

▲▲▲▲▲ PARTICIPANT'S WORKBOOK ▲▲▲▲▲

MOTOR INDUSTRY

KNOW YOUR RIGHTS



**Numsa course on the
Motor Industry Agreements**

INDEX

	Page
Introduction	3
Part 1 Collective Agreements	8
- Chapter 1: What are collective agreements	9
- Chapter 2: Legal status of agreements	21
Part 2 Motor Industry Agreements	29
- Chapter 1: Introduction	30
- Chapter 2: MIBCO	32
- Chapter 3: The Motor Agreements	40
- Chapter 4: Practical Exercises	53
- Chapter 5: Exemptions, Provision of Protective Clothing Social Security	71
Part 3 Resources	87
* Glossary of Terms	88
* Model questions and answers	91
* Extracts from the Administrative Agreement	101
* Extracts from the LRA	103
* Extract from "Numsa guide to the Industrial Councils"	113
* Numsa's resolution on Industrial Councils	116
* Course evaluation	117
* Calendar - 1997 and 1998	118

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Numsa wishes to thank Des East for assistance in writing this Workbook.

All pictures by William Matlala

INTRODUCTION

What this workbook is all about?

This workbook is about:

- rights & rules that govern us as workers.

Many of these rules & rights are found in:

- agreements that are binding on employers & unions.

These agreements are called collective agreements because:

- unlike an individual contract they deal with conditions of employment of many workers and not just conditions of one worker.

GENERAL WORKSHEET 1

What do you think are the reasons that made the Union decide that it was necessary to write this workbook?

METHOD OF THE WORKBOOK

The method of the workbook is:

1. Enskilling

- We are not aiming at something impossible - participants leaving the workshop knowing everything about Agreements
- The aim of the workshop is to give the skill of finding your way in the Agreement when dealing with problems

2. Participative

- The course will use "real life" case studies to encourage participation

3. Collective

- Most of the time participants will be working in pairs & groups

4. Reflective

- After each section of the workshop you will be asked to write any ideas that you have about:
 - possible changes to the agreement
 - about the way the course is proceeding

Ongoing reflection journal

Day 1

Session	<i>If the course would be run again, this is what I would recommend about this session.....</i>	<i>NUMSA should take the following steps about the section of the LRA or Agreement that we dealt with...</i>
Morning		
Afternoon		

Ongoing reflection journal

Day 2

Session	<i>If the course would be run again, this is what I would recommend about this session.....</i>	<i>NUMSA should take the following steps about the section of the LRA or Agreement that we dealt with...</i>
Morning		
Afternoon		

Ongoing reflection journal

Day 3

Session	<i>If the course would be run again, this is what I would recommend about this session.....</i>	<i>NUMSA should take the following steps about the section of the LRA or Agreement that we dealt with...</i>
Morning		

PART 1:



Pic: Trade Union representatives at national motor negotiations, April 1998

Collective Agreements

Chapter 1

WHAT ARE COLLECTIVE AGREEMENTS?

GENERAL WORKSHEET 2

Are there written agreements between your employer & NUMSA that deal with your conditions of employment and procedures to be followed in dealing with issues on the shopfloor?

At which level do the agreements apply and what issues do they deal with?

	Level	Level	Level
	- sector/industry – (e.g: the whole of engineering or motor or auto)	- company - (more than one workplace belonging to the same company)	- plant - (one workplace)
What agreement?	Industry		Plant level
Issues	Bonuses Hrs & work Holiday bonus Rate & pay		

Participant's Workbook - MOTOR

	Level	Level	Level
	- sector/industry – (e.g:the whole of engineering or motor or auto)	- company - (more than one workplace belonging to the same company)	- plant - (one workplace)
What agreement?			
Issues			

	Level	Level	Level
	- sector/industry – (e.g:the whole of engineering or motor or auto)	- company - (more than one workplace belonging to the same company)	- plant - (one workplace)
What agreement?			
Issues			

Procedural & substantive agreements

The issues covered by agreements can be divided into two types:

Type 1: *Issues that deal directly with conditions of employment*

Type 2: *Sections dealing with procedures that are to be followed in the relationship between the union and the employer*

e.g:

Industry -

Type 1	Type 2
- Conditions of employment -	- Procedures to be followed -
1. Hours of work 2. Wages 3. Overtime 4. Holiday pay 5. Allowances 6. Bonuses <i>Grading : insure</i> <i>Issues in agreement</i>	1. Trade union access to the workplace 2. Other union rights 3. Dispute procedures 4. The duty to consult with the union during retrenchments 5. Recognition of shopstewards 6. Disciplinary procedures

Financial issues

**SUBSTANTIVE
ISSUES**

**PROCEDURAL
ISSUES**

Steps to follow

In some companies substantive & procedural issues are found in different agreements:

**SUBSTANTIVE
AGREEMENT**

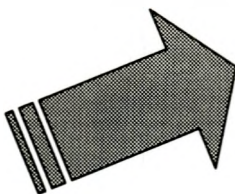
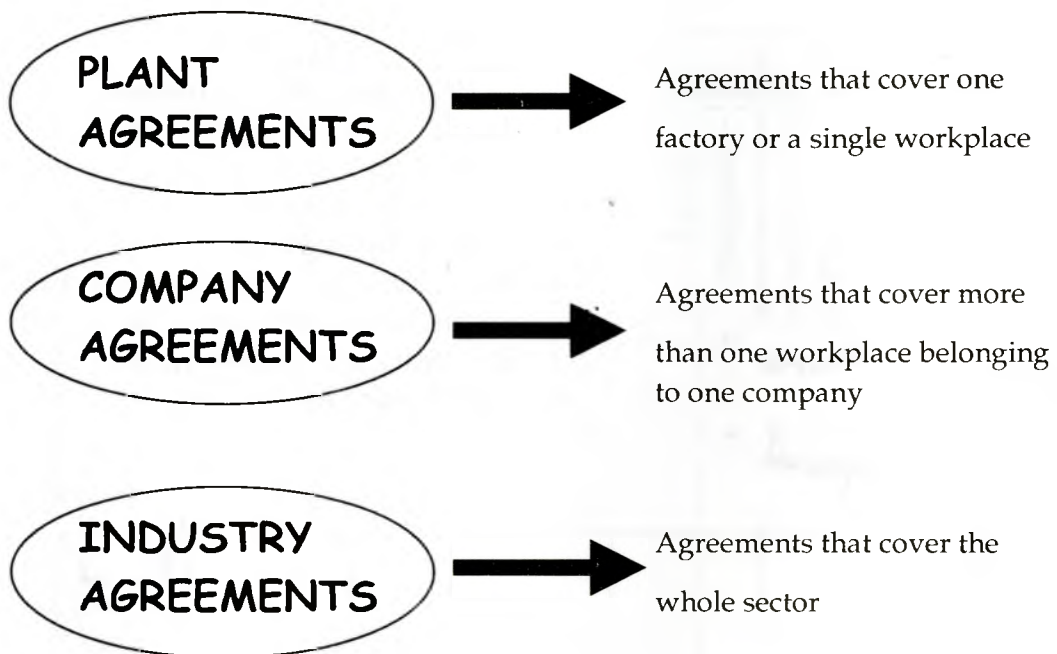
**PROCEDURAL
AGREEMENT**

(Get copy of Agreement between Nura & Co)

Levels of bargaining

A look at the agreements that exist between employers and NUMSA will reveal that such agreements do not only cover a range of issues but are negotiated and signed at different levels.

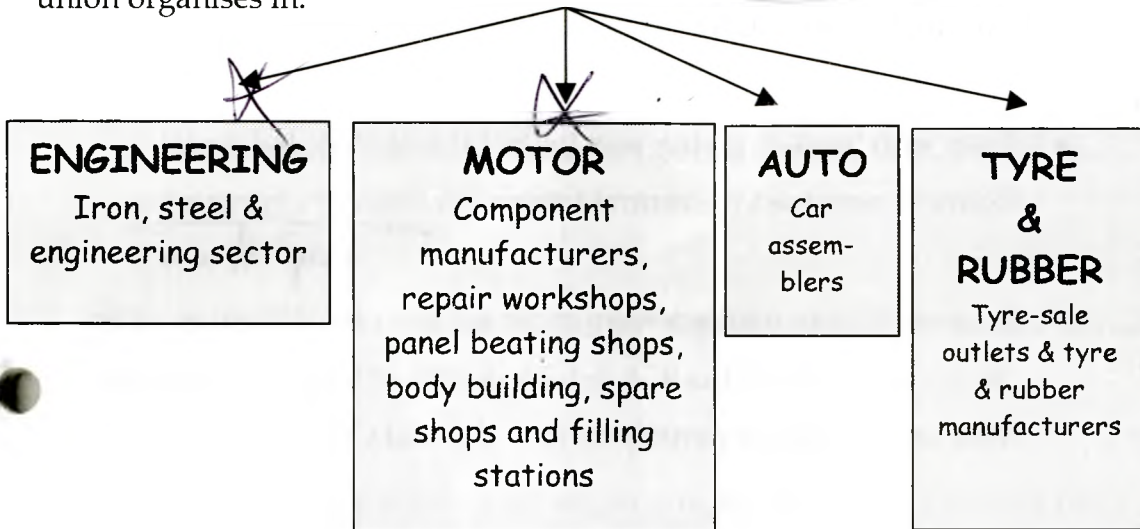
These are the levels:



This workbook is about **INDUSTRY AGREEMENTS**. In this course we will not deal with plant & company agreements except to touch on their relationship with industry agreements.

NUMSA & industry agreements

NUMSA is part of industry agreements in the four major industries that the union organises in:



It is the agreements in these sectors that this course will focus on.

Forums for negotiating industry agreements

Historically and before the new LRA came into operation, industry agreements could be negotiated in the following forums:

A forum established by the old LRA

Statutory forum
Industrial Council

Set up by State

A forum established through a private agreement between unions & employers

Non-statutory
national bargaining forum

The History of Industrial Councils

- Industrial Councils were established in terms of the 1924 Industrial Conciliation Act (ICA).
- Even with the ICA giving way to the LRA of 1956, Industrial Councils remained the central forums for collective bargaining. *Negotiation*
- Because African workers were excluded from the definition of an "employee" both in the ICA & LRA of 1956, African workers and their unions did not participate in Industrial Councils.
- As a result of this the Councils were then used by white unions to promote the interests of skilled white workers.
- This situation only partially changed in 1979 when the LRA was changed to give African workers bargaining rights. From then on African workers and their unions could participate in Industrial Councils.

How the Councils functioned?

- While many Industrial Councils operated as if they belonged to the employers only, in terms of the law they were bipartite bodies.
- According to the old LRA, representation from unions & employer organisations was supposed to be equal. Government was not represented.
- The Councils were also permanent bodies which besides the reps from unions & employers who attended meetings, employed staff.

- They operated in particular industries.
- Their primary task was to negotiate conditions of employment for the whole industry.
- Agreements reached within the Council applied to the rest of the sector.
- The Councils employed full-time inspectors known as agents whose job was to police the agreement.
- Besides being a forum for negotiating for the sector, Councils had other functions of:
 - settling dispute within the industry
 - administering benefits & funds
 - co-ordinating training within the sector.

Councils & industry agreements

This is how the Councils worked in relation to industry agreements:

- Unions as well as employers will bring their proposals on wages & other conditions of employment to the negotiating table.
- Negotiations will happen within the Council.
- If there is an agreement, such an agreement will be signed.
- Using his powers, the Minister of Labour takes the signed agreement and publishes it in the government gazette.

- The Minister also had the powers to extend the agreement to the whole industry – beyond the unions and employers that were party to the signed agreement.
- When the agreement has been extended and gazetted it is a criminal offence for employers to pay less than what is stipulated in the industry agreement.
- The employers also had to stick with all the conditions of employment in the agreement.
- Those employers who for whatever reason were not able to comply with the agreement, had to go back to the Council and ask for exemptions.
- The task of the agents who were full-time staff employed by the Council, was to visit workplaces and see whether companies were complying with what is in the agreement.

GENERAL WORKSHEET 3

As a pair answer the following questions:

a) Did NUMSA participate in Industrial Councils?

Yes

b) Which Councils did NUMSA participate in?

(Dangany Council) Nicisemi

.....

.....

.....

.....

Centralised bargaining in the auto sector

- Since 1989, there has been no Industrial Council for the auto sector.
- The Council that existed – the Automobile Manufacturing Industrial Council (AMIC) was disbanded that year.
- AMIC was a regionally based Industrial Council. It was based in the Eastern Cape where the auto industry was then concentrated.
- What exists presently in the auto sector is a non-statutory National Bargaining Forum (NBF).
- The NBF was formed in 1989 and unlike Industrial Councils it was established not on the basis of the LRA but through an agreement between the employers and the unions.
- Between 1987 which is when NUMSA was formed and the establishment of the NBF in 1989, although AMIC still existed the union negotiated agreements plant by plant.

Bargaining institutions under the new LRA

- The new LRA still sees the system similar to the one that promoted Industrial Councils as important and necessary.
- Under the new Act, Industrial Councils will be known as Bargaining Councils which is why NICISEMI has changes its name to the Metal and Engineering Industries Bargaining Council.
- As in the old LRA, under the new Act the formation of Bargaining Councils is voluntary.
- Sections 29 & 30 of the LRA deal with the establishment of Bargaining Councils.
- Bargaining outside Bargaining Councils and forming non-statutory forums is not prohibited.
- Like the Industrial Councils, the new Bargaining Councils will have the function of:

Page: 103

- concluding collective agreements
- enforcing them
- resolving disputes
- promoting training
- administering funds.

