

**A comparison of some global collective bargaining trends  
with developments in the South African private sector  
centralised collective bargaining system**

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## **ABSTRACT**

The way collective bargaining is conducted globally, changes over time. Internationally, collective bargaining is becoming more and more decentralised, with a decline in membership numbers and ensuing power of the primary parties involved in the process. Subsequently, the question is asked whether these trends are also evident in South Africa. The research focused on centralised collective bargaining in the private sector through the bargaining council system over the period 1995-2010. The intent of the research was to identify trends, but more importantly to establish why these trends had developed, and what the possible effects thereof are on the council system. The research provided insight into private sector centralised collective bargaining in South Africa from a broader perspective, thus making a comparison with various international trends possible.

## 1. INTRODUCTION

Collective bargaining is a complex process, with no clear-cut answers. Raskin (Ulman 1967:135) aptly summarised this years ago: “I am a great believer in collective bargaining; the only trouble is that after thirty years of watching it at close range in dozens of industries, large and small, I am not sure I know what it is.” This still holds true today, with scholars all over the world researching the phenomenon.

Many such studies have shown that the way collective bargaining is conducted globally changes over time (e.g. Wild 2004; Brewster, Mayrhofer & Morley 2004, Carrell & Heavrin 2004, Bamber, Lansbury & Wailes 2004, Weis 2004, Schulten 2005, Godfrey, Du Toit & Theron 2010, Maree 2011). Internationally, collective bargaining is becoming more and more decentralised, with a decline in membership numbers and subsequent power of the primary parties involved in the process. The question arises whether these trends are also evident in South Africa.

Collective bargaining at all levels (i.e. from decentralised to centralised) takes place in South Africa. The Constitution (1996) protects fundamental collective rights, and the entire Labour Relations Act 66 of 1995 (LRA) is based on promoting and supporting collective bargaining, while section 1(d) provides for the promotion of orderly collective bargaining at sectoral level in centralised bargaining forums (i.e. bargaining councils). It is on centralised collective bargaining through the bargaining council system that this paper focuses.

Centralised collective bargaining and an approach based on formal, statutory and official approaches are evident in many South African industries, and bargaining councils are regarded as a viable option for structuring centralised collective bargaining in these industries. These councils have been in existence for 86 years - first as industrial councils until 1995, and thereafter as bargaining councils (Holtzhausen 2011). Although a general trend is evident in which the number of bargaining councils in South Africa is declining, a few new councils (although not enough to counteract the bargaining councils that closed their doors) have been established over time, and more sectors of the economy are considering formalising and institutionalising their collective bargaining arrangements by establishing a council.

The research (Holtzhausen 2011) is based on the premise that the LRA (1995) set out to strengthen collective bargaining, and specifically to give a reformed framework for bargaining councils in order to solve some of the problems experienced by the earlier industrial councils. However, it has become clear that some challenges still remain, and therefore the research focused on centralised collective bargaining through the bargaining council system from 1995 when new legislation was introduced, to 2010 - thus covering a 15-year period. The aim of the research was to identify developments, but more significantly to give explanations why these trends had developed, and what the potential effects thereof are on the council system. Five private sector councils in the chemical, clothing, building, metal and engineering, and motor industries were investigated. One of the results of the research was that it provided insight into centralised collective bargaining in South Africa which made a comparison with various international trends possible – the focus of this paper.

The discussion in this paper aims to shed some light on whether, in these five chosen industries, South Africa is on a par with collective bargaining trends identified in other parts of the world. Furthermore, the paper discusses some of the possible implications of these trends for centralised collective bargaining processes, the relevant stakeholders, and the bargaining council system.

## 2 LITERATURE REVIEW

### 2.1 The concept of collective bargaining

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

- Representation is a fundamental agreement of the process;
- Commonality forms the basis for bargaining;
- Conflict can be seen as the reason for bargaining; and
- Power is the regulator, or driving force of bargaining.

These principles are also the principles underlying the system of centralised collective bargaining within the South African bargaining council system.

Collective bargaining is widely regarded as a labour right. The International Labour Organisation's (ILO) Declaration on the Fundamental Principles and Rights at Work - adopted in 1998 as an expression of commitment by governments, employers' and workers' organisations to uphold basic human values - sees freedom of association, and the effective recognition of the right to collective bargaining, as some of the main principles and rights of all parties. In South Africa these rights are adhered to, and regulated by the LRA. The right to freedom of association, to strike, as well as a number of organisational rights set out in the LRA, promote collective bargaining in South Africa. In addition, a key feature of the current statute is the promotion of orderly collective bargaining, particularly also at sectoral level (Du Toit et al 2003). However, it remains a system of voluntarism (unlike the old LRA which held a duty to bargain).

Kahn-Freud (Godfrey et al 2010:4) argued that collective bargaining originated from the inequality between the employer (the bearer of power) and the employee (the one without power). In an attempt to equalise this power imbalance, employees negotiate collectively through representatives, rather than individually and on their own behalf. This results in collective agreements regulating the employment relationship in a group context (Hollinshead, Nicholls & Tailby 2003:344). Flanders (1975:222) in one of the seminal sources of collective bargaining principles emphasises the characteristic of joint regulation as the essential character of collective bargaining. Collective bargaining is thus founded on the theory of joint regulation, allowing employees – through their representatives - to open up discussions on issues of concern to them, and to respond to matters raised by management. The important outcome of this process is an acceptance or agreement of what has been decided (Hollinshead et al 2003:343-344). According

to these authors, there are therefore two fundamental requirements for collective bargaining to take place namely:

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

The requirement of employees and employers to act and see themselves as a group seeking the same objectives holds its own challenges. Dunlop (1967:173) addresses this matter by stating that another characteristic of collective bargaining involves the determination of priorities within each party of the bargaining process: "...the view that a homogeneous union negotiates with a homogeneous management or association is erroneous and mischievous". Rather, collective bargaining is about compromise and assessment of priorities within each side. As Venter, Levy, Holtzhausen, Conradie, Bendeman & Dworzanowski-Venter (2011:373) point out: "... [Collective bargaining] is premised on the joint regulation of the employment relationship through co-operation, commonality, trust and compromise".

