

A Confusion of Categories

A case study of the organization of casual and contract workers by the South African Commercial, Catering and Allied Workers Union (SACCAWU).

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A Confusion of Categories!: a case study of the organization of casual and contract workers by the South African Commercial, Catering and Allied Workers Union (SACCAWU).

Introduction

This case study analyses the on-going campaign of the South African Commercial, Catering and Allied Workers Union of South Africa to organise and represent casual and contract workers in the Retail and Hospitality Sectors in South Africa. The case study focuses on two national companies where SACCAWU has an overwhelming majority of membership: Pick n' Pay, a major retailing chain with holdings in several African Countries, and Sun International of South Africa, a hotel chain with a similar expansionist programme in the region.

The study points to some of the characteristics of flexibility in the South African labour market and reveals that under certain conditions permanent or core workers have sufficient commonalities with flexible workers to not only act together within the union but to lead resistance to extremes of inequality on a workplace level. The study also provides indicators of the organizational characteristics which facilitate this struggle.

Methodology

A literature review was performed to review the sectors; profile the companies; the demographics of the workforce; occupational distribution; extent of formal and informal work, trends and reasons for informalization.

In addition, the research drew on preliminary findings of a survey conducted by the Labour Research Service to establish union activity at workplaces with significant numbers of informalised workers (Petersen & Elsely 2012). Twenty nine trade union representatives 24 organisers and 5 shop stewards from eleven unions were surveyed. There were eleven female respondents.¹

The qualitative method was utilized through semi-structured interviews and focus group discussions. Focus group discussions (F/G1) with 46 SACCAWU members working in the hospitality sector were conducted in Durban (1 June 2012); Cape Town (16 March 2012 & 23 August 2012) and Johannesburg (5 September 2012). These focus groups reviewed the perspectives of union members of the extent of informalisation in their sector; differences in conditions of work and wages; perceived challenges and obstacles and their views of union strategies for organizing the informalised in their workplaces.

¹ Petersen, Patricia and Elsely, Trenton. Drivers and obstacles to organizing vulnerable workers. Labour Research Service, Cape Town, 2012.

Face to face interviews and/or written responses to questions were conducted with:
2 leading shop stewards of the two retail food chains, Pick n; Pay;
1 leading shop steward from Shoprite /Checkers in the Western Cape;
8 shop stewards at Sun International workplaces;
3 union officials.

A final focus group (F/G2) to discuss the research findings and verify facts was conducted 23 November 2012 comprising of:

- 13 representatives of the Sun International Shop Steward's co-ordinating committee, including the National Gender Co-ordinator of the Sun International Shop Steward's co-ordinating committee;
- 1 Representative from SACCAWU Collective Bargaining Unit;
- The head of SACCAWU International Desk;
- Three representatives from the IUF, the global union organizing in the hospitality sector;
- The senior specialist for Southern Africa of the American Centre for International Labour Solidarity (ACILS).

Names of interviewees are not revealed in the study; instead, interview referees are numbered according to codes defining their roles in the union. Citation codes are as follows:

F/G: Focus Group

S/St. Shop Steward

TU/O. Trade Union official.

GUF/O. Global Union official.

Sex breakdown is as follows:

F/G: Focus Group 1: Female 18; Male 28.

F/G: Focus Group 2. Female 4; Male 15.

S/St. Shop Stewards: female 3; male 8.

TU/O. Trade Union officials: female 0; male 3.

GUF/O. Global Union officials: female 2; male 1.

Opinions from Management were taken directly from company reports and of government from government statements and documents.

Extent of “informalisation from above” in the South African economy

Labour flexibility has been steadily gaining ground in South Africa. As one academic authority argues, “Fifteen years after the introduction of the Employment Equity Act (EEA) the workplace in the formal economy is probably a more unequal place than when it was introduced. Certainly it is a more unequal place than in the 1980s, when trade unions were in ascendancy, and the foundations of the present labour dispensation were being laid... In legal form, it (inequality) is between different workforces engaged in the same operation: the workforce of a core business, who is the client, on the one

hand, and the workforces of the contractors or service providers the client engages, on the other.”²

South Africa has experienced a consistent growth curve for over almost two decades. From 1993 until 2011, the average quarterly GDP Growth was 3.32 percent.³ The global recession in 2008 caused growth to slow sharply during the latter part of the year, leading to a decline in 2009. The recovery in 2010-11 was less robust than the growth rates recorded in the mid-2000s.

Contrary to expectations⁴, steady economic growth has not led to significant improvement in job security, working conditions or wage income⁵. Instead, in line with global trends, it has been accompanied by the restructuring of several key industries, predominantly textile manufacturing; retail; hospitality; construction and transport and the informalization of much of the workforce in these sectors.

In the period from 1995-2001, full-time employment according to the economically active population (EAP - meaning workforce) declined by 20% while informal occupations rose by 17 - 31% of EAP %.⁶ As a result of the restructuring, “Employment practices were highly exploitative, with most workers being employed on a casual, temporary, or ad hoc basis.”⁷ “During 2004 – 2005, of the 658,000 jobs created, 516,000 were in the informal sector.”⁸

An adaption of Von Holdt and Webster’s calculations in 2003 – 2004 puts the EAP at 20,3 million, with 8,4 million registered unemployed; 6,6 million in the formal economy with regulatory protections and secure employment; 3,1million as “semi-formal” workers in precarious forms of work, including outsourced, temporary, part-time and domestic workers; and 2,2 million in completely informal economic activities.⁹

² Theron, Jan. *S.A. Labour legislation is not working*. <http://www.iol.co.za/capetimes/sa-s-labour-legislation-is-not-working-1.1361880>

³ “South Africa GDP Growth Rate,” Trading Economics, <http://www.tradingeconomics.com/south-africa/gdp-growth>.

⁴ For a recent analysis of the relationship between the ANC government’s economic decisions and increased inequality, I recommend Professor Sampie Terblanche’s *Lost in Transformation: South Africa’s search for a new future since 1986*. (2012).

⁵ See “Jobless Growth” in *The Economist June 3rd 2010* <http://www.economist.com/node/16248641>

⁶ Barchiesi, Franco “Informality and Casualization as Challenges to South Africa’s Industrial Unionism: Manufacturing Workers in the East Rand/Ekurhuleni Region in the 1990s,” *African Studies Quarterly* 11 (2010): 67-85.

⁷ Barrett, Jane *Organizing in the Informal Economy: A Case Study of the Minibus Taxi Industry in South Africa*, ILO, 2003, 15, http://www.ilo.org/wcmsp5/groups/public/@ed_emp/@emp_ent/@ifp_s_eed/documents/publication/wcms_117698.pdf. pg15

⁸ Devan Pillay, “Globalisation and the Informalisation of Labor: The Case of South Africa,” in *Labor and Challenges of Globalisation: What Prospects for International Solidarity?*, eds. A. Bieler, I. Lindberg, and D. Pillay, (Scottsville: UKZN Press, 2008), pg49.

⁹ Pillay, 52

The Labour Force Surveys for the period 2008 to 2012 show representation of the informal sector as a proportion of the total number employed in South Africa to be in the range of 15,5% in the second quarter of 2012, with the largest percentile by far in the trade sector.¹⁰

Table 1: Informal Sector Employment by Sector

INDUSTRY	2008 Q2	%	2012 Q2	%
1. Mining	2	0,1	0	0,0
2. Manufacturing	237	10,1	171	8,2
3. Utilities	1	0,0	2	0,1
4. Construction	329	14,1	292	14,0
5. Trade	1 079	46,1	1 000	48,0
6. Transport	217	9,3	187	9,0
7. Finance	165	7,1	132	6,3
8. Community and Social Service	310	13,2	300	14,4
TOTAL: INFORMALLY EMPLOYED	2 340	17	2 085	15,5
TOTAL EMPLOYED	13 729		13 447	

Source: Quarterly Labour Force Surveys 2008 - 2012

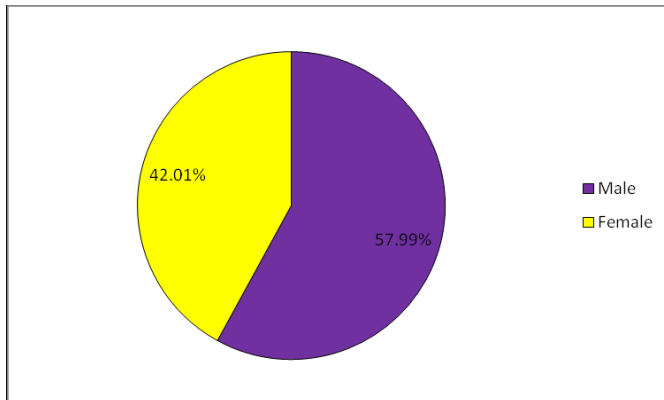
In a University of the Western Cape, department of economics Mini-Thesis, Petersen notes the following about gender in the informal sector:¹¹

“With respect to gender status, Saunders (2005:130) showed that there is a slightly larger share of male workers (averaging more than 55%) in the informal economy compared to their female counterparts. Male informal workers also constitute a slightly higher proportion than female workers in 2011 as indicated in the figure below.”

