

The Small Business Sector: Deregulation or Collective Bargaining? (1993) 14 ILJ 570 *

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'Abraham Adamson, owner of A&A Motor Spares in Athlone, Cape Town, was dealing with a client in June 1991 when the sheriff of the court walked in and seized 21 gearboxes and various other movable assets.

His [Adamson's] crime was failing to pay two of his 14 employees the overtime rates stipulated by an industrial council which a few weeks earlier he never even knew existed. ¹

So begins one of numerous press reports in the last few years recording the burdens placed on small entrepreneurs by legal regulation in general and industrial councils in particular. A senior manager of the Small Business Development Corporation (SBDC) was reported as saying that 'he is aware of 10 cases in the Western Cape where businesses were liquidated by industrial councils over the last two years, generally for non-payment of levies'.

Two comments by small employers, quoted in the same report, pithily express their viewpoint:

'Either I pay them [workers] below the minimum wage or I close my doors and they lose their jobs. They prefer to have their jobs.'

'They want to tell me when I can open and close my factory at Christmas. These people are killing employment. If I comply with these rules I will have to close down my company.'

A fortnight later the same newspaper published a response by David Levy, general secretary of the National Industrial Council for the Iron, Steel, Engineering & Metallurgical Industries who said:

'We are not attempting to harm small business in any way. The industrial councils are essential if we are to have civilised working conditions and a decent standard of living for employees, whether they come from big or small businesses. [Opponents of the system] are often businesses with a record of exploitation ²

This exchange sums up two opposing points of view in a debate that has been surfacing with increasing frequency in the recent period. ³ On the one hand looms the grim reality of chronic mass

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unemployment and the manifest incapacity of the formal sector of the economy to employ more than a small fraction of the growing number of work-seekers. To some, the small and informal sectors offer the only hope of alleviating if not solving the problem, provided it is stimulated and freed from legislative restraint.

Such a cure, argue critics of deregulation, might be worse than the disease. Workers in small businesses tend to be paid lower wages, enjoy fewer rights and suffer worse conditions than workers in organized sectors. Whittling away at their remaining rights would not only boost exploitation; it would undermine the conditions of labour in general. ⁴

The Shaping of Government Policy

The government nailed its colours to the mast some seven years ago with the Temporary Removal of Restrictions on Economic Activities Act 87 of 1986 which gave sweeping powers to the State President to suspend any law which in his opinion 'unduly impedes economic development or competition in the economic field, or the creation of job opportunities'.⁵ In practice, these powers were only exercised in respect of a number of 'hives' (industrial parks) owned by the SBDC; and the Act itself is due to remain in force only until 31 March 1994. Nevertheless a precedent was created; and machinery was set in motion to extend such policies to the economy as a whole.

The deregulation bandwagon was given further momentum by the idea of export-processing zones (EPZs)⁶ mooted by the Department of Trade and Industry 'as part of a greater national plan to attract investments'.⁷ Included among the inducements to investors would be exemption from tariffs, streamlining of administrative procedures, 'tax holidays' and, last but not least,

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the possibility of excluding EPZs from 'host country legislation and policies such as minimum wages if necessary'.⁸

Finally, the National Manpower Commission (NMC) has embraced the principal assumption of the pro-deregulation lobby as a basis for future policy:⁹

'Given the large potential contribution small businesses can make with regard to economic growth and the provision of employment in South Africa, the role of this sector cannot be ignored.... The stimulation of small formal and informal businesses in order for them to grow, to create more employment opportunities and wealth for the population of South Africa, is therefore very important.'¹⁰

This, however, is debatable. There is considerable evidence that deregulation does not address the fundamental problems experienced by small entrepreneurs in the formal sector, let alone the de facto non-regulated informal sector.¹¹ The conclusion reached by Dewar, Postlethwayt & Watson in respect of the informal sector speaks volumes:

