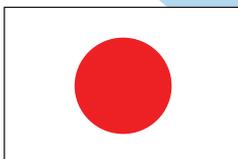


DISCUSSION PAPER
Pham Thi Thu Lan

COLLECTIVE BARGAINING IN VIETNAM



ILO/Japan
Multi-bilateral
Programme



100
1919-2019
SOCIAL JUSTICE
DECENT WORK



Summary

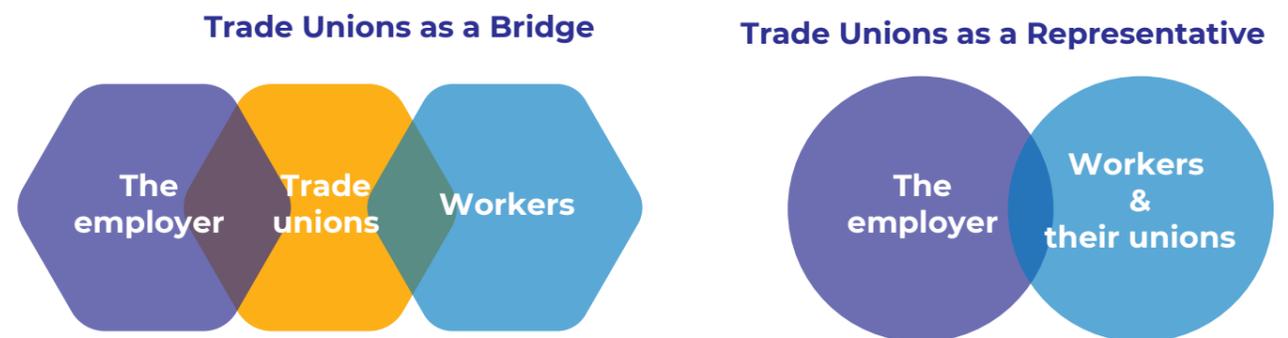
Collective bargaining was established in the first Labour Code of the Socialist Republic of Viet Nam in 1994, in which trade unions are assigned to represent workers in collective bargaining with the employer at all levels. Since then, trade unions have conducted collective bargaining in the form of an intermediary standing between the workers and the employer, collecting workers' issues for collective bargaining, representing both sides in choosing and deciding relevant content for negotiations, and trying to bring the wishes and expectations of both sides closer to each other. This is called bridge negotiations. Bridge negotiations are a legacy of union operation in a centrally planned economy, in which there is no such term as "bipartite labour relations". In bridge negotiations, trade unions play a role in resolving disagreements between management and employees, among management themselves, and among workers themselves, based on the law and with reasonable rational thinking for everyone in the workplace. Upon Viet Nam's entry into the market economy, trade unions were legalized as representative organizations for workers, but discrimination and interference by the employer have prevented trade unions from standing solely on the side of the employee. Thus, genuine collective bargaining is hindered and trade unions are forced to continue with bridge negotiations. Bridge negotiations neutralize worker participation, with workers left mainly to provide information to trade unions. Workers themselves are unaware and unconscious of their right to collective bargaining and are not using this right in establishing the employment relationship at the workplace. Yet their passive participation still plays a role in the subsequent results of negotiations.

A striking feature of negotiations in Viet Nam is that they only take place in an authentic manner when strikes occur; therefore, negotiations in Viet Nam are more about problem-solving than collective bargaining. Practices in Viet Nam show that collective bargaining is not used as a tool to adjust labour relations at the enterprise, sectoral, or national levels. The content of collective bargaining agreements (CBAs) with any provisions higher than those established by the law, if any, is mainly brought about by the willingness and voluntary sharing of the employer with the workers, rather than as the result of collective bargaining.

Bridge and Representative Negotiations: the Role of Trade Unions

"BRIDGE" VS. "REPRESENTATION"

The terms "bridge" and "representation" as used here refer to the actual position of trade unions in the relationship between the employer and workers, not to mention the legally defined role of trade unions. "Bridge" means standing in the middle and taking a role on behalf of both sides to solve problems that arise in the relationship between the two sides. "Representation" means to take sides and act on behalf of one side to solve problems that arise in the relationship with the other side.



Definition of Collective Bargaining (Convention No. 154, ILO)

Collective bargaining extends to all negotiations which take place between an employer, a group of employers or one or more employers' organisations, on the one hand, and one or more workers' organisations, on the other, for--

- (a) determining working conditions and terms of employment; and/or
- (b) regulating relations between employers and workers; and/or
- (c) regulating relations between employers or their organisations and a workers' organisation or workers' organisations.

Article 2, Collective Bargaining Convention, 1981 (No. 154).

In bridge negotiations, trade unions explore bilateral wishes and expectations; they analyze, assess and select the issues that: (1) meet the expectations of both sides, and (2) upon which trade unions believe both sides can reach an agreement. The trade unions negotiate with/persuade both sides so as to pull them closer together. However, with the trade unions' legal role as the workers' representative organization, trade unions will support workers' wishes and try to convince the employer to meet their expectations. In the case that such expectations fail to be met regardless of the trade unions' efforts to convince the

employers, the trade unions shall explain the situation to the workers, analyze the situation, and persuade the workers to understand and accept the facts as they exist. If the workers still do not accept these facts, the workers will react spontaneously at a certain time, often in the form of a collective work stoppage.

