International Framework Agreements Taking Sting Out of Transnational Collective Bargaining

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Globalization and a transnational labor environment impact on the employer's ability to regulate or manage labor from different countries. They directly also impact on the ability of trade unions to conclude collective agreements.The question is: whether the process of concluding International Framework Agreements (IFAs) cannot be used as an alternative process for collective bargaining on transnational level and in this way contribute towards a more integrative bargaining? IFAs have created an additional collective bargaining mechanism which can be expanded to incorporate other issues that form the basis of plant level negotiations. IFAs can take the sting or bite out of plant level negotiations as the parties already are in agreement on basic principles and standards.

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Introduction

Collective Bargaining on shop floor level at its best is not something that most employers are looking forward to. This process is very often marked by animosity between the parties as it sometimes tends to bring out the negative aspects of the employment relationship. The challenges faced by both the employer and the trade union during the collective bargaining process are huge and both parties hope that in the end it will result in a collective agreement. The regulation of labor in the workplace and the conclusion of collective agreements are never an easy task but it is even more complex and challenging if it has to take place across national borders in a globalised world. Globalization and a transnational labor environment impact on the ability of the employer to regulate or manage a labor force that is based in different countries. They directly also impact on the ability of trade unions to conclude collective agreements. The migration of workers across national borders, the existence of multinational companies and the demands of transnational labor relations present management and trade unions with many challenges.

International framework agreements (IFAs) are a far more effective management tool for transnational labor regulation.

This paper is premised on the conviction that corporate social responsibility codes and other codes of conduct as well as the negotiation of collective agreements at company level are not enough to effectively manage and regulate labor in a transnational environment. The author suggests that international framework agreements (IFAs) are a far more effective management tool for transnational labor regulation and also for the establishment of collective agreements on a transnational level rather than the traditional collective bargaining methods. The paper starts with an overview of ILO Convention 98, followed by an analysis of the characteristics of traditional collective bargaining methods and IFAs. The paper concludes with a proposal that IFAs as a method of transnational collective bargaining can negate the often negative environment in which collective bargaining takes place and creates a more positive environment for collective bargaining on a transnational level.

Right to Organize & Collective Bargaining: ILO Convention 98

The ILO adopted various conventions that can be seen as international labor standards even though some of these conventions have not been ratified by some member states. Once a convention is approved, it constitutes a legal obligation on member states to adhere to, and apply, its provisions (Hughes, 2005). During July 2011, the ILO has implemented 186 conventions which are still in force today. Governments are obligated to submit detailed reports on their compliance with the conventions they have endorsed and each year there are some suspected breaches of these international labor standards.

In 1998 at the 86th International Labor Conference the ILO adopted the famous "Declaration on Fundamental Principles and Rights at Work" which holds four central policies: (1) the right of workers to associate freely and bargain collectively; (2) the end of forced and compulsory labor; (3) the end of child labor; and (4) the end of unfair discrimination among workers (Hughes, 2005; Weiss, 2013). Most member states have by this time accepted the ILO conventions that embody these fundamental principles.

For the purposes of this study the author gives particular attention to convention 87 and 98 of the ILO. These two conventions are both seen as fundamental principles and rights at work, especially in today's globalized and transnational world of work. Freedom of association and the right to collective bargaining requires the ability to "form freely and join trade union or similar organizations and to engage in voluntary collective bargaining leading to the implementation of collective agreements" (Hughes, 2005: 415). Freedom of association and the right to collective bargaining require in turn

a "legal basis guaranteeing these rights, appropriate institutions, protection against discrimination in the exercise of these rights and accepted involvement of the parties" (Hughes, 2005: 415).

Freedom of Association & Protection of Right to Organize (C87)

This convention regarding Freedom of Association and Protection of the Right to Organise entered into force in July 1950 which was adopted in San Francisco at the 31st International Labor Conference held in July 1948. It is still active today and seen as one of the fundamental conventions of the ILO. This convention consists of four (IV) Parts and 21 Articles. Part I is concerned with Freedom of Association and has ten Articles whereas Part II is about the Protection of the Right to Organize and only consists of one article. The latter might be due the fact that the right to organize is also explained in another section. Part III is Miscellaneous Provisions that include two Articles that integrate this convention with other provisions. The last part, Part IV is the Final Provisions and has eight Articles that is associated with the communication of the convention, its implementation, the ratification process, and the reporting of this Convention.