Chapter 2

LEGAL STATUS OF COLLECTIVE AGREEMENTS

- Since the 1970s, independent unions have entered into collective agreements with employers.
- These were private collective agreements as the labour laws did not favour unions with a predominantly black membership.
- In the 1970s many of the COSATU unions did not use the Industrial Council system (they couldn't). They went from plant to plant, from company to company and forced employers to conclude collective agreements with the unions.
- Many of the agreements that are in existence in many companies come from this era.
- These agreements were outside the statutory bargaining arrangements.
- They covered a wide range of issues from recognition of the unions to substantive issues such as wages and other conditions of employment.
- Although these agreements were private arrangements, they had the force of law as any contract.

The new LRA & collective agreements

- The new LRA of 1995 makes collective agreements expressly and legally binding (section 23). (see pages 103-112 for certain sections of the LRA).
- The new LRA defines a collective agreement as any;
“written agreement concerning terms & conditions of employment or any other matter of mutual interest concluded by a registered union/s and employer/s”
- According to this definition, the agreements that the union has concluded at plant, company and industry levels, can be regarded as collective agreements.
- They *are* legally binding on the union and the employer.
- Besides stating that collective agreements are about terms & conditions of employment and any other issue of mutual interest, the new LRA leaves the content of a collective agreement to the parties.

Stipulation of the new LRA

- The new LRA stipulates the following in relation to collective agreements:
 - *who is bound by a collective agreement (sec 23 & 31)*
 - *under what conditions can the agreement be extended to parties not part of the agreement (sec 23 & 32)*
 - *the relationship of collective agreements to individual contracts [sections 23(3) & 199(1)]*
 - *how disputes about collective agreements are to be resolved (sec 24 & 51)*

The new LRA & levels of bargaining

- While the new LRA makes collective agreements legally binding, it does not stipulate the level at which these can be signed.
- They can be signed at:
 - *plant level*
 - *company level*
 - *industry level*
- The new LRA also does not say what issues must be dealt with at industry level and which ones must go to company & plant levels.
- The only thing that the LRA does, is that it gives Bargaining Councils the power to determine which issues may not be issues of dispute for strike purposes at plant & company levels [*sec 28 (i)*].
- The new LRA recognises both the statutory (Bargaining Councils) & non-statutory bargaining institutions such as the auto NBF.
- Agreements reached at the level of the Bargaining Council will be extended to non-parties under certain conditions (*sec 32*).

Non-statutory agreements concluded before 11 November 1996

- All collective agreements entered into privately (*i.e* not on the basis of Industrial Councils) before the commencement of the new LRA in November 1996, continue to be valid [*schedule 7(13)*].
- They will be treated as if they were concluded on the basis of the present Act.
- Even if an agreement concluded before November 1996 does not deal with the organisational rights stipulated in *sections 11-16* of the new LRA, the union party to the agreement automatically enjoys these rights.
- The only thing that the new LRA requires is that the collective agreement concluded before November should comply with the dispute procedures stipulated in *section 24(1)*.

Council agreements predating Nov 1996

- Agreements signed and promulgated in terms of the old Act by the Minister remain in force for the 18 months after the commencement of the new LRA or until the expiry of that agreement whichever is the shorter.
- Exemptions as well as non-compliance will be dealt with in the old way for 18 months or until the expiry of the agreement whichever is the shorter.

Contracting out of the LRA?

- A lot has been said about how one can sign away the rights in the LRA through a collective agreement.
- While the sections 20 & 64 and 65 allow for the variation of the rights and procedures in relation to organisational rights and strikes, it is not clear whether this applies to other provisions of the Act.
- The issue of whether one can vary the statutory rights in the LRA downwards must still be tested.

GENERAL WORKSHEET 6

At Chicks Scrap Metals there exists an agreement between NUMSA and the company. Like all scrap metal companies, Chicks does not fall under the engineering industry agreement. To deal with this factor the union signed a plant agreement in 1989.

The agreement deals with union recognition. Contained in the agreement are clauses dealing with:

- access to the workplace for union officials
- deduction of subscriptions
- shopsteward elections
- bargaining procedures at plant level
- dispute procedures relating to strikes
- retrenchment procedures.

After attending a workshop on the LRA, the Chicks shopstewards went back to the company and demanded the following:

- time off for shopsteward training
- that the company discloses information when it bargains with them.

They told the company that they were entitled to these rights under the new LRA. They also informed the company from now on any retrenchments and disputes will be dealt with in line with the LRA.

The company has a different view. It argues that the relationship between the company is governed by the collective agreement. The company quotes section 20 of the LRA that gives parties the option of concluding a collective agreement that regulates organisational rights. The company also insists that the retrenchment and dispute procedures that apply are those in the plant agreement.

a) Are the shopstewards correct in arguing that they are entitled to rights relating to time off and disclosure of information?

b) What dispute and retrenchment procedures will apply? Those in the LRA or those in the agreement?

GENERAL WORKSHEET 7

A plant level collective agreement between NUMSA and Skorokoro Spares contains the following clause:

"Short time may be implemented by the employers on 2-hours notice. Unworked hours during short time arrangements shall not be paid".

Last week at 14h45, which was two hours before knocking off time, the company gave the workers notice. It told them that the following day short time within the company was commencing.

Looking at the industry agreement signed at the level of the Bargaining Council by the employer organisation to which Skorokoro management belongs and NUMSA, the workers see the following clause:

"Short time may be implemented by the employer on 48-hour notice. Unworked hours during short time arrangements shall not be paid".

Which clause will apply? Is it the one in the industry agreement or the one contained in the plant collective agreement?

Part 2:

MOTOR INDUSTRY AGREEMENTS



MIBCO Bargaining Council employees chairing the 1997 wage negotiations

Chapter 1:

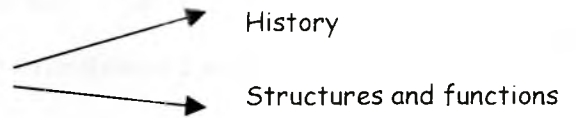
INTRODUCTION

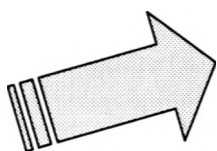
This section of the workbook will guide you through the workshop on Bargaining Council Agreements. This section, like the rest of the workbook, will provide information in an easy-to-understand, practical way, using “real-life”, practical exercises. This section is a resource which you can use to help you to:

- ☐ understand the history and evolution of the MIBCO;
- ☐ understand the process by which MIBCO agreements are negotiated;
- ☐ advise workers quickly and efficiently about the rights workers have won through the Motor Industry Agreements.
- ☐ advise workers about the avenues of redress available to them in the event of disputes arising from the Agreements. (Where do I go if I have a problem I cannot solve myself?).
- ☐ find the clauses relevant to a worker's queries and to be able to explain this in a manner easily understandable to the worker;
- ☐ make the necessary calculations to answer questions most frequently asked by workers, such as hours of work, wages, overtime pay, leave, leave pay, etc.;
- ☐ identify gaps as well as areas which the union must fight to change.

Chapter 2:

MIBCO



**Important note:**

This section is intended only to give you a broad sketch of the history of the council. There is no specific detail in terms of dates, etc.

1. NICMI like other Industrial Councils was created in terms of the Industrial Conciliation Act, 1924. The *National Industrial Council for the Motor Industry (NICMI)* was registered on 15 July 1952. It has remained the central forum for collective bargaining ever since. Until 1997, the Motor Industries Bargaining Council (MIBCO) was known as NICMI.
2. The unions who were party to the Council at that time were the Motor Industry Employees Union of South Africa, (MIEU) and the Motor Industry Staff Association (MISA). The Motor Industry Employees' Union of South Africa (MIEU) represented mainly white, "coloured" and Indian artisans.
3. The coloured and Indian workers later formed their own union because they did not accept the changes in the Industrial Conciliation Act of 1956 which prohibited "non-white" workers of mixed-race unions to hold executive positions in their unions. The new union became known as the Motor Industry Coloured Workers' Union, (MICWU) and it represented all classes of workers, i.e. artisans, clerical workers and general workers.

5. The Motor Industry Coloured Workers Union was admitted to NICMI on 20 October 1960. The union changed its name to Motor Industry Combined Workers Union on 5 September 1968.

Training of Apprentices

1. The Apprenticeship Act (1944) regulated all matters concerning the employment and contracting of apprentices into any industry. In terms of that Act the Motor Industry had a Apprenticeship Committee which was responsible for granting Contracts of Apprenticeship in the motor industry.
2. At that time (and indeed for many years after) it was virtually impossible for any black worker to obtain a legal apprenticeship in any of the motor industry trades because the MIEU was the sole representative of workers at the Apprenticeship Committee. MIEU blocked many applications for prospective black apprentices if the company employing them did not have black artisans to train them. This meant that most qualified artisans (motor mechanics, panelbeaters, automotive electricians, etc.) were white.

Negotiating Structure

1. The three unions formed a body known as the National Liaison Committee (NLC) to co-ordinate their negotiating demands and strategies.
2. The unions would each formulate their demands as mandated by their members and submit them to the NLC. They were then discussed in joint meetings and a final set of joint demands drafted for presentation to the employers.
3. MICWU represented many lower-paid workers who earned minimum wages. Therefore the union's focus in negotiations was on

improvements in basic conditions (such as minimum wages). The other unions – because most of their workers already earned much more than the prescribed minimum wages – mainly wanted increases in contributions to pension and medical aid contributions. This naturally led to tensions when the time came for settling agreements. The employers would offer increases in benefit fund contributions which the white unions found acceptable, without making similar offers to improve conditions for lower-paid workers. This strategy pitted the unions against each other and MICWU invariably came out with less than it could achieve on its own. Eventually these tensions became too great and MICWU decided to withdraw from the NLC and submitted its own demands at negotiations independently of the other unions.

4. This situation remained until MICWU became part of NUMSA and since then NUMSA has been involved in a great struggle to change and transform NICMI (now called MIBCO) so it can become more responsive to the needs of lower-paid workers.

How MIBCO functions?

1. In Part 1 (pages 16-24) we looked at the general operations of Bargaining Councils. In the graphic on page 37 of this workbook you will find a presentation of the structure and functions of the MIBCO.
2. MIBCO parties meet regularly to deal with matters that concern the industry. Because both employer and union representatives are not full-time in the Council and have other work, MIBCO has employed full-time staff who must ensure that the terms and conditions of the Agreement are complied with throughout the industry. The Council has six regions and deploys inspectors (Agents) who have to visit every establishment covered by the Agreement at certain minimum intervals each year. The agents have legal right of access to all premises and to relevant information. **As part of transforming the Council, it is**

important for shop stewards to put pressure on the agents. Shop stewards must keep the names and phone numbers of agents in their area handy. Any wrong-doing on their part must be reported to the Local and to our reps in the Council.

3. In the MIBCO, after a long battle by Numsa, the principle of *proportional representation* has now been accepted and this will mean that NUMSA – which has the largest membership – will have more seats on the MIBCO than the other two unions. This corrects a long-standing historical imbalance since even as long ago as 1984 MICWU's membership numbers began to outstrip that of the other two unions.

MIBCO telephone and fax numbers

W Cape

Tel: 021-9486400

Fax: 021-9486438

E Cape

Tel: 041-547654

Fax: 041-572076

KZN

Tel: 031-255525

Fax: 031-252783

Free State

Tel: 051-4303274

Fax: 051-4304636

Transvaal

Tel: 011-7879400

Fax: 011-7874517

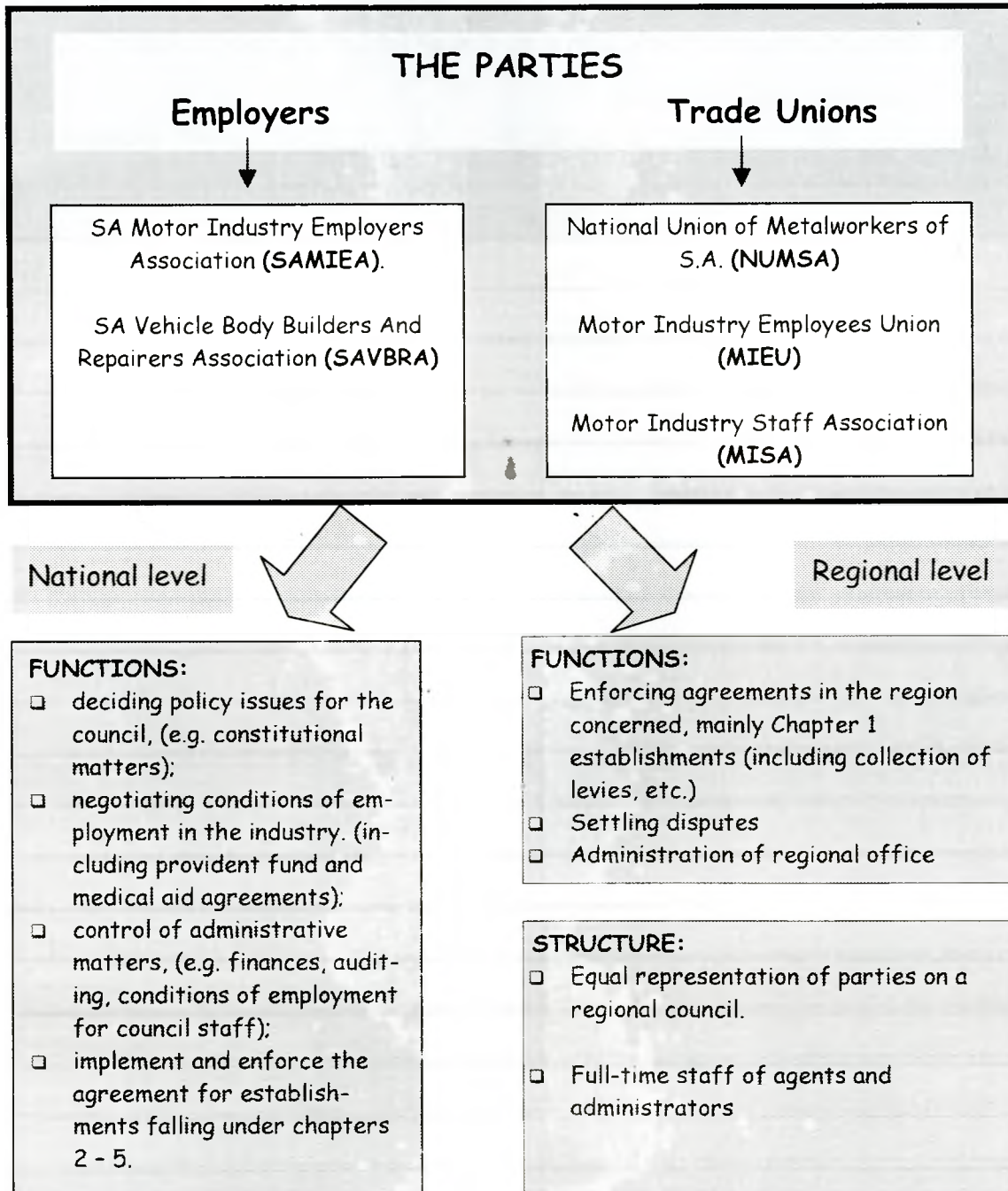
Northern Transvaal

Tel: 012-3410328

Fax: 012-3412971

Motor Industry Bargaining Council

NATIONAL AND REGIONAL STRUCTURE



The parties to the MIBCO are the same at national and regional level, but their powers and functions differ. See above.

