

Rethinking industrial councils?

Small business and collective bargaining



The Industrial Councils in the clothing industry are being undermined by a

growing trend towards small business.

JAN THERON asks whether this trend will lead to far-reaching changes in the IC system.

Over recent years a number of propositions about small business have acquired the status of conventional wisdoms. For example:

- ❑ small business should be promoted in order (amongst other reasons) to create

employment and stimulate the economy;

- ❑ in order to promote small business, it is necessary to remove restrictions and regulations which inhibit small business. Amongst the regulations which are seen to inhibit small business, labour legislation is seen as one of the most significant.

Should there be reform of labour legislation to take account of the needs of small business? Should this reform go so far as to create a special dispensation for small businesses, exempting small businesses from the regulatory regime that applies to other businesses?

Specifically, should small businesses be compelled to comply with Industrial Council Agreements which are extended to them in terms of the Labour Relations Act (LRA)? If not, on what basis should small businesses be exempted? What, also, are the implications for moves towards centralised bargaining, within and outside of Industrial Councils (ICs)?

In short, what does the question of small business signify for labour relations in the future? But first it is necessary to understand how the system of extending IC Agreements works.

The industrial council system

Industrial Councils have also given rise to a number of conventional wisdoms. One is that ICs are the cornerstone of our industrial relations system. Another is that this is a 'system' based on voluntarism. In other words, in which the involvement of the state is minimal.

In fact the state has always been involved in a very direct way in ICs. For once the employer and union who are parties to an IC have reached agreement, they almost always ask the Minister of Manpower to make it binding on employers and workers who are not. This is done by publication in the Government Gazette. The basis on which the Minister decides to publish an agreement is

This is an edited version of a longer paper produced for the Labour Law Unit, UCT



Worker organisation under threat in clothing industry

whether (in his opinion) the parties are 'sufficiently representative' of the industry. The rationale is to prevent 'unfair competition', such as where employer non-parties pay below the minimum agreed. It is nevertheless a political decision.

Thus when African workers were organised, the Minister used freely to extend IC agreements to them, negotiated by unions representing mostly skilled, mostly white workers. Clearly these unions did not represent the majority of workers in the industry. It was a way of legislating low minimum wages for the majority.

But from about the mid 1980s the Minister became increasingly unwilling to extend agreements. Of course this had to do with the organisation of workers into representative unions. But one reason given, was the effect extending IC Agreements would have on small business.

In what follows we shall look at what small business means in the case of the clothing industry, to illustrate a wider phenomenon, and what it may mean for the IC system.

The clothing industry

The clothing industry is a typical low-wage industry, because of its low entry levels. The only capital needed to manufacture clothing is the cost of the sewing machine. For this reason, there are many small factories in this industry. The call for industry-wide regulation and some system of extension of Industrial Council agreements is strongest in such industries.

Until the early 1980s, the parties to the clothing industry IC in the Western Cape were a "sweetheart" union and an employers' association. The union's representivity was not an issue for the employers or the Minister because there was a closed shop. Sixty-two thousand workers were employed.

Ten years later, some 48 000 workers were employed at relatively high minimum wages. The union had become a militant COSATU affiliate and the IC had been transformed. What is more, there are now two employers' associations on the IC. The members of the dominant one employ 75% of the workers and represent 35% of the manufacturers. They include the big

manufacturers. The other association represents small businesses engaged mainly in CMT (cut, make and trim) operations.

The employer bodies are divided over minimum wages and the extension of the IC Agreement. For CMT operators, wages and labour costs are by far their biggest expense, amounting to 70% to 80% of their operating costs. For the big manufacturers, it is only 20-30%. Linked to this is their power in relation to the union – the big manufacturers are the union's base whereas small business is inherently difficult to organise.