Arguments for collective bargaining are often based on two beliefs. On the one hand a belief in the injustice of unconstrained, unilateral management discretion which may result in employee exploitation, and on the other, a preference for voluntary arrangements determined by the parties themselves (Salamon in Hollinshead et al 2003:347). In fact, Salamon states that the process of collective bargaining assumes that there is an ongoing, interdependent relationship between the parties and that both parties would prefer to solve differences on a mutually acceptable basis, rather than to end the relationship.

The main aim of collective bargaining is to reach mutually acceptable agreements through negotiations on matters of joint interest. Fox (Clarke & Clements 1978:138) states that as agreements are jointly determined by representatives of both employers and employees, they consequently share responsibility for their contents and observance. This continuous character of collective bargaining, which enables the parties to constantly adapt agreements to changing needs and circumstances, enhances the acceptability of collective agreements.

As stated above, centralised and decentralised collective bargaining takes place within South Africa - centralised bargaining mainly within the bargaining council system. However, this centralised form of collective bargaining contradicts the general tendency worldwide towards a more decentralised approach<sup>1</sup>. The section below discusses some international collective bargaining trends which are then used as a benchmark to compare South African bargaining trends.

## 2.2 Some global collective bargaining trends

Historically, pluralism originated in the United States of America (USA) and the United Kingdom (UK), with collective bargaining still remaining as a form of collective dispute resolution in both countries (Finnemore 2009:7). However, over the last decade(s) the traditional

<sup>1</sup> Rojot (Gladstone et al 1992:184) warns though of "the risk of too global a use of general concepts", stating that "it is perhaps too facile to hold blithely that decentralisation is a universal trend". According to this author, although it certainly appears

collective bargaining process has been affected by the demise of large, labour-intensive industries, privatisation, the changing nature of work and globalisation. In general, union membership has declined in these countries; similarly to other countries over the world, with only a few counter examples. According to Kassalow (Gladstone, Wheeler, Rojot, Eyraud & Ben-Israel 1992:152) long-established centralised structures of collective bargaining gave way in the 1980s in a number of companies and industries in the USA as management sought greater flexibility. Finnemore (2009:8) explain that in the USA and UK (as in a number of other countries), pluralism and its proneness to strikes are increasingly questioned, with collective bargaining alleged as being too disruptive and the accompanied industrial action seen as too costly for any country that competes globally. As a result, many international companies shifted their production to the newly industrialised countries of South-East Asia where trade unions were undeveloped and employers were guaranteed, a “docile but productive workforce”.

Europe, likewise, has experienced related challenges. Lansbury (Brewster et al 2004:11) argues that even though European countries had increased demands to adapt their conventional labour relations practices in response to worldwide competition and changing technologies, most European countries are unsure about the exact nature of the labour relations system they should establish to be appropriate in decades to come. Many European countries were traditionally heavily unionised (more so than the USA, for instance) and reflect key values such as pluralism - union recognition for the purpose of collective bargaining is often a requirement by law and bargaining at national, industry and plant-level frequently take place. The UK is an example of a country where an industry-based, centralised collective bargaining structure (Joint Standing Industrial Councils) existed. In the Netherlands collective agreements can be extended, as with South Africa’s bargaining council system. Nevertheless, it is also evident that union participation is declining and that decentralisation policies seem to be at the order of the day. For instance, in the European Union as a whole, it was reported that the use of trade unions for negotiation and establishing employee rights has decreased by 17% in 1999 alone (Brewster et al 2004:216).

Wild (2004:91-99) states that some important trans-national and trans-sector changes in both the conduct of collective bargaining and the strength of the role-players are evident. These trends, supported by further research, are briefly discussed below.

### **2.2.1 A decline in trade union membership and power**

Internationally, trade union membership and power are declining (see for instance Vettori 2006; Ouchi & Araki in Maree 2010:2). The ILO, in a study done in 2000 (Godfrey et al 2010:11), found that trade union membership peaked in most countries during the eighties, but has declined progressively since. Bamber et al (2004:344-345) cite a few examples of decline: Australian union density declined from 51% in 1976 to 25% in 2000. In the UK it decreased from 45% in 1985 to 29% in 2000. A further decline is evident. In 2009, Australia had a 19.7% membership density (New Unionism Network 2011) and the UK 27.4%. However, countries such as Indonesia have, since the 1990s, asked more and more for democratic institutions, although union density has remained fairly constant over the last decade (Bamber et al 2000:18-19; New Unionism Network 2011). In South Korea, a strong independent union movement was formed with membership increasing over the last decade, while in Taiwan labour regulations were expanded and reinforced. Taiwan had a surge in union membership from 3,8% in 1955 to 22,9%

in 1987 and union density has increased further over the last decade (Carrell & Heavrin 2004:456; New Unionism Network 2011), although these unions are often regarded as politically and socially oriented. In Japan, enterprise unionism is seen as one of the pillars of their labour relations system, with bargaining conducted primarily at organisational level (Carrell & Heavrin 2004:314). Nevertheless, Japanese union density has declined substantially over the last decade (New Unionism Network 2011).

