COLLECTIVE BARGAINING

THE EMPLOYERS’ PERSPECTIVE

INTERNATIONAL ORGANISATION OF EMPLOYERS
BASIC PRINCIPLES

Collective bargaining can be a useful and empowering tool for engagement between employers and workers. When combined with the principle of freedom of association, it has been, and continues to be, an effective vehicle in achieving successful outcomes for workers and employers throughout the world.

Amongst other factors, it can be particularly useful in bridging economic and social considerations in the world of work. It can be empowering of individuals and organizations, it can strengthen weak voices, it can bring order to labour relations, it can reduce poverty and social disadvantage, it can skill the unskilled, it can make those preoccupied with economic considerations focus on social matters, it can make those preoccupied with social matters focus on economic sustainability and capacity, and it can be a force for sustainable well being of individuals and enterprises.
These are not, however, automatic gains. Whether they are captured or secured requires an enabling framework, and depends on the quality of both the bargaining processes and the terms of agreements. Employers and employer organizations in many different contexts have subscribed to collective bargaining notions for many decades, and continue to do so.

**THE NORMATIVE FRAMEWORK**

The importance employers attach to collective bargaining has always been expressed with reference to its context and to its proper application in national circumstances.

Ever since ILO Convention No. 98 on collective bargaining was first adopted, in 1949, through to the Declaration on *Fundamental Principles and Rights at Work*, which was adopted almost 50 years later, employers have expressed the view that the universal values underpinning collective bargaining can only be effectively applied having regard to three considerations:

First, the Convention requires mandatory promotion of collective bargaining but only voluntary agreement-making. The importance – indeed obligation – of States to promote collective bargaining is established by the norms of the ILO. Beyond that, its application is voluntary, without obligation on those who collectively bargain to be compelled to reach agreements that they do not consider to be in their or their mutual interests;

Second, the level of bargaining is a matter for national and local determination by the parties to the bargaining process: collective bargaining has never been applied according to one model. It may be national level bargaining, industry or sub-industry bargaining or enterprise-specific bargaining. The Convention itself speaks of national circumstances.

Third, collective bargaining cannot be the exclusive form of employer and worker engagement. Provided the norms of collective bargaining are promoted and encouraged, there has been no obligation on employers to exclusively deal with their employees through a collective bargaining process. Obviously, where the collective bargaining process fails to lead to agreement, then other forms of engagement are necessary. Further, where institutional structures do not exist or are not strong enough for collective bargaining to take place, alternatives must exist for effective employment relationships to be created and exist.
COLLECTIVE BARGAINING : A MEANS NOT AN END

It is important to draw a distinction between bargaining processes and bargaining outcomes. Both are important, but the distinction nonetheless needs to be drawn.

There can be no assumption that each collective agreement in itself achieves successful outcomes for all parties. To draw that conclusion, an examination of qualitative aspects is essential:

1. Has the bargaining process been conducted in a genuine and effective manner?

2. Has the agreement (if there is one) contributed to both employment creation and social protection?

3. Has it reflected a mutuality of interests?

4. Is it sustainable and strengthening of relationships?

The broader point to be made from these observations is that collective bargaining should – indeed must – be promoted; but that, while its benefits can (and in many cases, do) exist, they are not givens.

The bulk of opinion is that the economic outcomes of one bargaining process over another are inconclusive or indeterminate. Given the diversity of national circumstances and the different industry, enterprise and worker capacities, this is not surprising. The 2006 OECD Employment Outlook noted:

“.. the evidence concerning the impact of collective bargaining structures on aggregate employment and unemployment continues to be somewhat inconclusive. The overall non-robustness of results across studies probably reflects, at least in part, the difficulty of measuring bargaining structures and practices, as well as the fact that the same institutional set-up may perform differently in different economic and political contexts.”

Poor quality collective agreements can fail to deliver social or economic objectives. Poor quality collective agreements can fail to balance job creation with job protection. Poor quality collective agreements can create mistrust and a loss of confidence rather than build relationships that are needed for second and third generations of collective agreements to be entered into.
The importance here is the word ‘can’. They can be to the good (and often are) but they can also be neutral or fail to improve industrial relationships.¹

This is an important distinction to make because it sends a critical message to negotiating parties – that they must apply their mind to the quality of what they are agreeing – to see its substance at least as important as the process itself. In other words, don’t bargain collectively just because a government or international body tells you that it is good for you, but do so because you can find, with effort, that it may benefit you in your circumstances and help you find or acknowledge mutual interests with the other negotiating party.

