# Module 9

## Industrial and Labour Relations

### Overview

This module examines industrial and labour relations, covering the scope and objectives of the International Labour Organization (ILO), labour legislation, industrial disputes/conflicts, trade unionism and collective bargaining as practised by various countries such as the U.S., the U.K., India, West Germany, Sri Lanka and Malaysia.

Upon completing this module, you should be able to:

Outcomes

- *describe* the processes of communication and negotiation called industrial or labour relations.
- *comment* on labour relation issues with references to their historical background.
- *correctly* use the vocabulary of collective bargaining and hold realistic expectations of its outcomes and processes.

## Terminology


Terminology

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|---|---|
| Collective bargaining: | Negotiation between an employer and workers or their representation about working conditions and terms of employment. |
| Conflict: | Conflict results from continual disputes as the frustration level rises. |
| Dispute: | A dispute is a disagreement over a particular issue between two people or group usually is a short-term occurrence. |
| Negotiation: | A process of discussing a subject matter with the objective of reaching an agreement. |
| Trade union: | A trade union is an organised group of workers who collectively want to improve the terms and conditions at their workplace and to enhance their status in society. |

# Introduction to industrial and labour relations

As Blyton and Turnbull (1994) note, "work dominates the lives of most men and women" and "the management of employees, both individually and collectively, remains a central feature of organisational life". These irrefutable observations quoted by Salamon (1998) show the reason why most large organisations depend upon competent work in this field.

The terms "industrial relations" and "labour relations" are often used interchangeably and can be viewed as the interaction between the various interested parties involved in employment. The employer and the employee are obvious parties. In ensuring a level playing field for both sides, the state provides the legal framework within which such relations may take place.

A notable body of thought about labour relations was that of J. T. Dunlop who applied the systems concept to industrial relations in 1958. Although Dunlop's work has been subject to a variety of interpretations, uses and criticisms, few writers have suggested its abandonment. As Salamon states, "the criticisms do not themselves invalidate the systems approach to examining industrial relations but rather highlight the need for accommodation and refinement" (Salamon, 1998, p. 13).

Dunlop's systems approach model sees industrial relations as a sub-system of society distinct from, but overlapping, the economic and political sub-systems. The model has four interrelated elements:

1. **Actors** – Management, non-managerial employees and their representatives as well as specialised government agencies concerned with industrial relations.
2. **Contexts** – Influences and constraints on the decisions and actions of the actors which emanate from other parts of society.
3. **Ideology** – Beliefs within the system which not only define the role of each actor or but also define the view that they have of the role of the other actors of the system.
4. **Rules** – The regulatory framework developed by a range of processes and presented in a variety of forms which expresses the terms and nature of the employment relationship.

Unions representing workers garner their strength through numbers to influence employer decisions concerning matters that affect employment such as pay, working hours as well as other terms and conditions of employment. Employers see this as an erosion of their authority and power to make decisions concerning their businesses. In this tension lies the essence of labour relations.

Emotions and tension run high in labour relations. Economic factors through the decades have determined which side has power over the other. Employees have an edge when the labour market is limited and employers are at an advantage when there is high unemployment.

However, unions are also affected when employers are economically affected.

While some employers have used their clout or power fairly, some have not. The economic exploitation of labour and the disrespect shown to human dignity have led to the formation of unions that can stand up to the economic might and power of employers.

On the converse side, it has been argued that the ability of some unions to win greater concessions than warranted has contributed in no small way to the loss of jobs in particular sectors due to the flight of jobs.

The resolution of this inherent conflict in labour relations is crucial to business survival, growth and competitiveness. The traditional adversarial concept of win-lose has to give way to win-win in the current climate where the wants and needs of both sides have to be met.

A win-win climate requires the accommodation of the other's needs rather than their traditional repudiation by each side. Such accommodation can bring about an increase in productivity and better quality of life.

> *Labour relations is a continuous relationship between a defined group of employees (represented by a union or association) and an employer. The relationship includes the negotiation of a written contract concerning wages, hours and other conditions of employment and the interpretation and administration of this contract over its period of coverage.* (Milkovich & Glueck, 1985)
>
> *Industrial relations is a set of phenomena, operating both within and outside the workplace, concerned with determining and regulating the employment relationship.* (Salamon, 1998)

## Development of industrial relations

The nature of industrial relations has evolved from early origins in the master-servant relationships of the trades when overall power resided with the owner/employer. Many factors in the changing nature of organisations and society especially in the last 100 years have produced the forms of relationships seen today. Different stages in this unplanned change are identifiable. Salamon (1998) nevertheless comments that each stage did not supersede and replace the previous stage and that each stage supplemented and modified the previous stage.

In the U.S., unions go as far back as 1790 when such skilled craftsmen as shoemakers, tailors, printers and others organised themselves. From those unions to the present ones, the history of the union movement has been one of alternate expansion and contraction. In the U.K., a similar pattern has been observed. Salamon (1998) argues that trade unionism and collective bargaining during the later part of the 19th century were largely confined to the skilled trades and piecework industries. In the former, the workers had the industrial strength, through mutual insurance and their control over entry into the trade, to seek employer acceptance of union

rules. The main impetus for the development of collective bargaining at the national or industry level came during World War I.

In the post-Industrial Revolution period, some welfare-minded employers responded to the fact that employees looked to their respective employers to provide them with many of their needs. This phenomenon of paternalism was the style in an era where individuals or families dominated various businesses. With the advent of popularity and the more advantageous form of the corporate entity (the limited liability company), paternalism gave way to other styles of management.

Until around the 1960s, work in the organisational unit called "Personnel" involved file management where the activities typically included screening applications, orientation, collecting and storing data, and circulating information on policies, organisational events and news. Personnel departments grew out of the need for businesses to take care of legal requirements that came about to provide better working conditions and a fairer deal for employees. Such departments also grew out of a need to have an intermediary between workers and owners. At times, it was used by the owners to find out what was going on at the worker level and as an intelligence-collecting agency that reported on suspected troublemakers.

According to Salamon (1998), the period since the mid-1980s has seen significant developments in management's approach to industrial relations alongside confrontation and increased legislative control. No single strategy has been adopted by organisations but certain strands are apparent:

- **Management initiative**: Management has been the prime mover for the introduction of HRM approaches and projects intended to support and be integrated with the achievement of business objectives.
- **Process relationships**: The balance has shifted from an emphasis on the management-union relationship (collectivism) to an emphasis on the management-employee relationship (individualism). The objective has been to secure the identification of the individual with the organisation and its goals as well as employee commitment likewise.
- **Structure of bargaining**: There has been a continuation of the shift from the national multi-employer level to the single-employer organisational level.
- **Pay and working arrangements**: The new emphasis among most organisations has been on flexibility and greater individualisation of the contractual relationship. More emphasis has been placed on organisational or individual performance in determining pay and less on uniform rates for jobs.

The era after the Industrial Revolution and the post-Depression period saw a steep rise in the strength of unions. The ability of the unions to bring society to focus on the poor living standards of workers and the large-scale unemployment of youths contributed in no small measure to

the growth of trade unions worldwide. It brought about the ability of workers to negotiate better terms and conditions of employment and also made management more socially responsible.

The growth of trade unions continued in the U.S. when a steady decline in membership was noted elsewhere from the 1950s onwards and especially during 1970–1980 when closures and massive lay-offs took place. In India, union numbers peaked around 1920. The increasing power of trade unions made governments sit up and take note of the conditions of workers, leading to the enactment of various laws that forced employers to provide a fairer deal for their workers.

