CHAPTER 4

DEMOCRACY, INDUSTRIAL DEMOCRACY AND WORKER PARTICIPATION

4.1 INTRODUCTION

This chapter commences with an explanation of what is meant by the term "democracy". The direct and indirect approaches to democracy are discussed. From democracy the discussion proceeds to industrial democracy. Some of the well known theorists' views on democracy and definitions are then examined. This is followed by a review of the different forms or models of industrial democracy. The last section deals with the recurrent interest in workers' participation.

4.2 DEMOCRACY

There are few words more widely used by so many that is so little understood by such a large number of users, than the word democracy. If we look at the derivation of the word "democracy" we find that it comes from the Greek word *demos*, the people and "*kratia*", power. Democracy therefore refers to people's power, "*in contrast to monarchy, single rule, oligarchy, rule by the few and aristocracy, the best man's power*" (Parkyn, 1979:50). Parkyn goes on to argue that the acceptance or acquiescence by the people is very different from the will of the people. In the first instance, the people subject themselves to the arbitrary and irresponsible tyranny of the ruling class. In the second instance each citizen decides that the government shall be controlled in accordance with the common will of the people.

The Concise Oxford Dictionary defines democracy as "*a system of government by the whole population, usually through elected representatives*".

Most democracies find themselves somewhere on this continuum between the arbitrary decisions of the ruling class and government through the common will of the people.

Although the ultimate source of power is technically known as the sovereignty, in every community there is one particular person or group of persons who has the authority to make or change the law - the so-called *actual legal sovereign*. This actual legal sovereign (e.g. a parliament) has the authority, but it is not the real source of power.

The real source of power is the opinion of the governed. Behind the actual legal sovereign in any community lies an *ultimate general sovereign.* This public opinion may be tolerant of different forms of actual legal sovereignty, for example, of a tyrant or an aristocracy.

It is accepted that the perfect democracy is one in which each individual citizen resolves that government should be a reflection of the common will of the people. There are two ways to reach this objective. One is the ultimate sovereign (the people) can merge with and become the actual legal sovereign (the government) or alternatively, the ultimate general sovereign controls the appointment and the deposition of the actual legal sovereign, but remains separate from it. This first approach refers the participatory or direct theory of democracy and the second to the representative theory of democracy or indirect democracy.

4.2.1 The theory of direct or participatory democracy

The theory of direct democracy (Parkyn,1979:50) argues that each member of a democratic society has the natural right to participate equally in the direct government of society. This notion has its origin in the ideas of Rousseau, who like Hobbes, developed the concept of the social contract. In the development of man from his primitive state of anarchy there arrived a time when it was beneficial for individuals to join forces for their mutual self-preservation. The problem was to find a form of association in which the individual could enjoy the benefits of this collectivity yet remain free as an individual. Rousseau published his Social Contract in 1762, in which he considers participation in decision-making as central to the establishment and maintenance of democratic policy. His concept of democracy is a democracy where there is direct participation of each citizen in government. His Social Contract further demands that whoever refuses to obey the general will, shall be forced to do so. He continued that unless each individual is forced through the participatory process into socially responsible action, there can be no law which ensures everyone's freedom. Rousseau believed that direct participation enables individuals to be and remain their own master. Direct participation in his view would increase feelings of belonging among the citizens of a community - that no man or group would be master of another and all would be equally dependent on each other and would accept laws arrived at through democratic processes (Parkyn,1979:53 and Pateman, 1970:22). What may be said in

defence of Rousseau's ideas is that his concepts were formulated against a backdrop of a much less complex society than today and in which enormous cities with large populations were relatively unknown.

The direct or participatory view of democracy is also referred to as the radical approach to democracy. Besides Rousseau other contributors to this view were Mill and Cole. Mill specifically points out the integrative function of democratic participation with his words: "*Through political discussions the individual becomes consciously a member of a great community and that whenever he has something to do for the public he is made to feel that not only the common will is his will, but it partly depends on his exertions*" (Pateman, 1970:33). Mill's main contribution to the participatory theory of democracy is contained in his view that it should also be extended to industry. Mill saw some form of co-operation in the workplace as inevitable, particularly as employees acquired more rights in society (Mill,1965:792).

G D K Cole believed that the path to greater democracy lay through industry. His theory is based on his view that society is a complex of associations held together by the will of its members and he argues that human beings must participate in the organisation and regulation of their associations (Pateman, 1970:36).

4.2.2 The theory of indirect democracy or the liberal democratic view

Liberal democratic theorists like John Locke have suggested that individuals in society have to surrender their power to a number of individuals who govern and make decisions on their behalf (Mitchell, 1998a and b :18). This concept of limited democracy is also shared by theorists like Dahl, Eckstein and Schumpeter. Schumpeter criticised popular decision-making in that it was based on an empirically unrealistic foundation. For him democracy was a process of arriving at political decisions in which individuals acquire the power to make decisions through a competition for the peoples' vote (Schumpeter,1943). This view of democracy confirms the participation of the citizens in voting for leaders and in discussing political issues. Therefore for the liberal democratic theorists there is no central role for direct participation in democracy.

Direct rule-making by individuals as proposed by the theory of direct democracy, is only possible in small units, whilst in large units, rules must be made by the elected

representatives, writes Nel (1984:4-5). In a representative democracy the rules are determined by the voting of the elected representatives and not directly by individual voters. In Western democracy citizens are usually able to vote freely for any representative from any political party which functions in accordance with the laws of the land. Overt characteristics and mechanisms of political democracy stem from underlying philosophy of individual and social freedom and equality (Nel,1984:5). Bendix (1980:38) is of the view that social and economic market mechanisms form the functional basis of Western democracy. In other words, the market system makes the Western form of democracy possible. It could therefore be argued that democracy in the Western style will have difficulty in a society where the social and economic systems are not supportive of the political system.

Parkyn (1979:53) writes that since the mid-nineteen-sixties there has been a world-wide increase in support for classical or indirect democracy. This is apparent from the development of populism, the growth of student power, industrial sit-ins and the demands for worker control. To the politically innocent the grand concept of direct participation in either industrial or national communities is a goal both desirable and achievable.

Parkyn (1979:54) believes that persons who support direct participatory democracy "*fail to differentiate between the prescribed and the discretionary components of work and indeed living* ". In a civilised society laws are made which provide human behaviour with clearly defined limits. Lawmaking or policymaking in a democratic polity is executed by groups of people or their representatives. Direct decision-making without either law or policy is anarchy and leads to chaos.

In Parkyn's opinion (1979:54) the theory of participatory democracy is based on three erroneous assumptions: that all members of the polity *want* to participate; that all members of the polity have *similar* intellectual, emotional and moral capacities; and that where there is ready agreement on the desired *end* to be achieved, there will also be agreement on the means to achieve that end.

Parkyn (1979:55) disproves the first assumption by pointing to the low percentage of actual voters. This same trend is also observed in South African communities and organisations e.g. in municipal elections where low percentages of eligible voters bother

to vote.

The second assumption made by supporters of direct democracy is that all members of the polity have similar intellectual, emotional and moral capacities. We know from our own experience that people are not born with equal physical or intellectual capacities. The supporters of the view further argue that because under natural law everyone has the right to live, all should have equal rights to participate in the making of direct decisions that will effect their lives. In a typically mixed ability group two things can happen. Either two or three leaders will emerge and gain support of the majority, or the majority, unable to comprehend the relationship of specific issues to other issues, may make popular short-term decisions. The former leads to totalitarianism and the latter to mediocrity.

The third false assumption made by those who support participatory democracy is that where there may be ready agreement on the desired end to be achieved there will also be ready agreement on the means to achieve that end. From our own observations we know that this cannot be true, as is illustrated by the example that as a society South Africans agree that something should be done about crime and violence. However, there is little agreement on exactly what should be done.

In Parkyn's view (1979:59) industrial democracy, like national democracy can only be some form of representative democracy, where the ultimate general sovereign controls the appointment and deposition of the actual legal sovereign, but remains separate from it. Unlike participatory democracy, which is an attempt at an ideal theory based on *a priori* considerations, representative democracy is essentially pragmatic.

Both the liberal and the radical democratic theories explain the characteristics of democracy which constitute the basis for employee participation in decision-making. However, the weakness of indirect or representative democracy, as advocated by the liberal authors, is that it ignores the importance of popular participation. Even so the radical and the participatory theories of democracy provide a sufficient philosophical basis for industrial democracy and employee participation in decision-making in the workplace.

As a democratic state the Republic of South Africa (RSA) adheres to the principles of

democracy. The Constitution, as the supreme law of the RSA, entrenches democratic norms in every sphere of life as is shown in the preamble to the constitution which reads "*We ....Adopt this constitution as the supreme law of the Republic so as to heal the divisions of the past and establish a society based on democratic values, social justice and fundamental justice.*" (Constitution of the Republic of South Africa Act 108 of 1996). It may therefore be concluded that democratic values have to be applied in South African society as well as in specific sectors of society such as workplaces. Section 23 of the Constitution supports this view by providing for comprehensive labour relations rights which will encourage a democratic ethos in the workplace between employers and employees.

4.3 INDUSTRIAL DEMOCRACY

4.3.1 Industrial Democracy defined

When attempting to define industrial democracy one is faced with the same dilemma as when trying to define democracy, that is, that there is no generally accepted agreement as to the meaning, processes or demarcations of these two concepts. King and Van de Vall (1978:3) hold the view that industrial democracy means different things to different supporters of the same underlying idea. Street (1983:519) writes that "*industrial democracy has many believers, but there is no one church and a confused clergy*". Kahn-Freund (1977a) puts it even stronger when he says that the term industrial democracy is beyond definition. Despite these rather pessimistic views about the definition of industrial democracy a number of definitions of the term will be discussed in the following paragraphs.

As already stated the concept "*Industrial democracy* " has different meanings for different categories of people and even publications of the International Labour Organisation (ILO) (1981) do not provide a crisp definition of the term. Meanings assigned to the concept range from management consulting with workers prior to taking decisions, to worker participation or employee involvement (which also have different interpretations), to co-determination of work-related matters, to outright workers' control (the Marxist interpretation).

Salamon (1998: 353) describes industrial democracy (or workers' control) as "*a socio-*

political concept or philosophy of industrial organisations which focuses on the introduction of democratic procedures to restructure the industrial power and authority relationship within organisations...". The central objective in this instance is the introduction of employee self-management in the organisation of which the ownership will be held by the employees or the state and the managerial functions are handled by a group of elected employees.

Salamon asserts that large scale change to this type of industrial democracy "*would require a significant, if not complete, change in the economic, social and authority relationships not only within organizations but also in society*". He then goes on to quote Hyman and Mason who wrote that this was an unlikely scenario in contemporary market- driven economies where worker concerns with achieving industrial control have been supplanted by efforts to protect individual employment and worker rights.

Nel (1984:6) writes "*in a wider sense industrial democracy is practised where workers voice their opinions and make suggestions to the employer on issues which affect them. The employer gives serious consideration to these opinions and suggestions, but reserves the right to undertake the final decision-making. In the narrow sense, it means that both parties share equally in all decisions which affect the attaining of organizational goals. Workers and employers are then held jointly responsible for the outcome of such decisions .*"

Bolweg (1976:91) writes that to his mind industrial democracy constitutes "*the extent to which workers and their representatives influence the outcome of organisational decisions* ". This definition has two central elements according to Nel (1984:6): (a) the opportunity to influence decisions, which indicates their power within the workplace; and (b) the impact of employees' involvement in the decisions in the workplace, which refers to the number of organizational decisions they exert influence on and their importance from the employees' position.

Nel (1999:21-23) reviews the writings of authors such as Elliot and Bolweg and makes the point that industrial democracy implies the participation of workers in the decision-making process of organizations and genuine concern for their rights, giving them the opportunity to influence the decision-making processes as well as the actual outcome of such decisions. This concept of democratisation is clearly one of the aims of the

Labour Relations Act of 1995.

Writing about industrial democracy Bendix (1992:128) believes that as a result of socio-political and economic transition and changes in individual values and attitudes, the labour relationship can no longer be viewed as an economic relationship in which one party is the decision-maker and the other the executor of such decisions. The labour relationship is more of a socio-economic partnership where both parties have equal rights and the decision-making process is shared between managers and employees.

This new interpretation of the labour relationship has resulted in management's traditional prerogative to manage and make decisions regarding the workplace and employees being challenged increasingly.

The aspirations to implementing industrial democracy are said to fall into two groups: "*control through ownership*" and "*control against ownership*"(Mitchell,1998aand 1998b). Control through ownership means that employees could be become joint owners of the company together with the shareholders. By so doing the employees are able to have direct control of the workplace. Share ownership schemes introduced in some South African companies in the 1980s are local examples of this course of action. The measure of control that employees will enjoy will depend on the percentage of shares they hold. In all the South African examples the percentage of shares owned by employees was always so insignificant that one could seriously call into question the motives of the shareholders and management as to whether they were earnest about ever truly sharing decision-making power.

The control against ownership view does not accept that shareholders have the right to control the workplace. It wants to extend the right to control the workplace to the employees through disclosure of information, consultation, joint decision-making and the creation of workers forums' for this purpose. At exactly what level in the organisation employees participate in the decision-making process is also an important consideration. This level is dependant upon the directness of the control and the matters on which employees participate in making decisions (Mitchell,1998a and 1998b).

Although industrial democracy is about sharing of decision-making in the workplace,

South African trade unions have been for a long time against sharing this responsibility with management and have constantly challenged the concept through collective bargaining. Van Niekerk (1995) writes that unions distrust management initiatives in seeking agreement on co-operative processes and are concerned that such processes will be used to challenge union power and undermine collective bargaining. They also fear co-option by management. This may be one of the reasons why workplace forums are so slow in getting off the ground. Unions have to initiate the establishment of workplace forums but mistrust co-operative processes and fear the undermining of collective bargaining. Sharing in decision-making calls for an altogether new style of behaviour – something South African unions are perhaps not ready for yet.

The importance of industrial democracy has been translated into legislation through the Labour Relations Act of 66 of 1995 of which section 1 provides: "The purpose of the Act is to advance economic development, social justice, labour peace and the democratisation of the workplace by fulfilling the primary objects of this Act... ." From this it is evident that the LRA seeks to entrench democratisation in the workplace, in particular, by providing for employee participation in decision-making.

Although the Act is in support of the spirit of industrial democracy, the term industrial democracy does not appear in the LRA of 1995. What is however referred to in the Act as one of the purposes of the Act, is section 1(d)(iii) which provides for "*employee participation in decision-making in the workplace*". This idea of participation in decision-making is taken further in Chapter V of the Act which deals specifically with the introduction of workplace forums (WPFs) as a means of achieving this participation in decision-making in the workplace.

The drafters of the Act wished to extend the government's intention of democratising the country to the workplace in a similar way as found in a number of other countries, most notably Germany and the Netherlands whose systems were used as models for the LRA.

For purposes of this study industrial democracy is circumscribed as those aspects dealing with participation in decision-making as is found in the LRA, namely disclosure of information, collective bargaining, joint-consultation and joint decision-making and Workplace Forums.

4.3.2 Arguments for democracy

In Kiloh's opinion (1986:14) arguments for industrial democracy can be divided into two groups. One grouping consists of those one might call "democrats" while the others are supporters of industrial democracy from a managerial perspective.

The first group contends that it is at work and with work-related activities that people spend most of their time and where people can contribute most to decision-making and are most affected by the results of such a decisions. However, with the increasing size of firms, the concentration of economic power and centralisation of decision-making, management has become more remote and modern workers have become less able to shape their own economic existence compared to working people in pre-industrial societies (Mill, 1965). As a consequence a feeling of powerlessness and alienation has set in which in turn caused ordinary people to adopt "*an essentially passive, fatalistic and dependent kind of outlook* " according to Poole (1978). The argument continues that even if there is a democratic political system the ordinary person is essentially "*disenfranchised* " by having little or no influence over political decisions and none at all over economic ones with the result that control remains in the hands of a minority. Advocates of industrial democracy maintain that if the democratic idea is to fulfil the ideal of full participation, then social institutions, starting with the workplace, should be democratised. Industrial democracy will, it is claimed, produce better, more moral citizens and improve the quality of democratic government in a variety of ways.

