WORKER PARTICIPATION IN THE NEW SOUTH AFRICA

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I N D E X

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While this paper is a team effort, I am entirely responsible for all errors of fact and interpretation. Furthermore, the views expressed in this paper are those of the author.

TABLE OF STATUTES AND SUBSIDIARY LEGISLATION

- LABOUR RELATIONS ACT 28 OF 1956 (AS AMENDED)

- THE REPUBLIC OF SOUTH AFRICA CONSTITUTION ACT 200 OF 1993

- LABOUR RELATIONS ACT 66 OF 1995

- THE DRAFT NEGOTIATING BILL, JANUARY 1995

A B S T R A C T

The economies of Third World countries, almost without exception, are plagued by problems such as high inflation and mass unemployment, resulting in widespread poverty and an inevitable economic downward spiral.

Within this context, the immediate task of any new post-independence government, is to stabilise the economy and attract foreign investment. Set in a global economy, with industries that cannot compete on world markets, these countries resort to exploiting the only viable commodity they have, which is cheap labour. The new South African Government faces similar problems to the rest of the Third World, including large-scale illiteracy and a largely unskilled workforce. Fortunately South Africa has opted for a different route to solve these problems. The ANC-led Government of National Unity has formulated a Reconstruction and Development Program (RDP) designed to meet the specific needs of South Africa. This plan is perceived by the millions of disadvantaged South Africans as being the solution to many of their problems.

It would be naive to think that the RDP could succeed without finance. Minister without Portfolio, Mr Jay Naidoo, sums up the Government's sentiments as follows:

"We are very conscious that unless we maintain fiscal discipline, the medium to long terms sustainability of the RDP will be at risk."1

This raises the question whether finance is the only key to the success of the RDP. The answer is to be found in the ANC's draft of the RDP itself: "The success of the RDP does not only require finance. It also requires labour, skills and co-ordinated effort in combination with that finance."2

One of the basic principles of the RDP is the democratisation of South Africa. The RDP is more than just a policy document, it is an attempt to extend democracy beyond the ballot box. Having finally attained political democracy for <u>all</u> South Africans, and in keeping with the RDP, the next step is to work towards industrial democracy. This means giving the workers a say in their daily working lives. This is by no means a new topic, in South Africa it has been debated in academic circles, on the shop floor and in boardrooms. However, the RDP adds new impetis to this topic.

The focus of this paper is the immediate future of South African Labour Relations, specifically worker participation in the context of the RDP. The New Labour Relations Act* was passed in

*** Act 66 of 1995**

November 1995 which will bring about many changes to the current labour dispensation, this paper sets out to evaluate the New Labour Relations Act in the light of its proposals to extend industrial democracy and its impact on the development of industrial relations in South Africa.

The paper will examine various models of worker participation, including the current dispensation (as of 1 January 1996) and ultimately attempts to assess their applicability to South Africa. Consideration will be given to the concept of extending the existing collective bargaining system as opposed to importing foreign systems of worker participation.

ABSTRACT

1. The Argus, Tuesday, September 27, 1994

2. The RDP pg 142

PART ONE

I N T R O D U C T I O N

THE RECONSTRUCTION AND DEVELOPMENT PROGRAMME (RDP)

The task facing the new South African Government is an arduous one with the immediate objectives being re-integration into the global economy, creation of employment and making our economy more investor-friendly. However, the ANC based its election success on delivery to the people. The RDP was touted as the answer to South Africa's economic and social problems.

The RDP is thus the logical starting point when considering the issue of industrial democracy in South Africa. This programme is an integral part of the new Government's strategy for the upliftment of the underprivileged masses in the rebuilding of South Africa's economy. An analysis of industrial relations in South Africa without considering the RDP would be incomplete.

The ANC draft of the RDP describes the program as: "an integrated programme based on the people that provides peace and security for all and builds the nation, links reconstruction and development and deepens democracy."1 Kevin Davie of Business Times is of the opinion that the RDP "largely accords with the

programmes which have worked elsewhere."2 It has already been mentioned that the success of the RDP depends on a number of inter-related factors. There is a risk of over-emphasising the role of finance at the expense of other integral elements. This program needs the participation of the people to succeed because "without worker support we will not get the productivity gains so important in success stories such as Singapore."3 Minister Jay Naidoo has promised that the RDP will deliver the goods. However, it must be remembered that the RDP is "a policy project, not a collection of projects, to transform society fundamentally."4

The key elements of the RDP include: the meeting of basic needs, developing human resources, building the economy and democratising the State and society.5 These elements are linked and ultimately compliment each other. In order to make this a reality the people in South Africa must participate in the decision-making, for the "RDP reflects a commitment to grassroots, bottom-up development which is owned and driven by communities."6

The RDP envisages more than just a democratisation of the State, it necessitates democratisation of industry. The top-bottom approach of management needs to be transformed in keeping with the changes that are taking place in the country. "Democratisation is integral to the RDP, without thoroughgoing democratisation, the resources and potential of our country and

people will not be available for a coherent programme of reconstruction and development."7

The New Labour Relations Act is a perfect example of this policy in operation. The drafters of the Act, consulted extensively before both draft and final proposals were introduced.

On the issue of building the economy, the RDP regards the question of worker rights as central. The objectives of the RDP for worker rights include the following:

1. The correcting of imbalances of power between employers and workers ;

2. Entrenching of the rights to organise and strike ;

3. The creation of negotiation and participation structures at various levels to ensure that labour plays an important role in the reconstruction and development of our country.

The document recognises that, "a critical cause of inefficiency and inequality lies in the position of labour." Previously, "economic growth depended on the centrality of the cheap labour system."8 The economic policies of the ANC require human resource development on a massive scale. It seems almost inevitable that the ANC's RDP recommendations on worker rights are set to play key role in the Labour Law reform. This will

bring the LRA in line with the requirements of the RDP, the Constitution and International Labour Organisations (ILO) recommendations. Furthermore, the RDP calls for "workplace democratisation, and more open and flexible management styles."9

The RDP seeks to safeguard and extend the worker rights that have been achieved by organised labour over the years, with equal rights for all workers, in a consolidated statute. However, the negotiations at the World Trade Centre watered down many of the policy positions of the RDP. An illustration of this is the inclusion of a "freedom to lock out" clause in the Constitution, which was not considered to be a necessary provision for reconstruction and development. Collective bargaining plays a key role in the RDP: "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 changes at the workplace and industry level."10 Legislation must place an obligation on employers to negotiate substantial changes in working conditions. Furthermore, the new Act should deal with worker access to company information.

The RDP goes beyond Labour Law reform and includes the reform in Company and Tax Law with the ultimate aim of protecting and extending worker's rights. It further envisages a restructuring of the Industrial Court system, allowing workers an opportunity

to have complaints and disputes resolved in a cheap, accessible and speedy manner. The tripartite institutions should also have a say in determining appointments to the Industrial and Labour Appeal Courts.

The ANC is aware that the objectives of the RDP can only be achieved if transparent, participative and accountable policy-making procedures are established in both the public and private sectors. "The RDP makes a decisive break from the exploitative cheap labour policies of apartheid and moves toward education, training skills, living wage, and collective bargaining as the basis for enhanced productivity in the economy."11

It is important to remember the context in which this document was drafted. The ANC was not in power and a formal alliance was established with COSATU (Confederation of South African Trade Unions) and the SACP (South African Communist Party) in order to contest the election under the ANC banner. Consequently, the RDP puts its weight behind living wages, by recognising that: "The required levels of growth for the successful implementation of the RDP can only be achieved on the basis of living wage policies agreed upon by Government, the Labour movement and the private sector."12 Since the original document was drafted the ANC has come into power, it has now faced the realities of governing and it has inherited the legacy of apartheid. The ANC was barely in power when the country was hit by a wave of strikes and blockages of national roads.

In September of 1994, COSATU had to bow to Government pressure to accept cuts in trade tariffs. COSATU General Secretary, Mr Sam Shilowa demanded that ANC Cabinet Ministers climb off the fence and back workers in the fight against employers. However, Minister of Labour, Mr Tito Mboweni, confirmed the Government's commitment to remain neutral. At COSATU's annual congress NUMSA's (National Union of Metal Workers of South Africa) General Secretary Enoch Godongwana pointed to the "history of betrayal of Trade Unions by their political allies."**14**

Nevertheless, the alliance has survived that crisis, and only time will tell whether any further watering down of the policy issues of the RDP will be tolerated by COSATU and their constituents. One thing is certain though, the ANC must remain uncomprising on the issue of worker participation in the final draft of the New Labour Relations Act. It is clear from the draft of the RDP that labour is to play a more meaningful role in the broader economy. Workers have fought for their political freedom, the agenda and focus of the labour movement has now changed. Now, more than ever, workers are demanding a participative role in industry. The new Labour Relations Act should take cognisance of this. It is submitted that the objectives of the South African Government, cannot be realised without worker participation. The inclusive approach of the RDP must surely be adopted.

The writers assessment of the various forms of worker participation will primarily adopt this criterion as a yardstick.

INTRODUCTION

1. The RDP pg 5
2. Business Times, September 25, 1994
3. Ibid
4. The Argus, Thursday, October 6, 1994
5. The RDP pg 8
6. Ibid pg 15
7. Ibid pg 11
8. Ibid pg 77
9. The RDP pg 92
10. The RDP pg 114
11. Ibid pg 81
12. Ibid pg 113
14. Business Times, October 9, 1994

CHAPTER ONE

INDUSTRIAL DEMOCRACY

This chapter will deal with the concept of Industrial Democracy and attempt to justify its extension within South African labour relations as a back-drop to the specific focus on worker participation in subsequent chapters.

In April of 1994, South Africans of all races cast their votes in the country's first ever democratic elections. In spite of fears otherwise, the three days of voting were the most peaceful days this country has experienced in years. Dr Darcy Du Toit constructs the most striking parallel between political and industrial democracy which sums up the sentiment of this paper: "In economic life, as in political life, democracy is an indispensable ingredient of peace and co-operation in the longer term; for this reason industrial peace ... implies a far reaching democratisation of the labour process."1

Much has been written on the topic of industrial democracy, especially in support of the concept in principle. Both academics and trade unionists have continually justified the need to extend industrial democracy, and more employers have seen merit in giving the workers a say in their working lives. It seems therefore that the issue is no longer whether industrial

democracy should exist in the workplace, but rather what form it should take, and the extent to which it should be applied. Although employers do agree that workers should participate in decision-making, they constantly seek to keep participation within certain limits, thereby jealously guarding their managerial prerogative and their right to manage.

