

TURP

NUMSA WORKSHOP ON DISCLOSURE (12 October 1995)

Objectives of the workshop:

- a) Shopstewards and union organisers should have a good idea and understanding of the debates for and against disclosure of information.
- b) Must be able to select areas relevant to their needs and negotiate with management what is it that they need.
- c) Must be able to identify useful information, legal and practical constraints and how to deal with them.
- d) They must be able to formulate a NUMSA strategy around disclosure.

1. Introductions (An ice-breaker game would be played) (15 mins)

The aim:

This aims at introducing the facilitator (and organisation s/he comes from), the participants (their positions) to familiarise everybody with each other. This creates a relaxed atmosphere conducive to interactive learning.

2. Ground rules session

3. What is disclosure? (15 mins x2)

* (T/union) reasons for wanting information, how to benefit from it?

4. Expectations (whole class/group discussion) What to disclose? (45 mins)

To find out what the participants in their individual capacity want discussed (what issues that bother them or have experienced in their particular workplaces need disclosed in detail). This is likely to form the basis of discussion for the session: The following issue will be covered.

5. How will the disclosed information be useful? How can the union use this information? (list from above)

(25 mins)

BREAK (Tea)

6. Management's claim of confidentiality? What are the hidden reasons for refusal? (short input and discussion)

7. International comparisons/ examples

* This is an input (transparency/ hand out will be provided) showing different disclosure criteria and areas covered in various countries in Europe.

* This is followed by discussion (30 mins)

8. South African (situation)

Why: is it often said that "information is power?"

* To take a close look at who controls information (bosses and govt), can they be challenged?

* What are the best tools to achieve this?

(Short input and discussion)

* The Companies Act

* GAAP

* Union /employer bargaining

* The RDP

* The LRA/ Bill

(1 hour)

Break

9. Exercise (Role play)

Break the group into two, one management and the other representative union. Each group discuss the benefits and problems related with information disclosure (based on the above tools discussed)

(25 mins preparation time and 5 mins each presentation, plus 10 mins plenary discussion)

or

10. What information do we want companies to disclose?

* Individual companies: what can you do to gain access to information in your company? (small group work) (15 mins)

11. Dangers of having information on your hands, what are the negatives?

12. Evaluation

Short form to be filled in plus few comments.

(5 mins)

Facilitator's notes on Disclosure

1. Introductions

- * Facilitator introduces him/herself first and the organisation, Turp. Just a brief background of Turp (very brief even if the group is familiar with this). You choose how you want to introduce yourself. You could want to give a bit of a background about yourself. I will have a separate illustration on newsprint, showing what I have done since birth up to now! One could recite that if they like.
- * Group introduction: I propose a game be played, that will have everybody participating. The game is a "picnic game". You say to them we are a happy group who have just decided to go out on a picnic. So each and everyone of us has something to share with us all at the picnic. This must start with the first letter of your name. You (as facilitator) start by saying "for this event I will bring Aloe juice, for keeping healthy skins, because my name is Alfred". The next cde then say the same thing starting from me, the next also saying the same thing, until the last one. Then to see if you can still remember what they said you say it all. **Rules:** Cdes are not allowed to write down anything here, you could be helped with names and items forgotten during the game. Take a minute discussing how they felt about the whole exercise?

You can mention the objectives of the w/shop at this stage from your understanding of the brief. You may say something about the *participatory approach* used in designing and presentation of this w/shop (methods used in Turp) as we believe that cdes have gone through a lot of experiences in their worklife and know the subject.

(NB: Could shorten this in the interest of time, just give name and position)

2. Ground/house rules: set these informal rules with the group that are binding to everyone present. For instance smoking is a health risk that cdes should not be allowed to smoke in the room. There will be breaks when they can smoke, neither walking in and out is okay, it disrupts.
3. What is disclosure? (input) - 7 mins
You may ask if any cde understand or know what "disclosure" means but give an input on the meaning of this term.
4. Expectations (Whole group discussion) What do you want the bosses to disclose? (45 mins)
 - * Pose a question to the class and allow a brainstorm/discussion on what do cdes expect to achieve and learn about in disclosure of information? What should the bosses disclose? The list of issues must come out of this exercise.

