

Chapter 6: Process of Collective Bargaining

Preparing charter of demands, general practices, issues to be included, right to participate in decision making processes, strategies applied by managements, union responses, negotiation process, collective agreement (duration, nature, and implementation), merits and demerits of collective bargaining.

PROCEDURE OF COLLECTIVE BARGAINING

Developing a Bargaining Relationship

One of the very important facets which need to be considered before studying the process of collective bargaining is “Understanding and developing of a good Bargaining relationship”. This step consists of three activities mainly;

- (1) to decide who or which union is to be recognized as the representative of the workers for bargaining purposes
- (2) to decide what should be the level of bargaining
- (3) to decide what should be the scope and coverage of issues under collective bargaining.

(1) **Recognition of the bargaining agent.** In those organizations where there is a single trade union, that union is generally granted recognition to represent the workers. But where there is more than one union , any of these criteria may be used for identifying the representative union , namely:

- (a) Selection of the union by a secret ballot
- (b) Selection through verification of membership by some government agency if required.
- (c) Bargaining with a joint committee of all major unions.
- (d) bargaining with a negotiation committee in which different unions would be represented in proportion to their verified membership
- (e) Bargaining with a negotiation committee which consists of elected representative of every department of the organization selected by secret ballot, irrespective of their union affiliations.

The secret ballot system is widely used in countries like United States, West Germany, etc. In India some trade unions have supported this method but some have opposed it. If the secret ballot or verification conducted by an independent statutory authority indicates that any particular union has got an absolute majority of eligible employees, it should be given recognition as the Sole Bargaining Agent, and the other unions may be given the right to represent their member's grievances.

2. Levels of bargaining. Collective bargaining is possible at all levels, such as

- At the level of the enterprise,
- It may be at the level of the industry in a particular region.
- At the level of the entire industry in the country, that is, at the national level.

From the point of view of an individual establishment, enterprise-level bargaining is generally useful in the sense that the settlement is tailored to the conditions of that organization. In most of the South East Asian countries, the enterprise level Bargaining is predominant.

2. **Scope and coverage of collective bargaining.** Though in many organizations bargaining is struck only by specific issues like wage increase, bonus, or seniority, promotion, etc., yet it is considered advantageous, both for the management and the trade unions, to cover as many issues of interests to both parties as possible. Now a days the orientation of collective bargaining is changing from conflict to co-operation and there by building an atmosphere of trust, progress and social welfare. For example: union must strive for larger scope and coverage like wages and service conditions for contract labor, temporary, part time employees, trainees etc.

The Collective Bargaining Process Variation:

The negotiation process has been visualized in different ways. Collective bargaining procedure can be compared with the poker game in which the highest points go to those who combine deception, bluff and luck and have the ability to come up with a strong hand whenever they are challenged by there counterpart. They further think that the process of negotiation is similar to an exercise in politics where the relative strength of the parties stems from decisiveness and that it resembles with a debate. They are also of the view that both the parties on the bargaining table become entirely flexible and willing to be persuaded only when all the facts have been presented.

However with the increasing maturity of collective bargaining, there has been enlargement of the rational process. In addition several

other factors also influence the negotiation process. Among these factors some are mentioned below:

- Objectives of the parties.
- Kind of experience, knowledge the parties have.
- The Industrial legislation of the concerned country.
- The personalities and training of the negotiators.
- The history of the labor relations in the enterprise.
- The size of the bargaining unit and
- The economic environment.

Although several negotiators may attempt to bluff or outsmart the opposite group, others seldom think of using these tactics. While some bargainers may attempt to dictate the contract on a unilateral ground, others visualize that this process is eventually self defeating. While some negotiators may come together with excessive unrealistic proposals, others may have quite realistic ones. In some negotiations , there may be in each side implicit faith in the counterpart while in others there may prevail a climate of mutual distrust, suspicion and even hatred, in view of the past adverse labor relations. Moreover if the objective is to obtain solution to there mutual problems, the parties are likely to conduct the negotiation on the ground of rationality and fairness. However if the objective is to “put management in its place” or to “weaken or to even destroy the union”, the process of negotiation may take quite different forms. Thus several factors operate causing variations in the conduct of collective bargaining negotiations.

“Militant unions vs. irrational management”, “Rational unions vs. oppressive management”, “Progressive union and progressive

management”-There can be many permutations and combinations and results of the bargaining process would vary depending on these.

Notwithstanding the variations in collective bargaining process, in recent days it is characterized by rational discussions based on facts. In modern collective bargaining process the low level of behavioral patterns such as emotional out burst, tricks, distortion of facts, misrepresentations and deceit are largely avoided. The labor and management representatives have realized that these elements cause unhealthy labor relations and increase the possibility of industrial conflict. Implicitly, one of the goals of collective bargaining is to promote a rational and harmonious relationship in the organization. Accordingly, the negotiators should have qualities of patience, trustworthiness, friendliness, integrity and fairness. Each party should share the attitude of self assessment and consider that the other party may not necessarily be wrong all the time. If such an open attitude is developed in both the parties, the negotiation process is likely to become successful.

