

CHAPTER 7

WORKER PARTICIPATION, JOINT CONSULTATION AND JOINT DECISION-MAKING

7.1 INTRODUCTION

The discourse in this chapter focuses on three inter-related topics namely worker participation, joint consultation and decision-making. Worker participation is examined in its direct and indirect forms. The direct form of worker participation in countries such as Japan and the United States together with examples of the indirect mode of worker participation from Germany, India and Australia are presented. Involvement, a concept often used in the discussion of worker participation is also examined.

The discussion of joint consultation commences with a clarification of the concept. The functions of a consultative structure are also examined. Matters for consultation as provided for in the Labour Relations Act of 1995 (LRA) are then presented. This section of the chapter concludes with an appraisal of the meaning of the duty to consult.

In the last section of the chapter the practice of joint decision-making in the organisation is investigated. Matters for joint decision-making in South Africa as provided for in the LRA of 1995 are also explored. The section concludes with a discussion of the provision of reaching consensus through joint decision-making.

7.2 WORKER PARTICIPATION

Horwitz (1981) defines worker participation as the perceived degree of influence which workers have on decisions affecting them. The process of participation may be viewed in terms of both direct and indirect participation of individuals or groups in decisions which relate to the performance of their jobs. Examples of direct participation are job enrichment and team building. Indirect participation refers to collective participation by way of worker representation on formal structures of consultation and negotiation.

Worker participation can include a whole spectrum of forms that range from those found within the boundaries of an organisation to social policy participation outside the organisation in the environment in which the organisation finds itself. Forms of within

organisation participation range from participation at workstations level, involving direct supervisory/employee relations about daily tasks to high level participation involving elected employee representatives. The following sub-sections examine how worker participation is practised in a number of countries.

7.2.1 Direct worker participation

7.2.1.1 Japan

Employee participation in Japan occurs through a system of quality circles. The quality circle approach started in the 1950s. The key objective of the approach is cost reduction. This was achieved through improved quality controls and techniques of quality control. Monden (1983) writes that an important feature of the success of this approach is the emphasis on "*respect for humanity*".

Quality circles are small groups of workers who meet voluntarily to decide on quality control functions within the company. The groups meet for an hour a week during work time to solve work-related problems (Dale and Boaden, 1990 and Imai, 1991). By 1991 there were an estimated 3 million Japanese workers involved in 170 000 quality circles in Japan. Quality circles form an integral part of lean production systems which use *kaizen* techniques to continually reduce costs and raise quality and productivity (Imai, 1991).

Effective cost reduction management involves a reduction as a consequence of reallocation of operations, reduced waste, greater efficiencies and the introduction of machinery. Monden (1983) believes that at the same time it is possible to "show respect for humanity" through making work more meaningful and effective and keeping lines of communication open in the organisation in order to enhance trust and effective problem solving. Effective suggestion schemes draw upon the ideas of frontline workers to improve organisational functioning and at the same time create a sense of recognition and participation amongst the participating workers.

7.2.1.2 The United States of America

In the 1980s changes in the US business environment, managerial resistance to unionism and incentives for cost reduction through non-union operations put an end to

the traditional system of labour relations and gave rise to a new system of managerialism (non-unionism). The crisis caused by labour costs in competitive markets in the early 1980's meant that there was no longer a place for the old adversarial rule-based system of labour relations. Non-union firms were found to have greater flexibility in the use and management of human resources, had lower costs, were more profitable and had lower levels of conflict compared to unionised firms (Anstey, 1997:476).

Business realities forced companies to experiment with the idea of worker participation and decentralisation of bargaining. Driven by business needs this called for greater involvement of workers in work processes. Changes in the workplace towards greater participation had two objectives: first, to increase participation so as to overcome adversarial relations and increase worker motivation, commitment and problem-solving potential and second, to alter the organisation of work in order to simplify work rules, lower costs and increase flexibility in the management of human resources (Kochan, Katz and McKersie, 1986).

Quality circles were the first form of worker participation to be introduced in US firms in response to their success in companies in Japan. Quality circles turned out less successful than anticipated because the US labour system designed for adversarialism did not prove conducive to the quality circle approach. Imai (1991) points out that Japanese labour/management relations are traditionally less confrontational than that which are found in Western economies. This could also be one of the reasons why quality circles lost their appeal in South African companies.

In response to the disappointing results with quality circles Quality of Work Life programmes (QWL) comprising labour/management committees at all levels in an organisation were introduced in unionised companies. These committees sought to draw union influence into decision-making processes, while leaving bargaining for substantive negotiations. Lawler (1991) writes that research into QWL programmes indicates increased employee satisfaction as they become more involved in problem-solving and decision-making whereas adversarialism in relations reduces satisfaction. Unfortunately employee satisfaction alone does not lead to increased productivity.

7.2.2 Indirect worker participation

7.2.2.1 Germany

Fisher (1978) examined the West Germany application of worker participation. Much of the history of German labour/management relations involved the extension and development of co-determination which has evolved at both plant and enterprise level.

Co-determination at plant level is implemented through the Works Council and is aimed at increased participation of the individual worker in his immediate work environment. This type of co-determination was first sanctioned by law in Germany in 1920. After suppression during the Nazi era, Works Councils re-appeared during the Allied occupation with enhanced and expanded roles as they served the purposes of the Allied powers to establish a non-Nazi leadership.

Co-determination at industry level on the other hand did not enjoy widespread acceptance. Prior to World War II this form of co-determination *i.e.* labour having a say in governing boards of large companies was unheard of. During the Allied occupation the labour movement was able to effect co-determination as a policy in the Coal and Steel industries in the Ruhr region. Fifteen member supervisory boards were introduced (model 1). When the Christian Democratic Government wanted to change this arrangement they were forced to legalise it in an act under threat of a strike in 1951. The government then responded with the Enterprise Organisation Law of 1952 that regulated the structure outside the steel and coal industry. According to this arrangement shareholders retain a two-thirds majority in the 15 member supervisor board (model 2). Most industrialists regard this as an optimal arrangement to the problem of labour participation.

The development of the labour/management relationship in Germany is closely linked to the tenets of the political parties in power. To deal with the issue of expansion of co-determination the Biedenkopf Commission was appointed and presented its report in 1970. The Commission held that both models were unsatisfactory and recommended a 12 member supervisory board of which one half is elected by stockholders and four by employees and the remaining two members had to be agreed on by the board. This recommendation of the Commission was never implemented but the three major

political parties agreed that there should be parity between labour and capital. After heated debate between the Social Democratic Party and the Free Democrats a new model 2 was adopted. This model made a distinction between high and low level employees for the first time.

After the election in 1972 the Social Democrats and Free Democrats worked out a compromise model 3. Ten of the members of the 20 member supervisory board would be elected directly by the shareholders. Labour representatives would be indirectly elected by groups of electors nominated by employees. The labour representatives must include three union representatives and one high-level employee. A chairman and deputy chairman are elected from among the members of the supervisory board.

After years of more debate the Co-determination Act of 1976 was promulgated on July 1, 1976. The basic goal of parity in the Supervisory Board remains, but the labour side is now classified into three different groups: workers, salaried employees and senior executives.

The three co-determination models discussed here are displayed graphically in figure 7.1.

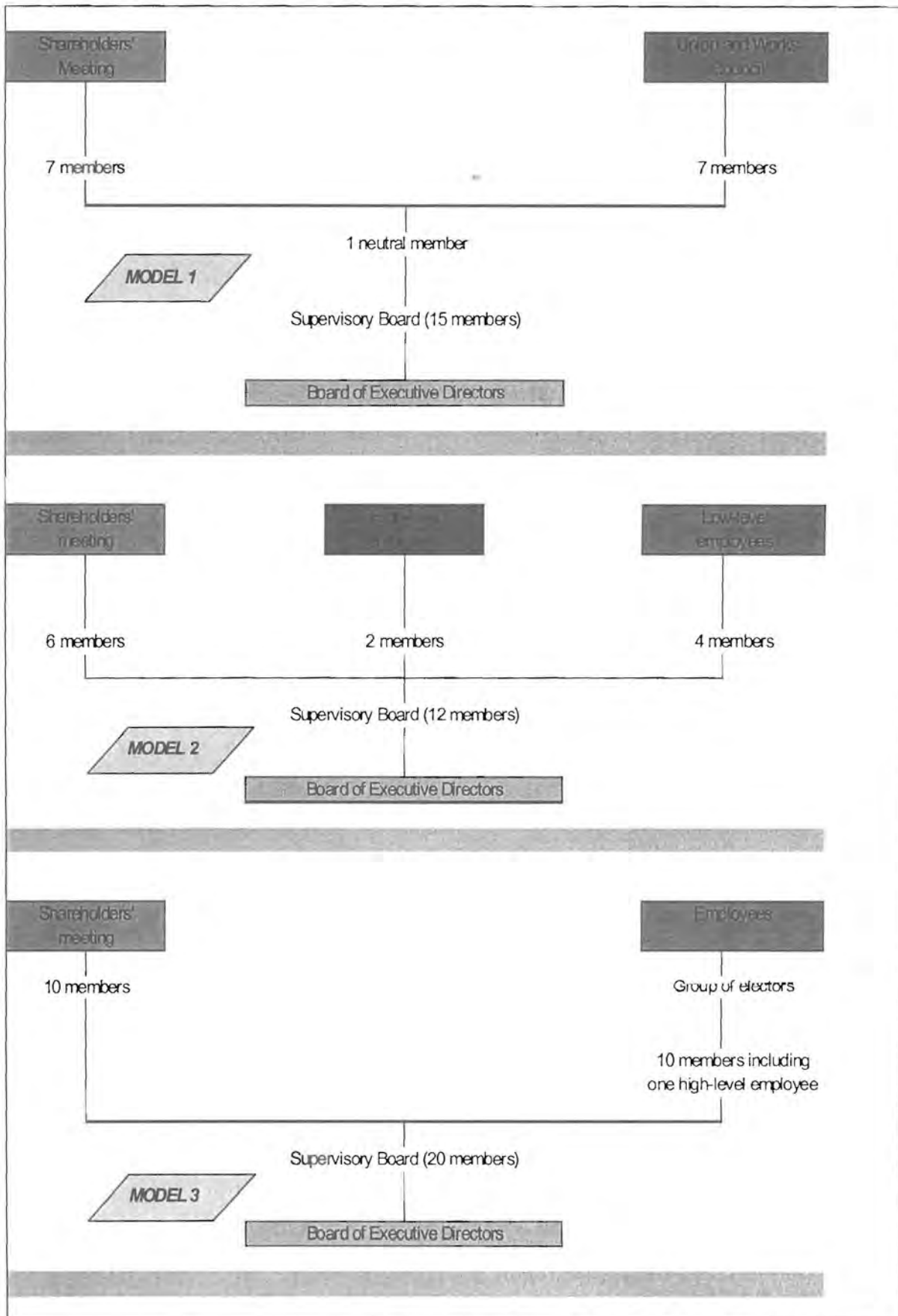


Figure 7.1: The development of different models of co-determination in Germany.