Support for this argument is based on an evolutionary view of the progressive development of individual relations and a belief that there is an increasing demand for more participation in decision-making within society in general and the workplace in particular (Kiloh, 1986:15). (See also Pateman,1970 and Bullock, 1977). According to this line of reasoning, improvements in education and the level of economic prosperity and security have led to rising expectations. This has caused a crisis of legitimacy so that the workplace, being one of the last bastions of undemocratic behaviour in a democratic society, is under siege. Kiloh writes (1986:15) that evidence of this groundswell of democratic fervour is somewhat thin. Most surveys point to a preference for day-to-day involvement in on-the-job decisions rather than a demand for widespread democracy. The preferences of South African workers in respect of either involvement or job-related decision-making are unknown at the time of writing. However, avenues

are opening up e.g. legislation now provides that workers as well as students at universities must have representation at the highest decision-making structure, namely the university council.

Kiloh (1986:15) writes that the belief that a demand for greater democracy exists, seems to correspond with a change in trade union policy in the early 1970s from hostility to one of more positive attitudes towards certain forms of industrial democracy. It appears unlikely that South African trade unions have made this switch from hostility to greater cooperation judging by the small number of workplace forums which have been established. Workplace forums are essentially cooperative structures.

During the 1960s and 70s a second group of proponents of industrial democracy, the "managerialists", became interested in industrial democracy for totally different reasons. Similar to the democrats, they recognise the role played by alienation and dissatisfaction but are more interested in the effects of this on economic performance. Industrial democracy is advocated by them as a means of promoting employee commitment and improving industrial relations (Kiloh, 1986:16). It may be argued that if the work was advantageous to workers, it surely would not be necessary for management to artificially contrive to gain the commitment of the workers.

A closely related argument emanates from the "human relations" school of industrial psychology of Maslow and Likert, which explains motivation in terms of a hierarchy of needs. This view holds that many of the problems such as absenteeism, high labour turnover, low productivity, poor quality workmanship and strikes, have as underlying cause an over-authoritarian management style. Participation in decision-making is therefore important not in terms of genuine power-sharing but in terms of individual psychological needs or group dynamics. Industrial democracy therefore has as objective improved job satisfaction and hence job performance and efficiency.

The official view of British industry as expressed by the Confederation of British Industry is that industrial democracy should not go further than discussion, information-sharing and the encouragement of a consensus perspective on capitalist production. In recent years the Commission of the European Community has proposed directives supporting disclosure of information and the involvement of worker representatives in decision-making. In the UK all four major political parties have also developed policies that

emphasize the immediate benefits of the participative aspects of industrial democracy in terms of industrial efficiency and industrial relations (Kiloh, 1986:16).

4.3.3 Weber, Marx and Durkheim's ideas of industrial democracy

Weber's view :

Although Max Weber's interest lay less in the field of democratic theory than in organisational theory and the theory of competing elites, his contribution has had a significant impact on the ideas related to industrial democracy. In his translated "Economy and Society", Weber (1968) makes the distinction between value and purposive rationality which have been important components of many modern theories of industrial democracy. He observed that there has been a gradual replacement of value rationality by the narrowly focussed objectives of purposive or instrumental rationality process - reflected in the emergence of the bureaucratic forms of administration. This had obvious affinities with the emphasis on effectiveness within the equilibrium model of democracy. Weber's conceptual categories are also seen in the analysis of social stratification. Changes in class, status and political party partially explain any change in democratic administrative procedures. The emphasis on power in organisations has been of importance in explanations of participation in the workplace. Hence almost all integrative schemes for industrial democracy have been designed to seek new modes of legitimacy when earlier types of domination have been challenged.

Weber's analysis of the conditions for direct or participatory democracy and the way in which representative participation in committees can be undermined by organisational and bureaucratic conditions have obvious implications for industrial democracy. From his analysis it could therefore be argued that direct democracy could only operate in small organisations, with simple administrative structures, amongst people of similar social positions and of minimum training. The growing complexity of administrative tasks and sheer expansion of the scope of these tasks have excluded workers with limited training and experience from participation. This introduces a potential problem in democratising the workplace in South Africa, as the majority of workers have extremely low levels of education. Weber's rationale for the growth of bureaucracy in capitalist enterprises and his dismissal of decentralisation and direct democracy can be and have been used as arguments against the adoption of alternative, more democratic systems

of management (Kiloh,1986:18).

Marx's view:

The Marxists' sociological perspective includes notions such as alienation, the labour process, the class accommodation thesis, the relationship between industrial democracy and major transformations in the technological economic bases as well as in the political and socio-cultural conditions of industrial societies. Marx's "Economic and Philosophical Manuscripts" of 1844 have been widely cited for the four principal forms of alienation: lack of control over the means of production, deprivation in actual work activities, estrangement and a lack of concern for industrial democracy.

The advancement of structural-type analyses within Marxism together with the knowledge that the concept of alienation had been modified in Grundrisse and Nichols' (1973) foreword to Marx, have led to considerable doubts about the validity of the term "alienation". In the 1970s Braverman (1975) took the debate forward with his identification that control of the labour processes is crucial to capitalist development.

The most sophisticated version of Marxism, based upon the relationship of industrial democracy to materialist changes in modern societies, is that of Brannen, Batstone, Fatchett and White (1976:245-262). In their view modern capitalism is still influenced by market forces and the pursuit of maximum profit, but concentration, new technologies, attempts to control the market and the increasing role of the state have together ensured that labour is the most important production factor. Through militant industrial action labour is in a position to cause substantial damage to employers. This possibility encourages strategies for institutionalisation of conflict resolution including collective bargaining, conciliation, mediation, arbitration and workers' participation in management.

Durkheim's view :

Another interpretation of industrial democracy has come from the sociology of Durkheim. Factors mentioned by him are anomie, the forced division of labour, the role of justice and the relationship between the state and corporations. From the perspective of industrial democracy, anomie is seen as the result of the breakdown of the normative order in society. Where Durkheimian theorists focussed upon social integration, the Marxists see participation in terms of systems integration. Fox and Flanders (1969:151-

180) thus attributed the disintegration of collective bargaining machinery to: the unprecedented rise in the price level; expansion of some industries; the acceleration of technological and organizational change and the creation of new classes of work and workers; and the rapid spread of union organisation and labour scarcity at the time, brought power to and awakened the aspirations of the working classes.

In the 1970s Fox (1974:314-369) changed his view of Durkheim's work moving to the radical side of Durkheim's ideas on the forced division of labour. Normative disorder was understood in terms of social inequalities and differences in life and the unequal aspects of collective bargaining were seen as fundamental barriers to social justice. Poole (1982:190) writes that Fox's "*high trust* " solution to industrial discord implied a fundamental shift of values, institutions and philosophy and a re-examination of the relevance and fairness of the numerous conventions governing decision-making and rewards in the work organisation.

4.3.4 Different views of democracy and industrial democracy.

In Poole's view (1982:181) good studies of industrial democracy are usually based on one or more of the general theories of democracy. Democratic theory can be classified into the liberal democratic theorists, who see private property as the cornerstone of social order, and the socialist democratic theorists who view private property, and the political system which sustains it, as hampering true economic and political democracy (Kiloh,1986:17-18). MacPherson (1977) has provided a very useful framework for democracy according to which he divides democracy into protective, developmental equilibrium and participatory types. His framework and views of utopian democracy are used in the sections that follow.

4.3.4.1 Utopian democracy

Before the 1800s, and in the works of Jean Jacques Rousseau and Thomas Jefferson, democracy was understood to mean participation in decisions. Given the developmental stage in which Western civilisation found itself at that time, this was possible in that class divisions and economic inequality were not too great. "*Both writers saw private property as a sacred individual right and the independent worker-proprietor as the essential bulwark of the just society* " (Poole,1982:182). Both these elements are even

today accepted as essential for a modern democracy.

4.3.4.2 The protective creative perspective of democracy

The protective view of democracy was based on the Utilitarianism of writers such as Bentham and James Mill and Thomas Hobbes' ideas of natural rights. Supporters of this view accepted class divisions and the idea of a capitalist market economy and the laws of classical political economy (MacPherson,1977:24). Democratic political forms are advocated by liberal democrats as a necessary means of protecting individual rights against the tyranny of the state on the one hand and revolutionary demands from the lower classes on the other (Kiloh, 1986:17-19). Kiloh is of the opinion that the so-called "*new right* " in the UK also uses the protective view of democracy when utilising democracy as a formal device to safeguard the liberty of the individual and certain inalienable property rights.

4.3.4.3 The developmental perspective of democracy

The developmental approach regarded participatory institutions as essential in the developing of active and public-spirited citizens. John Stuart Mill's writings form part of this approach. The educational function of participation and the focus on co-operative principles are central to this approach. The idea of a universal law of exploitation and inequalities of the market society were questioned. The emerging labour classes were seen as a danger to private ownership and militancy of organised workers together with increased literacy were all regarded as threats to the society of the time by supporters of this developmental paradigm (Pateman,1970 and MacPherson,1977:44-47).

J. S. Mill saw democracy as a means of self-development for citizens and as a means for community development. He believed that man as an active, creative and developing being, can achieve higher levels of economic, political and social behaviour. The productive and consumptive aspects of human existence were also recognised (Mac Pherson,1977:61). Other theorists who supported this school of thought were Carlyle, Maris, Ruskin, Marx, Dewey, MacIver, Laski and Cole. This view of human potential encouraged the idea of co-operatives with the potential to change society for the better. Economic organisation along these lines are related to Cole's concept of participation and regulation of associations founded on the principles of guild socialism (Poole, 1982:

182-183).

4.3.4.4 The equilibrium perspective of democracy

This perspective is also referred to as the pluralist-elitist view. The equilibrium model had its beginning in the middle decades of the twentieth century after the publication of Schumpeter's *Capitalism, Socialism and Democracy* in 1943. The supporters of this model of democracy were in essence the successors of the protective democracy of Bentham and James Mill, but with some changes such as the abandonment of developmental democracy and with the competitive struggle for the votes of citizens now incorporated into this particular view of democracy.

The central theme of Schumpeter's view was the role of the people in establishing a government from among competing political parties but not actively participating in the actual day-to-day governance of a country (Schumpeter, 1943). His point of view is thus in support of the indirect form of democracy.

Schumpeter's concept was further developed in other writings on democratic pluralism. Dahl's theory of polyarchy emphasised the processes by which ordinary citizens exert a relatively high degree of control over political leaders. Lipset contributed ideas on legitimacy, effectiveness and conflict. Eckstein also examined durability, legitimacy and effectiveness. Down viewed political parties in democratic politics as analogous to entrepreneurs in a profit-seeking economy (Poole,1982:183).

Pluralist writers on democracy were particularly concerned with establishment of institutional checks against the concentration and misuse of power. Olsen saw social pluralism "*as counterweight to totalitarianism and as an attempt to ensure the decentralisation of powers in a variety of political and organizational milieus*". In the industrial democracy literature this perspective is particularly influenced by the writings of Clegg and Dahrendorf. In Clegg's *Industrial Democracy and Nationalization*, the theory of democracy as free cooperation in pursuit of common aims is shown to differ from the idea of "*a mechanism for securing popular choice of policies and political control over government*".

In Clegg's opinion (1955: 142) this view was only suitable for activities of small societies and could only exist if it is accommodated "*within a larger democracy of opposition*" .

Clegg believed that industrial democracy was part and parcel of trade unionism. Trade union opposition was seen as essential in large nationalised industries, as they were too large to function as democracies of common purpose without opposition. Applying this argument to the South African economy it would mean that trade unions have a substantial role to play in the state enterprises such as Telkom, Transnet and Eskom.

In *A New Approach to Industrial Democracy*, Clegg postulated the position that opposition as a check on the concentration of power, was a basis for the modern understanding of democracy. This supported his three central principles: that unions must be independent of both state and management, that only the unions represent the interests of industrial workers and that the ownership of industry was irrelevant to good industrial relations (1960: 21).

Dahrendorf took a structural approach in his analysis of democracy. For him the oppositional concept was founded on the notion of "*dichotomous distribution of authority*" in the workplace and on the necessity for oppositional parties to represent the interests of subordinates to criticise and oppose management but to take no direct part in the processes of decision-making (1959:257-267). In Dahrendorf's view works councillors were seen as part of the ruling class of industry and the role of the labour manager was regarded as a position of domination in the workplace. Many years later in 1973 Dahrendorf observed that co-determination could be an obstacle to organisational change. Delegative types of participation were seen as preventing effective decision-making and as procedures limiting participants in their decision-making (Poole, 1982:184).

4.3.4.5 The participatory perspective of democracy

Pateman's (1970:103-119) contrasting notion of participatory democracy conjoined the ideas of the early Utopians, namely, the developmental emphasis on the unfulfilled capacities of working people in the productive sphere and the democratic socialist view of workers' control. In addition her contribution emphasised the educational potential of participation, the special importance of developments in industry to the theory of participatory democracy and the view that the establishment of a democratic polity was necessary for a participatory society.

In assessing Pateman's contribution to the debate Poole (1982:182) refers to the following aspects: Active participation was identified as essential for political efficacy, for fostering of the democratic character and for underpinning and enriching the wider institutions in the polity. A participatory society was seen to depend on the relationship of the individual to authority structures in a society and the human results of participatory democracy were regarded as of primary significance. The tendency of active participation in the one sphere to underpin effective involvement in the decision-making in a work context also reinforces the notion of the desirability of a participatory society.

4.3.5 Models of industrial democracy

King and Van de Vall (1978:3) write that since the Industrial Revolution, few ideas have been pursued by a larger and more diversified group of supporters than industrial democracy. The concept has engaged such varied groups as Utopian Socialists in France, the Fabians and Guild Socialists in Britain, Social Democrats and Communists in Germany and Trade Unionists and "*Human Relationists* " in the United States. Such diversities in background and interest have produced varied and opposing models. In current conceptions of industrial democracy there are fundamental distinctions in goals and strategies between those versions which provide a greater or less direct participatory role in company decision-making, as is prevalent in Europe, and those comprising a "participatory" managerial style which is consistent with the "human relations" theory, as developed in the United States industry. There is also the conception, developed partly in defence of a "pragmatic" trade unionism in the United States and Canada, that collective bargaining procedures which entail the negotiation at plant-level of agreements and individual grievance arbitration provide a road to industrial democracy.

It is noteworthy that the opposing approaches perceived in direct and indirect democracy is also found are industrial democracy as can be seen from the various forms of industrial democracy that could range on a continuum from direct participation to indirect participation in decision-making in the place of work. At least one common element among the various roads to industrial democracy is the provision of mechanisms by which workers can have a real or sensed participation in managerial decisions.

In the following sections a summary is presented of an extremely useful analysis made by King and Van de Vall (1978) of European forms or models of worker participation that will be utilised to obtain a better understanding of how industrial democracy is practised in its various forms. The development periods of the different forms of industrial democracy are graphically presented in Figure 4.1. This analysis should also provide a better understanding of one of the South African versions of industrial democracy as it finds expression in Workplace Forums (WPFs).

