

and educate consumers and hotel and eatery owners regarding PFA is the need of the hour.

5. Although there are stringent laws for consumer rights protection and for punishing

culprits, Indian consumers are unaware of the laws and their provisions. Besides, consumers must also be vigilant about identifying adulterated food and wrong branding of articles by unscrupulous manufacturers.

THE IMPORTANCE OF COLLECTIVE BARGAINING IN SETTLEMENT OF INDUSTRIAL DISPUTES

By

—PEDDI RAVINDER, B.Com., L.L.M.
Nallagutta, Kachibowli,
Secunderabad, A.P.

Introduction :

An individual is free to bargain for himself and safe guard his own interest. If an individual workman seeks employment he stands in a weaker position before his master who having command over wealth stands in better position to dictate his own terms and the individual has to accept the offer without any reserves for he has to feed his family.

However the position becomes different if a body makes a bargain or association of workmen. They can negotiate and settle their terms with the employer, in a better way and secure better wages, better terms of employment and greater securities. The object of collective bargaining is to harmonize labour relations, promote industrial peace by creating equality of bargaining power between the labour and the capital. Collective bargaining can exist only in an atmosphere of political freedom.

In political life, democratic countries have established system of discussions through representative assemblies for determining the laws by which they shall be governed. In international relationship we have gone only same along this road. Meanwhile in the world of industry and commerce a process has been evolving in the past century for the negotiation between management and the

employees of terms and conditions of service and the established of peaceful, orders relations at the place of work through mutual settlement of different and the co-operation or all those engaged in the establishment. The process is known as collective bargaining.

Present Context of Collective Bargaining:

Industrial harmony is essential for economic progress of the nation. Unnecessary strike and lock-outs go against the interest of the community and severely effect on the growth of the nation. The industrial harmony can be better maintained in the parties are strong and develop the habit of planned collective bargaining then only fruitful human relations among men are possible provided. All members of the group observe certain rules of conduct. There was a time when primitive societies settled disputes by battle. The rule of judge prevailed and might was right. This gradually gave way to another stage when some central authority backed by force settled the differences of men.

The phrase "Collective Bargaining" is one of the recent origin. The basic tenet of collective bargaining is to meet, discuss and decide the simple and complicated issues affecting workers as group as well as individuals. It is the form of bargaining where representative of employers and employees bargain in good faith and arrive

at agreement, governing wages, bonus, and other conditions of the employment. Collective bargaining may be in between an employer or group of employers and a *bona fide* labour union. Much progress has been made in the past decade towards collective bargaining through bipartite bodies, both in the private and public sectors.

The importance of collective bargaining as an essential component of productive industrial relations is being increasingly recognized in India mainly because of the adjudication system which cause delay and expensive that is why both labour unions and employers are coming closer to the idea of collective bargaining to resolve key issues like wages and other employment conditions over the last 9 decades. The scope of collective bargaining has become flexible that can include any issue in its ambit. If any issue is uncovered it is because the parties across the table are dissatisfied. Collective bargaining is accepted as an inevitable to be adopted in the labour management relations even by the conservative employers in the capitalist democratic societies. In the present days collective bargaining has become a general feature in all industries. Any agreement collectively arrived at is generally observed by both the employers and workmen who are not a party to it. The Trade Unions in India could not contribute to the settlement of industrial disputes to the desired extent because the labour is divided, lack of proper labour leadership, majority of workmen are illiterate and the employers are well organized. As such it is unable to participate in mutual discussions.

The other reason is there are a number of labour organizations namely AITUC, INTUC, BMS, HMC *etc.* The rule of collective bargaining has been incorporated in The Industrial Disputes Act, 1947 where in the provision is made for appointment of conciliation officers, charge with the duty of mediation and promoting the settlement of industrial disputes. On a reference of a dispute to the conciliation officer, a conciliation board

is constituted consisting of the representatives of a employees and employer with the conciliation officer and its chairman. The memorandum of settlement duly signed by the parties is sent to the appropriate government for publication. A settlement arrived at by agreement between the employer and workmen otherwise than in the course of conciliation proceedings shall be binding on the parties to the agreement. A settlement comes into operation on such date and binding for such date and binding for such period as agreed upon by the parties.