Source: Fisher (1978)

7.2.2.2 India

In describing worker participation in India, Makindy (1985) writes that worker participation dates back to 1918 when the then Tata Iron and Steel Company made an initial attempt to involve workers in the management of the company. The first legal step in the direction of employee involvement in decision-making processes was taken in 1947 with the Industrial Disputes Act which stipulated that all industrial units with more than 100 employees must establish works committees (WCs) with an equal number of representatives from employers and employees. As WCs were not effective the government in 1956 introduced joint management councils (JMCs). The JMCs were also not effective so legislation was enacted in 1970 to introduce participative management at policy-making level of the enterprises by inducting worker directors to the boards of companies. In 1975 the Shop and Joint Council Scheme was introduced as institutionalized forums for communication and consultation between labour and management. In 1989 the Government introduced further amending legislation on worker participation in management. This Bill was only enacted some years afterwards.

In spite of the ineffectiveness of participation in industry-employee-involvement, decision-making at grass roots tells another story. At shopfloor level employees were participating in decision-making by means of quality circles (QCs). Management's direct involvement of employees in decision-making led to a decline in trade unions. This management strategy triggered a period of severe trade union militancy which caused extreme hardship for ordinary members and eventually led to the overthrow of the union leadership. Trade unions in due course changed their attitude and adopted a more co-operative approach with management.

7.2.2.3 Australia

Describing the Australian position on employee participation, Lansbury and Davis (1992) report that employee participation in workplace decision-making first emerged as an important issue in Australia during the 1970s. In recent years discussions concerning this have focussed on industrial and organizational implications especially with regard to productivity and performance rather than on the broader philosophy which dominated earlier debate.

Employee participation (referred to as employee involvement in North-America) has been associated with employer-initiated programmes which stress the advantages both to the individual and to the enterprise when workers become more involved in decisions related to their work. The Australian Labour Party and the unions have preferred the term industrial democracy - for them this concept expresses an extension of the political rights of workers, through which they can exercise greater influence over decisions affecting their lives at work (Lansbury and Davis,1992).

The Australian government's policy discussion paper "Industrial democracy and employee participation" released in 1986 defines industrial democracy as "*.... employees being able to influence the decisions that affect their working lives ... it means genuine participation; having a real say employee participation describes the processes and practices for achieving a greater degree of employee influence in individual enterprises and workplaces*". Participation denotes more than merely being present at the decision -making process. The important ingredient is the influence that each party brings to bear. Every variant of the process has been observed; in some situations one party has no influence at all while in others the two parties have equal influence.

The 1980s witnessed the creation of a more favourable framework for the development of employee participation schemes as a result of the 1983 Prices and Wages Accord between the Australian Council of Trade Unions and the Australian Labour Party. Other government initiatives to encourage participation were the Public Sector Reform Act of 1984 and the Affirmative Action (Equal Employment Opportunity for Women) Act 1986. From the mid-1980s onwards union and employer main councils endorsed the implementation of strategies to achieve higher levels of consultation and employee participation, explicitly in order to improve workplace productivity and performance.

The connection between employee participation and improved economic performance was highlighted in the 1987-91 national Wage Case hearings. Each of these landmark national Wage Case decisions over this period commented on the pivotal role of cooperation and consultation. Thus by the beginning of the 1990s there appeared to be not only a broad consensus on the importance of information-sharing and consultation, but also growing pressure within the industrial relations system for their implementation.

Research in the 1970s and 1980s indicated a wide range of views among workers, managers, union officials and employers on employee participation. In the view of Spillane, Findlay and Borthwick cited in Lansbury and Davis (1992) employers prefer "immediate" forms of participation such as job enrichment, which involve workers in decisions at lower levels in the hierarchy. By contrast, workers tend to favour "intermediate" forms such as greater involvement and provision of more adequate information from management or more formal arrangements such as joint consultative meetings. Less support has been found among all parties for more "distant" forms of participation, such as representation at board level.

The 1980s saw considerable experimentation with different forms of employee participation and industrial democracy. Some innovations were introduced through semi- autonomous work groups and various forms of job redesign which provided individual workers with opportunities to develop their skills and competence and exercise greater control over the production process. There were also some examples of workers' cooperatives which have attracted very little government support. Financial participation is becoming more common in the private sector, but it must be noted that employee participation is not necessarily the primary objective of such schemes. Advocates of greater employee participation have commonly argued for its implementation as being integral to good human resources management.

The Australian government has been reluctant to legislate directly on employee participation and industrial democracy. The majority of workers enjoy no specific right to information or consultation over workplace matters. By contrast the South African situation after 1996 differs dramatically in that the Labour Relations Act of 1995 makes specific provision for participation through Workplace Forums (WPFs). The WPFs have defined rights in terms of which certain matters must be consulted on while on others joint decision-making is required.

The Australian Council of Trade Unions (ACTU) has endorsed aspects of the Swedish approach to industrial democracy in regard to the direction which Australia should follow. Both government and the ACTU have emphasised the value of industrial democracy and worker participation to improve the competitiveness of Australian industry.

7.3 INVOLVEMENT

A related concept that often causes confusion in discussions of employee participation, is employee involvement. Locke and Schweiger (1979:265-339) regard "*participative decision making as joint decision making*". This definition is unfortunately of little use as it does not clearly indicate whether employee participation and employee involvement are different phenomena or the same.

Dachler and Wilpert (1978) describe employee involvement as "*a systematic approach to redistributing the responsibility and accountability for problem solving and decision making to the lowest appropriate level*".

In order to understand employee involvement Van Aken, Monetta and Sink (1994: 39) suggest using the extent of participation identified in literature such as: the degree to which it is formal versus informal; the degree to which it is direct versus indirect; the level of influence that individuals have; and the nature of the decisions they make. For these authors the definitions of participation do not inherently exclude white collar and knowledge workers, but tend to emphasize involving lower level employees. This emphasis on the lower level positions, also seems to be the view of Salamon (1998: 356) judging from the position where involvement is placed in his model. Ledford (1993) seems to concur with the previous two opinions when he cites Lawler and his associates who define employee involvement "*as.... extension of power to make decisions and of business information, rewards for performance and technical and social skills to the lowest levels of the organisation*".

Ledford (1993) identifies three different types of employee involvement. *Suggestion involvement* is usually introduced through management practices such as quality circles that are introduced as an adjunct to the formal structure without real change to the organisation. These forms of involvement were particularly popular in South African organisations in the late 1980s and early 1990s. *Job involvement* entails that workers assume greater control over daily decisions concerning their jobs, through the introduction of self-managing work teams. *High involvement* includes the previously mentioned two forms of involvement but differs in that it extends to involving employees in the management of the business. Extensive changes in power, information sharing (disclosure), skill building and human resources systems are common in such organisations. From the literature (Lansbury and Davis 1992) it appears that

involvement is the term preferred in North America when worker participation is discussed. Other authors (Salamon,1998; Dachler and Wilpert, 1978 and Ledford ,1993) restrict the meaning of involvement to the participation of the lower level workers in an organisation.

Anstey (1997:473) writes that direct forms of participation have traditionally been at the lower levels of an enterprise in the form of quality circles and more recently team systems. The development of such systems can be found in Japan from where they spread to the USA. Western Europe took a totally different view of worker participation. Trade unions were more in favour of indirect forms of participation which found expression in different variants of works councils. These bodies were aimed at participation and operational decision-making through the processes of information disclosure, consultation and co-determination. This indirect form of employee participation is also the approach the South African legislators chose for the labour relations system since 1994. The introduction of Workplace Forums, discussed in Chapter Eight of this study, could be viewed as a South African version of a works council.

Salamon (1992:346 and 1998:355) points out three characteristics which may be used to categorise different forms of participation in organisations and developed a model to illustrate this:

- the method or extent of participation: direct forms reflecting active individual employee involvement in decision-making processes and indirect forms in which participation takes place through elected representatives;
- the level within the organisation: participation ranging from work station to board level;
- the scope of participation: those which are direct and at lower levels in an organisation tend to be task centred, while higher level indirect forms tend to be power centred.

In the adaptation of Salamon's (1992:347 and 1998:356) model (Figure 7.2) the direct forms of participation are found in the lower left corner of the model. Workplace Forums and Works Councils would be found at a higher level in organisations and are also closer to the indirect side on the method of participation axis. The diagonal axis

illustrates the objectives of the various forms of participation.

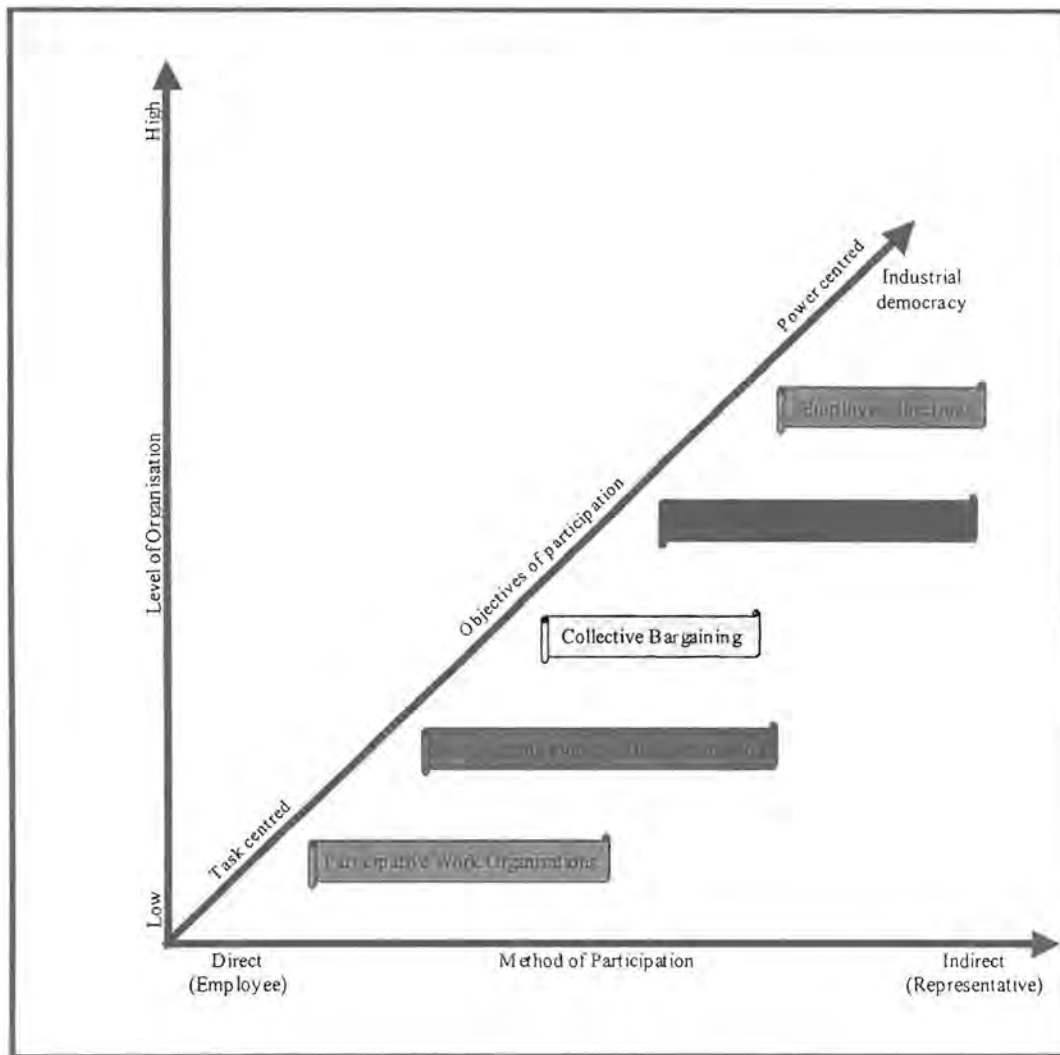


Figure: 7.2: A model of different forms of employee involvement and participation

Source: Adopted from Salamon(1998: 356)

7.4 PERSPECTIVES ON WORKER PARTICIPATION

In their study of South African organisations, James and Horwitz (1992) found that managers and workers believe that joint decision-making should take place at the job/task level, though this was not happening in practice. An important factor in this regard is that managers and workers are not aware of each others' perceptions about aspects of participation. Erroneous assumptions are made about participation in general.

