

Collective Bargaining and Negotiation Skills

A TRAINING GUIDE
FOR TRADE UNION



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Dicetak di Jakarta, Indonesia

Foreword

The ILO/USA Declaration Project in Indonesia (Phases I and II) funded by the Department of Labour of the United States came into being in 2001 with the clear mandate to promote and realize freedom of association and collective bargaining in Indonesia and specifically to extend support to the tripartite constituents – government, employers and workers – in creating sound and stable industrial relations and in the implementation of the broad labour reform programme inspired by the Indonesian Reformasi movement and the democratic changes in 1998.

The new democratic setting in 1998 provided the opportunity for the effective recognition of freedom of association and the right to collective bargaining in the country. Several free and independent unions have been organized since that time to break the monopoly enjoyed by one single trade union under the old regime. Workers and employers were freer to conduct bipartite and collective bargaining negotiations without outside interference. The road however has not been easy as the parties often lack the necessary experience, knowledge and skills in conducting genuine collective bargaining and negotiations. A number of unnecessary disputes and conflicts with disastrous results for both parties in some cases, have resulted from failed negotiations and collective bargaining deadlocks. By its very essence, collective bargaining requires the parties, which are well aware of their needs, possibilities and priorities, to adapt to the changing circumstances of the specific context in which work is carried out and to make mutual concessions and identify satisfactory outcomes for each party.

Midway through Phase I of the Project, a Mid-Term Evaluation Team composed of Mr. William Simpson, independent leader, Mr. Roger Bohning representing the ILO and Ms. Sue Hahn on behalf of USDOL, after hearing the views of tripartite representatives in Jakarta and from the field, directed the Project to focus on fewer key activities with high priority to be given to

the training of the social partners on collective bargaining and negotiation skills. The Project proceeded to conduct a large number of the corresponding training workshops in 2002 in the seven (7) provinces under its coverage with the enthusiastic endorsement of the social partners. In the succeeding follow-up evaluation of the Project, Mr. Bohning and Ms. Hahn, recommended the extension of the Project and the continuation of the training activities on collective bargaining and negotiation skills for the social partners.

A set of training materials was developed for the training activities on collective bargaining and negotiation skills conducted by an international consultant for participants from the Employers Association of Indonesia (APINDO). A different set of materials was prepared by another international consultant for the training conducted for trade unionists. The Project is publishing the two complementary sets of materials for the benefit of the social partners in the conduct of their own training programmes. The Project will also conduct a training of trainers (TOT) course for selected potential trainers from APINDO and trade unions to be followed by a number of separate and joint training workshops by the trainers trained for the social partners in various provinces. The corollary objective is ensuring sustainability and to encourage employers and trade unions to conduct their own workshops based on their needs.

The Project extends its deep appreciation to Mr. Manuel Dia, former Dean of Labor in the University of the Philippines and ILO senior specialist on workers' activities, for serving as its international consultant and for the formulation and development of the highly excellent and useful training materials for trade unions on collective bargaining and negotiating skills and likewise the very effective and successful training workshops he conducted for participants from various trade unions in the seven provinces covered by the Project in Indonesia. We are also thankful to Mr. Saeful Tavip, Secretary General, Association of Indonesian Workers (ASPEK Indonesia) for going over the materials to determine their suitability for use in Indonesia, and to Ms. Endang Sulistyarningsih, Research and Development Center, Ministry of Manpower and Transmigration, for reviewing the materials for purposes of gender mainstreaming.

The ILO Office in Jakarta and the Project wish to express the hope that this publication will be of lasting usefulness to the trade unions in Indonesia and to other interested parties as well for the appropriate and effective application of collective bargaining as a fundamental principle and

right at work and as a pre-requisite of sound industrial relations under the provisions of the new legislation enacted under Indonesia's Labour Law Reform Programme.

Jakarta, Indonesia, August 2003

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Introduction

The industrial relations environment and institutions in Indonesia have dramatically changed in recent years. Important changes in labour legislations have come about. One notable example of this change is the adoption of the Trade Union Law (Act No. 21/2000) and the Manpower Act (Act. No 13/2003). The proposed Industrial Dispute Settlement Act is currently under consideration in Parliament.

Significant steps in the reform of labour legislation followed the recent ratification of ILO Conventions on the fundamental principles and rights at work, including the ILO Convention No 87 on Freedom of Association, which was ratified in June 1998.

One of the basic reasons for the new labour laws is the “new economic and political environment in Indonesia that requires a legal framework to be established for the conduct of the industrial relations which is fair, effective and assists in the resolution of industrial conflict”.

The post Soeharto/New Order regime ushered in the period of what is now referred to as *“reformasi”*. The Soeharto era imposed strict control by government over industrial relations. This was a strategy calculated to attract foreign investments and growth of new industries rather than workers’ rights. This control by government included military/police interventions in labour disputes and severe limitation on the rights of workers to organize. The only workers’ organization allowed to function at that time was the government-supported organization.

The significant changes in the industrial relations system in the country, particularly the robust formation of workers’ organizations, at all levels, also increased the potential for industrial unrests and protest actions. Some of these industrial actions could turn violent and impact on the investment climate of the country. There is therefore an urgent need to put in place an effective system to deal with industrial relations concerns and conflicts. The

new laws provide the legal and policy framework for the new system.

The growth of new institutions, including representative organizations of workers and employers, inevitably call for the sustained up-grading of the capability of workers and employers organizations to engage in collective bargaining as an effective bi-partite mechanism for promoting industrial peace, advancing social changes and enhancing stability. Collective bargaining also provides an important platform for the democratic participation of workers in decision-making in the work place and beyond.

This set of materials (presented in four modules) is designed as resource information to help in promoting a comprehensive understanding of the practice of collective bargaining. It is designed for new trade unionists, experienced collective bargaining negotiators, industrial relations practitioners, and others interested in industrial relations as a field of interest to enhance their appreciation of the collective bargaining process and negotiation techniques. This should lead to ensuring the effective integration of women in all activities or programs by explicitly addressing the participation patterns and assistance requirements of men and women at all steps of the bargaining process.

In no two countries or even in no two negotiating situations in the same country or work place is the process exactly the same. Therefore, those using these materials can select what is relevant for their needs and interest at a given time. The materials are arranged in such a way that the user can use the modules separately as independent sets of information or training materials. This also explains the universal nature of the materials, although specific inputs relevant to Indonesia are incorporated in the text.

The first module provides an outline of what generally are considered as factors or environmental conditions affecting the practice of collective bargaining. Module II discusses factors related to the advancement of wage and associated economic issues in negotiations. Module III describes some techniques and factors related to strategies in negotiations. The last module identifies modalities for implementation of collective agreements and related options for dispute settlement.

Each module is designed to provide information on how the gender aspect can be integrated in the bargaining process.

Aside from the brief information on relevant ILO instruments included in the text, summary of important ILO Conventions related to collective bargaining and trade union interests are provided as an Annex to Module IV.

MODULE ONE



Collective Bargaining and The National Economy

Lesson 1

Collective Bargaining and The National Economy: An Introduction

1. What is Collective Bargaining?

The International Labour Organisation (ILO), through the ILO Convention No. 98 (Convention Concerning the Application of the Principles of the Right to Organise and Bargain Collectively), defines collective bargaining as the “voluntary negotiation between employer or employers organisations and workers’ organisations, with a view to the regulations of terms and conditions of employment by mean of collective agreement”.

ILO Recommendation No.91 (Recommendation Concerning Collective Agreement) further defines collective bargaining in this manner:

- (1) *For the purpose of this Recommendation, the term “collective agreements” means all agreement in writing regarding working conditions and terms of employment concluded between an employer, a group of employers or one or more employers’ organisations on the one hand, and one or more representative workers’ organisations, or, in the absence of such organisation, the representatives of the workers duly elected and*

authorized by them in accordance with national laws and regulations, on the other.

- (2) *Nothing in the present definition should be interpreted as implying the recognition of any association of workers established, dominated or financed by employers or their representatives.*

In short, collective bargaining is the procedure by which the wages and conditions of employment of workers are determined through negotiated agreements between the organisations of the workers or their chosen representatives and the employers. Workers organisations set up for purposes of bargaining must necessarily be independent and free from interference of the employers.

In many countries, the key means of action promoting gender equality in the world of work is through collective bargaining, as a process of negotiation between workers' representatives and employers. This process may result in a collective agreement, which outlines the terms and conditions of employment or any other matter of mutual interest to the workers and employer.

The role of trade unions in promoting gender equality through collective bargaining is especially important in the context of the current inadequacies of equality legislation and its enforcement in many countries. The role of trade unions is acknowledged in the Platform for Action of the Fourth World Conference on Women (Beijing, September 1995), which calls on governments and all social actors to recognize collective bargaining as a right and an important mechanism for the promotion of gender equality. This role is reaffirmed in both the Beijing Plus 5 and the Copenhagen plus 5 final outcome documents.

2. Industrial Democracy

Collective bargaining is not a mere signing of agreement that is mutually acceptable to both parties. It is not a mere meeting of the minds of two opposing parties across the bargaining table. It is not a mere discussion of grievances, wage issues, seniority rules, etc.

Collective bargaining is the democratic, joint formulation of "work rules" and "working conditions" on all matters that directly affect the workers in the work place. In other words, collective bargaining is self-government in operation. It is the establishment of factory or work place laws based

upon common consent.

In general, the concerns and interests of women, with perhaps the exception of maternity leave, have in the past often been overlooked in the process of collective bargaining. And since collective agreements tend to be based on past agreements, the situation has been perpetuated. Traditional bargaining agenda items have been approached without the inputs of women and issues of particular concern to women have not been addressed. But now that women are making up a greater share of the paid workforce and are an important and often untapped source of potential union membership, women, unions, women's groups and employers are acknowledging the need to deal in collective bargaining with issues of concern to women.

Collective bargaining is a right of the workers that gives them a say on how their working lives will be governed. Like the right to form unions and the right to an eight-hour day work, the right to bargain collectively took a long time before it was recognised by governments and employers alike. A definition of what subjects are to be dealt with in collective bargaining may exist in national legislation. Even where a narrow definition is set out in legislation, this does not normally limit the ability of the parties to agree to bargain on wider range of issues.

Today, collective bargaining is widely recognised as one of the essential bases of democracy in the industry as well as in civil societies in general. In some countries, the system is highly developed to the point that bargaining takes place not only at the plant level but also at the industry or even inter-industry level. Issues covered ranges from wages and fringe benefits to mechanisms of workers participation in the running of the enterprise. In countries where majority of the workers are covered by collective agreement and where the system of collective bargaining is fully institutionalised collective bargaining clearly goes beyond industrial democracy.

In many developing countries, the system is just beginning to make headway. Due to historical, political, economic, social and cultural factors, which are discussed elsewhere in these materials, collective bargaining in developing countries must be treated in a different way. Note that collective bargaining became a universal right in Western countries at a time that these countries already achieved great industrial strides and were on top of the global economy. In many developing countries, the right to bargain collectively was recognised only after their emergence from colonial rule.

3. Political Environment

Ideally, there must be reasonable equality of strength between the two bargaining parties.

As a rule, individual workers are in a weak position to bargain with their employer over wages and conditions of employment. The urgent need for a job forces an individual worker to accept less favourable terms, especially if there is a large surplus of labour looking for jobs and willing to accept lower wages; hence the imperative of workers' organisations and collective bargaining on the part of the workers. The rights to organise, bargain collectively and engage in other forms of concerted activity are tools of working people in curbing or minimising exploitation especially for women workers, ensuring equality of treatment and standardising or raising to high level the conditions of employment.

Yet in many countries, these rights are restricted or strictly regulated. In some, the right to form unions is banned outright. In others, the right to organise and the right to bargain collectively are officially recognised but subject to stringent rules. In particular, the right to strike and hold pickets are either proscribed or severely limited by various disabling legislation, whose objective effect is a ban or curtailment of these activities. Such a situation naturally weakens the position of workers to bargain to the extent that the exercise of collective bargaining is sometimes called collective begging.

At the other extreme, there are countries where the workers fully enjoy the above rights. In those countries where the labour movement is strong and has taken full advantage of the above right, employers are not wont to complain that there is "too much power in the hands of the unions".

Whichever way one looks at it, the political climate in particular, government policies, effects either positively or negatively the process of collective bargaining. Some legislation may promote or hamper collective bargaining, strengthen or weaken one of the parties.

4. National Economy

Collective bargaining is also directly affected by the conditions of the national economy. Yet this aspect is least discuss in the literatures on collective bargaining.

The importance of this relationship cannot be under-estimated. In the

first place, one of the objectives of collective bargaining is to determine how the fruits of production will be shared between employers and workers, and between men and women workers. But the size of these fruits is oftentimes dependent on the health of the national and even global economy. If the amount to be shared is too small due to the consequence of a national or world depression, then there is very little to share.

Secondly, the conditions of the national economy not only affect the amount to be shared but also the bargaining power of the workers. For instance, during a recession the presence of a large surplus of idle manpower tends to pull down the wages of those enjoying employment because of competition for jobs. This naturally strengthens the position of the employers to ignore union demands over wage issues. One can also say the same thing about inflation, which, if galloping, tends to cancel the workers in the bargaining process advanced.

Lesson 2

Dualistic Economies

1. Collective Bargaining in Advanced Countries/ Developing Countries

One major differentiating factor in the practice of collective bargaining in advanced countries (AC) in contrast to the practice in developing countries (DC) is the nature of their economies. ACs generally enjoy a high level of industrial development, a well-developed market and a relatively more sophisticated labour force, the bulk of whom are concentrated in the modern industrial sector.

In contrast, DCs industrial development is highly uneven and underdeveloped. The modern industrial sector engaged in mass production is narrow, in fact, constitutes only an enclave in the economy. On the other hand, agricultural production based on peasant labour is predominant. In the cities and towns, many people find employment in the small scale, household-based or cottage undertakings.

Consequently, unionised workers oftentimes constitute a distinct minority because unionising work is limited to the modern enclave of the

economy where clear employer-employee relations prevail. But even this modern enclave of the economy is puny compared to the giant enterprises in Acs where the number of workers in an enterprise can reach up to 100,000 or even 300,000 and more. In DCs, there is a preponderance of unions whose membership ranges from 50 to 100 or a few thousands, which reflect on the limited scale of the industrial undertaking. Not surprisingly, many unions are organisationally and financially weak, which is further aggravated by the intense rivalry among union organisers belonging to different federations of varied ideological, political and international affiliations.

The task of unions, especially in the spheres of organising and bargaining, is made more difficult by the large army of unemployed and underemployed.

2. Dualism/Informal Sector in Developing Countries

In general, the economies of developing countries are dualistic. This dualism applies not only to the economy as a whole but also to the traditional three sectors of the economy: agriculture, services, and industrial. In the urban centres and other metropolitan areas there is even the 'informal sector' which some ILO and UNDP reports describes as an economic zone where: free entry to new enterprises exists; enterprises rely on indigenous resources, they are mostly family owned and small scale, they are labour intensive and adapted technology; workers rely on non-formal sources of education and skills; and they operate in unregulated and competitive markets. An ILO expert on the informal sector gives a shorter definition: "It (informal sector) consists of small-scale units engaged in the production and distribution of goods and services with the primary objective of generating employment and income to their participants notwithstanding the constraints on capital, both physical and human, and know how.

Obviously, unionism and collective bargaining are difficult to establish in the informal sector of the economy because there are no clear employer-employee relations, production is backward and limited, and the number of workers per enterprise is too small (usually less than 10) for these workers to be organised into a union. In countries with a large informal sector, it is only natural to expect that unionism and collective bargaining face serious limitations.

Trade unionism and collective bargaining are of relatively recent entry in the agrarian sector of the economy, confined mostly in the mining, logging

and plantation areas. Many smallholder farms, whether producing food or export crops do not have clear employer- employee relations.

However, owner cultivators, tenant farmers and sharecroppers can and do organise themselves to protect as well as advance their interest, for instance for negotiating a fair agricultural pricing policy from the government, speeding up infrastructure development or seeking the implementation of a land reform program. But in many cases, peasant organisations and similar associations are relatively weak compared to the industrial unions in the urban areas.

Nevertheless, there is a growing awareness among trade union on the need to assist or help small farmers as well as the landless rural workers to organise themselves. In this respect ILO Convention No. 141 and ILO Recommendation No. 149 on Rural Workers Organisation have become very useful guides in the organisation of rural workers.

Lesson 3

The Economic Problems of Developing Countries

As pointed out in Lesson 1, the economic “condition” of the country affects either positively or negatively the process of collective bargaining. And yet many report of the international agencies show that the economies of many developing countries remain precarious. This weakness is reflected in the persistence of dualistic economy and the poverty gripping the live of millions in the developing countries.

The immediate and most common causes of massive poverty in Asia are unemployment/underemployment, landlessness and inflation. Other causes are illiteracy, population explosion, etc.

In addition, the union should be aware that the division of labour is largely dependent on the socio-economic context. Every society has its own set of social institutions of gender concerning the rights and opportunities of men and women. It is important therefore for trade unions to understand that the division of labour between men and women can be analysed by differentiating between reproductive and productive tasks.

Productive tasks refer to work undertaken for the production of goods and services for the market as well as the processing of primary products, produced by either men or women in a household. Such productive tasks

can be based at the formal workplace or at home and can be formally or informally organized.

Reproductive tasks refer to human reproduction and maintenance, i.e. activities carried out to reproduce and care for the household and community, such as fuel and water collection, food preparation, childcare, education and health care. These activities are usually unpaid and are often excluded from national employment and income statistics because they are viewed as non-economic activities.

1. Unemployment/ Underemployment

Unemployment simply means inability to obtain work although work is actively sought. It is a degrading situation for every worker.

Unemployment is related to the concept of *underemployment*, which means that a person is looking for work even if he/she has a job because the job he/she is holding is not enough to sustain him/her and his/her family. A person is *visibly underemployed* if the person is working for short hours and wanting more work. This is the lot of those holding part-time jobs as well as those hired on a seasonal basis like the seasonal landless rural workers. A person is *invisibly underemployed* if he/she is working on a full-time basis and yet is still looking for employment.

Unemployment and underemployment are at the core of poverty in developing countries. Some developing countries may boast of a low rate of open unemployment and yet close examination would reveal that these countries suffer from high underemployment rate. In fact underemployment can immediately be detected if a developing country has a large urban informal sector. As the ILO Director-General said:

“The urban informal sector offers a precarious livelihood. Because of low productivity, informal sector earnings are typically less than the formal sector wages and around the subsistence level at best. The people live in squalid slums, often with no regular water supply and hardly any access to garbage disposal and other community services.”

Of course, unemployment and underemployment adversely affect the bargaining position of the employed in the formal sector. Massive unemployment/underemployment tend to lower the general level of wages in the formal sector because of the ensuing competition for jobs.

Lesson 4

The National Income Debate

Collective bargaining is basically a question of sharing: how much should go to labour and how much to the employers.

The size of the cake to be shared, of course, depends on the health of the enterprise, in particular and the economy in general. At the micro or enterprise level, this health is partly evaluated through an exhaustive analysis of the income or profit and loss position of the firm. At the macro or national, this health is likewise partly seen although the analysis of the national income accounts.

If trade unions are to be credible regarding their commitment to promoting equality through collective bargaining, they must be able to show that equality is an integral part of their own policies and structures. Therefore, the size of the cake to be shared, should be distributed equitably between men and women workers.

However, while the enterprise cake is largely shared between the workers and the management group, the national cake, in the context of a dualistic economy, is not simply a question of sharing between the workers in general and the various employers taken together. The government plays a dominant role in the sharing or allocation act. Also involved in the process of sharing are the landowning groups, the foreign creditors institutions, the farmers, etc. The organised workers, of course, have a vital stake in the national sharing and it is only through a clearer understanding of the various economic phenomena in society can they determine what fairly and rightfully belongs to them.

Lesson 5

Economic Issues/ Policies

Trade unions in developing countries cannot remain oblivious of what is happening in the national and even global economy. For many trade unions, therefore, the arena for the struggle in the improvement of the lot of their members goes beyond the bargaining table at the plant level. How for instance, can trade unions fight inflation, which erodes the benefits ear

at the bargaining table? Certainly not simply at the company level because one is facing a national disease. The slogan “more, more and more” at the company-level bargaining is at best unworkable; at its worst, it gives the workers a warped perspective of their real position in society.

Unions are generally still not “women-friendly” and the inclusion of gender perspectives in all trade union policies and programs is far from being achieved. Unions can – and must – take up the challenge of transforming the labour market through equality and justice. While it is true that women have been swelling the ranks of the unions action is required to ensure their access to union leadership positions and much remains to be done to organize them, in particular those belonging to vulnerable groups (i.e. the informal sector and a typical work) and young women.

To put it simply, collective bargaining does not exist in a social and economic vacuum. This explains why in many of the more developed industrial countries, the trend is towards greater workers participation in the decision-making processes in the firms, in the industry and in the economy in general. This in one way in which workers protect and expand their hard-won rights. Thus, the development of such institutions as industry wide collective bargaining; and in some jurisdictions, the emergence of such bodies as works council, industrial co-determination and self-management, modes of advancing industrial peace.

1. Need to Analyse Economic Issues/ Problems

Clearly, one of the basic tasks of trade unions in the developing countries is to analyze economic issues and problems that affect them in particular and society in general. They cannot afford to take them for granted. Sometimes the unions develop linkages with academic and research organizations to carry out research on important issues and problems including women worker’s issues, such as childcare, maternity rights and pension reforms.

In some cases, the issue being debated poses some threats on unionism itself. For instance, there is the debate going on about the supposed inevitability of a trade-off between economic growth and freedom of the workers. What this thesis say is that one cannot have economic growth and at the same time give full freedom to the workers to exercise their rights such as the right to conduct concerted activities, and vice versa. But is this acceptable to the workers? Is this thesis really true? Moreover, is it not possible

to achieve simultaneously growth, freedom and social equity?

Thus, it is only natural that trade unions should be involved in the formulation of economic policies and in the implementation of whatever programs and project may be derived out of these policies. Gathering any information and statistics available regarding women in the workplace and the sector (for example, how many women are in different job categories, what is the differential in pay between men and women) is recommended.

It is for this reason that some trade unions insist that workers should be consulted or at best manage to elect their own representative not only in labour ad judicatory bodies but also in public agencies responsible for the formulation and implementation of economic policies. One of the most important agencies is the legislative body of the government itself.

Involvement of workers' representative in these bodies is also one way of ensuring that no government measures are taken to limit workers' rights, including the right to bargain collectively in an atmosphere of freedom and democracy.

2. The Labour Market as An Environment for Collective Bargaining

The nature of the labour market does not exactly follow the perfect competitive model envisioned by the economists. The labour market model sets up an interaction between the supply and demand for labour. The interaction between these two curves determines the equilibrium point, interpreted as the correct price for labour. At this equilibrium point, the exact quantity for labour demanded and labour supplied are equal.

In a market economy, the forces of supply and demand for labour determine both the jobs that will be available and how much workers will be paid for doing them. Discrimination against women in the labour market and its role in producing economic inequality between women and men should be explored in-depth.

However, both union and management as two institutions do not permit this economic model to function in real life. Unions on the one hand affect wages through many ways, among which are:

1. Restriction of the supply of labour, in order to increase its demand. Examples of these are the close shop or union shop provision which tend to restrict entry into the internal labour market of the enterprise;

2. Bargaining for standard rates. As wages are standardized, employers will hire the number of workers they want, and any surplus job applicants will be excluded immediately from the labour market;
3. Pressing for policies designed to shift upward the demand for labour. High wages can be argued to have a favourable “shock effect” to force employers to be more efficient in using labour. The union may also help the employers in an industry to maintain a high monopoly price for their services, with some of the extra profits going into higher wages; and
4. Lessening exploitation of labour by employers. This is done by the union’s countering of its own monopoly bargaining power (what economists call monopoly). In this situation where there is a single seller for all labour, organising a union can result in higher wages without any decline in employment.

In order to articulate the issues of concern to women, the women should be involved in all of the various processes which deal with improving and defending workers’ conditions and rights, including at the negotiating table and on occupational health, safety and environment committees, in grievance-handling procedures; as shop stewards; as works council/joint committee members; and on company boards where there is employee representation.

Once the management realises the union is going to see to it that the employer must pay the wage rate demanded, the employer will again be a “wage taker”, who will have to hire men/women up to where their “marginal product” fully equals that new wage rate.

3. Economic Goals

At the collective bargaining table, the following are some of the most important factors around which argument are likely to centre. These factors in summary could be considered as the economic environment within which collective bargaining takes place.

a. Cost of living, inflation, and purchasing power

If the cost of living is rising, the union negotiators will argue about the maintenance of the workers’ standard of living. If prices are falling (which is rare), employers bring up this issue. The labour side will stress that

high wages are a means to maintain or increase the purchasing power of workers as consumers. The management invariably counters off the inflationary bias raising labour costs.

b. Ability to pay (profitability)

If the company and industry have been prosperous, the union will stress ability to pay. But if the industry has had low profitability, the employer will emphasize this point.

c. Productivity

If productivity has risen or fallen, this concept will also be brought in by one of the interested parties. Arguments revolve around what should be the “adequate” share for both sides at the negotiating table. The fact is that “productivity” sharing has become a major issue in bargaining.

d. Wage standards/ comparisons

The government may set forth guide policies for wages and prices, and these policies maybe invoked or ignored depending on the interests of thee bargaining partiers. Such guideposts broadly aim to have money wage increase with the national productivity. Equal remuneration for men and women workers for work of equal value refers to rates of remuneration established without discrimination based on sex.

If other firms in the same area are paying wages higher or lower than the firm in question, negotiations will also tough on this argument.

e. Standard of living

Different geographic areas would have different standards of living. Negotiators therefore should be aware of these differentials. Wage levels in major cities would be different in other cities. There would be large differences in prices of basic commodities in an urban area against a rural community. The same argument holds true for regional areas: the standard of living in one region may be different from another region. Negotiators should also bear in mind that there are basic similarities as well. What is crucial would be how to point these out at the correct opportunity during the bargaining. In order to have better understanding in how money will be spent for life, especially to those who have families, it will helpful for unions to include women members during the bargaining.

Furthermore, collective bargaining as a private decision-making affair would not be separated from the national economic context within which it transpires. Most often, national economic policy dictates that priorities be given to the maintenance of price stability and a low unemployment rate just equivalent to frictional levels, among other goals. In addition, the government may set the following macro-economic goals:

1. An annual economic growth rate, which approximates what, has been planned or targeted;
2. Equilibrium in the international balance of payments;
3. Elimination of poverty and narrowing of wide gaps in income distribution;
4. Improved performance in labour mobility (stable migration levels);
5. Removal of structural imperfection.

