection

According to Leedy (1993:139), all research methodology rests upon the principle that the type of data and the research problem dictate the research methodology. Data ultimately reach the

researcher as words or numbers⁷. Researchers collect data using one or more techniques that may be grouped into two categories, namely quantitative data collection (collecting data in the form of numbers) and qualitative data collection (collecting data in the form of words) (Neuman 2000:33).

According to Henning et al (2004:1-4), the purpose of the research influences the chosen method for the data collection and analysis. The distinction between qualitative and quantitative paradigms lies in the quest for understanding and for in-depth inquiry. In quantitative studies, the focus is more on the control⁸ of the actions and representations of the participants. However, in a qualitative study, the variables are not controlled because it is precisely this “freedom and natural development of action and representation” that the researcher wishes to capture. The goal of qualitative studies is to explore a topic in depth, instead of it lying in the “quantity of understanding”. Based on this reasoning, qualitative research was chosen as the appropriate research method for the study.

2.2.4.2 Qualitative research

Qualitative data “are a source of well-grounded, rich descriptions and explanations of processes in identifiable local contexts” (Miles & Huberman 1994:1). Qualitative data enable one to see exactly what events led to what consequences and to derive fruitful explanations. Table 2.3 illustrates the main characteristics of qualitative research.

Table 2.3: Characteristics of qualitative research

Qualitative research characteristics
Capture and discover meaning once the researcher becomes immersed in the data
Concepts are in the form of themes, motifs, generalisations and taxonomies
Measures are created in an ad hoc manner and are often specific to the individual setting or researcher
Data are in the form of words and images from documents, observations and transcripts
Theory can be causal or non-causal ⁹ and is often inductive
Research procedures are particular, and replication is very rare
Analysis proceeds by extracting themes or generalisations from evidence and organising data to present a coherent, consistent picture

Source: Neuman (2000:123)

Mariano (Leedy 1993:140) cautions that qualitative research is a creative, scientific process that requires a great deal of time and critical thinking, and emotional and intelligent energy -

⁷ In the researcher’s opinion, this is too limited a viewpoint, because elements such as visual impressions and the impact of the people interviewed may also be vital. This does not, however, reach the interviewer in words or in numbers.

⁸ In the researcher’s opinion it is almost impossible to *control* variables, even when researchers endeavour to do so.

⁹ This point may be disputed, as it may be argued that a methodological approach is imperative to draw on in order to evaluate and interpret the data. In this research, the pluralistic framework (see chapter 3) served as such a theoretical framework.

–creative scholarship at its best”. As such, certain omnipresent issues should be kept in mind with qualitative research, as highlighted in table 2.4.

Table 2.4: Qualitative research issues

Qualitative research issues
Data collection is labour intensive
Regular data overload
The distinctive possibility of researcher prejudice
Time demands of processing and coding data
The sufficiency of sampling when only a few cases can be managed
The generalisability of findings
The reliability and quality of conclusions
Their value in the world of policy and action

Source: Miles & Huberman (1994:2)

2.2.4.3 Research methods

Marshall and Rossman (1995:78) state that qualitative researchers rely mainly on four methods to gather information, namely participation, direct observation, in-depth interviewing and document review.

Both in-depth interviewing and reviewing relevant documents were used to gather data in this study.

a In-depth interviewing

According to Marshall et al (1995:81), interviews have particular strengths, namely collecting large amounts of data quickly, gathering a large variety of information across a large number of subjects and immediate follow-up and clarification. Leedy (1993:187-192) suggests the use of a questionnaire (interview schedule) for the survey. He states that in survey studies, observation in one way or another is absolutely essential. The questionnaire is an instrument for observing data beyond the observer’s physical reach, and should be designed to fulfil a specific research objective. The questionnaire is closely allied to the structured interview, as the questions for the interview schedule should be as carefully planned and as accurately worded as the items in a questionnaire.

The main data-generating technique in this research was semistructured interviews with open-ended questions. Two interview schedules were designed (see annexures A & B) – one for the council secretariat and one for the employer and employee parties. The questions were chosen to address all the objectives of the study. This document was sent to interviewees prior to the interviews to ensure preparedness. The main employer and employee party were identified on the basis of the size of the organisation – for instance, if a council had more than one employer party, the largest one was included in the selection of interviewees. Council secretariat representatives were also interviewed. All interviewees were either heading the organisation, or at the very least, in the collective bargaining section of the organisation. Telephone calls were

first made to ascertain the correct person for the interview and to strengthen a bond of commitment between that individual and the researcher. Confidentiality was assured.

In total, 11 interviews (including one telephone interview) were conducted with 13 representatives of both the main employer and employee parties of the selected councils, as well as with four councils' executive directors. In some instances, more than one person attended the interview, resulting in more respondents than interviews. These extra interviewees were nominated by the original group of interviewees because of the significant contribution they could make to the interview. NUMSA nominated one interviewee for both the motor and steel and engineering industries. In addition, two questionnaires (including the same questions as those in the interview schedule) were completed. A total of 15 respondents thus participated in the research (see annexure C for more detail on the respondents and interviews). Only one interview was thus not conducted, namely with the clothing sector council secretariat, because no appointment could be confirmed during the time frame of the research, even after various attempts by the researcher. In total, four telephone follow-up interviews were conducted, and various email enquiries made afterwards to ensure accurateness.

Because of the sensitive nature of the information, no digital recordings could be made. Hand-written records were kept during each interview. These records were included in a formal report written as soon as possible after each interview. The researcher attempted to capture as accurately as possible the essence of the contents of each interview. The entire body of data was perused more than once, breaking it down into smaller chunks. Each piece of data was classified into categories and recurring themes were identified, binding all the interviews together by summarising, grouping and structuring the data. Quotations that represented specific categories were identified and recorded.

b *Reviewing documents*

Researchers can supplement other methods of data gathering (eg interviews) by gathering and analysing documents. According to Marshall et al (1995:85), it is an unobtrusive method, rich in portraying the values and beliefs of participants in the setting. They suggest minutes of meetings, logs, announcements and formal policy statements as possible sources of data.

Documents that were analysed included the constitutions and collective agreements of bargaining councils, newsletters, information documents and websites.

2.2.5 Validity and reliability

Validity generally refers to the extent to which a concept, conclusion or measurement is well founded and corresponds accurately and correctly to the real world. In other words, the validity of a measurement tool is considered to be the degree to which the tool measures what it claims to measure. Validity is often considered along with reliability, referring to the extent to which a measurement gives consistent results, that is, repeatedly measures what it measured the first time (www.wikipedia.org & <http://qualitativeresearch.ratcliffs.net/Validity.pdf>).

According to Morse, Barrett, Mayan, Olson and Spiers (2002:9-10), to ensure both validity and reliability, the researcher needs to move back and forth between design and implementation to ensure comparisons between question formulation, literature, data collection strategies and analysis. Data are systematically and constantly monitored, focus is maintained and the fit of data and the conceptual work of analysis and interpretation are checked and confirmed. According to Kvale (Henning et al 2004:148-149), the researcher is therefore tasked with managing the process by filing “evidence” in order to validate (ie check for bias, neglect, lack of precision; question all procedures and decisions critically; theorise throughout the process; and discuss and share research actions with reviewers for a critical review).

Verification strategies that ensure both reliability and validity of data involve activities such as the following:

- Firstly, *methodological coherence* involves ensuring congruence between the research question and the components of the method. The interdependence of qualitative research demands that the question matches the method, which in turn matches the data and the analytic processes.
- Secondly, the *sample must be appropriate*, consisting of participants who best represent or have knowledge of the research topic, thereby ensuring optimal quality data.
- Thirdly, *collecting and analysing data concurrently* forms “a mutual interaction between what is known and what one needs to know”.
- The fourth aspect requires *thinking theoretically*. Ideas emerging from existing data are reconfirmed in new data; which may give rise to new ideas which, in turn, must be verified in data already collected (Morse et al 2002:11-13).

Strategies to ensure validity and reliability were applied in the current research. Interviewees were probed to clear up vague responses or to elaborate on a statement. When respondents were not sure what was being asked, the researcher explained the question. Interviewees were contacted afterwards when necessary to ensure accurate analysis of the information collected during the interview. To eliminate bias (as suggested in Brynard & Hanekom 2008:44), leading questions were avoided, the sample of interviewees included all relevant parties to ensure a complete and accurate picture from all points of view and conflicting data were checked.

2.3 LIMITATIONS OF THE RESEARCH

Possible shortcomings in the research may lie in the realities of qualitative research. Probably the most prominent of this entails the relatively small sample of councils that could be included in the sample because of the time-consuming nature of interviews – a fact which limits the representativeness of the data when considering all bargaining councils in South Africa. Even so, the population sample (see section 2.2.3) ensured high relevance in answering the research question, mainly because it allowed comparisons with the results of the prior study (Holtzhausen & Mischke 2004); because the sample recognises the differences in characteristics of the various councils; and because it constitutes most of the major councils in the private sector.

2.4 CONCLUSION

This chapter indicated the research methodology that was applied in the study. It dealt with the qualitative research methods used in this study, which included interviews and the reviewing of documents. In addition, the chapter explained that the study was built on a previous exploratory study (Holtzhausen & Mischke 2004), making comparative research possible. It indicated that a thorough literature review on collective bargaining (chapter 3) and bargaining councils (chapter 4) formed the basis for the descriptive research. In addition, the chapter highlighted that the empirical research (chapter 5) contributed to explaining why councils have changed in the way they have (explanatory research). The chapter explains that the study concluded with a comparison between identified South African and international centralised bargaining trends in chapter 6.

The next chapter focuses on centralised collective bargaining and also reviews pluralism as the primary philosophy of collective bargaining and as the selected viewpoint from which this research was done. It concludes with a comparative study of centralised collective bargaining in some selected countries, with the focus on similar bargaining institutions.

CHAPTER 3 COLLECTIVE BARGAINING

3.1 INTRODUCTION

The purpose of this chapter is twofold. Firstly, it deals with pluralism as the underlying philosophy of collective bargaining and also as the chosen perspective from which this research was undertaken (see sec 3.2). It then discusses the theory of collective bargaining – a key aspect of the study of bargaining councils. It reflects on its core principles, the levels at which it is conducted and concludes by looking at the advantages and disadvantages of centralised bargaining, which is the level of collective bargaining on which the research focuses (sec 3.3). The chapter concludes with a brief overview of centralised collective bargaining in a number of other countries, thus allowing a comparison between identified South African and international centralised bargaining trends (see chapter 6).

The introduction provides a theoretical and empirical foundation for this chapter. The issues it raises are then expanded on in the ensuing sections.

Bendix (2004:233) comprehensively describes the collective bargaining process as one necessitated by a conflict of needs, interests, goals, values, perceptions and ideologies, but also resting on a commonality of interest, whereby employees and their representatives, and employers and their representatives, negotiate in order to achieve some balance between the fulfilment of their respective needs and objectives. From this definition the following is clear:

- Representation is fundamental.
- Commonality forms the basis.
- Conflict is the reason.
- Power is the regulator or driving force of collective bargaining.

Collective bargaining is widely regarded as a labour right. The ILO Declaration on the Fundamental Principles and Rights at Work (1998a) sees freedom of association and the effective recognition of the right to collective bargaining as two of the main principles and rights of all parties. In South Africa, these rights are promoted, adhered to and regulated by the LRA. An important feature of the current statute is the promotion of orderly voluntary collective bargaining, particularly at sectoral level too – unlike the duty to bargain, which was created by the Industrial Court under the previous Act. It is often argued (eg see Du Toit et al 2003) that by not stating a general duty to bargain, but by creating mechanisms to encourage it, a classical pluralist approach becomes the “vision embodied in the Act”. Similarly, Bendix (2004:253) emphasises that collective bargaining, which is central to the conduct of the labour relationship, is an expression of pluralism.

According to Bendix (2004:253), a pluralist approach “rests on the presumption that with different groups representing competing interests, powers will be widely and fairly distributed,

that an equalisation of power¹⁰ will occur and that the free exercise of power by one group will be constrained by the countervailing power of the other". Through unions, employees thus equal the power of management.¹¹ These parties will then engage in mutually beneficial collective bargaining (being dependant on each other), moderating their demands for the common good, thereby maintaining the conflict inherent in the relationship at manageable levels. Nel (2008:7) agrees, stating that the pluralist perspective typically concentrates on how to regulate and institutionalise conflict in order to contain and control its impact on the parties and their relationships.

However, Hyman (1978:29) contends that pluralists advance far too easily from recognising that conflict is inherent in the relationship, to managing and institutionalising the conflict. In this regard Hyman elaborates on Fox's response to the Donovan Report: "...its optimistic assessment of the prospects of an agreed reform' of British industrial relations implies a somewhat narrow conception of the dynamics of industrial conflict". According to Fox, "clearly the assumption was being made of a widespread basic consensus which needed only the right' institutional form in which to emerge". It is furthermore often argued that pluralists may claim to recognise the different interests present in the workplace, but do not engage enough with the extent to which the conflict stems from the manner of production within which the employment relationship occurs. In this regard, Hyman (1978:31) aptly quotes Fox: "...Pluralists themselves accept as natural and inevitable that in collective bargaining trade unions should pursue restricted (and hence readily negotiable) objectives."

Many years ago, Fox (1966) asserted that the organisation has to be seen as a "plural" society which has to be contained in some form of equilibrium. He argued that rival sources of leadership and attachment have to be accepted, especially by whoever is ruling the plural society in question. According to Finnemore and Van Rensburg (2002:7), liberal pluralism accepts that society has diverse competing interest groups, each with the right to free association and to further the interests of its constituents by any legitimate means. However, the pluralist approach is often criticised as being idealistic, arguing that unions are in a constant struggle to challenge employers' power. Theorists, such as Fox (1974), reflected on the "myths of pluralism", and concluded that power is not really distributed equally and that long before employers reach the negotiation table, they are forced into accepting the main structure as shaped by management.

Historically, pluralism evolved in the USA and the UK, with collective bargaining still remaining as a pillar of collective dispute resolution (Finnemore & Van Rensburg 2002:8). However, the traditional collective bargaining process has been influenced in these countries by the demise of large labour-intensive industries, privatisation, the changing nature of work and globalisation. In general, union membership has declined. According to Kassalow (Gladstone, Wheeler, Rojot, Eyraud & Ben-Israel 1992:152), long-established centralised structures of collective bargaining gave way in the 1980s in a number of USA companies and industries as management sought

¹⁰ This may be too simplistic and idealistic, and should refer instead to a *greater equalisation of power* that may occur between the parties.

¹¹ An easily debated question: Would the primary parties to the employment relationship ever hold the same power?

greater flexibility. In the USA and UK (as in many other countries), pluralism is increasingly questioned, with collective bargaining perceived to be too disruptive and the accompanying industrial action too costly for any country having to compete in the global world. Hence many international companies shifted their production to the newly industrialised countries of South East Asia where trade unions were undeveloped and employers guaranteed, a “docile but productive workforce” (Finnemore & Van Rensburg 2002:8-9).

However, labour relations are changing in South East Asia. According to Bamber, Park, Lee, Ross and Broadbent (2000:5), a longstanding and contested debate argues that there is “a global tendency for technological and market forces associated with industrialisation to push national employment relations systems towards uniformity and convergence”. This may include the increasing autonomy of employment relations institutions, including unions, and also referring to, for instance, a move towards collective bargaining. Bamber et al (2000:18-19) explain that since the 1990s, countries such as Indonesia have asked for more democratic institutions. In South Korea, there is a strong rise of an independent union movement, while in Taiwan, labour regulations were expanded and reinforced. Taiwan has also witnessed a growth in union membership from 3,8% in 1955 to 22,9% in 1987 (Carrell & Heavrin 2004:456). However, unions are often regarded as politically and socially oriented. In Japan, enterprise unionism is seen as one of the pillars of the Japanese system of labour relations, with bargaining conducted primarily at local level, although general issues may be conducted at industry level (Carrell & Heavrin 2004:314).

Europe has witnessed similar challenges to its employment relations. Lansbury (Brewster, Mayrhofer & Morley 2004:11) argues that even though all European countries experience increased demands to adapt their conventional industrial relations practices in response to global competition and changing technologies, most European countries are unsure about the exact nature of the industrial relations system they should be seeking to establish and which system would be appropriate in decades to come.

In South Africa, the ICA (1924) was the first Act modelled on pluralist principles of promoting collective bargaining, but excluded Africans from the definition of an employee (also refer to the discussion on this in chapter 4). According to Finnemore and Van Rensburg (2002:9), the Act gave rise to an underdeveloped and discriminatory form of pluralism. Although most employees and their unions were given legal status within the formal framework of labour relations in 1979, African employees were still denied basic democratic rights, resulting in many African trade unions in the 1980s adopting a Marxist analysis of capitalism. Employers were increasingly seen as the “capitalist class allies of the apartheid system”. This resulted in a vision of socialism: “While pluralism presupposed some semblance of balance of power between employers and unions, those promoting socialism found much to support their arguments that in fact there was a huge disparity in power between capital and labour” (Finnemore & Van Rensburg 2002:9).

Still, many recognition and wage agreements were negotiated in the South African workplace in the 1980s. Pluralism attested to being a forceful philosophy, and collective bargaining at all

levels proved to be a vent for political and social tensions (Finnemore & Van Rensburg 2002:9). In later years, it resulted in a unique form of collective agreement, namely the transformation agreement (Swanepoel 1999:115), in which employers manage competing forces, on the one hand, and bring about change in the social fabric of the society, on the other, ultimately achieving economic growth and upliftment. This kind of agreement, which is fairly unique to South Africa, underlines the encouraging spirit and management of challenges by the various parties in the bargaining field.

Having briefly outlined the basis of this chapter, the issues are elaborated on below.

3.2 THE PLURALIST APPROACH

This section focuses on a broad theoretical overview of the pluralist perspective to labour relations and collective bargaining in particular. The justification for discussing only the pluralist approach is found in the goal of analysing collective bargaining from as objective a perspective as possible – a viewpoint that gives credit and legitimacy to both of the parties in the collective bargaining process – something not done from either a purely managerial or labour perspective. This does not imply that pluralism is, or should be, the only perspective to be considered in labour relations, or more specifically collective bargaining. Nor does the selection of the pluralist perspective negate the teachings of other philosophies. However, of the many philosophies, the pluralist approach allows best for objectivity because it acknowledges the specific interests of both labour and management; accepts that these two groups are different; and that it is legitimate for both sides to seek to further their respective interests. For the same reasons, the Marxist analysis, although a strong and comprehensive theory, has not been adopted because of its pro-labour and anti-managerial approach. The pluralist approach also allows for the radical approach, as this perspective merely points out that there is no equalisation of power – even after workers have come together in a strong trade union that negotiates on their behalf (Fox 1977:136-151).

3.2.1 An overview

Salamon (1998:5-9) explains that pluralism emphasises the organisation as a blend of various homogeneous groups with divergent interest, over which the government tries to maintain some sort of equilibrium. Either cooperation or conflict between parties can be emphasised. It is argued that the pluralistic perspective forms the basis of collective bargaining, especially if one perceives the process as necessitated by a conflict of needs, interests and aspirations between the two primary parties, but also based on their mutual interest of organisational survival. Collective bargaining may then be the tool that addresses the differing needs and objectives of each party.

The underlying principles of the organisation must also be understood in order to comprehend the place and functioning of collective bargaining in the organisation. Dahrendorf (1959:157) referred to two differing views on society, namely that social order results from a general agreement of values which outweighs all other possible or actual differences of opinion and interest; and the view that coherence and order in society are founded on force and constraint

and on the domination of some and the subjection of others. He concluded that these views are not mutually exclusive. He distinguished between two theories in contemporary sociology, as does Fox (1971:57-60). The first of these is the *integration theory* which sees the social structure of an organisation in terms of a functionally integrated system held in equilibrium by certain patterned processes based on common norms and values; whereas the *conflict theory* views social structure as being held together by coercive power, but still producing within itself the forces which maintain it in an endless process of change. Both authors concluded that the structure and dynamics of an organisation (and society) are too complex and subtle to be accounted for by either of these theories. Enterprise norms are more likely to be supported by a mixture of power and authority, than by either on its own.

Hence Fox (Clarke & Clements 1978:136) contends that the organisation has to be seen as a “plural” society which has to be contained in some form of equilibrium. He explains that there is a relatively extensive distribution of authority and power within such a society, a parting of ownership from management, a separation of political and industrial conflict and a recognition and institutionalisation of conflict in both spheres. This perspective is based on the assumption that the organisation consists of individuals who come together in various distinct sectional groups, each with its own interests, objectives and leadership. Employers and employees all have their own expectations that they bring with them to their work roles. Because of the multistructured and competitive nature of these groupings, tensions and competing claims have to be managed in the interest of maintaining a “viable collaborative structure” (Fox 1971:193). Salamon (1992:34) explains that the underlying assumption of this perspective is that the organisation is in a permanent state of dynamic tensions as a result of the inherent conflict of interest between the various parties, and it therefore needs to be managed.

Fox (1971:57-60) points to the possibility of seeing the organisation as a coalition of stakeholders, but says that conflicting interests or incompatibilities are always evident. Fox (1966:4) states that within the pluralistic perspective, “the degree of common purpose which can exist in industry is only of a very limited nature”. Employees and managers will both have their own aspirations, and much depends on the compatibility of these aspirations. Therefore, while workers bring a variety of their own needs and goals to the workplace, they also accept, to varying degrees, management’s prerogative to organise work and direct the workforce. Thus, when management’s actions are perceived as legitimate, the employment relationship will be characterised by a consensus model of organisations, similar to those proposed by the management’s theorists.

The pluralistic perspective further suggests that even though there are differences between the parties, they are not so fundamental that they cannot be bridged by compromise (Fox 1971:195-199). However, a balance of power between them is necessary. Declaring to workers that “we are all in this together” may well be true in the sense that all stakeholders may be dependent for what they want on the organisation’s continued existence; however, their wants may not be easily acceptable. Fox (Clarke & Clements 1978:137) highlights the importance for the health and stability of the system that neither employers nor trade unions feel that they are being

overly subjected to coercive dictation by the other in negotiating terms and conditions of employment. As Fox (1966:5) explains:

The general picture of industrial relations that could be drawn from this pluralistic approach is one that, though hardly free of conflict, contains mechanisms enabling the contending parties, not too unevenly matched, to negotiate their mutual accommodations in a manner appropriate to a society which aspires to industrial and political democracy.

The pluralistic view accepts the principle of freedom of association and thus the formation of trade unions (which Fox 1966:7 & 1971:107 defines as “a concentration of power”). He explains that an individual’s membership to the collectivity may mould his/her attitudes and responses. The individual’s behaviour within the organisation is now subject to an additional source of authority besides that of management. The whole objective of the collectivity is to put together a group that can mobilise power. Because of the enterprise being a coalition of interests, composed of different sectional groups, it provides a legitimate basis for union activity to first protect their economic interests, but also to defend them against the arbitrary exercise of managerial authority. The assumption that the welfare and conditions of employees can be improved through planned organised activity of employees and their representatives (ie trade unionism) was first proposed by the Webbs, who agreed on the need for strategies in order to improve poor working conditions and wages by increasing the bargaining power of individuals against their employers (Kochan 1980:7-9)¹².

The premise of excessive trade union power is also debated. Flanders (1975:245) explained that there is an “inherent contradiction, a logical inconsistency” in this view. He quotes Ashley to substantiate his statement:

The only practical alternative to strikes - peaceful collective bargaining - depends for its efficiency on the existence of strongly organised unions. But strongly organised unions, though they are indispensable instruments for enforcing treaties, are powerful weapons of attack ... This puts the employer in an awkward moral situation: it is almost more than can be asked of average human nature to demand that he shall rejoice at the growing power of a union; and yet, unless it is strong, it cannot effectively maintain the peace.

According to Flanders (1975:218-219), all forms of bargaining are “pressure-group activities”, with the resulting deals being, “in reality, compromise settlements of power conflicts”. Collective bargaining is therefore a power relationship between organisations, best described as a diplomatic use of power. Flanders (1975:237-238) explains that neither trade unions or employers’ organisations, nor individual organisations have a monopoly of power on their own side. Instead, various groups in the organisations have different degrees of power, often resulting in fractional bargaining. Blyton and Turnbull (1994:178) contend that collective

¹² This also points to one possible reason (based upon the principles of the pluralist perspective) for the support of centralised collective bargaining (the focus of this study) by trade unions. The strategy lies in strength in numbers obtained through bargaining at industry level. By enhancing the trade union’s power, its chances of improving poor working conditions and wages are increased. Centralised collective bargaining is thus a means for employees to challenge some of the powers employers hold by acting collectively. As can be seen from section 3.3.3 below, centralised bargaining and the subsequent increase in the balance of power, also enhance stability and labour peace within an industry

bargaining represents a potential source of managerial control in the way in which it can institutionalise conflict by channelling the power of trade unions into a ... mechanism which, while acknowledging that power, at the same time circumscribes it and gives it a greater predictability." According to Dahrendorf (Blyton & Turnbull 1994:178), ... the frozen fronts of industrial conflict are thawed". Collective bargaining thus tempers industrial conflict.

However, the real concern is the dynamics of change in pluralistic structures in which social and industrial conflict is accepted as justifiable and not suppressed (Flanders 1975:248-252). The process of collective bargaining, as groups rally and exert power to change old norms and fashion new ones, has predominantly met the upsurge of manifest conflict in industrial relations. Fox (1971:146-147) argues that whether managers believe that the participation in collective decision-making can help them to maintain industrial peace or regulate markets, or whether they feel compelled to submit to it through the threat of sanctions, it still remains common in societies where there is no state intervention to rely on collective bargaining. Fox (1971:153) describes a pluralistic society with the least possible state intervention as follows:

Through the mechanism of freedom of contract, freedom of association, an unrestricted traffic in ideas and ideologies, combined with a strong preference for voluntary action, there develops a wide variety of relatively autonomous but interacting norm-creating groups and agencies. The result is a multiplicity of separate normative systems, which appear to evolve in a more or less haphazard fashion. Though ... they may lack integrating principles, some degree of constant disorder is bound to follow ...

Dubin (Flanders 1975:251) argues that in a democracy, the permanence of the society and its stability depend upon a universal set of criteria for determining when conflict becomes disorder – in industry, collective bargaining can be regarded as the social process that provides such a framework within which employers and employees' viewpoints of disputed matters that lead to industrial disorder can be considered, with the aim of eliminating the causes of the disorder. In this sense it can be regarded as the ... great social invention that has institutionalised industrial conflict".

The inherent conflict that exists can be about both procedural and substantive issues (Fox 1971). Whenever there is a position of authority, the possibility of conflict of interests exists, as differences over the range and use of authority, power and control are bound to emerge. However, Kochan (1980:19) explains that conflict is limited, as employers and employees are interdependent for their survival and for achieving their goals, and moreover, employers and employees may also share common goals in some areas of mutual interest. Kochan (1980:19) concludes as follows:

Thus, the conflict of interests, while being a permanent feature of industrial relations, is neither unlimited nor all encompassing. It exists for only a sub-set of issues that are of concern for both workers and employers and is limited by the need for both workers and employers to cooperate enough to assure the survival of the system.

Kochan (1980) explains that these assumptions provide a useful starting point for conceptualising the nature of the relationship between an organised group of employees and their employer. These sociopsychological aspects of collective bargaining should not be ignored and the ways these are perceived depend, inter alia, on the frames of reference of the relevant

parties (Flanders 1975:229-230). Although there may be inherent conflict in the employment relationship, it may not always be perceived to carry a wide enough range of issues to result in employees activating a rigorous response. Fox (1971) also contends that not all workers perceive this conflict of interests to exist in their relationship with their employer, or if they perceive that it exists, they may not be motivated enough to do something about it. However, a variety of actions and strategies may be chosen as a display of the conflict in order to pursue workers' goals, for example, leaving the organisation or joining a trade union. However, as Kochan (1980:20) explains, because the conflict of interest is seen as an inherent part of the employment relationship, the manifestation of this conflict in, say, industrial action or bargaining impasses, is viewed as natural and legitimate products of the system.

A number of other implicit assumptions on the nature of industrial society and employment relations emanated from this theory. Kochan (1980:7-9) clarifies that the emphasis placed on protective labour legislation (eg health and safety issues) and union organisation, implied an acceptance of the inherent conflict¹³ of interest existing between employers and employees. Perlman (Kochan 1980:8) argued that employees' attitude and behaviour are dominated by their need for job security. Barbash (Kochan 1980:8) expanded on these theories and stated that central to labour problems was the clash between the job security interest of workers and the needs of employers for effective and efficient organisations. These theorists argued for the acceptance and accommodation of differing interests. The authors explain that their philosophy represents a middle ground between the classical economists, on the one hand, and the Marxists and socialists, on the other. This laid the foundation for the field of industrial relations. It was also realised that there was a need for a more integrated approach to industrial relations that analyses various viewpoints of economists, psychologists and industrial sociologists on the subject. Kochan (1980:13) explained it by saying that a need was perceived to end the split analysis of trade union and collective bargaining problems, on the one hand, and the problems of the management of modern organisations, on the other.

A question that emerges is how collective bargaining deals with the pluralist approach of various needs and inherent conflict within the workplace. How can the range of worker's goals be recognised, whilst at the same time balancing these against the needs and constraints of the employer? These and other questions relating to collective bargaining are discussed below.

3.2.2 A critical reflection on pluralism

The pluralist approach is often criticised. Fox explains (1973:192) that in describing an ideology, there is always the difficulty of the existence of many individual variants. Some devotees accept, while others may reject, each given item of the syndrome. Only a generalised picture can therefore be offered.

¹³ Various views on the matter of "inherent conflict" existed. Kochan (1980:7-8) pointed out that Commons' view differed from the beliefs of Webbs and Marx, who argued that the source of inherent conflict arose from the nature of capitalism. However, Commons and his followers advocated that the source of inherent conflict is not derived from the nature of capitalism and that the means for dealing with it through trade unions, and periodic conflict resolution, indicate strategies working within the capitalist system.

According to Hyman and Brough (1975:163-166), the possibility that the structure of ownership and control within the capitalist industry may generate irreconcilable conflict between the interests of employees and employers is not dealt with. The use of the term “pluralism” implies that in that society, relations are characterised by competition of different sectional groups of which none possesses a disproportionate concentration of power”. Fox (1966:14) maintains that the presupposition of balance needs to be engineered by structural adaptations in work organisations, and that direct negotiations with workers are essential. Hyman and Fryer (1974:169) felt that although the pluralist framework recognises differences in interests and objectives, the legitimacy of interest groups and their objectives are often only selectively endorsed. So, for instance, union democracy (the control of union policy and organisation from below by the rank and file”) is rarely treated as a significant and serious issue. Furthermore, Hyman and Brough (1975:163-166) describe it as an act of faith that workers are willing to cooperate - for this to happen, management need to recognise the legitimate existence of a divergence of interest. The presupposition of being able to resolve conflicts of interest is plausible only if it is assumed that these conflicts are less fundamental than the underlying area of common aims and interests. In this later works, Fox (1973) agreed with this point, by stating that even though there is a difference in interests, values, norms, and so forth, the disagreement is not so great that it will destroy the system, but will rather submit to compromise and the groups find themselves able to share moral beliefs which lead to them observing agreements freely and honourably.

These writings were followed by what Fox (Clarke & Clements 1978:141-145) termed a “radical approach” to pluralism, in which he advances a critical reflection of the pluralist framework. According to this, trade unions focus on areas that revolve around issues such as wages, working conditions and the like – all of great significance to both the role players, but it still does not address the basic fundamentals of the system such as the hierarchical nature of the organisation, or the massive inequalities of financial rewards, status, control and autonomy in the workplace. The question the radical asks is why trade unions do not question and challenge management on all the issues that have a huge impact on their work experience, rewards and life destinies. According to Fox, the answer is twofold. Firstly, unions realise that while they have some economic power, and may even enjoy support from government, they still do not have enough power to challenge management about these significantly larger aspirations. Why do they not hold this power? The answer lies in the fact that trade union members, apart from realising what they can lose from a clash in trying to fulfil these aspirations, “are still too much under the influence of social conditioning to venture a bid of these dimensions”. To some extent they also accept the principles on which management operate their enterprise. Fox therefore concludes that when employees accept (as they almost always do) the basic structure, principles and conventions of the work organisation, they do not do so from free considered choice, but partly because they are aware of the superior power that supports the pattern of organisations, and furthermore because their social environment induces them to see it as “natural, realistic, and only to be expected”. Union aspirations are therefore limited to influencing those managerial decisions that have immediate importance and are within reach through collective bargaining.

How do the radicals thus see the process of collective bargaining? According to Fox (Clarke & Clements 1978:144-149), for them, collective bargaining is at worst a mere façade behind which the employer continues to dictate terms, at best a means by which organised employees can get marginally to grips with their masters on some issues although still leaving the latter with the real reserves of power". The radical agrees that appearances of the process may suggest the contrary, for example, in wage negotiations when it often seems as if the agreed-upon wage is closer to that demanded by the employees, than that initially offered by the employer. However, this is so because the aspirations of employees are shaped by their awareness of the employer's power and the need to be realistic". Appearances are therefore misleading, and even if employees are members of trade unions, they are still in a much weaker position than their employers. Agreements may therefore be seen as being imposed by a much stronger party on a much weaker one, which may well result in employees not perceiving a moral obligation to abide by such agreements. Fox (Clarke & Clements 1978:149-150) concludes that he believes more in this radical view, or some version of it, than pure pluralism. However, what is much more important is for managers to determine the views held by their labour force. It is only when we realise that our attitudes and behaviour are based on assumptions about our society and organisations, that we can scrutinise them and decide whether we find them convincing.

3.3 COLLECTIVE BARGAINING

3.3.1 Underlying collective bargaining principles

Kahn-Freud (Godfrey et al 2010:4) argued that the starting point of collective bargaining is the inequality between the employer (the bearer of power) and the employee (the one without power). In an attempt to equalise this power imbalance, employees negotiate collectively through representatives, rather than individually and on their own behalf. The process results in collective agreements regulating the employment relationship in a group context (Hollinshead et al 2003:344). Collective bargaining is thus founded on the theories that employees can only challenge the power of employers through collective bargaining (Kahn-Freud, in Godfrey et al 2010:4), and of joint regulation as the essential character of collective bargaining (Flanders 1975:222) allowing employees – through their representatives – to open up discussions of issues of concern to them, and to respond to issues raised by management.

According to Hollinshead et al (2003:343-344), there are two fundamental requirements for collective bargaining to take place:

- (1) Employees have to see themselves as part of a group with similar objectives and interest in the employment relationship.
- (2) Management must be prepared to accept and acknowledge the existence of trade unions and their right to represent the interests of its members.

The requirement of employees (and employers) to act as a group seeking the same objectives has its own challenges. Dunlop (1967:173) points to another characteristic of collective bargaining - it involves the determination of priorities within each party of the bargaining process: ... the view that a homogeneous union negotiates with a homogeneous management

or association is erroneous and mischievous". Instead, collective bargaining is about compromise and the assessment of priorities in each side. As Venter, Levy, Conradie and Holtzhausen (2009:369) point out: "... it [collective bargaining] is premised on the joint regulation of the employment relationship through co-operation, commonality, trust and compromise". However, Hyman (1978:25), in his discussion of seminal works of Flanders, points out the very important insight that it cannot be assumed that the objectives of one party to a relationship will necessarily coincide with those of the others, nor that what is rational and efficient for one party, will be so for the other party who may have different aims and interests. It can therefore be argued that the challenge does not only lie with finding a balance between opposing parties, but that a redress of major socio-economic inequalities is imperative.

Still, arguments for collective bargaining are often based on two beliefs: on the one hand, a belief in the injustice of unconstrained, unilateral management discretion which may result in employee exploitation, and on the other, a preference for voluntary arrangements determined by the parties themselves (Salamon in Hollinshead et al 2003:347). In fact, the process of collective bargaining assumes that there is an ongoing interdependent relationship between the parties and that both parties would prefer to solve differences on a mutually acceptable basis, instead of terminating the relationship. Gompers (Carrell & Heavrin 2004:106) also emphasises the characteristic of a continuous relationship between the two main parties in collective bargaining, starting with the negotiation of a contract to an almost daily interpretation and administration of its provisions. However, in Hyman's critique of pluralism (1978:26) it is argued that Flanders and Fox saw pluralism not as a "theory of sovereignty, but of social differentiation", and that the most important issue is the "maintenance of social integration despite group autonomy and government non-intervention." This argument indicates a tension between pluralists' support of voluntarism and the reality of government intervention in labour relations.

Many argue that the main aim of collective bargaining is to reach mutually acceptable agreements through negotiations on matters of joint interest. According to Flanders (1975:221, 252), because agreements are jointly determined by representatives of both parties, they consequently share responsibility for its content and observance. Fox (Clarke & Clements 1978:138) reiterates the continuous character of collective bargaining, which enables the parties to constantly adapt agreements to changing needs and circumstances, thus enhancing the acceptability of collective agreements.

Historically, collective bargaining was the method whereby manifest conflict in industry was kept within "socially tolerable bounds" (Flanders 1975:252). If collective bargaining is thus viewed as a social process, the input should be seen as conflict and disarray, and the output as rules, including their application and modification. He concludes that collective bargaining can be regarded as both a rule-making or conflict-resolving process of bilateral character through which the terms on which individuals are employed, are determined and regulated. Furthermore, the rights of and relationships between individuals, employees, union officials and employers were defined (see seminal works such as Flanders 1975:216 & 248; Kochan 1980:27-28; Fox 1971:146). This has been achieved because the rules it produces (in the form of collective

agreements and in unwritten understandings), are supported by an adequately high degree of agreement between the role players. This is no easy task. According to Derber (Flanders 1975:229), the parties to collective bargaining may differ in their

- long-term goals and motives;
- immediate standards;
- perception of the factual situation;
- expectations of their future;
- sympathy for and understanding of the other party;
- judgement of relative power and of the feasibility of gaining their objectives; and
- skills in bargaining and persuasion.

