

**COLLECTIVE BARGAINING WITHIN THE LABOUR RELATIONSHIP: IN A  
SOUTH AFRICAN CONTEXT**

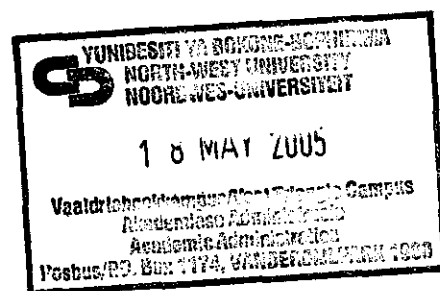
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## **TABLE OF CONTENTS**

	<b>Page</b>
<b>SUMMARY</b>	i
<b>OPSOMMING</b>	iii
<b>CHAPTER 1</b>	
<b>INTRODUCTION AND PROBLEM STATEMENT</b>	
1.1 Introduction	1
1.2 Setting of the problem	8
1.3 The goal of the study	9
1.4 Previous research on collective bargaining in South Africa	9
1.5 Applicability of the findings of the research	10
1.6 Research method	11
1.6.1 Literature method	11
1.7 Definition of concepts	11
1.7.1 Collective bargaining	12
1.7.2 Bargaining agents	15
1.7.2.1 Trade union	15
1.7.2.2 Employer's organization	16
1.7.2.3 Workplace forum	17
1.7.2.4 Employee	17
1.7.3 Collective agreement	18
1.7.4 The Commission for conciliation, mediation and arbitration	19
1.8 The purpose of collective bargaining	19
1.9 Unfolding the contents	22

## **CHAPTER 2**

### **THE NATURE OF THE COLLECTIVE BARGAINING PROCESS AND THE HISTORY OF COLLECTIVE BARGAINING**

2.1	Introduction	23
2.2	The nature of collective bargaining	24
2.2.1	The marketing theory	28
2.2.2	The government theory	29
2.2.3	The management theory	29
2.3	Development of South African collective labour law	30
2.3.1	The period 1924 – 1979	32
2.3.2.1	The 1973 strikes to the Wiehahn Commission: the period 1973 – 1979	33
2.3.3	The Wiehahn Commission	34
2.3.4	The Labour Relations Act amendments: the period 1980 – 1989	35
2.3.5.1.1	The major milestones of political transition: the period 1990 – 1994	35
2.4	The role of collective bargaining	53
2.5	Reasons for collective bargaining	55
2.5.1	Commonality	55
2.5.2	Conflict	56
2.6	Theory and perspectives of collective bargaining	57
2.6.1	The unitary perspective	58
2.6.2	The class conflict perspective	59
2.6.3	The radical approach	59
2.6.4	The pluralist perspective	60
2.6.5	Corporatism	61
2.6.5	Dunlop's systems theory	63
2.7	Summary	65

## **CHAPTER 3**

### **COLLECTIVE BARGAINING AGENTS, AGREEMENTS AND INDUSTRIAL ACTION**

3.1	Introduction	66
3.2	Forces in collective bargaining	66
3.2.1	Primary forces	67
3.2.1.1	Economic forces	67
3.2.1.2	Political forces	69
3.2.1.3	Social forces	69
3.2.1.4	Technological forces	69
3.2.2	Secondary forces	70
3.2.2.1	Goals of parties	70
3.2.2.2	Issues being discussed	70
3.2.2.3	Labour law	70
3.2.2.4	Precedents in bargaining	71
3.2.2.5	Individual and group influences	71
3.3	Bargaining styles	72
3.3.1	Distributive bargaining	73
3.3.1.1	The process of distributive bargaining	73
3.3.2	Destructive bargaining	76
3.3.3	Integrative bargaining	76
3.4	Bargaining structures and levels	76
3.4.1	Industry-level bargaining	78
3.4.2	Plant-level bargaining	81
3.4.4	Centralised multi-employer bargaining	85
3.4.5	Decentralised bargaining	85
3.5	Bargaining agents	90
3.5.1	Trade unions	91
3.5.1.1	Trade union objectives	92

## **TABLE OF CONTENTS (CONTINUED)**

3.5.1.2	Union methods for achieving objectives	93
3.5.1.3	Structure of trade unions	95
3.5.1.3.1	Shop stewards	95
3.5.1.3.2	Branch office	95
3.5.1.3.3	Regional office	96
3.5.1.3.4	National executive committee	96
3.5.2	Union federations	97
3.5.2.1	COSATU	97
3.5.2.2	FEDUSA	98
3.5.2.3	SACLA	98
3.5.2.4	NACTU	99
3.5.3	Trade union representatives (Shop Stewards)	99
3.5.3.1	Shop steward functions	100
3.5.3.2	The nature of the shop steward's task	101
3.5.4	Employers' organizations	102
3.5.4.1	Disclosure of information	103
3.6	Bargaining forums	104
3.6.1	Workplace forums	104
3.6.1.1	Functions of workplace forums	104
3.6.1.2	Establishment of workplace forums	105
3.6.1.3	Matter for consultation	106
3.6.1.4	The consultation process	107
3.6.1.5	Matters for joint decision-making	108
3.6.1.6	Disclosure of information	109
3.6.1.7	Dissolution of workplace forums	111
3.7	Bargaining councils	111
3.7.1	Powers and functions of bargaining councils	111
3.7.2	Establishment of bargaining councils	112
3.7.3	Constitution of bargaining councils	112

## **TABLE OF CONTENTS (CONTINUED)**

3.8	Statutory councils	114
3.8.1	Powers and function of statutory councils	114
3.8.2	Dispute resolution by councils	114
3.9	Collective agreement and industrial action	115
3.9.1	Collective agreements	115
3.9.1.1	Bargaining council agreements	115
3.9.1.2	Statutory council agreements	116
3.9.1.3	Closed shop agreements	116
3.9.1.3.1	Advantages of the closed shop	119
3.9.1.3.2	Disadvantages of the closed shop	119
3.9.1.4	Agency shop agreements	120
3.9.1.5	Disputes regarding closed shops and agency shops	121
3.9.2	Legal effect of collective agreements	124
3.10	Recognition agreements	125
3.11	Industrial action	126
3.11.1	Definition of a strike and lock-out	127
3.11.2	The right to strike and recourse to lock-out	128
3.11.3	Reasons for industrial action	130
3.11.4	Forms of collective industrial action by employees	132
3.11.5	Go-slows	133
3.11.6	Overtime bans	133
3.11.7	Traditional strikes	134
3.11.8	Secondary or sympathy strikes	134
3.11.9	Preparing for strike action and action to take during a strike	135
3.12	Limitations on strikes	136
3.13	Summary	136

## **CHAPTER 4**

### **COLLECTIVE BARGAINING AND NEGOTIATION**

4.1	Introduction	138
4.2	Defining the concept of negotiation	139
4.2.1	Negotiation tactics	140
4.2.2	The principles of negotiation	141
4.3	Approaches to negotiation	142
4.3.1	Competitive negotiation	142
4.3.2	Collaborative negotiation	143
4.4	Labour union negotiation	143
4.4.1	Bargaining for wages	143
4.4.2	The negotiation procedure	143
4.4.3	The nature of representation	144
4.4.4	Dispute procedure	144
4.4.5	Legalising agreements	144
4.4.6	Management-worker relationships	145
4.5	Motivation and negotiation	146
4.5.1	Maslow's needs approach	147
4.5.2	The VIE approach	149
4.5.3	Herzberg's two-factor motivation theory	150
4.5.4	McClelland's theory of achievement motivation	152
4.6	The negotiation process	153
4.7	Summary	155

## **CHAPTER 5**

### **CONCLUSION, PROPOSALS AND FUTURE RESEARCH PROSPECTS**

5.1	Introduction	156
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## **TABLE OF CONTENTS (CONTINUED)**

5.2	Conclusion of the research	157
5.2.1	Nature of the collective bargaining process and the history of collective bargaining	157
5.2.2	Collective bargaining agents, agreements and industrial action	158
5.2.3	Collective bargaining and negotiation	158
5.3	Recommendations	158
5.4	Future research	160
5.5	Summary conclusion	161
<b>AFRIKAANSE OPSOMMING</b>		164
<b>REFERENCES</b>		170

## **LIST OF TABLES**

TABLE 1:	MEMBERSHIP OF REGISTERED TRADE UNIONS, 1976 – 1995	39
TABLE 2:	UNION MEMBERSHIP AND UNION DENSITY	40
TABLE 3:	LABOUR RELATIONS PERSPECTIVES	61
TABLE 4:	COLLECTIVE BARGAINING COVERAGE IN THE NON- AGRICULTURAL FORMAL SECTOR (1993 – 1997)	80
TABLE 5:	ADVANTAGES AND DISADVANTAGES OF CENTRALISED AND DECENTRALISED BARGAINING	86
TABEL 6:	LEVELS OF BARGAINING IN SOUTH AFRICA	88
TABLE 7:	LEVELS OF UNION REPRESENTATIVES	100
TABLE 8:	BASIC REQUIREMENTS OF COMMON LAW FOR RECOGNITION AGREEMENT	105
TABLE 9:	SYNTHESIS OF NEGOTIATION APPROACHES	124

## LIST OF FIGURES

FIGURE 1: PRIMARY COLLECTIVE BARGAINING FORCES	67
FIGURE 2: SECONDARY INFLUENCES ON COLLECTIVE BARGAINING	70
FIGURE 3: A TYPICAL BARGAINING RANGE	74
FIGURE 4: BARGAINING STRUCTURES AND BARGAINING LEVELS	89
FIGURE 5: A FRAMEWORK OF COLLECTIVE BARGAINING IN SOUTH AFRICA	90
FIGURE 6: BARGAINING AGENTS	91
FIGURE 7: A MODEL STRUCTURE OF A UNION	97
FIGURE 8: THE ROLE OF THE SHOP STEWARD	102
FIGURE 9: FUNCTIONS OF THE WORKPLACE FORUM	105
FIGURE 10: WORKPLACE FORUM DISPUTE RESOLUTION	110
FIGURE 11: DISPUTE RESOLUTION FOR CLOSED SHOP AND AGENCY SHOP AGREEMENTS	122
FIGURE 12: DISPUTE RESOLUTION FOR COLLECTIVE AGREEMENTS	123
FIGURE 13: PROCEDURE TOWARDS A LEGAL STRIKE OR LOCK-OUT	128
FIGURE 14: MASLOW'S NEED HIERARCHY	147
FIGURE 15: VIE THEORY	149
FIGURE 16: HERZBERG'S TWO-FACTOR THEORY	151
FIGURE 17: COMPARISON BETWEEN THE THEORIES OF MASLOW AND HERZBERG	152

## **SUMMARY**

Collective bargaining can be described as an interactive process that resolves disputes between the employer and employee. It is a process whereby trade unions and employers' organisations come together to resolve a dispute of mutual interest to both parties.

There has been significant worker movement in South Africa over the past few years, which is due to the fact that employees are becoming more involved in decision making at the workplace in order for their needs to be taken into consideration.

Collective bargaining is central to the labour relationship. This study will analyse the process, functions, role, history and influences of collective bargaining.

The purpose of this dissertation is to give the individual a clear understanding of the concept of collective bargaining. When one studies collective bargaining, the following points must be recognised:

- The reasons for collective bargaining, namely, power play between the parties, conflict and commonality.
- The history of collective bargaining is analysed to understand the development of collective bargaining.
- The bargaining agents in the labour relationship, namely, trade unions, bargaining councils, workplace forums and employers' organisations.
- The types of collective action that arise out of collective bargaining, namely strikes and lock-outs.

The bargaining process begins when the trade union places its demands on the table. Management then compares the demands of the union with its own and then reacts to the demands of the union.

Collective bargaining acts as an economic function in that it regulates the individual and collective relationships at the workplace.

It also acts as a social function by establishing a system of industrial fairness for the employee to protect them from arbitrary action from management and to acknowledge their rights as an individual. It also fulfills a social function in that it allows employees to have a say in workplace matters that may affect them.

Recommendations are made regarding the changes that need to be made, as well as matters, which need to be analysed and examined further.

## OPSOMMING

Kollektiewe bedinging kan beskryf word as 'n interaktiewe proses wat poog om geskille tussen die werkgewer en werknemer op te los. Dit is 'n proses waarby die vakbonde en werkgewers organisasies byeenkom met die doel om 'n ooreenkoms aan te gaan oor 'n aangeleentheid van gemeenskaplike belang.

Daar was aansienlike werkersbeweging binne Suid-Afrika oor die laaste paar jare as gevolg van die feit dat werknemers meer betrokke is by die besluitneming in die werkplek sodat hulle behoeftes in ag geneem kan word.

Kollektiewe bedinging is sentraal tot die arbeidsverhouding. Hierdie studie analiseer die proses, funksies, rol, geskiedenis, en die invloed van kollektiewe bedinging.

Die doel van die skripsie is om aan die individu 'n duidelike verstandhouding te gee oor die onderwerp kollektiewe bedinging. Wanneer kollektiewe bedinging bestudeer word, kom die volgende navore:

- Die redes vir kollektiewe bedinging, naamlik, magspel tussen die partye, konflik en gemeenskaplikheid.
- Die geskiedenis van kollektiewe bedinging word geanaliseer om die ontwikkeling van kollektiewe bedinging te begryp.
- Die bedingings agente van die arbeidsverhouding naamlik vakbonde, werknemerverteenwoordigers, werkplekforums en werkgewers organisasies.
- Die tipes kollektiewe aksies wat ontstaan uit kollektiewe bedinging, naamlik stakings en uitsluitings.

Die bedingingsproses begin wanneer die vakbonde hul versoeke daar stel. Bestuur vergelyk die versoeke met hul eie versoeke of hulle reageer op die versoeke van die vakbonde.

Kollektiewe bedinging verwesenlik 'n ekonomiese funksie deurdat dit die regulasie van individuele en kollektiewe arbeidsverhoudings bewerkstellig.

Dit verwesenlik 'n sosiale funksie deurdat dit 'n sisteem van industriële geregtigheid vestig wat werknemers beskerm teen willekeurige aksie deur bestuur en dit herken hul reg tot mens waardigheid.

Laastens vervul kollektiewe 'n sosiale funksie deurdat dit vir werknemers 'n stem gee in sake wat hul werksomstandighede beïnvloed.

Ter samevatting is kollektiewe bedinging gerig daarop om goeie verhoudings tussen werkgever en werknemer te behou en om arbeidsvrede daar te stel en te behou.

Voorstelle word gemaak ten opsigte van veranderings wat aangebring moet word asook sake wat verder geanaliseer en ondersoek moet word.

## **CHAPTER 1**

### **INTRODUCTION AND PROBLEM STATEMENT**

#### **1.1 INTRODUCTION**

In this chapter, the problem is stated against a broader background and complexities that influence the problem are discussed. This study takes a theoretical approach towards collective bargaining, therefore the nature, purposes, functions, and processes of collective bargaining are discussed and compared in detail.

Any country's employment relations system is shaped by its history and various socio-political, economic and technological forces both inside and outside the country. It is the legislative framework in particular that helps to shape employment relations paradigms. In turn, the employment relations system helps to shape a country's history, simultaneously affecting other subsystems both inside and outside a country (Nel, 2002:55).

In an attempt to defuse the generation of conflict, most societies have developed rules, institutions and procedures for the regulation of conflict. Some rules are prescribed by the state in various labour laws, other rules have been developed through agreements between employers and unions. These institutionalise the process of collective bargaining, which is accepted by many Western countries as being the best means of resolving conflict between employers and workers (Le Grange, 1996:8).

Labour legislation has in the first place, to ensure the protection of employees. Early industrialisation taught that the operation of the market principle is not a guarantee against exploitation and that an individual may, by force of circumstances, enter into an unfavourable contract. For this reason it is regarded



as the duty of the State to legislate on minimum terms and conditions of employment and to protect health and safety of the workforce.

Secondly, labour law in a voluntary system will provide the framework for the conduct of the collective labour relationship. Legislation will provide for freedom of association, freedom from victimization and the right to engage in industrial action. To promote labour peace, dispute settlement procedures may also be provided. Furthermore, it may happen that each party is protected from unfair practices by the other and that collective bargaining is promoted by the body of labour legislation (Bendix, 2001:89).

On the other hand, the constitutional framework of labour sets out fundamental rights for all persons. No legislation can contain provisions that may deprive individuals of these fundamental rights. The rights may only be limited if it is reasonable and explained for in a self-governing society that based on equality, but the rights cannot be removed completely.

There are some amendments that affect collective bargaining and bargaining councils and they are as follows according to Labour Protect:

- Bargaining Council agreements may now be enforced in a similar way to Basic Conditions of Employment Act 75 of 1997 enforcement (Section 33A). Any unresolved dispute about compliance with any provision of a collective agreement can be referred to arbitration by an arbitrator appointed by the council. The arbitrator has all of the powers of a Commissioner of the Commission of Conciliation, Mediation and Arbitration (hereafter only CCMA), and may also determine any dispute about the application or interpretation of a collective agreement. The arbitrator may make any appropriate award, including an order that any person pay an amount owing in terms of a collective agreement or may impose a fine for a failure to comply with an agreement. The arbitrator's award is subject to review by the Labour Court.

- Simultaneously with the amendments a notice stipulating fines that CCMA arbitrators may levy is being published in the regulations.
- Bargaining Councils are required to advise the registrar of Labour Relations annually on the involvement of small businesses in the Council (Section 54 of the Labour Relations Act of 1995). Bargaining councils are required to provide a report to the Registrar on the extent to which they cover small employers, and the extent to which they take the interests of small and medium enterprises into account.
- The Registrar of Labour Relations is given increased powers to oversee the conduct of a Council's affairs (Section 54), including ascertaining representivity.
- The Registrar of Labour Relations now has created authority to register, or refuse, an applicant as a Trade Union or Employers' Organisation. This is to assist and prevent unscrupulous labour organizations abusing workers and smaller employers. The registrar must be satisfied that they are a genuine organization.

Successful labour relations demand a basic knowledge of labour legislation. Labour legislation, broadly stated, is that set of official rules within which the individual and collective relations between the parties – employers and workers; employers mutually; workers mutually, and between the government, employers and workers – are arranged (Nel *et al*, 1998:53).

The researcher's studies focus more on collective bargaining after the discovery of gold and diamonds in the 1870's, the United Kingdom had a major effect on South Africa. During this time, there were no updates on legislation. After the appointment of the Wiehahn Commission in 1977, amendments to legislation

were made in 1979 and since then changes to industrial legislation were commonly made.

The principle of workers combining in collective action in an attempt to satisfy their needs and wants can be traced to the decline of the feudal system in the 17<sup>th</sup> century and the advent of the Industrial Revolution. After the decline of the guild system, which had provided protection for craftsmen, the so-called combinations originated, in which workers decided to act as a group when approaching management with a view to improving their working conditions (Nel, 2002:133).

Like its predecessor (Labour Relations Act of 1956), the Labour Relations Act 66 of 1995 makes no express provision for a duty to bargain. Under the Labour Relations Act of 1956, however, the labour courts were able to fashion such a duty under their general unfair labour practice jurisdiction – a refusal by an employer to bargain with a trade union which enjoyed sufficient representation was, after all, a recipe for promoting labour unrest. The new Labour Relations Act of 1995 affords the Labour Court no such scope for compelling employers to bargain collectively. It contents itself, rather, with granting unions and employers certain rights and leaving it to them to determine whether and to what extent such rights are exercised in the process of collective bargaining (Grogan, 2001:258).

According to the researcher, today's workplace can be described as a place of change because there always seems to be technological transformation that occurs on a daily basis, there is severe competition, not only within the workplace but world wide, and most importantly the gender and cultural differences of the workforce is more varied than ever before.

The challenges that are faced by participants in collective bargaining have been well documented. According to Nel (2002:135), management is challenged to

behave rationally in its interaction with workers, while workers are challenged to try to satisfy their needs within the framework of the dynamics of the organization and in collaboration with management.

Responses to these challenges are powerful and influential because they are not only troublesome to the individual employee but can affect an entire workforce, which inevitably leads to conflict. This conflict can lead to arguments and misunderstandings among workers, which then leads to industrial action in the form of strikes and lockouts.

In certain circumstances, management and labour may even cooperate to avoid change and to eliminate competition or interference. It is necessary, therefore, that the process of collective bargaining be based on a meaningful balance between cooperation and competition between management and workers (Nel, 2002:135).

It is clear that collective bargaining will remain central to South African industrial relations. Essential to the effectiveness of collective bargaining is the leverage that either side of the industry can wield regarding the other. Although the state as employer is in a stronger position than its private sector counterpart, the public employee is potentially also in a stronger position than its private sector counterpart. A defining characteristic of most government activity and services is that they are the ones available to the public. This means that industrial action which disrupts such services has a very significant impact on the public, serving as a substantial lever in collective bargaining (Le Grange, 1996:6).

Collective bargaining and negotiation are vital to resolve the challenges that occur in the workplace, as both these mechanisms aid dispute resolution. Negotiation allows individuals to become effective in voicing their opinions and to have their work recognized. Negotiation further helps individuals to deal with resistance to change over gender and cultural issues.

The researcher agrees that collective bargaining is a voluntary process that settles the conflicting interests and aspirations of management and employees through the joint regulation of the terms and conditions of employment.

Furthermore, collective bargaining is a process in which trade unions and employers' organisations meet with an effort of reaching an agreement which is expressed in the terms of a contract and which identifies the extent and nature of the employer-employee relationship.

The researcher believes that collective bargaining was established to resolve the conflicting interests, which regularly occur between the employer and employee. Collective bargaining, therefore, brought about worker participation to resolve these conflicts. This means that employees must be involved in the production process and therefore there must be good relations between the employer and employee. If good industrial relations exist, it will lead to job satisfaction and it will create trust in the employer-employee relationship.

Nel and Van Rooyen (1991:165) state that collective bargaining, i.e. the bargaining process between labour and management in the labour relations system, is therefore characterised by an urgency to reach a decision because of social, economic and legal pressures.

According to the researcher, one of the bases of the bargaining relationship is power. The employer has power over an employee because the employer knows that the employee is aware that the employer is paying his/her earnings. Although the employee is aware of who is paying his/her salary, he/she can also make the employer aware that if it were not for the employees' production, the employer would not be able to make a living. The employee, therefore, has the power of withholding his/her labour. However, the employer enters into the bargaining relationship because he/she knows that the employee also has power through their union. The power that an employee has through its union can be a

form of industrial action such as a strike. It must not be forgotten that the employer has this same type of power, because he/she can also engage in industrial action in the form of a lockout.

A strike or lockout occurs when the parties in dispute cannot reach consensus or come to an agreement on a matter of mutual interest. This action is then a way of threatening the opposing party and a way of getting them to give in to their demands.

According to du Plessis *et al.* (1996:135), collective bargaining is a process through which bilateral control of the enterprise by management and labour can be, and often is, established and by bargaining collectively, conflict in the workplace is contained and agreements are reached to resolve conflict that has arisen.

Bargaining is a process of meeting, presenting demands, counterdemands and proposals, haggling, convincing and, in many cases, threatening, until agreement is reached (Nel & van Rooyen, 1991:166).

There are various issues that arise when one studies the role of collective bargaining and negotiation within the labour relationship:

- There are certain processes to be followed in collective bargaining. What are these processes and how are they carried out?
- What are the reasons for collective bargaining?
- Who are the agents that assist collective bargaining and what role do they play?
- What agreements exist for collective bargaining?

- When and what types of industrial action take place?
- What function does negotiation play towards the labour relationship and how is it related to collective bargaining?

It is clear that the labour relationship has a positive approach towards collective bargaining and negotiation because it assists the labour parties in the settlement of disputes and ensures that the correct procedure is followed when dispute settlement occurs. These procedures are set out in collective agreements that are formulated between the parties to the labour relationship. If individuals refuse to enter into the bargaining relationship if requested to do so, the consequences must not be overlooked because it can lead to industrial action or even as a last and more serious resort, dismissal.

## **1.2 SETTING OF THE PROBLEM**

According to the researcher, collective bargaining and negotiation do not always guarantee that a dispute will end in a peaceful agreement or settlement that all the parties involved are satisfied with.

Workplace disputes occur on a daily basis, they sometimes occur between two individuals about work dissatisfaction or they occur between a whole workforce and an employer about wage increases.

Workplace disputes can spread like wild fire, for example, if one workforce specialising in steel is in dispute about wage increases and other steel company employees hear about the dispute for higher wages, they also demand wage increases, which then leads to the whole steel industry striking for higher wages. This then leads to lower production and a drain on the economy.

To avoid major production disruptions in the workplace, negotiation and collective bargaining occur to resolve a dispute and reach an agreement as soon as possible.

### **1.3 THE GOAL OF THE STUDY**

The goal of this study is to describe and identify major changes in the field of collective bargaining. The specific sub-goals to be investigated, will be approached in the following way.

- To identify the characteristics of collective bargaining to give the individual a general understanding of the concept, purpose and process of collective bargaining. To identify how collective bargaining take place within the different levels of bargaining in South Africa.
- To investigate the nature of collective bargaining and examine the current trends in collective bargaining in South Africa.
- To explain the difference between negotiation and collective bargaining, as well as the difference between centralized and decentralized bargaining.
- To identify the conditions necessary for successful collective bargaining will be summarised and the types and reasons for industrial action will be discussed.

### **1.4 PREVIOUS RESEARCH ON COLLECTIVE BARGAINING IN SOUTH AFRICA**

A search i.r.o. collective bargaining, suggests that relatively little have been written on the role of bargaining on industry level and workplace level organisations.



The study by Hamman (1993) focus on the impact of collective bargaining legislation in primary argiculture. Hamman wanted to assess and find out if the enactment of legislation would lead to more stimulated collective bargaining.

Dayakala (1999) studied the social workers' perception on the subject of unionisation and collective bargaining. She further explored the social workers perceptions of compatibility and incompatibility of unionism and professionalism.

Marinus (1996) study focuses on the collective bargaining provisions by focussing on the Labour Relations Act 28 of 1956 and the new Labour Relations Act. He also identified the problems of each of these acts have.

The study of Godfrey (1997) was on the perception of employers in Western Cape Clothing Industry with regard to different levels of bargaining. The study was done in 1991, which looks at bargaining at a regional level and in 1995, which looks at bargaining at a national level. The research was to determine why collective bargaining becomes situated at a particular level.

Le Grange (1996) on the other hand studied the theory of collective bargaining in the South African Police. The nature and purpose of collective bargaining is discussed in terms of the role it fulfils in the public sector.

## **1.5 APPLICABILITY OF THE FINDINGS OF THE RESEARCH**

The dissertation provides a detailed examination of collective bargaining in South Africa after 1995. Lessons are to be learned from knowledge gained in the literature study and the importance of future studies on collective bargaining. These are discussed in the final chapter, where recommendations for future research and practice are made.

## **1.6 RESEARCH METHOD**

There are various types of research that can be used, namely, empirical research, literature research, experimental research and historical research. In this study the researcher focuses on a literature method.

### **1.6.1 Literature method**

The researcher has chosen to base this dissertation on the extensive use of literature study to give an expert opinion on the meaning of collective bargaining. The types of literature will mainly include textbooks, articles, and studies. The number of books published on the study of labour relations and dispute resolution reveals the vast amount of research done on the subject. This research is wide-ranging and only touches the difference between collective bargaining and negotiation as well as many other topics. The researcher therefore chooses to do a comprehensive literature study on the role and purpose of collective bargaining within the labour relationship.

This study will be based not only on the quantity but also on the quality of research to provide the individual with extensive knowledge on the subject of collective bargaining. The researcher aims to make this study simply understandable and straightforward for the information to be easily absorbed by the reader.

## **1.7 DEFINITION OF CONCEPTS**

The following concepts are relevant to this study:

### 1.7.1 COLLECTIVE BARGAINING

The term collective bargaining originated in the British labour movement. But it was Samuel Gompers, an American labour leader, who developed its common use in this country. The following is a modern-day definition:

*“Collective bargaining is defined as the continuous relationship between an employer and a designated labor organization representing a specific unit of employees for the purpose of negotiating written terms of employment “(Somers, 1980:553-556).*

Beatrix and Sidney Webb described collective bargaining as:

*“...one method whereby trade unions could maintain and improve their members’ terms and conditions of employment (Bendix, 2001:233).*

This description is correct, because:

- Collective bargaining is an union-initiated process, and
- The initial purpose of collective bargaining is to obtain improved employment conditions for trade unions members.

The description given by Webbs may be insufficient, because of the following reasons:

- it fails to highlight the interactive nature of the process its paradoxical basis and its central position in the conduct of the traditional relationship.
- It also fails to describe the dynamic nature of the collective bargaining process, its reliance on the power of the parties and its susceptibility to outside influences.

Bendix (2001:232-233) described collective bargaining as:

*“a process, necessitated by a conflict of needs, interest, goals, values, perceptions and ideologies, but resting on a basic interdependency and commonality of interest, whereby employees/employee collectives and employers/employer collectives, by the conduct of continued negotiation and the application of pressure and counterpressure, attempt to achieve some balance between the fulfillment of the needs, goals and interest of management on the one hand and employees on the other – the extent to which either party achieves its objectives depending on the nature of the relationship itself, each party’s source and use of power, the power balance between them, the organizational and strategic effectiveness of each party, as well as the type of bargaining structure and the prevalent economic, sociopolitical and other conditions”.*

Collective bargaining is a process of decision-making between employers and trade unions, with the purpose of arriving at an agreed set of rules governing the substantive and procedural terms of the relationship between them, and all aspects of and issues arising out of the employment situation (Le Grange, 1996:13).

Collective bargaining has also been defined as:

*“a voluntary process for reconciling the conflicting interests and aspirations of management and labour through the joint regulation of terms and conditions of employment”* (Rycroft & Jordaan, 1992:116).

Collective bargaining is according to Grogan (2003:304) :

*“a process by which employers and organised groups of employees seek to reconcile their conflicting goals through mutual accommodation”.*

This involved employers or employers' organizations bargaining with employee representatives or trade unions about matters of mutual interest, such as terms and conditions of employment (Basson, et al., 2003:56). Collective bargaining is a voluntary process and it has the ultimate aim of facilitating an environment in which both the employer and employee can reach an agreement and conciliation in terms of the matters in dispute (Van Jaarsveld & Van Eck, 1998:144).

To better understand this definition, a few of finer concepts need explanation. The idea of bargaining is the curcual theme that runs through this mediation process, but what does it entails? Basson, *et al.* (2003:56) *puts forward that bargaining occurs when*

*“two opposing parties exchange demand and make counter-demands”.*

The concept can also be interpreted as the various parties either proposing, accepting or rejecting compromises or in other words, the parties may negotiate and the one will place pressure on the other to give into its demands.

There are two main purposes of collective bargaining, namely:

- Collective bargaining aims to regulate terms and conditions of employment (secular level).
- Collective bargaining has the purpose of being an avenue for the resolution of disputes (enterprise level) (Basson, et al., 2003:57).

The Labour Relations Act legislates and enforces these tow purposes of collective bargaining through providing a framework for collective bargaining and promoting collective bargaining (Van Jaarsveld & Van Eck, 1998:146). These goals were reiterated in the case of *National Union of Metalworkers of South Africa and Others v Bader Bop (Pty) Ltd and Another* where it was held by the Constitutional Court that the Act sought to provide a framework whereby both employers and employees and their organizations could partake in collective

bargaining and the formulation of industrial policy and that it sought to promote orderly collective bargaining with and emphasis on bargaining at sectoral level, employee participation in decisions in the workplace and the effective resolution of disputes.

