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Dr. Ram Pravesh Ram
Associate Professor of Commerce
Vanijya Mahavidyalaya, Patna University, Patna
Contact No-9931591543
Email.-rpram.vmpu05@gmail.com

TOPIC- COLLECTIVE BARGAINING- MEANING, CONCEPT, FUNCTIONS, NATURE, TYPES, ELEMENTS, PROCESS, CONDITIONS FOR SUCCESS OF COLLECTIVE BARGAINING

MEANING -AND CONCEPT OF COLLECTIVE BARGAINING

The Term “Collective Bargaining” Originated in the writings of Sidney and Beatrice Webb, the famed historian of the British labour movement, Towards the end of the nineteenth century. It was first given currency in the United States by Samuel Gompers. Collective Bargaining is a process of joint decision-making and basically represents a democratic way of life in industry. It establishes a culture of bipartism and joint consultation in industry and a flexible method of adjustment to economic and technical changes in an industry. It helps in establishing industrial peace without disrupting either the existing arrangements or the production activities.

Collective bargaining has been defined in the Encyclopaedia of Social Sciences, as “a process of discussion and negotiation between two parties, one or both of whom is a group of persons acting in concert. The resulting bargain is an understanding as to the terms and conditions under which a continuing service is to be performed....More specifically, collective bargaining is a procedure by which employers and a group of employees agree upon the conditions of work.

collective bargaining defines as a ‘social-control technique for reflecting and transmitting the basic power relationships which underlie the conflict of interest in an industrial relations system.’ The definition emphasises important characteristics of collective bargaining, that it is concerned with the application of power in the adjustment of inherent conflicts of interest. The Webbs described collective bargaining as an economic institution, with trade unionism acting as a labour cartel by controlling entry into the trade.

FUNCTIONS OF COLLECTIVE BARGAINING

Collective bargaining serves a number of important functions. It is a rule making or legislative process in the sense that it formulates terms and conditions under which labour and management may cooperate and work together over a certain stated period.

It is also a judicial process for in every collective agreement there is a provision or clause regarding the interpretation of the agreement and how any difference of opinion about the intention or scope of a particular

clause is to be resolved. It is also an executive process as both management and union undertake to implement the agreement signed.

John Dunlop and Derek Bok have listed five important functions of collective bargaining:

- (i) establishing the rules of the workplace;
- (ii) (ii) determining the form of compensation;
- (iii) standardising compensation;
- (iv) (iv) determining priorities on each side; and

(v) redesigning the machinery of bargaining.

According to Flanders (1974) collective bargaining serves two employers' interests. One is market control. By negotiating pay and conditions that are more or less standard, employers effectively take the costs of one of the most important factors of production out of competition. The second interest served by collective bargaining is a contribution to managerial control.

NATURE OF COLLECTIVE BARGAINING

The essential characteristic of collective bargaining is that employees do not negotiate individually and on their own behalf, but do so collectively through representatives. It can only exist and function in the following circumstances:

1 If employees identify a commonality of purpose, organise and act in concert.

1 If management is prepared to recognise their organisation and accept a change in the employment relationship which removes, or at least constraints, its ability to deal with employees on an individual basis.

Joseph Shister has opined that collective bargaining can best be analysed by listing its principal characteristics. He lists five characteristics;

- (i) collective bargaining involves group relationships;
- (ii) it is both continuous and evolutionary;
- (iii) it interacts with the socio-economic climate;
- (iv) it varies from setting to setting.