The term “collective bargaining” was first described in the works of Sidney and Beatrice Webb (Kochan 1980:27) as fundamentally an economic transaction that employees turned to in order to enhance their bargaining power against that of the employer. The basic purpose of this process was therefore to maintain or improve conditions of employees’ working lives (Flanders 1975:214). Flanders (1975:223) explained they concluded that collective bargaining developed as a reaction by workers to the disadvantages of individual bargaining - under conditions of free competition, most individual workers deal with employers from a position of unequal bargaining power (see Kochan 1980:6).

Fox (1971:154) argues for seeing the value of the process of self-determination through the process of collective bargaining (against an authoritarian approach). When economists, for instance, evaluate trade unionism and collective bargaining solely in terms of substantive/economic outcomes, it is inadequate as a social assessment and ignores the significance of the procedural aspects. In pluralist societies, “how” something is achieved is equally important.

Several authors pointed to reasons other than purely an economic exchange for collective bargaining. Chamberlain and Kuhn (1965:113–130) regard collective bargaining as

- an economic transaction;
- a governmental system in which the laws of the workplace are codified; and
- a structure for continuous decision-making.

Swanepoel (1999:346) argues that although the traditional paradigm centres on economic exchange, the bargaining arena is often more complex, say, in the South African context¹⁴, than a single economic transaction.

Overlooking the non-economic consequences of collective bargaining implies that labour is only regarded as a commodity, thus ignoring the fact that labour is more, because it cannot be separated from the worker’s life. The rejection of this “commodity approach” was promoted by many (eg Kochan 1980:6, 18; Fernie & Metcalf 2005:21). Instead, workers are seen as individuals with unique needs, expectations and goals in the workplace. According to Kochan

¹⁴ It is this author’s opinion that when analysing the LRA’s purpose and the bargaining structure provided for collective bargaining, it may be assumed that the legislator had in mind that the collective bargaining process should deal with as wide a range of topics as suggested in the employer-employee relationship.

(1980:19), workers not only have goals such as job security and better wages, but also intrinsic concerns such as satisfying work leading to personal growth. Employees who are represented by trade unions through the process of collective bargaining are influenced by the effects of this process beyond the securing of material gains to the establishment of rights in industry. Flanders (1975:225) states that collective bargaining also promotes the “rule of law” in employment relations because it defines rights and obligations, say, by preventing victimisation.

Salamon (Hollinshead et al 2003:347-349, 367) stresses that collective bargaining is not limited to substantive agreements, but that

its real significance, perhaps, lies in management acceptance of a style of employment relationship which is based on the legitimisation of the expression of the different interests within the organisation (conflict), on joint regulation (constraining the unilateral exercise of managerial authority over employees), and on the principle of employee involvement and influence in a range of organisational decision-making.

The notions of collective bargaining and joint-decision-making are closely linked to the ideology of pluralism. Hyman (1978:20-21) points out that pluralists assume that there are no “undue concentrations of economic power”, especially in the labour market as such power, if it exists, are either diffused or, when recognised, said to be balanced between large corporations and organised labour. He reiterates that often the argument is that full employment and legislative support for collective bargaining among workers permitted union power to equal, or to even exceed such power. Ross (1958) in Hyman (1978:23) takes it even further by stating that “the development of collective bargaining, and the institutional arrangements associated with it... has resulted in the establishment of parity of bargaining strength between employers and employed”. The focus of all of these are thus on the workplace, rather than on the society (Hyman 1978:23). Hyman adds that according to Fox (1966), the distribution of power and resources within an enterprise is not explicitly considered, and a balance of power is therefore not asserted – an assumption underlined by the notion that management has to accept other sources of leadership, and that management - within a plural society - has to share decision-making with them. All of these arguments, however, ignore the important decision-making powers that influence the relationship beyond the ambit of collective bargaining, such as broader social inequality. As such, Fox in later works (1971:139) argues that:

If unions are to stand any chance of forcing management to yield a share in decision-making... their struggle and the methods used must be tolerated by society and the state. In the last resort, it is the values and the norms, legal and otherwise, of the wider society which determines whether or not the collectivity is able to impose itself upon the organisation’s procedural system.

In South Africa, the often very militant stance of unions is a case in point.

Chamberlain (Flanders 1975:230-233) holds that all theories about collective bargaining can be reduced to the following three:

- (1) A means of contracting for the sale of labour (the “marketing theory”);
- (2) A form of industrial government (the “governmental theory”); and
- (3) A method of management (the “managerial theory”).

In his *marketing theory*, the contractual aspect of collective bargaining is emphasised, viewing it as the process of determining under what terms labour will continue to be supplied to an organisation. Collective bargaining is thus necessary to redress the bargaining imbalance that exists between employers and employees. In his *governmental theory*, the contractual character of bargaining relationships is recognised, but the emphasis is on setting up organs of government for making, interpreting and executing industry laws. The principle that underlies this theory is “the theory of industrial sovereignty” which has two facets, namely that managers should divide their power with unions to ensure that mutually acceptable laws of industrial self-regulation can be in place, and, secondly, that they should engage in a joint defence of their autonomy. The *managerial theory* emphasises the functional relationship between unions and organisations, combining to reach decisions on matters of mutual interest. Its basis is the “principle of mutuality” which holds that “those who are integral to the conduct of an enterprise should have a voice in decisions of concern to them”, thus furthering the idea of industrial democracy. Chamberlain (Flanders 1975) did not argue that these theories should be regarded as separate and loose standing, but rather reflecting different stages in the historical development of collective bargaining. Moreover, it expresses not only different views on what happens in collective bargaining, but also on what *should* happen.

Flanders (1975:232-233) criticises these theories. The marketing theory is flawed because it argues that bargaining only takes place in the context of economic processes. The governmental theory is unnecessarily restrictive, only concentrating on substantive rules, whilst collective bargaining cannot exist without both substantial and procedural rules. Regarding Chamberlain’s managerial theory, the question is asked whether collective bargaining is a method of management that involves trade unions in the managerial function. It is often argued that trade unions, through entering into bargaining relationships, give employers an additional source of supervision over worker behaviour, and thus for management it can represent a degree of joint control (see Ursell & Blyton 1988:94, Blyton & Turnbull 1994:178). Flanders (1975:234) criticises this line of thought, asking why collective bargaining, in any circumstances, is equated with joint management. He reasons that the responsibility of trade unions in signing collective agreements does not go beyond upholding the observance of the rules they have shared in making. According to Chamberlain (Flanders 1975:235), in seeking to extend their decision-making in the organisation, trade unions are not trespassing on the managerial function. Flanders (1975:235) contends that a modern view of collective bargaining should broaden its scope from regulating markets to regulating management.

This does not mean that collective bargaining holds the same value for all management, but rather that acceptance has only been partial (Fox 1971:155-158). The importance of the management prerogative is noted. By accepting joint regulation, managers “commit themselves to compromise and to abandoning some aspects of their claim to management prerogative”. The tendency will therefore be to allow joint regulation only of those areas where they feel their prerogative is least involved. Flanders (1965) distinguishes here between “market regulations” (determining norms relating to the employment contract, say, working hours) and “managerial regulations” (determining norms governing the utilisation of labour, capital and other resources brought together and coordinated through management). Management would far more easily

negotiate about the terms on which employees are to be hired, than on how employees are to be utilised once hired.

Salamon (1992:220) also points to the management prerogative creating conflict in a context where trade unions and collective bargaining exist. He states the following: –The confrontational attitudes engendered by the forceful re-exertion of managerial prerogatives cannot realistically provide a foundation for the creation of a long-term co-operative relationship between management and employees.” Conflict may thus develop because parties have different standards for judging managerial decisions and behaviours. Fox (1971:159) asserts the following: –Only comparatively rarely has management grasped that the only sure and stable way of maintaining its control was to share it.”

The challenge thus lies with management and trade unions to negotiate ways of regulating their relationship. Hence, in a nutshell, the resolution of conflict is characterised by establishing procedures and institutions that can achieve cooperation through compromise (Salamon 1992:35) – this is no easy task. According to Flanders (1975:159), certain conditions need to be met for collective bargaining to survive:

- (1) The parties must retain a certain degree of organisation;
- (2) The parties must be ready to enter into agreements with each other, i.e. mutual recognition;
- (3) The agreements must be observed by those covered by them.

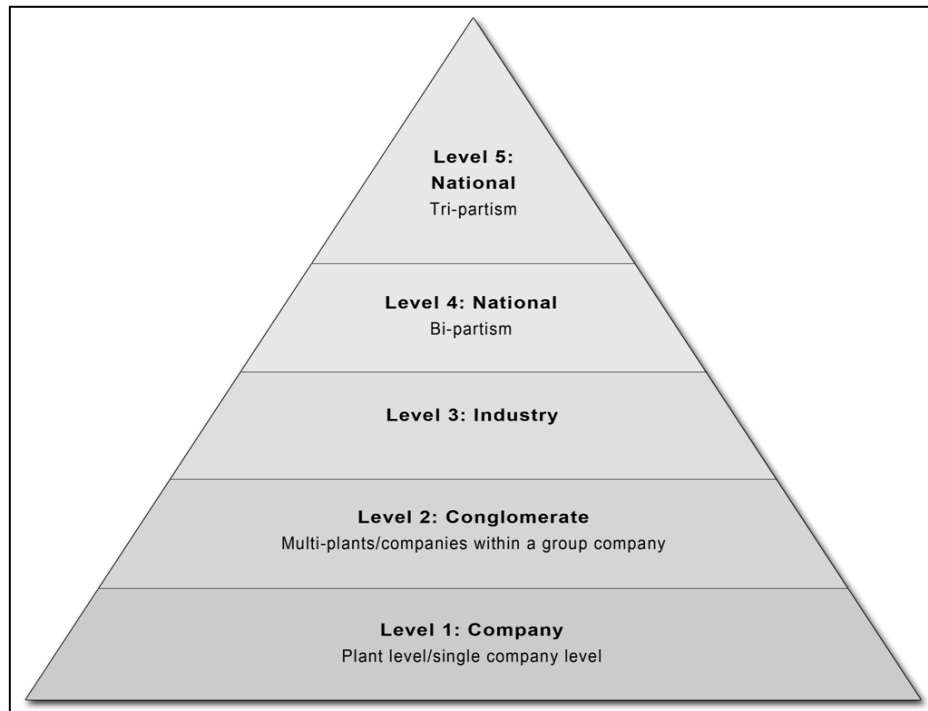
In order for this to happen, sanctions of one kind or another are necessary, for instance, through the legal enforcement of collective agreements.

3.3.2 Collective bargaining levels

Collective bargaining occurs globally in various forums and at different levels. Figure 3.1 portrays the five levels at which bargaining takes place in a market-type economy, with different issues being negotiated at different levels (see Douwes-Dekker 1990:23; Swanepoel 1999:348; Hollinshead et al 2003:352-356; McDonald 1986). These forms of collective bargaining are not necessarily mutually exclusive - parties may voluntarily enter negotiations at all levels, and as will be seen in the next section, bargaining often takes place at more than one level in a country¹⁵.

¹⁵ This is also the case in South Africa, with the focus of this study on bargaining councils, that is, centralised bargaining at industry level.

Figure 3.1: Collective bargaining levels



Source: Adapted from Douwes-Dekker (1990:23); Swanepoel (1999:348)

In South Africa three major levels of collective bargaining are visible. In this system, one level sets the framework for the next – so for instance will minimum centralised sectoral levels be set, but allowing for productivity bargaining at plant level. All of this happens within a set institutionalised framework. The strength and co-ordinating capacity of the roleplayers is vital in the success of such a system. Nevertheless, tensions remain between decentralised and centralised bargaining, and at present a variety of strategies are prevalent with no obvious, single trend.

The extent to which organised capital and organised labour are active at the various levels depends, according to Douwes-Dekker (1990:23), on the following:

- the legitimacy granted to unions in the society it operates in;
- support by employers and employers' organisations;
- cohesive national federations;
- a propensity by the primary parties to accept trade-offs on the nature of their preferred socio-economic order;
- support received through legislation/basic agreements;
- the relationship between the various role-players; and
- the levels at which trials of strength regarding industrial action is expressed.

The level at which bargaining occurs has both advantages and disadvantages. Since this study focuses on the centralised level, the next section will discuss the pros and cons of centralised bargaining.

3.3.3 The advantages and disadvantages of centralised collective bargaining

Any discussion on centralised bargaining (and/or bargaining councils) should consider the advantages and disadvantages of such a system. The discussion does not aim to examine in detail each advantage and disadvantage, but rather to give a broad overview. Table 3.1 compares the advantages and disadvantages of centralised bargaining, and as such, also of councils.

Table 3.1: Advantages and disadvantages of centralised bargaining

Centralised bargaining	
Advantages	<ul style="list-style-type: none"> • Sets industry-wide standards. • Sets minimum conditions per industry without government interference. • Creates a stable environment and promotes labour peace because it increases the power of both parties. • Allows for more professional bargaining with skilled people. • Economies of scale arise, for example, industry-wide benefit funds that are more significant and cost effective. • Generates cooperation, partnerships and commitment between major stakeholders as they learn from each other and determine strategies, objectives and plans for an industry. • Allows the formulation of industry-wide responses to increased competition. • It is easier to make financial information available on general conditions of the industry without having to make public information on individual organisations which may damage their competitiveness. • It allows both primary parties to regulate industrial relations, wages, fringe benefits and other matters through a process of negotiation and agreement. • The number of strikes in a sector should decline because of the serious nature of such strikes and subsequent greater efforts to prevent them. • Considers and deals with industry-specific circumstances. • Provides a dispute resolution mechanism for an industry. • Offers the prospect of cooperative sectoral policy formulation, regulation and administration systems. • Allows unions to promote equality, whilst preventing wage drift. • Promotes strategic trade unionism as whole industries are considered. • Maintains that both parties need not devote limited resources to repeating negotiations. • Allows time for tackling fundamental economic issues such as productivity, job creation and pay levels. • Offers protection for members in weakly organised workplaces. • Takes wages out of the competition. • Streamlines the administrative burden of negotiating wages at plant level. • Removes wage conflict from the shop floor. • Prevents employers (especially SMMEs) from being targeted by unions individually. • Lessens the influence of the union on the shop floor. • Offers SMME access to bargaining and human resource expertise.

Disadvantages	<ul style="list-style-type: none"> • It is less flexible. • The interests of select groups tend to be underrepresented. • It tends to support large organisations (including large unions) because they are better able to set up and drive their agendas. • Volatile currencies and problematic organisational issues for trade unions make it almost impossible to deal with international trade and product markets. • Wages and benefits tend not to accommodate the economic realities and needs of individual organisations. • Unions and employers do not connect actively in dialogue to address issues of specific workplaces. • It does not improve labour productivity in individual organisations. • It prevents enterprises from reacting appropriately and speedily to the pressures and competition resulting from the worldwide economy. • Wages in small, low-profit organisations are pushed higher, thus creating a barrier to the entry of new small businesses. • Because councils are complex, they tend to discourage investors. • Workers may be disadvantaged if negotiations and the finalisation of agreements are too protracted.
----------------------	--

Source: Adapted from Bendix (2006:250); NMC (1995:14-17); Baskin (1995:49); Anstey (2004:1830-1831); Le Roux (1990:2); Venter et al (2009:377); Bhorat et al (2009:1); McKersie (1990:10); Vettori (2001); Barker (2003:33;325) Standing et al (1996:153); Finnemore & Van Rensburg (2005:229); Holtzhausen (2005:13); Reynolds & Backer (1992:44-45); Standing, Sender & Weeks (1996:153, 194-195).

3.4 COLLECTIVE BARGAINING IN SELECTED COUNTRIES

According to Bamber, Lansbury and Wailes (2004:3-6), there are several reasons for studying international comparative employment relations. This field provides information on international developments, may serve as a source of models for policy development and assists with the construction of theories. The increased global connectedness necessitates a greater need for information on worldwide practices. The above authors caution that much information about many countries must be collected before generalisations can be made. There is also a tendency to focus on the institutional and legal structures as a basis for comparison, as opposed to more complex, informal practices and procedures. Institutional forms of collective bargaining that work well in one environment, would not necessarily work well in another (Aidt & Tzannatos 2002). However, comparing countries with similar economies, cultures and historic traditions has many advantages: -By looking at differences we seek uniformities, universal rules which explain these differences” (Strauss in Bamber et al 2004:5).

It is against the backdrop of these cautionary remarks that the next section deals with a comparative study on collective bargaining trends in selected countries (see also the comparison of these trends with South African collective bargaining trends in chapter 6).

3.4.1 Global union-employer-state relations

Carrell and Heavrin (2004:43) state that there are three distinct attitudes that governments have displayed in reaction to unionisation of workers: suppression, tolerance and encouragement:

- (1) *Suppression.* Most countries in the development of their industrial economies suppressed unions and the notion of collective bargaining. Great Britain (GB), at the beginning of the Industrial Revolution, passed the Combination Acts in 1799 and 1800, making a union illegal as a conspiracy to restrain trade. France (1791) forbade employee combinations, thus suppressing unions. Reaction in the early 1800s in the USA to the labour movement was comparable - the combination of labourers [was] considered illegal". Germany, Russia and Japan passed similar laws as industrialisation reached them in the late 19th to 20th centuries. When industrialisation came to some Third World countries, they did not ban unions, but still attempted to suppress collective bargaining. For instance, the governments of Ghana, Nigeria and Singapore limited the authority of trade unions, even though unions were supported legislatively. Unions were seen in a support role to employees, rather than as the representatives of employees to employers. The suppression of unions is most common when there is concern that the workers' demands will threaten a nation, fearing that the workers will destroy what has been created.
- (2) *Toleration.* The history of the union movement shows that that this period of suppression is followed by one of tolerating unions, mainly because unions keep functioning even when suppressed. Countries with economic growth simply lose the desire to keep workers from organising. This tolerance results in unions becoming powerful political forces. A case in point is the USA, which in the 1930s, went from mere tolerance to legally protecting unions and collective bargaining.
- (3) *Protection and encouragement.* Industrial countries fighting the two World Wars found it necessary to marshal capital and labour for the war effort". In exchange, capital wanted money and labour wanted collective bargaining. Collective bargaining was mandated by law or policy in both the USA¹⁶ and Britain, largely because of this. Developed economies striving for industrial peace also encouraged collective bargaining. Governments, it is concluded, encourage collective bargaining when it is perceived to assist economic stability.

The above does not address the current trends that are emerging worldwide of declining membership of employer and employee organisations, and a trend towards decentralisation¹⁷. A question that arises from the above is: What happens after "protection and encouragement"? Would these authors add another attitude in years to come?

¹⁶ This view of Carrell and Heavrin (2004:43) may be questioned because, in the USA, there is strong employers' resistance to trade unions and collective bargaining. The protection and encouragement that existed may have been purely the result of the war (ie an economic requirement), and not because of trade union support from employers' side.

¹⁷ Rojot (Gladstone et al 1992:184) warns of "the risk of too global a use of general concepts", stating that "it is perhaps too facile to hold blithely that decentralisation is a universal trend". Although it certainly is a popular concept, a new equilibrium between centralisation and decentralisation may occur.

Many countries in which collective bargaining is prevalent are European, possibly because traditionally they were heavily unionised (more so than the USA, for instance) and reflect key values such as pluralism. Brewster et al (2004:21) confirm that in European countries, union recognition for the purpose of collective bargaining is often a requirement by law and that bargaining occurs at national, industry and plant level. Nevertheless, union participation is declining and decentralisation policies seem to be the order of the day. For example, in the European Union, the use of trade unions for negotiating and establishing employee rights decreased by 17% in 1999 alone (Brewster et al 2004:216).

3.4.2 Global collective bargaining developments

According to Wild (2004:91-99), a number of significant transnational and transsector changes are evident in both the conduct of collective bargaining and on the strength of the role players (see secs 1.3.1 and 2.2.2). These trends are discussed in the sections below and supported by further research.

3.4.2.1 A decline in trade union membership and power

Globally, trade union membership and power are declining (see Vettori 2006; Ouchi & Araki in Maree 2010:2). According to a study by the ILO in 2000 (Godfrey et al 2010:11), trade union membership peaked in most countries during the 1980s, but has declined steadily since. Bamber et al (2004:344-345) cite a few examples of decline: Australian union density declined from 51% in 1976 to 25% in 2000. In the UK it decreased from 45% in 1985 to 29% in 2000. Nevertheless, Wild (2004:91-99) cautions against making the assumption that the deals that trade unions struck are less influential because of declining union membership and a decline in the level of people covered by these agreements. For instance, in France, in the nonagricultural sector, low membership of unions (approximately 6% in the private sector) coexists with collective bargaining coverage of almost 90%.

Various reasons are given for the decline. Godfrey et al (2010:8-12), Ferner and Hyman (1998:xvii) and Bamber et al (2004:344-346) explain that globalisation increases the inequality in power between transnational employers and employees, and undermines unions' ability to organise employees. The increase in atypical work also contributes to the challenge unions face in recruiting members because workers in part-time, temporary and other forms of unstable employment are difficult to organise. There is also a decline in the number of manual workers, who often held the stronghold of trade union membership. Furthermore, the political change that swept the globe contributed to undermining the position of trade unions. Bamber et al (2004:345) point to another contributing factor, namely economic factors such as the influence of rising unemployment in many countries because of recessions. They add that in more competitive global product markets, unions are less able to attract members by achieving huge wage increases and better working conditions, since this may lead to pricing such members out of work.

3.4.2.2 Employers' organisations facing similar challenges to trade unions, reducing the services associated with (centralised) collective bargaining

Weiss (2004:5) confirms that the weakness of trade unions is matched by that of employers' organisations, and that collective bargaining is generally mostly confined to plant level.

Employers are faced with new challenges and opportunities as economies became more integrated with the global economy (Bamber et al 2004:346-347). Competition between companies, industries and countries has increased, and many industries have had to restructure. Consequently employers' have perceived a greater need to ensure proficient work practices and restrain labour costs. In most countries, employers have adopted a stronger stance in collective bargaining, in many instances, discouraging unionisation. Wild (2004:95) explains that companies exposed to international competitive pressures see decentralised collective bargaining as increasing their ability to adapt to changing labour and product market needs. Employers' associations consequently need to adapt to these trends because employers are moving away from activities directed at centralised bargaining levels (see Bamber et al 2004:350).

3.4.2.3 A decline in collective bargaining as a mechanism to determine wages and conditions of service and an increase in the individual contract

Ouchi and Araki (Maree 2010:2) argue that determining working conditions at plant level is steadily becoming widespread. This is supported by Ferner and Hyman (1998:xiii), who argue that multinational companies are more likely to impose common patterns of employment relations across their international operations, and that the outcome of such forces are company-based employment systems. One can thus refute the argument that increased integration of economies in a global market will contribute to this trend. The changing world of work (eg the increase in atypical forms of employment and women entering the labour market – also effecting a subsequent increase in part-time and casual employment) has also contributed to a steady move away from wage determination through collective bargaining to the individual contract (Wild 2004:98). Weiss (2004:9) argues that because of the weakness of employers' organisations and the "non-existence of collective actors in large parts of the economy" in the EU, it is not surprising that collective bargaining is the exception rather than the rule, and that when it does occur, it is mostly only at plant level.

3.4.2.4 A decline in the coverage of collective agreements, including coverage through extensions

Traxler et al (Bamber et al 2004:382) state that collective bargaining coverage is a key indicator of the extent to which national employment relations are organised, because "the less employees are covered by collective agreements, the more irrelevant organised industrial relations as a whole will become". According to Bamber et al (2004:382), countries such as Australia, Japan, the USA and the UK have a steady decline in bargaining coverage, especially

in the private sector. However, France is an example of a country in which coverage has increased, while it has remained relatively stable in Canada, Germany and Sweden.

Godfrey et al (2010:14) argue that the general trend towards decentralising collective bargaining impacts significantly on collective bargaining coverage, an element further affected by the decline in union membership. When no provision is made for the extension of collective agreements, coverage is essentially limited to party employers and employees. Schulten (2005:10) agrees, stating that the existence and use of extension procedures may positively affect bargaining coverage, as can be seen, say, in France, Italy and the Netherlands.

Wild (2004:91-99) concurs, arguing that the impact of collective bargaining depends much on the system that exists for the extension of agreements¹⁸ beyond those directly covered by the agreement. Extension mechanisms impact most strongly in countries and sectors where there is multi-employer bargaining. Extension agreements are at their most effective in Europe, with countries like Austria, Belgium, Finland, France, Italy and Slovenia having coverage levels of 90% or more. Whilst the existence of extension provisions do tend to generate high levels of bargaining coverage (eg in Austria, Spain and Portugal), the parallel is not automatic. Sweden and Norway are examples of countries with high levels of bargaining coverage, but this is the result of strong trade union and employer influence and discipline. In Hungary, Poland and Slovakia, low levels of coverage are found, although statutory extension mechanisms exist. Table 3.2 illustrates the use of extensions in some European countries.

Table 3.2: Extension mechanisms in some European countries

Country	<i>Erga omnes</i> extensions	Sectoral extensions	Contract compliance	Bargaining coverage (%)
Austria	X	X	X	98
Belgium	X	-	-	>90
Germany	X	-	X	67
Italy	-	-	X	90
Netherlands	X	-	-	n/a
Sweden	-	-	-	<90
UK	-	-	-	36
Spain	X	X	-	81

Source: Wild (2004:97)

Collective agreements are extended automatically by law in Austria, Finland, Luxemburg and Spain. However, it is more common for extensions to be granted at the request of one of the negotiating parties (eg in Belgium, Germany, Netherlands and Poland) or both of the parties (eg in Denmark, France, Hungary, Ireland and Slovakia). In some countries (eg France and

¹⁸ Extension provisions are based on three broad forms of machinery namely *erga omnes* extensions (makes collective agreements binding on those employers in the field of application but who were not parties to the agreements themselves); *sectoral extensions* (makes a collective agreement in one sector applicable to another sector where effective collective bargaining does not exist); and *contract compliance extensions* (normally applied by government agencies where contracts are only offered to bidders who apply in terms of a relevant collective agreement). *Erga omnes* extensions are the most commonly used of the three variants (Wild 2004:96).

Greece), the government has an overriding right to decide whether agreements should be extended. There are often regulations pertaining to the extensions of agreements. In Germany, Finland and Spain, for instance, a minimum of 50% of the employees in the sector must be covered before a further extension will be granted, and 51% for Greece, Hungary, the Netherlands and Ireland.

3.4.2.5 A decline in the level at which collective bargaining occurs

Where collective bargaining does take place, the level at which it is conducted, is diminishing – if at a national level, it seems to shift to an industry level, and from industry to plant level (see Bamber 2004:350; Wild 2004:91-99; Ferner & Hyman 1998:xvi-xvii; Auer 2000:56-58). Australia is a case in point, where the industrial relations system has moved from a highly centralised one to a system where decentralised, plant-level bargaining is promoted (Strachan & Burgess 2000:361). In most countries in which there is collective bargaining, it seems to occur at more than one level (see Schulten 2005:12-15).

Schulten (2005) distinguishes between two groups of countries according to a broad range of similarities. The one group consists of 11 “old” European Union (EU) member states mostly in Northern and Western Europe. These countries still have relatively strong multi-employer bargaining institutions, sectoral or intersectoral bargaining, and relatively high bargaining coverage. Sectoral centralised bargaining systems at national level are mainly prevalent in these countries. Another four countries have intersectoral level bargaining. The second group (10 countries including most of the Central and Eastern Europe states, that is, most of “new” EU countries and the UK), have relatively weak bargaining institutions compared to the first group. Bargaining usually occurs at plant level and bargaining coverage is relatively low. France is an example of a country where no wage bargaining level is clearly dominant. Weiss (2004:9) and Lado (2002:108) confirm that in these countries there is practically no sectoral or national bargaining, and that the coverage of agreements is extremely limited.

In the USA there are examples of sectoral or national bargaining in certain parts of the economy, especially in the public sectors, despite the principal pattern of decentralised bargaining. However, the dominant form of collective bargaining in the world today is at plant level – this is true for most of the Asia-Pacific region, Eastern Europe, Africa and the Americas. In contrast, most of the current European Union countries (see discussion above), some of the Latin American countries (Argentina, Brazil and Uruguay) and South Africa have more centralised collective bargaining systems.

3.4.2.6 Declining levels of detail in agreements

The level of detail contained in agreements at national and industry level is decreasing (Wild 2004:91-99). Agreements at the highest level are increasingly reflecting minimum standards and policy frameworks or objectives, with more operational flexibility possible at implementation level. It may be argued that in the same way as with the general trend towards decentralisation,

this is also mainly driven by companies' pursuit of flexibility, enabling them to respond adequately to fast-changing markets.

3.5 CONCLUSION

Collective bargaining is a complex and intricate process, with no clear-cut answers. Raskin (Ulman 1967:135) aptly summarises it as follows: "I am a great believer in collective bargaining; the only trouble is that after thirty years of watching it at close range in dozens of industries, large and small, I am not sure I know what it is."

In pursuing the goal of better understanding the collective bargaining process, this chapter focused on the pluralist perspective of the employment relationship as a basic underlying philosophy, with the rationale of analysing collective bargaining from as objective a perspective as possible. It expanded on theoretical principles underlying collective bargaining and pluralism, also indicating the various levels at which collective bargaining can be conducted. It argued that centralised collective bargaining is a means for employees to challenge some of the powers employers hold by acting collectively.

Finally, a global view of centralised collective bargaining was given. From the literature it is clear that centralised collective bargaining is under a great deal of pressure in many industrial relations systems all over the world. This discussion will serve as the basis for comparing South African centralised collective bargaining trends (based on the empirical research) with international trends in chapter 6. According to Bamber et al (2004:330), one of the purposes of comparative employment relations is to "rethink the relationship of the international to the national". One way of doing this is by identifying elements of the international industrial relations regime. This is based on the idea that national level employment relations practices do not exist in isolation, but "rather develop in and are reinforced by an international set of rules or system of governance".

Against this international background, and with a clear understanding of the principles of pluralism and collective bargaining, the next chapter focuses on centralised collective bargaining in South Africa, with specific reference to the bargaining council system.

CHAPTER 4 **BARGAINING COUNCILS**

4.1 INTRODUCTION

Chapter 4 builds on the discussion of the fundamental principles of collective bargaining in the previous chapter by focusing on centralised collective bargaining in South Africa. This is done by means of a detailed literature review of the bargaining council system. As explained in chapter 3, this research studies councils from a pluralist perspective, thus expressing viewpoints from both a labour and a managerial perspective. However, one should never lose sight of the fact that councils are made up of opposing parties, and that agreements are almost always a compromise between contesting interests. Furthermore, whereas chapter 3 expanded on international collective bargaining trends, this chapter focuses on a literature review of the bargaining council institution in South Africa, paving the way for an international comparison in the study's concluding chapter.

The chapter starts off by giving a general and historical overview of councils. It then focuses on the bargaining council system of today – it provides a legal perspective, indicates trends in council numbers and coverage and discusses a council's functions and powers. Against this backdrop, the literature review then examines prominent research that has been conducted on the four key aspects of this study, namely representivity, the main agreement (wages, conditions of employment and related aspects), benefit funds and dispute resolution.

The purpose of the literature review on councils is twofold. Firstly, it is a vital source of information on what has been written about councils in South Africa – thereby enhancing the level of knowledge on councils. This leads to the second purpose of this chapter, namely laying the foundation for the current research by highlighting areas of contention and the challenges councils face. The review of the literature generated the questions that were asked in the empirical study (see ch 5). The chapter also serves as a starting point from which to determine what has been happening with councils in the last 15 years – the basic research question of this study.

4.2 BARGAINING COUNCILS

4.2.1 General

The LRA does not enforce collective bargaining, but promotes it – specifically also the establishment of centralised collective bargaining structures (bargaining councils) and the extension of agreements to non-parties. Thompson and Benjamin (Holtzhausen & Mischke 2004:1) elucidate as follows: –The showpiece labour-management institution of the LRA is bargaining councils, and the statute makes a series of entreaties to organised labour and

business to move in that direction as they structure their relations. However, it is a framework that can only be induced, not obliged”.

The role of these councils is to “create a stable framework for the setting of standards relating to minimum wages and conditions through distributive bargaining, to promote industrial relations stability, to participate in the development of industrial policy and policies relating to skill enhancement, enhance productivity and tackle poverty and inequality” (Report of the Presidential Commission to Investigate Labour Market Policy [hereafter referred to as the Labour Market Commission (LMC)] 1996:5).

However, describing councils in all their facets is no easy task. Godfrey, Maree, Du Toit and Theron (2005:4) rightly say that bargaining councils are diverse organisations and as such difficult to make generalisations about. This is evident in the various characteristics of respective councils. Councils range in size from huge ones, covering the entire country and a number of sectors and subsectors, to national councils with a fairly narrow sectoral focus, to regional councils that together cover a reasonable proportion of an industry, to small local councils that cover only a few hundred workers.

4.2.2 Historical overview

Bargaining councils are the direct descendants of industrial councils,¹⁹ first provided for in the 1924 ICA. The voluntary establishment of industrial councils attempted to provide an orderly system for self-regulation in industries through collective agreements. However, African workers were excluded from the definition of an employee in this Act, and therefore did not form part of the industrial council system (also refer to the discussion on this in ch 3). The result was long-term wariness of councils by African workers (Steenkamp et al 2004:950; Bhorat et al 2009:3-4), long after 1979 when the Wiehahn Commission of Inquiry into Labour Legislation reported that African employees should be allowed to join registered trade unions and be directly represented on industrial councils. It is widely accepted that this report fundamentally changed the labour relations system in South Africa (Steenkamp et al 2004:943). Still, many unions preferred to strengthen their membership and negotiate at plant level instead of at industry level, while employers put pressure on trade unions to join industrial councils. This resulted in many disputes in the 1980s. This situation was reversed once trade unions came to accept industrial councils (Horwitz 1989; Finnemore 1989), a change that occurred when the fast-growing Metal and Allied Workers Union joined the industrial council for the metal industry in 1984 (Steenkamp et al 2004:950). Many trade unions followed suit. The interests of African workers also became a fundamental point of discussion and negotiation at centralised level.

Voluntary collective bargaining, through social dialogue with the relevant role players, helped to find mutually acceptable solutions to the uniqueness of South Africa’s past and anticipated future (Holtzhausen 2005:7). An ILO report (1998) emphasised the value of negotiating with the workforce in the light of existing collective bargaining agreements in order to smooth the way for

¹⁹ The reference to “industrial councils” was changed to “bargaining councils” in the LRA of 1995, in order to indicate that more sectors of the economy now participate in the council system (eg the public and agriculture sectors).

and accommodate the needs of workers. Trade unions supported these viewpoints. As early as 1991, Copelyn (2004:60) suggested that the most powerful base that unions have is the platforms they use for collective bargaining - collective bargaining can be used to deal in earnest with the social and economic concerns of their members. Enormous creative opportunities open up for unions when they adopt a system of national industry negotiations. Institutions such as industrial councils provided the independent base for trade unions to influence a new South Africa.

This was also the case in 1994, with the most important goal of unions being to secure a more comprehensive system of centralised collective bargaining (Godfrey 2009:15). Finnemore and Van Rensburg (2002:225) agreed that after the 1994 elections, centralised collective bargaining was strongly promoted. For instance, the Reconstruction and Development Programme (RDP) supported bargaining councils and the extensions of agreements to all workplaces in the industry:

Effective implementation of the RDP requires a system of collective bargaining at national, industrial and workplace level, giving workers a key say in industry decision-making and ensuring that unions are fully involved in designing and overseeing change at workplace and industry level. Industrial bargaining forums or industrial councils must play an important role in the implementation of the RDP. Agreements negotiated in such forums should be extended through legislation to all workplaces in that industry (African National Congress (ANC) 1994, in Finnemore & Van Rensburg 2002:225).

The Ministerial Legal Task Team appointed by the ANC in 1994 to draft a new Labour Relations Bill, was specifically asked to give effect to government policy as reflected in the RDP (Du Toit et al 2003:23).

The LMC (1996:55) supported the vision of the LRA to increase industry-level bargaining. It stated that the DOL should encourage and facilitate (if necessary) the establishment of councils. In addition, the LMC (1996:191) offered the following advice:

Negotiation through democratic institutional structures is both socially desirable and economically efficient. More co-operative relations at firm, industrial, regional and national level should encourage investment and productivity growth and allow for the balancing need for secure and reasonably remunerated employment and society's need for rapid employment creation.

At the time, Baskin (1995:51) made the statement that the –centralised bargaining system as we know it, set up in the 1920s through the industrial council system, is archaic and often inflexible ... we need to see it as a challenge. We need to draw lessons from that in building a system that is both centralised and comprehensive.” Hence the National Labour and Economic Development Institute (NALEDI) (Baskin 1995:51-52) argued for the design of a flexible bargaining system:

- It argued for three main interactive²⁰ bargaining levels: national, industrial (across fairly broadly-defined industries), and plant-level;
- It argued for broad-based industry forums, registered as industrial councils, listing about 30 such structures, distributed across 11 industries. This industrial level, it was suggested, should form the legal centre because of the law allowing for the extension of agreements and should therefore not be based on the principle of voluntarism²¹;
- Industrial councils agreements should be more flexible, allowing for various basic schedules which can be set down for different sub-sectors/regions/smaller employers;
- Councils should set framework agreements with basic minimum standards and conditions, and then bargaining up or down from there – thus avoiding rigid, complex agreements;
- Councils should be reformed to be less bureaucratic and more user-friendly;
- Councils should accommodate the –legitimate need of small business”.

