

Collective Bargaining and Negotiation Skills

**A RESOURCE BOOK
FOR EMPLOYERS**



Copyright © International Labour Organization 2003

First published 2003

Publications of the International Labour Office enjoy copyright under Protocol 2 of the Universal Copyright Convention. Nevertheless, short excerpts from them may be reproduced without authorization, on condition that the source is indicated. For rights of reproduction or translation, application should be made to the Publications Bureau (Rights and Permissions), International Labour Office, CH-1211 Geneva 22, Switzerland. The International Labour Office welcomes such applications.

Libraries, institutions and other users registered in the United Kingdom with the Copyright Licensing Agency, 90 Tottenham Court Road, London W1T 4LP [Fax: (+44) (0)20 7631 5500; email: cla@cla.co.uk], in the United States with the Copyright Clearance Center, 222 Rosewood Drive, Danvers, MA 01923 [Fax: (+1) (978) 750 4470; email: info@copyright.com] or in other countries with associated Reproduction Rights Organizations, may make photocopies in accordance with the licences issued to them for this purpose.

ILO

Collective Bargaining and Negotiation Skills; A Resource Book for Employers

Jakarta, International Labour Office, 2003

ISBN 92-2-114308-2

The designations employed in ILO publications, which are in conformity with United Nations practice, and the presentation of material therein do not imply the expression of any opinion whatsoever on the part of the International Labour Office concerning the legal status of any country, area or territory or of its authorities, or concerning the delimitation of its frontiers.

The responsibility for opinions expressed in signed articles, studies and other contributions rests solely with their authors, and publication does not constitute an endorsement by the International Labour Office of the opinions expressed in them.

Reference to names of firms and commercial products and processes does not imply their endorsement by the International Labour Office, and any failure to mention a particular firm, commercial product or process is not a sign of disapproval.

ILO publications can be obtained through major booksellers or ILO local offices in many countries, or direct from ILO Publications, International Labour Office, CH-1211 Geneva 22, Switzerland or from the ILO Office in Jakarta, UN Building, 5th floor, Jl. MH Thamrin 14, Jakarta 10350. Catalogues or lists of new publications are available free of charge from the above address, or by email: pubvente@ilo.org ; jakarta@ilo.org.

Visit our website: www.ilo.org/publns ; www.un.or.id/ilo

Printed in Jakarta

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 programs. 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 is grateful to Ms. Elise Callander for serving as its international consultant and for the preparation of the very excellent and comprehensive training materials on collective bargaining and negotiation skills for APINDO as well as the highly successful and effective training workshops she conducted for employers in seven Indonesian provinces. We also appreciate the assistance provided by Mr. Pitoyo, Executive Director of APINDO, who went over the materials to ensure that it is wholly suitable for Indonesian use and Ms. Endang Sulistyarningsih of the Research and Development Center of the Ministry of Manpower and Transmigration, who reviewed 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 continuing usefulness to employers in Indonesia through APINDO 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 Indonesian's Labour Law Reform Programme.

Jakarta, Indonesia, July 2003

Alan Boulton
Director ILO Office
Jakarta

Carmelo C. Noriel
Chief Technical Advisor
ILO/USA Declaration Project Jakarta

Table of Contents

Foreword	iii
Introduction	1
COLLECTIVE BARGAINING	5
I. WHAT IS COLLECTIVE BARGAINING?.....	15
1. The Political Dimension	6
2. The Economic Dimension	7
3. The Legal Dimension	12
4. The Manpower Act (Act. No. 13/2003)	13
II. ECONOMIC ARGUMENTS THAT MAY FORM PART OF COLLECTIVE BARGAINING	19
1. Cost of Living, Inflation and Purchasing Power	19
2. Ability to Pay/Profitability	19
3. Productivity.....	20
4. Wage Standards/Comparison	20
5. Standard of Living.....	20
6. National Economic Policy	20
III. ISSUES THAT CAN BE PART OF COLLECTIVE BARGAINING AND ENTERPRISE/INDUSTRY OR NATIONAL LEVEL	22
1. Wages.....	22

2. Wage Determination	24
NEGOTIATIONS AND NEGOTIATING SKILLS	27
I. BASIC PRINCIPLES OF NEGOTIATION	27
1. Defining Negotiation	27
A. Grievance Handling/Resolution	28
B. Counseling	28
C. Group Problem Solving	28
D. Collective Bargaining	28
2. Effective Negotiation	29
A. Purposeful Persuasion	29
B. Constructive Compromise	30
3. Negotiation Phases	30
Phase I : Exploration	31
Phase II : Expectation Structuring	31
Phase III : Movement and Seeking Common Ground	31
Phase IV : Conclusion	31
Agreement – The Final Phase	31
4. Elements of Negotiation	34
A. The Negotiating Ritual	34
B. Positional Bargaining.....	36
C. Structure and Procedures.....	40
D. Relationships.....	40
E. Communications	41
F. Expectations.....	42
G. Commitments.....	42
H. Common Ground/Goals.....	43
I Power.....	44
II. PREPARING FOR NEGOTIATIONS	46
1. Research to Establish Your Facts	47
2. Clarifying Objectives.....	41
3. Prioritizing and Sequencing Issues	42
4. Anticipating Responses.....	43
5. Fall-Backs and Options/Identifying Possible Solutions.....	43

6. Identifying the Costs of Various Claims.....	44
7. Assessing the Implications of Claims or Demands	44
8. Influencing Expectations Before Negotiation	45
9. Establishing the Negotiation Strategy	45
10. Handling Breakdown of Negotiations	47
III. PROCESS OF NEGOTIATIONS.....	59
1. Opening the Meeting	59
2. Confirming Common Ground and Narrowing the Gap.....	60
3. Making Proposals.....	61
4. Responding to Proposals	61
5. Questioning and Listening	62
6. Bargaining, Movement and Solution Building	63
A. Supportive Argument	63
B. Gaining Movement.....	63
C. Conclusion and Agreement.....	64
7. Consolidating the Agreement.....	65
A. Gaining Commitment	66
B. Confirming the Agreement	66
C. Communicating the Agreement	66
8. Handling the Breakdown of Negotiations	67
IV. NEGOTIATIONS TECHNIQUES, ORGANIZATION AND BEHAVIOR	69
1. The Negotiating Team.....	69
2. Planning Negotiations – Setting the Style and Scene	70
3. Techniques and Tactics.....	71
4. Rules of Negotiating for Collective Bargaining	76
5. Negotiating Techniques – Final Points	78

Introduction

Collective Bargaining and Negotiation Skills are essentially rooted in the Indonesian culture. The words “musyawarah untuk mufakat” (deliberation towards consensus) is the way that Indonesians settle conflicts, that happen in the society for example through the Parliament, the People Consultative Assembly and in many other institution and organizations. The *Musyawarah Mufakat* means that solving conflict shall be handled through peaceful means and voting as far as possible is to be avoided.

Collective Bargaining is a kind of discussions (*musyawarah*) between workers or Trade Unions and the Management in order to arrive at or conducting collective bargaining requires negotiation skills and a proper attitude. The Employers’ Association of Indonesia (APINDO) accepts the responsibility of assisting all its members is having a better understanding the process and procedure of conducting effective collective bargaining.

Industrial conflicts can unnecessarily cost jobs, profits and investments. It is therefore in the interests of employers, workers and government to work towards industrial peace.

Freedom of Association enables employers and workers to promote and defend their interests and at the same time arrive at a common viewpoint for their mutual benefit.

Through their representatives employers and workers can have a voice in the decision-making process on labour issues and play an active part in building a well-functioning industrial relations system.

Improved industrial relations will:

- encourage domestic and international investment in Indonesian industry and commerce which will lead to the creation of long term

sustainable jobs

- lead to improvements in productivity and gain sharing
- encourage industrial and social development
- ensure the prevention and settlement of labour conflicts fairly and equitably
- lead to a better standard of living for all Indonesians

Poor labour-management relations can be caused by a variety of factors, some of which are external to the workplace. However, most issues that arise can be resolved in the workplace if workers and management and employers seek to work cooperatively rather than in conflict.

Indonesian industrial relations is in a transition phase, moving from the tight control of the central government in which only one labour union was officially recognized and the Government stipulated the level of minimum wages and many other labour conditions.

Since 1998, other workers' organizations have been able to organize with the Indonesian Government's ratification of ILO Convention 87 – Freedom of Association and the passing of the Workers/Labour Union Law of Indonesia ACT No.21 of 2000.

There has been a rapid increase in the number of trade unions. ACT No. 21 of 2000 allows a union to be established with a minimum of 10 members. Employers are facing a different industrial relations environment.

Training in collective bargaining and negotiation skills, seeks to provide workers and management with skills to be able to work cooperatively during both the interim phase and also as the industrial relations system becomes more settled and defined.

Training involves providing people with new knowledge, better skills, different attitudes, different perceptions and different techniques, all directed to changing the behavior and improving the performance of both individuals and groups within the enterprise, whether they be workers or managers.

Training just does not happen. It requires careful planning, good organization and innovative implementation. Above all it requires skilled trainers able to assess what needs to be done, and able to do things to assist in bringing about desired improvements.

A trainer requires training materials on collective bargaining and negotiation skills, plus the ability and skill to use these materials effectively.

This Resource Book is designed to assist by:

- providing information on the role of a trainer, including identifying

target groups, assessing their needs, designing training activities to meet those needs, and using interactive training methods

- providing technical information to strengthen background knowledge on collective bargaining and negotiation skills
- providing exercises, case studies, role plays and questions for discussion to assist in training

Remember training is not an end in itself. Training activities are not conducted just for the sake of it. Training is to improve performance. The aim is to achieve better and more harmonious relations between workers and managers at the enterprise level in particular.

Generally the training workshops will be interactive, involving interaction between a trainer and the participants, and interaction between the participants themselves. These interactions will be based on discussion questions, exercises, role-plays and case studies. It will also be necessary for a trainer to provide information to participants before interacting in discussions and group and individual tasks. Information can be provided as part of pre-reading or it can be given as part of a lecture/discussion.

The training material of the project consists of three parts – a general introduction, an overview of the training process and technical information on the subject of the training. The complete set will be used in all future training activities under the project. This publication will however concern only the third part of the materials, which relate to the information and the skills required by managers and workers at the enterprise level if they are to change behavior and improve relations at the workplace. It also includes suggestions on how to run the training programs, including overhead transparencies, questions for discussion and other exercises that can be a basis for interactive learning.

Over time trainers can develop their own materials from their own experience. All training materials should continuously be reviewed and updated to ensure that the information is relevant to the situation of the participants and their own experiences and reflects general changes in the law and the economy.



COLLECTIVE BARGAINING

I. WHAT IS COLLECTIVE BARGAINING?

The International Labour Organization [ILO] defines Collective Bargaining as the:

“voluntary negotiation between employer or employers organizations and workers’ organizations, with a view to the regulations of terms and conditions of employment by means of collective agreement.” [ILO Convention 98 Convention concerning the Right to Organize and Collective Bargaining]

ILO Recommendation No 91 concerning Collective Agreements defines collective agreements as follows:

... 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’ organizations on the one hand, and one or more representative workers’ organizations, or, in the absence of such organization, the representatives of the workers duly elected and authorized by them in accordance with national laws and regulations, on the other.

Collective bargaining, its type and nature will vary between countries and in many instances will vary between industries in the same country.

Collective bargaining is the term used to describe the process of negotiation between workers and employers and their representatives concerning any issue related to terms and conditions of employment or any other matter of mutual interest to the workers and employer.

In brief some of the impacts on the way collective bargaining is organized, a range of environments both internal and external to the enterprise, the industry and the country will influence the people involved and the issues to be bargained.

Collective bargaining is also a key means of determining terms and conditions of employment. However, 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. Traditional bargaining agenda items have been approached without the inputs of women and issues of particular concern to women have not been addressed. Items to be negotiated are usually economic or issues that carry a monetary value.

