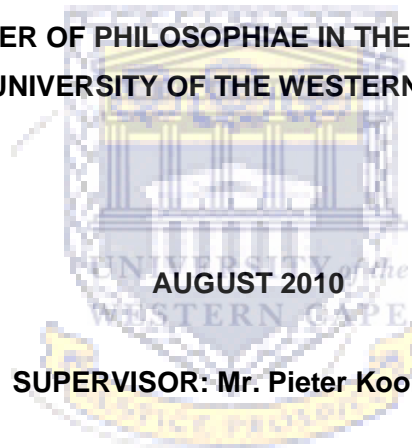


**A STUDY OF THE EMPLOYERS ATTITUDES TOWARDS MATTERS STIPULATED IN SECTION 84 OF THE LABOUR RELATIONS ACT NO 66 OF 1995 AND HOW THOSE RELATE TO THE OBJECTIVES OF THE BARGAINING COUNCIL FOR HAIRDRESSING TRADE, CAPE PENINSULA.**

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**SUBMITTED IN PARTIAL FULFILLMENT OF THE REQUIREMENTS OF  
DEGREE OF MAGISTER OF PHILOSOPHIAE IN THE FACULTY OF LAW OF THE  
UNIVERSITY OF THE WESTERN CAPE**



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**SUPERVISOR: Mr. Pieter Koornhof**

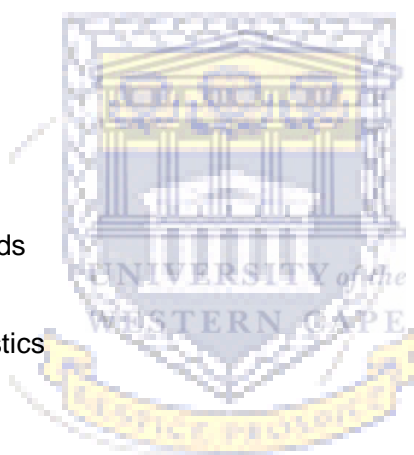
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## DECLARATION

I declare a study of the employers attitudes towards matters stipulated in section 84 of The Labour Relations Act no 66 of 1995 (LRA), and how those relate to the objectives of the Hairdressing Bargaining Council (HDBC) in the Western Cape is my own work, that it has not been submitted for any other degree or examination in any other university, and that all the sources I have used or quoted have been indicated and acknowledged by complete references.

Keith Barends



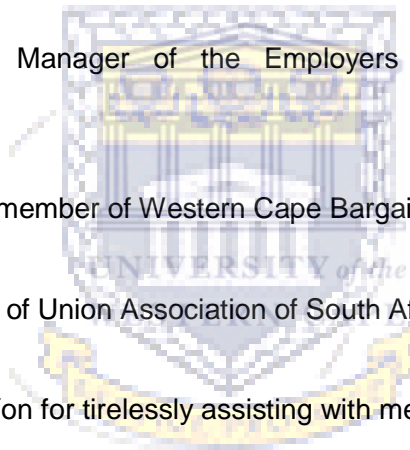
August 2010

Signed .....

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## ABSTRACT

Workplace forums make provision for the participation of workers in forums and committees. Such “officially constituted forums” may be formed where there are more than 100 employees. The objective and purpose of establishing such forums is to ensure communication and participation in the decision making process

The research question and title of this paper was premised in the light of altering the perception of using only sector based bargaining through bargaining councils to an adoption of bargaining enterprise level. By establishing workplace forums the specific matters for consultation in section 84 of the Act would be incorporated into the collective agreement, thereby extending the process of collective bargaining. The research undertaken assumes the lead hypotheses that trade unions and employers alike are not prepared to dispense with compromising their power to share it the enterprise level

The research conducted has been undertaken to engage the stakeholders to explore the possibility of establishing workplace forums. The gains of workplace forums with respect to sharing decision making is a distinct advantage both business and labour seemingly do not realise because of a continued resolve to negotiate conditions of service annually exclusively.

The research was undertaken by designing an interview questionnaire for distribution. The population for this research includes a cross section of employers from the industry in the Western Cape, parties to the Hairdressing Beauty and Cosmetology Bargaining Council, the Employers Organisation and the Employees Organisation or Trade Union. The criteria set for the questionnaire anticipate responses of respondents to the challenges before and after the possible incorporation of section 84 of the Act

Finally the research results indicate that the parties to a collective agreement in this industry still gravitate towards distributive collective bargaining by negotiating salaries, wages and conditions of employment in Bargaining Councils.

Workplace forums could create a platform for integrative bargaining. The incorporation of the specific matters for consultation in s84 of the Act will unlock the impasse created between sector and plant or enterprise level bargaining.

## CHAPTER 1

### INTRODUCTION AND PROBLEM FORMULATION

Section 23(5) of the Constitution of the Republic of South Africa guarantees the right of workers and employers to form trade unions and employers organisations and to engage in collective bargaining.

Collective bargaining before the introduction of the 1995 Act was reduced to recognition agreements between business and labour that aimed to address conditions of service salaries and rules relating to discipline and grievances. Recognition was granted solely on representivity of racial groups or specific technical requirements in the industry or sector.

Grogan states the following:

“Bargaining councils are the statutory successors to the industrial councils that existed under the 1956 LRA, restyled and revamped to cater for new potential membership and functions. The primary function of bargaining councils, like their predecessors, is to regulate relations between management and labour in the sectors of employment over which they have jurisdiction by concluding collective agreements, and to settle disputes between parties falling within their registered scope (Grogan, 2007:73)

Bargaining councils are statutory bodies established to enforce collective agreements concluded by the collective bargaining agents for the industry or sector.

In terms of section 213 of the LRA, collective agreements are concluded between registered trade unions and employers or employers’ organisations and deal with terms and conditions of employment or any other matter of mutual interest.

The terms and conditions of employment form the basis of negotiations between trade unions and employer organisations. Parties in the collective bargaining process have not seen the need to change the predetermined agenda of collective bargaining.



The legislators of the Act aimed to make meaningful changes to the 1956 LRA. Therefore, in the preamble of the Act they have purported to promote employee participation in decision-making through the establishment of, *inter alia*, workplace forums.

A work place forum may be established in terms of Section 80 of the Labour Relations Act. Section 79 of the LRA sets out four “general functions” of a workplace forum as follows:

“A *work-place forum* established in terms of this Chapter—

- (a) must seek to promote the interests of all *employees* in the *work-place*, whether or not they are *trade union* members;
- (b) must seek to enhance efficiency in the *work-place*;
- (c) is entitled to be consulted by the employer, with a view to reaching consensus about the matters referred to in [section 84](#); and
- (d) is entitled to participate in joint decision-making about the matters referred to in [section 86](#).”

The workplace forum is designed to provide non-adversarial opportunities for employers and employees to cooperate by means of consultation and joint decision-making on a range of workplace related issues excluding wage negotiations.

A workplace forum thus provides an opportunity for worker participation, which refers to:

- Consultation of employees or employee representatives on work related matters;
- Involvement of the employer and employee representatives in joint decision-making (co-determination) with management
- The disclosure of information for purposes of consultation or joint decision-making; or a combination of all three.

Consultation is the preferred method trade unions and employer organisations use when liaising with one another in these workplace forums.

Participation through consultation is a technique whereby workers -primarily through their representatives- periodically confer with their supervisors or more senior employer representatives. This is done in a structured manner by means of, for example, a committee, council or any other similar structure. In the United Kingdom joint consultation committees have for some time now been the preferred structure for representative participation. (Nel, 2005:327)

Section 84 is one of the provisions of the 1995 LRA which seeks to give effect to these changes. For the sake of convenience, the section is stipulated below.

**84. Specific matters for consultation.**—(1) Unless the matters for consultation are regulated by a *collective agreement* with the representative *trade union*, a work-place *forum* is entitled to be consulted by the employer about proposals relating to any of the following matters—

- (a) restructuring the *work-place*, including the introduction of new technology and new work methods;
- (b) changes in the organisation of work;
- (c) partial or total plant closures;
- (d) mergers and transfers of ownership in so far as they have an impact on the *employees*;
- (e) the *dismissal of employees* for reasons based on *operational requirements*;
- (f) exemptions from any *collective agreement* or any law;
- (g) job grading;
- (h) criteria for merit increases or the payment of discretionary bonuses;
- (i) education and training;
- (j)

product development plans; and

(k)

export promotion.

(2) A *bargaining council* may confer on a *work-place forum* the right to be consulted about additional matters in *work-places* that fall within the *registered scope* of the *bargaining council*.

(3) A representative *trade union* and an employer may conclude a *collective agreement* conferring on the *work-place forum* the right to be consulted about any additional matters in that *work-place*.

(4) Any other law may confer on a *work-place forum* the right to be consulted about any additional matters.

(5) Subject to any applicable occupational health and safety legislation, a representative *trade union* and an employer may agree—

(a)

that the employer must consult with the *work-place forum* with a view to initiating, developing, promoting, monitoring and reviewing measures to ensure health and safety at work;

(b)

that a meeting between the *work-place forum* and the employer constitutes a meeting of a health and safety committee required to be established in the *work-place* by that legislation; and

(c)

that one or more members of the *work-place forum* are health and safety representatives for the purposes of that legislation.

(6) For the purposes of *work-place forum* in the *public service*—

(a)

the *collective agreement* referred to in [subsection \(1\)](#) is a *collective agreement* concluded in a *bargaining council*;

(b)

a *bargaining council* may remove any matter from the list of matters referred to in [subsection \(1\)](#) in respect of *work-places* that fall within its *registered scope*; and

(c)

[subsection \(3\)](#) does not apply.

These matters mentioned above form the basis of “specific matters for consultation”. Trade unions and employers are sometimes reluctant to engage in this process. These specific matters of consultation

bring interesting issues on the table for discussion between employers and employees or even employers' organisations/trade unions.

Labour market policy emulated through the Act and the forums created by it, such as bargaining councils and workplace forums, have the following purposes, namely:

- In terms of Section 84 of the Act to promote collective bargaining at sectoral level as well as employee participation in decision making in the workplace. Powers conferred on Institutions such as Bargaining Councils confer on workplace forums additional matters for consultation.
- In terms of Section 27(1) bargaining councils were introduced to replace industrial councils under the old LRA. In terms of Section 7 of the Act, provisions have been made for industrial councils to be transformed into bargaining councils. Registered trade unions and registered employer organizations may establish bargaining council for a sector and area by adopting constitutions that meets the requirements of Section 30 of the Act and registering the bargaining council.
- In terms of Section 27(2) the state may be party to a bargaining council if it is an employer in the sector and area in respect of which the bargaining council is established.

## **1.1 BACKGROUND**

Bargaining Councils are recognized as primary promoters of communication within their respective sectors or industries. Parties in the Hairdressing industry have also, naturally, formed bargaining councils. One such bargaining council is the Bargaining Council for the Hairdressing Trade, Cape Peninsula. A constitution by the founding parties to the collective agreement in 2005 outlines the scope, functions and powers of the Council below. The founding parties to the council are-

- (a) The Employers' Organisation for Hairdressing, Cosmetology and Beauty Employers' (Western Cape Division)
- (b) The United Association of South Africa Personal Care Sector (Western Cape)

The council is represented in the Magisterial Districts of the Cape, Wynberg, Simonstown, Goodwood and Bellville, in those portions of the Magisterial Districts of Malmesbury and Stellenbosch.

The Council has the following functions and powers.<sup>1</sup>

- (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 of the Act;
- (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 provident, sick benefit and sick pay, 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;
- (j) to confer on workplace forums additional matters for consultation; and
- (k) to consider and deal with any other matter that affects the interests of the parties.

The Council is only able to exercise these powers and perform these functions within its registered scope. The Council for the Hairdressing Trade, Cape Peninsula is a registered bargaining council in terms of the Act

## 1.2 PROBLEM FORMULATION

South Africa has not seen remarkable success of work place forums since the inception of the LRA (Bendix, 2005).

The Council for the Hairdressing Trade Cape Peninsula is one of four regional bargaining councils representing provinces in South Africa. The annual review of conditions of service in these bargaining councils takes place annually to conclude collective agreements for the sector or area. The industry outlets are called salons or hairdressing studios. These outlets are established within near proximity of each other in the urban areas especially in the central business districts of cities and towns.

The research conducted in this paper has been undertaken to engage the stakeholders to explore the possibility of establishing workplace forums. The gains of workplace forums with respect to sharing

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<sup>1</sup> [Http://www.hcsbc.co.za/Section%20a-B-C/Functions\\_Of\\_The\\_Bargaining\\_Council.Htm](http://www.hcsbc.co.za/Section%20a-B-C/Functions_Of_The_Bargaining_Council.Htm)

decision making is a distinct advantage both business and labour seemingly do not realise because of a continued resolve to exclusively negotiate conditions of service on an annual basis.

The research questionnaire was designed to afford stakeholders an opportunity to review their stance on the existing method of collective bargaining through the determination of negotiating an annual collective agreement. The questions posed in it were expanded upon to provide comprehensive information on establishing workplace forums. The questionnaire was designed in such a way that it anticipated possible challenges that stakeholders may have with implementing workplace forums. The variables in the questions sought to anticipate a range of responses that dealt with aspects such as:

- obtaining mandates,
- getting feedback and re-negotiating mandates
- incorporation of matter in existing collective agreement
- possible problems and challenges
- proposed solutions
- adjustments
- possibilities of incorporation
- legislative requirements/challenges
- nature and extent of establishing work place forums

Permission to conduct the research was met with challenges by both the employers' organisation and the trade union of the Council. A request was made independently that the research paper should not be published. It is my understanding that the parties to the collective agreement are steeped in maintaining the status quo with respect to the negotiated conditions of service in the regional bargaining councils. The consultation of specific matters may be seen as bringing about changes to the way the areas operate with regard to jurisdictional boundaries which are still determined by magisterial boundaries. Owing to the fact that 317 salons in the relevant are not registered, the Council also has a problem with regulating these entities who are not parties to any collective agreement. The task to get these salons to comply may also be an inhibiting factor to integrate the provisions of section 84 of the Act because of the workload. There is also a high level of non-compliance in the sector, and the council often finds it challenging to maintain its representivity, especially given the reluctance of some salon owners who claim they need not pay bargaining levies in light of the high rate of non-compliance.

As part of the research methodology, questionnaires were distributed to a small sample population of registered salon owners. Upon enquiry of their willingness to participate, or on subsequent receipt of the questionnaire, many of these owners referred the situation to their employer's organisation. The employer's organisation initially instructed salon owners not to fill in the questionnaires because they were the mandated representative for all salon owners who were members. This led to a relatively small number being successfully distributed to office bearers and senior managers as a sample. The problem of this small sample was further exacerbated by regional office bearers of the trade union and the employers' organisation who were not able to speak confidently to the objectives of the HDBC.

Notwithstanding the abovementioned, the responses through the collection of the small sample have been tabulated to represent the industries stance on the establishment of workplace councils. The results purport to provide context to the recommendations made against the backdrop of the intentions of the legislator in determining an alternative to a conventional approach of collective bargaining through negotiating a collective agreement.

The extension of powers by the Council on workplace forums to consult on a range of matters referred to in Section 84 of the Act should act as a stimulus to establish workplace forums. The notion to influence the process of establishing workplace forums by undertaking the research was implemented to allow the Council to revisit its mandate of conventional bargaining.

The research attempted to measure the attitudes displayed by the stakeholders in their responses to the questionnaires to deny or confirm strongholds in maintaining the status quo of bargaining councils as opposed to establishing workplace forums.

### **1.3 MOTIVATION FOR THE STUDY**

The Council for the Hairdressing Trade of the Cape Peninsula was chosen to be the topic for the research to consider the provisions of section 84 of the Act to determine whether parties through plant level bargaining could establish workplace forums or at least incorporate specific matters for consultation in their collective agreement. The specific matters in section 84 of the Act may through the establishment of workplace forums assist the Council to achieve its objectives that relate to improved collective bargaining in the sector.

The Council's bargaining agents demonstrate a cordial relationship between themselves, evidenced by annual excursions undertaken together to benchmark the industry world-wide. These strong relationships could be utilised to leverage the latter to engage each other to change the position of not only concluding a collective agreement, but also to incorporate specific matters.

The choice of this topic for research may provide enlightenment and the possibility of improving communication between the stakeholders and ultimately improved employee relations at the Hairdressing Bargaining Council of the Western Cape.

Little is known about what the effect of consultation on specific matters could have on the improvement of employee relations if incorporated into the Bargaining council agreement. The purpose of this part of the research is to determine how far the employers, employees and unions as well as the Bargaining Council are willing to cooperate in incorporating the issues of Section 84 of the LRA in their Collective Agreement.

The data has been compiled and the outcomes of the research have been formulated in the research paper that is presented for review and comment. Qualitative research methods in the form of structured interviews have been utilized together with samples drawn from the employer population that is close to hand. Care was exercised not to make generalisations about the total population from the sample to protect the representivity of it. This type of sampling is specifically suited for this paper because it aims to pilot test what the effect on stakeholders would be if they would entertain the notion of incorporating specific matters in section 84 into collective agreements

#### **1.4 RESEARCH OBJECTIVES**

The effects of possible incorporation of specific matters contemplated were considered and the following research objectives were determined.

