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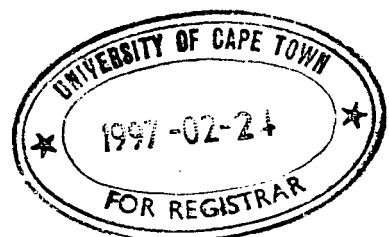
**WORKER PARTICIPATION FROM A COMPARATIVE PERSPECTIVE:  
LESSONS FOR SOUTH AFRICA**

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**Bradley Conradie**

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## ABSTRACT

The concept of worker participation in industry can be regarded as a new addition to South African labour law. The new Labour Relations Act provides for the establishment of workplace forums in an attempt to give workers a say in the running of the enterprises in which they work. As this concept is a new one in our labour law, in drafting the relevant provisions of the Act much emphasis was placed on the experiences in other jurisdictions in which worker participation systems have been in existence for quite some time. Any study of worker participation in general as well as in relation to South Africa will be incomplete if these experiences are not taken into consideration.

The European experience, in particular that of Germany was heavily drawn on by the drafters of the new Act and it will undoubtedly continue to be a valuable source of information on worker participation in the future. As far as the African experience is concerned research in this area is sorely lacking making it extremely difficult to properly ascertain the extent to which worker participation is taking place in Africa.

The development of worker participation in terms of the Act could

be severely limited if the trade union movement does not lend its support to the concept and accordingly refuse to trigger the establishment of workplace forums.

At this early stage in the existence of the new Act it is not possible to determine with any accuracy whether workplace forums will be a suitable vehicle for worker participation in South Africa. What is certain, however, is that any attempt to understand worker participation in South Africa will be incomplete in the absence of an international perspective.

## 1. INTRODUCTION

Historically South Africa's system of industrial relations can be described as extremely adversarial in nature. It is a system which was characterised by tough bargaining and a high level of strike action and litigation in the courts.<sup>1</sup> With our re-entry into international markets which are highly competitive with increasing emphasis being placed on flexible production patterns we need to move away from an adversarial industrial relations system to one which is more participative and problem solving in nature. According to the drafters of the new Labour Relations Act (LRA),<sup>2</sup> if we are to successfully restructure our industries in this direction then management and labour must find new ways of dealing with each other.<sup>3</sup> Their solution to the problem seems to lie in the introduction of workplace forums.

Workplace forums are, however, but one of many forms of worker participation. Worker participation may be confined to a particular enterprise or may be extended to social policy participation between enterprises. Within the enterprise it could range from participation at workstation level or direct supervisory-employee relations around daily tasks to high level participation involving elected worker representatives.<sup>4</sup>

In what follows we will firstly look at the concept of worker

participation in general. Thereafter we will look at the Swedish system of worker participation followed by a general overview of the position in Africa. Finally we will look at the salient features of both the German and South African systems of worker participation in an attempt to see to what extent they are similar and to what extent they differ.

At this point it is pertinent to note that the making of comparisons in labour law is both difficult and dangerous given that it is not useful to examine any aspect of foreign labour law in isolation of its institutional and social context.<sup>5</sup> However, be that as it may, such comparisons are valuable given that they help us better understand our own system or aspects thereof by seeing it from a different perspective. This better understanding enables us to identify weaknesses in our own system and as such to make the necessary changes. It also helps identify possible limitations on certain aspects of our system and very importantly can provide suggestions for improvement.<sup>6</sup> All this is highly relevant to the introduction of workplace forums in South Africa given that it is a new concept in our labour law.

## 2. WORKER PARTICIPATION IN GENERAL

### 2.1. Overview

Worker participation is a phenomenon which is widespread internationally, appearing in various political and economic systems. The development of worker participation has not been a systematic one and as such there is no coherent approach to it by the various nations which subscribe to it. Long before the commencement of the new Labour Relations Act academics and other interested parties have looked to this international development with the aim of devising a South African model. Not surprisingly, it is submitted, any particular model which was looked at depended on the political and economic views of those looking to develop a model of worker participation in South Africa. Thus, according to Anstey, those in the trade union movement and 'socialist leaning academics' looked to Yugoslavia's system of worker self-management, to the Mondragon experiences in Spain and the social democracies of Norway and Sweden for direction. Employers and more capitalist orientated academics on the other hand turned to the United Kingdom, the United States and Japan for their inspiration.<sup>7</sup> One can thus say that each of the parties mentioned above are influenced by their own ideologies, interests and world views in searching for a model. Recognition of this aspect is important as it is often overlooked that worker participation systems in any

country are normally products of 'historical compromises, revolutions, economic crises, experiments and power exchanges'<sup>8</sup>. Taken to its logical conclusion this will suggest that no worker participation system is in final form, but rather that it is in a process of ongoing transition.

The idea of worker participation was first suggested over forty years ago as a means of increasing productivity and in response to employees' demands for an input in the running of the enterprises in which they worked. The idea of worker participation was initially met with much resistance and suspicion by employers.<sup>9</sup> The 1960s saw a change in attitudes towards worker participation by employers. Across Europe support was growing for the idea of giving workers a greater say in the decisions which affected their jobs and working environment. According to O' Kelly, "In many countries legislation was introduced to give workers some limited powers of access to information and the right to be consulted on workplace decisions. There was a growing recognition of the need to involve people in the decisions related to their work and workplaces."<sup>10</sup>

The 1970s and the early 1980s were characterised by government initiatives to promote greater employee involvement. This was

evident in Germany, France and the Scandinavian countries. Similar moves were underway at the International Labour Organisation (ILO) who gave effect to the idea that management and workers within an undertaking should recognise the importance of a climate of mutual understanding and confidence in the enterprise that is favourable to efficiencies and worker aspirations.<sup>11</sup> The ILO was also instrumental in the promotion of the quality of working life.<sup>12</sup>

Managements' attitude towards worker participation and in particular representative participation became more positive towards the end of the 1980s. This change in attitude can be coupled to the realisation on the part of management that there are economic advantages associated with this style of management. It is seen as a means of improving the competitiveness of the enterprise as well as increasing productivity.<sup>13</sup>

The further point to be made and perhaps of more importance for South Africa is that the process outlined above is the norm as opposed to the development of a worker participation system via a mere legislative enactment. In South Africa, as will become apparent later, there has been no historical development of the worker participation model contained in the new Act. However,

one must qualify this statement in so far as one accepts that in South Africa collective bargaining had been the chosen form of worker participation.

## 2.2. Forms of Worker Participation

Before we can properly understand the phenomenon worker participation we have to know what is meant by the term 'worker participation'. It is submitted that there is no universally accepted meaning of these words. However, Salamon proposes three quite different meanings. According to him worker participation means;

1. "a socio-political concept or philosophy of industrial organisation' which generally reflects an approach which ultimately sees a form of employee self-management prevailing in organisations which are either owned by employees or the state. Management is ideally through a group of elected representatives who are responsible for organisational decision-making. In order to implement such a system major changes in authority and economic relations in organisations and the wider society are required.

2. a generic term to encompass all processes and

institutions of employee influence' within an organisation. This could range from simple managerial information giving through joint consultation on the one hand, to collective bargaining, works councils and forms of worker control on the other.

3. a term denoting a phase in the evolutionary development of the traditional joint regulation process. This envisages moving beyond traditional collective bargaining and mere information sharing and consultation to shared responsibility and decision making. What is regarded as real participation."<sup>14</sup>

What is evident from all three meanings outlined above is that worker participation involves a style of management which gives effect to the need and right of employees to be involved in the decision-making process in the enterprise beyond that normally covered by collective bargaining. What is important to note from the above deduction is that worker participation should be regarded as an extension of traditional collective bargaining rather than as a replacement for it.

Despite the different approaches to worker participation by countries based on their political and economic persuasions at

least four forms of worker participation can be identified as most widely used - shop-floor participation, works councils, collective bargaining and representation on company boards.<sup>15</sup> However, beyond the above forms specialised participative systems have been developed to deal with, inter alia, health and safety matters, productivity, job classification and pension funds.<sup>16</sup>

Understanding of the various forms of participation might be enhanced by differentiating between three constituent elements.

Firstly the method or extent of participation. Direct participation reflecting active individual involvement in the decision-making process and indirect participation taking place through elected representatives.

Secondly the level in the organisation. Participation can range from work station to board level participation.

Thirdly, the scope of participation. Lower level, direct forms of participation tend to be task centred and as such primarily concerned with the operational work situation. On the other hand higher level indirect forms of participation tend to be power centred in that it is focused on managerial authority and

decisions which determine the environment within which operational decisions have to be made.<sup>17</sup>

### 2.3. Worker Participation Options

#### 2.3.1. *Worker Directors*

Company boards by their structure and nature are regarded as plausible candidates for the location of strategic power. They have an apparent tangibility as a decision-making group and as such can be associated with industrial democracy. The West German system of worker participation is the origin of the concept of worker directors. The co-determination Acts of 1951 and 1976 entrenched the system of worker directors in organisations employing more than 2000 employees.<sup>18</sup> Worker directors are also operative in other European countries such as the Netherlands, Denmark and France.

In these countries the use of worker directors is seen by management as a means of establishing a coalition between workers and management with the aim of, inter alia, reducing conflict, raising employee awareness of business problems, reducing resistance to managerial decisions and improving decision-making.<sup>19</sup> However, there is also a management view that this form of worker participation raises issues pertaining to ownership rights, in particular the encroachment of such

rights. It is also opposed on efficiency grounds - worker directors will interfere with the proper conduct of company affairs due to their possible incompetence, inexperience or bias.<sup>20</sup>

What are the attitudes of workers in this regard? With regard to property rights it is argued that in the absence of a more fundamental transformation of ownership, worker directors would be worse than ineffective as representatives of labour, merely legitimating the existing system and the interests of management. In addition participation at this level could confuse the function of trade unions and affect their bargaining strength.<sup>21</sup>

The unions for their part are divided on the use of worker directors as a form of participation. There are those who see the use of worker directors as a challenge to the role of the trade union and as diluting the power of the trade unions. On the other hand there are those who argue that every opportunity should be taken to establish joint control at all levels in organisations and board participation is thus an attractive option.<sup>22</sup>

In order for board level representation to be relevant to the

democratization of work, two requirements must be fulfilled. Firstly there must be some significant shift in the pattern of decision-making and secondly the shift must broaden the distribution of power. What is the point of having representative bodies if the bodies have no power and the representatives no impact?