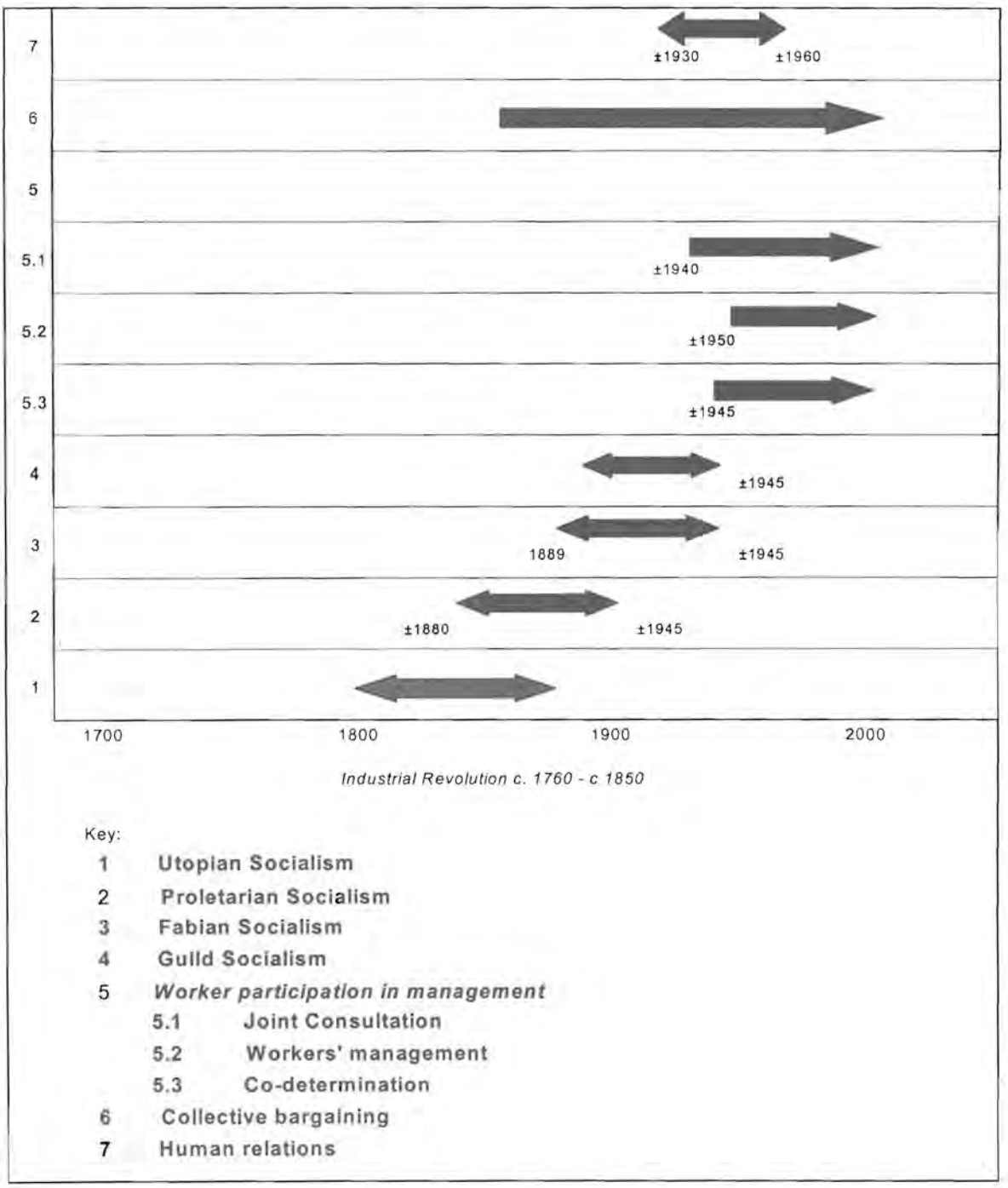

Figure 4.1: The development periods of different forms of industrial democracy

4.3.5.1 Utopian socialism

The earliest traces of this school of thought have their origins in several countries. In early nineteenth century France, the idea that the principles of democracy should be applied to the world of work was first voiced by the "Utopian Socialists" such as de Saint Simon, Comte and Fourier. At about the same time in Britain, Robert Owen started several cooperative production experiments and established the industrial community of New Lanark. In Germany a number of liberal reformers wrote articles about a society with a happier future where workers and entrepreneurs would work in harmony, satisfying the needs of all workers of the industrial "Gemeinschaft".

In each of these early movements, the mere suggestion that industrial relations should be regulated by democratic principles represented an almost revolutionary break with practice in the nineteenth century factories. The utopian nature of the ideals is highlighted by such vague and ambitious schemes as the universal abolition of property rights, the establishment of production communes and the reaction to exploitation merely by promotion of a general goodwill. It is not therefore surprising that most of these plans never reached implementation (King and Van de Vall, 1978:4-5). (See also 3.7.2)

4.3.5.2 Proletarian socialism

The writings of this group of Socialists, among them Karl Marx and Michael Bakunin, had a much greater impact on the industrial environment. This was mainly due to the technology of production that had changed since the beginning of the Industrial Revolution. In this period industrial capitalism had moved into mass production and the exploitation of industrial workers had become more severe.

Marx and Bakunin agreed on the need to expropriate the means of production, thereby eliminating the bourgeoisie resulting in control being relinquished to the workers. They were however not in agreement on how to reach this goal. For Marx the proletariat had to make use of their political organisations to gain economic and political control. Bakunin was more of an anarchist and believed in the use of trade unions and strikes and even terrorist tactics as effective means of social revolution and eventual workers' control.

The ideas of Marx and Bakunin led to two worldwide antagonistic political movements. Many of the ideas of Marx became the theocratical foundation of the Communist movement and, as revised by Bernstein, they were incorporated into the programmes of political parties. Bakunin's ideas gave rise to the Syndicalist workers' movement. The "*trade unions socialists* " as they were called believed that revolutionary trade union action was the proper means not only of creating the new society but also of governing this new society. In the USA the Syndicalist ideas found their expression in the Industrial Workers of the World which was established in 1905 and exerted influence on the American labour movement for several decades (King and Van de Vall, 1978: 5-6).

4.3.5.3 Fabian socialism

In 1889 a distinct British version of industrial democracy was formulated with the publication of the Fabian Essays on Socialism. The Fabians were a small group of intellectuals, writers and scholars whose ranks included Sidney and Beatrice Webb and George Bernard Shaw, the playwright. In their book " *Industrial Democracy* ", published in 1897, the Webbs drafted a concept of democracy that was less revolutionary than that of the French or the German Socialists. In their view a democratic system of industrial relations would emerge not through workers' control but when management accepted the trade unions as partners in a continual relationship of industry-wide and national collective bargaining. In later years the Fabians turned this moderate design into a more radical industrial relations model which in addition to collective bargaining involved the nationalisation of basic industries, the appointment of trade union representatives on controlling boards of nationalised industries and the participation of workers themselves on various councils and committees at plant-level.

After World War 2 when the British Labour Party came to power the idea of full nationalisation was abolished and the determinative participation of workers in the formulation of company policies became restricted to a consultative role in the exploratory stages of managerial decision-making. King and Van de Vall (1978:7) raise a very important issue by pointing out that none of the Socialist groups had ever been able to indicate how industrial democracy should be achieved in industrial relations. None of the Socialist theorists had been able to provide a model in which workers would control their working conditions without themselves being dominated by powerful

trade unions and party political leaders. Awareness of the dilemma of autocratic pressures in large democratic organisations grew especially after Robert Michels analysed the problem in his famous *"Law of Oligarchy* " based on research of the European Socialist movements around the turn of the nineteenth century. Twentieth century Socialists had to admit that powerful trade unions were not in themselves an assured guarantee of democracy in industry.

4.3.5.4 Guild socialism

For a period a splinter group of the British Fabians, called the Guild Socialists, seemed to have discovered a solution to the dilemma of the anti-democratic centralist tendencies of modern political and economic organisations. They recognised the threat which centralised authority poses to a democratic system of industrial relations. Under the historian G D K Cole, the Guild Socialists drafted a model of industrial government in which the control of various sectors of nationalised industry would be delegated to various craft unions or "Guilds". The basic idea was that representatives of the workers in each particular craft would take part in the management of "their" industrial sector. King and Van de Vall (1978:7) cite Schneider who pointed out that this programme would have reversed two pronounced trends in modern industry. One is that the guilds were in the true sense a pre-factory type of productive system and the other is that in the development of trade unionism the trend has been away from craft unions towards industrial unions.

The proposed model proved equally unworkable and after its peak at World War 1, the movement quickly lost its attraction. Guild Socialism suffered a fate similar to other branches of Socialism and by about 1940-45 had become not much more than another ideological stage in the multi-faceted history of industrial democracy. Very different forms of workers' control were on the ascendence as means to industrial democracy models of workers' participation in Europe and to plant-level bargaining in the USA.

4.3.5.5 Workers' participation in management

About the time of the decline of Guild Socialism, labour leaders in Britain, but also on the Continent began to re-assess the goals of organised labour in the light of the emerging political and economic organisation of society. Many of the traditional craft

unions were being replaced by industrial unions headed by more pragmatic union leaders.

In King and Van de Vall's opinion (1978:9) this led to a threefold re-evaluation of the concept of industrial democracy in Britain as well as in Germany. One of the most fundamental aspects of this ideological change was the transition from the nineteenth century idea of full workers' control to the more moderate concept of shared control. This new willingness to cooperate with the old capitalist foes was a sign of more fundamental ideological changes that were taking place. These shifts indicated a gradual acknowledgement by Socialist leaders of post-war capitalism as an imperfect but viable economic system.

(It is noteworthy that a similar re-conceptualisation of industrial democracy also took place within the union movement in South Africa after the first democratic election in 1994. Prior to 1994 there were often statements made in support of nationalisation of industry and total worker control. Since 1994 there appears to be less and less support for this extreme form of industrial democracy in South Africa.)

Another change was the extension of the concept of industrial democracy from the macro-social to the micro-social level. This shift was effected in order to make the rather vague and abstract ideal of industrial democracy a more realistic alternative for industrial workers. This resulted, in West Germany especially, in the proliferation of Works Councils in local companies and plants.

A third ideological change occurred in the understanding of how workers would participate in industrial decision-making. Labour leaders were very aware of the dilemma of improving workers' wages and fringe benefits on the one hand and achieving increased responsibility in company decision-making on the other. In this dilemma between industrial conflict and industrial cooperation, the solution was to combine a continued emphasis on conflict with a modified concept of labour participation in management. Subsequently there was a gradual modification of attitude by the British and West German unions from participation as a determinative say in management to a consultative voice in company affairs.

4.3.5.5.1 Joint Consultation

In Britain, after World War 2, the threefold re-evaluation of industrial democracy opened the door for the broadening of joint consultation throughout industry. Its acceptance by management and trade unions was encouraged by good experiences with joint production committees during World War 2. So when the Labour Party adopted Joint Consultation as policy all conditions were favourable for widespread adoption of the system. The system also spread to industry in Scandinavia and in the Low Countries.(See also 7.5)

4.3.5.5.2 Workers' management

After being expelled from the Comintern in 1948 Yugoslavia found itself in a political no-man's land between the Capitalist and Soviet blocks. Under these circumstances the Yugoslav Communists developed their own unique model of industrial relations. Their system probably had more in common with the early nineteenth century Utopian Socialists than any contemporary model of industrial relations. The Yugoslavs created a more highly developed model of participation by introducing the principle of "full" workers' control. That made it the only operating national system of industrial management in which a council of worker representatives, democratically elected by the labour force, managed and made decisions at the highest level of an industrial organisation.

4.3.5.5.3 Co-determination

In Germany, Works Councils had been widely adopted in the period between the two World Wars. Although the National Socialists dissolved the councils in the 1930s the ideas did not perish. In 1945 the Social Democrats incorporated these ideas into a system of workers' participation. Comparable to the consultative model it was called co-determination.

As a result of the urgent need for coal, iron and steel in post-war Europe, the trade unions in the Ruhr industries were in a stronger bargaining position than others and able to negotiate a more highly developed participative system called Qualifizierte or "Special" Co-determination.

Special Co-determination has the characteristic that it brings representatives of workers into management positions. It is a model in which the Works Council performs both negotiating and consultative functions and in which workers are represented at several levels of the company management. In some circles the system of Special Co-determination is viewed as one of the steps towards more democratic industrial relations.

4.3.5.5.4 Collective Bargaining

After it was formulated by the Webbs, the concept of collective bargaining as a route to democracy had gained some support in the USA by the beginning of the twentieth century (Derber,1966:261). This bargaining or "conflict" model of industrial democracy is mostly found in the USA where under the influence of "pragmatic" or "business" unionism, such phenomena as local unionism, shopfloor bargaining and individual grievance arbitration have developed. The bargaining model of industrial democracy is based on the experience that in local union bargaining and grievance mediation the workers and their representatives do participate to some degree in decisions on company policy.

Theorists of the bargaining model of industrial democracy compare the negotiated agreement between union and management to a "constitution" for company government. In addition to the constitution that comes up for revisions every two to three years this form of governance, in the same way as its political counterpart, has agencies to enforce its "laws". The attempt to emulate the political democracy model in the workplace is unmistakable. This model of participation is obviously different from the other models previously discussed in this section. Through their continuous involvement in collective bargaining workers are better able to prevent and correct decision-making that may be harmful to their co-workers in comparison to the other models of participation discussed thus far.

King and Van de Vall (1978:12) believes collective bargaining to be very different from other forms of participation and cite Walker who refers to collective bargaining as a "disjunctive" form of participation. In the collective bargaining model, bargaining and grievance solving are both predominantly conflict-oriented procedures, while participation in a Workers' Council or National Economic Board includes a willingness

among labour and management to engage in cooperation. Thus while the collective bargaining model is basically oriented towards conflict, the European participative systems are oriented towards both conflict and cooperation.

4.3.5.5.5 Human Relations

This approach to viewing behaviour in organisations was partly in reaction to the preoccupation of the American unions with industrial conflict, which induced a number of management theorists in the USA to develop a "cooperative" model of labour/ management relations which became known as "Human Relations". The distinct flavour of a managerial bias has persisted in Human Relations theory since it emanated from a theory developed by Elton Mayo of Harvard University. The "democratic" underpinning of Human Relations theory can be traced to ethical-religious conceptions of individual dignity and reverence for life which seem far removed from the practical management techniques which have developed.

Drawing conclusions from their own research, such Human Relations specialists as Argyris, Bennis and McGregor, have developed convincing arguments against the so-called "autocratic syndrome" in industrial government. King and Van de Vall (1978: 14-15) cite the following examples from proponents of this school of thought. Argyris advocates measures for producing more "authentic relationships" and greater "entrepreneurial competence" in order to create more egalitarian relations, to improve communications and to facilitate organisational change. McGregor developed a theory of "industrial humanism" including his "Y" model of industrial man as preferable alternatives to the prevailing "survival of the fittest" approach in labour/management relations. Bennis contributed "T Groups" and a number of "power equalizing" techniques which would lead to a wider acceptance of democratic values in industrial organisations. Blake and Mouton developed the so-called Grid techniques, which aim at equilibrium between management's concern for efficiency and the interests of those engaged in production.

The apparent duality of objectives of human relations i.e. improving the organisation's effectiveness and at the same time meeting individual "needs" for participation makes it difficult to assess the real contribution of the Human Relations movement to industrial democracy.

4.4 THE RECURRENT INTEREST IN WORKERS' PARTICIPATION

Since the Industrial Revolution (c.1760-c.1850) writers have been considering the question of workers' participation in the management of their workplace, in other words, industrial democracy. Following the end of the Second World War various countries have planned and implemented programmes with the objective of having employees participate in the management of the organisation in which they are employed. The ILO's publications *Consultation and Cooperation between Employers and Workers at the level of the Enterprise* (1962) and *Participation of Workers in Decisions within Undertakings* (1967) give an account of some of these attempts in a number of countries.

The recurrent interest in participation is not incidental. It may be seen as one of man's responses to the modern conditions under which work is performed since the advent of the Industrial Revolution. The most widely accepted reason for workers having a right to influence decisions regarding their work, is founded on the belief that in post-industrial times the nature of work is based on the division of labour which contributes to the unhappiness of the working masses. (See also Adam Smith's contribution in 3.6.1) Bendix, R. (1956: vii-viii) points out that the idea that work in modern times has a negative influence on the individual as well as on society has enjoyed the interest of both conservative and radical writers of which de Tocqueville and Marx serve as examples.

It was Marx who pointed to the alienating effects that modern technology, increased division of labour and capitalist property institutions had on the modern worker. Marx clearly distinguished between two elements in the alienation of work: the alienation of the worker to the products of his labour and "*self-alienation* " - the relationship of the worker to the process of production, within the productive activity itself (Marx in Bettamore, 1963: 124-126).