For example, in a country suffering severe inflation, the unions, seeking to maintain the purchasing power of their member's pay packets will seek to have wages increased by the level of inflation, which can in turn lead to further inflationary pressures if the costs of the wage increase are passed on in higher prices, and then there will be another claim for increased wages and so it goes. There obviously will need to be a circuit breaker or a spiral will develop. Whilst workers represented by the unions may achieve the inflation increases in their wages, if prices go up, people who are not able to access the wage increases will suffer a reduction in their living standards. Inflation is not something the unions can of themselves solve, but this is an indication of how collective bargaining is not undertaken in a vacuum.

1. The Political Dimension

The freedom to associate and the right to collectively bargain is widely recognized as one of the essential elements of a democratic society.

For bargaining to be credible there needs to be reasonably equal strength between the parties bargaining, including between men and women workers and the employer. As a rule, individual workers do not have the same bargaining power as their employer. Especially if there is a surplus of labour and the position requires very few skills a worker has very little bargaining power, and issues of particular concern to women are not addressed. The need for a job and the competition from other unemployed workers will

mean that an individual in such a situation will accept lower wages, or long hours, or unsafe working conditions. . Women workers usually involve in this kind of situation. The right to freely organize and join workers' organization provides individual workers with a greater power to bargain and seek better conditions of employment.

Trade unions exist to represent the needs and interest of all their members; they bargain for improved terms and conditions of employment and a safe and healthy working environment for both men and women. However, power is a pendulum, and there are many instances where powerful workers' organizations have had more power than an employer or employer organizations.

The freedom to associate and bargain collectively does not mean that there will necessarily always be harmony. What these rights do is provide an environment in which it should be easier to create industrial harmony based on a more equal sharing of power. For equality purposes, there is a need for specific consideration of gender issues in collective bargaining.

Many countries have industrial legislation that seeks to assist in creating industrial harmony by for example:

- Enacting legislation that clearly defines the rights and obligations of worker and employer organizations, often by registering such organizations and ensuring that the organization has a “life” beyond the people who established it – including need to keep accounts, report on a yearly basis, hold elections for office bearers etc;
- Enacting legislation that provides for legally enforceable agreements and restricts the use of industrial action during the period of the agreement.

In terms of women workers' right, legislative coverage are usually inadequate; and where there is legislation effective implementation is necessary.

2. The Economic Dimension

One of the main reasons for collective bargaining is to determine the relative “shares” of a company's output between the different stakeholders, including the owners [in a publicly listed company these are the shareholders], management and workers.

In many economies, workers in the formal sector have a minimum share already determined by the existence of a legislated/declared minimum

wage and other legislated/declared terms and conditions of employment including welfare/pension schemes, hours of work, paid leave etc. all of which are a cost to a company and may reduce the share available to other stakeholders.

The most commonly used measure of economic development is Gross National Product per head of population [GNP per capita]. Often countries are ranked based on their GNP per capita.

GNP is the total value of the final goods and services produced by the economy in a given accounting period, usually a year. The measure of final goods and services produced mean that there is no double counting, as many goods in particular are intermediate goods used to produce the final good, for example:

- animal skins are tanned to make leather and the leather to produce shoes, bags and other goods
- cotton is picked, cleaned and spun into cotton cloth and the cotton cloth is used to produce clothes,
- iron ore is mined and then processed with other inputs to produce steel which is then used to produce cars,
- copra is processed into coconut oil that in turn is used to produce shampoo, soap etc.

In countries with large numbers of foreigners in-country and a large number of nationals (expatriates) working abroad, a more appropriate measure may be Gross Domestic Product (GDP). GDP measures the domestic component of the national product (GNP) excluding the earnings of nationals [expatriate] workers working abroad but including the output of foreigners working in the country, GNP measures the national product which includes earnings of nationals working abroad but excludes the output of foreigners working in the country. If the GDP is bigger than the GNP, which is often the case in developing economies, this means that there is a large foreign presence in the national economy. This is not necessarily an issue for concern, although if political or economic action occurs to cause concern amongst foreign workers causing them to withdraw the effect can be serious for the economy of the country, as shown during the Asian economic crisis.

As with all broad measures, neither GNP nor GDP, indicate the distribution of the countries production. It is an average per head of population, and like all averages there are people above and below the

average. It does not measure discrepancy between incomes and access to social infrastructure, and it does not measure the contribution of women workers. In economies where there are still large numbers of subsistence farmers and tribal communities, that is a non-market and non-moneterized sector, GNP and GDP does not measure their contribution. Neither does it measure the contribution of household activity or the informal sector. The study shows that the extent to which we understate GNP by ignoring non-market output and or informal sector is 25 percent or more.

There is an on-going debate as to what would be more appropriate measures of “development”. Measures that have been suggested include:

- achievement of a minimum living standard for the poorest of people, including personal consumption of food, clothing and shelter, access to communal or public services including health and transportation, safe water etc;
- provision of productive and fairly remunerated employment
- popular /mass participation in country's decision making processes
- access to education and training programs
- close monitoring of the impact of changes in development strategies and women's position in the labor market
- To improve the quality of employment in the jobs newly created by globalization, there is a need for integrating minimum labor standards in the processes of economic integration. This is particularly relevant for women whose employment opportunities have been predominantly in export-oriented sectors, the informal sector and homework, which offer low quality jobs.

In some countries the growth in the informal sector [individual contractor arrangements and such like], has occurred because employers seek to avoid the minimum conditions. There is a generally a high level of unemployment in countries with a large informal sector, and there are always people prepared to work for less than the minimum and without protection of other work based legislation, just to survive.

Women are much more likely than men to be in the informal economy, and they face serious deficits in decent work – they are engaged in poor quality jobs, with low productivity and income, poor working conditions and occupational health and safety standards and limited access to knowledge, technology, finance and markets.

The economic sophistication of a country can affect the impact of

collective bargaining.

Industrially advanced countries have a high level of industrial development and a well-developed market. Such countries also have a relatively more educated, skilled and trained workforce. Also, the number of part-time women workers has been increasing sharply, but part-timers are still generally regarded as less committed and less valuable than full-timers and treated accordingly. While some women choose part-time work so as to be able to combine work and family responsibilities, the majority does so because they have no choice. When the bulk of such workforce was in the traditional manufacturing/secondary industry sector there was a high level of unionization of the workforce [often over 50%] and employers organizations developed to negotiate with the powerful unions.

The trend in many advanced countries is that the majority of the workforce is in the service sector, in some economies this can be as high as 70% of the workforce. The service sector was ignored by many of the powerful manufacturer and construction and allied unions. With a large number of service sector workers seeing themselves as professionals and many positions casualized, the number of full time positions has decreased and in some countries unionization of the working population has fallen to below 25%.

In the USA it is now below 20% of the workforce who are members of a union.

Union power in these countries is still concentrated in manufacturing, mining, construction, transport and the public sector. Union confederations are concerned with the decreasing number of members and are establishing recruitment campaigns in the service sector. The trade union movement is conscious of the critical need to recruit and retain women members, give them a voice in decision-making, promote gender equality and address the problems of vulnerable women workers particularly through the collective bargaining process. However, many of the younger workers do not see a need to join as they consider the union has nothing to offer them. Most advanced industrial economies have less than 4% of their workforce in agriculture, over 70% in the service sector and the remaining 25% or so in manufacturing, construction, transport etc. and this number continues to fall.

In contrast in developing economies industrial development is uneven and often underdeveloped. In most developing economies the major sector is still agricultural production based on very small holdings worked by owner

cultivators, tenant farmers and share croppers with no clear employer-employee relation. In Indonesia some 70% of the workforce is in this sector, and the majority of its workforce are women.

Whilst the agriculture sector may organize when needed around specific issues of concern to them it is generally to negotiate fair prices from the government, seek land reform and issues such as access to water and power, better roads and other infrastructure issues. Farmer organizations are generally not interested in issues to do with terms and conditions of work. The ILO Convention No 141 and ILO Recommendation No 149 on Rural workers Organizations are guides are attempts to recognize the need for rural workers to organize. There are some workers organizations in the plantation areas as plantations do require a lot of labour and there is therefore a concentration of workers.

The other area of the developing economies that provides employment is the small-scale household based or cottage undertakings. Lots of women workers are involved in these small-scale household activities because they could share time between household activities and their job. In such countries unionized workers usually constitute a minority in the industrial and formal sector where a clear employer-employee relationship exists.

Unionism and collective bargaining are difficult to establish in the informal sector, which grow in urban centers in developing economies. The ILO and UNDP describes the informal sector as where free entry to new enterprises exists, enterprises rely on indigenous resources, they are mostly formally owned and small scale, they are labour intensive and adapted technology, workers rely on non-formal sources of education, training and skill development and operate in unregulated and competitive markets. In the informal sector there is generally no clear employer-employee relations and the number of workers per unit of production is small.

In many developing economies there is still massive poverty indicated by a large number of the workforce either unemployed or underemployed, in the agricultural areas large number of people who are landless, high levels of illiteracy, poor infrastructure including access to a regular and safe water supply, sanitary and permanent housing, appropriate garbage disposal, access to health care and hospitals and other community services. The majority of women, especially in developing countries, have found work because they have been prepared to go into “female jobs”, often in the informal sector – with irregular status, insecurity, poor pay and with specific occupational safety and health hazards. They are paid less than their non-contingent

(male) counterparts and normally are not covered by labor and social security regulations nor by the provisions of collective agreements.

3. The Legal Dimension

Many countries consider that collective bargaining, in a variety of forms, is the most effective method of regulating terms and conditions of employment. In addition, any issue, which is identified as eliminating direct or indirect discrimination, promoting equality of opportunity and treatment or more effectively balancing work and family responsibilities is legitimate issue for collective bargaining.

To encourage collective bargaining many countries have enacted legislation to recognize organizations of workers and employers, and to give those organizations access to dispute resolution mechanisms. In many instances organizations of workers and employers have a separate legal identity from their members and can sue and be sued in their own right. The legislation can prescribe when industrial action, both strikes and lockouts are legal, and when they are not.

It is also recognized that in all countries there are many workers who are not members of a trade union and/or trade unions in certain industries and occupations are unable to achieve collective agreements regulating terms and conditions of employment. Just as trade unionists may be discriminated against merely for being trade unionists, some women face discrimination merely because they are women or because of their marital status or family responsibilities.

Most countries enact legislation that establishes basic standards for workers whose conditions would otherwise be unprotected. These standards are usually minimum conditions and have general application unless there are agreements containing conditions better than the minimum standard. Agreements containing better standards will have effect in lieu of the minimum standard.

Gender equality bargaining can be a powerful mechanism through which unions can either reinforce existing rights under legislation or previous collective agreements by devising practical methods of implementation, or extend workplace rights on issues which have traditionally been ignored.

In industries and occupations where unions are able to negotiate terms and conditions better than the minimum standard, such improved conditions over time may flow to other workers as the minimum standard is also raised

or there is enactment of special legislation applying to all workers.

4. 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*)

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*).

II. ECONOMIC ARGUMENTS THAT MAY FORM PART OF COLLECTIVE BARGAINING

1. Cost of living, inflation and purchasing power

As previously described, one of the union's aims is to at least maintain the purchasing power of their member's wages, and over time to increase that purchasing power by achieving wage increases higher than the rate of inflation. Whilst workers earn money wages, they are more interested in what they can buy with their wages. If due to inflation they can buy less with the same money wage, they will seek to increase their money wage to ensure their standard of living does not decrease. With women accounting for a rising share of the labor force but remaining largely marginalized and highly vulnerable to discrimination and exploitation, it is obvious that trade unions have a critical role to play to address this concerns.

Wage increases to workers increase the cost of producing the good or service, and unless there can be cost savings achieved elsewhere, for example increased productivity per employee, less wastage etc., the employers to maintain their profitability will raise prices, unless there is price freezes. If prices are raised this will fuel inflation, and disadvantage those in the economy who can not increase their income, whereas if prices are frozen, if an employer can no longer operate profitability they may close their business and put people out of work.

2. Ability to Pay/Profitability

As shown this has two sides. If a company increases its profitability then unions will argue that they can increase wages and other terms and conditions of employment. The company may argue that it wants to retain earnings to build a new plant, or introduce new machinery, or increase production. In the long term the general good for the economy is increased investment in production, but this would mean that workers get less in wage increases. There may also be difficulties in an industry, for example car manufacturing, where one company is very profitable and is prepared to pay higher or provide different benefits, but other companies are not making profits and the union seeks the same wage increase for all workers in the industry rather than company by company. Unions tend to believe that there is one rate for a particular role and that rate should be paid to

anyone in that role regardless of the profitability of the company. Just as unions tend to be against performance payments that seek to significantly differentiate between an excellent worker and an average worker.

