



# COLLECTIVE BARGAINING NEGOTIATIONS

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## **A. Introduction**

This Paper addresses the differences between negotiation and collective bargaining, the nature of collective bargaining, the conditions necessary for successful collective bargaining, some of the advantages of collective bargaining, issues of concern for employers and guidelines for employers on the process of bargaining itself from the pre-negotiation stage to the agreement itself. Some of the fundamental principles, the observance of which could achieve the broader objectives of negotiations in the employment relationship, are discussed in another Paper entitled "Principles of Negotiation".

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## **B. Negotiation and Collective Bargaining**

Collective bargaining is specifically an industrial relations mechanism or tool, and is an aspect of negotiation, applicable to the employment relationship. As a process, the two are in essence the same, and the principles applicable to negotiations are relevant to collective bargaining as well. However, some differences need to be noted.

In collective bargaining the union always has a collective interest since the negotiations are for the benefit of several employees. Where collective bargaining is not for one employer but for several, collective interests become a feature for both parties to the bargaining process. In negotiations in non-employment situations, collective interests are less, or non-existent, except when states negotiate with each other. Further, in labour relations, negotiations involve the public interest such as where negotiations are on wages which can impact on prices. This is implicitly recognized when a party or the parties seek the support of the public, especially where negotiations have failed and work disruptions follow. Governments intervene when necessary in collective bargaining because the negotiations are of interest to those beyond the parties themselves.

In collective bargaining certain essential conditions need to be satisfied, such as the existence of the freedom of association and a labour law system. Further, since the beneficiaries of collective bargaining are in daily contact with each other, negotiations take place in the background of a continuing relationship which ultimately motivates the parties to resolve the specific issues.

The nature of the relationship between the parties in collective bargaining distinguishes the negotiations from normal commercial negotiations in which the buyer may be in a stronger position as he could take his business elsewhere. In the employment relationship the employer

is, in a sense, a buyer of services and the employee the seller, and the latter may have the more potent sanction in the form of trade union action.

Unfortunately the term "bargaining" implies that the process is one of haggling, which is more appropriate to one-time relationships such as a one-time purchaser or a claimant to damages. While collective bargaining may take the form of haggling, ideally it should involve adjusting the respective positions of the parties in a way that is satisfactory to all, for reasons explained in the Paper entitled "Principles of Negotiation".

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## **C. Nature of Collective Bargaining**

The ILO Right to Organize and Collective Bargaining Convention (No. 98), 1949 describes collective bargaining as:

"Voluntary negotiation between employers or employers' organizations and workers' organizations, with a view to the regulation of terms and conditions of employment by collective agreements."

Collective bargaining could also be defined as negotiations relating to terms of employment and conditions of work between an employer, a group of employers or an employers' organization on the one hand, and representative workers' organizations on the other, with a view to reaching agreement.

There are several essential features of collective bargaining, all of which cannot be reflected in a single definition or description of the process:

- i. It is not equivalent to collective agreements because collective bargaining refers to the process or means, and collective agreements to the possible result, of bargaining. Collective bargaining may not always lead to a collective agreement.
- ii. It is a method used by trade unions to improve the terms and conditions of employment of their members.
- iii. It seeks to restore the unequal bargaining position between employer and employee.
- iv. Where it leads to an agreement, it modifies, rather than replaces, the individual contract of employment, because it does not create the employer-employee relationship.
- v. The process is bipartite, but in some developing countries the State plays a role in the form of a conciliator where disagreements occur, or where collective bargaining impinges on government policy.