What Marx and others had in mind was the contrast between the old and the new worker. In the past the pre-industrial worker dominated technology, had a sense of purpose in his work and was part of the production system. The modern worker is dominated by factory technology and organisation, the division of labour has removed him from responsibility and he is unable to develop a sense of purpose connecting his

job to the overall productive process. The result is that the worker experiences a feeling of powerlessness. There is no sense of cooperation with his employer who has hired him solely to perform a specific job and he therefore does not identify with the goals of his workplace. The Marxists' solution for eliminating the alienating effect of modern work, was the inevitable establishment of a communist social order in which there would be no division of labour forced on workers by capitalism.

This belief that modern production methods were responsible for a crisis in human relations, that it caused a decline of individual creativity and human fraternity enjoyed common acceptance among conservatives, humanists and radicals of the 19th century. The conservatives even suggested a romantic and reactionary idea of 'back to the land'.

Rosenstein (1969:1-11) writes that the thinkers of the time accepted that industry was there to stay and suggested several means through which the alienating effects of modern industry could be ameliorated. There was a belief that the unskilled and the semi-skilled workers could not enjoy meaning and satisfaction in their work and therefore their free time had to be made meaningful and rewarding — the so-called "*Leisure Solution*". Other solutions related to the components of work itself — such as redesigning the job and increased automation.

Another solution proposed by the thinkers of this era, was the idea of introducing procedures in industry which would enable employees to influence managerial decisions in the place of work. The "*Participation Solution*" seeks neither to change the after-work activity nor the technical content of work. What the supporters of this idea had in mind was to change the status of the worker in the hierarchical order of the workplace. By permitting workers some control over decision-making without affecting control of the work process and technical aspects, the powerlessness dimension of alienation could be addressed.

By advancing arguments in favour of the participation solution, social thinkers and certain social scientists — especially the Human Relations School — have moved closer to each other. In addition to the original humanist intentions of socialists — to abolish the division of labour and rationality in the organisation of the economy — social scientists have added the proposition that equalisation of power in organisations would bring about not only increased satisfaction but also improve performance in the

organisations (Rosenstein, 1969: 1-11).

In the following paragraphs further reasons and justifications for greater worker participation are examined in an attempt to explain the continued interest in workers participation.

According to Schregle (1970) the most far-reaching effort to associate workers directly in the decision-making process, was found in Yugoslav enterprises where a fully-fledged system of worker self-management was introduced in 1950. Ownership of plants were in the hands of the public and management was exercised by the workers in the plant. The main authority for decision-making was exercised by a collectivity of all workers employed in the enterprises. The collectivity acts through various bodies, the most important being the workers' assembly at workshop level, consisting of all workers and the works council comprised of elected representatives. The workers' council in turn elected the management board. The traditional workers/management relationship in the normal sense did not exist. A similar system was also found in Algeria and to some extent in Poland.

In other countries worker participation takes the form of admitting worker representatives as full members of supervisory or management boards together with representatives of the shareholders. In the larger mining and steel firms a 50-50 representative basis was introduced. The supervisory boards which are vested with general policy guidance and supervision consists of five representatives each of the shareholders and of the employees plus an independent eleventh member. The Management Boards normally consist of three members and, must by law include a "*labour director*". In other countries such as Austria, France, Spain, the Netherlands, Ireland and United Arab Republic the supervisory or management boards also contain worker representatives, usually in a minority position.

If one examines the traditional directive, autocratic style of managing business organisations and the people employed in them, it is not difficult to hear the cries of managers questioning why they should become more participative. To answer this question Vaughan (1983) presents three powerful arguments in support of worker participation. These are firstly, the increased motivation argument which holds that participation will lead to increased worker satisfaction and consequently, improved

motivation and enhanced productivity. Secondly, the improved decision argument which holds that management decisions will be improved if workers are also involved in the decision-making process. Thirdly, the industrial democracy argument which holds that workers have an inalienable right to participate in decisions which affect their lives.

According to Hofmeyr (1992) at a micro level our knowledge of individual and organisational behaviour asserts powerfully that the advantages of participation include: the greater likelihood that people understand something they have contributed to; people are more committed to something which they have been involved in, in formulating; the experience and insights of the people at whom the process is directed can be tapped. If participation leads to empowering of people, it releases the potential of individuals to perform effectively.

Doucoliagos (1992) examined the effects of participation on productivity of two forms of business. Labour-management firms - LMFs - (worker-owned firms in which labour exercises ultimate and democratic decision-making power, with one vote per person) as well as Participatory capitalist firms - PCFs - (firms adopting one or more participatory schemes involving employees such as Employee Stock Ownership Plans (ESOPs), quality circles, gainsharing, profit sharing and autonomous work groups) were included in the study.

There are several theoretical reasons why PCFs and LMFs differ in respect of the channels through which various forms of participation function and the effects they have on productivity. In PCFs strategic decision-making power rests with owners and senior managers. In the LMFs the locus of strategic decision-making power rests with and is diffused throughout the entire membership. Workers control determines the degree of participation in decision-making; profit sharing and ownership are under their control and so is the impact of these variables on productivity. Supporters of participation argue that participation in decision-making, profit sharing and worker ownership has positive effects on the firm.

Doucoliagos (1992) found in 64% of the eleven studies examined that in LMFs democratic worker participation in decision-making was positively correlated but not always significantly correlated with productivity. In the case of PCFs 20% of the studies found a negative association between worker participation in decision-making and

productivity.

Thorburg (1993) refers to the Work in America Institute's "*the participative leader from autocracy to empowerment* " study which cites the virtues of partcipative programmes and some companies that report impressive results. The programmes discussed in the Institute's study occurred in both union and non-union settings. Surprising as it may seem, partnerships between management and workers were found to work best in union settings when the top level of union management are involved. Some unions are even training their representatives to work in a cooperative partnership process. The secret for achieving success with Workplace Forums (WPFs) will perhaps be in this particular approach of involving the top leadership of unions as opposed to the local union officials, as has been done in some companies in the US. This would also require managements of South African organisations to adopt a more cooperative and participative philosophy and style in dealing with their workers.

In the debate on the value of cooperative employee participation programmes there is also another view held by Kelley and Harrison (1992) in their book "*Unions, Technology and Labour-management Cooperation*" that employee participation in a non-union environment is a waste of energy. These programmes do not contribute to higher productivity, better quality of work life (QWL) or greater job security. The only relationship they found between employee participation programmes and productivity, job security and QWL was with QWL in a union environment. They also believe that in a non-union environment participative programmes expect employees to supply ideas to enhance productivity or performance but they receive very little or meagre benefits or rewards in return. Interestingly, Kelly and Harrison propose a works council system such as found in Europe to be adapted to the US environment to enable workers in non-union settings greater say in their work. This idea of an American version of the German works council system is also supported by Kochan and McKersie and Weiler as cited by Wever (1994).

According to Thorburg (1993) unions in the US believe they can work cooperatively with management without selling out. Only time will tell if unions in South Africa would be able to make this immense transition from adversarialism to cooperation.

4.5 SUMMARY

Once democratisation of the workplace has taken place, democratisation of a society is almost complete. The South African society is well on its way to becoming a true democracy. However democratisation of the workplace has only begun. Democracy can be viewed from different perspectives. Just as scholars of democracy have different views of democracy so do scholars have different perspectives of industrial democracy.

The search for democracy is perhaps the most critical cause for political instability and change of societies today. It has become a sought-after political model throughout the world. The desire for democracy is also felt in the workplace and it seems only natural that the same principles found in society at large should also apply to the workplace.

The desire for industrial democracy has led to the recurrent interest in workers' participation in decision-making. This interest persists in spite of the contradictory evidence as to the advantages which workers' participation might have for employers and employees.

With the increase of true democratic societies in the world it is inevitable that the pressure to extend democratic rights to the workplace should intensify.

Pressure for industrial democracy will continue until full worker rights have been gained. At the same time there are compelling economic reasons why organisations should adopt a participative style of management.

Whether one supports the direct theory of democracy where members of a unit are directly involved in decision-making or the indirect theory of democracy were decision-making for a unit is done by elected representatives, both approaches require information to be available to make informed decisions.

Industrial democracy, which is the application of democratic principles in the workplace, entails that the workers as members of the particular unit, participate in decision-making. As in the case of democracy, the quality of decisions would depend on the information available to decision-makers in the workplace.

It is therefore only logical that decision-makers have access to information through information disclosure. In Chapter Five the discussion will focus on the disclosure of information without which participation in decision-making and the achievement of industrial democracy are impossible.

CHAPTER 5

DISCLOSURE OF BUSINESS INFORMATION

5.1 INTRODUCTION

In this chapter the disclosure of business information is discussed commencing with an examination of the disclosure of business information in the United States and the United Kingdom. Thereafter the reasons for the disclosure of information are discussed. The remainder of the chapter examines the disclosure of information in South Africa in terms of the LRA of 1995.

Democracy is undoubtedly one of the major political models in the world. In a true democracy the whole population shares in the government through elected representatives. On a social level all members of society may share in the benefits of that society and also have a responsibility to act in the interests of that society. All members may also freely take part in economic activities, provided these are not harmful to the larger society. If democracy is also applied in the world of work, it would mean that employees are entitled to participate in decision-making especially in those decisions that concern them. Successful participation by employees would necessitate that relevant information is disclosed to them for joint decision-making. Information disclosure is an essential element of participation in decision-making and in labour relations processes such as dispute resolution and, as will be discussed later, in collective bargaining and consultation.

Disclosure of work-related information is one of the means through which industrial democracy can find expression. However, not all information which may be disclosed would be of interest to employees but on the other hand effective worker participation in decision-making without disclosure of business information would be impossible. Streek (1994:90) believes constructive involvement of workers is only possible if they are familiar with the employer's plans and decisions.

Legislation and judicial rulings dealing with information disclosure emerged at different times in different countries. In the United States it dates back as far as 1936 when the National Labour Relations Board (NLRB) (similar to the CCMA) recognised that information disclosure was important for collective bargaining purposes. In the United

Kingdom legislation was introduced in 1971 which compelled employers, when requested, to provide trade unions with such information without which collective bargaining would be impeded. Most European countries have a works council system with statutory provisions for disclosure. In Sweden after the Second World War, the disclosure of information was regulated by a voluntary national agreement between the Swedish Confederation of Employers' Organisations (SAF) and the Confederation of Trade Unions (LO). This arrangement was replaced by the Joint Regulation of Working Life Act in 1977 which provides for wide ranging statutory rights to information (Ballace and Gospel, 1983).

On an international level organisations such as the International Labour Organisation (ILO), the Organisation for Economic Co-operation and Development (OECD), the United Nations Commission on Transformational Corporations and the European Community/Union have all contributed to a greater awareness of the importance of disclosure of information to the representatives of workers (Roberts and Liebhaberg, 1977).

Parties involved in industrial relations have taken different views on information disclosure. Some governments and international agencies view fuller disclosure as contributing to good industrial relations as expressly stated in the Employment Protection Act of 1975 in the UK (Legislative Series, 1975). Depending on the country disclosure of information is encouraged as contributing to the "*orderly collective bargaining or the smooth* "operation of works councils.

Trade unions view information disclosure as a way of furthering their objectives by extending negotiations and joint regulation into areas that were previously the exclusive domain of management. European unions also regard disclosure of information as a means of broadening industrial democracy (Ballace and Gospel,1983). On the other hand some employers regard statutory obligations on disclosure to trade unions as a threat to their management prerogative. Their objections are based on the need for commercial secrecy and confidentiality and fear that effective decision-making will be impeded. Other more progressive employers welcome greater disclosure as a channel of communication with their employees.

In this chapter the following aspects pertaining to the disclosure of information are discussed: reasons for information disclosure, development of a culture of information disclosure, relevance of business information, limitations to disclosure and disputes regarding business information disclosure.

5.2 INFORMATION DISCLOSURE IN THE UNITED STATES, THE UNITED KINGDOM AND SOUTH AFRICA

5.2.1 The United States

The disclosure of information to unions in the US is based on the employer's statutory duty to bargain in good faith which has its roots in the interpretation of the National Labour Relations Act (NLRA) by the National Labour Relations Board (NLRB) and the Federal Courts. In 1936 the NLRB held that "*communication of facts peculiarly within the knowledge of either party is of the essence in the bargaining process* ". The Board found that refusal to disclose the information constituted bad-faith bargaining (NLRB, 1936).The substantive scope of bargaining was circumscribed by the Supreme Court in the Borg-Warner case when the range of potential bargaining subjects was categorised and labelled as mandatory, permissive or illegal items (Ballace and Gospel,1983).

Mandatory subjects for bargaining by virtue of section 8(d) of the NLRA were listed as "*wages, hours and other terms and conditions* ". Issues that fall outside this definition are the so-called permissive items. No party can compel the other to negotiate about permissive items and neither may industrial action be employed to persuade the reluctant party. The request to disclose information must be initiated by the union and must be sufficiently specific. In Ballace and Gospel's (1983) view the union has a right to receive information which is "*relevant and necessary*" to bargaining and to the union's administration of the contract. Wage related information is presumed relevant and a union is not required to prove their need for the called-for information. The NLRB and the courts were required to determine whether the requested information is relevant to an issue which is the subject of negotiations between the employer and the union.

Ballace and Gospel (1983) note that many of the refusals by employers to disclose information are based on objections to the manner in which employers are expected to

provide the information. Information requested might not be available in the format that the union has requested. The information may also be of such a volume that compliance would place an unnecessary burden on the employer. In other situations employers have raised objections based on confidentiality related to the need to protect business secrets or individual privacy. The NLRB will determine whether the company's interest in refusing to turn over the information is "*legitimate and substantial* ". If the employer is found to have such an interest, the NLRB will seek to determine whether the employer had made a "good faith" effort to provide the union with data requested in an alternative form designed to protect the employer's interest while meeting the union's needs.

In the US employers are required to file numerous detailed reports with government agencies such as the Securities and Exchange Commission, the Office of Federal Contract Compliance Program and the Occupational Safety and Health Administration. Under the Freedom of Information Act any record within the control of a federal agency is accessible upon request to any person (Ballace and Gospel, 1983). Through accessing these public records a fair idea of the company's activities may be gained.

In South Africa the Promotion of Access of Information Act of 2000 makes similar access to the records of public bodies possible.

5.2.2 The United Kingdom

Disclosure of information in the UK is regulated by the Employment Protection Act of 1975. Section 17(1) of this Act makes it mandatory for the employer to disclose information (a) without which the trade union to a material extent would be impeded in carrying on collective bargaining, and (b) which would be essential in accordance with good industrial relations practice for purposes of collective bargaining. Section 17(2) provides that bargaining must be about matters in relation to categories of workers in respect of which the trade union is recognised by the employer (Ballace and Gospel, 1983). In other words, the trade union cannot expect blanket disclosure or demand information for employees outside of their bargaining unit.

The Advisory Conciliation and Arbitration Services (ACAS) (similar to the CCMA) has issued a code of practice as well as a list under a number of headings of items that might be relevant to collective bargaining. If a union considers that an employer has

failed to fulfil his statutory duty it has recourse to an elaborate complaints and enforcement procedure. This enforcement procedure is clumsy and seldom used. White collar unions were the most prominent among the unions making use of this provision of the Act, probably because their bargaining position is weaker (Ballace and Gospel, 1983).

Ballace and Gospel (1983) also note that the success of employers' defences for refusing to disclose information has shown that checks and exemptions in the Act are extensive and restrictive. As an example, employers have used section 18(2)(a) to exempt them from disclosing original documentation; section18(2)(b) for exemption from disclosure where disproportionate work is involved and section 18(2)(c) to aver that the information was communicated in confidence. All these sections of the Act have been used successfully by employers to refuse disclosure.

On the other hand, more union claims are rejected due to a narrow interpretation of the Act according to Ballace and Gospel (1983). The following points demonstrate this position. First, the question of legal recognition for bargaining purposes: unions are restricted to their area of recognition in terms of their members or subject matter. Second is the narrow interpretation of the concept of "*good industrial relations practice*" which has generally been of little use to unions for disclosure purposes. Thirdly, the requirement that disclosure of information "*without which the trade union representatives would be to a material extent impeded* " in collective bargaining has hampered the union considerably in obtaining information without which it had managed in the past.