With the advent of specialists within HR/personnel functions, it was only natural that a specialist would deal with such matters as group relationships with organised or unorganised employees, negotiations, contract administration, grievances and arbitration. It not only gave rise to an extension of personnel departments to be known as industrial relations units but it also paved the way for a new field known as industrial relations. This was a necessary extension of personnel departments to deal with the rising power of trade unions.

## Objectives of industrial relations (IR)

Industrial relations is not an objective science. As Salamon (1998) argues, there are no simple objective facts in industrial relations. This is not to deny the presence of important issues and debates in industrial relations apart from those entangled with the conflictual or consensual relationship of the participants. The loftier issues centre on such concepts as fairness/equity, power/authority and individualism/collectivism. You can infer these topics from at least three of the objectives that Nair and Nair (1999) attribute to IR:

1. The development of healthy employer-employee relations.
2. The maintenance of industrial peace and high productivity.
3. The development and growth of industrial democracy.

Nair and Nair (1999) also cite Kirkaldy (1947) according to whom there are four objectives for IR:

1. The improvement of economic conditions of workers.
2. State control on industries for regulating production and promoting harmonious industrial relations.
3. The socialisation or rationalisation of industries by making the state itself a major employer.
4. The vesting of the proprietary interest of workers in the industries in which they are employed.

Given these overall goals and objectives, it is not surprising that the field is engaged in a number of policy-oriented and operations-oriented activities. Some of these focus on the relationships between the employer and individual employees. Others deal with management, organised groups and other labour groups. Another area to which industrial relations

activities contribute significantly is that of overall industrial goals such as productivity, labour peace and industrial democracy. Your attention is now directed at some of these areas.

### Employer to individual employee relationships

This relates to the areas of management focus in relation to policies and practices that ultimately affect the productivity and well-being of their employees as individuals. With a view to optimising the interests of the employer and those of employees, these comprise fields such as:

- Wages and salary administration
- Career prospects inclusive of planning and promotion
- Retirement benefits and medical benefits
- Discipline and redress of grievances
- Training and development
- Counselling
- Workers' compensation and related issues such as insurance

### Labour management relations

Distinct from employer-employee relations is this area which relates to relations between the employer as a management body and its workers as a recognised group or set of groups. It covers rights, protocols and practices which are often regulated by a legal structure related to:

- Management with concepts such as "management rights".
- The formation and recognition of unions to represent the interests of the employees.
- Collective agreements.
- The settling of industrial disputes.

Through these bodies, management and labour negotiate and enforce the establishment of welfare measures and benefit schemes. Another focus of labour-management relations are health and safety regulations and programmes at work.

### Industrial peace and productivity

One of the most important aspects of IR is to maintain industrial peace and thereby increase productivity. It depends on the quality of union-management relations at workplaces. In fact, proactive labour administrations of some countries have changed their focus from being law enforcers to facilitators to maintain industrial peace. Rather than resolving strikes by unions, good IR means averting strikes through proactive interaction. Productivity is another important area in which IR becomes significant. In the highly competitive area of global business, maintaining high productivity is important for the survival of organisations. In the Global Competitiveness Report 2001–2002, this fact is borne well. A few other areas of focus for IR are:

- Upgrading technology and production methods.
- Securing employee commitment and cooperation in improving productivity.
- Minimising "man days lost" per year.
- The retraining and redevelopment of surplus labour.

### Industrial democracy

The nature of the relationship between employees and management in the decision-making process of organisations is central to the character and conduct of the industrial relations system at the organisational level. Salamon (1998, p. 353) mentions that industrial democracy is also known as worker's control. According to him, this is a socio-political concept or philosophy of industrial organisation which focuses on the introduction of democratic procedures to restructure the industrial power and authority relationship within organisations. He further argues that it thereby creates a system which involves determination by the whole labour force of the nature, methods and purpose of production. Salamon elaborates that the central objective of industrial democracy is the establishment of employee self-management within an organisation where ownership is vested in either the employees or the state and where managerial function is exercised ultimately through a group elected by the employees themselves. This group has the authority over all decisions of the organisation including the allocation of profits between extra wages and reinvestment.

### Liaison functions

In addition, the IR function also has a liaison role within it. Those who are responsible for the IR function in an organisation have to play a key and central role in the formulation of the industrial relations policy of the organisation. This is at a conceptual and policy level but there are other activities which take IR personnel out of the organisation in the likes of liaison with government and local government authorities such as labour officers/inspectors, participation in judicial and semi-judicial dispute settlements, participation in labour conferences and so on.

## The International Labour Organization (ILO)

In this era of globalisation, the ILO's goals have come of age. The ILO Constitution states that "the failure of any nation to adopt humane conditions of labour is an obstacle in the way of other nations which desire to improve the conditions in their own countries". Always philosophically far-sighted, the ILO Constitution is based on an overarching principle that appeals to many people on either side of the line dividing owners and workers. The principle is that universal and lasting peace can be established only if it is based upon social justice. Lofty words, but one needs only to look at the economic roots of World War II in Germany to see how labour unrest can make nations ready to take up arms.

## Scope

The ILO is the international institutional framework which has made it possible to address issues (such as the eight-hour working day, maternity protection, child labour laws and a range of policies that promotes workplace safety and peaceful industrial relations) and to find solutions allowing work conditions to improve everywhere. No country or industry could have afforded to introduce any of these in the absence of similar and simultaneous action by its competitors.

## Objectives

The ILO has four main objectives:

1. To promote and realise standards, fundamental principles and rights at work.
2. To create greater opportunities for men and women to secure decent employment.
3. To enhance the coverage and effectiveness of social protection for all.
4. To strengthen tripartism and social dialogue.

These objectives are realised in a number of ways:

- The formulation of international policies and programmes to promote basic human rights, improve living and working conditions, and enhance employment opportunities.
- The creation of international labour standards – backed by a unique system to supervise their application – to serve as guidelines for national authorities in putting these policies into action.
- An extensive programme of international technical co-operation formulated and implemented in an active partnership with constituents to help countries in making these policies effective in practice.
- Training, education, research and publishing activities to help advance all of these efforts.

## Principles

In 1944, the International Labour Conference met in Philadelphia (USA) and adopted the Declaration of Philadelphia which redefined the aims and purposes of the ILO through the adoption of the following principles:

1. Labour is not a commodity.
2. Freedom of expression and of association is essential to sustained progress.
3. Poverty anywhere constitutes a danger to prosperity everywhere.
4. All human beings, irrespective of race, creed or gender have the right to pursue both their material well-being and their spiritual

development in conditions of freedom and dignity, of economic security and of equal opportunity.

In 1988, the ILO Conference adopted the Declaration on Fundamental Principles and Rights at Work which reaffirmed the commitment of the international community to "respect, to promote and to realise in good faith" the rights of workers and employers to freedom of association and the effective right to collective bargaining.

It also commits member states to work towards the elimination of all forms of forced or compulsory labour, the effective abolition of child labour and the elimination of discrimination in employment and occupation.

The declaration emphasises that all member states have an obligation to respect the fundamental principles involved whether or not they have ratified the relevant conventions.