'[I]t is naive to assume that the informal sector can provide a solution to the problems of un- and underemployment on its own. In reality, only a small minority of informal sector operations become successful, expanding operations. The great majority face continuing poverty and economic and occupational insecurity.'¹²

Small businesses, it has been argued -

'are most likely to thrive on the basis of the increased aggregate demand for goods and services which is generated under conditions of general economic expansion. We believe this is borne out by the experience of countries such as Japan which are cited as successful examples of policies for stimulating small businesses. In the absence of powerful underlying growth, such stimulation can provide small businesses with a degree of protection against market forces but does not in itself lead to an increase of aggregate demand. Essentially, it enables ... small businesses to preserve or increase their market share at the expense of non-subsidised businesses but does not create new space for economic growth'.¹³

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Beyond acknowledging that small businesses are in a 'difficult position *vis-à-vis* large businesses', however, the NMC has thus far seen no reason to temper its view. Noting that 'a balance between the interests of both employers and employees is still of the utmost importance',¹⁴ it went on to recommend that 'all unnecessary restrictions [on small business growth] should be removed'.¹⁵

Criteria for Deregulation

What will this mean for employees? It will depend in the first place on the nature of the 'restrictions' to be removed. Regulations range from bureaucratic formalities to rules for enforcing basic worker rights, safety at work, minimum conditions of employment and other aspects of employee welfare. Simplifying or abolishing red tape is no doubt a good thing. But what about regulations of the latter kind (referred to below as 'welfare regulations') and workers' rights in general?

The problem is that small business is not a harmonious whole. Like business in general it is characterized by tension between employers' interests and workers' interests. While workers are the beneficiaries of welfare regulations, employers must bear the cost of complying with them. Some conclude that, for this reason, welfare regulations are prime examples of 'restrictions' that need to be lifted for small businesses to grow; ¹⁶ the cost of complying with them is as much of a burden to struggling employers as the inconvenience of coping with red tape. Interpreted thus, deregulation would take place at the direct expense of employees' rights and conditions of work; and this, notwithstanding its stated aim of seeking 'a balance between the interests of both employers and employees', is essentially the standpoint which the NMC has adopted.

Its principal recommendation is that existing provision for exempting businesses from the operation of industrial council agreements should be 'made more accessible' to micro-businesses ¹⁷ and, moreover, 'supplemented by *administrative and other relief* which should be granted to micro-businesses *automatically*'. ¹⁸ In other words, exemption from statutory minimum

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conditions as a remedy for the cost of complying with such conditions should be encouraged and extended, even if this means depriving employees of legal protection. ¹⁹

Although the NMC report refers only to 'micro-businesses', it nevertheless represents a significant expansion of the frontiers of deregulation. Firstly, it would mean that the principle of deregulation would for the first time be applied as *of right* to specified categories of business and no longer by dispensation. Beyond this, market forces create a natural demand for deregulation, once implemented, to be extended to businesses not yet deregulated and rules not yet suspended. Thus advocates of deregulation do not confine themselves to micro-businesses but plead the case for freeing the economy in general from regulatory restrictions. ²⁰ Indeed, the Temporary Removal of Restrictions on Economic Activities Act was completely general in its permissive powers.

If the policy recommended by the NMC were to be implemented, the number of exemptions would presumably rise significantly and 'free market' conditions could eventually become the norm in certain areas or sectors. ²¹ What this might lead to in a situation of mass unemployment was illustrated by a supermarket employee interviewed in Khayelitsha, near Cape Town, with whom 'conditions of employment were not even discussed ... let alone negotiated. This worker had been taken on two weeks previously and did not know what his wages would be'. ²²

Dangers to Health and Safety

In addition, the NMC recommended that micro-businesses should be exempt from regulations requiring sanitary conveniences, washing facilities, change rooms, rest and dining rooms and provision of seats. ²³ It went on to state that 'consideration could also be given' to exempting such businesses from regulations relating to thermal requirements, lighting, windows, housekeeping, noise, precautions against flooding, fire precautions, supervision of machinery, reporting of incidents in

