

INDUSTRIAL DISPUTES/CONFLICTS

Section 2K of the Industrial Disputes Act, 1947 defines as industrial dispute as “any dispute or difference between employers and employees, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour of any person.”

CHARACTERISTICS OF INDUSTRIAL DISPUTES/CONFLICTS

Based on the definition of the term industrial dispute given in the Industrial Disputes Act, its characteristics have been identified as follows:

An industrial dispute is a collective dispute between employer and employees. The dispute between an individual employee and employer is not normally viewed as an industrial dispute except for dismissal, discharge, retrenchment or termination of individual employee. Typically, the dispute should have been raised by a substantial number of employees. The relationship existing between the parties to the industrial dispute must be that of the employer and employee or co-workers, that is, between workmen and workmen.

The dispute may arise out of disagreements between employers and employees over the terms of employment like wages and salary, incentives and benefits, workloads and so on. It could also be connected to the condition of labour like working conditions, occupational health and safety, and so on.

TYPES OF INDUSTRIAL DISPUTES/CONFLICTS

An industrial dispute is basically a difference between employer and employees. Based on the characteristics of employees needs and interests, the disputes/conflicts may be classified into interest and rights disputes/conflicts. We shall now see those disputes/conflicts in detail.

Interest Disputes/conflicts: These refer to the disputes/conflicts relating to the economic interest of the employees. The interest disputes/conflicts often arise at the negotiation or bargaining stage of a collective bargaining process. They may relate to wages, incentives and other benefits of the employees. In short, an interest dispute relates to the conditions of employment of workers.

Right Disputes/conflicts: These involve disputes/conflicts over the understanding, interpretation, and application of the rules and regulations which protect the rights of the employees. They may relate to the interpretation and implementation of statutory rules, company rules, collective bargaining agreements, and employment contracts. The alleged violation of these rules provides a ground for right disputes/conflicts. For instance, the nonimplementation of safety rules, the violation of wages or bonus act and the misinterpretation of wage agreements can cause right disputes/conflicts.

When the efforts of employees and employers for an amicable settlement of rights and interest disputes/conflicts fail, the employees may begin to express their disputes/conflicts openly. The purpose of such an open expression of disputes/conflicts is to apply pressure on the employers to get their

demands fulfilled. They may also attempt to get the attention of the general public and government to their problems.

OUTCOMES OF DISPUTES/CONFLICTS

The interest and rights disputes/conflicts may be expressed by the employees through the following forms and shape:

- A. **STRIKE:** A strike is an important tool in the hands of the trade unions to exert pressure on the employers to achieve their demands. According to the Industrial Disputes Act, 1947, a strike means a cessation of work by a body of persons employed in any industry acting in combination or a concerted refusal, or a refusal under a common understanding, of any number of persons who are or have been so employed to continue to work or to accept employment. Employees may resort to strike collectively when there is an interest or rights violations.

Type s o f Strikes: Some of the important forms of strikes are general strike, pen-down, stoolsdown and sit-in strikes, wild-cat strike, go-slow and work-to-rule strikes, sick leave and mass casual leave strikes, hunger strike and sympathy strike. We shall now discuss these strikes.

- i. General Strike: It normally refers to a large-scale strike organized by the employees belonging to an industry, a region or an entire country. Normally the employees of a region, state or nation are united by common goals and interests and as such struggle together. Since these strikes are organized on a mass basis, they create a huge impact and often put a lot of pressure on the employers. However, general strikes are normally not intended against any individual employer.
- ii. Pen-down, Tools-down and sit-in strikes In pen-down, tool-down and sit-in strikes, employees report for duty but do not work. In these forms of protest, the employees just refuse to leave their place after entering the work premises and remain idle. These strikes may be planned or spontaneous, depending upon the happenings and urgency of the situation.
- iii. Wild-Cat Strike: When employees resort to an unauthorized strike in violation of the labour contract or agreements, it is called a wild-cat strike. Unions may resort to a wild-cat strike to pressure their employers during negotiations. Strictly speaking, wild-cat strikes are illegal and the
- iv. Go-Slow (slow down) and Work-to-Rule Strikes: Go-slow and work-to-rule strikes are forms of strike in which employees work but not up to their usual levels or capacity. They reduce their output deliberately to show their protest to the employers. In this form of strike, the employees continue to get the wages while the employer's revenue is badly affected. Here, the employees strictly follow the rules and just refuse to deviate from them. They would quote the rule books to avoid or to go slow on the work.
- v. Sick Leave and Mass Casual Leave Strikes: Employees participating in these strikes apply for sick leave or casual leave en masse, mentioning sickness as the reason. The purpose of such mass casual or sick leave is to bring the work to a halt in order to achieve their demands.