Essentially three types of boards can be identified in Europe.<sup>23</sup> Firstly, the supervisory board which is for all practical purposes a policy defining body. It lays down guidelines to be implemented by a lower-tier board. This brings us to our second board, the management board. This board sees to the implementation of policies and proposals and is regarded as having the ability to frustrate the supervisory board.<sup>24</sup> Thirdly, there is the unitary board which combines the previous two categories. However, it is argued that real power cannot be confidently located even in such a board which formally has ultimate authority. Decisions inevitably tend to be delegated to sub-committees.<sup>25</sup>

What are the main problems associated with the use of worker directors? According to Anstey worker directors face the reality that power and decision-making are likely to reside with senior management who have the expertise, knowledge and

current information required to run an operation. Power is delegated to them for purposes of daily decision-making. Boards for their part meet infrequently and are normally reliant on management for information and proposals. Their role is normally that of endorsing managements' decisions rather than playing a direct management role. Further there are problems of loyalty. To whom does the worker director owe his loyalty, to the company or the trade union and its members?<sup>26</sup>

Another vexing problem is the question as to whether boards initiate decisions or merely respond to proposals. If a body is to play a strategic role then it must have the capacity to take the initiative. Also of significance is the frequency of board meetings. It could be argued that a board which meets frequently has more influence than one which meets irregularly.<sup>27</sup>

What is it then that keeps the concept of worker directors alive? Is it the belief that although there are problems on a technical level, in principle the idea that ownership bestows rights on the representatives of capital is becoming less appealing? To this end there is a view that workers who invest their labour power in an enterprise have similar rights to

those of shareholders. Be that as it may this view is in direct conflict with the idea of property rights which underlies the company law of most countries.<sup>28</sup>

### **2.3.2. Works Councils**

The German system of worker participation is one which embraces works councils. This system will be concentrated on in detail below and as such only a very brief introduction to works councils will be given at this stage.

Works councils are not joint bodies but rather consist of elected workers' representatives only. It has the advisory and collective bargaining functions which are normally ascribed to trade unions. It may not bargain on remuneration and other conditions of employment as these are normally dealt with via collective agreements between trade unions and employers associations.<sup>29</sup>

### **2.3.3. Worker Controlled Enterprises**

There are those in the trade union movement who are of the view that worker control is the best form of worker participation. This view is largely influenced by ideological stances. Amongst this group there are on the one hand those who believe

that the full benefits of worker controlled enterprises can only be achieved if an entire society rejects capitalism. On the other hand there is the belief that worker-controlled enterprises can be developed in an evolutionary manner.<sup>30</sup>

It is submitted that worker-controlled enterprises in socialist economies are prone to certain problems. In some societies they have contributed to economic stagnation and misallocation of resources as more and more public funds are used to subsidise non-economically viable options. In market economies worker-controlled enterprises tend to be under-financed, lack competent management expertise and limit investment opportunities for worker-owners who have to put their savings back into an investment which may not offer them the best returns.<sup>31</sup>

Despite the above problems it is argued that worker controlled enterprises may prove useful in bridging the gaps between those anxious to participate in the economy and the current owners of capital anxious to see the survival of a market system. It offers a means of extending ownership and control of the means of production in a business rather than welfare spirit.<sup>32</sup>

#### **2.3.4. Employee Share Ownership**

Employee share ownership (ESOP) initiatives or programmes can be seen as a 'counter-thrust' to the concept of worker-controlled enterprises. These programmes have assumed prominence in both the United States and the United Kingdom over the past 15 to 20 years. The purpose of such schemes are diverse including inter alia wealth sharing, increasing motivation, job saving and the creation of a sense of common identity. Trade unions have been sceptical as far as ESOP programmes are concerned. Internationally they have voiced concerns to the effect that they are exposed to financial risk which is seldom associated with a greater say in decision-making or improved access to information. Further financial participation is largely unrelated to control of organisations and seen as possible co-optation attempts by employers.

Despite the above reservations it is submitted that ESOPs have taken off internationally. The reasons for their success overseas is said to be related to the extent to which they are part of a wider approach to participation by management, involve all employees and involve disclosure of information.<sup>33</sup>

#### **2.3.5. Shopfloor Participation**

It is submitted that direct worker participation whereby

workers are directly involved in work process issues is most favoured by employers. This system of participation occurs at low levels of organisation, is seen as able to improve productivity and organisational performance and is regarded as the least threatening form of worker participation as far as challenges to managerial control is concerned.

This is an approach which has been used in Japan since the 1950s to raise productivity and to improve labour-management relations. Out of this type of participation has come the concept of the quality circle which concentrates on quality control and the involving of workers in the operation decision-making process. It is submitted that this concept developed into a national movement which contributed to the transformation of the Japanese economy. Such success also has its origins in the fact that it fitted in with the cultural values of that country with its emphasis on collectivism, its acceptance by both the union movement and management in the spirit of nation building as well as the lifetime employment practices of many Japanese companies.

Similar attempts were made in the United States as they recognised the necessity of identifying more efficient production methods in the light of increased competition from

countries such as Japan. Two concepts developed in the American context - managerialism and quality of work-life (QWL).

With managerialism trade unions are identified as an obstacle or at least unnecessary for participation. Rather what managerialism requires is effective management leading to economic growth based on the co-ordinated independence of small groups operating in an autonomous manner as opposed to a bureaucratic work-rule approach. In place of the trade unions is a system of communication channels, the protection against the abuse of power by management, job security and personal planning and development.

The other approach, QWL, involves the recognition that while collective bargaining and unionism may be inappropriate to new challenges this does not mean that there is no longer a need for trade unions. Independent worker representation will still be required given that abuses of power will continue and grievances and conflicts will always be a part of the workplace. Thus managerialism cannot effectively replace trade unionism. However, there is still a challenge to the trade unions, ie, to move beyond collective bargaining and industrial action to other forms of representation and participation.

QWL programmes involve cooperation between capital and labour based on the common interest of the survival of the enterprise and its growth in an increasingly competitive environment. In order for these programmes to succeed dramatic changes are required. They include;

- the shifting of management styles at all levels;
- embarking on new levels of information sharing;
- the adjustment of authority relations;
- doing away with union bashing;
- unions moving beyond an adversarial role to organisational building.<sup>34</sup>

The above approach recognises that labour management relations are inherently adversarial and that as such compromises from both sides are required to achieve the goals of QWL programmes outlined above.

#### **2.4. Benefits of Worker Participation for Workers**

What are the benefits of worker participation for workers? According to Stephens it gives workers a stake in their job, fosters an identification of workers with their own enterprise, and gives them a say in the decisions which affect them.<sup>35</sup>

Ultimately the extent of the workers' share in the exercise of control depends firstly on the degree of decision-making power transferred to them. One can distinguish three types of participation according to the degree of decision-making power transferred to the workers:

- (a) joint consultation whereby workers have less than 50% of the power in the decision-making process with management;
- (b) co-determination whereby management and workers have equal say in the decision-making process and therefore have to work towards a compromised solution;
- (c) workers' control whereby workers have more than 50% of the power in the decision-making process.<sup>36</sup>

Secondly, workers' share in the exercise of control depends on the range of decisions in which they participate. What the following table illustrates is that the higher up in the order a decision in which workers participate is, the greater the extent of control exercised by them in the enterprise. <sup>37</sup>

EXTENT OF CONTROL	RANGE OF DECISIONS
<i>Highest</i> (1)	Distribution of profits, Investments, Financing, Budgeting.
(2)	Choice of products, Quality of products, Quantity of products.
(3)	Technology, Organisation, Planning, Administrative Routines.
(4)	Hiring, Firing, Distribution of work tasks.
(5)	Work speed, Work methods, Choice of tools, Ordering of tasks, etc. <sup>38</sup>
<i>Lowest</i> (6)	Work and annual leave schedules, Administration of welfare services. <sup>39</sup>

Thirdly, the extent of workers' control is determined by the direction in which decisions can be influenced through the various types of participation. Do workers only have negative decision-making power whereby they can only veto or dispute managements' decisions? Do they have positive decision-making power whereby they too can raise issues and initiate the decision-making process? It is submitted that where a

participative system is introduced via legislation or collective agreement that participation tends to be in both directions.<sup>40</sup> As we will see later this does not appear to be the position in South Africa despite the fact that our participatory structure has its origins in legislation.

## 2.5. WORKERS' ATTITUDES TO PARTICIPATION

What are workers' attitudes to participation? It is submitted that participative decision-making is most often introduced because of its supposed consequences. Participation leads to more satisfaction and a greater feeling of involvement, better use of knowledge and abilities, greater legitimization of decisions or more efficient organisation or higher productivity. The above is known as the functional democratization of the workplace.<sup>41</sup> There is also what is known as the structural democratization of the workplace which involves the change in the distribution of power in favour of lower level participants in an organisation. Efforts in this direction are said to often increase conflict and dissatisfaction amongst workers given that traditionally subordinate people place greater emphasis on the satisfaction of their own interests - interests which cannot always be realised. The above distinction points to possible outcomes of participation. In this regard the following workers'

responses to participation can be distinguished (positive and negative outcomes);

1. **Primary individual-level outcomes** - feelings of identification and involvement, satisfaction with the job or company in general, improved access to information regarding the company, feelings of increased power. Feelings of powerlessness, frustration and alienation;

2. **Secondary individual-level outcomes** - higher motivation, less absenteeism, higher turnover, increased desire for participation and influence. Lower motivation, higher absenteeism, lower turnover, desire for less participation and influence;

3. **Company structure and process outcomes** - less conflict because different interests are better tuned to each other, power equalization, more control through information and anticipation of employee behaviour, mutual trust, better information-sharing and communication, more efficient decision-making through better skill utilization, better implementation of decisions. On the other hand, more conflict because of incompatible interests.<sup>42</sup>

The Industrial Democracy in Europe (IDE) International Research Group report sums up the above outcomes by stating that "All these outcomes can contribute, positively or negatively to "the promotion of the interests of top management and the company (efficiency, flexibility, etc.), the promotion of the interests of workers and unions, and changes in societal norms and values concerning participation in the distribution of influence."<sup>43</sup>

What then are the main problems which have been identified by workers with regard to worker participation?

As far as representative participation is concerned problems have been identified pertaining to the concept of distant decision-making in general. To this end many employees consider that their participation in decision-making concerning general policy issues is too small. At a minimum employees would like the opportunity to be informed and to discuss these issues. Further there are also problems relating to the extent to which representatives should be involved and the types of decisions they should participate in making.<sup>44</sup>

There are also problems relating to the attitude of workers to a representative system and to their representatives. Although

views in this regard are divergent certain general problems can be identified. Rank and file employees feel that they do not know much about the work of their representatives. This problem could be associated with the fact that in some systems representative participation is established by management or by legislation. Workers lack of interest might thus be due to the fact that the bodies were not intended to be in their interests and/or that the establishment of these bodies are quite authoritarian. Employees often show a lack of interest in the work of their representatives. It is submitted that this might be due to workers' perceptions that representatives rarely have much influence over policy decisions in organisations and as such are dissatisfied and disinterested. Of interest for South Africa is the fact that in countries such as Scandinavia representative bodies are established by collective bargaining where unions play a dominant role. Through the involvement of the unions workers see representative bodies as instruments for promoting their interests. In addition to the above problems there is also the problem of the often marginal influence that representatives have on policy decision-making.<sup>45</sup>

What are the problems as perceived by the representatives themselves? The greatest problem for representatives is said

to be their conflicting roles as a result of their involvement in policy decision-making on the one hand and their relationship to the electorate on the other. Such conflict leaving the representative with a feeling of powerlessness and alienation. However, the picture of the representative is not all grim. Some studies have indicated a growing professionalism among representatives as well as an emergence of career patterns as representatives. There are thus reasons for representatives showing more interest in participatory systems than the average employee.<sup>46</sup>

## **2.6. Trade Union Responses to Worker Participation**

Trade unionists both here and abroad have questioned whether worker participation really allows workers a say in areas normally the domain of managerial prerogative or whether it is simply a strategy by management to co-opt workers.