THE FRAMEWORK CONDITIONS

Collective bargaining processes above all need to be adaptable in order to continue playing an important role in the world of work and be fully cognizant of the evolving nature of the world of work.

For example, there are multiple streams and forms of employment and the provision of labour. The workplace and forms of working are an evolving paradigm. The idea of one fixed model of employment relationships – applicable everywhere across all sectors - is no longer relevant.

For bargaining processes to produce successful outcomes a number of variables need to be in place. These include: stronger industrial relations institutions; bargaining co-ordination; and non-adversarial relationships. Of course each of these expressions might include the concept of collective bargaining, but equally they each can stand apart from a collective bargaining process in the strict sense of the term.

¹ An illustration of a bad collective agreement is one that has unintended consequences. For instance, in a major European economy a collective agreement provided special benefits for older workers, such as salary supplements, protection against lower payment in case of changes in their work tasks and increased protection against dismissal. As these benefits involve costs for employers, which do not correspond to comparable benefits, they are not in line with the conditions needed for job creation and actually discourage the creation of jobs for older workers. As a consequence, the employment rate of older workers in that country is relatively low.
DIFFERENT MODELS, DIFFERENT REALITIES

There is no one ideal bargaining model. Nor is there collective wisdom that it is appropriate in all circumstances.

The experience over the past two decades shows that there is no single combination of policies and institutions to achieve and maintain good labour market performance. A successful package needs to be coherent and embody a good overall incentive structure.

Several successful OECD economies combine low levels of welfare benefits and limited taxation to fund these benefits, as well as light employment protection legislation. Collective agreements play a limited role in these countries. The result is high employment rates, achieved at a low cost for the public purse.

Other successful countries, characterized by a strong emphasis on coordinated collective bargaining and social dialogue, offer generous welfare benefits but activate jobseekers through the provision of training opportunities and other active labour market programmes. In these countries, employment regulations are more restrictive than is the case with other successful OECD economies. These countries have achieved high employment and low income disparity, but at a high budgetary cost.²

GREATER CHOICE

The reality is that collective bargaining is occurring in an environment where there are multiple forms of engagement between employers and workers.

There is therefore a need for an analysis of the potential benefits of collective bargaining vis-à-vis other methods and processes of determining working conditions, such as government regulation, arbitration, bargaining outside of union structures, direct contracting and market forces.

While it would be wrong to characterize all bargaining options as equally viable or that one size can fit all, employers favour a suite of bargaining options, and perhaps more relevantly, there are many employers and employees using a suite each and every day.

² Examples from the OECD 2006 Policy lessons
CURRENT TRENDS

A serious consideration of the nature and function of collective bargaining in the globalized economy must recognize that, as a general point, it is clear that the incidence of collective bargaining, notwithstanding its continued relevance in the eyes of employers as an important tool in resolving workplace issues, is diminishing. The reasons for this are complex but include poor or non-existent enabling frameworks, lack of capacity by workers or employer organizations, large informal economies and an unawareness of the modalities of collective bargaining.

Certainly changes to economies and labour markets are placing collective bargaining under pressure, at least in its more traditional forms. Five developments illustrate this point.

1. **Competitive pressures**
   
The new opportunities that have been presented by increasingly integrated global economy have also brought increased competitive challenges. Companies acting in an open economy face stiffer price competition than companies acting in a closed economy. **Capital is more mobile. Companies are more mobile. Consumers have more choice.** These are major factors with significant consequences that need to be factored into any bargaining process.

2. **SMEs**
   
Not only are most new businesses small entrepreneurs but this is also where most new jobs in the world of work are coming from. The experience of employer organizations is that SMEs are often less willing or able to be collectively led into a single bargaining process. Disparity and diversity make collective organization, let alone collective decision making, difficult. Yet, if collective bargaining does not (or is not able to be tailored to) work effectively in the growing parts of an economy and amongst that profile of employers which is expanding, then it is not going to maintain its relevance into the future.

3. **Increasingly skilled and mobile workforce**

   In relation to education and skills development, a more educated and mobile workforce means an increasing capacity to recognize one’s own skills - and with skills come bargaining power and, in turn, the willingness or capacity to deal directly on all or some employment matters with employers or managers outside of the traditional union structures.
4. **Trade union density**
Collective bargaining derives its effectiveness from organized and efficient collective worker or employer structures, existing within a framework of freedom of association. However, the reality is that trade union membership and influence are under pressure in many parts of the world. In many areas, the incidence of collective bargaining as a mechanism for setting wages and conditions of employment is declining. This entails a need for greater recognition of non-union bargaining.

