

DISCLOSURE OF BUSINESS INFORMATION

by R van der Walt and AW Campbell

Abstract:

The disclosure of information to employees/workers in South Africa has always been a matter which depended largely on the relationship between the employer and the employees as well as the employer's goodwill towards the employees. Information disclosure in the USA, the UK, Sweden and South Africa is examined in this article.

It is demonstrated that the situation regarding the disclosure of information to employees has changed substantially since the commencement of the Labour Relations Act 66 of 1995. The article also reports the views of management and of worker representatives of a number of surveyed organisations regarding the disclosure of information. Some inferences are drawn from the findings of the research.

1 INTRODUCTION

This article discusses the disclosure of business information, commencing with an examination of the disclosure of business information in the United States of America, the United Kingdom, Sweden and South Africa. A comparison with other countries provides a yardstick against which disclosure of information in South Africa can be assessed. The countries were selected for the following reasons: The US is the leading economy in the western world. Industrial relations practices in the UK have influenced South Africa through historical ties between the two countries. Sweden was one of the countries examined by the drafters of the new LRA as a potential model for a new industrial relations system in South Africa. The remainder of the article examines the disclosure of information in South Africa in terms of the Labour Relations Act 66 of 1995 (LRA).

Democracy is undoubtedly one of the major political models in the world. In a true democracy the entire population participates in government through its elected representatives. On a social level all members of society may share in the benefits of that society and they also have a responsibility to act in the interests of the society to which they belong. All members may also participate freely in economic activities, provided these are not harmful to society at large. If democracy is also applied to

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the world of work, the implications would be that employees are entitled to participate in decision-making, especially in those decisions that have a bearing on them. Successful participation by employees would require that relevant information should be disclosed to them for joint decision-making. Information disclosure is, in fact, an essential element in joint decision-making and in labour relations processes such as dispute resolution, collective bargaining and consultation.

Disclosure of work-related information is one of the means through which industrial democracy can find expression in the workplace. 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 the relevant 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 came into force at different times in different countries. In the United States such measures date back as far as 1936, when the National Labour Relations Board (NLRB), which is similar to the Commission for Conciliation Mediation and Arbitration (the CCMA) in South Africa, 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 the kind of 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 & 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 the disclosure of information to the representatives of the workers (Roberts & Liebhaber 1977).

Trade unions view information disclosure as a means 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 & Gospel 1983). On the other hand some employers regard the statutory obligation of disclosure to trade unions as a threat to their management prerogatives. Their objections are based on the need for commercial secrecy and confidentiality and

the fear that effective decision-making will be impeded. Other more progressive employers welcome greater disclosure as a channel of communication with their employees.

2 INFORMATION DISCLOSURE IN THE UNITED STATES, THE UNITED KINGDOM, SWEDEN AND SOUTH AFRICA

2.1 The United States of America

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 & 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. 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 had requested.

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 & Gospel 1983). Through accessing these public records a fair idea of the company's activities may be gained.

The information disclosure system in the US has contributed significantly to improved industrial relations as measured against reduced trade union militancy and smoother contract negotiations. (In South Africa the Promotion of Access to Information Act 2 of 2000 makes similar access to the records of public bodies possible. This Act has been in force since 9 March 2001). Future research would be able to assess whether access to public records has contributed to information disclosure in the workplace in South Africa.

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 the purposes of collective bargaining. Section 17(2) provides that bargaining must be about matters that affect categories of workers in respect of which the trade union is recognised by the employer (Ballace & Gospel 1983). In other words, the trade union cannot expect blanket disclosure or demand information for employees outside their bargaining unit.

The Advisory Conciliation and Arbitration Services (ACAS) (which is similar to the CCMA) has issued a code of practice as well as a list of items under a number of headings that might be relevant to collective bargaining. If a union considers that an employer has failed to fulfil its statutory duty it has recourse to an elaborate complaints and enforcement procedure. This enforcement procedure is clumsy and seldom used. This provision of the Act has been used mainly by white collar unions, probably because their bargaining position is weaker (Ballace & 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 terms of the Act are extensive and restrictive. As an example, employers have used section 18(2)(a) to exempt them from disclosing original documentation; section 18(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 by the ACAS because of a narrow interpretation of the Act (Ballace & Gospel 1983). The following points demonstrate this position. First, the question of legal recognition for bargaining purposes: unions are restricted by their recognition in respect of their members and subject matter. Second, there 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 unions considerably in obtaining the type of information they had managed without in the past.