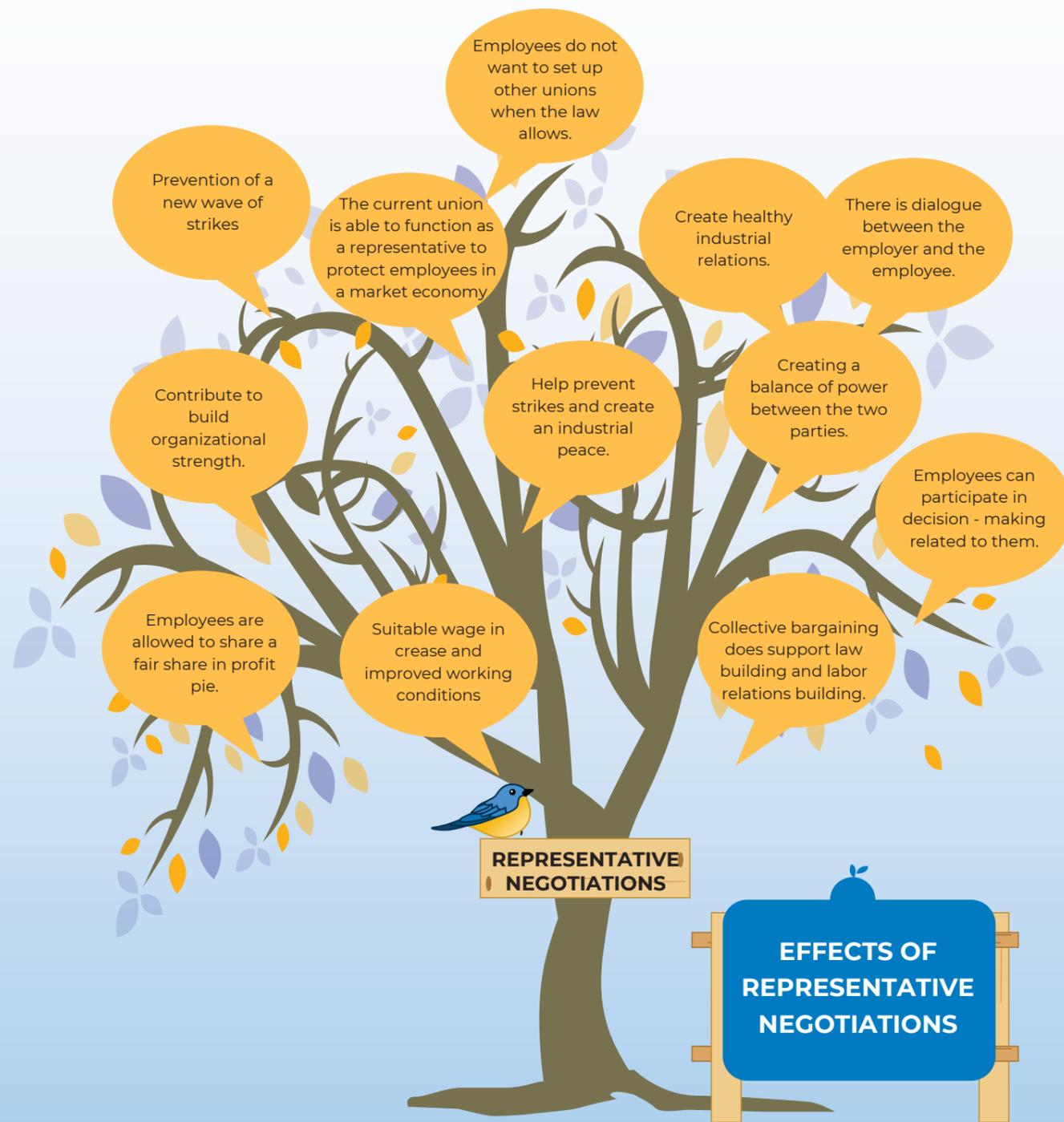
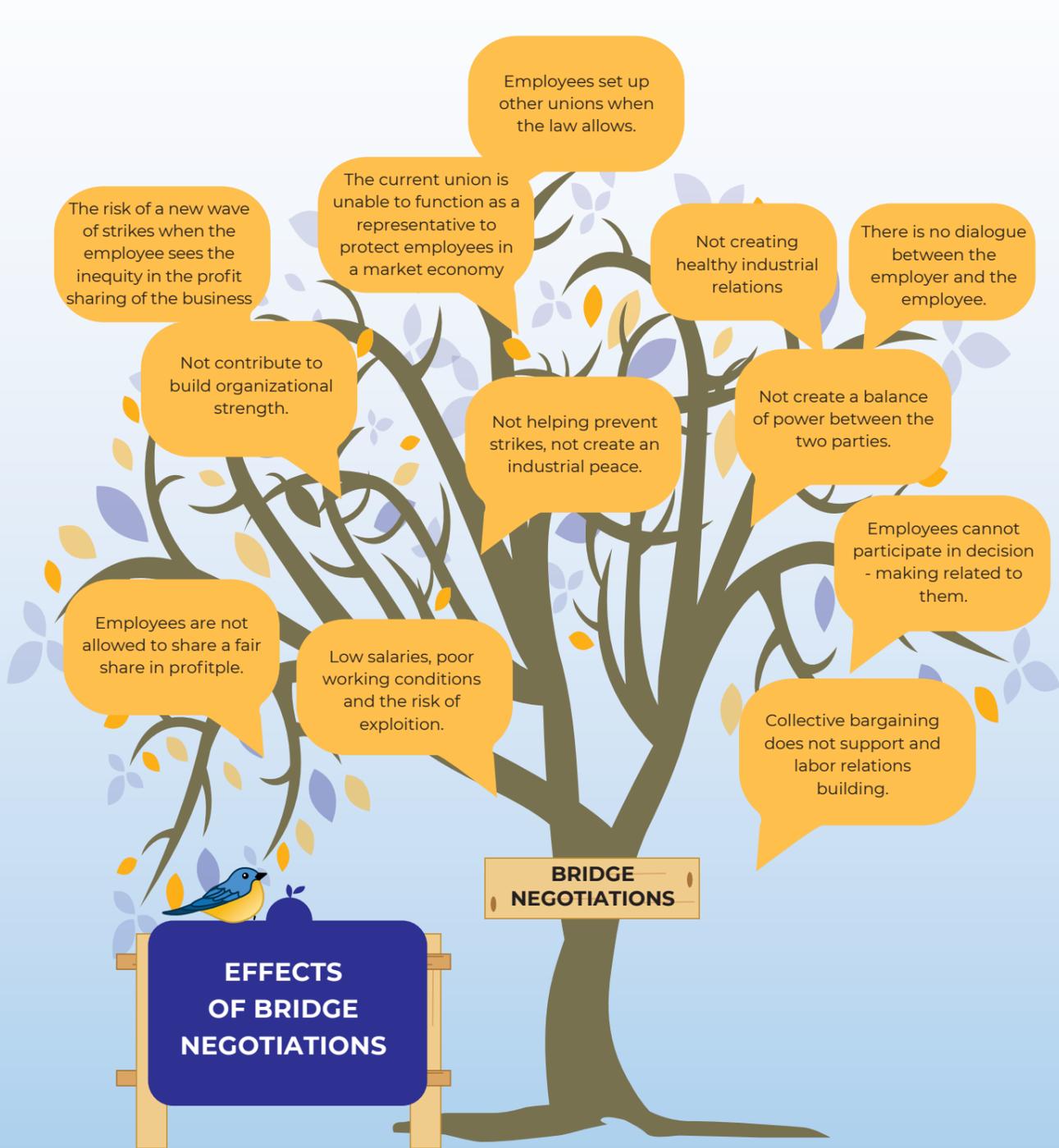
In representative negotiations, trade unions take the workers' side and discuss with workers the content for negotiation, approaches and strategies, and then come to a decision with the workers. Then the trade unions represent the workers during the collective bargaining process. When negotiations face a deadlock, the trade unions discuss the issues once again with the workers to find a solution.