CMT manufacturers argue they cannot afford to pay the same wages as the big operators, and there should be a differential wage. However, the big manufacturers could then set up their own CMT operations in order to pay lower wages. The underlying problem is that both associations represent only registered employers. Both are being undercut by a boom in small clothing manufacturers operating entirely outside the IC — the informal sector.

The informal clothing sector

There are no statistics or studies that establish the extent of the informal clothing sector. The employer's association estimates that up to 40% of all unit garments are produced by small businesses not registered with the IC. But, even if this is an exaggeration, there is no doubt that the informal sector is extensive.

Many of these operations are home-based and may employ retrenched clothing workers. Some of them may supply registered manufacturers, in contravention of the IC agreement, or the informal retail sector such as flea-markets. And, there is evidence that small manufacturers are increasingly supplying major fashion houses. But how does the retailer contact the unregistered small manufacturer? It has been suggested that this is done through 'design centres'. The design centre approaches retailers with a design proposal. If the retailer accepts the proposal, it offers a contract, on the basis of a price per unit garment. The design centre then looks for the

manufacturer to supply a garment, at a price per unit garment.

A registered CMT manufacturer who prefers to work for design centres says he has turned away more work in the last six months than ever before because he would "rather work short-time than work at a loss". This, he says, is due to undercutting by unregistered small manufacturers who probably pay their labour piece rates.

How can the extension of IC agreements prevent the undercutting of the wages of organised labour, while informal manufacturers remain entirely unregulated? Instead of improving the position of workers in the formal sector, the extension of IC agreements inevitably squeezes out registered small businesses. They are now caught between the big manufacturers on the one hand and the informal sector on the other. The demand for centralised bargaining can only exacerbate this process.

If this trend toward the 'informalisation' of the clothing industry continues, there will be a shrinkage of the formal sector. The big manufacturers will be increasingly confined to a smaller section of the market, the 'higher added value' garments. The formal sector could shrink away altogether. This is largely what happened in North America. Any clothing industry there is now is in the homes of immigrant families in the peripheries of the big urban centres.

Encouraging 'informalisation'?

Small business is encouraged by state policy and capital itself. For example, capital's support for small business through agencies such as the Small Business Development Corporation (SBDC) is a matter of public record. To what extent, then, is it also their policy to encourage informalisation?

It is said the distinguishing feature of the informal sector is that it is unregulated by the institutions of society. Apart from not complying with IC agreements or labour legislation, what this also means is that the informal sector does not pay tax.

The mere fact that the SBDC, which is a parastatal body, lends money to small

Informal sector – what does it mean for collective bargaining?

businesses in the informal sector, suggests a willingness to turn a blind eye toward this development. There are also reports indicating more concrete forms of encouragement. For example, employers giving retrenched clothing workers machines with which to start their own business. This suggests a present policy to encourage 'informalisation' as vigorous as repressive regulation was to stop it in the past.

The blanket exemptions the Wage Board hands out to small business form part of the same policy. And, in a circular letter of May 1987 from the Director General to all ICs, ICs are encouraged to follow the Wage Board's example.

Whatever the objects of such policy, the effect is to undermine the relatively high wages of organised labour.

The IC for the Clothing Industry plans to deal with this problem in the Western Cape by more effective policing in the informal sector. The present inspectorate of five is to be doubled. This will enable inspectors to visit each registered factory once a year and, it is hoped, track down factories which don't register. Wisely, the objective would be to get them to register, rather than shut them down.

But to rely on such measures would be to underestimate the problem. It has to be understood in the context of a shift from big to small enterprises, including the growth of the informal sector, across the world (*see box on page 62*).

Clearly the 'informalisation' in the clothing industry is not an isolated phenomenon. Global changes are bound to have an impact on production in SA. The



increase in small business and the informal sector will have profound implications for collective bargaining in the future.

It cannot be an option to try to prevent the growth of small businesses in the informal sector. In the absence of any apparent alternatives, it is a question of survival for many people. In this limited sense (and not because of their supposed employment-creating potential) there is a case for a special dispensation for small business. In the case of sub-contracted small business, there may also be a case for a special dispensation. But how does one distinguish between small business in this sense, and technologically advanced small businesses which do not need a special dispensation? How small business is defined is therefore important.