Informal employment by gender, 2011

¹⁰ QLFS 2008 – 2012 <http://www.statssa.gov.za/qlfs/index.asp>. Includes retail and wholesale trade

¹¹ Saunders, S.G. (2005). Estimates of informal economy in South Africa: some macroeconomic policy implementations. Unpublished doctoral dissertation. Johannesburg: University of Johannesburg. Cited in Petersen, Marshall Maurice. *Informal employment in South Africa: a critical assessment of its definition and measurement*. (University of Western Cape: 2868590), December 2011, pp8-9.



Source: Own calculations (Saunders 2005) using QLFS data.

Industrial regulatory framework and the coverage of informalised workers

There are currently two central pieces of labor legislation: the Basic Conditions of Employment Act (BCEA) of 1997 and the Labour Relations Act (LRA) of 1995. The BCEA sets out minimum standards for most employers, excluding minimum wage requirements. The BCEA also provides for state legislated Sectoral Determinations which regulate wages, hours and basic conditions for vulnerable or special sectors.¹² Under this act the ANC government, in some cases for the first time, has set minimum standards, including minimum wages and benefits for vulnerable workers. This applies to both the wholesale and retail sector (Sectoral determination 9) and the hospitality sector (Sectoral determination 14).

The LRA facilitates collective bargaining rights for wages and workplace conditions, including the right to organize. Once a Collective Bargaining Agreement (CBA) is signed at a bi-partite sectoral bargaining forum, it becomes legislated and covers all employers and employees in that particular sector. However, if workers are not in any employment contract, then they are not granted these rights. Small, medium and micro enterprises may apply for exemption from coverage of CBA's by the department of labour. These applications are generally contested by the unions in the sector.

These two laws, revised in the mid-1990s and amended through social dialogue, have underpinned the establishment of minimum standards and wages for workers not historically protected in this way, and brought a much larger number of workers under the protection of labour regulating instruments than had been the case under apartheid. Moreover, most of these rights are also extended to vulnerable workers such as casuals and contract workers. In most cases, only workers working less than 24 hours per month are excluded from the legislation. The problem is that although these

¹² Vulnerable includes inter alia contract cleaning workers; domestic workers; farm workers; forestry workers; workers in the hospitality sector; civil engineering and taxi drivers. eg. of special sector; child performers.

workers are now covered by legal protections, they are not effectively organized or represented and are very often either ignorant of their rights or unable to access them due to deliberate strategies by employers to deny them access. This is why sectoral determinations are legislated to set minimum wages and protections.

Table 2: Coverage of social protection laws for casual workers

LEGISLATION	PURPOSE	COVERAGE OF CASUAL/INFORMAL WORKERS
Constitution of the Republic of South Africa, 1996	Provides the supreme law of the Republic	23 (1) Covers workers, as citizens and as workers of all categories
Labour Relations Act, 66 of 1995 (LRA)	To advance economic development, social justice, labour peace.	Covers casual workers together with all other categories of workers
Compensation for Occupational Injuries and Diseases Amendment Act, No 61 of 1997	To provide for compensation for disablement caused by occupational injuries or diseases sustained or contracted by employees in the course of their employment, or for death resulting from such injuries or diseases.	Covers casual workers but domestic workers are specifically, excluded .
Basic Conditions of Employment Act, 75 Of 1997 (BCEA)	To advance economic development and social justice by giving effect to and regulating the right to fair labour practices.	Covers casual workers together with all other categories of workers, but really aimed at standard employees
Employment Equity Act, 55 Of 1998 (EEA)	To protect workers and job seekers from unfair discrimination, and provide a framework for implementing affirmative action to increase the participation of previously disadvantaged groups in the workplace.	Covers casual workers, as with all other categories of workers, but really aimed at standard employees
Skills Development Act 97 of 1998, and Skills Development Levies Act 9 of 1999.	To develop workplace skills and legislate employer contributions (levies act).	Covers existing and potential workers, all categories.
Unemployment Insurance	To establish an unemployment	<i>Excludes</i> employees

Act, 63 Of 2001 (UIA)	insurance fund to which employers and employees contribute and from which employees who become unemployed or their beneficiaries, as the case may be, are entitled to benefits and in so doing to alleviate the harmful economic and social effects of unemployment.	employed for less than 24 hours a month with a particular employer, and their employers.
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Sectoral determinations minima, a double edged sword

State legislated wage minima are generally pegged against existing poverty levels, and have as their main objective the protection of vulnerable, under-organized workers from extremes of poverty. They are set outside of the collective bargaining framework in those sectors where unions are too weak to set up bargaining councils to protect the vulnerable and unorganized¹³. However, as will be demonstrated in the case studies below, if the minimum wage is legislated at a lower rate than the actual wages won through collective bargaining processes¹⁴ it also serves to drive down wages and conditions in organized workplaces in the same sector by allowing employers to add to the ever-growing vulnerable underclass amongst the protected workers.

Creating the informalised in South Africa

In a report for the Danish Federation of workers on the impact of non- standard and non-permanent employment relations such as temporary work; fixed term contracts; seasonal work and outsourcing / subcontracting, Bodibe notes that services such as cleaning, catering, warehouses, transport and distribution and lastly security are heavily subcontracted.¹⁵

The report gives three reasons for companies to resort to casual and flexible labour, viz.

- to reduce labour costs;
- to extend working hours;
- to achieve easy deployment of labour.

Bodibe's report points out that it is mostly young female workers that are engaged as casuals, especially in the retail industry and without exception in cleaning.¹⁶ However,

¹³ Unions need to prove representation of 50% of workers in the sector to bring employer bodies to the negotiating table through the setting up of a sectoral bargaining council.

¹⁴ Labour Research Service wage data demonstrates the large differentials between sectoral minima and collective agreements on an annual basis (www.lrs.org.za).

¹⁵ Bodibe, O, 2006. The Extent and Effects of Casualisation in Southern Africa : Analysis of Lesotho, Mozambique, South Africa, Swaziland, Zambia and Zimbabwe, Danish Federation of Workers.

¹⁶ Summarised from Bodibe, 2006, p.4

empirical figures, where available for these sectors, show that the gender balance may vary, depending on workplace and sector.¹⁷

Bodibe cites a study by Cheadle who suggests that there are three kinds of flexibility:

- employment flexibility (the freedom to determine employment levels quickly and cheaply):
- Wage flexibility (the freedom to alter wage level without restraint);
- Functional flexibility (the freedom to alter work processes, terms and conditions of employment, etc. cheaply).¹⁸

One industry characterized by an increasingly flexible labour force is the retail and hospitality industry, employing a significant number of casual, contract and part-time workers.¹⁹

The retail and hospitality industry

The retail and hospitality industry is one of the largest growing industries on the African Continent.²⁰ In South Africa, employment in the wholesale & trade, hospitality and accommodation industry has grown substantially since 2001. In fact the numbers employed double between 2007 and 2008 using the revised figures for this period from Stats SA. In 2008 the total number employed in the industry was 3,156,000 of whom two thirds were in the formal and one third categorised as in the informal economy. Overall employment declined in 2009 due to the recession and by 2010 there were close to 300,000 fewer employed in the industry. By the first quarter of 2011 the number of people employed increased but is still almost 200,000 fewer than in the first quarter of 2008 even though the economic growth of the industry is almost at 2008 levels again.²¹

Experts in the industry predict a turnaround over the next period. However, workers in hospitality interviewed consider 2012 to be the toughest year in the industry for a long time, with both five and three star hotels competing for custom. They report being warned of possible retrenchment and report on workers accepting short-time²², low or no increases, and multi-tasking through fulfill several functions within the hotels for no

¹⁷ In both companies reviewed in this report the gender and ethnic balance for casual and permanent staff are similar. This is manifest in the different workplaces as well (S/St. 1; S/St.4; S/St.7).

¹⁸ Ibid.

¹⁹ Taal, Michelle. Hospitality Sector Report 2012. (Labour Research Service, Cape Town, 2012).

²⁰ Article by Benjamin, Chantelle in *Mail and Guardian Business* Nov 23 – 29 2012 pg 9.

Quoting David Fine, Co-author of *Africa at Work: job creation and inclusive growth*, a report based on interviews with 1373 African business leaders. "the secret to job creation lies in African countries focussing on three labour intensive sectors, namely, agriculture manufacturing and retail and hospitality."

