

Collective Bargaining In India

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ABSTRACT

Collective bargaining is the term used to define the process by which an employer must attempt to negotiate an agreement with a union and not with specific workers regarding employment and working conditions. This is usually done with the aim of helping workers express their concerns and enter into better negotiations with employers to address certain workers' claims and rights, including inquiries regarding hours worked, wages, working conditions, etc. This practice is often quite effective as it often prompts companies to take action to address employee concerns. In private and state-owned enterprises in India, this method of resolving labor disputes has revolutionized industrial relations. This is because business and commerce are bound to run into problems and it is impractical for a court to rule on all issues. Therefore, the use of collective bargaining as a method of dispute resolution in the workplace has been shown to be effective. The main objective of this paper is to critically analyze the concept of collective bargaining in general, including the study of its scope, objectives, types, conditions, environments, theories, and different levels. between different subjects. Furthermore, he tries to look at his concept from an Indian perspective to understand its context and structure in the Indian context.

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I. INTRODUCTION

The term collective bargaining is made up of two words, 'collective' – which means a 'group action' through representation and 'bargaining', means 'negotiating', which involves proposals and counter-proposals, offers and counter-offers. Thus it means collective negotiations between the employer and the employee, relating to their work situations. The success of these negotiations depends upon mutual understanding and give and take principles between the employers and employees.

In the work situation, an individual worker has to face many problems such as, low wages, long hours of work, loss incentive etc. These problems of an individual or few individuals cannot attract the attention of the employer because of their less bargaining power. The growth of trade union increased the bargaining strength of workers and enables them to bargain for their better conditions collectively. Collective bargaining is a source of solving the problems of employees in the work situation collectively. It provides a good climate for discussing the problems of workers with their employers. The employees put their demands before the employers and the employers also give certain concession to them. Thus it ensures that the management cannot take unilateral decision concerning the work ignoring the workers. It also helps the workers to achieve responsible wages, working conditions, working hours, fringe benefits etc. It provides them a collective strength to bargain with employer. It also provides the employers some control over the employees. The process of collective bargaining is bipartite in nature, i.e. the negotiations are between the employers and employees without a third party's intervention. Thus collective bargaining serves to bridge the emotional and physiological gulf between the workers and employers through direct discussions. The HR Labor Relations Manager directs the organization's labor relations agreement in accordance with executive level instruction and endorsement. They supervise labor relations support staff and serve as the management representative in labor negotiation, bargaining, or interpretive meetings. (*Collective Bargaining*, n.d.)

A COLLECTIVE BARGAINING CONSISTS OF FOUR TYPES OF ACTIVITIES

There are four widely recognised types of bargaining exercises.

1. Conjunctive or Distributive Bargaining and
2. Integrative or Co-operative Bargaining.
3. Composite Bargaining
4. Productivity Bargaining

Though both aim at joint decision-making, their processes are dissimilar. • Distributive bargaining concentrates on the function of resolving pure conflicts of interest. It serves to allocate fixed sums of resources and hence often

has a “win-lose” quality. Here, 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 performs the function of finding common or complementary interests and solving problems confronting both partners. It serves to optimise the potential for collective 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 example of integrative bargaining.
- Productivity Bargaining: In it workers’ wages and benefits are negotiated against their productivity. That means, the more they are productive, the better wages and benefit they will get.
- Composite Bargaining: Here workers’ bargain usually for wages comparing with their work level, employment level and environmental hazards etc. (*TYPES OF COLLECTIVES BARGAINING*, n.d.)

PROCEDURE OF COLLECTIVE BARGAINING

1. A charter of demands

The trade union will notify the employer for initiating collective bargaining negotiations. The representatives of the trade union draft a charter of demands which contains issues related to terms of employment and the working conditions namely wages and allowances, bonuses, working hours, benefits, holidays. In some cases, an employer may also notify the trade union and initiate collective bargaining negotiations.

2. Negotiations

Negotiation is the next step after the submission of the charter of demands by the trade union. Both the employer and the employee seek opportunities to suggest compromise solutions in their favour until an agreement is reached. If it is impossible to reach out to an agreement, a third party (mediator / arbitrator) may be brought in from outside. If, even with the assistance of the third party, no viable solution can be found to resolve the parties’ differences, the trade union may decide to engage in strikes.

3. Collective bargaining agreement

Pursuant to the negotiations between the parties, a collective bargaining agreement will be executed between the employer and workmen represented by trade unions, setting out the terms of employment and the working conditions of labour.

4. Strikes

If both parties fail to reach an agreement because of mutual consensus, the union may go on a strike, which shall be in accordance with the provisions of the Industrial Disputes Act 1947 (“ID Act”).

