

# Review

*Collective Bargaining in South Africa: Past, present and future?*  
(Juta & Co Ltd, Claremont, 2000)

Shane Godfrey, Johann Maree, Darcy Du Toit and Jan Theron

*Reviewed by Gilton Klerck*

This book analyses the development of collective bargaining in South Africa from legal, sociological, economic and historical perspectives.

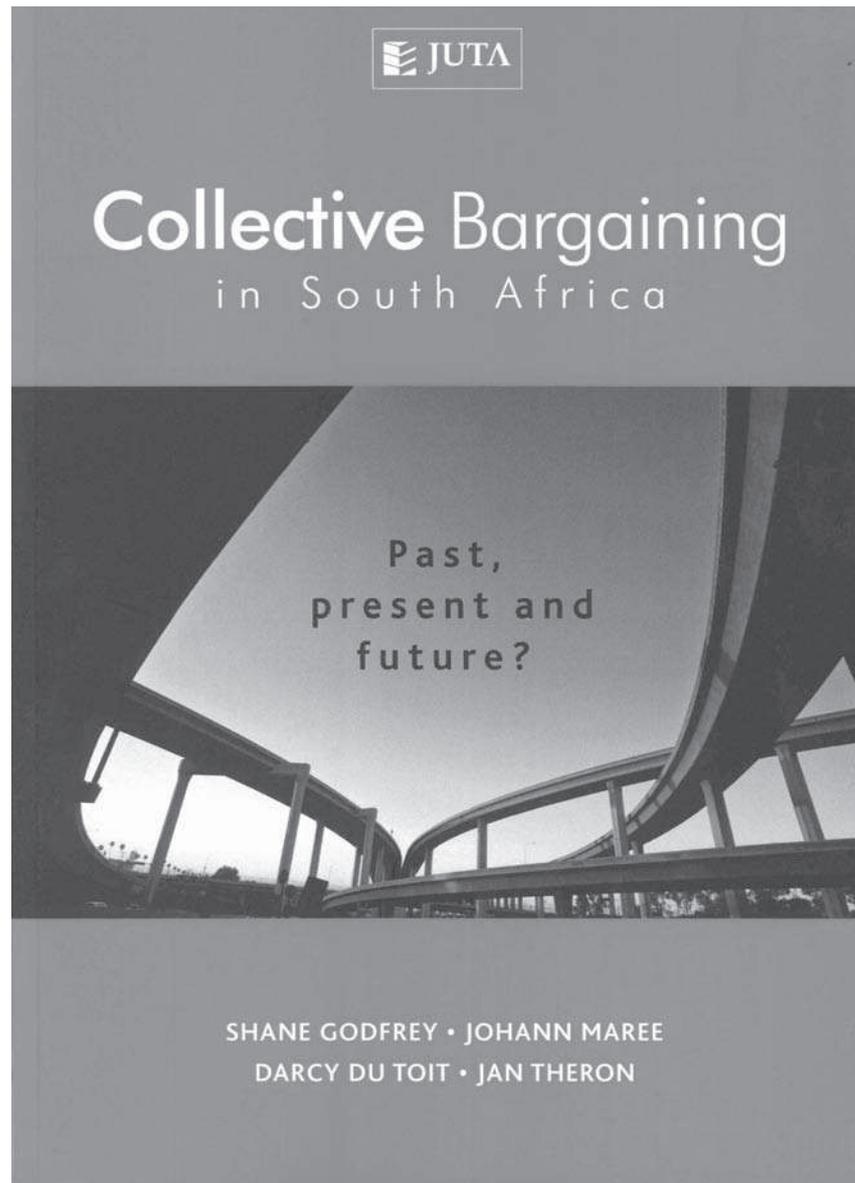
The findings of numerous research projects dating back to 1992, which form the empirical basis of this book, led Godfrey et al to conclude that 'collective bargaining in South Africa was not in a healthy state'.

The authors lament the lack of debate among local unions, organised business and policy-makers on the state of the collective bargaining system in South Africa. This is a cause for concern since collective bargaining is a primary function of trade unions, the core of our labour relations system, and a vital component in establishing a meaningful social partnership in our economy and society.

