

A 5W2H ANALYSIS ON THE PROCESS OF COLLECTIVE BARGAINING AGREEMENT IN PUBLIC SECTOR INDUSTRIES IN INDIA

Aakash Y. Raj, School of Law, Christ University

ABSTRACT

Public sector industries in India have a significant impact on economy from rendering job opportunities to manufacturing goods and services. Filled with basket of benefits, the industries are pulled down during strikes and lockouts imposed by the employees as a result of discrimination, exploitation and differences in opinion. Employer-employee relationship is essential for the smooth progress. To safeguard the interest of the employee and to avoid conflicts, Industrial dispute act 1947 developed Collective Bargaining. The process involves an agreement between the employer and the employee that is represented by the trade union in the industry in an aim to negotiate. The current study focuses on the identifying the factors and the cause responsible for industrial dispute. For which 5W2H analysis is applied on the factors analysed through the secondary data collected from journals, articles, books and case laws. The factors and the cause that are responsible for industrial disputes in respect to collective bargaining agreement is strike, wage structure, retrenchment, material facts and termination. Whilst effectively applying collective bargaining via negotiation as per the industrial dispute act 1947 will reduce strikes and lockouts raised by the employees.

Keywords: Collective Bargaining Agreement, Negotiations, Strike, Lockouts, Retrenchment, Wage Structure, Termination, Material Facts.

INTRODUCTION

The collective bargaining process is an amicable negotiation between employers and the group of employees in the organization. It is aimed to develop proper agreements for regulating the structure of salary, conditions of working, as well as prevalent aspects. The respective process is developed as per the Industrial Disputes Act 1947. It can be viewed as a friend of the management modern and recent developments in industrial sectors that have changed the attributes of Management. Today workers are very much aware of their rights, their position in the business concerned and they cannot be exploited and suppressed. And due to the impact of the communist movement, they are inclined to be very much militant. Management also realizes that collective bargaining is the solution for the peaceful conduct of industrial life. By bargaining collectively with organized labour, management seeks to give effect to its legitimate expectation that the planning of production and distribution shall not be frustrated through interruption of work.

Collective bargaining starts with the negotiation of management with the union that represents workers where an agreement is reached to not only settle the matters in conflict but also paves the way for the smooth progress of the industry. Once the management is assured that

there will be no labour unrest, it can well concentrate all its attention to find a better method of production and large the area of marketing. Such a peaceful situation gives mental relief and larger profits to the management. This directly induces the management to provide better amenities and a wage increase to the workers.

Collective bargaining also works as a substitute for labour legislation the government enacts labour legislation to protect the interest of Workers, to stop discrimination and exploitation, and to secure their tenure of employment. According to Rajesh & Manoj (2015). The main object of labour law has always been and always been, to be a counter-veiling force to counteract the inequality of bargaining power which is inherent and must be inherent in the employment relationship. All the protective legislation's like legislation's on the employment of women and children, on safety in mines and factories, on payment of wages in cash on the prohibition of discrimination and unfair dismissal are effective in this regard. But legislations are generally more rigid than collective bargaining and they are less responsive to economic change. Collective agreements are concluded for a year, sometimes for two or three, sometimes without a time limit. If the management, has a time of prosperity and high level of demand, consents to high standards of labour conditions, it may find itself unable to maintain them when demand slackens and prices fall. In this situation, the flexibility of collective bargaining allows an adjustment of agreed standards to changing conditions. It may not be possible to amend a statute from time to time. Collective bargaining standards and their more flexibility make it easier for the unions to obtain improvement in this form. The legislation's rigidity of the legislative processes is perhaps one of the main reasons for the comparative low legislative standards (Sobczak & Havard, 2015).

Due to this difficulty collective bargaining seeks to achieve the object of labour legislation and almost tends to substitute it in all the fields of industrial life. Collective bargaining, as opposed to the legislation, is flexible, accommodative and responsive to economic restriction on the labour-management relations in the public interest and economic emergency. It can also encourage collective bargaining positively. In India, the concept of collective bargaining has not grabbed the limelight with the associating benefits in the application of concept. Lack of knowledge and close mindedness amongst the stakeholders are to be blamed.