In this study collective bargaining refers to negotiations about conditions of employment and terms of employment between the employer and employee and their representatives.

### **1.7.2 BARGAINING AGENTS**

These are three institutions recognised by the Labour Relations Act, which represent employers and employees in collective bargaining. They are namely, trade unions, employers' organisations and workplace forums (Grogan, 1999:218).

#### **1.7.2.1 TRADE UNION**

One of the first definitions of a trade union was that of Sidney and Beatrix Webb, who described a unions as:

*"...a continuous association of wage earners for the purpose of maintaining or improving their working lives".*

In South Africa the Labour Relations Act of 1995 defines a unions as:

*"an association of employees whose principal purpose is to regulate relations between employees and employers, including any employers' association".*

The researcher agrees with Bendix (2001:149) that neither of these definitions allows for a distinction and certain associations which may also seek to represent the interest of their members, but which do so on a cooperative or consultative basis. The element missing from the definitions is that unions establish a position of equality with the employer and engage in bargaining with the employer, as opposed to associations, which do not bargain but merely talk and which have rely mostly on the goodwill of the employer because they do not have the power base or position to elicit concessions from him. Therefore according to the researcher a better definition of a union is that of Salamon (1987:57) that a union is:

*“Any organization, whose membership consists of employees, which seeks to organize and represent their interests both in the workplace and society, an, in particular, seeks to regulate their employment relationship through the direct process of collective bargaining with management “.*

Salamon’s definition highlights two other aspects of unionism, namely:

- Trade unionism requires organization; and
- A union seeks to improve the position of its members in society at large.

In this study the researcher uses the definition of Salamon as defined above.

#### **1.7.2.2 EMPLOYER’S ORGANISATION**

An employers’ organization is defined as:

*“any number of employers associated together for the purpose, whether by itself or together with other purposes, of regulating relations between employers and employees or trade unions”. (Grogan, 2001:271).*

Employers' organizations are therefore the employers' counterpart of trade unions. Employers organizations can form federations, which have *locus standi* to bring actions in their own names.

### **1.7.2.3 WORKPLACE FORUM**

The Labour Relations Act of 1995 creates a new plant-level institution, namely the workplace forum, which is intended to promote participative management rather than adversarial bargaining within particular enterprises. The workplace forum is one of the forums in which collective bargaining may take place.

Workplace forums differ from trade unions in that they are 'in-house' institutions operating within a particular company or division, and membership is confined to employees of the particular employer (Grogan, 2001:273).

### **1.7.2.4 EMPLOYEE**

It is important to know who the "employees" are, because it is crucial to the application of the act. Section 213 of the 1995 Labour Relations Act defines "employee" as:

*"... any person, excluding an independent contractor, who works for another person or for the State and who receives, or is entitled to receive any remuneration; and any other person who in any manner assists in carrying on or conducting the business of an employer.*

This definition of "employee" includes not only somebody who works for another and who receives, or is entitled to receive, any remuneration, but also any other person who in any manner assists in carrying on or conducting the business of an employer. It is thus important to distinguish between an employee and an independent contractor (Slabbert *et al.*, 1998:5-29).



Any other person who in any manner assists in carrying on or conducting the business of an employer (Basic Conditions of Employment Act, Act No. 75 of 1997).

### **1.7.3 COLLECTIVE AGREEMENT**

The Labour Relations Act of 1995, Section 23-26, discusses the issues relating to collective agreements. Finnemore and Van der Merwe (1996:147) define collective agreements as follows:

*“A collective agreement means a written agreement concerning terms, conditions of employment or any other matter of mutual interest concluded by one or more registered trade unions and one or more employers and / or registered organisations”.*

A collective agreement in terms of Section 213 of the Labour Relations Act of 1995, could also be defined as follows:

*“A written agreement concerning terms and conditions of employment or any other matter of mutual interest concluded by one or more registered trade unions, on the one hand, and on the other hand one or more employees, one or more registered employers’ organisations, or one or more employers and one or more registered employers’ organisations.”*

There are two types of collective agreements, namely procedural agreements and substantive agreements. Procedural agreements relate to those collective agreements that regulate how the parties will conduct their relationships (Muchinsky *et al.*, 1998:285). The substantive agreement regulates the rights and obligations of the union and employers in terms of the exchange of rewards for services (Slabbert *et al.*, 1999: 9-30).

According to the researcher, collective agreements are thus agreements entered into between management and labour, such as bargaining council agreements and recognition agreements.

A collective agreement binds employees who are not members of a registered trade union or trade unions in the agreement, if the employees are identified in the agreement. The agreement expressly binds them if the majority of employees in the workplace are members of the trade union. When applicable, a collective agreement changes a contract of employment between an employee and employer who are both bound by the collective agreement. A collective agreement which regulates; terms and conditions of employment, or the conduct of the employer in relation to their employees, or the conduct of the employees in relation to their employer. A collective agreement becomes binding 30 days after signature, unless otherwise provided. A collective agreement for an indefinite period can be terminated on reasonable notice. It is not a criminal offence to not comply with the provisions of an agreement.

#### **1.7.4 COMMISSION FOR CONCILIATION, MEDIATION AND ARBITRATION CCMA**

The Commission for Conciliation, Mediation and Arbitration plays a central role in the statutory dispute-resolution process. All disputes not handled by private procedures or accredited bargaining councils or agencies must be referred to it for conciliation or mediation before they can be referred to arbitration or adjudication through the Republic (Grogan, 1999:259).

#### **1.8 THE PURPOSE OF COLLECTIVE BARGAINING**

The purpose of collective bargaining is to reach an agreement. Usually this is achieved through compromises or concessions made by both parties (Bendix, 2000:138).

It was noted by Naser J in *Carstens v Van Zwam* “[t]here are no facts on which I could decide whether or not the reduced wage offered to journeymen is fair, and I also doubt whether it would be the function of the court to decide such an issue, even if all the relevant facts were placed before it”. Thus it is the function and power and collective bargaining and not of law to determine the appropriate wage (Trollip, 1997:41).

Du Toit *et al*/ states that the Labour Relations Act attempts to “Advance collective bargaining as a means of securing labour peace, social justice, economic development and employee equality”. According to the researcher this it can be extracted that collective bargaining is not merely a means of securing an agreement over wages or conditions, it maintains labour peace, promotes equality and also plays a social and economical role.

Rycroft & Jordaan (1988:202) illustrate three functions that collective bargaining fulfils, namely:

- It has an economic role in its establishment of wages and standards for employees that are reasonable. Collective bargaining must also be remembered that no sector of the economy is immune from the effects of collective bargaining. For example, if unions and employers in the steel industry were to collectively agree that the wages of steel workers should be increased, the price of steel too would have to increase, thus affecting the buyers.
- Collective bargaining fulfils a social function in that it establishes an industrial justice system that protects employees from arbitrary action by management and which recognizes the right to human dignity.
- Collective bargaining performs a political function, it brings a measure of democracy to the workplace, allowing the employee to have a say in matters that affect their working lives.

The bargaining process is usually set in motion when the union places its demands on the table, which management then counters with its own demands or just responds to the demands of the union.

As the bargaining process advances and each party makes compromises, the parties then move closer to an agreement. The result of the process will depend on how strongly one party can persuade the other party to give in to their demands, or their desire to maintain the relationship and reach some kind of agreement. If no agreement is reached, the parties then declare a deadlock, which usually results in either party declaring a dispute.

Collective bargaining fulfils various functions. The first being an economic function in that it serves as a tool for the regulation of individual and collective workplace relations and the institutionalisation of industrial conflict.

Secondly, collective bargaining fulfils a social function in that it establishes a system of industrial justice which protects employees from arbitrary action by management and which recognises their right to human dignity (Rycroft & Jordaan, 1992:117).

The last function is that of a political nature. It gives employees a say in matters that affect their working lives as well as a right to representation.

There can consequently be no doubt that, given the character and nature of collective bargaining, the entire sphere of collective bargaining is especially viable for future dynamic development and readjustment. An increasing need for more effective participation in decision-making is of utmost importance to labour relations in South Africa. Although increasing use will be made of different models of worker participation, the possibilities and dynamic nature of the process will ensure that collective bargaining will always be resorted to in the field of employment (Le Grange, 1996:33).

It can be concluded that collective bargaining is aimed at keeping good relations between the employer and employee and to obtain and maintain labour peace. It is a process aimed at avoiding and solving industrial conflict.

## **1.9 UNFOLDING THE CONTENTS**

The first chapter will consist of an introduction and definition of the problem. The researcher gives an explanation of the concept of collective bargaining and how this mechanism plays a role within the labour relationship. The research method and purpose of this study will also be verified.

The second chapter will consist of more extensive research on the nature of collective bargaining. The history of collective bargaining will be discussed and reviewed. The reasons for collective bargaining, namely, commonality, conflict and power will be made understandable to the individual. There will be a focus on conflict as this is the root of labour disputes. Lastly, different theories will be identified and explained.

The third chapter will define and explain the functions, structure and objectives of the different bargaining agents and bargaining forums. Collective agreements, namely closed shop and agency shop agreements will be discussed. Industrial action and the role it plays in collective bargaining will be analysed.

Chapter four will identify negotiation tactics and the negotiation process will be investigated and there will be a comparison of collective bargaining and negotiation.

Chapter five will be an analysis and summary of the research findings and recommendations of this study will be stated.

## **CHAPTER 2**

### **THE NATURE OF THE COLLECTIVE BARGAINING PROCESS AND THE HISTORY OF COLLECTIVE BARGAINING IN SOUTH AFRICA**

#### **2.1 INTRODUCTION**

In Chapter One the research problem was stated against a broader background and complexities that influence the problem were discussed. In this Chapter the history and background of collective bargaining will be discussed. The research in this chapter will be on bargaining styles and the role of collective bargaining.

In industrial relations terms, South Africa is both an old and a new country. Although industrialisation commenced only at the end of the nineteenth century, South Africa had an Industrial Conciliation (Labour Relations) Act long before Great Britain had any comprehensive legislation governing labour relations. South Africa was also one of the founder members of the International Labour Organisation, but was later expelled for its apartheid policies. It is those apartheid policies which stratified the labour relations system until the late 1970's, and which have left the country in a situation where it constantly needs to take quantum leaps in order to keep up with rapid developments elsewhere in the world (Bendix, 2000:27).

When the first Dutch settlers arrived at the Cape in 1652, the need for labour was already a crucial issue. The indigenous populations were seen as inferior and were used to provide labour for these settlers and this is how slavery became an essential part of the Cape Colony. The nomadic Boer farmers carried these ideas into the interior of the country where blacks were expected to do all the manual labour. The blacks rendered their services to the farmer in return for the right to home on the land.

The modern South African industrial relations system came into being in 1924, with the introduction to the Industrial Conciliation Act (no. 11). This Act was passed in the aftermath of the 1922 white miners' strike and the election of the Pact government (a Labour-National Party coalition) in 1924. It allowed for industry-level bargaining between employers and representatives of trade unions that had been registered in terms of the Act. Once a specific agreement governing wages and working conditions for a particular industry had been negotiated, it was legally binding on all firms operating in the relevant industry. Workers could only resort to legal strike action once a complex procedure had been exhausted (Wood, 1998:28).

## **2.2 THE NATURE OF COLLECTIVE BARGAINING**

Collective bargaining can be described as negotiations about conditions of employment and terms of employment between the employer and employee and their representatives with a view of reaching an agreement.

Collective bargaining as a process usually occurs either when an existing agreement terminates and the management-union relationship must be reviewed, or when conflicts of interest arise and existing agreements are rejected, or when the need for an agreement arises because of a dispute or grievance (Nel, 2002:135).

Collective bargaining is usually referred to as a process because it involves interaction. This interaction involves more than one person or group and these persons or groups have a common effect on one another because the behaviour of one person or group affects the behaviour of the other.

Dyakal (1999:68) distinguished that the essential characteristics of collective bargaining according to the Donovan Commission method, is that employees do not negotiate individually and on their own behalf, but do so collectively through

representatives. Clearly, therefore, collective bargaining can exist and function only if:

- The employees themselves are prepared to identify a commonality of purpose, organize and act in concert and
- Management is prepared to recognize their organizations and accept a change in the employment relationship, which removes or at least constrains, its ability to deal with employees on an individual basis.

The term 'collective bargaining' was first used by the Webbs, who described collective bargaining as an economic association, which had trade unionism acting as an interest group, which controlled entry into the trade.

Allan Flanders argued that collective bargaining is a political process and that the value of a union to its members is in its ability to protect their dignity and not economic achievement.

On the other hand, Marxists argued that collective bargaining is a means of social control within a trade and the class struggle between capital and labour.

The various aspects of collective bargaining can be identified as follows:

- **Collective bargaining as communication process:** collective bargaining is essentially a process of communication, and therefore it displays all the problems usually associated with communication, added to the other inherent problems surrounding collective bargaining (Nel & Van Rooyen, 1985:93).

During the collective bargaining process, the parties inform each other of their needs, wants and attitudes. As a communication process, collective bargaining depends on effective verbal language. In the case of nonverbal



communications, culture plays an important role because it has a direct influence on how the language is interpreted.

- **Collective bargaining as an economic process:** One of the major objectives of collective bargaining is to improve wages and conditions of service. This has misled many people to regard it mainly as an economic or marketing factor, but the problem with this view is that it implies a win-lose situation whereby labour will not be “sold” if the price is not right.

Normally labour is withheld (by striking) only as a coercive or persuasive measure, the intention being that labour will be sold and compromise reached (Le Grange, 1996:16). Because of the economic orientation, it is suggested that collective bargaining is an economic market activity such as buying and selling a product by negotiating about the price (Nel & van Rooyen, 1991:168).

- **Collective bargaining as a negotiation process:** Collective bargaining is seen as a process of negotiation that is mainly aimed at the economic position of the employer-employee relationship. During this method, the behaviour and counter-behaviour of the parties involved in the negotiations are analysed. It is generally accepted that conflict is generated by economic, ideological, socio-cultural and personal differences between people. According to Dubin (1957:179) if it is accepted that collective bargaining is an interactive process and that any human relationship has a certain conflict potential, then it is easy to understand why collective bargaining has an element of conflict.

According to researcher whether or not collective bargaining restricts conflict to a minimum will depend on the extent to which the bargaining process serves the need and goals of the participants and on the objectives of the bargaining process itself.

The negotiating activity must therefore be recognized and the contractual element admitted. It must also be recognized that these are elements or characteristics of the methods, and as such it cannot describe or define the nature of collective bargaining (Nel & Van Rooyen, 1985:94).

- **As a conflict control mechanism:** the view of collective bargaining as a conflict-control mechanism is probably the most dynamic (Finnemore & Van der Merwe, 1994). It is based on the principle of participation and the proactive regulation of the workplace relationship. Collective bargaining alleviates tension by making employers and employees participate with one another. Collective bargaining, therefore, regulates the relationships at the workplace.
- **As a trade union activity:** almost from its inception collective bargaining has been intimately related to the growth and development of trade unionism (Le Grange, 1996:17).
- **As a management style or technique:** collective bargaining can influence the management of an organization, without it being regarded as a management style, in various respects:
  - Managers are compelled to follow certain rules in handling employees with regard to promotion, wages, overtime, etc.
  - They must consider and preferably consult with their employees; and
  - Collective bargaining introduces a prohibition on certain, normally accepted behaviour mode, such as withholding wages as a form of discipline.

Since the establishment of collective bargaining, it has been related to the growth and development of trade unionism. Union representatives become the collective bargaining agent when they represent and act on behalf of the worker.

Collective bargaining is seen as a method of joint decision-making that stimulates participation and consultation. Collective bargaining influences the management of an organisation by compelling managers to follow certain rules relating to personnel, to act reasonably when consulting with employees and prohibits managers from carrying out certain forms of discipline. Flanders (1974:31) reduced the system theory (discussed in detail later in this chapter) with regard to the nature of collective bargaining to three theories, namely:

- Marketing theory;
- Government theory and
- Management theory.

Although the three bargaining theories represent different phases in historical development (discussed in the next sections) of bargaining, this does not mean that the management theory, which represents the latest view on the nature of collective bargaining, is the only correct theory. Flanders (1974: 32-33) gives the reasons as being: "They are supported by value judgements so that each has its own appropriate ethical justification."

### **2.2.1 Marketing theory**

Chamberlain's marketing theory briefly means that employees sell their labour to the employer via a common agent, the trade union. The price at which the individual employees in the labour market will ultimately be prepared to sell their labour to the employer is determined collectively and is embodied in a collective agreement. Although the agreement can be seen as a standard catalogue of labour, it does not imply that the employer is under any obligation to buy an employee's labour, but rather that when an employer does, in fact, buy an employee's labour, it will be at the price agreed upon (Slabbert & Swanepoel, 1998:204).

### **2.2.2 The government theory**

In the same way that a country's legislation is usually shaped according to the needs of society, the rules and regulations collectively agreed upon flow from the needs of the worker. In contrast with the marketing theory, the rules and regulations will not, however, only provide for the extrinsic needs of the employees, which can be converted into a monetary value, but also for the intrinsic needs of employees, such as their need for training, promotion, job security, excetera. In the government theory more than just the highest possible price of labour is involved (Slabbert & Swanepoel, 1998:205).

### **2.2.3 The management theory**

The management theory can be regarded as an extension of the government theory. In the management theory, the nature of collective bargaining can be analysed best against the background of the employees in their working environment. This is because management and trade unions make joint decisions in the bargaining process concerning matters, which affect the work-life of the employer. The decisions, which crystallize in rules, regulations and procedures, are embodied in a collective agreement on which the labour policy of the enterprise is based. It can therefore be concluded that the labour policy of the enterprise is the result of joint decision-making between management and trade unions (Slabbert & Swanepoel, 1998:206).

According to the researcher, collective bargaining is often mistakenly viewed as the main objective of labour relations. Collectively bargaining is indeed a very important aspect that occurs in labour relations for the reason that it is a process, which occurs between employees and management and takes place between the parties because there are common interests. It further aims to promote healthy working conditions for both the employee and employer by containing conflict and promotes communication within the workplace. Therefore, collective

bargaining can be seen as a co-operative process because both labour parties bargain with each other to eventually reach a compromise.

Most importantly, in a pluralist system, the process of collective bargaining is the predominant method by which employers and their employees as a collective establish and continue a relationship, which might otherwise prove difficult to maintain. If there were no collective bargaining, there might be no relationship between employers and employees except the individual contractual relationship, which is essentially imbalanced. Collective bargaining constitutes a means by which the two sides can get together, talk about their problems, needs and goals and try to settle their differences (Bendix, 1989:77).

## **2.3 DEVELOPMENT OF SOUTH AFRICAN COLLECTIVE LABOUR LAW**

According to Bendix (2001:239) the bargaining relationship may be described as the extension, collectivisation and formalisation of the labour relationship. Prior to the establishment of the bargaining relationship, a formal relationship, regulated by the contract of employment or legislative provisions, does exist between the employer and individual employee. Also, negotiations might be conducted between the employer and individual employees, but there is no formal relationship between the employer and the employee collective, at least not one of the same types as the bargaining relationship. In the absence of a bargaining relationship there might be an informal collective relationship in that the employer may from time to time call his employees together, speak to them and canvass their opinions, or there might be another kind of formal relationship, embodied by workers committee' or workers' council. The first type of relationship puts no onus on the employer to consult with or heed the opinion of his employees, while the second may not allow employees to use their power to elicit concessions from the employer unless the workers' committee acts also in a bargaining capacity.

The bargaining relationship is marked by the employer's formal agreement to enter into negotiations with his employee or a group of his employees with a view to mutual regulation of their relationship. In agreeing to bargain, the employer acknowledges the power of his employees and their standing as equal negotiating partners. Implicitly he accepts that there is a conflict through the bargaining process. Moreover, acceptance of the bargaining relationship would, in a voluntary system, imply acceptance of the employees' freedom to strike and the employer's freedom to lock out his employees.

Bendix (2001:240) continued that the establishment of the collective bargaining relationship, the parties agree, in the first place, that each will not pursue his own interests to the exclusion of the other, but that they will interact within the framework of mutually agreed rules and procedures. As Hawkins (1981) has stated, 'The rules embodied in collective bargaining procedures represent a voluntary undertaking by employers and trade unions alike to act in accordance with accepted norms of behaviour.'

Most importantly, the bargaining relationship differs from the normal employer-employee relationship in that an outside party, in the form of the union, usually represents the interests of employees. For this reasons the bargaining relationship is often described as an employer-union relationship or a relationship between an employers' association and a union and not as an employer-employee relationship, which it essentially is and should remain. The entry of a third party, whether it is in the form of a trade union or an employers' association, greatly formalises the relationship. Such formalisation is necessary but it may, at times, hamper the relationship.

There are instances when the employer agrees to enter into a bargaining relationship with his employees without the presence of a union or where an employer will bargain with a union on an ad hoc basis without concluding a formal agreement, but these are the exception rather than the rule.

### 2.3.1 THE PERIOD 1924-1979

A number of legislative changes took place during the years 1924-1979, most notably, a series of amendments to the Industrial Conciliation Act and the introduction to the Native Labour (Settlement of Disputes) Act. These acts were primarily dedicated to entrenching a dualistic, racially segregated industrial relations system, *inter alia* by means of forcing non-racial trade unions to split on racial lines (Wood, 1998:29).

In the 1950's, large numbers of trade union leaders were banned and arrested when the Nationalist government passed the Suppression of Communism Act. The ANC (African National Congress) who supported many of the unions, were targets of the legislation. It was a period of rigorous political mobilization that involved several stayaways.

In the meantime the government's policy of a partheid was to divide the union movement even further. The Industrial Conciliation Act was amended in 1956 placing further control on black workers. A prohibition was placed on the formation of mixed trade unions and in many areas job reservation served to protect white workers from competition (Finnemore, 1999:28).

Various trade union organizations were formed in the 1950's, namely:

- **SACLA (South African Confederation of Labour).** SACLA was formed in 1957 and consisted of mainly white conventional unions who represent workers in mining, steel and railways.
- **TUSCA (Trade Union Council of South Africa).** TUSCA was formed in 1954 and consisted of registered trade unions, excluding black unions, who mainly represented industries. In 1962, TUSCA allowed black union membership but was placed under pressure by the government about their

decision and therefore in 1967, the federation was forced to expel the black unions that had joined. The black unions then had no choice but to form their own organizations.

- **SACTU (South African Congress of Trade Unions).** This federation was formed in 1955 and consisted of non-racial trade unions of the TLC (South Africa Trades and Labour Council) and the black unions of the TLC as well as the black unions of the CNETU (Council for Non-European Trade Unions). It promoted a political role for trade unions and maintained links with the ANC.

On 21 March 1960, 69 people were shot while demonstrating against the Pass Laws at a police station in Sharpeville. After this banning orders were served on the ANC, PAC, and all SACTU'S leaders.

As a result, black trade union activity virtually disappeared during the 1960's. Government and employer controls ensured a period of industrial peace and economic growth, which in retrospect was deceptively calm (Finnemore, 1999:29).

### **2.3.2 THE 1973 STRIKES TO THE WIEHAHN COMMISSION: THE PERIOD 1973-1979**

In 1973 wages were rapidly decreasing due to rising inflation and extensive strikes by black workers broke out in Durban over these wages. These strikes spread to other areas and industry was almost brought to a standstill. This was the first time that real power was demonstrated by black workers.

These events emphasized the shortage of labour legislation for blacks. The government then developed the Bantu Labour Relations Act, which provided for the settling of disputes by means of a liaison committee within a company.



In 1973 to 1977 the power of unregistered black trade unions grew because the structure of mainly employer-initiated committees lacked a power base and had little bargaining power. The formal system was increasingly sidestepped because employers started to recognize and bargain with these unions.

In Soweto, in 1976 when black school children were peacefully demonstrating against Bantu education and the compulsory use of Afrikaans in their schools, the demonstration turned violent when police opened fire. As a result, investment from overseas decreased and there was a growing shortage of skilled workers.

### **2.3.3 THE WIEHAHN COMMISSION**

The major recommendations of this commission, which reported early in 1979, included some bold and positive reforms:

- Granting freedom of association to all workers irrespective of race and status as migrant or commuters;
- Autonomy of unions in deciding membership criteria (as a consequence mixed unions would be allowed);
- Apprenticeships to be open to all races;
- Appointment of a National Manpower Commission to serve as an ongoing monitor and study group of the changing labour process; and
- Restructuring of the previous Industrial Tribunal into an Industrial Court to adjudicate on disputes of rights or interest and to create a body of case law. Access to the court was to be easy, and its processes simple and inexpensive to the parties (Finnemore, 1999:30).

#### **2.3.4 THE LABOUR RELATIONS ACT AMENDMENTS: THE PERIOD 1980-1989**

Throughout the 1980's, the independent unions made increasing use of the Court, although this seemed to have little effect in curtailing outbreaks of industrial conflict in the workplace. In this sense, it would seem that the Industrial Court's role as an arbiter was no more successful than the entire Industrial Council system in reducing the incidence of industrial conflict. In many cases, disputes were only referred to the Industrial Court after strike action had already taken place (Wood, 1998:30 as stated by Wakfer, 1993:45-7).

In 1981 the name of the IC Act (Industrial Conciliation Act) was changed to the Labour Relations Act. The changes applied to the Act were namely:

- The Bantu Labour Relations Act was cancelled;
- Trade union rights were made available to all South African workers; and
- All racial restrictions were removed and full independence was granted in respect of their membership.

#### **2.3.5 THE MAJOR MILESTONES OF POLITICAL TRANSITION: THE PERIOD 1990-1994**

February 1990	Nelson Mandela released. Unbanning of ANC, PAC, and UDF. Commitment by government to negotiate.
May 1990	Groote Schuur Minute – government and ANC agree to resolve existing climate of violence and establish working groups to make provision for the release of political prisoners, indemnity for political offences, review of security legislation and lifting state of

	emergency.
May 1990	SACCOLA, COSATU, NACTU (SCN) ACCORD – employers and unions agree to major changes to Labour Relations Act.
August 1990	Pretoria Minute – ANC agrees to cease the armed struggle and dates set for release of prisoners and granting of amnesty.
September 1990	The Laboria Minute – After coming under pressure from COSATU, Government in a meeting with representatives of unions and employers undertakes to find ways of implementing the SCN Accord.
February 1991	Labour Relations Act amended to include SCN Accord provisions.
September 1991	National Peace Accord signed by representatives of 23 political and government bodies. Multi-party national, regional and local peace structures established. Goldstone Commission of Enquiry established to investigate public violence and intimidation.
November/ December 1991	CODESA 1 - Official commencement of political negotiations and signing of Declaration of Intent to create an undivided South Africa, draw up a new constitution and strengthen Peace Accord. Process breaks down over failure to find agreement on way forward.
March 1992	Referendum is called among whites to assess support for political negotiations. Sixty-nine percent vote “yes” in an 85 per cent poll.
May 1992	CODESA 2 restarts negotiations for political transformation – stalls over majority percentage required to change the new constitution.
June 1992	Boipatong massacre occurs. IFP supporters kill forty-six people. The massacre finally jeopardizes negotiations and tensions rise in the country as suspicions of a third force within the government security forces gains momentum.
August 1992	Mass Action campaign is mounted and a General Strike occurs on third and fourth August.

September 1992	Bisho March – Seventy thousand protesters march to Bisho stadium to protect against the Ciskei government. Twenty-nine people are shot by homeland troops when they take an unplanned route to the stadium. Tensions reach critical levels.
September 1992	Record of Understanding between Government and ANC leads way to reopening negotiations.
December 1992	Secret Bilateral Talks between government and ANC set stage for negotiations on basis of establishing a government of national unity for next five years.
March 1993	Multi-party negotiations process involving all political parties reopens.
April 1993	Right-wingers assassinate Chris Hani. Power shifts irrevocably to the ANC in the aftermath of the assassination and give impetus to the urgency of reaching a political settlement.
November 1993	Parties agree to an Interim Constitution and Bill of rights and workers' rights are included after pressure is exerted by COSATU. A Transitional Executive Council is established to run the country in tandem with government until elections. Independent Electoral Commission is appointed to plan, monitor and run elections.
27 April 1994	Election Day proceeds peacefully. The Government of National Unity comprising Cabinet, National Assembly and Senate as well as nine provincial governments is established. Nelson Mandela is elected as President.

Source: Finnemore, 1999:37-38

The rise of the independent trade union movement gave workers an opportunity to become involved in the democratization process and to take part in a parliamentary democracy for the first time in history. Institutional for such as NEDLAC made it possible to shape the transformation process in such as way

that it takes a progressive form. This possibility was described as "radical reform" just before and after the 1994 elections (Adler and Webster, 1995).

Labour movements in South Africa go through cycles of organization and disorganization. A number of unions emerged as social movements when industrialization was sparked by the discovery of gold and diamonds in the late 1800s. However, several of these movements disappeared again. In many cases, unions were not able to sustain themselves because of 'legal', as well as illegal forms of harassment by the Apartheid state. Structures were vulnerable, since leaders who openly associated with the liberation movements could be prosecuted under legislation designed to destabilise oppositional politics.

The first major labour movement to organize black workers emerged in the 1920s, in the form of the Industrial and Commercial Workers' Union (ICU). This general union, which achieved considerable success originally, later collapsed after failing to respond to massive growth by adapting its organizational structures. Pleas to break the general union down into smaller industrial unions were rejected. It was also plagued by internal corruption and bureaucratization (Simons and Simons, 1983:353).

Whereas the ICU expelled Communists from its ranks, the South African Congress of Trade Unions (SACTU) was openly aligned to the Congress movement and basically became a union movement in exile when the Apartheid government banned many of its officials and office bearers. By the 1960s, SACTU had disintegrated internally. However, from its new office in London, the exiled SACTU continued to play a role in the anti-Apartheid struggle. In 1990, it returned to South Africa and merged with COSATU (Roux, 1990).

Hence, the ICU collapsed because it was not able to adapt its structures to cope with a rapid expansion in membership. It was plagued by internal strife and corruption. On the other hand, even though the union federation was not officially banned, SACTU basically went into exile, since many of its leaders were banned,

jailed and harassed by the Apartheid state machinery. Unionists learned from these experiences, and the labour movement, which became strong after the 1970s was careful to build accountable workplace structures and to avoid open involvement in liberation politics.

As a result, South Africa is one of the few countries where trade unions have gained members in recent history (see tables 2.1 and 2.2). Of the different trade union federations, the Congress of South African Trade Unions (COSATU) is currently the strongest, with an estimated membership of 1.7 million. This success can be traced to certain structural conditions coupled with effective forms of organization, which took advantage of these conditions.

**TABLE 1: MEMBERSHIP OF REGISTERED TRADE UNIONS, 1976-1995**

<b>Year</b>	<b>Number of registered unions</b>	<b>Number of union members</b>
1976	173	673,000
1977	174	677,000
1978	174	698,000
1979	167	727,000
1980	188	781,000
1981	200	1 054,000
1982	199	1 226,000
1983	194	1 288,000
1984	193	1 406,000
1985	196	1 391,000
1986	195	1 698,000
1987	205	1 879,000
1988	209	2 084,000
1989	212	2 130,000
1990	209	2 459,000
1991	200	2 750,000
1992	194	2 905,000
1993	201	2 890 174
1994	213	2 470 481
1995	248	2 690 727

Source: Department of Manpower (later Department of Labour) Annual Reports, 1976-1995.

