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**Collective bargaining
in times of crisis:
A case study of
South Africa**

Renee Grawitzky



December 2011

Industrial
and Employment
Relations
Department
(DIALOGUE)

ILO DWT
for Eastern
and Southern
Africa

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Foreword

This paper is one of a series of national studies on collective bargaining and effective responses to the crisis under the Global Product on ‘Supporting collective bargaining and sound industrial relations’. The national studies seek to examine the impact of the crisis on industrial relations and collective bargaining institutions; identify the ways in which collective bargaining was used to mitigate the effects of the crisis and the outcomes as they relate to employment wages, working time, and employment relations. They identify good practices in this regard and consider the implications for balanced and effective recovery.

This study analyses the context in which social dialogue and collective bargaining took place in South Africa during the crisis. Inequality, poverty and unemployment are among the biggest challenges facing development in South Africa’s post-apartheid era. These created highly adversarial bargaining relations and placed constraints on the types of measures that could be agreed upon. Collective bargaining during the crisis was instrumental in terms of protecting wages and ensuring better treatment for contract workers; however, its role was limited in terms of saving jobs.

The paper provides an analysis on key intervention measures used during the crisis, one of which is the Training Layoff Scheme (TLS). The objective of the TLS was to avoid retrenchment by reskilling workers through training during downtime. It was implemented through a collective agreement between the union and the employer. While some sectors did use this innovative scheme, it did not have a significant impact on keeping workers in employment during the economic downturn.

This study analyses the factors that placed restraints on collective bargaining. Capacity issues, lack of trust and lack of access to information and resources have weakened collective bargaining and its potential outcomes. The high number of industrial strikes experienced across key sectors in 2007, 2008 and most notably in 2010, indicates that employment relations are highly adversarial.

DIALOGUE working papers are intended to encourage an exchange of ideas and are not final documents. The views expressed are the responsibility of the author and do not necessarily represent those of the ILO. I am grateful to Renee Grawitzky for undertaking the study and commend it to all interested readers.

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Executive summary

This paper, commissioned by the International Labour Organisation (ILO), forms part of a multi-country study which seeks to build on the work initiated by the Global Jobs Pact adopted during the ILO Conference in June 2009. The Global Jobs Pact proposed a range of crisis responses and measures aimed at placing employment, social protection and incomes at the heart of recovery. These included looking at social dialogue, collective bargaining and the role played by industrial relations institutions in maximising the impact of the crisis response, facilitating social stability, and avoiding job losses and wage deflation.

In examining the role played by industrial relations and collective bargaining institutions in mitigating the impact of the crisis and thereafter assisting in the recovery in South Africa (SA), the paper looks at the context in which bargaining took place during the crisis; the institutions which are responsible for facilitating bargaining and the outcomes to emerge from these processes and whether they could potentially hampered or contributed towards a balanced recovery.

In providing the context for collective bargaining, the first section of the paper provides an overview of some key economic indicators impacting on the labour market such as employment, wages, productivity, income inequality and the share of wages to GDP. This section highlights the growing inequality in the society (as reflected in the rise in the Gini coefficient and the steady decline in wages as a share of GDP), which interviews suggest could be a contributory factor to rising wage demands (along with the rather dramatic changes in the consumer price index (CPI) during the period under review.)

Aside from looking at levels of unemployment, inequality and the general state of the economy, this section also touches very briefly on other factors impacting on the bargaining environment such as the period leading up to the election of Jacob Zuma as the new President of SA in 2009. This period marked a time when workers had renewed hope of having a sympathetic ear to their demands, especially concerning wages. This mood of buoyancy coincided with the pre-2010 Soccer World Cup period, which was used as a critical bargaining tool to leverage higher increases for workers who saw this event as an opportunity to share in its gains.

In view of the economic realities, the second section of the paper looks briefly at the macro-level response of the social partners – government, labour, business and the community – to the economic crisis. SA's response began slightly later than other countries when former President Kgalema Motlanthe convened a meeting of the social partners on 4 December 2008 to discuss the challenges brought about by the global crisis. At the meeting, the social partners agreed that overcoming these challenges would require a collective response to the difficult economic conditions facing the country.

Prior to this initiative, many South Africans did not believe that the economic crisis would affect the country as the economic fundamentals appeared sound and the economy was growing. However, from the third quarter of 2008 the economy went into its first recession since 1994 and from that time until the second quarter of 2009, close to 900,000 jobs were lost – almost wiping out the previous gains made in creating job opportunities between 2001 and 2007.

By the time the social partners met in December 2008, the economy had already started shedding jobs. After an intense but short process the parties emerged with a 'Framework Agreement for SA's response to the International Economic Crisis' released on 19 February 2009. The challenge thereafter was to ensure the implementation of this agreement by the social partners. However, this process was partly delayed by the general elections and the change in government, ensuring that implementation only got going in

June/July 2009, when the newly established, and yet to be resourced, Department for Economic Development (DED) was tasked with driving the process.

While the National Framework Agreement (NFA) was hailed as one of the worlds' model responses to the crisis, this section evaluates the extent to which it was implemented, with a particular focus on two key interventions linked to collective bargaining, namely, the Training Layoff Scheme (TLS) and assistance to distressed sectors.

Having set the scene at a national level through the NFA, relevant industrial relations and collective bargaining institutions and other public bodies such as the Commission for Conciliation Mediation and Arbitration (CCMA) – set up as a key dispute resolution agency – sought to respond decisively to deal with job insecurity. The CCMA began to co-ordinate its response and worked together, for the first time, with other institutions such as Productivity SA (PSA) and the Industrial Development Corporation (IDC). This coordinated response saw the interplay between labour market institutions and those set up to drive the country's industrial policy.

Institutions such as the CCMA emerged out of the legislative changes made by the new government in the aftermath of the first democratic elections in 1994. This period heralded a time of some major changes to the SA labour market with the aim of firstly, reversing the legacies of apartheid, and secondly, seeking to transform workplaces which had been characterised by high levels of adversarialism and conflict during the apartheid years.

The new government initiated a number of legislative reforms starting with the Labour Relations Act 66 of 1995 (LRA) which was followed by the Basic Conditions of Employment Act, the Skills Development Act and Employment Equity Act. The LRA sought to promote the role of the social partners (government, labour and business) in the governance of the labour market with a focus on self-regulation and more importantly, the role of social dialogue. This is reflected in the formation of tripartite bodies such as the CCMA, the National Economic Development and Labour Council (NEDLAC), Sector Education Training Authority (Seta's), the Employment Conditions Commission (ECC) and on the collective bargaining front, bargaining councils – all managed by the social partners.

Collective bargaining in SA, as highlighted in section three, takes place at various levels – sector, enterprise and plant. A key but not the only institution responsible for collective bargaining is the bargaining councils. Aside from bargaining councils, centralised collective bargaining also takes place in non-statutory structures such as those found in, among others, mining, automobile manufacturing, contract cleaning and private security. As indicated, bargaining also takes place at enterprise and/or plant level and where there is limited bargaining and union organisation, wages are determined through sectoral determinations which are promulgated by the Department of Labour (DoL) following recommendations made by the ECC.

The fourth section looks at collective bargaining, covering more than two million workers across key sectors in the economy in order to understand how the social partners negotiated deals to mitigate the impact of the crisis in order to save jobs at a sector and/or enterprise level. An analysis of collective bargaining during the recession highlights not only the complexities of negotiating in a highly unequal society (and corresponding heightened expectations) but a situation compounded by the 2010 Soccer World Cup and an environment fuelled by the political changes which were unfolding in the build-up to the 2009 general elections.

Workers had experienced a decline in real wages given that inflation spiked in 2008. Secondly, they had a perception of a growing gap between the rich and poor which impacted on their demands (that is aside from the rising cost of living for lower paid workers). As a result of these factors, coupled with internal problems facing some of the social partners, collective bargaining during the recession was contested by industrial

action (especially in 2010) reaching its highest level (14-million working days lost) in recent years.

At the same time the period saw strains beginning to appear in the bargaining institutions. Some bargaining councils modernised and adopted new bargaining approaches and strategies. However, many have not adapted to meet the new challenges. The state of the institutions reflects the capacity and resource constraints facing the partners – a theme running through the paper.

This section also looks at the quality of negotiations and what emerges is the view that there is little attempt to find solutions in negotiations and parties tend to automatically take one or two major settlements achieved elsewhere as the benchmark. While pattern bargaining (as reflected internationally) can be a positive practice, as it can lead to greater coordination in terms of settlements across the economy, parties need to consider other factors such as productivity growth and the relative competitiveness of the sector.

In terms of collective bargaining outcomes, nominal wage increases during the crisis ranged between 9.8 per cent and 10.4 per cent, during 2008 to around 9.4 per cent and 9.6 per cent in 2009 and in 2010 the settlements dropped to between 8.3 per cent and 8.6 per cent. These nominal increases were achieved in the wake of workers achieving real growth in wages during 2009 and 2010.

The fifth section examines the role of collective bargaining in mitigating the effects of the crisis by looking at how earnings were protected; ensuring employment security and initiatives to improve skills during the downturn. The study points to the various interventions agreed to as a result of collective bargaining. However, what emerges is that in an environment of high inequality as in SA, collective bargaining has become a key mechanism for redistribution; thus it has been more effective in protecting earnings than in saving jobs.

In the sixth section of the paper which looks at the responsiveness of the collective bargaining and industrial relations institutions such as the CCMA, bargaining councils and NEDLAC to the crisis, the study found that the crisis heightened existing challenges in some institutions. However, institutions such as the CCMA rose to meet its new responsibilities which placed additional pressure on its already stretched resources as the crisis led to a marked increase in the institution's caseload. The implementation of the TLS proved to be a major challenge for the CCMA.

In terms of the responsiveness of the bargaining councils to the crisis, they sought where possible to be lenient in terms of granting exemptions, and where economic hardships was proven, then exemptions were granted. However, it is questionable whether councils as a whole (with some exceptions) were able to stem the tide of job losses. Where councils were able to be more proactive was in relation to industrial policy issues, but that is a terrain that a number of councils have failed to explore despite this being one of their responsibilities in terms of the LRA.

The final section highlights the lessons learnt and points to some core issues which need to be addressed by both policy makers and the social partners if collective bargaining is to become a more strategic intervention in SA. Issues highlighted include the capacity of the social partners; the responsiveness of labour market and collective bargaining institutions; the failure by parties to make use of state support; the role and impact of public sector collective bargaining on bargaining more broadly; and the deteriorating state of labour relations and the lack of tradition and dialogue around ensuring the strengthening of collective bargaining in distribution and productivity.

1. Methodology

This report is based on numerous semi-structured interviews as well as a review of various documents obtained during the course of the study.

Telephone and face-to-face interviews were conducted between 1 November 2010 and February 2011.

As per the original terms of reference for the research project, the following groupings of people were interviewed (see Annex 1):

- The chief negotiators from the unions and employers party to the bargaining councils targeted as well as from other collective bargaining structures;
- Bargaining council officials;
- Mediators and/or facilitators involved in some of the disputes/strikes during the period under review;
- Senior representatives from the social partners – government, labour and business;
- The directors of key tripartite industrial relations institutions such as the CCMA and NEDLAC;
- Researchers, academics, industrial relations practitioners and economists; and
- Representatives from key government departments and institutions such as labour, economic development, finance, the SA Reserve Bank and STATS SA.

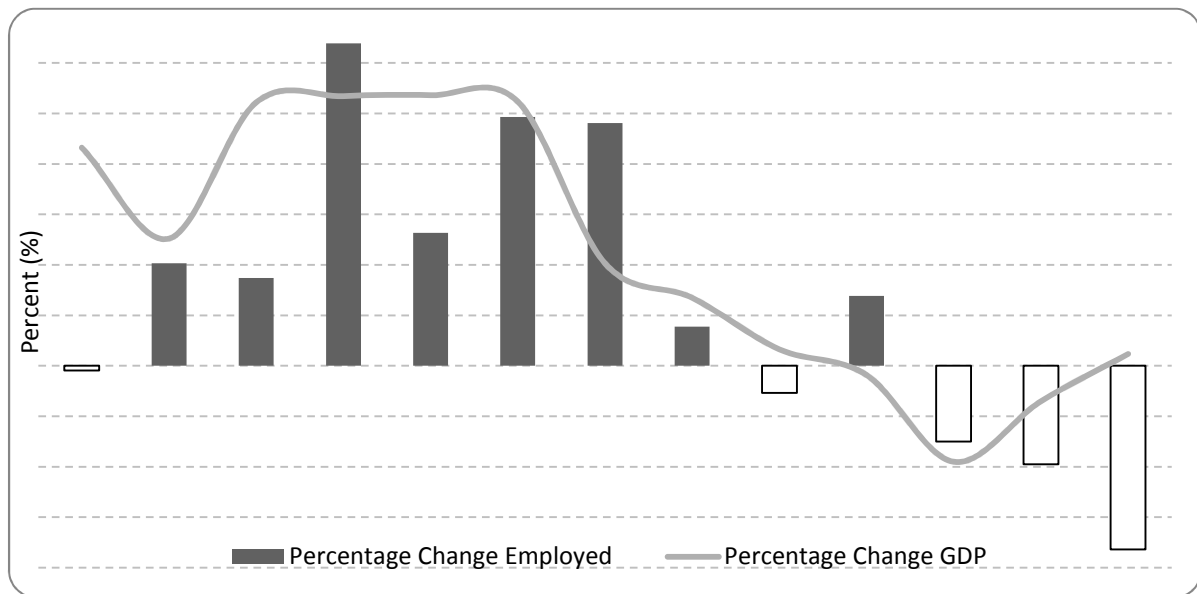
2. Socio-economic background to the crisis

For many South Africans the recent global financial crisis was something that was happening elsewhere. This view was prevalent even among those who lost their jobs but did not necessarily attribute this development specifically to the crisis.

There are reasons for this. At the onset of the global crisis, many South Africans, including politicians and government officials, did not believe that it would affect the country because the economic fundamentals appeared sound and the economy had stabilised with real gross domestic product (GDP) averaging around 5.5 per cent between 2005 and 2007. This coupled with the general buoyant mood around the 2010 Soccer World Cup, initially veiled the full extent of the impact of the crisis. More importantly, SA has long been a country characterised by high levels of unemployment, poverty and inequality, hence, the crisis merely highlighted the vulnerabilities which already existed in the labour market since the apartheid era.

The seriousness of the recession only really hit home following the release of the first quarter growth figures in May 2009. What could not be ignored was the fact that by the first quarter of 2010, over one million jobs had been shed, further exacerbating the already high unemployment rate.

Figure 1.
Growth rates in employment and GDP



Source: (Bhorat et al) SARB 2009 Economic and Financial Data, Statistics SA LFS (September 2000-September 2007, QLFS (2008:Q2- 2009Q3) and own calculations.

As figure 1 shows, GDP growth moved into negative figures and the subsequent impact on employment from the first quarter in 2009. From the third quarter of 2008 (when the economy went into recession) to the second quarter of 2009, close to 900,000 jobs were lost (Bhorat, 2010). It could well be argued that the 2010 Soccer World Cup which might have, to some degree, cushioned the country from the full effects of the crisis, despite the fact that the event did not have the desired economic benefits as previously anticipated. Ultimately, more than one million jobs were lost (the majority from the informal sector) by 2010 (and continued to shed jobs even when the GDP growth moved into positive figures)¹ leading to a further squeeze on the household income of the poor.

As the country went into recession, with the economy contracting by 1.8 per cent in the last quarter of 2008, inflation surged to record levels, driven largely by rising international food and fuel costs. This spike in inflation (and subsequent sharp drop in 2009), as this paper will highlight, posed a challenge for workers and employers who sought to navigate their way through some very tough collective bargaining during the crisis.

While the global crisis was taking hold, the focus of many was elsewhere – on the 2010 Soccer World Cup and changes in political leadership within the ruling African National Congress (ANC). This change in political leadership, observers argue, impacted on the workings of government from the time of the ANC’s national conference in Polokwane until after the elections in 2009.² Effectively during this period there was a political hiatus until the new government came into power.

The following section looks at the trends on employment, wages, productivity, income inequality and the share of wages to GDP in order to understand the context in which bargaining took place. Importantly, this section highlights the growing inequality and the current lack of culture or tradition which allows for negotiations which links increases with productivity improvements.

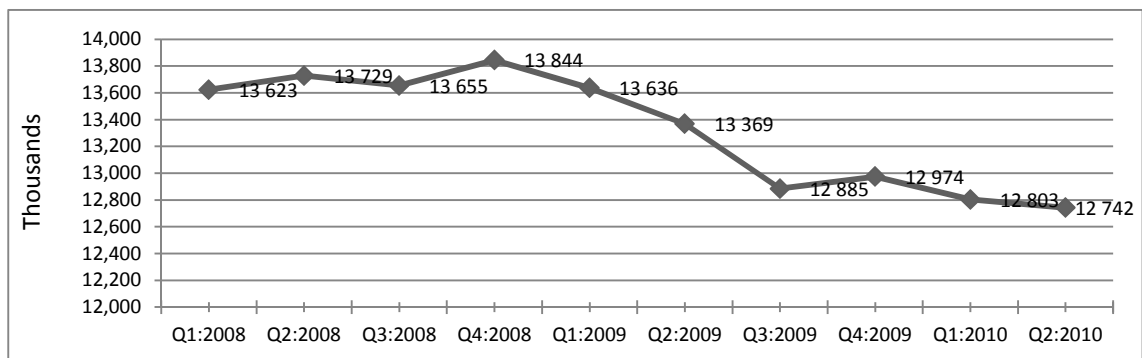
¹ Naledi: Towards a Cosatu Living Wage Conference, October 2010 (draft report).

² Based on interviews conducted with various analysts.

2.1 Employment

During the global crisis the country shed close to 900,000 jobs and further jobs were lost once the economy moved out of the recession. Figure 2 (Stats SA, 2010) below reflects the change in employment between 2008 and 2010. Total employment between the period 2001 and second quarter of 2008 increased from 10.9 million to 13.7 million (Bhorat, 2010) and following the peak in employment in June 2008, there was a steady decline from the fourth quarter in 2008. By the third quarter of 2009, total employment had declined by 5.7 per cent – from 13.7 million to 12.9 million individuals.

Figure 2.
Changes in total employment, South Africa, 2008 – 2010

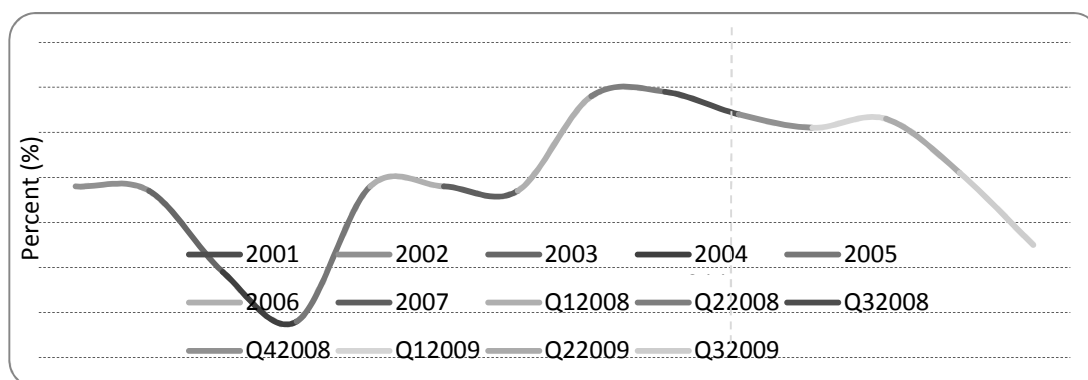


Source: Oxfam) Statistics SA, Quarterly Labour Force Survey, July 2010 (Stats SA 2010a)

Secondly, the job losses highlighted an increase in the number of discouraged individuals. Figure 3 shows that the labour force participation rate pre-recession increased significantly but from the time of the recession there was an immediate decline – gradually initially and then dropping to its lowest level in five years. The main effect of the recession, economists point out, was a rise in discouragement, particularly among black South Africans with little or no schooling (Verick, 2009).³

³ Bhorat argues that before the recession, unemployment was a function of the inability of the economy to create a sufficient number of jobs for the expanding labour force as new entrants came into the market faster than the economy could absorb them (Bhorat & Oosthuizen 2006).

Figure 3.
Labour force participation rates, South Africa, 2001-2009



Source: (Bhorat) Labour Force Survey (September 2001 – September 2007), Quarterly Labour Force Survey (Q3 2008, Q3 2009) & own calculation.

Note: The narrow definition of the labour force is used when calculating the labour force participation rates.

Finally, Stats SA research data (Oxfam, 2010) shows that in line with global trends, job losses hit the most vulnerable workers first. Table 1 shows how the initial wave affected those in the informal sector such as domestic work and retail – both formal and informal. Table 1 shows the impact on employment in the different sectors, with the most job losses in trade (196,000), manufacturing (173,000) and construction (105,000). Some sectors gained jobs such as transport (10,000), private households (34,000) and community and social services (29,000).

Table 1.
Employment by industry,
total and quarter on quarter percentage changes

	2008 Q1	2008 Q2	2008 Q3	2008 Q4	2009 Q1	2009 Q2	2009 Q3	2009 Q4	2010 Q1	2010 Q2
Agriculture	799	790	767	764	737	711	653	615	650	618
		-1.1%	-2.9%	-0.4%	-3.5%	-3.5%	-8.2%	-5.8%	5.7%	-4.9%
Mining	333	346	314	321	333	319	299	296	296	306
		3.9%	-9.2%	2.2%	3.7%	-4.2%	-6.3%	-1%		3.4%
Manufacturing	1 987	1 968	1 917	1 944	1 882	1 873	1 723	1 742	1 708	1 655
		-1%	-2.6%	1.4%	-3.2%	-0.5%	-8%	1.1%	-2%	-3.1%
Electricity, gas and water supply	95	97	98	86	100	93	81	98	70	93
		2.1%	1%	-12.2%	16.3%	-7%	-12.9%	21%	-28.6%	32.9%
Construction	1 112	1 138	1 102	1 190	1 127	1 117	1 057	1 085	1 021	1 006
		2.3%	-3.2%	8%	-5.3%	-0.9%	-5.4%	2.6%	-5.9%	-1.5%
Wholesale and retail trade	3 156	3 104	3 175	3 164	3 020	2 962	2 851	2 873	2 826	2 839
		-1.6%	2.3%	-0.3%	-4.6%	-1.9%	-3.7%	0.8%	-1.6%	0.5%
Transport	747	774	769	774	757	727	737	739	766	734
		3.6%	-0.6%	0.7%	-2.2%	-4%	1.4%	0.3%	3.7%	-4.2%

	2008 Q1	2008 Q2	2008 Q3	2008 Q4	2009 Q1	2009 Q2	2009 Q3	2009 Q4	2010 Q1	2010 Q2
Finance	1 667	1 687	1 633	1 635	1 724	1 710	1 683	1 759	1 633	1 670
		1.2%	-3.2%	0.1%	5.4%	-0.8%	-1.6%	4.5%	-7.2%	2.3%
Community and social services	2 564	2 635	2 603	2 661	2 650	2 663	2 627	2 628	2 657	2 659
		2.8%	-1.2%	2.2%	-0.4%	0.5%	-1.4%	0%	1.1%	0.1%
Private households	1 163	1 184	1 273	1 298	1 299	1 194	1 166	1 135	1 169	1 154
		1.8%	7.5%	2%	0.1%	-8.1%	-2.3%	-2.7%	3%	-1.3%
Other		4	3		5	2	7	3	6	6
			-25%	-100%		-60%	250%	-57.1%	100%	

Source: (Oxfam, 2010) Statistics SA, Quarterly Labour Force Survey, May 2009 and July 2010 (Stats SA 2010).