Judging from the above, it appears that information disclosure to trade unions has been far more successful in the US than in 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.

2.3 Sweden

In 1946 the two main Swedish trade union confederations, the LO and the TLO, and the Swedish Confederation of Employers' Organisations (SAF) signed a National Works Council Agreement. This led to the establishment of joint works councils at plant level with a view to acting as a channel for consultation and disclosure of information on technical, general economic and financial matters. Management reserved the right to make decisions, but where these decisions were of importance to employees, they were to be disclosed to the works council. Some form of restriction applied to council members in that they were barred from divulging information to other employees on matters stipulated by the employer (Johnston, as cited in Ballace & Gospel 1983).

Although the disclosure obligation enjoyed legal support, the Works Council Agreement was revised and extended in 1958 and 1966. The unions felt that this channel of communication was inadequate, however, and claimed that information was often given too late, that the information was out-dated or that the information did not meet their decision-making needs. In 1975 the union confederation and the SAF signed a new agreement that gave the unions the right to more extensive information through plant economic committees and also the right to send their own consultants to examine company books (Ballace & Gospel 1983).

In 1976 the Joint Regulation of Working Life Act (also referred to as the Joint Determination Act) made the disclosure of information part of statute law for the first time. This Act requires the employer to keep the union continuously informed of developments in the production and financial aspects of the organisation and the principles on which the employer's personnel policy is based. Furthermore, the employer must furnish such supplementary information as may be sought by the employee representatives during negotiations. The employer is also compelled to allow the union to examine the books, accounts and any other documents which the union believes it needs (Ballace & Gospel 1983).

The statutory requirements for the disclosure of information in Sweden are minimal. First, a conflict clause limits the right to information where this information would affect a situation in which industrial conflict exists or is imminent. Second, the union may only receive information that pertains to the members of the union in question. (Note that the majority of management representatives who participated in a South African study indicated that information should be limited to information concerning union members only. The trade union/workers representatives expressed exactly the opposite view.)

(See section 5.2.)Third, the employer may require the union to negotiate in order to reach agreement regarding the duty of confidentiality concerning the information disclosed. Where no agreement proves possible, the employer may apply to the Labour Court for a ruling.

2.4 South Africa

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 2 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 there are two perspectives to the rationale for the disclosure of information: 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.”* On the basis of research carried out by him, 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 object of information disclosure is to *“reinforce management’s influence and control of the organization 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 revealed 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.

2.5 The need for disclosure of business Information

As mentioned above, the disclosure of information in collective bargaining and the consultation process has long found acceptance in other countries. Brand and Cassim (1980:250) write, "*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 the 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. By contrast, the spontaneous disclosure of information by employers 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 to develop a culture of information disclosure in South Africa should be seen against the background of a previous system of government which prevailed for decades and over time resulted in a secretive and unresponsive culture in public and private bodies, which in turn led to the abuse of power and even to human rights abuses.

The provisions for information disclosure contained in the Labour Relations Act 66 of 1995, the principle of discovery in law practice, that is 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 promotes 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 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 was advanced in the past 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.

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."*

3 DISCLOSURE OF INFORMATION UNDER THE LRA 66 OF 1995

The deficiency pointed out by Kahn-Freund is dealt with in this Act. 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. Section 16(2) requires that the employer should disclose all relevant information to a trade union. Du Toit et al (2000:176; 1998:114) under the heading "Disclosure of Information" state the following: *"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 that the trade union concerned has achieved

representative status. The “*required information*” refers to the 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 that is 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 (WPFs) the right to information in terms of 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 are not first required 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 participate 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 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 a court. Disclosure of information that may cause substantial harm to an employee or employer and private and personal information is also excluded.

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 of 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 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 the information must be pertinent to the issues on hand.

According to section 16(2,) the information must be relevant to the duties to be performed by a trade union representative or a shop steward, which include such duties 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 performing 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. But again the demand for disclosure must be relevant to the issue in dispute. For example, if in a retrenchment dispute the justification for the retrenchment is of a non-financial nature, the union cannot demand the disclosure of the financial records of the company.