**TABLE 2: UNION MEMBERSHIP AND UNION DENSITY, 1985 – 1988**

	1985	1987	1989	1991	1993	1996	1998
Union membership	1,391,423	1,887,940	2,130,117	2,750,400	3,272,768	3,016,933	3,801,388
COSATU membership	400,000	712,231	924,499	1,205,307	1,205,244	1,639,865	1,713,533
Non-COSATU members	991,423	1,175,709	1,205,618	1,545,093	2,067,524	1,377,068	2,087,855
Non-unionized workers	6,451,277	6,128,560	6,026,583	5,237,100	4,484,897	4,573,067	3,746,612
Total employment	7,842,700	8,016,500	8,156,700	7,987,500	7,757,665	7,590,000	7,548,000
Total employment (excluding agriculture)	6,090,900	6,265,500	6,454,500	6,315,600	6,115,365	5,238,572	4,922,029
Union density (excluding agriculture)	18%	24%	26%	34%	43%	40%	51%

Source: Naidoo (1999:16).

Ever since the Industrial Conciliation Act of 1924, black African workers were excluded from the legal definition of 'employee'. They were not allowed to strike legally, while white workers were able to bargain collectively for wages and conditions in Industrial Councils, which covered industries with sufficient employer/employee representation. By the late 1960s, South Africa was experiencing phenomenal economic growth, but the wages of African workers were kept relatively low. There were import-substitution industrialization policies, a considerable involvement of the state in the economy through public ownership of large corporations, and foreign exchange controls. A relatively high gold price coupled with cheap labour provided a secure tax base. However, the emergence of militant social movement unionism was a substantial challenge to this system.

The emergence of COSATU can be traced to the early 1970s. In January 1973, an estimated 100,000 workers went on strike: the strikes started in the Durban-Pinetown area and expanded across the country (Webster, 1995, p. 1). They were significant in that they happened spontaneously, i.e. they were not organized by existing trade union structures. But after these strikes, workers started to organize themselves into unions, following the British model of workplace organization based on shop stewards. These new unions were

referred to as 'independent trade unions', since they were seen as separate from existing unions dominated by white workers and the state (Maree, 1987: viii).

Learning from previous experience, many union organizers were careful not to be openly associated with the liberation movement – instead, they concentrated on building durable shop-floor structures based on shop stewards committees. At first, the movement struggled to survive but from the late 1970s on, membership rocketed. Unions began to develop an alternative collective bargaining strategy by ignoring the government-sanctioned system of formal exclusion and they started to sign recognition agreements with individual firms. These agreements were based on common law and resulted in the emergence of an alternative decentralized collective bargaining system. In 1979, there were five recognition agreements in place - by 1983 they had increased to 406 (Maree, 1987, p. 8). In April 1979 several unions formed the Federation of South African Trade Unions (FOSATU), with an original membership of around 20,000 (Buhlungu, 1999:4).

Faced by this challenge, the Apartheid government set up the Wiehahn Commission of Enquiry in 1977. Based on the recommendations of the Commission, the government passed the Industrial Conciliation Amendment Act in 1979. African workers were included in the legal definition of 'employee' and were granted limited rights. The Wiehahn system envisioned incorporating the emerging trade unions in the centralized Industrial Council system, but instead, unions continued to expand their shop-floor structures. They used the legal space created by the new Act, specifically the legal concept of 'unfair labour practice', to successfully challenge employers in the Industrial Court. Only later, when they were much better organized on an industrial level, did unions take up collective bargaining on a sectoral level (Friedman, 1987).

From the 1950s when it was formed, the Industrial Council system was dominated by the Trade Union Council of South Africa (TUCSA), a loose federation of trade unions that mostly catered for white workers. However, when these unions were challenged by the newly emerging independent trade unions,



they unsuccessfully attempted to accommodate the interests of black workers. Some of the affiliates, for instance, had separate branches for black and white members. By the early 1980s it became clear that TUCSA would not survive as a federation and in 1986 it was disbanded (Bendix, 1996: 201-210).

In 1985, unions affiliated to FOSATU, together with several others including the National Union of Mineworkers (NUM), formed the Congress of South African Trade Unions (COSATU). COSATU brought together 33 unions representing a paid-up membership of 462,359 workers. This represented 33 per cent of workers who were members of registered trade unions (Buhlungu, 1999:4). The new federation affirmed its commitment to the tradition of worker control. Structures were set up in accordance with this principle, where elected shop stewards played a central role. At its founding conference, COSATU committed the federation to the principles of the Freedom Charter, but did not affiliate with any political party or organization. In founding COSATU, five core principles were accepted:

- non-racialism;
- worker control;
- paid-up membership;
- international worker solidarity; and
- one industry, one union: one country, one federation.

In 1986, another significant new federation was formed when the Azanian Council of Trade Unions (AZACTU) and the Council of Unions of South Africa (CUSA), joined forces to form the National Council of Trade Unions (NACTU). The newly formed federation had an estimated membership of 200,000. Whereas COSATU adhered to the principle of non-racialism, many of the affiliated unions insisted on black leadership. Like COSATU, NACTU mostly organized blue-collar workers. Currently, NACTU has an estimated membership of 370,000 (Buhlungu, 1999:4; Bendix, 1996:221,227).

From the mid-1980s onwards, the new independent trade unions started using the Industrial Council system to bargain with employers at sectoral level. In several industries, such as motor manufacturing, steel and engineering, clothing and textiles, Industrial Councils became central to unions' negotiating strategies. However, they continued to base their shop-floor structures on shop stewards committees. At factory and company level, they also continued to bargain collectively using recognition agreements. In effect, a dual collective bargaining system had developed, where negotiations took place at industry- as well as at company level. It should be noted, however, that these Industrial Councils were only established in industries where the union movement was strong and had sufficient representation. The significance of these foray for industrial relations as a whole in South Africa is sometimes overestimated, especially when the Councils are blamed for so-called rigidities in the labour market. Only 36.4 per cent of non-agricultural private sector employees are covered by Council agreements (ILO, 1999, p. 98).

During the 1980s, following changes to the legislative framework governing employment relations in 1979, the Apartheid government went some way towards allowing trade unions and employers to construct a bargaining framework within the legal parameters. However, towards the end of the 1980s, government became uncomfortable with the growing strength of COSATU. In 1988 it attempted to close down some of the legal space created for the union movement by amending the Labour Relations Act. The amendments changed (by codification) the definition of 'unfair labour practice', and enabled employers to sue unions for damages caused by illegal strike action. This resulted in widespread protest from unions. Strike action forced employers to reconsider their position and negotiations between COSATU, NACTU and the South African Consultative Committee on Labour Affairs (SACCOLA), an employers' organization, resulted in an accord which condemned the changes to the Labour Relations Act. The government was forced to reconsider its position and accept that it would have to include organized labour in policy processes before

changing the regulatory environment. The National Manpower Commission was established as a tripartite forum in which such negotiations could take place. This meant that the labour movement had become a national force to be reckoned with.

In 1989, F.W de Klerk took over from P.W. Botha as state president, and in early 1990 the government lifted the ban on all the major liberation movements. As a result, the ANC, the Nationalist Party government and several other political parties began negotiations on the nature of a post-Apartheid society. COSATU was closely involved in these negotiations, and established a formal alliance with the ANC and the SACP.

Simultaneously, another process of realignment was taking place. This eventually resulted in the formation of a new trade union federation whose membership surpassed that of NACTU when yet another new federation was formed in 1997. Many of the trade unions that were affiliated to the old TUCSA never formally joined a federation. The largest of these unions organized public sector workers, who were mainly white bureaucrats. When it became clear that the Nationalist Party would not be in government indefinitely, some of these unions began to see the need for a trade union federation that could protect the interests of their members in the public service. As a result, the Federation of South African Labour (FEDSAL) was formed. By 1994, FEDSAL had 230,000 members.

In 1997, however, FEDSAL merged with a number of other unions to form the Federation of Unions of South Africa (FEDUSA), and succeeded in expanding its membership among black employees. FEDUSA currently has a membership of 540,000.

The process of transition before the 1994 elections was peculiar in terms of policy-making and governance. The Nationalist Party technically still governed the country, but as the ANC role in negotiations became stronger, the lack of

government legitimacy to make decisions became quite stark. In 1991, for instance, the government changed the system of taxation on sales from a general sales tax (GST) to a value added tax (VAT). This affected the price of basic goods, with considerable economic implications for the poor. COSATU campaigned against the unilateral decision, and the government responded by setting up the National Economic Forum to consult on major economic decisions as part of the policy process. This forum, coupled with the National Manpower Commission, represented a shift towards a corporatist mode of policy-making. During the 1990s, several other forays were set up to provide space for participation, not only for trade unions, but also for stakeholders from civil society in general. These foray included the National Housing Forum and the National Electricity Forum. The government's lack of legitimacy to make decisions, coupled with a well-organized civil society in general, led to this increase in "participative democracy", albeit not formalized constitutionally.

The trade union movement, recognizing its growing role in the formulation of public policy, was mindful of the fact that it was based on foray, which were fragile and temporary. Unions also realized that the gains made in terms of organizing workers were not legally entrenched as rights. Already at its 1989 National Congress, COSATU resolved to draw up a Workers' Charter to spell out certain basic rights, which would enable trade unions to remain an independent force in society. In 1990, the issue received renewed attention. Both COSATU and NACTU took part in the process, which became known as the Workers' Rights Campaign. COSATU adopted a document spelling out workers' rights at a special congress in September 1993. The document recognized the gains made by the labour movement, such as participation in decision-making at various levels, including plant-level collective bargaining based on recognition agreements, industry-wide participation in Industrial Councils, and national foray, such as the National Economic Forum and the National Manpower Commission. But to formalize these gains, the document made the following demands:

- First, that the new government should sign "the international labour law conventions of the ILO concerning freedom of association, collective bargaining, workplace representation and the other conventions dealing with fundamental rights."
- Second, that the country's new Bill of Rights should guarantee the right of workers to "join trade unions... strike on all social, political and economic issues... [and to] gain access to information from employers and the government."
- Third, that "the new constitution and law should ensure that civil society, including trade unions, is able to be actively involved in public policymaking".
- Fourth, that labour legislation must be changed to provide a single statute to govern labour relations "for all workers throughout the economy", as well as legislation governing basic conditions of employment for the whole economy. It also argued that negotiations with trade unions should be mandatory, and that centralized collective bargaining arrangements should be instituted in every industry.

Also in 1993, while COSATU was campaigning for the entrenchment of basic labour rights in the country's Bill of Rights, the Nationalist Party policy makers were expressing concern about the trend towards centralization in industrial relations. Already then, the "language of rights" used by the labour movement was challenged by the "language of the market". These calls were legitimated again in 1996, when the new government abandoned a macroeconomic policy, which prioritized the social regulation of economic relations.

While the ANC, the Nationalist Party, and other stakeholders were negotiating the nature of a future dispensation, COSATU, and the National Union of Metalworkers of South Africa (NUMSA) in particular, were busy formulating a strategy for social transformation in a post-Apartheid society. The strategy saw a central role for the state in the reconstruction of South African society. Gotz (1999) argues that the ANC negotiators used this document as a trade-off to convince the "left" to accept certain concessions made to the Nationalist Party in

an attempt to break the deadlock in the negotiations. One must keep in mind the escalating levels of violence in the country and the concern of negotiators about an apocalyptic outcome to the process. The strategy was taken on board by the ANC as its election manifesto, and, after eight drafts, became known as the Reconstruction and Development Programme (RDP).

The RDP, even though considerably watered down and vague in terms of specific goals compared with the original document, maintained that the state should play a central role in the reconstruction process. Significantly, the labour movement had succeeded in shaping the agenda, at least on a formal level, of the ANC, its alliance partner. The ANC, in its turn, was able to use COSATU structures to campaign in the 1994 elections. At that time, it seemed possible that the labour movement, through its alliance with the ANC, but still maintaining its independence, could drive a programme of "radical reform" - using policy-making institutions and its strategic alliance with the strongest political party to drive a process of national reconstruction aimed at meeting basic needs.

In 1994, the ANC was elected as the majority party in the new Government of National Unity. During the first years after the elections, COSATU was able to achieve many of the goals set out in the Workers' Rights Campaign:

- First, a new body, the National Economic, Development and Labour Council (NEDLAC), replaced the National Manpower Commission and the National Economic Forum.
- Second, through negotiations on a new constitution and mass campaigns, COSATU succeeded in entrenching several workers' rights in the Bill of Rights. These included the right to strike and to form trade unions.
- Third, the new government ratified several international labour Conventions.
- Fourth, a new Labour Relations Act was negotiated in NEDLAC, formalizing several campaigns of the late 1980s and the early 1990s. While not succeeding in demands for mandatory centralized collective bargaining, dispute resolution mechanisms were streamlined and certain organizational

rights were operationalised. The Act provided for workplace fora, which, although COSATU is still sceptical about their usefulness, provided access to information and a form of co-determination at workplace level.

Since the early 1990s, COSATU has undergone substantial structural changes, partly in response to the challenges posed by globalization, but also as a result of engagement in various national institutions, such as NEDLAC. In addition, the coming of parliamentary democracy opened other avenues for the labour movement to influence policymaking. As a result, COSATU is losing some of its characteristics as a social movement union.

There has always been tension in trade unions between 'democracy' and 'efficiency'. This tension plays out on many levels - between members and officials, between members and elected representatives, and between the structures at different levels - local, regional and national (Buhlungu, 1999). In this context, the 'independent' trade union movement in South Africa is largely based on organization at workplace level based on shop stewards. The shop stewards have always been central to plant, local, regional and national structures. COSATU and its unions have maintained the principle that the number of representatives on executive committees who are shop stewards, i.e. actual wage workers, should be greater than the number of union officials, i.e. people employed by trade unions or federations. Shop stewards and officials are not allowed to take decisions on behalf of workers without proper mandates.

But the tradition of 'worker control' seems to have undergone changes in the past decade. These changes should be seen not only in the context of the labour movement's involvement in more structures, such as NEDLAC, but also in the context of the rapid growth of unions from the late 1980s until recently. The average size of a trade union affiliated to COSATU is just over 100,000 members, with structures spread geographically across the whole country. This massive growth had certain implications for trade union structures:

- The influx of a large number of new members put pressure on the existing traditions of worker control. Many new shop stewards were appointed, who did not necessarily share the collective memory of the post-1973 model of organization (Marie, 1992, p. 21). A survey conducted in 1991 found that 28 per cent of COSATU shop stewards were in their twenties. This implied that many were not experienced and did not share the "union traditions of democratic worker control" (Collins, 1994, p. 30).
- The increase in membership "necessitated complex nationally centralized structures." This resulted in a "greater division of labour and responsibilities between structures and among staff" (Marie, 1992, p. 21).
- A large membership body demands greater focus on servicing, which meant a shift from an organizing model of trade unionism towards a servicing model (Marie, 1992). Apart from more demands for effective servicing, shop stewards were required to attend more and more meetings at different levels. Many unions responded to these demands by reducing the frequency of branch meetings, to enable shop stewards to engage in regional and national structures (Collins, 1994, p. 31).
- To deal with the increased workload, the number of full-time shop stewards has been expanding, enabling elected representatives to play a more central role in the daily running of union matters. This practice has been criticised for removing shop stewards from the daily experience of the workers they are supposed to represent (Collins, 1994, pp. 33-34).

However, several surveys have found that members of unions affiliated to COSATU still regularly elect shop stewards, usually by secret ballot (Collins, 1994; Wood, 1999). A survey conducted in 1994 found that members elected 84 per cent of shop stewards, 13 per cent were appointed by union leaders, and management appointed 1 per cent. In a 1998 survey, the number of shop stewards elected by members increased to 92 per cent. Only 3 per cent of workers reported that leaders appointed shop stewards, with management appointments remaining constant at 1 per cent. These figures actually imply an



expansion of shop-floor democracy in terms of the election of shop stewards. Indeed, 93 per cent of workers interviewed in 1998 pointed out those shop steward elections are held at least every three years (Wood, 1999, pp. 10-12). The 1999 COSATU National Congress mandated the federation to coordinate shop steward elections for all the affiliates on an annual basis. In future, these elections will take place at the same time, giving the election process a higher profile.

A major shift, which occurred from 1994 to 1998, is how workers view the role of shop stewards. In 1994, 26 per cent of workers felt that shop stewards "had the right to represent workers' interests as they saw fit, or that they had discretion within a broad mandate." In the 1998 survey, this number increased to 50 per cent. Wood argues that this could reflect the "increased complexity of the bargaining environment", where "industrial relations are increasingly institutionalized." The proportion of workers who felt that shop stewards should be dismissed when they failed to do what their constituencies desired remained constant at 93 per cent in both surveys. Wood concludes: "It is evident that an increasing number of workers are willing to trust shop stewards to engage with management on their behalf, as long as they report back from time to time" (1999, p. 13). However, 71 per cent of the workers interviewed in the 1998 survey said that they attended union meetings at least once a month. This number had declined from 77 per cent in 1994 (Wood, 1999, p. 9).

There also seemed to be a generational shift in terms of worker opinions on the role of shop stewards. Younger workers were more likely to give shop stewards a broad mandate, or treat them as a form of indirect democracy. The views of older workers, however, conformed much more to the militant form of direct participation based on worker control, as table 5 illustrates. The data confirm the view that the role of shop stewards as "simple bearers of the mandate" (Marie, 1992, p.23), is changing towards a role of active representation with more discretion.

Apart from changes in the relationship between members and shop stewards, there also seems to be a shift in the role of full-time union officials. This has to do with the complex challenges posed by rapid transformation. Unions tend to rely more on experts to respond to pressing deadlines, leading to what is described as 'bureaucratization' (see Buhlungu, 1997, p. 44). New generations of officials "are coming in at a phase where there is an increasing tendency for officials to lead office bearers rather than the other way round" (Collins, 1994, p. 37). Concerns were also expressed about the 'brain drain' from COSATU. Experienced union leaders were lost to Parliament, the structures of the governing African National Congress and, ironically, big business and some of the unions' own new investment corporations. According to Baskin (1996, p. 15) COSATU lost about 80 of the 1,450 officials employed by affiliates in 1994 alone. In 1999, six of COSATU's four national office bearers left the labour movement, some to pursue careers as parliamentarians, and one as a provincial premier.

In the 1970s and 1980s, many unions had a policy of not paying their officials more than the highest paid workers in the industries, which they organized (Buhlungu, 1997, p. 17). However, in response to the so-called "brain drain" of union officials (Buhlungu, 1994), COSATU and its affiliates have been moving towards higher remuneration structures in an attempt to retain experienced officials. Standard union packages include benefits such as a car allowance, housing allowance, medical aid and provident funds (Buhlungu, 1997, p. 17).

A consequence may be that union officials move further away from the class position of their members. Internally, the movement has also seen an increased wage gap between officials at different levels. Packages are generally linked to grading systems. Table 6 provides a breakdown of the remuneration packages of trade union officials from Buhlungu's survey.

The survey also showed that 63.4 per cent of employed officials did not see themselves working in the union movement in five years' time (see table 7).

Furthermore, it indicated that a majority of [union] officials (57 per cent) had only been working in the union for four years or less (see table 8).

This implies a careerist attitude among a large proportion of union officials, as well as inexperience resulting from rapid staff turnover. According to Buhlungu (1997), this means a process of "generational transformation" is taking place among trade union officials.

The above structural changes relate to individual unions. But COSATU has also consciously engaged in a process of organizational restructuring in order to "co-ordinate and reinforce the collective bargaining strategies of the affiliates" in the context of the "likelihood that collective bargaining will come under increasing pressure from employers under the guise of international competitiveness and 'globalization'." (COSATU, 1997:92). These changes implied the setting up of new decision-making bodies and stronger implementation structures.

A new body, the Central Committee, was set up to enable the federation to speed up policy decisions. As the second highest decision-making structure, this body meets annually to consider policy matters. The first Central Committee meeting took place in June 1998. Apart from the annual meetings, a Central Executive Committee (CEC) was set up to meet twice a year with the national office bearers to consider policy matters.

The National Executive Committee, which in the past met only six times per year, was made smaller, and now meets once a month. This body considers operational and administrative issues and is responsible for driving the negotiations strategy of the federation. Also, instead of once every four years, the National Congress now meets once every three years.

Hence, not only globalization, but also a phenomenal growth in membership, has affected trade union structures, specifically unions affiliated to COSATU. This, coupled with union involvement in more and more centralized structures, such as NEDLAC and bargaining councils, has led to shifts in traditions based on worker

control. Although members generally still elect shop stewards, there are indications of a generational shift, not only among members, but also among full-time union officials. As a federation, COSATU has responded to the demands of centralized structures for a more involved approach from the federation by creating bodies that meet on a more regular basis. It has also moved towards a more central role for the federation in coordinating affiliates. In the future, COSATU as an organization may begin to show more similarities with the older trade unions of Western Europe and North America. However, the traditions of unions as social movements may persist, or be revitalized, in the context of campaigns to defend the gains made in the 1980s and 1990s. The following section discusses new campaigns linked to globalization.

## **2.4 THE ROLE OF COLLECTIVE BARGAINING**

The field of employment relations is not only concerned with the relationship and interaction between institutional groups, but also with all the processes that arise out of it. Some of these processes are collective bargaining, grievance and disciplinary procedures, and arbitration. Collective bargaining is therefore only one of many processes, which combine to make up the field of study of employment relations (Nel, 2002:134).

Collective bargaining is a process whereby employers and employees seek to reconcile their conflicting goals. When this settlement is reached, the terms are then recorded as a collective agreement, which is signed by the parties. The employers, unions and their members are then bound by the terms of the agreement.

Throughout the world, collective bargaining takes place in various forums and at a variety of levels. The term "forum" is used here to loosely describe any structural arrangement that may be established to accommodate the parties involved in collective bargaining. The different forums that have emerged are a

reflection of historical development and choices of the parties, political and cultural influences as well as legislation. Globalisation is also increasingly playing a role in shaping collective bargaining forums (Finnemore, 1999:161).

Certain requirements are essential for the proper functioning of the collective bargaining process. As such, they constitute the basic elements one may expect from a legal policy designed to facilitate and encourage the collective bargaining process. For the rest, however, the law should abstain from interference with the outcome or substantive results of the bargaining process. That should be left to the parties to determine for themselves.

Firstly, it is quite obvious that collective bargaining is impossible without trade unions, and that trade unions cannot exist without members. The initial requirement would therefore be that employees must be guaranteed the freedom to form, belong to and participate in trade unions and union activities. But it is also necessary that other evils, which may undermine a trade union's bargaining position, should be eliminated, for example,

- The failure or refusal to recognize a representative trade union;
- Prohibitions on the deduction of membership dues;
- The refusal to employ known trade unionists;
- The refusal to allow appropriate time off or to provide facilities for industrial relations duties or legitimate union activities;
- The refusal to allow union officials access to premises; and
- Statutory bans on picketing and bans on the distribution of union literature.

Secondly, in the absence of a willingness to bargain, employers and trade unions ought to be compelled to bargain collectively.

Thirdly, the law may be expected to provide protection against dismissal for employees who participate in industrial action in support of employment – related

demands. The ability to withhold labour is what impels the parties to bargain collectively.

Finally, as the parties expect their collective agreements to be honoured, the law may in turn be expected to ensure that this happens, for example by treating them as legally enforceable agreements or clothing them with statutory force.

## **2.5 REASONS FOR COLLECTIVE BARGAINING**

The researcher focuses now on different reasons for collective bargaining, namely: commonality and conflict

### **2.5.1 COMMONALITY**

Collective bargaining would not take place if the employer and employee did not share common interests and have to work together in order to produce goods and services. Both the parties to the labour relationship have the organisations well being and profitability at heart, and for this to take place, the parties are forced to sort out their differences.

In a newspaper article concerning unhappy employees, Bennett (2002:1) stated that trust is a vital part of building creative and effective teams, and delivery by teams is crucial to meeting customer needs.

Bennett (2002:1) further stated that if someone is in a brainstorming session and does not trust his colleagues, he is not likely to speak up and share a creative idea and if he further fears failure and rejection, he is even less likely to share his ideas.

In certain circumstances commonality of interest may, for both parties, override conflict. This could occur when the general economy of a country or the future of

the enterprise is threatened, where employees share in the decision making process or where moral principles dictate the relationship (Bendix, 2001:234).

If this occurs, the employer-employee relationship becomes more cooperative because both parties are aiming at the common good of the company rather than settling their opposing interests.

It can then be said that the bargaining relationship aims to establish trust and good relations between management and employees and to keep peace between their common interests.

### **2.5.2 CONFLICT**

Conflict usually arises because each party to the labour relationship wants to pursue their own goals according to their own interests, needs and values. If collective bargaining did not exist and conflict continued in the labour relationship, it would have destructive effects and would negatively affect both parties.

On the assumption that conflict is inherent in the relationship between management and labour, this conflict can be contained by, on the one hand, encouraging trade unionism and, on the other hand, by advocating collective bargaining as the appropriate way of resolving conflict of interest. Fundamental to this approach is the assumption that organized labour is possessed of a bargaining power, more or less comparable to that employer. The essence of this bargaining power lies in the ability to withhold labour, and for this reason it is accepted that employees should, like their employers, as a last resort, be able to draw on their economic muscle should negotiation prove fruitless. At the outset it should be noted that the relationship between the law and collective bargaining is not constant. It has been said that "students of labour law come to recognize at first hand that law is but a tool of policy and that the legal regulation of collective

bargaining is shaped and directed by the wider considerations of socio – economic policy” (Le Grange, 1996:21).

An agreement to bargain is not always due to conflict and it does not attempt to eliminate conflict completely. It is a known fact that conflict exists in all organisations and if it is handled properly, it will not reach larger proportions. Therefore, if conflict is accepted and the parties agree to bargain it will stimulate growth and change within an organisation.

## **2.6 THEORY AND PERSPECTIVES OF COLLECTIVE BARGAINING**

The principle of workers combining in collective action in an attempt to satisfy their demands can be traced back to the decline of the feudal system in the 17<sup>th</sup> century as well as the advent of the Industrial Revolution. After the decline of the guild system which provided protection for craftment, the so-called “combinations” organisations” originated. Workers decided to act as a group when approaching management in an attempt to improve their working conditions. The principle was that the coercive power of group acting collectively is much grater than that of an individual striving towards the same goal (Nel & Van Rooyen, 1985:90).

In an attempt to defuse the generation of conflict, most societies have developed rules, institutions and procedures for the regulation of conflict. Some rules are prescribed by the state in various labour laws; other rules have been developed through agreements between employers and unions. These institutionalize the process of collective bargaining, which is accepted by many Western countries as being the best means of resolving conflict between employers and workers.

Collective bargaining is characterized by an urgency to reach a decision as a result of social, economic and legal pressures. Collective bargaining offers challenges to all participants (De Villiers, 1980:17).



Collective bargaining is a “free process” insofar as the nature of the interaction is determined by more than just the dynamics, needs and desires of the two groups. The nature and extent of the process is considerably constrained by environmental determinants, as in South Africa, for instance, where the collective bargaining process must take place within the constraints brought about by labour legislation.

There are different theoretical approaches that are identified with the purpose and nature of industrial relations. Each theory is based on its own assumptions about society.

### **2.6.1 THE UNITARY PERSPECTIVE**

The unitary perspective has the assumption that the employer and employee share common interests and objectives, which are in relation to the operation and success of the organisation.

Trade Unions are regarded as an intrusion, competing with management for the loyalty of employees. Collective bargaining is resisted, and where it does take place, managerial prerogative is jealously protected. The law constitutes an unwelcome invasion of the personal relations between management and employees (Hamman, 1993:15).

Management has the prerogative to make decisions, and the employees accept this right. The relationship is characterized by obedience, loyalty, and trust that are expected from the employees with little or no challenge to management's authority (Tustin & Geldenhuys, 2000:41). The employer is regarded, as being in possession of unquestionable right and authority and any challenge to that authority by employees is regarded unlawful.

Employers and employees are presumed to share the same values in that both support the free enterprise system, respect authority and perform their allotted tasks diligently and with loyalty. Since the system aims at the common good, there should be no questioning of one's place within this constellation. Employers or their managers are there to manage and employees to work (Bendix, 2001:21).

The unitary perspective regards the employer and employee as a team, which have the same interests and does not allow for conflict of interest.

It suggests a work environment that is characterised by harmony, co-operation and trust and because of the common interest that exists; it leaves little room for trade unionism.

### **2.6.2 THE CLASS CONFLICT PERSPECTIVE**

This perspective regards industrial conflict as synonymous with political and class conflict: the capitalist structure of industry and its system of wage labour are viewed as being closely connected with class divisions in society (Rycroft & Jordaan, 1992:119).

This perspective regards trade unionism as a symptom of class conflict because individual workers are open to exploitation that they are compelled to establish collectives to protect their own interests.

### **2.6.3 THE RADICAL APPROACH**

The radical approach is based on the Karl Marx view of society. This approach holds that the employer has greater power than that of the employee and that the economic system establishes political and legal structures, which favour the employer. This approach sees society as a capitalist society.

Because of the imbalance in social power in a capitalist society, there can be no parity of power between employer and employee. Collective bargaining provides only a limited and temporary accommodation of the inherent and fundamental divisions within capitalistic organizations. The process and institutions of joint regulations are therefore seen as supporting and promoting the position of management instead of challenging it (Tustin & Geldenhuys, 2000:45).

According to Dyakala (1999:36), COSATU is for instance more Marxist inclined than the Federation of South African Labour (FEDSAL).

#### **2.6.4 THE PLURALIST PERSPECTIVE**

Pluralism, when applied to the labour relationship, accepts that there will always be conflict between employers and employees, but assumes that the power of the employer inherent in the relationship can be balanced by the countervailing power of the collectivity or union and that conflict can be contained by 'orderly' collective bargaining (Bendix, 2001:22).

This approach presumes that different groups represent competing interests and because of this power will be widely and fairly distributed.

According to the researcher, it assumes that if employees join unions, they will equal the power of management and both parties will engage in collective bargaining that will benefit them both. Unfortunately, this is not always easy to achieve because the employer holds the initial power and the union has to continually challenge this power.

The researcher believes that the pluralist approach maintains that the essence of bargaining power lies in the ability of one party to withhold something that is valuable to the other party.

The pluralist approach, albeit in varying forms, is that adopted in most industrialized countries. It is also the dominant approach within the South African Industrial Relations system (Bendix, 2001:22).

**TABLE 3 – LABOUR RELATIONS PERSPECTIVES**

	<b>Unitary</b>	<b>Pluralistic</b>	<b>Marxist/radical</b>	<b>Societal Corporatism</b>
<b>Values</b>	Integrate group with common values, interests, and objectives.	Different groups with different values, interests, and objectives.	Unequal division between capital and labour.	Co-ordination with state involvement and direction.
<b>View on conflict</b>	Irrational, unnecessary, and exceptional, and results from poor communications, misunderstanding, or agitation. Must be managed by means of coercion.	Unavoidable but functional if managed by structures and procedures.	Inherent in society. Society must be changed.	Natural and must be managed by negotiations with emphasis on consensus building.
<b>Role of trade unions</b>	Intrusion in the relationship from outside the organization.	Internal part of organization to channel conflict and represent interests of employees.	Expresses and protects interests of working class against exploitation by capitalism.	Important party in the tripartite structure with interest in society.

Source: Tusin and Geldenhuys, 2000:47 adapted from Finnemore 1996.

### **2.6.5 CORPORATISM**

Karl von Holdt describes corporatism as “an institutional framework, which incorporates the labour movement in the economic and social decision making of society”. Von Holdt states also “Generally corporatism tends to introduce a more cooperative relation between the three parties (capital, labour, and the State).

