



**ANALYSING THE IMPACT OF COLLECTIVE BARGAINING IN AN INDUSTRY WHERE
WORKERS HAVE LOW BARGAINING POWER: CASE STUDY OF THE KZN CONTRACT
CLEANING INDUSTRY**

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ABSTRACT

The aim of this research report is to investigate the impact of collective bargaining in an industry where workers have low bargaining power. It seeks to understand what collective bargaining has been able to achieve for workers in the KwaZulu-Natal (KZN) contract cleaning industry. Contract cleaning is one of the most precarious and poorly organised sectors in South Africa. Scholars contend that contract cleaning has re-introduced one of the many aspects that characterised the apartheid workplace. In investigating how collective bargaining has impacted contract cleaners and their view of the labour relationship, the history of the industrial relations system and the mechanisms that regulate the contract cleaning sector (sectoral determination and collective bargaining) are considered. Debates surrounding the usefulness of collective bargaining in the current industrial relations system and the operation of this mechanism in a triangular employment relationship are discussed. Though references are made to the sectoral determination for contract cleaning, the focus of the research report is on collective bargaining.

The data for this research was collected using both primary and secondary sources. In relation to the former, interviews were conducted with officials of the bargaining council and trade unions. Interviews were also conducted with workers in the KZN contract cleaning industry. In relation to the latter, documentary data that was relevant to the research topic, such as the KZN contract cleaning main agreement, the Decent Work Programme and legislation, was examined.

The findings of this study demonstrate that workers in the KZN contract cleaning industry lack voice and cannot have meaningful inputs in the workplace. A representation gap exists that is exacerbated by the division between unions. The implications of this situation are that wages are lower than those prescribed by the sectoral determination, the non-compliance of firms becomes a prevalent issue and strike action becomes inefficient. With the continuous labour unrest in the current industrial relations system in South Africa it is apparent that the current labour legislation has not able to protect precarious workers found in new forms of employment.

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ABBREVIATIONS

ANC	African National Congress
BEECA	Black Economic Empowerment Cleaning Association
BEE	Black Economic Empowerment
BCEA	Basic Conditions of Employment Act
BCCCI	Bargaining Council for the Contract Cleaning Industry
CCMA	Commission for Conciliation, Mediation and Arbitration
COSATU	Congress of South African Trade Union
HOSPERSA	Health and Other Service Personnel Trade Union of South Africa
ILO	International Labour Organisation
LRA	Labour Relations Act
NAGEWU	National General Workers Union
NBC	National Bargaining Council
NCCA	National Contract Cleaners Association
NEDLAC	National Economic Development and Labour Council
NEF	National Employment Forum
NMC	National Manpower Commission
SACP	South African Communist Party
SATAWU	South African Transport and Allied Workers Union
SER	Standard Employment Relationship
TER	Triangular Employment Relationship
THOR	Transport, Action, Retail and General Workers Union

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CHAPTER ONE: INTRODUCTION

1.1 INTRODUCTION

The advent of democracy in South Africa ushered in a new system of industrial relations. Since the country's first democratic elections in 1994, there has been a systematic removal of apartheid legislation (Webster & Omar 2003:4). The transition from authoritarianism to democracy has created a host of new democratic and social rights for workers, trade unions and citizens (Buhlungu & Webster 2006:248). It has been marked by major institutional innovations that laid the foundation for a class compromise (Webster & Adler 1999:358). The centerpiece of the new industrial relations system was collective bargaining at various levels. Firstly, it promoted collective bargaining through creating institutions such as National Economic Development and Labour Council (NEDLAC) which crafted new rules that compelled key social actors - government, organised labour, business and community-based organisation – to bargain over liberalisation through negotiating and concluding agreements on major economic and social policies (Webster & Adler 1999:358). Secondly, it incentivised the use of collective bargaining in the workplace. This transition also entailed the introduction of a new labour relations regime in the workplace in an attempt to consolidate democracy and remove the legacy of apartheid. Webster (2015) writes that the promise of a new labour regime was premised on a more inclusive and participatory industrial relations system. He further holds that South Africa was praised for its successful transition to a more rights-based and cooperative industrial relations system. Sectoral bargaining councils mostly regulated labour and wage conditions for formal workers (Pons-Vignon & Paolo 2014:29). In sectors where unions were absent or too weak to initiate bargaining, the Minister of labour issued sectoral determinations to set minimum wages and working conditions.

Yet, these changes in industrial relations law coincided with the rise in precarious work which has limited many workers' ability to participate in this system. There has been a fundamental

change in the nature of work leading to a fragmented and uneven labour market that consists of work that is often precarious, has low wages and lacks benefits (Buhlungu & Webster 2006:251). Barchiesi (2011) writes that waged employment remained remarkably unstable and vulnerable for most South African workers. There is growing consensus among industrial sociologists that the restructuring of work has produced precarious work (Masondo 2010:1). The restructuring of production coincided with the proliferation of precarious jobs (Barchiesi 2011:78). Webster and Omar (2003) hold that the adoption of neoliberal policies has led to pressures to restructure the workplace. For Theron (2011), the process of restructuring could be conceived of as an endeavour that was endorsed by the new democratic government - the African National Congress (ANC) - to modernise the economy while integrating it into the global economy. This process has resulted in the emergence of three zones within the labour market (Buhlungu & Webster 2006:251). The first zone is the core zone that is occupied by skilled workers. These are workers in permanent employment with job security and good working conditions. The non-core zone is the second zone that is occupied by semi-skilled and non-skilled workers with precarious jobs (Buhlungu & Webster 2006:251). Non-core workers are often casualised and earn low wages, lack benefits and work in poor conditions. The periphery is the third zone in the labour market and is occupied by workers in the informal sector (von Holdt & Webster 2005:5). Workers in the non-core and periphery zone are found in atypical work which Theron and Godfrey (2000) define as part-time, subcontract or casual work. It can be said that these workers constitute the precariat from Standing's (2011) conceptualisation of the working class which consists of people who lack labour related security such as job security, representation security and income security. This increase in the precariat has important implications for the post-1995 industrial relations system. It has been shown that the centerpiece of the post-apartheid IR system, collective bargaining, only works if two conditions are met; the Standard Employment Relationship (SER) and bargaining power. Precarious employment has undermined both of these conditions.

A Standard Employment Relationship (SER) can be defined as full-time employment where there is a single employer with an indefinite contract of employment (Omomowo 2010:2). The opposite of this is atypical employment which is often described as a Triangular Employment Relationship (TER). This relationship comprises a worker, an intermediary which can be a contractor or a labour broker and a client company (Omomowo 2010:2). A study by Cheadle (2006) on the Labour Relations Act (LRA) and the Basic Conditions of Employment Act (BCEA) reveals that the Standard Employment Relationship (SER) is gradually being replaced by atypical employment which has had dual implications for labour law. On the one hand, regulations that are based on the SER are not adaptable to new forms of employment. On the other hand, labour law has failed to accommodate the flexibility of the labour market. Theron (2003) writes that a central characteristic of atypical employment is the replacement of a contract of employment with a commercial contract between a principal company and a contractor or a labour broker. Cheadle (2006) notes that because the growth of flexible, casual and contingent jobs has been so steep, some have questioned whether these forms of labour should continue to be called atypical (Cheadle 2006 in Barchiesi 2011:75).

Theron (2011) posits that collective bargaining is problematic in a triangular employment relationship. He holds that it is an exercise in futility insofar as the wages and work conditions are in effect determined by the client. The contractual agreement that fundamentally governs workers in a triangular employment relationship is no longer a contract of employment but rather a commercial contract between the client and legal employer of the workers concerned due to the externalisation of work (Theron 2011:1). For Coleman (2013), the operation of collective bargaining is not able to deal with the challenges that face low wage, casualised workers. He writes that existing minimum wage setting mechanisms are failing to bring workers out of poverty and that many workers are confined to the level of these very low wage minima. For collective bargaining to work for all workers there is a need to encourage and promote the

collective representation of non-standard workers found in new forms of employment such as the TER (Theron 2011:1).

It is not only new forms of employment which have limited the success of collective bargaining, but also a lack of bargaining power on the part of many workers. Chamberlain (1955) defines bargaining power as the ability to induce an opponent to accept an agreement on one's own terms. Associational power and structural power denote two types of workers' bargaining power. The former entails many forms of power that result from the formation of the collective organisation of workers while the latter consists of power that accrues to workers simply from their location in an economic system (Silver 2003:13). Bargaining power, for a worker, is only increased if the worker is made more attractive to employers. This is when a worker possesses marketplace bargaining power which Silver (2003) defines as the power that results directly from tight labour markets. It is the first subtype of structural power and can take several forms such as possession of scarce skills that are in demand by employers and the ability to pull out of the labour market entirely and survive on nonwage sources of income (Silver 2003:13). Most workers in atypical employment do not possess marketplace bargaining power. This is because these workers are either semi-skilled or non-skilled and as such do not possess scarce skills that are marketable to employers. They also occupy low wage sectors and receive wages that are beneath the household subsistence level. The second type of structural power is workplace bargaining power that results from the strategic location of a particular group of workers within a key industrial sector (Silver 2003:13). Workers in the mining industry, for instance, possess this type of bargaining power because of work stoppage (resulting from strike action) can cause disruptions on a wider scale than the stoppage itself. The number of working days that are lost during a strike can have a significant impact on the productivity of the companies and the economy as a whole (DoL 2012:6). While workers in atypical employment, such as those found in the retail sector possess some workplace bargaining power, exercising this power becomes

difficult when the law that governs the labour relationship is unable to protect these workers. The relative bargaining power of the parties to collective bargaining depends on the laws that govern a country's system of labour relations (Dan-Schmidt & Ellis 2010:4). Valodia (2000) argues that a fundamental problem with current labour regulation in South Africa is that it only seeks to regulate employment relationships where a clear and concise employment relationship between an employer and an employee exists. It is in this instance that it becomes difficult for workers in atypical employment to exercise their bargaining power in sectors where there is collective bargaining.

Collective bargaining exists in the KwaZulu-Natal contract cleaning sector, but workers have very little bargaining power and organisation is low. This is an industry where work is precarious because the worker is employed under a contract of indefinite duration by a third party to the collective agreement (McKay et al 2012:32). Workers in contract cleaning do not have significant bargaining power because they do not possess scarce skills that employers compete for. In industries such as auto-manufacturing and mining, the workers have significant structural bargaining power, which allows them to disrupt production through strike action and undermine profitability. Collective bargaining, in these industries, is used to establish peace and co-operation which can possibly lead to growth and stability to the benefit of both workers and employers. In contract cleaning, workers are hired and fired at the will of the employers and it is less likely that workers' resistance is a threat to profitability. It is for these reasons that the case of the contract cleaning industry in KZN is an interesting one because it is not clear why collective bargaining exists and whether it achieves the same aims for these workers as it does for workers in the auto-manufacturing and mining industry.

This research is important because it seeks to understand why collective bargaining exists in a sector where workers have low bargaining power. It can also shed light on what collective bargaining is able to do for vulnerable in South Africa and whether policy should be aimed at

expanding collective bargaining throughout all sectors. There is a substantial amount of work about collective bargaining in labour intensive industries such as mining (Godfrey et al. 2007) and the automobile industry (Webster & Omar 2003; Masondo 2010). However, there is much less work that investigates how collective bargaining has impacted vulnerable workers (such as contract cleaners) with low bargaining power. This research seeks to add new insight on debates surrounding collective bargaining in the current industrial relations system.

