OJEN ROEJ

Ontario Justice Education Network

IN BRIEF

STUDENT HANDOUT

COLLECTIVE BARGAINING

WHAT IS A COLLECTIVE AGREEMENT?

A collective agreement is a written contract between an employer and a group of employees who are represented by a trade union which outlines the terms and conditions of the workers' employment. This agreement contains the rights, obligations and duties of the workers as well as the employer and the trade union itself. The group of workers are referred to as a bargaining unit.

For example, nurses working in a hospital could be part of a trade union and form what is called a bargaining unit. Their collective agreement would outline the terms and conditions of their job and set out the obligations that the hospital has towards them. The nurses could agree to work 12 hour shifts and the hospital would agree to pay them a certain salary based on each nurse's experience.

WHAT IS COLLECTIVE BARGAINING?

Collective bargaining is the process during which the employer and the trade union representing the workers negotiate the collective agreement (either a first one or the renewal of an existing one). During the negotiations, the parties will decide such issues as wages, benefits, working conditions, grievance procedures, etc.

For the process of collective bargaining to begin for a new unit, a trade union must advise the employer, in writing, of its desire to negotiate an agreement. If the bargaining is to renew an existing collective agreement, either the trade union or the employer can give notice to the other party of its desire to negotiate. The parties must meet within 15 days of receiving the notice unless they agree to meet at another time.

Once the parties meet, they will exchange their proposals. These proposals will outline the terms and conditions sought by the parties. From thereon, the parties will be able to see where they agree and where they have to negotiate to agree to certain terms and conditions.

For example, the trade union's proposal may outline that the workers in the unit get 15 days of vacation per year whereas the employer's proposal establishes that the workers only get 10 days of vacation. Both parties will have to negotiate this term before it can be included in the collective agreement.

During collective bargaining, each party agrees to bargain in good faith and to make every reasonable effort to enter into a collective agreement. This means that each party must bargain fairly, reasonably and honestly. For example, the employer must make certain important information, such as pay rates, available to the trade union. Without this information, the trade union could not negotiate properly.

If parties reach an agreement, this agreement must be ratified by the employees who are part of the bargaining unit. The employees vote by way of a secret ballot. If the majority of the employees in the unit vote in favour of the agreement, it will pass. If not, the negotiations will have to continue.

WHAT HAPPENS IF THE PARTIES CANNOT AGREE?

In Ontario, if the parties cannot reach an agreement, they can ask the Ministry of Labour to appoint a conciliator. The conciliator's role is to help the parties come to an agreement. If the conciliation is not successful, the conciliator will advise the Minister of Labour who will then issue a "no board" report.

The parties can choose to ask an arbitrator to decide on the issues in dispute. They will present their respective arguments for each issue on which they cannot agree and the arbitrator will give a binding decision. The parties will have to follow the arbitrator's decision. If the parties choose to use an arbitrator, they are giving up their right to strike or to lockout.

Parties who cannot reach an agreement and who do not proceed by way of arbitration can be in a strike or a lockout position once conciliation has failed.

WHAT IS A STRIKE?

A strike is when all the employees of a bargaining unit stop working or refuse to perform some of their duties in such a way to slow down the output of their employer during a labour dispute.

WHAT IS A LOCKOUT?

A lockout is when the employer closes the workplace or suspends work for certain employees during a labour dispute.

A lockout or a strike usually ends when the parties agree on the terms of a new collective agreement and conclude collective bargaining.

MOCK BARGAINING SCENARIO

Takahashi is a large Japanese restaurant that operates in a busy downtown office tower. It has been around for 25 years and is open from Monday to Friday from 10 am to 10 pm. The restaurant serves the people working in the office tower, who use it as a nice place to take clients for fancy sushi lunches and dinners.

To run the restaurant, there is a large staff made up of cooks, dish washers, custodial staffers, servers, bus boys and bartenders. The restaurant has been unionized for 20 years. Around 50% of the workers have been at Takahashi for over 10 years. 40% of the workers have been with Takahashi for less than 3 years.

For a long time, the Union has had a very good working relationship with Mr. Takahashi. Mr. Takahashi had always believed that the happier his workers were, the more invested they would be in the business, which would lead to a more successful restaurant. To that end, Mr. Takahashi generally gave the employees a 4% increase in wages each year as well as a generous December Holiday Bonus of one week's pay for every employee. If business had gone really well, Mr. Takahashi would give a 6% increase in wages. The employees at Takahashi made more money than workers at other restaurants. Although the Union engaged in bargaining every 2 years, negotiations were very cordial and fast. However, Mr. Takahashi has aged and cannot keep up with running the business. He has decided to pass the restaurant onto his son, Robert, a successful business executive.