## Labour legislation

Over a period of time, many labour laws have been enacted in particularly the developing world. According to Nair and Nair (1999), India tops the list in the amount of labour legislation. Salamon (1998) states that the 1970s also saw increased legal intervention in industrial relations in the U.K. Dessler (2001) notes that there were no special labour laws in the U.S. until about 1930. Employers were not required to engage in collective bargaining with employees and were virtually unrestrained in their behaviour toward unions. This one-sided situation lasted from the Industrial Revolution to the Great Depression (around the 1930s). Dessler (2001) also mentions that labour law since then has gone through three clear changes in response to changing public attitudes, values and economic conditions: (1) "strong encouragement" of unions (2) "modified encouragement coupled with regulation", and (3) "detailed regulation of internal union affairs".

When you look around the world (particularly the developing countries), you would notice that labour legislation has been quite influenced by the politics of the day. If the political party in power is pro-labour, you will see the government's labour administration becoming increasingly more protective of the country's labour force. This is done through the introduction of pro-labour laws into the statute book.

In general, legislation introduced by governments throughout the world can be classified into certain types. Let us look at the types of labour legislation that exist.

### Types of legislation

This section discusses the features of three broad areas of labour legislation: (1) working conditions, (2) wages, and (3) industrial relations.

#### Working conditions

Much of the legislation is sector-based (such as factories) and is related to physical and other working conditions (such as hours of work, minimum lighting and space, overtime and maximum hours of work) particularly pertaining to work in factories. Many countries have a Factories Act that deals with all these aspects. Similarly, there are laws that specifically deal with the employment of persons in shops and offices as well as other sectors of industry. These types of legislation may also deal with areas such as maternity benefits and the prevention of child labour. In some jurisdictions, specific legislation covering all or a range of sectors may have been enacted to provide for these concerns.

#### Wages

There are minimum wages as well as terms and generic conditions of employment (usually of the labour categories) prescribed in some countries such as some in the Asian region where social security measures are non-existent. Laws may also provide for the period of time within which salaries/wages have to be paid.

#### Industrial relations

Laws may prescribe the whole gamut of industrial relations that includes dispute settlement, industrial courts/tribunals and their powers, and the ability of the state in some countries (especially the Asian region) to refer such disputes for settlement to specified bodies. Many countries are likely to have industrial disputes laws that deal with these aspects.

A country's laws usually provide for rules and regulations pertaining to trade unions. They would deal with such areas as the formation and registration of trade unions and the recognition of such unions by employers as well as the rights, powers and duties of the unions.

## Industrial disputes/conflicts

No relationship is devoid of difficulties. An employer-employee relation is no exception. However good the relationship may be, mistakes and misunderstandings often take place on both sides. The consequences are disputes or conflicts within the workplace. Disputes and the resultant conflicts cause losses of production, suffering among workers and the idling of machines and materials. It also affects the consumer. However, it must be noted that it has been through conflict that workers have won for themselves better terms and conditions of employment. Conflict could also throw up issues that are ultimately resolved through the intervention of the public and/or the government (the enactment of legislation more favourable to workers).

In the applicable law in India, industrial disputes are defined rather circularly as –

> *Any dispute or difference between employers and employers or between employees and employees or between employers and employees which is connected with the employment or non-employment or the terms and conditions of employment or with the conditions of work of any person.* (Industrial Disputes Act, 1947)

## Nature of conflicts

The definition includes three different possible sets of antagonists in industrial conflict. However, the present discussion is confined to disputes arising between management and workers. Disputes arise from a variety of sources for a variety of reasons. Some are innocent misunderstandings of regulations or policies but others are much more complicated, sometimes with malicious intent. In some cases, the cause lies with the individual manager or employee but others are due to management-union intent. The following sections review the various causes under two categories: (1) conflicts caused by unions, and (2) those caused by management.

### Conflict caused by unions

You cannot expect unions to cooperate with the management all the time. In reality, it does not happen that way. The quality of the relationship also depends on the people who interact for the two parties (those in management and the trade union officials). In some countries, trade unions are also politicised. As a result, political interference may disturb the relationship and give rise to conflict situations even if the relationship between the management and the unions is free of conflict. Some of the situations that may arise as a result are:

- Non-cooperation
- Arguments and quarrelsome behaviour
- Hostility and irritations
- Stress, strain and anxiety
- Unwillingness to negotiate or participate in discussions
- Resentment or withdrawal
- Absenteeism, alcoholism or a high incidence of accidents
- “Work to rule” or “go slow” tactics
- Demonstrations
- Strikes.

### Conflict caused by management

In a unionised setting, managers can create their share of conflict. An arrogant employee of the personnel department can cause a dispute that

ends up in a strike. Many are the court cases that were the result of a heated argument between the personnel department and workers over trivial issues. Some of the causes are outlined here. Refusal to discuss or negotiate a demand by the union is a very common cause resulting in a dispute. Also, a manager may use derogatory language about an employee resulting in sections of employees walking out in protest until the manager concerned tenders a public apology. Some causes may emanate from disciplinary issues that result in suspension, demotion and dismissal. A few other causes are:

- Lay-offs
- Lockout
- Termination.

## Types of disputes

The U.K.'s Industrial Relations Code of Practice of 1972 recognised two types of disputes:

1. A **dispute of right** arises out of the application or interpretation of an existing agreement or contract – for example, the fairness of standing orders, denial of awards, non-payment of allowances or other breach of rights contained in collective agreements. As Salamon (1998) points out, it is the practice in the U.S. that disputes of right are more suited to arbitration than the disputes of interest.
2. A **dispute of interest** is one that is not anticipated by law but which arises out of determination of new terms and conditions of employment according to claims made by employees or proposals made by employers. For instance, lay-offs as well as claims for wages and bonus may give rise to disputes of interest.

## Causes of disputes

Many factors can precipitate disputes. Nair and Nair (1999) have classified them as follows:

1. **Economic causes** – wages/salaries, profit.
2. **Social causes** – low morale, corruption, pollution, rising unemployment.
3. **Political causes** – political rivalry, unstable government.
4. **Technical causes** – fear of losing jobs due to automation, unsuitable technology.
5. **Psychological causes** – loss of job, propaganda, instigation.
6. **Market causes** – competition, loss, recession.
7. **Legal causes** – court order to close down factories, shifting (under zoning laws).

Most of these causes would be seen to be at the macro level beyond the realm of management or labour control. However, where managements

and workers do have control is at the micro level (at the organisational level) where the quality of their relationships, mutual trust and respect enhance the sense of belonging, commitment and interest in the job. Good industrial relations will thus be seen as the key to greater productivity leading to greater profits for the employer while giving employees a better quality of life through more favourable earnings.

## Resolution of conflict and settlement of disputes

The need to contain industrial strife has led to many means for resolving disputes – all of which fall into one of three classifications which are elaborated here:

1. Labour administration by the state
2. Statutory measures
3. Non-statutory measures.

### Labour administration

The state usually provides the machinery by which disputes may be resolved. The Labour Ministry/Department in some Asian countries lays down policy guidelines on labour matters. The government passes laws enabling government machinery to intervene in labour disputes. In some countries, provincial governments also have the power to enact legislation in respect of labour matters in their jurisdictive areas such as states in India.

In the U.S., the National Labor Relations Board (NLRB) administers the law and regulations in the private and third sectors. Many states also have state boards to administer state labour laws. A key point here, as with Canada, is that of the level of government that constitutionally has responsibility for labour relations. In Canada, it is principally with the provinces except for federal workers. In Canada, the federal labour law is administered by the Canada Labour Relations Board for the private and third sectors. The public sector body is the Public Service Staff Relations Board. The provinces and territories have labour relations boards.

