



HRD 2104: PRINCIPLES OF INDUSTRIAL MANAGEMENT

GROUP A3

Kiarie Zawadi Muthoni	SCT211-0462/2022
Vincent Ochieng'	SCT211-0070/2022
Kaigu Ann Wangari	SCT211-0772/2022
Levi Mutugi	SCT211-0067/2022
Matere Hans Walubengo	SCT 211-0080/2022

Question one

Collective Bargaining and Joint Consultation definition, formation, nature and role of Collective Bargaining, agreement contents of the contract and the role of Collective Bargaining in Industrial Management.

DEFINITION AND FORMATION

Collective bargaining is a process in which representatives of employers and employees, typically labor unions, engage in in order to reach agreements on pay, benefits, working conditions, and other aspects of employment. Achieving mutual agreements that meet the interests of labor and management is the goal of this essential industrial relations mechanism.

Conversely, joint consultation describes a procedure where representatives of employers and employees meet to talk about issues that are relevant to the workplace and of mutual interest. Joint consultation is more about exchanging information, debating concerns, and getting feedback from both parties in order to improve decision-making and promote a cooperative work environment while collective bargaining is primarily concerned with negotiating particular terms and conditions of employment.

The formation of collective bargaining typically involves several steps:

- **Recognition of Employee Representation:** The process typically begins with the recognition of a particular group or union as the legitimate representative of the employees. This recognition can occur through various means, including voluntary acknowledgment by the employer, certification by a government agency, or through a process outlined in labor laws or collective bargaining agreements.
- **Formation of Labor Union:** Before collective bargaining can take place, there needs to be an organized group of employees or a labor union. This union is formed by employees who share common interests and goals related to their employment conditions. They often come together to form a collective voice to negotiate with the employer on their behalf.
- **Authorization and Mandate:** Once formed, the union seeks authorization from its members to represent them in bargaining with the employer. This authorization can be obtained through membership votes or other democratic processes within the union. The members provide the union with a mandate to negotiate on their behalf.
- **Initial Contact and Negotiation:** The union then reaches out to the employer or their representatives to initiate the bargaining process. This may involve sending a formal notice of intent to negotiate or requesting a meeting to discuss the terms of the collective bargaining agreement. The parties may exchange proposals outlining their respective positions and priorities.
- **Collective Bargaining Agreement (CBA) Negotiation:** Involves a series of meetings and discussions between the union and the employer's representatives. Both parties present their proposals, make counteroffers, and engage in dialogue to reach agreements on various issues. These negotiations can cover a wide range of topics, including wages, benefits, working hours, job security, health and safety standards, grievance procedures, and more.
- **Mediation and Arbitration:** In some cases, if negotiations reach an impasse, a third-party mediator or arbitrator may be brought in to help facilitate discussions and resolve disputes. Mediation involves a neutral third party assisting the parties in reaching a voluntary agreement, while arbitration involves a binding decision made by an arbitrator after hearing arguments from both sides.

- **Ratification:** Once the union and the employer reach a tentative agreement through negotiations, the proposed collective bargaining agreement is presented to the union members for ratification. Members have the opportunity to review the terms of the agreement and vote on whether to accept or reject it. If a majority of members vote in favor, the agreement is ratified and becomes legally binding.
- **Implementation and Enforcement:** After ratification, the terms of the collective bargaining agreement are implemented by the employer, and both parties are expected to adhere to its provisions. The agreement typically includes mechanisms for resolving disputes and grievances that may arise during its term. Enforcement of the agreement may involve monitoring compliance, addressing violations through grievance procedures, and, if necessary, seeking legal remedies through labor authorities or the court system.

A notable example is the collective bargaining agreements (CBAs) negotiated between teachers' unions and the Kenyan government. For instance, the Kenya National Union of Teachers (KNUT) and the Kenya Union of Post Primary Education Teachers (KUPPET) have engaged in collective bargaining with the government to address issues such as salary increments, promotions, allowances, and improvements in working conditions for teachers across the country.

