COLLECTIVE BARGAINING IN INDIA

Collective bargaining has been defined by the Supreme Court ("SC") as "the technique by which dispute as to conditions of employment is resolved amicably by agreement rather than coercion". It is a process of discussion and negotiation between employer and workers regarding the terms of employment and working conditions. Workers are generally represented by trade unions with respect to expressing their grievance concerning service conditions and wages before the employer and the management. Refusing to bargain collectively in good faith with the employer is considered to be an unfair labour practice as per the provisions of the Industrial Disputes Act, 1947 ("IDA"). This is generally an effective system as it usually results in employers undertaking actions to resolve the issues of the workers. However, the legal procedure for pursuing collective bargaining in India is complicated.

Stages of Collective Bargaining in India

A. Charter of Demands

Typically, the trade union notifies the employer of a call for collective bargaining negotiations. However, in certain cases the employer may also initiate the collective bargaining process by notifying the union(s).

The representatives of the trade union draft a "charter of demands" through various discussions and consultations with union members. The charter typically contains issues relating to wages, bonuses, working hours, benefits, allowances, terms of employment, holidays, etc. In an establishment with multiple unions the employer generally prefers a common charter of demands, but in principle, all unions may submit different charters.

B. Negotiation

As a next step, negotiations begin after the submission of the charter of demands by the representatives of the trade union. Prior to such negotiations, both the employer and the trade unions prepare for such negotiations by ensuring collection of data, policy formulation and deciding the strategy in the negotiations.

After such preparation, the negotiations take place wherein the trade unions and the employer engage in debates and discussions pertaining to the demands made by the tradeunions.14 In the event that such demands are rejected, the trade union may decide to engage in strikes.

The collective bargaining process obviously takes long where the employer has to engage with multiple unions. In the public sector, it may take months or even years. For example, he Joint Wage Negotiating Committee for the Steel Industry, covering workers in four large unions, took more than three years

from the date of the submission of the charter of demands to the Steel Authority of India Ltd. (SAIL).

C. Collective Bargaining Agreement

Next, a collective bargaining agreement will be drawn up and entered into between the employer and workmen represented by trade unions. It may be structured as bipartite agreement, memorandum of settlement or consent award.

D. Strikes

If both parties fail to reach a collective agreement, the union(s) may go on strike. As per the IDA, public utility sector employees must provide six weeks' notice of a strike, and may strike fourteen days after providing such notice (a 'cooling off period').

Under the IDA, neither side may take any industrial action while the conciliation is pending, and not until seven days after the conclusion of conciliation proceedings or two months after the conclusion of legal proceedings.

E. Conciliation

A conciliation proceeding begins once the conciliation officer receives a notice of strike or lockout. During the 'cooling off period', the state government may appoint a conciliation officer to investigate the disputes, mediate and promote settlement. On the other hand, it may also appoint a Board of Conciliation which shall be appointed in equal numbers on the recommendation of both parties, and shall be composed of a chairman and either two or four members. No strikes may be conducted during the course of the conciliation proceeding.

Conciliation proceedings are concluded with one of the following recommendations:

(i) a settlement,
(ii) no settlement or
(iii) reference to a labour court or an industrial tribunal.

F. Compulsory Arbitration or Adjudication by Labour Courts, Industrial Tribunals and National Tribunals

When conciliation and mediation fails, parties may either go for voluntary or compulsory arbitration. In the case of voluntary arbitration, either the state or central government appoints a Board of Arbitrators, which consists of a representative from the trade union and a representative from the employer. In the case of compulsory arbitration, both parties submit the dispute to a mutually-agreed third party for arbitration, which is typically a government officer.

Arbitration may be compulsory because the arbitrator makes recommendations to the parties without their consent, and both parties must accept the conditions recommended by the arbitrator.

Section 7A of the IDA provides for a labour court or industrial tribunal within each state government consisting of one person appointed to adjudicate prolonged industrial disputes, such as strikes and lockouts. Section 7B provides for the constitution of national tribunals by the central government for the adjudication of industrial disputes that involve questions of national interest or issues related to more than one state. In such a case, the government appoints one person to the national tribunal and can appoint two other advisers.

If a labour dispute cannot be resolved via conciliation and mediation, the employer and the workers can refer the case by a written agreement to a labour court, industrial tribunal or national tribunal for adjudication or compulsory arbitration. A final ruling on the industrial dispute must be made within six months from the commencement of the inquiry. A copy of the arbitration agreement signed by all parties is then forwarded to the appropriate government office and conciliation officer pursuant to which the government must publish the ruling in the Official Gazette within one month from receipt of the copy.