As a result, the authors set out to give the book a greater policy orientation and to raise the question of the future of the collective bargaining system in the hope that it will stimulate greater awareness and debate. The primary purpose of the book is to inform key stakeholders in the labour relations system by providing extensive empirical data as well as a rigorous analysis of this data to lay the basis for evidence-based policy formulation.

## BACKGROUND TO BARGAINING SYSTEM

The book commences by placing collective bargaining in perspective. This includes brief overviews of the history of



collective bargaining, the role of labour law, the search for flexibility, the impact of globalisation, and the development of collective bargaining in South Africa and its impact on

unemployment and macro-economic policy.

The authors define collective bargaining as 'an adversarial process, involving negotiations between parties with conflicting interests in

seeking mutually acceptable compromises’.

Although history shows that collective bargaining is extremely robust, it has perhaps never been as threatened as it is today. From the late-1980s, changes in international trade and investment, neo-liberal economic policies, developments in technology, new ways of organising work, declining trade union membership and collective bargaining coverage, rising unemployment, and ‘flexible’ employment strategies increasingly undermined the conditions under which unions and collective bargaining had previously flourished.

While our unique history has allowed the unions and bargaining councils to remain powerful, globalisation poses severe challenges to established ways of organising and bargaining. Many South African trade unions, according to Godfrey et al, have yet to come to terms with these challenges.

Chapter 2 provides an historical overview of South Africa’s system of collective bargaining from 1924 (when the Industrial Conciliation Act was passed) to 1994 (when the first democratic elections were held). The authors suggest that a historical outline of collective bargaining is vital to an understanding of the ways in which the system functions today, its ability to adapt to future challenges and some of its limitations.

This outline shows that the introduction of new labour laws closely followed the various upsurges in labour militancy. Following the strike waves in the early 1970s and the Soweto uprising of 1976, for instance, employers and the apartheid government realised that they could no longer sustain a labour relations system that prevented African workers from engaging in collective bargaining through independent trade unions.

In 1979, the government implemented the Wiehahn Commission’s recommendations by

recognising the right of African workers to form and join unions and to engage in collective bargaining. Industrial councils were the central bargaining institutions during this period and their development reflected many of the conflicts and contradictions in the wider apartheid society.

Despite being a key negotiating forum for over 70 years, industrial councils contained a number of shortcomings. These included a patchwork of local, regional and national councils and that sector-level bargaining was initially privileged to the exclusion of bargaining at other levels. Also the voluntary nature of participation in the system meant that employers could withdraw at any time and trade union democracy was undermined by over bureaucratic procedures. In this time the wage gap between skilled and unskilled workers was not significantly reduced while income redistribution and transformation of the apartheid workplace was not achieved. A sustainable balance between flexibility and the needs of small firms was also never managed. And finally industrial councils did not stem the tide of rising unemployment or reduce the impact of casualisation, deregulation and trade liberalisation from the 1980s onwards.

In Chapter 3, the authors consider the processes that led to the formulation of the Draft Labour Relations Bill as well as the key provisions on collective bargaining in the Labour Relations Act (LRA) of 1995.

The core problem the LRA faced was how to balance the conflicting demands of voluntarism in essence allowing the parties the flexibility to develop their own bargaining arrangements and compulsion to get parties to follow statutory guidelines.

By stripping the unfair labour practice definition of its collective dimensions and by not imposing a

duty to bargain, the new LRA has tied bargaining rights to the collective strength of workers. However, while the LRA contains no express duty to bargain, its provisions clearly seek to promote it.

To establish some measure of parity in the power balance between the parties, trade unions are granted a number of rights, including organisational rights and a right to strike, in order to persuade employers to bargain with them.

The LRA introduced a number of changes to the institutional landscape, and some of its most wide-ranging reforms relate to collective bargaining. This included the introduction of bargaining and statutory councils while dispute resolution is carried out under the auspices of the Commission for Conciliation, Mediation and Arbitration while the new Labour Court and Labour Appeal Court were established to adjudicate industrial disputes. A Public Service Coordinating Bargaining Council was also set up for the first time. The Act makes provision for agency and closed shop agreements and introduces provisions to ensure more effective representation of small and medium enterprises.