²¹ *Bargaining Monitor* Vol 25 No. 177 (Labour Research Service, (Cape Town, Oct 2011)

²² "Short time" is used when workers agree with management to work reduced hours and concomitantly, wages, in order to save their jobs and avoid retrenchments. These agreements are negotiated with the union.

extra wages or recognition, in order to avoid retrenchments.²³ Union representatives from two major retail outlets, Shoprite and Pick 'n Pay, report similar trends.²⁴

Extent of unionization of informalised workers

A COSATU 2012 Workers' Survey covering 3,030 workers in 37 urban districts across the country asserts that workers who are in temporary, casual or seasonal positions or who work for smaller employers are less likely to be in a union, although this varied substantially between affiliates. Citing the Quarterly Labour Force Survey (QLFS) for the first quarter of 2012, 95% of union members, but only 50% of non-union members, had permanent positions.

Hospitality, wholesale and retail, transport and allied services and the clothing industries are particularly affected. Amongst COSATU's affiliates in these sectors, SACCAWU and the South African Clothing and Textile Workers' Union (SACTWU), between 15% and 20% said they were not in permanent jobs, compared to less than 10% of all COSATU members. Only 3% of union members but 12% of non-members said they are employed through a labour broker, outsourced service agency or subcontractor. Only 7% of union members were in organisations with fewer than ten workers, compared to 35% of non-members.²⁵

The Union

The South Africa Commercial, Catering and Allied Workers Union (SACCAWU) is a registered trade union with 147,000 members. SACCAWU organises in the private services sectors, which comprise of commercial (wholesale, distributive and retail), catering, tourism, hospitality and finance (banks, assurance and insurance). The majority of SACCAWU membership is in the wholesale and retail trades, and SACCAWU is the most representative trade union in the sector. <http://www.saccawu.org.za/>) SACCAWU is also the most representative union in the hospitality sector. It has a nationwide membership in the hospitality sector of 40,000 workers, of which 20,000 are in Gauteng.²⁶

Both the retail and hospitality sectors are characterised by having a few huge chains, which are well organized by SACCAWU, while the overwhelming majority of employers are small medium and micro enterprises (SMMEs) with small staff complements, and weakly organised. Because of the preponderance of SMME's, both the wholesale and

²³ Taal, M. (2012) pp 7-8

²⁴ S/St .6; S/St.7; TU/O.2; TU/O. 3.

²⁵ COSATU 2012 Worker's Survey:

<http://www.cosatu.org.za/docs/reports/2012/final%20workers%20surveys%20results%20August%202012.pdf> pp 35 – 36.

²⁶ Nyman, P in Webster, E. et al, 2012, "Working in the Hospitality Industry in Gauteng", Society, Work and Development (SWOP) Institute, South Africa: University of the Witwatersrand

retail sector (Sectoral Determination 9); and the hospitality sector (Sectoral Determination 14); are covered by state legislated minimum wage and workplace protections. The Basic Conditions of Employment Act provides for state legislated Sectoral Determinations which regulate wages, hours and basic conditions for vulnerable or special sectors.²⁷

SACCAWU has determinedly organised the larger wholesale and retail chains since the rapid restructuring of the labour force in this sector which began in the 1990's.²⁸ The union has therefore gained some experience in fighting back corporate attempts to informalise formerly protected jobs. They have now instituted a concerted campaign to take what they have learned in wholesale and retail organizing into the catering and hospitality sector. These campaigns form part of the broader SACCAWU strategy to ban labour brokers.²⁹ SACCAWU is a COSATU affiliate, and supports the COSATU campaign against labour brokers.

Labour brokers, or service contractors, or temporary employment services as they are now being called, are a particular form of outsourcing in southern Africa, providing low-skilled, casual labour to companies. Companies hire the labour broker to provide workers rather than hire the worker themselves. Workers who sign on at labour brokers have no fixed hours or benefits and are paid much less than those directly employed by the company. They provide labour for certain jobs (like cleaning and gardening services) and for peak periods and anti-social hours. An Employment Services Bill is currently in the pipeline to provide a regulatory framework and ensure that these firms are registered with the Department of Labour. Labour brokers are still subject to the BCEA and the sectoral determinations in the industry. They often claim to represent those work seekers least connected to the labour market.³⁰

The campaign to outlaw labour brokers has been pioneered by the Namibian trade union federations and their allies in the Southern African sub-region. In 2008 the Namibian Constitutional court handed down a decision to ban labour brokers, in line with subsection 128 of its Labour Relations Act prohibiting 'third party' labour hire,

²⁷ Vulnerable includes inter alia contract cleaning and gardening workers; domestic workers; farm workers; forestry workers; construction workers; taxi drivers etc. eg. of special sector - child performers.

²⁸ Official estimates put casual and temporary labour by the late 1990s somewhere between 17 and 20 per cent of the total formal retailing workforce, up from 11 per cent in the late 1980s. (Central Statistical Services, 1998; Statistics South Africa, 2002/3). However, independent case study research has found much higher rates of casualization ranging from 45 per cent to 65 to 70 per cent at store levels in specific regions (Rees, 1997; Kenny, 2004a: 488; Clarke, 2004 cited in Kenny 2005).

²⁹ See SACCAWU statement on Labour Brokers (appendix 1.)

³⁰ The Changing face of labour broking, pg 25 Business Report Wed 28 November 2012; Angela Dick, CEO of Transman (PTY) Ltd, as quoted in <http://dailymaverick.co.za/article/2012-06-18-the-conflict-that-may-define-sas-future-labour-brokers-side>

defended by the government in the constitutional court case.³¹ This decision is currently under appeal.

There is no such clause in the South African LRA. In August 2009 COSATU presented a submission on labour brokers to the parliamentary portfolio committee on labour. Encouraged by the Namibian High Court decision and the pronouncements by the then South African Minister of labour in support of the Namibian position, COSATU appealed to the South African government to do the same. The South African government responded by distributing a discussion paper through its Department of Labour (now a Bill) which sought the middle road through stronger regulation of labour brokers.

In October 2009, social dialogue and negotiations commenced on this issue at NEDLAC³², but no consensus was reached on future reforms. Labour, normally united on a NEDLAC level, was split on the issue, with COSATU and the National Council of Trade Unions (NACTU) in favour of a legislative ban on labour broking³³, whilst on the other hand, organised business and the Federation of Democratic Unions of South Africa (FEDUSA) argued that the contentious issues, such as duration, social security, dismissal, benefits and freedom to organise and associate, could all be tackled through improved regulation.³⁴

Challenges to union organisation in the industry as identified by labour analysts

Bridget Kenny points out in her long range study of unionisation in the retail sector that the restructuring in South Africa's food retailing labour market has significantly contributed to the decline of union strength in the sector over the past fifteen years.³⁵ Kenny outlines the transformation of retail workforce from one characterised by permanent and full-time employment in the mid-1980s, with minor use of part-time and casual employment, to an extensively restructured workforce in the 1990s. As collective bargaining secured a standard shift for permanent workers, retailers made greater use of casual labour and flexible shifts, leading to the next great challenge for union organising. Staff scheduling was introduced which utilised permanent workers in the "valleys" and casual labour, working flexible hours, in the "peaks".³⁶

³¹ "No person may for reward, employ any person with a view to making that person available to a third party to perform work for the third party". www.optumewealth.co.za

³² The National Economic Development and Labour Council is the statutory social dialogue structure with representatives from government, organised business, organised labour and organised community groupings.

³³ BPS van Eck. 2010. *Temporary Employment Services (Labour Brokers) in South Africa and Namibia*. PER. 2010. Volume 13 No. 2 p.107.

³⁴ FEDUSA General Secretary, Dennis George, quoted in <http://www.polity.org.za/article/livelihood-of-one-million-people-hangs-in-the-balance-2010-03-05>

³⁵ Kenny, B. in TRAVAIL, capital et société 38:1&2 (2005) Militant Divisions, Collective Possibilities: Lessons for labour mobilization from South African retail sector workers.

³⁶ Ibid.

The Sociology of Work Project identified a number of obstacles to unionization in the hospitality industry in their 2012 report:³⁷

Flexibility:

The industry employs a significant number of casual workers and part-time workers, many of whom are students. The number of permanent workers has declined over the last two decades due to wide-spread restructuring and outsourcing in the hospitality industry³⁸. Increasingly workers are employed on a fixed time basis for a specific event such as a conference or festival. These irregular forms of employment hinder union membership which requires regular payment of union dues.