NMC and COSATU try to define small businesses

In 1989, the Minister of Manpower requested the (unrestructured) NMC to investigate the influence of labour legislation on small business. Its report, released in July 1991, recognises the difficulty of defining small business but fails to develop an adequate response.

The NMC differentiates between micro-businesses and small businesses, and confines its recommendations to micro-businesses. A micro-business, in the NMC's definition,

normally employs no more than five employees, and has a turnover not exceeding R250 000. It should also be an independent legal entity, managed and controlled by a natural person, who is also owner. The NMC regards this as a "basic (minimum) definition ... where there is agreement in a sector to

change the definition according to the specific circumstances of that sector, such a proposal could be made to the facilitator". The facilitator is a small-business facilitator, which the Department of Manpower plans to appoint in each of its offices.

The Minister, in his official response,

The new significance of small business

The growth of small business in SA must be seen against the backdrop of global economic restructuring since the 1970s, as a result of a crisis in the system of mass production referred to as Fordism.

This restructuring involves the introduction of a new production regime. Long production lines employing large numbers of unskilled or semi-skilled workers are no longer necessary. Computer-driven technologies and Japanese production techniques are the order of the day. The watchword now is flexibility. Accordingly, there has been a shift from big to small enterprises, regarded as more flexible. A different workforce is also required: relatively skilled workers who can use the modern technologies in a flexible way.

This restructuring means that it can no longer be assumed that small business cannot compete with big business on an equal footing. For example, it is argued that technologically advanced small businesses dominate the economy in Southern European countries and, in some cases, perform competitively on international markets. In particular, attention has focused on the Emilio Romagna region of Italy, where clusters of small business operating in similar industries are located in 'industrial districts'.

Could this be the 'acceptable face' of small business? There are indications that organised labour may regard these industrial districts as a model to be emulated. It is no doubt wise for organised labour to make the best of the situation, but the implications for workers of this new 'post-Fordist' era are by

no means rosy.

According to one authority, the change which underlies the new production methods implies "relatively high levels of structural (as opposed to frictional) unemployment, rapid destruction and reconstruction of skills, modest (if any) gains in the real wage and the roll back of trade union power – one of the political pillars of the Fordist regime".* Further, at a macro level, it has led to a radical restructuring of the labour market, with a diminishing core of workers with permanent, full-time employment and a growing periphery of workers in various kinds of 'flexible' employment.

It is in this global context that small business acquires a new significance.

For, accompanying this growth in 'flexible' employment has also been a growth of organised sub-contracting and the rapid growth of 'black', 'informal' or 'underground' economies in large cities. This 'growth', it appears, is the assumed employment potential of small business. However, this 'growth' has been at the expense of permanent jobs. In Britain, between 1981 and 1985, the number of 'flexible' workers increased by 16% to 8,1 million. But, in the same period, permanent jobs decreased by 6% to 15,6 million. ♦

* D Harvey, *The condition of postmodernity*, Blackwell, 1990.

approves this definition "as a starting point". But where does this definition actually take us? How is a turnover figure to be determined? Is there to be disclosure of the financial statements of an enterprise? What is the meaning of "normally employs"? How will anyone know that an enterprise actually has a turnover which exceeds the prescribed limits, or actually employs more than five, if there is no requirement for an enterprise to register? What is the status of a "basic (minimum) definition" that can be administratively amended?

COSATU, in its representations to the NMC, takes issue with this definition. COSATU proposes that a micro-business should not employ more than 10 persons. In a clear attempt to prevent big manufacturers from reconstituting themselves as micro-businesses, and the problem of sub-contracting, it also requires that a micro-business should "not have been created by the division of an existing business or by contracting out of its services", or supply "the majority of its services or products to a single client".