Despite the explanatory provisions of the Labour Relations Act of 1995 that accompanied the Bill, the drafter’s policy choice should be seen for what it really

is, the new “high water mark” of corporatism (Marinus, 1996:5). Corporatism is the collective sentiment of the drafting team. From the one-time controversial alliance between labour and business that highlighted the beginning of the “New Age” in South African history the drafters intend to create a new self-enforcing cooperative relationship to tackle the future (Parsons, 1995:22).

Fuelling the corporatism engine is the so-called New Ethos, Minister Mboweni’s catch-all phrase representing the need for an understanding to be reached between unions and business that in order to be both competitive and successful, they will have to sit down and jointly work things out (Mboweni, 1992).

In a corporatist system, government obtains input from both labour and capital but retains the right to final decision-making. Unions may not be satisfied with this arrangement, demanding instead a form of “bargained” corporatism by which business and labour negotiate and use power to reach agreement on important issues, and where government acts merely as a rubber – stamping agency. Thus different perceptions of corporatism may lead to tensions within the corporatist relationship itself, as there are few governments, which would abdicate their right to the final decision.

Those unions, which aim eventually to achieve a completely socialist dispensation, may view corporatism as antiposed to this objective. They see it as promoting a partnership with capital, thereby ensuring the acceptance and promotion of a capitalist economic dispensation. On the other hand, it is argued that corporatism constitutes merely a necessary interim or evolutionary stage preceding the final achievement of a socialist state.

In an article written for the South African Labour Bulletin in January/February 1993, Von Holdt pointed to the dangers of corporatism for the union movement. He warned that it could only entrench the power of an “unaccountable

bureaucracy” in trade unions, could result in the disintegration of the mass or grassroots base of unions and lead to the alienation of unions from their membership. According to Von Holdt, corporatism “co – opts labour into accepting the economic perspectives of capital”; it centralizes power in the hands of an elite group of trade unionists, businessmen and government officials and “stabilizes capitalistic society” by ensuring that “the labour movement can not struggle for socialism”.

Von Holdt, while favouring entry into a corporatist relationship, at the time counseled unions actively to promote “militant strategic unionism” and thereby to avoid the dangers of becoming “corporatist unions”. This, he argued, they could achieve by developing clear strategies and objectives for national, industrial and workplace interactions; by negotiating from positions of independent strength, by complementing national demands with demands for increased worker power at plant level and by promoting broad coalitions with other popular organizations as well as a reconstruction accord with the ANC. By these means they could, from his perspective, use strategic unionism as a means to achieve the “radical democratization and transformation of the social order”.

#### **2.6.5 DUNLOP’S SYSTEMS THEORY**

Collective bargaining takes place within the context of an industrial relations framework. The terms ‘industrial relations’ was popularized by John Dunlop in his influential work *Industrial Relations Systems* to refer to the premises, values, laws, institutions and practices that govern employment relationships (Hamman, 1993:17-18).

Dunlop (as quoted by Brand, 1992:24-25) states that in order to fully appreciate Dunlop's model the following observations regarding industrial relations behaviour in an industrial society must be noted:

- An industrial relations system is an analytical subsystem of an industrial society.
- An industrial relations system is not a part of the economic system; both being regarded as subsystems of industrial society.
- Relationships and boundary lines exist between society and the economy, as well as the industrial relations system.
- An industrial relations system is like the economy, a logical abstraction. Neither is concerned with behaviour as a whole.
- This model provides a distinctive analytical and theoretical field for study.
- Three separate analytical problems can be distinguished, namely
  - the relationship of the industrial relations system to society as a whole,
  - the relationship between the industrial relations and economic subsystems, and
  - the inner structure and characteristics of the industrial relations subsystem.

Hamman (1993:18) further states that according to Dunlop's systems model, an analysis of industrial relations should begin by considering the various environmental contexts that affect employment relationships: the economic forces, technology, the broad political, legal, and social forces that determine the power of labour and management in society.

Technology is an important determinant of work rules because it establishes how jobs are designed and combined into the organisational structure. In turn, the broader economic environment influences technology.

The system held together by an ideology, which defines the role and place of each actor within the system while at the same time it defines the ideas, which each actor holds towards the place and function of other in the system. This

does not mean that the actors do not hold their own ideological position, but an industrial relations system “requires that these ideologies may be sufficiently compatible and consistent so as to permit a common set of ideas which recognize an acceptable role for each other” (Dunlop, 1958:16-17).

Dunlop has been criticised for assuming a stable shared ideology. According to this criticism, it is therefore a very static model, with no recognition that the different actors may have differing perceptions of a common environmental change which will, in turn, lead to quite different responses and patterns of behaviour. The normative premises of the model means that it is inappropriate for analyzing change in the industrial relations system (Hamman, 1993:19).

The forces in collective bargaining are analysed in more detail in Chapter 3.

## **2.7 SUMMARY**

By looking at the nature and history of collective bargaining, one can identify how collective bargaining was established and how it has changed and developed over the years. Collective bargaining is essential to the labour relationship because it encourages negotiation and forces the labour parties to face their problems and resolve them as quickly as possible to ensure peaceful labour relations.

By studying the various theories and perspectives of collective bargaining, the researcher believes that the pluralist approach best suits the labour relationship within South Africa because it acknowledges that conflict always exists but can be managed if both parties engage in orderly collective bargaining.

In the next chapter, the various bargaining agents and agreements that play a role in collective bargaining will be explored. Industrial action will also be investigated.



## **CHAPTER 3**

### **COLLECTIVE BARGAINING AGENTS, AGREEMENTS AND INDUSTRIAL ACTION**

#### **3.1 INTRODUCTION**

In Chapter 2, the history and background of collective bargaining was discussed as well as the role of collective bargaining. In this Chapter, the bargaining processes, agreements, agents and forums will be discussed and investigated. Industrial action and its' role in collective bargaining are also analysed. Therefore, this chapter is an in depth explanation of the various aspects of collective bargaining.

In the view of my studies, the past few years have brought about many changes in South Africa. These changes have led people to want and achieve improvements in their daily lives. The daily life of most individuals is that of their work environment. Competitive demands place a great need for security, societal justice, economic development and labour and environmental peace.

This is achieved through collective bargaining because it promotes negotiation that leads to decision-making and compromise. Collective agreements then play a great role in adopting a framework, which influence the collective bargaining process, the actors involved in the process, the styles of bargaining and the structure of collective bargaining.

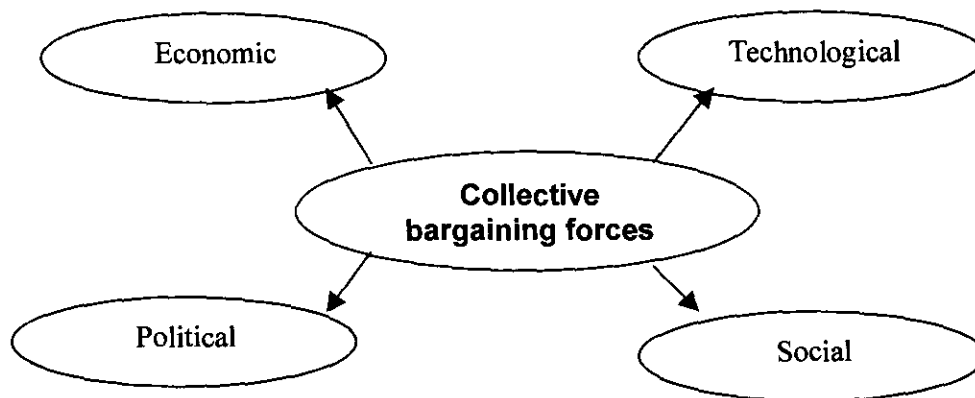
#### **3.2 FORCES IN COLLECTIVE BARGAINING**

The primary and secondary forces are analysed in terms of the nature of collective bargaining, which was touched upon in Chapter 2.

### 3.2.1 PRIMARY FORCES

The researcher will now discuss the different forces, namely economic, political, social and technological in detail. The forces of collective bargaining are illustrated by the researcher in figure 1.

**FIGURE 1 – PRIMARY COLLECTIVE BARGAINING FORCES**



Source: Researcher

#### 3.2.1.1 ECONOMIC FORCES

Economic constraints and pressures influence collective bargaining. Economic forces can be divided into macro-economic and micro-economic forces.

The first macro-economic force is that of the government's economic policy. A government which adopts a planned economy and a redistribution of wealth will interfere with the bargaining process because it will place constraints on either the employer or employee because collective bargaining will not be as important as that of being involved in redistribution.

Futhermore, the monetary policy determines the rate of inflation, economic growth and the rate of unemployment. According to Bendix (1989:101), in times of economic prosperity the expectation of employees will rise. More importantly, labour will be in high demand and unions will have greater bargaining power. This will lead

to increased demands by unions and to aggressive collective bargaining, even though employers are better able to meet union demands than in times of economic recession.

In this instance, unions hold more power because the bargaining range will be narrow and wages will be increased. This increase in labour costs has the danger of unemployment because employers will attempt to achieve the same production levels by minimising the workforce or introducing new machinery.

In times of unemployment and economic hardship, the bargaining power of unions decreases because the demands of employees become more realistic because of the knowledge of the economic situation and therefore leads to more co-operative bargaining.

A higher inflation rate will lead to higher prices and a higher standard of living, which will then lead to higher wage demands from employees in order to survive and live comfortably.

The micro economic forces that influence collective bargaining are the elasticity of demand, labour market competition, product competition and profits shown. When the demand for labour becomes inelastic, the power of trade unions increases because an increase in wages may not result in the reduction of workers. This may be due to workers being essential to a specific process of production, the demand for the final product remains unchanged, and where labour costs are only a fraction of the total costs.

When industry is concentrated and where a number of employers compete for labour in a tight market, unions, on the whole, can exercise greater leverage. Conversely, if the product is highly competitive, the employer may, particularly if there is no centralised bargaining system, engage in aggressive wage bargaining for fear that increased labour cost will price his product out of the market (Bendix, 1989:102).

### **3.2.1.2 POLITICAL FORCES**

In a country like South Africa, people belong to various political groups and have different views on political issues. When bargaining, this can affect issues that are raised in the bargaining process and can have an affect on the attitude of bargaining parties towards each other.

Racialism has always been a matter of dispute in South Africa, as well as other countries, and therefore a matter that could have been dealt with as a misunderstanding or problem becomes an issue.

### **3.2.1.3 SOCIAL FORCES**

Employers and employees often come from very different social classes. This can lead to friction between the bargaining parties because for example, an employer may frown upon an employee because of his/her social mannerisms and an employee may feel inadequate and uncomfortable in the company of his/her employer. A situation like this leads to tension and makes the bargaining process more difficult.

In a substantive sphere, problems experienced within particular communities, such as insufficient housing, inadequate child care or other facilities, poor education and lack of or insufficient transport, will make their way to the bargaining table in the form of demands for benefit and other schemes or for social responsibility programmes (Bendix 1989:104).

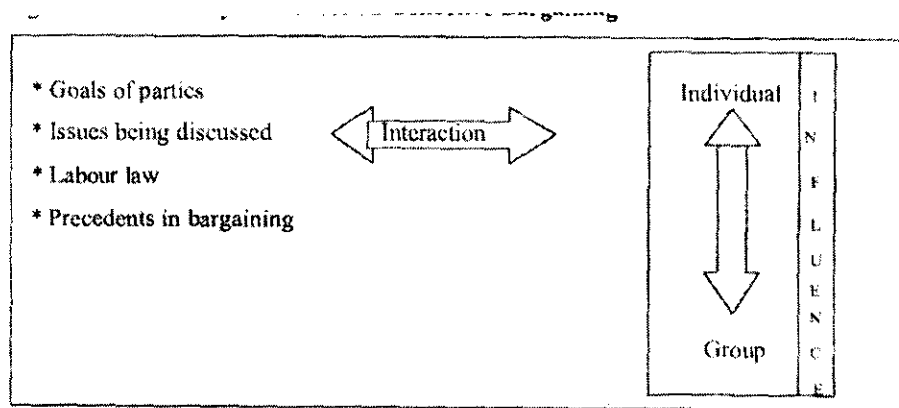
### **3.2.1.4 TECHNOLOGICAL FORCES**

Technology can have an influence on the work process in the way that it can replace some of the tasks that an individual would usually carry out physically. This can result in the work process becoming boring, unsociable and unsatisfactory for the employee. The employee will then demand increased job content, the establishment of work groups and whole process tasks to make his/her work more humanising and satisfactory. Union power increases as long as there is a technological development

because it threatens the job security of employees.

### 3.2.2 SECONDARY FORCES

**FIGURE 2 – SECONDARY INFLUENCES ON COLLECTIVE BARGAINING**



Source: Slabbert *et al* (1998)

#### 3.2.2.1 GOALS OF PARTIES

The employer and employee both have goals they want to achieve in the short-term or long-term of employment, for example, monetary gains and societal acknowledgement.

#### 3.2.2.2 ISSUES BEING DISCUSSED

Issues refer to the various short-term objectives to be achieved. An issue can be a demand put forward by a party to achieve a long-term goal, for example, management might insist on work flexibility and multiskilling as a short-term objective to realise the long-term goal of world-class competitiveness (Slabbert, *et al.*, 1998:9-14).

#### 3.2.2.3 LABOUR LAW

Labour law provides a framework for each country, therefore negotiations cannot

reach an agreement on an issue that is against the labour laws of a country.

#### **3.2.2.4 PRECEDENTS IN BARGAINING**

If any of the parties know of a precedent negotiated by other parties outside their negotiating forum it will influence their thinking, especially if the precedent is within the ambit of the long-term goal (Slabbert, *et al.*, 1998:9-14).

#### **3.2.2.5 INDIVIDUAL AND GROUP INFLUENCES**

Individuals have characteristics, which influence their behaviour, and thinking and these characteristics will have an effect on the bargaining process:

- Ability and skills
- Values and attitudes
- Biographical characteristics
- Personality traits
- Experience
- Education
- Motivation and determination.

When individuals are in groups they tend to act differently from how they would act on their own. Individuals act according to the norms of the group and not their own so that they can be accepted by other members of the group. The following influences groups:

- Interaction
- Conflict
- The structure of the group
- Power of the group
- Political issues
- The behaviour of other groups

### 3.3 BARGAINING STYLES

Employee participation may be through collective bargaining. In such a case trade unions engage in negotiations with management in order to influence decisions executed at higher organisational levels. Van Rensburg (1998:16/3) indicates that in the context of employment relations collective bargaining takes place against the background of differing and sometimes conflicting interests of employees and employers. Keith and Girling (1991:292-293) add that the adversarial parties have to formalise procedures during the process of collective bargaining and may at times require the services of a mediator.

Van Rensburg (1998:17/9) distinguishes between two forms of collective bargaining: distributive and integrative bargaining. The two forms are briefly discussed below.

- **Distributive bargaining** : This form of bargaining is associated with the typical bargaining positions between management and unions. It takes place when the two parties' interests are in conflict. It involves the two parties making proposals, counterproposals and compromises.
- **Integrative bargaining**: This form of bargaining occurs when there is a common problem at the workplace. The involved parties work together to define the problem, analyse it, gather, exchange and explore information and creative solutions.

During the process of collective bargaining, interaction takes place between union officials and management. Through such representation, employees are able to impact on decisions taken by management. Mosoge (1996:16) however, questions the effectiveness of employee participation through representation because it decreases the participation of the general populace of employees. This type of participation may breed alienation as it creates a gap between the expected and actual responses of the representatives. Williamson and Johnson (1991:16) indicate that this leads to claims by the general populace of employees of improper representation.

The researcher discusses the different bargaining styles in this paragraph, namely distributive bargaining, destructive bargaining and integrative bargaining.

### **3.3.1 DISTRIBUTIVE BARGAINING**

The researcher describes distributive bargaining as negotiation that is associated with situations where parties with competing interests are involved in a process of dividing a limited resource among themselves.

Wage negotiations are a typical resource that would fall under distributive bargaining. In this type of situation the goals of the employer and the employees are in direct conflict and the outcome usually represents a gain for one party and a loss for the other party. It is therefore described as a “win-lose” situation.

According to Slabbert and Swanepoel (1998:208), a further characteristic of distributive bargaining is that the respective parties have a bargaining base or so-called point of resistance. According to the Graduate School of Business Administration (1987:2), the point of resistance in bargaining is a limit below which no participant will bargain. The area between the two bargaining bases is called the bargaining area. This point of resistance is often also known as the parties' mandate.

#### **3.3.1.1 THE PROCESS OF DISTRIBUTIVE BARGAINING**

The process of distributive bargaining includes different aspects, namely:

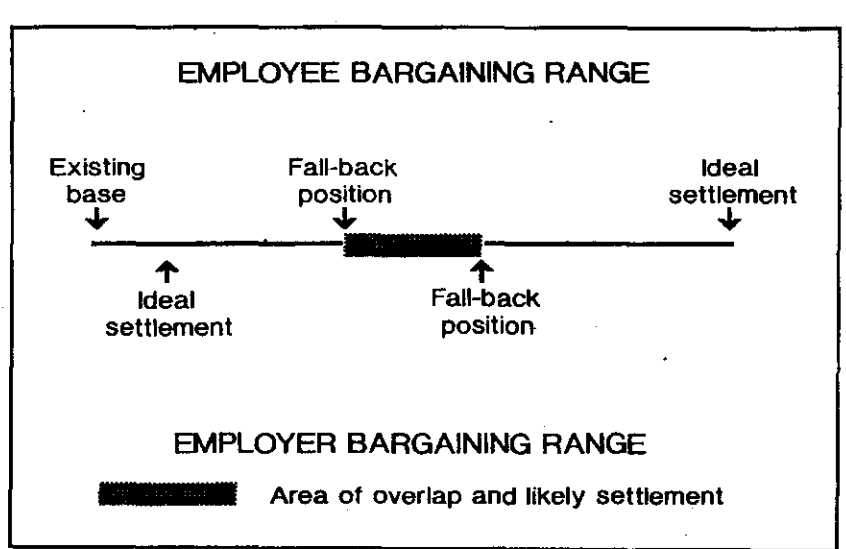
- **Preparation for negotiation.** Preparation involves four different aspects, namely:
  1. **The collection of information.** The information that is collected is relevant to the issues on hand and unions and employers tend to collect similar information. The information could have a bearing on the determination of the final agreement.



2. **The choice of the negotiating team.** Negotiation requires a great deal of skill because negotiators must be able to read each other's behaviour as well as to judge the authority of other's. Therefore, the choice of the negotiating team is very important because this is where the parties attempt to maximize their strengths at the bargaining table.
3. **The identification and analysis of the issues.** This aspect is included in negotiation and opening demands, bargaining ranges and fallback positions for each issue is established.
4. **Strategic planning.** Strategic planning includes assessing the climate in which negotiations will be conducted and the determining of power realities, the usage of resources and the information to be given to employees and the public.

Figure 3 illustrates a typical bargaining range between the employer and trade union.

**FIGURE 3 – A TYPICAL BARGAINING RANGE**



Source: Finnemore and van der Merwe (1994:184)

Finnemore and van der Merwe (1994:183) state that the area between the demand and first offer is called the "bargaining range" and sets the limits within

which the negotiations will be carried out. Each party will strive to obtain a settlement as near as possible to its point of departure, but there is usually a tacit acceptance of "game" that has to be played before agreement is reached. Our negotiation culture demands that each party be seen by its constituents to be taking a tough line. Ultimately, however, divergent demand and offers usually move close enough to enter a "settlement zone". At this point the parties are sufficiently close for a compromise to become possible.

5. **Opening the negotiation:** The first negotiating session is generally an extremely important occasion in that the climate for bargaining is set, the bargaining boundaries established, offers and demands justified and manipulative attempts are made to influence the expectations of the other party (Finnemore & van der Merwe, 1994:186). Negotiation tactics and principles will be discussed further in Chapter 4. The actual bargaining process can be broken down into three phases:
6. **Signalling.** After both parties have presented their demands and debated their positions, they begin to signal one another on the areas in which they are prepared to move.
7. **Proposing.** After the signaling phase, cautious proposals begin to emerge. These proposals must be treated with respect and their clearness must be established and written down.
8. **Packaging.** This phase is very important because this is where the proposals are integrated and shaped by the parties into packages that are acceptable to one another.
9. **Closing the agreement:** The power reality between the parties will have to be carefully assessed at this point. For example, are union tactics seen as sufficiently disruptive or unreasonable that an employer feels that, irrespective of the cost in terms of lost production and damaged relationships; a strike must be precipitated or lockout planned? Alternatively a trade union may feel that a too-confident management needs to be shown that workers are prepared to use the

strike weapon and that the consequences will be serious for business. Only an overt confrontation can resolve such situations and often the new power reality that results provides for a greater measure of respect and realism in future relationships (Finnemore & van der Merwe, 1994:188).

### **3.3.2 DESTRUCTIVE BARGAINING**

During this type of bargaining one of the parties try to harm the other parties despite the damage the party itself will suffer. The point of departure can be described as a lose-lose strategy. According to Pienaar and Spoelstra this type of bargaining only proves that self-destruction is used as reprisal and retaliation (Slabbert & Swanepoel, 1998:208).

### **3.3.3 INTEGRATIVE BARGAINING**

Integrative bargaining occurs when both parties have the same preference for a successful outcome or are equally concerned to solve a problem (Bendix, 2001:245). Matters dealt with in integrative bargaining include items such as promotion, job security, benefits and procedures.

The object of integrative bargaining, and more specifically the basic principle of joint "problem solving" is to divert attention from the conflicting interests and rather resolve a common problem caused by conflicting interests, in collaborations with the opposing parties (Slabbert & Swanepoel, 1998:209).

## **3.4 BARGAINING STRUCTURES AND LEVELS**

Since the late 1980s, the labour movement has engaged in negotiations with government and organized business at national level. New institutions were formed to accommodate the process, namely:

- the National Manpower Commission and the National Economic Forum, and since 1994,
- the National Economic, Development and

- Labour Council (NEDLAC).

The three major trade union federations, COSATU, FEDUSA and NACTU, all take part in NEDLAC. NEDLAC consists of four chambers, i.e. the labour market chamber, the trade and industry chamber, the public finance and monetary policy chamber, and the development chamber. In the first three chambers, government, labour and business are represented. The fourth chamber, includes “civil” representatives as well as workers, employers and government (Webster, 1995b).

The NEDLAC Act establishes the objectives of the Council as follows. NEDLAC shall:

- strive to promote the goals of economic growth, participation in economic decision making and social equity;
- seek to reach consensus and conclude agreements on matters pertaining to economic and social policy;
- consider all proposed labour legislation relating to labour market policy before it is introduced in Parliament;
- consider all significant changes to social and economic policy before it is implemented or introduced in Parliament;
- encourage and promote the formulation of coordinated policy on social and economic matters (Gostner and Joffe, 1998:133).

The process of political democratization opened up space for the labour movement to influence policy-making. Also, its position in society is recognized through the formalization of workers’ rights as human rights that are protected in the Bill of Rights enshrined in the Constitution. In the context of the double transition, however, commentators differ as to whether these institutions enable the labour movement to shape the direction of policy, or whether it merely “institutionalises” the labour movement to accept the government’s macroeconomic strategy.

The labour movement has achieved several successes through its involvement in NEDLAC. These include:

- The achievement of a relatively progressive Labour Relations Act, despite certain weaknesses.
- A degree of success in putting human and labour rights on South Africa's trade agenda, by convincing government to require trade partners to sign a "side letter" to trade agreements, in which they commit themselves to "respect human rights and to commit themselves to work towards the ratification of core international labour Conventions (Gostner & Joffe, 1998, p. 138).

Through the Social Clause Framework Agreement it compelled the South African government to ratify certain core international labour Conventions (Gostner & Joffe, 1998:139).

Since 1996, the government's position that macroeconomic policy cannot be negotiated in NEDLAC has curtailed the extent to which the labour movement was able to use the Council to influence the national developmental policy framework. Instead, NEDLAC became an institution in which the implementation of liberalization could be negotiated. Also, labour's participation in NEDLAC is hampered by a lack of capacity to engage consistently in complex negotiations around issues such as trade agreements (Gostner & Joffe, 1998:144-146) argue that labour representatives have not succeeded in moving from a reactive mode of operation into a proactive mode. This does not only relate to the undermining role of the non-negotiability of the macroeconomic framework, but also because labour has not succeeded in setting up functional structures, or a coherent framework of mandating. There are also difficulties in mobilizing workers around the very complex issues under negotiation.

### **3.4.1 INDUSTRY-LEVEL BARGAINING**

Meso-level collective bargaining usually takes place in bargaining councils. These councils can be industry-wide, but some are also geographically determined. The functions of bargaining councils are to:

- negotiate collective bargaining agreements concerning wages, working conditions and other procedural issues;

- administer and enforce agreements, prevent and resolve disputes;
- promote and establish training and education schemes;
- establish and administer benefit schemes; and
- deal with requests for exemptions from agreements (Webster, 1999:6).

It is important to note that agreements on wages and conditions reached in bargaining councils can be extended by the Minister of Labour to non-parties in the industry or geographical region where the bargaining council is registered. Employers can apply for exemption where they consider the requirements as too onerous.

The extent of the move towards meso-level collective bargaining has been overstated. As table 3 indicates, only 32 per cent of non-agricultural employees are covered by bargaining council agreements. When the Chamber of Mines is included, this figure increases to 36.4 per cent of workers in the non-agricultural private sector. The inclusion of the Transnet bargaining council (the transport parastatal) and the public sector bargaining council artificially inflates the number of employees covered by bargaining council agreements.

It is also important to note that collective bargaining at industry level is based on voluntarism. The parties can only register bargaining councils if there is sufficient representation from both organized labour and organized employers, and if both parties agree.

The Labour Relations Act also provides for Statutory Councils, sometimes described as "trainee bargaining councils". These can execute the functions of a bargaining council, but wage agreements cannot be extended to non-parties. These councils can be established in industries where employers or employees have a representation of 30 per cent. The aim of this was to break the deadlock in negotiations on voluntary versus mandatory centralised collective bargaining (Webster, 1999:7).

**TABLE 3 – COLLECTIVE BARGAINING COVERAGE IN THE NON-AGRICULTURAL FORMAL SECTOR (1993 – 1997)**

Calendar year	1993	1994	1995	1996	1997
<b>Registered collective bargaining agreements in the private sector</b>					
Registered agreements	163	156	124	139	147
Employers involved	20702	23745	50194	70387	53636
Workers involved	313572	353634	823823	810589	775583
<b>Bargaining coverage (coverage range in brackets)</b>					
Private sector bargaining council	765800	731100	783700	925846	886900
NABC Coverage	737800	703600	755700	895846	857900
Non-NABC Coverage	28000	27500	28000	30000	29000
% of private sector employment	(26.5)	(25.6)	(27.0)	(32.7)	(32.0)
Chamber of Mines	386653	391288	377017	342439	322025
% of mining employment	(62.4)	(64.4)	(63.5)	(60.4)	(58.6)
Total private sector (Bargaining Councils and Chamber of Mines)	1.152.453	1.122.388	1.1.160.717	1.268.285	1.208.925
% of total private sector employment	(32.9)	(32.4)	(33.2)	(37.3)	(36.4)
Transnet	134331	112735	109972	107281	104105
% Transnet employment	(101.8)	(96.9)	(95.6)	(95.6)	(96.6)
Other public sector	n.d	n.d	n.d	n.d	1250000
% of public sector employment	(n.d)	(n.d)	(n.d)	(n.d)	(71.2)
Total coverage	n.d	n.d	n.d	n.d	2563030
% of total employment	(n.d)	(n.d)	(n.d)	(n.d)	(49.0)

Adapted from ILO (1999:98).

Bargaining councils have recently come under attack, especially in the framework of calls for labour market flexibility. The South Africa Foundation (1996) blamed labour market rigidities on the extension of bargaining council agreements to non-parties. It should be noted that only a third of private sector employees are covered by such agreements. Also, as indicated, firms can apply for exemption from bargaining council agreements. In 80 per cent of the cases, these exemptions are granted (ILO, 1999). The South African Enterprise Labour Flexibility Survey found that larger companies between 150 and 400 workers generally apply for exemptions. Very few firms with less than 50 workers apply. This may imply that small business does not find bargaining council agreements restrictive. An alternative explanation may be that they simply ignore such agreements (Standing, 1997b).

Nevertheless, very few new bargaining councils are currently registered and it seems unlikely that a trend towards centralisation will continue. In fact, a number of bargaining councils have been deregistered since 1995.

### **3.4.2 PLANT-LEVEL BARGAINING**

As pointed out in Chapter 2, South Africa has developed a dual collective bargaining system, where wages and conditions are negotiated at industry- as well as at plant-level, the latter according to recognition agreements. Influenced by the German model of works councils coupled with centralised wage negotiations, the authors of the Labour Relations Act attempted to apply these principles. The LRA could not outlaw plant-level collective bargaining, but introduced a new concept, the workplace forum, in an attempt to facilitate a movement away from distributive collective bargaining toward integrative bargaining. It was hoped that these forum would provide for co-determination at the workplace and that bargaining over wages and conditions would gravitate towards the centre. The Labour Relations Act envisaged a transformation of adversarial industrial relations at the workplace into a regime of co-determination, where unions actively take part in efforts to improve productivity through their involvement in workplace forum.

However, since the LRA was adopted, only six such fora have been established (Psoulis et al., 1999). Instead of this approach, there is evidence of a trend towards *lean production* based on the casualization of work and attempts to by-pass unions, instead of involving them in restructuring initiatives.

Webster (1999:10) argues that "attempts at productivity increases have invariably been accompanied by job losses." He quotes a survey of 165 companies employing 315,000 employees which found that "company restructuring", rather than "economic downturn" is now the prime contributor to retrenchments. Commenting on the findings of a survey on flexibility patterns in manufacturing industry, Standing identifies a trend towards different forms of casualised work in South Africa:

- Evidence suggests that South African firms have been moving in the same direction as their counter parts in most other parts of the world, turning towards



greater use of *flexiworkers*, through casual labour, contract labour, subcontracting to smaller firms, homeworkers and

- other 'outworkers', and agency workers (Standing, 1997b:7).

The accompanying movement towards the introduction of team work supported by remuneration structures linked to individual or team performance (respectively referred to as work process and wage flexibility), has been treated with scepticism by trade unions. In South Africa, the phrase "world-class manufacturing" is used quite often to describe the introduction of these practices (Ewert, 1992; 1997). Instead of post-Fordism, evidence of restructuring initiatives in South Africa seems to point towards a movement towards 'neo-Fordism'. This entails only "a partial movement away from racial-Fordist regulatory practices" (Kraak, 1996:42). Kraak puts it as follows:

*"It has primarily to do with the intensification of the Fordist labour process and the weakening of the organized trade union movement through the introduction of more exploitative forms of work organization using new technologies. It also has to do with the partial dilution of the racial division of labour in a manner which leaves shopfloor power relations unchanged (Kraak, 1996:42).*

The September Commission described management strategies of retrenching, outsourcing or subcontracting as "seeking to by-pass the union by refusing to consult or engaging in meaningless consultation". According to the Commission, the dangers of these initiatives for organized labour include the "division of workers into 'insiders' and 'outsiders'", and the possibility that "union responses to restructuring may create ideological confusion among members and activists" (COSATU, 1997:96-97).