Shift work is widespread in the hospitality industry with many workers employed at night. Indeed in the casino industry workers operate on a 24 hours, seven days a week system. Sun International's Carnival City, for example has a system of four nine hour shift: 5:00 am to 2:00 pm, 8:00 am to 5:00pm, 3:00pm to 12:00 am, and 8:00 pm to 5:00 am. Apart from the negative impact these hours have on family life, they make it difficult for the union to recruit or gather workers together at a single time.

Symbolic labour (sic):

Many workers in the hospitality industry, especially in casinos, do not see themselves as workers. Instead in the words of a waitress in a casino, they see themselves as glamorous people because the place is seen as glamorous.³⁹ This identification with a globalized consumer culture constrains workers' capacity to see themselves as potential union members.⁴⁰

Restricted access:

Restaurants, hotels and casinos are tightly enclosed and heavily guarded spaces designed for luxury and entertainment. Access is controlled by management who are reluctant to allow union organizers into these spaces. On the one hand, they fear a threat to security by armed robbers; on the other they are concerned with the disruptive effect of intruders on the atmosphere in a restaurant. While many unions have succeeded in meeting workers during lunch breaks or after hours, shift work makes this difficult.

Gender discrimination:

The SWOP report also points out that the hospitality industry is characterized by a large number of young female workers. Many of the issues that they are concerned about are hidden, such as sexual harassment, and are difficult to mobilize around publicly.

³⁷ Webster, E. et al(2012)

³⁸ Nyman, Patricia, in Webster et al.(2012)

³⁹ Mguni, Lindiwe in Webster et al.(2012)

⁴⁰ Ibid.

Challenges to union organisation in the industry as perceived by workers

In 2012, The Labour Research Service held focus group sessions with SACCAWU hospitality and catering worker in three provinces. Two were held in Cape Town, one in Durban and one Johannesburg. The aim of these discussions was to understand the organising problems of informalisation as perceived by workers in the sector. These sessions endorsed some of the above obstacles, and also brought out some divisive perceptions, as outlined below.

Correlation of shift work to permanent/casual divide:

Shift work undermines unity, as there is never a time when have all workers are at workplace together. Shop stewards tend to be permanent, full-time workers at the workplace, working hours conforming to the traditional working day. Casual and contract workers work the busy periods only, and early or late shifts. Access to early and late shifts brings problems of transport to work and home for shop stewards, as public transport is not reliable outside of normal peak hours.

Union members are victimised through being given fewer shifts and flexi-time, unorganised workers are given more shifts so as to make it appear that being a union member is harmful to one's opportunities at the company. This also has the effect of setting worker against worker as permanent workers feel it is unfair that flexi-time workers have the same number of shifts as them. Workers often to hold this against each other and call those with more shifts "management's babies". In one company management promoted a company union to rival SACCAWU, giving it more space and opportunity to organise while limiting SACCAWU until SACCAWU was no longer representative. However, the failure of this union to make gains at the bargaining table resulted in an illegal strike, dismissals and the collapse of that union.⁴¹

There were also incidences reported of management using the allocation of work to play off permanent workers against casual workers, by promising permanent status in return for working the less popular shifts.⁴²

Demographic diversification and perceived divisions amongst labour force:

Participants identified increasing levels of immigrant workers in the workplaces. This has several implications for union organising. Participants felt that immigrant workers were an easy target for management abuse as they are either ignorant of their labour rights or are willing to give them up in order to keep their jobs. For example they do not question when they are given shifts on public holidays and are also known to not only

⁴¹ LRS report SACCAWU Hospitality Sector Focus Group discussion.

⁴² Taal, M.(2012).

work in the shop but also to work in a private capacity for management without further wages.

SACCAWU has also tried to organise undocumented foreign workers in companies. Management states that because the workers are undocumented they cannot be recruited to a union to which SACCAWU counters that if management does not allow SACCAWU to recruit the workers they will report them for breaking the law and hiring undocumented workers.⁴³

This however brings its own issues between workers as some participants noted that South African workers are not always willing to join the union if they see that foreigners at the workplace have joined it. This attitude is seen as nurtured by management who are perceived to encourage South Africans to see themselves as different as or better than foreign workers. The opposite is also true. Foreign workers are encouraged to see South African workers as lazy and having too many rights and that the unions encourage this, even as they themselves are abused. While these divisions are encouraged by management, participants acknowledged that these perspectives have their origin within the labour force.

Women, even when in the majority, have specific challenges in the hospitality sector. Union members, and especially shop stewards, tend to be predominantly male, and sometimes unorganised women do not feel comfortable approaching them.⁴⁴

Union bashing.

Except in a single case, management is seen as highly hostile towards the union, both bribing workers to stay away from the union and also being openly threatening towards union shop stewards. Contract workers employed by labour brokers are known to tell SACCAWU organisers that their boss has told them not to join the union. It is often difficult to convince them that it is safe to join the union and keep their job. Despite the illegality, management practices range from offering loans to workers to awarding better wages if they agree to leave the union. Pre-written letters of resignation from the union are also available from one manager where the member only has to sign that they want to leave the union.

Insufficient trade union visibility.

There seems to be a lack of uniformity even amongst shop stewards on the union's response to casual workers. Some focus group participants were unaware that it was policy to organise casual workers, as they are not around the workplace regularly or were not long in the company. Others articulated the SACCAWU policy of aggressively organising casual workers and other atypical workers and pointed out that workers

⁴³ *ibid.*

⁴⁴ SACCAWU has been active in the Gender at work project, which encourages women in the retail sector to stand as shop stewards. <http://www.genderatwork.org/saccawu>

outside the sector at the same workplace have also been organised, and gave the example of the organising of security guards, by SACCAWU. Once they were organised, SACCAWU organisers handed them over to SATAWU.⁴⁵

Union members, particularly in the hospitality sector, feel that the union is not visible enough at their workplaces. While there is a general acknowledgement that the elected shop stewards are the union and therefore the union is visible through them, there is a sense that a more official visibility of SACCAWU in the form of organiser visits and written material, would assist unorganised workers in seeing the union as a stakeholder at the work place.

Overcoming the obstacles: the case of Pick n Pay.

The Pick n Pay Group is one of Africa's largest and South Africa's second largest retailer of food, general merchandise and clothing. According to the 2011 company report it has a total of 869 stores, made up of Hypermarkets, Supermarkets and Family Stores (which are franchise stores). It operates in seven African countries outside of South Africa as well as in Australia as Franklins. The Group generates an annual turnover of ZAR 52billion and employs over 49 000 people. It is estimated that in South Africa 60% of these are women, and that the proportion of women to men is constant amongst formal and informalised workers in the company.⁴⁶

Company documentation at the year-end (February 2011) notes 869 stores (500 corporate, 379 franchise), excluding in-store pharmacies and a 25% investment in TM in Zimbabwe (51 stores). In October 2010 the company bought 24 per cent of Zimbabwe operation TM Supermarkets, bringing its total shareholding to 49 per cent. The group currently operates four store in Zambia, seventeen stores in Namibia, twelve in Botswana, seven in Swaziland and one in Lesotho, two in Zambia and one in Mozambique; together with its fifty-one-store network with TM in Zimbabwe. In October 2011 it opened its first store in Mauritius. In total 104 new stores are planned for 2011/2012 including Mauritius, Malawi and DRC. Angola is next with the West African states of Nigeria and Ghana and Kenya, Tanzania, Uganda, Rwanda and Burundi in East Africa listed as "on the radar" with further plans off-shore in the Comoros Islands and the Seychelles.⁴⁷

Pick n Pay ownership has a markedly liberal approach to trade unionism in comparison with other South African retail chains. The company has been unionised since 1984, and

⁴⁵ Taal, M. 2012.

⁴⁶ S/St 7.

⁴⁷ LRS, Bargaining Monitor Vol 25 No. 177, October 2011

in 1997 introduced an optional employee share ownership scheme.⁴⁸ Even so, the union is of the opinion that the company is drifting towards a hard-line industrial relations stance, due to stiff competition and the entry of Wal-Mart into South Africa. Another development impelling the current intransigence and unilateralism (sic) of the company is the rumoured larger share purchase by TESCO, a British retail giant.⁴⁹

Pick n Pay has employed both permanent and casual workers for over two decades. Initially, casuals earned the same hourly rate as permanent workers, but had no access to company employment benefits, viz. medical aid, provident fund and the supplementing of state maternity benefits. The company approach has been to gradually increase its casual workforce, by appointing all new employees as casuals. Casual workers work the same jobs as the permanent workforce during peak periods of the week, month and year. They are called in when needed by store managers, and are given the hours and days they are to work on a weekly (scheduled) basis. During these peak periods there are often more casuals than permanent workers working in any given store.⁵⁰

In 2003 the government introduced sectoral determination 9, specifying minimum wages, hours and conditions of service for wholesale and retail service, replacing the old wage determination 478 for the Commercial Distributive Trade. The wage minimum in new sectoral determination act was lower than the existing wage rate, earned by both casuals and permanent workers. In the years that followed, the company's response was to appoint all new employees at a lower rate, conforming to the sectoral determination minima, thus creating a third differentiated layer amongst the workers.⁵¹

SACCAWU shop stewards on a workplace and national level recruited these workers into the union and fought against this differentiation. The matter came to a head in 2006 with a deadlock around the wage increase (an equal amount for all – referred to as an “across the board increase”), as well as permanent employment for all casual workers, with the company management offering varied hours, wages and percentage increases for new employees, casual and permanents.

