

## Representivity: The Achilles heel of bargaining councils

by Maggie Holtzhausen\*

### Abstract

*The legislative requirement of representivity of parties to bargaining councils remains one of the main challenges these institutions face. When trade unions and/or employers' organisations are deemed to be unrepresentative, this could lead to the ultimate collapse of the council, or result in collective agreements not being extended to non-parties – thereby defeating the purpose of centralised collective bargaining. This research has thrown light on representation levels by demonstrating that they are not stagnant, but change constantly. The research indicates that today private sector councils especially are often faced with unrepresentative parties, mainly because of economic and political challenges and significant changes in the world of work. Examples are given of how councils deal with these challenges, if at all. The research indicates that even though representivity remains a huge challenge for councils, collective agreements are still in the main extended to non-parties. Nevertheless, there is evidence that the extension of agreements has been challenged. This article therefore throws light on and improves our understanding of non-representivity matters in certain bargaining councils, and by extension our understanding of non-representivity in other bargaining councils as well. It concludes with certain recommendations. Hence, this article contributes to existing knowledge by providing a more inclusive and integrated view of non-representivity and its consequences, thereby enriching the broader employment relations management context.*

**Key words:** bargaining councils, representation, representivity, extension of agreements, centralised collective bargaining, collective agreements, trade unions, employers' organisations

### 1 Introduction

A bargaining council (referred to as an industrial council in previous legislation) is a statutory institution provided for in the Labour Relations Act 55 of 1995, as amended (LRA) and established for a specific area and sector/industry. It is a voluntary institution formed by agreement between representative trade unions and employers' organisations in the relevant area and sector/industry. One of its main functions is centralised collective bargaining. A collective agreement reached between the different parties is applicable to all parties that formed part of the agreement, but may also be extended by the Minister of Labour (MOL) to non-parties. However, this would not happen unless the parties to the bargaining council are representative of the industry

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and area of the particular bargaining council. The LRA determines representivity of parties to councils in one of two ways: firstly the number of employees who are employed by employers who are parties to a bargaining council as a proportion of all employees in that sector or industry is considered, and secondly, the number of members of party trade unions as a proportion of all employees is considered.

Non-representivity is often highlighted as one of the most significant factors having a negative effect on collective bargaining and the requirement of representation remains one of the biggest challenges that bargaining councils face. Representation levels are not inert, but change constantly. Over the past decade it has been widely reported that trade union membership is on the decline in many countries, with employers' organisations facing the same challenges (see for instance Ebbinghaus 2004; Vettori 2006; Ouchi & Araki in Maree 2011; Borat, Naidoo & Yu 2014). According to a study by the International Labour Organization (ILO) in 2000 (Godfrey, Maree, Du Toit & Theron 2010), trade union membership peaked in most countries during the 1980s, but it has declined steadily since. This general decline in trade unionisation was confirmed in another ILO report on social dialogue 13 years later (2013). Although there is not a direct parallel between South Africa and other countries, the same general trend is also evident in South Africa's private sector – although trade unionism remains strong in this country. This decline in membership within trade unions and employers' organisations is the reason why many of the councils have to deal with the implications of unrepresentative parties. Further contributing factors are economic challenges, together with significant changes in the world of work.

Non-representivity has far-reaching implications. When parties to a council are deemed to be unrepresentative of the industry, such a situation may lead to the ultimate collapse of the council. Furthermore, it may result in agreements in bargaining councils not being extended to non-parties, thereby defeating the whole purpose of centralised collective bargaining. The Presidential Commission to Investigate Labour Market Policy – referred to as the Labour Market Commission (LMC) – explains that the aim of the extension of agreements is to ensure that all employers are bound by collective agreements reached in representative bargaining councils and/or where extensions are needed to support more stable and representative sectoral bargaining (LMC 1996). Before extensions are granted, the question of whether the parties to a council are representative will be considered by the Registrar at the Department of Labour (DOL), who takes into consideration the nature of the sector and the area for which registration is sought.

The research was based on the principle that the purpose of the LRA is to strengthen collective bargaining and specially to offer a revised framework for bargaining councils in order to resolve some of the difficulties experienced by the previous industrial councils. However, research indicates that challenges still exist in the current system – among others regarding representivity. Subsequently, the following research question was formulated for the study on which this article is based: How have bargaining councils adapted to the changing environment over the 15-year period from 1995 to 2010, with particular focus on four key factors, namely representivity, the main agreement, benefit funds, dispute resolution and other related developments (Holtzhausen 2011)? The focus of the article is only on one of these aspects, namely that of representivity within the South African bargaining council system.

The article is structured as follows: Firstly, a literature review serves as a framework for the discussions that are offered. It focuses on how representivity levels are determined in South Africa and when and how parties are admitted to councils. It

stipulates the effect and implications of non-representivity on councils, and specifically addresses the aspect of extensions of agreements. It considers the centralised collective bargaining system through bargaining councils as a subsystem of South Africa's broader labour relations system. This is in line with Dunlop's (1958) Industrial Relations Systems approach, which recognises that there are groups of actors (for instance employers and employees); a set of complex rules (in this instance the collective agreements reached); and lastly an environmental context (the research clearly shows that councils are not immune to influences from their environment). Within this context, the author goes on to discuss some broad environmental aspects that may impact on representivity as found in the literature. Secondly, the research is described. It explores the challenges faced by parties to a council in becoming or remaining representative in South Africa, and thus highlights the causes of non-representivity within the councils that were researched. The research confirms the reasons highlighted in the literature study as having a huge impact on representation. The article concludes with some practical and theoretical implications of non-representivity, and recommendations are made to lessen the constant challenges councils face in order to remain representative.

## **2 Some representivity-related issues to consider – a literature review**

To provide some background and to emphasise the importance of representivity within bargaining councils, various aspects related to this matter are briefly considered below in the context of South African labour legislation. These include the voluntary nature of councils, admission of parties to the councils and the extension of collective agreements to non-parties. The discussion shows that representation levels are key to the functioning of these councils.

### **2.1 Voluntary nature of councils**

The LRA does not enforce collective bargaining, but promotes it – specifically also the establishment of bargaining councils and the extension of agreements to non-parties. More than a decade ago Thompson and Benjamin (Holtzhausen & Mischke 2004:1) made the following statement: "The showpiece labour-management institution of the LRA is bargaining councils, and the statute makes a series of entreaties to organised labour and business to move in that direction as they structure their relations. However, it is a framework that can only be induced, not obliged." The voluntary nature of bargaining councils underlines the importance of representation – councils are formed in consequence of agreements between representative trade unions and employers' organisations. However, without adequate representation levels, councils may not be formed, and neither may extensions to non-parties be granted.

Therefore, if parties do not participate voluntarily in the council system, councils ultimately collapse. A case in point occurred in the construction sector where the number of unregistered employers in the sector increased to a point where the "...competitive pressure on registered employers to abandon centralised bargaining arrangements..." (Godfrey & Bamu 2012:224) was so high that it led to the collapse of the Building Industry Bargaining Council (BIBC) (Gauteng) (also discussed in Baskin 1998).

### **2.2 Admission of parties to councils**

Sections 27 to 34 of the LRA set out the statutory provisions for the establishment of councils, for example, the procedure to be followed in the registration of a bargaining

council through the DOL. One of the set requirements for councils to be registered is that the parties to the proposed council must be sufficiently representative (no definition is given in the LRA as to what would constitute sufficient representation, although it is generally accepted as standing at a level of about 30%) of employers and employees within the scope of such a council.

Registration of a trade union or an employers' organisation is a legal prerequisite for access to a bargaining council (s 27(1)). Registered trade unions and employers' organisations that do not belong to a council at the time of its establishment may apply for admission to the council (s 56). Access criteria for the bargaining council are set in the council's constitution and include either agreed-upon set numbers, or percentages of representation, for the purpose of setting access thresholds (Holtzhausen & Mischke 2004).

The DOL maintains that it is up to the parties to regulate access criteria by agreement and incorporate them in the constitution of the council, and that the Department should not intervene but should merely give advice as and when necessary (Holtzhausen & Mischke 2004). However, the DOL emphasised the need for parties to set access criteria and indicated that the core consideration in respect of access to councils should be the number of employees employed by employers, and not the number of employers as such. The rationale behind this is that small numbers of employers can employ large numbers of employees. The number of employers is therefore not the appropriate measure.

### **2.3 Extensions of agreements**

The LRA (s 32) makes provision for the extension of agreements to non-parties by the MOL if the parties to the council are representative. Parties to a bargaining council are trade unions (representing their members) and employers' organisations (and thus all employers that are members of these organisations) that have joined the specific council and that participate in the council. Non-parties are employers that are registered with a specific bargaining council, but that are not members of an employers' organisation that is party to the bargaining council.

As stated above, a council is deemed to be representative in a sector if the employer party employs more than 50% of the employees covered by the council, and the trade union party has a membership of more than 50% of the employees (Godfrey, Maree & Theron 2006a). However, the Registrar, when considering whether the parties to a council are representative, will take into consideration the nature of the sector and the area for which registration is sought; nevertheless parties may be regarded as representative of the whole area, even if the parties have no members in part of the area (s 49(1), LRA; Joubert & Faris 2009).

