হ্যান্ডবুক-৪ : যৌথ দরকারকর্মি ও নেগোশিয়েশন

Hand Book-4: Collective Bargaining and Negotiation

ওয়ার্কার্স রিসোৰ্স সেন্টার

Workers Resource Center
Handbook-4

Collective Bargaining & Negotiation
Handbook-4 covers the process of negotiating a collective agreement with the employer at the workplace. It gives tips and guidelines for the union to draft an agreement with members participation and the terms and conditions that can be included. The section on preparing for negotiation follows on from Handbook-3 that discussed negotiating individual and collective grievances. Finally, it discusses how to ensure that an agreement is implemented properly and how it can be amended.

The Handbook deals with these questions

Section 1: The Principles and definition of Collective Bargaining
- What are the most important principles to follow?
- How do the ILO Standards support the right to collective bargaining?
- What rights does the Bangladesh Law provide?
- What is the role of the Bargaining Agent?

Section 2: Preparing for Collective Bargaining
- How are the contents for an agreement selected?
- What are the nest best ways to engage the members?
- What is the most important information needed by the trade union?
- Why is it necessary to prepare demands and proposals?

Section 3: Negotiating and Implementing the Agreement
- Who should be part of the negotiating team?
- What are the best tactics to use at the bargaining table?
- How can management responses be anticipated?
- Why is it important to monitor and enforce an agreement?
The Principles & Definition of Collective Bargaining

When trade unions negotiate with the employer or a group of employers, on behalf of their members for improved terms and conditions of employment it is called Collective Bargaining (CB). Bargaining can take place at the national, sector and workplace levels. The CB will negotiate workers demand based on their aspiration collected from their member (interest based demand). This proposal usually is higher than term and condition stipulated in the law that should be implemented accordingly (right based demand).

When an agreement is concluded and both parties sign it is called a Collective Bargaining Agreement (CBA).

In Bangladesh, CB takes place between a group of workers acting collectively as a registered trade union, called the Bargaining Agent (BA) and an employer or group of employers.

This handbook deals only with bargaining at the enterprise or workplace level. RMG factories are small or part of a ‘group of enterprises’ and these employers are often at the bottom of the supply chain and not familiar with the process of collective bargaining.

Key Point

**Bargaining Agent:** is the registered trade union that can represent the workers in one factory or a group of enterprises

**Bargaining in Good Faith:** means that both parties must try to reach a consensus before taking other actions

**Mediation & Conciliation:** if talks break down a 3rd party can assist the parties to reach an agreement but must be independent of the employer and government

Key Point

Collective Bargaining is an orderly and peaceful way of dealing with the conflict of interests that has always existed between employers and workers. The Employer traditionally holds the balance of power but when a trade union represents the workers, the unequal power relation can be corrected.
**Both parties (trade unions and employers) need to respect 4 main principles**

**Principle 1: Recognition of the opposing interests**
- Employers want to get the most from the workers at the lowest possible cost to maximise profits
- Workers want the best possible pay and conditions for the work that they do

**Principle 2: Bargaining in good faith**
- Both parties explore ideas and options before rejecting the others’ demands
- Each party is prepared to compromise and find a workable solution; does not take an ‘all-or-nothing position’

**Principle 3: Avoidance of any kind of violence**
- Bargaining can be difficult at times and there will be confrontation
- But physical attacks, sabotage and blackmail are not acceptable, from either side

**Principle 4: Bargaining with autonomy**
- Collective bargaining is the responsibility of employers and trade unions
- Government interference or influence is not permitted

**ILO Standards and the Law**

The ILO Conventions and Recommendations contain the principles, rights and responsibilities of the parties and require governments to include these in Labour Laws and Rules.

Trade unions can only bargain collectively for workers when they have the right to form and join trade unions.