## D. Conditions for Successful Collective Bargaining

### Pluralism and the Freedom of Association

A pluralistic outlook involves the acceptance within a political system of pressure groups (e.g. religious groups, unions, business associations, political parties ) with specific interests with which a government has dialogue, with a view to effecting compromises by making concessions. Pluralism implies a process of bargaining between these groups, and between one or more of them on the one hand and the government on the other. It therefore recognises these groups as the checks and balances which guarantee democracy. It is natural that in labour relations in a pluralist society, collective bargaining is recognised as a fundamental tool through which stability is maintained, while the freedom of association is the *sine qua non* because without the right of association the interest groups in a society would be unable to function effectively. Thus pluralism's

"theme is that men associate together to further their common interests and desires; their associations exert pressure on each other and on the government; the concessions which follow help to bind society together; thereafter stability is maintained by further concessions and adjustments as new associations emerge and power shifts from one group to another."

(H.A. Clegg: *A New Approach to Industrial Democracy*, Blackwell, Oxford, UK, 1960 at 20).

There can, therefore, be no meaningful collective bargaining without the freedom of association accorded to both employers and workers.

### Trade Union Recognition

The existence of the freedom of association does not necessarily mean that there would automatically be recognition of unions for bargaining purposes. Especially in systems where there is a multiplicity of trade unions, there should be some pre-determined objective criteria operative within the industrial relations system to decide when and how a union should be recognised for collective bargaining purposes. The accepted principle is to recognise the most representative union, but what criteria is used to decide it and by whom may differ from system to system. In some systems the issue would be determined by requiring the union to have not less than a stipulated percentage of the workers in the enterprise or category in its membership. The representativeness may be decided by a referendum in the workplace or by an outside certifying authority (such as a 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 (e.g. one or two years) in order to ensure the stability of the process.

### Observance of Agreements

Especially in developing countries where there is a multiplicity of unions, unions are sometimes unable to secure observance of agreements by their members. Where a labour law system provides for sanctions for breaches of agreements, the labour administration authorities may be reluctant to impose sanctions on workers. Where there is frequent non-observance of

agreements or understandings reached through the collective bargaining process, the party not in default would lose faith in the process.

### **Support of Labour Administration Authorities**

Support by the labour administration authorities is necessary for successful collective bargaining. This implies that they will:

- i. provide the necessary climate for it. For instance, they should provide effective conciliation services in the event of a breakdown in the process, and even provide the necessary legal framework for it to operate in where necessary, *e.g.* provision for the registration of agreements.
- ii. will not support a party in breach of agreements concluded consequent to collective bargaining.
- iii. as far as is practicable, secure observance of collective bargaining agreements.
- iv. provide methods for the settlement of disputes arising out of collective bargaining if the parties themselves have not so provided.

### **Good Faith**

Collective bargaining is workable only if the parties bargain in good faith. If not, there will be only the process of bargaining without a result *viz.* an agreement. Good faith is more likely where certain attitudes are shared among employers, workers and their organizations *e.g.* a belief and faith in the value of compromise through dialogue, in the process of collective bargaining, and in the productive nature of the relationship collective bargaining requires and develops. Strong organizations of workers and employers contribute to bargaining in good faith, because there would be some parity in the bargaining strength of the two parties.

### **Proper Internal Communication**

Both the management and union should keep their managers and members respectively well informed, as a lack of proper communication and information can lead to misunderstandings and even to strikes. Sometimes managers and supervisors who are ill-informed may inadvertently mislead workers who work under them about the current state of negotiations, the management's objectives and so on. In fact, it is necessary to involve managers in deciding on objectives and solutions, and such participation is likely to ensure greater acceptance - and therefore better implementation - by them.

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## **E. Advantages of Collective Bargaining**

First, collective bargaining has the advantage of settlement through dialogue and consensus rather than through conflict and confrontation. It differs from arbitration where the solution is based on a decision of a third party, while arrangements resulting from collective bargaining usually represent the choice or compromise of the parties themselves. Arbitration may displease one party because it usually involves a win/lose situation, and sometimes it may even displease both parties.

Second, collective bargaining agreements often institutionalize settlement through dialogue. For instance, a collective agreement may provide for methods by which disputes between the parties will be settled. In that event the parties know beforehand that if they are in disagreement there is an agreed method by which such disagreement may be resolved.