In 2004, bargaining councils as a whole were representative on both employer and trade union accounts (Godfrey et al 2006a)<sup>1</sup>: Employer parties employed 63% of all employees, while trade union parties represented 60% of all employees covered by the councils – even though not all councils were representative on both measures. However, Godfrey and Bamu (2012) point out that when these data are scrutinised, it becomes clear that councils are faced with problems regarding trade union representivity as at the time nine of the bargaining councils had less than 50% representivity relating to trade union membership, and another four councils had exactly 50%.

In addition to extension at the instance of majority representation (i.e. 50% + 1 membership) (s 32(1)), the LRA allows for the possibility of extension when parties to

the council are sufficiently representative within the registered scope of the council in the area in which the extension is sought; or where failure to extend the agreement may undermine collective bargaining at sectoral level (s 32(b)). In such cases, and when all requirements have been met, the minister is obliged to extend a council's agreement if requested to do so (Godfrey et al 2006a). However, this does not seem to be applied strictly – there are examples where agreements were extended when councils were not representative on both counts. The authors conclude that either councils must have been sufficiently representative, or failure to extend the agreement would have threatened bargaining at sectoral level. The minister apparently used his discretion to extend the agreements, although there is evidence that the DOL has become much stricter in exercising this discretion (Godfrey, Theron & Visser 2007).

Recently, the extension of agreements has come under renewed scrutiny – the National Employers' Association of South Africa (NEASA) having challenged the extension of the MEIBC's agreements in the Labour Court for the periods 2012/2013 and 2013/2014 (see *NEASA v MEIBC & Minister of Labour & Others* JR860/13, J2339/14 & J2616/14). Although it is not the objective of this article to discuss the possible implications of these cases and decisions, it should still be noted that on 17 December 2014 the Labour Court judgment set aside the Minister's 12 April 2013 extension of the MEIBC Main Agreement of 2011/2013 (Mthiyane 2014). According to their press release, the MEIBC is of the opinion that "...the judge erred in aspects of fact, law and reasoning. Most importantly the judge failed to consider the substantial effect of setting aside the extension of the Main Agreement after the very agreement had expired."

It is therefore clear that the extension of agreements to non-parties has been, and will always be, a hotly debated issue. Although it is not the aim of this article to discuss the advantages and disadvantages of extended agreements, a brief discussion of the advantages and disadvantages is necessary to put into perspective the influence that non-representation may have, should it lead to extensions not being granted or, as shown above, being reversed.

The extension of agreements is seen as a stabilising factor and a condition of labour peace, on the one hand, and as creating unemployment, on the other (Hofman 2009). Barker (2003) explains that because wages are standardised throughout the industry, employers – in the interests of labour peace – might agree to higher wages than they would have, had there been no bargaining council. Since all employers would then pay this higher wage, and because this can be passed on to the consumer, the incentive to resist wage demands is reduced. Furthermore, because competition on the basis of wages is eliminated, the operation of the market mechanism is interfered with, which could have a negative effect on international competitiveness. Moll (1996) contends that organisations may adopt more capital-intensive means of production, because some organisations will be unable to pay the negotiated wages, and will go out of business in the long run. Over time, "compulsory" centralisation raises wages to a new level. This is because management is deprived of the example of uncovered (i.e. not covered by a bargaining council agreement) non-unionised workers in the same industry who are earning lower wages. Such workers' wages might have remained more market related if they had not been raised through centralised bargaining. Among the other questions raised is the matter of the ethics of enforcing agreements on parties who were not party to the agreement that was concluded. Small employers in particular argue that this practice often results in agreements with which smaller organisations cannot comply and they also contend that it is against the principle of freedom of

association (Bendix 2010), thus nullifying the principle of voluntary membership of councils.

The major justification for extending agreements is to support sectoral bargaining, the argument being that if it is cheaper to compete from outside the council, employers might resign from their employers' organisation, which would lead to an increasingly unrepresentative employers' organisation, and the ultimate collapse of the council (Barker 2003). However, Du Toit, Bosch, Woolfrey, Godfrey, Rossouw, Christie, Cooper, Giles and Bosch (2003) found that party employers' organisations and party trade unions showed strong support for the extension of agreements, citing the levelling of the playing field as their reason for supporting extensions. Of the 50 parties they interviewed in their research, only one was against the extension of agreements.

For small and medium enterprises (SME) in particular, the extension of agreements can be very problematic. Hofman (2009:200) aptly puts it as follows:

Across-the-board increases are not a required part of a collective agreement. They are negotiated, with the other terms of a collective agreement, in the bargaining council responsible for an industry. Small businesses can take part in these negotiations. Section 30(1)(b) of the Labour Relations Act even says "the constitution of every bargaining council must provide for the representation of small and medium enterprises". But being represented in collective bargaining is not the same as being able to influence the terms of the agreement that comes out of the bargaining. The big players in a bargaining council, the trade unions with most members and the employers with most employees, will be able to dominate negotiations.

Notwithstanding the decrease in bargaining council numbers over the years, or the decline in coverage, the coverage of workers remains significant, and has remained fairly consistent considering the total number of workers covered in both private and public sectors. When considering these numbers in more detail, it becomes clear that the number of employees covered by council agreements amplified considerably after 1995, mainly because of the inclusion of public sector councils which covered more than a million workers (Godfrey & Bamu 2012). The fact that the coverage numbers remained fairly consistent in the main is therefore because of strong support for councils in the public sector – in the private sector bargaining council numbers are diminishing, and so therefore is the coverage number of employees.

At the end of 2004, councils covered a total of about 2 400 000 employees, of whom about 335 000 were covered by extended council agreements (Godfrey et al 2006a). Figures in the September 2004 Labour Force Survey implied that broadly 20.3% of all workers were covered by bargaining councils, and councils' extensions covered 2.9% of all workers. Godfrey et al (2006a) state that opponents of councils will argue that these figures are inflated because they count employees who should not be included, and that one should compare the total coverage of councils with the number of employees in the economy who fall within the range of occupations generally covered by collective bargaining and bargaining councils. This calculation (which admittedly has some imperfections) concluded that an amended, more accurate calculation for the share of employees covered by bargaining councils is 32.6%, with 4.6% of employees covered by extended agreements. Bhorat, Van der Westhuizen and Goga (2009) confirm these figures. Councils' agreements therefore cover just under a third of all employees that fall within the occupational categories generally covered by collective bargaining, with the extension of agreements covering less than 5% of such

employees.<sup>ii</sup> Even in sectors where extensions of agreements are significant (say, manufacturing), the proportion of workers covered by councils is in the minority, with a mere 15% employed by non-party employers. Employees covered by extended agreements therefore represent a relatively small percentage – nonetheless, the number of employees covered through the extensions still remains significant. In 2011, Grawitzky (2011) confirmed that at that time the 47 bargaining councils covered approximately 2.5 million private and public sector workers (including workers from the national and local government sectors); coverage numbers have thus remained fairly constant over the years. However, she again cautions that this is because collective bargaining in the public sector has increased substantially, and the author states that more than 50 per cent of bargaining council coverage is linked to the public service (including local government).

The discussion above clearly indicates the importance of representation within the context of centralised collective bargaining. The next section focuses on possible contributing factors to the current South African situation.

### **3 Some factors influencing representivity in South Africa**

Considering the above figures, one needs to deliberate on the factors that could impact on this picture and thereby affect the South African bargaining council system. In other words, the question was asked what the issues were that might impact on the representivity levels of councils. This is done against the backdrop of Dunlop's industrial relations systems theory.

#### **3.1 *Dunlop's industrial relations systems theory***

According to the seminal work of Dunlop (1958), organisations are made up of a variety of subsystems that should work together harmoniously in order for the larger system to succeed. He views the labour relations system as a subsystem of a wider social system (referring to aspects with a technological, market and budgetary context) – similar to political and economic subsystems. In other words, it is argued that successful labour relations (and, ultimately, organisational success) rely on the synergy, interrelations and interdependence of different fundamental subsystems within the organisation.

As argued by Dunlop, labour relations always involve certain actors (i.e. managers and their representatives, non-managerial staff and their representatives, as well as the government departments concerned), frameworks, and beliefs that hold the system together, as well as a set of rules created to direct the actors in the workplace. These rules may take various forms – for instance legislation, trade union regulations and collective agreements. They could include social conventions, managerial decisions and accepted customs and practice (Flanders 1965, as discussed in Jayeoba, Ayantunji & Sholesi 2013). To sum up, the actors function within certain limitations, and are predisposed and restricted by aspects such as technology of the workplace and community, the market and budgetary constraints, a complex set of rules, and the locus and division of power in society at large.

