Role of Collective Bargaining as a Grievance Redressal Mechanism

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I. Introduction:

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

The phrase 'collective bargaining' was first coined by Sidney and Beatrice Webb. This was widely accepted, particularly in the developed countries.

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[2] "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.

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[2] Goals and Strategy in Collective Bargaining by F.H. Harbison, Harper &Bros. USA.1951 136

II. Definitions:

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).

According to Dale Yoder, "Collective bargaining is the term used to describe a situation in which the essential conditions of employment are determined by bargaining process undertaken by representatives of a group of workers on the one hand and of one or more employers on the other."

In the words of Flippo, "Collective bargaining is a process in which the representatives of a labour organisation and the representatives of business organisation meet and attempt to negotiate a contract or agreement, which specifies the nature of employee-employer-union relationship."

The International Labour Organisation defines collective bargaining as "the negotiations about working conditions and terms of employment between an employer, or a group of employers, or one or more employers' organisations, on the one hand, and one or more representative workers' organisation on the other with a view to reaching agreement."[3]

III. Meaning of Collective Bargaining According to the Law Courts in India:

Collective Bargaining in India has been the subject matter of industrial adjudication since long and has been defined by our Law Courts. In Karol Leather Karamchari Sangathan v. Liberty Footwear Company[4], the Supreme Court observed that, "Collective bargaining is a technique by which dispute as to conditions of employment is resolved amicably by agreement rather than coercion." According to the Court, the Industrial Disputes Act, 1947 seeks to achieve social justice on the basis of collective bargaining. In an earlier judgment in Titagarh Jute Co. Ltd. v. Sriram Tiwari[5], the Calcutta High Court clarified that this policy of the legislature is also implicit in the definition of 'industrial dispute'.

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[3] International Labour Office, Collective Bargaining (A Worker's Education Manual) (1960), p.3

[4](1989) 4 SCC 448.

[5] (1979) I LLJ 495 Cal

In Ram Prasad Viswakarma v. Industrial Tribunal[6] the Court observed that, "It is well known how before the days of 'collective bargaining', labour was at a great disadvantage in obtaining reasonable terms for contracts of service from its employer. As trade unions developed in the country and Collective bargaining became the rule, the employers found it necessary and convenient to deal with the representatives of workmen, instead of individual workmen, not only for the making or modification of contracts but in the matter of taking disciplinary action against one or more workmen and as regards of other disputes."

In Bharat Iron Works v. Bhagubhai Balubhai Patel[7], it was held that "Collective bargaining, being the order of the day in the democratic, social welfare State, legitimate trade union activities, which must shun all kinds of physical threats, coercion or violence, must march with a spirit of tolerance, understanding and grace in dealings on the part of the employer. Such activities can flow in healthy channel only on mutual cooperation between the employer and the employees and cannot be considered as irksome by the management in the best interests of its business. Dialogue with representatives of a union help striking a delicate balance in adjustments and settlement of various contentious claims and issues.

IV. Types of Collective Bargaining in India:

1. Bipartite Agreements: These are most important types of collective agreements because they represent a dynamic relationship that is evolving in establishment concerned without any pressure from outside. The bipartite agreements are drawn up in voluntary negotiation between management and union. Usually the agreement reached by the bipartite voluntarily has the same binding force as settlement reached in conciliation proceedings. The implementations of these types of agreements are also not a problem because both the parties feel confident of their ability to reach the agreement.

2. Settlements: It is tripartite in nature because usually it is reached by conciliation, i.e. it arises out of dispute referred to the appropriate labour department and the conciliation officer plays an important role in bringing about conciliation of the differing viewpoints of the parties. And if during the process of conciliation, the conciliation officer feels that there is possibility of reaching a settlement, he withdraws himself from the scene. Then the parties are to finalise the

[6] (1961) I LLJ 504

[7] (1976) Lab. I.C:.4[S.C.].

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terms of the agreement and should report back to conciliation officer within a specified time. But the forms of settlement are more limited in nature than bipartite voluntary agreements, because they strictly relate to the issues referred to the conciliation officer.

3. Consent Award: Here the negotiation takes place between the parties when the dispute is actually pending before one of the compulsory adjudicatory authorities and the agreement is incorporated to the authorities, award. Thus though the agreement is reached voluntarily between the parties, it becomes part of the binding award pronounced by an authority constituted for the purpose. The idea of national or industry-wide agreements and that to on a particular pattern may appear to be a more ideal system to active industrial relation through collective bargaining, but the experience of various countries shows that it is not possible to be dogmatic about the ideal type of collective bargaining, because it largely depends upon the background, traditions and local factors of a particular region or country.