1.2 OBJECTIVES OF STUDY

This research sets out to understand what collective bargaining has been able to achieve for workers in the KwaZulu-Natal contract cleaning industry. It seeks to answer the following question: *What is the impact of collective bargaining in an industry where workers have low bargaining power?* This can be measured in terms of job satisfaction (wages, working conditions), labour peace and workplace co-operation. Essentially, this research seeks to understand if collective bargaining is effective in achieving fairness, peace and cooperation in an industry with atypical and vulnerable workers.

Sub-question: *How has collective bargaining impacted the workers' views of the labour relationship?*

As a qualitative study, it sets out to:

- Understand the internal structure and functioning of the bargaining council for contract cleaning in KwaZulu-Natal
- Examine the wages and working conditions of workers in this industry
- Explore how collective bargaining has been utilised by the workers and employers

1.3 THEORETICAL FRAMEWORK

Collective bargaining is a prime instrument of regulation in industrial relations (Cella 2012:174). It is the most direct mechanism for channelling the interests of workers. A theoretical understanding of industrial relations is imperative when attempting to understand how collective bargaining works and how it affects parties of the bargaining council. Collective bargaining is only one aspect of industrial relations. It is important to understand how the industrial system operates as a whole in order to understand the factors that influence it. It is on these premises that the industrial relations system is the institutional framework in which this research study is located. This research also draws its theoretical framework from literature pertaining to collective bargaining.

The term *industrial relations system* embraces the totality of actors, actions, rules and processes pertaining to the labour relationship in a particular society (Bendix 2008:28). The parties to the labour relationship, processes deriving from it, and the legal system governing the relationship are the main components of an industrial relations system. Edwards (1995) theorises that the purpose of industrial relations is the control, adjustment, adaptation or regulation of the employment relationship. Put differently, industrial relations focuses on the ways in which employment is regulated. For Klerck (2008), the structures and patterns of industrial relations at a particular time and place are subject to unique social, political, economic, historical and cultural forces. In defining industrial relations as a culture, that is, as a practice, words such as conflict, joint regulation, efficiency, fairness, autonomy and representation are important and necessary in grasping its character, limitations and potential (Cella 2012:174). There are many different approaches and perspectives from which one can view industrial relations. These approaches will not be discussed as the purpose of this research is not to study the system of industrial relations in its entirety but to focus on one aspect of the system which is collective bargaining.

This term collective bargaining is suggested to be an accurate description of the practice in which employers and employees agree on the terms in which labour should be performed (Chamberlain & Kuhn 1965:2). The purpose of negotiation is to arrive at a collective agreement which will govern the employment relationship. Collective bargaining is founded on an employment relationship that is well defined and the freedom of workers and employers to associate to an organisation that represents their interests (Hayter 2011:1). Chamberlain and Kuhn (1965) assert that the manner in which people define collective bargaining will, in part, determine the practice of collective bargaining. Through this process, an agreement is reached on the general terms that govern all employees within the bargaining unit. The role of the bargaining unit is to identify employees and employers to whom the negotiated terms of a collective agreement apply (Chamberlain & Kuhn 1965:109). The two main dimensions of a unit are; the grouping of employees and the grouping of employers. The area in which bargaining units operate differs and may range from a single department, a shop in a plant or a nation-wide industry (Chamberlain & Kuhn 1965:233). Each area may encompass employees of either craft or comprehensive unionism. The former is inclusive of workers who possess a specialised skill or perform a particularised function. The latter encompasses all employees, and does not take into account the nature of skills or functions (Chamberlain & Kuhn 1965:243). Bargaining levels pertain to the decision as to whether bargaining will take place at a centralised or decentralised level.

Decentralised collective bargaining denotes a system in which a union gains recognition at a particular plant or undertaking and then bargains on behalf of employees at that plant or undertaking or in a specific bargaining unit (Bendix 2010: 297). Union efforts at plant-level recognition were often hindered by the employer's refusal to grant access to the union or permission to hold meetings. In terms of organisational rights, in the Labour Relations Act (LRA) of 1995, a union has only to prove sufficient or majority representation in order access these

rights (Bendix 2010:297). Dyakala (1999) holds that the central issue relating to decentralised bargaining pertains to what is the most appropriate level for the determination of pay and other terms and conditions of employment. Centralised bargaining refers to collective bargaining that takes place at industry level rather than company level (Bamber et al 2010:652). It takes wages out of the competition while being able to provide better benefits at a lesser cost. The level of centralisation in collective bargaining will differ in accordance to the power and organisational resources of the unions (Klerck 2008:251). Apart from the sectoral determination, centralised bargaining is the main form of fixing minimum wages since South Africa does not have a national minimum wage (Kreuser 2013:1). The process of collective bargaining is a two-sided process (Bendix 2010:252). This is to say that effective bargaining is premised on ideals that resonate with both workers and employers. It permits workers to achieve a form of workplace democracy and to ensure the rule of law in the workplace. The fulcrum of power continually shifts amid the two parties (Bendix 2010:252). If power is to be balanced and free collective bargaining is to take place, Bendix (2010) writes that it is important for individuals to have the freedom of joining the organisations of their choice and that no manipulation of membership should occur.

1.4 STRUCTURE OF THE RESEARCH REPORT

This study is divided into six chapters. The first chapter is an introduction to the research topic. It gives a background to that which informed this research, such as the South African industrial relations system, collective bargaining and bargaining power.

The second chapter is a discussion on the methods used to carry out the research and collect data. It also describes the advantages and disadvantages of the methods that were adopted in order to answer the research question while highlighting the issues of validity and reliability. This chapter also speaks about the ethical considerations that guided this study.

The third and fourth chapter provides the academic literature that underpinned this study. The third chapter delves into the history of industrial relations in South Africa. It traces the origins of collective bargaining from the period of industrial councils (now bargaining councils), the appointment of the Wiehahn Commission (1979) to the Labour Relations Act (1995). It also demonstrates that whenever there was crisis in the Industrial Relations system in South Africa, new legislation was drafted and implemented in order to deal with the crisis. The fourth chapter describes how the industry is structured leads to precarious work. It sites different arguments on the impact of new forms of employment on the contract cleaning industry as well as how this has given rise to precarity. This chapter further describes the legal framework that governs the contract cleaning industry in South Africa, sectoral determinations and collective bargaining. It also introduces the case of the KZN contract cleaning industry.

The fifth chapter is the findings chapter. It provides an answer to the research question and describes the impact of collective bargaining in the KZN contract cleaning industry. It is divided into themes that arose from the analysis of the data such as lack of voice and representation gap.

The sixth chapter concludes this research report. It discusses the implications of the findings and provides recommendations.

CHAPTER TWO: RESEARCH METHODOLOGY

It has been argued that the choice of whether to do qualitative or quantitative research depends on the nature of the research question (Strauss & Corbin 1998). Erickson (1986) refers to qualitative research as interpretive research and suggests that the term *qualitative* essentially carries the distinction of being non-quantitative. In tandem with Erickson's definition, Denzin and Lincoln (1994) hold that qualitative research can be viewed as a set of interpretive practices where no single practice has privilege over any other. Qualitative research uses an inductive strategy. The intention is to study the subject in a natural setting in order to get the ideas and feelings of those being interviewed or observed (Strauss & Corbin 1998). What constitutes qualitative research is its purposeful use for describing, explaining, and interpreting collected data (Williams 2007:67). This research study is qualitative in nature. The intention of qualitative research is to study the subject in a natural setting which, in this instance, includes trade union officials, bargaining council official and workers. This will allow for an understanding of the ideas and feelings of those being interviewed. This research is also exploratory in nature as it seeks to explore, not only how collective bargaining has impacted the contract cleaning industry, but also how the workers' view of the labour relationship has been influenced.

2.1 CASE STUDY RESEARCH DESIGN

A case study is an empirical inquiry that investigates a contemporary phenomenon within its real life context when the boundaries between the phenomenon and context are not clearly evident (Yin 1984:23). It also uses multiple data collection methods and multiple sources of data. This research study adopted a case study research design because it is well situated for answering the research question. The intention of this study is not to generalise but rather to understand what collective bargaining has been able to do for workers in the KwaZulu-Natal contract cleaning sector. Stake (1994 cited in Punch 2005) argues that whether a case study should

seek to generalise and claim to be representative is dependent on the purpose and context of the particular research project that is undertaken.

2.2 GAINING ACCESS TO THE FIELD

Schatzman and Strauss (1973) theorise that the field method (of research) is more like an umbrella of activity beneath which any technique may be used for gaining the desired knowledge, and for processes of thinking about this information. A field researcher examines social meanings while grasping multiple perspectives in natural social settings (Neuman 1994:335). Gaining access is one of the common concerns in field research. Access into the field for this research was gained through the use of two gatekeepers. Neuman (1994) defines a gatekeeper as someone with the formal or informal authority to control access to a site. Field researchers expect to negotiate with gatekeepers and bargain for access (Neuman 1994:339). The bargaining council official for the contract cleaning sector in KwaZulu-Natal - who was interviewed in his capacity as an official - was a formal gatekeeper. He was able to provide a list of the names and contacts of the trade union officials I was able to interview later on during the course of the research. The other gatekeeper was an informal gatekeeper who is a close relative of mine and has friends who work as contract cleaners in the province. She was able to give me the names and contacts of the workers who then formed part of this research study. This is the manner in which I was able to gain access to the field site.

2.3 SAMPLE FRAME

In this research study, 17 people were interviewed and 4 out of the 17 were officials of the bargaining council and trade unions. The remaining interviewees (13) comprised of workers employed in contract cleaning. The contract cleaners worked in a clinic, mall, company office and university at the time of the interviews. Out of the 13 workers that were interviewed, 12 of them were women, reflecting the literature (Coyle 1985) that cleaning jobs are dominated by women. The numerous workers who declined to do interviews were also women.

The study adopted purposive sampling. This technique is a form of non-probability sampling in which selection is premised on knowledge of the population, its elements and the nature of the research aims (Babbie & Mouton 2001:166). It is predicated on the researcher's judgement and the purpose of the study. Probability sampling refers to the process in which a selection of the population can be chosen by researchers as they have the characteristics that can be viewed as representative of wider society, albeit in smaller numbers (Terre Blanche et al 2006:135). This permits generalisations to be made from a small population to the whole population. This type of sampling was not chosen because the sample size was not determined by the need to ensure generalisability, but rather the desire to investigate the chosen topic entirely and provide meaningful, information rich data (Terre Blanche et al 2006:135). As such, this study acknowledges that choosing purposive sampling will not allow the sample to be representative but may be applicable in similar contexts where workers have low bargaining power.

Snowball sampling is another type non-probability sampling technique (Babbie & Mouton 2001:167). Snowball refers to the process of accumulation as each located subject suggests other subjects. This sampling method was suitable for recruiting some participants for this research report. Babbie and Mouton (2001) state that snowball sampling is appropriate when the members of a distinct group are difficult to locate. Using this sampling method made it easier to access workers in the KwaZulu-Natal contract cleaning sector as I was unfamiliar with the sector and the province.

2.4 METHODS OF DATA COLLECTION

Primary and secondary sources were used during the data collection process of this research study. The former refers to data that is collected by the researcher during fieldwork while the latter refers to the data that existed before the beginning of a particular research project (Babbi Mouton 2001:76).

