

VOCATIONAL TRAINING AND COLLECTIVE BARGAINING

What do we understand by collective bargaining?

Collective bargaining has close relationship with trade union freedom. According to the ILO Convention N°98 and Recommendation N°94, the legitimate subject to bargain and sign a collective bargaining, on behalf of the workers, needs to be, necessarily and primarily, a trade union organisation. This is different for employers, who have greater freedom (whether one employer, or several employers, or one or many employers' organisations may celebrate collective agreements). Then, it is not possible by principles that a collective agreement be celebrated by an inorganic group of workers; the rule states that a trade union organisation has to intervene.⁶

The above is based on the primary goal of collective bargaining that consists in the worker being able to negotiate with the employer under rather fair conditions or with greater bargaining power than he would have if he were negotiating on his own. Since the worker is in a less privileged situation than the employer, he negotiates collectively in order to oppose the power of quantity to the economic power of his opposing party.

In collective bargaining:

- There is a conflict or confrontation of interests and it is introduced as a mechanism to solve such conflict.
- The term “bargaining” itself indicates that we start from different postures or points of view between two or more actors, among whom a transaction is sought, and, ideally, an agreement is reached.
- The main objective of collective bargaining is then to reach an agreement, a “collective agreement”. At the same time, that agreement is not considered to be the end of the conflict, but rather a sort of “truce”, for which duration

⁶ Ermida Uriarte, Oscar: “Evolución de las relaciones entre lo sindical y lo participativo en relación con la negociación colectiva”. In: *Derecho colectivo del trabajo*. Teaching Materials. Pontificia Universidad Católica del Perú, Facultad de Derecho, Lima, 1990.

terms are set and the conditions that the subscribing parties have promised to respect are established.

Nowadays, it is almost a common denominator in different countries in Latin America and the Caribbean the fact that collective bargaining has gone backwards at a branch or activity sector level. The only level at which there is a relatively important incidence of collective bargaining is that of enterprises. This is often the result of modifications in labour regulations openly seeking that effect, while in other cases it has been the result in practice but without significant changes in the regulations in force.

The loss of incidence of collective bargaining becomes even more evident when we take into account the large number of workers who do not follow the traditional path towards wage and formal labour insertion. More and more workers begin to integrate the bulk of the informal or unstructured sector of economy, are affected by unemployment, or are inserted in the labour market under other modalities such as self-employment and micro enterprises. As a general rule, these workers do not have access to collective bargaining.

It is unquestionable that these processes lead to a weakening of workers' ability to negotiate, not only because collective bargaining is restricted to enterprises –and therefore trade union's pressure margins are reduced– but also because the new social and economic context limits these organisations from the point of view of the issues that could effectively be included in the bargaining.

Vocational training as a bargaining issue⁷

Within this situation where trade unions have lost ability to bargain and exercise pressure, it seems that vocational training allows for the bargaining margins to be broadened, despite the already mentioned restrictions.

In accordance with that, vocational training is a growing component of collective bargaining at its different levels and expressions. As vocational training began to be a part of the labour relations system, it was inevitable that sooner or later it would be reached by collective bargaining:

- Vocational training as a worker's right may be subject to be included in collective agreements, just as any other labour right.
- As an economic instrument, employers may have a high interest in regulating vocational training through bargaining.

⁷ A large and in-depth study on the links between vocational training and collective bargaining in: Ermida, Oscar; Rosenbaum, Jorge: Formación profesional en la negociación colectiva. Cinterfor/ILO, Montevideo, 1998. This publication in spanish is available at: <http://www.cinterfor.org.uy/public/spanish/region/ampro/cinterfor/publ/ermida/index.htm>

- Since collective agreements are flexible standards, they have the appropriate features to go along with the changing needs of training, as technological changes continue to take place.

Finally, the different levels of bargaining (at enterprises, by branch, national, and even international), offer a wide range of alternatives, each of them showing better or worse ability to consider the varied aspects of vocational training. For instance:

- The big framework agreements or national social pacts are particularly appropriate to establish ample guidelines of training policies and to create general competence bodies.
- Collective agreements of industrial branch or economic activity may prepare sectoral training plans, set industrial policies and regulate the rights and obligations in force for a whole sector.
- Enterprise collective agreements may orient the specific training plans of a certain enterprise as well as adapt the provisions of agreements and pacts of higher order.

Types of clauses about vocational training in collective agreements

Collective agreements that deal with the issue of training usually contain the following items:

- *General or programme expository clauses*

These clauses are incorporated to collective agreements with the aim of formally establishing aspects such as the parties' will to promote vocational training at the enterprise or the right of workers to receive it. Without them being less important, these clauses do not generally specify the mechanisms or formulas to achieve the contents of the agreement.

- *Clauses on free time for training*

This kind of clauses, which are more specific than the previous ones, establish the relationship between training time and work time, fixing an amount of working hours that will be devoted to training, or else the enterprise will give compensations for training provided beyond working hours.

- *Provisions about special training programmes*

Occasionally, there could be clauses referring to training programmes oriented to facing concrete problems or changes. This could refer, for instance, to the implementation of an internal system of quality assurance or the introduction of new technologies into productive or service rendering processes.