In Bangladesh, when the union is registered, the employer must recognise the union as the Bargaining Agent (BA). (ILO C. No 87 – Freedom of Association and the Right to Organise) and the Bangladesh Labour Laws. see Handbook-1.
Summary of the main points in the ILO Standards on collective bargaining rights

**Convention No. 98: Right to Organise and Collective Bargaining**
- The right not to be discriminated against (Article 1)
- Protects trade unions from interference from outside bodies (Article 2.1 & 2)
- Establishment of laws to protect the right to CB (Article 3)
- Requires laws to encourage and promote the process for voluntary negotiations (Article 4)

**Recommendation 129**
- Guidelines for Bargaining in Good Faith (Section 1.2 (1))
- Establishes the unions right to information from the employer so they can prepare reasonable demands (Section I.2. (2))
- Effective consultations and meetings between parties must take place (Section I. 2.3)
- The employer’s responsibility to set up CB processes without excluding the trade union (Section I. 2.4)
- Gives the union the right to meet and discuss with members during the process (Section II. 10)
- Sets out the areas to be negotiated (Section II.15 (1&2))

**Convention 135: Workers Representatives Convention & Recommendation 143**
- Gives protection for worker representatives (Article 1)
- The employer must provide facilities for workers (Article 2)
- Defines protection for representatives against dismissal; in cases against trade unions natural justice must be followed (Section III.5&6)
- Sets out the facilities required by worker representatives (Section IV.9.1)
- Provision of time off work without loss of pay or other conditions to carry out duties (Section IV.10)
- Union representatives to be given time off to attend union training courses & meetings (Section IV.11)
- WR to have access to all workplaces that are part of the enterprise (Section IV.12)
- Access to be granted to union officers, not employed by the enterprise (IV.17.1)
**Convention 154: Collective Bargaining Convention**

- CB can be carried out between all the parties that determine working conditions or terms of employment (Article-2a)
- Includes the regulating of relations between the parties and bargaining in good faith (Article-2b)
- Encourages the establishment of rules and procedures between the parties (Article-5c)
- Prevents anything from limiting CB by lack of or restrictive rules (Article-5d)
- The government sets up processes for settlement of disputes (Article-5e)

**Recommendation 163: Collective Bargaining**

- Requires governments to have supporting laws for FOA (Section II-2)
- Representatives of employer and trade union organisations are recognised (Section II.3 a-b)
- Both parties to provide training so representatives have the necessary skills (Section II.5.1-4)
- Parties need to have a mandate to make decisions (Section II-6)
- For meaningful negotiations Parties must have access to information (Section II.7. 2 a-b)

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**Summary of Collective bargaining in the Bangladesh Labour Law and Rules**

These laws cover the general rights and responsibilities for employers and trade unions but only have specific clauses for the Bargaining Agent. These general rights also apply to Collective Bargaining.

**Chapter XIII of the Bangladesh Labour Law**

Section 195 covers the responsibility of Employers

- Prevents discrimination against trade union members and officers at the workplace (a-d)
- Requires them to communicate with the Bargaining Agent (j)
- Stops the transferring of trade union officers without their permission (k)
Section 196 covers worker responsibilities

- Prevents unions from intimidating, inducing or compelling any members, or to resort to Gherao (2. a-f)
- Stops them from interfering in any elections of office bearers, or for the BA, when there is more one trade union

Section 199 states that a collective agreement cannot be enforced if it places restraints on the trade or commerce of the enterprise

Chapter XIII of the Labour Act Law
Section 202 covers the elections of the Collective Bargaining Agent (CBA)

- If there is only one union that union automatically becomes the CBA (1)
- If there is more than one union, an election is held between the unions for 1 CBA, or the Director of Labour can be requested to hold the election through a secret ballot, where all entitled workers shall be giving a vote (2 - 15)
- The winning CBA must receive more than 1/3 of the votes for the 2 year term (15 and 16)
- Employer must provide an office for the CBA on the premises (26)
- All parties have the right to use external expertise (202.a)

The responsibilities and rights of the CBA are set out in the Labour Act law & and the Rules.