LITERATURE REVIEW

Collective bargaining is generally referred to as the Collective Bargaining Agreement. It is an agreement that is developed and implemented between the management of the organisation and the employees that are represented by the Trade Unions. Also, there are different levels of Collective bargaining that are present in India about National-level industry bargaining, industry-cum regional bargaining. It additionally involves enterprise-level bargaining or plant-level bargaining (Desai, 2019).

Collective Bargaining Agreement in the public sector industries is the national level of industry bargaining. Along with that, in the respective industry, the government plays a vital role as the employer. Furthermore, the government and the trade unions build up a coordination committee to engage the Collective Bargaining Agreement proceedings (Desai, 2019). On the other hand, Collective Bargaining in the public sector suffers if the situation of the state government is completely different from the Government of India. With the aid of effective enforcement of the Collective Bargaining Agreement in the public sector, the wages are revised

by the Pay commissions in India as well as enhancement in salary structure is also determined by the Wage Boards for different industrial sectors (Hayes, 2019).

Wage boards are generally the tripartite organization and they are developed by the government to fix the wage structure. Along with that, the Minimum Wages Act of 1948 also facilitates the respective industry to develop a potential wage structure in the scheduled employments. Section 4 of the respective act illuminates that the basic rate of wages, as well as the special allowance, needs to be fixed considering the minimum wage structure. In addition to that, subsection 2 of section 4 of the respective act also highlights that the basic wage rate needs to be developed without including the living allowance as well as the cash value of the concession (The Minimum Wages Act, 1948).

Collective Bargaining Agreement within the public sector industries also accounts for The Factories act 1948 so that the employees within the organization can be safe as well as their welfare is also maintained. Section 7A of the respective act highlights that there needs to be proper maintenance of the system so that safety prevails within the factor. Along with that, Section 2 (c) of the concerned act also states that instruction, training as well as supervision need to be developed so that the health and safety of all workers are maintained (The Factories Act, 1948). The Industrial Disputes Act 1947 is also enforced within the public sector industries of India for mitigating employment-related disputes and settling them peacefully between the labour unions and management. Section 18 of the concerned act mentions that effective settlement is conducted between the employer and the worker of the trade unions and the conciliation process needs to be bounded on the parties that are associated with the agreement (The Industrial Dispute Act, 1947). The Collective Bargaining agreement process takes a longer time in the respective industry in terms of taking more than a month or year (Desai, 2019).

Concept of Collective Bargaining

Collective Bargaining Agreement is prevalent in terms of bipartite or voluntary agreements, settlements as well as consent awards. Bipartite or voluntary agreements are the voluntary negotiation that is conducted between the employer and the trade union. In addition to that, collective bargaining settlements are generally tripartite which involves the management of the organisation and the trade union members. Then again, consent awards are the agreements that are reached while the dispute is pending before the authority. Section 18 of the Industrial Disputes Act 1947 illuminates that settlements are conducted by the employers and the workers concerning the salary structure, benefits as well as allowances (The Industrial Dispute Act, 1947). Apart from that the agreements of the Collective Bargaining Agreement also contain different conditions in terms of the development of strike by the trade unions and employers. The concerned agreement also contains different obligations of the worker as well as the employer. Besides, the agreement also highlights the penalties in terms of non-compliance with the obligations of employers and workers. With the aid of the Collective Bargaining Agreement, a flexible labour market is fostered in India as well as harmonious labour-management relation is also maintained (Miyamura, 2016).

Employers are considered as one of the prime stakeholders of the Collective Bargaining Agreement that is developed within the organization. This is because; employers take significant interest in the negotiation process associated with salary structure, working hours as well as a concession, and over time (Flavin & Hartney, 2015). On a similar note, employees are also

considered important stakeholders of the concerned agreement. In addition to that, they take significant interest in the concerned process for getting a potential salary structure as well as proper working hours. Along with that, trade unions are important stakeholders as they foster a potential settlement between the employer and the worker of the organization. Mutually, the government is also a major stakeholder of the Collective Bargaining Agreement as the respective agreement is developed by them for settling different disputes among workers, employers as well as trade unions of the organization (Desai, 2019).