The Commission does, however, point out that in some cases unions have used the space created by restructuring initiatives to resist retrenchments and subcontracting, to win "the right to information", and to set up consultative forum. But, "in the majority of cases", unions have not engaged with these processes effectively. Even in cases where restructuring agreements are signed, unions find it difficult to actually use the

gains to their advantage in practice (COSATU, 1997: 97-98). Different reasons for this are mentioned, namely:

- The first points to the perceived route taken by management; “most managers are more concerned to reduce costs and workers and weaken the unions, than to cooperate with unions or to upgrade the skills of their workers”.
- Secondly the Commission acknowledges that unions lack clear vision and policy guidelines on restructuring, as well as the capacity to engage effectively (COSATU, 1997:98).

According to the researcher, in the context of the institutional environment for collective action, labour has partly succeeded in using NEDLAC to shape the nature of post-Apartheid South Africa. However, the labour movement's role in NEDLAC is constrained by a lack of capacity to shape debates, as well as the government stance on the non-negotiability of its macroeconomic strategy. NEDLAC does provide labour with an opportunity to engage in trade negotiations, and provides a platform to keep issues such as the social clause on the agenda. In terms of industrial relations at a meso-level, it seems that the trend towards centralization has come to an end. Only 36 per cent of the non-agricultural private sector workforce is covered by bargaining council agreements and firm-level bargaining, according to recognition agreements, still forms the foundation of collective bargaining.

Trade unions have had little success in dealing with company-level restructuring and South Africa's version of “world-class manufacturing”. They are still trying to find a response to the movement away from standardized contracts of employment and remuneration, towards individualized contracts and bonus systems, coupled with an increase in casualization. Unions may find themselves *defending* the gains made during campaigns in the 1980s and 1990s, and, in the process, will be forced to become more outward looking as companies seek cheap and docile labour elsewhere.

A bargaining unit is that part of the workplace in which a union claims recognition and in which it negotiates. The different trends in recent years between South Africa

and some of the advanced industrialized countries highlights the great diversity that exists between bargaining structures across countries, sectors, and firms. Bargaining can take place, at the one extreme, between an employer and a particular work group within a plant, and, at the other extreme, bargaining arrangements have been established at the national, economy-wide level by confederations of employers' organizations and trade unions. In between these poles, bargaining takes place at plant level or enterprise level, or employers bargain collectively via associations at local, regional or national levels for industries or industrial sub-sectors (Godfrey, 1997:3).

The type of bargaining structure established would determine which employees are to be covered by an agreement. Consequently, it also determines who will receive protection from an agreement, especially if such agreement becomes enforceable by statute. It will determine the amount of union influence in a company or industry and the power that both a union and employers can exercise during negotiations (Bendix, 2001:246).

According to Grogan (2000:270) it is noteworthy that unions' entitlement to organisational and workplace forum rights are established by reference into to a particular bargaining unit but to their support in the workplace as a whole. Commissioners called upon to consider recognition disputes could be expected to discourage the fragmentation of bargaining units. However, the degree of support enjoyed by a union in particular bargaining units may be a factor relevant to the sufficiency of its membership in the workplace as a whole.

Kochen in Murray (1996:253) identified three levels of bargaining namely:

1. Centralized (multi-employer; multi-plant) bargaining;
2. Part centralized (single employer: multiple) bargaining and
3. Decentralized (single employer: single plant bargaining).

### **3.4.1 CENTRALISED MULTI-EMPLOYER BARGAINING**

Strong centralized bargaining structures may prevent the government from subordinating the interests of labour to its economic policies and developmental strategies (Dyakala, 1999:71).

The Labour Relations Act 66 of 1995 promotes the use of centralized bargaining structures. Bendix (2001:271) states that in essence it retains the previous industrial councils, now renamed bargaining councils, and extends these also to the public service. Some aspects of councils have been modified and provision has been made for statutory councils in areas where unions may not be sufficiently representative.

Bargaining councils are discussed in detail further on in this chapter (3.6).

### **3.4.5 DECENTRALISED BARGAINING**

Antiposed to the centralized bargaining council system is the system whereby a union gains recognition at a particular plant or undertaking and then bargains on behalf of employees at that plant or undertaking or in a specific bargaining unit. Previously union efforts at plant-level recognition were often hampered by the employer's refusal to grant access (or permission to hold meetings) to the union. In terms of the organizational rights now accorded to unions by the Labour Relations Act, a union has merely to prove sufficient or majority representation in order to exercise these and other rights. Much of the game playing which in the past preceded recognition may now disappear (Bendix, 2001:277-278).

According to Dyakala (1999:76), the central issue in respect of decentralisation of collective bargaining relates to what is the most appropriate level for the determination of pay and other terms and conditions of employment (substantive issues).

**TABLE 4 – ADVANTAGES AND DISADVANTAGES FO CENTRALISED AND DECENTRALISED BARGAINING**

Centralised Bargaining		Decentralised bargaining	
Advantages	Disadvantages	Advantages	Disadvantages
Wages out of competition (pro for unions and employers)	Wages may be set at minimum levels (con for union)	Wages differentiated according to particular organisation	Danger of whipsawing (con for employers) Employers afraid to become uncompetitive (con for unions)
Better benefits at less cost		Benefits tailor-made for individual needs	Fewer benefits provided
Larger-scale training programmes		Programmes tailor-made for specific needs	Less likelihood of large-scale training programmes
Fewer strike actions	Industrial action on a wider scale		Likelihood of spontaneous strikes increases
	Does not diffuse workplace tensions	Diffuses workplace tensions	
Limits power of workplace organization (management and employees)		Increases power of workplace organisation	Workplace representatives may become too independent of union
	Possibility of democratic decision making in unions and employer organization decreases	Greater opportunity for democratic decision making	
	Diverse interests represented	Caters for specific needs	
	Greater intra-organisational conflict	Intra-organisational conflict minimized	
	Less flexible	More flexible	
	May smother smaller employer or union	Allows employers and unions to follow their own noses	
Bargainers usually more professional			Bargainers may not be sufficiently experienced
Long-term objectives			Objectives may be short term
Provides overall, uniform standards and minimum safeguards			May lead to employer play-offs and wage inflation

Source: Nel (2002:141)

There are four types of bargaining units that exist:

**Narrow Decentralised Units.** This type of bargaining unit is established when a union represents the interests of one group of workers at a particular plant or where various unions, who each represent a different bargaining unit, represent the interests of different groups of workers. This kind of bargaining unit increases commonality and worker participation and decreases intra-organisational conflict. The effect of a strike is minimised because production can continue without the member of a particular unit.

**Broad Decentralised Units.** This type of bargaining unit comprises of all the unions or the majority of the unions combining to form one bargaining unit. Broad decentralized units have the same advantages as narrow decentralised units, although strike action established by a majority of the employees could lead to a total loss of production.

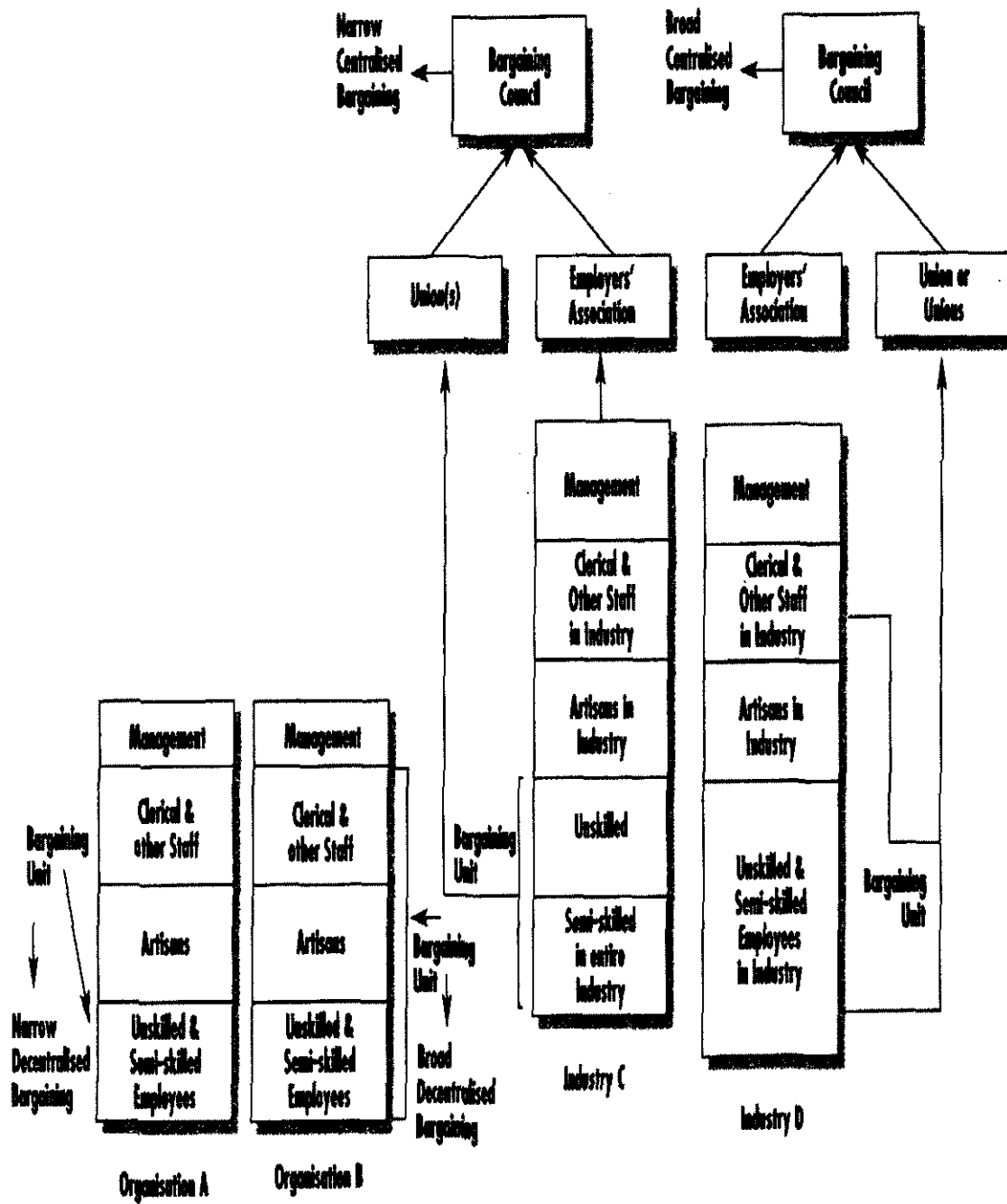
**Narrow Centralised Units.** According to Bendix (2001:247) this type of structure is established when one union or a number of unions representing a particular sector or interest at a company, or industry, or different industries, bargain centrally with the company, with a number of employers from the same industry, or with employers from different industries. There is less direct conflict between individual management and employees and strike action is minimised if the workers represented do not occupy strategic positions.

**Broad Centralised Units.** A broad centralised unit is instituted when a union/s representing diverse interests bargain with a number of employers at industry level. The structure of this type of unit is very complex which has an advantage for both sides because the uniformity of wage levels and benefits is achieved by a centralised agreement. There is a greater need for intra-organisational bargaining because there is greater inter-union and inter-employer conflict.

**TABEL 5 – LEVELS OF BARGAINING IN SOUTH AFRICA**

<b>LEVEL</b>	<b>STRUCTURE</b>	<b>FUNCTIONS</b>	<b>ACTORS</b>	<b>SCOPE</b>
National	NEDLAC	To carry out negotiations between state, employers and employees.	<ul style="list-style-type: none"> <li>• Government</li> <li>• Business</li> <li>• Workforce</li> <li>• Community</li> </ul>	National socio economic and labour policy.
Industry	Bargaining councils and statutory councils	Arrange to include employer and employee representatives for an entire industry.	<ul style="list-style-type: none"> <li>• Registered trade unions</li> <li>• Registered employers associations</li> </ul>	Wages and working conditions for an entire industry.
Regional	Union structures and employer associations	Assist in the bargaining process.	<ul style="list-style-type: none"> <li>• Registered trade unions</li> <li>• Registered employers associations</li> </ul>	Wages and working conditions at a regional level.
Firm/ companies within a group company	Employee representatives/ unions and the employer.	To represent employees in a particular firm.	<ul style="list-style-type: none"> <li>• Trade unions</li> <li>• Trade union representative</li> <li>• Employer</li> <li>• Community groups</li> </ul>	Wages and working conditions and procedural issues at the level of the firm.
Plant	Shop stewards and management	To negotiate about terms and conditions of employment.	<ul style="list-style-type: none"> <li>• Trade unions</li> <li>• Trade union representative</li> <li>• Employer</li> <li>• Community groups (in specific circumstances)</li> </ul>	Wages and working conditions and procedural issues at the level of the individual plant.

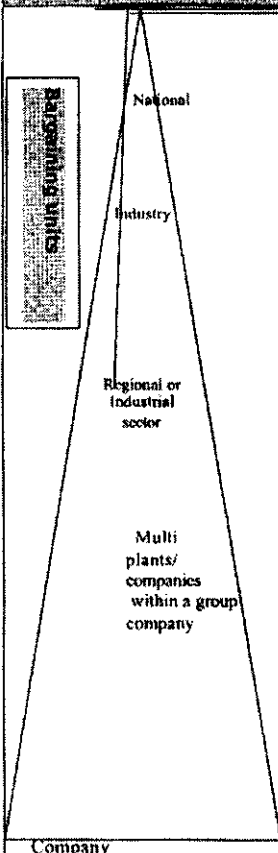
**DIAGRAM 4 – BARGAINING STRUCTURES AND BARGAINING LEVELS**



Source: Bendix (2000:141)



**FIGURE 5 – A FRAMEWORK OF COLLECTIVE BARGAINING IN SOUTH AFRICA**

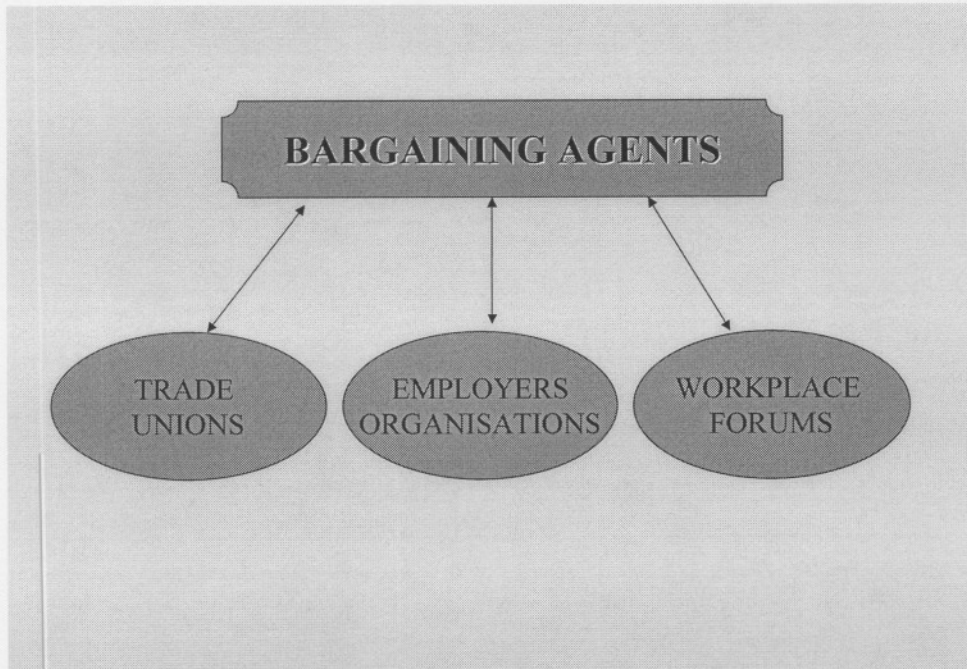
Bargaining level	Bargaining Structure	Actors	Scope	Type of Bargaining
	Nedlac	<ul style="list-style-type: none"> <li>Government</li> <li>Business</li> <li>Labour</li> <li>Community</li> </ul>	National social economic policy	Centralised bargaining
	Bargaining or statutory council	<ul style="list-style-type: none"> <li>Registered employer associations</li> <li>Registered and Trade Union</li> </ul>	Normally substantive/ (wages and conditions of service) and/ or procedural issues for an entire industry	
	Bargaining or statutory council	<ul style="list-style-type: none"> <li>Registered employer associations</li> <li>Registered and Trade Union</li> </ul>	Substantive (wages and conditions or service) and/ or procedural issues for an industry	
	Multi-plants/ companies negotiating forum	<ul style="list-style-type: none"> <li>Employer and trade union(s)</li> <li>In specific circumstances also community groups</li> </ul>	Substantive (wages and conditions or service) and/ or procedural issues in a particular company	
Company Plant level or single company level	Plants or single company negotiation forum	<ul style="list-style-type: none"> <li>Employer and trade union(s)</li> <li>In specific circumstances also community groups</li> </ul>	Substantive (wages and conditions or service) and/ or procedural issues in a particular company	Decentralised bargaining

Source: Slabbert *et al* (1998)

### 3.5 BARGAINING AGENTS

The different bargaining agents are illustrated by the researcher in figure 5.

**FIGURE 6 – BARGAINING AGENTS**



Source: Researcher

### **3.5.1 TRADE UNIONS**

According to the researcher, a trade union can be defined as an association of employees whose main objective is to regulate the relations between the employee and employer including employers' organisations.

According to Jackson (1982:106) employers in many countries have come to recognize some potential benefits from union recognition and the extension of collective bargaining. While the majority may not have taken the initiative in granting recognition to unions or introducing collective bargaining machinery, many have accepted such developments when they have been pressed. This apparent change of heart has a number of sources. One was the decision that, on balance, fighting union recognition and collective bargaining was not 'worth the effort'. Another more positive reason was the appreciation that union recognition and the extension of collective bargaining can bring benefits for employers as well as unions. Potentially it has the advantage of regulating relationships and making them more predictable.

Collective bargaining is one of the main ways that trade unions try to influence the conditions of employment and unions do not only affect the development of collective bargaining but the development of collective bargaining will also affect them.

Trade unions owe their existence to the principle of freedom of association as defined in the Labour Relations Act. This right recognises that it is an individual's choice to associate or not to associate with any organisation/trade union of the individual's choice (Pons & Deale, 1998:6-2).

### **3.5.1.1      TRADE UNION OBJECTIVES**

Pons and Deale (1998:6-7) state that the following points represent a typical set of trade union objectives:

- To organise and unit all workers employed in all the industries covered by this constitution into one strong national union.
- To protect and further the interests and promote the welfare of members, or any or some of its members.
- To strive for economic and social justice for all members by means of regulating relations, negotiating and settling disputes between members and employers.
- To resist retrenchment and to fight for full employment.
- To set up effective collective bargaining machinery.
- To democratise the work processes.
- To oppose any policy, practice or measure which will cause division or disunity amongst members or workers and to fight to eradicate all forms of racism and sexism.

- To promote, support or oppose, as may be deemed expedient, any proposed legislation or other measure affecting the interests of the members.
- To affiliate with, confer or enter into arrangements with any other trade union or labour organisation and to work towards one federation of trade unions to unite and represent all workers in South Africa.
- To build solidarity with workers and their unions in different countries.
- To establish, maintain or join funds for the benefit of members or persons employed by the union.
- To provide, when deemed necessary, legal assistance to members in relation to their employment or in furtherance of any of the objects set out herein, provided it is not inconsistent with any matter specifically provided for in this constitution.
- To do such things as appear to be in the interests of members generally or of the union and which are not inconsistent with the objects or any other matter specifically provided for in the constitution.

### 3.5.1.2 UNION METHODS FOR ACHIEVING OBJECTIVES

Different methods that trade unions can use to achieving their objectives are through:

- **Affiliation and representation on national bodies.** Trade unions unite on a national as well as international level and this is done by affiliating with trade union federations. By affiliating, workers have greater representational rights, and these rights can be stipulated with more authority.
- **Fringe benefit schemes.** The area of social benefits was affected by the development of trade unionism. The most common benefits that are encountered today include the provision of medical, funeral and maternity benefits.

- **Collective bargaining.** This characteristic needs no further discussion because it is known that collective bargaining is one of the main instruments that trade unions use to promote the interests of its members.
- **Freedom of association.** Freedom of association means that an individual has the freedom to join an existing union or join in the establishment of a union. When an individual is a member of a union, he/she contracts with the other members in terms of the constitutions and rules of the union. In other words, becoming a union member involves becoming a party to the contract of association that constitutes the specific union.
- **Closed shop principle.** The principle of closed shop contradicts that of freedom of association because for example, it would be unfair to expect in an organised body of workers that, say, only 80 per cent should provide union membership fees to promote certain interests, while the other 20 per cent share in the benefits without paying membership fees.
- **Grievance and disciplinary procedure.** The establishment of a grievance and disciplinary procedure system for negotiation between the trade union and the employer creates the channels for the reasonable and just settlement of matters to mutual benefit. In the absence of this procedure, or where it is disregarded, conflict arises, leading to a feeling of insecurity in members, particularly if the trade union cannot afford them protection through power (Nel & van Rooyen, 1985:82).
- **Reconciliation and arbitration.** Reconciliation and mediation usually go hand in hand and are both procedures in which a third party assists the parties in negotiations with the aim of helping them reach an agreement.

Arbitration is a procedure in which a third party has the authority to make decisions in order to resolve a dispute, but it must be noted that it does not act as a court. An arbitration settlement is legally binding, which is not enforceable, but it has the same legal nature as that of a legally binding collective agreement.

- **Strikes.** A strike is the most effective and final weapon of a trade union and is usually used as a last resort because it can have serious consequences.

### **3.5.1.3 STRUCTURE OF TRADE UNIONS**

The structure of a trade union is usually the opposite to that of a business because power is not always situated at the top of a union hierarchy.

#### **3.5.1.3.1 SHOP STEWARDS**

Union members elect shop stewards to act as a go-between with the local union office. Shop stewards attend feedback meetings at which:

- Information and experiences are shared;
- Collective concerns to be taken to branch level are communicated;
- The activities of shop stewards are trained and coordinated;
- Feedback is provided on decisions made by other levels in the union.

#### **3.5.1.3.2 BRANCH OFFICE**

A branch office usually consists of a combination of shop stewards, which are elected by the shop steward committee and union officials. The branch office is responsible for:

- Communicating policy decisions to members;
- Making sure that all suggestions and concerns from members reach higher levels of the organisation;
- Coordinating trade union activities;

- Organising recruitment for new members.

#### **3.5.1.3.3 REGIONAL OFFICE**

The regional office consists of representatives from the branches, full-time officials and organisers who are usually specialists in training and education. The regional office coordinates activities between branches and liaises with the national executive.

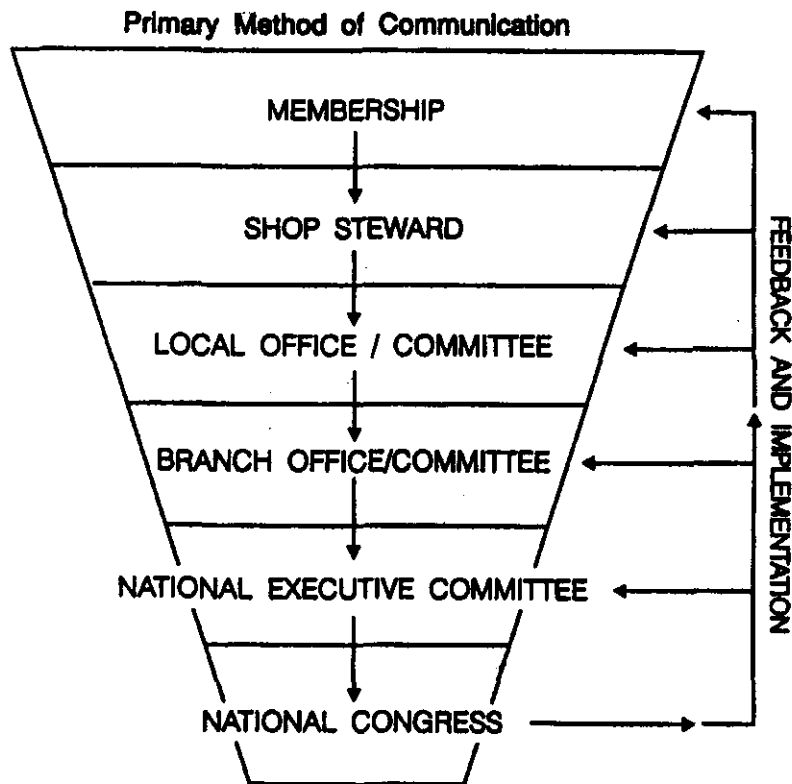
#### **3.5.1.3.4 NATIONAL EXECUTIVE COMMITTEE**

The national executive committee consists of the union president, vice president, general secretary and treasurer. The role of the union president and vice president is usually filled from the ranks of shop stewards and the role of the general secretary and treasurer is filled by full-time union officials. The role of the national executive committee includes:

- The implementation of the policy and to make final decisions after the input from the other structures within the union;
- To coordinate media releases and decide on the wide-ranging actions of the union;
- To assign research into specific issues and to provide specialist skills;
- To ensure the organisational efficiency of the union.

It should be noted that the bottom-up type of organisation within trade unions generally promotes the aims and objectives of trade unions. However, some trade unions have developed stronger top-down hierarchies. Such an approach is generally not in the interests of the membership (Pons & Deale, 1998:6-4).

**FIGURE 7 – A MODEL STRUCTURE OF A UNION**



Source: Pons and Deale (1998:6-5)

### **3.5.2 UNION FEDERATIONS**

#### **3.5.2.1 COSATU**

COSATU, the Congress of South African Trade Unions was established in 1985 and is the largest federation of trade unions in South Africa. COSATU has the following main objectives:

- To promote democracy in the workplace;
- To involve workers in job evaluation, training, affirmative action, investment, job creation and productivity;



- To challenge inequality and promote rural development;
- To lobby for antitrust laws;
- To oppose wage freezes and cuts in social spending;
- To promote international worker solidarity;
- To encourage the amalgamation of unions; and
- To establish its own investment company to manage pension funds.

#### **3.5.2.2 FEDUSA**

FEDUSA, the Federation of Union of South Africa, is the second largest federation in South Africa. FEDUSA represents the moderate views of labour.

FEDUSA supports the following policies:

- A democratic system which protects the individual;
- Job creation;
- A taxation system mindful of the requirements of the working class; and
- The exposure of authorities that waste resources.

#### **3.5.2.3 SACLA**

SACLA, the South African Confederation of Labour Associations, is the oldest federation. It is an all-white federation and focuses on maintaining racial exclusivity of labour in skilled positions.

#### **3.5.2.4 NACTU**

NACTU, the National Council of Trade Unions, was established in 1986 as a result of a merger between the Azanian Congress of Trade Union and the Council of Union of South Africa. NACTU's goal is to achieve the democratic aspirations of the most oppressed and exploited.

Although the federation is non-racial, its dedication to black worker leadership led to fallout with other unions. NACTU remains committed to black consciousness. It has, however, adopted the principles of non-affiliation to political organisations, financial accountability and autonomy of unions in the framework/federation (Pons & Deale, 1998:6-11).

#### **3.5.3 TRADE UNION REPRESENTATIVES (SHOP STEWARDS)**

Shop stewards are elected by members of a majority trade union in a workplace that consists of more than 10 employees. The number of shop stewards who can be elected depends on the size of the organisation.

The shop steward has a twofold task. Firstly, he/she is a worker who has the same rights and obligations as his/her workers. The shop steward will work on the factory floor because that is where he can associate closely with his/her workers.

Secondly, the shop steward is an office-bearer of his trade union and his conduct is regulated according to the stipulations of the trade union constitution, which must comply with the relevant legislation.

The shop steward's relationship with the company as an employee is also important. Employers expect shop stewards to meet reasonable standards of performance in terms of their contract of employment. This can lead to conflict if management is not sympathetic to the complex balancing act required of a shop steward to satisfy the union office, the constituents and the demands of the employment contract (Pons & Deale, 1998:6-22).

**TABLE 6 – LEVELS OF UNION REPRESENTATIVES**

<b>LEVELS OF UNION REPRESENTATIVES</b>		
<b>UNION OFFICIAL, e.g.</b> secretary, organiser, legal officer, education officer	<b>UNION OFFICE BEARER, e.g.</b> president, branch chairperson, member of executive committee/council	<b>SHOPFLOOR WORKER REPRESENTATIVE, i.e.</b> shop steward
<ul style="list-style-type: none"> <li>• is employed by the union;</li> <li>• is appointed by union office bearers;</li> <li>• fulfils the role of union administrator, recruiter, negotiator;</li> <li>• advises union office bearers and shop stewards on technical issues</li> </ul>	<ul style="list-style-type: none"> <li>• is employed by a company;</li> <li>• is elected by union members;</li> <li>• participates in policy formulation</li> </ul>	<ul style="list-style-type: none"> <li>• is employed by a company;</li> <li>• is elected by workers;</li> <li>• represents workers' views and interests to management</li> </ul>

Source: Pons and Deale (1998:6-6)

### **3.5.3.1 SHOP STEWARD FUNCTIONS**

The Government Gazette (1995:13) states that trade union representatives have the right to perform the following functions:

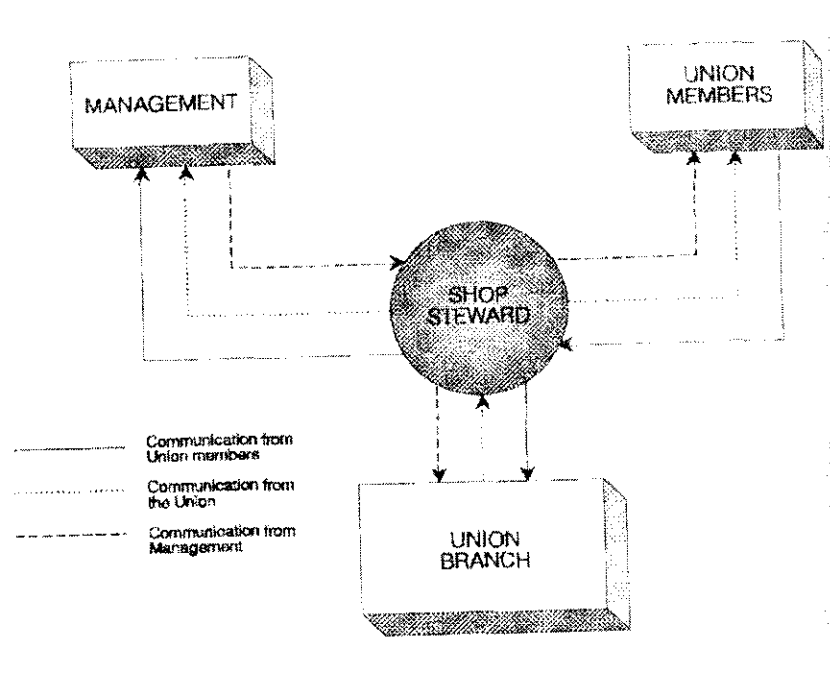
- at the request of an employee in the workplace, to assist and represent the employee in grievance and disciplinary proceedings;
- to monitor the employer's compliance with the work-related provisions of this Act, any law regulating terms and conditions of employment and any collective agreement binding on the employer;

- to report on any alleged contraventions of the work-related provisions of this Act, any law regulating terms and conditions of employment and any collective agreement binding on the employer to –
  - (i) the employer;
  - (ii) the representative trade union; and
  - (iii) any responsible authority or agency; and
- to perform any other function agreed to between the representative trade union and the employer.
- Subject to reasonable conditions, a trade union representative is entitled to take reasonable time off with pay during working hours –
  - to perform the functions of a trade union representative; and
  - to be trained in any subject relevant to the performance of the functions of a trade union representative.