- Can nominate workers to the Safety Committee (Rules 81-88)
- To represent all workers in the workplace or ‘group of enterprises’
- To call for new elections within 15 days of the expiry of the term of the CBA and follow the instructions for this (Rules 177)
- To give notice of a strike, within the rules set out in the Labour Law
- The CBA’s office must have natural light, air flows, chairs and tables, electricity, fans, lights and a notice board and be accessible to workers (Rule 182) but cannot interfere in management’s administration functions or in appointments, transfers or promotions or receive transport, financial assistance or additional furniture (Rule 202)

Section 203 states that in a ‘group of establishments’ a national federation can act as a CBA
The Service Rules

The employer must follow the rules for developing and submitting Service Rules, when there is no CBA, and they must be approved by the Inspector General of the Department of Inspection for Factories and Establishments (DIFE) Director of Labour. Section 3.

In Chapter II on Recruitment and Conditions of Employment (Rules 3 – 6)

- The employer must display the draft Service Rules within 7 days after they are notified accordingly by the Inspector General
- The union has the right to submit proposals or objections to the Inspector General within 10 days on Form 3(A)
- The Inspector General shall set a date to hear them within 14 days (4) and then sends those considered reasonable to the employer within 10 days, Rule 4(4)
- The final approved Service Rules must be made available to any person for the cost of payment of photocopying, Rule 4(16)

Story of Success & Solidarity

On the 14 January 2017, the Donglian Fashion Sommilito Sramik Union signed a collective agreement with the company A two-year collective bargaining agreement was signed between representatives of the union and Donglian Fashion, a ready-made garments manufacturer in Ashulia; the garment-producing hub in Dhaka.

The agreement includes provisions on wages, time off, maternity leave, a grievance procedure, fire and safety, meal and festival allowances, space for union activities and more. Workers are now entitled to an annual wage increase, sick leave and paid holidays, and will no longer have their pay arbitrarily docked for arriving late.

Key Point

Trade unions cannot take the right to bargain collectively for granted but must always be prepared to defend their right against restrictive legislation, hostile employers and government actions.
The agreement is a first at this company and followed a labour dispute in 2015 when 12 union members were fired. The Sommilito Garments Sramik Federation (SGSF), an affiliate of IndustriALL Global Union, mobilized international support. Donglian Fashion is owned by a Japanese company and the union in Japan (UA Zensen) raised the problem and pressure was put on local management to negotiate with the union. The 12 workers were reinstated and an MOU was signed in 2016. The new collective agreement built on this action and sets an example for improved industrial relations in the RMG sector.

SGSF president Nazma Akter said:
This agreement is a good example for the trade union movement in Bangladesh and shows what can be achieved with global solidarity. Support from IndustriALL and other unions has enabled us to turn around the situation at Donglian and produce a strong collective agreement. The management at Donglian now realizes that the union is a very good platform to negotiate with workers and we have a much better relationship.


This story demonstrates that it is possible for a union to be registered and achieve improvements in terms and conditions of employment. It also shows the importance of solidarity between unions, supporting each other at the national and international levels.

IndustriALL is the Global Union Federation that affiliates unions in the RMG sector and has an office in Dhaka.
The Contents of a Collective Agreement

The limit to the contents of a CA is not set out in ILO Standards; the parties must agree on what to include or omit.

Convention 154 (Article 5, 2a) recommends that items are progressively included; this means that the 1st agreement can include basic terms and conditions and additional items can be included each time it is renewed, or over an agreed period.

Some issues like OSH can have separate agreements.

The contents can be divided into

Wages and Conditions with financial implications. For example–
- Overtime, bonuses, allowances, compensation, training & education
- Methods of payments to workers
- Pensions, redundancy, promotion, termination & retirement
- Conditions of Work: (hours, leave (sick, holiday, parental, family & maternity), occupational safety and health, redundancy, skills training, job security)
- Welfare provisions: toilets, washrooms, restrooms, child care, medical care
- Provident Funds and sharing profits

Structure of union-management relations, For example–
- Grievance and dispute settlement procedures, including strikes
- Rights for trade union representation; check-off for trade union dues
- Communication & consultation
- Policy positions and procedures on gender equality, harassment and discrimination
- Flexible work and rest breaks during work
- The duration of the agreement.