- * Write down answers on newsprint/board as they give them. See if you can match anything with what has been said in the outline (as above).
 - * This is a quick buzz to produce the list of issues that unions always demanded information on?
NB: participants are the ones who know best what information their union is demanding be disclosed. Have your **(check) list** of issues (that unions have always expressed) ready, in case they do not mention all. You might have a handout or some clipping to give out.
5. How can we use the information made available to us? (whole group discussion) - (25 mins)
- Ask what are the benefits of information disclosure, if the answers do not cover that adequately. NB: workers are *secondary stakeholders*! Use the list from 4 (above) going to each item there! Mainly mention useful hints on issues listed (allow other viewpoints from participants, but you want to move fast!)
6. What is Management's claim of confidentiality? (short input and discussion) - 7 mins
- Ask cdes who have or are aware of what bosses always claim as a difficulty in disclosing information as it may land up with the rival or competitor. Ask if this is this a realist fear? How can unions deal with this? What are the underlying reasons? Is n't power and "prerogative" at the root of this refusal? How do you deal with this? While answers are being provided, write them down on newsprint or board. Employers consider disclosure to be "unwarranted invasion of their privacy and prerogative" (John Brand - Academic, Lawyer and Advocate of the Supreme Court)

BREAK (Tea)

7. International examples

- * **Give an input** (provide a handout) showing different disclosure criteria and areas covered in various countries in Europe and elsewhere. Prepare a transparency or slide to show and talk to by reading from it. They are the following:
 - * France
 - * Germany
 - * Denmark
 - * Finland
 - * Australia
- * This is followed by discussion (30 mins)

8. South African

- * **Short in put** as to why is it often said that "information is power?"
- * Taking a closer look at who controls information? . It is not difficult to tell that actually the **bosses and govt** do, can they be challenged?

This is just a comment to say that those who have information on their side have "power" because they possess all the knowledge of the situation. You can plan, make decisions and change them at any time when you have inside information. Bosses have all the information and secrets about companies, while the government likewise has all the information and secrets about the country. Can the working class challenge this? (do not need a direct answer).

- * **What are the best tools to achieve this?**

The following are some of the tools used to get information in SA:

- * The Companies Act:

Companies are set up according to the regulations of the law applicable to the type of company, as follows:

- * Companies are regulated by the Companies Act No.61 of 1973 (as amended), Partnerships Act, Close Corporations Act etc.
- * **JSE rulings** and requirements for listing. Provides for Audit Committees. They are expected to monitor compliance with legal requirements and company's code of conduct, review internal control structures, review content of financial statements, liaise with external auditors and senior executives.

- * **GAAP**

What is this? ask them, may be one cde has an idea and explain. This stands for **generally accepted accounting practice**. It is a standard practice observed voluntarily by the accounting world referred to in sections 286 (3) and 288 (2) of the Companies Act of 1973, these are approved by the Accounting Practices Board (APB). But also means practices followed by several companies (with respected names). Can workers use this to access information regarding the employer? SAICA has proposed legislation to give gaap legal status (MBR 7/8/95)

- * **The King Commission Report**

This is the report on corporate governance, initiated by the Institute of Directors which calls for "transparency, openness, and full disclosure to all interested parties". This was following the similar examples in other countries where such commissions

have come up with path-breaking rules for companies to follow. Similar research has been conducted in USA, Australia, the United Kingdom etc.

This initiative in particular was following Cadbury Commission in the United Kingdom which came up with the "Cadbury Report on The Financial Aspects of Corporate Governance" in 1993. What is the **legal status of the King Report**? There are certain important things introduced by this report, for instance:

- * Directors have to declare that the company will be "a going concern in the year ahead", or that there is no reason why not, if there is disclose it.
- * interim results have to be certified by external auditors as well (just like the full year ones).
- * suggestion that directors share information with staff "to enable employees to gain a better understanding of the corporation". "It urges management to consult employees before taking decisions that will affect them" (BD 5/4/95).
- * directors to disclose executive and non-executive pay, its affirmative action policies and appoint an audit committee.

* The RDP

What does the RDP say about information disclosure?

Labour and worker rights: under sec 4.8.3.3 - workers are entitled to "the right to information from companies and the government" (p.113).

* Union /employer bargaining

This is the process whereby the union and the employer agree on particular issues with regards to working conditions and wages for the workers. Recognition agreements will contain terms and scope of their interaction. How far is this realistically useful in obtaining and securing information from the employer? All this is regulated by an Act, the LRA.