### **3.5.3.2 THE NATURE OF THE SHOP STEWARD'S TASK**

A shop steward will only be able to perform his duty effectively if he/she has the confidence of both the management and the workers. He/she must be a good listener in order to listen to the arguments of both parties and he/she must further be fair but firm with both parties to be able to distinguish between real and imaginary grievances. His task demands that he have a thorough knowledge of the needs of his fellow workers, the policy of his union and management as well as the stipulations of agreements and statutory regulations which are applicable. For this reason he consequently finds himself in an advisory capacity towards his fellow workers and management with regard to the relevant aspects of the trade and services his trade union offers members (Nel & van Rooyen, 1985:87).

**DIAGRAM 8 – THE ROLE OF THE SHOP STEWARD**



Adapted from Bendix (2001:168)

### **3.5.4 EMPLOYERS' ORGANISATIONS**

An employers' organisation can be defined as any number of employers who are associated together with the aim of regulating relations between employers and employees or trade unions.

Employers' organisations have the same general rights, which are accorded to trade unions, in so far as they are applicable.

Because employers have interests other than the regulation of the employer-employee relationship, employers may belong to various organizations some of which play no role in industrial relations. So for example employers have traditionally established trade organizations for the purpose of promoting and protecting common business interests. One purpose of chamber of commerce or business is to serve as useful representational liaison and advisory bodies and in so

doing many succeed in promoting healthier labour relations but they do not actively intervene in the relations but they do not actively intervene in the relations but they do not actively intervene in the employer-employee relationship and do not engage in collective bargaining. It is employers associations, which have the duty to bargain for employers (Dyakala, 1999:80).

The role of employer organisations in South Africa has gained greater significance in recent years for several reasons. The pressure from trade unions for centralised negotiations initially on industrial councils and now bargaining councils required an organised employer response. Unions have also grown and grouped into strong, national federations with significant socio-political influence. This propelled the development of a strong counterforce among employers, especially as negotiations of critical national issues in various tripartite forums have proceeded (Finnemore, 1999:128).

#### **3.5.4.1 DISCLOSURE OF INFORMATION**

When an employer is consulting or bargaining with a representative trade union, the employer must disclose all relevant information to the representative trade union that will allow the union to effectively engage in consultation or collective bargaining.

According to the Government Gazette (1995:14-15) an employer is not required to disclose information –

- that is legally privileged;
- that the employer cannot disclose without contravening a prohibition imposed on the employer by any law or order of any court;
- that is confidential and, if disclosed, may cause substantial harm to an employee or the employer; or

- that is private personal information relating to an employee, unless that employee consents to the disclosure of that information.

### **3.6 BARGAINING FORUMS**

Under bargaining forum the researcher discuss the workplace forum.

#### **3.6.1 WORKPLACE FORUMS**

A Workplace Forum is a structure, comprising of all unionized and non-unionised employee groups in a particular enterprise, (except senior management). These employee representatives are known as Workplace Forum members. The Forum is set up to facilitate, control and implement, together with the employer, the effective management of the organization. The Forum representatives would, with the employer's agreement, with the mandate from their constituencies, decide on which aspects of the organisation are to be jointly managed and in what way (Israelstam & Marais, 1996:27).

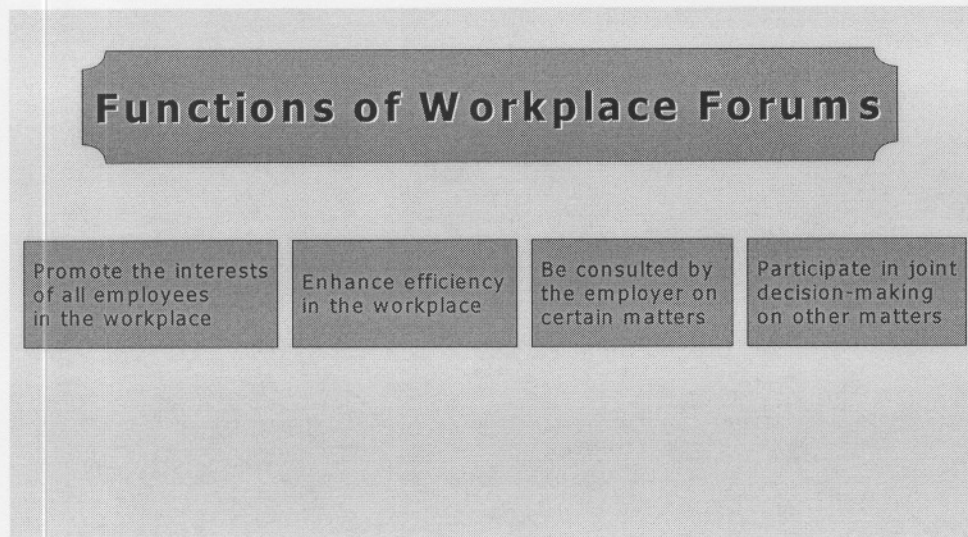
##### **3.6.1.1 FUNCTIONS OF WORKPLACE FORUMS**

As set out in Section 79 of the Government Gazette (1995:90), a workplace forum has the following general functions:

- must seek to promote the interests of all employees in the workplace, whether or not they are trade union members;
- must seek to enhance efficiency in the workplace;
- is entitled to be consulted by the employer, with a view to reaching consensus, about the matters referred to in section 84; and
- is entitled to participate in joint decision-making about the matters referred to in section 86.

The functions of the workplace forum are illustrate by the researcher in figure 9.

**FIGURE 9 – FUNCTIONS OF THE WORKPLACE FORUM**



Source: Researcher

### **3.6.1.2 ESTABLISHMENT OF WORKPLACE FORUMS**

The establishment of a workplace forum can only be initiated by an application to the employer from a registered trade union, which represent a majority of the employees in a workplace with more that 100 employees.

The trade union must lodge its application with the CCMA, which after considering only whether there are more than 100 employees in the workplace concerned, wither the applicant represents a majority of such employees, and whether there is already a functioning workplace forum in place, must appoint a commissioner 'to assist the parties to establish a workplace forum by collective agreement or, failing that, to establish one' (Grogan, 2000:253).



### **3.6.1.3        MATTERS FOR CONSULTATION**

- Unless the matters for consultation are regulated by a collective agreement, a workplace forum is entitled to be consulted by the employer about proposals relating to the following matters:
- Restructuring of the workplace, including the introduction of new technology and new work methods;
- Changes in the organisation of work;
- Partial or total plant closure;
- Mergers and transfers of ownership as far as they have an impact on the employees;
- The dismissal of employees based on operational requirements;
- Exemptions from any collective agreement or any law;
- Job grading;
- Criteria for merit increases or the payment of discretionary bonuses;
- Education and training;
- Product development plans; and
- Export promotion.

The Government Gazette (1995:98-99) further states that:

- A bargaining council may confer on a workplace forum the right to be consulted about additional matters in workplaces that fall within the registered scope of the bargaining council.
- A representative trade union and an employer may conclude a collective agreement conferring on the workplace forum the right to be consulted about any additional matters in that workplace.
- Any other law may confer on a workplace forum the right to be consulted about additional matters.

#### **3.6.1.4. THE CONSULTATION PROCESS**

- Before an employer can implement a proposal in relation to any matter referred to above, the employer must consult with the workplace forum and attempt to reach consensus with it.
- The employer must allow the workplace forum an opportunity during the consultation to make representations and to advance alternative proposals.
- The employer must consider and respond to the alternative proposals made by the workplace forum and, if the employer disagrees with the workplace forum, the employer must state the reasons for disagreeing.
- If the employer and workplace forum do not reach consensus, the employer must invoke any agreed procedure to resolve any differences before implementing the employer's proposal.

### **3.6.1.5 MATTERS FOR JOINT DECISION-MAKING**

The provisions regulating joint decision-making are set out in section 86 of the Government Gazette (1995:100-101):

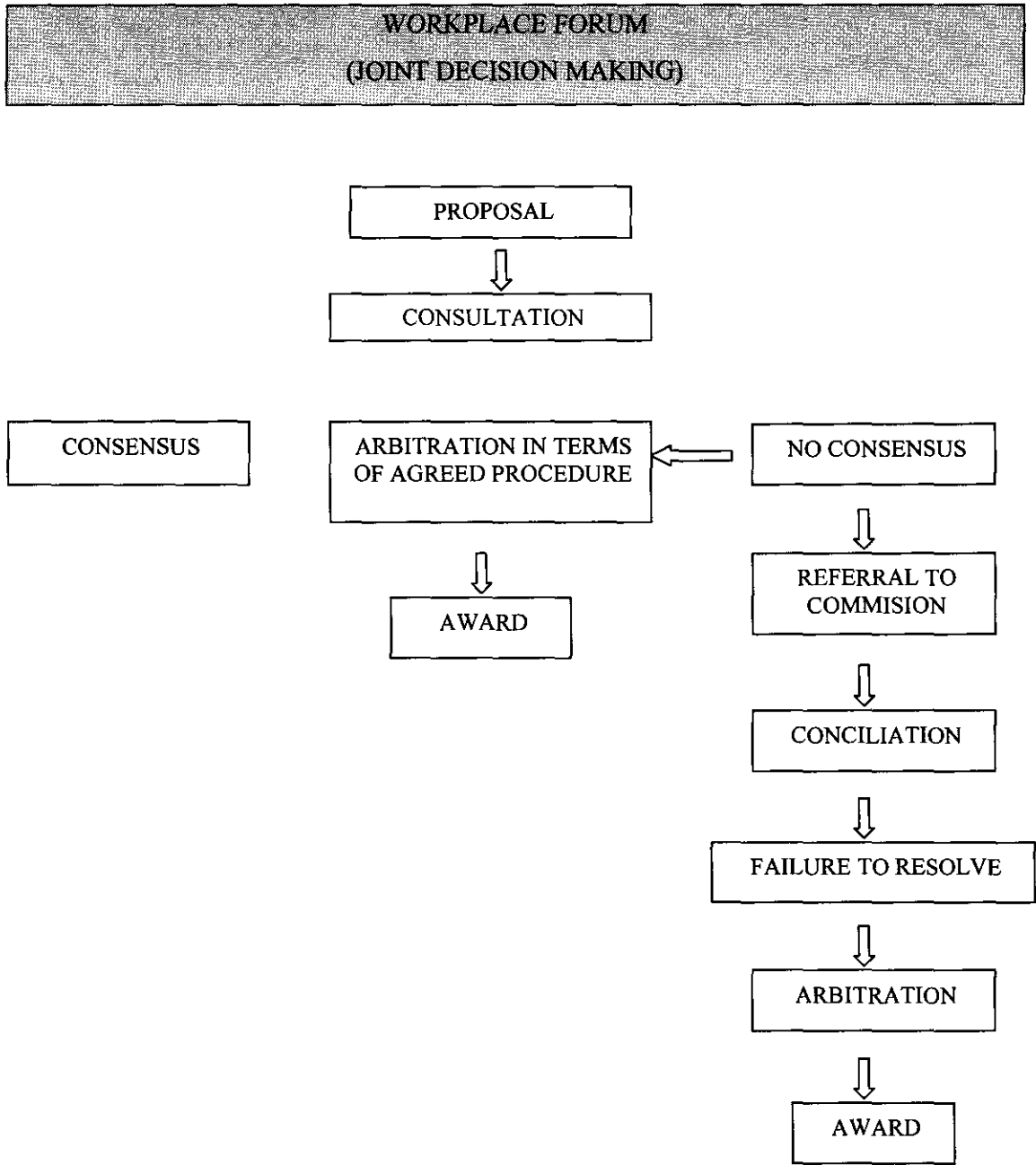
1. Unless the matters for joint decision-making are regulated by a collective agreement with the representative trade union, an employer must consult and reach consensus with a workplace forum before implementing any proposal concerning –
  - (a) disciplinary codes and procedures;
  - (b) rules relating to the proper regulation of the workplace in so far as they apply to conduct not related to the work performance of employees;
  - (c) measures designed to protect and advance persons disadvantaged by unfair discrimination; and
  - (d) changes by the employer or employer-appointed representatives on trusts or boards of employer-controlled schemes, to the rules regulating social benefit schemes.
2. A representative trade union and an employer may conclude a collective agreement -
  - (a) conferring on the workplace forum the right to joint decision-making in respect of additional matters in the workplace;
  - (b) removing any matter referred to in subsection (1) (a) to (d) from the list of matters requiring joint decision-making.
3. Any other law may confer on a workplace forum the right to participate in joint decision-making about additional matters.

4. If the employer does not reach consensus with the workplace forum, the employer may –
  - (a) refer the dispute to arbitration in terms of an agreed procedure; or
  - (b) if there is no agreed procedure, refer the dispute to the Commission.
5. The employer must satisfy the Commission that a copy of the referral has been served on the chairperson of the workplace forum.
6. The Commission must attempt to resolve the dispute through conciliation.
7. If the dispute remains unresolved, the employer may request that the dispute be resolved through arbitration.

#### **3.6.1.6 DISCLOSURE OF INFORMATION**

An employer must disclose to the workplace forum all relevant information that will allow the workplace forum to effectively engage in consultation and joint decision-making. As discussed earlier, an employer is not required to disclose information that is legally privileged, confidential, etc. If a dispute arises regarding the disclosure of information, any party to the dispute may refer the dispute in writing to the Commission. The party, who refers the dispute, must satisfy the Commission that a copy of the referral has been served on all the other parties to the dispute. The Commission must attempt to resolve the dispute through conciliation. If the dispute remains unresolved after conciliation, either party to the dispute may request that the dispute be resolved through arbitration.

**FIGURE 10 – WORKPLACE FORUM DISPUTE RESOLUTION**



Source: Government Gazette (1995:244)

### **3.6.1.7 DISSOLUTION OF WORKPLACE FORUMS**

A representative trade union in a workplace may request a vote to dissolve a workplace forum. If a vote to dissolve a workplace forum has been requested, an election officer must be appointed in terms of the constitution of the workplace forum. Within 30 days of the request for a vote, the election officer must prepare and conduct the vote. If more than 50 per cent of the employees who have voted support the dissolution of the workplace forum, the workplace forum must be dissolved.

## **3.7 BARGAINING COUNCILS**

Bargaining councils are the statutory successors to industrial councils of which their functions remain the regulation of sectors of employment over which they have jurisdiction by collective agreements and the settlement of disputes.

A bargaining council can exercise its powers over employers and employee in the industry for which it is registered. Its agreements only bind the parties to the council who are parties to such agreements.

### **3.7.1 POWERS AND FUNCTIONS OF BARGAINING COUNCILS**

The powers and functions of bargaining councils are as follows:

- To conclude collective agreements;
- To enforce those collective agreements;
- To prevent and resolve labour disputes;
- To perform dispute-resolution functions;
- To establish and administer a fund to be used for resolving disputes;
- To establish training and education schemes;

- To develop proposals for submission to NEDLAC or any other appropriate forum on policy and legislation that may affect the sector and area;
- To determine by collective agreement the matters which may not be an issue in dispute for the purposes of a strike or lock-out at the workplace; and
- To present on workplace forums additional matters for consultation.

### **3.7.2 ESTABLISHMENT OF BARGAINING COUNCILS**

The establishment of bargaining councils is carried out as follows:

- A bargaining council may be established in a sector and area by one or more registered trade unions and employers' organisation/s:
  - adopting a constitution that meets the requirements of section 30 of the Act; and
  - obtaining registration of the bargaining council in terms of section 29 of the Act.
- The State may be a party to any bargaining council if it is an employer in that sector and area.
- If the State is a party to a bargaining council in terms of the above, any reference to a registered employers' organisation includes a reference to the State as a party.

### **3.7.3 CONSTITUTION OF BARGAINING COUNCILS**

The researcher will now discuss the constitution of bargaining councils:

- The constitution of every bargaining council must provide for:

- the appointment of representatives of the parties to the bargaining council;
- the representation of small and medium enterprises;
- the circumstances and manner in which representatives must vacate their positions and the procedure for replacing them;
- rules for the convening and conducting of meetings of representatives;
- the way in which decisions are to be made;
- the appointment of office-bearers and officials and their functions;
- the establishment and functioning of committees;
- the determination through arbitration of any dispute arising between the parties to the bargaining council;
- the procedure to be followed if a dispute arises between the parties to the bargaining council;
- the procedure to be followed if a dispute arises between a registered trade union and registered employers' organisation that are parties to the bargaining council;
- the procedure for exemption from collective agreements;
- the banking and investment of funds;
- the purposes for which its funds may be used;
- the delegation of its power and functions;



- the admission of additional registered trade unions and registered employers' organisations;
- a procedure for changing its constitution; and
- a procedure by which it may resolve to wind up.

### **3.8 STATUTORY COUNCILS**

Statutory councils are the result of a compromise between the government and the big unions to satisfy the latter's fear that the bargaining council system would not do enough to promote centralised bargaining.

The conspicuous difference between bargaining and statutory councils is that union or employer parties can, in the absence of agreement, be forced to become members of statutory councils ministerial order (Grogan, 2000:261).

#### **3.8.1 POWERS AND FUNCTIONS OF STATUTORY COUNCILS**

The powers and functions of a statutory council are:

- To perform dispute resolution functions;
- To promote and establish training and education schemes; and To establish and administer pension, provident, medical aid, sick pay, holiday, and unemployment schemes or funds that benefit one or more of the parties to the statutory council or their members.

#### **3.8.2 DISPUTE RESOLUTION BY COUNCILS**

Both bargaining and statutory councils are empowered to resolve any dispute concerning matters of mutual interest through conciliation and, if the parties consent, through arbitration. They can also arbitrate rights disputes if they are accredited to

perform these functions by the CCMA. If consent to arbitration by a non-accredited council cannot be obtained, the dispute must be referred to the CCMA (Grogan, 2000:262).

### **3.9 COLLECTIVE AGREEMENTS AND INDUSTRIAL ACTION**

Collective agreements are formulated in order to lay down the 'law' on how the employment relationship should be carried out. Collective agreements state wages and conditions of service that are fixed for a given period.

Collective agreements differ from individual contracts of employment in that the latter are entered into between individual employees and their employers, and establish personal rights and duties *inter se*, while the former are entered into between an employer or a group of employers, on the one hand, and the representative of a number of employees, on the other, and establish uniform conditions of service for all employees falling within particular categories (Grogan, 2001:295).

#### **3.9.1 COLLECTIVE AGREEMENTS**

A collective agreement means a written agreement concerning terms, conditions of employment or any other matter of mutual interest concluded by one or more registered trade union and one or more employer and/or registered organisations. The term collective agreement refers to bargaining council agreements and any workplace agreement between employers and employees that regulate terms and conditions of employment or the conduct of employers and employees. The Act gives significant status to collective agreements. For example, parties may agree to establish their own internal labour relations structures and their own dispute resolving processes. Collective agreements may also provide for closed shops and agency shops (Finnemore, 1999:154).

##### **3.9.1.1 BARGAINING COUNCIL AGREEMENTS**

Bargaining council agreements are substantive agreements and are more centralised because they deal with matters such as wages and conditions of service.

However, bargaining council agreements make provision for procedural issues such as job evaluation, retrenchment procedures and education and training. The substantive issues are usually negotiated annually.

### **3.9.1.2 STATUTORY COUNCIL AGREEMENTS**

Statutory council agreements are procedural agreements that control items such as dispute resolution, administration of medical and pension funds and education and training.

### **3.9.1.3 CLOSED SHOP AGREEMENTS**

A closed shop agreement requires all employees who are covered by the agreement to join a particular union. A closed shop has two different forms, the first being a pre-entry closed shop that requires that an employee must already be a member of a designated union before being offered employment. The second form is a post-entry closed shop that requires an employee to join a designated union within a specified period after employment.

A union party to a closed shop agreement may, in terms of its constitution, withhold membership from an employee or may terminate his membership for 'fair' reasons, including (but not limited to) behaviour that hampers the collective exercise of trade union rights. This could mean that an employee or group of employees who refuse to take part in a strike could have his/their membership terminated (Bendix, 2001:265).

A closed shop agreement is basically the following:

- A representative trade union and an employer or employers' organisation may conclude a collective agreement, or closed shop agreement, requiring all employees covered by the agreement to be members of the trade union.
- A closed shop agreement is only binding if –

- a vote has been held of the employees to be covered by the agreement;
- two thirds of the employees who voted have voted in favour of the agreement;
- there is no provision in the agreement requiring membership of the trade union before employment commences;
- it provides that not part of the amount deducted may be –
  - (i) paid as an affiliation fee to a political party;
  - (ii) contributed in cash or kind to a political party; or
  - (iii) used for any expenditure that does not advance or protect the socio-economic interests of employees.
- Despite the above, a closed shop agreement may be concluded between a registered trade union and a registered employer' organization in respect of a sector and area to become binding in every workplace in which –
  - a vote has been held of the employees to be covered by the agreement; and
  - two thirds of the employees who voted have voted in favour of the agreement.
- No trade union that is party to a closed shop agreement may refuse an employee membership or expel an employee from the trade union unless
  - the refusal or expulsion is in accordance with the trade union's constitution; and

- the reason for the refusal or expulsion is fair.
- It is not unfair to dismiss an employee –
  - for refusing to join a trade union party to a closed shop agreement;
  - who is refused membership of a trade union party to a closed shop agreement; or
- Who is expelled from a trade union party to a closed shop agreement at the time a closed shop agreement takes effect, those employees may not be dismissed for refusing to join a trade union party to the agreement.
- Employees may not be dismissed for refusing to join a trade union party to the agreement on the grounds of conscientious objection.
- If the parties to a closed shop agreement do not admit the registered trade union as a party, the trade union may refer the dispute in writing to the CCMA to be resolved through conciliation.
- The registered trade union must satisfy the Commission that a copy of the referral has been served on all the parties to the closed shop agreement.
- If the dispute remains unresolved, any party to the dispute may refer it to the Labour Court for adjudication.
- The termination of a closed shop agreement will be determined when a representative trade union conducts a vote of the employees covered by the agreement if –
  - one third of the employees sign a petition calling for the termination of the agreement; and

- three years have past since the date on which the agreement commenced.

If the majority of the employees who voted, voted to terminate the closed shop agreement, the agreement will terminate.

#### **3.9.1.3.1 ADVANTAGES OF THE CLOSED SHOP**

- It eliminates the problem of “free-riders”. Free-riders can be described as workers who do not pay membership fees or participate in the union but they receive all the benefits.
- Ensuring solidarity during industrial action increases union power and it strengthens the union's financial status.
- Union rivalry is overcome and friction on the shop floor is reduced.
- The status of the union within the company is reinforced and it therefore alleviates the pressure on the union to constantly challenge management to maintain its status.
- Management communication with employees is facilitated through a single channel.

#### **3.9.1.3.2 DISADVANTAGES OF THE CLOSED SHOP**

- It is an infringement of an individual's freedom because it compels employees to become union members.
- It implies that an employees who are expelled from the union, will lose their jobs.

- Union officials take the membership for granted and members cannot stand up for themselves and leave the union if they are dissatisfied.
- Unions that operate under the closed shop agreements lose their enthusiasm and the leadership loses touch with the shop floor.
- The honest commitment of union members to union goals may be minor.
- Due to the financial and security benefits provided by increased membership fees under closed shop agreements, leaders may become co-opted by management.

#### **3.9.1.4 AGENCY SHOP AGREEMENTS**

An agency shop agreement does not oblige employees to become union members, but it may provide that non-members who are eligible for union membership are obliged to pay a subscription that does not exceed the amount payable in dues by union members. These subscriptions are paid into a separate fund, administered by the majority union or unions, and are to be used to advance the 'socioeconomic welfare' of all employees (Bendix, 2001:265). The employer may deduct the agency fee from the employee's wages without the employee's authorisation.

Agency shops seek to overcome the problem of 'free-riders' and it avoids infringing the employee's right to freedom of association. Unlike the closed shop, employees are not compelled to become members of the trade union when joining an organisation.

Finnemore (1999:96) states that certain restrictions relate to agency shop agreements:

- The agreed agency fee must be equivalent to or less than the subscription required for membership of the representative union;

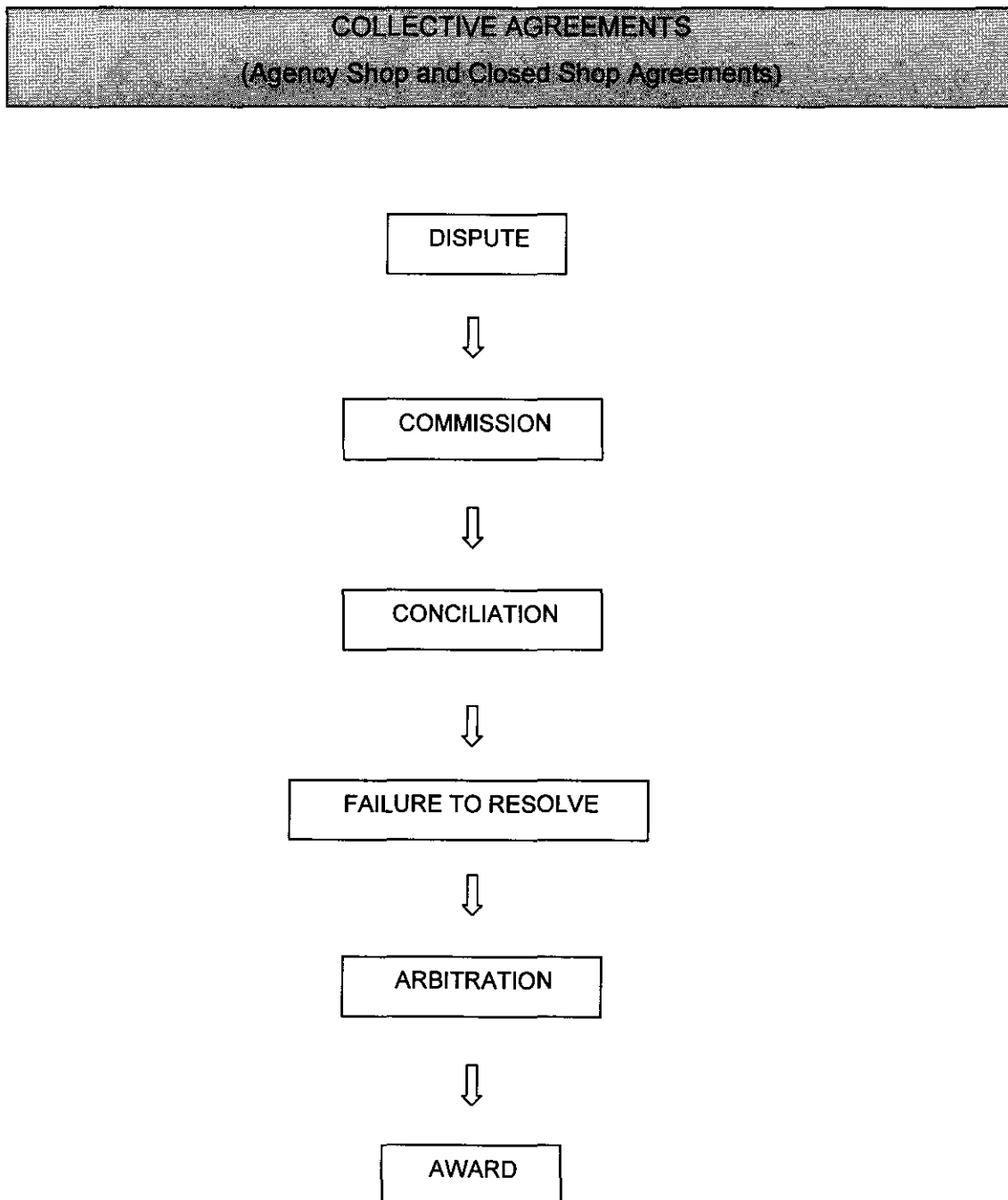
- The amount deducted must be paid into a separate account administered by the representative union and the same limitations on expenditure as exist for closed shop funds apply to agency shop funds;
- Any person may inspect the auditor's report relating to expenditure on the account;
- An employer or employer organisation may challenge a union to prove that it is still a majority union, but must give the union 90 days in which to prove that it is still representative; and
- If the union fails to prove its representivity, the employer must give 30 days notice of termination of the agreement.

#### **3.9.1.5 DISPUTES REGARDING CLOSED SHOPS AND AGENCY SHOPS**

The Labour Relations Act has termed closed shop and agency shop agreements as collective agreements. The employer is not obliged to enter into such an agreement with the union but if the employer does not concede to such a demand, the union may refer the dispute to the CCMA for conciliation. If the dispute remains unresolved, the union has the right to strike on the issue or the parties could agree to refer the dispute to arbitration.

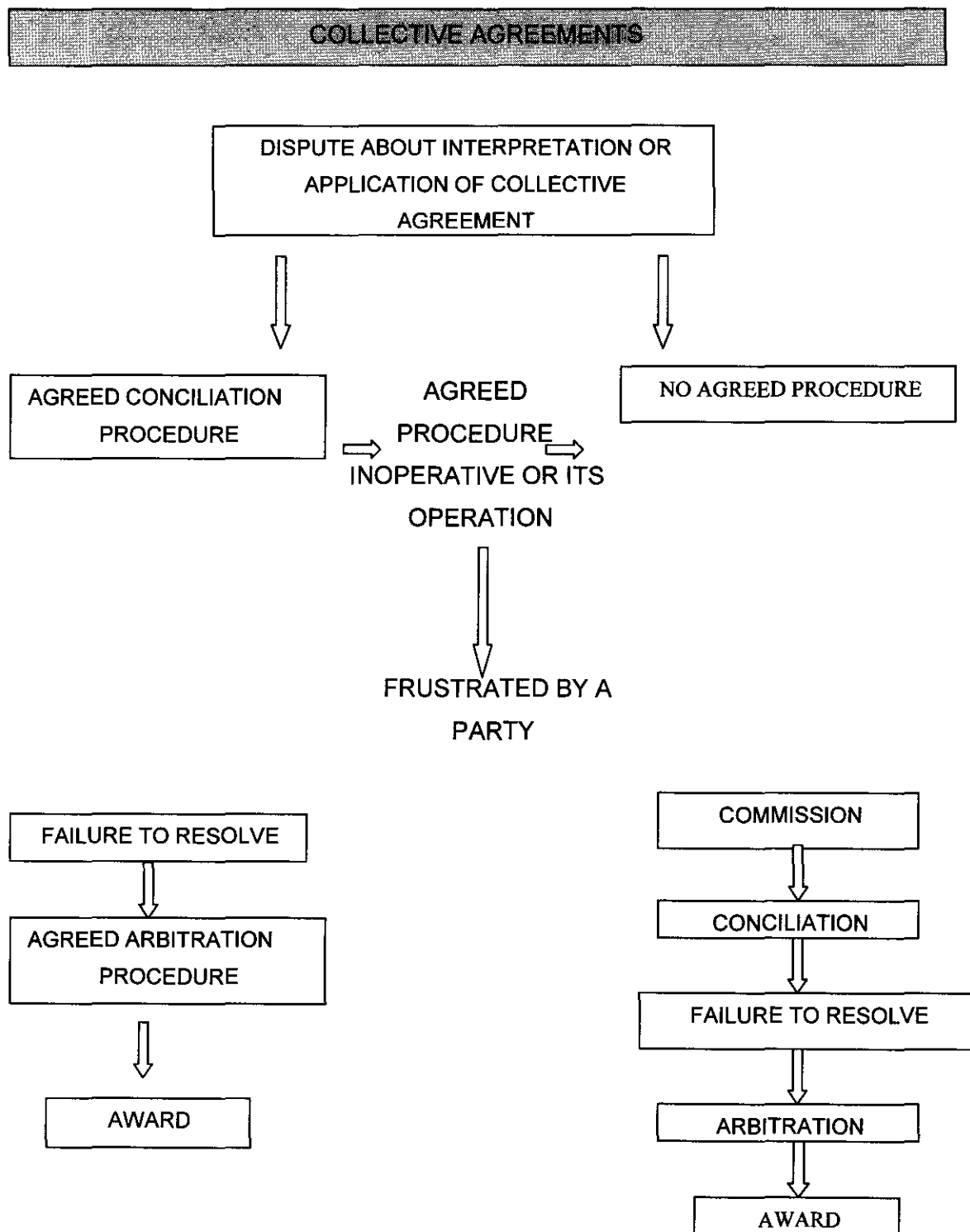


**FIGURE 11 – DISPUTE RESOLUTION FOR CLOSED SHOP AND AGENCY SHOP AGREEMENTS**



Source: Government Gazette (1995:239)

**FIGURE 12 – DISPUTE RESOLUTION FOR COLLECTIVE AGREEMENTS**



Source: Government Gazette (1995:238)

### **3.9.2 LEGAL EFFECT OF COLLECTIVE AGREEMENTS**

The legal effect of collective agreement is set out in Section 23 of the Government Gazette (1995:20) as follows:

**1 A collective agreement binds –**

- the parties to the collective agreement;
- each party to the collective agreement and the members of every other party to the collective agreement, in so far as the provisions are applicable between them;
- the members of a registered trade union and the employers who are members of a registered employer's organisation that is party to the collective agreement if the collective agreement regulates –
  - (i) terms and conditions of employment; or
  - (ii) the conduct of the employers in relation to their employees or the conduct of the employees in relation to their employers;
- employees who are not members of the registered trade union or trade unions party to the agreement if –
  - (i) the employees are identified in the agreement;
  - (ii) the agreement expressly binds the employees; and
  - (iii) that trade union or those trade unions have as their members the majority of employees employed by the employer in the workplace.