The employees may opt for this method even to forewarn the employers of the consequences of a strike planned in the future. In this form of strike, the striking employees are legally right and safe as they are entitled to a specified number of days of casual or sick leave in a year.

- vi. Hunger Strike: In a hunger strike, the employees undertake fasting by abstaining from both food and work as a means of protest. Since there is a cessation of work due to employees' participation in the fasting. It is viewed as a strike. The purpose of such a strike is to embarrass the employers and get the attention of the government and the general public.
- vii. Sympathy Strike: The purpose of a sympathy strike is to express sympathy and solidarity with another group of striking employees belonging to a different category of employment in the same organization. For instance, in order to express solidarity with the striking doctors, the nursing staff may go on strike. The purpose here may be to further intensify the strike and its impact or to sympathize with the cause of the doctors' strike or both. As such, the nursing staff may not have any direct or immediate cause to strike other than supporting the doctors' strike. Incidentally, the sympathy strike may also be conducted for the striking employees in other organizations in the same or a different industry.

B. **PICKETING**: It is a form of protest by employees in which the primary intention is to prevent or dissuade the non-striking employees from attending to their work during the strike period. In this method, the striking employees assemble in front of the factory gates and attempt to persuade the non-strikers to decide against going inside the premises and there by participate in the strike. The intention of picketing is to achieve complete stoppage of work in order to increase the pressure on the employer. Picketing may be held at the workplace or even at some other prominent places to attract the attentions of the public and government.

C. **GHERAOS**: It is a form of protest in which employees encircle their employers or top managers at the workplace with a view to restricting their movements. The purpose of a blockade or confinement is to force the employer or managers to concede the demands of the workers. The wrongful confinement of any person is not legally tenable and therefore gherao is an illegal act.

D. **LOCK-OUTS**: A lock-out is the employer's response to the employees' continued protest in the form of strike. In a lock-out, the employer closes the workplace with the aim of preventing the employees from entering the factory premises and performing their job. Employers may resort to lock-outs when there are largescale work disturbances, incomplete production or abnormally high production costs. It is also a strategy adopted by the employers to test the employees' endurance and break their resolve to continue the strike. According to the Industrial Disputes Act, 1947, a lock-out means "the temporary closing of a place of employment or the suspension of work, or the refusal by an employer to continue to employ any number of persons employed by him."

CAUSES OF INDUSTRIAL DISPUTES/CONFLICTS

The causes of industrial disputes/conflicts or unrest may be grouped in four broad categories:

A. INDUSTRIAL FACTORS: Grievances relating to employment, i.e. work, wages, bonus, hours of work, privileges, conditions of employment and obligations of employees and other factors are:

- i. Attitude of workers
- ii. Increasing prices and demand for increases in dearness allowance
- iii. Indiscipline and violence among the workers
- iv. Workers' resistance to rationalization, introduction of new machinery

B. MANAGEMENT'S ATTITUDE TOWARDS THE WORKERS:

- i. Disinterest of the management to discuss with the workers
- ii. Management's unwillingness to recognize a particular trade union
- iii. Not involving the workers in decision-making
- iv. Inadequate communication

C. ROLE OF GOVERNMENT MACHINERY

- i. Not successful in implementing Labour Laws
- ii. Inability of conciliation machinery of the Labour department to do its job and employees and management's loss of confidence in the same.
- iii. Irrelevance of certain provisions of Labour Laws in the context of challenges of present industrial climate and imperatives of development due to competitive environment

D. OTHER CAUSES

- i. Affiliation of trade unions with political parties, political leadership, thereby bringing pressures for accepting their demands
- ii. Political instability and poor centre-state relations contribute to industrial conflict
- iii. Another factor is character crisis, in values of trade union leaders, trade union rivalry
- iv. Need for change in outlook and attitudes of the parties including management.

Hence, there is an increasing tendency among the industrial workers to resort to strike and militancy. They forget that strike is the last resort in their armoury.

Trade Unions

Trade union is an important actor or participant of industrial relations. Trade unions are formed to protect the interest of the employees.

According to G.D.H.Cole, a trade union means, “an association of workers in one or more professions – an association carried mainly for the purpose of protecting and advancing the members, economic interests in connection with their daily work.”

Dale Yoder defined a trade union as, “ a continuing long term association of employees, formed and maintained for the specific purpose of advancing and protecting the interest of the members in their working relationship.”