One reason why worker participation programmes are not implemented is the traditional directive style prevalent in South African organisations. There is also said to be a feared loss of managerial authority. However, the results of their study show that managers do not see worker participation as necessarily reducing managerial control. This points towards the concept cited by James and Horwitz (1992) called expandable control. A possible reason why workers want to reduce managerial control is to gain greater power and influence.

There is a desire among workers for more participation at job level, be it full or partial. Although both workers and management groups also agree that participation does not occur at policy decision-making levels, managers are uncertain whether there should be worker participation at that level (James and Horwitz, 1992).

Workers and managers felt that workers should have the knowledge and skills for participation at the job/task level, but that they do not currently have the propensity for making higher level policy decisions.

Even though managers feel there exists some opportunity for workers to influence their own jobs, workers disagree about this. For example, the appropriateness of a suggestion scheme to provide the desired range of participation needs is limited.

Regarding direct and indirect participation workers appear to support both types of participation, which can be interpreted as wanting more participation generally. Workers and managers felt that external political changes are the least important in affecting worker participation.

Ramsay (1976) examining participation from a shopfloor perspective came to the following conclusions: individual employees are mostly interested in how participation affects their own jobs; collective bargaining as a means of increasing influence does not get as much support as expected; as a goal *per se* participation is not that attractive to workers relative to other perceived requirements of a job. Nevertheless there is considerable demand for a greater say by shop floor workers in decisions affecting them.

In the remainder of this chapter two of the processes through which worker participation takes place in organisations, namely consultation and decision-making, will be

considered.

7.5 JOINT CONSULTATION

McAllister (1989: 2) writes that consultation (often referred to as joint consultation or co-operation) involves an attempt to influence decision-making. Hovels and Nas (1977:119) define joint consultation as " *the independent formulation of problems concerning any aspect of management policy by elected members on behalf of workers and from the point of view of the employees, its discussion with top management and the attempt to influence top management policy on such a basis* " .

Consultation is generally regarded as a weak form of participation and some writers do not regard it as a form of participation at all. Poole (1978:76) for example, comments that situations in which management effectively exerts control are incompatible with full participation in decision-making. For Poole participation demands some real sharing of decision-making powers (at 62). In terms of Hovels and Nas's (1977:110) definition, workers' representatives identify subjects to be discussed with management, define their standpoints on issues, put the workers' viewpoint and "... *enlarge on management's definition of the situation*" and thereby seek to influence the conclusions reached at meetings. In addition, representatives should enjoy certain rights in a consultative system, such as the right to information, to protest, to make suggestions, and so on. Whether or not one calls this "*participation*" depends on how one defines the term writes McAllister (1989: 2).

Vernon (1996:1) in seeking to describe what is meant by consultation, writes that some managers see it as an unnecessary burden. Some unions regard it with suspicion, believing that it enables managers to bypass the existing negotiating machinery. He cites the British Advisory Conciliation and Arbitration Service that defines consultation as "*the process by which management and employees or their representatives jointly examine and discuss issues of mutual concern. It involves seeking acceptable solutions to problems through a genuine exchange of views and information.*"

MacInnes (1985:101) comments that if one wants to discuss joint consultation it is useful to be quite clear exactly what is meant by the term. For him joint consultation is not the consultation which exists as part of national collective bargaining nor is it the almost

universal practice of individual managers "sounding out" the shopfloor opinion on different matters. It can also be distinguished from formal and informal collective bargaining in that binding agreements, precedents or decisions do not emanate from the discussions. What constitutes joint consultation in his view is plant or company specific arrangements involving a stable body of people meeting on a regular basis.

According to MacInnes (1985:102) such arrangements provide that the chairman or managing director periodically addresses the workers on company performance. Before addressing the workers these executives take the opportunity to meet shopstewards beforehand and in some cases minutes are kept. Such encounters deserve to be regarded as part of the process of consultation, but respondents seldom thought of them as "*joint consultation*".

In his research MacInnes further found that the respective aims of management and worker representatives were remarkably consistent across the case studies. Managers saw consultation as a forum for explaining to worker representatives why various decisions were taken, especially ones which might be unpopular and why the ability of management to take decisions speedily and effectively was important. Consultation should educate shopstewards or worker representatives about the economics of business life e.g. profitability and therefore productivity was important for survival, job security and good wages. Managers tried to exhibit that their prerogatives and right to manage were not authoritarian but a function of their expertise and requirements of business efficiency. Consultation was therefore a forum for management to demonstrate the common interests of management and the workforce.

Worker representatives had a less comprehensive set of ideas about consultation. This is both consistent with the more fragmentary character of their values systems generally and a symptom that their views are rooted in responses to management initiatives. Representatives saw it as an opportunity to gain information they could pass on to their constituents, raise grievances and impress upon management the singular interest of the shopfloor in such issues as job security.

According to Hawes and Brookes (1980) consultative or joint consultative machinery has a long history in Britain. In the latter half of the nineteenth century committees in which management and workers had representation, existed in a number of companies (Clegg, 1955). As far back as 1923 Cole wrote that employers deliberately sought to

avoid dealing with new trade unions by creating alternative channels for regular communication of management's views. Regular, formally established consultative machinery only became incorporated into the routine of British industrial relations during and after the First World War. Between 1922 and 1939 consultative committees declined throughout industry except in larger companies. The Second World War radically changed this situation. Consultative bodies were revived on a massive scale – joint production consultative committees were essential for increasing production for the war effort.

As the 1950s progressed it became increasingly more difficult to sustain the argument that the rigid division of functions between consultative arrangements and collective bargaining and negotiation, which had been advanced up to that point by many adherents of joint consultation, could and should be maintained. A decline in joint consultation set in in most sectors as Jacques indicated in 1951 (cited by Hawes and Brookes, 1980).

During the 1960s joint consultative machinery continued to exist in many sectors, but was generally seldom utilised by the parties involved. Hawes and Brookes (1980) cite Clegg (1970) where he referred to joint consultation during this period as *"little more than an adjunct of collective bargaining"*. However survey data from the 1970s indicate that there was a considerable increase in the number of formal joint consultation machinery arrangements established in the manufacturing industry since the early 1970s and that the range of issues discussed had also become broader. The next decade saw a stabilisation of the number of joint consultation arrangements between 1980 to 1984. During the same decade there was a slight decline in the numbers in the manufacturing sector but this was made up for by the increase in joint consultation machinery structures in the public sector (Marchington, 1987:44).

Vernon (1996) writes that before 1 March 1996, UK legislation restricted the right to be consulted over redundancies and business transfers to representatives of independent trade unions which were recognised by the employer. Already in 1994 the European Court of Justice had held that such restrictions meant that the UK was in breach of European Union regulations. This led to the introduction of the Collective Redundancies and Transfer of Undertakings (Amendment) Regulation of 1995 which came into effect from 1 March 1996. The continental influence in bringing pressure to bear on the UK

to move closer to the continental system of joint consultation is therefore quite clear.

In terms of the above regulation, employers may choose to consult either representatives of a recognised trade union or representatives elected by the employees concerned. Consultation requirements do not apply where the employer proposes to dismiss fewer than 20 employees during a 90-day period; arrangement for election of representatives will be left to the employers' discretion, but subject to certain detailed requirements; *ad hoc* arrangements for electing representatives will be allowed and consultation with appropriate employees representatives must begin "*in good time*" (Vernon, 1996).

7.5.1 Reasons for consultation

According to Vernon (1996) the notion that employees can contribute to management's decision-making process is not a new one. It is crucial to teamwork and total quality initiatives and, indeed, to the whole process of change management. By using effective consultation methods, the quality of management decisions is likely to be enhanced considerably. Once a decision is made in this way, there is far more chance of ongoing commitment and co-operation from employees.

Allowing employee participation in management decisions can be complicated and hard to manage at first but is worth pursuing because it makes the entire organisational structure more connected. The well connected organisation is better able to handle change and evolve when necessary (Ashmos, Duchon, McDaniel. and Huonker, 2002:189).

7.5.2 Functioning of a consultative structure

The following suggestions have been made by Vernon (1996). One of the first decisions to make when setting up consultation arrangements, is whether a permanent committee is needed or whether to make do with an *ad hoc* arrangement as the need arises. Supporters of the *ad hoc* committee idea argue that these committees tend to be more focussed in their approach and that time is not wasted on trivial matters.

The frequency at which the committees are likely to be convened would seem to favour

a standing arrangement. Using an existing committee may also be less expensive than setting up a new committee each time the need arises and having to go through a learning curve to become fully functional.

It is important to ensure that any existing union representative structure is closely integrated with consultative arrangements if the process is to enhance rather than detract from good industrial relations.

MacInnes' (1985) research found that in addition to the differences in perceptions between managers and worker representatives, there were also tensions within their respective approaches to joint consultation. Management's aim of justifying managerial prerogative by demonstrating its roots in managerial expertise and competence, absolutely contradicted the aim of using the shopfloor to tap employee expertise and evaluation of proposals. Worker representatives' aim of tempering managerial prerogative by influencing managerial decision-making, in turn, was restricted by their reluctance to share responsibilities for decisions that were not the result of collective bargaining.

Some of this sentiment of not wanting to be committed to decision-making unless derived from collective bargaining was also detected amongst South African unions (Van der Walt, 1997). Worker representatives saw no reason to volunteer to exercise responsibility only. The result was that what started as an attack on managerial prerogative became a reaffirmation of it: it was solely management's job to manage better. Both parties resolved to keep consultation and collective bargaining separate and avoid negotiable items in the consultation process. In practice the dividing line between the two processes was not always clearly distinguishable.