Different agreements under the Collective Bargaining process are developed by considering The Industrial Disputes Act (IDA) 1947. Section 18 subsection 1 of the respective act conveys the process of settlements that are developed between workers represented by the members of the trade union and the hierarchy of the organisation (The Industrial Dispute Act, 1947). In addition to that, the settlements are done considering the interest of the employers and the employees. Section 19 of IDA 1947 illuminates that period of operation and settlements are only conducted or come into operation when it is agreed by all the parties present in the dispute. In addition to that, subsection 2 of Section 19 of the concerned act highlights that the settlements are only limited for a period and if the time-period is not agreed then another six months' time is also conveyed (The Industrial Dispute Act, 1947)

On the other hand, the Collective Bargaining Agreement is also implemented within public sector industries to reduce strikes and lockouts with the organization. Section 22 of IDA 1947 highlights that no person in terms of employer and the employees associated with the trade unions shall perform lockouts or strike and such actions are considered as the breach of the contract. Subsection 2 of Section 22 of IDA 1947 states that employees of the members of the Trade Unions need to convey notice of fourteen-day for strike or lockout in the organization (The Industrial Dispute Act, 1947).

Collective Bargaining Agreement is enforced within the organization to maintain a potential wage structure so that employees can be benefitted. Section 2 of Schedule 1 of Industrial Employment (Standing Orders) Central Rules 1946 (IESOA) illuminates that there needs to be proper classification of workers such as permanent, temporary, casual as well as apprentices. The respective act also facilitates regulating and codifying the conditions of service in terms of the condition of employment. Section 11 payment of wages of Schedule 1 of the concerned act states that a proper wage structure needs to be established and it needs to be paid according to the total number of employees present within the organization (The Industrial Employment Act, 1946).

Apart from that, Section 15 of the Trade Union Act 1926 illuminates those general funds needed to be developed by the organization. Subsection e of Section 15 of the concerned act highlights that the trade disputes can be conveyed on the behalf of the Trade Unions and section 21 also states that employees cannot be the members of the Trade Union if the individual is convicted by the court or has spent imprisonment of 5 years and unless a period of 5 years has elapsed since the release of the individual (Trade Union Act, 1926).

Besides, to gain a better insight on the reality check of collective bargaining agreement, past legal decision are overlooked to check the impact on the public sector industries concerning the strike, negotiations, wage structure, retrenchment and other factors covered under the agreement.

Case Law on Collective Bargaining Agreements

Table 1 CASE LAWS					
Case Name	Who	Reason	Outcome	Result	Why
B.R Singh v. Union of India (Cases, 1989)	Trade union and employers	Demand from the management concerning salary, house facilities and allowances	Strike	CBA was a failure	The organisation did not mitigate the disputes of the employees
Karnal Leather Karmachari vs Liberty Footwear Company (Regd) on 31st August 1989 (Cases, 1989)	Employees and company	Termination of employees	Strike	Success	Maintaining of CBA and following of peacefully and voluntarily. Retaking of employees
All India Bank Employees v. NI Tribunal	Trade union and	Freedom of expression	Strike was raised	Success	Implementing CBA effectively can decrease strike and lockdown
Hindustan Lever Ltd. vs Hindustan Lever Employees' Union... on 3 December, 1998	Employer and workman	Retrenchment	lockout	failure	CBA is applied in general and not for specific workmen. Hence the agreement is considered inconsistent.
Vintadhachallum and others	Employer and single employee		Strike	Failure	CBA is considered when the dispute is raised by the representative trade union or considerable number of employees in the company.
ITC employee association and state of Karnataka	Company and trade union	Supressing of material facts	Strike	Success	Negotiation was followed up for the welfare of the employees
Hindustan copper tandoor and the chief labour commission.	employee and company	Recognition of CB agent, the right of the employer.	Strike	Failure	As per the IDA, the management of the company will recognize the trade union on behalf of the employee
MRF united workers union and got	Management and employee	Selection of collective bargaining agent	Strike	Success	Right of the employee to select the collective bargaining agent.
Gokulesh petroleum P.Ltd v/s Himalaya r shah	Individual workmen and employer	Termination of employee	Strike	Failure	Section 2(A) states that individual disputes should be resolved by the specific individual without affecting the community interest.

Muni Lal and 4 others	Individual workmen and company	Retrenchment	Strike	Failure	The dispute should be general and an individual workmen has no right to raise a dispute as per the collective bargaining agreement
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Collective bargaining agreement acts as a blue print focusing on the rights and duties of the employees. From the case laws studied, the disputes are mainly arising due to wage structure, termination, retrenchment, suppressing of material facts, freedom of expression and selection of a collective bargaining agent. The agreement emphasis to promote peace and prosperity in the industries while increasing the productivity. From the case laws (Table 1), it is evident that implementing the process effectively in the industry will decrease strikes and lockouts whilst fulfilling the desired objectives of the employers in terms of maintaining a potential relationship with the employees of the industries.

