

**THE ROLE OF THE
TRADE UNION IN POST DEMOCRATIC
SOUTH AFRICA**

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Summary

In South Africa, labour has played a central role in shaping the transition to democracy. It remained an open question as to whether labour could sustain its involvement during the period of consolidation after the first democratic elections. As was evident in other emerging democracies, economic liberalization often led to stagnation and high costs being imposed on workers, while weakening the state.

South African trade unions thus faced formidable problems as they had to respond to rapid economic and industrial change. While being stubborn, South African trade unions remain adaptable enough to survive and grow into the 21st Century.

In this dissertation, the writer examines the relevance of trade unions in contemporary South Africa and how they are coming to terms with the deregulated labour market, and the question of globalisation. We look at the emergence of new forms of collective bargaining, the growth of trade unions as partners in a changing workplace and the different ways trade unions are modernising themselves to attract new members.

Labour when used as a collective force is capable of shaping democratization through the strategic use of power. Labour has the potential, through participation in negotiated compromises, to ensure that the costs of adjustments are not borne by workers alone. To this end, the South African trade union movement has developed innovative strategies and institutions.

Chapter 1

Introduction

After the unbanning of the African National Congress and other opposition parties in February 1990, organized labour began to re-evaluate its militant strategies and began to explore a new relationship towards what was expected to become South Africa's first democratic government.¹

This period saw the birth of the Tripartite Alliance between COSATU, the South African Communist Party and the ANC, making organized labour an important component of the new government's decision making. Endowed with new found authority, labour began to demand a more influential role in formulating economic policy at the enterprise, industrial and national levels. Labour feared that political transition, even under a democratically elected government, would not by itself achieve labour's goals of economic and social transformation.²

These fears were real as labour soon learnt that with democratization came globalization, and with globalization came job losses, privatisation, cutbacks in social spending, and downward pressure on wages. The ANC, as the senior partner in the Alliance, did not endear itself to labour with its adoption of a macro-economic policy, a policy that is still the cause of much

¹ Gallie *Trade Unionism in Recession* 1996 8.

² Adler *Trade Unions and Democratization in South Africa, 1985 – 1997* 2000 3.

friction between the Alliance partners. This is not to say that COSATU, as the largest representative of organized labour, cannot survive without its alliance partners, for it remains financially independent, and retains a capacity to mobilize through a leadership that is accountable to its members rather than to a political party. More food for thought is the fact that the labour movement in South Africa is considerably stronger than its counterparts in the developing world, with union density rates considerably higher than in other cases of transition where labour has played an important role.³

The Constitution and Bill of rights accord trade unions a base of security never previously experienced, but the labour movement faced some serious post-democratic problems, which included:

1. The loss of key strategic leadership to government;
2. Membership plateaus remaining stagnant;
3. Its political identity which focused on the opposition to apartheid was now less clear;
4. The wage gains of the early 1990's were less sustainable in the face of economic change;
5. Unity across ideological and racial lines remained and still remains elusive;⁴

³ *Ibid.*

⁴ Gallie 34.

Labour market factors have been relatively less important in South Africa while it has affected union decline in a number of advanced industrial countries. The growth of the trade unions has increased throughout the 1990's despite a continuing high rate of unemployment.⁵ Changing patterns of employment have, however, been more significant in affecting union growth. Political factors have clearly contributed to trade union growth, as the social context that South Africa finds itself in has varied over time, and has assumed a different meaning for different workers who at the end of the day, must choose to join a trade union. For white skilled and semi-skilled workers, the economic benefits of unionization historically have been inextricably linked to the maintenance of a racial division in labour. For black workers on the other hand, an economic benefit of union membership has been linked to the unions providing a voice for their rights.⁶

The political character of many South African trade unions is primarily related to their strategy of pursuing broad working – class interests, linked to the close alliance between certain unions and political groupings. While these features may attract workers to trade unions, they do not automatically do so as the connections between union growth and political activity are often more complicated than assumed and is beset by a range of other factors. While South Africa is clearly in the process of becoming a highly unionized society, the structure of the trade union movement still carries with it a significant imprint of

⁵ Baskin *Against the Current : Labour and Economic Policy in South Africa* 1996 11.

⁶ Gallie 62.

the past.⁷ The first and most striking aspect of union structure is the large number of trade unions and trade union federations that exist. Unlike many other countries, where the number of unions has decreased through mergers and transfers, the number of unions in South Africa remains relatively unchanged.⁸

Notwithstanding the rationalization of labour legislation during the 1990's, the labour movement was affected by socio-economic and political problems. These problems overflowed into the labour relations area, resulting in stayaways, consumer boycotts and a sharp rise in the number of strikes. Employers realised that they could no longer exercise their management prerogatives aggressively, and that it was no longer possible to make decisions affecting workers in an autocratic manner. The captains of industry were forced to negotiate and consult with the trade unions.⁹ Trade unions continue to yield political and economic power in present day South Africa, and this paper will attempt to examine their role in this post-democratic era.

⁷ Southall *Imperialism or Solidarity? : International Labour and South African Trade Unions* 1995 54.

⁸ Gallie 65.

⁹ Adler 33.

Chapter 2

Overview of the Trade Union Movement in South Africa

2 1 Trade Union membership, representation and organisation in the workplace

2 2 Tripartism and the political influence of the trade union movement

2 3 The trade union dissected: it's internal machinery

2 4 Trade Unions and the HIV / AIDS Epidemic

2 5 The trade union as an Educator

Chapter 2

Overview of the Trade Union Movement in South Africa

2 1 Trade Union membership, representation and organisation in the workplace

Trade unions have grown rapidly over the last decade in South Africa, and it is estimated that trade union density has increased from 15 per cent to 58 percent.¹ Although the number of union federations are below ten, COSATU has more members than all the federations combined. However, the labour movement remains divided by race, skill, and ideological differences, and it also remains decentralized to a large degree, where peak level bargaining structures are restricted to the manufacturing sectors.² In the public service and agricultural sector, we find that organisational rights have been granted not so long ago and rapid gains in membership has been nullified by high levels of union competition, and further compounded by racial and ideological differences. COSATU, has also felt the strain of these realities, and has lost a significant number of its senior leaders to government, political office, and the corporate sector.³

¹ www.statisticssa.org/unions/2003=% (19 November 2003).

² Van Meelis “*The Reconstruction and Development Programme : A View from the Tripartite Alliance*” 1999 SALB 1 14.

³ Gallie *Trade Unionism in Recession* 1996 14.

Organizationally, unions are being confronted by new challenges arising from realignments within the labour movement, ongoing capacity problems and changing membership patterns. However, overall membership in the last two years has remained largely unchanged, while total employment in South Africa has declined slightly. Around 43 per cent of union members currently belong to a COSATU affiliate, with the balance made up of members affiliated to others unaffiliated unions. In most sectors, the dominant union is a COSATU affiliate, and COSATU unions only have serious rivals in the public service, agriculture, construction, furniture, printing and chemicals industry.⁴

Union density in South Africa is high by international standards, with over 40 percent of all employees claiming membership to a union. This figure rises to over 50 percent if agricultural and domestic workers are excluded from the equation. These figures represent the highest unionisation rates of any developing country, and occur despite very substantial levels of unemployment.⁵ Union density in agriculture and domestic services are extremely low, and construction is not much higher. On the other hand, membership in the clothing, textile and auto industries peak at 90 percent, and is aided in some instances by closed – shop arrangements. The mining, manufacturing, and transport industries have union densities of 50 percent and upwards.⁶

⁴ Baskin *Against the Current: Labour and Economic Policy in South Africa* 1996 25.