- 2 A collective agreement binds for the whole period of the collective agreement every person bound in terms of the above who was a member at the time it became binding, or who becomes a member after it became binding, whether or not that person continues to be a member of the registered trade union or registered employer's organization for the duration of the collective agreement.
- 3 Where applicable, a collective agreement varies any contract of employment between an employee and employer who are both bound by the collective agreement.
- 4 Unless the collective agreement provides otherwise, any party to a collective agreement that is concluded for an indefinite period may terminate the agreement by giving reasonable notice to the other parties.

### **3.10 RECOGNITION AGREEMENTS**

According to Grogan (2001:298), the Labour Relations Act requires that recognition agreements must provide for a procedure to resolve disputes about their interpretation and application first by conciliation (which would include mediation) and then by arbitration. Grogan further states that it is only in the absence of such provisions, or where their operation is frustrated by one of the parties, that the services of the CCMA can be used.

The recognition agreement will not only confirm that the employer accepts the union as a bargaining agent, but will also stipulate the rules and procedures for the further conduct of the relationship and the parameters within which the relationship will be conducted – that is, the issues and procedures which will be subject to bargaining or joint decision making. In this respect the recognition agreement resembles the constitution of a bargaining council (Bendix, 2001:278).

**TABLE 7 – BASIC REQUIREMENTS OF COMMON LAW FOR RECOGNITION AGREEMENT**

<b>Requirement</b>	<b>Implications</b>
Parties must have the capacity to contract.	Only legal persons can enter into contracts. A trade union that is not a legal personality cannot contract in its own name. In the case where the union has legal personality, union negotiators must have the necessary powers in terms of the union's constitution.
Both parties have the serious intention to contract.	A formal written agreement cannot simply be a working relationship put into writing for the sake of convenience.
Performance must be possible at the time of the conclusion of the contract.	Parties must have the capacity to deliver on their intentions.
It must be lawful.	The contract must not be prohibited by statute law or common law. For example, an agreement that was in obvious contradiction to the Labour Relations Act would not be enforceable. Similarly, a clause in the contract, whereby the employer agrees not to call the police in the event of a conventional industrial dispute would not be enforceable.
The terms of the contract must be certain.	A vague contract would be void.

Source: Wood (1998:63-64) adapted from Piron (1984:33-35)

### **3.11 INDUSTRIAL ACTION**

In chapter 2 we learnt that the power play between the employer and employee or their union establishes the formation of collective bargaining. If bargaining should fail, either party may resort to the use of its power in order to persuade or threaten the other party. Industrial action as a use of power is ultimately aimed at forcing the other party into an agreement that is more acceptable to the party initiating the action.

Without the right to resort to industrial action, employees are confined to collective bargaining rather than collective bargaining. On the other hand, employers, too, need the right to undertake industrial action against a union whose members may have gained too much power under certain circumstances (Finnemore & van der Merwe, 1994:191).

### **3.11.1 DEFINITION OF A STRIKE AND LOCK-OUT**

A strike can be defined as the refusal to work, the retardation of work or the obstruction of work, which is instituted for the purpose of remedying a grievance or resolving a dispute on any matter of mutual interest. The work above includes overtime, whether it is voluntary or compulsory.

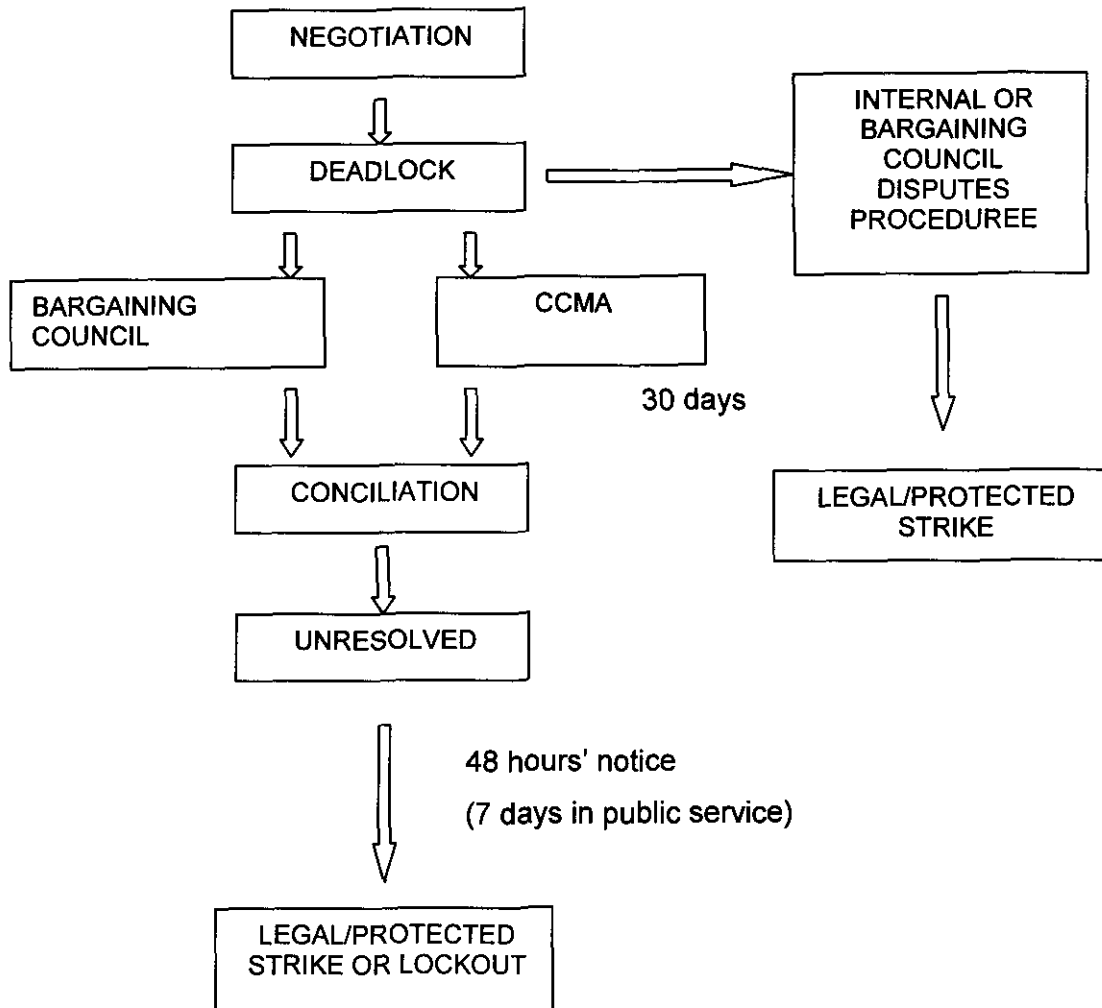
A protected strike is not limited and complies with the procedural provisions of the Act. Employees who take part in a protected strike are protected from dismissal because they do not commit unlawful conduct or breach of contract. An unprotected strike does not comply with the procedural provisions of the Labour Relations Act.

A lockout is the exclusion of employees from their workplace in order to compel them to give in to a demand of their employer/s regarding any matter of mutual interest. There are two types of lockouts:

- **Offensive lockouts.** Offensive lockouts may be implemented under various circumstances. When a deadlock in negotiations arises, management may impose a lockout so that the employer controls the timing of the industrial action rather than allowing the union the advantage of choosing when to embark on a strike. Tactically the employer thus controls the situation (Finnemore & van der Merwe, 1994:212).
- **Defensive lockouts.** Defensive lockouts may occur after a strike has commenced and usually occurs when management wants to enforce the seriousness of its final offer or to remove striking workers from the premises.

The gates are usually locked and access is only granted to scab labour until the striking employees accept the conditions laid down by management.

**FIGURE 13 – PROCEDURE TOWARDS A LEGAL STRIKE OR LOCKOUT**



Source: Bendix (2001:611)

### 3.11.2 THE RIGHT TO STRIKE AND RECOURSE TO LOCK-OUT

- Every employee has the right to strike and every employer has recourse to lock-out if –
  - the issue in dispute has been referred to a council or to the Commission in terms of the Act, and –

- (i) a certificate stating that the dispute is unresolved has been issued; and
  - (ii) a period of 30 days, or an agreed upon extension period, has elapsed since the referral was received by the council or the Commission.
- in the case of a proposed strike, at least 48 hours' notice of the commencement of the strike has been given to the employer in writing, unless
  - (i) the issue in dispute relates to a collective agreement to be concluded in a council; or
  - (ii) the employer is a member of an employers' organization that is a party to the dispute.
- in the case of a proposed lockout, at least 48 hours' notice of the commencement of the lockout must be given, in writing, to any trade union that is party to the dispute. If there is no trade union, notice must be given to the employees and if the dispute relates to a collective agreement to be concluded in a council, notice must be given to that council.
  - in the case of a proposed strike or lockout where the State is the employer, seven days' notice of the commencement of the strike or lockout must be given to the relevant parties.
- If the dispute concerns a refusal to bargain, an advisory award must be made before notice is given. A refusal to bargain includes –
  - a refusal to recognize a trade union as a collective bargaining agent or to agree to establish a bargaining council;
  - a withdrawal of recognition of a collective bargaining agent;



- a resignation of a party from a bargaining council; and
  - a dispute about appropriate bargaining units, bargaining levels or bargaining subjects.
- The requirements of a strike or a lock-out do not apply if –
    - the parties to the dispute are members of a council, and the dispute has been dealt with by that council in accordance with its constitution;
    - the strike or lock-out conforms with the procedures in a collective agreement; or
    - the employees strike in response to lock-out by their employer that does not comply with the provisions or the employer locks out employees in response to their taking part in a strike that does not comply with the provisions.
  - Any employee who or any trade union that refers a dispute about a unilateral change to terms and conditions of employment to a council or the Commission may, in the referral –
    - require the employer not to implement unilaterally the change to terms and conditions of employment; or
    - if the employer has already implemented the change unilaterally, require the employer to restore the terms and conditions of employment that applied before the change.

### 3.11.3 REASONS FOR INDUSTRIAL ACTION

- **Industrial unrest.** Industrial unrest usually begins as a feeling of dissatisfaction with existing work circumstances but as the workers begin to

form groups to discuss the matter, all the rising emotions can eventually lead to a strike.

- **Wages.** Wages remains one of the most important factors that lead to strikes. Workers usually strike because they want higher wages and this demand arises because of the rise in the cost of living.
- **Working hours.** Working hours used to be an important factor to the lead of strikes. This factor rarely leads to strikes today because working hours were shortened when a standard was laid down a few years ago.
- **Training and development.** The training and development of black workers frequently occurs but causes unrest when other workers from different racial backgrounds are recruited.
- **Recognition disputes.** After trade union rights had been granted to black people, they banded themselves together into trade unions and claimed recognition from employers. The latter frequently did not heed these demands, but rather tried to apply the new system according to the old pattern of recognition and representation. They even paid off some of the workers and called in police assistance instead of acting realistically and flexibly (Nel *et al.*, 1998:167).
- **Domestic disputes in the workplace.** Employees often bring their social or domestic problems and frustrations to work and expect their employer to assist them in solving their problems.
- **Solidarity disputes.** Workers are becoming more and more aware of the value of their labour and what effect it has on their employers when they withhold their labour.
- **Consultation.** The fact that there is continual growth in workers' aspirations causes them to become frustrated because employers are reluctant to give

them a say in matters that affect them. While an entrepreneur considers himself to be the most important of the four production factors (land, labour, capital, entrepreneurship), the worker regards his labour as being equally important and therefore demand sympathetic consultation (Nel, *et al.*, 1998:168).

- **General causes.** General causes of strikes include unhappy working conditions, political objectives, the closed membership issue and the interpretation of agreements.
- **Job security, safety and detention.** Workers are becoming concerned about the security of their job and income and therefore trade unions are demanding participation in the decision that affects their security and benefits.

#### **3.11.4 FORMS OF COLLECTIVE INDUSTRIAL ACTION BY EMPLOYEES**

Employees may express their dissatisfaction in the following forms of collective action:

- **Withdrawal of cooperation.** This is when employees withdraw their support from any cooperative ventures, such as productivity gain sharing plans and quality circles. There is no flexibility in the resolution of work problems and an undue use of the grievance procedure.
- **Work to rule.** This is when employees slow down work by insisting on strict interpretations of duties specified in the contract of employment or recognition agreement. By requiring specific detailed instructions on how to complete the work, production is negatively impacted.
- **Go-slow.** This is when employees work at a lower level of output than normal and work without enthusiasm.

- **Overtime ban.** This is when there is a collective refusal to work outside normal working hours.
- **Traditional strike.** A group of employees act collectively by implementing a complete stoppage of work in an attempt to pressurise the employer into conceding to their demands. Sit-ins or sleep-ins in the company premises may be part of such action (Finnemore, 1999:266).
- **Secondary strike.** This is when a group of employees strike in support of employees' striking in another organisation.

### 3.11.5 GO-SLOWS

Employees slow down their production as a pressure tactic and feel that it is less risky than a strike. It is usually more difficult for the employer to take action against this type of behaviour because it is difficult to prove that the decreased production is due to the go-slow.

Go slows normally occur when the relationships between management and the union are poor. Go-slows often lead to the spoilage of products, for example, food has to be kept clean and in a cool place, and in the case of a go-slow this is not always done effectively and the food therefore rots.

### 3.11.6 OVERTIME BANS

Under the old Labour Relations Act there was debate over whether overtime was a strike in situations where overtime was not part of an employee's contract of employment but rather voluntary. The new Act now explicitly states that overtime bans are strikes, whether the overtime or voluntary or compulsory.

Besides being used as a pressure tactic at the workplace, overtime bans of part of COSATU's strategy of job creation because overtime bans which are related to weekend work, have resulted in employers resorting to employment of additional

work.

### **3.11.7 TRADITIONAL STRIKES**

This remains the most powerful form of collective action and the following types of traditional strikes exist:

- **Offensive economic strikes.** This type of strike centers on the demands for better wages, hour of work, annual leave and conditions of service that the employer is willing to grant at the bargaining table. This type of strike is likely to adhere to the requirements of the Labour Relations Act.
- **Defensive frictional strikes.** This type of strike occurs in the response to the perception that management has carried out unfair action. For example, the dismissal of an individual or group of employees, failure to deal with employee grievances, problems of supervision, changes to existing work practices, plant relocation or closure and pending retrenchment.
- **Solidarity building strikes.** This type of strike arises out of a need to promote the aims of the union in achieving recognition from the employer.

### **3.11.8 SECONDARY OR SYMPATHY STRIKES**

A sympathy or secondary strike is when employees, who are not party to the initial dispute, strike in support of the employees who initiated the action. Finnemore (1999:269) states that sympathy or secondary strikes may seriously affect production or sales in other organizations. The strategy is to put pressure on organizations associated with the main target company so that management in these related companies will also urge the target organization to settle the dispute as soon as possible.

### 3.11.9 PREPARING FOR STRIKE ACTION AND ACTION TO TAKE DURING A STRIKE

There is usually a committee consisting of senior management who act according to a contingency plan when there is a strike. The following people have a role to play when preparing for a strike:

- **Final decision-maker or mediator.** The managing director or acting manager usually acts as a mediator between the conflicting parties but does not become directly involved.
- **Chief decision-maker.** This person holds his/her post under the managing director but still remains the chief decision-maker with regard to the strike. He/she coordinates all activities but does not hold the final say of the managing director.
- **Management spokesman or negotiator.** He must have enough status to enjoy credibility among the workers. He should therefore also have the authority to actually ratify certain concessions and to immediately enforce decisions (Nel, *et al.*, 1998:171).
- **Liaison person.** This person handles all communication with the media.
- **Security coordinator.** This person ensures that the security of the enterprise is controlled and that there is no loss or damage to staff and property.
- **Interpreter.** An interpreter ensures that all communication that takes place between management and workers is understandable.
- **Secretary.** This person records all communication and activities that takes place between the striking workers and management.

- **Assistant.** This person assists all members of the strike when extra help is needed.

### **3.12 LIMITATIONS ON STRIKES**

Employees are prohibited from striking where:

- A person is bound by a collective agreement that prohibits a strike or lock-out in respect of the dispute in issue;
- A person is bound by an agreement that requires the dispute to be resolved through arbitration;
- The dispute in issue is one that a party has the right to refer the dispute to arbitration or the Labour Court in terms of the Act;
- A person is bound by any collective agreement, arbitration award, or statutory council determination that regulates the issue in dispute; or
- A person is engaged in an essential or maintenance service.

An essential service is a service of which the interruption will endanger the life, personal safety or health of the whole or any part of the population. It includes the Parliamentary Service and the South African Police Services.

A maintenance service is a service of which the interruption will have the effect of material physical destruction to any working area, plant or machinery.

### **3.13 SUMMARY**

Collective bargaining can be seen as a process, which is available to be made use of by all individuals in society, whether they are an employer or employee. The functions and responsibilities of the various bargaining agents are made obvious in

terms of the labour relationship. Bargaining agents support the parties, namely the employer and employee, in collective bargaining and without them, the bargaining process would be a lot more difficult and would be a longer process.

By taking part in collective bargaining, the detriments of industrial action can be avoided and production and services can operate a lot more smoothly and peacefully.

In the next chapter, collective bargaining and negotiation will be discussed to determine their similarities as well as their differences.



## **CHAPTER 4**

### **COLLECTIVE BARGAINING AND NEGOTIATION**

#### **4.1 INTRODUCTION**

The negotiation process occurs when conflicting parties attempt to carry out the collective bargaining process and in doing this, the parties attempt to reach an agreement on matters of mutual interest.

Negotiation not only tries to reach agreement on matters of mutual interest, but also seeks to balance the power play in the employer-employee relationship. Therefore, negotiation takes place because the conflicting parties in the labour relationship are actually dependent on each other to meet their individual goals.

Although collective bargaining can essentially be regarded as the Lifeblood of the enterprise's success in the area of labour relations, this does not mean that it synonymous with negotiation. From the point of view of labour relations, collective bargaining is a wider concept encompassing various forms and topics, such as grievances and discipline, but with negotiation forming an integral and core process throughout (Nel, *et al.*, 1998:148).

The central component of collective bargaining is the negotiation process because it is used by representatives of management and by trade unions to reach agreements and control conflict.

The way in which the negotiation process is carried out is affected by the way in which representatives of both parties view the negotiations. Personal values and attitudes, educational background and training, personal prejudices, and attitudes towards the opposing party all contribute towards the success or failure of the process (Tustin & Geldenhuys, 2002:143).

## **4.2 DEFINING THE CONCEPT OF NEGOTIATION**

Negotiation is the most basic process for dealing with labour conflict. Some writers see negotiation as synonymous with collective bargaining while others see collective bargaining as a specific type of negotiation. Subscribers to the latter view maintain that individual bargaining is also a form of negotiation (Keyser, 1996:1).

Falkenberg (as quoted by Anstey, 1991:92) believes negotiation is the process whereby two or more parties, who are faced with a problem or a conflict about some limited resources, attempt to agree on how best to solve the problem or resolve the conflict.

Different situations require different negotiation strategies. Therefore, different skills and approaches are used and there is always a requirement of politeness and proper behaviour. Negotiation takes place on a daily basis and sometimes occurs out of instinct or intuition. The following factors can be identified as the core to negotiation:

- It involves two or more parties;
- It is a verbal process;
- It involves parties who are seeking to reach an agreement;
- The agreement is over a conflict of interest; and
- It is where the parties seek to preserve their interests, but adjust their views and positions in the joint effort to achieve an agreement.

According to Spoelstra and Pienaar (1996:3), negotiation is an exchange of information through communication. The information is formulated as strategies and techniques. These strategies and techniques originate from the negotiation relationship between the parties and they serve to continue or discontinue the relationship. The purpose of this communication exchange is to reach

agreement between parties who have certain things in common while disagreeing on others.

Negotiation is very similar to collective bargaining in the way that they are both tools for resolving conflict. They both aim to reach peace and understanding within relationships and are both an interactive process.

It should be emphasized that collective bargaining and negotiation in an employment relations context also covers areas of interaction or issues other than economic ones (e.g. wages) such as grievance procedures, transfers, and promotions, job grading and the constitution of committees (Nel, 2002:151).

#### **4.2.1 NEGOTIATION TACTICS**

- **Collaborative tactics.** Collaborative tactics is the exchange of power and recognition for the need of cooperation. Collaborative tactics include joint action and education that are based on compromise relations between parties. These agreements tend to emerge when the parties are in agreement about the rearrangement of resources and occur when there is no threat in terms of money, prestige, power or status.
- **Campaign tactics.** Campaign tactics are used in situations where differences in the distribution of resources exist. Change brings about the realignment of power and prestige, which involves a loss for some, but the competition is seen within the rules of the game of competition. Therefore, the parties use negotiation, bargaining, compromise, arbitration and other pressure tactics to seek agreement but in an attempt to preserve their interests.

- **Disruptive tactics.** Disruptive tactics are used when there is challenge that exists in status relationships, which are established in a competition for power between parties.

Anstey (1991:94) states that disruptive tactics are designed to prevent the target group from operating as usual and they are intended to disrupt but not to injure, harm or destroy in the sense of violence to people or property, and include acts of civil disobedience, protest marches, demonstrations, boycotts, renouncing honours, stayaways, fasts, factory occupations, and non-cooperation with laws.

- **Violent tactics.** Violent tactics are used when parties want to reconstruct the entire social system. It involves attacks on people and property, guerilla warfare and efforts to take over the government by force. Violent tactics are unsuccessful tools to defeat the government because it provides a justification for government repression.

#### 4.2.2 THE PRINCIPLES OF NEGOTIATION

The following principles have to be followed in order to negotiate successfully:

- **Strengthen the relationship of trust on a continual basis.** The parties involved in the negotiation process have contact with each other on a daily basis over a period of time, therefore to have a sound relationship the parties must not provide each other with misleading information as this could harm the relationship of trust. In order for the parties to trust each other, they must implement agreements and obey the rules and procedures.
- **Accept the negotiation process in good will.** The parties to the negotiation process must commit to reaching an agreement and by doing

so must accept that compromises will have to be made and precedents will be created.

- **Accept the negotiation status of both parties.** Each party must accept and respect the independent status of each party and must understand that there will be fundamental differences between them.
- **Acknowledge that each party has the power to cause harm to the other.** The balance of power play between the parties will affect the negotiation process. The more powerful party will have more success in manipulating and winning the negotiation.

### **4.3 APPROACHES TO NEGOTIATION**

#### **4.3.1 COMPETITIVE NEGOTIATION**

Competitive negotiation is also known as traditional negotiation and postulates that although there are many subjects of common agreement, the primary interests of labour and management are in conflict with one another.

The climate established for competitive negotiation is of utmost importance to the negotiators involved. A relaxed, open, and easy-going climate will not be welcomed. Instead, a climate that is courteous yet businesslike which encourages brisk action is favoured. The opening phase of negotiation is often totally ambiguous, thus leaving the opposing party unsure of what to expect, or procedures may be outlined which will place the negotiator at a distinct advantage over the opposition. In responding to such an opener, the opposition party can retaliate by preparing an opening statement, which is just as obscure or vague, or one that seeks to gain the advantage (Tustin & Geldenhuys, 2002:144).

### **4.3.2 COLLABORATIVE NEGOTIATION**

Collaborative negotiation seeks to find a mutually beneficial agreement and focuses on a 'win-win' or 'mutual gain' approach. According to Spoelstra and Pienaar (1996:8), in this form of negotiation disagreements are seen to be more costly than compromise; gains and losses should be equalized; and there are underlying repetitive or continuous relationships which have to be maintained as there could definitely be future dependence of the parties on each other.

Collaborative negotiation is based on the assumption that, although differences in needs are acknowledged, the fundamental interests of labour and management are complementary (Tustin & Geldenhuys, 2002:145).

## **4.4 LABOUR UNION NEGOTIATION**

### **4.4.1 BARGAINING FOR WAGES**

Trade unions bargain about wage benefits, pension benefits and maternity leave but their first priority still remains bargaining for better wages.

The inflation rate in South Africa has outstripped wage increases in recent years, with the result that real wages have fallen and that South African wage earners are now worse off than three years ago. Pressure on wages will probably remain high in the foreseeable future. Management will therefore have to face unions on a regular basis for many years to come (Spoelstra & Pienaar, 1996:229).

### **4.4.2 THE NEGOTIATION PROCEDURE**

Piron (as quoted by Spoelstra and Pienaar, 1996:229) believes that the first and foremost agreement that management should negotiate with labour unions should be the negotiation procedure. This procedure is one that sets out the way

in which the negotiations should proceed to achieve a substantive agreement, or the renegotiation of the recognition agreement between management and the union, or both. In many ways the negotiation procedure can also be termed the formalisation of the common ground that exists between the parties at ground level; the common ground in this case being the way the parties are going to deal with each other in the future.

#### **4.4.3 THE NATURE OF REPRESENTATION**

The number of negotiators around the negotiation table is usually one of the most difficult issues for negotiators to handle because the limit is usually about ten to twelve negotiators but management prefer to have a maximum of three negotiators.

When wage bargaining, the recognition agreement usually stipulates that shop stewards must act as the negotiators.

#### **4.4.4 DISPUTE PROCEDURE**

The recognition agreement can state that before either party can declare a dispute, at least three to four meetings must be held and these meetings may not be held on the same day. If no agreement is reached in these meetings, either party may declare a dispute, which will then be referred to either mediation, arbitration, or both.

#### **4.4.5 LEGALISING AGREEMENTS**

Should agreements be reached at any of the collective bargaining meetings, provision should be made to reduce the agreement to writing. These agreements can then become binding on the parties. The fact that the agreement becomes binding on the parties does not mean, however, that it

automatically become binding on the employees (Spoelstra & Pienaar, 1996:232).

#### 4.4.6 MANAGEMENT-WORKER RELATIONSHIPS

According to the researcher, the relationship between management and the workers should start long before they even reach the negotiating table. The relationship should be established on good faith and 'negotiated' on a day-to-day basis.

**TABLE 8 – SYNTHESIS OF NEGOTIATION APPROACHES**

	Competitive negotiation	Collaborative negotiation	Potential solutions for practitioners
Preperations	<p>Target and resistance points are set for each issue. This practice may limit discussions.</p> <p>The number of parties involved is restricted by officially designated negotiators. This practice may lead to agreements that may not attend to all interests.</p>	<p>Core interests are identified and potential solutions are developed that are likely to be mutually satisfactory. However, and exclusive focus on interests may be viewed as irresponsible.</p> <p>The negotiating committees bring additional members to the negotiations, on the basis of their expertise, for instance. More parties may complicate the agenda, however.</p>	<p>Set points key issues, but fully explore the interests.</p> <p>Involve more parties if necessary, but be clear about their roles and expectations.</p>
Body of negotiation	Opening positions are set, only the chief	Taking initial positions is avoided while interest are	Open with interest-based statements, but be



	negotiator is addressed, and caucuses are made use of. Extreme opening positions are artificial and may lead to positional dialogue; creativity is constrained by speaking only through the chief negotiator, and caucuses also limit inputs and pose political risks.	clarified, emphasizing flexibility and creativity. Statements based on interests may lead to anxiety, however; multiple communication channels may increase vulnerability to divide-and-rule tactics, and trust is needed for using joint sub-committees.	explicit about perceived constituent limitations on the scope of dialogue; communicate initially through the chief negotiator and later experiment with safer issues; also use joint sub-committees on safe issues, establish ground rules, and use caucused to ensure agreement.
Reaching agreement	Agreements are often concluded at the last minute. Rushed agreements may lead to poor results.	The problem-solving approach is sometimes set aside for any distributive trade-offs necessary to reach agreement. Moving away from a collaborative approach may be viewed as abandoning the concept.	Use the collaborative approach, but anticipate that one or both parties may move away from the concept at the end.