Key Point
A general rule is that anything connected to the work environment that impacts on workers or their families can be included. Some employers try and limit the contents but they cannot do so without the agreement of the trade union.
The Bangladesh Labour Act covered issues of Collective Bargaining in
- Chapter IX (100 – 119) Working Time and Leave
- Chapter X (120 – 149) Wages and Payment thereof
- Chapter XII (150 – 174) Compensation
- Chapter XIII (175 – 208) Trade Unions and Industrial Relations
- Chapter XIV (209 – 231) Dispute Settlement, Labour Courts and Legal Proceedings

The selection of the content for a CBA must be relevant to the concerns and problems faced by workers.

The Labour Law provides for the minimum the employer can give to the workers; to prevent exploitation the union can ask for more.

During negotiations, the Bargaining Agent must check that the employer is not offering less than the law.

Negotiating a first-time collective agreement can take many months; it is important not to hurry the process because the content and each clause must be agreed to by both parties. On the other hand, the neither party should block the negotiations from being concluded.

An Agreement is renewed, changed or added to regularly, usually after 2 or 3 years; but if a clause is problematic, the employer and the union can sit down and make amendments before the end of the term.

The union representatives need to monitor implementation and keep notes of what is not working or remains unfair. New issues may need including, for example, a clause on environmental issues, HIV/AIDS; or the labour laws may have changed.

**Key Point**

Collective Bargaining is a continuous, dynamic process where the parties sign a legal, enforceable document that provides a way to settle disputes and improve relationships between employers, the trade union and the workers.
Guidelines for Negotiating

The following steps can assist the trade union to succeed in the negotiations and are implemented continually throughout the period of negotiations.

Setting up the Negotiating team

- The Executive Committee of the union selects the negotiating team (the team); either the whole committee, or a combination of selected union leaders and workplace representatives.
- A small workplace needs a small team of 2-4 but if the trade union represents a group of enterprises, the team needs to include representatives from each workplace.
- The team is responsible for researching and preparing the demands, communicating with members and sitting at the negotiating table with management.
- The team needs to support each other and resolve any difficulties that come between them during the process; especially as they will be working together for many months.

The members of the team need:

- Some experience in negotiating workplace issues with management
- Knowledge of the law and the principles of collective bargaining and union processes and policies
- An understanding of workplace issues and problems
- To be trusted and respected by the membership

The ILO Standards recommend that negotiating teams should be allowed to attend training courses. This is included in the Labour Law. Ask the Federation to assist.

Key Point

The team that sits at the negotiating table with management should be a maximum of 5 representatives. Include 2 or 3 substitutes as part of the team, who can take over, in case someone falls ill or resigns.
## Involving the members

If all the workers support the union, the management is more likely to listen and negotiate in good faith.

- Talk with members, find out their problems and ask them what changes they want.
- Explain the process of collective bargaining and why it is important that they show support.
- Tell them what is expected of them; to come to meetings, sign petitions or support actions.
- Hold regular meetings to get agreement on the contents of the agreement.
- Always keep them informed of progress.

## The trade union has the right to meet with the workers, in the workplace, to discuss the process but must inform them first.

Let management see that the union is communicating with the workers and has their support,

- Organise small group discussions or meetings during breaks or after work.
- Encourage workers to visit the BA office to collect information, read the notice board and ask questions.
- Write short bulletins with regular updates and handout to workers leaving or starting work.
- Involve members in small workplace actions, if management is not bargaining in good faith.
- Form a support committee of activist members to help with membership awareness raising, giving the team feedback from members and organising events.