Good faith bargaining a term that means both parties are communicating and negotiating and those proposals are being matched with counterproposals with both parties making every reasonable effort to arrive at agreements. It does not mean that either party is compelled to agree to proposal. Bargaining in good faith is the cornerstone of effective labour management relations. It means that both parties communicate and negotiate. It means that proposals are matched with counterproposals and that both parties make every reasonable effort to arrive at agreement. It does not mean that either party is compelled to agree to a proposal. Nor does it require that either party make any specific concessions. As interpreted by the courts, a violation of the requirement for good faith bargaining may include the following:

1. Surface bargaining: This involves merely going through the motions of bargaining without any real intention of completing a formal agreement.

2. Concession: Although no one is required to make a concession, the court's definitions of good faith suggest that willingness to compromise is an essential ingredient in good faith bargaining.

3. Proposals and demands: This is considered as a positive factor in determining overall good faith.

4. Dilatory tactics: The law requires that the parties meet and 'confer at reasonable times and intervals.' Obviously, refusal to meet at all with the union does not satisfy the positive duty imposed on the employer.

5. Imposing conditions: Attempts to impose conditions that are as onerous or unreasonable as to indicate bad faith will be scrutinized by the board.

6. Unilateral changes in conditions: This is viewed as a strong indication that the employer is not bargaining with the required intent of reaching an agreement.

7. By passing the representative: An employer violates its duty to bargain when it refuses to negotiate with the union representative. The duty of management to bargain in good faith involves, at a minimum, recognition that this statutory representative is the one with whom the employer must deal in conducting bargaining negotiations.

8. Commission of unfair labour practices during negotiations: Such practices may reflect poorly upon the good faith of the guilty party.

9. Providing information: Information must be supplied to the union, upon request, to enable it to understand and intelligently discuss the issues raised in bargaining.

10. Bargaining items: Refusal to bargain on a mandatory item (one must bargain over these) or insistence on a permissive item (one may bargain over these) is usually viewed as bad faith bargaining.

V. Process of Collective Bargaining:

There are certain fundamental procedures and stages that are followed in the organisations. That standardisation is as follows: Process of collective bargaining and negotiation the process can be divided into four main phases:

V. I. Organising and Recognition- The first thing to be done by the employees is to form a group of seven persons or more (as per Trade Unions Act, 1926) and get the trade union registered under the Act. The registration of the union is advisable, because there are certain advantages of getting the union registered. It can use its general funds for certain specified purposes; it can create a separate fund for political purposes; it gets immunity from civil suit in certain cases; it can have representation of its members to the works committee; etc. After getting the union registered, efforts should be made to

increase its membership; it should enjoy the support of the majority of workers in the plant. In case, it is not the only union in the plant, efforts should be made to make it the most representative union so that it s is recognised as the exclusive bargaining representative for all the employees within the specified bargaining unit by the employers. Once the union is recognised as the bargaining agent, each worker is covered by the negotiated contract and must abide by the governance.

V. II. Preparation for Negotiation- After a union has been recognised as the exclusive bargaining agent, both the union and management begin preparation for negotiations. The preparation for negotiation is basically composed of three activities:
a. Fact gathering
b. Goal setting
c. Strategy development.

Facts are gathered from both internal sources and the external sources. The internal data would include things like:
- Grievance and accident record
- Employee performance report
- Overtime figures
- Reports on transfers
- Turnover
- Absenteeism etc.

External information should include:
- Statistics on the current economy
- Economic forecasts for short and intermediate terms
- Data on communities in which the company operates
- Industry labour statistics. This information helps management in knowing its position and the position of similar other organisations under the existing circumstances, and in anticipating the same in the near future.

On the basis of these data, the management sets tentative goals for achieving in the negotiations. Please understand that when the management has the above data in hand the management is in a better position to develop a strategy for dealing with the union's demands. This includes assessing the union's power and specific tactics. The degree of union influence is affected by factors like the labour market, economic conditions, rates of inflation, and recent contract settlements. Also understand in the process of negotiations, management's ability to tolerate a strike will also be crucial. If the company's products are highly demanded, the management will be against a strike, even for a short period. On the other hand, if the sales have been low,

management may be prepared even for a lengthy strike, and, therefore, will be unwilling to concede to union's demand.