Permanent, casual, and even non-unionised workers joined the strike. They settled on a very low increase (an additional R5 per week applied to all workers)⁵², which was less than the company offered its permanent workforce if they had taken a percentage

⁴⁸ (http://www.financialresults.co.za/2011/pnp_ar2011/afs_stores_note04.html)

⁴⁹ TU/O.3

⁵⁰ S/St. 7; TU/O 2.

⁵¹ Ibid.

⁵² Ibid.

increase. The union regards its main victory as being the agreement struck with the company to begin phasing in all casuals into permanent employment, with a fixed number of hours per week and including the same benefits as the permanent workers, proportional to the amount of hours worked.

After working a certain number of years at Pick n Pay, casuals now become “variable time employees” commonly known as VTEs. They earn the same and often still work peak times according to schedules, but are guaranteed 186 fixed hours averaged out over the month (40 hours per week). Employees formerly termed permanent are now known as “Full-time employees” (FTEs). They work 196 hours averaged out across one month (45 hours per week).

The war of hours continues...

The guaranteeing of a minimum of fixed hours and proportional benefits was viewed as a great victory by the workers at Pick n Pay. However, their respite was of short duration. The first big blow dealt to the union in 2009 was the company management’s withdrawal of their joint “flexibility and mobility agreement”. This agreement facilitated joint union and management decision making in scheduling hours of work during peak and slow periods on a workplace level. Shop stewards and managers had to agree on the weekly staff time schedules for each department.

The union had negotiated this agreement to ensure fairness in hours allocated to fixed and variable staff. The company withdrew the agreement unilaterally, citing its onerous unworkability and arguing that it was an infringement on their exclusive right to make operational decisions. This withdrawal has caused much unhappiness and affects full-time and variable time staff members. SACCAWU challenged this withdrawal through private arbitration and lost the case on the basis that the agreement was no longer financially viable for the company. The matter was referred to the Labour Court for review but the union’s review application was dismissed.

In 2011, Pick ‘n Pay management informed the union that they planned to retrench over 3000 workers. The union entered into negotiations to prevent or alleviate the retrenchments. They were presented with an option to retain all staff if they agreed to treat Sunday as part of a normal working week. In return for halting the retrenchment of the workers, the union agreed to extend the working week from Sunday to Sunday, foregoing double pay for staff working on a Sunday. Although union members at the company agreed to this concession, it was not a popular one.

The union at Pick n’ Pay.

SACCAWU has majority representation at the company, and has an agency shop⁵³ agreement in place for over five years. This is possible if 75% of the workforce belongs to the union. SACCAWU organises its members at Pick n Pay, like many of the other large retail outlets, into company councils. At every store/workplace, they elect their shop stewards. They are entitled to 1 shop steward for every 10 workers as per their collective bargaining agreement. These shop stewards form a workplace shop steward's committee, and elect their co-ordinating shop steward/s, often assigning them portfolios or titles.

Shop stewards from all stores in a given geographical area attend a weekly Tuesday meeting (local company council) during working hours at the union office. Time off for shop stewards to attend these meetings is included in the CBA. At these meetings they report on recruitment targets and on-going union campaigns and cases at the company.

They convene quadrennial regional shop stewards' councils, which precede the quadrennial national shop stewards' council. These meetings elect regional and national office bearers. i.e. chairperson, deputy chairperson; secretary; treasurer and gender co-ordinator.) In the regional shop stewards' council they elect a regional negotiator as well, who will form part of the national negotiating team. In between the quadrennial period, they hold an annual national shop steward summit that is attended by all regional office bearers, as well as national general meetings where all SACCAWU members in the employ of Pick 'n Pay attend.⁵⁴

The costs for the regional and national meetings are covered by a discretionary fund made up by a voluntary levy on all SACCAWU members at Pick n Pay, in addition to their union dues. SACCAWU union dues are proportional to wage. In addition to this, each worker pays a R15 per month levy into the fund, which is managed by the office bearers on the regional and national shop steward's councils. They have their own bank accounts, separate from SACCAWU's accounts. Pick n Pay regional shop steward's councils get 30% of the fund and the national council 70%.⁵⁵ The fund pays for transport and accommodation to company shop steward regional and national meetings. The levy gets set in consultation with the Central Executive Committee of SACCAWU.

Company council's relationship to SACCAWU union structures

⁵³ Non union members pay a similar fee as union member dues into a fund that is used to support collective bargaining activities.

⁵⁴ TU/O.3

⁵⁵ S/St.7 & TU/O.2

All members of the shop steward's committee are entitled to attend a monthly union local meetings organised on a geographical basis. At these meetings they raise their company issues and articulate their needs to the union. The local elects office bearers (Chairperson; deputy chair; secretary and treasurer), which runs the affairs of the local and oversees the election of delegates to the regional general council, which meets annually, and the regional congress, which meets every three years.

Aside from the intersection at a local level, the hierarchical union representative structures and company councils run parallel to one another. They are all incorporated into the SACCAWU constitution as amended at their 2008 National Congress. Company councils try to get their best people elected into the union local and regional leadership, as this is their only way of influencing overall union decision making.⁵⁶

The case of Sun International of South Africa

Sun International (South Africa) Limited was formerly known as Kersaf Investments Limited. The Group generates annual revenue of over 6 billion Rand⁵⁷ and its principal activities are the operation of leisure resorts, hotels and casinos. Sun International owns hotels, leisure and gaming operations in Botswana, Chile, Lesotho, Namibia, Nigeria, Swaziland and Zambia.

In South Africa it has 14 workplaces including the head office of the group.⁵⁸ It employs 12 427 workers, excluding those contracted to provide services. Of these employees, 9053 are permanent staff, and 1844 are casual or "scheduled" as casuals are known in the company, due to the fact that their working hours are drafted according to a work schedule. 49% of the company's workforce is female, and 51% male.⁵⁹

Sun International South Africa (SISA) was the first Casino group in SA. Since 1998, SISA has employed a flexible workforce.

SACCAWU began organizing union members at Sun International using the Company Council model initiated in the retail industry in the 1990s. In December 2009 SACCAWU members embarked on a seven-week strike at Sun International workplace sites nationally, involving more than 70% of its members. The demands of the union were for

⁵⁶ S/St.1, S/St. 6, S/St. 7; TU/O.2

⁵⁷ R6, 2 billion in 2010 and R6,9 in 2011. Sun International Annual Report 2011.

http://suninternational.investoreports.com/sun_ar_2011/financials/group-statements-of-comprehensive-income/

⁵⁸ S/ST.1

⁵⁹ Sun Interntional Annual Report 2011

an across the board increment for all workers, rather than a variable percentage increase leading to differentiated amounts between employees; and the conversion of “scheduled” employees, so called due to their hours of work being formulated on an weekly basis, into “core “ employees with fixed hours and benefits.

At the time of the strike, all new Sun International employees were appointed as scheduled staff. After working for the company for a number of years, they could apply to become core staff. In many instances, their application was denied. Core and scheduled staff worked at the same jobs, for the same hours and wage. But only core staff were eligible for benefits, which were considerable, inclusive of provident fund; medical aid; housing subsidy; education subsidy for their children’s education and profit sharing through the Sun International Employee Share Trust (SIEST) At the time of going to strike, the majority of workers at SISA were scheduled employees.

The strike was a bitter one. The company instituted a lock-out at Grand West, Boardwalk and Fish River Sun on 4 December 2009. Contravention of the picketing distance by striking workers at Grand West hotel and Casino in Cape Town resulted in assaults by police and arrests of workers. The picketing distance was enforced through the company obtaining an interim order at the Labour Court.

The final agreement was far-reaching. The union settled on 8% wage increase, less than its asking amount of 13%. Despite accepting a lower wage increase, union shop stewards cite their biggest victory in the company’s agreement to convert 90% of its staff to core through a phased process which is still continuing, starting with those who have been with the company the longest, making them eligible for benefits. The company now reports on the two categories of workers in this process (permanent full time and permanent scheduled) in its annual report, having increased its core employees from 5 826 to 9 053 from 2008 – 2011; and reduced its scheduled staff from 2 852 to 1 844 during the same period.⁶⁰

It also agreed to expand its education loan scheme to finance the primary, secondary and tertiary education of the children of all employees with a minimum of one year service and to extend the housing subsidy to all employees with over 2 years of service from 2010 onwards, whether scheduled or not. Non-scheduled employees are also eligible for shares payout from the Sun International Employee Share Trust.