Characteristics of bridge and representative negotiations

	Bridge negotiations	Representative negotiations
<i>Union independence</i>	Members of the trade union executive board should wear two hats as management and as union officials so that they can easily "negotiate/persuade" both sides.	Trade unions are totally independent from the employer/management. Trade union personnel and the workers share the same problems in their relationship with the employer so they can stand on the side of the workers and negotiate with the employer on behalf of the workers.
<i>Trade unions' role</i>	Concerned about the demands of both sides.	Concerned about workers' demands. The employer has its own representative to care about its demands.
<i>Trigger for collective bargaining</i>	Trade unions (as the main actor).	Workers and trade unions (workers as the main actor; workers and their union are one).
<i>Decision-making of trade unions in collective bargaining</i>	Trade unions assess the situation, decide the issues of negotiation, and propose solutions that are harmonious with both sides; then, they discuss and persuade both sides to agree. The solution can be adjusted after getting more information from both sides during the negotiation process.	Trade unions hold discussions with the workers and together they jointly decide on a solution, then the trade unions conduct dialogues and negotiate with the employer on behalf of the workers on an equal footing.
<i>Results of negotiation</i>	Results depend on the goodwill of the employer concerning provision of any benefits higher than those established by the law. Collective bargaining faces an impasse if the employer is not willing.	Results depend on the bargaining power of the union and the collective strength of the workers.
<i>If the employer does not offer goodwill</i>	The trade union gets stuck in negotiations.	Trade unions use the workers' collective strength in escalation and strike (as a last resort).

	Bridge negotiations	Representative negotiations
<i>Worker participation in collective bargaining</i>	Passive workers, who do nothing more than provide information to trade unions and then wait for the results of negotiation from the union.	Active and proactive workers, who propose negotiation content and hold discussions with the union on negotiation strategies and ways to achieve objectives.
<i>Collective action and strikes</i>	Spontaneous by the workers. The union does not build or organize worker solidarity or use such strength to support collective bargaining.	Trade unions build and organize collective actions and strikes. "Solidarity is strength".
<i>The workers' reaction to trade unions</i>	The workers blame trade unions for any failure. Workers do not really see trade unions as their representative.	Workers see their responsibilities in collective bargaining and, together with the union, seek solutions to deadlocks in collective bargaining.
<i>The legal system in support of collective bargaining</i>	The law should provide details concerning wages, working conditions, conditions of employment, etc., to set the basis for the trade union to negotiate in a bridge role. Negotiations are mainly based on the content stipulated by laws and other legal documents. In other words, these are negotiations about implementing the law. Negotiating provisions better than the law depends completely on the willingness of the employer or the spontaneous reaction of the workers.	The law only stipulates the minimum for wages, working conditions, conditions of employment, etc., and provides for protection of the right to collective bargaining and related rights in support of collective bargaining. Trade unions and the employer then negotiate wage rates, working conditions, employment benefits, and other conditions that are higher than the minimum and in accordance with the actual situation of the enterprise.
<i>The characteristics of negotiations</i>	It is not a genuine negotiation process between the workers who are represented by trade unions and the employer, and anti-union discrimination and interference are not much matter of concern. Trade unions are a third party that deals with both parties' demands, and tries to explain and persuade the other party to accept a compromise solution if one party does not fully agree. There is no need for the role of the state labour agency as a third party to facilitate the negotiation process as trade unions are already occupying the middle role between workers and the employer.	It is a genuine negotiation process between the workers who are represented by trade unions and the employer. The role of the state labour agency is important so as to facilitate and resume negotiations when there is a deadlock. An effective legal system for regulating and controlling unfair labour practices and discrimination and interference by the employer arising during negotiations is required so that the workers/trade unions can engage in collective bargaining.

THE EFFECTS OF THE TWO TYPES OF NEGOTIATION



Depending on the outcome of production and business as well as goodwill of the employer, bridge negotiations may bring some better conditions for workers than those provided for by the law. But if the employer does not offer any goodwill, workers' wages will be low and the working conditions will be poor, and there is the risk of exploitation. The reality in Viet Nam, which has experienced more than 7,000 strikes since 1995, is that strikes are mainly caused by low wages and insecure working conditions. This suggests that waiting for "goodwill and reasonable sharing" from the employer is not the solution. This also implies that when workers are aware of fairness and their contribution to the profit pie of the business, they will be angry about injustice, which leads to the risk of strikes different from the current type of strikes where workers only want to have their wages improved and minimum working conditions secured.

Bridge negotiations show that the workers and trade unions are not one. As a result, workers do not perceive their role in the union and in building the strength of the organization. This is dangerous as workers themselves could form another organization (once this is permitted by law) if the current union cannot fulfill its role of representing the workers as defined by the law. Bridge negotiations do not help prevent spontaneous strikes; rather, the union expects spontaneous strikes to occur in order to help it negotiate with the employer. This means that bridge negotiations do not help to create industrial peace and a non-strike working environment. Bridge negotiations do not create a balance of power between the two sides: the foundation upon which genuine collective bargaining takes place. Workers remain the inferior without the ability to engage in workplace decision-making related to their employment. As a result, bridge negotiations cannot contribute to building harmonious labour relations in the workplace and do not contribute to improving legislation at the sectoral and national levels.

On the contrary, representative negotiations mean that the workers and trade unions are one, and the workers build the trade union organization based on the strength of their solidarity, thereby creating a balance of power with the employer. This balance of power is the foundation for promoting collective bargaining and bringing about improvement in wages and working conditions in line with the growth of the business and the socio-economic situation of the country, contributing to development of the law, and promoting stable and progressive labour relations.