Indian Trade Union Act, 1926 defined trade union as, “any combination whether temporary or permanent formed primarily for the purpose of regulating the relations between workmen and employers or between workmen and workmen, between employers and employers or for imposing restrictive conditions on the conduct of any trade or business and include any federation of two or more trade unions.”

Objectives of Trade Union:

- (1) To improve the economic lot of the workers by securing them better wages.
- (2) To secure for workers better working conditions.
- (3) To secure bonus for the workers from the profits of the enterprise/organization.
- (4) To ensure stable employment for workers and resist the schemes of management which reduce employment opportunities.
- (5) To provide legal assistance to workers in connection with disputes regarding work and payment of wages.

Functions of Trade Unions:

- (1) Collective bargaining with the management for securing better work environment for the workers/ employees.
- (2) Providing security to the workers and keeping check over the hiring and firing of workers.
- (3) Helping the management in redressal of grievances of workers at appropriate level.
- (4) If any dispute/matter remains unsettled referring the matter for arbitration.

(5) To negotiate with management certain matters like hours of work, fringe benefits, wages and medical facilities and other welfare schemes.

(6) To develop cooperation with employers.

(7) To arouse public opinion in favour of labour/workers.

Types of trade unions:

1. Craft Unions

Craft unions represent workers across several industries with a particular skill.

2. Industrial Unions

Industrial unions represent all workers in one industry with different skills.

3. General Unions

General unions represent workers from many different occupations and industries.

4. White-collar Unions / Staff Associations

This type of unions represent workers in professional and commercial jobs.

A trade union will act in the best interest of the workers and try to secure the best possible working conditions, pay and protect jobs. Trade unions are financed by the workers who will normally pay a monthly subscription for the right to be a member. When a union represents a group of workers to their employers it is known as collective bargaining.

COLLECTIVE BARGAINING

Definition of Collective Bargaining:

Industrial disputes between the employee and employer can also be settled by discussion and negotiation between these two parties in order to arrive at a decision.

This is also commonly known as collective bargaining as both the parties eventually agree to follow a decision that they arrive at after a lot of negotiation and discussion.

According to Beach, "Collective Bargaining is concerned with the relations between unions reporting employees and employers (or their representatives).

It involves the process of union organization of employees, negotiations administration and interpretation of collective agreements concerning wages, hours of work and other conditions of employees arguing in concerted economic actions dispute settlement procedures".

According to Flippo, "Collective Bargaining is a process in which the representatives of a labor organization and the representatives of business organization meet and attempt to negotiate a contract or agreement, which specifies the nature of employee-employer union relationship".

"Collective Bargaining is a mode of fixing the terms of employment by means of bargaining between organized body of employees and an employer or association of employees acting usually through authorized agents. The essence of Collective Bargaining is bargaining between interested parties and not from outside parties".

According to an ILO Manual in 1960, the Collective Bargaining is defined as:

"Negotiations about working conditions and terms of employment between an employer, a group of employees or one or more employers organization on the other, with a view to reaching an agreement."

It is also asserted that "the terms of agreement serve as a code defining the rights and obligations of each party in their employment relations with one another, if fixes large number of detailed conditions of employees and during its validity none of the matters it deals with, internal circumstances give grounds for a dispute counseling and individual workers".

Main Features of Collective Bargaining:

Some of the salient features of collective bargaining are:

1. It is a Group Action:

Collective bargaining is a group action as opposed to individual action. Both the parties of settlement are represented by their groups. Employer is represented by its delegates and, on the other side; employees are represented by their trade union.

2. It is a Continuous Process:

Collective bargaining is a continuous process and does not end with one agreement. It provides a mechanism for continuing and organised relationship between management and trade union. It is a process that goes on for 365 days of the year.

3. It is a Bipartite Process:

Collective bargaining is a two party process. Both the parties—employers and employees— collectively take some action. There is no intervention of any third party. It is mutual given-and-take rather than take-it-or-leave-it method of arriving at the settlement of a dispute.

4. It is a Process:

Collective bargaining is a process in the sense that it consists of a number of steps. The starting point is the presentation of charter of demands by the workers and the last step is the reaching of an agreement, or a contract which would serve as the basic law governing labour-management relations over a period of time in an enterprise.

5. It is Flexible and Mobile and not Fixed or Static:

It has fluidity. There is no hard and fast rule for reaching an agreement. There is ample scope for compromise. A spirit of give-and-take works unless final agreement acceptable to both the parties is reached.

6. It is Industrial Democracy at Work:

Collective bargaining is based on the principle of industrial democracy where the labour union represents the workers in negotiations with the employer or employers. Industrial democracy is the government of labour with the consent of the governed—the workers. The principle of arbitrary unilateralism has given way to that of self-government in industry. Actually, collective bargaining is not a mere signing of an agreement granting seniority, vacations and wage increase, by sitting around a table.