Nevertheless, Wild (2004:91-99) cautions against assuming that this implies that the deals made by trade unions are less significant, merely because of a declining union membership and level of people covered by these agreements. For instance, in France's non-agricultural sector, low union membership (roughly 6% in the private sector) coexists with collective bargaining coverage of almost 90%.

Various reasons elucidate the decline. Godfrey et al (2010:8-12), Ferner and Hyman (1998:xvii) and Bamber et al (2004:344-346) explain that globalisation increases the inequality in power between transnational employers and employees, and undermines unions' ability to organise employees. Furthermore, the raise in atypical work contributes to the challenge unions' face in recruiting members from workers in part-time, temporary and other forms of unstable employment. There is also a decline in manual workers' numbers, who mostly held the stronghold of trade union membership. Additionally, international political change sweeping the globe added to the deterioration of trade unions' position. Economic factors, such as the influence of rising unemployment in many countries because of recessions, further contributed (Bamber et al 2004:345). The authors add that in more competitive universal product markets, unions are less able to attract members by achieving huge wage increases and better working conditions, since this may lead to pricing such members out of work.

South Africa used to be an exception, with soaring levels of membership growth reported (e.g. union density as a percentage of the non-agricultural labour force was 28% in the mid-1980s, and increased to 54% in the mid-1990s). However, a membership decline is now also evident in South Africa in the private sector; collective bargaining has decreased; and the scope of bargaining has narrowed at organisational level, dealing mostly only with wages, whilst remaining working conditions are regulated by the Basic Conditions of Employment Act (BCEA) (Godfrey 2009:17). Ndungu (2010) agrees that trade union numbers are dwindling in all sectors – the number of registered unions in South Africa declined from 504 in 2002, to 210 in 2010. This represents a drop of 60% in registered unions. Furthermore, even though published figures vary, it is clear that union density has dropped – in 2002 there were roughly 4.5million union workers out of approximately 11.2million workers in South Africa; a figure that has now declined to about 3.3million workers (Ndungu 2010). Thus, only around 33% of workers in South Africa currently belong to unions. According to Finnemore (2009:123) this figure is even lower with only approximately 23% of employees being members of trade unions in 2009.

### **2.2.2 Employers' organisations face similar challenges to trade unions, and are reducing services associated with (centralised) collective bargaining**

Weiss (2004:5) confirms that trade union decline is matched by that of employers' organisations, and that collective bargaining is by and large confined to plant level.

Employers face new challenges and opportunities as economies become globalised (Bamber et al 2004:346-347). Many industries have had to restructure because of increased competition between companies, industries and countries. Subsequently employers' have perceived a bigger need to pursue proficient work practices and contain labour costs. In most countries, employers have adopted a stronger stance in collective bargaining, often discouraging unionisation. Wild (2004:95) clarifies that companies exposed to worldwide competitive pressures see decentralised collective bargaining as enhancing their ability to adjust to changing labour and product market needs. Employers' organisations therefore need to adapt to these trends because employers are moving away from conduct directed at centralised bargaining levels (Bamber et al 2004:350).

### **2.2.3 A decline in collective bargaining as a method to determine wages and working conditions and an increase in the individual contract**

Ouchi and Araki (Maree 2010:2) argue that determining conditions of service at organisational level is progressively becoming widespread. This is sustained by Ferner and Hyman (1998:xiii), who argue that international business are more likely to impose universal patterns of employment relations across their worldwide operations, and that the outcome of such forces are organisational-based employment systems. One can thus refute the argument that enlarged integration of economies in an international market will contribute to this trend. The changing world of work (eg the increase in atypical forms of employment and women entering the labour market – also effecting a ensuing increase in part-time and casual employment) has also added to a steady move away from wage determination through collective bargaining to the individual contract (Wild 2004:98). Weiss (2004:9) argues that the weakness of employers' organisations and the “non-existence of collective actors in large parts of the economy” in the EU explains why collective bargaining is the exception rather than the rule, and that it is no surprise that when it does occur, it is mostly only at plant level.

### **2.2.4. A decline in the coverage of collective agreements, including coverage through extensions**

Traxler et al (Bamber et al 2004:382) argue that collective bargaining coverage is an important indicator of the level to which national employment relations are organised, because “... the less employees are covered by collective agreements, the more irrelevant organised industrial relations as a whole will become”. Countries such as Australia, Japan, the USA and the UK have a steady decline in bargaining coverage, particularly in the private sector (Bamber et al 2004:382). However, France serves as an example of a country with increased coverage, while it has remained relatively stable in Canada, Germany and Sweden.

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

Wild (2004:91-99) agrees, assessing that the impact of collective bargaining depends much on the system that exists for the extension of agreements<sup>2</sup> beyond parties covered directly by the agreement. The impact of extension mechanisms is most strong in countries and sectors where multi-employer bargaining is prevalent. Extension agreements are at their most effective in Europe, with countries like Belgium, Austria, France, Italy, Slovenia and Finland having coverage levels of 90% or more. While the existence of extension provisions do tend to create high levels of bargaining coverage (eg in Spain, Austria and Portugal), the parallel is not automatic. Sweden and Norway are examples of countries with high bargaining coverage levels, but this is because of strong employer and trade union discipline and influence. In Poland, Slovakia and Hungary low levels of coverage are found, although statutory extension mechanisms exist. Table 1 illustrates the use of extensions in some European countries.