* The LRA/ New Bill

Section 16 (1)-(3), of the new bill states that a "representative trade union which shall be registered" and has the majority of the employees in the workplace as its members, whenever the employer is engaged in consultation or collective bargaining, "the employer shall disclose to the representative trade union all relevant information" to allow an effective engagement with the employer.

Section 89 (1), provides that "an employer must disclose to the workplace forum all relevant information that will allow the workplace forum to engage effectively in consultation and joint decision-making".

See **Section 89(2)**, as well.

There are limitations such as follows:

- * *There are three reasons that allow an employer not to give information, if it affects privacy of an individual, if it is legally privileged, or one which the employer could not give without breaking any law or order of court, confidential or may harm employee(er) or private personal information relating of an employee. Secs 16 (5) and 89 (2).*
- * *The Bill stipulates that only "relevant information" must be disclosed to the union. It does not define what is relevant information. This means that a union must define what is "relevant information". Or Industrial Courts will do that.*
- * *The missing provision for 'compulsory' centralised bargaining in the Bill is cause for great dissatisfaction within the labour movement. Business argue that this will cause unemployment as foreign investors will be frightened and turn away while small businesses will not grow.*
- * *With the 'voluntary' nature of bargaining in the new Bill, some commentators feel that the duty to disclose information on the part of the employer then falls away.*

The Companies (Section 15A) states that the Minister may exempt any particular information or particular fact concerning the affairs of the company, or that of its subsidiaries which would be otherwise required under the act.

(1 hour)

Break

9. Exercise (Role play)

Break the group into two, one management and the other representative union. Each group discuss the benefits and problems related with information disclosure (based on the above tools discussed)

(25 mins preparation time and 5 mins each presentation, plus 10 mins plenary discussion)

Summary

10. What information do we want companies to disclose?

- * As a summary to the discussion, a facilitator makes a **short input** on how to access information about individual companies, depending on whether they are private, public or subsidiary companies.
 - * *Public companies publish annual reports, in which they report on all the operations of the company, financial statements and these include subsidiaries. But there are public unlisted companies. The Registrar of Companies has information on the latter.*
 - * *Private companies, these are not required by law to publish anything for the public. The best way of accessing some information on these is by looking at annual reports of their parents if they are public companies. Otherwise pressure from the employees or union will do.*

- * *Press clippings, if you develop a press watch for your particular company or group.*
- * *Turp, as your last resort this organisation keeps a close watch on selected companies and subscribe to McGregor's On-line service they could provide some information on any company (especially if listed). They have annual reports of most of the larger listed companies and keep press cuttings thereof.*

* **Short exercise on individual companies: what can you do to gain access to information in your own company?** (individual or group work to work on this) (15 mins)

This is attempting to give specific focus on the individual companies to benefit participants in their own company's information needs. Cdes must think what do they want their co's to disclose in particular. It would be much easier if there are more than one from the same company. This gives individual attention to this topic.

Plenary discussion of the above (10-20 mins)

11. Evaluation (5 mins)

Short form to be filled in plus few comments. Individually, how are we going to take this disclosure of information forward? (short discussion)

Comments on disclosure?

1. "Both Cadbury and King (Reports) are static analyses and do not even purport to deal with the dynamic issues relating to functioning of corporations" - **Michael Katz** (Attorney heading Taxation subcommission on King Commission). BD 6/9/95
2. "Link executive salaries to company performance" **Mike Olivier**, MD Sibson & Co Business Day 10/8/95. His view is that disclosure of executive pay would not close the wage gap between senior executives, but would make them more accountable for their salaries.
3. New JSE rules on public companies - they must have at least 10% of their shares held by the public, also to disclose awareness of nominee shareholders (BD 7/6/95)
4. Proposed law to promote open govt (FM 7/7/95). This Bill intends giving the public a "greater access to official information"

List of Union demands for disclosure

Though not exhaustive, this list has demands that the labour movement has always demanded of the bosses:

- * Rights of workers when factory closes down/ or on liquidation
- * Retrenchment plans
- * Profits and cost statistics
- * Directors' fees and benefits
- * Work reorganisation/ restructuring/ downsizing
- * Retraining of retrenched workforce
- * Investment plans, production, mergers
- * Details such as buying capital goods (machines), cars, payment of dividends, interest and royalties, taxes, fees/donations to political parties and corporate social responsibility.
- * Job grading system and how many people in each grade