3.2 Limitations to disclosure

Organisations may make their own assessment of what and how much information they would disclose in the interests of the parties concerned, provided they comply with the legal requirements. In the section that follows the limitations on disclosure of information as prescribed 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. The employees on the other hand affirm 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. Often the courts have had to determine how much confidential information needs to be disclosed to the opposing party.

The LRA specifies that in terms of section 16(4) 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. Also, according to section 16(5)(c) an employer is not required to disclose confidential information which may cause substantial harm to an employee or to the employer.

In the context of workplace forums (WPFs), Khoza (1999:153) writes that although the limitations on 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, leaving aside consultation and joint decision-making matters, section 83(2) prescribes that an employer must have regular meetings with the WPF.

From an examination of the information to be disclosed it appears that the workplace forum, as representative of all the employees, will be given an opportunity to gain more insight into the company's operations. The 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.

4 EMPIRICAL STUDY

It is clear from the preceding review that disclosure of information plays a crucial role in industrial relations in most industrialised countries. As a developing and newly democratised country, South Africa has securely anchored democratic ideals in its constitution as well as in its labour legislation, such as the Labour Relations Act. In order to obtain some idea of the extent to which these ideals have found practical application the writer conducted a study in a number of organisations. The research process and the findings of the study are discussed below.

4.1 Methodology

The views of management as well as of worker representatives in a selected number of organisations were obtained in regard to disclosure of information. This survey formed part of a more extensive study of aspects of industrial democracy in a number of South African organisations.

Before embarking on the investigation a wide-ranging study was conducted to obtain background information for the execution of the research. Based on this review it was decided to utilise the qualitative research procedure put forward by Miles and Huberman(1984; 1994).

A number of data collection methods were employed in the research, namely, a literature study, a survey questionnaire and in-depth interviews in the qualitative

research tradition.

Data were obtained from seven organisations that were willing to participate in the study. These organisations come from various sectors of the economy and for convenience are referred to as follows: Case A (agricultural research); Case B (tertiary education); Case C (private security); Case D (manufacturing); Case E (research and development); Case F (private hospital) and Case G (armaments). In order to meet one of the criteria of good qualitative research, namely generalisability, triangulation of the multiple sources of data was applied, as suggested by Lincoln and Guba (1985:20). Each of the organisations that agreed to participate in the study was requested to have two questionnaires completed, one by management representatives and one by representatives of the workers in the same organisation. The management and worker respondents were requested to express the views of their respective groups in response to the various questions. In other words, multiple views were obtained in each case as well as multiple views across different cases in various sectors of the economy.

Where possible agendas, minutes of meetings and other documents related to the interaction between management and workers were also obtained. Further data for analysis were obtained from follow-up explanatory interviews with some of the respondents.

4.2 Analysis of data and results

Once the questionnaires had been completed and the relevant documents received, the responses of the two groups of representatives were summarised and tabulated. In a number of cases it was necessary to conduct follow-up interviews to clarify certain responses.

Following the Miles and Huberman (1984;1994) approach to qualitative research, the responses to each of the survey questions and subquestions on the selected aspects of industrial democracy were recorded and tabulated prior to analysis. This resulted in nine tables which displayed the responses of the management representatives as well as the responses of the trade union/worker representatives. For the purposes of this article only one table is shown here, namely the segment dealing with respondents' views on section 16 of the LRA, which provides for the disclosure of information.

Table 1: Respondents' views of section 16 of the LRA, which provides for disclosure of information

Case	Management representatives' views	Trade union/worker representatives' views
A	Open to idea - enhances consultation	In line with LRA. A means of resolving disputes
B	Agrees with s16 as long as focus is on relevant information	Have taken note and made arrangements for disclosure of information
C	Only discloses if necessary to assist our employees	Good idea; gives workers more insight
D	Disclose what trade union (TU)/employees want if reasons are justified	It gives TU the right to information
E	In terms of agreement between TUs and employer it means conveying and disclosing information at earliest possible time before acting	Makes protecting interests of TU members much easier
F	Agree with the principle expressed in s16 of the LRA	Very important as it allows TU representatives to perform functions
G	We share business processes and financial information	Gives TU more information than before

An analysis of the above responses shows that all the respondents (management as well as workers) concurred with the principle of disclosure of information. On the management side the application of the principle ranged from an open approach of sharing information to a narrow approach of disclosing only certain (relevant) information and only when requested by the union or workers.