There are generally four broad stages in the negotiation process

- (1) preparation for negotiation
- (2) negotiation stage
- (3) signing the agreement
- (4) follow up action

PREPARATION FOR NEGOTIATION

Prior to the actual bargaining sessions, enough care should be taken by both the parties to have a thorough preparation for the negotiations. This has become a pre – requisite to collective bargaining in view of several reasons. Consultation with the lower level members of their respective organizations can help both the parties to obtain valuable information and evolve specific bargaining table approaches. The consultation

process also increases the morale of the two organizations. Again the technical assistance of legal and public relations experts can also be utilized gainfully in the collective bargaining process. Finally care should be taken to preplan with mutual consent the meeting places, ground rules relating to transcripts of the sessions , publicity releases, the payment system of union representatives and allied issues.

(a) Negotiations may commence at the instance of either party – the workers or the management

While some management bide their time till trade unions put forward their proposals, others resort to what is known as positive bargaining by submitting their own proposals for consideration by the workers representatives. If the parties already have an existing contract, it specifically mentions that either party proposing changes in the existing agreement should notify the other party. The nature and extent of such changes must be notified usually 30 to 90 days prior to the termination of the contract.

(b) Union team

Careful selection of a **Union** bargaining team may make a significant contribution to the successful outcome of a particular series of negotiations. The negotiators must have sufficient training to participate and must have an understanding of the total business operation. The most popular and apparently effective bargaining body consists of the following persons:

- (1) Persons with extensive knowledge and experience an industrial relations/personnel management function;
- (2) Representative from the finance area; and
- (3) Members with analytical capabilities.

- (4) People with good communication and convincing skills.

If the negotiating body consists of such people from various fields, the combined effort yields sufficient information and expertise. It is not essential for the number of representatives of the employers' side and the workers' side to be equal as decisions are not taken by a process of voting by the majority. However, it is advisable to keep the team strong and balanced. As far as possible, a committee should be kept small, for large numbers on both sides become unwieldy. In such cases they may concentrate on a discussion of individual grievances or problems rather than on the real agenda/issues. The chief negotiator evolves a strategy of action and of the tactics to be adopted during the negotiations. It is necessary that the roles to be played by each member of the team are properly pre-assigned and each member knows when to take over the discussions. It is good to have proper meetings amongst the team members on the agenda and other points which can be anticipated. The process is called as internal negotiations and it is advisable to have internal negotiations before and during the collective bargaining process.

(c) The Agenda

There is a need to develop proper and clear agenda so that meaningful discussion can be held. It is further required that proper framework should get evolved for fruitful discussions. This helps in adequate preparation for the various items to be discussed. It saves time as issues are identified at the outset and preliminary discussions are already done. It helps both management and union to determine who should be present in the negotiation sessions.

Both the employers and the employees should devote a great deal of

Time to the preparation for the negotiation. The necessary data may have to be collected, from various sources like inside, outside the organization. An area survey of what other organizations are doing for similar issues can provide us with important benchmarks. This kind of surveys can be done with the help of experts in the field of industrial relations.

As a part of home work, the demands of the management should be analyzed and classified into three categories:

- Demands which possibly be met;
- Demands which may be rejected;
- And demands which call for hard bargaining.

An appraisal of the cost of implementing the proposals if they are accepted maybe worked out. The union team should carefully formulate their charter of demands; thoroughly study the implications of the unions demands; and think of the arguments and the counter arguments during the bargaining.

THE NEGOTIATION

Methodology for bargaining – by objectives

Methodology for bargaining is very important in negotiating process. It will help the negotiator to develop those personal and managerial (administrative) qualities of preparedness, knowledge, ability, sensitivity, timing, analytical abilities, composure and patience. These qualities develop as a result of observation, experience involvement and conscious individual effort and experience.

As a bargaining methodology it is desirable to list all the bargaining items, whether introduced by the employer or the employee that the parties will consider during the course of the collective bargaining negotiations. These bargaining items could be separated into two parts –

- The cost or financial items
- The other for non cost or non financial items.

After listing the items priority rating can be determined for these items based on its value or importance relative to all other items on the agenda. The range of the objectives could be decided, which could be like

- **Realistic:** The realistic goal is what both the parties fully expect that it is achievable, logical and based on facts.
- **Optimistic:** The optimistic goal for particular item would be what the negotiator thinks can be achieved. But the negotiation process might have to go through various odds and conditions may not be favorable.
- **Pessimistic objectives.** The pessimistic goal would be a possible outcome if everything did not go as well as expected, but definitely within the acceptance range of the party.