Source: Stats SA: QES.

2.2 Income inequality

While SA is classified as a middle-income country, levels of inequality are now among the highest in the world. In the post 1994 period the new government sought to tackle inequality and rising poverty. However, the 'poor growth performance and employment track record of the economy between 1995 and 2001 has taken its toll on household incomes and poverty levels' (Pauw & Mncube, 2007).⁴ As a result, government stepped in and increased its allocation towards social grants which has had an impact in reducing poverty and inequality. However, income inequality has continued to grow as an increasing share of income is going to the top end (Woolard, Leibbrandt, Finn & Argent, 2010).⁵ To illustrate the extent of the inequalities in SA, Table 2⁶ shows that the overall income inequality has increased further between 1993 and 2008. Between 1993 and 2008 the country's Gini coefficient increased by four percentage points, from 0.66 to 0.70.

The data also highlights the increase in inequality by racial group, with the Gini coefficient for the black population having risen most sharply during the fifteen years and more recently for the Asian/Indian population. Interestingly, the data shows how inequality in the rural areas has declined relative to urban areas.

⁴ Pauw, K. and Mncube, L: The Impact of Growth and Redistribution on Poverty and Inequality in South Africa, Development Policy Research Unit, UCT, 2007.

⁵ Woolard, I.; Leibbrandt, M.; Finn, A.; Argent, J.: Trends in South African Income Distribution and Poverty. Since the Fall of Apartheid, OECD Social, Employment and Migration Working Paper No.101

⁶ *ibid.*

Table 2.
Gini coefficients for per capita income by race and geotype

	1993	2000	2008
African	0.54	0.60	0.62
Coloured	0.44	0.53	0.54
Asian/Indian	0.47	0.51	0.61
White	0.43	0.47	0.50
Rural	0.58	0.62	0.56
Urban	0.61	0.64	0.67
Overall	0.66	0.68	0.70

Source: (Leibbrandt et al, May 2010) using data from SALDRU 1993, IES 2000 and NIDS 2008 data sets

Interviewees point to the fact that the rise in overall income inequality and the dynamics around intra-African inequality could be driving wage demands; an issue raised during discussions on factors impacting on collective bargaining.

3. Legislative overview of South African collective bargaining system

The Labour Relations Act No. 66 of 1995 (LRA) sets the scene for the legislative framework for collective bargaining in SA. The LRA was based on the premise of self-regulation coupled with the development of robust tripartite institutions (comprising strong unions and employer organisations). At the centre of this approach was the promotion of social dialogue as the most appropriate way of managing not only the transition to democracy but also the changes which were unfolding in the workplace. Hence, tripartite institutions such as bargaining councils (previously known as industrial councils) were proposed as being the central but not the only institution for bargaining.

There are currently 47 bargaining councils covering an estimated 2.5 million workers across both the private and public sectors (including national and local government). In recent years, there has been a growing importance of the public sector in collective bargaining and now more than 50 per cent of bargaining council coverage is linked to the public service (including local government). Annex 2 provides more detail on the state of bargaining councils and other collective bargaining arrangements.

Aside from bargaining councils, collective bargaining takes place in a number of other centralised bargaining arrangements as described by a report commissioned by the CCMA.⁷ Aside from the introduction of a new structure called statutory councils which has had limited impact, there are also non-statutory centralised structures such as those in the mining and automobile manufacturing industries, otherwise bargaining is found at company and or plant level. Informal and formal centralised bargaining arrangements have emerged in a number of sectors. Such arrangements have emerged in some sectors traditionally covered by sectoral determinations such as private security and contract cleaning. Agreements reached in these bargaining structures are more often than not incorporated by the Minister of Labour into sectoral determinations for those sectors.

⁷ Support for bargaining councils and collective bargaining: A research report commissioned by the CCMA conducted by the Labour and Enterprise Policy Research Group (LEP) in partnership with the National Labour and Economic Development Institute (Naledi), June 2010.

Meanwhile, parties in gold and coal mines, members of the Chamber of Mines and the seven main automobile manufacturers have long established centralised bargaining arrangements which bind the parties to the negotiations. Parties to these negotiations are exploring the possibility of establishing bargaining councils.

Wages in sectors that have little or no history of collective bargaining (and are classified as being vulnerable), are determined through sectoral determinations which are promulgated by the Department of Labour (DoL). This is in line with the provisions of the Basic Conditions of Employment Act (BCEA) of 1997 (amended 2002) which provides for the promulgation of sectoral determinations which set minimum wages for workers in specific sectors which are deemed to be vulnerable. Since the establishment of the ECC – which makes recommendations to the Minister on minimum wages for these sectors, eleven sectoral determinations have been published across a range of sectors including agriculture, contract cleaning, civil engineering, private security, domestic workers and wholesale and retail. Based on 2007 employment figures, about 5.5 million workers were covered by sectoral determinations.

Aside from collect bargaining institutions, the LRA makes provision for the establishment of other key tripartite labour market institutions which deal with dispute resolution such as the Commission for Conciliation Mediation and Arbitration (CCMA) and the National Economic Development and Labour Council (NEDLAC) – viewed as the custodian of social dialogue (see Annex 2).

4. Response of social partners to the economic crisis

4.1 Negotiating the National Framework Agreement (NFA)

South Africa's response to the global crisis began slightly later than other countries when the former President Kgalema Motlanthe convened a meeting on 4 December 2008 of the social partners to discuss the challenges brought about by the global economic crisis. At the meeting the social partners agreed that overcoming these challenges would require a collective response to the difficult economic conditions facing the country.

This led to a relatively short but intense process which involved the parties trying to merge the different agendas of the respective constituencies. Government argued that the aim of the process was not to develop a new economic policy but a temporary intervention to deal with the consequences of the crisis. Despite last minute reservations and 13 drafts later, the parties finally presented a draft framework to the Presidential Working Group and the 'Framework Agreement for SA's response to the International Economic Crisis' was released on 19 February 2009.⁸

Elements of the government's full response to the crisis had been included in the 2009/10 national budget which was announced in Parliament on 11 February 2009.⁹ Such elements included a continued commitment to increase public spending (linked to infrastructure programmes), boosting the existing Expanded Public Works Programme (EPWP) and exploring how the Unemployment Insurance Fund (UIF) could be restructured to provided extended benefits to the unemployed.

The key principles of the framework were to ensure that the burden of the economic downturn would not be placed on the poor and vulnerable, activities supportive of growth

⁸ www.politt.org.za/article/framework-for-south-africas-response-to-the-international-economic-crisis-february-2009-2009-02-23)

⁹ 2009/2010 National Budget: www.finance.gov.za or www.info.gov.za/speeches/budget/speech2009.pdf

and decent work would be protected and supported, and high levels of investment in public sector infrastructure maintained. The key action areas included: addressing job losses through layoff arrangements and special measures for companies in distress; measures to combat customs fraud; competition commission investigations into collusive practices; the promotion of local procurement of supplies, services and other requirements; counter-cyclical fiscal policy (as highlighted above) and the maintenance of public infrastructure investment.

Other interventions included the decision by government to extend both its social security and social service commitments for vulnerable individuals and communities, while supporting particularly vulnerable communities with agricultural starter packs to the tune of R76 million. Formal sector workers facing job losses could get support from the UIF and the TLS; and the state provided support to sectors in distress, including the motor and clothing sectors, while providing some relief to SMMEs in distress in the form of faster payments for government services provided, and initiatives aimed at increasing access to credit and providing more flexible repayment periods.

4.2 Implementing the NFA

The signing of the agreement was hailed as a major achievement and a model for other countries. However, its implementation was partly delayed by the elections so momentum only got going in some areas by June 2009. From July 2009 the newly established Department for Economic Development (DED) led the NFA's implementation. The Department convened eleven leadership teams consisting of the leadership of the social partners. These leadership task teams were supposed to report to President Zuma which was done from time to time.

The implementation of the NFA was supposed to have been achieved in various phases and for the purposes of this study, the focus is on those interventions linked to collective bargaining, namely, the TLS (which formed part of one of a number of interventions of the employment task team) and assistance for distressed sectors.

Distressed sectors: The DED explained¹⁰ that the first phase involved the establishment of an R6.1 billion fund administered by the IDC to support companies affected by the crisis; the development of the distressed sector proposals to transform and support distressed sectors including auto, clothing and textile, capital equipment and metal fabrication. The second phase included the implementation of the Distressed Sector Fund which resulted in the approval by the IDC of funding to 50 companies, saving or creating 14,926 jobs. The fund operated across a range of sectors including metals, chemicals, mining, clothing (see box below) and textiles, tourism, catering, agriculture, forestry, sawmilling, automotive and auto parts and accessories. The total amount approved by August 2010 was R1.8 billion. Further applications had been received and were being considered by the IDC.

Clothing industry

Through the NFA, a process was embarked upon in NEDLAC leading to a sector accord which identified clothing as a vulnerable sector in the context of the crisis and acknowledging that the sector (along with footwear) was strategically positioned to play an important role in reversing the deindustrialisation of the economy and therefore, could play an important role of contributing towards reindustrialisation and job creation. A number of support measures were introduced to assist the sector, the most significant being the production incentive scheme (PIS). It is intended to assist companies in upgrading their facilities (plant and equipment). The net effect of this incentive is that qualifying companies will benefit to a tune of 10 per cent of their VAT which will be paid back to them. The general consensus is that this is the most significant support measure ever given to the industry by government to place the sector on a more sustainable trajectory.

¹⁰ Department for Economic Development: Implementation of the Framework Agreement: presentation to the select committee on 17 August 2010.

Training layoff scheme (TLS): The first phase of implementing the TLS required the establishment of an R2.9 billion fund to finance the scheme. The second phase required the setting up of the institution to drive this as well as ensuring the relevant institutions were set up to work together. The TLS as highlighted in the NFA is “in addition to other measures to avoid retrenchment, one further option that the parties will consider is training layoffs, financed by the NSF and Setas, for workers whose employers would ordinarily retrench them and which can be introduced on terms that would keep them in employment during the economic downturn but re-skill them as an investment for the future economic recovery.”

The scheme provided that for a period of three months workers could receive training provided by a Seta and during that time the company would only have to pay the basic social package (among others, pension contributions). Employees would remain in employment and in addition receive half their salary up to a maximum of R6,239 per month. An estimated R2.4 billion was allocated for the training allowances and R500 million ring-fenced by the Setas for training costs.

The scheme could be accessed through the CCMA or participating Setas. An employer, trade union or employee could request the CCMA to facilitate the conclusion of a training layoff agreement; alternatively the parties can independently conclude such an agreement and submit it to the CCMA for confirmation that it complies with the agreed rules and procedures. About 200 CCMA commissioners were briefed and 37 were trained to facilitate training layoff applications. In order to increase uptake of the scheme, targeted workshops were held across various sectors and provinces by the DED. By August 2010, an estimated 6,083 workers were placed on training layoffs instead of being retrenched.

In terms of the implementation of other aspects of the NFA, various government reports and presentations¹¹ indicate that some aspects have been implemented but others not all. All social partners agree that the NFA was a ‘great social innovation’, but ultimately retrenchments still prevailed and jobs were lost. A government official argued that the agreement was overloaded with outstanding social partnership issues.¹² But in moving forward, there needs to be a consolidation of lessons learnt from ‘our partly adequate response’, as ‘... all in all, perhaps 20,000 or 30,000 jobs were saved directly, at best, though many lives were made liveable through EPWP, CWP and social grants.’

In conclusion, a labour representative pointed out that while the parties had not fared well in terms of implementation, partly due to not having the same experience as other countries in terms of intervening during a crisis, ‘we now have the experience and are better prepared in the event of another economic crisis.’

4.3 Role of the social partners in the NFA

As highlighted in this paper a previous report to the ILO on SA’s response to the global crisis¹³ stated that as the NFA process unfolded, each constituency had very different views of what they wanted it to achieve. Having finally agreed to the framework, the process of implementation has shown some serious weaknesses within the social partners and their

¹¹ Hirsch, A: SA’s response to the global economic crisis – some reflections. October 2010

¹² A government official stated ‘the social partnership was not nimble enough to focus on the core issues.’ He adds that the absence of SME measures reflects social partnership deficiencies while though not directly a product of the crisis, the Community Works Programme (CWP) appears to be a major innovation in social protection. Areas of innovation such as the IDC Fund and the TLS were partly successful but hampered by design and implementation issues. which would suggest, he says, that ‘the social partnership was not nimble enough to focus on the core issues.’ He adds that the absence of SME measures reflects social partnership deficiencies while though not directly a product of the crisis, the Community Works Programme (CWP) appears to be a major innovation in social protection. Areas of innovation such as the IDC Fund and the TLS were partly successful but hampered by design and implementation issues.

¹³ Grawitzky, R: South Africa’s employment and social protection policy responses to the global economic crisis, June 2009.

ability to deliver their constituencies, as highlighted in section 6.2 which focuses on the challenges faced by the CCMA in implementing the TLS.¹⁴

What has emerged, yet again, is the issue of capacity among the social partners to implement while at the same time raising some concerns on whether there is sufficient will to drive implementation.

5. The role of collective bargaining during the crisis

This section provides an analysis of negotiations across key sectors of the economy in order to understand the role played by collective bargaining during the recent economic crisis. This analysis touches on the negotiated responses from social partners in dealing with the crisis as well as pointing to the factors that contributed towards a difficult bargaining environment, the challenges facing the social partners in collective bargaining and the general industrial relations climate.

This study tracked negotiations covering 13 out of the current 47 bargaining councils, other statutory and non-statutory centralised bargaining arrangements and some examples of enterprise level bargaining. These collective agreements covered an estimated two million workers (see Annex 3 for an overview of the settlements achieved in the sectors targeted between 2008-2010).

5.1 Overview

Bargaining during the recession highlights not only the complexities of negotiating in a highly unequal society but a situation compounded by the 2010 Soccer World Cup which provided an opportunity for some workers to share in its gains. Hence, the economic realities were not necessarily reflected in the demands tabled and the perception of rising inequality and corresponding expectations (also fueled by the political changes which were unfolding in the build up to the 2009 general elections) proved to be key drivers for higher demands.

During the global crisis, workers believed they had lost out in previous years because of the decline in real wages (see figure 5) and wanted to recoup their losses. At the same time, they saw little or no sign that other sectors of society were tightening their belts; instead they saw a society consumed by a culture of enrichment and conspicuous consumption. Thus, collective bargaining during the recession was accompanied by industrial action (especially in 2010), reaching its highest level in recent years (see figure 4).

At the same time the period saw a decline in trust between the negotiating partners and a real sense that as a result of the neglect of collective bargaining, strains are beginning to appear – as reflected in some bargaining institutions.¹⁵ Some bargaining councils have effectively maintained and carried forward the old traditions of collective bargaining from pre-1994. However, there are some bargaining councils which have modernised and adopted new bargaining approaches and strategies (see Annex 3). However, there are a large number that have not changed in any significant way.

¹⁴ A senior trade unionist says the 'NFA was a good process but it would take time to ensure implementation ... in terms of only blaming employers for the TLS, unions too have not support it on the ground. Workers have not bought into it as when it comes to restructuring workers are used to getting their retrenchment pay and then leaving. This is an area where one would have expected more cooperation between employers and unions'.

¹⁵ Interviews point to a growing concern among some of the social partners around the current state of bargaining in South Africa. Interviewees claim that bargaining has become a neglected area with both employers and unions viewing it as a once off event, or as 'something to get through'.

A number of bargaining councils, for example, have sought to assist parties in preparing for negotiations¹⁶ (as this is an issue which has emerged strongly in interviews about the lack of proper preparation) so as to speed up the processes (which are proving to be rather costly for the councils as they tend to drag on, with real negotiations often only taking place when a dispute is declared or during a strike)¹⁷ as well as looking at the mode of bargaining with the aim of exploring new approaches towards bargaining.

The state of the institutions – co-managed by the social partners – reflects the capacity and resource constraints they are facing as well as the general state of the management of human resources where parties have failed to create sufficient linkage between wages, skill progression and productivity or explore linkages between labour market institutions such as bargaining councils and industrial policy.¹⁸

In terms of the state of the bargaining partners, the research points to capacity, lack of basic negotiating skills and trust between partners, the power of negotiators to influence and educate their own constituencies, turnover of negotiators and lack of access to information and resources of some negotiators as being some of the key issues which need to be addressed.

While it is a mixed bag, there is a general feeling that the level of sophistication among both employer and union negotiators has declined over the years and needs to be urgently addressed.¹⁹ A study pointed to the present lack of skilled negotiators, partly linked to staff turnover (CCMA, 2010). This, the report argues, affects the level of trust between parties especially those who, over a period of time, built a strong relationship. In addition, there is also an issue of the power and ability of negotiators to take their constituency along with them and be in a position to articulate and influence their constituencies²⁰ in terms of the reality of what is possible and whether they are able to exercise leadership.²¹

As to the quality of negotiations, the view is that there is little attempt to find solutions during negotiations. Further, there is concern that in some bargaining processes (a phenomenon more associated with the public sector and SOEs) the real negotiations take place outside the bargaining forum.²² In addition, parties tend to look at one or two key settlements achieved elsewhere as the benchmark (and in recent years that has tended to be

¹⁶ The road freight bargaining councils, among a number, seeks to empower both bargaining partners in negotiations by providing them with relevant information and data. This example raises some challenges for councils around data collection, what role they should be playing to assist parties as well as the role of the council general secretary. The social partners need to consider whether council general secretaries should be playing a more strategic role in collective bargaining – which would require them to have the requisite skills base to intervene and mediate between the parties – or should their focus purely be on being an administrator.

¹⁷ This is a result of a belief that employers are holding back, leaving the union with no option but to push for a dispute or strike to get any movement.

¹⁸ Interview with a former trade unionist.

¹⁹ As one industrial relations practitioner states: ‘we are not seeing any creativity or innovation in bargaining ... we have to come to terms with what is happening on the ground. We have lost a lot of ground since the late 1990s when we were a leader in many areas of negotiations.’

²⁰ As one observer says: ‘I don’t get a sense that negotiators are totally in control of their respective constituencies. They now tend to be messengers. Good and empowered negotiators should be right where decision making is happening. They are not empowered to really negotiate and influence.’ In the past negotiators were powerful in their own right and were able to influence senior executives in companies or unions. ‘The decision makers are removed from the reality while the negotiators do not have the status and ability to stand before their decision makers to challenge their mandates. Negotiators not talking in realistic terms because do not have the authority – same with union negotiators.’

²¹ Interviews raise concerns about the ability and/or willingness of negotiators to interrogate not only worker mandates but those of employers.

²² ‘There are in fact then two negotiations taking place. Ultimately it subverts the credibility of the bargain process and the bargaining structure.’ Unionists point out that in addition, behind the scenes negotiations become a problem if members are not taken along (and the main negotiators are excluded from this process) and then they see proposed settlements in the media, before they are properly briefed.

the public sector²³ and SOEs²⁴ – sectors that are largely protected). While pattern bargaining is a positive practice as reflected in international literature, as it helps to coordinate increases across the economy, parties also need to look at what is happening in their own sector.

Linked to capacity constraints is the ability of the parties to monitor and ensure implementation of agreements²⁵ and ensure that their constituencies at the local level are able to engage and understand issues agreed to at the national level.²⁶

In terms of collective bargaining outcomes, data collected by STATS SA (figure 5) shows that workers achieved real growth in wages during 2009 and 2010. The SA Reserve Bank indicated that this growth in real wages comes off the back of a decline in real wages prior to the crisis. Looking at nominal wage increases during the crisis, increases ranged between 9.8 per cent and 10.4 per cent, during 2008 to around 9.4 per cent and 9.6 per cent in 2009; in 2010 the settlements dropped to between 8.3 per cent and 8.6 per cent.

Some interviewees raised concern as to whether relatively high wage increases granted during the recession were at the expense of other conditions of employment. The Cape Town based Labour Research Service (LRS)²⁷ – which monitors and analyses hundreds of collective bargaining agreements – argues that there has been very little or minimal movement of non-wage benefits. Generally, these benefits have largely remained static as unions have tended to focus on wages. Research conducted as part of this study reaffirms this view both in relation to the focus on wages and the fact that largely, worker benefits were not compromised in the face of higher wage increases; rather, they remained relatively unchanged.

Given the high inequalities and expectations to have these redressed (coupled with the capacity constraints of the social partners), it is extremely difficult for collective bargaining (and its institutions) to play anything other than a redistributive role – which is critical in terms of protecting earners.

The bargaining environment during the recession

The bargaining environment from 2008 onwards was very much shaped by the developments which unfolded in 2007, as the collective bargaining process proved to be

²³ Partly as a consequence of the changes in the labour market towards non-standard employment as well as extending bargaining rights to public servants –the public sector, including SOE's are dominating the collective bargaining arena. Previously, the private sector was the 'lead' in terms of what was happening in negotiations and particularly around settlements. The shift is linked to a number of factors. Firstly, public sector workers were finally given the right to bargain collectively. Secondly, bargaining since 1994 has become voluntary and is dependent on workers being sufficiently representative to gain organisational rights to force employers to bargain. This shift in approach coincided with some dramatic changes in the labour market with the move towards atypical work, non-standard employment, outsourcing as well as ongoing retrenchments. This, coupled with other developments has led to a decline in private sector union membership (there has been a 60 per cent decline in the number of unions registered). In this changing labour market, unions are finding it more difficult to organise workers who are operating in both established and emerging sectors with unions being forced to rely on a shrinking pool of core workers. While in some instances union membership has not declined, they are experiencing a high turnover of membership. This impacts on union power as members are firstly, not secure in their jobs and secondly, they do not have enough time to become entrenched in the union to understand the need for long term strategies.

²⁴ The CCMA stated that during the recession settlements achieved in the SOEs (such as Eskom and Transnet) impacted on the public sector negotiations (which experienced a three week strike) which in turn set the trend for settlements in the private sector.

²⁵ A former trade unionist says in the public sector, for example, so many agreements are struck but it is questionable about the capacity to implement these agreements as well as to monitor implementation. The failure of parties to implement agreements which are repeatedly rolled over will eventually impact on negotiations. This was evident during a number of negotiations during 2010.

²⁶ Labour researchers argue that shop stewards need additional training and are not sufficiently empowered in some instances. In others, the shop stewards (as in automobile manufacturing) have a greater understanding than the union organisers. This is proving to be increasingly problematic with one labour observer stating that in the drafting of agreements, workers lose out on benefits if they not properly crafted.

²⁷ Labour Research Service Bargaining Indicators: 2010/2011

very acrimonious, culminating in high levels of industrial action. Worker expectations were high: they were aware that the economy had stabilised and was growing and jobs were being created; the 2010 Soccer World Cup was being marketed as an event that all would benefit from; and in the political arena, the anticipation of the election of Jacob Zuma as President gave workers an increased sense of their own political power. Hence, the country faced strikes across key sectors in 2007 as parties sought to renegotiate multi-year agreements, where workers expected to get an increased share of the pie. Strikes linked to the building of the stadiums for the 2010 Soccer World Cup and other megaprojects also began in 2007 as workers saw this event as an opportunity to try and get some benefits (Roscom, 2009).²⁸

By the time President Zuma came to power in 2009, with the support of labour (the Congress of SA Trade Unions, Cosatu), the economy had moved into a recession and the environment proved to be decidedly different. While the recession placed huge pressures on companies, especially for those in distressed sectors (among others, clothing and motor retail), for workers the recession just added further economic hardships (with rising cost of living especially among lower paid workers who are more affected by food inflation than the overall inflation rate), job insecurity and job losses. (It should be noted that overall CPI does not provide an accurate reflection of the actual cost of living for low income earners. The CPI is an average for everyone but low income earners spent a larger percentage of their wages/salaries on food and transport. So when food or transport costs rise, these workers are more heavily affected than higher income earners.