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connection with machinery, notifiable substances and safety equipment ²⁴ While no recommendation was made on these issues, the NMC was of the opinion that further investigation was needed to assess, not the efficacy of such regulations in protecting the health and welfare of employees, but their 'impact ... on micro-businesses'. ²⁵

As Barry Jammy observes, 'one might be forgiven for gaining the distinct impression ... that those rights [ie basic employee rights] were not foremost in the minds of the draftsmen when the report was prepared'. ²⁶

The prejudice threatened to workers by this approach is very real. In a commentary submitted early on in the deliberations of the NMC, the Industrial Health Research Group (IHRG) at the University of Cape Town had presented evidence of hazards at work emerging from factory inspections and hygiene surveys, and concluded:

'Given that there are still serious problems for employees in factories as outlined above, we feel that the removal of MOSA ²⁷ for small businesses will be a retrogressive step that will increase the already large burden to society of occupational disease and accidents....

Small businesses have a tendency to employ largely casual labour, and there is seldom any provision for monitoring hazards and accidents, or a factory clinic. They tend not to be organised by unions, and therefore there would be little protection for employees faced with unhealthy or dangerous deregulated conditions.... It is precisely in the small business sector where employees need legal protection because of their lack of union representation, and of an industrial relations framework for dealing with health and welfare questions.' ²⁸

Subsequent investigation lent weight to these concerns. Surveys carried out at SBDC hives during 1991, while not conclusive, did reflect a higher degree of safety consciousness at regulated hives than at deregulated hives. ²⁹ Follow-up interviews revealed a shrewd awareness among some employers of the possibility of cutting costs in the absence of (as the owner of a woodworking shop put it) 'fancy safety regulations'. This, she explained, allowed her to run her business 'in a more practical way'. ³⁰ All

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four employees at this work-place, on the other hand, complained about dust, noise and cold. One stated that she had required medical treatment for three months owing to chest problems caused by dust.

Had the hive in question not been deregulated, these conditions would very possibly have been illegal.

Towards an Alternative Policy

Unfortunately, while the lifting of regulations legalizes abuses which would otherwise have been prohibited, it does not follow that the mere existence of regulations will prevent such abuses. Various hazards are not covered by regulations; ³¹ in this sense there is a need for increased regulation rather than deregulation. More problematically, health and safety inspectors are few in number and able to investigate only a small percentage of workplaces - in practice, high-risk work-places and those from which more compensation claims emanate. A trade union presence is almost non-existent in small business and a strongly anti-union attitude is widespread among employers. ³² Thus there is nobody to monitor safety conditions, and regulations are frequently a dead letter.

The same problem, it may be noted, would arise if conditions of employment in small businesses were to be regulated by means of a wage determination, as could be done at any time. Again, as matters stand today, there would be little or no possibility of enforcing such a determination.

To sum up: the welfare of employees in an extremely weak bargaining position will suffer if the thrust of state policy is to deprive them of legal protection; but legal protection in itself will be ineffectual in the absence of a mechanism to enforce it. To address the totality of these problems, it is submitted, a twofold strategy is called for:

- (a) a system of collective bargaining appropriate to the small business sector needs to be developed as an alternative to the policy of deregulation; and
- (b) to make collective bargaining feasible and to monitor agreements, ways will need to be found of establishing a trade union presence in the sector.

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A Collective Bargaining Model for Small Business

A common objection to collective bargaining - and a principal argument for deregulation - is the belief that small business could not carry the increased labour costs which, it is assumed, would be imposed as a result. In reality, the whole idea of collective bargaining is to reach agreement on working conditions and wages that both employers and workers can live with at that point in time. This principle, enshrined in the LRA, applies to the small business sector as much as any other sector; the parties would set out to negotiate terms and conditions that employers could afford and that workers would regard as the best that are on offer.