MacInnes (1985) found that managers viewed discussions prior to decisions as threatening to weaken their prerogative as a result of inviting opposition to their decisions. However, this then precluded incorporating shopfloor experience in decision-making. Discussions sometimes became exercises in management proving the misguided nature of the workforce's criticism rather than a search for solutions to common problems. Controversial issues were rarely brought to the consultation table. They threatened the unity spirit which management valued, while worker representatives did not wish to tackle such issues with their negotiating hats off.

The MacInnes's (1985) investigation also found a cyclical pattern in many of the consultation arrangements examined. In the early stages of the consultation process, consultation is usually so imprecisely defined as to command widespread support. However, as the consultation progresses it gradually becomes clear that it is not satisfying the expectations of either party. Sometimes this initial confusion of purpose is identified and steps are taken to try and reform the process in some way so as to accommodate the aspirations of both management and the workforce. The ideology of unitarianism in management sustains the belief that consultation ought to be desirable and successful. Although consultation ought to work it never seems to reach that point. Either one of the parties decides the effort is not worthwhile and the attempt is abandoned or consultation becomes a very marginalised activity. Sometimes when a new manager arrives, who is more enthusiastic about involvement or some events make it desirable, the consultation arrangement is resuscitated and the cycle to establish joint consultation resumes.

Marchington and Armstrong's (1983) survey into joint consultation discovered that those organisations that had maintained a history of successful consultation had done so by virtue of their managements' philosophy towards employee relations in general which had been sustained despite increased environmental pressures such as economic recessions. The accompanying consultation process also illustrated the commitment of management to employee relations. In those organisations in which consultation achieved little or had collapsed, it was found that consultation was not accorded a high status. Management of these companies did not attend the consultation meetings which were characterised by the shop stewards as being used by management to confuse or indoctrinate the employees.

In organisations where there is an effective centralised union organisation, consultation is viewed in a more favourable light by both parties to the consultation process. In such circumstances unions are able to oppose employers' actions rather than having to rely on their goodwill. It has also been a recurrent theme in recent literature that employers may abandon certain tactics for fear of encountering worker resistance (Marchington and Armstrong, 1983).

Marchington and Armstrong (1983) also conclude from their research that consultation has an effect on the trust between employer and employee representatives. One major

advantage of consultation cited by shopstewards as well as managers, is the way in which it can lead to better relationships between the two parties. They also point out that the maintenance of high trust in itself is greatly dependent upon performance in the market place or on the shopfloor and the ability of both parties to keep their promises.

From their case studies it does not appear to Marchington and Armstrong (1983) as if joint consultation is taking over from collective bargaining as a primary mechanism of joint regulation. In the highly unionised establishments which were keen to maintain a distinction between the two processes and for the shopstewards especially, joint consultation was a useful adjunct to collective bargaining.

7.5.3 Matters for consultation in terms of the LRA of 1995

As stated elsewhere WPFs were introduced to provide rights to employees to influence decision-making. One such right is the right to be consulted over specified matters. Section 84 of the LRA makes it clear that a WPF has to be consulted on matters enumerated in the section, unless there is a collective agreement regulating such matters.

The fact that a WPF has to be consulted on the listed matters shows the extent to which the legislature was prepared to reduce the scope of management in decision-making. Deal (1995:22) provides a system that divides these matters into four categories. They are: Business decisions: investment decisions, corporate structures, strategic business plans, mergers, transfers and partial or total plant closures. Production decisions: production and development plans, introduction of new technologies and work methods. Organisational decisions: changes in the organisation of the work, working time patterns and restructuring the workplace. Personnel decisions: dismissals based on operational requirements, education and training and job grading.

It is possible that through a collective agreement, matters for consultation with a WPF may be reduced. This would obviously be contrary to the objective of extending employees' influence. If a collective agreement already regulates one of the matters Sterner (1996:59) is of the opinion that WPFs have no right to be consulted on such a matter. A reduction of matters for consultation can occur as a result of making concessions which will extend gains on other matters for the employees. Section 84(2),

however, creates the impression that what the legislature had in mind was rather an increase in the matters for consultation. The implication here is that collective agreements should not be limiting but rather contribute to the widening of the scope for consultation. In Germany it is also possible to increase consultation rights of works councils through collective agreements. (Federal Labour Court, 1988:466).

Additional matters for consultation with WPFs may be agreed upon by a bargaining council according to section 28 (j). For Khoza (1999:144) it is very significant that it is at a central level where additional consultation matters can be decided upon. What still remains to be seen is whether trade unions can accept these increased powers for WPFs or whether WPFs will thereby become competitors of the unions. He writes "*In the latter case the structural impact on the labour movement and on the system of industrial relations as a whole cannot be ignored.*"

It is also possible for the parties to define the matters for consultation in the constitution of a WPF, by adding or deleting matters listed in section 84(1). In addition WPFs may acquire the right to be consulted on any matter provided for by any other law according to section 84(5). This same section also provides that a representative trade union may agree with the employer that the WPF may be consulted on health and safety matters according to applicable health and safety legislation.

7.5.4 The meaning of the duty to consult

Section 85(1) reads that "*Before an employer may implement a proposal in relation to any matter referred to in section 84(1), the employer must consult the WPF and attempt to reach consensus with it.*" This means that the employer must initiate the process. For Khoza (1999:144) this provision is problematic as it may weaken the effectiveness of the consultation process because the employer is given the right to decide whether or not to initiate consultation which may be only when he believes he is in a stronger position relative to the WPF. A situation so created would not serve the purpose of the Act which is to create greater employee involvement in decision-making. Du Toit *et al* (1998:276) agree with this sentiment with the statement "*the aim of the Act to provide a structure of on-going dialogue between management and workers, has only partially been realized*".

The start of the consultation process can impact on the effectiveness of the decision-making process. Under the previous legislation the Appellate Division in the Atlantis Diesel case (1994) ruled that consultation should begin as soon as the employer recognises that the business is failing, considers a need to remedy the situation and identifies retrenchment as a possibility. Under the retrenchment provision the current LRA specifies in section 189 that when an employer contemplates dismissing one or more employees for reasons based on the employer's operational requirements, the employer must consult.... The section then specifies who must be consulted.

Section 85(1) does not specify exactly when consultation with a WPF on section 84(1) issues should begin, apart from the fact that this has to be before implementation of the proposal. This could lead to employers taking a decision and then pretending to be consulting openly with the WPF. The practices in the Netherlands and Germany provide some guidance in this regard. In the Netherlands, consultation must commence in a "timely fashion" in terms of the Works Council Act of 1979, Section 25(2) to permit both careful consideration of issues presented and also to permit the advice of works councils to affect the ultimate decision-making process. In Germany the Works Constitution Act of 1952 Section 90 specifies that consultation with the council must commence "in good time". However, as a result of the broadness of the terms "timely fashion" and "in good time" they do not offer much clarification on when consultation should begin. In Denmark the Corporation Agreement of 1947, article 3 provides that management must involve the corporation committee (similar to WPFs) at an early stage in the decision-making process, so that the viewpoints of employees can be taken into account (Knudsen, 1995: 86).

Section 85(2) of the LRA provides that the employer must allow the WPF an opportunity during the consultation process to make representations and advance alternatives. This provision contributes to the consultation process. According to section 85(3) the employer must consider and respond to the proposals made by the WPF and if the employer does not agree with the proposals, reasons for disagreeing must be provided. The WPF is given the opportunity to make meaningful and effective proposals which may ultimately influence the decision of the employer.

In the Netherlands, the Works Council Act of 1979 Section 25(3) provides that before a company's management board may render a decision on certain specified subjects,

it must seek the advice of the works council. The works council must be advised in advance of the reasons for the decision being contemplated, the consequences it will have for the employees and the measures management intends to take in the light of those consequences. The Dutch system prescribes what information the employer must make available to the works council. Bearing this practice in mind, the Dutch approach could serve as a model for making consultation in WPFs more effective.

Section 85(1) of the LRA spells out that the consultation process must attempt to reach consensus. It does not make agreement mandatory and such consultation must be distinguished from joint decision-making and negotiation under collective bargaining. If the WPF and the employer fail to reach any agreement, the employer is entitled to implement his proposal, after making use of any dispute resolution mechanism. This indicates the extent to which the management prerogative to make final decisions on matters listed for consultation has been maintained. Although WPFs are permitted to make representations on alternative proposals this means very little if employers ultimately implement their own proposals. The fact that the employer can still implement his own proposals seems to endanger the very nature of the consultation process.

The LRA provides an opportunity for a third party to assist the workplace forum and the employer to be reconciled if they do not agree. This is effected through any agreed procedure between the parties which may be included in the constitution of the WPF in terms of section 82 and possibly in a collective agreement, where applicable. If one of the parties believes that there was non-compliance with the procedure for consultation, such a dispute may be referred to arbitration according to section 94, providing a further limitation of the management prerogative (Khoza, 1999:147-148).

Ottervanger (1996:401) writes that in terms of section 26 of the Dutch Works Council Act of 1979 if an employer has obtained the advice of the works council and then proceeds to make a decision that is contrary to the advice of the council, the employer shall immediately advise the council of his decision and explain why he has not followed the council's advice. Where the employer has made a decision that is contrary to the advice given, he may not implement such a decision for thirty days during which time the works council may appeal to the Enterprise Chamber of the Amsterdam Court of Appeal. The sole basis of appeal to the Enterprise Chamber needs to be that the employer's management board could not reasonably have reached the relevant

decision had it weighed all interests involved. This is a very strong mechanism for maintaining checks and balances on the process of consultation compared to the weaker system under the LRA. After reviewing the decision, the Enterprise Chamber may issue an order requiring the employer to withdraw the decision as a whole or in part and to reverse specified consequences of the decision or to prevent the company from taking any acts implementing its decision. The decision of the Enterprise Chamber may be appealed to the Supreme Court of the Netherlands. Khoza (1999:148) believes that *"to ensure that parties are focussed and that employees are given an effective opportunity to influence the decision-making process,"* strong mechanisms to evaluate the substantive and procedural correctness of the decisions should be put in place in the LRA similar to the Dutch system.

7.6 JOINT DECISION-MAKING

Schregle (1970) writes that the most widespread form of associating workers with decision-making is the works council, works committee, enterprise committee or similar body through which management/employee relations at the enterprise level have been institutionalized. In some countries such committees consist of worker representatives only and in other committees the members include both management and worker representatives. In other countries both approaches exist side by side.

Whether labour/management cooperation has been created by agreement or statute the functions and decision-making authority vary greatly from one country to the other and include variations in respect of information, consultation, negotiation and co-decision rights. It would be fallacious to link the concept of participation too closely with the existence of special machinery for institutionalizing labour/ management relations. What is important is the extent to which workers have an influence in the decision-making process in an organisation acting through their representatives.

Schregle (1970:120) writes that there was a large measure of agreement by experts that workers should be associated with making and carrying out decisions in matters directly related to working conditions. The focus of controversy is in fact whether worker representatives should be involved in the financial, production, marketing and other economic decision-making processes traditionally exercised by management. Opinions on this differ widely. On the one side both management and the unions believe

management should have the final say based on the fundamental principle of management's responsibility to the owners of the enterprise. Trade unions which are directly involved in management decisions would no longer be in a position to effectively promote and protect worker interests.

