THE ROLE OF NEGOTIATIONS IN INDUSTRIAL CONFLICT RESOLUTION

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ABSTRACT

Conflict is a fact of life in organizations as well as other areas of life, as people compete for jobs, resources, power, acknowledgment and security; dealing with it is difficult because it arouses primitive emotions such as people feeling threatened. Poor workers’ welfare and insensitivity on the part of employers or their management representatives offer some explanations for causes of conflicts in organisations. Salaries/emoluments are not only poor, but payment can be quite irregular. When this is viewed against the backdrop of ostentatious living among political leaders/elites and managers of the Public Sector, conflict becomes inevitable especially in situation where the machinery and process of negotiation is not given firm footing. The widely held misconception that union-management interaction must be adversary and combative is anchored on the existence of dual interest groups (in organisations) with different goals and motivation. An attempt was made in this study through to examine how negotiations can be employed as a strategy for industrial conflict management and to promote harmonious worker-management relations at the workplace generally. A critical look at the respondents’ views has amply demonstrated that negotiations have gained prominent degree of recognition as an effective approach to conflict management and industrial harmony not only in the literature but also in practice. This agrees with Ubeku (1985) and Fashoyin (1992) findings that strike is destructive both to the employer, employees and the society at large, leading to decrease in productivity, loss of contract year, loss of profit resulting from loss of revenue, net earnings and idle equipment. Negotiators must therefore deal with differences in a way that optimizes the chance of reaching a fair outcome efficiently and amicably; that rewards those who are better prepared, more skilful and efficient, and who have the better case as measured by objective standards of fairness; and that makes each successive negotiation likely to be even better.

Key words: Negotiations; Industrial; Conflict; Resolution
Introduction

The concept of conflict is multi-dimensional. Conflict is a sequence of interaction between groups in society, between groups and government, and between individuals. Conflict exists in the workplace as it does in many other parts of life. Conflict is inevitable in labour-management relations, but without cooperation based upon an ideology that makes it possible to develop constructive industrial relations, the marvels of modern technology and industrialization may lead to disaster. Organizational conflict is the discord that occurs when the goals, interests or values of different individuals or groups are incompatible and those individuals or groups block or frustrate each other’s attempt to achieve their objectives. Conflict is an inevitable part of organizational life since the goals of different stakeholders such as managers and staff are often incompatible.

Conflict is a fact of life in organizations as well as other areas of life, as people compete for jobs, resources, power, acknowledgment and security; dealing with it is difficult because it arouses primitive emotions such as people feeling threatened. Poor workers’ welfare and insensitivity on the part of employers or their management representatives offer some explanations for causes of conflicts in organisations. Salaries/emoluments are not only poor, but payment can be quite irregular. When this is viewed against the backdrop of ostentatious living among political leaders/elites and managers of the Public Sector, conflict becomes inevitable especially in situation where the machinery and process of collective bargaining is not given firm footing. The widely held misconception that union-management interaction must be adversary and combative is anchored on the existence of dual interest groups (in organisations) with different goals and motivation. One group is represented by employers of labour or the management whose primary concern is profit maximization or service delivery at any and all costs. The second group is made up of workers.
Their goal is to achieve improved welfare and better working conditions. The achievement of these seeming disparate goals dictates attitudes and strategies that bring the interest groups on collision path and ultimately conflict. Collective bargaining then rises to this challenge. Perfidy or deliberate refusal to honour collective agreements arrived at through the consensual process of collective bargaining are rife among employers/management representatives of some public sector organisations. When processes like these are jettisoned, an atmosphere of conflict which collective bargaining ought to neutralize festers.

LITERATURE REVIEW

What is negotiation?

Negotiation has been defined as any form of direct or indirect communication whereby parties who have opposing interests discuss the form of any joint action which they might take to manage and ultimately resolve the dispute between them. Negotiations may be used to resolve an already-existing problem or to lay the groundwork for a future relationship between two or more parties.

