

# COLLECTIVE BARGAINING



International  
Labour  
Office

*In collective bargaining, one or more trade unions and one or more employers or employers' organizations negotiate with the intention of reaching agreement on two broad subjects: terms and conditions of employment; and the rules that govern how the two sides will jointly address workplace issues and resolve any disputes that arise between them.*

## What is bargaining?

Negotiating or *bargaining* is a means of joint decision-making. It is used by individuals or groups like trade unions and employers who depend on each other to achieve their goals but who may have different interests. The unique aspect of bargaining is that both parties agree on the questions that concern them. In the case of trade unions and employers (or their organizations), that means agreeing the terms and conditions of employment – to the extent that these are not fixed by the law – or improving on legal minimum standards. Regardless of the subject, in bargaining neither side can simply say to the other 'this is what you are going to do' or 'this is what you get in return for working with me'. Nor does either side have a monopoly on making proposals for how the relationship should work. Rather, each side listens to the propositions

of the other and considers whether they are reasonable from the perspective of establishing and maintaining a balance between their own interests and those of their bargaining counterparts.

It is important to distinguish between bargaining and consultation, which can appear to be similar processes but are in fact very different. In bargaining, each side has the right to refuse a proposal. Alternatively they can make a counter-proposal or demand a concession from the other party before accepting their proposal. It is a joint decision making process. By contrast, consultation is what occurs when one side hears the other before taking a final decision which may, or may not, reflect the other parties' views.

## Why does bargaining not lead to instant deadlock?

At first sight, the right of bargainers to refuse the propositions of their counterparts may appear to be a recipe for deadlock. However, this is not usually the case because those who bargain are *mutually dependent*. For example, without investors and entrepreneurs, there would be no businesses to employ workers. But without workers, there would be no production and no return

on investment. Each side thus has a strong incentive to continue negotiations, make trade-offs and find a way to reconcile the interests of both parties. The participants know that flatly rejecting the claims of their counterparts will very quickly damage their relationship whose maintenance is essential for jobs, wages and productivity.

## Agreeing the terms and conditions of employment: collective vs. individual bargaining

The *terms and conditions of employment* can be thought of as a summary of what the employer and the worker can expect to gain from the employment relationship and what they contribute to it. They define work and working hours, the physical conditions under which the work will be done and the total remuneration that will be paid. Wages, working time and job classification are the most important elements, but terms and conditions can also include entitlement to sickness, parental and other leave, entitlement to training, the provision of personal protective equipment, conditions for termination and so on.

In principle, terms and conditions of employment can be agreed between each individual worker and the employer.

In practice, the scope for every single worker to enter into a genuine negotiation about his or her individual employment relationship is very limited. But rather than being agreed through *individual* bargaining, some or all terms and conditions can be agreed through *collective* bargaining. Where workers are able to form or join trade unions and thus act collectively, terms and conditions can be negotiated by union representatives acting on behalf of all the workers concerned. Once an agreement is reached, all of the workers represented in the negotiation process will have the same basic rights and duties, with appropriate variations to take into account different types of work and levels of seniority.

As individuals, workers lack the economic power of employers. No employer can do without workers as a group, but it is rarely the case that an employer is dependent on one individual worker. The isolated worker depends on the employer much more than the employer

depends on the worker. Ensuring that workers have the capacity to act collectively, through an independent union, goes a long way to offsetting this imbalance in (individual) employment relations.

## What does collective bargaining look like in practice?

With a mandate from those they represent, negotiators from both sides meet to make and consider claims and counter-claims about new or revised terms and conditions. For example, an employer might propose certain significant changes to long-established working practices. Union representatives know that workers will find these changes difficult and challenging, but recognize that they are likely to lead to increased output. They offer to accept the changes in return for a guarantee that workers will share the gains via an increase in pay. Similarly, union representatives may propose that normal working hours be reduced. Employers know that this will increase the hourly cost of labour, but offer to absorb this cost in return for workers agreeing to accept more flexibility in shift patterns.

The result of these and many similar offers, claims and counter-claims is recorded in a written document that sets out the terms and conditions of employment that will

apply to a defined group of workers and that is formally agreed by the employer and union. This is the collective bargaining agreement or CBA, which is given legal force in different ways in different countries.

As well as the obvious advantages of consistency, administrative convenience and joint rule-making, agreeing terms and conditions via collective rather than individual bargaining significantly reduces the risk that workers, particularly those in the most vulnerable categories, will be trapped in unacceptable forms of work. Collective agreements are also more inclusive than individual employment contracts. Given that they are typically applied to all workers in a bargaining unit or industry, they can afford labour protection to vulnerable groups of workers that may find it difficult to become members of a union, such as migrant workers or workers in small and medium-sized enterprises.

## Bargaining about how to bargain

Collective bargaining not only establishes substantive terms and conditions of employment like pay and working time, but also the procedures by which certain decisions affecting both workers and employers will be taken. The ILO refers to this as 'regulating relations' between workers and employers, and their organizations.

Through collective bargaining, workers and employers can agree procedures for dealing with matters affecting individual workers like grievance claims or disciplinary action, as well as establishing rules for the conduct of the collective bargaining relationship and other forms of social dialogue like joint consultation.

### Collective bargaining and the law in Tanzania and France

In Tanzania, the structure of trade union representation and the subjects and procedures for collective bargaining are left to workers and employers to define by agreement among themselves. Government agencies will only intervene where unions and employers cannot reach agreement. In terms of the content of collective bargaining, the law in Tanzania specifies only that collective agreements shall be about 'any matter relating to labour and employment relations' (Employment and Labour Relations Act, 2004). By contrast in France, the kinds of workplace consultation and negotiation that has to take place on different questions and in businesses of different sizes is specified in detail in the law, together with a wide range of other matters like the rights and duties of union representatives. There is also a range of subjects that collective bargaining at company level must cover, although this is the subject of broad agreement between the social partners at national level.

(<http://www.worker-participation.eu/National-Industrial-Relations/Countries/France/Workplace-Representation>)

## The role of government

Governments have a responsibility to guarantee freedom of association and the effective recognition of the right to collective bargaining. They also have a key role to play in promoting collective bargaining, respecting the autonomy of the parties and the voluntary nature of the process. Governments typically do so by establishing rules and procedures for collective bargaining, in consultation with the social partners. This includes procedures for the recognition of the bargaining parties (see factsheet 2). Governments also play a role in supporting the effective application of collective agreements and take measures to ensure compliance with them (see factsheet 4).

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