

Collective Bargaining: A Tool for settling Industrial Disputes

Aakash Raj* & Deepa Rani Saliant†

Abstract

The terms and conditions of employment of workers are regulated between their bargaining agents and the employers. Thus, the obligation to bargain collectively is mutual. So the union and the employer are under the duty to bargain, in view, that the parties are required to meet at reasonable times and confer in good faith, with an intention to negotiate on the subject matter called for. In relation to this, the collective bargaining agreement ought to be written and signed by parties on request, where in either party is required to agree to a proposal or make a concession. With an aim to reduce unwanted strikes and lockdowns caused by the workers, the paper revolves around the role of Trade Unions in the settlement of disputes between the employer and workers through a collective bargaining process, resulting in the peaceful settlement of industrial disputes.

Keywords: Conciliation, Employer, Industrial Disputes Act 1947, Labourer, Trade Union

1. Introduction

A trade union also called a labour union, is an association of labourers who are part of a trade, industry, or plant, which is primarily setup to achieve certain benefits, which are pro-labour

* School of Law, CHRIST (Deemed to be University), Bangalore, Karnataka, India; aakash.raj@res.christuniversity.in
†SDM Law College, Mangaluru, Karnataka, India; deeparani.salian@res.christuniversity.in



These improvements are achieved through a process of collective action to alleviate conditions of workers with regard to pay, benefits, working conditions, and social and political status. Labour movement and trade unionism are terms used synonymously. As a movement, trade unionism originated in Great Britain, Europe, and the United States in the 19th century.¹

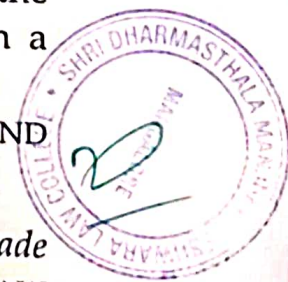
The earliest known fraternal and independent associations of workmen emerged in Great Britain in the 18th century. These independent labour organisations that mushroomed around that time also involved themselves in political and economic matters and began to encounter hostility from employers and governments.² The purpose of trade unions primarily includes helping improve people's pay and conditions of work and employment. Trade unions have been advocating laws and policies for the benefit of workers. Workers confronting issues individually are not often successful as they tend to have very little bargaining power to influence decisions made by powerful employers regarding their job. Collective efforts of workers through trade unions have a better chance of being heard and can also influence the decision making of the employers and governments.

The practice of trade unionism is not unknown to America. In The United States of America, an employee who has been treated unjustly by his/her union can file a charge of unfair labour practice with the National Labour Relations Board or petition the union and/or employer in the State Court. Before the courts or boards hear such a claim, the employer must do all he/she can through the contracts and union's procedures. If the boards or courts uphold an employee's charge of unfair treatment by the union, then the lost pay, reinstatement, or other compensation can be awarded.

There are various kinds of trade unions depending on the occupation of the workers. Some unions represent workers in a

¹ PATRICH ELIAS & BRAIN NAJUIN, *LABOUR LAW: CASES AND MATERIALS*, 16 Peter Willington Pub, (1974).

² Ewing & Hendy, *New perspectives on collective labour law: Trade union recognition and collective bargaining*, 46 *INDUSTRIAL LAW JOURNAL*, 23-51 (2017).



specific industry. For example, the National Union of Journalists (NUJ), as is representative of the name, speak for journalists. The Banking, Insurance and Finance Union (BIFU) represents people from the financial sector, and so on. The biggest union in number is in Britain, which is the GMB UNISON and the Transport and General Workers Union (TGWU), which represents people working in different occupations and industries from both the public and private sectors. These unions are often successful because many unions have merged together to increase their membership and are therefore able to wield their influence.³

Unions survive because of certain ideologies and therefore have thrived over the years. Some aspects pertaining to the bargaining philosophy of the union include:

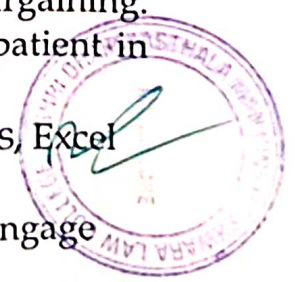
- A. A strong faith in collective bargaining as a method of decision making is a belief that the union helps and promotes collective bargaining with interest to protect as well as promote the interest of the workers.
- B. A desire to enhance the security and strength of the union as a collective bargaining institution.⁴

As every union is formed based on certain principles, it should consider the repercussions, viability, and economic and budgetary capacity of the organisation prior to demands put forth before the employer. The union must be informed of the terms of employment and conditions of work and compare them with other industries similar in functions before preparing statements of demands to be placed on the negotiating table. The statement of demands should be self-explanatory, intelligible, and simple in understanding to not give rise to any misunderstanding.