WORKSHEET 1

What is your perception of the MIBCO today?

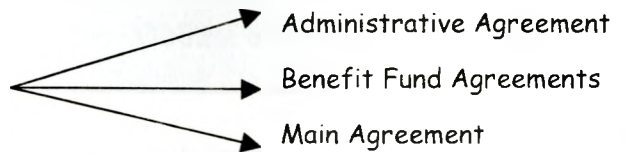
- Is it accessible? (easy to contact? agents easy to approach? Co-operative?)
- Does it deal effectively with complaints? (quick response? Consults workers? Reports back?).
- How can shop stewards influence the present situation?

WORKSHEET 2.

- ☐ Who are your region's representatives to MIBCO nationally and regionally?
- ☐ Are you as representatives of the shopfloor able to influence any of the discussions and negotiations that take place within MIBCO? Motivate your answer.
- ☐ In Part 1 of this workbook, you heard about Numsa's approach to industrial councils and attempts to make the Council a worker's instrument. Is the union succeeding in relation to MIBCO?

Chapter 3:

The Motor Agreements:



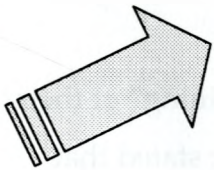
Introduction

The Motor Agreement has three main sections:

- The Administrative Agreement
- Benefit Fund Agreements
- The Main Agreement

The Administrative Agreement:

This contains details of the administration of the Council such as the collection of Council levies and trade union subscriptions. (see pages 101 102 in the Resources section for some of these extracts.) These provisions have been placed in a separate agreement because of the possible risk of a collapse of the Council's administration if the parties fail to reach agreement on substantive matters such as wages, etc. during negotiations.



NB: The Administrative agreement contains vital provisions eg.:

- the deduction and payment of trade union subscriptions,
- granting of exemptions from the agreement and
- the manner and timing of payment of wages.

Benefit Fund Agreements:

These agreements cover the various Social Security funds presently in operation, such as the Medical Aid and Pension and Provident funds.

Main Agreement:

This is the section that deals with wages and conditions of employment. The Main Agreement has various Chapters and Divisions. The Main Agreement must be properly understood if you are to gain a working knowledge of the document.

Why has the Main Agreement been divided into Divisions & Chapters?

For many years in the motor industry a position was taken that all work done on a motor vehicle was "journeyman's work". What this meant is that work on vehicles could only be done by qualified and skilled artisans.

Over time the position that all work in the industry could only be done by journeymen began to be undermined. **Some workers began doing a portion of "journeyman's work"**. These workers were called operatives. Some provision had to be made to define such operatives and the scope of their work. This is how grades came about.

But the journeymen and their unions did not take the "undermining" of their skill lying down. They fought for a clause in the agreement that stated that unqualified workers could only perform any aspect of such work if the Council granted an exemption to this effect. (*See Clause 7, Division A of the agreement*).

The **second development** that undermined the position that only journeymen could work in the trade, was the development of "specialist shops". In addition to general workshops where sales, repairs and maintenance of vehicles are done, some establishments began to specialise in vehicle body building, manufacturing of components and parts, reworking of engines and reconditioning of clutch plates, brake linings etc.

This specialisation within the industry led to a situation where the different establishments had to be classified into different Chapters in the Agreement:

Brief description of the various types of establishment:

CHAPTER 1: All general workshops where repairs and maintenance of vehicles are done, new or used motor vehicles are sold or new or used spare parts for vehicles are sold.

CHAPTER 2: Vehicle Body Building establishments. This covers establishments where the bodies of vehicles (mainly trucks and buses) are built and/or repaired and the establishment has been registered as such by the Council. These factories must not be confused with vehicle manufacturing companies like Toyota or Nissan where new vehicles are built.

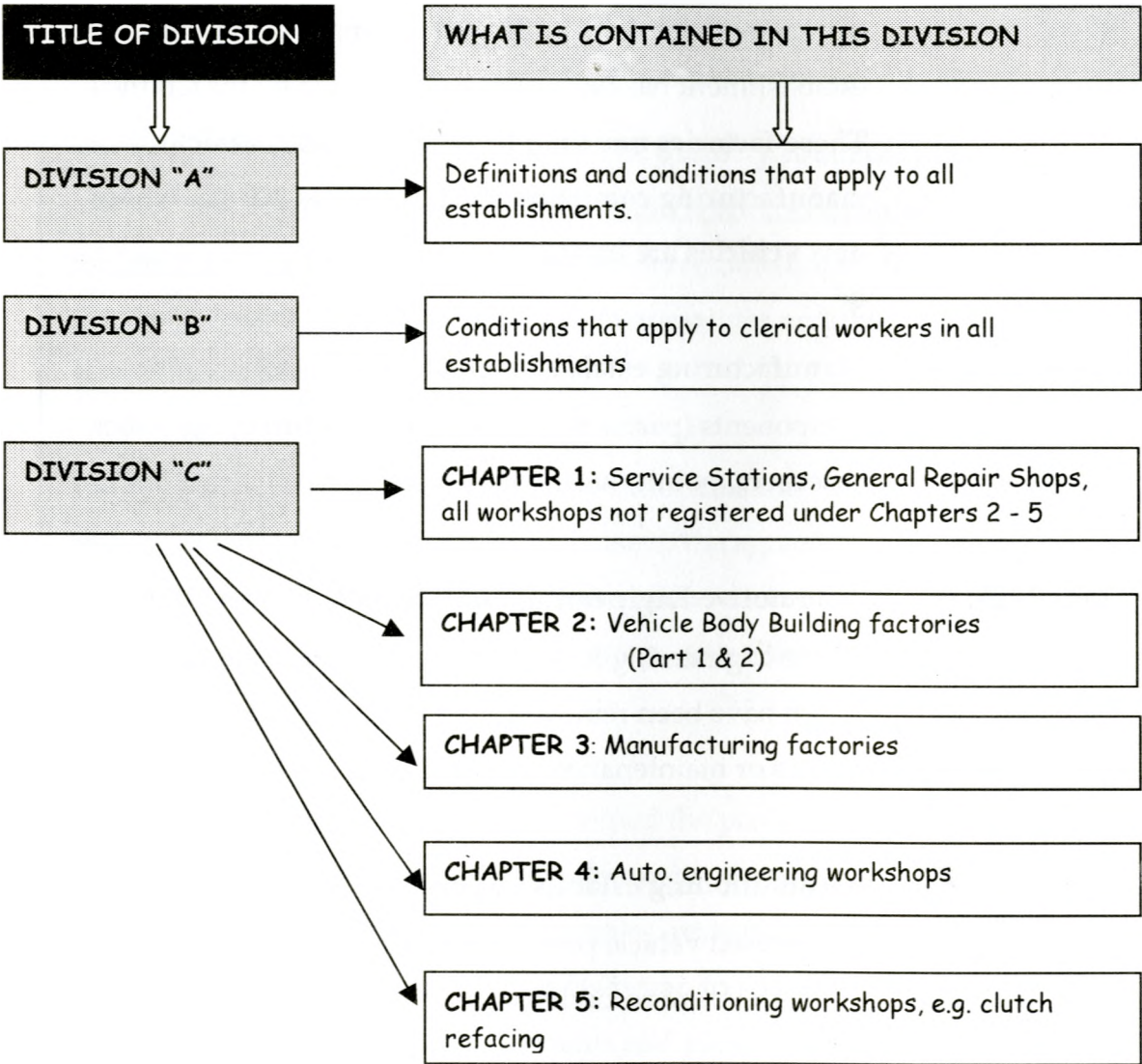
CHAPTER 3: Manufacturing establishments: Factories where new components (parts) for cars are manufactured, e.g. shock absorbers, points, wiring harnesses, etc.

CHAPTER 4: Automotive Engineering establishments. Workshops where engineering is done on motor vehicle engines which have been removed from the vehicle. No other repairs or maintenance are permitted.

CHAPTER 5: Reconditioning establishments. Workshops/factories where used vehicle parts such as clutch plates, brake linings, etc. are reconditioned.

The **third development** that undermined the position that only the journeymen could work in the industry was the emergence of clerical workers. With the growth of specialisation and in the size of establishments, the need for clerical workers became great. As clerical (white-collar) workers entered the industry, they had to be similarly catered for in the Agreement. A separate Division had to be created for them. Conditions of employment for clerical workers are found in Division B of the agreement.

This is what these developments have meant for the structure of the Main Agreement: *(see Index of the gazette – page 152)*



WORKSHEET 3

Do this exercise in pairs. Write down the names of establishments that you know (including your own) and state under which chapters they operate. Explain why you think they fall in these chapters.

CHAPTER 1:

CHAPTER 2:

CHAPTER 3:

CHAPTER 4:

CHAPTER 5:

N.B: Until 1996, Chapter 2 had two parts - Part I & II. Part I applied to all vehicle body building establishments. Part II applied only to those vehicle body building establishments registered with the Bargaining Council.

To be covered by provisions of Part II of Chapter 2, the company had to register with the Bargaining Council. This requirement to register now also applies to Chapters 2-5.

Important points about the structure of the Main Agreement

While the presentation above provides a clear history of the agreement, the agreement itself is a very clumsy document. It has repetitions and it is very difficult to read.

To make things easier, **Clause 2** of each Division and Chapter, deals with definitions. These clauses are like a dictionary. They explain the terms and words used in that Division and Chapter. You will also find descriptions of different jobs in the motor industry in these clauses.

To assist readers, the terms and words in the Definitions clauses are arranged in alphabetical order – from A to Z.

WORKSHEET 4

a) What is the difference between a "casual employee" and a "relief employee"?

b) Is there a difference between a "journeyman", a "B/A journeyman" and "exempted journeyman"?

c) What is the difference between a "general operative" and a "general worker"?

d) Do a "forecourt attendant" and a "char" do the same kind of work?

e) Is there a difference between a "shop assistant" and a "repair shop assistant"?

f) Is there a difference between a "stand-by allowance" and a "call-out allowance"?

Who is covered by the Main Agreement?

To be able to assist fellow workers you need to know whether they are covered by the Agreement or not. To answer the question of who is covered you need to look at a number of things.

1. **Check** whether the establishment in which the workers concerned work, **falls within the definition of the "motor industry"**. What constitutes the "motor industry" is defined in **Clause 2 (69), Division A** in pages 18 – 20.
2. **Check the area in which the workers are working.** Historically the provisions in the Agreement applied differently to different areas. Although people were working in the same industry, depending on where they were in South Africa, their conditions and wages differed. In terms of the Agreement until recently, South Africa was divided into three areas – Area "A", Area "B" and Area "C".

Area "A" covered the magisterial districts in the major cities, Area "B" covered the peri-urban areas and Area "C" the small towns and rural areas.

Since becoming part of the Council, NUMSA has fought this division into Areas. Only recently was Area "C" collapsed into Area "B". You now have Area "A" and "other Areas". The definition of Areas can be found in Clause 2 (5) – (21), Division A in pages 3-4.

3. ***Check whether workers are covered by the scope of the Main Agreement.*** In each Division and Chapter the first clause is about the scope of that Division and Chapter. These clauses tell you who exactly is covered.

Clauses dealing with the scope of the Main Agreement

i) **Division A** Clause 1, pp.2-3

ii) **Division B** Clause 1, pp.42-43

iii) **Division C**

 Chapter 1 Clause 1, p.53

 Chapter 2

(Part I) Clause 1, p.82

(Part II) Clause 1, p.94

 Chapter 3 Clause1, pp.97-98

 Chapter 4 Clause1, p.114

 Chapter 5 Clause1, p.130

WORKSHEET 5

Under which Area does your workplace fall in terms of the Main Agreement?
Are you covered by the Main Agreement?

