

Collective Bargaining – Its Relationship to Stakeholders

V. Vijay Durga Prasad

Collective bargaining has become a very important institution in the realm of industrial relations and extends to all negotiations that take place between employers on the one hand and one or more workers' organizations on the other to determine the working conditions and terms of employment. Collective bargaining is a method by which trade unions protect, safeguard and improve the conditions of their members' working lives. The benefits it has conferred upon workers have been overwhelming. The institution has also benefited the employers and managements in numerous ways. This article examines the relationship of collective bargaining with certain groups of stakeholders during a negotiation. The author highlights notable hurdles in the process of collective bargaining in spite of its continuous steady pace of growth since independence.

V. Vijay Durga Prasad Professor & Head, Department of Management Studies, PS College of Engineering & Technology, Vijayawada 520001. E-mail: vijaydurgaprasad@gmail.com

Introduction

Collective bargaining is a means of joint regulation by employers and workers' organisations. Respect of rules depends on the manner of their formulation. Collective bargaining provides the opportunity to formulate rules by mutual consent. Some view the process of collective bargaining as one of unions sharing governance with management. This influences regulation or rule making and results in contract. Several analysts have focused on the economic and political functions of collective bargaining. Some emphasise the economic functions others highlight the political role of trade unions in collective bargaining. In most cases, the dynamics of economic and political factors and forces together determine the outcomes of collective bargaining. According to ILO, freedom of association and collective bargaining are fundamental rights. Both freedom of association and the right to collective bargaining form an integral part of the ILO Declaration on Fundamental Principles and Rights at Work.

Collective bargaining is the process in which the terms and conditions of employment are determined jointly by

the employer and workers. Like bargaining in the commodity market where the sellers try to sell commodities at higher possible prices, and the buyers seeks to purchase at lower possible prices, in collective bargaining the sellers of labour services, (workers) bargain for obtaining better and improved terms and conditions of employment, and the buyers of these services try to purchase them at lower price as possible. In this process of give-and-take, the final terms are determined on an agreed basis. Collective bargaining emanates from employment relationship. The employer-employee relationship is a pre-condition for collective bargaining. Where there is no such relationship as in the case of self-employed persons or members confined to trade union or an employers' organization, the question of collective bargaining does not arise.

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The primary object of collective bargaining is the determination of terms and conditions of employment through negotiations and process of give-and-take. If negotiations succeed the parties arrive at an agreement, which is called 'collective agreement'. In the event of the failure of negotiations, the parties generally take recourse to corrective measures. The agreement arrived at during the course of bargaining may relate to a number of subjects of the terms of employment and working conditions or to only a single issue. As the

terms of employment and working conditions have widened during the course of time, so also has the subject matter of collective bargaining. Collective bargaining is confined not only to employer and workers, but the state has also come to play a notable role in regulating various aspects of collective bargaining. Some of these aspects include: selection of bargaining agent, determining the enforceability of collective agreements, obligating the employer and trade unions to bargain collectively and imposing restrictions on industrial actions in the event of failure of negotiations and so on.

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The nature of collective bargaining is changing and dynamic. With the changes taking place in technology, economic order, political environment, structure of trade union organizations, ownership of individual enterprises, and role of the government and so on, the various ingredients of collective bargaining are also changing. The pattern of collective bargaining in different countries is not the same nor is collective bargaining at the same stage of development all over the world. The main steps involved in collective bargaining include: presentation in a collective manner to the employer their demands by the employees, discussions and negotiations on the basis of mutual give and take for fulfilling the demands, signing of a formal agreement or arriving at an informal understanding when

negotiations result in mutual satisfaction and in the event of the failure of negotiations a likely resort to strike or lock out to force the opposite party to come to terms.

Collective Bargaining & the Stakeholders

Collective bargaining, as the term itself states, is a process that is not individualistic in nature but collective. There are certain groups of stakeholders. During a negotiation the possible concerned parties are described here under.

The Government: In the West collective bargaining takes place in its most advanced form where as in socialist countries, collective bargaining is rarely seen. In transition economies like the former USSR and eastern and central Europe, collective bargaining agreements are beginning to take place. In centrally planned economies there is a fear that if collective bargaining is left to the parties, it will cause distortions in wage levels and unit labour costs. Therefore, there has been a tendency on the part of the government to regulate wage increases. But wage controls would work for a short term, not over a period, particularly if such controls fail to pay attention to two other related areas: incomes and prices.

Democratic governments believe collective bargaining is a public policy aimed at promoting harmonious and cooperative relationships and encouraging the growth

of strong and independent organizations of workers and employers. In some countries public policies dissuade parties from entering into collective bargaining agreements on issues other than wages and working conditions. One of the major concerns of governments in countries that are wedded to the principles of egalitarianism, concerns the disparity and inequity that can occur between and across different sectors and the exploitation during the conditions of tight labour markets and by employers under adverse economic conditions.

