Private Equity and Collective Bargaining

Guidelines for Negotiating with Portfolio Companies

International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations

Because the principle mechanism for pumping out profits through a private equity buyout is **leverage** (debt), the financial structure of a company under private equity ownership is fundamentally transformed. That transformation determines the context in which unions engage in collective bargaining.

Collective bargaining with a company taken private through a leveraged buyout therefore requires **full disclosure** of the **mechanisms behind the debt financing**, in addition to the other information which unions require for bargaining (e.g. sales, profits, productivity etc.)

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 to confidentiality.

To meaningfully engage in collective bargaining, unions faced with a buyout fund as owner must have access to the **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). These accounts must be accurate, verifiable and preferably audited.

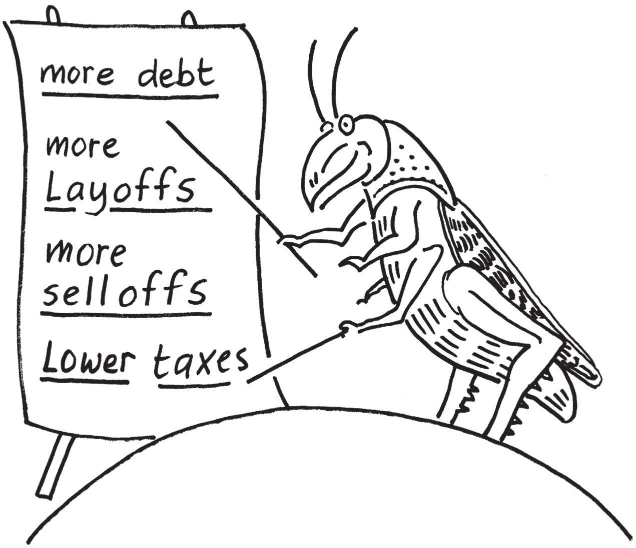
When a buyout fund acquires a company, the burden of paying off the purchase debt imposes enormous pressure on company cash flow management. Unions therefore not only have to pursue the traditional collective bargaining goals of defending/improving pay and conditions. Bargaining must be used as a tool to negotiate **employment and investment guarantees** to prevent layoffs and asset stripping.

To negotiate effectively, unions need to know:

- the **total amount of the debt** incurred in purchasing the company
- the **types and maturities of the debt** – junior or senior? (i.e. who has first claims on company assets)/secured or unsecured ?
- the **rates** (floating or fixed) and **schedules**
- the nature of the **covenants** (e.g. restrictions on assuming more debt) , if any
- 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

Every buyout has a **financial target** to hit and a **timeframe** to make it in. Unions therefore need detailed information on the specifics of the **business plan**, including –

- **exit strategy** (IPO, sale to another financial investor)
- plans for **selloffs/closures**: how will the cash freed up from these be used?
- projected **changes in employment methods and their impact on collective bargaining** units/structures (e.g. co-packing, subcontracting)
- utilization of company **cash reserves/ financial assets**
- utilization of **intangible assets** ("intellectual property", patents, trademarks, copyrights)
- resources and commitment to maintaining **pension funds/ retirement and other benefits**



The goal in mapping the private equity owner's financial/business strategy is to gain sufficient information to locate –

- availability and sources of funds for i**nvestment** in plant and equipment, research and training
- space for negotiating **employment and investment commitments**

The buyout process operates within a highly compressed time frame. Private equity owners have no commitment to the longterm health or perspectives of the company and are focused on exiting from the moment they enter as investors. Assets and cash flow are subject to continual assault as the buyout funds seek new ways to siphon off cash.

In addition, the need to devote a substantial portion of free cash flow to paying down the debt leaves the funds' portfolio companies highly vulnerable to external shocks – a rise in interest rates, a downturn in sales, changes in raw material prices etc. can all expose the company to shocks which can push it into insolvency.

Unions therefore 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 ("**dividendend recapitalizations**")
- **debt refinancing and new bond issues**, sometimes issued to cover new debt, or pay outstanding debt ("PIC notes", "toggle notes" etc.)

A Workers' Guide to Private Equity Buyouts

This IUF publication explains for trade unionists the forces behind the enormous growth in private equity buyouts, the financial mechanisms they use and the consequences for workers, their workplaces, their unions and society as a whole. It explains how a specific political environment (deregulation) has made it possible for the funds to expand globally, and how political and trade union action can contain the funds.

The brochure is available in English, French, German, Japanese, Korean, Spanish and Swedish from the IUF secretariat.

www.buyoutwatch.info

Updated regularly, the IUF's Private Equity Buyout Watch provides news, research and analysis in order to monitor the impact of leveraged buyouts on workers and trade unions and contribute to building a labour movement response.

IUF

Rampe du Pont-Rouge 8
CH – 1213 Petit-Lancy/Geneva
Switzerland
Tel: +41 22 793 22 33
Fax: +41 22 793 22 38
E-mail: iuf@iuf.org

www.iuf.org