- To identify the matters stated in Section 84 of the LRA that can promote the objectives of the HDBC when incorporated into the existing Collective Agreements.
- To identify how the matters stated in Section 84 of the LRA can form part of the Collective Agreement of the HDBC.



- To identify and understand the possible problems of implementing the matters stated in section 84 of the LRA in the main agreement of the HDBC.
- To articulate the adjustments, if any of the sections of the LRA that could facilitate the matters tabled by section 84 of the LRA to be incorporated in collective agreements
- To examine the effect, if any, the incorporation of the issues of Section 84, adapted and incorporated into the Collective Agreement of the HDBC has on the promotion of the objectives of said Bargaining Council.

## 1.5 RESEARCH HYPOTHESES

Several research hypotheses were formulated under the assumption that collective bargaining is universally practiced throughout the world, especially in the context of negotiation aimed to address conditions of service salaries and rules relating to discipline and grievances. . Parties to this negotiation process use consultation with a view of reaching consensus on the conditions of service and rules relating to discipline and grievances.

The hypotheses that will guide the study are as follows:

*Hypothesis 1:* Employers will not want to incorporate the issues of Section 84 because this will diminish the prerogative to manage their businesses. The hypothesis was made on the basis that production factors and the subsequent decisions lie in the ambit of management prerogative. Employers may find it difficult therefore to dispense with the responsibility and accountability constructs when making decisions regarding production.

*Hypothesis 2:* Employers may be reluctant to engage in discussing matters of consultation identified in Section 84 of the LRA for possible inclusion in the existing collective agreement because this type of regulation may contribute to delayed decision making and lengthy consultation. The regulation to consult on specific matters may be difficult to conclude because of hypothesis 1 where a paradigm shift needs to be achieved. The possible operational difficulties associated with organising the workplace to suit workplace forums may pose further problems in this regard.

*Hypothesis 3:* Trade unions will not engage in the process of incorporating matters of consultation of section 84 because it diminishes their power base to negotiate on a centralized basis as opposed to plant negotiation. Trade unions have indicated the preference to bargain at centralised level. This is demonstrated in the low number of workplace forums being established. Trade unions assume their power from negotiating solid sectoral bargaining agreements at national level and chose not to engage in enterprise level negotiations.

*Hypothesis 4:* The Hairdressing Bargaining Council may consider that facilitating this intervention may be seen as premature and bring labour discord instead of improved and more mature employment relations. The relationship between the bargaining agents of the Council is stable and cordial. Parties have successfully negotiated conditions of service and dispute resolution mechanisms in the past and seemingly do not entertain any disputes unnecessarily.

## **1.6 LIMITATION OF THE STUDY**

The sample consists of stakeholders in business and labour within the sector of the hairdressing beauty and cosmetology industry in the Cape Peninsula. The Council comprises of 173 registered salons and studios in accordance with the constitution of the bargaining council and as regulated by section 30 of the Act. There are 317 non registered salons in the area. A total of 20 questionnaires, representing more than 10% of the registered salons in the industry were circulated to respondents to complete. Non-registered unions did not form part of the sample. There are 1750 employees under the jurisdiction of the Council. Due to a lack of response to the questionnaires, it was later determined that several respondents had simply referred the research compilation to their bargaining principals. In light of this, it was decided to also gauge the opinion of the union and employers' organisations. This was done through the use of telephonic interviews which followed the same structure and set of questions utilised in the original questionnaire. For ease of reference, copies of the questionnaire were also made available to union and employer organisation representatives.

The reluctance by salon owners to respond to the questionnaires distributed to them was determined as being the representative dependence of the owners on the employers' association. Two office bearers from the representative trade union at a regional level and another at national level participated in answering and providing responses to the set questionnaire. The employer association likewise also provided three office bearers, two at regional and another at national level, to participate

in responding to the questionnaire set. The result of the responses in relation to the registered salons is small given the constraints mentioned and the fact that only 10 respondents finally agreed to the interviews. Due to this, a decision to use an additional sampling method, namely convenience sampling, to expand the research, was made. This entailed interviewing the office bearers of the employer association and the representative trade union. Complete care and good reason to utilise convenience sampling as an additional sampling method was an imperative consideration in determining a representative sample. Due to the use of differing methods of research, this pilot study may incur a very small margin of error, which has been reflected as acceptable statistical deviations in the research results.

Notwithstanding the abovementioned, it should still be stated that the sample may be viewed as representative of the industry given the fact that respondents to the questionnaire represent the sector at both enterprise and national level. Furthermore, it is representative because of its cross-sectional nature, and includes all of the stakeholders in the collective bargaining process. Owing to the nature of the sample, the results may not be representative of the industry in the country as a whole, considering that the research undertaken was mostly in a regional Council based context. The findings and the conclusions will therefore only be applicable to this specific field sector within the organisation. However, some of the strategies could be relevant to the rest of the industry.

Given the abovementioned circumstances, it is clear that the attempted qualitative research was hampered by logistical, geographical and attitudinal problems, which admittedly may affect the reliability thereof. With reference to the small size of the population in question, the qualitative research component of this paper should, in any case, merely be seen as a pilot study to indicate the acceptability or probability of the hypotheses stated and the research presented in this paper as a whole.

## CHAPTER 2

### LITERATURE REVIEW

#### 2.1 INTRODUCTION

The research question and title of this paper was premised in the light of altering the perception of using only sector based bargaining through bargaining councils to a possible adoption of bargaining at a shop floor level. By establishing workplace forums the specific matters for consultation in section 84 of the Act could be incorporated into the collective agreement, thereby extending the process of collective bargaining.

The literature reviewed is contextualised in such a way as to provide a proper overview to the collective bargaining in a contemporary manner.

#### 2.2 DEFINITION/DISCUSSION OF KEY TERMS AND PHRASES

The following definitions are defined to facilitate the understanding of the various terminologies used within this study.

##### **Bargaining Councils**

Grogan states the following:

“Bargaining councils are the statutory successors to the industrial councils that existed under the 1956 LRA, restyled and revamped to cater for new potential membership and functions. The primary function of bargaining councils, like their predecessors, is to regulate relations between management and labour in the sectors of employment over which they have jurisdiction by concluding collective agreements, and to settle disputes between parties falling within their registered scope.”

(Grogan, 2009: 335)

Bargaining council means a bargaining council referred to in section 27 and includes in relation to the public service, the bargaining councils referred to in section 35 of the LRA below.

## **Collective agreements**

According to the LRA of 1995, a collective agreement is defined as a written agreement concerning terms and conditions of employment or any other matter of mutual interest concluded by one or more registered trade unions on the one hand, and one or more employers or employer's associations on the other hand. (Nel, 2005)

- A collective agreement is where the trade unions reach agreement with their members on the new terms and conditions on behalf of all employees covered by the pay and grading review.
- a negotiated agreement, which is not enforceable at law, between an employer and employees' representatives, covering rates of pay or terms and conditions of employment, or both.

*(Collins English Dictionary – Complete and Unabridged © HarperCollins Publishers 2003)*

In terms of section 213 of the LRA, collective agreements are concluded between registered trade unions and employers or employers' organisations and deal with terms and conditions of employment or any other matter of mutual interest.

## **.Consultation**

“A joint, meaningful, consensus-seeking exercise” (Pillar, 2005)

According to *Burton's Legal Thesaurus*:

- In practice consultation refers to a conference between the counsel or attorneys engaged on the same side of a cause, for the purpose of examining their case, arranging their proofs, and removing any difficulties there may be in their way.
- This should be had sufficiently early to enable the counsel to obtain an amendment of the pleadings, or further evidence. At these consultations the exact course to be taken by the plaintiff in exhibiting his proofs should be adopted, in consultation, by the plaintiff's counsel. In a consultation on a defendant's case, it is important to ascertain the statement of the defence, and the evidence which may be depended upon to support it; to arrange the exact course of defence, and to determine on the cross-examination of the plaintiff's witnesses; and, above all, whether or not evidence shall be given on the part of the defendant, or withheld, so as to avoid a reply on the part of the plaintiff. The wishes of the client should, in all cases, be consulted.

(Burton's Legal Thesaurus, 4E. Copyrighted in 2007 by William C. Burton. Used with permission of The McGraw-Hill Companies, Inc.)

Participation through consultation is a technique whereby workers-primarily through their representatives-periodically confer with their supervisors or more senior employer representatives. This is done in a structured manner by means of, for example, a committee, council or any other similar structure. In the United Kingdom joint consultation committees have for some time now been the preferred structure for representative participation. (Nel, 2005)

### **Employers Organisations**

- An employers' organization, employers' association or employers' federation is an association of employers. A trade union, which organizes employees, is the opposite of an employers' organization.
- Body of employers, usually from the same sector of the economy, associated to further the interests of member companies by conducting negotiations with trade unions, providing advice, making representations to other bodies, etc.

(Collins English Dictionary – Complete and Unabridged © HarperCollins Publishers 2003)

In terms of section 213 of the LRA “employers' organisation” means any number of employers associated together for the purpose, whether by itself or with other purposes, of regulating relations between employers and employees or trade unions.

Employer organizations are defined as follows by Barker and Holtzhausen (1996:49) “An organization that voluntarily links together with any number of employers, often in a particular industry and\ or region. One of the primary aims of such an organization is to regulate relations between employers and employee organization”.

### **Trade Union**

In terms of Section 213 of the Act, a “trade union” means an association of employees whose principal purpose is to regulate relations between employees and employers, including any employers' organisations.

A trade union is regarded as a continuing permanent organization created by the workers to protect themselves at their work, to improve the conditions of their work through collective bargaining, to seek

to better the conditions of their lives, and to provide a means of expression for the workers' views of matter of society. (Nel, 2005)

### **Workplace Forums**

A work place forum may be established in terms of Section 80 of the Labour Relations Act. As already stated above, the LRA also sets out "general functions" of a workplace forum.

Workplace forums are primarily designed to be consultative bodies. Viewed from a macro-perspective, however, the LRA dictates that employers must consult on certain issues and engage in joint decision making on other issues.

## **2.3 COLLECTIVE BARGAINING IN A GLOBALISED CONTEXT**

South Africa after being accepted into the international community after its liberation and the apartheid era in 1994 slowly came back into the fold of global markets and is now a country with the ability to optimise resources relating to production internationally. The bargaining powers of workers are often exploited by companies relocating and forcing workers to be subjected to factors beyond their control as cited below.

One of the factors driving globalisation and the liberalisation and mobility of capital has fundamentally changed the bargaining power of firms *vis a vis* governments and workers. The implicit and sometimes explicit threat of relocation and the transnational nature of firms in some sectors have changed the political economy of industrial relations, weakening the bargaining position of workers. Some governments, keen to attract or retain investment (both foreign and domestic) offer discounts on labour protection, further undermining the ability of workers to bargain over decent work. (Godfrey, Maree, Du Doit, Theron, 2010:99).

The observation from the above report epitomises the extent governments would project themselves to pursue labour market flexibility with respect to investment and at the cost of removing the bargaining power of workers. The latter occurs where strong labour law dispensations have been negotiated and legislated.

## **2.4 OVERVIEW OF COLLECTIVE BARGAINING**



The term bargaining level describes whether bargaining takes place between unions and individual employers (plant-level bargaining) or between one or more unions and a group of employers from a particular industry or occupation (sector level or centralised bargaining). (Grogan, 313)

Bargaining takes place within a local and global context and on different levels. The research review undertaken will now provide a brief overview of the stated areas

### **International Collective Bargaining**

The right to collective bargaining has been acknowledged internationally. The International Labour Organisation Convention number 98, Right to Organise and Collective Bargaining of 1949 recognises the right, stating that methods would be undertaken to encourage and promote the full development and utilisation of machinery for voluntary negotiation between employers or employers organisations and trade unions with a view to regulating terms and conditions of employment by means of collective agreements. South Africa (a member country of the ILO) has given effect to this convention by protecting this right in the South African Constitution (s23(5)), as well as by providing extensively for collective bargaining through labour legislation. (Nel, Kirsten, Swanepoel, Erasmus & Poisat, 2008:185).

In collective bargaining the parties, through their respective representatives, negotiate about issues related to or impacting on the employment relationship in its organizational and broader societal context, and through the use of power and communication processes they conclude collective agreements to regulate their relationships and balance their partly individual and partly common interest and objectives. (Nel, 2005)

According to West's Encyclopaedia of American Law, collective bargaining is:

- "A method of negotiation in which employees use authorized union representatives to assist them
- Refers to a process of negotiation between representatives of workers (usually labour union officials) and management to determine the conditions of employment. The agreement reached may cover not only wages but hiring practices, layoffs, promotions, working conditions and hours, and benefit programs."
- "Good-faith process between an organization's management and a trade union representing its employees, for negotiating wages, working hours, working conditions, and



other matters of mutual interest. To the management, this process presents (usually) one set of people to negotiate with; to the employees, it gives greatly enhanced bargaining-power. Collective bargaining is the fundamental principle on which the trade union system is based.”

*(West's Encyclopaedia of American Law, published by Thompson Gale in 2005)*

As a member country to the ILO, South Africa, by giving effect to the convention, has also legislated the intentions of the ILO in the laws mentioned above. The convention also makes a powerful statement in stating that the full development and utilisation of machinery for voluntary negotiation should be used by the collective bargaining parties. The effect of the latter is that there is not only a legislative but also a voluntary obligation on employers or employers' organisations and trade unions to develop and utilise the machinery designed to bargain collectively namely through Bargaining Councils and Workplace Forums.

**In the Canadian Supreme Court case of *Delisle v Canada (Deputy Attorney General)* [1999] 2 SCR 989, Judge Bastarach states:**

“Labour law is a fundamentally important as well as extremely sensitive subject. It is based upon a political and economic compromise between organised labour a very powerful socio-economic force on the one hand, and the employees of labour an equally powerful socio-economic force on the other. The balance between the two forces is delicate and the public at large depends for its security and welfare upon the maintenance of that balance .One group concedes certain interests in exchange for concessions from the other. There is clearly no correct balance which may be struck giving permanent satisfaction to the two groups as securing the public interest .The whole process is inherently dynamic and unstable. Care must be taken then in considering whether the constitutional protection should be given to one aspect of this dynamic and evolving process while leaving the others subject to the social pressures of the day.”

When evaluating the above judgment and comparing it to the South African context, more specifically in relation to the Constitution with respect to section 23, and which is further regulated in the LRA, no less than three objectives surface that are embedded in our own labour law :

- To give effect to section 23 (5) of the constitution which states that every trade union, every employers organisation and employer has the right to engage in collective bargaining. National legislation may be enacted to regulate collective bargaining.
- To regulate organisational rights.
- To promote and facilitate collective bargaining at the workplace and at sectoral level.

It is with the third point that the review looks to the forums that have been legislated to give effect to collective bargaining in South Africa. It is encouraging to note the legal protections in the abbreviated judgment recognise the rights of the parties in collective bargaining to be equal.

### **Collective Bargaining in South Africa**

South Africa has a lengthy history in the collective bargaining arena. The history is recorded in labour law dispensation informed by the establishment of forums such as Industrial and Bargaining Councils and Workplace Forums.

An important aim of the LRA was to reduce the intense adversarialism that had characterised relations throughout the 1980s and early 1990s, while also promoting greater cooperation between employers and workers on the shop floor. This was seen as being important in the context of negotiating the restructuring of firms that would result from trade liberalisation and the pressures of global market forces. To manage the process, the drafters of the Act argued, a second channel of engagement between employers and workers was needed alongside the traditional (adversarial) avenue of collective bargaining. The result was the provision of workplace forums in chapter V of the Act. Given the emphasis on the centralised bargaining, the implication that distributive bargaining would shift (largely) to the industry level while workplace forums would deal with issues on the shop floor that fostered a problem solving rather than an adversarial approach. Enterprise level bargaining was, however, not ruled out. (Godfrey, et al, 2010:99).

A makeshift approach was introduced to deal with the removal of adversarial relations. The establishment of workplace forums was meant to deal with issues at an enterprise level.

The establishment of the system of workplace forums is an innovating aspect of the new labour law dispensation and a concrete manifestation of the concept of workplace democracy. In terms of this

system, employees obtain joint consultative powers in the management of the undertaking in regard to matters concerning them. In South Africa the concept is relatively new, but the concept of works councils is well known internationally. (Godfrey, et al, 2010:99). The consultative powers assumed by employees through the establishment of workplace forums directly participate in the decisions of an organisation

The right of workplace forums to be consulted by the employer is conferred and regulated by section 84. This provision obliges the employer to consult the workplace forum on a wide range of matters.

A glance at these subjects, which can be extended by agreement, on direction from a bargaining council or by law, indicates that the purpose of consultation is to provide the workforce with the opportunity to be informed about, and make suggestions and representations regarding a number of issues formerly falling within managerial prerogative.

(Grogan, 2007:8)

In terms of section 80(2) of the Act rights are established through the regulation of a workplace forum, but can only be exercised by a representative trade union. There is also an obligatory expectation to consult on the matters promulgated in section 84 of the Act as stipulated. Proposals can only be implemented if the employer has consulted with a view of reaching consensus on a matter referred to workplace forum that relates to section 84 of the Act.