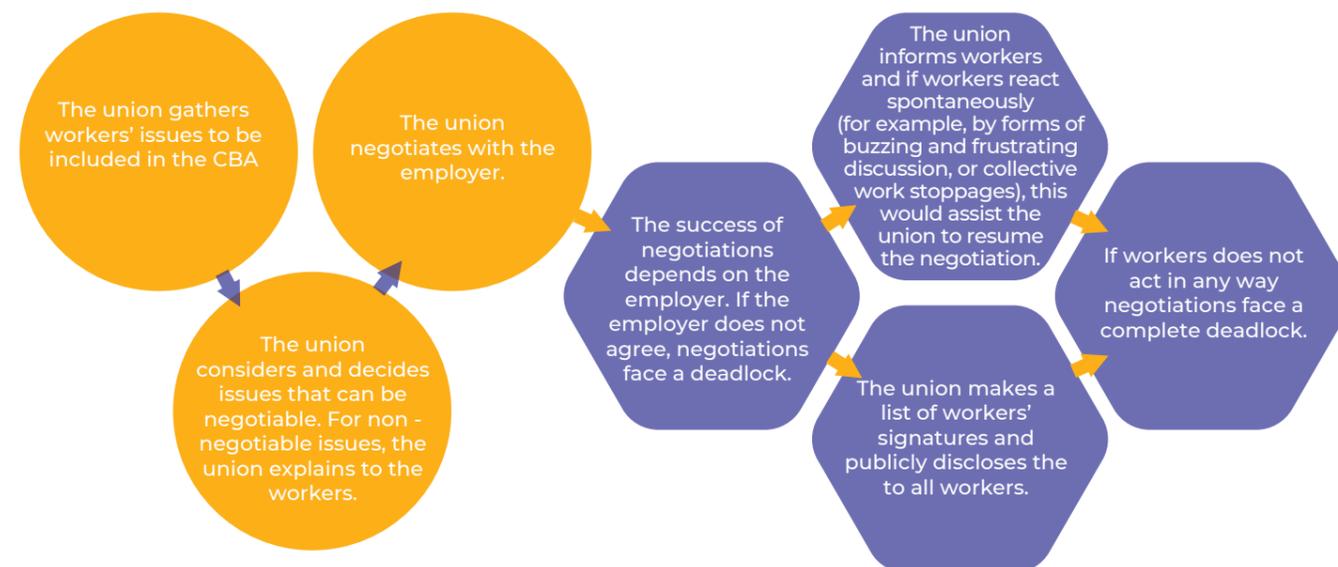
The Reality of Collective Bargaining in Viet Nam

Collective bargaining in Viet Nam is mainly conducted at the enterprise level. By the end of 2018, 28,876 CBAs have reportedly been signed at the firm level, which accounts for 60,6% of all unionized enterprises.

Regarding multi-employer CBAs, three agreements have been signed, including a CBA among tourism enterprises in Da Nang, a CBA among garment enterprises in Ho Chi Minh City, a CBA among electronic enterprises in Hai Phong, a CBA among wood - processing enterprises in Binh Duong and two CBAs among tourist enterprises in Quang Ninh and Khanh Hoa. These are the very first multi-employer CBAs in Viet Nam and were undertaken within the pilot program of the Industrial Relations Project of the ILO in Viet Nam.

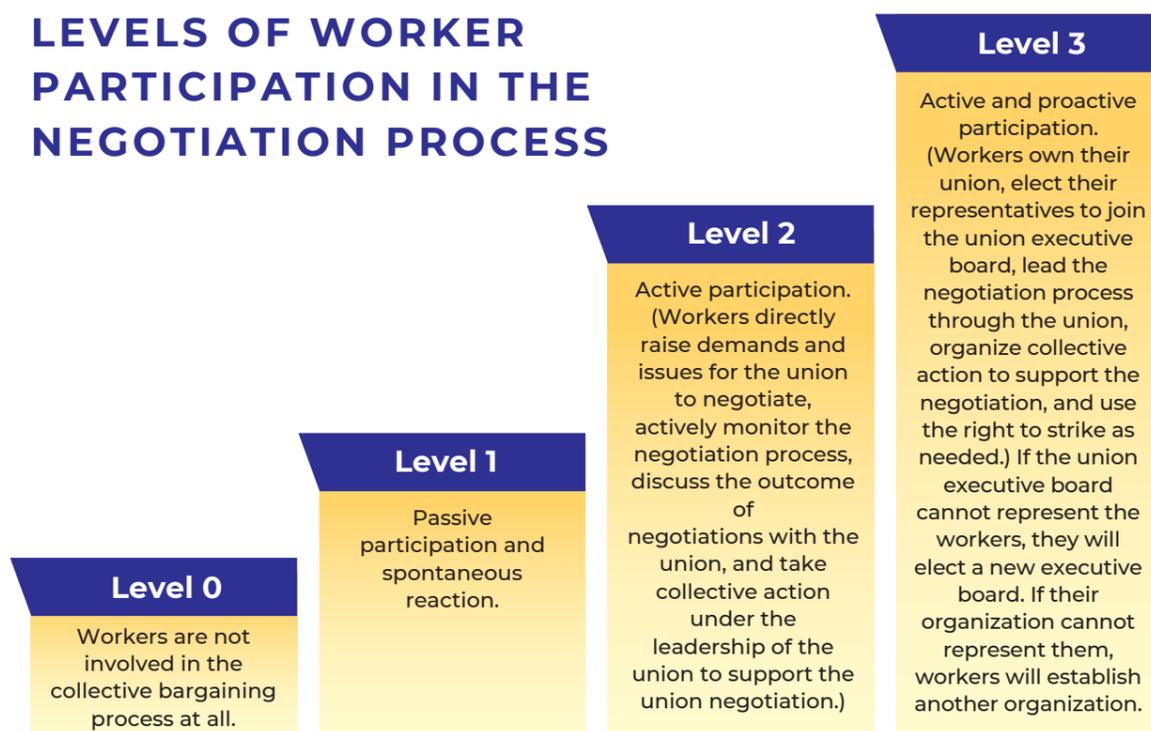
Regarding industrial CBAs, there are CBAs in the textile and garment sector (covering 70 enterprises under the Viet Nam Garment and Textile Group), the railway sector, the rubber sector, the post office, and the steel sector. At the provincial level, there is a CBA in the garment and textile sector in Binh Duong (covering 13 enterprises) and a CBA in the garment and textile sector in Hanoi (covering 27 enterprises). Though called industrial CBAs, these CBAs are, in fact, also multi-employer CBAs, but they have a broader coverage of enterprises in the sector.

Collective bargaining in Viet Nam usually follows the below process:



This process shows that workers play a passive role in collective bargaining. It is very rare for the union to prepare a list of worker signatures and make it public to all workers (an idea initiated when VGCL implemented the pilot program on bottom-up membership development in 2014) as this strategy creates a confrontation between enterprise union officials and the employer; and union officials are easily exposed to acts of discrimination from the employer. Therefore, if negotiations face a deadlock, the best thing they can do is to inform the workers. Some trade union officials shared that they have informed workers in the hope that they will take collective action, based on which the union can resume negotiations.

LEVELS OF WORKER PARTICIPATION IN THE NEGOTIATION PROCESS



The current negotiation process in Viet Nam shows that worker involvement in collective bargaining is only at Level 0 or Level 1. The fact that workers do not participate or passively participate in collective bargaining shows that these are bridge negotiations, in which the union acts as an intermediary body connecting employers and workers and “negotiates” on behalf of both sides. The union tries to match the desires of the two sides so as to create harmonious labour relations; and, as an organization representing the workers, the union often tilts more towards the workers’ side and tries to persuade the employer with logic and rational reasoning in hopes of achieving the highest possible benefits for the workers.

