Collective Bargaining and Collective Agreement

OVERVIEW

Private Sector
- Deciding Terms and Conditions of Service
- Collective Bargaining
- Recognition Procedure
- De-recognition
- Bargaining Procedure
- Negotiation Techniques
- Collective Agreement

Public Sector
- Terms and Conditions of Service
- Salaries
- Commissions
- Public Services Department
- National Joint Councils (NJCs)
- Public Services Tribunal
PRIVATE SECTOR

DECIDING TERMS AND CONDITIONS OF SERVICE

- Terms and conditions of service – wages and other benefits agreed to in contract of employment
- Decision relating to employees’ wages and benefits can be made unilaterally or bilaterally
- Unilateral – public sector and non-unionised companies
- Bilateral – unionised companies
WHAT IS COLLECTIVE BARGAINING

- Collective bargaining refers to negotiating with a view to the conclusion of a collective agreement.
- Collective agreement – an agreement in writing concluded between an employer or employer union on the one hand and an employee union on the other, relating to the terms and conditions of employment and work of workmen or concerning the relations between such parties.

DECIDING TERMS AND CONDITIONS OF SERVICE

- The objectives of collective bargaining:
  - To improve terms and conditions of service
  - To protect workers’ right by including provisions to check any abuse of power by the employer and prevent him from acting unjustly
  - To allow workers to participate in decision making in areas which are of vital interest to them
COLLECTIVE BARGAINING

- 2 necessary pre-conditions for effective collective bargaining:
  - Workers must have the right to form collective associations
  - Unions must have bargaining strength
    - Be recognized by the employer
    - Has adequate financial strength
    - Members are united

RECOGNITION PROCEDURE

- To obtain recognition from employer, union has to fill in *Claim for Recognition Form* and presents it to the employer [a copy of the form will be forwarded to DG of Industrial Relations

- Employer must reply within 21 days

- Employer has 3 possible responses -
  - Grant voluntary recognition; refuse to grant recognition; request the DG of Industrial Relations to verify whether the union is the correct union for his particular industry.
**RECOGNITION PROCEDURE**

- If the employer refuse to give recognition or fail to reply, the union can report to the DG
- If the employer still refuse, the DG will report the matter to the Minister of HR
- The minister will normally order recognition if more than 50% of eligible workers belong to the union
- A union which have been granted recognition by employer cannot have that recognition taken away

**BARGAINING STRENGTHS**

- Sufficient number of members
- Strong financial position
- Solidarity of the workers
- External factors
  - general economic situation
  - level of unemployment
PRE-REQUISITE TO BARGAINING PROCESS

- For collective bargaining to take place:
  - Worker must have the right and be active in unions
  - Recognition must be granted to union by the employer
  - Both employer and the union must be willing to bargain in good faith
- The outcome of collective bargaining depends a lot on the nature of the relationship between both parties – employer and union

BARGAINING LEVELS

- Collective bargaining can take place between:
  - A single employer and a trade union of employees
  - A group of employers and a union of employees
- Multi-employer bargaining is found where an employers’ association exist
COLLECTIVE BARGAINING PROCEDURE

Union presents written demands

At the first bargaining session, union explains its demand and management presents counter offer

Agreement is reached, put in writing and signed

Conciliation meeting held to resolve dispute

If no resolution, dispute is referred to Industrial Court for arbitration

Bargaining sessions continue. Non-controversial items where agreement is reached are cleared first

Bargaining over controversial items (Economic items)

Breakdown in negotiations. Parties refuse to continue negotiations

NEGOTIATIONS TECHNIQUES

Preparation

Negotiations

Implementation of the Collective Agreement

Disputes

Preparation

Collective Agreement

Collective Agreement

Settlement
CHARACTERISTICS OF EFFECTIVE NEGOTIATORS

- Patient and don’t lose temper when provoked
- Have strong communication skills:
  - They listen well
  - They speak clearly and to the point
  - They check out their understanding of what has been agreed
- Physically fit to withstand long sessions
- Knowledgeable of the employment laws and the industrial relations system

COLLECTION OF INFORMATION

- Know the opposition
  - Financial strengths, total membership, power structure, personality of leaders, internal problems/weaknesses
  - Gather information through formal and informal contacts, newsletters etc.
- Economic information
  - Financial information on the company, CPI, current state of labour market etc.
DECIDING OBJECTIVES, STRATEGIES AND TACTICS

- Strategy – overall plan of action
- Tactics – detailed methods and steps used to implement their strategy
- For each item in the proposed collective agreement the negotiators establish what they would like to achieve – most favoured and the bottom line
- Tactics used by employers in negotiations:
  - Room arrangement
  - Purposely delaying the negotiations
  - Threaten to withdraw agreement to check-off procedure

GETTING A MANDATE

- The union team will need to ensure what is the minimum their members will accept
- The management will have to check with senior officers in the company what they are willing to give away during the bargaining process
- If the union negotiators fail to get what they want; what would be the next course of action? Picket? Strike?
STAGES IN BARGAINING

- Involves certain amount of give and take between both parties
- The final outcome depends greatly on the skills and of the negotiators and the bargaining power of each side
- Normally take place at neutral venues
- Usually starts with union presenting its demands and the management team presenting the counter offer
- Easily agreed items will be covered first and the more controversial items will be discussed at later sessions

When and if agreement is reached, the agreement will be put in writing, using language which is as precise as possible and signed

- A formal signing ceremony is often held with invited guest from Ministry of Human Resources or elsewhere to act as witness to the process
- If the negotiation fails, the matter can be referred to the Industrial Court for settlement
- Finally each bargaining team will carry out a post-mortem
COLLECTIVE AGREEMENT

- An agreement in writing between an employer, or a trade union of employers, and a trade union of workers relating to the terms and conditions of employment or the relations between the two parties.
- The agreement regulates the relationship between the employer and his employees for a set period of time (normally 3 years).
- It also becomes an implied term of the contract of employment of the individuals who work in the organization.

If the employer fails to comply with the terms contained in the collective agreement, any trade union or individual can lodge a complaint with the Industrial Court.

The Industrial Court will recognize the agreement as binding, valid enforceable document subjected to the following conditions:
- It must specify the parties to the agreement.
- It must specify the duration of the agreement – cannot be less than 3 years.
- It must include a procedure for modification and termination of the agreement.
- It must specify the procedure to be used to settle any dispute over interpretation or implementation of the agreement.
- It must not include items which are considered managerial prerogatives.
ITEMS COMMONLY FOUND IN COLLECTIVE AGREEMENTS

- Recognition
- Union security
- Compensations and benefits
  - Salary scales, bonus payment, overtime rates, retirement benefits, holidays, leave benefits, medical benefits, allowances etc
- Existing benefits

PUBLIC SECTOR
TERMS AND CONDITIONS OF SERVICE

- Legal procedures relating to collective bargaining do not apply to the public sector
- The government unilaterally makes all decisions pertaining to terms and conditions of service
- To aid their decision making, the government has appointed a number of special commissions and committees from time to time

REFERENCES