As referred to above workers' participation in management has definite advantages for management. It can secure greater employee support and commitment for management decisions, reduce conflict by making workers aware of the problems and constraints experienced by management.

The unions for their part feel that participation could inhibit their ability to exhibit an equal but opposite reaction to managerial decisions from an independent standpoint. The trade union movement largely seeing its role as one of confrontation with management through collective bargaining and that participation as such is inconsistent with this role.<sup>47</sup>

Despite the above reservations there has been a trend within certain unions to opt for participation on the basis that workers should seek to establish joint control at all levels of organisation where decisions are made which affect employees. In Germany a system of Co-determination existed in the West since the 1920s. It is submitted that here support for participation by the unions was based on the rationale that workers claim to a share in the economic decision-making process should be derived from the fact that workers provide the labour for economic production.<sup>48</sup>

In Sweden the approach is different. Here the trade unions accepted in 1972 that two worker representatives should serve on the boards of companies above a certain size. The aim is not parity representation on company boards but rather to present a worker perspective on issues and to glean information of use to the union.<sup>49</sup>

Prior to the commencement of the new Labour Relations Act the debate had not really crystallised in South Africa due to the limited forms of worker participation on offer. Participation in most companies in South Africa was limited to lower levels of participation. It is submitted that South African managers, not surprisingly given the international trend, saw workers participation as inter alia, a vehicle for attaining higher productivity, reducing strike action and improving employee loyalty. Labours' response to worker participation in this context is also not surprising. They are highly sceptical of the use of quality circles for example. They regard this form of worker participation as trivial even though workers may be stimulated and even flattered by the opportunity to make suggestions and help to solve problems.<sup>50</sup>

What is the trade union movements' attitude towards worker ownership of enterprises or ESOP's? It is submitted that part-ownership through ESOP's contains an element of risk for the trade union movement. The system having been designed and implemented by industrialists whose main pursuit is not the interests of workers but rather the stabilization of capitalism. It also leads to certain contradictions as far as the trade union movement is concerned. Their loyalties have been to the interests of workers primarily fighting for wage

increases. However, if workers are also owners such wage increases may limit capital reinvestment and affect company performance. This obviously affects workers' interests especially where they hold a substantial stake in the enterprise.<sup>51</sup> Further responses from the trade unions with regard to ESOPs were that they were seen as attempts to co-opt workers to a 'management ideology' which could compromise union strength, that ESOP's amount to participation in capitalist forms of ownership which are regarded as fundamentally unequal and that workers have a marginal influence over the corporate decision-making process.<sup>52</sup>

Jay Naidoo, then general secretary of Cosatu summed up their position with regard to ESOP's as follows;

"We are essentially opposed to the idea. Fundamental issues must be redressed first. We're struggling for a living wage, let alone considering buying shares, which we see as perpetuating inequality. Equity participation doesn't redress the fundamental inequalities in South African society and certainly won't resolve the country's unemployment crisis. This will require a restructuring of the economy."<sup>53</sup>

On the other hand NACTU's position in this regard was;

"We believe in meaningful participation with clout. Equity participation is ok only if accompanied by a mechanism which allows participation in decision -making, planning, and policy formulation. If workers are offered share options, they must have representation at board level. Management musn't offer equity as a panacea."<sup>54</sup>

The response of the trade union movement to the system of worker participation as proposed by the new Act will be canvassed later.

### **2.7. The Case Against Worker Participation**

There is an argument that just as political democracy is based on the existence of an opposition so is industrial democracy based on the existence of an opposition within an industry to the power of management.<sup>55</sup> This opposition comes from none other than the trade union movement. The most important function of trade unions is said to be to defend and promote the interests of its workers and to oppose management and employers on behalf of their members.<sup>56</sup> According to this approach industrial democracy is viewed as no more than the existence of a trade union strong enough to oppose management

and a management that accepts trade unionism as an opposition and is willing to compromise and to come to terms with it in the interests of industrial harmony and unity.<sup>57</sup> Having established this role for the trade union movement reasons are advanced as to why they should never share the job of management with management. It is firstly argued that trade unions lack the technical ability to administer industry and are thus already precluded from participation. Hardly any of those who represent industry have the commercial experience to run a large enterprise. Secondly, there is the question of democracy within the trade unions. It is submitted that trade unions in their pursuit of their workers' interests often violate democratic procedures. While, so the story goes, these violations may be permitted within the union movement they will be intolerable in the realm of managerial responsibility. Finally any policy which would undermine the independence of trade unions would deflect union policy from its proper role as opposition and hence undermine industrial democracy.<sup>58</sup>

Any threat to the role of the trade union as an independent opposition to management is thus, in the light of the above argument a threat to industrial democracy. The major criticism of the above reservations is the simplistic and inadequate definition given to industrial democracy - ie the idea that the

mere existence of an opposition guarantees industrial democracy.

#### 2.8. SA Approach to Worker Participation - Pre-1995 LRA

As mentioned above collective bargaining is the form of worker participation which South Africa followed. This is not surprising if one considers that on an international level collective bargaining is the most prevalent form of worker participation. It may be used under different circumstances by different means and even under restrictions but it remains one of the few forms of worker participation which is not limited by ideological and national boundaries and can thus be used almost anywhere in the world.<sup>59</sup>

In South Africa following the reforms ushered in by the Wiehahn Commission an independent trade union structure came to the fore. This movement was wary of co-optation by the then apartheid state, white labour and white capital. In the eighties this trade union movement vigorously involved itself in remoulding the collective bargaining system. They took bargaining to new levels (plant, company and enterprise), achieved new labour rights through the industrial court, raised wage levels and generally had a dramatic influence on personnel practices.<sup>60</sup>

This approach by the trade unions placed a lot of pressure on many employers. This coupled with increased economic and political pressure on them from abroad saw a shift from 'coercive or paternalistic' unitarism towards more democratic management styles.

Of the major problems of using collective bargaining as a system of worker participation in South Africa were, and probably still is, low growth rates, low investment confidence and productivity levels, high inflation and capital flight, social welfare problems relating to housing, education and health.<sup>61</sup> All of these are in some way or other linked to the legacy of apartheid which prevailed in South Africa. As is evident today these problems have transcended the eradication of apartheid. It is submitted that if labour and capital is to play a part in solving these problems then they have to move beyond mere collective bargaining to a suitable form of worker participation to enjoy any degree of success. Collective bargaining by its very nature is too adversarial to be suited to the task and a more cooperative approach is essential. A shift must thus be evidenced from a relationship between capital and labour characterised by annual bouts of adversarial exchange to one which places greater emphasis on the daily relations of the workplace and consultation and joint decision-

making on matters which affect both parties.

### 3. The Swedish Approach to Worker Participation

#### 3.1. Introduction

We will now turn our attention to the Swedish approach to worker participation. Worker participation in Sweden is based on the principle of freedom of choice of employees. According to section 3 of the Swedish Act on Association and Negotiation,<sup>62</sup> "The right of association shall not be infringed, and an association shall not be bound to tolerate any infringement of the right of association which constitutes interference with its activities."<sup>63</sup>

Participation takes place through collective negotiations. Whether such negotiations are to take place and what unions are to act as representatives depends on the free choice of the employees. Those who are to serve as negotiators are selected using union procedures as determined by union members.<sup>64</sup>

Participation in Sweden at all levels is through the union and representation at enterprise or plant level is closely linked with the union which made the collective agreement. Such collective agreements are negotiated by national unions on an

industry wide basis. In terms of the Act on the Joint Regulation of Working Life of 1976 (Co-determination Act)<sup>65</sup> the legal right to co-determine at the enterprise level belongs almost exclusively to unions that have collective agreements. In this regard section 11 states that, "Before an employer decides on an important alteration to his activity, he shall, on his own initiative, negotiate with an organisation of employees in relation to which he is bound by collective agreement". The only exception occurs in terms of section 13 of the above Act when the problem involves only individuals belonging to another union. As we shall see later in Sweden there is no such dual system as exists in Germany in terms of which wages and other economic terms are negotiated by the union in a national agreement whereas decisions at the enterprise or plant level are negotiated by works councils which are not part of the union but created by statute and legally independent of the union.<sup>66</sup>

The effectiveness of the employees' voice depends in the first instance on their persuasive power during negotiations and failing that on the economic pressure which they can bring to bear on the employer.<sup>67</sup>

The 1976 Act referred to above extended the collective

agreement topics from the historic wages and economic terms to include the negotiation of a co-determination agreement providing for union participation in management decisions.<sup>68</sup> The collective agreement creates a statutory no-strike obligation on the economic terms included in the agreement. However, during the contract period the union is free to strike on co-determination issues not included in the agreement.<sup>69</sup> This contrasts with the German system where the works council has the right to negotiate on a wide range of topics but there is no strike option whatsoever. Where agreement cannot be reached the dispute is resolved through arbitration by a neutral party.<sup>70</sup>

### **3.2. Completeness of Coverage**

In Sweden ninety-five percent of all blue collar workers and seventy-five percent of all salaried employees belong to a trade union. Most blue collar workers belonging to unions affiliated with the Swedish Confederation of Trade Unions (Landsorganisationen i Sverige - LO) and white collar workers to unions affiliated to the Central Organisation of Salaried Employees (TCO).<sup>71</sup> These figures leads one to the conclusion that almost every employee in Sweden is a member of a trade union and included in the participation system. What are the reasons for this near completeness of coverage in Sweden? It

is submitted that in Sweden, the vast majority of the workers choose to join a trade union, a trend explainable partly through cultural attitudes towards joining organisations, collective action and social responsibility. A more interesting factor, however, is the attitudes and practices of employers in Sweden. Universally these attitudes are important as it will influence an employees readiness to join a trade union as employees may fear victimisation from employers. This does not appear to happen in Sweden. According to Summers;

"It would be a rare employer in Sweden who would try and discourage its employees from joining a union or persuade them that they may be better off without collective bargaining. Such an employer would be considered a pariah by other employers."<sup>72</sup>

There thus appears to be a fair amount of social pressure on employers not to discourage the unionization of their workers and to participate in collective bargaining. There are also historical reasons for employers' attitudes. In 1906 management and labour, amidst continuing conflict, worked out an agreement known as the December Compromise.<sup>73</sup> One part of the compromise entailed that employers would explicitly accept unions and collective bargaining. The other part of the

compromise provided that the employer is entitled to direct and distribute the work, to hire and dismiss workers at will, and to employ workers whether they are organised or not. It is thus submitted that employers made possible and encouraged the growth of Swedish unions and collective agreements. Unions in turn agreed to limit collective bargaining to wages, hours and other economic terms and as such not interfering with the management of the enterprise. (*paragraph 32*)<sup>74</sup> There was, however, one significant encroachment on the employers' entitlements referred to above. In 1964 the Basic Agreement of 1938<sup>75</sup> was amended limiting the employers' right to discharge individual employees and provided for binding arbitration on whether the employer had material grounds for discharge.<sup>76</sup> Beyond this *intrusion* there was no willingness on the part of unions to curb management prerogative. They accepted, albeit grudgingly the employers' right to decide matters beyond the economic terms regulated by collective agreement.<sup>77</sup>

### 3.3. Centralization

The Swedish system of collective bargaining can be regarded as a centralised one where national industrial agreements are negotiated between national unions and national employer organisations. In this system plant organisation is weak or

almost nonexistent.