Negotiation has also been characterized as the “preeminent mode of dispute resolution”, which is hardly surprising given its presence in virtually all aspects of everyday life, whether at the individual, institutional, national or global levels. Each negotiation is unique, differing from one another in terms of subject matter, the number of participants and the process used. Given the presence of negotiation in daily life, it is not surprising to find that negotiation can also be applied within the context of other dispute resolution processes, such as mediation and litigation settlement conferences.
Characteristics of a negotiation

Negotiation is:

- **Voluntary:** No party is forced to participate in a negotiation. The parties are free to accept or reject the outcome of negotiations and can withdraw at any point during the process. Parties may participate directly in the negotiations or they may choose to be represented by someone else, such as a family member, friend, a lawyer or other professional bodies.

- **Bilateral/Multilateral:** Negotiations can involve two, three or dozens of parties. They can range from two individuals seeking to agree on the sale of a house to negotiations involving diplomats from dozens of States (e.g., World Trade Organization (WTO)).

- **Non-adjudicative:** Negotiation involves only the parties. The outcome of a negotiation is reached by the parties together without recourse to a third-party neutral.

- **Informal:** There are no prescribed rules in negotiation. The parties are free to adopt whatever rules they choose, if any. Generally they will agree on issues such as the subject matter, timing and location of negotiations. Further matters such as confidentiality, the number of negotiating sessions the parties commit to, and which documents may be used, can also be addressed.

- **Confidential:** The parties have the option of negotiating publicly or privately. In the government context, negotiations would be subject to the constitution or the relevant laws of the land.

- **Flexible:** The scope of a negotiation depends on the choice of the parties. The parties can determine not only the topic or the topics that will be the subject of the negotiations, but also whether they will adopt a positional-based bargaining approach or an interest-based approach.

Advantages of negotiation

- In procedural terms, negotiation is probably the most flexible form of dispute resolution as it involves only those parties with an interest in the matter and their representatives, if any. The parties are free to shape the negotiations in accordance with their own needs, for example, setting the agenda, selecting the forum (public or private) and identifying the participants. By ensuring that all those who have an interest in the dispute have been consulted regarding their willingness to participate and that adequate safeguards exist to prevent inequities in the bargaining process (i.e., an imbalance in power between the parties), the chances of reaching an agreement satisfactory to all are enhanced.
Like any method of dispute resolution, negotiation cannot guarantee that a party will be successful. However, many commentators feel that negotiations have a greater possibility of a successful outcome when the parties adopt an interest-based approach as opposed to a positional-based approach. By focusing on their mutual needs and interests and the use of mechanisms such as objective standards, there is a greater chance of reaching an agreement that meets the needs of the parties. This is sometimes referred to as a “win-win” approach.

Negotiation is a voluntary process. No one is required to participate in negotiations should they not wish to do so.

There is no need for recourse to a third-party neutral. This is important when none of the parties wants to involve outside parties in the process, e.g., the matter to be discussed or the dispute to be resolved may be highly sensitive in nature.

Unlike the outcomes of certain adjudicative processes, e.g., the courts, the outcome of a negotiation only binds those parties who were involved in the negotiation. The agreement must not, of course, be contrary to the law (e.g., an agreement to commit a crime would be illegal and thus void for public policy reasons).

Assuming that the parties are negotiating in good faith, negotiation will provide the parties with the opportunity to design an agreement which reflects their interests.

Negotiations may preserve and in some cases even enhance the relationship between the parties once an agreement has been reached between them.

Opting for negotiation instead of litigation may be less expensive for the parties and may reduce delays.

Disadvantages of negotiation

A particular negotiation may have a successful outcome. However, parties may be of unequal power and the weaker party(ies) may be placed at a disadvantage. Where a party with an interest in the matter in dispute is excluded or inadequately represented in the negotiations, the agreement's value is diminished, thereby making it subject to future challenge. In the absence of safeguards in the negotiating process, the agreement could be viewed by a participant or others outside the process as being inequitable, even though the substance of the agreement may be beyond reproach.
A successful negotiation requires each party to have a clear understanding of its negotiating mandate. If uncertainty exists regarding the limits of a party's negotiating authority, the party will not be able to participate effectively in the bargaining process.