Rycroft and Jordaan agree that while "ownership or control of property may in earlier times have supplied the necessary justification for the employer's powers of command, it became evident with the development of the Industrial age that the right to manage could no longer simply be justified as an incident of ownership."2

In South Africa the concept of absolute ownership of property has shown itself to be inappropriate in a modern industrialised era, necessitating the introduction of labour legislation. Since the 1924 Industrial Conciliation Act was passed, the legislature has been constantly diluting the employer's right of control. The 1956 Labour Relations Act was drafted with the express aim of obtaining industrial peace and thereby continuing this process. Should the new Labour Relations Act hope to achieve industrial peace, a further diluting of the managerial prerogative is required.

Even amongst advocates of industrial democracy, there are two broad schools of thought. Firstly, there are those who believe

that the right of control is vested in the ownership of the property and therefore the only logical way of involving workers in decision-making, is to give them access to property rights or a share in company ownership. On the other hand, others argue that the workers are entitled to a say in the management of the enterprise, irrespective of ownership and simply because they work there. The democratisation of industry "entails a shift away from the individualistic and 'basically exploitative' perception of property rights towards the notion of property as a social responsibility."3

British labour analysts Farnham and Pimlot in the work "Understanding Industrial Relations" argue that it is a "common place observation that much work and many occupations in our [Britain] society are boring, repetitive, lacking in stimulus and are unsatisfying in themselves. Such work is often marked by high labour turnover, considerable absenteeism amongst employees, and high levels of conflict in industrial relations."4 This experience of self estrangement is at the very heart of Karl Marx's concept of "alienation". Dr Darcy Du Toit is of the opinion that a limited devolution of managerial prerogative need not interfere with the overall management, indeed he contends it may enhance it. Hence, the interest of the owner/employer (ie increased productivity and efficiency) and the interests of the worker (ie control over his/her working life) are not necessarily bi-polar opposites.

It is submitted that a major obstacle in the way of extension of industrial democracy is the employer's perception of industrial democracy. The employer sees the extension of worker's participation within the undertaking as a take-over of the enterprise by the worker. Some employers cling to the unitarist perspective, by regarding trade unionism as an unwarranted intrusion in the employer-employee relationship. These employers reluctantly negotiate with trade unions but "nevertheless continue to direct their individual relation's policies along unitary lines, by limiting, for example, subject matter about which they are prepared to bargain with trade union representatives to a very narrow range of issues."5

A study under the auspices of the International Labour Organisation suggests that there are ethical or moral objectives in extending industrial democracy. The study suggests that "participation in decision-making is designed to promote individual development or fulfilment, in accordance with the conception of human rights and dignity."6 The ILO finds support for this proposal in the Universal Declaration of Human Rights. Article one reads; "All human beings are born free and equal in dignity and rights. They are endowed with reason and conscious and should act towards one another in the spirit of brotherhood."7

However good this may sound in theory, these changes need to be translated into "rands and cents" for the owners of the means of

production or they will not be willing to relinquish their control. It is my submission that there are indeed benefits for all concerned, and that increased productivity and efficiency translates into increased profits. Furthermore, as Mark Anstey argues, "a developing country cannot afford ongoing high levels of industrial action and poor productivity."8 Therefore even the State has an interest in developing an industrial relations policy that reduces industrial conflict and increases productivity. The learned author is of the opinion that increased job satisfaction is the vehicle for improved motivation and enhanced productivity and further that "adjustments of traditional autocratic decision-making and improved communication channels are mooted as a means to a more meaningful industrial democracy allowing the proper expression of worker rights as organisational share-holders and as having the consequence of improved problem-solving and lower resistance to decisions."9

Horvat in his book; "The Political Economy of Socialism" suggests that the cause of inefficiency in a hierachial system is the fundamental social conflict between employer and employee. Horvat identifies inefficiencies which flow from the hierachial approach, namely:

1. The employees lack the appropriate motivation and hence their work rate will not be optimal because they are not working for themselves ;

2. Therefore because the employer cannot get optimal performance out of his/her workforce, the employer enlists the services of a supervisor instead of opting for worker participation. Besides the fact that supervision costs are enormous, Horvat points out that "people have a natural inclination to refrain from work when they are not supervised by the master."10 It follows that because the supervisor cannot be in all places at once, not all workers will be working at optimum level.

3. The authoritarian/hierarchial approach weakens the "impulse towards innovation." The employees do not get any direct credit for innovation and will therefore hold back on any ideas that they may have. The ILO study recognises that there "is a growing awareness of the fact that the knowledge, experience and intelligence of these who actually do the work is not sufficiently utilised with the view to improving industrial organisation and methods."11

The ILO publication relies on studies conducted by the International Institute of Labour Studies which support the concept of the worker's participation in decision-making for the following reasons:

1. Workers have ideas which can be useful;

2. effective communication upwards is essential to sound decision-making at the top;

3. workers are more inclined to accept decisions where they have participated in the decision-making process;

4. workers may work harder because they have participated directly in decisions that affect them;

5. workers may work more intelligently if, through participation in decision-making, they are better informed about the reason behind decisions;

6. worker's participation may foster a more co-operative attitude amongst workers and management, thus raising efficiency by improving team work and reducing the loss of efficiency arising from industrial disputes;

7. worker's participation may act as a spur to managerial efficiency.12

The study also reveals that the alternatives to participation take the shape of misunderstandings, resistance, low morale and suspicion. Loosely translated, this means inefficiency, and with it, low productivity.

Mark Anstey believes that dramatic changes in management styles

are required at all levels and "union bashing" must be dropped as an industrial relations tactic. He argues that "unions have to risk moving beyond the 'challenge role' into organisation building and training roles, to adjust their philosophies and risk member's perception of co-option by management."13 He points out that strong ideological stances can create rigidity in positions prohibiting the development of strategic alliance. Douwes Dekker, in his contribution to Anstey's book sums up the situation as follows: "If South Africa is to "short-circuit" certain historical developments in communist countries, then captains of industry should be prepared to accept industrial democracy."14

Among the supporters of industrial democracy are those who advocate the gradual spread of participation, leading ultimately to full worker control. The suggestion is that decision-making or even mere consultation on a particular subject, provides experience for both the workers and their representatives from which worker participation can develop. Why then has the extension of industrial democracy which promises so much, not taken place? The answer lies in the fact that industrial democracy even in its weakest form "constitutes a challenge to the existing distribution of economic power."15

CHAPTER ONE

1. Du Toit ((1993)3 SLR) pg 352
2. Rycroft and Jordaan pg 11
3. Ibid pg 16
4. Farnham and Pimlot pg 11
5. Ibid pg 54
6. ILO Report pg 10 (Worker Participation in discussion within undertakings)
7. Universal Declaration of Human Rights
8. Anstey pg 6
9. Ibid pg 23
10. Horvat pg 193
11. ILO Report pg 17
12. ILO Report pg 17
13. Anstey pg 22
14. Ibid pg 160
15. ILO Report pg 15

CHAPTER TWO

OBSTACLES TO WORKER PARTICIPATION

This Chapter will examine the objections that have been raised against the extension of industrial democracy and the obstacles which the advocates of worker participation face.

As acknowledged earlier in this paper, the objections do not relate so much to the general idea of allowing workers to participate in decisions. The real objections are against the form which such participation should take and against the underlying ideological principle. Worker participation is perceived as a threat to the exercise of authority and to the chain of command. The study conducted by the ILO confirms that "there is no doubt that it is the politico-social aim of applying the concept of political democracy to the individual undertakings which give rise to the strongest objections."1

However, it should never simply be taken for granted that the trade union have no objections to the extensions of industrial democracy. Although in theory, such an extension is designed to benefit the workers, the ILO study reveals that there are strong objections where the purpose of the participation is to promote the integration of workers in the undertaking."2 Trade unions

are weary of their members being drawn into the system which disadvantages their constituents, they are continually aware of the danger of worker representatives being "co-opted". Trade unions must have the interest of the worker at heart and have expressed objections when the purpose of democratising the industry is "to improve the efficiency of the undertaking."3 The result is to over-emphasise productivity and efficiency at the expense of the interests of the worker. While it is submitted in this paper that industrial democracy and productivity must necessarily co-exist, it must be remembered that productivity is a "by-product" of industrial democracy. However, it is the concern of the writer that our starting point not be that of improving productivity, but rather that we should be working from the point of improving the working lives of the workers, and the productivity gains will also be realised.

The ILO study suggests that the main objective from management's point of view is: "the need for management to maintain maximum unity, authority and freedom of manoeuvre to respond to changes in the economic situation, the distinctive role of the businessman, it is considered, is to innovate and take risks, on the successful outcome of which all the workers in the undertaking ultimately depend.4 Too often it is argued that democracy is a slow and cumbersome process and management often has to react on the spur of the moment and make decisions. Yet, the fundamental question is: who ultimately bears the brunt of plans or decisions that back-fire? My submission is that it is

not the owner. With the protection that the various forms of business enterprise have to offer, including limited or no personal liability, the owner is always well protected. Ultimately, the workers and their families will suffer, especially where retrenchments have to take place in order for the business to continue when a managerial decision does not reap any dividends. This is not to say that democratic decision-making is faultless or infallible, but mistakes made as a result of this process are easier for the workers to accept where they are involved in the decision-making. The ILO study also reveals that the International Organisation of Employers has "opposed any proposals under which share holders would not be in a majority in private undertakings."5

Other criticisms of the idea of worker participation levelled by the trade union movement find expression in the belief that trade unions must preserve their independence. This is based on the presumption that making joint managerial decisions would necessarily mean that the trade union will have to give up its independence. Trade unions perceive their role to be one of exerting pressure "on management to obtain the maximum benefits for workers and not to take its place, or to be associated with the decisions that might adversely affect their independence. "6 However, it is difficult to understand why the independence of the trade union should necessarily be lost where it actively serves the interests of the constituents in whatever forum it presents it members. Trade unions all over the world are

demanding a greater say in decisions that affect their members' lives, and when this right is exercised, through whatever means, and an agreement is reached which both parties are satisfied with, the independence of the trade unions is not jeopardised. Be that as it may, these perceptions are indeed an obstacle and will have to be addressed because trade unions must also be convinced of the merits of any system which we wish to introduce. At the root of the problem are deep-seated ideological differences and, in fact, trade unions often choose not to participate in management because of the opposition to the socio-economic order in a particular country.