**Table 1: Extension mechanisms in some European countries**

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

**Source:** Wild (2004:97)

Automatic extension of collective agreements that are regulated by law takes place in Finland, Luxemburg, Austria and Spain. However, mostly extensions are granted at the request of one of the negotiating parties (eg in the Netherlands, Belgium, Germany and Poland) or both of the parties (eg in Hungary, Denmark, France, Ireland and Slovakia). In some countries (eg Greece and France), the government has the overriding say on whether agreements should be extended. There are often regulations in relation to the extensions of agreements. In Finland, Germany and Spain, for example, a minimum of 50% of the employees in the sector must be covered before an extension will be granted, and 51% for the Netherlands, Greece, Hungary and Ireland.

### 2.2.5 A decline in the level at which collective bargaining occurs

The level at which collective bargaining is conducted at, where it does take place, is diminishing – if at a national level, it seems to shift to an industry level, and from industry to plant level (see Bamber 2004:350; Wild 2004:91-99; Ferner & Hyman 1998:xvi-xvii; Auer 2000:56-58). In most

<sup>2</sup> Extension provisions are based on three broad forms of machinery namely *erga omnes* extensions (makes collective agreements binding on those employers in the field of application but who were not parties to the agreements themselves); *sectoral extensions* (makes a collective agreement in one sector applicable to another sector where effective collective bargaining does not exist); and *contract compliance extensions* (normally applied by government agencies where contracts are only offered to bidders who apply in terms of a relevant collective agreement). *Erga omnes* extensions are the most commonly used of the three variants (Wild 2004:96).

countries in which collective bargaining is still prevalent, it seems to occur at more than one level (Schulten 2005:12-15).

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

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

### **2.2.6 Declining levels of detail in agreements**

At national and industry level the level of detail contained in agreements is decreasing (Wild 2004:91-99). Agreements at the highest level are progressively reflecting minimum standards and policy frameworks or objectives, with more operational flexibility possible at implementation level. It may be argued that, similarly to the general trend towards decentralisation, this is mainly driven by organisations’ pursuit of flexibility, enabling them to respond adequately to fast-changing markets.

According to Bamber et al (2004:330) one rationale of comparative studies of employment relations is to “rethink the relationship of the international to the national”. This is based on the notion that national-level employment relations practices do not exist in isolation, but rather “develop in and are re-enforced by an international set of rules or system of governance”. In South Africa one such system is bargaining councils, discussed in more detail in the following section.

## **2.3 Bargaining Councils in South Africa**

The question that this paper seeks to answer is what is happening to centralised collective bargaining in South Africa compared to the rest of the world. Some answers are found in the bargaining council system.

Although the LRA does not enforce collective bargaining, it promotes it and specifically also the establishment of centralised collective bargaining structures and the extension of agreements to nonparties through the bargaining council system. The role of these councils is to: “create a stable framework for the setting of standards relating to minimum wages and conditions through distributive bargaining, to promote industrial relations stability, to participate in the development of industrial policy and policies relating to skill enhancement, enhance productivity and tackle poverty and inequality” (Presidential Commission to Investigate Labour Market Policy 1996:5) (hereafter referred to as the Labour Market Commission [LMC]).

Today it is often said that councils play a key role in their respective sectors, but that councils must be flexible in order to govern their sectors effectively. If these councils are to succeed, they should not play the role of big brother, but rather be client-service-based driven. This provides the necessary incentives for labour and business to willingly participate in the system. Yet, this debate is not clear cut, but holds many varying viewpoints.

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

Godfrey et al (2006:733-734) caution that councils have been the foundation and is central to collective bargaining and the industrial relations systems of South Africa for over 80 years. Therefore changes to the statutory framework that may threaten or destabilise the bargaining council system may have serious consequences well beyond that system.

### **2.3.1 Number of bargaining councils**

The bargaining council system is going through an era of transformation and volatility. Councils are on the decline, despite newly-established and currently-negotiated councils. New councils formed have, in most cases, been established with great difficulty after a long period of struggle (Godfrey et al 2005:13&81). Four of the nine major sectors of the economy have no council, or the councils cover an insignificant proportion of workers. In various industries and sectors, councils have existed for considerable periods of time. Table 2 summarises the trend in council numbers and registered employees covered.

**Table 2: Bargaining council trends as displayed in number of councils and coverage of employees**

Year	Number of councils	Total registered employees covered
1983	104	1 171 724
1992	87	735 533
1995	80	823 823
2004	48	2 358 012
2009	46*	-
2010	41**	-

\* This figure excluded two councils that were in the process of de-registration.

\*\* One of these councils have already filed for liquidation

**Source:** Adapted from Godfrey (2009:17) & Department of Labour (DOL) (2010)

The decline in number of councils can be ascribed to some extent to the amalgamation<sup>3</sup> of regional councils and sub-sectoral councils into national councils, but also to the fact that some of the councils ceased to function and were de-registered.

### 2.3.2 Bargaining councils' coverage

The LRA and BCEA cover about 9.5 million employees in the country (Godfrey 2009:18, Borhat et al 2009:22-34). Of these, about 25% are covered by bargaining council agreements (approximately 2,36 million employees), about 36% are covered by sectoral determinations, and the remaining 39% are covered only by the BCEA (including those covered by ministerial determinations and the 'old' sectoral determinations). Approximately 5% of all employees are covered by extended council agreements (i.e. employees of nonparties that are registered with councils). When including the public sector in South Africa, coverage increased from 1995 to 2005, but private sector coverage declined substantially. The literature indicates that bargaining councils covered just less than a third of employees who were potentially covered by collective bargaining (including the public sector), and 13% when coverage in the public sector was excluded. About 5% of such employees are nonparty employees (thus covered by extensions). Coverage declined substantially in both the manufacturing (7%) and construction (50%) sectors during the period, 1995 to 2005 (Bhorat et al 2009:27).