The economic environment within which bargaining takes place requires that the management and the unions have to adjust not just in accommodating each other, but in accommodating the goals set by a third party: that of the national government and its economic policy. For practitioners therefore, it would be major challenge to manage the result of the negotiations so as to complement or harmonize, rather than conflict with the objectives set for national economic policy.

4. Economic Constraints

It can be seen from the foregoing discussion that definite economic constraints do exist in the determination of collective bargaining results.

Trade unions should recognize that there exist limits to the package of economic demands that they would be able to push through. It is expected that management will always argue that some wage demands may even be unrealistic and impractical. From the management point of view, such demands might leave nothing for profits, and thus will limit either the expansion plans of the company, additional investment in new product lines, or even the survival of the firm. Management often counter argues by saying that the demand for the services of the union's members might decline and there must be a limit to the tolerance. Without significant female involvement it is likely that unions will lack much of the information necessary or the motivation to persuade the employers to provide fair

compensation for women and for workers with family responsibilities.

From the point of view of the trade unions, management proposals on wage level may just be too low to be accepted by the union membership. Unions may want to be at the same level of wages as other unions at least in the industry, or perhaps management proposals would not be sufficient to compensate for increase in the cost of living. Thus, there will be a limited range of wage positions (a limited number of wage package alternatives) for the union, all of which will be acceptable but some of which will be more highly preferred than others.

Since gender equality is far from being a reality within the trade union movement, it is important that trade unions formulate specific statements of policy on gender equality. Such statements could be in the form of resolutions and policy documents adopted by executive boards. Special publications, position papers, equality plans, guidelines on gender, positive action programmes. A policy statement can serve as a benchmark for future union action. Implementation of the policy on gender equality can be effective only when treated as a mainstream union issue rather than a “women only” issue.

Lesson 6

Principles of Financial Analysis

1. What is Financial Analysis?

Many groups outside the business enterprise including trade union leaders are interested in its financial affairs. Outsiders usually do not have access to the detailed data that are available to management and must therefore rely on published information in making decisions and conclusions.

The management of an enterprise makes operating and financial decision based on a wide variety of reports which are generated by the firm's own information system or which are available from other sources. Further, there are more sophisticated analyses of profit-volume relationships, production decisions, and profitability forecasts available to the management.

The union should ensure that the employer keeps statistics segregated by gender regarding pay levels (including overtime), recruitment, promotion, training and dismissal. These statistics should be made available to the union,

as they can be useful in spotting problem areas.

The first step in financial analysis is to obtain as much factual information as possible. The major sources of corporate financial information are published reports from the government commission or agency regulating corporate activities, and audit reports from private accountants.

A corporation whose stock is publicly owned issues annual and quarterly reports. Annual reports usually contain comparative financial statements and accompanying notes, supplementary financial information and comments by the management on the year's operations and prospects for the future. They are available to the public as well as to the stockholders. Some countries guarantee the right of labour organisations, as well as the general public, in obtaining a copy of company financial information.

Relevant government agency or agencies such as a commission regulating corporate activities require publicly owned corporations to file periodic statements. These documents are particularly valuable sources of financial information because the agency prescribes a standard format and terminology. These statements may contain more detailed information.

When an accountant in private practice performs an audit, this report is addressed to the board of directors and frequently to the stockholder of the audited company. Frequently the auditor's report consists only of the auditor's opinion. However, when dealing with smaller enterprises the accountant generally prepares a more detailed financial statement and substantive comments. Banks and other lending institutions also rely heavily on these types of audit reports. The union's research committee must take pains to obtain these kinds of documents, analyse and interpret them. In addition, the union's research committee should include a female member to analyse and interpret them.

The area also includes private research organisations, sometimes internationally known, which compile financial information for investors and the general public. Many trade associations collect and publish average ratios for companies in the industries. Major brokerage firms and investment advisory services compile information about publicly owned companies from all sources and make it available to their customers. In addition, such firms maintain a staff of analysts who study business conditions and review published financial statements, do research on industry trends and interpret them for outsiders.

To summarise, financial analysis mainly involves knowing what to look for and how to use them in the bargaining table. Financial analysis is the

process of *selection, relation* and *evaluation*. The first step is to select from the total information available about an enterprise and necessary information relevant to the argument to be presented. The second is to arrange the information a way that will bring out the significant relationships. The final step is to study these relationships, interpret the results, and use them effectively in the negotiating table.

Financial analysis is not primarily a matter of making computations although this is a necessary skill for any analyst. The important part of the analytical process begins when the computational task is finished. This must be borne in mind by the union's financial analyst or researcher.

Lesson 7

The Financial Statement of An Enterprise

1. Balance Sheet

A balance sheet presents the financial position of an economic entity, such as a business enterprise. The financial position of a business at a given date includes the assets, liabilities and the owners' equity, and the relationships among them. An integral part of the balance sheet (also known as statement of financial condition/position) consists of notes of the financial statements that disclose contingencies commitments and other financial matters relevant to the business.

Basically, a balance sheet is a historical summary of what an enterprise *owns*, and what it *owes* and the owners' equity at a particular date.

The things an enterprise owns are called its *assets* and the various sums of money that it owes other entities are called its *liabilities*. The balance sheet also includes data on the capitalisation of the enterprise. The owner's equity represents the interest of the owners in the enterprise, computed as the excess of an enterprise's assets over its liabilities.

The assets of an enterprise therefore include such valued economic resources as land, buildings, machineries and equipment and raw materials expressed in terms of money value. The liabilities are economic obligations to be settled in the future, such as loans from the banks and the owners or shareholders' money contributed as capital. They resulted from past transactions.

Assets on the one hand, liabilities plus owner's equity on the other hand, balance each other. Their total must be equal. Their total must be equal.

2. Liabilities and Net Worth

The liabilities of an enterprise are what is owes to ;outsiders and they consist of monetary; obligations both long-term (such as bonds and mortgages payable) and short term (such as bank overdrafts, trade accounts and notes payables). They consist also of performance obligations such as deferred revenue and provisions for future free services. Usually one year. Long-term liabilities (also known as fixed liabilities) on the other hand represent the long-term financial sources of the enterprise. To obtain long-term loans, an enterprise usually has to offer some of its property as security. This means that if the enterprise cannot repay the loan when it is due, then the property may be sold to repay that loan.

3. Points in Examining the Accounts of An Enterprise

All corporations are by law, distinct personalities from their members. They are interested in making profits not only to justify the confidence which the shareholders reposed in them, through their investment but also as a means of creating the reserves for expansion and re-investment.

The employees and workers of a profitable company make a significant contribution, through their labour, to creating the company's profit. They would naturally like to share in that profit through concessions won from collective bargaining. Employers invariably argue incapacity to pay whenever trade unions put up a pay claim or a demand for improvement of the conditions of employment. Losing the "competitiveness" of the company within a particular industrial market is also a frequently heard argument. Whether incapacity is real or imaginary can only be seen from the financial position of the company that is normally a closely guarded secret. However, much headway can be gained by a union in supporting and substantiating their economic claim if they have an operational research committee who are ready to devote some effort at scrutinising the company's balance sheet and income statement and analysing their relationship to each other.

The balance sheet accounts are limited in disclosing the company's

capacity to pay the economic demands of the union. This is because the balance sheet could only show the financial position of a company at a given time. Information as to the company's capacity to pay would be found more from the income statement, also call the Profit and Loss statement or the Profit and Loss appropriation account. The disclosures made by the chairman of the Board of Directors at the annual stockholders' meeting will also be useful.

4. Balance Sheet Accounts

a. Capital surplus/earned surplus and retained earnings

By investing capital in an enterprise, the shareholders expect payments (in the form of dividends paid) from profits made by the company. Not all of the enterprise income however is paid back to its shareholders. The term *capital surplus* or *earned surplus* represents the profits that have been retained in the enterprise, and not paid to its stockholders. Earned surplus is profit made in the course of the company's normal operations, whereas capital surplus is profit that is not made from normal operations, such as the sale of fixed assets, or gains due to the winning of a lawsuit. *Retained earnings* is the popular term used to represent the accumulated net income of a corporation, less amounts distributed to its stockholders and amount transferred to paid-in capital accounts. Union negotiators should note that in many large corporations, the practice is to show on the balance sheet lesser values than what actually was the total income earned and retained. During the year, numerous transfers should have been made from the Retained Earnings account to the Capital stock and additional paid-in capital accounts. Such transfers are considered valid and legally permissible, and the question to ask would be the intention why the management did so.

b. Reserves

Represent the money kept aside by the company for expansions, additional investments and other purposes that the management through its directors consider as necessary and appropriate. The interest of the union for this item would be to determine whether they are reasonable or not. The same vital questions may be raised with regard to other items such as the large surpluses, not appropriated profits and balances

carried forward. Then union must raise the issue of the right of workers to claim some benefits from the profits accumulated.

c. Allowance for doubtful accounts

Doubtful accounts refer to the bad debts due to uncollected accounts. These results from selling merchandise to customers who do not pay their accounts during the relevant period for payment. The general principle is that losses from doubtful accounts are incurred in the period in which the sales are made. Losses from uncollected accounts are therefore deducted for the period in which they are made. The analyst must watch out for extraordinary allotments to recover such losses and whether they are properly charged (“written-off”) for the period wherein they were made.

d. Reserves for depreciation and depletion

Most often, reserves for depreciations and depletion in the balance sheet are matched against fixed assets. Thus they are also called contra-asset accounts. Recording the reserve for the services costs to expire on account and development costs is called *amortisation*. *Depletion* for accounting purposes refers to the estimated costs of natural resources such as mining right, timber concessions, oil field rights and the like.

This type of account is one of the most controversial and troublesome areas in financial analysis. Businessmen tend to view depreciation as a matter of “setting aside something” during prosperous periods for the replacement of depreciated assets. When earning are high, large amounts of depreciation might be recorded for these assets. The question arises whether to record the same cost proportions in times of low earning, sacrificing other accounts that might need the same allocation. There is also a problem in estimating an “appropriate” service life period for fixed assets. Most often, these are decided arbitrarily by the management, thus again affecting the allocation of reserves and the overall financial situation of an enterprise.

This would be a crucial bone of contention for the participants in the bargaining table.

5. Profit and Loss Accounts

The following accounts which appear on the “expense” or “cost” side of an income statement should be examined closely by any union leader who is preparing for collective bargaining.

a. Director's fees

These are payments made to directors of the company for attending board meetings and other incidental payments. Some directors may be full time managers of the company in which case the figure may include their salaries. By comparing the figures for the last two or three years, it can be readily seen whether the directors have given themselves increases, the percentage of such increases and how these compare with increases (if any) given to the workers. If there has been an increase it may be due to an increase in the number of the company's board of directors, which should be reported in the chairman's announcement at the annual meeting or this information may be reported in the press.

b. Depreciation expenses

Is the allowance for the decline in value as result of wearing down of the company's machinery, buildings, fixtures and furniture, equipment (including vehicles). The estimated difference between the value of the property at the beginning and at the end of the year is the book value. This is a reasonable thing to do, on condition that the allowance for depreciation is a fair estimate of the actual decrease in value. The reason is that the company must replace worn out machinery and other property after a given period of time in order to maintain or improve efficiency. But depreciation estimates may be easily manipulated to reach unreasonable proportions. The union negotiators should then raise the question why replacement costs are being accumulated too rapidly than is normal allow for the assets concerned. This is a common tactic employers use when the collective bargaining negotiation approaches, to strengthen their argument of incapacity to pay.

c. Wages and salaries, direct labour costs

Are items that should be of particular interest for the union. This item includes the percentages of operating costs they represent and can be said to constitute a direct return to the workers who are supposed to be

the productive source of value in the industry. The percentage will vary according to whether the particular company or industry is capital intensive (wages constitute a small percentage of the total cost) or labour intensive (wages constitute a major portion of the total cost). Most likely, if the company is capital intensive the union is likely to meet little resistance on the question of capacity to pay. On the other hand, if it is labour intensive then there will be resistance on this question. The main question for consideration however is whether the company has made enough profit to meet the union's demand.

d. Production costs

This refers to the cost of producing the goods or the cost of manufacturing and transporting them to the selling point (or market).

The enterprise plant and equipment play a large part in the productive process. It is the ideal situation, when all costs are associated with some physical product or output of goods.

The costs of raw materials, direct labour and some kind of variable factory overhead can be easily traced to the physical production because the relationship between effort and accomplishment is rather clear. The problem occurs when this approach is also applied to such expense accounts as sales, salaries, advertising and promotion expenditures, administrative overhead, and other managerial incentives (incidentals). It is often a great area for argumentation to trace these types of accounts and clearly relate them to the production of goods. Most often, accounting managers find it necessary to adopt arbitrary but "reasonable" assumptions for these accounts in relation to production.

The union negotiators may have to offer a slightly different assumption for what is the reasonable cost allocation for these types of expense account.

e. Tax expenses

For business enterprises, the most relevant tax expenses fall under two categories: corporate income tax and business tax. Business taxes are those paid by the enterprise to the government for operating an enterprise but are negligible compare to corporate income taxes.

The corporate income tax is the amount that the company is required by law to pay the government of the country where the company is operating and where the profit is derived. It is assessed on a given

percentage of the company's profit. For the union this figure is usually non-arguable since it is the law that provides for the exact tax level at which the enterprise may be taxed.

Above a certain income level, the law of most countries specify the income tax should be paid. Income derived from investments is always taxed, and in most countries the percentage is the same as that used for assessing corporation taxes

f. Dividends paid

In the financial statement, tax expenses appear together with the gross dividends paid to the company's stockholders. This portion of the statement should therefore merit closer scrutiny by the negotiator.

A ten-point dividend is generally accepted as a fair return in most countries. But dividend above 10% should provoke some criticism and a more insistent bargaining approach from the union negotiating panel. If wages have been increased or more fringe benefits granted, how do these compare with the dividends paid to shareholders?

Cash dividends in the strict sense are earnings distributed to stockholders in proportion to the number of shares they own in the enterprise. Corporation however distribute additional shares of their own stock, and these are called "stock dividends" wherein no resources are actually distributed. Also, a company may occasionally choose to pay a dividend in the form of merchandise, or other property such as securities.

Lesson 8

Profit and Loss: The Ability of The Enterprise to Pay

1. The Income Statement and Meaning of Net Income

For collective bargaining practitioners, this item is of central importance during negotiations for the economic package to be incorporated into the agreement.

The net income represents the profits made by the enterprise after meeting all operating expenses, and is sometimes called *operating income* or *income before tax*. (If expenses exceed revenues, the difference is referred to

as a net loss). From this amount, the tax which the company pays to the government is met, dividends are paid to both preferred and common shares of stockholder, and transfers are made to reserves (also call the general revenue reserve), inappropriate profit (that portion of the profits for which the directors of the company have taken no decision as to its disbursements) and balance carried forward (retained earning which is really a portion of the unappreciated profits).

It is the income statement, (also called the profit and loss statement) which tell the story of an enterprise over a period of time, whether operations resulted in the earning of a net profit or the incurring of a net loss. This is the picture of a struggle between two sets of opposing forces.

For every business concern, the income statement is prepared at least once a year but some enterprises prepare quarterly and even monthly reports.

The main point to consider is whether profit has increased or decreased as compared with previous years. This information could be gleaned from the comparative study of the company income statements from previous years. For a particular period, the company might have made profits, which management could easily regard as insufficient to meet all the union's economic demands.

2. Determination of Profit and Loss

The measurement of net income (or net loss) involves the principles of matching costs and revenue. To those who have staked interests in the firm, the report of net income may not be as significant as statement showing income by products, department or division of responsibility. It is often the practice of company management not to disclose this valuable data showing the operational details of the enterprise to just any outsider. Thus, the income statement is a highly condensed document of what happened to the enterprise during the past period.

Expenses include the cost of all services, or goods and services required to earn the revenue, regardless of whether payment as yet been made for them. The amount shown for wages, therefore, includes wages owing to employees for work done since the last payday. Expenses also include an estimate of the cost of using fixed assets such as buildings, machinery, and office equipment for the financial period. This is what is known as depreciation expenses.

There should be a distinction between expenses and losses. In theory,

losses are non-productive expenditures or asset expiration that have no observable relation to either current or future revenue. Thus, the cost of mistakes, waste and unusual casualties or calamities over which there can be no control may be distinguished from ordinary operating expenses on the ground that the former are non-productive. For external reporting, minimum standards of disclosure require that material and unusual losses be disclosed in the income statements.

A troublesome problem in the reporting of income involves the proper treatment of extraordinary gains and/or losses and of prior period adjustments. These are gains or losses due to an event in the future, such as earthquakes, and an expropriation on or a prohibition under newly enacted law. General agreement exists however that these items if considerable, should be clearly disclosed. Not to be included in this category would be gains or losses on disposal of a segment of a business, write-downs of receivables of contract pricing. Neither is the effect of fluctuation in foreign exchange rates extraordinary.

3. Analysis of Income Performance

Most workers within the enterprise never have an opportunity to look into the actual computation of the firm's net income. The income statement that is open to the public is a highly condensed version of what actually happened in the company during the year. The outsider must be content with a general review of the relation between revenue, total operating expenses and net income. This usually requires careful analysis of gross profit and operating expenses ratio over a time period:

$$\text{Operating expenses ratio} = \frac{\text{Operating Expenses}}{\text{Net Sales}}$$

Analysis of income performance should always cover several periods not only because of the difficulty of measuring income year by year but also because it is important to know how a company performs in periods of both prosperity and adversity. Net income may be satisfactory in one year but be drastically reduced the next because of depressed business conditions.

4. Analysis of the Firm's Financial Strength

Earnings record of the enterprise is the primary indicator for its financial strength. In the face of an excellent earnings record, an unsatisfactory financial position would not lend credence to that record. Earnings therefore do not tell the whole story for the enterprise. A company's ability to meet its obligations, to withstand adverse business conditions, and the ability to shift resources to meet changing conditions – in short, its financial strength is an important factor to continuing survival growth. A trade union leader needs to verify any assertion by the management on the financial conditions of the enterprise. It becomes imperative therefore to also scrutinise the notes accompanying the financial statements

Lesson 9

The Broad Legal Framework for Collective Bargaining

The great of collective bargaining and the resultant agreements is that they provide a method for the regulation of conditions of employment by those directly concerned. The employers and workers in an industry know more about its conditions and problems than anyone else, and they are directly affected by the operation of the agreements. The terms of an agreement serves as a code defining the rights and obligations of each party in their employment relations with one another. The agreement fixes a large number of detailed conditions of employment. During its validity, none of the contents it deal with can in normal circumstances give grounds for a dispute concerning individual workers,

Basic standards are fixed and every worker knows that he cannot be required to work under conditions less favourable than those stipulated in the agreement. If the latter applies to a group of employers or to members of an employers' association, each employer knows that he is safeguarded by the basic standards it lays down from being undercut in labour conditions by his competitors in the group or association. The establishment of conditions by agreement is some guarantee that they will be as fair s practicable in view of the economic circumstances of the industry and the relative bargaining strength of the two sides.

Although in collective bargaining negotiations each side contests the attitudes and demands of the other, the processes of bargaining often leads to better mutual understanding. The employers gain a greater insight into the problems and aspirations of the workers, while the latter become more aware of the economic and technical factors involved in industrial management. The conclusion of an agreement is thereby facilitated.

One of the great merits of collective bargaining is that it provides a flexible means of adjusting wages and conditions of employment to economic and technical changes in industry. The parties can meet whenever necessary and can adapt the terms of their agreements to these changes.

Although collective bargaining is of primary interest to the workers and employers concerned and to their organisation, the levels of wages and labour cost resulting from all collective agreements taken together are also of vital concern to the whole community. They affect the level of prices the cost of living and the ability of the country to pay for its imports, and may also affect levels of employment. The first responsibility of those who participate in collective bargaining is to get the best bargain they can for those they represent.

In this regard, do the procedures take sufficient account of the interests of the community and the requirement of the national economy to enable it to move forward? This question is meaningful particularly if demands put forward by the trade unions in different industries are not in some degree coordinated by a central trade union organisation. This question is raised easily during times of high employment and rising prices. Most countries desire to combine full employment with reasonable stability of prices and with methods of wage determination that include free collective bargaining.

To achieve the aims required for national growth and at the same time attain full employment is not always an easy task. A combination or a package of government action, through monetary policy combined with fiscal measures or other means may of course have a bearing on the issues involved in collective bargaining and an indirect influence of its result.

1. The Bargaining Process

In explaining the many-sided nature of collective bargaining as a process, views include the marketing theory, the governmental theory, and the managerial or industrial relations theory. Examination of the problems in

the bargaining process makes use of these approaches as powerful tools of analysis, providing guides in the solution of problems in union-management relations.

The marketing approach points to a study of the law of contract and principles of as price-oriented economic systems as fruitfully applicable to bargaining systems. The government approach suggests a study of government, political party relationship and the nature of authority as most pertinent terms in analysing the process of bargaining. The industrial relations concepts on the other hand suggests the study of business processes and individual organisation as means of getting to the roots of problems in bargaining.

Each explanation contains important facets which, taken as a whole, contributes to a complete understanding as to what collect bargaining is all about. To some extent, they represent the stages of development of the bargaining process itself. The theories reflect the evolution of the process, implying certain stages in its recognition. Each explanation further repr4esent different conception of what the bargaining process should be, and as such they express value judgements. These approaches are not necessarily conflicting but they focus upon the variety of suggested solutions to labour-management problems and the over-all environment where collective bargaining takes place.

The marketing concept looks upon collective bargaining as a means of interaction between the buyers and sellers of labour. It is an exchange relationship, and many economists come to view the marketing theory as the most meaningful explanation in the behaviour of parties to bargaining.

The marketing theory views collective bargaining as a process to determine what terms labour will continue to supply against what employers will demand in the market. Employees are willing to continue to sell their individual labour only on terms collectively determined, and collective bargaining defines the terms of settlement of the sale. There is an assumption of equality between the sellers and buyers of labour. The reality however is that there exists and inequality in position between the workers and the employers.

Collective bargaining is supposed to remedy this imbalance, mainly labour's disadvantage. Collect action through the marketing process assumes to have restored some original equality of bargaining between workers and employers. By common action, workers could prevent themselves from being played off against each other.

Through time, collective agreement has been a document of the terms on which works area swilling to work in an enterprise. It is different from the labour contract under which an individual commits himself/herself to perform services within a certain time period for a specified wage. Failure to honour this commitment may render a person liable to as damage suit for breach of con tract. Some legal theorists think that the collective agreement on the other hand commits no one to give services, but merely assures that when a service is given, it shall be rewarded as provided for in the agreement.

The connection between marketing theory of the bargaining process and the view of the collective agreement as a contract is seen in the totality of obligations to both parties contained in the document. In the bargaining session, the union is deemed to have marketed the labour power of its members. The terms which it has secured are set forth in a binding contract, enforceable by the courts.

The Construction of the agreement as a contract requires strict interpretation and application. The term contained in the agreement represent the bargain. The agreement becomes a legal instrument when signed by the parties. As such, its clauses are to be honoured during the period of affectivity.

The marketing approach views the nature of a collective agreement as essential within the domain of laws governing contracts. A collective agreement is just one of several kinds of con tracts, which in general jurisprudence may not differ much from all the others in terms of implementation and interpretation. Like any other contract, it originates from an agreement, implies a promise, creates rights and duties, and is enforced, if need be by the power of the State.

2. State Regulation of Collective Bargaining

Collective bargaining is widely regarded as the most effective method of regulating conditions of employment. Yet in all countries there are many workers who are not members of trade unions, while in certain industries and occupations workers' organisations are not strong enough to win collective agreements effectively regulating conditions of employment.

In such cases the State has a duty to lie down by legislation basic standards for workers whose conditions otherwise be unprotected.

These standards are often of general application, but in most cases

they represent only minimum conditions. Industries and occupations where trade unions are strong enough, they are free to negotiate with employers for higher standards and also for the regulation by collective agreement of matters that do not lend themselves to regulation by law. On the other hand, it often happens that improved conditions, such as longer holiday with pay, are first won by the workers in key industries through collective bargaining and afterwards extended to all workers through the enactment of special legislations.

The State may enact legislation to make the processes of collective bargaining more systematic and effective. It may even decide that the provision of a collective agreement negotiated between certain workers and employers organisations shall be extended to other workers and employers in the same occupation or industry whose organisation are not parties to the agreement. In this way conditions of employment can be regulated through an industry or occupation in accordance with standards recognised to be a practicable by as a substantial number of workers and employers concerned.

The State may also set up special bodies to fix minimum wages and conditions of work in industries and occupation in which the collective bargaining process is not effective or not resorted to and where, without such regulation, the wages and working conditions of many workers would be unduly low. The procedures in these bodies are usually modelled as far as possible on those of collective bargaining by the inclusion of representative of employers and workers.

There are various ways in which the State can promote collective bargaining and assist in the implementation and enforcement of collective agreements. It can facilitate negotiations by laying down procedures for the workers to decide which union shall represent them in the bargaining process, and by making illegal certain unfair practices which may disturb or disrupt negotiations and create bad feeling between the parties.

Especially valuable are the facilities for conciliation and arbitration provided by the State to assist in the reaching of settlement when collective bargaining seems likely to fail to achieve results or when it has broken down and there is a possibility of conflict. Finally, the State may establish or help in the establishment of special machinery such as labour courts, arbitration boards, etc. to decide on questions relating to the application and interpretation of collective bargaining.

There is thus close interplay between collective bargaining and

legislation. The way in which they are interwoven in the fabric of industrial relations vary considerably from one country to another.

For this purpose, Salient Provisions of the newly enacted Manpower Act (Act. No 13/2003) follow:

3. The Manpower Act (Act. No 13/2003)

The salient provisions of the newly enacted Manpower Act on industrial relations follow:

a. Bipartitism and Tripartitism

1. In the course of industrial relations as stipulated under this Act, there is the term “Bipartite” as an institution and “Bipartite” as a system. As an institution, Bipartite means a body whose members comprise elements representing workers/labourers or labour unions, along with employers for a single period of time within a company. This is called LKS Bipartite.

In the event that within that company there is already a labour union, then upon the agreement of the workers, the representatives can be appointed from that labour union.

This Act does not automatically confer status to the labour union to sit as the representative of the workers in the Bipartite institution as:

- a. within a company, not all workers are members of the labour union;
- b. The LKS Bipartite as a forum providing suggestions and recommendations must have its members focused more directly on professionalism.

As a system, Bipartite means the meetings mechanism or the bringing together of the workers or labour unions on the one side, and the employers on the other side in a meeting, as an effort to reach agreement.