There are four outcomes that can be achieved in negotiations. They are:
- Lose-Lose
- Lose-Win
- Win-lose
- Win-Win

The first situation is where both the parties lose. In the second and the third situation, only one party wins and the other one loses. The fourth situation is in which both the parties win.

V. III. Negotiation- For negotiating a contract, the first meeting between labour and management negotiation teams usually establishes rules, policies, and schedules for future meetings. Sometimes, at the first meeting, the representatives of labour formally present their specific proposals for changes in the existing labour agreements. At succeeding meetings, management submits counter-proposals. Both groups seek opportunities to suggest compromise solutions in their favour until an agreement is reached. If labour and management find it impossible to come to an agreement, a third-party (a fact finder, a mediator, or an arbitrator) may be brought in from outside. If, even with the assistance of the outsider, no viable solution can be found to resolve the parties' differences, there may be a strike or lockout. It should be clearly understood that strikes and lockouts should not be resorted to. We have already seen the ill effects of these weapons. Weapons! , Now don't give that lost look! We have read this in Industrial disputes. This brings us to the last phase in negotiations and that is contract administration.

V. IV. Contract Administration- The final phase in the process of collective bargaining is contract administration. Once a contract is agreed upon, it then must be administered. The way it will be administered is included in the contract itself.

For effective administration of the contract and to have harmonious industrial relations in the organisation, the contract must spell out a procedure for handling contractual disputes. Almost all collective bargaining agreements contain formal procedures to be used in resolving grievances over the interpretation and application of the terms of contract. I am sure you will agree that the grievance procedures should be designed in such a way that makes it possible to resolve grievances as quickly as possible and at the lowest level possible in the organisation. The grievances should be referred

to higher levels, and, ultimately, to arbitration, only when they cannot be resolved at the initial level. This is essential for speedy resolution of grievances and for creating an efficient and effective working climate in the organisation.

VI. Conclusion and Suggestions:

In Indian labour arena we see, multiplicity of unions and Inter-union rivalry. Statutory provisions for recognizing unions as bargaining agents are absent. It is believed that the institution of collective bargaining is still in its preliminary and organisational stage. State, therefore, must play a progressive and positive role in removing the pitfalls which have stood in the way of mutual, amicable and voluntary settlement of labour disputes. The labour policy must reflect a new approach. Hitherto the State has been playing a dominant role in controlling and guiding labour-management relation through its lopsided adjudication machinery. The role of the industrial adjudicator virtually differs from that of a judge of ordinary civil court. The judge of a civil court has to apply the law to the case before him and decide rights and liabilities according to its established laws, whereas industrial adjudicator has to adjust and reconcile the conflicting claims of disputants and evolve "socially desirable" rights and obligations of the disputants. In deciding industrial disputes the adjudicator is free to apply the principle of equity and good conscience.

However, it is said that the impact of the romantic attitude of the judiciary towards workers has not proved conducive to the peaceful industrial relations. It is accepted that the end of judicial proceeding is pain and penalties. It cannot solve the problems of industries. Accordingly it is said that,"While statutes, rules, regulations, pains and penalties have their place in the ordering of industry, they do not touch the core of the problems of industrial relations."[8]

Moreover, advocates of adjudication contend that as the collective bargaining procedure might end in a strike or lockout, which implies a great loss to the parties concerned and the country, so for the sake of industrial peace, the adjudication becomes necessary.

Industrial peace can be established by the adjudication for the time being. But the conflicts are driven deeper and it will retard industrial production. In the absence of effective collective bargaining the anti–productivity tendencies are bound to appear.

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[8] Kir Kaldy, The spirit of Industrial Relations (1974) P. 58,cited in S.N. Dhyani's np. cit., P. 396.

Therefore, for the effectiveness of the mechanism of collective bargaining, the following suggestions should be adhered to:

- Recognition of trade union has to be determined through verification of fee membership method. The union having more membership should be recognised as the effective bargaining agent.
- The State should enact suitable legislation providing for compulsory recognition of trade union by employers.
- The provision for political fund by trade unions has to be done away with-since it invariably encourages the politicians to prey upon the union.
- State has to play a progressive role in removing the pitfalls which stand in the way of mutual, amicable and voluntary settlement of labour disputes.