The Employers : The perspectives of management and workers or employers and unions are usually divergent and conflicting in a collective bargaining situation. If they are in an adversarial mode their energies and efforts will be directed at barring the gain to the other party. If they realize the value of cooperation and collaboration, they would like to consult and cooperate to produce a bigger size cake and agree on each having a bigger slice than before. Employers would find it easy to afford pay increases if the cost of such pay revisions is funded through improvements in productivity and profitability. In the past managements used to receive charters of demands and bargain with the unions and offer something. In return, management usually did not ask and therefore did not get anything. Nevertheless, in the last one decade or so, managements have increasingly been making counter proposals and insisting on the policy of 'something for something or nothing for nothing'. Thus collective bargaining has

become a give and take process. For employers the advantage with collective bargaining is that they can secure some equity, fairness and parity between and among workers. However, where managements bargain separately with different craft unions within an enterprise, it results in undesirable competition, disparity and conflict.

Workers & Trade Unions: It is recognized that an individual worker who is not in the organized sector and who is not unionized is generally unable to exercise much bargaining. The exception is the high-tech service sector where the tendency is generally not to join a union and to negotiate pay and benefits individually. For large sections of workforce in wage and salaried employment, collective bargaining is still supposed to increase the power of the workers and trade unions to negotiate better wages and conditions of employment. The bargaining power of unions is high if both the input and output of labour is not substitutable and if the proportionate cost of labour is low. The purpose of trade unions is to secure more wages and benefits for their members and to ensure a semblance of parity across different categories of employees.

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greater the tendency to show some moderation in wages so that the weak and strong units pay more or less similar wages to workers at similar skill levels and occupations. However, decentralization and individualization of contracts are negatively impacting on the power and outcomes of negotiations based on equity and parity.

Consumers & Community: Where unions and managements enter into collusive agreements, they may prove detrimental to the interests of the consumers and community. For instance, in the late 1970s an agreement between the employees' union and the Life Insurance Corporation provided for granting additional benefits to employees financed from the profits that should have been passed on to policy holders because the profits accrued largely due to increased life expectancy. In 1981 the government introduced an amendment prohibiting them from entering into collective agreements in future. Similarly, in the 1980s, following Drug Price Controller Order, when the prices of some drugs were frozen or reduced, some pharmaceutical companies began to incur losses. They curtailed production within the company and began to outsource production to small-scale enterprises whereby they could get some concessions and reduce input costs including wages. The resultant profits were shared by the company with its workers and the contract manufacturers. The workers, who were engaged in the production of drugs in small-scale enterprises, got much

lower wages than those in the big domestic and foreign companies.

Relations within the Enterprise

When the intention of the parties to a negotiation is to bar the other party from gaining, the relations tend to be adversarial. Collective bargaining by nature is perceived to be oriented by conflicts of interests. The impact of collective bargaining on manager-employee relations is difficult to generalize. Collective bargaining does not address many manager-employee problems. Some managers are of the opinion that they are placed in a conflicting role of representing their employees to management. Where collective agreements restrain managers from directly communicating with employees there are bound to be problems in communication.

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Organisational Impact

Negotiations take place under conditions of unbalanced power relationships. Therefore the impact of collective agreements on organizations, companies and or unions would be varied. When negotiations are dead-locked or take place under the influence and pressure tactics of outsiders, including the government, law and order enforcing ma-

chinery and the public, the locus of control shifts away from the enterprise and the outcomes become unpredictable for both the unions and managements. Therefore, it is in the interests of the parties to ensure that conflict does not escalate. Failure to negotiate may sometimes escalate the dispute into legal action.

Hurdles in India

Ever since the dawn of independence, collective bargaining in the country has continued to grow at a steady pace, but there have been hurdles in its way. Notable among these hurdles are as follows:

Recognition of Unions

The recognition of trade unions for the purpose of bargaining has continued to be voluntary. There is no statutory compulsion for the employers to recognize representative unions. They are only under moral obligation to do so under the Code of Discipline. Although the Industrial Disputes Act, 1947 has made refusal to bargain collectively by the employer with a recognized union and for a recognized union with the employer an unfair labour practice, the provision does not have much significance in the absence of statutory obligation to recognize representative unions for the purpose of bargaining. Recognition of trade unions compulsorily, and clear-cut definitions of the roles of recognized and minority unions, will provide a sound basis for the growth of collective bargaining in the country.

In this regard the first National Commission on Labour recommended. "It would be desirable to make recognition compulsory under a central law in all undertakings employing 100 or more workers or where the capital invested is above a stipulated size. A trade union seeking recognition as a bargaining agent from an individual employer should have a membership of at least 30 per cent of workers in the establishment. The minimum membership should be 25 per cent if recognition is sought for an industry in a local area. The second NCL (2002) has recommended compulsory recognition of representative trade unions and has worked out a comprehensive draft legislation covering various aspects of industrial relations.