Third, collective bargaining is a form of participation. Both parties participate in deciding what proportion of the 'cake' is to be shared by the parties entitled to a share. It is a form of participation also because it involves a sharing of rule-making power between employers and unions in areas which in earlier times were regarded as management prerogatives, *e.g.* transfer, promotion, redundancy, discipline, modernisation, production norms. However, in some countries such as Singapore and Malaysia, transfers, promotions, retrenchments, lay-offs and work assignments are excluded by law from the scope of collective bargaining.

Fourth, collective bargaining agreements sometimes renounce or limit the settlement of disputes through trade union action. Such agreements have the effect of guaranteeing industrial peace for the duration of the agreements, either generally or more usually on matters covered by the agreement.

Fifth, collective bargaining is an essential feature in the concept of social partnership towards which labour relations should strive. Social partnership in this context may be described as a partnership between organised employer institutions and organised labour institutions designed to maintain non-confrontational processes in the settlement of disputes which may arise between employers and employees.

Sixth, collective bargaining has valuable by-products relevant to the relationship between the two parties. For instance, a long course of successful and *bona fide* dealings leads to the generation of trust. It contributes towards mutual understanding by establishing a continuing relationship. The process, once the relationship of trust and understanding has been established, creates an attitude of attacking problems together rather than each other.

Seventh, in societies where there is a multiplicity of unions and shifting union loyalties, collective bargaining and consequent agreements tend to stabilise union membership. For instance, where there is a collective agreement employees are less likely to change union affiliations frequently. This is of value also to employers who are faced with constant changes in union membership and consequent inter-union rivalries resulting in more disputes in the workplace than otherwise.

Eighth - perhaps most important of all - collective bargaining usually has the effect of improving industrial relations. This improvement can be at different levels. The continuing dialogue tends to improve relations at the workplace level between workers and the union on the one hand and the employer on the other. It also establishes a productive relationship between the union and the employers' organization where the latter is involved in the negotiation process.

## F. Current Trends in Collective Bargaining

Collective bargaining may take place at the national, industry or enterprise level. In no country does it take place exclusively at one level only. However, in many industrialized countries, especially in Europe, the existence of strong employers' organizations and trade unions have resulted in many important agreements being concluded at the national or industry level, supplemented by some enterprise level bargaining. In the USA, however, bargaining at the enterprise level has been the more usual practice, other than in specific sectors such as coal, steel, trucking and construction. In Japan national level bargaining has been the exception, and it has been supplemented by a substantial amount of enterprise level bargaining, facilitated partly by union structures which are enterprise-based. In many Asian countries relatively low rates of unionisation have militated against national and industry level bargaining, and enterprise level bargaining has been more common. This accounts for the relative non-involvement of some Asian employers' organizations in collective bargaining. Japanese employers and workers have demonstrated how a combination of enterprise level bargaining and shop floor mechanisms (such as joint consultation) enables the parties to take into account specific enterprise conditions and also to increase productivity.

The tendency during the last decade - and especially in the 1990s - even among industrialised countries with a highly centralised bargaining system, is towards enterprise level bargaining. This is true of even a country like Sweden with a strong employers' organization, a strong trade union movement, and a previous tradition of centralized bargaining. In the 1990s the avowed policy of the Swedish Employers' Confederation has been to move negotiation to the enterprise level. Decline in union membership and an increase in corporate power in Europe have contributed to this trend. But most importantly, restructuring of enterprises flowing from intense competition has created the need to focus on enterprise level issues such as flexible working time, removal of narrow job classifications, new work organization, promotion of more worker involvement schemes and decentralised decision-making. Many employers view centralised bargaining as facilitating more equal distribution of incomes, but depriving employers of the ability to use pay as an instrument for productivity enhancement and to compensate for skills and performance. The push by employers for flexibility in the context of increasing global competition has raised many issues which are more appropriately dealt with at the enterprise level. Some of the many concerns of employers such as productivity and quality, performance, and skills development to retain or gain competitive edge and to make rapid changes to adapt to the global marketplace, are likely to increase the movement towards more enterprise level negotiation.