When considering private sector bargaining councils, in both years the largest coverage was accounted for by four key industries namely the metal and engineering -, motor -, clothing - and construction industries (Bhorat et al 2009:27). Only in two private sectors, namely in Manufacturing and Transport & Storage, do councils have both a significant presence overall and are the number of employees covered by extended agreements relatively high. In 1995 the manufacturing sector accounted for almost half of all workers covered by council agreements (43%). However, in both the above sectors, less than 16% of employees in the relevant occupational categories are covered by extended agreements. In the construction sector, the number of workers belonging to councils almost halved between 1995 (230 000 employees) and 2005 (approximately 114 000 employees).

<sup>3</sup> This may point to even greater centralisation in certain industries (Du Toit et al 2003:40). Even so, the impact of this from the point of view of the number of bargaining councils is important - for example, the formation of the national clothing and textile councils meant a net loss of 12 councils (Godfrey et al 2006:747).

Notably, even though the number of councils has decreased; the number of employees covered by councils has increased over the last decade. This is so even if one counts only the coverage of the private sector councils, although the predominant reason for the increase is the addition of the public sector councils after the new LRA (Godfrey et al 2006:746). See both Table 2 above and a further elaboration in Table 3 below.

**Table 3: Estimated bargaining council (BC) coverage, 1995 and 2005**

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

**Source:** Adapted from Borat et al 2009:27

Undoubtedly, the coverage of workers through these institutions still remains significant. According to Godfrey (2009:18) this implies a strengthening of the council system since the introduction of the LRA in 1995.

### 3 RESEARCH METHODOLOGY

#### 3.1 Research paradigm

For the study on which this paper is based to be meaningful and to provide a detailed, accurate picture, an attempt was made to examine, describe and explain how bargaining councils in South Africa have changed over the past 15 years, specifically with regard to some key areas. This was done by incorporating previous relevant research on councils (Holtzhausen & Mischke 2004) (exploratory research), whose findings were also used as a benchmark for comparison; and by conducting a detailed literature review of the principles of centralised collective bargaining, international collective bargaining trends and bargaining councils (the starting point of the descriptive research). As in the exploratory study, the literature review contributed extensively to the research because it helped to provide a theoretical framework within which to conduct the research, as well as a detailed description of existing data on bargaining councils. Furthermore, the empirical research probed into a variety of relevant possible reasons to explain why councils have changed in the way they have (explanatory research). This combination of exploratory, descriptive and explanatory investigations resulted in insightful, valuable and quality research. Lastly, the study added a comparative component by comparing the trends found in the five South African bargaining councils with international centralised bargaining trends (as discussed

above). It was argued that this component added further depth to the study. Consequently, questions were asked to compare South African trends with international trends.

### 3.2 Type of research

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

### 3.3 The population

In the main, two reasons determined the choice of councils to be researched. Firstly, councils were selected from a diverse range of bargaining councils where the differences between them were meaningful, thus allowing a good cross-section of councils even with a relatively small sample. As a result of this approach, councils specific to areas of interest, but with varying characteristics, were selected. The characteristics included the following:

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

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

#### 3.3.1 The Metal and Engineering National Bargaining Council (MEIBC)

The MEIBC, which was established in 1946, is the largest and one of the oldest private sector councils. It is a strong, stable national council, with its head office in Johannesburg, and six regional offices. It employs 120 people. The main employers’ organisation is the Steel and Engineering Industries Federation of South Africa (SEIFSA), the umbrella body for 35 independent employer associations representing all the various sectors which form the metal and engineering industry. Three other employers’ organisations are party to the council. The

<sup>4</sup> In the researcher’s opinion it is almost impossible to *control* variables, even when researchers endeavour to do so.

employers' organisations collectively represent about 8 800 employers in the industry, employing approximately 270 000 scheduled employees. The National Union of Metalworkers of South Africa (NUMSA), one of six unions on the council, is the largest metalworkers' union, and the second-largest trade union in South Africa, with about 232 000 members. The council operates in an industry under pressure.

### **3.3.2 The National Bargaining Council for the Chemical Industry (NBCCI)**

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

### **3.3.3 The National Bargaining Council for the Clothing Manufacturing Industry (NBCCMI)**

The clothing industry had five regional councils which consolidated to form a national council in 2002. It is still characterised by a strong regional orientation. SACTWU, the only trade union, has 111 000 members of whom 72 600 (in mid-2002) were estimated to work in clothing manufacturing enterprises. The employers' parties consisted of six regional associations which amalgamated in 2009 to form one employers' association, the Apparel Manufacturers of South Africa (AMSA). The council functions in a crisis industry, impacting on the stability of the council. Non-compliance is a major challenge.

### **3.3.4 Motor Industry Bargaining Council (MIBCO)**

The Motor Industry Bargaining Council is a large, stable, national council consisting of approximately 14 000 employers and 182 000 employees, operating in a relatively stable industry. The majority union is NUMSA, with one other union, the Motor Industry Staff Association. The Retail Motor Industry Organisation (RMI) is the largest employers' association, and together with the Fuel Retailers' Association (FRA), represents employers. It is known for its excellent dispute resolution system.

### **3.3.5 The Building Industry Bargaining Council (Cape of Good Hope) (BIBC CGH)**

The Building Industry Bargaining Council (Cape of Good Hope), which has been operating for more than 80 years, is a sector- and area-specific council with jurisdiction over approximately 200 sq. km. About 50 000 people are active in the building industry in this area. The BIBC (CGH) functions within a cyclical industry. Most other councils in the construction sector have collapsed. The council employs 65 people. Two employers' associations – the largest of which is the Master Builders and Allied Trades' Association (MBA), and five trade unions, of which the Building Workers' Union (BWU) is the largest – are party to the council.