As far as the U.S. and Canada are concerned, labour relations administrators have two major duties:

1. To supervise representation elections and certify unions as bargaining agents.
2. To hear appeals of alleged violations of the laws.

Although it is widely believed that the boards do a satisfactory job, there has been criticism that they place too high a priority on maintaining stability and predictability in collective bargaining at the expense of union democracy, employee free choice and representational effectiveness.

The Asian labour administrative context is different in view of a different social and legal regime. The state machinery ensures the implementation of the country's (or state's) laws and intervenes to settle disputes.

## Statutory measures

Most countries also set up statutory bodies to deal with the settlement of disputes. These are somewhat different from government labour administration agencies such as departments or ministries of labour or manpower. A few examples are works committees, conciliation officers, boards of conciliation, mediation boards, labour courts, industrial tribunals as seen in India and Sri Lanka. These have authority conferred by labour laws to settle disputes. In some disputes, the Labour Department or Ministry may appear before the court as a facilitator.

Laws affecting collective bargaining in the U.S. are complicated. The important items of legislation in this regard are the National Labor Relations Act (the Wagner Act), the Labor-Management Relations Act of 1947 (the Taft-Hartley Act) and the Landrum-Griffin Act 1959. These Acts cover many aspects of labour relations including the procedure by which unions come to represent employees in the private sector.

In India and Sri Lanka, the principal enactment is the Industrial Disputes Act of each country. In Sri Lanka however, numerous other laws have been added to statutory measures in the settlement of disputes. Some of them are:

- Industrial courts
- Labour tribunals
- Arbitration (both voluntary and compulsory).

What is to be noted is the nature and scope of statutory measures in the Western world in comparison to those in India and the rest of Asia. While statutory measures in the West relate to the process of collective bargaining between employers and unions, statutory measures on the Indian subcontinent are much wider in scope and provide for much more than collective bargaining.

## Non-statutory measures

Most disputes can be resolved short of going before a legally constituted body such as the labour tribunal or industrial courts. Voluntary arbitration, workers' participation in management and collective bargaining are some of the key measures in this regard. One of the chief measures in this area in India is the Code of Discipline formulated by the Indian Labour Conference in New Delhi in 1957 for Indian industries. This code was developed for the purpose of maintaining discipline in industries in the public and private sectors. Managements and unions mutually agree to abide by certain actions such as unions agreeing not to strike or stage a lockout without due notice and managements agreeing not to increase workload unilaterally. There are other areas in which the two parties have agreed to maintain harmony. There is also tripartite machinery in place such as the Indian Labour Conference (ILC) and the Standing Labour Committee (SLC) among others to contribute to the settlement of disputes. Worker participation in management and collective bargaining are the other measures available in India.

In the West, where the focus is on the broadly established practice of collective bargaining, importance is placed in that process with all other initiatives being subservient to it.

## Trade unionism

Trade unionism has its roots in Marxist dogma. It began as a force to counter the exploitation of workers by the newly established post-Industrial Revolution capitalists whose actions widened the gap between the living standards of owners and workers. Trade unionism can be mutually beneficial if a responsible partnership exists but can be destructive and counter-productive if both sides consider themselves adversaries. Here is the definition of a trade union from the Trade Unions Act 1926 of India:

> *Any combination of persons, whether temporary or permanent, primarily for the purpose of regulating the relations between workers and employers or between workers and workers or for imposing restrictive conditions on the conduct of any trade or business and includes the federations of two or more trade unions.*

A more recent and non-legislative definition of a union is:

> *An organisation of workers acting collectively who seek to protect and promote their mutual interests through collective bargaining.* (De Cenzo & Robbins, 1993)

As Nair and Nair (1999) point out, we can derive the following characteristics of trade unions from these definitions:

- A union is an association of persons – employees or independent workers/tradespersons.
- A union is not casual. Once recognised, it is relatively permanent.
- A union's main objective is to secure economic benefits for its members. This is done through a process called collective bargaining.
- A union influences or affects industrial relations. Some unions maintain harmony with employers through the intelligent handling of matters. Others take drastic action without consulting advisers or applying a long-term perspective.
- A union provides "checks and balances" on employers and thus may restrict or reduce the freedoms of management.
- Unions may form federations. Some of them may engage in collective bargaining for entire industrial or professional sectors.

### Principles

So, why do workers form unions? What are the underlying principles of trade unionism? Today, to a large extent, three maxims quoted by Nair

and Nair (1999, p. 288) provide the underlying principles of trade unionism.

**"Unity is strength"**

The early capitalists were able to exploit workers, as the worker was on an unequal footing in relation to their employer – that is, they had no bargaining power. When workers realised that their strength lay in numbers, they were able to win for themselves concessions that would not have been possible but for their collective might. This was probably the first principle of trade unionism.

**"Equal pay for equal work"**

Unions believe that caste, creed, gender or race should never form the basis of discrimination against a worker. If equal work is done, then the pay should also be equal. This also provides for the elimination of any discrimination of workers. In the past when paternalism was practised, the owner-employer had his/her favourites and they were treated better than others who did the same kind of work. This is not possible now as trade unions are very vigilant about job contents of its members and those who have not joined the union.

**"Security of employment"**

One of the major principles of trade unionism is to safeguard the security of employment of the members. When employers try to retrench, lay off or downsize, unions vehemently protest to save the jobs of some of their members. Such action from a union is somewhat protective of its own membership lists. There have been instances where members have left one union and joined another which could put up a better fight for their welfare.

## Classification of trade unions

So far, the concept of unions has been discussed as almost a single topic. In actual fact, there are variations on the theme. Unions are of various types and they serve various purposes as described here.

### Classification based on trade

Many unions have memberships and jurisdictions based on the trades they represent. The most narrow in membership is the craft union which represents only members certified in a given craft or trade such as pipe fitting, carpentry, and clerical work. Although very common in the Western world, craft unions are not common in countries like India and Sri Lanka. At the other extreme in terms of the range of workers represented is the general union which has members drawn from all trades. Most unions in India and Sri Lanka are in this category.

Another common delineation of unions based on trades or crafts is that between blue-collar workers and white-collar workers. Unions representing workers employed on the production floor or outdoor trades such as in construction work are called blue-collar unions. In contrast,

those employees in shops and offices who are not in management grades and perform clerical and allied functions are called white-collar workers.

In addition, trade unions may be categorised on the basis of the industry in which they are employed. Examples of these are workers engaged in agriculture or forestry, hence agricultural labour unions or forest worker unions.

### Classification based on agreement

Another basis on which labour agreements are sometimes distinguished is on the basis of the type of agreement involved – based on the degree to which membership in the union is a condition of employment.

- **Closed shop**: Where management and union agree that the union would have sole responsibility and authority for the recruitment of workers, it is called a closed shop. The worker joins the union to become an employee of the shop. The Taft-Hartley Act of 1947 bans closed shop agreements in the U.S. although they still exist in the construction and printing trades. Sometimes, the closed shop is also called the hiring hall.
- **Union shop**: Where there is an agreement that all new recruits must join the union within a fixed period after employment it is called a union shop. In the U.S. where some states are declared to be right-to-work states, the union shop is prohibited – anyone (irrespective of union membership) has the right to work.
- **Preferential shop**: When a union member is given preference in filling a vacancy, such an agreement is called preferential shop.
- **Maintenance shop**: In this type of arrangement, no compulsory membership in the union before or after recruitment exists. However, if the employee chooses to become a member after recruitment, his/her membership remains compulsory right throughout his/her tenure of employment with that particular employer. This is called maintenance of membership shop or maintenance shop.
- **Agency shop**: In terms of the agreement between management and the union, a non-union member has to pay the union a sum equivalent to a member's subscription in order to continue employment with the employer. This is called an agency shop.
- **Open shop**: Membership in a union is not compulsory or obligatory either before or after recruitment. In such organisations, there is sometimes no union at all. This is the least desirable form for unions. This is referred to as an open shop.