In terms of the LRA, an employer may only implement a proposal in respect of any matter referred to in Section 84(1) of the Act, after the employer has *consulted* the workplace forum and actually attempted to *reach consensus* with it. The employer must allow the forum the opportunity to make presentations and put forward alternative proposals.

Those issues that are listed in the Act as being subject to a process of joint consultation are therefore no longer to be considered part of the “holy management terrain” as used to be the case during the years of less pro-labour governments in South Africa. (Nel, Kirsten, Swanepoel, Erasmus, Poisat, 2008:335)

The stated specific matters for consultation with employers seemingly do not feature on representative trade unions agendas when determining strategies to bargain collectively. The traditional salary and

wage demands inevitably make up the items of annual negotiations between bargaining agents at Council level and specific matters for consultation as envisaged by the act seldom feature.

Sectoral bargaining is equally essential to the system in order to arrive at agreements that can operationalise national objectives at the industry level. But sectoral bargaining, too, is not viable on its own in global labour markets characterised by transnational dimensions as well by the need for micro-regulation at enterprise and workplace level. This is so irrespective of whether sectoral bargaining takes place within councils or within non-statutory structures.

The development of bargaining at enterprise and workplace level within the framework of sectoral agreements is therefore an essential part of a well functioning collective bargaining system. It is at this level that agreements can fine tune the sectoral framework to the needs of specific workplaces. At the same time bargaining at this level allows for the maximum involvement of workers in the bargaining process. (Godfrey, et al, 2010:241)

## **2.5 CONCLUSION**

The literature reviewed states in the main that collective bargaining is structured around the promulgation of labour law through the provision of collective agreements by established Bargaining Councils. The bargaining powers of agents determine the outcomes and determine conditions of service in these Councils. Workplace forums have provided another level of bargaining at enterprise level but have seldom been established by representative trade unions at shop floor level. The quest for countries to pursue labour market flexibility to maximise their domestic and foreign investment places workers at risk and interferes with their ability to bargain for a better dispensation. Representative trade unions, though, can establish workplace forums that will obligate employers to consult at enterprise level and attempt to reach consensus on a range of specific matters in s84 of the Act. The consultative process permits bargaining parties to influence decision making over a number of directives that were clearly in the prerogative of management. Collective agreements technically make provision for sector or industry collective bargaining .Bargaining at enterprise level through workplace forums was legislated to prevent the adversarialism anticipated at enterprise level but requires an approach that will give representative trade unions an opportunity incorporate section 84 matters into sectoral agreements. The latter requires trade unions to articulate an incorporation of section 84 matter for consultation into existing collective agreements and align these matters to specific enterprise level.

## CHAPTER 3

### RESEARCH DESIGN AND METHODOLOGY

#### INTRODUCTION

This chapter provides an outline of the research methodology used in the investigation of exploring the possibility of establishing workplace forums. The research is intended to gauge the willingness of the stakeholders in the Hairdressing Beauty and Cosmetology industry to consult with a view to incorporating specific matters, as outlined in section 84 of the Labour Relations act no 66 of 1995, into their present collective agreement. The selection of the sample, measuring instruments, procedure for data collection and the statistical techniques utilized relating to the research are delineated.

#### 3.1 SELECTION OF THE SAMPLE

Huysamen (1994:38) defines a population as encompassing “the total collection of all members, cases or elements about which the researcher wishes to draw conclusions.” The population for this research includes a cross section of employers from the industry in the Western Cape, parties to the Hairdressing Beauty and Cosmetology Bargaining Council, the Employers Organisation and the Employees Organisation or Trade Union.

According to Sekaran (2003:266), sampling is “the process of selecting a sufficient number of elements from the population, so that a study of the sample and an understanding of its properties or characteristics would make it possible for us to generalize such properties or characteristics to the population elements.” Accordingly, the sample consists of all the stakeholders in the collective bargaining process of consultation that has a direct impact on the research hypotheses.

##### 3.1.1 Sample Population

The Council comprises of 173 registered salons and studios in accordance with the constitution of the bargaining council and as regulated by section 30 of the Act. There are 317 non registered salons in the area. Questionnaires were circulated to a total of 20 respondents, being slightly more than 10% of the sample population, to complete. Due to a lack of response determined by follow ups to the

respondents, it was decided to further gauge the responses through telephonic interviews to salon owners, employer organisation officials and trade union office bearers. The result of the responses in relation to the registered salons is small given the constraints already mentioned and only 10 respondents ultimately agreed to the interviews. Owing to the nature of the sample the results may not be representative of the industry in the rest of the country. The findings and the conclusions will therefore only be applicable to this specific field sector within the organisation. However, some of the strategies that emerge out of the results of the research could be relevant to the rest of the industry.

A population refers to the entire group of people from which data can be sourced and investigated and from which the researcher can make inferences (Cooper & Schindler 2001; Saunders, Lewis & Thornhill, 2000). In this study the population consisted of regional stakeholders in the collective bargaining process and a representative number of employers or salon owners in the industry.

Notwithstanding the shortcomings involved, a non probability sampling design, namely, convenience sampling was used to draw the sample. Convenience sampling involves collecting information from members of the population who are most easily accessible and conveniently available to provide the required information (Kerlinger 1986). The rationale for using this method is that it is convenient and cost effective (Neuman 1997; Terreblanche & Durrheim 1999). The disadvantage, however, is that the properties of the sample are likely to under- or overestimate the true population values (Terreblanche & Durrheim 1999). Moreover, the sample may misrepresent the population and the results cannot easily and accurately be generalized (Newman 1997; Sekaram 2000). The data was gathered by means of self-report questionnaires. Rosnow and Rosenthal (1996) have outlined the advantages of using questionnaires as follows.

- It can be administered to large number of individuals.
- The method also allows anonymity and
- It is relatively more economical to use.

### **3.1.2 Procedure**

A cross-sectional research method, based on the survey approach was utilized. Ten employers out of a total population of 173 salons and studios completed the self evaluation questionnaire. The number of employees in each of these salons ranged between two to ten and the salons chosen were spread over an area of 70 kilometres

Cover letters, affixed to the questionnaire, explained the nature of the study, as well as assuring respondents of the confidentiality of any information provided. Respondents were also provided with detailed instructions as to how the questionnaires were to be completed and returned. The rationale behind providing clear instructions and assuring confidentiality of information is based on the fact that this significantly reduces the likelihood of obtaining biased responses (Sekaran 2003).

Self-administered questionnaires were returned after two weeks. This method was considered the most efficient means of data collection since the sample was geographically widely dispersed. The Council has jurisdiction in the magisterial districts of the Cape, Wynberg, Simonstown, Goodwood and Bellville and in certain portions of the magisterial districts of Malmesbury and Stellenbosch

The telephonic interviews conducted with the respondents were structured to provide a brief background to Workplace forums. The same questions were used in all of the interviews to maintain consistency. The procedure to conduct the interviews involved gauging the responses to the 51 questions from both the employer organisations and trade union representatives. The interviews were undertaken after the distributed questionnaires were gathered. The responses were recorded, noted down in a manner similar to the standard responses found in the questionnaire, and were carefully tabulated and added to the responses of the questionnaires.

Because of the nature of the parties interviewed, it was observed that both the trade union and employer representatives had divergent views about the incorporating specific matters in section 84 into the industry collective agreement. Their responses were influenced from a geographical perspective which either favoured enterprise or centralised bargaining. The positions by the respondents demonstrated positional bargaining to the extent of the official position of their federations on the research question.

Controls to minimise the margin of error in convenience sampling was used to make the sample more representative. Care was exercised by being mindful in research design that the anticipated responses chosen would at another time yield a similar result with the same population. The responses were factored into the research to make sure the control will not reflect a divergence that will distort the result or findings. Respondents to the telephonic interviews were weighted in relation to the constituencies and federations which they represented. When applying these measures, the factors allowed for a statistical deviation, which was generally no more than 1%. Given the fact that the



answers to an interview can often be more nuanced, this explains why, despite the generally small number of respondents, the tabulated results may deviate by a number of percentage points here and there.

### 3.1.3 Statistical Methods

For the purposes of testing the research hypotheses, a number of statistical techniques were employed. These included both descriptive and inferential statistical techniques. A battery of 51 questions was set to evaluate the responses of employers associations and trade unions. The questionnaire follows a systems approach identifying inputs, throughputs and outputs of the collective bargain process against a backdrop that a collective agreement is already in place in the Council. The challenges before and after the possible incorporation of section 84 of the Act has been worked into the questions to anticipate responses of respondents.

The questionnaire was designed outlining the following constructs, evaluations and responses expected and can be summarised under the following heading.

### 3.1.4 Questionnaire design

- **Obtaining Mandates** (Questions 1-11 were designed to test whether employers were obtaining and providing mandates in the negotiation process of the Hairdressing Beauty and Cosmetology Bargaining Council from their constituencies). This section of the questionnaire was designed to evaluate the responses by the stakeholders to the objectives of the Act with respect to collective bargaining. The section also evaluated the responses to the preferred bargaining structures if any and whether mandates were important to the stakeholders in the collective bargaining process.

**Feedback and Renegotiating Mandates** (Questions 12 & 13 were designed to evaluate the ability of employers to re-engage in the negotiating process). This part of the questionnaire set questions to evaluate responses of collective bargaining parties with respect to whether they were prepared to revise their positions of power regarding matters of interest

- **Incorporation of matters (s84) of the LRA** into the Collective Agreement. A number of questions, namely numbers 14-18, represented requests to determine whether employers and trade unions were amenable to incorporating the derivatives of section 84 into the existing collective agreement. The responses of the section expected bargaining parties to indicate



whether they were ready to extend the ambit of collective bargaining by following a more integrative approach to collective bargaining by incorporating specific matters for consultation into the existing collective agreement of the Council.

- **Problems/Challenges** Questions 19-21 were designed to anticipate what kind of challenges would be experienced in the transition period (if any) to possibly incorporating workplace forums into an existing or new collective agreement. The section identified questions that could possibly affect a transition if specific matters identified were incorporated into the council agreement that were in the prerogative of employers in their decision making process.
- **Solutions** Questions 22-26 were set to possibly anticipate which solutions to the challenges in questions 19-21 could arise and be possibly implemented. The questions set were meant to evaluate problems / a challenge in the context of transition .The legal framework was anticipated to be the guiding factor to deal with the possible challenges identified.
- **Adjustments** The design of questions 27-28 looked at parallels in other sectors and at the international environment. Questions were designed to evaluate issues that were key to making the necessary adjustments.
- **Incorporation possible?** Questions 29-41 presuppose the hypothesis of incorporating specific matters of consultation into an existing collective agreement. The questions in this section form the bulk of the questionnaire. The respondents are directly asked if they would incorporate the specific matters in section 84 of the Act in the collective agreement determined in the Council.
- **Legislative Requirements** A set of questions namely 42 -51 anticipates the difficulties (if any) in the transition to integrate workplace forums into the existing relationship of collective bargaining governed by a Bargaining Council. The expanded and last section concentrates on allowing respondents to expand in more detail to the identify their concerns and difficulties with enacting changes though a legislative process and to articulate dispute resolutions mechanisms they may want to introduce or identify challenges in this regard.

### 3.1.5 Criteria to determine questions

The questionnaires were designed from variables in the collective bargaining process of stakeholders engaged in negotiations at national level of the HDBC .The questions were set to gauge the responses of the stakeholders with respect to their preferences at either centralized or decentralized or plant level bargaining .

The question also relates to the provisions of section 84 of the Act and evaluates the collective bargaining agents in the Hairdressing Beauty and Cosmetology's response to joint-decision making in workplace forums.

Questions were also set to evaluate the response with respect to whether employers had anticipated initiating workplace forums in the industry. Employers were asked to commit an answer to whether they would negotiate certain rights acquired through the negotiation process as possible trade-off for the inclusion of workplace forums in the existing collective agreement.

The provisions relating to the ILO conventions on collective bargaining formed the basis of questioning to test the employers responses to international collective bargaining benchmarking. Employers were tested to see whether they would incorporate the specific matters in s84 of the Act, in the event of the formation of workplace forums, they would dispense with their prerogative to manage. Employers by answering the questionnaire were expected to commit a response to their preference of distributive and integrative bargaining at plant level.

The hypotheses guided the formulation of questions that related to consultation, expecting employers to commit a response to their prerogative to manage their businesses. A second set of questions aimed at measuring the employer's reluctance to consult extensively in making decisions, begged the response that their decision making would be retarded or delayed. Other questions tested the employers' responses to whether the imposition of workplace forums would bring about discord or cause impaired relationships.

Questions were drafted to give employers an opportunity to answer on a range of issues that relate to labour market flexibility, automation technological changes, restructuring, mergers exemptions from collective agreements and other important strategic decisions. The rationale for these questions were

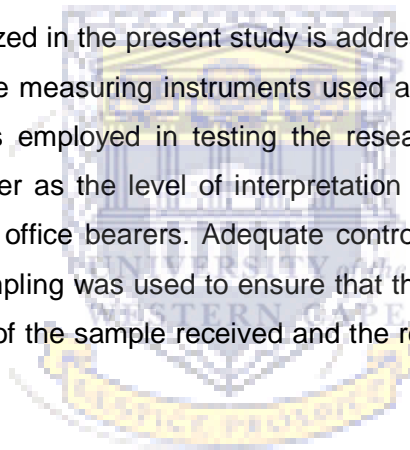
centered around the possible acceptance that these variables fall in the ambit of decision making that is the prerogative of management.

### **3.1.6 Descriptive Statistics**

Descriptive statistics describe the phenomena of interest (Sekaran 2003) and is used to analyse data for classifying and summarizing numerical data. It includes the analysis of data using frequencies, dispersions of dependent and independent variables and measures of central tendency and variability and to obtain a feel for the data (Sekaran 2003). The results of the biographical questionnaire will be based on the frequencies and percentages obtained based on the sample characteristics.

## **3.2 CONCLUSION**

The research methodology utilized in the present study is addressed in this chapter. More specifically, the selection of the sample, the measuring instruments used and the rationale for their inclusion, as well as the statistical methods employed in testing the research hypotheses, are discussed. The anticipated responses may differ as the level of interpretation of these mandates varies from salon owners and local and national office bearers. Adequate controls were implemented in the research design where convenience sampling was used to ensure that the results were more representative of the population. The limitations of the sample received and the representivity of it has been detailed in Chapter 1.



## CHAPTER 4

### PRESENTATION OF RESULTS

#### INTRODUCTION

In this chapter the results of the analysis are reported and presented and will proceed to analyse the descriptive statistics of the variables under consideration.

This chapter will outline the results obtained in the study and will present a comprehensive discussion of these results. The descriptive results computed in the study are presented in an outline of the characteristics of the sample with regards to variables included in the research study, followed by the analyses of the constructs relevant to the study, i.e. incorporating matters of consultation into the present collective agreement of the HDBC. The constructs relevant to the study will be analysed and presented and conclusions will be drawn on the basis of the result obtained.

The preceding chapters serve as a background against which contents of this chapter will be presented and interpreted.

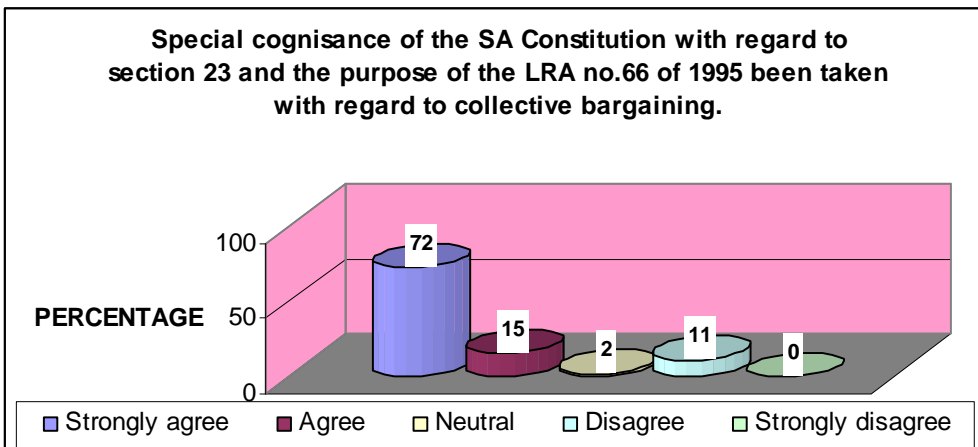
#### 4.1 DESCRIPTIVE STATISTICS

Descriptive statistics were calculated for the sample that was provided to nominated stakeholders in the industry. Data emanating from variables included in this study, were collected, summarised, observed and interpreted.