Levels of Collective Bargaining in India

In India, collective bargaining typically takes place at three levels:

National-level industry bargaining – common in core industries such as banks, coal, steel, ports and docks, and oil where the central government plays a major role as the employer. In these industries, the CTUO do not typically provide any guidelines on a charter of demands, including an increase of wage or improvement of working conditions; instead, both sides – the government and trade unions – set up a "coordination committee" to engage in the collective bargaining proceedings. Collective bargaining in the public sector generally suffers if the position of the state government is different from that of the central government.

Pay scales for government employees at the national level are revised by Pay Commissions, and wage increases are determined by Wage Boards for several industrial sectors, such as journalists and other newspaper employees. Wage Boards are tripartite organizations established by the government to fix wages. They include representatives from workers, employees and independents. The SC recently upheld the Majithia Wage Board's recommendations to raise salaries for journalists and non-journalists in print media, dismissing challenges by the management of various newspapers.

Industry-cum regional bargaining – peculiar to industries where the private sector dominates, such as cotton, jute, textiles, engineering, tea

plantation, ports and docks. Bargaining generally occurs in two stages: company-wide agreements are formed, which are then supplemented with regional (i.e. plant-level) agreements.

Basic wage rates and other benefits are usually decided at the company level, while certain allowances, incentives etc., are decided at the regional or plant level, taking into account the particular circumstances, needs etc., of the employees. However, such regional agreements are only binding on company management if the employers' association authorizes it in writing to bargain on its behalf.

Enterprise or plant-level bargaining practices differ from case to case because there is no uniform collective bargaining procedure. Typically, the bargaining council (or negotiating committee) is constituted by a proportional representation of many unions in an establishment. It is therefore easier for the management to negotiate with one bargaining agent if multiple unions at the company can form such a single entity.

If not, the management will then have to negotiate individually with each registered union. In the private sector, employers generally press for plant-level bargaining because uniformity of wage negotiation can be ignored and the bargaining power of trade unions can be reduced. Also, trade unions insist on plant-level bargaining because the payable capacity of the company is much higher and because labour issues can be resolved more quickly and easily. Trade unions can typically face a dilemma in decentralized plant-level bargaining if the business is having a managerial crisis from market failures or the management is reluctant to negotiate with the unions.

Collective Bargaining Agreements in India

A. Types of Collective Bargaining Agreements

In India, collective bargaining agreements are divided into three classes:

i. ***Bipartite (or voluntary) agreements*** are drawn up in voluntary negotiations between the employer and the trade union.

As per the IDA, such agreements are binding. Implementation is generally nonproblematic because both parties reached the agreement voluntarily.

ii. ***Settlements*** are tripartite in nature, as they involve the employer, trade union and conciliation officer. They arise from a specific dispute, which is then referred to an officer for reconciliation. If during the reconciliation process, the officer feels that the parties' viewpoints have indeed been reconciled, and that an agreement is possible, he may withdraw himself. If the parties finalize an agreement after the officer's withdrawal, it is reported back to the officer within a specified time and the matter is settled. However, it should be noted that the forms of settlement are more limited in nature than bipartite agreements,

because they must relate to the specific issues referred to the conciliation officer.

iii. ***Consent awards*** are agreements reached while a dispute is pending before a compulsory adjudicatory authority, and incorporated into the authority's award.

Even though the agreement is reached voluntarily, it becomes part of the binding award pronounced by the authority constituted for the purpose.

B. Contents of Collective Bargaining Agreements

As a part of collective bargaining mechanism, employers and workmen represented by trade unions enter into collective bargaining agreements typically structured as memorandum of settlements which enumerate the various clauses that govern the relationship between the workmen represented by trade unions and employers.

The IDA, under section 18(1) of the IDA, provides that such settlements entered into between workmen represented by trade unions and employers would be binding upon the parties.

Typically, clauses in the memorandum of settlement pertain to the following:

- ✓ Term / Duration of the memorandum of settlement as may be agreed between the parties
- ✓ Settlement terms which, typically, may be with respect to wages, benefits, allowances, arrears with respect to payment to workers, concessions, works hours, overtime etc.
- ✓ Conditions with respect to strikes and lockouts by trade unions and employers respectively
- ✓ Obligations of workmen
- ✓ Obligations of employer
- ✓ Penalties with respect to non-compliance of the obligations of workmen and employers
- ✓ Dispute resolution
- ✓ Miscellaneous clauses including severability, notice, etc.