2. Suggestions, opinions, and considerations from the LKS Tripartite provide inputs for the government for determining policy in the manpower field. However, the government will carefully weigh all suggestions and opinions put forward by the LKS Tripartite.
3. The membership of the LKS Tripartite from among labour union elements (Article 107) basically adhere to the principle “the most representative” meaning representation according to the sequence of the highest number of members.

In order to determine the sequence of the actual number of members, a verification is conducted based on membership data of the labour unions involved.

b. Company Regulations

1. In contrast to previous arrangements, the obligation to draw up company regulations is the task of employers hiring at least 10 (ten) or more workers, but for companies employing less than 10 (ten) workers, they can draw up the company regulations voluntarily.
2. The purpose of drawing up company regulations:
 - a. there will be an amount of certainty concerning work requirements in the company as a guide for labour relations;
 - b. enhancing productivity and peace in the workplace that can eventually raise the living standards of the workers and their families.
3. The company regulations become effective after they are ratified by the Minister or other appointed official (*Article 108, point a*).

In accordance with government decentralization, the official named to ratify is an official responsible for the manpower sector of a district, municipality or province, or is an official from the Department of Manpower and Transmigration.
4. During the validity period of the company regulations, employers are obliged to accommodate the labour unions who desire to draw up a collective labour agreement, if the said labour unions have fulfilled the requirements for drawing up a collective labour agreement.
5. Validation of the company regulations by an official having responsibility over manpower affairs is limited to a period of time of at the most 30 (thirty) days. Within that 30 (thirty) day period, the official concerned may return any company regulation not meeting requirements back to the employer. In order to anticipate any late return of company regulations that have already been revised by the employer (within 14 days), in these cases sanctions may be imposed on the appointed official, and at the time that official inspects the said company regulations, he is obliged to provide guidance concerning its revision.
6. In order to avoid any lack of regulations for the company to follow, the employer in submitting a revision of company regulations must take into account the time period for the validation of those

regulations.

If the employer is late in submitting a revision of the company regulations, thus creating a lack of regulations inside the company, the employer is then considered not to possess any company regulations or is not providing revisions.

c. Collective Labour Agreement

1. The purpose of a CLA in a company is so that in the company there are no differing work requirements between one set of workers and another set of workers. Differences in work requirements will cause acts of discrimination which violate this Act and ILO Convention No. 111 against Discrimination.
2. Stipulations of work as mentioned in the collective labour agreement is valid for all workers, thus those work requirements must be approved by the majority (more than 50%) of workers in the company concerned. (*Article 119, paragraph 1*).
3. An over- 50% agreement level can be attained by:
 - a. a single labour union within the company;
 - b. a labour union not achieving a majority but receiving support from the other workers in that company through the process of voting;
 - c. a coalition of several labour unions.
4. In the event a coalition does not attain more than 50%, a team of negotiators will be represented by all the representatives of all the labour unions, in a proportional manner.

The stipulation to allow more than one labour union in one company to discuss the CLA with the Employers, even though their members do not attain the 50% figure, is meant as an effort to encourage and enhance the status of the CLA as an instrument determining the work requirements in a voluntary manner.
5. As the collective labour agreement is valid for all the workers in a company, then in the drawing up of a collective labour agreement, the labour unions winning the right must have the support of more than 50% of all the workers.
6. In order to prevent a vacuum in any arrangement of work conditions within a company, when the time of a 1 (one) year extension has expired, but there is still no agreement on a new CLA, then the work requirements in that company still will be based on the CLA that was

last in effect. (*Article 123*)

7. In this Article what is meant is that the collective labour agreements drawn up between the labour unions and the employers are in general better than the company regulations that were unilaterally drawn up by the company (*Article 131, paragraph 3*)
8. Registration of the CLA by the Employer at the agency responsible for manpower affairs is meant to:
 - Enable the agency in charge of manpower affairs to provide guidance in order to enhance the quality of the conditions of work;
 - To provide data on the number of companies having a CLA. (*Article 132*)
9. Bearing in mind that this Manpower Act is valid also for State-Owned Enterprises and Region-Owned Enterprises, the process of settlement of industrial relations disputes in those companies as stipulated under this Act is subservient to National Act No. 22 of 1957 and National Act No. 12 of 1964.
10. Strikes as a basic right of workers/labourers and labour unions are carried out after a breakdown in negotiations, whether as a result of the meetings ending in a deadlock or the employer is unwilling to continue negotiations.
11. As strikes are a basic right of the workers/labourers, they therefore cannot be instigated or participated in by non-workers and/or non-labour unionists. In the event of a strike being participated in by those who are not workers/labourers, all actions undertaken by them are also the responsibility of the strike guarantors. (*Article 137*)
12. Included within the category of inciting other workers/labourers to strike in violation of existing laws is included in Article 138 stating among others:
 - coercing/intimidating/threatening workers/labourers not originally participating in the strike so that those workers/labourers take part or do not carry out their work;
 - conducting deceptive practices/inciting the workers/labourers so that they are ensnared into participating in the strike;
 - obstructing other workers/labourers who are willing to work/carry out duties.

In the conditions above, there must be some courage among the workers/labourers to refuse to strike.

13. The time frame of 7 (seven) workdays before the onset of the strike is meant to provide adequate opportunity to the employers and the agencies in charge of the manpower field to strive for a settlement. If the workers/labourers conduct their strike before the time frame of 7 (seven) days prior notification has passed, there is a concern that not enough time was given to attain a hoped-for settlement, so that some undesirable consequences may occur. For that reason, the employer can take temporary action as a security measure by forbidding the workers/labourers on strike to enter the location of productive process activities or the company grounds. (*Article 140*)
14. Basically strikes are carried out at the work site or location and concerns the execution of the work relationship, however, workers/labourers can strike outside the work area and this does not create problems in the work relationship. For that reason, in the notification process the place and reasons for the strike must be mentioned. (*Article 140, paragraph 2, items b and c*)
15. Strikes cannot be allowed to linger on, bearing in mind that many parties lose in the process; thus in the case that officials in charge of the manpower field cannot settle the matter, there must be other authoritative institutions to immediately settle the dispute. The institution in this case is the Industrial Relations Dispute Settlement Agency. However, submission of the matter to that institution must be in accordance with procedures in effect. (*Article 141, paragraph 4*).
16. Submission of the problem to the institution does not automatically halt the strike. Continuation or cessation of the strike is based on agreement between the parties. (*Article 141, paragraph 5*).
17. The legal consequence of a strike in violation of the law and its sanctions will be determined through a Ministerial Decree. (*Article 142, paragraph 2*)
18. Wages continue to be paid during a strike in cases where: (*Article 145*)
 - a. The strike is legal, namely:
 - there has been notification within the stipulated time frame; and/or
 - for companies providing public services or involving the safety of human lives, the strike is conducted by workers/labourers who are off duty; and:

- the employer clearly is unwilling to fulfill the normative demands that have been determined and instructed by the officials of the agency responsible for the manpower field.
19. Lockouts (*Article 146*) are an action taken by employers to reject the workers/labourers' demands in whole or in part, in order to continue production, as a result of an industrial dispute.
- There must be differentiation from a company's closure as a result of bankruptcy or other reasons.
- A lockout is temporary in nature and can be ended when the dispute has been resolved, or an agreement has been reached to stop the lockout.
- Refusing entry to workers/labourers does not constitute or is meant as an action to terminate the work relationship.
- In the case of lockouts that are carried out legally, wages are not required to be paid (explanation of Article 146, paragraph 3).

Lesson 10

Political Conditions Essential for a Successful Collective Bargaining

1. A Favourable Political Climate

If collective bargaining is to be fully effective, a favourable political "climate" must exist. In particular, the government and public opinion must be convinced that collective bargaining is among the best methods of regulating certain conditions of employment. Collective bargaining has often been practiced in countries where the authorities have been hostile to it, and obstacles and restrictions have hampered it. In other countries the authorities have merely tolerated it without giving any positive encouragement. In such conditions, the establishment and maintenance of collect bargaining is a hard struggle and can only have limited success. In some extreme cases, collective bargaining has been eliminated entirely by the radical step of abolishing trade unions and employers' organisation, condition of employment being regulated by the State. Obviously wherever trade union s have been made illegal, there can be no collective bargaining.

In contrast, government in many countries actively encouraged collective bargaining. Removing legislative restrictions that may hamper it does this. Bargaining processes are facilitated through the provision of machineries for conciliation and arbitration, or by specifically conferring the right to bargain collectively, laying down rules concerning the form and contents of agreement, registering the, extending their application and assisting in their enforcement.

To effectively introduce gender equality demands at the negotiation requires commitment between union and the employer.

2. Freedom of Association

Freedom of association is essential for collective bargaining. Where such freedom is denied, collective bargaining is not practical and where it is restricted collective bargaining is also restricted. Freedom of association can be facilitated by the removal of legislative restriction on combination where they exist, leaving workers and employers free to form association as they please.

It should be remembered however that the removal of such restrictions does not necessarily imply that strong organisation of either workers or employers will in fact be formed and does not in itself confer any positive right to bargain collectively. It still leaves employers in a position to discourage workers from forming trade unions or to refuse to employ union members. Company-dominated unions may be set up to hinder the formation of free trade unions. In some countries union have, after a period of struggle, grown strong enough to prevent or greatly limit such attempts to deny or restrict freedom of association. In other countries, government have enacted legislation giving workers the right to form associations and making illegal any attempt by employers to interfere with this right. But in all such cases the law still leaves workers free to choose whether they will organise or not.

Freedom of association has its principal source at the Freedom of Association and the Right to Organise Convention of 1948 (No.87), of the International Labour Organisation. This Convention lays down a number of principles for guaranteeing workers and employers the free exercise of the right to organise in relation to the public authorities. The Convention specifies four basic guarantees in this regard. The first is aimed at ensuring that all workers and employers have the right to establish and join organisation of their own choice without previous authorisation. The second

gives the organisations the right to draw up their constitution and rules, to elect their representatives in full freedom, to organise their administration and activities, and to formulate their programme. The third protects the organisation against dissolution or suspension by administrative authority. The fourth grants the organisations the right to establish and join federations and confederations and to affiliate with international organisation of workers and employers.

3. Stability of Workers' Organisations

Workers may have freedom of association but unless they make use of that right and form and maintain stable union, collective bargaining will be ineffective. If an organisation is weak, employers can say that it does not represent the workers and will refuse to recognise it or negotiate with it. It is vital that union take action to strengthen women's participation in trade union activities. Before entering into an agreement with a union, employers will want a reasonable assurance that it will be able to honour its undertakings. And this implies both that the union can exercise authority over its members and that its membership sufficiently stable. If the latter fluctuates widely, at time covering only a small fraction of the workers, it cannot be considered as a reliable instrument for collective bargaining. In the early stages of trade union organisation in any country, industry or occupation the smallness and instability of union membership is one of the main reason for the infrequency of collective bargaining. This is particularly true in many occupations in the under-developed countries.

Before recognising a union, employers sometimes demand evidence that it has enough members to justify entering into collective bargaining with it. As mention earlier, a frequently used test is the number of member who are in good standing (i.e. who regularly pay their dues to the union). This test is applied where official recognition carrying with it the right to bargain on behalf of the workers, is to be granted to a union.

Rivalry between unions is often a cause of instability in workers' organisation. Each of several unions recruits some of the workers but no one union is really representative. Employers will often refuse to bargain while such issues are unresolved on the workers' side, arguing that the workers must first put their own house in order before they can reasonably claim the right to bargain collectively.

4. Recognition of Trade Union

Even assuming that freedom of association exists and that the workers have established stable organisations, collective bargaining cannot begin until employers recognise the organisations for that purpose. Employers will give such recognition only if they believe it to be in their interest or if they are legally compelled by judicial decision to recognise the union.

Ponce a trade union is organised, employers may decide that it is in their interest to recognise it and negotiate with it.

Otherwise, they may be faced with strikes, and the ensuing financial losses may be far greater than the cost of any concessions on wages and conditions they may have to make in negotiations with the union. The granting of recognition may also have the positive benefit of improving industrial relations, and this may react favourably on production.

A group of employers or an employers' organisation may find it to their advantage to recognise trade union not only because recognition could be a means of avoiding losses from strikes, but also because agreement negotiated would regulate conditions of employment for all the employers and thus safeguard all of them against competition by undercutting labour standards.

5. Willingness to “Give and Take”

The fact of entering into negotiations implies that the differences between two parties can be adjusted by compromise and concession in the expectation that agreement can be reached. Obviously, if one or both sides merely make demands when they meet there can be no negotiation or agreement. Consequently, at the start each side normally puts forward claims that are intended to provide a basis for bargaining, and as the negotiations proceed one side will agree to reduce demand on one item in return for some concession by the other side.

The art of bargaining is for each side to probe the other to find out its strength and weakness. On some points one side may be unwilling to depart much from its starting position, whereas on the other its attitude may be more flexible. The attitude of the other side is probably similar, though the points on which it is relatively rigid or flexible may be different. In these circumstances, the two sides have considerable room for manoeuvre and for “give and take”.

Willingness to “give and take” during negotiations does not necessarily mean that concessions made by one side will be matched by equal concessions from the other. One side may make greatly exaggerated demands that it will have to tone down considerably if agreement is to be reached. Also depending on the relative strength of the two parties, economic conditions at the time and skill in negotiation, one side may win more concessions than the other.

6. Bargaining in Good Faith

In some countries “bargaining in good faith” is based on definite social prescriptions and legal axioms. In these countries, bargaining in good faith requires the employers, among other things, to make counter proposals, to meet with the union to disclose information, and to refrain from negotiating with workers not included in the bargaining unit. They are also expressly enjoined not to engage in “unfair labour practice” as defined by law, in the course of negotiations. “Unfair labour practice” on the part of management would include the following: interference in the internal affairs of the union, bribery, discouraging workers not to join a labour organisation, contracting-out services of functions performed by union member to undermine their organising activities, discrimination in hiring practices, and violation of the collective agreement. On the part of the union unfair labour practice would include: coercion of employees in their right to self-organisation, refusal to bargain collectively, promotion of discriminatory practices in the enterprise in the ground of gender, bribery, and violation of the collective agreement.

In other legal systems however unfair labour practice on the side of labour is not recognised, and this causes resentment among the employers.

The question of how far the employer or the union can insist in laying down the rules for the bargaining session such as number of participants, their qualification and the time, duration and location of meetings is also a matter of mutual trust, and even protocol. Taking these details light-heartedly can sometimes cause serious conflict between union and management. With superficial reasons of protocol, the employer can refuse to bargain, claiming for example that the union delegates behave impolitely or used intimidating language. This violates “protocol” and implies the non-existence, or violation of “good faith” between the two parties.

Employers and trade unions have a direct responsibility in applying the principle of equal pay for work of equal value. For example, they could

ensure that collective agreement do not contain provisions contrary to this principle, and review, where necessary, existing wage determination practices to ensure that criteria for job classification and evolution are free from any sex bias.

Employers would sometimes impose rules on the bargaining sessions, restricting the number of participants from the union, and limiting the duration of each session as a psychological strategy of showing-of that it has the upper hand. Legal questions however arise: whether a refusal to bargain is justifiable due to lack of rules governing bargaining session or because there is no “good faith” between the two parasites. In enterprises that have long experience and good standing in industrial relations, such rules are either laid down in written agreements or established by practice. Only then could bargaining in good faith really take place.

7. Factors Likely to Influence The Success or Failure of Gender Equality Bargaining

Research has identified a number of factors that are likely to encourage or discourage gender equality bargaining:

Factors relating to trade unions include: (a) the extent to which women’s voice is heard within the union, including women’s proportion of the membership and their participation in the union; (b) the extent to which women have power within the union and the extent to which those in power (men or women) have a commitment to equality; (c) the importance attached to equality bargaining in the union; (d) the existence and nature of the policies and structures to give this effect.

Factors relating to employers (at the company level) include: (a) labour market and competitive position; (b) workforce composition (including proportion of women); (c) actual or desired employer image; (d) management style and culture; (e) identity and role of key individuals within the organization, including matters of ownership and control.

Factors relating to the nature and structure of collective bargaining within an organization: (a) the extent of recognition afforded to the union by the employer; (b) the quality of the bargaining relationship; (c) the nature, power and discretion of the negotiators; (d) the way in which bargaining agendas are constructed; (e) links between equality structures in employer or union organizations on the one hand and negotiation structures on the other; and the relationship between the different bargaining agents/units.

Lesson 11

The Structure of Collective Bargaining

1. Structure of Collective Bargaining

Collective bargaining may take place between one or more unions and a big corporation that has a number of plants in different parts of the country. Management may bring a representative from each of the larger plants to take part in the negotiations with the representatives of the union or unions. Alternatively, the negotiations may be between one or more unions and a number of undertakings all operating in the same locality, and these undertakings will have to decide on a common policy before collective bargaining takes place.

The problem of representation and the co-ordination of policies are greatest when collective bargaining covers the whole of an industry in one country, particularly in countries where trade unionism has grown up over the years with no single uniform pattern. In a single industry there may be several craft unions of skilled workmen, one for each occupation, and these separate unions may be national in scope. In addition some of the workers in the same industry may be organised along industrial lines in a union membership which is open to any worker in the industry concerned, whatever level or skill. There may also be workers in the industry that belongs to one or more unions of general workers whose membership is drawn.

But before embarking on collective bargaining for the promotion of gender equality at the national levels, unions should be aware of and take into account other forms of social agreements that have been developed and adopted with the direct participation of union representatives. For example, there could be national tripartite agreements on the promotion of gender equality; such agreements in some cases can have a similar impact to national law and cover all workers in a country.

2. Appropriate bargaining unit

A bargaining unit is an area of employee representation for purposes of collective bargaining. In most countries, it is a matter of law that a bonafide labour organisation that can show that it has majority of employees in the appropriate bargaining unit as members is automatically entitled to exclusive bargaining representation rights. Such union is the bargaining representative of employees in the bargaining unit for collective bargaining purposes in

the enterprise.

The equivalent obligation for enjoying exclusive bargaining rights is the employee organisation's legal obligation to bargain collectively and administer agreements applying to all employees in the unit. A problem however arises in the interpretation of the employees' right to be represented by "unions of their own free choosing," provided for in organic laws in many countries.

3. Bargaining at the Local and National levels

In countries where much collective bargaining takes place at the local level between one or more local employers and a local union (which may be affiliated with a national union) the problem arises as to how much freedom the local union may have in the negotiations and to what extent it is bound by policies adopted by the national organisation. Similar problems may also arise in countries where collective bargaining is carried on at a higher level than that of the enterprise or plant.

Before beginning any bargaining process, trade unions should analyse the particular context where the bargaining is to take place – so as to be able to articulate appropriate action and to be more effective in achieving desired results. For example, unions should not forget that agreements at company, sectoral or national levels that cover gender issues can have considerable impact in terms of establishing minimum standards.

One solution which some unions adopt is for the central organisation to lay down general standards and principles for the guidance of local branches or unions in the bargaining, leaving the local branch or union considerable freedom provided that conforms with those principles and standards. The local branches or unions may already have been associated with the framing of these policies and standards in so far as they have been present at the central meeting that adopted them. In some local collective bargaining conferences, a representative of the regional or national headquarters of the union will attend to assist the representatives of the local branch or union in their negotiations with the employers. In some unions approval of local agreements by the national body is required before they can be ratified and made effective. There are wide differences between organisations as regards the degree of freedom given to local branches or unions, but frequently the tendency is to increase the authority and control of the central body. When collective bargaining takes place at the national level each side devises its policy and formulates its claims by consultation with its members.

Thus local branch or unions will send delegates to meetings where they discuss with the senior officers of the union the demands to be made and plan of campaign. The delegates express the views of the rank and file in each area at these meetings, which enable the officials at headquarters to ascertain the general attitude of the members. In many unions there is a tendency for the influence of the national leaders to grow stronger, though in reaching their decision they must take careful account of local opinion and be sure of support through the union.

Some unions require that their members before coming into effect shall submit agreements negotiated by their representatives for ratification. Sometimes draft agreements must be submitted for approval to a meeting of delegates from the branches. This situation sometime gives rise to awkwardness for both sides, when what both have agreed at a higher level gets to be rejected at pant level. The same is true of employers' organisation which requires that what has been agreed at the negotiating table should first be submitted for approval by the individual employers.

Other unions in some countries have it to the negotiating panel the responsibility of negotiating provisions along the general lines of demands approved by the general membership. Some unions, in order that their representatives may be in a strong bargaining position may give them authority either before bargaining begins or at a critical stage the negotiations to call a strike if they cannot secure a specified term. This however may not always be desirable as the bargaining is then conducted with the threat of imminent conflict hanging over the proceedings.

As unions and employers' organisations grow in size and become national federations, they tend to employ trained economists and other research workers on their national staff. These researchers compile facts on the cost of living, economic conditions and the particular aspects of the industry or enterprise. They determine wage levels in other industries and occupations and prepare statements to assist the negotiators. The collection of actual information to back up the negotiations process would tend to narrow the margin of difference between the two sides and enable agreements to be reached easily.

4. Industry–Wide Agreements

Special problems arise when collective bargaining and agreements cover a large number of enterprises and area industry-wide.

MODULE TWO



WAGES AND RELATED FACTORS

Lesson 1

Wages on the Enterprise, Industry and National Level

One of the more highly debated subjects in collective bargaining is the area of wages. Simply defined, wages are payments for services rendered. However, wages may vary in scope and levels. Wages may cover both the formal or industrial workers and the informal or the agricultural sector; the subject may also be viewed from the enterprise, industry or national levels.

A number of criteria in wage setting have been followed. Among them are the measures of equity, need and contribution. The amount of wages given to workers have not only been determined through collective bargaining but also through the process of arbitration, industry boards, national minimum wages fixing, or in some cases regional minimum wage fixing.

Inequality in pay or remuneration is perhaps the most persistent form of discrimination between women and men. The wage gap between women and men remains significant, and in some countries it has widened in recent years. Equal pay between women and men for work of equal value needs to be perceived as a priority by governments, employers and trade unions, so that every effort can be made to implement fully the equal remuneration

convention, 1951 (no. 100).

Wages cannot be isolated from other related factors. These may be the level of productivity and the practice of job evaluation in the enterprise level; and the industry and national incomes policy from the macro-economic perspective. The international situation, likewise, contributes to the determination of prevailing wage levels in the country.

It must be remembered that wages are not only determined through collective bargaining but also through government legislation. Equal treatment of the specific areas is given.

It is well known that women earn less than men do. The cause of the gap, however, is not well understood. There are at least three major economic explanations of the wage gap: human capital, pure discrimination, and “crowding”. The crowding explanation simply means that women are very much crowded into relatively few occupations, presumably low wage and less desirable ones.

1. **What is a Wage?**

The International Labour Organization (ILO) Convention No. 95 regard wages as:

“Remuneration, however, designated or calculated, capable of being expressed in terms of money and fixed by mutual agreement or by national laws or regulation which are payable by virtue of a written contract or employment by an employer to an employed person for work done or to be done or for services rendered.”

ILO Convention No. 100, on the other hand, considered remuneration to include:

“The ordinary basic, or minimum wage or salary and any additional emoluments whatsoever payable directly or indirectly, whether in cash or in kind by the employer to the worker and arising out of the workers’ employment.”

Wages, are, thus any kind of payment arising out of the work contract regardless of the type of employment and the denomination. They represent the income received by the worker in exchange for his/her labour. Wages may further be given either in cash or in kind, or both in cash and kind.

Although wages maybe defined as income payments, the involved sectors – the employers, the workers, and the government have somewhat

different views regarding the subject.

To the employers, wages are costs for use of labour services. They are a component of expenditure, an item in the cost of production. As part of the labour cost, wages affect management's competitive position thru increase in the cost of production, the efficiency of the workers and the profitability of the company's operations.

To the workers, wages stand as a major source of income. Wages may be the only means of livelihood affecting the workers standard of living, status in the community and future economic security.

The government is, likewise, concerned with the level and movement of wages. They consider possible effects on the socio-economic life of the community in particular and the nation in general. Wages represent a part of the nation's purchasing power that determine to a large extent the direction of national economies.

2. Wages and Earnings

For some workers, wages constitute their total earnings. For the more prosperous ones, wages are just a part of the total income earned.

Added to the basic wage received are allowances, bonuses, premium payments, paid leaves and other fringe benefits that may come in the form of cash and kind.

The ILO, in their manual on methods entitled *An Integrated System of Wage Statistics*, suggested a list of the components of earning classified as direct wages, remuneration for time not worked, bonuses and other payments in kind.

Components of Earnings

- I. Direct wages and salaries
 1. Pay for normal time work
 2. Premium pay for overtime and holiday work
 3. Premium pay for shift work, night work, etc. where these are not treated as overtime
 4. Incentive pay (production bonuses etc.)
 5. Other regularly paid bonuses (like 13th month pay in some countries)
 6. Family allowances paid directly by employer
 7. Cost-of – living dearness allowance
 8. House rent allowance paid directly by employer

- II. Remuneration for time not worked (in cash)
 - 1. Annual vacation and other paid leaves, including long service leave
 - 2. Public holidays and other recognized holidays
 - 3. Other time off granted with pay

- III. Bonuses and gratuities (in cash)
 - 1. Year-end, seasonal and other one-time bonuses
 - 2. Profit sharing bonuses
 - 3. Additional payment in respect of vacation, supplementary to normal vacation pay, and other bonuses and gratuities

- IV. Payment in kind
 - 1. Payment in kind for food and drink
 - 2. Payment in kind for fuel
 - 3. Imputed rental value of free or subsidized housing
 - 4. Other payments in kind (footwear, clothing, etc)

With the variability in the proportion of the components of total earning, certain sectors propose the modification of the composition of wages. Some sector would want the integration of allowances as part of the basic wage. This may prove advantageous to some workers since certain incentives and privileges are based on the level of basic wages. On the other hand, certain issues may prop up. The arrangement may mean additional taxes to pay.

The list of suggested issues for bargaining is not set out in any particular order. Each union (which has women's workers representatives) should find its own entry point into equality bargaining. This would depend on the social and legal context, and most importantly, on what the women themselves choose as priorities.

Lesson 2

Wage Criteria

General level of wages refers to the average earnings of the workers employed within the enterprise in relation to the wages and incomes received elsewhere or the cost of living. Wage structure pertains to the relative wage

position of different workers within the enterprise. Wages system include the methods of rewarding the contributions of particular workers or groups of workers or and of establishing various elements that normally comprise total earnings.

ILO Convention No. 131 sets some criteria for determining the level of minimum wages. Among other, the following must be taken into consideration –

“The need of workers and their families; the general level of wages in the country; the cost of living and changes therein; social security benefits; the relative living standards of other social groups; economic factors including the requirements of economic development, levels of productivity; and the desirability of attaining and maintaining a high level of employment.”

