

A challenging role

retirement fund trustees

In recent years, the profile of retirement fund trustees has been raised. This is mainly due to legislative changes that give most fund members the right to elect at least 50% of trustees. At the same time, the challenges and responsibilities facing trustees are growing. Trade union trustees - member-elected trustees who are also union representatives - face additional pressures. They are accountable to their unions as well as to fund members. As unionists, they must also promote the social and economic agenda of the labour movement. This article focuses on the tasks of the unionist trustee.

Challenges facing trustees

Challenges facing a unionist trustee fall into three main categories: the changing and complex external landscape; the changing nature of retirement funds and the financial sector; and accountability to fund members and the union.

The external landscape

Political and social change has brought a promise of 'a better life for all', including retirement security for all. It has meant institutionalised participation by unions in developing policy and legislation. This includes the right to challenge and strike on social and economic issues affecting workers and the poor.

Through their increased influence,

Chris Bonner outlines the difficult and demanding role of unionists who serve as retirement fund trustees.

unions have made gains in the retirement fund arena, the most notable being the 1996 amendments to the Pension Funds Act. The Act encourages increasing control of funds by their rightful beneficiaries - workers, rather than employers. Unions have used Nedlac and direct access to parliament and government ministers, to mount challenges to the retirement fund regime - such as employers' illegitimate use of fund surpluses. An optimistic vision (see Ravi Naidoo, *Labour Bulletin*, 25 (2)) challenges unions, through their control of billions of rands in retirement funds, to use 'pension power' to extend worker influence over investments and the economy, in a way that benefits the poor and empowers the disadvantaged.

Government's neoliberal agenda has had a negative effect on retirement security for all. The burden of providing for retirement has been increasingly 'privatised' in line with global trends, with individuals and working people now bearing the brunt of providing for their future, rather than the state.

Other government policies and actions

seem to contradict its longer-term policy goal. These include increasing the tax burden on retirement funds, de-regulating the financial sector, which allows for higher charges and questionable practices. Such actions will reduce the funds available for retirees, and increase poverty and the need for more state funding! An economy in crisis, with high and rising unemployment, increasing liquidations, and lower returns on investments, add to this scenario. Finally, HIV/AIDS is raising the cost of the insurance portion of retirement fund contributions, leaving less for retirement benefits.

Changing retirement funds and the financial sector

As defined contribution funds - mostly provident funds - grow in number, trustees have a greater responsibility to ensure a living retirement benefit. Without an employer-guaranteed retirement benefit - defined benefit funds, mostly pension funds - members carry the risk of poor investment returns and depend on their trustees to make the right decisions.

Unions have successfully campaigned for this change on the grounds of paternalism, and control and abuse of pension funds by employers. Rising unemployment and the pressing need for workers to have access to survival cash played a large part in union demands for the shift to provident funds.

Retirement funds are major players in the financial sector, and are growing globally and in South Africa. Selling financial products is an enormous industry, and competition is fierce. Retirement funds provide lucrative pickings and are fertile ground for corrupt practices. There is much talk in the union movement that offers of kickbacks in return for contracts are commonplace.

With the rise of the sector has come a

massive increase in the number of investment vehicles and options. In the early days of union involvement in the new provident funds, the investment decisions of trustees were limited. Now facing a minefield of options, trustees depend more and more on the advice of consultants, financial advisers and asset managers. Complicating matters is the pressure on funds to maximise returns, while providing direct social benefits for members, such as housing, and 'RDP investments'. The entry of union investment companies - themselves competitors for retirement fund investments and management contracts - adds another dimension to this complex web.

Who do trustees answer to?

A major organisational challenge for union trustees is balancing their accountability to democratic union structures with their legal and fiduciary duties as trustees. In theory, trustees and unions have a common purpose - to provide for the needs of the members and act in their best interests. The reality is more complex. Unions' democratic decision-making is complicated and sometimes cumbersome. They develop policies that bind all members, and work according to a set of values and principles that may contradict those of the retirement industry and other key players. They are often involved in adversarial collective bargaining with employers. Despite this, employers and unionists wearing trustee hats are expected to act with one accord at trustee meetings. The dynamics become even more challenging in multi-union funds, where union trustees themselves may be divided.

Roles and duties

A union trustee has a range of complex roles and responsibilities. Trustees have to balance the specific and the broad, the

technical and strategic. They have to integrate the union and the fund. This requires technical skills and competencies, expert and general knowledge, strategic thinking and organisational abilities. It requires a person of integrity, honesty and commitment.

