

**FOR DEBATE AND GUIDANCE**

THIRD ITEM ON THE AGENDA

**Collective bargaining: Follow-up to the
Chairperson's Summary of the High-level
Tripartite Meeting on Collective
Bargaining
(Geneva, 19–20 November 2009)**

1. In November 2007, following the Committee discussion on “Collective bargaining and the Decent Work Agenda”,¹ the Governing Body asked the Office to organize a high-level tripartite meeting on collective bargaining, noting that further analysis and research, focusing on recent trends and innovations, would be required in preparation for the Meeting.²
2. The Meeting took place in Geneva on 19 and 20 November 2009 and was attended by 12 Government representatives, 12 Employers, and 12 Workers. It was also attended by representatives from 49 countries, who had been participating in the Governing Body. Participants welcomed the Introductory note which provided an overview of trends and innovations in different parts of the world.³ A number of working papers were also made available.⁴ The Meeting benefited from presentations by speakers from different regions, including academics, policy-makers, employers and trade union leaders.
3. The Meeting marked the 60th anniversary of the Right to Organise and Collective Bargaining Convention, 1949 (No. 98). In his opening remarks, the Director-General stressed the need to strengthen the institutional environment for collective bargaining if this fundamental principle and right at work was to be effectively realized. He was joined by the Chairperson and by the Employer and Worker Vice-Chairpersons of the Governing Body, who each gave their perspective on the role of collective bargaining in the quest for

¹ GB.300/ESP/1.

² GB.300/15(Rev.), para. 119.

³ ILO: *Collective bargaining: Negotiating for social justice. Introductory note*, Industrial and Employment Relations Department, Geneva, 2009 (TMCB/2009/1).

⁴ Documents can be found at: <http://www.ilo.org/public/english/dialogue/ifpdial/events/tripartite/meeting.htm>.

social justice and on the challenges that governments, employers' and workers' organizations face in this context. Professor Thomas Kochan of the MIT's Sloan School of Management chaired the Meeting.

Thematic panel discussions

4. The Meeting was organized around thematic panel discussions. The first panel addressed the role of collective bargaining in managing change as an effective crisis response. The second panel focused on innovative practices and discussed two case studies. The first study presented a collective agreement in the health-care sector in the United States which sought to improve productivity, service quality and working conditions. The second case study concerned the role played by collective bargaining in improving the working conditions and employment stability of non-regular workers in India. While in no way reflecting common practices, the two examples illustrated how challenges in very different country contexts could be addressed through collective bargaining. The third panel explored the ways in which policy and institutions have created an enabling environment for the effective realization of the right to collective bargaining through law, bargaining councils and machinery for dispute prevention and resolution. At the end of the Meeting the Chairperson presented a summary reflecting his views and the points of convergence (see the appendix).

Next steps

5. The outcome of the Meeting will be taken into account in the execution of the Programme and Budget for 2010–11, which reflects the four areas of follow-up action agreed to by the Committee in November 2007. These include the ongoing promotion of the ratification and effective implementation of the international labour standards related to freedom of association and the right to collective bargaining, capacity building and technical advisory services. It will also feature prominently in the Office's knowledge development and dissemination activities, with particular emphasis on the role that collective bargaining plays as part of an effective crisis response in the context of implementing the Global Jobs Pact.

Geneva, 10 February 2010.

Submitted for debate and guidance.

Appendix

High-level Tripartite Meeting on Collective Bargaining: Negotiating for social justice

(Geneva, 19–20 November 2009)

Chairperson's summary

1. The High-level Tripartite Meeting on Collective Bargaining was an occasion to celebrate the 60th anniversary of the ILO Right to Organise and Collective Bargaining Convention, 1949 (No. 98). During the opening session, the Director-General, the Chairperson and Employer and Worker Vice-Chairpersons of the Governing Body, agreed that ILO Convention No. 98 along with the 1998 ILO Declaration on Fundamental Principles and Rights at Work, were foundational principles of the ILO. They provide the basis for pursuing social justice, decent work and enterprise sustainability and must continue to be emphasized as we seek to recover from the disastrous recession and economic decline that we are experiencing.
2. From my point of view, in the twentieth century, collective bargaining earned its status as a cornerstone institution for democracy and as means of enhancing the growth of our economies and improving workers' economic status, and as an instrument for the social partners to respond to crises at their workplaces and at national levels. It also proved to be innovative for much of the twentieth century. Our challenge is to build on that rich institutional history and to carry it on in the twenty-first century. However collective bargaining faces many challenges, including a changing workforce, the changing nature of work, and the globalization of economic activity. Union membership and collective bargaining coverage have either declined or remained essentially stable in the majority of advanced industrialized economies and covers only a very small fraction of the workforce in many developing nations. Collective bargaining therefore needs to evolve and adapt if it is to remain relevant as a tool for addressing the interests and concerns of the parties today. These challenges need to be addressed in all of our efforts, and must be addressed collectively if we are to make progress. Participating countries, governments', employers' and workers' representatives, have helped us to understand what each needs to do to meet these challenges. This summary provides an overview of the discussions at the Meeting and my understanding of the points of convergence.

