The collective bargaining framework

Measures to encourage and promote the full development of collective bargaining
Setting a collective bargaining framework: Key questions

- Who has the **right** to collective bargaining?
- Who are the **parties** to collective bargaining?
- How will the parties be **recognized** for the purposes of collective bargaining?
- At what **level** will collective bargaining take place?
- What are the **subjects** to collective bargaining?
- How to promote **good faith bargaining**?
• “encourage and promote the full development and utilisation of machinery for voluntary negotiation between employers or employers’ organisations and workers’ organisations.”
  (Right to Organise and Collective Bargaining Convention, 1949, No. 98)

• “Machinery appropriate to the conditions existing in each country should be established, by means of agreement or laws or regulations as may be appropriate under national conditions, to negotiate, conclude, revise and renew collective agreements, or to be available to assist the parties in the negotiation, conclusion, revision and renewal of collective agreements”.
  (Collective Agreements Recommendation, 1951 R. 91)
Whatever kind of machinery used, its first objective should be to encourage by all possible means free and voluntary collective bargaining between the parties, allowing them the greatest possible autonomy, while establishing a legal framework and administrative structure to which they may have recourse, on a voluntary basis and by mutual agreement, to facilitate the conclusion of a collective agreement.

(General Survey of the reports on C. 87 and C. 98)
Machinery for collective bargaining

1. Through an **agreement** between social partners
   (Strong social partners, well-established tradition of CB)

1. Through **legal and institutional framework**
   established by public authorities, in consultation with social partners
   (Fragmented and weak social partners)
The right to collective bargaining

• All workers in the public and private sector
  • Possible exceptions: Police and armed forces: application of the CB right determined by national laws
  • Special modalities for exercising the right to strike: Public servants engaged in the administration of the state

(Labour Relations (Public Service) Convention 151 and C. 154).

• Effective recognition of the right to CB (employee – independent contractor, disguised employment relationship)
  • Guidance to clarify the scope of application of labour laws to guarantee that workers:
    • Exercise the right to collective bargaining
    • Enjoy effective labour protection under CBA

(ILO Employment Relationship Recommendation, 2006 (No. 198))
Parties to collective bargaining

• The CB framework to recognise CB as the exclusive prerogative:

  - *Employers’ side*: an employer, a group of employers, organisation of employers, managers or experts
  
  - *Workers’ side*: independent workers’ organizations (first-level trade unions, federations and confederations)
    
    - “Not under the control of employers” (C. 98)
    - “Organize activities free from interference by public authorities” (C. 87)
    - Role of trade unions to negotiate and conclude CBAs and the role of workers’ representatives to conclude CBAs in absence of trade unions (R. 91)
Recognition of representative parties for the purpose of collective bargaining

• Representativity:
  • Representativity for grievance procedures, tripartite bodies..
  • Registration # Representativity

• Recognition as representative of a constituency:
  acknowledge, accept and recognize an organisation as representative for the purpose of CB:

  1. Voluntary recognition of representative organisation:
     Recognition agreement on CB procedures & issues

  2. Determination of representativity through the law: formal status granted to employers’ and workers organisations via an administrative decision that all involved are bound to accept
Recognition of representative parties for the purpose of collective bargaining (cont’d)

- ‘Common law’ countries
  - Voluntary recognition
  - Legal criteria
    - ‘card count’ (union membership)
    - ballot (majority of workers would like union X to represent them in bargaining)

- ‘Civil law’ countries
  - Periodic workplace elections (threshold)
  - Independence, experience and financial rectitude
Recognition systems

• **Multiple unions** gaining recognition and negotiating:
  • Separate bargaining with each union – CBA applies only to members
  • ‘Single table’ bargaining – coordination of bargaining between all unions; one CBA applicable to all workers in the category

• **Exclusive bargaining agent** bargaining on behalf of all workers:
  • Representativity chosen by a majority vote of all employees in the unit
  • Certification made by an independent body
  • Provisions for new election after a stipulated period by:
    • A union which has failed to become bargaining agent
    • An union other than the certified organisation
  • Where no union is exclusive bargaining agent, all unions should be able to bargain for their members
Recognition procedures: Considerations

- **Scope of recognition**: bargaining unit, territory, industry, sector, occupation, enterprise or work unit
  - Effective recognition of CB rights: scope of bargaining unit should enable related groups of workers to defend their common interests

- Rapid and effective recognition procedures

- **Thresholds** for establishing representativeness should not hamper the full development of CB

- Establishing procedures for resolving *disputes over recognition* (ballot)

- Mechanism for *changes in representativity* of the bargaining parties
The bargaining level: Prerogative of bargaining parties

• Level of negotiation chosen freely by the bargaining parties:
  • Workplace, establishment or plant level
  • Enterprise level
  • Industry, sector or branch of activity level
  • Municipal or regional level
  • Occupational or inter-professional level
  • National level
  • A combination of these levels

• Degree of coordination: effectiveness of CB

• Systems of collective bargaining:
  • Single or enterprise-based bargaining
  • Multi-employer bargaining setting (industry, regional or centralised interprofessional)
## Single and multi-employer bargaining