Alton Craig (1975) (referred to in Jayeoba et al 2013) refined Dunlop's framework by introducing inputs into the system, including aspects such as the objectives, values and power of the labour relations actors. Craig also defined the societal environment in terms of economic, social, political and legal inputs into the labour relations system. In addition, he indicated that the system's outputs will again impact on the environmental

inputs through a feedback loop. The systems approach therefore includes three components, namely inputs, throughputs and outputs.<sup>iii</sup>

It is argued that a collective bargaining system could also be regarded as a subsystem of labour relations. Thus, bargaining councils are organisations which, it is argued, are similarly affected by these three components of the open systems theory – a point confirmed by the literature and research as discussed further on. Evidence is to be found in the fact that councils are exposed to legislative changes and precedent set in the Labour Court; role players face economic challenges which impact on the demands made at the bargaining table; and there is political conflict – take the example of the alliance between COSATU and the ruling party (ANC) which is said to be under strain, as well as the conflict evident between COSATU and the National Union of Metalworkers of South Africa (NUMSA) (see for instance [www.numsa.org.za](http://www.numsa.org.za) and [www.cosatu.org.za](http://www.cosatu.org.za)). The bargaining council landscape is constantly changing.

Dunlop's theory therefore forms the background for the discussion of developments within the council system that follows. The following section considers the relevant macro-external environment as part of the inputs impacting on the council system and specifically on representivity issues, as it is argued that a bargaining council is no exception, but is also often affected by its external environment (see for instance Horwitz 2000). However, this is not to say that the discussion below addresses all aspects influencing the councils – it merely provides a summary of aspects found in the literature which affect councils. Interestingly enough, these aspects were also highlighted in the research (see discussion further on) as matters of importance for all councils researched.

### **3.2 Economic, political and social influences on the primary parties and institutions of labour relations**

Employers' organisations and trade unions are not immune from the changes and challenges affecting them, and need to adapt to these. The challenges facing employers' organisations are explained in an ILO report (2013:15-16) as follows:

Employers' organizations have faced a range of challenges in the current global economic environment, one characterized by rapidly evolving technologies; labour market transformations; a changing architecture of production systems organized in global value chains; pressures on companies to improve their competitiveness and productivity; and heightened competition to attract capital and investment. These attributes of the global economy have increased the complexity for employers' organizations to represent members and respond to their expectations, obliging the bodies to review their strategies, the services offered to their members as well as their own structures.

One change seen in South Africa because of the above challenges is that mergers are taking place between business and economic organisations and chambers of commerce, thereby giving employers a stronger national voice (ILO 2013).

Trade unions are similarly challenged (ILO 2013:16):

Pressures linked to the global economic environment and persistent violations of workers' rights have dramatically affected workers and their unions. Lack of respect for freedom of association and collective bargaining rights; the tendency towards negotiating working conditions at enterprise level (even in countries with long traditions of sectoral and inter-sectoral social dialogue) in a context of increasing



labour market segmentation; limits to workers' effective access to trade union rights (in particular non-standard employment relationships such as temporary, contract or fixed-term workers); and rising unemployment in some countries, especially among youth, have hindered organizing efforts by workers' organizations to strengthen their base and their bargaining power.

The above influences and the economic, social and political concerns of South Africa regarding its labour relations system have been evident over the years. Bhorat et al (2014:17) explain that employers' organisations and trade unions are not "...merely economic agents; they are necessarily key actors in the political arena". They argue that the traditionally radical nature of the labour movement within South Africa because of apartheid is entrenched in the South African trade union movement of today.

In the early 1990s during the apartheid years, Copelyn (2004) suggested that the most influential base unions have is the platforms they utilise for collective bargaining as these can be used to deal in earnest with the social and economic concerns of their members. According to this author, vast opportunities and resources open up for unions when they adopt a system of national industry negotiations. Institutions such as bargaining councils (known at the time as industrial councils) provided the independent base for trade unions to influence a new South Africa.

With the democratisation of South Africa around 1994, it became evident that councils were seen as a platform for social dialogue between management and labour, ideally situated to deal with both economic and social concerns (Holtzhausen 2011). Many unions regarded (and still regard) the strengthening of centralised collective bargaining as their primary goal (Godfrey 2009). In addition, employers often welcome institutional support in managing their labour relations better, and some regard the council system as having enough flexibility to make participation worthwhile (Donnelly 2001). Moreover, they believe that it is a way to protect themselves from a strong state alliance with dominant unions.

However, it remains a relationship based on compromise between contesting parties (Holtzhausen 2011). Voluntary collective bargaining, through social dialogue with the relevant role players, helped to find mutually acceptable solutions to the uniqueness of South Africa's past and anticipated future (Holtzhausen 2005). The newly elected government of 1994 also saw collective bargaining, and specifically bargaining councils, as a vital part of the future, and as integral in, for instance, implementing the Reconstruction and Development Programme (RDP):

Effective implementation of the RDP requires a system of collective bargaining at national, industrial and workplace level, giving workers a key say in industry decision-making and ensuring that unions are fully involved in designing and overseeing change at workplace and industry level. Industrial bargaining forums or industrial councils must play an important role in the implementation of the RDP. Agreements negotiated in such forums should be extended through legislation to all workplaces in that industry (African National Congress (ANC) 1994, in Finnemore & Van Rensburg 2002:225).

The Ministerial Legal Task Team appointed by the ANC in 1994 to draft a new Labour Relations Bill was specifically tasked with giving effect to government policy as reflected in the RDP (Du Toit et al 2003). As such, the 1995 LRA brought changes to the council system, and envisages increasing industry level bargaining.

Apart from these political influences, it is also clear that bargaining councils are not immune from economic challenges, whether national or international. An economic downturn has massive potential implications for councils stemming from the hardship experienced by parties to the council.

The 2009 recession is a case in point. The Executive Director of the Steel and Engineering Industries Federation of South Africa (SEIFSA) summarised the effect of the recession as follows (SEIFSA 2012:11): "Global economic prospects continue to cloud the domestic outlook. This is of great concern to the sector due to its exposure to international markets." The effect of recessions and other forms of economic hardship on councils is confirmed by other research (see for instance the ILO study by Grawitsky (2011) over the same period; as well as the study by Godfrey and Bamu 2012). Grawitsky's research (2011) cited examples from the economic downturn around 2009. Specifically, it was found that firstly, the recession impacted on councils' finances as some councils reported a reduced income from levies owing to an increase in job losses in the affected sectors; secondly, it resulted in a noticeable escalation in the workload, especially in relation to dispute resolution, which put severe pressure on resources; and thirdly, an upsurge in exemption applications (not only because of wages, but also because of working conditions such as the payment of bonuses and council levies) and the working of short-time were noticed. The research also showed that generally councils considered these exemption applications favourably. One can conclude from this that if the sector suffers, the council suffers.

Another key challenge affecting the representivity of councils is the decline in union membership over the last couple of years, evident in many countries and also in the private sector of South Africa (see for instance Harbridge & Wilkinson 2001, Vettori 2006; Ouchi & Araki in Maree 2011; Godfrey et al 2007; and Dicks, in Ndungu 2007; Ebbinghaus 2004).

The latest figures indicate that 184 trade unions are registered in South Africa (Department of Labour 2015). According to calculations by Borat et al (2014:4-5), trade union density increased in the public sector from 55% in 1997 to 75% in 2010, after which it declined slightly to just above 69% in 2013. Elsley, Mthethwa and Taal (2013) confirm the growth in public sector trade union membership. According to these authors, public sector employees formed about 42% of the total COSATU membership in 2012, a number which has increased dramatically over the last decade. However, private-sector union density indicates a different trend, with a decline of almost 12% from 1997 to 2013. These figures are illustrated in the table below.

**Table 1**  
**Trade union membership\* of public and private sector employees in the formal sector, selected years**

Year	Private sector		Public sector	
	Number of union members	Union members as % of workers	Number of union members	Union members as % of workers
1997	1.813,217	35.6%	835,795	55.2%
2001	1.748,807	30.6%	1.070,248	70.1%
2005	1.925,248	30.1%	1.087,772	68.4%
2010	1.888,293	26.3%	1.324,964	74.6%
2013	1.868,711	24.4%	1.393,189	69.2%

Source: Borat et al (2014)

\*Calculations based on Statistics South Africa's October Household Survey (1997), Labour Force Surveys (2001, 2005), and Quarterly Labour Force Surveys (2010, 2013).

The Adcorp Employment Index (2013:2) expresses the decline in trade union membership as follows: "South Africa's trade unions are in crisis". According to their Index, only one in every four employees (25.5% of the workforce) is unionised, a number which is declining slowly but surely. In addition, only about 43% of people who join the workforce for the first time join trade unions. According to Bhorat et al (2014), it is predominantly in the manufacturing, construction, finance and agricultural sectors where the declining trend in union density since 2010 is visible. Adcorp (2013) confirms a unionisation rate of merely 11% in the five sectors of trade, finance, manufacturing, construction and private households. This is especially noteworthy as these sectors represent approximately two-thirds of total employment in South Africa.