The union must advise the members not to do anything which paralyses the smooth negotiation during collective bargaining. The trade union leaders play a significant role in collective bargaining. Workers who are optimistic, patient, intelligent, tactful, patient in

³ B. D. SINGH, INDUSTRIAL RELATIONS EMERGING PARADIGMS, Excel Book Publications, New Delhi (2004).

⁴ Holley, Jennings, Wolters, The labor relations process. Cengage Learning(2011).



listening, have integrity, are open-minded and are well-mannered are usually elected as trade union leaders. They must also be experts in human relations.⁵ A person who exhibits authority while speaking and acts judiciously is appointed as a negotiator. Trade unions with such members can also be registered trade unions. Only after such registration can a union be recognised, and once registered, they enjoy various benefits, protections and immunities.

2. Role of Trade Union in Collective Bargaining

One of the principal functions of a trade union is the conduct of collective bargaining, which helps in negotiating labour conditions to counterbalance the bargaining strength of the employer.⁶ Trade unions can have direct negotiations with the employers and remove one of the important causes of many strikes, that is, misrepresenting the workers to the employers by the intermediaries. A worker is a trade union member, and by collective and united action, he/she can counteract the strong bargaining powers of the employers and thus can get a fair deal.⁷

There are certain factors that help trade unions to be successful, these pre-requisites include:

- a) Strong
- b) Stable
- c) Representative Trade Union⁸

In the early stages of the formation of trade union unions, whether in a country, industry, or occupation, the limited and unstable membership of workers in unions were one of the main reasons for

⁵ B. D. SINGH, *INDUSTRIAL RELATIONS EMERGING PARADIGMS*, 37 Excel Book Publications, New Delhi (2004).

⁶ Ackers, *Collective bargaining as industrial democracy: Hugh Clegg and the political foundations of British industrial relations pluralism*, 45 *BRITISH JOURNAL OF INDUSTRIAL RELATIONS*, 77-101 (2007).

⁷ *Growth of India's Trade Union Movement, Phase 1, The First Phase (1875-1918)*.

⁸ *Growth of India's Trade Union Movement, Phase 1, The First Phase (1875-1918)*.



the ineffectiveness of collective bargaining. In underdeveloped countries, the malafides affecting the trade union movement are the multiplicity of trade unions and inter and intra-union rivalries. The development of a strong trade union is hampered by the interference of outsiders and because of indulgence in politics. If the movement is to be a dynamic force for economic development, it must guard itself against the intrusion of unscrupulous labour leaders and politicians, who may harm the movement. A truly representative, enlightened, and strong labour union can effectively implement collective bargaining agreements, and the employer is assured that agreements will be respected and the workers will not retreat. Therefore, the success of collective bargaining largely depends on the existence of strong trade unions, and fluctuation and shifting of loyalty will hinder the growth of collective bargaining.

The employer shall recognise the trade unions that fulfil certain conditions and are registered to negotiate and sign collective bargaining agreements. The recognition of trade unions is a sine qua non for collective bargaining. A recognised trade union enjoys certain additional privileges than trade unions that are unregistered. There should be one strong trade union in one plant for collective bargaining to be effective. In case there is more than one union. There should be proper cooperation among them so that any dispute that arises can be negotiated with the employer in the enterprise, which has collective strength. For effective collective bargaining, either all the unions or at least one union should have a majority of workers with it. It can be called a representative union for negotiating or bargaining with the employers.⁹

The trade union must be strong, that is, it must have a majority of the membership of the workers in the establishment. It must have a permanent existence and stability for collective bargaining. It must not change its position after its registration.¹⁰ The representative union for an industry in that area is that which covers more than

⁹ S. KRISHNA MURTHY, COMMENTARY ON TRADE UNION ACT, 1926 Commercial Pub, New Delhi (2002).

¹⁰ KATZ, KURUVILLA, TURNER, TRADE UNIONS & COLLECTIVE BARGAINING (Vol. 1099), World Bank Publications (1993).



25% of the workers in all establishments in the industry¹¹ and also has the right to represent all the workers in the industrial establishment at all levels of bargaining and thereby can redress the grievances of the workers.

The representative union must be able to speak at various levels of bargaining with convincing knowledge and a reasonable voice. It must have the support of the collective will of the workers. Trade unions with partisan approaches have often been blamed for deviating from the workers' cause as they concentrate more on a political issue that causes inter and intra-rivalry among union workers. This partisan approach affects the strength and security of the union and will consequently be under pressure to obtain material gratification as the union members work towards gaining the loyalty of the political leaders.¹² The emergence of many trade unions reduces the average strength of membership per union and erodes financial stability. Trade union rivalry has always been an obstacle to the promotion of collective bargaining.¹³

3. Prevention of Economic Damages: Strikes & Lockouts

Strikes and lock-outs cause economic damages, and this affects the economy and its wealth as a whole. These can be prevented if cordial relations co-exist between employer and employees. Strikes and lock-outs are two powerful weapons in the hands of the workers and employers. Under Section 2(9) of the Industrial Disputes Act, 1947,¹⁴ strikes are defined as "cessation of work for any length of time under a common understanding to put pressure

¹¹ P D Raju, *Choosing Collective Bargaining Agent: The Andhra Pradesh Experience in India*, INDIAN JOURNAL OF INDUSTRIAL RELATIONS, 696-712 (2007).