#### 4.2 RESULTS OF THE QUESTIONNAIRE

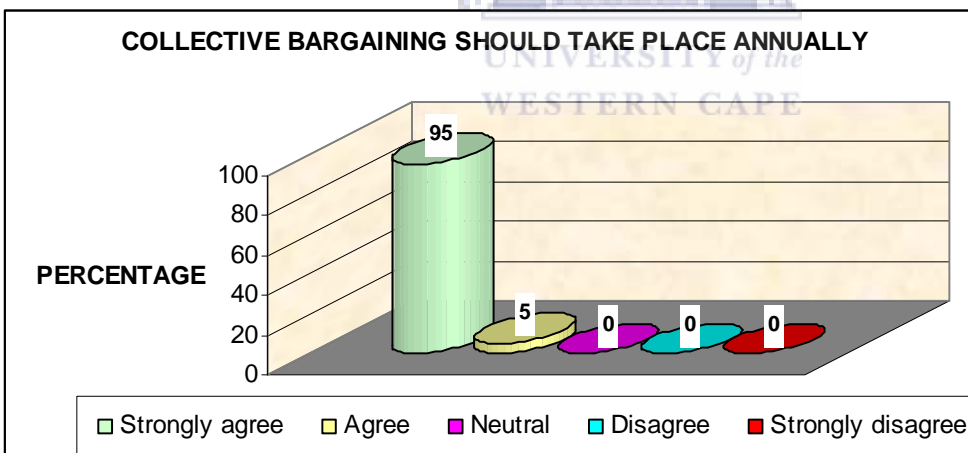
This section outlines the descriptive results on the basis of variables included in the questionnaire. The variables that will receive attention are consultation, mandates, workplace forums, centralized bargaining, plant bargaining and specific matters for consultation and communication. The results of the parties who partook in the qualitative research are graphically illustrated below.

**Figure 1**



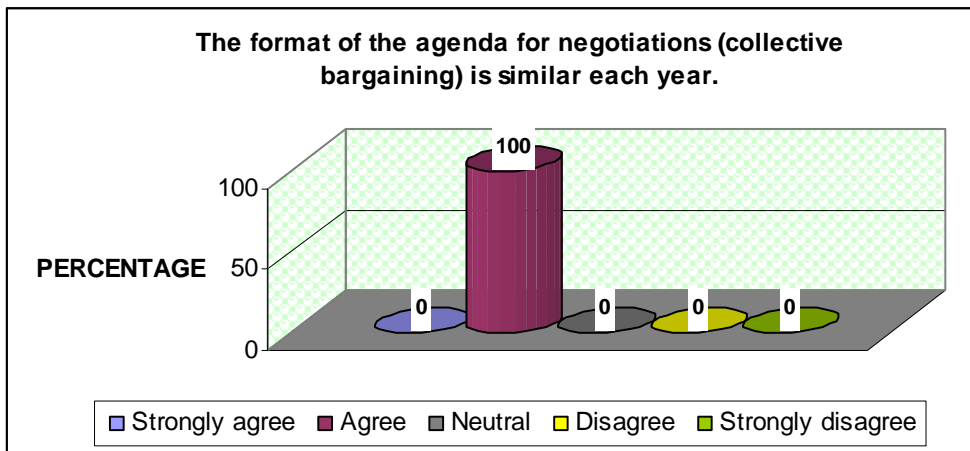
The respondents have overwhelmingly (87%) responded by agreeing that the provisions of the LRA guides the process of bargaining collectively in the industry. Only 11% have indicated that the process of collective bargaining was not as a result of an agreed labour dispensation (Figure 1).

**Figure 2**



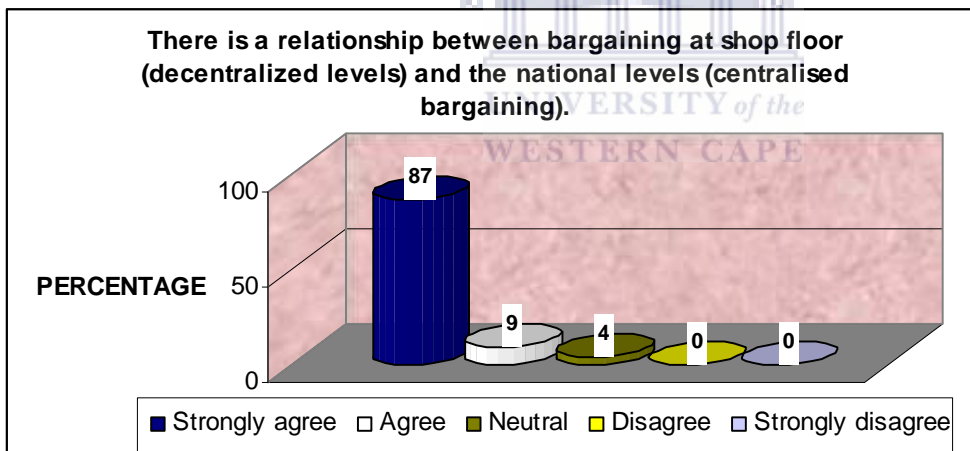
The results indicate that the respondents are comfortable that the process of collective bargaining should take place annually. The indicators that support this submission is illustrated in the descriptive results of n=95%, strongly agree and n= 5% agree) (Figure 2).

**Figure 3**



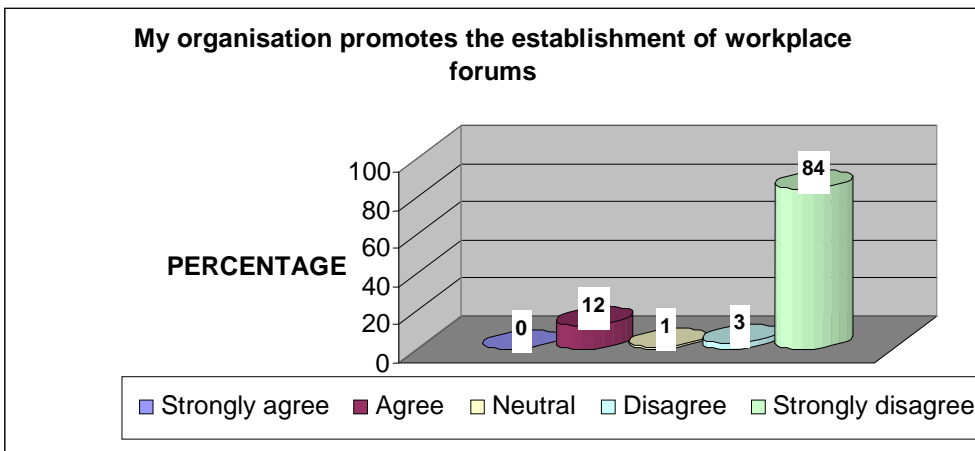
The respondents have indicated through the result that n=100% that the agenda items at annual negotiations have consistently been the same each year (Figure 3).

**Figure 4**



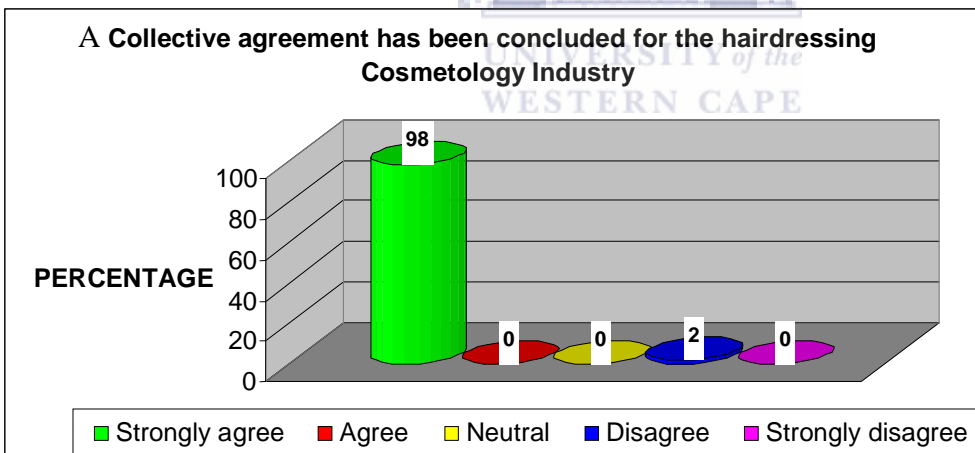
The descriptive results qualify the assessment of the respondents that they strongly agree n=87%, and n=9% agree that a relationship exists between decentralised and centralised bargaining (Figure 4).

**Figure 5**



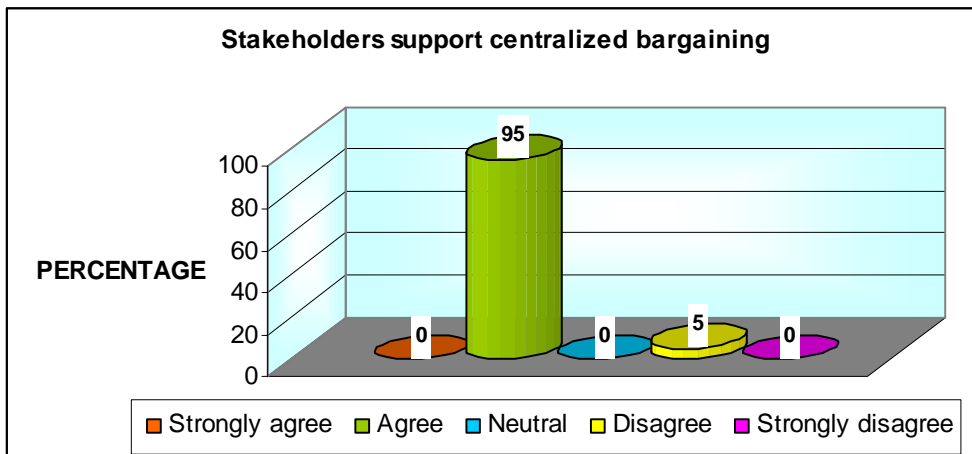
All the stakeholders in the collective bargaining process who surveyed this questionnaire have strongly disagreed,  $n=84\%$  and  $n=3\%$ . The overwhelming majority disagree their organisation's environment promotes the establishment of workplace forums. Only  $n=12\%$  agree that the establishment of workplace forums are promoted (Figure 5).

**Figure 6**



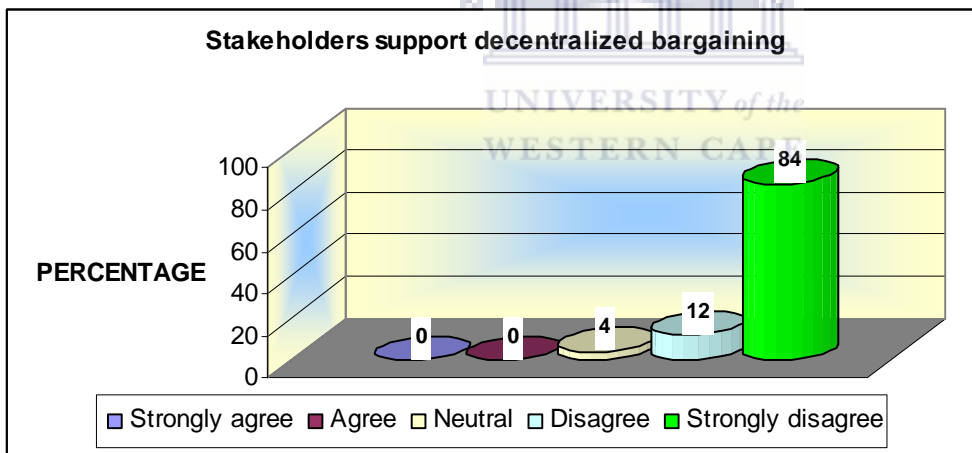
The respondents have indicated through the result,  $n= 98\%$  that they have concluded a collective agreement in the Council. (Figure 6).

**Figure 7**



The respondents in the descriptive results indicate (n=95%) overwhelming support for centralised bargaining for the industry (Figure 7).

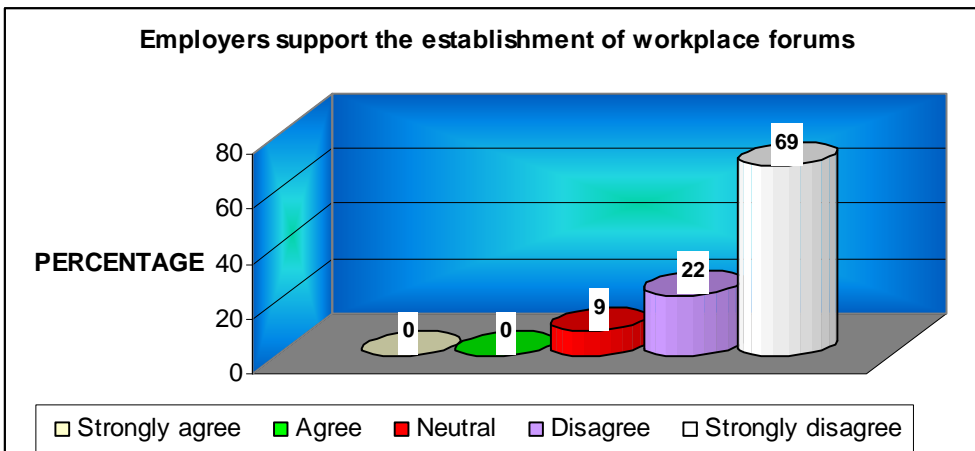
**Figure 8**



Respondents of the questionnaire strongly disagree (n=84% and n=12 disagree) with a view to supporting decentralised bargaining (Figure 8).

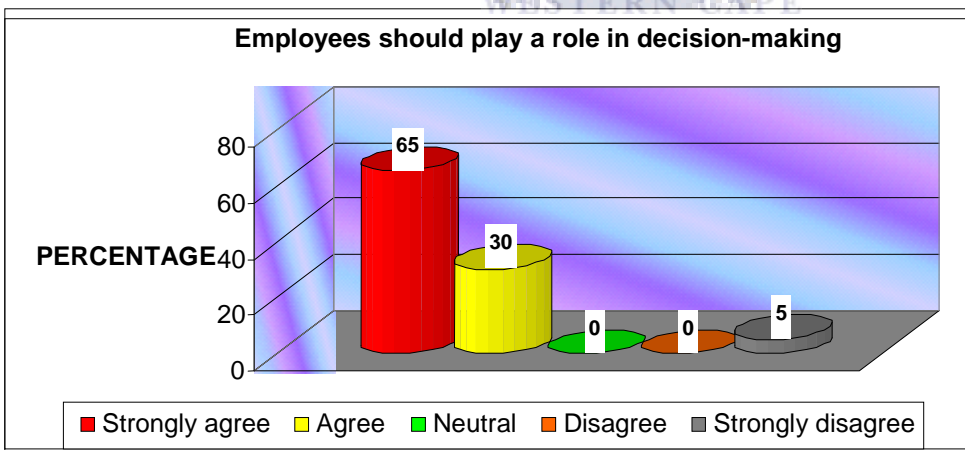


**Figure 9**



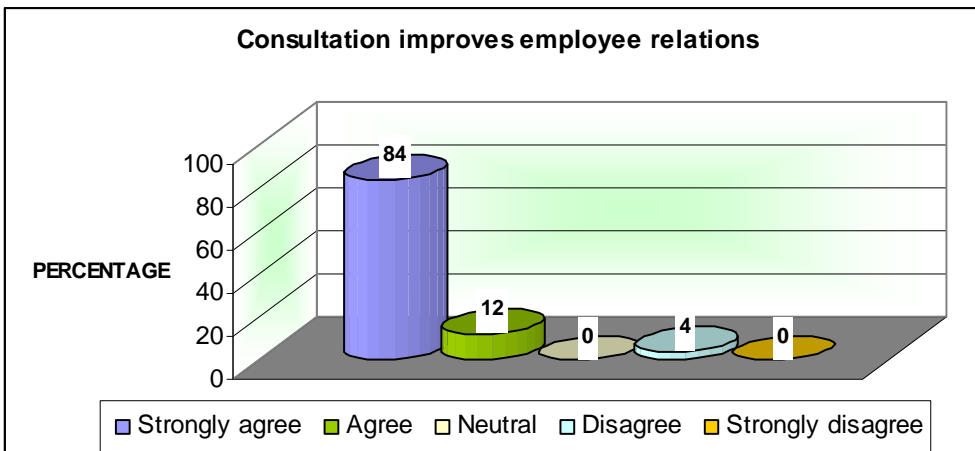
Of the respondents, the majority of employers strongly disagree (n=69% and n=22% agree) to support the establishment of workplace forums (Figure 9) The responses indicate that they would not support the establishment of workplace forums and based on the responses indicate that they are not willing to share their management prerogative in decision making with respect to the specific matters articulated in s84 of the Act.

**Figure 10**



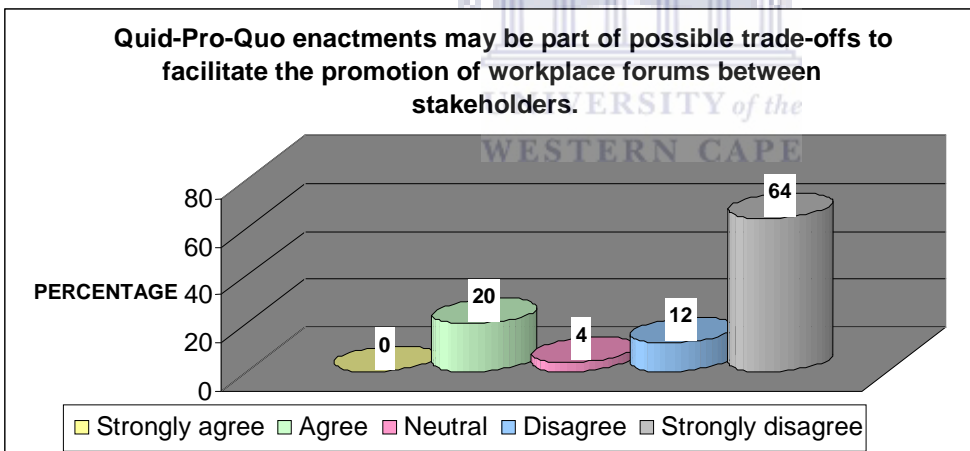
The respondents collectively agree (n=65% and n=30%) that employees should play a positive role in decision making (Figure 10).