- *Creation of bipartite committees to manage such programmes*

In some countries, the law regulates the creation of bipartite instances for the management of training programmes (as it will be seen in the following item). However, in some cases (both in sectors and enterprises) this type of instance is expressly created through the agreements reached in collective bargaining, and, as such, they are included in the agreements.

- *Provisions on training actions funding and –to a shorter extent– incentives for attending courses, fellowships, etc.*

Some examples of collective agreements even include funding schemes for training actions, for instance, by fixing the contributions of the enterprise and/or the workers, through deductions in their wages, to create training funds, or to allot them a special sum with the same objective. In other cases, it is possible to find agreements that develop policies which foster the training of the enterprise's workers, whether through the assignment of working time or financial assistance for that purpose.

- *Clauses establishing the employer's duty to provide training*

Through this kind of clauses the employer commits himself to provide the necessary training to workers in order to help them to carry out their job in a more efficient way, without them thinking they might lose their job because of qualification deficits. As a rule, this kind of agreements are based, on the one hand, on the effective acknowledgement of workers' right to receive training, and, on the other, on regarding training as part of the necessary entrepreneurial investment to achieve goals related to productivity and the quality of production or services.

- *The link between training programmes and staff reductions for budgetary reasons*

Some enterprises start staff reduction processes after introducing new technologies or as a consequence of diverse difficulties. In that sense, agreements have been made in order to minimise job losses and offer support to workers who have been made redundant by means of training actions. In such situations, the workers who have lower qualification levels are the most vulnerable ones, therefore, the chance of being able to receive training becomes a key aspect, whether to stay at the enterprise, or to have better tools to look for a new job.

- *Clauses that connect vocational training with remunerations and/or productivity*

Finally, there are some few cases of connection experiences between training policies and other labour aspects, such as remunerations and productivity. Agreements by which rises in remunerations –wages or extra-wages– depend on the improvement of productivity, have already been carried out in several enterprises of diverse countries in the region through the so-called “variable remuneration”.

neration models". However, some collective agreements by activity and enterprise level have taken a further step: in the understanding that productivity is a function of training, the increases in workers' qualification are translated into improvements in their remuneration. In spite of the incipient nature of these agreements, they are a possible path to take in terms of collective bargaining for trade unions.

Bargaining strategies⁸

Bargaining is an essential component of trade unions' work. Although it cannot be labelled as a struggle measure, it is, under normal conditions, a strategy to look for solutions and possibly to prepare struggle measures. Bargaining, then, adds to strikes and demonstrations –the traditional ways for trade unions to exercise pressure and to struggle.

In order for bargaining to be feasible and to produce significant results, certain basic conditions need to be present:

- *The political will to bargain:* bargaining must be the best alternative for both parties. Only those who are forced by the circumstances to take up the alternative of bargaining are in a suitable starting point to achieve a reasonable agreement.
- *A minimum number of interests in common:* no bargaining can possibly take place if parties have only reasons to continue the conflict but not to find a solution that will benefit both.
- *Personal readiness:* bargaining is a human process, made by individuals. Therefore, it is necessary that it has a basic ingredient: personal readiness to bargain.

It is important that the necessary conditions exist to carry out bargaining, and the chosen method to bargain is just as important. What follows are some useful recommendations to that respect:

- *Separate the person from the problem:* when we bargain with the other party, we are not dealing with an abstract representative; it is a person with emotions, a scale of values, different background and points of view, and quite unpredictable. Just like us.
- *Each bargainer has two types of interests: the substance and the relationship:* each of them wants to reach an agreement that satisfies the substantial interests which originated the conflict. But also they are interested in their relation-

⁸ Most of the contents of this item have been taken from: Graña, G. (coord.): *Manual de formación sindical para delegados de base de la industria de la construcción*. Cinterfor, Montevideo, 2002. This Trade Unions Guide is worth consulting, and it is available at: http://www.cinterfor.org.uy/public/spanish/region/ampro/cinterfor/publ/man_fs/manuafs.htm

ship with the other party, so that it may not affect future relationships and bargaining negatively.

- *Separate the relationship from the substance:* it is necessary to separate the problem from the personal relationship, by dealing with the substantial problem itself, while the relationship is based on clear-cut perceptions, plain communications and appropriate emotions.
- *Separate the process of generating from the process of deciding:* since the hyper-critical judgement hinders imagination, it is better to separate the creative act from the critical one, the act of thinking from the act of selecting an alternative.
- *Multiplication of options swinging between the particular and the general:* the task of generating alternatives includes four types of thoughts: the first one is to think about a particular problem; the second one is to make a descriptive analysis (situation diagnosis, problem classification, and provisional suggestion of causes); the third type of thought is to consider what could possibly be done; the fourth and last is to arrive to a precise proposal that could be taken to action.
- *Resort to the help offered by different professions and disciplines:* they may offer alternatives we have not primarily considered.
- *Generate agreements with different degrees of intensity:* if an agreement cannot be reached in terms of substantial issues, it may be reached on secondary issues.
- *Changes in the scope of agreements:* if the substantial could not be agreed on, it may be possible to make a partial agreement including fewer parts or lasting for a shorter period of time.
- *Search for mutual benefits and identification of shared interests:* it is important to remember that both parties may end up even worse than they are now. Shared interests are opportunities to may make bargaining more fluent.