⁵ Taylor *The Future of the Trade Unions* 1994 32.

⁶ Baskin 26.

While membership is growing in the public service, it is declining in manufacturing. In contrast, there has been a rapid process of unionization in the public service with many staff associations having transformed themselves into unions and attracting new members.⁷ The recognition of public service unions in the middle 1990's, coupled with the insecurity felt by public servants after the 1994 elections, contributed to this growth. In the mining sector, unionization has risen both absolutely and as a percentage of the workforce, this despite a decline in the total mining workforce. In the service sector, as well as in transport and communications, unionization levels have remained relatively stable.⁸

There is a growing trend for white-collar employees and professionals to unionise, despite collective bargaining previously having favoured blue-collar workers. A case in point is that of SASBO (South African Society of Bank Officials) who in the late 90's affiliated to COSATU. SASBO, as a previously conservative staff association have now bore the fruits of collective bargaining as is evident at wage increase negotiations. SASBO's subsequent affiliation to COSATU signified a new direction for white-collar employees, although other former "conservative" unions have been hesitant to follow suite. However, it is interesting to note that union densities for white males are not substantially lower than those of black workers. To their advantage white unions have been legally

⁷ Southall *Imperialism or Solidarity? : International Labour and South African Trade Unions* 1995 55.

⁸ Baskin 28.

recognised since 1924, and were encouraged by the previous regime. In the last 5 years, there has been a resurgence of white workers joining unions, with some having become members of pre-dominantly black unions, seen as more effective than the traditionally white unions. In contrast, black workers are more likely to unionise than white workers, given the historical nature of apartheid as they most often found themselves in lower-paying and less-skilled jobs.⁹

The majority of unions are relatively small and remain unaffiliated to any of the main federations. These unions are widely spread across the different sectors of the economy and represent workers from various employment sectors. Despite the trend towards a reduction in the number of unions due to the changing needs of union organisation, many unions seem to have been around for a long time. For many unions, the nature of union organisation may not have changed much, but this does not apply to the larger unions who are affiliated to the major federations.¹⁰ Although this may be financially viable, it does not necessarily allow for effective union organisation. Many of the unions affiliated to COSATU have grown rapidly in numbers, but at the same time, they have experienced an increased strain on their organisational resources.¹¹ Although there are a large number of unions, the majority of unionized workers are concentrated within

⁹ www.cosatu.org/stat/fig/00&9/hp (12 October 2003).

¹⁰ Gallie 23.

¹¹ Adler *Trade Unions and Democratization in South Africa, 1985 – 1997* 2000 66.

relatively few unions, with COSATU accounting for more than half of all unionized workers.¹²

2 2 Tripartism and the political influence of the trade union movement

Although the ANC's dismissive attitude towards its alliance partners on certain occasions have led to reports of a split in the alliance, however fragile, the alliance still continues. A great concern of the SACP and COSATU is the government's lack of consultation.¹³ The balance of power clearly lies in favour of the ANC who has all but assumed absolute political power with its power sharing coup in the Western Cape and KwaZulu – Natal. The ANC has managed throughout the late 1990's to strategically interpose itself as broker between the international financial and commercial community on the one hand, and domestic political rivals on the other. This strategy has all but kicked the wind out of the Pan African Congress and the New National Party, the latter having being briefly resuscitated back to life by its new master, the ANC, in the Western Cape.¹⁴ And just as the ANC had profited politically at the expense of the 'old' National party, it would now profit at the expense of its tripartite allies after the removal of exchange controls and the passing of other measures to liberalise the economy. Shortly after the abolition of the Financial Rand, the government in reaction to the

¹² *Ibid.*

¹³ *Ibid.*

¹⁴ Baleni "Can it survive? *The Alliance in a new era*" 2001 *SALB* 6 78.

sudden deterioration of the value of the Rand published the *Growth, Employment and Redistribution* policy (commonly referred to as G.E.A.R) and this was seen as a clear challenge to its alliance partners. COSATU responded with its own macro-economic policies which were and still today opposes the government's economic policies.¹⁵

The governments' *neoliberal* reforms, despite the alliance partner's opposition, are largely outside their control, and COSATU's frustration is shared by the SACP. The SACP in particular has failed to carve out a separate identity for itself outside of the alliance, and its non-participation in NEDLAC has further diminished its influence on matters of any significance. The programs, which the SACP had long sought to implement, namely the nationalisation of banks, mines and factories, have effectively been abandoned.¹⁶ COSATU could have justifiably been expected to participate in macro-economic policy post 1994, as it had consolidated internal resistance to apartheid. However, the ANC owes a large degree of its coming into power to the support of overseas capital, and since coming into power, has been under capital's influence. The ANC has steadily entrenched itself as the only viable government, and is now less vulnerable to internal challenges. The SACP which continues to reject the values of capitalism has all but been marginalised and alienated, and has lost much of its traditional influence over the ANC.¹⁷

¹⁵ Adler 152.

¹⁶ Cronin "The South African Communist Party: Preparing for a New Era?" 1993 *SALB* 3 22.

¹⁷ Adler 155.

By and large trade union members are more than often members of a political party, with the most natural choice being the ANC, owing to the alliance. The government uses COSATU to mobilise the masses as a show of strength to foreign investors, who are in constant search of conflict free industrial areas. COSATU and the SACP have indirectly reconciled themselves to a reduced role within the tripartite alliance. It is argued that for COSATU or the SACP to go into formal opposition by abandoning the tripartite alliance altogether, would be a disastrous course, as the range of forces which they would have to confront, both at home and overseas, will ultimately spell condemnation to the political wilderness, this despite COSATU's financial independence.¹⁸

COSATU optimists will unequivocally disagree, as it's membership numbers put those membership figures of opposition parties to shame. Politics as they say make strange bedfellows, and a split in the alliance could possibly yield the most unthinkable alliances. The trade union movement clearly has political weight through sheer numbers alone, and it's interests would be far better served in an alliance with the ruling party, which for the unforeseeable future, bar a catastrophic event, would be the ANC. The question now facing the ANC is: How can it recommit itself to the working class? If the ANC can answer this question successfully, the survival of the tripartite alliance will be ensured.¹⁹

¹⁸ *Ibid.*

¹⁹ Crankshaw *Race, Class and the Changing Division of Labour Under Apartheid* 1997 32.

2 3 **The trade union dissected: it's internal machinery**

The Labour Relations Act defines a 'trade union' as –
'an association of employees whose principal purpose is to regulate relations between employees and employers, including any employer's organisations'.

An 'Employer's organisation' means –

*'any number of employers associated together for the purpose, whether by itself or with other purposes, of regulating relations between employers and employees or trade unions'*²⁰

The first requirement is that a trade union must be an 'association' of employees.

This means that there must be some form of organization and involvement of members. Secondly, the definition of 'trade union' states that its principal purpose must be to regulate relations between employees and employers. A trade union's constitution may also not provide for charging disbursements incurred while litigation. Such a provision has been found contrary to the notion of a trade union as an organization not for gain.²¹

It has been held that a committee of retrenched employees which seeks to regulate relations between them and their ex-employer does not meet the definition of a trade union. A trade union's constitution may also not provide for

²⁰ S 213.