The favourable response by worker representatives to disclosure of information was to be expected because workers and their representatives now potentially have more information available than ever before. This makes their function of protecting the interests of the workers a great deal easier. This positive views of the principle of disclosure of information held by both the management and the workers'

representatives are an encouraging sign for future labour relations in South Africa.

The second question on disclosure of information, namely, "Who should make such requests for the disclosure of information?", was analysed in a similar manner and showed that management representatives were in favour of the requests coming from the trade union or employees or a combination of the two. The responses of the worker representatives also indicated that they were in favour of their elected representatives or their trade unions, but also individual employees, making requests for information. In this instance therefore there also was consensus between the two constituencies.

This shared view is interpreted to mean that disclosure of information cannot be a "free for all" situation but should be limited to the parties concerned.

The responses to Question 3, "Should trade unions be limited to information concerning their members only?" produced the following results:

The majority of management representatives held the view that information disclosed to the unions should be restricted to information concerning their members. However, there was also a view that information should not be so restricted. A management representative was of the opinion that worker representatives "*should have a clear picture of the organisation's ability to participate responsibly*". Such a view may be described as mature and progressive regarding the role of trade unions because it recognises their particular function in healthy labour relations.

As could be expected, the workers' representatives, almost without exception, believed that disclosure should not be limited to information concerning members only. This was hardly surprising as more available information could strengthen their union's bargaining position. One worker representative had reservations about unrestricted access to information. This concern related to possible abuse of confidential information.

This situation where management and worker representatives have conflicting views regarding the restriction of disclosure of information to union members only, could point to an area of potential conflict in management-worker relations.

Question 4 was: "Has disclosure of information improved collective bargaining and conflict resolution processes in your organisation?" The responses of the management representatives presented a mixed picture – four reported improvement in collective bargaining and conflict resolution in their organisations and this was confirmed by the worker representatives in three of the same organisations.

The remaining three management representatives (cases C, D and E) reported that disclosure of information had not contributed to improvement in collective bargaining

and conflict resolution in their organisations. This view was confirmed by four of the worker representatives, including those of organisations C, D and E. These four based their views on reasons such as that the information disclosed was too selective and too limited to be of much use.

It would appear that disclosure of information has led to improved collective bargaining and conflict resolution and hence improved labour relations in some organisations. Future research could investigate the specific reasons for this.

Employee participation in decision-making is a key element of industrial democracy and Question 5 therefore asked: "Has disclosure of information affected employee participation in your organisation?"

Four management representatives gave an outright positive response to the question. This finding corresponds to that of Grosett (1997:38), who found that one of the benefits of disclosure of information listed by employers was increased employee involvement. Five of the worker representatives also reported that the disclosure of information definitely improved employee participation in their organisations.

This finding is gratifying as it could indicate a gradual move away from the adversarial labour relations of the past to a mode of greater participation between management and workers in South Africa.

The responses from management and the worker representatives to Question 6, "What type of information is disclosed?" indicated a wide range of categories. Most frequently requested and furnished were financial information or budgetary information. Disclosure of information on organisational changes and restructuring was the second most frequently requested kind of information.

The placement of financial information and information on organisational changes and restructuring as first and second on the list is possibly a reflection of the economic condition of the country, which has a direct impact on labour relations.

The responses to Question 7, "At what stage/when will your organisation disclose information to a trade union?", also demonstrated a wide variety of practices. The most common practice reported by management and by worker representatives was disclosure during wage negotiations. Other responses by management included "when deemed necessary by management", "on a need to know basis" and "when compelled by law" and "only after salary negotiations have been concluded". Ngobo and Howard (1999:9) refer to the reluctance of employers to disclose information as "minimal compliance".

This reluctance of management to disclose information is in contrast to management's acceptance of the principle of disclosure of information. If the

contradiction between management's views and behaviour is not resolved, conflict is to be expected between management and the workers.