WORKER PARTICIPATION: ACTIVE VS. PASSIVE

Active Participation	Passive Participation
<ul style="list-style-type: none"> • Workers know that collective bargaining is their right. • Workers are aware of the process and how to conduct collective bargaining. • Workers recognize that collective bargaining is their responsibility. Success or failure of collective bargaining is up to them. • Workers gather issues that need to be negotiated and discuss priorities. • Workers and their union discuss the strategy for negotiation, including: preparation of negotiation options and tactics (give or take, optimal limits/settlements, mandatory contents of the CBA), development of arguments for proposals, logistical preparation for the negotiation process, planning of collective actions when negotiations face a deadlock, monitoring the implementation of the agreement, discussing solutions and measures when the employer violates the agreement, preparing for re-negotiations before the agreement expires, and so on. • Workers discuss collective actions, including strikes as a last resort, and they are ready to act through their union and under the leadership of the union. • Workers discuss ways to protect union officials who may be discriminated against in the negotiation process and to plan legal measures, if needed. • The workers accept responsibility if the results of negotiation are not as expected and they do not blame the union. 	<ul style="list-style-type: none"> • Workers do nothing and wait for the union to ask for their opinion, providing information accordingly. • Workers pay union dues and wait for the union to work on their behalf and solve their problems. • Workers blame the union when the union fails to achieve the results they desire in collective bargaining.

Real collective bargaining only occurs when worker participation reaches Level 2 or Level 3. In other words, only when workers participate in the collective bargaining process at Levels 2 and 3 is it genuine collective bargaining. If worker participation is at Level 0 or level 1, then it is just problem-solving negotiations.

Problem-Solving Negotiations	Collective Bargaining
<ul style="list-style-type: none"> • Only to resolve a conflict right after it happens. • Trade unions stand between the workers and the employer to reconcile the two sides. The workers hold a weak position. • Strikes can occur at any time if workers are feel pressured by accumulated anger, even if the CBA is still valid. • Negotiation takes place only after a conflict / strike. 	<ul style="list-style-type: none"> • A continuous, regular and periodic process for a signed agreement so as to prevent conflict. • Trade unions represent the workers. Trade unions are on equal footing with the employer. • Strikes only occur if the employer refuses to negotiate or come to an agreement. No strikes during the the agreement's period of validity. • Negotiations can start whenever a party proposes, or when the agreement expires.

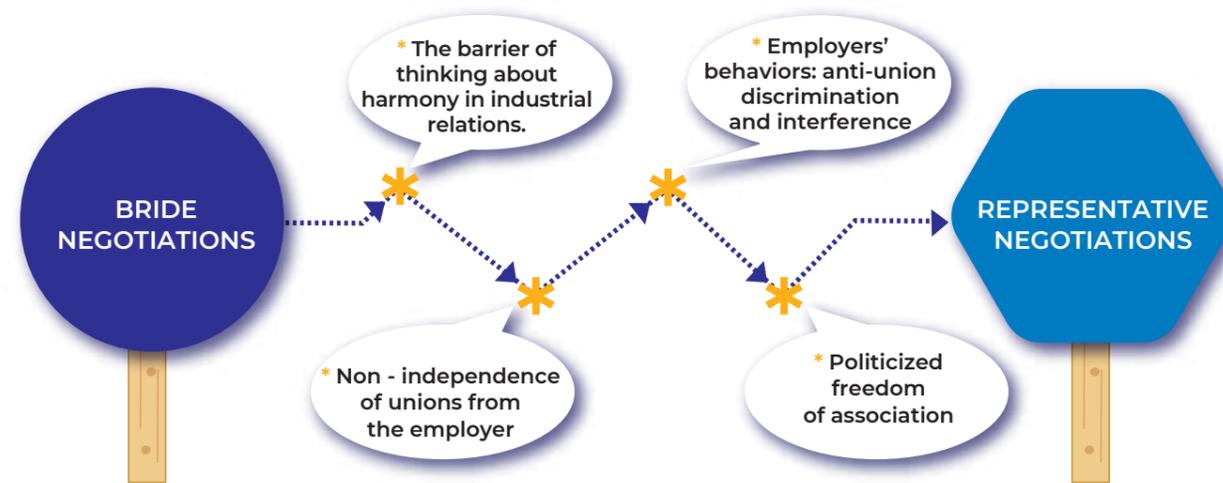
In Viet Nam, the popular negotiation model at present is problem-solving negotiations.

Why are workers in Viet Nam passive in collective bargaining?

- In a large number of enterprises in Viet Nam, it is common for the person who holds a leading or managerial position in the enterprise, such as the head or deputy-head of the human resource department, or even senior managers such as the director or deputy-director of the company, to also join the union executive board and, in fact, to often hold the position of union president. This situation makes workers think that the union is not really their organization.
- Workers in Viet Nam do not think that the union is them and that they are the union. They think the union is an organization to which they pay union fees and they wait for the union to solve their problems.
- The organizing approach used by the current trade unions makes workers passive. Trade unions approach the employer and convince them to agree to the establishment of a union at the enterprise as prescribed by law.
- Even when union organizing is conducted from the bottom up, the union's operational pattern reverts to the old model, i.e. the trade unions ask the employer for approval before conducting union activities.
- After the employer approves of the formation of a trade union at the workplace, upper-level trade unions approach workers to explain the benefits trade unions can bring them if they join the union. Essentially, the union is offering "promises" to bring good things to the workers. Even with the pilot bottom-up organizing of the Viet Nam General Confederation of Labour where upper-level trade unions meet workers directly to advocate for union formation instead of meeting with the employer as in the past, the approach is to discuss the common issues of that workers have and this gives a sense of "promise" to workers that their problems will be solved if they join the union. Approaching workers in a "promise" way instead of discussing with workers how they could solve their problems through their union or by formulating a strategy of action in the union does not help workers to master their organization/union after the union is established.

As a result, workers wait for trade unions to implement their "promises"!

Barriers to Representative Negotiations in Viet Nam



Barriers to Representative Negotiations in Viet Nam

THE BARRIER OF THINKING ABOUT HARMONIOUS AND STABLE LABOUR RELATIONS

There are two different ways for considering harmonious and stable labour relations: one is that the actors in industrial relations neither want nor accept conflict, and therefore, they seek ways to end conflict as soon as possible, mainly by persuading the employer to meet the expectations of the workers; the other is to accept conflict and consider it a normal and natural thing in industrial relations and to promote dialogue and negotiations for satisfactory settlement so as to prevent conflict, thereby creating harmony and stability in industrial relations.

