

3 role of trade union in compensation law employment essay

Law



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INTRODUCTION

Trade Unionism grew as one of the most powerful socio-economic political institutions of our time - to fill in the vacuum created by industrial revolution in industrial society. It came as a countervailing force to reconcile social and economic aberrations created by Industrial Revolution. Individual dispensability and collective indispensability was the basic principle for its formation. United we stand and divided we fall is the philosophy. The government policy of " Laissez-faire" left the working class at the mercy of mighty employers. The worker lacked bargaining power and seller of most perishable commodity (labour) he was no match for the mighty employer. The supply of labour was more and demand was less. Employers employed them at their terms, which were exploitative. The exploitation of labour was at its peak. Combination of workers was considered as ' criminal conspiracy' and the terms of contract was regulated by workman Breach of Contract Act, 1860 and general law of the land. Discontent was brewing. Liberal democratic and revolutionary ideas (set in motion by American war of Independence, French Revolution and Thinkers like Rousseau & Marks etc.) of the time fanned the discontentment which was a smoldering since long and gave birth to an institution known as " trade union."

DEFINITION OF TRADE UNION

According to Webbs, a trade union is a continuous association of wage earners for the purpose of maintaining and improving the conditions of their working lives. Under the Trade Union Act of 1926, the term is defined as " any combination, whether temporary or permanent, formed primarily for the

purpose of regulating the relations between workers and employers, or for imposing restrictive conditions on the condition of any trade or business and includes any federation of two or more unions". Let us examine the definition in parts. Trade union is an association either of employees or employers or of independent workers. It is a relatively permanent formation of workers. It is not a temporary or casual combination of workers. It is formed for securing certain economic (like better wages, better working and living conditions), social (such as educational, recreational, medical, respect for individual) benefits to members. Collective strength offers a sort of insurance cover to members to fight against irrational, arbitrary and illegal actions of employers. Members can share their feelings, exchange notes and fight the employer quite effectively whenever he goes off the track. 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).

FUNCTIONS OF TRADE UNIONS

Functions of trade unions are: a) Militant or protective or intra-mutual functions: These functions include protecting the workers' interests, i. e., hike in wages, providing more benefits, job security, etc., through collective bargaining and direct action such as strikes, gheraos, etc. b) Fraternal or extramural functions: These functions include providing financial and non-financial assistance to workers during the periods of strikes and lock outs, extension of medical facilities during slackness and casualties, provision of education, recreation, recreational and housing facilities, provision of social and religious benefits, etc. c) Political functions: These functions include

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affiliating the union with a political party, helping the political party in enrolling members, collecting donations, seeking the help of political parties during the periods of strikes and lockouts. d) Social functions: These functions include carrying out social service activities discharging social responsibilities through various sections of the society like educating the customers.

OBJECTIVES OF TRADE UNIONS

Unions concentrate their attention to achieve the following objectives: a)

Wages and Salaries: The subject which drew the major attention of the trade unions is wages and salaries. Of course, this item may be related to policy matters. However, differences may arise in the process of their

implementation. In the case of unorganised sector the trade union plays a crucial role in bargaining the pay scales. b) **Working Conditions:** Trade unions with a view to safeguard the health of workers demands the management to provide all the basic facilities such as, lighting and ventilation, sanitation, rest rooms, safety equipment while discharging hazardous duties, drinking, refreshment, minimum working hours, leave and rest, holidays with pay, job satisfaction, social security benefits and other welfare measures. c)

Discipline: Trade unions not only conduct negotiations in respect of the items with which their working conditions may be improved but also protect the workers from the clutches of management whenever workers become the victims of management's unilateral acts and disciplinary policies. This victimisation may take the form of penal transfers, suspensions, dismissals, etc. In such a situation the separated worker who is left in a helpless condition may approach the trade union. Ultimately the problem may be

brought to the notice of management by the trade union and it explains about the injustice met out to an individual worker and fights the management for justice. Thus, the victimised worker may be protected by the trade union. d) Personnel Policies: Trade unions may fight against improper implementation of personnel policies in respect of recruitment, selection, promotions, transfers, training, etc. e) Welfare: As stated earlier, trade unions are meant for the welfare of workers. Trade union works as a guide, consulting authority and cooperates in overcoming the personnel problems of workers. It may bring to the notice of management, through collective bargaining meetings, the difficulties of workers in respect of sanitation, hospitals, quarters, schools and colleges for their children's cultural and social problems. f) Employee-employer relation: Harmonious relations between the employees and employer are a sine quo non for industrial peace. A trade union always strives for achieving this objective. However, the bureaucratic attitude and unilateral thinking of management may lead to conflicts in the organisation which ultimately disrupt the relations between the workers and management. Trade union, being the representative of all the workers, may carry out continuous negotiations with the management with a view to promote industrial peace. g) Negotiating machinery: Negotiations include the proposals made by one party and the counter proposals of the other party. This process continues until the parties reach an agreement. Thus, negotiations are based on 'give and take' principle. Trade union being a party for negotiations protects the interests of workers through collective bargaining. Thus, the trade union works as the negotiating machinery. h) Safeguarding organisational health and the

interest of the industry: Organisational health can be diagnosed by methods evolved for grievance redressal and techniques adopted to reduce the rate of absenteeism and labour turnover and to improve the employee relations. Trade unions by their effective working may achieve employee satisfaction. Thus, trade unions help in reducing the rate of absenteeism, labour turnover and developing systematic grievance settlement procedures leading to harmonious industrial relations. Trade unions can thus contribute to the improvements in level of production and productivity, discipline and improve quality of work life.