Ballace and Gospel (1983) note that the Act's direct influence is slight due to its terms, the manner in which it is interpreted and the resultant decline of interest on the part of trade unions in its use. Indirectly it may have created an atmosphere conducive to disclosure and unions may have become more aware of the importance of information as important tools in the bargaining process.

Judging from the above, it appears that information disclosure to trade unions has been far more successful in the US than in the the UK. One explanation for this could be the terms of the relevant Act and its interpretation in the UK, which places more restrictions on the trade unions desiring information disclosure than is the case in the US.

5.2.3 South Africa

Several studies have investigated the importance of trust in the workplace (Elangovan and Shapiro, 1998, Jones and George, 1998 and Kramer and Tyler, 1996). Many organisations in South Africa still treat many of their employees as if they are immature, untrustworthy children, even when it comes to the disclosure of non-confidential business information. As a result of non-disclosure of general business information, the great majority of employees perceive themselves as not truly part of the organisation in which they are employed. Some employees may believe that their superiors mistrust them. Without relevant business information employees are often in no position to generate ideas or make suggestions which could be of benefit to the organisation and themselves. This reticence by agreement to disclose business information misses the opportunity to empower employees and for the employees to experience a sense of involvement and participation in the activities of the organisation.

Since 1994 the South African government has actively attempted to foster a culture of transparency and accountability in public and private bodies by giving effect to the right of access to information. Section 8 of the Constitution "*provides for the horizontal application of the rights in the Bill of Rights to juristic persons to the extent required by the nature of the rights and the nature of those juristic persons* " as quoted in the Promotion of Access to Information Act of 2000. Furthermore section 32(1)(a) of the Constitution provides that everyone has the right of access to information held by the State and section 32(1)(b) " *provides for the horizontal application of the right of access to any information held by another person to everyone when that information is required for the exercise or protection of any rights*". Section 32(1)(b) means that employees and trade unions now have constitutional support when they demand information from their employers in order to exercise or protect their rights. The Constitution requires the government to enact national legislation to give effect to the rights in Section 32 of the Constitution and this has taken the form of the Promotion of Access to Information Act of 2000.

Landman (1996:22) is of the opinion that the rationale for disclosure of information can be divided into two aims: the employee-centred aim and the company-centred aim. He writes "*Parliament believes that employees and their agents will be able to perform their monitoring functions, exert influence on managerial discretion and make decisions on*

a higher and more informed perhaps even rational basis if they are provided by employers with relevant knowledge and information." Based on his research Grosett (1997:37) provides the following reasons for business information disclosure and writes that "*employee-centred aims are based on more "ethical" considerations such as the organisation's responsibility to keep its employees informed and the desirability of employees' representatives to be given information to support the role of joint consultation and other forms of participation in decision-making* ".

In dealing with their employers, employees today regard access to business information as essential in order for them to gauge the employer's financial position, as well as the employer's ability to meet their demands. Some employers in turn regard the disclosure of business information as a further opportunity to increase their influence and control of the workplace. In this regard Grosett (1997:37) writes that the aim with information disclosure is to "*reinforce management's influence and control of the organisation .... achieved by increasing employee involvement and identification with the interests of the organization*". However, not all employers view disclosure of information as an opportunity - some see this as a definite threat to their "*management prerogative*" and fear that it could lead to an escalation in demands from employees.

Grosett's (1997:38) research of South African organisations found the following benefits of information disclosure as indicated by employers. Employers believe that information disclosure leads to improved employee cooperation because information enhances the employees' understanding of the organisation and decisions made within it. Employers were also of the opinion that shared information leads to improved collective bargaining and reduced conflict. Employers also reported increased employee involvement in decision-making because employees had access to relevant information. A further reported benefit was increased levels of job satisfaction.

The disclosure of information in collective bargaining and the consultation process has long found acceptance in other countries. Brand and Cassim (1980:250) writes "*The progress of collective bargaining in the United States and Europe has been characterised by the move away from uninformed and irrational bargaining towards sophisticated and intelligent bargaining. In the USA this process has been facilitated by a recognition that, integral to the duty to bargain, is the requirement that an employer furnish relevant information in its possession to the union. The purpose of this is to*

enable the union to bargain intelligently, to understand and discuss issues raised by the employer's opposition to union's demands and administer a contract. "

Jordaan (1996:1-2) quoting a report issued by the Advisory, Conciliation and Arbitration Services in the UK writes that a lack of information has been shown to handicap the ignorant party when it comes to the bargaining and consultation process. Disclosure of information to works councils in Germany and the Netherlands is common practice.

The International Labour Organisation (ILO) also recommends that disclosure of information should be part of the collective bargaining process. The ILO's Collective Bargaining Standards Recommendation 163 (1981) reads "*measures adapted to national conditions should be taken, if necessary, so that parties have access to information required by meaningful negotiation*".

The need for the development of a culture of information disclosure in South Africa must be seen against the background of a system of government which prevailed for decades and over time resulted in a secretive and unresponsive culture in public and private bodies and which in turn led to abuse of power and even to human rights violations.

The provisions for information disclosure contained in the new LRA, the doctrine of discovery in law practice, i.e. the obligation on opposing sides to disclose documents that they may have in their possession and the Constitution of the RSA have all contributed to the development of a culture of information disclosure. Johannessen (1995:45) identified the following reasons for access to information under section 23 of the Constitution of the Republic of South Africa Act 200 of 1993 (the Interim Constitution): Access to information is a right identified in the chapter on fundamental human rights in the Constitution. Allowing citizens to obtain information is an essential part of democratic participation and the free flow of information supports the participatory form of democracy. Access to information also encourages accountability in a democracy and access to information encourages better administrative decisions.

The reasons for gaining access to information mentioned above, reflect the importance of information disclosure in any constitutional democracy. This right to access to information is of such importance that it is specified in the final Constitution. Section 32

of the Constitution of South Africa Act No 108 of 1996 deals specifically with this very important right. In his commentary on section 32, Devenish (1998:80) writes "*Its inclusion endorses the pervasive theme of accountability and transparency of government and administration that runs like a golden thread through the entire Constitution and forms part of a new political morality*". It follows that without disclosure, employees would find it impossible to hold employers accountable for actions that are detrimental to employee interests.

In South African labour law the right to disclosure of information has developed through the principle of good faith bargaining and the Industrial Court decisions regarding retrenchment. Under the LRA 28 of 1956 the unfair labour practice jurisdiction of the Industrial Court was utilised to induce parties to the bargaining process to engage in meaningful bargaining. In addition, the Industrial Court was able to order access to an employer's premises and the disclosure of relevant information. In the Atlantis Diesel Engines v NUMSA case (1995) the Labour Appeal Court dealt with the matter of good faith bargaining and disclosure of information to the trade union when retrenchments were considered. Kahn-Freund (1997b:21) has written that "*Negotiation does not deserve its name if one of the negotiating parties is kept in the dark about matters within the exclusive knowledge of the other which are relevant for agreement.*"

5.3 DISCLOSURE OF INFORMATION UNDER THE LRA 66 OF 1995

Disclosure of information is provided for in section 16 in order for the LRA to achieve its objectives of promoting collective bargaining and employee participation. Section 16(1) specifies that disclosure of information can only be claimed by a majority union. Minority unions may however act together to achieve a majority and then exercise their right to disclosure. Section16(2) requires that the employer must disclose to a trade union all relevant information. Du Toit *et al* (2000:176 and 1998:114) write under the heading "Disclosure of Information" that "*Once a union has acquired this right, the onus is on the employer to disclose the required information, even in the absence of any request from the union.*"

In this context "this right" means the trade union concerned achieving representative status. The "required information" refers to disclosure of relevant information to the union that will allow its representatives to effectively perform their functions and enable

it to engage effectively in consultation and collective bargaining in terms of the relevant sections of the LRA.

The spontaneous disclosure of information by employers during collective bargaining and participation by employees in decision-making may be the action required to improve and strengthen the trust relationship between employers and trade unions in South Africa .

Successful consultation and joint decision-making processes depend largely on the knowledge the parties have about the issues being discussed. It is for this reason that the legislature has granted Workplace Forums the right to information in section 89 of the LRA. The employer must disclose to the Workplace Forums all relevant information that will allow the Workplace Forums to accomplish effective consultation and joint decision-making. Disclosure of information is mandatory and therefore the Workplace Forums need not first have to request the information specified in the relevant sections of the Act. According to section 89(1) the disclosure is intended to allow the Workplace Forums to take part effectively in consultation and decision-making. It therefore seems logical that such information should be made available before these processes begin in order to allow parties time to prepare.

An employer with a functioning Workplace Forum has to disclose all relevant information. The relevance of the information is determined by reference to the matters listed for consultation in section 84 and for joint decision-making in section 86. The Workplace Forums may request further disclosure except in respect of information that is legally privileged and information that cannot be disclosed as such disclosure would contravene the law or an order of the court. Disclosure of information that may cause substantial harm to an employee or employer and private and personal information is also excluded.

5.3.1 Relevance of information

Everingham (1991:217) suggests that in general the following information should be disclosed: Information on the financial status of the organisation; information on absenteeism, industrial relations and productivity; and lastly, information on the employees' contribution to the planning the organisation's future. This suggestion

includes the typical information found in annual reports of companies. It is doubtful whether disclosure of this type of information which is designed to meet the requirements of the shareholders will contribute to more constructive collective bargaining and greater employee participation in decision-making .

Based on the research of information disclosure to employees, Grosett (1997: 39-40) lists the following items of information for disclosure: productivity information; information on morale; information on wages and benefits; safety information; information on company performance; information on wealth sharing and information on the organisation's future.

In regard to disclosure to representative trade unions under section 16 of the LRA, the question of whether or not information is relevant, is determined with reference to the circumstances of each case. Furthermore the relevance of information must be determined by the purpose for which it is sought and it must be pertinent to the issues in question.

According to section 16(2) the information must be relevant to the duties to be performed by a trade union representative or a shopsteward which include such activities as representing employees in grievance and disciplinary hearings; monitoring the employer's compliance with provisions of the Act and collective agreements and reporting alleged contravention of workplace-related provisions of the former; and to perform any other functions agreed to between the trade union representative(s) and the employer. Section 16(3) provides for the disclosure of information so as to allow the trade union to engage effectively in consultation or collective bargaining. In a retrenchment context the Labour Appeal Court in the National Union of Metal Workers of SA v Atlantis Diesel Engines case (1993) recognised relevant information as that which concerned the retrenchment process. A further consideration is advanced by Du Toit *et al* (1998:115) who write that as far as collective bargaining is concerned "*In the collective bargaining arena relevant information includes all information necessary to adduce, defend or refute negotiating claims.... information that might, but not necessarily must, advance the other party's case should be disclosed* " .

5.4 LIMITATIONS TO DISCLOSURE

Organisations may make their own assessment of what and how much information they would disclose in the interest of the parties concerned, provided they comply with the legal requirements. In the section that follows the limitations on disclosure of information as found in the LRA of 1995 are examined.

Section 16(5) stipulates that an employer is not required to disclose the following types of information: Information that is legally privileged; that cannot be disclosed without contravention of the law or an order of court; that is confidential; and private and personal information unless the employee concerned consents to such disclosure.

5.4.1 Legally privileged information

What is regarded as legally privileged information may not always be clear. The Appellate Division in Bogoshidi v Director for Serious Economic Offences provided the guideline that only confidential communication between attorney and client for the purpose of obtaining legal advice, is privileged. Jordaan (1996:3) however suggests that in labour law: "*Industrial relations advice as well as information obtained for example for collective bargaining strategy purposes, should also be considered to be legally privileged* ". In the workplace the second opinion would be of greater use to both employer and employees.

5.4.2 Prohibitions imposed on the employer by any law or order of the court

This means that disclosure of certain information is prohibited by law, e.g. information that may harm national security. Where there is a court order prohibiting disclosure based on the rights of a third party, any disclosure would constitute contempt of court.

5.4.3 Private personal information.

This refers to information concerning a particular individual in his or her private capacity which is not related to the employment relationship and is not public knowledge. An example of this would be a person's HIV/AIDS status. This is based on the right to privacy which is protected by the Constitution of the RSA.

5.4.4 Confidential information that may cause substantial harm to an employee or employer.

On the question of confidentiality of information in the workplace, the potential for conflict becomes very significant. On the one hand there is the employer wishing to disclose as little as possible in order to protect his ownership rights. On the other hand there are the employees wanting to enforce their right to be informed. Parkinson (1977:72) proposes that the arguments against full disclosure of information could be grouped into two categories. "*First, the possible leakage of confidential information to workers and trade unions may undermine management's positioning in collective bargaining, and second, information is a source of power - providing unlimited information to workers and trade unions may undermine management's position in collective bargaining*". It is debatable whether the second argument is very sound in reality because management, purely by reason of its role in a company, would always have more information at its disposal than the employees and their representatives.

The employees on the other hand rely on the principle that no limitation should be placed on their procedural rights to make use of all information in their possession in order to present their case. This dichotomy has led to the courts often having to determine how much confidential information needs to be disclosed to the opposing party.

The LRA specifies in terms of section 16(4) that the employer must notify the trade union representative or the trade union in writing if any information disclosed in terms of sections 16(2) and 16(3) is confidential. Section 16(5)(c) provides that an employer is not required to disclose confidential information which may cause substantial harm to an employee or the employer.

In the context of workplace forums Khoza (1999:153) writes that although the limitations to disclosure are similar to those under section 16, he believes WPFs are entitled to more generous disclosure of information than a representative union. Firstly, the information to be disclosed is defined under the issues for consultation and joint decision-making, thus removing the employer's discretion in deciding what to disclose. Secondly, the employer, in terms of section 90, is obliged to allow the WPF to inspect any documents containing information in terms of section 89 or at the request of the

WPF. The employer should also provide copies of the information to the WPF. If the WPF does not ensure the confidentiality of the disclosed information the right may be withdrawn by a commissioner of the CCMA. Thirdly, beyond the consultation and joint decision-making matters, section 83(2) prescribes that the employer must have regular meetings with the WPF as discussed in Chapter Eight of this thesis.

From an examination of the information to be disclosed it appears that the workplace forum, as representatives of all the employees, will be given an opportunity to get a better understanding of the company's operations. This information must be provided in such a manner that maximum understanding can be achieved. Where employees have difficulty in understanding complex information, expert assistance may be obtained to make the information more comprehensible.

5.5 SUFFICIENT DISCLOSURE

Employers' and employees' representatives are unlikely to agree on when sufficient information has been disclosed. Some clarity on the matter is provided by the LRA in section 16(2) as well as in the limitations mentioned in section 16(5). Section 16(2) provides that all relevant information that would allow the trade union representative to perform effectively his/her duties must be disclosed by the employer. During the process of consultation and bargaining the employer must disclose to the representative trade union all relevant information that will allow the representative trade union to effectively take part in consultation or collective bargaining. Unfortunately relevant information is not defined and this could lead to disputes.

To determine sufficiency of disclosure the Labour Appeal Court in the Atlantis Diesel Engines (Pty) Ltd v NUMSA (1995) case used the limitation specified in section 16(5). In NUMSA v Metkor (Pty) Ltd (1990) Roth AM stated that :" *It seems to me to be lawful, just and equitable that management should be obliged to disclose only such information as would reasonably enable employees to consider the consequences that information held for them* ".This 1990 opinion has been criticised by Du Toit *et al* (1998:150) when read in terms of the provisions of the LRA of 1995. When determining sufficient information disclosure, the purposes of the Act cannot be ignored because the LRA makes provision for more information disclosure than ever before. This is a vital requirement for the processes of collective bargaining and consultation.