WORKSHEET 6

- a) Ten petrol attendants work at Sibaya Service Station in Umtata. Are they covered by the Main Agreement? Motivate by quoting the relevant section.

- b) Last year a Daewoo workshop was established in Midrand. The workshop will recondition South Korean engines. Under which Division and Chapter will this workshop fall? Motivate and quote relevant section.

- c) At a recent COSATU CEC meeting T&GWU lodged a formal complaint against NUMSA. The union accused NUMSA of poaching its members at Kingspark - a company operating parking spaces in the major cities. NUMSA believes that the company falls within its scope. Who is correct NUMSA or T&GWU?

- d) Clerical assistants from a company manufacturing shock absorbers have recently joined NUMSA. In which Division and Chapter will you find their conditions of employment?

Why is it important to understand the different chapters and divisions?

A shopsteward will not be able to assist fellow workers with their problems unless he/she understands all the chapters and the categories of workers they cover. As you will see later in the workbook, one of the first questions you might ask yourself when a worker approaches you with a query is "Which chapter of the Agreement it covers this worker?"

And if you do not understand the agreement and the process before an Agreement is reached, you will not be able to help the union decide how to transform the motor industry and the MIBCO.

Chapter 4

Practical Exercises to help you
use the Main Agreement

In this part you will learn how to find answers to common complaints/queries from workers who are covered by the agreement. This process will be covered in two sections:



SECTION 1:

Here you will learn to ask questions in a **logical way which** will lead you quickly to the section of the agreement which is relevant to the query. You will also be given a general list of actions you could take to report or correct contraventions of the agreement.

SECTION 2:

Here you will do **practical exercises** based on frequently asked questions from workers, e.g. calculate leave pay, determine whether pay rates are correct, etc.

SECTION 1: A logical process of dealing with queries

When you are approached by a worker who has a query or complaint you could waste a lot of time if you do not ask the right questions to lead you to those clauses in the agreement which will help you to resolve the matter. Some of the steps proposed below may seem obvious (for instance if we suggest that you make sure that the worker is covered by the MIBCO agreement, this may seem obvious if that worker is a petrol pump attendant.). However, sometimes neglecting to deal with the “obvious” can lead to a frustrating dead-end.

It is important to understand how to read *clause references* and this will be explained as well. This will be useful if you need to explain to an official of the union or the council exactly which clauses of the agreement have been *contravened*.

Worksheet 7

You are visiting your local union office when a worker *whom you don't know* approaches you with the complaint that he believes he is not receiving the correct wage for the job he is doing.

In pairs, write down what you believe are the questions you should ask that person in order to lead you to the correct clause in the Agreement which covers this matter.

A logical approach will lead you easily to the right clauses in the Agreement to help you deal with the complaint. In particular the questions about *current wages, daily tasks and company name and operations* are vital. Failure to get answers to these could result in a futile search for solutions. This is the case whether the complaint is about wages, leave, or any other condition of employment prescribed by the agreement. It will not be necessary to ask all these questions in every case, but this guide will help ensure that you do not miss anything.

How to read a Clause reference.

You phone the Industrial Council agents for advice on a worker’s problem. He tells you to refer to: “**Clause 4 (1) (a), Division C.**” What does this mean?

- The Clause number comes first and is the number which usually also precedes the title of the clause, e.g. **4. Hours of work.**
- The next number in brackets is the **sub-clause number** within the clause.

- The letter in brackets refers to a **paragraph** within the sub-clause.
Sometimes paragraphs have additional **sub-paragraphs** which would be numbered with "Roman numerals like this (ii) or (v) or (x).
- The final reference in the above example is the **Division**. (Either "A" "B" or "C")

The way you would read out this reference is: "Division C, Clause 4, sub-clause 1, paragraph (a)".

Try reading out loud the following references.

Div B Clause 5 (2) (c)

Div A Clause 12 (3) (d) (ii)

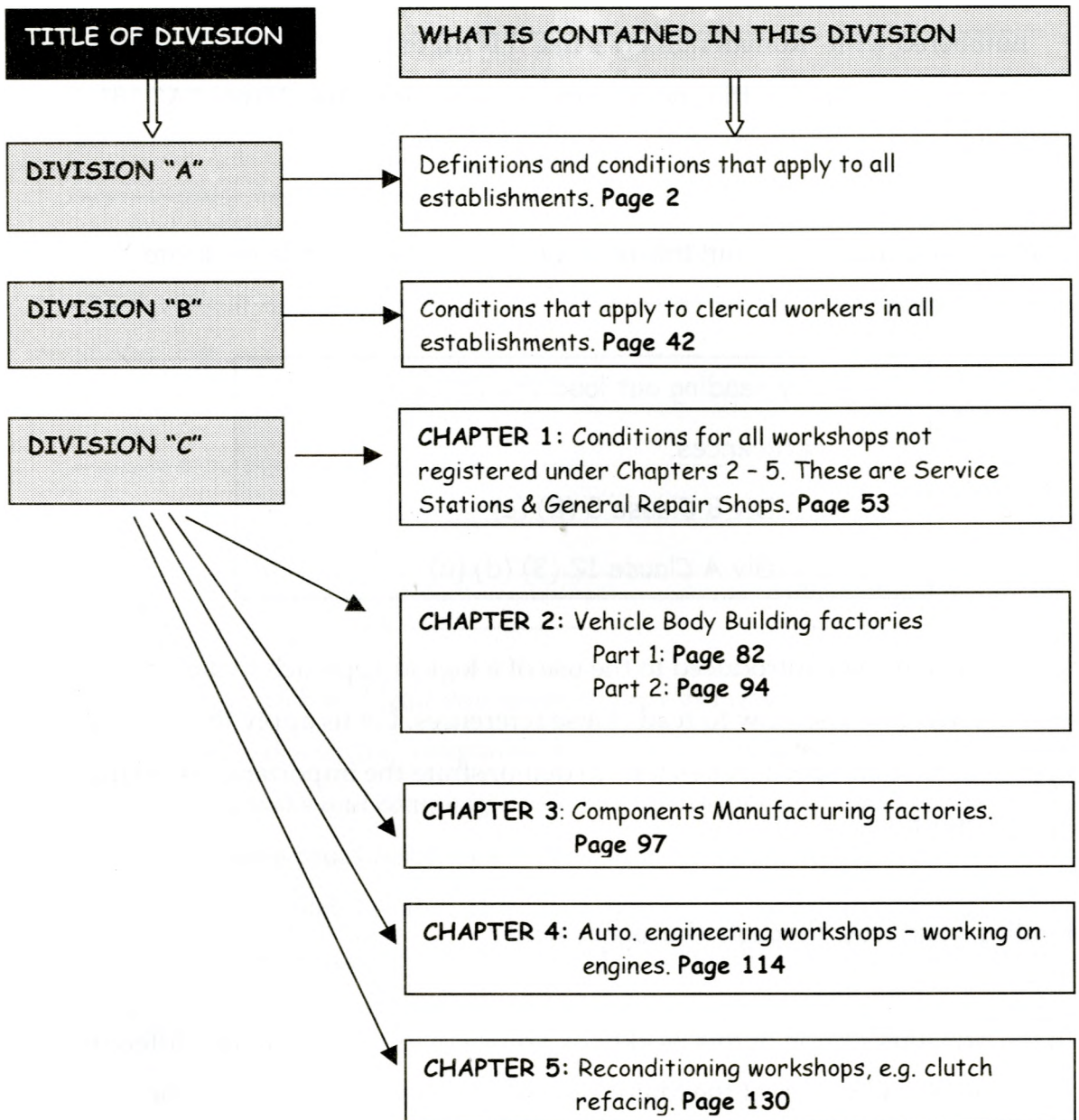
You have now been introduced to the use of a logical approach to dealing with queries and also how to read clause references. Let us apply this general approach to some specific questions to demonstrate the importance of asking logical questions.

Finding your way through the agreement?

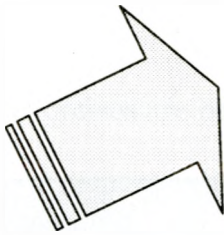
In the previous section of this workbook you were introduced to the different Divisions and Chapters of the Main Agreement. This arrangement of the Agreement into Divisions and Chapters is found on **page 152** of the Government Gazette of June 1995.

In this section what we will do is to show you how to find your way through the Main Agreement when faced with a query. We will show you where you start and which section of the Main Agreement you go to, step by step.

The structure of the Main Agreement and page numbers:



Steps you need to follow when you are checking the Main Agreement:



STEP 1: Does the worker do clerical work or manual work?

- Clerical/White collar workers' conditions are found under Division B.
- Blue collar workers are covered under Division C.

STEP 2: If the workers are blue collar workers, then you need to establish the Chapter in which the company belongs.

- Look in Chapters 2 – 5 for specialist establishments eg. Gearbox reconditioning, clutch refacing etc.
- Look in Chapter 1 for establishments not covered by Chapters 2-5.

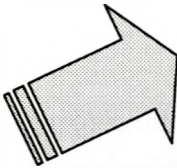
STEP 3: If you cannot find what you are looking for in Division B & C, then go to Division A. Provisions in Division A apply to all establishments.

Also important to note is that since the June 1995 Gazette, there have been amendments to the Main Agreement. It will not help you to just look at the provisions of the June 1995 Gazette, if these have been amended.

So when you are referring to the Agreements, you must also look at the latest amendments. For the exercises in this workbook, the starting point is the 1995 Gazette. After looking at the 1995 Gazette you need to look at the **August 1996 Amendments** provided separately from this workbook in the form of another Government Gazette. For minimum wages for 1998, look at the April –

August 98 Wage Rates. It is entitled: **Schedule – Motor Industry Bargaining Council (MIBCO)**.

Use the model questions and answers which are contained in pages 91 - 100 to see whether you can find your way through the Main Agreement. Also use the *glossary of terms*, (pp. 88 – 89) and the *index* in the agreement.



NOTE:

You will be working with 2 Government Gazettes - 16466 and 17383 and with a schedule of the new wage rates.

- 16466 is the Main Agreement
- 17383 has some amendments to the Main Agreement
- The schedule gives you the current wage rates.

How to use these documents:

1. Find the section that you need in 16466.
2. Check in 17383 to see if it has been amended. If it has, use this one.
3. If it is just a wage query, then look at the schedule of new wage rates.

SECTION 2: Practical Exercises

In the previous section you were given a logical approach for dealing with complaints or queries about the Main Agreement for the Motor Industry. The following section will allow you to do some practical exercises to build on what you have learned up to now.

The exercises are based on the following problems:

- ☐ Wages
- ☐ Job Grades
- ☐ Leave Pay
- ☐ Sick leave
- ☐ Hours of work

There are eight questions and some of the questions will deal with more than one matter.

WORKSHEET 8

You are a shop steward in the Motor Industry. A worker named Joe asks you to check whether his pay is correct for the work he is doing. Let us say that you ask the following questions and that you receive the responses shown:

You ask.....	Joe responds....
What work do you do?	I am a welder
For which company?	Peter's Repair Works
How much do you earn now?	R8,00 per hour

In pairs answer the following questions:

- ☐ Have you received enough information from Joe to deal with his complaint?
- ☐ If you think you have, where in the Main Agreement will you find the answer to his problem?
- ☐ If you think you did **not** gather enough information, what else do you need to know?

WORKSHEET 9

A worker is responsible for assembling engines so that they can be re-installed into cars. This work is done in a registered Automotive Engineering workshop. He has been doing this for four years and the workshop is located in Prieska in the Northern Cape.

What is this worker's job grade and title and what is the prescribed minimum wage *for the job?*

WORKSHEET 10

A worker describes her job to you as follows:

"I operate a machine in a factory. I do not set or adjust the machine - this is done by the supervisor. Once the machine has been set I switch it on and feed long, flat strips of metal into it. I then push a lever which causes the strips to be cut into small squares. The cut piece is moved away by a conveyor belt and I feed the next piece in. This continues until the required number of pieces have been cut. We make things like points and condensers for cars".

What is her job grade and minimum wage?

WORKSHEET 11

How much should the worker earn if she also sets and adjusts the machine using only a tape measure and a square?

WORKSHEET 12

A worker starts employment at a firm in Johannesburg on 1 November 1996. He is a clerk and earns a monthly wage of R3 500,00. He resigns after giving proper notice as required by the Main Agreement and his last working day is 31 July 1997. During this time he has been off sick for three days and has received payment for sick leave. How much gross pay should this worker receive when he leaves? ("Gross Pay" means his pay and accrued leave pay before deductions of any sort.) You should give a breakdown of the pay and also state which Division and Clauses contain the answer.

WORKSHEET 13

A worker who pumps petrol at a filling station in a major city tells you that he works from 07h00 to 20h00 every day, with a break for lunch from 12h30 to 13h30. He does not work over weekends. He wants you to check whether his pay and overtime pay are correct. What he knows for certain is that he only receives the prescribed minimum rate of pay. He gives you his most recent payslip. He was not absent during the week to which the payslip relates. The only details on the payslip are as follows:

Name:	David			
Normal hours				60
Total pay				R218.40

Answer the following questions:

- a) Calculate what the correct wage should be, exclusive of overtime.
- b) Is the overtime pay rate correct?
- c) Are the hours worked correct in terms of the agreement?
- d) Is the payslip adequate? If not, what is missing?

Please provide details of the relevant clauses in the agreement.