ROLE IN COMPENSATION MANAGEMENT

Workers who are non-unionised are more at risk of low pay. Women who work in non-unionised workplaces earn on average two-thirds of the hourly pay of their male counterparts, whilst those women who are union members earn nearly 90 per cent"(Source: TUC Labour Market Research 2000).

Collective Bargaining

In theory unions might exercise their collective bargaining power to partially offset the purchasing power of an employer in a particular occupation and in doing so achieve a mark-up on wages compared to those on offer to non-union members. But for this to happen, a union must have some control over the total labour supply available to an industry. Trade union reforms in the 1980s brought an end to the closed shop in a bid to increase the flexibility of the labour market. Collective bargaining is a process between employers and employees to reach an agreement regarding the rights and duties of people at work. Collective bargaining aims to reach a collective agreement which

usually sets out issues such as employees pay, working hours, training, health and safety, and rights to participate in workplace or company affairs. During the bargaining process, employees are typically represented by a trade union. The union may negotiate with a single employer (who is typically representing a company's shareholders) or may negotiate with a federation of businesses, depending on the country, to reach an industry wide agreement. A collective agreement functions as a labor contract between an employer and one or more unions. Collective bargaining consists of the process of negotiation between representatives of a union and employers (generally represented by management, in some countries by an employers' organization) in respect of the terms and conditions of employment of employees, such as wages, hours of work, working conditions and grievance-procedures, and about the rights and responsibilities of trade unions. The parties often refer to the result of the negotiation as a collective bargaining agreement (CBA) or as a collective employment agreement (CEA). A collective bargaining process generally consists of four types of activities- distributive bargaining, integrative bargaining, attitudinal restructuring and intra-organizational bargaining. Distributive bargaining: It involves haggling over the distribution of surplus. Under it, the economic issues like wages, salaries and bonus are discussed. In distributive bargaining, one party's gain is another party's loss. This is most commonly explained in terms of a pie. Disputants can work together to make the pie bigger, so there is enough for both of them to have as much as they want, or they can focus on cutting the pie up, trying to get as much as they can for themselves. In general, distributive bargaining tends to be more competitive.

This type of bargaining is also known as conjunctive bargaining. Integrative bargaining: This involves negotiation of an issue on which both the parties may gain, or at least neither party loses. For example, representatives of employer and employee sides may bargain over the better training programme or a better job evaluation method. Here, both the parties are trying to make more of something. In general, it tends to be more cooperative than distributive bargaining. This type of bargaining is also known as cooperative bargaining. Attitudinal restructuring: This involves shaping and reshaping some attitudes like trust or distrust, friendliness or hostility between labor and management. When there is a backlog of bitterness between both the parties, attitudinal restructuring is required to maintain smooth and harmonious industrial relations. It develops a bargaining environment and creates trust and cooperation among the parties. Intra-organizational bargaining: It generally aims at resolving internal conflicts. This is a type of maneuvering to achieve consensus with the workers and management. Even within the union, there may be differences between groups. For example, skilled workers may feel that they are neglected or women workers may feel that their interests are not looked after properly. Within the management also, there may be differences. Trade unions maneuver to achieve consensus among the conflicting groups.

Characteristics of Collective Bargaining

It is a group process, wherein one group, representing the employers, and the other, representing the employees, sit together to negotiate terms of employment. Negotiations form an important aspect of the process of collective bargaining i. e., there is considerable scope for discussion,

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compromise or mutual give and take in collective bargaining. Collective bargaining is a formalized process by which employers and independent trade unions negotiate terms and conditions of employment and the ways in which certain employment-related issues are to be regulated at national, organizational and workplace levels. Collective bargaining is a process in the sense that it consists of a number of steps. It begins with the presentation of the charter of demands and ends with reaching an agreement, which would serve as the basic law governing labor management relations over a period of time in an enterprise. Moreover, it is flexible process and not fixed or static. Mutual trust and understanding serve as the by products of harmonious relations between the two parties. It a bipartite process. This means there are always two parties involved in the process of collective bargaining. The negotiations generally take place between the employees and the management. It is a form of participation. Collective bargaining is a complementary process i. e. each party needs something that the other party has; labor can increase productivity and management can pay better for their efforts. Collective bargaining tends to improve the relations between workers and the union on the one hand and the employer on the other. Collective Bargaining is continuous process. It enables industrial democracy to be effective. It uses cooperation and consensus for settling disputes rather than conflict and confrontation. Collective bargaining takes into account day to day changes, policies, potentialities, capacities and interests. It is a political activity frequently undertaken by professional negotiators.