In Viet Nam, all actors from the government, employers, and unions think of harmony and stability in the first way. The parties do not want strikes to occur, and when a spontaneous strike occurs, an inter-agency delegation including representatives of the labour agency, inspection, unions, etc., is formed immediately to address the problem so as to stop the strike as quickly as possible. However, no mechanism for dialogue and collective bargaining is established after that, which leads to another spontaneous strike when workers become frustrated and annoyed once again. Because strikes are unwanted, trade unions are expected not to organize strikes and even, trade unions could be blamed by the political system when a spontaneous strike occurs as it is perceived as affecting social stability and damag-

ing the investment environment. Thoughts of harmony and stability in this way can be imagined as the motto "calm water on the surface, fierce waves below the surface" rather than true harmony and stability.

This type of thinking obstructs the workers' right to organize and right to strike, leading to improper collective bargaining. Issues which are not resolved on the basis of dialogue and negotiations will lead to a situation where "even a worm will turn", i.e. spontaneous strikes only and no organized strikes in support of union bargaining. Spontaneous strikes mean instability.

THE BARRIER OF NON-INDEPENDENCE OF THE UNION FROM THE EMPLOYER

The union executive board at the enterprise level is dominated by people with managerial positions in the enterprise. Most of the shop stewards in the union at the workplace are simultaneously a supervisor or assistant supervisor. The rate of blue-collar workers holding positions in the union is very low. This is a legacy from the centrally planned economy.

Actually, almost all employers use supervisors and assistant supervisors as management arm to pressure workers to complete production targets or increase productivity. Benefits for supervisors and assistant supervisors are often tied to the benefits enjoyed by the employer as their salaries are based on the output/productivity of the line. With such a difference in benefits from the workers, how can supervisors and assistant supervisors gain the trust of the workers to act as their representative?

The true foundation of representation is trust. There is no representation without trust. All representation imposed by law or administrative decisions will not be effective if not based on trust and, in a market economy, trust cannot be achieved if the representative of the workers is their supervisor/manager.

Wrong thinking about the independence of trade unions creates barriers. There are two ways of thinking about the independence of trade unions. Firstly, independence in the sense of the separation of trade unions from the employer, i.e. no leader or managerial person from the business holds a trade union position; the union should not apply for permission from the employer before conducting union activities; the union account is managed and used by the union and its members; etc. Secondly, independence in the sense that the work wages for union officials are not paid by the employer. All labour relations actors in Viet Nam, including union officials, staff of state labour agencies, and business managers, think of the independence of trade unions in the second way, i.e. union officials who are paid wages by the employer and who are unable to perform effectively as trade union officials. Such a fact originates from the fear of discrimination, fear of losing their jobs, and fear of losing wages because of the notion that "union officials getting wages from the employer should work for the employer". This way of thinking is due to a limited

awareness of the trade union rights of workers. Workers' salaries are paid in exchange for the contribution workers make to earning a profit for the business. Joining the union and exercising their trade union rights is the right of workers in their relationship with the employer, which is not related to wages at all. These rights are protected by law and workers have the right to claim the protection of the law when they lose their jobs or wages due to their involvement in union activities.

It is the incorrect belief that union independence is the independence of wages that leads to the thinking that results in the task of collective bargaining being handed over to upper-level unions, the sending of upper-level union officials to the workplace to represent workers, or the belief that trade unions should pay wages to union officials at the enterprise so as to make the union independent from the employer. All of these solutions are not sustainable.

Firstly, the upper-level union is unable to organize collective bargaining in all workplaces/enterprises in their geographical or industrial area of charge due to the fact that the number of upper-level union officials is limited, not to mention the existence of a multitude of other tasks in the political system that require upper-level unions to deal with them. The upper-level union is weakly connected to workers, making it difficult for them to hold discussions directly with the workers to organize for the purpose of collective bargaining, and therefore, it must still go through the workplace union. In fact, upper-level unions are assigned the right to represent workers in non-unionized workplaces, but very few of these non-unionized workplaces have a collective bargaining agreement concluded by an upper-level union. If any CBA exists, the upper-level union also conducts negotiations in a way that bridges between workers and the employer.

Secondly, if sectoral collective bargaining is done instead of enterprise collective bargaining, the sector-level union still needs the participation and collective power of the workers in the sector in order to create the balance required for the union to negotiate. In this sense, the sectoral union shares a role similar to that of the upper-level union in the regard that they are unable to contact all members and workers in the sector in order to organize them for the purpose of collective bargaining, for example: gathering workers' wishes, prioritizing issues for collective bargaining, collecting worker signatures, or conducting strikes (as a last resort). The organization of strikes requires the consensus of the workers. Workers need to be educated to understand the right to strike and to dispel their fears. For strikes to be organized, workers need to be mobilized for their involvement, planning, strategy-formulating and legal procedures, and so on. And this does not only extend to the union calling and workers immediately participating. Therefore, organizing for strikes will still go through the workplace union.

Third, the idea that "workplace union officials earn wages from the union" is an impossible solution because no union can have enough resources to pay for all workplace union officials.

THE BARRIERS OF DISCRIMINATION, INTERFERENCE AND LACK OF GOODWILL FROM THE EMPLOYER

Convention No. 98 of the ILO

Article 1:

1. Workers shall enjoy adequate protection against acts of anti-union discrimination in respect of their employment.
2. Such protection shall apply more particularly in respect of acts calculated to
 - (a) make the employment of a worker subject to the condition that he shall not join a union or shall relinquish trade union membership;
 - (b) cause the dismissal of or otherwise prejudice a worker by reason of union membership or because of participation in union activities outside working hours or, with the consent of the employer, within working hours.

Article 2:

1. Workers' and employers' organizations shall enjoy adequate protection against any acts of interference by each other or each other's agents or members in their establishment, functioning or administration.
2. In particular, acts which are designed to promote the establishment of workers' organizations under the domination of employers or employers' organizations, or to support workers' organizations by financial or other means, with the object of placing such organizations under the control of employers or employers' organizations, shall be deemed to constitute acts of interference within the meaning of this Article.

Discrimination and interference are two basic types of acts that hinder representative negotiations in Viet Nam. Discrimination is acts of the employer targeting trade union officials and workers in order to make them unable to or not dare to raise their voice, negotiate or undertake actions to defend their employment as well as their rights and interests. Interference is acts conducted by the employer to dominate, manipulate, control and manage unions, and drive them as they wish. It is because of this discrimination and inter-

ference that union officials feel safe when they practice collective bargaining as bridge negotiations. As such, they are not subjected to anti-union discrimination and they can protect their jobs.