Other criticisms highlighted by the ILO are more practically orientated, with emphasis on training workers and passing on the knowledge required to be able to assume managerial responsibilities. As mentioned previously, it is submitted that the company laws of this country are an obstacle in that management is accountable to the Board of Directors. This needs to be addressed by the Legislature, because management should also be held accountable to the workers.

CHAPTER TWO

1. ILO Report pg 29
2. Ibid pg 20
3. Ibid
4. Ibid pg 30
5. Ibid pg 32
6. Ibid pg 33
7. Ibid pg 31

CHAPTER 3

FORMS OF WORKER PARTICIPATION

The idea of worker participation involves the workers in joint decision-making with their employers or managers. Farnham and Pimlot identify three approaches to decision-making within the workplace, namely:

1. The Managerial Approach
2. The Traditional Approach
3. The Advanced Approach

The Managerial Approach

The authors regard this approach as a mere "communication exercise by which management, having made a decision, simply informs employee representatives of the fact."1 Furthermore, this approach is highly protective of management's right to manage and does not even necessitate the representation of employee interests through the trade union. This approach is based on the unitary perspective or theory of industrial relations, which is predominantly management orientated.

Management makes all the decisions and employees should not challenge managerial prerogative, while trade unionism is viewed as "illegitimate intrusion into the unified and co-operative structure of the workplace."2

The Traditional Approach

This is a process by which "management seeks the views, feelings, and ideas of employees through their representatives"3 prior to making a decision. The authors point out that the main aim of this approach is to improve efficiency in order to maximise productivity in the workplace. It is clear that the decision-making ultimately rests with management. Furthermore, because management sets the terms of reference, there are certain topics which are excluded from joint decision-making.

In the South African context, this approach can be described as "consultation" and not "negotiation". This distinction is canvassed in MAWU vs Hart Limited 1985 (6) ILJ 478 (IC), suffice it to say that consultation means something less than negotiation within the bargaining context. This approach also finds expression in the South African collective bargaining arena, in the sense that there are topics in respect of which management is not obliged to bargain.

The Advanced Approach

The most important difference between this approach and the abovementioned approach lies in its primary objective. Its main aim is to "promote the principle of industrial democracy at work"4 and as such it threatens the unilateral right to manage. The advanced approach diminishes managerial prerogative by expanding the areas of joint decision-making. Moreover, as Farnham and Pimlot point out, it does not distinguish between consultation and negotiation within the bargaining process. Therefore, any subject of concern to employees and their representatives can fall within the ambit of joint decision-making. The list of topics is not closed. This paper supports the advanced approach because it envisages a flexible and progressive attitude, with an ever-expanding range of bargaining topics. More important, it is the aim of promoting industrial democracy which puts the worker above the production level of the enterprise.

The International Labour Organisation study lists five models of worker participation which will be canvassed in this paper:

1. Information and consultation ;
2. collective bargaining ;
3. co-decision-making works council or similar body ;
4. representatives of the personnel on a management body ;
5. workers self-management ;

Information and Consultation

This model envisages the exchange of information and consultation on matters of interest to the workforce. This has been the dominant industrial relations strategy over the years. Consultation must take place before decisions are taken, however, there has always been a proviso attached to the exchange of information:
information which, if shared, would cause damage to the enterprise, is excluded. Management decides whether to consult, and if so, what information should be disclosed.
This model is no more than a mere "communication exercise". Not only is the supply of information limited but management also dictates the topic and terms for consultation. Although consultation must take place before decisions are taken, it is still management which makes the final decision. In practice those decisions are usually made even before consultation begins. Management makes a decision and pays lip-service to the principle of consultation.

Consultation tends to take place between management and employee representatives and the object of the meeting is to consult and not negotiate. Employee representatives have no means of enforcing their demands and are thus ineffective. This model clearly falls within the traditional approach of worker participation, with no real challenge to managerial prerogative.

While management may be content to continue along these lines workers want to play a more participative and meaningful role. At this stage of our industrial relations growth this will certainly be a regressive move. Information and consultation is absolutely vital to ensure that good industrial relations are maintained, but hopelessly inadequate as a form of worker participation in isolation. It should be part of a broader process of bargaining and negotiating. It is clearly a means to an end: and not an end in itself. As such the paper will not deal with this model extensively.

Collective Bargaining

Farnham and Pimlot define collective bargaining as: "negotiations about working conditions and terms of employment between an employer, a group of employers or one or more employer's organisations on the one hand, and one or more representative workers organisations on the other, with a view to reaching an agreement.5 This is the model which has been endorsed by the South African labour relations legislation. This model also falls within the traditional approach of worker participation and while it makes inroads into the managerial prerogative, its effect has been blunted by the limitations placed on it. These limitations will be discussed in more detail in the chapter on Collective Bargaining in South Africa.

Co-Decision-making in Works Councils or similar bodies

The ILO report regards the right to co-decision-making as relating to specific matters which generally affect personnel policy or welfare. The requirement of co-decision can often amount to the power to veto. However, in practice this 'frequently gives rise to negotiation, to bargaining or creates a compromise in the form of an agreement, in effect, a collective agreement.'6 This too falls within the traditional approach of worker participation and does not make any significant inroads into managerial prerogative.

The term "co-decision-making" is a misnomer because firstly, the issues for 'co-decision-making' are predetermined and secondly in some instances the employees only have a right to consult in advance. This model will be dealt with in further detail in subsequent chapters.

Membership of Management Bodies

Under this model the workers are represented on management bodies such as the Board of Directors. "This sort of participation amounts to co-management, since the powers of such bodies extend to all the problems raised by an industrial operation."7

This model belongs in the advanced approach to worker participation only insofar as it represents a change to

traditional management structures. Worker representatives are part of the management structure and form part of the decision-making process. However, the effectiveness of such participation will depend on the type and degree of representation that the worker representatives have on the management body. It often occurs that worker representatives are in the minority and theoretically can always be outvoted by the management sector, and thus prove to be ineffective. Such a system makes no real inroads into traditional managerial prerogative because the final decision remains with the management sector on the Board. A more extensive assessment of these structures will follow in subsequent chapters.

Self-Management

Self-management is in essence "worker-control", workers themselves designate members of their ranks to be representatives on the management bodies. The ILO report identifies the former Yugoslavia as the most well-known example of this system when the management of public undertakings was handed over to the workers concerned. This system must be rated as an advanced approach to worker participation. It represents more than a challenge to managerial prerogative, in fact, it is a total abolition of management in the classic sense. Under this system, there is no need for trade unionism because management now has the interest of the workers at heart and there is no conflict of interest present. A discussion of this model will follow in subsequent

chapters.

It is clear from the above overview of the different models that the managerial approach, which is based on the unitarist theory of industrial relations, is no longer regarded as a workable alternative in a modern industrialised society. The unitarist theory does not deal with industrial conflict, because according to this theory, both management and labour have a common goal, ie. successful production, this means that management can get increased profits and in turn pay workers higher wages.

The basis of this theory is the master-servant relationship with the employer having all the authority and prerogative to manage the enterprise. As there is no conflict envisaged, there is no room for trade unionism, because the worker's most important duty is that of obedience to the employer. Industrial conflict is explained away as being a by-product of trade unionism which brings friction within the employer-employee relationship. It is argued that conflict is caused by a few discordant employees. However, this approach has come under increasing pressure because not only can it not explain the increasing industrial conflict, it also cannot deal with the conflict.

Pluralism in a sense was better equipped to deal with industrial conflict in an industrialised society. This theory accepted trade unionism as a legitimate component of the industrial relations system. It recognised the inherent conflict between

capital and labour and was able to explain this conflict as being a product of divergent interests. "Industrial Conflict, therefore, is accepted by pluralists not only as being inevitable but also as requiring containment within the social mechanisms."[8] Pluralism seeks to do just that, to contain industrial conflict. Pluralists maintain that the differences between management and labour are not so fundamental as to make them incapable of compromise.

The class conflict analysis of industrial relations is based on Marxist theory, which is strictly speaking not a theory of industrial relations. "It is rather a general theory of society and of social change which has implications for the analysis of industrial relations within what Marxists would describe as Capitalist societies."[9] By this analysis, industrial conflict is an element of the broader societal conflict. This societal conflict is inherent in Capitalist societies and industrial conflict cannot be resolved until the broader societal conflict has been resolved by "smashing Capitalism". Trade Unions are seen as a symbol of the class conflict, workers uniting against the forces of Capitalism ie. the owners of the means of production. While Trade unions are deemed to be unnecessary in the post-capitalism era, they are regarded as a vehicle to workers' emancipation within the capitalist context. The advanced approach to industrial relations which promotes industrial democracy is based on such an analysis, it aims to emancipate workers from managerial prerogatives. Democracy it is

said, can set free citizens of a country, industrial democracy must have the same effect on workers.

Industrial relations has evolved from the unitary theory of industrial relations and the managerial approach, towards the traditional approach which embraces pluralism. The world is moving towards the advanced approach to industrial relations, and South Africa must not be left behind. The South African system of collective bargaining while rejecting the managerial approach still restricts worker participation in decision-making. Farnham and Pimlot rely on the study of an American social psychologist, Rensis Likert, whose findings have shown, "that departments which are low in efficiency, tend to be run by managers who are "job-centred" and exert constant pressure on subordinates to achieve higher output. Departments which attain high performance levels, on the other hand, tend to be run by managers who are "employee-centred". **10** The "challenge" that this country faces in the development of its labour relations is to move away from the traditional approach of industrial relations which is "job-centred" to an advanced approach of industrial relations which is "employee-centred". This paper will ultimately assess whether collective bargaining can make this transition from the traditional to the advanced approach of industrial relations or whether the importing of foreign systems of worker participation is necessary to make the transition. The paper will also attempt to answer the following question; "Can the new Act bring about this transition?"