5. **Increasingly decentralized**
More broadly, there is a real shift in the level at which collective bargaining takes place, towards decentralized approaches. Where bargaining exists at the national level it is shifting to the level of the sector. Where sectoral bargaining predominates, influence is shifting to the level of the enterprise. The “majority” form of collective bargaining in the world today is that which takes place at the enterprise level.

There is also an increasing tendency for more centralized agreements to take the form of framework documents that allow significant operational flexibility at the enterprise level. Further, even within enterprise agreements, there is increased flexibility (i.e. employees choose particular elements). These framework agreements leave firms with more leeway to adjust wages to local conditions and, additionally, to be able to introduce opening clauses for local bargaining parties to re-negotiate sectoral agreements.

These are developments that underscore why collective bargaining needs to be adaptable. The characteristics - *voluntarism of agreements, flexibility in the level of bargaining and non-exclusivity of bargaining methods* - require emphasis because they present the universality of the collective bargaining notion in a manner which is more likely to be relevant in a globalized economy and an increasingly individualized society, without undermining its core values.

Without clear recognition of these contextual matters when we promote collective bargaining, we run the very real risk that we speak to employers and some governments and workers in a language that either they do not understand or cannot see as viable or relevant to their particular circumstances.
CHALLENGES TO COLLECTIVE BARGAINING

Collective bargaining is not an outdated notion, whatever the realities of globalization. In many regions and enterprises – agrarian or industrial, high tech or low skill, developing or developed – it is being undertaken.

However, it is vital to assess what is and is not occurring, and if the assessment is positive, communicate to employers, governments and workers that collective bargaining has sufficiently flexible inherent characteristics and application to make it a viable, indeed desirable, form of employer-employee engagement in this century.

Equally, if that assessment draws mixed conclusions or discloses shortcomings in processes or outcomes, then we need to understand and address those, if that can be done.

The challenges are numerous. Collective bargaining within the context and realities of small and medium enterprises has already been referenced, an increasingly educated and skilled workforce, and globalization.

There is another reason why collective bargaining is under challenge – it (like all human institutions and, more relevantly, other labour market institutions) has its weaknesses and failings, some inherent, some in practice.

There needs to be a proper and robust analysis of these weaknesses more openly in order to address some of them and better communicate the notion of collective bargaining to those who may wrongly assume that it is simply an anachronism of past economic eras.

Among those shortcomings for employers are:

1. Its inherently collective nature, which can (but not always) limit diversity, innovation and responsiveness;

2. The costs of collective bargaining (and in particular the costs of industrial action in support of collective demands); and

3. The inherent assumption that individuals and enterprises want to collectively be led on labour issues by worker and employer organizations. The modern reality is that the freedom to collectively bargain implies the freedom to not collectively bargain (but to freely contract in other forms), just as the freedom to associate implies the freedom to not associate. In some developed counties in particular, workers and employers are often voting with their feet and structuring their relationships in other ways (including by collective bargaining outside a formal union structure where there is low unionization).
Of course, all shortcomings are capable of being remedied or seen in a less critical context. For example:

In terms of diversity and responsiveness, there are many examples of collective bargaining incorporating flexibilities - often at enterprise, local and individual levels;

In respect of the cost of industrial action, there is always a cost/benefit in any system of labour relations. One way to minimize the cost of strikes is to undertake a sound and mature process with open communication channels; another is for strikes in support of collective bargaining to have sensible limitations placed on them, especially in relation to essential services and the public interest; and

On the issue of individuals exercising their freedoms to pursue their objectives in non-collective ways, organizations of employers and workers need to increase their service capacities and their communication and relevance to their constituencies, so that members, not just organizational priorities, drive collective processes.

**ROLES OF THE ACTORS**

**EMPLOYERS’ ORGANIZATIONS**

Employers believe that an open discussion about collective bargaining must not lose sight of the principal objective, which is a harmonious and productive workplace *not collective bargaining per se*. The collective bargaining process is important and, if properly and democratically applied, can be an empowering and relationship-building experience. However, enterprises are more likely to judge collective bargaining by outcomes, and our collective bargaining advocacy is to this end, not as an end in itself.

That itself presents resource and technical challenges for both worker organizations and employer organizations.