## Materials

- Surveys to find out what the members want.
- Flyers and leaflets to help them understand the process and their rights.
- Petitions on single issues for members to sign and the team to use in negotiations.
- For members to wear buttons or stickers to state their support.
Preparing the demands and proposals

**Take the time to**
If all the workers support the union, the management is more likely to listen and negotiate in good faith
- Gather and analyse information to justify the demands
- Establish facts so demands are based on accurate information
- Decide what to include in the agreement (work from an existing RMG CBA)
- Prioritise, cost and prepare a list of items to open the negotiations
- Write a clear and simple draft of the agreement
- Anticipate management’s position
- Develop arguments and counter proposals
- Discuss tactics and share the work between the team.

**Useful information**
- Up to date statistics on wages, benefits, classification and categories of workers
- The problems faced by the workers and what members want from the negotiations
- Statistics on staff turnover, sick leave, number of dismissals and the reasons
- Past or current CBAs and a copy of the Service Rules
- The minimum Labour Law requirements for wages, benefits and working conditions
- The financial position of the company, how competitive it is in the sector
- Management plans for the company’s future
- How often audits are carried out and copies of the audit reports
- Average wages in the RMG sector in Asia
- Economic trends in the industry and future projections
- CBA’s in other RMG companies or similar sectors
- The Bangladesh economy, unemployment levels, prospects for the sector
- What people in the local community think about the company

**Where to find the information**
- Membership surveys and talking with workplace representatives
- Annual company and financial reports and related documents
- Industry trade journals and the media
- Legal cases the employer is or was involved in
- Websites (National and international/global unions), the company’s and buyers and the Multinational Corporations, the Ethical Trading Initiative, other unions, national and sector federations, similar trade union organisations, and any other relevant organisations.

**Key Point**
Having the facts strengthen the team’s position. Never go into a negotiation without careful preparation or with misleading information.
**Activity**

- Make a list of the information needed and divide it between the team members.
- Set a date and meet to discuss the findings and how to use them.
- Check the information is factually correct before using it in a negotiation

**Selecting the Items for negotiation**

Be clear about what the members want. Discuss feedback from them to identify the main issues.

**Divide the items between**

1) Terms and conditions of employment
2) The relations between the employer and the trade union
3) Administrative details for negotiating an agreement

**For each item ask**

- Is it the member’s priority?
- How easy or difficult will it be to negotiate?
- Will the members support it?
- What is the impact on members?
- What will the proposal cost management?

**Opening the Negotiations**

Send a notice to the employer with a request to discuss the content and structure of the agreement; propose a date, time and place. If the employer does not agree on all the items, suggest two lists, one for agreed items and another for items to discuss later.

**Key Point**

Take the lead in negotiations. Let the employer respond to your demand rather than responding to their demand. Send management written notices and proposals.
After the 1st meeting

- Write a clause for every demand / proposal
- Know your ‘Bottom Line’
- The bottom line is the minimum the members will accept
- If the employer rejects it you cannot come back and ask for a higher amount
- If you ask for more than the bottom line you have ‘room to negotiate’ and creating more options. The members want a 10% pay rise.

<table>
<thead>
<tr>
<th>Accept the offer and</th>
<th>the members get more than they expected</th>
</tr>
</thead>
<tbody>
<tr>
<td>Union asks for 20%</td>
<td>employer offers 6%</td>
</tr>
<tr>
<td>Union asks for 16%</td>
<td>employer offers 10%</td>
</tr>
<tr>
<td>Union asks for 13%</td>
<td>employer offers 12%</td>
</tr>
</tbody>
</table>

If the employer does not offer more than 8% - go back to your members and ask them what they will accept

Take a similar approach to each item, always asking for a bit more than your members want

Give the union flexibility to negotiate

Negotiating Tips

- Include an item that is not a priority so it can be ‘traded off’ with the employer to win a priority item

- During the negotiations note down what has been agreed, what was not agreed and what was traded off. Keep a chart to avoid mistakes and give each team member a copy to take into negotiations

- Always make sure that the clauses in the agreement are not in breach of the current Labour Law

Key Point

Hold a team meeting after each negotiation, to check progress, decide how to report back to the members. If it does not go as planned, change the strategy – be flexible and realistic in your demands
**Costing the demand**
- If there is a financial cost to the employer, estimate the amount
- For a wage claim calculate how much the wage bill will increase
- If the employer says we can’t afford it respond by giving an estimate of the percentage increase in profits for the previous year
- Any demand that increases the cost to the employer must factor in the employer’s ability to pay if you know profits are down, make a realistic demand
- If you are not sure how to do this get assistance from the federation

**Anticipating employer responses**
This is an important part of preparation, it helps to develop ‘counter arguments’ to negative responses of the employer.

