

COLLECTIVE BARGAINING POWER: UNION AND MANAGEMENT

Dr. Abhishek Gupta¹ and Neetu Gupta²

¹Administrative-cum-Accounts Officer, Sardar Swaran Singh National Institute of Renewable Energy (An autonomous Institute of Ministry of New & Renewable Energy), Kapurthala (Punjab), India

Email: iloveindia1909@gmail.com

²Student (MBA), Annamalai University, Tamil Nadu, India

Email: abhigurgaon2009@yahoo.co.in

ABSTRACT

Collective Bargaining refers to a process by which employers on the one hand and representatives of the employees on the other attempt to arrive at agreements covering the conditions under which employees will contribute and be compensated for their services. Collective bargaining is concerned with the relations between trade unions & management. Bargaining is collective because chosen representatives of labour & management acts as bargaining agents. Collective bargaining was introduced in India for the first time in 1952; collective bargaining in India grew on par with the growth of Trade Unionism. Collective Bargaining arrangements for the first time were made at Ahmadabad Cotton Textile Industry. The main purpose of the arrangements was regulation of management and labour relationships. Only after independence, there was considerable growth in Collective Bargaining. Trade Unions gained importance after independence. From management's side, there emerged a new class of managers, who saw labour with sympathy and understanding. Another flow of collective bargaining process in India is that it is mostly used for basic monetary benefits. In recent years, collective bargaining is gaining momentum. A study of the various agreements entered into India between employers and employees has brought to light certain trends in collective bargaining. Agreements are mostly unit-wise, though some are industry-wise. The scope of the agreements has been widening and now includes matters relating to bonus, productivity, modernisation, standing orders, voluntary arbitration, incentive schemes, and job evaluation. Long-term agreements, covering a period which ranges between 2 years and 5 years, are on the increase. The number of agreements entered into each year has been on the increase. Joint consultation in various forms has been provided for in a number of agreements and collective bargaining has proved to be feasible and effective. Though, collective bargaining has grown in India due to the statutory provisions, voluntary measures. Industrial Truce Resolution of 1962 and the amendments to the Industrial Disputes Act 1947, its success is

limited. The causes for its limited success are problems with unions, problems from government, legal problems, political interference and attitude of management. To make collective bargaining more effective, the Indian Institute of Personal Management has suggested for a truly representative, enlightened and strong trade union should come into being and should function on strictly constitutional lines; there should be a progressive and strong management; when there are several units of the company, there should be a delegation of authority to the local management; and a fact-finding approach, and a willingness to use new tools should be adopted for the solution of industrial problems. The National labour policy has to make itself more intelligible so as to resolve the dilemmas in collective bargaining and thereby resolve the riddle of the multiple unionisms and strengthen the labour movement, having majority representation union concept. Law should be changed to upgrade the status of settlements following bipartite negotiations. Provision for a statutory representative trade union, as the sole bargaining agent of the workmen, will enable workers and employers to establish strong collective bargaining relationships. As such, close interplay between collective bargaining and legislation must continue which will lead to the growth of collective bargaining. The weapons of strikes and lockouts must be regarded as strategically tactics instead of as means of conflict, if collective bargaining is to be accepted as an effective method in industrial relationship. In our industrial economy, collective bargaining is the most ideal method for settlement of industrial disputes, and therefore, this institution has to be developed.

INTRODUCTION

Collective bargaining in India grew on par with the growth of Trade Unionism. Collective Bargaining arrangements for the first time were made at Ahmadabad Cotton Textile Industry. The main purpose of the arrangements was regulation of management and labour relationships. But there was no considerable growth until the Second World War. Even this growth during the Second World War was not the result of management and unions influence but due to government's efforts. There was not much awareness of Collective Bargaining and its importance in that period. Only after independence, there was considerable growth in Collective Bargaining. Trade Unions gained importance after independence. From management's side, there emerged a new class of managers, who saw labour with sympathy and understanding. But collective Bargaining process took place mainly at plant level and organisation level unlike western countries where the agreements are reached at industry level. Another flow of collective bargaining process in India is that it is mostly used for basic monetary benefits. In recent years, collective bargaining is gaining momentum. Collective bargaining was introduced in India for the first time in 1952; it gradually acquired importance and significance in the following years. Most of the collective bargaining (agreements) has been at the plant level, though in important textile centres like Bombay and Ahmadabad, industry level agreements have been common. Such agreements are also to be found in the plantation industry in South and in Assam, and in the coal industry. Apart from these, in new industries chemicals, petroleum, oil refining and

distribution, aluminium and electrical equipment, automobile repairing the arrangements for the settlement of disputes through voluntary agreements have become common in recent years. In the ports and the docks, collective agreements have been the rule at individual centres. On certain matters affecting all the ports, all-India agreements have been reached. In the banking industry, after a series of awards, employers and unions have, in recent years, come closer to reach collective agreements.