The above classifications are more common in the West than on the Indian subcontinent.

### Classification based on membership

This type of classification exists mostly in India especially in the states of Maharashtra and Gujarat. It is based on the Bombay Industrial Relations Act and derives from the membership on the roll of the union.

A qualified union is one with less than 5 per cent of the total employees while a representative union is one that has at least 15 per cent of the total employees and a primary union is one which has more than 15 per cent of the employees on its roll.

## Evolution of trade unions

The Industrial Revolution in the 19th century brought about massive increases in output. It gave the owners of businesses an equally massive increase in capital accumulation. It did very little to improve the lot of the average worker. Wages were low. Working conditions were abominable and hazardous. Labour was considered a commodity that could be bought or sold.

The political philosophy of laissez-faire (leave things alone) prevented governments from doing anything to improve conditions of the workers. Realising that they were on their own, workers organised themselves collectively to obtain improvements to wages and working conditions.

The first visible union activity in the U.S. took place in 1794 when the shoemakers of Philadelphia made an attempt to increase their wages which had been unilaterally reduced by their employers. The shoemakers were not successful. In 1806, a federal court fined the union and ruled in favour of the employers who contended that the combination of workers was an illegal conspiracy in restraint of trade. However, in the landmark case of Commonwealth of Massachusetts v. Hunt in 1842, the conspiracy theory was overturned and the court ruled that unions were not criminal as such as they could have honourable as well as destructive objectives. The union's objective would determine whether it was legal or illegal.

After the Hunt decision, many unions emerged. In 1886, the American Federation of Labour (AFL) was organised. It was an amalgamation of national craft unions. It emphasised craft (rather than industry) and did not take on any particular political philosophy. Its objectives were more pragmatic than social or political.

In 1935, the Congress of Industrial Organisations (CIO) was formed. Although it was intended to work within the AFL, many issues forced the two apart. The CIO addressed all workers and not just those in crafts. However, the AFL and the CIO merged later in 1955 and they became a formidable force in collective bargaining country-wide in the U.S.

Through this era of the 1940s and 1950s, the American public's identification with union goals led to a changed regulatory climate and phenomenal growth in union strength. After that, unions began a long decline through to the 1980s.

Industries that were heavily unionised were typically the ones hit hardest by competitive pressures in the 1980s. Foreign competition, deregulation and a changed climate of public opinion severely weakened unions to the point that the pay increases for union members around the mid-1980s were around 40 per cent less than those given to non-union workers. These troubles eased slightly around 1986 but high unemployment at that time restrained unions considerably.

As mentioned above, unions were blamed for the flight of jobs due to high wage settlements. However, it has been said that management historically has exhibited trouble maintaining the discipline and foresight to deal directly and fairly with employees. Commitment to employees can be difficult in lean times. History is not on the side of the employer either. Without unions, the government and the courts could be asked to increase their intervention in the workplace which is an outcome that may not be to the liking of employers. It is fair to see unions as a counterbalance (perhaps an essential one) against unbridled capitalism.

## The trade union as an organisation

Unions are organisations and employers too. Like any other organisations, unions also have objectives. Their objectives may either be job-conscious or class-conscious.

- **Job consciousness** leads to relatively limited economic goals pursued through such mechanisms as collective bargaining. The labour movement in the U.S. pursues this objective.
- **Class consciousness** seeks fundamental change in the political and economic system. Unions obtain such change through the political arena. Even though unions in the U.S. may endorse candidates and encourage their members to actively participate in the political process, their objectives still remain the economic betterment of their members. They do not seek an alternative economic or political system. However, such fundamental change may be the objective of the union movement in European or South American countries.

### Why employees join unions

From a practical standpoint, people would join unions if the benefit they derive from being a member is greater than the cost of being a member. Therefore, potential increases in wages must be greater than the amount of dues paid. Kochan et al. (1984) developed a model according to which an individual's decision to join or avoid a union is influenced by three critical determinants.

1. Perceptions of work environment:
    - Job dissatisfaction
    - Working conditions problems
    - Inequity perceptions.

    Dissatisfaction with bread-and-butter aspects of the job such as wages and benefits as well as dissatisfaction with supervision or

with the treatment of one group of employees versus another can translate into greater interest in unionism.

2. Perceptions of influence:
   - Desired influence
   - Difficulty of influencing conditions

   This is the desire to participate or influence the job and the employment conditions surrounding the job. Kochan (1984) says the key here is that the lack of other effective alternatives for influence turns employees to unions.

3. Beliefs about unions:
   - Big-labour image
   - Expectations about unions

   Employees who are dissatisfied have certain expectations about what a union can do for them. When organising efforts predispose or convince them that a union can improve their situation, employees are more likely to join unions.

There has also been research into the reasons employees give for not joining unions.

- They identify with management.
- They do not agree with the goals of unions.
- They see themselves as professionals and consider unions as inappropriate for professionals.

However, what must be noted is that there are no substantial differences between people who do and do not join unions. Rather, the work situation seems to make the biggest difference. It is sometimes said that employers' personnel practices are the unions' greatest organising weapon.

### Organisation structure

National trade unions show striking similarity although the nitty gritty may vary. Whether it is the AFL-CIO in the U.S. or national unions in India, by and large the structure comprises four levels:

1. Conventions/Sessions
2. General council
3. Provincial bodies
4. Local bodies.

National conventions/conferences are held either annually or bi-annually. This is the highest policy-making body. The general council carries out policy decisions taken by the convention. Various standing committees are often set up to look into research, education, lobbying and public relations services.

State-level bodies liaise with national-level organisations. These bodies keep a close watch on the implementation of labour legislation and

practices. They may also assist or influence state government in the passage of legislation and/or in administrative actions. They are also involved in collective bargaining and are responsible for the welfare of their membership and membership drives.

## Problems of trade unions

Nair and Nair (1999) showcase the Indian situation quite vividly in presenting the problems of Indian trade unions. Some of these may also be relevant to other countries and particularly to the West. Let us look at each of these problems briefly.

**Multiple trade unions**

India has a problem in its trade union movement because of the very large number of unions. It has caused inter-union rivalry and compromised the unity of workers. It also leads to fragmentation of the worker population. Some unions may be more than willing to accede to the pressures of employers and some others may be in the hands of the politicians behind trade unions purely to expand their voter base than to look after the welfare of the workers.

**Politicisation**

According to Nair and Nair (1999), political influence on trade unionism in a democracy cannot be avoided. In countries such as India and Sri Lanka, the historical development of the trade union movement was inseparably attached to the political movement through the struggle for independence. Although it helped the unions in the beginning to gain considerable influence on the government in power, in the long run it has become a threat to the unity of the working class.

**Democracy and leadership**

Nair and Nair (1999) point out (with particular reference to India) that the basic objective of trade unions may be to promote industrial democracy but it rarely happens in practice. Union leaders show authoritarian behaviour with less than optimal participation, openness and transparency.