CHAPTER 3

1. Farnham and Pimlot pg 329
2. Ibid pg 52
3. Ibid pg 330
4. Ibid pg 331
5. Ibid pg 215
6. ILO Report pg 22
7. ILO Report pg 23
8. Farnham and Pimlot pg 58
9. Ibid
10. Ibid pg 150

CHAPTER 4

COLLECTIVE BARGAINING IN SOUTH AFRICA

The long title of the Labour Relations Act 28 of 1856 sets out the aims and objectives of the Act, with its principle aim being "the prevention and settlement of disputes between employers and employees." The legislature has endorsed the system of collective bargaining as a means of achieving this aim. Thompson writes that "the act was crafted ... to reconcile the conflicting interests of capital and labour through the technique which has become known as collective bargaining."1 Collective bargaining has been the tool employed by the Labour Relations Act to reconcile management and labour. The pluralist perspective of separation of power has manifested itself in the form of the "tripartite" arrangement which has developed in the South African Labour Relations system.

Farnham and Pimlot identify three conditions which are necessary for collective bargaining to be an effective means of regulating relations between employers and trade unions:

1. The parties must be sufficiently organised. By this they mean that freedom of association and of organisation amongst

employees into independent trade unions are indispensable conditions for the establishment of viable collective bargaining. This presupposes organised trade unions which employees of any given enterprise can choose to participate in. It is my submission that organisation on the part of employees of any given enterprise can choose to participate in. It is my submission that organisation on the part of employers is not an important requirement because of their position of power, while on the part of labour this is absolutely vital because it is only as a collective that labour can begin to bargain with the employers. "This view of collective bargaining is based on the belief that it provides the means to remedy the fundamental bargaining inequalities which exist between the strong position of the employer, on the one hand, and the weak position of the individual employee."2

2. Employers should recognise trade unions for bargaining purposes. The history of collective bargaining in South Africa is the history of the struggle for trade union recognition. Trade Union recognition is one of the fundamental principles of pluralism which recognises trade unions as an integral part of industrial conflict resolution and not as the cause of conflict. Farnham and Pimlot argue that collective bargaining and trade unionism "have repeatedly shown themselves to be inter-dependent."3 The two complement each other and therefore without recognition of trade unions for the purposes of bargaining, there can be no collective bargaining.

3. Negotiate in good faith. The third requirement is that the parties negotiate in good faith and accept the agreements entered into as being binding upon each other. In summary, the learned authors write that: "The fundamental legal requirements for the existence of trade unions and collective bargaining are the freedom for employees to join trade unions and to take part in their activities, the freedom of trade unionists to strike, picket and peacably further an industrial dispute and the recognition of trade unions by employers for collective bargaining within plural societies are now internationally recognised as being basic human freedoms."4

Why then has collective bargaining failed to meet the aims and objectives of the Act? More fundamentally, can collective bargaining succeed in bringing about industrial peace?

The limitations of collective bargaining

The South African system of collective bargaining has developed out of the principle of industrial pluralism. It is submitted that some fundamental limitations to collective bargaining are exposed by the practical application of the theory of pluralism. Pluralism has played its role in taking us out of the realm of the crude master-servant relationship, but can it take us further? Pluralism can also be viewed as a compromise between the unitary and class conflict theories. These two theories are

only "correct" in so far as they protect the interest of one of the parties in the employment relationship. The unitary perspective protects the employer while the class conflict theory protects the interests of the employees. The pluralist perspective purports to protect both parties in the employment relationship. The main purpose of Labour Law, according to pluralists, is to "regulate, to support and restrain the power of management and the power of organised labour."5

The Principles of Industrial Pluralism

Pluralism regards the separation of power between the State, management and labour as essential. The State's role in the conflict is simply to be a neutral umpire, making sure that the "rules of the game" are observed. Secondly, it recognises the inherent conflict between management and labour and accepts trade unionism as part of the resolution process. Pluralism "postulates a divergence of interests between capital and labour, yet assumes that management and labour have at least one interest in common"6 which is to resolve the conflict which arises from time to time by reasonable, predictable procedures. The workplace is considered to be a "mini-democracy" where management and labour can sit around the negotiating table and jointly decide on issues that affect them. The assumption is that management and labour have more or less the same bargaining power which prevents one group from being dominated by another. It is believed that through collective bargaining "labour and capital

compromise their own self-interest and arrive at mutually agreeable terms."7

Pluralists see the intervention of the law in the above relationship as being undesirable and in fact, it is envisaged that the law should only play a small role. While "law has important functions in labour relations they are secondary if compared with the impact of the labour market."8 Pluralists advocate the concept of voluntarism, they insist that the State, Government and Law should not interfere within the collective bargaining arena. As Farnham and Pimlot describe, the essence of "the voluntary principle in industrial relations implies first, a preference for free collective bargaining as a method of fixing pay and working conditions, second, a belief that a non-legal system of industrial relations should allow only those matters beyond the competence trade unions to be determined by law, and third, a desire for the complete autonomy of the bargaining partners in industry." 9

However, is the law really a neutral outsider as envisaged by pure pluralist ideology? In order to answer this question, it is necessary to look at the role of the courts and analyse their interpretation of the pluralist perspectives. The abstention of the law in the "substantive outcome" of the dispute has been accepted by our courts. In Buthelezi and Others vs Labour for Africa (1991)12 ILJ 588 (IC). De Kock SM declared at 592G that "the Court would be stepping outside its legitimate terrain" if

it were to involve itself in interest disputes, thereby proclaiming that such matters are best left to the parties to bargain over. The result of the bargaining process will be determined by the powers of the respective parties. Thompson speaks of "splendid abstention" in such matters. The relevant question here is whether the Courts have, in fact, adhered to the abstentionist approach and played the role of a "neutral outsider"? Jordaan in his book co-authored by Rycroft, 10 is not convinced that there can be any real abstentionism, in fact, he views this approach as being more of an ideal than a reality. He suggests that "the courts are not only drawn into the process of negotiation but perhaps unwittingly are usually drawn in on the side of the employer given the latter's (employer's) superior legal position as owner or controller of industrial property and as dominant party to individual contract of employment."11 South African history is testament to this fact in that the introduction of the 1924 Industrial Conciliation Act was designed to deal with uprisings of the white workers.

Furthermore, even if the Courts practically applied the abstentionist approach as envisaged by the Pluralists it would still disadvantage labour because of their inferior position. Therefore, it is my submission that while the pluralist perspective may sound attractive on paper, it has fundamental practical flaws. The law has recognised these differences to some extent by the introduction of protective legislation, such as the Basic Conditions of Employment Act to compensate for

labour's disadvantages at the bargaining table.

Another fundamental principle of the Pluralist idealogy is the idea that management and labour have more or less an equal amount of power at their disposal and hence there can be little domination by one group over the other. Is there really a "rough equilibrium" between management and labour? Rycroft and Jordaan point out that Pluralists do not postulate "equality in economic positions but rather equal application of the rules of the game," 12 which translates into comparable restraints on their economic power. Does equal application of the rules achieve equality in practice? This question is best answered by sketching a political analogy: Equality does not mean treating everybody equally because this does not acknowledge that people are different and can in fact lead to the most gross inequalities. South African law recognises this principle in that it has special laws applying to minors and mentally incapacitated persons. Similarly, not all citizens can be taxed equally because not everybody has the same earning capacity. Therefore, treating people equally involves the recognition of their differences and catering for them accordingly.

The proposition that there is simply no equality between the individual employee and his or her employer cannot be disputed. The idea of equal parties bargaining over a contract of employment only applies to a few highly skilled individuals, but for the great majority of the workforce in this country this is

not the case. In fact, in such a situation, especially with the high rate of unemployment in South Africa, the relationship between the two reflects more accurately the "master-servant" relationship which conjures up images of submission and subordination. However, as Kahn-Freund points out "much of the submission and subordination may be concealed in that indispensable figment of the legal mind known as the contract of employment."13 Further, it is assumed that the contract is between equals. The power of labour lies in its collectivity, armed with strike action, labour can begin to bargain as "equals" with employers. However, the only weapon that labour has, has been blunted by the law. Section 65 of the Labour Relations Act sets out the procedure that should be followed before a union may embark on strike action or before the employer may lock out the workers. It is true that management and labour are both subject to the same procedural rules but the effect on the respective parties differs. In terms of Section 65 the parties must either refer their dispute to an Industrial Council or if none exists in the industry, they should apply for a Conciliation Board to be set up to deal with the dispute.14 A strike or lockout may be called within thirty (30) days of the matter being submitted to the Industrial Council or Conciliation Board.15 This requirement creates a statutory "cooling-off" period where it is hoped that the matter will be further negotiated. It is submitted that although these procedures apply to both employers and the unions, they have a more crippling effect on labour and strikes than lockouts. Why is this the case? Union strategy may be to use

its bargaining power during its peak periods. In industries like the retail industry, unions are at their most powerful during December and January and the timing of the strike becomes absolutely vital. If an employer were to announce at the end of November that it will not be able to pay annual bonus in December, it will be impossible for the union to declare a legal strike in December. Even if the decision was subject to negotiation, the strike may only be declared towards the end of January when its bargaining power is no longer at its peak. It is very difficult to envisage the employer facing the same difficulties with a lockout. If the strike were to go ahead without following the procedures set out in Section 65 it would become illegal and would not enjoy the protection of the Act.

This is not to say that procedures should be abolished; indeed, we need reasonable and predictable procedures. However, we should consider different procedures to cater for the differences between the parties. It may be necessary to subject the parties to different procedures in order to ensure equality at the bargaining table. Subjecting the parties to the same procedures does <u>not</u> acknowledge their differences and can result in inequality at the end of the day. It is my submission that labour law needs to move out of the realm of theory and be more practically orientated. It is one thing to have a perfect theoretical approach but quite another to put into practice.

The Labour Relations approach which is adopted needs to recognise

the differences between the parties at the bargaining table, to pretend that they are equals does not solve the problems at the shop-floor level. This paper does not suggest that the Courts or the State assist labour during negotiations, rather the approach should be to empower labour so that they can sit at the bargaining table as equals.