<table>
<thead>
<tr>
<th>Employer Fears</th>
<th>Counter Arguments</th>
</tr>
</thead>
<tbody>
<tr>
<td>Loss of profits and an increase in production costs</td>
<td>Production increase when workers have better conditions and wages</td>
</tr>
<tr>
<td>Loosening competitive advantage because of the union</td>
<td>Improvement to wages and conditions, means workers produce better quality products</td>
</tr>
<tr>
<td>Losing customers</td>
<td>The buyers appreciate more efficiency and fairness to workers</td>
</tr>
<tr>
<td>Loss of management prerogative</td>
<td>Standardisation of terms and conditions and improved HR management provide uniformity and make the company easier to manage</td>
</tr>
<tr>
<td>Interference in how they run the business</td>
<td>Eliminating fear, nepotism and uncertainty give stability, reduce misunderstandings and provide a better working environment for all</td>
</tr>
<tr>
<td>The political party influence over the trade union</td>
<td>The trade union operates independently and democratically and is only concerned about the welfare of the workers</td>
</tr>
<tr>
<td>The union prevents the introduction of technical improvements</td>
<td>The union is asking to be consulted over changes to work practices; workers can contribute positively to changes because they understand the nature of the work and have ideas</td>
</tr>
<tr>
<td>The law says this and we cannot ignore the law</td>
<td>The law sets the minimum terms and conditions to protect the most vulnerable workers, it does not prevent negotiations for improvement</td>
</tr>
<tr>
<td>The workers just go on strike all the time and want more and more</td>
<td>If workers feel that the employer is listening to them and being fair then they will be more reasonable and conflict decreases</td>
</tr>
</tbody>
</table>
Writing a Clause

- Keep it simple and clear to avoid misinterpretation
- Check that it is not breaching the law
- Use everyday language so that the members can understand it
- Check the facts
- Use existing CBAs for guidance
- Ask the federation for assistance

Key Point

The terms and conditions are fixed in legislation, and are a safety net to prevent extreme exploitation, it does not prevent the union for demanding more reasonable terms and conditions of employment

Key Point

An individual can get angry and walk away and pay the price for a missed opportunity. If the union does this, it is the members who pay the price

Negotiating & Implementing the Agreement

Every day, people at home and in the market place bargain. Finding out what a reasonable price is and looking for the best deal. Then negotiating for a reasonable, affordable price gives the seller a profit.

This is like workplace bargaining; except the union is not bargaining for themselves but on behalf of the members.

Bargaining in good faith, following the principles and working in a team, can ensure the team gets the best deal for members.

Employers can get angry and refuse to change, make insulting remarks or treat the union with disrespect but often it is done on purpose to make the union lose control

If the team responds with dignity and without returning the insults, they gain the upper hand and the ‘moral high-ground’. 
The Stages of Negotiations

| Introductions | • Introduce the team members  
|               | • Set ground rules  
|               | • Establish the equal status between the teams |
| Discussion    | • Listen to each other’s proposals  
|               | • Explore what can easily be agreed or not agreed  
|               | • Listen and respond without personal attacks or judgements  
|               | • Give explanations and justifications  
|               | • Use breaks to decide what to agree, give up or modify |
| Bargaining    | • Be clear about the position on each item  
|               | • State arguments and be prepared to disagree  
|               | • Make counter proposals, trade-offs or suggestions for change  
|               | • Use language such as; if we do this -----, will you consider that ----- |
| Conclusions   | • Agree or not agree items in principle  
|               | • Make a list of items that can be agreed or will be difficult  
|               | • Decide what will be discussed at the next meeting |