In collective bargaining, the employer does not deal with workers directly, but he deals with a collective authorised institution. It is an institutional mechanism for:

a) fixing up the price of labour services;

b) establishing a system of industrial jurisprudence; and

c) providing a machinery for the representation of individual and group interests. It covers the entire range of organised relationship between union and management, including negotiation, administration, interpretation, application and enforcement of written agreements. It sets forth joint understandings as to policies and procedures governing wages, rates of pay, hours of work and other conditions of employment. It is recognised as the central institution or 'heart' of industrial relations in all democratic nations. Collective bargaining is essentially a multi-dimensional institution. It is also an important means of extending industrial democracy to employees within the workplace. Several conditions are necessary for its emergence and survival. These include freedom of association for employees to organise into trade unions, which are independent both of their employers and of the state, employer recognition, bargaining in good faith, and mutual acceptance of the agreements entered into by employers and employees. For Clegg, collective bargaining covers both the negotiation and the administration of agreements. He holds that collective bargaining is the principal influence on union behaviour. He identifies six dimensions of collective bargaining as: extent, level, depth, union security, degree of control and scope. Further, he argues that the dimensions of collective bargaining are themselves mainly determined by the structures of management and of employers' organisations.

TYPES OF COLLECTIVE BARGAINING

There are two types of bargaining exercises. One is known as conjunctive or distributive bargaining and the other integrative or cooperative bargaining. Though both aim at joint decision-making, their processes are dissimilar. Distributive bargaining has the function of resolving pure conflicts of interest. It serves to allocate fixed sums of resources and hence often has a "win-lose" quality. In distributive bargaining, the relationship is a forced one, in which the attainment of one party's goal appears to be in basic conflict with that of the other. It deals with issues in which parties have conflicting interests and each party uses its coercive power to a maximum extent possible. In such a situation, one party's gain is the other's loss. Wage

bargaining is an obvious example of distributive or conjunctive bargaining. In contrast to the win-lose syndrome of distributive bargaining, integrative bargaining is concerned with the solution of problems confronting both parties. It is a situation where neither party can gain unless the other gains as well. Integrative bargaining has the function of finding common or complementary interests and solving problems confronting both partners. It serves to optimise the potential for joint gains and hence often has a "win-win" quality. It makes a problem-solving approach in which both the parties make a positive joint effort to their mutual satisfaction. Productivity bargaining is an instance of integrative bargaining.

ELEMENTS OF COLLECTIVE BARGAINING

There are three elements in the system of collective bargaining:

1) Issues for Consideration: The issues pertaining to union recognition and union security come up for consideration when the organisation of workers are weak and they struggle for recognition by the employers. The issues which are generally taken up for consideration are on several aspects of employment relationship, such as

wages, fringe benefits, working conditions, and personnel matters such as promotion, transfer, discharge and dismissal.

2) The Procedure for Consideration: The bargaining machinery and procedure for consideration of various issues differ in relation to whether the two parties, employers, managements and workers and their unions, conduct bargaining on their own or whether a third party, such as the government intervenes to bring about a settlement between them.

3) Collective Agreements and their Implementation: The term “collective agreement” means all agreements in writing regarding working conditions and terms of employment concluded between an employer, a group of employers or one or more employers’ organisations, on the one hand, and one or more representative workers’ organisations or, in the absence of such organisations, the representatives of the workers duly elected and authorised by them in accordance with national laws and regulations, on the other (ILO Recommendation No. 91). The collective bargaining agreement may be described in a number of ways. It is a compromise between the self-interest of the two parties that they have agreed upon as a guide to their relationships on certain matters for a specified period of time.

Collective agreement patterns may vary from country to country depending upon:

(i) the scope of legislation of the country where the agreement is signed; (ii) the level at which the agreement is negotiated and the industry to which it is to apply; and (iii) the government policy towards labour and industrial relations and propensity of the parties to bargain with each other. The negotiators have to decide at which level the collective agreement has to be applied: (i) to the undertaking, plant or work site; (ii) to a particular place or an area; or (iii) to the whole country. In some countries, negotiations at the level of a single undertaking are considered to be more appropriate in view of the special conditions prevailing there. The advantage of negotiating at the level of industry is that it tends to harmonise working conditions and provides uniform benefits to all concerned. The contents of collective agreements vary considerably from plant to plant and from industry to industry. Usually, they cover items relating to wages, working conditions, working hours, fringe benefits, and job security. Legally, a collective agreement binds only the parties to it and the persons on behalf of whom they were acting. It often happens that all workers in a given undertaking may not belong to the union which signed the agreement, or that they are non-unionised. Therefore, in a number of countries the law provides for compulsory coverage of agreements or settlements on the employers and all the employees in an establishment. The implementation and supervision of collective agreements, in some countries, depends on the good faith of the parties. They are “gentlemen’s agreements” without any legal sanction, for instance, in the United Kingdom.