²¹ *NEWU v Mtshali* (2000) 3 BLLR 337 (LC) 113.

membership of applicants for employment, since they do not fall within the definition of 'employee'.²²

Although the racial restrictions on trade union membership had been abolished by the early 1980s, the emerging labour movement remained suspicious of the previous Labour Relations Act. Many trade unionists believed that registration was a means by which the apartheid state sought to control them. However, important benefits were reserved for registered unions and employers' organizations while certain controls, such as the prohibition of political activities, were extended to unregistered unions as well. Against this background, most of the previously unregistered unions eventually chose to register. A union that was already registered in respect of a particular sector or area could object to the registration of a rival union and the Registrar, once satisfied that the complainant was 'sufficiently representative', could refuse to register the applicant union. On the other hand, this gave the Registrar an unacceptably wide discretion over unions' ability to register.²³

The new LRA set out to remedy these problems. The LRA creates a relatively simple process for the registration of trade unions and employers' organizations. As under the previous Act, it is not compulsory to register but very persuasive reasons, in the form of legal and organizational benefits, are offered for doing so. In respect of the fundamental aspects of the right of freedom of association,

²² *Midland Chamber of Industries Staff Committee v Midland Chamber of Industries* (1995) 5 BLLR 74 (IC) 77.

²³ Du Toit *Labour Relations Law : A Comprehensive Guide* 2003 201.

however, no distinction is drawn between registered and unregistered trade unions or employers' organizations. The right of an employee to be assisted by a trade union representative during a disciplinary enquiry, or an enquiry regarding poor work performance or incapacity does not appear to be confined to representatives of registered unions.²⁴

In a few situations, unregistered unions and employers' organizations actually find themselves less restricted than their registered counterparts. For example

- An unregistered union or employers' organization is not bound to make provision in its constitution for a ballot of its affected members prior to calling a strike or lock-out, nor is it restrained from taking disciplinary action against members who refused to take part in industrial action if there was no majority vote in favour of such action.²⁵
- If a registered organization acts on behalf of its members in a dispute, service of any document in connection to the dispute upon it is deemed to be sufficient, thus placing an onus on such union or employers' organization to inform its members.²⁶

On a balance, however, the advantages attached to registration, particularly in the crucial areas of organizational rights, collective bargaining and industrial

²⁴ *SANAWU v Maluti Crushers* (1997) 7 BLLR 955 (CCMA) 959.

²⁵ S 95(5)(q).

²⁶ In *Mzeku v Volkswagen SA (Pty) Ltd* (2001) 8 BLLR 857 (LAC) this provision was interpreted very widely.

action, are overwhelming. It would seem that the debate about pros and cons of registration has been settled once and for all.²⁷

In line with the Labour Relations Act's commitment to freedom of association, very few limitations on the right to register have been retained. Thus, the previous requirement that a union or employers' organization should be 'sufficiently representative' of an industry has been omitted. The aim of registration is '*to promote the observance of democratic principles in the internal operation and governance of unions and to ensure proper financial control over funds in line with public policy*'.²⁸ The formal policies of the Labour Relations Act are designed with this purpose in mind.

A trade union or employers' organization may apply for registration, provided-

- It has adopted a name or abbreviation which is not so close to the name of another organization that is likely to cause confusion;
- It has adopted a constitution that complies with section 95 (5) and (6);
- It has an address in South Africa; and
- In the case of a trade union, it is 'independent', meaning that it must be free of any direct or indirect control, interference or influence by an employer or employers' organization.²⁹

²⁷ Du Toit 185.

²⁸ Explanatory Memorandum to the Draft Bill 146.

²⁹ S 95(1) - (4).

Application must be made on the prescribed form and accompanied by a copy of the applicant's constitution and 'any other information' that may assist the Registrar to determine whether the requirements for registration have been met.³⁰ The Registrar may also require additional information but enjoys no unfettered discretion.³¹

After registration the Registrar must issue a certificate of registration, which constituted 'sufficient proof' that the trade union or employers' organization is a body corporate.³²

Federations of trade unions or employers' organizations are not required to register but must furnish their constitutions and certain information regarding their members and office-bearers to the Registrar.³³

'Federation' is not defined except by the qualification that any such organization must have 'the promotion of the interests' of employees or employers respectively 'as a primary object'. It may be assumed that it will include any organization of more than one trade union or employers' organization, whether or not it describing itself as a 'federation', provided it has the required objective either implicitly or explicitly.³⁴

³⁰ S 96(1).

³¹ S 96(2).

³² S 96(7).

³³ S 107(1).

³⁴ S 107(2).

A registered trade union or employers' organization may resolve to amalgamate with another such organization, whether or not the latter is registered. The amalgamated union or employers' organization may then apply for registration in the usual way. Once registered, all assets, rights and obligations of the constituent organizations, including those arising from collective agreements and council membership, devolve on the amalgamated union or employers' organization.³⁵ An amalgamated union or employers' organization may have the power to discipline a member for conduct prior to amalgamation in certain circumstances. This will undoubtedly be the case where the member has belonged to one of the amalgamated organizations and where such conduct was contrary to the constitution or rules of both the amalgamating or amalgamated organizations.³⁶

The Labour Court may order that a registered union or employers' organization be wound up if –

- The organization has resolved to wind up its affairs and applied for such order; or
- The Registrar or a member of the organization has applied for such order and the court is satisfied that the organization is unable to continue to function 'for some reason that cannot be remedied'.³⁷

³⁵ Unless the constitution of the amalgamated organisation provides to the contrary.

³⁶ S 103(1).

³⁷ S 106(1).

A registered trade union or employers' organization must be deregistered if it has been wound up in terms of section 103 or, in case of a trade union, if the Labour Court has declared that it is no longer independent. The rights enjoyed by a trade union or employers' organization as a result of registration are extinguished by deregistration.³⁸

A registered trade union is a legal person with powers and duties determined by its constitution. It can act only through its duly appointed representatives, and actions performed by such representatives in accordance with the union's constitution will generally be binding on the union. In this respect trade unions are no different from other corporate entities.³⁹

Under the previous Labour Relations Act, organizational rights were conspicuous by their absence. After April 1994, the courts were bound to uphold the basic rights entrenched in the interim Constitution. Certain of these rights, such as the right to assemble, were essential to trade unions' organizational activity. Had the jurisprudence of the Industrial Court been left to develop it is likely that the organizational rights of trade unions would have been interpreted more extensively in accordance with the Constitution. However, the case-by-case determination of organization rights would have remained an unsatisfactory solution, creating little certainty as to the rights and duties of union and

³⁸ S 95(5).

³⁹ Du Toit 199.

employers. The new Labour Relations Act cut across this development, codifying parts of the existing law and also breaking new ground.⁴⁰

To qualify for any of these rights unions must, with limited exceptions, be (i) registered and (ii) 'sufficiently representative'. There are three different routes by which unions may acquire some or all organizational rights:

- (a) by collective agreement;⁴¹
- (b) by virtue of membership of a bargaining council or statutory council;⁴²
- (c) by following the procedure laid down in the LRA.⁴³

All organizational rights can be acquired either by a single registered union or by two or more such unions acting together. A union which has achieved organizational rights by agreement with the employer or by way of arbitration, however, cannot subsequently 'act together' with another union in exercising such rights unless the employer consents or the second union obtains the rights by agreement or arbitration.⁴⁴

The meaning of 'workplace' (that is, the area where the organizational rights will apply) may be determined by agreement, failing which it can be referred to conciliation and arbitration by the CCMA together with any other disputes

⁴⁰ S 20.

⁴¹ S 23.