The absence of a neutral third party can result in parties being unable to reach agreement as they be may be incapable of defining the issues at stake, let alone making any progress towards a solution.

The absence of a neutral third party may encourage one party to attempt to take advantage of the other.

No party can be compelled to continue negotiating. Anyone who chooses to terminate negotiations may do so at any time in the process, notwithstanding the time, effort and money that may have been invested by the other party or parties.

Some issues or questions are simply not amenable to negotiation. There will be virtually no chance of an agreement where the parties are divided by opposing ideologies or beliefs which leave little or no room for mutual concessions and there is no willingness to make any such concessions.

The negotiation process cannot guarantee the good faith or trustworthiness of any of the parties.

Negotiation may be used as a stalling tactic to prevent another party from asserting its rights (e.g., through litigation or arbitration).

How to use negotiation

Objective of a Negotiation

Negotiations allow the parties to agree to an outcome which is mutually satisfactory. The actual terms of the agreement must be concluded by the parties and can be as broad or as specific as the parties desire. A negotiated settlement can be recorded in the form of an agreement. Once signed, has the force of a contract between the parties. If the settlement is negotiated in the context of a litigious dispute, then the parties may wish to register the settlement with the court in conformity with the applicable rules of practice.
Negotiating Styles

Generally speaking, although the labels may vary from one commentator to the next, negotiating styles can be divided into two categories:

1. **Competitive/Positional-Based Negotiation**

   In the competitive model, the parties try to maximize their returns at the expense of one another, will use a variety of methods to do so and view the interests of the opposing party or parties as not being relevant, except insofar as they advance one's own goal of maximizing returns. Competitive bargaining has been criticized for its focus on specific positions rather than attempting to discern the true interests of the parties. Among the criticisms which have been levelled at the competitive model are its tendency to promote brinkmanship and to discourage the mutual trust which is necessary for joint gain.

2. **Cooperative/Interest-Based Negotiation**

   Cooperative or problem-solving negotiation starts from the premise that the negotiations need not be seen as a “zero-sum” situation, i.e., the gains of one party in the negotiation are not necessarily at the expense of the other party. Common interests and values are stressed, as is the use of an objective approach, and the goal of the negotiations is a solution that is fair and mutually agreeable.

In recent years, the form of cooperative negotiating style known as principled bargaining has won widespread acceptance. The proponents of principled bargaining believe that bargaining over fixed positions can lead to situations where parties will either be stubborn (“hard bargaining”) or accept unilateral losses (“soft bargaining”) in order to reach agreement. Principled bargaining, which attempts to reconcile the interests underlying these positions, helps the parties to reach agreement and circumvent the problems of hard and soft bargaining. It is this form of negotiation which is seeing increasing use.
Dealing with Differences

Underlying any successful relationship is the principle of mutual respect. This is particularly true during negotiations, where cultural and/or linguistic differences between the parties may occasionally result in misunderstandings between them. Such differences will influence the perceptions and assumptions of individuals and how they bargain. Differences in gender may also play a role in the negotiating process, whether the parties are of the same or different cultural backgrounds. Reliance on stereotypes, whether based on gender, cultural, physical or racial differences or physical disability, will cause and reinforce misunderstandings between the parties.

The ability to deal with others who are not of the same gender or cultural origin or who differ in some way from one's self varies with each individual and the degree to which she or he has been exposed to and is willing to accept diversity. Whatever one's background, clearly demonstrating respect for and an open-minded attitude towards others is always an appropriate course of action. When there are cultural or other differences among parties to a negotiation, it is important to be aware of and sensitive to these differences. In such a situation, it is essential to communicate clearly and effectively with the other party or parties in a negotiation. Doing so will enhance the relationship between the parties as well as minimize the chances of a misinterpretation of the underlying message.

Dealing with Difficult or Deceptive Conduct

At any point during negotiations, one party may decide to use a variety of tactics in order to obtain an advantage over another party. This behaviour can range from pressure tactics (attempting to force a party to accept specific terms), intimidation (implicit or explicit), deliberate ambiguity regarding the scope of the negotiating mandate to blatantly unethical behaviour (providing misleading or false information, lies, etc.).

