



# Free riders - re-thinking the closed shop

Debate around the closed shop has lately livened up in COSATU. CHRIS ALBERTYN and ROD CROMPTON\* look at some of the issues surrounding 'free riders' and union security. They argue that the unions urgently need to campaign in support of the closed shop.

**J**ob security is one of the basic demands of the COSATU Living Wage Campaign, but till now COSATU has failed to focus on an important threat to job security. This is the effect that non-union members (free riders) can have on the jobs of union members.

The problem of non-union members or free riders is as old as trade unions themselves. Free riders take advantage of the benefits won by the union. They are also manipulated by employers against the interests of union members. They seldom contribute in a particular struggle with management, and by scabbing during strikes, free riders often make it easier for employers to dismiss striking union members.

Despite all this, COSATU has failed to come up with a demand to protect union members from the free riders. In many countries union members have protected themselves and their organisations by negotiating some form of closed shop, or a union security agreement. In this country the progressive trade union movement has been very wary of the closed shop, because of the way in which the racist white minority unions have used it to reserve jobs for whites and to resist the growth of the progressive, democratic trade union movement. Within COSATU there is mistaken concern that closed shops limit freedom of association, that they are by definition undemocratic and serve to

extend racial or other privileges.

## **Urgent need to assess the closed shop demand**

COSATU's LRA/Living Wage Conference of 12-13 May acknowledged for the first time that the closed shop is a contentious but serious issue facing the trade union movement. There are a number of reasons why it is crucial for COSATU to debate the issues. It must develop some form of demand to protect union members against the employers' tendency to use the free riders against the unions.

### **1. Basic Trade Union Rights:**

Union security, ie an agreement which defines the rights of union members in relation to non-members or mi-

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*Closed shop - strengthening workers' unity and democracy*

*Photo: Afrapix*

norities, is a basic trade union right. This right is under increasing attack by Barlow Rand and other companies that try to bolster minorities.

### **2. Membership Objections:**

Unions have had high levels of membership in some companies for several years, and members frequently object to free riders.

### **3. The LRA:**

The infamous amendments to the Labour Relations Act in September 1988 specifically attacked the organised strength of the working class. The spear-head of this attack is the clause that makes it an unfair labour practice for a majority union to demand sole collective bargaining rights. Secondly, the LRA makes agency shops and closed shops illegal in pri-

vate agreements. They can only be introduced through gazetted Industrial Council or Conciliation Board agreements. These changes largely favour racist white unions with existing closed shop agreements.

### **4. The Workers Charter:**

The 1989 COSATU Congress resolved to draw up a Workers Charter. Debate around the Workers Charter is an important campaign in 1990 for COSATU affiliates. A crucial debate is whether or not the Charter will include the right of unions to deal with the free rider problem.

### **5. Majority Rule and Individual Rights:**

In the speculation about a negotiated settlement in SA and the call for a bill of rights, various groupings are

preparing their draft bills. The state, in the form of the South African Law Commission, has already had much publicity for a bill of rights which specifically excludes the closed shop. If passed, this bill would seriously limit workers' rights to deal with the free rider problem.

### **6. Violence:**

Recently there has been marked increase in the level of violence surrounding strikes. Much of this is caused by free riders who are manipulated by management during industrial action.

### **7. Negotiated Settlement:**

The attack by capital and the state on trade unions through the LRA amendments must also be seen in the light of the looming negotiations for a political settlement in



South Africa. If big capital, through its agent the state, has to negotiate a new dispensation, it would choose not to negotiate with a powerful opponent. The progressive trade union movement inside South Africa represents the most organised internal anti-apartheid power base. To defend its control of the economy capital will try to weaken the progressive unions in the run up to the negotiations.

### Ways of dealing with free riders

Over the years and under different circumstances, unions have developed various ways of dealing with the free rider problem. Agreements have been negotiated, and usually became law, which in different ways gave protection to the collective rights of the union membership. They are outlined below, beginning with the weakest example of a union security agreement.