## G. Issues of Concern for Employers

### Addressing Productivity and Efficiency Issues

Historically, collective bargaining has addressed equity issues from the point of view of employees - issues such as a fair wage, working conditions and the equal distribution of wage increases to all. Until recently, considerations of efficiency important to productivity were

either not addressed, or were accorded relatively little importance. Increasingly employers wish to utilize the collective bargaining process to effect workplace changes in the interests of competitiveness. Hence the view of employers that the process should address not only how the gains of improved performance should be shared, but also how to increase the productivity 'cake' so to speak. This is the only way in which regular pay increases can be absorbed without eroding profitability and jeopardising competitiveness.

However, collective bargaining is relatively more conflictual than some other forms of negotiation and consultation. Therefore, to reduce the conflictual issues it is more effective for employers and their employees to establish joint consultation mechanisms to achieve an understanding on how to increase the productivity 'cake'. In that event, in collective bargaining the areas of dispute would be narrowed, and both parties would be likely to share a common view about the issues and even arrive at a basic agreement on them. In this connection the joint consultation system in the larger Japanese enterprises which fulfil this function is worth noting.

Collective bargaining in Japan results from constitutional guarantees, the Trade Union Act, the obligation to bargain in good faith and the right to strike. Joint consultation, on the other hand, is a voluntary system which is an outcome of arrangements between the parties based on the mutual acceptance of the need to avoid conflict through strikes or other similar actions. Joint consultation schemes have been the corner-stone of information sharing between management and labour and of labour-management cooperation in Japan where

"unions and employers .... have long been aware of the importance of information sharing in an industrial relations system ... after bitter and protracted strikes in the forties and early fifties, both management and labour made concerted efforts to restore industrial peace and to develop a stable industrial relations system ... these efforts led to the development of key aspects of the modern Japanese industrial relations system, including the joint consultation, a corner-stone of labour-management information sharing."

(Motohiro Morishima "Information Sharing and Firm Performance in Japan in 1991 (Vol.30) *Industrial Relations* 37 at 39.)

Japanese joint consultation systems had their origins in the 1950s when it was promoted by the Japan Productivity Centre. It is estimated that by 1990 about 84 per cent of unionized enterprises had set up joint consultation schemes, and 44 per cent of the non-unionized ones had joint consultation arrangements. These mechanisms, which are an aspect of two-way communication, deal with a variety of issues. In both unionized and non-unionized establishments the most common subjects which come within consultation are working conditions, working hours, leave, safety and health, welfare and cultural activities, bonus, pension and retirement payments, work scheduling, education and training, recruitment, transfers, lay off, job assignment. There are also a range of management issues which fall within joint consultation, but on these matters management merely provides information and explanations. These management issues include business plans and policies, introduction of new technology, organizational changes and production and sales plans. Many establishments have two levels of communication. Quality circles and shopfloor committees represent the mechanisms at the shopfloor level, and joint consultation committees represent the mechanisms at the corporate level. These committees supplement collective bargaining in the sense that they provide the forum for information-sharing prior to wage negotiations.

In Japan the frequency of joint consultations varies. But on an average in unionized firms there may be 15 meetings and in non-unionized firms about 8 per year. Research suggests that information sharing through the joint consultation system has had a positive effect on profitability, labour productivity and on reducing labour costs, especially in the manufacturing sector (*ibid.*). Recent evidence suggests that the larger American corporations "share more business and financial information with their unions and employees than is required by law, and that information sharing within the non-union sector - where the statutory requirement for information disclosure is much less stringent - is as extensive as in the union sector." (*ibid.* at 37).