**Lack of adequate finances**

A large number of small-sized unions find it extremely difficult to sustain themselves as their only means of income is membership subscriptions. Poor finances affect union activities and members tend to gravitate towards other unions when they are not adequately served.

These are the major reasons for the failure of trade unions particularly in Asia.

# Collective bargaining

You have seen that workers united to win concessions from owner employers in the post-Industrial Revolution era. This unity offered them strength. Probably as a result of this, they found it very convenient to present their problems to management through their unions. Managers also found it easier to deal with union leaders to resolve problems common to workers. This led to the concept of collective bargaining first identified by Sidney and Beatrice Webb in the U.K. and by Groper in the U.S. Collective bargaining grew with the growth of unionism.

Collective bargaining may be defined as:

> *A method of determining terms and conditions of employment and regulating the employment relationship which utilises the process of negotiation between representatives of management and employees intended to result in an agreement which may be applied across a group of employees.* (Salamon, 1998, p. 305)

The US National Labor Relations Act reads:

> *For the purpose of (this act) to bargain collectively is the performance of the mutual obligation of the employer and the representative of the employees to meet at reasonable times and confer in good faith with respect to wages, hours, and terms and conditions of employment, or the negotiation of an agreement, or any question arising thereunder, and the execution of a written contract incorporating any agreement reached if requested by either party, but such obligation does not compel either party to agree to a proposal or require the making of a concession.* (Dessler, 2001, pp. 566-567)

As Dessler (2001) argues, this means in plain language that both management and labour are required by law to negotiate wages, hours and the terms and conditions of employment "in good faith". Bargaining in good faith is the cornerstone of effective labour-management relations. It means that both parties communicate and negotiate. Collective bargaining would thus be seen as a process whereby representatives of employers and employees negotiate, administer and enforce agreements that cover wages, hours of work and other terms and conditions of employment.

There is more to collective bargaining than the mere getting together of two bodies to review and agree upon certain terms of employment. Formally, collective bargaining involves the following:

- Statutory support by legislative measures.
- The existence of employee representatives – that is, the union.
- The recognition of the union by the employer as the bargaining agent.
- The existence of an industrial dispute.
- The threat of economic force in the form of a lockout or strike to settle an industrial dispute or to reach an agreement.

- Negotiation.
- Finalisation of an agreement.
- Implementation of an agreement.

Collective bargaining can be a stabilising factor in the free enterprise system. The recognised representation of employees by the union and the prescribed practices of collective bargaining and agreements provide an accepted means to solve economic conflict, a clear legal framework within which the parties negotiate and establishes a safety valve for psychological and social conflict among the individuals and groups involved.

To achieve a successful management-union relationship and the acceptance of collective bargaining protocols, a state of genuine representation and acceptance of the parties must exist. For such a relationship, what might be called the critical success factors (CSFs) are:

- The bona fide interaction of the two parties.
- The union's understanding that the interests of workers are not superior to that of the survival and success of the organisation.
- Managements must accept and support the rights of trade unions.
- The union at the collective bargaining process must truly represent the majority of workers.
- The union representatives must be purposeful and reasonable.
- Managements must be progressive and enlightened. They must not exploit disunity among unions to their advantage.
- Both managements and unions must be vigilant enough to prevent political exploitation of conflict for political ends.

With these conditions in place, it is the hope of all concerned that timely and peaceful agreements can be negotiated and that disputes which arise are amicably settled. However, there are times and circumstances in which this is not the outcome, thereby leading to escalated conflict and the taking of more extreme measures available to the bargaining parties.

Let us look at some examples in regard to collective bargaining and try to capture the salient features those countries have adopted.

**United States**

You have seen how trade unionism evolved in the U.S. and how the AFL-CIO emerged as a formidable union grouping that now accounts for approximately 20 million members. American trade unions have strong and effective leadership developed from within the union. Union leaders are well paid. They have all the facilities that top executives of companies would have and they employ skilled staff to assist them in their work.

Each organisation is required to have only one bargaining agent. In case of dispute, the U.S. National Labor Relations Board is empowered to designate the bargaining unit in the interests of business and industry.

**United Kingdom**

In the U.K., unionism has developed along professional lines. It has been estimated that about 40 per cent and 90 per cent of white-collar and blue-collar workers respectively are members of trade unions. There is also significant unionisation among professionals. Those in the education, health and government services as well as even some non-profit organisations are now members of unions. Collective bargaining seems to be the main purpose of professionals in unions. It is estimated that about 40 per cent of all salaried non-managerial staff are represented by bargaining agents compared to 25 per cent of the labour force.

**India**

Indian trade unionism (though principally influenced by the U.K.) has been considerably modified by Marxist concepts.

**West Germany and other European nations**

The American concept of industrial relations and a new concept of co-determination that began in West Germany spread to other West European nations. Co-determination is a tripartite negotiation process in which elected worker representatives sit on supervisory boards along with representatives of shareholders and those of employers in equal numbers. There are no strong unions in West Germany as in the U.S. The national average strike level in West Germany has been low in comparison to that of Italy and the U.K.

**Sri Lanka**

Collective bargaining in Sri Lanka is mainly limited to individual unions negotiating with individual organisations although a few collective agreements cover a number of employers and employees across many organisations and many categories of employees.

**Malaysia**

According to Maimunah Aminuddin (2006), collective bargaining in Malaysia places more emphasis on economic issues. However, it could also include issues relating to workers' welfare, safety and schemes pertaining to productivity. She further mentioned that the Minister of Human Resources is encouraging employers and trade unions to incorporate a clause on sexual harassment in their collective agreements. Collective bargaining could be further transformed into a form of consultation. However, this change would require a reform of the current industrial relations climate which is sometimes hostile.

Collective bargaining is considered by the government to be the best way for private companies to decide on workers' terms and conditions of service. The procedure for collective bargaining is laid out in the Industrial Relations Act 1967.

## The nature and scope of collective agreements

A previous section furnished several definitions of collective bargaining. A better understanding of the process will come from reviewing some of its critical ingredients:

- It is a group process.
- It involves negotiation.
- It is a bipartite exercise involving representatives of unions or associations of employees and employers.
- The objective of collective bargaining is to reach an agreement.
- The purpose of the process is to improve working conditions for employees while securing the interests of management.
- It is not merely an economic process. It is a socio-economic process (based on the best of democratic traditions) that involves mutual respect of each other's views, aspirations, expectations and values.
- It meticulously follows legislation, rules, regulations, conventions and customs developed by trade unions, managements, corporations, and also state and central governments.

What is included in an agreement reached through collective bargaining will depend on the needs and requirements of the parties to the agreement. They could be industry or workplace specific. Despite this, the following would be likely topics covered by the process of collective bargaining:

- Wages, salaries increments and bonus payments
- Hours of work and overtime hours/rates
- Terms and conditions of work, safety, welfare and health care
- Grievance procedures
- Labour productivity, labour standards and modernisation
- Union-management relations including worker participation.

The range of the economy and its institutions that the certifications of the unions or associations cover also affects the scope of collective bargaining. Most commonly, these are distinguished as to whether the representation is for an individual plant or employing organisation, an industry comprising a number of employers, or the economic institutions of a nation.

### Plant level

In these negotiations, agreements are reached between the management of an independent business unit and the union representing the workers of that unit. They are confined to issues at the business unit level and there is no involvement of other unions in other units or industries. This is very common in India.