3. Productivity

How it is measured and how increased productivity will be shared is often a central issue in bargaining. For women workers the problem is compounded when their enterprise is home based with neither spatial nor temporal separation between productive and reproductive tasks, which compete for space, attention, and investment.

4. Wage standards/comparison

As already stated, unions tend to believe that all workers performing the same role should be paid the same and in negotiations will seek to introduce information on pay rates for similar or the same role. Employers will counter with ability to pay arguments, pointing out the differences in profitability. In addition in some countries governments may have policies that directs the parties in a negotiation as to what are appropriate levels of wage increases or what terms and conditions should be reviewed. Equal remuneration for men and women workers for work of equal value refers to rates of remuneration established without discrimination based on sex.

5. Standard of Living

Different geographic regions in a country may have different standards of living. For example it is often more expensive to live in a large city than in smaller towns

6. National Economic Policy

In some countries governments may seek to establish macro-economic goals that need to be considered in any bargaining including price stability, lower unemployment, annual growth rate etc.

Because there are a range of variables that may be raised it is important to be able to substantiate a position by the use of data and analysis.

Management of companies generally relies on a large amount of internal

data and reports to manage their company. Decisions are made based on these reports, which can include:

- production/sales by volume and product – where there are sophisticated systems, management can receive such reports daily on the previous days activities;
- cost reporting;
- profitability reporting;
- budgeting/forecasting and achievement against budget/forecast

As well there are analysts reports for publicly listed companies and in most countries, companies, who are registered and/or publicly listed have to provide a variety of reports to various agencies.

In a collective bargaining situation, management and unions should try and agree on what is the relevant data and management should consider whether provide the information to the union if it is not commercial in confidence information.

The unions should also gather information to establish a general picture of gender and pay. Unions could review their workplace situation to determine if women workers have lower average earnings than men with the same job title; or have lower average earnings than men in the same grade; and or women in female-dominated jobs are paid less than the lowest male-dominated jobs, etc.

Analysis of and understanding of financial data and appropriate use of that data is fundamental in collective bargaining.

It is not appropriate to spend time on financial analysis and the important information that can be obtained.

In preparing for a collective bargain it is vital that you have available all relevant financial information and understand how the figures have been calculated. If you do not understand the analysis, you need to be carefully briefed and have some one with you at the negotiations who does clearly understand and can explain the figures.

III. ISSUES THAT CAN BE PART OF COLLECTIVE BARGAINING AT THE ENTERPRISE/INDUSTRY OR NATIONAL LEVEL

1. Wages

The ILO Convention No 95 defines 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.”

Wages represent the income received by the worker in exchange for his/her labour. Wages may be given in cash and/or in kind.

To the employer wages are a cost of production of a good or service, an expense.

To the worker wages are a major source of income affecting their standard of living, status in the community and future economic security.

For the Government employment in the formal sector also means there is the capacity to tax workers earnings. In addition in some countries there are Government taxes levied on payroll and other taxes that may be directly related to employment. In addition wages represent a part of the nation's purchasing power that determine to a large extent the direction of national economies.

For the majority of workers, wages constitute their total income.

Added to the basic wage for performing a job many workers receive allowances, bonuses, paid leave and a range of other benefits that may be paid in cash or provided in kind, for example housing, cars, access to hospitals and doctors etc.

The ILO in their manual “An Integrated System of Wage Statistics, suggests a list of the components of earnings classified as direct wages, remuneration for time not worked, bonuses and other payments in kind, as follows [some additional components have been included to update the list]:

a. Direct wages and salaries

1. Pay for working “normal” hours – base rate

2. Premium pay for working overtime and on holidays
3. Premium pay for shift work, night work where this work is not treated as overtime
4. Incentive pay arrangements, including production bonuses
5. Regularly paid bonuses, such as a 13th month
6. Family allowances paid directly by the employer
7. Cost of living/dearness allowance
8. House rent allowance paid directly by the employer

b. Remuneration for time not worked [paid in cash]

1. annual leave and other paid leave, including sick leave, bereavement leave, long service leave
2. public holidays and other recognized holidays
3. other time off granted with pay, for example study leave

c. 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 for example leave travel assistance, and other bonuses and gratuities

d. Payment in Kind

1. provision of meals – for example a staff canteen
2. provision of fuel for a motor vehicle
3. imputed value of a company provided car
4. imputed rental value of company provided accommodation
5. provision of other goods and services at no or minimal charge to the employee

In establishing wages in an enterprise, a company, a geographic area, an industry or whatever unit is being measured there are three basic criteria that are normally used:

- *measures of equity* – comparable wages – that is people doing the same job should, taking into account the individual's level of skill

and experience, be paid the same wage – that is equal pay for equal work both within and between occupations and enterprises

Equal pay for work of equal value is a more modern and 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.

- *measures of need* – cost of living, living wage, purchasing power - from time to time governments, industrial tribunals and other organizations seek to compute what would be the minimum wage necessary for a family unit [often a husband with a dependent wife and two children] to live and then seek to argue that adjustments should occur to this wage so calculated when prices, as measured by the Consumer Price Index [CPI] or some other measure, have increased. This adjustment it is argued maintains the real purchasing power of the wage.
- *measures of contribution* – ability to pay by the enterprise, productivity contributed by the workers.

2. Wage Determination

Remember that wages are income to the worker but a cost of production to the employer. A worker will seek to maximize his/her income whilst the employer will seek to minimize costs.

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

a number of jobs. However in a large number of economies the market forces cannot operate unfettered because of the existence of legislated minimum wages and/or specific legally applicable wage rates for different occupations and levels of skill and experience.

In summary wages can be determined through a variety of ways including:

1. negotiations between workers and their employer as:
 - individual agreements
 - collective bargaining agreements
2. between workers and employer representatives as collective bargaining agreements
3. intervention/inclusion of third parties in the negotiation and/or determination of wages, by:
 - conciliation
 - mediation
 - arbitration
 - industry boards or other organizations
 - national minimum wages established by the government or industrial tribunal or other body

The intervention of a third party can be voluntary, by both parties agreeing to the use of a third party to resolve the matter, or compulsory due to the operation of legislation.

T W O
.....

NEGOTIATIONS AND NEGOTIATING SKILLS

I. BASIC PRINCIPLES OF NEGOTIATION

1. Defining Negotiation

Negotiation can be defined:

“...as attempting, through discussion, persuasion and where appropriate, compromise to reach an agreement with the other party(s) on a particular issue or range of issues.”

Negotiation is essentially a lifelong process. We negotiate every day. Sometimes it is for small things, other times it may be for a major event. In our emotional interactions with other people we are constantly negotiating even when we do not realize it.

As children we learn that we can bargain with our parents for notice and affection. From that point on we engage in countless negotiations. We bargain with teachers, with business clients, with employers, with employees, with merchants etc.

Some negotiations are clearly defined; others are often unnoticed, for example discussing with friends where to eat a meal.

What we are concerned with in this Program are the negotiations we enter into *in the context of the workplace.*

The usual areas in which we can be involved in negotiations in the workplace include:

a. Grievance handling/resolution

Where a worker has a grievance the management and the worker would discuss this grievance and the worker would try to persuade management

of the justification of his claim. If agreement is to be reached then compromise may be necessary.

b. Counseling

As for example where a worker has a problem of regular absences from work and management meet with the worker to discuss the problem with him or her and try to persuade the worker as to the seriousness of the problem and the need to deal with it. In many cases the individual may have difficulty in accepting that the problem exists but having persuaded the worker to accept that he or she has a problem then some agreement can be reached as to what should be done to resolve it.

c. Group problem solving

In a situation where a group of people is given a problem to solve there would obviously be a discussion of the problem and the various solutions. People would try to persuade others on what they consider to be the best solution to the problem. There would be compromise involved in many cases before an eventual agreement could be reached on the possible solution to the problem.

d. Collective bargaining

Negotiations would occur in this situation where, for example, workers are seeking higher pay, longer holidays, shorter working weeks, a change in job classification, etc. Management may seek to collectively bargain to in an effort to for example increase productivity by reaching agreement on working methods, reduction in waste, introduction of new machinery etc. The party with the claim should discuss with the other party their view of the issue and try to persuade the other party that their point of view is a reasonable one in the circumstances. Some compromise may be necessary by each side in order to reach agreement.

Bargaining is the most frequently used process in the formal union/management relationship. It occurs when there is a problem or demand and both sides have their own preferred solution to it, and in the process:

- Each realize they may get what they want but only at the expense of the other;
- Each side is trying to get movement by the other and neither will willingly give it;

- There is pressure and conflict, but also willingness to find a workable solution which is acceptable to both;
- There is a tacit understanding that to find the workable solution both sides will need to compromise

Some features, which are basic to the bargaining process, are:

- Pressure
- Movement
- Willingness to talk ... and keep talking

However, discussion alone would not be enough for negotiation to take place successfully. There would have to be persuasion and possibly compromise as well.

Successful negotiation is based on:

- (a) Purposeful persuasion;
- (b) Constructive compromise.

2. Effective Negotiation

a. Purposeful Persuasion

When negotiating we are essentially trying to persuade the other party that he/she should agree to our point of view. Equally the other party is trying to do the same. There are certainly some commitments that are not as important as others. You must also recognize that the other party has certain key commitments as well as other commitments upon which it is more likely to reach a compromise.

- It is important to realize that persuasion is an ongoing process in which various elements in the positions of both sides are discussed. As this takes place, perceptions and expectations relating to the final outcome are affected; some are emphasized, others dropped, while some remain unchanged;
- At this stage, the key areas of commitment underlining the fundamental argument of each issue are identifiable. One of the objectives in negotiation should be to emphasize your commitment, while undermining the other party's. It is important, therefore, that you persuade the other party to agree to the validity of your key commitments;

- The more agreement you get on these key commitments the stronger your negotiating stance. Once the other side has accepted the fundamental principles on which you are negotiating, it will be much easier to reach agreement on the detail. Once agreement is reached on key commitments then it is much easier to make compromises on your other commitments to reach agreement

b. Constructive Compromise

Discussion and persuasion may work to convince the other party to agree with your point of view but normally will not result in agreement being reached on all matters or in all cases. This is particularly true in a collective bargaining situation. Generally complete agreement is not reached without some compromise.

- Reaching a negotiated settlement of issues in dispute requires give and take by both parties;
- There will, of course, be certain occasions when no compromise can be made for a variety of reasons – for example when a fundamental principle is at stake or when there are pressing economic or financial reasons – no compromise can be made. A company in severe financial difficulties may refuse a claim for a wage increase to workers because to do so would mean that the company might have to close and therefore will refuse the claim and will also refuse to make a compromise whatsoever on the issue
- In such circumstances the negotiations will center around your attempt to convince the other side that in all the circumstances your position is reasonable.

But, the general rule is that compromises will be made by all parties to negotiation.

3. Negotiation Phases

Most negotiations go through a number of clearly identifiable phases following opening position statements by both parties:

Phase 1 :

Exploration

At this stage both parties attempt to identify each others position in

relation to the issue or issues involved and the degree of attachment, which they have towards it

Phase 2 :

Expectation Structuring

Each side attempts to get the other to negotiate on their key commitments

Phase 3 :

Movement and Seeking Common Ground

A party can move on to this phase when it realizes that it has reached as much agreement as it is likely to do so on their key commitments. Once potential areas of agreement and movement have been identified, further discussion continues during which proposition and formulating proposals takes place

Phase 4 :

Conclusion

Eventually when a party feels that it has reached as much agreement as it is likely to reach on a particular issue and that this agreement is acceptable to them it is in a position to make as final offer. However, it is important that when ever a final offer is made that you are quite clear that the other side is likely to recommend acceptance. It should be made clear that the final offer is subject to confirmation in writing by the organization. Finally the consequences of rejecting the final proposals should be clearly understood.