Hence, demands did not necessarily reflect the economic realities. First, as highlighted above, the 2010 Soccer World Cup proved to be a key factor driving high wage demands.²⁹

The following include some of the major strikes linked to the 2010 World Cup as highlighted by the CCMA:

- The Stadium disputes (2007 to 2008) at Mbombela, Green Point, Moses Mabhida and Peter Mokaba stadiums collectively represented around 17 work stoppages of varying duration, of which only two were protected. All these work stoppages placed the delivery of the 2010 stadiums under severe pressure.
- The Civil Engineering dispute (2009) effectively halted construction of all 2010 stadiums and related projects for almost two weeks.
- The Transnet dispute (2010) played itself out before the commencement of the event, but severely threatened logistical support in respect of goods that were being imported for the event.
- The Eskom dispute (2010) presented a direct threat to the event as it unfolded during the event and placed the hosting of the matches including the semi-finals and final match in jeopardy.
- The Public sector dispute (2010) arose early in the event and would not have affected the event but its resolution was heavily affected by the settlements achieved in the Transnet and Eskom disputes.

Second, interviewees have inferred that within the prevalent culture and climate of enrichment, workers focused on short-term survival instead of making strategic decisions in light of deteriorating labour market conditions. In the face of rising member expectations, unions were finding it increasingly difficult to win settlements that could maintain living standards or even ensure their improvement. At the same time however,

²⁸ Roscom, A. Industrial action in the construction of the Gautrain and the 2010 soccer stadiums, May 2009. Roscom states: 'Many important politicians and other leaders were constantly reminding the public of the benefits of this high-profile event. The large amounts of money being spent on these projects was often in the media, and workers often felt a sense of unfairness that they were not benefitting more from the monies being invested by government in these projects. As one newspaper by-line read in relation to the Moses Mabhida strikes in 2007: "We are part of the nation, and we also need a share of the cake" (Mabuza et al, 2007).'

²⁹ The CCMA had already begun to warn parties in 2008 of heightened industrial action linked to this event and sought to intervene where possible, especially with the civil engineering and construction industry.

union leaders failed to sufficiently challenge and interrogate worker mandates, which has led to difficulties, and in some instances leaders faced a backlash from members.³⁰

Third, a further issue to emerge during the crisis was the growing dissatisfaction among union members with the outcomes of multi-year agreements, which research has shown is becoming increasingly prevalent across the key sectors. Such concerns emerged in local government, metal and engineering, motor and automobile components and mining, especially relating to the three year deals entered into in 2007. In these cases, with inflation spiking in 2008,³¹ workers realised that their increases were below inflation and in some instances unions tried to reopen negotiations in 2008 but employers refused; in metal the parties reopened negotiations and as part of the final settlement the agreement was extended for another year, making it a four year wage deal.

Finally, interviewees argue that the bargaining environment has begun to look more adversarial not only because of the quality of bargaining – across both private and public sector – but the lack of trust which exists between the parties with no real dialogue happening on the shopfloor between line management and employees on how to influence business outcomes.³²

³⁰ What emerged very strongly from the interviewees is the failure by union structures and leaders to sufficiently interrogate worker mandates prior to the formulation of demands. This failure could be attributed to a number of factors such as whether leadership feel they are able to make unpopular pronouncements (a factor impacting on the public sector strike) and more importantly, whether members will actually believe them which, some argued, is a consequence of a decline in union education (with a particular focus on the political economy and good shop steward training).

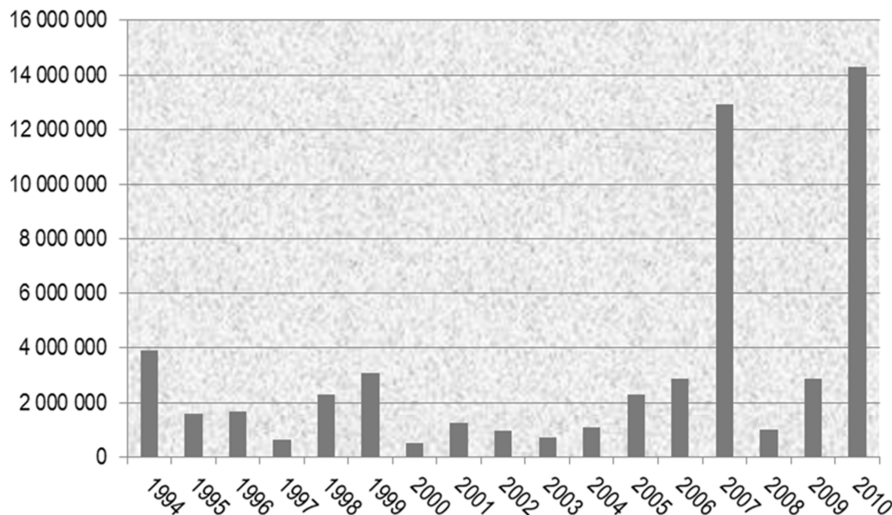
³¹ Interviews highlighted that the majority of these agreements provided for inflation linked increase plus an additional one or two per cent. In 2008 inflation spike to well over 11 per cent and increases had been linked to CPI from the previous year which was way below the 2008 figure. As a result, workers received increases way below inflation in 2008. For example, in local government, the parties entered into a three year deal in 2006. However, during the last year of the deal, in 2008 workers were supposed to get an increase of 1, 75 per cent above average CPIX (CPI excluding mortgage costs) in the year to January, although the adjustment date is in June. This meant that workers would have received an 8, 3 per cent increase but inflation jumped to 12, 2 per cent by June, resulting in a wage increase way below inflation.

³² A former trade unionist: ‘In the absence of these kind of conversations about the challenges and how people can work together as a team and create an informed workforce and how they can begin to trust the company, there is no trust and why should workers trust if there is no sharing or only sharing when it suits the company.’

Strikes during the recession

The start of the global crisis was preceded by a slow but steady rise in industrial action culminating in the 2007 strikes which resulted in more than 12 million working days being lost due to strikes. As figure 4 shows, working days lost during 2008 and 2009 dropped substantially, but then rose again sharply in 2010 with over 14 million working days lost – more than during the height of the militant strikes of the 80s.

Figure 4.
Working days lost between 1994 – 2010



Source: Andrew Levy & Associates

Aside from the steady increase in strikes from 2004 onwards, research found that strikes are getting longer with an increased willingness on the part of workers to use the strike weapon. Of growing concern in some quarters is the perception that strikes are becoming more violent.³³ The majority of wage negotiations tracked in this study faced some form of industrial action, with the highest levels recorded in 2010 – when key sectors were renegotiating three year wage deals where workers believed they had lost out because of inflation spiking in 2008. This had caused some unhappiness among members when inflation spiked in 2008.

5.2 Wage settlements during the crisis

Wage data in South Africa is a little problematic especially during the period of the crisis. Statistics South Africa replaced the bi-annual Labour Force Survey (LFS) with the Quarterly Labour Force Survey (QLFS) in 2008 and the wage data question was removed from the survey and only included again from the third quarter of 2010. As a result, the only other source of monthly wage data is the Quarterly Employment Statistics (QES) which provides payroll data from the formal non-agricultural sector. In terms of that data (see figure 5), workers experienced a decline in real wage growth prior to the crisis, and this trend continued through 2008 but by the second to third quarter of 2009 the situation changed and workers began to experience a real growth in wages until the third quarter of 2010.

³³ Some analysts believe that there has been an increase in strike violence which coincides with deterioration in negotiations. A labour analyst says however, that there is more active membership involved in collective bargaining than before and they are becoming more active, separate from the union leadership. 'So there is more shop steward driven involvement who is often more in touch with issues than the union organiser.' He warns that if anything 'there is an activism emerging which is precarious as some workers are living under oppressive conditions and the strikes are extremely defensive as a result they become violent... Many workers going on strike are probably already highly in debt and wages barely covering them. So workers are on strike knowing that debt collectors are after them so after a week tensions mount and if no-one budges then drastic measures are explored.'

It should be pointed out that the productivity data currently utilised in SA provides a rather simplistic measure of productivity as it only relates to labour productivity – taking the number employed relative to output (GDP). It is therefore difficult to make a clear analysis as it does not factor in other issues which impact on productivity such as training, investment in new capital equipment and the like.

In terms of average wage settlements (see Annex 3) in relation to inflation, increases were significantly above inflation during 2009 and 2010, except for 2008 when inflation rose to over 11 per cent, largely due to oil price hikes and consequently rising food prices. This led to a drive by the unions for double digit increases, but within a matter of months inflation dropped sharply and continued to spiral down well into 2010.

6. Outcomes of collective bargaining during the recession

As highlighted above, this study tracked collective bargaining across a range of sectors in order to understand how the social partners responded and what trade-offs were agreed to in order to save jobs during the crisis. This section addresses the role of collective bargaining in mitigating the effects of the crisis by looking at how earnings were protected; ensuring employment security and improving skills during the downturn.

6.1 Collective bargaining and employment security

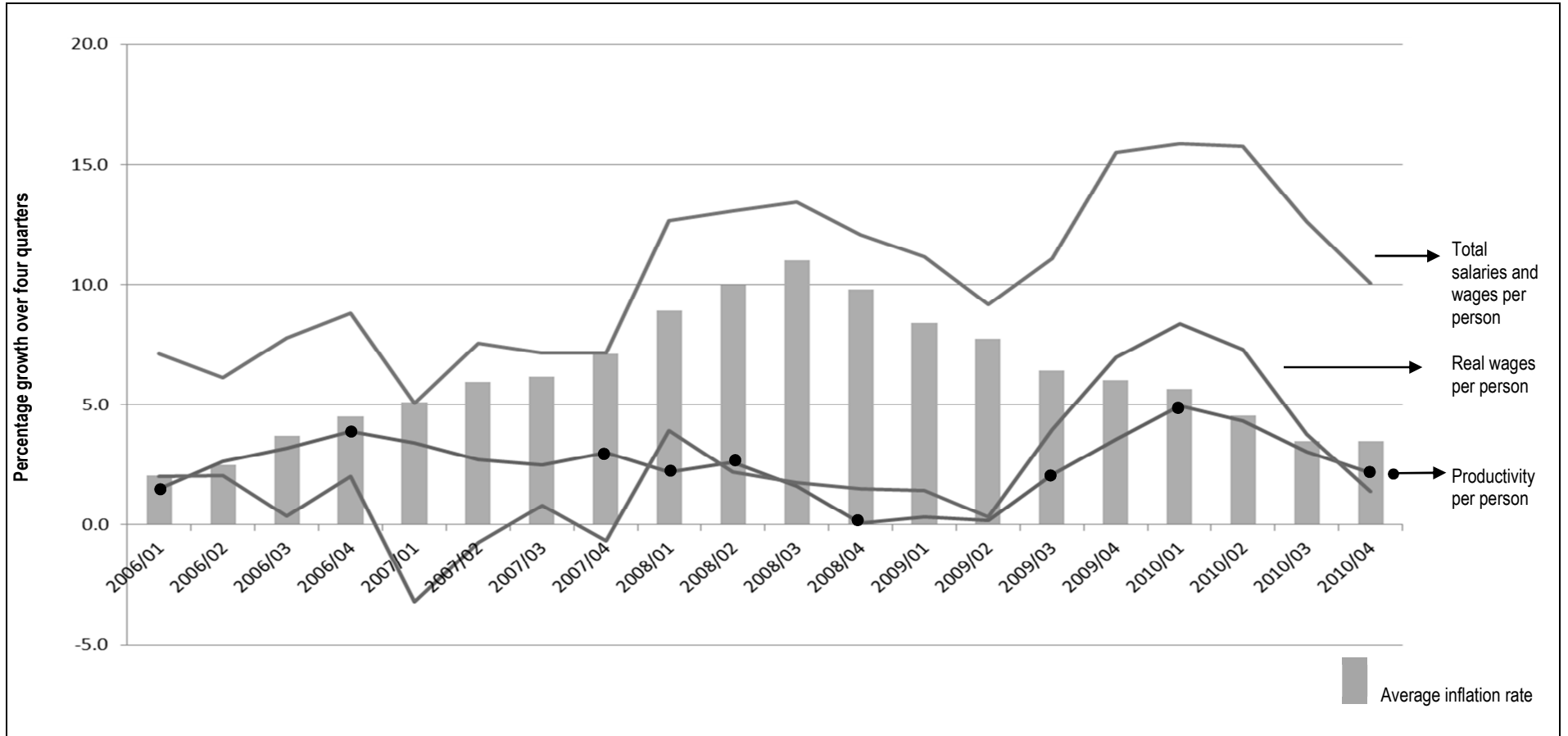
This section examines the extent to which collective bargaining mitigated the effect of the crisis on jobs and the measures agreed to in order to save jobs, such as working short-time, reduced working week, job sharing, extended annual leave, the utilisation of the TLS, an employment guarantee in exchange for wage moderation and the like. This section also focuses on the extent to which permanent employees negotiated their job security by ensuring that jobs were not contracted out, for example, the extent to which collective agreements included a ban on the use of labour brokers or the phasing out of the use of labour brokers – limiting the externalisation of labour to protect permanent jobs.

Interviews point to the fact that collective bargaining and bargaining institutions have sought, where possible, to mitigate the effects of the crisis by entering into the following types of arrangements to save jobs:

- Sectors such as metal and engineering, motor retail, automobile manufacturing, mining, and glass worked extensive short-time to save jobs. In the glass sector, aside from working short-time and reduced working hours, some companies negotiated voluntary retrenchment packages, while in one company the parties agreed to reducing the wage rate in order to save jobs.³⁴ The parties were involved in a section 189 process when the CCMA got involved. As an alternative to retrenchment, the company proposed salary debasing (reducing the actual hourly rate to the minimum of that grade) as well as the payment of part severance pay (the difference between earnings then and now). There were two unions involved in the company, adopting opposing positions (both Cosatu unions). One union rejected salary debasing and from the beginning sought only to negotiate severance packages. However, the turnaround

³⁴ While it is difficult to evaluate the extent to which parties agreed to wage moderation, a number of bargaining councils indicated that they had anecdotal evidence of parties that had agreed to wage freezes and wage moderation in exchange for saving jobs, but this was largely in smaller enterprises. The SA Transport and Allied Workers Union (Satawu) claimed it had agreed to wage moderation in 2009 exchange for a guarantee of job security at Transnet. However, with the release of executive bonuses by the end of 2009, the unions felt they had been misled and took a tougher stance in 2010.

Figure 5.
Real wages in relation to productivity and inflation



Source: Stats SA. QES

came when workers realized that they would not get such a huge pay-out and finally agreed to the company's proposal.³⁵

- In mining, the parties sought to be proactive and in view of the fact that parties expected mining to be heavily affected by the crisis, a tripartite and multi-stakeholder forum called the Mining Industry, Growth, development and Employment Task Team (MIGDETT) was set up in December 2008. This structure sought to manage the impact of the crisis and to look at how to reposition the sector for growth. In an attempt to prevent job losses, a number of mines worked short time and extended annual leave but there was little or no uptake of the TLS. Ultimately, fewer permanent jobs were lost, as according to the Chamber of Mines, the majority of jobs lost were as a result of the mines cancelling their contracts with independent contractors. As a result, contract workers were mainly affected. Among permanent employees, mines offered workers voluntary retrenchment packages with an ex gratia payment as a 'sweetener' as well as the offer of early retirement. As a result of these measures, an estimated 48,000 were retrenched (forced retrenchment) as opposed to the expected 100,000.
- In the construction sector, the unions pointed to examples where workers agreed to job sharing where a group of workers would rotate and work two weeks on and two weeks off, but problems emerged where employers then sought to retrench during job sharing arrangements.
- Automobile manufacturing workers faced high and extended periods of short-time during the recession, especially among those companies without export orders. In a number of instances, the union – the National Union of Metalworkers of SA (Numsa) and employers utilised the TLS which assisted in preventing job losses. The TLS was utilised extensively in automobile manufacturing as well as in metal and engineering (see section 6.3).

A further measure explored in terms of the protection of jobs is the extent to which collective agreements dealt with the use of contract labour. The demand to ban labour brokers has been a central demand by the unions for a number of years with the result that the government recently published amendments to the labour laws to try and deal with labour concerns. As reflected in Annexes 3 and 4, an increasing number of collective agreements reflect either a move towards a total ban on the use of labour brokers while others are seeking to regulate its use by phasing it out in certain areas or having threshold for the number of permanent workers as compared to casuals/contract workers. For example, in the motor councils, the parties agreed to ban labour brokers within 18 months and in other sub-sectors to not have more than 35 per cent of employees coming from labour brokers. In a number of sub-sectors of the textile industry, parties agreed to various targets for the employment of permanent versus contract employees. For example, in the blanket sub-sector the parties agreed to increase the target for permanent employees to 64 per cent and fixed term contract employees 36 per cent. In the fuel sector, the parties agreed that core functions would not be outsourced and finally, at Transnet, the company agreed to the appointment of 1,000 contract employees from one of their subsidiaries as permanent employees.

³⁵ A CCMA commissioner says through the negotiations it emerged that there is a problem around the level of experience of the union organizers, who during the section 189 process, failed to explore alternatives to retrenchments and from the first pay spoke about severance pay, notice pay and selection criteria. 'They did not appear to interrogate the proposed retrenchment and they are not innovative. They almost seem resigned to the outcome. The other issue is lack of capacity in understanding or how to interrogate the companies financials....The main reason that they opted for severance pay was they thought they will get more. They will rather lose their jobs and then claim UIF.'

6.2 Earnings

This section focuses on whether during the crisis collective bargaining was effective in providing protection for earnings. The study has shown, firstly, that during the crisis collective bargaining largely ensured the protection of workers' wages, as reflected in section 5.2 and highlighted in Annex 3 (which outlines the outcomes of the collective bargaining processes which formed part of this study). These settlements point to the fact that collective bargaining did not result in a drop in wages nor in extensive wage moderation or wage cuts.

Real wage growth was evident from the middle of 2009 and into 2010 but not during 2008. Workers not covered by formalised collective bargaining, such as through sectoral determinations (see section 3). During the recession workers received increases equivalent to CPI while in previous years they had received real increases. ECC members pointed out that during the recession, employers and independent advisors argued for inflation-linked increases, given the economic realities. Hence, in vulnerable sectors, worker wages were capped at inflation increases. This was not necessarily the case in all sectors covered by sectoral determinations. For example, in private security where the parties have set up a private bargaining arrangement supported by the CCMA and DoL, the negotiated agreement for 2009 was 8.6 per cent. However, the DoL decided to extend the agreement for another year, providing only for an inflation increase of 3.4 per cent for 2010, which the unions argued could prove problematic and could impact on the 2011 negotiations.

Secondly, (as highlighted in sections 4 and 7.2), during the recession, as an alternative to retrenchment, some workers participated in the TLS and for a period of three months were guaranteed the payment of their social benefits and a portion of their wages.

Thirdly, aside from stipulating that a smaller percentage of the workforce can be contract labour in order to protect permanent jobs, the collective agreements highlight the extent to which parties are ensuring that council agreements are extended to cover labour brokers. In the case of the building council (Cape), subcontractors in the sector are seen as employers and are covered by the council, including labour brokers. In terms of clothing, the agreement reached during the crisis provides new protection for contract workers. All contract workers will be automatically entitled to a pro-rata share of all statutory payments due to permanent workers, will have the same wage and other terms and conditions of employment as permanent workers (except, at this stage, maternity leave payments), and must be offered permanent employment after a maximum of 12 months' employment with the same employer.

Councils such as the Metal and Engineering Industries Bargaining Council (MEIBC) explained its proactive stance in dealing with labour brokers. The council monitors them closely and regular meetings are held with labour broking employer organisations and many are accrediting themselves. The council indicates that 92 per cent of labour brokers assessed by inspectors pay up immediately.

Fourthly, the council system seeks to find a balance between protecting earnings and worker benefits while at the same time assisting companies which might be facing difficult times. This is achieved through the exemption process whereby employers can apply for exemptions from the main agreements. This issue will be elaborated upon in section 7.1. The system effectively allows for adjustments but at the same time ensures effective protection of earnings. However, an area of challenge is where there is non-compliance with agreements which ultimately does not protect earnings, as in the case of the clothing industry.

6.3 Innovative agreements

This section looks at whether during the recession attempts were made by the bargaining partners to look at areas of innovation to improve productivity during the upturn. This

study found some examples where parties agreed to look at productivity (clothing); in addition, some companies (automobile manufacturing) utilised the downturn to upskill their own employees or the unemployed and in some instances, the parties took advantage of the TLS.

In automobile manufacturing there are two examples of companies taking advantage of the downturn to upskill their own employees. In terms of the collective bargaining agreement reached in the sector, the parties agreed that in terms of workplace restructuring, “management and shop stewards will share and consult on issues like scheduled production, manning levels, quality, productivity and market share”.

In terms of skills development, during the recession Volkswagen employed just under 1,000 people in 2009 and upskilled them and used them in the production for a third shift as the company was introducing a new production line. Some of these employees have been taken on full-time.

During the recession, orders at BMW decreased but instead of retrenching (as the company wanted to retain a stable and skilled workforce in anticipation of going into production on a new 3 series in 2012), the company together with Merseta and the local government entered into a partnership to train the existing workforce. The company was affected by a number of non-production days and during that time, salaries were not affected as the company utilised the TLS through the Merseta’s Retrenchment Assistance Programme (RAP). During the downturn the Merseta took a decision to introduce the RAP (as a precursor to the TLS) to assist companies or employees that were being retrenched; the intervention would train up to the value of R12,500 and upskill employees so that they could re-enter the labour market or explore entrepreneurial activities.

At BMW, between 2009 and 2010, an estimated 1,100 employees were trained on an NQF level 1 learnership which focused on business administration practices (including entrepreneurial and computer training); these employees are now on the NQF framework which will enable them to have greater access to education.

Finally, a review of collective bargaining arrangements reached during the recession shows that there were some sectors which committed to relooking at productivity, such as Transnet; in the clothing sector the parties agreed in 2008 to allocate 0.5 per cent for a productivity incentive scheme in some areas. The union, SACTWU, claimed that the productivity incentive was part of the union’s demands and is intended to help enhance the industry’s competitiveness. In 2009, the parties agreed to establish a productivity institute and a training institute under the auspices of the bargaining council.

7. Responsiveness of institutions to the crisis

This section explores the impact of the economic crisis on industrial relations and collective bargaining institutions (CCMA, NEDLAC and bargaining councils) and examines how they responded to the crisis.

7.1 Bargaining councils

Bargaining councils were affected by the crisis, firstly in relation to their finances. A number of councils reported that reduced levies (as a result of job losses) coupled with a marked increase in workload (especially on dispute resolution) placed a major strain on resources. Secondly, a number of councils experienced job losses (in the metal and engineering, clothing, paper and wood, glass, motor retail industries). Thirdly, some councils saw an increase in exemption applications and the working of short-time, with the TLS having a limited impact.