Apart from the sectors mentioned above, two other sectors that need to be closely monitored for possible changes are the mining and metal and engineering sectors. According to Bhorat et al (2014), the mining sector has been South Africa's most highly unionised sector, and union density rates in this sector are still increasing – for instance, union density has increased by 9% since 1997, reaching 80% in 2013. However, recent years have shown huge changes in mining union membership. Since the establishment of the National Union of Mineworkers (NUM) in 1982, it has been the dominant trade union in the mining sector with a current membership of more than 300 000 workers (Bhorat et al 2014). However, a rival trade union has been formed – the Association of Mineworkers and Construction Union (AMCU), with an estimated membership of about 50 000 in both sectors. The long-term effect of this rivalry on union membership in this sector still remains to be seen. The National Union of Metalworkers of South Africa (NUMSA), the second largest union in South Africa, has also faced enormous challenges. NUMSA used to be an affiliate of COSATU's, the strongest trade union federation in South Africa. However, in the latter half of 2014, COSATU expelled NUMSA ([www.numsa.org.za](http://www.numsa.org.za); see for instance the NUMSA press release on this matter, dated 9 November 2014) – and it remains to be seen how this move will affect the union.

Generally, the downward trend in union density and bargaining power is mostly attributed to changes on a macro-environmental level (such as higher unemployment levels, increased competition in the environment of globalisation, a shift away from manufacturing to services, changes in technology, increased import and export competition and international trade) and others – e.g. changes in firm size (Nel, Kirsten, Swanepoel, Erasmus & Poisat 2012; ILO 2013). It goes without saying that a declining trend in the parties to employment relations will impact on the organisations and role players of that particular employment relations system – bargaining councils are no exception. A decline in union membership directly affects the representativeness of the parties to the council.

The challenges posed by the economy also affect work patterns as organisations adapt to meet these challenges. This is discussed next.

### **3.3 Changing work patterns**

The nature of employment is changing – partly, it is argued, because of globalisation, but also because of other changes in areas such as the economy. This is not easily definable though, nor is it assumed that globalisation will affect all systems equally or in the same way. Fashoyin (2010) argues that the impact of globalisation on employment relations in different countries varies. He addresses this aspect by explaining that one of the most significant theories on capitalist diversity, known as the Varieties of Capitalism Theory (VoC), proposes that the effect of globalisation on employment

relations differs across different types of market economies. For instance, Fashoyin (2010) refers to a paper by Lansbury and Wailes (2010) which uses data from a study of employment relations in the automobile assembly industry in seven countries to study the value of the VoC approach to the comparative study of employment relations. The findings propose that there are systematic differences in the impact of globalisation on employment relations in liberal, coordinated and to some extent in Asian market economies.

Although globalisation does not affect all employment relations systems equally, it nevertheless results in increased collective bargaining challenges which should be noted, including challenges at the centralised level. Fashoyin (2010: 517) explains this as follows:

Globalization has intensified competition, in response to which enterprises have sought flexibility by introducing new forms of work organization and changing their employment practices. These changes present important challenges for collective bargaining, the practices and structures of which are called upon to adapt in order to remain responsive.

Cutcher-Gershenfeld and Kochan (2004) cite the example of jobs in the USA which are becoming increasingly knowledge-driven across a broad range, requiring changes in work organisation and practices. Another example is given by Auer (2000), who states that the fragmentation of large-scale mass production resulting from globalisation weakens centralised bargaining and threatens a further erosion of collective bargaining coverage. More prominence is given to, say, productivity and performance-related bargaining and internal flexibility issues (e.g. flexible working hours at plant level). This general tendency to negotiate issues of this kind at plant level has contributed to the decentralisation of the labour relations system.

Research confirms that South Africa is experiencing similar (even if not directly comparable) challenges through changing employment practices to those experienced by its counterparts worldwide. In South Africa, the following example from the clothing industry confirms the possible effect of globalisation on the structuring of work and subsequently on unionisation and ultimately the bargaining council system (Bennett 2002:9):

The in-depth restructuring of the clothing industry, which followed the full reintegration of South African economy into the global market place, brought about significant changes in the organization of work and consequently raised enormous challenges to the labour movement. Restructuring once large and medium enterprises in an effort to cut costs and remain globally competitive has led to massive downsizing and an upsurge in smaller-sized establishments... Restructuring in the clothing industry also resulted in considerable pressures on the statutory centralized bargaining system. Significant numbers of smaller employers removed themselves from bargaining council jurisdiction, either by rejecting it outright or by subcontracting work to informal undertakings or to independent subcontractors. Under these circumstances, the whole bargaining council system is being threatened...

However, it is not argued that this similarity implies that because collective bargaining is generally declining in a range of countries, South Africa should follow suit – testing this assumption was not within the scope of the original research, and also falls outside the scope of this article. Nevertheless, Ndungu (2007:3) asserts the following: “Fundamental to the question of improving union capacity to bargain collectively should

be the acknowledgement that the changing nature of workplace relations has resulted in the weakening of centralised bargaining.”

South Africa is also experiencing an increase in atypical employment. Maree (2011) explains that atypical employment consists of three inter-related processes: casualisation, externalisation, and informalisation. Casualisation refers to the process whereby standard employment declines because of an increase in temporary and part-time workers, or both. Externalisation refers to the process whereby a temporary employment service (known popularly as labour brokers in South Africa) employs an employee who is hired to another employer in whose workplace the employee then works. Informalisation refers to the increasing practice of unregulated employment, in part or altogether (Theron & Godfrey 2004). Benjamin (2008) mentions the small sizes of firms as an additional factor when defining the informal economy.

The increase in atypical employment presents a challenge to unions as these categories are all difficult to organise (see Horwitz 2000; Theron 2003). In general, unions first attend to permanent workers, and the likely influence of an increase in the use of atypical workers may erode their support base (Olivier 1998). The DOL (2007) also acknowledges the threat of casualisation to union growth, resulting in the decline of bargaining council strength. The National Labour and Economic Development Institute (NALEDI) (Musgrave 2008) emphasises that these trends necessitate better collective bargaining systems.

Not only is there an increase in atypical work in South Africa; the informal sector is also growing. A number of years ago Standing, Sender and Weeks (1996) stated that councils are not necessarily representative because many small non-registered employers increasingly operate in the informal economy. The growth of the informal economy has been evident over a number of years (Adcorp 2011). According to Benjamin (2008), more than 30% of working South Africans fall within this sector. Moreover, an increase in vulnerable employment<sup>IV</sup> is visible as formal employment growth decreases – as was the case in South Africa when GDP growth declined 5.3 percentage points to -2.2% in 2009 because of the recession (ILO 2010). According to an Adcorp report (2011), the informal sector represented approximately 39% of South Africa’s potential workforce. In September 2011, this sector grew at an annual rate of almost 8%. As stated in this report, about 6.2 million people worked in this sector.

The effect of these changing workplace practices on the council system is potentially huge because of representation issues.

### **3.4 Changes within the small business sector**

Indications are that organisations are employing fewer employees (see for instance MEIBC 2013). This is also evident when looking at the bargaining council system, which mainly covers small firms. In fact, the average size of registered businesses across the council system is 18 employees (Godfrey et al 2006a). In addition, the average size of all party firms is 27 employees, and of all non-party firms, 11 employees – thus confirming that councils comprise fewer larger party firms, compared to more and smaller non-party firms.

As in the informal sector, trade unions find it difficult to organise within the small business sector, which is another challenge to council representivity. Bennett (2002) cites the example of the profound restructuring of the clothing sector following the reintegration, in the mid-1990s, of the South African economy into the international marketplace. The way work was organised changed considerably, posing enormous challenges for all role players. In order to remain globally competitive and cut costs,

large and medium enterprises downsized, increasing the number of smaller firms. The restructuring placed enormous pressure on the National Bargaining Council for the Clothing Manufacturing Industry (NBCCMI) – significant numbers of small firms withdrew from the council, either by rejecting it outright, or by subcontracting work to informal undertakings or independent subcontractors. In certain areas, increasingly more employees functioned outside the council.

The brief literature review above reflects some of the main areas related to representivity levels where bargaining councils as organisations are subject to macro-external factors, and thus supports the notion that representivity of employer and employee parties is a challenge. This matter was investigated in depth in the research on which this article is based. The research methodology, followed by a discussion of the findings, is explained below.

## **4 Research methodology**

The article is based on qualitative research done as part of a broader study (Holtzhausen 2011) which focused on how bargaining councils have adapted to the changing environment over the 15-year period from 1995 to 2010, with particular focus on some key factors, including representivity. Councils in five industries were investigated: the chemical, clothing, building, metal and engineering, and motoring industries. In this broader study the aim was to identify and examine trends, to determine, among others, their possible effect on the council system and how councils respond to their influence. More information is given below.

To ensure that the study on which this article is based (Holtzhausen 2011) would be meaningful and provide a detailed, accurate picture, an attempt was made to understand how bargaining councils in South Africa have changed over the past 15 years (from the passage of the groundbreaking LRA in 1995, which affected bargaining councils directly, to 2010). Specifically, certain key areas, including representivity, were studied. This was done by incorporating previous relevant research on councils and using these findings as a benchmark for comparison (Holtzhausen & Mischke 2004), as well as by conducting a detailed literature review of the principles of centralised collective bargaining, international collective bargaining trends and bargaining councils. The literature review provided a theoretical framework within which to conduct the research, as well as a detailed description of existing data on bargaining councils.