Agreement – The Final Phase

Having reached agreement management must follow up to summarize, finalize, confirm and implement the agreement. This should be done by putting the agreement into writing.

This summary should be agreed by all concerned and commitment given to fully implement the terms of the agreement. The wording of the agreement should be as clear as possible to avoid misinterpretation and dispute in the future.

Specific dates should be set and agreed for the implementation of the

various aspects of the agreement;

- These dates should be reasonable and achievable;
- The payments [where there are payments involved] should not be made prior to implementation;
- The agreement should be confirmed in writing by both parties and should not be implemented until formal acceptance has been notified.

For example – the steps involved in a typically negotiated agreement could start from the following position:

- (a) Management propose to introduce changes which include;
 - The introduction of new work practices;
 - Agreement to operate new machinery when introduced;
 - Total flexibility in a worker's relevant area
- (b) The Union, in response to such a demand state their initial position as seeking:
 - An increase in basic pay;
 - The introduction of shorter working hours;
 - An increase in the shift premium to compensate for working unsociable hours;
 - The introduction of a bonus scheme
- (i) When the parties meet that will try to identify how the other party can justify its demands:
 - The employer, for example, is likely to argue that the acceptance of new work practices is essential for the survival of the business; flexibility is now the usual way of working and workers must accept the introduction of new machinery if the organization is to have a future;
 - The union on the other hand is likely to seek an increase in basic pay arguing that they are making a significant contribution to the increased profits of the organization; new machinery will also increase productivity and therefore should lead to a shorter working week since all of the work should be capable of bring done within a shorter period of time;

- its members to the proposal/offer
- (v) Assuming that the other side have recommended the employer's offer for acceptance then the next step for management is to put in writing what has been agreed. Management must specify what new work practices have been agreed and what the actual increase in pay for this will be. It should also be made clear in the agreement that no increases in basic pay will be paid until the new work practices are up and running. This agreement should be confirmed in writing by both sides before it is implemented.

4. Elements of Negotiation

a. The Negotiating Ritual

Negotiation involves more than what takes place around the negotiating table. Many of the issues involved are decided before the negotiation takes place and often the activities around the table are merely a performance for the benefit of others.

- (i) By ritual is meant the procedural steps, which all parties feel obliged to carry out even though they are fully aware that for all intents and purposes it is for, show and the other side is not fooled. A common example of a negotiating ritual would be a pay bargaining situation where a union would seek initially considerably more than it is eventually prepared to settle for [ambit claim]; the employer, on the other hand, would initially offer considerably less than he/she is prepared to concede:
- The union may seek an 8% pay increase when it is prepared to settle eventually for 5%;
 - The employer may offer 3% at some stage in the negotiations even though he/she is prepared ultimately to offer 5%, but in most instances the employer would only make the offer of 3% provided that the union moves on its initial demand of 8%;
 - Since the union would then move from perhaps a pay demand of 8% to one of 6% and the employer would then make an offer perhaps of 3% in order to keep the negotiations going and not give the union a reason to walk away and start industrial action;

- The differential between the parties is now only 3%;
- Both parties would then continue to negotiate in an effort to justify their particular position;
- Gradually over time the parties will move closer and closer to a settlement at 4.5% - 5%;
- The advantage of the ritual in such a situation is that it facilitates a coming together of the parties. A negotiation is a situation where to a large extent when the parties start negotiations each side is unaware of the other side's real or "bottom-line" position. As each side tries to justify their position to the other side it becomes clearer during the course of the negotiations what is the real position of each party
- Ritual can help facilitate agreement. It is essential that the parties involved in negotiations know and understand the traditions and rituals, as failure to adhere to them can lead to anxiety, fear and a hardening of positions which inhibit success and increase the likelihood of a breakdown in conflict:

For example:

- If an employer did not understand that the union in a pay demand case initially seeks more than it is eventually willing to agree, then the employer may refuse to negotiate and the negotiations will break down very quickly with no apparent resolution
- If a union, on the other hand, does not understand that the employer will offer less than he/she is eventually prepared to offer then again negotiations can break down and the union rejects the employers offer out of hand and threatens strike action

Either of these situations can obviously damage relations between parties and it is therefore important that the ritual is agreed and adhered to when ever possible.

- However, management should not feel that it is locked in to following a negotiation ritual in all cases. If, for example, the organization is in severe financial difficulties then the employer may not be in a position to make any offer whatsoever in relation to a pay demand from the other side. The employer in such a

case would adhere to his/her initial stance and would not move at all from this position at any point in the negotiations. To claim financial difficulties and then to change the stance, without some other way of reaching an agreement would also create problems in future negotiations. As each time the employer refers to financial constraints in future negotiations as a reason to not move from their position the union will remember that that is an opening position and not a key commitment. Credibility is very important.

- However, management should not feel that it is tied to handling issues strictly in accordance with established custom and practice. If key goals and objectives are not attainable by conventional means or if procedures or rituals are threatening to limit or slow down the decision making process then management must be able to try as new and unconventional method.

b. Positional Bargaining

Do not confuse ritualistic behavior with positional bargaining, which is where each party establishes an extreme (and very often unsustainable) position: once the position is stated they are then forced to justify it, if they can, and may stubbornly hold on to it and not disclose their true intent. In contrast the negotiating ritual involves each party taking a position from which some movement towards agreement is perceived by the other side.

For example:

In a redundancy situation where the normal redundancy settlement terms in the sector in which the company is involved are four weeks pay per year of service subject to a maximum of 10 years service per employee:

- If the union sets an initial demand of five weeks pay per year of service with no upper limit to the number of years, then this position would be seen as part of the normal negotiating ritual;
- If management set its initial position as half a weeks pay per year of service up to a maximum of 5 years service for each employee made redundant then the management position would be seen as a very extreme one and it would be put in a position of trying to justify it;
- The union would be likely to refuse to make any move on their position since they would feel that they would have very little room

for negotiation and they would be waiting for management to make a move.

The disadvantages of positional bargaining are:

- Loss of trust and negative effect on relationships. The union would be suspicious as to why management is taking this position; this would have a negative effect on the relationship with the union and in future negotiations the union would be very reluctant to negotiate seriously
- The more extreme the opening positions and the smaller the concessions, the more time and effort it will take to discover if agreement is possible;
- A large number of individual decisions are required as each negotiator decides what to offer, what to reject, and how much of a concession to make; there would be a greater number of breaks in meetings, meetings will take longer and may take place over several days
- Where each decision involves yielding to the other side, thus producing pressure to yield further, a negotiator has little incentive to move quickly; in the example the union will make no concessions until it sees some realistic movement from management. Management is put in the position of making concessions without getting anything on return during the course of the negotiations
- Delaying and threatening tactics become commonplace;
- If the negotiations break down at a stage where management is adopting an extreme position the workforce may conclude that it is necessary to take industrial action to force management into adopting a reasonable position.

These all increase the time and costs of reaching agreement as well as the risk that no agreement will be reached at all. Bargaining becomes a contest of will, and the task of devising an acceptable solution becomes a battle, with anger and resentment often resulting.

Success is important but so also is the maintenance of the relationship between the parties on an ongoing basis:

- Playing it hard may achieve satisfactory results in the short term, but undermine the relationship in the medium to long term;
- Playing it soft runs the risk of negotiating a bad deal.

The alternative to be aimed for:

- Separate the people from the problem; keep emotions and egos out of the process and make every effort to regard the “problem” as everybody’s to solve. It is important that emotions are controlled at negotiations. Management should be careful in making comments that jobs have been lost as a result of workers attitudes toward their jobs. For example making comments that absenteeism levels have been very high, productivity has been poor, industrial action has been commonplace etc. Over-emphasizing blame may lead to an aggressive response from union representatives who would be likely to accuse management of poor leadership. These types of statements make it more difficult for the parties to reach agreement.
- Negotiators should concentrate on their “mutual interests”; a negotiating position in a traditional sense often obscures what you really want; the positions of the parties will obviously be different, it helps the negotiation process if areas where agreement exists can be identified.

For example:

In the redundancy example given, both parties obviously have an interest in the enterprise remaining in business; redundancies may be unfortunately necessary to achieve this, but if both parties focus only on the redundancy terms themselves it will make it more difficult to reach agreement.

- Focus on interests and not positions where possible; generate a variety of possibilities for any given problem, which can help to avoid making compromises while under pressure of the actual negotiation. By creating a range of solutions this tells the other party to the negotiation that you are serious about reaching a realistic settlement; also it may make certain of your demands more acceptable to the other side.

For example:

In the redundancy situation management might look at:

- shorter working hours and pro rata pay
- providing unpaid leave of one week per employee to be taken on a rotational basis
- guarantees that if re-employing, either on a permanent or temporary basis if the business improves, that any worker made redundant will be re-employed if they apply for a position

Such suggestions might make the redundancy terms offered by management which are less than the sector norm more acceptable to the workers involved.

- Where interests are directly opposed, a favorable result can be achieved by a hard line; this may be necessary where problems are serious and there is an absolute need to get what one is looking for. In such situations it is still important to be flexible about more peripheral issues, for example in agreeing the date of implementation or by making a once off payment to secure agreement;
- Negotiating approaches must not inhibit management from doing what is necessary to ensure survival/viability. Ultimately management must do what is necessary for the survival/viability of the organization and take a firm stance if this is appropriate; management must never show any indecision or weakness in negotiations and must never allow its approach to suggest that it does not know what is required in any given situation. Management must always know where it is going in negotiations and this must be communicated to the other side. There is often a fine line between the decent consultative approach and the perception that management is weak and indecisive; this perception must be avoided at all costs;
- Give the other party a stake in the outcomes by getting them to participate in the process; very often employees can put their local knowledge and experience to good use in many ways, including plant modification and design, or redesign of a customer service process etc. Likewise in negotiations they are more likely to go along with the solution if they have contributed. *A solution to which a party has contributed will be most likely to have that party's commitment.* This is true of both workers as it is of management. Employer negotiators are negotiating on behalf of managers who will have to implement any agreement. The more that managers are involved with and contribute their knowledge and experience to the negotiations the more committed they will be to ensure that an agreement is properly implemented;
- *attempt at all times to apply objective standards.* Third parties such as an industrial tribunal may have set generally accepted standards and these can be quoted to the other party at negotiations. Also keep up to date with employment law decisions of courts and tribunals that

may also apply to the situation you are negotiating.

c. Structure and Procedures

You should consider the procedures to be followed should you fail to reach agreement. For example:

- Are the parties required to refer the matter to a third party?
- Does this third party make a binding decision or a recommendation, which either party is free to accept or reject?
- How are employees to decide to accept/reject a recommendation by a third party? For example – vote by secret ballot; show of hands at a meeting; vote by only those directly involved in the dispute; vote to be by all employees at the enterprise etc.

d. Relationships

Remember that you are likely to have a long term relationship with the other party and it is therefore essential that you:

- Adhere to agreements or otherwise you will leave yourself open to retaliation at a later date with the other party perhaps renegeing on an agreement. Where you find a situation where it is not possible for you to adhere to something that has already been agreed with the other party it is important that you meet the other party and discuss your particular difficulties. It may be possible to negotiate a change to the agreement. The benefit of this approach is that you avoid damaging the relationship with the other side. It also provides an opportunity for the other side to suggest alternatives to resolve the problem that has arisen.
- Do not allow trickery to be introduced to the final wording of an agreement. This will damage the trust between the parties. Ensure that the wording in any agreement is clear. It is important that things are not left worded in an unclear fashion on purpose. Although there are sometimes disputes as to what is meant by a word or a phrase you should try to minimize this type of dispute as much as possible.
- Do not disclose information given in confidence or informally by some one from the other side at the formal meeting. To do otherwise would damage trust between the parties. At times it can be useful to have an informal meeting with a representative of the other side during which people can be more open and frank. If you disclose information

from such meetings the other side will not be prepared to meet and you lose a very useful forum for exchanging ideas.

- Do not mislead the other party or it will undermine the relationship and will make any further relationship difficult or impossible

e. Communications

Communications is a two way sharing of information and understanding which will help to bring the expectations of both sides closer together.

