

Introduction to Collective Bargaining (1 week)

This introductory session will include the definition and meaning of **collective bargaining**, its purpose and importance, factors that contribute to collective bargaining, and ways by which terms and conditions of employment are decided. Discussion on the history of collective bargaining in the United States, Europe, and Asia will also be included.

INTRODUCTION:

Collective bargaining is a process whereby organized labor and management negotiate the terms and the conditions of employment. Let us explore some definitions from different sources:

“Collective bargaining is a method by which trade unions protect and improve the condition of their member’s working lives.”

According to Flanders “Collective Bargaining as a means of joint regulation”

Collective Bargaining and ILO: According to ILO, (convention no: 87) “Collective Bargaining is a fundamental right. The right to Collective Bargaining forms an integral part of the ILO declaration on fundamental principles (1998).”

OECD (Organization for Economic Co-operation and Development), WTO (World Trade Organization) and the United Nations advocates Collective Bargaining in similar tones. Collective Bargaining is a part of “Core Labor Standards, Social clause and Global Compact respectively” This means

that Collective Bargaining should be considered as a **Fundamental Right**.

The process by which the mutual agreement incorporated between the management and the Worker's Union is known as the collective bargaining agreement. By its very nature, collective bargaining is a dynamic process in the sense that Collective bargaining today is much different from what it used to be before the advent of the modern labor laws. Today collective bargaining has assumed a complex nature, conducted in the most formal environment, associating the services of a large number of experts, legal practitioners, consultants and specialized personnel. Today it is regarded as a social process, because it occurs in a social setting.

The collective bargaining process simultaneously triggers of the following:

- 1) Employee's right.
- 2) Employer's duty.

In majority of the cases collective bargaining process deals with issues like:

- 1) Rate of wages, pay.
- 2) Hours of employment, working conditions
- 3) Employment policies
- 4) Productivity settlement

The objectives of the collective bargaining are given as:

- 1) Settle the conflicts related to working conditions and wages.
- 2) To protect the interest of the workers through collective action.

3) To resolve the difference between the workers and management through voluntary negotiations and to arrive at a consensus.

4) To avoid third party intervention in matters relating to employment.

PRACTICALLY SPEAKING ANY ISSUE THAT HAS RELEVANCE TO MANAGEMENT AND WORKERS BECOME THE SUBJECT MATTER OF BARGAINING.

For the purpose of the act to bargain collectively is the performance of the mutual obligation of the employer and the representative of the employees to meet at reasonable times and confer in good faith with respect to wages, hours, and terms and conditions of employment, or the negotiation of an agreement, or any question arising there under, the execution of a written contract incorporating any agreement read if requested by either party, but such obligation does not compel either party to agree to a proposal or require the making of a concession.

“A MUTUAL OBLIGATION ON THE EMPLOYER AND EMPLOYEE TO BARGAIN IN GOOD FAITH TOWARDS THE SETTLEMENT OF COLLECTIVE BARGAINING”

What is Good Faith?

“Good faith” – has emerged from the legal terminology “Fair legal practices” which means that there must be faith and trust between the management and the workers.

Good faith bargaining is the cornerstone of effective labor management relations. It means that both parties communicate and negotiate, that they match proposals with counter proposals, and that both make every reasonable effort to arrive at an agreement. It does not mean that one party compels another to agree to a proposal. Nor does it require that

either party make any specific concessions (although as a practical matter, some may be necessary).

When is bargaining not in good faith? An Example:

Example: In a company A, 185 negotiation meetings took place but no resolutions came out. We can draw a hypothesis that there was no good faith from both the parties and negotiations were going on without any sense of reaching to an agreement. The political negotiations between India and Pakistan, over the issues of Kashmir go on similar note. Here past experience plays an important role.

Symptoms of Collective Bargaining without good faith:

1. **Surface bargaining:** Going through the process of bargaining without any real intention of completing a formal agreement.
2. **Unwillingness** to give concessions and compromise at any point of time.
3. **Inadequate proposals** and demands: There may be a deliberate attempt by the parties to give proposals and demands in such a way that no settlement would take place. For example: Demanding a productivity improvement without suggesting any improvement in systems and methods.
4. **Dilatory tactics:** The law requires that the parties meet at reasonable times and intervals. Obviously, refusal to meet with the union does not satisfy the positive duty imposed on the employer and vice versa. It is observed that there is a deliberate attempt by the parties not to call a meeting without giving any reasonable ground. For example: “the matter is under consideration”; “Director is not available”; “we need more time”

etc. The basic objective of giving such statements is to avoid meetings. It is also been experienced that there is a tendency as well as tactics to delay the meetings so that workers would bring more pressure on the Union.

