### COLLECTIVE BARGAINING OVERVIEW

Collective bargaining arrangements are a system of rules, jointly agreed by employers and employee representatives, for negotiating matters such as pay and conditions of employment and resolving any differences that can arise from them. Collective bargaining can only exist in organisations where employees have some form of representation, usually in the form of a trade union.

Typical issues covered by collective bargaining are hours, wages, benefits, working conditions, and the rules of the workplace. The roots of collective bargaining lie in the nineteenth century, when workers began to agitate for more rights in their places of employment. Many skilled trades started using their skills as bargaining tools to force their employers to meet their workplace needs. Other workers relied on sheer numbers, creating major strikes to protest against poor working conditions.

**How has the Collective Bargaining Agreement been reached?**

Where a number of employees have joined a trade union, a request for recognition may be made to the employer. Recognition normally confers upon the union the right to negotiate (or bargain) on behalf of its members. Since mid-2000 provision exists under schedule 1 of the Employment Relations Act 1999 for trade unions to apply to the Central Arbitration Committee (CAC) for statutory recognition. If a company receives a request for recognition, all the circumstances should be considered. These would include the appropriateness of the union and in particular, the strength of support from employees.

In some cases, it may be agreed that there is insufficient support to justify full recognition at that time, but that representation rights, which entitle members to be represented by their union individually (e.g. in disciplinary cases or if the employee has a grievance), would be more appropriate. The right to be accompanied at a grievance or disciplinary hearing is set out in section 13 of the Employment Relations Act 1999, and came into effect in 2000.

Recognised unions have certain statutory rights including the right to:

* Information for collective bargaining purposes
* Time off for trade union duties and activities (including training)
* Be recognised by the new employer in certain circumstances when there is a transfer of a business
* Appoint a safety representative

**How can collective bargaining be made to work effectively?**

Employers and trade unions should write down simple recognition and negotiating agreements, setting out the rights and duties of the parties involved and how collective bargaining should be conducted. Agreed procedures can assist orderly negotiation and help avoid industrial disputes. It is good practice for the parties to agree that a strike, lock-out or other form of industrial action will not take place until all stages of the procedure have been exhausted. It is also important to ensure that:

* Managers and trade union representatives have employment relations training
* Results of negotiations are communicated accurately and rapidly to employees
* Workplace reps have adequate facilities to enable them to keep in touch with their members and to represent them effectively
* Managers and unions meet regularly, not only when trouble arises

In general, experienced people from the union will play an important part in putting together a draft of their bargaining requirements. The union will then put the desires of the workforce to the company. Numerous meetings between representatives of employer and employees will be held until the two sides can come to agreement if at all possible.

**Procedural arrangements:**

Now, we need to carefully consider the procedural arrangements. First, we need to know what is expected from each side – the management and the union. Trade union responsibilities:

Trade unions should identify and request the information they require for collective bargaining in advance of negotiations whenever practicable. Misunderstandings can be avoided, costs reduced, and time saved, if requests state as precisely as possible all the information required, and the reasons why the information is considered relevant.

Requests should conform to an agreed procedure. A reasonable period of time should be allowed for employers to consider a request and to reply.

Trade unions should keep employers informed of the names of the representatives authorised to carry out collective bargaining on their behalf.

Trade unions should review existing training programmes or establish new ones to ensure negotiators are equipped to understand and use information effectively.

**Employers’ responsibilities:**

Employers should aim to be as open and helpful as possible in meeting trade union requests for information. Where a request is refused, the reasons for the refusal should be explained as far as possible to the trade union representatives concerned and be capable of being substantiated should the matter be taken to the Central Arbitration Committee.

Information agreed as relevant to collective bargaining should be made available as soon as possible once a request for the information has been made by an authorised trade union representative. Employers should present information in a form and style which recipients can reasonably be expected to understand.

So, because of the collective agreement, employers and trade unions should try to arrive at a joint understanding on how the provisions on the disclosure of information can be implemented most effectively. They should consider what information is likely to be required, what is available, and what could reasonably be made available.

Consideration should also be given to the form in which the information will be presented, when it should be presented and to whom. In particular, the parties should try to reach an understanding on what information could most appropriately be provided on a regular basis. This reinforces our position on exercising our information and consultation rights and also enables us to work within the framework of correct procedural arrangements.