Paragraph 32 referred to above also played a part. By limiting collective bargaining to wages and other economic terms it encouraged bargaining by industry on a national level. Local or regional variations as required could be contained in the national industry agreement. There was thus little need for local agreements on substantial issues.<sup>78</sup>

Comprehensiveness of unionization in Sweden coupled with a recognition of a need for a wage policy that would help provide economic stability and full employment also contributed to centralization.<sup>79</sup> Central negotiations enable unions to seek through collective bargaining to lift the wages of employees in low wage industries thus attempting to reduce disparities in earnings. This can only be done through national inter-industry bargaining.<sup>80</sup>

Does the above centralization really exist given the provisions of the Swedish co-determination Act of 1976? This Act recognises that co-determination at workplace level requires a substantial measure of decentralisation. The right to negotiate concerning changes in the activities of the enterprise and changes in the work or employment conditions of

employees are seen to belong in the first instance to the local union. Only if agreement is not reached at this level is negotiation to take place at central level.<sup>81</sup> Section 36 of the Act provides that the power to exercise the right of priority of interpretation<sup>82</sup> belong in the first instance to the union. In terms of section 20 the employer has a duty to the local union to provide information concerning the activities of the enterprise. It would appear that the Act requires that primary authority and responsibility for co-determination be placed at the local level. It is further submitted that both employers and unions seem to agree that the functions of co-determination contemplated by the Act must be performed by the local union dealing directly with the individual employer.<sup>83</sup>

In effect what the statute contemplates is that collective agreements concerning wages and other economic terms be negotiated centrally while management decisions concerning the workplace and the enterprise be negotiated locally.

#### **3.4. The Scope of Participation**

Prior to 1976 the scope of the legal duty to negotiate was undefined and of no practical concern. After 1976 section 10

of the Co-determination Act redefined the unions' right to negotiate to include "any matter relating to the relationship between the employer and any member of the organisation who is or has been employed by that employer." It would appear that the subjects on which the union can require the employer to negotiate are practically unlimited. Section 11 of the Act imposes on the employer a primary duty to negotiate, ie a duty to initiate negotiations before taking action.<sup>84</sup> This duty in terms of the section includes negotiations before making "an important alteration to his activity" or any "alteration of working or employment conditions for employees." It is submitted that these words are intended to cover those decisions that unions would typically wish to have an opportunity to negotiate about such as the opening of new plants, reducing operations, relocating the enterprise and major investment decisions. The Labour Court has added to this by placing a duty on the employer to negotiate before, inter alia, introducing new types of machinery, shifting control of a plant from one subsidiary to another, selling the company or hiring a new managing director.<sup>85</sup>

It is important to note, however, that employers are empowered to use their bargaining power to reduce the required scope of negotiations. Section 4 of the Co-determination Act provides

that the employer can negotiate for a provision in a collective agreement that certain matters be within its unilateral control during the contract term. A demand for such a clause could be supported by a lockout.

No right to co-determination is effective in the absence of a right to information. Section 19 of the Co-determination Act requires the employer to take the initiative to regularly provide the union with relevant information. The union is accordingly entitled to all relevant information including, inter alia, the salaries of executives, unit costs of production, number of units produced, sale price per unit and the profit margin. The union is further entitled to examine the books and accounts and to verify this information.<sup>86</sup>

Employees in Sweden also enjoy co-determination at board level. The Act on Board Representation for Employees of Joint Stock Companies and Cooperative Associations of 1972 gave employees the right to elect two members to sit on the board. This in effect gave recognition to the idea that employees are partners in the enterprise and as such entitled to a voice in all decisions of the enterprise.<sup>87</sup>

### 3.5. The Effectiveness of Participation

#### 3.5.1. *Wages and Economic Terms*

In Sweden disputes over wages and other economic terms may be resolved by economic conflict. The effectiveness of the employees voice depends effectively on the effectiveness of the strike or lockout. Given that both the strike and lockout are extremely powerful weapons in any industry, just how extensively are these weapons used in Sweden? It is submitted that resort to such action is limited. In the first place centralization of negotiations, centralized control over the strike and the use of sympathetic economic action largely precludes open economic conflict. A strike in one enterprise will inevitably be countered by a lockout in another related industry, which in turn will be countered by a strike in yet another industry. This resort to sympathetic action thus limits recourse to industrial action.<sup>88</sup> From the above it appears that in Sweden the strike and lockout are weapons of mutual destruction and as such other means of resolving differences, such as negotiation, should be used.

#### 3.5.2. *Non-economic Terms*

What is the position with regard to non-economic terms? In Sweden there is a duty on the employer not to make unilateral changes without first bargaining with the unions until it appears that further negotiations will be fruitless - only then

may he make the change. The employer is responsible for initiating negotiations and must negotiate in good faith.<sup>89</sup> This in effect gives employees a powerful voice as they can influence management decisions before they are made. Their position is further strengthened by the fact that they can legally strike to influence the decision.<sup>90</sup> However, it would appear that the unions are also not keen to resort to industrial action to obtain co-determination agreements in this area. The primary reason is said to be that historically the unions have placed more emphasis on increasing wages than on non-economic issues. Secondly, although they support industrial democracy, and made demands in this regard, they have been unwilling to strike over it. They would rather prefer to see the ideals of industrial democracy achieved through legislation and negotiation than through economic force. This is not that hard to understand if one considers what was mentioned above, i.e. the willingness of employers in Sweden to listen to and accept employees as partners in the enterprise.

What is the position at board level? Employees do not have enough votes to influence the outcome of management board decisions and as such can only effectively participate through persuasion. However, it is submitted that at this level

persuasion is of limited effectiveness and the primary value of board representation is to give the union an indication of problems within the enterprise and to give them access to information pertaining to the enterprises plans and activities.<sup>91</sup>

Where effective participation does take place in Sweden is in matters concerning safety, health and other matters relating to the work environment. Safety representatives must be named in all workplaces employing five or more employees and safety committees in workplaces with fifty or more employees. These representatives or committees have similar rights as those of the unions under the Co-determination Act. These rights include inter alia, "the right to participate in planning, the right to be notified before significant changes are made, and the right to all relevant information."<sup>92</sup> In addition to the above powers they also have certain decision-making powers. In this regard where there is an immediate and serious danger to life and health they can order the suspension of work pending a decision by the Labour Inspectorate.<sup>93</sup>

### **3.6 Participation by Employees in Employee Representation**

We will now look at the role which employees play in participation in Sweden. It is submitted that participation

in Sweden cannot be direct and must be through the trade union. Thus measuring employee participation in the decision-making process in effect means measuring employee participation in the decisions of the unions that represent them. As discussed earlier most union activity in Sweden takes place at a central level and as such decision-making is far removed from the employees. Employees thus effectively have no real voice in decisions of the union and more importantly no direct means of participation. Employees can only delegate to union officials three or four levels removed from them the authority to do what the officials believe is best.<sup>94</sup> Although employees have no effective say at the national or central level they do have an effective voice at enterprise or workplace level. According to Summers;

"Here grievances are settled, piece-rates are negotiated, increases beyond those provided by the central agreement are obtained, and individual salaries for salaried employees are determined. This is done by the union club or other union workplace organization or with union representatives with whom the employees have personal contact."<sup>95</sup>

Where direct participation does take place in Sweden is when

dealing with non-economic issues. These decisions are largely made by workplace organisations and as such as close to the employees as possible.<sup>96</sup> Decisions are thus placed in the hands of representatives directly elected by the employees, personally known to the employees and readily available.

The biggest problem with regard to employee participation in Sweden is their centralised system of representation referred to above. It is submitted that co-determination requires a decentralized union structure with decision-making at the local level. This problem, however, has been acknowledged. According to the report of the 1981 Confederation of Labour Congress, "it is not enough...to say that democracy functions if elected representatives reflect the electors' or the members' views. Democracy functions fully first when the sharp boundary between the electors/members and elected ceases to exist, when the whole collectivity conceives itself as participants in the same democratic process."<sup>97</sup>

## **4. African Experience**

### **4.1. Brief Overview**

The discussion of worker participation thus far as well as that which is to follow has been premised on the European experience

of worker participation. This is inevitable given that such structures have existed in certain European countries for several decades now. It is also necessary given that the South African system was designed with strong influences from these European models.<sup>98</sup> However having said that one must not lose sight of the fact that South Africa is nestled at the tip of Africa and hence a brief overview of the African experience of worker participation is more than appropriate.<sup>99</sup>

The political independence which swept through Africa created possibilities for fundamental changes in labour relations. Having (supposedly) broken free from the shackles of colonialism the new independent governments had the opportunity to give shape to labour relations. According to Kester;

"Inspired in many cases by European experience and theory (Yugoslavia was an important reference point) workers' participation and self-management (Algeria) were introduced with the expectation that such systems would create democratic practices and institutions in the overall process of socio-economic development."<sup>100</sup>

This policy fitted in with current ideologies which were geared towards self-reliance and self-determination. Participation

and self-management thus became part of a broader overall strategy for change and development towards a new socio-economic order.

It is submitted that due mainly to ideological reasons participatory development was initially laid on a weak basis. This is due to the fact that where participation was introduced this was done largely by (presidential) decrees as opposed to legislative enactments. Where workers' participation is not legalised it can be regarded as defenceless. In the few cases where it was done via legislation, legal powers were not 'strong enough to counter company laws inherited from colonial times'. This obviously presented a problem as the participation process was thus vulnerable to manipulation by government, employers, and management of public enterprise. In this context it is hardly surprising that participation started to reflect traditional managerial values as opposed to being an instrument for effective redistribution of power and income.<sup>101</sup>

In similar vein to the political deterioration which plagued so many of the newly independent African states was the deterioration of participation evidenced by a movement from economic and social liberation to manipulation and from manipulation to exploitation.