The most common used criteria in determining wage levels may be summarized as –

1. measures of equity – comparable wages
2. measures of need – cost of living, living wage, purchasing power
3. measures of contribution – ability to pay, productivity

The workers’ group generally employs the living wage and the purchasing power criteria. Both use the remaining standards; the employer and the workers as grounds for wage determination.

1. Measures of Equity

The underlying principle for the criterion on equity is the principle of equal pay for equal work.

In accordance with convention no. 100, all workers should have the right to receive equal pay for work of equal value, and this principle should apply to all elements of remunerations, including non-wage benefits.

Within the enterprise, workers belong to different occupation groups and possess varying skills and qualifications. Workers doing the same type of job and endowed with similar skills necessarily would demand for an equal pay.

For many people, the notion of equal pay implies that women and men should receive equal pay only when they are performing exactly the same work under identical conditions, with the same qualifications and

experience. However, to define equal pay in such a way would seriously limit its application.

External to the enterprise would mean an examination of prevailing earnings, wage structures, compensation systems in comparable enterprises and industries. Comparable means they have relatively the same work force, capital, production, sales etc.

In view of this, it was deemed preferable to adopt the principle of equal pay for work of equal value, assessed on the basis of common criteria. The main problem here is that of establishing criteria for assessing the value of a particular occupation. Value can be assessed from the point of view of work content, complexity and responsibility. These criteria can undoubtedly be combined, bearing in mind that the more complex the job the rarer it will be on the market. But they can also conflict. Take, for example the case of an enterprise in which certain secretarial jobs mainly performed by women and technical jobs in which men predominate have been assessed as being of comparable value. They should, from the point of view of work content, be paid at the same rate. However, if there is a shortage of one or other of these types of jobs on the market, they should, from the market point of view, be paid differently. This is one of the problems raised by the application of the principle of equal pay for work of equal value.

It is a common practice for enterprises to have a wages structure as close as possible to the industry average. Wage must remain at a competitive level within the industry where the enterprise belongs. The practice attracts and retains better workers, while ensuring the product to be sold at competitive prices.

Applying the principle of comparable wages appear to be more difficult across industries rather than just applied to given work place or enterprise. Whatever, the difficulties encountered, prevailing wages would always be a relevant criterion. Employers would always regard the standard as important for if force to negotiate higher wages then its competitors would place the enterprise at a competitive disadvantages because of increased labour cost. The worker would always feel desolate if he/she is not paid equitably in relation with other worker, union members or with workers in another industry with similar type of work.

The adoption of the principle of equal value also raises the question of indirect discrimination. This appears when there is inequality of treatment, based not on gender as such, but on the criteria that are used in relation to work typically performed by women and work typically performed by men.

Thus, the criteria for promotion may be such that women, or workers in jobs where women predominate, are less likely to be promoted than men. The skills associated with female-dominated occupations may be systematically downgraded, or, conversely, certain benefits or bonuses may be paid only in the case of male-dominated occupations. Similarly, part-time jobs, in which women predominate, are undervalued and underpaid. This type of discrimination, which is largely attributable to the fact that women are concentrated in certain occupations or sectors of activity, explains why the average wage for women is lower than that for men. Therefore, both bargaining parties, union and employer, should implement the equal pay for work of equal value.

2. Measure of Need

The criteria classified as measure of need include the living wage and the cost-of-living index. They reflect the needs of workers in coping up with daily living.

The living wage represents the minimum budget an employee needs for a decent standard of living. It is the amount of sufficient to maintain a family of average size.

Although the idea of a living wage appears quite vague, approximations have been made in many countries regarding its make up. Some of these estimates have been computed by government ministries, wage councils while the others have been the results of studies conducted by the private sector.

Food cost estimate include the determination of specific nutrients and the specific food groups needed for a health diet and the quantities required per day. The resulting estimates of the average cost of daily nutritional requirements are then obtained for the reference families of various sizes. Simultaneously, estimates of the amount of income required for the purchase of other necessities in life in addition to food requirement are computed. Patterns of actual expenditures of households for various good and services may be employed in the process.

Where the living wage is the minimum subsistence level, the cost of living represents the actual standard established by statistical measurement.

Changes in the cost of living provide the basis for certain age adjustment. Wage adjustments are important to the time. It is generally expected that wage changes in the cost of living over the same period. Debates, thus,

focus on – the measurement of changes in costs; and the extent to which it can or must be compensated.

Changes in the cost of living are normally measured through the movements in the *consumer price index (CPI)*. In general, the index number is a single statistical measure indicating any relative change over time in the prices, quantities or values of items produced, marketed or summed. Consumer price index, in particular, measures the average change in the retail prices of a fixed basket of goods and services called the “market basket” purchased by an average household.

Retail prices of goods and services used in the construction of the CPI are normally collected from principal markets and trading centers in the metropolitan areas outside of the metropolis – the outskirts of the country. The items included in the market basket may be classified into various groups- food, housing, clothing, fuel light and water and other. Each may have a separate index and all items index combining the various group indices.

The purchasing power of a particular currency reflects the actual amount of goods and services the currency can buy. Real wage, on the other hand, indicates the actual basket of goods and services that the money wage or the salary of the workers can purchase. In other words, when pitted against the CPI, the changes in the prices of goods and services are reflected.

In some cases price adjustments are made through changes in basic wage rates. For others, cost-of-living allowances are covered in the compensation package. Escalator clause in CBA may be specified. In this connection the process entails systematic wage adjustments through predetermined rules that directly link money wages and the consumer price index. For instance, union and management may agree that when the CPI increases by 10%, there will be a corresponding 10% increase in wages. Or else, a certain amount of money be given, or a combination of a percentage increase and a flat sum. The adjustments may be in equal percentages or just partial compensation for the priced increases. Added to the computation consideration are the coverage and timing of wage adjustments.

Whatever adjustments are made, the arguments on the relationship of prices and wages remain.

3. Measures of Contribution

The third criterion for settling issues regarding wages involves the

examination of how much the employer can share—capacity to pay; and how much the workers can contribute—labour productivity.

Ability to pay is taken as synonymous with the enterprise's degree of prosperity. Claim for higher wage is based on the profits or surplus that the enterprise earns. The surplus reflects the income of the enterprise after it has subtracted the cost of production, including wages.

Approximation of the enterprise's ability to pay entails an examination of published company financial statements. In wage negotiations, the most informative features of company accounts are the balance sheet and the profit and loss statement. The Balance sheet reveals the assets—property, bank and cash balances, receivables; and the liabilities of the enterprise at the end of the financial year covered. The other account shows the income and expenditures, the profits gained and losses incurred by the year. These company accounts must be studied over a period of years. The process establishes certain trends in company operations.

Likewise, analysis of the capacity to pay is not limited to the enterprise level but may expand to the industry and even to the national economy. For enterprises operating on foreign markets, the ability to pay would also take into account foreign exchange processes.

The *productivity* criterion stems from the idea that a more productive worker must be better compensated than less industrious one. Also it is a fact that increased productivity leads to increased ability to pay by the company.

Labour productivity simply refers to output measured in physical units per man-hours of work. It is a measure of the relationship between the volume of goods produced and one factor of input of production –labour time.

It is, however, difficult to single out a particular factor to increase productivity and the exact contribution of labour to it. Improve productivity may be attributed to together elements apart from increased efficiency of labour. These may be a more efficient utilization of fuel, more economical materials, and technical improvements in machines, organization and process.

For some, productivity – wage indexation have been undertaken. This entails a closer examination of productivity changes and establishing wage adjustments accordingly. Others have not directly related productivity with wage increases, but rather incorporate the change thru incentive bonuses.

4. Wage Demands

Wage demands may be based on the identified criteria – comparability, decent standard of living, cost of living, and ability to pay and labour productivity. While the workers wage demands may be primarily based on their basic needs for food, clothing, shelter, health and education; the employers' willingness to raise the level of wages largely depends on the competitiveness and the profitability of the enterprise.

Lesson 3

Wage Determination

Wage determination presupposes certain givens in the environment – the presence of differing income levels, the conditions in the labour market, the prevailing economic conditions in the enterprise, industry and the nations.

In general, in a competitive economy, wages are determined through the interplay of market forces. Supply and demands forces set the “going rate” or the level of pay of workers. The rates are set high or low depending on the number of workers applying for and able to do a number of vacant jobs.

The labour market is not to be taken apart from the other prevailing economic conditions. Many different types of jobs calling for varying degrees of skill, experience, responsibility, physical and mental effort creates varying income levels within and without the enterprise. Within the enterprise – personal, occupational, sex, differentials; differentials for handicapped, older workers; product and business differentials; or hazardous work differentials may characterize the internal wage structure. Outside of the enterprise, there are the industry and national levels. The external wage structure may have inter-industry intra-industry, urban rural, union –non-union, geographical type of differentials.

Module I earlier discussed the economic conditions from the macro perspective affecting collective bargaining. And for that matter wage negotiations. Some of these include the existence of dualistic economies, problems of unemployment, landlessness and inflation in developing countries.

From these givens, various means of wage determinations are followed. They can be strategically divided into wage determination thru:

1. employer-worker(s) negotiations
 - a. individual agreement
 - b. collective bargaining agreement
2. the inclusion of a third party in wage negotiations
 - a. arbitration
 - b. industry boards
 - c. national minimum wage fixing

1. Individual Agreements

Wage determination thru individual agreements is synonymous with personal bargaining. The methods may vary but the distinct feature of this type of bargaining is that the employer deals directly with the prospective or employed worker.

It is common practice for employer to announce job openings specifying the nature of the job, the type of skills needed, the wage rate. In coming up with the wage rate, the employer may consider conditions in the labour market, his/her ability to pay and the value of the worker to him/her. Notice may be made available to the other workers in the enterprise and through the media. Labour Ministries and some private organizations may also have published placements. The employers usually have specified rate ranges. The prospective worker may sometimes have minimal stand on the rate. The rate is accepted once the worker is hired.

Individual agreements present certain limitations in wage negotiations. More often the employer ultimately decides for the individual workers. Alone, he/she is the seeker thus putting him/her on a somewhat disadvantageous position.

2. Collective Bargaining Agreements

With the relative weakness of worker in individual negotiations, wage bargaining through workers' organizations have become a more preferred process.

Collective bargaining may cover the enterprise, the industry or even

the entire country. Whatever be the scope and coverage, the determined wage levels are written in a collective bargaining agreement.

Trade unions may just have the workers within the enterprise as their members. The membership can extend to a group of enterprise that may cover an entire industry or a number of industries. The workers organization may likewise be an independent local union or affiliated with a federation.

Whatever the size of the respective organizations collective bargaining still projects a bipartite process. The employers and workers till have their own respective views and opinions on wage issues. Some of these may include level of wages, qualifications, stability of payments and the wage differentials.

3. Arbitration

When the employers and the workers cannot settle wages, third party intervention becomes necessary in the negotiation. Conciliation, mediation and eventually arbitration are resorted to. (see further discussion in Module V).

A conciliator, very often a government authority, helps the parties involved to arrive at an amicable settlement. When no settlement is reached at this level, voluntary or compulsory arbitration is employed in wage determinations.

In *voluntary arbitration*, both parties agree to refer the wage deadlock to a person or group of persons nominated by them jointly. Both parties present their respective arguments with the corresponding justifications. The arbitrator then specifies the award in terms he/she considers to be socially just, economically sound and to the best of the interest of the parties concerned. Strikes and lockouts may occur if there is still no acceptable decision.

In *compulsory arbitration*, the government intervenes. Both parties are required by law to appear before the arbitrator and present their arguments. Strikes and lockouts are prohibited. (A deeper discussion of this subject appears in Module V).

4. Industry Boards

ILO Convention No. 26 calls for:

“the creation of minimum wage fixing machinery for trades in which

no arrangements exist for the effective regulation of wages by collective agreement or otherwise and wages are exceptionally low”.

Apart from negotiations, certain advanced countries have set up separate wage boards for each industry or a group of related industries. Membership in these boards is normally tripartite, consisting of equal employers and workers representative and some independent member one of whom is chairperson. The government appoints, after some consultation with the respective groups.

The board examines the economic and labour conditions in the particular industries and recommend minimum wage rates. The varying condition of the industries may result to different rates.

5. National Minimum Wage Fixing

ILO Convention No. 131 provides –

“the establishment of a system of minimum wages covering all groups of wage earners where terms of employment are such that coverage would be appropriate”.

Many countries have legislated laws empowering the government to fix a national minimum wage. National bodies or councils composed of employer, workers and government representatives review periodically wage levels. They consider the cost of living, the economic condition in their recommendations.

Minimum wage provides the foundation for the wage structure of the country. In some, distinction is made of agricultural and non-agricultural workers. Whatever, these fixed wage rates represent the floor level, thus, any wage negotiation on an individual or collective process, must raise the bare minimum.

Lesson 4

Wages and the Economy of the Enterprise

1. Wages as a component of Production Cost

In the process of producing a certain commodity, the enterprise entails

production cost. Production cost normally includes the cost of the inputs or the factors of production. Generally production costs include payments for land, labour, capital, materials, entrepreneurship and other overhead expenses. All of these factors are essential for the completion of the product.

From the list, labour poses as just one of the elements of production, and wages is just one component of labour cost. The rest of the elements may be classified as fringe benefits. More often the total cost entailed by the fringes affects the level of wages. Some relationship does exist between wages and the other earnings of the worker, all because they are part of labour cost.

The cost of job creation and the training of workers as well add up to the labour cost. More often, to upgrade their skills, the workers have to undergo either on-the-job training or attend formal courses in training institutions. Sometimes, the company creates new jobs to live up to the technology needs and the developments in the industry.

Arriving at an appropriate level of wage proportion to total production cost and eventually to company profits entails a careful analysis of relevant data, the company conditions as well as the attitude of employers and the workers towards wages. Wages are as much a controversial subject as profits are, that a deeper and a more critical examination of the economic condition of the enterprise are relevant.

2. Wages and Productivity

Productivity has been defined as the ratio between output and inputs. Labour productivity in particular refers to output per man-hour.

On a broader perspective, it is commonly accepted by employers that the productivity of workers can be improved if they are given monetary incentives. This means that workers are compensated by increased productivity above a set productivity norm. This is reflected in the application of wage incentive systems.

For women workers, the issue is not only the wage incentive systems that could increase productivity. But it seems that they face more complex phenomenon the world of work. Thus all efforts for the advancement of women in such areas as education, health, science and technology, politics and decision-making, will result in the improvement of women's productivity.

Wage incentive systems can be broadly classified into individual and group incentive systems. From the context, individual incentive system

connotes individual worker's bonus based on his/her sole productivity performance while group incentive system depends on group performance.

The classification implies that individual incentives fit for workers who are solely responsible for a particular job and that his/her operation does not depend on other work stages. Group incentives are naturally applicable to jobs performed through team efforts.

Productivity bonuses are usually based on production quotas. Quotas are set, computed from the average output of an average worker. Workers with outputs exceeding the set quotas merit premium payments. Generally, the employers unilaterally decide on the quotas as well as the incentives to be given. In some instances this matter becomes one of the issues taken up during collective bargaining negotiations.

3. Wages and Job Evaluation

In an enterprise where different jobs are present, problems arise in the determination of the "right" amount of pay a job should be given. Where several jobs are involved, the problem becomes more complex and questions such as the following have to be answered:

- a. Which jobs should be paid higher than other jobs?
- b. How can the relative worth of a job be determined in order to assign them the proper wages?
- c. Can there be an objective method or technique of "measuring" jobs to the satisfaction of both labour and management?

One workable solution to these problems would be the institution of job evaluation.

Simply defined, job evaluation is a technique used to measure the relative value of jobs in the enterprise. It is intended to ensure that the money available for wages be equitably distributed on the basis of the type of service rendered.

Job evaluation, which provides a way of systematically providing compensation on the basis of job content without regard to the personal characteristics of a worker, has increasingly come to be considered as the best way to resolve wage discrimination. However, to be effective they have to include appraisal criteria that would be relevant to the work mainly carried out by women. For equality purposes, ensure that job evaluation systems are "gender neutral".

A job evaluation program has the following objectives:

- a. to provide a record of all job requirements in order that the company shall have a sound basis for selection, placement and training of personnel;
- b. to reclassify, part or all of the job classes with salary rate ranges according to prerequisites, skills, responsibilities, efforts and working conditions;
- c. to help eliminate ;or minimize inequities;
- d. to provide a plan of progression and promotion within the firm or enterprise;
- e. to provide a framework for periodic review and fair appraisal by management of the work of each employee; and
- f. top increases job satisfaction and reduces possible causes of conflict.

The principle of equal pay for work of equal value means that rates and types of remuneration should not be based on an employee's sex, but on an objective evaluation of the work performed. This principle can be implemented by some practical measures:

- Job classification systems and pay structures should be based on objective criteria, irrespective of the sex of the person who perform the job;
- Any reference to a particular sex (or group) should be removed from all remuneration criteria, collective agreements, payment systems, salary schedules, bonus systems, benefits plans, medical coverage and other fringe benefits;
- Any remuneration system and structure which has the effect of grouping members of a particular sex (or group) in a specific job classification and salary level should be reviewed and adjusted to ensure that other workers are not performing work of equal value in a different jobs classification and salary level.

Methodology in rating the jobs in an enterprise are classified into non-quantitative an the quantitative methods:

- a) *Ranking method (non-quantitative)* – Jobs in an enterprise are arranged in the order of their importance or complexity, comparing all jobs as a whole. The most important or most complex job is given as rank of “1” and the next one ranked “2” and so on. The last

number that coincides with the number of jobs being evaluated will rank the least important or least complex job. If several raters do evaluation, the average rank is the final rating.

- b) *Classification method (non-quantitative)* – Groups, levels, grades, classification an function area first developed and defined and then jobs are evaluated according to the different grades, levels or groups.
- c) *Factor comparison method (quantitative)* – Jobs factors (like skills or knowledge, responsibility, effort and working conditions) are determined. Then jobs are compared against each other considering each factor and following specific rules established. The jobs rank or level under the different factors is taken and/or summed up to determine its overall rank or level following rule established.
- d) *Point-rating method (quantitative)* – Under this method, a set of job factors are determined and weighted according to importance as a basis of establishing numerical point value along the scale of degrees (usually 4, 5 or 6). Jobs are evaluated according to this plan or rating scale. The results are in terms of point values for each job. The more points the job has, the higher the rating.

Point rating method is know to be the most scientific, most objective and most popular. As such, it is also the most acceptable method of job evaluation.

Although the primary objective of job evaluation is to rationalize the compensation of workers, certain related issues and problems have to be tackled before the institution of the job evaluation program, to include discrimination issues. The acceptance of the scheme by the workers to be affected must be borne in mind. For this reasons, the parties to be involved in the job evaluation process have to be settled. Usually, the management decides but the workers sometimes take part in the exercise. In such instances, the workers should be made aware of the nature, advantages and disadvantages of the system to be introduced. They must be made to understand that the jobs are the ones being rated, not the job occupant/holders. Another cardinal principle in job evaluation is that no one should suffer a wage diminution as a result of job evaluation.

Job evaluation does not displace collective bargaining. The union can bargain for the use of gender neutral job evaluation criteria that define and value factors in an objective manner – taking into account only those aspects required to perform the work to the expected level of accuracy and efficiency,

without being influenced by feminine stereotypes or bound by traditional criteria; and that conceptualize work as having human relations skills and emotional aspects, as well as mental and physical aspects. The result of a job evaluation program will serve as a frame of reference during collective bargaining negotiations and aids the parties in arriving at a mutually acceptable level of wage payments. It stands as a practical means of giving substance to the principle of “equal pay for work of equal value”. Job evaluation plays an important function in the economy of the enterprise for a rational wage structure leads to motivated workers performing their jobs on a more efficient level.

Employers and trade unions have a direct responsibility in applying the principle of equal pay for work of equal value. For example, they should ensure that collective agreements do not contain provisions contrary to this principle, and review, where necessary, existing wage determination practices to ensure that criteria for job classification and evaluation are free from any sex bias.

Lesson 5

Wages and the National Economy

On the national level, wages are more often linked with the national income and the national incomes policy. Apart from wages, other forms of income are rent, interest and profits. Rents include payments of the use of land while interests are payments for the use of capital. The sum total of the various forms of income makes up the national incomes. Wages are just a kind of income and wage earners are among the many contributors to the total income. The controversial issue of how the income is to be properly shared still prevails. Collective bargaining is one of the processes used to resolve questions of sharing the wealth of nation.

Incomes policies cover policies affecting the different forms of income, be they in the form of wages, rent, profits or interest incomes. Discussion of national incomes policy starts with the rate of growth of the national incomes and the need to ensure that increases in the general level of incomes keep pace with that rate. This policy likewise involves adjustments of wages in different industries and occupations to minimize discrepancies if not to eliminate them. Thus, incomes policies especially in developing countries,

are primarily legislated to attain better income distribution and for income expansion to contribute to accelerating the pace of economic development.

Wage policy is just a part of the incomes policy existing in the country. Wage policy usually includes minimum wage legislation, legislations affecting the terms and conditions of compensation as well as those affecting the process by which wages and other compensation are adjusted. These policies aim for the protection of labour, balanced with the goals of expanding employment opportunities and maintaining price stability.

The workers through their respective organizations may be involved in national wage policy determination. Workers' organizations often come up with position papers regarding wage and price increases. They participate in open forums and national debates, expressing their stand on certain wage issues. The greater involvement of workers is evidenced in national wages councils and tripartite conferences. Often, workers are represented in these bodies and national forums.

Incomes policy in general and wage policy in particular attempt to improve on income levels while attaining the goals of national development.

MODULE THREE



COLLECTIVE BARGAINING TECHNIQUES

Lesson 1

Selection and Composition of the Negotiating Committee

With the knowledge of what the union member and the union want from collective bargaining, it will now be the function of the union to create a committee to undertake the negotiations.

In light of the advantages of union membership, ensure that the under representation of women workers will be corrected. The policies of unions themselves should not contribute to the under-representation of women among their members.

The process of selecting members of the bargaining committee should be based on the following criteria: *1) Educational qualification; 2) Experience in actual negotiations; 3) The ability to keep cool under extreme pressure; 4) Women workers should have active representation in such bodies at all level.* These should be the principal criteria for the union to observe if it really wants successful collective agreement. Trade unions officers must adopt this principal criteria in selecting the members of the union bargaining committee, and should, as much as possible, convince the members to rally and support these criteria, especially for achieving non-discriminatory collective bargaining. Collective negotiations permeate into the basic rights,

interests and welfare of the members as workers of the company. Therefore popularity with the members, if selection is by election, should be discouraged, and the fitness or the criteria earlier mentioned should be the primary consideration.

The educational qualification per se is not so much of a requirement but education is coupled with the ability to understand, analyses and interpret figures and other data, information and other documents needed in actual collective bargaining negotiation, including.

Experience in actual negotiation should be given high priority because there are issues that might be raised by the employer that are rather technical and beyond the immediate comprehension and understanding of the members of the committee. The experienced negotiator can easily detect it and can make on the spot decisions and save the union from committing serious errors or blunder detrimental to the welfare of the members. For instance, the employer will raise the issue of job evaluation, and the employer completes that the increase in wages should be granted only after the job evaluation. In this particular issue, the experienced negotiator of the union can make immediate decision, after consulting the members of the union panel of the advantages and disadvantages of the job evaluation, whether to accept or reject the counter proposal of the employer. The experienced negotiator of the union should be able to recognize the job factors to be evaluated. They should ensure that those factors are gender neutral.

A collective bargaining negotiation is a human drama of two contending forces. Each one is trying to convince each other of their position through persuasion supported by facts and figures, and sometimes with stubbornness. It is in this human drama where emotions are displayed with varying intensity. It is therefore indispensable that members of the union bargaining committee should have the ability to keep cool under extreme pressure of emotional display. If any member of the union bargaining committee cannot maintain his cool against the barrage, sarcasm and insults leveled against the union by the employer, then the union will lose its effectiveness and its member will ultimately suffer. However if the members are properly selected based on the aforementioned criteria, then the union and the members can expect that they can get something out of the bargaining negotiation.

Lesson 2

Duties and Responsibilities of the Negotiating Committee

It is a distinct honor and a rare privilege to be selected as a member of the union's bargaining committee. It is recognition of the person's ability, integrity and sincerity. Once the members place considerable faith in the person(s) selected, then it is already an assurance that the members have full trust and confidence in the person(s).

After the union bargaining committee is formed, the member must select the chairperson and the secretary. They must agree on the rules of the game. The chairperson should be given complete power and authority to maintain proper decorum among the members of the panel. The chairperson must have complete control over the statements of the members of the committee. He/she should be the spokesperson of the committee. All answers, questions and other matters for clarification must first be addressed and approved or accepted by the chairperson of the committee before tossing it to the employer's panel. The rule should be rigid and must be strictly followed to avoid embarrassment, chaos and confusion during the negotiation sessions. The secretary should be the official recorder and keeper of all records, materials and other matters pertaining to negotiation.

The committee must maintain close contact with the member and must be available and ready any time to answer any question that might be raised relative to the collective bargaining negotiation. In the preparation of trade union proposals, the committee should have, first and foremost in their minds, the perceived needs and problems of the members, with specific attention to women workers issues other than maternity. As mentioned earlier, if there are quite a number of needs and problems, the committee must call a general membership meeting so that the members can voice out what their needs are. However, if it is impossible to call a general membership meeting, the different officers assigned to the different departments or section of the company (for example shop stewards, grievance persons, etc.) should be called to a meeting for the purpose of getting information about the needs and problems of the members. After getting all these information, the committee must collate, analyze and interpret it; establish priorities and get the average of the proposal when it comes to wages and other social benefits, Also it is the obligation of the committee to identify other areas

which are basically important not only to the members but to the union as e.g., union security.

Aside from gathering information, data and other needs and problems of the members, the committee should look into and gather data as to the general condition of the business, the productivity of the workers the profitability of the company, the consumer price index, industry wage profiles and the community wage profile. More time should be spent in gathering committee's analysis and interpretation.

All the data, information and other relevant materials must be explained to the members truthfully, and with full respect to gender issues, particularly the financial condition of the employer. The reason for the explanation is to appraise the member of the possible benefits and consequence or implication of the proposals. Also this allows the members to think, rationalize their idea regarding their proposals or question the data gathered by the committee. In short, allowing the member to participate in the deliberations of issues strengthens the unity and the fighting spirit of the members.

When the union proposals are already prepared, the committee must have completed all the justifications for every proposal, anticipated the possible counter-proposals of the employer; and must have already made tentative counter-arguments and counter-proposals. In other words, all the possible moves of the employer were already examined under a microscope.