Collective Bargaining In India

During the early post-Independence years, efforts were made to develop the system of collective bargaining as an alternative to compulsory negotiation. But, the recessionary condition in the industry, the weak bargaining strength of union and the need to maintain industrial peace to implement the Five-Year Plans necessitated continuing the compulsory arbitration mechanism as the main plank of the industrial relations machinery. On the other hand, firstly, the influence of collective bargaining was limited only to a few industries. Secondly, the scope for bargaining was greatly restricted because of rising industrial legislations enacted by the various states, which touched upon practically all aspects of wages and working conditions in factories. Thirdly, its developments were greatly hampered by the liberal provision of adjudication machinery which prompted trade unions to lean heavily on it, rather than on their strength to settle disputes. Moreover, the rampant trade union rivalry and undertrained freedom enjoyed by the minority unions in raising disputes on the negotiated issues have also posed difficulties in effective working of the collective bargaining system. The slow progress in the recognition of unions as bargaining agents also limited the growth of the collective bargaining system.

Status of Collective Bargaining

Early bargaining theories compared union power to that of a monopolist. Whereas the difference between price and marginal cost could be used to determine the extent of a monopolist's leverage, the mark-up of union pay over nonunion pay could be used to illustrate organized labor's power. A study of the various agreements of the companies entered into India, between employers and employees has brought to light certain trends in collective bargaining. Some of these are agreements are mostly unit-wise agreements, though some are industry-wise; for example, the agreements entered into by the textile industries in Bombay and Ahmedabad. The scope of the agreements has been widening and now includes matters relating to bonus, productivity, modernisation, standing orders, voluntary arbitration, incentive schemes, and job evaluation. The number of agreements entered into each year has been on the increase. Joint consultation in various forms has been provided for in a number of agreements; and collective bargaining has proved to be feasible and effective. Another notable feature of the agreements is the recognition of their mutual rights and responsibilities by the representatives of management and employees. Under a number of agreements, the unions have recognised the right of the managements, among other things, to introduce new or improved methods of production, establish production schedules and gratuity standards, and make rules for maintaining discipline and securing effective operation of the plant. The right of the management to discharge workers for just cause, including inefficiency and lack of work, has also been conceded. The managements, on their part, have recognised the unions as bargaining agents and pledged to desist from unfair practices such as interference with the right of the workmen to organise and join a union and discrimination against them

because of their membership of a union. In the same manner, the trade unions have agreed to follow the constitutional methods as laid down in the grievance procedure to redress the grievances of their members and to desist from indulging in or encouraging unfair union practices.

Rapid Growth of Collective Bargaining In India

The growth of collective bargaining in India is attributed to statutory provisions, which have laid down some general principles of negotiation, procedure for collective agreements and the character of the representation of negotiating parties. Voluntary measures, such as tripartite conferences, joint consultative boards and industrial committees at the industry level have provided an ingenious mechanism for the promotion of collective bargaining practices. The recent measures taken by the Government of India schemes for workers' education, participation of labour in management, the evolution of the Code of Inter-Union Harmony, the Code of Efficiency and Welfare, the Code of Discipline, the formation of joint management councils, Works Committees, and shop councils, and the formulation of grievances redressed procedure at the plant level. The Industrial Truce Resolution of 1962 has also influenced the growth of collective bargaining. The Resolution required managements and workers to "strive for constructive co-operation in all possible ways and enjoined on them to resolve their disputes peacefully through mutual discussion, conciliation and voluntary arbitration".