In India, there are three types of agreements, namely,

(a) voluntary agreements,

(b) settlements,

and (c) consent awards.

Collective agreements are voluntary when they are the result of direct negotiations between the parties and when the parties rely on themselves for their implementation. Settlements are collective agreements that are backed by the intervention of government agencies. Consent awards are agreements reached between the parties when the matters in dispute are under reference to industrial tribunal/courts.

COLLECTIVE BARGAINING PROCESS

Collective bargaining is a two-edged sword; what is won may also be lost. Today's collective bargaining process is based upon statutory law. What makes collective bargaining possible in this context is that both labour and management have an ultimate harmony of interest; that is, the desire to assure that the firm for which they work – and from which they are both paid – will remain in business. In order to stay in business, it must be competitive with other firms.

The bargaining process includes preparation of initial demands, negotiations, and settlement. Adequate preparation for bargaining is often the key to success – preparation for negotiations is a comprehensive on-going job for both the management and the union.

Preparation allows each bargaining team to determine their bargaining objectives; a negotiating team to defend its proposals; and to anticipate the opponent's demands.

Among the more important steps to pre-negotiation preparations are the following:

- 1) Coordinating preparations among persons responsible for gathering and analysing information relevant to the bargaining process.
- 2) Selection of a chief negotiator and bargaining team members.
- 3) Reviewing previous negotiations because it provides insights into the opponent's bargaining tactics and probable demands.
- 4) Gathering data on internal operations and policies of comparable firms through wage and salary surveys.
- 5) Formulate proposals and priorities.
- 6) Select a suitable site for negotiations.
- 7) Organise the relevant information in a bargaining book for easy access at the bargaining table.
- 8) Notify the opponent the intent to bargain by serving required notice.

The first step in the collective bargaining process is establishing a relationship for ongoing negotiations and the formulation of agreements covering conditions in the workplace. It is obvious that a great deal of effort can go into the process of establishing a collective bargaining relationship. It is an anxiety producing process and that

each step may involve bitter conflict between the parties. Sometimes, this conflict escalates to litigation; and sometimes it even spills over to violence. Hence, one of its objectives should be promotion of rational and harmonious relations between employers and unions. The second step in the bargaining process relates to the scope of bargaining, i.e., the matters on which to bargain. It consists of three broad categories of items – subjects over which bargaining is mandatory, subjects considered illegal or prohibited, and subjects on which bargaining is permitted but not required. In case of subjects, which are mandatory, the relevant statute or common law makes it unfair labour practice or breach of good faith to refuse to bargain over them. The second category of items in the scope of bargaining is practices considered illegal or prohibited. These are the matters that cannot be bargained under law. Falling between these two categories are items upon which bargaining is permitted, but not required. Either side may refuse to discuss such a matter. To do so is not considered a breach of fair labour practice or good faith.

The third step in the bargaining process is careful structuring. Many observers agree that some structural aspects are crucial in facilitating the ability to reach agreements. The personnel department should take the initiative of forming a negotiating team consisting of two or three members, besides the industrial relations expert. The management team should include representatives of the departments, a personnel specialist, and some one competent to assess the various proposals and counter proposals. The bargaining teams should also be balanced in terms of number of individuals present. Both the sides should agree in advance on the timing, location, and length of bargaining sessions.