Typical Acts of Anti-Union Discrimination in Viet Nam

Below are typical anti-union discrimination in the workplace used to obstruct the formation of trade unions for the purpose of collective bargaining at enterprises.

- Providing favorable incentives to workers for not joining trade unions, such as: extra pension with a value of 500,000 VND per month; paying insurance for non-union workers, etc.
- Asking workers to write a voluntary request to not join a trade union.
- Talking with and disseminating information to workers about the disadvantages of joining trade unions, such as: workers get no additional benefits because the employer has already provided all incentives for workers while workers must pay 1% membership dues if they join trade unions.
- Not allowing the upper-level union to access workplaces and meet with workers for the purpose of organizing.
- Taking revenge on workers who join trade unions in various ways:
 - + Regularly transferring workers to other work, which is unpleasant, for up to 60 days until workers resign from their job.
 - + Controlling and supervising workers 24h per 24h day.
 - + Finding ways to dismiss workers who are active in unions or involved in organizing strikes, for reasons that are not related to strikes.
- The company creates a mutual support club with benefits for members of the club, but not for members of the union, such as mutual visits, wedding and funeral support and allowances, etc., similar to the services provided by the union to members, or even higher than the benefits provided by the union (for example, an additional 5 days of annual leave for employees who are members of the club and other benefits) so as to let the workers see the value of not joining the union.
- Transferring union chairpersons to other jobs when seeing that the union chairpersons speak strongly for workers.
- Promoting union chairpersons to a higher position or using material benefits to "buy off" union officials.
- Informing workers that their benefits will be cut if they join the union.

Typical Acts of Interference and Manipulation in Viet Nam

Acts of interference and manipulation are found in the workplace, including:

- Manipulating things to place workers who dare not speak up into positions representing workers in dialogues, collective bargaining, the workers' congress, etc. in the workplace.
- Not transferring trade union fees to the union as well as not transferring the membership dues deducted from members to the union.
- Managing trade union bank accounts; controlling the union's expenditures; not allowing trade unions to use the trade union budget for activities which the employer does not want.
- Dominating the election of the trade union executive committee, controlling the list of candidates for election, introducing or appointing management personnel into union positions, manipulating and monitoring the vote-checking process, etc., and utilizing various methods for placing the employer's personnel into leadership positions of workplace trade unions and managing unions to ensure that unions will operate the way management wants them to.
- Explicitly protecting management personnel on the trade union executive committee, and making workers think that only the management personnel on the trade union executive committee can help negotiate for and protect the rights and interests of workers.
- Leading workers to misunderstand how a trade union official should be, so that workers will elect inappropriate individuals to represent and protect their rights and interests.
- Listening to the opinions of workers only when workers express their concerns through human resource managers, so that workers will only elect human resource managers into the position of chairperson for a workplace union.
- Shifting responsibilities of the employer to trade unions, for example, the responsibility for ensuring the quality of meals between shifts, responsibility for not letting workers go on strike, etc.

International Laws¹ on the Principles of Good Faith

Principles of good faith are reflected in the following conduct:

- Recognizing representative organizations for the purpose of collective bargaining;
- Engaging in real and constructive negotiations;
- Endeavoring to reach agreement;
- Avoiding unjustified delays in collective bargaining;
- Respecting the commitments made and implementing signed CBA.

In addition, lack of goodwill on the part of the employer also obstructs collective bargaining.

Acts of Bad Faith in Collective Bargaining by the Employer in Viet Nam

- Nominating those who do not have decision-making power to take part in collective bargaining.
- Nominating those who are not authorized to sign a CBA, and then, moving the person who signed to another position which renders the CBA invalid after agreement has been reached.
- Including in CBAs only the points that exist in the law and not any higher benefits which are available in practice in order to avoid a long-term commitment.
- Pretending to agree to collective bargaining but not supporting collective bargaining in practice through various means, for example: failure to attend negotiation meetings.
- Not sending an interpreter to the negotiation meeting or not being supportive in eliminating linguistic barriers in collective bargaining in FDI enterprises.
- Not arranging meeting rooms for negotiations, not arranging time to participate in the meeting, and not creating conditions for trade union officials to meet with union members and workers to prepare for collective bargaining.
- Acting discriminatorily against workers and trade unions when they attempt genuine collective bargaining.

International Laws² on the Conduct of Parties in Negotiation

- Attending and participating in meetings at reasonable times; conferring in good faith;
- Giving genuine consideration to the proposals made by the representatives of the other party in bargaining;
- Responding in a timely manner to proposals for the agreement made by the representatives of the other party in bargaining; and making every reasonable effort to conclude a collective agreement.

¹ Report of International Labour Conference, the 101th session, Geneva, 2012, Giving Globalization a Human Face, para. 208, International Labour Organization.

² Collective Bargaining: a Policy Guide, International Labour Office, Geneva, 2015.

Labour Law Revision: Refraining from Politicizing Freedom of Association

The Importance of Freedom of Association in Collective Bargaining

Freedom of association is the right of workers to freely organize and join an organization of their own choosing so as to establish wages, working conditions and industrial peace. The birth of freedom of association arises from the fact that the relationship between the worker and the employer is an unequal relationship. As an individual, the worker is always weaker than the employer in any situation. The employer has the right to set conditions and make decisions on issues relating to the worker in the employment relationship.

Based on the principles of "labour is not a commodity"³ and "all human beings are born free and equal in dignity and rights",⁴ freedom of association is established by ILO member tripartite constituents to ensure equality between workers and employers in their interdependent relationship.

Freedom of association ensures that all workers, based on the principle of "unity/solidarity is strength", are free to associate with each other to form organizations, thereby creating equal status with the employer so as to engage in collective bargaining with the employer to determine wages and working conditions related to them. Without an organization, workers can never enter into negotiations with the employer on an equal footing.

However, if the workers' organization is placed under the control and domination of any outside force, that organization will no longer function for the benefit of its members. Therefore, the word "freedom" in "freedom of association" implies independence and, in whatever form, not being governed, controlled, administered, interfered, manipulated, dominated, etc., by any individuals or any organizations other than the workers themselves who are the members of that organization. Only then does that organization actually operate in the interest of the workers. And only then does collective bargaining become meaningful.