According to Kester "participation was now labelled 'responsible participation', especially in the former French colonies, co-opting trade unions for the execution of party policies, demanding industrial peace and higher productivity. Trade unions were side-tracked in certain countries and in other countries governments introduced works councils by legislation which gave equal or in practice more power to directly elected works committees or workers' councils than to trade unions (e.g. in Zambia and in Zimbabwe, where the trade union federations refused to become integrated in the party)."<sup>102</sup>

What becomes apparent is that workers' participation in Africa today is in a process of erosion.

However, it is submitted that this problem is not unique to Africa. The European experience of worker participation indicates that the concept was growing and dynamic in the 1960s and 1970s. The unemployment and deregulation of work contracts which accompanied the 1980s became priority worries and trade unions accordingly put full emphasis on collective bargaining leading to the stagnation of the development of workers participation. The governments response was similar to that of the trade unions while on the other hand there was a rapid rise

in management and employer-initiated forms of participation in organisation (quality circles etc.) and in profits and ownership. During all this management initiative, and lack of trade union support and commitment, the latter remained divided over aims, principles and forms of participation and as such did not exert much influence on the economic policy of the European Union.<sup>103</sup>

Returning to Africa a survey conducted indicated that among 2000 trade union representatives in Guinée, 96% declared themselves in favour of participation. Current research underway in Mali, Tanzania and Zimbabwe indicate similar results. What the research results in Africa has definitely revealed is that participation is seen as a necessary component of socio-economic development at various levels (workplace, local, regional and national). It also indicates that one of the main reasons for the past failures of development programmes is precisely because of the lack of effective and meaningful participation. This realisation was also recently made by the World Bank who admitted that they had overlooked the need for participation in initiating, designing and executing development projects at all levels.<sup>104</sup>

It is submitted that the challenge facing Africa as far as

participation is concerned is to find a way to give a new lease of life to participation in Africa. Responsible participation will have to be replaced by the development of democratic participation which must seek to introduce new values, aims and objectives. According to Kester, "Democratic participation has to create the conditions for new economic and social justice which is the necessary foundation for any democracy."<sup>105</sup>

#### **4.2. The Role of the African Workers' Participation Development Programme (APADEP)**

We will briefly look at the importance of this program for the development of worker participation in Africa. It was as a result of this organization that a joint programme of cooperation was launched between the Organization of African Trade Union Unity (OATUU), the Federation of Dutch Trade Unions (FNV) and the Institute of Social Studies (ISS) in 1981. The project's aim is to strengthen trade unions in Africa as they attempt to respond to emerging structures of trade union and worker participation. In order for trade unions to embark on meaningful and effective participation they have to acquire the necessary knowledge, experience and skill. A five-year programme was accordingly launched with the aim of making workers' participation an element of on-going trade union activity in Africa. Part of the programme was to assess

possibilities, establish priorities and examine concrete mechanisms', in addition to helping trade unions formulate and implement their own policies on participation, bearing in mind the interests of workers and society at large. In order to achieve these aims an education drive for inter alia, trade union leaders at national and enterprise level, workers' education instructors and worker representatives has to be embarked on. Further what is required is the development of research and other supporting activities which can be used in the development of policy formulation, education and trade union action. The education and research objectives are related in that they seek to 'mobilise and professionalise the education and research capacity on workers' participation, trade unionism and labour relations'.<sup>106</sup>

It is submitted that "the long-term objective of the project is to create an ongoing activity in Africa, on training, education and research on trade union and workers' participation, in response to developments in Africa."<sup>107</sup>

## 5. WORKER PARTICIPATION IN GERMANY AND SOUTH AFRICA

From a comparative perspective reference to the German model

of worker participation is crucial given that the drafters of our new Act were strongly influenced by this model. The German model is regarded as one of the oldest and most successful forms of worker participation and also capable of introducing democracy into an economy. In addition to this it is submitted that the success of the German economy can be linked to the participative nature of their industrial relations system.<sup>108</sup>

## **5.1. Historical Background**

### **5.1.1. Germany**

The institutionalisation of workers' participation in the management of German enterprises is over 70 years old. Both works councils and workers' representation on supervisory boards were introduced after the First World War under the new Weimar Republic, albeit that their rights in this regard were limited to some information and conciliation rights. Co-determination from this stage already was a political issue. The declared objective of the labour movement during the 1920s was the introduction of workers' participation in economic decisions. The idea was for industrial democracy to go hand in hand with political democracy.<sup>109</sup> The fact that trade unions' support for these structures were very strong turned out to be in the mutual interest of both parties with works councils becoming a powerful force in the larger companies and

trade union representatives gaining the most seats in works councils' elections. This formed a natural bond between works councils and trade unions.<sup>110</sup>

It is therefore not surprising that when the National Socialist regime came to power in 1933 that they dissolved works councils and trade unions thus effectively abolishing the first attempt to democratize company structures. However, after the Second World War works councils such as those which existed under the Weimar Republic were reintroduced by legislation of the allied powers and subsequently confirmed by Federal German Legislation. A general co-determination plan issued in the 1950s envisaged that the entire economy was to be run on a joint basis by employers and workers with equal representation. This was to take place at industry regional and national levels. This plan was never realised.<sup>111</sup>

In this period after the war, however, the iron and steel industry was placed under special trustee administration and parity between workers and shareholders' representatives on the supervisory boards was introduced. In 1976 parity representation on supervisory boards was extended to companies with more than 2000 workers.<sup>112</sup> However, despite a nation-wide strike the unions failed to secure a joint-decision-making

mechanism for the works councils. The Works Constitution Act of 1952 merely added some consultation rights and a conflict resolution mechanism. It was not until the power shift in government in 1972 in favour of the Social Democrats that the Works Constitution Act was amended and matters for joint decision-making included.<sup>113</sup>

### **5.1.2. South Africa**

There are those who argue that worker representation was introduced by the government in order to undermine the collective bargaining power of the unions between the 1950s and the 1970s. The submission is that the Native Labour Act of 1953 restricted black worker representation to enterprise level works committees and prohibited strike action on their part. Then in response to black labour militance in the 1970s the government expanded the existing works committee system by introducing liaison and coordinating committees to contain worker activism and to establish an alternative means of management-labour communication to trade unionism.<sup>114</sup>

On the other hand there are those who submit that the above resemblance between workplace forums and works committees are only superficial as closer inspection reveals that it did not amount to a statutory system of worker participation such as

that contemplated by the new Act.<sup>115</sup>

## 5.2. General Overview

In Germany worker participation takes place via worker representatives on the supervisory board and through the works council.

### 5.2.1. Supervisory Board

German company law makes provision for a two-tier board system in shareholder companies in the form of a supervisory board and a management board.<sup>116</sup> The supervisory board, whereby employees' representatives form an integral part of the company structure, is situated between the shareholders assembly and the management board. The supervisory boards' powers includes the determining of general company policy, supervising the activities of the management board of the company, approving financial statements and management board decisions in respect of issues such as the set up and relocation of plants, capital investments and the introduction of social measures outside of collective agreements.<sup>117</sup> This board is further responsible for the election of the members of the management board. The supervisory board, however, cannot make any decisions. This power rests with the management board alone which is empowered to run the company and to take decisions. Supervisory board

discussions are not made public but it is submitted that in most cases decisions are taken unanimously and that votes are avoided.<sup>118</sup>

Basically there are three different models of supervisory board representation. The model introduced for the coal mining, iron and steel industries in 1951 for companies with at least 1000 workers. The model introduced in 1952 for companies with a minimum of 500 workers and finally the 1976 model for companies with at least 2000 workers. It is submitted that the first model, for the coal mining, iron and steel industries, is the only one which gives the workers true equal representation. The second model only provides one third of the seats for workers' representatives. The 1976 model gives workers as many seats as owners but as will be discussed below this does not mean that true parity exists.<sup>119</sup>

With regard to the 1976 model, on the one side half the members of the supervisory board are elected by the shareholders at their annual meeting. The other half is elected by the employees. The employees' side is divided into internal and external representatives. The former coming from within the workforce and the latter coming from the trade union.<sup>120</sup> Worker representatives on the supervisory board are elected by the

employees of the company through a complicated electoral system. There are separate lists for wage earners and salaried staff, the number of worker representatives elected depending on the size of the enterprise. Where a company employs more than 20 000 workers a supervisory board consisting of 20 members is prescribed.<sup>121</sup>

However, despite this parity there are certain structural requirements which weigh decision-making in favour of the shareholders. The Act lays down that among the worker representatives there must be one elected by the employees (and representing them) who holds a managerial position. Not surprisingly the trade unions feel that this violates the parity principle as this representative will in all probability vote with the shareholders and not the workers. Unions are also dissatisfied with the provision that in the event of disagreement the chairperson of the supervisory board has two votes in order to break the deadlock.<sup>122</sup> Employers for their part are also not happy with the parity concept. The Confederation of German Employers' Association argues that parity destroys the equilibrium on both sides which is necessary for free collective bargaining to function. Further they feel that the collective bargaining problem and the infringement of the guarantee of ownership laid down in the

German constitution are arguments far stronger than any economic, socio-political objections because of their constitutional implications.<sup>123</sup> However, in the end result it is submitted that the position of the supervisory board is rather weak. The management board is said to have access to a huge staff of experts who can prepare their decisions in a way that makes it difficult for the supervisory board to function. In addition the supervisory board only meets infrequently and is composed of people who have many other responsibilities.<sup>124</sup>

Worker representatives on supervisory boards have the same rights and duties as the representatives of the shareholders. They thus receive the same emoluments, which varies depending on the company. However, as it is felt that they should not derive exclusive and personal benefit by virtue of their positions they are required to pay a certain percentage, fixed by the trade unions, into the assets of a special foundation which finances research, publicity and study grants in the field of co-determination.<sup>125</sup>

This level of participation is not a feature of the South African Act.

### 5.2.2. Works Councils

In Germany a works council can be established in any workplace which consists of at least five employees. The terms of office is four years and members of the works council cannot be removed by the employees but rather by labour court action.<sup>126</sup>

These councils are conceived as institutions distinct from trade unions. Works councils represent all workers of the plant whether organised or not. Unlike the supervisory board the works council is not a joint body but rather a counterpart to management consisting only of workers' representatives. The size of the works council depends on the number of workers in an industrial concern. There is a requirement placed on works councils by law that they have to co-operate in good faith with management. The resort to industrial action as a means of resolving conflict is consequently prohibited. Where conflicts do arise they have to be resolved by a special arbitration committee.<sup>127</sup>

Management and works councils are free to conclude what is known as works agreements on any matter relating to labour-management relations in the plant. However, works councils have to have statutory power to compel management to sign such

an agreement. In the absence of such power it remains at management's discretion whether such an agreement should be concluded. Thus it is submitted that it is of the utmost importance for the works council to know its statutory rights as this places them in a stronger position with regard to certain matters.<sup>128</sup> Works councils' rights include, inter alia, the right to information, the right to consultation, the right to control and veto and most importantly the right to co-determination.

