

# Workplace forums:

## co-determination and workers' struggle

OUPA LEHULERE\*  
argues that employers  
stand to gain the most



from the  
workplace  
forums as  
they stand  
in the draft  
Bill. He  
suggests

changes which will  
advance worker rights.

The publication of the draft Labour Relations Bill is certainly one of the most important events since the 1994 general election.

Workplace forums are a key aspect of the Bill. Two principles underlie the concept of the forums. The first is that South Africa

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must strive to be internationally competitive in order for the economy to grow. The second is that the attempt to be competitive demands co-operation between labour and capital.

### International competitiveness

The present fierce global competition is a product of the ongoing world economic crisis over the past 25 years. Falling profits have forced capitalists to compete for markets. The main methods they use to be competitive are: paying lower wages or moving industries to low-wage areas; trying to break the power of trade unions; getting workers to work longer hours like in Japan, eroding democracy in the workplace; speeding up the pace of work and introducing labour-saving devices. Minister of Labour, Tito Mboweni, is correct when he observes that "the world tends to see globalisation as you downsize [ie you retrench], you reduce democratisation of the workplace, ...you increasingly disallow unionisation .." (*SA Labour Bulletin*, Vol 19 no 1)

The implication of global competitiveness is therefore not consensus between labour and capital, but an intensification of the struggle between them

### Co-determination

Moving from the idea that the basis of competitiveness is co-operation between labour

and capital, some political currents in the labour movement propose what they call co-determination. According to this concept, labour and capital should jointly solve the problems of production. In countries where co-determination has been applied, workers have been forced to defend their gains through major struggles. The capitalists have used co-determination to convince workers to "tighten their belts" and accept lower wages. At a recent Social Summit in Denmark, capitalists from Germany and Sweden — countries where co-determination is in place — called for lower wages, social service cuts and an end to minimum labour standards. Only major strikes by German workers, and not co-operation with the bosses, have secured gains like the 35-hour week.

The adoption of a system of co-determination, or "joint management" of the capitalist firms, has had negative consequences for workers:

- Workers' solidarity is undermined. Workers are forced to compete with each other and in some cases accept lower wages and bad working conditions as part of the attempt to be competitive.
- Instead of struggling for jobs to be shared so as to tackle unemployment, workers who accept competitiveness tend to work very long hours, which undermines the struggle for jobs.
- Co-determination disarms workers because workers give up their right to strike on issues covered by co-determination agreements.
- Co-determination undermines the struggle for socialism because, instead of preparing workers for the struggle against capitalism, it promotes the idea that the capitalists and the workers have common interests. It therefore leads to the co-optation of the working class.

The alternative to co-determination is workers' control. Unlike co-determination, workers do not attempt to jointly manage the problems of capitalism. In this way, workers' control forms part of the struggle for socialism.

\*\* "Workplace forums can they tame management?", SA Labour Bulletin, Vol 19 no 1, p32

## The form and content of workplace forums

### *The aims and purpose of the forums*

The Bill states that the general functions of the forum are to represent the interests of workers, to consult with the employer, to provide for worker participation and to enhance efficiency in the workplace. A striking feature of the way these general functions are formulated is that the issues closest to the employers, in particular efficiency, are built into the general functions quite explicitly. On the other hand, issues that concern workers, such as questions of social, gender and racial equity in the workplace, are not mentioned, even in the most general manner.

In the past, the bosses played a crucial role in entrenching social inequality, not only in the workplace but in society as a whole. An important goal of transformation is to ensure that business enterprises do not act in a manner that perpetuates this inequality. The Bill should direct companies towards achieving social goals. As institutions of workers' control, the forums would be the best placed institutions to drive this process.

As Karl von Holdt points out, by failing to specify which issues the forums will deal with, there is a danger that employers' resistance will render the forums useless\*\*.

### *The structure of the forums*

One of the main union objections against workplace forums is that, as presently structured, they will undermine unions. Although only unions can initiate the formation of forums, non-unionised workers can put up candidates for election to the forums. Given bosses' general hostility to unions, this will open a back door for hidden forms of "company unionism", with management encouraging the formation of non-union associations for the purposes of forum elections.