¹² Jenkins, *Labor policy & the second generation of economic reform in India*, 3 INDIA REVIEW, 333-363 (2004).

¹³ T. N. BHOGOLIWALA, *ECONOMICS OF LABOUR & SOCIAL WELFARE*, 119 Sahitya Bhavan Pub, Agra (1974).

¹⁴ The Industrial Disputes Act, Act No. 14 of 1947, INDIA CODE (1947), Vol. 1, §§ 2, cl. 9.



on an employer to accept their demand"¹⁵. The three measures that the employer has as a defence to counter violent, unjust trade unionism are:

- a) Shutting down the place of employment
- b) Suspension of all work
- c) Refusal to continue service of persons employed who have resorted to unjust ways¹⁶

Strikes and lock-outs have to be used as a last resort when differences in the terms and conditions of employment arise, as it adversely affects the interest of not only the place of work but the community at large. They destroy the level of production and interrupt public utility services, thereby causing economic loss. The Industrial Disputes Act 1947¹⁷ lays down certain rules to be followed prior to strikes and lock-outs. If workers and employers strike or lock-outs in public utility services without following the prescribed procedure, then it is considered to be illegal.¹⁸ This should be done during the pendency of conciliation proceedings before a conciliation officer and seven days after the conclusion of such proceedings.¹⁹ As we know, strikes occur when employees refuse to work. The employer provides relief with regard to compensation or conditions of work. Therefore strike, and the threat of a strike constitutes an important device by which unions apply economic pressure in labour disputes.²⁰ Employers, on the other hand, use lock-outs as a defensive weapon. Strikes and lock-

¹⁵ Dhyani, *Strike: A Study in State Controls & Adjustment of Industrial Relations in India*, 1 INDIAN JOURNAL OF INDUSTRIAL RELATIONS, 100-116(1965).

¹⁶ HEERY & ABBOTT, *TRADE UNIONS & THE INSECURE WORKFORCE*, 167-192, Routledge (2000).

¹⁷ The Industrial Disputes Act, Act No. 14 of 1947, INDIA CODE (1947), Vol. 1.

¹⁸ *supra*, at 16.

¹⁹ S. C. SRIVATSAVA, *INDUSTRIAL RELATIONS & LABOUR LAW*, Vikas Pub, New Delhi, (2003).

²⁰ INTERNATIONAL LABOUR OFFICE, *COLLECTIVE BARGAINING: A WORKERS EDUCATION MANUAL*, 5 ILO, Geneva (1980).



outs bring severe losses and inconveniences to third parties. At times, they disrupt the availability of products or services, which in turn inconveniences the public.

4. Regulating Strikes

As strikes are essential a resort to economic compulsion as a method of resolving disputes, they may be seen somewhat barbaric as measured may seem somewhat barbaric as compared to more peaceful means of settlement.²¹ Strikes have frequently been subjected to legislative restrictions; however, certain other factors that could lead to the failure of the strikes are:

- I. When strikes are organised in communities and have a strong sense of grievance against outsiders, public opinion in society may have no restraining impact. For example, during World War II, coal miners conducted a series of illegal but partially successful strikes, despite a massive public relations campaign against them for hindering the war effort.
- II. The degree to which strikes can be replaced by other workers who can effectively perform their job is a major determinant of whether an illegal strike can be halted. Small groups of highly skilled employees may be virtually impossible to replace and so may strike successfully despite legal sanctions.
- III. The degree of internal disagreement within the union is an important factor. If the union is united, the threat of legal compulsion to end a strike may only increase the striker's determination to persevere, but a disunited group may easily be induced to return to work.



²¹ T. N. BHAGOLIWALA, ECONOMICS OF LABOUR & SOCIAL WELFARE, 120 Sahitya Bhavan Pub, Agra (1974).

IV. The threat of arrest or forced dispersion of strikers by police, whether to dissolve the union or to prevent illegal picketing, is sometimes but not always effective.²²

Many disputes can be avoided if the employer has a willing heart and there is a smooth and cordial relationship between the management and the labour through effective collective bargaining.