Legal framework

The roles and duties of boards of trustees are set out in section 7 of the Pension Funds Act, together with regulations. The Act applies to all private retirement funds, with the important exceptions of funds underwritten and run wholly by insurance companies, and those set up and maintained in terms of a collective agreement at a bargaining council. Most parastatal funds and the Government Employees Pension Fund are also excluded from the Act's provisions. However, in most cases the roles and responsibilities of their trustees would be in line with the Act.

In terms of the Act, the overall objective of the board of trustees is 'to direct, control and oversee the operations of the fund in accordance with the applicable laws and rules of the fund'. The Act goes on to determine how this should be done. The board is obliged to take all reasonable steps to ensure the interests of members are protected at all times; act with due care and diligence; avoid conflicts of interest; and act with impartiality in respect of members and beneficiaries.

Duties

The duties of the board are to:

- ensure that proper records, books and minutes of board resolutions are kept;
- ensure proper control systems, including the appointment of a principal officer, auditor and valuator, where required, and the submitting of financial and other reports to the registrar;
- ensure adequate information is

communicated to members, including their rights, benefits and duties;

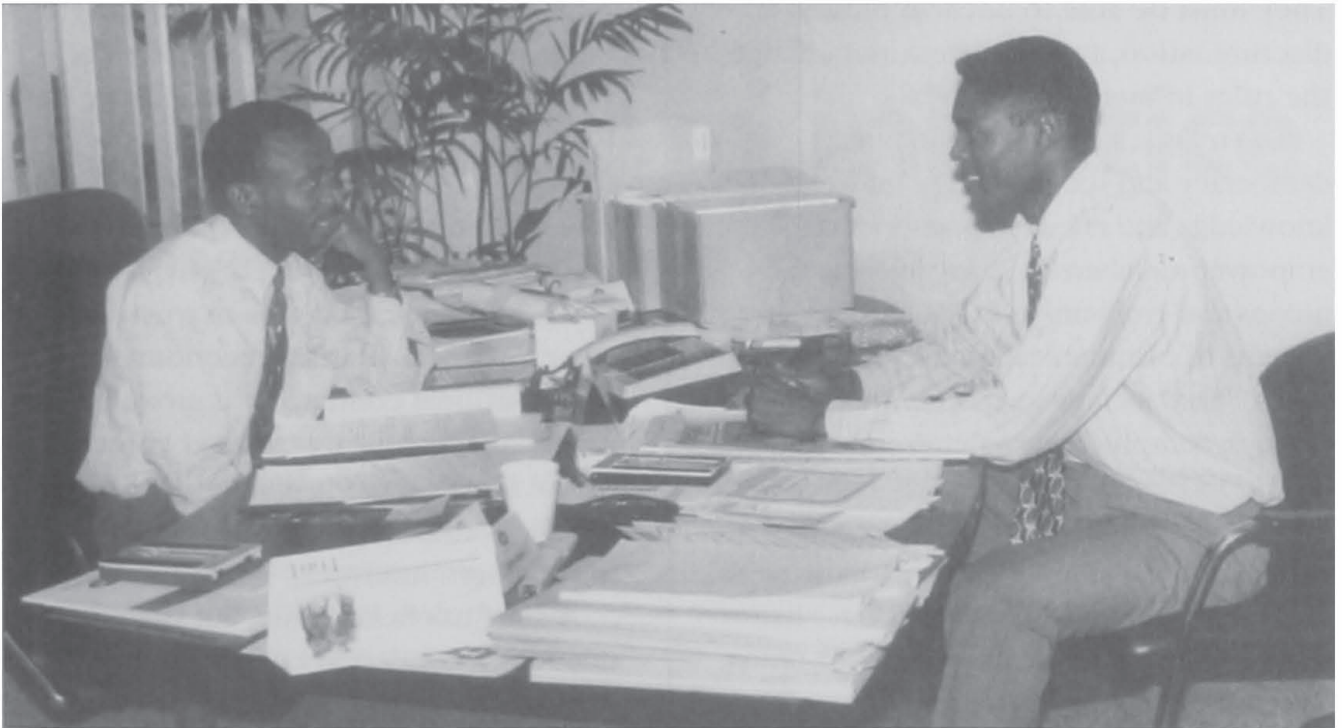
- ensure that contributions are paid on time;
- obtain expert advice on matters where board members lack expertise; and
- ensure that the rules and operation of the fund comply with the Act and other laws.

These provisions seem straightforward and clear, but their interpretation is influenced by class and position, financial and other vested interests, access to information, confidence and experience. The current dispute around ownership of fund surpluses illustrates just how deep the differences are.