For example:

An organization may give information on how it is performing to employees on a regular basis and allow the workers to question management on the reason for good or bad performance and what the expectations are for the future. Obviously this will influence the expectation and beliefs of people as to what can be achieved at negotiation. The key to reaching agreement is to minimize the differences/gap between the parties before they start negotiations.

- People behave based on their expectations and beliefs and the likelihood of compromise and agreement is directly related to expectations;
- A two-way sharing of information and understanding will help to bring the expectations of both sides closer together, thus making the negotiating process easier;
- This process of communications, if it is to have credibility, should be ongoing all the time; it is important that an organization does not merely disclose information when times are bad;
- It is easier to influence people prior to the negotiating process commencing than during the negotiations.

f. Expectations

Positions and attitudes adopted in bargaining are very much determined by the expectations that each party has of the others reaction to its own arguments, demands, posturing and so on.

For example:

If you believe that the person with whom you are negotiating may not willingly accept an argument that will be crucial to your position, you should test both positions before you get near the negotiations at all; this

will help you identify more accurately the type of negotiations you face and how you should set about handling it.

For example:

- If workers are seeking a reduction in working hours below the hours that are worked in similar enterprises then the union will find it difficult to justify its case;
- If on the other hand the working hours are above what is the generally accepted norm then it would be difficult to justify opposing a reduction.

Clearly the type of negotiation faced in the above situations will be different and you will need to research the traditional arguments that are likely to be put forward by the other side to justify its position. You can then prepare possible responses to challenge these arguments, thus ensuring that your own case will be better prepared.

From analysis and testing of expectations it should be possible to highlight the key arguments, demands and commitments on both sides:

- This will help you determine where and how to make your points in negotiating;
- You will be better prepared for negotiations because you will be able to anticipate the points that will be raised;
- *Your own case will also be better prepared*, as you will be highlighting all your arguments in a systematic manner and you have tried to understand your other party's position and how that will affect your arguments

g: Commitments

Bargaining has various ingredients – coercion, bluff, movement and persuasion – which is a gradual on-going process in which various elements in the positions of both parties are discussed. As this takes place, perceptions and expectations relating to the situation of the final outcome are affected. Some positions are emphasized, other dropped, while others remain unchanged.

“Key commitments” are principles or points of argument to be achieved in the negotiation process; and as one side achieves their commitments and deny the other side their commitments, the basis of the final settlement moves in their favor.

If you can persuade the other party to agree to the validity of your key commitments then this will strengthen your negotiating stance. If the other side accepts the fundamental principles of which you are negotiating it will be much easier to reach agreement on the detail.

For example:

If you make it clear to the other party that you have no intention of increasing annual leave in the organization and you put forward clear arguments to back this up, which the other party accepts, then it puts you in a very strong negotiating stance on the issue.

It is important for negotiators to identify their “key commitments”.

- They serve as a useful guide to negotiating strategy; negotiators should evolve a plan of how they intend to set about getting agreement on each;
- They concentrate discussion on each side of the negotiation; the more agreement is achieved by a negotiator on their own commitments the greater is the opportunity for settlement on their terms;
- When gained they represent areas of common ground between both sides;
- They should be used as the launching pad for making proposals; the greater the agreement on one side’s key commitments the less likely it is that their proposals will be rejected.

h. Common Ground/Goals

There are fundamental differences of principle and opinion between both sides in a negotiating process. However, before they would be prepared to meet, there must exist some common ground which management should plan to increase, while decreasing the conflicting goals.

a. Identify some common ground:

- In stating position;
- Between the people who are negotiating

In the bargaining situation, if negotiators identify and increase the area of common ground, they are automatically decreasing the area of difference between them, and therefore making settlement easier to achieve. As progress is made in the negotiations, it can be useful to

pause and reflect, confirm understanding and agreement to date. This ground, once confirmed, can then be built upon.

b. Check Common Ground:

- By discussing and questioning
- By looking and listening

If negotiations have come to a standstill it can be useful to reflect back to the last time agreement and understanding was confirmed and attempt to progress from that position. By making each move with reference to the area of common ground agreed, you are taking the initiative, while minimizing the risk involved.

c. Use Common Ground:

- To keep momentum in negotiations;
- To launch/introduce a new position

For example:

An obvious common ground between workers and management would be an increase in the business the organization does; if this is clearly identified at negotiations and agreed that it is a common ground/goal, then it can help achieve agreement on some matters, because the measure as to whether the business will increase can be used when discussing these matters.

i. Power

Recognition and assessment of negotiating power is vital to successful negotiation and before starting negotiations there is a need to assess the parties relative strengths. Bargaining power is the ability to gain acceptance of a preferred position.

It is possible to identify three types of negotiating power:

- *Personal Power*

Based on the relationship that exists between negotiators and on the skills of the negotiator; this relates to personal ability and credibility and relates to personal competence, skills in understanding and reading the bargaining process, confidence in ability and negotiating position. It is very much influenced by the level of trust and goodwill that has been built up between the two negotiating parties from previous negotiations. However, even if one has personal power if does not

necessarily mean that the other party will move in the negotiations. While it is important to have personal power do not over estimate your ability to always win.

- *Persuasive Power*

Derived from the specific facts of the negotiating situation, the key to persuasive power lies in the facts and the strength of the arguments and is external to the negotiators. This is where you try to persuade the other party that your position is a reasonable one in the circumstances and that it is not in their best interests to maintain their position.

- *Coercive Power*

The ability of one side to threaten and use a number of sanctions on the other party if they fail to concede to the demands.

For example

- An employer could threaten to close down a plant, lay off workers, abandon an expansion plan etc
- The workers, on the other hand, could threaten strike action, bans on overtime, bans on use of certain machines, refuse to accept raw materials from a certain supplier etc

Negotiating power affects:

- negotiating objectives;
- negotiating strategy; and
- negotiating style.

Power relationships are continuously changing throughout a negotiation and good negotiators constantly re-assess their position as key commitments are gained and lost and movement is achieved.

II. PREPARING FOR NEGOTIATIONS

Preparation is crucial for successful negotiations and involves giving consideration to a number of areas if a negotiating case is to be developed which:

- contains the necessary pressure points and strengths;
- identifies consequences of failure to agree; and
- benefits required to reach a successful conclusion.

In preparing for a negotiation be clear about your objectives.

Good cases have three essential pressure points:

- strengths;
- unpleasant consequences of non-acceptance;
- benefits;

Negotiators will move their position if:

- they feel they have no option;
- to stay where they are is unpleasant for them;
- they can see some advantage in moving their position.

When preparing a case:

- (a) Identify strengths; these may include:
 - Facts which support your case
 - Hard, compelling argument
 - Custom and practice
- (b) Assemble unpleasant consequences for all concerned, or for the situation if they do not agree to your proposal.
- (c) Assemble benefits to all concerned, or to the situation if they agree.
- (d) Make notes which should include:
 - A statement of the position which the case supports
 - The key points to be put forward and the evidence and arguments supporting them
- (e) Identify the main weaknesses in your own position; prepare cover positions so that you know what to say or do when weaknesses are raised.

The negotiations preparation process involves:

- researching facts
- clarifying what you want to achieve in negotiation
- prioritizing your demands
- anticipating the other party's response to your demands
- identifying possible solutions
- identifying costs of various claims made
- assessing the implications of claims and demands made
- recognizing the importance of influencing expectations before negotiations start
- establishing a negotiations strategy

1. Research to establish your facts

All the options and alternatives available must be evaluated so that you have an appreciation of the costs, implications, advantages and disadvantages if each.

The areas to be considered here include:

- (a) ***Procedure:*** the organization may have a particular negotiating procedure for resolving disputes, which must be followed in certain situations. It is important that this is assessed and if it is discovered that procedures are not being adhered to then negotiations should not begin
- (b) ***The validity of the claim:*** it may be possible that the claim is not allowed under existing agreements or law.

For example

- The enterprise may have an agreement which states clearly that somebody is not entitled to what they are claiming
- Legislation may state that to concede on this demand would leave the enterprise open to a breach of the law
- Custom and practice in the organization may dictate that such a claim is not justified

If on researching the facts you come to the conclusion that the claim is not valid then the people pursuing the claim should be immediately

informed, do not wait until the negotiation commences

(c) ***The facts of the issue or claim:*** you must research the claim so that you know precisely what is the actual position:

- The facts presented by the other side may not necessarily be a full picture of the whole story
- Records may have to be found and management directly involved in the issue under discussion may have to be consulted

For example:

If some one alleges that they did not receive an overtime payment for overtime worked then either going to the cards used to “clock-on” or the time keeping system used, talking with management to confirm that the overtime was worked and then checking the wage calculation to see if it is correct

(d) ***The cost implications:*** you must measure both the direct and indirect costs of making a concession of the claim. This will be important because the cost implications can be used as justification to either refuse the claim outright or to make a counter offer

(e) ***Equity considerations:*** you have to consider the implications of making a concession to certain individuals or small groups, by considering such issues as:

- What will the view of other workers in the enterprise be if you were to make this concession
- Will they perceive it to be fair and if not will it result in further claims being made
- If you give an extra payment to certain workers for doing a particular job [e.g. an allowance for cleaning machinery] will this create demands by other workers in the enterprise for extra payments for doing some parts of their jobs for which they have not been receiving payment, if the workers have up to now as part of their job been cleaning the machines without receiving an allowance

(f) ***Consequential considerations:*** what are the consequences for the organization of making a concession or partial concession?

For example:

If the enterprise makes a concession to workers who are in a

particularly strong bargaining position does this mean that the enterprise is open to this type of blackmail in the future; ultimately the enterprise will have to resist the demands of these workers and perhaps it may be best to do it from the start rather than establish a precedent which will be more difficult to break the next time the same group make another demand.

Do not just think of today ... but also tomorrow and the next day when making concessions.

- (g) **Precedent:** where workers claim that what they are looking for has been clearly established in the past either within the enterprise or within the industry sector you need to research this; precedent is often a very strong argument to justify claims. However in your research you need to also ensure you know the reason why the claim was conceded elsewhere and on what basis.

For example:

Workers may claim that there are several enterprises in your sector who have introduced a system of a paid day off a month on the third Monday of the month. You would ring the enterprises to ask if they in fact have introduced such a system. BUT you should also ask why the system was introduced and were there any concessions from the workers. You may find that the agreement to introduce the system was based on agreement from the workers that they would not take time off during work hours to attend appointments with doctors, dentists, their child's school or whatever, that those appointments would be scheduled for the Monday and that the workers agreed to work an additional 15 minutes a day for the 19 days they worked by not taking an afternoon coffee break. The chances are that the workers making the claim had not told you of the concessions. You may also be prepared to agree to the claim if the workers make the same concessions.

- (h) **Internal comparisons:** there are often established relationships between the wages and conditions of employment of various groups of workers within an organization. If changes have recently been made to the wages or conditions of employment of other groups then this will leave you open to a claim. You would need to be able to explain clearly and justify why such changes were made.

- (i) ***Comparisons with other employers:*** it is important that you research where the organization stands in relation to other employers. For example, to establish whether pay rates in the organization are in line with the industry or locality norm, or various conditions of employment in line with what is generally accepted as the norm. The unions will tend to be selective when making comparisons, using only those comparisons that justify the claim they are making. You must be in a position to contest the claims that they are making with your own information.
- (j) ***Changes in productivity:*** workers will tend to look for an increase in pay where productivity has increased. However, you need to research why this increase in productivity has occurred. It may have occurred because of the introduction of new technology and there may not have been an increase in the individual effort or level of responsibility of workers and in fact individual jobs may have become easier, for example with the introduction of mechanical handling machinery the effort in moving goods may now mean less physical effort and time. Unless the responsibility or effort has been increased there is usually no case for a pay increase.
- (k) ***General Information:*** there is certain general information which you must put together when preparing for any negotiation, depending on the claim such information could include:
- Actual and projected increases in the cost of living;
 - Rates of pay by sector and/or position and/or locality;
 - Actual increases to those rates of pay and when those increases occurred;
 - Conditions of employment that apply generally in the economy and also in your sector or locality if different
 - Projections of performance of the industry sector in which you are involved
 - If there are claims being made on other enterprises in the sector
- In putting together this type of general information you can not just rely on those statistics that support your case and nor should you seek to vary the statistics and information you use from claim to claim, once a precedent is established for the use of certain information this sets a precedent for future negotiations and you

will find it difficult to justify varying the statistics used from negotiation to negotiation.