**Figure 11**



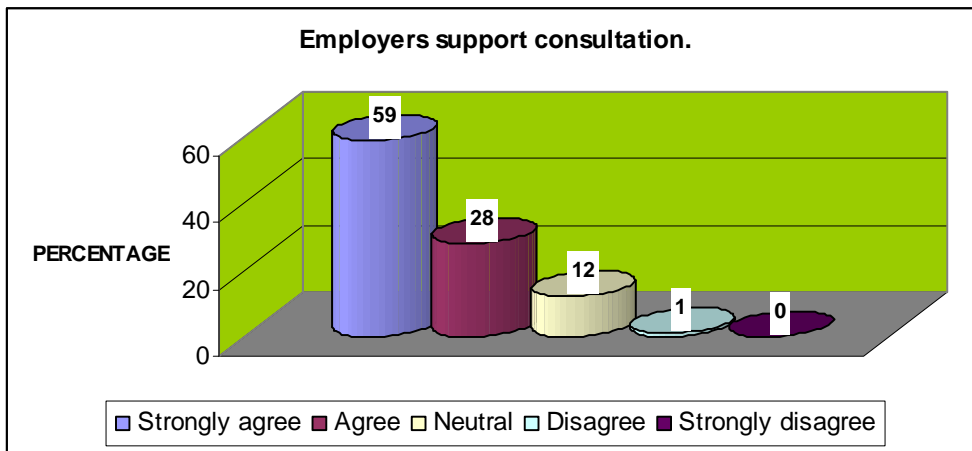
The respondents, through the descriptive result, indicate that consultation improves employee relations (n=84% strongly agree and n=12% agree) (Figure 11).

**Figure 12**



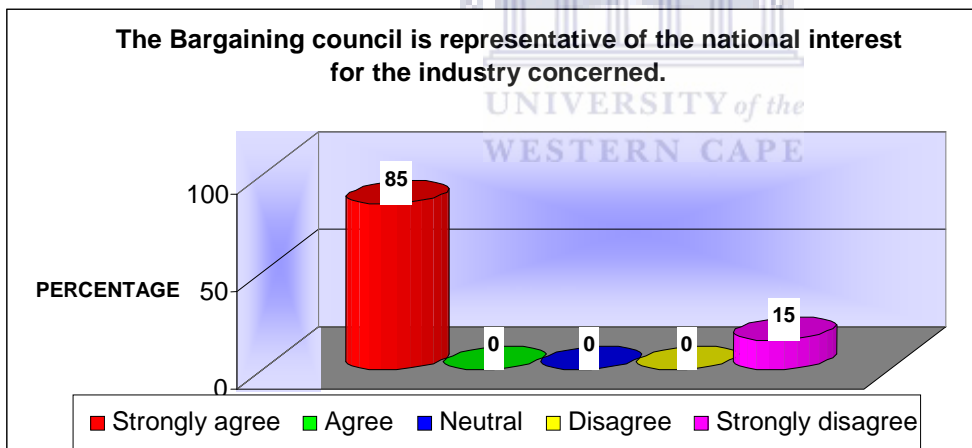
The respondents strongly disagree (n=64% and disagree n=12%) that trade-offs could be used to facilitate the promotion of workplace forums between stakeholders in the collective bargaining process. The question anticipates that employers may have to dispense with management prerogatives assumed in decision making that relate to production. (Figure 12).

**Figure 13**



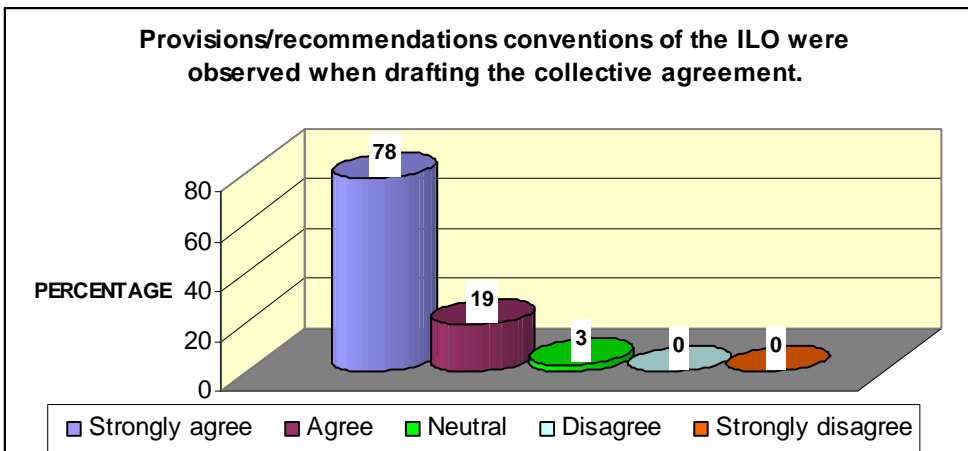
The respondents (employers) of this descriptive result strongly support consultation in that n=59% strongly agree and n=28% and agree (Figure 13).

**Figure 14**



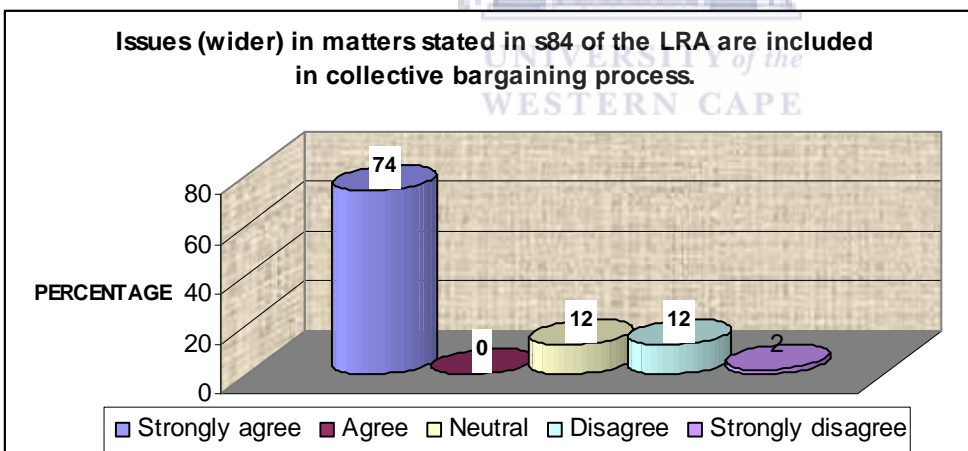
The respondents of the questionnaire strongly agree (n=85%) that the Bargaining Council for the industry should be representative of the national interest. Some of the respondents strongly disagree (n=15%) and have not recognised the bargaining council as representative of the industry (Figure 14).

**Figure 15**



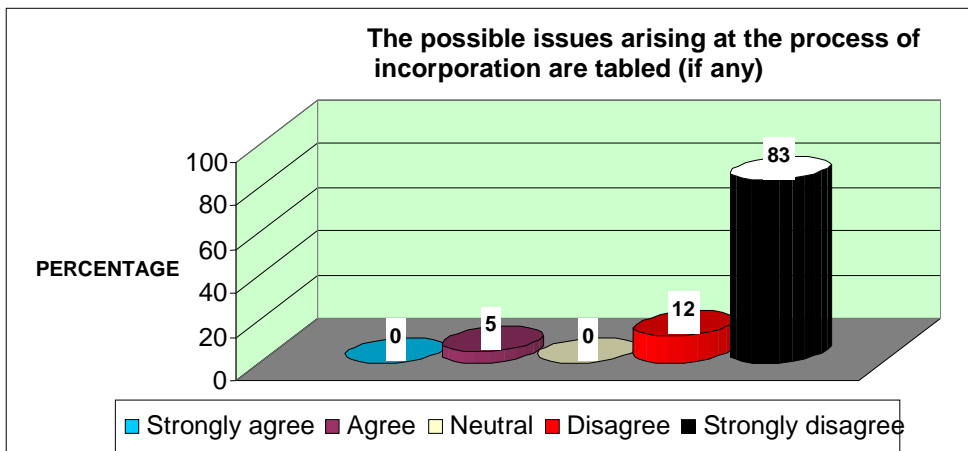
The descriptive indicators in the results as shown in Figure 15 reflect that the respondents have observed the recommendations of freedom of association and collective bargaining by strongly agreeing (n=78%) and (n=19%) agreeing respectively.

**Figure 16**



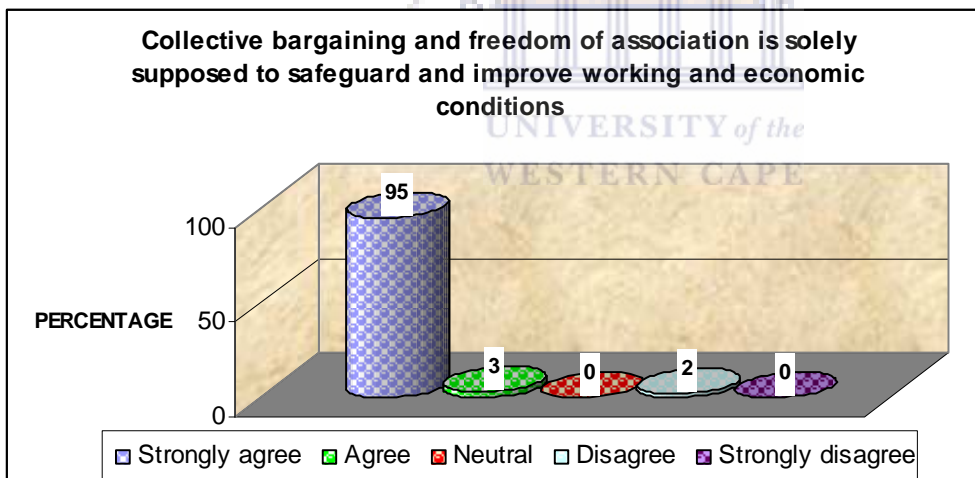
When the respondents were asked to indicate whether other issues such as stipulated in section 84 of the Labour Relations Act should be included in the collective bargaining process they strongly agreed (n=74%) (Figure 16). Some of the respondents indicated that they did not have a preference (n=12%) and a further 12% indicated that they disagreed with the incorporation of these matters in the collective bargaining process.

**Figure 17**



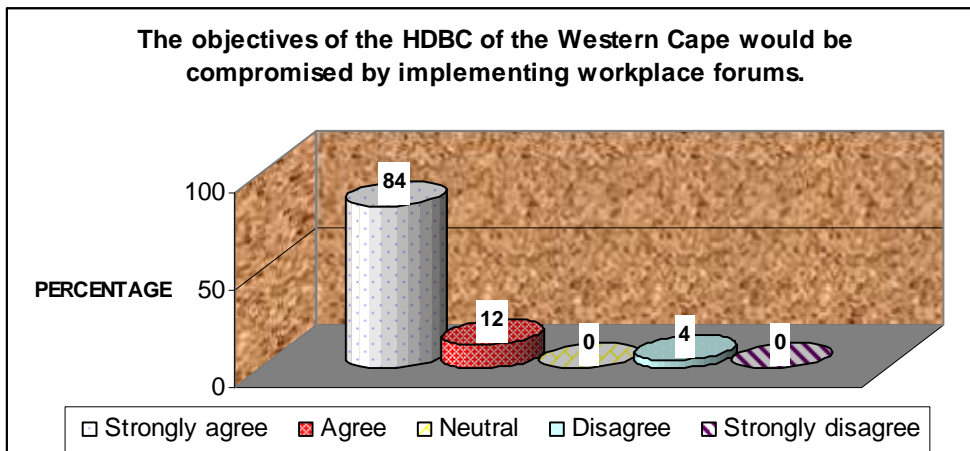
The respondents strongly disagree,  $n=83\%$  and disagree  $n=12\%$  respectively that these possible issues at the process of incorporation should be tabled at national negotiations (Figure 17).

**Figure 18**



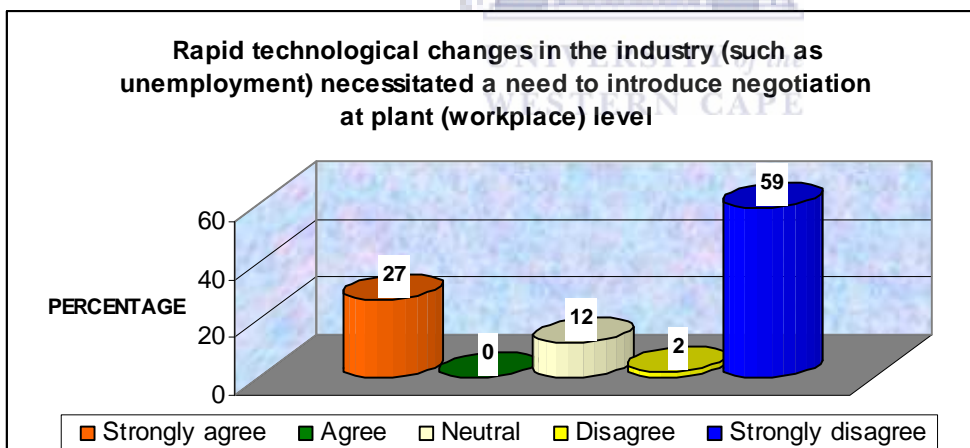
The respondents overwhelmingly strongly agree ( $n=95\%$ ) that collective bargaining and freedom of association is solely supposed to safeguard and improve working and economic conditions (Figure 18).

**Figure 19**



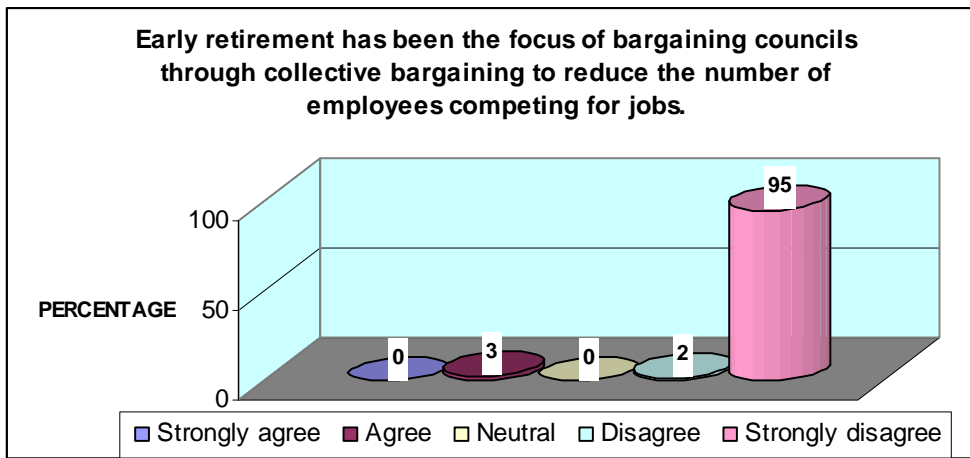
The results of the descriptive questionnaire indicate that the respondents strongly agree (n=84% and agree n=12%) that the objectives of the Hairdressing bargaining Council will be compromised (Figure 19).

**Figure 20**



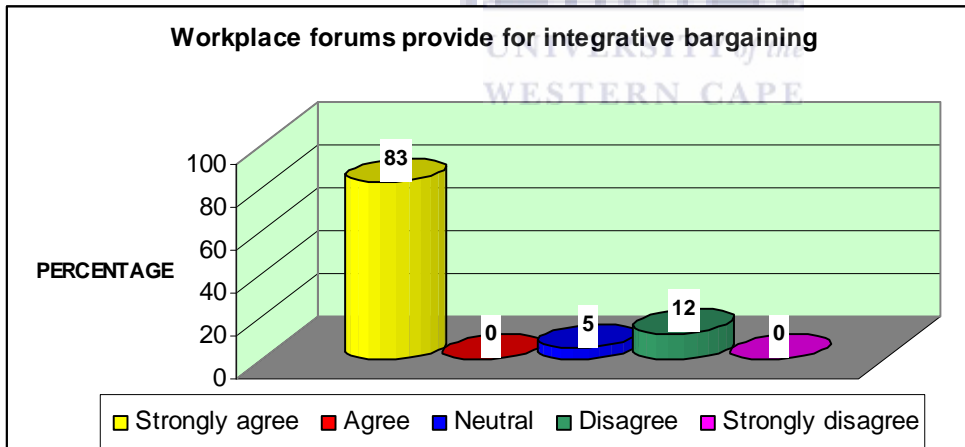
The respondents strongly disagree (n=59% and disagree n=2%) that technological changes would necessitate a need to introduce negotiation at plant (workplace) level (Figure 20). The response is made against the backdrop that the industry is not regulated that effectively (there are 173 registered salons and 317 non- registered).

