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Negotiation as a mechanism for conflict prevention and resolution: positional negotiation and interest-based negotiation

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Types of negotiation according to the type of interdependence between the parties

- Conflict is an element that will always be present in labour relations. For this reason, the International Labour Organisation (ILO) promotes the existence of effective conflict management systems, among which negotiation stands out as an alternative dispute resolution mechanism characterised by the parties' control over the process, as well as the greater informality and speed that negotiation allows.
- The interdependence present in labour relations makes it possible to distinguish between positional negotiation and interest-based negotiation. In the first type of negotiation, only one of the parties can achieve the proposed goal, relating competitively with the other party. In the second type of negotiation, the relationship is a win-win, i.e. the achievement of one party's goal allows the other party to achieve its own goal as well. Understanding the characteristics and possible complementarity of these two types of negotiation is key to a successful collective bargaining process.
- In positional negotiation, the objective of the parties will always be to maximise the value of the agreement. In this context, the main strategy should be aimed at obtaining information, both on the party's objective and on the counterpart's point of resistance. These negotiations are characterised by three clearly distinguishable stages, namely the initial offers, the concessions and the closing of the negotiation.
- In interest-based negotiations, the aim is to reach the Pareto efficient frontier. This requires the development of strategies aimed at information exchange between the parties, collaboration, trust and clear communication in order to find agreements that are satisfactory for all parties involved in the negotiation process. This type of negotiation consists of four distinct stages, namely the identification and definition of the problem, the identification of interests, the generation of alternative solutions and, finally, the evaluation and selection of options.

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Background

The characteristics of the relationship between employers and workers imply the existence of a conflict. Conflict is inherent in interpersonal relationships. It is not a question of ignoring conflict, but rather of understanding it. This is why it is necessary to establish an effective system for conflict management, enabling conflict prevention and resolution when it is formalised.³

Nowadays, studying and analysing the effectiveness of the conflict prevention and resolution system is even more relevant in view of the important changes that can be detected in the labour market and in the organisation of work, situations that challenge access to labour justice as a formula for conflict resolution.⁴

So much so that the International Labour Conference of the ILO itself has repeatedly addressed the importance of expeditious, fair, impartial, accessible, transparent and effective dispute prevention and resolution mechanisms to promote social dialogue at all levels.⁵

This is framed in International Labour Standards that prescribe the complementarity of judicial and extrajudicial procedures for access to justice⁶, as well as provisions that point to the need to find ways of preventing conflicts in the field of labour.⁷

Access to labour justice presupposes adequate coordination and complementarity between judicial, quasi-judicial and extra-judicial institutions, with negotiation as an extra-judicial mechanism being relevant for this briefing note.⁸ In relation to out-of-court institutions as a dispute resolution mechanism, these have certain advantages if one considers the greater control of the parties over the

process, as well as greater informality and speed, being especially useful for conflicts of collective interest and conflicts of law with labour relations in force.⁹

Considering these advantages of negotiation as a mechanism for preventing and resolving conflicts¹⁰, this briefing note will focus on the conceptualisation of negotiation and the analysis of the different stages and procedures that characterise negotiation.

To this end, this briefing note will conceptualise and describe negotiation as an alternative dispute resolution mechanism. Subsequently, the interdependent nature of labour relations will be discussed in depth, explaining the effects this has on the type of negotiation that should take place between the parties. In this context, the third part will deal with two types of negotiation that arise depending on the interdependence of the parties, namely positional negotiation and interest-based negotiation. Finally, the procedure or stages of each of these types of negotiation will be explained, as well as the strategies to be developed by the parties depending on the type of negotiation they are involved in.

Negotiation, its conceptualisation and characteristics

Negotiation can be understood as the attempt - through discussion, persuasion and compromise - to reach an agreement with another party on one or more issues.¹¹

³ CIF, & ILO (2013). *Labour Dispute Resolution System: Guidelines for improved performance*. International Labour Organization.

⁴ International Labour Organization (2023). *Access to labour justice: Comparative law and practice on the prevention and resolution of labour disputes*. ILO.

⁵ See Resolutions and Conclusions of the 101st Session, 2012; 102nd Session, 2013; 107th Session, 2018; 112th Session, 2024.

⁶ See mainly Article 10(b) of Convention No 190; Article 8(2) of Convention No 169; Article 8 of Convention No 151; paragraph 14 of Recommendation No 198; paragraph 17 of Recommendation No 130 and Recommendation No 92.

⁷ There are provisions that explicitly set out preventive measures such as negotiation, namely paragraphs 3 and 4 of Recommendation n°203 on forced labour and paragraph 22 of Recommendation n°204 on the transition from the informal to the formal economy. In addition, there are many provisions concerning conflict prevention based on alternative dispute resolution mechanisms and cooperation at the workplace, e.g. Article 7(2) of Convention No. 182; Articles 7 and 13 of Convention No. 158; paragraph 2(1) of Recommendation No. 129 and paragraph 1 of Recommendation No. 94.