In Japan different views on the effectiveness of joint consultation exist in relation to unionized and non-unionized firms. About 75 per cent of unionized firms find joint consultation effective, while less than 50 per cent of non-unionized firms find it so. (Shozo Inoue "Building Better Industrial Relations: The Japanese Experience" in *Report of the ILO/Japan Workshop for Asia-Pacific Employers' Organizations on Sound Labour Relations Practices*, Singapore, 2-6 March 1992: ILO, Bangkok 33 at 40). According to Shozo Inoue (*ibid.*):

"Effective areas of JC among the unionized establishments are: improved communication between the management and the union (78 per cent), followed by more smooth business operation, and improved work environments. Improving job satisfaction and increasing interest in management did not score high points. In contrast, the non-union establishments report that employees developed greater interest in management (45 per cent), followed by improved business operation, communication and job satisfaction."

One of the significant characteristics of joint consultation in Japan is that collective bargaining and joint consultation serve different objectives and are therefore not in conflict with each other. Bargainable issues are dealt with under collective bargaining and non-bargainable ones under joint consultation. If during joint consultation some issues become bargainable (which could happen in relation to matters on which it is not clear whether they are bargainable ones or not), they will be transferred to the collective bargaining forum. It is also an important characteristic of the joint consultation system that it does not handle individual grievances, which are dealt with under grievance handling procedures.

Joint consultation has made a significant contribution to enterprise level labour relations by creating mutual understanding on a range of management issues which impinge on the lives of employees. This in turn has had an effect on collective bargaining, which tends to take place in an atmosphere in which workers have been informed of management objectives, so that the areas for misunderstanding and conflict are considerably reduced. In effect, therefore, collective bargaining takes place from a point at which some degree of common objectives have been agreed upon. Since information on wage criteria is also shared, differences in wage negotiations (which in most countries are highly contentious) are narrowed, facilitating acceptable compromises and negotiations without disputes. Joint consultation has motivated employers and employees to generate gains and to share them for their mutual benefit.

In essence, joint consultation has become the means through which information is shared, mutual understanding is promoted, participation in arriving at decisions is facilitated, and working conditions are negotiated. As such, it is an essential component of Japanese enterprise level labour relations. The enterprise level union system significantly contributes to the workability and effectiveness of the joint consultation system.

## **Criteria for Wage Increases**

Traditionally, the factors or criteria which have influenced pay increases through collective bargaining include enterprise profit, job evaluation, seniority, cost of living, manpower shortage or surplus, the negotiating strength and skills of the parties. Performance measures such as productivity or profit related to groups or individuals have not featured prominently in collective bargaining. Further, though wage rates negotiated through collective bargaining do reflect wage differentials based on skills, such differentials have not been geared to the encouragement of skills acquisition and application. Therefore a major concern for employers is the need to negotiate pay systems which are

- strategic in the sense that they achieve strategic objectives
- flexible in the sense that their variable component can absorb downturns in business and reduce labour costs
- oriented towards better performance in terms of productivity, quality, profit or whatever performance criteria are agreed upon
- capable of enhancing earnings of employees through improved performance
- capable of reducing the incidence of redundancies during times of recession or poor enterprise performance through the flexible component of pay
- able to reward good performance without increasing labour costs as a part of total costs through enhanced productivity
- able to attract and retain competent staff
- able overall to control or stabilize labour costs.

These objectives have come to the forefront, particularly due to pressures flowing from globalization.

Therefore wage increases through collective bargaining need to be based on a wider range of criteria than has traditionally been the case. Otherwise once collective bargaining is over, the employer may be left without the financial capacity to adjust pay based on group or individual performance, as well as on skills acquisition and application.