⁴² S 11 – 16.

⁴³ S 12

⁴⁴ S 21(6) – (7).

regarding the exercise of organizational rights. In this event the statutory definition must be applied. The greatest difficulty in defining a 'workplace' arise in the context of a business which operated at different sites or has functionally different divisions. In *OCGAWU v Volkswagen of South Africa (Pty) Ltd* it was held that, given the qualifying phrase 'unless the context indicates otherwise', a bargaining unit may be considered a 'workplace' for purposes of organizational rights.⁴⁵ Different thresholds may be required for different organizational rights. In other words, the criteria for establishing representivity may be more or less onerous depending on the nature of the right in question. There are a number of indications to this effect:

- for certain rights, such as disclosure of information, a majority of employees employed by the employer at the workplace must be members of the union concerned while for other rights, such as the right to access, the union need only be 'sufficiently representative';⁴⁶
- when seeking to establish representivity, the union must specify which rights it wishes to exercise;⁴⁷
- when deciding whether a union is representative, the arbitrator must consider the nature of the organizational rights that the union seeks to exercise;⁴⁸

⁴⁵ (2002) 1 BLLR 60 (CCMA) 65.

⁴⁶ S 12.

⁴⁷ S 21(2).

⁴⁸ S 21(8)(b).

- when the union ceases to be 'representative' the arbitrator may withdraw 'any of the organizational rights'. All these rights, therefore, do not fall away automatically.⁴⁹

An employer must grant a 'sufficiently representative' registered trade union rights of access, stop-order facilities and leave for trade union activities if notified by the union that it wishes to exercise these rights. 'Sufficiently representative' is not defined, thus allowing the parties or, if they fail to agree, the arbitrator some flexibility in giving content to the term.⁵⁰

In deciding whether a union is sufficiently representative the arbitrator must follow two guidelines. The first is to seek to minimize the proliferation of unions in a workplace, encourage a system of a representative union in the workplace and minimize the financial and administrative burden on the employer, which would arise if organizational rights were granted to more than one union. These considerations may tend to steer the arbitrator towards higher thresholds.

Secondly, the arbitrator must consider:

- the nature of the workplace;
- the nature of the organizational rights the union seeks to exercise;
- the nature of the sector; and

⁴⁹ S 21(8)(c)

⁵⁰ S 15.

- the organizational history of the workplace or any other workplace of the employer.⁵¹

Trade union representatives (also known as 'shop stewards') may acquire statutory rights in workplaces –

- where the union, or two or more unions acting jointly, have majority membership; and
- where such union(s) have ten or more members.

The number of trade union representatives that may be elected ranges from one to 20, depending on the size of the workplace. Trade union representatives have the right to –

- receive from their employer free copies of collective agreements, arbitration awards or determinations made in terms of the BCEA;
- assist and represent employees, if so required, in grievance and disciplinary proceedings;
- monitor the employer's compliance with any law or collective agreement relating to terms and conditions of employment in the workplace;
- report any alleged contravention of such law, collective agreement or other regulatory measure to the employer, union or responsible agency;

⁵¹ S 21(8).

- perform any other function agreed between the union and the employer;
- take reasonable time off, with pay, to perform these duties and undergo relevant training, subject to reasonable conditions.⁵²

The nomination, election, term of office and removal of trade union representatives are governed by the constitution of the union. Any additional number of union representatives may be elected at a workplace. Such representatives, however, will not enjoy the rights set out above unless the employer conceded them. To be enforceable in terms of the Labour Relations Act, an agreement to this effect would need to be in the form of a collective agreement.

Statutory trade union representatives cannot be elected in workplaces with fewer than ten members of the union(s) concerned. This is aimed at accommodating concerns about over-regulation expressed by advocates of small business interests. However, it also places an additional hurdle in the way of employee organization in small workplaces. Employees are entitled to elect non-statutory representatives but the latter will only enjoy such organizational rights as are agreed by the employer.⁵³

⁵² S 14.

⁵³ Du Toit 212.

An employee who is an office-bearer of a union is sufficiently representative, or of a trade union federation to which the union is affiliated, is entitled to take reasonable time off from work to perform official functions. Such leave need not be paid. The employer and the union may agree on the number of days' leave, including any days of paid leave, and related conditions. If a dispute concerning such leave is resolved through arbitration, the life of the award is limited to 12 months.⁵⁴

In workplaces where the union or unions concerned have majority membership the employer is under a duty to disclose to the union all relevant information that will:

- allow its representatives to effectively perform their functions in terms of section (14) 4; and
- enable the trade union to engage effectively in consultation and collective bargaining.

Once a union has acquired this right, the onus is on the employer to disclose the required information irrespective of any request from the union. The duty only becomes operative, however, when the employer and the union are engaged in consultation or bargaining. Mere agreement to consult or bargain at some future date, if it is submitted, is not enough to activate it.⁵⁵

⁵⁴ S 15.

⁵⁵ S 16.

An employer needs not disclose information that is not 'relevant'. Even if it is relevant, information need not be disclosed if –

- 1) it is legally privileged;
- 2) it cannot be disclosed without contravening a prohibition imposed by a law or court order;
- 3) it is confidential and, if disclosed, may cause substantial harm to an employee or to the employer; or
- 4) it is private personal information relating to an employee, unless the employee consents to its disclosure.⁵⁶

2 4 Trade unions and the HIV / AIDS Epidemic

Government research indicates that one in every five workers in South Africa will be HIV positive by 2005. The average life span of a South African will be 40 years because the epidemic is mainly found in the ages 15 to 49. The cost in human and economic terms will be enormous.⁵⁷ Certain industries will be hit harder by HIV / AIDS than others. The most glaring example in this regard is the trucking industry where it is estimated that over 56% of truck drivers are infected with HIV. The severity of HIV / AIDS causes many problems, in that productivity levels decrease as absenteeism increases, companies have to train new

⁵⁶ S 16(5).

⁵⁷ Vlok "The route of the problem: Part 1" 2001 SALB 1 55.

employees, and the rate of medical aid and provident fund schemes increases, to name but a few.

The unions obviously have a lot to do, but the responsibility to ensure that the epidemic is under control is not only the duty of the trade unions. It simply cannot be when companies are losing employees to this dreaded disease on a weekly basis. HIV / AIDS will not only affect companies internally, by killing breadwinners and increasing the costs of medical aids and provident funds, but disposable income will decrease dramatically. Up until now, most HIV / AIDS programmes have focused on awareness, condom usage and sexually transmitted diseases, and this is not adequate, as both the trade unions and management must tackle the epidemic strategically. The stigma which society attaches to HIV / AIDS is one of the reasons why it is difficult to fight it, but it is difficult to expect society to be open about the epidemic when one of the most progressive forces in the country has problems with openness and acceptance.⁵⁸ COSATU can be commended for agreeing to ensure openness about HIV/AIDS in the federation at a workshop held on HIV / AIDS during 1998, but confesses at the same time that 'comrades are ducking and diving but we cannot force them'.⁵⁹ Trade unions have been criticised in the past because of their lack of education on the rights of those with HIV / AIDS. Many employees do not

⁵⁸ The Sunday Times "Mbeki Stumbles" 13 May 2002 Johannesburg.