The above mentioned negotiation range is perceived by both the parties and adequate efforts are made accordingly.

All these objectives are a strictly confidential part of the negotiators blue print of goals and should be treated as such and never revealed to the opposing bargaining representative.

This methodology provides a systematic framework for approaching collective bargaining negotiations. Some advantages to collective bargaining negotiations result from the use of the methodology by objectives.

ADVANTAGES

- (1) It gives the negotiating team a real sense of direction and tangible goals (objectives) by which team members may measure their progress during negotiations.
- (2) It provides a more meaningful basis for data preparation, because positions and goals are specifically identified.
- (3) The team has a ready reference, easy to scan blue print that provides a confidential guide to strategy and tactics for all cost and non - cost bargaining items, individually and/or collectively.
- (4) The identification of not just one goal but a range of possible settlement goals on each bargaining item requires by its very nature a more detailed and careful analysis.
- (5) It provides a better means of evaluating past negotiations as a useful experience base from which to launch a more effective plan for the next round of negotiations.
- (6) It provides the parties individually with a safe and effective mechanism for delegating authority their bargaining teams.

(a) Opening the negotiation

Give all the participants including yourself three or four minutes to settle down; to gather papers together and wait for any potential latecomers. Before doing this, the management must at the outset, make sure that the union leaders, with whom the negotiation is going to take place, are really the representatives of the workers. Having exchanged the appropriate social greetings the management may ask the trade union

side to present their case. Normally management representatives act as the chairman of proceedings. Once their leading spokesman has begun the initial statement of his position, we are unlikely to interrupt him even if we feel certain that he has made an error on a factual point. Management representatives may listen carefully and observe the reactions of the other members of the trade union side; in particular the little nods of agreement or supports, on those points about which they feel strongly agreeable.

In this opening phase of the negotiations, management must expect the speeches to be long and prepared with emotional language. The union spokesman has to convince his own members present and those on the shop floor that he did his best. Unions often take an aggressive initial stand and it is a poor strategy on the part of the management team to be equally aggressive or impatient. Before reply to the management, the union must have time and inopportunity to explore the differences and unanimity of opinion. While giving the first reply to the management, union may be borne the following points in mind:

- (1) The number of points which can be communicated should be kept to a minimum. It is better to repeat and assert the same point using different language than to try to cover too much ground. Use plain language and avoid the use of jargons.
- (2) Do not get bogged down in prolonged discussion of one or two of the items raised by the trade union side. Deal with all the points if necessary those items must be grouped together.
- (3) Address your remarks to the main spokesman. Loud shouting and bad temper are not substitutes for a good case well presented.
- (4) Identify the areas of agreement because this gives the impression that progress is being made. Have you left yourself with enough room in which to bargain subsequently?

(5) Will the first statement be made solely by the chief spokesman or could it be made by certain other members of your team? Are there some more members who can contribute as well?

(6) Even if the management team feels that there is no hope of reaching an agreement, managements case may be presented in a broad outline. Management may remember that their contact with the trade union is a continuing one. One should not worry about too much of carry over of these negotiations for the next sessions. This would give adequate time to analyze the situation.

(b) The Middle Period

The transition from the first to the second phase of the negotiations is often blurred. Speeches will tend to become much shorter and less formal. These will sound more natural. Contributions may be made by others and thus gradually number of participants will increase.

The management's negotiator may encounter a problem of maintaining unanimity in public within his own bargaining team. A member of the bargaining team who frequently allows public expression of differences in the conference room may soon be displaced. It is essential that a real team spirit is maintained throughout the negotiations.

The middle period may contain one or more adjournments made at the request of either party. These can be used to:

- (1) allow the other party to evaluate either new offer or new information;
- (2) consult with or report back their group;
- (3) Settle things down; and
- (4) Prevent negotiating fatigue.

Management need not be afraid to suggest or ask for an adjournment, it is not a sign of weakness. Be careful not to be seen to abuse the

adjournment. The skilled use of this time is one of the most important hallmarks of an experienced negotiator. During the middle period of the negotiations both sides, and in particular management may decide to release new information, if relevant. At this time one can take the calculated risk of assessing the way this information will be received and handled by the opponent. The use of information is a tactic and its adoption requires both skill and experience.

(c) Concluding the Negotiation

The experience negotiator keeps on bargaining as long as the other party continues to do so in good faith and there appears to be a chance of a settlement. But management should not concede everything just to do a settlement. There is always a reasonable point beyond which the management representatives do not bargain and this point must be recognized. conceding a point in favor of the opposite party should never be done in the manner of succumbing. Once it becomes clear that a certain point has to be conceded, the giving party must see – and mention – that the concession is being made on an explicit appreciation of such and such valid points made out by the opposite party. This way the concession granted does not remain a one- way traffic, it also earns goodwill and quite possibly, a reciprocal concession from the opposite party.