- (l) **Counter Claims:** sometimes a compromise which might not otherwise be possible is made possible because you introduce something you want into the discussions to justify a concession by you on the basis of gaining what you want.

For example:

You may offer an increase in pay greater than you might otherwise have offered because in return the workers have agreed to accept a change in work practices which increases productivity and therefore helps to finance an increase in labour costs.

2. Clarifying Objectives

Whilst the objective of negotiation is to achieve a settlement there are certain key objectives that must be achieved by management.

Examples of these objectives include:

- (a) **Retaining competitiveness/financial balance:** any concessions made must not result in the company becoming less competitive than its competitors. Management must take into account of the fact that competitors may not necessarily be operating in the same economy; therefore the impact of other issues such as exchange rates need to be considered together with increased in labour costs. The financial balance of the organization must not be upset through trying to reach a negotiated agreement.
- (b) **Retaining/attracting employees:** the company obviously wants to establish pay rates and conditions of employment, which will attract employees with the skills and qualifications, which are essential for the business to grow and develop. If an organization is known to pay low rates and to have poor conditions of employment then it will be likely to have difficulty in recruiting experienced personnel. Also, when the organization recruit new employees it will find it very difficult to retain the better ones who will tend to leave once they have obtained experience.
- (c) **Avoiding trend setting:** it is important that an organization avoids setting a trend, which will be quoted by unions to other employers.

By agreeing to claims that are well in excess of what the industry sector expects to concede may result in the organization being perceived by unions as an easy target and it will make it difficult in the future for management to resist claims from workers.

- (d) ***Retaining adequate funds***: where an organization makes a profit a certain proportion of those profits should be retained for future investment in plant and machinery or research and development or expansion of the business and equally important providing a safe guard against difficult periods. Shareholders are also entitled to a dividend in return for their investment and will seek to have a fair return for their investment.
- (e) ***Reasonable and cooperative workforce***: an enterprise to run efficiently must have a reasonable and cooperative workforce. Workers expect reasonable pay levels and conditions of employment. If people feel they are being treated unfairly they will tend to not cooperate and will seek every opportunity to improve their situation. This can be very disruptive and will generally mean that the enterprise is not operating efficiently and therefore not making the level of profit it could with a more cooperative and productive workforce.

3. Prioritizing and sequencing issues

After deciding the issues that you want to discuss at a negotiation it is important that you prioritize these otherwise you could make concessions on issues that are of the greatest importance to you.

- The most important issues are the ones that must be achieved at negotiation
- The least important issues are the ones which you can perhaps make concessions on, especially if by making a concession on these issues you can achieve agreement on your most important issues

When you receive the details of the claim from the other party, you should also list these claims in what you believe would be the other party's order of importance/priority. This will give you some idea of what the other party might be prepared to make concessions on in return for your demands.

4. Anticipating responses

You have to try to anticipate the responses of the other party to the points you make to justify your case. The research you have carried out will of course be a help. When you respond to the arguments made by the other side to justify their case you must always be able to anticipate what their response to your reply will be.

Be prepared by trying to think like your other party.

5. Fall-backs and options/identifying possible solutions

It is no normal in negotiation to establish a position from which you can move, if necessary, for example by making an offer of a pay increase at a lower rate than you will be prepared to eventually concede. By making this lower offer you have room to move during the negotiations as other matters are introduced and debated. You must also seek to develop solutions that can assist the other side, for example you may be able to make concessions on some of the union demands and in return the union would be able to move closer to what you see as a realistic settlement.

- It is important that when you are negotiating that you are all the time searching for solutions to help both sides reach agreement
- Do not all the time be waiting for the other side to make all the concessions.

In certain situations it will not be possible to reach agreement. However, in such a situation it may be possible to reach some sort of an interim or provisional arrangement.

For example:

If the company is looking for flexible work practices and the union is claiming a wage increase which is far in excess of what the company would be prepared to agree then it may be possible to offer a smaller pay increase to enable the introduction of flexibility which the company seeks and review the situation in a number of months. If the new working arrangements are operating effectively and are achieving more than the company initially anticipated then it may be possible in that situation to offer more money at a later date. If this is the interim agreement that is reached it will be necessary to have some agreed measures to assess the effectiveness of the changes and in broad terms at what level would the

company be prepared to enter negotiations on a further pay increase.

6. Identifying the costs of various claims

When a union makes a claim, management must cost each of the claims. The benefits, if any that would accrue to the company as a result of conceding these claims should also be considered.

For example:

If workers are seeking a pay increase, you should calculate what would be the exact increase in your labour cost bill, including any on-costs. Once you have determined the likely cost of agreeing to the claim you need to decide what you need as management to seek from the workers to off-set all or some of this additional cost. Where ever possible management must ensure that claims that increase labour costs are not accepted without some benefit accruing to the company.

7. Assessing the implications of claims or demands

Beside the cost implications of the demands made by the other party you should also consider other implications of agreeing to the demands. These could include:

- Making a concession to a demand that is in breach of a company/ union agreement, custom and practice etc. If you make a concession that is in breach of a company/union agreement then it renders that part of the agreement void and of no effect, it may if the components of the company/union agreement are not severable make the whole company/union agreement void and of no effect. If you make a concession on something which is out of line with custom and practice then you are in effect showing that you are prepared to change custom and practice. You weaken your ability in future negotiations to seek to rely on custom and practice to not agree to a claim. That is not to say that you do not seek to change company/ union agreements and/or custom and practice – all it means is that you make sure that you clearly understand the implications of what you are doing not only for this negotiation but for the precedent you may be establishing for future negotiations and for future negotiators.

- Considering what the perceptions of others in the organization will be to any concessions you make. If they perceive it as not being justified they will seek the same thing and it would be difficult for you to resist such a claim. Even if the issue eventually ends up before a third party who agrees with your position the perception of unfairness will still be there and this can affect morale and your standing in the organization.

8. Influencing expectations before negotiation

It is easier to influence expectation prior to negotiation than it is at the negotiation meeting. As stated in Section 1.9, if you argue at negotiations that the company's business is particularly difficult at present and that projections for the future are not good there is a danger that this may be seen as part of the negotiating ritual by the other side. If, however, the company has always discussed with the workers the performance of the organization and released trading figures on a regular basis, when the company is performing well and also when it is performing poorly, it would be easier to convince people at the negotiation that what you are saying is real and is not just part of the ritual. It is important to realize that views and opinions of people change slowly and communication needs to be regular and over a period of time, you will not change views by suddenly providing information just before a negotiation is about to commence.

9. Establishing the negotiation strategy

Strategy is of crucial importance in negotiation and involves planning to give you a decisive advantage at negotiation.

The bargaining strategy occurs at three distinct stages:

- Prior to the negotiation meeting
- At the negotiation meeting but before the bargaining takes place
- At the negotiation meeting when the bargaining is occurring
 - (a) Prior to the negotiation meeting you need to establish the position in relation to the claim beyond which you will not go. You also have to make a judgement of what you believe is the minimum that the other side is prepared to accept:

- Where a number of issues are involved you should prioritize and list in order of importance what you believe is the priority list of the other side.
 - You have to be prepared to move at negotiations from your initial position and this must obviously be built into your initial offer.
 - Your initial offer has to be realistic if the negotiation is to continue
 - It is also possible that you could interlink a number of issues in a negotiation package, thereby giving greater room for negotiation; you have to build in movement in relation to each of these items
- Pre-negotiation/persuasion aimed both at the key decision makers of the other side and those they represent can form an important part of your strategy, but needs to take place on a continuous basis where possible; otherwise a sudden and unusual release of information just prior to negotiations may be treated with suspicion.
- (b) During the early part of the negotiation meeting no actual bargaining takes place; both parties are merely asking questions of the other side challenging the other side to justify its arguments, testing its commitment to each of the issues raised and presenting its own key commitments. You have to plan what you are going to say to justify your own case and the type of questions you would ask the other side to get them to justify their claims.
- During the bargaining sessions [refer part (c)] you will have to concentrate on persuasion and questioning for clarification, trying to tease out those areas of your other party's case where they may be prepared to move
 - You will also need to consider how you can possibly signal to the other side those areas where you are prepared to move without actually making any concessions.
- (c) Finally, there is the strategy for that part of the negotiation meeting at which bargaining takes place. You need to consider what are the proposals on which you can make concessions in return for modification of your other party's demands. This brings you to the familiar strategy of linking your concessions to concessions

on the other side and making your proposals conditional. If the linkage is not seen as a fair exchange by one party, often a counter demand is employed to restore the balance. This stage of negotiation is typified by a series of conditional propositions becoming increasingly more specific as you near agreement.

- Where negotiations involve a number of separate items it is important that you adopt an approach which takes the view that nothing is finally agreed until everything is agreed
- Do not agree on items that are less important to you first before dealing with the big issues; where a party makes a number of demands the you should note their position on each item; however, you should never lose sight of those items that are priority items for you
- You must also recognize that you may fail to reach agreement during negotiation. Therefore, you must have a strategy on how to deal with such an event.

10. Handling breakdown of negotiations

Giving thought to the situation, which would occur if the negotiations failed to achieve agreement is an essential part of planning for negotiation. It is unwise to allow a negotiation to fail if the probable outcome – whether because of action by the other party or through third party intervention- is worse than the position reached when breakdown occurs.

The main options are:

- (a) To take unilateral action; but in considering this, you need to think of the effects on future working relationships
- (b) Third party intervention in the form of:
 - **Conciliation** – where a conciliator works with the two parties to help them reach agreement
 - **Mediation** – where both parties agree to consider, but are not bound to accept, a solution suggested by the mediator
 - **Arbitration** – the most powerful and risky form of third party intervention – where both parties bind themselves in advance to accept the arbitrator's solution – or legal action through the courts or tribunals

Making sound decisions about the use of conciliation, mediation or arbitration depends on thorough and accurate assessments of the strengths of each party case

Never over estimate the strength of your case – nor under estimate the strength of the other party's case.

III. PROCESS OF NEGOTIATIONS

Negotiation is a process involving:

- initial discussion and explanation
- making and responding to proposals
- bargaining to find solutions
- concluding and communicating the agreement

Negotiators also need to consider:

- the action they will have to take to implement the agreement after it has been reached
- how to handle the possibility of negotiations breaking down

1. Opening the meeting (discussing and exploring)

There is no set rule as to who should open negotiations:

- Where management take the initiative at the meeting then it should give an outline of the background to their case, and depending on the issues to be negotiated discussing areas such as:
 - the ability of the employer to pay or concede the conditions demanded;
 - If the environment in which the company is operating is very competitive then the company may be restricted to what it can offer or agree to;
 - If the market situation in which the company is declining then the company can not incur additional labour costs
 - Even if the market is growing there is a need to consider what competitors are doing so the company is not at a competitive disadvantage;
 - Projected increases in cost of living on the basis that pay increases in excess of the cost of living would be harder to justify – however need to be aware that you should not get into a position where the company is seen to always agree to increase wages at least in line with the cost of living;
 - Pay rates in comparable companies and for comparable roles, and the current rates the company is paying – again need to be

careful how you use this information as you would not want to be seen to conceding where the company wants to be vis a vis other companies or roles as a matter of course in future negotiations;

- Where the initiative is taken by the other party to open the negotiations, you should ask them to explain, clarify and justify their claim. It is important that no offer to be made by you at this stage in the meeting.

2. Confirming common ground and narrowing the gap

Once each side has made its opening statement the next move is to identify the areas of common ground and seek to remove the gap between the positions through questioning and discussion which tests commitment and seeks to influence expectations.

On issues where gaining agreement seems difficult you should:

- Ask the other party to postpone or modify its demands;
- Adjourn the meeting for a short period of time to discuss with your negotiation team and/or company management what the other party is demanding and perhaps formulate proposals. It is possible that the other party have introduced demands for the first time or demands that are not as high as expected. You may break to discuss these issues and may even decide to make a specific proposal on return;
- Ask the other party to adjourn the meeting for a short period of time or until another occasion to allow the other party to consider counter-claims which management have put forward for the first time;
- Adjourn until another occasion because the issue has to be referred back to higher authority.