The real problem, therefore, is not collective bargaining per se but rather the fact that most employer organizations represented on most councils are dominated by major employers who are able to agree to terms that might be unaffordable to small and struggling enterprises. An appropriate bargaining system would need to take account of actual differences among employers. Within the industrial council context, it could give rise to *sectoral agreements* applicable exclusively to small businesses (as defined in the course of collective bargaining) in each industry, that would make fewer demands on employers and

contain fewer benefits for workers than the agreements applicable to the remainder of those industries. ³³

Dangers of abuse would no doubt be inherent in such a situation. To limit such danger, two safeguards at least would be vital. Firstly, the option of inclusion in the small business category for bargaining purposes should only be available to employers who would otherwise have qualified for exemption; it would, in other words, be an alternative to exemption rather than a new escape route from industrial council agreements. Secondly, there would have to be a rigorous duty of disclosure on employers who seek to make use of this option to satisfy union parties that their case is genuine ³⁴

Developing a Bargaining System

Trade union participation would be no less essential to collective bargaining in the small business sector than in any other sector. ³⁵ Yet trade union organization in small businesses is at present extremely limited. How can this problem be addressed?

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A field study in the Cape Town area and the Kew industrial area in Johannesburg during the second half of 1991 suggested that the major obstacles to trade union organization were employer hostility and its mirror image: a perception among workers that unionization could jeopardize their jobs. ³⁶ In addition, there was a noticeable reluctance among trade union officials to commit scarce resources to a sector that is perceived as being extremely difficult to organize. ³⁷

But the absence of representative trade unions is only one side of the problem. Industrial councils are voluntary bodies and cannot function without employer participation. With the exception of one or two industries, employer organization in the small business sector is as thin on the ground as union organization, and suspicion of industrial councils ranges from strong to intense. The problem thus presents itself as follows: how would it be possible to persuade small employers to accept the freedom of their employees to join unions and, at the same time, to organize themselves for industrial council purposes?

Very probably there is no simple answer. A number of expedients, however, do present themselves. On the one hand, a more concerted approach by the union movement at industry and national level could expand the frontiers of collective bargaining at least in certain areas of small business. In addition to this, in the current climate of political renewal, union pressure combined with research into possible alternatives could influence emergent government policy towards the small business sector to open up new channels for collective bargaining.

The need to encourage job creation is universally accepted; in this respect there are no fundamental differences between unions and employers. ³⁸ In practice, this translates into pressure from the small business lobby or government to commit greater resources to assist small enterprises. This, too, is not necessarily controversial. The real question is the terms on which such assistance should be given.

From the free market point of view there should be a minimum of state intervention; in other words, subject only to questions of economic viability, assistance should have no strings attached. Given the poor track record of small business in the area of worker

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rights and the importance ascribed to this sector as an area of future job creation, such an approach can hardly be sound. In return for the commitment of public resources, it is common practice to require compliance with the basic norms of public policy. Public policy in a new South Africa, it is submitted, should include the promotion of trade union rights and collective bargaining in every sector of the economy, not excepting small business (which is, indeed, the stated objective of the existing LRA). Benefits such as tax relief, low interest loans, access to state contracts and assistance in general should be made conditional not only on economic considerations but also on compliance with a minimum code of conduct which should include (a) union recognition and (b) industrial council representation for the purposes of negotiating collective agreements applicable to the small business sector. ³⁹

Would this impose a straitjacket on small employers? It is submitted that it would not. Employers would be given the choice whether to take on certain social responsibilities in return for certain privileges. The point, surely, is that society may reserve the right to encourage those forms of endeavour which are in accordance with its overall objectives and to refrain from rewarding activities which undermine them.

From a comparative point of view it is interesting to note the provision made in the Bank of Zambia Act 24 of 1985 for guarantees by the central bank to 'needy small scale or new entrepreneurs who could not induce independent sureties or securities' with the aim of 'increasing the flow of institutional credit to small-scale enterprises'. ⁴⁰ For a number of reasons the scheme failed to take off and, in Ailola's view, the guarantee mechanism is badly suited to promote lending to 'sectors that are largely informal and which lack the basic assets to cushion the borrower in the event of default'. ⁴¹ Nevertheless, an interesting feature of the scheme was the requirement to register the business in question with the Small Industries Development Organisation or the Village Industry Service in order to qualify for a guarantee. ⁴² Although this may well have been 'unnecessary and bureaucratic' ⁴³ in the Zambian context, it does illustrate the possibility of requiring small business to comply with a broader social policy in return for state assistance.