The description of the population shows that the chosen sample differed with regard to the structure and nature of the industries in which the councils operated; all were significant councils found in some of South Africa's major industries; there was a mixture of old and new councils; and the councils were in diverse industries, each with its own unique strengths and weaknesses. Moreover, four of these councils (i.e. the metal and engineering, motor, clothing and construction industries) are the largest councils in the private sector in terms of coverage of employers and employees (Bhorat et al 2009:27). The research therefore involved an adequate cross-section of councils. Although it could not be claimed that this selection of councils was representative of bargaining councils in South Africa, it constituted most of the major councils in the private sector and therefore provided an adequate reflection of bargaining council trends.

### **3.4 Data generation techniques**

Data was gathered through in-depth interviewing and reviewing relevant documents.

The main data-generating technique in this research was semi-structured interviews with 45 open-ended questions – although not all questions focussed on representivity. One-and-a-half-hour slots were agreed upon beforehand to ensure enough time for a detailed discussion. Two interview schedules were designed – one for the council secretariat and one for the employer and employee parties. The questions were chosen to address all the objectives of the study, and were based on the extensive literature review. This document was sent to interviewees prior to the interviews to ensure that they would be prepared. The main employer and employee party were identified on the basis of the size of the organisation – for instance, if a council had more than one employer party, the largest one was included in the selection of interviewees. Council secretariat representatives were also interviewed. All interviewees were either heading the organisation, or at the very least, in the collective bargaining section of the organisation. Telephone calls were first made to ascertain the correct person for the interview and to strengthen a bond of commitment between that individual and the researcher. Confidentiality was assured.

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

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

### **3.5 Data analysis**

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

### **3.6 Validity and reliability**

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

## **4. THE RESEARCH FINDINGS AND DISCUSSION**

The presentation of the findings is structured around a summary of some of the international trends discussed earlier. Firstly, the trend is stipulated, followed by a discussion on the South African situation within the bargaining council system.

### **4.1 Trend 1: Globally, trade union membership, as well as their power is on the decline.**

In all the industries researched, trade union membership has declined in the past 15 years. However, a decrease in membership numbers does not necessarily mean that a union's power has diminished – it may remain the same as many of these unions still remain dominant, active and influential.

All interviewees agreed that the decline in representivity can mostly be ascribed to economic challenges and subsequent job losses (which have been evident in the last few years), and the changing world of work. Job losses imply a loss in membership numbers. The potentially threatening situation of atypical employment to the existence of unions (eg the difficulty of recruiting members in atypical employment and workers moving in and out of employment

contracts), as well as to their members (eg the lack of security linked to flexible employment practices) is widely acknowledged. Not all industries are equally affected.

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

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

#### **4.2 Trend 2: Employers’ organisations membership is declining, and they focus more on reducing their dependence on services associated with collective bargaining, and specifically, centralised collective bargaining.**

Contrary to the international trend of reducing their dependence on services associated with collective bargaining, all employers’ representatives indicated support for the councils and thus centralised bargaining. A Master Builders’ Association (MBA) representative indicated that they are more and more aware of the benefits of centralised bargaining: “We now know the bargaining council is out there to help us”. The MEIBC representative had a similar view, stating that the Steel and Engineering Industries Federation of South Africa (SEIFSA) is a strong pillar of the council, and the organisation “embraces the transformation of the last years, and also the council”.

It also appears as if membership to employers’ organisations is less affected by the recession, although the SACTWU representative cited “unsatisfactory employer representivity levels in the clothing bargaining council” as a threat to the council. However, none of the employers’ organisations or council representatives commented on a membership problem.

Employers’ organisations offer more services, and often have strong recruitment drives. Furthermore, many of these organisations (e.g. the MBA and SEIFSA) have existed for a number of years, giving them stability and credibility. The BIBC (CGH) also pointed out that the number of employers (and therefore also membership numbers) in an industry may increase because of fragmentation of the industry due to increased atypical employment trends. In the building industry for example 90% of employers employ less than 10 employees.

It is evident that changes in the world of work affect employers. The Minister of Labour renewed his focus on the continued use by business of the services provided by labour brokers and limited duration employment contracts, and presented Nedlac with a report as well as a range of critical proposed amendments to the law. This includes the proposed introduction of Ministerial power to prohibit labour broking in any particular sector of the economy. SEIFSA came out strongly against these possible amendments, arguing that it, if promulgated, would introduce a number of unacceptable presumptions, powers and new employer liabilities into labour law, making the

South African labour market even more inflexible. SEIFSA believes that proper enforcement of current legislation is the key to eliminating the various alleged employment abuses referred to in the Minister's report.

Moreover, innovative ways of strategically approaching and solving inherent and relevant emerging challenges are necessary. According to the MEIBC representative, atypical work is an industry feature because of its very nature (e.g. a major infrastructure project that necessitates the increase of atypical employment for the period of the project). However, employers also see it as a way to "bypass the hassles and difficulties of hiring and firing". The use of labour brokers has increased dramatically – it was estimated at about 5% of the workforce in the industry in 1999, whilst the current estimate is about 20-25%. The industry deals with it through a clause in their 2003 agreement that stipulates that workers working for more than 12 months for a specific employer will be permanently employed.

The chemical industry serves as another example. It was agreed in 2009 within three of the chemical sectors to apply their sector agreements to employers using labour brokers. Employers are held responsible to ensure that labour brokers apply the sector agreements, thereby protecting employees working through labour brokers' services. Similarly, the MIBCO representative confirmed that labour brokers and employers are together held liable for complying with the industry agreement.