This was regarded by the Sun International SACCAWU members as a major victory. In the light of this they deferred their other urgent demands to further negotiations with the company. These were:

⁶⁰ Sun International Company report 2011.

- to scrap a 1998 collective agreement signed by the union at certain SISA workplaces which has Sunday as a normal part of the working week, thus incurring time and a half pay for Sunday work; whilst at others the CBA conforms to the Basic Conditions of Employment Act with double pay on Sunday;⁶¹
- to do away with the procurement of casual and contract workers through labour broking and employ a permanent workforce;
- to settle a dispute on the payment of tips for gaming staff, which the company has been withholding for several years. According to gaming rules, punters are not allowed to tip gaming staff directly. Instead they have to place their tips into a box in the gaming area, which management supervises. The union claims that the company has not distributed these tips to gaming employees for several years⁶².

Sun International employs cleaners, gardeners, waitrons and kitchen staff through labour brokers. These workers earn much lower wages than those employed by Sun International, work the anti-social hours or peak periods and have no access to provident fund, medical aid, the SIEST profit sharing scheme; housing subsidy and education loan scheme. In 2011, the Sun International Shop Steward's Co-ordinating Committee decided to step up the campaign to bring all workers employed by contract service providers into Sun International's staff, in line with the SACAWU and COSATU campaign to do away with labour brokers.

Having had sufficient warning for several years with this item being on the negotiating table, Sun International management have put forward a proposal to the union to incorporate some of these workers as staff members, but once again, into a different category with varied hours and wages. The Human Resource department and Sun International Shop Stewards Co-ordinating Council met 12 – 16 November 2012, in a workshop facilitated by the statutory Centre for Conciliation, Mediation and Arbitration (CCMA), to discuss the chain's proposal to phase out the utilization of contract service providers. Until these negotiations are completed, details remain confidential.

The union remains in dispute with the company over the differentiation at certain workplaces over Sunday as a working day, and over the tips for gaming staff.

The union at Sun International

⁶¹ FG2

⁶² FG2

SACCAWU has majority representation at the company, and has an agency shop⁶³ agreement in place since 2010. Sun International is a successful example of the SACCAWU organising strategy of the retail sector being taken up in a hospitality chain.

The company council at Sun international operates slightly differently from the Pick 'n Pay one. The CBA allows for 1 shop steward for every 60 members (not 10 members as with PnP). The union is entitled to one full-time shop steward for every 300 members at the workplace.⁶⁴

The levy is also much less than at Pick 'n Pay. Each Sun International union member pays a R50 per year once-off levy into a fund, to facilitate two national meetings of the national Sun International company Council a year. The fund, as with Pick 'n pay is managed by the independently elected office bearers of the national company council. The fund pays for transport to the national meetings. Sun International provides accommodation for these meetings.

The SISA S/St council has 16 members. It elects a National Chairperson; Vice Chairperson and Treasurer and Gender Co-ordinator. The Shop Steward's council has quarterly meetings with the SISA CEO and Human Resource Director. Sometimes the Financial Director also attends these meetings. A National Shop Steward's council is also convened consisting of 70 -80 people from all SISA workplaces to set the bargaining agenda. The union is preparing to form a regional company council structure, like the Pick 'n Pay one.⁶⁵

As with the Pick n Pay company council, the only the intersection of the union hierarchical structures is at a local level.

Characteristics of flexibility

Labour flexibility is good for employers. Flexible trading hours brings increased profits, if prohibitive legal protections intended to protect workers family and social time are circumvented and labour costs are contained. Employment flexibility brings freedom to pay low wages; change the number of workers during operational peaks and troughs and decide unilaterally how and when work is conducted. Legal protections are supposed to provide a counter balance to this, specifically for vulnerable workers, but the Labour Relations Act of 1995, a product of social dialogue and compromise, opens

⁶³ Non union members pay a similar fee as union member dues into a fund that is used to support collective bargaining activities as agreed by both union and company management.

⁶⁴ S/St.1

⁶⁵ TU/O. 2

the door to flexibility by allowing unions to opt out of the most crucial protections against flexibility.

The reduction of labour costs through the downward variation of hours, wages and benefits amongst employees undermines those protections and frees up financial restrictions to trading hours in the wholesale, retail and hospitality sectors. This trend is at the core of a protracted engagement between South African unions and employers in these sectors. The case study of SACCAWU at these two national companies is a tale of a valiant battle on the part of the union to resist this trend for employment inequality in the workplace.

The war over hours

South African labour legislation is highly protective of working hours through the Basic Conditions of Employment Act. Professionals are excluded from these protections through an exemption of anyone above a ceiling of annual earnings, but are also subject to regulation.⁶⁶

In the Basic Conditions of Employment Act, the maximum hours in a working week are 45. Employees work a 9 hour day if the average working week in the sector/company or workplace is taken as a five day week, or 8 hours if the average is a six day week. A compulsory (lunch-hour) rest period of one hour every 5 hours must be taken. A working day (inclusive of overtime) cannot extend beyond 12 hours; and a rest period (weekend) of 36 consecutive hours, which must include Sunday, is stipulated in the Act.

All work on Sundays and public holidays is voluntary. Employees can volunteer to do overtime work on Sundays and public holidays if they are requested to do so by the employer. An employee who does ad hoc overtime work on a Sunday must be remunerated at a rate of double the usual wage or hourly fee. Even if an employee normally works on a Sunday (ie, it is taken as part of the normal working week in the sector), she/he must still be paid one and a half times the normal daily rate.

Employees can never be required to work on a public holiday at the usual daily fee. Work on a public holiday can only be undertaken according to a special agreement between the employer and employee, and the fee must be at least double the normal rate. If the employer and employee agree, the remuneration can also be in the form of paid time off.

⁶⁶ With higher earners such as office, management staff and professionals, the number of hours per week is specified in the employment contract and any time that is worked over this limit classifies as overtime. This overtime does not distinguish between after-hours Sunday, or public holiday work and the employment contract could specify whether the employee agrees upfront to do some overtime work when required. No compensation is required from the employer, but unless urgent and due to unforeseen circumstances, the employee is entitled to refuse to work overtime.

Overtime cannot be more than ten hours in any given week and has to average out to 4 hours per week over a period of four months. Employees can also agree, through a collective agreement, to “average out” their working hours over a period of up to 4 months. This means that as long as the average hours per week remain 45 over the 4 month period, they can vary the number of hours on a weekly basis.

The conditions and compensation for overtime work must be negotiated between the employer and employee. The employer is not obliged to pay for overtime work in any way, and an employee is not obliged to work overtime if he does not want to.

Paradoxically, despite these explicit regulations the legislation allows for employees to sign away these protective rights. In general, the law states that you cannot through collective bargaining agree to worse conditions than in the BCEA. However, through collective bargaining agreements, employees may agree to work a “compressed working week”. If this agreement applies, employees can work up to 12 hours a day without getting overtime pay, although they may not work more than 10 hours overtime, nor more than 5 days in any given week. Employees can also agree to Sunday work in the employment contract as a matter of course, as long as the week consists of 45 hours and contains a 36 hour rest period. If this applies, an employee no longer has the option of refusing to work on a Sunday (voluntary agreement is no longer necessary) and is remunerated at one and a half times the normal wage rate for each hour worked, not at the double rate of the act.

As the case studies of Pick n Pay and Sun International bear out, this facility to opt out of the protection of weekends in the Basic Conditions of Employment Act, and the legislation of sectoral wage minima in the wholesale, retail and hospitality industry, has set the scene for a long range process of driving down the overall cost of wages whilst increasing trading hours in the industry.

Downward variation of wages

The case studies also demonstrate how state legislated minima, being an agreed amount set by technical experts and adopted through a tri-partite structure⁶⁷, can weaken actual earnings, negotiated through collective bargaining. This is corroborated by the LRS survey of informal work, in which organisers identified sectoral determinations as an obstacle to organizing, limiting unions in negotiating better increases. Employers use it as a weapon against the unions saying “this is the wage instituted by your government” and are not prepared to negotiate more.⁶⁸

⁶⁷ The Employment Conditions Commission was established in terms of section 59 (1) of the Basic Conditions of Employment Act, 1997 (BCEA). It advises the Minister of Labour on the making of sectoral determinations and any matter concerning basic conditions of employment including the effect of government policies on employment.