## **Levels of bargaining**

Originally collective bargaining at the national or the industry level was viewed by employers as a means of reducing competition based on labour costs through standardized wage rates. Employers no longer view collective bargaining from this perspective. Instead, centralized and industry level negotiation is considered as depriving enterprises of the needed flexibility to compete on the basis of adjustments at the level of the enterprise in relation to pay, working hours and conditions, work organization, manpower utilization and so on. The efficiency gains are considerably greater - and more easily realizable - when negotiations take place at the enterprise level. Therefore, the major thrust in all countries where the pattern hitherto was national or industry level bargaining, towards increased enterprise-level bargaining, has been by employers. Not all unions favour this trend; their power position can be automatically eroded by this trend, just as it is enhanced through centralized or industry level bargaining.

## **Recognition Criteria**

Even where there is a single union structure, there should be recognition criteria applicable to the union for collective bargaining purposes. The union should be representative of a minimum

percentage of employees, as the employer cannot reasonably be expected to conclude an agreement with a union which is not representative.

The need for recognition criteria is all the greater where there is union multiplicity. In countries with union multiplicity and rivalry, recognition disputes have been a cause of major disputes, and practical problems often arise. One is the issue of the continued applicability of an agreement to workers who subsequently leave the negotiating union and join another union. Another issue relates to the status of a collective agreement where, during the duration of the agreement, the union loses its membership and is replaced by another union in the workplace. Employers expect the legal framework to provide for such issues, so as to overcome uncertainty and avoid disputes.

### **Extension of Agreements**

The principle of extension of collective agreements to cover employers and employees not parties to, or covered by, such agreements, is embodied in some labour law systems. The issue can arise only where negotiations are above the level of the enterprise, but can nevertheless be undesirable from several points of view.

First, extension of collective agreements deprives an employer of the opportunity he would have had, had he been a party to the negotiations, to take account of workplace conditions and needs. This is particularly important at a time when enterprise level bargaining is the trend.

Second, it is inconsistent to speak of voluntary collective bargaining on the one hand and provide for involuntary coverage on the other. An extension of coverage should occur, if at all, only where both parties agree to it.

Third, extensions are impractical - and can be harmful - in countries with large regional disparities.

### **Disputes Arising out of Agreements**

Employers expect disputes connected with collective agreements, whether they relate to interpretation or non-observance, to be settled in accordance with procedures agreed to and contained in the agreement, or through other machinery with conciliation as a first step.

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## **H. Pre-Negotiation Preparations**

### **Objectives**

A party wishing to arrive at a satisfactory conclusion or arrangement through collective bargaining should first identify the objectives of the exercise. Some objectives common to employers are the following:

- i. Ensuring that the enterprise is not rendered uncompetitive
- ii. The need to keep wage increases below the level of productivity increases and/or within the inflation rate.
- iii. Guarantees of industrial peace during the period of operation of the agreement

As far as possible managers should be consulted in determining objectives; their priorities should be solicited, and they should be aware of the company's views in regard to objectives so that they could be tested against the managers' views.

It is insufficient to merely determine objectives. A tentative plan to achieve these objectives, which can be modified during the course of the negotiations, could be formulated. Such a plan should include the company's requests to the union. For instance, work reorganization to increase productivity to absorb the cost increases consequent upon collective bargaining may form part of the company's plan. Negotiations on the union's demands are generally an ideal setting in which management can achieve some of its objectives through agreement. In order to achieve this, the management must be clear about its own priorities. If there is an existing collective agreement, it would be a useful starting point. An analysis should be made of how it has worked, its unsatisfactory features from the company's point of view should be identified, and the changes necessary determined.

### **Negotiating Team**

The negotiating team, and the respective roles of the members, should be determined before the negotiations. Employers would find it useful to include in the team people from different disciplines.