From reviews and case study collected for the concept of collective bargaining, a 5W2H analysis is mapped out to identify the cause which is affecting the process of collective bargaining agreement.

5W2H Analysis on the Causes of Collective Bargaining Agreement

5W2H analysis applies a basic seven question approach on the information collected through vivid sources to provide a suggestion on improving the effectiveness of the collective bargaining agreement. The analysis attempts to identify the loopholes associated whilst providing a suggestion of the occurring problem in public sector industries. From the data collected the factors responsible for disputes in public sector industries are wage structure, termination, suppression of material facts and appointment of collective bargaining agent.

Collective bargaining agreement mainly emphasis negotiation while protecting the rights and duties of the employees as per the IDA of 1947. However, the disputes are called by the employees on the employers according to the rules and regulations mentioned in the collective bargaining agreement. Wage structure is one of the causes for collective bargaining agreement. Salary should be paid as per the productivity and hours worked by the employee. When the monetary demands of the employee is not met by the employer a road is created for industrial dispute. However, before the disputes are raised, the industry should give a hand to negotiate as per the collective bargaining agreement to increase productivity and prosperity in the industry. Termination of employees can be due to new technology, appointment of employees or a justifiable reason by the employer. Unlikely to provide prior notice and replacing large number of employees prior the contract period can cause a dispute in the industry. Collective bargaining agreement protects the right of such employees through negotiation. Thirdly, material facts in collective bargaining agreement refer to the terms and condition of employment for all the employees by establishing a concrete memorial of mutual rights and duties. Lastly, selection of a collective bargaining agent in a collective bargaining agreement acts on behalf of the employees. It is the right of the employee to elect the agent (Table 2). However, when the right is taken over by the management it becomes a cause for dispute.

Table 2
5W2H ANALYSIS ON CAUSES OF COLLECTIVE BARGAINING AGREEMENT

Control items	What	Why	where	Who	When	How	How often is the problem encountered
Wage structure	Wage is a Potential salary provided to employee for the number of hours invested in the organisation. However a dispute is raised by the employee, when the salary is not paid as per the expectations.	Overlooking the demands raised by the employees concerning the wage result in strikes or lockdowns affecting the productivity and peace in the industry.	Manufacturing Industries	The dispute is raised by the trade union representative on the company or the employer.	The problem of wage arises when the employee senses that the salary paid is not sufficient for the number of hours invested.	Wage structure is identified as a dispute when the employees call for a strike or lockdown	Normally more than 5 years during the wage revisions
Termination	Generally, termination should follow up on a prior notice or after the fulfilment of the contract period. However, termination of employees following a CBA is a cause with a justifiable reason by the employer.	Termination of large number of existing employees before the contract period and unjustifiable reason arises a dispute in terms of strikes or lockdown.	Public Sector Industries	The dispute is raised by the employee on the company or the employer.	The problem of termination arises when the employee is replaced by machines or other employees due to age, knowledge and education.	termination is identified as a dispute when the employees call for a strike or lockdown	While replacing machines and new employees in the organisation.
Material facts	Material facts are the terms and conditions of employment for all the employees to bring out fairness in settlement.	Neglecting the rights and duties of the employees makes a road for differences between the employee and employer.	Public Sector Industries	The dispute is raised by the employee on the company or the employer.	Suppress the terms and conditions affecting the rights and duties of the employees.	Supressing of material facts is identified as a dispute when the employees call for a strike or lockdown	When there is a difference of opinion between the employer and employee
Selection of collective bargaining agent	Collective bargaining agent act as a representative of employees and it is the right of the employees to choose the agent.	Interference of the employees or the management can raise a dispute	Public Sector Industries	The dispute is raised by the employee on the company or the employer.	The problem of selecting a collective bargaining agent arises when the right of the employee is affected as per the collective bargaining agreement	The Collective Bargaining agent will be selected through the Trade Union representatives	While selecting the collecting bargaining agent

