

Trends in collective bargaining: Why South Africa differs from global trends.

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ABSTRACT

This paper examines trends in collective bargaining and trade unionism in South Africa over the past 25 years and contrasts them with trends in other countries round the world. It finds that there are some substantial differences between South Africa and other countries in the world, but also one major similarity. The paper explores the trends in collective bargaining in South Africa in detail and finds that there has been centralisation of bargaining and growing union density. It concludes by explaining the major reasons for these trends. They are grounded in the country's social, political and economic history.

INTRODUCTION

Collective bargaining trends in South Africa have often moved in the opposite direction to global trends over the past thirty years. When collective bargaining decentralised in many countries it became more centralised in South Africa; when trade union density declined it increased in South Africa. One explanation has been the emergence of a less repressive regime in South Africa that enabled the pent-up demand for trade unions to be met. (Verma et al. 2002:373) Although there is some validity in this perception it is incomplete and inadequate.

This paper presents an alternative and more comprehensive explanation that situates collective bargaining in South Africa in its historical context. In doing so, it provides a political, economic and social analysis of collective bargaining trends in South Africa.

BACKGROUND

In order to understand the significance of the issues discussed in this paper it is important to have a grasp of South Africa's demographics and population groups. The classification of the South African population is based on the country's history and consists of four groups: Blacks, Whites, Coloured people, and Asians. Blacks are indigenous Africans, Whites are descendants of European settlers, Asians come mainly from India but also from elsewhere in East Asia. Coloured people are the descendants of the aboriginal Khoi and San people, slaves from South-East Asia, and the result of combined Black and White parentage.

As a result of the apartheid heritage there are still significant differences in the socio-economic circumstances of the four population groups. Blacks are the poorest and make up the overwhelming majority (79.5%) of the population of 47.5 million in 2006. Whites are the wealthiest and constitute slightly more than 9% of the population. There are almost as many Coloured people as Whites in the country while the Asian population group is the smallest making up only 2.5 per cent of the population.

HISTORICAL OVERVIEW OF COLLECTIVE BARGAINING IN SOUTH AFRICA

The centrepiece of collective bargaining legislation in South Africa was the Industrial Conciliation Act of 1924. It made provision for the establishment of industrial councils as the core centralised collective bargaining institution that still exists (except that the name was changed to bargaining council in 1995). For the first 55 years of their existence the industrial councils statutorily denied Black workers, who have always constituted the overwhelming majority of the working class, access to centralised collective bargaining. This was done by not allowing them to belong to or establish registered trade unions, the only unions that were allowed to join industrial councils.

However the emergence of democratic Black trade unions with strong workplace organisation in the early 1970s as well as increasing international pressure against the apartheid state forced the South African state in 1979 to allow Black trade unions to become registered and thus able to join industrial councils. This constituted a fundamental turning point for employment relations in South Africa. During the 1980s and early 1990s the industrial relations landscape changed dramatically as Black unions grew rapidly, gained recognition from employers, and started participating in Industrial Councils. These unions drastically shifted power relations in negotiations and brought a new dynamic to collective bargaining in South Africa.

Further transformation of collective bargaining took place after the political transformation of South Africa in 1994. Universal franchise brought Black majority rule to South Africa for the first time ever under the ruling African National Congress (ANC) with Nelson Mandela as the first president of the new South Africa. The new government rapidly passed a cluster of labour laws that entrenched worker and trade union rights very strongly. The centrepiece for collective bargaining was the Labour Relations Act of 1995 that extended full collective bargaining rights to almost the entire public service as well as domestic and farm workers and changed the name of industrial councils to bargaining councils. The Act did not impose the duty to bargain was not imposed by the legislation, but the Act did strengthen trade union organisational rights at the workplace.

The remainder of this paper examines the changes in collective bargaining that have taken place in South Africa since 1979.

COLLECTIVE BARGAINING TRENDS IN SOUTH AFRICA 1979 - 2008

Before 1979 industrial councils were the dominant collective bargaining institutions in South Africa. They could be established by registered trade unions and employer associations in a particular region and sector of the economy if the Minister of Labour deemed them to be sufficiently representative. Until 1979 Black workers were excluded from participating in the industrial council system. They were excluded from the definition of employees and could not belong to registered trade unions. As a result they did not have direct representation on the councils.