⁶⁸ Petersen & Elsely (2012)

Without due cognisance being given to the actual earnings in the sector, the state legislated minima aids those employers seeking to undercut actual earnings.

Opting out of employee social benefits

Employer contributions to statutory benefits, such as those prescribed by the Skills Development Act and Unemployment Insurance Act, are compulsory. However, employer contributions to employee pensions and provident funds⁶⁹; medical aid schemes; annual thirteenth cheques and other social benefits such as employer “top-up” to the state provisions for maternity benefits; housing and education loans or subsidies have been negotiated and won by trade unions since the days of privileged white labour and a tiered labour force during the apartheid era. These benefits were extended to black workers in the formative years of the democratic trade union movement in the 1980s and early 1990s.

The rolling back of these benefit provisions has been one of the main challenges to trade unions over the past two decades. As the case study demonstrates, employers have by and large succeeded in reducing the number of permanent or core employees through the introduction of shift work and the appointing all new employees on a “scheduled hours” or “varied hours” or “part-time” basis.

Conclusion: A confusion of categories⁷⁰, but clarity of vision: analysis of the union’s strategy.

“Although atypical employment has become the natural order of employment throughout the world, we find in South Africa resistance to this arrangement.”⁷¹

Resistance to informalisation

At Pick n Pay the union succeeded in improving the hours, wages and benefit provision of informalised/flexible workers. A similar victory was won by SACCAWU at another huge retail chain, Shoprite/Checkers. Here too, the union also engaged in a protracted battle and a bitter strike to increase the hours of casual workers, and is still locked in a battle to improve the ratio of permanent to casual.

⁶⁹ A Provident fund is a retirement scheme, which varies slightly from a pension in that employees are paid a portion as a lump sum immediately on retirement and the balance as a monthly allowance. It is preferred by low paid workers who often have in general, a limited life expectancy rate.

⁷⁰ A term coined by TU/O.3 to describe the multiple employee categories in various collective bargaining agreements signed by the union (FG2).

⁷¹ Bagraims attorneys, a labour law consultancy with an aggressive and vocal advocacy project for legal protections to be minimised to facilitate market restructuring.

<http://www.bagraimsattorneys.co.za/welcome-back-to-the-world-of-work/>

In both cases, the union did not succeed in winning absolute equality. At Pick n Pay, there are three categories, permanent full-time employees, permanent variable time employees, and casual employees. Under their current agreement, Shoprite/Checkers now employs permanent full-time employees (working 45 hours per week); permanent part-time employees (working 40 hours per week) and part-timers working less than 40 hours per week.

The union has recently set its sights on improving their level of representation and organisation of informalised workers in the hospitality and catering sectors. This has been informed by the pioneering progress made by the Sun International Company council, which has succeeded in increasing permanent positions and improving hours, benefits and wages for scheduled workers.

Re-regulation is neither easy nor neat. In all three workplaces, contract workers still earn much less than permanent workers. Often, these variable time or contract workers cannot exercise their rights to the proportional benefits won through collective bargaining, as on less wage they cannot afford the employee portion of the costs.⁷² Neither can they exercise their rights as members of the union, as employers refuse to grant them rights negotiated by the union for shop stewards who previously were all full-time, specifically time off arrangements to do union business.⁷³

All the workplaces mentioned above are still locked in negotiations or disputes around averaging of hours and compressed working weeks. Another retail chain, Woolworths, has recently issued new contracts to all their staff in which Sunday is treated as a normal trading day. Even if the Sun International company council succeeds in their negotiations for incorporating contract staff into the company, it seems likely that a third category of worker will be created at the company.

Yet it is undeniable that SACCAWU has provided an alternate scenario to the indiscriminate and unchallenged informalisation so prevalent in the retail and hospitality industry in other countries. In the companies reviewed, permanent workers were prepared to make personal sacrifices in the interest of workplace equality for all. In both Pick n Pay and Sun International, shop stewards who are permanent workers are doing all the negotiations for casual and contract workers, and even entering into mediated discussions on their behalf⁷⁴. They take their mandate from these workers through the union.

Even when union membership is merely aspirational, due to contract workers not being allowed to join the union openly, or having their attempts for membership thwarted, as in the case of Sun International, shop stewards are negotiating on their behalf and in

⁷² FG2.

⁷³ TU/O.2

⁷⁴ As in the SISA discussions for incorporation of contract workers.

their interest. When asked whether they are sure that these workers will accept what they negotiate for them, they responded by saying they are sure, implying some consultation, albeit clandestine or informal.⁷⁵

Equally remarkable, flexi-time workers are prepared to accept variable conditions in one workplace, as long as they are given job security/ permanency. When interrogating what this permanency/job security entails, the most common and important elements are a fixed number of hours per week (as close to a 45 hour week as is possible); provident fund and medical aid coverage. They are also prepared to accept, and elect, full-timers to represent their interests.

Utilisation of service advantage

Retail and hospitality workers in large chains like Pick n Pay and Sun International have considerable leverage. Both sectors thrive on customer service, on creating an ambience that builds a loyal customer base and attracts them back again. Thus although employers are determined to reduce the costs of their labour force, they cannot go too far, as unhappy or highly dissatisfied workers do not provide a desirable service atmosphere. The union at Pick n Pay and at Sun International have used their company's images very astutely to their advantage through collective bargaining.

Utilisation of locational advantage

In the large retail chains characterised by peaks and troughs in trading days and hours, workers with varied hours, wages and benefits share the same workplace, and often do the same work. This leads to a strong impetus to recognise the commonality between them. It is in the interest of the permanent worker to reduce the number of casuals and contract workers, or risk losing their increasingly precarious permanent status altogether. It is also in the interest of the organised workers earning actual wages and benefits much higher than the sectoral minima to bring other workers up to their levels of wages, or their income, and jobs become unsustainable.

It is always more difficult to accept hardship when others in close range are faring better. Unorganised workers, employed at lower rates and anti-social shifts, are witness to the superior conditions of the permanent, unionised staff at the same workplace, and thus eager to join the union⁷⁶. Once the members of the union overcome viewing these workers as "other", the task of recruitment is easy.

⁷⁵ FG2.

⁷⁶ All Shop stewards interviewed; TU/O. 2

Centralised gender programme

SACCAWU has been at the forefront of South African unions pioneering parental rights; HIV/Aids rights and sexual harassment protections for its members. In 1988 the union signed an unprecedented parental rights agreement at Pick n Pay for 9 months paid maternity leave⁷⁷ and 2 months unpaid. As part of this agreement, males we also granted 8 days fully paid parental leave.⁷⁸ The union signed similar agreements with other large retail outfits in the 1980s and 1990s⁷⁹, although most of these have now been undermined by new conditions being introduced through mergers or the appointment of large numbers of casual staff who no longer qualify for these benefits.

SACCAWU has also been at the forefront of developing a full gender department in the union, convening gender councils and conferences and electing gender co-ordinators on multiple levels. The union has a national gender co-ordinator and eight regional gender co-ordinators, who are all administrators in their respective regions. The national gender chairperson sits on the national executive structures of the union⁸⁰. In 2002, at its 7th general congress, it decided to elect gender co-ordinators at a company level. In 2005, at its 8th general congress, it decided that gender co-ordinators should form part of the national negotiating teams of the companies, and should sit on the local and national executive structures of the company councils. These gender co-ordinators meet in regional and national gender structures.⁸¹

Company gender co-ordinators are expected to place “gender issues like childcare and sexual harassment (and parental rights) on the collective bargaining agenda.”⁸² The union has also developed guiding workplace policies on these issues. There is still some unevenness on a company level though. One gender co-ordinator mentioned that when the company has these policies in place, gender co-ordinators need more structured resource provision and forums to raise concerns and issues concerning lower paid women workers, as well as guidance on what to actually do in the national council and national negotiating committee.⁸³

⁷⁷ Statutory requirement is 3 months unpaid leave, with a percentage of your salary redeemable through the statutory unemployed insurance benefits.

⁷⁸ TU/O. 2

⁷⁹ National Gender Co-ordinator’s report to the SACCAWU inaugural national gender conference 28 – 30 July 2006, Agreements data pgs 1 – 7.

⁸⁰ SACAWU General Secretary email, 20 February 2013.

⁸¹ Ibid. pg 12.

⁸² Ibid. pg 13.

⁸³ FG2.

SACCAWU has kept track of women in leadership positions in the union since 1998.⁸⁴ The union's most recent campaign endeavour is to focus on building women leaders from the shop floor, through increasing the number of female shop stewards. The campaign is aimed at retail shopping malls.⁸⁵

Platforms of self organisation

Unique among trade unions in South Africa, the SACCAWU company councils are semi-autonomous, expediting decision making and reporting directly to the members at the workplace. They set the agenda for collective bargaining demands in consultation with the members, and make all decisions related to the collective bargaining process amongst them. They raise and control their own funds to facilitate this. They decide on what they need from the union, and relay this through the local structures.