One area where there will be a need to exercise those rights will be in preparation for an annual wage increase. Perhaps the easiest way to look at this would be to determine what workplace reps and workplace reps’ committees could be doing to plan how the negotiations will take place. The following 4 stages are a suggestion as to how you could go about this.

**Stage 1: Preparation**

* Gathering information and deciding the negotiation goals. What is realistically achievable in terms of a wage claim? Have previous claims set a trend where wage increases have been determined by management? Do your members have any input into what the wage claim should be? Compared to the size of your organisation does your company’s financial status influence your claim? From which other sources can you look towards to gather information on industry standard wage claims? To how many people does the wage claim equate?
* Analysis of the information. What does the information you have gathered tell you? How can you display this information to give a clear and accurate picture of the company’s financial situation?
* Using the information to devise your negotiation strategy. Once you have checked the accuracy of your information you are now in a position to start planning how you will deliver your claims and proposals to management.

**Stage 2: Introduction and positioning**

If your objectives are too vague you will have too wide a range of ways for those who you are negotiating with. The other side’s negotiators will not be able to make sense of what you are actually wanting from the negotiations. On the other hand, if your objectives are too precise and if you do not know what the other group’s objectives are, you are in danger of pitching your claim at an inappropriate level. Have you thought out your proposals carefully and do they appear realistically achievable or is your claim based on wildly held assumptions about the organisation’s ability to pay?

Many claims fail at the introductory stage simply because the figures you have presented cannot be verified and may be vastly exaggerated. You need to consider making an introduction as to why you are making a wage claim – the cost of living, extra costs of fuel and inflation could be your starting points but remember – increased costs affect everyone so there may be some counter claim to your proposals.

**Stage 3: Bargaining and negotiation**

• Bargaining techniques

The objectives of negotiating are to achieve a result.

What is your bargaining stance? Are you prepared to be flexible or rigid in your approach? Will you consider trading off to come closer to your goals? Are you looking for a win–lose situation or a win–win situation? You need to remember that to maintain a professional position, the relationship between the bargaining team and management should not be a points scoring activity but should look at arriving at a solution where both parties make gains. That is not to say that you are going to bargain away members’ rights but you are going to bargain for increases that are achievable and easy to accommodate for both sides.

**Stage 4: Finalising the settlement**

Once you are satisfied that you have achieved your stated objectives, having negotiated around all the obstacles, it is very important that you receive written details of your proposed agreement and check those details for accuracy before presenting this to your members. If the members are satisfied then you can continue with formalising the agreement and make sure management stick with its content.

**Substantive and procedural rules and collective bargaining:**

Procedural rules concern the establishment of processes by which cases are dealt with; for example, in a workplace context, the procedures to investigate individual employee grievances, or to carry out decisions to dismiss employees in a fair manner. Frequently, procedural agreements are put into the company rule book which provides information on the overall terms and conditions of employment and codes of behaviour.

Substantive rules refer to matters such as basic pay, overtime premiums, bonus arrangements, holiday entitlements, hours of work, etc. – mainly things that will contractually affect the member.

Procedural rules, once established, are expected to be in use for some years, although they will include provisions for being altered. Substantive rules, on the other hand, are more likely to be changed on a regular basis. In the world of work we may take substantive rules as shorthand for economic rules and procedural rules for management rules.

Rules about the way work is to be done and the conditions for rewarding people for doing it may be made unilaterally by management. In certain situations, strong unions such as Unite may be able to impose a unilateral decision on management. On the other hand, usually where unions are recognised by management for collective bargaining, both the procedural and substantive rules are made jointly.

The world of employment relations also has procedures and facilities to settle disputes by third-party intervention. In the UK, the main body for this is ACAS, the Advisory, Conciliation and Arbitration Service. Although ACAS was set up by the government, ACAS is required to act impartially in seeking to promote good industrial relations. As its name suggests, ACAS officers can offer advice. They can conciliate whereby they endeavour to get disputing parties back together again to talk through their problems and reach agreement. Lastly, they can arbitrate by appointing an independent third person or persons to make a final decision, which both parties agree in advance to accept.

Finally, there are a number of areas of the employment relationship where governments have chosen to intervene and lay down substantive rules, such as on the minimum wage, or maximum hours of work. They have also set out procedures governing the relationship between employers and trade unions as in the conduct of strikes or picketing.