Industrial councils' principal functions were to negotiate and implement wages and working conditions for employees covered by the Council. Once an agreement had been successfully negotiated the Minister of Labour would publish it in the Government Gazette whereupon the agreement had the force of law. If the parties to the Council were deemed sufficiently representative by the Minister the agreement could be extended to all employees in that particular sector and region. Provision was also made for exemption from the agreement upon appeal. It was usually small firms not party to the industrial councils that appealed against the extension of the

agreement on the grounds that they could not afford the extra cost that the agreement incurred.

Centralisation of collective bargaining

Just prior to 1978 there were 102 industrial councils in existence. Although the original intention of the legislators was that industrial councils should be national and hence that bargaining would be highly centralised, only 13 per cent of the councils were national in 1978 (see Table 1). Over 50 per cent of the councils were regional, covering either the whole or part of one of the four provinces. Almost a third of the councils were local, usually operating within a city or town, while six had only a single employer.

Table 1 Private sector bargaining councils centralisation 1978, 1992 & 2004

Centralisation	1978	%	1992	%	2004	%
National	13	13	7	9	13	30
Regional	52	51	33	43	14	33
Local	31	30	31	40	15	35
Single Company	6	6	6	8	1	2
Total	102	100	77	100	43	100

Sources: Godfrey 1992:38-45; Godfrey et al 2006:26-28.

At the end of the 1970s industrial councils were at their peak. From then there has been a decline in the number of councils as demonstrated in Table 1. During the first period (1978-92) there was a strong decline in national and regional councils with local councils remaining steady. But during the second period (1992-2004) regional, local, and single company councils declined steeply while there was actually an increase in national councils. There are a number of reasons for these diverse trends.

In 1979 Black trade unions were able to register for the first time. Their new legal status led to recognition by employers and the unions grew explosively during the 1980s. The signed up membership of the Black unions that started up during the early 1970s increased more than fourfold from 70 150 in 1979 to 299 552 in 1983 while the number of recognition agreements by companies shot up from a mere 5 in 1979 to 406 in 1983. (Maree 1987:8) At first the unions were hostile to industrial councils and opposed to joining them because they feared that they would be dominated by employers and White trade unions on the councils. But from 1982 onwards the Black unions started joining councils. Where the unions were strong nationally they started to thrive, but some unions' suspicions and hostilities lingered and they deliberately set about collapsing the councils once they had joined them. The unions were inadvertently assisted in this by some large employers who strongly adhered to free market principles and withdrew from the regulatory world of industrial councils.

During the 1980s the South African government also strongly imbibed the free market ideology and was keen to reduce labour regulation. Consequently it tightened up the representivity requirements for bargaining councils and made the gazetting of agreements and their extensions more difficult. These measures also served to weaken industrial councils and contributed to the demise of the ones that were frail already.

During the second period (1992-2004) a new dynamic set in. Some of the Black trade unions had grown into large and powerful national unions. By 1996 total trade union membership including all unions (not only Black unions) had increased to just over three million with a union density of 57.5 per cent in the private non-agricultural sectors of the economy.¹ (Macun 2000:60) In order to consolidate their power they wanted to bargain nationally with employers. Those unions that were on regional bargaining councils started lobbying for the merger of the councils into one national council. This happened in the case of the clothing industry when five regional clothing councils merged into one national council in May 2002. In addition, in industries where there were no bargaining councils, but strong Black trade unions, the unions started agitating for the establishment of a bargaining council. Thus, for instance, a National Bargaining Council for the Chemical Industry (BCCI) was established in December 2001. For the past few years the large and powerful National Union of Mineworkers (NUM) with 270 500 members has been agitating for the establishment of a national bargaining council in the mining industry, but thus far the Chamber of Mines has not agreed to it even though centralised collective bargaining between them has been taking place for decades.

In summary, bargaining councils have declined in number to less than half their 1979 total, but they underwent a structural change towards more centralised bargaining. This was principally due to the emergence of large national Black unions that came to appreciate the advantages of centralised national level bargaining.

Coverage of bargaining councils

In spite of the relatively high unionisation of the South African labour force, the coverage of the bargaining councils is low as Table 2 indicates. It shows that only 32.6 per cent of all employees in grades 4 to 9, the grades that are normally covered by BC agreements, were covered by bargaining council agreements in 2004.