**Figure 21**



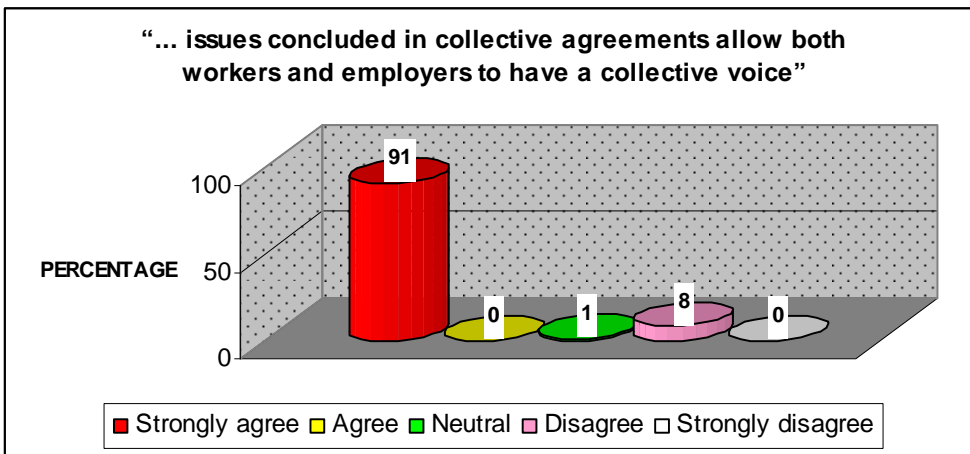
The stakeholders in the collective bargaining process strongly disagree (n=95%) that early retirement could reduce the number of employees competing for jobs and ultimately reduce the high levels of unemployment (Figure 21)

**Figure 22**



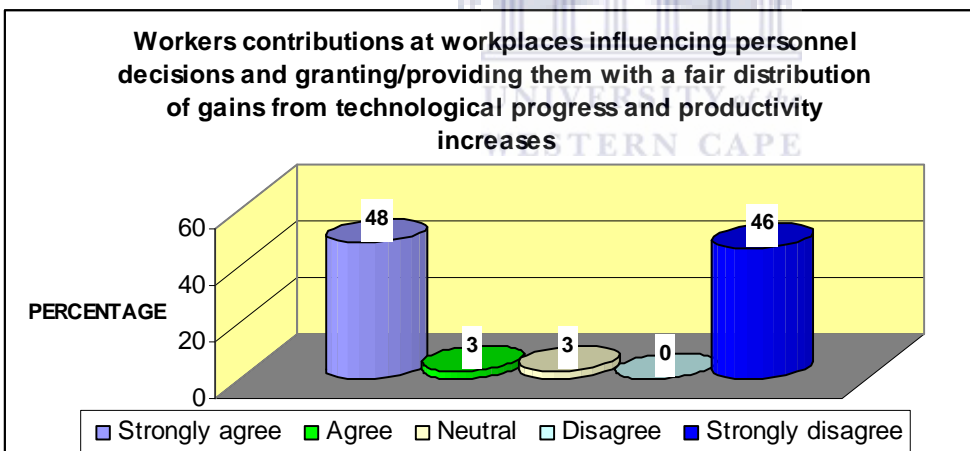
The respondents have strongly agreed (n=83%) that workplace could provide a platform for integrative bargaining (Figure 22).

**Figure 23**



The respondents have strongly agreed (n=91%) that issues concluded in collective agreements allow both workers and employers a collective voice (Figure 23).

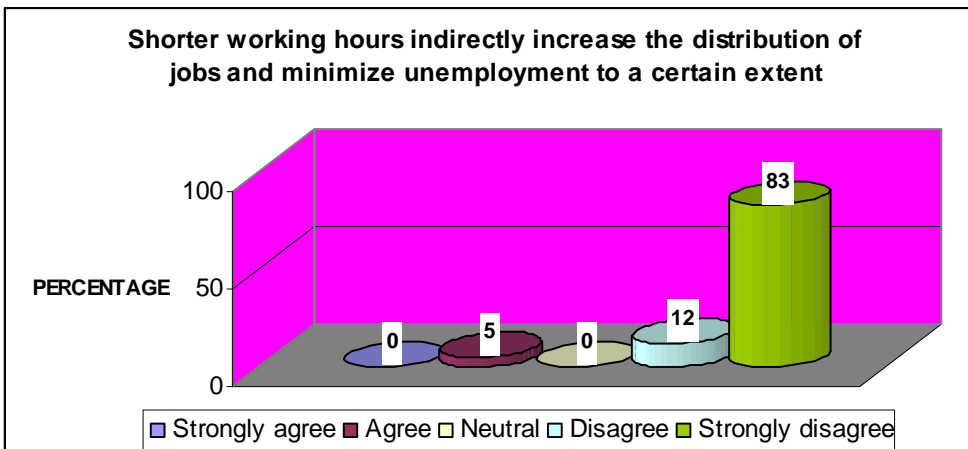
**Figure 24**



The respondents have strongly agreed (n=48%) and also strongly disagreed (n=46%) that contributions by workers could influence personnel decisions that could lead to a fair distribution of gains from technological progress and productivity increases. The analysis obtained from respondents indicate that employees feel that the gains are directly as a result of their input or productivity achievements made to at enterprise level. Employers on the other hand feel it is because of their investment in research and development imperatives. (Figure 24).

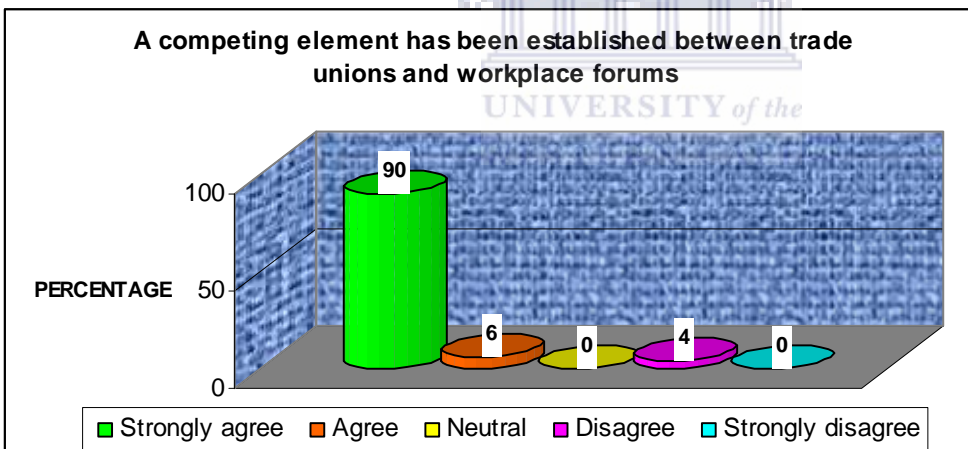


**Figure 25**



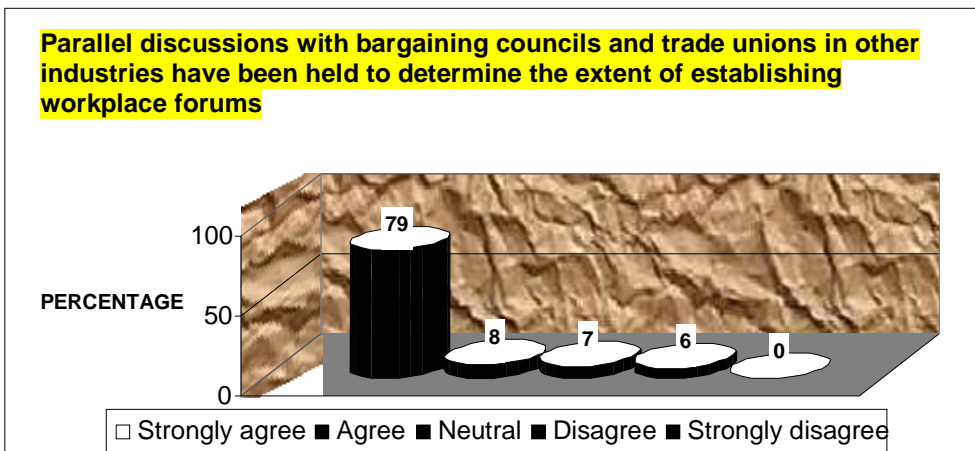
The respondents strongly disagreed (n=83%) with the notion that shorter working hours would increase the distribution of jobs if consulted through a workplace forum (Figure 25).

**Figure 26**



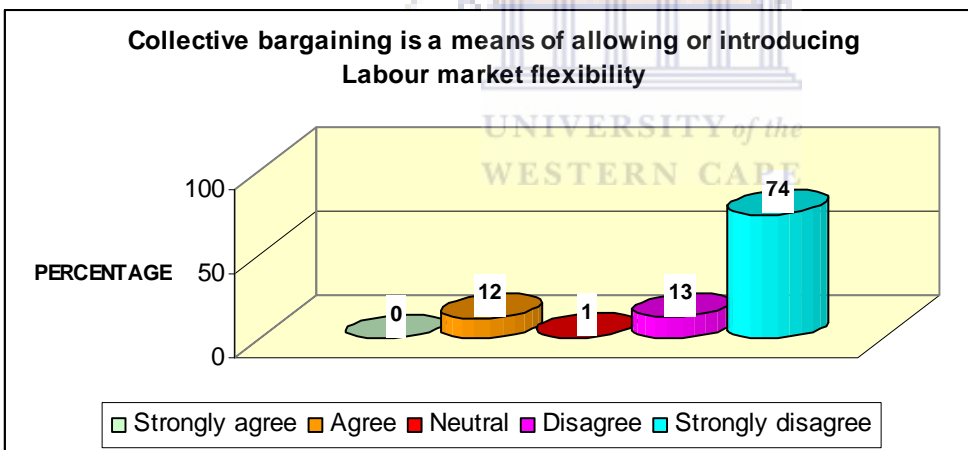
The respondents strongly agreed (n=90%) that a competing element had been created through the power trade unions enjoyed through current labour dispensation and that the establishment of workplace forums would diminish this power (Figure 26).

**Figure 27**



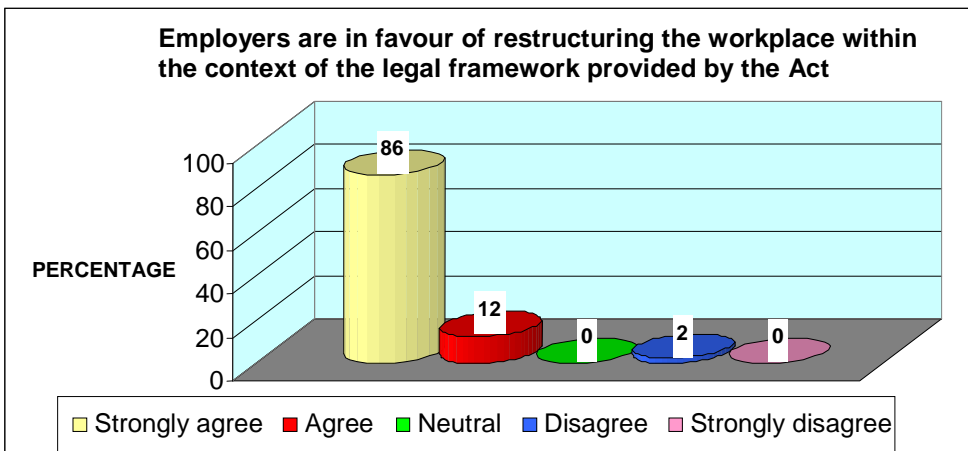
The respondents strongly agreed (n=79%) that a need existed in the industry to hold parallel discussions with their counterparts to explore the establishment of workplace forums (Figure 27).

**Figure 28**



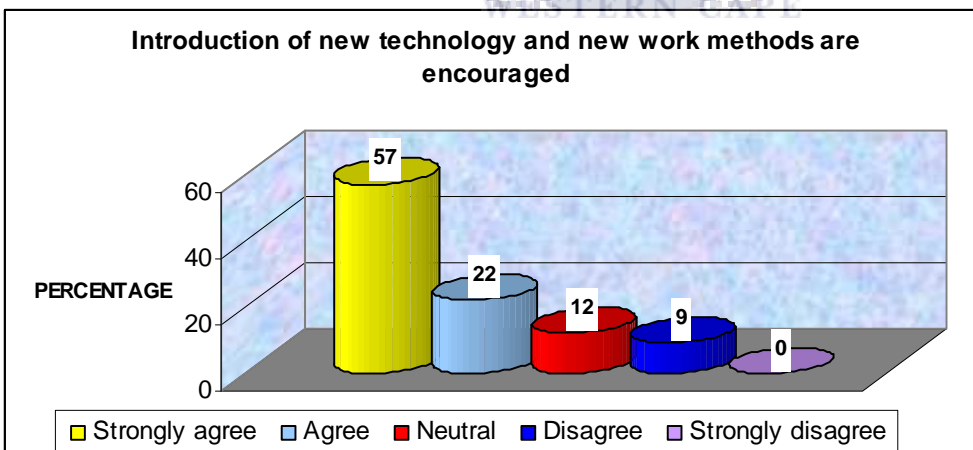
The respondents strongly disagreed (n=74%) that collective bargaining could introduce labour market flexibility (Figure 28).

**Figure 29**



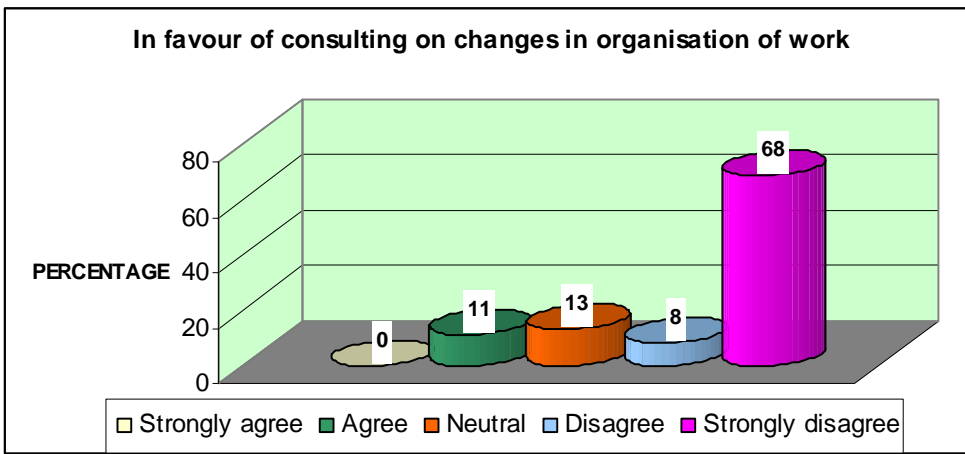
Employers are strongly in favour of the legal framework in the Act (n=86%) of restructuring the workplace and found it unnecessary to incorporate such matters in a collective agreement or to establish workplace forums. They felt instead of leaving it to a consultative process which could lead to a dispute being declared, and to ultimately influence decision making in this regard it was best left to be regulated in a legislative manner. (Figure 29).

**Figure 30**



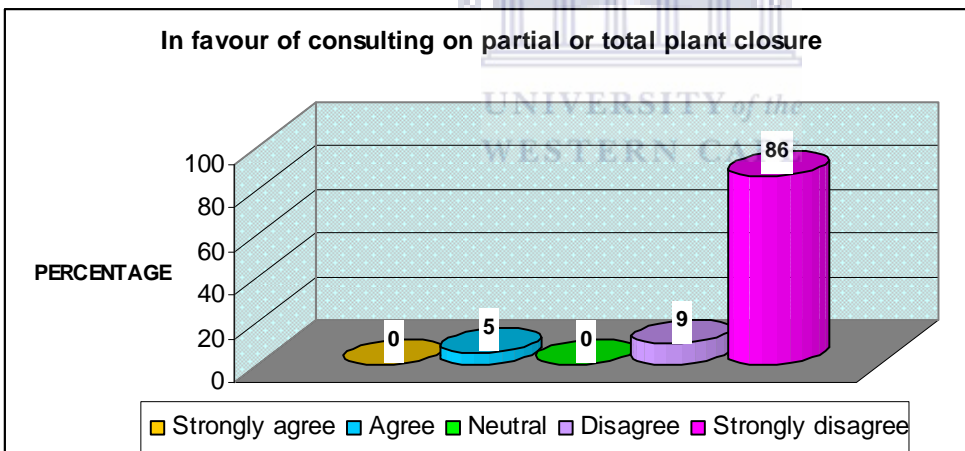
The descriptive results indicate the respondents strongly agree (n=57% and n=22% agree) that the introduction of new technology and new work methods are encouraged (Figure 30).

**Figure 31**



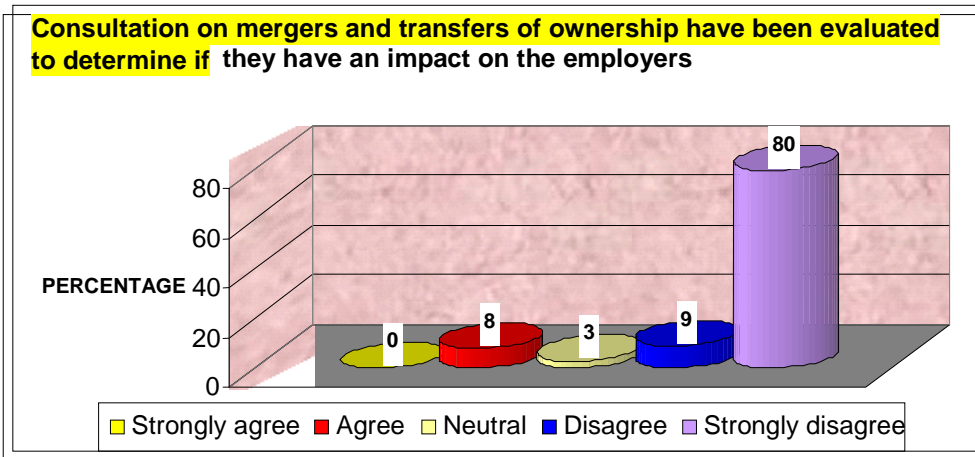
The respondents strongly disagree (n=68% and n=8% disagree), that consulting on changes in the organisation of work would not be favored (Figure 31).