However, the above system never took off (Godfrey 2009:15-16). Various discussions and negotiations saw major differences between business and labour (Du Toit et al 2003:23-30). Union federations argued for national industry-wide bargaining to be achieved by the National Economic Development and Labour Council (NEDLAC) demarcating the scope of each bargaining council - to be confirmed by law. Furthermore, all employers should be represented at council level, and any trade union with 30% membership should be entitled to representation. Bargaining was to take place when unions had a 50%+1 level of representivity. Bargaining issues were to be decided by the parties, if necessary, by recourse to industrial action. Extension of agreements would thus have been unnecessary because of the nonexistence of non-parties to the process. Exemptions were proposed to be agreed upon by the parties to the councils, with a right of appeal only if bargaining was not concluded in good faith.

A task team preparing the first draft of the LRA for discussion at NEDLAC argued that three collective bargaining options existed: a duty to bargaining with the Act prescribing bargaining topics and levels of bargaining; an option of less compulsion and with courts deciding on levels and topics of bargaining if the primary parties could not agree thereupon; and lastly, voluntary bargaining determining own bargaining arrangements through exercising power (Godfrey 2009:16). The third model was chosen, and the bargaining council system remained voluntary. However, the Act provided for the encouragement of the council system through a number of provisions such as providing a mechanism for the Registrar and the Minister of Labour (MOL) to support the establishment of bargaining councils (Du Toit et al 2003:23-30). The key features of the old system were thus retained – voluntarism, extension of agreements on the basis of representivity and the extension of agreements if parties were sufficiently representative (Godfrey 2009:17). Some innovations were added, for instance, a more transparent exemption system, provisions for small and medium-sized enterprises (SMMEs) representation, NEDLAC

²⁰ The approach of different levels of bargaining in order to address different issues found general support in industries such as the motor industry. It was argued that the scope and content of the negotiations at these levels should be determined by the relevant parties in order to improve collective bargaining in that industry (NMC 1995:16-33). However, this should not be confused with bargaining on the same issue at two levels – employers have always strongly resisted this.

²¹ This viewpoint was strongly contested by employers. Most companies indicated that centralised bargaining should not be enforced by law, but should be based on the principle of voluntarism – with the prevailing circumstances and the nature of the business dictating the bargaining system (NMC 1995:16, 33). Union representatives reiterated their support for centralised bargaining enforced by legislation.

submissions and training and education schemes. Vettori (2001:342) reflects that “given our history, it is perhaps not remarkable that at a time when the rest of the world was moving away from industry collective bargaining, the Act adopted a stance in the opposite direction”.

Today it is often said that councils play a key role in their respective sectors, but they need to be flexible in order to govern effectively. If these councils are to succeed in their suggested roles, they should focus on rendering a service. This will provide the necessary incentives for labour and business to willingly participate in the system. Yet, this debate is not clear cut, but holds many varying viewpoints.

Donnelly (2001:564-565) found that employers have a strong propensity to associate and participate in, inter alia, the bargaining council system. According to his research, the beliefs that institutional support will assist in managing one’s own labour relations better; that there is still enough flexibility within the bargaining system to make participation worthwhile; and that association is the best protection from an empowered state alliance with powerful unions, all play their part. A combination of these factors leads to perceptions on the part of employers that bargaining councils are as much “political devices as economic agencies”. The employers’ response to this broader political agenda may well determine the resilience of sectoral bargaining over time, as employers choose to associate instead of free-ride. However, employers’ natural preference for individualism and autonomy of action conflicts with this need for collective security within a potentially hostile system.

Godfrey et al (2006:733-734) caution that councils have been the foundation for and central to the collective bargaining and industrial relations systems of South Africa for over 80 years. Changes to the statutory framework that may threaten or destabilise the bargaining council system may have serious consequences well beyond that system - especially because the system is not in a healthy condition. Furthermore, councils are supported by business and organised labour (Millennium Labour Council [MLC] 2001:1551) which state that “the parties acknowledge that bargaining councils are an integral part of the collective bargaining arrangements in SA.”

4.2.3 Bargaining councils’ numbers and coverage

As indicated in the discussion above, the bargaining council system in South Africa is experiencing an era of transformation and volatility. Councils are on the decline, even though some were recently established. Godfrey et al (2005:13&81) explain that the decline has neither been offset by the establishment of the five public sector councils after the new LRA, nor by the small number of other councils established (eg chemical, fishing and wood and paper). Furthermore, it is significant that the new councils that have been formed have, in most instances, been established with great difficulty after a long period of struggle. Four of the nine major sectors of the economy have no bargaining council at all, or the bargaining councils cover an insignificant proportion of workers. Nonetheless, more sectors of the economy are considering formalising and institutionalising their collective bargaining arrangements by establishing a bargaining council. The trend in council numbers is summarised in table 4.1.

Table 4.1: Bargaining council numbers

Year	Number of councils
1983	104
1992	87
1995	80
2004	48
2009	46*
2010	41**

* This figure excluded two councils that were in the process of deregistration.

** One of these councils has filed for liquidation

Source: Adapted from Godfrey (2009:17); DOL (2010) statistics (www.labour.gov.za)

The decline in the number of councils can be ascribed to some extent to the amalgamation²² of regional councils and subsectoral councils into national councils (eg the NBCCMI), but also to the fact that some of the councils ceased to function and were deregistered. Godfrey et al (2005:81-82) argue that this may be a healthy process, which will end with a smaller number of large national councils covering employees previously covered by regional and local councils. Nevertheless, this is no easy task. New councils are not easy to establish and the merger of councils also tends to be sluggish and difficult - the merger of regional councils to form the NBCCMI took about eight years, and “the council is still to all intents and purposes an amalgamation of regional structures rather than a national structure”. If the trend is indeed towards large national councils and the downfall of smaller councils, then the likely outcome would be a few councils covering only certain sectors, with the majority of the labour market covered by the BCEA or sectoral determinations, or plant-level bargaining (of which only the latter two set wages). Godfrey et al (2005:82) correctly state that this raises questions about the future nature of the industrial relations system.

As indicated in table 4.2 below, council trends are also visible from the point of view of coverage of employees. The LRA and BCEA cover about 9.5million employees in the country (Godfrey 2009:18; Borat et al 2009:22-34). Of these, about 25% are covered by bargaining council agreements (approximately 2.36 million employees), about 36% by sectoral determinations and the remaining 39% only by the BCEA (including those covered by ministerial - and the so-called “old” sectoral determinations). Bargaining councils cover just less than a third of employees who are potentially covered by collective bargaining (ie people working for someone else in occupational categories 4 to 9 of the Labour Force Survey). However, when coverage in the public sectors is excluded, 13% (or approximately 1 million) of employees in 1995 in formal employment were covered by council agreements. According to Borat et al (2009:27), in 1995, the manufacturing sector accounted for almost half of all workers covered by bargaining council agreements (43%), a figure that declined to 36% in 2005. In the construction sector, the number

²² This may point to even greater centralisation in certain industries (Du Toit et al 2003:40). Even so, the impact of this from the perspective of the number of bargaining councils is important - for example, the formation of the national clothing and textile councils meant a net reduction in numbers of 12 councils (Godfrey et al 2006:747).

of workers covered by councils almost halved between 1995 (230 000 employees) and 2005 (approximately 114 000 employees).

Hence even though the number of councils has decreased, the number of employees covered by councils has increased over the last decade, although the predominant reason for this is the addition of the public sector councils (Godfrey et al 2006:746) (see table 4.2 below).

Table 4.2: Estimated bargaining council coverage, 1995 and 2005

Category	1995	2005
Total formal employment	8 120 279	8 039 401
Total BC coverage	1 193 597	2 580 331
Total BC coverage (% of total formal employment)	14.7%	32.1%
Private sector BC coverage	1 193 597	1 072 399
Private sector BC coverage (% of total formal employment)	14.7%	13.3%
Public sector BC coverage	-	1 507 932
Public sector BC coverage (% of total formal employment)	-	18.7%
Uncovered		Approximately 68%

Source: Adapted from Borat et al (2009:27)

Bargaining councils are thus on the decline, but the coverage of workers through these institutions remains significant, and have increased when considering the inclusion of the public sector. According to Godfrey (2009:18), this implies a strengthening of the council system since the introduction of the LRA in 1995. Moreover, councils are well located within the manufacturing sector, thereby hugely impacting on the country's economy (Adler 1991:53).

4.2.4 A legal perspective

It is necessary to look at councils' legal structure and functioning in order to grasp the challenges they face. The aims of this section is not set out to provide a full and comprehensive discussion of all legal provisions relating to councils, but merely to provide some background on those areas pertinent to highlighting the structural or functional aspects relating to this dissertation. As such, an overview is provided, laying the foundation for a more in-depth study of the four key areas identified in chapter 1.

4.2.4.1 General

As stated above, one of the objectives of the LRA is to promote collective bargaining at sectoral level (s 1[d][ii]). Inducements offered to bargaining at centralised level include the following:

- Access to a workplace within the registered scope of the council and stop-order facilities are automatically granted to trade unions (irrespective of their representation level at that particular workplace) that are party²³ to a council (s 19).
- Council agreements may change minimum conditions of service (s 49, BCEA)²⁴.
- Parties to the council may, by collective agreement, establish thresholds of representivity with regard to some of the organisational rights referred to in the LRA (s 18[1]).
- Bargaining councils may add to the mandatory list of issues over which workplace forums must be consulted on²⁵.
- Matters which may not be an issue in dispute for the purposes of industrial action can be determined by the parties to a council through a collective agreement (s 28[1][i]).

Thomson (Du Toit et al 2003:234-235) suggests the following reasons why centralised bargaining is so strongly promoted by the LRA:

- It is argued that a structured setting in which collective bargaining could take place was better suited to industrial relations in a post-apartheid South Africa.
- A higher degree of wage equity is possible through sectoral bargaining.
- Because councils are based on a system of voluntarism, it is argued that these councils are only established once both the employer and the labour parties have agreed that it will serve common interests.
- Flexibility is allowed through the LRA system for councils to set minimum (as opposed to actual²⁶) wages and to negotiate framework (as opposed to fixed) agreements.

Councils are extensively regulated in Part C of Chapter III (Collective bargaining) of the LRA (1995). Some amendments followed in 2002. Sections 27 to 34 set out the statutory provisions of councils, for example, the procedure to be followed in the registration of a bargaining council through the DOL. For councils to be registered, the parties to the proposed council must be sufficiently representative of employers and employees within the scope of such a council.

The starting point of a bargaining council is consensus, that is, the adoption of the constitution of the council by registered parties in terms of section 27 (Holtzhausen & Mischke 2004). Half of the councils' representatives are appointed by trade unions and the other half by employers – hence both parties have equal voting powers. The constitution (s 30) makes provision for the appointment of representatives and office-bearers – setting out their functions. It stipulates

²³ Godfrey et al (2006) emphasise the importance of distinguishing between party, nonparty and noncompliant firms. Party firms are registered with a bargaining council and are also members of an employers' organisation that is a party to the council. Nonparty firms are registered with a council, but have not joined any of the party employers' organisations. Agreements are extended to these firms. A noncompliant firm is one that falls within a bargaining council jurisdiction but has not registered with a council and does not comply with the bargaining council's (extended) agreement(s).

²⁴ According to section 49 of the BCEA, a collective agreement that has been negotiated in a council may replace or exclude any basic condition of employment, as long as the agreement does not infringe on the set of core rights and entitlements as set out in the BCEA.

²⁵ The last two provisions in particular give councils considerable power to influence the bargaining agenda at plant level (Du Toit et al 2005:245).

²⁶ "Actuals" is the term used in industries to refer to the actual wages workers receive. Minimum wages set the norm, although workers often obtain more than that. When councils negotiate on actual wages, it means that the negotiated increase is on the actual wage, instead of on the minimum wage.

negotiating decision-making procedures for the purposes of reaching substantive agreements, and provides for the resolution of disputes, meeting procedures, the administration of funds and exemption procedures. Actions for changing the constitution and for winding up the council (if necessary/so agreed) are also determined.

4.2.4.2 *Functions and powers of bargaining councils*

The powers and functions of councils (s 28) are to

- conclude and enforce collective agreements
- prevent and resolve labour disputes
- perform the dispute resolution functions referred to in section 51
- establish and administer a fund to be used for resolving disputes
- promote and establish training and education schemes
- 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
- develop proposals for submission to NEDLAC or any other appropriate forum on policy and legislation that may affect the sector and area
- determine by collective agreement the matters which may not be an issue in dispute for the purposes of a strike or a lockout at the workplace
- confer on workplace forums additional matters for consultation
- provide industrial support services within the sector
- extend the services and functions of the bargaining council to workers in the informal sector and home workers

Du Toit et al (2003:249) indicate that these functions are not exhaustive (s 28[1]), but that the topics that may be included in councils' constitutions suggest functions that may go beyond these in order to promote collective bargaining at sectoral level. A fundamental issue that arises in the context of these statutory provisions is the extent to which bargaining councils perform all these functions. According to Holtzhausen and Mischke (2004), it would appear that bargaining councils generally focus their attention and activities on collective bargaining and dispute resolution - to the virtual exclusion of any other function.

Through the 2002 amendments, councils now have the power to provide industrial support services within their sector and also to extend these services and functions to workers in the informal sector and home workers (s 28). According to Godfrey et al (2005:19), it is unclear what the effect of the 2002 provisions will be. Even though the intentions mean well, much depends on the ability of councils to offer support services and extend their policing of agreements into the informal economy. Du Toit et al (2003:51) also contend that even though these two new powers are aimed at strengthening the role of bargaining councils in their respective industries, it is unclear what these two provisions will mean in practice.

4.3 FOUR KEY AREAS

This section deals in depth with the following four key areas identified earlier:

- representivity
- the main agreement (wages and conditions of service, and other related issues)
- benefit funds
- dispute resolution

4.3.1 Representivity

4.3.1.1 Determination of representation

The Registrar, when considering whether the parties to a council are representative, takes into consideration the nature of the sector and the area for which registration is sought. Parties may be regarded as representative of the whole area, even if the parties have no members in part of the area (s 49(1), LRA; Joubert & Faris 2009). In 2004, bargaining councils as a whole were representative on both accounts (Godfrey et al 2006:741-742)²⁷: Employer parties employed 63% of all employees, whilst trade union parties represented 60% of all employees covered by the councils – even though not all councils were representative on both measures. Nonetheless, representation is viewed by all role players as one of the main challenges councils face (see Godfrey et al 2007; Dicks, in Ndungu 2007:152).

Many factors influence whether a bargaining council is and will remain representative. The council system is directly affected by its external environment (see Horwitz 2000). For a council to maintain its infrastructure and services and to retain its staff component, a certain number of employees are needed – if this number drops significantly because of economic pressure in an industry, the council also suffers financially. Another example stems from the perception that it is cheaper to compete from outside the council. Employers might resign from their employers' organisation, which would lead to an increasingly unrepresentative employers' organisation, and the ultimate collapse of the council. The BIBC (Gauteng) is a case in point (Baskin 1998). The number of employees covered by the council decreased substantially, while the number of employees in the industry remained stable or might even have increased. Estimates suggested that there were as many employees outside of the regulatory net as inside. Enforcement of the council agreement became increasingly difficult, to some extent because of the nature of the industry, and in part because the agreement was removed from market realities.

4.3.1.2 Admission of parties to councils

Registration of a trade union or an employers' organisation is a legal prerequisite for access to a bargaining council (s 27[1]). Registered trade unions and employers' organisations not

²⁷ These data refer to the representivity of parties that are registered – unregistered (ie noncompliant) parties, although technically covered by the councils, are not included in the calculations (Godfrey et al 2006:742). The clothing sector is a case in point: this council's representivity is 52% on the first measure. However, when unregistered parties are included in the calculation, the figure drops to 39%.

belonging to a council during its establishment, may apply for admission to the council (s 56). Access criteria for the bargaining council are set in the council's constitution and include either fixed numbers or percentages of representation, for the purpose of setting access thresholds (Holtzhausen & Mischke 2004:9). The applicant's certificate of registration and a copy of its constitution must accompany the written application. The council should then, within a period of 90 days, indicate whether to grant or refuse the application. A party that is turned down may take the matter up with the Labour Court.

The DOL maintains that access criteria are for the parties to regulate by means of agreement in the constitution of the council, and that the Department should not intervene — but only give advice as and when necessary (Holtzhausen & Mischke 2004:9). However, the DOL emphasised the need for parties to set access criteria and indicated that the core consideration in respect of access to councils should be the number of employees employed by employers, because small numbers of employers can employ large numbers of employees. The number of employers is therefore not the appropriate approach. In all bargaining councils covered by this research, access criteria have existed for trade unions, and registration of the union is a prerequisite.

4.3.1.3 Small firm representation

The specific needs and problems of the small business sector are highlighted in this study. Taking care of this sector is necessary for various reasons, but also because the council system mainly covers small firms. In fact, the average size of registered businesses across the council system is 18 employees (Godfrey et al 2006:743). In addition, the average size of all party firms is 27 employees, and of all nonparty firms, 11 employees – thus confirming that councils comprise fewer larger party firms, compared to more and smaller nonparty firms.

Organised labour and business (MLC 2001:1551-1552) agreed to promote small business membership in employers' organisations, so that their interest would be better represented at bargaining councils. To this end, they suggested that all role players should give a "political signal" to nonparty employers that good practice would be developed by councils to support better communication. They suggested the introduction of a requirement on councils, through section 54 of the LRA, to submit an annual report to the Registrar reflecting the extent of activity of SMMEs in the various councils, including factors such as trade union and employers' organisation membership, application of agreements to non-parties, and the nature and extent of applications for exemptions applied for and/or granted.

The LRA looks after the needs of SMMEs through, say, obliging bargaining councils to make specific reference in their constitutions to their representation. As rightly stated by Albertyn (1990:124-126), "if industry level bargaining is to be sensitive to the needs of all the employers and workers who fall within its ambit, significant minorities must be allowed a say in the bargaining process". He suggests a pluralist approach (see chapter 3) in which the centralised system is not based purely on majorities, but also not on an "all-comers" system, affording equal weight to all representatives - whether representing large or small constituencies. Instead, he

argues that the best system would be one of centralised bargaining lying between these two extremes and taking the best of both through significant, but proportional representation within an economically defined bargaining unit.

According to Du Toit et al (2003:8), greater participation by SMMEs in employers' organisations should solve many of the problems cited by small organisations in their opposition to councils. However, in reality, a different picture emerges. Even though the LRA aims to encourage small businesses to join employers' organisations or to form such organisations themselves in order to make their voices heard in councils, these provisos seem to have had practically no impact, and the LRA does not appear to have gone far enough in this regard (Godfrey et al 2006:741-743). The Act left out an important proviso which would have forced employers' organisations to recruit more small businesses, namely that the party employers' organisation has to represent the majority of employers covered by the council. This oversight was regrettable from the perspective of the small business - it implies that a minority of large firms on councils can reach agreements with unions and have them extended to many small firms. The system as a whole would have been unrepresentative if the third measure had been introduced, since only 41% of all employers were members of party employers' organisations – no fewer than 24 councils were unrepresented on this measure. However, note that Godfrey et al (2007) found that small firms do not want to join employers' organisations – either because they are not aware of them, have been put off by them or have no interest in participating in them.

DOL research data provide another interesting perspective (Godfrey et al 2006:744-746). Relatively large numbers of small businesses covered by bargaining councils are members of party employers' organisations; in addition, small businesses are generally fairly well organised by party trade unions. The question is thus asked why small businesses appear to have a problem with the council system. Numerically, small businesses should be able to outvote the minority of larger businesses. Research in the clothing sector shows that even though small firms complain about decisions taken by their employers' organisation, the decisions were mostly reached on the basis of consensus, even often voted for. The authors conclude that the reason why small businesses seem to be so pliable is that in debates within the employers' organisations, they make little impact compared with the larger organisations where well-versed and powerful arguments are put forward. Despite their reservations, small businesses tend to end up agreeing with the larger organisations. One can only conclude that it must largely be a question of expertise possessed by their larger counterparts that dominates the process, and a shortage of human resources to challenge the sophistication of the large firms. Nevertheless, research (Godfrey et al 2007) pointed out that even though small firms' knowledge of labour legislation and other regulations is by and large inadequate, it is visibly better in firms covered by bargaining councils. This trend is ascribed to these firms' exposure to monitoring by the councils and the latter's user-friendliness in terms of advice and assistance.

One other way of dealing with SMMEs was recommended by the LMC (1996:58), namely a less burdensome schedule of minimum conditions. In this way, the special circumstances of SMMEs and the dualism of the labour market are taken into consideration, whilst also keeping all employers within the bounds of a basic regulatory net. Such an approach recognises that there

is one basic labour law covering all employers and employees. If this approach is followed, instead of SMMEs having to apply for exemptions, the process should be easy for small and start-up businesses to pursue. The LRA opted for the second approach of exemptions. But it sounds easier than in reality. Small businesses seemingly struggle to meet the standards set by councils (see Ichharam 2003). There are other problems as well – for example, the small employer does not have the time and/or knowledge to apply for exemptions, often does not know about the possibility of exemptions or does not see applying for exemptions as a practical option (Godfrey et al 2007).

Trade unions also find it difficult to organise within the small business sector, again challenging council representivity. Bennett (2002:ix;18-19) cites the example of the profound restructuring of the clothing sector following the reintegration of the South African economy in the mid-1990s into the international marketplace. The organisation of work changed considerably, posing enormous challenges for all role players. In order to remain globally competitive and cut costs, large and medium enterprises downsized, increasing the number of smaller firms. The restructuring placed enormous pressure on the NBCCMI - significant numbers of small firms withdrew from the council, either by rejecting it outright, or by subcontracting work to informal undertakings or independent sub-contractors. In certain areas, increasingly more employees functioned outside the council.

4.3.1.4 Changing work patterns

Globalisation and the changing world of work bring its own challenges to bargaining councils and their representivity levels. According to the Auer (2000), the fragmentation of large-scale mass production in the time of globalisation weakens centralised bargaining and threatens a further erosion of collective bargaining coverage. It explains that along with the changing balance of power in industrial relations, globalisation also leads to adjustments in the nature of the employment and bargaining relationship. More prominence is given to, say, productivity and performance-related bargaining and internal flexibility issues (eg flexible work hours at plant level). This general tendency to negotiate these kinds of issues at plant level has led to decentralisation of the industrial relations system.

South Africa has been part of the global world since the country's democratisation, with trade unions experiencing the same problems as their counterparts worldwide - an increase in temporary and part-time workers (ie casualisation), independent contractors, and so forth - all categories which are difficult to organise (see Theron 2003:1273-1274; Horwitz 2000) – thus also threatening representivity levels for the parties to bargaining councils. In general, unions first attend to permanent workers, and the likely impact of an increase in use of atypical workers (ie flexible forms of employment such as part-time and casual employees) may erode their support base (Olivier 1998:672). Ndungu (2007:3) asserts the following: "Fundamental to the question of improving union capacity to bargain collectively should be the acknowledgement that the changing nature of workplace relations has resulted in the weakening of centralised bargaining". The DOL also acknowledges the threat of casualisation to union growth, resulting in

the decline of bargaining council strength (DOL 2007). NALEDI (Musgrave 2008) emphasises that these trends necessitate better collective bargaining systems.

Apart from the increase in atypical work, the informal sector²⁸ is also growing. Standing et al (1996:153, 194-195) stated years ago that councils are not necessarily representative because many small nonregistered employers increasingly operate in the informal economy. The growth of the informal economy was again confirmed by the ILO (2004:60). According to Benjamin (2008:1579), more than 30% of working South Africans fall within this sector. Moreover, an increase in vulnerable employment²⁹ is visible as formal employment growth decreases - as was the case in South Africa when GDP growth declined 5.3 percentage points to minus 2.2% in 2009 because of the recession (ILO 2010:9-19). Even though the international economy appeared to start growing again during 2009, labour markets showed little sign of improving, with sharp increases evident in unemployment.

4.3.2 The main agreement (wages and conditions of employment)

This key area focuses on the collective bargaining function of councils in order to reach agreements on wages and conditions of service. However, in reality, it is far more complex than this – for example, agreements are extended to non-parties and parties may ask for exemptions from agreements. In addition, there is the question of non-compliance and enforcement of agreements, how agreements and labour rights can be extended to the growing section of vulnerable employment and how councils deal with different sectors in one industry. All these issues are addressed below.

4.3.2.1 Collective agreements

One of the main advantages of councils is that the parties themselves, without the intervention of government, set conditions of employment through collective agreements. These agreements bind the parties to the council who are part of the agreement, unless it is extended to non-parties (ss 31-32). Section 32 allows councils to request the MOL to extend collective agreements to non-parties within its registered scope.

According to Godfrey et al (2005:14), councils have a great deal of leeway in the sorts of agreements they produce, the variation they introduce, the way in which agreements are policed and the sorts of services (if any) offered to firms within their jurisdiction. As Anstey (2004:1852) aptly puts it: “It is not the establishment of a national bargaining council which will preserve collective bargaining in an industry, but what the parties put on its agendas ...”.

The main agreements of councils differ substantially - some are long and complex, and full of particulars built up over years of negotiations, while others are relatively straightforward

²⁸ The informal economy is defined as a sector recognised by two primary factors, namely the absence and/or non-compliance of legal regulation, and the small sizes of firms (Benjamin 2008:1579, 1583).

²⁹ Vulnerable employment is defined as the sum of own-account workers and workers contributing to family businesses. It is thus indicative of informal economy employment (ILO 2010:19).

(Godfrey et al 2005:4; Holtzhausen & Mischke 2004). Some agreements moved away from detailed statements, emphasising principles rather than using elaborate language to cover every contingency. However, McKersie (1990:14) stressed that the ability to do this depends on the degree of trust and maturity between the parties. The length of agreements differs as well - spanning a number of years to being only applicable for a year period. Horwitz (2000) suggests that agreements should be longer term, allowing for workplace change and development between bargaining periods, whilst ensuring compliance and stability (see also Webster, Van Meelis & Psoulis 2000).

4.3.2.2 Flexibility arrangements

According to Barker (2003:34), wage flexibility is influenced by collective bargaining and the degree to which provision is made in agreements for flexibility arrangements. In the case of bargaining councils, there seems to be a history of rigid agreements, with stringent and cumbersome exemption procedures – although many would argue that this is merely to provide more security for workers within the bargaining arena.

Much pressure thus exists on councils to provide some form of flexibility - mostly in the form of a variation in agreements, and usually with regard to specific regions (Godfrey et al 2007). One example was the proposals by Horwitz (2000) for the BIBC (CGH) to restructure its main agreement to permit “regulated flexibility”³⁰, including basic employment standards and an entry-level and/or piece work pay structure and benefits designed to allow flexible cost of employment packages based on actual needs – the proposals were never followed. Godfrey et al (2007:1) point out that collective bargaining aids the concept of “regulated flexibility” – an important statement considering the role councils play in collective bargaining in South Africa. Still, collective agreements concluded in bargaining councils are usually detailed and refer to actual rands and cents in respect of wages - these are not general or policy-oriented agreements, but rigidly spell out the real practice.

4.3.2.3 Two-tier bargaining

A council agreement may make provision for two-tier bargaining should the parties to the agreement be amenable to this. Two-tier bargaining has its advantages and disadvantages. For instance, it is said that it may promote enterprise efficiency (eg through productivity-related compensation schemes), whilst still ensuring standardisation in sectors on minimum employment conditions. However, the most appropriate level of negotiation will depend on the issues negotiated and the traditional practices of that industry.

The LMC (1996:55-57) supported a certain degree of structured decentralised bargaining - councils can play a role by providing guidelines to promote supplementary bargaining. Councils

³⁰ Godfrey et al (2007:1) explain the critical importance of collective bargaining as the mechanism through which “regulated flexibility” can be achieved as “the ability ... to set wages and conditions that balance employees’ needs with those of employers [which] is critical for the ability of the new labour relations system to balance the imperatives of equity and economic development”.

should set the rules of the game, dealing with some items centrally and channelling others to company-level negotiations. A system of two-tier bargaining may, for example, set minimum conditions and outline the parameters within which supplementary bargaining could take place. For instance, compliance with minimum hours can be ensured, but the actual scheduling of hours can be bargained for at enterprise level, linking it to, say, productivity or profit-sharing arrangements. This approach would promote enterprise efficiency, grant workers a share in the fruits of such gains and set realistic minima for the less profitable enterprises, while at the same time moderating undue wage drift between enterprises within one sector." SEIFSA indicated (NMC 1995:16) that there was scope for greater flexibility and productivity improvement at company level within the structure of broader collective agreements. Even so, evidence suggests that very little or no productivity bargaining is taking place in South Africa, and that even in cases where a framework agreement was negotiated at central level, not much interest was shown at plant level (Godfrey et al 2007). Godfrey et al (2007) maintain that most agreements prohibit plant-level bargaining over issues covered in the council agreement.

Schulten (Du Toit 2007:1416) explains multilevel flexible bargaining as the general global tendency – in most countries that still have a domination of intersectoral or sectoral bargaining, higher-level agreements have widened the possibility for further bargaining at plant level. Seemingly this is not popular in South Africa. Cheadle (2007:52) criticises government, saying that the DOL should have written a model bargaining council agreement" to be incorporated into a clear policy on minimum and actual wages, and that councils should set minima that expand the compliance net and don't constitute a barrier to job creation and to allow actuals to be determined at plant-level".

4.3.2.4 Bargaining chambers

A council agreement may make provision for various bargaining chambers of subsectors in an industry should the parties to the agreement accept this. The LMC (1996:56) states the aim of centralised bargaining to bring together in one bargaining forum broadly similar products or service providers, taking into consideration issues such as product market, economies of scale (for social benefit purposes) and the specific nature and labour intensity of the various subsections of an industry, ensuring that the same conditions do not automatically apply to vastly different situations.

However, Barker (2003:327) contends that bargaining councils introduce an element of inflexibility, and do not take into account that circumstances may vary radically from one organisation to the next or from one area to the next. As such, they are a significant source of labour market inflexibility. The NMC (1995:15) highlighted the disadvantage of centralised bargaining and inflexibility - in this study the demarcation of industries was mentioned as a concern - the metal industry is a case in point:

There is a particular problem with the metal industry in that on the employers' side SEIFSA is made up of 50 different associations representing very different industries, for example, Iron and Steel Manufacture, the Construction Industry, Electronics Gate and Fence Manufacture. To throw these all together and negotiate wages is not "efficient".

It was emphasised that the bargaining system must cater for both the uniqueness of individual operations and for flexibility in the system (NMC 1995:16). This point is supported by Anstey (2004:1860), who argues that if bargaining processes are used wisely, collective bargaining (in this instance in the clothing sector) for an industry may develop effective responses to challenges posed in that sector: “Nothing constrains the parties from negotiating flexibilities for certain sectors of the industry operating under difficult conditions.”

It appears that various measures are adopted by councils to accommodate, or at least consider, employer diversity. One way of doing this is by establishing subsectoral bargaining chambers, which has been done in the chemical industry (Holtzhausen & Mischke 2004:21-22). The DOL concurs that different bargaining chambers generally succeed in addressing specific industry needs. The needs of the industry would be decisive in this regard, and issues such as differences and interfaces between various subsectors would have to be taken into account. Different agreements could be structured to accommodate general issues (such as sick leave or overtime and overtime pay) that have found application throughout the industry, while chamber-specific agreements could deal with subsectoral issues in more detail. There would be no need for a central and overarching chamber, the Department added, because the plenary bargaining council itself would fulfil this function. Alternatively, the council could have a single constitution and a single substantive agreement, such an agreement, however, providing for different categories of employees.

4.3.2.5 Extension of agreements to non-parties

The LMC (1996:58) explains the aim of extending agreements as ensuring that all employers are bound by collective agreements reached in representative bargaining councils or where extensions are needed to support stable sectoral bargaining.

The LRA (s 32) makes provision for the extension of agreements to non-parties by the MOL. In addition to extension at the instance of majority parties (s 32[1]), it allows for the possibility of extension when parties to the council are sufficiently representative within the registered scope of the council in the area in which the extension is sought; or where failure to extend the agreement may undermine collective bargaining at sectoral level (s 32[b]). A council is deemed to be representative in a sector if the employer party on the council employs more than 50% of the employees covered by the council, and the trade union party represents more than 50% of the employees. In such cases, and when all requirements have been met, the Minister is obliged to extend a council's agreement if requested to do so (Godfrey et al 2006:741-742). However, this does not seem to be strictly applied - in 2004, even where councils were not representative on both counts, agreements were extended. The authors conclude that councils must have been either sufficiently representative, or not extending the agreement would have threatened bargaining at sectoral level. The Minister had thus used his discretion to extend the agreements, although evidence shows that the DOL is much sterner in exercising this discretion (Godfrey et al 2007).

Nonetheless, the extension of agreements to non-parties has, and will always be, a much debated point (see Moll 1996; Cooper 2000:240). It is seen as a stabilising factor and a condition of labour peace, on the one hand, and creates unemployment, on the other. According to Barker (2003:326), because wages are standardised throughout the industry, it might be that employers, in the interest of labour peace, agree to higher wages than they would have, had there be no bargaining council. Since all employers are then paying this higher wage, and because this can be passed on to the consumer, this reduces the incentive to resist wage demands. Furthermore, because competition on the basis of wages is eliminated, the operation of the market mechanism is interfered with, which may have a negative impact on international competitiveness. Moll (1996) contends that organisations may adopt more capital-intensive means of production, because some organisations will be incapable of paying the negotiated wages, and in the long run will go out of business. Over time, “-ompulsory” centralisation raises wages to a new level. This is because management are deprived of the example of uncovered nonunionised workers in the same industry who are earning lower wages.

Other questions are raised, for example, on the ethics of enforcing agreements on parties who were not party to the agreement that was reached. Small employers in particular argue that it often results in agreements with which smaller organisations cannot comply. Furthermore, it is argued that it is against the principle of freedom of association, and nullifies the principle of voluntary membership of councils (Bendix 2004:275). The major justification for it is to support sectoral bargaining, the argument being that if it is cheaper to compete from outside the council, employers might resign from their employers’ organisation, which would lead to an increasingly unrepresentative employers’ organisation, and the ultimate collapse of the council (Barker 2003:325).

However, Du Toit et al (1995:9) found that party employers’ organisations and party trade unions showed strong support for the extension of agreements, citing the levelling of the playing field as their reason for supporting extensions. Of the 50 parties they interviewed in their research, only one was against the extension of agreements.

The real influence of extensions should be considered. At the end of 2004, councils covered a total of 2 358 012 employees, of whom 335 420 were covered by extended council agreements (Godfrey et al 2006a:734-735). Figures from the September 2004 Labour Force Survey implied that broadly 20.3% of all workers were covered by bargaining councils, and councils’ extensions covered 2.9% of all workers. Godfrey et al (2006a:735-742) state that opponents of councils will argue that these figures are inflated because they count employees who should not be included, and that one should compare the total coverage of councils with the number of employees in the economy who fall within the range of occupations generally covered by collective bargaining and bargaining councils. This calculation (admitting some imperfections) concluded that an amended, more accurate calculation for the share of employees covered by bargaining councils is 32.6%, with 4.6% of employees covered by extended agreements. Councils’ agreements therefore cover just under a third of all employees that fall within the occupational categories generally covered by collective bargaining, with the extension of agreements covering less than

5% of such employees³¹. Even in sectors where extensions of agreements are significant (say, manufacturing), the proportion of workers covered by councils is in the minority, with a mere 15% employed at nonparty employers. As such, one may conclude that despite the huge criticism directed at them, these councils will have an impact on the labour market and may cause problems for small firms.

4.3.2.6 Exemptions from agreements

The general consensus is that the only way for an employer to avoid the rigidity of council agreements is through using the exemption procedure to its full extent.

The LRA has at its heart a system of self-regulation through collective bargaining by the two primary parties. Legally, section 30(1)(k) requires the constitution of a bargaining council to include an exemption procedure from collective agreements. Companies can apply for an exemption from some or all provisions in the council's agreement – which therefore serves as the “escape route” should a business need to apply for a concession from the agreements. The council must establish an independent body to hear appeals from non-parties when exemption applications are refused – thereby ensuring a more impartial process. Some argue that the LRA is thus an empowering Act, which provides ample scope for unions and employers to reach agreements that suit their circumstances (eg Patel 1999).

However, the ILO Review (Standing et al 1996:150, 180) lists a number of criticisms against the system of exemptions, most importantly that there would be a smaller need for exemptions if simpler, less arduous “framework” agreements were concluded at sectoral level. This view is widely supported. Baskin (1998) argues that bargaining coverage is more likely to be extended to the most vulnerable in sectors if sectoral agreements focus more on “modest, enforceable agreements”, while Cheadle (2007:52) states that the Minister should be strict on collective agreements that prove to be “too bureaucratic or onerous”.

