**NEGOTIATION DYNAMICS; SKILLS AND TECHNIQUES**

**Lokoja, April, 2024**

**Introduction**

Collective bargaining is the process in which working people through their unions, negotiates contract with their employers to determine their term of employment including pay, benefits, hours of work, leave, job health and safety policies.

The term “collective bargaining “refers to the negotiation of employment terms between an employer and a group of workers. Employees are normally represented by a labour union during collective bargaining.

The terms negotiated during collective bargaining can include working conditions, salaries and compensation, working hours and benefits. The goal is to come up with a collective agreement through written contract. According to international Labour Organization (ILO) collective bargaining is a fundamental right for all employees.

Collective bargaining and worker’s voice can help addressing the challenges posed by a changing world of work. As demographic and technological changes unfold, collective bargaining can allow company to adjust wages, working time, work organization and task to view needs in a flexible and pragmatic manner. It can help shaping new rights adopting existing ones, regulating the use of new technologies, provide active support to workers transitioning to new jobs and anticipating skills needs.

The numbers of workers who are members of unions and covered by collective agreements have declined in many OECD countries and many countries in sub-Saharan African continents especially our country Nigeria.

As a matter of facts, increases in different forms of nonstandard employment in a number of countries pose a huge challenge to collective bargaining, as non-standard workers are under represented by trade unions. In the broadest sense, collective bargaining refers to the negotiation process between an employer and a group of employees aimed at agreements to regulate working conditions.

**PROCESS/STAGES OF COLLECTIVE BARGAINING**

Collective bargaining is a process through which the union and employer exchange proposals, share ideas, mutually solve problems, and reach a written agreement.

Most times, bargaining occurs when an existing agreement is going to expire. But sometimes, the union will be negotiating a first agreement after organizing a new units/branches. Both sides from bargaining teams and gather information.

The resulting approved contract legally binds both parties. Each round of successor negotiations allows the parties to revisit existing agreements while there are many local varieties; here is how the collective bargaining process commonly unfold in an organization with union presence.

1. **Preparing for Bargaining**

The union’s bargaining team usually selected through a process outlined in the union’s constitution while the employer appoint the management team. Each team analyzes the current bargaining agreement to identify areas they want to improve. Ideally the local branch union will reach out to the stakeholders to seek input on issues for potential proposal.

1. **Conducting Negotiations**

Negotiations usually take several rounds of bargaining. The union and management sides express the rationale behind their proposals. Same agreement provisions remain predominantly the same from negotiated agreement to another while others, such as salary, are bargained with each agreement. The parties may modify some sections and either side may propose a new bargaining items. State laws and other procedure agreements determine the mandatory, permissive, and prohibited subjects of bargaining.

1. **Ratifying the Agreement**

When the union and the employer reach an agreement they review the agreement with their respective constituency groups. The union holds meeting with their members to brief them on the outcome of the negotiation. The management team generally seeks approval from the board of the directors. If both sides ratify the agreement, then the parties have a new collective bargaining agreement.

1. **Resolving a Collective Agreement Disputes**

If the parties cannot reach an agreement, the Labour laws generally specify how the disputes can be resolved. Usually,, the parties can use mediation, arbitration and or a strike to reach an agreement.

1. **Changing or Clarifying the Agreement**

With the agreement of both parties, any section of a ratify CBA can be revised during the term of the contract. In many occasion, union and management representatives meet regularly during the term of the agreement to talk about and resolve issues of mutual concern.

In addition, either at the bargaining table or during the life of an agreement, the parties can bargain a memorandum of understanding related to a specific issue. The benefit of an MOU is that it allows the parties to reach an agreement on a new or unforeseen issue that is important to both the union and the employer.

Process of Collective Bargaining

Negotiation

Collective Agreement

**TYPES/FORM OF COLLECTIVE BARGAINING**

1. Simple plant bargaining – Trade Union Bargaining with the Management
2. Multiple plant bargaining – single factory having several plants.
3. Multiple employers bargaining – bargaining between all Trade Unions in the same industry and the employer.
4. Association of employers in the industry with single union in a country e.g (HOPSEA)

**PRINCIPLE OF COLLECTIVE BARGAINING FOR BOTH UNION AND MANAGEMENT**

1. Collective bargaining process should give due consideration to hear the problems on both sides: this will develop mutual understanding of a problem which is more important for arriving at the solution.
2. Both the Management and the union should analyse the alternatives to arrive at the best solution.
3. There must be mutual respect on both the parties. The management should respect the unions and the unions should recognize the importance of Management.
4. Both the union and management must have good faith and confidence in discussion and arriving at a solution.
5. Both the parties should work for the betterment of workers as well as Management.
6. Both parties should follow all the rules of collective bargaining.
7. Collective bargaining should be used to know the view points of both parties.
8. Trade unions should have open mind on various issues.
9. Trade union should explain the terms and conditions of the agreements to their members.
10. Trade union should fully support the Managements once some agreements have taken place.

**COLLECTIVE BARGAINING AGREEMENT IN NIGERIA; BINDINGNESS AND ENFORCEABILITY**

At common Law, collective agreement is seen as a gentleman agreement and therefore not legally enforceable. It is a simple agreement which lacks the parties intention to create a legal relation, a very important element of a valid contract and offend the principle of privity of contract as it is usually between organization or association of employers and trade union. So the individual employee is not privy to it. This is the major reason for many industrial actions as one of the parties especially may refuse to honour it.

