Collective bargaining process and strategies

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Good labor relations cannot be brought about by legislation.... I believe that enlightened labor and enlightened management, working together, can accomplish far more by peaceful bargaining than is possible though legislation. (Harry Truman)

Introduction

Labor unions were organized primarily to fight for workers' rights and to get better terms and conditions of work through collective bargaining to improve the overall quality of life and political power of their members.

In the USA, about 2.4 million workers are under major collective bargaining agreements (those covering 1,000 workers or more) which were scheduled to expire or to be reopened in 1996. These workers constituted about 30 percent of the 8.2 million employees under such agreements in private industry and State and local governments (Monthly Labor Review, 1996).

In the Philippines, 94,454 workers are covered by new collective bargaining agreements (CBAs) filed by 626 unions in 1996. These are in addition to the 405,000 workers covered under existing CBAs registered with the Department of Labor and Employment by 3,401 unions (BLES, 1996). For those unions which have been able to secure CBAs, some of such contracts had significantly contributed in the attainment of union workplace goals such as better job security, working conditions, wages and other benefits, while in other cases these have produced modest or minimal gains.

Collective bargaining, as defined by Byars and Rue (1991), is a process that involves the negotiation, drafting, administration, and interpretation of a written agreement between an employer and a union for a specific period of time. This process, therefore, involves proposals and counter proposals, demands and counter demands, through which each party tries to obtain for itself the best or most favorable terms and conditions. It also involves constant communication between the union and the management during the implementation of the written contract to avoid disputes in the interpretation and implementation of the provisions of the CBA.

The end result of the collective bargaining process is a contract which is called the Collective Bargaining Agreement (CBA). The CBA stipulates the joint understanding of the union and management concerning wages, benefits, hours of work, promotion, discipline, and other terms and conditions of employment. The CBAs cover a variety of issues, which may be broadly categorized as: political and economic.

The political issues are those related to coverage, union security, job security, rights and responsibilities of parties, company rules and regulations, strikes/lockouts, check off, and grievance procedures.

The economic issues, on the other hand, are related to wages, allowances, bonuses, hospitalization, insurance, retirement, productivity, incentives and meal subsidies, etc. Given this classification of CBA issues, it can be noted that each contract still differs from another based on actual contents of the provisions of the contract.

However, an analysis of CBAs revealed that most contracts include specific issues related to: (1) wages and benefits; (2) management rights; (3) union security; (4) dispute settlement; (5) job security; and (6) strike/lockout.
Process

A. Principles

The collective bargaining process is based on four (4) principles which do not take the form of begging that appeals to the goodwill of the employer. These principles are:

(1) Recognition of opposing interests between labor and management. The employer’s interest is to get the most from the workers, at the lowest possible cost, in order to maximize profit. This means low wages and poor working conditions. In contrast to the employer’s aims to reduce production cost to a minimum level, workers are interested in getting the best possible conditions for their work: good wages, safe and healthful workplace, an acceptable length of the working day and other fringe benefits which would allow them to live decently.

(2) Find a settlement of the clash of interest by means of a compromise between the workers’ demands and employer’s offer. A compromise requires good faith and a flexible “give and take attitude” on both sides. If one or both parties present their demands rigidly as an “all-or-nothing” alternative, without the willingness to concede, if necessary, this cannot be called “bargaining.”

(3) Non-violence. The use of strike/lockout and other forms of threat or harassment to get one’s demands in the initial stages of the negotiations, without exhausting possible ways to arrive at a compromise, is not advantageous to both parties. It can result to an early deadlock. All peaceful alternative means should be utilized to arrive at an agreement.

(4) Bargaining autonomy. This means that the shaping of working conditions through the conclusion of collective bargaining agreements is solely the responsibility of unions and employers. Government interference, therefore, is non-permissible.

Aside from these four principles, Byars and Rue (1991) also added the following basic tenets of the collective bargaining process:

(1) Negotiation of relevant issues in good faith by both management and the union.

(2) Incorporation of the parties’ understandings into a written contract.

(3) Administration of the daily working relationships according to the terms and conditions of employment specified in the contract.

(4) Resolution of disputes in the interpretation of the terms of the contract through established procedures.

B. Stages

The collective bargaining process involves three major stages:

(1) Pre-Negotiation. This involves the collection and analysis of data to be able to outline the demands, come up with bases/justifications for the demands, prioritize the demands, and write the CBA proposal. Both parties, particularly the union, need to conduct extensive research related to the needs of workers, the economy, the financial condition of the company, and other relevant data to prepare and justify its proposals.

(2) Actual Negotiation. This includes stating the initial offer; further research to justify demand and counter offer; deadlock on issues; and final agreement. This stage also necessitates the use of strategies and tactics by the respective panels designed to improve their chances of securing better provisions in the contract.

(3) Implementation of CBA. This is after both parties have signed the contract (i.e. after the union members have ratified the same), and thus the CBA had taken into effect. At this stage, the
union and management find it necessary to have the same interpretation of the provisions of the CBA to avoid disputes. The effectivity of the contracts can cover a variety of time periods between one (1) year and five (5) years, the most common being three (3) years.