A contrasting view, as found in Germany and Scandinavian countries, holds that workers should have a direct say in management decisions including financing, production, planning etc. They argue that it is impossible to distinguish between management decisions that affect workers and those that do not. It is reasoned that all management decisions in one way or another affect the workers of an organisation.

In terms of the broader definition of participation in decision-making both parties maintain their independence, with the trade union's role seen as one of moderating or influencing management decisions. Worker participation (or in its extreme form: worker control) may also be seen as a desire or demand by labour to be engaged in decision-making at various levels in the organisation. This may be part of a reformist approach which does not seek radical transformation or as part of a radical approach to transform production relations. If it is part of radical transformation the objective would be full worker control which trade unionists describe as worker self-management or industrial democracy. However, worker participation should be seen as ranging on a continuum from very limited forms (pseudo participation) to full control in which industrial relations have been transformed totally (Pateman, 1970: 68-69).

Coldwell (1992) writes that the extent of unionised and non-unionised workers' participation in decision-making depends on several factors beyond the organisation's control. These factors are the political circumstances in a particular country; whether the country is socialist or capitalist oriented; the permissiveness or prescriptiveness of the rules and regulations pertaining to unionisation and the existing economic situation.

Participation programmes have often not been negotiated with unions and management seems to feel that such programmes need not be negotiated because they do not affect wages or conditions of service. Most existing programmes do not result in increased earnings but instead operate on the principle of recognition. Unions are opposed to such programmes because they may be used to undermine the unions and may not give workers real benefits. Also many suggestions put forward by participation committees

are not acted upon by management.

The inclusion of workers in joint decision-making is regarded by trade unionists as a victory and furtherance of industrial democracy. Given the history of the trade unions' struggle for recognition in South Africa such a belief is understandable. Von Holdt (1995:33) writes "*that co-determination (whether in the form of workplace forums or some other form) could confer important powers on unions to participate and shape decision-making in the workplace... co-determination provides unions with the power and means to democratize the workplace and improve the quality of working life...In a real way it allows unions to tame and civilize the employers*".

As joint decision-making is a new approach in South African labour law, there are few precedents on the subject. The idea for this approach originates from Germany with its system of co-determination (Halbach, 1994:150-152; Sterner, 1996:50-73).

Section 86 of the LRA prescribes co-determination rights for workplace forums in the form of joint decision-making. The employer not only has to give the relevant information about envisaged decisions, it has to meet with the workplace forum in an endeavour to reach consensus. The matters for joint decision-making can also be regulated by collective agreement between the parties. If the parties incorporate matters for joint decision-making in the collective agreement, the employer is no longer required to meet with the WPF but with the trade union. As in the case of WPF consultation only the employer can initiate joint decision-making.

This provision differs considerably from the German practice where the works council has an equal right to initiating co-determination. According to Halbach (1994:150-152) the German legislature found this requirement necessary because otherwise the employer could prevent the works council from exercising its right to co-determination by not taking any action to make co-determination possible.

7.6.1 Matters for joint decision-making in terms of the LRA of 1995

In terms of section 86(1) joint decision-making with a workplace forum is required in respect of the following matters: disciplinary codes and procedures, rules relating to the proper regulation of the workplace itself, measures to protect and advance persons

disadvantaged by unfair discrimination and changes to rules regulating social benefits schemes. This is however a very narrow range and may reflect a compromise by the legislature on not further reducing the already shrinking managerial prerogative. However, it is interesting to note that matters can be added through collective agreement between a representative trade union and an employer in terms of section 86(2) and any other law e.g. the Employment Equity Act No 55 of 1998 section 16(3), can increase the matters for joint decision-making as per section 86(3).

The LRA also permits limitation of the issues of joint decision-making with the workplace forum through collective agreements with a representative trade union. This again means a derogation of participation rights. Collective agreements are not deemed the appropriate means for the regulation of the issues for joint decision-making because such issues may lead to the application of pressure in the collective bargaining process. If the parties cannot agree on matters, the employer cannot implement the proposals. Therefore in such matters the employer cannot bypass the WPF. This is important in respect of absence of the right of taking the initiative. As with consultation the LRA does not provide for the right of the WPF to demand a decision from the employer regarding issues for joint decision-making. Therefore the WPF is not able to force the employer to change or reassess issues listed in section 86(1) of the LRA.

7.6.2 Reaching consensus through joint decision-making

Section 86 of the LRA requires that an employer must consult and must reach consensus with a WPF before implementing a proposal. This is different from section 85 where only an attempt to reach consensus on matters for consultation is required.

The mandatory agreement required by this section indicates a stronger sense of purpose in striving for employee participation in decision-making.

In the event of the WPF and the employer not being able to reach consensus the employer may in terms of sections 86(4) (a) and (b) refer the dispute to arbitration in terms of any agreed procedure; or if there is no such procedure, to the CCMA. The CCMA must attempt to resolve the dispute, if it remains unresolved, only the employer may request that the CCMA resolve the dispute by arbitration. It is interesting to note that the original Bill was changed after revision. Originally the CCMA automatically had

to resolve the dispute by arbitration if conciliation failed. The LRA makes arbitration available only at the instance of the employer.

The present position of the LRA on referral to arbitration appears to favour employers. Only the employer may request arbitration of the dispute or decide not to take any action at all. Therefore whether a dispute is settled or not depends entirely on the employer, who can always threaten to drop the matter, which may not be in the WPF's interest. As the WPF may have an interest in the proposed changes but in a different form, the WPF is left ineffectual (Sterner, 1995:72). The reason for this change in the revision of the original Bill reflects the interest and fears of management according to Du Toit *et al*, 1998:10). "*The LRA is an attempt to reconcile the interests of labour and management, but in the process important needs and rights of WPFs are to a large extent ignored.*"

Examining how similar situations in other countries are dealt with, we find that in the Netherlands if the works council does not agree with decisions proposed by the management board, the board may request the Industrial Committee to approve the decision. Such approval will obviate the consent of the works council. This means that the decision-making is removed from both the works council and the employer and instead is made by the Industrial Committee. It could happen that both the works council and the employer make representations after which the Industrial Committee makes a decision very similar to arbitration. A decision by the employer without the consent of either the works council or the Industrial Committee is null and void (Ottervanger, 1996: 403).

In Germany section 76 of the Works Constitution Act No 15 of 1952 states that if a works council and an employer do not reach agreement a ruling shall be given by the conciliation committee. The decision shall override any agreement entered into by the employer and the works council. It is worth noting that in both Germany and the Netherlands conciliation is not a prerequisite prior to a decision being made by independent bodies. Khoza (1999:151-152) is of the opinion that because of conciliation provisions the LRA is more employee friendly because it gives employees a chance to get a decision to which they clearly have contributed although it may not be absolutely in their favour. If the dispute is unresolved it goes to arbitration which allows an independent body to make a decision which it deems appropriate, leaving the parties with a decision to which they are bound. This may be seen as a decision in

which the employees had little if any say and may make implementation of such a decision difficult. The parties are then left with an arbitration award which is final and binding and may not be appealed. Employees also may not take industrial action. However, in certain circumstances (e.g. a defect in the arbitration proceedings) the arbitration award may be taken to the Labour Court for review. (Sections 145 and 158(1)(g).)

7.7 SUMMARY

Worker participation is considered from a direct as well as an indirect approach together with a few examples of countries which apply the respective approaches. Joint consultation is clarified and the provisions of South African legislation are explored. Joint decision-making in general and the provisions of the LRA of 1995 for joint decision-making are also discussed.

From a review of the literature it is apparent that worker participation differs from country to country. One of the approaches in categorising worker participation would be whether participation of workers is of a direct or of an indirect nature. Even within these two broad categories countries differ in their approaches in applying worker participation in their respective countries.

Involvement is a concept that is often used in the context of discussions of employee or worker participation. From the literature it appears to be the term preferred by researchers of worker participation in North America. Some authors restrict the meaning of participation to the lower level workers in an organisation which is also the level where the direct form of worker participation is found.

Joint consultation between management and labour is a well established practice in most Western countries albeit in different forms. Joint consultation is practised since there is a belief that employees can contribute to management's decision-making and that it creates an opportunity for workers to influence management's decisions. Since the introduction of the LRA of 1995 in South Africa matters for consultation through workplace forums are clearly listed in legislation.

Joint decision-making is also a relatively new approach in South African labour law. The

notion for this approach has its roots in the German system of co-determination. Co-determination rights have also been introduced to South Africa through section 86 of the LRA of 1995 which sets out the joint decision-making rights of workplace forums.

CHAPTER 8

WORKPLACE FORUMS: A SOUTH AFRICAN MODEL FOR INDUSTRIAL DEMOCRACY

8.1 INTRODUCTION AND BACKGROUND TO WORKPLACE FORUMS

In this chapter Workplace Forums (WPFs) as introduced to the South African labour sphere by the Labour Relations Act of 1995 (LRA), is discussed. Workplace Forums are the South African model for promoting industrial democracy and worker participation in the workplace.

The introduction of Workplace Forums is one of the most innovative ideas contained in the LRA. In this regard Du Toit, Woolfrey, Murphy, Godfrey, Bosch and Christie (1998:45) remark *"It represents a shift from the tradition of adversarial collective bargaining between employers and trade unions over all matters of mutual interest towards a division of labour between trade unions and workplace forums in representing employee interests."* The reason for this separation of distributive bargaining and cooperative relations can be found in the Explanatory Memorandum to the Draft Bill (Government Gazette no. 16259 of 1995:135-136) *"In creating a structure for on-going dialogue between management and workers, statutory recognition is given to the realization that unless workers and managers work together more effectively, they will fail adequately to improve productivity and living standards workplace forums expand worker representation beyond the limits of collective bargaining by providing workers with an institutionalized voice in managerial decisions."*

From the explanatory memorandum it is clear that the drafters of the LRA were strongly influenced by similar structures and practices in Western Europe. (See also Wood and Mahabir, 2001:232). In the 1970s managements across Europe realised that if they were to move from mass production to flexible production they would have to give employees a say in decision-making. This led to the development of a system of employee participation which has taken on the form of works councils in countries such as Sweden (Anstey, 1997), Germany and the Netherlands. Works councils are similar to workplace forums (WPFs) as envisaged in the LRA.

8.2 PARALLELS BETWEEN THE DEVELOPMENT OF GERMAN WORKS COUNCILS AND SOUTH AFRICAN WORKPLACE FORUMS (WPFs)

As mentioned above many of the features of work councils have been taken over for use in WPFs. Therefore one of the best known works council systems, that of Germany, will be used to draw parallels with WPFs. Du Toit *et al* (1998:45) observe that despite any superficial resemblance between WPFs and works committees established in terms of the Black Labour Relations Act of 1953 or works councils in terms of section 34A of the LRA of 1956, on closer inspection neither amounts to a statutory system of worker participation as conceived in the current LRA.