### Industry level

In this process, the unions of many business units form an association and hold discussion with similar associations of owners/managements of such units. Agreements reached are binding on all such units and implemented accordingly. It prevents different terms and conditions being applicable to different units in the same industry or across industries. Sometimes, in certain industries, this level of agreement is negotiated to cover issues of common interest to the units that comprise it but other contracts are negotiated at the plant level to cover issues of varying interest to the individual units.

### National level

The issues common to all workers across industries, regions and sectors are discussed between representatives of the national trade unions and representatives in the industry and the business community. Although rare in India, this is very common to the U.S. where the AFL-CIO enters into national level agreements.

## The process of collective bargaining

As noted, collective bargaining is governed and informed by a range of laws, rules, regulations and protocols. Accordingly, the process encompasses the following major phases:

1. A charter of demands by the bargaining agent
2. Preparation for negotiation
3. Bargaining
4. Collective agreement
5. Contract administration.

A union needs to be registered so that it may be recognised. A recognised union could become the bargaining agent empowered to hold discussions with management on behalf of the employees in the organisation. If there is more than one union, the union having the majority membership is recognised as the bargaining agent. In some countries, the legislation allows only one bargaining agent for a defined unit of workers. Many employers have several such defined units of workers, differentiated on the basis of criteria such as the trade or skills involved, that are often represented by different unions. In these countries, each unit so defined collectively bargains with the employer for a separate contract. Each union prepares the charter of demands. Where there is an existing agreement, the union will usually raise their new demands a few months before the expiry of such an agreement.

Managements and unions prepare themselves for negotiations. Management will prepare by collecting data on employee performance records, labour standards, productivity, absenteeism, accidents, turnover, profit, and so on. This data is available internally. External data gathered would include economic data, cost of living, terms and conditions of

similar employees in other organisations, and copies of similar contracts signed by other unions.

Based on data and analysis, management assesses the expectations of similar unions elsewhere and the terms of the agreements that have been agreed to. This will help management decide the percentage increase in wages they ought to consider. In addition to balancing viability with labour costs, management will also balance the interests of labour with those of the shareholder and consider constraints on pricing with regard to the competition.

Managements would also consider prioritising the demands, the stand (whether it should be tough or accommodative) they should take with the union and make decisions whether to avoid or face strikes or lockouts. Lockout is a refusal by the employer to provide opportunities to work.

Similarly, unions collect data and formulate their policies and strategies based on their negotiating power, market conditions, management's capacity to pay and general public support to their cause.

Bargaining usually takes place in a business-like climate. No accusations are made or each other's motives questioned. Their respective positions are presented, supported by facts and figures. Demands may be taken one after the other or on a basis agreed to at the beginning of negotiations. Some demands may be conceded at the beginning. Prerogatives of management may be questioned by the unions with a view to enlarge its scope of influence on management. Managements usually do not allow such encroachment into areas they consider as being their prerogative. A total rejection of demands would certainly lead to deadlock and is certain to lead to a strike/lockout. Collective bargaining is successful when there is a give-and-take attitude on both sides. This also happens when communication channels are always kept open and when both sides have the capacity to read the other's true intentions and act win-win.

The terms agreed to have to be reduced to writing. This writing is variously referred to as the collective agreement, labour contract, union contract or labour-management contract. Companies usually print and circulate them to all relevant parties. The agreement is binding on both parties. Such an agreement has legal status and serves as a day-to-day guide for labour-management relations.

Once the contract has been ratified, its administration follows. Good practice dictates that its administration be transparent – clear with respect to the handling of contractual disputes and loyal to the spirit of the agreement.

## Collective bargaining and the right to strike

Though precedent-setting has made the processes of collective bargaining increasingly more predictable, collective bargaining does not always have a smooth flow. Many things may happen that prevent both sides from keeping the process from moving. In the U.S., three things can happen when an impasse develops.

1. Conciliation or mediation
2. A strike or a lockout
3. Arbitration.

In India and Sri Lanka, impasses more often lead to strikes than the other two options. However, trends in recent recessionary times have shown a greater willingness on both sides to resort to the other two options.

The Canadian Oxford Dictionary defines a strike as "an organised refusal by employees to work until some grievance is remedied". Such a withdrawal of service to the employer can be triggered by a variety of causes and circumstances. In the U.S., a series of distinctions are made as follows:

- **Contract strike** – This occurs when management and the union cannot agree on the terms of a new contract. In the U.S., more than 90 per cent of strikes are contract strikes.
- **Grievance strike** – This occurs when the union disagrees on how management interprets the contract or handles day-to-day problems such as discipline. These are usually prohibited by about 95 per cent of the contracts in the U.S. It occurs frequently in some specific industries.
- **Jurisdictional strike** – This take place when two or more unions disagree on which jobs should be organised by each union. The Taft-Hartley Act gives the NLRB power to settle these issues and unions also have their own methods of settling them.
- **Recognition strike** – This occurs as a strategy to force an employer to accept the union. Only 1 per cent of strikes in the U.S. are in this category.
- **Political strike** – This takes place to influence government policy. It is extremely rare in the U.S.

In some countries, a strike is seen as a refusal to fulfil work obligations. In others, only a few categories are outright illegal. Unfair labour practice strikes are aimed at protesting illegal conduct by the employer. A wildcat strike is an unauthorised strike occurring during the term of a contract. A sympathy strike occurs when one union strikes in support of the strike of another.

In other jurisdictions such as in India and Sri Lanka, a different taxonomy may be more appropriate:

- **Economic strike** – This takes place when employee/union demands on wages, working hours and terms and conditions of employment are not met.
- **Wildcat strike** – This is a quick, sudden and unauthorised stoppage of work and is illegal.
- **Sit-down strike** – In this type of action, employees get to their places/points of work but refuse to work.

- **Sympathy strike** – In this, the union and the employees are not connected with the dispute but they strike to show their solidarity with the striking union. In the U.S., such a strike is illegal under the Taft-Hartley Act.

## Policies for collective bargaining and union-management relations

There are laws and rules governing the establishment of unions and collective agreements. However, laws cannot dictate good union-management relations and the effective administration of jointly-negotiated agreements. These outcomes require a commitment and will of intent from both parties. Collective bargaining can be most effective when there is evidence of a number of characteristics in the relationship and on the parts of managements and unions separately.

Collective bargaining should be considered an educational process. It can give management an opportunity to get to know about suppressed feelings, grievances, wants and desires of workers. Equally, union leaders can get to know the financial position of the organisation and managerial problems of balancing various competing interests to remain viable.

Collective bargaining must be treated as a form of finding the best solution to a given problem. This calls for a give-and-take attitude from both sides so that both sides gain.

- The parties must have equal power. As with any situation involving the interests of two parties, an inequality in the strengths of such parties can lead to ruthless hegemony, constant conflict and benevolent generosity that the weaker party recognises can easily be taken away.
- There must be mutual trust and confidence. An absence, or perceived absence, of goodwill can lead to acrimony and conflict that make it near impossible to negotiate and maintain mutually satisfying and productive agreements.
- Both negotiating teams should have leadership qualities. During negotiations, it is essential that the parties know that the commitments being proposed by each negotiating team have high probability of acceptance by the parties that the negotiators represent. Their leadership effectiveness in convincing the members is critical.
- The agreement reached must be in conformity with the law of the land. Obviously, the obvious and accepted legality of the agreement is a fundamental requirement. The agreement is a legal document, binding on both parties.