A brief look at the decisions of the Industrial Court highlights the limitations of collective bargaining. The classic cases are Bester Homes vs Cele (1992)13 ILJ 877 where the LAC found that severance pay is a 'non-negotiable topic'. In Buthelezi vs Labour for Africa (1992) 12 ILJ 588 (ic) the Court found that the applicants demands were "unreasonable" and hence there was no duty to bargain. Other cases decided along these lines include Dunlop Tyres vs NUMSA 16, the Barlows 17 and Transkei Sun 18 cases.

It is clear from these decisions that the law favours the retention of managerial prerogative by excluding certain issues from the bargaining table. Unions thus face the prospect of either being ineffective at the bargaining table or being excluded altogether. However, there is no doubt that collective bargaining can be one of the most inclusive models of worker participation. Trade union representatives are mandated by their constituents who should remain fully informed and be consulted with throughout the entire bargaining process. The question remains whether the existing system of collective bargaining can

be improved or whether these are incurable defects. This will be canvassed in the chapter entitled "The Way Forward", in which the writer will argue for the retention of collective bargaining as a model of worker participation in South Africa.

CHAPTER 4

1. Thompson (1991) pg 1209
2. Farnham and Pimlot pg 219
3. Ibid pg 28
4. Ibid pg 317
5. Davies and Friedland pg 15
6. B Jordaan (1989(10) ILT 791) pg 794 - 5
7. Rycroft and Jordaan pg 124
8. Davies and Friedland pg 19
9. Farnham and Pimlot pg 47
10. "A Guide to South African Labour Law - 2nd Edition"
11. Rycroft and Jordaan pg 134
12. Rycroft and Jordaan pg 124
13. Davies and Friedland pg 18
14. S65(d)(i) and (ii)
15. S65(d)(i) and (bb)
16. (1990) 11 ILJ 149 (IC)
17. (1990) 11 ILJ 35 (T)
18. (1992) 13 ILJ 69 (TL)

CHAPTER FIVE

DIRECT FORMS OF WORKER PARTICIPATION

Having outlined the shortcomings of collective bargaining, we need now to examine other forms of worker participation. The focus of this paper will now shift to direct forms of worker participation. Unlike the indirect participatory function of collective bargaining, "under direct participation the worker himself contributes to and influences managerial decision-making or executes himself, functions previously carried out by management."1

The ILO report correctly recognised that there are various forms of worker participation ranging from formal structures such as worker self-management councils, to the more informal arrangement between the employer and the workers, either individually or in groups. Further, "between these two extremes, there is a range of intermediate solutions allowing for varying degrees of formal participation."2 The next few chapters of this paper will examine the following broad forms of worker participation, namely:

1. Self-management ;

2. Membership of management bodies ;

3. Work Councils 3

This paper will also look at a few experiments with these forms of worker participation.

SELF-MANAGEMENT SYSTEMS

"Conceptually, systems based on self-management, undoubtedly represent the most far-reaching attempts at direct involvement of the management responsibilities. Self-management can be defined most simply as the management of undertakings by their workers."4 This amounts to worker control with workers managing the enterprise without traditional management. The ILO report outlines its main features as being the following:

1. Managerial rights are transferred to the worker, but not the ownership. This usually comes about by introducing legislation.

2. The entire workforce has a right to participate, ie. both blue and white collar workers. However, these rights are lost should the worker leave the undertaking.

3. These rights are usually exercised through "worker councils" which are elected bodies. "The competence of self-management bodies extends to all decisions taken in the

undertaking, although special rules as to procedure and supervision may be laid down to avoid arbitrary action and to ensure the observance of certain standards."5

The report cites the former Yugoslav system as being the best known example of self-management systems. "The Yugoslav system is based on "social ownership" as distinct from State ownership."6 The main bodies in this system are the "worker's assembly" and the "worker's council", with the assembly being a more direct form of participation, in that it operates at shop-floor level. The worker's council which operates at boardroom level, or its equivalent, elects the general manager. The Yugoslav system stressed "that genuine self-management in undertakings can develop only if relations at the other levels of social organisation and in <u>society as a whole</u> (emphasis added) are similarly self-managing in nature."7

A self-managing system can only exist in a socialist society because it is based on social ownership. The implementation of a self-management system involves more than a simple restructuring of the enterprise, it includes a restructuring of the social fabric. While South Africa has a highly politicised workforce who are conscious of the need for drastic social reform, it is submitted that the climate is not yet right for such a system. Furthermore, the ANC-led Government of National Unity has to attract foreign investors in order to ensure the success of the RDP. The South African Labour Relations System has to take a

form which keeps the international investors interested. A self-management system will frighten many investors away. South Africa, unlike the former Yugoslavia is a multi-party State and it is submitted that the National Party, Inkatha Freedom Party, and the Democratic Party will vehemently oppose such proposals.

Within this context, the role of the union becomes a very difficult one because even under the Yugoslv system, the trade union was responsible for disciplinary proceedings. The South African system is further complicated because of the existence of a plurality of unions. The union represents the employee in disciplinary proceedings which are initiated by the employer, should the union act in the interest of the workforce as a whole against an individual, that worker will simply join another union.

The Algerian experiment with self-management also encountered many obstacles. These are listed in the ILO report as follows:

1. The autonomy of the undertaking was challenged especially regards distribution of income ;
2. The slow turnover of "management staff";
3. Lack of training and information ;
4. The definition of the relationship between management bodies was unclear and this led to conflict.

   Furthermore, "the economic conditions of the time and other factors favourable to the growth of self-management"8 were lacking, resulting in increased centralised direction by the

State.

Furthermore, it is my submission that Socialism can only succeed on a global scale. South Africa is still a developing country and if we "step out of line", the Western world will cut off all monetary assistance.

Self-management systems have one inherent flaw which is that it replaces one form of management with another.
The 'new' management must be held accountable to the workforce or they will be no better than traditional management. Without accountability to the workforce and even direct participation of the workforce it is questionable whether this model will be as inclusive as possible. It can also be accepted that that employers will vehemently oppose the introduction of this model.

PRODUCER'S CO-OPERATIVES

This model is a variant of the self-management system.
"In principle the worker members of these producer's co-operatives (which they own) assume all the responsibilities for their management."9 Co-operatives exist in both developing and industrialised countries. The ILO report lists the following sectors where co-operatives have played an important role: agriculture, food-processing industries, building and public works, various engineering and electrical industries, glass manufacture, printing, transport services. The principle behind

co-operatives is that workers themselves become owners of the enterprise. The ILO study quotes Israel as an example, "where the General Federation of Labour (Histadrut) through a special subsidiary (Hervat Ovdim) operates a considerable sector of the economy."10 However, supreme authority still lies with the management boards or Board of Directors, while the remainder of the workforce is simply informed of the decisions. The basic idea is that every worker is a "co-proprietor" who has participating rights, but such is the nature of the undertaking that there can be no guarantee that all the workers employed have a right to participate in managing the enterprise.

Georgina Jaffee is of the opinion that "the present crisis in capitalism resulting in mass unemployment, class conflict, low productivity and job dissatisfaction, has seen the introduction of worker co-operatives."11 In principle, the enterprise is "democratically controlled" by the workers with all workers having equal voting rights. As they operate on democratic principles, the author suggests that they are "implicitly critical of power structures in broader society, and in societies where fundamental transition to a different economic order is possible, co-operatives have identified strongly with political and social movements for change."12 Research and discussion within the Urban Foundation and large corporations suggests that "Western styles of entrepreneurship are not that appropriate for South Africa because of the ethic of "communalism," which exists within the black community. The "communalism", they say, is not

inconsistent with free enterprise, but may bring about with it some of the best aspects of socialism,"13 Jaffee, in support of the introduction of co-operatives in South Africa, puts forward the following arguments in favour of the co-operative system:

1. It gives the workers and unions experience in Industrial democracy and worker control.
2. It develops worker skills in self-management.
3. It will contribute towards "working class hegemony" in the overall transformation of the social and economic order.

However, the learned author recognises that worker co-operatives have limitations within our present economic system. The South African co-operatives have to survive in a highly developed capitalist economy. As such, their viability is measured in terms of competitiveness in the market and not in terms of their "social utility". Thus, "in order to be successful, they must find a suitable and viable gap in the market, so not to remain marginal enterprises."14 Further problems faced by co-operatives include: lack of access to start-up finance, shortage of business and managerial skills, problems of marketing, lack of insufficient support and training institutions. The idea of co-ownership is in itself problematic because the majority of workers in South Africa do not have access to finance. Realistically speaking, if only a few workers can afford to invest in an enterprise then we are right back to traditional employer-employee set-up. Logistical problems also exist because

one cannot have the entire workforce on the Board of Directors. Jaffee's study also indicates that in countries like the UK, Canada and the USA, the union movement have been sceptical about co-operatives. Trade unions could be placed in an uncompromising position because they do not like to be associated with unpopular managerial decisions.

While worker-co-operatives can be seen as an experiment in self-management, giving the workers invaluable experience, it is submitted that there are other ways for workers to gain such experience.

Whenever participation is based on ownership and ownership, in turn, is dependant on access to finance then one must question whether traditional managerial prerogative is being challenged.

CHAPTER 5

1. Farnham and Pimlot pg 423
2. ILO report pg 49
3. Terms used by the ILO report
4. ILO Report pg 49
5. Ibid
6. ILO Report pg 51
7. ILO Report pg 55 - See B Kavcic: Workers Participation in decisions within undertaking in Yugoslavia (Geneva, ILO mimeographed document SWPDU / D, 65) pg 4
8. ILO Report pg 58
9. Ibid pg 75
10. Ibid pg 76
11. Anstey pg 192
12. Ibid pg 194
13. Ibid pg 199
14. Ibid pg 207

CHAPTER SIX

MEMBERSHIP OF MANAGEMENT BODIES AND WORKS COUNCILS

Membership of Management Bodies

Representatives of the workers are allowed membership on the management bodies, either at the level of directors or at the level of managers. In the private sector, especially, one needs to distinguish between worker's representatives who are equal in number to the shareholder and the case where they are in the minority. The ILO study suggests that "there is no fundamental shift in the ultimate balance of power as regards decision-making"1 when the worker representatives are in the minority. In other words, managerial prerogative is still intact.

