



## Private Equity, "Transparency" and Collective Bargaining

Private equity funds have become major owners of companies employing many thousands of IUF members around the world. The IUF's *A Workers' Guide to Private Equity Buyouts* describes the mechanisms by which buyout funds acquire and transform businesses in order to achieve extremely high returns by draining cash from the company's assets and operations with an eye to a rapid sell-off. The current credit crisis means only that the price paid for acquiring companies has now sunk, as financing for big buyouts is currently unobtainable at favorable rates. Mega-buyouts are out (though they will return, since the buyout business is cyclical), but small-to-medium companies will continue to be targets for buyout funds. And many thousands of IUF members and potential members will continue to work for companies owned by private equity funds for the foreseeable future.

Because the principle mechanism for pumping out profits is leverage, or debt, the financial structure of a company under private equity ownership is fundamentally transformed. That transformation in turn changes the context in which unions engage in collective bargaining.

Now that the buyout funds are politically on the defensive, they are acknowledging the need for "transparency" (as in e.g. the UK Walker Commission's proposed Code of Conduct). Unions therefore need to define "transparency" in ways which can assist them in bargaining with the new owners.

Access to financial information available to union representatives for collective bargaining purposes varies widely from country to country and from company to company, depending on the legal and regulatory environment and the strength of the union. Where the activities of publicly-listed companies are subject to disclosure requirements, the minimum is established by the regulatory reporting requirements. Private companies of a certain size in countries with employee representation legislation (e.g. the German *Mitbestimmung*, or co-determination) will be subject to provisions for financial disclosure; European Works Councils have access to information under the terms of the EU Directive. In many instances, unions with established bargaining relationships will have access to information beyond these minimum requirements, subject generally to confidentiality. And unions' capacity to make use of the information they can access also varies widely, depending on their size, their internal resources, their experience and their access to external support.

To meaningfully engage in collective bargaining, unions faced with a buyout fund as owner must have access to the audited financial accounts which would be available under regulatory disclosure requirements for publicly listed companies

and/or access to information legislation (which applies equally to non-listed companies). The starting point for collective bargaining with a company taken private through a leveraged buyout is understanding the finance behind the leveraged acquisition. Unions therefore need to know, at a minimum:

- the total amount of the debt incurred in purchasing the companies shares
- the types and maturities of the debt
- the nature of the covenants, if any, and whether the loans are secured or unsecured
- the rates (floating or fixed) and schedules
- the identities of the lenders/holders of the debt securities if they are not publicly traded
- the fees paid for the takeover operation, as the acquired company normally assumes these costs

Unions also need detailed information on the general business plan, including

- exit strategy
- plans for selloffs/closures, and how the cash freed up from these will be used
- utilization of company cash reserves and financial assets and intangible assets ("intellectual property", trademarks, copyrights)
- plans for the sale and possible lease-back of real estate
- availability and sources of funds for investment in plant and equipment, research and training
- projected changes in employment methods and their impact on collective bargaining units/structures (e.g. co-packing, subcontracting)
- resources and commitment to maintaining pension funds and retirement benefits

Unions will have to press for ongoing access to information within the collective bargaining process in order to continuously monitor

- debt to earnings ratios
- dividends to earnings ratios
- the appearance of "special dividends", which may have been financed through additional debt ("dividend recapitalizations")
- debt refinancing and new bond issues, sometimes issued to cover new debt, or pay outstanding debt ("PIC notes")

All of the above are essential for collective bargaining with companies under private equity ownership, and will have to be incorporated in the bargaining process alongside traditional tools based on turnover, productivity, operating costs etc.