Managing change

3. The crisis that started in the financial sector soon impacted on the real economy and is now a global employment crisis. We heard of efforts of the social partners across Europe to use collective bargaining to arrive at agreements that save jobs, maintain income and try to ensure the short-term survival of enterprises, while also looking to secure longer term employability and enterprise sustainability through training and changes in work organization. Countries which had well developed collective bargaining institutions and practices were well prepared to craft effective recovery responses. In others with perhaps less developed institutions and traditions of collective bargaining, the role of the social partners has been more limited. We have also seen a return to tripartite discussions on critical economic and social policy issues at the national level. This is important not only for expanding the toolkit that the social partners have to address the crisis, but also for ensuring coordination.
4. The presentation by representatives from Daimler demonstrated the important role that collective bargaining at the sectoral level and works' council deliberations at the enterprise and workplace played in saving jobs and facilitating adjustment to the changing economic

realities that workers and the company faced. A broader package of policy measures that included support for short-time work and training made some of these discussions possible. Of course different countries have different industrial relations systems, however it illustrates the importance of seeing representation and collective bargaining as an integrative process and the links between the workplace, enterprise, sectoral and national levels. An important point about bargaining in times of crisis was raised in the Daimler case – that when parties face crisis and are open and transparent with each other about the nature of the crisis and the challenges they are facing, the result is not only a solution for the immediate crisis, but a deepening of trust and relationships. We should use this opportunity to build relationships, to build the trust that is so central to confronting these issues effectively and respond appropriately.

5. The experience at Daimler and in many similar cases around the world demonstrate that the parties can address these types of crises by being open to negotiation and the broadening out of the agendas, being transparent and sharing information, taking new ideas into account that they may not have thought of – it is that creative process that has brought about so many of the basic innovations in collective bargaining that have served us well in the past and can continue to do so for generations to come.

Innovative practices

6. The scope of issues that are the subject of collective bargaining has expanded to include training, employability and productivity. We had the opportunity to have presentations on two innovative case studies: the labour management partnership at Kaiser Permanente which seeks to improve the quality of services, efficiency and working conditions; and the efforts to expand the reach of collective bargaining to address and improve the working conditions and employment security of contract workers in India. In my view, these cases illustrate the potential of collective bargaining to address issues that go beyond wages and working hours or other legally mandated issues. Of course we cannot force employers and trade unions to talk about how to creatively implement technology in a way that safeguards the interests of the workforce while making sure that these technologies pay off in terms of improving the competitiveness of our enterprises and our economies. But these are examples of the types of issues that can be, and in some cases are being, addressed by labour and management in their collective agreements.
7. The key point made is that for collective bargaining to reach its full innovative potential it must go beyond formal contract negotiations. We need a coordinated response at all levels of our employment relations system, from the determination of working conditions, wages and hours, to the level of strategic decision making, within our enterprises where the basic decisions about product design and technology and location are made. There needs to be continuous dialogue at that level, as much as there is continuous dialogue at the workplace. Collective bargaining can provide a framework that facilitates that coordination and dialogue. But I want to emphasize particularly, that there is another level at which collective bargaining can play a facilitating role, and that was emphasized particularly in the Kaiser Permanente case, that the people on the front line, who understand how to deliver services, how to improve productivity, how to achieve continuous improvement need to be encouraged and brought into this process. This is the new frontier of collective bargaining. The Kaiser Permanente case showed that trade unions and employers that choose to expand this frontier by forming labour–management partnerships have the opportunity to forge a new social contract that once again sees wages and working conditions improve in tandem with improvements in productivity, service quality, and other critical measures of enterprise performance. To support these partnerships, employers need to share basic information about the business and the changing marketplace and provide the education and training that workers and trade unions need to contribute to continuous improvement. Trade unions need to be prepared to engage in

discussions on productivity, on the improvement of work processes as well as working conditions.

8. Another frontier for collective bargaining lies in the complex challenges associated with improving the working conditions of non-regular and/or migrant workers. These workers are often the most vulnerable in labour markets. The changing nature of work and difficulty establishing the existence of an employment relationship in some countries may place these workers outside of the reach of collective bargaining agreements. This is a difficult and contested area of law and practice in many countries. A number of examples from India illustrated how the social partners are using collective bargaining to address the needs of these workers. This is occurring on two fronts: first, between a trade union and temporary work agency to improve the conditions of work of those whom they employ; and second, between a trade union and user enterprise to regularize the contracts of non-regular workers. Trade unions are expanding their organizing drives and membership to include non-regular workers. The social partners will need to continue to discuss and explore new ways to address the needs of non-regular and migrant workers, including through collective bargaining, given that they constitute the majority of the workforce in many developing countries and a growing portion of the global workforce.