2.4.1 Primary Data Design

The primary data was collected through in-depth semi-structured interviews with officials of the South African Transport and Allied Workers Union (SATAWU), the National General Workers Union (NAGEWU) and the Transport Action Retail and General Workers Union (THOR). An interview with The Health and Other Service Personnel Trade Union of SA (HOSPERSA) could not be secured. The unions mentioned above are unions that represent workers in the KwaZulu-Natal contract cleaning sector. An interview was also conducted with the Bargaining Council for the Contract Cleaning Services Industry (BCCCI) for the province.

The interviews for the officials were conducted in their offices while the interviews with the workers were conducted either at their home or workplace (depending of the worker's choice). Leaving the interview context to the choice of the respondents was important because it allowed them to feel comfortable. This choice was also made out of convenience. Pertaining to the officials, the interviewees were selected due to their direct involvement in the bargaining council and trade unions. Further interviews were conducted with contract cleaners from KwaZulu-Natal. Most of the workers in KwaZulu-Natal were interviewed in isiZulu because it was their language of choice. Speaking to the respondents in the language that they preferred helped to establish rapport. Neuman (1994) holds that a field researcher builds rapport through forging a relationship and sharing the same language with the members of the field. The interviews were at least 20 to 30 minutes long although they were shortened in some instances due to the time constraints of the interviewees. The interviews generally provided rich and detailed information.

One of the advantages of interviews is that they are generally suitable for uncovering details which would not easily be accessed through quantitative research methods (Greenstein 2003:56). Semi-structured interviews were chosen for this research report because of their strength in giving detailed information on the issue under investigation. During the interviews that I conducted, I was able to probe the respondents' answers in order to get more information

on the issue under discussion as well as to clarify my understanding of the responses. A disadvantage of using interviews is that the interviewees may not be forthcoming with the truth for a number of reasons. For example, respondents might have been afraid of revealing the amount of wages that they received monthly because of the fear of judgement. Another disadvantage of using interviews is that the respondents' responses could be based on their perceptions versus facts of what collective bargaining has been able to do in the industry.

2.4.2 Secondary data design

The documentary method of data gathering is the way in which secondary data was collected. Documentary analysis refers to a systematic procedure for reviewing or evaluating documents which are both printed and electronic material. Akin to other analytical methods in qualitative research, documentary analysis necessitates that data be examined and interpreted in order to elicit meaning, gain understanding, and develop empirical knowledge (Corbin & Strauss 2008). This method was adopted in order to supplement the in-depth interviews that were conducted. Documents are a rich source of data for social research and documentary sources of data are used in different ways within social research. Some studies might depend entirely on documentary data while other studies collect this type of data in conjunction with interviews and observation (Ritchie & Lewis 2003:35). The manner in which secondary data was collected was through searching different documentary sources – that spoke to the subject at hand - before and throughout the duration of this research study. The documentary data that was accessed pertained to information on the history of industrial relations in South Africa, collective bargaining and the contract cleaning industry. The bargaining council for contract cleaning industry (BCCCI) main agreement, sectoral determination for contract cleaning and the decent work programme was the information that was useful in understanding what collective bargaining has been able to achieve over the past 20 years in contract cleaning. Examples of the sources that I consulted include the official website for the BCCCI, annual reports of the

National Contract Cleaners' Association (NCCA), relevant legislation including other literature with relevance to this study.

One of the advantages of using documentary data is that data is readily accessible in the form of journals, books and websites (Punch 2005:185). The researcher is able to access different and similar views on the phenomenon under study which cannot be necessarily attained through interviews. A disadvantage of using this method that pertains to the validity of the sources as the writer could be biased (Punch 2005:185). It is for these reasons that the use of more than one method in data collection was important in ensuring accuracy and validity of the information obtained. It also serves the purpose of corroborating the information that was ascertained through interviews.

2.5 RELIABILITY AND VALIDITY

In research, multiple techniques can be used in order to augment the validity and reliability of data. During the phase of data collection, I kept records of the data from the interviews and noted themes that came up which were unexpected as the research was progressing. This was done in order to see the direction which the research was taking as well as to make adjustments as new factors were revealed. I employed the technique of triangulation as I was able to combine different research techniques to gather information from different perspectives (Babbi & Mouton 2001:275). This was done through the use of in-depth semi-structured interviews and documentary data. Babbi and Mouton (2001:276) further note that no matter how careful one is in ensuring reliability, validity and objectivity, this can never be completely achieved in one's research project. I have attempted to ensure that the information collected and reported is accurate, valid and reliable in this research report.

2.6 RESEARCH ETHICS

In addressing the issue of ethics, all participants were briefed about the purpose of the research. Informed consent for participation in the study was secured from all participants. Participation was strictly voluntary and confidential; no coercion was used on participants to partake in this study. The protection of individuals remains pertinent in this study. Pseudonyms were used because the workers were apprehensive about the use of their real names and feared being dismissed from their jobs. However, the names of officials from the bargaining council and trade unions were disclosed because they were interviewed in their capacity as officials.

2.7 LIMITATIONS DURING FIELDWORK

The limitations that I encountered during the fieldwork pertain to securing access to research sites such as the Department of Labour and firms of employers in the contract cleaning sector. Numerous calls and emails were sent to these sites with no response. Attempts to secure an interview with the NCCA were also unsuccessful. I also experienced difficulties in securing a larger number of respondents in KwaZulu-Natal because the workers were apprehensive about being interviewed. Some of the questions that I asked during interviews were not answered because the workers did not feel comfortable with disclosing personal information. Another limitation that was experienced pertained to the translation challenges that I encountered during the process of transcribing the interviews. Some direct quotes ended up losing their meaning because the interviews that were conducted in isiZulu were later translated into English. As such, the meanings were often diluted.

CHAPTER THREE: HISTORY OF INDUSTRIAL RELATIONS IN SOUTH AFRICA

The history of industrial relations in South Africa is rooted in the discovery of gold and diamonds in the late 18th century where the period of industrialisation begun (Budeli et al 2008:18). The skilled labour needed to work in the mines, imported mostly from Europe, brought with them a tradition of craft unionism (Padayachee et al. 1985:2). Labour legislation crafted divisions among workers based on racial differences. Certain rights and privileges were accorded to particular races – white, coloured and Indian – while black people were denied these rights and privileges. It is on this foundation that the history of labour, in South Africa, is inevitably linked to the struggle for the national liberation of black people. Since 1924, there has been a steady attempt to reform labour relations. Each reform has been a response to specific moments of unrest and crisis of industrial relations. Budeli (2009) opines that the history of labour relations and workers' rights is long and complicated. This chapter seeks to summarise this long and complicated history.

3.1 INDUSTRIAL COUNCILS IN SOUTH AFRICA

The origins of collective bargaining can be traced back to the industrial revolution in the 18th and early 19th centuries (Hayter 2011:1). This period was characterised by intense economic, social and technological change which began in the United Kingdom, spreading to Western Europe, Northern America and other parts of the world. As production increased and labour relations was undergoing transformation, workers sought to protect themselves from the effects of new production methods and increased competitive pressures through forming organisations that were capable of representing their interests to employers and the government (Hayter 2011:1). In changing their form, some of these organisations were able to act as representatives of wage earners in large scale industries and demanded improvements in wages and working conditions (Hayter 2011:1). As a result, collective bargaining emerged as a means of balancing the unequal bargaining power in employment relations as well as to remedy the inherent

inequalities and injustices that were apparent during this period (Hayter 2011:1). Chamberlain and Kuhn (1965) write that the term collective bargaining originated in the writings of Beatrice Webb, in 1891. It denotes a process of negotiation that takes place between the representatives of an employer and of workers (Hayter 2011:1).

In South Africa, colonial precedents yielded the starting point for the industrial relations systems during the first half of the century (Godfrey et al 2010:17). The influence of early colonialism is demonstrated in the adoption of the Whitley model of councils by the Industrial Conciliation Act of 1924. These councils were known as Industrial Councils and remained the strength of the collective bargaining system during the apartheid regime (Godfrey et al 2010:18). Industrial councils were first established in response to the need to resolve disputes and represented the first institutionalised representation of collective bargaining in the South African labour market. The establishment of these institutions was propelled by the conflict between mining companies and miners in the early 1920s as well as the Rand Rebellion, in 1922, when white miners embarked on mass strike action against employers (Bhorat et al 2009:3). The Smuts government sent in the army which essentially crushed the strike action. At the end of the strike, 500 miners were wounded while 153 miners were killed (Bendix 2010:60). Another 5000 strikers were arrested, of whom four were later hung for treason. The miners who returned to work had to be satisfied with lower wages and the deskilling of jobs while hundreds of miners were laid off (Bendix 2010:60). This rebellion signified a moment of crisis in the South African industrial relations system. Upon realising the strength of the workers and fearing another surge of industrial unrest, the government concluded that it needed to create a statutory machine for collective bargaining and the settlement of disputes between employers and employees (Bendix 2010:60). This resulted in the drafting of the Industrial Conciliation Act of 1924.

The Industrial Conciliation Act was introduced in 1924, with the specific aim of establishing a system of collective bargaining (Bhorat et al 2009:3). The Act was able to provide the legislative

framework for the establishment of industrial councils, including the framework for the regulation of industrial conflict. The central aim of the Act was to create a system of nation-industry wide councils (Bhorat et al 2009:3).

These would allow industrial sectors to govern themselves by representative employer organisations as well as trade unions. Workers who fell outside of the ambit of the Act were agricultural workers, domestic workers, government employees and all black workers (Bhorat et al 2009:3). The system of collective bargaining set up by the 1924 Act in South Africa was restricted to a relatively skilled minority of white, coloured and Indian workers (Godfrey et al 2010:16). Bargaining that took place at firm or plant-level outside the industrial council system was rare. Though black workers could form and join trade unions, they were not allowed to join industrial councils (Godfrey et al 2010:16). Collective bargaining for black workers was, therefore, almost non-existent while wages and conditions of employment remained extremely poor (Godfrey et al 2010:16). This Act, according to Oliver et al (2003), was South Africa's first comprehensive labour legislation.

The Wage Act, introduced in 1925, accompanied the Industrial Conciliation Act. The Act established a Wage Board to make recommendations on minimum wages and working conditions (Bhorat et al 2009:4). The Minister of Manpower appointed the Board for a specific period which undertook investigations and made recommendations to the Minister prior to a wage determination being made. However, the Minister was under no obligation to make a wage determination based on the recommendations of the Board (Bhorat et al 2009:4). In addition, the Board advised the Minister on exemptions and extensions to a wage determination. The Wage Act, in effect, sought to provide minimum wages for white workers who did not fall within the industrial council system (Bhorat et al 2009:4). It created a dual system of industrial relations which saw the exclusion of African workers from the definition of an employee, and thus from the rights set out in the Act (Oliver et al 2003:207).