5.6 DISPUTES REGARDING BUSINESS INFORMATION DISCLOSURE

With disclosure of information a contentious issue, disputes between management and employees are inevitable. If a dispute arises about the disclosure of information the issue must be resolved by the Commission for Conciliation, Mediation and Arbitration (CCMA). Section 16 prescribes that the CCMA must first determine whether the information that is sought is relevant and also whether disclosure will result in harm to the employer. The CCMA must attempt to resolve the issues through conciliation and if unresolved it should attempt arbitration. The CCMA can either order disclosure of all information sought by a registered trade union or a WPF or order limited disclosure to limit potential harm as a result of the disclosure.

In this section a brief but useful comparison is made between the LRA and legislative provisions in Germany and the Netherlands in regard to disputes about information disclosure. According to section 80(2) of the Works Constitution Act 15 of 1952 in Germany, the employer must provide the works council with comprehensive information in good time in order for it to perform its duties. This section is also supported by other specific rights to information which are not directly linked to other participation rights. For example, section 90 specifies that the employer has to inform the works council timeously of plans with regard to construction, alteration or extension of production, technical equipment, work procedures and routines or jobs (Halbach, 1994).

In regard to the confidentiality of disclosed information section 79(1) stipulates that members and substitute members of works councils shall not divulge or exploit trade or business secrets which come to their knowledge through their membership of the works councils and which the employer has explicitly described as confidential. There is some concurrence with the provision in the LRA in that a works council member only breaches confidentiality if the information has been specified as confidential.

In the Netherlands Chapter 4 section 31(2) of the Works Council Act of 1979 provides that the management board should provide information at the request of the works council. (Under the LRA the employer is expected to disclose information without a request from the WPF or the representative trade union(s).) Information to be disclosed in the Netherlands must have reference to the legal and factual organization of the company, the names and addresses of the executives, the financial statements,

budgets, the expectations which the management board has for the future, investment plans, long term plans (twice a year) and the employment situation and social policy (once a year) (Ottervanger, 1996:399). In terms of Chapter 2 section 20(1) the members of the works council are compelled to observe secrecy regarding matters of which they learn in their capacity as council members. In the LRA only matters labelled confidential are treated as such. In both the Dutch and South African situations consultation with and report-back to their constituent employees by works councils and workplace forums are limited by the confidentiality provisions. This raises the question of whether either works councils or workplace forums can be effectively accountable to their constituencies. Extensive secrecy provisions do not contribute to effective employee participation in decision-making.

5.7 SUMMARY

The disclosure of information and particularly disclosure of business information cannot happen in isolation – the surrounding environment or climate in the organisation must support this activity. Therefore a culture change first had to take place in South Africa before functional information disclosure could occur. This culture change was brought about by changes such the Constitution of the RSA and other legislation such the LRA of 1995.

Some available literature provides guidelines on the types of information that may prove useful to meet requests for information disclosure. The conclusion drawn is that information to be considered for disclosure must be relevant to the matter at issue. If the matter facing the employer is, for example, one of dismissal for operational reasons, all information regarding the employer's motivation for such action could be regarded as relevant. From an employee/trade union perspective all information regarding severance pay, retraining, recall procedures etc. would be regarded as relevant for proper consultation.

An organisation cannot be expected to disclose all business information. It is shown that Section 16(5) of the LRA is quite specific in the prohibition of disclosure of defined types of information.

Bearing in mind South Africa's past where secrecy rather than information disclosure

was the norm, some parties may fear and resist any attempt at information disclosure. It is also evident from the LRA that there is sufficient provision made in the Act to deal with situations where the disclosure of business information is disputed.

It will be shown later that of the participants in the investigation four of the management representatives and four of the worker representatives preferred to resolve disclosure disputes in their organisations internally through negotiations between the employer and the trade union rather than making use of external agencies such as the CCMA.

Collective Bargaining in which disclosure of information is vital, will be discussed in the following chapter.

CHAPTER 6

COLLECTIVE BARGAINING

6.1 INTRODUCTION

The potential for conflict within the labour relationship is immeasurable. Conflict is, *inter alia,* manifested in disagreement about the division of profits and benefits. On a sophisticated level conflict centres on such matters as role and status definition, decision-making powers, accountability structures, flexibility and control as well on in a conflict of personal values and goals, beliefs and ideologies. The employees in the early industrial environment soon realised that the only effective means at their disposal to improve their wages and working conditions against the powerful employers were to combine their forces and so in due course trade unions were founded. Instead of each worker having to negotiate or bargain individually, the trade union would negotiate collectively on behalf of all its members thus establishing the process now known as collective bargaining.

Conflict in the labour relationship will become dysfunctional if it reaches destructive proportions, is not balanced by cooperation and is not handled in a proper manner. In the labour relationship it has long been accepted that conflict is endemic - consequently processes have been devised to handle and contain conflict. This has led to the institutionalisation of collective bargaining as a predominant process within the relationship.

For Thompson (1996) collective bargaining *" represents an important, perhaps the most important, means of participation in industrial life for many employees. It also carries with it seeds for more sophisticated and participatory forms of workplace and social regulation...It also serves to broaden the base of democratic pluralism*". In a similar vein Cordova (1982) writes that collective bargaining is the form of employee participation most in evidence internationally.

Thus both collective bargaining and cooperation have a place in managing the conflict that is inherent in the labour relationship. By their nature both processes would also contribute to participation by employees and therefore promote democratisation of the workplace.

Flanders (1965) notes that employers participate in collective bargaining for two major reasons: market control through which they attempt to remove wages from competition and managerial control through which behaviour at work is regulated by means of procedural arrangements. Managerial control is the means used to ensure more predictable workplace behaviour and therefore improve work output. Collective bargaining also provides a sense of legitimacy to the rules and substantive conditions of employment by virtue of the participation of both employer and employee parties in the negotiating process. The market control objective has been achieved best under conditions of centralised or multi-employer bargaining. Cameron (1989:10) suggest that trade unions are attracted to centralised bargaining as a "*forum where negotiations on industrial matters may take place on a systematic basis*".

Lord Wedderburn (1983:270) writes that collective bargaining concerns "..... *all negotiation by employees carried on collectively through their representatives. The resulting agreement between union and employer is at once an industrial peace treaty and a source of rules; it encompasses the terms and conditions of employment, remuneration and other benefits, the distribution of work and the control of jobs.....more than (it) leads to 'joint regulation' at the place of work.*"

For Rycroft and Jordaan (1992) collective bargaining fulfils several functions: economically it serves as a means of regulating workplace relations and institutionalising conflict; socially it establishes a system of industrial justice protecting employees from arbitrary management action; and politically it is a means of extending democracy to industrial life.

As indicated above Flanders (1965) suggests that employers participate in collective bargaining for two major strategic reasons: market control and managerial control. Both objectives are quite natural for any profit-motivated enterprise. However, market control is only possible in situations were a number of employers together bargain with the representatives of labour. Sisson (1987) argues that only employers in highly competitive industries are likely to see any advantage in this approach. Managerial control strategies on the other hand serve to secure rules through which workforces might more easily be managed through procedural agreements and substantive contracts. One of the biggest threats to enterprises is uncertainty. Both forms of control seek to create some degree of certainty. Employers prefer predictability of labour

conditions because it eases the burden of planning and managing the enterprise. Collective agreements emanating from the collective bargaining process not only provide some degree of certainty for a specified time but such agreements also bestow some legitimacy to management control because the process of bargaining is a joint process as opposed to other types of unilateral decisions made by employers. Sisson (1987:6) summarises this point by saying "In brief then, providing for rules which are jointly made, collective bargaining is held to contribute to managerial control by legitimating rules and by institutionalising conflict."

Greater influence in the workplace, made possible by collective bargaining not only benefits employers, but trade unions also stand to benefit by shifting the determination of terms and conditions of employment and employment rules away from arbitrary and/or unilateral decision-making on the part of the employer. Storey (1983) believes that in practice this means that organised labour can encroach upon the traditional management prerogative through use of the collective bargaining process.

Small enterprises may decide to act together when they are confronted by powerful trade unions and when they perceive it in their interest to control the undercutting of wages and conditions of service by others and also to contain union pressure for higher wages and better service conditions. These circumstances are often found in industries which experience low profit margins, high level of dependence on labour, weak or small employers facing large, centrally organised unions and intense competition both domestically and internationally. On the other hand, employers prefer bargaining individually where production units are large, capital to labour ratios are high and product competition is intense (Sisson, 1987).

6.1.1 Collective bargaining in Europe and Britain

In Western Europe employers opted for a multi-employer approach for the reason that it can contribute to neutralising the effects of direct union activity. Once terms and conditions have been set at sectoral level, individual employers have considerable freedom in decisions affecting their own operations. One of the perceived advantages of multi-employer bargaining for large employers is that wages and service conditions must be achievable for even the smallest employer in the forum. This fact circumscribes union demands for higher wages and better conditions. The advantages of the multi-

employer bargaining for small employers lie in the fact that they are shielded from direct union bargaining because bargaining takes place at a central forum level. In South Africa small employers often complain that wages and service conditions bargained in bargaining councils i.e. in multi-employer forums, are more suited to the larger employers and do not take into account the circumstances of small employers. The effectiveness of a multi-employer centralised bargaining system is compromised in cases where trade unions use the forum only to establish sectoral minima and then pursue a second round of bargaining at individual member companies to gain further concessions. This has occurred in various instances in South Africa (Sisson, 1987).

The ILO (1989) reports that in Western Europe enterprise (plant) level bargaining has increased while inter-occupational negotiations have declined. In a detailed review of industrial relations developments in Europe, Ferner and Hyman (1992) point out that there have been trends towards decentralised bargaining across Europe for some time. This has manifested itself in various forms. In Sweden, it has meant a move from national inter-occupational to industry level bargaining. In countries such as Britain, Italy and the Netherlands there has been a shift from sectoral to enterprise level bargaining according to Thompson (1996) and Gladstone (1989). For Gladstone these changes are not so much shifts from one level to another than an extension of bargaining across different levels. What is actually occurring is that there is a debate on the appropriate place for bargaining of different items. Some items will be bargained in central structures and other items at enterprise level.

Ferner and Hyman (1992) report that pay bargaining in Denmark has moved from a national multi-industry process to individual sectors. In Sweden there has been more of a see-saw process of national and industry bargaining with employers favouring enterprise bargaining. In the 1980s inter-occupational bargaining was discontinued in Denmark, Sweden, Norway, Ireland, Italy, the Netherlands and Spain. The ILO (1989) report that during the same period enterprise (plant) level bargaining increased in France, Germany and Norway.

Africa is not known as a continent with a strong collective bargaining tradition mainly due to low levels of industrialisation and state corporatist approaches by various governments. Only about ten percent of the workforce is in formal wage employment and few workers are unionised. Little collective bargaining takes place and the right to

strike is very restricted. Of course the exception to the above is South Africa of which more follows later.

The International Congress of Free Trade Unions (ICFTU,1989) reported a variety of collective bargaining arrangements. Botswana, Ghana, Mauritius and Uganda permitted collective bargaining at central and enterprise levels. In Burundi and Zaire a multi-tiered bargaining approach is followed but only through the auspices of a single union federation. In other countries such as Benin, Burkina Faso and Gabon industry bargaining is disallowed with only enterprise level collective bargaining being permitted. However, in most African countries centralised bargaining is preferred as it forms part of the unitary nation-building programme of those countries.

The system of collective bargaining that developed in Britain, in accord with trade unions, employers and the state, was one of "industrial self-government" advocated by the Whitley Committee and "voluntarism " in which they sought as far as possible to avoid legal intervention in the relationship (Wedderburn, 1986). Trade unions in Britain made progress through the removal of legal obstacles and not so much through acquiring positive rights as was the case in the rest of Europe.

Following the recommendations of the Whitley Committee for improved labour-management relations after the First World War, joint industrial councils were established in all organised industry for collective bargaining purposes. To cover industries not organised the Trade Board Act was extended to fix minimum wages and this gave rise to trade boards consisting of labour and management representatives. Between the wars many industrial councils fell into disuse, but the Second World War saw many of them receiving a new lease of life.

Local bargaining was however steadily gaining ground. In 1968 the Donovan Commission reported that the British industrial relations system was in fact a dual system consisting of a centralised system alongside a local or workplace bargaining system in the same industry. In the Commission's view the informal system was threatening the formal one through the fact that the gap between agreed wages and actual enterprise wages was widening. A consequence was that a system of formal centralised bargaining as well as a system of informal enterprise or local level bargaining became established. A similar difference between centrally agreed wages

and actual wages paid by individual companies also occurred in the metal industry in South Africa.

From 1980 the Conservative Government steadily curtailed the gains achieved by the powerful trade unions. In 1980 the Employment Act restricted the closed shop arrangement and picketing, removed compulsory arbitration in recognition disputes and reduced employee rights in unfair dismissal cases. In 1982 the Employment Act made trade unions liable for damages in cases of unlawful action, made solidarity action and secondary and sympathy strikes unlawful and further limited the closed shop. In 1990 the Employment Act removed protection for pre-entry closed shops and made refusal of employment of non-union members unlawful and empowered employers to dismiss employees engaged in unlawful strike action and removed immunities for shop stewards when mobilising to assist strikers. In 1993 the Trade Union and Employment Act prohibited check-off if a new agreement was not negotiated every three years; permitted employees to join a union of their choice and employers to offer financial inducements to employees to resign from trade unions. Wage Councils were abolished ending determination of minimum wages and support for collective bargaining through the Arbitration Commission was also removed (Gold, 1996; Visser and Van Ryssenveldt, 1996 and Salamon,1998).

The trade union movement fell from a density of fifty three percent in 1979 to thirty seven percent in 1992 and had also lost its grip on the Labour Party due to the new leadership turning away from its traditional allies, the unions. By the 1990s the British labour movement had lost its traditional power, collective bargaining no longer extended its cover as widely as in the past and enterprise level industrial relations was in fashion (Visser and Van Ryssenveldt, 1996). What had taken place in British labour relations was that the system of centralised collective bargaining was slowly being replaced by a system of local or enterprise level collective bargaining.

Jackson, Leopold and Tuck (1993:160) note several reasons for this trend towards decentralisation in Britain. Attempts by the government during the 1980s to deregulate the market led to moves away from national wage determination and in that way increased flexibility through enterprise level pay bargaining. Employers initiated strategies which had a major impact on the thinking about collective bargaining and pay levels. In terms of these strategies remuneration had to be linked to performance.

There were also efforts to devolve managerial responsibilities to lower levels in the enterprise.

Remuneration bargaining became more closely linked to the operational levels of the enterprise. This resulted in local worker representatives rather than union office bearers becoming more involved in the business activities. Managers believed that this decentralised process made the ownership of agreements easier for labour to accept. Through this decentralised approach "customised" agreements were possible and employees' representation was fundamentally changed. Enterprise level bargaining lends itself to productivity exchanges, which is not always possible with centralised bargaining. Business strategy, rather than labour markets, determined the withdrawal of employers from multi-employer bargaining (Jackson *et al*, 1993:161). Where in the past multi-employer bargaining attempted to control the labour market the emphasis shifted to control of work at enterprise level.

In this chapter Collective Bargaining (CB), perhaps the oldest form of employee participation in workplace decision-making, will be examined further. Although Collective Bargaining relies on adversarialism as opposed to cooperation which is generally associated with different forms of participative behaviour, it is nevertheless a means through which employees can take part in decision-making in the workplace. Historically it was the only means available to workers to protect and promote the interests of the working person. In the examination of the role of collective bargaining in enhancing employee participation in decision-making the following aspects are covered: theories and definitions of collective bargaining; the development of collective bargaining in South Africa; centralised collective bargaining; voluntarism; the duty to bargain and bargaining units.

6.2 DEFINITIONS AND THEORIES OF COLLECTIVE BARGAINING

The Concise Oxford Dictionary defines Collective Bargaining as "*negotiation of wages etc. by an organised body of employees* "(1995:258). The term, coined by the Webbs, first appeared in print in their now classic *Industrial Democracy* (1902) and was used to refer "*to negotiations concerning pay and conditions of employment between trade unions on the one hand and either an employer or an employer's association on the other* ".