**Management**, as a party to the agreement, can contribute to lasting harmony by observing a number of practices:

- Follow a realistic labour policy that is uniform and consistent across all sections and divisions.

- Consider the union a partner and not an adversary.
- Monitor rules and regulations continuously. Initiate changes if such changes improve morale and motivation. Do not take things for granted.
- While being careful not to contravene the terms of the agreement, be proactive and address the needs of the workers before it becomes a union-management issue.
- Consistently recognise the rights and authority of the bargaining unit – of the union that represents that group of workers.
- Give adequate attention to social issues while addressing economic issues.

Equally, **unions** have a role to play:

- Appreciate the financial constraints of an organisation when presenting demands. Ultimately, the survival of the organisation is more important than gaining all the demands of the employees.
- Realise that rights have corresponding duties and not pursue workers' rights alone but discharge duties so that the organisation benefits.
- Avoid threats and unfair trade practices to coerce managements into granting union demands.
- Be democratic and act with total integrity.
- Use the strike weapon only as a last resort.

So, it is apparent that there is much more to achieving and maintaining strong, productive and effective union-management relations than simply meeting the minimal legal requirements of collective bargaining.

## Laws of collective bargaining

### United States

The following table summarises the key laws in the U.S. regarding collective bargaining.

| Law | Coverage | Trend |
|---|---|---|
| Sherman Antitrust Act (1890) | Employers and employees in any business affecting interstate commerce. | Anti-union. |
| Clayton Act (1914) | Same as Sherman Act. | Pro-union. |
| Railway Labor Act (1926) | Non-managerial rail and airline employees. | Pro-union. |

| Law | Coverage | Trend |
|---|---|---|
| Norris-La Guardia Act (1932) | Private sector employers and labour organisations. | Pro-union. |
| Wagner Act (1935)<br>(The National Labor Relations Act) | Private sector employers and non-managerial employees not covered by the Railway Labor Act. | Pro-union. |
| Taft-Hartley Act (1947) | Same as Wagner Act. | Balanced the rights of management and the union. |
| Landrum-Griffin Act (1959) | Private sector employers and labour organisations. | Refined the Taft-Hartley Act. |
| Civil Service Reform Act (1978) replaced by provisions of Personnel System Reform Act of 2002 | Non-managerial, non-uniformed federal civil service employees and agencies. | New Act allows more scope for collective bargaining but provisions are not yet implemented. |

**Table 9.1 Summary of Major laws**

**Canada**

In Canada, all jurisdictions have laws regulating labour relations. The federal law is the Canada Labour Code. Each province has a similar law. The federal act applies only to industries under federal coverage.

All laws recognise the right of the employee to organise. Except in Quebec, they require an employer and a certified trade union to conclude a contract on wages and other terms of employment.

A collective agreement is binding on the parties covered. While in force, strikes are prohibited and disputes must be settled through a grievance procedure or arbitration. Under all law, government conciliation services are available to assist the parties to reach an agreement. Strikes or lockouts are then prohibited.

In 1975, the Department of Labour in Ottawa set up the Canada Labour Relations Council. It includes representatives from labour, management and the government. Its purpose is to promote labour peace at the federal level.

In the public sector, federal employees' labour relations are governed by the Public Service Staff Relations Act of 1967. This law allows federal employees except managers to join unions and bargain collectively. The law also created the Public Service Staff Relations Board.

Most public sector agreements require employees to choose ahead of time if they will submit to binding arbitration or strike. Canadian leaders criticise public sector employers for this provision and other shortcomings just as strongly as private sector employers have done so.

**India and Sri Lanka**

Many laws deal with all aspects of employment. It has been said that the economic status of these countries could ill afford the progressive laws that have been enacted in the interests of the workers. Nevertheless, it must be noted that these countries do not have social security and that these laws are an essential "cushion" for employees who would otherwise have no economic redress.

Most of the laws in the region can be classified under the following heads:

- Factory legislation
- Mining legislation (India)
- Wage legislation
- Trade union legislation
- Industrial disputes legislation
- Social security legislation.

# Module Summary

Summary

Although it may not always live up to its potential, collective bargaining can provide the forum for tremendous flexibility in labour-management relations. Contracts make explicit many of the rights and responsibilities of both labour and management. They are revised on a regular schedule and can be structured to suit the respective interests of the parties.

Although few employers invite a union to organise workers, most labour-management relationships evolve to a position of mutual respect. Despite that, managers in some jurisdictions as in the U.S. have become more active and successful in resisting union organising activities. This is seen as a major factor in the decline of union membership in such countries.

If a union is certified, then union and management representatives begin the collective bargaining process. Collective bargaining includes both contract negotiation and administration. If the parties disagree during the negotiations, certain conciliatory processes may help them. If not, a strike or lockout may result. Arbitration provides the solution if the parties disagree about contract administration.

Unions affect both efficiency and equity because an effective union can provide employees a voice to change organisation conditions and enhance equitable treatment of unionised employees. Efficiency is affected if having a more satisfied, stable unionised workforce results in higher productivity for the employer. However, unions can have a negative effect on productivity if work rules hinder performance. Whether or not the effect on productivity is positive depends on the quality of the employer-employee relationship.

# Assignment

Assignment

1. Discuss the mechanism, organisation and structure for the administration of labour matters in your country. What are the principal legal enactments that enable labour administration in your country?

2. Search the World Wide Web and find out more about the ILO, its organisational structure and the concept of "decent work".

3. What do you understand by the term "collective bargaining"? Is there a law in your country that provides for collective bargaining? Obtain a copy of a collective agreement from an organisation where collective bargaining is an industrial relations practice.

# Assessment

Assessment

1. In your country, what types of disputes are commonly experienced? What are the causes? Write a short essay outlining how those disputes can be avoided.

2. Collect statistics on your country's trade unions. On what basis have they been classified? How different is it from the above classification? Comment.

# References

References


Blyton, P. & Turnbull, P. (1994). *The dynamics of employee relations.* London: Macmillan.

Cole, G. A. (1991). *Personnel management: Theory and practice (*2nd Ed.). London: DP Publications.

De Cenzo, D. A. & Robbins, S. P. (1993). *Personnel/human resource management.* New Delhi: Prentice-Hall.

Dessler, G. (2001). *Human resource management (*7th Ed.). New Delhi: Prentice-Hall.

Dunlop, J. T. (1958). *Industrial relations systems.* London: Henry Holt Ltd.

Glueck, W. F. (1982). *Personnel: A diagnostic approach*. Revised by Milkovich (3rd Ed.). Dallas, Texas: Business Publications Inc.

Kirkaldy, H. S. (1947). *The spirit of industrial relations.* New Delhi: Oxford University Press.

Kochan, T., Katz, H. & Mower, N. (1984). *Worker participation and American unions: threat or opportunity.* Kalamazoo, MI: W. E. Upjohn.

Maimunah A. (2006). *Malaysian industrial relations and employment law* (5th Ed.). Kuala Lumpur: McGraw Hill.

Milkovich, G. T. & Glueck, W. F. (1985). *Personnel human resource management: A diagnostic approach.* Dallas, Texas: Business Publications Inc.

Nair, N. G. & Nair, L. (1999). *Personnel management and industrial relations*. New Delhi: S. Chand & Co.

Salamon, M. (1998). *Industrial relations theory and practice (*3rd Ed.). London: Prentice Hall.

World Economic Forum and the Center for International Development, Harvard University. (2002). *Global competitiveness report 2001-2002*. New York: Oxford University Press.