Employer organizations have often been the vehicle through which collective agreements or the framework of those agreements is negotiated. In more recent times, as collective bargaining has increasingly moved in a decentralized direction – from national bargaining to industry bargaining and from industry bargaining to enterprise bargaining (a theme later considered) - employer organizations have had to adapt to new collective bargaining realities. Often this has required adopting a different or more refined role, sometimes not that of party principal to a collective bargain but as a bargaining agent or adviser to an employer who is engaged in the collective bargaining process.
The trend towards enterprise-based collective bargaining in some countries may be a challenge for organizations, but it may also be one of the solutions to maintaining the relevance of collective bargaining in a global economy where innovation and flexibility are necessary elements to labour-management relations.

**WORKERS’ ORGANIZATIONS**

Collective bargaining is often promoted by workers’ organizations as a panacea to workplace issues, capable of resolving every manner of problem and addressing every issue. However, collective bargaining needs to be more than a belief system.

In the modern era it is less likely that day-to-day decisions by enterprises and individuals will be based on slavish adherence to principle. The collective bargaining notion must be tested by and translated into objective facts and experiences. This requires a robust analysis by unions, cognisant of the kinds of pressures companies are under. They need to think of the optimum approach to their objectives in a fashion that can produce positive outcomes for all parties.

Such a robust debate would better help shape real responses to workplace issues so that they are framed or reframed to be as adaptable and responsive to economic and social realities as possible.

**GOVERNMENTS**

Collective bargaining requires an enabling framework to be effective. However, collective bargaining is in many cases affected by an excessive level of regulation by government of matters that would otherwise be the subject of collective bargaining.

This can be a major impediment to collective bargaining, in particular in some developed and industrialized economies. For collective bargaining to operate, there must be work to be done, there must be unresolved issues relating to wages and employment conditions for the parties to bargain over in some collective manner. However, the tendency in some countries is for governments, either through legislation, executive orders or arbitration, to impose its will by regulating these issues directly. The result is that incentives to bargain are eroded, especially on the employer side. For example, if governments regulate working hours, then scope is limited for collective bargaining to enter this field. And the heavier and more detailed the government regulation, the more that collective bargaining options are lessened.

This issue is worth reflection by those parties who advocate standards to be set by governments in a mandatory and detailed manner.
The incidence of collective bargaining in practice, and whether it declines or resurges, is a matter that will be decided outside of the ILO. But in the ILO we can recognize the realities in which the collective bargaining message is propounded, and take steps to make its application sufficiently flexible that it remains a fundamental mechanism to bridge social and economic goals of the employment relationship.

The ILO needs to remain recognized as a competent and knowledgeable international institution in the field of collective bargaining. To do so, however, it needs to freshen up how it promotes collective bargaining, and move beyond traditional approaches.

It would be useful to catalogue types of collective bargaining, eliciting from constituents’ examples:

1. Spotting real trends as well as alternatives to collective bargaining. Collate examples of favourable outcomes of enterprise-level collective bargaining.

2. More information is needed on what new forms of bargaining are coming on stream.

3. Are the issues traditionally covered in collective bargaining arrangements changing?

4. What new issues are emerging?

New forms of bargaining need to be likewise catalogued. What are the new developments? What is working well? What is not?

Examples would be useful from countries with robust labour legislation which impacts on all in the labour market, not just those covered by collective agreements. Of particular interest would be examples of bargaining that have facilitated increased labour market entry.

Finally, international institutions and their constituent stakeholders should warn against an excessive preoccupation with ratification of the relevant ILO Conventions and debates about collective bargaining coverage, at the expense of providing technical assistance to secure its benefits. Ratification is important, but delivery of productive and efficient outcomes is even moreso.
CONCLUDING REMARKS

In summary, collective bargaining is under pressure, but remains a resilient notion which employer organizations support.

Ultimately, what makes the difference seems to be not so much the specific institutional arrangements in place, but much more the soundness of capacities and the quality of dialogue between labour and management at all levels.

Collective bargaining is not a “given”, nor should it be. It is in competition with other forms of employer-employee engagement.

For this reason, we must be attuned not only to the potential benefits of collective bargaining, but also to its failings or limitations, and to the impediments to its application – for it is only if we are realistic about these issues can we find solutions to those impediments.

We must also be very aware that many countries are at different phases of development, and so national conditions will differ.

The new realities challenge employer organizations to do things differently, and think strategically. Likewise the ILO and, of course, governments and trade unions.

They force us to look to outcomes, not just process. In the world in which we live today, we do not have the luxury to see collective bargaining as just a process. The reality is likely to strengthen, where our constituents will judge the notion harshly or highly depending on what it can deliver vis-à-vis other forms of workplace engagement. There are benefits and there are costs. To advance the notion of collective bargaining and render it durable and relevant, we need to be realistic and open about what it can and cannot achieve.

March 2008

*    *    *

- 12 -