WORKSHEET 14

Cde Peter Masinga started work at a Chapter one firm on 1 February 1979 and has worked there without any breaks ever since. He is a General Worker and feels that he is earning too little for his length of service. When he goes on leave in 1997 he comes to you and asks you to check whether his pay is correct. His last payslip shows the following:

Company: Tops Panelbeaters		Dept. Stores		Marital status; M	
Name: Masinga Peter		ID 4604146097081		Pay Date: 31/1/97	
Empl. Date: 01/02/79		Position: GW		Termination date: 00/00/00	
EARNINGS			DEDUCTIONS		
BASIC PAY	45	R270,00	P.A.Y.E	00	
O/TIME	00	00	U.I.F	2.70	
SICK PAY	00	00	MEDICAL	00	
LEAVE PAY	3 WEEKS	R810.00	PROV. FUND	00	
BONUS		R100.00	LEVIES	00	
TOTAL GROSS		R1180.00	UNION	2.70	
NET		R1174.60	TOTAL	5.40	

Check the payslip carefully, consult the Agreement and state what your advice is to Cde Masinga.

WORKSHEET 15

Fill in the blank spaces next to the job titles.

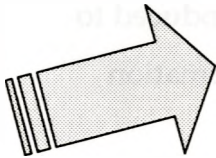
JOB TITLE	JOB GRADE	MINIMUM WAGE	CHAPTER
Body shop assistant			
Operative Grade BV			
Supervisor Grade 5			
Operative Grade CR.			
Operative Grade B			
Radiator Repairer			

WORKSHEET 16

It is the 5th of May. A member of the union complains to you that he was off sick for five days - from 21 to 25 April - but the employer only paid him for two days. You gather the following information:

- ☐ the company is a "non-party" shop (not a member of the employers' association);
- ☐ the worker started at this company on 6 January;
- ☐ a proper medical certificate was furnished to the employer on the day the worker returned to work (28 April).

Was the worker correctly paid? Explain your answer giving the relevant references in the agreement. Use the calendar in your workbook to assist you.



(IMPORTANT NOTE: The conditions which regulate Sick Leave in the Agreement may vary from those contained in the new Basic Conditions of Employment Act, but the question is included for the sake of acquiring skill in the use of the Agreement.)

What steps can I take if I find that the Agreement has been contravened?

There are three important actions you could take if you have investigated a complaint and are satisfied that the Main Agreement has been *breached*. These are:


1. Take the matter to the person responsible for such issues in your place of work. This could be the wage clerk, human resources manager, your supervisor or even the employer.
2. You could refer it to your union structures such as your local organiser, local office or to a committee of workers within your own workplace.
3. You could refer it directly to the MIBCO either by sending the member to the correct office of the council or by telephoning the council agent responsible for the establishment.

Whatever action you take, remember to have available all relevant information. In an earlier section of this workbook you were introduced to practical ways of handling queries, including how to gather information correctly and completely.

Also remember to follow up any query until it has been resolved to the best of your ability. Take careful notes showing dates and all other details.

NOTES

Chapter 5:



- Exemptions from the Council Agreement
- Provision of protective clothing
- Social Security

EXEMPTIONS FROM THE AGREEMENT

Requirement for an exemptions procedure

1. The Council's authority to grant exemptions from the provisions of the current agreement is set down in clause 4 of the MIBCO Administrative agreement.
2. The employer does not have to consult the worker before he applies for an exemption that will affect that worker. According to the procedure, employers must apply to the secretary of a regional council. The council if it grants the exemption, fixes conditions to the licence of exemption.
3. The council must itself appoint the exemptions body and determine the criteria for granting exemptions.
4. On the next page we give you the most important provisions of the agreement from which companies often seek exemption.

Exemptions that employers most often ask for:

LABOUR

- To use unqualified workers on work defined to be done only by qualified artisans.
(See Clause 7, Division "A" of the agreement.)
- To employ a number of operative grade employees in excess of the number stipulated in the "ratio " requirements of the agreements. (Refer to Clause 3, Chapter 2 for an example).

WAGES

- To pay wages lower than those prescribed in the agreement. (This is likely to be an exemption increasingly applied for, once non-party establishments can apply to an independent exemptions body.)
- To make deductions not specifically allowed in the agreement. (e.g. for trade union subscriptions where such union is not a party to the Council)

HOURS OF WORK

- To work short time.
- To work overtime in excess of the number of hours or on the days prescribed by the agreement.

BENEFIT FUNDS

- To join pension, provident and medical aid schemes not made compulsory by the agreements.

CLOSED SHOP

- For workers to work at "party" shops while being members of "non-party" trade unions or while refusing to join "party" unions.

In line with the new LRA, the exemptions procedure outlined above is supposed to change.

Note: Employees and their employers may not conclude private agreements which are less favourable than the industry agreement.

1. Section 30 (1) (k) of the Labour Relations Act (66 of 1995) requires that the constitution of a Bargaining Council must make provision for *"the procedure for exemption from collective agreements"*.
2. Section 32 (3) (e) of the LRA says that if a bargaining council wants its agreement to be extended to non-parties, the Minister of Labour may not grant such extension unless *i.a.* the collective agreement provides for the appointment of an independent exemptions body.

WORKSHEET 17

With the exemptions procedure about to change within the industry, on what basis should exemptions be granted? What criteria should we take to the Council for adoption?

[illegible]

WORKSHEET 18

Last Monday when workers at Multimech, a company building bus bodies, came to work, they were told by management that they had to go home. The reason was that the company was embarking on short-time. According to this arrangement, the workers will only work Tuesday, Wednesday, and Thursday for 6 months. The motivation for all this was that the company has lost a major contract.

- a) Did the company act correctly?
- b) Can Multimech embark on short-time without asking for an exemption?

WORKSHEET 19

Workers who belong to a union, which is not a party to the MIBCO, negotiate an agreement with their employer that their union subscriptions should be deducted from their weekly wages and remitted to their union.

What procedure should the company follow? State which clause/s of the agreement contain your answer. What are the implications of this provision in these circumstances?

PROVISION OF PROTECTIVE CLOTHING

What the Agreement says:

1. Every employer must provide free of charge, 3 overalls in every annual employment cycle for various types of employee in Chapters 1 – 5.
2. The following are **excluded** from this compulsory provision. These are: chars, general workers, watchmen and drivers.
3. In Chapter 1 establishments, the employee must launder the overall and keep it in a clean condition. Two overalls must be supplied when the employee starts employment and the third after six months.
3. Every employer must supply protective clothing required by the relevant Health and Safety Act.

WORKSHEET 20

A worker complains to you that he does dirty work in a vehicle body building factory but that his employer refuses to supply him with an overall. He has been working there for seven months and has supplied his own overalls in that time. His union card shows his occupation to be "General Operative". What is your advice to him?

[illegible]

WORKSHEET 21

All eligible staff at a manufacturing establishment have been given overalls which have the company's name printed on them and the company has deducted an amount from their pay to recover the cost.

After eight months employment a worker resigns and wants to leave with the overalls he has been given. The company insists that the overalls are its property and refuses to release them.

Advise the worker.

After eight months employment a worker resigns and wants to leave with the overalls he has been given. The company insists that the overalls are its property and refuses to release them.

[illegible]

SOCIAL SECURITY

1. Pension/Provident Fund Agreements.

A number of agreements have been negotiated over time which provide retirement benefits for workers in the Motor Industry.

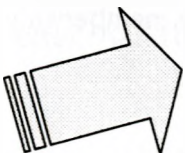
Schedule of retirement Fund Agreements applicable to NUMSA members.

- ☐ Autoworkers Pension Fund (established 28 July 1980)
- ☐ Autoworkers Provident Fund (established 3 July 1995)

These funds are administered and controlled by a company, the Motor Industry Fund Administrators (Pty) Ltd and all the parties have directors on its board. (Tel: 011-7870183 Fax: 011-7873025)

The agreements all provide for the following:

- ☐ The category of employee to which the agreement shall apply. (scope of application);
- ☐ Provisions which make membership **compulsory** for those covered by the "scope of application" clause;
- ☐ Scale of contributions;
- ☐ Provisions which determine who shall be responsible for administration of the funds and regulations stipulating conditions and procedures for application for membership.
- ☐ Provision for the council to set rules which deal with detail such as:
 - Conditions for membership of the funds, e.g. qualification periods;
 - Benefits due for different categories and levels of contributions;
 - Administrative procedures for application for the various benefits.
 - Control of the companies which are set up to run the Pension and Provident Funds;
 - Investment of fund assets;
- ☐ Measures which protect the funds from fraud and mismanagement.



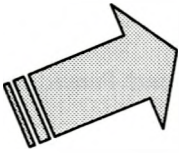
IMPORTANT:

The rules say that members of the Fund are entitled to receive only a summary of the rules and not the detailed rules. This does not prevent a member from requesting a copy of the detailed rules.

1.1 Autoworkers Pension Fund.

This fund was established because black workers had no such fund prior to 1980. The fund originally covered "non-journeymen" because coloured and Asian journeymen were, at that time, compulsory members of the Motor Industry Pension Fund. When black workers began emerging as journeymen in the industry, there was resistance from the MIEU to having black journeymen as members of the Motor Industry Pension Fund (MIPF). They could not, however, be excluded from the various funds which the industry could provide, and so a separate fund had to be established for them. This was done on 28 July 1980.

The fund is intended to provide benefits for workers who are members of NUMSA and who are employed by "party" employers.



Membership of the fund is compulsory for:

- ❑ All Apprentices who apply for membership. (This means that an employer cannot prevent an apprentice from joining the fund).
- ❑ All journeymen who have not reached retirement age.
- ❑ Any employee in the industry who has not reached retirement age and who is not receiving retirement benefits from the fund.
- ❑ Any employee who chooses not to join the Autoworkers Provident Fund.
- ❑ Provision is also made in the rules for Voluntary membership of the fund.

1.2 Autoworkers Provident Fund

Many workers prefer Provident Funds to Pension funds and the Union has established policies on this issue. Members have the right to choose which fund they want to join.

Some of the important matters for shop stewards to advise members on are:

- ❑ That employers of eligible employees are making the necessary contributions to the funds;
- ❑ That such contributions are at the correct rate (contributions used to be from as little as 4% but are now 7%)
- ❑ That members have nominated their beneficiaries correctly so that disputes after their death are minimised.

The retirement funds in the Motor Industry give workers the right to choose which fund they want to join (Pension or Provident) and therefore the rules of the two funds are almost identical. The type of benefits which the two funds provide are also similar. The following is a summary of some of the benefits:

- ❑ Pensions (either for retired members or – in the event of their death – for their surviving spouses),
- ❑ Lump-sum payments on retirement,
- ❑ Death benefits which are paid to nominated beneficiaries,
- ❑ Disability benefits;
- ❑ Retrenchment benefits.

In all cases members may be exempted from compulsory membership of the funds if employers contribute to a private fund which has benefits equal to or better than the Industry funds.

2. Sick, Accident and Maternity Pay Fund

Membership of the fund. (Clause 4 of the Fund agreement)

Membership is compulsory for all union members who are employed at "party" establishments.

Objects of the Fund. (Clause 5 of the Fund agreement)

- ☐ To assist members who lose pay because of absence through illness or accident;
- ☐ To assist female members who lose pay because of pregnancy.

Contributions. (Clause 6)

Members do not contribute to the fund. Employers pay a contribution for every member and an additional contribution for every female member.

Benefits. (Clause 7)

The Agreement does not specify the benefits. These are set out in the rules of the fund. However, when a member has been off sick and can provide the necessary proof, the employer must pay the worker and then claim from the fund.

3. MEDICAL AID FUNDS.

NUMSA members employed at party establishments are compelled to join the Autoworkers' Medical Aid Fund (Automed) unless their employer has received an exemption that permits them to join a private fund.

As is the case with the retirement funds, the Agreement of this fund contains only those provisions which:

- ❑ regulate which employees shall be members of the fund, and
- ❑ set out the various measures which compel employers to make the required contributions to the fund.

The fund was previously known as the MICWU Medical Fund and was originally negotiated so as to give lower-paid workers medical aid (however limited). The fund has changed over the years and now has a range of membership options and benefits that are contained in the rules.

There are five benefit categories (referred to in the rules as "Plans"), each with a different contribution rate and level of benefits:

1. Standard plan
2. Basic plan
3. Higher plan
4. Lower plan
5. Lower plan "B"

The plans 1 to 4 offer benefits like normal medical aid schemes, but plan 5, in addition to benefits of the Lower Plan, allows members to consult Traditional Healers.

Claims have to be made by members themselves and submitted to the Fund for

reimbursement unless the medical practitioner is prepared to offer treatment without payment and claim him/herself.