### **4.1 Type of research**

According to Henning, Van Rensburg and Smith (2004), the purpose of the research influences the chosen method of data collection and analysis. The distinction between qualitative and quantitative approaches lies in the quest for understanding and in-depth inquiry. In quantitative studies, the focus is more on the control<sup>V</sup> of the actions and representations of the participants. However, in a qualitative study, the variables are not controlled because the researcher wants to have freedom in decisions and actions taken on aspects the researcher wants to capture. The goal of qualitative studies is to explore a topic in depth.

### **4.2 The population**

The research probed a variety of possible reasons that might explain why councils have changed in the way they have; these changes were related to specific characteristics of councils. It was argued that these characteristics may be some of the variables that

influence the way councils have adapted to their changing environment, and questions were therefore posed to determine the effect of these characteristics.

In the main, two reasons determined the choice of councils to be researched. Firstly, councils were selected from a diverse range of bargaining councils where the differences between them were meaningful, thus allowing a good cross-section of councils even with a relatively small sample. The result of this approach was that councils specific to areas of interest, but with varying characteristics, were selected.

The characteristics included the following:

- size (e.g. regional versus national councils);
- the structure of the industry (e.g. serving overwhelmingly small versus large organisations);
- the nature of the industry (e.g. manufacturing versus construction);
- the nature of the employment relationship (e.g. fairly standardised contracts of employment versus labour brokering);
- the nature and size of the parties to councils (e.g. small versus large, powerful unions);
- number of years the council has been in existence; and
- the financial strength of the council.

Secondly, if the same selection of councils as in a previous study (Holtzhausen & Mischke 2004) had been researched again, comparisons would be possible, adding depth to the current research.

Accordingly, five councils were chosen in the chemical, clothing, building, metal and engineering and motoring industries, thus providing a sample of councils which met the characteristics set out above. The characteristics which prompted the inclusion of each council in the research are explained in more detail in Table 2 below.

**Table 2**  
**The population**

Bargaining council	Characteristics
National Bargaining Council for the Chemical Industry (NBCCI)	<ul style="list-style-type: none"> <li>• A relatively new national council</li> <li>• Strong subsectoral orientation</li> <li>• Main agreement not yet extended</li> <li>• A relatively stable but extremely diverse industry</li> </ul>
National Bargaining Council for the Clothing Manufacturing Industry (NBCCMI)	<ul style="list-style-type: none"> <li>• Previously regional councils, now a newly amalgamated national council</li> <li>• Still a strong regional orientation</li> <li>• Non-compliance challenges</li> <li>• A council potentially in crisis</li> <li>• New dynamics on employers' side</li> <li>• A crisis industry</li> </ul>
Building Industry Bargaining Council (Cape of Good Hope) (BIBC CGH)	<ul style="list-style-type: none"> <li>• Regional council</li> <li>• Most other construction councils having collapsed</li> <li>• Cyclical industry</li> </ul>
Metal and Engineering National Bargaining Council (MEIBC)	<ul style="list-style-type: none"> <li>• Strong and stable national council</li> <li>• An older council</li> <li>• An industry under pressure</li> </ul>
Motor Industry Bargaining Council (MIBCO)	<ul style="list-style-type: none"> <li>• Large stable national council</li> <li>• Excellent dispute resolution system</li> <li>• Relatively stable industry</li> </ul>

Source: Holtzhausen (2011)

The table above confirms that the selected sample varied with regard to the structure and character of the industries in which the councils operate. They were all important councils; most were old, but one relatively new council was included. The councils operated in different industries and each had its own distinctive strengths and weaknesses. The population therefore covered an acceptable cross-section of councils. While it cannot be claimed that this choice of councils is representative of bargaining councils in South Africa, these councils do constitute an important selection of the most important private sector councils and consequently present an ample indication of bargaining council trends.

Background information on the different councils is given below.

#### 4.2.1 *The Metal and Engineering Industries Bargaining Council (MEIBC)*

The MEIBC ([www.meibc.co.za](http://www.meibc.co.za)), which was established in 1946, is the largest and one of the oldest private sector councils. Over the years it has been regarded as a strong, stable national council, with a head office in Johannesburg and six regional offices. It employs 140 people. According to the MEIBC ([www.meibc.co.za](http://www.meibc.co.za)), the council represented around 10 624 firms and 306 747 employees in the metal and engineering industry at the end of November 2014.

The main employers' organisation is the Steel and Engineering Industries Federation of South Africa (SEIFSA), the umbrella body for 27 independent employers' associations representing all the various sectors which form the metal and engineering industry. Three other employers' organisations are party to the council. The SEIFSA membership employs about 51% of the industry's labour force and more than 78% of all scheduled employees represented by the employers' organisations party to the MEIBC ([www.seifsa.co.za](http://www.seifsa.co.za)).

The National Union of Metalworkers of South Africa (NUMSA), one of six unions on the council, is the largest metalworkers' union, and the second largest trade union in South Africa, with about 232 000 members.

The council operates in an industry under pressure. In addition to economic and business pressures, the MEIBC has faced a number of challenges of late. For example, between 2011 and 2014 the MEIBC has been challenged in court regarding the extension of their agreements (see the discussion on this elsewhere). In addition, the council's biggest labour union, NUMSA, is confronting numerous problems after being expelled from COSATU in November 2014 (see for example Marrian 2014).

#### 4.2.2 *The National Bargaining Council for the Chemical Industry (NBCCI)*

This is one of the newest bargaining councils ([www.nbcci.org.za](http://www.nbcci.org.za)), having registered in 2001. It is a national council with no regional offices. It serves five sectors in the chemical industry, and a strong sectoral approach forms the basis of all its operations. It functions within a relatively stable but extremely diverse industry. Four unions are party to the council, of which the Chemical Energy Paper Printing Wood Allied Workers Union (CEPPWAWU) is the majority union. Nine employers' organisations are party to the council, with one full-time appointed coordinator for them all. The council currently consists of approximately 220 employers' parties and employs a staff of about 70 000 – of whom roughly half are union members.

#### 4.2.3 *The National Bargaining Council for the Clothing Manufacturing Industry (NBCCMI)*

The clothing industry had five regional councils which consolidated to form a national council in 2002. It is still has a strong regional orientation. SACTWU, the only trade



union, has over 85 000 members ([www.sactwu.org.za](http://www.sactwu.org.za)) and functions in the clothing, textile, leather and footwear, distribution and allied industries. The employers' parties consisted of six regional associations which amalgamated in 2009 to form a single employers' association, the Apparel Manufacturers of South Africa (AMSA). The council is functioning in a crisis industry, which impacts on its stability. Non-compliance is a major challenge.

#### **4.2.4 Motor Industry Bargaining Council (MIBCO)**

The Motor Industry Bargaining Council is a large, stable, national council, operating in a relatively stable industry. The Council consists of approximately 14 000 registered employers, employing about 182 000 employees ([www.mibco.org.za](http://www.mibco.org.za)). The majority union is NUMSA. The Retail Motor Industry Organisation (RMI) is the largest employers' association and represents employers, together with the Fuel Retailers' Association (FRA). The Council is known for its excellent dispute resolution system.

#### **4.2.5 The Building Industry Bargaining Council (Cape of Good Hope) (BIBC CGH)**

The Building Industry Bargaining Council (Cape of Good Hope), which has been operating for more than 80 years, is a sector- and area-specific council with jurisdiction over approximately 200 km<sup>2</sup> ([www.bibc.co.za](http://www.bibc.co.za)). About 50 000 people are active in the building industry in this area. The BIBC (CGH) functions within a cyclical industry. Most other councils in the construction sector have collapsed. The council employs approximately 65 people. Two employers' associations – the largest of which is the Master Builders and Allied Trades' Association (MBA), and five trade unions, of which the Building Workers' Union (BWU) is the largest – are party to the council.

### **4.3 Data generation techniques**

Data were gathered by conducting interviews and reviewing relevant documents.

The main data-generating technique in this research was semi-structured interviews with 45 open-ended questions – although not all questions focused on representivity. One-and-a-half-hour slots were agreed upon beforehand to ensure enough time for a detailed discussion. Two interview schedules were designed – one for the council secretariat and one for the employer and employee parties. The questions were chosen to address all the objectives of the study, and were based on an extensive literature review. This document was sent to interviewees prior to the interviews to ensure that they would be prepared. The main employer and employee party were identified on the basis of the size of the organisation – for instance, if a council had more than one employer party, the largest one was included in the selection of interviewees. Council secretariat representatives were also interviewed. All interviewees were either heading the organisation or, at the very least, involved in collective bargaining at the organisation. Telephone calls were first made to ascertain the correct person for the interview and to strengthen a bond of commitment between that individual and the researcher. Because of the sensitive nature of some of the information probed, confidentiality was assured.