3.2 APPOINTMENT OF WIEHAHN COMMISSION IN 1979

The failure of the dual industrial relations system, in South Africa, was signalled by the massive strikes by African workers. It was the emergence of independent shop floor based industrial unions of black workers that challenged the dualistic system of industrial relations in the 1970s (Webster & Adler 1999:358). Black labour suddenly hit back at the apartheid regime through strikes, starting in present-day Namibia in 1971–1972 and culminating in a wave of strikes in Durban in 1973 (Sithole & Ndlovu 2011:189). At the lower end of the labour market wages were terribly low. The Durban strikes constituted a defining moment in South African history as they shattered the industrial peace that had existed since the banning of the African National Congress (ANC), Pan African Congress (PAC), South African Communist Party (SACP) and the crushing of the South African Congress of Trade Unions (SACTU) (Sithole & Ndlovu 2011:189). These strikes also denoted another crisis in the industrial relations system. In total, 61 000 workers went on strike with the longest strike lasting for 7 days (Maree 2013:1).

Following the Durban strikes in 1973, new trade unions formed by African workers across the nation emerged (Godfrey et al 2010:18). Unions were focused on winning recognition at plant level which entailed both organisational and substantive rights (Webster & Adler 1999:358). Coleman (2013) contends that it was the independent labour movement that fought during this period to establish collective bargaining institutions. Due to the increasing internal and external economic political pressure, the apartheid government appointed the Wiehahn Commission in 1977 to investigate and report on the industrial relations system. This Commission was set up following the aftermath of the 1976 Soweto uprising and the system-wide challenge it posed to the apartheid regime (Webster & Adler 1999:359). It was also established due to the rapid growth of the new unions and their success in pursuing plant-level bargaining strategies in order to push up wage levels, improve employment conditions and address arbitrary disciplinary

action (Godfrey et al 2007:7). The Wiehahn Commission promoted a radically different dispensation, including the de-racialisation of labour legislation, freedom of association and the establishment of an industrial court with the power to resolve unfair labour practices (Oliver et al 2003:207).

The appointment of the Wiehahn Commission proved to be a turning point for South African industrial relations (Venter & Levy 2011:44). The Commission issued its main report in 1979 and recommended that African workers should be included in the definition of employee and be allowed to join and form trade unions. It is argued that the Commission was specifically instructed to consider a method by which black trade unions could be controlled and incorporated into the industrial relations system without creating disruption (Bendix 2010:77). The government responded to the Commission's report by passing the Industrial Conciliation Amendment Act 94 of 1979 which included, within its definition of what constituted an employee, only employees who were entitled to legal residence within the boundaries of the Republic of South Africa (Venter & Levy 2011:45). Effectively, this excluded migrant workers from the conciliation machinery provided by the Act.

The Federation of South African Trade Unions (FOSATU), founded in 1979 and the Council of Unions of South Africa (COSA), founded in 1980, were formed as a result of the inclusion of Black workers in the Industrial Conciliation Act (Venter & Levy 2011:45). The 1979 Amendment Act was further amended in 1981 and became the Labour Relations Act. It introduced important developments in the industrial relations system in South Africa. The most significant amendment was to the definition of an employee which removed the exclusion of black workers, allowing them to join registered trade unions and be directly represented on industrial councils and conciliation boards. Black workers gained access to the rights in the Labour Relations Act that were previously awarded to unions for white, coloured and Indian workers (Godfrey et al 2007:5). The new unions that emerged initially rejected registration in terms of the Act, thereby

excluding themselves from participation on industrial councils and conciliation boards (Godfrey et al 2007:7). The rejection of registration was somewhat motivated by a desire to avoid the legal controls that went with registration. To some extent, it was also in protest at the exclusion of non-residents and contract workers from the definition of employee (Godfrey et al 2007:7). These categories included many members of the new unions. The resistance to these exclusions saw them removed by a further amendment to the definition employee in 1981. Simultaneously, many of the controls and obligations with which registered unions were burdened were extended to unregistered unions (Godfrey et al 2007:7).

3.3 THE LABOUR RELATIONS ACT IN 1995

The election of the ANC in the country's first democratic elections, in 1994, opened the way for a review of labour legislation. The ANC, supported and bolstered by COSATU and SACP, assumed power as the majority party (Bendix 2010:86). A new industrial relations system emerged in South Africa. It is held that the promise of a new labour regime was premised on a more inclusive and participatory industrial relations system. This outcome involved compromise which was contested from the beginning by labour, employers and government (Webster 2015:28).

One of the first objectives of the new democratic government was to establish a legal task team to draft a new LRA (Webster & Adler 1999:360). This team was established in February 1995 and the first Draft Negotiation Document was published for comment. The National Manpower Commission (NMC) and the National Economic Forum (NEF) was disbanded in early 1995 and was replaced by NEDLAC which was intended to represent major stakeholders as well as to consult on economic, industrial relations and labour market policy (Bendix 2010:88). Located in the Department of Labour, NEDLAC was charged with the task of reaching consensus between government, organised labour, organised employers and other community-based interest groups on all significant economic and social policy before it goes to parliament (Webster &

Adler 1999:363). It was one of the first pieces of legislation that was passed by the new government. Following a prolonged bargaining process, the new LRA was formally passed by parliament at the end of 1996 (Webster & Adler 1999:360)

The LRA of 1995 repealed the LRA of 1956 and subsequent amendments (Bendix 2010:88). It denotes a crucial aspect of the industrial relations system in South Africa that has maintained and strengthened the system of collective bargaining within the workplace (Bezuidenhout & Fakier 2002:468). The LRA of 1995 brought about fundamental revisions to the employment relationship and gives effect - in the first instance - to constitutionally entrenched rights such as the right to strike, freedom of association and equality (Venter & Levy 2011:199). Webster and Adler (1999) state that the new LRA of 1995 entrenched the right to strike with a clear right to picket while the labour movement hindered capital's insistence on a lockout clause. It further provides a comprehensive framework of trade union organisational rights and facilitates greater collective bargaining. Industrial councils, now bargaining councils, gradually became representative of workers of all races (Godfrey et al 2010:19).

Although there is no statutory duty to bargain, the LRA of 1995 does promote a duty to bargain at industry or sectoral level (Venter & Levy 2011:200). This is accomplished through giving effect to a number of organisational rights for trade unions and by protecting the right to strike. Organisational rights remain necessary precursors to collective bargaining because without the ability to organise effectively, there can be no bargaining relationship (Venter & Levy 2011:200). The Commission for Conciliation, Mediation and Arbitration (CCMA) was established through the LRA of 1995 and encourages parties to resolve disputes through conciliation and mediation (Webster & Adler 1999:360). This Act had the task of building on changes that would prepare the industrial relations system for the global environment (Godfrey et al 2010:19). The most significant innovation of the Act, according to Webster and Adler (1999), pertains to the provision of joint decision making and consultation at shop floor level between management and

workers through the creation of workplace forums that were developed in part from both South African and Western European precedents.

With the election of a democratic government, COSATU set out its objectives and wanted centralised bargaining councils in all sectors. This was to be achieved through the amalgamation of certain councils and the securing of a commitment from the new national government, the ANC (Godfrey et al 2010:82). It was also premised on intensifying the pressure on employers for collective bargaining where forums were non-existent. COSATU pushed for these councils to cover the entire country as part of its “Living Wage” campaign (Godfrey et al 2010:82).

Nattrass and Seekings (2012) state that the discourse of a civilized wage was revived through the same institutions through which it had been effected in a racialised form. These scholars argue that not all unionists were committed to using the council system as some feared bureaucratisation. Others, who were based primarily in larger and profitable companies, had an incentive to retain some plant-level bargaining because they were able to gain wage increases far in excess of the industrial councils’ minima (Nattrass & Seekings 2012:12). Despite hostility from some employers, COSATU unions reached an agreement with employers over centralised bargaining (Nattrass & Seekings 2012:13).

This chapter reviewed the history of industrial relations in South Africa. It illustrates that whenever crisis arose due to industrial unrest; new labour legislation was drafted and implemented. This was demonstrated in the adoption of Industrial Conciliation Act of 1924, the Wage Act in 1925 and the Wiehahn Commission (1979) in response to the strike action and revolt from labour during these periods. This history also illustrates the development of the industrial relations system towards creating a set of institutions that include workers who were previously excluded in the previous system. Institutions for collective bargaining (industrial

councils) were established following industrial unrest and created a platform for white, coloured and Indians workers to resolve labour disputes in the 1920s. Black workers became recognised as workers in 1979 and vulnerable, informal workers shared the same rights as formal workers after 1995. The objective of this change in industrial relations was to create a system grounded on fairness and equality, labour peace and efficient dispute resolution. A study into the impact of collective bargaining in a precarious sector such as contract cleaning is an important one as it will reveal the possibilities of limitations of sectoral/industry level bargaining and whether this mechanism has contributed to what Maree (2013) refers to as the failure of employment relations in post-apartheid South Africa.

CHAPTER FOUR: PRECARIOUS WORK, REGULATION AND COLLECTIVE BARGAINING

IN CONTRACT CLEANING

It has been claimed that the contract cleaning industry is a microcosm of the South African labour market (ILO 2014:13). A vast majority of these workers are unorganised and work under precarious conditions. The precariousness is created by the fact that there is dissociation between the employer who signs the contract of employment and the company which possesses power over the future of the employment relationship (McKay et al 2012:8). Coyle's (1985) work on the impact of privatisation for women's work demonstrates that the majority of people in cleaning jobs are women and that poor pay and working conditions can be especially found in cleaning services that are subcontracted. This chapter will outline the structure of the contract cleaning industry and illustrate how this structure gives rise to precarious work. The two forms of regulation in the South African contract cleaning industry which are the sectoral determination and collective bargaining will also be discussed.

4.1 STRUCTURE OF THE CONTRACT CLEANING INDUSTRY

Globally, cleaning work is more often than not outsourced to a specialist company which supplies cleaning services on a contractual basis (Campbell & Peeters 2008:29). Competition is often fierce as the successful bidder is the one that offers the lowest price. The cleaning of large premises such as office buildings, hospitals and universities is undertaken within the framework of different employment relationships (Campbell & Peeters 2008:29). Herod and Aguiar (2006) argue that under the neoliberal state, cleaning work has been tantamount to sweatshop work through the deregulation of the labour market. These scholars posit that neoliberalism undermines workplace protection and purposely creates a casual labour force. Ryan and Herod (2006) posit that the nature of competition in cleaning is such that firms often bid at a loss and attempt to recover costs by subcontracting work to cheaper providers through cutting the cleaner's hours and reorganising work. Competition between cleaning contractors has been

quite deleterious to profit margins, conditions and wages. It is the use of subcontracting that exposes cleaning firms to competition (Koesl 2012:90).

Campbell and Peeters' (2008) research on contract cleaners in Australia reveals that the absence of protective regulation makes the situation worse for cleaners as the pressure of competition around poor practices forces reputable contractors out of the industry. Numerous firms that jostle for business are willing to offer low prices in order to secure work. Wills (2008) contends that competition has led to cleaning services being offered at night and early morning. It is an industry that is easy for workers as well as firms to enter (Campbell & Peeters 2008:29). Ryan and Herod (2006) note that some cleaning firms are organised on an ethnic basis, where workers are recruited in one or few communities. Firms can be collaborators as well as competitors, linked together in a chain of subcontracting (Campbell & Peeters 2008:29). Subcontracting alters the nature of the employer and employee contract (Coyle 1985:13). It often means that labour can be hired and fired at the will of the employer without entitlement to severance pay. The hours of work, agreed rates of pay and place of work change at the employer's will (Coyle 1985:13).