5. Settlement of Labour Disputes

The Industrial Disputes Act 1947²³ provides machinery for the establishment of works committees, conciliation and adjudication machinery to promote harmonious relations between employers and workers.²⁴

5.1. Works Committee

The works committee settles industrial disputes through direct negotiation between employers and employees. The works committees are generally concerned about the problems arising in the everyday working of the establishment. Their functions and responsibilities cannot go beyond offering recommendations, and therefore there are more or fewer bodies who endeavour to settle the differences in the first instance. The final choice rests completely with the union as a whole. This method helps resolve disputes and consequential strikes and lock-outs, which can be avoided to the mutual advantage of both labour and management by effective functioning of Collective Bargaining.

6. Conciliation Machinery

Conciliation is a process by which the worker and employer representatives are brought together before a third person or a



²² D Q Mills, *LABOR-MANAGEMENT RELATIONS*, NEW YORK: McGraw-Hill (1978).

²³ The Industrial Disputes Act, Act No. 14 of 1947, INDIA CODE (1947), Vol. 1.

²⁴ C. S. VENKATA RATNAM, P. A. NAIDU, *INDUSTRIAL RELATIONS & COLLECTIVE BARGAINING IN SOUTH ASIA*, 51 ILO Pub (1999).

group of persons to persuade them to a mutual agreement. The Industrial Disputes Act 1947²⁵ emphasizes the settlement of labour disputes through third-party intervention. When approached by either party, whether working in public utility services or industrial establishments, under the Industrial Disputes Act 1947,²⁶ employing conciliation to resolve a dispute is compulsory. The conciliation machinery may take note of a dispute brought before it or *suo-moto* take up a cause if it apprehends a dispute. A settlement arrived through the conciliation mechanism becomes binding on all the parties to the dispute. Conciliation is based upon the recognition of the fact that strike may prove detrimental to both employers and employees. This is especially true when both the employers and employees have more or less equal bargaining power. Although conciliation does not rule out strikes completely, it does help in resolving differences due to faulty negotiations and helps parties to understand and appreciate the situation.²⁷

7. Role of Trade Unions in shaping Industrial Relations

Issues with regard to wages and conditions of employment of workers are agreed upon during appointment, and later enhancement of salaries, if not agreed upon mutually, is settled by some form of collective negotiation between the union/s and their employer/s. After obtaining recognition and being brought before the bargaining table, the trade union can agree to allow the employer to bargain and negotiate sensibly. In the United States, an employer is duty-bound to bargain in good faith with the union, which is a recognised bargaining agent. All information about the organisation required by the workers for a negotiation process must be provided by the employer to help facilitate collective bargaining. There are also duties to inform and consult with the

²⁵ The Industrial Disputes Act, Act No. 14 of 1947, INDIA CODE (1947), Vol. 1.

²⁶ The Industrial Disputes Act, Act No. 14 of 1947, INDIA CODE (1947), Vol. 1.

²⁷ O. P. MALHOTRA, THE LAW OF INDUSTRIAL DISPUTES, Volume I, 12 Lexis Nexus Butter Worths Pub, New Delhi (2004).



union on particular issues, redundancies, takeovers and safety matters.

8. Information for Collective Bargaining

Where an employer recognises an independent trade union as having negotiating rights, he is required to provide certain information to its representatives for collective bargaining. The legislation aims to encourage openness - a free flow of information from the employer to the union. Information can be disclosed if it satisfies the twin test:

- a) The information can be disclosed, the lack of which would put the union at a material disadvantage at the bargaining table.
- b) The information must be disclosed as a good industrial relations practice.²⁸

There is, however, no bounded duty to disclose the information until the credit end union representative requests it. The information sought must be materials that are important, relevant or significant for collective bargaining. The employer is required to disclose information only if it follows good industrial relations practices. If the information is appropriately given to the union, they can have smooth negotiation and agreement, which will reflect industrial peace. Thus, the trade union plays a positive role in promoting industrial relations.²⁹ Collective bargaining rules are of two kinds. They are:

8.1. Procedural Rules

Procedural rules with regard to Alternative Dispute Resolution (A.D.R.) set out the procedure that governs the behaviour of both the employer and union. The rules lay down how contracts should be negotiated, modified, renewed, or terminated. They decide who

²⁸ AIDT & TZANNATOS, *UNIONS & COLLECTIVE BARGAINING: ECONOMIC EFFECTS IN A GLOBAL ENVIRONMENT*, Washington, DC, World Bank(2002).

