

Challenging the bargaining council

At the end of 1998, employers in the Building Industry Bargaining Council in Gauteng notified the unions that they would be pulling out of the bargaining council. Currently, the employer body – the Gauteng Master Builders Association (GMBA) and unions are discussing restructuring the bargaining council. The GMBA will decide whether or not to pull out of the bargaining council when it has assessed the outcome of these talks.

General secretary of CAWU, Thabo Morale, gives some of the background. 'In 1996 we heard unconfirmed rumours that employers were discussing pulling out of the bargaining council. At negotiations employers proposed a two-tier bargaining arrangement. This meant that only one category of workers would get all benefits. Unions rejected that.'

In 1997, employers told the unions that they were considering pulling out of the council. They cited non-compliance, the fact that the bargaining council was expensive and not efficient, and payment of benefits as problems.

Unions rejected the idea that employers pull out of the bargaining council and said that the parties should engage on the issues. *Bosberaads* were held in early and late 1998. At the end of 1998 employers gave notice that they intended to withdraw. The parties agreed to hold discussions on this for a three-month

There are problems in the Gauteng Building Industries Industrial Council. Tanya van Meelis investigates.

period. In mid April employers will decide whether or not to pull out of the bargaining council.

Too expensive?

Both the GMBA and CAWU think that the bargaining council is too expensive. Morale says that 'its big, has a high number of staff and is not cost effective'.

Executive director of the GMBA, Colin de Kock, agrees. 'Staff in the bargaining council have been protected and may now have to go. You can't not change an industry because of 128 jobs in the bargaining council. There are 120 000 jobs in the industry.'

The bargaining council has already decreased the number of people it employs to bring down its administrative costs. It dropped from 260 in 1987 to 128 now. This decrease has made it more difficult to give effective service to the increasing number of people being retrenched in the industry and making claims.

A few years ago the bargaining council outsourced the pension fund to Fedsure. CAWU and GMBA agree that this

outsourcing should be done with other funds.

Joao Manuel De Castro, general secretary of the Amalgamated Union of Building Trade Workers (AUBTW), the biggest union in the industry, does not think that outsourcing benefits will cut costs: 'We've had quotes and found that they were too expensive. The bargaining council is not a profitable organisation, so it can run the funds at a lower cost.'

Secretary of the bargaining council, Wynand Stapelberg, also disagrees with the claim that administration of funds by the bargaining council is too expensive. All the funds administered by the council, with the exception of the dispute resolution fund, are self sufficient. On average the funds' costs for administration are 10%. The medical aid runs at 6,1%.

For Stapelberg the source of the council's financial problems is the decreasing number of people contributing to the bargaining council. In 1985, 95 000 employees in the industry contributed to the bargaining council. In 1997 there were 30 000. In times of economic hardship you need more people contributing to the bargaining council to ensure sustainability and an ability to pay out claims

Problem of compliance

The Minister of Labour has extended the agreement on wages and benefits reached at the bargaining council to all employers and employees in Gauteng. However, most employers (about 60%) pay less than they should – they are not complying with the agreement. Employers cite this non-compliance as another reason why they want to pull out of the bargaining council

Employers say that companies who do not comply can do the work more cheaply than companies who do comply. Non-complying companies get more contracts and make more profit.

De Kock says that it is too expensive and virtually impossible to ensure anywhere near full compliance. Until May 1998 it was a criminal offence not to comply to the agreement. Companies who did not comply could be prosecuted by the state. However, the success rate in this system was very low.

The new law is that non-compliance goes the arbitration route. While De Kock thinks that this is less compelling, Stapelberg thinks that this is a better system: 'Arbitration is a better system because you can't solve labour relations problems in a criminal court. With arbitration, the process is in our hands – we decide the dates and it is quicker than going to court.'

For De Castro non-compliance should not be a reason to pull out of the bargaining council: 'Employers complain about high non-compliance but it is there own members who are not complying.'

De Kock admits this: 'Traditionally the people who have been subject to the agreement were white. There are now many black emergent contractors. In the main the emergent contractors are not compliant with any form of legislation and they operate on lower prices. They pay only for the finished product, so they do not pay overtime etc.'

Reduce the number of agents?

CAWU's view is that the agents are ineffective and corrupt. It has proposed that the number of agents be reduced to lower costs and that shopstewards police agreements instead. De Castro agrees: 'Agents are good when they monitor the system. When they are not monitoring the system they shouldn't be there. Shopstewards should then do it. This will save money.'

Stapelberg supports the idea that shopstewards police agreements in the



Centralised bargaining protects workers and allows parties to address problems in the industry.

companies where they work but points to a poor record in this regard. 'In 1994 we cut the number of agents by 50% and parties agreed to play an active role in ensuring implementation of agreements. But unions didn't play their role.'

Stapelberg says that the estimated 400 shopstewards in the industry could be more effective than the 10 or 12 agents employed by the bargaining council. He thinks that the bargaining council should produce copies of the agreement in pocket size and give this to the members of the organisations party to the agreement. All negotiators should then understand and retain ownership of the agreement and ensure its implementation.