All but the first, the preferential shop are outlawed by the 1988 LRA amendments. The minister has the power to block all new union security agreements, while protecting the existing closed shop unions.

- **Preferential shop**

Union members are given preference when there are job vacancies and free riders are retrenched before union members.

- **Agency shop/solidarity subscriptions**

All workers within the bargaining unit must pay union dues once the ma-

majority have signed up. Non-members are not compelled to join the union, but merely to pay solidarity subscriptions. The worker decides whether or not to join the union and is still free to join another union if she/he wants, and to pay two sets of dues. There are a number of possible variations here. The majority union could, for example, require free riders to pay part, say 75%, of the full union due; the union could require the free rider to pay an amount equal to the union dues to a charity nominated by the union. These options are outlawed in SA. In terms of the Basic Conditions of Employment Act deductions may not be made from a worker's wage without written consent. Only a gazetted Industrial Council or Conciliation Board Agreement can overcome this problem.

- **Union shop or post-entry closed shop**

A worker must join the union within a certain time after becoming employed in the bargaining unit. The union decides whether or not the applicant may become a member. If the union decides not to admit the applicant that worker must look for work elsewhere.

- **Closed shop proper or pre-entry closed shop**

A worker must be a member of the union before



he/she can be employed in the bargaining unit. There are two kinds of closed shop. The *exclusionary* like that of the early craftsmen, is still practised by lawyers and doctors in SA to this day. The *inclusionary* is the most common today, and tries to include all the workers in the bargaining unit/plant.

### Union security in other countries

How have workers in other countries dealt with free riders? Under Western capitalism workers have used what power they have to get laws passed which protect them.

The closed shop is permitted in all its forms in Sweden and the Netherlands. In the United Kingdom approximately 40% of union members are covered by closed shop agreements. With the rise of Thatcherism the closed shop and workers rights in general have come under attack. New closed shop agreements have now been outlawed.

In Japan and Mexico the law permits the closed shop proper. The agency shop is permitted in Switzerland where collective agreements may require payment of solidarity subscriptions by workers who do not belong to a trade union.

Solidarity subscriptions





are required of free riders, to be paid to the majority union, in the Bahamas, Grenada, Zaire, Gabon, Mali, Nigeria and Tanzania. Preferential treatment of union members in respect of recruitment and other union security provisions are practised in Australia and New Zealand. In most of Canada and New Zealand compulsory payment of solidarity subscriptions is provided for.

In West Germany the law does not permit the closed shop. But it operates in practice because the Works Councils have the right to select new employees. Since the Works Councils are usually dominated by the trade unions, they are able to ensure that new employees are union members before they are employed.

In Italy and France the trade unions are affiliated to federations founded by or closely linked to political parties. Membership of a political party and a trade union go hand in hand. There a worker must belong to one of the trade unions in the bargaining unit and chooses which one he/she will join.

In the USA the pre-entry closed shop is not permitted. But in most states other forms of union security are permitted and they are common in the most industrialised states.

Approximately 80% of

unionised workers in the USA are covered by some form of union security agreement.

## Democratic unions and the closed shop

The closed shop can be seen as a way of protecting the union as a democratic institution which aims to represent workers in general. Democratic trade unions are a significant historical development which develops and encourages democratic practices. They encourage discussion and the right of people to express themselves and to put their view. They encourage a process whereby those issues which can be settled by talking are settled in this way rather than by force.

The value of this institution for workers' lives and society as a whole should not be underestimated. Institutions in society which in and of themselves promote the concept of democracy, co-operation and the non-violent resolution of disputes amongst people, should be preserved and protected.

Where free riders are obliged to belong to a union through some form of union security agreement, moderate workers who might scab or return to work during a strike

are obliged to go to union meetings to argue their position, to try and persuade the militants why there should be a return to work (and vice versa). This is far better than meeting each other at the factory gates ready to intimidate or kill each other. As long as free riders are not covered by some form of closed shop there will be conflict during industrial disputes, particularly when the majority decides to take action.