It should also be noted that there is strong opposition from employers to any system where the shareholders are not in the majority. The objections from the employers are largely predictable, the ILO report lists the following: an infringement on private ownership by giving the workers a joint right to dispose of capital, it jeopardises the market economy which relies on rapid decisions, it gives too much power to the trade unions, there is a possibility that the worker representatives will not come from the workplace, and party representation would

interfere with collective bargaining. Whether the representatives are on the Board of Directors or the management board is another important distinction, because the Board of Directors have the power to appoint or dismiss management. Yet, another important distinction to be drawn is between "co-supervision" and "co-management". The former is less authoritative, which is usually the case in minority representation, where the worker representatives simply "supervise" proceedings, as opposed to participating in the management of the undertaking.

The ILO study shows that in most countries where this form of worker participation has been adopted, the worker representatives are in the minority and in fact they never form more than half of their respective boards. Nevertheless, one cannot deny that they do indeed influence the decisions made at these levels. However, as suggested by the ILO study, there is no direct participation by the workers in decision-making, in fact, the report shows that most of these meetings are held in private and the reasons for decisions are hardly ever disclosed.

Company determination in Germany

The Co-determination Act of 1976 assures employee representation on supervisory boards of large corporations. The Act provides for the formulation of a supervisory board composed of 50% shareholders and 50% employee representatives. This is a mandatory provision for all companies employing more than 2000

employees.

The Chairperson of this board is elected by majority vote of the members. However, if no majority is attained then the shareholders representatives elect a chairperson from their own ranks. The importance of the chairperson cannot be underestimated because in the event of a tie vote the chairperson has two votes in the Second ballot. Although theoretically an employee representative can become a chairperson of the supervisory board, in practice the chairperson is invariably a shareholder representative. The German legislature regards the supervisory board as a homogeneous body making decisions for the enterprise and not as pluralist groups with competing interests.

The Act did not introduce new bodies into the corporate structure. It simply fits worker participation into the traditional corporate framework. All the Act does is modify the composition of these bodies.

Manfred Weiss lists the following basic functions of the supervisory board; electing members to the management board and supervising the activities of the management board. In addition, the supervisory board has extended rights to information. The Management Board is obliged to supply information on all issues referring to management of the enterprise. The law also allows both boards to establish rules whereby certain decisions require the consent of the supervisory board. The supervisory board may

appeal to the shareholders if the management board refuses.

The legal status of the workers representatives is identical to that of the shareholder representatives. They have the same rights and duties. They too are bound by Company Laws which prohibit the disclosure of information to anybody inside or outside the enterprise. Weiss highlights the difficulties this creates. It is common practice for seats among the worker representatives to be reserved for union officials. However, they are unable to communicate with their constituents. Weiss correctly sums up the position as follows:
"This leads to isolation of the representatives and alienation of the constituency. The effect is loss of legitimacy for the representatives on the supervisory board."2

Bearing in mind the criterion of being as inclusive as possible it is the writers submission that this model does not meet the requirement. Worker representatives should not only keep their constituents property informed but also take forward proposals from the shop floor. Company law forces the worker representatives to be loyal to the shareholders when in fact they should remain loyal to the workers.

In developing countries, this system of worker participation faces a number of obstacles. Apart from the fact that Governments are fearful of frightening foreign investors and the strong opposition from the employers "there is also hesitation or even

opposition from the trade unions, which generally prefer collective bargaining."3 There exists the fear that worker representatives will become "captives of management" where there is a plurality of unions, as is the case in South Africa, there are difficulties in selecting the worker representatives. Added to this is the issue of educational levels of the majority of workers in developing countries, they are simply ill-equipped to participate effectively in management. As with self-management, the worker representatives are reluctant to be associated with decisions which have a negative effect on the workers whom they represent. Unions "are equivocal in their views, some seeing the presence of worker representatives on the boards as diluting the "challenge" role and powers of the trade union, others taking the view that every opportunity should be taken to establish joint control at all levels in organisations and that board participation offers opportunities to influence key decisions affecting worker's lives."4

Work Councils

Work Councils are bodies comprised of workers with which management must consult prior to making decisions that affect the working lives of the employees. They act as "counterparts" of management on behalf of the workers.

Under most systems trade unions have the right to nominate candidates for the councils or even to remove them. The ILO study identifies the following powers and functions: information,

consultation (allowing worker representatives to propose alternative solutions), co-decision (including a right to veto on certain decisions), direct autonomous management of some of the activities of the undertaking. 'Generally speaking, the competence of works councils covers three main areas of management: economic questions, staff problems and welfare activities.'5 It is often difficult to draw a distinction between co-decisions and traditional collective bargaining, because in practice this kind of decision-making involves bargaining and compromise.

The ILO report points out that "in several countries difficulties were experienced, especially in the early stages, in setting up works councils in the undertakings covered by national legislation ... . The lukewarmness of some heads of undertakings, and apathy or hesitation on the part of workers and their organisations, are often given as possible reasons for these difficulties."6

Trade Unions have often been hostile towards these bodies, seeing them as encroaching on trade union activities and the challenge is to find an arrangement in which trade unions and work councils can work together effectively. "Problems of harmonising trade union representation and the works councils seems to arise more in countries where collective bargaining takes place primarily at the level of the undertaking."7

Work Councils in Germany

The German system traditionally operates on a two-tier system, involving trade unions and work councils. The German Courts emphasize the principle of Tarifautonomie (collective bargaining autonomy). At the trade union level the Courts support industrial action as a means of backing industrial demands. The result is that "Germany has created a labour system, in which the Union's power comes not by legislative fiat but through its ability to use industrial action as a means to assert leverage in the collective bargaining process."8

Work councils are established in terms of the Works Constitution, and exist independently of the Trade Unions. "The Works Constitution creates a system of representation, participation and co-determination* at the shop level ..."9 Employers and executive staff are excluded from representation on the works council. In terms of the Works Constitution Act (Betriebsverfassungsgesetz/Betr VG), "the installation of Works Councils is not compulsory but depends on the initiative of the workers or the unions. Other representative bodies may be established when the nature of the business makes it difficult to establish Works Councils." 10 Nevertheless, the Works Constitution Act stipulates that in any establishment which has

*** decision-making conducted jointly by worker's representatives and management**

at least five employees with voting rights, Works Councils can be elected for a term of four years. The express purpose of the Works Council is to safe-guard the interest of the employees at shop-floor level. BetrVG Section 2 reads as follows: "The employer and the Works Council shall work together in the spirit of mutual trust having regard to the applicable collective agreements and in co-operation with trade unions and their employer's associations represented in the establishment for the good of the employees and the establishment."

The functions of the Works Councils are to protect employee-interests, and this is achieved as follows:

1. Works Councils have far-reaching rights of participation and co-determination.
2. Works Councils' consent is required on a number of issues including recruitment and transfer of employees.
3. Employers cannot dismiss an employee without advance consultation. An extensive right of co-determination exists in "social working conditions".
4. Works Councils have the right to be informed in a number of issues, including financial matters.
5. In matters such as reduction of operations, the Works Council may require the preparation of a social compensation plan.
6. If an agreement on a matter of co-determination cannot be

reached, then a decision shall be made by the Conciliation Committee before it is referred to the Labour Courts.

Works Councils represent all workers at a particular plant, whether they are union members or not. Where works councils are established at seperate plants in a "multi-plant" enterprise they must form a general works council. The Act makes provision for meetings. These meetings must take place during working hours where the works council has to give a report on its activities to the workers. Provision is also made for management to report to the works council on matters such as personnel policy, social affairs and the economic position of the enterprise, including future prospects.

The Works Council is required by law to co-operate with the employer in good faith and consequently industrial action as a means of resolving disputes is prohibited. As a result any activity which endangers the 'peace of the establishment' is forbidden. However, the Act makes provision for an arbitration committee to compensate for the absence of industrial action.

The task of this committee is to resolve disputes between management and the works council. It consists of management and employee representatives with a neutral president. If the Committee cannot resolve the dispute the Courts are left to adjudicate on the matter.

Interaction between Collective Bargaining and Work Councils

Remuneration and other working conditions are issues reserved for collective bargaining. The idea is to prevent works councils competing with trade unions.

"All provisions make it clear that the collective agreements takes priority over works agreements and that works agreements shall not be contracted on matters that are reserved for the collective agreement. Works agreements, however, may improve the resolutions in the employee's favour."11

However, as Brian Robinson correctly points out the "German system is, of course, very firmly rooted in German society. it may not be transferrable without considerable modifications. For one thing, the German unions are by and large prosperous and sympathetic to the profit motive. They own banks and businesses, have powerful political influence, are well-organised, engage in steady dialogue with government and industry on economic policy."12 Before we even consider importing the German system, which admittedly, is very sophisticated and effective, we should heed to Robinson's caveat that "no system is exportable in its entirety."13 Furthermore, collective bargaining and works councils operate on two seperate levels in Germany. The South African collective bargaining system operates at both plant level and industry level which may result in conflict between trade unions and works councils. Nevertheless, works councils have

have gained some support and have been implemented in many developing countries.

The New Labour Relations Act however, has borrowed extensively from the German system. The writer is of the opinion that the success of this model in South Africa depends on whether the legislature has adapted in South African conditions.

CHAPTER 6

1. ILO Report pg 83
2. Weiss pg 180/1
3. ILO Report pg 111
4. Anstey pg 13
5. ILO Report pg 139
6. Ibid pg 141
7. Ibid pg 143
8. Buschman pg 28 (Comparative Labour Law Jnl)
9. Ibid pg 29 Vol 15 1993 - 4 pg 29
10. BetrVG S1,3(ii) - Buschman pg 29
11. Buschman pg 35
12. Anstey pg 67
13. Ibid pg 71

CHAPTER SEVEN

THE WAY FORWARD

"The future South Africa is not likely to have a political economy which is either rigorously controlled or free enterprise in character. This recognition must surely caution both utopian socialist and laissez-faire Capitalists in their advocacy of particular unitary solutions for a South African or Industrial Relations System."1

This paper supports Anstey's view wholeheartedly, the solution that is proposed for South Africa must find an amicable compromise between these two extremes, one which would benefit labour and capital. At the same time, it must be taken into consideration that we need to rebuild our economy which is very fragile at the moment and cannot afford a major "shake-up". Anstey supports the idea of moving beyond adversarialism in our labour relations and suggests that South Africa should look at other forms of worker participation, however, he is of the opinion that these should compliment collective bargaining as opposed to replacing it completely.

