

LL.B IV SEMESTER

THE TRADE UNIONS ACT, 1926

COLLECTIVE BARGAINING

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COLLECTIVE BARGAINING

Collective Bargaining and Trade Unions Industrial harmony is essential for economic progress and the concept of Industrial harmony wants the existence of undertaking, cooperation and sense of partnership between employers and employees. There may be conflicting interests between employer and workmen but this attitude leads to an understanding for achieving common goals, such as production and prosperity.

Generally by collective bargaining we mean, an essential element of economic democracy, is a 'two party' procedure for arriving at a commonly agreed solution. The term is thus used to describe the procedure, whereby employers must attempt to reach agreement about wage-rates and basic conditions of labour with trade unions, instead of with individual workers. In other words, it is the process of discussion and negotiation between an employer and a union culminating in a written agreement or contract and the adjustment of problems arising under the agreement.

"Collective bargaining" writes Harbison "is a process of accommodation between two institutions which have both common and conflicting interests". Its aim is not to seek industrial peace at any price Constructive bargaining should seek "to promote the attainment of the commonly held goals of a free society."

In the context of the present day egalitarian society, with its fast changing social norms, a concept like 'collective bargaining' is not capable of a precise definition. The content and scope of 'collective bargaining' is a process of bargaining between the employers and their workers, by which they settle their disputes relating to employment or non-employment, terms of employment or conditions of labour of the workmen, among themselves, on the strength of the sanctions available to each side.

Collective bargaining is a technique by which disputes as to conditions of employment, are resolved amicably, by agreement, rather than by coercion. The dispute is settled peacefully and voluntarily, although reluctantly, between labour and management, seeks to achieve social justice on the basis of collective bargaining

Meaning of Collective Bargaining

As put by Louis E. Howard, collective bargaining means ".....To get together (right of meeting), to enter a common organization (right of association), to determine that whatever conditions of work are allotted shall be the same for all workers and to make a bargain with employers to that effect (rights of combinations and bargaining) and eventually in case the employers should refuse to enter on such a bargain or fail to honour it when entered upon, to confront them with a united refusal to go to work or to continue at work (right of strike).

The common law had recognised relations between individuals as master and servant. It did not recognise collective bargaining or anybody that is entitled to represent the body of workmen in negotiations relating to employment or the terms of employment or with the conditions of labour of any person. In common law, if a number of employees in concert and combination withdraw their labour and decide not to work, it would amount to a breach of contract, which was actionable in common law.

Governing Laws to Trade Unions in India

Constitution of India,

Article 19(1)(c) of the Constitution of India, 1950 which envisages fundamental right to freedom of speech and expression also guarantees the country's citizens the right "to form associations or unions" including trade unions. The SC has held that the right guaranteed in Article 19(1) (c) also includes the right to join an association or union. This right carries with it the right of the State to impose reasonable restrictions. Furthermore, it has been established that the right to form associations or unions does not in any manner encompass the guarantee that a trade union so formed shall be enabled to engage in collective bargaining or achieve the purpose for which it was formed. The right to recognition of the trade union by the employer was not brought within the purview of the right under Article 19(1)(c) and thus, such recognition denied by the employer will not be considered as a violation of Article 19(1)(c). The various freedoms that are recognized under the fundamental right, Article 19(1)(c),:

- i. The right of the members of the union to meet,
- ii. The right of the members to move from place to place,
- iii. The right to discuss their problems and propagate their views, and
- iv. The right of the members to hold property.

Trade Unions Act, 1926

The Trade Unions Act, 1926 ("TU Act") provides for formation and registration of trade unions and in certain respects to define the law relating to registered trade unions. The TU Act defines a trade union as "any combinations, whether temporary or permanent, formed primarily for the purpose of regulating the relations between workmen and employers or between workmen and workmen, or between employers and employers, or for imposing restrictive condition on the conduct of any trade or business, and includes any federation or two or more trade unions." All workmen have the right to form a union or refuse to be a member of any union. However, not all workers' organizations are considered trade unions. For example, the Madras High Court has held that an association of sub-magistrates of the judiciary, tahsildars, etc., is not a trade union because the members are engaged in sovereign and regal functions of the government.

Industrial Disputes Act, 1947

The IDA also deals with trade unions in the manner that it regulates the rights of employers and employees in the investigation and settlement of industrial disputes. It provides for collective bargaining by negotiation and mediation and, failing that, voluntary arbitration or compulsory adjudication with the active participation of trade unions. As per the IDA, a settlement arrived at through collective bargaining is binding. Two types of settlements are recognized:

- i. Those reached in the course of conciliation proceedings before the authority - such settlements bind members of the signatory union as well as non-members and all present and future employees of the management.