Table 3 provides an overview of the situation concerning exemptions and shows that overall, exemption applications increased during the crisis; however, not all applications were related to wages but often to council levies and other employment conditions such as annual bonuses.

As to the granting of exemptions, it would appear that the councils sought to take into account the recession when considering applications and where cases were genuine and the enterprise could show a case of hardship and the need for relief for a period of time, then the applications were granted.

The case of non-compliance in clothing

In recent years, and not specifically linked to but exacerbated by the crisis, the number of non-compliant companies in clothing has grown. These non-compliant companies are predominantly found in two provinces of South Africa – Newcastle/ Bochobela (former Bantustan and decentralised area) area which are dominated by Chinese and Indian employers. During 2010, the clothing bargaining council decided to take action against these non-compliant companies; an initial 50 companies were targeted and were forced to close down, leading to significant job losses. Workers challenged the move of the council. Following various interventions, the parties (including government) entered into discussions to suspend the closure of over 300 companies because of the potential impact on jobs. An estimated 18,000 jobs would have been lost if these companies had closed. A key aspect of these discussions revolves around a mechanism to ensure that these companies were able to comply with the minimum wage. These discussions are continuing, with attempts to find some resolution to ensure that these companies begin a phased in approach to comply with the main agreement. Various deadlines have been set for the companies to comply and each time they have been extended with these companies arguing that they are unable to comply as they will go out of business. The key problem here is that local companies are competing with these non-complying companies for contracts and the complying companies are saying “we are complying and we are being punished because they are losing out on business”.

Finally, during the crisis, councils have sought to stem the tide of job losses by promoting the TLS, other interventions, or through exemptions. However, it is questionable whether these interventions had the desired results. Where councils were able to be more proactive was in industrial policy issues, but that is a terrain that a number of councils have failed to explore.

Table 3.
Exemption applications to bargaining councils during the crisis³⁶

Sector	Exemption applications	Non-compliance	Short time	General comments
Chemical	No significant increase in applications	Not an issue	Extensive short time worked in glass only	Normally only receive 3-4 exemption applications per annum. Agreements are not extended to non-parties.
Leather	No noticeable increase in exemption applications – see general comments.	About 90% of registered employers comply with main agreement so non-compliance is not an issue of the magnitude in clothing.	Sectors seasonal but marked increase in short time in tanning sub-sector	A footwear agreement signed in 2005/6 allows for varying down wages. The agreement makes provision to cater for the semi-and informal subsectors, and the inclusion of an enabling clause that provides for plant level bargaining. The agreement reduced the prescribed rates for the semi-and informal category by a certain percentage of the actual prescribed rates for the industry.
Clothing	Exemption applications increased – about 30% granted. In terms of the agreement, certain criteria have to meet for the exemption application to be considered. A number of the applications did not meet the required criteria. About 40% of applications were for exemptions around the payment of council levies (provident fund) and not only on wages.	High levels of non-compliance (see box below)	The industry lost a total of 2500 jobs during the crisis and surprisingly not a lot short time worked – an estimated 11 factories were on short time.	Various support measures were introduced to assist the sector, the most significant being the production incentive scheme (PIS). It is intended to assist companies in upgrading their facilities both plant and equipment. The net effect of this incentive is that qualifying companies will benefit to a tune of 10% of their VAT which will be paid back to them
Textile	Significant increase in exemption applications and retrenchments. About 50% of applications were granted and when applications not granted were as a result of failure to provide proper motivation or plans on how catch-up would be achieved thereafter. Exemption applications focused on wages and annual bonuses. The number of exemption applications has significantly increased since the last Congress. The majority of applications were on wages and other cost related conditions of employment, such as Annual Bonus and Provident Funds.	Some non-compliance but more employers coming to the party. Employers now coming to the council to become registered.	Increase in short-time worked in some sub-sectors	
Metal	Significant increase in exemption applications especially in 2008 and 2009. About 80% of the exemption applications were granted and they focused a lot on exemptions from the wage increase and some companies proposed instead either a 1%-2% or no increase at all – to save jobs.	Non-compliance not significantly higher but mainly among smaller firms.	High levels of short-time worked	The council has indicated that the exemption process is very robust with sufficient checks and balances in place.

³⁶ Information gathered for this study.

Sector	Exemption applications	Non-compliance	Short time	General comments
Wood and paper Building (Cape)	No marked increase in exemption applications		Increased short time worked	Agreements in construction broadly around short-time and job sharing: For example, workers would rotate and work two weeks on and two weeks off to allow another group of workers to work. In some instances, problems emerged especially if the employer wished to retrench during job sharing arrangements.
Motor	There was a significant increase in exemption applications with a large number granted.		there was a dramatic increase in short time and reduced working hours	In some instances parties agreed to wage freezes or wage cuts to avoid retrenchments, but the council warned that this was mainly in smaller companies. However, companies did not make use TLS
Road freight	Exemption applications increased but most did not relate to wages but other provisions such as provident funds etc. The council received 205 exemption applications in 2009 and 2010. The majority of applications were granted.	Non-compliance is an issue but compliance level is good	It is a seasonal sector so difficult to determine whether increase short time linked to crisis	Various companies have incentive schemes in place

7.2 CCMA

The economic crisis has had a marked impact on the workings of the CCMA, firstly in terms of increased caseload and the number of small and large scale retrenchments. For example, between 2009 and 2010, the institutions caseload increased by 17 per cent. Secondly, this increased caseload put extreme pressure on the CCMA's cash flow and 'ability to meet its costs and sustain its operations at current levels'. In 2009 and 2010, the annual caseload exceeded 150,000. Thirdly, the CCMA's already stretched resources were placed under additional pressure as a result of the added responsibilities it took on as a result of the global crisis.

In terms of the NFA, the CCMA became responsible for implementing the TLS as well as assisting parties in terms of section 189A processes.³⁷ The CCMA explains that in responding to the crisis, the institution required a multifaceted approach with the acknowledgement that while it was at the 'centre stage in the quest to save jobs', it could not solve the problem but make a difference.³⁸ In order to meet its new obligations, the CCMA established a dedicated project office to manage these interventions and began to work with organizations it had previously not engaged with, such as Productivity SA and the IDC, the Unemployment Insurance Fund, the Sector Education and Training Authorities (Setas), Employment Services and the National Youth Development Agency. In addition, the CCMA had to enhance its internal capacity and business processes through additional training of commissioners and the appointment of a panel of commissioners to deal with retrenchments in each region.

Finally, the CCMA raised awareness of its holistic approach to dealing with job insecurity, business distress and popularizing the TLS through over 200 events around the country coupled with additional interventions to popularize its activities.

According to the CCMA, for the period January 2009 to June 2010, 16,182 jobs were saved through their interventions while over 19,000 people were retrenched either through forced or voluntary retrenchments. In terms of the TLS, by October 2010, there were 21 companies participating in the scheme involving over 6,000 workers. At the time, a number of applications were pending.

Some of the challenges, as outlined by the CCMA in terms of implementation of the scheme and its holistic approach to saving jobs included, among others, the fact that the social partners in NEDLAC appeared to be "far removed from parties at the rock face, as a result of which agreements do not necessarily filter through" and subsequent questions were raised as to the ability of the social partners to deliver their constituencies.³⁹ Added to this were delays at NEDLAC leadership level in signing off TLS amendments aimed at addressing blockages. This combined with inadequate communication and information exchange between implementation partners (a significant factor) all played a role in the slow start up, together with inadequate trade union engagement in addressing blockages

³⁷ During a presentation to the portfolio committee in parliament in March 2010, the CCMA stated "together with an increased caseload has also led the organisation to approach the Treasury and Department of Labour for additional funding to avert a cash flow crisis in the current financial year."

³⁸ The CCMA stated that some of these interventions are not sustainable in the long term and ultimately, jobs would have been lost

³⁹ As one BUSA official states, elements of business began to distance themselves from the NFA process even before it started as business "does not have capacity to get buy-in and collective support". DED officials found that where they either held workshops or tried to specifically target companies, many had not heard of the scheme or had very limited knowledge of it. This points to the failure of the parties (including the unions) to inform their respective constituencies and the general low level of knowledge around the scheme. The DED contacted companies who were working short time to consider the TLS. They were not very receptive and but were more interested in the IDC distressed fund. Many did not understand the TLS and thought the Fund would give them money. Businesses were looking for handouts and when they saw that the Fund was providing a loan that had to be paid back, the response was more muted (DED).

and the fact that not all situations and businesses are suitable for a training layoff. The CCMA (as well as DED) highlighted the fact that the business mindset of shedding jobs as a measure of first resort in troubled trading times is still prevalent; conversely, interviewees point out that many workers would rather opt for severance packages instead of exploring alternatives to retrenchment.⁴⁰

Finally, and most importantly, the framework (NFA) response has required intergovernmental coordination, which is a challenge in itself and even more so in times of crisis.⁴¹ The multi-partner aspect of the TLS, as argued by both the CCMA and DED, resulted in significant delays and bureaucratic hurdles for parties involved. In addition, significant blockages occurred at the SETA processing stage while there were delays from parties in submitting necessary information.

In view of some of the challenges that emerged, amendments to the TLS were approved in September 2010 including among others, the intention to de-link the scheme from the global economic crisis as an eligibility criterion, along with streamlining the Scheme's rules and improving accessibility; training allowance increased from 3 to 6 months' worth of payments at 50 per cent of salary (75 per cent was proposed); the training could be spread over an indefinite period if combined with short time and other mechanisms; the removal of the salary ceiling for eligibility, though the maximum training allowance remains at R6,239 per month (an increase was proposed) and the revision of the CCMA's TL Advisory Committee's approach on determining eligibility.

There are numerous examples where the CCMA together with other partners sought to save jobs, as highlighted in section 6.1. In some instances, the parties sought to utilize the TLS but in others it required work reorganization or other interventions. It is inevitable that challenges would arise in putting in place a scheme like the TLS, especially in a time of crisis. In setting up a new institutions and rules in a crisis, there are bound to be some mistakes and there needs to be a process of learning as it is being implemented (Roscom, 2010).⁴²

While the take up was initially slow, it began to pick up by the time the economy started moving back into recovery. The key issue here is whether the scheme should only be viewed as an intervention for times of crisis or become a permanent intervention in event of lay-offs.

7.3 NEDLAC

The crisis affected the work of the institution as the social partners eventually agreed that the process of developing a response to the economic crisis would be co-managed by NEDLAC and the Presidency. It was not a given that the process would involve NEDLAC. As a result of its involvement in the NFA process, NEDLAC proved to be busy during 2009, leading to some challenges for the institution.

⁴⁰ This also emerged as an issue during research done in the Department for Economic Development in relation to the challenges around implementing the TLS. In addition, it was found that workers in debt see the offer of a retrenchment package as being attractive so that they can pay off their debt collectors who are not too far from the factory gate. What has also been alluded to in the interviews is that in some instances, union officials are not always au fait with the provisions of section 189 and skilled enough to negotiate alternative arrangements to retrenchment or explain to members what their options are as an alternative to retrenchment. In addition, union officials are under such pressure and are dealing with so many retrenchments that they might opt to take the short cut by agreeing to the payment of severance pay.

⁴¹ There are a number of departments involved in the TLS including labour, DED and higher education and training. Hence, if a decision has to be taken around the rules of the TLS or proposed plans to amend the scheme (as was done in September 2010), delays invariably occurred. A key challenge for DED is whether it is able to get other ministers to cooperate and ensure implementation of the NFA.

⁴² Roscom, A.; Howard, N. Review of the Training Layoff Scheme, prepared for the Employment Promotions Programme, 2011.

Conclusion

While highlighting the important role that collective bargaining has played in mitigating the effects of the global crisis, the huge inequalities which exist within the South African society have strained employment relations. Collective bargaining played a key role in protecting earnings and ensuring equal treatment of contract workers in some sectors. However, collective bargaining has played a limited role in terms of saving jobs (through negotiations on reduced working hours, short-time and the like). One or two innovative agreements were reached on using downtime to improve the skills of the existing workforce by taking advantage of the TLS so that jobs were not lost. The take-up of the TLS has been slow which has been attributed, among other issues, to the fact that it was a new scheme set up during a crisis, and there was a need to disseminate information on the new scheme.

Furthermore, the capacity and resources among social partners were weak, which hampered the quality of agreements reached. Capacity issues raised included, among others, a lack of basic negotiating skills, turnover of negotiators and lack of access to information and resources so as to prepare properly for negotiations. The challenge for the social partners in moving forward is how to improve productivity and ensure workers share in productivity gains.

Deep inequalities in the society coupled with the lack of trust between the negotiation partners as well as the inherent weaknesses among the bargaining partners have made for a rather adversarial bargaining environment, as reflected in the rise in the number of working days lost due to strikes. Aside from the outcomes of bargaining, the study found that collective bargaining and industrial relations institutions – set up during political transition – remain relatively strong. However, the capacity and resource constraints among social partners are impacting their ability to be responsive enough to sufficiently mitigate the effects of the crisis, and hence, be in a position to assist effectively in economic recovery. Nevertheless, the study shows that collective bargaining can play a role in avoiding layoffs, protecting income and facilitating adjustment at the enterprise and sectoral levels.

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Annex 1.

Legislative framework for collective bargaining and social dialogue

Overview of collective bargaining structures

The Labour Relations Act No 66 of 1995 (LRA) raised expectations about the possibility of fundamental change in the nature of labour relations and of effective dispute resolution and collective bargaining in South Africa. The LRA sought to promote the role of the social partners with a focus on self-regulation by setting up tripartite institutions such as bargaining councils (previously known as industrial councils) which are central but not the only institution for bargaining.

Aside from bargaining councils, collective bargaining takes place in a number of other centralised bargaining arrangements as described by a report commissioned by the CCMA.⁴³ Aside from the introduction of a new structure called statutory councils which has had limited impact, there are also non-statutory centralised structures such as those found in the mining and automobile manufacturing; otherwise bargaining is found at company and or plant level. Wages in sectors that have little or no history of collective bargaining (and are classified as vulnerable), are determined through sectoral determinations which are promulgated by the Department of Labour (DoL).

Status of collective bargaining structures

Bargaining councils: Interviews and research (Godfrey et al, June 2010) has found that there are currently 47 bargaining councils covering an estimated 2.5 million workers⁴⁴ in both the private and public sectors (including national and local government). In recent years, there has been a growing importance of the public sector in collective bargaining and now more than 50 per cent of bargaining council coverage is linked to the public service (including local government).

Evolution of collective bargaining in the public sector

Prior to 1995 collective bargaining in the private and public sectors were governed by different laws and public servants did not have formal collective bargaining rights. This changed with the promulgation of the LRA which sought to ensure that for the first time, public servants would be governed by the same labour legislation as workers in the private sector and provided for the establishment of a statutory bargaining council – the Public Sector Co-ordinating Bargaining Council (PSCBC).

The LRA sought to ensure that the PSCBC would provide a forum for negotiating issues affecting the entire public service. The PSCBC comprises a central bargaining structure with four designated sector councils covering education, public health and social development, safety and security and the general public service sector as well as nine provincial chambers.

The overarching framework for conditions of employment and regulations are negotiated at PSCBC level. As most of the agreements negotiated at PSCBC level are framework agreements, the details and implementation are supposed

⁴³ Support for bargaining councils and collective bargaining: A research report commissioned by the CCMA conducted by the Labour and Enterprise Policy Research Group (LEP) in partnership with the National Labour and Economic Development Institute (Naledi), June 2010.

⁴⁴ LEP and NALEDI (2010) Support for Bargaining Councils and Centralised Bargaining, A research report commissioned by the CMMA, p. 31.

to be dealt with at a sectoral level.

The PSCBC is the country's largest bargaining council covering more than one million workers.⁴⁵ The PSCBC is responsible for negotiating issues which impacts on more than 37 per cent of the national budget which is now over R900 billion. The total wage bill for the public service is in the region of R300.4 billion.

Aside from the magnitude of issues discussed in the PSCBC, the bargaining environment is further complicated by the fact that there are eight main unions party to the council and they are divided into two key blocs – those affiliated to Cosatu and the independents with some affiliated to Fedusa – the second largest trade union federation in the country. The fastest growing union at the moment within the PSCBC is an affiliate of Fedusa, the PSA. This does not always allow for labour solidarity and the dynamics between the unions can contribute to some rather complex negotiations.⁴⁶

While there has been a decline in the number of councils over the years as a result of mergers and in some cases, deregistration, there are some signs that there is a move away from informal bargaining arrangements to more formal bargaining councils (as reflected by developments in private security but also moves to establish a bargaining council in mining and automobile manufacturing). In addition, it would appear that despite historical opposition by employers to centralised bargaining (with employers in retail continuing to hold out despite renewed demands by unions for centralised bargaining), interviews suggest that employers (while retaining some concerns around centralised bargaining) are also wanting to remove themselves from the hassle factor of bargaining at plant level.

The bargaining council system has proved to be resilient, but like any system it faces its own challenges and levels of competencies and effectiveness differs revealing a mixed bag in terms of those councils which are functioning effectively and those which are not. However, as a labour analyst states, bargaining councils have, in the main, maintained and carried forward the old traditions of collective bargaining from the pre-1994 period. While some councils may have modernised and adopted new bargaining approaches and strategies, the intention of the LRA was to facilitate innovation which had not happened in a significant way. Some councils have dynamic and innovative CEOs/general secretaries who have sought to introduce new approaches to bargaining and this study highlights one or two of the 'model' councils.

Although changes are being made, the representativity of the parties remains a key issue, especially in view of the concerns on extending agreements to non-parties as well as issues on the rising levels of non-compliance (as in the case of clothing). In terms of the Act, if the employer and unions which belong to the council have sufficient levels of representation in the sector, they can request the Minister of Labour to extend council agreements to non-parties. The extension of agreements has come under the spotlight in various studies (Godfrey, 2010) and reports (OECD, 2010) with claims that this is contributing to labour market inflexibility. The extension of agreements, it has been argued, places unnecessary burdens on small and new businesses and contributes to high unemployment.⁴⁷ In terms of the extension of agreements, it is understood that if representativity falls below 50 per cent then the Minister can refuse to extend such agreements to non-parties. Linked to the question of representativity is the rise in non-standard employment which, unions argue, has meant that more and more workers are not covered by main agreements as unions are finding it hard to recruit such workers.

Statutory councils: According to a report commissioned by the CCMA on collective bargaining,⁴⁸ statutory councils, as provided for in the 1995 LRA, was viewed as a stepping stone towards establishing a bargaining council. 'Statutory councils sought to

⁴⁵ PSCBC 10th anniversary publication

⁴⁶ Interview with parties to the PSCBC

⁴⁷ OECD Economic Surveys: South Africa 2010

⁴⁸ LEP and Naledi: Support for bargaining councils and collective bargaining. A research report commissioned by the CCMA, 25 June 2010.

provide a model for promoting centralised bargaining with a degree of compulsion, but without going as far as to introduce a compulsory system of centralised bargaining.’ In reality, there has been little take-up of these institutions with those that have been established mainly focusing on dispute resolution rather than collective bargaining.

Other non-statutory centralised bargaining arrangements: Informal and formal centralised bargaining arrangements have emerged in some sectors traditionally covered by sectoral determinations such as private security and contract cleaning. Agreements reached in these bargaining structures are more often than not incorporated by the Minister into sectoral determinations for those sectors. Meanwhile, parties in gold and coal mines, members of the Chamber of Mines and the seven main automobile manufacturers have long established centralised bargaining arrangements which bind the parties to the negotiations. But these parties are also following demands from their respective unions, exploring the establishment of bargaining councils.

Company and plant level bargaining: Interviewees highlight that plant level bargaining is happening but ‘appears to be declining’ (CCMA report, 2009). Interviewees have expressed concern that if plant level bargaining is in decline (as that is the perception), this could impact on the ability of parties at that level to negotiate innovative deals on productivity and changing work organisation. The challenge, the CCMA argues⁴⁹ is that in the absence of the parties establishing workplace forums, as provided for in the LRA and the model of co-determination’, makes it difficult to explore innovation and workplace change.

Sectoral determinations: The Basic Conditions of Employment Act (BCEA) of 1997 (amended 2002) provides for the promulgation of sectoral determinations which sets minimum wages for workers in specific sectors which are deemed to be vulnerable. The BCEA provides for the establishment of the Employment Conditions Commission (ECC) – a tripartite structure – which seeks to protect vulnerable workers in sectors in which they are likely to be exploited, or where worker organizations and trade unions are absent, and workers are not covered by the BCEA or other wage regulating mechanisms. The commission is thus tasked with conducting investigations into appropriate conditions of employment and minimum wages for workers in certain sectors, with a view to making sectoral determinations.

Since the establishment of the ECC, eleven sectoral determinations have been published across a range of sectors including Agriculture, Contract Cleaning, Civil Engineering, Private Security, Domestic Workers and Wholesale and Retail. It is estimated that sectoral determinations cover an estimated one-third of workers or according to 2007 employment figures about 5.5 million workers. The largest coverage is of domestic workers (1.2 million), followed by retail (802,242), the smallest being civil engineering (59,926) and forestry (17,373).

In some of these sectors, parties have set up informal arrangements, with the assistance of the CCMA and DoL with the aim of eventually forming bargaining councils as in the case of contract cleaning and private security.

According to a Naledi report prepared for Cosatu’s living wage campaign planned for the first quarter of 2011, the average increases in the adjustment of Sectoral Determinations minimums were set at CPI plus 2 per cent.⁵⁰

This section looks only at developments in the formulation of minimum wages in contract cleaning (outside of the KZN bargaining council) and private security. According

⁴⁹ Interview with CCMA commissioner

⁵⁰ As the report highlights, “at face value the wage adjustments may seem reasonable and provides wage increases above inflation; however it is done on a very low wage base making any wage increase insignificant. In addition, when compared to minimum living standards using MLL and SLL, by far most (7) Sectoral Determinations do not meet those minimum or supplementary living standards.”

to the DoL, the Employment Conditions Commission (ECC) reviewed contract cleaning and finalised private security during 2009 and 2010. The DoL explains that sectors such as private security and contract cleaning (as well as civil engineering and to some extent forestry) have private arrangements and generally their agreements get incorporated into the sectoral determination. The ECC in terms of its mandate is required to evaluate the agreement reached in these private arrangements – which are facilitated by both the DoL and CCMA – to see whether the wages agreed to would measure up against the criteria set in the BCOE.

The DoL points out that discussions within the ECC have changed in relation to a number of factors such as: should there be a differentiation between different areas in the country and the level of wages in relation to the economic reality of the time. Overall however, the positions adopted by the ECC members reflect more a meeting of minds and an overall view of looking at the needs of the economy. For example, the positions put forward by labour in the ECC discussions are more moderate and are often linked to inflation plus an improvement factor of 1 or 2 per. During deliberations for increases in 2009 and 2010 however, employers and independent advisors argued only for inflation linked increases given the economic realities. Labour would have had a problem with that it should not only be inflation but some improvement in cost of living for wages.

Aside from these deliberations in the ECC, the DoL is however, concerned about the kinds of input received by parties when investigations are conducted into the various sectors and level of debate by employers and employees. There is also concern about whether the minimum wage has an impact on addressing the vulnerability of these workers; the unintended consequences and the level of involvement of the parties.