⁵⁹ Vlok 2001 SALB 56.

understand how legislation protects them from discrimination on the basis of their HIV status.⁶⁰

Labour has thrown its weight behind the HIV / AIDS campaign in principle, yet it experiences difficulty in translating that support into action due to what it sees as management's intransigence and indifference. Companies on the other hand is sailing with its good plans to counter the epidemic and is clearly taking an enormous amount of the credit for the success of the HIV / AIDS programmes to date. While acknowledging the importance of trade union support on paper, in practice most companies tend to work around labour rather than in partnership with it.⁶¹

Encouraging a culture of openness and acceptance about HIV/AIDS in an environment where silence and denial is encouraged is one of the biggest challenges in managing the epidemic in any environment. The reams of policy documents and the millions of Rands invested in aggressive workplace campaigns will guarantee nothing if there is not a consistent and co-ordinated response by all stakeholders.⁶² Attempts to work together on an HIV / AIDS program are made more difficult when the industrial relations climate between the company and union is fraught with tension, such as when the union consistently embarks on strike action or stayaways.⁶³

⁶⁰ Crankshaw 121.

⁶¹ Meeson "Practising in parallel not the best practice" 2000 SALB 2 49.

⁶² Macun "Trade unions in crisis? Findings from the worker representative survey" 1998 SAJLR 1 22.

⁶³ Meeson 2000 SALB 50.

The Trade Union task team on HIV / AIDS was created at the beginning of 1999 through support from the American Center for International Labor Solidarity. The “big three” federations, namely COSATU, FEDUSA and NACTU have been involved from the outset. The aim of the Task Team was to give support to the labour movement on HIV / AIDS issues and to assist unions to implement their programmes on HIV / AIDS. The Department of Health had also later joined the Task Team as a participant. The task team trains shop stewards and organisers who must then educate not only workers, but also the broad community. The federations mentioned above have joined forces with the Treatment Action Campaign whose objective it is to ‘ensure access to affordable and quality treatment for people with HIV / AIDS, to prevent and eliminate new HIV infections and to improve the affordability and quality of healthcare access’. By being involved in the Task Team and the TAC, unions and federations have made a contribution to the broader working class struggle and their members ultimately benefit, whether they need medication or whether they are educated on HIV / AIDS. Nevertheless, the federations and unions also benefit from it, as they learn to work with other stakeholders and in turn learn from them.⁶⁴

An example of stakeholders working together is that of a groundbreaking HIV / AIDS awareness program set up by NUMSA and FORD in terms of which they set out to inform, educate and assist workers, as well as their families and

⁶⁴ www.cosatu.org.za/aids/worker%education(15 August 2003).

the communities in which they live. FORD and NUMSA had even gone as far as hosting an HIV / AIDS seminar for the entire South African automobile manufacturing industry. Part of their strategy is peer education programmes, which involves constant feedback, information gathering, recommendations and education. In this way, everyone is involved from top management to the floor sweeper. The company and the union also make every effort to take the message to families and the community. As a result, FORD and NUMSA's lead has been followed by all the motor manufacturers, and this serves as an example to other industries as to how stakeholders must work together.⁶⁵

The mining industry has gone one better by establishing special HIV / AIDS clinics on most of the mines. So to, has the trucking industry. Through the interaction of the unions, the federations, the multinationals, the government and non-governmental institutions, the battle against the epidemic of HIV / AIDS has certainly produced positive results, but the war is far from over as the scourge which beset the nation continues to claim lives, especially those caught in the mire of unemployment and poverty.⁶⁶ Food for thought is the fact that South Africa is home to less than 5% of the world's population but account for 50% of HIV infections worldwide.

⁶⁵ www.numsa.org.za/education&//strategy(22 July 2003).

⁶⁶ www.tac.org.za/unions%03&%//hp(15 September 2003).

2 5 The trade union as an Educator

Trade union education in South Africa has made a major contribution to the growth and development of the South African trade union movement. The most important providers of trade union education have been the unions and federations themselves, supported by labour service organizations, worker colleges and in the past four years by 'Ditsela' (a tripartite alliance education initiative aimed at workers).

Trade union education encompasses 'formal' training programmes and workshops, as well as the range of informal, on-the-job and other forms of experimental learning that takes place in a union environment. Trade union education's primary aim is to build a strong trade union movement. It has a tradition of collective, participatory and active learning, embedded in union values and principles. It has focused on ensuring that unionists in their various roles are effective in delivering on their purpose and mandate.

In the changing political and economic climate nationally and internationally, trade union education cannot escape the pressure facing the union movement as a whole. Although the greater part of the movement generally maintains a socialist vision, the political discourse in the environment had shifted radically. The language, ideology and practices of the 'market' have entered trade unions in both overt and subtle ways. Change in the global and national economic

terrain mean that unionists are struggling to adapt to a situation of greater complexity. They have ever-increasing needs for more in-depth knowledge and skills, as well as creative strategies and approaches that can balance national imperatives with immediate worker interests. With changes of such magnitude, it is not surprising that union culture and unionists themselves are changing. This includes a changing understanding of the purpose and functioning of unions, and changing attitudes and practices. It includes the more rapid turnover of union staff, linked to the opening up of career opportunities and a generally more individual orientation.

These broad changes affecting, and being affected by, the trade union movement, present challenges for trade union education. These challenges include what type, level and form of provision there should be, and how it would be sustained. It includes deciding who the providers are and what contents should be covered. Learners' and their unions' attitudes and expectations towards education would also have to be dealt with. They begin to question the purpose and value of union education, including the principles, values and collective ethos on which it has traditionally been based.⁶⁷

Trade union education that encourages critical, creative thinking and questioning helps build people's capacity to deal with these challenges.

⁶⁷ Bonner "*Trade union education*" 2000 SALB 6 67.

The legacy of apartheid education has left several generations of black workers with little or no access to education and training, or qualifications of any marketable value. Workers are now turning to their own organizations to address these needs? The legitimate concern for redress through qualifications, together with rising career and salary expectations, and the promise contained in the new skills and education legislation, pose enormous challenges for trade union education. Unionists are requesting that the trade union courses be formally accredited. This has raised a number of concerns and debates within the movement. Some of the concerns are political and ideological. Others are practical and resource-based. For example, concern has been expressed that formalizing and accrediting trade union education will undermine its very purpose, which is to build strong unions, as well as change its collective and transformative agenda. Individual trade unionists will use scarce resources to build their own careers (often out of the movement), and the democratic process will be undermined. Union and management will begin to demand only formally qualified officials and shop stewards, and those whose formal education is limited will exclude themselves from training for fear of failure. Practically, it has become clear that developing qualifications, the necessary systems for assessment and record keeping, as well as suitably qualified unionist educators to do the work within and close to the unions, requires massive initial and ongoing resources.

The alternative seems to be to hand over trade union education to outside providers, whose motives, commitment and ideological orientation may be very

different from that of the trade union movement. There are, however, compelling arguments to take a decision to move cautiously towards accrediting some of its courses. This will include working with the Education, Training and Development Practitioners (SETA) covering trade union staff. It will include developing more formal certification processes with its current university partners as well as increasing the pace of development work on a homegrown trade unionist qualifications framework (NQF). This decision recognizes that such a move may contribute to the securing of sustainable funding, providing for career development in the unions and thus motivating and retaining staff, as well as forcing improvement in the quality of union education. A recent study carried out by the British Trade Union Council (TUC) on its accredited shop stewards' training programmes, showed that fears of negative outcomes were unfounded.⁶⁸

With the changing union context, comes a need for a new content, new skills and new approaches to union education. These ranged from applying new laws effectively, to negotiating on economic policy, industrial restructuring and workplace change. They included issues as diverse as counseling workers on HIV / AIDS, and advising workers in financial problems and the setting up of small businesses. This need for new knowledge, skills, approaches, and strategies is to be found at all levels in the unions. There is a perceived need for more in-depth and specialist training programmes for specific roles and functions – for example, legal specialization, specialization in health and safety or

⁶⁸ Taylor *The Future of the Trade Unions* 1994 152.

retirement funds, and for union leadership to acquire skills to manage unions effectively. Training in the use of technology and in communication skills is high on the agenda. Women leadership development and gender awareness programmes have become important. At the same time, there is a recognition that political education must be stepped up to counter the negative and pervasive effects of neo-liberalism, globalisation and technicism.⁶⁹

Linked to the challenges around content, are challenges around methodology and broad approach. For example, in the area of economics, there is an ongoing debate around the most appropriate teaching and learning methodologies.