In the case where a party requests an adjournment it should normally be agreed to. The duration of the adjournment should be by mutual agreement. The party who requests the agreement would normally speak first on the resumption of the negotiations.

After the initial stage of the meeting at which there has been a general discussion and exploration the next step is making and responding to proposals.

3. Making proposals

Only make a proposal to the other side at the meeting if you are satisfied that the right climate exists. If the company is in a difficult financial situation it is important that the other party accepts this before a proposal or offer is made. Any offer you do make should leave you in a situation, which allows for some changes, but this should not occur until there has been some modification in the other party's demands.

If the other party rejects your initial offer out of hand then you have to consider if there is any point in proceeding further with the meeting.

If you believe that the other party is not going to move into your settlement area then there is no point in proceeding with the meeting; at this point you should consider suggesting that the issue be referred to a third party for mediation/conciliation. This proposal would have to be agreed to by the other party as going to a third party at this stage would have to be by agreement it could not be imposed unilaterally.

4. Responding to proposals

It is normal to respond initially to proposals from the other side by making general statements to influence expectations rather than by making specific counter-offers. This will be an elaboration of what was said in the opening of the meeting and at this time you may also seek to introduce some evidence, data etc to support your statements

Trading companies may speak in general terms with supporting information where available about issues such as:

- *Ability to pay* – referring to the financial position of the company and/or current and anticipated future levels of employment
- *The need to remain competitive* – including in comparison with companies in the country and also with importers
- *The difficulty of obtaining price increases* – either due to the market pressure or government controls
- *The impact of pay increases on employment* – increased labour costs may encourage the company to invest in new technology which will over time reduce employee numbers or alternatively there were expansion plans which will not be able to be financed if labour costs increase

- *Level of pay settlements in competitor companies* – and potential squeeze on profit margins of any increased costs
- *Movement in exchange rate* – if company exporting into a particular market[s] any increases in exchange rates will make their products more expensive and less able to compete
- *Precedents which may be created or must be followed* – In the case of non-trading organizations including schools, hospitals and other organizations whose major cost is labour – it would be appropriate to speak about issues such as:
- *Need to maintain financial balance* – finances of such organizations are restricted, often relying on government subsidy and donations from the public to continue to operate
- *Government policy* –

5. Questioning and Listening

It is important that questions are asked at an early stage of the meeting in order to:

- *Clarify* – what it is the other party is claiming/stating
- *Challenge* – the other side to justify their case and argument issue by issue
- *Test* – the other sides commitment to each of their issues in order to gain a greater insight into their priorities
- *Identify* – possible areas for movement and bargaining; for example you might ask the other party whether in return for concession on the particular issues they are prepared to drop other issues

It is also important to listen actively and acknowledge what the other party is saying by:

- *Paraphrasing the content.* Give your interpretation of what the other party is saying to avoid any misunderstanding and to reflect the underlying feelings of the other party
- *Inviting further contributions.* You may seek further expansion on particular points from the other side. This again shows that you are actively listening to what they have to say
- *Non-verbal listening responses.* Including posture, body language, facial

expressions, nodding and so on – that develop the impression that you are listening and understanding the other party's point of view.

6. Bargaining, movement and solution building

The next stage of a negotiation meeting is where the bargaining begins to take place. It involves initially providing the other party with arguments to support your case and arguments to challenge their case. After that the next stage of the bargaining is to gain movement towards one another and eventually to reach agreement.

a. Supportive Argument

Arguments put forward to justify your case should be based on the information you have from the research you did prior to the bargaining meeting taking place. It is very important that the case you are presenting is convincing and where possible independent and professional sources – for example research institutes – should be used. The arguments you use must justify your case and challenge the case of the other party.

b. Gaining Movement

Having put forward the arguments to support your case and to challenge the case of the other party the next stage of the bargaining process is to make an offer in order to gain some movement from the other side. You should previously have identified concessions that you can willingly give which may lead to a movement from the other side's initial position,

Where your settlement points are unlikely to be agreed upon willingly you will need to search for various ways to make your position more acceptable to the other side. A settlement will only be seen as relevant and fair if it satisfies the needs of each side to a greater rather than a lesser extent.

In seeking to gain movement:

- Be certain of the other side's demands;
- Summarize periodically where the discussion has led and thereby secure step-by-step movement towards agreement;
- Proposals which are initially put as hypothetical suggestions make it easier for both parties to avoid the pressure of immediate acceptance

or withdrawal;

- Make it easy for the other side to move, rather than challenging them on a win/lose basis;
- Remember that fear of losing personal or corporate face can severely inhibit progress;
- Constructive compromise is a basic means of gaining movement rather than a sign of weakness.

c. Conclusions and Agreement

When concluding negotiations it is important that you create a “*we win/you win*” situation with both sides making certain concessions and gaining something in return.

For example:

Management may agree to a pay increase on the introduction of new technology, flexibility in working arrangements and a new dispute settlement agreement and workers apart from gaining the pay increase may obtain agreement on more secure employment and a company that should prosper with a more efficient workplace.

If you create a situation of “we win/ you lose” or “we lose/ you win” you are moving towards a situation where both parties will view the negotiations as “we lose/you lose”.

For example:

- If a company does not negotiate but simply threatens to close down a plant unless the workers are prepared to accept a wage freeze, the company may in the short term achieve an improvement in its cost competitiveness, but at the probable cost of resentment and demotivation which may lead to increased wastage, lower productivity, higher absenteeism etc. Ultimately the organization may become less rather than more efficient and be higher cost than its competitors;
- On the other hand, if the company concede totally to the worker’s demands in face of a threat of strike action then this threat is likely to be repeated to force concessions even when the company can not afford to make them and these concessions may threaten the financial viability of the company and may lead to closure and the workers will be out of work.

When reaching the end of bargaining:

- (a) Never put a final offer on the table unless you are sure that the other party's representatives are likely to recommend acceptance to their members, otherwise you may be out in a position where you can not increase that offer without damaging your credibility
- (b) ensure that the recommendation of the other party's representatives is in tune with what you believe the people they represent will accept; whilst the union official may be prepared to recommend the company's offer for acceptance, management must use their own local knowledge to determine whether the union official is capable of selling the company's offer to his/her members
- (c) make it clear that the final offer is subject to confirmation in writing by the employer; when an offer is in writing there is less possibility of confusion over what the employer is in fact offering
- (d) Make certain that the other party knows the consequences for employees of rejecting the final proposals
- (e) Make sure that there is full understanding on all sides on what is being agreed and avoid "fudging" the issues merely to secure agreement

7. Consolidating the agreement

Once agreement is reached between the negotiating parties management should put this agreement in writing to the other party who should confirm in writing their acceptance. This often involves union officials outlining to their members the details of the agreement and why they should vote for its acceptance. Once the workers have voted for acceptance and this is confirmed in writing by the union the agreement can be implemented. If an employer wants to encourage acceptance of the agreement they may agree to a union meeting during working hours of an agreed duration. It is best to have the meeting towards the end of the day so that there is minimal disruption and if the meeting is a long meeting then only some of it will be in work time, unlike if it was held in the morning. In places where shift work is the norm the union may seek to have one meeting per shift.

a. Gaining Commitment

Unless the union official or the person negotiating on behalf of the workers can guarantee that all members will adhere to the agreement, the agreement is meaningless

b. Confirming the agreement

It is essential that the actual terms of the agreement be confirmed in writing. If the issue is a fairly simple and straight-forward matter then an exchange of letters will be sufficient. However, if it is a complex agreement, as for example the introduction of new working methods, changes to disciplinary procedures, a more detailed document will be required.

In confirming the agreement;

- The agreed proposals are clearly and unambiguously stated in any document that is prepared;
- A written acceptance of the document is received and none of the proposals should be implemented until this has occurred;
- The letter of confirmation should restate the actual terms agreed, the categories of employees involved, the effective date of the agreement and the termination date. If the agreement is in addition to or in lieu of certain provision in a company/union agreement this should be included in the letter of acceptance as well as in the documentation of the agreement. There should a dispute settling procedure to resolve differences in interpretation.

It is important to put the agreement in writing and in detail as perceptions of what was agreed may change. Over time people come and go and when there is a dispute some time later and all those who negotiated the agreement are no longer employed by the company or are no longer a union official the written agreement is all that is left of that negotiation.

c. Communicating the agreement

If possible there should be as part of the agreement details of how the agreement is to be communicated to both management and workers. A joint communication is preferred. However, if there is no agreement then management should ensure that the terms of the agreement are communicated to the workforce. The extent of the communication will depend on the complexity of the issues. For simple matters a memo will probably be all that is needed. For more complex issues there should be face to face presentations made. Starting with the senior management team and the negotiating team briefing front line managers and supervisors and then those people briefing their own staff. The

negotiation team should provide materials that can be used in the briefings. If it is a complex issue then the front line managers with their staff should hold small team briefings, where issues can also be discussed. If there are issues raised in such meetings that seem to indicate there could be problems with implementation front line supervisors should immediately inform senior management and the negotiating team as it may be necessary to meet with the union to resolve the issue before it becomes a major problem and affects the implementation of the agreement. Generally negotiators [both management and unions] are not aware of some of the intricacies of implementation at the shop floor and may have agreed to something that will not work, or will compromise health and safety. If this is the case then there needs to be a review. It is vital that front line managers be fully briefed on all the details and be involved in the writing of implementation guides, manuals etc. as they are the managers who will have to see through the successful implementation of the agreement.

8. Handling the breakdown of negotiations

Even where every effort has been made to reach agreement there will be situations where agreement cannot be reached. When doing your preparation before the meetings you would have determined the points beyond which you are not prepared to settle. If the other party is not prepared to move significantly from their original position towards your minimum settlement points then there may be no option but to accept that agreement is not possible. Therefore it is important before the bargaining process starts that you do not concede too easily on your initial position because this will leave you with little room to move at a later stage, you have to be satisfied that the other party is also making certain concessions.

If you are threatened with industrial action, you should withdraw from the meeting or adjourn it to review then options you considered when planning your negotiation strategy. These could include:

- A referral back to the Managing Director and/or the Board – to again discuss the issue and see whether it is possible to make further progress;
- Communication to all levels of management;
- Direct communication with employees about the implications for

them. It is important that workers understand the company's position. However, the communication needs to be unemotional and not seeking to blame anyone. It must be factual and able to be supported if questioned;

- Directly contacting the senior officials of the union if you believe that they are not fully aware of what is happening and/or to ensure that any procedures, such as a secret ballot before a strike is called if that is part of union rules or government legislation is complied with;
- Publicly declaring that no further negotiations can take place if verbal threats or industrial action is occurring. If you are seen to be making concessions when industrial action is threatened then it sets a precedent and will be used against you in the future.

Management should not re-enter negotiations after a final offer has been rejected, unless the union also makes some concessions. Making final offers and then being prepared to renegotiate in the face of union intransigence damages credibility and will cause problems in future negotiations as the "first" final offer will not be seen as final, because in the last negotiations it was not.

When negotiations break down, either the parties walk away to regroup and start again or the matter may be referred to a third party in an effort to gain settlement through conciliation, mediation or arbitration. Management needs to assess the seriousness of the failure of the negotiations for their company, and unless there are costs in not reaching some agreement another tactic is to just wait and see what happens. In some instances the union may not have the support of its members, and to go to a third party in such a situation may be giving the union more power than it has at the workplace.

IV. NEGOTIATION TECHNIQUES, ORGANIZATION AND BEHAVIOR

Negotiation is a process of communications to gain agreement and requires abilities of:

- Listening;
- Empathy with the other party's case, which does not mean agreement;
- Influencing and persuasion;
- A good communicator/advocate.

A successful negotiator is:

- A good organizer of ideas;
- Able to analyze a situation and the arguments put forward;
- Able to control the negotiation process.

Negotiations are also influenced by:

- Their style and pace;
- The composition of the negotiating team;
- By the setting in which the negotiations take place, the seating, the room, documentation etc.

1. The Negotiating Team

- (a) Organization – careful consideration needs to be given to the composition and organization of the negotiating team; other than in very informal organizations a team of three to five members is usually advisable if coordination is to be maintained during the negotiations.