An agenda should be prepared indicating which items are to be taken up first –

economic or non-economic. A decision must be made as to whether to treat each item separately, or to seek to bargain an entire package at once. The task of management team should range from formulation of management's charter of demands to the full participation in the actual bargaining sessions; and above all, the preparation of the draft of the settlement and, then, the readiness to negotiate.

An absence of good faith bargaining has been found to include:

- 1) An unwillingness to make counter proposals.
- 2) Constantly changing positions in bargaining.
- 3) The use of delaying tactics.
- 4) Withdrawal of concessions after they have been made.
- 5) Unilateral actions over topics of bargaining.
- 6) Refusal to furnish necessary data for negotiations.

Steps to improve the process of collective bargaining are:

1) Begin the process of negotiations with proposals, not demands.

1) Avoid taking public positions for or against certain proposals in advance of

negotiations.

1 Avoid taking strike votes before the process of negotiation begins.

1 Give negotiators proper authority to bargain.

1 Avoid unnecessary delays in beginning negotiations and in conducting them.

1 Insist on offering facts and arguments.

1 Make plenty of proposals to enhance the opportunities to find compromises.

1 Be prepared to compromise.

1 Be prepared to get results gradually.

1 Preserve good manners and keep discussion focused on relevant issues.

1 Be prepared to stand for a long and hard strike or lockout (as the case may be) in

order to force a settlement justified by facts and arguments

CONDITIONS FOR SUCCESS OF COLLECTIVE BARGAINING

The success of collective bargaining depends upon the following factors:

1) The union participating in the collective bargaining process must be strong, democratic and enlightened. The weak and fragmented state of the unions, smallness and instability of their membership, rivalries, and company formed and dominated trade unions are some of the reasons for the undeveloped state of collective bargaining. Collective bargaining cannot become fully effective if management continues to regard the union as an alien outside force.

2) One of the principles for establishing and promoting collective bargaining is to give voluntary recognition to trade unions as one of the contracting parties. It may also have the positive benefit of improving industrial relations, production and productivity.

3) There should be willingness to give and take by both the parties and interest on the part of both to reach an agreement and to make collective bargaining work. The trade unions should refrain from putting forward exaggerated demands. Both the parties must realise that collective bargaining negotiations are by their very nature a part of compromise process. An emphasis on accommodation rather than conflict is necessary.

4) The whole atmosphere of collective bargaining gets vitiated, relations become bitter and strained and negotiations more difficult, if one or both the parties engage in unfair practices. Both the union and the management, therefore, must desist from committing unfair practices and must have a healthy regard for their mutual rights and responsibilities. Trust and openness are very essential for meaningful discussion.

5) Collective bargaining usually takes place when there are differences between the parties on certain issues. But in order to make the collective bargaining process more successful, it is essential on the part of the representatives of employers and unions to hold meetings at regular intervals to consider matters of common interest. Such an

on-going process would enable them to understand one another's problem better and make it easier to find solutions to questions on which their interests' conflict.

6) Effective collective bargaining presupposes an intelligent understanding of both management and union of the needs, aspirations, objectives and problems of the other party. Union leaders must have full knowledge of the economics of the plant or industry concerned. Management must have a developed awareness of the nature of the union as a political institution operating in an economic environment.

7) The effectiveness of collective bargaining cannot be attained without maturity of leadership on both sides of the bargaining table. The negotiators should have such qualities as experience, skill, intelligence, resourcefulness, honesty and technical know-how. They must have the capacity to distinguish between basically important and trivial issues. They must know when it is wise or necessary to compromise and when it may be fatal to concede the demands.

8) Intelligent collective bargaining demands specialised training. The increasingly technical complexity of the collective bargaining agenda requires expert professional advice, experience and skill on the part of the negotiators.

9) Both management and the union often find it difficult to locate the men on the other side of the table who are authorised to negotiate. For proper negotiations, it is necessary to know the persons empowered to act for the company and the union respectively.