Should we use an approach that is primarily experiential, or do we focus on giving new knowledge directly. Or is it something in between?

How far should we be using new technology in our education programmes?

Is it appropriate to focus resources on developing and using technology, including developing distance education by computer – as is increasingly happening in the north? Or should we focus on simple, understandable and basic methodologies, which grassroots educators can easily apply?

On a broader level, there is a question as to whether trade union education, with its focus on courses and workshops, is capable of effectively achieving its challenging objectives. Trade union education depends to a large extent on the capacity of union to take advantage of available funding to run programmes

⁶⁹ Thomas *Globalization and Third World Trade Unions: The Challenge of Rapid Economic Change* 1995 15.

offered. Often the better resourced and organized unions are the ones who do so, and the unions who most need assistance do not. It has been noted on numerous occasions that education and training courses alone are not enough. The concept of collective learning for organization building implies that the individual learner must apply skills and knowledge acquired on return to the union. However, learners often report that they are not able to do so due to the lack of support or opportunity. Interestingly, despite this many are able to make their contribution in a number of ways that perhaps we had not thought of.⁷⁰

Globalisation and the increasing power of multi-national companies, international financial institutions and financial speculation require a global response from labour. In South Africa, solidarity with African countries is recognized by the federations as vital. Trade union education has an important role to play in the process of building solidarity. One way is the sharing of ideas on methodology, another is by building links and common programmes through new technology.

Whilst some of the challenges seem daunting in an environment of shrinking financial and people resources, trade union education continues to be a vital and integral part of trade union life. It is an exciting and rewarding field in which to work. Both COSATU and FEDUSA have recently reaffirmed its importance in strengthening the movement.⁷¹

⁷⁰ www.naledi.org.za/education&peer//hp2(12 May 2003).

⁷¹ Bonner 2000 *SALB* 72.

Chapter 3

3 1 Analysis of the Trade Union movement at VOLKSWAGEN SOUTH AFRICA (PTY) LTD

3 1 1 Volkswagen before the mass dismissal furore

For a long time before the strikes of January 2000 internal union politics at Volkswagen were unstable. In the 1980's workers were militant as they fought to improve their working conditions, and the Volkswagen factory was regarded as an important ward, so as to speak in local political battles. Prior to the dawn of democracy, the union had managed to contain internal differences, but things would dramatically change in time to come. With our new government, came new labour laws protecting workers like never before, and Volkswagen began recruiting young workers who embraced the ideals of the new South Africa. Then there were older workers who remembered the hard battles of the 1980's and who could not forget the cruel system of apartheid. The ensuing conflict was partly due to these two groups struggling to find a way of dealing with management in the post economic realities of international competition and globalization, phrase words which were foreign to both union members and management who previously did battle on the political front. As time passed, a group of older workers began to feel alienated from the younger shop stewards

who rejected the “old school” policy of viewing all management initiatives with suspicion.¹

Matters came to a head, when the union and management reached an agreement to secure a lucrative Golf A4 Export contract, which Volkswagen Germany had now allocated to its local subsidiary. As with all agreements, it was subjected to several rounds of negotiations, and fortunately for the union, it had quickly realised the disastrous effects of the factory not being awarded the contract. Unfortunately, the older workers did not see it that way as they felt the union was selling out on all the hard won struggles they had fought in the 1980's. A core of these workers started holding meetings where they began to voice their unhappiness about shop stewards, and gradually began to attract other sympathetic workers around them. To add fuel to the fire, the Old Mutual demutualization process had taken place, and workers believed that they were entitled to a cash payout, this despite the union's attempt to convince them otherwise. The disgruntled group, which now accused the union of sleeping in the same bed with management, included 13 NUMSA shop stewards. In an effort to quell the anti-NUMSA sentiment which was growing louder by the day, the union attempted to appease the 13 shop stewards who had voiced concern with the unions' new strategy. However, they were unco-operative and were duly suspended.

¹ Forrest “*What happened at VW?*” 2000 *SALB* 1 15

NUMSA then made an about turn, and lifted the suspension on the 13 shop stewards with certain conditions. The current NUMSA shop stewards then resigned amidst the threatening atmosphere in the plant as they felt that there was no unity within NUMSA.

The rebel shop stewards then held their own shop steward elections and NUMSA's regional powers then suspended these undemocratically elected shop stewards. On the 20th January 2000 a strike that cost 1300 jobs ensued. This internal union problem had now threatened to destroy the Eastern Cape economy, as Volkswagen Germany was contemplating disinvestment. NUMSA moved quickly to counter criticism from all facets of industry and government but more importantly to save a lucrative export deal which had barely commenced. A subsequent far-reaching collective agreement was concluded between NUMSA and management in order to prevent a repeat of the above saga.²

3 1 2 Volkswagen in the post mass dismissal era

The effect of the strike on the stability of NUMSA within the plant was profound. The shop steward council was in shambles, as union members were disorientated with what they perceived as the shop steward council bowing down to management pressure. To make matters even more complicated for NUMSA, the robust and hostile trade union, OCGAWU had begun to establish a presence within the plant by taking up the fight of the dismissed workers. Many workers

who were sympathetic towards their dismissed colleagues joined OCGAWU in large numbers. The unthinkable was beginning to unfold, as NUMSA and its very existence was under threat. Membership dropped from 89% to 60%. OCGAWU tried by all means to obtain recognition within the plant, but was vehemently opposed by VW management and NUMSA. The effect of OCGAWU gaining recognition, was all too ominous, and management and NUMSA concluded a threshold agreement to shut out OCGAWU.

With the lucrative A4 Golf export contract saved, NUMSA could now concentrate on unifying its divided membership and stabilizing its internal organization. Management agreed to assist NUMSA by appointing a full time education officer and established a 'shop-steward' career path programme, to put the shop stewards on an equal footing with management as was done in Germany. The first batch of 'graduates' are currently at the end of their study cycle, and NUMSA are quite rightly gloating. Management and senior union representatives have successfully undergone several organizational building exercises, facilitated by local academics, and have achieved a sense of mutual co-operation and understanding. This was practically unthinkable in the pre-strike era where NUMSA and management were continually engaged in fierce struggles, on the political front.

Back to the present, NUMSA has achieved internal stability and is preparing to start wage negotiations in March 2004. It has shifted its focus to the imminent

² www.numsa.org.za/volkswagen&%collective/(9 October 2003).

challenges facing the workers, with a particular emphasis on HIV/AIDS peer education programmes. A fully comprehensive plan, it includes voluntary testing for workers, counselling, stage plays, talks and various community awareness projects. A recent anonymous survey has indicated that 6% of the workforce is HIV positive, an indication that the programme is reaping rewards, as the comparable infection rate in the greater Uitenhage community is much higher. Post matric education is also on the increase as workers take advantage of studying incentives offered by management. The education levels of the workforce do not lag far behind other plants in the Volkswagen Group, especially in similar developing markets such as Mexico and Brazil.