In Viet Nam, the term "freedom of association" is being heard and understood in a "politicized" way. "Freedom of association" is not understood in its nature, but often regarded as a factor creating social unrest and even political instability. In actuality, instability is the result of an unequal, unfair and non-participatory decision-making process. Without freedom of association and genuine collective bargaining, any consent would only be superficial. Frustration with unfair decisions would accumulate day after day until one day it explodes into instability. The fact that there have been more than 7,000 wildcat strikes in Viet Nam since 1995 is proof of the lack of genuine collective bargaining and unreleased frustration.

There is no denying that freedom of association can be abused for political purposes. However, preventing such abuse does not constitute stopping freedom of association, but rather constitutes allowing for mutually satisfactory decision-making with win-win-win solutions for all parties, which then neutralizes political intentions. Mutually satisfactory and win-win-win decisions require freedom of association. All acts abusing freedom of association for purely political purposes are outside the scope of union operation and in violation of the principles of freedom of association.

Many countries allow freedom of association and yet there is no instability; examples include Norway, Sweden, Denmark, etc. The rate of strikes in these countries is low. In countries where there is instability and conflict, the reason behind that instability and conflict lies in a decision-making process which does not really involve the people nor consider the opinions of the groups affected, such as is seen in the Middle East, North Africa, etc. Of course, extremist groups and terrorism should be banned. The law has the right to ban extremists and the people support this ban.

Incorrect understanding of freedom of association is a barrier to the development of relevant labour legislation, thereby hindering workers from occupying a position of power equal to that of the employer, which in turn precludes genuine collective bargaining and impedes the development of sound, harmonious and stable labour relations.

¹ Philadelphia Declaration, ILO, 1944.

² Article 1, Universal Declaration on Human Rights, United Nations.

Recommendations for representative negotiations

REMOVING BARRIERS FROM REPRESENTATIVE NEGOTIATIONS

First, thinking determines action. The actors in industrial relations need to change their thinking about harmony and stability in labour relations in order to transform the enterprise-level management method from human resource management to collective bargaining.

Secondly, the parties involved in industrial relations need to understand correctly the independence of trade unions and clear out the notion that "union officials must not receive salaries from the employer so as to be able to operate effectively", and then implement union autonomy in terms of personnel, finance and union activities. Separating managerial persons from all positions in trade unions is the first necessary step.

Thirdly, Viet Nam needs to build and enforce laws that effectively prevent acts of discrimination, interference and unfair labour practices by the employer so as to protect workers and trade unions and to allow them to engage in genuine and meaningful collective bargaining.

Fourthly, the actors in industrial relations should be provided with capacity-building to understand "freedom of association" correctly, thereby participating in the development of laws to ensure that freedom of association is implemented for the right purpose, contributing to building healthy labour relations, and preventing abuse of freedom of association for political purposes.

WORKERS ARE EMPOWERED TO USE COLLECTIVE BARGAINING

For representative negotiations to take place, it is very important to train workers on collective bargaining and empower them to make use of this right. Workers should be trained on related skills, such as organizing skills for the purpose of collective bargaining, gathering collective bargaining issues, analyzing the economic and labour environment of the workplace/enterprise/industry, using negotiation tactics and strategies, organizing collective action and strikes in support of collective bargaining, communication skills, union-building skills, negotiation skills and other necessary skills.

MAKING EFFORTS TO RATIFY CONVENTION 87 ON FREEDOM OF ASSOCIATION AND PROMOTING IMPLEMENTATION OF CONVENTION 98 AFTER RATIFICATION

On 14 June 2019, the National Assembly of Viet Nam ratified Convention 98 on the right to organize and bargain collectively, demonstrating its political determination to promote collective bargaining in Viet Nam. For representative negotiations, Viet Nam needs to effectively implement Convention 98 and make efforts to ratify Convention 87 on freedom of association. Conventions 87 and 98 are an important reference for the actors involved in industrial relations to participate in legislative building towards genuine collective bargaining.

RECOMMENDATIONS FOR REFORMING THE CURRENT UNION SYSTEM FOR GENUINE COLLECTIVE BARGAINING

In addition to the importance of separating managerial persons from union positions, the current union system needs to shift from a top-down approach to a bottom-up approach in collective bargaining, specifically:

- Educate workers that they are the union and the union is them. Workers need to elect those capable of representing them in a real manner. Workers must master their organization and decide their collective bargaining process.
- Educate workers so that they participate actively and proactively in developing collective bargaining strategies, discuss and formulate collective bargaining plans, including tactics for escalation of collective actions and the use of strikes as a last resort.
- The union needs to completely eliminate its organizing approach based on asking the employer for approval. The right to organize a union is the right of the worker. Workers have the right to form their own union without having to obtain permission from the employer. They can simply inform the employer and demand the employer's recognition of the union for the purpose of collective bargaining. All acts of anti-union discrimination and interference should be resolved in accordance with the law.
- The union needs to completely erase the habit of asking the employer for approval of the union programme. Instead, the union asks their members for approval. This is especially important for the union members and the workers to see that the union is independent of the employer and to build trust in the union. Only then can the union perform in a role of representation rather than in the bridge role it currently occupies.
- The union needs to make the workers understand that the establishment of a union is for the purpose of collective bargaining. The union needs to discuss collective bargaining with the workers during the process of mobilizing and organizing workers into the union. The union needs to conduct these two tasks at the same time: to establish a union for the purpose of collective bargaining and to conduct collective bargaining for the purpose of building the union. The organizational structure of trade unions at all levels also needs to be reformed to meet this goal.
- When approaching the workers for mobilizing them into a union, instead of giving "a promise of better things if they join the union" as is being done now, the union instead needs to discuss problems at the workplace with workers and discuss forming a union with the workers for them to understand about having an organization for collective voice and collective actions. Workers and trade unions need to work together to solve workplace problems in the relationship with the employer based on the strength of their solidarity. Workers should not be made to think that a union is set up to do everything for them. The union needs to build the capacity of the union members and workers so that they can understand their responsibilities within the union and work within the union to solve their own problems.

The above recommendations do not mean putting the union in confrontation with the employer. The independence of trade unions from the employer does not mean a confrontation, but rather a creation of a real organization that represents workers for genuine collective bargaining with the employer so that collective bargaining becomes a tool to adjust labour relations in the workplace.

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The views expressed in this report are those of the authors and do not necessarily reflect the views of the ILO.

NOTHING ABOUT WORKERS WITHOUT WORKERS.

**“Nihil de nobis,
sine nobis”.¹**

**“Nothing about
us without us”.**

**“Không có điều gì về
chúng tôi mà không
có chúng tôi”.**



NEW INDUSTRIAL RELATIONS FRAMEWORK (NIRF/JAPAN)
REINFORCE REPRESENTATIVE FUNCTION OF TRADE UNIONS AND EMPLOYERS

¹ Latin slogan