In South Africa, contract cleaning has been dubbed an important sector because it is a significant employer of people in the country (ILO 2014:5). Bezuidenhout and Fakier (2006) use a case study of the life of Maria, a contract cleaner at the University of Witwatersrand, to argue how neoliberal policies such as subcontracting have undermined efforts to de-racialize the workplace. These scholars argue that contract cleaning has reintroduced many of the aspects that characterised the apartheid workplace regime such as job insecurity, low wages and lack of benefits (Bezuidenhout & Fakier 2006:479). The intensification of work and the reduction of wages are transforming cleaning work (Herod & Aguiar 2006:29). Wills (2008) explains that a sharp intensification of work means that fewer cleaners are contracted to do the same amount of work and have to work harder in order to complete their work. Many contract cleaners

experience short, unstable hours linked to compressed work schedules. In addition, Allen and Henry (1997 cited in Wills 2008) assert that where cleaning jobs might have provided living wage jobs, subcontracting has meant that cleaners are in sweatshop jobs associated with increased levels of personal risk, poverty wages as well as an increase in the intensification of work.

4.2 PRECARIOUS WORK IN CONTRACT CLEANING

Precarious work has a profound impact on individuals and societies. Standing (2011) utilises the concept of the precariat to demonstrate the precarious situation that many people have found themselves in as a result of the neoliberal measures that have been undertaken. The precariat was a term first employed by French sociologists to describe *seasonal or temporary workers* in the 1980s (Obinger 2009:1). In Italy, the *precariato* denoted more than casual labour, it has been used to define workers who earn low wages (Obinger 2009:1). Standing (2011) posits that a majority of people are pressured into a new and insecure precariat. An increase in the rates of unemployment and precarious work arrangements has led to the deterioration of the quality of working and living conditions (ILO 2012:35). Pons-Vignon and Paolo (2014) write that the casualisation of labour has entailed a marked deterioration in levels of pay and security. It has been argued that the normalisation of precarious work has damaging effects on society at large. It leaves workers and communities in unstable, insecure positions as precarious workers have been found to suffer a higher rate of occupational safety and health issues (ILO 2012:35).

Low wages and poor working conditions can be found in contract cleaning internationally (Campbell & Peeters 2008; Wills 2008). This sector denotes precarious work because of insecure wages, job insecurity and inferior working conditions. Within the ambit of academia, government and labour there is a debate as to the precise definition of precarious work. The International Labour Organisation (ILO) states that a precarious job can take many forms. For instance, it is usually defined by low pay, uncertainty as to the duration of employment and a

disguised or ambiguous employment relationship (ILO 2012:27). Temporary contracts of various durations provide a lower wage and do not always confer the same benefits. Koessler (2012) maintains that precariousness due to subcontracting is particularly prevalent in low-industries such as cleaning, catering or security services. The precarious situation that most cleaners face is exacerbated by the absence of incremental wages or possibilities of progression within organisations (Koessler 2012:90). One can surmise that this nature of employment is prone to be more insecure and workers are often marginalised. There have been many suggestions on how to reduce precarious employment. The ILO (2012) contends that re-establishing full employment as the central objective of economic policy is one way. This is to say that monetary, fiscal and industrial policies need to converge in order to ensure quality employment for all. Levelling the playing field and avoiding unfair competition in the labour market is another way that has been suggested as a way of reducing precarious employment (ILO 2012:35). Another way that has been cited by the ILO (2012) as a way of reducing precarious employment is collective bargaining and the freedom of association which are deemed to be integral accessing decent working conditions and other benefits. These are further critical in preventing precarious work arrangements and ensuring better working conditions (ILO 2012:61).

Contract cleaning remains a significant source of employment for women which further makes it a precarious sector. Research by Coyle (1985) a general ago elsewhere demonstrated that most of the people that work in cleaning jobs are women. She held that women were being used to pave the way for a significant deterioration in the terms and conditions of employment. More recently and locally, Orr (2001) writes that the increase in women's employment is referred to as the feminisation of labour which is driven by the private sector's desire for low wages, productivity, flexible labour and labour control. She further states that the casualisation of labour has been suggested to have negative effects on women's work due to the loss of typical benefits such training and maternity leave.

4.3 REGULATION OF THE CONTRACT CLEANING INDUSTRY

The Basic Conditions of Employment Act (BCEA) of 1997 provides for the establishment of sectoral determinations which establish the minimum wages for workers found in specific sectors of the economy (DoL 2003 in DPRU 2010:15). Sectoral determinations regulate the terms and conditions of employment where workers are understood to be particularly vulnerable to exploitation, low levels of organisation and no centralised collective bargaining, (Elsley and Mthethwa 2014:13). The contract cleaning industry in South Africa is regulated by a sectoral determination nationally except for KwaZulu-Natal where a bargaining council exists.

4.3.1 Sectoral Determinations

Sectoral employment standards, also known as sectoral determinations, are made where there is no bargaining council. The promulgation of the first sectoral determination was in contract cleaning, in 1999 (DPRU 2010:15). These standards denote a set of minimum terms and conditions which apply to all labour within a defined sector or region and provide a system of sectoral minimum wages in South Africa where a national minimum wage does not exist (Venter & Levy 2011:39). The Minister of Labour can make a sectoral determination that establishes the basic conditions of employment for employees within a specific area. Sectoral determinations are made in accordance with the provisions in Chapter 8 of the Basic Conditions of Employment (BCEA) and also by publishing a notice in the Government Gazette (Bhorat et al. 2009:16). The Minister of Labour does not publish a sectoral determination that covers employers and employees who are already covered by a collective agreement that was concluded at a bargaining council. Furthermore, if a collective agreement is concluded in an area covered by a sectoral determination, the provisions of the sectoral determination will no longer be applicable to parties covered by a bargaining council agreement (Bhorat et al. 200:16). These sectoral employment standards are administered rather than negotiated and more than one determination is influenced by the agreement reached in non-statutory bargaining forums

(Elsley & Mthethwa 2014:3). Naidoo et al (2007) argue that sectoral determinations are set in sectors that are regarded as vulnerable in light of the fact that there are some sectors that are more prone to exploitation than others.

4.3.2 Collective bargaining

The concept of collective bargaining can be understood as a process of mutual influence between the employer and union whose objective is to reach an agreement on the employees' working conditions (wages, benefits, work schedules) (Cloutier et al. 2012:401). It is a decision-making process based on the relative power that each party has to persuade the other through the use of industrial actions. The outcome of the bargaining process is the content of a new collective bargaining agreement (Cloutier et al. 2012:401). Collective bargaining that takes place at industry level rather than company level is referred to as centralised bargaining and occurs when employers in a sector bargain with one or more unions representing the employees of these employers (Bamber et al 2010:652). Bargaining councils, according to Elsley and Mthethwa (2014) are a form of centralised bargaining created in a specific industry where employers and trade unions negotiate terms and conditions of employment. Centralised bargaining neutralises the impact of trade unionism in the workplace (Sisson 1987 in Klerck 2008). Employers feel that it reduces their vulnerability to trade union pressure while trade unions regard it as a means of rationalising their bargaining activities, expanding their influence and increasing their membership. The centralisation of collective bargaining, for the government, represents an important institutionalisation of conflict and an important counter to bouts of industrial unrest and a mechanism for promoting industrial cooperation (Blyton & Turnbull 1998 in Klerck 2008). It can provide access to medical and provident funds that can benefit employers and employees as well as increase the power of both parties while being essential for proactive strategic unionism (Kreuser 2013). Dyakala (1999) contends that strong centralised bargaining structures can prevent the government from subordinating the interests

of labour to its economic policies and development strategies. Conversely, it has been suggested that centralised bargaining places restrictions on the flexibility of the labour market (Kreuser 2013).

Formal and informal centralised bargaining arrangements exist in the South African contract cleaning industry (Grawitzky 2011:37). The agreements reached in these bargaining structures are often incorporated by the Minister of Labour into sectoral determinations. The National Bargaining Forum (NBF) was established because both employers and unions were not sufficiently representative in order to form a bargaining council nationally. Through the NBF, the NCCA and unions have been able to negotiate wage agreements which are then forwarded to the Department of Labour (DoL) as the basis for legislation (Grawitzky 2011:37). In KwaZulu-Natal, unions and employers negotiate agreements through a formalised process of centralised bargaining. Workers in this industry have little bargaining power. This is also an industry that has low levels of organisation in light of the existence of a bargaining council in the province. Godfrey et al (2010) write that centralised bargaining has been primarily driven by employers that are seeking to set a floor for competition. These authors posit that apart from the transport and retail sectors, there is little evidence of trade union organisation in the services sector. It is argued that the councils that do exist in the services sector supposedly owe their existence more to the fact that employers regard them as useful in regulating conditions of work (Southall 2013; Godfrey et al 2007). Contract cleaning denotes an operation in which there is a low entry threshold level for emerging new firms with the intent of establishing new business. As a result, there is potential for wage competition and undercutting amongst employers (Godfrey et al 2007:44). The contract cleaning bargaining council has been perceived to be relatively effective in enforcing compliance.

CHAPTER FIVE: ANALYSIS OF FINDINGS

5.1 INTRODUCTION

Collective bargaining enables a group of employees with a common interest to negotiate a binding written contract with the employer. Bratton and Gold (2012) write that collective bargaining over pay, working time and conditions is the *raison d'être* of trade unions. Both parties, the employer and the union, have divergent interests and make different calculations on what is fair, effective or beneficial given the organization's scarce resources and competitive position. In South Africa, collective bargaining constitutes the core of industrial relations (Klerck 2008:218). Apart from providing a platform in which wages and working conditions are negotiated, collective bargaining aims to create a more peaceful, efficient and fair labour relationship. It is normally assumed that the success of collective bargaining depends on a clear and well-defined employment relationship between the employee and the employer, what is often called a standard employment relationship (Theron 2003, Coleman 2013). It is further assumed that representation/organisation is important for workers to exercise bargaining power, which is central to the process of reaching fair outcomes in the bargaining process. A gap in representation possesses a threat to the success of collective bargaining for workers. Freeman et al. (2007) define representation gap as the percentage of workers who desire union representation but do not have access. This representation gap is growing as a result of the trend towards casualisation, part-time and temporary employment relationships (Serrano et al. 2010:30).

There is somewhat unusually, however, an industry where collective bargaining exists and workers are not in a standard employment relationship, and where workers have relatively low levels of bargaining power. This is the contract cleaning industry in KwaZulu-Natal (KZN). In order to understand how collective bargaining operates in these circumstances, this research set out to investigate the impact of collective bargaining in the industry as well as how

formalised bargaining has impacted the workers' view of the labour relationship. In other words, is the bargaining council achieving the ends that are normally expected of collective bargaining? This will be reflected in the degree to which workers have a voice and representation in decision making and workers' job satisfaction in terms of wages and working conditions. It will also be measured in terms of labour peace, workplace co-operation and participation, justice and fairness.

This chapter will show that there is a lack of voice and representation gap in the KZN contract cleaning industry which undermines the effectiveness of the bargaining council. It will demonstrate how the division that exists between unions further undermines the success of collective bargaining. It will outline how this lack of substantive voice, and consequently democracy in the workplace, the representation gap and division between unions affects the process and effectiveness of collective bargaining. This chapter will demonstrate that the outcome of the above has been lower wages than those prescribed by the sectoral determination, issues of non-compliance and ineffective strikes.