At this point it is important for the union to present the proposals in draft contract form clearly written in simple language. Ambiguous word or words that are capable of different interpretation should be avoided. The reason is clear; it gives direction as to what the union want and also to possibly limit the employer from counter-proposing other issues not needed by the members. Although the employer is not prevented from counter-proposing other things, experience have shown that if the union is presenting proposal in contract form, the employer will make counter proposals based on the unions' original proposals. If there are deviations, such deviations are very minor.

1. Research for Collective Bargaining

Sources of information

Very few local unions in developing countries have a research department of their own. In most cases, unions in such countries depend upon the national trade union center for such activity.

The work of a trade union research department depend upon the requirements of the union it self. Large trade unions may be capable of supporting research departments that can provide all the data and information the unions need regarding the industry for their normal negotiation activities. They can further draw upon the services of the national center.

Sometimes the unions develop linkages with academic and research organizations to carry out research on important women's issues, such as childcare, maternity rights and pension reforms.

The unions' research department should be able to collect information about wages and working conditions, the study of collective bargaining agreements and arbitration awards, and the analysis of existing legislation affecting labor and management.

Gathering any information and or statistics available regarding women in the workplace and the sector (for example, how many women are in different job categories, what is the differential in pay between men and women) is recommended.

It would be advisable for unions to maintain up-to-date loose leaf bargaining note- books or better yet separate computer files (diskettes or CD) for negotiations broken down by subject matter.

Such notebooks or computer files should contain:

1. Source materials (where to go for information) including useful web site addresses
2. Wage data in the industry and in the community
3. Fringe benefits survey
4. Important contract settlements and pattern setting agreements in the industry and in the community
5. Problems that have arisen during the present contract
6. Bargaining history between the union and management
7. Anticipated company counter proposals; and
8. Full explanations/justifications/arguments supporting the union's proposal
9. Workforce analysis, which is disaggregated by gender.

Following is a list of some important sources of information, which are usually kept on file in a union research department.

A. Reference library of books and documents

1. Official document. The union should subscribe to the relevant official document series and keep in touch with the government printer to get information about what documents are available, ensure that all data and information are disaggregated by gender. The most important sources of information are reports from the Ministry of Manpower and/or Central Bureau of Statistics periodical or annual statistical abstracts and bulletin concerning population, production, prices, trade employment, and wages. Likewise, copies of laws concerning trade unions, employment regulations and registration, arbitration and taxation. Publication from the Ministry of Finance Commerce and Industry will be of great help as well.
2. Inter-governmental documents. Occasional reports from United Nations, World Bank, Asian Development Bank and the ILO may deal with matters relating to the country or industries of importance to the union.
3. Other relevant books and documents. Such book and documents dealing with the industry wherein the union has jurisdiction will be valuable. Company monographs and annual financial statements, investor's guides, newsletters and stock prospectus are also good reference. Industry studies prepared by trade associations, non-governmental research organizations, and government bureaus should also be gathered.

B. Periodicals and Newspaper (clippings) and others

1. General. Union must subscribe to the most important local newspapers and periodical, and items clipped for the files.
2. The union should also subscribe to local business journals, if any and to trade papers published by associations and big companies.
3. Labor. The local union should be on the mailing list of various trade unions periodicals in the country. These should be kept on the shelves and examined for information for the clipping files. Other publications of particular interest to local unions are labor gazettes and similar publications for labor, trade and commerce and finance ministries.
4. Hard copies of down loaded information from the Internet, which are of relevance to the union's interests.

The inclusion of certain gender issues in agreements is also promoted

by various other sources, including women employers, women politicians, non-government organization, which deal with women issues, etc. On the basis of the information provided, the unions draw attention of their members to these issues, formulate their own guidelines and include them in the negotiations with employers.

Access to the Internet could be very useful in obtaining current information, which may be critical to the unions particularly in collective bargaining

Lesson 3

Data Gathering

The union should review with the shop stewards their experiences under the current collective bargaining agreement to determine areas where problems have arisen for purposes of changes in the agreement. Studies should therefore be made on grievances and arbitration cases to determine whether a contract change(s) is or are necessary as a result of unfavorable arbitration decision or grievance with unfavorable results.

Although it is not advisable to get bogged down in financial discussion it may be wise for the union to have a general ideal of the company's financial condition and to be aware of the trend of sales, profits and other key indicators.

Company wage data, if available to the union, provides a wealth of information. A close examination of the company's own internal wage structure tells where the members of the union are and where it wants to go. It is also important to demonstrate inequities in the wage structure, if any. The most common used wage comparisons are external. These include:

- the level of wages outside the company, and
- the level of wage settlements arrived at in the area or industry or by other unions.

Comparisons are frequently made with firms in the area or with other firms in the industry regardless of area, other plants of the same company, rates from competing industries, and rates based on gender.

Lesson 4

Data Analysis and Interpretation

1. The Rising Cost of Living

Steadily increasing consumer prices is a worldwide phenomenon that may apparently last indefinitely. A Price increase due to inflation greatly affects the buying power of wages.

In most countries, the statistical impact of inflation is measured by a month Consumer Price Index (CPI), mentioned in previous lessons. It is essential for every union/researcher to understand the CPI, to be prepared to explain it to the membership, and to be able to determine the effect each change has on the value of established wages.

The true value of wages lies in what they could buy. This is in general, a known quantity at the time a contract is being negotiated and the wage structure is established. The cost of living – the price of what a worker buys keep going up, bit by bit. Before long, what the workers earns is no longer enough to maintain the decent living wage that money wages were supposed to provide.

CPI, customarily issued monthly, expresses in statistical form what workers and housewives have noticed in the market place. Since few agreements in the developing countries have *escalator clauses*, catching up with inflation – and trying to project its future course, is a pivotal part of the process.

2. Other issues

Identify and prioritize needs of workers – this will usually require determining the cost of a particular benefit. If an employer can be shown that a particular benefit will not cost anything (or not much), or that it can bring tangible benefits in terms of reduced absenteeism and higher productivity, the employer is more likely to agree. In difficult economic times, rather than pay raise, the union might have more success with negotiating for non pay, low cost equality benefits, such as flexible working arrangements for women workers or paternity leave which affect a small percentage of workers while exhibiting a progressive attitude on the part of both the management and the union. Benefits to employers should be

explained, and not merely in monetary terms, but also with regard to such things as staff recruitment, less staff turnover, less absenteeism, etc.

Lesson 5

Political Issues in Collective Bargaining

The issues in collective bargaining are generally divided into two: a) *the non-economic or political issues*; and, b) *the economic issues*. In general terms, the non-economic issues are the provision on the workers' rights, the employers' rights; discipline and redundancy procedures; and union consultation and participation in these and other fields.

More particularly, the following are the *non-economic issues*:

1. The Scope of the Bargaining Unit.

In every productive enterprise, one could readily see the various categories or classification of employees. There are those that are classified as top management, middle management and supervisor, and the rank and file employees. Top management usually includes the chairman of the Board, president, executive vice president, general manager and all other vice presidents and assistant vice presidents of the corporation. The middle management and supervisors are the department managers, whether in operation, finance, administration or production and maintenance. In a number of countries these categories of employees are excluded in the bargaining unit, (as in the Philippines). The rank and file employees are also classified as skilled, semiskilled and unskilled. Their appointment may be permanent or regular, temporary, probationary, casual, or piece-rate workers. Employees may be paid on daily, weekly, semi-monthly or monthly basis.

The officers of the union or the collective bargaining committee must decide in advance as to which category of rank and file employees should be included in the bargaining unit or coverage, particularly the newly formed trade union organization who will be entrusted to negotiate the first collective agreement. These things should be carefully studied including the advantages and disadvantages of the category of employees to be included or excluded in the bargaining unit.

2. Recognition of the Union

The union should be recognized as the sole and exclusive bargaining agent or representative of the workers or employees within the bargaining unit, in the company or industry. The rationale behind this is to give the union more leeway in planning its program of administration, organizing, enforcement and training of its members with less interference from the employer or other unions.

3. Union Security Arrangement

There are different variations of union security arrangements. They are: 1) *Closed shop*; 2) *Union shop*; 3) *Maintenance of membership*; and, 4) *Agency shop*.

Closed shop is the highest form of union security arrangement for it gives the union more authority and control of prospective applicants who will join the workforce in the company or industry. The employer, by accepting the closed-shop arrangement, is parting away its once cherished management right or prerogative, which is the right to hire employees. This is so because before the employer can accept an applicant, he/she is first referred to the union and he/she must file his/her membership as a condition of employment in the company. The union has all the prerogatives to accept or reject the application of prospective employees of the company. However, this closed-shop arrangement has some pitfalls that might lead to management-management misunderstanding. For instance, a prospective applicant files his /her membership application with the contracting union and the latter rejected the application for failure to meet the necessary standards imposed by the union, or, the prospective applicant has uttered slanderous pronouncements against the contracting union which in effect results in the denial of his/her application. The employer is also concerned in accepting the prospective applicant because of the experience and skill needed by the company. The denial of the union and the concern of the employer definitely creates an atmosphere of misunderstanding, thus tense relations exist.

The *union shop* arrangement is a modification of the closed-shop arrangement. The prerogative of the employer to hire employees is still vested with the employer. It can hire employees any time they want. The only condition is that the newly hired employees, after working for several

month as agreed between the union and employer, say, 90 days, the employee concerned must file his/her membership with the union as a condition of continued employment.

The *Maintenance of Membership* is another form of union security arrangement that in effect enjoins the members of the bargaining unit who are members of the union to continue their membership during the lifetime of the collective agreement. Failure to do so will subject erring union members for disciplinary action that is not limited to suspension but may include separation or termination from employment and union membership.

The *Agency shop* arrangement is the weakest of all types of union security arrangement. The union in cases resorts this to where after a certification election a minority group is already affiliated with another union. It is founded on the philosophy that “no one should be enriched at the expense of others”. Therefore, the minority workers who are members of another union should contribute the same amount of union dues or other special assessments that the contracting union members are contributing, if they received or accepted the benefits from the collective agreement entered into by the contracting union and the employers. The amount collected from the non-members is referred to as “the agency fee”. This agency shop arrangement is a stopgap measure adopted by the contracting union in order to protect the rights and interest of the union and its members.

4. Check- Off

Any organization cannot function properly without funds. Funds are the lifeblood of an organization. Without funds, the organization will die a natural death. It will just disintegrate before it could start operations.

The union is like any other organization. It is an association of workers. It has goals and objectives to achieve; it has plans and program of action for the benefit of its members and their dependents. To carry on its objectives, goals program of action it requires the use of funds. Therefore, funds are indispensable to the union as blood is to human beings.

There are two schools of thought in generating funds for labor unions; it is either by check-off, if it is agreed between the contracting union and the employer to deduct union dues and other special assessments from the payroll of the members and to remit the amount to the union treasurer at the specified time provided for in the collective agreement. Of course, written individual authorization must be submitted in advance to the employer

before any deductions are made. The other is voluntary payment of union dues and other assessments by union member to the treasurer or authorized representative of the union.

These two schools of thought have both advantages and disadvantages. One can see from the check-off that it is possible that union officers may have less contact and rapport with the general membership. Bureaucracy may set in. In short, there is alienation of members from the union. However, these things can be avoided if the labor organization has adopted a system whereby all the officer, stewards and committee member have open communication lines thereby giving the members direct access to the union and its officers.

In voluntary payments by the members of union dues and other assessments, one can readily gauge the strength of the union. That is, if all the members of the union without reminder, warning, reprimand or cajoling, voluntarily go the union office and pay their obligations. This method is no doubt an ideal one. But is this true today? Can you build a strong union without knowing in advance the cash position of the union? Can you implement your program of activities for the benefit of the union, officers and members? These methods or approaches should be carefully analyzed and its strength and weakness evaluated.

5. Job Security

The security of the job is the primordial concern of the workers. Without security of employment, the union's existence is volatile. The union officer and stewards could not plan, design and implement union programs of activities, for its existence is very shaky. Anytime, probably with or without their knowledge, its members will lose interest and ultimately disaffiliate or resign from the union. It is therefore the main consideration of the union through its officers and representatives to fight first for the security of employment of its members.

By job security, the union should strive to secure its members from undue harassment. The members should not be meted disciplinary action without just cause. The just cause must be clearly outlined, clearly stated, and agreed upon in unequivocal terms. The union must see to it that any ambiguous provision which is subject to different interpretation should not find print in their collective agreement, code of discipline and other rules and procedures of the employer or company. In other words, the union

through its officers a steward must protect the job of its members at all cost, if it really wants to maintain the member for a long period.

It is important that there is a clear policy on non-discrimination for reasons related to pregnancy and that measures are in place to protect pregnant women.

6. Seniority

Trade union officers and collective bargaining committee members must be vigilant with respect to seniority in terms of promotion in rank, lay-off, redundancy or retrenchment that the employers may adopt for the benefit of his/her company. The principle that should be followed by the union officers and the members of the collective bargaining committee should be "last in, first out". This means that in case of redundancy, lay-off or retrenchment, the last employee even if a union member, should be the first that would be affected.

Making part-time workers redundant or a "last in – first out" policy can be discriminatory where most workers in these category are women. Selection for redeployment or retraining made on this basis can be discriminatory for the same reason. Bargaining can be used to negotiate the least discriminatory scheme for redundancy.

Another principle that the union should take into consideration is the principle that employees with longer service with the employer should be given preference over others in promotion and training provided they have the necessary qualification, ability or aptitude; and the union should fight for women workers' right that there will be no interruption in seniority during leave.

7. Non-Discrimination

It should be the principle of trade union officers and collective bargaining committee members to abhor and fight against discrimination that employer may attempt to do against the members of the union. Discrimination may take the form of union activity or union membership, in employment, promotion, training or status. Other forms of discrimination may be due to sex, race, color, tribe, religion or political belief. This "no discrimination clause" provision must be clearly spelled out in the collective

agreement. Failure on the part of the trade union officers and collective bargaining committee members to do so may cause grave and irreparable damage to the union and discontent of the members, which might lead to, if not checked on time, disaffiliation or voluntary resignation from the union.

8. Union Bulletin Board

Trade union officers and bargaining committee members should not overlook the union bulletin board as one of the proposals because the union officers from time to time has to publish important announcements for dissemination to the membership. The most conspicuous place to disseminate information is within the company premises and very accessible to the union membership. Of course, union officers can also post important announcement in the union hall, but not all members are informed of the development like for instance those assigned in the night shift. Ensure that women workers issues and problems are posted this bulletin board.

9. Management Rights or Prerogatives

In a free enterprise system employers are clothed with rights and prerogatives in conducting their own business outfit. Many have said, "Management rights and prerogatives are inherent in the conduct of profit oriented enterprises". Some of these inherent rights or prerogatives are: the right to discipline employees who fails to observe the standards or rules set by the employer, including suspension, demotion, transfers or even termination from employment, the right to promote employee whether in pay or rank and the right to direct the workforce. However, these rights or prerogatives are not really that absolute. It is subject to the laws, rules and regulations set by the government in the conduct of the business, such as requirement of registration, procurement of the necessary permit in the city or municipality where the employer wish to operate, internal revenue permits, the registration of the company and its employees with the social security system, the medical care commission, the employees compensation commission, etc.

The employer is also required to observe and follow strictly the labor standard laws, health and safety laws, social legislations and the laws governing management-management relations. In short, there is no such

thing as an absolute right or prerogative of management. The laws of the country always restrict it and other voluntary agreement entered into by employers with other organization, such as unions and other forms of workers organizations. However, employers may insist on definite action to take against their employees without negotiations or intervention of the union. But these areas should be clearly defined by the company's rules and regulation or policies

10. Grievance Procedure

This is management-management administrative machinery adopted for investigating and finally settling day-to-day problems or grievances of employees/workers and disputes between the union and the employer without strikes or lockouts.

A grievance may involve a dispute, dissatisfaction or disagreement between employee or the union and the company regarding the meaning, interpretation and implementation of any of the terms and provisions of collective agreement, code of discipline or other company rules and regulations.

Union officers and committee members must know the different variation of the grievance procedures. Some unions are adopting the shop steward system whereby an aggrieved worker or employee must first report his grievance and if meritorious, proceeds to discuss the grievance with the supervisor together with the aggrieved worker, as a first step. Failing to find amicable solution, the grievance is elevated to the next step, usually handled by the Grievance Committee (composed of board of directors and any executive officers of the union). The Grievance Committee shall discuss the grievance with the Department Manager or Industrial Relations Manager. Failing to find a solution within the specified time, the grievance is elevated to the Union President. The Union President discusses the grievance with the General Manager, Superintendent or the President of the Corporation. Failing to find amicable solution, the grievance may be submitted for conciliation mediation or voluntary arbitration. Any agreement or decision arrived at during the conciliation; mediation or voluntary arbitration proceeding shall be considered as final and not appeal able.

11. No Strike, No Lock-Out Clause

The union officers and bargaining committee members must study this clause carefully because it is loaded with implications and consequences not only to the union and its officers but also the members and their dependents, without mentioning its impact on the employers in case of strike.

The Officers and bargaining committee members must have a full grasp of the laws on strike and lockout in their own country. Their implications and consequences to their union, their officers and union members and dependents must be clearly analyzed. Moreover, the different doctrines related to strike and lockout issues, must be clear to the minds of the officers and committee members because the doctrine are considered part of the laws dealing on management-management relationship.

Union officer and bargaining committee members should know the areas which are considered strike, like for instance unfair labor practices most likely to be committed by the employer. They should know how to delineate and analyze the areas and should not allow themselves to be caught unaware, otherwise, agreeing to no strike and no lockout clause without knowing the pluses and the minuses would be very costly and detrimental to the union and its members.

Employers will always propose or counter-propose a no strike and no lockout clause because they are more concerned about the stability of the company. As much as possible they would not allow any disruption in the operation of the company. It is counter productive and would result to loses. The price is too high to pay, unless of course the company is really losing.

12. Contract Term and Affectivity

Some countries have law that set the contract term of collective agreement. Other countries explicitly allow the union and the employer to agree on the term of the collective agreement. In the Philippines, the Labor Code allows the parties in a collective agreement a three-year term that is co-terminus with the term of offices of the union officers. The rational behind setting up the period of affectivity of a collective agreement, which is co-terminus with the term of the union officers, is to allow for its continuity and smooth administration. It has been the experience in the past that there

are different interpretations of the collective agreement as there are new set of officers of the union. Thus continuity and smooth administration of collective agreement have been disrupted or distorted, giving rise to labor-management conflict or misunderstanding.

The effectiveness of collective agreements is varied. There are collective bargaining agreements provide a specific date of effectiveness of the agreement. There are other agreements in which the effectiveness of some of the provisions are different, like for instance the effectiveness of wage increases and other benefits that are separate and distinct from the other provisions of the agreement.

Union officers and bargaining committee members have to depend on their sound judgment after consulting the membership on which course of action to take. There is no clear-cut answer or rule to follow. There are several factors to consider, that is, the temperament of the employer, the nature of the business and profitability of the company, the technology, and the temperament of the membership to mention a few.

13. Automatic Applicability of Previous Collective Agreement

Union officers and bargaining committee members should be aware of the fact that in every collective bargaining negotiation it will take several months or even years to conclude a new collective agreement, or renew the existing one with modification or none at all. Given this background information, union officers and bargaining committee members must decide in advance whether or not to include automatic applicability of previous collective agreements. But before taking a stand, the advantages and disadvantages should be studied carefully.

Automatic renewal or applicability of previous collective agreement connotes an idea that pending negotiation of a new collective bargaining agreement, the old agreement shall automatically be applied and shall be binding between the parties. This provision may put the union and the members on the disadvantageous position because of the fact that there might be provision in the collective agreement detrimental to security of tenure of members of the union like for instance, in promotion, lay-offs, retrenchment, redundancy or introduction of labor saving devices which might be imposed or adopted by the employer pending the renewal of the agreement.

Lesson 6

The Economic Issues

As mentioned above, the economic issues refer to issues that carry monetary value. These issues include wages and fringe benefits for the workers and costs of production (or expenses) for the employers. The nature of economic issues also directs both parties to the concerned with the existence of the company. The union's concern is for the protection of workers rights (including women workers rights), interests and welfare. The employer therefore has a stake on the viability of the company, productivity of the workers and the competitiveness of the products in the market.

However, the proposals for collective bargaining may not be as high as one would expect it to be if the union is aware on the existence, viability and the ability of the company to meet the demands. Likewise, the employer would not label the union officers and bargaining committee members as "irresponsible" and "immature" bargainers if the company or employer were convinced with the reasonableness of the union's proposals.

But to strike a happy balance on what should be a reasonable set of union proposals demand considerable time, money; and effort. The work is tedious and a difficult one because the union officer and bargaining committee members would have to mobilize all the members of the committee or the research staff to gather data, information and other documents needed in the preparation of he proposals. Moreover, these materials must be studied and analyzed very carefully: the advantages and disadvantages, the merits and demerits the possible arguments and counter-arguments of the employer should be properly delineated and made crystal clear in the minds of the union officers and collective bargaining committee members. It is only after due deliberation and careful analysis that the union officers and bargaining committee members could come up with sound and reasonable proposals which would possibly be accepted by the employer.

The union's officers and bargaining committee members may proposed any economic matter which would redound to the benefit of the members. They can even propose anything under the sun. However, presenting proposals is one thing and getting the agreement of the employer is another matter.

Union members are interested in the "economic windfall" that the union would get from the collective negotiation. The union officers and

collective bargaining committee members should made the “economic windfall” as the guiding principle in assessing the union’s needs and problems and in negotiation with the employer. Failure to observe and follow this principle may create a problem in the union and the entire membership. There would be chaos and confusion; member would be dissatisfied.

What are these economic issues? There are many economic issues as there are union members. Each member may propose something according to his/her perceived needs and problems. Some of these economic issues are: wages, hours of work, overtime compensation on regular, special holidays and public holidays. Premium compensation during special and public holidays, vacation and sick leaves with pay, hospitalization, maternity and paternity leave pay, night differential pay, bonuses that may; be either in the following categories: production, anniversary, midyear, school thirteenth month pay etc. All these economic issues have consequential effects on both parties. For the workers, the granting of any one or all of the mentioned economic issues by the employer will help improve the socio-economic conditions of the members, particularly their standard of living. It will help cushion the impact as a result of price increases of prime commodities because of inflation or stagflation. The worker can buy more goods and services in the market, send his/her children to school, improve the physical make-up of his dwelling place, etc.. For the employer or company, the production of goods and services will improve because the workers are satisfied and contented. If production increases, then, its follows that the profit that go to the coffers of the employer will likewise increase, assuming that other factors are constant. The employer can therefore plow back certain percentages of the profit for expansion purposes that can generate productive employment.

Let us explored the various *economic proposals*. They are:

1. Wages

Trade union officers and bargaining committee members must understand the significance of wages for it is one of the major factors in the economic and social life of any community. Workers and union members and their families depend almost entirely on wages to provided themselves with food, clothing and all the other necessities in life.

The union should consider the concept of equal pay for work of equal value instead of equal pay for equal work. Equal pay for work of equal

value is forward looking concept. The principle of equal pay for work of equal value is intended to cover not only those cases where men and women undertake the same or similar work but also the more usual situation where they carry out different work. The concept thus addresses the undervaluing of the jobs undertaken primarily by women, in particular, by comparing those jobs in terms of their actual requirements with the jobs undertaken mainly by men.

There are various terms used extensively in wage discussions that the trade union officers and bargaining committee members should know how to distinguish. They are: money wages, real wages and labor costs. Money wages are payment in cash that the workers receive for their work. Real wages are the amount of goods and services that money can buy in the market. Labor costs are money wages that the money can buy in the market. Labor costs are the money wages which an employer or company pays to his/her staff, together with other payments he/she makes in employing workers, and are part of his/her total cost of production.

Another distinction in wages is between time-rate and piece-rate and other methods of payment where the wages are linked with output so that workers have an incentive to increase their production. Workers on time-rate are paid in specified wage for working an hour, day, week or month. If piece-rate are the bases, the workers are paid specified amount for doing/completing a definite quantity of work, for example, cleaning a number of pieces of rattan poles in the rattan furniture industry, making 1,000 wood boxes for the soft drinks or beverage industry, etc.. Another area that should be clear in the mind of the trade union officers and bargaining committee members is the distinction of rates of wages from earning. A worker's rate of wage may be for example —1,000 monetary units (m.u.) a month, but if he/she works for only three weeks and is unemployed for the remaining week his earnings will be only 750 m/u. Similarly, if he is on short time and does not work on, say one day each week, and work on one of two Sundays or on a public holiday will receive extra pay and their earning will be considerably more than the monthly rate of 1,000 m.u. for working normal time each week. If piece-rates or other incentive methods are used, the rate may be 10.00 m.u. for doing specified tasks, for example making one box for a soft drink, but the earning of able workers who do three in one day will earn 30.00 m.u.

Trade union officers and bargaining committee members should also understand the thinking of the employer regarding wages. Employers have

a different view of looking at wages. Added to wages are costs of raw materials, energy, and other costs of making their products and relate total cost to the price at which they can sell their products. If the labor costs of making their products and relate total cost to the price at which they can sell their products. If the labor costs form a big proportion of total costs the rates of wages are likely to be affected directly by changes in the selling price of the products. For example, the workers in sugar plantation or sugar centrals with their rates of wages are affected immediate because of the rise and fall in the price of sugar in the world markets. On other hand, in industries where labor costs form only a small part of total costs, wages tend to be less immediately influenced by changes in the selling price of the products.

In framing wage proposals, trade union officers and bargaining committee members must gather important information, document or data and analyse them very carefully including their applicability or uses to the union and their members. They should include the following information, data or documents on: 1) industry wage profile; 2) community wage profile; 3) consumer price index (CPI); Employer's financial reports; and 5) general business conditions.

The *industry wage profile* will definitely inform the trade union officers and bargaining committee members of the wage level of different firms or companies belong to the same industry. By comparing the wages of the workers in different firms or companies within the same industry, the union officers and bargaining committee members could easily determine if their employer is the pace-setter or lowest in paying wage to his/ her workers. If the conclusion shows that the employer is the pacesetter, then, proposal for higher wage may or may not be pushed through; instead exploring other economic issues may be taken up in the form of added benefits. However if during the analysis it is shown the employer is not the pacesetter but belongs to the median or even lowest, then, this will bolster or strengthen the position of the union to propose higher wages.

The *community wage profile* is another important information or data that should be analyzed. This is so because this will give the picture of the community wage levels of one industry compare with the other industries before one could make a definite conclusion or findings. If the union is short of expert to analyze the data, it should without hesitation hire expert advisers or consultants to do the interpretation and analysis, including the preparation of tables and graphs that would be needed in actual negotiations or in presenting the arguments and counter-arguments. One can make

preliminary assumptions that if the community wage is higher, there is mushrooming of business establishments because people have more money to buy goods and services thereby promoting economic growth in the community.