Causes for Limited Success

Collective bargaining has grown in India due to the statutory provisions, voluntary measures. Industrial Truce Resolution of 1962 and the amendments to the Industrial Disputes Act 1947, its success is limited. The causes for its limited success are problems with Unions, Collective Bargaining process mainly depends on the strength of Unions. But there are not many strong unions in India. Indian unions are marked with multiplicity, inter and intra-union rivalry, weak financial position and non-recognition. Weak trade unions cannot initiate strong arguments during negotiations. There is usually no unanimous decision among workers to be presented at the negotiating table. The Government has not been making strong efforts for the development of Collective Bargaining. The government has imposed many restrictions regarding strikes and lockouts, which is an obstacle for the development of collective bargaining process. Legal Problems, now adjudication is easily accessible. As such, collective bargaining process is losing its importance. Interference of political leaders in all aspects of union matters has increased over the years. Almost all unions are associating themselves with some political party or the other. And there are many such unions. To protect their own unions, all political parties interfere into the matters, creating inter-union rivalries. In India, managements have negative attitude towards Unions. They do not appreciate their workers joining unions. As strong unions are must for collective bargaining process, this attitude of management hampers the process.

Recommendations of National Commission of Labour

Government intervention in Industrial relations particularly in the settlement of industrial disputes should be reduced gradually to the minimum possible extent. Compulsory adjudication of disputes should be used only as a last resort. Trade Unions should be strengthened both organisationally and financially by amending the Trade Union Act of 1926

to make registration of unions compulsory, enhance the union membership fee, and reduce the presence of outsiders in the union executive and among the office-bearers and increase the minimum number of members in respect of unions applying for registration. Legal provision may be made either by a separate legislation or by amending an existing enactment for compulsory recognition of trade unions and certification of unions as bargaining agents. Prohibition and penalisation of unfair labour practices, bargaining in good faith by both employers and unions, conferring legal validity and legitimacy on collective agreements.

Pre-Requisites of Successful Collective Bargaining

We recommend that there must be a change in the attitude of employers and employees. They should realise that collective bargaining approach does not imply litigation as it does under adjudication. It is an approach which indicates that the two parties are determined to resolve their differences on their respective claims in a peaceful manner, relying only on their own strength and resources; they do not look to a third party for the solution of their problems. The bargaining agents of both the parties should be determined to arrive at an agreed solution of their respective problems. Employers and employees should enter upon negotiations on points of difference or on demands with a view to reaching an agreement. Any refusal to negotiate on the part of either side should be looked upon as an unfair practice. Rigid attitudes are out of place in a collective bargaining system. Negotiations can be successful only when the parties rely on facts and figures to support their point of view. The trade union should be assisted by such specialists as economists, productivity experts and professionals, so that their case is properly presented to the representatives of the management. In order to bring this, the organisational set up of a trade union will have to be changed; and the latter should adopt a constructive approach at the bargaining table rather than the agitation or litigation-oriented approach. To ensure that collective bargaining functions properly, unfair labour practices should be avoided and abandoned by both sides. The negotiations between the management and the recognised trade union will then be conducted in an atmosphere of goodwill, which will not be vitiated by malpractices, and neither side would take advantage of the other by resorting to unfair practices. Once an agreement is reached, it must be honoured and implemented. No strike or lock-out should be permitted in respect of issues which have already been covered in the contract; and the trade union should not be allowed to raise fresh demands. A provision for arbitration should be incorporated in the agreement, which should become operative when there is any disagreement on the interpretation of its terms and conditions. The disputes arising out of the agreement should be referred to an agreed third party with a view to arriving at a final and binding decision.

To make collective bargaining more effective, the Indian Institute of Personal Management has suggested a truly representative, enlightened and strong trade union should come into being and should function on strictly constitutional lines. There should be a progressive and strong management which is conscious of its obligations and responsibilities to the owners of the business, to the employees, the consumers and the country. When there are several units of the company, there should be a delegation of authority to the local management; and a fact-finding approach, and a willingness to use new tools should be adopted for the solution of industrial problems. If collective bargaining is to thrive, minimum changes are necessary in the present legislations for collective bargaining. Statutory steps in this regard should