**Figure 32**



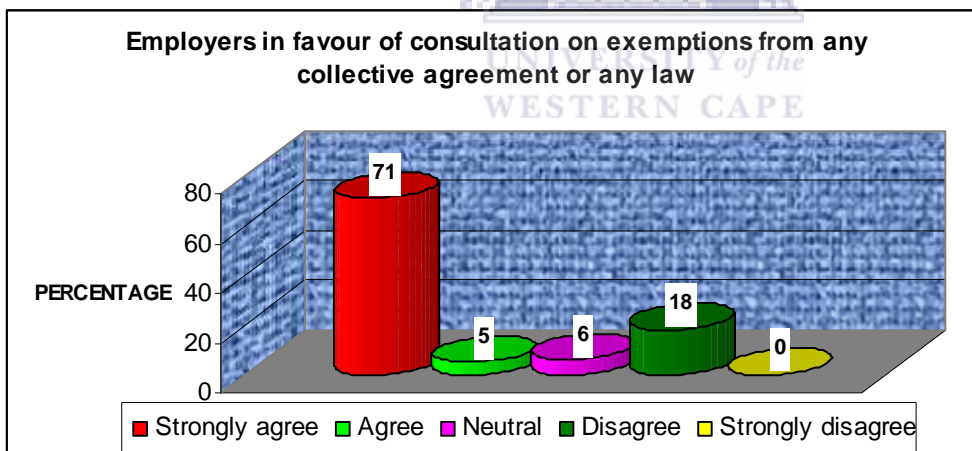
The respondents submitted that they strongly disagree (n=86%) with consulting on partial or total plant closures (Figure 32).

Figure 33



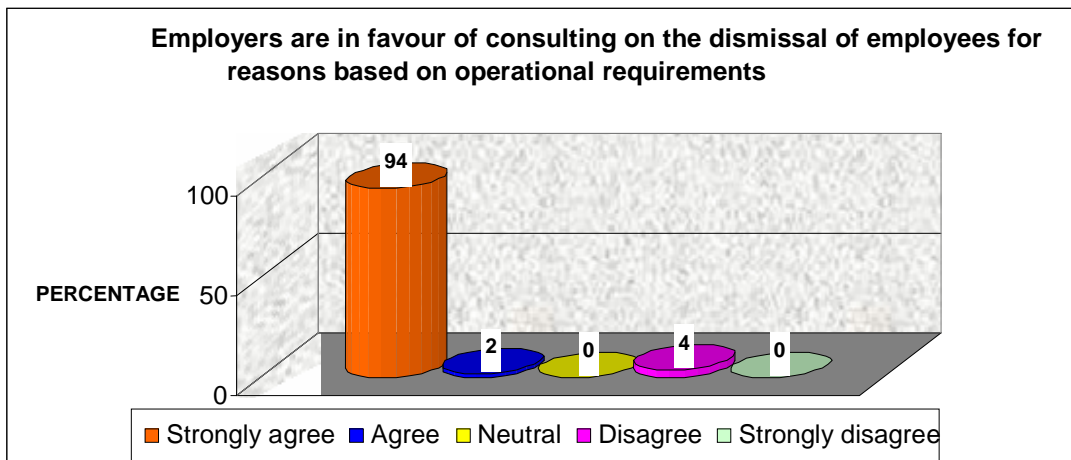
The respondents strongly disagreed through the descriptive results (n=80%) that consultation on mergers and transfers of ownership could have an impact on employers (Figure 33).

Figure 34



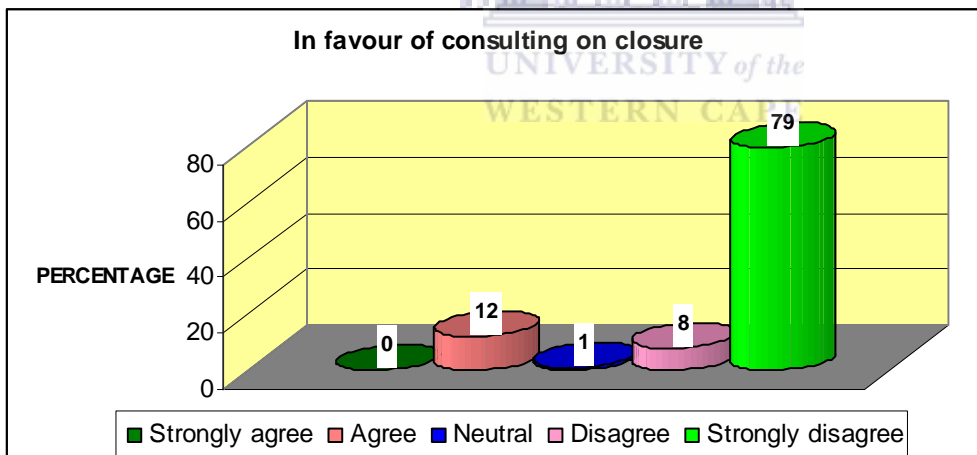
The respondents' strongly agreed (n=71%) and indicated that they were in favour of exemptions from the collective agreement (Figure 34).

**Figure 35**



The respondents indicated that they strongly agree (n=94%), and are in favour that discussion surrounding dismissals for operational requirements could be part of workplace forums if established (Figure 35).

**Figure 36**



The respondents strongly disagreed (n=79%) that consultation on plant closure be part of a workplace forum if established (Figure 36).

**Figure 37**

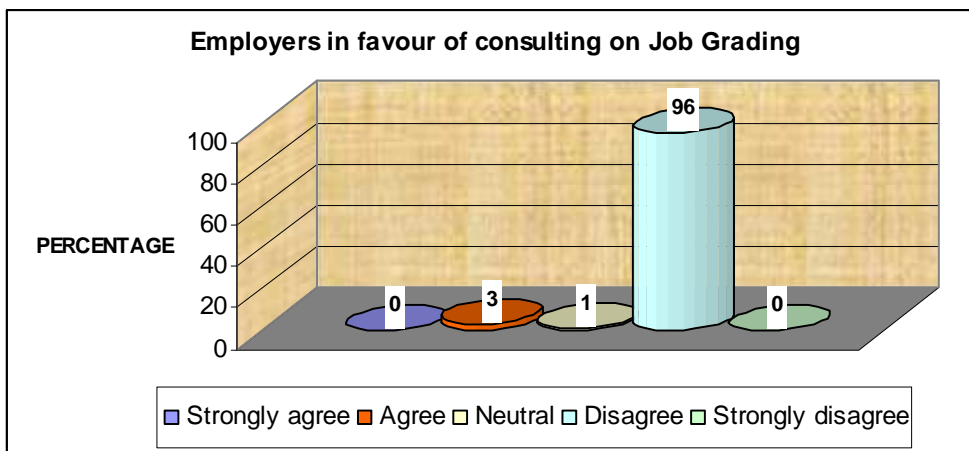
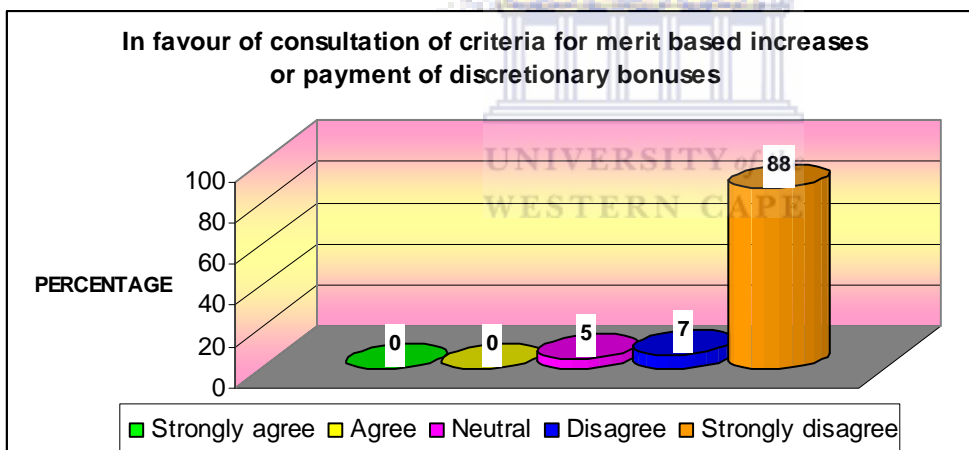


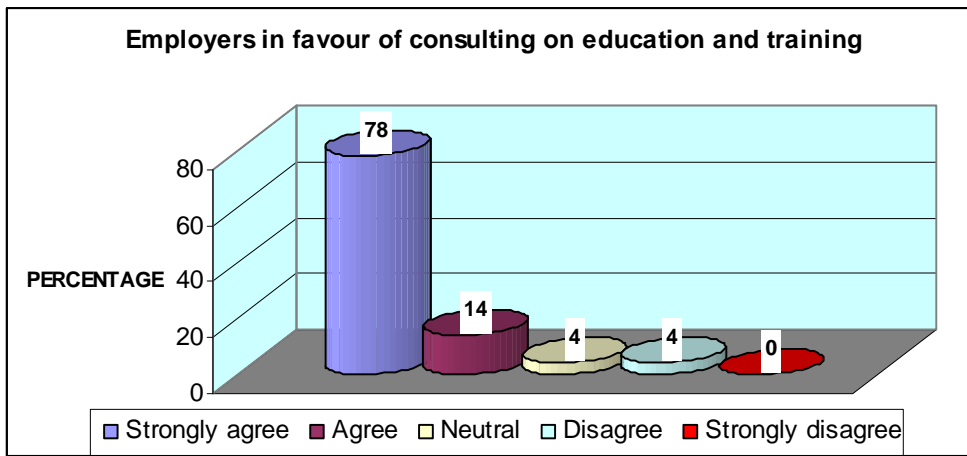
Figure 37 shows that 96% of responders were not in favour of consulting on job grading.

**Figure 38**



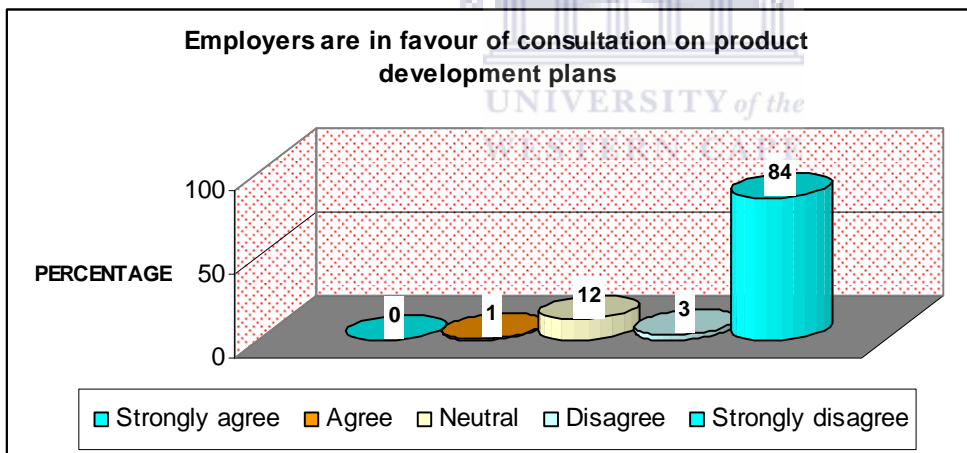
Consultation on the criteria for merit based increases or payment of discretionary bonuses at workplace forum level was strongly disagreed to by the respondents (n=88%) who indicated that overwhelmingly through the descriptive result (Figure 38).

**Figure 39**



The respondents strongly agreed (n=78%) that they would be in favour of consulting on matters such as education and training if a workplace forum was established (Figure 39).

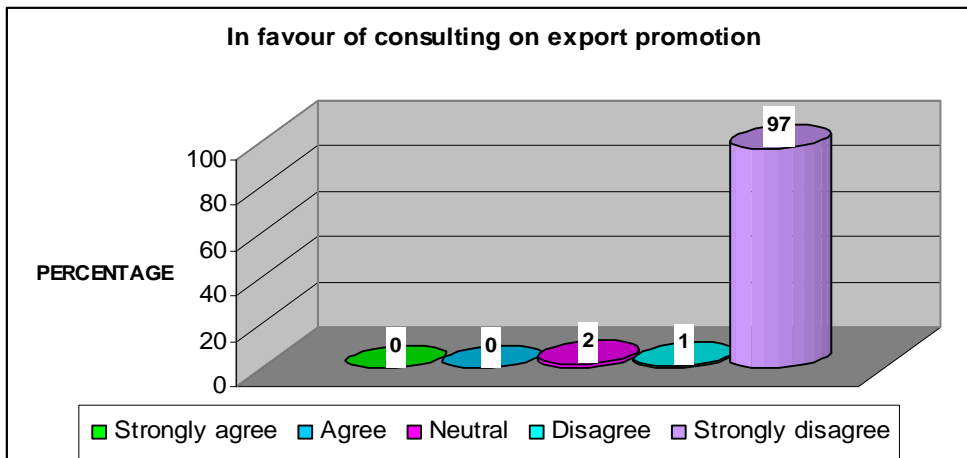
**Figure 40**



The respondents strongly disagreed (n=84%) with the notion that they would be in favour of consultation on product development plans (Figure 40).

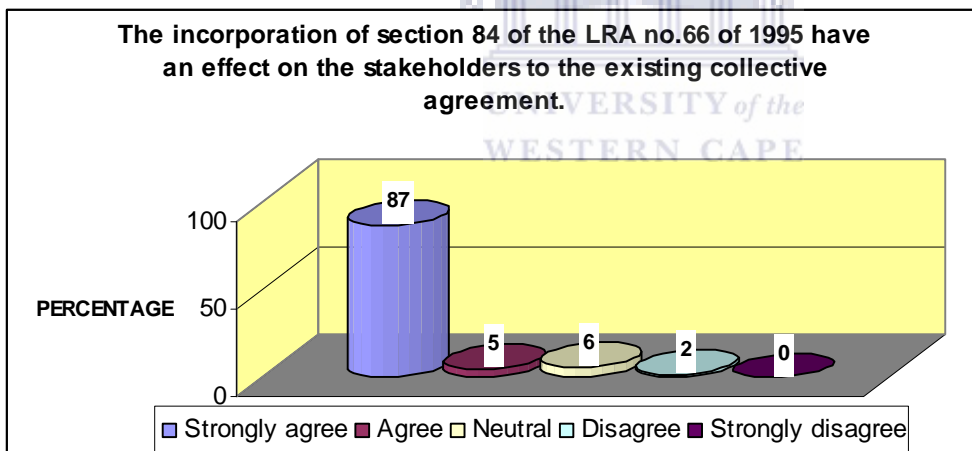


**Figure 41**



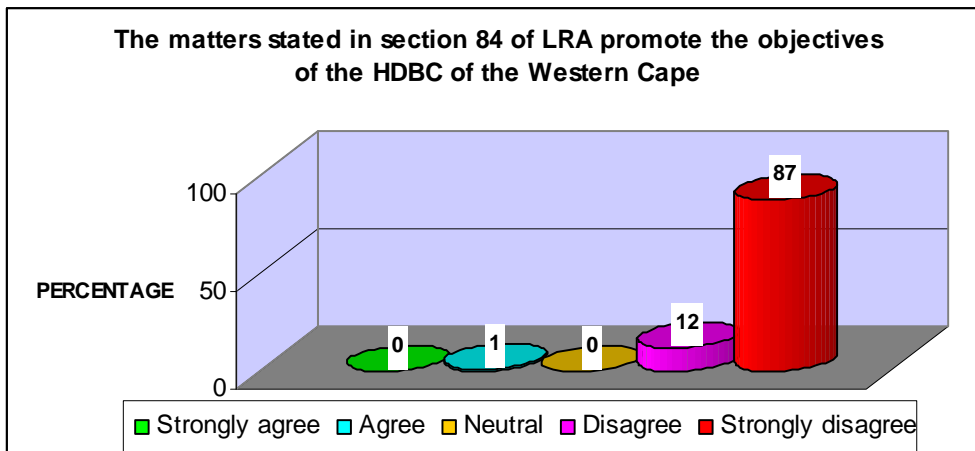
The descriptive result above reflects that the respondents strongly disagree (n=97%) with being in favour of consulting on export promotion (Figure 41).

**Figure 42**



The respondents strongly agree (n=87%) that the incorporation of section 84 of the LRA will have an effect on the stakeholders to the collective agreement (Figure 42).