Nonetheless, not many firms apply for exemptions. Macun (2008) found that only 12% of organisations applied for exemptions from the (then) industrial council system, and that most of these were larger firms employing more than 151 workers. The South African Enterprise Labour Flexibility Survey (Vettori 2001; Bezuidenhout 2000) also indicated that it is mainly larger employers (with between 150 and 400 workers) that apply for exemptions. However, the research is contradicted by Godfrey et al (2006b:1378-1380), who indicate that mainly small firms apply for exemptions³² - although these findings are limited by the number of responses

³¹ Godfrey et al (2006a:730-731) highlight one problem in this data: bargaining councils do not know about those firms that should be registered with a council, but fail to (or refuse to) do so – had they known about them, they could be pursued to encourage them to register. However, this shortcoming means that the failure to include employees at noncompliant firms (which are technically covered by extended agreements) to some extent discounts the above figures. The overall coverage of councils and the coverage of non-parties are therefore higher – although it is practically impossible to know by how much.

³² As defined by councils themselves – mostly referring to firms with fewer than 10 employees.

received regarding this matter in their research. Data provided by the DOL supported their research - in respect of 44 bargaining councils examined in 2003, 7 373 applications for exemption were made – 59% of these from small firms. Of these applications, 77% were granted in total, and if one looks only at small firms, a total of 78% was granted. Research also indicates that most exemptions that are applied for are granted - either in full, at least partially or subject to conditions (Godfrey et al 2006b:1375-1377). It further shows that only a limited number of refused exemptions are taken on appeal.

Godfrey et al (2006b:1381) also studied the accessibility to, and use of the exemption system by nonparty firms. When comparing the number of party as opposed to nonparty applications, the vast majority come from non-parties. Few of these applications were for full exemptions, but were mainly focused on exemption from council benefit funds and wage clauses.

Hence in practice, all councils must make provision for exemptions from collective agreements. In most cases it was a subcommittee of the council – if there was no subcommittee, the full council would take responsibility (Godfrey et al 2006b:1371-1372). The subcommittees comprised lawyers, the Commission for Conciliation, Mediation and Arbitration (CCMA) commissioners, ex-trade unionists, academics with labour relations credentials and people with financial expertise. With regard to the appeals body, some councils structure it along bipartite or tripartite lines, whilst others see this role more as an adjudicative one, in which appeals are heard by a single person instead of a whole committee. Such a person is chosen from a panel of ombudsmen or from independent bodies (e.g. Tokiso). Alternatively, appeals are referred to the CCMA. In some very small councils, no independent body to hear appeals has been established, even though this is a prerequisite for the extensions of agreements (s 32(3)). Most bargaining councils use a standard form for the application process, although other written applications are accepted (Godfrey et al 2006b:1374-1375). In addition, an applicant may also appear in person before a committee that will hear such an application. Relevant unions are contacted to hear their views. The time from the receipt of the application, until it is processed is not unreasonable, with the majority of councils taking an average of four weeks to process the application.

Most councils have exemption criteria and publish these in their collective agreement, their constitution, or in both (Godfrey et al 2006b:1373). The criteria (often regarded as guidelines, and not hard-and-fast rules) include the size and geographic location of the workforce, whether it is a new or an established undertaking and the company's financial situation. Other factors considered are the circumstances prevailing in the industry as a whole or the sectors likely to be affected by the application, and whether the granting of the exemption will prejudice the objectives of the council. In some instances, a business plan must be submitted. Whether the granting of the exemption will impact negatively on local competitors who are complying with collective agreements, is a factor considered in the textile industry. In the clothing industry, no application for exemption affecting terms and conditions of employment is considered unless the

employees or their representatives have been properly consulted and their views fully recorded in a document to accompany the exemption application.

Exemptions are sometimes granted subject to conditions – for instance, provisions for a phasing-in period of minimum standards or that the implementation thereof will be monitored (Godfrey et al 2006b:1375; 1385). These authors recommend that shorter lists of criteria should be considered and that criteria should be weighted – thus benefiting a more transparent system.

Automatic exemptions³³ exist in a minority of councils – applying mainly to the small business employing fewer than five or only one employee (eg an owner-driver in the road-freight industry) (Godfrey et al 2006b:1382-1385). The authors recommend that councils should explore the option of blanket exemptions for particular categories of business, specifically new and small businesses.

4.3.2.7 Non-compliance and enforcement of agreements

Another problem area is non-compliance and enforcement of agreements, relating to two areas: registered firms not complying with the agreement, and firms not registering and thus also presumably not complying (see Bosch 2003:24-25; Cooper, in Biagi 2000:240). According to the LRA (s 33), designated agents may be appointed by the Minister to promote, monitor and enforce any of the collective agreements concluded in the council. If necessary, agreements can be enforced by means of arbitration (s 33a) (Du Toit et al 2003:51).

Non-compliance poses a huge challenge for councils – the clothing sector is a case in point. Anstey (2004:1859) estimated that 61% of companies employing about 51% of employees in the industry do not comply with the council agreement. Skinner and Valodia (2002:61-63) cite examples of clothing sector firms (KwaZulu-Natal region) that opted out of the bargaining council as a strategy to cope with the result of increased import competition. Figures as high as 300 employers, employing approximately 20 000 workers, who do not comply with some (or all) collective agreements, are cited. The employers' organisation in the industry confirmed these figures, saying that about half of the industry (43%) is noncompliant (Bisseker 2010).

Godfrey et al (2006a:739-741) also examined the problem of firms that do not register with councils. In the NBCCMI, 24% of employees are employed by unregistered employers. In two other sectors, non-compliance was even higher, with only 54% of all workers in the textile industry, and only 39% of workers in the leather industry, covered by council regulations. However, research (Godfrey et al 2007) indicates that some councils saw the nonregistration of firms - a possible consequence of limited enforcement - not as a major threat, but believed that enforcement at councils was effective. Godfrey et al (2007) also point out that councils often do not know how high the levels of nonregistration are, even though they are dangerously high at some councils.

³³ Automatic/blanket exemptions refer to a situation where an organisation is exempt from a collective agreement purely by belonging to a specific category of business, without having to formally apply for the exemption. At some bargaining councils, businesses still need to register with the council.

Ensuring compliance becomes a hugely expensive and virtually impossible task. The task is undertaken by bargaining council agents. Godfrey et al (2006a:740) argue that even though larger councils employ more agents than the smaller councils, they still have fewer agents in relation to the number of employers and employees they cover. For instance, in the NBCCMI, the ratio is one agent for every 73 employers and 6 122 employees; in the textile sector, the ratio is one agent for every 137 employers and almost 24 000 employees! This indicates an overstretched enforcement function, especially if one considers the fact that these agents have many other functions to perform. Both the clothing and textile sectors' bargaining council's agents spent about 30% of their time on tracing unregistered firms. It is argued that a more flexible approach towards enforcement and exemption applications may encourage compliance, instead of avoidance of sectoral agreements. In practice, it was found that the NBCCMI was inflexible in its approach towards agreement enforcement (Groenewald 2006:95).

In order to reduce the number of agents and thus lower costs, it has been suggested (eg by trade unions involved in the BIBC [Gauteng]), that shop stewards be given the responsibility of policing agreements (Van Meelis 1999:68-69). The employers agreed that because of the number of shop stewards in the industry, this might be a more effective solution. However, the secretary of the council at that time pointed out that even though this sounded excellent on paper, when implemented in previous years, it had failed because "unions did not play their role". Various other problems were mentioned. For instance, employers felt that shop stewards should be trained by the councils, whereas unions felt that it was their responsibility. However, in Horwitz's research (2000), close to half of the respondents argued that increased policing is not the answer to non-compliance. A better option would be a package of services and benefits that make registering at a council attractive.

4.3.2.8 Labour rights and the changing workforce

The growth in atypical work and the informal sectors as discussed above raises questions on the protection of labour rights to the self-employed and to informal sector employees, and the implication of this challenge for councils. How can labour rights and the stipulations found in the main agreement of a council be applied and extended to these two groups? According to Benjamin (2008:1580-1581), South African workers who fall within the conventional definition of an employee are entitled to receive the full protection of the law. However, a worker who falls outside this definition does not have this protection, and little or no entitlement to social insurance benefits. For instance, the self-employed are not regarded as employees and thus not covered by labour law. Whilst the informal sector's employees are covered by labour laws, in practice they cannot actually enforce these rights.

Certain ILO conventions (eg Convention 87 of 1948 on Freedom of Association and the Right to Organise) are applicable to all workers – including self-employed workers, corresponding with its mandate to protect all workers. It can thus be argued that international law obligations require countries to broaden aspects of their labour law to workers other than employees. The South African Constitution (s 23) guarantees a universal right to fair labour practices, and the right of

all workers to engage in collective bargaining – the rationale being to confirm the democratic values of human dignity, equal rights and freedom. Labour law under South African conditions has a more integrative function, which includes the “... need to combat the social exclusion of an underclass of unemployed or partially employed people” (Du Toit 2007:1423-1427). This leaves the questions of how employees can effectively affirm their right to bargain collectively in this globalised production process; and how trade unions can engage meaningfully with multinational employers, another result of globalisation.³⁴

DOL research indicated that the increase of nonstandard employment has eroded the quality of labour protection and a reassessment of policies and legislative provisions may be called for. For instance, the existence of a bargaining council in a sector prevents the MOL from setting special minimum conditions for informal workers in that sector because all employees in that sector fall under the jurisdiction of the council. The current scenario does not take into account the fact that a council may only have the capacity to protect some of the workers in the sector (Benjamin 2008:1584-1594). The Minister should therefore perhaps be granted more flexibility to set minimum conditions of employment for informal workers, including those sectors with bargaining councils.³⁵

Theron (2003:1255; 1276-1277) argues that casualisation and externalisation (ie businesses making use of sub-contractors, temporary employment services or other forms of intermediaries) contribute to the decline in the number of councils. Extending the current scope of council coverage appears extremely limited, and councils are already struggling with the enforcement of agreements. Macun (2008:35) emphasises the importance of centralised bargaining arrangements in this matter, because it will gain legitimacy and contribute to overall stability if these arrangements can sustain more equal income distribution and extend wage agreements to more vulnerable workers without putting jobs at risk. Benjamin (2008:1587-1589) draws the following conclusion:

[It] is not an overstatement to say that conventional legal regimes establishing labour rights are undergoing what can be termed a crisis of application. This arises from the fact that in most labour markets an increasing proportion of workers ... are unprotected or inadequately protected by labour rights.

There does not appear to be any “universal” solution to the regulation of informal work.

According to Godfrey (Benjamin 2008:1592-1594), some council responses to protect vulnerable employment have emerged:

- The BIBC (CGH) uses a variety of strategies to regulate outsourcing to labour-only sub-contractors and achieve compliance with their agreements. An agreement was reached with large-scale housing financial institutions to allow contracting of builders registered

³⁴ Also, in South Africa, the decentralisation of production poses major challenges for traditional bargaining structures, and the internationalisation of production an even greater challenge (Du Toit 2007:1428-1429). Internationally this has led to either international collective bargaining between international trade union structures and international employers' organisations, the coordination of bargaining activities internationally or international framework agreements between international trade unions and multinational employers (ILO 2000:31-32). One can but wonder what the effect of this would be on bargaining councils.

³⁵ But then the DOL has even less enforcement capacity.

with the council only. Other services such as payroll services and an employment bureau have been established to attract smaller firms. All of the above have resulted in more, and smaller, firms registering with the council, and complying with its agreements.

- Another example is the Leather Industry Bargaining Council. This sector was brought to the brink of collapse because of trade liberalisation and the huge influx of cheap shoes. However, employers and trade unions responded by revising the footwear collective agreement: they classified businesses in one of three categories: formal businesses pay 100% of the set wage and have to comply with the full agreement; semiformal firms differ from the previous category in that they only have to pay 75% of the set wage rates. Informal firms are fully excluded from the agreement, but must still register with the council. Additional negotiations are allowed at plant level, which can reduce the wage rate even further.
- A number of councils have regulated the operations of temporary employment services in their respective sectors by requiring these services to register with the council, and by limiting the percentage of workers who can be engaged by them, or the work they may perform.

4.3.3 Benefit funds

4.3.3.1 General

Among a bargaining council's range of powers and obligations are those relating to the establishment of social benefit funds. Section 28 (LRA) gives 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". Councils have to report each year to the Registrar on these funds. Section 33A(2) states that collective agreements that include "the rules of any fund or scheme established by the bargaining council" may be extended to non-parties. The benefit funds of councils form part of either the main agreement or fall under separate agreements. Agreements regarding funds are not renegotiated on a regular basis, and often remain in place longer than the main agreement (Bhorat et al 2009:6).

Criticism regarding flexibility is cited against these benefit systems. In general, small firm perceptions of benefit funds are negative, with complaints ranging from the cost of the funds, to allegations that benefits were poor with difficult access (Godfrey et al 2007). In the BIBC (CGH), complaints were raised about the inflexibility and costliness of social benefit schemes because employers feel that having to buy the full range of benefits (holiday, pension and sick fund) takes away any form of flexibility (Horwitz 2000). Even so, they indicated that although the pension/provident fund was deemed to be costly, the council system may still be less expensive than individual employer schemes. It was suggested that councils should be more flexible, and that a stamp purchase system be offered similar to a "cafeteria system" whereby employers and employees can select benefits according to their needs.

The question remains on how well councils can – if at all – deal with the challenges of providing social protection to the informal sector. Nonetheless, it has become an agenda point. Benjamin (2008:1585-1586) mentions that the challenge of how labour law can engage with the social security systems to extend forms of protection to those who currently fall outside of the social safety net, has been raised. The complexity of the problem is acknowledged because of the diversity in the informal sector.

4.3.3.2 Legislative changes

Recent years have seen significant changes in legislation that directly affect bargaining councils in respect of both retirement (provident and pension) and medical schemes. Budlender and Sadeck (2007) explain that the first major change came with the Labour Relations Amendment Act of 1998, which amended section 28 of the 1995 LRA to say that “the provisions of the laws relating to pension, provident or medical aid schemes or funds must be complied with in establishing any pension, provident or medical aid scheme or fund” by a council, and that the relevant laws would apply to all such funds and schemes previously established.

More far-reaching changes are expected in the coming years. In 2007, research was commissioned by the National Treasury as part of a larger group of papers investigating different aspects of the current situation in respect of social security arrangements in South Africa.³⁶ One particular paper looked at the benefit schemes of bargaining councils and related bodies. The research aimed to establish which of the councils have particular types of funds and, subsequently, the basic characteristics of those funds (Budlender & Sadeck 2007). Most of the discussion that follows is based on this research.

4.3.3.3 Bargaining councils with funds

In their research, Budlender and Sadeck (2007) and Macun (2008:34) indicated that a total of 27 private sector councils³⁷ had at least one fund. This constitutes about two-thirds of all private sector councils. According to estimates, a total of over 800 000, and close on 50 000 employers, are covered. However, in practice, there are at least two reasons why fewer employees than this would be covered by funds. Firstly, some bargaining councils have funds that do not cover all employees in their scope, for instance, funds covering only metropolitan workers. Secondly, some council funds are not extended to non-parties. Twenty of the 27 councils said their main agreement is extended to non-parties. The variation in both size and geographical range represents two of the many characteristics in terms of which council funds are diverse.

³⁶ The proposed reforms include the introduction of a multipillar system consisting of improvements to social assistance grants, unemployment insurance and death and disability benefits. It also includes obligatory participation by all employees in a national social security fund; additional compulsory participation in private occupational or individual retirement funds by employees earning in excess of an earnings threshold to a prescribed level (yet to be determined), and the introduction of a wage subsidy to ease the brunt of the proposed new social security tax on lower paid employees. The Interdepartmental Task Team completed a position paper in 2009 (still not giving a united view), which contains the areas of agreement, and the balance of issues that will be put out for stakeholder comment. Government has regularly confirmed its approach towards an integrated social security system (www.fpi.co.za).

³⁷ A total of 27 councils participated in the research.

4.3.3.4 Different types of bargaining council funds

a Pension and provident funds

Pension and provident funds provide benefits to employees at the time of retirement. According to Budlender and Sadeck (2007), in the past, pension funds tended to be found among higher-paid and more highly skilled workers, while provident funds were found among lower-paid and less skilled workers because the ability to have access to the full amount made provident funds particularly attractive to these workers. However, this picture has changed - provident funds now outnumber pension funds. Bargaining councils adapted to this trend by, for instance, closing pension funds and transferring members to provident funds. In other cases, the pension fund remained for those previously covered, while a provident fund was established for the uncovered workers. The MIBCO fund is a case in point that covers only pensioners, because the council moved its active members from their pension to their provident fund at the end of 2004.

b Pension funds

According to Budlender and Sadeck's research (2007), 13 councils had pension funds. All of the pension funds covered only employees from that particular bargaining council. Seven of the pension funds were said to be part of the main agreement, with the remaining six established by way of a separate agreement. In some instances, pension funds in separate agreements were not extended to non-parties. In such instances, these funds can act as an encouragement to employers and employees to become members of the parties to the council, thereby promoting an increase in the representivity of councils. Another possible outcome of having a fund separate from the main agreement is that it may cover a longer period and will then not be affected if the main agreement is not extended because of hold-ups in annual wage negotiations. Employers and employees contributed the same amount each month to these funds. Funds are predominantly administered by external administrators; but the MEIBC has an in-house section 21 company for this purpose.

c Provident funds

Budlender and Sadeck (2007) found that 22 of the 27 councils had a provident fund agreement. The MEIBC's provident fund was the only one that covered some employees outside the council. It covered an additional 107 firms, with 3 047 employees, who had voluntarily registered with the fund, and whose numbers were included in the total provided by the council in respect of the provident fund.

d Medical and sick benefit funds

In 1979, a total of 16 of the 101 industrial councils then in existence had medical aids and 29 had medical benefit schemes (Cooper in Budlender & Sadeck 2007). By 1994, there was a total of 34 bargaining council medical schemes. In 2007, a much smaller total of 15 councils indicated that they had a medical or sick benefit fund or scheme of some sort (Budlender & Sadeck 2007). Membership of the medical fund was not compulsory in seven councils. For instance, in the NBCCMI, it is not compulsory outside metropolitan areas. MIBCO has the largest membership numbers (56 000 members). Very few funds cover dependants. In the

clothing sector in the Western Cape, coverage of dependants was introduced in 1994 as part of ongoing improvement of benefits.

e Sick pay funds

In 2007, 14 councils reported that they had sick pay funds (Budlender & Sadeck 2007), of which seven funds had separate agreements for this purpose. It appears that while some funds are currently offering less than is provided by the BCEA, others offer more. For instance, the MEIBC sick fund affords full pay for ten days, cumulative over a three-year phase. This fund also covers 50% of wages over a period of 26 weeks in respect of maternity payment, thereby topping up Unemployment Insurance Fund (UIF) maternity benefits. Furthermore, at the time of the current research, there were moves to extend the fund to cover compassionate leave days in addition to those provided for by the BCEA. Horwitz (2000) cites a further example, namely that the Sick Leave Pay Fund of the BIBC (CGH) works on a system of credits for employees. These credits are retained as employees move to new employers. This arrangement thus acknowledges the work patterns of the building industry.

The MEIBC indicated that membership was under review in consultation with the DOL in order to make it compulsory for everyone in the industry – currently, the fund is compulsory only for firms that were members of the party employers' association and employees belonging to party trade unions. In most cases, bargaining councils administer the sick pay fund themselves, although the MEIBC has a section 21 company, which takes care of the administration.

f Disability cover

Disability cover provides relief to employees who lose their income because of permanent disability. This income is in addition to what an employee might receive from the Workmen's Compensation Fund (WCF) (Budlender & Sadeck 2007). However, disability cover in the council funds is not restricted to work-related injuries or illness, but may even be linked to the inability to work in the particular industry or similar occupation, even if the person is capable of being employed in another sector or job. In most cases, the benefit is the same as the retirement benefit, and the beneficiary loses the right to the retirement benefit. Seventeen councils had funds that provided disability cover, mostly covered under the pension or provident fund. None of the funds required additional contributions from employees for disability cover.

g Survivor benefits

Survivor benefits (also referred to as death benefits) provide assistance in the form of a lump sum to family members when an employee dies. It is similar to death benefits for surviving dependants provided through the WCF in respect of employees who die as a result of a work-related injury or illness, but with the bargaining council funds, benefits are not restricted to work-related causes (Budlender & Sadeck 2007).

h Leave and holiday pay

Leave and holiday pay funds usually provide for extra days of paid leave a year (over and above the BCEA requirements), or for an annual vacation bonus (Budlender & Sadeck 2007). The

employer makes contributions to the fund during the year and the bargaining council then pays the worker the leave pay when applicable.

Fourteen councils reported that they had a leave or holiday pay fund agreement, of which three councils said that it was a separate agreement. In the MEIBC, it was reported that a company could be exempt if it was struggling, but that it still had to contribute to a trust fund during the exemption period. It would also not be allowed to apply a second time for exemption.

Budlender and Sadeck (2007) explain that to some extent leave pay funds may be the result of historical times when basic labour legislation did not guarantee paid leave for all employees. However, there are reasons why some of these funds remain in usage: in the case of the building industry, for instance, employees mostly have several different employers during the year. Paying the money to the council increases the probability that the employee will receive the full amount due at the end of the year. A further reason suggested is that if the employer goes out of business or disappears, the employee will still receive his/her holiday pay for the period in which contributions were made. According to Horwitz (2000), this system may also be less costly to employers who wish to provide these benefits, because cost is based on full weeks worked only.

i Unemployment benefits

Only one bargaining council – Diamond Cutting – reported having an unemployment fund over and above the UIF. Benefits were calculated to pay out a percentage in addition to what the UIF paid - and thus give the unemployed person almost 100% of former earnings (Budlender & Sadeck 2007).

j Other funds

Budlender and Sadeck (2007) also investigated maternity, housing and funeral benefits, asking whether councils had such provisions and, if so, under which fund these benefits were covered. Five councils reported providing *maternity benefits*, mostly through sick pay or sick benefit funds. Nine councils provided some form of *housing benefits*. Twenty funds provided *funeral benefits*, predominantly through the provident or pension funds. Only two of the five councils in this research named *additional funds* when asked if there were any others. These were as follows:

- NBCCMI: Supplementary Benefits in the Eastern Cape, Industry Protection Fund in the Northern and Western Cape and Trade Union Capacity Building Fund in Western Cape
- MEIBC: Compliance Fund

4.3.4 Dispute resolution

A key function of bargaining councils is dispute resolution. It is seen by both employers and trade unions as vital – in fact, in a study on the effectiveness of councils, employers rated it as the most important function of councils, whilst it was also in the top five reasons trade unions supported councils (Reynolds & Backer 1992:46-47). Subsequent research confirms this finding (Holtzhausen & Mischke 2004:65-67).

One of the changes in the 1995 LRA is the accreditation of councils to perform conciliations and arbitrations for their sectors³⁸. According to Du Toit et al (2003:44-45), the intention of the LRA is to accredit councils to take over the function of workplace dispute resolution in their respective industries. Councils settle about 17 000 disputes referred to them every year, thereby lessening the load of the CCMA (Barker 2003:325). According to Brand (2002:1735), one of bargaining councils' main dispute resolution functions is to enforce collective agreements and deal with disputes relating to their application and interpretation through the processes of conciliation and arbitration. However, Brand (2002:1742) cautions that the dispute resolution function as prescribed by the LRA for councils is intricate and far reaching – councils therefore have to act cautiously because they run the risk of acting outside their statutory powers.

One contentious area relates to subsidies councils receive from the state for dispute resolution (Godfrey et al 2005:19; Du Toit et al 2003; Barker 2005; Brand 2002:1741). An accredited council or agency may apply for a subsidy from the CCMA to perform accredited dispute resolution functions. However, this subsidy is usually somewhat limited (currently R450 per resolved dispute) and normally covers only a fraction of the actual cost of the dispute resolution, and puts a drain on council funding³⁹. An additional burden is also placed on the inspectorate of councils since many councils train their agents to perform conciliations and, in some instances, arbitrations.

Examples supporting these arguments are easy to find. The employers of the (now collapsed) BIBC (Gauteng) said councils being accredited to do dispute resolution have an added cost to the already burdened councils. According to De Kock (Van Meelis 1999:71), –if you do not have an accredited bargaining council you can go to the CCMA for free. We are therefore penalised for being in a bargaining council.”⁴⁰ Subsidies due to them by the CCMA were also not forthcoming. However, research by Horwitz (2000) indicates that dispute resolution by the BIBC (CGH) – thus in the same industry as the previous example – is regarded as more favourable to both employers and employees than use of the CCMA.

This function is mainly dealt with in-house, in conjunction with a panel of outside commissioners (Godfrey et al 2007). However, neither route solves the problems of expense and capacity. Councils are faced with a difficult balancing act in taking on the dispute resolution function (Holtzhausen & Mischke 2004; Godfrey et al 2005). Expenses vary according to how many outsiders the council has on its conciliation and arbitration panels (Godfrey et al 2005:19-20). For example, the road freight industry conducts dispute resolution in-house, but with outsiders

³⁸ Ichharam (2003) states that many bargaining councils are still only accredited for conciliations, and not arbitrations, and that this has a negative impact on the role these councils can play in dispute resolution.

³⁹ This problem was also brought to the Labour Court in the case between East Cape Master Builders & Allied Industries Association & another v Building Industry Bargaining Council (Southern & Eastern Cape) & others (2004). In this case, the employers indicated that one of the reasons for the application of the winding up of the bargaining council was the cost of the council's dispute resolution system. However, the court found that the allegation that the dispute resolution costs far exceeded the CCMA subsidy was found to be unhelpful in that the applicants failed to submit details of the actual costs or average costs incurred in resolving disputes. Still, it was not disputed that the subsidy of the CCMA was a fraction of the actual cost of performing the total dispute resolution function.

⁴⁰ Note that accreditation of councils is voluntary.

on its panels because its personnel do not have the skills to conduct conciliations and/or arbitrations.

According to Godfrey et al (2005:20) and Brand (2002:1741), one way of easing the burden would be to charge a dispute resolution levy, which could also be extended to non-parties in terms of section 132 (LRA). However, this is likely to enrage small firms, which complain that the costs imposed by bargaining councils are already too high. Alternatively, the new section 33A (LRA)⁴¹ may assist in reducing costs. The arbitrator will then have all the powers of a CCMA commissioner, and may make an award that includes (Brand 2002:1735-1736) the following:

- ordering the payment of any amount owing in terms of a collective agreement
- imposing a prescribed fine
- ordering the parties to pay an arbitration fee
- ordering a party to pay the costs of the arbitration

Charging a party an arbitration fee and the ability to order to pay costs are of paramount importance – they enable the council to shift the costs of the arbitration to the defaulter instead of depending entirely on state subsidies or council levies. This could greatly assist councils with their payment of the dispute resolution function.

However, arbitration can only be funded by charging a party an arbitration fee if the council is accredited, and in the case of a dismissal that is found to be procedurally unfair, or in enforcement arbitration in terms of section 33A (LRA). A more radical option would be to substantially increase the subsidy to councils or, failing that, transfer the dispute resolution function back to the CCMA (Godfrey et al 2005:20). Parties to a dispute can also agree to refer the dispute to private conciliation or arbitration, thereby lessening the financial burden of dispute resolution on them by shifting it on to the parties. According to Brand (2002:1742), even though the parties will then have to pay for the process themselves, the benefit to them is that they could choose the dispute resolver, adding legitimacy and quality to the process, thereby reducing the probability of a review. The process is usually conducted promptly and efficiently, and at a time and place convenient to the parties involved. According to Brown (1995), this may make this route worthwhile to the parties.

Proposed amendments to the LRA tabled in December 2010 clarify that a council's agreement may include a dispute resolution levy, and that councils may charge a fee for dispute resolution services (under the same guidelines as those of the CCMA) (www.labour.gov.za, accessed on 29 January 2011). It is hoped that this amendment, if promulgated, will alleviate at least some of these financial challenges.

The question remains whether bargaining councils are successful in dispute resolution. According to Du Toit et al (2003:44-45), the quality of dispute resolution services in councils is

⁴¹ Section 33A (LRA) provides that a collective agreement may authorise a designated agent to issue a compliance order which requires any person bound by the collective agreement to comply with it for a specified period of time. If a dispute regarding compliance remains unresolved, the council may refer the dispute to arbitration by an arbitrator appointed by the council.

sometimes worrisome. Ichharam (2003) found that certain councils play a significant role in the dispute resolution process, and that disputes are processed effectively and speedily. However, many bargaining councils were ineffective in resolving disputes, often attributed to logistical problems of convening hearings (eg in the road freight industry), resulting in matters being withdrawn (Holtzhausen & Mischke 2004). Another view states that councils often succeed in conciliating disputes within the 30-day period stipulated by the LRA - the MEIBC is a case in point, with only 0.5% of conciliations falling outside the statutory 30-day period (Deale 2003:23). According to Macun (2008:33), a vast improvement could be seen in dispute settlement rates for councils – bargaining councils are currently reporting settlement rates of between 50 and 60%, as opposed to about 30% in the past.

An interesting development is the promotion of a shared services concept among bargaining councils – driven by the MEIBC (Centre for Dispute Resolution 2008:23). The idea centres around the concept of allowing councils to draw on each other's resources to increase effectiveness, whilst decreasing costs. According to the MEIBC, this principle applies particularly to the dispute resolution function where councils could benefit from economies of scale and have a basis from which to benchmark councils against one another. One such pilot project was entered into in 2008 between the South African Road Passenger Bargaining Council and the MEIBC, with the support of both the DOL and the CCMA.

4.4 CONCLUSION

The chapter provided a summary of the most important writings on bargaining councils. It started off with a brief historical overview, indicating that bargaining councils are the direct descendants of the industrial councils that were first formed in 1924.

With the democratisation of South Africa around 1994, councils were seen as a platform for social dialogue between management and labour, ideally situated to deal with both economic and social concerns. Many unions regarded the strengthening of centralised collective bargaining as their primary goal. Employers often welcome the institutional support in managing their labour relations better, and some regard the council system as having enough flexibility to make participation worthwhile. Moreover, they believe that it is a way to protect themselves from a strong state alliance with dominant unions. However, it remains a relationship based on compromise between contesting parties. The new government saw collective bargaining, and specifically bargaining councils, as a vital part of the future, and as integral in, for instance, implementing the RDP. The 1995 LRA brought changes to the council system, and has the vision of increasing industry level bargaining. Although bargaining councils have decreased in numbers over the years, the coverage of workers remains significant and has increased when public sectors bargaining councils are taken into consideration.

The discussion then focused on the four key aspects identified as part of the research question, namely representivity, the main agreement (wages and conditions of service), benefit funds and dispute resolution.

Regarding representivity, it became clear that a decline in trade union membership is evident, placing councils under a lot of stress. The main reasons given for this trend is the increase in atypical work, tough economic times resulting in an increase in unemployment and growing informal and small business sectors – all difficult conditions for trade unions to recruit members in.

The main agreements (including aspects of wages and working conditions) of councils were discussed. The fact that the parties to the council can themselves regulate conditions of service ideal to their industries, is regarded as a huge advantage. However, more flexibility arrangements would be welcomed. Although two-tier bargaining addresses the need for flexibility, it seems to be unpopular. Councils can also introduce bargaining chambers, thus addressing the needs of subsectors and accommodating employer diversity. The extensions of agreements remain a contentious issue. Although they are seen as contributing to labour peace and a stabilising factor, they are also deemed to lead to greater unemployment. Nevertheless, the literature showed that even in sectors where the extensions of agreements are significant, the proportion of workers covered by councils is in the minority, with only about 15% of workers employed by nonparty employers. Employers can also request to be exempt from some or all of the provisions of the council's agreement. This is done through a set exemption procedure. However, not many firms apply for exemptions; mainly small firms fall in the category of those that do apply. Automatic exemptions are rare. Compliance and enforcement of agreements remain a huge challenge. Designated agents are appointed to assist with enforcement, but this does not address the problems of firms not registering with the council, and which are thus often unknown to the agents. Ensuring compliance becomes an almost impossible task and is extremely costly.

Bargaining councils may establish social benefit funds. Research indicates that at least two-thirds of private sector councils have at least one fund, covering a total of over 800 000 employees, and almost 50 000 employers. Significant legislative changes are expected in coming years. The benefit funds of councils are criticised for being inflexible, with the small businesses in particular complaining about costs and the inaccessibility of benefits. However, council funds are generally strong and well supported.

Dispute resolution is viewed as a key function of councils by both parties, in fact research indicates that it may be regarded as the most significant and beneficial function. Since 1995, councils have been accredited for conciliations and arbitrations in their sectors. Funding remains a problem and the subsidy received from the state is seen as inadequate. Councils are generally seen to be effective in performing this function.

From the above it is evident that many challenges remain. In 1994, Von Holdt (1994:33) stated that in order for councils to survive, they need

a new vision in which they are seen as dynamic forums for the renewal of industry. They will have to generate and support industrial policy, facilitate new approaches ... stimulate ... innovation and small business – in short they will have to generate competitive *advantages*, rather than competitive *disadvantages*.

It is now 15 years later, and this study aims to determine how councils have adapted to the changing environment over the past 15 years. This chapter provided a literature review of councils, laying the foundation for the empirical research that follows in the next chapter. Chapter 5 offers insights into whether councils responded to the proposed new vision above, and how they have adapted in the four identified key areas.

University of Cape Town

CHAPTER 5

AN ANALYSIS AND DISCUSSION OF THE RESULTS

5.1 INTRODUCTION

The previous two chapters laid the foundation for the empirical research, of which the most important findings are discussed in this chapter. Chapter 3 discussed pluralism – the perspective from which the interviews were conducted with representatives of the main trade union and employers' organisation. Representatives from the council secretariats were also interviewed. The starting point for the descriptive part of the research was the literature review of available research on centralised collective bargaining and the bargaining council system (chapters 3 and 4). As in the exploratory study (Holtzhausen & Mischke 2004), it contributed extensively to the study because it helped identify key issues to research and provided a benchmark for comparison. The aim of this research is to answer the question of how bargaining councils have adapted to their environment in the past 15 years. The research focused on four subsidiary themes, namely representivity, the main agreement (wages and conditions of service), benefit funds and dispute resolution. The questions asked in the interviews were largely based on the information described in chapters 3 and 4.

In addition, to explain and add depth to the results of the exploratory and descriptive parts of the study, an explanatory component was introduced. The purpose of this chapter is to clarify why and how councils have changed in the last 15 years. As explained in chapters 1 and 2, this dissertation does this by examining a number of environmental threats and opportunities, and by relating possible changes to specific characteristics of councils⁴² – including but not limited to their size, the structure and nature of the industry it operates in, the nature of the employment relationship, the nature and size of the parties to the councils and a council's age and financial strength. It was argued that these characteristics are the most important variables that influence the way councils have adapted to their changing environment. Hence questions were asked to determine their effect, benefiting the aim of the research to describe and explain what has happened to councils in the last 15 years. Lastly, questions were posed about the four key areas in order to determine whether any changes were prevalent. These questions included factors that could identify South Africa's centralised collective bargaining trends, thus also making it possible to compare these trends with international trends (as discussed in chapter 3) in the concluding chapter.

The chapter reports on the results by first providing a brief background on the five councils selected for the research. It then describes some of the environmental factors councils have been exposed to in the past 15 years. The second section deals with possible characteristics that could affect councils. This is followed by a discussion of the four identified key areas. The discussion concludes with a few general comments on the council system.

⁴² These same characteristics were used to choose the population for the study (see sec 2.2.3).

5.2 COUNCILS RESEARCHED

Five bargaining councils were researched - a short description of each (in no particular order) follows⁴³:

5.2.1 The MEIBC

The MEIBC, which was established in 1946, is the largest private sector council. It is a national council, with its head office in Johannesburg, and six regional offices. It employs 120 people. The main employers' organisation is the Steel and Engineering Industries Federation of South Africa (SEIFSA); the umbrella body for 35 independent employer associations representing all the various sectors which form the metal and engineering industry. Three other employers' organisations are party to the council. The employers' organisations collectively represent about 8 800 employers in the industry, employing approximately 270 000 scheduled employees. The National Union of Metalworkers of South Africa (NUMSA), one of six unions on the council, is the largest metalworkers union, and second largest trade union in South Africa, with about 232 000 members.

5.2.2 The NBCCI

This is one of the newest bargaining councils, having registered in 2001. It is a national council with no regional offices. It serves five sectors in the chemical industry, and a strong sectoral approach forms the basis of all its operations. Four unions are party to the council, of which the Chemical Energy Paper Printing Wood Allied Workers Union (CEPPWAWU) is the majority union. There are nine employers' organisations party to the council, with one full-time appointed coordinator for all. The council currently consists of approximately 220 employers' parties and about 70 000 unionised employees.

5.2.3 The NBCCMI

The clothing industry had five regional councils which consolidated to form a national council in 2002. SACTWU is the only trade union. It has 111 000 members of whom 72 600 (in mid-2002) were estimated to work in clothing manufacturing enterprises. The employers' parties consisted out of six regional associations which amalgamated in 2009 to form one employers' association, the Apparel Manufacturers of South Africa (AMSA).

5.2.4 MIBCO

This is a national council consisting of approximately 14 000 employers and 182 000 employees. The majority union is NUMSA, with one other union, the Motor Industry Staff

⁴³ Due to ethical considerations, the names of interviewees are not provided in the thesis, although a detailed list of the councils' researched are given. Appendix C also provides a list of the councils, the date of each interview, as well as the designation of the various interviewees in the respective councils.

Association. The Retail Motor Industry Organisation (RMI) is the largest employers' association, and together with the Fuel Retailers Association (FRA), represents employers.