5. Conciliation

Once the conciliation officer receives a notice of strike or lockout, the conciliation proceedings shall commence. The State Government may appoint a conciliation officer or a Board of Conciliation to investigate disputes, mediate and promote a settlement. Workers are prohibited from going on strike during the pendency of such conciliation proceedings. Conciliation proceeding may have one of the three outcomes, namely (i) a settlement; or (ii) no settlement; or (iv) reference being made to the appropriate labour court or any other industrial tribunal.

6. Compulsory arbitration or adjudication

When conciliation and mediation fail, parties may either resort to compulsory or voluntary arbitration. Arbitration and the recommendations of the arbitrator may be binding to the parties. Section 7A of the ID Act provides for a labour court or industrial tribunal within a state to adjudicate protracted industrial disputes such as strikes and lockouts. Section 7B of the ID Act provides for constitution of national tribunals to resolve disputes involving questions of national interest or issues concerning more than two states. In the event, a labour dispute is not resolved by conciliation and mediation, the employer, and the workers may refer the case by a written agreement to a labour court, industrial tribunal or national tribunal for adjudication or compulsory arbitration. (*Collective Bargaining in India: Procedure and Types*, n.d.)

CHARACTERISTICS OF COLLECTIVE BARGAINING

1. It is a group process, wherein one group, representing the employers, and the other, representing the employees, sit together to negotiate terms of employment.
2. Negotiations form an important aspect of the process of collective bargaining i.e., there is considerable scope for discussion, compromise or mutual give and take in collective bargaining.

3. Collective bargaining is a formalized process by which employers and independent trade unions negotiate terms and conditions of employment and the ways in which certain employment-related issues are to be regulated at national, organizational and workplace levels.

4. Collective bargaining is a process in the sense that it consists of a number of steps. It begins with the presentation of the charter of demands and ends with reaching an agreement, which would serve as the basic law governing labor management relations over a period of time in an enterprise. Moreover, it is flexible process and not fixed or static. Mutual trust and understanding serve as the by products of harmonious relations between the two parties.

5. It is a bipartite process. This means there are always two parties involved in the process of collective bargaining. The negotiations generally take place between the employees and the management. It is a form of participation.

6. Collective bargaining is a complementary process i.e. each party needs something that the other party has; labor can increase productivity and management can pay better for their efforts.

7. Collective bargaining tends to improve the relations between workers and the union on the one hand and the employer on the other.

8. Collective Bargaining is a continuous process. It enables industrial democracy to be effective. It uses cooperation and consensus for settling disputes rather than conflict and confrontation.

9. Collective bargaining takes into account day to day changes, policies, potentialities, capacities and interests. It is a political activity frequently undertaken by professional negotiators.

FEATURES AND FUNCTIONS OF COLLECTIVE BARGAINING

The important features of collective Bargaining are as follows.

1. Group and Collective Action

Group and Collective action is the main feature of collective Bargaining. It is a collective process in two ways. First, the workers collectively bargain for their shared interests and benefits. Secondly, the workers and management jointly arrive at an amicable solution through negotiations.

2. Strength

It is an industrial democracy at work. Across the table, both parties bargain from a position of equal power. In collective Bargaining, the bargaining power of both parties is equal.

3. Continuous Process

It is a constant process. It establishes a regular and stable relationship between the parties involved. It involves not only the contract negotiation but also the contract's administration or application. The continuous process is the main feature of Collective Bargaining. It means that Bargaining is a day-to-day process consisting of several steps: organising, recognition, preparation for negotiation, negotiation, and contract administration.

4. Flexible

It is flexible, and the parties must adopt a flexible attitude throughout the Bargaining process since no party can afford to be rigid and inflexible. The unique feature of collective Bargaining is that both the parties concerned start negotiations with entirely different views. But finally, reach a point acceptable to both parties. It is, therefore, not a one-way street but a give-and-take process.

5. Voluntary

Collective Bargaining is a voluntary process by the management and workers. Both the parties come to the Bargaining to have a meaningful dialogue on various troubling issues.

6. Dynamic

Collective Bargaining is a relatively new concept and is growing, expanding, and changing. The idea used to be emotional, turbulent, and sentimental in the past. But now, it is scientific, factual, and systematic.

7. Power Relationship

Collective Bargaining involves a power relationship. Workers want to gain the maximum from the management, and management wants to extract the maximum from workers by paying as little as possible. Both must retreat from their positions to reach a solution, accept less than what is asked, and give more than offered.

Collective Bargaining plays an essential role in preventing and settling industrial disputes by performing the following functions.

1. Economic Strength

Increase the economic strength of employees & management.

2. Uniformity

Establish uniform conditions of employment.