Court are also weary of enforcing collective agreements except where they are expressly incorporated in individual contract of employment. Such is the court position in Union Bank of Nigeria vs Edet where it was held that employees cannot litigate over an alleged breach of terms of collective agreement which has not been adopted by both parties as forming part of terms of employment.

One may need to ask why parties entered into collective agreement when it is ordinary unenforceable? It is because being gentleman’s agreement; some parties still protect their integrity by honouring their words.

Prior to the amendment of the constitution of the federal republic of Nigeria, 1999; collective agreement is treated as binding and enforceable though not automatic. This is just a step away from the common law position as parties who intend to enforce it still have to take any of the following steps:

1. By leaving at least three (3) copies of the collective agreement with the minister of Labour and Employment who has the discretion to specify the particular part of the agreement that will be binding on the parties to the agreement. This step is relevant when there is a trade dispute; the minister intervention is based on the terms of the agreement.
2. By seeking intervention of the court for the interpretation or enforcement of the relevant terms of collective agreement. The court here is national Industrial court having the exclusive jurisdiction to determine or interpret any question relating to the collective agreement, terms of settlement of trade dispute, constitution of trade unions/associations and other civil cases or matter relating to or connected with; condition of service upon the said interpretation, the collective agreement becomes binding.
3. By acting or relying on the terms of the collective agreement either expressly or by conduct. The court in “cooperative and commence bank (Nigeria ltd) vs Okonko” held that the collective agreement relied upon by the employer in dismissing the employee is also enforceable by the employee in instituting the action. Where it is evident that the parties have activated the benefits of a collective agreement, even if it is by conduct, the court will infer the intention to create a legal relation from such attitude and hold the agreement, being a contract as binding on them.
4. By proving that the terms of the collective agreement forms part of the custom and usage in that trade. Where this is evident before the court, it will be held as binding on the parties.
5. By reliance on principal agency rule. Here the union will be regarded as acting in the capacity of an agent to the members.

**NEGOTIATION SKILLS AND TECHNIQUES**

**Negotiation Styles**

1. Soft :

Participants are friends

The goal is agreement

1. Hard

Participants are adversaries

The goal is victory

1. Principle – problem solvers, wise outcome

**Skills in negotiation**

1. Active listening
2. Asking good questions
3. Communication skills (specially verbal communication)
4. Decision making ability
5. Emotional control
6. Interpersonal skills
7. Preparing BATNA (Best alternative to a negotiated agreement, your alternatives)
8. Problem solving
9. Smart trade off development
10. Patience – some negotiation can take a long time to complete
11. Persuasion – ability to influence others is an important negotiation skills
12. Planning – negotiation requires planning to help you determine what you want and how the terms will be fulfilled
13. Integrity – having strong ethical and moral principles, is an essential skill for negotiations.

**Tips for successful negotiation**

Consider these tips to help you prepare for negotiation talks:

1. **Do your research**

Before entering into negotiation talks evaluate all sides and consider their goals. It can also be helpful to research the person you are negotiating with. Understand the limitation of the negotiator.

1. **Know your priorities**

Determine what is most important and what you are willing to settle for in its place. Setting your priorities ahead of time can help you evaluate what you refuse to give up and where you’re willing to budge.

1. **Consider the opposition**

Consider the potential opposition to your negotiations. Do you think your Manager will object to a pay increase because of dealing sales? Write down all the potential oppositions and then gather the information you can use to argue your case.

1. **Keep communication open**

Be consistent about presenting your goals, objectives and expectations to reduce the risk of confusion. Use effective communication skill, including verbal responses and nonverbal cues. Strive for mutually beneficial solutions, but be prepared to compromise.

1. **Know when to walk away**

One of the hardest parts of negotiation is knowing when to walk away. It is important to enter all negotiations recognizing that you may not be able to agree. Once you realize no further comprises can be made and terms can’t be reached, it’s probably time to discontinue talks.

1. **Keep your timeline in mind**

A timeline can significantly impact your position of power in the negotiation. If one or both sides are rushing to reach a decision, one may give up too much and regret their actions. For example, if you’re trying to get a new job quickly, you take a position with lower pay or compromise too much on benefits. In this case, you may find yourself unsatisfied with your decision long term.

**NEGOTIATION OUTCOMES**

* Both sides should come to consensus and commit to the agreement
* The agreement should help to maintain ongoing communications and interactions between the negotiating parties so that future negotiations can take place.
* Negotiations should lead to a better situation

The test of a first rate intelligence is the ability to hold two opposed ideas in mind at the same time and still retain the ability to function”, (f. Scott Fitzgerald)

**REMEMBER**

* Don’t dwell on people or gains, stick to the interests at hand
* Don’t close doors. Be fair, you may wish to enter into negotiations again.
* The end result should be acceptable to both parties
* If you don’t ask, don’t expect
* Negotiations with high expectations do better
* The pie is almost never “fixed)
* Don’t be afraid to offend: “it’s only business”
* Don’t give two much credit to the other side
* You are an asset and present from strength

**Conclusion**

The promotion of collective bargaining at all levels is key to productive, equitable and stable employment relations. While an enabling regulatory frame work and other measures to promote collective bargaining are essential, the effectiveness of collective bargaining is often hampered by the poor negotiating skills of the bargaining parties. More often than not, the negotiation skills of the parties are confrontational and undermine trust which is the foundation of sound Labour relations.

The skills knowledge and capacity of those representing employers and workers organizations are critical in preventing labour disputes and achieving outcomes and agreements that that meet the interest of all parties. Effective negotiation skills are not mere common sense. They are acquired through a combination of training and experience.

**Comrade Dr. Success Leke**

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