7. It is Dynamic:

It is relatively a new concept, and is growing, expanding and changing. In the past, it used to be emotional, turbulent and sentimental, but now it is scientific, factual and systematic.

8. It is a Complementary and not a Competitive Process:

Collective bargaining is not a competitive process i.e., labour and management do not coopt while negotiating for the same object. It is essentially a complementary process i.e., each party needs something which the other party has, namely, labour can put greater productive effort and management has the capacity to pay for that effort and to organise and guide it for achieving the enterprise's objectives.

Essential conditions for the success of collective bargaining

- i. Constructive consultation between trade union and management is possible only when the bargaining power of two parties is relatively equal and is exercised with responsibility and discrimination.
- ii. Two parties of collective bargaining accept the principle of 'free consultation' and 'free enterprise' consistent with the advancement of public interest.
- iii. The willing acceptance by management to recognize representative union for this purpose.
- iv. Both the parties must have mutual confidence, good faith and a desire to make collective bargaining machinery a success.

- v. Management should not await the union to raise problems but should make every reasonable effort to prevent them from arising and to remove them promptly when they arise.
- vi. An emphasis upon a problem solving approach with deemphasis upon excessive legalism.
- vii. Dispose of the issues in the same meeting and minimize of the pending of items.
- viii. Desire of the management to settle the issues to the satisfaction of employees. This does not mean that management must not relinquish its right to direct the company or that it must accede to all union demands.
- ix. Unions must understand the economic implications of collective bargaining and realize that union demands must be met from the income and resources of the organization.
- x. Both the parties should represent the rights and responsibilities of each other.
- xi. The process of bargaining should be free from unfair practices.
- xii. Unanimity among workers: before entering into negotiations, there must be unanimity among workers. At least the representatives of workers should be able to represent the opinion or demands of majority of workers.
- xiii. The attitudes of parties should be positive. Both the parties should reach the negotiating table with an intention to find better solutions.
- xiv. The parties involved in collective bargaining should be prepared to give away something in order to gain something.
- xv. The representatives of both the parties should fully understand and be clear about the problems and their implications.

Collective Bargaining Process

There are two stages in collective bargaining:

- i. The negotiating stage and
- ii. The stage of contract administration.

i. Negotiation:

(a) Identification of problem: the nature of the problem influences whole process. Whether the problem is very important to be discussed immediately or can be postponed for some other convenient time, whether the problem can be solved with the other party's acceptance on its presentation and does not need to involve long process of collective bargaining process etc. It also influences selection of representatives, their size, period of negotiations and period of agreement that is reached ultimately. As such it is important for both the parties to be clear about the problem before entering into the negotiations.

(b) Preparing for Negotiation: when it becomes necessary to solve the problem through collective bargaining process, both the parties prepare themselves for negotiations. The preparation starts with selection of representatives. Such representatives should be selected who can carry out negotiations with patience, composure and who can present their view effectively. After selection

they should be fed with complete problem and its pros and cons. His powers and authority during negotiations also should be clearly spelt out. Other preparations include fixing up time for negotiations, period of negotiations etc. but once the parties enter into negotiations the period of negotiations may vary depending upon circumstances.

(c) Negotiations of Agreement: Usually there will be a chief negotiator who is from management side. He directs and presides the process. The chief negotiator presents the problem, its intensity and nature and the views of both the parties. Then he allows the representatives of both the parties to present their views. During negotiations, the representatives of both the parties should be attentive as to find out what the other party is arguing for. The representatives tend to think about what counter arguments they can present and how to say 'no' effectively, while the other party is representing its own views. This is a major obstacle in the bargaining process. By understanding their problems and weighing them, sometimes a better solution may be reached, which is more acceptable to both the parties. So, it is very important that representatives should reach negotiations table with positive attitudes. When a solution is reached at, it is put on the paper taking concerned legislations into consideration. Both the parties concerned sign the agreement which becomes a binding contract for both the parties.

If, in spite of all efforts no amicable solution could be reached, both the parties resorts to arbitration.

II.Contract Administration:

Implementation of the contract is as important as making as contract. Management usually distributes the printed contract, its terms and conditions throughout organization. The union takes steps to see that all workers understand the contract and implement it. From time to time depending upon changing circumstances, both the parties can make mutually acceptable amendments.

Causes for the limited success of collective bargaining in India

1. Problems with unions
2. Problems with government
3. Legal problems
4. Political interference
5. Attitude of management