Advance preparation is essential in order to respond effectively to these tactics, whenever they may arise. In devising strategies to counter such behaviour, each situation must be viewed as unique. Previous experience of others can provide useful guidelines in formulating a suitable response. Awareness of basic communication techniques and strategies on how to communicate with difficult or deceptive individuals may also be
The choice of tactic(s) to be used to rebut difficult or unethical conduct is a question of personal judgment, as what may be an appropriate response in one situation may be excessive or too conciliatory in other circumstances.

Preparing for a Negotiation

Initial Assessment

The negotiation process begins with a communication or signal from one party to the other indicating a willingness to bargain. Since negotiation is a voluntary process, the first and fundamental step to be taken is to confirm whether or not the other party or parties are interested in negotiations. In making such an assessment, it is important to take into account the following factors:

- the desire to resolve the dispute;
- whether a negotiated solution is in the interests of any or all of the parties in question;
- the credibility of the other party(ies);
- the willingness of the parties to establish or preserve a relationship;
- whether or not there is a disparity between the parties to the extent that it would be impossible to bargain equally, i.e., there is a marked contrast between the parties in terms of the level of education or the resources of the parties;
- the desirability of using another form of alternative dispute resolution, such as mediation or arbitration; and
- Proper authority to enter into negotiations and to reach an agreement or settlement.
Once it has been decided that negotiations are an appropriate course of action, arrangements that must be made with the other parties include:

- outlining the agenda and the scope of the negotiations;
- fixing the timetable, i.e., whether or not there will be a fixed period for the talks as well as the frequency and the duration of the negotiations;
- determining the identity of the participants, ensuring that all interested parties have been consulted;
- choosing the locale for the negotiations (preferably a neutral location) and arranging necessary support services;
- specifying the official language(s) to be used for the purposes of the negotiations, as well as the need for translation and interpretation services where need be.
- deciding whether or not the negotiations and any resulting agreement will be confidential

Consistency in these matters will not only assist in ensuring the negotiations are as effective as possible, they will also reinforce one's credibility and can thus contribute to establishing mutual confidence and trust.

Preparation of a Strategy and Interest Assessment

A crucial factor in achieving one's goals in negotiation is thorough preparation. Therefore, it is suggested that the following steps should be taken prior to any bargaining session:

- Study the dispute in question before the negotiations. This means not only obtaining the facts surrounding the dispute, but also attempting to find out as much as possible about the other party or parties, their background and their negotiating interests.

Harmonize and reconcile the varying and sometimes competing interests within one's negotiating side before negotiating with the other side. Failure to do so can undermine one's negotiating stance by making the other party aware of internal disagreements and thus raising doubts as to one's ability to implement any future agreement.
- When assessing one's interests as well as those of other parties, the Best Alternative To a Negotiated Agreement (BATNA) must be taken into account. The BATNA is “the standard against which any proposed agreement should be measured”. It is, in essence, the best of all the possible alternatives to negotiation should the latter fail. Assessing one's BATNA is indispensable and should be done carefully and well in advance of any bargaining session so as to avoid unpleasant surprises from the opposing party during the negotiations. Attempting to estimate the BATNA of the other party will also be worthwhile when planning one's negotiation strategy.

- Creativity is necessary when attempting to devise solutions when at first glance the dispute appears to be insoluble. An impasse will often result when the negotiating parties advance specific positions and refuse to change them. Each party should then canvass the various members of the negotiating team in order to obtain their views regarding possible solutions, i.e., determining the parties' underlying interests and how they may be satisfied. This should be done in an environment which encourages the team members to express their ideas freely and without fear of criticism, e.g., a brainstorming session.