The role of the trade union within the Volkswagen Group worldwide is one of influence and power. The Group Global Works Council, which is a representative body of all majority unions found within the Volkswagen Group, holds 49% shareholding rights on the Volkswagen Board in Germany.

The future of the company clearly does not rest solely on the shoulders of management, as the Works Council have to make important recommendations and strategic decisions to ensure the survival and expansion of the Volkswagen Group in this era of globalisation. NUMSA finds itself in a position where it is now part of the Group Global Works Council, and by virtue of this, cannot oppose the globalisation drive being undertaken by the Volkswagen Group. This is a clear act of defiance against the COSATU strategy of being anti-globalisation. As the

stakes are high, NUMSA clearly knows its position within the Volkswagen Group, and any shift in its current policy will be disastrous. NUMSA would rather defy official COSATU policy, in order to ensure stability not only within the Volkswagen factory, but the motor industry as a whole.³

3 2 Analysis of the non-unionized environment of the South African Breweries' state-of-the-art production facility in Port Elizabeth

The Ibhayi Brewery was officially opened in October 2000 with much fanfare as it was hailed as the most technologically advanced brewery in the Southern Hemisphere. The South African Breweries had invested billions into the planning and construction of the new plant, and the financial spin-off's to the local building industry was enormous. The 'old' Brewery in Main Street had fallen into a state of disrepair, and high maintenance costs meant that the plant was simply unprofitable. A new production plant was simply a must.

Due to technological advances in the art of brewing, advanced operation systems had made certain skilled positions redundant. The majority union, FAWU (Food and Allied Workers Union) was caught in a situation which it could not escape. That is, retrenchments were an obvious reality and workers felt betrayed by the union blindly accepting management proposals regarding the 'new' brewery. Many workers failed to realize that if the union had opposed the

³ Information obtained from an interview with Anthony Honeyball, Labour Relations Manager at Volkswagen South Africa, on the 23 January 2004.

construction of the new brewery, the entire workforce faced retrenchment, and SAB would simply have relocated its operations to the former Transkei, where cheap labour was and still is in abundance.

During June 1999, a National Substantive Agreement was concluded between SAB and FAWU, and a commitment made to construct a new brewery in Porsvance, Port Elizabeth. The National Substantive Agreement, which is applicable on a national basis at all SAB operations, regulates inter alia employee allowances, leave days, disciplinary procedure and key performance areas etc. However, the NSA concluded with FAWU during June 1999, was different in that a ground breaking agreement was reached between management and the union that the Ibhayi Brewery, upon completion, would be devoid of any union presence. This meant that workers at Ibhayi Brewery could become members of FAWU, but that no FAWU shop stewards or organizers were allowed to operate within the plant on a permanent basis. FAWU maintained a presence in the form of a recognition and threshold agreement concluded with SAB in the late 1990's. For all other purposes, the union was excluded although workers were allowed union representation during disciplinary hearings.

By allowing such a draconian change, FAWU in return negotiated highly lucrative retrenchment packages for the soon to be retrenched workers, and co-opted SAB into assisting workers with additional finance to start small business'

directly linked to the outsourcing of SAB contracts. As a result, nearly a ¼ of the retrenched workers are now directly employed by their former employer through the various outsourcing contracts, while those who opted for retrenchment packages were financially well looked after. It was quite a bold move by FAWU, but the price paid has been to exclude itself from the new plant. At present, the total workforce of the Ibhayi Brewery is 132, whereas the 'old' brewery employed 300 workers, the majority of whom were weekly paid. All workers at the new brewery are monthly paid, and about 55% of the workforce are members of FAWU.

However, a quick survey conducted indicates that most workers are not aware that a FAWU representative is entitled to represent them at disciplinary hearing, or at any grievance phase. Management's response is that disciplinary hearings are at a minimum, and that disputes are reported during weekly one-on-one sessions between workers and management. Management then takes up the dispute within the management structures and reports back to the aggrieved worker within a day. Management claims that 99,9% of disputes are settled in this manner. Thus, their argument is that there is no need to have a union representative, as a simple dispute could become a complicated and dragged out affair upon union intervention. This point must be granted to management, but the general perception amongst workers is that management conveniently bypasses the workers or albeit their union, when it comes to important decisions, such as retrenchment.

A case in point is the recent announcement by Management that due to the restructuring of its Regional Offices, the administration department of SAB Eastern Cape, situated in Ibhayi, will be taken over by SAB Western Cape in Newlands, Cape Town. All affected workers have been given three month's retrenchment notice in order for them to apply for alternative positions within the company. Management concedes that about ¼ of the soon to be retrenched workers can be accommodated at other plants, leaving the remainder unemployed. Most of the administration department employees, are in actual fact not members of FAWU, leaving them without any protection. The fact that these workers are white and middle-aged, makes re-employment difficult. The only recourse available to these workers is to declare a dispute at the CCMA, though financial resources for legal representation could be problem.

According to Human Resources, the number of disciplinary hearings against workers have been reduced by nearly 500% as compared to the 'old' plant, and the number of dismissals a tenth of what it was before. Although management paints a rosy picture, the random survey also indicates that at least 30% of the workers who commenced employment at the new brewery have resigned. The majority of these workers were union members. At least 40% of all workers interviewed have indicated that they are presently looking at other work opportunities. This is obviously not a healthy situation, and upon questioning management, their response was that workers are always looking out for better

opportunities, but at the end of the day, SAB has one of the largest numbers of long service recipients every year.

Credit can however be given to Management for its career development programme, which is not regulated by the National Substantive Agreement, but is an initiative implemented by management to educate the workforce. Every worker and their immediate superior have a one-on-one career development discussion every 6 months, where a workers' needs are identified and decisions are made by the two parties on how it can be improved. As a result, over 40% of workers are currently pursuing industry related studies at local tertiary institutions in Port Elizabeth.

With regard to the question of HIV/AIDS, the Ibhayi Brewery has a comprehensive HIV/AIDS awareness and prevention program run by an Equity Committee, which is comprised entirely of workers. A substantial amount of funding is provided by management. SAB also plays a pro-active role in the community and sponsors various AIDS clinics and projects to the tune of millions of rands per year. This management points out, is once again a management prerogative and is not part of the National Substantive Agreement.

It was envisaged that the non-unionised model of the Ibhayi Brewery would serve as an example to other breweries within the SAB group, but none has since followed suit. According to the FAWU office in Port Elizabeth, it seldom receives

a request by an SAB employee, who is a union member, for a FAWU representative to be present at a disciplinary hearing. FAWU concedes that the number of dismissals and disciplinary hearings at the Ibhayi Brewery is one of the lowest in the Eastern Cape. FAWU states that each and every union member is given a newsletter via e-mail and normal post in order to keep members updated on labour developments and union activities.