²⁹ T. N. BHAGOLIWALA, *ECONOMICS OF LABOUR & SOCIAL WELFARE*, 120 Sahitya Bhavan Pub, Agra (1974).



should represent the two sides and what facilities they will be provided, which will help them bargain. Further, they also determine how differences over implementation of substantive rules may be handled

8.2. Substantive Rules

Substantive rules do not regulate the relations between groups but between individuals. They are concerned with the substance of the agreements which the union and management work out. Further, they play a significant role in regulating the economic and political relationship between employer and employee. ~

9. Types of Bargaining

Several terms have been used to refer to the relationship forced upon both worker and management by their functional necessity. The relationship is a forced one and exists because a working agreement is essential to serve the interests of both. Each party uses its coercive power to the greatest extent possible, with no regard to its effect on the other. How much each party gains from bargaining depends on the coercive power at its disposal. One party/s gain are the other's losses. Wage bargains are an obvious example of conjunctive or distributive bargaining. Conjunctive bargaining provides the minimum condition necessary for the functioning of the enterprise. Although a win-lose situation cannot be done away with entirely, labour-management relations can progress beyond this minimum level to one of cooperative or integrative bargaining.³⁰

More recent instances of such labour management cooperation are found in what is known as productivity bargaining. According to this, bargaining as a method is used to enhance productivity by cutting down overtime and revising inefficient work methods. The agreement entrusts the union with joint responsibility to revise the method of work. In return, the workers are offered a substantial rise in wages. The management secures union consent to change

³⁰ A CEFALIELLO, *COLLECTIVE BARGAINING: A SINGLE EUROPEAN CONCEPT?* (Doctoral dissertation, University of Glasgow)(2016)



work methods and reduces overtime, and the workers get both shorter hours and higher wages.

Although collective bargaining is the best method to resolve the friction between the labour and management in practice, there are areas of concern too. In the words of Chamberlain, the greatest barrier to cooperation is fear of cooperation itself.³¹ The trade union might fear that the management would use cooperation to wipe it out of existence. The management, on the other hand, fears a loss of privilege. A subject once brought to the negotiating table cannot be retracted to the realm of privilege. All this does not alter the fact that there are areas of common interests. It is a problem of whether management wants security or is prepared to take calculated risks to advance constructive cooperation. Collective bargaining agreements are generally drafted, taking into consideration all these views.³²

10. Essential Pre-requisites of Successful Collective Bargaining

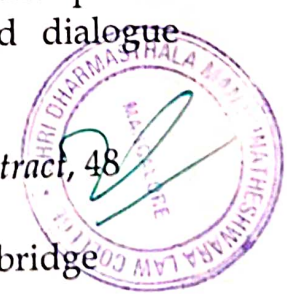
Collective bargaining as a method of alternative dispute resolution can be fully effective if a favourable political climate exists. In particular, the government must facilitate the same through policy response. Only then can collective agreements become the best method for regulating industrial disputes.

10.1. Pluralism and Freedom of Association

In labour relations in a pluralistic society, collective bargaining is recognized as a fundamental tool through which stability is maintained. Pluralism indicates a process of bargaining between one more of the industrial group on the one hand and the government on the other. There are many pressure groups within a political system, like, business associations, unions, political parties etc. A pluralistic viewpoint involves acceptance and dialogue

³¹ Chamberlain, *Collective Bargaining & the Concept of Contract*, 48 COLUMBIA LAW REVIEW, 829-847(1948).

³² BERCUSSON, BRIAN, *EUROPEAN LABOUR LAW*, 103 Cambridge University Press, (2009).



between these pressure groups and the government. Both exchange ideas, intending to effect compromises, by making a concession. Thus, pluralism's "theme is that men associate together to further their common interests"³³ and desire their associations to exert pressure on each other and the government. The concession which follows helps to bind society together, and thereafter stability is maintained by further concessions and adjustments as new associations emerge and power shifts from one group to another"³⁴. The freedom of association provided in the Constitution of India under Article 19³⁵ offers unions the right of association. The interest groups in society would be unable to function effectively if they lacked the right to form associations. Employers and employees should have freedom of association and form their unions or organisations. The question of collective bargaining does not arise without a union, particularly for employees. The existence of strong, independent, well-organised trade unions with defined policies is the key condition for the successful process of collective bargaining.³⁶

It follows that when unions are well organised, particularly in the early stages of development, collective bargaining is not very useful. In India, trade unions are generally weak because of rivalry among themselves based on caste, creed, and religion.

10.2. Recognition of Trade Union

The freedom of association does not necessarily entitle every association to be recognised. Especially in a system where there are

³³ L I Rudolph & Rudolph, *Demand groups & pluralist representation in India*, 24 JOURNAL OF COMMONWEALTH & COMPARATIVE POLITICS, 227-238 (1986).

³⁴ Gellner M, *A New Approach to Industrial Democracy*, 36 INTERNATIONAL AFFAIRS, 516-516 (1960).

³⁵ INDIA CONST, art. 19.