DISCUSSION

A 5W2H analysis highlights the factors and the cause that are responsible for industrial disputes in respect to collective bargaining agreement. From the analysis, negotiation has the tendency to reduce strikes and lockouts raised by the employees. Negotiation can happen through collective bargaining when the employer and employees settle the disputes without affecting the productivity and prosperity of the industry. The reasons for disputes identified are wage structure, termination, suppressing of material facts and the right to choose the collective bargaining agent. Collective bargaining agreement is provided in general and not for specific dispute. According to section 2A of the industrial act, disputes concerning discharge, dismissal, retrenchment or termination of the service of an individual workman that the dispute may be deemed to be an industrial dispute are considered. The individual settlement is referred to as inconsistent with the concept of collective bargaining.

Implementing collective bargaining process effectively in the organisation helps in decreasing strike as well as lock outs whilst fulfilling the desires or the objectives of the employers in maintaining a potential relationship with the employees of the organisation. It enhances the salary structure by satisfying the employees to work effectively for increasing the productivity. Employees are a vital element for the success of any organisation. Terminating and replacing the employees at large can bring out indifferences resulting in loss. Thus, the industry should follow up with the collective bargaining agreement prior termination. Material facts are documents which hold a prominent position in the welfare of the employees. It highlights the rights and duties which can exercised by the employee and given the case the employee can raise a petition when the rights are overlooked in relation to collective bargaining by the management. According to the section 9(E) of IDA the representative trade union will be recognised by the management of the company as the authorised collective bargaining agent on behalf of the employee. The management is not ought to interfere with the right of the employee. To bridge the gap between the employer and employee, a trade union member is appointed as the terms and conditions mentioned in the agreement. The employees own the right to select the trade representative member who will bring out the right of the employees and organise themselves into a particular union for the purpose of collective bargaining.

CONCLUSION AND SUGGESTION

Collective bargaining agreement between the employer and the employee in the industries to avoid uncertainties. Here, the initial step for the management of the public sector is to convey appropriate information regarding the collective bargaining process before its implementation. In addition to that, it is also necessary to foster an effective interaction process to reduce the strike and lockouts within the organization. The collective bargaining process can be enhanced in terms of stating a clear difference between fundamental and legal right. This can facilitate decreasing the strike within the organization. The proper implementation of the concerned process can also help in enhancing the productivity of the organization. This can also increase the performance of the employees.

Collective Bargaining involves a continuing relationship, with conflict and cooperation mixed in varying propositions. It is a process of bargaining between employers and their workers by which they settle their dispute among themselves concerning employment or non-

employment or terms of employment or conditions of work of the workmen, on the strength of areas accessible on each side. Every so often such bargaining results in an amicable settlement of disputes voluntarily and peacefully between the parties. The workers and employers resort to their weapon of strike and lockout in the process of collective bargaining to pressurize each other which makes both the parties aware of the strength of each other and finally forcibly and they arrive at an amicable settlement in the mutual interest. The outcome of bargaining depends upon the art, skill and of displaying the strength by the representations of one party to the other.

The representative of trade union taking into consideration their responsibility as the bargaining agent bargain with the employer and brings an amicable settlement which is acceptable to both the employers and workers. Collective bargaining is the first and foremost machinery which is adopted for the prevention of industrial dispute. But this machinery is not been properly adopted in industrial establishment, its embodiment with the end goal that it involves the hesitant exchange of responsibilities, the two parties need to yield less and get more. It is just like a business bargain in which both negotiators do not have full trust in each other. Collective bargaining to be an effective tool, all the trade unions must be organized ad themselves reliant. The strength of bargaining power on the part of the trade union depends upon the proper organization right leadership, adequate financial resources, and adopting genuine trade union principle and methods. These are some of the essential prerequisites for successful bargaining. Trade union if they realize hard work and higher productivity, they can increase the economic well-being of their members. The organizations of the trade union on these lines can contribute towards the peaceful industrial relation as a whole and employers will also fulfil their social obligation by not adopting unfair labour practices in their part and it will create a sense of duty to do honest work on workers. Our policies plan emphasis of collective bargaining for settlement of the industrial dispute and it is not given proper effect. Collective bargaining machinery is not an effective place in India. Collective bargaining can be the best machinery for the settlement of a dispute and it can play a pivotal in shaping the industrial relationship if it is properly adopted.

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