5.2 Lack of voice for workers

Voice is the ability of workers to have meaningful input into workplace decisions and is a standard of worker participation (Budd et al. 2010:3). It is an important concept in industrial relations and can also be conceived of as the constructive role that collective bargaining between employees and employers plays in resolving disputes, and thereby promotes productivity and economic growth (Valodia, 2000:11). In order to understand the impact of collective bargaining in contract cleaning, workers were asked about their views on the labour relationship and their employers. It might be expected that in an industry where there is formalised bargaining and where work is regulated by the LRA and BCEA, workers should feel secure enough to express their grievances without the fear of dismissal. However, Klare (1981) has argued that the law that governs collective bargaining is only marginally concerned with

worker input or participation. Its real preoccupation is the efficient management of the enterprise and establishing governance that promotes industrial stabilisation (Klare 1981:459). This view held by Klare (1981) seems to be confirmed in the case of the contract cleaning industry in KZN.

Most respondents interviewed do not view the employment relationship as mutually beneficial and, despite the presence of the bargaining council, believe that there will always be conflict between employers and employees. These workers also expressed that they do not have a voice in the workplace because they cannot speak to their employers about their grievances as a result of constantly receiving threats of dismissal.

The following was expressed by the workers upon being asked about the issues they faced at work and how they addressed these issues:

We can't speak to them (employer) about the problems that we have at work because they tell us we can look for another job and that they can find other people who want the job. When there are problems at work I just keep quiet because I do not want to lose my job. Zifikile, Contract Cleaner (Clinic)

When there is an issue, I don't tell anyone. When I get angry and speak about the issue, the higher people (employer) tell me that they will make me lose my job so I just keep quiet. I must keep smiling even if it's hurting me. I don't say anything because I don't want to complain about my job. Rose, Contract Cleaner (Office)

The lack of voice is evident given that instances of workers' rights being violated were commonly reported. Workers interviewed complained of employers not paying full wages, overtime for work carried out after hours or on weekends as well as employers assigning duties that are not related to cleaning.

The following was expressed by the workers:

I don't like how they treat me sometimes. I was employed as a cleaner but the boss tells me to make the people in the office tea. So, I do two jobs. I clean and make tea but I do not get paid for making tea. I am only paid as a cleaner which is not fair. The boss also makes me move heavy furniture to other parts of the office.
Nonzwakazi, Contract Cleaner (Office)

Sometimes, the employers do not like to be wrong and when you tell them your problems, they do not listen. This is the situation when it comes to wages. When I asked him why money is missing from y wages, he just says "you make me angry", "I'm not a crook". I end up not saying how I feel because of what he says. The boss also doesn't add the money we should be paid for working overtime to our wages.
Deborah, Contract Cleaner (Mall)

Deborah also expressed that the decision to cut down the hours of work was imposed on her and that her employer instructs her to come in on weekends to make up for the total hours that should be worked in a month. Her employer also does not pay her for working overtime. Even though a collective agreement exists, her employers set their own conditions of work and unreasonably reduce her wages. This violation of workers' rights appears to be common in this industry because most of the workers that were interviewed shared similar accounts.

Bargaining councils are required to provide a forum in which conditions of work and wages are agreed upon and regulated through a formal process. These councils are also required to compel the employers to adhere to the collective agreement between the parties and serve a broader purpose beyond setting wages. The threats of dismissal, non-payment of overtime and setting of duties through personalised relationships are problems that a bargaining council

should be able to eliminate. However, these problems still persist in the KZN contract cleaning industry. Workers are afraid of expressing their grievances because of threats of dismissal. These workers also do not know that their grievances can be taken to the council when their employers fail to address them. Most of the workers interviewed revealed that they did not know what a bargaining council actually does, apart from setting wages. It is because of this reason that workers are left to believe that there is no platform available for them to speak about their grievances and as a result, employers are not held accountable.

5.3 Representation gap

Collective bargaining is voluntary in South Africa. It only takes place when either the employers or employees feel the need to bargain. It is for this reason that one would expect to find high rates of representation/unionisation in sectors with bargaining councils. Voice is an important aspect in collective bargaining because it provides a countervailing source of power to management through unionisation and organisation (Dundon et al. 2004:4). It enables unions to provide representation and recognition for their members.

A report compiled by the ILO (2014) on contract cleaning in South Africa shows that there are low levels of organisation in the industry. Figures submitted to the Department of Labour suggest that roughly 37% of all employees in the industry are unionised. The ILO (2014) further reported that organisation in the industry is complicated by the attitudes of some employers as employees fear victimisation and dismissal. This representation gap means that the unions that exist in the industry only serve the interests of the few workers that are organised. While a few workers are part of unions, most of the workers interviewed are not union members. What is unusual about contract cleaning in KZN is that a bargaining council exists in an industry where the levels of organisation are low.

The following was expressed by one of the workers:

We haven't joined a union yet. Someone from a union came to speak to us. It was SATAWU who came to speak to us but we didn't join because we didn't have enough numbers. He said that we should be in numbers when he comes so that he can sign up all of us. We did not do that because others are afraid that they will get fired. Nomthandazo, Contract Cleaner (Clinic)

I would like to join a union because I have heard that unions help people. No one has come to my workplace to ask me to join a union so that is why I am not part of a union. My employers treat me unfairly and I do not know what I can do because they do not listen to me. Deborah, Contract Cleaner (Mall)

When asked for her view on unions, she expressed that being told by a union official said that she could not join the union because he needed numbers (more than one worker) in order to register her and her co-workers. This has negatively affected her perception of unions. This experience has led her to believe that unions are self-serving rather than invested in the interests of workers because the union official was more concerned with registering a large number of workers rather than the few that were available and willing to register.

The few workers that are part of unions had positive perceptions of unions. Beauty, one of the unionised workers that were part of a strike in 2014, had the following to say:

I am part of a union, SATAWU. A few years ago, the union told us to mobilise other workers because we were going on strike. So, we went on strike because we were fighting to get more money. The money that we got was too little for the days and hours that we work. It was my first time on strike but I was happy to strike with my union because I felt like our grievances were being heard.

Beauty's experience of being a unionised member highlights that industrial action is an important aspect of collective bargaining. It demonstrates that workers feel a sense of inclusion,

justice and participation through industrial action rather than being a part of bargaining council where there is no engagement. Cella (2012) argues that it is only with collective bargaining that industrial conflict becomes subject to a form of joint regulation, enabling an achievement of efficient norms endowed with minimum fairness. Without the right to strike, workers feel that collective bargaining becomes collective begging (Klerck 2008:363). It is through industrial action such as strikes that workers feel like they are a part of a collective and that their grievances are being advanced. However, without the organisation of all workers in the KZN contract cleaning industry, the bargaining council does not serve the purposes of recognition and legitimacy for all workers.

5.4 Division between unions

Collective bargaining tests the organisation of unions (Klerck 2008). It can either deepen the weaknesses of the union or amplifies the strengths of the union. This process also takes place regardless of the state of union organisation. The unions in the KZN contract cleaning industry that were interviewed revealed that there is conflict within the industry which is not only limited to the employers. The unions are in conflict with each other due to a number of reasons which have been expressed below. One of the issues that caused this conflict between the unions is the drive to create a national bargaining council throughout the country.

Mr Mkhize, the general secretary of Transport, Action, Retail and General Workers Union (THOR) had the following to say about the conflict:

In the contract cleaning industry, there has been an attempt to form a national bargaining council and this attempt was loaded with malice on the part of SATAWU. It is one of the biggest unions in the industry and of course you know that it is fighting itself, it is imploding. They are even killing each other.

We learned late in these discussions that have been taking place in Johannesburg, facilitated by Professor Cheadle as well as the CCMA, that SATAWU's call was that "let us try to establish something and along the lines we would squeeze those small unions out". So, we are seen as a threat and we will be used to establish the national bargaining council.

Once it is established, we get thrown out. They can do that very easily by inflating the number of the threshold level for membership. SAWATU was suggesting that a threshold be 12 000 members. If a minimum is 12 000 members, I mean, how many unions will sit there? It is only SATAWU.

Yet, here in KZN, we all got equal seats because of equal representation. So the intention was very clear to us and we decided as THOR to support a call that the issue of a national bargaining council should not proceed.

For THOR, the drive to create a national bargaining council is a strategy to ensure that small unions will be pushed out once the council has been established. Mr Mkhize further added that:

The NCCA moved (for the motion) because it has its own internal conflicts because we were to extend in KZN to other provinces. The extension has been put on hold and we supported it. SATAWU did not object locally because it is divided as a union at national level.

Well, NAGEWU being NAGEWU, you'll understand it was neither yay nor nay. It's always in the middle. If you stand in the middle, you get shot by both sides. At least as small as we are as a union, we are brave enough to say things that we are not happy about.

In an industry where workers have low bargaining power and organisation is low, solidarity between unions is important if collectively bargaining is to benefit these workers. The division between unions serves as a distraction from the issues that exist in the industry such as low wages and poor working conditions. Instead of fighting for better wages and working conditions for workers, unions become preoccupied with the internal conflict that exists. It is also likely that employers capitalise on this division which allows them to keep wages low. The agreements that have been negotiated by unions are constantly being challenged by employers and unions can only make sure that these agreements are enforced. It is only through solidarity that unions can fight to keep the gains that have been won when agreements are up for negotiations.

5.5 Bargained wages lower than prescribed wages

The wage structure in South Africa remains highly unequal and stratified with the majority of black workers, together with low paid workers, in vast sectors earning wages that are below the household subsistence level (Coleman 2013:2,6). Wages differ considerably across sectors and provinces. Non-metropolitan areas such as KwaZulu-Natal have always had a history of low wages in contract cleaning and clothing manufacturing industry. In contract cleaning, wages differ across provinces.

Since its inception in 1993, the bargaining council for the contract cleaning industry (BCCCI) has produced wages that are significantly lower than those prescribed by the sectoral determination nationally. At the time of this research (2015), the wage rate for the KZN contract cleaning industry was R14.50 per hour.

The rates in other areas can be seen in the table below:

Minimum hourly rates for contract cleaners				
Area A		Area B	Area C	
Metropolitan Councils: City of Cape Town, Ekurhuleni, City of Johannesburg, City of Tshwane and Nelson Mandela Local Councils: Emfuleni, Merafong, Mogale City, Metsimaholo, Randfontein, Stellenboch, Westonaria		Areas covered by KwaZulu- Natal Contract Cleaning Bargaining Council	The rest of South Africa	
Period	Rate Per Hour	Rates prescribed by the KwaZulu-Natal Contract Cleaning Bargaining Council	Period	Rate Per Hour
06/01/2015 – 30/11/2015	R16.98		06/01/2015 – 30/11/2015	R15.47
01/12/2015 – 30/11/2016	Previous minimum rate + CPI + 1.5%		01/12/2015 –30/11/2016	Previous minimum rate + CPI + 1.5%
01/12/2016 – 30/11/2017			01/12/2016 – 30/11/2017	

Table 1: Government Gazette, January 2016

The unions interviewed had the following to say about this outcome of bargained wages. Mr Patrick Mkhize, the general secretary of THOR expressed that:

It is the fault of the bargaining council. If there was no bargaining council, then the Minister of Labour would have actually set the sectoral determination for KZN as it the case for other provinces. In fact, KZN should be having better wages

than other provinces because it has got centralised bargaining. But it (the bargaining council) had other parties like NAGEWU and SATAWU capitulating to the employers.