Another area to consider is the *consumer price index (CPI)*. What is consumer price index? It is an indicator of relative fluctuation of prices of consumer goods and service in a given period of time. A certain year is considered as the reference point or base year. The base year is always given an equivalent of 100 percent or 1.00 m.u. as the base may be. Any increase in prices ;of consumer goods and services in a given year compared to the base year rare reflected in percentage. For Instance, 1990 is selected as the base year, it is assigned or given an equivalent of 100%, which represents also the 1.00 m.u.. In other words, if you have 1.00 m.u. in 1990 if applied to the succeeding year is no longer worth 1.00 m.u. because the index reflected an increase of say 14%. The monetary unit therefore can only buy consumer goods and services worth 0.86 m.u. The bargaining committee members after knowing the consumer price indices and its effect on the purchasing power of the wages of their members, can frame up wage proposal that would reflect the value of the purchasing power or recover the lost value.

The *employer's financial report* is very important in framing up wage proposal. These data should be gathered and interpreted properly before framing up the wage proposals. This is so because financial reports of the employer will give the bargaining committee members an idea of the financial condition or the capacity of the employer to pay or meet the wage proposal of the union. However, financial reposts are difficult to gather, much more to interpret and analyze. It requires previous knowledge of accounting with long experience before one could make a definite conclusion or findings. If the union is short of experts to analyze the data, it should without hesitation hire expert advisers or consultants to do the interpretation and analyses, including the preparation of tables and graphs that would be needed in actual negotiations or in presenting the arguments and counter-arguments.

The *general business condition* should be explored for it is indicative of the overall condition of the business in the country. It is not advisable to propose wage increases if after exploring the general business condition the finding would reveal that there is economic slump. In other words, the general business condition is really bad. In one way or the other the employer will be affected, particularly if it is engaged in exportation of its products.

Trade union officers and bargaining committee members must know when to propose increases in wages. Timing is very important and should not escape from the minds of the bargaining committee members.

After gathering, interpreting and analyzing all the relevant information, data and materials, trades union officers and bargaining committee members have to decide as to the type of wage proposals it would send to the employer for their consideration, scrutiny and possibly for approval or acceptance. They should decide whether to adopt the following: 1) across-the-board wage increases; or 2) graduated wage increases. They should also decide whether, using the above stated types of wage increases, it should be by percentage or a fixed amount. If it is percentage, how much percent increase? Or if by fixed amount, how much in real amount (specify the precise quantum amount). Also, who are the workers to be covered whether unskilled, semi-skilled or skilled workers? All these things must be clarified in advance.

Another thing is the bottom line of the wage proposals. It should be remembered that the wage proposals sent to the employer are not final but only a basis for discussion during the negotiation. It is completely wrong to tell the employer that the original proposal is the final proposal. There can be no negotiation on wage issues if the proposal is final. That would constitute a final demand. If the union officers and bargaining committee members adopt that kind of idea then there will be no room for negotiation, for the employers will not negotiate. The employer will call or label the union officers and committee members as “irresponsible” and “immature” in the art of negotiation.

The effectiveness and duration of wage proposal is another area that should be deliberated upon and should be approved or supported by the general membership. Effectiveness may be retroactive or not. If retroactive, the specific date, month and year should be specified or clearly stated. It would be a serious error or unpardonable blunder if trade union officers and committee members agree with the employer on the date, month and year of effectiveness or retroactivity of wage increase but for some reasons or another omitted it in the final copy duly signed and executed collective agreement.

The duration of wage increases takes different forms. Some collective agreements provide for different durations; either, yearly, every eighteen (18) months, or straight duration, that is, from the date of effectiveness until the expiration of the collective agreement. Usually when wage increases

are good for only one year or two years there is a wage re-opening clause in the collective agreement. Union officers and bargaining committee members must be very careful not to commit with the employer regarding this kind of counter-proposal without knowing its advantages and disadvantages. It is a very costly error if the union will agree with such arrangement. In short, union officers and bargaining committee members must know the total amount involved for every counter-proposal of the employer, and its possible effect on the purchasing power of the wages of the members, anticipating the possible increase in prices of goods especially prime commodities.

The other area that should be anticipated is the “package deal” usually offered by the employer as a counter-proposal to the union proposals. But what is a “package deal”? It is the total amount counter-proposed by the employer as a package to the union proposal. For instance, the total amount of the union proposals is 30 million Rupiah in a three (3) years contract; the employer may counter-propose a package deal of 15 million Rupiah. The determination of how much will be for wages increases and various other fringe benefits are left to the sound judgment of the union officers and bargaining committee members.

The package deal should be studied carefully by trade union officers and bargaining committee members because it might have a consequential effect on the original proposals. Also it has to be discussed and approved by the general membership or if it is impossible to call a general membership meeting, the approval of the board of directors of the union.

There are various justifications for wage increases. Among them are: 1) Profits were high enough to sustain the increase without jeopardizing investments; 2) the value of wages has been reduced by increase in the consumer price index; 3) Man-hour productivity and substantially increased the company was getting its labor at a cheaper rate; 4) the company should help develop the local market by helping to increase local purchasing power; 5) the living standard of the local population needed to be raised; 6) higher wages would lead to more stable and satisfied labor force.

2. Premium and Overtime Compensation

Premium compensation is paid to workers who work during special and public holidays. It is a penalty imposed to employers for inefficient management of the business outfit, or, for requiring workers to render service beyond the normal schedule due to additional demand for production. It is

also imposed against employers who require the workers to work for the first eight-hours work during special and public holidays. Collective agreements can be used to ensure that both men and women are compensated for work during special and public holiday and have equal access to voluntary work. The amount varies depending on the existing laws of the country and existing collective agreements. In some countries, the premium pay is legislated by law such as 130% over and above the workers existing rate of pay; some are even higher. Also, there do exist collective agreements, which provide for higher premium pay as incentive for workers to work outside regular workdays. Generally the premium pay is higher than the overtime compensation.

Over time compensation is different from the premium compensation because premium compensation applies only during special and public holidays, and for the first eight-hours of work. Whereas, overtime compensation applies only after working eight-hours of work is ordinary, special and public holidays. The rates of overtime compensation during ordinary days differ from special and public holidays. Some countries provide by legislation overtime compensation of 125% during ordinary days, some higher. During special and public holidays, the overtime compensation is higher than the ordinary days by about 5%, that is, if on ordinary day it is 125%, on special and public holidays it would be 1340%. In some cases, women's ability to work overtime is limited due to their family responsibilities or prohibitions on night work for women. The union may negotiate to remove such restrictions or to protect the interests of women members in some other way.

3. Night Differential Pay

There are companies operating for twenty-four hours and therefore have a staggered work schedule. Usually the work schedule start at seven (7:00) o'clock in the morning to four (16:00 hours) in the afternoon, for; the first shift; four (16:00 hours) in the afternoon to twelve (24 hours) midnight, for the second shift; and from twelve (24 hours) to seven (7:00 hours) in the morning, for the thirds shift (sometime referred to as graveyard shift). Obviously, the first shift workers are not entitled to the night differential pay. Only the second and third shift workers are entitled to the night differential pay. The amount depends on existing legislation of the country. There are countries whose labor law provides for a ten percent

(10%) night differential pay to workers who work from ten hours in the evening to six o'clock (6:00hours) of the following morning. This is true in the case of the Philippines. However, this night differential pay is the minimum and any additional amount is subject to collective bargaining. Beyond the 10% percent, the trade union officers and collective bargaining committee members can bargain for higher night differential pay, specially for those working from twelve midnight (24 hours) to eight (8 hours) in the morning.

The attitudes of women and society toward night work are influenced by cultural, economic and national contexts, and attitudes are changing. Views on the prohibition of night work for women in the context of the promotion of equality vary. On the one hand, the removal of restrictions on women working at night seems to be a way of reducing discrimination against women in the workplace because it opens up more employment possibilities to them, often at higher rates of pay than day-time rates. An alternate view is that special protections for women in certain circumstances are necessary to keep them from excessively arduous working conditions and to protect their reproductive role.

It may be the case in some circumstances that women working at night are not as safe as their male colleagues traveling to and from work and that women working at night would have overly long working days as they are likely to also bear the domestic burden during the day, sometimes in conjunction with other paid work.

Making available services such as transport, security, childcare, etc. will make it easier for women to work at night. Extra time off, special payment or bonuses, transport time, etc, can also be negotiated. If the national context is unfavorable to night work for women, unions should negotiate to protect women workers.

4. Paid Leaves

Paid leaves are payments or benefits enjoyed by the workers that are additional to the labor cost of the employer. These are costs to the employer that are not directly related to the work when no specific work is done. These are: vacation, maternity, paternity and sick leaves with pay including hospitalization. The employer on his own initiative or through collective bargaining may provide for these fringe benefits. If it is provided for voluntarily by the employer the reason is perhaps the employer believes

that it will secure greater goodwill and efficiency from the workers and to minimize labor dispute.

Due to women's special health needs resulting from menstruation, many unions have negotiated for days off each month. This is particularly important if some women have serious conditions, or if work is particularly heavy. Such leave is referred to as menstrual leave. This paid leave may be one or two days per month and negotiated by the unions as leave days outside of annual leave or normal sick leave which normally must be substantiated by a doctor's certificate.

5. Union Education Leave

The strength of the union is not measured only in terms of funds or financial standing of the union. Funds are very important in order to carry out programs of activities designed to benefit the union, its officers, members and their dependents. However, it is education that counts most. If union members and officers are enlightened or knowledgeable on their respective rights and obligations, financial stranding of the company, the production targets and goals, etc. then, it follows that the union is strong and its members productive. Therefore, union officers and committee members should not forget to include in their proposal union educational leave with pay. The number of days may depend on the outcome of the research conducted by the bargaining committee or the research committee.

The educational leave may be for the purpose of attending a labor union sponsored seminar or conferences, local, regional or international. Both labor and management like for instance labor-management relation's seminar, or management-management productivity seminar, etc, may sponsor it. The subjects or topics of the seminar may touch on: labor laws, health and safety, social security, consumers and credit cooperative laws, procedures, structure and administration, collective agreement, code of discipline.

Care must be taken to ensure that women have access to such leave, including those working part time. Women should also have access to vocational training, and in particular to training related to advanced technological changes. Training should be used as a means to redress bias in employment hierarchies.

6. Emergency Leaves

Trade union officers and bargaining committee members incorporate emergency leave as one of the proposals. The officers must have a complete idea in their firm or company of the number of employees or union members who have gone on emergency leave and the reason or justification for such leaves. Such information is necessary in order for the trade union officers, and bargaining committee members to argue with precision with management bargaining representatives. There is no substitute for complete data when arguing with the employers.

The emergency leave may be with pay or without pay depending on the individual application and the merit of its justification. But most of the collective agreements allow emergency leave with pay, however, it is chargeable to the unused vacation leave of the employee or union member concerned. The union officers and bargaining committee members use their own discretion or sound judgment relying most of the time upon the welfare of their member and balancing it with the needs or operation of the company.

7. Time-Off with Pay

The maintenance of cordial and harmonious relationships require that both labor and employer representatives should be aware of their respective obligation in good faith and respect for each other. However, a reality exist that in day-to-day relationship, conflict or misunderstanding either in the perception, interpretation and implementation of collective agreement, code of discipline and rules and procedure occur. The union officers and stewards are called upon to act accordingly in order to protect the members from victimization,. Handling grievances and attending labor management conference entail considerable effort, time and money including research on previous issues that have bearing on current grievances of the members and employer. Since union officers and stewards are at the same time employees or workers of the company, they should be given time-off with pay in attending meetings conferences or handling grievances of their members. The employer is also concerned with maintaining stable and harmonious relationship. When problems are unsettled he/she is the loser in terms of profitability of the enterprise. For obvious reasons the employer or company may give in to a “time-off-with pay” proposal without much haggling. As matter of fact the employer is the indirect beneficiary.

8. Bonuses

Bonuses that may be granted or extended by the employers through their own initiative or through collective bargaining agreements are not directly related to the performance of specific work, except production bonus. They are fringe benefit considered as supplements to the workers ordinary wages that are of value to them and their families. There are various forms of bonuses: 1) *anniversary bonus*; 2) *mid-year bonus*; 3) *school bonus*; 4) *production bonus*; 5) *rice ration bonus*; 6) *13th month bonus*.

Trade union officers and collective bargaining committee members must understand that all these bonuses are costs to the employer. If the employer is required to share the socials costs for the good of the workers and their dependents, then, the union officers and bargaining committee members must really understand and the actual capability of the employer to absorb the cost of such proposals.

Since bonus systems concentrate on fixed-term and full-time employment, women are often at a disadvantage. Consideration should be given to concentrating on basic pay increases, which may be of greater benefit to women. Alternatively, bonus systems maybe enlarged to include all workers regardless of status, or extended to include grades of jobs, which have not traditionally attracted bonus payments. It is important, of course, to ensure that bonuses are paid without discrimination, either direct or indirect.

Lesson 7

Sample Contract Clauses for Interpretation

Practicum on Contract Interpretation: Which is a Better Contract Clause? Why?

1. On coverage of Collective Bargaining Agreement (CBA)

- a. This agreement covers all regular and permanent rank-and-file workers of the company except managerial, supervisory, technical, probationary, casual and contractual employees.
- b. This agreement covers all regular and permanent employees within

the appropriate bargaining unit except the following positions:

Department managers and their secretaries

Accounting personnel

Personnel in the Personnel Department

Cashier and Paymaster

Apprentice, casual, probationary and contractual workers

2. Types of Union Security

- a. Member of the union shall maintain their membership in the union during the effectiveness of this agreement. New workers coming in or hired during the effectiveness of the CBA, shall be required to immediately apply for union membership; and they shall not be denied such membership on any other ground than those provided by law.
- b. During the lifetime of this agreement, all employees shall maintain their membership in the union. Likewise, those who subsequently become members during the effectiveness of this agreement.
- c. Employees who were members of the union at the time of the signing of this agreement shall maintain as a condition for continued employment. New workers hired who are within the bargaining unit shall within 90 days become members of the union as a condition for continued employment.

3. Job Control; Factors In Promotion

- a. When all factors are relatively equal, the employee with the most seniority shall be promoted.
- b. In case of promotion, seniority shall prevail, when in the judgment of management all necessary qualifications are relatively equal.
- c. The relative capacity, experience, merit, efficiency and physical fitness shall be among the determining consideration by which the company shall subject the employee for promotion. All the above factors being equal, seniority shall govern.

4. Management Rights

- a. All management functions, whether heretofore or hereafter exercised and regardless of the frequency or infrequency of the exercise shall remain vested exclusively in the company. It is recognized, therefore, that the sole right of decision with respect to management operations and direction of the working force and other functions normally incident to such responsibility is vested in the company, and any rights that the company had prior to the effectiveness of this agreement are retained by the company.
- b. The union hereby recognizes the company's right to hire, fire, transfer, and lay-off discipline its employee and laborers for just and proper cause. The union recognizes the company's right to add, modify or delete any position, provided the same is not used to discriminate against any employee. Any action taken by the management under this Article may be treated as a grievance to be processed under the Grievance Procedure provided in this agreement.

Lesson 8

Techniques and Strategies in Bargaining

1. Strategies

Successful bargaining requires different strategies and techniques. However, there is no specific strategy or technique to be adopted in any negotiation because it involves the subtle and intermingling of many skills and techniques adapted to the characteristics and needs of the individual practitioner. But there are strategies and techniques that are very useful for trade union officers and collective bargaining committee members who are about to negotiate the first collective bargaining agreement or renew the old collective bargaining agreement. These strategies are: *1) talk facts; 2) exercise self-control; 3) tell the truth; 4) ask for more than you expect to get; 5) make final offers final; 6) stick to particulars; 7) question the evidence; 8) time all moves carefully; 9) take advantage of intermissions; and 10) make use of a "package" of counter-proposals.*

a. *Talk facts*

Trade union officers and collective bargaining committee members should not rely on persuasiveness alone because persuasiveness, while maybe useful, will not give you a true picture of the general conditions of the employers. In other word, you cannot refute by persuasiveness the arguments of the employer supported with facts. Even if you present facts there is still room for disagreement because conflict of interest will continue to exist. Nevertheless, a factual presentation during collective bargaining negotiation is essential for a successful negotiation. There are no words more telling and more convincing than presenting facts and figures.

b. *Exercise self-control*

This does not mean you cannot be emotional during a collective bargaining negotiation. What it means is that you can display your emotion, even anger but the display must be controlled and not mere random outburst. This must be cultivated and put into practice by a trade union officer and collective bargaining committee member.

c. *Tell the Truth*

A successful negotiator is one whose personal integrity is beyond question, whose words are accepted by the other side as gospel truth and who can live up to the spirit and intent as well as commitment. This does not, however, imply that the negotiator should tell all that he/she knows. The occasional holding back of information is legitimate and, if used wisely and judiciously can be a good bargaining strategy.

d. *Ask for more than you expect to get*

Trade union officers and collective bargaining committee members should know how to distinguish between principles and particulars. While there is nothing wrong in asking for more than you expect to get, the employer may utilize a reverse technique that he/she will adapt a strategy of “offering less than he/she expect to give”. You can ask more than you expect to get, but be reasonable. In other words, your proposal should be high enough for the employer to know but should be within the reach of the employer. By doing this, the employer, who intends to bargain, may give counter-proposal that are also reasonable. The trade union representatives should know that they are sitting across the bargaining

table with the sole purpose of getting an agreement with the employer, not to kill the employer's business.

e. Make final offers final

The trade union representatives should know in advance the bottom line of their proposals. They should think twice before making a final offer to the employer. All possibilities available to the union should be explored before telling or informing the employer of the final stand or offer of the union.

f. Stick to particulars

The trade union representatives should know how to distinguish between principles and particulars. For instance, if you do not approve or accept the counter-proposal of the employer on the criteria on promotion, you should know how to tell straight to the face of the employer that you do not accept that particular criteria, not telling the employer that "as a matter of principle, we do not want to accept it." Do not use principles as your scapegoat when the subject matter or issue is very particular.

g. Question the evidenced

The information, data and other documents that were gathered by the union during the preparation of the union proposals, but before actual negotiations, should have been critically analyzed. This is very important in actual negotiations because you can present this to disprove whatever evidences the employer might present during the negotiation. The trade union representatives should know when to question the evidence of the employer, and the only way to question it is by presenting other supporting data, information and other documents. However a word of caution should be emphasized here, not all the time could one question the evidence of the employer. If the union will do it every time the employer presents an evidence this will only invite emotional displays i.e., anger which might lead to nothing. In short, questioning the evidenced requires proper timing.

h. Time all moves carefully

Good timing involves holding most factual arguments well in reserve until all bargaining issues are apparent. It is not a desirable strategy or technique to open all your cards in a one day meeting. Sometimes some

factual information should be held further for rebuttal purposes. Occasionally good timing involves the non-presentation of data at all.

i. Take advantage of intermissions

Trade union negotiators should learn now to use the intermission or recess to their advantage. There are cases wherein after a prolonged and heated discussion a recess is needed in order to clear some important issues among the members of the group, or marshal their arguments, or to decide whether to accept or reject the counter-proposals of the employer. It is during a recess or intermission that the members of the union panel could properly evaluate the issues free of anger and emotion.

j. Make use of "package" counter-proposals

The union bargaining panel should know in advance all their non-economic and economic demands or proposals, the arguments and counter-arguments and the supporting information, data and documentation to substantiate their original proposals. In case the employer will make counter-proposal in package, they can immediately analyze it and properly distribute to the different proposal without asking the employer for an adjustment or the fixing of another date for negotiation conference.

Lesson 9

Drafting the Contract

With the years, the areas that labor and management can cover under a union contract expand. Most of these subjects are inherently complicated ones-retirement, group insurance, hospitalization benefits, merit increases, and the like.

Labor and management have been making progressively more intricate arrangement under these headings, with the result that, although the agreements are still called "contract", they compare in length and complexity with statutes or codes.

In addition, technological advances and changing economic circumstances wipe out the old job classifications and force the setting up of new ones.

Accordingly much skills and care must now be exercised to keep the union contract from becoming like a jungle in which lurks the dangers of conflicting provisions, of omission, vagueness, and error.

The sorry fact is that a great many union contract are such “jungles”. Many of their sections are excerpts from company policy statements; contracts made by others than the bargaining parties or lifted from books of sample contract clauses in collective bargaining. These excerpts for the most part, will have been added to the contract with little or no effort to adapt their special purpose terminology; and the organization to causes already in the contract. Therefore they seldom fit in the particular management-management relationships of the parties.

Collective bargaining contract are usually negotiated under so much pressure and under time constraints that even when sections or articles are not borrowed from other collective bargaining agreements they are often put together under such bargaining environment. Thus, at times do not reflect the true intention of the parties.

When the meaning of the particular clause or provision is elusive, the ordinary worker, and even trade union leaders favor the interpretation that advances their own interest. They find it easy to consider this the only “fair” interpretation, and to feel that anyone accepting any other is obstinately rejecting the pain working of the contract.

Thus, the parties to the contact come to suspect each other not only of error, but also of bad faith. Disputes arise and strikes occur needlessly, as do litigation and arbitration.

1. Function of the Parties Drafting the CBA

The parties drafting the agreement have the function of preventing rather than resolving labor disputes. If they perform their function well, very few disputes will arise; and it will prevent literally scores of disputes for every one that the employer and the union resolved by arbitration, litigation or economic strength.

The parties drafting the CBA prevent disputes by making sure that the employer, the union, and the members understand the contract, and that all understand it to mean the same thing. This is not easy. Few contract negotiators write a sentence that is crystal clear even at the time it is written. The employer, the union and the workers are forever free to attack the language used by the party drafting the contract.

Good drafting of a CBA implies a complete job. There is no way to make one section of a contract adequate if the other sections are to remain vague or nebulous. For a contract is an integrated whole; it is not a mere collection of unrelated provisions. Since each provision will be interpreted in the light of the whole, one cannot hope to draft the provision unless there is a foundation and a framework of a contract for fitting it into. Many a provision that might be a master piece if standing alone has become a monstrosity when injected into a contract in which it does not dovetail.

On the issue of **Union Security**: Who speaks for whom and with what authority?

a. Recognition

1. The company recognizes the Union as the sole and exclusive bargaining representative of all the employees within the appropriate bargaining unit for purposes of collective bargaining with respect to rates of pay, wages, hours of work and other terms and conditions of employment.
2. The company recognizes the union as the bargaining representative of all regular and permanent rank and file employees/workers of the Company for purposes of collective bargaining.

b. Coverage

1. This agreement covers all regular rank and file employees except managerial, supervisory, technical probationary, contractual and casual employees.
2. This agreement covers all regular rank and file employees within the appropriate bargaining unit except the following positions:
 - a. Department managers and their secretaries
 - b. Accountants and accounting personnel
 - c. Personnel Officer and personnel in the personnel department
 - d. Cashier and paymaster
 - e. Apprentices, temporary, casual, probationary and contractual employees
3. Types of Union Security
 - a. In conformity with the union demand, the company agrees to require as a condition for continued employment of those employee covered by this agreement who either are members of the union in good standing in accordance with its constitution

and by-laws, and all employees who became members in the union in good standing for the duration of this agreement.

- b. During the lifetime of this agreement, all employees covered by this agreement and those who subsequently become members of the union shall maintain their membership in the union.

On *Management Rights*: except in what conditions the rights are exercise.

- a. A management functions, whether heretofore or hereafter exercised and regardless of the frequency or infrequency of the exercise, shall remain vested exclusively in the company. It is recognized, therefore, that the sole right of decision with respect to management operations and direction of the working force and other functions normally incident to such responsibility is vested in the company; and any rights that the company had prior to the effectiveness of the agreement are retained by the company.
- b. The union hereby recognizes the company's right to hire and discharge, transfer, lay-off, or disciplines its regular employees and labours for just and proper cause. The union recognizes the company's right to add, modify or delete any position, provided such action is not exercised for the purpose of discriminating against any union members or for the purpose of violating this agreement. The company may layoff, discharge, transfer, reclassify or discipline any probationary or temporary employee in its sole discretion and such action shall not be the subject of the grievance procedure.

On *Hours of Work*: What Constitute

- a. Since the operations of the Plant are on a 24-hour, 7 day a week basis, all shift workers shall have a normal work-week of forty (40) hours, eight (8) hours per day on a seven (7) day cycle.
- b. Since operations in the Plant is on a 24-hour, 7-day-a -week basis, the work week will be on Monday thru Sunday, inclusive all shift workers shall have a normal work week of forty (40) hours, eight (8) hours per day, from Monday thru Sunday inclusive.

Hours of work for both men and women should be calculated to avoid differentiation and possible gender discrimination.

On Over time Work

- a. For shift workers, 30% overtime pay will be paid to all employee who work more than forty hours within a week, in addition to the overtime of 30% for work performed in excess of eight hours a day.
- b. Shift worker shall be paid 30% overtime pay for work in excess of forty hours a week within the four week cycle in a month, in addition to the 30% overtime pay in excess of eight hours worked in a day.

Grievances defined

1. For purpose of this agreement, a grievance is defined as a claim alleging that the terms of this agreement are not being implemented.
2. Any difference of opinion, controversy, or dispute between the company and the union, or between the company and any employee or labours within the appropriate bargaining unit, concerning the interpretation or application of this agreement or any term; or condition of employment involving employees of labours within the bargaining unit shall be considered a grievance.

Effect of Laws on the CBA

1. Benefits established under this agreement shall not be compounded with similar ones stipulated by the Law, court, municipal or provincial government regulations or introduced by legislation during the life of this agreement.
2. It is mutually agreed that if subsequent laws, and other governmental orders give benefits to workers over and above the benefits under this agreement, then the workers that are more beneficial to them shall enjoy such benefits.

Duration of the Contract: For how long?

1. This agreement shall be effective from the 1st day of May 2002 until 30 April 2003 and shall be subject to automatic extension for yearly periods unless terminated.
2. This agreement shall be effective from 1st day of May 2002 thru the 30th day of April 2003, and shall be subject to automatic extension of yearly periods unless a written notice by either party is given to

the other within sixty days prior to its expiration of its intention to modify, amend, or supplement this agreement. In the event such notice is given, negotiation for a new agreement shall immediately commence within ten days from date of receipt of such notice by the other party. The provision of this agreement shall continue in force and effect pending the signing of a new agreement.

With the basic principles in contract writing as a guide and using the agreed terms during negotiations and the final decision on the deadlocked issues, both union and management panel should now sit down and draft the agreement.