A terrain of struggle

Union trustees have a duty to work within the framework of the law, putting the interests of members first, while upholding the values and programmes of the union movement. These include upholding democratic practice and worker control, openness, anti-racism and anti-sexism, unity and collectivism. It involves encouraging socially responsible investment practices and contributing to the social security and empowerment of workers and the poor.

In most cases, employers make up 50% of board members. Boards are supported by administrators, consultants and other service providers, who generally have a pro-employer mind-set and a technical approach. If workers are truly to control their funds, union trustees must not be seduced by the trappings of office, nor unwittingly rubber-stamp an employer agenda. They need to view retirement funds as another terrain of struggle in building unions and working class power. A union trustee sitting on a joint board will need to bring to bear the best of union negotiating tactics.



Trustees depend on the advice of consultants and asset managers.

Priorities

In carrying out their duties, there are a number of priority areas on which union trustees must focus.

The first of these is the investment of workers' money. Trustees are responsible for making investment decisions that bring a rate of return which will give members a living retirement benefit, as well as contribute to social upliftment. For provident fund trustees, this is particularly onerous. In most cases, trustees obtain 'expert' advice from consultants, and hand over detailed investment decisions and implementation to financial managers. The role of trustees becomes that of developing, and agreeing to the fund's investment policy and targets; choosing the 'experts'; negotiating contracts or overseeing negotiations; monitoring performance; ensuring transparency and full reporting. This critical role must be carried out vigilantly. Trustees need not be investment experts, but need to understand the landscape, basic principles and functioning of investments.

The second task is to control the

experts. Trustees often claim service providers control the role of trustees, finances, investments and claims. Trustees need to build the confidence and ability to change this. Knowing the legal requirements, the fund rules, how the administration works, what to expect from each service provider and where abuses of power can take place is of utmost importance. Trustees must develop an ability to ask the right questions and enforce agreements. The importance of choosing an appropriate, trusted and active principal officer cannot be underestimated.

Trustees must ensure worker-friendly fund rules that support the needs of members. The Act provides a framework, which is fleshed out by fund rules. In many cases, trustees are not intimately involved in drawing up the rules. Rules allow employers to take contribution holidays, divert surpluses, set up secret accounts, avoid risk, reduce benefits and exert undue power. Union trustees have a duty to ensure they understand the rules fully and can explain them to members.

They must be able to unearth hidden discrimination, and challenge and change the rules in members' interests.

The trustee's next task is to build democracy and accountability. Information, knowledge and effective participation empower members. In many instances, unions and cross-union funds have set up systems of communication for their national funds. These include formal communication through pamphlets, newsletters and regular individual benefit statements, as well as the decentralisation of trustee functions to regional and workplace committees. Even so, misunderstandings occur. These have had tragic results, including the death of a union leader at the hands of disgruntled members.

Trustees need to work closely with union leaders to ensure communication and education is ongoing and effective, and that members' voices are heard. Ways must be found for communication and accountability to feed into unions' constitutional structures. Allowing alternative centres of power to develop may be dangerous and destructive.

Training and capacity needs

Prompted by legislative changes and the expected growth in the number of worker trustees, numerous press articles have appeared advocating large-scale training of worker trustees. Some technikons and universities have put in place training courses for trustees, and many service providers claim to have stepped up training. The relevance and success of these initiatives still need assessment.

Using a survey, workshops and a pilot course, Ditsela established that training of worker and union trustees was non-existent or generally conducted by administrators or other service providers.

Trustees complained that providers were pro-employer and lacked an understanding of unions and worker

issues. Training was superficial and designed without the participation of trustees or unions. The methodology was one of 'powerpoint and talk'. They identified a need for training to be undertaken by the unions themselves or institutions such as Ditsela. This would locate the role and duties of trustees in their historical, political, economic and organisational context. Of course, trustees must have technical skills and knowledge on such matters as investment, finances and legislation so they can control funds in members' interests.

A start has been made, but there is a need for a concerted effort in this area. Members, shopstewards, leaders, organisers and educators also need training. As responsibility increasingly shifts to individualised retirement provision, the pressure for unions to prioritise this area of work nationally and at the grassroots will grow.

Conclusion

Pension and provident funds, and thus the role of trustees, will grow in importance to the labour movement. On an individual level, it can mean the difference between abject poverty and relative security. On a macro level, it can empower workers to exert collective influence on the funds, the financial sector and the economy in the interests of the poor.

It is vital that union trustees are able to carry out their complex duties, in terms of both their union and membership mandates. They need ongoing support from their unions, federations and union-friendly organisations. Unions must build the capacity of unionists at all levels. They will need to mobilise 'no-strings attached' resources for this purpose. ★

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