But there are more fundamental objections to the attempt to arrive at a generic definition of small or micro-business. What is big or small, viable or not viable, can only be understood in terms of a specific industrial sector. It was, for example, suggested to the writer that an efficient operator in the clothing industry required to employ about 50 workers. How does the number of persons employed indicate whether it is a deserving case? Who will decide the complex questions these definitions give rise to? Finally, how does such a definition address the problem of 'informalisation'?

NMC encourages 'informalisation'

The ostensible purpose of the NMC's definition of micro-businesses is to provide certain "administrative and other relief". The simplification of certain procedures is not controversial, so long as it does not erode minimum standards. But certain of the

NMC proposals go far beyond this, and actually encourage 'informalisation'.

For example, the NMC recommends that factory micro-businesses no longer be required to register. If there is no requirement to register, it is impossible to enforce minimum standards. The proposal that micro-businesses be exempted from inspection of their premises has the same effect. The thrust of these recommendations is to place micro-businesses beyond regulation.

This is also the tenor of the NMC's proposals regarding exemptions from Industrial Council agreements. Thus the ICs are encouraged to adopt the view of the Natal Master Builders and Allied Industries Association that the objective of an agreement ought to be to establish minimum

What is a small business?

Most commentators agree that it is difficult to define a small business. Frequently they are talking about different types of enterprises. Our analysis suggests that, underlying this confusion, is a change in the production regime and a restructuring of the labour market. This involves the following related but distinct tendencies in businesses that can be defined as small.

- o A tendency toward technologically advanced small businesses established under the new production regime described above (see box on p 62).
- o A tendency toward small businesses set up in response to a restructured labour market where workers have diminishing prospects for formal employment. This would include small businesses to which certain operations formerly carried out by big business are sub-contracted.

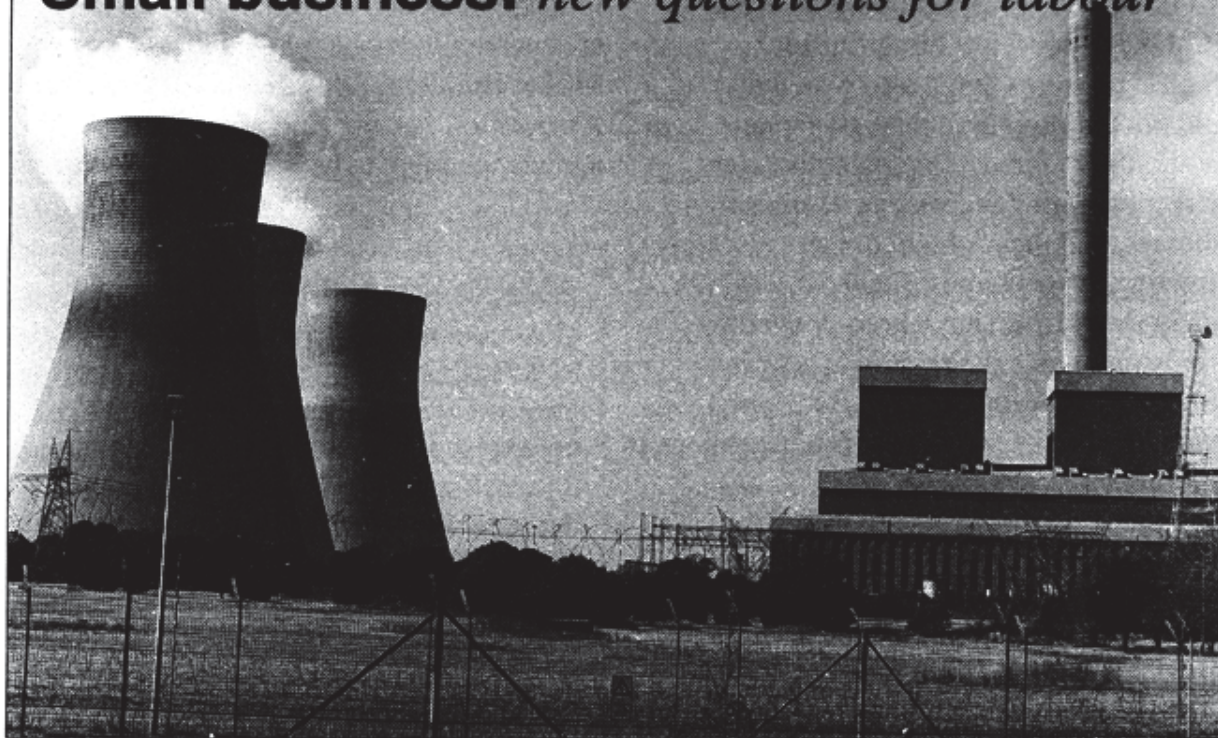
The former will tend to be in the formal sector and the latter in the informal sector, but this depends where and how the line is drawn. Further, in the case of sub-contracted small business, there is clearly a structural relationship between the formal sector and the informal sector. ♦