The role of unions in the various sectors differs and is a mixed bag. For example, during investigations on wages for farmworkers, the Department gets little support from the unions because the sector is poorly organised. No unions have presented any form of input into the process. The DoL pointed out that the farmworkers' union (together with other civil society organisations) were the most active in the Western Cape, as compared to other parts of the country.⁵¹

The DoL point out that employer participation is also a problem. Overall the level of participation in public processes has declined in recent years. There are exemptions, for example, in agriculture, employer participation is better than in wholesale and retail. In hospitality, while employers are well organised in a single unit, participation is poor.

In the case of wholesale and retail, there is little participation at the level of the public hearing process but at the ECC the participation of the unions becomes more engaged and they try to get the best possible deal for workers. Where the unions are engaged they raise the issue of wage and cost of living and protection of workers in triangular employment relationships. The fundamental demand by unions is for workers to have a living wage but they do not define what a living wage is. Interestingly, for farmworkers there is a realisation that if wages are increased above a certain point, they could lose their jobs and this view comes from workers themselves and not necessarily from the unions. In 2008/9 the unions demanded increases of 21-22 per cent given the absolute level of wages. But then the unions were absent during the public hearings and then workers were saying that the wages would impact on employment.

Industrial relations institutions

CCMA: The CCMA was established in terms of the LRA to resolve disputes in a more effective and speedy manner than the previous system of the old conciliation boards and

⁵¹ 'What we tried to do with farm and taxi drivers we established working groups to try and speak to the national role players. The unions participated in that but only at that level but when we go down to the workers it is poorly organised. We have tried to do everything but participation is poor...The kinds of sectors we go into are poorly organised and low levels of education and structural nature of the sectors impact on the type of engagement we have with them.'

industrial court. Since its inception, the CCMA – run by a tripartite management board – has recorded relatively high settlement rates of up to 70 per cent with an annual caseload in the region of 120,000. In recent years it has become more proactive in attempting to intervene and resolve disputes ahead of industrial action. The CCMA’s legislative functions include conciliating workplace disputes, mediation and arbitration, facilitating the establishment of WPF’s and statutory councils, accrediting and subsidising bargaining councils and private agencies for dispute resolution purposes. To date, 40 bargaining councils have been accredited to do dispute resolution in their sectors. In the event of a party-party dispute, councils may approach the CCMA for assistance or the CCMA could offer assistance in terms of section 150 of the LRA. However, such processes are governed by council constitutions.

NEDLAC: NEDLAC has its origins in the previous National Economic Forum (NEF) and National Manpower Commission (NMC) – two structures which existed prior to 1994. Post 1994, the new government decided what policy style would best achieve the goal of economic reform.⁵² The options ranged from forcing reform to engagement where consultation and negotiations were extended beyond the parliamentary actors to a range of interest groups such as organized labour and business. At the time, it was believed that this approach improved the quality of decisions and led to the sustainability of democracy.

It was this approach which was eventually adopted and reflected in the decision by cabinet during the second half of 1994 to endorse the merger of the NEF and NMC into a single socio-economic forum. The NEDLAC Act, one of the first pieces of legislation passed by the new government, was published in December 1994 and the institution formally launched on 18 February 1995. NEDLAC has become synonymous with the country’s commitment to social dialogue and it is through this institution that some of the key pieces of new legislation passed by the new government post 1994 were first debated.

⁵² Nedlac’s 10th anniversary publication, 2005.

Annex 2.

Table 4.
Negotiated responses during the crisis: 2008 – 2010

Bargaining councils	Signatory parties	Main provisions
Chemical Industries Bargaining Council	Unions	2008
	Solidarity SA Chemical Workers Union (Sacwu) General Industries Workers Union of SA (Giwusa) Chemical, Energy, paper, printing, wood and allied workers union	Petroleum: 12% wage increase and minimum wage increased to R 4 000-00 per. Glass: 11, 5% increase and minimum wages increased to R 3000-00. Pharmaceutical: 12% increases and minimum wage increased to R 4 144-00 per. The parties also agreed to refrain from engaging labour brokers who abuse or who are violating the fundamental rights of workers as per applicable labour legislation and agreements concluded at sector and/ or plant level in respect of labour brokers. Industrial Chemical: 11, 5% wage increase on June 2008 actual basic wages, effective from 1 July 2008, was agreed, plus a further across the board increase of 0, 5% on the June 2008 actual basic wage, effective from 1 January 2009. Minimum wage increased to R 3 431-36 per month and then R 3 446-75 from 1 January 2009. Fast Moving Consumer Goods (FMCG): 11% increase and minimum
	Employers	2009
	National Petroleum Employers Association National Base Chemical Employers Association Glass Industries Employers Association Labour Affairs Association of the Pharmaceutical industry Fertilizer Industry Employers Association National Speciality Chemicals Employers Association Explosive Industry Employers Association National Fast Moving Consumer Goods Employers Association Surface Coatings Industry Employers Association	Petroleum: Two year wage deal. In year 1 – 9, 5% increase from 1 July 2009 plus a further 0, 5% from 1 January 2010. Year 2: increased linked to the April 2010 Headline CPI plus an improvement factor of 1, 5% with effect from 1 July 2010 plus a further 0, 5% increase from 1 January 2011. Glass sector: Two year wage deal – increase linked to the April CPI plus an improvement factor of 0, 5%. In the event of fluctuations in CPI for April, the month preceding the increase above 11% or below 5.5% then either party may exercise right to reopen negotiations. Shift allowance – afternoon shift 9% and night – 12% The Agreement also provides for a reduction in working hours from 44 to 43. Pharmaceutical: 10 % wage increase with a minimum wage of R 4 560-00. Industrial Chemicals: 9% with effect from 1 July 2009 and a minimum wage of R 3 756- 96. FMCG: 9% with effect from 1 July 2009 (exemption agreements with specific companies agreed on 7% 2010 Glass sector: Increases linked to inflation and if the April CPI was lower than 5, 5% or higher than 11%, then either party could reopen negotiations. As the April CPI came out at 4, 8%, the unions elected to re-open negotiations. The parties eventually settled on a 7, 5% increase from 1 July 2010.

Bargaining councils	Signatory parties	Main provisions
<p>National Textile Bargaining Council (blankets, carpets, Cotton, home textiles, non-woven, woven & crochet Worsteds, wool & mohair, manufacturing fibres) (15 000)</p>	<p>Union SA Clothing and Textile Workers Union</p> <p>Employers Narrow fabrics manufacturers association National Manufactured Fibres Employers Association SA Carpet Manufacturers Employers Association SA Wool and Mohair Processors' Employers Association National Association of Worsteds Textile Manufacturers SA Cotton Textile Processors' Employers Association National Textile Manufacturers Association The SA Home Textiles Manufacturers Employers Organisation SA Blankets Manufacturers Employers Organisation</p>	<p>Pharmaceutical sector: 8% with effect from 1 July 2010; minimum wage increased from R 4 560-00 to R 5 000-00. Industrial Chemicals: 7, 5% as from 1 July 2010 plus a further 0, 5% increase on 1 January 2011; pregnant females entitled to 3 days for ante natal visits during pregnancy FMCG: 8% increase Agreement also to refrain from engaging labour brokers who do not act in accordance with applicable legislation.</p> <p>2008 Settlements ranging between 6.7% and 10.4% depending on the sub-sector</p> <p>2009 Settlements ranging between 5% and 11.5% Woven and crochet: the parties agreed to increase productivity through an attendance incentive with employees receiving an attendance bonus of 0, 75% per week for full attendance (woven, crochet, knitted). Wool and mohair : parties agreed to implement a productivity incentive scheme at company level based on own targets Blanket : ban on employment of LB</p> <p>2010 (strike in worsteds textile) Settlements between 5.79% and 10% Labour brokers and employers will be jointly liable for non-compliance with the provisions in the agreement. Wool and mohair – provision on the working of short time making provision that an employer must give employees four hours' notice and unions three days' notice. Worsteds section: increase in shift allowances and annual bonus Cotton woven textiles: temporary employees will be paid 80% of the wage Blankets: 9 hours' notice of ST; increase target for permanent employees (64%) and fixed term contract employees 36%; overall improved PF contributions, annual bonus, time off for shop stewards, extended lunch breaks on International Aids Day. Cotton: Improvement in the Provident Fund contributions; improvement in service and night shift allowances. Carpets sector: increase in the service allowance, night shift allowance and increases in provident fund contributions of both employers and employees. Blanket sector: increased the shop stewards' leave days 'pooled from 40 to 50 days per annum and introduced the productivity Incentive Scheme to be negotiated at plant level and a 1 week's annual bonus to contract workers, guaranteed.</p>
<p>National Bargaining Council for the Clothing</p>	<p>Union</p>	<p>2008</p>

Bargaining councils	Signatory parties	Main provisions
Manufacturing Industry (57 000)	SACTWU Employers NCMA EPCMA TCMA CAESAR NDCMA FSNCCM	<p>9.5% – metro (9% plus 0.5% for productivity scheme at plant level) 10.5% – cape (0.5% for productivity scheme) 10.15 – 11.61% – non metro (Paarl, etc.) 12.71% – 14.24% (Newcastle, etc.)</p> <p>The final agreement provided for a 9% to 14.24% increase to total labour costs, with 0.5% being allocated for a productivity incentive scheme for metro and Cape Country areas.</p> <p>The provisions of the 2008/9 agreement also included the following:</p> <ul style="list-style-type: none"> ▪ the introduction of a trade union agency shop in the KZN metro area, whereby all non-Sactwu members are required to pay a compulsory bargaining service fee to the trade union, equal to the union membership subscriptions; ▪ a reduction, without loss of wages, in the qualifying periods for the machinists job category to a maximum of 18 months (previously it was as high as 24 months' in some areas) and by 2 months' for all other job categories where the qualifying period was more than 24 months'. ▪ the introduction of an Industry Protection Fund, consisting of a weekly contribution of 10c per week per employee, contributed by each employee and each employer for those areas where no such fund existed; ▪ the final adoption of the signed Code of Good Practice on Key Aspects of HIV/Aids & Employment ▪ new protections for contract workers: all contract workers would be automatically entitled to a pro-rata share of all statutory payments due to permanent workers, will have the same wage- and other terms and conditions of employment as permanent workers (except, at this stage, for maternity leave payments) and must be offered permanent employment after a maximum of 12 months' employment with the same employer; ▪ workers who have completed a learnership cannot be employed as contract workers and must be offered full time employment. <p>2009 (strike – 2-3 weeks)</p> <p>Ranged from 7% (total labour costs) in metro to 9%-11% in other areas. For non-metro areas, the wage increase was R40 from 1st September 2009 and a further R5 with effect from 1st January 2010 for the machinists' and general worker job categories and 9% for all other job categories (for a machinist this meant a 10.7% wage increase and for a general worker it meant a 11.8% increase in areas such as Ladysmith, Isithebe, Newcastle and Botshabelo.</p> <p>Other provisions included:</p> <ul style="list-style-type: none"> ▪ Reduce wage gap between workers in the Frankfurt, Parys, Vredefort on the one hand and Bloemfontein, Kimberley and Kroonstad on the other every year until it is equalised by granting the lower paid workers the same rand amount as that which the annual percentage increase equates to for higher paid workers; ▪ The wage gap between garment knitting workers in the Eastern Cape and those in the Western Cape would be narrowed; ▪ The agreement committed the parties to a program to address the challenge of high absenteeism in some

Bargaining councils	Signatory parties	Main provisions
National Bargaining Council of the Leather Industry of South Africa (NICLI) (24 000-40 000)	Union SACTWU NULW Employers SAFLIA (footwear) SATEO	<p>parts of the industry (it was to start with those companies where absenteeism was more than 10%);</p> <ul style="list-style-type: none"> ▪ Those companies who have unilaterally implemented a wage increase prior to the settlement to avoid the strike were required to pay an extra 2% penalty towards a compliance levy; ▪ A productivity institute will be established under the auspices of the clothing bargaining council, to promote productivity issues in the industry; ▪ A feasibility study will be conducted for the establishment of an industry training institute; ▪ The main agreement will be amended to strengthen the union's rights to fight non-compliance, including the granting of the right to strike against non-compliance (which currently is not clear, based on the bargaining council's legal opinion); ▪ Outsourcing to non-compliant companies would not be permitted; ▪ The parties would pursue buy local agreements with local and provincial governments. <p>2010 Ranged from 6.5% to 7.9% in non-metro</p>
		<p>2008 Footwear: 10.5%; three days' family responsibility leave; sick leave provisions capped to 10 days per annum and a phasing in clause to address those operating outside the council; concluded an agency shop agreement. Tanning: 10%; labour brokers have to register and comply with the main agreement General goods and handbags: 10, 5%, increased the family responsibility leave from two days to 3 days per annum.</p> <p>2009 Footwear (strike): 8.5% increase Tanning: 8%-10, 4%. Increase of 8% ATB, an additional 0.5% allowance and an additional 5 days wages for employees in the Automotive tanners and an additional 1 day's wages for employees in the General Tanning. General goods and handbags: 7.5% wage increase plus payment for public holidays falling on a Saturday during the annual leave period.</p> <p>2010 Footwear: 7, 25%; over time rates to be paid at 1.5 as per the BCEA. (in leather additional protection for workers employed by labour brokers) Tanning: 7.1% (Automotive Tanning sector wage strikes in 2009 and 2010) – 7% plus an ex – gratia annual bonus payment of 0.5% calculated on total annual income for 2010, payable at December shutdown. General goods and handbags: 7.5%</p>

Bargaining councils	Signatory parties	Main provisions
National Bargaining Council for the Wood and Paper Sector	Unions Solidarity, Ceppwawu, Uasa	2008 Paper and pulp: 12% and min wage of R4 650 and agreed to reduce the working week to 42 hour week within four years but would be the subject of working group deliberations
	Employers National Tissue and Allied Product Employers Association Employers Association for the Paper and Pulp Industry Employers Association for the Fibre and Particle Board Employers Association for the Sawmilling Industry	Sawmilling: 10.5% and min wage of R1400; 10% night shift allowance; 10% of basic wage for maternity leave of 4 months; 15 days annual leave; one week's annual bonus; Tissue and allied: between 10% and 11.5% (depending on company) and min wage of R2 750; increase in shift allowances (depending on company); education allowance adjusted to bring in line, parties continually review status of temporary labour to ensure that core positions occupied by permanent staff. Fibre and particle: 11% and R3000; 2009 Paper and pulp: 9% and min wage of R5 070; will not use labour brokers unless they comply with legislation, various provisions referred to company level Sawmilling: 7.6% and a further 1% from 1 Jan; Tissue and allied: 7.5% and min. wage of R2,950; 5% for semi-continuous shifts and 10% for continuous shifts; labour agree to flying shift handovers; Fibre and particle: 8.5% and 9% (depending on company) and R3 500; shift allowances increased from 7% to 8% and other companies to 8.5% and 10%; 2010 Paper and pulp: 8% and min wage of R5 476, increase shift allowance by 0.5%, Sawmilling: 7.5% and min wage of R1,650; task team to examine a range of benefits Fibre and particle: 7% and R4 000 min wage; shift allowances increased 9% for some companies; standby allowance of R541 per month; two months maternity leave paid at 25% of salary for those employed for two years or more; study leave of 2 days per exam (maximum of 3 exams); additional day compassionate leave.
Metal and Engineering Industries Bargaining Council	Unions Numsa Uasa Solidarity	2008 Signed three year wage deal in 2007 which would have granted workers increases ranging between 7, 1% and 8, 1%, in 2008. The increases were fixed and not linked to CPI. However, in 2008 the parties reopened negotiations as CPI spiked. As a result the agreement was extended to 4 years and the increase for 2008 was 10.4%. Other improvements included: an increase in the subsistence allowance for some employees; as well as the shift allowance and dirty work allowance; the sick pay fund amended to provide six months maternity leave.
	Employers Seifsa	2009

Bargaining councils	Signatory parties	Main provisions
	National Employers Association	<p>Council increase was 8.8%</p> <p>House agreements ranged from 7% – 9%</p> <p>2010</p> <p>House agreements between 8% and 10%</p> <p>Council increases ranged between 7.1% – 8.1%</p> <p>Short time: notification period changed from 2 days to 5 calendar days' notice to the council.</p> <p>Technological change and work-reorganisation: Subclause 2(b)(i) provides for establishment, at plant level, of an ergonomic committee (comprising representative trade unions, any employee representative body, and a designated management representative) which has the power to review the ergonomic implications of the technological changes and take decisions on how workers interact with all aspects of their work environment, including the task, and the tools and equipment used and work re-organisation.</p>
Building Industry Bargaining Council Cape of Good Hope (27 000)	<p>Employers</p> <p>Boland Meesterbouers en Verwante Bedrywe Vereniging Master Builders and Allied Trades' Association, Cape Peninsula</p> <p>Unions</p> <p>Building, Construction and Allied Workers' Union Building, Wood and Allied Workers' Union of South Africa Building Workers' Union National Union of Mineworkers (NUM)</p>	<p>2008: 10%</p> <p>2009: 9%</p> <p>2010: 8% (part of 3 year deal)</p> <p>No person may utilize a temporary employment service for work in connection with the Building Industry unless , both the person and the temporary employment service are, at all times during the use of the temporary employment service, employers in good standing with the Council.</p>
Motor Industries Bargaining Council	<p>Unions</p> <p>MISA/SAMU</p> <p>Numsa</p> <p>Employers</p> <p>Retail Motor Industry organisation</p> <p>Fuel Retailers Association</p>	<p>2008 (part of 3 year deal signed in 2007)</p> <p>Motor retail: Increases ranged between 8% and 11% (depending on job grades with apprentices paid higher)</p> <p>Component manufacturers: 8%</p> <p>Fuel retailers:</p> <p>2009</p> <p>Motor retail: Increases ranged between 7% and 10%</p> <p>Component manufacturers: 7.5%</p> <p>Fuel retailers:</p> <p>2010 (strike)</p>

Bargaining councils	Signatory parties	Main provisions
National Bargaining Council for the Road Freight Industry (65 000)	<p>Employers Road Freight Employers Association</p> <p>Unions Motor Transport Workers Union Professional Transport Workers Union SA Transport and Allied Workers Union Transport and Allied Workers Union</p>	<p>9% for motor components; petrol attendants – 10%</p> <p>2011: 8% or CPI</p> <p>2012: 7% or CPI</p> <p>Labour brokers (TES) must be registered with the Motor Industry Bargaining Council.</p> <p>All staff must be on minimum conditions (also labour broking staff).</p> <p>By August 2013, no employer may have more than 35% of workforce consisting of labour broking employees. Joint and several liabilities will apply. In addition, labour broking employees will be subject to the minimum conditions prescribed in the main agreement and entitled to benefits; establishment of an industry policy forum (IPF) to look at the future viability and sustainability of the industry with the process facilitated by the CCMA and include participation at a leadership level.</p> <p>Fuel sector – by Feb 2012 no employer will have any of their core staff consisting of labour broking staff</p> <p>2008: Two year deal from 2007-9 (first year of deal was 9%) 8%</p> <p>2009: 11% (2 year deal to 2011) and 9.5% in 2010</p> <p>Subsistence, cross border and night shift allowances were increased by an amount equivalent to the across the board increase for each year.</p> <p>Extension of the maternity provisions to other areas; agreement to look at medical aid scheme in the industry; as well as setting up of a task team to look at the feasibility of new allowances such as danger and occupational allowances.</p>
Transnet Bargaining Council	<p>Unions Satawu Utatu</p>	<p>2008: 10%</p> <p>2009: 7%</p> <p>2010: 11%+ 1%</p> <p>The 1% is not part of salary and will be paid as a “once off” payment.</p> <p>R 1 000 ex gratia payment to all employees.</p> <p>Medical aid subsidy extended to all who belong to a medical aid scheme. Transmed and other schemes still to be negotiated by the parties.</p> <p>Medical allowance to workers who do not belong to a medical aid scheme.</p> <p>Minimum wage to be increased from R 38 000 p.a. to R 50 000 p.a.</p> <p>1 000 contract workers to be employed on a permanent basis. Agreed process for the placement of the remaining contract workers.</p>

Bargaining councils	Signatory parties	Main provisions
Local government bargaining council	Unions Samwu and Imatu Employers Salga	2008 (part of 3 year deal): 8.3% 2009 (new 3 year deal): 13%; provision to fill all vacant posts in municipalities; 2010 : CPI plus 1%;
Public sector Coordinating Bargaining council	Unions Nehawu, Sadtu, Denosa, Popcru, Hospersa, PSA, Naptosa, Sapu	2008 : 10.5% 2009 : 10%-13% 2010 : 7.5% Housing allowance of R 800 p.m. Development of a home ownership scheme – to be implemented by 1 April 2011. Investigation into the equalization of medical aid subsidy. Minimum service level agreement to be concluded. Resolution of all outstanding issues from the previous year.
Agreement level: statutory council		
Printing, newspaper and packaging (e.g. Nampak, Kohler or Mondipak)		2009 8.5%
Agreement level: sectors (non-statutory)		
Private security		2008 (from 3 year deal signed in 2007): 7.25% 2009 : 3 year wage deal signed: 11.5% 2010 : 7.5% increase but removing the lowest entry level grade to raise the minimum so increase for some up to 12%.
Contract cleaning		2008 : 13. 2009 : 8.6%

Bargaining councils	Signatory parties	Main provisions
		<p>2010: 3.4%</p>
Mining		<p>2008: from 2 year wage deal signed in 2007</p> <p>2009: 2 year wage deal: 10.5% increase for lowest grade to increase minimum wage to R3646 for underground and the second leg of the clause a further increase to get to R4 000 for the next year – another 10%.</p> <p>Cat 4-8 got 10% and the miners and artisans got 9%</p> <p>2010</p> <p>To get lowest paid workers to R4000 min, a 10% increase2010 – rest of workers got 7.5% as worked on CPI plus 1 and a guaranteed minimum of 7.5%.</p>
Automobile manufacturing		<p>2008: 8% (part of 3 year deal in 2007)</p> <p>2009: 7.5%</p> <p>2010 (two week strike): 10%</p> <p>2011: 9% (if CPI goes above 9% then workers will get CPI)</p> <p>2012: 9% (as 2011 provision re CPI)</p> <p>10% allowance to certain categories of workers e.g. welders.</p> <p>Ban on use of labour broker</p> <p>Employers will continue to support plant level short-time fund</p> <p>Short term contract employees paid at the entry rate and entitled to benefits</p> <p>Parties agree to the establishment of a bargaining council</p> <p>Workplace restructuring: management and shop stewards will share and consult on issues like scheduled production, manning levels, quality, productivity and market share.</p>
Agreement level: enterprise		
Pick 'n Pay	Unions Saccawu	<p>2008 (3 year wage deal): 8%</p> <p>2010: 6-7%</p>
Shoprite	Unions Saccawu	<p>2008: 8%-9% (part of three year deal which ended in 2008)</p> <p>2009: R350ATB</p>

Bargaining councils	Signatory parties	Main provisions
		2010: 8-9%
Eskom	Unions Numsa, Num, Solidarity	2008: 7% plus an improvement factor 2009: 10% 2010: 9% increase; Housing allowance of R 1 500 p.m.
SABC	Unions Broadcast, Electronic, Media & Allied Workers Union (BEMAWU) Media Workers Association of SA (Mwasa) Communication Workers Union	2008: 11.5% (part of 3 year wage deal) 2009: 10% (agreement renegotiated)

Annex 3.

