SABPP
SA BOARD FOR PEOPLE PRACTICES
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BARGAINING COUNCILS

Introduction

Bargaining councils (BCs) are currently under the spotlight in collective employee relations (ER) matters. Such institutions of centralised bargaining are considered by some to be redolent of the collusive past, when big business and big unions got together to strike deals which were good for the big parties and bad for the small parties. Others believe that BCs have made a significant contribution to governance of ER in a specific sector, leading to industrial peace. It is worth noting that "centralised bargaining" is not synonymous with "bargaining council". Centralised bargaining may take place, for example, in the mining industry, but there is no registered BC in place in the industry. The other industries where this occurs are pelagic fishing and automobile manufacturing.

Another common misperception is that the existence of a BC precludes any possibility of shop-floor negotiations. Whether bargaining on any particular issue (for example, minimum wages/actual wages, leave conditions or working arrangements) occurs at BC level or at shop floor level depends on the constitution of the BC and/or specific collective agreements reached within the BC. Thus, the arrangements on such issues can differ between industries.

It is also worth noting that the term "bargaining council" is not synonymous with collective bargaining only. Many BCs also run large social benefit schemes such as retirement funds, sick pay funds, holiday pay funds and even bursary funds.

A Bargaining Council is an organisation set up in terms of the Labour Relations Act of 1995 which provides a forum for collective bargaining between one or more registered trade unions and one or more registered employer organisations on matters such as working conditions and wages. A bargaining council must be registered with the Department of Labour.

This Fact Sheet will cover the legal and practical situation concerning BCs. An understanding of this will contribute towards an HR or ER practitioner making sound judgements about interactions with the relevant bargaining council.

1. History

BCs (originally Industrial Councils) have been around in South Africa for a very long time. They were first established under the old Industrial Conciliation Act of 1924, which was extended radically in 1981 (Labour Relations Amendment Act 57 of 1981) when rights were extended to Black workers.

In 1983 there were 104 industrial councils. As the democratic trade unions grew during the 1980's, they initially avoided these councils, preferring to build their power at shop floor level. However, once these unions began to consolidate their power, and particularly once the "one industry, one union" approach was adopted by COSATU at its formation in 1985, they began to push hard for the extension of the industrial council system by establishing new councils in the previously unorganised industries, such as the chemical industry.

The new Labour Relations Act (66 of 1995) of the democratic government changed the names of these councils to Bargaining Councils and extended their scope to include the public sector for the first time. This gave rise to an enormous increase in the number of employees covered by BCs, which in fact disguised the decrease in the number of private sector bargaining councils.

2. Legislative Framework

The Labour Relations Act (LRA) is the governing statute. Relevant sections are discussed below.

a) Establishment of Bargaining Councils (Section 27)

Unions and employer associations must make a joint application to the Department of Labour to establish a BC, once they have agreed on a constitution, which must comply with the requirements of the LRA.

Nedlac is tasked in terms of the LRA with considering and making recommendations on the demarcation of scope of a BC. (If Nedlac cannot reach an agreement on the demarcation, the Minister can make a demarcation decision.) From there, the Department of Labour must ensure that parties are "sufficiently representative" within that scope.

The constitution of the BC must "provide for the representation of small and medium enterprises".

Applications to become parties to a BC subsequent to the initial registration of the BC must be considered by the BC and either approved or rejected. A party that is refused admission to a BC may appeal to the Labour Court.

BCs may charge a levy to all party employers to finance the running of the BC. Employers and unions that are party to the Council must submit returns of numbers of employees, wages paid and other relevant information. Where Agreements are extended (see section below), those employers affected by the extension must also submit returns.

b) Extension of Agreements to Non-Parties (Section 32)

A BC may apply to the Minister of Labour for an extension of any Agreement to employers who are not party to the Council. The BC does not have to be unanimous in agreeing to apply for the extension – the requirement is that one or more unions who represent the majority of workers employed by employers who are party to the BC and one or more employers' associations who are party to the BC and employ the majority of workers must vote in favour of the extension. The Minister may only grant such an application if the BC itself is representative – that is parties to the BC represent a majority of workers in the sector. If the Minister is satisfied that all requirements have been met, the collective agreement is extended by publishing it in the Government Gazette.

Recent successful court challenges to extensions of agreements have hinged on the lack of representivity of parties to the BC/signatories to the Agreement[1]. According to a 2006 research paper[2] it was found that of the estimated 32.6% of formally employed workers covered by BCs, only 4.6% were covered by extensions to agreements. This initial evidence does suggest that the extensions to non-parties as a source of potential rigidity in the labour market may be overstated. In a recent High Court Judgment[3] some critical issues relating to Section 32 were considered which deal whether the requirements of S32 were met when the Minister of Labour decided to extend the National Main Collective Agreement of the National Bargaining Council for the Clothing Manufacturing Industry to non-parties in the clothing industry.

In terms of Section 32 (5) of the LRA, the Minister also has the discretion to extend an Agreement to non-parties where she can show that, by not extending the Agreement, damage will be done to the collective bargaining system. Unions have publicly stated recently that if the Minister cannot extend the Agreement because of lack of representivity, the unions will apply under this section.