PART 3:

RESOURCE SECTION



Motor workers demonstrate to show their support for Numsa's 1997 demands

GLOSSARY OF TERMS

Administrative Agreement	An agreement which contains all provisions covering the administration of the MIBCO, e.g. collection of Trade Union subscriptions, etc.
Agents (Designated)	Employees of the MIBCO who have to ensure that all companies in the industry comply with the agreements. They are designated in terms of the LRA and have wide powers of entry and inspection.
Apprentice	One who has entered into a written contract of apprenticeship in terms of the Manpower Training Act.
Artisan	Same as a journeyman. See below.
B/A Journeyman	A worker over the age of 22 who can provide written proof of at least three years' practical experience in a trade in the Motor Industry. Also a worker who can provide at least 3½ years experience as a Repair Shop Assistant or Body Shop Assistant.
Body Shop Assistant (BSA)	A worker in a panel-beating shop who assists a journeyman to do repair work.
Breach	This means to break the agreement or any of its clauses.
Contravene	Has the same meaning as "Breach"
Journeyman (same as Artisan)	A worker who has successfully completed an apprenticeship in a designated trade. Also includes workers who may not have had formal apprenticeships but who have passed a Trade Test in a particular trade. In NUMSA they receive "CA" cards.
Main Agreement	The agreement negotiated between the parties to the MIBCO and which covers all issues like wages, hours of work, etc.
MIEU.	Motor Industry Employee's Union. A party Union formerly for white journeymen, apprentices, etc. Now accepts all races.
MISA	Motor Industry Staff Association. Union for "white-collar" workers. Also used to restrict its membership to white workers.
Party shop/ party establishment.	A workshop, factory or other establishment operating in the motor industry and which is a member of SAMIEA or SAVBRA. <i>A shop which operates within the registered scope of the MIBCO but which chooses not to join either of the associations is a "non-party" shop</i>

Repair Shop Assistant (RSA)	A worker who works under the supervision of a journeyman and who is allowed to do certain removal and replacement operations when repairing cars. This class of worker is only allowed in Chapter one shops.
SAMIEA	South African Motor Industry Employers Association.
SAVBRA	South African Vehicle Body Builders and Repairers Association.
Index	A detailed list of important words in the Agreement and the page numbers where you will find them.
Definitions	A list of words and expressions in the agreements and their meanings.
Scope of Application	The employers, employees, area and operations covered by the Agreement

The following are definitions of the various membership grades which NUMSA uses to identify the job categories of members in the Motor Industry

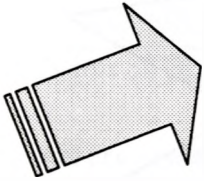
Grade CA	A <i>journeyman</i> member of NUMSA
Grade CAE	A worker who works under a Licence of Exemption and is allowed to do journeyman's work ONLY IN A CHAPTER 2 establishment (Vehicle body building).
Grade CBA	A " <i>B/A</i> " <i>journeyman</i> member of NUMSA
Grade CC	Issued to Clerical employees.
Grade CEA	Issued to Operative Engine Assemblers (only in registered Chapter 4 Auto Engineering establishments.)
Grade CB	All members other than those listed above, e.g. general workers, repair shop assistants, chars, etc.
Proportional representation.	A method of calculating the number of seats the union will have on the council based on the number of members it has in the industry. This is different from simply sharing the number of seats equally between the unions.

USE THE SPACE BELOW TO ENTER NEW WORDS YOU LEARN.

MIBCO Agreement - Model questions and answers.

The following model questions and answers will help users to answer questions about:

- Wages
- Job Grades
- Leave Pay
- Sick leave
- Hours of work



NOTE:

These model questions and answers can only serve as a guide to help you work through the questions set in part 4 of this manual. Please try and solve the problems on your own in order to learn the skill or improve it.

WAGES



MODEL QUESTION 1: Checking wages

A worker approaches you at your local and states that she is being underpaid. She shows you a payslip that reflects her occupation as "Cleaner" and her gross wage (before any deductions) for a 45 hour week as R140,00.

MODEL ANSWER 1

You should ask this...	To get this...
What is your name Comrade?	Lerato Maruping
Are you a member of NUMSA?	Yes
What are your card details?	The number is CB 12345 and it says my occupation is "Char"
What is the name of your company?	Jackson Motors. It is a filling station.
Where is this company situated?	Johannesburg
Describe your daily work.	"I come in at 07:30 every day, make coffee for the office staff and for myself. After that I clean the offices, the kitchen and the toilets. I also go to the Post Office to post letters and fetch letters"
Is this all you do every day?	"Yes, I do no other work."

You are now able to check the Motor Agreement because you know that:

- The company is actually in the Motor Industry
- It operates in Area "A" under Chapter 1 of Division "C"
- You check the *Definition* of a Char and confirm that the job is that of a cleaner which is Job Grade 1. Her actual tasks are within the definition.
- You check the Contents Schedule in this manual which shows that wages for Chapter 1, Div. C are covered in Clause 3. There you find the wage for Job Grade 1 in an "A" area is R158,40 per week.
- You can now advise the member that she is being underpaid and start proceedings to get the matter corrected.

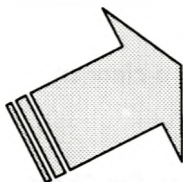


JOB GRADES

Background information

Job grading is a system whereby a number of different jobs which require the same level of skill are grouped together in a "Grade". Such a grade is usually numbered and all grades with the same number will have the same prescribed wage.

Before job grading was introduced in the Motor Industry agreements, the wage schedules were very long because a wage had to be listed for every kind of job contained in the agreement.



SPECIAL WARNING.

Be very careful when dealing with jobs listed in **Chapter 3** of the agreement. In this chapter (which deals with registered Manufacturing establishments) the various Operatives are defined as Operative Grade 1, Grade 2, and so on. This definition is for the purpose of giving a **JOB DESCRIPTION** and - for example - an Operative Grade 1 is a Grade 3 employee and earns the wage for that grade.

To help you, the following is a summary of the Operative employees with their wage job grades:

Operative grade	Job Grade
Grade 1	Grade 3
Grade 2	Grade 4
Grade 3	Grade 4
Grade 4	Grade 5
Grade 5	Grade 5

GENERAL WORKSHEET 4

In your group, read the extract from NUMSA's Guide to the Industrial Council on pages 113 - 115 of the Resources section. Also read the resolution on the union's approach to Industrial Councils (on page 116) before answering the following question:

In your view how successful has the union been in maintaining the balance between a focus on Industrial Councils and the maintenance of a vibrant and active shopfloor?

GENERAL WORKSHEET 5

Indicate whether the statements listed below are true or false.

Statement <i>According to the new LRA.....</i>	True Or False	Motivation <i>Point to the section in the LRA (see pages 98 - 111 for extracts of LRA)</i>
1. Industry agreements cover completely different issues from those covered by company/plant ones	<i>True</i>	<i>Page 102</i>
2. All industry agreements are published in the government gazette	<i>True</i>	<i>Page 103</i>
3. Collective agreements override individual contracts	<i>True</i>	
4. Bargaining Council agreements can be extended to non-union members while plant agreements cannot		
5. An employer who fails to comply with a collective agreement can no longer be taken to a criminal court		

MODEL QUESTION 2: JOB GRADES.

A worker tells you that he is employed in a factory which manufactures big truck and bus bodies. He would like to know what his job grade is so that he can check if his pay is correct. His NUMSA membership card simply gives his number as CB and his job as "Operator". How would you help this member?

MODEL ANSWER 2: JOB GRADES

- Note the member's name and membership number;
- From the worker's description of the company's operations you can gather that it is a registered Chapter 2 establishment. (If necessary confirm this with the organiser or the MIBCO office.)
- Ask for a detailed description of the member's daily work.

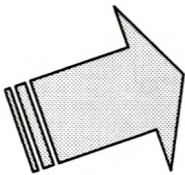
His response is: *"I mix fibreglass which we use to make various parts of the truck bodies. I get a chart which tells me how much of the different chemicals I have to put in and then I do the mixing".*
- Now carefully check through all the **definitions** of the operatives in **Chapter 2 (Vehicle body building)** of the Agreement to find one that matches what the member says is his daily work. In this case you will find that it is included in the definition of an Operative Grade CV.
- The job grade of this operative is given in brackets at the beginning of the definition. It is grade 5.



LEAVE PAY.

Background Information

Important points to be aware of when dealing with queries about leave pay are:



- A worker is entitled to three week's leave on full pay after completing a "leave cycle" with the same company. For weekly paid employees the leave cycle is calculated in terms of the number of shifts worked and for monthly paid employees it is twelve months.
- A worker with 10 or more years' service *with the same employer* is entitled to four weeks leave pay at the end of the leave cycle.
- If a worker leaves a company before the end of a leave cycle that worker must be paid "Accrued Leave Pay", (ALP). This ALP is a portion of three weeks' pay. The portion is the same as the portion of a leave cycle worked, so if the period worked is half the leave cycle, the ALP will be half of three (or 4) weeks' pay.
- Public Holidays do not count as part of a worker's annual leave;
- Some workers (Grades 7 and 8) are entitled to Additional Holiday which the employer pays over to the council on behalf of such workers every month. Two weeks before they go on leave the employer must reclaim the money from the council and pay it over to the worker when he/she goes on leave.
- Workers who do not qualify for additional holiday pay must be paid a bonus of two week's pay when they go on leave.

MODEL QUESTION 3: LEAVE PAY

A Repair shop assistant starts work at Company A - based in Cape Town - on 1 April 1997 and earns a weekly wage of R350,00. On 1 December 1997 he tells you that he will leave the company on 31 December 1997 and wants to know how much leave pay he can expect to receive.

MODEL ANSWER 3

- You must establish that the worker did not take any leave on full pay in the period 1 April to 1 December 1997. Any leave taken must be deducted from the amount due at the end of December 1997.
- Count the completed months in the period employed: 1 April to 31 December 1997 is nine months.
- The leave cycle would be completed on 31 March 1998. (End of twelve months). Therefore the period worked is $9/12$ (or $\frac{3}{4}$) of the year.
- Accrued leave pay is therefore $9/12$ (or $\frac{3}{4}$) of three weeks' pay, calculated thus:

$$3 \times 350 \times 9 \div 12 = \underline{\underline{R787.50}}$$

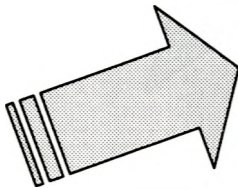
The bonus is not compulsory because it only becomes due if the worker stays with this employer to the end of the leave cycle.



SICK LEAVE. (Clause 11, Div. "A")

Background Information

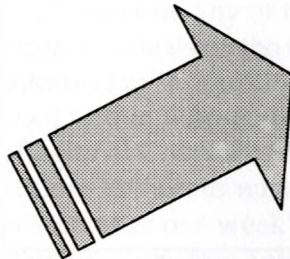
The following summary of the main sick leave provisions will help you deal with the question in the manual:



- Check first if the worker is employed at a *party establishment*. Workers at party establishments are covered by the Sick & Accident Pay Fund from which they are paid if they lose pay through illness.
- A worker who starts work for a new employer is entitled to one day's sick leave for every five weeks worked during the first 52 weeks;
- After a year with the same employer a worker is entitled to 10 working days' sick leave if he/she works a five-day week and 12 days if he/she works a $5\frac{1}{2}$ day week.
- Paid sick leave is not cumulative (it cannot be carried over from one year to the next).

HOURS OF WORK

RESOURCES



Background Information

The maximum (most) ordinary hours of work in any week is 45. On any day it is 8 hours (excluding meal breaks). Any time worked longer than these hours must be paid at overtime rates.

MODEL QUESTION 4: Hours of work

You work in an ordinary garage where petrol is sold and a large repair workshop is operated. You are a repair shop assistant in the workshop.

You start work at 7:30 every morning and knock off at 17:30 (5:30 p.m.) and have a half-hour lunch break from 12:30 to 13:00. You are given two tea breaks of 15 minutes each - one in mid-morning and one in mid-afternoon. These are your hours Mondays to Fridays and the workshop is closed on weekends. You do not receive overtime pay.

Calculate your hours of work and state whether they are in accordance with the agreement.

MODEL ANSWER 4.

Look for "Hours of Work" in the Contents schedule. You find that this is covered in Division "C", Chapter 1, Clause 4. The maximum hours prescribed are 45 per week.

How to calculate the actual hours worked :

"Knock off" time	17:30
Less start time:	07:30
Total hours worked per day	10
Less 30 minutes lunch break	0:30
Actual hours per day	9 hrs 30 min (9.5 hours)
Multiplied by 5 days per week	$5 \times 9.5 = 47.5$ per week

The hours worked are in excess of the prescribed 45 hours.

EXTRACTS FROM THE MOTOR ADMINISTRATIVE AGREEMENT

CLAUSE 4. EXEMPTIONS

1. Exemptions from any of the provisions of this Agreement may be granted by Regional Councils or the Council.
2. Application for exemption shall be made to the secretary of the Regional Council within whose area the applicant operates or is employed.
3. The Regional Council or the Council, as the case may be, shall fix the conditions subject to which such exemptions shall be valid, and may, if it deems fit, after one week's notice has been given, in writing, to the person(s) concerned, withdraw any licence of exemption.
4. The secretary of the Regional Council or the Secretary of the Council, as the case may be, shall issue to every person granted exemption, a licence signed by him setting out-
 - (a) the name of the person concerned;
 - (b) the provisions of this Agreement from which exemption is granted;
 - (c) the conditions subject to which such exemption is granted;
 - (d) the period during which the exemption shall be valid;
5. The secretary of the Regional Council or the Secretary of the Council, as the case may be, shall-
 - (a) number consecutively all licences issued;
 - (b) retain a copy of each licence issued; and
 - (c) where exemption is granted to an employee, forward a copy of the licence to the employer concerned.
6. The Secretary of the Regional Council or the General Secretary of the Council, as the case may be, shall issue to every person granted a consent, a letter of authority signed by him setting out, read with the changes required by the context, the information referred to in (4) and (5) above.