Davey, Bagnanno and Estenson (1982:2) describe Collective Bargaining (CB) as "*a continuing institutional relationship between an employer entity (governmental or private) and a labour organisation (union or association) representing exclusively a defined group of employees (appropriate bargaining unit) concerned with the negotiation, administration, interpretation and enforcement of written agreements covering joint understanding as to wages or salaries, rates of pay, hours of work and other conditions of employment*".

Flanders (1968:1-26) has argued that the Webbs were mistaken in their view of the nature of CB. According to him they viewed CB as a collective version of individual bargaining. This view he referred to as the classical view of CB. For Flanders CB is purely a "rule-making" activity which regulates but does not replace individual bargaining. Flanders identified a number of differences between CB and individual bargaining. Firstly, individual bargaining is about the buying or selling of a particular commodity whereas CB does not involve the buying or selling of anything. Secondly, individual bargaining usually stipulates in detail the terms and conditions of trade, whereas in CB only the minimum terms and conditions are specified. Thirdly, individual bargaining is essentially a market activity and CB a political activity where power is used without wishing to cause permanent damage to the ongoing relationship without which none of the bargaining partners can function. Fourthly, that since CB is more of a political than an economic activity, different factors have to be considered; CB is often performed by professional negotiators who recognise the importance of maintaining the relationship between the parties and therefore refrain from driving too hard a bargain. Fifthly, collective bargaining is not restricted to a discussion of economic matters, but is also concerned with other issues, for example, service conditions, health and safety matters etc.

The views of a number of other writers in the field correspond with Flanders' views. In his 1968 article (18-19) Flanders examined the work of two other well-known contributors to the area of study. In their work Chamberlain and Kuhn held the view that there are three theories about the nature of CB. The first, which is very similar to Flanders' so-called classical view, sees CB as consisting of contracting for the sale of labour. The second view regards CB as a form of industrial government where it is the objective of collective bargaining to lay down the rules. The third theory holds CB as a management approach that emphasises the functional relationship between employers

and trade unions as representatives of the workers, to the benefit of both parties. Flanders believed that the managerial theory of CB had much to offer the understanding of the interaction between employers and trade unions. It stressed that labour is not only interested in the negotiated wages but also in the management of the enterprise. Flanders warned that the impression might be created that the trade unions were set on taking over or becoming part of management. This interpretation was later denied by Chamberlain. Flanders' view could be interpreted as implying that unions were considering the idea of participation in decision-making or industrial democracy in whatever form. Jackson (1992:137) comes to Flanders' defence when he suggests that Flanders' warning must be understood only as an attempt by trade unions to place limits on managerial action.

Flanders' position has in turn been cited by Fox (1974:151-174) where he argues that Flanders' criticisms of the Webbs' notion of CB is incorrect for a number of reasons. Firstly, Flanders used MacIver and Page's definition of individual bargaining. Fox presents an alternative argument, that individual bargaining should be viewed as having three elements: first a bargaining process consisting of an argument, evidence and threats made by the respective parties; second, this element may or may not end in an agreement after both buyer and seller have had to make compromises and third, this element may or may not result in the parties entering into a contract between them. Fox believes that it is wrong to suggest that individual and collective bargaining are different because the one ends in a contract and the other in rules made through a bargaining process.

Fox's second point of disagreement with Flanders' understanding of CB is that the latter differentiates between individual and collective bargaining in that only CB is seen as political process involving "*the diplomatic use of power*". Fox argues that this also applies to individual bargaining. The difference between individual and collective bargaining is precisely what the Webbs said that it was – "*a difference of the disparity of power* ".

The third disagreement refers to Flanders' assertion that a refusal to bargain in an individual case is taken at face value but as a bargaining ploy if applied to collective bargaining. Fox argues that the differences between the individual and collective refusal are more convincingly seen as ones of contingency rather than principle.

The main criticism by Fox of Flanders' work however relates to his general approach. According to Fox, Flanders saw the main function of CB and trade unionism as political rather than economic. With this line of reasoning Flanders supported Chamberlain and Kuhn's notion of "*managerial bargaining*" through which workers try to influence decision-making in the organisation and the idea that workers joined trade unions mainly for non-economic reasons. In other words, Flanders believed that CB could be employed to enhance industrial democracy and participation in decision-making in the workplace. Fox admits that the reasons why unions undertake bargaining and why workers join unions are contradictory and inconclusive, yet he believed that the economic motives should not be underestimated in the collective bargaining process.

6.3 DEVELOPMENT OF COLLECTIVE BARGAINING IN SOUTH AFRICA

The development of Collective Bargaining is discussed in different time periods in order to examine the context of South Africa's developmental history. Industrial Relations developments cannot be divorced from the social, economic and political change taking place in a country.

6.3.1 The period 1652 to 1870

Labour relations during this period consisted mainly of master/slave interaction. Employee representation did not exist. Between 1652 and 1866 the relationship between employer and employee was mainly of an individualistic and paternalistic nature. Over time more and more black persons were employed by white colonists which required that measures had to be introduced to regulate the employment of such black persons and their movement in certain areas. In 1828 a pass system was introduced in the Cape Colony which allowed blacks in white areas solely for employment purposes (Tustin, 1991:5-6).

6.3.2 The period 1870 to 1924

The discovery of diamonds and gold led to an influx of labour to Kimberley and the Witwatersrand and to the establishment of other industries to support the mining industry. Skilled European immigrants had to be imported and these workers brought with them trade union experiences especially the British brand. In 1911 the Mines and

Works Act was passed which effectively reserved thirty-two job categories exclusively for whites.

A number of strikes by black workers between 1904 and 1910 forced the government to introduce the Black Labour Relations Act No 15 of 1911 in order to regulate black labour. However, this Act made no provision for collective bargaining or negotiating between employers and black workers.

In 1915 the Transvaal Chamber of Mines agreed to recognise white trade unions. Partly as a result of World War 1, a period of relative labour stability followed. This cooperative spirit between employers and employees did not last especially when the gold price declined in 1920. In an attempt to save costs employers wanted to replace white workers with cheaper black labour. This policy of the mine owners eventually gave rise to the 1922 strike. One result of the strike was that the government realised that statutory machinery for collective bargaining and the settlement of disputes was urgently required. The outcome of this was the promulgation of the Industrial Conciliation Act of 1924 (Bendix, 1996: 78-80).

6.3.3 The period 1924 to 1956

The Industrial Conciliation Act of 1924 defined employees in such a manner that black workers were excluded from the ambit of the Act. Thus black workers could not participate in collective bargaining. Other legislation such as the Wage Act No 27 of 1925 was also introduced to provide for minimum wages and to regulate working conditions (Nel and Van Rooyen, 1993:60-61).

Tustin (1991:9) writes that the Industrial Conciliation Act of 1924 gave rise to an era of tri-partism because the state then actively became involved in the regulation of conflict between labour and employers while recognised trade unions were permitted to function in an orderly manner.

Nel and Van Rooyen (1993:61) record that because of the steady growth in white and black trade unions and the large migration of labour to urban areas, as a result of the Great Depression in the early 1930s, it was decided to up-date the Industrial Conciliation Act which was eventually replaced by the "new" Industrial Conciliation Act No 36 of

1937. This Act provided for labour peace through self-regulation and negotiation mechanisms such as arbitration, mediation and conciliation. The Act also provided for the recognition of some black workers through the definition of an "employee". Thus racially mixed trade unions became a possibility in South Africa for the first time.

Soon after coming to power in 1948 the National Party government appointed the Botha Commission to examine labour legislation and the Commission eventually recommended separate labour legislation for whites and non-whites. This meant that black workers would in future be excluded from the conciliation mechanism provided for in the Industrial Conciliation Act of 1937.

The Botha Commission report resulted in two Acts which were to form the foundation of South Africa's dualistic system of labour relations.

The Black Labour Relations Act No 48 of 1953 was aimed at creating a system of labour relations to run parallel with the Industrial Conciliation Act of 1937. The main difference was that the black workers could officially belong to a union but were excluded from the Industrial Council system. As substitute a system of work committees was introduced to negotiate with employers.

The Industrial Conciliation Act No 28 of 1956 replaced the Industrial Conciliation Act of 1937 and contained several discriminatory aspects such as prohibiting the registration of new mixed trade unions. A characteristic of the labour relations of this period was the protection which white workers enjoyed through legislation. The alternative system of works committees introduced for black workers led to the dualistic system that formed part of South African labour relations for many years. This system of works committees was a failure due to the undemocratic and paternalistic manner in which non-white workers' interests were represented (Nel and Van Rooyen,1993:64-65)

6.3.4 The period 1956 to 1979

This period was characterised by initial labour peace and the establishment of a well organised labour movement. However, labour relations are dynamic by nature and the labour legislation of the time did not reflect the changes that were taking place in the labour relations practice. Labour legislation between 1953 and 1956 clearly reflected

the dualistic system of work representation: Black workers were only allowed representation within their employing organisation, while representation of white workers outside the workplace was recognised by statute. It was also during this era that the South African Confederation of Trade Union (SACTU) and the Trade Union Council of South Africa (TUCSA) were formed (Nel and Van Rooyen,1993:13).

After the strikes on the Witwatersrand especially in 1976 it was clear that legislation dealing with black workers' representation was due for an overhaul. The Black Labour Relations Amendment Act No 84 of 1977 was passed amending Act No 48 of 1953 and creating a mechanism for negotiation by black workers for the first time. This Act made provision for the establishment of liaison committees between management and workers as well as coordinating works committees in companies. Black workers also obtained the right to occupy positions previously exclusively reserved for white workers as well as with right to strike under certain conditions (Tustin,1991:13).

6.3.5 The period 1979 to 1995

The discriminatory nature of the Black Labour Relations Regulation Act of 1977 and the Industrial Conciliation Act of 1956 gave rise to numerous labour relations problems. Two factors contributed to the formulation of a new manpower policy and up-dating of labour legislation: (a) the changing international climate against the racial policies of the country concomitant with the pressures that resulted from this, and (b) the rapid industrialisation which required more skilled workers. Labour legislation fell short of providing for this need and for black trade union aspirations and contributed to black labour/white employer confrontation (Bendix, 1996:101-103).

A White Paper on a new manpower policy based on the Wiehahn Commission's recommendations was published and covered aspects such as freedom of association irrespective of race for permanent residents of South Africa; job reservation was terminated; closed shop agreements were allowed and the Industrial Conciliation Act and the Black Labour Relations Regulation Act were to be combined to eliminate dualism. (Nel and Van Rooyen,1993:70-75)

The Industrial Conciliation Act of 1924 had excluded from the definition of employee any "pass-carrying" persons. Through this restriction the majority of workers in South Africa

essentially had been denied access to the formal labour relations system of trade union organisation and registration and the collective bargaining system. The Wiehahn Commission's recommendations led to amendments to the Act between 1979 and 1981, resulting in the removal of racial reference in the Act, thus granting freedom of association to all employees and removing barriers to non-racial trade unionism.

During 1981 the Industrial Conciliation Act No 28 of 1956 and the Black Labour Relations Act Regulations Act No 84 of 1977 were replaced by the Labour Relations Amendment Act No 57 of 1981. Only registered trade unions were permitted to use the collective bargaining mechanism. Changes included provisions that unregistered and registered trade unions were placed under the same regulations, racially mixed unions could register and works committees received a new spurt of life. Some employers viewed these committees as a transitional phase to full trade union representation (Nel and Van Rooyen, 1993:80-81).

Further amendments to labour legislation became necessary as there were practical problems with the implementation of the Labour Relations Amendment Act No 83 of 1988. Prior to and after the implementation of the Act on 1 September 1988 the South African Coordinating Council on Labour Affairs (SACCOLA), the Congress of South African Unions (COSATU) and the National Council of Trade Unions (NACTU) held several meetings with government representatives to discuss changes to the Act.

SACCOLA, COSATU and NACTU sent a joint letter to the Director-General of the Department of Manpower objecting to six sections of the Act. This led to a process of consultation and negotiation between the government, trade unions and employers and the introduction of the Labour Relations Amendment Act No 9 of 1991 (Nel and Van Rooyen, 1993:32). It is significant that for the first time employers and organised labour acted collectively to persuade the government to change labour legislation. This collective action gave rise to what Tustin (1991:101) refers to as "tripartite groups" consisting of the government, employers' organisations and trade unions.

The unbanning of the African National Congress (ANC), Pan Africanist Congress (PAC) and the South African Communist Party (SACP) on 2 February 1990 by the then president FW de Klerk had a significant influence on labour relations in the country. The ANC, PAC and SACP in turn influenced trade union policies and structures as well as

shopfloor representatives (Tustin, 1991:17-18).

By 1981 collective bargaining had rid itself of racial prescription but many employees in sectors such as agriculture, the public service, domestic services, parliamentary workers and tertiary education staff were still excluded from taking part in collective bargaining. In order to modernise the labour relations framework the government attempted to cover those affected employees through the Public Service Act of 1993, the Education Labour Relations Act of 1993 and the Agricultural Labour Relations Act of 1993. This resulted in a fragmented body of labour legislation.

The system of collective bargaining through industrial councils had its birth in the Industrial Conciliation Act of 1924 and lasted until the introduction of the Labour Relations Act of 1995. Since the early 1980s black unions were permitted to register as trade unions thus entitling them to make use of the formal system of dispute resolution through industrial councils and conciliation boards.

After initial resistance to participation in these centralised industrial councils, the independent unions reversed their stance. Some of the objections raised were that the industrial councils were controlled by undemocratic unions, employers and the state and that there was a need to encourage shopfloor participation and build the independent union movement (Friedman,1987). Webster (1983) describes this reversal in union stance as a strategic shift in recognition of the advantages that centralised bargaining held for unions.

Several other events in the political sphere impacted on the trade unions, for example, the decision of the ANC to disband the South African Council of Trade Unions (SACTU) and to support COSATU. The violent struggle between the ANC and the Inkatha Freedom Party (IFP), the repeal of the apartheid laws and the establishment of the Convention for a Democratic South Africa (CODESA) all influenced the trade unions. Trade unions and the political organisations began to realise that they had to act in concert in order to increase their power and therefore formed the alliance between COSATU, SACP and the ANC.

Anstey (1997:312) writes that in 1992 the ILO sent a delegation to South Africa in spite of the fact that the country was no longer a member of the organisation. The ILO commission recommended that there be less control by government over trade union

funds and that their political activities had to cease and that labour rights had to be extended to farm and domestic workers.

6.3.6 Collective bargaining structures: 1995 to present

Since the late 1980s South African labour laws were in need of real reform. The legal framework and the institutions that regulated the labour market had to be modernised. The reform of the laws governing labour relations was the first step in this process.

After the 1994 elections the ANC-led cabinet of the Government of National Unity appointed a legal task team, which in July 1994 identified the following problems with existing labour law: the multiplicity of labour laws; the lack of an integrated labour law framework; contradiction and clashes with policy; *post hoc* creation of rules; the extent of discretion of administrators and mediators; haphazard collective bargaining; ineffective conciliation mechanisms and procedures; the cost of dispute resolution; the cost of the unfair dismissal law; transgression of international law and lack of compliance with the new Constitution.

A Labour Relations Bill was tabled in parliament and accepted in September 1995 after extensive consultation at NEDLAC (National Economic Development and Labour Council). The new Labour Relations Act No 66 of 1995 (the LRA) was designed to harmonise labour relations through conciliation, mediation and arbitration as well to provide clear guidelines on trade union recognition. Two new structures provided for in the Act for the regulation of collective bargaining are Bargaining Councils and Statutory Councils.

The LRA of 1995 required that Industrial Councils change to Bargaining Councils in order to represent all sectors of the economy. Thus the aims of the Reconstruction and Development Programme (RDP) and the government's commitment to shopfloor bargaining were advanced. (Government Gazette, No 16861,1995:127).

In addition to the LRA's provisions for private sector organisations, provision is also made for a national bargaining council for the Public Service as well as a national bargaining council for the Education sector. NEDLAC is responsible for the registration of bargaining councils and the demarcation of industries. Bargaining agreements may

be extended to non-parties and provision is also made for an independent body that may exempt non-parties from agreements (Bendix,1996:102). Although the LRA of 1995 does not make bargaining mandatory, collective bargaining is greatly facilitated through the organisational rights bestowed on trade unions and employer organisations.