5.2.5 The BIBC (CGH)

The council has been operating for more than 80 years, and is a sector and area-specific council with jurisdiction over approximately 200 sq km. About 50 000 people are active in the building industry in this area. The council employs 65 people. Two employers' associations – the largest of which is the Masters Builders and Allied Trades' Association (MBA), and five trade unions, of which the Building Workers' Union (BWU) is the largest union – are party to the council.

As stated above, for each bargaining council in this research a representative of the council secretariat, and the strongest trade union and employers' organisation respectively were interviewed. In the case of the BIBC (CGH), two representatives of the council secretariat were interviewed (see Annexure C for detail on the interviews held).

5.3 THE RESULTS

5.3.1 Threats, opportunities and subsequent changes

Interviewees were asked to identify the threats and opportunities their councils had been exposed to over the period 1995 to 2010 (or part thereof), and to indicate how the councils had adapted to the changing environment. The two main external threats (mentioned by all the parties) related to the economy (eg the current global economic crisis) and the changing world of work. The principal changes mentioned were better relationships formed over the past years between the parties and the fact that parties saw no better way to regulate their respective industries. These changes were also regarded as significant opportunities. These factors are discussed in more detail below.

5.3.1.1 Economic influences

There is no doubt that the economy has a huge impact on councils. Interviewees all emphasised economic issues as an environmental factor influencing the way councils change. When the economy is growing, industries are successful, job losses are not a constant threat (also impacting on representivity levels) and bargaining becomes generally easier. However, the converse is also true. Tough economic times lead to retrenchments, short-time and other variations in working arrangements, and an increase in exemption requests. Enforcement becomes a challenge. In addition to economic fluctuations, South African businesses were faced with post-apartheid challenges of democratisation and subsequent transformation, and the opening up of the economy after 1994. Industries, especially clothing and steel, were increasingly exposed to the threat of growing economies such as China and India, requiring initiatives to counteract the problem. Towards the end of the 1990s, rapid trade liberalisation was evident, with a decline in state interventions, particularly in respect of energy and transport

initiatives. These factors have influenced all the councils in the past 15 years in their respective industries in varying degrees. (This has also led to parties realising that they need to work together - see the discussion later on.) Examples of how councils have adapted to these environmental factors are discussed below.

Most interviewees mentioned the current global economic crisis and its significant impact on the national economy and manufacturing in particular. As a result, all five industries reported job losses over the past 15 years. The metal and engineering industry is a case in point. Export markets have dwindled considerably and employers have been forced to implement extensive short-time working arrangements and large-scale retrenchments in an attempt to remain financially viable in the face of acute trading conditions. Employment reached a ten-year peak of scheduled jobs in February 2009, but then dramatically shed over 75 000 jobs in the space of ten months. The SEIFSA interviewee stated: "There can be no doubt that our membership remains faced with an unusually difficult, unpredictable and uncertain year ahead. The events of the past year have left the world a very different place from what it was this time last year."

The CEPPWAWU interviewee stated that the economic recession had resulted in more employers asking for exemptions in the last three to four years, while variations in working hours (especially overtime) became more prominent, particularly in medium-sized businesses employing up to 100 employees.

The clothing industry is known to be under pressure. Mounting levels of imports are resulting in considerable job losses. The SACTWU and AMSA interviewees explained that a "Rescue Package" initiative had been formed in 2009 to address the impact of this crisis on the industry. The Department of Trade and Industry, SACTWU and AMSA - under the auspices of the NBCCMI - identified 12 policy measures to be implemented. One of these was a coordinated and well-resourced skills development programme constructed to cover the full spectrum of skills requirements in support of future growth areas. The programme determines that employees who ordinarily would be retrenched would, where possible, be offered training discharges, which would keep them in employment during the economic recession but reskill them for future economic recovery.

BIBC (CGH) officials take consolation in the fact that their industry is cyclical and should return to higher levels. They attempt to avoid retrenchments by allowing temporary layoffs for a continuous period not exceeding 20 working days (collective agreement clause 8(9)). According to this, an employer may temporarily lay off employees on account of inclement weather, a shortage of material owing to circumstances beyond the control of the employer or a temporary shortage of work. If, at the end of this 20-day period, the employer wishes to extend the lay-off period for a further 20 working days, the employee is first given the choice to be retrenched in accordance with procedures set out in the agreement.

5.3.1.2 *The changing world of work*

The research showed that the workers' profile has changed in the past 15 years, and that – in line with international trends – increasingly more workers find themselves in atypical employment with casualisation, the use of sub-contractors, labour brokers and temporary employment on the rise. A growing informal sector is evident. Councils are severely threatened by this phenomenon because a decline in permanent employment leads to a decrease in membership numbers of parties, thus threatening parties' representivity levels. A few examples are provided below.

All parties, with the exception of the NBCCI secretariat, indicated that the changing world of work has threatened councils. The SEIFSA interviewee explained this as follows: "From 1995-2010 the industry has moved progressively into atypical employment. Fixed-term contracts are renewed and rolled-over, labour brokering has grown a lot. Permanent employment has declined. This is mainly because of our inflexible labour policies". According to the MEIBC representative, the industry has always had atypical work, often necessitated by the very nature of the industry – for instance, a major infrastructure project that requires the increase of atypical employment for the period of the project. Still, the use of labour brokers has increased dramatically and is fairly new in this industry – it was estimated at about 5% of their workforce in 1999, whilst the current estimate is about 20 to 25%. He indicated that similar to other employment, labour brokering is also influenced by economic growth, or the lack thereof (eg a recession). In tough times, the use of labour brokers also declines. However, employers sometimes also view it as a way to "bypass the hassles and difficulties of hiring and firing". The MEIBC interviewee stated the following: "Lots of pressure exists for mobility, this should be encouraged, but then a skills and safety net is needed. There is still a competitive dimension to all of this. It is a reality – we need to promote competitiveness within the agenda of decent work." According to the ILO the Decent Work concept "… is based on the understanding that work is a source of personal dignity, family stability, peace in the community, democracies that deliver for people, and economic growth that expands opportunities for productive jobs and enterprise development" (www.ilo.org).

The greatest current challenge is that of labour brokers. In 2009, the MOL presented to NEDLAC a report and a range of proposed legislative amendments – including the introduction of ministerial power to prohibit labour brokering in any particular sector of the economy. A draft amendment Bill was formulated for consideration by the Cabinet and Parliament with the intention of introducing legislative changes. Employer parties regard the possible restriction of labour brokers as a threat to their businesses. Labour, however, sees labour brokering and other atypical forms of work as a threat to its own existence (eg the difficulty of recruiting members under such circumstances), and to its members (eg the lack of security employees have on account of flexible employment practices).

The following are specific examples: SEIFSA came out strongly against the possible amendments mentioned above, arguing that, it would introduce a number of unacceptable

presumptions, powers and new employer liabilities into labour law, making the South African labour market more inflexible. SEIFSA believes that proper enforcement of current legislation is the key to eliminating the various alleged employment abuses referred to in the Minister's report, and does not support further regulation in the absence of a meticulous effort focused on ensuring effective and proper adherence of existing labour legislation. SEIFSA argued that further restrictions on employers regarding their use of labour will have a serious detrimental effect on anticipated industry growth and have an adverse impact on the numbers of workers employed. It will thus do everything in its power to protect its members' rights to use flexible employment practices and services provided by labour brokers. However, the AMSA representative argued that the industry has seen only marginal changes in labour brokering usage, and that at least 90% of employment contracts are still permanent. Casualisation is limited. Still, all indications are that there has been huge informalisation of clothing operations.

Another case in point is the BIBC. The council representative emphasised that "fragmentation is the main threat to the council, as it leads to representivity problems". He explained that large firms that used to employ more than 6 000 employees have adapted a new business model: "Sub-contracting then became fashionable, and they are now project managers. This happens in big and smaller businesses. The threat lies in that it becomes more difficult to control."

The methods councils employ to deal with the changing world of work are discussed in section 5.3.2.

5.3.1.3 Level of cooperation between the respective parties

One of the most significant opportunities reiterated by all interviewees was the more mature relationship that has emerged between the respective parties in the past 15 years. To a certain extent this was a result of difficult and changing economic circumstances (as discussed above), and crippling industrial action – both of which forced the respective parties to seek a different approach. Negotiations now tend to centre more around win-win situations – considering the overall effect of the outcomes on the respective industries. The chemical industry attributes its sector's improved relationships to the formation of the council. More detail follows.

Earlier research (Holtzhausen & Mischke 2004) confirmed considerable tension, controversy and continuous debate between parties, especially from the employers' side. Trade unions indicated that they could not trust employers because they were set on undermining or eliminating unions. In the current research, the MIBCO, MEIBC and NBCCMI interviewees all indicated that in the last 15 years, a concerted effort had been made to turn their relationships around. In many instances, this had been a long and difficult process. The NUMSA interviewee indicated that major strikes in the motor industry had been seen as turnaround points. The 2004 strike, in particular, had resulted in parties realising that change and transformation were inevitable.

The MEIBC and SEIFSA interviewees explained that their bargaining process had been through some phases, linked to "major bolts of industrial action". The first was in 1988 when an

extremely –strategic (big business offered to bargain at plant-level) and a crippling strike changed the nature of engagement”. Relationships had worsened, and positional bargaining in its extreme forms had occurred. In 1999, the industry had experienced another major strike, resulting in a different approach referred to as –The New Deal”. NUMSA had been accepted as a party, although the relationship was still adversarial. Parties had moved away from positional⁴⁴ to interest bargaining. Parties had agreed to prenegotiation conferences in order to facilitate a common understanding of the key economic issues that faced the industry, demands were limited to a few key issues, the negotiation process was carefully managed and even the venue and physical layout and structure of the negotiations were changed. A landmark agreement of two years was reached, introducing a 40-hour workweek, flexible working time arrangements for voluntary implementation at plant level and the commitment to the joint formulation of an industry strategy to promote economic and employment growth. The MEIBC interviewee explained this as follows:

The vision of a more benign growth path was born. Parties realised this was a lose-lose scenario. They needed to do things differently. Restructuring started. An outside facilitator was appointed to accompany the process right through. The bargaining council itself became less of a secretariat, and got more active in the process. Its core focus and key value proposition became the promotion of collective bargaining. The council became a strategic facilitator. Annual negotiations are now merely a phase of the negotiations and getting the parties together. But the process is constant, and at times very formal – at times 1 000 NUMSA shop stewards are present. We need to be very realistic; we need to deal with it respectfully. It is almost a ceremony, and we need to take people through that dance. People get antagonistic, they play from the gully. The council need to sensitise all the parties, to explain the process, but behind the scenes. Only thereafter can the process start. Then the parties sense prioritisation. Then it becomes very informal and bilateral. But still it is adversarial. Parties almost see it as universal, as if it is a particular standard, part of a custom they have to acknowledge. Then - let’s get down to serious business. We have to allow space for this increasingly. We must never allow the conversation to end, even when in dispute. We have to ensure that. At all times the relationship remains cordial. We need to see to contact time to connect. We need to build up trust, to keep a bit of the magic alive. The captains of industry are different, they are more informal, and at the end a deal is cracked somewhere.

The year 2007 witnessed a groundbreaking three-year agreement in the industry.

Other examples of improved more cooperative relationships were provided. The CEPPWAWU representative indicated that –only a few companies remain bullish – relationships with employers have improved a lot over the past five years”. He cites the regulation of the chemical industry through the NBCCI as the main reason for this: –Both parties now know their parameters on wages, taking away unnecessary conflict.” The employers’ representative agreed – working together on the council gives parties the time to get to know each other, and to better

⁴⁴ In 1998, over 90 individual demands were submitted for negotiations. SEIFSA responded by initially rejecting them all. From this basis, the parties were slowly forced off their divergent positions in an attempt to reach an agreement with as little compromise and as few concessions as possible.

understand their respective needs. The MIBCO interviewee attested to more cooperation and a needs-based bargaining environment – needs are identified by the respective parties, and negotiations follow to see how these needs can be met. However, the RMI interviewee indicated that there is still some mistrust, and that the country's past has influenced decisions; often because business is not understood and known to lower-skilled shop stewards who form part of negotiating teams.

Another case in point is the building industry. An MBA representative explained as follows: “There is no us and them’ – that’s the big thing.” It is becoming easier to structure their agreements – the council representative confirmed: “Three meetings, that’s all it takes, and we have our agreements.”

The employers’ representative of the NBCCMI elaborated as follows: “We are constantly pushing the boundaries of the traditional relationship ... we are more partnership-orientated. There are much more participation in strategies – also with regards to flexibility and productivity issues. In fact, the common interest-issues agenda’ is growing.” He explained that current economic challenges forced the role players to stand together, and to put behind them any conflicting, adversarial relationships. Moreover, they were compelled to find other ways, to focus on mutual interests and to support joint collaborative projects. In his words: “In clothing the enemy is international competitors, they can shut the trade unions and the industry down. It is not only a threat any more, it is terminal. Therefore we have more participation, more partnership between the unions and management.”

This is not to say that it is always easy. The NUMSA interviewee indicated that even though relationships had matured a lot, challenges still remained. The MEIBC representative agreed: “It is challenging to change one’s business hat for a bargaining hat. Parties are more cordial, more respectful, but have not yet succeeded fully.” In order to succeed, he reiterated, one needs commitment, maturity and the capacity to deal with these issues at a strategic level. The SACTWU respondent saw one of the major past challenges of his council as the attempt by some employers’ associations to collapse the council. The AMSA interviewee responded to this allegation as follows:

There was never a decision taken at any meeting, nor was it ever discussed to undermine the council. I am aware that groupings of individuals may or may not have had such discussions in the past. However, I cannot respond to an unsubstantiated industry rumour. It has never been a mandated decision. This is talk in the industry; it is rumour ... speculation ... of individuals as opposed to employers’ institutions and employer policy.

It is evident that challenges remain. Also, the parties will not hesitate to resort to any measures necessary to attain their objectives – a fact clearly proven by the recent industrial action such as that evident in the motor industry.

5.3.1.4 The need for councils

Another significant change of the past 15 years mentioned by all interviewees was that parties had increasingly come to realise the benefit of centralised bargaining through their councils.

In earlier research (Holtzhausen & Mischke 2004), some employers' organisations representatives had indicated a complete and utter lack of a sense of ownership – there was no sense of the employers' organisations or the employers they represented having any real stake in the bargaining council or being in a position to change anything. The perception was more a matter of being "subjected" to the will of the council, not entirely voluntarily. The council appeared as something that had to be endured – this burden on employers and their employers' organisation occasioning considerable resentment. Generally speaking, employers were considerably less enthusiastic about the bargaining councils in which they were involved, whereas trade unions did not express a similar view. Trade unions seemingly viewed councils as appropriate, effective and efficient forums. The mere existence of a bargaining council does not necessarily improve differences between employers and unions, even though councils are sometimes established as a result of particularly difficult collective relationships; hard, aggressive and overly adversarial position-based collective bargaining; or protracted and costly industrial action. In these situations, a council is seen as a solution to a breakdown in the collective relationship or as a means of improving the relationship; even as a measure to prevent or minimise future strike action. Real differences may still persist. A council does not appear to be a quick fix for collective bargaining problems and issues; if the bargaining relationship is strained, these stresses, strains, problems and concerns become institutionalised with the bargaining process itself. One exception was the NBCCI – the parties displayed a sense of enthusiasm and willingness to make the council work and meet the needs of the parties. At the time it was said that this could prove to be a vital attribute, should councils wish to play an active role in the success of their industries.

Contrary to the above, in this research, all interviewees expressed their support for councils, saying that this is the only way that both employers and employees can bargain collectively and fairly for a whole industry: "Employers still have a big say", mentioned the NBCCI employers' representative. The BIBC (CGH) interviewee added that the main advantage of councils lies in the fact that "the industry can govern itself. Nobody is better qualified to govern them but the employers and employees of the industry. Yes, I believe in the system." Another BIBC (CGH) council interviewee added that the council contributed to labour peace, and thus to LRA goals. The MIBCO secretariat stated that at least 80% of parties share the view that there is no alternative: "Here industry has a voice in what happens in the industry." The RMI interviewee agreed - research conducted in 2005/2006 indicated employer support for the council. He added that the MIBCO adds value to businesses that do not have labour relations knowledge. Another MBA respondent added: "We constantly monitor our members who each time vote unanimously for retaining collective bargaining." The AMSA interviewee explained this as follows: "It is what the parties do with the structure". The fact that it is on a voluntary basis was reiterated time and again. All agreed that they see no other or better way to deal with the challenges of their respective industries. This is markedly different from earlier findings (Holtzhausen & Mischke 2004) when many employers' representatives indicated that they had no real stake in the councils, that they could not change anything and that they were "subjected" to the council.

The SACTWU respondent aptly summarised this as follows:

The bargaining council system has been central to industrial relations stability in the industry. It has, importantly, played a major role to resolve disputes between the parties, provided a stable institutional vehicle to deliver social benefits to our members (eg healthcare and retirement provisions), provided a forum for the development of important industry policy and promoted jobs. Undoubtedly it has helped to promote labour peace (only one national collective bargaining strike over the last 15 years), and provided the forum to develop industrial policy (such as the recent Rescue Package for the industry). Established a fund to protect and promote the industry, actively promoted compliance and been central to promote general social dialogue. It has also helped to promote union membership growth (eg through union security arrangements such as the closed and agency shop provisions) and employer association viability (such as agency provision).

5.3.2 Influencing factors

In chapters 1 and 2 it was explained that various characteristics had guided the researcher's choice of councils to research. It was also argued that these characteristics are variables that influence councils. Interviewees were probed to determine whether these factors played a role in the way councils had changed in the preceding 15 years.

5.3.2.1 Size of a council

Interviewees agreed that the size of a council, and whether or not it has regional offices, influence its operation.

National councils strong enough to have regional offices (eg MIBCO and the MEIBC) mentioned that this assists greatly in servicing their members, although both councils' interviewees indicated that regional offices sometimes work too much on their own, and should be well managed. NUMSA indicated that even more regional offices are necessary to service all members efficiently. The CEPPWAWU representative indicated that it preferred national to regional councils because benefits are better streamlined nationally. The chemical industry parties confirmed that the larger the council, the more services it can render, but also the more expenses it has to deal with.

Interviewees in the BIBC (CGH) disagreed, saying that regional councils allow more for factors specific to that region. Also, a smaller council can adopt a more "hands-on approach", and better facilitate dispute resolution because of its more service-oriented nature.

The most significant change in the past 15 years regarding a council's size was evident in the clothing sector where regional councils had amalgamated to form one large national council. Both SACTWU and AMSA interviewees indicated that a strong regional orientation still exists.

5.3.2.2 Structure of the industry

The structure of the industry – especially whether the sector consists mostly of small or big business – affects councils in varying ways and degrees. All parties indicated that larger businesses bring stability and reliability to the council – especially from a financial perspective. Levies are paid, and a professional relationship exists between the council and big business.

In the MEIBC, about two-thirds (approximately 6 000 from 9 000 businesses) are small firms, employing fewer than 20 employees. Thus, almost 30% of the employers employ about 70% of the employees. About 100 employers employ more than a 1 000 employees. In the motor industry, more than 80% of all firms employ 20 and fewer employees, although the industry also has some large businesses. In the NBCCI, approximately 90% of businesses are medium to large (eg Sasol employs approximately 10% of all workers party to the council). However, this varies according to the different sectors – the petroleum sector, for instance, has smaller firms. The RMI and CEPPWAWU interviewees agreed that the diversity of large and small businesses in one industry is a huge challenge. The CEPPWAWU interviewee cited the example of big businesses that sometimes agree to benefits (eg number of leave days) smaller business cannot.

Some councils have had to adapt to an increase in smaller businesses. According to the MBA interviewee, the last 15 years had seen building industry employers becoming smaller – this does not mean that employment is down in their area, but that larger businesses tend to use sub-contractors and focus on project management. The BIBC (CGH) now has mostly small firms as members, which are well represented by the MBA. The SACTWU respondent stated that the clothing industry had an even spread of small, medium and big business, and as such this was not a factor impacting on the effectiveness of the council. However, the AMSA interviewee differed, saying the number of small firms in the clothing industry was increasing, with a decline in bigger business, making it increasingly difficult. He explained this as follows: “It is much more complex. It is difficult to find appropriate regulatory measures in an industry ranging from 1 200 manufacturers ranging from three men doing embroidery, to manufacturers that has 2 300 people which are vertically integrated into a retail operation. It is a massive challenge.” They attempt to address this challenge by multiskilling the workforce, thus promoting greater mobility between the manufacturers of various products. Although the council advocates multiskilling, Sector Education Training Authorities (SETAs) and employers, not the council, are responsible for facilitating training initiatives.

5.3.2.3 Nature of the employment relationship in the industry

Interviewees agreed that the changing world of work (discussed above) necessitates innovative ways of strategically approaching and solving emerging challenges. The last few years in particular have witnessed some changes in councils’ agreements and other initiatives to deal with the increase in labour brokering and the growing informal sector.

Most industries deal with the use of labour brokers by also applying the industry's agreement to them. Employers remain accountable to ensure that the labour broker complies with it. The building and chemical industries are a case in point. According to the CEPPWAWU spokesperson, during 2009, it was agreed in three of the chemical sectors to also apply sector agreements to employers using labour brokers, thereby protecting these workers. This is especially important in some of the sectors (eg in the Fast Moving Consumer Goods [FMCG]) where many casuals are used. He explained their strategy as encouraging all employers to register with the council and complying with agreements. According to the NBCCI representative, labour brokers contact the council and ask for assistance in ensuring that they comply with agreements in the sector. Employers in this sector have also agreed only to use labour brokers in the industry when they comply with labour legislation. The building industry follows the same approach.

The MIBCO representative confirmed a similar approach. They have a special arrangement regarding labour brokers in their 2010 agreement, namely that all staff are employed according to at least MIBCO minimum agreements, and that by the end of their current agreement (2013), no more than 35% of the workforce of any employers will consist of labour brokering employees. Furthermore, employers acknowledge the growth of the informal sector and are looking at ways to involve this sector more. According to the MEIBC representative, in 2004, a Registry of Labour Brokers was started. A clause in the council's 2003 agreement stipulates that workers working for more than 12 months for a specific employer should be permanently employed.

The growth in the informal sector is evident. The BWU interviewee explained that building contractors are encouraged to involve the informal sector when tendering for a project such as a school. The AMSA representative gave details on the clothing industry: "There is a growing phenomenon of cottage industries and garage operations. The last three to four years have also seen a growing trend of one operation posing as five or more separate smaller outlets in order to gain council's blanket exemption for firms employing less than six employees." Much emphasis is placed on compliance strategies (see below) to overcome the problem. The RMI launched a forum in 2006 to develop small businesses in previously disadvantaged areas by providing training and equipment – the initiative currently represents about 1 400 informal/semiformal firms in rural areas and townships. The aim is to create a mechanism to migrate informal trade into the formal sector. Although this is not a MIBCO initiative, it will affect the council in the long run.

5.3.2.4 Nature and size of council parties

The nature and size and number of unions and employers' organisations party to a council influence the bargaining process. Apart from the general decline in trade unions' membership numbers (discussed in sec 3.5.1), the merger in employers' associations in the clothing sector represents the primary change in council parties over the past 15 years – see the discussion below.

Councils are sometimes dominated by huge players: powerful employers' organisations and numerically strong trade unions (Holtzhausen & Mischke 2004:9). Councils with mainly large well-established businesses (eg the NBCCI) said it adds permanence and security. Historical factors also play a role, especially in the case of the older more established councils. Small trade unions or those that historically represented white (or white-collar) employees may remain members to a bargaining council by virtue of the fact that it was a founding member of the bargaining council and that it succeeds (even if only barely) in maintaining the required membership number.

A council deals with various trade unions and employers' organisations by allocating seats according to representivity figures. The MIBCO interviewee indicated that this ensures representation of all parties at all council forums. Also, when issues concern more than one party, a combined caucus represents the respective parties, and a unified position is presented to the council forum. This remains a challenge for parties. NUMSA, for example, has 12 regions – all represented at council level during negotiations.

The chemical industry has nine diverse employers' associations registered with the council, which appointed one coordinator. It is said that they have a more unified front than their labour counterparts – employers negotiate per sector, but still caucus together, and consider the effect of the whole industry before they start with their own sectoral bargaining. A great deal more internal politics are evident between the four chemical industry unions. The CEPPWAWU representative mentioned that it was often quite difficult for the various trade unions to work together, although the unions come to negotiations as a group. Trade unions are more diverse, and serve different federations with different ideologies; a factor the employers' representatives do not have. Nevertheless, the different unions still decide among themselves – based on their representivity – how many seats each union will have. According to the council secretariat, this process has improved immensely over the years.

In the clothing industry, the trade union representative raised a similar point: “SACTWU is the sole trade union representative. This has made it easier to mandate settlements.” He mentioned that in other industries, “it is more difficult as we are still a minority union and generally get over-ruled by the majority union”. He also mentioned that the existence of many employers' organisation in the council also causes problems in bargaining because of their differences. The AMSA interviewee agreed: “One union and one employers' organisation is much better on a council.” He explained that the growth in smaller businesses in the industry posed challenges for the employers' parties, because the council has a proportional voting structure (ie one vote for any size business). This was cited as one of the main reasons for the merger of the employers' organisations in the industry about a year ago. Regional employers' organisations merged to form one national body (AMSA). As explained by the AMSA interviewee: “the development brought about one national voice. We are one employer's body who speaks on *both* labour and trade matters.” At the time of this research, AMSA was approximately one year old, had a constitution, but had yet to be formally registered with the DOL.

The BIBC (CGH) secretariat and employers' interviewees indicated that politics in trade union federations also play a role - both trade unions in this council are non-Cosatu affiliated – a factor that adds to improved relationships between the employers and trade unions. In Gauteng, it was said, the Cosatu union became too militant, in part, the reason for the collapse of that council.

5.3.2.5 Age of the council

Both newer and older councils experience advantages and disadvantages linked to their respective ages, and changes have occurred over the past 15 years to accommodate these.

The NBCCI, a fairly young council formed in 2001, indicated that it has structured its services more with time. However, not all services are offered, because it takes time to put in place and implement them. Teething problems arise. However, the CEPPWAWU representative indicated that a young council has a more flexible approach, making it easier to have new ideas implemented.

The converse was also true – according to the MIBCO interviewee, an older council can become set in its ways – and not always to the good of the parties. Previous research (Holtzhausen & Mischke 2004) supports this view. However, since then, definite changes have been evident. Councils now advocate newer business approaches. MIBCO is an example of how new leadership has effected numerous changes in the council over the last couple of years, especially regarding service delivery such as implementing new technology. MIBCO has also restructured its service delivery processes so that regional offices are now only responsible for enforcement and collection of levies, with one centralised shared services centre at head office. The MEIBC interviewee emphasised that older councils have a “deep-rooted way of doing things”. He suggested that change management programmes may be necessary to ensure adequate responses by secretariat employees to new ideas and work processes. The SEIFSA interviewee indicated that up to 1995, the age of the council had acted against it, because of “white craft unions resulting in a white council. We played a significant role in bringing African workers on board.”

The AMSA representative cautioned that there is often a correlation between the age of an organisation and institutional collapse because of a lack of growth and innovation. A great deal depends on management to know at what point to respond and to reinvent the organisation. He stressed the importance of strong leadership, and mentioned that the NBCCMI is well managed and measured against set criteria (eg budgets). This was also the view of SACTWU: “Generally, the older the bargaining council the better it operates and the better the bargaining.”

The BIBC (CGH) secretariat stated that older councils are seen as well-established, well-proven institutions, and not “fly-by-nights”. However, part of the success of this council lies in the fact that it has been “pretty progressive in moving with the times”. The BWU representative agreed, saying that the council has developed a good infrastructure, and that years of experience have eased the process.

5.3.2.6 *Financial circumstances of councils*

All the councils currently have a relatively stable financial outlook, and regard this as imperative for their healthy functioning. However, the financial circumstances of councils are hugely influenced by their own financial management, their membership and other external influences. Councils have implemented changes in the past 15 years to counteract negative influences.

Large businesses contribute greatly to financial stability.

Difficult economic times influence councils' financial outlook negatively, as enforcement becomes more challenging and levies fall behind. The AMSA interviewee aptly summarised this: "if the industry battles, the council battles." Another case in point is steel and engineering – according to the MEIBC interviewee, the council was on the verge of bankruptcy in 1999. Benefit collections are necessary to assist with cash flow, and they try to break even with their dispute resolution levy. Furthermore, there is scope to increase the number of agents to ensure higher levels of compliance. Inflation also plays a role – the BIBC (CGH) indicated that it keeps abreast by having an equal percentage increase in levies to wages. This ensures that it moves with economic changes. The MIBCO interviewee mentioned that the council did not increase their levies for a period of ten years, and had to dip into their reserves to keep abreast. Since 2004, levies have been reviewed annually to avoid similar situations.

Furthermore, the SACTWU respondent commented that councils with better resources make the union's role easier (eg some councils pay all the costs associated with trade union participation in councils).

5.3.3 Key area 1: representivity

Representivity of parties remains one of the primary council challenges especially because trade union membership has declined in the past 15 years. The next section deals with this in more detail, and also indicates how councils have responded to this threat.

5.3.3.1 General

All parties mentioned the importance of representivity for extending agreements, but also as general support for the council system.

As discussed above, interviewees agreed that the decline in representivity can generally be ascribed to the economic recession and subsequent job losses, and changing work patterns. The potential threat to their own existence (eg the difficulty of recruiting members under such circumstances, and workers moving in and out of employment contracts), and to their members (eg the lack of security employees experience because of flexible employment practices) is widely acknowledged. However, not all industries are equally affected.

Other external factors also impact on representation – for example, the MIBCO interviewee indicated that in 2008, the MOL extended their scope to include the former Transkei, Bophuthatswana, Venda and Ciskei (TBVC) states, and that this currently reflects negatively on union membership. However, the RMI interviewee indicated that in the past, membership was artificially held high because social benefit schemes were compulsory and linked to employer and union membership. However, membership of these schemes is now optional. This implies that whereas in the past, employers automatically enrolled staff for trade union membership in order to provide medical benefits, this no longer happens. Trade unions now have to recruit members. The BIBC interviewees indicated that some industries are cyclical – sometimes impacting on representivity.

Table 5.1 below indicates the registered membership numbers for the three councils that provided figures. The loss in employee numbers is evident, although the numbers in the chemical industry have not changed much over the years. According to the NBCCI interviewee, the various trade unions in the chemical industry are all strong and stable, and employees generally only change jobs within the sector. The influence of the economic downturn is apparent when comparing 2005 with 2010 figures.

Table 5.1: Registered parties' strength (includes non-parties)

Year	Registered employees	Registered employers
NBCCI		
2001	83 643	197
2005	79 332	240
2010	72 427	210
BIBC (CGH)		
1995	29 337	1 409
2000	21 102	1 091
2005	33 584	1 641
2010	31 940	1 474
NBCCMI*		
1998	80 635	834
2000	69 954	702
2005	83 081	1 138
2010	57 021	965

Source: Figures provided by interviewees. (MIBCO and the MEIBC did not provide any figures.)

*The NBCCMI's scope was changed to cover the whole of South Africa after 2003. Figures provided for 1998 and 2000 reflect only metro areas, whereas the 2005 and 2010 figures include non-metro areas.

5.3.3.2 Trade union membership

Trade union membership and power are on the decline.

Unions were generally not forthcoming on their membership figures. However, it was the view of most of the respondents that representivity figures have declined in the past 15 years, mainly

because of job losses. Still, SACTWU indicated that this did not mean that its power has diminished, but had stayed the same – it is still the sole labour party at the NBCCMI.

In three of the industries (building, chemical, and metal and engineering), interviewees indicated that trade unions have lost touch with their members, a factor that contributes to declining membership. For example, the BIBC secretariat interviewee stated the following: “Trade unions have little to offer. The non-trade-union guy also gets an increase. They have lost some status. Often now the bargaining councils will do what the unions used to do. It is almost as if the councils are eroding the power of the trade unions.” In addition, the lack of resources and skills to deal with new employment practices is cited as the main reason for declining membership. “In fact”, he says, “if left to their [the trade unions’] own device, they may not always survive. It is the bargaining council that often keeps them up”. The MEIBC and RMI spokespersons emphasised that unions battled because of the exodus of skilled and experienced trade unionists after 1994, and had not managed to rebuild their strength. Moreover, trade unions often focus too much on political issues. The MIBCO representative indicated that unions are understaffed, and lack the time and resources to address all the needs in an industry. The RMI interviewee added that unions are expensive for lower-paid employees. NUMSA, for example, asks 1% of the wages of employees as membership fees – a costly contribution when earning relatively low wages.

When asked whether unions participate in membership recruitment drives to increase their numbers, the CEPWAWU representative answered that “although recruitment drives are being planned and constantly talked about, it doesn’t get past that”. The BWU interviewees agreed. However, SACTWU has engaged in a R1 million/annum recruitment campaign, and launched an aggressive “Save Jobs Campaign”; the combination has slowed job losses and membership decline. Furthermore, SACTWU has strengthened its participation in council affairs; spend more time preparing for council meetings; and promote the “value adding” agenda of bargaining councils. All of these were done in response to the challenges they have experienced over the last 15 years.

SACTWU’s membership figures indicate a decline in numbers (see table 5.2). Note that SACTWU serves other industries, and that all members are reflected, not only clothing industry employees.

Table 5.2: SACTWU membership numbers

Year	Membership
1995	107 114*
2000	106 213
2005	105 276
2010	95 605

Source: SACTWU

*Estimated figure

5.3.3.3 Membership of employers' organisations

It appears as if membership to employers' organisations is less exposed to representation problems. According to the SACTWU respondent, the clothing sector has been the one exception in the last 15 years. The employers' organisations responded with a strong recruitment drive.

This is not to say that employers' organisations are not affected by macro-external influences. The BIBC (CGH) cautioned that the number of employers (and therefore also perhaps membership numbers) may increase because of the fragmentation of the industry as a result of increased subcontracting and other atypical employment trends – in their area, 90% of employers employ fewer than ten employees. However, as a rule they are less affected by the recession. Many of these organisations (eg the MBA and SEIFSA) have existed for a number of years, giving them stability and credibility. Moreover, they offer other services, enhancing membership support. Some of these services also generate income, for instance, the consultancy services offered by SEIFSA.

Table 5.3 below provides example of SEIFSA membership numbers over the period of the research. From the figures it is evident that the number of firms declined in the early 2000. Among other factors, a recruitment drive was launched at that time, and additional services offered to members at a fee. The number of firms peaked in 2007/2008, and declined thereafter, mostly because of the economic downturn. The number of employees also increased up to the mid-2000s, but has declined by almost 20 000 since then.

Table 5.3: SEIFSA membership numbers

Year	Firms	Total number of employees
1993/1994	2600	192 500
2000/2001	2150	162 440
2005/2006	2590	257 550
2007/2008	2713	248 899
2008/2009	2483	244 543
2009/2010	2379	239 773

Source: SEIFSA

5.3.4 Key area 2: the main agreement (wages, conditions of service and related factors)

The next section deals specifically with issues relating to the main agreement. From the discussion it is clear that many changes have occurred in the past 15 years, and councils have adapted in various ways to these changes.

5.3.4.1 Centralised versus decentralised bargaining

All interviewees agreed that bargaining became more centralised over the 15-year period. This is especially true in two of the industries: chemical (a new bargaining council was formed in 2001), and clothing (with the consolidation of five regional councils into a national council).

In the clothing industry, the SACTWU representative stated that this was a consequence of the union pursuing its strategic bargaining objectives for stronger national centralised bargaining to exploit economies of scale and to pursue national employment conditions' standards". The AMSA interviewee explained that the previous system of regional councils had been unsuccessful – these councils were autonomous, insufficient and uncoordinated. All parties agreed that a national council better looks after the interests of the industry as a whole: "Integrating institutional structures were much better. It is not the structure of the institution that determines bureaucracy. Large institutions are not necessarily bureaucratic." Nonetheless, the last four years have seen a greater devolution of power to plant-level work arrangements without bargaining council or trade union involvement on non-substantive issues. This enabling clause (19B) in the agreement allows for flexible practices on condition that even though employers can structure shifts, working times and so forth, according to their own needs, the package value of every worker should, over a period of one year, average the agreed-upon full package. Workers should thus not receive less than what they would have, had no flexibility been allowed.

Once the NBCCI's agreement is extended to non-parties, the industry will be even more centralised. According to the employers' representative, employers were initially opposed to the formation of the council. The advantage of not having to negotiate at plant level was the main reason for ultimately agreeing to the formation of a council.

In the metal and engineering industry, some significant changes were reported. In 1992, a trade-off was reached between the parties when, in return for percentage increases on actual wages, plant-level bargaining would be limited. Up to then, the industry had had two-tier bargaining. In 1995, it was stipulated in their main agreement that there is no compulsion on any firm to bargain at plant level on any substantive issues. Currently there is no plant-level bargaining, except for historical "house agreements" (ie an agreement catering for a specific huge company).

The building industry is the one exception where collective bargaining is happening less at centralised level. Two bargaining councils (Durban and Johannesburg) have collapsed, and the Port Elizabeth council is reported to be struggling. According to the BIBC (CGH) representative, from a national perspective, the building industry may thus be moving away from centralised collective bargaining. However, in their council specifically, the same level of centralised collective bargaining remains. The MBA respondent indicated that it may even be more centralised, because of their enforcement drive. The BIBC (CGH)'s agreement is structured to allow some plant-level negotiations on issues other than those fixed in their agreement. At present transport of employees and overtime arrangements are the only two such examples.