CLAUSE 12. SUBSCRIPTIONS TO MIEU, MISA, NUMSA AND SAMIEA

- (1) (a) Every employer who is a member of the South African Motor Industry Employers' Association and/or the South African Vehicle Builders' and Repairers' Association shall deduct from the wages of each of his employees concerned the amount of the subscription payable by such employees to the Motor Industry Employees' Union of South Africa, the Motor Industry Staff Association or the National Union of Metalworkers of South Africa and shall pay to the secretary of the Regional Council having jurisdiction in the area concerned the amount thus deducted and render a written statement containing the following details in respect of each employee from whose wages subscriptions have been deducted:
 - (i) surname and initials
 - (ii) trade union membership number
 - (iii) amount deducted; and

- (iv) period in respect of which subscriptions were deducted.
- (b) An employer who has been notified in writing by a Regional Council that one or more of his employees is in arrears with the Motor Industry Employees' Union of South Africa or the National Union of Metalworkers of South Africa subscriptions or entrance fees shall deduct such arrears up to an amount not exceeding R4 per employee per week from remuneration due to such employee, and shall forthwith remit any amounts so deducted to the Regional Council concerned.
- (c) Every employer shall pay the subscriptions deducted and render the statement required in terms of paragraph (a) to the secretary of the Regional Council concerned by not later than the 10th day of the month immediately following the month to which the subscriptions relate.

CLAUSE 30. MATERNITY LEAVE

1. An employee who has completed two years' continuous service in the aggregate with one or more employers in the Motor Industry, of which the last 12 completed months were with the same employer, shall on termination of her services, be entitled to a guarantee of re-employment, subject to the following conditions, namely that-
 - (i) both the employee and the employer shall be members of one of the respective trade unions or employers' organisations which are parties to the National Industrial Council for the Motor Industry;
 - (ii) the employee's services are terminated as a result of her pregnancy; and
 - (iii) the employer shall on the date of termination of the employee's services provide her with a written guarantee of re-employment which shall be valid for a period of not less than six months reckoned from the date of termination of services.
2. Any employee who has been provided with a written guarantee of re-employment, shall give her employer at least four weeks' written notice of her intention to return to employment in which notice the date of return to employment shall be clearly specified.
3. Any employee who has been re-employed in terms of sub-clause (2) shall be paid a wage of not less than the wage paid to her at the time of termination of service or the minimum prescribed wage, whichever is the greater: Provided that such employee shall be appointed in the same or a similar position which she held at termination of services.
4. Should any retrenchment of staff take place during the absence of an employee whose services were terminated in terms of subclause (1) such employee shall be regarded as being in employment.
5. For the purposes of calculating the period of employment in the Industry, the period an employee is on maternity leave shall be regarded as employment in the Industry.

Extracts from the Labour Relations Act, 1995, of specific sections that relate to Bargaining Councils and Collective Agreements.

PART B-COLLECTIVE AGREEMENTS

23. Legal effect of collective agreement

- (1) A collective agreement binds-
 - (a) the parties to the collective agreement;
 - (b) each party to the collective agreement and the members of every other party to the collective agreement, in so far as the provisions are applicable between them;
 - (c) the members of a registered trade union and the employers who are members of a registered employers' organisation that are party to the collective agreement if the collective agreement regulates-
 - (i) terms and conditions of employment; or
 - (ii) the conduct of the employers in relation to their employees or the conduct of the employees in relation to their employers;
 - (d) employees who are not members of the registered trade union or trade unions party to the agreement if-
 - (i) the employees are identified in the agreement;
 - (ii) the agreement expressly binds the employees; and
 - (iii) that trade union or those trade unions have as their members the majority of employees employed by the employer in the workplace.
- (2) A collective agreement binds for the whole period of the collective agreement every person bound in terms of subsection (1)(c) who was a member at the time it became binding, or who becomes a member after it became binding, whether or not that person continues to be a member of the registered trade union or registered employers' organisation for the duration of the collective agreement.
- (3) Where applicable, a collective agreement varies any contract of employment between an employee and employer who are both bound by the collective agreement.
- (4) Unless the collective agreement provides otherwise, any party to a collective agreement that is concluded for an indefinite period may terminate the agreement by giving reasonable notice to the other parties.

24. Disputes about collective agreements

- (1) Every collective agreement, excluding an agency shop agreement concluded in terms of section 25 or a closed shop agreement concluded in terms of section 26, must provide for a procedure to resolve any dispute about the interpretation or application of the collective agreement. The procedure must first require the parties to attempt to resolve the dispute through conciliation and, if the dispute remains unresolved, to resolve it through arbitration.
- (2) If there is a dispute about the interpretation or application of a collective agreement, any party to the dispute may refer the dispute in writing to the Commission if-

- (a) the collective agreement does not provide for a procedure as required by subsection (1);
 - (b) the procedure provided for in the collective agreement is not operative; or
 - (c) any party to the collective agreement has frustrated the resolution of the dispute in terms of the collective agreement.
- (3) The party who refers the dispute to the Commission must satisfy it that a copy of the referral has been served on all the other parties to the dispute.
- (4) The Commission must attempt to resolve the dispute through conciliation.
- (5) If the dispute remains unresolved, any party to the dispute may request that the dispute be resolved through arbitration.
- (6) If there is a dispute about the interpretation or application of an agency shop agreement concluded in terms of section 25 or a closed shop agreement concluded in terms of section 26, any party to the dispute may refer the dispute in writing to the Commission, and subsections (3) to (5) will apply to that dispute.
- (7) Any person bound by an arbitration award about the interpretation or application of section 25(3)(c) and (d) or section 26(3)(d) may appeal against that award to the Labour Court.

Part C – Bargaining Councils

28. Powers and functions of bargaining council

The powers and functions of a bargaining council in relation to its registered scope include the following-

- (a) to conclude collective agreements;
- (b) to enforce those collective agreements;
- (c) to prevent and resolve labour disputes;
- (d) to perform the dispute resolution functions referred to in section 51;
- (e) to establish and administer a fund to be used for resolving disputes;
- (f) to promote and establish training and education schemes;
- (g) to establish and administer pension, provident, medical aid, sick pay, holiday, unemployment and training schemes or funds or any similar schemes or funds for the benefit of one or more of the parties to the bargaining council or their members;
- (h) to develop proposals for submission to NEDLAC or any other appropriate forum on policy and legislation that may affect the sector and area;
- (i) to determine by collective agreement the matters which may not be an issue in dispute for the purposes of a strike or a lock-out at the workplace; and
- (j) to confer on workplace forums additional matters for consultation.

30. Constitution of bargaining council

- (1) The constitution of every bargaining council must at least provide for-
 - (a) the appointment of representatives of the parties to the bargaining council, of whom half must be appointed by the trade unions that are party to the bargaining council and the other half by the employers' organisations that are party to the bargaining council, and the appointment of alternates to the representatives;
 - (b) the representation of small and medium enterprises;
 - (c) the circumstances and manner in which representatives must vacate their seats' and the procedure for replacing them;
 - (d) rules for the convening and conducting of meetings of representatives, including the quorum required for, and the minutes to be kept of, those meetings;
 - (e) the manner in which decisions are to be made; the appointment or election of office-bearers and officials, their functions, and the circumstances and manner in which they may be removed from office;
 - (g) the establishment and functioning of committees;
 - (h) the determination through arbitration of any dispute arising between the parties to the bargaining council about the interpretation or application of the bargaining council's constitution;
 - (i) the procedure to be followed if a dispute arises between the parties to the bargaining council;
 - (j) the procedure to be followed if a dispute arises between a registered trade union that is a party to the bargaining council, or its members, or both, on the one hand, and employers who belong to a registered employers' organisation that is a party to the bargaining council, on the other hand;
 - (k) the procedure for exemption from collective agreements;
 - (l) the banking and investment of its funds;
 - (m) the purposes for which its funds may be used;

- (n) the delegation of its powers and functions;
 - (o) the admission of additional registered trade unions and registered employers' organisations as parties to the bargaining council, subject to the provisions of section 56;7
 - (p) a procedure for changing its constitution; and
 - (q) a procedure by which it may resolve to wind up.
- (2) The requirements for the constitution of a bargaining council in subsection (1) apply to the constitution of a bargaining council in the public service except that-
- (a) any reference to an "employers' organisation" must be read as a reference to the State as employer; and
 - (b) the requirement in subsection (1)(b) concerning the representation of small and medium enterprises does not apply.
- (3) The constitution of the Public Service Co-ordinating Bargaining Council must include a procedure for establishing a bargaining council in a sector of the public service designated in terms of section 37(l).
- (4) The constitution of a bargaining council in the public service may include provisions for the establishment and functioning of chambers of a bargaining council on national and regional levels.
- (5) The procedures for the resolution of disputes referred to in subsection (1)(h), (i) and (j) may not entrust dispute resolution functions to the Commission unless the governing body of the Commission has agreed thereto.

31. **Binding nature of collective agreement concluded in bargaining council**

Subject to the provisions of section 32 and the constitution of the bargaining council, a collective agreement concluded in a bargaining council binds :-

- (a) the parties to the bargaining council who are also parties to the collective agreement;
- (b) each party to the collective agreement and the members of every other party to the collective agreement in so far as the provisions thereof apply to the relationship between such a party and the members of such other party; and
- (c) the members of a registered trade union that is a party to the collective agreement and the employers who are members of a registered employers' organisation that is such a party, if the collective agreement regulates-
 - (i) terms and conditions of employment; or
 - (ii) the conduct of the employers in relation to their employees or the conduct of the employees in relation to their employers.

32. **Extension of collective agreement concluded in bargaining council**

- (1) A bargaining council may ask the Minister in writing to extend a collective agreement concluded in the bargaining council to any non-parties to the collective agreement that are within its registered scope and are identified in the if at a meeting of the bargaining council request, I
- (a) one or more registered trade unions whose members constitute the majority of the members of the trade unions that are party to the bargaining council vote in favour of the extension; and
 - (b) one or more registered employers' organisations, whose members employ the majority

of the employees employed by the members of the employers' organisations that are party to the bargaining council, vote in favour of the extension.

- (2) Within 60 days of receiving the request, the Minister must extend the collective agreement, as requested, by publishing a notice in the Government Gazette declaring that, from a specified date and for a specified period, the collective agreement will be binding on the non-parties specified in the notice.
- (3) A collective agreement may not be extended in terms of subsection (2) unless the Minister is satisfied that-
 - (a) the decision by the bargaining council to request the extension of the collective agreement complies with the provisions of subsection (1);
 - (b) the majority of all the employees who, upon extension of the collective agreement, will fall within the scope of the agreement, are members of the trade unions that are parties to the bargaining council;
 - (c) the members of the employers' organisations that are parties to the bargaining council will, upon the extension of the collective agreement, be found to employ the majority of all the employees who fall within the scope of the collective agreement;
 - (d) the non-parties specified in the request fall within the bargaining council's registered scope;
 - (e) the collective agreement establishes or appoints an independent body to grant exemptions to non-parties and to determine the terms of those exemptions from the provisions of the collective agreement as soon as possible;
 - (f) the collective agreement contains criteria that must be applied by the independent body when it considers applications for exemptions, and that those criteria are fair and promote the primary objects of this Act; and
 - (g) the terms of the collective agreement do not discriminate against non-parties.
- (4) For the purpose of subsection (3)(e), a bargaining council in its appointment of the members of the independent body must have due regard to the nominations made by the institutions listed in the schedule promulgated in terms of section 207(6).
- (5) Despite subsection (3)(b) and (c), the Minister may extend a collective agreement in terms of subsection (2) if
 - (a) the parties to the bargaining council are sufficiently representative within the registered scope of the bargaining council in the area in respect of which the extension is sought; and
 - (b) the Minister is satisfied that failure to extend the agreement may undermine collective bargaining at sectoral level or in the public service as a whole; and
- (6) (a) After a notice has been published in terms of subsection (2), the Minister, at the request of the bargaining council, may publish a further notice in the Government Gazette
 - (i) extending the period specified in the earlier notice by a further period determined by the Minister; or
 - (ii) if the period specified in the earlier notice has expired, declaring a new date from which, and a further period during which, the provisions of the earlier notice will be effective.

- (b) The provisions of subsections (3) and (5), read with the changes required by the context, apply in respect of the publication of any notice in terms of this subsection.
- (7) The Minister, at the request of the bargaining council, must publish a notice in the Government Gazette cancelling all or part of any notice published in terms of subsection (2) or (6) from a date specified in the notice.
- (8) Whenever any collective agreement in respect of which a notice has been published in terms of subsection (2) or (6) is amended, amplified or replaced by a new collective agreement, the provisions of this section apply to that new collective agreement.
- (9) For the purposes of extending collective agreements concluded in the Public Service Co-ordinating Bargaining Council or any bargaining council contemplated in section 37(3) or (4)-
 - (a) any reference in this section to an employers' organisation must be read as a reference to the State as employer; and
 - (b) Subsections (3)(c), (e) and (f) and (4) of this section will not apply.

51. **Dispute resolution functions of council**

- (1) In this section, dispute means any dispute about a matter of mutual interest between-
 - (a) on the one side(i) one or more trade unions; one or more employees; or one or more trade unions and one or more employees; and
 - (b) on the other side-
 - (i) one or more employers' organisations;
 - (ii) one or more employers; or
 - (iii) one or more employers' organisations and one or more employers.
- (2)
 - (a)
 - (i) The parties to a council must attempt to resolve any dispute between themselves in accordance with the constitution of the council.
 - (ii) For the purposes of subparagraph (i), a party to a council includes the members of any registered trade union or registered employers' organisation that is a party to the council; and
 - (b) Any party to a dispute who is not a party to a council but who falls within the registered scope of the council may refer the dispute to the council in writing.
 - (c) The party who refers the dispute to the council must satisfy it that a copy of the referral has been served on all the other parties to the dispute.
- (3) If a dispute is referred to a council in terms of this Act" and any party to that dispute is not a party to that council, the council must attempt to resolve the dispute
 - (a) through conciliation; and
 - (b) if the dispute remains unresolved after conciliation, the council must arbitrate the dispute if-
 - (i) this Act requires arbitration and any party to the dispute has requested that it be

- resolved through arbitration; or
 - (ii) all the parties to the dispute consent to arbitration under the auspices of the council.
- (4) If one or more of the parties to a dispute that has been referred to the council do not fall within the registered scope of that council, it must refer the dispute to the Commission.
- (5) The date on which the referral in terms of subsection (4) was received by a council is, for all purposes, the date on which the council referred the dispute to the Commission.
- (6) A council may enter into an agreement with the Commission or an accredited agency in terms of which the Commission or accredited agency is to perform, on behalf of the council, its dispute resolution functions in terms of this section.