It involves the steps stated above:

1. **Negotiation:** The union presents its demands to the government or the relevant employer (such as the Teachers Service Commission, TSC). These demands often cover various aspects of teachers' welfare, including salary increments, allowances, promotions, workload, and working conditions.
2. **Collective Bargaining Agreements (CBAs):** Once negotiations commence, both parties work towards reaching a mutually acceptable agreement which is formalized into a document known as a Collective Bargaining Agreement (CBA), which outlines the terms and conditions of employment for teachers within the specified period, usually lasting for several years.
3. **Mediation and Arbitration:** Sometimes, negotiations can reach an impasse, leading to the involvement of mediators or arbitrators to help resolve disputes and facilitate agreement between the parties. These mediators could be government-appointed officials or independent third parties agreed upon by both sides.
4. **Strike Action:** In cases where negotiations fail to yield satisfactory outcomes, teachers' unions may resort to strike action as a last resort to pressure the government or employer into meeting their demands. Strikes in the education sector can have significant repercussions, disrupting learning activities and prompting government intervention to resolve the dispute.
5. **Implementation and Enforcement:** Once an agreement is reached, it is implemented, and both parties are expected to adhere to its provisions. The union monitors the implementation of the CBA to ensure that the agreed-upon terms are upheld, and any grievances or violations are addressed through established dispute resolution mechanisms.

6. **Renegotiation:** Since CBAs typically have a limited duration, after which they need to be renegotiated, the process of renegotiation involves reviewing the existing agreement, identifying areas for improvement, and negotiating new terms and conditions for the next period.

NATURE AND ROLE OF COLLECTIVE BARGAINING

Nature of collective bargaining

1. **It is a collective process**

As it says in the name, the bargaining process is a collective process. The workers that wish to participate in this process form a group called a trade union or labor union.

Companies may be able to shut out the voices of one or two employees but can't necessarily do the same with a larger group of unified individuals. The workers in the labor union elect leaders who are going to represent them and their interests, and they are the ones who are going to negotiate with the company management.

2. **Parties involved have bargain strength**

Both parties have something to offer to one another in order to come up with a win-win situation. Both parties try to consider the other's position and bring issues to the table that aim to benefit both parties. They both have to adjust to each other's needs. For example, the employers can offer better wages and the employees on the other hand can offer increased productivity in terms of more hours and increased efficiency in the workplace. They both come to a middle ground where they can agree and follow the terms.

3. **It is a political process**

Most industrialized countries have laws that protect the right to engage in collective bargaining and form unions. In Kenya, The Labour Relations Act, 2007 protects the right of workers to engage in collective bargaining activities. The act also protects the right of association and promotes effective collective bargaining. According to the Kenya Law Reform Commission, every person has the right to freedom of association. This includes the right to form, join, or participate in the activities of an association of any kind.

4. **It is a voluntary process**

It is entirely the choice of workers to decide to go through with collective bargaining. They decide whether they want to protest or not. It's also the worker's choice to join the trade union or not. No one can force them to enter the trade union. Since they join

out of their own willingness that means every worker is willing to fight for what they want. This ensures no one can back out of the process and it will follow through to the end. The end goal for them is to come to an agreement on employment terms that are favorable for them.

5. Collective bargaining process is strategic

The trade union must have a plan which consists of their goals and a step-by-step approach on how they are going to carry out the bargaining process. Failure to have a plan may lead to them being confused and even being misled by the company management. This will step them back and, in the end, have them not getting what they wanted in the first place. Goals and strategy are what helps them have their needs fulfilled by the owners.

6. It is a continuous process

After an agreement is finalized, workers and shop stewards will continue monitoring to ensure that the company is abiding by its obligations. The process does not end with the agreement. Workers should be involved in the decision-making process thereafter and they should communicate with the company management and work on their involvement.

7. It is a complex process

Collective bargaining is often a long, drawn-out process that can take weeks or even months. Employers and labor union leaders may have to go back and forth with employment terms. Union leaders are required to update employees and must put the terms to a vote. If employees vote to reject a contract, the negotiating process begins again.

8. It is a flexible process

The collective bargaining often involves a lot of back-and-forth, with offers and counteroffers and so both parties, that is, the employers and the employees should be willing to adjust their demands to establish a middle ground where both parties are satisfied. Both the employers and employees being stubborn drags the dispute for long and in the end harms the company goals.

Role of collective bargaining

1. Negotiates better terms of employment

Collective bargaining involves company management and labor union negotiating better employment terms. The employment terms may be better working conditions, salaries, compensation, working hours and benefits. At the end they come up with a collective bargaining agreement through a written contract.

2. Better work relationships

Through collective bargaining, work relationships between the employers and employees are strengthened. Since it involves a lot of negotiating and both parties have to communicate what they want they both establish a middle ground and see each other through such that there is a win-win situation at the end. This leads to better fulfillment and better relations between the employees and owners.

3. Protecting Workers' Rights and Interests

Through the trade unions, the employees have a collective voice, and they can be able to speak out on the unfavorable work conditions and fight for their rights. The Kenyan law, Labor relations Act, 2007 also protects the rights of workers to engage in collective bargaining process.