This more centralised approach is often ascribed to the need to move away from any form of two-tier bargaining. In a previous study (Holtzhausen & Mischke 2004), the representative of FRA in the motor industry indicated that the loss of flexibility for employers was a trade-off against the benefits of centralised regulation of the entire industry. Considerations of flexibility were accommodated by the exemptions procedure. In some cases, total inflexibility was in the interest of the industry as a whole – for example, regulating (at centralised level) health and safety issues. In the current research, the NUMSA interviewee stated that they want to move away completely from any plant-level bargaining, except for issues such as employment equity and skills development that could be discussed at plant level.

Another reason cited for the more centralised approach was the benefits derived from councils (also see the discussion above). The employers' coordinator of the NBCCI saw the trend of greater centralised bargaining as a direct result – and advantage – of their council: working together on the council gives parties the time to get to know each other, and to better understand the varying needs of both parties. The BIBC (CGH) employers' representatives indicated that they were increasingly aware of the benefits of centralised bargaining. A MBA representative stated the following: "We now know the bargaining council is out there to help us." The MEIBC representative had a similar view, stating that SEIFSA is a strong pillar of the council, and the organisation "embraces the transformation of the last years, and also the council."

5.3.4.2 Flexibility arrangements

Flexibility arrangements exist in some but not all of the councils. Interviewees mainly feel that exemption procedures adequately address flexibility, although employers would prefer more flexibility, especially towards small businesses. In earlier research (Holtzhausen & Mischke 2004), the representative of the MBA (Gauteng) expressed the view that bargaining councils and flexibility are two mutually exclusive concepts, and that the lack of flexibility, especially manifested in the rigidity of the trade unions, was, for this employers' organisation at least, the final straw that led to the collapse of the council.

The existing forms of flexibility arrangements are discussed below.

a Based on subsectors/categories of business/chambers

The majority of interviewees highlighted the difficulty of dealing with various types and categories of businesses within centralised bargaining structures.

In the NBCCI, the constitution provides for five sectoral chambers set out in Schedule 1 of the constitution. The employers' representative indicated that there is only one cycle of bargaining per council, that negotiations in all chambers commence at the same time and that parties are expected to submit proposals by a certain date. One chamber may not veto the decision of another. However, a right to veto a decision is retained by the central bargaining council for exceptional cases where the constitution of the bargaining council is being contravened or undermined. As explained in table 5.4 below, bargaining takes place at three levels

(Constitution, Schedules 2-4). Some examples of issues that are negotiated at each level are provided below:

Table 5.4: NBCCI bargaining levels

National bargaining council level	Sectoral/chamber level	Plant level
<ul style="list-style-type: none"> • Enforcement of agreements • Various industry benefit funds • Minimum working conditions 	<ul style="list-style-type: none"> • Wages (both minimum and rand/% increases on actual wages) • Shift allowances • Actual terms and conditions in respect of issues such as various forms of leave, an annual bonus and hours of work 	<ul style="list-style-type: none"> • Actual conditions in respect of affirmative action and productivity • Performance bonuses • Company-specific issues such as training, dispute resolution, retrenchments and job grading

Source: NBCCI (2003)

The council's constitution thus reflects minimum standards and policy frameworks, thereby allowing more operational flexibility and detailed implementation at plant level. However, the council holds jurisdiction and plant level agreements are still well coordinated and governed by the council. All three chemical industry interviewees indicated that a list such as the above can never be extensive, and that new issues crop up on a regular basis. If this happens, it is decided at national level where the issue should be dealt with. In principle, however, this three-level bargaining has remained the same since the registration of the council, and no major changes are foreseen. The CEPPWAWU representative stated that they are against any other special arrangements, as exemption procedures are created to deal with special circumstances.

In the case of both the MEIBC and MIBCO, there are no bargaining chambers: instead, the main agreements concluded by the parties in these councils refer to specific technical fields or types of work. In the MEIBC, the sizeable and complex main agreement relates to terms and conditions of employment. When it comes to specific wage rates, however, a myriad of technical schedules set out details applicable to specific occupations or types of work. The plastic sector was historically not part of the council, but was a fairly new addition in approximately 2002, and as such, had a different dispensation. The SEIFSA interviewee explained they had "automatic exemption" (however, they still needed to apply for it even though it was standard practice to allow the exemption) for approximately five years up to 2007, when it was further complicated because of the Plastic Convertors Association breaking away from SEIFSA. Discussions are still ongoing on how to deal with this sector.

The approach of MIBCO more resembles the use of chambers, even though its constitution does not provide for chambers. Seven different MIBCO sectors were identified, all with their own specific arrangements, although the basic conditions of employment are the same (with some minor exceptions) across the board. Some flexibility arrangements exist in wage structures – all negotiated at the same time. However, the RMI interviewee indicated that they were

researching different models. Employers prefer one industry, but with different agreements for the different sectors. Trade unions, he explained, believe in a one-size-fits-all approach. Earlier research (Holtzhausen & Mischke 2004) mentioned this challenge, with the RMI indicating at that stage that they were looking into different approaches and bargaining models to cater for sectoral differences. It was also said that NUMSA had ignored this fragmentation, and sought to deal with the motor industry as a whole, disregarding differences. The MIBCO has now formed a tripartite Industry Policy Forum (IPF), facilitated by the CCMA as part of their 2010 agreement. The parties are hoping that the outside facilitation process will help to resolve some of the issues on the table. The IPF's purpose is to secure a living wage and industry sustainability via research and engagement. The issues under investigation are working hours, shift allowances, hourly pay rates and job grading. The overall purpose of the forum is to find a better way to deal with the complexities of the different sectors within the council.

In the clothing sector, the AMSA interviewee indicated that no flexibility arrangements based on sectors exist, mainly because the industry is so complex. Different products (eg jeans versus swimwear) have completely different markets, manufacturing and management skills. Furthermore the sizes of firms vary – from three to a 1 000 employees. This complicates the solution on how to divide the industry into subsectors. However, this could probably be said of all the councils.

b Based on regional differences and/or metro/non-metro

Up to 2010, the BIBC (CGH) made provision for differing wages according to rural and nonrural areas. However, it was argued that within the small area covered by the council, circumstances did not really differ. The variation was subsequently scrapped. The new agreement will be phased in over a nine-year period.

The AMSA and SACTWU interviewees elucidated that the main agreement of the clothing sector caters for three regional-specific areas (KwaZulu-Natal, Eastern Cape and Northern areas) in three different sections. Policy matters are dealt with nationally, while execution and compliance issues are dealt with regionally. This federal structure is in the process of being converted to a unitary structure. The change is possible because employers have recently agreed to it because of economies of scale and cost savings when duplication is eliminated. Furthermore, the NBCCMI's main agreement caters for different wage rates according to metro or non-metro areas, with the latter paying lower wages than the former. Even so, the AMSA interviewee stated that the market is still indicating that the council has out-priced labour in the rural areas. The parties to the council are looking at a multitiered wage model. The AMSA interviewee explained as follows: "We have to find a more flexible multitiered agreement – but then for all employers. At a minimum it should be metro and non-metro wages, with non-metro being significantly lower. Ratios should be further adjusted."

At the time of the research, MIBCO had three different regions stipulated in its main agreement: metro, non-metro and the TBVC states (given a 3-year period – ending 2013 – to become compliant with the council agreement and for the various parties to become regulated and organised). Wages differ about 15 to 20% between metro and non-metro areas. In 2004,

however, in the fuel sector it was decided to close the gap on regional differentiation because fuel prices were the same nationally. The MIBCO interviewee indicated that all other sectors are moving to a situation of no regional variation.

c Based on a firm's size

Only one example was found in the clothing sector that has blanket exemption for firms employing fewer than six workers. The RMI interviewee stated the following: "There has to be a better model, a special dispensation for small business."

d Based on a firm's age

As a rule, blanket exemptions are not supported as a flexibility arrangement, except in the clothing sector. The SACTWU respondent indicated that exemptions are rarely requested and rarely granted, unless they emerge as part of a collective bargaining settlement. However, they do support blanket exemptions: "Sometimes it can help to settle disputes, promote council representivity or set new agreed industry standards."

The MIBCO secretariat interviewee indicated that their council do not support blanket exemptions because they "focus on needs as they arise. With blanket exemptions one falls into the trap of not going back to the business to keep up with new realities."

Although SEIFSA indicated in the earlier research (Holtzhausen & Mischke 2004) that more flexibility would be welcomed, possibly in the form of automatic exemptions for companies of a certain size, no such exemptions have since been agreed upon. The MEIBC has a flexibility arrangement for businesses of three years and newer. Although exemptions are normally granted, firms must still apply to be exempt from the normal wage rate and pay only 50% of the rate.

e Other forms of flexibility arrangements

In the BIBC (CGH), for the past approximately eight years, the council agreement makes provision for "new entry-level employees" to earn lower wages and benefits for the first 250 days. This assists sub-contractors when they employ less experienced workers, to build up skills in the industry, and to ease entry-level employment creation for young builders entering the formal market.

Clause 19(b) in the NBCCMI's main agreement caters for some flexible workplace arrangements on issues such as working time. The SACTWU respondent also indicated various levels of pay structures – from entry level to qualified employees. However, "the union does not accept flexibility where such is simply used as an excuse for downward variation in conditions of employment".

In 1999, the last MEIBC "house agreement" was reached. These agreements were concluded for very large companies, and conditions specific to the company were agreed upon. Today, bargaining takes place on issues such as long-service allowances, although the majority of working conditions are the same as in the rest of the industry. There is a strong drive to bring

these companies under the main agreement. Furthermore, labour brokers have a special dispensation that exempts them from MEIBC pension fund contributions, although employers still have to pay death and disability contributions. Employers are also exempt from granting annual leave, and so forth, to labour brokering workers. However, benefits that are not received by the labour brokering worker (say, leave not granted) has to be paid by the employer to the employee. The payment must equal what should have been due, had the worker been employed full time – thus compensating in monetary value those benefits not received by the worker. During the period of its first two-year agreement (1999), this industry also reduced working hours whilst introducing flexible work time arrangements at individual companies in the industry.

5.3.4.3 Time period of agreement

In general, agreements are negotiated for longer periods of time – agreements used to be mostly for a one year period, but are now agreed upon for periods of two years and longer.

MIBCO had one year agreements prior to 2004 and three year agreements since. The MIBCO interviewee explained: “Longer agreements bring stability, employers can plan properly, and it gives clear direction to what the parties can expect.” The SEIFSA interviewee explained their situation prior to “The New Deal” (see above):

The consequent obligation to engage in protracted and adversarial bargaining over most of the year created a single-minded focus on negotiations to the detriment of other equally important objectives. The need to address the industry’s employment crisis, the formulation of competitive strategies and the like suffer when there is an unbalanced focus on wage negotiations each year.

Most parties agreed with this view, and added that it is also a much cheaper option as the negotiation process is costly.

The MEIBC was one of the first councils that adopted a multi-year agreement. They deal with any unforeseen circumstances as they arise – the negotiations of 2007 are a case in point. Unions agreed to a three year agreement with a flat rate increase – a problem when the mostly unforeseen sharp rise in inflation occurred. An appeal from the trade unions necessitated a review of the agreement; hence it was agreed to supplement the previously agreed fixed level of wage increases. The trade unions, in return, agreed to extend the duration of the main agreement by a further year – effectively introducing a four-year wage agreement into the industry – a historical first. The MEIBC interviewee indicated that this process was made possible because their collective bargaining process is seen as an ongoing, facilitated process. A similar situation resulted in the BIBC (CGH). In both these cases the employers supported a decent work agenda and illustrated good will.

The BIBC (CGH) has been negotiating three year agreements for a number of years. However, the agreements did not include annual wage increases, but only other conditions of service. This necessitated 12-monthly wage negotiations and a yearly amendment to the main

agreement – implying that representivity had to be proven annually. To counteract this problem, agreements have, for the past six years, also included wage increases.

The NBCCI has changed its practices slightly to have a two-year agreement concluded in 2009 for the first time within two sectors – petroleum and glass. It is accepted that there are varying needs in the different sectors, and each sector motivates its own needs. Previously, all agreements were for a one-year period. The CEPPWAWU official indicated that a decision was made within the trade union to explore multiyear agreements, although they saw two years as the maximum.

In the clothing industry, agreements are for one year. The SACTWU respondent supported this: “Yes it is ideal, as it is the most important aspect around which to keep a mobilised membership. In general, we extend our agreements for longer than a year but still negotiate annually. This is to prevent having periods when no agreement is applicable.” However, the AMSA interviewee preferred longer agreements (say, two years), and said that in principle there is accord for this with the union, although no agreement exists on how to do it.

5.3.4.4 Level of detail contained in agreement

The level of detail contained in national agreements is generally not decreasing, even though the content is more user-friendly and simplified.

According to the NBCCI, its collective agreements were simplified but kept specific – according to the DOL’s advice and requirements.

The BIBC (CGH) and MIBCO indicated that its main agreement was simplified, using simpler, easier English, although all legal requirements are still met. According to the BIBC (CGH) representative, this is essential as councils deal increasingly more with the smaller employer who does not have the time or the knowledge to deal with lengthy complicated agreements. The agreement is also structured in such a way that everything stipulated in the agreement is fixed, whilst all matters over and above those covered in the agreement may be negotiated at plant level. However, plant-level bargaining is not encouraged, and parties strive to deal with most aspects via their main agreement. The council representative argued that only allowing minimal plant-level bargaining contributes to stability in the industry because most matters are still covered by the industry agreement itself.

According to the SACTWU representative, their agreement is elaborate and covers regional and area aspects, which is consolidated into one national gazetted agreement. The variety of regional and area matters complicates comparisons. Parties are working towards a more standardised approach.

Although all parties agree that they need to simplify the agreement, it has to remain a legal document, which by its very nature, remains complex. MIBCO, the MEIBC and NBCCMI secretariat spokespersons all indicated that they could not manage to simplify their respective

agreements – mainly because of disagreements between parties about details on job grading and categories. A case in point is the NBCCMI, with more than 20 different job categories, and no agreement between the parties on how to downscale the categories. The MEIBC interviewee indicated that they are also endeavouring to simplify their main agreement and to “clean up the very complex grading system” with the assistance of a specially formed working group.

5.3.4.5 Two-tier bargaining

Two-tier bargaining is limited, although some forms of operational flexibility are present. Both business and labour are mainly against it. According to the SACTWU respondent: “Two-tier bargaining causes confusion and results in non-standardised employment conditions.”

Regarding the motor industry, the RMI interviewee explained that employers want no form of two-tier bargaining. He elaborated as follows: “[T]his was always the intention, but clauses in our agreement were open to interpretation. Now it [the 2010 agreement] states it clearly: no two-tier bargaining on any matter of mutual interest.” There is one exception in this industry where plant-level bargaining is allowed on actual wages. The reason for this exception is to be found in the type of sector – dealer sales and distribution establishment payment structures are characterised by the use of incentive schemes and commission structures.

5.3.4.6 Minimum versus actual wages

Councils negotiate mostly on minimum wages, although different wage models exist.

The NBCCI constitution indicates that minimum wages and random or actual percentage increases on actual wages for each sector within the industry are determined at sector level (ie not at national/plant level). However, all three NBCCI interviewees indicated that bargaining only takes place on minimum wages.

In the case of the BIBC (CGH), minimum wages have always been negotiated. However, there is a provision in the agreement that states that if a worker is earning in excess of the prescribed minimum wage, he/she is entitled to the monetary increase negotiated. For instance, if the minimum wage is R10 and the worker is earning R15 and the negotiated increase is 10%, he/she is entitled to the monetary value, which is 10% of R10, equalling R1. He/she will then earn at least R16. The same provision applies in the clothing sector.

According to the SACTWU respondent, negotiations should be on minimum wages, because they are “the agreed industry standards”. However, in the clothing industry, there is hardly any difference between agreed minimum wages and actual wages. The AMSA interviewee elaborated as follows: “[I]t is supposed to be minimum wages. But because of increased pressures, the minimums have become actuals.”

The SEIFSA interviewee explained that the MEIBC has a schedule of minimum wages in its collective agreement – these are guaranteed and regularly adjusted. However, annual increases are negotiated as a percentage increase on actuals.

The motor industry has a more complex agreement. The RMI interviewee explained that the wage model has three levels. Level 1 negotiates minimum wages and guaranteed monetary increases for the whole industry (similar to the clothing and building industries). Level 2 negotiates actual wage increases for the component manufacturing sector. Level 3 negotiates only minimum wages for sector 6 (because of the incentive-type payment relevant to this sector). This variation is mainly because of the huge differences and needs of the respective sectors within the industry. As explained by the MIBCO interviewee:

We have 220 000 employees and 20 000 businesses in diverse sectors. Take fuel and tyres. We have to acknowledge differences ... the fuel sector is for instance regulated ... manufacturing companies on the other hand have problems with Eskom, and the strong rand we have to take cognisance of. We need much more mature collective bargaining. Different sectors are divided into different categories in the main agreement. However, historically, the council is still overarching.

The RMI interviewee disagreed with NUMSA's drive towards one dispensation for all sectors. Employers want minimum wages to be paid throughout the sector, so that different sectors can negotiate a dispensation on top of that in order to suit the respective needs and circumstances of that sector. NUMSA indicated that it prefers negotiating on actual wages because "minimum wages are artificial. Minimum levels are not well researched in SA. Minimum is relative, the ability to afford wages and skills levels must be compensated." The industry is currently in the process of researching a new wage model.

5.3.4.7 Small firm representation

In general, there is no special dispensation for small businesses.

Both the MEIBC and BIBC (CGH) secretariat interviewees pointed to the increased pressure from small businesses in their respective sectors, and government policy towards enhancing small business development in South Africa.

All industries have some form of small business representation at council meetings. MIBCO mainly comprises of small businesses, and the council allocates seats for SMMEs on all its committees, as does the MEIBC. Even in sectors where large businesses are present (eg the fuel sector with SASOL as member), small business owners are elected by other businesses to represent their views. The council interviewee indicated that small business needs are also reflected in "the needs-based culture of the council". NUMSA felt that SMMEs were adequately represented at the MEIBC and MIBCO. In the clothing industry, small business has specifically appointed representatives at council level from the labour and employer side. However, the AMSA interview emphasised that larger firms still carry the burden of representing all employers – even when the smaller firms are part of the council structure.

Still, SMMEs see some advantages in councils. The NBCCI employers' representative mentioned that small businesses see the hands-on availability of industrial relations services as a huge advantage. The BIBC (CGH) offers many services to assist smaller firms, for example, payroll services, and assistance with costing of contracts, taxation and unemployment insurance. A separate levy is payable by firms wishing to make use of these services. Nonetheless, research by the MEIBC (which also assists small firms in a number of ways) highlighted the fact that small businesses feel left out in the cold and do not perceive the council to be meeting their expectations.

5.3.4.8 Extension of agreements to non-parties

a The past and present situation

In four of the five councils, agreements have always been extended, albeit not without problems. The MIBCO spokesperson indicated that 2010 was the first year in which they had really experienced problems having their agreement extended. The RMI interviewee indicated that from 1999 to 2010, only once did they manage to obtain a certificate of representation.

The NBCCI is the one exception, although enormous changes are foreseen. All three interviewees indicated that the council is preparing for extensions – not only is it reviewing their constitution, agreements and policies, but it is also putting in place all the necessary structures and procedures. An exemption appeal procedure for the industry is currently being negotiated. These changes are deemed to be necessary because the DOL will not consider extending agreements otherwise. The employers' representative was adamant about the need for extensions: –Agreements that are not extended to non-parties lead to unfair competition, as these non-parties may keep their wages lower than the negotiated rates. Our agreements have to be extended”⁴⁵.

However, neither the trade union, nor the employers' representative was overly optimistic about reaching a workable solution soon. The CEPPWAWU representative explained that currently no agreement exists among the various trade union parties in the council about appropriate bargaining units. Before this problem is sorted out, no agreements can be extended. The employers' representative agreed, and explained that reaching an agreement on an adequate job grading system for the industry is an extremely complex problem:

Approximately 200 firms are members of the council. Each one has its own grading system and bargaining unit. Theoretically that means that 200 bargaining units exist. A common bargaining unit is necessary. There is no agreement on this between the employers, and also not between the employers and the employees.

He also emphasised that representivity figures remain challenging:

Part of this lies with figures used to determine representivity. The DOL came up with a figure from the UIF database of over 7 000 firms in the chemical industry. It just cannot be! At most there are 300 firms. This indicates a problem with the definition of the chemical industry.

⁴⁵ This interview was in Afrikaans. The researcher translated all the quotations from the interview with the chemical industry employers' representative.

All interviewees in the chemical industry stressed that employers sometimes threaten to leave the council if their demands or wage offers are not met, or if the trade union's demands – according to them – are too extravagant. As stated by the employers' representative: "Agreements not extended to non-parties become a bargaining chip in the hands of employers." However, the NBCCI secretariat mentioned that because agreements are not extended to non-parties, the council has the advantage that membership is totally voluntary, which means that compliance is not an issue – parties that are members to the council want to be and thus comply.

All interviewees agreed that extending agreements brings stability to industries because everybody knows what is expected. The SACTWU respondent explained this as follows: "Instability at plant-level is avoided, as everyone is aware that there are centrally prescribed and extended conditions of employment."

b The DOL's stance

All interviewees agreed that the DOL's stance towards representivity figures is stricter than before. This is also supported by previous research (Holtzhausen & Mischke 2004) – at the time no difficulties were experienced with extensions; it was rather a matter of course. Currently, however, the AMSA interviewee indicated that extremely compelling submissions and arguments are necessary. Although no clear policy is forthcoming from the DOL, figures of above 40% representivity are said to be the norm for sufficient representation.

On the question why the DOL is sterner, a variety of responses were evident. The BIBC (CGH) secretariat indicated that the reason for this could be the fact that the Minister was faced with a couple of court cases where employers took to court the matter of extending agreements without the necessary representivity figures. Another reason is to provide legitimacy to the process. The AMSA representative agreed and stressed that extended agreements must have legitimacy in order to protect the bargaining council system.

However, many of the interviewees indicated that the Minister has to take the new employment structures and the related impact on representivity figures into consideration. The AMSA interviewee argued that in the clothing industry, employment levels have dropped, but the number of firms has remained constant and are on the increase. Big companies are closing down, resulting in many job losses. However, increasingly smaller firms are established. The Minister should rather focus on whether the relevant parties have the interests of the industry at heart (e.g. by looking at the history of the council), as this is more important than the numbers they represent. At the end, it is argued, the stability of the industry is more important than any numbers. According to MIBCO, mature councils should not be hindered by representivity levels: "power and accountability should be delegated to the council."

5.3.4.9 Exemptions

Councils deal with exemptions on a needs basis, according to exemption procedures. Parties indicated that this is essential in order to grant exemptions only when really necessary – doing it differently would defy the purpose of centralised bargaining.

a Exemption committees

All councils have either an exemption committee, or if there is not a specific committee, another arrangement exists. This is usually the responsibility of a specific standing committee established for this purpose (Holtzhausen & Mischke 2004). The MIBCO interviewee explained as follows: *“We have to embrace the different needs of different sectors. There is no one-size-fits-all. We need a very structured approach ... exemptions are one way.”* An appeal procedure is imperative. Most interviewees felt it vital to have an independent committee, at the very least, at the appeal level.

Even though the council's agreement is not extended to non-parties, the NBCCI also has an exemption committee comprising three officials. Parties that cannot comply with the stipulations of the agreement can thus still apply for exemptions. The decision reached at this level is final and binding, although, according to LRA regulations, parties may ask for a review. The parties to the council nominate a person to sit on the committee; thereafter the council approaches the CCMA, which makes a recommendation on the approval of the candidate. The appointment is confirmed at the AGM. Normally only one exemption meeting is held a year. In an effort to minimise applications for exemptions, employers provide a list during wage negotiations to unions of firms that will apply for exemptions. If an agreement is reached, notice is given to the council. However, if not, a conciliation process is facilitated by the council, and if agreed upon, so noted. Finally, if no agreement is reached, it is referred as an arbitration process to the exemptions committee, which then makes a decision. It is believed that because of this approach, as few as 10 applications per annum are received from the 220 employers registered at the council. Exemptions are linked to their agreement period – thus generally for a year. Most firms do not apply a second time. However, the council is in the process of amending its exemption procedure to also include a pre-exemption trial by the parties to the exemption hearing in order to simplify this process even more. Parties indicated that a review process is necessary because the current procedures were inadequate, mainly because it does not include an appeal procedure, but follows the route of conciliations and arbitrations.

In the BIBC (CGH), the compliance committee deals with exemptions. If the exemption request is from a party member, then the decision taken at this level is final. However, if the request is from a nonparty member, the applicant may appeal to the Independent Exemptions Board of Appeal for a final and binding decision. Most exemption requests deal with employers who have defaulted on levy payments, and who request an exemption on arrears and/or penalties accrued. Exemptions that are granted are always conditional (eg for certain time periods), according to the merits of the case. Meetings are held on a needs basis only since just two applications for exemptions were received during the last five years.

With the NBCCMI, the exemption committee evaluates each application against set criteria, thus ensuring objectivity. The council now has one national executive committee, instead of several regional committees, as in the past (Holtzhausen & Mischke 2004). The application is referred to an Independent Appeals Committee that makes a final decision. The exemption committee sits approximately once every two months, while the appeals committee meets on a needs only basis.

In MIBCO, two committees exist (on both the initial application and the appeal), depending on whether the exemption application is from non-parties (an independent exemption board) or a party application (a council administrative committee makes the decision). Decisions may be appealed. This is a different approach from before (Holtzhausen & Mischke 2004) when regional offices dealt with applications for exemptions on a monthly basis with full decision-making powers (similar to the MEIBC at the time). In both instances, committees were either the full regional office or persons nominated by the regional office. The MEIBC now has an independent Exemption Committee and Appeals Board – according to the SEIFSA interviewee, this makes the process easier because its independent nature ensures that there are no vested interests. These committees have regular standing monthly meetings. The RMI interviewee indicated that exemptions are rarely granted.

b Exemption procedures and criteria

All councils agree that procedures and set criteria play a vital role in the effectiveness of the committees. The DOL emphasised that the criteria for exemptions were a topic for negotiation amongst the council parties, and that they support automatic exemptions if an employer employs, say, fewer than five employees (Holtzhausen & Mischke 2004).

According to the AMSA interviewee, the application procedure in the clothing industry is –completely ineffective if viewed from the employers’ side. SACTWU will not agree. The exemption process should not start at an exemption committee with members with vested interests. There should be an independent exemption and appeals committee.” The NBCCMI has recently developed written criteria and procedures for their Appeals Committee against which each application must be evaluated. The criteria are generally available to the industry.

Criteria normally include the disclosure of financial statements by the applicant. The chemical industry reiterated that it regards financial statements indicating clear evidence of financial difficulties as being imperative to the decision to grant exemptions; the industry’s criteria were changed to include this matter. The CEPPWAWU interviewee mentioned the need for at least one financial specialist on an exemption committee.

Criteria are generally regularly reviewed – in the case of MIBCO, on an annual basis. The interviewee indicated that changes are made to criteria –according to market realities”. NUMSA complained about the MIBCO exemption process, stating that copies of exemption applications are not regularly sent to it (NUMSA), and that it should be consulted.

5.3.4.10 *Non-compliance and enforcement of agreements*

a Level of non-compliance

Only the NBCCI has no problem with compliance levels – purely because agreements are not extended to non-parties, implying that employers who are members to the Council support it. These firms want to be part of the council, know what lies ahead and plan accordingly. The council estimates that only one in a 100 cases may perhaps not comply with some aspect of the agreement.

However, in other councils a different picture emerges. The MEIBC indicated that approximately 3 000 (mostly small) firms are in arrears of up to three months and longer. The MIBCO secretariat indicated that they have “some problem-children, but it is not a major threat”. Their agents visit all businesses (also those with a clean record) at least once every 18 months. However, the NUMSA interviewee disagreed:

Non-compliance is increasing. In some areas, all agents do is to give enforcement letters. They advise employers to apply for exemptions. Employers go to regional councils. By then there is a two-month’s delay. ... It goes to dispute resolution. Employers do not attend. In the mean time, they get rid of the workers.

NUMSA would rather see that an agent should issue a compliance order within seven days. If this is unsuccessful, the process should go directly to the Dispute Resolution Centre (DRC) for conciliation-arbitration. The RMI interviewee indicated that the enforcement model is wrong. Firms should be visited at least once a year. To enable this, the focus should be on the “bad guys” – thus not big businesses that comply with the agreement. Furthermore, the focus should be on non-parties because they are usually guilty of non-compliance.

Indications suggest that the clothing sector has the greatest problem. The AMSA interviewee indicated that non-compliance has “mushroomed up, and ... is primarily driven by cheap imports, it is a competitive problem”. He added that it impacts directly on the legitimacy of extended agreements. He elaborated on the problem as follows:

We have huge problems with compliance. About half of the employers (about 43%) do not comply with minimum agreements. About 80% of these pay less than the minimum wage. Compliant firms complain about losing orders, as the noncompliant firms get huge cost advantages. During the last 18 months we have had a massive compliance drive. Now 70 writs of execution to shut down have been issued to shut down these businesses, employing just less than 4 000 people. The union asked us to hold back. We had a special council meeting. Plan B is to have a multi-tiered wage model.

The issue remains complex and a huge dilemma to both business and labour – does one follow the agenda of decent work, or cause job losses? According to the SACTWU respondent, the compliance problem is aggravated by the length of the enforcement procedure before a final determination is reached in the Labour Court.

b Number of agents monitoring compliance

The NBCCI has no appointed agents. According to the trade union interviewee, shop stewards at the various work places pick up problems (if any), and relay them to the trade union if

necessary. Shop stewards play an indirect role in alerting all councils to non-compliance. The other councils have agents, but more agents are needed in most cases. MIBCO in particular experiences problems with the number of agents since the incorporation of the former TBVC states.

c Enforcement approach and innovative strategies

All councils, with the exception of the MEIBC, indicated that they are moving away from a policing approach to one focusing on educating employers about the good of the council, decent work and thus compliance with agreements. According to the SEIFSA interviewee, in the 1980s, the approach was policing and enforcement; the early 1990s focused only on inspections and assistance, while from 1995, the council only inspected when they received a complaint. However, no other strategies have been put in place.

This function is generally now referred to as monitoring compliance, rather than enforcement. Agents are trained on how to approach an employer, and to promote the benefits of the respective council. As explained by the SACTWU interviewee: “The approach has changed. It has evolved into a combination of carrot and stick’. More incentives are made available to compliant companies while persistent non-compliance is aggressively pursued through enforcement procedures.” MIBCO has adopted a similar approach, and since 2006, has tightened its credit control measures (the council makes use of credit listings to identify businesses), with an even stricter approach since 2008, with the appointment of credit controllers.

The BIBC (CGH) has adopted a proactive approach. It appoints more agents, but also ensures that the benefits of the council are more visible. This is done through the services of an appointed public relations officer who “educates” and informs stakeholders. An active marketing approach has been followed in the past eight years, promoting the theme of “because it is the moral thing to do”, emphasising the importance of providing decent work to employees in the industry. Other avenues to ensure compliance are explored, say, by proactively looking at approved building plans to ensure that plans are from firms complying with agreements. The council also approaches the “givers of work” (eg government, financial institutions and the local municipality) and advocates that construction tenders should only be given to registered firms complying with the agreements of the council. To promote this, the council, according to its main agreement, keeps a register of “employers in good standing with the Council” (Clause 6A (1–4)), which is available to anybody on request. Furthermore, subcontracting and temporary employment services are only allowed to employers in good standing – if a firm makes use of a sub-contractor not in good standing, that firm is held liable for all obligations to all or any of the sub-contractor’s employees.

The NBCCMI has stepped up compliance enforcement processes and procedures. In order to deal with these challenges, a National Compliance Manager has been appointed as part of a new dedicated unit in the council. To counteract the phenomenon of a growing informal sector and non-compliance in the clothing industry, retailers are requested to support the drive towards decent work, and to only buy from agreement-compliant firms. The SACTWU respondent

explained that the council introduced a so-called “certificate of compliance” for compliant firms – it was hoped that this would serve as an incentive. Furthermore, noncompliant companies are offered a “compliance plan”. According to the AMSA interviewee, the aim is to seek “creative and fast-tracked solutions”. Their “rescue package” also proposes that all three tiers of government, together with parastatals and other state institutions, should ensure that all the clothing and textiles procured by them are manufactured in South Africa, using South African inputs where available and by companies complying with labour laws and bargaining council agreements.

5.3.5 Key area 3: benefit funds

It is clear from the research that benefit funds are a vital agenda point, with many changes expected in the near future. The main expected changes come from government, which has announced a number of proposed elemental changes to social security and retirement arrangements in the country. Seven proposals have been suggested, including, inter alia, a wage subsidy, state old-age grant for all, mandatory contributions to the National Social Security Provident Fund, mandatory participation in private occupational or individual retirement funds, voluntary additional contributions to occupational or individual retirement funds, reform of the governance and regulation of the retirement funding industry and reform of the taxation system. The reform process will have major implications for industry funds – interviewees indicated that these possible reforms are taken into consideration when any changes or decisions are considered on the current state of affairs. In fact, most councils have placed future initiatives regarding their benefit funds on hold until more clarity is available from government. Some minor changes that have happened over the past 15 years are discussed below.

Table 5.5 indicates the benefit funds of the four councils covered in the research that have funds (the NBCCI does not administer any benefit funds). Regarding employees, the first column represents those who enjoy the protection of the agreement, the second column how many are employed by party employers and the third column how many employees are members of party unions. For employers, the two columns represent those who are covered, followed by those who are actually party to the council (ie affiliated to the relevant employers’ organisations). The different estimations are significant because, in some instances, funds cover all employees covered by the bargaining council, while in others the funds are limited to parties or to those employed by employers who are party to the fund.

Table 5.5: Number of employers and employees party to and covered by the main agreement

Bargaining council	Employees			Employers	
	Covered	Party employers	Party unions	Covered	Party
BIBC (CGH)	34 000	9 400	6 112	1 000	244
NBCCMI	74 456	35 339	56 044	1 048	270
MEIBC	300 000	181 000	185 000	9 500	3 500
MIBCO	200 000	130 032	146 217	18 000	9 000

Source: Adapted from Budlender & Sadeck (2007:10)

5.3.5.1 Bargaining council funds

a The overall picture

Table 5.6 below indicates the funds for the councils in this research, indicating that most kinds of funds are administered by these councils.

Table 5.6: Council funds

Bargaining council	Pension	Provident	Medical	Sick pay	Disability	Survivors	Leave
BIBC (CGH)	√	√	√	√	√	√	√
NBCCMI		√	√	√	√	√	
MEIBC	√	√		√	√	√	√
MIBCO	√	√	√	√			√

Source: Adapted from Budlender & Sadeck (2007:45) and confirmed by the interviewees

The 2007 MEIBC agreement provides for investigating the possible introduction of medical aid cover for industry workers – a project that is still ongoing. Since 2006, MIBCO provides collateral to enable employees to buy houses. It also assists employees exposed to business closures through its Contingency Reserves Fund (funded from other unclaimed moneys). NUMSA was satisfied with the benefit funds of the two industries, but felt that all funds should be extended to non-parties. This is currently not the case.

The NBCCI employers' interviewee said that although the possibility of obtaining some funds has been on the bargaining menu for many years, it has never been a priority. Most firms in the industry already have their own established funds, and are not interested in further funds.

Health care clinics have been established in the clothing sector which has also been extended to other industries. These clinics offer free services to retired workers.

In the BIBC (CGH), much has been done to improve the pension fund, such as adding a funeral benefit. It also introduced a Bonus Fund in 1997. The fund was phased in over a period of time and first made provision for a period of only four days. This was expanded up to a

period of 15 days in 2010. It is available to all workers, and is based on daily contributions according to the number of days worked. Contributions to all funds are entirely from employers, and are based on the number of days worked, thereby acknowledging the specific requirements of the industry. Stipulations include, for instance, a certain number of days that must be worked before a death benefit will apply – this leads to more stable employment because it encourages continuous employment. Benefits are transferable when employees change employers within the specific area of the council, thus ensuring continuity. The MBA respondent indicated that one of the major changes in their council over the last 15 years was the growth in benefits funds, especially in the Pension Fund from a value of R600 million in 2002 to close to R2 billion today.

5.3.6 Key area 4: dispute resolution

One major change in bargaining councils over the past 15 years came with the provision in the LRA (1995) that councils can become accredited to deal with dispute resolution in their sectors through conciliations and arbitrations – a service well supported and complimented on by interviewees.

All councils in this research are accredited for both conciliation and arbitration. For instance, the SACTWU respondent indicated that its dispute resolution was: “Very effective. There has only been one national wage strike due to negotiations failure. It is well run with sufficient back-up support administration.” No real logistical problems are experienced – councils that have no regional offices (eg the NBCCI) make use of the DOL and CCMA venues. Only the NBCCI employers’ representative indicated that the administration of the function could still be improved.

In a previous study (Holtzhausen and Mischke 2004), it was found that the dispute resolution function is dealt with in one of two ways – it is either done in-house or contracted out. The exception was the MEIBC, which has contracted out its dispute resolution function in its entirety to an outside agency (Tokiso). This situation remains. The MEIBC confirmed that it is extremely costly to contract out dispute resolution, but indicated that it did not have the capacity (in terms of staff and skills) to run the dispute resolution function itself – because of the size of this council, nearly 5 000 disputes are generated every year. While the in-house option is less expensive, it still imposes a financial burden on the council and also puts pressure on staff.