- ii. ii. Those reached outside the course of conciliation proceedings, but signed independently by the parties to the settlement - such settlements bind only

Collective bargaining is a process of discussion and negotiation between an employer and a trade union culminating in a written agreement and the adjustment of problems arising under the agreement. The Supreme Court of India has defined the process of collective bargaining as a technique by which, dispute as to conditions of employment is resolved amicably by agreement rather than coercion. Workers, who are generally represented by a trade union, use this medium to express their grievance about various issues such as wages and working conditions.

Procedure for initiating collective bargaining

1. A charter of demands

The trade union will notify the employer for initiating collective bargaining negotiations. The representatives of the trade union draft a charter of demands which contains issues related to terms of employment and the working conditions namely wages and allowances, bonuses, working hours, benefits, holidays. In some cases, an employer may also notify the trade union and initiate collective bargaining negotiations.

2. Negotiations

Negotiation is the next step after the submission of the charter of demands by the trade union. Both the employer and the employee seek opportunities to suggest compromise solutions in their favour until an agreement is reached. If it impossible to reach out to an agreement, a third party (mediator / arbitrator) may be brought in from outside. If, even with the assistance of the third party, no viable solution can be found to resolve the parties' differences, the trade union may decide to engage in strikes.

3. Collective bargaining agreement

Pursuant to the negotiations between the parties, a collective bargaining agreement will be executed between the employer and workmen represented by trade unions, setting out the terms of employment and the working conditions of labour.

4. Strikes

If both parties fail to reach an agreement because of mutual consensus, the union may go on a strike, which shall be in accordance with the provisions of the Industrial Disputes Act 1947 ("ID Act").

5. Conciliation

Once the conciliation officer receives a notice of strike or lockout, the conciliation proceedings shall commence. The State Government may appoint a conciliation officer or a Board of Conciliation to investigate disputes, mediate and promote a settlement. Workers are prohibited from going on strike during the pendency of such conciliation proceedings. Conciliation proceeding may have one of the three outcomes, namely (i) a settlement; or (ii) no settlement; or (iii) reference being made to the appropriate labour court or any other industrial tribunal.

6. Compulsory arbitration or adjudication

When conciliation and mediation fail, parties may either resort to compulsory or voluntary arbitration. Arbitration and the recommendations of the arbitrator may be binding to

the parties. Section 7A of the ID Act provides for a labour court or industrial tribunal within a state to adjudicate protracted industrial disputes such as strikes and lockouts. Section 7B of the ID Act provides for constitution of national tribunals to resolve disputes involving questions of national interest or issues concerning more than two states. In the event, a labour dispute is not resolved by conciliation and mediation, the employer, and the workers may refer the case by a written agreement to a labour court, industrial tribunal or national tribunal for adjudication or compulsory arbitration.

The following types of collective bargaining agreements are prevalent in India:

1. Bipartite agreements

These agreements are a result of voluntary negotiations between employer and trade union and are binding, as per the provisions of the ID Act.

2. Settlements

It is tripartite in nature as it involves the employer, trade union and the conciliation officer. Settlements arise out of specific disputes which is resolved by a reconciliation officer. If, during the conciliation proceedings, the conciliation officer believes at any point of time that there is a possibility of reaching a settlement, then the officer may withdraw himself from the negotiations. The parties are free to finalise the terms of the agreement and must inform the conciliation officer within a specified timeframe if such an agreement is reached after his withdrawal.

3. Consent awards

These are agreements reached while a dispute is pending before an adjudicatory authority. Such agreement is incorporated in the authority's award and although the agreement is reached voluntarily between parties, it becomes binding under the award passed by the authority.

Conclusion

Refusal by the employer to bargain collectively in good faith is an unfair labour practice as per the ID Act. Collective bargaining agreements between the trade union and employers are enforceable under Section 18 of the ID Act. For a successful process of collective bargaining, it must begin with proposals. Rather than demands and the parties should be ready to negotiate and compromise. The process of collective bargaining enables healthy discussions between workers and employers and facilitate the growth of industrial relations. Having said that, collective bargaining by trade unions often tends to be an arm-twisting exercise given the political affiliation of trade unions in India and it is more about the show of strength by the trade union as opposed to a good faith effort to negotiate genuine demands of workers.