⁸ See Arellano Ortiz, P. (2025) "Alcanzar la justicia social a través del acceso a la justicia laboral", in García Murcia, J. and Torres de León, V. (dir) *Acceso a la justicia en el ámbito de las relaciones de trabajo. Una mirada desde los sistemas latinos*, Tirant lo Blanch, Valencia, pp. 19 - 45.

⁹ International Labour Organization (2023). *Access to labour justice: Comparative law and practice on the prevention and resolution of labour disputes*. ILO.

¹⁰ See Arellano Ortiz, P. (2024) "Mecanismos de resolución de disputas laborales a través de la negociación colectiva: desafíos y proyecciones", in García Murcia, J. y Torres de León, V. (dir) *Negociación colectiva y solución de conflictos de trabajo*, Tirant lo Blanch, Valencia, pp. 27-57.

¹¹ International Labour Organization (2003). *Collective Bargaining and Negotiation Skills; a Resource Book for Employers*. ILO.

In this way, negotiation presumes the existence of certain elements in order to take shape. Specifically, a negotiation is formed when i) there are two or more parties, ii) linked by a conflict of needs and desires that must be resolved and iii) in which the parties are interdependently related, i.e. they need each other to achieve their respective objectives. As a result, iv) the parties consider negotiation to be the most appropriate way to resolve the conflict, and therefore voluntarily make use of it. Moreover, iv) negotiation implies a modification in the initial positions of the negotiators, in order to resolve the problem.¹²

Negotiation has originally been understood as a process with clearly identifiable phases. First, each party conducts a mutual analysis exercise to determine the other party's position and its level of commitment to that position. Subsequently, they move towards a state of expectation structuring, i.e., they seek to influence the other party to negotiate their key commitments. When the parties have identified areas of possible agreement, a third phase begins in which they seek common ground and proposals for solutions that will make it possible to reach the aforementioned agreements. In this way, in those cases in which the party considers that a satisfactory level of agreement has been reached with respect to one of its needs, it should make an acceptable offer to end the negotiation, thus satisfying its desire or need and preventing or ending the respective conflict.¹³

The series of stages described above provide a general outline of a negotiation procedure. In the following, however, the procedure will be reviewed according to the type of negotiation.

Determining the type of negotiation according to the type of interdependence between the parties

All social organisations - including those in the context of labour relations - involve a subordination of wills.¹⁴ From a legal perspective, this subordination is manifested in the

exercise of a power of direction and control by an employer towards a worker, who sees his or her freedom limited with regard to the way in which a certain productive activity is carried out.¹⁵

However, this affirmation should not ignore the fact that the employer is not a self-sufficient entity and, therefore, will always require the worker to achieve its objectives. This is based on an ontological conception of a power relation that necessarily assumes a polar opposite, but especially because the productive process generates value when the worker carries out his activity according to the guidelines given by his employer, hence, regardless of the ownership of the means of production, the worker is essential for the generation of surplus value.¹⁶ This characteristic of labour relations is fundamental to understand that between an employer and workers the relationship can be characterised as an interdependent relationship, in the sense that the achievement of the objective or result of one of the parties presupposes the action of the other party.¹⁷

The existence of an interdependent relationship does not mean that both parties have the same objectives or seek the same outcomes but simply means that one party requires the other for the achievement of its own objective. This is in line with the point made at the beginning of this briefing note that employer-employee relations are essentially conflictual relations, due to differences in the interests and objectives of each of the parties.¹⁸

In the first type of interdependence called zero-sum, distributive or positional relationship, only one of the parties can achieve the proposed goal, relating competitively with the other party, since if one of them achieves the goal, the other party is unable to achieve its respective objective. In contrast, non-zero-sum, integrative or interest-based interdependence is characterised by the fact that the relationship is one of mutual gain, i.e. the achievement of one party's goal enables the other party to achieve its own goal as well.¹⁹

The problem with positional relationships is that as they are competitive relationships, they assume that the solution to

¹² Lewicki, R. J., & Barry, B. (2012). *Fundamentals of negotiation* (2nd ed). McGraw-Hill.

¹³ International Labour Organization (2003). *Collective Bargaining and Negotiation Skills; a Resource Book for Employers*. ILO.

¹⁴ Araujo, K. (2016). *Fear of subordinates. A theory of authority*. LOM.

¹⁵ Castel, R. (2012). *The rise of uncertainties: Work, protections, status of the individual*. Fondo de Cultura Económica and Kahn-Freund, O. (2019). *Labour and law*. Comares.