The NBCCI, BIBC (CGH) and NBCCMI appoint their own panel of conciliators and arbitrators, and in the case of the clothing industry, also senior arbitrators. In addition, the NBCCI has an in-house dispute resolution department comprising four employees. According to interviewees, conciliations rarely go beyond the 30-day period as stipulated by the LRA. Conciliators and arbitrators are all well trained and efficient. The BIBC (CGH) also has four permanent employees who screen cases, hold telephone conversations, offer advice and try to solve any problems at that level. The MIBCO interviewee indicated that MIBCO’s in-house DRC, which was started 15 years ago, was well regarded. It functions from six regional centres and 62 satellite venues.

The referral rate in the MEIBC DRC has increased from 394 cases per month in 2002/3 to 668 cases per month in 2008/9 (MEIBC 2009:2). The council attributes this increase to a robust system which is accessible and understood in the industry, as well as to the increasing efficiency of the DRC. However, the increase of 12% in the referral rate during the period September 2008 to August 2009 was caused mainly by the economic recession. This is also evident in the number of retrenchments and non-renewals-of-contract cases that have increased. According to the report, similar trends are visible in the DRCs of other councils. The councils indicated that most of the cases they dealt with were dismissal referrals.

Without exception, all parties indicated that the subsidy received from the DOL (still R450 per arbitration) (Holtzhausen & Mischke 2004) is inadequate. According to the MIBCO interviewee, dispute resolution costs about R2 000 per day, which means that the council has to subsidise this service. The NBCCI secretariat estimated the cost per arbitration at R6 000.

5.3.7 General comments

Interviewees were also asked a number of general questions as discussed below. The information gathered here indicates a few other areas of change in the past 15 years.

5.3.7.1 Factors contributing to the success of councils

Interviewees were asked whether they regarded their councils as successful or unsuccessful in their tasks as stipulated by the LRA. All agreed that their councils were successful. Interviewees were then asked to explain what, in their minds, contributed most to their success.

a Improved relationships, the positive attitude of parties, good communication and a common commitment to the industry

As stated earlier, the development of more mature relationships is one of the main changes that have occurred in the last 15 years. According to the majority of interviewees, it contributed hugely to their council's success. The BIBC (CGH) secretariat stated the following as the key to the council's success: "The realisation by all parties that we are on the same page, serving the same industry". The SACTWU respondent commented as follows: "It has been successful largely because of joint party commitment to make it work and by the parties taking its operations seriously. We play a very active role in it."

b Agenda of decent work

In the clothing, building and steel and engineering industries, parties see the emphasis on a decent work agenda as a factor that contributes to better relationships, and as such, also to the success of the councils. The BWU representative remarked that a council creates a safe environment that is well regulated and that it therefore allows the agenda of decent work.

c Service delivery

The research shows that service delivery has become a priority among councils, thus contributing to their success.

The BIBC (CGH) interviewee indicated that the council supplied updated, relevant and clear information to its members through effective communication methods and regular meetings. Processes and procedures are regularly revised. The belief is that being service oriented and striving for excellence maintain the efficient running of the council. An effective administrative system aids this goal, as do proper advanced planning and a fixed programme. Five different council meetings are held every month, but the meetings have changed from long and cumbersome to short and efficient. This is attributed to the provision of relevant, concise information to stakeholders beforehand, thereby eliminating unnecessary questions and arguments. Members are committed and come prepared. As stated by the secretariat: *“We get on with the business of the day.”*

The MIBCO secretariat said that the council had become far more service oriented since 2004 (when new leadership was appointed), and had upgraded its technology to better service its members – an ongoing project. The council had kept its regional footprints, but had centralised services to head office to offer a better coordinated approach. Furthermore, the council liaises with other councils in order to extend its services at a nominal fee, partly because it believes it will strengthen the collective bargaining process and promote business opportunities.

In the clothing industry, the AMSA interviewee indicated that the NBCCMI had reinvented itself to move with the times, and is now more focused on value-adding services, not simply negotiation and enforcement.

According to the MEIBC interviewee, this council has successfully transformed itself. His mandate in 2003 was to change the demographics of the council, without compromising service delivery. The council had previously functioned with strong regional entities and no uniformity. He had to change the council’s culture from *“highly bureaucratic to one more geared to service delivery towards the industry”*. A new vision and mission had been implemented. At that stage, the council had had neither human resource policies and procedures nor any computer systems in place.

d Leadership

Another contributing factor is leadership in the council secretariat and among the respective parties. The loss in leadership of trade unions post-1994 was mentioned by the majority of interviewees as a huge challenge. Leadership in the council secretariat was deemed by all to be absolutely imperative. New leaders had introduced many necessary changes and ideas, especially to older councils stuck in their ways. The MEIBC interviewee stressed: *“...The old institution was challenged. We had to make the council more democratised, more transparent. The governance of the council became a challenge.”*

In both the building and metal and engineering industries, council interviewees emphasised the need for succession planning of leadership, emphasising the huge challenge of cascading knowledge down.

The AMSA interviewee indicated that part of the success of the NBCCMI could be attributed to the fact that the council is well funded, with good managerial disciplines in place. It is a properly run institution. As an institution we have to be even more creative and responsive.”

The MIBCO interviewee mentioned the council’s credit control ability (R7 billion had been under administration on a monthly basis from their provident fund) and effective communication as results stemming from solid leadership. The council had adopted a proactive approach, and endeavoured to react to problems immediately. He explained this as follows: “In 2003-2004 we had a change in leadership. The issues are still the same, but the management has changed. We offer sustainable services, new technology and improved bargaining processes. For this, a council needs strong and well-educated leadership.”

The fact that it is a challenging environment was repeatedly reiterated. The MEIBC interviewee elaborated as follows:

Any change has to be modelled by leadership of the organisation. Governance and stakeholder commitment is important. It is risky to play this role, but there is an element of necessity for bureaucrats. The terrain is highly contested – all parties want to move forward. You have to take staff *and* stakeholders by their necks! You also often deal with people who are not competent to do this. You need to create stability through groups of negotiators and varying principles, in the beginning there are lots of teething problems. You work things out. You have new leaders and new players coming in. It is quite political to get roles stabilised. You have to constantly ask yourself what the roles are of structures, personnel, the regional councils. You need to be creative, to think through policy-making. You need clear rules, structures, buy-in and capacity for it to work. You need leadership renewal – it is all part of sustaining energy. You need to know what style of leadership you need. As a council you need to be a good administrator – of the agreement, enforcement and dispute resolution. You facilitate this, and are the back-up. Still you need to keep all this going, to suggest ways out of problems and impasses between parties. It is very challenging.

He sees their role as that of a strategic partner. Apart from steering the bargaining process, they also assist the facilitator appointed to drive collective bargaining:

There’s a risk to all of this, you need to put limits on it. A mediator’s role is a very precarious one, because you ask the parties to entrust an individual with the process. You need to point out uncomfortable feelings towards the process. You have to be hard, especially with reality checking. You need to “live” with the stakeholders. The role of the council is rather a supportive facilitative role; you still need the key facilitator to drive the process, rather than leading the process.

NUMSA had expressed the need for MIBCO to play a similar more facilitating role.

5.3.7.2 Comments on the legal framework governing councils

Interviewees were asked whether they would change any legislative regulations.

a Criminalisation of non-compliance

The BIBC (CGH) raised the matter of compliance and mentioned that post-1995, a process is followed of mediation and conciliation. According to the council, this takes much longer than the pre-1995 approach of criminalisation and referring non-compliance issues to a court of law. The SACTWU respondent also raised this point: “The most important required legislative change is to criminalise non-compliance.” NUMSA agreed.

b Industry policy proposals to NEDLAC

No council has made any proposals to NEDLAC, mostly, it is said, because the respective parties normally differ on the solutions to problems. They therefore prefer to present their own views to NEDLAC. The initiative in the clothing industry to criminalise non-compliance is the only example of a combined effort that would probably be tabled at NEDLAC.

5.4 CONCLUSION

The chapter reported on the research findings regarding the question of how bargaining councils have adapted to their environment in the past 15 years. The findings are only briefly summarised below as a detailed analysis follows in chapter 6.

The chapter started with an indication of what parties regarded as the main threats and opportunities during this period of time and how councils had adapted to these. The research showed that the principal environmental threats had been the challenging economic times and the changing world of work. It further indicated that the most prominent opportunities lay in the fact that relationships between parties had matured in the past 15 years (mainly necessitated by economic conditions and major industrial conflict) and that parties had come to realise the significance and benefits of centralised bargaining through the council system.

The discussion then focused on several characteristics of bargaining councils – their size, the structure and nature of the industry in which they operate, the nature of the employment relationship, the nature and size of the parties to the councils, and a council’s age and financial strength. The research showed that, in all instances, these characteristics had played a role in changes the councils had experienced.

The research then highlighted the four subsidiary themes of representivity, the main agreement (wages and conditions of service), benefit funds and dispute resolution. It showed that in all four the areas significant changes had occurred and that councils had to constantly adapt to their changing environment if they wished to survive.

The discussion concluded with a few general remarks on councils.

The research findings add to the body of knowledge as discussed in chapters 3 and 4, and broaden the awareness of centralised collective bargaining developments in South Africa. Chapter 6 concludes with a discussion on how South African centralised collective bargaining trends compare with international trends as previously discussed, as well as a summary and an analytical discussion of the main findings of the study.

University of Cape Town

CHAPTER 6 CONCLUSION

6.1 INTRODUCTION

It is evident that bargaining councils are in the midst of an extremely uncertain period and that even though councils are often regarded as the only way forward, a number of pertinent problems and challenges exist. This chapter summarises and highlights the most important trends against the background of the empirical research of the previous chapter, as well as the literature research of chapter 3 and 4.

Previous research (Holtzhausen & Mischke 2004) made it clear that arguably, in some instances, bargaining councils represent centralisation under strain. In other instances, neither the employers' organisation(s) nor the trade union(s) could conceive of a viable alternative for regulating not only terms and conditions of employment, but also other issues affecting an industry or sector as a whole. This study explored and answered many council-related questions, but also left many areas unanswered, prompting further research.

In this study, the researcher aimed to determine how bargaining councils adapted to the changing environment over the 15-year period from 1995 to 2010. Subsequently, a vast literature review was undertaken, focusing on collective bargaining (chapter 3), and bargaining councils (chapter 4), pointing to unanswered questions and forming the basis for descriptive research. It built on the previous exploratory study referred to above, making comparative research possible. The research encompassed qualitative research methods which included conducting interviews and reviewing documents (see chapter 2). The empirical research (chapter 5) elaborated on how and why councils have changed in the ways they have (explanatory research).

This concluding chapter summarises the findings of the study. This is done by focusing on three factors – international developments, factors that influence councils and four key areas of bargaining councils. Throughout the study it became clear that these three factors overlap and should be read as a whole – elements relevant to one factor are often also relevant to the next, but will not be repeated. The summary starts by comparing the data from the empirical research with international trends (discussed in chapter 3). Thereafter it summarises the findings on the influencing factors and the four key areas (identified in chapters 1 and 2) and provides an analytical discussion thereof. The summary and discussion of the three factors provide reasons for the trends and findings, explain the dominant drivers of change and highlight the councils' responses.

6.2 A SUMMARY OF THE PRINCIPAL FINDINGS

6.2.1 A global comparison

The findings of the study pointed to a number of factors that can be related to international trends. The next section compares South African and international trends, also indicating the implications of these trends for councils. Each international trend is summarised in a heading and followed by a discussion of the South African situation.

6.2.1.1 Trend 1: a decline in trade union membership and power

In all the industries researched, trade union membership has declined in the past 15 years. However, a decrease in membership numbers does not necessarily mean that a union's power has diminished – it may remain the same.

All interviewees agreed that the decline in representivity can mostly be ascribed to economic challenges and subsequent job losses (which have been evident in the last few years), and the changing world of work. Job losses imply a loss in membership numbers. The potentially threatening situation of atypical employment to the existence of unions (eg the difficulty of recruiting members in atypical employment and workers moving in and out of employment contracts), as well as to their members (eg the lack of security linked to flexible employment practices) is widely acknowledged. Not all industries are equally affected.

In addition, in three industries (building, chemical, and metal and engineering), interviewees indicated that trade unions have lost touch with their members, contributing to the decline in membership. Unions also battle because of the exodus of skilled and experienced trade unionists after 1994; and have not yet rebuilt their strength. They regularly focus too much on political issues. Unions are often understaffed and lack the time and resources to address all the needs in an industry. Although recruitment drives normally succeed, not many unions use this avenue.

One exception is SACTWU. In response to the challenges of the past 15 years, the union has successfully launched recruitment and aggressive –Save Jobs” campaigns. It is also actively involved in council affairs and promotes the –value adding” agenda of councils.

a Implications for councils

Declining membership impacts on councils' representivity levels and thus on extensions of agreements (discussed below). In severe cases, it could even lead to the collapse of a council. There is much pressure on unions to reverse the situation.

6.2.1.2 Trend 2: employers' organisations facing similar challenges to trade unions and thus reducing the services associated with (centralised) collective bargaining

Contrary to this international trend, all employers indicated support for centralised bargaining. However, membership numbers declined in the past 15 years and the clothing sector reported representivity problems. The research indicates that changes in the world of work and tough economic times have affected a decline in membership numbers of employers' organisations – although to a lesser extent than trade unions. Many employers' organisations have existed for a number of years, giving them stability and credibility.

a Implications for councils

As stated above, a decline in membership affects representivity, leading to problems in the extension of agreements. It also results in higher non-compliance levels that councils have to combat through increasing enforcement activities. In many instances, councils have changed their approach on enforcement by introducing new strategies to alleviate the problem, for instance, by marketing the benefits of the council to employers. Declining membership, when evident, is addressed through strong recruitment drives. Employers' organisations also continuously expand their services according to market requirements – SEIFSA is a case in point. The research indicated that councils need to focus on service delivery, making it worth the employers' while to stay involved in the process.

6.2.1.3 Trend 3: a decline in collective bargaining as a mechanism to determine wages and conditions of service, with a steady move towards the individual contract

In none of the industries researched had this been the case for the past 15 years – in fact the converse was true (although a different picture may emerge in industries without councils). Substantive issues are collectively bargained and agreed upon at council level and only minor plant level bargaining and operational flexibility exists. All parties indicated that centralised bargaining has increased, whilst decentralised bargaining has decreased.

This is mostly ascribed to more mature relationships fostered between the parties. Bargaining in the past 15 years has changed from adversarial positional bargaining to interest bargaining with a win-win-outcome approach. Councils are pushing the boundaries of the traditional relationship and are more partnership oriented. In fact, the common interest issues agenda is on the increase – both parties showing evidence of considering the good of the whole industry. This is generally because of the enormous challenges facing these industries – it has forced parties to stand together, and as far as possible, put behind them conflicting adversarial relationships. Parties indicated that they could see no other way of regulating their respective industries, but through the councils.

Nevertheless, balancing the conflicting needs of the parties to councils still poses a huge challenge. It is ultimately a fight for power between two contesting parties. At the end of the day, whatever is agreed is almost always a settlement between opposing interests.

a Implications for councils

To succeed, parties need the commitment, maturity and capacity to deal with issues at a strategic level. Council officials need to play a more facilitating role in the collective bargaining process, thus steering the process and keeping communication alive. It is evident that the transformation of relationships goes hand in hand with a firm decision to change, and often necessitates the facilitation of an outside change management expert. The MEIBC is an example of a council in which this approach is successfully followed.

6.2.1.4 Trend 4: a decline in the coverage of collective agreements through extensions

When including the public sector in South Africa, coverage increased from 1995 to 2005, but private sector coverage declined substantially. According to the literature review (ch 4), in 2005, bargaining councils covered just less than a third of employees who were potentially covered by collective bargaining (including the public sector), and 13% when coverage in the public sector was excluded. About 5% of such employees are nonparty employees (thus covered by extensions). Coverage declined substantially in both the manufacturing (7%) and construction (50%) sectors during the period, 1995 to 2005 (Bhorat et al 2009:27).

a Implications for councils

Except for the NBCCI, all other council agreements in this research have always been extended. Parties support the extension of agreements, since not extending agreements to non-parties could lead to unfair competition. As indicated above, lower representivity figures and their consequent effect on the extension of agreements pose a serious problem, and need to be actively and strategically addressed. In addition, the MOL has adopted a much sterner approach to agreement extensions in the past few years.

In cases where agreements are not extended, as in the NBCCI, employers sometimes threaten to leave the council if their demands or wage offers are not met, or if they feel that the trade union's demands are too extravagant. This becomes a "bargaining chip" in the hands of employers. This council is in the process of preparing itself in all the areas required by the DOL necessary to have its agreement extended.

6.2.1.5 Trend 5: where there is collective bargaining, the level at which it is conducted, is diminishing - if at national level there is an apparent shift to industry level and then to plant level

In all five councils researched, the level of bargaining did not diminish in the preceding 15 years – if anything, the converse was true. With the exception of the NBCCI, all councils had been in existence since before 1995. Collective bargaining had thus remained centralised for a number of years – although the details of some of the agreements changed. In the chemical industry, collective bargaining became centralised with the formation of the council in 2001. Once the council's agreement is extended to non-parties, the industry will be even more centralised. The clothing industry is an example of bargaining becoming even more centralised, with the amalgamation of five regional councils into one national council – a move now highly supported by both parties, although it took the employers' party some time to see the benefits of this

change. According to all interviewees, bargaining about substantive issues has also become more centralised.

The building industry is one sector showing significant signs that centralised collective bargaining is on the decline. Two councils have collapsed, and a third is struggling. According to a BIBC (CGH) interviewee, from a national perspective, the building industry is thus moving away from centralised bargaining. However, in this council specifically, the same level of centralised collective bargaining remains.

a Implications for councils

As stated above, the councils in the research show signs of becoming more centralised. Nevertheless, the council secretariats and employers' organisations interviewees stated that they had difficulty finding solutions to apply to vastly different sectors and situations, but as yet had not come up with a solution to the problem. Trade unions prefer one set of agreements applicable to all sectors within an industry. In the research, the NBCCI emerged as the only example of a council that is structured to allow bargaining at more levels. The council's constitution stipulates the exact negotiating scope for national, sectoral/chamber and plant-level bargaining. MIBCO is the only council in the process of investigating different bargaining models to better deal with the needs of its industry's various subsectors needs, and intends appointing a CCMA representative to mediate the process.

6.2.1.6 Trend 6: a decrease in the level of detail in collective agreements – agreements at the highest level increasingly reflecting minimum standards and policy frameworks or objectives, with more operational flexibility possible at implementation level

This was not the case in most of the industries, in fact, the opposite was true. Only limited flexible work arrangements exist in industries. When they do exist, it is normally only in respect of plant-level work arrangements.

One exception is the NBCCI. Its constitution reflects minimum standards and policy frameworks, thereby allowing more operational flexibility and detailed implementation at plant level. The BIBC (CGH) agreement is structured in such a way that everything stipulated in the agreement is fixed, while all aspects over and above those may be negotiated at plant level, although this is not encouraged. In the clothing sector, the last four years have seen a greater devolution of power to plant-level work arrangements without council or trade union involvement; there are a few flexible work arrangements (eg for shifts and working times) in the industry.

a Implications for councils

There is pressure within councils to provide some kind of flexibility through, say, variations in agreements. The clothing sector is currently in negotiations seeking a possible solution to its industry's challenges, perhaps differentiating more between metro and non-metro areas. MIBCO is researching alternatives. The current research showed that the majority of trade unions are against flexible arrangements because they maintain that exemption procedures deal adequately with any situation. NUMSA indicated that it wants to move away from any form

of plant-level bargaining (with the only exception of issues such as employment equity and skills development). However, employers would welcome more flexibility.

There is a trend towards simplifying agreements. However, this normally goes no further than using simpler, more understandable English. All parties concurred that the agreement has to remain a legal document, which, by its very nature, is complex⁴⁶. When referring to the content of the agreement, the MIBCO, MEIBC and NBCCMI secretariat interviewees indicated that they could not manage to simplify their respective agreements – mainly because of disagreements between parties about the details of job grading and categories.

6.2.2 Influencing factors

In chapters 1 and 2, various characteristics guided the choice of councils to research. Interviewees were probed to determine whether these factors also influence councils, and in what way.

6.2.2.1 A council's size

All councils indicated that their size, especially whether they are regional or national councils, influences their performance. In the past 15 years, the clothing sector has amalgamated into a national council, while other councils have remained the same.

It is generally believed that national councils with regional offices render a better service to the parties. The head office normally acts as a centralised shared services centre, whilst regional offices are responsible for monitoring compliance and levy payments. Often, the larger the council is, the more services it can deliver and the more streamlined it is, but it also has to deal with more expenses. Regional offices sometimes work too independently, and should be well managed. Interviewees in the building industry disagreed, saying that regional councils are able to cater for services specific to that area. Also, a smaller council can adopt a more “hands-on approach”, and better facilitate dispute resolution because it is more service oriented.

a Implications for councils

The research confirmed the importance of effective leadership and solid management principles. It was repeatedly stressed that councils are also organisations that need to be well managed. Clear strategies, policies, procedures, role clarification and a proactive approach are necessary to manage big councils, especially those with regional offices. Both MIBCO and the MEIBC indicated that much time and effort go into proper management and effective

⁴⁶ However, one should question whether legal documents are really that complex – or is it rather a case that everyone understands what the existing agreements mean, despite their complexity. Once one starts changing agreements, introducing new terms, and so forth, everything might become less clear than it was in the first place. People have different interpretations of what appear to be simple terms – thus opening up a whole new arena for conflict. In reality, perhaps this is what the councils were trying to avoid.

communication, and that they have adapted various strategies and procedures to better deal with the current challenges faced by sizeable operations such as theirs.

6.2.2.2 The industry's structure

The structure of the industry – especially whether the sector consists mostly of small or big business – affects councils in varying ways and degrees. The number of small firms in industries has increased in the past 15 years, with a decline in larger business - the diversity making it increasingly difficult and far more complex for councils to deal with.

a Implications for councils

The majority of parties to the councils are SMMEs. Big businesses sometimes agree to benefits SMMEs cannot provide. Interviewees indicated that larger businesses bring stability and reliability to the council – especially from a financial perspective. Levies are paid and professional relationships exist. Big business seems to carry the burden of representing the SMMEs at council level.

The fragmentation of big business was mentioned by the BIBC (CGH) secretariat as one of its main challenges – smaller businesses are more difficult to control. Small firms are often dominated by their larger counterparts, even when they belong to employers' organisations, and do not really influence the bargaining process, but are rather influenced by it. No special dispensations exist for SMME, although they are represented at all council forums. At the same time, councils face increasing pressure from SMMEs and government to develop policies to enhance small business development.

Councils are working towards assisting small business. The BIBC (CGH), for instance, assists with payroll, taxation and other services. Dispute resolution by councils is a huge advantage for SMMEs. Nevertheless, research indicates that SMMEs still feel left out in the cold and dominated by their larger counterparts.

Indications are that the mix of small and big business in one council poses a challenge. Councils find it difficult to formulate appropriate regulatory measures in industries ranging from micro one-man businesses, to huge corporate giants. Employers contend that a one-size-fits-all approach cannot cater for differences, whereas the unions support such an approach, arguing that exemption procedures deal adequately with all issues.

6.2.2.3 The nature of the industry's employment relationship

Interviewees agreed that the changing world of work has become a reality in the past 15 years, and necessitates innovative ways of strategically approaching and solving inherent emerging challenges.

a Implications for councils

A range of critical proposed amendments to the LRA were tabled by the MOL, including the proposed introduction of Ministerial power to prohibit labour broking in any particular sector of the economy. Employers do not agree, but believe that the proper enforcement of current legislation is the key to eliminating the various alleged employment abuses referred to in the Minister's report. Most industries deal with labour brokering by making employers responsible for complying with agreements, even when using the services of a labour broker – they are therefore already complying with suggested amendments to the LRA tabled in 2010. In addition, the MIBCO parties agreed in 2010 that by 2013 (the end of the current agreement), no more than 35% of the workforce would consist of labour brokering employees.

Employers acknowledge the growth of the informal sector and are looking at ways to involve the sector more. Some initiatives are evident, although these are the exception – for instance, the RMI has initiated a programme to assist the transfer of the informal businesses to the formal sector, whilst the BIBC (CGH) encourages the inclusion of the informal sector in certain tenders.

6.2.2.4 Nature and size of council parties

The nature, size and number of unions and employers' organisations party to a council influence the bargaining process. The most significant change in this area during the research period was the merger of employers' organisations in the clothing industry into one national body (AMSA) in 2009.

a Implications for councils

Interviewees concurred that having one employers' organisation and one trade union simplifies the bargaining process. However, when this is not the case councils deal with various trade unions and employers' organisations by allocating seats according to representivity figures. When issues affect more than one party, a combined caucus represents the respective parties, and a unified position is presented to the council forum. In the NBCCI, nine employers' organisations have appointed one coordinator for their caucus. Some trade unions find it difficult to work together, although unions come to negotiations as a united group. Trade unions are more diverse and serve different federations with different ideologies, a function the employers' representatives do not have.

Councils are sometimes dominated by big players – powerful employers' organisations and numerically strong trade unions. Historical factors also play a role – and smaller parties may remain members of a bargaining council by virtue of the fact that it were a founding member of the bargaining council and that it succeeds (even if only barely) in maintaining the required membership number.

6.2.2.5 A council's age

Both younger and older councils experience advantages and disadvantages linked to their respective ages. The newest council (NBCCI) was formed in 2001.

a Implications for councils

Younger councils cannot offer all services because it takes time to put the necessary structures in place to render these services. Teething problems arise. However, younger councils have a more flexible approach, making it easier to implement new ideas. The converse is also true – an older council may become extremely set in its ways, which is not always beneficial for the parties. However, definite changes are evident in this regard. Councils advocate newer proactive business approaches and communication initiatives, change management programmes and strong leadership.

6.2.2.6 Financial circumstances

All the councils have a relatively stable financial outlook, and regard this as imperative for their healthy functioning. Large businesses contribute greatly to financial stability in councils.

a Implications for councils

Most interviewees indicated that difficult economic times influence them negatively – enforcement becomes more challenging as levies fall behind and enforcement approaches have changed (as discussed above). Councils implemented strategies in the preceding 15 years to ensure a stable financial outlook. This occurs mainly through the management of levies. For instance, levies are reviewed annually to keep abreast of inflation, and in some instances, they are increased annually at the same rate as wage increases.

6.2.3 Four key factors

6.2.3.1 Representivity

As stated above, representivity figures are a huge concern for councils. Both trade unions and employers' organisations have seen a decline in membership in the 15 years under investigation. The DOL has become stricter about this issue, and not being representative poses a real threat to the extension of a council's agreement to non-parties. This can ultimately lead to the demise of a council.

a Implications for councils

Unions need to be more active in recruiting members in order to combat their decline in membership numbers, and should ensure strong leadership with adequate skills in order to stay relevant to their members' needs. Employers have increasingly used atypical forms of work (eg labour brokering), and now need to look at innovative ways to deal with the sterner approach adopted by the DOL. Interviewees cautioned that the Minister should take into consideration new employment structures and the related impact on representivity figures. It is argued that the Minister should rather focus on whether the relevant parties have the interests of the industry at heart – the stability of the industry is ultimately more important than any numbers.

6.2.3.2 *The main agreement*

In addition to what has been discussed above, the following factors and changes in the past 15 years merit brief mention.

The need for flexibility is mainly dealt with through the process of exemptions, although some subsectoral (business chambers) and area (eg non-metro/metro) arrangements exist. Blanket exemptions are extremely rare, with only one exception for micro-firms in the clothing industry. The BIBC (CGH) made provision for new entry-level employees eight years ago, whilst the MEIBC has flexibility arrangements for firms that are three years and younger.

With the exception of the NBCCMI, as a rule, multiyear agreements are now reached. Parties to councils are constantly working towards streamlining these agreements. Minimum wages with guaranteed monetary increases are usually negotiated, although different wage models exist. In some rare instances, negotiations on actual wages take place.

Exemptions are dealt with through specific procedures and criteria.

There is no two-tier bargaining, except for the arrangements of the NBCCI.

Non-compliance remains a huge challenge, in some sectors more so than in others. Although enforcement still takes place, councils attempt to tackle this through innovative strategies, such as supporting decent work agendas – the BIBC (CGH) is a case in point with its media drive of complying with the council's main agreement – because it is the right thing to do".

a Implications for councils

The research has shown that councils are continuously looking at new ways to address challenges they face and various changes are evident (see ch 5). When confronted with unplanned circumstances (eg in the building and steel and engineering industries, when their multiyear agreement did not include inflationary precautions), parties addressed these through goodwill and negotiations.

6.2.3.3 *Benefit funds*

Four of the councils in this research have a satisfactory selection of benefits funds. In the last 15 years, not much has changed in these funds – mostly because they have existed successfully for many years. Both parties indicated that they regarded the funds administered by councils as important and beneficial to their members.

a Implications for councils

Councils are also awaiting changes in South African legislation regarding an increased social net, and any suggested changes have been placed on hold until further indications of what can be expected from government.

6.2.2.4 Dispute resolution

Dispute resolution is widely regarded by all interviewees as hugely successful. With the exception of some minor administrative problems, it works well and disputes are resolved within specified time limits. In the 15 years covered in this research, the accreditation of councils for conciliations and arbitrations was probably the one functional change most beneficial to these institutions. The cost of the function was the only bone of contention mentioned in the research.

a Implications for councils

Proposed amendments to the LRA tabled in December 2010 clarify that a council's agreement may include a dispute resolution levy, and that councils may charge a fee for dispute resolution services (under the same guidelines as those of the CCMA). It is hoped that this, if so promulgated, will ease the financial burden councils experience, although the small business sector will not welcome an additional levy.

6.2.4 Reasons for Council's Adaptability

One question remains – why have these councils been able to adapt and survive relatively well in the face of so many challenges? There is no simple answer to this question. The research points to two main strengths in the current council system. Firstly, it indicates one positive change in all five of the councils in the last 15 years, namely the fact that the relationships between the parties have matured substantially (even though the approach that was followed to reach this point differed). The reason given throughout for this significant change was that the councils' challenges were so massive, industrial action so severe and negotiations so lengthy and costly, that both parties realised something had to change – it was obvious that the relationship between the parties had to change. This aspect may have contributed significantly to the positive demeanour of parties to their councils. Secondly, the research findings also suggest the possibility that the relative strength and success of the council system is to be found in the limited legislative (but voluntarist) framework governing bargaining councils, because this allows councils to address their diverse needs as they see fit. This possibility came to the fore because the councils have all approached their various challenges individually, despite similarities, differences and overlapping. Councils thus sought ways to solve their challenges as best they could; what worked for one council, did not necessarily work for another, and they all had to address challenges in their own unique way. In other words, the main strength of the system is probably the ability of different councils to adapt differently to different dynamics and pressures in different sectors. One may thus conclude that the improved relationship between parties has allowed councils to do different things to help them remain stable – and the limited framework has accommodated these different approaches.

6.3 IN CLOSING

It has been argued that the reason why bargaining councils have survived for so long is because they serve the interests of large corporations, powerful trade unions and the state – the three main role players in employment relations. Large firms can negotiate wages they can

afford to pay and then have the agreement extended to the whole industry in order to eliminate wage cost competition from small and other firms. The powerful unions are content with the relatively high wages they have negotiated and councils provide all the machinery to extend and enforce the agreement. The fact that the agreement could result in reduced employment does not concern the unions because their members are generally well protected. The state is complicit in all of this because it helps to reduce industrial conflict. At the end of the day, the whole process remains a power play between dominant parties.

Most of these arguments are valid – the research clearly indicated that the big firms are in fact the stabilising factor in councils. The needs of small firms are mostly addressed only superficially. Powerful unions are the driving force, and remain committed to the quest of councils. The DOL functions in the background. It is possibly against this backdrop that the generally positive comments of the role players in this research should be read. After all, it was the largest employers' organisation and powerful trade union in each council that was interviewed.

Nonetheless, one cannot deny that councils play a massive role in the South African economy. Clearly, if nothing else, they are hardy, robust institutions, capable of surviving fundamental legislative and political changes. More importantly, the tremendous positive trends of the past 15 years in the system should not be underplayed – in clothing, steel and engineering and in the motor industries, the role players have succeeded in changing extremely adversarial bargaining and relationships into positive, respected and cooperative bargaining relationships. Contrary to other examples in the construction industry, the BIBC (CGH) has been innovative in its approach to contributing to the success of its sector and area. The NBCCI has succeeded in selecting a model that works for its industry. Overall, the beginnings of striving towards a decent work culture are indeed visible.

However, a number of vital conditions for the continuous survival and success of councils linger (see Godfrey et al 2006a & 2007) – such as becoming more responsive and adapting to the changing needs of South African society, the industries and the employers/employees they serve. Councils should strive to be more democratic, participatory, accountable and transparent. Greater flexibility towards the small business sector is necessary. Compliance issues have to be solved and addressed innovatively by educating businesses and improving communication. More adequate financial support for the council's dispute resolution function is imperative. Councils need to improve their representivity, and the trade unions in particular, need to act on the criticisms directed at them. Councils should explore the types of benefits they can offer organisations and how to be more active in terms of the services they provide. Further challenges brought about by the worldwide trend of an increase in atypical employment should be proactively approached. In all of these issues, the council secretariat should play a more facilitating role, driving the process. A major challenge also lies in balancing the need for greater economic efficiency with the needs of workers for decent work and social protection. The DOL should fulfil a more hands-on role towards councils, by, say, developing support programmes, disseminating best practices and coordinating resources and systems. As Anstey (2004:1863) so aptly summarises this:

Where multi-employer collective bargaining ... was centred as a concept of market control based in "levelling" labour costs across industries, its ... [new] test will be the extent to which it can become a market sensitive mechanism for wage setting in industries reflecting increasingly diverse conditions as a consequence of variable levels of enterprise integration into the global economy.

At the start of this study it was mentioned that the challenges facing these councils necessitate "a process of interest accommodation which includes all sorts of bipartite or tripartite discussions ... and aim[ed] at ascertaining a view of the other party, obtaining a concession, or reaching a compromise" (Cordova 1985:307). Furthermore, it seems clear that the bargaining process should rest on the assumption that "... neither party is completely wrong, that concessions by either party do not necessarily signify weakness in that party, and that, while the individual goals of the parties may be important ... it should not occur at the cost of disrupting the organisation as a whole" (Bendix in Steenkamp et al 2004:945). A pluralist approach was thus advocated.

However, the research indicates a trend towards a developing social corporatism at the meso-level. This should be critically examined – is the greater cooperation between parties really a result of weakening (previously militant) trade unions? Or is it – as indicated – an approach born of the need to counteract extremely adversarial bargaining and crippling industrial action and thus sustainable because both parties see no other way forward? Does it thus indicate a maturity of the relationship between the parties? After all, councils are made up of contesting parties, and whatever they agree upon will almost always be based on some form of compromise. The answer to this will probably only emerge in years to come, but it seems clear that it is only with an approach in which both parties (with their respective needs) are seen as vital stakeholders, that councils will be able to face the challenges they are bombarded with.

BIBLIOGRAPHY

- Adler, T. 1991. The demise of industrial councils: social and economic effects. *South African Labour Bulletin* 15(5):52-60, January.
- Aidt, T & Tzannatos, Z. 2002. *Unions and collective bargaining*. Washington: World Bank.
- Albertyn, C. 1990. Industry bargaining. *Employment Law* 7(1):123-126, September.
- Anstey, M. 2004. National bargaining in South Africa's clothing manufacturing industry: problems and prospects of multi-employer bargaining in an industry under siege. *Industrial Law Journal* 25:1829-1865. CD-Rom, Jutastat Labour Library.
- Auer, P. 2000. Employment revival in Europe: labour market success in Austria, Denmark, Ireland and the Netherlands. Geneva: ILO.
- Bamber, G, Park, F, Lee, C, Ross, P & Broadbent, K (eds). 2000. *Employment relations in the Asia Pacific: changing approaches*. St Leonards: Allen & Unwin.
- Bamber, GJ, Lansbury, RD & Wailes, N. 2004. *International and comparative employment relations: globalisation and the developed market economies*. 4th edition. London: Sage.
- Barker, FS. 2003. *The South African labour market*. 4th edition. Hatfield: Van Schaik.
- Barker, FS. 2005. Issues to be considered when establishing a bargaining council. Paper presented at the Conference on Collective Bargaining in the Mining Industry, 10 March.
- Barker, FS & Holtzhausen, MME. 1996. *South African labour glossary*. Pretoria: Van Schaik.
- Baskin, J. 1995. The need for centralised (but flexible) bargaining. *South African Labour Bulletin* 19(1):48-56, March.
- Baskin, J. 1998. Jobs, growth and equity in a global context. 11th Annual Labour Law Conference, 1-3 July, International Convention Centre, Durban.
- Bendix, S. 2004. *Industrial relations in South Africa*. 4th edition. Lansdowne: Juta.
- Bendix, S. 2006. *Industrial relations in South Africa*. 4th edition revised (8th impression). Cape Town: Juta.
- Benjamin, P. 2008. Informal work and labour rights in South Africa. *Industrial Law Journal* 29:1579-1602. CD-Rom, Jutastat Labour Library.