CHAPTER IV

STRIKES AND LOCK-OUTS

64. Right to strike and recourse to lock-out

- (1) Every employee has the right to strike and every employer has recourse to lock-out if-
 - (a) the issue in dispute has been referred to a council or to the Commission as required by this Act, and-
 - (i) a certificate stating that the dispute remains unresolved has been issued; or
 - (ii) a period of 30 days, or any extension of that period agreed to between the parties to the dispute, has elapsed since the referral was received by the council or the Commission; and after that-
 - (b) in the case of a proposed strike, at least 48 hours' notice of the commencement of the strike, in writing, has been given to the employer, unless-
 - (i) the issue in dispute relates to a collective agreement to be concluded in a council, in which case, notice must have been given to that council; or
 - (ii) the employer is a member of an employers' organisation that is a party to the dispute, in which case, notice must have been given to that employers' organisation; or
 - (c) in the case of a proposed lock-out, at least 48 hours' notice of the commencement of the lock-out, in writing, has been given to any trade union that is a party to the dispute, or, if there is no such trade union, to the employees, unless the issue in dispute relates to a collective agreement to be concluded in a council, in which case, notice must have been given to that council; or
 - (d) the case of a proposed strike or lock-out where the State is the employer, at least seven days' notice of the commencement of the strike or lock-out has been given to the parties contemplated in paragraphs (b) and (c).
- (2) If the issue in dispute concerns a refusal to bargain, an advisory award must have been made in terms of section 135(3)(c) before notice is given in terms of subsection (1)(b) or (c). A refusal to bargain includes-
 - (a) a refusal-
 - (i) to recognise a trade union as a collective bargaining agent; or
 - (ii) to agree to establish a bargaining council;

- (b) a withdrawal of recognition of a collective bargaining agent;
 - (c) a resignation of a party from a bargaining council;
 - (d) a dispute about-
 - (i) appropriate bargaining units;
 - (ii) appropriate bargaining levels; or
 - (iii) bargaining subjects.
- (3) The requirements of subsection (1) do not apply to a strike or a lock-out if-
- (a) the parties to the dispute are members of a council, and the dispute has been dealt with by that council in accordance with its constitution;
 - (b) the strike or lock-out conforms with the procedures in a collective agreement;
 - (c) the employees strike in response to a lock-out by their employer that does not comply with the provisions of this Chapter;
 - (d) the employer locks out its employees in response to their taking part in a strike that does not conform with the provisions of this Chapter; or
 - (e) the employer fails to comply with the requirements of subsections (4) and (5).
- (4) Any employee who or any trade union that refers a dispute about a unilateral change to terms and conditions of employment to a council or the Commission in terms of subsection (1)(a) may, in the referral, and for the period referred to in subsection (1)(a)-
- (a) require the employer not to implement unilaterally the change to terms and conditions of employment; or
 - (b) if the employer has already implemented the change unilaterally, require the employer to restore the terms and conditions of employment that applied before the change.
- (5) The employer must comply with a requirement in terms of subsection (4) within 48 hours of service of the referral on the employer.

65. Limitations on right to strike or recourse to lock-out

- (1) No person may take part in a strike or a lock-out or in any conduct in contemplation or furtherance of a strike or a lock-out if-
- (a) that person is bound by a collective agreement that prohibits a strike or lock-out in respect of the issue in dispute;
 - (b) that person is bound by an agreement that requires the issue in dispute to be referred to arbitration;
 - (c) the issue in dispute is one that a party has the right to refer to arbitration or to the Labour Court in terms of this Act;
 - (d) that person is engaged in-

- (i) an essential service; or
 - (ii) a maintenance service.
- (2)
 - (a) Despite section 65(l)(c), a person may take part in a strike or a lock-out or in any conduct in contemplation or in furtherance of a strike or lock-out if the issue in dispute is about any matter dealt with in sections 12 to 15.
 - (b) If the registered trade union has given notice of the proposed strike in terms of section 64(l) in respect of an issue in dispute referred to in paragraph (a), it may not exercise the right to refer the dispute to arbitration in terms of section 21 for a period of 12 months from the date of the notice.
- (3) Subject to a collective agreement, no person may take part in a strike or a lock-out or in any conduct in contemplation or furtherance of a strike or lock-out-13. Essential services, agreed minimum services and maintenance services are regulated in sections 71 to 75.

14. **These sections deal with organisational rights.**

- (a) if that person is bound by-
 - (i) any arbitration award or collective agreement that regulates the issue in dispute; or
 - (ii) any determination made in terms of section 44 by the Minister that regulates the issue in dispute; or
 - (b) any determination made in terms of the Wage Act and that regulates the issue in dispute, during the first year of that determination.

Extract from Numsa book on:

Numsa guide to the Industrial Councils

Numsa and the Industrial Council System

OUR STRATEGY

The unions that came together to form Numsa in 1987 had historically different strategies to the Industrial Council system. Today these different approaches and experiences have been integrated into a single national Numsa approach. However, it is important to reflect on the past experiences in order to develop a systematic understanding of our present situation.

MICWU

Micwu, which had members in the motor and motor components industry, was virtually "born" into participation in the motor industrial council. Micwu members, before establishing an independent union in 1959, were members of the artisan union, Mieu. They left Mieu when "coloureds" were barred by law from participating in the executive of a multi-racial union.

The union remained dominantly "coloured" and Indian through much of the 1960s with African members joining towards the mid 1970s. Micwu remained in Nicmi in this period and attempted to resolve problems relating to the exclusion of African members by finding alternative routes. This was in line with the strategy of parallel unions formulated by TUCSA (Trade Union Co-ordinating Council of South Africa – a conservative white dominated union federation). Micwu attempted to set up a parallel union for African members in 1979, however this was short lived. They were able to set up Benefit Funds that were extended to African members.

In the Nicmi wage bargaining forums, Micwu negotiated and concluded agreements on behalf of general workers which in practice covered African workers as well. In this way the leadership believed they were addressing the needs of their African members.

MAWU

Mawu was, from its formation, opposed to participating in the Industrial Council system.

Mawu was established in 1973 and was mainly organised in the engineering industry. It had a smaller membership in the motor components sector.

There were many reasons for rejecting the industrial council system. This was apart from the fact that, even if Mawu wished to participate in the council before 1979, they were prevented from doing so because they were in the eyes of the law an "African" union.

Two arguments stand out as central in the Industrial Council debate:

- The Industrial Council system removed the power of workers at factory floor level and placed it in the hands of a small union elite. Plant level bargaining was the way to build active involvement of the members and a strong shop steward structure in the factories.
- The Industrial Council system was a creation of the Apartheid government and participation was therefore a form of collaboration.

Seifsa actively resisted Mawu's attempts to establish plant level bargaining as a right. Seifsa directed its members to refer all negotiating issues to the National Industrial Council and only deal with unions at plant level on a consultative basis. Unregistered unions were to be refused both shop stewards as well as stop order rights. In fact, Seifsa tried very hard to destroy Mawu.

Between 1979 and 1982, Mawu intensified its struggle for plant bargaining rights. While they did force agreements in a few companies they were largely unsuccessful in the industry as a whole. Massive strike waves on the East Rand were able to force increases in certain plants, however they were unsuccessful in changing the system. A major Industrial Court case against a key Seifsa member company to force plant level bargaining, was also unsuccessful.

While this battle was in progress, new organisational problems forced the leadership to review its opposition to the Industrial Council. Between 1978 and 1982, Mawu membership grew from 6 700 to 30000. It became clear to the Union that they could not adequately service the needs of the membership using a "plant-by-plant" strategy and that they needed to establish negotiating forums on an industry-wide basis in order to bring members together for greater power. The 1980/1 strike wave had achieved little, because companies were able to defeat strikers at individual plants. Mawu leadership felt that the Industrial Council could be used as a focus for greater unity and for greater membership. This period also saw a deepening of the recession resulting in large scale retrenchments. Mawu began to search for forums where it could address these problems more adequately. Centralised bargaining was seen as a strategy that would achieve this goal.

Thus Mawu registered and applied to join the Nicisemi in February 1983 and attended their first negotiations in March that year.

NAAWU

Nawwu had a strong presence in the auto and tyre and rubber industries in the Eastern Cape and Western Cape regions.

Naawu, then Numarwosa, joined the Industrial Council for the Automobile Manufacturing industry in 1971. At that stage the only other union was the white, right-wing Iron and Steel Union (Yster en Staal) which only represented white artisans in the industry. The scope

of registration of the council was limited to the Eastern Province only. Naawu immediately began to assert itself in the Industrial Council, as it then spoke for all the "coloured" workers in the industry, who at that time constituted the majority of employees in the industry.

Since 1971, Naawu assisted with the organising of black workers in the industry. These workers joined the parallel United, African, Rubber and Allied Workers' Union which was then unregistered in terms of the law. These workers were represented through the Central Bantu Labour Relations Committee under the auspices of the new Department of Labour.

There were joint caucuses held between Naawu and the representatives from the UAW who were in fact there under the auspices of the Department of Labour. The demands submitted by them were the same as those submitted by Naawu because all meetings were held jointly, i.e. Branch General meetings as well as Branch Executive Council meetings.

Employers did not like this idea of the joint approach by the two groups.

In 1979, the employers, together with Iron and Steel Workers' Union tried to outvote Naawu on the council in order to conclude an agreement on wages and conditions of employment. When Naawu threatened them with a court interdict, the employers sent Iron and Steel out of the meeting and Naawu reached an agreement with the employers which far exceeded the wage offer and conditions which Iron and Steel was prepared to accept.

This so upset Iron and Steel representatives that they threatened to resign from the council because the employers concluded a better agreement with Naawu "behind their backs".

From then onwards, the employers respected Naawu and until this day will not conclude an agreement unless Numsa has agreed to it.

TYRE COUNCIL

Naawu joined the Industrial Council for the Tyre and Rubber Manufacturing Industry (Eastern Province) in March 1984. At that stage, the only union on the council was the same white right-wing Iron and Steel Workers' Union.

The Iron and Steel union only represented white artisans in the industry. Right from the beginning Naawu asserted its position in this council and, at the first negotiation it participated in, forced employers to improve the wages of the lowest paid workers by 53%. The first offer of the employers for unskilled workers in fact exceeded the demand made by the white union for increases for unskilled workers.

Numsa today is accepted by the employers on this Council as the major force and to a large extent as representing all the workers.

Resolution on Membership of Industrial Councils

NC May 1987

This Congress noting that:

1. Regional and national collective bargaining in the metal industry in South Africa is done through the system of industrial councils.
2. The conditions of employment negotiated by such industrial councils are applied to the vast majority of metalworkers in South Africa.
3. There are no less than 15 000 establishments in the metal and related industries.
4. It is impossible for the Union to have plant level negotiations with all the establishments in the metal and related industries.

Believing that:

1. It is also the duty of the union to further the interests of its members and improve their conditions of employment.
2. Using the industrial councils to achieve regional and national conditions of employment will be in the interests of all metal workers.
3. Regional and national bargaining must be complimented by plant level negotiations where workers so decide.

Therefore resolve that:

1. The Union applies and becomes a party to the industrial councils having jurisdiction in the areas and industrial sections where our members are employed.
2. Such membership of the industrial councils shall not prevent the union and its members from participating in plant level negotiations.

The fight to transform the Industrial/Bargaining Councils

As can be seen from the above resolution, NUMSA has supported the participation in Bargaining Councils. But for the union, this participation had to be accompanied by strong shopfloor organisation. For NUMSA participation in Councils is not a substitute for strong shopsteward committees.

Since 1997, NUMSA has been involved in a struggle to transform the Councils and make them an instrument in the workers' struggle. This struggle has involved:

- **A fight for workers' participation.** Unlike other unions, from the word go, NUMSA insisted that participation in Council activity must not be confined to officials. Most of our representatives and delegates to the Councils are workers.
- **Democratisation of the Councils.** The first fight that NUMSA waged within the Motor and Engineering Councils was that representation for NUMSA must cater for all the union's regions. This for us was important for facilitating mandating and reportbacks. Although initially resisted, the union won this demand. We have now every region represented nationally within the Motor and Engineering Councils.
- Another battle for democratising the Councils was to demand **proportional representation within the union delegation**. It did not make sense why NUMSA with more than 100 000 engineering workers was allowed the same number of representatives as other smaller unions within the Council.
- **A fight for the accountability of Council officials.** In the same way that we insist on accountability of union officials, NUMSA strongly argued for accountability of Council officials to all parties. Agents and other officials had to stop working as if they were only employed by employers and not by the unions and their members.

Course Evaluation

1. Having gone through this workbook, why is it important for shopstewards to understand the industry agreement?

2. Looking at your ongoing reflection journal, what recommendations are you making about the course, if it were to run again?

3. What issues have you noted down which you think the union must take up with the Council? (possible amendments or new sections.)

CALENDERS

1997

January							February							March							April						
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1998

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1999

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