One survey in the Western Cape (by Phillip Struckman, 1990, FW 9/6/94) of 347 workers in a big national company showed workers' information needs as:

- * Company aims
- * Staff benefits for employees
- * Company profits
- * Effect of inflation on company
- * Dividends to shareholders
- * Health benefits
- * Retirement and pensions, bonus schemes

Table of International examples

<i>Country</i>	<i>Representation</i>	<i>Rights/Duties</i>	<i>Negotiation</i>	<i>Decn-making</i>
<i>Spain</i>	<i>Works Councils (from 50 workers)</i>	<i>Info. disclosure, consultation, negotiation. entitled to receive at least once a quarter verbal or written information on general delpmts, co's production and sales, its forward plans and employment trends</i>	<i>Any area agreed with employer, labour, union, social issues,</i>	<i>Consultation on issues benefiting workers and families. No veto power</i>
<i>Belgium</i>	<i>Works Councils, has management reps (100 or more)</i>	<i>Economic and financial information, new tech, details of workforce etc.</i>	<i>No negotiating rights</i>	<i>Co. regs like work times, breaks annual holiday, app of auditor</i>
<i>Denmark</i>	<i>Co-operation Committee (35 or more workers), has mngr reps</i>	<i>Kept informed of any developments. Co. financial position, prospects, volume of orders, mkt conditions, employment outlook, new tech</i>	<i>Co-op Comm may not deal with issues normally covered in collective bargaining or IC</i>	<i>Employee reps elected to b/directors where workforce is 50 or more. These reps have same rights, duties as directors</i>
<i>Sweden</i>	<i>Co-determination (workplace) and employee rep at board level</i>	<i>Employer has to keep unions informed of production, personnel and financial issues (except for sensitive and confidential matters), access to company accounts, other documents</i>	<i>Employers have a primary duty to negotiate with a trade union, before taking decision on major changes on working conditions, of employment or overall operations</i>	<i>Union entitled to appoint a worker-director for 4 yrs. Enjoy same status as other directors. Forbidden to take part in discussions related to strikes etc.</i>

<i>W/Germany</i>	<i>Works Councils (at plant level) and Co-determination at (board level)</i>	<i>Employer must "supply comprehensive information" in good time. Access to any documentation required, that incl payroll for gross wages, kept informed about all issues affecting interest of disabled, young, older or foreign workers, right on matter related to introduction of new technology. Information must be disclosed on a full range of economic and financial. These incl reduction in operations, closures and transfers, new methods etc.</i>	<i>Union rep at supervisory board-level. Influence depends on size of co and its sectoral location.</i>	<i>Three types of co-determination (depending on size of company)</i>
<i>United Kingdom</i>	<i>low-level</i>	<i>Labour Relations (Consolidation) Act) impose a duty on employer to disclose information to an independent recognised union. There are limitations attached</i>		<i>Production, pay and employment</i>

Source: EIRR Report

Evaluation responses (21/9/95)

All the shopstewards attending this workshop expressed their satisfaction with the methods used, some adding that the **level** was (too) high but right for them. They all benefitted a lot by attending it as they came across new issues and ways of fighting for information disclosure from bosses.

What needs to be **improved**? Responses varied to a great extent here, some said if there was a video material, one said needed more days to increase skills and the other said these workshops should be conducted every year to benefit new shopstewards.

Two responses concerned time factor, one was that too short a time was worrying to him. The other called for improvement of "teaching tactics, short methods (*and*) to the point"

Evaluation responses (22/9/95)

The second group of shopstewards felt that attending the workshop was a worthwhile exercise, in which they learnt a lot of things. They felt they were now better equipped to face management on information disclosure issues.

The **level** of the workshop was "high" but suitable for understanding.

On what needs to be **improved**, many responded by calling for more of these workshops and follow ups, that they should involve a lot more people (referring to workers in general). Few expressed a different view like "make a lecture livelier..use audio visual, if available". One mentioned "time and problem solving".

On the **administrative** side, "punctuality must improve", "provide tea during tea-break", "get more people involved in these workshops", "need a follow-up workshop".