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A different avenue of promoting a union culture in small business, with interesting implications, was the practice of some major unions in the USA in the 1930's of providing loans and management counselling to small employers on the verge of bankruptcy. Blumrosen comments: 'When benefits come from the union, employee loyalty increases as does employer cooperation.' ⁴⁴

Developing Union Structures

If policies of this nature were to be followed, union *membership* in the small business sector would be likely to increase and collective bargaining along the lines suggested above might

well become technically possible. The problem of effective union *organization*, however, to give body to collective bargaining and monitor the implementation of agreements, would remain.

This question, though of a practical rather than a legal nature, is crucial to the propositions raised above. Even before delving into the rich field of comparative international experience, there have been some innovative efforts at organizing workers in small businesses by a number of South African unions - in particular, attempting to establish area-based rather than work-place-based units of organization.⁴⁵ Not only does this grapple with the very real difficulty of servicing small numbers of members scattered across large numbers of work-places; it opens up possibilities of developing inter-union co-operation along the lines of COSATU locals.⁴⁶ Shop stewards elected by the combined membership of the different unions in the area could serve as a first-line union structure in dealing with local work-place problems and negotiations. Although steps in this direction have so far been only tentative, a more concerted union intervention focused around the development of collective bargaining structures could give considerable impetus to organization on the ground.

Organization of this nature would embody a more direct or participatory form of democracy than the representative model which is typical of unionism in large enterprises and industrial councils. The membership would of necessity *be* the union to a greater extent than in large-scale industry where full-time organizers can play a bigger role. Moreover, in the small business context, the duty of disclosure which is inherent in collective bargaining could well give rise to de facto worker participation. With employers and employees often working shoulder to shoulder, the logic of the situation might be to give the latter increasing influence over and involvement in management

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decisions to the point, in some cases, of co-managing the business. This, in turn, could help to supplement the scarcity of management skills which is one of the most serious constraints on small business development.⁴⁷

Creating New Traditions

It is not suggested that any of the expedients discussed above will be a panacea for the problems that have been identified. At best there will be a protracted process of battling on different fronts to establish new traditions in the face of resistance, prejudice, suspicion and fear of the unknown among workers as well as employers. A successful precedent, however, could serve as a beachhead of labour culture more in keeping with the values of a new South Africa. Step by step the prevailing climate could be changed to a stage where, at least in certain areas of small business, organization and collective bargaining would be seen as symbols of progress rather than tentacles of strangulation.

Such a process would clearly be of more than industrial significance. Problems of social upliftment and empowerment of an oppressed population are centrally on today's agenda. Involving the most disadvantaged and marginalized workers in the organization of their working lives would ipso facto broaden their horizons, boost their self-confidence and draw them more fully into the mainstream of social transformation.

Repeated predictions by economists of the increasing proportion of work-seekers who will be forced to seek employment in small and informal businesses lend force to this conclusion. Society will be the poorer if these hundreds of thousands of people were to be abandoned to the forces of a deregulated market. Society will benefit if their energies and skills can be linked to those of the labour movement as a whole. Creating a legislative framework to make this possible should be one of the priorities of South Africa's first democratically elected government.

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¹ *Sunday Times* 7 February 1993.

² *Sunday Times* 21 February 1993.

³ Cf Lynda Loxton 'Bad regulations or bad employers?' *South* 26 September 1991; Editorial 'Scrap controls, or else!' *Financial Mail (FM)* 25 October 1991; 'How government boosts unemployment' *FM* 24 April 1992; Johan Naude 'Penalties for enterprise' *FM* 4 September 1992; Jean le May 'Small business battles between employers', workers' interests' *Weekend Argus* 3 October 1992.