This paper lends its full support to Karl Klare's belief that collective bargaining should play a central role in labour relations in future generations. It is also accepted that

"democratisation should extend both to upper tiers of the firm governance and strategic decision-making processes, and to the mundane levels of the organisation and structure of day to day operations and decision-making."2 As the German system illustrates, it is possible for collective bargaining to co-exist with other methods of worker participation.

As previously discussed, collective bargaining is not faultless and has its limitations. However, instead of writing-off collective bargaining, we should rather try to address these limitations. The support for the retention of collective bargaining hinges on the following proposition by Klare: "At least so long as massive inequalities of power in the workplace exists, employees will have a need for autonomous organisations to aggregate their interests and voices, and to identify and articulate their collective needs independent of employer domination ... in addition collective bargaining promotes employee autonomy and participation and hence, self-determination, because of its unique capacity, when <u>well-functioning</u> (emphasis added) for flexible adaption to local conditions and therefore for decentralised, participatory problem-solving."3

Whatever changes are introduced, be it an improved collective bargaining arrangement or another form of worker participation, it is important to decide by what means these changes should be introduced, by legislation or agreement. Klare believes that the

law should be catalyst for this change or improvement and indeed it is difficult to imagine any other agent bringing about this change, it will certainly not be the owners of the means of production.

It is submitted that there are two fundamental changes in the approach of collective bargaining which need to be addressed and these are also highlighted by Klare. Collective bargaining in South Africa needs to reflect a greater commitment to the democratisation of decision-making; and a redistribution of power in favour of labour. The reason that collective bargaining is lacking in these areas is because pluralism "fundamentally accepts that work must be organised on an authoritarian basis and holds that there is a "core of entrepreneurial control" from which employee participation is excluded."4 The collective bargaining which is envisaged is one which will break into the exclusive enclave reserved for managerial prerogative. It should uphold the principle that employees have a right to participate. In any event, the democratisation of the work place and authoritarianism in the work place are mutually exclusive concepts, they simply cannot co-exist.

The system of collective bargaining in this country has also been accused of being "defensive" or "reactive". In order for industrial democracy to be realised, collective bargaining will have to be "pro-active" ie. the participation should be in the decision-making rather than reacting to a managerial decision.

It is therefore necessary that the law "should strengthen employee bargaining power and remove certain built-in limitations of collective bargaining."5 The ultimate responsibility for this change lies with the law.

Catherine O'Reagan (now Judge of the Constitutional Court) in her article entitled "Possibilities for Worker Participation in Corporate Decision-making" recognises that collective bargaining is also a form of worker participation, but she further argues that it has limitations in bringing about industrial peace. She points out that all collective bargaining does is to force parties to bargain until impasse before either party may resort to industrial action. However, we must accept that the strikes and lockouts are an extension of collective bargaining, being part and parcel of bargaining. It is submitted that industrial strife can never be completely abolished in a class stratefied society, all we can hope to do is limit industrial unrest.

In spite of her criticism of the collective bargaining system, she sees some of these limitations as being "remediable". The limitations include the following:

1. The range of legitimate topics is limited. The list of bargainable topics needs to be extended to all decisions that affect the daily working lives of the workers.

2. Unions often bargain from a position of ignorance with no

real access to confidential information. This too is clearly a remediable limitation. The law should make provision for the access of information for bargaining purposes.

3. A further limitation is that when there is a dispute over the terms of collective agreement, management can give effect to its own interpretation. Once again, we have to address the weighting in favour of the employer and redistribute power in favour of the labour. However, within the German model the deciding vote in the case of a deadlock belongs to the chairperson who represents the shareholders. There are thus no guarantee that such problems only manifest themselves in the collective bargaining system.

However, the learned author also sees structural problems which she argues cannot be remedied. The first is that, in principle, the parties are bargaining from unequal positions, labour only has the strike weapon while management has a range of weapons. This is precisely the focus of this paper; pluralism falsely assumes that the parties are equals. The parties are, in fact not equals and the law should recognise this and cater for labour's inferior position. However, one has to question whether the position can be any different under other models of worker participation, for is inequality simply not an integral part of Capitalist society?

The second limitation is that collective bargaining is only as effective as worker organisation. The writer also points out that certain regions and industries will not have strong unions to canvass worker's interests. Although this paper advocates a system which redistributes power in favour of the union, there is still no room in this system for weak unions which need to be spoonfed. A requirement of the proposed collective bargaining system is strong, independent unions. As legal intervention is limited, the onus is still on the unions to organise and gain solidarity in order to be a force to be reckoned with at the bargaining table.

Thirdly, O'Reagan points out that collective bargaining accepts management's right to manage. The collective bargaining model which is envisaged is one where the right to manage and control of the business is shared. It involves a breakdown of managerial prerogative but does not advocate worker-control.

The most valid of the criticism is that collective bargaining has an adversarial character. One cannot dispute that this is a structural problem which can only be remedied in a classless society. Albeit representatives on the Board of Directors or works councils, where the representatives have competing interests, there will be adversarialism.

Other forms of worker participation should not be completely excluded. A plant-level participatory system has been introduced

in Volkswagen South Africa. This system came into operation as a result of collective agreement. Hence, these two systems are not mutually exclusive. While there were problems with the system, the workers still chose this participatory system. Is this not what industrial democracy demands?

In bringing about change in our industrial relations system, the following suggestions of the ILO study should be taken into account: the need to have the greatest possible support for the proposals from all interested parties, and to consider the adaptability of the system to the country/region. It is my submission that a third factor should be taken into consideration, namely, the need to be least disruptive to the economy.

Charles Nupen of the Independent Mediation Services of South Africa (IMSSA) believes that collective bargaining has asserted itself as the dominant form of worker participation in South Africa because it "allows parties with conflicting world views and conflicting interests to engage on issues of substance within the parameters of agreed procedures in a manner which does not undermine those respective world views or interests."7

The banning of political organisations during the apartheid era forced unions to adapt a political agenda and to adapt roles of opposition against the State and the owners of the means of production. While the writer fully supports the idea that unions

should discard the challenge role, it must be accepted that the unions are very reluctant to do so. Similarly the employers and employers organisations in this country still view unions as the "enemy", whose strikes are the cause of profit losses.

Within this context the writer is of the opinion that an option such as membership of management bodies will be unworkable because of the distrust that exists between the two groups. South African trade unions prefer the "watch-dog" approach, choosing to guard and protect their members' interest rather than being seen as a part of the management structure.

Works Councils on the other hand may prove to be useful if the legislature is able to keep the roles of the works council and trade unions seperate and distinct. The next chapter will examine the prospects of the work forums which the legislature has introduced.

As far as self-management is concerned the writer is of the opinion that within a global context its chances of success are minimal. Apart from being rejected by a market economy it has the potential to be the most disruptive to our own economy. The ultimate goal for the idealist may be worker control in a classless society but the sobering reality is that South Africa has to function within a global Capitalist economy and it is within these confines that we have to operate.

At the risk of being repetitive, it must be emphasized that there is a need to choose a system which the union movement as well as the employer organisations will accept. There is no reason to believe that they will not accept a system which has been a long time practice in South Africa. Secondly, it must be remembered that no system can be imported without adaptation. Finally, it is submitted that the proposed changes to collective bargaining are likely to be less disruptive to the economy than a major shake-up of our industrial relations system. "The dilemmas associated with participation at high organisational levels, coupled with strong ideological stances, act often to restrict trade unions to the position that worker control is the best option and until this is attained, that collective bargaining is the least compromising of the available alternatives."6

CHAPTER 7

1. Anstey pg vi (preface)
2. Klare pg 241 (Catholic University Law Review 1988)
3. Klare pg 242
4. Ibid pg 248
5. Ibid pg 250
6. Anstey pg 15
7. Ibid pg 36

CHAPTER EIGHT

THE LABOUR RELATIONS ACT

The focus of this chapter will be the new Labour Relations Act. The writer will assess whether the legislature has addressed the limitations of collective bargaining in South Africa, and ultimately whether collective bargaining can make the transition to an advanced approach of industrial relations. Secondly, the writer will endeavour to speculate on the success of the work forums envisaged by the new Act.

The primary objectives of the Act includes the promoting and facilitating of collective bargaining as well as the introduction of work forums, which are seen as the vehicle to promote employee participation in decision-making.

It was argued previously in this paper that the law should recognise inequalities between labour and capital and cater for those. Section 15 of the Act addresses an inequality that is often overlooked. Management's function is to manage while the employees main function is to do the job for which he or she is employed, trade unions activities are considered to be secondary. The Act allows for time off for the purpose of trade union activities, thereby addressing this problem.

The disclosure of information is another problem which must be addressed before unions can play a meaningful role at the bargaining table. Section 16(2) seeks to tackle this problem, it calls for the disclosure of "all relevant information that will allow the trade union representatives to perform effectively". However, the legislature also excludes information that is legally privileged 1, the employer cannot disclose without contravening a prohibition imposed on the employer by any law or order of any Court, 2 is confidential and, if disclosed, may cause substantial harm to an employee or the employer 3 and, finally, private personal information relating to an employee.4

The Act unashamedly supports majoritarianism, which the writer believes, can only strengthen unions. Collective bargaining can only be effective with strong unions. Ideally, unions should show solidarity at the bargaining table, however, when a plurality of unions exists as in the case in South Africa, it is my submission that majoritarianism is the only viable option.

However, the most telling difference between management and labour is their recourse to industrial action. It is in this area that inequalities need to be addressed. The legislature attempts to draw a distinction between strikes and lock-outs in Section 64. The employee is accorded a "right to strike" while the employer only enjoys a "recourse to lock-out". While one must accept that there is a difference between the two, it is at best very subtle.