8.2.1 The development of works councils in Germany

Worker representation in Germany can be traced back to 1835 when Robert von Mohl introduced a proposal for the establishment of workers' committees with the view to profit-sharing, a rather progressive idea at the time. Some of these ideas were eventually included in the proposed Industrial Act (Gewerbeordnung) of 1848 but unfortunately this proposed Act was never enacted. In 1863 the labour movement became better organised with the founding of the General German Workers' Association especially after its amalgamation with the German Workers' Party in 1875. In 1878 socialist trade unions were banned as they were regarded as a menace to society (Sterner, 1996:8).

During the period 1870 to 1890 some religious and liberal companies voluntarily introduced worker representation. Employers and not the labour representatives were the first to establish worker participation as they believed participatory structures would contribute to job satisfaction and prevent the unions from influencing the workers.

Sterner (1996:9) notes that the Worker Protection Act of 1891 was the first legislative attempt at the voluntary establishment of works committees. Worker committees established during World War I – necessitated by economic demands of the war effort – ensured legal protection for the first time. After the war full recognition of trade unions was guaranteed and every company employing more than 20 employees had to establish worker committees, thus introducing co-determination of employment conditions to the German labour relations system. Unions opposed this dualistic

representation system and favoured unified worker representation by unions at plant and industry level. The Works Council Law (Betriebsrätegesetz) of 1920 regulated the formation and the functioning of works councils and was the forerunner to the present day Works Constitution Act.

Worker participation was derailed by the rise of the Third Reich in 1933. After the end of the World War II a need was felt to restructure the entire German economy by drafting a new act on worker participation. The unions were in favour of co-determination in relevant economic matters, but the final Works Council Act of 1952 upheld the principles of the free market and provided for participation in consultation only and excluded joint decision-making. In 1972 the Works Constitution Act was passed to accommodate economic and social changes in the country. Works councils were then afforded co-determination rights in the form of joint decision-making (Sterner, 1996:9).

It must be pointed out that the end result was not exactly what the unions or employers had in mind. The unions envisaged direct participation such as quality circles but this in turn was unacceptable to the employers. The unions' reluctance to support indirect representation stems from their fear of their influence being weakened by the works council. This is precisely the reason given by unions in South Africa for their reluctance in to establish WPFs (Van der Walt, 1997 and Van der Walt, 1998).

8.2.2 South African workplace forums

The South African economy has been on the decline for a number of decades and it never quite managed to achieve the growth rates of the early 1960s. Trade boycotts and sanctions of the 1970s and 80s, followed since 1994 by global competition, contributed to the deterioration of the economy. This in turn has resulted in many companies reducing the number of jobs with the consequential increase in the unemployment rate that currently stands at 45 % of the economically active population.

The South African labour scene has been known for its adversarial labour relations. Strike action and litigation were common occurrences. Co-operation between management and labour were very unlikely in these circumstances. The low productivity problem in the country could also not easily be addressed under such conditions. Change to the existing labour system first had to occur.

It is worth noting that section 1d(iii) of the LRA states that the LRA seeks to advance economic development by fulfilling the primary objectives of the Act, one of which is to promote employee participation in decision-making through WPFs. (See also Godfrey and Du Toit, 2000:15). According to Bendix, W. (1995:108) the democratisation of workplaces was also the motivation for the establishment of work councils in Western Europe. *"The core thought of the Western European philosophy of industrial democracy... is the democratisation of work life by employee representation and employee participation in workplace control and the daily decision-making process in the enterprise which as it has been argued, convincingly affects their life as well as that of managers, owners, shareholders if not more so..."*.

Another source of influence on the development of the South African labour relations system is the International Labour Organisation (ILO). The ILO has only had any real influence on South African labour relations under the new government and after an office was opened in Pretoria. The ILO has over the years passed several recommendations regarding consultation and co-operation between management and labour, the first being adopted in 1952. These recommendations had as objectives mutual understanding and good relations between the parties. According to Anstey (1995), this was to be achieved by joint consultation on matters concerning the interests of workers.

The early 1990s may be viewed as a period of transition in South African labour relations. The scope of labour relations was expanded to include workers such as agricultural workers who had never before been protected by labour legislation. The position of the State also changed and it became just another employer covered by labour legislation.

To get a better understanding of the intentions of the drafters of the LRA of 1995 it is appropriate to start with the South African Constitution against which all legislation is judged in the final analysis. The Constitution protects the right to property and the labour rights of freedom of association, organisation and collective bargaining. In Anstey's (1997:87) opinion the Constitution does not specifically refer to worker participation or co-determination which are only referred to by implication.

The Reconstruction and Development Programme (RDP), the policy framework of the

ANC, the majority political party in the government, serve as another important direction indicator for South African future legislation and particularly labour legislation. Anstey (1997:88), Du Toit *et al* (1998:47) and Godfrey and Du Toit (2000:15) quote from the RDP (1994, paras 4.8.6 - 4.8.8). It called for "*changes in employment patterns and labour market policies,*" including a system of collective bargaining that will give workers "*a say in industry decision-making*". The aim is to ensure that unions "*are fully involved in the designing and overseeing of changes in the workplace and industry levels*" as well as expanding the jurisdiction of industrial bargaining forums to include a range of RDP-related policy issues. Specifically, legislation must "*facilitate worker participation and decision-making in the world of work and should include*" an obligation on employers to negotiate substantial changes concerning production matters or workplace organisation within a nationally negotiated framework. Sterner (1996:15) also points out that the ideas of worker participation and democratisation are mentioned in the RDP and that these ideas were later incorporated into the LRA.

The drafters of the LRA and negotiators at the National Economic Development and Labour Council (NEDLAC) who developed and refined the proposal for legislative purposes, to a large degree supported the ILO guidelines and the RDP's policy framework. They took care particularly to ensure that independent unions and traditional collective bargaining should not be undermined as well as to shift the manner of management/union interaction from the historically adversarial-confrontational to one of consultation and joint decision-making.

The drafters were also very conscious of the need to improve the competitiveness of South African industry. Godfrey and Du Toit (2000:15) have also noted the importance of WPFs for the process of enterprise restructuring to improve productivity and become internationally competitive as found in the explanatory memorandum. The drafters' position was that WPFs were not meant to replace collective bargaining but to supplement it through a system of participation dealing with non-wage issues. A clear distinction is made between workplace forums and collective bargaining with enterprise-level workplace forums placed in a position similar to the works councils in Germany. A further reason for the drafters having to make this clear distinction was that unions had achieved considerable success with collective bargaining and would not have permitted a reduction of the influence they had gained through collective bargaining. Trade unions also had bad memories of works committees and works councils under

the previous dispensation. This led to the term workplace forum being preferred, rather than works council as they are called in Germany. Van der Walt (1997) found that this separation of functions to ensure the integrity of the collective bargaining system has not been totally successful as many unions still advance their fear of the undermining of their power as the main reason for not establishing workplace forums.

8.3 DESCRIPTION OF TERMINOLOGY

8.3.1 A workplace

Section 213 of the LRA dealing with definitions defines a “workplace” in the following manner:

“ (a) in relation to a sector in the public service in respect of which a bargaining council has been established in terms of section 37 has the meaning that the responsible Minister determines after having consulted the bargaining council;

(b) in relation to the remainder of the public service, has the meaning that the Minister for Public Service and Administration determines after having consulted the Public Service Co-ordinating Bargaining Council;

(c) in all other instances means the place or places where the employees of an employer work. If an employer carries on or conducts two or more operations that are independent of one another by reason of their size, function or organisation, the place or places where employees work in connection with each independent operation, constitutes the workplace for that operation.”

Although the final definition had been extended by the Act from that in the first Bill, the definition is not without problems. Sterner (1996:27) is of the opinion that a workplace is “*all the operations falling under an entity*”. The current author does not agree with this view and finds the LRA definition acceptable for the time being.

8.3.2 An Employee

In relation to WPFs an “employee” is defined in section 78(a) as follows:

"employee" means any person who is employed in a workplace, except a senior managerial employee whose contract of employment or status confers the authority to do any of the following in the workplace -

- (i) employ and dismiss employees on behalf of the employer;
(Deleted by section 23 of Act 42 of 1996)
- (ii) represent the employer in dealings with the workplace forum; or
- (iii) determine policy and take decisions on behalf of the employer that may be in conflict with the representation of employees in the workplace.

8.3.3 A representative trade union

Section 78(b) defines a representative trade union as "*a registered trade union or two or more registered trade unions acting jointly, that have as members the majority of the employees employed by an employer in a workplace*".

8.4 GENERAL FUNCTIONS OF A WORKPLACE FORUM

A workplace forum established in terms of Chapter V section 79:

(a) must seek to promote the interests of all employees in the workplace, whether or not they are trade union members;

(b) must seek to enhance efficiency in the workplace;

(c) is entitled to be consulted by the employer, with a view to reaching consensus, about matters referred to in section 84; and

(d) is entitled to participate in joint decision-making about the matters referred to in section 86.

Section 79 thus sets out four functions of workplace forums, the first two of which are general obligations owed by the WPF to employees and the employer and the other two are rights which the forum can claim from the employer (LRA, 1995 and Du Toit *et al*, 1998:255).

In Khoza's (1999:129) view workplace forums which are not constituted in terms of Chapter V of the LRA may not be bound to perform all the functions provided for. If a WPF is formed on the basis of a collective agreement, section 80(8) provides that the provisions of Chapter V do not apply, which may mean that the workplace forum will not provide for the interests of all the employees in that workplace. This may result in only members of the parties to collective agreement benefiting. However, if section 80(8) is read precisely it will be clear that even though a workplace forum has been formed on the basis of a collective agreement, it could still promote the interests of all employees in the workplace because all employees in a workplace are entitled to representation on the WPF. In addition there is nothing preventing the parties from including any of the provisions of section 79 in their collective agreements through referring the disputes to the CCMA.

One of the main functions of a WPF is to promote the interests of all employees in the workplace whether they are members of the trade union or not. Cheadle (1995:75) writes "*it is for the above reason that the composition of the workplace forum must be by way of direct election of members by the employees in the workplace (section 82(1)(c)). However, if a representative trade union is recognised by the employer for purposes of collective bargaining in respect of all employees in the workplace, then the trade union may choose the members of the workplace forum from among its elected representatives in that workplace.*" Consequently the composition of a WPF is very important in this regard, since this will possibly determine the ability of the forum to advance the interests of all employees in the workplace. As WPFs can only be initiated by trade unions, there is always the possibility of conflict between serving the interests of all employees in the WPF versus only the interests of the union members. It is for this reason that section 78(b) specifies that the trade union(s) concerned must be a majority union or unions. This is to ensure that unions will have the ability to represent the democratic views in that workplace. Section 94 provides for an aggrieved employee to hold the WPF accountable by challenging the validity of an agreement.