MODULE FOUR



IMPLEMENTATION OF A COLLECTIVE BARGAINING AGREEMENT

Introduction

The occurrence of conflict in labour-management relations stems from a variety of causes ranging from the usual economic causes (like demand for higher wages) to more complex ones, as negotiable issues because more entwined with socio-economic conditions like inflation, recession, unemployment, health and living standards. One will observe that the occurrence of conflict in labour management relation takes on a healthy stance as society progresses, and the resolution of conflict takes on a strong posture as the rising expectation of workers are at least met.

In addition, promoting gender equality in employment does not end once the collective bargaining process is signed. The following up to the collective bargaining process is essential; otherwise rights may exist on paper only.

The sources of conflict are varied: it may be motivated by economic or financial reasons (higher wages, overtime, vacations, holidays, pensions, insurance); by personal reasons (discharge, discipline, promotion, rapport between supervisors and employees); or by different judgment between women and men's workers. Disputes arising from such reasons are called "*interest disputes*", since the conflict arises out of the workers' or unions' attempt to obtain certain employment conditions.

While interest disputes may be resolved through the collective bargaining contract which incorporates the basic conditions mutually agreed upon by both parties, the resolution of the other kinds of dispute—“*rights disputes*” necessitates the aid of an industrial court. Rights disputes involve conflict arising out of the interpretation and/or the application of collective agreement or national legislation. Thus, while collective agreement establish the working conditions and terms of employment agreed upon by both workers’, organizations and employers’ organizations, it may also create a source of conflict through ill-defined and equivocal (double meaning) language which in turn give rise to conflicting interpretations.

When conflict exists, it is but righteous that workers be given a means by which they can express their complaints about his/her working conditions without risking his/her job. This is the essence of the grievance procedure. Under collective bargaining, the union is recognized and accepted as the spokesperson for the workers when a dispute exists between union and management. As much as possible, a way must be found to reach settlement without either of the parties resorting to the use of economic power. Simple put, what goes on and how the grievance procedure is handled, make up the negotiating process which has its ultimate aim, peaceful resolution of a conflict/dispute.

Grievance procedures take various forms. In some countries, once the parties sign the agreement it is valid and binding. In others, collective agreements are forwarded to and recognized by an industrial court and therefore enforceable by the said court. The establishment of a labour court is considered as an important step for the effective resolution of “rights disputes” and unfair labour practice cases.

There are five elements present in collective bargaining: first, dispute resolution is sought primarily through direct negotiation between the parties unless both parties voluntarily agree to involve a neutral party and to accept its decision, then arbitration is resorted to. Second, the final of the decision is substantially uncertain at the beginning of the negotiations. Third, the parties see direct negotiation as a proper process for dispute resolution, and therefore approach the negotiation in good faith. Fourth, if disagreement over settlement terms persists, the parties themselves should determine how to resolve the impasse until such time that their continue disagreement threatens the well-being of all concerned. Fifth, participation of both parties should be viewed from an even power base.

1. Conflict Resolution and Industrial Peace: Methods of implementing a Collective Bargaining Agreement

Three phases make up the collective bargaining process: the preparation phase, the negotiation phase, and the implementation phase.

The first two phases are undeniably crucial: the preparation phase brings the parties together and provides a means by which the parties can discuss and confer with each other, quipped with the necessary facts: whatever discussion that has transpired in the preparation phase is translated into the negotiation phase where the parties eventually see settlement or agreement. While the negotiation phase does give a “conclusive and final” impression to the collective bargaining process, the CBA process, however, does not actually end in the negotiation phase. Equally, if not more important, is the implementation phase where both parties carry out what has been settled or agree upon during the negotiation phase. While the preparation phase and the negotiation phase are concerned with the “whys” and the “whats” of the collective bargaining process respectively, the implementation phase answers the “hows” of the collective bargaining process.

In the final analysis therefore, knowledge of an effective machinery for the enforcement of collective agreements may spell the difference between being able to settle disputes peacefully and being able to prevent disputes.

The process for including gender issues in collective bargaining normally includes the some measurements. It is particularly important to ensure that women are consulted and their concerns and priorities taken into account for at least three important reasons. Firstly, collective agreements are often formulated on the basis of past agreements, and these tended to almost completely ignore the specific concerns and interests of women. Secondly, women tend to be the “invisible” workforce; and thirdly, they often lack the confidence to make themselves heard, especially when they are not well educated.

Promoting gender equality at the workplace does not end once the collective agreement is signed. There should be proper implementation and monitoring. Some of the monitoring procedures are informal or ad hoc, carried out by the union leaders or when there are specific grievances. In many cases, the monitoring covers implementation of the entire agreements rather than just the equality provisions. However, in some cases there is specific attention given to gender clauses, with reporting to an external or

higher body.

Grievances or disputes are always [prone to occur in labour-management relations because human beings run organizations and reactions to every change should be expected. One cannot say that relationships between people will always be in perfect harmony. Problems arise because of changes in the system that prompts the actors to react to such changes, and from erroneous interpretations of the CBA. Thus, while such problems arise in labour-management relations, the ability to effectively implement the CBA serves to at least reduce such problems by allowing for corrections to certain loopholes that may arise. This eventually serves as “guide” for future CBAs.

2. Different methods of implementing the Collective Bargaining Agreement according to the actors that implement the Agreement

1. how collective bargaining agreement is *implemented by the parties themselves*, included under which are:
 - a) through a representative i.e., the shop steward
 - b) through joint committees
 - c) through work councils.
2. how collective bargaining agreement is *implemented through the use of a third party* which includes:
 - a) special legislation;
 - b) supervision of a labour inspector;
 - c) conciliation
 - i. conciliation/ mediation
 - ii. voluntary or compulsory conciliation
 - iii. individual conciliation and conciliation boards
 - d) special arbitration
 - e) specialized labour courts

Lesson 1

Shop Steward

The shop steward is the workers' representative at the place of work. He/she is normally elected to this job by his/her fellow union members, who recognize him/her as a leader who will represent their interest before management and higher councils of the union.

The function of the shop steward ranges from collecting and handling out union information and to actually assisting in negotiating new agreements and leading strike action.

When a worker comes forward with a complaint, the shop steward should:

1. Gather all the necessary and important information regarding the grievance /complaint by discussing the grievance with the worker concerned, asking probing questions which will enable the shop steward to present an accurate and objective interpretation of the grievance to the management.
2. Re-check and study all the facts and know the precise nature of the grievance.
3. Inform the aggrieved worker that he/she will do his/her best and bring about a satisfactory settlement. If after a thorough investigation of the case, there is no legitimate grievance that exists, he/she should honestly tell a worker that the union can not take up the case.
4. Write down the grievance clearly and straight to the point.
5. Approach management at the shop level – usually a supervisor or foreman.

Under the grievance procedure, the supervisor or the foreman and the shop steward or work councils share the responsibility for settling grievances.

When the shop steward or the work councils cannot settle a grievance with the foreman or supervisor, the problem goes to the next step in the grievance procedure. When the system fails in resolving workers' grievances, the ultimate step is to refer the grievance to compulsory arbitration or voluntary arbitration.

The shop steward should also encourage workers who have a grievance to come directly to him and not to the foreman. A worker who is ignorant of the contract may let the foreman talk him out of a grievance, or he may;

agree to a settlement that weakens the agreement and indirectly hurts the other workers. Some employer encourage workers to ignore their shop steward in the hope of weakening the union; if a worker can settle his grievance with the foreman, he/she may; decide not to involve the union at all.

1. Grievance Procedure

When a union becomes the exclusive bargaining agent of a group of employees, it is required by law to represent all the employees in the bargaining unit. Under such representation all employees, members, and non-members alike, have equal right to have their grievances (as defined in the contract) processed through the grievance machinery specified in the contract. Union participation is key element in grievance procedure under collective bargaining agreements.

A critical aspect is the setting up of a dispute resolution procedure, which has adequate resources and capacity to justly and efficiently address any breach of the collective agreement. The dispute resolution procedure (which may include conciliation, arbitration, reference to labor court, etc.) must be able to deal with sensitive issues such as sexual harassment, discrimination, denials of family leave, unfair dismissals, etc.

There are problems that may arise over complaints the union chooses not to process as grievance. Among these are grievances that are without merit, in the union's judgment; those which union feels it cannot win; and disputes in which a choice has to be made between opposing grievance of two employee (e.g. grievance involving seniority). Where such judgment enters, an employee may feel that his/her grievance has been improperly rejected, if not accepted, or not properly processed, because of bias or discrimination.

As such, formal statements ensuring the highest degree of confidentiality possible for the complainant is necessary. Without such assurances, many employees, especially women, making claims on gender provisions might be dissuaded from bringing their claims forward for fear of workplace isolation, ridicule, reprisals, etc. When informing employees of their rights under the collective agreements, they should simultaneously be informed of the proper methods of handling grievances and be assured that confidentiality will be a top priority.

The essence of a grievance procedure is to provide a means by which

an employee without jeopardizing his/her job, can express a complaint about his/her work or working conditions and obtain a fair hearing through progressively higher level of management, Under collective bargaining, four important and related features have been added to this concept: First, the collective bargaining contract may create a source of grievances and disagreement through ambiguities of language and of omissions, as do changing circumstances and violation; second, the union is recognized and accepted as the spokesperson for the aggrieved worker, and an inability to agree on a resolution of the issue becomes a dispute between union and management; third, because an unresolved grievance becomes union-management dispute, a way must be found to reach settlement shorts of strike or lockout or substitute for such actions. Final and binding arbitration is the principal mean to this end; fourth, the process of adjusting grievances and grievance disputes is itself defined in the agreement, and, along with other aspects of collective bargaining tend to become increasingly formal.

The almost universal adoption of grievance procedures and grievance arbitration has given rise to the notion that strikes and lockouts arising during the term of agreements are universally outlawed. In general, however, in the absence of an absolute ban on strikes and lockouts during the term of agreement work stoppage may occur if:

1. no grievance procedure is provided;
2. no final and binding arbitration is provided;
3. certain issues are non-arbitral;
4. certain issues are excluded from the grievance and arbitration procedures;
5. the contract is deemed cancelled on particular types of contract violation; non-compliance with decisions and awards is charged; or
6. the grievance machinery breaks down.

It is the sincere desire of both parties that employee grievances be settled as fairly and as quickly as possible. Therefore, when a grievance arises, the following procedures must be followed:

1. The employee (individually or accompanied by his committeeman) shall seek direct adjustment ;of any grievance or dispute with the foreman under whom he/she is employed. The foreman should reply to stated employee as soon as possible (within three days).
2. If the question is not then settled, the employee may submit his/her

grievance in writing on forms supplied by the union, to a committee selected as hereinafter provided for the particular unit in which such employee is employed or working. Committee investigates said complaint and if in its opinion the grievance has merit it shall have the right to meet with the local company superintendent or his representative (within ten days after meeting with the committee) provided that prior to the time of or as at the meeting with the committee such complaint or grievance has been submitted in writing to the local superintendent or his representative.

3. In exceptional cases, workmen's committee shall have the right to institute grievances concerning any alleged violation of the agreement by filling a written complaint with the official locally in charge.
4. Any grievances filed with or by the local workmen's committee's consent.
5. No complaint or grievance shall be considered hereunder unless it is presented to the superintendent or official locally in charge within sixty days from the date on which the complaint or grievance arose or from the date on which the employee(s) concerned first learned of the cause of the complaint.
6. Employees of the employer who are members of the union will select from among and the committee above-mentioned. No official, foreman, or employee having authority to hire or discharge workers shall serve on the committee.
7. In case of discharge or lay-off, employees who may desire to file complaints within one week after the effective date of discharge or lay-off to the committee. The workmen's committee will be furnished with a copy of the statement furnished to the employee, both when the discharge or lay-off is for the cause or for flagrant violation of a company rule. Any grievance to be filled under this section must be file within forty days from the effective date of the discharge or lay-off. In the event the decision of the superintendent or his representative shall not be satisfactory to the committee, it is agreed that the president of the company, or some one designated by him, shall not later than forty five days after such decision, have the right to confer with the director of Industrial Relations or some one designated by him, shall render a decision to the president of the company within twenty days after grievances or disputes have been

so submitted to him in writing.

8. If such decision is not satisfactory, then upon request of the president, and within sixty days from the posting date of the final appeal answer, there shall be set up a local arbitration board, such grievances and disputes submitted to it within ten days after the formation of such board. Such local boards shall consider only individual or local employee or local committee grievances arising under the application of the current existing agreement, or supplements thereto, and local wage and classification disputes submitted on the initiative of the president. In this connection the employer agree to give consideration to local classification rate inequity complaints existing by reason of a comparison with the average competitive rate of pay for like jobs having comparable duties and responsibilities being paid by agreed-upon major competitive companies in the local area. Such requests for adjustments of classification rate inequities if any shall be made not more frequently than twice annually.
9. The abovementioned local Arbitration Board shall be composed of one person designated by the employee and one designated by the president of the company. The board shall within seven days from date of submission. Should the two members of the Board selected as above provided, be unable to agree within seven days, or to mutually agree upon an impartial third arbitrator, an impartial third party member shall be selected within seven days thereafter by the employer or the employee member of the Arbitration Board, or such two parties jointly requesting for a panel of arbitrators from which the third member of the Board shall be selected.
10. The decision of the Board aforesaid shall be final. However, if the rules at the time a given case originated are subsequently changed, it is understood that the arbitration award rendered under the former rules and conditions shall not act to prohibit consideration of a complaint originating under the changed rules and conditions.
11. The fee and expenses of the impartial arbitrator selected as above provided shall be divided equally between the parties to such arbitration. The parties agree to attempt to hold the arbitrator's fee to a reasonable basis.

Lesson 2

Joint Committees

Every establishment should have a machinery for worker-management communication and consultation by establishing a committee composed of workers' and employers' representatives and labour welfare matter like productivity programs population, safety and health, education, etc. the joint committee aims to institute better industrial relations and encourage productivity, provided the permissive role of management is assured.

Only the union in an establishment usually recognizes one type of joint committee and its functions are defined, some of which include:

1. amending of existing rule and regulations of the company
2. promoting labour productivity; and
3. serving as a grievance committee in cases where grievances are not satisfactorily resolve through the established grievance machinery.

USE OF THIRD PARTY

Lesson 3

Special Legislation

Under special legislation (as in the case of most countries in Europe, in Latin America and; in some countries in Asia, the provision of collective bargaining agreement are automatically applicable to the employment relationship of all individual covered by them. In these cases, should a breach of agreement occurs, the observance of a collective agreement could therefore be secured through action for damages in the courts. Action for damages can be brought either by an organization in the event of violation by another organization which is a party to the agreement, or by one of its members, to secure damages either for itself or for a member. Under special legislation, the law often prohibits strikes or lockout during the validity of an agreement intended either to enforce or to modify its terms.

Lesson 4

Supervision by Labour Inspectors

Supervision of the application of an agreement entails the responsibility of the parties for ascertaining that its provisions are observed. In several countries, labour inspectors are appointed to supervise the application of the agreements. In some countries where the coverage of collective agreements may; be extended beyond the original parties to other workers and employees in a given field, supervision by; a labour inspector is usual, in consideration of the fact that organization themselves cannot supervise employees and worker not affiliated them. The government, which orders the extension of the agreement to others becomes responsible for enforcement.

Lesson 5

Conciliation

Conciliation is a procedure in the settlement of labour disputes that is aimed at helping the parties to the dispute to reduce their differences with the ultimate end of reaching an agreement. Conciliation has been applied described as “a process of Peace-making”. The essential role of the conciliator is to help; the parties in a labour dispute (disputes regarding rights and disputes regarding interests) arrive at an amicable settlement of their differences. They are responsible for bringing the parties together and assisting them in reducing their difference until an agreement is reached over the issues in dispute. Unless a settlement is reached, the conciliators have failed because they have no authority to present their proposals for the settlement of the dispute. Together with collective bargaining, conciliation presents pluralism, voluntarism and free interplay of social forces, recognizing the need for a flexible and dynamic settlement procedure.

Several features characterize conciliation services. Conciliation procedures should be free of charge; conciliation procedures should be prompt and quick; conciliation procedures should be initiated by any of the parties to the dispute (as stipulated in the ILO’s Voluntary Conciliation and Arbitration Recommendation 1951, No 92); the establishment of the

conciliation machinery as well as the attendance at conciliation meeting should be voluntary. In effective conciliation presupposes two basic tools namely: technical competence of the conciliator (mastery of labour laws and policies governing employer-employee relationship, aspect of the labour relation system), and the personal trait of the conciliator himself/herself (trustworthiness, objectivity, stamina, endurance and patience).

Conciliation procedure begins with the beginning of the negotiation itself, or in the most industrial relation systems, only when a dispute exists between the parties.

It is up to one or both of the parties to request conciliation or for the conciliation service to intervene on its own initiative. Frequently, one or both of the parties to the dispute, sometimes in connection with statutory rules requiring notification to the competent authority of the existence of a dispute, initiate conciliation following a request or application. Sometimes the conciliator will offer his/her services when he/she is aware of the existence of the dispute, even where the parties have not requested it and irrespective of any requirement of notification.

When is requested by a party, or a dispute is anticipated the conciliation service, the service is not necessarily obliged to begin the conciliation procedure. Reason: if there has not been adequate negotiation between the parties or if agree procedures for disputes settlement have not been respected, the conciliation service may find it proper, or may be required to refer the dispute back to the parties for negotiation or for consideration through the agreed procedure.

Conciliation proceedings consist of a series of phases that frequently overlap or are concurrent. The conciliator seeks to lead parties toward a clear definition of the issues that are in dispute. He/she seeks to soften the parties unwillingness to compromise, leading them to a rational dialogue. He/she seeks to promote a rational discussion and a full understanding of each side. He/she seeks for alternative solutions until there are indications that a settlement is in the offing, and he/she brings parties into agreement on the terms of a mutually agreed settlement.

The threat or occurrence of a strike or lockout may affect conciliation proceedings by acting as a pressure upon the parties to each agreement before the date on which the strike or lockout is to be declared and may consequently assist conciliation efforts. If the threat of a strike or lockout reflects the unwillingness of one of the parties to reach a settlement, this may be the opposite effect and may even harden the position of the other

side.

Where a conciliator has entered a dispute after a strike or lockout has occurred, and the negotiation have been interrupted, the conciliator will have to see whether the parties are willing to resume the negotiation with his/her participation. In some cases one of the parties may refuse to negotiate while a work stoppage is in effect and the conciliator may be called upon to assist in negotiation a return to work to permit a resumption of negotiations. In other cases, where collective bargaining is continuing, the conciliator may have to assist parties in negotiating a return to work order pending a successful conclusion of the negotiations,

Conciliation proceedings may be terminated either by an agreement between the parties or as a result of a failure to achieve agreement. Where a settlement is reached in the course of conciliation, it is recorded either in the form of a normal collective agreement drawn up by the conciliator or conciliation board and signed by the conciliator and the parties. The terms of the agreement should be written down and approved by the parties.

Where the conciliation effort has not been successful, the proceedings may be ended by: the expiry of the statutory time limit for the proceedings; by formal decision of the conciliator; or by the declaration of a strike or lockout. In cases in which a mediator or conciliation board is responsible for issuing a proposed settlement, the proceedings may be terminated by the issuance of recommendations.

The conciliation system is accepted, as a public function assumed by government and this is true even in countries where there is a strong emphasis on voluntarism in industrial relation. There are only differences of approach among countries and these are found in the organization of public conciliation services where some accept these services as a function of the labour ministry, or in other cases, these services are carried out by the ministry officials or by officials with specialized functions (such as labour inspectors) or by independent ministry not subject to government control or by conciliators being given an independent status. In certain countries, the functions of conciliation and arbitration have been combined in an independent agency or tribunal, in which case joint or tripartite advisory committees have been also established to advise on the operation of the agency.

Conciliation as a means of peaceful settlement of labour disputes could be brought about through the intervention of either a conciliator or a mediator. It could either be voluntary or compulsory and it may be

performed by individual conciliation or by a conciliation board. Briefly, these different types of conciliation are discussed below.

1. Conciliation/Mediation

Conciliation assists the parties in reducing differences until agreement is reached; mediator makes proposals for the settlement of the dispute. However, there is no sharp demarcation line between the two since a conciliator seldom take the passive role and refrain from making suggestions him/her self. Occasionally, a distinction is framed in different terms, for example, where so called 'conciliation' board or committee deal with the right disputes and mediators are high level government officials called upon to conciliate or mediate disputes of particular importance; or when conciliation committees deal with rights disputes and mediators with interest disputes.

2. Voluntary or Compulsory Conciliation

When one or both parties request for conciliation, or when the parties accept the intervention of a conciliator when proffered by the conciliation service, voluntary; conciliation comes into play. Since this is a continuation of negotiation (with the help of a third party, it basically depends upon the parties, whether they are willing to continue bargaining voluntarily. Voluntary conciliation may be more effective (rather than compulsory) where one or both parties are suspicious of third party intervention. It ensures that conciliation will be resorted to when the parties want it, than having its chances of success. On the other hand reluctance of one or both parties to invoke or accept the procedure may result in situation in which opportunities for conciliation are lost. This may lead to turn to a higher frequency of strikes and possible economic losses for the society at large.

Under a system of compulsory conciliation, on the other hand, the parties are under obligation to have recourse to conciliation. This may be done by prohibiting resort to strikes or lockouts without previously exhausting the conciliation procedure by requiring the parties to submit disputes to the statutory conciliation procedure or to participate in conciliation proceeding when convened or by a combination of these means. While the existence of a legal obligation to resort to conciliation is no

guarantee that the obligation will be respected or that even if respected, a good-faith effort will be made to settle a dispute through conciliation, such obligation may give conciliation a wide role in dispute settlement than it would otherwise have. They are mainly intended to ensure that all non-binding means of settlement are exhausted before resorting to power struggle through direct action. However, there are occasions in certain countries when the conciliation procedure is seen as a formality to be met before having legal methods of dispute settlement.

3. Individual Conciliation and Conciliation Board

The function of conciliation may be performed by individual conciliator, acting alone, or by conciliation boards or committee. In the latter case, the boards or committees, generally are composed of representatives of employers and workers and an independent chairperson (who may be a public conciliator). Conciliation by a high-level member of government, such as the Minister of Labour or Prime Minister which sometime occur in certain countries in important disputes, may perhaps be considered to be a special type of conciliation distinct from the first two mentioned.

It is sometimes considered that the individual conciliator can be more effective because of more flexibility in using the various conciliation techniques to lead the parties to a compromise and agreement. Conciliation boards are criticized as being rigid and sometimes formalistic thus lacking the flexibility for effective conciliation.

The distinction between individual conciliation and conciliation boards are in some respect like the difference between conciliation and mediation, with the conciliation practiced by the individual conciliators who assist the parties in their negotiation, while mediation is carried out by conciliation boards who are expected to produce a recommended solution, where conciliation boards are required to make formal proposals for the settlement of a dispute, these boards may have an advantage over an individual conciliator or mediator since the employers and workers representative included on the boards provide some assurance that the parties interests and view will be taken into consideration

Lesson 6

Arbitration

Arbitration is a procedure whereby a third party (whether an individual arbitrator, a board of arbitrators or an arbitration court), not acting as a court of law, is empowered to take a decision that disposes of the dispute. If the decision concerns legal disputes, and involves deciding the rights and obligations of the parties, arbitration is similar in function to adjudication. If the decision concerns; interest or economic disputes, it involves replacing negotiation by an award considered by the third party to be appropriate. In both cases, even if the arbitral award is obligatory under the law, it is similar in legal nature to a legally binding collective agreement and a party will have to seek enforcement before the court of law. Arbitration may also be conducted by a tripartite board, which is made up of a member from each party and a neutral person chosen through an agreed procedure. In some important arbitration board action, the parties consider it important to have more than one neutral member on the board, or even have the board entirely composed of neutrals.

a. Voluntary Arbitration

is the procedure whereby the parties to a dispute consent or agree to refer such dispute to a person or persons nominated by them jointly. Voluntary arbitration could also refer (as in some countries) to a situation where the parties to a dispute agree or consent to a reference but leave the choice of arbitration to some other authorities. Voluntary arbitration is sometimes viewed as an extension of collective bargaining inasmuch as the source is the concept of the parties themselves. Voluntary arbitration in some countries may be conceptually different from other countries. In some countries voluntary arbitration is the final stage in the grievance procedure usually established by collective agreements, aiming at the settlement of right disputes without recourse to the courts that is still the ultimate means to settle both interests and rights disputes or exclusively interest disputes. The significance of voluntary arbitration lies primarily in its capacity to offer the parties to a labour dispute an alternative to the reference of the dispute to court.

The extent to which voluntary arbitration is resorted to varies widely. Some countries make it a government policy to encourage recourse to

voluntary arbitration dealing with disputes unsettled by conciliation. However, although there are a few examples of effective machinery for voluntary arbitration established by collective agreement a number of disputes referred to arbitration (as in Indian case) are referred to Industrial or Labour Courts and not to voluntary arbitration. In other countries voluntary arbitration as a mean of settling disputes has either been resorted to frequently or has been out of practice.

The award of an arbitrator should be final and binding to the parties since the award is rendered by a person whom both parties have confidence. However, a review by an appellate body by whatever name it may be call in individual countries should be provided for in cases where an arbitrator makes a perverse order or acts in excess of or without jurisdiction, or where the arbitrator commits an error of law. It follows that the awards of the arbitrators should be seasoned awards thus enabling the parties to know the basis of which a decision has been arrived at.

b. Compulsory Arbitration

simply means that when a labour dispute arises between the employer and an employee and/ or the trade union, and when it has been found impossible to resolve then dispute because of deadlock on one or more issues, the law directs that government intervention should impose compulsory arbitration on parties whether they like it or not.

1. Role of Courts in Compulsory Arbitration

In some countries, governments are empowered to refer any industrial dispute to arbitration on their own initiative under certain circumstances. Compulsory arbitration can be entrusted to courts called under various names e.g. labour courts, industrial tribunals or industrial courts. In some instances (Sri Lanka), minor disputes are referred to compulsory arbitration by arbitrators appointed from a panel of the judges of the industrial court (e.g. Labour Courts in Pakistan, and Industrial Courts in Sri Lanka, Industrial Tribunal and Labour Courts in India) made up mostly of persons who have been or who are qualified to be judges in the ordinary courts. Consequently, compulsory arbitration has become highly legalistic process; sometime called “adjudication” when these courts or tribunals, reflecting their legalistic approach to the settlement of labour disputes, carry it out.

2. Scope of Issues

Compulsory arbitration may cover all sorts of labour disputes, including interest and rights disputes. Lawyers are often entrusted with the task of solving the disputes arising over new wages rates or improved conditions of work as well as other types of disputes. This situation further strengthens legalism in labour relations.