³⁶ Hyman, Richard, *The Europeanisation or the erosion of industrial relations*, 32 INDUSTRIAL RELATIONS JOURNAL, 280-294 (2001); Heidenreich, Gabriele, *The Open Method of Co-ordination: a way to the Europeanization of Social & Employment Policies*, 46 JCMS: JOURNAL OF COMMON MARKET STUDIES, 497-532 (2008).



numerous trade unions, there should be some pre-established criteria that are operative within the industrial relations system to decide when and how a union should be recognised. The general criteria are to recognise the most representative union. However, how recognition is granted, to whom and by whom may differ from system to system and is based on certain criteria. In some systems, recognition is determined by requiring the union to have not less than a stipulated percentage of the workers in the enterprise.³⁷ The representation is also decided by a referendum in the workplace or by an outsider, like, a certifying authority (such as the labour department or an independent statutory body). There could be a condition that once certified as the bargaining agent. There cannot be a change of agent for a prescribed period, such as one or two years, to ensure the stability of the process.³⁸

10.3. Clear areas of bargaining

The areas where the parties are legally required to bargain collectively should be correctly spelt out. International Labour Organization has stated that negotiations imply that the differences between two parties can be resolved through a compromise and that an agreement can be reached.³⁹ There can be no negotiation or agreement if both sides don't agree to settle disputes amicably when they meet.

10.3. Good Faith

A precedent of good faith drives the process of collective bargaining. Only if the intention to settle a dispute is through good faith can there be productive bargaining,⁴⁰ and a resultant agreement can be drawn upon. Good faith can exist where a sense of justice and fairness is the common ideals and attitudes shared

³⁷ Payalchatly, *Collective Bargaining: Process & Advantages*, 2 Journal of International Academic Research for Multidisciplinary, 647, 650(2014).

³⁸ *Id*, at 647.

³⁹ Gernigon, Odero, Guido, *ILO Principles Concerning Collective Bargaining*, 139 INTERNATIONAL LABOUR REVIEW, 33(2000).

⁴⁰ Delony, *Good Faith in Collective Bargaining*, 12 U. Fla. L. Rev 378, 1959.



among employers, workers, and their organisations. A belief in compromise through dialogue is the foundation for collective bargaining.

A. Mutual trust and Confidence

Understanding, mutual trust, confidence, respect for each other, and readiness to settle the matter by negotiations are necessary virtues that help resolve disputes. During negotiations, the parties must avoid unlawful practices, which may vitiate the conducive atmosphere for bargaining. There should be greater prominence on settlement of disputes than on conflict, and regard should be shown for the responsibilities and rights of both.

B. Parity of Strength

There should be a semblance of parity of strength of both the parties, that is, the employers and the union, for real and effective bargaining to occur, and they should bear in mind to act in good faith, should act mutually to solve issues that arise. Though there are no legal sanctions behind the terms and conditions agreed upon by the parties, they should exhibit strength that is consistent.

C. Willingness to give and take

Representatives who are selected and duly authorised by both parties should observe the proper procedure of bargaining and avoid a breakdown of dialogue as far as possible. The bargaining must be factual, and such discussions based on facts must be properly assessed.

D. Right to Strike and Lock-outs

The right of employees and employers to strike and lock-outs for genuine reasons must be a recognised subject based on national interest, as this alone can ensure freedom of collective bargaining. Parties to the dispute should have the freedom to decide how to regulate employment relations. Even where the government provides a regulatory framework, both parties should have sufficient leeway to negotiate to set norms and regulations.



E. Support by Government and Labour Administrative Authorities

The labour administration authorities play a pivotal role in the smooth functioning of the union. Their support is necessary for successful collective bargaining. This implies that they will have to:

- a) Provide the necessary environment for alternative dispute resolution. For example, they should provide effective conciliation services in the event of a breakdown in the process and even provide the necessary provision for the registration of agreements.
- b) Post collective bargaining has been concluded. The parties must abstain from supporting the breach of agreements.
- c) As far as is practicable, ensure observance of collective bargaining agreements.
- d) Provide ways, means and methods for the peaceful settlement of disputes that arise out if collective bargaining fails.

The State should encourage collective bargaining as a method of settling industrial disputes and monitoring and guiding the employer and employee relations. Possible steps that the government can take in this direction include:

- a) Announcing policies at both the Central and State level with sufficient clarity, stating that the government is in favour of bipartite settlement of disputes at plant, industry, regional, national levels and will minimize their interventionist approach.
- b) Making employers recognize unions as bargaining agents and frame suitable rules for such a recognition to be observed both by employers and unions.
- c) Encourage collective bargaining and settlement through final agreements by conferring their legitimacy and validity, and provide the help of conciliation machinery to parties to resolve their difference when necessary, and prohibit unfair labour practices.