### **Research and Study**

The union's demands should be carefully studied. The following are some of the matters to which attention should be paid:

- a. Assess the economic impact of the demands on the company.
- b. Make a comparative study, *e.g.* in a wage demand one should ascertain comparative wage rates in the industry and in allied or similar businesses, the minimum wage, if any, and the rates applicable in other collective agreements.
- c. Separate the demands which the company has no intention of fulfilling or giving, either on a question of principle or due to economic incapacity.
- d. Prepare the company's position in regard to the other demands, *e.g.* the conditions on which the company may be prepared to grant them or compromise on them.
- e. Identify the demands which may be of crucial importance to the union or to the employees as the case may be. This is crucial to success in negotiations because, without a proper assessment of such demands, a negotiated settlement may not result or, if one results, it may lack durability because it has not addressed the main problems. The issues which may be of crucial importance may not be the same in the case of both (union and employees) as they may have differing interests. Having identified the crucial demands the company should formulate its strategy in relation to them *e.g.* the possibility of trading some of the company's demands in return for the union's demands.

### **Responding to the Union's Requests**

It is a matter of assessment in each situation as to whether the management should make an initial response in writing to the union before negotiations commence.

Usually it is desirable that written positions stated before negotiations commence should not contain a flat or blanket refusal. At this stage it is preferable to couch a refusal in language

which does not give the impression of an out-of-hand rejection or a rejection without consideration of the merits. Negative answers may sometimes be better given during the negotiations because it affords greater opportunities for explanations of the reasons for the negative answers. A rejection during negotiations would more likely give the impression to the union and employees that such rejection was made only after negotiations and not before. It is always useful from the point of view of reaching agreement on other matters to first listen to the reasons adduced by the union for a demand which the company does not propose to accept. A rejection during negotiations also enables the employer to convince a union of at least some of the reasons why the demand is not acceptable. It also prevents a union from resorting to trade union action on the issue of a refusal to negotiate, as distinct from rejection of the demands after negotiation.

### **Inventing Options.**

Since negotiations may not proceed or take place in the way a party may plan, a party should be able to provide alternative options to what he, or the other party, expects. For example, if it transpires that the wage increase sought is not acceptable, the employer should be prepared with alternatives to cushion the impact of an increase in excess of what it had planned to agree to.

### **Strategy**

A party to collective bargaining negotiations has to formulate a strategy for all stages of the negotiation, including the pre-negotiation stage. Before negotiations commence, the strategy should include matters such as;

- a. options as referred to above
- b. how much to offer while leaving room for further negotiation if the offer fails. The offer should be sufficiently attractive so as not to lead to a breakdown in negotiations.
- c. how to link one's requirements to the concessions one makes.

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## **I. The Negotiations**

### **Principled Negotiation**

The broad principles on which negotiations should be conducted are outlined in the Paper entitled "Principles of Negotiation". This section will therefore underline some other matters to which attention should be paid.

### **Who Commences**

There is no inflexible rule as to who should open the negotiations. However, it is not unreasonable for the management to claim that if the union has initiated the negotiations, it should first outline its rationale and justification for doing so. Nevertheless, the management should make it clear at the outset that agreement on any particular issue is subject to an overall settlement, including its own expectations from the union.

## **Management's Reactions**

In outlining the employer's response, the following could be included:

- i. The context in which the employer is negotiating, such as the business environment, and how this affects the employer's position in the negotiations.
- ii. A judgement will have to be made about the stage at which the union should be informed about the items on which the employer will not make any concession. However, the impression should not be created that the union will not be allowed an opportunity to present its case.
- iii. The basis on which the employer is prepared to negotiate. This could include the employer's objectives and expectations from a collective agreement, and any unsatisfactory features in the existing agreement (if there is one) which require to be rectified.

## **Internal Communication**

During the negotiations there should be good internal communication between the company and its managers about the situation at any given time. This will help clarify misunderstandings and even eliminate disinformation especially where employees, as happens in developing countries, seek information or clarification from their managers.

## **Notes of Discussion**

Notes of the discussion should be maintained, and preferably issued and agreed on with the other party, to avoid misunderstandings. Such notes could be useful in the event of disputes and a breakdown in negotiations.