Thought must be given as to how the negotiations will be handled. For example, it must be decided in advance whether there will be one spokesperson or whether each member of the negotiating team will be responsible for one or more particular areas or topics. Another consideration is fixing in advance when and how to call a private team caucus that will interrupt the negotiations. Resorting to a caucus of team members is helpful when a new issue emerges at the table or an issue on the table requires clarification or further analysis. Finally, all members of the negotiating team should be aware of the need to resolve any internal disputes away from the negotiating table and to avoid revealing any such disputes or doubts to the other parties, e.g., through the use of inappropriate body language.
Steps of a Negotiation

Each negotiation has its own unique characteristics. There is thus no uniform and exclusive manner governing the organization of a bargaining session. For example, the timing of an offer and the question of which party is to make the first offer fall within the discretion of the negotiator and are determined by the overall dynamic of a particular negotiation.

Negotiation Session

During any negotiation, the following considerations should be kept in mind:

- Concentrate on interests, not positions. Try to focus on the underlying interests of all the parties, i.e., their needs, desires, concerns and fears, and how they might be acknowledged and reconciled.

- Separate the people from the problem. Avoid blaming the other side for the problem(s) one has encountered and discuss the perceptions held by each side. Ensure that there is effective communication between all parties.

- Listen carefully and actively to what the other side is saying and acknowledge what is being said. This can be done through methods such as asking questions and by making frequent summaries.

- Try to make the negotiations a “win-win” outcome by creating options for mutual benefit.

1. There is no need to wait until negotiations have begun, however, in order to develop these options. They can and should form part of the development of the negotiating strategy, although they are subject to modification in the course of the negotiation.

2. Creating these options implies a willingness to look beyond the limits of the issue(s) in question. Doing this can be achieved through means such as brainstorming sessions with one's negotiating team. Brainstorming can also be a joint exercise involving all the parties.
These sessions should be structured so as to allow all participants the opportunity to voice ideas in a non-adversarial and non-critical environment.

- Use objective standards. Citing objective standards such as legislation or government policies enables parties to view the issues in rational rather than emotional terms and facilitates the conclusion of an agreement. There is likely a variety of alternative objective criteria that could be cited by the parties and, if possible, they should be identified by each negotiating team prior to entering into the negotiating session.

- Evaluate proposals of the other party and the progress of the negotiations in light of the BATNA (Best Alternative To a Negotiated Agreement). It may become necessary to break off the negotiations if there appears to be no way of achieving an outcome which is superior to the BATNA. This can occur when it becomes apparent that the underlying interests between the parties are irreconcilable or that the other side does not really want an agreement.

- When necessary, feel free to stop the negotiations if there is a need for the members of the negotiating team to confer on a new development. To avoid revealing the content of these discussions, the caucus should be held in a private location which is preferably not visible to the other side.

- Stay within the limits of one's negotiating mandate. Ensure that there is constant communication with the client/members when acting on the latter's behalf. The same principle applies when bargaining in the governmental context; before committing the government to a position Justice counsel must be clear as to the extent of her or his bargaining authority. More specifically, counsel must be certain that they have received specific instructions as to whether or not to conclude an agreement as well as the limits of the mandate, e.g., the limits governing any offer to the other party as well as the degree to which other options can be offered. As well, any agreement that is reached must respect existing laws and government policies.
Prepare for the possibility of being confronted with provocative, intimidating, unfair or deceptive behaviour of a party to the negotiations. At worst, it may become necessary to end the negotiations, having carefully examined one's BATNA and having concluded that termination is the preferable course of action.

Statutory/Policy Considerations

A negotiator's authority is limited not only by the mandate given by his or her principal or client, but also by factors that may not be explicitly mentioned in her or his mandate, such as existing statutes, regulations or government policies.

CONCLUSION

There is no doubt that in a given case a lawyer may obtain a short-term gain for a client by bluffing, threatening, actively misrepresenting the extent of the lawyer's authority, what the client is willing to do, or other facts, or by engaging in browbeating or other psychological pressure tactics. However in a professional arena it is not a sound practice to negotiate in a way that rewards deception, stubbornness, dirty tricks and taking risks. It is therefore wiser for negotiators to deal with differences in a way that optimizes the chance of reaching a fair outcome efficiently and amicably; that rewards those who are better prepared, more skilful and efficient, and who have the better case as measured by objective standards of fairness; and that makes each successive negotiation likely to be even better.

Readings