Table 2 Realistic bargaining council coverage by industrial classification 2004

Industry Classification	Total employees in grades 4-9	Number of bargaining councils	Registered employees	As % of total employees	Employees covered by extensions	As % of total employees
Agriculture	688 620	2	10 522	1.5	385	0.1
Mining	376 501	0	-	-	-	-
Manufacturing	1 230 177	17	526 185	42.8	189 253	15.4
Utilities	59 207	0	-	-	-	-
Construction	594 780	6	47 052	7.9	20 485	3.4
Trade	1 333 239	5	192 026	14.4	63 968	4.8
Transport	397 669	4	286 116	71.9	54 245	13.6
Finance	671 601	1	10 543	1.6	1 290	0.2
Services	1 890 157	13	1 285 568	68.0	5 794	0.3
Total	7 241 951	48	2 358 012	32.6	335 420	4.6

Source: Godfrey et al 2006:22-23 Table 1.

Table 2 also shows that only three sectors of the economy regulated wages and working conditions to any great extent through negotiations on bargaining councils.

¹ This union density figure, supplied by the Department of Labour, is misleadingly high as it is based on not only excluding the public service and agriculture, but also the military and police as well as domestic workers.

The three sectors were manufacturing (42.8 per cent), transport (71.9 per cent) and service (68.0 per cent). Wholesale and retail trade (14.4 per cent) and construction (7.9 per cent) had very low coverage of regulation based on bargaining council agreements.

Table 2 also shows that the proportion of employees covered by the extension of agreements was very low. Only 4.6 per cent of all employees in grades 4 to 9 were covered by the extension of bargaining council agreements.

The statistics of Table 2 provide an over-generous picture of the extent of coverage provided by bargaining councils. This is because it only counts the employees in the grades which bargaining councils normally recruit members, namely grades 4 to 9. If total employment in the economy is used to do the calculations, bargaining councils cover only 20.3 per cent of total employment while the proportion of employees covered by extended agreements comes to only 2.9 per cent. (Godfrey et al 2006:21)

However, collective bargaining in South Africa is not only conducted by bargaining councils. Plant and company level bargaining also takes place as does some significant centralised bargaining. The Chamber of Mines has been conducting centralised bargaining with trade unions in gold and coal mining for many decades. A National Bargaining Forum that included all but one of the auto assembly plants was set up in 1989 to enable centralised negotiations to take place. There is extensive company level bargaining in the retail trade, especially with large chain stores where trade unions have won recognition. Unfortunately, there is no up-to-date data of the extent of company-level collective bargaining in South Africa. Together with centralised bargaining outside bargaining councils it is estimated that company-level bargaining covers approximately half a million to one million employees.

Representivity of bargaining councils

It is very important that the parties on bargaining councils which negotiate agreements that are extended to the rest of the sector be representative. A party of a bargaining council is an employer association or trade union that has joined the council and participates in negotiating the agreement. A non-party of a bargaining council is an enterprise that is registered with the bargaining council, but is not a member of an employers association that is party to the bargaining council. Table 3 provides three measures of representivity of the parties to bargaining councils in the private sector. It shows that the parties are quite well represented for two of the measures regarding employees, namely the proportion of employees working for employers who are bargaining council parties (63 per cent) and the proportion of employees who belong to the unions that are parties to the councils (60 per cent).

Table 3 Representivity of private sector bargaining councils 2004

Total no of registered employers in sectors covered by barg. councils	50 691
Total no of employers party to bargaining councils	20 865
Party employers as percentage of all employers	41%
Total employees in sectors covered by bargaining councils	901 555
Total employees of all party employers	564 454
Employees of party employers as percentage of all employees	63%
Members of trade unions party to bargaining councils	539 555
Party union members as percentage of all employees	60%

Source: Godfrey et al 2006:26 Table 2(a).

These are the only two measures that are legally required for councils to be deemed representative and for their agreements to be extended to non-parties. However, when it comes to the third measure of representivity in Table 3, party employers as a percentage of all employers covered by the bargaining councils, the rate of representation falls to 41%. Thus 59% of employers covered by bargaining council agreements are not represented on the bargaining councils and therefore do not participate in negotiating the agreements. Between them they employ 37% of all the employees covered by the bargaining councils

Representivity in the public service bargaining councils is extremely high. After the public sector was granted the same collective bargaining rights as the private sector in 1995 and bargaining councils in public service were established statutorily, public service trade unions grew rapidly. By 1999 public service unions had a density of no less than 96%. By the end of 2007 public service trade union membership exceeded one million with a similar density.