In the building industry all labour brokers should register with the council and abide by the agreed working conditions, wages and benefits. However, they go even further. The council has adapted a strong marketing strategy over the past eight years emphasising the importance of providing decent work to employees in the industry "because it is the moral thing to do". Also, the council approaches the "givers of work" (e.g. government, financial institutions and the local municipality) and advocate that construction tenders only be given to registered firms complying with the agreements of the council. A similar approach is followed in the clothing industry, where a growth in the informal sector is evident. The AMSA representative stated: "There is a growing phenomenon of cottage industries and garage operations". To counteract this, retailers are requested to support the drive towards decent work, and to only buy from agreement-compliant firms.

#### **4.3 Trend 3: Collective bargaining as a mechanism to determine wages and conditions of service are on the decline, with a steady move towards the individual contract.**

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

This is mostly ascribed to more mature relationships fostered between the parties. Bargaining in the past 15 years has changed from adversarial positional bargaining to interest bargaining with a win-win-outcome approach. Councils are pushing the boundaries of the traditional relationship and are more partnership oriented. In fact, the common interest issues agenda is on the increase –

both parties showing evidence of considering the good of the whole industry. This is generally because of the enormous challenges facing these industries – it has forced parties to stand together, and as far as possible, put behind them conflicting adversarial relationships. Parties indicated that they could see no other way of regulating their respective industries, but through the councils. The CEPPWAWU representative stated that “... only a few companies remain bullish – relationships with employers have improved a lot over the past five years.” He cited the regulation of the industry through the NBCCI as the main contributing factor: “Both parties now know their parameters on wages, taking away unnecessary conflict”. The employers’ representative in the chemical industry agreed. According to him, working together on the council gives parties the time to get to know each other, and to better understand respective needs. Another example of a more cooperative relationship is the building industry. As a MBA representative said: “There is no ‘us and them’ – that’s the big thing.” All parties in the building industry agreed that it is continuously becoming easier to reach agreements – as the council representative confirmed: “Three meetings, that’s all it takes, and we have our agreements”. The employers’ representative<sup>5</sup> of the NBCCI put it this way: “We are constantly pushing the boundaries of the traditional relationship ... we are more partnership-orientated. There are much more participation in strategies – also with regard to flexibility and productivity issues. In fact, the ‘common interest-issues agenda’ is growing.” The AMSA representative explained that current challenges facing the clothing industry have forced the parties in the industry to stand together, and to put behind them any conflicting, adversarial relationships. Moreover, they were compelled to find other ways, to focus on mutual interests, and to support joint collaborative projects.

Nevertheless, balancing the conflicting needs of the parties to councils still poses a huge challenge. As the MEIBC representative explained: “It is challenging to change one’s business hat for a bargaining hat!” To succeed, he reiterated, one needs commitment, maturity and be capacitated to deal with these issues on a strategic level. Although the metal and engineering industry is moving to a more co-operative approach and parties are “more cordial, more respectful”, they have not yet succeeded fully. It is ultimately a fight for power between two contesting parties. At the end of the day, whatever is agreed is almost always a settlement between opposing interests.

#### **4.4 Trend 4: The coverage of collective agreements through extensions is reducing.**

But for the NBCCI, all other council agreements in the research have always been extended. However, the NBCCI is preparing for the extensions of agreements sooner rather than later – not only is the council reviewing their constitution, agreements and policies, but it is also putting in place all necessary structures and procedures. The employers’ representative was adamant about the need for the extension of agreements: “Agreements that are not extended to nonparties lead to unfair competition, as these nonparties may keep their wages lower than the negotiated rates. Our agreements have to be extended” However, neither the trade union, nor the employers’ representative was overly optimistic on easily reaching a workable solution. The CEPPWAWU representative explained that currently no agreement exist amongst the various trade union parties on appropriate bargaining units. Before this is solved, no agreements can be extended.

<sup>5</sup> This interview was in Afrikaans. All quotes from the interview with the chemical industry employers’ representative were loosely translated.

The employers' representative agreed, explaining that getting an agreement on an adequate job grading system for the industry is extremely complex: "Approximately 200 firms are members to the council. Each one has its own grading system and bargaining unit. Theoretically that means that 200 bargaining units exist. A common bargaining unit is necessary. There are no agreement on this between the employers, and also not between the employers and the employees."

Another related problem mentioned by both employers' and employees' representatives in the chemical industry is that employers sometimes threaten to leave the council (as agreements are not extended at present, participation in the council is completely voluntary) should their demands or wage offer not be met, or should trade union's demands be – according to them – too extravagant. As stated by the employers' representative: "Agreements not extended to nonparties become a 'bargaining chip' in the hands of employers".

All parties agreed that lower representivity figures and its effect on the extensions of agreements, is a serious problem, even though all agreements were extended up to now. The MIBCO spokesperson indicated that 2010 was the first year in which they really experienced problems getting their agreement extended, with no surety on whether they will succeed.

All parties agreed that the DOL's stance towards representivity figures is much sterner. Although no clear policy is forthcoming from the DOL, figures of above 40% representivity is said to be the norm for sufficient representation. Few explanations exist for the sterner approach. The BIBC (CGH) interviewee indicated that the Minister was faced with a couple of court cases where employers took the matter of agreement extensions without the necessary representivity figures, to court. Also, the Minister has to protect the legitimacy of the process. However, interviewees cautioned that the Minister has to take the new employment structures and the related impact on representivity figures into consideration. It is argued that the Minister should rather focus on whether the relevant parties have the interests of the industry at heart (e.g. by looking at the history of the council) - at the end the stability of the industry is more important than any numbers.