Finnemore (1996:169) writes "*To break the deadlock regarding compulsory versus voluntary centralised bargaining at the NEDLAC negotiation of the LRA, provision was made for statutory councils.*" Where there is no bargaining council and a trade union or two or more trade unions acting jointly or an employers' organisation or two or more acting together and having at least 30 percent representivity in a sector or area, a statutory council may be established by application to the registrar of industrial relations. The powers and functions of statutory councils are more limited than those of bargaining councils.

6.4 CENTRALISED BARGAINING

The LRA of 1995 shows a definite preference for centralised bargaining. This is evident from the purpose of the Act which states in section 1(d) (ii) that it is to promote collective bargaining at sectoral level but also in section 1(d) (iii) that it is to promote participation in decision-making at plant level. The legal drafters' preference for centralised bargaining is explained in the Explanatory Memorandum (Government Gazette No 16259 of 1995: 121). In their view the previous Act lacked conceptual clarity as to the structure and functions of collective bargaining. A majoritarian system of industry level bargaining in the form of industrial councils had existed since the promulgation of the Industrial Conciliation Act of 1924. However, majoritarianism had been undermined by the Minister's wide discretionary powers and the Industrial Court's unfair labour practice jurisdiction. The result of these limitations was that the existing statutory framework could not properly accommodate and facilitate an orderly relationship between bargaining at the level of industry as well as at the level of the workplace. The system was also not supportive of employee participation in decision-making and the agenda for cooperative management and the agenda for the adversarial management were confused. If an orderly system was to be achieved the collective bargaining agenda had to be divided into plant level matters and a centralised system of collective bargaining.

The arguments for and against centralised bargaining also elucidate how collective

bargaining is relevant to employee participation. Du Toit *et al* (1998:154) write that *"the unions argued that centralised bargaining: (i) is the best means of establishing industry-wide minimum wage and fair standards; (ii) allows for an effective use of skilled union and employer negotiators; (iii) leads to one collective agreement in each sector concluded by skilled negotiators, avoiding a plethora of poor quality collective agreements each with potential for litigation; (iv) strengthens the capacity of bargaining agents; (v) develops social benefit funds that are more meaningful and cost-effective; and (vi) leads to a proactive style of unionism in which common employer-employee interests are advanced, as opposed to a narrow, defensive and reactive approach"*.

Employers, in turn, rejected the idea of centralised bargaining as they argued that it would promote strikes and undermine economic growth. Patel (1990) reflects their views when he writes: "*The second set of employer arguments challenge the operation of centralised institutions. Those arguments contend that: (i) centralised bargaining removes negotiations from the key actors at plant level, namely the shop stewards and managers; (ii) it denies access to the bargaining forum for trade unions which have strong plant representation but lack an industry majority; (iii) it lacks flexibility in that disputes are often declared for an entire industry and strikes take place even when the more profitable sectors of industry are able and willing to pay more than the average offer of the employers; and (iv) the tendency to bargain exposes employers to a double risk of strike action.*" The employers' views reflect a strong preference for a plant level system which would allow them to determine what happens in their workplaces in conjunction with their employees. This will protect employers from the collective power of employees at central level and may also limit the scope of the employees' decision-making capacity at plant level. Although the legal drafters settled on a centralised system of collective bargaining, the voluntarist principle was retained by making the formation of bargaining councils voluntary but offering inducements for centralised bargaining (Du Toit *et al*,1998:155). The ideal of worker participation is not lost as collective bargaining is regulated by collective agreement while workplace forums for consultation and joint decision-making with the employer will continue at plant level. Khoza (1999:94) writes that the centralised bargaining element of the LRA will provide supporting force to employee participation in decision-making at the workplace since it allows employees participation in decision-making at industry-wide level.

The rule of collective bargaining at central level and workplace forums at plant level

represents a pluralistic model of employee participation. The pluralistic approach is not unique to South Africa and Summers (1995) writes that the systems of countries such as Germany and Sweden are nearly identical to the South African model for employee participation in decision-making. In the USA a contrasting structure is followed with collective bargaining practised at plant level only. Adversarialism originating from general production problems in this way is carried over to daily plant relations. This is, however, not the case with the pluralistic model where industry matters and individual plant matters are kept apart. Cooperation and employee participation thus have a much greater chance of success.

The conclusion is that to enhance employee participation in decision-making, a number of countries combine collective bargaining and cooperative processes like consultation and joint decision-making. The question that arises is at which level certain issues may best be solved by means of enhanced employee participation. A related concern is whether the current system will be able to continue to segregate matters best suited for centralised bargaining. Only time will tell whether the South African model succeeds or not.

6.5 VOLUNTARISM

In Britain where the term originated, voluntarism was originally used to describe a system in which both management and labour resisted any government interference in the labour relationship. This occurred in the 1980s when there was increasing government interference in the labour system in Britain. Voluntarism is no longer what it used to be. In other labour relations systems "*voluntarism*" referred to the process of bargaining and not to the duty to bargain. The British government could compel collective bargaining between employers and labour representatives, but chose not to. It is the former approach that previously applied in South Africa where the Industrial Court had ruled that there is a duty to bargain, that it should take place in "good faith" and could include any matter relevant to the employment relationship.

Although the Labour Relations Act of 1995 created the structures for collective bargaining, precisely how this should take place in practice has been left to employees and employers to decide voluntarily. Lord Wedderburn (1983) writes that: "*a voluntarist policy would allow the two sides [of industry] by agreement and practice to develop their*

own norms and their own sanctions abstain from....compulsion in their collective relationship". A voluntarist approach would require employers and employees to realise that they are partners who have to be involved when important decisions have to be made in the workplace.

Under the LRA of 1956 the unfair labour practice jurisdiction permitted the courts to intervene in the bargaining relationship. This is no longer the case. With the current LRA, the collective bargaining process has been reorganised. Section 1(c) of LRA of 1995 sets forth one of the primary objects of the Act as:

"To provide a framework within which employees and their trade unions and employers and employers' organisations can -

(i) collectively bargain to determine wages, terms and conditions of employment and other matters of mutual interest; and

(ii) formulate industrial policy."

Although there is no provision for a duty to bargain in the current Act, collective bargaining is encouraged and supported by granting organisational rights as well as providing for the right to strike. Section 23 specifies that collective agreements between employers and employees on how they will regulate terms and conditions of employment are legally binding. The preference for voluntarism is strengthened through the provisions in section 65 (1)(a) that make it possible for trade unions and employers (should they so wish) to sign an agreement that prohibits strikes in respect of certain issues.

The possibility of the exploitation of voluntarism is prevented through an element of compulsion in certain circumstances e.g. a refusal to bargain (Section 64(2)). Should an employer proceed with unilateral changes in the workplace, employees by the use of strike action may pressure the employer to revert to the previous state of affairs.

The framework provided by the Act supports interaction between employer and employees in collective bargaining on a voluntary basis without the fear of coercion from the Labour Courts.

6.6 THE DUTY TO BARGAIN

In the early 1980s the emerging trade unions pushed strongly for plant level bargaining, which at the time was a foreign concept for role players in South Africa who over decades had come to accept the well-established system of Industrial Councils with centralised collective bargaining. Employers' resistance to union demands for plant level collective bargaining gave rise to numerous strikes. Employers in turn demanded from the trade unions some form of evidence that they represented the majority of workers in the particular bargaining unit which they claimed to represent. An interesting point is made by Thompson and Benjamin (1996) when they remark that this insistence by employers on majoritarianism, laid the foundation for later union demands for majoritarianism which was then not always acceptable to all employers.

In the Stocks and Stocks (Natal) v BAWU and BAWU v Pek Manufacturing Co. cases the Industrial Court held that an employer was obliged to negotiate collectively with employees to resolve a dispute of interest; that there was a general but not immutable duty to bargain also with minority unions and that this duty did not rest upon achievement of a wider recognition agreement. In the BIFAWU v Mutual and Federal case a definitive position was reached through a ruling by the Appeal Court. The company had identified three bargaining units in its operation consisting of a non-clerical unit where the union had forty four percent representivity, a clerical unit where the union had ten percent representivity and a supervisory unit where the union claimed a three percent representivity. The union demanded two bargaining units, one a managerial and the other a non-managerial unit. The Industrial Court rejected the union arguments of sufficient representivity for bargaining purposes and the earlier all-comers decision of the court, remarking that the union did not even have representivity in its own proposed bargaining units. The Labour Appeal Court then overturned this decision. However, on appeal the Appeal Court confirmed the decision of the Industrial Court.

In 1987 Brassey, Cameron, Cheadle and Olivier (at 151) argued "*There is nothing quite so subversive of collective bargaining, however, as to refuse to bargain entirely or to pretend to bargain without doing so, going through the motions with no intention of reaching agreement.* ". In their view voluntarism was wrong on the grounds that employers could employ the principle not to bargain at all. Labour law in South Africa supported collective bargaining in the public interest and therefore they had to support

trade unions as major actors in collective bargaining (1987:151). The general duty to bargain, which emerged under the unfair labour practice jurisdiction through cases in the 1980s, has not been entrenched in the 1995 Act. The law, however, re-enacted organisational rights, but there is no statutory duty on employers or employees to bargain. Chapter IV of the Act in section 64 provides for non-binding arbitration on employers refusing to bargain *inter alia* by withdrawing from an existing relationship with a trade union.

The drafters of the LRA argued that the imposition of a legal duty to bargain would lead to inflexibility in the labour market when flexibility is required by the bargaining parties to determine their relationship (Explanatory Memorandum on the Draft Negotiating Document, 1995).

A further reason why the drafters wished to avoid circumscribing the duty to bargain for individual employers lies in the Act itself which seeks to promote sectoral bargaining. Providing a detailed description of the duties of an employer to bargain collectively would not support the promotion of sectoral bargaining. Anstey (1997:422) argues that the above reasoning is negated by the detailed list of items for consultation and joint decision-making in Workplace Forums provided in Chapter V of the Act. This writer disagrees with Anstey's position in this regard. The list of items are intended for use in Workplace Forums. Workplace Forums are intended to complement the collective bargaining which are conducted at organisational level and seek to promote participation at workplace level, where participation achieves the best results (See Thorburg (1993), Schregle (1970) and Wever (1994).

As pointed out above the LRA of 1995 does not compel employers and employees to bargain. Also under the common law there is no duty to bargain or negotiate. In contrast, the LRA of 1956 made collective bargaining the only means through which workplace unrest could be contained and the duty to bargain was seen as part of the promotion of collective bargaining. The Industrial Court in Fawu v Spekenham Supreme (1988: 636-637) stated that overriding in labour relations in South Africa, it was time for the court to find firmly and unequivocally that in general terms it was unfair for an employer not to negotiate *bona fide* with a representative union. The duty to bargain set definite parameters for collective bargaining thereby extending the scope of influence which employees had on decisions in the workplace.

Khoza (1999:116) writes that where the drafters of the Labour Relations Bill had to decide on whether the duty to bargain should be retained or not, they had three options. The first option was for a system of statutory compulsion to bargain. Under this option the levels and the topics would be determined statutorily. The second model would allow for limited intervention by courts to determine the appropriate level of bargaining and bargaining topics. (More or less the position under the LRA of 1956). The third option would be to allow parties to the bargaining process to determine their own bargaining arrangements. The drafters opted for the third option as they felt that the first two of the three models would introduce rigidity in the labour market, which needed to continuously respond to the changing economic environment.

6.7 BARGAINING UNITS

Grogan (1998:209) views a bargaining unit "*as that part of workforce or workplace in which a union claims recognition and in respect of which it negotiates. It is only acting on behalf of a bargaining unit, that a union can influence the decision of the employer.*"

Brassey *et al* (1987) write that the LRA of 1956 did not provide for the manner in which bargaining units were to be determined. The determination of the bargaining units was left to the bargaining parties to determine as part of the collective bargaining process. The importance of this practice was explained by Louw AM in the Industrial Court in the case of Banking Insurance Finance and Assurance Workers' Union v Mutual and Federal Insurance Co Ltd (SALLR,1993:165 H-I) "*The composition of a bargaining unit will not only determine on behalf of whom bargaining will take place, but will also determine which employees are to receive protection from an agreement that may emanate from negotiations between the parties. The question of appropriate bargaining units underlies the union's demand to negotiate wages and conditions of employment and forms such an inexorable part thereof, that it would be nonsensical to grant an order to negotiate without first determining on whose behalf negotiations are to take place.*"

The adoption of the LRA of 1995 has introduced changes to labour legislation and lays down how labour relations are to be practised by South African employers and trade unions. The determination of a bargaining unit is no longer tied to a particular unit of the workplace, but a trade union must demonstrate support in the entire workplace. Precisely how a workplace is defined, is found in section 213 which reads "*the place or*

places where the employees of an employer work ".

The LRA of 1995 also introduces a new distinction, namely, differential thresholds of representivity when it comes to the enjoyment of different rights. For a trade union to claim organisational rights provided for in sections 12 to 16 the trade union has to be sufficiently representative of the employees in the workplace. The Act unfortunately does not define what is to be regarded as "sufficiently representative". This omission of a definite percentage of representivity could lead to confusion and avoidable litigation. In some cases the CCMA determined that "sufficiently representative" refers to a substantial enough number of members of a union to warrant being dealt with. The ruling is vague and unhelpful in clarifying labour relationships. The CCMA did however provide some guidance in SA Clothing and Textile Workers Union v Sheraton Textiles (Pty) Ltd (1997:1412) where the issue in dispute was whether the union should be granted the organisational rights of access and stop-orders provided for in sections 12 and 13. The applicant had 29.7% membership in the respondent's workplace. The commissioner determined that the union virtually had a thirty percent representativeness in the workplace and was a major player representing significant interest in the industry and on the basis of these facts, the union was held to be representative.

On this same issue of representivity Cheadle (1997:12) write that : "*Warnings against union proliferation notwithstanding, it seems appropriate to set quite a low threshold for basic organization resistant sectors. Perhaps a figure as modest as 20% might be needed to allow unions to gain a viable toehold. It might also be in order to introduce a dynamic element: if there is but a single battling union and no spectre of union rivalry, the CCMA could adopt a relaxed view of thresholds. It should however advise that the criteria for representivity in a particular workplace may become more stringent over time and if other unions join the fray, an employer could revert to the Commission under section 21 (10) as circumstances changed and the representivity notion hardened.* "

Although the legislature has sought to simplify the determination of bargaining units, Khoza (1999:105) is of the view that trade unions will still have to demonstrate their representativeness in a workplace to enjoy certain rights. The LRA of 1995 requires that employer and employees' representatives have to work out an agreement on bargaining units. If no agreement is reached the parties may not proceed directly to court. Section 21 determines that the parties have to refer their dispute to the CCMA. If the trade union

is not satisfied with the advisory award, it may engage in industrial action according to section 64(2)(d)(i) as refusal to bargain also includes disputes about appropriate bargaining units.

The access to participation in workplace decision-making is however not equal for all employees. One of the consequences of the majoritarianism approach followed in the LRA of 1995 is that minority union members may not be enjoying the rights that they may otherwise be entitled to. Fortunately the Act in sections 11 and 14 (10) attempts to remedy this situation by providing that minority unions may act jointly to achieve the required threshold and so enjoy all the rights to which they are entitled.

6.8 SUMMARY

In this chapter collective bargaining is examined by briefly referring to how it is practised in a number of European and African countries as well as in Britain. A number of definitions and theories of collective bargaining are also discussed. A summary of the development of collective bargaining in South Africa is also provided. A few related concepts such as centralised bargaining, voluntarism, the duty to bargain and bargaining units are also reviewed.

South Africa's has a history of collective bargaining dating back to 1924. As a result of the close relationship between Britain and South Africa many of the characteristics of British collective bargaining are also found in early South African collective bargaining.

Collective bargaining has also been employed by the previous as well as the present government as a means to exert control over the labour market.

South Africa's promotion of centralised sectoral bargaining appears to be out of step with Western Europe where there is a strong preference for plant level collective bargaining which by its nature offers greater employee participation and enhances industrial democracy.