The works councils' rights of participation are divided into three areas covering personnel, economic and social matters. Personnel matters include personal planning, vocational training as well as the hiring, transfer and dismissal of employees.<sup>129</sup> With regard to personnel matters the works councils' rights fall short of co-determination. Only a limited veto power is provided for. Economic matters deal with everything concerned with the economic policy of management such as investment and production. Here the works councils' power does not go beyond rights to information and consultation. With regard to social matters, which relates to the social consequences of economic decisions, the works council position is the strongest. Here the legislator has enumerated a list of subject matters over which the works

council has a real right of co-determination on a list of co-determination matters. These include, inter alia, the regulations governing the conduct of workers in the plant, daily working time, introduction and use of technical devices designed to monitor the workers' conduct or performance and questions relating to health and safety etc.<sup>130</sup>

It is submitted that in the larger enterprises employers usually associate works councils with most decisions directly or indirectly affecting the employees. However, in smaller enterprises the trade unions often complain that works councils have to overcome employer resistance.<sup>131</sup> The consequence of works councils having the above rights to participation is that they must be prepared to share not only in decision-making but also in the responsibilities arising from them. For example, after employees have been identified by the works council and management for retrenchment the former may have to explain the decision to the workers affected.<sup>132</sup> Many trade unionists the world over may consider such involvement to be incompatible with their role of protecting workers' interests.

The involvement of works councils in enterprise decision-making can be regarded as the backbone of co-determination. Co-determination for its part represents the reluctance to accept ongoing opposition between conflicting interests, but rather

to resolve differences by integrating these opposing forces into one institutional organ.

### 5.2.3. *Workplace Forums*

It is submitted that the introduction of workplace forums in the new Act is the 'most radical innovation of the Act' as it is an entirely new concept in our law.<sup>133</sup> The relevant provisions envisage a shift from traditional adversarial collective bargaining over all matters of mutual interest to information sharing, consultation and joint decision-making over certain matters. Collective bargaining will, however, still be the mechanism used for issues relating to wages and other interest issues. Thus the purpose is not to undermine collective bargaining but rather to supplement it by relieving it of functions for which it is not well suited.<sup>134</sup> Ultimately one can say that the purpose of workplace forums is to create a structure for ongoing dialogue between management and labour, in order to give statutory recognition to the realization that unless management and labour co-operate more effectively there will be no increase in productivity and living standards. In return for such cooperation in terms of the Act workers also receive an institutionalised voice in managerial decisions and employers benefit from increased efficiency and performance.<sup>135</sup>

In South Africa a workplace forum may only be established in a workplace in which more than 100 employees are employed by an employer.<sup>136</sup> This high threshold will in all probability have the effect of excluding workplace forums from the majority of firms in South Africa. It is submitted that the German threshold of five employees reflects the idea that worker participation in decision-making is a human right.<sup>137</sup>

The Act provides for four alternative models for the establishment of workplace forums.

Firstly it would appear that the Act seeks to encourage employers and trade unions to enter into collective agreements, in terms of s 80(7), for the establishment and regulation of workplace forums. Secondly, if they cannot reach agreement in this regard the Act seeks to facilitate agreement at least with regard to the constitution of the workplace forum in accordance with the provisions of Chapter V.<sup>138</sup> Thirdly, if the parties are unable to reach agreement with regard to any or all of the provisions of the constitution then the commissioner will, subject to the guidelines laid down in Schedule 2, determine what these provisions should be.<sup>139</sup> Finally, if a representative trade union is recognised as the bargaining agent for all employees in the workplace, it is entitled to

appoint a workplace forum consisting exclusively of its own elected representatives.<sup>140</sup>

In both the German and South African system there is a similar provision to the effect that executive staff are not included as employees for purposes of calculating the number of employees in a workplace.<sup>141</sup> In Germany, however, such executive staff members have a separate body of representation in the form of the 'committee of speakers'. This committee has some information and consultation rights but no joint decision rights.<sup>142</sup> Such a committee is unknown in terms of the South African system.

### **5.3. Role of the Trade Unions**

In Germany the establishment of works councils are not dependant on the co-operation of a trade union in the sense that they act as a trigger for such establishment. Rather, works councils can be established at the request of employees. However, trade unions do have initiating and controlling functions which they can use to support the establishment of a works council where one does not exist. Initiating functions in that they can initiate a works meeting where workers decided that they want to set-up a works council or wish to call a meeting of a works council. Control functions in that they have

control over the election procedure and the capacity to invoke sanctions against employers or employees who violate their duties with regard to works councils.<sup>143</sup>

In South Africa the co-operation of the trade union is paramount.

Section 80(2) of the new Act provides that an application for the establishment of a workplace forum can only be made by a representative trade union. A representative trade union is here defined as 'a registered trade union or two or more registered trade unions acting jointly, that have as members the majority of employees employed by an employer in a workplace'.<sup>144</sup> Representivity as contained in this definition is said to be novel in that traditionally unions have sought to achieve majority membership in specific bargaining units and have been recognised as bargaining agents on this basis. Rarely was majority membership sought in a **workplace**.<sup>145</sup> This approach could have the effect of limiting the number of applications for the establishment of workplace forums by single unions.

The fact that the establishment of a workplace forum can only be triggered by a majority union is troubling. This requirement, in addition to the one relating to the 100

employee threshold referred to above, will in all probability have the effect of excluding workplace forums from the majority of firms in South Africa. This approach has lead Clyde Summers to ask;

"If worker participation is a central requirement of industrial democracy, and if it promotes a more satisfying work life for employees and increased productivity for the employer, why should it wait upon the request of a majority union?"<sup>146</sup>

Why can it not be established at the request of a registered trade union representing a substantial number of employees in the workplace? After all the Act provides that an election must be held by the employees in the workplace for members of the workplace forum.<sup>147</sup> The right to vote is not restricted to trade union members. All employees are to benefit from the establishment of the workplace forum and as such the representivity requirement laid down in the Act seems unnecessarily strict.

One can thus say that in Germany the trade unions play an indirect role in the establishment of a works council whereas in South Africa the trade union plays a crucial role given that

workplace forums cannot be established without their cooperation.

#### 5.4. Relationship between Trade Unions and Participatory Structures

The question which arises at this stage is whether or not the existence of works councils are a threat to the trade union movement and indeed to collective bargaining? According to Mayer;

"The establishment of a second channel of workers' representation via a statutory body of participation very often raises the fear that this body might undermine the collective bargaining power of the union."<sup>148</sup>

With regard to collective bargaining this problem does not appear to arise in the German system where there is a clear divide between the bargaining area of the unions and that of the works council. Certain matters fall within the exclusive bargaining domain of the trade unions. Examples here are remuneration and other conditions of employment which are normally set by collective agreements.<sup>149</sup>

Also important to note is that those involved in bargaining for the trade unions at a regional level are not involved in the bargaining undertaken by the works council. Thus it is submitted that the adversarial world of collective bargaining about distributive issues is separated from the co-operative world of production issues.<sup>150</sup>

In practice, however, there does not appear to be a clear divide between the trade union and the works council. The enterprise world is rife with conflict and the works council which is not permitted to resort to industrial action often needs the cooperation of the trade union to bargain effectively. In addition to this approximately eighty percent of works council' members are also union members and often even union officials. Further more, training programmes for works council' members are mostly run by the trade unions.<sup>151</sup>

The unions on the other hand look to the works council to recruit new trade union members and to provide them with information pertaining to the economic position of the company which the unions have no statutory right to themselves.<sup>152</sup>

What is the position in South Africa? With regard to collective bargaining it depends largely on the level of

bargaining. Where only enterprise bargaining exists as opposed to industry/sector bargaining the existence of workplace forums may pose certain problems.<sup>153</sup> The resolution of disputes over distributive issues, that is disputes relating to economic issues, should be separated from disputes over productivity issues, that is issues which relate to the productivity and profitability of the enterprise.<sup>154</sup> Disputes over distributive issues are regarded as being highly confrontational as opposed to productivity issues in which both workers and management have a shared concern. Summers is of the opinion that;

"Distributive issues...are inescapably confrontational; workplace and productivity issues need to be cooperative."<sup>155</sup>

Where there is only enterprise bargaining the employer would in all probability have to face two employee representative structures at the workplace; the local union and the workplace forum. Antagonism over problems which arose at the bargaining table can be carried over to the consultation and joint decision-making process between the employer and the workplace forum especially where the members of the workplace forum are largely the same as those who represented the union at the bargaining table.<sup>156</sup>

The problem of the co-existence of collective bargaining and workplace forum consultation and joint decision-making does not really materialise when economic terms are bargained at sectoral level. It is submitted that the hostility evident at the collective bargaining table does not carry over to the workplace and undermine cooperation at plant level.<sup>157</sup>

As with the German situation in all probability workplace forums in South Africa will also be dependant on trade unions for training purposes and expert advice.

#### **5.5. Disclosure of Information**

The German works council is entitled to information with regard to a wide range of subjects which deal mainly with social, organisational and personnel matters. In terms of section 79 of the Works Constitution Act an employer can make the disclosure of information strictly confidential thus prohibiting works council' members from leaking such information to the public.

Works councils are only to a lesser degree entitled to information pertaining to the economic and financial position of the company. However, in plants with more than 100 employees a finance committee can be established with its

members appointed by the works council. This committee has a right to be informed about the economic and financial position of the company.<sup>158</sup>

The position in South Africa is similar. In order for workplace forums to be able to effectively engage in consultation or joint decision-making the employer is under a duty to disclose to the employer all relevant information.<sup>159</sup> However, despite this right there are exceptions. The employer need not disclose information which is legally privileged<sup>160</sup> or that will result in the employer contravening any law or an order of court.<sup>161</sup> Further, the employer need not disclose information that is confidential and, if disclosed, may cause substantial harm to an employee or the employer.<sup>162</sup> Finally, the employer need not disclose information that is private personal information relating to an employee, unless that employee consents to such disclosure.<sup>163</sup> It is submitted that where the information is confidential or private personal information a balance needs to be struck between the harm that the disclosure is likely to cause the employer or employee and the harm that the failure to disclose the information will cause to the ability of the workplace forum to engage effectively in consultation and joint decision-making.<sup>164</sup> The Commission for Conciliation Mediation and Arbitration (CCMA)

is given the task of balancing these conflicting interests. Should the Commission decide that the balance of harm favours the disclosure of the information it may order the disclosure on terms designed to limit the harm.<sup>165</sup> In addition when making an order the Commission must take into account any breach of confidentiality in respect of information disclosed at that workplace in the past.<sup>166</sup>

#### 5.6. Consultation

The list of matters for consultation in the works council is short and limited to personnel matters such as recruitment, job grading transfer of employees<sup>167</sup> as well as dismissals.<sup>168</sup> If the works council and the employer cannot reach consensus then the Labour Court has to be invoked to break the deadlock. If a dispute is about a dismissal then the works council also has to be consulted but in the absence of consensus the works council itself cannot refer the dispute to the Labour Court. In this instance the dismissed employee self must refer the dispute.<sup>169</sup> The works councils are subject to peace obligations and as such cannot resort to industrial action.