Process of Collective Bargaining

Collective bargaining generally includes negotiations between the two parties (employees' representatives and employer's representatives).

Collective bargaining consists of negotiations between an employer and a group of employees that determine the conditions of employment. Often employees are represented in the bargaining by a union or other labor organization. The result of collective bargaining procedure is called the collective bargaining agreement (CBA). Collective agreements may be in the form of procedural agreements or substantive agreements. Procedural agreements deal with the relationship between workers and management and the procedures to be adopted for resolving individual or group disputes. This will normally include procedures in respect of individual grievances, disputes and discipline. Frequently, procedural agreements are put into the company rule book which provides information on the overall terms and conditions of employment and codes of behavior. A substantive agreement deals with specific issues, such as basic pay, overtime premiums, bonus arrangements, holiday entitlements, hours of work, etc. In many companies, agreements have a fixed time scale and a collective bargaining process will review the procedural agreement when negotiations take place on pay and conditions of employment. The collective bargaining process comprises of five core steps: Prepare: This phase involves composition of a negotiation team. The negotiation team should consist of representatives of both the parties with adequate knowledge and skills for negotiation. In this phase both the employer's representatives and the union examine their own situation in order to develop the issues that they believe will be most

important. The first thing to be done is to determine whether there is actually any reason to negotiate at all. A correct understanding of the main issues to be covered and intimate knowledge of operations, working conditions, production norms and other relevant conditions is required.

Discuss: Here, the parties decide the ground rules that will guide the negotiations. A process well begun is half done and this is no less true in case of collective bargaining. An environment of mutual trust and understanding is also created so that the collective bargaining agreement would be reached.

Propose: This phase involves the initial opening statements and the possible options that exist to resolve them. In a word, this phase could be described as 'brainstorming'. The exchange of messages takes place and opinion of both the parties is sought.

Bargain: Negotiations are easy if a problem solving attitude is adopted. This stage comprises the time when 'what ifs' and 'supposals' are set forth and the drafting of agreements take place.

Settlement: Once the parties are through with the bargaining process, a consensual agreement is reached upon wherein both the parties agree to a common decision regarding the problem or the issue. This stage is described as consisting of effective joint implementation of the agreement through shared visions, strategic planning and negotiated change.

Importance of Collective Bargaining

Collective bargaining includes not only negotiations between the employers and unions but also includes the process of resolving labor-management conflicts. Thus, collective bargaining is, essentially, a recognized way of creating a system of industrial jurisprudence. It acts as a method of

introducing civil rights in the industry, that is, the management should be conducted by rules rather than arbitrary decision making. It establishes rules which define and restrict the traditional authority exercised by the management.

Importance to employees

Collective bargaining develops a sense of self respect and responsibility among the employees. It increases the strength of the workforce, thereby, increasing their bargaining capacity as a group. Collective bargaining increases the morale and productivity of employees. It restricts management's freedom for arbitrary action against the employees. Moreover, unilateral actions by the employer are also discouraged. Effective collective bargaining machinery strengthens the trade unions movement. The workers feel motivated as they can approach the management on various matters and bargain for higher benefits. It helps in securing a prompt and fair settlement of grievances. It provides a flexible means for the adjustment of wages and employment conditions to economic and technological changes in the industry, as a result of which the chances for conflicts are reduced.

Importance to employers

It becomes easier for the management to resolve issues at the bargaining level rather than taking up complaints of individual workers. Collective bargaining tends to promote a sense of job security among employees and thereby tends to reduce the cost of labor turnover to management.

Collective bargaining opens up the channel of communication between the

workers and the management and increases worker participation in decision making. Collective bargaining plays a vital role in settling and preventing industrial disputes.

Importance to society

Collective bargaining leads to industrial peace in the country. It results in establishment of a harmonious industrial climate which supports which helps the pace of a nation's efforts towards economic and social development since the obstacles to such a development can be reduced considerably. The discrimination and exploitation of workers is constantly being checked. It provides a method or the regulation of the conditions of employment of those who are directly concerned about them.

Levels of Collective Bargaining

Collective bargaining operates at three levels: National level, Sector or industry level, Company/enterprise level. Economy-wide (national) bargaining is a bipartite or tripartite form of negotiation between union confederations, central employer associations and government agencies. It aims at providing a floor for lower-level bargaining on the terms of employment, often taking into account macroeconomic goals. Sectoral bargaining, which aims at the standardization of the terms of employment in one industry, includes a range of bargaining patterns. Bargaining may be either broadly or narrowly defined in terms of the industrial activities covered and may be either split up according to territorial subunits or conducted nationally. Company/enterprise level, the third bargaining level involves the company and/or establishment.

As a supplementary type of bargaining, it emphasizes the point that bargaining levels need not be mutually exclusive.

QUESTIONS:-

Q1. What is Trade Union? What are its objectives and functions? Q2. Why do workers join Trade Union? Explain. Q3. Discuss the role of Trade union in Determination of Compensation System. Q4. What is the Collective Bargaining? Explain its types and characteristics? Q5. Describe the importance of collective bargaining to the various parties? Q6. Explain briefly the procedure of collective bargaining in an enterprise or an industry?