**Collective agreements and works rules relating to the employment contract:**

As mentioned earlier in the course, under sections 1 and 2 of the Employment Rights Act 1996 (ERA 96), employees have the right to a written statement of particulars of their employment. This must be given to the employee no later than two months after their employment begins and must include: the names of the employer and the employee; the date on which employment began and the period of continuous employment; the scale and rate of remuneration, pay intervals and the method of calculating pay; terms and conditions relating to hours of work and holiday entitlement; the job title and description and: the employee’s place of work. These must be contained in a single document. However, provided that they are given within the two-month deadline, other employment particulars can be documented by instalments and one of these could include details of collective agreements affecting employment.

Works rules, guidelines or rules about how work should be carried out can be part of the contract, even if the employee has no option but to accept the rule.

Although most collective agreements are not legally binding on the parties that have concluded them (the employer and the union), items within the agreement that can be incorporated into the individual’s contract become binding conditions of that contract.

A company reached an agreement with the T&G (now merged with Amicus to form Unite) giving workers the right to 20 days’ leave plus bank and public holidays.

The company then published a staff handbook which said that the bank and public holidays were part of the 20 days. The EAT held that the collective agreement’s effect was to amend existing contracts, and the employer could not unilaterally change them. (Wood Hall Personnel & Transport v Harris and Gonsalvez EAT/156/02).

Tribunals have to look at the “contractual intention” of the parties, when deciding whether the terms of a collective agreement are incorporated. In the case of Kaur v MG Rover (2004) EWCA Civ 1507 ([2005] IRLR 40), the Court of Appeal held that the term in a collective agreement which stated that there would be no redundancies was “aspirational” and did not amount to a contractual term.

However, in Harlow v Artemis International [2008] EWHC 1126, an employee successfully obtained access to a collectively agreed enhanced redundancy policy. The High Court noted that the policy was identifiable as an entitlement, the method of calculating payment was clearly set out and the policy was referred to in individuals’ contracts.

Changes agreed in negotiations are binding on all employees, even if they might not like what has been negotiated, particularly if a considerable amount of time has passed before they voice their objections (Henry v London General Transport Services (2002] EWCA Civ 488 ([2002] IRLR 472)).

In the case of Trotter v Grattan EAT/0179/03, a collectively agreed stop and search policy was incorporated into the contracts of every employee, even if they had not all individually agreed to the policy:

Objecting to a new company policy of random searches, Mr. Trotter resigned and claimed constructive dismissal. The EAT held that while the policy change did amount to a fundamental breach of contract, the constructive dismissal was fair. The policy had been introduced after consultation with the unions so was not imposed arbitrarily, and it would not be reasonable for the employer to have to differentiate between employees who had agreed the change and those who had not.

It is useful for workplace representatives to know that if the representative(s) has apparent authority to negotiate, the employer can reach a deal at that level, even if the procedures say that a full-time official should be informed of any deals concluded (Harris v Richard Lawson Autologistics [2002] EWCA Civ 442 ([2002] IRLR 476)). However, if a change has not been agreed by all recognised unions, it may well be the case that it is not universally incorporated:

A local authority wanted to change holiday terms, but only reached agreement to do so with one of its two recognised unions; nevertheless, it introduced the change. The EAT noted that the collective bargaining “rests upon a foundation of consensus and process” and that the processes for voting agreed between the unions had not been followed. This meant there had been no local agreement to the change, which therefore had not been incorporated into employees’ contracts. (South Tyneside MBC v Graham EAT/0107/03).

Once a change is incorporated into an employee’s contract, it becomes a binding contractual term. The employee cannot revert to the previous contractual agreement without a further agreement.

**Union and collective organisation rights relating to collective bargaining:**

Union and collective organisation rights are principally governed by the Trade Union and

Labour Relations (Consolidation) Act 1992 (TULRCA), which was amended by the Employment Relations Act 1999 (ERA 99) and the Employment Relations Act 2004 (ERA 04).

It is unlawful (section 145B of TULRCA) for an employer to offer a worker an inducement to stop, or prevent, their terms and conditions being negotiated by a union through a collective agreement (“collective bargaining”).

In 2006, supermarket chain Asda was ordered to pay £850,000 for offering inducements to 340 members of the GMB general union to give up their collective bargaining rights. The workers at its distribution depot in Washington, Tyne & Wear, were offered a 10 per cent pay rise in order to end collective bargaining at the site.