It should also be noted that the collective bargaining process seems to differ more in style than in substance. Scarth (1994), in his study, identified two styles, namely: (1) adversarial and (2) cooperative process.

The adversarial style is clearly having a high degree of animosity and antagonism between the union and management during the negotiation, while the cooperative style is more of a collaborative effort between the union and management to arrive at an agreement. Power (1996) added a new contract negotiation style called target-specific bargaining. This model is a team-based, interactive process which helps one organization and its bargaining units bury old tensions and sign long-term agreements.

C. Composition of the CBA negotiating panel

One of the critical factors in the collective bargaining process is the people involved in the actual negotiations. These negotiators at the bargaining table vary slightly as to job title or position in the organization and number depending on the type of union. Table 1 presents the usual members of the panel of both parties.

The General Manager of large companies rarely joins the negotiations if there is an impending or an actual deadlock in the issues which would have a major impact on the company, such as issues related to wages.

<table>
<thead>
<tr>
<th>Type of unions</th>
<th>Union panel</th>
<th>Management panel</th>
</tr>
</thead>
<tbody>
<tr>
<td>Member of a National Union or Federation of Unions</td>
<td>Federation Representative Local Officials</td>
<td>IR/HRD Manager Controller Lawyer General Manager *</td>
</tr>
<tr>
<td>Independent Enterprise Union</td>
<td>Officers Lawyer</td>
<td>IR/HRM Mgr. Controller Lawyer General Manager *</td>
</tr>
</tbody>
</table>

* The General Manager of large companies rarely joins the negotiations if there is an impending or an actual deadlock in the issues which would have a major impact on the company, such as issues related to wages.

D. Strategies in collective bargaining negotiation

Some strategies used by the union. The strategies utilized by the union in the entire duration of the collective bargaining process contribute significantly towards determining the nature, type or extent of the benefits they will be able to get from management. Based on a recent survey of unions, the following are some strategies they employ:

1. Pinpointing the best and most appropriate time to negotiate and when a strike would be most effective
2. Building up a substantial collective bargaining (strike) fund
3. Defining the ground rules
4. Deciding what information to give/withhold during negotiation
5. If facts are vague, suspending judgment and negotiation on such issues
6. Making the opening statements, with the management making the response
7. Identifying which of the proposals cannot be compromised
8. Identifying which proposal can be compromised, to what extent, and in exchange for what
9. Having alternative proposals that will respond to management's unrealistic counter proposals
10. Conducting continuous research to be able to support/justify demands
11. Expecting unforeseen crises and developments that might occur in the course of bargaining which requires new strategies and techniques
12. Listing information that can be obtained during negotiation
13. Practicing equal footing during negotiation. Avoid using Boss or Sir in addressing the management panel
14. Controlling the discussion and always taking the initiative
15. Keeping a scoresheet of what were discussed and the result of the discussion
16. Showing conviction in saying “No,” and presenting facts to substantiate the arguments
17. Not agreeing on anything until they have agreed on everything
18. Offering to write the draft of the final agreement
19. Signing the final draft as basis of the final copies
20. Examining final copies before final signing, becoming extra careful
21. In case of deadlock, getting ready for a strike
22. Identifying friends of labor in Department of Labor and Employment.
Factors of success of any collective bargaining

1. Trust between parties
2. Confidence of the members in their representatives in the negotiations
3. Open and honest communication
4. Group participation
5. Negotiators must possess the required skills for negotiation
6. Establishment of clear procedures and ground rules for negotiation
7. The resolution of conflicts during negotiation
8. Accessibility of information to make informed decisions
9. Use of the problem-solving team approach to identify issues and come up with options to discuss during negotiations.

Some strategies used by management during negotiations. On the other hand, management utilizes strategies to lessen costs for the company. Some of these strategies are:
1. Background checking of the negotiation panel of the union
2. Adding or subtracting a few significant points in the final minutes of the CBA meeting
3. Harassing union negotiation panel members
4. Not giving the true financial condition of the company
5. Sending pro-management workers during union meetings to spy
6. Explaining that the company is not generating profit
7. Meticulously examining the details of each proposal
8. Offering a “package deal” to save on labor costs
9. Bluffing
10. Offering the least as a counter proposal

C. Conclusion

Given the dynamic and changing socio-cultural, economic and political realities in Europe, USA, and the Asia-Pacific, it is imperative that an effective collective bargaining process be established, and that the strategies and tactics that provide meaningful results/outcomes relevant and acceptable to all parties involved, particularly the employees as represented by the union be fostered.

Bibliography


The crossed check

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The issuance of checks has now become commonplace. While payment in cash is desired, payment in the form of checks is both practical and convenient. The prevalent use of checks in the financial community is the compelling reason for the enactment of Batas Pambansa Blg. 22, otherwise known as the Bouncing Checks Law, which imposes penal sanctions on persons who circulate checks drawn against insufficient funds or a closed account.

There are several types of checks, one of which is the crossed check. A crossed check is one which bears across its face two parallel lines diagonally, usually on the upper left side. There are two ways of crossing a check: special and general. The check is crossed specially if the name of a particular bank or company is written or appears between the parallel lines. The check is crossed generally if only the words “& Co.” or “Payee’s Account Only” are written between the parallel lines or when nothing is written at all between said lines.