The parties are nevertheless subject to the same "rules of the game" as far as strikes and lock-outs are concerned. While the draft proposal contained a provision in Section 47(4) that allowed employees or trade unions to counter management's unilateral action, the Act does not have a similar provision. This weighting in favour of the workers has been done away with because the Act remains a compromise document. However, unionists such as Jeremy Baskin and Vishwas Satgar believe that the "LRA is substantially more union-friendly than its predecessor"5. However, they also argue that it is not 'one-sided'. Nevertheless the Act condones secondary strikes 6 and picketing 7. Even more important for workers is Section 77 which allows for "protest action to promote and defend socio-economic interests of workers."

Yet another provision which gives the strike weapon a cutting edge is Section 76 which precludes the employers from taking on replacement labour. However, the most important aspect of this Act is the 'duty to bargain' provision found in Section 66(2). The act specifically lists a 'refusal to bargain' as a dispute. Although it is not a general duty to bargain it is certainly an improvement of the current act. Once again the process of compromise has resulted in a 'watering-down' of the promises of the RDP.

The Act also introduces a prohibition on the dismissal for legal

strikes, affording striking workers the protection which is necessary to make their bargaining power more meaningful. These provisions certainly tilt the balance of power in favour of the labour movement.

In previous chapters it was argued that collective bargaining is limited because it operates from a false assumption that the parties bargaining power is more or less equal. The paper also endeavoured to show that this is not the case. The new Act certainly recognises this position and attempts to tilt the balance of power in favour of unions. The Act is 'union-friendly' because it equips the trade unions with the tools to be more effective at the bargaining table.

The collective bargaining model, it is submitted can make the transition from a traditional approach of industrial relations to a modern approach. While it will never remove industrial conflict the New Act does attempt to make disputes easier to resolve. Trade unions have been given a base from which to bargain, which is fundamental to collective bargaining being effective.

Workplace Forums

It is clear that the drafters of this Act drew heavily from the German experience. Workplace forums have been introduced with a view to promoting employee participation. It has already been

mentioned that the success of these forums depends on whether the legislature is able to ensure that trade unions and work forums do not compete. The Act shows a general tendency towards centralised bargaining which ideally will suit the trade union movement. Work forums, on the other hand, are designed to operate at plant level.

The Act provides for the establishment of workplace forums at any workplace with one hundred (100) employees or more. The forum will consist of employees who are not 'senior managerial' employees. The Act also allows a representative trade union to apply for the establishment of a workplace forum. This is another attempt to ensure that trade unions embrace the idea of work forums and do not regard them as a competing interest. Workplace forums are designed to protect the interests of all the employees, both union and non-union members.

Provision has also been made for workplace forum meetings. Regular meetings between the forum and the employer, where the employer is required to give financial reports as well as consult on matters that may affect employees. Furthermore the Act provides for meetings between members of the workplace forum and the employees. These meetings are designed for reporting back to the employees. This is very important because it allows the forum to include the workers on the shop-floor in decision-making.

The Act also lists specific matters for consultation, including

1. restructuring the workplace 8
2. changes in the organisation of work 9
3. partial or total plant closures 10
4. mergers and transfers of ownership 11
5. dismissal of employees for operational requirements 12

However, the Act gives precedence to collective agreements, again ensuring that trade unions and workplace forums do not compete.

Workplace forums are afforded the right to consult as well as joint decision-making on topics such as ; disciplinary codes and procedures 13, rules relating to work performance of employees 14 and affirmative action policy 15. The flexible approach of the Act is evident in Section 86(2) which allows a collective agreement to extend the topics subject to joint decision-making.

Newly established forums may request a review of the employers criteria for merit increases 16 and disciplinary codes and procedures. Furthermore, the employer has a duty to disclose information to the forums, with the normal exclusions.

The legislature may well be successful in developing a culture of co-operation between trade unions and workplace forums. As a result, workplace forums will probably enjoy a measure of success.

The author is also of the opinion that this system can co-exist alongside collective bargaining and provided it is designed to implement collective bargaining the new Labour Relations Act should be more successful in its attempts to move towards co-operation in the workplace.

CHAPTER 8

1. Section 16(5)(a)
2. Section 16(5)(b)
3. Section 16(5)(c)
4. Section 16(5)(d)
5. Baskin and Satgar pg 2
6. Section 66
7. Section 69
8. Section 84(1)(a)
9. Section 84(1)(b)
10. Section 84(1)(c)
11. Section 84(1)(d)
12. Section 84(1)(e)
13. Section 86(1)(a)
14. Section 86(1)(b)
15. Section 86(1)(c)
16. Section 87(1)(a)
17. Section 87(1)(b)

CONCLUSION

South Africa seeks to strengthen her economy and in doing so become an international competitor. There is an inherent danger in importing foreign systems in toto because there are a host of factors which make South Africa so very different from other countries. "The use of the comparative method requires a knowledge not only of the foreign law, but also of its social, and above all its political context. The use of comparative law for practical purposes becomes an abuse only if it is informed by a legalistic spirit which ignores this context of the law."1

The process of adapting to more progressive forms of worker participation needs to be a gradual change, rather than an abrupt one. The new Act recognises this and to its credit has introduced work forums to exist alongside the collective bargaining setup. As the Act seeks to address the inequalities in the working relationship one can be optimistic that it will be more successful than our present Labour Relations Act. However, the new Act will not be an instant success and it will take time for the new system to develop into an effective one. Workers need to be trained and educated about the new system and employers' fears needs to be addressed. It is submitted that collective bargaining is a flexible form of worker participation because it has the ability to continually erode managerial prerogative. With the assistance of the new Labour Relations Act, South Africa can move forward to create a new Labour Relations System that is uniquely South African.

CONCLUSION

1. Kahn-Freund (Modern Law Review, 1974) pg 27

B I B L I O G R A P H Y

BOOKS

1. Aaron B and Wedderburn K
"Industrial Conflict: A Comparative Legal Survey"
Crane, Russak and Co. Inc
1972

2. African National Congress
"The Reconstruction and Development Programme:
A Policy Framework"
Umyanyane Publishers
1994

3. Anderman S.D.
"Labour Law - Management Decisions and Worker's Rights"
Butterworths
1992

4. Anstey M
"South African Options and Experiences - Proceedings of the 1989 Conference on Worker Participation"
Juta and Co Ltd
1992

5. Bayat Assef
"Work Politics and Power: An international perspective on Worker's control and self-management"
Zed Books Ltd
London
1991

6. Blanpain R
"Comparative Labour Law and Industrial Relations"
Third Edition
Kluwer Law and Taxation Publishers
1987

7. Brassey M
"Labour Relations under the new South African Constitution"
UCT Labour Law Unit
1994

8. Davies P and Freedland M
"Khan - Freund's labour and the Law"
Third Edition
Stevens
London
1983

9. De Witt Sherri
"Worker Participation and the Crisis
of Liberal Democracy"
Westview Press
Boulder, Colorado
1980

10. Farnham D and Pimlot J
"Understanding Industrial Relations"
Second Edition
Camelot Press
1983

11. Horvat B
"The Political Economy of Socialism :
A Marxist Social Theory"
Armonk
1982

12. International Labour Office, Geneva
"Worker Participation in decisions within
undertakings"
Skotaville Publishers
1989

13. Maller Judy
"Conflict and Co-operation
Case studies in Worker Participation"
Ravan Press
Johannesburg
1992

14. Rycroft A and Jordaan B
"A guide to South African Labour Law"
Second Edition
Juta and Co Ltd
1992

15. Thompson C
"Labour Law : The Key Statutes
and Regulations"
Juta and Co Ltd
1991

16. Weiss M
"Labour Law and Industrial Relations
in the Federal Republic of Germany"
Kluwer Law and Taxation Publishers
1987

17. Draft Negotiating Document in the form
of a Labour Relations Bill"
Government Gazette Publication
February 1995

JOURNAL ARTICLES

1. Beatty D.
"Constitutional Labour Right: Pro's and Cons"
(1993) 14 ILJ 1

2. Buschman R
"Worker Participation and Collective Bargaining in Germany"
Comparative Labour Law Journal
Vol 15 1993 - 4 pg 26

3. Davis D.
"the Juridification of Industrial Relations in South Africa or Mike Tyson vs Johannes Voet"
(1991) 12 ILJ 1181

4. Du Toit D
"Democratising the Employment Relationship"
Stellenbosch Law Review
1993(3) pg 325

5. Jordaan B
"Industrial Pluralism and the approach of the Industrial Court"
(1989)10 ILJ 791

6. Kahn-Freund O.
"On Uses and Misuses of Comparative Law"
The Modern Law Review pg 27
1974

7. Klare K.
"Workplace Democracy and Market Reconstruction"
Catholic University Law Review pg 1
1988

8. Landman A
"Judge made law: A gloss to the requirement for a legal strike"
(1991) 11 ILJ 274

9. Oliver M
"A Charter for Fundamental Rights for South Africa - Implications for Labour Law and Industrial Relations"
(1993) Tydskrif 651

10. Oliver M
"A New Labour Relations Act:
Essential characteristics and implications for
the profession"
De Rebus pg 357
June 1995

11. O'Regan C.
"Possibilities for Worker Participation in
Corporate Decision-making in Labour Law"
(1991) 12 ILJ 113

12. Rood M.
"Worker's Participation: New initiatives at
European Level"
Internation Journal of Comparative Labour Law
and Industrial Relations"
Vol 8 1992 pg 319

13. Schregle J
"Collective Bargaining and Worker's
Participation - The Position of the ILO"
Comparative Labour Law Journal
Vol 14 1992 - 3 pg 431

14. Thompson C
"Bargaining and Legal Intervention"
(1987) 8 ILJ 1

15. Visser D.
"The Absoluteness of Ownership - The South African
Common law in Perspective"
1985 Act Juridica 39

16. Weidemann H.
"Co-determination by Workers in German Enterprises"
American Journal of Comparative Law
Vol 28 1980 pg 79

DISCUSSION PAPER

Jeremy Baskin and Vishwas Satgar
the Africa's New Labour Relations Act: a critical assessment and
challenges of labour"
Naledi
Johannesburg
September 1995