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<tr>
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<tbody>
<tr>
<td><strong>Level</strong></td>
<td>Enterprise</td>
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<tr>
<td><strong>Typical number of parties:</strong></td>
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<tr>
<td>Representing employers</td>
<td>✓ A single employer</td>
<td>✓ One or more employers or employers’ organizations</td>
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<tr>
<td>Representing workers</td>
<td>✓ In most cases an exclusive bargaining agent, whether a single trade union or coalition of unions representing a majority of workers</td>
<td>✓ Most representative trade unions at the industry or national level</td>
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<tr>
<td><strong>Typical number of agreements per industry</strong></td>
<td>✓ Many</td>
<td>✓ One or more</td>
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<td><strong>Typical coverage:</strong></td>
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<tr>
<td>Of employees</td>
<td>✓ Moderate or low</td>
<td>✓ High</td>
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<tr>
<td>By enterprise size</td>
<td>✓ High in large enterprises</td>
<td>✓ Covers both small and large enterprises</td>
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<td>✓ Low in small enterprises</td>
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### Single and multi-employer bargaining (cont’d)

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<td><strong>Implications for distribution of wages</strong></td>
<td>✓ Standardizes pay rates and compresses enterprise wage structures</td>
<td>✓ Together with a high degree of coordination, raises wage floors and standardizes pay rates across industry, with an equalizing effect on the wage distribution</td>
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<td><strong>Implications for enterprise efficiency</strong></td>
<td>✓ Agreements reflect the performance of enterprises and the competitive environment within which they operate</td>
<td>✓ Agreements apply to the whole industry, and reduce (wage) differences between enterprises, providing an incentive for more efficient enterprises to innovate</td>
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<td><strong>Topics and level of detail</strong></td>
<td>✓ Regulates a range of topics in a detailed manner, tailored to the needs of the enterprise</td>
<td>✓ Can address issues affecting a whole industry, such as social insurance</td>
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<td>✓ Typically establishes the wage floor and basic conditions of employment</td>
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<td>✓ Provides for general increases at an industry level</td>
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<td>✓ Can allow for specific issues to be addressed in a detailed manner at the enterprise level</td>
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<td><strong>Application of provisions</strong></td>
<td>✓ Depending on the system, a collective agreement:</td>
<td>✓ Applicable to signatory parties, that is all employers and/or employers represented by an employers’ organization and all members of a trade union</td>
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<td>• Applies to the parties that negotiated it and those they represent. Employers may decide to apply conditions negotiated to all workers, regardless of their membership in a trade union</td>
<td>✓ Applicability of a collective agreement may be extended by a public authority to non-parties, provided certain conditions are met (e.g. requested by one or more of the signatory parties; parties considered sufficiently representative; non-parties able to submit observations)</td>
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<td>• In some systems, such as those with exclusive bargaining agents, the collective agreement may apply to all employees in the bargaining unit or enterprise, if the union (or coalition of unions) represents the majority of workers</td>
<td>✓ Enterprise-level agreements may implement specific provisions in the high-level agreements</td>
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<td><strong>Inclusivity</strong></td>
<td>✓ May not include employees of non-parties, such as workers employed by temporary employment agencies (working at the same work site)</td>
<td>✓ High degree of inclusivity as multiple employers can be involved</td>
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<td>✓ Depending on collective bargaining framework a collective agreement once concluded may (or may not) apply to all employees in the bargaining unit, including non-union members</td>
<td>✓ Policy-based extension applies entitlements in collective agreements to vulnerable categories, such as migrant workers or those in non-standard forms of employment</td>
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<td><strong>Typical duration of agreement</strong></td>
<td>✓ Fixed term</td>
<td>✓ Fixed term; or</td>
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<td>✓ Open-ended, often with a reopener clause to periodically review wages and other issues</td>
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<td><strong>Typically advocated by:</strong></td>
<td>✓ Employers</td>
<td>✓ Trade unions</td>
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<td>✓ Trade unions that have majority representation at one enterprise but are not well organized across the industry</td>
<td>✓ Employers wishing to prevent unfair wage competition and/or reduce the administrative costs related to bargaining at an enterprise level with multiple unions</td>
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Inclusive bargaining frameworks

• Encouraging parties to apply the CBA to all workers in the enterprise

• Establish joint industry forums on industry issues

• Support ad hoc joint bargaining committees to negotiate/revise provisions of branch CBAs

• Registration of joint multi-party bargaining councils upon request of representative parties at sector/industry or branch

• Policy-based extension of an industry-level CBA to all employers and workers in the industry or branch of industry
Subjects for collective bargaining

• **Working conditions**: wages, allowances, working time, overtime, rest period etc.

• **Terms of employment**: promotion, transfer, dismissal etc.

• **Regulation of relations**: facilities for TU representatives, procedures for the resolution of disputes, consultation, cooperation and information sharing

• **Innovative packages**: flexible working time arrangements; save jobs through work sharing; gender equality; equal protection for non-standard workers; improvement of work organisation; product quality and competitiveness

• **Full latitude** of negotiating partners to **decide** the subjects in the bargaining table
  • **Exceptions**: discriminatory clauses, clauses contrary to minimum legal protection

• **PS bargaining**: overall budgetary package or setting upper and lower limits for wage negotiation (significant role for CB)