4. Increases employee productivity

When employees negotiate for and are provided with better work conditions, salaries, compensation and benefits, it boosts their productivity as their morale is increased. They can therefore work more efficiently. This leads to higher profits and value for the employer.

5. Reduces inequality and Social Disparities

Through collective bargaining, workers can negotiate for fairer distribution of wealth and opportunities within the workplace. This helps reduce income inequality and social disparities, contributing to a more equitable society.

AGREEMENT CONTENTS OF THE CONTRACT

A collective bargaining agreement (CBA) is a written legal contract between an employer and a union representing employees. The CBA is as a result of extensive negotiations between the parties and it sets the terms and conditions of employment.

The subjects of negotiation in a CBA can be classified into three namely:

1. Mandatory subjects – these are those that both the employer and the union are required to negotiate in good faith and these subjects are essential for maintaining good labor relations e.g. wages.
2. Voluntary subjects – these are the subject that the employers and unions may or may not negotiate but are not required legally to do so e.g. technological policies.
3. Illegal subjects – these are those that are not allowed by the law to be considered in a CBA and often involve matters that go against existing labor laws and fundamental rights e.g. Discriminatory practices.

The contents of a CBA contract may vary depending on the specific needs of the parties involved, as well as the industry and legal requirements. Common elements include:

1. Introduction – it sets out the purpose of the agreement and the relevant parties involved.
2. Scope of agreement – it defines what the agreement will contain and cover.
3. Management rights – it specifies the rights and responsibilities of the employer such as hiring of employees.
4. Union rights – outlines the responsibilities of the union and it's rights such as the representation of employees in case of a problem.
5. Wages and compensation – it specifies the base pay rates, pay increases and bonuses and also incentives for the employees.
6. Benefits - this covers the benefits that an employee is supposed to receive such as health insurance, retirement plans i.e. pensions, vacation time, sick leave etc.
7. Work rules and conditions – establishes work place rules, health and safety regulations and the relevant methods of handling disputes and other conditions that may arise in the workplace.
8. Seniority and job security – it addresses the seniority rights in an organization and outlines the protocols for layoffs, promotions and protection against discrimination or unlawful termination.
9. Training and Development – it specifies provisions for employee training, career development and other opportunities for skill gaining.
10. Equality and Non-discrimination – it includes provisions preventing discrimination based on characteristics such as race, gender, religion etc. and also contains policies that promote diversity and privacy
11. Technological policies – addresses the issues related to the use of technology at work i.e. internet usage, social media practices and electronic monitoring
12. Duration and renewal – it outlines the duration of the said agreement i.e. start and end dates and whether there will be future renegotiations or renewal of the agreement.

ROLE OF COLLECTIVE BARGAINING IN INDUSTRIAL MANAGEMENT

Collective bargaining plays a crucial role in industrial management by serving as a mechanism for negotiating terms and conditions of employment between employers and labor unions representing workers.

Its key roles include:

1. Establishing Employment Conditions: Through collective bargaining, employers and labor unions negotiate various aspects of employment conditions such as wages, benefits, working hours, leave policies, health and safety standards, and grievance procedures. This process helps to establish a framework that balances the interests of both parties.
2. Promoting Fairness and Equity: Collective bargaining ensures that workers have a voice in decisions that affect their working conditions and livelihoods in the workplace. It helps to address power imbalances between employers and individual workers by allowing employees to negotiate as a collective entity.

3. **Enhancing Productivity and Efficiency:** By addressing workers' concerns and providing incentives for job satisfaction, collective bargaining can help to create a positive work environment that encourages employee engagement and commitment.
4. **Improving Communication and Collaboration:** The process of collective bargaining fosters communication and collaboration between labor and management. By engaging in negotiations and discussions, both parties can better understand each other's perspectives and work together to find mutually acceptable solutions to workplace issues.
5. **Conflict Resolution:** Collective bargaining provides a structured framework for resolving conflicts and disputes between labor and management. By establishing formal negotiation processes and grievance procedures, it helps to address issues in a timely and constructive manner, reducing the likelihood of costly disruptions such as strikes or lockouts.
6. **Maintaining Industrial Peace:** One of the key functions of collective bargaining is to maintain industrial peace and stability. By providing a framework for resolving disputes and addressing workers' concerns, collective bargaining helps to prevent labor unrest and promote a stable and productive industrial relations environment.
7. **Adapting to Changing Economic and Technological Conditions:** Collective bargaining allows for flexibility in responding to changing economic and technological conditions. By renegotiating employment terms and conditions as needed, both labor and management can adapt to shifts in market demand, technological advancements, and other external factors affecting the workplace.