In total, 11 interviews were conducted (which included one telephone interview) with 13 representatives of both the main employer and employee parties of the five selected councils, and also with the executive directors of four councils. In some instances, more than one person attended the interview, resulting in more respondents than interviews (i.e. 13 interviewees in 11 interviews). These extra interviewees were nominated by the original group of interviewees because of the significant contribution they were able to

make to the interview. NUMSA nominated one interviewee for both the motor and the steel and engineering industries. In addition, two interview schedules (including the same questions that were asked at the interviews) were completed in written format by respondents who could not grant the researcher interviews. Therefore, a total of 15 respondents participated in the research. Only one of the planned interviews was not conducted, namely with the clothing sector council secretariat, as no appointment could be confirmed during the time frame of the research, even after various attempts by the researcher. In total, four telephone follow-up interviews were conducted, and various e-mail enquiries were made afterwards to ensure accuracy of the data.

The documents analysed included the constitutions and collective agreements of bargaining councils, as well as newsletters, information documents and websites.

#### **4.4 Data analysis**

Because of the sensitive nature of the information, no digital recordings could be made. Handwritten records were kept during each interview. These records were included in a formal report written as soon as possible after each interview. The researcher tried to produce an accurate summary of what had transpired at the interviews. The entire body of data was perused more than once, breaking it down into smaller chunks. Each piece of data was classified into categories and recurring themes were identified, binding all the interviews together by summarising, grouping and structuring the data. Quotations that represented specific categories were identified and recorded. Relevant documents were reviewed. Applicable existing statistics substantiated data when relevant.

#### **4.5 Validity and reliability**

Strategies to ensure validity and reliability were applied in the research. Interviewees were probed to clear up vague responses or to elaborate on a statement. When respondents were not sure what was being asked, the researcher explained the question. Interviewees were contacted afterwards when necessary to ensure accurate analysis of the information collected during the interview. To eliminate bias (as suggested in Brynard & Hanekom 2008), leading questions were avoided. The sample of interviewees included all relevant parties to ensure a complete and accurate picture from all points of view, and conflicting data were checked. To ensure trustworthiness and knowledgeable responses, interviews were held with people in key leadership positions who had been with their organisation for a number of years.

#### **4.6 Shortcomings of the research**

The cause of possible shortcomings may lie in the realities of qualitative research. The main shortcoming is probably the relatively small sample of councils that could be included in the sample – a fact which limits the representativeness of the data when considering all bargaining councils in South Africa. Even so, the population sample ensured high relevance in answering the research question.

Another shortcoming relates to the unavailability of accurate trade union numbers for the period under research, although all the interviewees confirmed a decline in trade union membership numbers.

A further shortcoming may lie in the reality that all research has some limitations when determining its scope – and thus unanswered questions will always exist, necessitating further research. Nonetheless, the research (and article) contributed extensively to broadening knowledge of the challenges faced by councils regarding representivity and the way councils respond to the challenges.

## 5 Findings

The research confirmed that in the area of representivity, significant changes have occurred and councils are having to adapt to their changing environment constantly if they wished to survive. All interviewees mentioned the importance of representivity in extending agreements, but also as general support for the council system. The representivity-related findings of the research are discussed below under a variety of themes/categories (for ease of reference, the pattern followed is that of the literature study discussion above; as the findings of this study serve to confirm the findings in the literature).

### 5.1 *External environmental threats to councils' representivity and subsequent council responses*

The literature discussed above indicates that bargaining councils, like other organisations, are influenced by their external environment. The research probed more deeply into this matter. Subsequently, interviewees were asked to identify changes (threats and/or opportunities) their councils were exposed to in the period 1995 to 2010 (or part thereof), and to indicate how the councils have adapted to the changing environment.

The two main external threats to councils and their representivity mentioned by all interviewees related to the economy (e.g. the economic crisis at the time) and the changing world of work. Some other threats were also reported, all of which directly impact on representivity levels. These are all discussed below.

#### 5.1.1 *Economic influences*

The research confirmed that the economy has a major influence on council representivity levels – representivity levels go down in tough economic times as companies seek ways of surviving, often by cutting labour costs. All interviewees indicated that over the past 15 years economic factors have influenced them in varying degrees in their respective industries. When the economy is growing, industries are successful, job losses are not a constant threat and collective bargaining generally becomes easier. However, the converse is also true. Tough economic times lead to retrenchments, short-time and other variations in working arrangements, and an increase in exemption requests.

In addition to generic economic fluctuations, South African businesses were also faced with post-apartheid challenges of democratisation and subsequent transformation after 1994, and the opening up of the economy. Industries, especially the clothing and steel industries, were increasingly exposed to the threat of growing economies such as those of China and India. Initiatives to counteract the problem were required. Towards the end of the 1990s, rapid trade liberalisation was evident, with a decline in state interventions, particularly in respect of energy and transport initiatives. As a result, all five industries have reported job losses over the past 15 years. This situation has had a direct influence on the councils' representation levels.

The interviewees gave some examples of how councils have adapted to these environmental factors. The metal and engineering industry is a case in point. Export markets have dwindled considerably and employers have been forced to implement extensive short-time working arrangements and large-scale retrenchments in an attempt to remain financially viable in the face of acute trading conditions. Employment reached a 10-year peak of scheduled jobs in February 2009, but then dramatically shed

over 75 000 jobs in the space of 10 months. The SEIFSA interviewee stated: *“There can be no doubt that our membership remains faced with an unusually difficult, unpredictable and uncertain year ahead. The events of the past year have left the world a very different place from what it was this time last year.”*

The clothing industry is also known to be under pressure. Mounting levels of imports are resulting in considerable job losses. The AMSA representative explained that current economic challenges are forcing the role players to stand together, putting behind them any conflicting, adversarial relationships. Moreover, they were compelled to find ways to focus on mutual interests and to support joint collaborative projects. In his words: *“[I]n clothing the enemy is international competitors, they can shut the trade unions and the industry down. It is not only a threat anymore, it is terminal. Therefore we have more participation, more partnership between the unions and management.”* The SACTWU and AMSA interviewees explained that a *“rescue package initiative had been formed in 2009 to address the effect of this crisis on the industry”*. The Department of Trade and Industry, SACTWU and AMSA – under the auspices of the NBCCMI – identified 12 policy measures to be implemented. One of these determines that employees who would ordinarily be retrenched would, where possible, be offered training discharges, which would keep them in employment during the economic recession but re-skill them for future economic recovery.

BIBC (CGH) officials take consolation in the fact that their industry is cyclical and should return to higher levels of employment. They attempt to avoid retrenchments by allowing temporary layoffs for a continuous period not exceeding 20 working days (collective agreement clause 8(9)). According to this agreement, an employer may temporarily lay off employees on account of inclement weather, a shortage of material owing to circumstances beyond the control of the employer or a temporary shortage of work. If, at the end of this 20-day period, the employer wishes to extend the lay-off period for a further 20 working days, the employee is first given the choice of being retrenched in accordance with procedures set out in the agreement.

### 5.1.2 *The changing world of work*

The research showed that the workers' profile has changed in the past 15 years, and that – in line with international trends – increasingly more workers in South Africa find themselves in atypical employment with casualisation (i.e. the use of subcontractors, labour brokers and part-time employment) on the rise. A growing informal sector is evident. Councils are severely threatened by this phenomenon because a decline in permanent employment leads to a decrease in membership numbers of parties, thus threatening parties' representivity levels. Trade unions see labour brokering and other atypical forms of work as a threat to their own existence (e.g. the difficulty of recruiting members under such circumstances), as well as to their members (e.g. the lack of job security experienced by employees on account of flexible employment practices). A few examples of these challenges are provided below.

All parties, with the exception of the NBCCI secretariat, indicated that the changing world of work has threatened councils. The SEIFSA interviewee explained this as follows: *“From 1995-2010 the industry has moved progressively into atypical employment. Fixed-term contracts are renewed and rolled over; labour brokering has grown a lot. Permanent employment has declined. This is mainly because of our inflexible labour policies.”* According to the MEIBC representative, atypical work has always been a feature of the industry, often necessitated by its very nature – for instance, a major infrastructure project that requires an increase in atypical employment

for the period of the project. Nevertheless, the use of labour brokers has increased dramatically and is a fairly new practice in this industry – it was estimated at about 5% of the workforce in the industry in 1999, but in 2010 the estimated figure was about 20 to 25%. He indicated that labour brokering is often a function of growth (e.g. because of a recession and subsequent job losses), and that in tough times, the use of labour brokers also declines.

However, the AMSA representative argued that the clothing industry has seen only marginal changes in labour brokering usage, and that at least 90% of employment contracts are still permanent. Casualisation is limited. Still, all indications are that there has been huge informalisation of clothing operations.

Another case in point is the BIBC (CGH). During the interview the council representative emphasised that *“fragmentation is the main threat to the council, as it leads to representivity problems”*. He explained that large firms that used to employ more than 6 000 employees have adapted a new business model: *“Sub-contracting then became fashionable, and they are now project managers. This happens in big and smaller businesses. The threat lies in that it becomes more difficult to control.”*

#### 5.1.3 Increase in the small business sector

Many of the councils have a majority of smaller enterprises. The MEIBC is a case in point. According to SEIFSA (which comprises more than 77% of all scheduled employees represented by employer’s organisations party to the MEIBC), 62% of their member companies employ fewer than 50 employees.

