Moving towards centralised bargaining in mining

Negotiations in the mining industry are highly fragmented but there are exciting possibilities afoot to create a single centralised mining bargaining council. **Ian Macun** considers the issues that the industry will have to confront in the creation of such a council.

Mining has evolved into a large, diverse and complex industry. In employment terms, it is small as it contributes roughly only 3.4% of total employment with approximately 455 000 workers. And employment has declined from a 4.8% share in 2003, a reduction of about 100 000 jobs.

The industry however accounts for 25% of South Africa's foreign exchange earnings and it makes up 31% of the value of the Johannesburg Securities Exchange. It contributes 7% of gross domestic product (GDP) and is the largest contributor to black economic empowerment deals in terms of value.

Historically, labour relations were slow to change in the mining industry. Bargaining with black unions only started after the National Union of Mineworkers (NUM) entered negotiations with the Chamber of Mines in 1983.

Before this, the industry had closed-shop agreements with unions representing higher white occupational grades and the majority of mining employers refused to recognise black unions representing workers in the lower grades. Even after 1983, recognition had to be won on a mine-by-mine basis, often in the face of hostile management and government.

Collective bargaining has also been segmented along occupational lines. The NUM is the major union for black workers, representing the lower grades and a number of other unions represent higher grade workers.

The structure of bargaining is a two-tier system, with unions and the Chamber negotiating on wages and conditions of employment at sectoral level and mine level negotiations taking place on operational issues. The NUM and other unions still negotiate at mine or mining house level with those companies that are not members of the Chamber's bargaining unit.

The latest sectoral agreements are those between the Chamber and the NUM, Solidarity and Uasa – the Union (United Association of South Africa). These agreements cover gold and coal for 2007 to 2009. The scope of these agreements has been extended to cover other issues, including job grading, long service awards and even an initiative to establish a mining museum in recognition of the contribution made by mineworkers to the economy.

RESPONSES TO COUNCIL

Since 2003, there have been discussions about the formation of a single bargaining council in the mining industry. NUM initially tabled a demand for the establishment of a council in 2003. It has been supported by Solidarity and Uasa.

The NUM wants a centralised bargaining arrangement that will lead to common conditions of employment for each of the major commodities – gold, coal, platinum, diamonds and base metals. It also wants harmonisation of benefits.

A bargaining council will allow for improved monitoring of the implementation of the wage agreement and by extending the agreement, every company will be bound to follow the centrally negotiated issues. A final aim is to reduce the proliferation of unions in the industry.

A bargaining council would deliver benefits to employers and workers. It would enable organisations of employers and workers to negotiate standard conditions of employment for everyone in the industry. It would make it possible to extend social benefits, such as retirement funds to those who do not have access to benefits.

A centralised institution should also offer dispute resolution services and other services that the parties agree to. A council could, for example, extend worker share ownership schemes that have been introduced at some mining

Cedric Nunn

companies. Well functioning bargaining councils generally offer greater predictability and stability in labour relations which is an advantage to everyone.

To be effective, centralised bargaining has to strike a balance between levelling the playing fields around conditions of employment and ensuring a flexibility for those employers that operate close to the margins of profitability. Striking this balance will always pose a risk to the benefits that bargaining councils offer.

The Chamber of Mines and the unions agreed to a joint investigation of centralised bargaining including the feasibility of a bargaining council. This investigation was concluded in 2004 and discussions have been progressing slowly but steadily since then.

At one level, forming a bargaining council is straightforward. One or more registered unions and employer organisations adopt a constitution and submit it to the Registrar of Labour Relations in the Department of Labour. The constitution must provide for a number of issues contained in section 30 of the Labour Relations Act. These issues include the appointment of representatives of the parties to the council, the representation of small and medium enterprises, the manner in which decisions will be made, dispute resolution procedures, the procedure for exemption from collective agreements.

Once an application for registration of a bargaining council is received, the Registrar publishes a notice giving the public an opportunity to lodge objections. The Registrar then sends the application together with any objections to Nedlac (National Economic Development & Labour Council) which considers the appropriateness of the application. Within 90 days, Nedlac must conclude its deliberations and report to the Registrar.

Once the process reaches this stage, the possibility of delays concerning objections and debate in Nedlac will be affected by the amount of groundwork that the parties to the application have done. The better the groundwork, the smoother and quicker the registration process.