For De Kock it is unacceptable that shopstewards go to other sites to police the agreement. He favours having a statutory minimum and individuals reporting non-compliance.

However, Stapelberg raises another

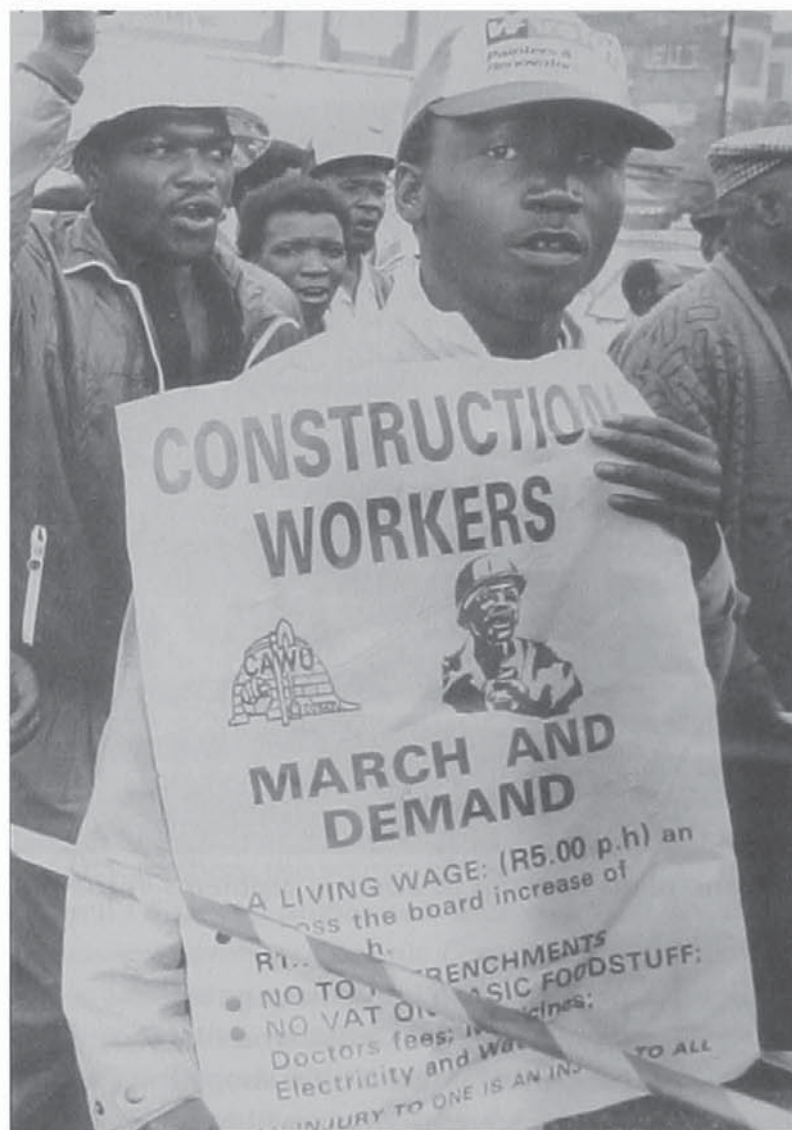
problem with implementing self regulation: 'The GMBA won't let the bargaining council train shopstewards on the agreement. They say that the unions should train the shopstewards themselves.'

Agents do dispute resolution now. If there were no agents there would be only a few people from the employers and unions who could do dispute resolution. However, as De Kock says, 'the parties don't have the time to do intensive dispute resolution. I could only devote one day a month to dispute resolution for the bargaining council.'

For De Castro this would not be a problem. Dispute resolution could either be sent to Independent Mediation Services of South Africa (IMSSA) or shopstewards could be trained to do it.

Labour too expensive?

De Kock says that you have to look at the bargaining council in its economic



Workers earn less money when employers do not comply with the agreement.

context: 'The industry has experienced major changes since the early 1990s with unions coming into industrial councils (now bargaining councils) and negotiating agreements. Since 1982 the industry has been in decline. This has forced us to look at cutting costs and labour is a major component.'

De Kock says that pressure to reduce labour costs comes from both the decline in the industry and the fact that many employers compete for contracts with companies who undercut the agreement. The use of labour-only contractors and independent contractors is high. These contractors pay very low wages and give

no benefits to workers.

The GMBA would like to see a more flexible approach including a lowering of minimums and making benefits optional: 'For the last four years we've proposed a two-tier system or a phased approach. Companies coming into the system could, for example, start at 40% of the requirement. We also proposed a productivity-linked remuneration system. The unions did not respond well to this. One organiser said that they would only see such a system over his dead body. We wanted to have it so that if a worker didn't reach the minimum he would be fired.'