Source: Tustin & Geldenhuys (2002:147)

#### 4.5 MOTIVATION AND NEGOTIATION

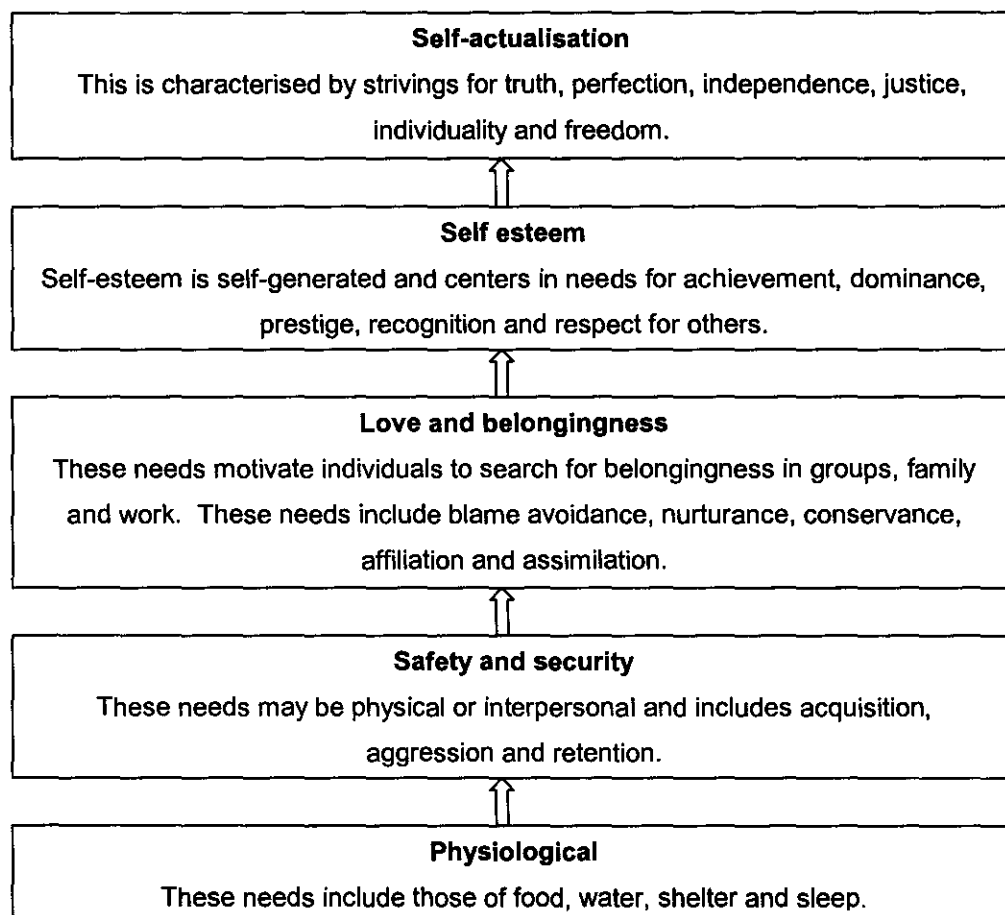
When individuals negotiate, they must want to do it and most importantly, must know how to do it. There are some uncertain answers and new thinking regarding negotiation lie in motivation theories. Two approaches regarding this matter will be discussed:

#### 4.5.1 MASLOW'S NEEDS APPROACH

Maslow proposed the concept of a needs hierarchy, needs being the basic motivators of human activity. He suggested that there can be no substitute for a basic need owing to its intrinsic properties, that such needs exist across castes, cultures and classes, and that healthy individuals, families and societies are characterised by needs satisfaction. (Anstey, 1991:118).

The hierarchical order of needs are illustrated as follows:

**FIGURE 14 – MASLOW'S NEED HIERARCHY**



Source: Compiler

Maslow proposed that individuals could move on to higher needs only when previous needs have been satisfied. In other words, until basic physiological needs of hunger, thirst, rest and shelter have been met, higher needs for safety and security will not act as motivators. Having said this, the theory acknowledges that more than one motivator may drive behaviour simultaneously – thus love and belongingness may be the primary motivator, but adjacent needs for self-esteem and safety may also be present as motivators (Keyser, 1996:36).

Nierenberg (as quoted by Anstey, 1991:119) proposes a matrix for a need theory of negotiation that recognises:

- Needs;
- The levels at which negotiation is conducted, that is, international, interorganisational, and interpersonal, and
- Varieties of application of need theory.

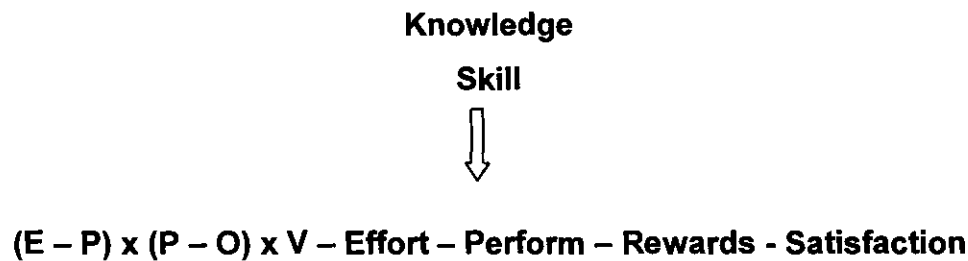
He suggests six varieties of application exist and orders these in terms of control and risk. The applications are:

- Negotiator works for opposer's needs.
- Negotiator lets opposer work for his needs.
- Negotiator works for own and opposer's needs.
- Negotiator works against own needs.
- Negotiator works against opposer's needs.
- Negotiator works against own and opposer's needs.

## 4.5.2 THE VIE APPROACH

The valence-instrumentality-expectancy theory places emphasise on cognitive and drive theories and focuses on cognitive beliefs that predict effort.

**FIGURE 15 – VIE THEORY**



Source: Compiler as adapted by Anstey

The expectancy belief ( $E - P$ ) proposes that sufficient effort results in successful performance.

The instrumentality belief ( $P - O$ ) proposes that successful results in a particular outcome. Therefore, negotiation will result in the achievement of a particular goal.

The valence component ( $V$ ) refers to the possible or negative value people place on outcomes. Performance can either have rewards that are satisfying (e.g. salary increase) or prevent a negative event (e.g. retrenchment).

If any of these beliefs are low, then it is doubtful that an effort will be made to perform a certain behaviour. This does not include knowledge and skill because they are insufficient in themselves, people must want to negotiate and believe in the effectiveness of the process.

People make choices about the utilisation of negotiation in relation to the perceived effectiveness of other tactics to achieve an objective. If a party believes that it can fight better than it can negotiate, or that this approach will produce more rewarding outcomes than coercive or disruptive tactics may prevail. It is not uncommon to hear unionists' state that negotiation gets them nowhere compared to strike action. If management moves only under strike pressure, and usually do so, then in a sense they contribute to the belief that disruptive tactics are more rewarding than exchanges at the bargaining table.

#### **4.5.3 HERZBERG'S TWO-FACTOR MOTIVATION THEORY**

Herzberg found a set of factors or working conditions that tend to motivate people to improve their performance that ultimately results in job satisfaction. These motivators include:

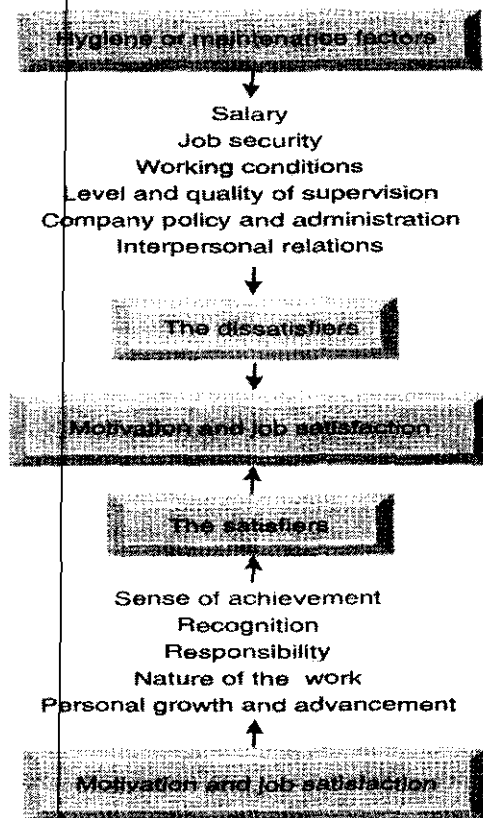
- Achievement in the completion of tasks;
- Recognition for what has been achieved;
- The meaningfulness of the job and how challenging it is;
- Progress or growth; and
- Responsibility.

Herzberg believes that a job will be done with motivation if it includes these factors. He states that dissatisfaction is caused when the hygiene or maintenance factors are absent. These factors satisfy a person's lower-order needs and include:

- Organisational policy and administration;

- Working conditions and work security;
- Salary and status;
- Interpersonal relations with work colleagues; and
- Supervision.

**DIAGRAM 16 – HERZBERG'S TWO-FACTOR THEORY**



Source: Mullins (as adapted by Gerber *et al.*, 1999:265)

Herzberg sees the solution to the motivation problem in the design of the job itself, especially in job enrichment, to make the work more challenging,

interesting and meaningful. He was among the first theorists to recognize the importance of personal goals (Gerber *et al*, 1999:264).

#### 4.5.4 McCLELLAND'S THEORY OF ACHIEVEMENT MOTIVATION

McClelland bases his theory on the assumption that there is a relation between the achievement motivation aroused in individuals, entrepreneurship and economic growth of a particular cultural group. His theory is that any person has the energy to show a variety of behaviours. How a person behaves depends on the strength of his or her motives and the opportunities offered in the situation.

His theory may be represented as follows:

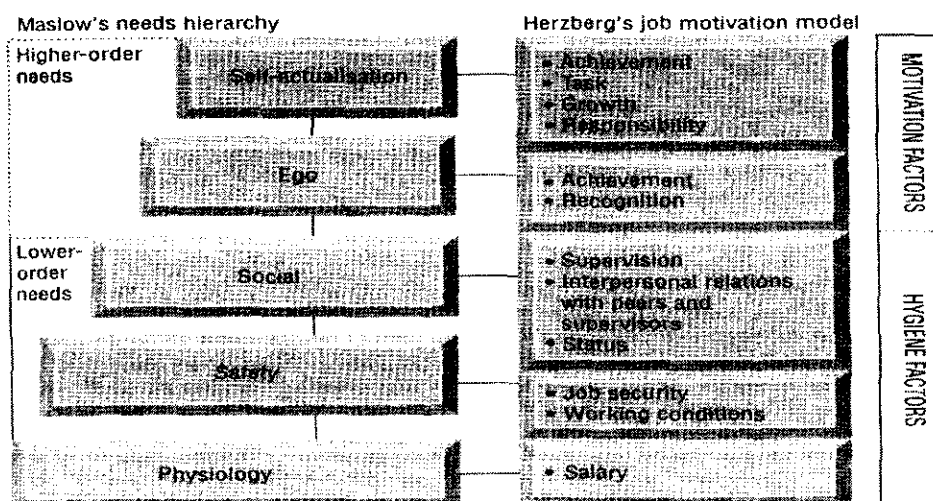
Aroused motivation =  $M \times E \times I$ , where

M = strength of the basic motive

E = expectancy of attaining the goal

I = perceived incentive value of the goal

#### DIAGRAM 17 - COMPARISON BETWEEN THE THEORIES OF MASLOW AND HERZBERG



Source: Skinner and Ivancevich (as adapted by Gerber *et al*, 1999:267)

## 4.6 THE NEGOTIATION PROCESS

In the context of industrial relations, negotiation is the process of personal interaction by which representatives of management and of trade unions make decisions on matters of joint concern to them and those whom they represent (Farnham & Pimlott, 1983:410). Both parties are responsible for the decisions that they have mutually agreed upon. Bargaining takes place within the parties before the commencement of joint negotiation.

There are three aspects to the negotiation process. The first is that it involves social interaction between the individuals and groups who are parties to the dynamics of collective bargaining. The second aspect involves the representative and communicative functions of negotiation and the third aspect is the implication that differences in power exist between the groups who are involved in the process of joint negotiation.

Negotiation is unique in itself and in this respect, there are three main sets of factors that seem to be a major influence in determining the climate of a particular negotiation:

- **Institutional background.** The institutional factors include the level of procedure within which negotiations take place, the type of claim under discussion, the balance of bargaining power between management and the unions, and the degree of formality in the particular negotiation.
- **Behavioural contexts.** The behavioural contexts include, the size of the negotiating groups, the interests that they represent, the personalities involved, the ideologies and moral values of the negotiators, and their negotiating skills.



- **Type of negotiation.** The types of that exist are 'distributive' and 'integrative' bargaining. Distributive bargaining occurs in situations where the two parties are in conflict over the ways in which something might be decided between themselves.

Integrative bargaining occurs when both sides have to recognise that they may have one or more common problem, which require mutual resolution between themselves.

The next stage is for each side to decide its objectives prior to actually bargaining. This is sometimes easier to identify in theory than to establish in practice, for conflicts often develop within each of the two sides before joint negotiation commences. It is not unusual, therefore, both before negotiations and even during them, for intra-group disagreements to emerge within each negotiating side. The important thing, however, is for neither of the parties to weaken its potential bargaining position by showing less than a united front to its opponents. Each side's negotiating goals, therefore, are determined by a process of 'intra-organisational bargaining among themselves prior to joint negotiation, so that they can show a common front to the opposing negotiating team (Farnham & Pimlott, 1983:413).

The next vital step in the bargaining process is for each party to have assessed their relative bargaining power and deciding on their bargaining objectives. This step includes assessing the strength and weaknesses of each party's claim.

After the bargaining position of each party has been established, the parties then try to find out where the other party really stands. Once this is achieved, the parties begin to converge towards common ground and the real give and take of negotiation occurs. During this stage the parties tend to concentrate on convergent rather than on divergent issues, which minimises conflict. Negotiation then rapidly moves into its concluding or decision-making phase.

Lastly, once the final agreement is reached, it is the responsibility of each party to implement and monitor the decisions that they have jointly agreed upon.

A keynote of successful negotiations is flexibility. Even if the desired and minimum positions of the opposition are well known, it is strategic to at least appear to be flexible, to be willing to make concessions (Nel, 2002:155).

Unions tend to want to negotiate package deals, while management tends to want to negotiate items. This allows a lot of room for flexibility and trade-offs. It also allows for the sacrifice of less critical items in favour of more important items, so that the total cost of the package can be negotiated within the range predetermined by each party (Nel, 2002:155).

#### **4.7 SUMMARY**

Negotiation and collective bargaining are two different but very similar processes which actually go hand in hand when settling disputes.

Different negotiation situations could require different strategies. There could be a danger in overemphasizing differences, especially in culture. Commonalities are probably more prolific and more important than any differences that may exist. Negotiators should search rather for what is common than what is unique in other individuals (Spoelstra & Pienaar, 1996:255).

In the next chapter, conclusions will be drawn up and recommendations and future research comments will be noted.

## **CHAPTER 5**

### **CONCLUSION, PROPOSALS AND FUTURE RESEARCH PROSPECTS**

#### **5.1 INTRODUCTION**

The goal of this study is to describe and identify the major changes in the field of labour relations. Certain secondary goals are formulated from the primary aim (see paragraph 1.3). In order to attain this aim, collective bargaining must be studied. A literature study was conducted i.r.o. all sources that are available. The results of this literature study were discussed in the previous chapters. Conclusions are drawn in this chapter and subsequently recommendations are made on the basis of these.

Throughout this study, the researcher attempted to provide the individual with an understandable and comprehensible knowledge about the development of collective bargaining and the role that it plays within the labour relationship.

In the South African society that we live in today, collective bargaining is essential to the parties to the labour relationship because it helps to deal with issues such as wages, job creation, racism, job satisfaction and leave benefits. Most of these issues are seen as very important to any person that is employed because it is indirectly related to their standard of living and everyone would like to live as comfortably as possible.

When employers are faced with trade union organisation, the law plays an important role in the decision whether the employer will negotiate or resist trade union organisation. Similarly the cost of organisation of members to trade unions can be increased or decreased by legal institutions. Thus labour legislation plays an important part in the strategic choices exercised by management and trade unions alike. It can create both the incentives or disincentives to collective bargaining (Hamman, 1993:104).

## **5.2 CONCLUSION OF THE RESEARCH**

The focus on the conclusions emanate from the findings of the literature study. In this section the conclusions are made by discussing each chapter separately and individually.

### **5.2.1 THE NATURE OF THE COLLECTIVE BARGAINING PROCESS AND THE HISTORY OF COLLECTIVE BARGAINING**

The research looks at the transformation of South Africa's collective bargaining system and there has been a profound transformation moving off a pre-1979 base of state corporatism to a system of legislation entrenching labour rights. The new Labour Relations Act of 1995 is the first negotiated piece of major legislation confirming the social corporatist character in the country, which confirms the social partners are seeking to strengthen in the future.

In the context of South Africa's history and trade union rivalries, it is argued that the bargaining unit debate will inevitably become a continuous one. The drafters of the negotiating document for the Labour Relations Act of 1995 argued that the imposition of a legal duty to bargain would introduce rigidities into the labour market at a time when the parties needed flexibility to determine the nature and structure of their bargaining relationship.

The researcher came to find that collective bargaining occurs out of the commonality and conflict between the parties to the labour relationship. The interests of these parties are often the same but their attempts to reach these interests or goals are often very different and therefore clash with one another. Either party thinks that their approach and attempts are more appropriate and significant. Conflict usually occurs when the parties have different interests which they do not agree with. The parties will not compromise or come to an agreement with one another, which leads to further conflict and a deadlock.

### **5.2.2 COLLECTIVE BARGAINING AGENTS, AGREEMENTS AND INDUSTRIAL ACTION**

Trade unions play an important role in assisting employees with the bargaining process. Trade unions fight for the rights and needs of employees and usually set collective bargaining in motion to reach these demands.

Trade unions also give a hand to employees by demonstrating to them that they have a right to bargain for their needs and values at the workplace. They usually relay the demands of the employees to management and bargain for these demands. If trade unions do not come to an agreement with management, they can form collective action in the form of a strike.

Collective agreements are usually drawn up to 'lay down the law' of how disputes should be carried out and how to resolve a grievance in the best manner.

### **5.2.3 COLLECTIVE BARGAINING AND NEGOTIATION**

Negotiation plays an important role in collective bargaining because it helps the parties to compromise with one another and to listen to one another. If negotiation took place more often at the workplace between the labour parties, a great amount of conflict could be avoided.

The researcher argues that negotiation is a tool which must be used in everyday life when communicating. It is one of the only ways to help keep peace and compromise between individuals.

## **5.3 RECOMMENDATIONS**

Collective bargaining essentially arises out of the power differences and conflict that exists between the parties to the labour relationship. Collective bargaining

takes place on a regular basis because conflict between management and employees takes place every day.

In order for collective bargaining to be successful within an organisation or industry, the following recommendations exist:

- As soon as a workplace dispute arises, the parties involved must attempt to resolve the dispute through negotiation as soon as possible. If this process fails, either party may refer the dispute to the CCMA for conciliation. If conciliation fails, either party may then refer the dispute to arbitration. All these steps must be carried out as soon as possible to avoid further conflict from arising and to avoid collective industrial action.
- The parties to the labour relationship must be prepared to make concessions and compromises when trying to reach an agreement or resolve a dispute. If the parties are not prepared to make concessions and compromises, their relationship will just deteriorate and result in further conflict.
- Organisations' must establish collective agreements so that management and employees both follow the 'rules' when resolving disputes. Collective agreements assist the parties in dispute and provides them with a better understanding of their rights and the rights of the opposing party.
- It must be known that the employer and employee are not obliged to bargain collectively. However, the parties must be aware that bargaining collectively will only provide them with assistance when negotiating on matters of mutual interest but also avoid conflict which will stall the process of coming to an agreement.

- Employees should be made more aware of collective bargaining and the labour acts that support it. Through this awareness, labour disputes will occur less frequently and will be resolved over a shorter period.
- There should be more staff education on industrial relations issues and the Labour Relations Act 66 of 1995 to identify the needs for collective bargaining.

#### **5.4 FUTURE RESEARCH**

The researcher recommends that individuals who further want to study the subject of collective bargaining use the following:

- There has been a small number of studies done on collective bargaining and of these studies, a very small amount did empirical studies in the form of questionnaires and interviews with the parties relevant to collective bargaining. For example, a study should be done on after an employee joins a trade union, are they more aware of their right to bargain collectively and is there an improvement in their employment relationships?
- A study focusing on two specific industries, for example the metal industry and the clothing industry, could be analysed and compared in terms of their methods of carrying out negotiations and collective bargaining.
- A study can be done on the different levels of bargaining and how they take place in different industries.

## **5.5 SUMMARY CONCLUSION**

Collective bargaining is a process that is aimed at maintaining good industrial relations and labour peace between the employer and employee and their representatives.

Collective bargaining and negotiation are essential elements to establishing and maintaining good relations at the workplace. Management and labour would have difficulty operating with one another effectively and satisfying their individual work needs and goals if it wasn't for collective bargaining and negotiation.

Collective bargaining was established to ensure that there is equal power between the employer and employee and to ensure that they avoid conflict and focus on mutual matters of interest.

Collective bargaining is a labour market function and an important means of extending industrial democracy to employees. Trade union recognition by employers is very important because trade unions assist and represent employees in dispute. Trade unions assist the labour relationship because if they did not exist, employers and employees would not consult on matters of mutual interest.

Every bargaining structure comprises of four elements which includes bargaining levels, bargaining units, bargaining forms and bargaining scope. Collective bargaining takes place at a number of different bargaining levels, for example, on a national, company or plant basis. Bargaining units relate to groups of employees who are covered by a particular set of bargaining arrangements and collective agreements. A bargaining unit may consist of one or more bargaining agents representing the employees concerned. Bargaining forms are the agreements that are determined by management and the unions within a bargaining unit and whether these agreements are formal and written or informal



and unwritten. Bargaining scope is the range of subjects covered in particular negotiations.

The end products of collective bargaining are collective agreements. While they exhibit differing degrees of formality and content, collective agreements, by definition, are usually in writing, are signed, and are 'binding in honour' on the parties to them (Farnham & Pimlott, 1983:243).

It can be concluded that if collective bargaining did not exist, the labour relationship would continually be in conflict. Collective bargaining aims to maintain good relations between the employer and employee and their representatives and resolves dispute in a quick and reasonable manner. Therefore, collective bargaining is a very important tool to the parties of the labour relationship and is responsible for the survival of the labour relationship.

While studying the issues of collective bargaining, the researcher found that the other studies on collective bargaining found that:

Hamman (1993) came to the conclusion that the environment in which farmers and trade unions operate favours collective bargaining and that negotiation on wages can be conducted at a sectorial level.

Dayakala (1999) found that social workers who chose to join trade unions did so for job security reasons like higher wages and better fringe benefits. Social workers who chose to not join trade unions did so out of fear of militancy of unions or the fear of being bound by decisions made by trade union leadership.

Marinus (1996) found that unions still operate as if they were labouring under the apartheid system and that business is doing very little to show a willingness to co-operate under a new political order.

Godfrey (1997) found that employees prefer to bargain at particular due to reasons such as administrative and logistical convenience, the nature of the labour market, distrust of the union and the economics and convenience of centrally administered benefit funds.

Le Grange (1996) found that limitation remains the fact that regulations only govern the resolution of collective disputes and not individual disputes, which are still dealt with under the grievance procedure for the South African Police.

The researcher came to find that collective bargaining occurs out of the commonality and conflict between the parties to the labour relationship. The interests of these parties are often the same but their attempts to reach these interests or goals are often very different and therefore clash with one another.

## **AFRIKAANSE OPSOMMING**

### **KOLLEKTIEWE BEDINGING IN DIE WERKSVERHOUDING**

#### **INLEIDING**

Eerste and mees belangrikste moet die arbeidswet die werkers beskerm. Vroeë industrialisasie het ons geleer dat die werking van die mark beginsel nie 'n waarborg teen uitbuiting is nie en dat 'n individu as gevolg van omstandighede in 'n ongunstige kontrak kan beland. Daarom is dit die Staat se plig om die wetgewing te baseer op vasgestelde terme en voorwaardes van werksverskaffing en om die gesondheid en veiligheid van die werknemers te beskerm.

Tweedens sal arbeidswette in 'n vrywillige sisteem, 'n raamwerk verskaf vir die gedrag van die kollektiewe arbeidsverhouding. Wetgewing sal verseker dat daar vryheid is ten opsigte van 'n verkeerdelike ooreenkomste en voorkom dat die persoon 'n arbeids slagoffer word. Dit bied die werknemer ook die reg om deel te neem aan die industriële proses. Om arbeids vrede te bewerkstellig mag daar 'n geskil skikking ingestel word.

Sukcesvolle arbeids verhoudings verg 'n basiese kennis van arbeidswetgewing. Arbeidswetgewing is 'n stel van offisiële wette waarin die individu en kollektiewe verhoudinge tussen die partye georganiseer word.

Volgens die navorsers kan vandag se werkplek beskryf word as 'n plek van veranderinge omrede daar altyd tegnologiese vooruitgang op 'n daaglikse basis is. Daar is streng kompetisie, nie net in die werkplek nie, maar wêreldwyd. Die belangrikste rede hiervoor is kulturele asook geslagsverskille tussen die werkers.

Dit is duidelik dat kollektiewe bedinging blywend sal wees in Suid Afrika se industriële verhoudings. Wesenlik tot die sukses van kollektiewe bedinging is die grasië wat beide kante van die industrie mekaar bied.

Kollektiewe bedinging en onderhandelings is belangrik om die uitdagings wat in die werkplek ontstaan te oorbrug. Beide hierdie meganismes huts geskille aan. Onderhandelings bied die individu die geleentheid om hul opinie te lig. Dit bied hulle ook die geleentheid dat hulle werk erkenning ontvang. Onderhandelings help die werknemers om kulturele en geslags verskille te oorkom.

Die navorser glo dat kollektiewe bedinging daar gestel is om konflik van belange tussen die werknemer en werkgever te oorbrug. Kollektiewe bedinging het meegebring dat die werkers ook deelneem om konflik situasies uit te sorteer. Dit beteken dat werknemers betrokke moet wees in die produksie proses en dat daar goeie verhoudinge tussen werknemer en werkgever moet bestaan. As daar goeie industriële verhoudings bestaan sal dit lei tot werksatisfaksie asook vertroue tussen die werkgever en werknemer.

Stakings en uitsluitings ontstaan wanneer die partye betrokke in die geskil nie tot 'n ooreenkoms van gesamentlike belang kan kom nie. Hierdie optrede is dan 'n manier om die teenstrydige party te bedreig asook 'n manier om die ander party te forseer om aan hulle eise te voldoen.

Dit is duidelik dat arbeidsverhoudinge 'n positiewe benadering het ten opsigte van kollektiewe bedinging en onderhandelinge, omrede dit die arbeids partye bystand bied om geskille op te los. Dit sorg ook dat geskille volgens die korekte prosedures uitgesorteer word. Hierdie prosedures word uit een gesit in die kollektiewe ooreenkoms wat geformuleer word tussen die partye in die arbeids verhouding. As individue weier om deel te neem aan die bedingingsverhouding as hulle gevra word, moet die gevolge nie oorsien word nie want dit kan lei tot industriële aksie of 'n ernstiger roete sal afdanking beteken.

## **DOEL VAN DIE STUDIE**

Die hoofdoel van hierdie studie is om die karaktertrekke van kollektiewe bedinging te identifiseer, te beskryf en om die individu 'n algemene begrip te bied oor die konsep.

Die voorneme en die proses van kollektiewe bedinging sal bespreek word om die leser 'n indikasie te bied van hoe dit plaasvind in Suid-Afrika.

Deur te fokus op kollektiewe bedinging sal die navorser die natuur van kollektiewe bedinging ondersoek, asook die huidige neiging van kollektiewe bedinging. Die verskil tussen onderhandelinge en kollektiewe bedinging sal geïdentifiseer word, asook die verskil tussen gesentraliseerde en gedesentraliseerde bedinging.

Tweedens sal kollektiewe ooreenkomste geanaliseer en gekontrasteer word om die individu 'n begrip te bied hoe dit kollektiewe bedinging ondersteun asook om die partye betrokke by die geskil bymekaar uit bring. Kollektiewe ooreenkomste word nagesien om die belange van beide die werkgever en die werknemer te beskerm asook om te verseker dat ekonomiese aktiwiteit behou word. Dit behou ook industriële vrede.

Laastens sal die kondisies vir suksesvolle kollektiewe bedinging opgesom word en die verskillende tipes en die redes vir industriële aksie sal bespreek word.

## **METODE VAN ONDERSOEK**

Die navorser baseer hierdie skripsie op die uitgebreide gebruik van literatuur om 'n deskundige opinie te lig oor die betekenis van kollektiewe bedinging. Die tipes literatuur sal die volgende insluit, handboeke; artikels; en studies. Die hoeveelheid boeke wat alreeds oor arbeidsverhoudinge en geskil oplossing geskryf is dui op die eindelose navorsing wat op hierdie onderwerpe gedoen is. Die navorsing is

breed en dit raak net aan die verskille tussen kollektiewe bedinging en onderhandelings asook baie ander onderwerpe. Daaroor kies die navorser 'n omvattende literatuur studie oor die rol en doel van kollektiewe bedinging in die arbeids verhouding.

Hierdie studie word nie slegs gebaseer op kwantiteit nie maar ook op kwaliteit om die individu 'n omvattende begrip oor kollektiewe bedinging te bied. Die navorser se doelwit is om die studie eenvoudig en verstaanbaar te maak sodat al die informasie ingeneem en verstaan kan word.

## **AANBEVELINGS**

Kollektiewe bedinging ontstaan hoofsaaklik uit verskille en konflik tussen die partye in die arbeids verhouding. Kollektiewe bedinging vind plaas op 'n gereelde basis as gevolg van konflik tussen bestuur en werknemers elke dag.

Vir kollektiewe bedinging om suksesvol te wees bestaan die volgende aanbevelings:

- Sodra 'n geskil in die werkplek ontstaan moet die partye betrokke probeer om dit op te los deur die regte onderhandelinge so gou as moontlik. Indien dit onsuksesvol plaasvind mag beide partye die geskil na die CCMA verwys. As versoening onsuksesvol is moet beide partye die geskil na die arbitrasie hof verwys. Al hierdie stappe moet so gou as moontlik plaasvind om verdere konflik en kollektiewe industriële aksie te vermy.
- Die partye in die arbeidsverhouding moet bereid wees om toegewings en skikkings te maak wanneer die partye probeer om die geskil op te los. As die partye nie bereid is om toegewings te maak nie en tot 'n skikking te kom nie sal hul verhouding agter uit gaan en dit sal weer lei tot verdere konflik.

- Organisasies moet kollektiewe ooreenkomste daar stel sodat beide bestuur en die werkgewers die reëls kan gehoorsaam wanneer 'n geskil opgelos word. Kollektiewe ooreenkomste ondersteun beide partye in 'n geskil situasie en bied hulle 'n beter begrip oor hulle regte en die regte van die teenstrydige party.
- Dit moet gesê word dat die werkgewer en werknemer nie verplig is om deel te neem aan kollektiewe bedinging nie. Hoewel die partye moet bewus wees van kollektiewe bedinging en dat dit hulle sal bystaan in die geval van onderhandelinge oor sake van gesamentlike belang.
- Werknemers moet meer bewus gemaak word van kollektiewe bedinging en arbeids aksies wat dit ondersteun. Deur hierdie bewustheid te skep sal arbeids geskille minder voorkom en sal geskille vinniger opgelos word.

## **GEVOLGTREKKING**

Kollektiewe bedinging was in stand gebring om te verseker dat gelykstaande regte bestaan tussen die werkgewer en werknemer. Dit verseker ook dat konflik vermy word en dat die partye fokus op gesamentlike belange.

Kollektiewe bedinging is 'n arbeids mark funksie en 'n belangrike wyse vir uitbreiding van industriële demokrasie vir werknemers. Werkers unie erkenning deur die werkgewers is belangrik omrede werkers unies werknemers ondersteun en verteenwoordig in die geval van 'n geskil. Werkers unies ondersteun die arbeids verhoudings omrede as dit nie sou bestaan nie sou die werknemers en werkgewers nie beraad oor gesamentlike belange nie.

Die eindproduk van kollektiewe bedinging is kollektiewe ooreenkomste. Alhoewel hulle verskillende formalitiete en inhoud ten toon stel word kollektiewe

ooreenkomste gewoonlik op skrif gestel en word dit onderteken. Dit vorm dan 'n bindende kontrak tussen die partye.

As kollektiewe bedinging nie sou bestaan nie sou die arbieds verhoudinge aanhoudend in konflik verkeer. Kollektiewe bedinging behou goeie verhoudinge tussen beide partye en hulle verteenwoordigers en dit sorg vir flinke geskil oplossing op die korrekte manier. Dus is kollektiewe bedinging baie belangrike vir die behoud van partye se arbeidsverhoudinge en dit is verantwoordelik vir die oorlewing van die arbeids verhouding.



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