The Unions and the employers, while making a collective bargaining must be sufficiently watchful that the agreement arrived at should be in conformity not only with the provisions of a general law touching upon the subject of dispute, but also be in conformity with the provisions of the industrial law having a bearing with the subject matter of dispute. It has also to be borne in mind while making an agreement that the interest of the workers who are not the members of the trade unions are also protected and the workers are not discriminated against.

The Voluntary Codes :

In 1957 and 1958 when *Guljarilal Nanda* was the Union Labour Minister, made a significant effort to shift the emphasis from legislation to deal with industrial conflicts to voluntarily accepted norms of behaviours at the national level. Nanda has all along been a true Gandhian. It was at his initiative that the Indian Labour Conference discussed 3 Drafts Codes:-

- (a) A code of conduct to regulate Inter-Union relations.
- (b) A code of discipline to regulate Labour Management relations and
- (c) A code of efficiency and welfare for laying down norms of productivity and labour welfare.

Voluntary Arbitration under the Code:-

Mahatmaji disliked strikes as a method of settling Industrial disputes, addressing the Mill-Hand of Ahmedabad on the occasion of the second anniversary of the struggle that had taken place between Mill Owners and Workers (1981), *Mahatmaji* had said, "I know that strikes are an inherent right of the working man for the purpose of securing justice, but they must be considered as crime immediately", the capitalist accepts the principal of arbitration.

The ministry of labour, report (1975-76) stated that in 1975, out of 1,087 cases in the central sphere in which conciliation had failed in 14 cases, the worker and employers agreed to settle the disputes through voluntary arbitration.

In India the employers have all along been way of Voluntary Arbitration. Compulsory arbitration, which is only another name for adjudication, is much more popular with them. The workers organizations when they are in a disadvantageous position, naturally prefer Voluntary arbitration to litigation.

The National Arbitration Promotion Board:-

A board of arbitration was set up in 1968 for arbitrating on disputes raised in the joint consultative machinery of the central government employees upto October, 1979, the board received as many as 89 references and gave its awards on 85 of them.

The majority of the awards have been in favour of the staff. So the government is actually practicing, in case of differences with its own employees, what it is preaching elsewhere.

Bargaining in Good Faith - A New Developments:

The Maharashtra Recognition of Union and Prevention of Unfair Labour Practices Act, 1972 has made a specific provision, on

the lines of the provisions. In the National Labour Relations Act, 1935 of the U.S.A for "Bargaining in Good Faith" by both the Unions and Employers. This Maharashtra Act provides that it would be unfair labour practice on the part of the management "to refer to bargaining collectively, in good faith, with the recognized trade unions" and *vice versa*, such practice is punishable under the Act.

In U.S.A. either party can invite the National Labour Relations Board to send an official to watch the negotiations process to make sure that the parties are seriously negotiating with a view to reaching an agreement.

This new legal provision should be incorporated in a central legislation. The Janata Government had included this provision in their abortive Industrial Relations Bill, 1978.

Meaning of Collective Bargaining:

"The term Collective Bargaining is a combination of Two parts "Collective" and "Bargaining". Collective denotes group action through representatives as opposed to individual action.

In unorganized trades the individual workman accepts or refuse the terms offered by the employer without communication with the fellow workman. For the sale of his labour he makes with the employer a strictly individual bargain. But it is a group of workman concert and send representatives conduct the bargaining on behalf of the whole body, the position is at once changed instead of employer making a series of separate contracts with isolated individuals, he meets with a collective will and settles in a single agreement the principles upon which for time being all workman will be changed.

For a layman, collective bargaining is the procedure by which the wages, and conditions of employment of workers are regulated by agreements between the representatives of either party.