Right to Organize &Collective Bargaining Convention (C98)

This convention deals with the principles of the Right to Organize and to Bargain Collectively. It entered into force during the 1950s (18 July 1951) and was adopted during the 32nd International Labor Conference session held on the 1 July 1949 in Geneva, Switzerland. This is one of the ILO's Core Conventions. It consists of sixteen Articles and for purposes of this paper attention is given only to Articles 1, 2 and 3 which deal with the Rights to Organize and also Articles 4, 5 and 6 which deal with the Rights to Collective Bargaining.

Article 1 states that workers should be protected against discrimination when it comes to union membership. In normal terms this would mean that no employee should be prejudiced in any way for being a member or not being a member of a trade union. Article 2 calls for non-interference in the establishment, functioning and administration of workers and employers' organizations whether it is by themselves or each other's' agents. This article enshrines the independence of trade unions and or employers organizations, which should function independently from interference from the State or any other party to the employment relationship. Article 3 requires every ILO member to give effect to articles 1 and 2 through "appropriate machinery", this would include national legislation that prohibits discrimination on the grounds of union membership and legislation that enables the formation and functioning of trade unions and employers organizations.

With regards to the Right to Collective Bargaining article 4 entails that laws must promote "the full development and utilization of machinery for voluntary ne-

gotiation" between worker organizations and employer groups to regulate employment "by means of collective agreements". Article 5 states that national laws and regulations can offer different laws for police and armed forces whereas article 6 further provides exception to "the position of public servants engaged in the administration of the State".

Traditional Collective Bargaining Methods

The most obvious characteristic of Collective Bargaining is that it is *collective.*It is thus a process involving not two individuals, but parties representing groups or individuals (Anstey et al, 2011: 48).The individuals represented during this process are aggregates of employees; they could all work for the same employer or in the same industrial, commercial or service sector. The collective bargaining thus takes place between their representatives and a single employer. This is known as plant level bargaining. If the represented group is defined by reference to the sector in which its members work, collective bargaining is said to be ***centralized.*** Centralized bargaining in the South African context normally takes place via bargaining councils for specific sectors.

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Collective bargaining entails *bargaining*. The principles of bargaining are different from a consultation process and are also different from dictation. During the bargaining process parties normally strive towards reaching an agreement by means of compromise. As soon as one party abandons compromise the parties must either part company or resort to dictation. At this point agreement can only be reached if one of the parties succumbs to the dictates of the other. One must also note that *bargaining* is different from supplication to which one of the parties must resort to if the other party is overwhelmingly stronger or more obdurate. Concessions made by a stronger party in such a situation are a product not of persuasion but of sympathy and entirely on the stronger party's terms. Successful bargaining is dependent on the equality of parties; both the parties must treat each other as equals. Where parties to the collective bargaining process are not treated as equals, it is nothing more than collective begging (Anstey et al, 2011: 49).Collective bargaining should be more than a begging exercise by protecting the individual employee's freedom of association and granting of statutory rights to trade unions and their officials. It should however be noted that collective bargaining goes no further than creating an equilibrium that brings the parties to the bargaining table it does not prescribe what the parties should agree to.

Collective bargaining goes no further than creating an equilibrium that brings the parties to the bargaining table.

Another characteristic of collective bargaining is that the outcome or agreement depends on the acceptance of the

parties themselves and not on prescription by some external authority. The outcome is determined by each party's perception of the other party's strength or weakness. These perceptions of each other also come to play during industrial action, where the parties test the strength or weakness of each other. The collective bargaining process, especially in South Africa, is mostly a distributive bargaining process. Employers and employees view each other as enemies, parties are in opposing positions and a gain for one party represents a loss for the other, even more so where collective bargaining takes place at plant level (Bendix, 2015: 196).