Once the Minister has extended an Agreement, it is compulsory for all employers in the sector to comply. Enforcement officers (agents) can issue compliance notices and ultimately, writs of execution can be issued for non-compliance. Non-party employers may appeal individually against the application of the extension to them and the BC must have an independent panel to adjudicate such appeals.

c) Proposed amendments to the LRA involving BCs

The 2012 proposed amendments to the LRA sought to strengthen the position of non-parties to whom such agreements have been extended and also propose a quicker and more efficient exemption procedure for non-parties. Time periods for consideration of exemptions would be set at 30 days, and appeals also 30 days. The amendment will also limit who may be a member of such an appeal body, to ensure that the body is entirely independent.

Another proposed change is that, before the Minister extends an agreement, a notice must first be published in the Government Gazette and The Minister must consider comments received from the public. Furthermore, the Minister would be compelled to consider the composition of the applicable workforce and the extent to which there may be employees within the sector employed in non-standard forms of employment.

[1] In the December 2012 case in the MEIBC, the case was complicated by the fact that employer parties to the BC failed to agree with each other. Facts relating to representivity are currently in dispute.

[2] Godfrey, S., Maree, J. & Theron, J. 2006. Conditions of Employment and Small Business: Coverage, Compliance and Exemptions. Development Policy Research Unit Working Paper No. 06/106, March 2006. Cape Town: University of Cape Town.

[3] Valuline CC and others v The Minister of Labour and National Clothing Bargaining Council, Case No: 5642/2011.

9. Additional information and resources

- Sabinet can provide copies of all bargaining council agreements. www.sabinet.co.za/

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(Any mistakes or omissions are entirely the responsibility of the SABPP).

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www.sabpp.co.za

APPENDIX 1 – LIST OF PRIVATE SECTOR BARGAINING COUNCILS

(Downloaded April 2013 from the Office of the Registrar of Labour Relations, Department of Labour and headed August 2011)

Motor Industry Bargaining Council	www.mibco.org.za
Bargaining Council for the Building Industry (Bloemfontein)	www.bibc.co.za
Building Industry Bargaining Council (Kimberley)	www.bibc.co.za
Building Industry Bargaining Council (Southern and Eastern Cape)	www.bibpe.co.za
Building Industry Bargaining Council (Cape of Good Hope)	www.bibc.co.za
Building Industry Bargaining Council (East London)	www.bibcpe.co.za
Building Bargaining Council (North and West Boland)	www.nnbnwbol.org.za
Bargaining Council for the Diamond Cutting Industry (SA)	011 334 9004
Furniture Bargaining Council	www.furnbed.co.za
Furniture Bargaining Council for the Furniture Manufacturing Industry of the Western Cape	www.furniture.org.za
Bargaining Council for the Furniture Manufacturing Industry, KZN	www.bcfmikzn.co.za
Bargaining Council for the Furniture Manufacturing Industry of the Eastern Cape	041 487 1874
Bargaining Council for the Furniture Manufacturing Industry of the South Western Districts	021 448 4436
Bargaining Council for the Hairdressing Trade, Cape Peninsula	www.cnbc.co.za
Hairdressing and Cosmetology Bargaining Council KwaZulu-Natal	www.ncbckzn.co.za
Bargaining Council for the Hairdressing and Cosmetology Trade, Pretoria	www.hcsbc.co.za
Hairdressing and Cosmetology Services Bargaining Council (Semi-National)	www.hcsbc.co.za
Metal and Engineering Industries Bargaining Council (National)	www.meibc.co.za
Bargaining Council for the Jewellery and Precious Metal Industry (Cape)	021 418 9320
Bargaining Council for the Laundry, Cleaning and Dyeing Industry (Cape)	www.laundrybc.co.za
Bargaining Council for the Laundry, Cleaning and Dyeing Industry (Natal)	www.ntbc.co.za
National Bargaining Council of the Leather Industry of SA	031 305 8230
Bargaining Council for the Meat Trade, Gauteng	011 646 0290

National Bargaining Council for the Road Freight and Logistics Industry	www.nbcrfi.org.za
National Bargaining Council for the Sugar Manufacturing and Refining Industry	031 508 7331
Bargaining Council for the Restaurant, Catering and Allied Trades	www.bcrcat.co.za
Bargaining Council for the Food Retail, Restaurant, Catering and Allied Trades	www.cateringcouncil.co.za
South African Road Passenger Bargaining Council	021 685 0769
Motor Ferry Industry Bargaining Council of South Africa (National)	021 422 2507
Bargaining Council for the Canvas Goods Industry (Witwatersrand and Pretoria)	011 334 4229
Bargaining Council for the New Tyre Manufacturing Industry (National)	041 487 1874
Bargaining Council for the Grain Corporation (National)	012 323 4061
Bargaining Council for the Contract Cleaning Services Industry (KwaZulu-Natal)	www.bccci.co.za
Transnet Bargaining Council (National)	www.tbc.co.za
National Bargaining Council for the Electrical Industry of SA	www.nbeci.co.za
National Bargaining Council for the Chemical Industry	www.nbcci.org.za
National Bargaining Council for the Wood and Paper Sector	www.nbcwps.org.za
Bargaining Council for the Fishing Industry (National)	021 421 0336
National Bargaining Council for Clothing Manufacturing Industry	www.nbc.co.za
National Textile Bargaining Council	www.ntbc.co.za