

“TRADE UNION FREEDOM OF ASSOCIATION AND COLLECTIVE BARGAINING”
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Cameroon in formulating national Laws regarding social legislation makes sure to use as guide, International Labour Organization instruments in the form of Conventions and Recommendations.

After independence in 1960, the government had by 1962, ratified I.L.O. Convention No. 87 of 17th June, to 10th July, 1948 on Freedom of Association and I.L.O. Convention No. 98 of 8th June, 1949, on the Right to organize and Bargain Collectively. With each Labour Code Freedom of Association is enshrined allowing for workers and employers organizations the Right to set up trade unions and employer’s Associations.

Cameroon, since attaining independence in 1960, has had three Laws instituting the Labour Code as follows:-

- Law No. 67/LF/6 of 12th June, 1967, instituting the Federal Labour Code.
- Law No. 74/14 of 27th November, 1974 instituting the Unitary Labour Code and,
- Law No. 92/007 of 14th August, 1992, instituting a Liberal Labour Code respectively.

Each of the Laws provided for Freedom of Association and for the Right to organize and Bargain collectively. ILO Convention No. 87 states in its Article 2 inter-alia,

“Workers and employers, without distinction whatsoever, shall have the right to establish and subject only to the rules of the organization concerned, to join organization of their own choosing without previous authorization.”

Section 3 of each of the above Laws instituting the Cameroon Labour Code takes its inspiration from Article 2 of ILO Convention 87 and provides as follows:-

“The Law recognizes the right of workers and employers without distinction whatsoever, to set up freely and without prior authorization (trade unions or employers associations) for the study, defense, promotion and protection of their interests.”

Section 4 (1) of the Labour Code also provides as follows;

“Every worker and employer shall have the right to join a trade union or employer’s association of his own choice in his occupation or kind of business.”

And 4 (2) to protect workers from:-

a) Any acts of anti-union discrimination in respect of their employment.

b) Any practice tending:-

- To make their employment subject to their membership or non membership in a trade union.

-cause their dismissal or other prejudice by reason of union membership or non membership or participation in union activities.

Freedom of Association has thus played into the hands of not only political zealots in the ruling party but has also allowed some unscrupulous and exploitative employers to sponsor the creation of trade unions while government agents in order to weaken the central trade unions encourages the setting up of several trade union confederations so as to divide and conquer. This is evidenced by the fact that with the introduction of multipartism in the early nineties, it was

but opposition political parties that were able to call for strikes including the February 2008 high commodity price riots. The numerous trade union Confederations enables government to undertake consultations on matters that may affect workers adversely with leaders of those trade union Confederations which are unrepresentative of workers.

Being that the government in Cameroon is the highest employer of wage earners and since civil servants are governed by Special regulations and not the Labour Code, the ILO Convention on Freedom of Association does not apply to civil servants in the public service. So, too is ILO convention No. 98 concerning collective Bargaining.

COLLECTIVE BARGAINING:

Collective Bargaining simply means the coming together of representatives of trade unions and management, usually to negotiate over wages or wage rates, production norms and other working conditions and what both parties agree on is reduced to writing.

A Collective Bargaining Agreement such as the National Collective Bargaining Agreement for Agricultural Undertakings and related activities is a Collective Agreement between the Association of employers in the Agricultural Sector and the most representative trade union Confederation. A collective bargaining Agreement is often specific, the language clearly and unambiguously defining the rights and duties of the parties to the agreement.

Since there are no trade unions in the public sector (Civil service) Collective Bargaining is legislated purely for employers and trade unions in the private sector of the economy. The Labour Code provides two types of Collective Bargaining Agreements which are:-

- Company bargaining Agreements and,
- National Collective Bargaining Agreements.

Social legislation such as the provisions of the Labour Code provides minimum protection and benefits to workers governed by the Labour Code. In order to improve on these legal minimum provisions, workers

organizations and either individual employers or employers associations must come together for purposes of engaging in Collective Bargaining, so as to improve on the minimum the Law provides.

A Trade union in the private sector exists on the premises that it gets things for its members that the employer would not have given otherwise. The trade union must win victories to preserve itself, not in all contract negotiations, to be sure, but often enough to preserve the union's image of effectiveness. VICTORY at the Collective bargaining table cannot therefore be the private affair of a few trade union professionals; it must be savored by the broad membership of the union. Thus, Collective Bargaining usually always involves wage and salary negotiations work norms incentives, and working and living conditions.

THE TRADE UNION AT THE COLLECTIVE BARGAINING

TABLE: The Trade Union usually goes to the Collective Bargaining table with a set of demands from the employer. Sometimes during negotiations the employer may remark that,

“All through this collective bargaining negotiating session, I have made concession after concession and the Union has not offered me a single thing in return. Is this what you call Collective Bargaining?”

To answer this employer's question one must first consider what the Union can really offer to the employer in exchange for raising wages and improving on other working and living conditions of the workers. Can the Union give up old benefits secured in past collective Bargaining Agreements for improved new benefits? Obviously, not. Such an arrangement would transform Collective Bargaining into a process where the employer takes back with one hand the equivalent of what he has offered with another.

If we assume that the employer is not trying to rescind an old established working condition, there are basically only two things the Union can offer, namely:-

- It can give up part of its other negotiating demands less important to the workers.

- The Union can give up its right to strike.

When a trade union leader or a Staff Representative goes to the Collective Bargaining table he should understand that Collective Bargaining is the only way by which the trade union can improve the minimum benefits provided to the workers by Law. In that case, the negotiators must be prepared to give and take.