The high incidence of mail pilferage of agents violating the trust placed upon them has been a cause for alarm necessitating the crossing of checks. A check is crossed to insure payment to the payee or the rightful holder particularly when the check is forwarded by mail or when entrusted to an agent. This is achieved by requiring the intervention of a bank because a crossed check must not be encashed immediately but accepted merely for deposit. Banks are supposed to exercise prudence in identifying the person presenting the check in order that payment is properly made. It is the depository bank that takes charge of the collection.

In the case of a crossed check specially, the drawee bank should pay only with the intervention of the bank or company indicated between the two parallel lines. Thus, a check drawn against United Coconut Planters Bank and crossed to Philippine National Bank must be deposited with any bank where an account is maintained since there is no bank specifically indicated.

Crossing a check does not render it non-negotiable. It does not constitute a restriction of the negotiability of the instrument. The banking rule banning acceptance of checks for deposit or cash payment with more than one endorsement unless cleared by some bank officials does not invalidate the instrument;

While crossing a check does not render it non-negotiable, it may be negotiated only once—to one who has an account with a bank.

Neither does it invalidate the negotiation or transfer of the said check. Under the Negotiable Instrument Law, an instrument which in all respects fulfill the requirements of negotiability may not be negotiated only if respectively endorsed under Section 36(a). This refers to an endorsement written in express words that prohibits further negotiation of the instrument. Crossing a check does not constitute such prohibition as set out under the law.

Indeed, the effect of crossing a check relates only to the mode of its presentation for payment. Under Section 72 of the Negotiable Instruments Law, presentation for payment to be sufficient must be made by the holder or by some person authorized to receive payment in his behalf. In checks crossed specially, the authorized person would be the bank or company written between the two parallel lines. The drawee bank can be made to pay again by the rightful owner should payment prove to be erroneous.

While crossing a check does not render it non-negotiable, it may be negotiated only once—to one who has an account with a bank. The act of crossing serves as a warning to the person to whom the instrument is negotiated that the check has been issued for a definite purpose so that he must inquire if he has received the check pursuant to that purpose. Otherwise, he becomes a holder not in due course. The case of State Investment House, Inc. v. IAC (175 SCRA 310) provides a factual background that will illustrate the point here raised. Thus—

“It appears that shortly before September 5, 1980, New Sikatuna Wood Industries, Inc. requested for a loan from private respondent Harris Chua. The latter agreed to grant the same subject to the condition that the former should wait until December 1980 when he would have the money. In view of this agreement, private respondent-wife, Anita Peña Chua issued three (3) crossed checks payable to New Sikatuna Wood Industries, Inc. all postdated December 22, 1980 x x x.

“Subsequently, New Sikatuna Industries, Inc. entered into an agreement with herein petitioner State Investment House, Inc. where by for and in consideration of the sum of P1,047,402.91 under a deed of sale, the former assigned and discounted with petitioner eleven (11) postdated checks including the aforementioned three (3) postdated checks issued by herein respondents-wife
Anita Peña Chua to New Sikatuna Wood Industries, Inc.

"When the three issued by private respondent Anita Peña Chua were allegedly deposited by petitioner, these checks were dishonored by reasons of 'insufficient funds', 'account closed', respectively. Petitioner claims that despite demands on private respondent Anita Peña Chua to make good said checks, the latter failed to pay the same necessitating the former to file an action for collection against the latter and her husband Harris Chua before the Regional Trial Court of Manila Branch XXXVII docketed as Civil Case No. 82-10547."

The Supreme Court had adopted the ruling of the Intermediate Appellate Court quoted below:

"It results therefore that when appellee rediscounted the check knowing that it was a crossed check he was knowingly violating the avowed intention of crossing the check. Furthermore, his failure to inquire from the holder, party defendant New Sikatuna Wood Industries, Inc., the purpose for which the three checks were crossed, despite the warning of the crossing, prevents him from being considered in good faith and thus he is not a holder in due course. Being not a holder in due course, plaintiff is subject to the personal defenses, such as lack of consideration between appellants and New Sikatuna Wood Industries. Note that under the facts the checks were postdated and issued only as a loan to New Sikatuna Wood Industries, Inc. if and when deposits were made, hence the three checks are without consideration."

In summary, the effects of crossing a check are: (1) that the check may not be encashed but only deposited in the bank; (2) that the check may be negotiated only once--to one who has an account with a bank; and (3) that the act of crossing the check serves as a warning to the holder that the check has been issued for a definite purpose so that he must inquire if he has received the check pursuant to the purpose.

Finally, it may be stated that the drawer may be sued for violation of B.P. Blg. 22 on a crossed check issued for consideration which was returned by the drawee bank for having been drawn against insufficient funds or a closed account. The gravamen of the offense is the issuance of a bad check. It is immaterial that the drawer has crossed the check and there are defects in the taking of the check or the presentation thereof; the law does not permit the drawer to circulate a bouncing check.

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