Therefore, the success of collective bargaining is possible only if the employee and management realize their responsibilities and desire success. When the negotiations between the parties have resulted in an agreement, the terms of the contract should be recorded in writing and incorporated in a document. When an agreement is reached, it should be honoured and fairly implemented. To ensure the proper functioning of the agreement, both parties should give up and avoid unfair labour practices.⁴¹

a. Proper Internal Communication

The management and union should keep their managers and members well informed, as a lack of proper communication and information can lead to misunderstanding and can lead to further disputes. Sometimes, ill-informed managers and supervisors may mislead the workers about the current state of negotiations and the management's objectives.⁴² Therefore, it is necessary to involve managers in deciding on objectives and solutions, and such participation is likely to ensure greater acceptance and better implementation.⁴³

b. Observance of Agreement

In developing countries where there are many unions, they are sometimes unable to ensure the observance of agreements by the members. While the labour law system provides for sanctions for breaches of agreements, the labour administration authorities may be reluctant to impose sanctions on workers.⁴⁴ Where there is frequent non-observance of agreements or understanding reached through the collective bargaining process, the party which has good faith may lose faith in the process.

⁴¹ Vos Kees, *Europeanization & convergence in industrial relations*, 12 EUROPEAN JOURNAL OF INDUSTRIAL RELATIONS, 311 (2006).

⁴² KAST & ROSENWEIG, ORGANIZATION & MANAGEMENT, 106-111, New York: McGraw Hill Book-Company, (Second Edition, 1974).

⁴³ Koopmans T, *The birth of European law at the crossroads of legal traditions*, THE AMERICAN JOURNAL OF COMPARATIVE LAW, 493-507 (1991).

⁴⁴ Lobel, *Realities of Interest Based (Win-Win) Bargaining*, LABOR LAW JOURNAL, 771-773 (1994).



11. B. R Singh v. Union of India⁴⁵

This case highlighted the failure of the Collective Bargaining agreement processes between the trade unions and the employers of the organisation. The Trade fair authority had several demands from the management in terms of housing facilities for the employees, as well as the enhancement of salaries and allowances for the employees. In this situation, a strike was called by the trade unions. However, some of the employees attended their job during the strike. After the strike was called off, some of the employees were terminated, and some were not given the actual position demanded by them. In the respective case, the court recognised that the organisation's employees selected strike as the mode of expressing their grievances. The verdict was conveyed that it is a right to form a labour union in the organisation.

In addition to that, Article 19 (c) of the Constitution of India 1949⁴⁶ states that there is a proper right to forming associations and or unions. Therefore, the formation of the labour union was appropriate within the organisation. On the other hand, it was also illuminated that calling a strike was generally the breaching of the contract. Section 22 of the Industrial Dispute Act 1947⁴⁷ illuminates that there is a prohibition of strikes and locks out in the organisation. Along with that, clause 1 of Section 22⁴⁸ of the concerned act also mentions that no person or the employee shall enter into the strike, and the formation of the strike is also considered as breaching of contract. This case demonstrates that the Collective Bargaining Agreement process was not followed within the organisation not to mitigate the disputes or the demands of the employees peacefully and cordially.

⁴⁵ B. R. Singh & Ors. v. Union of India & Ors., 1989 SCR Supl. (1) 257.

⁴⁶ INDIA CONST, art 19, cl. 1.

⁴⁷ The Industrial Disputes Act, Act No. 14 of 1947, INDIA CODE (1947), Vol. 1, §§ 22.

⁴⁸ The Industrial Disputes Act, Act No. 14 of 1947, INDIA CODE (1947), Vol. 1, §§ 22, cl. 1.



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a. Karnal Leather Karmachari v. Liberty Footwear Company (Regd)⁴⁹

This case emphasised the proper maintenance of the Collective Bargaining Agreement. The liberty footwear company had a legal dispute with its employees. This was because approximately 200 employees were terminated from the organisation. In addition to that, the committee of the organization expressed their view of retaking approximately 159 employees back to their work. On the other hand, Section 10 (a) of the Industrial Dispute Act 1947⁵⁰ demonstrates that the award made without potential publication was invalid. Also, the Industrial Dispute Act 1947⁵¹ determines social justice in effectively implementing Collective Bargaining Agreement. On a similar note, the dispute between the employer and the worker management of Liberty Footwear Company was settled peacefully and voluntarily. The case's verdict highlights that sharing the views if necessary is the significant right of the employees, and they can also share their views in front of the management. Non-compliance with the respective right is fatal within the organisation. Therefore, the concerned case highlights the proper compliance with the Collective Bargaining Agreement process between the management and the employers of the organisation.

b. All India Bank Employees v. N. I. Tribunal⁵²

The respective case highlighted the importance of freedom of expression and speech. Article 19 (1) of the Constitution of India 1950⁵³ focuses on the potential rights in terms of a right to move to

⁴⁹ Karnal Leather Karamchhari Sanghathan (Regd.) v. Liberty Footwear Company (Regd.) 1989 SCR (3) 1065.

⁵⁰ The Industrial Disputes Act, Act No. 14 of 1947, INDIA CODE (1947), Vol. 1, §§ 10, cl. a.

⁵¹ The Industrial Disputes Act, Act No. 14 of 1947, INDIA CODE (1947), Vol. 1.