Despite the presence of strong legalism in the procedure for settling labour disputes the development of tripartite bodies, as contrasted with courts, indicates the trend to be veering away from legalism.

3. Purpose for Which Adjudication Should Be Used:

It is considered that compulsory arbitration should be used mainly for interest disputes provided other satisfactory dispute settlement mechanism are available for the resolution of rights disputes. It is essential, in keeping with the policy of promoting a policy of bilateral negotiations, the compulsory arbitration should be preceded by; the full utilization of conciliation services which are manned by trained and able conciliators. In some countries, special machinery for the resolution of individual grievances, such as dismissals, and voluntary arbitration provision, are used to settle disputes arising out of collective bargaining agreements.

In some countries, compulsory arbitration of disputes has been adopted as an alternative to strike. The adoption of compulsory arbitration as a major or final mode of dispute settlement, after conciliation and mediation efforts have been exhausted, reflect the concern of governments that work stoppage due to industrial disputes could hinder development and serve as disincentives to foreign investors in different industries in the country.

4. Last Resort

Resort to compulsory arbitration has not been incompatible with collective bargaining, nor need it be, provided it is utilized where collective bargaining and conciliation failed. It is however, a useful substitute for collective action either by employees or workers and a necessary tool in the hands of the state in the context in which developing countries are placed. Proper timing is important in the utilization of adjudication if one is to ensure that arbitration and collective bargaining do not become antithetical.

5. Criticisms Against Compulsory Arbitration

Some of the criticisms against compulsory arbitration that render it ineffective in the settlement of labour disputes and in achieving other desired goals area:

- a. Litigation tend to be protracted;
- b. Judicial approach to the adjudication of disputes subordinates policy considerations and economic factors to the technicalities of the law;
- c. excessive dependence on the national labour courts which hinder the development of collective bargaining;
- d. Hampers the development of a unified, strong responsible labour movement;
- e. That state intervention in industrial disputes may earn for the government a much of the hostility caused by what are essentially the economic facts of life;
- f. That in the context of a divided labour movement, compulsory action arouses the suspicion that the public authority favors one group as against another and compromises the labour leaders who are sympathetic to government policy, provides fodder for the opposition and perpetuates division in the labour movement;
- g. Compulsory arbitration creates frustration and discontentment among workers and suppresses the cathartic value of protest.
- h. In compulsory arbitration, there is the temptation for government to dictate the award of its own arbitrators;
- i. There is the danger of the corruption of government arbitrators by parties to a dispute;
- j. Lawyers will displease trade union leaders since subjection of collective bargaining to judicial action in formal courts trend to stunt the growth of trade unionism.

6. Compulsory Arbitration as an Effective Instrument

Despite the aforementioned criticism, there are reasons why compulsory arbitration is also considered as an effective instrument and maintains industrial peace by:

- a. developing industrial relations on an orderly basis;

- b. extending advantages of unionization and collective bargaining to groups in the labour force which are either weak or unorganized.,

7. Effects of Compulsory Arbitration on Collective Bargaining

There is a unanimous view that compulsory arbitration and collective bargaining are compatible and could fruitfully co-exist. Both institutions have a place in the industrial relations system of developing countries.

Compulsory arbitration should be placed at the end of all negotiation and settlement procedures, and should be conserved as a last resort to be invoked only when all the possibilities for negotiation and conciliation have been exhausted. The key to compatibility or incompatibility between collective bargaining and compulsory arbitration depends on the level and timing of arbitration. A premature and ill-conceived invocation of compulsory arbitration may adversely affect collective bargaining negotiations.

Lesson 7

Specialized Labour Tribunal

In some countries, when labour and management cannot agree on the settlement of a grievance, the grievance is referred to a labour tribunal. Labour tribunals are usually composed of an equal number of judges elected by labour and management and an independent authority, who represents government or the interest of the general public. These tribunals are established by legislation and in some cases they may subpoena both parties to appear before them in their attempt to settle the grievances.

Many countries, however prefer not to use the ordinary tribunals for enforcement of collective agreements. The procedures in these tribunals are likely to be long and costly, and delay may result in strike action to secure a quicker remedy. Moreover, the judges or magistrates, who are mainly concerned with matters of general legislation may not be fully aware of the special problems involved in labour relations. Specialized labour tribunals have therefore been set up to deal with these cases. Sometimes, action for the enforcement of the terms of collective agreements may be brought only

by organizations, but in some cases individuals may take proceeding as well. In certain cases, action may be brought only after the parties have failed to reach a settlement through negotiation or conciliation.

Lesson 8

Use of Industrial Action: Strikes and Lockouts

A lockout is the closing of a workplace by the employer during a labour dispute; the employer decides to shut down the factory and exclude the workers from working therein and therefore put economic pressure on the workers and their families to accept the wages and working conditions he/she dictates.

A strike is a temporary stoppage of work through the concerted action of employees as a result of an industrial dispute. It is the most powerful economic weapon the unions have in their struggle for a better life for their members.

It is generally recognized and that the right to strike symbolizes the right to fight for justice and self-defense. This implies that the right to strike and lockout acquires an inalienable dimension and should not be subjected to criminal action. The right to strike exists independent of government laws. A total and permanent ban on strike is not acceptable. It is generally felt the strikes and lockouts are important elements of freedom of association and should be permitted in non-vital industries. Then right to strike should be exercised as a last resort, and done in a responsible, orderly and regulated manner.

Generally, the arbitrary suspension of the right to strike is frowned upon, since it only postpones problems and increases tensions. Limitation imposed without adequate regard for their implication to industrial relations also are unacceptable. Any possible suspension or limitation of the right to strike entails the government obligation to establish effective speedy and impartial machinery for the settlement of disputes, particularly those arising from deadlocks in negotiations.

There are two classes of strikes: the economic type and the unfair labour practice type. Economic strikes are resorted to when the strikes seeks to compel the employer to accede to as demand for higher wages or better working conditions, or to compel recognition without court certification.

Unfair labour strikes are those provoked or prolonged by a refusal to bargain, or a discriminating discharge, or caused by any other sort of unfair labour practice. The nature of strike can change in the sense that it may start as economic and can be prolonged as an unfair labour practice strike.

Workers and members of a labour union generally have the right to strike to secure a particular demand, they may also have the right to signify to their employer their intention to close work and their reasons for doing.

The legality of a strike will depend on two points: the purpose for which it is maintained; and the means employed carrying it on. Thus for a strike to be legal, it should have a legitimate objective, usually the promotion of the welfare of the worker, and it should not be accomplished or maintained by force or any other illegal act.

Generally, workers can strike:

1. to demand for better working conditions;
2. to secure an advance in wages or shorter periods of work;
3. to secure re-employment of a union member deemed to have been improperly dismissed;
4. to secure the discharge of a fellow employee deemed as troublesome;
5. to secure improved relations with the employer.

On the other hand, strikes for the following reasons may be illegal:

1. encourage the commission of an unlawful or criminal act;
2. to compel an employee to join a boycott;
3. to overthrow the government.

For workers to quit employment and go elsewhere without any intention of returning is not a strike. When the workers quit because of failure to receive their pay is not a strike. A refusal of miners to work in a dangerous and unminable part of a coal mine, when they are continually at work in other parts of a coal mine, is not a strike. Refusal of workers to enter into the employment of a particular employer is not a strike. Therefore, there has to be a trade dispute between striking employees and their employers for a strike to be lawful.

When a union has reached a stage of considering the need for striking action, it will have to consider the many aspects of the proposed action – when it will take place, how long it will last, which union members will be directly involved, the kind of strike, how it is to be organized etc..

Normally, a union committee would not consider proposing strike

action unless it is reasonably sure that there already exists a strong feeling among the members supporting a strike. The committee must take the responsibility for leading the membership in this and all other issues. The leadership will be more effective if there is close contact between the leaders and the workers.

Because it is so important that a strike action (a union action) should have active support of all members, union rules sometimes provide that a strike shall not be called unless the majority of the members approve it.

Law that the relationship existing between the striking workers and their employer is not necessarily terminated by a strike has long recognized it. Neither is it accepted that a voluntary return to work is a waiver of the original demand before the strike. However, when the labour union refuses to bargain collectively and then declare a strike, the participating workers can be denied their rights and privileges under the law. Striking workers committing illegal acts during a strike can lose their rights to continue working with the company.

Generally, the readmission of striking workers on a temporary basis after the strike, when they were permanent workers before the strike, is considered as illegal. But when the employer voluntarily agrees to reinstate the striking workers, his/her action constitute a waiver that the strike has been illegal. However, reinstatement of striking workers, except the leader, show discrimination. On the other hand, a strike in violation of a “no-strike” clause in the collective agreement between the striking union and the company will disentitle striking workers to reinstatement unless breach of contract is waived or condoned.

Participants in the ASEAN Regional Seminar on Collective Bargaining and Labour Administration in 1977 agreed that the right to strike might be influenced by the development requirements. The labour relations system including the right to strike is only a subsystem of the larger political system. The important thing is to define first the objective of the larger political system; once a society has established its labour relations subsystem should be defined and regulated in the light of those goals. To recognize or to withdraw the right to strike would therefore depend on the definition of the goals of the larger system. Limitations on the right to strike may also be conditioned by development needs and requirements.

Special emphasis is placed on the various dimensions and implications of the development theme. On the one hand, employers and workers should refrain from disruptive industrial action and should resort to strikes and

lockouts only when necessary. On the other hand, government should take employers and workers into confidence and share with them the elaboration and implementation of social policies.

While the right to strike is universally recognized, its exercise is oftentimes regarded as indication of the extent of political freedom in a country because some countries impose varying degrees of restrictions. In some countries, strikes or lockouts are allowed only in non-vital industries; how vital an industry is, does the government decide a matter. In others, strikes are prohibited in government enterprises and the public sectors. If, however, strikes and lockouts are indeed allowed in these sectors the right to strike is subject to certain requirements and regulation. Some countries do not allow strikes on disputes involving the interpretation or application of collective bargaining agreement. Once the Industrial Court has taken jurisdiction over the dispute on matters involving the application of collective agreement no strike or lockout is allowed. In disputes where the government is the employer, consent of the state authority is necessary before the Industrial Court can assume jurisdiction of the dispute.

1. Peace Obligation

The obligation to maintain peace while an agreement is in force is an important aspect of sound labour –management relation. Such an obligation is either imposed by law or agreed upon by the parties. Some countries require the registration of collective agreements and grant them the status of judicial awards. In others, the parties are required to establish grievance machinery with voluntary arbitration as the final step in the grievance procedure.

2. Right to Concerted Activities

The law in many countries guarantees to workers not only the right to organize but also the right to concerted activities for the purpose of collective bargaining and “mutual aid and protection”. However, this right to concerted activities does not mean the right to solicit new members on the company property in violation of a company rule. But this right undoubtedly includes strike as one such concerted activities.

The policy to avoid resorting to strikes by workers is still contained under the labour relation policy of many countries. However, the objective

is attained through the elimination of industrial unrest by encouraging the protecting the exercise of employees or workers right to self-organization, the promotion of sound and stable industrial peace and then advancement of general welfare and best interest of the employers and employees by the settlement of issues respecting the terms and conditions of employment through the collective bargaining process. The objective is strengthened by making available full and adequate government facilities for conciliation and mediation to aid and encourage employer and employees in reaching and maintaining agreements concerning the terms and conditions of employment and making all reasonable efforts to settle their differences by mutual agreements. There is no longer any reliance on compulsory arbitration on the avoidance of difference between employers and employees, which may arise, by prescribing certain rules to be followed in the negotiation and administration of the collective agreement.

There are other variations of mass activities aside from the two aforementioned. They have been classified as follows:

- a. sit-down strike
- b. mass-leave
- c. picketing
- d. boycott
- e. noise barrage

Sit-down strikes occur when the workers seize company property and barricade themselves in and others as a means of ensuring plant closure. Workers cease to work but remain at their workstation with the machines and tools idle.

Boycott is another weapon used by unions to put economic pressure on an employer. Boycott has been defined as the act of causing or attempting to cause by inducement, persuasion or coercion, third parties to the labour dispute – primarily suppliers and customers of an employer. The object of a boycott is to close down the business and thus prevent the employer from operating by (1) withholding the labour force from the employer., (2) preventing the delivery of raw materials to the business or finished goods from the establishment, or (3) discouraging existing or potential customers from trading with the struck employer.

Mass leave on the other hand is a temporary walkout by all employees. It is at temporary work stoppage on the employee part until an agreement is concluded between the employees and employer. The workers usually leave the job site and will not return until the dispute is settled.

A P P E N D I X



Selected International Labour Standards

The preamble of the ILO Constitution sets out three reasons for the establishment of an organization for the main purpose of adopting international standards.

- a. The fact that “universal and lasting peace can be established only if it is based upon social justice” which was the prime motive of the people who framed the ILO Constitution as an integral part of the 1919 treaty.
- b. The existence of condition of labour involving “injustice, hardship, and privation” and the need for their improvement, underlined by the Preamble by reference to “sentiments of justice and humanity”. It is reaffirmed in the passage of the Declaration of Philadelphia “that all human beings irrespective of race, creed or sex have then right to pursue both their material well-being and their spiritual development in conditions of freedom and dignity, of economic security and equal opportunity”. The Preamble of the Constitution also sets out fields in which improvement in conditions of labour “were urgently required”. All these are now covered by international labour standards.
- c. The fear of the social effects of international competition. The Preamble acknowledges “the failure of any nation to adopt humane conditions of labour is an obstacle in the way of other nations which desire to improve the conditions in their own countries”.

Other factors explain why Conventions and Recommendations are needed -

- d. The need for regulation of situation in which an international element is involved, such as the international mobility of labour e.g. migrant workers and seafarers
- e. The need of many countries for a model on which to base their industrial legislation, after being suitably adapted, of course, to national circumstances. Developing countries have attained independence with little to build on in the way of labour standards, and most tend to be short of the specialist staff required to adopt legislation.
- f. “Safety stop” argument, i.e. when a country ratifies and ILO Convention, it is in effect giving its pledge to an international treaty. Backsliding is thus much more difficult than if no international obligation existed; hence ratification gives Labour Laws a degree of stability what is not necessarily conferred by purely national legislation.

1. Basic Human Rights

ILO has always attached particular importance to certain basic human rights which constitute an essential element in all action designed to improve the conditions of workers. These are dealt with in Conventions and Recommendations on the freedom of association, the freedom from forced labour and the freedom from discrimination.

a. Freedom of Association

Basic ILO conventions on the freedom of association are in the Freedom of Association and Protection of the Right to Organize Convention, 1948 (no.87), and the Right to Organize and Collective Bargaining Convention 1949 (No.98).

b. Convention 87

Provides that workers and employers, without distinction whatsoever shall have the right to establish and join organizations of their own choosing without previous authorization and provides for guarantees permitting those organization and federations that may establish to carry

on their activity without interference from public authorities.

c. The Freedom of Association and Protection of the Right to Organize Convention, 1948 (no.87)

Lays down a number of principles for guaranteeing workers' and employers free exercise of the right to organize in relation to the public authorities. The Convention specifies *four basic guarantees* in this regard:

1. The first is aimed at ensuring that all workers and employer have the right to establish and join organizations of their own choosing without previous authorization. Under Convention No 87, workers and employers have the right to establish and join organization of their own choosing. Put in these terms, the principle must be considered as one of the foundations of freedom of association. It entails in particular the right to determine the structure and composition of trade unions, to set u p one or several organizations in any one enterprise, occupation, or branch of activity, land to establish federations and confederations freely. Provisions fixing conditions, which are too restrictive, particularly as regards the minimum number of members, and provisions that impose a single trade union system are incompatible with the guarantees laid down in the Convention. Any system of trade union monopoly imposed by law is at variance with the principle of free choice of organization laid down in Article 2 of Convention No.87. A tendency towards relative centralization of the trade union movement may be observed in most countries. When these moves towards centralization are made at the initiative of the trade union them selves, and are expressions of their own spontaneous will they be in conformity with Convention 87. On the other hand, trade union unity imposed by law at all levels runs counter to the Convention even if it is a result of a request made by the existing trade union organization.

Although the Convention clearly does not aim to make trade union pluralism compulsory, pluralism must be possible in every case. Trade union unity imposed by law, whether directly or indirectly, runs counter to the principles of the Convention.

Convention No. 87 embodied a concept that has been highlighted in the preparatory work on the instrument, namely that freedom of association should be guaranteed without distinction or discrimination

of any kind as to occupation, sex color, race, creed, nationality, or political opinion. The only exception to this general principle is that stipulated in Article 9, which permits States to determine the extent to which the guarantee provide for in the Convention apply to the armed forces and the police.

During the preparatory work on Convention No. 87, it was emphasized that the freedom of association should be guaranteed not only to employers and workers in private industry but also public employees.

However, despite the provision of Article 2, the fact is that, although the legislation of virtually all countries recognizes the right of associations of workers in the private sector, the same does not always apply to public servant and officials. In the same countries, public servants do not have exactly the same right of association as the workers in the private sector; in others, the right does not exist for certain categories of public servant or is curtailed by restrictions that do not normally apply to the workers. Finally, in some countries, the legislation does not at all recognize the right of public servants and officials to organize.

It is not always possible to determine from the law in force in a country the precise extent to which public servants enjoy the right of association in practice. Even in countries where their right to form trade union organization is not recognize by law, associations, for example, are sometimes set u p. The fact that law recognizes the right of association does not necessarily mean that public employees are actually able to establish effective organizations to protect their interest.

Certain other categories of workers area also sometimes denied the right to form trade union. The Committee has for example, been called upon to examine the right to organize of domestic staff, persons working at home and in family workshops, persons working in charitable institution, seamen, executive and managerial staff, etc. Depending on the country's legislation the last-named category may be denied the right to organize or may be entitled to do so provided they do not combine with employees of a lower grade.

Since they are not specifically excluded from Convention No 87, all these categories of workers would naturally be covered by the guarantees afforded by the Convention and should have the right to

establish and join organizations.

As the Committee has already pointed out, Convention 87 covers employers as well as workers. Provisions governing the right to organize are normally the same for both. In certain countries, however, employers are excluded from the general trade union law; in others they are governed by special regulations. A distinction must be drawn between countries where private employers exist and those where, under the prevailing system, there is little or no private enterprise. In the second group of countries the right to organize acquires an additional significance for those who are responsible for the direction and management of the undertakings since the right and guarantee laid down in Convention 87 must be secured for all workers and employers including managers of enterprises belonging to the State.

2. The second basic guarantee gives the organizations the right to draw up their constitution and rules, to elect their representatives in full freedom, to organize their administration and activities and to formulate their program.

As with the other rights guaranteed by Article 3 of Convention 87, the principle of non-interference by the public authorities, recognized in paragraph 2 of this Article, is essential to protect the free exercise by the organizations of the right to organize their administration and activities and to formulate their programs.

The most common restrictions on the right of trade unions to organize their activities and to formulate their programs appear to be concerned with the political activities of the organization and the right to strike. Given the development of the trade union movement, union action cannot nowadays be restricted solely to occupational matters. A general prohibition of political activities is not only incompatible with Convention 87 but it is also unrealistic for all practical purposes. Trade union often undertake some measure of political action, including support for a political party, which they may consider necessary for the advancement of their economic and social objectives. Thus organizations should be able to make public their views on as government's economic and social policy, provided that their political action does not compromise the continuity of the union movement or of its economic and social functions; governments, in turn, must not endeavor to use organization as political instruments.

With regard to the right to strike, a general prohibition—sometimes the result of express provisions or as in many countries, the cumulative effect of provisions concerning the official dispute settlement machinery— constitutes a considerable limitation on the means available to trade unions to further and defend the interest of their members and on their right to organize their activities. A prohibition of this nature can only be justified. A permanent ban on strikes should only be imposed on public servants acting in their capacity as public authority officials and on workers in essential services, and should be compensated by the existence of adequate impartial and speedy conciliation and arbitration procedures. Finally, restriction relating to the objective of a strike and the methods used should be sufficiently reasonable as to not result in practice in total prohibition or an excessive limitation of the exercise of the right to strike.

3. The third basic guarantee protects the organization against dissolution or suspension by administrative authorities. The dissolution and suspension of trade union organization are extreme forms of interference by the authorities in the activities of organization. In view of the gravity of these measures, therefore, it is important that they should be accompanied by all the necessary guarantees, which can only be secured under normal judicial procedures.
4. The fourth basic guarantee grants the organization the right to establish and join federations and confederations and to affiliate with international organizations of workers and employer. Federations and confederations have the same rights as their affiliated organizations. In order to defend the interest of their affiliated organizations. In order to defend the interest of their members more effectively, the first-level trade unions must have the right to form federations and confederation of their own choosing. Moreover, if this right is not to remain a dead letter, the higher-level organization must also enjoy the rights accorded to the basic organizations, including the right to bargain collectively and to strike. It is also an important feature of the international solidarity of workers and employers that national federations and confederations should be able to unite at the international level without hindrance.

To these the Convention adds a further two safeguards: as regards the legal personality of the organizations, federation and confederations,

the Convention provides that the acquisition of legal personality may not be made subject to conditions of such a character as to restrict the guarantees mentioned above; as regards respect for the law, in exercising the right provided for in the Convention, workers, employers and their organization must respect the law of the land but in return, the law of the land shall not be such as to impair nor shall it be so applied as to impair, the guarantees provided for in the instrument.

It should also be pointed out that the rights set forth in the Freedom of Association and Protection of the Right to Organize Convention, No 87 are very broadly recognized in as much as they apply to workers and employers alike without distinction whatsoever, and in all branches of activity with the exception of the armed forces and the police. These rights guarantee both to workers and employers the free exercise of the right to organize without interference from the public authorities. Article 10 of the Convention defines the type of organization and envisaged, namely “any organization of workers or of employers”. Article 11 obliges ratifying member States “to take all necessary appropriate measure to ensure that workers and employers may exercise freely the right to organize”. This Article lay down an obligation for the States to take measures to prevent any interference with such rights without qualification, that is interference by individuals, by organizations or by public authorities.

d. Convention No. 98

is designed to protect workers against acts of anti-union discrimination, to safeguard workers’ and employers’ organization mutual interference and to promote voluntary negotiation between management and labour.

e. The Right to Organize and Collectively Bargaining Convention, 1949 (No.98),

deals with two essential aspects of trade union rights: workers ‘ exercise of their right to organize vis-a vis employers—the Convention contains specific provisions for the protection of the individual workers against acts of anti-union discrimination and for the interference in each other’s affairs - and the promotion of voluntary collective bargaining (Articles 1 to 4).

Article 1 of Convention No. 98 guarantees workers adequate protection against acts of anti-union discrimination both in taking up employment and in the course of employment and covers all measures of anti-union discrimination (dismissals, transfers, demotions and any other prejudicial acts). The protection provided in the Convention is particularly important in the case of trade union representatives and officer, as these must have the guarantee that they will not be prejudiced on account of the union mandate that they hold.

The effectiveness of legal provisions, however, depends to a large extent on the way in which these provisions are applied in practice and on the forms of compensations and sanctions provided. Legal standards are inadequate if they are not coupled with; effective and expeditious procedures to ensure their application and with sufficiently dissuasive penal sanction; machinery for preventive protection (e.g., prior authorization of the labour inspector in the event of dismissal) is particularly useful in this respect. The obligation of the employer to prove that there is no union-related dismissal is an additional means of ensuring real protection of the right to organize as guaranteed by the Convention. Legislation which allows the employer in practice to terminate the employment of a worker on condition that he/she pays the compensation provided for by law in any case of unjustified dismissal, when the real motive is his/her union membership or activity, is inadequate under the terms of Article 1 of the Convention. Defective enforcement machinery is likewise inadequate. The re-instatement of the dismissed worker is obviously the most appropriate remedy in such cases of anti-union discrimination.

Article 2 of Convention 98 provides that workers' and employers' organizations should enjoy an adequate protection against acts of interference by each other. It is important therefore, whenever it appears that there is insufficient protection against interference or that such acts do occur in practice, governments take specific action, in particular through legislative means to ensure that the guarantee provided for in the Convention are respected.

Several countries have adopted provisions aimed at protecting workers against acts of interference by employers. Such provision are sometimes of a general nature but in other cases they are more specific and may refer to the independence (i.e., the absence of any control on the part

of any employer) of a trade union as a condition for its registration or otherwise, denial of bargaining rights to trade union which is not independent, prohibition of financial or other support being given to a trade union by employer desirous of exerting control over it, forbidding employer to make employers to trade union representatives, etc. The machinery set up to enforce these provision depends on the various procedures established by national law or practices: it may consist in the intervention of the Registrar of trade unions or the labour administration, then labour courts or the ordinary courts, which are competent to deal with unfair labour practices such as acts of anti-union discrimination and interference.

The Committee on Freedom of Association has stressed on various occasions the need to adopt clear precise provisions aimed at effectively protecting workers' organizations against acts of interference by employer and their organization. In particular, it has pointed out that to give the necessary publicity to provisions such as those of Article 2 of the Convention and ensure that full effect is given to them in practice even in cases where ratification has the effect of incorporating the international standard in national law, it is highly important that these provisions accompanied by provision for appeal and penalties to ensure that they are complied with, should be embodied explicitly in the relevant legislation.

Article 4 of Convention⁹⁸ provides that governments must take measures where necessary, to promote voluntary negotiation between employers and workers. It thus guarantees the autonomy of the bargaining parties and means that the government must refrain from interfering in such a manner as to restrict such autonomy.

Government interference in the collective bargaining procedure entails, in particular, from restrictive legislation on collective bargaining matters and the effects of economic policy measures on the autonomy of the parties.

In the Committee's opinion it would normally be contrary to the principles of Convention 98 to exclude from the collective bargaining certain questions – particularly those concerning conditions of employment – or to make a collective agreement subject to prior approval before it can enter into force or to provide for the possibility of its being declared void because it runs counter to the government's economic

policy. The Committee considers that, rather than subject the validity of collective agreements to government approval steps should be taken to persuade the parties to collective bargaining to have regard voluntarily in their negotiations to major economic and social policy considerations and the general interest invoked by the government.

As regards wage bargaining, the Committee stresses that if, for compelling reasons of national economic interest a government considers that the wage rates cannot be fixed freely by means of collective negotiations, such a restriction should be imposed as an exceptional measure and only to the extent necessary, without exceeding a reasonable period and it should be accompanied by adequate safeguards to protect workers' living standards.

f. Convention 135 and Recommendation 143 of 1971

ensure that workers' representatives in the undertaking are effectively protected against any prejudicial act based on their status or activities as workers' representatives or on their union activities, and provide that facilities shall be afforded in the undertaking to enable those representatives to carry out their functions promptly and efficiently.