Ineffective Procedures

Even where the employers are willing to recognize the representative unions, the determination of the representative character of unions often becomes a very difficult task. For this purpose the procedure of verification of membership has been widely used. The procedure of 'Secret Ballot', as is widely followed in western countries is seldom used in India. There is no law on the subject in the country. The problem has become more acute on account of fierce rivalries and factionalism engulfing a large number of trade unions in the country. It is desirable to entrust the task to an impartial authority like National Labour Relations Board of USA, or Industrial Relations Commission recommended by the first National Commission on Labour or Labour Relations Commission as recommended by the Second National

Commission on Labour (2002). It is also desirable to adopt the procedure of secret ballot rather than that of verification of membership figures.

Outside Leadership

Outside leadership in the Indian trade union movement has also been a contributing factor. A large number of trade unions are dominated by outside leaders who are also active workers of one political party or the other. The rivalry and factionalism of the political parties are also often reflected in the trade unions. The result is that when a representative union having allegiance to one political party is recognized, the other unions affiliated to other political parties try to dislodge it and clamour for their own recognition. The situation becomes worse when a representative union recognized as bargaining agent, is opposed to the political party in power. Experience has also shown that a number of outside leaders do not have any interest in the affairs of the union, or in the aspirations of the workers whom they represent in bargaining. Thus, there is a need to build up strong internal leadership. The Central Board for Workers' Education has been doing a commendable job in this direction.

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Elaborate Adjudication Machineries

A network of adjudication machineries established under the Indus-

trial Disputes Act, 1947 and some state Acts in the form of Labour Courts, Tribunals, National Tribunals and Industrial Courts, have been in operation for more than half a century. Under these laws the government is empowered to refer industrial disputes to these authorities, whether the parties like it or not. The adjudication awards are binding on the parties. Resort to strike or lock-out is prohibited during the pendency of disputes before these authorities and the period of operation of the awards. A large number of disputes are referred to these authorities every year and, during their pendency, it is very difficult for the parties to enter into negotiations, although they can jointly request the adjudicating authorities to give consent awards. The working of adjudication machineries has revealed many deficiencies from various aspects. It was on account of these deficiencies that V.V.Giri was vehemently opposed to its use and favoured collective bargaining as the most appropriate method of settling industrial disputes.

Restrictions on Strikes & Lock-Outs

In collective bargaining, right to strike and lock-out is considered as the last weapon in the armoury of workers and employers, respectively. Collective bargaining without this right has little significance. In India, considerable restrictions have been imposed on the exercise of this right under the Industrial Disputes Act, 1947, state

industrial relations laws and also occasionally, enforced Essential Services Maintenance Act. Experience of the working of the industrial relations in the country shows that majority of strikes in the country have taken place in utter defiance of the statutory restrictions. In a recent decision of August 3, 2003, the Supreme Court has observed that “the trade unions, which have a guaranteed right for collective bargaining, have no right to go on strike.” It is too early to depict the implications and effects of this decision.

Coverage of Labour Laws

A number of protective, social security and welfare laws have been in operation in the country. These laws cover a wide range of subjects of direct interests of individual workers such as, to cite a few examples, hours of work, physical working conditions, wages, and social security benefits, protection of service, personnel matters, welfare amenities, and holidays among others. Many of these are subjects of collective bargaining in a number of countries. On many occasions, the trade unions in India have pressurized the government to enact pro-labour laws. Only a few trade unions have succeeded in improving upon the minimum standards laid down under labour laws. Had the coverage of labour laws been narrow, the trade unions would have relied more on collective bargaining than on other methods.

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these hurdles, collective bargaining has increasingly acquired a prominent place in the industrial relations in the country. The policy of privatization and liberalization is likely to give it a boost in the coming years.

Inadequate Unionisation

In India, only a small percentage of workers have been organized on a regular basis. Available figures show less than 15 per cent workers in India are organized, as against about 40 per cent in the USA and around 50 per cent in Great Britain, France and many other European countries. The financial condition of the Indian trade unions is also poor. Moreover, organizations of workers at the industry or regional level are confined only to a few industries. These features are not congenial for the growth of collective bargaining in the country.

Other Factors

Some other factors inhibiting the growth of collective bargaining in India have been inadequacy of education among workers, unwillingness on the part of many employers to part with their freedom and to sit along with their workers on the bargaining table, poverty of the workers and masses, and inadequate capacity of the industry to pay. Despite

Conclusion

Collective bargaining is a method by which trade unions protect, safeguard and improve the conditions of their members' working lives. The participants in the process are employers or their organizations and worker representatives, usually trade unions. Collective bargaining provides for procedural and substantial rules. Procedural rules concern mechanisms for dealing with interpretations and implementation of agreements as well as resolving conflicts, whereas substantial rules concern the substance of the agreement, in both the markets and managerial relationships. Collective bargaining is viewed as a process of give and take rather than giving in. Therefore the future of collective bargaining is contingent on its transformation into a cooperative process. With the evolution of industrial and employment relations in the face of rapid changes and significant advances in technology, collective bargaining has become an instrument of social change.