Stapelberg agrees that the cost of employment is too high in the current climate when comparing it to wages paid by emergent contractors and RDP contracts: 'The entering into a three-year agreement with 10% and 12% increases per year was perhaps wrongly timed. It adds to the cost of fringe benefits that could be an additional 20% to 30% of the

cost of employment. They have priced themselves out of the market.'

AUBTW disputes the idea that labour is too expensive. De Castro explains: 'The building industry is one of the lowest paid industries. Our wages at R6 are rock bottom. Employers still want to cut wages by 50%. Costs for workers, such as transport, are going up. After workers have paid this from wages what is left?'

Morale is prepared to look at a more flexible approach: 'The more avoidance there is the more the industry will suffer because of a lack of levies etc. We need a flexible approach.'

CAWU is looking at unloading some

benefits – for example, the small contractor could be exempted from the medical aid, stability fund and certain levies but not the provident fund. While CAWU is prepared to be 'flexible' on benefits, Morale says that they will never lower the minimum wage. They would, however, look at having a lower entry rate wage.

Morale thinks that such 'flexibility' can promote a union agenda. 'You cannot divorce strategic compromise by the union and the need to develop small employers in the industry. We want to encourage development and transformation but retain worker rights.'

Unions' attempts to resist a decrease in wages are, for De Kock, a sign that they do not understand the economics of the situation. 'They still don't see the genuine economic imperatives behind the situation. The trade unions lack insight into the issues. They have a major capacity problem.'

De Castro does not agree with this. 'You don't have to be a professor to know what basic needs are. My economic understanding is good – I know that if you have money you can do something and if you don't have money you can't.'

Dispute resolution costs

The LRA states that parties that fall under a bargaining council must go to the bargaining council for dispute resolution if it is accredited. This adds to the costs of the bargaining council and is a problem for De Kock: 'If you do not have an accredited bargaining council you can go to the CCMA for free. We are therefore penalised for being in a bargaining council. The CCMA is supposed to give us subsidies, but we still haven't got them yet.'

Stapelberg states that they have been trying to get their subsidy from the CCMA

for two years and have not been successful. He adds that a further problem is that too little money has been allocated by the CCMA to subsidise dispute resolution in bargaining councils. 'This year the CCMA has allocated R4-million to subsidise bargaining councils. This has to go to 76 councils – though only 23 of them are accredited at this stage.'

Stapelberg believes that bargaining councils should receive a higher subsidy. 'We were offered R250 per completed case. This doesn't look at how many meetings are needed to complete the case. We are treated like Cinderella – we are given the scraps.'

Restructured institutions

De Kock states clearly that employers in the industry are not opposed to collective bargaining. 'The majority of members are not opposed to bargaining and benefits. The problem is how high they will be and the policing of agreements. Employers do not favour plant or company level bargaining because they lack negotiating experience.'

De Kock wants to explore other forms of setting standards for the industry such as a sectoral determination.

The unions, however, want to stay in the bargaining council. De Castro says his union is holding back on action while in negotiations now. If there are no results, AUBTW will commence with its programme of action.

CAWU had threatened a national strike when employers gave notice of their intention to pull out. However, employers did not feel compelled to stay in the bargaining council, as De Kock explains: 'The compulsion was to get out of the bargaining council. Contractors in the rest of the country said that they would watch because maybe this was the way to go. We didn't believe that the union had the

resources to take national industrial action. If there was we would have taken legal action to stop it.'

Morale still threatens a national strike and wants to increase support of its demands: 'We have to reformulate our strategy and approach. The battle is not over. We need more involvement by our federations - COSATU and NACTU.'

For Morale the battle goes beyond the struggle to maintain the bargaining council: 'Employers are trying to exploit the LRA to their advantage. Unions must find the loopholes in the LRA and close the gaps else we will have to re-fight battles we won in the 1980s. We have to stop the bosses from rolling back our victories and achievements. The new LRA doesn't herald the end of the struggle. The victories we scored have to be vigorously defended. Centralised bargaining is one of those victories.'

Even if the unions can keep employers in the bargaining council and even if they restructure the bargaining council, they will still face the question of how to extend the benefits of centralised bargaining to other workers. De Kock says that it will not support extension in the future if it is going to be penalised.

Conclusion

A decline in the building industry has put increased pressure on the bargaining council - fewer people are contributing to it and more people are making claims from it. Unions may lose much of what they have fought for historically if employers do pull out of the Building Industries Bargaining Council. How much the strategic compromises the unions make to keep employers in the bargaining council will allow employers to exploit labour further will only be known in the future.

The alternative - letting employers pull



Many construction workers have lost their jobs.

out of the bargaining council - will allow employers to drive down wages, decrease benefits and weaken the unions. It is only through strong centralised institutions that workers can be protected and parties can jointly address issues concerning the industry.

Employers need to support attempts to build capacity in the unions so that they negotiate with informed and strong parties capable of adhering to agreements.

Unions need to ensure workers are protected and their interests advanced, not just through centralised bargaining, but by organising, building structures and developing strong shopstewards in every site. The federations need to help ensure victory, or else a dangerous precedent will be set. ★