A second function of a WPF is to ensure efficiency in the workplace. Efficiency in the workplace has not been defined in the LRA and it still has to be seen how it is going to be defined. Some indication of what efficiency might constitute is given by Du Toit (1995:792). "*The only imperative identified with the functions of workplace forums is that of seeking to enhance efficiency in the workplace. Such an explicit directive will be*

binding on a court in a way that a general statement of intent by the Minister is not. The implication is that economic efficiency must take precedence over the requirements of democracy and that if 'efficiency' as understood by the courts demands it, workers' rights to be involved in decision-making must be curtailed." Although WPFs are intended to enhance co-operative behaviour in the workplace as is seen from the function mentioned above, there is always the possibility of conflict between management and the WPF over matters discussed with the union.

A real danger exists in the fact that employees are not prohibited from taking industrial action on matters listed for consultation. Olivier (1996:813) comments in this regard "*it is significant that the new Labour Relations Act does not exclude the possibility that employees may embark on strike action if agreement on a matter for consultation cannot be reached*". It may also happen that employees may engage in industrial action as employees and not as members of a WPF. On issues of joint decision-making, the WPF and employees may not take any industrial action. Where a WPF exercises its rights which then affect efficiency negatively, an employer should be able to apply to the CCMA in terms of section 94(1)(d) for relief. It would then be for the CCMA to decide whether the WPF is acting in compliance with its function of enhancing efficiency in terms of section 79(b).

The above-mentioned position in the LRA is in agreement with the Dutch model under the Works Councils Act of 1979 which has as objective to promote consultation with and representation of persons employed in the enterprise and in the interest of its proper functioning. By comparison the German model, at Section 74 of the Works Constitution Act, is more precise in its prescription of how parties in a workplace should cooperate (Knudsen, 1995:38). The employer and the works council must avoid activities that could interfere with operations or imperil peace in the establishment. The employer may not lock out the works council, nor may the works council call a strike in the organisation. Internal disputes must be dealt with through the intervention of the conciliation committee or the appropriate labour court (Halbach, 1994:136).

8.5 LAUNCHING A WORKPLACE FORUM

In terms of section 80(1) and (2) of the LRA any representative union may apply for the establishment of WPF in a workplace employing more than a 100 employees. The LRA

specifies that application should be made to the CCMA and a copy of the application be sent to the employer (Grogan, 1998:212). Section 80(5)(b)(iii) is also very clear that an applicant must ensure that there is no other functioning WPF in that particular workplace. In the event of no agreement between the trade union and the employer, the CCMA can establish a WPF against the will of the employer. If agreement is reached the CCMA is no longer required.

From reading section 78(b) it is clear that to be a representative union, a union or unions acting jointly, must represent the majority of employees. In the opinion of Du Toit *et al* (1999: 259) this leaves minority unions with three options namely, increase their membership to meet the cut-off point; minority unions may form a joint-venture for the purpose of gaining a majority or the minority union(s) can establish a non-statutory structure with the view to consultation and joint decision-making.

WPFs may only be initiated by a trade union and not by an employer or any other party. Why this is the case will be answered by examining evidence from a number of European countries from where some of the ideas for WPFs were borrowed. *"In the Netherlands, some two thirds of work councils members in the larger enterprises are trade unionists. The trend is even more pronounced in Germany, where some 86% of works council members are trade unionists and some 75% are members of unions affiliated to the social-democratic union federation, the DGB. Union representation on works councils is more than twice their representation in the workforce as a whole. In countries with higher union density such as Belgium, on the other hand, unions are said to have colonized work councils."* (Olivier,1996:799).

In Germany the Works Constitution Act makes provision for either workers or a trade union to initiate a works council. This practice holds certain advantages in that the works council is an employee institution and not a place for the union to promote its interests. Although experience indicates that work councils end up being dominated by trade unions, non-union employees can ensure that their interests are also served.

In the Netherlands, thirty-five or more employees working at least one-third of the normal week may establish a works council. In Australia the threshold is even lower where five employees older than eighteen years of age may establish a works council (Coopers and Lybrand,1992:176).

In South Africa the position is quite different. A WPF may only be established in an organisation employing a hundred or more employees. Bosch and Du Toit cited in Benjamin and Cooper (1995:266) and Olivier, (1996:808) believe this number to be far too high and could exclude 74% of employees in the formal sector. This begs the question how many organisations will therefore be able to meet these requirements. Van der Walt (1997 and 1998) has also found that the prescribed number requirement excludes many organisations. Nel and Kirsten (2000:53) have suggested that it should be made possible to launch WPFs in organisations with fewer than a hundred employees to overcome this problem.

Cheadle, as one of the LRA drafters (Benjamin and Cooper, 1995:267) states that the threshold was determined because larger workplaces are more likely to possess the necessary skill and knowledge to make WPFs function effectively. This view is unconvincing without evidence to substantiate such a claim. An obvious way to overcome this problem would be to compel employers to ensure that members of their WPF and the relevant managers undergo appropriate high quality training. This could be viewed as an extension of the philosophy which requires employers to make a greater effort to train and develop their employees as envisaged in the Skills Development Act of 1998 and the Skills Development Levies Act of 1999.

In spite of the requirements of the LRA, smaller enterprises are free to establish their own participating structures. However, consideration should be given to reducing the prescribed threshold in South Africa to a number more in line with international practice.

A related problem is the way in which the Act defines a workplace. Section 213 reads: *"In this Act, unless the context otherwise indicates, workplace:(c) in all other instances means the place where the employees of an employer work. If an employer carries on or conducts two or more operations that are independent of one another by reason of their size, function or organisation, the place or places where the employees work in connection with each independent operation, constitute the workplace for that operation."*

The question arises what happens if one employer has several business sites in close proximity to each other that each employs less than a hundred workers. To Grogan's (1998:212) mind each of these sites would be regarded as an independent operation

by reason of its size, function and organisation and therefore is excluded from the WPF provision. There is also the possibility that employers who would wish to avoid a workplace forum may organise their operations in such a manner that no single site employs a hundred employees.

The LRA unfortunately is not very helpful in this respect as it provides no definition of an "operation", neither does the Act determine the size required nor the criteria to be used to determine "independence". The Industrial Court under the LRA 28 of 1956 declared that artificially dividing an enterprise for the purpose of avoiding the intentions of the Act, constituted improper conduct (*Paper Printing Wood and Allied Workers Union v Lane*, 1993). The current LRA's definition of a workplace is also not very enlightening. The Labour Court (LC) has only recorded that the definition of the workplace in section 213 of the LRA was intended to apply whenever it appeared in the Act and bears the same meaning throughout the various sections of the Act (*Speciality Stores v Commercial Catering and Allied Workers Union and Another*, 1997).

The Labour Appeal Court (LAC) made a different determination by stating that a workplace may have different meanings in different circumstances under the Act. Froneman DJP stated that: "*It must be kept in mind that the definition of a workplace in section 213 of the Act is preceded by the qualification that it bears that meaning unless the context (of the Act) otherwise indicates*" (*SA Commercial Catering and Allied Workers Union v Speciality Stores Ltd*, 1998). The LAC may have provided a guideline for commissioners or arbitrators in dealing with employers who deliberately organise their enterprises in such a manner as to avoid the establishment of a WPF. Including an anti-avoidance clause in the LRA would help to ensure that employers do not use reorganisation of their enterprises as opportunities to avoid the establishment of WPFs.

8.5.1 Types of Workplace Forums

Jordaan (1996:2) notes that it is generally accepted that there are four types of workplace forums: bargained forums, forums with a bargained constitution, forums constituted by a commissioner and trade union based workplace forums.

Bargained forums:

In terms of section 80(2) a representative trade union may apply to the CCMA for the

establishment of a WPF. This can only happen if there is already agreement between the employer and the trade union about the establishment of a WPF. If all the requirements as specified in section 80(5) have been met the commissioner must assist the parties or the trade union and the employer to reach a collective agreement on the establishment of a WPF. If the trade union and employer reach agreement over the establishment, powers and constitution of the forum, the provisions of section 80(6) of Chapter V of the LRA do not apply. The parties are then free to add to or limit the functions of the WPF in their agreement. Herein lies a danger that unions could dominate the WPF to the detriment of non-union members.

Khoza (1999:137) points out a contrary interpretation in that the collective agreement derives its life from section 80(7) and should be reflective of the contents of Chapter V. This would mean that deviation should not be far from the Act and that section 79 should always form part of all collective agreements for the establishment of WPFs.

Forums with a bargained constitution:

Section 80(9) provides that should the parties be unable to reach an agreement on the rights, powers and duties of the workplace forum, they may nevertheless with the assistance of a commissioner reach agreement on the WPF's constitution. This would mean that the WPF would retain the functions in section 79 which include the organisational rights specified in section 85 and section 86. The guidelines for the content of the constitution in Schedule 2 item 4 (2) provide for the eligibility of non-union members to stand for election to the WPF. Section 82 will also be relevant because it contains provisions which must be included in the constitution of the WPF.

Forums constituted by a Commissioner:

Section 80(10) stipulates: *"If no agreement is reached on any provisions of a constitution the commissioner must establish a workplace forum and determine the provisions of the constitution in accordance with this chapter, taking into account the guidelines in Schedule 2 ."*

This section gives employees the opportunity to establish a WPF in spite of opposition from the employer. It is not clear whether the commissioner must intervene when there

is disagreement on the entire or part of the constitution, as there is no provision that the parties must declare that they disagree. It is for the commissioner to decide when to step in. If any of the parties are dissatisfied with the commissioner's performance such a dispute may be referred to the Labour Court in terms of section 158(1)(a) or section 158(1)(b).

Trade union-based workplace forum:

A trade union recognised by an employer in terms of a collective agreement may establish a WPF as prescribed in section 81(1). This must be a majority union that may bargain on behalf of all the employees in the workplace. Such a union can form a WPF exclusively from its own members, most probably the shop stewards committee. In this case sections 80 and 82 will apply with exception of those sections dealing with the election of members of the workplace forum.

Although the Act wants to promote employee participation through WPFs, this objective is severely threatened by the dominant role given to trade unions. The fact that a collective agreement is to be concluded for the establishment of a WPF introduces the concept of collective bargaining and adversarialism. The Act further provides for the election to the WPF of trade union shop stewards who may have a mind-set of adversarial bargaining which is in opposition to the cooperative approach necessary for employee participation. The principle that the WPF must serve the needs of all the employees is also threatened as most members will come from a trade union (Olivier, 1996:809). Khoza (1999:139) believes that although the Act provides for forums separate from the collective bargaining structures, the Act does not succeed in this institutional separation, at best the forums will be supplementary structures for collective bargaining dominated by unions.

In Germany works councils exist independently of trade unions. The Works Constitution Act prescribes the separation of functions and personnel and functional links between trade unions and works councils. Non-unionised employees are permitted to initiate works councils so that they will only have functional and personnel links with the trade unions (Halbach, 1994:134).

In South Africa trade unions and WPFs are independent institutions but they are linked

by some personnel and functional links. The power that trade unions presently enjoy over WPFs creates doubts about the independence of the WPF which is necessary in order to promote employee participation for the benefit of all employees in the workplace.