guarantee the conditions in which the institution of collective bargaining based on mutual trust and respect strives to develop. This can be possible, if the interference of governmental machinery, whether a conciliator or arbitrator or adjudicator, should be minimal. Industrial relations legislations do not, of course, bar employers and unions from resolving their disputes through collective bargaining. But when they are either not willing or unable to do so, the law enables the government to intervene in the dispute and refer it to adjudication. The process of collective bargaining places a heavy responsibility on the parties by forcing them to make concession to each other and to take difficult decision regarding accepting or rejecting any proposal for settlement. Therefore, collective bargaining, even if permissible, becomes unreal in such a situation. The failure of collective bargaining in recent years has been illustrated by the frequent failure of joint negotiations, leading very often to cases of strikes and lock-outs which are arrested by the prompt machinery of conciliation, adjudication or arbitration. Collective Bargaining has been the main casualty of multiplicity of unions. Moreover, since government and its machinery are easily available, parties feel relieved in passing the buck to them. Since collective bargaining required patience, skill and preparation, the law is also not helpful in encouraging collective bargaining as a means of resolving disputes. In order to make collective bargaining work in India, the minority unions must be denied the legally enforceable right to bargain and the right to take disputes to conciliation and adjudication. At the same time, employers must be compelled to recognise and bargain with majority unions and give such unions exclusive bargaining, rights in their units. In actual practice, such accord is lacking in the practice of collective bargaining.

Such a state of collective bargaining, raises the question, whether can we have any basis for the development of collective bargaining in this situation? The course of State action or the inconsistency of the precept and practice of the government in India is a reflection of the ambivalence of public sentiment. This ambivalence is specially supported by the inherent incompatibility of the consciousness of our political democracy geared to a policy of planned development and a Socialistic Pattern of society. Such a situation has created a dilemma in collective bargaining too. Thus, it is generally contended that bi-partite collective bargaining, in the sense generally understood in the western countries, has not made much headway in India. But, collective bargaining in the sense generally understood in the western countries, is incompatible with the demands in the planned economy of India. In actual practice, attempts have been made in India to adopt collective bargaining to the needs of the planned economy by raising it to the level of a tri-partite status. There is much acceptance to this as a desirable move. The development of the Indian economy also restricts the scope of collective bargaining at the plant level by taking wages (including other payments) and working conditions out of the purview. Collective Bargaining, therefore, concentrates more and more on managerial functions and democratization of the internal structure of the plant community. On the other hand, the shortcomings inherent in collective bargaining, with prevalence of multiple unionisms have not been negative by any legislative steps in conformity with trend's all over the world. The peculiar situation is allowed to handle in the best way they can be by the managements and the unions, the State being indifferent to the elimination of the evils of multiple unionisms in collective bargaining.

CONCLUSION

The National labour policy has to make itself more intelligible so as to resolve the dilemmas in collective bargaining and thereby resolve the riddle of the multiple unionisms and strengthen the labour movement, having majority representation union concept. Law should be changed to upgrade the status of settlements following bipartite negotiations. Provision for a statutory representative trade union, as the sole bargaining agent of the workmen, will enable workers and employers to establish strong collective bargaining relationships. As such, close interplay between collective bargaining and legislation must continue which will lead to the growth of collective bargaining. The weapons of strikes and lockouts must be regarded as strategically tactics instead of as means of conflict, if collective bargaining is to be accepted as an effective method in industrial relationship. In our industrial economy, collective bargaining is the most ideal method for settlement of industrial disputes, and therefore, this institution has to be developed. In the working of collective bargaining, some labour specialists find an emerging trend towards replacement of traditional distributive agreements by those on productivity and improving the quality of work. It may, therefore, be hoped, that this would lead to working for workers' participation in management. If so, collective bargaining may develop and grow in an environment that is supportive. Still we think there is a scope of thorough research and study for making the collective bargaining as a full power of the Management.

REFERENCES

1. Bhatia S. K.(2003), "Constructive Industrial relations and labor Laws" New Delhi, Deep & deep Publishers.
2. Chand K. V. Kumar, "Industrial Relations" New Delhi, Ashish Publishers.
3. H.L. Kumar, Dismissal,2000 Discharge and Retrenchment (Delhi: Universal Law Publishing Co. Pvt. Ltd.) p. 257.
4. H.L. Kumar, labour Law (Delhi: Universal Law Publishing Co.) 2006 p. 120.
5. Kumar, H.L., Labour & Industrial Law (vol. II), 3rd edition, Universal Law Publishing Co., Delhi (2007)
6. Mamoria & Gankar (2000), "Dynamics of Industrial Relations" Mumbai Himalaya Publishers.