¹⁶ Castel, R. (2012). *The rise of uncertainties: Work, protections, status of the individual*. Fondo de Cultura Económica and Boltanski, L., & Chiapello, E. (1999). *The new spirit of capitalism*. Gallimard.

¹⁷ Lewicki, R. J., & Barry, B. (2012). *Fundamentals of negotiation* (2nd ed). McGraw-Hill.

¹⁸ CIF, & ILO (2013). *Labour Dispute Resolution System: Guidelines for performance improvement*. International Labour Organization.

¹⁹ Lewicki, R. J., & Barry, B. (2012). *Fundamentals of negotiation* (2nd ed). McGraw-Hill.

the conflict is a win-win situation for one of the parties, in that the other party necessarily loses because its interest is not satisfied.

Positional relationships usually refer to negotiations in which the parties divide scarce or limited resources, for example, money. It is important to note that often the parties to a conflict may understand that their relationship is positional in nature, when in fact it is an interest-based relationship. This ignorance or prejudice about the type of relationship that characterises a given conflict occurs when the parties have not focused on studying the interest behind each position.²⁰

An example of such a situation is a conflict in a room where two people are sitting next to a window. In this case one person wants the window to be open while the other wants to keep it closed. Initially we can argue that the relationship will always be positional in character, since the satisfaction of one party's goal prevents the other party from fulfilling its respective goal. In other words, if one chooses to open the window, the objective of keeping it closed is made impossible and vice versa, hence there will always be a winning and a losing party.

However, by focusing on determining what is in the interest of each party, rather than just the position of the two people within the library, it can be argued that the type of relationship can be conceived not as a positional one, but as an interest-based one. For example, it is theoretically feasible to argue that the person who wants the window open is interested in ventilating the air inside the room and the person who wants the window closed is interested in avoiding noise from outside. Thus, if we open the door instead of the window - since it does not face a noisy outside - the achievement of one party's goal allows the other party to achieve its own goal as well, i.e. the silence of the room can be maintained, but the atmosphere can be ventilated.

Negotiation stages and strategies depending on the type of interdependence

This section will explain how the type of interdependence can condition the stages and strategies that the parties must adopt to carry out a negotiation that allows for the resolution of the conflict.²¹

Positional Negotiation

In positional negotiations, the objective of the parties will always be to maximise the value of the agreement. To do this, the parties must discover or influence the counterpart's point of resistance, i.e. the point at which the negotiator will break off the negotiation process because he or she has moved too far away from his or her objectives or interests.

In this context, the main strategy should be to obtain information. This information should make it possible to assess the negotiating party's objective as well as the counterpart's point of resistance, since the success of the negotiation depends on the negotiating party's ability to reach an agreement that comes as close as possible to the counterpart's point of resistance.

In this context, the stages of the negotiation are key moments, as they allow for obtaining the information necessary to ensure the success of the process by revealing the other party's point of resistance.

Negotiations of a positional nature have three clearly distinguishable stages, namely the initial offers, the concessions and the closing of the negotiation.

Initial offers provide insight into the range of the negotiation delimited by both parties. It is important to emphasise that, although an exaggerated initial offer increases the negotiation range and, consequently, gives the negotiator greater mobility, it can also generate the risk of reaching the counterpart's points of resistance, which will lead to the termination of the negotiation process.

Once the initial offers made by the parties make it possible to determine the negotiation range, a new stage in the process begins, called the concessions stage.

²⁰ Fisher, R., Ury, W., & Patton, B. (2001). *Yes...OK!* Standard.

²¹ It should be noted that the approaches made by Lewicki, R. J., & Barry, B. (2012) will be used for this. *Fundamentals of negotiation* (2nd ed). McGraw-Hill.

The concessions made by the parties should not be fortuitous and, consequently, they are a very relevant instance for obtaining information on the counterpart's point of resistance, in other words, for the development of the strategy for this type of negotiation. This is because concessions must be gradual and, as the difference between one concession and another decreases, it should be interpreted that the negotiation range has been reduced to the point of resistance.

It is the concessions that each party makes that bring the negotiation process to a close by means of an agreement, i.e. the third stage in a positional negotiation process. Normally, the technique used to reach a final agreement in positional negotiation is to split the differences between the last concessions made by the parties.

Interest-based negotiation

The characteristics of positional negotiation, i.e. negotiation used when only one of the parties can achieve its objective, making it impossible for the other party to do so, were described above. However, there are also relationships in which the achievement of the goal of one of the parties does not prevent the other party from achieving its own goal, in which case non-zero-sum, integrative or interest-based interdependence relationships are formed.

In interest-based negotiations, the aim is to reach the Pareto efficient frontier²², i.e. to reach an agreement at a point where the improvement in the position of one party translates into a detriment to the position of the other party.²³ For this to happen, there must be a commitment between the negotiating parties to understand each other's interests and to seek agreements that meet those needs.