It makes a mockery of wages. In fact, we are the laughing stock of other provinces in the country in that we have a bargaining council but have lower wages. Of course the NCCA is happy because it represents the interests of the employers and the employers are maximising profit and it is at the expense of the exploited workers and workers in the industry are definitely exploited.

When asked the same question that was posed to THOR, Mr Alpheus Phala (the national sector coordinator in the contract cleaning industry) had the following to say on behalf of SATAWU:

Our members outside of KZN are earning more than our members in the bargaining council ... it's a long story and as to what happened, I think the conflict between the unions might have played a major role in terms of those wages being as they are. It might also be that employers in the province are used to autonomy (allowing them to set the wages at their will).

Coleman (2013) writes that the system of sectoral determination is modelled on the old wage determinations of the apartheid wage structure which are partial and uncoordinated. Bargaining councils are perceived to be institutions that are impartial and coordinated. It might therefore be assumed that wages that are negotiated in such an institution (such as those in the KZN contract cleaning industry) might be higher than those prescribed because the agreements are negotiated. Coleman (2013) posits that most bargaining council wage minima, while very low, are significantly higher than those prescribed in the sectoral determination due to the fact that these agreements are negotiated in organised sectors. The fact that wages in the KZN contract cleaning industry are lower than those prescribed is uncharacteristic of bargained wages vis-à-

vis state determined wages and undermines collective bargaining because workers use bargaining as a tool to fight for living wages. What further undermines collective bargaining, according to Coleman (2013), is that employers in the low wage economy are intransigent, an attitude which co-exists with low wages and desperate working conditions. He holds that the minima contained in collective agreements are not much of an improvement from the apartheid cheap labour structure because it is not enough for the basic subsistence of workers.

The workers interviewed had the following to say about wages in the industry:

As cleaners, we have a bargaining council which tells our employers how much to pay us and also makes sure that we get provident fund and family responsibility but the money is very low. I take care of all my children and grandchildren. The money that I get is not enough for the whole month. Deborah, Contract Cleaner (Mall).

I love my job because it gives me bread. I have 5 children which I support. I don't have a husband because he passed away. I stand on my own. The eldest is 24 and the youngest is 3. This month, I was paid R1 600. The money that I get is not enough to supply for my family's needs. Nomthandazo, Contract Cleaner (Clinic).

Most of the workers who were interviewed expressed that the wages they receive do not allow them to meet their basic monthly needs. While the bargaining council has introduced benefits that can only be found in the KZN contract cleaning sector, such as the family crisis plan, these workers opined that they are unhappy with their wages. The outcome of low wages in this industry can be attributed to the fact that workers have low bargaining power and lack voice in the workplace.

5.6 Issues of compliance

Nattrass and Seekings' (2012) work on the clothing manufacturing industry reports that a majority of employers countrywide, with at least 70% in KwaZulu-Natal, do not comply with the statutory requirements. Similar to the clothing manufacturing industry, contract cleaning is faced with the same issue of non-compliance from employers. Mendeloff (2014) writes that non-compliance can be attributed to a weak enforcement system, low rates of inspection and relatively insufficient inspection resources in South Africa (Mendeloff et al 2014:9). For Damonze (2013), non-compliance of small firms in contract cleaning poses a threat to the sector.

The bargaining council for the contract cleaning industry (BCCCI) says that there are inspection mechanisms to deal with the issue of non-compliance in the industry. The deputy secretary of the council, Mr Zulu, had the following to say about how the council investigates and resolves grievances that are brought forward:

We have agents (inspectors) who have been authorized by the Department of Labour. They will inspect premises or sites where employees work - that is when we get complaints. Sometimes, employees come to us themselves and others phone us. When the inspectors" investigate the site, they check whether the employees are paid correctly. They will also check whether the employees receive benefits such as leave, bonuses, etc. Obviously, if employees are not getting benefits or if they are not paid correctly, then we (the council) take up that matter with the company concerned.

It is evident that the grievances of workers can only be addressed if the initiative is taken (on the part of the workers) to report their complaints directly to the council. This can only happen more regularly when workers are educated about the role of the bargaining council as well as the

agency that they have within the labour relationship. Mr Zulu further expressed the following about the companies that have contract cleaning tenders with government departments:

When it comes to the companies doing work for the government department, we find that most of those are the ones which are non-compliant. There were some companies who were non-compliant early this year. What we did as the council was to put a notice in the paper (about the company) – we call this naming and shaming. We thought they would be scared because those departments that they are providing services for would say “guys, we do not want to be in the paper, sort your thing out. But I would say it did not really work”.

Most of the non-compliant firms are BEE firms. This is according to Mr Mkhize, of the THOR union, who had the following to say about the BEE employers in the industry:

In KZN, there are employers who are BEE employers. The worse employers in the industry are black employers. They are arrogant and tell you that they have contacts with government people and they do unsavoury things to workers with impunity.

I want to say this without fear of contradiction that more than 90%, close to 100% of the companies that have contracts with the Department of Health throughout the KwaZulu-Natal province are black owned. More than 90% close to 100% do not comply with the main agreement of the bargaining council in many aspects; the annual bonuses, the leave, the minimum wage, and all other benefits that are there. They are totally flouting the provisions of the main agreement. They have been named and shamed but are still the most difficult companies to deal with.

While it has been reported that the bargaining council is perceived to be relatively effective in procuring compliance from employers (Godfrey et al 2010), the above response from the council

seems to suggest the opposite. Employers continue to be non-complaint in light of the collective agreement that exists. The level of compliance in the industry would not be as low as it is if workers were more organised and also if unions were not divided and in conflict. It appears that collective bargaining has not been able to protect workers from being exploited by firms that do not comply with the statutory requirements that pertain to the minimum wage, bonuses and provident fund. In an industry like contract cleaning, where workers do not have a voice and work in poor conditions, the non-compliance of firms exacerbates the precarious nature of these workers.

5.6.1 Illegal procurement of tenders

The bargaining council for the KZN contract cleaning industry has been faced with challenges that have sought to undermine collective bargaining. The illegal procurement of contract cleaning tenders is a challenge with which the bargaining council is faced. It also demonstrates the effects of non-compliance in the industry where intransigent employers continue to operate with impunity. One of unions interviewed revealed that the presence of corruption has limited the success of collective bargaining because employers are non-compliant and intransigent. The union also shared that the Department of Health in KZN awards tenders to firms that are known to be non-compliant in the industry. Although complaints have been made by the union, there has been no investigation into this claim.

Mr Mkhize from the THOR union expressed that:

The Department of Health continues to have a contractual relationship with the companies that do not have certificates of compliance. This simply happens because at the level of procurement. There are people who manipulate the tender process and give tenders to non-compliant companies. I think it's because they give kick-backs to certain individuals.

We have asked the Natal Witness to do investigative journalism concerning this issue and they instantly grew cold feet. Perhaps they were told to just “back-off”. It’s either they were told that or given something to back-off, we don’t know.

But this is a serious allegation that is there which needs to be looked into because the situation with the Department of Health exacerbates and complicates the situation that workers find themselves in.

While the bargaining council has provided a forum for regulating employment of work and establishing fairness, corruption has made collective bargaining non-conducive for workers in the KZN contract cleaning industry. Instead of being penalised for not complying with the statutory requirements that have been established, employers are rewarded through acquiring cleaning contracts from the Department of Health. The fact that contract cleaners have low bargaining power and are mostly unorganised puts them at a greater risk of having their rights violated by their employers. In this instance, collective bargaining fails to protect these workers from non-compliant employers. These employers are not held accountable and continue to set the conditions of work at their will.

5.7 Ineffectiveness of strikes

One of the worrying trends in the new industrial relations system in South Africa has been the rise in strike activity. In a country where there is an unequal distribution of income in the labour market, wages are what often triggers strike action. Klerck (2008) attributes the salience of strikes in South Africa to the failure of employment relations. Strikes are able to test the relative bargaining advantage between the parties involved while putting pressure on them to compromise.

In recent years, there have been strikes in the KZN contract cleaning industry. Conflict between the employers’ association (NCCA) and unions in 2014 resulted in contract cleaners throughout

Durban going on strike. At the time, these workers earned R11.92 p/h and wanted the wage rate to be increased to R14.49 p/h. The cause of dissent was that workers in the province were unhappy that they were earning wages that were lower than any other contract cleaner outside of the province (Kubheka 2014:1). Workers also wanted a grading system as well as to work an 8-hour day. This strike is an example of workers trying to hold their employers accountable. THOR had the following to say about what triggered strike action:

It was the deadlock in negotiations because we wanted parity and for the first time parity was called by THOR in these negotiations that there should be parity between workers elsewhere and in KZN. SATAWU signed the agreement even though they were purporting to be with us. They signed the agreement that they must receive lower wages and next was NAGEWU to sign.

Parity in wages seems to be what triggered the strike. NAGEWU also expressed the following concerning the strike:

What triggered the strike is that the membership for all those unions who participated in the negotiation was mandated to go on strike because the employer organization - which is the NCCA, did not meet some of the demands. When we have certain employees that you pay higher rates and other benefits and other employees lower, it creates animosity. So, obviously the strike was driven by that.

Negotiations during the strike reached a deadlock and unions expressed their dissatisfaction with the way in which employers bargained with them, leading to high levels of conflict within the industry. THOR further revealed the following pertaining to the strike:

We were the ones who called off the strike early last year in April because we felt that it was beginning to get violent. The workers started fighting with each other because the less you earn the more pressure you are under financially. So, people

were starting to cross the picket line by going back to work and working under the conditions that they disliked because they had this and that to pay for. They were forced by those circumstances to go back to work.

SATAWU had the following to say about the ineffectiveness of the strike:

I think you are aware that sometime last year, we (unions) went on strike in KZN. Nothing came about because the strike was very weak. There was no preparation on our part and other unions went on a mission to recruit our members. This type of thing weakens the strike itself because other unions take advantage of the situation and what ends up happening is that the demands that we (unions) are on strike for are compromised.

The recent strike in the KZN contract cleaning industry illustrates that collective bargaining has not improved working conditions for these workers. It also demonstrates that strikes have proven to be inefficient for workers because no substantial change results from them. The conditions of work remain unfavourable because workers do not have a voice and there is no accountability for employers. In an industry such as this one, collective bargaining should be able to protect these workers while improving their work conditions; however, it has not been able to do so. It has been said that it is intransigent employers in the low wage sectors who aim to undermine and collapse collective bargaining (Coleman 2013:6). This intransigence can be seen in the KZN contract cleaning industry where employers continue to be non-compliant with the statutory requirements and deny workers their rights.

5.8 SUMMARY

The existence of collective bargaining in the KZN contract cleaning industry is a unique case because of the low levels of organisation among workers. For a bargaining council to work, both sides have to possess bargaining power in order to be able to negotiate a fair agreement and to

hold each other accountable. Findings of this research show that because workers have low bargaining power, they do not have voice in order to make meaningful inputs to workplace decisions. There is also a common violation of workers' rights by employers. The labour law that exists has not been able to protect workers in the KZN contract cleaning industry. A representation gap exists in the industry and even among the workers that are organised, there is division between unions. The employers are not held accountable by the bargaining or the unions. As such, workers are the ones who continue to suffer at the hands of their employers. The effect of an industry where there is low organisation and where workers have low bargaining power is that wages are lower than the minima prescribed by the sectoral determination and compliance is relatively low.