The unions also argue that the forums will act as a block to the further unionisation of the South African working class because, with forms of representation that are independent of unions, there will be no incentive to join unions.



*COSATU shopsteward council. a system is needed which is based on the traditional institutions of the working class*

**Other problems are:**

- ❑ The Commission for Conciliation, Mediation and Arbitration has the power to determine the structure of representation in the forum. According to the Bill, if the Commission "is of the view that a different composition is necessary to give effect to the occupational structure in the workplace" (57(8)(c)), the Commission can determine the composition of the forum. By giving the Commission powers to structure the forum and include workers who are not union members, certain groups, such as white collar workers, will be reinforced in their conservative tendencies. The Commission should not have the right to determine a forum's structure
- ❑ Secondly, as Von Holdt points out, unions are not afforded any role or rights in the forums. What is needed is a system that bases itself on the traditional institutions of the working class, and at the same time allows for a dynamic relationship with non-unionised workers. In terms of such a

system, all workers will participate in elections for the forum, but only registered unions can put up candidates. Non-unionised workers will have to choose amongst the various union candidates. Unions should also be allowed to put up candidates who are not union members. **There are a number of advantages to such a system:**

- ❑ It will act as an incentive for unions to devise strategies to organise white collar workers; unions can put up some members of this strata of workers as part of winning them over.
- ❑ It will introduce vibrancy and a democratic culture within the working class on the shopfloor.
- ❑ It will raise the level of debate within the working class since the different unions will be forced to develop positions on key questions facing workers.
- ❑ It will facilitate recruitment of other workers and organised workers will be seen as representatives of all workers

A system with no elections for the forums will be unable to take advantage of the opportunities offered by a shopfloor electoral process involving election speeches, posters and union leaders coming to address all the workers and not just their members. Such a process would open up vast possibilities for deepening a vibrant democratic culture within the working class, and in building unions' prestige.

The Bill should also be changed to give union officials structured access to the forums. As is clear, this will be a multi-union system. An approach based on "majoritarianism" is politically short-sighted because it will irrevocably damage the cause of trade union unity, one of COSATU's priorities.

Lastly, unions should be able to close the forums just as they are the key to setting them up.

### Workplace forums and central bargaining

One of the most important weaknesses of the Bill is its approach to the relationship between workplace forums and centralised bargaining. The absence of any link between the workplace forums and the Bargaining Councils is motivated on the basis that "production" issues can only be dealt with at the level of the individual shopfloor. In any industry, the technology and methods of workplace organisation are similar. This equalisation of technology and work organisation is itself a product of capitalist competition. Capitalists are forced to imitate the most competitive factories.

This separation between forums and Bargaining Councils will encourage the trend toward decentralised bargaining. This is especially the case because, although the Bill gives the bosses the option of refusing to bargain centrally — ie there is no duty to bargain — it in fact grants a duty to negotiate and co-determine in the context of the forums. The bosses have no option to refuse to set up a workplace forum. A structured link between the forums and the Councils is essential.

*There are a number of ways in which this link should be structured:*

- One of the tasks of the forums must be to ensure that bosses adhere to national agreements.
- Bargaining Councils should negotiate "framework agreements" to which the forums should be bound — this will mean that the Councils have some "concurrent powers" with the forums, and that they can set "minimum standards" on all the issues.
- Councils should be able to specify certain matters as the exclusive jurisdiction of the Council, for example negotiating wages. In such a system, there is no institutional separation between so-called production and distribution issues. But there would be no "dual bargaining" over the same issue as the Council would be able to prevent that by declaring exclusive jurisdiction, and/or by setting minimum standards. Forums should have no rights to negotiate opting out of national agreements, as is hinted in the Bill (footnote 9 to S63).

### The scope of the forums

There are two key issues here. Firstly, the forums can only be established in enterprises that have 100 or more workers. This provision will exclude the majority of workers from being able to establish forums. It is important that the law should open up space for workers in traditionally weak sectors. Any enterprise with ten workers should be able to establish a forum. This provision will be a powerful lever in resolving the problems of organising in some of the most difficult sectors.

