4. COLLECTIVE BARGAINING: THE PROCESS REGULATION

(Maimunah Aminuddin)

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INTRODUCTION

According to Ayadurai (1998), collective bargaining is the main avenue for enhancing the terms and conditions of employment of employees (through unions), thus furthering their socio-economic interests.

In addition, it is a major vehicle for regulating the relations between employers and unions within the structure which defines these relations as determined by the government.

The successful conclusion of collective bargaining process results in a collective agreement document which records in writing, the terms and conditions of employment as agreed upon for a specific time span.

This document serves as a written guarantee of harmonious employer-employee relations for the period covered by the agreement.

This agreement serves as solid evidence of stable employer-union relations in the particular organisation concerned.
WHAT IS COLLECTIVE BARGAINING?

Collective bargaining and its outcome, the collective agreement, are the crucial vehicles for advancing harmonious industrial relations, and so in tandem form the important element of the discipline.

The Industrial Relations Act (IRA) 1967 refers to the fundamental rights of the “trade union” that affect employers and employees (Part II), the need for recognition of employee unions by employers or their unions (Part III), followed by the provision of collective bargaining and the collective agreement as the progressive steps towards attaining industrial peace and harmony.

Thus, the IRA 1967 lays down the preconditions contributing towards the successful conduct of collective bargaining and the resulting collective agreement are (i) the acknowledgement of the fundamental rights of trade unions by employers, and (ii) the recognition of the employee unions by these employers.

The IRA 1967 defines collective bargaining as “negotiating with a view to the conclusion of a collective agreement” (p. 2), and collective agreement as “an agreement in writing concluded between an employer or a trade union of employers on the one hand and a trade union of workmen on the other relating to the terms and conditions of employment and work of workmen or concerning relations between such parties” (p. 1).
TYPES OF COLLECTIVE BARGAINING

The types relate to whether the employees and their unions are in (a) the private sector with numerous employers, or (b) through the use of Wages Councils.

In the private sector the trade union serves as the representative of the unionised employees which confers with the employer to negotiate and decide workers’ wages and other terms and conditions of employment. This activity creates joint decision-making by the employer and the employees, which forms the bilateral system of rule-setting.

Wages Councils come under the purview of the Wages Councils Act 1947 covering the protection of employees who do not possess the means or power to get fair terms from their employers. These employees include:

- Shop assistants;
- Hotel and catering workers;
- Cinema workers; and
- Stevedores and cargo handlers working for private employers in the Penang port.

Each council can comprise representatives of employers’ organisations, the employees’ associations and a nominated independent member.
NATURE OF COLLECTIVE BARGAINING

For collective bargaining to be a gainful process, two pre-conditions must be satisfied. They are:

1. The right of employees to form collective union organisations, and
2. The unions must possess bargaining clout.

The right to form and join a union is indicated in the IRA 1967 (Section 5). Within the umbrella of the law, trade union activity is legal. In the absence of this right, collective bargaining will not be possible.

As for bargaining clout, the union must:

• Be given recognition by the employer;
• Possess sufficient financial means; and
• Have members who are united.
FUNCTION OF COLLECTIVE BARGAINING

• Provide opportunity for employees to give decision-making input on “terms and conditions of service”.
• Protect employees’ rights by submitting provisions to counter any abuse of power by the employer and prevent him from acting arbitrarily.
• Permit employees to have a say in decision-making about areas which affect them.
• Include matters associated with the general welfare of employees.
• Encourage enlightened employers to agree to include terms that will further the employer-employee relationship process as a form of consultation.
DIMENSIONS OF COLLECTIVE BARGAINING

Collective bargaining can take place at different levels:

- Between one employer and a trade union of employees
- Between one employer and a number of trade unions
- Between a group of employers and a union of employees

Employees’ union may be:

- In-house
- National

Bargaining process:

1. Trade union submits a written proposed collective agreement to an employer and invites the employer to commence negotiations.
2. Employer must respond to the invitation within 14 days.
3. If the employer agrees to enter the negotiations, the first bargaining session must begin within 30 days of the agreement.
4. Employer may refuse to negotiate, creating a trade dispute.

5. Union may inform the Director General of Industrial Relations (DGIR) and request for conciliation.

If the employer does not respond to the invitation to commence negotiations, the union can inform the DGIR to request for conciliation.

6. DGIR will attempt to persuade the employer to bargain with the union.

The law permits the employer to take the initiative in presenting a proposal and invite the union to bargain, but this practice is the exception.

7. When the employer agrees to negotiate, the representatives from both parties meet and conduct a number of bargaining sessions, until a compromise acceptable to both parties is achieved.

8. This agreement is put in written form, signed by both parties, and deposited with the Industrial Court within one month of the signing ceremony.
9. The Industrial Court (IC) checks through the agreement to make certain that it does not contravene the law. This action of the IC is referred to as “taking cognisance” of the agreement. Once this step is completed, the agreement becomes a binding document enforceable by the IC.

10. If a deadlock occurs after a series of meetings, either party can request the DGIR to conciliate.

11. If the Industrial Relations Department officials are effective in getting the parties to arrive at a compromise, then an agreement may be reached.

12. If after conciliation the parties are still in disagreement, both parties can jointly request the Minister of Human Resources to refer the dispute to the IC for arbitration.

13. Alternatively, the Minister can exercise his authority under the IRA 1967 to refer the dispute to the IC.

14. IC will study the disputed issues and items, hear the presentations of both parties and come to a decision. IC decides on the final result of the collective agreement.
The Collective Agreement must satisfy the following conditions:

- Identify the parties to the agreement;
- State the period covered by the agreement, which must not be less than 3 years;
- Provide a means to make changes and to terminate the agreement;
- State the procedure to be followed to solve any dispute concerning interpretation or implementing the agreement; and
- Exclude items thought to be linked to management’s exercise of its prerogatives.