8.5.2 Requirements for the constitutions of WPFs

Section 82 and Schedule 2 provide guidelines of the requirements that the constitution of a WPF must meet. The constitution of every WPF must make reference to the following points:

A formula must be indicated determining the number of seats in the WPF. The normal formula that applies is :

100 to 200 employees - five members

201 to 600 employees - eight members

601 to 1000 employees- ten members

1000 plus employees - ten members for the first 1000 employees plus an additional member for every 500 employees up to a maximum of 20 members.

The constitution must also: give a formula for the distribution of seats to reflect the occupational structures of the workplace; provide for direct election of members of the WPF by employees; provide for the appointment of an employee as election officer; provide for the election of members of the WPF not later than 24 months after each preceding election; provide for a new election at any time within 21 months of the preceding election if another registered union becomes representative; provide for the procedures in which elections and ballots must be conducted; provide that any employee, including any current or former members of the WPF may be nominated as candidates by the registered trade union in the workplace or by a petition signed by not less than twenty per cent of the employees or 100 employees whichever number is smaller.

The constitution must further provide that in any ballot, every employee may vote by means of a secret ballot during working hours; provide that in every election every employee is entitled to cast a number of votes equal to the number of members to be

elected and to cast one or more of those votes in favour of any candidate if permitted by the constitution; establish the terms of office of members and the circumstances in which a member must vacate the office; establish the circumstances and manner in which members may be removed from office; establish the manner in which vacancies may be filled; establish the circumstances and manner in which meetings must be held; provide for reasonable time off with pay during working hours to prepare and conduct elections; provide members of WPFs reasonable paid time off during working hours to perform duties and receive training to perform those duties; require the employer to take steps that are reasonable to assist the election officer to conduct elections; require the employer to provide facilities to enable the workplace forum to perform its functions; provide for a full-time member of the WPF where there are more than a 1000 employees in a workplace; provide that the forum may invite any expert to attend meetings and that an expert is entitled to inspect and copy any document that the forum is entitled to; provide that office-bearers or officials of the representative trade unions may attend meetings and provide that the representative trade union and the employer by agreement, may change the constitution.

The constitution may establish a procedure for conciliation and arbitration of proposals in respect of which the employer and the WPF do not reach consensus; establish a co-ordinating WPF to perform any of the general functions of a WPF and one or more subsidiary WPFs to perform any specific functions of a WPF and include provisions that depart from S 83 to S 92. The constitution of a WPF in this sense also binds the employer.

8.6 MEETINGS OF WORKPLACE FORUMS

Meetings play a crucial role in the functioning of WPFs. Two of the main functions of a WPF namely consultation and joint decision-making can only take place in the context of a meeting between the WPF and the employer. In section 83 the Act envisages three forms of meetings: (1) meetings of the members of the WPF, (2) meetings of the WPF and the employer and (3) meetings between the WPF and the employees in the workplace.

8.6.1 Meetings of members of a Workplace Forum

Section 83(1) states that there must be regular meetings of the WPF, but is silent on exactly how regularly the meetings must be held. Schedule 2 item 6(c) provides guidance that reads that the WPF must meet whenever necessary, but at least once a month. It is also important to keep in mind that members of the WPF must be given time off to perform their functions and duties according to item 7a(i) of Schedule 2.

8.6.2 Meetings between the Workplace Forum and the Employer

The WPF and the employer must have regular meetings in terms of section 83(2). At this meeting the employer must present a report on its financial and employment situation, its performance since its last report and its anticipated performance in the short and long term and consult the WPF on any matter arising from the report that may affect employees in the workplace.

The employer may further consult the WPF and reach consensus on any matter listed in section 84. It is also up to the employer and the WPF to decide how often they will meet. The matters on which the employer must report were in the past the exclusive domain of management and could thus be regarded as an example of encroachment on management's prerogative. This meeting thus has an important role to play in decision-making even apart from those matters reserved for consultation and joint decision-making.

For Khoza (1999:141) section 83(2) raises some serious questions: Whether there are any limitations to the disclosure of the financial situation of the employer and whether it is assumed that the limitations to disclosure as they appear in section 16(5) of the LRA are applicable. The CCMA will have to clarify this. Another point is that consultation in this section is confined to matters arising from the employer's report and the section does not clarify the aim of the consultation. It is possible that parliament wanted the ordinary meaning of consultation to apply without any requirements for the parties to agree on anything.

8.6.3 Meetings between a Workplace Forum and Employees:

Section 83(3) provides that there must be a meeting between the WPF members and the employees of the workplace. The WPF must report on its general activities, matters it has been consulted on by the employer and matters in which it has participated in through joint decision-making with the employer. This is a report-back opportunity to ensure that the WPF is accountable to the employees for its activities. Item 6(f) of Schedule 2 suggests that such meetings should be held four times a year. In a workplace located on site, the meeting should be with all the members of the WPF. In the case where a workplace is geographically dispersed, the meetings with the employees need not be with all the members of the WPF, but with one or more of the members of the WPF. Section 83(3) (b) provides a unique situation whereby employees once per year meet directly with their employer at one of the report-back meetings where the employer must present an annual report on its financial status, its general performance and its future plans and prospects.

Khoza (1999:142) writes that it is not clear whether in cases where employees do not agree with the decisions taken by the WPF and the employer, they can have the decisions amended at a meeting with the WPF and the employer representatives. The exact status of the decisions of the WPF and this meeting of the employees and the employer is unclear. If the meeting is simply for the employer and the WPF to report then it misses an opportunity for true employee participation that could be strengthened by accountability and the possibility of altering unsatisfactory decisions.

In Germany the Works Constitution Act provides for consultative meetings with the employer at least once a month. The Dutch have a system of consultative meetings every second month. (Ottervanger, 1996:400). These meetings could be compared to the consultative meetings as prescribed in section 84 of the LRA. From other examples it seems there is a separation of consultative meetings and meetings held for the purpose of accounting to constituencies and there is no duplication by the employer consulting with the works council and the employees in the workplace. The South African approach will have to show its effectiveness and how these processes develop.

8.7 REVIEW OF DECISIONS

Once a decision has been agreed to between the employer and the WPF, such a decision does not appear to be reviewable. Only a newly established WPF in terms of section 87 can request a review of the criteria for merit increases or payment of discretionary bonuses, disciplinary codes and procedures and rules regarding the regulation of work performance.

8.8 MATTERS AFFECTING MORE THAN ONE WORKPLACE FORUM

Section 88 specifies what happens in the event of an employer having more than one WPF in his enterprise and matters are referred to arbitration. In such a situation the employer may give written notice to the chairpersons of all the WPFs that no other WPF may refer a matter that is substantially similar to arbitration. Nonetheless each of the WPFs have the opportunity to make representations and to participate in the arbitration proceedings. The arbitration award will be binding on the employer and the employees in each workplace. This provision is necessary to avoid simultaneous arbitration proceedings on issues that are essentially similar. Although it is not quite clear when matters are "*substantially the same*", the provision is necessary especially where a number of WPFs exist without a co-ordinating WPF.

The German Works Constitution Act does not make provision for such a procedure. In the event of a matter relating to more than one works council in an enterprise, the general works council is responsible. A decision made by the arbitration committee regarding such an event automatically affects the whole enterprise and therefore individual works councils. All other matters referred to the arbitration committee by one works council do not affect others as they relate to individual cases and should not have a bearing on other works councils (Sternier, 1996:79).

8.9 FULL-TIME MEMBERS OF THE WORKPLACE FORUM

Section 92 of the LRA makes provision for the appointment of a full-time WPF member in organisations employing 1000 or more employees. The employer is obliged to pay this full-time member the same remuneration as this person would have received prior to his or her appointment as a full-time member. When such a member ceases to be a

full-time member of the WPF the person concerned is to be reinstated to the same position as before or the position to which the person would have advanced, had it not been for the election to the full-time position. This arrangement to have a full-time member of a WPF could contribute to greater efficiency of the WPF in employee decision-making. A number of South African companies should not find this provision a problem as they already provide facilities for full-time shop stewards and some are even provided with company vehicles.

8.10 REMOVAL OF MEMBERS OF THE WORKPLACE FORUM

Section 82(1) (l) provides for the removal of WPF members from office and specifically enables a representative trade union that nominated a member to remove such a member at any time. This provision increases the control that a trade union could exert on its members in the WPF. This authority could have an effect on WPF members' behaviour which might not be in the interest of all the employees of a workplace. An example would be where a union pressurises its members on the WPF to support a proposal favourable to the union but not necessarily favourable to all the employees of a particular organisation.

8.11 TIME OFF, PAYMENT AND EXPERTS

Section 82(1)(p) prescribes that the employer must allow members of the WPF reasonable time off to perform their duties and receive relevant training. Godfrey and Du Toit (2000:18) note that COSATU's September Commission had also identified the need for training and development of shopstewards and union officials in participatory strategies to use WPFs as vehicle to facilitate industrial democracy.

Schedule 2 item 7(c) provides for the payment by the employer of reasonable training costs taking into account the size and capabilities of the employer. The employer may even be able to claim back training costs in terms of the Skills Development Act of 1998 and the Skills Development Levies Act of 1999.

Section 82(i)(t) provides for the use of experts by the WPF. However nowhere is provision made in the Act for the payment of these experts. As the WPF will not necessarily have funds at its disposal, the omission could place a serious question over

the ability of the WPF to access expert advice in order to enhance employee participation in decision-making in the workplace. The numerous direct and indirect costs associated with WPFs have been identified by Nel and Kirsten(2000:45) as one of managements' concerns regarding the establishment of WPFs.

8.12 DISSOLUTION OF A WORKPLACE FORUM

In terms of section 93 of the LRA a Workplace Forum can be dissolved. A representative trade union may request a ballot on the dissolution of the WPF. An election officer must arrange for a ballot within 30 days of receiving such a request. In the event of fifty percent of the employees voting in favour of dissolution, the WPF will be dissolved.

In Germany a works council can only be dissolved on legal grounds. Neither the employer nor a union may interfere in this system of employee participation (Sterner,1996:99). The position in South Africa is quite different where a trade union that is dissatisfied with a WPF can threaten to call a ballot and thus seriously undermine the independence of the WPF and free employee participation. This provision was most likely included to address trade union fears and opposition to WPFs in general.

8.13 SUMMARY

In this chapter a new structure (WPFs) introduced by the Labour Relations Act of 1995 (LRA) is examined. In the first section the German system of works councils and the South African workplace forum system are compared. Specific terminology as found in the Act with regard to Workplace Forums is also discussed. The launching of a workplace forum, meetings of the workplace forums and the dissolution of workplace forums are some of the topics considered in the remaining sections of the chapter.

From the Explanatory Memorandum on the draft Labour Relations Bill, it is obvious that drafters were strongly influenced by structures and practices in Western Europe most notably the works council systems of Germany and the Netherlands.

Although superficially workplace forums bear some resemblance to works committees established in terms of the Black Labour Relations Act of 1953 and works councils

provided for in section 34 of the LRA of 1956, the system of workplace forums is totally different as it constitutes a system of statutory worker participation that would promote industrial democracy.

The success of the system of workplace forums depends on the willingness of employers and workers and their representatives to embrace the principles and practices of participation and break with the adversarialism that characterised South African labour relations in the past.