The NUM, Solidarity and Uasa are, between them, very likely to represent the majority of workers in the industry and will no doubt constitute strong parties to centralised bargaining.

The Chamber is playing the lead role on the employer side. It brings together mines operating in gold, coal, platinum, diamond, lead, iron ore, antimony and copper. So far, the Chamber has made good progress around the establishment of a council in gold and coal, the sectors with a tradition of collective bargaining. But it appears that the Chamber needs to engage more with employers in the commodity sectors where it does not have a strong presence and where there is no history of centralised bargaining, such as platinum and diamonds.

Interestingly, some of the bigger contractors have responded positively to the formation of a bargaining council. These are companies that undertake shaft sinking, underground construction, tunnelling, stoping and other contracting services. A difficult challenge for the main players will be how to deal with small mining operations, particularly those that do not belong to employers' organisations.

ISSUES INVOLVED

The unions and the Chamber have made progress by working on a number of issues of principle that could underpin a future bargaining council and its constitution. These are:

- The scope and structure of the council.
- The recognition criteria for union membership of the council.
- The recognition criteria for membership of employers' organisations.
- The levels of bargaining.
- How to define micro, small and medium businesses.
- Exemptions from parts of the agreement.
- Dispute resolution functions.

While these principal issues are crucial to the viability of a council and its likely success in regulating the industry, three are likely to impact on the process of establishing a council.

Firstly, the scope of the council has implications for the founding parties. The registrar must take into consideration the representivity of the applicants in the sector and areas for which the application is made.

The Chamber is in favour of starting off in gold and coal and possibly bringing contractors within the scope as well. The NUM on the other hand, wants to include other commodities within the scope at the outset – gold, coal, platinum, diamonds, base metals and the contractors. While the NUM is clearly the majority union in the industry, the representivity of the Chamber, particularly in commodities such as platinum and diamonds, is not clear.

Secondly, recognition criteria for union membership of the council will affect who gains access to centralised bargaining. While centralised bargaining generally functions better where there are strong and stable parties to a bargaining arrangement, it should also be as inclusive as possible.

The main unions party to the discussions have agreed to a union threshold of 5 000 members for access to a future council. The founding unions will have a five-year period of membership in terms of a sunset clause. Such an arrangement is likely to impact on a number of smaller unions that operate in mining and may well reduce the chances of the future growth of unions. Fewer union parties could streamline centralised bargaining, but only if the larger unions are able to cater effectively for the diverse interests of workers within the mining industry.

Thirdly, the approach to small-scale mining will be an important policy issue for centralised bargaining arrangements in mining. Small-scale mining itself covers a diverse group of operations from artisanal mining to small companies with access to capital and skills. The Chamber includes some small companies and has a special fee dispensation for them, but there are many that are not members of any employer organisation and are very likely not unionised.

How centralised bargaining strikes a balance between accommodating the constraints faced by small-scale mining, while improving conditions of employment in these operations, will be a key challenge. The approach to exemptions from agreements will be one area where this challenge will play itself out. Here the parties are debating whether to consider blanket exemptions, or exemptions for those who can demonstrate a need for greater flexibility and what criteria are to be applied in considering applications for exemptions.

Considerable progress has been made on other issues, such as the levels of bargaining. It seems likely that the different commodity chambers will negotiate wages and conditions while matters relating to productivity and workplace restructuring will be left to company negotiations. The central chamber will deal with dispute resolution, enforcement, levies and policy issues.

An issue that has not been addressed is social benefits. Currently, there are a number of different union and employer pension and provident funds as well as mine level medical aid funds. The agreements between the Chamber and the unions only address social benefits to a limited extent, providing for funeral cover and a medical incapacity benefit. In the context of this decentralised and fragmented provision of social benefits, the NUM is in favour of moving to industry pension, provident and medical aid funds that provide better economies of scale, improved benefits and extended coverage.

CONCLUSION

Establishing centralised bargaining in this industry is likely to take time. It is also likely to be an evolving process. The existence of a council as an institutional base for the process may, however, serve to keep the parties focused on reaching agreements on core issues. A centralised mining council will also help to grow the scope of the council and the agreements that can be negotiated as well as increasing the services that can be extended to parties and non-parties.

It is certainly likely to provide interesting lessons for other councils and for collective bargaining in general. LB

Ian Macun is director of Collective Bargaining in the Department of Labour.