The IRA 1967 (Section 13 (3)), does not permit unions to include negotiation proposal items like promotion, transfer, recruitment, dismissal, termination for redundancy and assignment of work which are considered as management prerogatives. On the other hand, general issues associated to procedures concerning these aspects can be incorporated in collective agreements.
Common items found in almost all Collective Agreements:

• Recognition
  - may include list of employees excluded from union membership

• Union security
  - check-off issue

• Compensation and benefits
  - salary scales, bonus payment, overtime rates, retirement benefits, holidays, leave benefits, medical benefits, allowances

• Existing benefits
  - prevent removal or reduction of such benefits not specified in the collective agreement

• Procedures
  - advertising internal vacation positions
  - disciplinary
  - processing grievances
  - management-union consultation on matters like workers’ safety, retrenchment, work systems change and working hours, relocation
  - dealing with claims of sexual harassment
FACTORS AFFECTING COLLECTIVE BARGAINING

• Employer has to grant recognition of the union.
• Union must have bargaining strength
  - sufficient members to gain recognition from the employer
  - financial standing
    - depends on number of members and monthly subscriptions paid
    - ability to manage finances to be able to set up a “strike fund”
    - shortage of funds leads to inability to conduct research to support collective bargaining requirements
  - solidarity of the employees in backing the union
• Factors outside the control of workers
  - economic situation – boom as against recession
  - level of unemployment

Both parties will not wish to engage in “lose-lose” bargaining

• Bargaining should be conducted in “good faith”. Employer representatives must be given the authority to offer acceptable terms and conditions, and have the intention to sign an agreement with the union.
SELECTING NEGOTIATION

Collective Bargaining as a Continuous Process

Preparation

Negotiations

Implementation of the Collective Agreement

Disputes

Settlement

Preparation

Negotiations

Collective Agreement
Visible part of bargaining – the meetings between the negotiating teams
- forms about 10% of the bargaining process
The remaining 90% remains hidden in the form of preparation and follow-up.
Preparation involves gathering information
- some information from weaknesses linked to the current agreement, like
  any disputes over interpretation referred to the IC for settlement may be
  raised again in the next round of bargaining
- any item causing complaints or grievances will need to be re-examined
Both parties need to select the members of their bargaining team, pick the venue, be
prepared with the relevant financial data required.
From the employer’s side, the team members may include the IR Manager or the HR
Manager, the Finance Manager, and one or two line managers.
The union side, if it is a national union, may involve a combination of representatives both
from union headquarters who are full-time officers or employees of the union, possibly
involving the executive secretary and the experienced union industrial relations
officers, and from the company level union leaders. Often, the union’s team is larger
than the employer’s team, to permit the union site committee members to sit in.
In-house unions will select their union executive council members to conduct the
bargaining.
DEVELOPING BARGAINING STRATEGY

The bargaining sessions can be time-consuming, energy draining, and stressful. The knowledge, skills and attitudes possessed by the members of the bargaining team will have a major impact on the outcome of the negotiations.

Characteristics of Effective Negotiators:
• Exercise patience and coolness under provocative circumstances
• Possess effective communication skills  
  - good listeners  
  - speak without ambiguity and be specific  
  - reconfirm their understanding of the matters that have been agreed upon
• Be physically and mentally fit to participate effectively in the lengthy negotiations
• Be thoroughly conversant with the employment laws and the industrial relations system
Before bargaining commences, each team will need to decide on their members’ roles, like the:

- leader who will do most of the talking and questioning
- member responsible to summarise material where required, clarify matters agreed upon and not agreed upon, and keeping the negotiations from being side-lined
- member designated to do costing of proposals and counter-proposals, and to perform other calculations as needed during the bargaining session

At least one member should be equipped with a computer at the bargaining table. Other members will basically serve as observers and be on stand-by to their team leader when required.

Information gathering prior to the actual bargaining sessions is crucial. Such information include:

- Knowledge of the opposition. Management must acquire information about the union, like its financial strength, membership numbers, power structure, and personality of union leaders who may form the bargaining team.
Management should also examine the wishes and expectation of its employees by conducting survey feedback at regular intervals. Worker complaints and grievances should be analysed to identify possible items that will be raised at the bargaining sessions.

Clues should also be extracted from other agreements recently negotiated by the same union covering wage increases expected, as well as new benefits offered by another company in the same industry.

Economic information is vital to gauge the level of wages and benefits to be offered which often forms the most important and critical item in the bargaining agenda.

Negotiation Strategies and Tactics

• Negotiators have to identify their most favoured position or target, and their limit or resistance point.
• Management will get ready a contingency plan in case of a deadlock provoking a strike.
• Both parties will need to decide whether giving press statements during negotiation will benefit them.
continuation

• Tactics may involve the way in which chairs and tables are arranged to put the other party at a disadvantage.
  - cause delay in negotiations on purpose
  - negotiators’ standing with their peers will increase when they show they had to go through a difficult bargaining process
  - offer unreasonably high or low proposals at the first stage of bargaining
  - employers may threaten to withdraw their assistance to the check-off procedure.

• For each party, there is need to confirm with the principals what they want, how much leeway they are willing to accept, and traumatic situations they are willing to experience, prior to bargaining.

• It is acknowledged that bargaining in any form reflects a system of give and take. This means that at the end of a bargaining process between two parties, there will be a winner and there will be a loser. But it must be remembered that each collective bargaining negotiation will take place every three years. This means that if the winner had been very uncompromising, applied unfair strategies and tactics, etc., these matters will be remembered by the loser party in the next round of negotiations. In the long run, applying a win-win strategy by both parties will lead to progressive, effective and synergistically attractive outcomes.
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