wages and conditions of work "without in any way restricting the entrepreneurial initiative and employment opportunities". Where an employer can satisfy the Council that his or her entrepreneurial initiative is being restricted, exemption ought to be granted. But this begs the question: who is to say, and on what basis, that "an employer's entrepreneurial initiative" is being restricted? What entrepreneur would not say his or her

entrepreneurial initiative was being restricted, given the chance?

Undoubtedly, such a policy will lend impetus to the blanket exemption of micro-business – which is consistent with the policies of the Wage Board and the Small Business Development Corporation. The NMC's fuzzy definition of micro-business, will ensure the growth of unregulated small businesses.

Small business: *new questions for labour*



Electricity giant sponsors sub-contractors: bypassing the IC

The words "Small business – the key to our future" were written on the T-shirts of a number of people at a meeting I recently attended. They were sub-contractors, members of the local civic association who had contracted with Eskom to lay cables, instal meters and whatever else was necessary to provide electricity in the township.

Like any such contract, a time-frame and a rate is specified. But it says nothing about the terms on which labour is employed. That is a matter between the sub-contractors and the workers they employ. ("Eskom supports small business" was written on their backs).

Except in this case the sub-contractors

have an arrangement with the civic, to employ as many persons as possible. Not whom they will, but from a list of prospective workers the civic has provided. The rate is also 'negotiated' with the civic. It is nevertheless below the rates prescribed by the Industrial Council (IC).

That is the reason for the meeting. The sub-contractors are obliged by law to register with the IC. They are also obliged, unless they obtain an exemption, to pay the minimum wages the IC lays down. There are also certain other contributions which the council administers, as well as a levy which must be paid to the council itself. The

COSATU proposes tighter regulation

The NMC's approach can be contrasted with that of COSATU. In effect, COSATU proposes a special dispensation for micro-businesses, coupled with tighter regulation. COSATU makes the following proposals:

- ❑ Micro-businesses would have to qualify in terms of the definition and register (or be "certified") with the Department;

- ❑ The size of the Department's inspectorate should be increased, and its quality improved;
- ❑ There should be no blanket exemptions from the Wage Act, the Basic Conditions of Employment Act, IC agreements and the LRA, and a new system of applying for exemption should be formalised.

This new system would require an enterprise to publish a notice that it is applying for

sub-contractors want an exemption.

Possibly they could pay higher wages. But then, they say, they would have to do with fewer workers. Even then they could not afford IC wage rates, or levies. In future they would be able to pay the IC wage rates. But first they need to build up some capital. It is a familiar argument. Except some of those advancing it were once workers themselves, even union members and shopstewards.

As it is, the sub-contractors have to use more workers than they really need, to meet the requirements of the civic association. The civic regards the electrification of the township as its project. One of its objects is to provide employment for the community for whom the service is intended. The sub-contractors have accepted the civic's terms. It was after all the civic who recruited them in the first place. For them, it represents an opportunity to establish themselves. Already they are looking to a future beyond their Eskom contract.