Concluding the negotiation involves a decision making crisis. This is the point at which personal anxiety about the nature of settlement may show itself. A wide range of factors may interfere. Even if the management case is very strong and this is accepted by the trade union side, concession will be still made partly because of the face to face situation and partly because the relationship within the organization between management and the trade union is a continuing one. Anxiety may be caused because a failure to reach a mutually acceptable settlement involves recognizing the realities of power and conflict which in part lay hidden during the negotiations.

The greatest danger when concluding negotiations is that the outcome is never clearly stated. Industrial relations are full of examples of meetings where each side is left with different impressions of the result. Often the proceedings are informal. Records of discussions are not generally left, but the matters on which agreement is reached are carefully noted.

Reaching an agreement may be comparatively simple. The acid test is the successful implementation and maintenance of that agreement. Another aspect to be considered is the communication of the outcome of negotiations. How much and how should it be communicated. Further how widely this should be circulated taking into consideration the problems of timing and comprehension which are likely to be encountered.

This, in brief, is a sequence of interaction between two parties which takes place on countless occasions throughout industry and which is an essential component of industrial relations. For union and management the following procedures should be adopted during negotiations:

(1) Be friendly in negotiation

(2) Be willing to listen

(3) Give every one an opportunity to state his position and point of view. In this, you will uncover the person who is really insistent about a particular problem or grievance, and know how to deal with him. If facts disclose that there is a need for doing more than just solving the immediate problem, go as far as justified in the circumstances.

(4) Define each issue clearly and unambiguously, and discuss it in the light of all the available facts.

Management and union strategies

Management strategies:

Prior to the bargaining session, management negotiators prepare by developing the strategies and proposals they will use. Three major areas of preparation have been identified:

- Determination of the general size of the economic package that the company anticipates offering during the negotiations.
- Preparation of statistical displays and supportive data that the company will use during negotiations.
- Preparation of a bargaining book for the use of company negotiators, a compilation of information on issues that will be discussed, giving an analysis of the effect of each clause, its use in other companies, and other facts.

An important part of this calculation of the cost of various bargaining issues or demands. The relative cost of pay increases, benefits, and other provisions should be determined prior to negotiations. Other costs should also be considered. For instance, what is the cost to management, in terms of its ability to do its job, of union demands for changes in grievance and discipline procedures or transfer and promotion provisions? The goal is to be as well prepared as possible by considering the implications and ramifications of the issues that will be discussed and by being able to present a strong argument for the position management takes.

Union strategies:

Like management, unions need to prepare for negotiations by collecting information. More and better information gives the union the ability to be more convincing in negotiations. Since collective bargaining is the major means by which the union can convince its members that it is effective and valuable, this is a critical activity. Union should collect information in at least three areas:

- The financial situation of its company and its ability to pay;
- The attitude of management towards various issues, as reflected in past negotiations or inferred from negotiations in similar companies; and
- The attitudes and desires of the employees

The first two areas give the union an idea of what demands the management is likely to accept. The third area is important but is sometimes overlooked. The union should be aware of the preferences of the membership. For instance, is a pension preferred over increased vacation or holiday benefits? The preferences will vary with the characteristics of the workers. Younger workers are more likely to prefer more holidays, shorter work weeks, and limited overtime, whereas older workers are more interested in pension plans, benefits and overtime. The union can determine these preferences by using a questionnaire to survey its members.

SIGNING THE AGREEMENT

COLLECTIVE AGREEMENTS: A CLASSIFICATION

Collective agreements are commonly classified under two headings – ‘procedural’ and ‘substantive’.

(a) Procedure agreements

❖ Procedure agreements spell out the steps by which the industrial relations processes are carried out.

❖ Procedure agreements are collective agreements which relate to:

(1) Machinery for consultation, negotiation or arbitration on terms and conditions of employment or for any other matters which arise between trade unions and employers.

(2) Negotiating rights

(3) Facilities for trade union officials ;and

(4) Disciplinary matters and individual workers’ grievances.

(b) Substantive agreements

These contain the ‘substance’ of any agreement on terms and conditions of the employment. They cover payments of all kinds, i.e. wage rates, shift allowances, incentive payments also holidays and fringe benefits such as pensions and sick pay and various other allowances.

(c) Mixed procedural/ substantive agreements

The distinction between ‘procedural’ and ‘substantive’ agreements while useful, does not always apply in practice. It is possible to have both ‘substantive’ and ‘procedural’ elements in the same agreement. There is, however, a tendency for procedural agreements to have a separate and long term existence and consequently they are not

subject to a great deal of alteration. On the other hand, substantive agreements are altered from time to time to take account of on-going negotiations.