⁵² All India Bank Employees' Association v. N. I. Tribunal, AIR 1962 SC 171.

⁵³ INDIA CONST., art 19, cl. 1.



a place, discuss the problems, and share views. On the other hand, the respective case also stressed that Article 19 (1)⁵⁴ does not highlight the right to obtain all the objectives. Along with that, it also stated that the strikes by the unions of the organization can be controlled or restricted by enforcing the collective bargaining process. Therefore, it can be highlighted that implementing the collective bargaining process effectively in the organization helps decrease the strike and lock-outs.

c. **Hindustan Lever Ltd. v. Hindustan Lever Employees' Union (1998)**⁵⁵

According to section 2A⁵⁶ of the Industrial Disputes Act 1947, disputes concerning discharge, dismissal, retrenchment or termination of the service of an individual workman are deemed to be an industrial dispute. In this case, retrenchment was given with no formal notice to the workmen, resulting to become a lock-out. The employer tried to settle the dispute with each specific individual workman. The court ruled that individual settlement, as employed in the case, were inconsistent with the concept of collective bargaining.

d. **P. Vintadhachallum v. Management of Lotus Mills**⁵⁷

In this case, the collective bargaining agreement has been understood and interpreted as one with an aim to promote industrial peace strive and resolve industrial disputes. The current case focuses on the settlement of negotiation between the employer and the single employee through collective bargaining to avoid illegal lock-outs, retrenchment, or termination of services. However, the case highlighted that as per section 2A of the

⁵⁴ INDIA CONST., art 19, cl. 1.

⁵⁵ Hindustan Lever Employees Union v. Hindustan Lever Ltd. & Ors. (1995) 83 Company Cases, pp. 30-39 (SC).

⁵⁶ The Industrial Disputes Act, Act No. 14 of 1947, INDIA CODE (1947), Vol. 1, §§ 2A.

⁵⁷ P. Virudhachalam & Ors v. The Management of Lotus Mills & Anr (SC) Civil appeal No. 4852 of 1989.



Industrial Disputes Act 1947,⁵⁸ the dispute is considered when taken by the representative union member or a considerable number of employees. The case was in favour of the employer with respect to the collective bargaining agreement, wherein it was stated that a single employee could not bring in an industrial dispute. However, it can be considered one when it is followed up with many employees or a representative union member.

e. I.T.C. Employee Association v. State of Karnataka⁵⁹

This case emphasised the relationship between the employer and the trade union when direct bargaining could be done with the employees. The case employed section 12(13) of the Industrial Disputes Act 1947.⁶⁰ Accordingly, the company favoured settlement of the case through negotiation for the welfare of the employees whilst denying the allegation made by the trade union with respect to the collective bargaining agreement.

12. Conclusion

Collective bargaining promotes a stable relationship amongst the stakeholders, where conflict and cooperation are mixed in varying propositions. A representative of the trade union is appointed by the employee, who acts on behalf of the other workers in an organisation. The trade union representative considers the workers' responsibility as the bargaining agent, where he/she has the right to bargain with the employer and bring an amicable settlement that is acceptable to both the employers and workers. However beneficial the collective bargaining agreement might be, it is not well adopted in an industrial establishment.

It is pertinent to mention here that different political parties back the trade union movement in the public sector industries in India. Therefore, ideological differences make it difficult to smooth

⁵⁸ The Industrial Disputes Act, Act No. 14 of 1947, INDIA CODE (1947), Vol. 1, §§ 2, cl. K.

⁵⁹ I.T.C. Ltd. v. State of Karnataka & Ors [1985] I.L.J. 119.

⁶⁰ The Industrial Disputes Act, Act No. 14 of 1947, INDIA CODE (1947), Vol. 1, §§ 12, cl. 13.



collective bargaining agreements. Negotiating problems such as layoffs and closures from the point of view of large public sector industries requires the consideration of government policies.

Further, the trade union movement in India covers only a small portion of the total industrial employment. Poor financial resources, the multiplicity of unions, inter-union and intra-union rivalry, politicisation, and poor leadership make them weak agents in the collective bargaining process. Therefore, the role of trade unions in the collective bargaining process of public sector industries has to be viewed seriously, as these industries are a major source of employment and pillars of the national economy.

A trade union is vital for the success of an organization. With hard work and higher productivity, they can increase the economic well-being of their members. Today, raising unfair trade practices can be one of the causes for an unhealthy relationship between employers and workers. The organization needs to look into such matters, whilst fulfilling their social obligation, by not adopting unfair labour practices but by creating a sense of duty to work honestly. Collective bargaining agreements can become an effective tool to avoid strikes and lock-outs by practising proper procedure, the right leadership, having adequate financial resources, and following genuine trade union principles and methods.





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Authored by:

Dr. Rajashree S Kini ,Associate Professor

From

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L Zadeh (Univ. of California, USA)
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