Referring to TURP one said "the organisation or institution is a good resource to us employees".

Issues for disclosure as raised by the Durban Numsa shopstewards:

1. Affirmative Action policies - be negotiated
2. Incentive bonus
3. Grading and wages (linkages)- systems, total wage bill etc.
 - to fight discrimination
 - how many grades?
 - payment
4. Training (who provides?, how much spent?, certificates hours etc.
5. Profits (financial information)
6. Future plans of companies
7. Group structure including subsidiaries (ownership etc)
8. Global markets, competition, restructuring etc.
9. New technology - proper consultation?
10. Information on directors' fees, perks, pensions etc. --
11. Shareholders' dividends
12. Value added (profits)
13. Production targets
14. Customers - who are they?
15. Home loans, other benefits (employees) - holiday homes and allowances (for bosses)
16. Re-organisation of company (work)
17. Multi-skilling
18. World-class, what is?
19. Sales (month)
20. Company policies

12 October 1995

NUMSA DISCLOSURE WOKSHOP (Pietermaritzburg)

Outline for the day

1. Introductions (facilitator and Turp) - 10 mins
2. Ground rules with participants (outline and method) - 15 mins
3. What is disclosure? (input on meaning) - 5 mins
4. Expectations on disclosure (what to learn?) - how far do you expect this session to go? What to disclose? What do you want disclosed by the bosses? (brainstorm the & draw up a list) - 45 mins
5. How can the disclosed information be used? (input plus class/group discussion) - 25 mins
buzz groups & discussion
6. Management's response: claim of "confidentiality" (short input and discussion) - 7 mins

TEA BREAK (10:45-11:h00)

7. International examples (input and discussion)
8. S African (input and discussion)
 - * Companies ' Act
 - * JSE Rulings
 - * Gaap
 - * King Commission Report
 - * RDP
 - * New LRA/Bill
 - * Union/employer bargaining

LUNCH BREAK (13:h00- 13:45)

9. Role play - Management vs Union on the issue of disclosure and demand thereof (1 hour).
- or
10. Your company, (what should it disclose?) individual or group work to list issues.

11. Summary and how to access information /dangers of having information?
12. Evaluation

In the Labour Research Service's experience, information has been readily provided by management to unions during retrenchment exercises when the company sets out to prove its poor financial position. And to use this to support the retrenchment of union members.

Not unexpectedly, trade unions are extremely suspicious when the company voluntarily decides to disclose financial information to support an employment cutback. This sometimes happens after years of wrangling over information disclosure at wage negotiations. The Labour Research Service has encouraged unions to use these circumstances as a precedent and to push for a formal agreement on the disclosure of information with the company.

It appears, that on the whole, employers in South Africa feel extremely threatened by the release of financial information to workers and their trade unions. On the other side of the table trade unions are at times a little uncertain about how to use the information once they get it.

Information disclosure should not be treated as an ad hoc matter. This is why it is probably best to set out the disclosure of information in a well considered agreement. The agreement would then regulate the type and level of information to be disclosed, how often the information is disclosed and how it is disclosed. This agreement should also provide for the training of shop stewards in how to read the information.

REVIEW OF INTERNATIONAL DISCLOSURE STANDARDS

Currently, there is no clear statutory requirement in South Africa for the disclosure of financial information for collective bargaining purposes. And no clear precedent has been set in case law. Internationally, however, there is wide precedent for the disclosure of information.

The ILO Conventions and Recommendations constitute the most important sources of international labour law. Recommendations, though not binding like the Conventions, are intended to provide guidance for government action in relation to labour policy, legislation and practice. Recommendation Number 163, which deals with the promotion of collective bargaining, provides for information to be disclosed during negotiations. This recommendation states, amongst others, that "the parties should have access to the information required for *meaningful negotiations*".

Information disclosure is now widely accepted as an integral part of collective bargaining in many countries. Some examples are set out below.

Austria (Collective Labour Relations Act, 1973)

"108 (1). The occupier of an establishment shall provide the works council with information on the establishment's economic situation, the nature and scale of its production, the position with regard to orders, its sales in terms of quantity and value, its investment plans and other measures designed to improve its economic performance.....".

108 (2). the occupier of the establishment shall provide the works council every year, not later than one month after its submission to the tax authorities, with a copy of the balance sheet for the previous financial year, including the profit and loss account".

