

# **Collective Bargaining as a Means of Cooperation: Case of Nepal**

## **1. Background**

The significance of collective bargaining as a means to develop sound industrial relations and cooperation cannot be overlooked. However, in practice, its role may differ because of the nature of economy, work culture, bargaining strength of the partners and various institutional as well as socio-economic factors.

As far as Nepal is concerned, the country is primarily agricultural, dominated by a self-employment status. Agriculture takes a traditional form and technology and organized modern farms and plantations are not yet developed. The industrial sector, especially the formal organized sector, is very small from the viewpoint of its GDP contribution and the level of employment. But the impact of new economic policies enters first in the industrial and organized sector. This is therefore the first sector to also receive adversities. It is through cooperation and sound industrial relations in the organized industrial sector that a productive system could be developed. The coverage of collective bargaining has to be extended to include the informal sectors as well. With the worldwide expansion of liberalization policies, the government of Nepal's limited social expenditure is in danger of further reduction. A social security system and network is almost non-existent. Therefore, strengthening unionism and gaining a strong collective bargaining position is desirable not only from the perspective of economic development, but also from the viewpoint of social balance and social justice. The government should follow a labour welfare and social welfare approach.

## **2. Provisions of the labour laws**

The Labour Act 1992 made a number of provisions in order to systematize the procedure of collective bargaining. As per this act, authentic trade unions can directly present the charter of demands or

that can be done by the signature of the majority of the workers working in the enterprise. Authentic trade unions, that is, the collective bargaining agents in accordance with our Trade Union Act 1992, are to be elected at an interval of every two years by the majority of the workers in an enterprise. There may be 4 unions, to the maximum, at a time in an enterprise. Twenty five percent of the total workers can register enterprise level union.

When CBA tables the charter of demands, the management should invite them for talks. The resultant negotiation or agreement will be valid for two years. But if, within 21 days, table-talks could not be arranged or the talks failed to reach an agreement, the case should go to the labour office. Even when the case is in the labour office, the two partners--labour and management—can try a negotiated solution which the government should recognize unconditionally. On the other hand, when the case enters labour office and the tripartite talks fail to yield any results, workers are free to give an ultimatum of strike through a secret ballot decision of 60 percent of the workers. During lockout and strike also bipartite negotiations are possible. The labour administration of the government is, by law, obliged to recognize and accept the agreement unconditionally.

### **3. Practices**

Modern industrial activities had started in Nepal just after the great depression of 1929. Prior to the world war second, a number of industries had come into existence. But collective bargaining practices started only from 1947, when workers started to unionize themselves and, in the effort, the historical first strike appeared in our industrial scenario. The laws to regulate labour and trade union aspects were non-existent at that time. Up to 1959, collective bargaining practices were not within the legal framework and were conducted under the pressure of practical difficulties. In 1959, The Factory and Factory Workers Act came into existence and efforts to develop a system were initiated. However, the democratic multiparty system was put to an end in 1960 and, with the ban on political parties; even the trade unions were banned. The following three decades saw scattered union activities carried out underground. In 1989, GEFONT was established as the national confederation of trade unions with its underground operation. In 1990, workers took part in the democracy movement against autocratic and dictatorial system. Following the restoration of democracy, the labour sector got the Labour Act 1992 and the Trade Union Act 1992. These

labour laws started to systematize collective bargaining and establish an environment where a sound industrial relation could exist in the country.

The present collective bargaining practices are strictly limited to the enterprise level. Industry level bargaining systems are not developed within our legal framework. Therefore, in collective bargaining procedures, enterprise level unions do have the role, whereas their national federations do not have it.

Secondly, the formal sector is very small in our country. A vast majority of workers is in informal sectors, mainly in the agricultural sector. The workforce engaged in formal sectors is between 7 and 10 percent of the total workforce. Only 21 percent of the workforce is in wage employment and the rest 79 percent is self-employed. The present coverage of the labour laws is very limited in extent. Hence, the collective bargaining procedures and practices also cover a small portion of the workforce making it common to hold individual bargaining outside legal scrutiny.

Thirdly, with the entrenchment of globalization and new liberalisation policies, a process of the informalisation of the formal sector is taking place in Nepal. Sub-contraction of work by big enterprises outside their boundary is being evident. Similarly the sub-contracting of labour has increased. So is the scenario of the number of home-based workers. The masses are being thrown outside the social security network. This tendency is clearly visible in the carpet industry. Therefore, the establishment of the industry level bargaining system involving the concerned national federations has become an urgent need today.

#### **4. Possibilities**

While observing the scenario objectively, two types of factors are seen on the –move. On the one hand, many employers are guided by a feudal mentality. They do not have a dynamic entrepreneurial culture; the respect for and dignity of labour is not given any importance. On the other, due mainly to liberalization policies adopted under the conditionalities of IMF\WB without adequately considering our national realities, employers have focused their whole attention to curtail labour costs in order to gain high competitiveness. Changes in terms and modes of employment have widened the practice of sub-contraction and casualisation, hence increasing uncertainty and insecurity of employment. Instead of making corrections in external and internal economies and

diseconomies, and in managerial efficiency, they are on the move to informalise the formal sector so as to minimize their labour costs. Similarly, government expenditure on social welfare and social security is negligible. As a result, the working population is subjected to more and more hardships. *It will* certainly have a negative impact on cooperation between labour and management and hamper the effectiveness of collective bargaining.

Looking from the other angle, positive aspects are also on the move. Effective pro-worker unionism is being developed and radical political unionism is in the decline. Unionization is gaining a considerable speed, even in unorganized sectors including agriculture. Despite scattered efforts at dehumanization, the process of strengthening unionism is seen as a major trend in our national scenario. Workers' education programs (WEP) are becoming more extensive, though the contribution for WEP from employers and the government is almost zero. The process of revision and amendment of existing labour laws and the formulation of new laws is satisfactory. The employers' mentality is in a transition from feudal to a dynamic entrepreneurial culture. Involvement of trade unions in policy matters, even in national perspectives, is increasing and we are recognized and accepted as social partners.

The amendment to law in favour of the industry level bargaining system is our priority now. We hope it will have a long-term impact in creating an environment for sound industrial relations and cooperation. With the massive unionization of informal sectors, the collective bargaining system can be extended to informal sectors to cover the vast agricultural workforce.

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