Overview of collective bargaining across bargaining councils and other centralised and enterprise level arrangements: 2008–2010

Bargaining councils

Chemical Industry Bargaining Council: The chemical industry bargaining council has been operating for ten years. While it is a national council the sectors negotiate separately in five chambers. It could be argued that there is a three tier system in place with some issues negotiated at industry, sector and plant level, as provided for in the council constitution. The reason presented for this is that the council was established when practices already established in the sectors and employers wanted to retain maximum flexibility. Aside from this, the council does not extend agreements to non-parties; as a result exemption applications are kept to a minimum and on average between three and five applications are lodged per annum. The council argues that there is a high level of maturity with parties showing their ‘willingness to talk things out.’ In terms of union dynamics there is still a bit of power play between some of the unions.

During the recession, there was not a significant increase in exemption applications or increase in short-time worked except in the glass sector which is very sensitive to global trends and experienced significant problems. (It should be noted that even if there was an increase in short-time worked, it is not regulated by the main agreement, so companies do not have to notify the council). In the glass sector, the main unions agreed to a wage cut to save a company and prevent job losses. Some members accepted voluntary retrenchment packages and others agreed to a practice of debasing which amount to a significant reduction in wages to save jobs.

All parties claim that during the recession, negotiations were largely ‘business as usual’ except that the environment proved tougher during 2010, while the sector experienced a strike in 2009. As part of the Council’s attempts to reduce costs, a new wage negotiation model was agreed to by parties for implementation during the 2008 wage negotiations. The new model sought to ensure a more streamlined and structured process of negotiations and to reduce the number of meetings between parties in each sector or chamber. In 2008, the parties requested an additional number of meetings in order to get a settlement, but this did not adversely affect the budget.

In 2009, the strike – the first in a long time in the industry – led to two year wage deals in petroleum and glass, which employers claimed was significant. The primary motivation for these long term agreements was to ensure that wage negotiations were not scheduled during the 2010 Soccer World Cup. In both sectors, however, the long term economic and industrial relations benefits of multi-year agreements were also recognized, employers stated.

While glass signed a two year deal in 2009, negotiations were reopened because inflation fell outside the parameters set in terms of the wage deal. In petroleum the parties did not re-open negotiations in 2010 as the union was happy as they pegged the increase to a different inflation measure in year 2 of the deal.

The 2009 negotiations saw the first direct involvement by the CCMA in the chemical industry negotiations in terms of the provisions of section 150 of the Labour Relations Act, i.e. the CCMA saw it in the “public interest” to intervene in the disputes and strike. The institutions’ involvement did not lead to the resolution of all disputes. The total period devoted to wage negotiations during 2009 came to nearly three months and the total costs incurred by the bargaining council is estimated to be about 25 per cent higher than during 2008.

Negotiations during 2010 proved to be tough and unions were forced to revise their demands which were not easy to sell to members. Unions indicated that employers held firm and average settlements proved to be at least 1.5 per cent lower than for 2009.

National Bargaining Council of the Leather Industry of South Africa (NICLI): Parties in the leather council, which is the oldest bargaining council in the country, negotiate in three sub-sectors: footwear, tanning and general goods and handbags. The council is highly representative on both sides and parties indicate that the relationship between the two is relatively mature despite the fact that strikes occurred in 2009 and 2010.

The council indicated that the impact of the global crisis differed from sector to sector, with a surprisingly marginal decline in employment in footwear and general goods while a surprising increase in employment in tanning which was supposed to be heavily affected by the decline in car sales. This sector saw a dramatic increase in short time and some rather tough wage negotiations. The other sectors are quite seasonal in nature such as footwear, therefore it is difficult to determine whether an increase in short time was the result of the crisis or not.

With the limited number of job losses, the TLS was not used extensively and the council could only report on one company that utilised it. The main union, the National Union of Leatherworkers (Nulaw) said there was no real need to utilise the TLS but despite that, there was some uncertainty about the scheme and workers felt that if they utilised it, the company would close and then would not get paid. In some sub-sectors, a significant amount of short-time was worked, for example, in general goods.

Overall, employers indicated that the impact of the global crisis was not as severe as anticipated and employment figures (Table 5) confirm this.

Table 5.
Employment figures: 2008-2010

Sector	2007	2008	2009	2010
Footwear	10 940	10 676	10 201	10 217
General goods	2 578	2 397	2 196	2 113
Tanning	3 279	3 568	3 538	3 924

Source: Bargaining Council

Another surprising trend to emerge was that local production of footwear actually doubled. Interviews pointed to the fact that retailers are beginning to come to the party and buy local. The increase in local production is significant as this sector was earmarked as a 'grandpa' industry but now slowly appears to be reviving.

Since the start of the global crisis, the council did not report a noticeable increase in exemption applications as the largest sector, footwear, entered into an agreement in 2005/6 which allowed for the varying down of wages – hence creating some flexibility. The agreement caters for the semi-formal and informal subsectors, and the inclusion of an enabling clause that provides for plant level bargaining. The agreement reduced the prescribed rates for the semi-formal and informal category by a certain percentage of the actual prescribed rates for the industry. Aside from this, the unions indicated that the compliance rate was much higher than in clothing and about 90 per cent of employers registered comply with the main agreement. Employers concurred that there was an element of non-compliance but not like in clothing. In tanning the issue of labour brokers is rife but is not the case in some of the other sub-sectors.

In terms of wage negotiations, the following emerged in the different sub-sectors:

- *General goods and handbags*: During 2009, the unions demanded 15 per cent and for 2012 their demand went down to 10 per cent. Demands were generally the same with a focus on job security measures, for example, the regulation of labour brokers, strict regulation of contract labour and amending the rules on outsourcing (in 2009) – such as employers only able to outsource work to SMTs which are compliant and registered with the bargaining council. On the employer side, demands were tabled concerning productivity, with parties agreeing to look at this issue in order to remain internationally competitive. However, the unions claim that productivity has increased as there are fewer workers in the sector and companies appear to be making a profit. In 2008 the parties settled on 10.5 per cent and in 2009 negotiations deadlocked, leading to a two week strike by Nulw; the parties eventually settled on 8.5 per cent. The 2010 settlement amounted to 7.5 per cent plus other benefits (see Annex 4).
- *Footwear*: Negotiations in 2008 were uneventful and the parties settled in the second round on 10.5 per cent. The parties also agreed to a phasing in clause to address parties that were previously operating outside the Council’s jurisdiction. The situation was decidedly different in 2009 when according to Sactwu the employers sought to table proposals to negotiate down existing employment conditions. The employers demanded, among others, a wage freeze, a review of certain benefits and a scrapping of others. The parties went into dispute and the unions went on strike and eventually settled on 8.5 per cent. The 2010 negotiations were settled on 7.25 per cent with the majority union Nulw but the minority union Sactwu tried to negotiate a settlement of 8 per cent but failed.
- *Tanning*: The 2008 negotiations deadlocked and parties eventually settled on 10 per cent as well as reaching agreement requiring labour brokers operating in the industry to register and to comply with the industry terms and conditions of employment. In 2009 the negotiations led to a one day strike, followed by a deal on 8 per cent plus an additional 0.5 per cent allowance, an additional five days wages for employees in automotive tanning, and an additional 1 day wages for employees in general tanning. The 2010 negotiations also ended in deadlock and the majority of members, belonging to Sactwu, went on strike on 22 July 2010 with the exception of members in KZN. Despite various interventions, the strike was only settled a month later on 7 per cent plus an ex-gratia annual bonus payment of 0.5 per cent calculated on total annual income for 2010, payable at shutdown in December 2010.

National Bargaining Council for the Clothing Manufacturing Industry: Parties to the council have faced many challenges over the years: first, relating to the representativity of the parties (and related questions on the extension of agreements to non-parties); second, non-compliance; and third, job losses in the face of the influx of cheap imports from China and what some argue as “trade and policy imbalances between China and South Africa”.⁵³ Since the influx of imports, thousands of jobs have been lost coupled with factory closures. The recent global crisis, employers have argued, has merely exacerbated the situation.⁵⁴

Through the NFA a sectoral process was embarked upon in NEDLAC, leading to a sector accord which identified clothing as a vulnerable sector in the context of the crisis; it acknowledging that the sector was strategically positioned to play an important role in contributing towards reversing the deindustrialisation of economy and consequently clothing and footwear could play important role of contributing toward reindustrialisation

⁵³ City press article of 20 September 2010.

⁵⁴ “The crisis has not introduced a first time dynamic or consequence what it has done is exacerbated and speeded up market developments – competitive or non-competitive realities and brought it to a head sooner. It brought the non-compliance and sustainability issue to a head and the sustainability of light manufacturing and competitiveness of clothing manufacturing to a head....We are now being forced to focus on critical and key matters of survival which we would not have been dealing with the same sense of urgency for another 5-6 years. So ironically it has had favourable consequences for vulnerable sectors such as ours, brought about urgency and window of opportunity for us to extract from government and labour concessions, interventions and agreements that otherwise would not have likely to get.”

and achieve the national objective of job creation. A number of support measures have been introduced to assist the sector, the most significant being the production incentive scheme (PIS). It is intended to assist companies in upgrading their facilities both plant and equipment. The net effect of this incentive is that qualifying companies will benefit to a tune of 10 per cent of their VAT which will be paid back to them. The general consensus is that this is the most significant support measure ever given to the industry by government to place the sector on a more sustainable trajectory. Employers caution that it 'will not however, place us on a growth trajectory but will stabilise the industry over the short to medium term.' Employers indicated that an approach would be made to government to 'tweak' the incentives so that companies could use it as a wage subsidy.

The crisis has forced a necessary adjustment in terms of the operation of the bargaining council. In August 2010, the Council embarked on a compliance drive against 385 employers in the industry (employing 15,000 workers) who were not paying the minimum prescribed wages of R324 per week and who owed their staff R160 million in arrear wages. The main area of non-compliance is in the Newcastle/ Bochobela (former Bantustan and decentralised area) area which are dominated by Chinese and Indian employers. In view of the far reaching implications of this, various stakeholders expressed their concern and the need for all to meet to find a solution to the issue of non-compliance. The compliant employers, represented by the Apparel Manufacturers of SA (AMSA) agreed to institute a 30 day moratorium on further compliance action, on condition that the stakeholders in the industry could meet at national government level in an effort to find a way forward. The Free State Government facilitated a meeting which was hosted by the DoL and attended by the DED, the Department of Trade and Industry (DTI) and the stakeholders of the industry. The Minister of Economic Development, Ebrahim Patel (former Sactwu general secretary) offered to host a process leading to a new accord for the industry.

The council met at the end of September 2010 where it was agreed that a new accord was necessary. It was further agreed that the compliance drive against the 55 worst offenders of non-compliance would continue as the 30 day moratorium expired on 30 September 2010. The Council decided that the writs held against the remaining 330 non-compliant companies would be held in abeyance until mid-December 2010 and that the continuation of any further action would be decided at that time.

AMSA executive director Johann Baard emphasized the need to deal with the process urgently due to the devastating effect non-compliance has on members. This, he says, is due to the unfair cost advantage enjoyed by those employers who did not pay the minimum wages. He adds that AMSA did not have a mandate to extend the moratorium on holding back on further writs of execution, but would seek to obtain such a mandate in the light of the Sector Accord envisaged by Minister Patel.

The council's move to trigger its statutory rights led to the issuance of 55 writs of execution, leading to factory closures, 4,500 jobs lost; workers marched to the council to challenge this decision.

Minister Patel appointed a number of facilitators to assist with the sector accord process in order to arrive at a solution to regulate the labour market and address mushrooming non-compliance. Various meetings were held during 2010 involving the Chinese Chamber of Commerce and the Newcastle Chamber of Commerce (the only formally structured employer formation which represents non-compliant companies). By the end of December 2010 there was no resolution; the unions requested that the non-compliant companies be given a further 18 months to phase in the minimum wage. At the time of writing of this report, a resolution had yet to be achieved.

In terms of wage negotiations, clothing has settled slightly lower than other sectors but employers still believe that in the context of the sector, the increases have been high. In 2008, the parties settled on increases between 9 per cent – 14.24 per cent (total labour cost), with 0.5 per cent allocated for a productivity incentive scheme in two regions to

encourage such schemes at plant level. The union claimed that the productivity incentive was part of its demands, and is intended to help enhance the industry's competitiveness. A range of other benefits were agreed to including the introduction of an agency shop in the KwaZulu Natal metro area and new protection for contract workers. All contract workers would be automatically entitled to a pro-rata share of all statutory payments due to permanent workers, will have the same wage and other terms and conditions of employment as permanent workers (except, at this stage, for maternity leave payments) and must be offered permanent employment after a maximum of 12 months' employment with the same employer.

Wage negotiations in 2009 ended in deadlock and the union went on strike. Sactwu believed that employers were seeking to vary down employment conditions and tabled a number of demands including the modernisation of the main agreement and provision for plant level variation of some issues. The strike started on 15 September 2009 and during the strike the employers revised their offer. Within days of the commencement of the strike, the CCMA offered to intervene in the dispute in line with section 150 of the LRA. The conciliation process was interrupted by the union's national congress but eventually a settlement was reached: between 7 per cent and 11.8 per cent on the minimum wage, depending on the job category and geographic area, commitments to strengthen non-compliance enforcement, a narrowing of the wage gap between metro and non-metro areas and between different regions, agreement to establish a productivity institute and a training institute under the auspices of the bargaining council.

A unique feature of the agreement is that while it allows for annual negotiations, it is extended for a four year period until 2013, but with some exclusion not extended to non-parties because of representativity issues.

In view of the various dynamics playing out in the industry the 2010 negotiations proved to be difficult.⁵⁵ During the start of negotiations the employers tabled a range of demands including the averaging of hours of work; compressed working week; flexible annual leave; all forms of compensation must be based on actual attendance and the current differential between metro- and non-metro should not be narrowed any further. After the third round, the union declared a dispute and began to ballot its members. A national strike started on 15 September 2009 with an estimated 55,000 clothing workers joining the strike. The employers revised their offer to an 8 per cent wage increase linked to a number of preconditions, which had been previously rejected by the union. Within five days the CCMA sought to intervene in the dispute and during this process the union held its national congress. It was only after the congress that the parties moved towards a settlement with the union calling off the strike, except for three areas in the country. The final settlement provided an unconditional wage increase of between 7 per cent and 11.8 per cent on the minimum wage, depending on the job category and geographic area, commitments to strengthen non-compliance enforcement, a narrowing of the wage gap between metro and non-metro areas and between Eastern Cape and Western Cape garment knitting workers, a narrowing of the wage gap between Free State and Northern Cape metro workers, agreement to establish a productivity institute and a training institute under the auspices of the bargaining council, a commitment of the parties to address high absenteeism in some parts of the industry, and finally the parties would pursue buy local agreements with local and provincial governments.

National Textile Bargaining Council (NTBC): The textile industry has shifted from being one of South Africa's larger employers in the manufacturing sector to one of the smaller employers. Employment represents approximately 3 per cent of total manufacturing employment. Like clothing it has been heavily affected by cheaper imports resulting in job losses and factory closures. Since the global crisis, the council has seen a significant increase in exemption applications and some retrenchments.

⁵⁵ Sactwu collective bargaining report prepared for the 2010 national congress.

The union argues that wage negotiations have been used as an attempt by employers to vary down conditions including wages while the major focus of the union has been to expand the scope of bargaining to cover other textiles related operations organised by SACTWU and to strengthen the council.

From the start of the global crisis, employers argued that union demands were unaffordable because of retail cut backs and escalation in raw material costs. The union in turn argued that it has sought to introduce measures to improve the industry's sustainability, such as the implementation of the customized sector programme, its application to ITAC to increase the tariffs on clothing and certain fabrics to the World Trade Organisation (WTO) bound rates and support as contained for the industry in the NFA.

Negotiations since 2008 have proved to be tough and have focused predominantly on wages with some improvement in other benefits. In wool and mohair, the union agreed to the introduction of a productivity incentive for members and a similar agreement in woven and crochet linked to attendance.

The 2010 wage negotiations were all resolved except in worsted textile which went on strike in August 2010.

Metal and Engineering Industries Bargaining Council (MEIBC): This sector was heavily affected by the crisis with an estimated 80,000 jobs lost until 2010. In September 2008 employment stood at 384,164 and by January 2010 employment had dropped to 320,285. However, by September 2010, employment stood at 338,865 – the industry has managed to reclaim almost 18,000 jobs. The council indicated that about 50 per cent of the jobs lost were probably atypical.

At the same time, the industry experienced a dramatic increase in short-time working which began to taper off during 2010. During the crisis the sector also used the TLS extensively (as a result of a major drive by the main union, Numsa) as prior to the setting up of the scheme, some companies utilised the Retrenchment Assistance Programme (RAP) which was an initiative managed by the sectors Seta – Merseta (see section 5.2.3).

Job losses and company closures impacted on the councils' revenue and hence it's functioning, at a time when its workload increased substantially. The employer body, SEIFSA indicates that the impact of the crisis on the council was massive and the council went into an R14 million deficit. A number of measures were introduced to rectify the situation such as increasing the levies, a very painful process for the council. The council faced a double whammy, according to SEIFSA: firstly, it lost revenue because of reduced membership and at the same time the number of disputes "went through the roof", resulting in additional costs incurred for dispute resolution. The council indicated that when the crisis hit, the case load increased dramatically with an increased focus on misconduct issues. The council indicated that it appeared that during the crisis, employers got tougher on discipline or were not following retrenchment procedures properly.

As expected, exemption applications were relatively high in 2008 and 2009. Exemptions related to a range of areas including exemptions to the wage increase, with some companies proposing a 1-2 per cent increase or no increase at all. These were proposed as part of an attempt to save jobs. SIEFSA says in the main, a fair degree of pragmatism occurred at a company level. The council indicated that about 80 per cent of exemptions were granted. In addition, the exemption process is considered to be very robust with sufficient checks and balances in place. In terms of non-compliance, the council found that it was not significantly higher but is prevalent mainly among smaller firms.

The council has been quite proactive in dealing with labour brokers. They are closely monitored and regular meetings are held with labour broking employer organisations and many are accrediting themselves in the industry. The council indicated that 92 per cent of labour brokers assessed pay up immediately.

In terms of wage negotiations, parties last negotiated a three year wage deal in 2007 following a national strike. During these negotiations, Numsa changed its stance on increases. Instead of demanding CPIx plus an improvement factor, the union in 2007 demanded a flat rate increase and rejected the wage model which had been in place for many years. The union was warned that its change in strategy could be a mistake but parties agreed to an 8.5 per cent increase. In 2008, inflation spiked to around 13.4 per cent by July and the parties agreed to increases ranging between 7.1 per cent and 8.1 per cent in terms of the three year deal. The union approached employers and the council stating that it had miscalculated and requested an inflation linked increase. Employers agreed to re-open negotiations on the basis that the three year deal is extended for another two years. A final deal provided for the extension of the agreement for another year until 2011 plus an inflation linked increase. SEIFSA states it was happy to break away from its alignment with the other sectors.

As a result of this experience, the union resolved at its national bargaining conference in 2010 to oppose multi-year agreements, push for a 20 per cent wage increase and continue to demand a ban on the use of labour brokers.

Aside from negotiating in the bargaining council, the union also participates in a number of house agreements. The union has indicated that there is a need to consolidate all these negotiations into one bargaining chamber. One such house agreement signed this year was with Columbus Stainless which provided for a five year wage deal.

National Bargaining Council for the Wood and Paper Sector: This council was registered in 2005 and started operating in 2007. It comprises three to four major employers (including Mondi, Hans Marensky and Steinhof) and three unions. There are four sub-sectors: pulp and paper, sawmilling, tissue and board. The parties have traditionally negotiated one year deals.

The crisis impacted on the council in terms of retrenchments and job losses especially in sawmilling. As a result, the council received less revenue in terms of lost levies but this did not affect the functioning of the council. Despite job losses, there was no increase in exemption applications while the TLS was explored by one or two companies especially in sawmilling.

In terms of collective bargaining, both parties indicated that negotiations proved to be tough in 2009 and 2010 as the companies faced financial pressures and the unions tried to get the best for their members. Negotiations in pulp and paper were particularly tough with the parties almost reverting to a strike but settlement was reached following intense independent facilitation.

A key focus of the union's demands was non-standard employment and job security. In sawmilling the unions sought to increase the severance package from one week to six weeks for every year of service. Some companies have increased severance pay to two weeks. In terms of non-standard employment, parties in the tissue and allied sector agreed to review the status of temporary labour to ensure that core positions are occupied by permanent staff. However, this excludes the use of casual labour for seasonal work. In addition, parties agreed to use labour brokers only in non-core, seasonal and project related positions. In fibre and particle, an employee on a fixed term contract will be considered for permanent employment in the event the position becomes permanent.

Employers indicated that there has been an attempt to link wages and productivity but not all companies are in a position to measure their productivity.⁵⁶ Parties indicated that despite tough bargaining, it did not imply that the relationship between the parties was

⁵⁶ As one employer says: "In order to start talking about productivity increases, employers have to be able to measure productivity and that process must be formalised."

problematic. This very much depended on the level of maturity of the negotiators and capacity of the parties.⁵⁷

Building Industry Bargaining Council (Cape of Good Hope Building): This council, which is 80 years old, is one of the few remaining functional councils in the building industry. Aside from the Cape Council there are four other regional councils still registered: Bloemfontein; East London; Kimberly; North and West Boland; and, Southern and Eastern Cape. The Cape, North and West Boland and Bloemfontein are the only remaining councils which function as collective bargaining structures while the remainder administer benefit funds but are not engaged in collective bargaining. Employers in the Southern and Eastern Cape Building Bargaining Council, for example, refused to bargain as union representativity had fallen. Over the years, councils in Johannesburg and Durban collapsed following reduced representativity. Research on the stadium strikes in the build up to the 2010 World Cup⁵⁸ found that the larger building contractors in Gauteng bargain with NUM and BCAWU at a voluntary bargaining forum, and a similar voluntary forum exists in KwaZulu Natal involving a limited number of employers (Roscom, 2010).

While the other regional councils have all but collapsed, the Cape council continues to function and is very much in touch with what is happening in the sector. The council indicates that the trend in the other regions merely reflects the growing informalisation of the industry and the subsequent inability of the unions to unionise such workers, leading to low levels of representativity in these councils. The council covers 27,000 workers in the Western Cape who are represented by four unions. The majority of the unions are locally based unions except for the NUM which has a small membership base in the province. The council indicates that the *unions* ‘are keeping their nose above water in terms of representativity’ as well as the employers. As a result agreements are being extended to non-parties. The council also indicates that subcontractors in the sector are seen as employers and are covered by the council, including labour brokers and “we ensure that their employees get the benefits of collective bargaining.”

The main agreement does make provision for the protection of such workers. It states that before a main contractor contracts work to a subcontractor, he has to ensure that the subcontractor is registered and complies with the main agreement.

While the council’s finances have improved as a result of various measures introduced, the crisis had a slight impact and contributions were down 18 per cent year on year. This is in line with the job losses. However, the reduced levies and income has not affected the council as it is in a financially strong position. In line with other councils, the crisis has led to increased workload linked to dispute resolution.

In view of the seasonal nature of the sector, the TLS had little impact. In addition, it was viewed as having too much red tape as a result there was little uptake from contractors. The NUM indicated that construction did not look at the TLS and mainly agreed to short time (mainly in 2008) and job sharing. For example, workers would rotate and work two weeks on and two weeks off to allow another group of workers to work. In some instances, the union stated, problems emerged especially if the employer wished to retrench during job sharing arrangements.