Some councils have had to adapt to an increase in the number of smaller businesses. According to the MBA interviewee, the last 15 years have seen building industry employers becoming smaller – which does not mean that employment is down in their area, but is simply an indication that larger businesses tend to use subcontractors and focus on project management. The BIBC (CGH) now has mostly small firms as members. They are well represented by the MBA.

The SACTWU respondent stated that the clothing industry had an even spread of small, medium and big business, and as such this was not a factor that influenced the effectiveness of the council. However, the AMSA interviewee differed, saying the number of small firms in the clothing industry was increasing, with a decline in bigger business. Although this is not necessarily a negative trend from all points of view, it does make it more difficult for trade unions to organise and recruit members. It therefore impacts negatively on representivity levels.

#### 5.1.4 Some other threats

As discussed above, interviewees agreed that the decline in representivity can generally be ascribed to the economic recession and subsequent job losses, changing work patterns and an increase in the small business sector. However, not all industries are equally affected, and other external factors also affect representation. When the researcher tried to determine why councils were affected in a particular way, responses generally related to the specific circumstances of the sector or industry.

The motor industry is an example. The MIBCO interviewee indicated that in 2008, the MOL extended their scope to include the former Transkei, Bophuthatswana, Venda and Ciskei (TBVC states), and that this currently reflects negatively on union membership. However, the RMI interviewee indicated that in the past membership had been kept artificially high because social benefit schemes were compulsory and were linked to employer and union membership. However, membership of these schemes is now

optional. This implies that whereas in the past employers automatically enrolled staff for trade union membership in order to provide medical benefits, this no longer happens. Trade unions now have to recruit members.

Another example was found in the clothing sector, which faces the threat of low-priced imports from markets such as China. Organisations within these sectors indicate that they cannot compete with these markets.

## 5.2 Representivity levels in councils: responses from council parties and the DOL

The next section discusses the influence of the identified threats on the membership numbers of the parties to the council, and the stance of the DOL regarding their representivity levels.

### 5.2.1 Strength of registered parties

Not all interviewees were forthcoming on membership numbers. Table 3 below indicates the registered membership numbers for the three councils that provided figures. The loss in employee numbers is evident, although numbers in the chemical industry have not changed much over the years. According to the NBCCI interviewee, the various trade unions in the chemical industry are all strong and stable, and employees generally only change jobs within the sector. The influence of the economic downturn is apparent when comparing 2005 with 2010 figures.

**Table 3**  
**Registered parties' strength (includes non-parties)**

Year	Registered employees	Registered employers
NBCCI		
2001	83 643	197
2005	79 332	240
2010	72 427	210
BIBC (CGH)		
1995	29 337	1 409
2000	21 102	1 091
2005	33 584	1 641
2010	31 940	1 474
NBCCMI*		
1998	80 635	834
2000	69 954	702
2005	83 081	1 138
2010	57 021	965

**Source:** Figures provided by interviewees. (MIBCO and the MEIBC did not provide any figures.)

\*The NBCCMI's scope was changed to cover the whole of South Africa after 2003. Figures provided for 1998 and 2000 reflect only metropolitan areas, whereas the 2005 and 2010 figures include non-metropolitan areas.

### 5.2.2 Trade union membership

With the exception of SACTWU, unions were not forthcoming on their membership figures. However, it was the view of most of the respondents that, in line with international trends, trade union membership figures have declined in the past 15

years, mainly because of job losses. Still, SACTWU indicated that this did not mean that its power had diminished; on the contrary it had remained the same – SACTWU is still the sole labour party at the NBCCMI.

In three of the industries (building, chemical, and metal and engineering), interviewees indicated that trade unions had lost touch with their members, a factor that contributes to declining membership. For example, the BIBC secretariat interviewee stated the following: *“Trade unions have little to offer. The non-trade-union guy also gets an increase. They have lost some status. Often now the bargaining councils will do what the unions used to do. It is almost as if the councils are eroding the power of the trade unions.”* In addition, the lack of resources and skills to deal with new employment practices is cited as the main reason for declining membership. *“In fact”,* he said, *“if left to their [the trade unions] own device, they may not always survive. It is the bargaining council that often keeps them up.”* The MEIBC and RMI spokespersons emphasised that unions were in difficulties because of the exodus of skilled and experienced trade unionists after 1994, from which they had not managed to recover. Moreover, trade unions often focus too much on political issues. The MIBCO representative indicated that unions are understaffed, and lack the time and resources to address all the needs in an industry. The RMI interviewee added that unions are expensive for lower-paid employees. At the time of writing, NUMSA, for example, was charging 1% of the wages of employees as membership fees – a costly contribution for employees earning relatively low wages.

When asked whether unions participate in membership recruitment drives to increase their numbers, the CEPPWAWU representative answered that *“although recruitment drives are being planned and constantly talked about, it doesn’t get past that”*. The BWU interviewees agreed. However, around 2010 SACTWU engaged in a R1 million per annum recruitment campaign, and launched an aggressive “Save Jobs Campaign”; the combination has slowed job losses and it is hoped that the decline in membership will lessen. Furthermore, SACTWU has strengthened its participation in council affairs, spent more time preparing for council meetings and promoted the “value adding” agenda of bargaining councils. All these actions were taken in response to the economic challenges SACTWU has experienced over the last 15 years. Nevertheless, SACTWU’s membership figures still indicate a decline in numbers (see Table 4). Note that SACTWU serves other industries, and that all membership numbers are reflected, not only clothing industry employees.

**Table 4**  
**SACTWU membership numbers**

Year	Membership
1995	107 114*
2000	106 213
2005	105 276
2010	95 605
2013	85 000

**Source:** SACTWU interview; [www.sactwu.org.za](http://www.sactwu.org.za).

\*Estimated figure

### 5.2.3 Membership of employers’ organisations

It appears as if membership of employers’ organisations is less exposed to representation problems. One possible reason is the fact that all employers’ organisations in the research indicated that they support centralised bargaining.

According to the SACTWU respondent, the clothing sector has been the one exception in the past 15 years, with employers' organisations faced with membership challenges. The employers' organisations responded with a strong recruitment drive.

This is not to say that employers' organisations are not affected by macro-external influences. The BIBC (CGH) cautioned that the number of employers (and therefore also perhaps membership numbers) may increase because of the fragmentation of the industry as a result of increased subcontracting and other atypical employment trends – at the time of the study, in their area, 90% of employers employed fewer than 10 employees. However, as a rule employers' organisations were less affected by the recession. Many of these organisations (e.g. the MBA and SEIFSA) have existed for a number of years, giving them stability and credibility. Moreover, they offer other services, enhancing membership support. Some of these services also generate income, for instance, the consultancy services offered by SEIFSA.

Table 5 below provides example of SEIFSA membership numbers over the period of the research. From the figures it is evident that the number of firms declined in the early 2000s. Among other factors, a recruitment drive was launched at that time, and additional services offered to members at a fee. The number of firms peaked in 2007/2008, and declined thereafter, mostly because of the economic downturn. The number of employees also increased around 2005/2006, but has declined by almost 20 000 since then.

**Table 5**  
**SEIFSA membership numbers**

Year	Firms	Total number of employees
1993/1994	2 600	192 500
2000/2001	2 150	162 440
2005/2006	2 590	257 550
2007/2008	2 713	248 899
2008/2009	2 483	244 543
2009/2010	2 379	239 773
2012/2013	2 190	221 942

**Source:** SEIFSA (interview 2010); SEIFSA Annual Review 2013 ([www.seifsa.co.za](http://www.seifsa.co.za)).

#### 5.2.4 *The DOL's stance towards representivity figures*

All interviewees agreed that the DOL's stance towards representivity figures has become stricter than it used to be. This is also supported by previous research (Holtzhausen & Mischke 2004). At the time (2004), no difficulties were experienced with the extension of agreements; this was taken as a matter of course. However, during the research that forms the basis of this article, the AMSA interviewee indicated that extremely compelling submissions and arguments are necessary to get agreements extended when representivity levels are not retained in an industry. Although no clear policy is forthcoming from the DOL, figures of above 40% representivity are said to be the norm for sufficient representation.

On the question why the DOL is being stricter, a variety of responses were offered. The BIBC (CGH) secretariat indicated that the reason for this could be that the minister had been faced with a couple of court cases where employers took the matter of extending agreements without the necessary representivity figures to court. Another reason is the need to provide legitimacy to the process. The AMSA representative



agreed and stressed that extended agreements must have legitimacy in order to protect the bargaining council system.

However, many of the interviewees said that the minister had to take the new employment structures and the related impact on representivity figures into consideration. The AMSA interviewee argued that in the clothing industry, employment levels had dropped even though the number of firms was on the increase. Big companies were closing down, resulting in many job losses. However, increasingly smaller firms had been established. The minister should rather focus on whether the relevant parties have the interests of the industry at heart (e.g. by looking at the history of the council), as this is more important than the numbers the councils represent. In the end, it was argued, the stability of the industry is more important than any numbers. According to MIBCO, mature councils should not be hampered by representivity levels: “[P]ower and accountability should be delegated to the council.”

### 5.3 Extensions of agreements to non-parties

The question should be asked what the effect of these lower representivity levels is on the extension of agreements to the councils researched.