As opposed to its German counterpart the South African list of topics for consultation is long and includes, inter alia,

restructuring of the workplace, plant closures, dismissals for operational requirements and job grading.<sup>170</sup> Section 84 (1) of the Act provides that unless the matters for consultation are regulated by a collective agreement with the representative trade union, a workplace forum is entitled to be consulted by the employer about proposals relating to the following matters;

- (a) Restructuring the workplace, including the introduction of new technology and new work methods;
- (b) changes in the organisation of work;
- (c) partial or total plant closures;
- (d) mergers and transfers of ownership in so far as they have an impact on the employees;
- (e) the dismissal of employees for reasons based on operational requirements;
- (f) exemptions from any collective agreement or any law;
- (g) job grading;
- (h) criteria for merit increases or the payment of discretionary bonuses;
- (i) education and training;
- (j) product develop plans; and
- (k) export promotion.

In terms of s 83(2) an employer must also consult the workplace forum on any matter that may affect the employees in the

workplace arising out of the report on its financial and employment position, its performance since its last report and its anticipated performance in the short and long term.<sup>171</sup>

Bargaining councils can add additional matters for consultation in respect of workplaces which fall within its jurisdiction.<sup>172</sup>

Further, a representative trade union and an employer may conclude a collective agreement conferring on a workplace forum the right to be consulted about any additional matters in that workplace.<sup>173</sup> Finally, any other law may confer the right on a workplace forum to be consulted about additional matters.<sup>174</sup>

As far as consultation is concerned the Act has shed light on the nature of consultation. Prior to the Act the court held in Atlantic Diesel Engines (Pty) Ltd v Numsa<sup>175</sup> that consultation should be seen as a 'joint problem-solving exercise', with the object of reaching consensus. Although this is said to have removed the distinction between collective bargaining and consultation, 'it was nevertheless suggested that consultation should be understood as a process of seeking agreement by means of conciliation rather than through the adversarial cut and thrust of bargaining'.<sup>176</sup> The Act practically eliminates this distinction.

Section 85 lays down the procedure to be followed when engaging in consultation. According to this section;

(1) Before an employer may implement a proposal in relation to any matter referred to in section 84(1), the employer must consult the workplace forum and attempt to reach consensus with it.

(2) The employer must allow the workplace forum an opportunity during the consultation to make representations and to advance alternative proposals.

(3) The employer must consider and respond to the representations or alternative proposals made by the workplace forum and, if the employer does not agree with them, the employer must state the reasons for disagreeing.

Section 85(4) provides the procedure to be followed if the employer and the workplace forum cannot reach consensus. In this event the employer must invoke any agreed procedure before implementing the proposal.

It is interesting to note that in terms of section 85 only the employer can initiate the consultative process. The workplace forum is not afforded an opportunity in terms of the section

to table new issues which the employer will be obliged to consider in terms of section 85. This restriction on workplace forums may have the effect of compromising the efficacy of the consultation process and could go against the idea of creating ongoing dialogue between management and workers.<sup>177</sup>

Unlike in Germany should the process of consultation fail the Act does not prohibit the workplace forum from resorting to industrial action. In terms of s 65(1) a strike is not permitted in respect of an issue which any party is entitled to refer to arbitration or to the Labour Court or if the party is bound by a collective agreement that prohibits a strike in respect of the issue in dispute. However, it is submitted that sections 84 and 85 deal only with the process of consultation and not with substantive issues.<sup>178</sup> Industrial action may thus not be resorted to in respect of alleged procedural defects. However, this does not apply in respect of the employers' proposal itself. The workplace forum is entitled to resort to industrial action if it finds the employers' decision unacceptable.

### **5.7. Joint Decision-Making**

The German works council has the right to joint decision-making in respect of certain matters. Matters for joint decision-

making are contained in the Works Constitution Act. They include, inter alia, the start and end of daily working hours, temporary changes in working hours, rules of behaviour, work-related control techniques, piece-work payment and bonus schemes.<sup>179</sup>

Normally the employer will advance a proposal and the works council will advance alternative proposals. However, it is also possible for the works council to approach the employer with a proposal. If consensus on a proposal cannot be reached then the matter must be referred to the arbitration and conciliation committee which must then make a binding order.<sup>180</sup>

Although the matters for joint decision-making are primarily of a social nature there is an important restriction on the employers' right to unilateral implementation of economic decisions with regard to operational changes at work in plants with more than twenty employees. The works council has to be consulted if an employer wishes to dismiss an employee on the basis of operational requirements. If consultation fails the works council may require a social plan as compensation for the employees affected by the operational requirements decision.<sup>181</sup>

In South Africa section 86 of the Labour Relations Act which

deals with joint decision-making provides that an employer may not implement any proposal which is subject to joint decision-making before it has consulted with the workplace forum and has reached consensus with it. It is submitted that there is no precedent for such a duty in our law and that this 'duty places qualitatively greater constraints on managerial prerogative'.<sup>182</sup> Workplace forums are in effect given a veto power in respect of the employers' proposals. However, the effect of this power is contained given the limited number of topics subject to joint decision-making.

In terms of s 86(1) the following topics are topics for joint decision-making provided that they are not regulated by a collective agreement;

- (a) disciplinary codes and procedures;
- (b) rules relating to the proper regulation of the workplace in so far as they apply to conduct not related to the work performance of employees;
- (c) measures designed to protect and advance persons disadvantaged by unfair discrimination; and
- (d) changes by the employer or by employer-appointed representatives on trusts or boards of employer controlled schemes, to the rules regulating social

benefit schemes.

Apart from the topics mentioned above an employer and a representative trade union can, via a collective agreement, confer on a workplace forum a right to joint decision-making in respect of additional topics or to remove any of the topics from the list of matters requiring joint decision-making.

Our Act appears to be consistent with the international trend as far as the topics for joint decision-making are concerned. Like the German model the topics relate to social matters as opposed to economic ones. However, unlike the position in Germany our Act has no corresponding provision relating to the dismissal of employees on the basis of operational requirements in section 86.

It is also interesting to note that unlike the German system it is only the employer who can initiate the joint decision-making process. The workplace forum does not appear to have the right to approach the employer with a proposal relating to one of the topics contained in section 86.

If agreement cannot be reached the parties cannot resort to industrial action as with the consultation process referred to

above.

### 5.8. Costs

The establishment of a system of worker participation raises the question of who is to cover the cost associated with such participation. The general approach in Germany is that the employer is responsible for all costs of the works council associated with its functions.<sup>183</sup> Thus the employer has to pay for office facilities and the necessary technical equipment and for books and journals which are considered necessary. <sup>184</sup>

Works council' members are also granted paid time off from work for the performance of their functions. In companies with over three hundred employees the employer has to release a full time member for this purpose.<sup>185</sup>

Works council' members are also entitled to be released for three weeks to attend education and training courses during their regular term.<sup>186</sup> They are also allowed to attend additional training programmes in so far as it relates to acquiring knowledge which relates to the performance of their functions.<sup>187</sup>

The works council may also call on experts for advice.

However, in this regard the cost issue has to be settled in advance with the employer.<sup>188</sup>

The South African Act provides that the constitution of the workplace forum must provide that the employer must allow members of the workplace forum reasonable time off during working hours to perform the functions of a member of a workplace forum and to receive training relating to the performance of those functions.<sup>189</sup> The relevant section does not say who should pay for the cost of such training. However, the guidelines for the constitution of a workplace forum contained in Schedule 2 of the Act suggests that the employer should pay provided that the costs are reasonable having regard to the size and capabilities of the employer.<sup>190</sup>

The Act also makes provision for the forum to invite experts who may attend the meetings of the workplace forum and who may inspect and copy any document that members of the workplace forum are entitled to inspect and copy.<sup>191</sup> The Act is, however, silent on who should pay for such experts.

The Act makes provision for a full-time member of a workplace forum in workplaces with more than 1000 employees.<sup>192</sup> The employer is responsible to pay such full-time member the same

remuneration as before he became a full-time member.<sup>193</sup>

As far as facilities are concerned the Act is clear in that it provides that the employer must provide the necessary facilities to enable the forum to perform its functions.<sup>194</sup>

Given that works councils are a well established institution of German Labour Law it is understandable that there is more clarity regarding the costs associated with works councils. The problems associated with who is to pay for what is yet to arise in the South African system in which event we will be well advised to look to the German system for direction.

## 6. CONCLUSION

What the above discussion has hopefully achieved is to point out that worker participation systems have been in place in certain countries for several decades now. Each of these systems, although similar in many respects, have their own unique characteristics. This is so mainly because in determining which system to adopt the key parties are normally influenced by their social, political and economic views. Worker participation in this context is seen as an ongoing process and thus no system can truly be said to be in final

form.

What South Africa has attempted to do is to look to other jurisdictions systems of worker participation (particularly the German system) and to borrow key elements from these systems in order to create its own system. Unlike most of its counterparts the South African system has thus not developed historically so to speak, but rather via a legislative enactment based on the historical experiences of other countries. The extent to which this approach will prove to be problematic remains to be seen.

Finally, with regard to worker participation in Germany, if the South African system of worker participation in the form of workplace forums does not measure up to its German counterpart in many respects then this is to be understood. The German system is probably the most advanced and most successful system in the world and it would be unrealistic to expect the South African system to measure up to it at this early stage in its development.

What is important, however, is to bear in mind that much of the South African system has been inspired by the German one and as such we should have recourse to it as we develop and refine

our own system. However, in so doing we should not lose sight of the fact that the two systems exist in different social and institutional environments and as such that which works for the one may not necessarily work for the other.

NOTES

1. See M. Anstey **Workplace Forums: Can South African Industrial Relations Move Beyond Adversarialism?** at p.1.
2. Act 56 of 1995.
3. See Explanatory Memorandum - Ministerial Legal Task Team - January 1995 at p.35.
4. See Anstey supra at p.1.
5. See Clyde Summers **Worker Participation in the US and West Germany: A Comparative Study from an American Perspective**, The American Journal of Comparative Law, 1980 at p.367.
6. See Summers supra at p.368.
7. See M. Anstey **Worker Participation: Concepts and Issues in Worker Participation- South African Options and Experiences, 1990** at p.2.
8. See Anstey at note 7 supra at p.2.
9. See K. P. O' Kelly **Workers' Participation: A European Perspective** - Paper presented at the 9th Labour Law Conference, Durban, Republic of South Africa 11 to 13 July, 1996 at p.1.
10. See note 9 supra at p.1.
11. See Anstey supra at note 1 at p.3.
12. See O' Kelly supra at p.1.
13. See O' Kelly supra at p.1.
14. See M. Salamon **Industrial Relations: Theory and Practice**, Englewood Cliffs, New Jersey, Prentice Hall. 1987. ✓
15. See E. Cordova **Workers' Participation in Decisions Within Enterprises**, International Labour Review, Vol. 121, No 2, March-April, 1982, P. 125 at p.127. AL
16. See Anstey at note 7 supra at p.4.
17. See Salamon supra at note 14.