This reluctance to disclose information has the potential to cause disputes and this was probed by question 8, which asked "Has your organisation had a dispute relating to disclosure of information? One of the worker representatives stated that these disputes were *"on-going – every year we experience the same kind of problems to obtain information"*. In contrast, only two management representatives reported disputes about disclosure of information – in both cases involving financial information. A possible explanation of this dichotomy is that worker representatives experience greater frustration from management while the latter have yet to come to terms with disclosure of information as now required by the LRA.

Denying rather than dealing with this apparent reluctance on the side of management and workers' expectations regarding the disclosure of information will only delay constructive labour relations in South Africa.

To Question 9, "How were disputes resolved? What process was followed?", the representatives of both sides reported making use of the conciliation and/or mediation or arbitration services of the CCMA or resolving the disputes by internal negotiations between the employer and the trade union. However, the same response was given in only two cases. This is an indication of how differently matters are viewed by management and worker representatives.

Should these differing views of the management and the workers' representatives not be kept in mind and addressed, unnecessary disputes between the two parties could result.

4.3 Conclusions

Bearing in mind South Africa's past in which secrecy rather than the disclosure of information was the norm, the strides made with the new openness regarding access to information for South African citizens can be described as quite remarkable. In the working environment, in particular, the LRA of 1995 has provided for the first time for disclosure of information by employers to employees. However, there is still a reluctance to provide types of information which were previously considered as belonging to the domain of management and resistance is still encountered. It is believed that it will take considerable time for the human environment to change to such an extent that it sincerely supports a culture of openness and sharing of information.

The study described here indicated that there is universal support among the participants for the principle of disclosure of information. Differences between the parties occur about the type of information to be disclosed and the timing of such disclosure. The employer side is concerned about erosion of management

prerogatives and commercial confidentiality while the employee side wants information disclosure because it enhances their negotiating capacity and their ability to jointly regulate the workplace. The fact that many disputes between management and workers emanate from problems in regard to disclosure of information indicates that both sides need to work hard on developing a spirit of trust and cooperation. In view of our long history of adversarial relations this is likely to take a long time to evolve.

The study shows agreement by the parties that requests for information should be made by worker representatives. From this it appears that employees are not making efficient use of sections 16 and 89 of the LRA which, respectively, provide that an employer must disclose all relevant information to a representative trade union or to a workplace forum to enable them to perform their functions. It is a weakness of the LRA that it is not more specific and prescriptive on when the information must be provided. The spontaneous disclosure of information by employers prior to and during collective bargaining and participation by employees in decision-making is what is required to improve and consolidate a relationship of trust between employers and trade unions/employees.

Grosett (1997) found that employers reported that information disclosure was conducive to improved collective bargaining, to increased employee involvement in decision-making and to reduced conflict in their organisations. The study reported here produced similar responses but a significant difference is that in this instance the responses came from employer as well as employee representatives in the same organisations. However, worker representatives generally were of the opinion that insufficient information was being disclosed. This is certainly an aspect which needs to be attended to in order to avoid disputes and conflict in future.

It appears to be imperative for the enhancement of industrial democracy in South African organisations that a mutually acceptable procedure be developed between the national representatives of business and labour on all aspects of disclosure of information which have given or are likely in future to give rise to disputes. Greater clarity is needed, for example on the timing of disclosure of information; on its relevance and sufficiency and on what employers can reasonably be expected to disclose to their employees.

5 END NOTES

An important element in the success of enterprises in industrialised nations is the trust which has been established between managements and employees through making information available to all concerned. Unfortunately in South Africa the relationship between management and labour has been one of confrontation and suspicion of the motives of the other party. Job creation is essential if the quality of life of South Africans is to be improved. This cannot be achieved if existing local

organisations are not financially successful and therefore able to expand their operations and also attract investment.

It is the firm belief of this writer that South African organisations will only achieve the requisite success and growth if the existing suspicion and mistrust between management and labour are eradicated. One of the most powerful means of accomplishing this and achieving mutual understanding and common objectives is the sharing of information and knowledge. It is therefore of the utmost importance that employees and trade unions give urgent attention to this vital aspect of industrial relations.

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