The distributive bargaining process involves the use of power tactics very often accompanied by threats of strike action by the trade union or threats of dismissal due to operational requirements and or lockouts by the employer. Coercive power tactics are used by both parties with threats and counter threats. Due to the fact that plant level collective bargaining involves face-to-face negotiations between the employer (manager), shop stewards and trade union representatives these parties very often do not have the necessary skills or expertise to ensure that the collective bargaining process is viewed as a mutually beneficial process. This type of collective bargaining process is marked by a very strong adversarial environment and attitude between both parties, which in turn does not help in improving or achieving better relations between employers and employees.

The question that begs to be answered is, whether the process of concluding International Framework Agreements (IFAs) cannot be used as an alternative process for collective bargaining at transnational level and in this way contribute towards a more integrative bargaining?

International Framework Agreements (IFAs)

IFAs are not traditionally collective agreements, but rather framework agreements on the fundamental principles and rights at work that national or local agreements can use to improve on, thus creating a new space for transnational and national trade unions' cooperation in collective bargaining (Bourgue, 2008: 41). IFAs have mostly been effective in protecting basic trade union rights covered by ILO Conventions 87 and 98 and minimum labor standards by multinational companies and their business partners.

International Framework Agreements create norms for the application of social and labor-policy standards in transnational enterprises. They are an instrument developed by global and sectoral trade union federations with the aim of ensuring that fundamental labor and employment standards are also effectively applied on the periphery of global value-added chains. IFAs have so far only partly helped to achieve the goal of establishing social human rights in the global economy. They have, however, made a contribution towards casting a public spotlight on the normative significance of fundamental social standards and workers' rights, as well as manifesting in concrete terms how these rights

can be experienced at the corporate level. They are, in this way, a key supplementary instrument in efforts to strengthen, both politically and legally, social human rights on a global scale and to advance the international networking of labor unions as well as the transnationalization of labor relations at the corporate level. (Platzer&Rüb, 2014:1)

All IFAs operate on the principle of "respecting minimum standards for labor and human rights" as well as adhering to national legislation and industry regulations.

In recent years IFAs have emerged as a "new tool of regulation within transnational companies" (Telljohann et al, 2009: 507) with the aim of securing "core labor rights across multinational corporations' global supply chains" (Hammer, 2005: 511). All IFAs operate on the principle of "respecting minimum standards for labor and human rights" as well as adhering to national legislation and industry regulations (Hammer, 2005:520). With regards to the countless ILO conventions sanctioned, there is a possibility that IFAs can improve minimum standards in MNCs' foreign operations (Hammer, 2005). However, this is largely only valid for the core conventions associated with fundamental rights. IFAs cover more traditional bargaining issues such as "employment, wages, working time, health and safety, training or restructuring" (Fichter, Sydow&Volynets, 2007).

Besides mentioning minimum standards for labor rights, IFAs frequently also affirm their compliance with the following bodies: the ILO Tripartite Declaration on the Fundamental Rights of Workers, the UN Universal Declaration of Human Rights, the UN Global Compact, and the OECD Guidelines for Multinational Enterprises (Hammer, 2005). These agreements might also state their support to fundamental human rights in the workplace and community, as well as corporate social responsibility (Sobczak, 2007; Riisgaard, 2005). With regard to the ILO Tripartite Declaration on the Fundamental Rights of Workers, the Global Framework Agreements (GFA) clearly stated that they: "agree to observe, secure or further extend the generally accepted ILO core working standards and human rights" (Hammer, 2005: 520). As Hammer (2005) points out, the main areas of IFAs can be found in the acceptance of the ILO core conventions regarding:

i. Freedom of association, the right to organize and collective bargaining (C87, C98);

ii. Equality and non-discrimination (C100, C111);

iii. The preventions of forced labor (C29, C105);

iv. The preventions of child labor (C138, C182);

Even though all IFAs make reference to the ILO Conventions, not all specifically refer to the conventions by number. Some companies use IFAs as a platform for union strength which ultimately seeks further advances whereas many others move beyond these core provisions

and include much more detailed requirements (Hammer, 2005). Some IFAs only cover the basic reference to core labor conventions such as the Carrefour agreement who "only list ILO Convention 87, 98 and 135" (Hammer, 2005: 524). Very often these agreements do not even consist of a full page. With regard to IFAs, it can be concluded that the two most important core conventions of the ILO are 'the right to freedom of association (C87)' and 'the right to organize and collective bargaining (C98)'.