### Non-members undermine the union

At present many employers who promote the anti-worker, 'all comers approach', use the free riders to undermine the union members and the democratic process whereby the majority of workers make decisions and protect themselves.

For example:

1. When wage negotiations reach deadlock the employer's final offer is paid to non-members. When settlement is finally reached with the union, the employer refuses to backdate the increases for the union members, but gives the benefit of the higher wages negotiated by the union to the free riders.

2. Free riders are used as scabs during strikes.

3. Free riders are given bonuses or rewarded for not striking.

4. Free riders have their wages back dated to a date earlier than the date for union members, etc.

These actions elevate the



rights of the non-members above those of the members even though the free riders are the minority. This is victimisation of the union members and undermining of their collective bargaining rights.

**Closed shop responsibilities for democratic unions**

Sadly, in SA the closed shop has been a tool of oppression by racist minority trade unions. They have used it to

prevent the advance of progressive and democratic trade unions. In some countries the closed shop has promoted the growth of a complacent bureaucracy. This has given the closed shop a bad name.

However we need to bear in mind that just because some people got their sums wrong does not mean there is anything wrong with arithmetic.

All workers, including free riders, are entitled to



democratic restrictions on the exercise of union security rights, so that they do not become oppressive.

The right to the closed shop should be accompanied by requirements to ensure that it remains a democratic extension of workers' rights, and not a bureaucratic protection for lazy union officials or small minorities. The following suggestions are made. There are doubtless others that could be introduced.

- A significant majority should ballot in favour of introducing the closed shop.
- It should be reviewed regularly, once every two years for example.
- A significant minority (30 - 40%) should be able to petition for a re-ballot during the two year period.
- If the union loses the ballot it should have to wait for a specific period before trying again, for example one year.
- The disciplinary and grievance procedures within the union must be fair and clear. People who object to the closed shop, such as conscientious objectors, must have access to these procedures.
- The union should be worker-controlled.
- All workers in the bargaining unit must be informed and able to influence the mandates and decisions.



*American workers on picket - the closed shop can reduce the incidence of scabbing and violence*

Photo: ILR





- The interests of all parts of the bargaining unit must be equally promoted.
- The union should be able to admit all possible employees in the bargaining unit, irrespective of race, gender or creed.
- Workers in the closed shop should be entitled to belong to another union as well.
- The union should not affiliate directly to a particular political party. This does not mean that a union should not be entitled to engage in politics, but that its support of a particular political party should not bind all the members.

In British law members are only obliged to pay dues into the general union fund, but not into the union's political fund which it uses to finance political parties. Contributions to the union's political fund are voluntary and those who do not contribute may not be discriminated against in the union.

Under the LRA it is an offence for any union to affiliate to a political party, to give financial assistance to a political party, or for the union to influence its members with the object of assisting any political party. The only exception is Kwa-Zulu.

However with the current debate about a Workers Charter in mind consideration

needs to be given to these issues for the post-apartheid society.

### Debating principles: Freedom of association and dissociation

The closed shop debate raises several questions about the freedom of association.

*1. If all workers in a bargaining unit are obliged to have some form of association with a union, do free riders lose their freedom of association?*

It is important to understand what freedom of association means when answering such a question. The common understanding is that freedom of association means freedom of each individual to choose which organisation to join and freedom to choose not to join an organisation. But this ignores the fact that the collective also has rights.

The standard reference for Freedom of Association is the ILO's Convention 87 on Freedom of Association and Protection of the Right to Organise (1948). In sum the critical clauses say that:

- Workers and employers, without distinction whatsoever, shall have the right to establish and, subject only to the rules of the organisation concerned, join organisations of their own choice.
- Workers' and employer's organisations shall have the right to draw up their constitutions and rules, to elect their representatives in full freedom, to or-

ganise their administration and activities and to formulate their programmes.