5. Imposing conditions: May include attempts to impose conditions for any further negotiations. For example: The employee's unions of all the nationalized banks in India refused the computerization fearing that it would result job losses. But they agreed to this at one condition that the management designs a better Voluntary pay package to the employees. Similarly management may put a condition that wage rise would be considered only if it is linked with productivity. In short imposing condition on the opposite party indicates lack of faith and trust.

6. Bypassing the representative: (Negotiate with Yellow Unions) There is a possibility that management may negotiate with a puppetry unions created by management. They are not the true representatives of the workers. There are some flaws in the legislations in some countries that the management may not negotiate with the majority union. The second flaw is not having a compulsory democratic method of electing the union representatives. This helps either party to bypass the real representatives and fulfill their mean objectives. For example: in one of the automobile company management refused to negotiate with the Union which had ninety percent membership of the workers. On the other hand they negotiated with a minority union and signed a settlement with them and imposed the same on other workers.

8. Committing unfair labor practices during negotiations: Such practices may reflect poorly upon the good faith of the guilty party. Example: Either party may approach Political parties, pressure groups during the negotiation process. Some times it may happen that the

management would suspend some employees during the bargaining process and would only retain them only if the demands of the management are met.

9. **Withholding Information:** An employer must supply the union with information, upon request to enable it to understand and intelligently discuss the issues raised in bargaining. Example: Data such as Annual financial reports, production, inventory reports, investments done by the company etc.

10. **Ignoring bargaining items:** In such cases a party may ignore to bargain on the demand clauses and instead may propose on some other issues which were not a part of the bargaining agenda. For example: The prime bargaining issue might be of wage hike and may consciously be diverted to issues like transport, canteen, housing loan etc.

In plain language, this means that both management and Unions are required by law to negotiate wage, hours, and terms and conditions of employment in good faith. In short the attitude of both the parties plays a very important to yield positive results.

FEATURES OF COLLECTIVE BARGAINING:

- 1) **COLLECTIVE:** It's collective in two ways:
 - A) All the workers collectively bargain for their collective interest. Because they do not have individual capacity.
 - B) Workers and the management jointly arrive at an amicable solution through negotiations. The Union is expected to bring out

the common consensus on collective issues rather than individual issues.

Note: On the contrary if we observe Information Technology based (IT) companies, the bargain is individualistic. Because, it is knowledge based industry and the individual holds capacity to bargain for his own benefit.

2) **Bargaining Power:** In collective bargaining the bargaining strength of both the parties across the table is equal. Ideally it is industrial democracy at work. It will only be democratic only if both the parties are equipped with knowledge and skill. The strength of the union also depends on the demand and supply of working force. Similarly how much capital is invested upon one worker also determines the ratio of bargaining power. For example: A pilot's union would have more bargaining power than the union of road transport. Because the capital and stake invested on the pilot is much higher than the drivers.

3) **FLEXIBLE:** In collective bargaining both the parties should have to flexible mental set up to arrive amicably at a common consensus.

4) **VOLUNTARY:** Both the parties come in front of each other voluntary in order to arrive at a voluntary agreement, which is mutually acceptable to both the parties.

5) **CONTINUOUS:** Collective bargaining not only commences with negotiation and ends in argument, but it's a continuous process that includes implementation of the agreement and also further negotiations.

6) **DYNAMIC:** It's a dynamic process because it involves the following:

- A process of agreement which itself contains various concepts which may change and alter time to time.
- The implementation process is also on going.
- The mental makeup of the parties keeps on changing.
- Various strategies used by both the parties keeps on changing based on the demand of the situation.
- We all are a part of the global economy and the product, consumer's taste; market place etc keeps on changing. This has tremendous effect on companies. The same has impact on the bargaining as well.

7) **POWER RELATIONSHIP:** Both the parties want to extract the maximum from each other. But to reach a consensus both the parties have to retreat from their positions in order to reach a common consensus. In such an attempt both the parties try to reach on a common ground without any serious dilution of their power. Example: If the job of the worker is not skilled and he is being easily replaceable, he would have lesser bargaining power. Because, there is a huge mass of unemployed youth waiting to be replaced.

8) **REPRESENTATION:** The Collective Bargaining process must be represented by those who have the capacity to take decisions.

9) **BIPARTITE PROCESS:** The employees and the employers negotiate the issue directly across the table. And there is no third party intervention like pressure groups, legal consultants.