It is uncertain whether the IC will enforce compliance with its agreement. It is also uncertain whether the sub-contractors would be put out of business if it did. What is clear, is that the IC has the power to do so. Aside from the wage rates and levies laid down, all "employers" in the industry are required to have a "wireman's certificate", or employ someone with one. None of the sub-contractors has this qualification. In an industry which has long been the preserve of predominantly white artisans, there cannot be many Africans who have.

What is also certain, is that if the IC were to enforce compliance, it would certainly

provoke a reaction. After all, it is not an agreement the sub-contractors or their workers have had any part of. What might the ICs justification be for doing so?

So far as the wireman's certificate is concerned, the justification would presumably be to maintain standards of proper workmanship, and safety. But is the IC the only or best body to fulfil this function? So far as the wage rates are concerned, its justification would presumably be to prevent unfair competition from employers who pay below the negotiated minimum. But how adequate a justification is this in these particular circumstances?

To address this question, we need to scrutinise the system of extending IC Agreements, in the context of the regulatory regime as a whole. Can the sub-contractors be regarded as independent small-business? Should they be compelled to comply with an IC Agreement which has been extended to them in terms of the Labour Relations Act (LRA)? Or is small-business justified in paying lower rates than ICs have laid down, in such circumstances? Does it matter that workers have accepted these wages, or that the "owners" of the small-business are black?

These questions do not just concern the specific IC. They are questions of public policy. How should the labour relations system deal with such questions? Should labour legislation be reformed, to create a special dispensation for small business, exempting small businesses? What, also, are the implications of these questions, for collective bargaining within and outside of Industrial Councils? ☆

exemption in the Government Gazette, to allow for objections. The application would then be considered by the IC, or in the absence of an IC, by a regional committee to be composed of employer and union representatives. There would further be a right of appeal to a national body similarly composed.

COSATU also proposes strengthening the system of extension of IC agreements to non-parties.

Is there any reason, in a changed political climate, why tighter regulation should not succeed?

Obstacles to tighter regulations

There are many obstacles to COSATU's proposals for tighter regulation. The indications are that tighter regulation on its own would not succeed. For one thing, for the system of extensions to work, informal small businesses would have to register. In Quebec Province in Canada, with a well-established trade union tradition and comparable system of extending wage agreements by decree, such decrees have proved ineffective in the clothing industry. There are an estimated 25 000 to 30 000 'homeworkers' in the Montreal district alone, of whom only 1 000 are registered.

Obviously more inspectors could be employed. One objection to this would be financial. But a more profound objection is political. For, unless coupled with a policy which discriminates between categories of small and micro-businesses, their activities are likely to be perceived as repressive by a significant and growing constituency like, for example, the electrical sub-contractors sponsored by Eskom. (see pp 64-5)

COSATU's strategy raises other problems. On what basis would ICs grant exemptions? The introduction of more formal procedures is not going to make this any less contentious. Instead it will focus more attention on the question of exemptions. Can ICs be entrusted with the task? There is truth in the accusation that will undoubtedly be levelled at them, that they represent vested interests.

Recently a strident new voice has joined the chorus complaining about ICs and

extensions — the Confederation of Employers of SA (COFESA). According to its Director, ICs "provide a power base for some employers to conspire with other employers and unions ... to wipe out unfair competition". It is likely that this sort of comment will be heard more often. It will also carry more impact, as small business becomes increasingly black.

Will IC exemptions allow small business to pay differential wages? (At present it seems exemptions are only granted on an all-or-nothing basis). Will they be able, practically, to wade through the evidence that would have to be assimilated, if exemptions are to be granted on a fair and meaningful basis? Do they want to?