Most of this they do without requiring much intervention from union staff. The union has staff members who co-ordinate sectoral, national, regional and local activities. This ranges inter-alia, from overseeing shop steward elections to convening and servicing the collective bargaining process, to representing individual workers cases at the CCMA. The union has a national and regional Organising, Campaigning and Collective Bargaining Unit (OCCBU), with national and regional sectoral co-ordinators to provide this support.

Company councils may also be the reason perceived "otherness", due to casual and contract workers belonging to other ethnic groups, nationalities, or regions, are able to be overcome. All workers have, or seek, a common company identity *through* the union. Hence the structural barrier of contract workers being employed by another company/labour broker provides the greatest obstacle, not only to representing⁸⁶, but even to recruitment, with several workers in the focus groups expressing ignorance of the union policy to organise these workers.⁸⁷

Despite the weight given to them in the review of workers' perceptions,⁸⁸ identity issues do not come into play in these case studies either. Shop stewards at both companies affirmed that there are little to no demographic or gender differentiation between permanent, casual and contract workers at their different workplaces.⁸⁹ They

⁸⁴ See National gender co-ordinator/s report pg 15.

⁸⁵ <http://www.genderatwork.org/saccawu>

⁸⁶ As in the case of Sun International Grand West. A majority of cleaners at the Grand hotel employed by a contract cleaning company were recruited to the union, but management halted shop steward elections through refusing to allow another company's workers to meet on their premises (S/St. 1 & S/St.2; TU/O 1).

⁸⁷ FG1.

⁸⁸ FG1; Petersen & Elsely 2012.

⁸⁹

also assert that these workers are eager to join the union, and therefore easy to recruit. They say that these workers recognise the power of the union in the workplace and want that power to be exercised on their behalf. They often approach union shop stewards to act on their behalf and articulate their needs, even as non-members.⁹⁰

However, things are not always rosy between the company councils and the union structures. Shop stewards feel they receive insufficient support or delayed responses from their local union offices.⁹¹

The problems arise once the new members have been recruited. Especially with contract workers who report to employers off-site and therefore require union intervention for elections and negotiations for recognition agreements. Shop stewards accuse the local union offices of being slow to respond to new recruits, of not keeping pace with their requirements, of not creating sufficient visibility of the union at the workplaces.⁹²

When interrogated, it also became clear that hospitality sector shop stewards felt that the retail sector dominance in the union has led to difficulties in getting the interest and responses to the considerable organising problems of their sector from union leadership.⁹³ The response of the Global Union officials to this was a suggestion that SACCAWU consider structuring national planning and reporting along sectoral lines, to give equal consideration to all the sectors, as the IUF has done.⁹⁴

The role of shop stewards, especially full-time shop stewards, in driving the company councils also bears some scrutiny. Much mention has been made in recent months since the massacre of mineworkers at Marikina of the higher education and resource levels of shop stewards, especially full-time shop stewards, in relation to their peers, as inevitably leading to estrangement between union leaders and rank and file at the workplace.⁹⁵

These case studies contradict this easy conclusion. The shop stewards at Pick n Pay and Sun International not only have better resources than their peers, but are often better resourced than local union officials. They have individual access to email, ability to travel using their independent company council funds, financial and company literacy through

⁹⁰ All Shop stewards interviewed; FG2.

⁹¹ All shop stewards interviewed; FG2.

⁹² FG2.

⁹³ Ibid.

⁹⁴ GUF 2; GUF 3.

⁹⁵ See Momomiat, Y "A labouring Behemoth finally reaches the crossroads" in *Mail & Guardian*, Dec 21 2012 – Jan 3 2013, pp 34 – 35;

years of company negotiations and joint operational decision making. Yet far from this alienating them from rank and file members, the relentless struggle against flexibility has made them more attuned to worker needs.

Shop steward's described the pressure of constantly being under scrutiny by their fellow workers, of having to measuring up to the pressures being put on the union to restructure by management. Such scrutiny not only increases the competitive nature of workplace elections, but also their frustration at slow union responses and weak workplace visibility. At the cutting edge of daily conflict, they take issue instead with union staff, and describe the union responses as lacking energy and urgency.⁹⁶

The role of Global Unions

In collaboration with the Global Union UNI, SACCAWU and Shoprite/Checkers have signed a Global Framework Agreement in 2010. The agreement is minimal, in that it merely stipulates that Shoprite/Checkers will comply with the legal minimum standards, terms and conditions of employment for working hours, pay, health & safety, training and holidays in each country in which it operates; and that UNI will influence any of its members that participate in unprotected or illegal strikes and industrial activities. The union is also convening African regional shop steward's meetings towards a framework agreement for Pick n Pay.

Following discussions in 2012, SACCAWU, the Sun International Shop Steward's Council, and the IUF Africa have entered into an informal agreement to begin discussions towards assisting the organizing of unions in other African countries.

Building solidarity between permanent and contract/casual/variable time workers

"The influx of casual workers into the ranks of the Union has meant that the Union has to address new challenges arising from such an influx."⁹⁷

SACCAWU has only begun organising casual and contract workers during the current decade and has yet to institute the accompanying organisational changes. The need to give equal organisational weight and resources to all its sectors is top of the list. So too is addressing the union response rate to shopfloor interventions and general visibility. All shop stewards and union officials agree that the ratio of union organisers to members (one organiser for every 1 000 members) is unrealistic for a sector dominated

⁹⁶ All shop stewards interviewed; FG2.

⁹⁷ Deputy General Secretary of SACCAWU, Mdu Mbongwe (2010) <http://www.saccawu.org.za/discussion-documents/challenges-of-globalisation-extended-working-hours>

by a small employers and geographically scattered workforce such as the hospitality sector. More importantly, given the crucial role strikes have played in the shifting of management approaches to grant permanent status to casual and contract workers in the companies reviewed in this report, the union has to see concrete results (in the form of strike payouts) to its resolution to create a strike fund, taken at the 2008 national congress. These structural and resource weaknesses bear addressing in the short to medium term.

When asked what the union does actively to build solidarity between these workers, the response of a union official was that joint plant, regional and national general meetings develops these tactics on a case by case basis.⁹⁸ Negotiating on their behalf and fighting to increase their permanency, wages and benefits was the response of others.⁹⁹ The role of the union in highlighting the lack of fairness in a striated labour force cannot be underestimated in the on-going resistance to informalisation and the struggle for greater equality at these companies. The union slogan of Unity, Democracy and Socialism; a clear, national policy position of the union on equal working conditions and wages; the union and federation (COSATU's) refusal to accept labour brokers and abuse of the category of casual employment have set the value base which inspire shop stewards and workplace struggles, thereby succeeded in preventing docile acceptance of this concerted global trend.

APPENDIX 1.

SACCAWU Statement on Labour Brokers (<http://www.saccawu.org.za/campaigns/57-anti-walmart-coalition-campaign/111-saccawu-supports-strike-against-labour-brokers>)

TOTAL BANNING OF LABOUR BROKERS

For years now the wholesale, retail and hospitality sectors -, the sectors in which SACCAWU organises, have been faced with growing casualisation of employment with increasing worsening of employment contracts, wages and benefits. This situation has become substantially worse since the mushrooming of labour broking companies, where more and more workers are less likely to get full time and secure employment.

Labour Brokers Do Not Create Jobs!

We have pointed out many times that labour brokers are not employers. They do not create jobs but make huge profits by creating a pool of job seekers and then secure a deal to provide their services companies seeking workers but unwilling to take responsibilities that come with employment. It is through this arrangement, which does

⁹⁸ TU/O. 2.

⁹⁹ FG2.

not include workers, except when they are delivered to companies to work, the Labour Broking Companies are then paid an amount out of which they then pay workers. This obviously results in conditions that are worse than what workers would have secured if they were directly employed by companies where vacancies exist. We must demand the banning of labour brokers because it represents nothing more than modern day slavery under the so-called guise of creating jobs.

If we allow to labour brokering to continue, then it will result in secure, full-time, permanent employment being eroded until it becomes part of the past. Labour broking is the most severe onslaught on workers rights hard fought for over decades and if it is not banned much of what workers have won, through bitter trade unions struggles, will disappear. This is not in the interest of workers, not in the interest of the unemployed, not in the interest of decent work and not in the interest of the country at large. With labour broking there is no opportunity that we will be able to meaningfully bring new job seekers into the job market and this will not only have a problem with secure employment but will also have untold social problems flowing from it.

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