The allegation is frequently made by small non-party firms that large firms dominate the bargaining councils and negotiate agreements that suit them, but not the small firms. In particular, it is alleged that the large corporations negotiate wages that they can afford to pay, but the less productive small firms cannot.

Statistically, the evidence bears out that party firms are larger than non-party firms. However, it is also the case that the average size of firms registered with bargaining councils is relatively small. In a survey of 41 bargaining councils in 2005 it was found that the average number of employees of all registered firms was 18. Party firms employed 27 people on average while non-party firms employed 11 on average. (Godfrey et al 2006:32) Statistics however do not tell the full tale as it is the large corporations on bargaining councils that have the resources available to engage forcefully in the employers' associations party to the councils.

The representivity figures provided thus far are in all probability higher than they really are. This is because the figures exclude firms that do not register with the councils for one reason or another. Many of these firms operate in the informal economy and deliberately avoid detection for fear of having to pay taxes or having their wages and working conditions regulated. Estimates by 19 bargaining councils of the extent of non-registration of employers indicated a fairly wide dispersion of non-registration. Almost half were of the view that the number of unregistered firms constituted less than 20% of all the registered firms while the other half thought they amounted to between 20% and 99%. Only one thought it was 100 per cent or more. (Godfrey et al:2006:43-45) In the clothing industry where it was possible to establish the extent of non-registration of employers empirically, it was found that registered firms only employed three quarters of all employees in the industry. (Godfrey et al 2006:46)

It is generally the case that firms that do not register with bargaining councils are non-compliant, i.e. they do not comply with the wages and conditions specified in the council agreements, nor do they make payments into the benefits provided by the councils. However it is not only unregistered firms that do not comply with the agreements. There are also many registered firms that do not comply.

The extent of non-compliance with bargaining council agreements is vividly demonstrated by a 2009 snap survey that the clothing bargaining council conducted amongst 66 garment factories in Qwaqwa, a former Black 'homeland' created by the apartheid regime. It found that only one of the 66 factories was paying the legal minimum wage. This was partly due to the power imbalance between different actors

in the garment commodity chain. A factory owner said that he could not afford to pay workers more as he was only receiving R13 per garment that was being sold at R220 in the retail shop. (news24.com 30Apr09)

The second way of circumventing employment regulation contained in collectively bargained agreements is by means of non-standard employment practices. These are considered next after first clarifying how the concept is understood and used in this paper.

Non-standard employment

Non-standard employment is understood to entail employment that is not permanent (or indefinite), not full-time and usually takes place at the workplace of the employer. It is generated by three inter-related processes: casualisation, externalisation, and informalisation.

Casualisation is the process whereby standard employment is being displaced by employment that is temporary or part-time or both. Externalisation refers to the process through which employment becomes a triangular relationship: an employee is employed by one employer who hires the employee out to another employer in whose workplace the employee actually performs the work. By so doing the contract of employment that regulates the employment relationship is displaced by a commercial contract between the two employers. Informalisation is the process through which employment is increasingly unregulated, in part or altogether. (Godfrey and Theron 2004:5)

Efforts to establish the extent of non-standard employment in South Africa as a whole are extremely difficult because of the paucity of reliable statistics. What has become clear is that it differs from sector to sector in the economy. In-depth research in three sectors, mining, construction and retail, amply demonstrates the variance between sectors.

In the mines subcontracting has become prevalent since the 1990s, even of 'core' mining work such as contracting out the mining of certain shafts. The extent of subcontracting in the mining industry appears to have stabilised at about 10% of the workforce. (Godfrey and Theron 2004:7)

In construction non-standard employment is far higher. It has been estimated that from 40 to 60 per cent of the workforce are in informal employment. Externalisation through labour-only subcontracting has grown very rapidly in the construction industry over the past 15 years. The vast majority of these subcontractors are non-compliant with bargaining council agreements. The Cape Building Bargaining Council is of the view that 60 per cent of employees falling within its jurisdiction are working for non-compliant employers. The growth of non-compliance has been so vast that four bargaining council in the building industry have collapsed while another four are tottering on shaky ground. (Godfrey and Theron 2004:8-9)

The retail sector is extremely large and diverse. In 2004 it employed 1.5 million people. Non-standard employment has grown rapidly over the last two decades to the point that the majority of jobs can now be classified as non-standard. A majority of employees, mostly women, are working part-time. This might well suit many of them. Externalisation has taken place; not only the usual security and cleaning, but also shelf-packers and even check-out clerks. In addition, almost 40% of the retail sector forms part of the informal economy. (Godfrey and Theron 2004:11)