Creating an enabling environment

9. I now turn to the role of government. We heard three specific roles that government needs to play. One is to protect the basic rights for freedom of association and collective bargaining. The second is to provide mechanisms for individual and collective dispute resolution, and the third is to promote innovation and indeed to be a catalyst for innovation. Clearly, a democratic government is a precondition to freedom of association. Where it doesn't exist, worker organizations are going to continue to protest until they achieve the democratic right that all workers deserve and should be provided. So democracy is essential to freedom of association and, in turn, freedom of association and collective bargaining are means of strengthening and sustaining a democratic society.
10. Labour law, as many emphasized, should not be static. There may be a need to update it to address the reality of changing labour markets if it is to serve as an effective tool of labour market governance. We should not go through long periods of impasse or ideological debate over labour law. If that is the case, we will find that our law is outdated, and that practice is getting farther and farther removed from the requirements of law. But neither should labour law be subject to the whims of changing political regimes. We need an approach to labour law that is both stable and responsive, and which provides the social partners with the space to innovate through collective bargaining. The best labour law reforms are those that emerge from a process of social dialogue and consultation with all of the stakeholders having a voice, and doing whatever they can to build the commitment to implementing the changes in law wherever possible, as part of the deliberative process. Labour law is not self-implementing. It requires a commitment of the social partners and therefore the more we can do to make sure that it is the product of broad social consensus, the stronger our law will be.
11. Modern labour law should not reinforce adversarial systems but should open us up to explore opportunities for creative, innovative approaches. It must strike that appropriate balance between equity and efficiency. It is the practice that allows us to innovate and find new approaches – whether that means interest-based bargaining and problem solving, or the direct involvement of employees at the workplace to facilitated efforts by labour and management partners – collective bargaining is the mechanism that can help us find the right balance between equity, flexibility and competitiveness. Labour law is the policy instrument which can establish an enabling environment for innovations through collective bargaining. It is also the essential means for monitoring rights at work and social protection where collective bargaining is not well developed.

12. But as we have seen, there is also a need to go beyond these basic requirements. Today, an equally important role is to provide for dispute resolution, through mediation, facilitation and the voluntary means that parties need to reach agreements. There is a need to support governments in developing mediation services and agencies, as was instrumental in helping South Africa make a transition from apartheid to a democratic economy and society. The role of complementary structures and forums at the national and sectoral levels, such as wage councils in Uruguay or bargaining councils in South Africa also play a role in preventing and resolving disputes and helping the parties shape solutions that fit their particular situation. So we have to be continuously creative in developing mechanisms that help to prevent and resolve disputes and allow the collective bargaining process to realize its full potential. As a guiding principle these should always aim at helping the social partners achieve negotiated agreements.
13. The third role of government is probably the most underdeveloped at the moment. Government has a responsibility today, as emphasized during the Meeting, to be a catalyst for innovation. That means working with the parties, to build commitment to the principles of modern negotiation, of modern workplace participation, of consultation at the workplace and sectoral level, to consultation at the national level. There is no magical way to support this kind of innovation, but governments must be actively involved in providing and disseminating information, promoting innovation and supporting the parties as they reach for new approaches to solving their problems.

The role of the ILO

14. Finally, what does this all imply for the ILO? Clearly, forums such as this tripartite meeting are examples of the creative potential for bringing the parties together. We would continue to encourage social dialogue at this level and other levels by bringing experts together from different countries and experiences to provide ideas for how to strengthen the different elements of social dialogue. The ILO must continue to promote the ratification and effective implementation of Conventions Nos 87, 98, 151 and 154. Since protection by law and collective agreements are linked to the existence of a clear employment relationship, Recommendation No. 198 is a key instrument for addressing concerns about the employment relationship. The ILO must continue to play its role in knowledge development, collecting and updating information on the status of collective bargaining and worker representation, on innovative practices that illustrate how collective bargaining is both responding to specific crises and breaking new ground, and on other issues that are needed to understand the situation for collective bargaining and how it can advance social justice in our societies. The ILO also needs to continue to build the capacity of trade unions, employers' organizations and governments. The ILO has played a historical role in providing technical assistance to the development of labour laws, to its administration, and to building the capacity in our countries from advanced industrial societies to the developing economies around the world. That will continue to be a critical role, and I would continue to urge the ILO to support the development of technical assistance capabilities, particularly in our developing world.
15. And then finally, I want to echo something that the Director-General and the President of the Governing Body emphasized at the opening session. The ILO must continue to be the voice for promoting the principles and documenting the potential of collective bargaining in the world's economic forums that are taking place, and in other forums outside of the normal jurisdiction of the ILO. So to this end, I was delighted to hear that the ILO had a strong presence in the recent meetings of the G20 leaders at which the options for addressing the economic crisis were discussed. The Global Jobs Pact adopted by the ILC in 2009 makes reference to the critical role that collective bargaining can play in avoiding job losses, preventing deflationary wage spirals and reducing social tension. I would encourage the ILO to continue to emphasize the importance of trade unions and employers' organizations to democratic societies and the innovative potential of collective bargaining

and tripartite dialogue in discussions with leaders of our economic institutions, whether that be sister institutions such as the International Monetary Fund, or the World Bank, or the G20 or similar kinds of organizations and forums.

Thank you.

December 2009

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