## BARGAINING COUNCIL SYSTEM

Chapter 4 provides an in-depth analysis of the workings of the bargaining and statutory council system.

The first part of the chapter focuses on form by providing an overview of the infrastructure of the bargaining council system, which includes its coverage, the representivity of parties to councils and levels of compliance. It also deals with the enforcement capacity and exemption systems that support the legitimacy of councils as regulators of their sectors.

The second part focuses on content, but only in terms of the additional functions of councils. These are dispute resolution, training, industrial policy formulation

and various 'developmental' services.

This chapter also contains very useful data on bargaining council coverage by industry, applications for exemption from council agreements, bargaining council representivity, the average size of party and non-party firms, the representation of small firms, inspections and enforcement of agreements.

Important findings include that bargaining councils cover less than a third of all employees and that fewer than 5% of these employees are covered by extended agreements. Bargaining councils essentially cover small firms and their enforcement capacity is generally poor. Finally, there is a trend towards large national councils and the demise of smaller councils.

Chapter 5 outlines the impact of bargaining councils on wages, benefits and unemployment.

While bargaining councils carry out a range of functions, their primary purpose is to negotiate wages, conditions of employment and social benefit funds such as pension and sick benefit funds. These have important implications for the functioning of labour markets and the impact of economic policies.

In terms of wages, it was found that low-skilled African workers whose wages were covered by bargaining councils earned considerably more than similar workers outside the bargaining councils. However, a third of bargaining councils surveyed in 2004 had minimum wages for the lowest-paid job category that were below a minimum living level of R1 946 per month.

With regard to the impact of centralised bargaining on employment, the results are mixed. Some economists claim that the extension of bargaining council agreements to non-parties has a significant effect on employment and therefore makes unemployment worse. Other economists claim that this effect is very small.

Godfrey et al suggest that it is unfortunate that economists only focus on the negative impact of higher wages on unemployment and ignore the many positive benefits for low-earning workers.

### BARGAINING OUTSIDE SYSTEM

In Chapter 6, the discussion turns to collective bargaining outside of the bargaining council system. Since there is no mechanism to compel the establishment of bargaining councils, it is unlikely that centralised bargaining will be established in all sectors where there is trade union organisation or a need for collective bargaining. This means that mechanisms to support bargaining outside of bargaining councils have become increasingly important.

There are various forms of bargaining outside the official system.

First, there is plant-level bargaining between a union and an employer in a single workplace. A form of centralised bargaining also takes place at company (all workplaces of a particular employer) and corporate (all companies that belong to the same group) levels. The authors explore the different ways in which bargaining takes place in cleaning and security services, the retail sector, the mining industry and automobile manufacturing.

What emerges from this analysis is the lack of a coherent system of bargaining in South Africa.

### FUTURE OF COLLECTIVE BARGAINING

The final chapter considers the future of collective bargaining by outlining a number of options and a brief discussion of new directions in which collective bargaining could go.

The authors advocate an integrated, multi-level bargaining system, but recognise a number of obstacles to establishing such a system. These include firstly the

spread of unorganised and vulnerable casual workers and the growth of an informal economy with workers that are difficult to represent through existing organisational structures. Another obstacle is the failure of all parties to use Nedlac (National Economic Development and Labour Council) to its full potential. And finally the lack of strong links between centralised and workplace bargaining is a problem.

The authors do not provide convenient solutions, but offer key insights to stimulate and inform a debate between employers, unions and the government on strengthening and broadening collective bargaining institutions. *Collective Bargaining in South Africa* is a timely and an extremely useful addition to the literature on labour relations in our country. It combines a wealth of empirical information, penetrating analysis and compelling policy considerations.

Godfrey et al have done a sterling job in highlighting the sources of change as well as the sites of continuity in our system of collective bargaining.

However, much work still needs to be done to fill in the gaps in our understanding of the nature and impact of collective bargaining in South Africa. Important aspects of the employment relationship are not determined through formal or structured channels, but are rather shaped through informal workgroup relations and unofficial custom and practice. Crucially, informal and loosely structured relationships in the workplace tend to qualify, supplement and even subvert the decisions taken within organised or formal bargaining institutions. LB

*Gilton Klerck is an associate professor in Industrial and Economic Sociology at Rhodes University in Grahamstown.*