In four of the five councils, agreements have always been extended,<sup>vi</sup> albeit not without certain difficulties. According to the MIBCO spokesperson, 2010 was the first year in which they had really experienced problems with having their agreement extended. The RMI interviewee mentioned that from 1999 to 2010 they had only once managed to obtain a certificate of representation.

The NBCCI is the one exception, although substantial changes are foreseen. All three interviewees indicated that the council is preparing for extensions – not only is it reviewing their constitution, agreements and policies, but it is also putting all the necessary structures and procedures in place. An exemption appeal procedure for the industry is currently being negotiated. This is no easy task and has been on-going for some time. The changes are deemed to be necessary because the DOL will not consider extending agreements otherwise. The employers’ representative was adamant about the need for extensions: “Agreements that are not extended to non-parties lead to unfair competition, as these non-parties may keep their wages lower than the negotiated rates. Our agreements have to be extended.”<sup>vii</sup> He also emphasised that representivity figures remain challenging:

*“Part of this lies with figures used to determine representivity. The DOL came up with a figure from the UIF database of over 7 000 firms in the chemical industry. It just cannot be! At most there are 300 firms. It points to a problem with the definition of the chemical industry.”*

All interviewees in the chemical industry stressed that employers sometimes threaten to leave the council if their demands or wage offers are not met, or if the trade union’s demands – according to them – are too extravagant. As stated by the employers’ representative: “Agreements not extended to non-parties become a ‘bargaining chip’ in the hands of employers.” However, the NBCCI secretariat mentioned that because agreements are not extended to non-parties, the council has the advantage that membership is totally voluntary, which means that compliance is not an issue – parties that are members of the council want to be members, and therefore they comply.

All interviewees agreed that extending agreements brings stability to industries because everybody knows what is expected. The SACTWU respondent explained this as follows: “Instability at plant level is avoided, as everyone is aware that there are centrally prescribed and extended conditions of employment.”

## **6 Conclusion and recommendations**

In the study on which this article is based, the researcher aimed to determine how bargaining councils adapted to the changing environment over the 15-year period from 1995 to 2010 in order to help them deal with the challenges they face. This article focuses specifically on challenges related to the representivity of parties to the council.

It became evident from the research that bargaining councils are in the midst of an extremely uncertain period and that even though councils are often regarded as the only way forward, a number of pertinent problems and challenges exist – one of the most prominent challenges being a decline in representivity levels. This has important implications, as non-representivity may – in the worst-case scenario – lead to the ultimate collapse of a council. Councils are voluntarily constituted organisations. Without the support of the respective parties to a council, that council would cease to exist. Furthermore, non-representivity may result in failure to extend agreements in bargaining councils to non-parties, thus defying the purpose of centralised collective bargaining.

The findings of the study pointed to a number of collective bargaining trends and challenges.

Firstly, a decline in trade union membership and power is evident, especially in the private sector. This impacts negatively on the council system, even though trade unions strongly support the council system. Secondly, it is evident that employers' organisations are firstly moving away from centralised bargaining and secondly face similar challenges to trade unions regarding their representation, although to a somewhat lesser degree. Nonetheless, membership numbers within employers' organisations have declined over the past 15 years and the clothing sector has reported representivity challenges. All interviewees agreed that the decline in representivity for both trade unions and employers' organisations can mostly be ascribed to economic challenges resulting in an increase in unemployment and growing informal and small business sectors (all of which have been evident in the last few years), and the changing world of work. Trade unions find it difficult to recruit members under these conditions, as do employers' organisations – although to a less significant extent compared to trade unions. Many employers' organisations have existed for a number of years, giving them stability and credibility. Not all industries are equally affected, mainly because of each industry's specific circumstances. There is much pressure on unions in particular to reverse the situation, although only one union reported an active recruitment drive. Unions furthermore need to focus on delivering good and relevant service to their members. In contrast, declining membership in employers' organisations, when evident, is addressed through strong recruitment drives. Employers' organisations also continuously expand their services according to market requirements. Although employers' organisations seem to be reducing their services associated with (centralised) collective bargaining, all employers' parties interviewed indicated support for centralised bargaining, as do the trade unions.

The research thus confirms the challenges regarding representivity, and consequently extensions of agreements in bargaining councils. Parties support the extension of agreements, since refusal to extend agreements to non-parties could lead to unfair competition. Even so, a decline in the coverage of collective agreements through extensions is evident. It is therefore important to indicate the impact of extensions. From 1995 to 2005, private sector coverage declined substantially, especially in the construction and manufacturing sectors. Nonetheless, except for the NBCCI, all other council agreements covered in this research have always been

extended up to 2010. Often the extension of a council's agreement to non-parties is based on the discretion of the MOL, and is not granted because the council parties are representative. The DOL has become stricter about this issue – and parties indicate that strong arguments are required to convince the minister to extend agreements. The fact that the Labour Court has also recently revoked the extension of an MEIBC agreement will in all probability influence the way the MOL views the extension of agreements in future – a factor that may impact severely on the future of bargaining councils in the private sector especially, where trade union representation levels are often low and declining.

Some recommendations that may be helpful in increasing representation levels flowed from the research. These recommendations are applicable to the council itself, the MOL, and to the two main parties to the council. These recommendations are discussed below.

Firstly, councils need to focus on service delivery, making it worth the employers' while to remain involved in the process (trade unions are strong supporters of centralised bargaining; this is not always the case with employers).

Secondly, challenges brought about by the trend towards an increase in atypical employment should be proactively approached by both parties. Parties to the councils need to find innovative ways of improving their representivity. Unions need to be more active in recruiting members in order to combat their decline in membership numbers, and should ensure strong leadership with adequate skills in order to stay relevant to their members' needs. Trade unions, in particular, need to act on the criticisms levelled at them. Employers have increasingly used atypical forms of work (e.g. the use of temporary employment services), and now need to look at innovative ways of dealing with the sterner approach adopted by the DOL, as well as the latest amendments to the LRA introduced in 2015, which impact strongly on the use of temporary employment services. It remains to be seen from future research how this will affect parties' representativeness.

Thirdly, interviewees cautioned that the minister should take into consideration new employment structures and the related impact on representivity figures. It is argued that the minister should rather focus on whether the relevant parties have the interests of the industry at heart – the stability of the industry is ultimately more important than any numbers. This is another area where further research is imperative.

In addition, gaps have been identified in the results which could form possible areas for future research. Firstly, additional research on the impact of restructuring in the workplace and the casualisation of labour is necessary to better understand all the reasons relating to this phenomenon. For example, a study on the historical evolution of migrant and other forms of atypical labour in South Africa could shed light on all the possible influences of workplace restructuring and increased casualisation on the council system. Secondly, research should be undertaken on possible other external and internal influences within the councils. These include technological developments and changes to organisational strategies, processes, procedures and systems, such as changes in financial systems and human resource management strategies. Lastly, further research is necessary to explain the practices and conditions that shape the ways in which different industries are structured and the different way in which industries experience and respond to changes in economic conditions and labour market regulations. Such research should attempt to shed some light on the impact or consequences of these practices and conditions.

From the discussions above, one can conclude that one of the main challenges faced by parties to the councils is how to become and then remain representative. This is imperative in order for the councils to remain relevant and to survive. There is little doubt that representivity challenges can be regarded as the Achilles heel of bargaining councils.

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#### Endnotes

- <sup>i</sup> The data refer to the representivity of parties that are registered – unregistered (i.e. non-compliant) parties, although technically covered by the councils, are not included in the calculations (Godfrey et al 2006b). The clothing sector is a case in point: this council's representivity is 52% on the first measure. However, when unregistered parties are included in the calculation, the figure drops to 39%.

- ii Godfrey et al (2006a) highlight one problem in these data: bargaining councils do not know about those firms that should be registered with a council, but fail to (or refuse to) do so – had they known about them, these firms could have been pursued and encouraged to register. However, this shortcoming means that the failure to include employees at non-compliant firms (which are technically covered by extended agreements) to some extent discounts the above-mentioned figures. The overall coverage of councils and the coverage of non-parties are therefore higher – although it is practically impossible to know by how much.
- iii The inputs refer to those macro-external aspects impacting on labour relations (and also on the organisation) – for instance legislation, role players, institutions, and other influences like the economy, changes in technology, politics and so forth. The throughputs refer to the processes and procedures within the organisation that each subsystem uses in order to fulfil the basic management functions of planning, organising, leading and control. This will determine, to a large degree, the successes or failures of the organisation in the form of outputs – be they customer satisfaction, productivity, or labour relations-related effects, such as lower levels of absenteeism etc.
- iv Vulnerable employment is defined as the sum of own-account workers and workers contributing to family businesses. It is thus indicative of informal economy employment (ILO 2010).
- v In the researcher's opinion it is almost impossible to *control* variables, even when researchers endeavour to do so.
- vi Note that at the time of the research, the MEIBC agreement, since revoked by the Labour Court, had not come into play.
- vii This interview was conducted in Afrikaans. The researcher translated all the quotations from the interview with the chemical industry employers' representative.