POWER STRUCTURES OF PARTIES ENGAGED IN COLLECTIVE BARGAINING. It is by mobilizing their economic power, political, and moral that workers and their trade unions compel management in the first instance to deal with them and then to grant, in whole or in part the demands which they make upon company or Industry management. It is by countering with economic power, political and moral that corporate management determines how much and to what extent it will deal with its employees through organized unions, and once it deals with the Unions, how much of the demands it will grant, consistent with the necessity of maintaining competition, efficiency and freedom to conduct the business of the enterprise. This freedom to conduct the business of the company as management thinks fit, is known in Industrial Relations as “Management’s prerogative”. Some Management find it necessary to make proposals of its own to the Unions. Not to recognize this power competent as the critical element in determining Industrial Relationship is to be naïve and indeed to run the risk of jeopardizing effective and positive relationships between Industry and Trade Unions.

This is not to say that other values do not enter into any given situation, such as the nature and history of a particular industry, the types of personalities that occupy the positions of leadership, the political and moral climate of the times, the long-range economic outlook etc. etc. Essentially, however, power remains primary; these other factors only help shape the way in which power will express itself.

Since power is the chief factor, a great deal of emphasis is placed upon strategy and tactics conceived and employed by Industry and Unions in planning and executing their negotiations as well as in projecting the administration of the agreements which they have concluded at the

collective Bargaining table. Trade Unions rely on Collective Bargaining as a means of raising the standard of living of their members. The phrase "Collective Bargaining", covers a wide variety of subjects and involves hundreds of thousands of workers in the process.

It is the responsibility of Staff Representative (Shop Steward) to enforce a Collective Bargaining Agreement on behalf of the workers he represents. Collective Bargaining is yet to be established as a permanent part of our Industrial Life. Historically, the owners of industry take the position that since they owned the means of production, they, therefore have the sole right to determine the conditions of employment. Collective Bargaining is therefore a process by which the workers through the Union, collectively set by way of negotiations acceptable working and living conditions and wage rates, in exchange for their labour. The collapse of negotiations during collective bargaining sessions may lead to strike action. The non implementation of the terms of the contract is also an event that if not resolved amicably by the parties to the contract may also lead to a call for strike action by the Union.

INDIVIDUAL BARGAINING: By the present social legislative dispensation, contracts of employment are freely negotiated as spelt out in Section 23 of the Labour Code. The free negotiation of individual contracts of employment in a free market situation generally is a sound economic policy. In Cameroon, this policy is bound to have hic-coughs as the bargaining power of those seeking employment is weak. Given the unemployment situation in the Country, prospective employers will undoubtedly take advantage to exploit the situation by paying very low wages if not the barest minimum.

CONFLICTS: Bargaining, either collective or individual, usually entails giving and taking by the parties. The conclusion of a negotiated collective or individual contract must as a rule be reduced in writing and signed by the parties to the Agreement. The day to day operation of the Collective Agreement in a particular work-place may not be conflict free. In some cases, conflicts arise in the administration of Collective Agreement in the following areas:-

- Interpretation of the Agreement.
- Implementation.
- Discriminatory application of certain clauses of the Agreement.
- Unilateral action by Management.

It is in cognizance of these conflicts that a Collective Bargaining Agreement usually set forth therein a “Grievance procedure” for the settlement of conflicts arising either from the interpretation or implementation of the Agreement before any of the parties resort to a strike action or lock-out. The work-place is regarded as a communal environment within which problems arise and must be handled. The agreement and its clauses must, therefore be administered in terms of the people who make up the workers community. Issues regarding seniority, wage rates, leave, public holidays, discipline, productivity, all of them are constantly arising in the highly dynamic complex which goes to make up a

typical industry. The Collective Agreement lays down working rules and guides while the employer sets out its own rules usually known as “Internal Regulations”. The workers involved may not always act according to these rules, thereby exposing themselves to disciplinary measures. It is also very important to note that in the Cameroon Context, Labour relations between workers and employers are legislated in Law No. 92/007 of 14th August, 1992, constituting the Cameroon Labour Code, especially its Section (1) which inter-alia states;

“This law shall govern Labour relations between wage-earners and employers as well as between employers and apprentices under their supervision.”

Relations such as those defined by legislation are usually the minimum but while they may protect the legal rights of workers, they do not encourage productivity for the maximization of profits by the owners of the means of production. It is in recognition of the fact that while it is possible to legislate on the rights and privileges of workers, it is

impossible to legislate on workers performance on the job. It is with this in mind that Law makers provided in Section 53 (1) of the Labour Code for free independent collective Bargaining Agreements negotiated between Industrial Unions and Employers associations and individual companies to improve on the minimum provisions of the Law as concerns wage rates, working and living conditions of the workers, health and hygiene, productivity incentives and other fringe benefits.

In order to avoid unnecessary conflicts arising from disciplinary measures emanating from undefined rules meted to workers by employers, Section 29 (1) of the Labour Code obliges the employer to draw up Internal regulations dealing exclusively with rules relating to technical organization of work, disciplinary standards and procedure, safety and hygiene at work which are necessary for the proper functioning of the company. Usually, the Trade Union recognize that the primary objectives of a Company in entering into an Agreement with the Union is the promotion of orderly and peaceful industrial relations with its employees and the attaining of efficient and uninterrupted operations in its Factories and plants.