Definitions of Collective Bargaining:-

Prof. RANDLE-

“Collective Bargaining” is a function that partakes of the nature of Psychology, human relations, debate, philosophy, dramatics and what may be loosely termed broken filed running the proportions of each are not known/ not indeed are they fixed”.

AGNIHOTRI. V:- (Towards Collective Bargaining, Indian Labour Journal 1963)

In his special article “Towards Collective Bargaining” has defined as a technique for the fulfillment of the needs and objectives of the workers and employers is an integral part of the industrial society”, it is infact an extension of the principles and practice of democracy to industries. It is a dynamic process and constantly expanding.

Characteristics of Collective Bargaining:-

Prof. Randle rightly remarks, “A tree is known by its fruit, collective bargaining may be best known by its characteristics.”

The salient features of Collective Bargaining:-

(1) *It is a group action* :-It is brought to focus through representatives of labour as well as management. When they sit at the bargaining table, they represent certain groups and the decisions of those groups. It is group because of its representative nature”.

(2) *It is Bilateral process*:-It is a two way process both parties make proposals and counter proposals. It is a mutual give and take rather “take it or leave it”. It is a civilized confrontation with a view to arriving at an agreement for the object is not warfare but compromise.

There must be mutual eagerness to develop collective bargaining process and attitude which will result in harmony and progress.

(3) *It is a continuous process* :-Mechanism for continuous organized relationships between management and unions.

(4) *Negotiation Process* :-Collective bargaining is a Negotiation process and is a device used by the wage earners to safeguard their interest. It is an instrument of industrial organization for discussion and negotiation between two parties.

(5) *Democratic Process* :-Collective Bargaining is a Democratic Process. The success of the process lies in the adoption of mature and self-disciplined approach to it by the parties concerned.

Prerequisites for Successful Collective Bargaining:-

Collective Bargaining could be an affective instrument in the settlement of disputes and advancement of the course of labour if certain basic conditions are fulfilled. The basic conditions are :

(1) *Freedom of Associations*:-Freedom of Association is a very important prerequisite for successful collective bargaining. Enabling workers to join together in Trade Unions which are not in any way under the control or influence of the employers. There should be no pressure or domination from any side. Workers must be free to join any Union they like. At the same time there must be reasonable equality of strength between them. Such a situation can be created by combining together in unions and bargaining collectively. Freedom of Association is therefore very essential.

“Where such freedom is denied, collective bargaining is impracticable and where it is restricted collective bargaining is also restricted”.

(2) *Pleasant Atmosphere* :-The agreement should be arrived at an atmosphere of freedom, absence of any external pressure from either party is important. In India we

are familiar with the phenomenon of Political Pressure, particularly on employers, to concede the demands of particular unions.

(3) *Stable Workers Union* :—Existence of a truly representative enlightened and strong union functioning strictly on constitutional trade union lines. Likewise existence of a progressive and strong management is also essential.

(4) *Parity of Strength*:—There should be a measure of strength. The bargaining power between the trade union and the management. If the management is too powerful or is the trade union can easily pressurize the management to concede even an excessive or unreasonable demand. Then the spirit of collective bargaining is lost.

(5) *Recognition of Trade Unions*:—It is necessary for the management to recognize the Union and to bargain in more good faith in unionized situations. This also put pressure on the union to formulate plans and demands in a systematic manner. Collective bargaining cannot exist or begin until the union is recognized by management. There should be provisions for the statutory recognition of Trade Unions.

(6) *Bonafide Recognitions* :—There must be no element of coercion during negotiation. There is great emphasis on mutual accommodation rather than conflict. The employers should not reject out right the demands of employees. At the same time workers should not put towards unreasonable demands. Both parties must adopt a spirit of give and take mutual confidence. They should act on problem solving approach.