**Tips**
This is an important part of preparation, it helps to develop ‘counter arguments’ to negative responses of the employer.
• Avoid misunderstanding or mistakes by checking what was offered or said  
• Stay calm and do not rush the process  
• Set dates for meetings when both parties have the time  
• Agree on a series of meeting dates and times  
• Check that the employers can make decisions about the items  
• Request adjournments to avoid arguments and check positions

**Key Point**
Senior management should be part of the management team or give their representatives a mandate, in the same way the union has a mandate from the members.
Adjournments (a symbol of a flag saying time out)

Both parties have the right to call for an adjournment (or break) in the proceedings. This can be for a few minutes, half a day or a full day (especially if members must be consulted)

The team leader calls for an adjournment when
- Team members contradict each other or go beyond the mandate from members
- Management puts a new proposal that needs discussing
- Tensions are increasing and people are getting angry
- A new decision needs to be agreed with the team

Communication skills for negotiators
Establish a positive dialogue at the beginning of the negotiations to prevent management from accusing the union of sabotage. This makes it difficult for them to behave rudely
- Acknowledge their position without agreeing to it
- Avoid personal criticisms and be polite
- Ask questions to confirm what is being offered
- Avoid making statements, ask questions
- Listen actively
- Observe the employers body language
- Ask them to repeat something that was unclear
- Do not interrupt when someone is talking to offer advice or suggestions

Tips for the bargaining stage
- Avoid misunderstandings by asking for clarification
- Make an important point strongly and directly
- Be less forceful if the point is not a priority
- State clearly and strongly if you do not accept the terms offered
- If you are prepared to consider a point speak quietly
- Confirm all agreements in writing.

Key Point
Never argue in front of management or let them see you are not united
Think about body language and select the tone of voice, facial expressions, gestures, postures and eye contact suitable for the situation. At the same time observe the employers body language for hints about how they are feeling.

**In the team**

- The leader never dominates the discussion
- Agree on shared responsibilities for raising different issues
- Decide the team’s rules before the negotiations
- Never contradict or argue with a team member during the negotiation

The approach the union takes depends on the approach of the employer.

If the employer does not respect the union, refuses to share information or focus on proposed items; factors this in to the tactics and take a stronger position.

**Important Rules**

- Prepare for the worst, hope for the best
- Be flexible, and anticipate the employers position
- Do not expect a perfect agreement, be prepared to compromise
- Keep the members informed and involved
- Know the law, it can work for or against you
- Choose words carefully, ‘say what you mean and mean what you say’ – if it’s not the last offer don’t say it is
- Always bargain in good faith – without agreeing to every proposal
- Never give up your right to say NO
- Consider that both the union and the employers must ‘save face’
- Clarify the terms of the agreement to avoid misunderstandings late

**Taking Union Action**

- The union cannot agree with management if they refuse to consider basic rights and freedoms or continue to propose conditions that exploit workers
There are a range of actions available to the union. Selection depends on the Law and the capacity of the union carry out the actions.

Workplace actions are conducted to warn management that they are being unreasonable but it is important that the majority of workers participate. For example—wearing badges, refusing overtime, working to rule or putting up posters.

**Key Point**

Actions can put pressure on management to compromise, especially if the union has been bargaining in good faith

External Actions can be organised in the community or near the factory. They are useful if the company does not have a good reputation.

For example; demonstrations or rallies; sending reports to the media; organising collective action with other unions and organisations or using social media.

**Key Point**

The Labour Law allows for the parties to consult with external experts, as such, the parties can agree to find a qualified person to assist them

Mediation or Conciliation is a tool to assist the parties bargain in good faith and learn how to reach a compromise. It can be recommended by the union if management is being difficult.