Motor Industry Bargaining Council: The scope of this council is quite extensive and covers workers in very diverse sectors from motor dealerships, panel beaters, petrol attendants and auto-component manufacturers. The parties bargain separately across these

⁵⁷ An employer says: ‘we need to be able to talk the same language, the process is not smooth because of lack of capacity. In a dying industry how can you propose wage increase of 15 per cent?’ Parties, he says, need to look at training and succession planning especially in an environment where there is a high turnover of negotiators.

⁵⁸ Roscom, A: Industrial action in the construction of the Gautrain and the 2010 soccer stadiums, 2009

sub-sectors. The council has indicated that representativity has improved, as a result, the council has been strengthened.⁵⁹

The council has sought to become responsive to the needs of the different sectors and has not imposed one blanket agreement on all. Instead there are different agreements for the different sectors. The council believes there is growing maturity among the parties with a shift towards a 'needs based understanding of the industry.' The council secretariat explains that outside facilitators have been brought into the negotiations in order to get a more structured negotiation process.⁶⁰

In terms of collective bargaining, the 2007 negotiations led to a national strike with the final agreement providing for a three year wage deal. As a result of a spike in inflation in 2008, the main union, Numsa also sought to re-open negotiations (as they did in metal) but the parties could not agree to a trade-off and union members indicated that they would cover their losses in the 2010 negotiations.

Negotiations in 2010 began with the unions demanding a 20 per cent increase and employers offered 4 per cent. The negotiations proved to be tough leading to a dispute and subsequent strike. At the time of the strike, the union was on 15 per cent and the employers on 6 per cent. The CCMA intervened and provided a dedicated commission to facilitate the resolution of the dispute.⁶¹ Following a 15 day strike the parties finally settled on 9 per cent in 2010, 8 per cent in 2011 and 7 per cent for 2012. There was a slight variation for the other sub-sectors; for example, the fuel sector settled slightly higher, as did component manufacturers who faced pressure to settle after the automobile manufacturers had settled their own strike.

In terms of demands, a key focus was on labour brokers. The motor retail sector has agreed to ban the use of labour brokers within the next 18 months while in other sectors it has been agreed that not more than 35 per cent of employment will be allowed to come from labour brokers on completion of the third year of agreement. For the first time in the history of the council the employers agreed to backdate the increase.

In the aftermath of the strike, there were claims and counterclaims around the level of violence and other concerns that it took union members between three to four days to return to work after the strike was called off.

As a result of the recession, the council sought to establish a forum to reflect on the crisis as over 4,000 businesses were closed and 40,000 jobs lost. During the crisis there was a dramatic increase in short time worked and reduced working hours and in some instances parties agreed to wage freezes or wage cuts to avoid retrenchments, but the council warned that this was mainly in smaller companies. However, companies did not make use of the TLS.

National Bargaining Council for the Road Freight Industry: This council has come a long way from the days of high profile road blockages in the 1990s. The parties to the council include the Road Freight Employers Association and four unions including the Transport and Allied Workers Union, Motor Transport Workers Union, Professional Transport Workers Union and SA Transport and Allied Workers Union. The Employers Association represents 654 employers and the unions represent 32,000 employees.

Following some rather violent and prolonged strikes in the late 1990s, the parties to the council sought from 2001 onwards to change the way in which they had been

⁵⁹ The council stated: "At this point in time we are not battling... We do have challenges as a result of recession to get levies of employers and non-compliance is not really an issue."

⁶⁰ "That investment has helped and it is no longer like 10 years ago where unions made demands without trying to understand employer challenges and vice versa."

⁶¹ "From the work go we realised that there would be problems because the gap between the two parties was too big coupled with the fact that there were financial challenges facing members on both sides."

bargaining in an attempt to move away from positional to mutual gain bargaining.⁶² The parties agreed to undergo joint training in mutual gains negotiation⁶³ and agreed to explore facilitated pre-negotiation meetings while various task teams were set up to tackle difficult outstanding issues facing the industry.⁶⁴ This approach seems to have served the parties well, but it depends very much on having consistent negotiators on both sides and parties willing to consider a different approach to bargaining (Brand). On the council's side, it has sought to level the playing fields between the parties by providing them both with information and data to assist them in the bargaining process.⁶⁵

While the council acknowledges the role of external facilitation, it has found that in recent years if a facilitator is not familiar with the sector then it can prove problematic. In 2009, when the industry faced a three day strike, the council's general secretary stepped in and brokered a deal. This, the council argues, highlights the role that a general secretary could be playing.⁶⁶

In terms of demands, the parties indicate that it is business as usual and they have not changed in any significant way, with a continued focus on the ban on the use of labour brokers. In 2007 the parties agreed to put a ceiling of 30 per cent on the use of labour brokers. Another demand around job security has been the proposal to increase severance pay from one to three weeks; and to expand the bargaining unit to include voluntary members. While social benefits have always featured, there has been increased emphasis on medical aid and housing, especially in the wake of the public sector strike which impacted on negotiations.

On the employer side, attempts have been made to introduce productivity bargaining at a central level but this has been relegated to plant level. A number of companies have incentives schemes. The Council's main agreement provides for the negotiation on non-substantive issues, for example incentive schemes directly related to profit or productivity at any other level as agreed by the parties, which usually would be at plant or shop-floor level. The most common incentive scheme used by employers is a scheme based on the monthly turn-over of a vehicle. For example, an employer pays an employee on average 8 per cent of the income of the vehicle's turn over, over a given period of 21 working days per month. In effect the employees will on average earn three times the basic minimum prescribed wages per month, again depending on the employer and the region in which said employer operates. Another type of incentive is the payment of an amount per kilometer travelled by an employee. On regular routes employees receive, e.g. R0.60 per kilometer travelled, and on so-called special trips with extreme driving conditions R1 per kilometer. This will also accumulate over a period of 21 working days and be paid to employees as incentive bonuses.

The cyclical nature of the sector makes it extremely difficult to evaluate the impact of the crisis on the sector. However, the council indicated on the one hand that the total

⁶² Brand, J: The national bargaining council for the road freight industry – A SA case study.

⁶³ The training was done by John Brand and Felicity Steadman.

⁶⁴ The parties "who have made the change from highly adversarial bargaining to mutual gains negotiation recognise that there is a need to do things differently and central to that change is a joint understanding of the essence of mutual gains negotiation. Both parties need to play the new game so it is essential that they make a joint commitment to do things differently and jointly attend training in the new methodology...The move from positional to mutual gains negotiation is not an easy road to travel and calls for strong leadership and commitment from representatives of capital and labour. It cannot take place effectively without joint training and skilled facilitation. It is also very easy to regress into adversarial positional ways. The Road Freight Industry in South Africa has shown that it is the most effective way to negotiate over complex structural change issues which have to be addressed in a developing country like South Africa."

⁶⁵ The council stated: "We try and equip the parties in terms of information sharing so as to prevent delays in the negotiations. The main thing is education so that the parties can have fruitful engagement. Parties are given everything they need to make things better, simpler and faster." For example, in 2009, the council requested STATS SA to talk to the negotiating teams about CPI as a measure for increases. The council has also developed a negotiating protocol.

⁶⁶ The council stated: "it's not just about being an administrator but being able to have the stature and skills to intervene and resolve disputes."

number of employees in the sector grew while its income stream through levies was affected and impacted on the dispute resolution budget which is about R15 million per annum. This function was affected and the council had to implement cost cutting measures. During the crisis, exemption applications did increase but most did not relate to wages but to other provisions such as provident funds and the like. The council received 205 exemption applications between 2008 and 2010.

Transnet Bargaining Council: While this is a single company council, it covers the negotiation of wages and employment conditions across six divisions within the state owned enterprise (SOE) Transnet: Transnet Port Authority, Transnet Port Terminals, Transnet Rail Engineering, Transnet Freight Rail, Transnet Pipelines and the Corporate Centre which includes Transnet Capital Projects.

Since 2008, the council structure has changed from having divisional chambers to a central forum with some issues negotiated at divisional level within divisional chambers. For the unions, the move towards centralised bargaining across all divisions allows for more co-ordinated action and made the 2010 national strike possible. However, because of historical dynamics of divisional bargaining, the standardisation of employment conditions has yet to occur.

The council has indicated that there is generally good relations between the parties; inevitably during wage negotiations or in the case of the strike in 2010, relations do become tense. However, the parties have pointed to reduced levels of trust between the parties and inter-union rivalry being an issue, which emerged during 2010.

The global crisis impacted on collective bargaining only in the aftermath of the 2008 negotiations. The 2008 negotiations were completed in the first quarter of 2008 with the parties settling on 10 per cent and agreeing to introduce a productivity scheme. At the time the company was bullish about its performance and meeting targets and volumes. But by the end of 2008 and beginning of 2009 the situation had changed: Transnet was way off target but profits remained reasonable with no substantial losses.

2009 negotiations proved to be tough with all the focus on the recession and even union members were nervous about the future. As a result the parties settled on 7 per cent – with a trade-off of a guarantee of no retrenchments.⁶⁷ By the end of 2009 executive committee members received what workers saw as huge bonuses, which affected the climate around the 2010 negotiations as according to a union official, union members felt that they had settled on 7 per cent in 2009 because they thought the company was facing problems but the year-end bonuses did not reflect that, so they went in into the 2010 negotiations with a demand of 20 per cent and a fall-back position of 15 per cent.⁶⁸

Prior to the start of negotiations, discussions were under way between the parties on a new reward system as well as moves by Transnet to increase productivity and incentivise workers. This was put on hold as the parties went into 2010 negotiations. Parties went into negotiations knowing it would be tough not only in terms of wage increases but there were a number of unresolved issues which had raised levels of frustration (especially among workers in Transnet Freight Rail) such as delays around the introduction of a new grading system; some workers had not received notch progression increases for five years.

The parties negotiated for six weeks and deadlocked. Subsequent to this the parties went into mediation and then the unions issued a strike notice.⁶⁹ Just prior to the start of the

⁶⁷ A union official said: “The climate in 2009 was definitely one in which everyone was nervous including the membership. People were sensitive to the environment but members moderated where they were prepared to settle.”

⁶⁸ The council says: “One of the issues which hardened attitudes was the huge bonuses given to senior management. When the union tabled its demands in 2010, it said it had been led down the garden path in 2009 as in the midst of the so-called crisis the bonuses for senior management did not appear to reflect the crisis so this year the unions demanded what they felt rightfully belonged to members. So they agreed to wage moderation because of the crisis but not for senior managers... so not this year.”

⁶⁹ Unions indicated that the factors contributing to the bargaining process included the following: members have dependents to support; rising pressure of debt; the prospect of not having a job in the future translates into getting as much as you can now as

strike, Transnet management held a series of meetings with the union leadership in an attempt to broker a deal. This intervention proved to be problematic for a number of reasons, despite the fact that this approach had been utilised in the past to settle disputes. The situation created difficulty for some of the unions but ultimately, workers belonging to the different unions went on strike at different times. A week into the strike, the CCMA was brought in but the parties finally worked out a deal which provided for an 11 per cent increase (inflation at 5 per cent) plus an additional 1 per cent ex gratia payment of R1000 as well as a provision to give permanent status to contract employees who work for Transnet Capital Projects. As part of the strike resolution, it was agreed that at least 1,000 employees would be considered for permanent employment.

In the aftermath of the strike, interviews with the parties highlight some underlying relationship issues which need to be addressed including trust between the parties, how the parties consult on specific issues, and capacity issues.

South African Local Government Bargaining Council: The parties to the council include the SA Local Government Authority (Salga) which represents an estimated 283 municipalities and two unions – Samwu and Imatu – which represent the majority of workers in local authorities. While the parties bargain at a central level, implementation becomes an issue as the employer party effectively negotiates for 283 separate employers.⁷⁰

From a union point of view, the global crisis was not seen as affecting the sector. However, during the 2009 negotiations (parties negotiated a three year deal in 2007), employers argued that the crisis affected government finances in terms of lost revenue. Local government said there would be less income for municipalities and this would reduce the possibility of higher increases.⁷¹

In recent years, the parties have negotiated multi-year agreements. However, the three year deal from 2007 to 2009 provided for an increase below inflation in year 3 (2009) which has led to some disenchantment with multi-year agreements. The unions sought to reopen negotiations but Salga was not in a position to do so. The parties therefore went into the 2009/2010 negotiations rejecting multi-year agreements. In the end the parties agreed to another three year deal which provided some protection in case inflation went above or below a certain level. The increase for the first year was 13 per cent.

An interesting demand tabled by the unions was to fill vacancies in municipalities to ensure service delivery. Employers agreed to this and had to fill all vacancies in municipalities by July 2010. The council is attempting to ensure that municipalities comply with this. The council indicates that municipalities were beginning to fill the vacancies.

During 2010, the parties faced a strike over a dispute on job grading – an issue which had dragged on for nine years. A further dispute arose over the interpretation of the agreement signed which was referred to the Labour Court.⁷²

a result in the aftermath of the threat of the impact of the crisis, workers' drive for higher increases pushed in. "The theory of what would happen if they drive wages to high is theoretical...workers just look at that and they say we have to pay the rent and debt collectors. In a sense the global crisis is not new to a South African worker and the crisis of unemployment and low pay has been with workers for generations. That is the context of the huge demands...workers saying never mind the crisis of capital, we have been in crisis for so long."

⁷⁰ A union official states: 'the municipalities are effectively separate employers and each has their own circumstances and it is difficult to compare a metro such as Johannesburg to a local authority in the rural areas. There is a process now to start categorising the various municipalities, which might help the process. However, this issue also relates to how Salga gets its mandates. And this also involves national government.'

⁷¹ Samwu states: "we are not paying for the crisis".

⁷² Samwu has indicated that there are a very thin layer of officials who are capable of negotiating and drafting complex agreements. "We need strong organization ... the actual bargaining is done by few people so that is not the problem the real issue is what is supporting the bargaining and that requires the building of a strong and fighting organisation."

The council indicates that outside of wage negotiations and disputes and strikes, the parties are able to get on with things and deal with the ordinary business of the council. Observers however, feel that there is a need to ensure a higher degree of honesty and integrity in the negotiation process – both parties face challenges around communicating with members and obtaining mandates.

Public Sector Coordinating Bargaining Council (PSCBC): This is the country's largest bargaining structure, with vast majority of public servants belonging to unions – partly because an agency shop agreement is in place. Previously unions were divided along racial, ideological and occupational lines.⁷³ These historical divisions meant that co-operation was difficult in the early years of the Council. Unions – party to both Cosatu and Fedusa – remained fragmented but over time this has changed to some degree.

The start of the global crisis was preceded in 2007 by a national public sector strike which brought to the fore various dynamics around the tripartite alliance between the ANC, Cosatu and the SA Communist Party (Grawitzky, 2007). In the aftermath of the strike and the election of Jacob Zuma as President, the unions indicated that the dynamics changed dramatically and was reflected in the 2009 settlement.⁷⁴

While that might have been the case, the parties began negotiations for the 2010/11 increases with the government arguing that the global crisis was affecting what was affordable and not. Government said it had competing demands and could not afford the offer on the table as the state was receiving less revenue because increased unemployment meant less taxpayers.⁷⁵ Finance Minister Pravin Gordhan budgeted R294.4 billion for salary increases for public servants in the budget.

The negotiations started rather slowly and against the backdrop of unresolved issues from previous negotiations such as the minimum service level agreement, filling funded vacant posts, resolution on the housing allowance and medical aid. The parties had agreed however, that the negotiations during 2010 would only focus on wages, but then because housing had not been resolved, labour raised this stating it was a 'show-stopper'. The housing issue related to homeownership for public servants had been on the agenda for a long time and both parties were supposed to have done research and then meet to discuss the way forward. The research by government had been incomplete, thus it had no mandate to sign off on this issue within the agreed timeframe.

A senior union official said that after the 2007 strike, relations had improved and parties were able to talk. They began a process of pre-negotiation meetings which helped to prevent disputes at the start of actual negotiations. However, this did not occur prior to the 2010 negotiations; the result was that the employers' opening offer of 0.2 per cent above inflation was rejected at the outset by the unions.

Senior unionists say salaries was a significant issue on labours' side; one statement indicated that 'we want what other people are getting, we don't want peanuts' – referring to settlements in Eskom and Transnet, the high executive salaries and the rising wage gap.

⁷³ Grawitzky, R: Public sector strike: A challenge to union organization? A report commissioned by the National Labour and Economic Research Unit, December 2007 (draft)

⁷⁴ A union official explains that when President Jacob Zuma came to power, the settlement in 2009 reflected an openness and readiness to listen and unions felt that during the 2009 negotiations. The unions believe that in the aftermath of the ANC Conference at Polokwane and the new regime, the relationships in the PSCBC changed. "The hostility in 2007 was around personalities," they argue. "There was a different reaction from the state...they were prepared to open areas for discussion that previously were regarded as non-negotiable... the willingness to talk has brought the parties closer."

⁷⁵ The scene for the negotiations was set when Finance minister Pravin Gordhan stated in his 2010 budget: "Mister Speaker, the 2009 round of salary increases has placed immense pressure on the budget. Including the very necessary adjustment to the salaries of professionals, the wage bill has almost doubled in five years. Now that a major revision to public service remuneration is behind us, it will be necessary to moderate salary increases going forward. This is required to ensure that funds are also available for growth in public service employment and so that spending on school books, hospital building and maintenance of infrastructure is not compromised."

Comparative salaries were a huge problem for the unions, among other unresolved issues which had been on the agenda for a long time.⁷⁶

The negotiations ended in deadlock with the unions announcing their intention to go on strike.⁷⁷ After various formal and informal processes and interventions that took place during the strike, the parties finally reached a settlement but it took some time for some of the unions to get their members to return to work. At the start of the strike, labour was on 8.6 per cent and employers on 6.5 per cent: in an attempt to settle, employers first offered 7 per cent, and finally offered 7.5 per cent. The other sticky point was the housing allowance of R500: the parties settled on R800, with the unions initially demanding R1,650. The additional moves by government cost an additional R7 billion to the wage bill.

In the aftermath of the strike, the parties (unionists, government and practitioners) highlighted a number of concerns in relation to collective bargaining in the public service:

- training and the level of competence negotiators ;
- the impact of alliance politics and political intervention in the collective bargaining process;
- accountability and how negotiators secure the mandate from their constituencies;
- the complexity and multitude of agreements reached within the PSCBC;
- aligning the budgetary process with the collective bargaining process;
- formulation of wage demands and interrogating worker mandates;
- the possibility of multi-year agreements; and
- ensuring agreement on minimum service level agreements and finding resolving the issues in essential services.

Contract Cleaning Services Kwazulu-Natal: This regional council covers workers only in Kwa Zulu Natal while the remainder of workers in this sector are covered by a sectoral determination which is published by the DoL. There was some concern in the past about the council's stability, but at present both parties are deemed representative of their respective sectors. This council represents some of the lowest paid workers in the country, with a current minimum wage of approximately R1600 per month.

The council has indicated that generally negotiations are amiable but the bargaining environment – which has been characterised by strikes, high wage demands and an increased focus on social benefits such as housing allowances – has impacted negotiations during 2010. The key issue is the gap between the minimum wage that the council pays and the sectoral determination. The unions want the minimum rate per hour increased to R12 per hour in line with the determination, which is a 31 per cent increase. Employers have been talking about closing the gap over a longer period, citing the fact that the council also provides workers with a provident fund, a bonus system, etc.

The last time the parties negotiated was in 2007 when they entered a four year wage deal. The challenge for negotiations for 2011 is that the unions want to raise the minimum rate and the sectoral determination might be increased further which could add fuel to the flames, the council says.

⁷⁶ As well, members were feeling the economic crunch and felt that there should have been a radical shift after Polokwane. Overall, a unionist says, the level of anger and frustration among members was higher than in 2007 and they were not prepared to back off on their demands.

⁷⁷ Some union leaders are of the view that despite pressure from government, the members forced the strike that the union leadership and machinery were not prepared for it and neither was government it would appear. Yet again, the government had failed to negotiate minimum service level agreements which had been an outstanding issue from even before the 2007 strike.

Collective bargaining outside the bargaining councils

Statutory Council for Printing, Newspaper and Packaging Industry: This council is not involved in collective bargaining at a centralised level. A number of larger companies such as Nampak and Mondipak bargain semi-centrally with the two main unions – Ceppwawu and the SA Typographical Union. The rest of the employers’ party in the council – mainly smaller employers – do not support centralised bargaining as they find it difficult to compete especially with increased competition from India and China. As a result the majority of these companies bargain at plant/company level. While the larger employers effectively bargain outside the council, wage disputes can be referred to the council.

The global crisis has had an impact on employment with the council indicating that roughly 3,000 jobs have been lost. Despite the job losses, the TLS did not take off in the sector despite attempts by the council to encourage companies to enter into innovative deals. The council secretariat indicated that this was because there was uncertainty about who was going to pay the employees, and employers were unsure if they would get their money from DoL; the Setas and they were sceptical about paying employees up front and keeping them on the basis that business may improve. In addition, some companies who were paying benefits wanted to have immediate cost savings by cutting off those benefits.

The crisis appeared to impact on settlements as companies faced financial pressures. This is partly reflected in the settlements which declined from 6-10 per cent in 2008 to an average of 7 per cent in 2009 and then went up slightly in 2010. However, there are some companies where no increases were granted in 2010, with increases in 2011. Other companies retrenched and were then able to give higher increases and rewarded those who stayed on with decent increases. One of the larger companies, Nampak, faced retrenchments and plant closures, not necessarily as a result of the crisis, but a change in the use of packaging materials by one of its major customers who changed from paper packaging to plastics.

Semi-statutory forums and sectoral determinations

Contract cleaning: The contract cleaning determination was the first made in 1999. This sector covers cleaners who work outside the private household sector. In view of the fact that both employers and unions are not sufficiently representative to form a bargaining council, they have established a National Bargaining Forum consisting of the National Contract Cleaning Association (NCCA) and trade unions such as the SA Transport and Allied Workers Union (Satawu). The NCCA has a membership of approximately 275 employers and trade unions representing 22,000 workers. The NCCA and unions negotiate wages annually and then forward their agreement to the DoL as the basis for legislation. However, these agreements are not always promulgated or legislated in time. For example, in 2002, due to protracted negotiations between the parties, the new increase was not promulgated in time.

In 2006 the parties were unable to reach an agreement, even after a protracted strike, but the Minister went ahead and issued a determination. In 2008, the parties negotiated a one year deal of 8.6 per cent for 2009, but then the DoL extended the deal for an extra year and promulgated a CPI increase of 3.4 per cent.

Satawu argues that the global crisis did affect some companies in the sector and members worked shorter hours at reduced pay. In terms of establishing a bargaining council, some progress is being made but the challenge, according to the union, is bringing the regional council on board as their rates are much lower than those prescribed in the sectoral determination.

Private security: This sector has been described as vulnerable because it is relatively unorganised and wages are low compared to other major sectors. The sectoral determination applies to all employers and employees involved in guarding or protecting fixed property, premises, goods, persons or employees. Minimum wages are based on the security officers’ grade (qualification) and years of experience. A study conducted by the

DPRU on behalf of the DoL highlights the level of violation of the SD in security. The study concludes that security workers are clearly the most violated of workers covered by SDs and 67 per cent earned sub-minimum wages in 2007, which is the highest among all sectors.