What this means in practice is that if the union decides that non-members undermine the union, it could amend its constitution or adopt a policy in favour of the closed shop, union shop or agency shop. In other words, freedom of association is a two-way relationship and the union members may decide: "We want them to be part of us even if they do not want to be part of us, because we need each other to help further our common interests."

So freedom of association is also the right of workers to associate with whom they want to, *even if they want to associate with workers who do not want to associate with them!* This aspect of freedom of association is often lost in SA. The common interpretation of freedom of association at work, and the one that the employers conveniently quote, only sees the "negative" right of the individual/free rider "not" to join the union, and not the rights of the collective. Even some workers have been confused into believing that freedom of association only means the right not to join a union.

*2. Which right should carry more weight? The right of the individual/free rider, or the right of the group/union members?*

When are the rights of the individual more important than the rights of the group or collective? Should the in-



dividual have the right to stop the collective from including him/her in the association, where they have a common interest?

In each country some rights are given more weight than others. Rights must be seen in their social and political context. Under democratic government the will of the majority prevails over the will of the minority on several issues, for example compulsory taxation and military service. The majority government decides all citizens should pay taxes. So even those who do not support the government and so do not want to pay taxes, are compelled to pay.

Why should the free rider's right carry more weight than the members' rights? Is it not an abuse of freedom of association if only the free rider is protected?

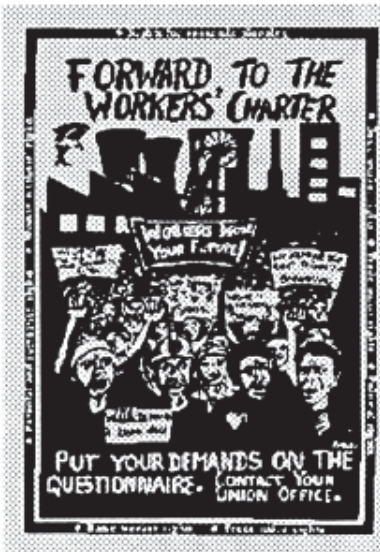
3. *Do the benefits of compulsory union membership in a closed shop outweigh the individual's loss of the right to decide for her/himself?*

Clearly workers are better off with trade unions than without them. History has shown that unions have promoted good industrial relations and prevented arbitrary managerial practices. Unions have improved the incomes of members above the incomes of non-unionised workers. That higher income is then spent by workers which in turn creates more jobs for the unemployed, which benefits the society as a whole.

What are the burdens of compulsory membership?

- paying union dues
- attending union meetings
- accepting decisions and resolutions of union meetings

These burdens are far less than the burdens of compulsory taxation or military conscription, but they are necessary for the good of the society.



*Should the Free Rider problem be addressed in a Workers' Charter?*

*What if the members say: "We are not prepared to be associated at work with free riders, we demand our right to disassociate from them. We do not want free riders to work alongside us".*

The member's right to disassociate from the free rider is preferable to the free rider's right to dissociate from the union when compulsory membership is regulated by fair and democratic procedures.

But are the consequences equal? Some people say that if the members 'disassociate' a free rider he/she will lose his/her job. On the other hand, the union members will not



lose their jobs if a free rider does not join the union.

Is this true? Yes, but only during labour peace. It is not true during a strike. The free rider scabbing may just make the difference which allows the employer to win. At the very least scabbing increases the suffering of strikers and their families. When members lose a strike they may well be losing their jobs as well or suffering some other form of loss such as back pay, warnings, broken service, etc. These burdens are far more serious than paying dues and attending meetings.

*In short the two rights are not equal. The member's rights outweigh the free rider's rights.*

### Conclusion

In the absence of an acceptable Labour Relations Act and political rights in SA, union security will need to be set out in agreements at industrial councils or conciliation boards. If violence and suffering are to be avoided and if justice is the goal, progressive unions will have to develop a means of dealing with the free riders. In the light of the current debate over the Workers Charter, the campaign against the LRA and the possibilities of a post apartheid society, the debate over free riders, union security agreements and the closed shop needs to be held urgently, and a position adopted which the labour movement can advance. ☆