Within the negotiating team there are the following main functions:

- (1) Spokesperson who leads the team, takes a constructive problem solving stance in seeking to move to final agreement
- (2) “Challenger” who takes a harder line in meeting the other party's assertions and pointing out difficulties in the claims
- (3) Analyst and recorder who monitors and assesses strategies and proposals, observes progress, records argument, commitments and final agreement

Each of these functions have to be covered by some one in the team and it is important that each member knows the role they are to play and does move out of the role during negotiating meetings. The other party will exploit any indication that there may be different approaches or that one negotiator is “easier” to influence than others on the team.

- (b) Empathy: the negotiating team should be aware of the total strategy in advance of negotiations; ideally they should generate strategy collectively and empathize with each other to give each other real support
- (c) Discipline: members of the team should be disciplined to act as a united and purposeful team; basic disciplinary guidelines are:
 - Do not interrupt the team leader unless it is absolutely necessary, and try to do so by a quick note rather than speaking out
 - Follow the agreed strategy in what you say and do
 - Make all your contributions
 - Do not break a silence which is favorable to your team
 - Stick to your agreed role, but
 - Help each other out of difficulty with commitment

2. Planning negotiations – setting the style and scene

Deciding on the composition and organization of the negotiating team is an important part of negotiations planning but consideration also needs to be given to the following in setting the style and scene for negotiations:

- (a) the style and tone – is it to be discursive or brisk, formal or informal, assertive or persuasive? The skilled negotiator always aims for a collaborative approach
- (b) the location – inexperienced negotiators always feel more comfortable on home ground; for a major formal negotiation the use of a neutral location may be desirable
- (c) the pace and timing – avoid negotiations while emotions are running high, but do not delay negotiations for its own sake. In planning and conducting negotiations pay positive attention to the duration of bargaining sessions, formal presentations and individual contributions to the discussion:

- a continuous session should not last more than 2 hours – however as parties are coming closer to agreement there may be much longer sessions as the detail is discussed and refined;
 - use adjournment as aids to negotiations by:
 - providing time to consider progress and/or new proposals within the team and avoiding snap decisions;
 - ending unconstructive or personalized arguments;
 - providing an opportunity for informal, exploratory talks between individual members of the two parties.
- (d) Providing refreshments – can help progress and can be used, together with adjournments to break up lengthy sessions;
- (e) Seating plans – for example around a table versus across a table can be used to reinforce either a confrontational or collaborative mode.

3. Techniques and tactics

The tactics of behavior appropriate to specific negotiations will be influenced by:

- Personal style – negotiations does not involve the mechanical use of pre-selected tricks, the behavior you use in negotiating is very much a matter of your own style and personality and if your assessment of the situation;
 - Uncertainty – inevitable in negotiations, despite preparation;
 - Ritual – industrial relations negotiators often follow “the negotiating ritual” in trying to achieve the best deal for those they represent
- (a) Making Proposals – in making an offer to the “other side”, justify it in relation to whichever considerations are appropriate based on your assessment of the other party’s attitude – positive or negative – to the company’s position. Remember proposals are best sold *on their advantage to the other party*, not one’s own, because you would not be making a proposal that was not positive for the company;

You should always build your case slowly, working from your strengths. Where ever possible:

- Get the union to agree to the progression that is taking place;
- Try and put proposals as hypothetical suggestions to minimize pressure

to accept or oppose;

- Always discuss and argue your points, they will not argue for themselves. This increases the credibility of your position and helps to weaken their objection and reduces their expectations;
- Do not allow yourself to be interrupted, and ensure that you complete your arguments before handing over to the other side;
- Use rhetorical questions for feedback – “See what I mean?” –use eye contact, use silence;
- Ensure that the case you are making really does support the overall proposal. Try to sound convincing. It is always better to negotiate from your point of view and insist that the case be discussed on the basis of the statements you have made;

Never try and imitate the style or presentation of other negotiators, develop your own style that suits you

(b) Responding to proposals and making concessions: when receiving proposals from the other side allow them to expand on their arguments without interruption

- Link as many of your issues as possible to those of the other side
- If you have an offer which is attractive to the other side you should make it conditional upon them giving you something in return; obviously, before such a linkage is accepted the items being linked have to be seen as roughly equal in terms of value:
 - Make sure you know exactly what their demand is before committing yourself to a response

(c) Active Listening – it is important to listen actively and acknowledge what is being said but it is difficult to listen well, especially under stress.

It is not enough to simply listen. You must also communicate to the other side that you have heard and understood. Try to separate suggestions, ideas, attitudes and values etc from the person who is advocating them. The skill of active listening can be developed and practiced even when the views and ideas coming across may be felt to be illogical or wrong.

Listen to find the meaning behind the word. Listen and look for indications of movement, changes of mood or approach in the other party.

(d) Probing questions – use to:

- Test the other side's case for errors or omissions of fact, faulty logic and misuse of statistics;
- Avoid misunderstanding;
- Test and express understanding;
- Force the other party to justify its case;
- Help identify options;
- Help find common ground between the parties;
- Look for an encourage movement.

By questioning the other side, you are forcing them to justify the position they have stated which should help give you the initiative.

In questioning:

- Never ask all questions at once;
- Remember that there is no need to question in all areas;
- Do not expand on questions, or rephrase a question if the other party is having difficulty answering your question, wait in silence for the answer do not try and help;
- Ask open-ended questions – not questions that only require a “yes” or “no” response;
- If there is a reluctance to answer a question – use silence, wait for answers
- Ensure that the answer is to the question as asked, otherwise ask the question again.

Good negotiators ask brief, intelligent questions for information, clarification and commitment in order to get the feedback essential to negotiating. They ask questions more than they make statements.

(e) Persuasive Reasoning – support your case without antagonizing the other side. Concentrate on issues or outcomes of common interest, rather than on the original differences. Before proposing a change ask yourself:

- What have I said or done which affects the other sides position as they see it?
- How do I know that this is so?

Persuade before you propose because before a negotiating position is modified the holder must be aware that to do so is necessary or of benefit. In seeking to persuade the other party to your point of view you need to consider:

- What common ground exists between the parties?
 - How can you use this positively to influence attitudes and expectations of the other side?
 - For which of the settlement points of each side is there an unwilling acceptance?
 - How to convince the other party that they should accept my settlement points?
 - Which settlement points can you persuade the other party to drop? How can you do this?
 - Which of the other party's settlement points could I concede wholly or in part as part of the deal? What linkage would I require? How does this linkage affect my own bargaining parameters?
- (f) Forming coalitions: at negotiation the most effective form of persuasion comes from within the negotiating group itself:
- Try to persuade people from within the negotiating group of the other side of your arguments.
 - Aim at the opinion formulators within that group who are able to convince the others in that group of your position.

Building good relationships and knowing the other side are key factors and even when problems do come to the negotiating table, progress will be more easily achieved if the parties have a good personal relationship based on mutual respect and trust

Involve your other party in negotiation in the line you are taking rather than merely telling them how right you are and how wrong they are. At all costs avoid the situation where the while of the other team says "no".

- (g) Incentives and pressures – where possible provide incentives at negotiations to encourage the other party to reach agreement; sanctions may be financial, legal or emotional, or may relate to the effect of a particular outcome on an organization's or individual's reputation.
- Management can bring pressure to bear on a union by threats, e.g. of possible redundancies because if the cost of the settlement, lay-offs

through loss of competitiveness or loss of orders leading to a reduction in the market share. Such arguments must be used with care and the facts must be available for management to prove its case;

- Threats are counter-productive if used regularly – if a threat is to be made it should be only as the last resort and management must be prepared to carry out the threat conscious of its consequences. If your bluff is called your credibility is undermined and damage is done to the relationship;
 - It is far better to concentrate on constructive bargaining tactfully making people aware of the sanctions available if negotiations fail
 - Never yield to threats or unfair pressure. Normally avoid emotional commitment, but displays of emotion may sometimes be beneficial if used consciously and they are sincere.
- (h) Maintaining Pressure – if you maintain pressure on the other side then you must assess the likely reaction of the other party. If management decides to maintain its position the it must ask itself:
- How far is it prepared to go?
 - Is the company prepared to take the costs of a strike or other industrial action? –and for how long?
 - What would the effect be of other forms of union action – e.g. overtime bans and working to rules?
 - What, if any, support would be likely from the outside?
- Having studied the effects of maintaining pressure on the other party then you have to determine what measures you can take to minimize or counter their effect.
- (j) Using adjournments: adjourn:
- To gain progress from pressure situations;
 - When there is radically new information;
 - When you are being asked to consider a new proposal;
 - When there is confusion in your team;
 - To bring unconstructive and personalized arguments to an end
- Always try and give the other side something to consider during the adjournment and while you are adjourned consider:
- What happened in the last session

- What you want to achieve in the coming session
- How you are going to conduct the next session

(k) End Games

- Time the final offer to coincide with a period of constructive discussion – not a combative phase
- Try and achieve maximum credibility for any statement you make about an offer being final – the tone and style of your statement may be as important as its substance

A negotiator may reopen issues that you thought had been settled to try and decrease the overall concession, and to pressure you to agree quickly before he raises any more demands. Respond to this by:

- Openly bringing it to his attention
- Refusing to proceed with negotiations on this basis
- Insisting on adhering to principle in negotiation

This approach differs from providing opportunities for trade-offs between parts of a negotiating package

- (l) Resolving negative consequences of agreement for the other party; proposals should be consistent with the values of the other side. When a judge gives you his opinion in a court case he just does not say “you win” or “you lose” – he explains how his decision is consistent with principle, law and precedent. A negotiator is no different.

Negotiators frequently hold on to positions not because the proposal on offer is inherently unacceptable, but because they want to avoid the feeling of having backed down and losing face.

If the substance can be rephrased or restructured to avoid losing face they will accept it.

A good negotiator should watch out for signs that his opposite number is in difficulty either because he has got himself into a dead end street or because of a particular mandate from his principles

4. Rules of negotiating for collective bargaining

Knowing the rules of the game will help you reach settlement. The rules have generally evolved over time and are observed by mutual agreement.

Before commencing any negotiation, you should be fully aware of the

rules that apply in your situation. The following is a list of commonplace rules, which might be useful:

- (a) on issues in which a precedent for negotiating or meeting has been set, there should be a willingness to meet the other party;
- (b) each party should be given an opportunity to state its position;
- (c) if appropriate, a time scale relating to settlement should be established in negotiating and then honored by the parties;
- (d) where counter demands are used, they should be tabled early in negotiations;
- (e) movement should be towards rather than away from the other party;
- (f) there should be no denial of what has been unambiguously stated. Information given in confidence or informally should not be repeated at a formal meeting;
- (g) an offer, once made, should not be withdrawn unless it is conditional at the time of making, or the circumstances surrounding it have radically and visibly changed;
- (h) a means of saving face should be preserved for use in defeat;
- (i) if an issue cannot be resolved in one meeting, a day should be set aside for the next;
- (j) if an issue cannot be resolved at local level, then it should be pursued through normal procedures to an appropriate third party;
- (k) adjournments are taken by mutual agreement; requests for an adjournment should normally be given;
- (l) duration of adjournments is by mutual agreement; the party who requests the adjournment should be allowed to speak first on resumption of talks;
- (m) adjournments are a valuable part of the negotiating process, but should not be used as a substitute for it;
- (n) in finalizing the agreement:
 - it is the responsibility of management to summarize the agreement;
 - the agreement should be specific, and where appropriate have a time scale for implementation;
 - there should be no trickery in the wording of the final agreement;

- an agreement once made should be implemented in that form;
- making an agreement implies responsibility for implementing.

5. Negotiations Techniques – Final Points

- With preparation and training most managers can improve their negotiating skills
- Effective negotiation demands:
 - a knowledge of the principles of the negotiating process;
 - the context of the particular negotiation;
 - its detailed subject matter.
- The main types of skill involved are:
 - Analytical,
 - Interactive,
 - Communicative.
- Negotiators need to be aware that they can be influenced in negotiations by:
 - Personality issues
 - Attitudes
 - Personal needs for recognition and achievement