The second problem area is that forums will only be established at plant level. Where different plants belong to the same company and produce the same product — for example different plants of Metal Box — the Bill's argument that each plant is unique is clearly incorrect. As Von Holdt suggests, there should be provision for "central forums", which will bring together forums from different plants. This must happen not only in the retail sector, as COSATU argues,



Photo: Cedric Nunn

*Changes to the forums could facilitate recruitment of all strata of workers*

but in all industries. The establishment of "central forums" will prevent the bosses from using one plant against another — getting them to compete. It will also build workers' solidarity.

**Co-determination, consultation and strikes**

In terms of the Bill, on certain issues workers will have joint decision-making powers with the bosses. On these issues workers will lose their right to strike and any dispute will be settled by compulsory arbitration. On other issues, however, workers will only have the right to be consulted. The bosses also have to negotiate with workers on the issues spelt out as consultation issues. The Bill says the employer shall consult the workplace forum "with the view to reaching consensus" (S65(1)). On consultation issues, however, workers retain their right to strike.

*The major problem with co-determination or joint decision-making is that:*

- ☐ workers are made co-responsible for managing the capitalist crisis,
- ☐ unions become identified with management, especially when workers see unions taking part in a decision to retrench,
- ☐ this identification of unions with management will be confirmed in the eyes of workers when unions are seen to commit themselves in advance to not striking over the "joint decision-making" issues;
- ☐ in cases of deadlock, the decision will be in the hands of an arbitrator. On what basis will the arbitrator decide the case? The "spirit of the law", which the arbitrator will use in the final analysis, places efficiency and competitiveness as the key reasons why the forums have been established. The "viability and profitability" of the firm will therefore be the key basis on

which the arbitrator will decide. The whole political approach of the Bill to "competitiveness" means that "joint decision-making" will tie workers' hands and force them into a situation where they identify more with the interests of the company, and solidarity with other workers will be broken.

The labour movement needs to ask itself: given that under the system of "joint decision-making" workers lose the right to strike, what advantage, practically, does this system hold for workers? What will be achieved by "joint decision-making" that will not be achieved by the provision of "consultation"? The fact of the matter is that workers do not really have a veto, as is sometimes claimed by supporters of "joint-decision making". The workers can delay a decision and hand the issue over to an arbitrator. If we take the "consultation" provision, workers can also delay the implementation because, as the Bill says: "the employer shall not implement a proposal...until [he/she] has consulted the workplace forum...with the view to reaching agreement" (S65(1)).

The unions should therefore reject the "joint decision-making" provisions, and maintain the "consultation" provisions of the Bill. The big advantage is that not only will this provide an opportunity for workers to prepare for struggle, but they can also propose mediation and/or arbitration if they do not feel strong enough. If the unions ensure that the anti-union provision on strikes in the Bill, which allows bosses to dismiss workers on a legal strike for so-called economic reasons, is removed, then workers have a strong chance of defending themselves against the attacks of bosses on the shopfloor.

The co-determination provisions of the Bill are not only politically a problem for a labour movement committed to socialism, but practically they offer no significant advantages to the unions. In fact, in many countries the co-determination arrangements are collapsing and workers in those countries are increasingly calling for the right to strike on issues covered by co-determination to be restored.

## The right to information and access to resources

The important issue raised by the provisions on the right to information is that:

- Workers in the forums cannot share this information with their union; unions should also have access to this information.
- There is no clear provision that workers have the right to information on holding companies. Capitalists use a lot of tricks to shift profits among their different companies. They can arrange their books in such a way that one company is shown to be making a loss and another to be making a profit. In order to counter this fraud, workers must have the right to information on holding companies.
- The forum must be able to report its findings from the company books to the workers in the enterprise. Failure to do this will mean that forums are in secret meetings with management, and this will compromise their independence and accountability to the workers.

The Act also needs to include a provision stating that employers pay for the hire of experts to assist workers in interpreting financial and other information.

## The accountability of the workplace forums

Besides the way the Bill deals with the question of access to information, another area in which it undermines the forums' accountability is in the way it approaches report backs. While the Bill says the forum shall meet the bosses on a monthly basis (S62), it only requires the forums to report back on a quarterly basis (S69(1)). The time lag between meetings of the forum with the bosses and its meeting with the workers will create accountability problems. The forum should have the right to report back to workers after every meeting with the bosses. ☆