**Figure 43**



The respondents through the indicated descriptive results strongly disagree (n=87%) that the matters stated in section 84 of the LRA promote the objectives of the HDABC of the Western Cape (Figure 43).

The questionnaire also made provision (in **section 44 to 48**) for respondents to respond to open questions. The questions were designed to anticipate in their own words their views relating to the nature, mechanics and challenges of the collective bargaining system in the Council. The questions set were designed in such a way to elaborate on the provisions of the Act that dealt with collective bargaining and allows the interviewer to explain the provisions without soliciting any specific response. With respect to question 44 the response was overwhelmingly that employers and trade unions did not have any problems with the present collective bargaining process.

In reply to question 46 respondents alike confirmed the sectoral model of collective bargaining where the nature represented power negotiations to realise mandates received from principals. The collective bargaining parties confirmed in response to question 47 that wages and conditions of service formed the basis of the annual collective bargaining process annually and that no change to this collective bargaining agenda had occurred in the last five years. (Question 48)

Questions **49-51** anticipated responses to the possible incorporation of specific matters for consultation into the present collective agreement in the Council and the effect it would have on present mandates, and who would take the lead in establishing workplace forums. The union replied to question 49 that considerable difficulty would be experienced in organising themselves over a wide spread area and that they favoured sectoral bargaining over enterprise level bargaining. Employers

supported enterprise level bargaining overwhelmingly, to question 50, unions responded that this process would interfere with their national agenda and would seek to polarise the union in provincial context if the mandates at enterprise level differed considerably from one another. With regard to question 51, both employers and unions confirmed that the lead to establish workplace forums stemmed from a legislative requirement that representative trade unions would take the lead.

### **4.3 SUMMARY OF THE CHAPTER**

The chapter has focused on the presentation of results achieved in this study. In the following chapter, the data will be discussed and an available existing study is integrated with the results emanating from the current study to draw conclusions.



## CHAPTER 5

### DISCUSSION OF RESULTS, CONCLUSIONS AND RECOMMENDATIONS

#### 5.1 INTRODUCTION

This chapter provides a detailed discussion of the results of the statistical analysis in relation to the hypotheses, previous research and related literature.

The second hypothesis of this research paper identifies the matters stipulated in Section 84 of the LRA that could possibly be incorporated in the Hairdressing, Beauty and Cosmetology collective agreement. The undertaken literature review in Chapter 2 of this paper suggests that the establishment of workplace forums is a new form of worker participation in the South African context. The legal framework of the LRA stipulates that Bargaining Councils can only be formed by one or more registered trade unions and one or more registered employers' organizations. It remains voluntary, requiring the collaboration of both partners. The latter is supported by the following statement:

“The LRA provides regulation for all collective bargaining but it gives explicit support to sectoral bargaining. Its main innovation at the workplace level was the workplace forum which has seen by COSATU, in particular, as being in competition with bargaining at the enterprise level rather than as support or supplement for bargaining.” (Godfrey, et al, 2010:229)

- A positive agreement by the respondents to engage other industry players was reflected in the results to explore the possible incorporation of the specific matters in the industry collective agreement. The parties have also reluctantly indicated that they undertake this engagement with the assistance of their umbrella bodies or federations. The responses to figure 1 where respondents indicate that the provisions of collective bargaining tenants in the Constitution and the Act are supported. They further emulate in their response to figure 4 that a relationship exists between sectoral and enterprise level bargaining. In figure 7, they however express their preference for sectoral or centralised bargaining.

- The respondents have indicated that the objectives of the bargaining council seemingly will be compromised by the incorporation of the specific matters in the collective agreement. The trade union parties especially endorse the establishment of bargaining councils in specific industries. They are reluctant by their responses to establish any other fora except bargaining councils. The categories of the questionnaire in this instance refer to three sections namely feedback and negotiation, the incorporation of specific matters for consultation into the existing Council agreement and the possible problems that may be experienced in the incorporation. The questions were designed to determine whether there would be a compromised or reluctance to the incorporation of the specific matters referred to in section 84 of the Act. The results indicate in figure 3 that there is a definite expectation that negotiations take place annually. Figures 7&8 displays that parties are ambivalent and that employers support enterprise bargaining and trade unions on the contrary support sectoral bargaining. The results in figure 12 purport that quid pro quo provisions should not be dealt with at centralised level of bargaining and could be inferred as confirmation that employers do not want to compromise their prerogative to make decisions at enterprise level. The respondents have indicated in the results overwhelmingly that the objectives of the Council could be compromised in figure 19 but have further amplified in the responses that have been amplified through explanations provided in figures 49-51 above.

With the second hypothesis, that employers may be reluctant to engage in discussing matters of consultation identified in Section 84 of the LRA for possible inclusion in the existing collective agreement because this type of regulation may contribute to delayed decision making and lengthy consultation, I reiterate a summary of the results namely:

- The respondents through the results submitted strongly disagree that consulting on partial or total plant closures, job grading, export promotion and consultation of the criteria for merit based increases or payment of discretionary bonuses, mergers or acquisitions would not be favoured by themselves. The rationale to retain management prerogative seems to be the justification for this result.

Another stated hypothesis was that trade unions will not engage in the process of incorporating matters of consultation of section 84 because it diminishes their power base to negotiate on a centralized basis as opposed to plant negotiation. The literature reviewed overwhelmingly supports the view that the legal framework regulating the process of centralized versus decentralized bargaining

places no compulsion on either of the collective bargaining agents. The results of the research offer the following views by trade unions on this:

- The respondents to the questionnaire are driven by concluding a collective agreement for the industry and recognizing the legality of such an agreement, but have not engaged each other as stakeholders to consult on matters for specific consultation (s84) or attempted to establish workplace forums. The results from the research indicate that both trade unions and employer's organisation accept the legislative framework that of bargaining councils as a preference to centralized bargaining as opposed to workplace forums which purport a model of decentralized bargaining.
- The stakeholders/employers in the industry collectively agree that the annual negotiations take place where it appears that only salary/wage increases and conditions of service that relate to the industry are negotiated. References to it confirm that the variables associated with collective bargaining are the same each year and has been so for several years in succession. It would seem from the responses by the parties that power gained from the negotiations at a national level may be diluted if workplace forums would be established where power would be distributed to more parties at workplace levels.
- The collective bargaining stakeholders agree that improved employee relations will be achieved through consultation. However, neither trade unions nor employers have mooted the process to establish workplace forums because of their national or centralized structures which has separate collective agreements for the regional provinces.

The final hypothesis made was that the Hairdressing Bargaining Council may consider that facilitating such an intervention may be seen as premature and bring labour discord instead of improved and more mature employment relations. Parties to the collective agreement of the HDDB have responded ambivalently to this notion:

- The results of the questionnaire that relate to whether workplace forums should be established reflect that the respondents are ad idem that workplace forums should not be established. Practical difficulties may be the reason for this as 100 or more employees are required to establish such workplace forums. It may mean that similar salons in a geographical area join to establish a workplace forum.

- The participation of employees in decision making has been positively reflected in the descriptive results of the questionnaire. It is worth noting that participation could be possible if positive engagement of consultation is provided, i.e. a workplace forum, to consult with the intention of incorporating specific matters of consultation into the industry collective agreement.
- The Bargaining Council is recognized as being the custodian of the collective agreement concluded between the collective bargaining stakeholders. The bargaining council is reluctant to initiate a process to consult on matters for incorporation into the existing collective agreement. They view it as disrupting present stable employment relations between the stakeholders. The adherence to separate or sub agreements at regional level should support the establishment of workplace forums and ultimately the incorporation of specific matters for consultation as reflection in section 84 of the LRA.
- The respondents endorse and confirm the need for integrative bargaining, but a fair amount of positional bargaining takes place on a centralized forum.

## **CONCLUSION AND RECOMMENDATIONS**

The research objectives of this paper attempted to assess whether it was possible to incorporate matters stated in section 84 of the Labour Relations Act into the present collective agreement of the Bargaining Council for Hairdressing Beauty and Cosmetology of the Western Cape. The descriptive results, however, confirm the lack of commitment by the respondents to consult on such issues. The apparent lack of commitment can be attributed to the bargaining party's consistent confidence to engage on a centralised bargaining platform articulated in the presentation of results. The practical implications of establishing workplace forums where a hundred or more employees are required may be another inhibiting factor given the fact that the council enterprises or salons are geographically spread over a radius of 70 or more kilometres. It would not pose problems to incorporate such matters into an existing agreement, but it would mean that the centralised bargaining power vested with the principal collective bargaining agents would have to be compromised. The results of the research indicate overwhelmingly that the collective bargaining agents prefer sectoral of centralised bargaining.

The parties to collective bargaining have not attempted to incorporate the issues referred to in s84 into the main collective agreement. This would require a process of negotiation. A workplace forum on the other hand is a process initiated by employees or representative parties such as trade unions.

Because the processes of initiation and establishment are unique to each forum, the collective bargaining agents have chosen not to implement either.

The results reflect their strong preference to the existing preference of the bargaining council for regulating collective bargaining matters in their industry. The results of the research paper in the category obtaining mandates and the placing variables on the agenda of annual negotiations reflect that only conditions of service and dispute resolution feature consistently.

The incorporation of these specific matters for consultation will not adversely affect the objectives of HDBC. In fact, bargaining councils have been tasked to assist with the establishment of workplace councils.

The hypothesis that employers will not want to incorporate the issues of section 84 because this will diminish the prerogative to manage their businesses was confirmed through the descriptive results in the questionnaire. Likewise, regulation through consultation on specific matters could not be determined, but employers have consistently reported that they valued managing prerogatives and preferred to engage them by sharing information instead of consultation.

Bargaining on a centralized basis confirms the hypothesis that trade unions are not prepared to dispense with compromising their power to share it at plant level.

The hypothesis that supports the HDBC may consider that facilitating this intervention may be seen as premature and introduce labour discord instead of improved and more mature employee relations, was also confirmed by the research conducted.

It is recommended that the collective bargaining parties to the HDBC engage each other after obtaining mandated positions on consultation with respect to incorporating section 84 of the LRA into the collective agreement. The HDBC could be empowered if the parties have consolidated mandates and are prepared to engage in a process of integrative as opposed to positional bargaining.

Finally the research results indicate that the parties to a collective agreement in this industry still gravitate towards distributive collective bargaining about salaries, wages and conditions of employment. Workplace forums could create a platform of integrative bargaining.



The LRA legislators intended to transform adversarial industrial relations through the process of integrative bargaining. The trade union and employer organisation agree that workplace forums are premature for their present relationship. The approach was envisaged to be voluntary but the establishment of such workplace forms that have been registered indicate that centralised bargaining at national level through a legislative process is preferred and that specific matters in Section 84 will be difficult to incorporate into collective agreements for the present time.



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## APPENDIX A

### A STUDY OF THE EMPLOYERS ATTITUDES TOWARDS MATTERS STIPILATED IN SECTION 84 OF THE LABOUR RELATIONS ACT NO 66 OF 1995 AND HOW THOSE RELATE TO THE OBJECTIVES OF THE HAIDRESSING BARGAINING COUNCIL IN THE WESTERN CAPE

All questions contained in this document serves as research ONLY. No names are required when completing it. The document is confidential and anonymity is maintained.

To complete the questionnaire, rate your answer according to the following (black ink):  
e.g.

**QUESTION: Nelson Mandela was the first president of the RSA since democracy in 1994.**

STRONGLY AGREE	AGREE	NEUTRAL	DISAGREE	STRONGLY DISAGREE
	X			

#### DEMOGRAPHIC INFORMATION

Your age	20 - 30		30 – 40		40 – 50		50+	
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Your gender	Male		Female	
-------------	------	--	--------	--

Collective bargaining stakeholder	Yes		No	
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Qualification	Grade 9		Grade 12		Diploma		If Other please state:
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Company's existence	Less 1 year		1 – 3 yrs		3 – 5 yrs		+5 yrs	
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QUESTION		ANSWER				
		STRONGLY AGREE	AGREE	NEUTRAL	DISAGREE	STRONGLY DISAGREE
<b>OBTAINING MANDATES</b>						
1.	Special cognizance of the SA Constitution with regard to section 23 and the purpose of the LRA no.66 of 1995 been taken with regard to collective bargaining.					
2.	Collective bargaining should take place annually.					
3.	The format of the agenda for negotiations (collective bargaining) is similar each year.					
4.	There is a relationship between bargaining at shop floor (decentralized levels) and the national levels (centralized bargaining).					
5.	My organisation promotes the establishment of workplace forums.					
6.	Collective agreement has been concluded for the hairdressing Cosmetology Industry					
7.	Stakeholders support centralized bargaining					
8.	Stakeholders support decentralized bargaining					
9.	Employers support the establishment of workplace forums					
10.	Employees play a role in decision-making					
11.	Consultation improves employee relations					
<b>FEEDBACK AND RENEGOTIATING MANDATES</b>						
12.	Quid-Pro-Quo enactments will be part of possible trade-offs to facilitate the promotion of workplace forums between					

	stakeholders.					
13.	Employers support consultation.					
<b>INCORPORATION OF MATTERS (S84) INTO COLLECTIVE AGREEMENT</b>						
14.	The Bargaining council representative of the national interest for the industry concerned.					
15.	Provisions/recommendations conventions of the ILO were observed when drafting the collective agreement.					
16.	Issues (wider) in matters stated in s84 of the LRA are included in collective bargaining process.					
17.	These issues are tabled (if any)					
18.	Collective bargaining and freedom of association is solely supposed to safeguard and improve working and economic conditions					
<b>PROBLEMS/CHALLENGES</b>						
19.	The objectives of the HDBC of the Western Cape would be compromised by implementing workplace forums.					
20.	Rapid technological changes in the industry (such as unemployment) necessitated a need to introduce negotiation at plant (workplace) level					
21.	Early retirement has been the focus of bargaining councils through collective bargaining to reduce the number of employees competing for jobs.					
<b>SOLUTIONS</b>						
22.	Workplace forums provide for integrative bargaining					

23.	“... issues concluded in collective agreements allow both workers and employers to have a collective voice”					
24.	Workers contributions at workplaces influencing personnel decisions and granting/providing them with a fair distribution of gains from technological progress and productivity increases					
25.	Shorter working hours indirectly increase the distribution of jobs and minimize unemployment to a certain extent					
26.	A competing element has been established between trade unions and workplace forums					
<b>ADJUSTMENTS</b>						
27.	Parallel discussions in other industries have been held with either bargaining councils/trade unions to possible promotion of the establishment of the workplace forums and their improved functioning					
28.	Collective bargaining a means of allowing or introducing Labour market flexibility					
<b>INCORPORATION – POSSIBLE?</b>						
29.	Employers are in favour of restructuring the workplace					
30.	Introduction of new technology and new work methods are encouraged					
31.	In favour of consulting on changes in organisation of work					
32.	In favour of consulting on partial or total plant closure					
33.	For consultation on merger and transfers of ownership as for as they have impact on the employers					
34.	In favour of consulting on the dismissal of employees for reasons based on operational requirements					
35.	Employers in favour of consultation on exemptions from any collective agreement or any law					
36.	In favour of consulting on closure					

37.	Employers in favour of consulting on Job Grading					
38.	In favour of consultation of criteria for merit based increases or payment of discretionary bonuses					
39.	Employers in favour of consulting on education and training					
40.	Employers are in favour of consultation on product development plans					
41.	In favour of consulting on export promotion					
<b>LEGISLATIVE REQUIREMENTS</b>						
42.	The incorporation of section 84 of the LRA no.66 of 1995 has an effect on the stakeholders to the existing collective agreement.					
43.	The matters stated in the 84 of LRA promote the objectives of the HDBC of the Western Cape					

44. What difficulties if any, were experienced in the collective bargaining process?

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45. What outcome of the collective bargaining process has led to the subsequent review of the collective agreements?

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46. Describe the nature of annual negotiations to conclude or review the collective agreement of the Hairdressing, Beauty and Cosmetology?

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47. Which conditions of service are reviewed annually?

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48. What differences have featured in the last 5 years in the format of the collective bargaining (if any)?

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49. What problems if any does your organisation anticipate if workplace forums form part of the collective bargaining process and ultimately incorporation into the collective agreement?

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50. What issues in terms of national mandates does your organisation have wrt the functioning and establishment of workplace forums?

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51. Who would you consider to take the lead in promoting the establishment of the workplace forums in your industry?

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Thank you for taking the time to complete the questionnaire. Your contribution is highly appreciated.

Keith Barends



## APPENDIX B

Dear Respondent

### **Self evaluation questionnaire for research purposes**

Thank you for taking the time to read this letter in anticipation of filling in the self-evaluation questionnaire attached.

I am a student of the University of the Western Cape completing a research paper for my master's degree at the university.

The research topic has been chosen in your industry where I perform conciliations and arbitrations as a panelist of the Hairdressing Bargaining Council for Beauty Hairdressing, Beauty and Cosmetology.

Please assist me by completing the questionnaire and returning it to fax: 0866199429 or email: [keith@hrcapacity.co.za](mailto:keith@hrcapacity.co.za)

The university has a very strict policy on confidentiality. I am obliged to inform you that confidentiality and anonymity will be maintained. The assurance is also given herewith that the research gathered will not be published or reproduced in any way.

Once more thank you for participating in this research.

Yours sincerely,

**Keith Barends**