

## **Labour Market Institutions Under Pressure**

The way labour relations are organised in SA is under pressure from a variety of quarters. For your interest we provide an overview of developments and speculate about how it can play out.

### **Sources of pressure**

#### **OECD – Organisation for Economic Co-operation and Development**

The OECD, in their latest report on SA, summarised their view of the country succinctly: “Capital income is rising, access to services is improving, social conditions are strengthening and crime rates are falling. But unemployment remains stubbornly high.” They identify unemployment and inequality as the country’s biggest problems.

On the labour market the organisation recommends, firstly, that the **extension** within an industry of negotiated agreements to parties who did not participate in the negotiations, should be “curtailed”. It means that if, for example, textile employers and unions agree to certain wages, such agreement should not simply be made applicable (“extended”) to employers and unions that did not participate in the negotiations.

This is a decades-old institution of SA labour relations: parties make a deal in what is called a bargaining council and the Minister of Labour then extends it via proclamation in the Government Gazette to non-parties. The idea is that everybody in the same industry pays the same wages and competition between firms does not take place on the basis of wages.

The OECD’s second recommendation is that collective bargaining should be “**centralised and co-ordinated**” **much stronger** so that “outsiders” can have a bigger influence on the setting of wages and conditions of employment. This simply means that somebody (say Nedlac or the Dept of Labour or cabinet or a committee of experts) should give guidelines on what wage increases in the economy should be (e.g. 5% to 10% in a particular year) and that everybody should settle within that range. It also implies that unemployment and competitiveness should be considered when setting such guidelines. (The OECD does not spell these out, it is my interpretation).

They also recommend that **product markets should be made less restrictive**, particularly to remove barriers to entrepreneurship. This is not a direct labour market recommendation, but has a bearing on job creation and (un)employment as small business create jobs.

#### **National Development Plan (NDP)**

The NDP is in 100% agreement with the OECD that unemployment and inequality are the most important priorities to be tackled.

Unlike the OECD, the NDP does not express itself directly on the organisation of collective bargaining. However, it does recommend that a “**social compact**” should be reached on ways to reduce unemployment and inequality. This implies some form of curtailment on wages and earnings. Such a compact was used to great effect in Ireland and the Netherlands in the 1980s.

This can of course only work if higher income groups also agree...!! A cartoon in The New Yorker comes to mind: a few gentlemen enjoying a drink in their favourite club are overheard saying, "They can have the minimum wage as long as they keep their hands off the maximum wage."!!

The NDP also says that measures should be taken to make it easier for young workers to enter the labour market. This articulates a wide consensus on the urgency of doing something about youth unemployment. R500 million was set aside in the recent budget for what is now called a "youth wage incentive scheme". Cosatu has become noticeably quiet on this issue. The politics around this seems to have changed considerably.

Thirdly, the NDP recommends that dismissal procedures in the case of poor performance should be made easier.

### The Courts

The OECD sentiments about extension of agreements have already surfaced in SA courts. Extension and representativeness is not so much an OECD issue as a home-grown one that has been building for a number of years now.

At the end of 2012 the Labour Court ruled that an agreement made in the metal and engineering industry could not be extended by the Minister to non-parties, because the parties who negotiated the agreement were not sufficiently representative of the industry. The minister was given 90 days to correct her decision and given the opportunity to extend it under a different provision of the Act.

In the KZN High Court, a number of clothing manufacturers from Newcastle have brought a case to challenge the extension of an agreement. The challenge is based on the fact that the unions who made the agreement represent less than 50% of the workers in the industry and therefore the agreement should not be extended to other workers (and by implication their employers).

Both these cases have at their heart how representative parties are when they negotiate agreements.

In the Gauteng High Court, the Free Market Foundation has brought a case to challenge the constitutionality of extending agreements to non-parties. This case is about more than just representativeness. It has at its heart the ability to set minimum wages in an industry. It will now wind its way through the Court hierarchy for eventual and final decision by the Constitutional Court.

### Violence in the platinum mines

The issue of representativeness also manifested itself in the violent saga of AMCU replacing NUM as the representative union on the platinum mines. It brings to the fore the question to what extent unions should be recognised as the collective bargaining agent for different categories of workers; or in ordinary English, who should sit in the room when unions and employers negotiate wages and conditions of employment. Leap-frogging, or unions trying to outbid each other, can make negotiations hell; excluding a truly representative union can also make life hell, as the platinum mines discovered. Tricky.

### Appropriate wages

The issue of what is an appropriate wage in a country of huge poverty and inequality adds to the pressure.

The farm worker strikes and accompanying violence in the Boland resulted in a surprise consensus between the ANC and the DA. Cape premier Zille visited the area and declared on national television that the prescribed minimum wage should be increased. The ANC and Cosatu articulated the same view. The rest is history.

These increases have already resulted in retrenchments, although it is very difficult to get a handle on precisely how many people have been retrenched.

Cosatu has also launched a campaign for a national minimum wage similar to what one finds in the UK or US. So far it does not seem to have gained much traction. Ironically, such traction will probably only be gained if there is a collapse or severe curtailment of bargaining council agreements which set minimum wages for different sectors.

### Pushing back

The Boland experience has brought a critical issue to the fore – how low can wages be before there is a more or less violent push-back. In the Boland there was a push-back against a wage of R67 and a general consensus that it was too low. In KZN and Johannesburg the current gazetted minimum wage for a machinist in the textile factories is R72 per day – less than farm workers now earn. The R67 sees a violent pushback, the R72 not. Why the difference? It is not clear.

### So What?

Finding one's way through all this is complex, but here is my best shot.

#### Fairly certain

- The “youth wage incentive scheme” now looks as if it will proceed.
- The many-decades-old practice of extending agreements to non-parties by way of proclamation in the Government Gazette is under serious pressure in cases where the negotiating parties are not representative. Non-representativeness has become a core issue and may very well lead to the collapse of some bargaining structures.
- More flexibility (as yet unspecified) will probably be introduced to accommodate some of these pressures.

#### Uncertain

- Collapsing industrial relations structures will not necessarily lead to more harmony, but rather to more unrest and mayhem. That is what we have seen with the representativeness battle of unions in the platinum sector.
- Even where parties are representative, the power to have their agreement extended is being challenged constitutionally. It remains to be seen what the Constitutional Court will rule.
- Concluding a social compact as proposed by the NDP will be difficult. True, it did happen in the run-up to 1994, albeit on different issues (peace and free elections). It will need the spark of special leadership and particular circumstances to make it happen again.

#### Wishful thinking

- Dropping wages to the point where the labour market “clears” i.e. wages are so low that most people can find a job, is not going to happen. It can only work where society at large accepts it, and currently that is not where SA is at. Most people recoil on hearing about very low wages being paid. It was amusing to watch a stockbroker (!!) on TV arguing for *lower*

wages, but hedging his bets: "...not apartheid-era levels, but real wages."!! Befuddled thinking, or having your cake and eating it.

- Because of this social reality, it is completely unlikely that minimum wages in SA would be scrapped. If the courts rule that bargaining council agreements cannot be extended, other measures will be formulated to put minimum wages in place, e.g. wage determinations as for farmworkers, or some national minimum wage as propagated by Cosatu. Politics, like nature, abhors a vacuum – it will be filled. And minimum wages in SA is definitely politics.