An increasing number of international unions are signing IFAs with TNCs to secure their promise to respect fundamental worker rights.

IFAs can be seen as an instrument used for the regulation of employment relations inTNCs and their supply networks (Fichter, Sydow&Volynets, 2007; Telljohann et al 2009; Sobczak, 2007). Hammer (2005) concurs and states that IFAs establish a vital and innovative tool for transnational labor relations, depending on the different features of international trade union activities such as codes of conduct. He nevertheless argues that IFAs are still "far from a mature industrial relations tool" (Hammer, 2005:514). An increasing number of international unions are signing IFAs with TNCs to secure their promise to respect fundamental worker rights (Riisgaard, 2005). IFAs can result from "the activities of different trade union structures and may go part of the way towards establishing regular bargaining relations". Similarly, they can also constitute the "starting point for putting labor on the map by according it organizing rights in the first place" (Hammer, 2005:512). IFAs are negotiated between a transnational employer and the regional, national and international unions that represent the workers included and protected by the agreement (Riisgaard, 2005). Furthermore, IFAs offer unions a place in the monitoring and compliance process. IFAs allow workers to decide what is best for them.

There are currently no model agreements or legal framework for IFAs (Weiss, 2013).

But even if such models were to be developed by Global Union Federations, no two IFAs are the same and development should take place accordingly (Sobczak, 2007). IFAs have created a platform for transnational employers and regional, national or international trade unions to come together and reach agreement, basic worker rights and minimum labor standards. This is an aspect that very often leads to vigorous debates and further disagreement and or disputes between employers and trade unions where face-to-face negotiations are taking place in the work place at shop floor level.

IFAs as a Tool for Transnational Agreements / Bargaining

IFAs currently have limited scope given the nature of the obligations that they impose on the signatory companies and their business partners as well as the voluntary and often non-binding

nature of these types of agreements. However IFAs are important for developing international collective bargaining within multinational companies. Global Union Federations (GUFs) view collective bargaining within multinational companies as a prerequisite to the development of international sector-based collective bargaining (Du Preez& Smit, 2017: 68).

IFAs can open the way for international sector-based collective bargaining on minimum working conditions.

IFAs in the same industrial sector, as was the case of the IMF in the automotive industry, could create conditions that are conducive to the negotiation of international sector-based agreements (Bourgue, 2008:44). This can only be done if international union solidarity in a specific sector is achieved and that way same industry obligations are imposed on employers. Collective bargaining within multinational companies must rely on the support of union solidarity networks in order to mobilize workers of these companies in various regions of the world. IFAs can open the way for international sector-based collective bargaining on minimum working conditions. IFAs have created an additional channel for communication, implementation and monitoring social human rights (Platzer&Rüb, 2014:17). This additional channel of communication can also be used for transnational collective bargaining. It is also of the utmost importance that if IFAs are viewed as a method for transnational collective bargaining that the trade union movement must continue to build stronger transnational structures and international solidarity.

Conclusion

Plant level negotiations are often bogged down with parties arguing about basic labor rights. This leads to negative perceptions by parties on the real issues from the other party. These types of negotiations are marked by high levels of antagonism between the parties and more often than not collective bargaining ends in a stalemate situation, parties declaring disputes and also industrial action. Plant level negotiations are very strongly influenced by the personalities of the negotiators who are trying their utmost to prove a point and *safe face* with their respective constituents and positive communication between the parties seems to come to a standstill.

IFAs have created a communication channel where parties on a transnational level can negotiate agreements on certain basic labor standards and labor rights. In general IFAs have managed to bring the employer party and the trade unions closer to each other by establishing basic labor standards and rights on a transnational level. The author maintains that IFAs have created an additional collective bargaining mechanism and it can be expanded on to incorporate other issues that form the basis of plant level negotiations. In this way IFAs can take the *sting or bite* out of plant level negotiations as the parties already are in agreement on basic principles and standards.

The success of using IFAs as a method to conclude collective agreements in its broader sense will depend on the willingness and effectiveness of regional trade unions to look and operate outside their normal national comfort zone.

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