18.A detailed discussion of worker participation in Germany follows later.

19. See Anstey at note 7 supra at p.13.

20. See T. Schuller **Democracy at Work**, Oxford University Press, 1985 at p.118.

21. See Schuller supra at note 20.

22. See Salamon supra at note 14.

23. A more detailed discussion of these boards will follow when we deal with worker participation in Germany.

24. See Schuller supra at p.121.

25. See Schuller supra at p.122.

26. See Anstey at note 7 supra at p.14.

27. See Schuller supra at p.122.

28. See Schuller supra at p.118-19.

29. See J. Schregle **Workers Participation in the Federal Republic of Germany in an International Perspective**, International Labour Review Vol 126, No 3, May/June 1987, P. 317 at p.320.

30. See P. Pillay **Worker Control of Enterprises**, Industrial Relations Journal of South Africa, Vol 17, No 1, 1987.

31. See note 30 supra.

32. See Anstey at note 7 supra at p.16.

33. See Anstey supra at note 7, pp.17-19.

34. For a discussion of the above see Anstey at note 7 supra at pp.19-22.

35. See E Stephens **The Politics of Worker Participation - The Peruvian Approach in Comparative Perspective**, Academic Press 1980 at p.3.

36. See Stephens supra at pp.14-15.

37. See Stephens supra at pp.13, 14, 15.

38. Individual level decisions.
39. General collective decisions only marginally related to work.
40. See Stephens supra at p.15.
41. See **Industrial Democracy in Europe** by Industrial Democracy in Europe (IDE) International Research Group at p.215.
42. See the IDE research report at p.215.
43. IDE research report at p.216.
44. IDE report supra at p.219.
45. See IDE report supra at pp. 220-21.
46. IDE report supra at p.220.
47. See J Maller **Esop's Fables**, Labour and Economic Research Centre Report, 1988 at p.16.
48. Maller supra at p.16.
49. See Maller supra at p.16. A more detailed discussion of the Swedish model follows later.
50. See Maller supra at p.18.
51. See Maller supra at p.19.
52. See Maller supra at p.19.
53. See Finance Week, 22-28 May 1986.
54. See Finance Week, 25 June 1987.
55. Argument as put forward by Hugh Clegg who was a leading industrial relations specialist in Britain, as contained in P. Blumberg **Industrial Democracy- The Sociology of Participation**, 1971 at p.139.
56. Blumberg supra at p.140.
57. Blumberg supra at p.141.
58. Blumberg supra at p.143.
59. See Cordova supra at p.128.
60. See Anstey at note 7 supra at p.7.

61. See Anstey at note 7 supra at p.9.
62. Act Respecting the Right of Association and Negotiation.
63. Later transferred to the Act on the Joint Regulation of Working Life of 1976 - sections 7-9.
64. See C. Summers, **Worker Participation in Sweden and the United States: Some Comparisons from an American Perspective**, University of Pennsylvania Law Review, Vol. 133:175, 1984 at p.178.
65. Sections 11, 12, 32, 34, 35, 38.
66. See C. Summers, **Worker Participation in the U.S. and West Germany: A Comparative Study from an American Perspective**, 28 American Journal of Comparative Law 367 (1980) at p.373-74.
67. See Summers at note 64 supra at p.179.
68. See Summers supra at note 64 supra and section 44 of the Co-determination Act supra.
69. Section 44 of the Co-determination Act supra.
70. See the discussion on the German system infra.
71. See Summers supra at note 64 at p.181.
72. See Summers supra at note 64 at p.183.
73. The December Compromise of 1906 as contained in F. Schmidt, **The Law of Labour Relations in Sweden** (1962) at 26-27.
74. See Summers supra at note 64 at p.186.
75. The Agreement laid down guidelines for union-employer relations, prescribed rules for economic conflict, and provided the framework for forty years of labour peace.
76. Section 4 of the Basic Agreement.
77. Summers supra at note 64 at p.187.
78. See Summers supra at note 64 at p.190.
79. Comprehensiveness of unionization in that large increases negotiated by one union in one industry would be at the expense of members of unions in other industries leading to competition between unions for increases and inevitably a spiral of wage inflation.

80. Summers supra at note 64 at pp.190-91.

81. Section 14.

82. The principle of priority of interpretation is a Swedish invention which simply means that where a collective agreement contains a provision about a right of joint regulation and a dispute arises over the application of such a provision that the employees' view shall apply until the dispute has been finally settled.

83. Summers supra at note 64 at p.194.

84. See L. Zakson **Worker Participation: Industrial Democracy and Managerial Prerogative in the Federal Republic of Germany, Sweden and the United States** at p.107.

85. See Summers supra at note 64 at p.199.

86. See Zakson supra at p.109.

87. See Zakson supra at p.104.

88. See Summers supra at note 64 at p.206.

89. Section 11 of the Co-determination Act.

90. Summers supra at note 64 at p.207.

91. Summers supra at note 64 at pp 212-14.

92. Chapter 6 of the Work Environment Act of 1977.

93. Summers supra at note 64 at p.214.

94. Summers supra at note 64 at p.215.

95. See note 64 supra at p.216.

96. Section 2 of the Co-determination Act of 1976.

97. At p. 30 of the report.

98. In particular the German system. See the comparison between the German and South African systems below.

99. At the outset it has to be pointed out that research on the African experience is sorely lacking. The only substantial material in this regard is that produced by the African Workers' Participation and Development Programme (APADEP). Due to this

lack of resources that which follows will almost exclusively be drawn from a forthcoming publication of Gerard Kester **Democratic Workers' Participation in Africa** which is based on interim results of trend studies, case studies, and questionnaire surveys.

100. See Kester supra at p.1.

101. See Kester supra at p.1.

102. See Kester supra at pp.1-2.

103. Kester supra at pp.2-3.

104. **The World Bank Annual Report, 1993** at pp.18 and 37.

105. Kester supra at p.4.

106. See Kester supra at p.5

107. See Kester supra at p.5

108. See U. Mayer **The German System of Worker Participation: A Model for South Africa** at p.1. [Paper presented by Professor Mayer to LLM students - International and Comparative Labour Law class 1996 - Institute of Development and Labour Law, University of Cape Town.]

109. See J. Schregle **Co-determination in the Federal Republic of Germany: A Comparative View**, *International Labour Review*, vol 117, No 1, Jan-Feb 1978.

110. See U. Mayer supra at p.3.

111. See Schregle supra at note 109.

112. See Schregle supra at note 109.

113. See Mayer supra at p.3.

114. See Mayer supra at p.2.

115. See Du Toit et al **The New Labour Relations Act**, Butterworths 1996 at p.227.

116. See Anstey supra at note 7 at p.7.

117. See M. Weiss **The German Model of Workers' Participation** in Hepple et al (eds) **Trade Unions in the Single Market** 1991 at p.64 and Anstey supra at note 7 at p.7.

- 118.Schregle supra at p.88.
- 119.See Weiss supra at note 117 at p.66.
- 120.See Udo Mayer supra at p.4. See also Weiss supra at p.66.
- 121.Schregle supra at p.89.
- 122.See Schregle supra at p.89.
- 123.Schregle supra at p. 89.
- 124.See M. Weiss supra at note 117 at p.66.
- 125.See Schregle supra at p.89.
- 126.See Weiss at note 117 supra at p.64.  
It is submitted that the prerequisites for such a recall are such that it very seldom happens in practice.
- 127.See Weiss supra at note 117 at p.64.
- 128.See Weiss supra at note 117 at p.65.
- 129.See Schregle supra at p.86 and Weiss supra at p.65.
- 130.See Schregle supra at p.86 and Weiss supra at p.65.
- 131.See Schregle supra at p.86.
- 132.See Schregle supra at p.86.
- 133.See Du Toit et al supra at p.227.
- 134.See Du Toit et al supra at p.227.
- 135.**Explanatory Memorandum** which accompanied the draft Labour Relations Bill prepared by the Ministerial Legal Task Team at p.35.
- 136.Section 80(1) of the Labour Relations Act (LRA).
- 137.See Mayer supra at p.5.
- 138.Section 80(9).
- 139.Section 80(10).
- 140.Trade union based workplace forum - s 81.

141. Section 78 of the LRA. For the German position see Mayer supra at p.5.

142. See Mayer supra at p.5.

143. For a discussion on the above see Anstey at note 7 supra at p.13.

144. Section 78(b).

145. See Du Toit et al supra at p. 7.

146. See C. Summers **Workplace Forums from a Comparative Perspective** (1995) 16 ILJ 806 at p. 811.

147. Section 82(c).

148. See Mayer supra at p.8.

149. Section 77(3) of the Works Constitution Act of 1952.

150. See Mayer supra at p.10.

151. See Weiss supra at p.67.

152. See Mayer at p.10.

153. See Summers at note 146 supra at p.807.

154. See Summers supra at note 146 at p.807.

155. See Summers supra at note 146 at p.807.

156. See Summers supra at 146 at p.810.

157. See Summers at note 146 supra at p.807.

158. For example matters relating to production programmes, investment and rationalisation plans. See Mayer at p.11.

159. Section 89(1).

160. Section 89(2)(a).

161. Section 89(2)(b).

162. Section 89(2)(c).

163. Section 89(2)(d).

164. See H. Cheadle **Workplace Forums** Current labour Law 1995 at p.75.
165. Section 89(2)(9).
166. Section 89(2)(10).
167. Section 99 of WCA.
168. Section 103 of WCA.
169. Mayer at p.12.
170. See Section 84(1) of the LRA for the complete list.
171. Report which is to be presented at the regular meetings which are to be held between the employer and the workplace forum.
172. Section 84(2) read with s 28(j).
173. Section 84(3).
174. Section 84 (4).
175. (1994) 15 ILJ 1247 A.
176. See Du Toit et al supra at p. 20.
177. See Du Toit et al supra at p.248.
178. See Du Toit et al supra at p.40.
179. See section 87 of the Works Constitution Act and also sections 94, 98 and 112 of the Works Constitution Act (WCA).
180. Mayer at p.13.
181. Mayer at p.13.
182. See Du Toit et al supra at p. 252.
183. Section 40 of the WCA.
184. See Mayer at p.16.
185. See Mayer at p.16.
186. A works council's term is four years.
187. Section 37(6).

188. See Mayer *supra* at p.17.

189. Section 82(1)(p).

190. Schedule 2 item 7(c).

191. Section 82(1)(t).

192. See section 92(1).

193. Section 92(2)(a).

194. Section 82(1)(r).