**4.5 Trend 5: Where collective bargaining does take place, the level that it is conducted at, is diminishing – if at a national level, it seems to be shifting to an industry level, and again from industry level, to plant-level.**

In all five councils researched, the level of bargaining did not diminish in the preceding 15 years – if anything, the converse was true. Except for the NBCCI, all other councils have been in existence since before 1995. Collective bargaining within these industries has thus remained centralised over a number of years – although the detail to some of the agreements has changed. Still, the building industry is a sector where centralised collective bargaining may be declining. Two councils have collapsed, and a third council is struggling. According to a BIBC (CGH) representative, from a national perspective the building industry may thus be moving away from centralised collective bargaining. However, in their council specifically, the same level of centralised collective bargaining remains.

The clothing industry is an example of bargaining becoming even more centralised with the amalgamation of five regional councils into one national council. The SACTWU representative

stated that this was “... in consequence of the union pursuing its strategic bargaining objectives for stronger national centralised bargaining to exploit economies of scale and to pursue national employment conditions standards”. The employers’ organisations also merged to form one national employers’ organisation (AMSA) to represent its members. According to them, bargaining regarding wages and conditions of service (i.e. substantive issues) has become more centralised in the industry. However, the last four years have seen a greater devolution of power to plant level work arrangements without council or trade union involvement. Flexible work arrangements exist in the industry on condition that the package value of every worker over a period of one year, should average the agreed-upon full package. However, employers can structure shifts, working times and so forth according to their own needs.

In the chemical industry collective bargaining became centralised with the formation of the council in 2001. Once the council’s agreement is extended to nonparties, the industry will be even more centralised. According to the employers’ representative, employers were initially against the formation of the council. However, the advantage of not having to negotiate only on plant-level was, according to him, the most important reason for eventually agreeing to a council. The NBCCI is the only example of a council in the research where bargaining takes place on three levels. The council’s constitution stipulates the exact negotiating scope on the three levels: national -, sectoral/chamber -, and plant level. Some examples are given in Table 4 below:

**Table 4: NBCCI levels of negotiations**

National level	Sectoral/chamber level	Plant level
<ul style="list-style-type: none"> <li>• Enforcement of agreements</li> <li>• Industry benefit funds</li> <li>• Minimum working conditions</li> </ul>	<ul style="list-style-type: none"> <li>• Wages</li> <li>• Shift allowances</li> <li>• Actual terms and conditions regarding issues e.g. leave, annual bonus, and hours of work</li> </ul>	<ul style="list-style-type: none"> <li>• Actual conditions regarding affirmative action and productivity</li> <li>• Performance bonuses</li> <li>• Company specific issues e.g. training, retrenchments, and job grading</li> </ul>

Source: NBCCI Constitution 2010

**4.6 Trend 6: The level of detail contained in the agreements of national and industry level is decreasing. Agreements at the highest level are increasingly reflecting minimum standards and policy frameworks or objectives, with more operational flexibility possible at implementation level.**

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

The MIBCO representative indicated that no plant level bargaining is permitted in the industry, although some forms of operational flexibility does exist. The NBCCI’s constitution reflects minimum standards and policy frameworks, thereby allowing more operational flexibility and detailed implementation at plant level. However, it still falls within the council’s jurisdiction and is well co-ordinated and governed. The BIBC (CGH) agreement is structured in such a way that everything stipulated in the agreement is fixed, whilst all aspects over and above those may be

negotiated at plant level. However, this is not encouraged. At present the transport of employees and overtime arrangements are the only two such examples.

There is a trend towards simplifying agreements. However, this normally goes no further than using simpler, more understandable English although all legal requirements are still met. According to the NBCCI, their agreements were simplified although very specific. The BIBC (CGH)'s agreement was simplified in approximately 1996. This was very important as councils deal more and more with smaller employers who do not have the time or knowledge to deal with long, complicated agreements. However, the MIBCO, MEIBC and NBCCMI secretariat spokespersons all indicated that they could not manage to simplify their respective agreements – mainly because of disagreements amongst parties regarding detail on job grading and categories. The example of the clothing industry is a case in point where more than 20 different job categories exist, but where no agreement can be found amongst the trade unions and employers' organisation on how to downscale these. Furthermore, all parties concur that the agreement has to remain a legal document, which by its very nature, remains complex. MIBCO succeeded in simplifying its agreement in 2010 in a more user-friendly document with easier English, although the detail in it remains the same.

## 5. CONCLUSIONS

This paper has shed some light on whether, in five chosen private sector industries, South Africa is on a par with collective bargaining developments identified in other parts of the world. Some similarities, but also disparities have become evident (Holtzhausen 2011).

Clearly legislation in South Africa strengthens collective bargaining. However, trade union membership and their power are declining, mainly because of tough economic times, but also because of the challenges linked to changes in the world of work. The same challenges face employers' organisations, although to a lesser extent.

Notwithstanding these challenges, collective bargaining is not (yet?) on the decline in these industries, but rather the opposite, with bargaining becoming more of a partnership, and less adversarial. The coverage of collective agreements through extensions is not reducing, although the process is challenged by representivity figures of the main parties. It also does not hold true that in these industries, the level where collective bargaining is conducted is diminishing - centralised collective bargaining is still strong in the industries researched.

However, both the literature and research suggests that bargaining councils will probably not survive without a pluralist view to collective bargaining. The challenges facing these councils (and thus centralised bargaining) necessitate processes of interest accommodation, of discovering respective views, of indulgence and compromise by all parties involved. It is only then that councils will be able to face their challenges.

One irrefutable conclusion that may be drawn from the above is that collective bargaining is still a complex process, with no clear-cut answers. Scholars all over the world will keep on researching the phenomenon, as workplaces find themselves in the midst of a variety of collective bargaining processes. The challenges remain...

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