Finland (Act respecting co-operation within undertakings of 22 September 1978)

"11 (1) The employer shall present the staff representatives with the undertaking's balance sheet as soon as it has been drawn up and, at least once in the course of the financial year, with a comprehensive report on the undertaking's economic situation, showing the prospects for its output, employment situation, profit margins and cost structure....".

France (Labour Code 1973, as amended to 1984)

"L.432-2. A works committee shall be informed and consulted before any major project is undertaken to introduce new forms of technology if they are likely to have consequences for the employment, skills, remuneration, training or working conditions of the staff...."

Germany (Works Constitution Act of 1972)

"80. (3). In discharging its duties the work council may, after making a more detailed agreement with the employer, call on the advice of experts in as far as the proper discharge of its duties so requires. The experts shall be bound to observe secrecy as prescribed in section 79...".

Portugal (Act respecting workers' committees, 1979)

"23. Scope of the right to information. (1) The right to information shall include the following subjects and entitlements: (a) general operating plans and budgets; ... (c) the organisation of production and its implications for the extent to which labour and equipment is employed; ... (j) plans for changing the purpose of the undertaking and its share capital and plans for changing the type of production in which the undertaking is engaged."

Spain (Workers' Charter 1980)

"64. Powers and duties. (1) A works committee shall have the following powers and duties: 1. to receive information, which shall be provided at least once a quarter, on the general trends in the economic sector to which the undertaking belongs, on the position with regard to the undertaking's production and sales, on its production programme and on the probable trends in its employment situation; 2. to examine the undertaking's balance sheet, final accounts and report ...".

This review of international legislation on the disclosure of information for collective bargaining purposes can broadly be summarised as follows:

1. The type of information that is required to be disclosed is specific. This reduces the level of ambiguity and ultimately the need to get clarity from the courts.
2. The type of information to be disclosed includes the plans and budgets of the enterprise, not just the historical performance.
3. The timing of information disclosure is set out in the legislation.
4. There is a recognised need for training to be provided to worker representatives.
5. There is provision for the use of experts.
6. The situation in which information is required needs to be set out in the legislation. For example, the introduction of new technology.
7. There is a requirement for the information disclosed to be kept confidential.

TWO MODELS: ADVERSARIAL AND CO-OPERATIVE

Swedish legislation is based on the co-operative model of industrial relations. Here the Joint Regulation or Working Life Act provides that an employer must:

1. Keep the union continuously informed of developments in production and of financial aspects of his business.
2. Must furnish such supplementary information as is sought by employee representatives during

Table of International examples

<i>Country</i>	<i>Representation</i>	<i>Rights/Duties</i>	<i>Negotiation</i>	<i>Decn-making</i>
<i>Spain</i>	<i>Works Councils (from 50 workers)</i>	<i>Info. disclosure, consultation, negotiation. entitled to receive at least once a quarter verbal or written information on general developments, co's production and sales, its forward plans and employment trends</i>	<i>Any area agreed with employer, labour, union, social issues,</i>	<i>Consultation on issues benefitting workers and families. No veto power</i>
<i>Belgium</i>	<i>Works Councils, has management reps (100 or more)</i>	<i>Economic and financial information, new tech, details of workforce etc.</i>	<i>No negotiating rights</i>	<i>Co. regs like work times, breaks annual holiday, app of auditor</i>
<i>Denmark</i>	<i>Co-operation Committee (35 or more workers), has mngt reps</i>	<i>Kept informed of any developments. Co. financial position, prospects, volume of orders, mkt conditions, employment outlook, new tech</i>	<i>Co-op Comm may not deal with issues normally covered in collective bargaining or IC</i>	<i>Employee reps elected to b/directors where workforce is 50 or more. These reps have same rights, duties as directors</i>
<i>Sweden</i>	<i>Co-determination (workplace) and employee rep at board level</i>	<i>Employer has to keep unions informed of production, personnel and financial issues (except for sensitive and confidential matters), access to company accounts, other documents</i>	<i>Employers have a primary duty to negotiate with a trade union, before taking decision on major changes on working conditions, of employment or overall operations</i>	<i>Union entitled to appoint a worker-director for 4 yrs. Enjoy same status as other directors. Forbidden to take part in discussions related to strikes etc.</i>