Conclusion :

In any nation, the history of collective bargaining is largely a history of Trade Unionism and labour movement. The two are in separately interlined. Labour unions and collective bargaining both are products of the modern industrial society. The system

of collective bargaining is the ideal process to be adopted in any country for regulation of industrial relations. Industrial peace and harmony can be achieved by the process of collective bargaining. It is desirable to avoid government interventions in matters of employer, employees relations at least to some extent. Collective bargaining is the collective expression of the hopes and expectations of the workmen. It is a process of mediation and negotiation under which wages and conditions of employment of workmen are settled between employers or association or employees and workmen representing through their union. Industrial harmony is assured by the system of collective bargaining. The right to strike or lock-out is the important weapons in the process of collective bargaining. They seek to induce peaceful settlements by threats of economic power against each other. Collective bargaining creates consciousness and a spirit of give and take and understanding in both the parties which are essential for harmonious industrial atmosphere on both sides.

In fact, the development of collective bargaining has been closely, in most of the countries associated with the trade unionism and with growth of employers associations. The history of Trade unionism in different parts of the world reveal that the collective bargaining can be succeeded only with the growth of strong and healthy unions. In Britain collective bargaining began in 19th century with craft Unions of skilled workers organized to protect their skill by preventing from under cutting job rates. In United Kingdom though other methods of settlements of disputes are statutorily provided, collective bargaining in United States and other Industrially advanced nations is a recognized method for the settlement of industrial disputes and for promotion of good industrial selections. In USA under the Wanger Act, 1935 collective bargaining was quite free but the Taft Heartly Ac, 1949 introduced some government regulations in their system like Wange Act, Taft Hartely

Act and the Institutions like the National Labour Relations Board (NLRB) and the Federal Mediation and Conciliation Service play an important role to protect the rights of the workers to organize and to make the process of collective bargaining orderly.

In India unfortunately collective bargaining has not been given its due. Neither the parties – employers and employees nor the state has shouldered the responsibilities squarely in the direction. Though the system of collective bargaining has not been done away, but the ultimate control and supervision of the terms and conditions of employment have been retained by the government through compulsory adjudication.

In England collective bargaining agreement is treated as “Gentlemen’s Agreement”. In England and in U.S.A once an agreement has been reached, it is a valid legal contract enforceable at law and both employers and labour organizations can use or can be used for breach of its clauses. It is for this reason that collective agreements in U.S.A are often called “Labour Contracts”.

In India collective bargaining agreement are enforceable U/S 18 of the Industrial disputes Act, as a settlement arrived at between workers and employers government may refer the dispute over the breach of contract to a labour court or to an industrial tribunal as the case may be.

Healthy Trade Union Movement is the sign for the success of the collective bargaining.

Suggestions :

In the contract of Indian Industrial relations system, some important suggestions are made here with a view to obtain good improvement in the practice of the collective bargaining process for maintaining good industrial relations.

1. There must be statutory provisions for regulating collective bargaining Unlike in America (National Labour Relations Act, 1935) in India. There is no statutory legislation to impose an obligation on the parties to bargain with one another.
2. Recognition of Trade Unions is the back bone of collective bargaining. On this aspect the National Commission on Labour Laws made several recommendations. These recommendations should be implemented without any delay.
3. To strengthen Trade Union Movement and for genuine Industrial relations the Trade Unions must be free from Politics and should continue to their activities of the working class.
4. The Indian Political consciousness is resulting in multiplicity of unions which in turn affects Industrial Relations. The Multiplicity of unions should be restricted. The Trade unions should realize that one unite we stand and divide we fall.
5. At the time of bargaining, the consumers interest must be taken into consideration, unless labour Unions and Managements keep consumers interest in their mind. While making negotiation, the system cannot work for long as the agreement is at the cost of general public.
6. Finally, it may be noted that collective bargaining cannot fall on us overnight to play a greater and constructive role, collective bargaining must acquire new dimensions in its structure and conception. The government as a matter of policy should encourage the parties to resort to more and more bargaining.