There is a fundamental objection to ICs playing this role. The move towards a more flexible production regime must inevitably result in a more flexible collective bargaining regime. The system of legislating wages is an inflexible system par excellence. That is why alternative models for extending collective bargaining to small business have to be developed.

The SBDC, regulation and industrial districts

But first informal small business must register. To achieve this, incentives are needed.

As outlined above official policy, and the SBDC (which is funded with public money) in particular, have profoundly shaped the development of small business. This influence could be used to shape small business in new ways. For example, the idea has been mooted by Darcy du Toit that small businesses comply with certain conditions before receiving assistance from the SBDC or, for that matter, benefits such as tax relief, low interest rates and the like. A minimum code of conduct would include recognition of representative unions and "industrial council representation for the purposes of negotiating collective agreements applicable to the small business sector".

Can this thinking be taken a stage further, by transforming the existing SBDC-established hives for small business into

something more closely resembling industrial districts? What distinguishes the concept of an industrial district is that it is composed of similar businesses which have a co-operative relationship with one another, and share certain functions and facilities, for example marketing. Obviously, for the SBDC to begin to play this sort of role would mark a radical departure from its 'deregulation' mindset.

When one examines the industries located in the hives, the idea is not as far-fetched as it might seem. In the hives surveyed in the Western Cape, the small businesses comprise primarily two industries, namely clothing and furniture. This may be the case in other areas, where hives have (organically, as it were) evolved their own industrial identity. The object of such a development would be to provide a model of how small business could operate, and still provide decent wages and the like.

Collective bargaining: the limits of the industrial councils?

The object of registering small business is to enable workers to be represented, and collective bargaining to take place.

Instead of relying on bureaucratic means, Du Toit and Bosch argue in a paper with the sub-heading "A challenge to the unions", unions should establish new forums where collective bargaining can take place. This could be on an area basis, for areas such as hives where small business is aggregated (they suggest area industrial councils). Or it could be by way of separate industrial agreements for the small business sector.

But before there can be collective bargaining, workers must be organised. That is the challenge. It is a challenge unions everywhere have been conspicuously unsuccessful in taking up.

In South Africa the challenge is shortly to take concrete form. A law exempting many hives from labour laws, IC Agreements included, is shortly to be lifted. Will the unions that are party to ICs rely on extensions to cover small business there? Or will they go in and organise them?

The challenge is also that new strategies, even new forms of organisation may be called

for. It may seem like a reversion to earlier forms of organisation. Faced with similar problems to those facing the clothing industry in this country, an official of the ILGWU in North America advocates a community based strategy, centred around a community advice office. General unionism may after all have a place.

Both organisation and bargaining would be greatly facilitated, if hives could be restructured along the lines of industrial districts. But that would be a solution for only a portion of small business. The underlying issue is that whether on an area basis or otherwise, the creation of separate forums for bargaining with small business implies acceptance of differential wages.

For some, that strikes at the very heart of the IC system. For, even if it is possible to prevent big manufacturers from restructuring themselves as small manufacturers to take advantage of the lower wages, the authority of the system of extension would be seriously eroded. In some instances that would have no drastic consequences. But in others it would threaten the survival of the system. Would that be a bad thing? Perhaps the question is rather, can it be avoided?

I would suggest it cannot. The authority of the IC system is already being eroded, by the process of informalisation described above. It is far better to arrest this informalisation process to the greatest extent possible by bringing small businesses into forums where they can be realistically and effectively regulated. After all, the history of labour relations in this country shows that attempts to legislate against undercutting, unless underpinned by organisation, are likely to rebound against the union movement and the system which seeks to impose them. ☆

Sources:

- Du Toit, D, *The Small Business Sector: Deregulation or Collective Bargaining?*, UCT, 1993
- Du Toit, D & Bosch, D, *Workers in small business: a challenge to the unions*, UCT, 1992
- Koch, B R, *The Informal Sector: Small Clothing Manufacturers in Mitchell's Plain*, 1991
- Various interviews*