CHAPTER SIX: CONCLUSION

With the re-emergence of South Africa into the global economy after 1994, the ANC was faced with the challenge of having to create a sustainable economic system. The government pursued different strategies in order to achieve higher economic growth, easing its protectionist stance while adopting policies that conformed to global practices (Dekker 1998:xi). It was noted by Lehulere (1997) that the ANC's radical shift from left wing politics to right wing politics was a product of the constraints faced by the democratic government. The emergence of a new industrial relations system was more rights-based and along with it came a host of rights for workers and trade unions (Webster & Adler 1999, Webster 2015). The cornerstone of this system – the Labour Relations Act (LRA '95) – encouraged 'voluntarism' where the regulation of labour relations was left to the unions and employers Pons-Vignon & Paolo 2014:9). The centrepiece of this voluntaristic self-regulation would be collective bargaining; and the primary forum for collective bargaining was bargaining councils.

Collective bargaining in its ideal form allows workers to achieve a sense of workplace democracy (Bendix 2010:252). Bargaining councils are especially important in post-Apartheid South Africa, given its legacy of inequality and low wages. These institutions held the promise that workers could advance their interests and push for a living wage. However, this new labour regime coincided with a rise in precarious work. Barchiesi (2011) writes that employment in South Africa has gradually become flexible, unprotected and fragmented. The rise in non-standard contracts of employment posed a threat to success of collective bargaining. The increasing number of precarious workers no longer had the power to force concessions through bargaining.

The main objective of this research was to investigate the impact of collective bargaining in the KZN contract cleaning industry where workers have low bargaining power. It sought to understand what it means for precarious workers to possess collective bargaining rights and

whether workers able to utilise the promised benefits of formal bargaining? Does collective bargaining give precarious workers a sense of justice and fairness in the bargaining process? The case of KZN was an interesting study because, unusually for an industry with formal collective bargaining, it has a representation gap among its workers, who, as a result, possess low bargaining power. It is a low wage industry where workers are vulnerable because of the poor working conditions and the subcontracted nature of the employment relationship. The findings of this study point to the limits of collective bargaining, and echo arguments made by other scholars (Theron 2010 and Coleman 2013) about the limits of collective bargaining.

This research demonstrates that, despite the presence of a bargaining council, contract cleaners in KZN lack voice and cannot make a meaningful input in workplace decisions. These workers cannot advance their grievances to their employers because of victimisation and arbitrary threats of dismissal. Employers in this industry have been found to engage in unfair labour practices and violate the workers' rights with impunity. Labour legislation has been unable to protect these workers because of the nature of the triangular employment relationship which is problematic. The conditions of employment are determined by a person who is legally not party to the employment relationship (Theron 2010:91). While the subcontractor is the legally recognised employer, it is the user company that actually controls their work conditions (Holdcroft 2012:1). It has been argued that employers use the triangular employment relationship in order to avoid unions and collective bargaining through outsourcing employment responsibilities. These forms of employment destabilise collective bargaining (Coleman 2013:2). The subcontracting and casualisation of workers can be conceived of as an attempt to deny workers the very citizenship rights that were promised to them with the advent of democracy - and above all - the right to fair and decent work (Barchiesi 2011:76). The findings of this research also demonstrate that a representation gap exists in the industry, as a large number of workers are unorganised. The majority of workers who are unorganised desire to join a union,

however, they have been unable to do so because of the lack of access. Where organisation is low, workers are unable to have a voice through unions that represent them. This gap is further exacerbated by divisions between unions. This low union density and inter-union conflict severely limits the effectiveness of formal bargaining structures.

The implication of the above situation is that wages in the KZN contract cleaning industry are lower than those prescribed by the sectoral determination nationally. In effect, the collective bargaining forum, rather than being a tool for workers" to fight for living wages, has produced wages that are lower than the national minima. Workers in the KZN contract cleaning industry struggle to meet their basic needs because they receive wages which are below the subsistence level. It is the intransigence of employers that keeps wages low (Coleman 2013:6). Another implication of lack of voice and the representation gap has been the issue of compliance with the agreements reached. Non-compliant employers continue to set their own conditions of employment which are not in line with the requirements of the collective agreement, and in some cases of the BCEA. The firms continue to violate the rights of workers without serious repercussions from the bargaining council, apart from being named-and-shamed in the local newspaper. In a situation such as this one, workers are the ones who are disadvantaged and vulnerable. Collective bargaining should be able to protect precarious workers however it has not able to do so for these workers. This speaks to the fragility of collective bargaining in low wage sectors. It seems to confirm what Coleman (2013) has argued, that collective bargaining is not able to achieve the transformation needed in South Africa because employers use it to attack wage levels. It has not been able to promote fairness and justice in the workplace.

These weaknesses of the bargaining council in contract cleaning point to the fact that there is a lack of legislation in South Africa which can protect workers in precarious work. The rights and protection that ostensibly exist for workers in non-standard employment, including the right to

form a bargaining council, cannot be easily accessed and may not be effective when workers do not have significant levels of organisation and bargaining power. As such, new legislation needs to be developed that is aimed at addressing the needs of workers found in these forms of employment. Moreover, extensive research needs to be undertaken on whether bargaining institutions are indeed fragmented or if these can still be used as a mechanism to reduce the inequality and stratification that exists in the current wage structure. This is especially important if the drive to create a National Bargaining Council (NBC) in contract cleaning is to be successful. The creation of the NBC can aid in the organisation and representation of workers, if done properly. It can eliminate the disparity in wages that currently exists while reducing the level of conflict between the unions that represent contract cleaners provincially. While the KZN bargaining council will be used as a blue-print for establishing a NBC, the relevant stakeholders (government, organised labour and employers) should learn from the challenges that currently exist in KZN and pose a threat to the success of collective bargaining in the industry. Strategies need to be drafted in order to deal with issues of low wages, compliance and organisation. The NBC would only work if there is a genuine and relatively strong organisation in the industry.

In realising that there is a decent work deficit in contract cleaning, the ILO (2014) has made decent work a priority. In seeking to transform the nature and form of labour relations in contract cleaning, the organisation has prioritised increasing employment security, improving levels of worker participation and reducing labour management conflict. This decent work programme is important because it can improve the conditions of work. It can also restore the dignity of contract cleaners who continue to feel invisible in the workplace. For the ILO to be able successfully implement the programme, it has to take into account the weaknesses of the previous attempts to regulate precarious work, such as detailed in this research.

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APPENDIX A: PARTICIPATION INFORMATION SHEET

University of the Witwatersrand,
1 Jan Smuts Avenue & Jorissen Street,
Braamfontein,
Johannesburg,
2000

To Whom It May Concern,

This letter serves to confirm that I, Nobuhle Dambile Hlangoti, am a registered Masters student in Industrial Sociology, at the University of Witwatersrand. The nature of my research deals with the current state of collective bargaining in the KwaZulu-Natal (KZN) contract cleaning industry. The main method of data collection will be semi-structured interviews with sample of key officials from the Bargaining Council for the Contract Cleaning Industry (BCCCI), South African Transport and Allied Workers' Union (SATAWU), the National General Workers Union (NAGEWU), Transport Action Retail & General Workers Union (*THOR*) and the National Contract Cleaner's Association (NCCA). It would be greatly appreciated if you can participate in the research and allow me to conduct the necessary interviews. I will be able to provide you with the interview schedule prior to the interview if you have any concerns about the questions I intend on asking. The interviews will be between 20-30 minutes. These interviews will be transcribed and used in a MA Research Report that will be submitted to the Department of Sociology, at the University of Witwatersrand, as part of the requirement for the attainment of a Master's Degree in Industrial Sociology. The MA Research Report will be publically accessible because it will be stored in the main library and will also be made available on the internet.

Should you have any queries please do not hesitate to contact me. My email is: 1255460@students.wits.ac.za and my mobile number is: 073 379 7052. You can also contact my supervisor, Dr Ben Scully at Ben.Scully@wits.ac.za .

Yours sincerely,

Nobuhle Dambile Hlangoti

APPENDIX B: CONSENT FORM

The aim of this research is to investigate the impact of collective bargaining is working in the KwaZulu-Natal (KZN) contract cleaning industry.

I agree to participate in this research study.

The purpose and nature of the study has been explained to me orally and in writing.

I am participating voluntarily.

I give permission for my interview with Nobuhle Dambile Hlangoti to be tape-recorded.

I understand that I can withdraw from the study, without repercussions, at any time, whether it is before it starts or while I am participating.

I understand that I can withdraw permission to use the data within two weeks of the interview, in which case the material will be deleted.

I understand that extracts from my interview may be quoted in the thesis and any subsequent publications if I give permission below:

(Please tick one box)

I agree to the disclosure of my name and position in the thesis

I do not agree to the disclosure of my name and position in the thesis

Signed Date

APPENDIX C: INTERVIEW SCHEDULE

BARGAINING COUNCIL FOR CONTRACT CLEANING SERVICES INDUSTRY (BCCCI)

1. Can you please introduce yourself? (Name, Position, Duration of Employment)
2. When was the bargaining council established? Who established the council? Who does it cover?
3. Why was the council established? (Bearing in mind that this sector was previously covered by a sectoral determination)
4. What impact has the bargaining council had in this sector? (In terms of wages, working conditions, etc)
5. What is the current state of centralised bargaining in this sector? Is centralised bargaining working?
6. What has been the role of unions in this sector? Have unions been successful in terms of wage agreements reached?
7. Why is KwaZulu-Natal the only province, in the country, with a bargaining council in this sector?
8. Why are wages in this province lower than those prescribed by the sectoral determination nationally?
9. Should there be a national minimum wage for contract cleaners in South Africa?
10. Are there challenges that the bargaining council is faced with?

NATIONAL CONTRACT CLEANERS ASSOCIATION (NCCA)

1. Can you please introduce yourself? (Name, Position and Duration of Employment)
2. How does the NCCA operate as an employer's" organisation?
3. What role did the NCCA play in the establishment of a bargaining council in this sector?
4. What is the current state of centralised bargaining in this sector?
5. What is nature of the relationship between the organisation and the active trade unions?
6. What has the impact of the bargaining council in this sector? (In terms of wages, working conditions, etc).
7. What challenges does the organisation face?

TRADE UNIONS (SATAWU, NAGEWU, THOR)

1. Can you please introduce yourself? (Name, Position ad Duration of Employment)
2. What was the role of the union in the establishment of the bargaining council?
3. Has centralised bargaining been driven by the union or employers?
4. Is centralised bargaining working for workers?
5. How effective has the union been in negotiating for the wages of workers?
6. Are workers satisfied with the terms of the agreement as prescribed by the bargaining council?
7. Why are wages in this province lower than those prescribed by the sectoral determination nationally?
8. What triggered the recent contract cleaners" strike in 2014? (What does this say about the current state of the industry?)
9. Should there be a national minimum wage for contract cleaners in South Africa?

WORKERS

1. Can you please introduce yourself? (Name, Place of Employment & Duration of Employment)
2. Is there anything that you enjoy about your job?
3. What are the working hours, wages and working conditions?
4. Do you have paid sick leave/ provident fund/pension?
5. What issues do you face at work? How do you address grievances?
6. Do you know what a bargaining council does? If so, what expectations do you have of one?
7. Is there anything that you'd like to add?