The State, wages and strikes 16th August 2011

During the current strike action several clients have asked why government allows strikes, why it is not "taking action" against strikers and why it does not grant companies exemption from minimum wages. Be careful what you wish for is the old warning. This applies to SA's wage setting mechanisms.

Deeply embedded in history ... and the Constitution

1922 saw the strike by white mineworkers on the Witwatersrand in which General Smuts infamously used the air force and army to fight the strikers. Nothing we see nowadays quite compares with that. The forcefulness did not help Genl Smuts. He was defeated in the 1924 election by the Pact coalition of General Hertzog who proceeded to establish a system of **collective bargaining** and **protection of vulnerable workers**.

The system, however, excluded Africans. In the 1970s the country experienced illegal strikes by Black unions, leading to much tension and violence. In 1979 the Wiehahn Commission recommended that Black trade unions be allowed to participate in the system of collective bargaining. The rest is history.

After 1994 then Labour minister Tito Mboweni updated and refined this system with various pieces of legislation, but the basics described below remained in force.

But it is more than just 88 years of history. There is also the Constitution.

Collective bargaining is based the **freedom of association** – the right to belong to any legal organisation of one's choice. It is a cornerstone of a free society. Linked to that freedom is the **right to collective bargaining** – to sit down with one's employer and negotiate one's wage. Both these rights are enshrined in the SA Constitution and protected by the Bill of Rights.

The relevance of this embeddedness was made clear in a recent speech the minister of Finance Pravin Gordhan, one of the sanest voices in the cabinet but a struggle activist himself. He talked about the need to relax two specific aspects of SA's labour laws whilst making it clear that "... we are not going to lose what we gained through hard struggles".

The two aspects the minister referred to was easier access for young people into the labour market (he has already proposed a wage subsidy to address that) and the case of the factories in Newcastle where a better balance must be found between earning a reasonable wage and keeping the factories open (i.e. preserve the jobs).

The Basics

Collective bargaining in SA is done through "bargaing councils", which are based on an economic sector and consist of 50% employers and 50% workers from that sector. Wages are thus set by employers and workers, not the government. This is called **self-determination** and is a fundamental principle in SA labour relations. The ANC and Cosatu unions have already clashed on this principle and more fights are sure to follow.

There are currently 47 bargaining councils in SA covering an estimated 2, 5 million workers across both the private and public sectors.

If wages are too high and companies price themselves out of the market, blame it on the employers and workers. There is not much government can do about it.

Conflict (strikes and lock-outs) is inherent in the process of collective bargaining. It is after all about the division of money and power. Some theoreticians argue collective bargaining is also about mutual interest and building a common future, but that is more often the exception than the rule. Such noble sentiments normally only appear when faced with total collapse.

Collective bargaining is **not a one way street** – parties have the power to strike/lock-out to force the other party to accept proposals. The party with the strongest "will to power" will prevail. As elsewhere in life clarity of vision and end-goals in sight and a single-minded determination to reach them determine the outcome of collective bargaining. It is quite instructive to see how, in cash-strapped US states, the employer or state governments are rolling back union benefits. It is all about the will to power.

Again, it is not government's responsibility to declare a wage too high or too low. If one does give government that power concerning wages for workers, it surely has to have the same power concerning stockbrokers', lawyers' and directors' wages!!

Exemption from collective bargaining agreements are granted by bargaining councils i.e. the employers and unions – not by the state. The notorious cases of the textile factories of Newcastle and Botshabelo that were forced to close because they did not pay the wages agreed in a collective agreement are applicable here. The legal duty of granting exemption is that of the bargaining council for that industry. It is not the duty of government.

For employers and unions to sit in judgement on exemptions for another business feels a bit like being judge and prosecutor. However, research done for the International Labour Organisation in SA on exemptions from collective agreements during the 2008/09 financial crisis, indicates that as much as 50% of textile and 30% of clothing applications for exemption were approved. Perhaps the judges are not such hanging judges, self-determination is working

after all. But as Newcastle and Botshabelo indicate, the mechanism needs to be improved to protect jobs.

There is no such a thing as a **national minimum wage** in SA. This is different from countries like the US and UK where Congress/parliament sets a minimum wage that applies across the whole country. What SA does have are **sector minimum wages** in sectors of the economy with little or no history of collective bargaining where workers are regarded as vulnerable. Sector minimums are determined by the Employment Conditions Commission after hearing evidence on financial and business conditions in a sector.

The word "vulnerable" is important. No one would regard stockbrokers, fund managers, doctors or lawyers as vulnerable, hence minimum wages are not set for them (although in theory it could!). On the other hand, domestic workers and cleaning staff are generally regarded as vulnerable and there one finds sector minima.

Eleven sectoral determinations have been made covering about 5.5 million workers in sectors like Agriculture, Contract Cleaning and Domestic Workers.

Critique of the system

Free marketeers want total flexibility and do not like collective bargaining with its collective contracts and minimum wages. They believe there should only be individual contracts. Fact is collective bargaing developed in response to the industrial revolution precisely as a response to the inequality inherent in the individual contract. Today collective bargaining is found in almost all formal economies and modern societies. Without that we would return to the violence of 1922, or the illegal strikes and violence we saw before 1979.

No society where all the power rests with one group is stable in the long run. Societies with checks and balances where tension and frustration can be unleashed have less chance of a revolution.

Abandoning collective bargaining also means that the freedom of association comes in the crosshairs. That is a major curtailment of freedom. If I cannot join a union, why be able to join a political party?

Improvements can be made to the SA system of collective bargaining and some are under discussion right now. But none of them involve throwing out the baby with the bathwater. As the minister of finance has made clear, there will be no holus bolus amendment to labour laws.

Freedom is messy and sometimes it makes us long for order. But as Churchill said "democracy is the worst form of government except all the others that have been tried". The same can be

said of a system of self-determination on wages. Government control all round may be worse. Be careful what you wish for.

(Next month we will analyse the current strike wave in SA in the context of the global rise in unrest and protest, workers' declining share of national wealth globally and the calls for nationalisation here locally. We believe there is a golden thread running through them all.)