⁴ For an overview of the debate, see Darcy du Toit *Workers in small businesses: The need for Organisation* (Labour Law Unit University of Cape Town Occasional Paper 1/91) at 7-10. Two comparative analyses which helped to inform the argument below are A Rainnie *Industrial relations in small firms* (Routledge 1989) and International Labour Conference 78th Session *The Dilemma of the Informal Sector* Report of the Director-General (Geneva 1991).

⁵ s 1. The Act was passed following publication of a report by the Committee for Economic Affairs of the President's Council *A strategy for small business development and for deregulation* (Government Printer PC 4/1985) the title of which is self-explanatory.

⁶ An EPZ is defined as 'a delineated, enclosed and policed area of a country, usually in or near a port of international exit and entry, which is treated for customs purposes as lying outside the domestic customs area'. A Wilsenach & A A Ligthelm *Discussion Document: Considerations on DBSA's Approach to Export Processing Zones (EPZS) within South Africa* (Development Bank of Southern Africa April 1992) at 2.

⁷ *Weekend Argus* 30/31 January 1993.

⁸ Wilsenach & Ligthelm at 14. Disturbingly implicit in the idea of EPZS, it may be noted, is the assumption that the buying power of South Africa's own population will remain too limited for the foreseeable future to offer worthwhile markets - in other words, that existing standards of living are unlikely to increase significantly, hence the need to aim at export markets.

⁹ *The Influence of Relevant Labour Legislation on the Small Business Sector* (Government Printer RP 49/1991 July 1991). Quotations below are from the summary of the report published in *Government Gazette* 13925 of 16 April 1992 (referred to as 'NMC Report')

¹⁰ NMC Report at 1.1; cf NMC 1990 Annual Report at 4.4. 1.

¹¹ discussed in Du Toit at 11-16.

¹² Urban Problems Research Unit, University of Cape Town *Proposals for the management and administration of the informal sector at the local authority level: The case of the Cape Town City Council* (Working Paper No 41 March 1990) at S.

¹³ Comment submitted to the NMC by the Labour Law Unit, University of Cape Town, on the above report. The reference to 'market forces' is perhaps unclear; the proposition is rather that small business is to be exempted from and protected against, not 'pure' market forces, but the structured market conditions which govern industry and services in general. Cf ILO Report at 18-19. C Duncan *Low pay, its causes and the post-war trade union response* (Research Studies Press 1981) speaks of the 'symbiotic relationship' between small business and big business: 55-6.

¹⁴ NMC Report at 2.3.