## **Styles of Negotiation**

It is an essential principle of negotiation - indeed of human relations - that one's style of negotiation may need to be adapted to the style of the other party. The negotiator who adopts only one approach to negotiations may be puzzled when he finds that the approach in question bears fruit in some cases but causes an adverse reaction in other cases. The ability to allow the attitudes of the other party or the facts or merits of the issue to fashion one's own particular style in a given negotiation requires a high degree of flexibility on the part of the negotiator, an absence of a pre-conceived approach to negotiation, and recognition of the fact that ultimately what matters is one's ability to secure one's objectives through dialogue. However, this should not be understood to mean that there should not be a principled approach to negotiation. What it means is that often one has to take into account even the idiosyncracies of the other party and assess what form of presentation is likely to appeal best to the person whom one is trying to convince.

## **Some Basic Rules in Collective Bargaining Negotiations**

A negotiator should view negotiations as an exercise with both sides walking towards each other, rather than away from each other. This will enable the negotiator to keep in mind that the final objective is a satisfactory agreement. It will also lead to a search for, or identification of, common ground while also addressing the differences.

A negotiator should be good at listening carefully to the other party who will, otherwise, feel that disagreement with his position is due to a lack of understanding. This is also necessary to encourage the other party to listen to you. Some indication should be given to suggest that the party has understood the other's position. Body language often communicates a party's reactions.

A party should build its case in a logical sequence and, as far as possible, try to obtain agreement at each stage of the process. This will narrow the areas of disagreement and facilitate focusing on those aspects.

Counter proposals and conditions attached to concessions should be indicated as early as possible, so that the basis on which a party is prepared to agree or compromise is understood.

Whenever possible, invite the other party to look at the problem from the opposite perspective, *e.g.* a wage increase as an additional cost which, due to competitive pressures, requires management to find ways to absorb it. It is sometimes useful to ask the union for suggestions on how it can cooperate to facilitate absorption of the increase.

It is usually preferable to avoid taking up at the outset the position that a particular item is not negotiable. It is more productive to request a party to justify its claim, and then point out why that claim is unreasonable. Taking up a non-negotiable position can lead to the preception that the position has nothing to do with the merits and that the party is not willing to listen.

Skillful questioning is an effective way of compelling the other party to justify its claim on the merits, and even shifting the other party to a different point of view.

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## **J. The Agreement**

When agreement is reached one of the following two courses may be adopted:

- i. Set out the agreement reached in a letter to the union and, on confirmation, prepare a draft agreement.
- ii. Alternatively provide the union with a draft agreement. This would be the better course of action as the actual agreement reached will be clearer. It also leaves less room for further negotiations between the time agreement is reached and the draft agreement is approved.

Before the agreement is signed, the proper interpretation of clauses which have the potential to result in problems of interpretation should be agreed upon through, for example, an exchange of letters. Where there are understandings which affect the interpretation of the agreement, they should be reduced to writing (*e.g.* in a letter) before the agreement is signed. But wherever possible, the agreement should be self-contained, inclusive of definitions or interpretations.

The contents of the agreement would depend on what is agreed upon and on the subject matter. The following examples are of some general application:

- i. The date of commencement of the agreement
- ii. Its duration - when it will terminate or may be terminated, and how it can be terminated
- iii. A definition of terms which may otherwise be ambiguous
- iv. The procedure for settling disputes regarding interpretation, as well as other disputes. This may also include the issue of trade union action and lock-out, *i.e.* in what circumstances such action may or may not be permitted.
- v. The consequences in the event of breaches of the agreement
- vi. As regards wages, exactly how conversion of employees' wages to the new scales is to be effected.

The signing of an agreement does not ensure its successful implementation. Managers and supervisors should be acquainted with the agreement through the most appropriate means. A combination of written and oral communication is often useful.

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*For further information, please contact Bureau for Employers' Activities (ACT/EMP)*

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