3. Fair Redressal

Secure a prompt & fair redressal of grievances.

4. Norms

Lay down Fair rates of wages & other norms of working conditions.

5. Efficiency

Achieve an efficient functioning of the organization.

6. Stability

Build the stability & prosperity of the Company.

7. Regulation

It provides a method of regulating the conditions of employment of those directly concerned about them. It is the very essential function of Collective Bargaining.

8. Solution

It solves the problem of sickness in industry and ensures old benefits, age pension benefits & other fringe benefits.

9. New Procedures

It creates new & varied procedures for the solution of problems as and when they arise. The employee is assured that he will be required to work under the stipulated condition incorporated in the agreement. Also, the employer is protected from unfair competition by those in similar industries.

10. Flexible Means

It provides a flexible means for the adjustment of wages & employment conditions to economic & technological changes in the industry. As a result of which, the changes in conflicts are reduced.

11. Democratic Principles

As a vehicle of industrial peace, Collective Bargaining is an essential & significant aspect of labor-management relations. Therefore, it extends the democratic principle from the political to the industrial field.

12. Industrial Jurisprudences

It builds up a system of industrial jurisprudence by introducing civil rights in the industry. In other words, it ensures that rules rather than arbitrary decisions conduct management. (Study Notes Expert, 2022)

SCOPE OF COLLECTIVE BARGAINING

The following topics come under the scope of collective Bargaining.

1. The Cooperation & Communication b/w Trade Union Organization and the Management

It covers matters such as employers' duties to consult, inform & decide in cooperation with the union and confidentiality clauses. Also, employers support trade union activities by providing them with technical facilities, etc.

2. Employment & Working Conditions

It covers matters such as employment contracts & termination of employment; principles of redundancy policy. Also, working time & working time schedules; & holiday & paid leave is included in it.

3. Wages & Remuneration

It covers matters such as the wage system & minimum wage tariffs; payment for working overtime & working on holidays. However, extra payments for difficult & risky working conditions & night work; & severance payment in the event of collective redundancies. In this area, the scope of Collective Bargaining is wide.

4. Occupational Safety & Health

These matters such as employee duties & cooperation with trade unions on safety and health issues. Preventive & corrective measures to improve working conditions & to reduce risk at work. Also, the establishment of trade union Safety & health delegates in companies.

5. Human Resource Development & Other Social Issues

It covers matters such as Training & human resources development activities. Moreover, the creation & utilization of the Social fund in an enterprise.

6. Reduction of Conflict between Management & Trade Unions

It covers the procedures applied in serious disagreements between social partners.

II. CONCLUSION

It is agreed that this Agreement shall be construed according to its written provisions, without regard to any discussions or negotiations, written or oral, which the parties have had leading to or resulting in the execution and delivery of this Agreement or any amendments to it, and that nothing which is not a written and executed portion of this Agreement shall be referred to in connection with its construction. This Agreement is the entire Agreement between the Employer and CEA. The parties acknowledge that they have fully bargained with respect to terms and conditions of employment and have settled them for the duration of this Agreement. This Agreement terminates all prior agreements and understandings and concludes all collective bargaining for the duration of this

Agreement. However, nothing contained herein shall be interpreted as precluding the right of the parties by mutual agreement to negotiate on matters that develop after entering into this Agreement. Any additions, deletions, or changes that are negotiated during the life of this Agreement shall be in the form of an addendum or memorandum of understanding and shall become a part of this Agreement.

REFERENCES

- [1]. Collective bargaining. (n.d.). <https://www.whatishumanresource.com/collective-bargaining>
- [2]. Collective bargaining and labour relations (Collective bargaining and labour relations). (n.d.). <https://www.ilo.org/global/topics/collective-bargaining-labour-relations/lang-en/index.htm#:~:text=Collective%20bargaining%20is%20a%20key,basis%20for%20sound%20labour%20relations>.
- [3]. Collective Bargaining in India: Procedure and Types. (n.d.). BW People. <https://bwpeople.businessworld.in/article/Collective-Bargaining-in-India-Procedure-and-Types/21-07-2018-155451/>
- [4]. Study Notes Expert. (2022, October 19). Collective Bargaining: Definition | 7 Features | Scope | Functions. https://studynotesexpert.com/collective-bargaining-features-and-scope-and-functions/#What_is_the_Scope_of_the_Impacts_of_Collective_Bargaining_Agreements
- [5]. TYPES OF COLLECTIVES BARGAINING. (n.d.). INFLIBNET CENTRE. http://epgp.inflibnet.ac.in/epgpdata/uploads/epgp_content/S001610/P001749/M022749/ET/1505113380Module20Quadrant1.pdf