Bennett, M. 2002. *Organizing workers in small enterprises: the experience of the Southern African Clothing and Textile Workers' Union*. SEED Working Paper No. 33. Series on Representation and Organization Building. Geneva: ILO.

Bezuidenhout, A. 2000. *Towards global social movement unionism? Trade union responses to globalization in South Africa*. Discussion Papers DP/115/2000. Labour and Society Programme. University of the Witwatersrand. Geneva: International Institute for Labour Studies.

Bhorat, H, Van der Westhuizen, C & Goga, S. 2009. *Analysing wage formation in the South African labour market: the role of bargaining councils*. Development Policy Research Unit. Working Paper 09/135, January.

Biagi, M (ed). 2000. Studies in employment and social policy. *Job creation and labour law: from protection towards pro-action*. The Netherlands: Kluwer Law International.

BIBC. 2007. Collective agreement. *Government Gazette* No. 8711, Vol 505, No. 30059. Pretoria: Government Printers.

Bisseker, C. 2010. Test case for decent work. *Financial Mail*, 25 June.

Blyton, P & Turnbull, P. 1994. *The dynamics of employee relations*. London: Macmillan.

Bosch, C. 2003. A survey of the 2002 labour legislation amendments: is there really "something for everyone"? *Industrial Law Journal* Volume 24:23-55. CD-Rom, Jutastat Labour Library.

Brand, J. 2002. Bargaining council dispute resolution under the LRA as amended. *Industrial Law Journal* 23:1733-1742. CD-Rom, Jutastat Labour Library.

Brewster, C, Mayrhofer, W, Morley, M (eds). 2004. *Human resource management in Europe. Evidence of convergence?* Oxford: Elsevier Butterworth Heinemann.

Brown, W. 1995. Bargaining at industry level and the pressure to decentralize. *Industrial Law Journal* 16:979-989. CD-Rom, Jutastat Labour Library.

Brynard, PA & Hanekom, SX. 2008. Introduction to research in management-related fields. 2nd edition. Pretoria: Van Schaik.

Budlender, D & Sadeck, S. 2007. Bargaining council and other benefit schemes. A unpublished report by the Community Agency for Social Enquiry. Prepared for the National Treasury, July.

Carrell, MR & Heavrin, C. 2004. *Labor relations and collective bargaining: cases, practice and law*. 7th edition. Englewood Cliffs, NJ: Pearson Prentice Hall.

Chamberlain, NW & Kuhn, JW. 1965. *Collective bargaining*. 2nd edition. New York: McGraw-Hill.

Cheadle, H. 2007. Government failure. *Finweek*, 1 February.

Clarke, T & Clements, L. 1978. *Trade unions under capitalism*. Sussex: The Harvester Press.

Constitution for the National Bargaining Council for the Clothing Manufacturing Industry. 2010. www.nbc.org.za. Accessed on 12 November 2010.

Cooper, C. 2000. Globalisation, labour law and unemployment: the South African case, in *Job creation and labour law*, edited by M Biagi. The Netherlands: Kluwer Law International:233-252.

Copelyn, J. 2004. Collective bargaining a base for transforming industry. *South African Labour Bulletin* 28(6):26-33, December.

Cordova, E. 1985. Collective bargaining, in *Comparative labour law and industrial relations*, edited by R Blanpain. 2nd edition revised. Deventer, The Netherlands: Kluwer.

Dahrendorf, R. 1959. *Class and class conflict in industrial society*. London: Routledge.

Deale, P. 2003. Resolving disputes in the metal industry. *South African Labour Bulletin* 27(1):22-23 February.

DOL. 2007. *Casualisation poses threat to strength of bargaining councils*. 21 September. www.labour.gov.za. Accessed on 12 October 2008.

Donnelly, E. 2001. Borrowing from Europe? Employers' views on associability and collective bargaining in the new South Africa. *International Journal of Human Resource Management* 12(4), June:551-567.

Douwes Dekker, L. 1990. *Industrial relations for a changing South Africa*. Johannesburg: Lex Patria.

Du Toit, D, Bosch, D, Woolfrey, D, Godfrey, S, Rossouw, J, Christie, S, Cooper, C, Giles, G & Bosch C. 2003. *Labour relations law*. 4th edition. Durban: Lexis Nexis Butterworths.

Du Toit, D. 2007. What is the future of collective bargaining (and labour law) in South Africa? *Industrial Law Journal* 28:1405-1436. CD-Rom, Jutastat Labour Library.

Dunlop, JT. 1967. *Industrial relations systems*. New York: Holt.

Explanatory Memoranda to Draft Bills 2000. 2000. *Industrial Law Journal* 21:2195-2232. CD-Rom, Jutastat Labour Library.

Ferner, A & Hyman, R (ed). 1998. *Changing industrial relations in Europe*. 2nd edition. Oxford: Blackwell.

Fernie, S & Metcalf, D. 2005. *Trade unions. Resurgence or demise?* Oxen: Routledge.

Finnemore, F & Van Rensburg, R. 2002. *Contemporary labour relations*. 2nd edition. Durban: LexisNexis Butterworths.

Finnemore, M. 1989. Bargaining forums and levels of debate. *IPB Journal* 7(12):10-13, May.

Flanders, A. 1975. *Management and unions*. London: Faber & Faber.

Fox, A. 1966. Industrial sociology and industrial relations. Research Paper 3, Royal Commission on Trade Unions and Employer Associations. London: HMSO.

Fox, A. 1971. *A sociology of work in industry*. London: Macmillan.

Fox, A. 1974. *Beyond contract: work, power and trust relations*. London: Faber.

Fox, A. 1977. The myths of pluralism and a radical alternative, in *Trade unions under capitalism*, edited by T Clarke & L Clements. Glasgow: Fontana/Collins: 136-151.

Gladstone, A, Wheeler, H, Rojot, J, Eyraud, F & Ben-Israel, R (eds). 1992. *Labour relations in a changing environment*. Berlin: Walter de Gruyter.

Godfrey, S, Maree, J & Theron, J. 2005. *Research Report on Conditions of Employment and Small Business: Coverage, Compliance and Exemptions*. Labour and Enterprise Project, Sociology Department/Institute of Development and Labour Law. Cape Town: University of Cape Town.

Godfrey, S, Maree, J & Theron, J. 2006a. Regulating the labour market: the role of bargaining councils. *Industrial Law Journal* 27:731-752. CD-Rom, Jutastat Labour Library.

Godfrey, S, Maree, J & Theron, J. 2006b. Flexibility in bargaining councils: the role of exemptions. *Industrial Law Journal* 27:1368-1386. CD-Rom, Jutastat Labour Library.

Godfrey, S, Theron, J, & Visser, M. 2007. *The state of collective bargaining in South Africa: an empirical and conceptual study of collective bargaining*. Labour and Enterprise Policy Research Group. University of Cape Town. Development Policy Research Unit. DPRU Working paper 07/130, November.

Godfrey, S. 2009. Bargaining council system. What developments? *South African Labour Bulletin* 33(3):15-18, August-September.

Godfrey, S, Maree, J, Du Toit, D & Theron, J. 2010. *Collective bargaining in South Africa. Past, present and future?* Claremont: Juta.

Groenewald, JW. 2006. *Collective bargaining, minimum labour standards and regulated flexibility in the South African clothing manufacturing sector: at the level of the national clothing bargaining council's Western Cape sub-chamber.* MLegum mini-thesis, University of the Western Cape, Cape Town.

Henning, E, Van Rensburg, W & Smith, B. 2004. *Finding your way in qualitative research.* Pretoria: Van Schaik.

Hollinshead, G, Nicholls, P & Tailby, S. 2003. *Employee relations.* London: Prentice Hall.

Holtzhausen, M. 2005. *Bargaining councils in South Africa: a vehicle for an Africanised version of flexibility?* Paper presented at the IIRA 4th African Regional Congress, Mauritius, November.

Holtzhausen, M & Mischke, C. 2004. Bargaining councils in other sectors of the South African economy and financial aspects of bargaining councils, in an unpublished report, *Joint investigation by the Chamber of Mines and the National Union of Mineworkers into various bargaining options*, compiled by the Chamber of Mines and the National Union of Mineworkers.

Horwitz, F. 1989. Collective bargaining climate and IR policy options. *IPM Journal* 7(12):4-9, May.

Horwitz, F. 2000. Report of the commission investigating the effects of sub-contracting on collective bargaining in the building industry in the Western Cape. Unpublished report, 1 December.

Hyman, R. 1978. Pluralism, Procedural Consensus and Collective Bargaining, *British Journal of Industrial Relations*, 16(1):16-40, March.

Hyman, R & Brough, I. 1975. *Social values and industrial relations.* Oxford: Blackwell.

Hyman, R & Fryer, RH. 1974. Trade unions: sociology and political economy, in *Processing people: cases in organisational behaviour*, edited by J McKinlay. London: Holt-Blond: 150-224.

Ichharam, M. 2003. *South Africa's bargaining councils and their role in dispute resolution.* Seminar 2003/3, 14 February, Department of Sociology, RAU.

ILO, *vide* International Labour Organisation.

International Labour Organisation. 1949. Convention concerning the application of the principles of the right to organise and to bargain collectively. Convention, C098. Geneva. Session of the Conference: 32.

International Labour Organisation. 1998a. Declaration on the Fundamental Principles and Rights at Work. www.ilo.org. Accessed on 12 July 2005.

International Labour Organisation. 1998b. Flexibility boosts productivity, poses challenges. *Worklife Report* 0834292X.

International Labour Organisation. 2000. *Organization, bargaining and dialogue for development in a globalising world*. Working Party on the Social Dimensions of Globalization, GB.279/WP/SDG/2. Geneva: ILO.

International Labour Organisation. 2010. *Global employment trends*, January. Geneva: ILO.

Joubert, WA & Faris, JA (founding & planning eds). 2009. *The law of South Africa*, vol 13, part 1. 2nd edition. Durban: LexisNexis.

Kochan, TA. 1980. *Collective bargaining and industrial relations*. Homewood, Ill: Irwin.

Labour Court Case No. P516/02. 2004. *East Cape Master Builders & Allied Industries Association & another v Building Industry Bargaining Council (Southern & Eastern Cape) & others*. Port Elizabeth. www.irnetwork.co.za. Accessed on 10 February 2005.

Labour Relations Act 66 of 1995. *Government Gazette* Vol 366 no 16861 December. Pretoria: Government Printers.

Lado, M. 2002. EU enlargement: reshaping European and national industrial relations? *International Journal of Comparative Labour Law and Industrial Relations* 18/1:101-124. The Netherlands: Kluwer Law International.

Le Roux, PAK. 1990. Levels of bargaining: legal aspects. *Industrial Relations Journal of South Africa* 10(3):1-8.

Leedy, PD. 1993. *Practical research: planning and design*. 5th edition. New York: Macmillan.

Macun, I. 2008. How central is centralised bargaining? *In the workplace* 32(1), March-April:32-35.

Maree, J. 2010. Trends in collective bargaining: why South Africa differs from global trends. Submitted for publication. Article.

Marshall, C & Rossman, GB. 1995. *Designing qualitative research*. 2nd edition. Thousand Oaks, Calif :Sage.

McKersie, RB. 1990. Constructive collective bargaining. Working paper. Alfred P Sloan School of Management, Massachusetts, March.

McDonald, F. 1986. Collective bargaining within an industrial relations system. *The civil engineering contractor*, September:38-46.

MEIBC. Centre for Dispute Resolution. 2008. *Dispute resolution in the metal and engineering industry. Review 2009*. Metal and Engineering Industries Bargaining Council. Tokiso.

MEIBC. Centre for Dispute Resolution. 2009. *Dispute resolution in the metal and engineering industry. Review 2009*. Metal and Engineering Industries Bargaining Council. Tokiso.

Miles, MB & Huberman, AM. 1994. *An expanded sourcebook: qualitative data analysis*. 2nd edition. Thousand Oaks California: Sage.

Millennium Labour Council. 2001. Millennium Labour Council. *Industrial Law Journal* 22:1545-2131.CD-Rom, Jutastat Labour Library.

Millward, N & Stevens, M. 1986. *British workplace industrial relations 1980-1984*. Aldershot: Gower.

MLC, *vide* Millennium Labour Council.

Moll, P. 1996. Compulsory centralization of collective bargaining in South Africa. *Human Capital and the Labour Market in South Africa* 86(2), May, AEA papers and proceedings.

Morse, JM, Barrett, M, Mayan, M, Olson, K & Spiers, J. 2002. Verification strategies for establishing reliability and validity in qualitative research. *International Journal of Qualitative Methods* 1(2):1-19, Spring.

Mouton, J & Marais, HC. 1988. *Basic Concepts in the methodology of the social sciences*. Pretoria: Human Sciences Research Council.

Musgrave, A. 2008. South Africa: workers feel bargaining pressure. *Business Day*, 25 March. www.allafrica.com/stories/200803250124.html. Accessed on 12 October 2008.

National Manpower Commission. 1995. *Union-management co-operation with a view to advancing productivity as a national goal*. Discussion paper, January.

NBCCI. 2003. Constitution of the NBCCI. May. NBCCI.

NBCCMI. 2009. Circular No. NBC/05/2009. www.nbc.org.za. Accessed on 12 November 2010.

NBCCMI. 2009. Draft rescue package. www.ifashion.co.za. Accessed on 12 November 2010.

NMC, *vide* National Manpower Commission.

Ndungu, SM. 2007. National Collective Bargaining Workshop, 16-17 May. NALEDI Report, July.

Nel, PS (ed). 2008. *South African employment relations: theory and practice*. 6th edition. Pretoria: Van Schaik.

Neuman, WL. 2000. *Social research methods: qualitative and quantitative approaches*. 4th edition. Boston: Allyn & Bacon.

Olivier, M. 1998. Extending labour law and social security protection: the predicament of the atypically employed. *Industrial Law Journal* 19: 669-685. CD-Rom, Jutastat Labour Library.

Patel, E. 1999. The case for centralised bargaining. *South African Labour Bulletin* 15(4):50-53.

Pela, M. 2005. Labour experts welcome proposed bargaining council for mining sector. *The Business Report*. <http://www.irnetwork.co.za>. Accessed on 15 March 2005.

Report of the Presidential Commission to Investigate Labour Market Policy. 1996. *Restructuring the South African Labour Market*. Cape Town: Photo-Prints.

Reynolds, ACE & Backer, W. 1992. Industrial councils in the 1990s: quo vadis? *South African Journal of Labour Relations* 16(3):37-49, September.

Rycroft, A (ed). 1990. *The private regulation of industrial conflict: proceedings of the Labour Law Conference 1989*. Cape Town: Juta.

Salamon, M. 1992. *Industrial relations: theory and practice*. 2nd edition. Hertfordshire: Prentice Hall.

Salamon, M. 1998. *Industrial relations. theory and practice*. 3rd edition. Hertfordshire: Prentice Hall.

Schnabel, C & Wagner, J. 1992. Unions and innovative activity in Germany. *Journal of Labour Research* 13(4):393-406.

Schulten, T. 2005. Changes in national collective bargaining systems since 1990. *EIROOnline*, 03. Accessed 20 January 2011.

SEIFSA. 2009. Report of the SEIFSA Chief Executive Officer, 2009. In-house publication.

Siebert, H (ed). 1997. *Structural change and labour market flexibility: experience in selected OECD economies*. Tübingen: Institute für Weltwirtschaft an der Universität Kiel.

Skinner, C & Valodia, I. 2002. Labour market policy, flexibility, and the future of labour relations: the case of Kwazulu-Natal clothing industry. *Transformation* 50:56-76.

Standing, G. 1988. *Unemployment and labour market flexibility: Sweden*. Geneva: International Labour Office.

Standing, G, Sender, J & Weeks, J. 1996. Restructuring the labour market: the South African challenge. *ILO Review*. Geneva: International Labour Organisation.

Steenkamp, A, Stelzner, S & Badenhorst, N. 2004. The right to bargaining collectively. *Industrial Law Journal, Special edition: 943-962. The Wiehahn Commission: 25 years on 25, May*.

Strachan, G & Burgess, J. 2000. The incompatibility of decentralized bargaining and equal employment opportunity in Australia. *British Journal of Industrial Relations* 38, September 0007-1080: 361-381.

Swanepoel, BJ (ed-in-chief). 1999. *The management of employment relations: organisational level perspectives*. Special student addition. Durban: Butterworths.

Theron, J. 2003. Employment is not what it used to be. *Industrial Law Journal* 24: 1247-1283. CD-Rom, Jutastat Labour Library.

Thomson, C & Benjamin, P. 2000. Labour management relations: the LRA 1995's approach to regulating labour-management relations. *South African labour law*. Revision 41, A106-107. Cape Town: Juta.

Ulman, L. 1967. Collective bargaining and industrial efficiency in *Britain's economic prospects*, edited by RE Caves. Washington: Brooking Institution.

Ursell, G & Blyton, P. 1988. *State, capital and labour: changing patterns of power and dependence*. London: Macmillan.

Van Meelis, T. 1999. Challenging the bargaining council. *South African Labour Bulletin* 23(2):67-72, April.

Venter, R, Levy, A, Conradie, M & Holtzhausen, M. 2009. *Labour relations in South Africa*. 3rd edition. Cape Town: Oxford University Press Southern Africa.

Verschoor, GJ. 1985. Employers' associations and collective bargaining in South Africa: a pilot study. MBA research report/dissertation, University of the Witwatersrand, Johannesburg.

Vettori, S. 2001. Industry level collective bargaining: a contributory factor to unemployment. *De Jure* 34(2):342-352.

Vettori, S. 2006. The rise and fall of trade unions. *De Jure* 39:113-126.

Von Holdt, K. 1994. Industrial councils: constraining or renewing industry? *South African Labour Bulletin* 18(1):32-33, January-February.

Webster, E, Van Meelis, T & Psoulis, C. 2000. Workplace innovation through collective bargaining: an assessment of South Africa's evolving labour relations system. IRASA 2000 Conference, Stellenbosch.

Weiss, M. 2004. Enlargement and industrial relations: building a new social partnership. *The International Journal of Comparative Labour Law and Industrial Relations* 20/1: 5-26. The Netherlands: Kluwer Law International.

Wild, A. 2004. Current international trends in collective bargaining, in Joint investigation by the Chamber of Mines and the National Union of Mineworkers into various bargaining options. Unpublished report. Chamber of Mines and the National Union of Mineworkers.

<http://qualitativeresearch.ratcliffs.net/Validity.pdf>. Accessed on 2 October 2010.

www.labour.gov.za/basic_guides *Basic guide to bargaining councils*. South African Department of Labour. Accessed on 15 November 2010.

www.fpi.co.za *Social security and retirement reform: FPI report back 10/03/2010*. Accessed on 12 November 2010.

www.ilo.org. Accessed on 1 February 2011

www.wikipedia.org. Accessed on 2 October 2010.

APPENDIX A
SCHEDULE FOR TRADE UNIONS AND EMPLOYERS' ORGANISATIONS

Name of Trade Union / Employers' organisation:
Sector:
Geographical Area:
Bargaining Council affiliated to:
Name of interviewee/person supplying information:
Position in organisation:
Time period in the organisation:
Date of interview:

1 **GENERAL INFORMATION**

- 1.1 What were the most important changes in your bargaining council over the past 15 year (1995-2010) and to what can you ascribe these? Were there any developments over this period that posed either as threats or opportunities to your *trade union/employers' organisation and its participation in the bargaining council*?
- 1.2 How has your trade union/employers' organisation adapted to the changing environment over the last 15 years?
- 1.3 Has bargaining become *more decentralised* (i.e. shifting from national to regional level, and from regional to plant-level) / *stayed the same* / *more centralised* over the past 15 years? Please elaborate?
- 1.4 Has the *size of your bargaining council* (e.g. regional versus national councils; and number of employers/employees covered) influenced its effectiveness in answering the needs of your members, and if so, in what way?
- 1.5 Has the *structure of the industrial sector* you operate in (e.g. serving overwhelmingly small organisations, or whether the sector is dominated by a few large organisations) influenced the effectiveness of your organisation - and therefore also the council's effectiveness - in answering to the needs of your members, and if so, in what way?
- 1.6 Has the *nature of the employment relationship* in the industrial sector you operate in (e.g. whether the sector still has fairly standardised employment, or whether the sector uses labour brokers, is highly casualised, etc) influenced the effectiveness of your organisation - and therefore also the council's effectiveness - in answering to the needs of your members, and if so, in what way?
- 1.7 Has the *nature and size of the representative parties on the council* (e.g. small versus big powerful unions/employers' organisations) influenced the effectiveness of your

organisation – and therefore also the council's effectiveness - in answering to the needs of your members, and if so, in what way?

- 1.8 Has the *age of the council* (e.g. whether it is fairly new, or has been in existence for many years) influenced the council's effectiveness in answering to the needs of their members, and if so, in what way?

2 FOUR KEY AREAS

2.1 Key Area 1: Collective bargaining, focusing on the main collective agreement of the council

2.1.1 Collective agreements

- a) Are there any changes over the last 15 years in the structuring etcetera of agreements reached (e.g. do agreements tend to be more modest and enforceable? More of a framework from which to work from?). Please elaborate.
- b) What flexibility arrangements (if any) have been catered for in the main agreement? Have the number of, and kind of arrangements changed over the past 15 years?

Aspects	Yes/No	Explain
Based on regional differences		
Based on sub-sectors/categories of business / chambers		
Formal/semi-formal/informal sectors		
Size/age of firms		
Other		

- c) Is the time period of the current main agreement (e.g. one year.) optimal or would you prefer a shorter or longer period? Specify.
- Did the time period for the main agreement change over the past 15 years, and if so why?
- d) How has your bargaining council, as well as your own organisation responded to the concept of "regulated flexibility" (eg basic conditions and entry-level pay-structures, but with a flexible cost of employment package) over the past 15 years?

2.1.2 Extension of agreements to non-parties

- a) Has the council ever experienced problems getting the main agreement extended? If so, what were the reasons? In particular, has representivity of one or both parties been a problem in the past or currently (or are you concerned about this in future)?
- b) Has the DOL become more or less strict on representivity figures being adequate before extending agreements since 1995, or has the department's approach remained the same? Why?
- c) Are small businesses exempted from some aspects of the agreement when it is extended to them? Did the approach towards small businesses change over the past 15 years? Explain?

- d) Has the extension of agreements over the past 15 years brought stability to the industrial relations environment in your sector? Please elaborate?

2.1.3 Exemptions

- a) Do the criteria set for exemptions in your council contribute to making the exemption procedure effective, or not? Please explain why / why not. Have this changed over the past 15 years, and if so how?

Yes	No
-----	----

- b) Does the composition of the exemption committee in your council contribute to making the exemption procedure effective, or not? Please explain why / why not. Have this changed over the past 15 years, and if so how?

Yes	No
-----	----

- c) Does the composition of the appeals committee in your council contribute to making the exemption procedure effective, or not? Please explain why/why not. Have this changed over the past 15 years, and if so how?

Yes	No
-----	----

- d) Has the approach towards blanket exemptions in your council changed over the past 15 years (e.g. has there been an increase or decrease in the usage of blanket exemptions, or has the approach remain the same)? Why/why not?

- e) How regularly do the committees meet?

2.1.4 Non-compliance and enforcement of agreements

- a) Is the level of non-compliance with your main agreement problematic? Has this changed over the last 15 years?
- b) Has the approach towards dealing with non-compliance changed over the past 15 years and if so, how?

2.1.5 Two-tier bargaining

- a) Is two-tier bargaining taking place within the jurisdiction of the council?

Yes	No
-----	----

Why / why not?

Has this phenomenon changed (increased/decreased/stayed the same) over the last 15 years, and if so, how and why?

If two-tier bargaining takes place within the council's jurisdiction, how well co-ordinated is it?

b) Are wages negotiated by the bargaining council based on:

Actual/current wages	Minimum wages
----------------------	---------------

Explain?

2.2 Key area 2: Representivity of bargaining councils.

2.2.1 Determination of registration

a) Please provide the following membership figures for your trade union / employers' organisation:

Year	Membership Numbers
1995	
2000	
2005	
2010	

b) Have trade union/employers' organisations' membership and power on your bargaining council

Declined	Stayed the same	Increased
----------	-----------------	-----------

..... over the past 15 years?

Please elaborate why it has declined, stayed the same, or increased?

2.2.2 Small firm representation

a) Are the needs of small businesses being adequately addressed through your council? Please elaborate on what is happening.

Yes	No
-----	----

b) Has the representation of small businesses become more or less effective over the past 15 years, or did it stay the same? Please explain.

2.2.3 The new world of work

a) Have the changes in the world of work (eg growth in informal sector, casualisation of work) affected your trade union / employers' organisation over the last 15 years, and if so in what way?

Yes	No
-----	----

Please elaborate

b) What specific measures have been taken to deal with this phenomenon and have they been successful?

c) What has your organisation done over the last 15 years to maintain or improve representivity levels?

2.3 Key Area 3: Benefit funds as administered (or not) by councils

2.3.1 Bargaining Council Funds

- a) Indicate the funds your members have access to in your council; provide detail on how these funds have changed over the past 15 years; as well as whether it has been extended to non-parties.

Type of Fund	Yes/ No	Details on how these funds have changed over the past 15 years	Extended to non-parties?
Pension Funds			
Provident Fund			
Medical and Sick Benefit Fund			
Sick Pay Fund			
Disability cover			
Survivor benefits			
Leave pay			
Holiday Pay			
Unemployment Benefits			
Other Funds			

- b) Is there a special agreement regarding these funds, or does it form part of the main agreement and renegotiated regularly?
- c) What forms of flexibility regarding benefit funds (if any) are built into the agreement to deal with, for instance, small businesses, the informal sector etc?

2.4 Key Area 4: Dispute resolution

- a) How effective has your council's dispute resolution function been over the past 15 years? Has there been any change in the way this function has been conducted? Please elaborate.
- b) Does your council experience logistical problems in conducting hearings?
- c) Is DR contracted out? In-house?

3 GENERAL

- 3.1 In your view, what have contributed to the success or failure of your bargaining council over the past 15 years? Do you foresee that these aspects will remain the same in the years to come, or that changes may be necessary?
- 3.2 Have changes to legislation in the past 15 years provided more support to the effective functioning of bargaining councils? Could legislation be changed to provide more support? Please elaborate.
- 3.3 To what extent has the BC system helped your trade union/employers' association to attain its goals over the past 15 years?
- 3.4 Has the bargaining council system addressed basic policy objectives, such as labour peace etc over the past 15 years? Also, what is the effect of collective bargaining on

social and economic goals of society? (Eg in reducing unemployment, providing adequate labour standards, EE opportunities and so on).

- 3.5 Should the BC be retained as present, adapted, or wound up? If retained or adapted, what role should it play?

I thank you for your time.
Maggie Holtzhausen

University of Cape Town

APPENDIX B
SCHEDULE FOR BARGAINING COUNCILS

Name of Bargaining Council:

Sector:

Geographical Area:

Name of interviewee/person supplying information:

Position in organisation:

Time period in the organisation:

Date of interview:

Age of council:

1 **GENERAL INFORMATION**

- 1.1 What aspects particular to the industry in which you operate in have posed either as threats or opportunities to your *bargaining council* over the past 15 years? Are these the same currently, or what new threats and opportunities exist?
- 1.2 Has bargaining become *more decentralised* (i.e. shifting from national to regional level, and from regional to plant-level) / *stayed the same* / *more centralised* over the past 15 years? Please elaborate?
- 1.3 What were the most important changes in your *bargaining council* over the past 15 years (1995-2010) and to what can you ascribe these (e.g. major restructuring of your council such as amalgamations from regional councils to national councils)?
- 1.4 Has the *size of your bargaining council* (e.g. regional versus national councils; and number of employers/employees covered) influenced its effectiveness in answering the needs of your members, and if so, in what way?
- 1.5 Has the *structure of the industrial sector* you operate in (e.g. serving overwhelmingly small organisations, or whether the sector is dominated by a few large organisations) influenced the effectiveness of your bargaining council in answering to the needs of your members, and if so, in what way?
- 1.6 Has the *nature of the employment relationship* in the industrial sector you operate in (e.g. whether the sector still has fairly standardised employment, or whether the sector uses labour brokers, is highly casualised, etc) influenced the effectiveness of your council in answering to the needs of your members, and if so, in what way?

- 1.7 Has the *nature and size of the representative parties on the council* (e.g. small versus big powerful unions/employers' organisations) influenced the effectiveness of your council in answering to the needs of your members, and if so, in what way?
- 1.8 Has the *age of the council* (e.g. whether it is fairly new, or has been in existence for many years) influenced the council's effectiveness in answering to the needs of members, and if so, in what way?
- 1.9 Has the *financial circumstances of the council* influenced the council's effectiveness in answering to the needs of members, and if so, in what way?

2 FOUR KEY AREAS

2.1 Key Area 1: Collective bargaining, focusing on the main collective agreement of the council

2.1.1 Collective agreements

- a) Are there any changes over the last 15 years in the structuring etcetera of agreements reached (e.g. do agreements tend to be more modest and enforceable? More of a framework from which to work from?). Please elaborate.
- b) What flexibility arrangements (if any) have been catered for in the main agreement? Have the number of, and kind of arrangements changed over the past 15 years?

Aspects	Yes/No	Explain
Based on regional differences		
Based on sub-sectors/categories of business / chambers		
Formal/semi-formal/informal sectors		
Size/age of firms		
Other		

- c) What is the time period for the current main agreement (e.g. one year, two years, etc)? Do you think this is optimal or would you prefer a shorter or longer period? Specify.

Did the time period for the main agreement change over the past 15 years, and if so why?

- d) What is your council's response to the concept of "regulated flexibility" (e.g. is your agreement increasingly or decreasingly reflecting minimum standards and policy frameworks, thereby allowing more or less operational flexibility and detailed implementation at plant level?) Has this changed over the last 15 years?

2.1.2 Extension of agreements to non-parties

- a) Over the last 15 years has the council's main agreement been extended to non-parties?

Yes	No
-----	----

- b) Is the council's current main agreement extended to non-parties?

Yes	No
-----	----

- c) How has the coverage of collective agreements through extensions changed over the past 15 years? Please elaborate on what the reasons for this may be?
- d) Has the council ever experienced problems getting the main agreement extended? If so, what were the reasons? In particular, has representivity of one or both parties been a problem in the past or currently (or are you concerned about this in future)?
- e) Has the DOL become more or less strict on representivity figures being adequate before extending agreements since 1995, or has the department's approach remained the same?
- f) Are small businesses exempted from some aspects of the agreement when it is extended to them? Did the approach towards small businesses change over the past 15 years? Explain?
- g) Has the extension of agreements over the past 15 years brought stability to the industrial relations environment in your sector? Please elaborate?

2.1.3 Exemptions

a) Please complete the table below

Committee	Yes/ No	Composition	Decision-making powers	Frequency of meetings
Exemption Committee				
Exemption Appeals Committee				

- b) Has any of the above details changed over the past 15 years, and if so, why?
- c) Does the composition of the exemption committee in your council contribute to making the exemption procedure effective, or not? Please explain why / why not.

Yes	No
-----	----

- d) Does the composition of the appeals committee in your council contribute to making the exemption procedure effective, or not? Please explain why/why not.

Yes	No
-----	----

e) What are the criteria for exemptions?

- f) Do the criteria set for exemptions in your council contribute to making the exemption procedure effective, or not? Please explain why / why not.

Yes	No
-----	----

g) Are there any blanket exemptions?

Yes	No
-----	----

If so, please provide criteria:

Must such businesses first register with the council to qualify for the exemption:

Yes	No
-----	----

h) Has the approach towards blanket exemptions in your council changed over the past 15 years (e.g. has there been an increase or decrease in the usage of blanket exemptions, or has the approach remain the same)? Why/why not?

i) Are exemptions granted for a certain time periods only?

Yes	No
-----	----

If yes, what generally are the time periods?

j) Do the applicants usually apply again at the end of that period for a further period of exemption? Explain:

Yes	No
-----	----

k) Are exemptions (partial and full exemptions) granted subject to conditions (other than a time limit)?

Yes	No
-----	----

If yes, what types of conditions are usually attached to exemptions?

l) Has the simplicity of the application procedure in your council contributed to making the exemption procedure effective, or not? Please explain why / why not.

Yes	No
-----	----

Have this changed over the past 15 years, and if so how?

2.1.4 Non-compliance and enforcement of agreements

a) Is the level of non-compliance with your main agreement problematic? Has this changed over the last 15 years?

b) Is the number of agents in your council responsible for enforcement of agreements in your sector sufficient to effectively enforce agreements? Please elaborate?

Yes	No
-----	----

c) Has the approach towards dealing with non-compliance changed over the past 15 years?

d) Do shop stewards play a role in trying to ensure or monitor compliance by firms?

Yes	No
-----	----

Why / why not?

If yes, since when has this approach been adopted?

2.1.5 Two-tier bargaining

a) Is two-tier bargaining taking place within the jurisdiction of the council?

Yes	No
-----	----

Why / why not?

Has this phenomenon changed (increased/decreased/stayed the same) over the last 15 years, and if so, how and why?

- b) If two-tier bargaining takes place within the council's jurisdiction, how well co-ordinated is it?
- c) Should wages negotiated by the bargaining council be based on:

Actual/current wages	Minimum wages
----------------------	---------------

Explain?

2.1.6 Bargaining chambers
(Applicable only when there are chambers in the council)

- a) Does each chamber have its own bargaining cycle?
- b) Is there a central, overarching chamber? If yes, what are its functions?
- c) Do Chambers have formal or informal veto rights over other Chambers?

2.2 Key area 2: Reprensitivity of bargaining councils.

2.2.1 Determination of registration

- a) Have trade union/employers' organisations' membership and power on bargaining councils _____ over the past 15 years:

Declined	Stayed the same	Increased
----------	-----------------	-----------

Please elaborate why it has declined, stayed the same, or increased?

2.2.2. Small firm representation

- a) Are the needs of small businesses being adequately addressed through your council? Please elaborate on what is happening.

Yes	No
-----	----

- b) Has the representation of small businesses become more or less effective over the past 15 years, or did it stay the same? Please explain.
- c) Does small business representation pose a threat to the effectiveness of the council? Explain.

2.2.3 The new world of work

- a) Has there been a steady move within the jurisdiction of your bargaining council towards or away from outsourcing, individual contracts, and informal employment or has it stayed more or less the same over the past 15 years? Please elaborate.
- b) What specific measures have been taken to deal with this phenomenon and have they been successful?

2.3 Key Area 3: Benefit funds as administered (or not) by councils

2.3.1 Bargaining Council Funds

d) Please provide detail on how funds your council administers have changed over the past 15 years

Type of Fund	Details on how these funds have changed over the past 15 years
Pension Funds	
Provident Fund	
Medical and Sick Benefit Fund	
Sick Pay Fund	
Disability cover	
Survivor benefits	
Leave pay	
Holiday Pay	
Unemployment Benefits	
Other Funds	

- a) Is there a special agreement regarding these funds, or does it form part of the main agreement and renegotiated regularly?
- b) What forms of flexibility regarding benefit funds (if any) are built into the agreement to deal with, for instance, small businesses, the informal sector etc?

2.4 Key Area 4: Dispute resolution

- a) How effective has the council's dispute resolution function been over the past 15 years? Has there been any change in the way this function has been conducted? Please elaborate.
- b) Does the council experience logistical problems in conducting hearings?

3 GENERAL

- 3.1 In your view, what has contributed to the success or failure of your bargaining council over the past 15 years? Do you foresee that these aspects will remain the same in the years to come, or that changes may be necessary?
- 3.2 Have changes to legislation in the past 15 years provided more support to the effective functioning of bargaining councils? Could legislation be changed to provide more support? Please elaborate.
- 3.3 To what extent has the BC system served the functions, or helped to attain the goals each of the actors expected from it over the past 15 years?
- 3.4 Has the bargaining council system addressed basic policy objectives and/or social and economic goals of society over the past 15 years? (Eg in reducing unemployment, providing adequate labour standards, EE opportunities and so on).

3.5 Should bargaining councils be retained in its present form? Or rather be wound up? If retained, what role should they play?

3.6 Any other comments?

I thank you for your time.
Maggie Holtzhausen

University of Cape Town

**APPENDIX C
DETAIL OF INTERVIEWS AND RESPONDENTS**

<u>ORGANISATION*</u>	<u>DATE OF INTERVIEW</u>	<u>POSITION IN ORGANISATION</u>
CLOTHING INDUSTRY		
SACTWU	13 July 2010 (written response)	General Secretary
AMSA	22 June 2010	General Secretary
BUILDING INDUSTRY		
BWU	22 June 2010	Executive Director
BIBC (CGH)	18 August 2010	Vice-chair
MBA (WC)		Past-President
BIBC (CGH)	18 August 2010	General Secretary
BIBC (CGH)	18 August 2010	Adjunct General Secretary
MBA (WC)	17 November 2010 (written response)	General Secretary
CHEMICAL INDUSTRY		
NBCCI	16 July 2010	General secretary
NBCCI	22 July 2010	Employers' consultant
CEPPWAWU	22 July 2010	Head Collective Bargaining
MOTOR INDUSTRY		
MIBCO	9 July 2010	General Secretary
NUMSA (also on behalf of the metal & engineering sector)	16 November 2010	National Motor Sector Coordinator
RMI	24 November 2010	Executive Director
METAL AND ENGINEERING INDUSTRY		
MEIBC	16 August 2010	General Secretary
SEIFSA	26 November 2010	Executive Director

*In no particular order