Both management and FAWU concede that the non-unionised Ibhayi Brewery, is a misnomer, as the union is for all purposes involved in the affairs of their members through the National Substantive Agreement, despite the physical absence of a shop steward at the plant. The union quickly points out that any of its members will not simply be retrenched by Management, as has happened with the Ibhayi administration staff, and that it is a lesson to those workers who refuse to join a union, based on a misconceived perception that unions are troublemakers. There is also consensus between management and FAWU, that the non-unionised concept owes its coming into existence to the small number of workers employed at Ibhayi Brewery, and that a similar proposal in the motor industry per se, would not work for obvious reasons. FAWU has committed itself to renewing the National Substantive Agreement and does not intend proposing any substantial changes in the near future. Management on the other hand are quite happy to maintain the status quo at Ibhayi Brewery.¹

¹ All information obtained through a series of visitations to the Ibhayi Brewery and the Food and the Food and Allied Workers Union office in Port Elizabeth.

Chapter 4

Conclusion

Trade unions, like any other organisation, are not immune to environmental changes and influences. These changes include a new political arena, the opening of international markets and the changed expectation of members. These changes are important for the sake of survival but there are other factors such as the globalization of markets that demand discipline and responsible behavior from trade unions. Globalization demands efficiency in the workplace, and inefficiency causes business to look at cost saving methods, which inevitably leads to a decrease in work numbers. Trade union demands for higher wages should, therefore, keep this basic economic principle of the demands of open competition in mind. Competition is relentless, and management cannot afford financial planning mistakes. Role players, including trade unions, will have to adapt to these changes.¹

Trade unionism plays an important role in South Africa's political, economic and social setup, because more than a quarter of the working population belongs to a trade union. The new democratic government inherited an economy that was highly sheltered under protectionist trade policies, which was aimed at creating a strong, self-sufficient industry.

¹ Rust “*The Future of SA Trade Unions: The Macro and Micro Environment*” 2000 *SAJLR* 2 85.

This pre-democratic industry was isolated from the pressures of international competition, resulting in relatively high labour costs and the development of an unskilled and uneducated labour force. The new government has chosen to adopt an economic policy that postulated a free and open market system. The major trade union federations, most notably COSATU has been strongly against the government's free market policy, using pressure tactics on and demands from the government, which have also had an effect on business. The more COSATU and the other trade union federations compromise it's position with such demands, the more likely it is to become increasingly marginalised.²

One important goal of trade unions in South Africa has been political emancipation. Historically labour relations in the workplace have been confrontational in nature, which has resulted in conflict and delayed co-operation. As a result, an atmosphere of distrust had developed between employers and trade unions, which has had a counterproductive effect on both the employer and labour. Since 1994, the political goal of trade unions has now shifted to achieving economic freedom, and to ultimately free the worker from economic poverty. The atmosphere of distrust has eased down, but it is not yet at the levels which optimists had hoped for. Until recently, it would appear that, generally speaking, trade unions understood their responsibility regarding themselves and their members, but did not take it seriously enough to tackle it

² Horwitz "Labour Market Flexibility in South Africa : Researching Recent Developments"
1996 SAJLR 2 1.

proactively. Trade Unions may reach a point where they suddenly realise that their very own survival is threatened as a result of the fall in their membership. Trade unions must thus engage in proactive action to address the causes which brings about the fall in membership. A trade union that has no members, and a union member who has no work, may both be said to have no existing rights³.

Trade unions in South Africa have tremendous problems regarding the overwhelming lack of knowledge and skills of their members, not only in specific specialised fields, but also as regards general business knowledge and skills of their members, not only in specific specialised fields, but also as regards general business knowledge and particularly productivity. A further problem is that trade union leaders will not acknowledge the reality of the international market place, and in other cases they do not want to communicate this reality to their members. Another problem facing South African trade unions is its underutilisation of opportunities. Trade unions have the unique character of a pooled group of workers with more or less shared interests. However, this uniqueness is not explored sufficiently to benefit the members, as the potential advantages of schemes, (insurance pension, medical) are not utilised, nor is the responsibility accepted.⁴

Trade unions cannot divorce themselves entirely from the role of “challenger of management actions” and blindly accept a co-operative approach. This action

³ Crankshaw *Race, Class and the Changing Division of Labour Under Apartheid* 1997 39.

⁴ Omar “Challenges facing labour” 2001 *SALB* 3 10.

would test the loyalty of their members, because their mandate to the trade union is provided specifically to create resistance by the trade unions to the managerial prerogative. Trade unions have a problem in determining the extent of the resistance, and the extent of the co-operation required, to retain the mandate of the members on the one hand, while ensuring the survival of the employer on the other. This type of role direction is a typical collective bargaining problem, and it is probably even more relevant today in South Africa, in the light of environmental changes, such as the opening of world markets.⁵

If trade unions take account of the macro picture of international competition, it's relationship with the government and the economic situation in South Africa, they are confronted with many variables in order to ensure survival. Although market changes is not the only factor influencing trade union survival, it is viewed as the most important. The overwhelming factor in the market affecting survival is the state of the South African economy, because the membership of trade unions is to a large degree linked to employment levels and job opportunities. The state of the economy plays a further decisive role in negotiations for better service conditions and wages. This aspect is determined out of whether or not union members retain their trust in trade unions as welfare providers.

When weighing up factors to determine the survival position of trade unions, a choice must be made. Firstly, unions can continue in their accustomed manner.

⁵ Adler *Trade Unions and Democratization in South Africa, 1985 – 1997* 2000 39.

This means continuing to keep the employer under pressure, which at present means making very costly demands. The distinct disadvantage of this approach is that employers can become less competitive, personnel retrenchments may follow, with a resultant drop on trade union membership.⁶

Secondly, trade unions can change their approach by becoming more flexible and creative, and through those actions, strengthen economic growth. These actions will have as a consequence, a less aggressive and more co-operative approach to the employer. The more effective utilisation of workplace democracy and the use of collective bargaining methods that promote productivity will result in less industrial action. At this point it is necessary to look at companies such as Volkswagen, where there is successful labour – management co-operation: productivity is higher, wages are better, working conditions are better, there are better living standards, improved health and safety conditions, income security and retirement benefits.⁷

Undoubtedly, the most challenging role for the modern trade union is to ensure job security for it's members, taking into account the fact that technological advances have made production processes more mechanised and automated, it seems that this problem will become progressively, more of a challenge. In order to overcome this problem, trade unions will have to make a concerted effort to

⁶ Baskin *Against the Current: Labour and Economic Policy in South Africa* 1996 56.

⁷ www.naledi.org.za/unions//labour (19 November 2003).

market the importance and qualities of the worker as a production factor, as opposed to the machine. This will require the worker to possess knowledge, skills levels and productivity potential, that will make the worker an attractive alternative as a production factor. To ensure job security, labour must be brought to the level where it is recognised as an irreplaceable production factor.⁸

In closing the trade union movement must accept that South Africa is an international role-player and trade unions must therefore play according to international rules. As companies are struggling to survive because of international competition, a more helpful attitude must be adopted by the trade unions. Trade unions in the past have shown little flexibility in responding and adapting to changes in the economy, and have chosen to remain intractable. A strong responsibility rests on trade unions, to adapt to environmental changes, none more so than COSATU, the labour arm of the tripartite alliance. COSATU must revalue its attitude towards the free market principle. This would then result in a situation where the government could drive its economic policies with ease, without having to stop and make promises that do not fit in within its stated policies. The underlying friction between the government and COSATU creates uncertainties, which is not a climate conducive to investment, economic growth and job creation. The trade unions future thus must be based on a commitment to economic success, linked with social justice. In this light, the unions should be

⁸ Roskam “*Restructuring and job security*” 2000 *SALB* 6 9.

seen as providers of a very broad range of services. The challenge is to sustain flexibility and creativity in societies.

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