- ¹⁵ NMC Report at 2.4. With the NMC transformed into a tripartite body representing employers, unions and the state, the input of union views may lead to a more balanced approach in the future.
- ¹⁶ SBDC seminar on small business and industrial councils (Cape Town 17 June 1991); Du Toit at 14-15.
- ¹⁷ defined as independent businesses employing no more than five workers and with an annual turnover not exceeding R250 000 at 1990 prices: NMC Report at 2.7.
- ¹⁸ NMC Report at 2.6; emphasis in the original.
- ¹⁹ The protection offered by the common-law contract of employment is not only minimal but largely academic in a situation where the worker's bargaining position is extremely weak and where, in practice, workers have little access to the courts.
- ²⁰ Cf, for example, the President's Council report referred to in n 5 above.
- ²¹ Even in the absence of such a policy, according to the NMC, '[o]nly a small percentage of applications [for exemption] are refused'. Out of 9 382 applications lodged in the year ending 31 October 1990, 7,7% were refused. *The Influence of relevant Labour Legislation on the Small Business Sector* (Government Printer RP 49/1991) at 4.1.1.1. SBDC officials question the accuracy of these figures.
- ²² Rowena Fester & Darcy du Toit *Small Businesses: The scope for worker participation* (Labour Law Unit University of Cape Town Occasional Paper 1/93) at 8. For an account of the anarchic conditions prevailing in the informal taxi industry, held up by some as a prize example of free enterprise, see Ferial Haffajee 'Bloody war as industry implodes on itself' *Weekly Mail* 5-11 February 1993.
- ²³ NMC Report at 2.16.3.1
- ²⁴ NMC Report at 2.16.4.
- ²⁵ NMC Report at 2.16.4. Other areas targeted for simplification or possible abolition are compensation for injury suffered at work (2.12) and unemployment insurance (2.13).
- ²⁶ 'Comment: Small Change' *Labour Law News and Court Reports* March 1992 at 1.
- ²⁷ Machinery and Occupational Safety Act 6 of 1983, in terms of which the above safety regulations are promulgated.
- ²⁸ Lewis et al 'Reply to *Government Gazette* Notice 1312 (1989): "Investigation into the influence of relevant labour legislation on the small business sector"' March 1990.
- ²⁹ Du Toit at 26-7.
- ³⁰ Darcy du Toit & Deena Bosch *Workers in small business: A challenge for the unions* (Labour Law Unit University of Cape Town Occasional Paper 2/92) at 11. Cf Paul J Papanek et al 'Occupational Lead Exposure in Los Angeles County: An Occupational Risk
- ³¹ Du Toit & Bosch at 14. Cf Alan Rycroft & Barney Jordaan *A Guide to South African Labour Law* (2 ed Cape Town 1992) at 317-18; Paul Benjamin 'Compensation for accidents at work and occupational diseases' *Labour Law Briefs* vol 4 no 11 at 78-9.
- ³² Cf Du Toit & Bosch at 28-32.
- ³³ Cf the suggestion in France of 'derogatory agreements' in smaller businesses. 'A derogatory agreement contains provisions that are less favourable than, or at least different from, legal provisions of workers.' M Biagi 'Employee representation in small and medium-sized enterprises: A comparative overview' (1992) 13 *Comparative Labor Law Journal* 270. Cf ILO Report at 37-44.
- ³⁴ See Du Toit & Bosch at 43-4, where these ideas were originally put forward.
- ³⁵ The possibility of alternative forms of worker representation was explored in a number of interviews with workers but attracted little interest: Du Toit & Bosch at 19-21.
- ³⁶ In other words, the protection against victimization of trade union members contained in the LRA has only a limited meaning in the small business sector - another example of legal regulation without a mechanism of enforcement.
- ³⁷ Du Toit & Bosch at 28-36; seminar on trade union organisation in small businesses (Labour Law Unit University of Cape Town 13 April 1992). In respect of Britain, Duncan at 154 writes: 'It is not the case that unions have struggled to organise small firms and have valiantly, but unfortunately, largely failed. Many workers attempting to organise trade unionism in smaller firms have been met with indifference, if not antipathy from the labour movement and unions have viewed small firms as too difficult and too expensive to organise.
- ³⁸ Du Toit & Bosch at 38-9.

- [39](#) It should be immaterial whether the benefit in question is provided directly by the state or by a semi-state corporation such as the SBDC. To the extent that public funds are committed, public policy should be observed.
- [40](#) D Ailola *Zambia's Credit Guarantee Scheme: Another Attempt at Alternative Securities* submitted for publication to (1993) *Stellenbosch Law Review* at 1. Page references are to the unpublished version; quotations are with the author's permission.
- [41](#) Ailola at 24.
- [42](#) Ailola at 8.
- [43](#) Ailola at 18.
- [44](#) Ruth G Blumrosen (unpublished paper Labour Law Unit University of Cape Town 1993) at 2.
- [45](#) discussed in Du Toit & Bosch at 45-9.
- [46](#) Or, perhaps, the British trades council model.
- [47](#) The possibility of worker participation in the broad sense as a corollary to collective bargaining was explored in Fester & Du Toit. Cf M Chesterman *Small businesses* (2 ed London 1982) especially at 272.