

Collective bargaining

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What is collective bargaining?

Collective bargaining is a voluntary process for reconciling the conflicting interests and aspirations of management and labour through the joint regulation of terms and conditions of employment. It is also a process of negotiation between management and union representatives to arrive at mutually acceptable wages and work conditions for employees. Collective bargaining is seen as a process through which employers and employees collectively seek to reconcile their conflicting goals (including determining working conditions, regulating relations between employers and workers and regulating relations between employers or their organisations and workers organisation) through a process of mutual accommodation.

Historical background to collective bargaining in Zimbabwe

The Industrial Conciliations Act established the foundation of collective bargaining in Zimbabwe. The 1959 Industrial Conciliation Act was a significant hallmark in industrial relations as the first genuine piece of legislation to allow the formation of black unions and provide wage-setting machinery by setting the parameters for collective bargaining and development of Industrial Boards and Industrial Councils. The 1973 Act twisted the system of collective bargaining with the empowering of the Minister to vary collective bargaining agreements, thus reducing the freedom to bargain (Collective Bargaining Autonomy). Not so much change occurred post-independence as had been forecasted, but just following the 1959 Industrial Conciliation Act.

Within the first five years of independence, wages continued to be determined through bargaining at an industrial level, albeit after the removal of racial overtones. This period marked the time to debate whether to introduce workers committees and works councils in the new systems or strengthen the existing machinery. To Trade Unions, this had apparent implications in terms of their strengths, at a time when they believed that the development of a Trade Union movement was a more significant achievement of worker expectations than worker participation. At the same time, to business, it meant an alteration to the existing power structures and an opening of new forms of worker control. This witnessed the formation of enterprise councils and the strengthening of the one industry one union policy.

Collective bargaining became largely centralised at the industry level. The coming in of the 1985 Act witnessed the institutionalisation of collective bargaining at the industry level with the possibility of

enterprise flexibility through flexible Workers Committees. Concepts such as unfair labour practice were introduced. This included good faith bargaining, bringing Employment Councils and Employment Boards (in their structures and forms) in the hierarchy to replace Industrial Councils and Boards introduced in the 1959 Act and empowering enterprise-level bargaining through Works Council. This also saw the empowering of the state to promulgate regulations that would have overriding effects on bargaining agreements. The state could determine maximum and minimum wages, severe curtailment of the right to strike and the intensive state regulation of Trade Union, and the continuation of the one union one industry concept, among other things. This resulted in collective bargaining playing a key and more secondary and subordinate role to state regulation. The neo-liberal policies adopted in the 1990s witnessed a radical shift towards voluntarism and labour autonomy. The collective bargaining process became a powerful platform for the determination of wages and dismissals.

The 2002 Amendment Act strengthened the facilitative role of the state, which expressly states in the purpose of the Act, the provision of a legal framework within which employers and employees can bargain collectively to improve working conditions. The Labour Act has maintained the position. Some of the critical elements that lie at the core of collective bargaining in the Act include, among other things, issues of scope of agreements, good faith negotiations and issues of agency representation as well as registration of agreements. Collective bargaining law in Zimbabwe has tremendously contributed to the whole industrial relations framework both economically and socially. The significant economic benefit so derived by parties to the employment relationship has been establishing a framework upon which individuals and collective workplace relations are managed and where industrial conflict is institutionalised to pursue a harmonious employee relations climate.

Collective bargaining remains a significant factor that parties have enjoyed in employment relations. The legally binding nature of collective bargaining has been significant. It falls at the hub of such works like Otto Kahn Freund, who argues that the law comes as a force to regulate, support and restrains the powers of management and organised labour. In other words, there is a clear recognition of the power difference between individual employees against management or organised labour against management, respectively. Furthermore, the law has improved on Trade Unions effectiveness as measured by meeting the primary needs of workers such as better pay, conditions of work, and protection against arbitrary management action. The state has made it very difficult for labour to enjoy the freedom to bargain by instituting a well calculated and sophisticated bargaining framework involving a combination of bargaining centralisation through Employment Councils and bargaining decentralisation in the workplace.

Research has proved that the essence of bargaining power lies in one's ability to withhold something of value from another. For example, strike action is an essential and integral part of collective bargaining. Without this, the power of management to shut down the plant will not be matched by a corresponding

power on the side of labour. Such factors have tended to negatively affect Trade Unions in terms of their abilities to negotiate effective collective bargaining. Most of the regulations were primarily driven by political factors rather than economic ones, thus resulting in disintegrated, frustrated competing and conflicting labour movements, diverting their attention from representing their constituencies to scampering for membership. Meanwhile, this has given more security to employers who already have so much power in employee relations. Zimbabwe has a two-tier system of managing collective bargaining, one for the public sector and another for the private sector. The administration of bargaining centralisation (industry-wide) and decentralisation (company-wide) simultaneously has brought interesting results. As a result, there has been a lack of collective voice on the part of employees in general, but the private sector has tended to wait for the public sector to negotiate CBAs first and then use the results as a benchmark.

Types of collective bargaining

The two basic types of collective bargaining are *traditional bargaining* and *partnership bargaining*.

1. Traditional style

The traditional bargaining style has been used since collective bargaining began between management and the early Labour Unions. It is an adversarial style of negotiating, putting one side against the other with little or no understanding of, or knowledge about, on the part of either part. Each side places its demands and proposal on the table, and the other side responds to them with counter-proposals. The process is negative and involves a struggle of give and take on most issues.

2. The partnership style

The partnership style of bargaining is a more modern concept. It strives for mutual understanding and common education on both labour and management, and it focuses on goals and concerns common to both parties. It emphasises on each other side being aware of its issues concerning the other side. It is called interest-based bargaining. In this process, labour and management each list and explain their needs and ensure discussion revolves around ways to meet those needs that will be acceptable and beneficial to both parties. This style of bargaining is very positive and imports a much more congenial atmosphere to the negotiating process. Sometimes there is a blending of the traditional and partnership styles in labour and managerial negotiations.

Purpose of collective bargaining

Collective bargaining assumes willingness on each side not only to listen to the representation of the other but also to abandon fixed positions where possible to find common ground. The following are the

reasons for collective bargaining;

- Establishing industrial justice
- It allows workers to participate in the decision that affects them.
- Ensures that no arbitrary decision is imposed and no unrealistic demands are made on them.

Factors necessary for effective collective bargaining to take place

There is a need to consider the following elements for effective collective bargaining to take place;

- Recognition of divergent interests of employers and employees.
- Recognition of the need for the equilibrium of power between two parties.
- Recognition of the philosophy of mutual survival.
- Elimination of direct and indirect obstacles to effective collective bargaining.
- Representation, a democratic process whereby elected representatives negotiate on behalf of large groups.
- Power lies in the ability of parties to influence each other towards mutually acceptable agreements.
- Common ground.

Key issues in collective bargaining

1. Scope

Issues discussed both substantive and procedural issues, including rates of remuneration, benefits, deductions from employee wages, methods of calculating or adjusting the rate of pay, overtime, vacation leave, hours of work occupational safety, procedures to deal with disputes, and measure to combat workplace violence.

2. Level

Collective bargaining occurs at the micro/enterprise level and the macro level, including the industry and national levels.

3. Coverage

This includes the specific groups/constituencies that are covered by collective agreements at various levels.

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