The strategy in interest-based negotiation is diametrically different from that of positional negotiation. In positional negotiation, obtaining information about the opponent's points of resistance is key to a successful agreement, so strategies should always be aimed at uncovering or hiding this information. In interest-based negotiations, however, the exchange of information is fundamental to

understanding the interests of each party and thus reaching agreements that are satisfactory for all those involved in the negotiation process.

Therefore, interest-based negotiation is most effective when there is a commitment by the negotiators to collaborate, as well as trust and clear communication that allows for the resolution of the conflict through agreements that are satisfactory to all participants in the negotiation process.

Given the nature of interest-based negotiations, it is argued that the negotiation process consists of four clearly distinguishable stages, namely: i) problem identification and definition; ii) identification of interests; iii) generation of alternative solutions; and, finally, iv) evaluation and selection of options.

The first stage consists of problem definition. For this, it is necessary to pose the problem for the parties in a neutral and depersonalised way, thus allowing its conceptualisation to be acceptable to all those negotiating. In addition, the problem must be conceptualised as a goal and not as a process, thus making it possible to know clearly when the problem has been solved. In short, problem identification assumes that the parties can be absolutely clear about the characteristics of the problem and, especially, can understand when the problem has been solved.

The stage described above is the answer to the question of the what, i.e. to know what is generating a conflict between the negotiating parties. Once what has been determined, a second stage in the negotiation process is to answer the question of why, i.e. why a certain position is generating a conflict between the parties.

The why question allows us to understand and identify the interests behind each position. This is fundamental for the proper resolution of the problem, as it allows us to determine the concerns, needs or desires of each negotiating party and, ultimately, to determine what the negotiating parties want once the negotiation process is over.

²² The Pareto Efficient Frontier is a premise originally constructed from the social sciences to address the allocation of resources, with the understanding that in order to consider a resource allocation to be efficient there should be no other feasible configuration that improves the situation of one individual without harming another. This can be extrapolated to negotiations on the understanding that they will be efficient arrangements when there are no arrangements that the parties

would have wanted or, if there were, would result in one of the parties having objections.

Tsay, C., & Bazerman, M. H. (2009). *A Decision-Making Perspective to Negotiation: A Review of the Past and a Look to the Future*. *Negotiation Journal*, 25(4), 467-480.

²³ Lewicki, R. J., & Barry, B. (2012). *Fundamentals of negotiation* (2nd ed). McGraw-Hill.

It should be noted that the interests of the negotiating parties may not only refer to interests of a substantive nature and linked to the central problem being negotiated but may also refer to interests regarding the negotiation process itself or to an interest in the relationship with the other party.

Having conceptualised the interests underlying each party's position, a third stage in an inclusive negotiation process begins, which consists of generating alternative solutions. This is a much more creative phase, as both sides must develop options that allow the interests of all negotiating parties to be satisfied.

Here there is a fundamental difference with respect to the positional negotiation process, since in this case the solutions to the problem must be aimed at satisfying the interests of both parties and not at the triumph of just one of the negotiating parties.

Finally, the last stage of the negotiation process begins, which aims to evaluate and select the options identified in the previous step. Specifically, the negotiating parties must narrow down the range of options proposed in order to determine which solution is the most acceptable for the final resolution of the identified problem. In this sense, if no solution satisfies the interests of the parties, it usually means that the previous steps have not been completed in a good manner and, consequently, the negotiation should go back to the first step, i.e., to the definition and delimitation of the problem.

For an adequate selection of options, it is necessary to evaluate them according to previously defined criteria that meet quality and acceptability standards for all those who have participated in the negotiation process. Therefore, personal preferences should always be justified using the criteria previously determined by the parties.

Ultimately, the interest-based negotiation process ends when both parties have agreed on a solution that satisfies the interests of all those involved in the process.

Final reflections

This briefing note has referred to negotiation and the importance of this alternative dispute resolution mechanism in meeting certain objectives set by the ILO, such as access to labour justice. It was also explained that its conceptualization requires attention to the type of relationship between the employer and the worker.

In particular, it was pointed out that labour relations are characterized by interdependence, which makes it possible to distinguish between positional negotiation and interest-based negotiation.

In the first type of negotiation, only one of the parties can achieve the proposed goal by relating competitively with the other party. In contrast, in interest-based negotiations the relationship is one of mutual gain, i.e. the achievement of one party's goal allows the other party to achieve its own goal as well.

The advantage of interest-based negotiations is that they allow the parties to reach a solution that reaches the Pareto efficient frontier, i.e., it is an agreement at a point where any improvement in the position of one party translates into a detriment to the position of the other party. In short, this type of negotiation makes it possible to reach solutions that satisfy the interests of all those involved in the process.