Temporary employment services or labour brokers, as they are known in South Africa, play a significant role in the externalisation of employment in the country. Researchers estimate that the number of firms providing employment services of one kind or another in the formal economy is in excess of 3000. (Godfrey and Theron 2004:14) According to their confederation of associations (Capes) they service 4 per cent of economically active population of South Africa and provide jobs for more than 400 000 people on any one day. (Capes 2009) Capes' COO estimates that labour brokers employ 500 000 people a year in the services sector alone. (Engineering News 2009) While labour brokers mainly provide temporary employment services, a small proportion of the service they provide is for permanent employment, but it is not clear precisely what this proportion is. (Godfrey and Theron 2004:14)

COLLECTIVE BARGAINING TRENDS GLOBALLY 1979-2008

The trend observed in collective bargaining and trade unionism in South Africa has by and large been opposite to global trends. Whereas collective bargaining became more centralised and trade union density increased over the past quarter of a century in South Africa, the converse was happening in many other countries in the world.

In a study of industrial relations trends in nine countries, Australia, France, Germany, Italy, Japan, South Korea, Taiwan, United Kingdom and United States of America, Ouchi and Araki (2007:xii) observed that,

'in almost all countries mentioned above there are some common tendencies: labour unions are declining and labour density is decreasing; determination of working conditions at the enterprise level is gradually becoming widespread; pressure for disadvantageous modification of working conditions in return for employment security is growing; derogation and deregulation are being more widely needed and accepted.'

There has thus been a trend of falling union density and decentralisation of collective bargaining in most of the nine countries.

But South Africa has also experienced something in common with the rest of the world, namely the pursuit of increased flexibility in the regulation of labour by employers. As Standing has pointed out, this growing labour flexibility has been wide-ranging: it entailed wage and labour cost flexibility, employment (numerical) flexibility, and work process (functional) flexibility. (Standing 1999:87-124) He sees calls for flexibility as 'little more than ill-designed masks for proposals to lower wages or worker protection'. (Standing 1999:49)

DISCUSSION

The reasons why trends in collective bargaining and union density in South Africa have differed from those of many other countries in the world are thus not adequately explained by attributing them to the emergence of a less repressive regime in South Africa that enabled the pent-up demand for trade unions to be met.

The core explanation lies in the emergence of a Black trade union movement in South Africa during the 1970s. It had to struggle for its survival in the first few years of its existence and, once that was achieved, for recognition from employers and the state. The crucial moment came in 1979 when the apartheid regime, partly forced by international pressure, reversed its policy and passed legislation that gave Black trade unions the same rights accorded to White trade unions. That was the turning point. Black trade unions grew rapidly in size and strength to become a significant economic and political force at national level from the mid-1980s onwards. As large

Black national unions established themselves, they joined bargaining councils. Where a national Black union joined a number of regional councils in the same industry, the unions pressurised employers' associations on these regional councils to agree to their amalgamation into a national bargaining council. In other industries, where there were no bargaining councils, large national Black trade unions successfully managed to lobby for the creation of a national bargaining council. Hence collective bargaining in South Africa became more centralised from the 1990s onwards. At the same time trade union density grew.

Another reason collective bargaining centralisation and trade union density increased during the 1990s was due to the extension of collective bargaining institutions into the public sector. Large national public sector bargaining councils were set up and the unionisation of almost all the public servants into large national unions took place. This increased union density considerably. Hence South Africa moved in the opposite direction to many countries as far as collective bargaining and trade unionism was concerned.

On the other hand, South Africa moved in step with the rest of the world by increasing flexibility and reducing the regulation of labour. This was due to a combination of developments. Political transformation to a democracy in 1994 opened the South African economy to trade with the rest of the world after decades of sanctions and boycotts by the international community. This was coupled with trade liberalisation as tariffs were lowered and quotas lifted. In addition, production strategies switched to flexible specialisation. Employers responded to these combined forces by introducing as much flexibility as they could into the employment relationship. Non-standard employment grew through the processes of casualisation, externalisation and informalisation.

CONCLUSION

South Africa experienced both opposing and similar trends in collective bargaining, trade unionism and labour regulation as many other countries in the world. This paper has tried to demonstrate that these similarities and divergences can best be understood by examining the historical, political and social forces that shaped them.

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