The various unions in the industry represent between 50,000 and 60,000 employees, out of a workforce of around 380,000. This R19 billion industry is highly competitive and characterised by a multitude of employer organisations and unions – for instance at the time of the 2006 strike there were seven employer organisations and 16 unions aligned to different trade union federations.

As with contract cleaning, the parties in this sector have established a bargaining forum and the agreements reached there are incorporated by the labour minister in the sectoral determinations. The three month 2006 strike marked a major change in the relationships between the parties. Through the intervention of the CCMA, the social partners – Business Unity SA (Busa) and Cosatu were brought in to assist in the resolution of a violent strike involving only 10 per cent⁷⁸ of the total workforce.

The intervention of the social partners led to an agreement between the parties to establish a bargaining council. These discussions, facilitated by the CCMA, are still in an early stage but all parties agree that some level of maturity is developing in the informal bargaining arrangement.⁷⁹ A Satawu official states that the situation is very different from that in 2006.⁸⁰ Both unions and employers acknowledge that the level of adversarialism has declined and is partly attributed to the change in negotiator on the side of employer and also the reduction in the number of employer organisations. On the union side a similar process has evolved with attempts to build solidarity (with joint labour caucuses) and reduce the number of unions involved. Only unions with a threshold of 5,000 could participate; as a result there are now only five unions which qualify – compared to 24 in 2006.

The 2006 strike led to a three year deal which the parties renegotiated in 2009. Another three-year deal was signed which provided for an inflation-linked increase plus a range of other measures to increase the entry rate. In terms of the wage deal, the first year provided an increase of 11.5 per cent. In 2010, a 7.5 per cent increase, coupled with the removal of one of the grades (from the salary structure) brought the increase to 12 per cent. In 2011 there was a 7 per cent increase; the removal of one geographical area from the salary structure brought the increase to 11 per cent.

⁷⁸ Barker, F and Kahn, N: An analysis of the 2006 security strike and subsequent negotiations.

⁷⁹ In moving towards a bargaining council, the sector faces some serious challenges such as addressing levels of representativity and the role of black economic empowerment (BEE) companies in collective bargaining. A Satawu official states that representativity affects both parties although the employers participating claim they employ the majority of employees in the sector. A major problem for unions is that when short term tenders expire and a new employer takes over, unions have to reorganise the workers. The issue of job security on the expiry of contracts (a problem also in contract cleaning) needs to be addressed if unions are going to be able to improve their ability to organise members. This issue has been referred as a section 77 application to NEDLAC. Finally, unions need to do more research to understand the ownership of companies as many companies have black empowerment components but white employers are still dominating the process. “We believe that a number of senior politicians are involved in some security companies and if they are exposed it might change the way they operate. They buy shares but stay far away from the operation of companies. There is a lot of fronting and the black employers and white employers caucus separately – there is a need to expose these issues.”

⁸⁰ Satawu states that the environment in 2009 was very different to 2006 and part of it was not only a change in employer stance (and negotiator) and the realisation that adversarialism was not working but the requirement around union participation. The unions stated that the new employer negotiator seeks to find alternatives and solutions while the involvement of the CCMA reduces levels of conflict. The union points out that while relations have changed, the reality is that employers will participate in negotiations and then ignore the agreement and do their own thing. “The problem is the policing of the agreement as the DoL is responsible and the regulatory authority but both have capacity problems.”

Non-statutory forums

Mining industry: There is a long tradition of centralised collective bargaining in sections of the mining industry. A centralised bargaining forum has existed among a number of unions such as the National Union of Mine Workers (NUM), United Association of South Africa (UASA), Solidarity and the South African Equity Workers' Association (SAEWA) and gold mines and collieries which are members of the Chamber of Mines since the early 1980s.

Mines which are not members of the Chamber negotiate either at mine or company level – such as platinum and diamond mines and the new mining companies. For many years the parties bargained separately for different categories of workers represented by the four unions. The situation changed and in 2005 the parties agreed to negotiate centrally for all bargaining units but at the same time, gold and coal negotiations were split into separate forums.

Agreements struck at Chamber level have generally provided some flexibility by taking into account the different conditions of the respective mining houses and often agreements have provided for different increases, rates of pay and conditions.

The demand by the majority union, NUM, for a bargaining council has been on the table since 2003 and the parties discussions on a draft constitution, but agreement has yet to be reached on a number of issues such as levels of representativity. The three unions, Num, Uasa and Solidarity, as founding members of the council, will have automatic recognition but only for three years and then the criteria will change. The scope of the proposed council has been an issue and there has been some debate around the inclusion of diamond and platinum mines. The parties have agreed the latter will have a 'lag time' of roughly one year after the establishment of the council before they can participate. In terms of the configuration of the council, there will be separate chambers for gold, coal and the mining contractors have agreed to come in provided they have a separate chamber.

The global crisis had a significant impact on the industry, especially in diamond and gold mining. The parties agreed to the establishment of a tripartite and multi-stakeholder forum called the Mining Industry, Growth, Development and Employment Task Team (MIGDETT) in December 2008, with two key objectives: first, to manage the impact of the global crisis, and second, to look at how to reposition the sector for growth in the next commodity up-cycle. Significant progress was made on the first objective in terms of reducing retrenchments and reducing pressure on mining companies. As a result an estimated 48,000 jobs were lost as opposed to the expected 100,000. A large proportion of these jobs, according to the Chamber, were lost by contract workers in line with the general trend of the more vulnerable being affected. The second objective has involved a huge amount of work, but a new growth and transformation strategy has been developed for the sector.

Unions have indicated that in order to save jobs, workers have agreed to working extensive short time and extended leave of up to three to four months. One of the more high profile examples where workers have not been paid for up to nine months occurred at an insolvent Aurora Grootvlei gold mine which was taken over two years ago by Nelson Mandela's grandson and Jacob Zuma's nephew. At the time of writing this report, workers had been on strike since March 2010 over the non-payment of wages. It is not clear however, whether the situation was the result of the global crisis.

In terms of the utilisation of the TLS, interviews highlight that it did not appear to be well promoted. While the unions agreed to it in practice there was resistance from both employers and to a certain extent employees. Workers preferred taking their retrenchment pay. The union says there not many options as regards training that could be carried out in three months.

In terms of wage negotiations during the crisis, the parties last entered into a two year wage deal in 2009. From an employer point of view it was very much business as usual

and there was no sense from the union side that the economic crisis was an issue despite pleas from employers.⁸¹

The NUM says in some instances the crisis did affect collective bargaining as there were questions around profitability. Despite this, the union was able to deliver CPI increases. A senior NUM official says it has been business as usual except that the crisis has brought challenges in terms of expectations around collective bargaining. There has been a backlash from members, he says. In one instance, the union's deputy president was attacked by workers while he was trying to sell a wage deal.

The NUM says from 2008 the average settlements were more than inflation and where the union could not get higher wage increases they focused on social benefits such as housing allowances, transport, and even trade union rights. Independent contracts are utilised extensively in the industry and this issue is raised repeatedly by the unions who want to unionise such workers. Unions want contractors to offer conditions similar to non-contract labour and as well as benefits such as medical aid and retirement.

In 2008, the union targeted to increase the minimum wage to R4500 for surface workers and R5,000 for underground workers by 2010. In some sectors this target has been reached but not among the smaller mining companies. The union says that increased cooperation between the regions and the head office is required to meet this target.

During the 2009 wage negotiations, the union demanded a 15 per cent wage increase, a living allowance of R2,000 a month (currently R1,300 for gold; for coal, R2,000–R4,000 as coal is very mechanised with a different worker grade). The parties finally agreed on a 10.5 per cent increase for the lowest grade which moved them up to R3646 for underground and a further 10 per cent in 2010 to get them to a minimum rate of the R4,000. Cat 4-8 got 10 per cent and the miners and artisans got 9 per cent. In 2010, the rest of the workers got 7.5 per cent as the parties worked on CPI plus 1 per cent and a guaranteed minimum of 7.5 per cent. The total cost to company was 9.5 per cent and a similar increase applied to coal.

Negotiations in platinum were tough during 2010 and the majority of platinum companies faced strike action and settled on between 8.5 per cent and 9.5 per cent as the unions were not prepared to consider CPI plus 1 per cent. Northam faced a five-week strike while Anglo Platinum managed to negotiate a two year deal on which they paid a premium. Indications were that during 2010, platinum workers got higher increases than their counterparts in gold mines, which could have created problems between the unions.⁸² Factors impacting the negotiations have included the pressure union negotiators are facing from members concerning the rising cost of living.⁸³

Automobile manufacturing: As in the mining industry, centralised collective bargaining is well established in this sector, with the seven main automobile manufacturers negotiating with the key unions in a National Bargaining Forum (NBF) which was set up in 1989. The AMEO (Automobile Manufacturers Employers' Organisation) – comprising the seven OEMs (original equipment manufacturers) in the country negotiates with the main union – Numsa – which is highly representative in this sector. While participation in this forum is voluntary, the agreements reached effectively bind the whole sector.

⁸¹ An employer stated: "But the unions did not buy any of the pleas. It fell on deaf ears. We settled to avoid strike action."

⁸² A Chamber official says "there is internal union competition between gold and platinum and it does not help if the public sector does not regard itself as being bound by CPI and this sets a bad precedence and puts pressure on other sectors."

⁸³ An employer states: "you get a sense that union leaders fully appreciated the pressure under which the mining companies are operating but they are under tremendous pressure from members...many of whom are in debt and at the end of the day their take-home pay is so little after all the deductions have been made."

Another employer argues that one of the reasons for high wage demands is the conspicuous consumption of the elite while workers see the high levels of corruption which they do not benefit from and now – as a result of the global crisis – they are forced to assist an even bigger extended family so the pressure on workers is even greater than ever before.

Over the years some innovative and far reaching agreements have been negotiated in the NBF and this sector became known in the mid to late 1990s as being way ahead of other sectors in linking wages, grading and training. An important feature of these deals was the provision for payment for skills acquired (rather than skills used), which allows workers to move up to grade four (of seven grades for weekly-paid workers) by acquiring additional skills even though they remain in the same job.

The thinking behind some of these agreements contributed to the debates around the drafting of the Skills Development Act. The sophisticated agreements reached by the NBF were matched by new initiatives and agreements at plant level to build better relationships and improve performance.

The achievements of the NBF suggest a long future?, but there are potential threats to its stability. Both parties express some ambivalence about the NBF. NUMSA wants to create a mega bargaining council, within which the automobile sector will be a chamber. Failing that, the union would like to establish a bargaining council for the sector that would incorporate the automobile components sector. Employers seem to favour greater decentralisation of bargaining, at least in the long-term. They are dissatisfied with the way the NBF distances negotiations from the shopfloor and performance of individual firms. Whether these preferences will be achieved remains to be seen: there are high risks for both parties in destabilising the NBF.

Despite the level of innovation, adversarialism still exists within the collective bargaining arena and the sector has been hit by numerous strikes over the years. In fact some employers would argue that since 2007, labour relations at a central level have gone back to the 80s and has become even more politicised.

During the period of the global crisis, the parties negotiated a three year wage deal in 2007 and then in 2010. Without some companies having export orders the impact of the global crisis would have been more severe. All seven companies worked some form of short-time while those with long term export commitments fared better than others. Small producers such as GM, Ford and Nissan, without major export commitments, had prolonged periods of short time. For example, Ford workers worked a three day week for four months while some companies did take up the option of the TLS.

During the negotiation of the 2007 wage agreement, the union abandoned any link to inflation, with the employers placing on record that the union was making a mistake by delinking increases from inflation. In 2008, inflation spiked and workers found that their increase was way below the official inflation rate. The union sought to re-open negotiations but the employers rejected this approach. Numsa states that this had a serious impact on the 2010 negotiations and it led to a backlash against multi-year agreements by members. The unions' demands, it claims, were very targeted and the numbers reduced compared to previous years. An observer says workers felt aggrieved and the impact on negotiations was twofold: the demands tabled were particularly high, and multi-term agreements which employers viewed as being critical to ensure stability and predictability in the sector were rejected. Aside from these issues the factors affecting the negotiations included: groundswell pressure from members which the leadership could not ignore; their credibility depended on being able to respond to members' perceptions.

Employers state that they were aware prior to the start of negotiations that a strike was inevitable.⁸⁴ By all accounts the bargaining process was adversarial, leading to a strike, but in the end the parties agreed to another three year wage deal. The wage increase of 10 per cent for year one was slightly higher than the top end of the range proposed by the independent facilitators. In addition, the parties agreed to a ban on the use of labour brokers which is not such an issue in the industry except for one or two companies which

⁸⁴ An employer stated: "In a multi-billion rand industry, the stakes are high so were engaged with people at all levels to prepare for negotiations and knew at the outset that we would not get a settlement without a strike."

utilise their services. In terms of productivity, there is no agreement at national level; each plant has its own incentive scheme and in some cases quite sophisticated agreements are in place.

Company level bargaining

Retail: This sector is considered a vulnerable sector in that it has a large number of workers in precarious employment due to its cyclical nature. As a result of the structure of the sector, with high levels of informalisation (and the use of casuals), it has proved difficult for unions to organise such workers who are dispersed in thousands of retail outlets. As a result, there is no history of centralised collective bargaining despite repeated campaigns by unions such as the South African Commercial, Catering and Allied Workers' Union (SACCAWU). The most recent attempt was towards the end of 2010, when the union called for industrial action in support of its demand. In view of the conditions in the sector, there is a sectoral determination governing the sector while there are a group of large companies which bargain at company level (except for franchised operations). These companies (such as Pick 'n Pay) have a long history of company level bargaining. SACCAWU estimates that its collective agreements cover about 150,000 employees in the sector (Godfrey, 2009), equivalent to only about 5 per cent of the sector.

Aside from the extensive use of casuals, which employers believe has largely been regulated through the sectoral determination, outsourcing exists as well as the use of labour brokers. This is especially prevalent in retail distribution centres which has created a problem for union organisation as traditionally these distribution centres have been highly unionised. The use of labour brokers reduces the ability of the union to organise such workers.

In the three retail companies covered by this report – Pick 'n Pay, Shoprite and Woolworths – different relationships and dynamics exist with the main union SACCAWU. Until 2010, Pick 'n Pay had a very solid relationship with the union and had been considered very progressive in the way in which it engaged the union. Their management style was decidedly different from Shoprite which is more conservative, not unlike Shoprite. Pick 'n Pay is the only company of the three that has a formal recognition agreement with the union, with a representation of around 60 per cent. In Shoprite, they are considered to be sufficiently representative with a membership of 36 per cent. The parties in Woolworths have had an ongoing dispute on bargaining rights. The way in which the companies bargain also differs. Shoprite negotiates directly with union officials/leaders while in Pick 'n Pay negotiations are led by employee representatives. The company negotiates with its own shop stewards and a union official who make up the negotiating team.

Pick 'n Pay: The global crisis coupled with changes in the retail market has placed Pick 'n Pay in a difficult trading and financial position. Signs of things to come began during the 2008 negotiations which proved quite acrimonious with the union threatening strike action and holding countrywide marches in support of a demand for the greater of a 12 per cent or R500 pay increase, with a minimum wage of R3,000 per month. At the time of the dispute being declared, the company had offered a R385 across-the-board increase and a three year deal. The parties eventually reached a deal with increases averaging 8 per cent. The parties finally settled following intervention by the CCMA.

Negotiations in 2010 were preceded by the company giving the union notice of possible job losses as well informing workers that the company was implementing austerity measures. Also, the company had issued a cautionary notice for the first time in over thirty years. The union tabled its demands including an increase of 20 per cent or ATB of R895. The company failed to respond as it did not have a mandate to respond. The union declared a dispute and in the dispute meeting the company tabled a dispute offer of around 6.3 per cent/with an average inflation rate of 6.1 per cent for the previous year.

Despite numerous interventions by the CCMA and private mediators and meetings involving the union leadership the company held firm and said if it went beyond its final offer it would be irresponsible and would not be sustainable into the future. The union embarked on a three day strike in October 2010 and three weeks later embarked on a further three week strike. The company indicated that despite repeated attempts, the union ‘did not believe us’ that it was our final offer. The parties finally reached an agreement in November 2010 with the company indicating that the parties needed to find a creative way to find a settlement. The final settlement was R365 ATB (around 7.5 per cent) for the first 18 months and then R400 for the second 18 months.

In reflection, the company states that as a result of the immediate trading situation it was forced to deal with issues differently: ‘Under different conditions we would have been able to settle in the normal amicable way.’ The company would have sought to avoid a strike. However, it could not meet the high demands.⁸⁵ Workers had been informed the previous year that the company had put in place austerity measures.

Shoprite: In 2003 and 2006 the company faced a number of strikes by SACCAWU in support of their demand to unionise and represent casual workers. Following these strikes, membership among these groups of workers increased. However, a study⁸⁶ of two Shoprite stores found that this strategy has not led to increased worker solidarity between casuals and permanent employees. Shoprite states that the union has continued to lose membership in the company, partly as a result of the categorisation of the workforce.⁸⁷

Despite this, the company says, union membership of full-timers is around 50 per cent and nationally around 35 per cent, compared to around 60 per cent in previous years. While the union does not have a majority, the company says, ‘we still talk because of our long relationship...’

In terms of collective bargaining, the company indicates that the union can expect an increase of inflation plus a few percentage points. The settlements from 2008 reflect this. Until 2008 the company had a three year wage deal; in its final year (2008) inflation went above what was agreed to and the union asked for a top up. The company indicated that it would be prepared to accede on condition that the union agreed to an increase for 2009 of R350 across the board – in effect the agreement was extended another year.

During 2010, the parties settled within five days which the company believed was usual but argued that the union got a good deal of between 8.5–9 per cent which was higher than normal. The company states that while the demands were similar to previous years, the focus was on social issues such as housing, medical and financial assistance. There is no link between wages and productivity despite the fact that the company had introduced performance based bonuses per store.

Woolworths: The company only negotiates wages with the union for workers in the distribution section and not for those in stores where the union is not sufficiently representative. The union has been continuously demanding collective bargaining rights in stores, a subject of ongoing industrial action.

The employer states that neither party is being proactive in terms of wage negotiations. Union demands have reflected, however, an increased focus on social benefits such as housing, transport and medical aid. The company says it is trying to move

⁸⁵ ‘The union’s mandate was not realistic...shop stewards were aware of the situation before negotiations about the company’s financial and trading position ...as a result they got a mandate from members which failed to evaluate this trading situation – they do not get realistic mandates taking into account sustainability and trading situations and then land up with members who thought they would get huge increases and feel disappointed in the Company.’

⁸⁶ South African Labour Bulletin: “Failing to be casual”.

⁸⁷ ‘When we converted casuals to comply with the sectoral determination, none were recognised union members but when they became part-timers a significant number joined the union but in the process membership among the old full-timers declined.’

away from the across the board increase so as to compensate those with a different skills or those at the higher end of the spectrum.⁸⁸

State-owned enterprises (SOE)

Eskom:⁸⁹ Eskom has a long history of collective bargaining with its main unions – NUM, NUMSA and Solidarity. What tends to complicate collective bargaining, observers state, is first, that as a critical SOE, there is bound to be a political dimension to negotiations; second, that it operates in a sector which is defined as an essential service, preventing a large portion of employees from striking.

Despite this, Eskom has faced numerous threats of strikes and one to two day demonstrations. In terms of negotiations during the crisis, the parties negotiated a two year deal in 2007 which some unions argued at the start of the 2009 negotiations had caused some problems for the unions. The 2009 negotiations started with the unions demanding a 16 per cent salary increase across the board, noting that it expected large adjustments in salaries to be made in order to give experienced employees the necessary recognition and to retain their services amid the current skills shortage. Further, it wanted a housing allowance of R5,000 a month for all employees. Negotiations continued until the unions declared a dispute and threatened strike action – at the time of strike threat the unions were on 14 per cent and the company 8 per cent (with inflation at that stage around 6.9 per cent).

In the lead up to the 2010 negotiations, some issues were unfolding in Eskom, including uncertainty around the appointment of a new CEO. Externally there were a number of drivers including the 2010 Soccer World Cup.⁹⁰ Amidst these dynamics, the parties went into the 2010 negotiations with rising frustration around the failure by the company to implement the housing allowance.⁹¹

During the negotiations the company's annual report was released highlighting executive pay. The remuneration report showed that in the year ending March 2010 Eskom paid its six executive directors and executive committee members 25 per cent more cash than it did the previous year. The executive salary bill went up to R20 million, against R16 million in 2009.⁹² Following hundreds of hours of mediation (and extensive political involvement), the parties finally reached a deal with the assistance of the CCMA.

SABC:⁹³ The relationship between the three unions and SABC management appear to be rather complex, at times adversarial and characterised by low levels of trust.⁹⁴ Unions indicate that the relationship between the parties (including among the unions) changes depending on who the CEO is; in recent years there has been a high turnover of CEOs.⁹⁵

⁸⁸ The newer shop stewards, the company says, “are a lot less fixed on the old way of bargaining and are more open to discussing issues... while they want their way they are also more accommodating of other views.”

⁸⁹ This input does not include comment from Eskom, who failed to respond despite repeated attempts.

⁹⁰ As one mediator says: “the union knew that they had everyone over a barrel.” As a result, the bargaining process was not driven by the standard CPI plus an improvement factor – the drivers were more complex, an observer says. Aside from the World Cup, other drivers included the widespread perception that ‘the fat cats are getting everything and everything they get us (as workers) should also get’.

⁹¹ The view among unions was that board members and executives were receiving housing allowances, then why should workers also not get it.

⁹² A report stated: “Union attitudes will probably be hardened by the fact that the remaining four executive committee members received an average 59 per cent cash increase on their 2009 salaries. The R14.5 million total received included short-term bonuses totalling R5.3 million, which were awarded for delivering both targeted savings in 2009 and for the R3.6 billion profit in 2010... Newly-appointed CEO Brian Dames received the highest increase, at 91 per cent of his 2009 total salary. While nobody was paid a cash bonus in 2009, Dames received an R2.1 million cash bonus in financial 2010.”

⁹³ This does not include input from the corporation despite numerous attempts to contact the relevant people.

⁹⁴ Interviews with the unions.

⁹⁵ A union official indicated that: some CEOs have had no regard for employee relations while others sought to build sound relations with the unions. It would appear that the relationship between the unions is also rather complex.

During the period of the global crisis, reports surfaced concerning corruption and mismanagement of funds by the organisation. In 2010, President Jacob Zuma approved the launching of an investigation of the Special Investigation Unit (SIU). According to media reports⁹⁶ an interim investigation was launched by the SIU, at the urging of the current board, following a damning auditor-general's report released in September 2009.

Prior to the crisis, the corporation negotiated a three year deal with the unions in 2008 with a provision for increases of inflation plus 1 per cent. The corporation wanted a three year deal so that there would be stability during the 2010 Soccer World Cup. However, when inflation spiked at the beginning of 2009 the SABC sought to withdraw from the deal claiming financial constraints. The unions claimed that it was not an issue of unsustainability but rather poor management which had led to the current financial crisis in the organisation. Various dynamics played out within and between the unions and management over the negotiation of alternative increases for 2009. The parties finally agreed to a lower increase. For 2010 the increase was 10 per cent without any improvements on benefits. A union official says that while the unions accepted a lower increase in 2009, they gained access to the audited reports of corporations' which have been linked to the claims of corruption and mismanagement.

⁹⁶ Benjamin, C.; Mkokeli, S: Elite unit to probe SABC losses, fraud, Business Day (4 November 2010).