Gauteng Building Industries Bargaining Council

In the last *Labour Bulletin* (vol 23, no 2) Tanya van Meelis reported that the Gauteng Master Builders Association (GMBA) threatened to withdraw from the Gauteng Building Bargaining Council. My article updates and contextualises the employer threat, which subsequent to various negotiations, has been formally withdrawn.

According to Colin de Kok of the GMBA, the major reason behind the employer threat to withdraw from the council is that wages and benefits set by the council do not reflect those paid in the market – there is extensive non-compliance with the bargaining council agreement This is made worse by government driven attempts to empower emergent contractors and hence give them preferences in tendering processes. He argues, however, that the emergent contractors are not required to fully comply with council agreements and that this leads to unfair competition.

Employers withdrew notice to leave the council and entered into negotiations with the unions following a joint union dispute against the withdrawal, which had been referred to the CCMA.

Negotiations

Employers are currently negotiating two issues with the unions. Whilst there are some areas of principle agreement, the parties still need to reach substantial agreement. Both

***Rob Rees**, argues that the employers' threat to pull out of the council is an explicit attempt to force unions to lower the cost of labour.*

issues arise from the employer drive to reduce labour costs The first issue, which the unions have agreed to in principle, is that there should be a lower entry-level wage. The current agreement covering the sector already provides that 'new general workers' get paid 10% less than the minimum set for general workers, in their first six months of employment. These workers are excluded from benefit contributions. In the case of a general worker on the prescribed minimum wage, full benefits make up some 18% of the total wage bill. Currently, then, new general workers cost employers 72% of a general worker who receives all the benefits But according to De Kok, employers are looking for a 30% to 40% cut.

It should be pointed out that the definition of a new general worker is a worker employed for the first time in the building industry in Gauteng. Thus the agreement already allows an employer to employ a skilled experienced worker working for the first time in Gauteng at

these wage levels (R6 an hour), implying even greater cost savings to employers

The second issue that employers are attempting to restructure is access to benefits They argue that all benefits except the pension/provident fund should be voluntary Employers are looking to restructure the medical aid and make it voluntary.At the moment skilled and semi-skilled workers have to belong to the medical aid and it is voluntary for general workers Lastly employers want to stop weekly contributions from the employer that go to the holiday fund This in effect is deferred leave pay, which workers access at the end of the year. Unions fear that if this is removed then workers will suffer from non-payment, as many do already Removing medical aid and holiday pay as a weekly contribution will save employers 12% to 13% on labour costs (calculated at the minimum prescribed wages) depending on the recognised skill of the worker.

Through their threat to withdraw from the council, employers have forced the unions to enter these negotiations, which are explicitly aimed at cheapening the cost of labour before the expiry of the current agreement in October 2000 Furthermore, they have done so without the unions being able to resort to legal strike action which the agreement prevents. Strikes over the terms and conditions of any future agreement can only legally occur from May 2000.

Advantages for employers

Although the employers threatened to withdraw from the council there are differences between large and small members of the GMBA It is the smaller members that seemed to have placed the most pressure for withdrawal. However, all employers have an interest in reducing the cost of labour and thus raises the question as to whether employers ever really intended leaving the council It is not the first time that they have threatened to withdraw – a similar situation occurred in the early 1990s and resulted in a programme of restructuring the industrial council, including cutting back council staff De Kok says rather cautiously that if there is one reason for employers to stay in the council it is because it is a lot easier to negotiate with the unions collectively than individually. However, an analysis of the agreements reached through the council suggests that there are a number of other advantages to employers

Two sections of the agreement ensure that legal strike action from the unions would not be possible on most issues Employers can secure legal relief from most threats to disrupt production, given that the agreement spans three years and that through the LRA, dismissals, the interpretation of agreements and retrenchments do not allow for legal strike action During the period of the agreement unions are unable to take strike action on the issues contained in the agreement. Previous agreements had similar clauses but also made it illegal to strike during the lifetime of the agreement, even over future agreements.The agreement excludes the possibility of bargaining at plant level over issues contained in the agreement This clause covers both the parties and the non-parties to the agreement.The agreement thus does not allow a union outside the bargaining council to bargain at plant level or even to strike over issues contained in the agreement (such as wages and benefits).

Legal ways of reducing costs

Further clauses in the current agreement provide several legal means to reduce labour costs These clauses facilitate legal non-compliance with the agreement in an industry where:

- the life of a site is relatively short;
- levels of unionisation are low;

- council policing of the agreement is inadequate.

Since 1993, workers who fail to report cases of underpayment of wages and contributions within ten weeks of this occurring, lose their right to make such claims. Workers performing semi-skilled work who do not prove that they are qualified to do this work within ten days are deemed to have been employed as a general worker, and are therefore on a lower wage rate. Workers complain that in order to get employed they do not show their qualifications, if they did they are unlikely to get the job.

Labour-only subcontractors

Since the late 1980s, the use of labour-only subcontractors has expanded at a rapid rate. Large companies cut back on their permanent staff and replaced them with these subcontractors Workers for these subcontractors can number up to 80% of labour on a construction site. Responding to this, the council has introduced various mechanisms that aim to control this. Since 1996 it is only legal for the principal employer to use a labour-only subcontractor if this subcontractor is registered with the council and the council confirms that he complies with the agreement. However, once this happens the principal contractor has no further legal responsibility for any breach of the council agreement that might occur. Whether by design or not this section waters down clause 198 of the LRA which makes the principal employer jointly and severely liable with the labour broker for any breach of council agreements whenever they occur

Way forward

The council agreements reached and the current negotiations reflect the strength of employers in the industry in the context of massive job losses and cut-throat competition for tenders Aside from the low levels of unionisation, workers are also divided between four unions in the sector. Many workers do not feel they are benefiting from the bargaining council.

If unions are to begin to make gains that do not seriously compromise the interests of workers in the industry, they will have to develop effective programmes to strengthen, widen and involve their membership. Some ideas towards this include:

- Ensure widespread and effective membership involvement in the current negotiations.
- Demand a greater role for government in ensuring compliance with minimum standards. Amongst other things this could mean only giving contracts to contractors who have a unionised workforce and who comply with labour legislation.
- Developing and campaigning around demands to improve workers' standard of living. This must include scrapping clauses in the agreements that allow for underpayment and that weaken sections of the LRA.
- Strengthen the capacity of the bargaining council to ensure compliance. Build joint and expanded monitoring teams, made up of other council inspectors, the Department of Labour inspectors and shopstewards, to clean up the building sector and the disease of non-compliance.
- Call for wider trade union support from workers supplying the raw materials and components to building sites – the bricks, cement and the window frames. Lay the future basis for powerful secondary strike action.
- Ensure that there are attempts to build joint construction union campaigns. ★

Rob Rees is a researcher at Naledi. This article is based on current uncompleted Naledi research.