A mediator cannot take sides in the negotiation and can only facilitate a better relationship between the parties

The person selected must be neutral and independent from government, employers and the trade union and all parties must agree to confidentiality.
**Strike Action**

Strike Action is taken as a last resort when all else has failed and must be planned strategically and within the Law. The Labour Law gives specific instructions for calling and conducting a strike and the union must keep within the deadlines and procedures or they could risk their rights to collective bargaining.

** Strikes and the Law**  
The law applies to employers and trade unions

**Summary of Main Points**

**Clause 210: Settlement of Industrial Dispute or Collective Bargaining**

- The CBA must raise an industrial dispute to the respective employer
- Within 15 days the employer must arrange a meeting to try and reach agreement that is then signed by both parties
- If a meeting is not arranged and no settlement is reached within 30 days from the date of holding of the first meeting (if parties are in agreement they can extend this time), the dispute can be referred to a Conciliator (approved by the Government) who has 10 days to settle the dispute and make a report to the government.
- If this fails, the Conciliator can persuade the parties to go before an arbitrator who shall bring down a judgement in 30 days, with no appeal available to either party.
Clause 211: Strike or Lockout

- A notice of strike must have a date of commencement, to be held between 7 – 14 days of the notice date
- A CBA cannot serve a strike notice unless 2/3 of its members have voted for the strike through a secret ballot, under the supervision of the Conciliator
- During the strike either party can make an application to the Labour Court for adjudication
- If the strike lasts more than 30 days the government can prohibit it from continuing and order it to be heard in the Labour Court for settlement
- The Labour court shall hear the dispute and make an award not later than 60 days from the government order. This award can last no longer 2 years. Strikes are prohibited for 3 years in case of a new establishment or foreign-owned or established with foreign support.

Important Rules

- Do not threaten an action if you cannot carry it out – it weakens your position
- For success - strengthen the membership and keep them involved and informed
- Warn the employer of the damage to their reputation - if the union is forced to act
- Start with soft actions and increase – never start with a strike or external action
- Know the unions limits - resources, support and capacity
Enforcing and Renewing the Agreement

- After the agreement is signed; it is registered and implemented
- In some countries, a collective bargaining agreement is registered with the labour department or comes under contract law.
- Either way, it becomes a legal document, enforceable in law.

For example
Wage rises are a priority for the members so the union ensures that increases are back-dated to the date the agreement was signed. Failure to do so, is then in breach of contract

Key Point
It is the employer’s responsibility to implement the agreement and the unions to ensure that the spirit and contents of the agreement are not violated by management.
The union then monitors that all clauses are put into practice. There will be many examples like this and even if management has asked supervisors to comply with the agreement, they may decide to ignore it or not understand it.

For example
It was agreed to standardise working hours to 40 hours per week and eliminate forced overtime. The workplace representatives are receiving complaints that some supervisors are not following the terms of the agreement and send a report with the facts to the Executive Committee who then takes it up with management.

Management interprets a clause differently to the Bargaining Agent
Section-231 of the Labour Law states that ‘any difficulties or doubts as to interpretation of an agreement shall be referred to the Tribunal who will hear from each party and make a binding decision’.

First the Bargaining Agent should try and resolve this internally before resorting to a Court Case.

The Bargaining Agent can file a complaint with the Labour Court if management fails to implement the agreement in a reasonable time frame.

But this costs union money, try and persuade management first and use the law as a last resort.

Key Point
Court cases are expensive for the union as they need lawyers, use this as a last resort and find other ways to resolve problems; use the dispute resolution process, conduct workplace actions.
Finally, report back to members

- As soon as the agreement is signed, the negotiating team must explain it to the members, so that they know and can claim their rights.
- Prepare a summary sheet to hand out and hold meetings to explain it in more detail and allow members to ask questions.
- Hold a training session for workplace representatives, so they understand how to monitor implementation and provide them with a copy of the agreement to put in their files.
Embassy of Denmark

Workers Resource Centre
All assistance for labours

ওয়ার্কার্স রিসোর্স সেন্টার

E-mail: hq.dhaka@wrcbd.org, Website: www.wrcbd.org

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International Labour Organization (ILO)