Although Robert sees that business is doing well, he has many new ideas and changes for the restaurant. He wants to open the restaurant on weekends for dinner and would like to renovate and revamp the décor of the restaurant. He would like to cut costs and to use the savings on redesigning the space.

The members of the Union are excited about changing the look of the restaurant, however, they are worried that they may have to bear the costs of the makeover. They have heard rumours that Robert is thinking about cutting jobs or lowering people's pay.

There has also been talk of a lockout or strike if the parties are unable to agree on a Collective Agreement. Robert does not want either a lockout or a strike because he is worried about losing business and the bad press that usually comes with a work stoppage. The workers don't want a lockout or strike, because the Union does not have a lot of money in the strike fund to pay the workers during a lockout or a strike.

The deadline for a strike or lockout is in one hour but there are a number of terms that are outstanding. Tensions are high between the parties and it's up to you to help bargain an acceptable Collective Agreement for both sides before time runs out. Good luck!

SECRET MEMO OF PRIORITIES - UNION

Term

Traditionally the Collective Agreement has always been for 2 years. The workers would like to have a Collective Agreement for 3 years to create greater stability in the workplace. They would not like to have the uncertainty of a contract that is less than 2 years.

Vegetarian Meal Options

The current Collective Agreement provides one staff meal before the start of a shift. Mr. Takahashi has generally provided meals that contain meat, as he believed that meat was pivotal in making his workers strong. Around 25% of the workers are vegetarian and choose not to eat the meals. These workers have made a request to the Union to ensure that a vegetarian option is always available.

Weekend Scheduling

The workers who have been at Takahashi for more than 10 years (50% of the membership) do not want to work on the weekends. Most of them have families and enjoy spending their weekends with them. They would like to see an article that protects them from being forced to work on a weekend shift. The workers who have been at Takahashi for less than 3 years (40% of the membership) are fine with working on weekends, however they would like the Collective Agreement to allow them to switch shifts two weeks before the scheduled time.

Job Security

The members with less than 3 years of service (40% of the membership) are very worried about getting laid off since they do not have seniority. A spokesperson for that group of workers has told the Union's bargaining team that all of the members with less than 3 years of service will refuse to ratify a Collective Agreement that allows for any lay-offs.

Wages

In the last collective agreement, workers received a 6% increase in wages each year along with a Holiday Bonus worth one week's pay. The workers know that Robert will try to give less of an increase in wages, although they feel this is unfair, given how well the restaurant is doing. They are willing to accept at minimum a 2% increase in wages (although they would be happy to get more!). They are, however, unwilling to get rid of the Holiday Bonus, which workers use for shopping and the winter holiday.

*Remember if the parties are unable to reach an agreement, there will be either a lockout or a strike (which neither party wants). The Union must work with the Employer's bargaining team to reach an agreement that both Robert and the majority of the workers agree with. If either Robert or the workers reject the offer, there will be a lockout or a strike.

Although workers may feel certain priorities are important at the outset of negotiations, it's possible you will need to compromise on the priorities. It is your job as the Union to sell the compromised deal you have brokered to the workers. Part of the assignment will be to explain why you made the choices you did. Good luck!

SECRET MEMO OF PRIORITIES - EMPLOYER

Term

Traditionally the Collective Agreement has always been for 2 years. The Employer would like to have a 1 year term contract. Robert wants to see how things go with his first year as owner and then reassess. Although this is somewhat important to Robert, he understands that the Union may be resistant and he will settle for a 2 year contract.

Mr. Takahashi was relatively tolerant about what people wore to work. Robert would like to ensure that all servers, bartenders, hosts/hostesses and busboys look professional and dress in the following way:

- Women: black heels, black skirt or slacks, and black dress top;
- Men: black dress shoes, black slacks, and black button-down shirt with black standardized Takahashi tie.

Renovation Costs

Although business has been good at Takahashi, Robert would like to spend a significant amount of money to renovate and redecorate the restaurant. Robert's accountant has determined that in order to cover the costs of the renovations, the Collective Agreement must allow for one of these three options:

- 0% wage increase, with a Holiday Bonus worth one week's pay; or
- 10% layoff of workers with low seniority, 4% wage increase with a Holiday Bonus worth two week's pay; or
- 1% wage increase, Holiday Bonus worth one week's pay based on merit.

From Robert's standpoint, the final Collective Agreement must include one of these options, or something better.

Weekend Dinner Shifts

Unbeknownst to the employees, Mr. Takahashi has had a pretty severe gambling problem over the last few years. He has been buying supplies for the restaurant through shady loan sharks. Robert believes the only way to get Takahashi out of debt is through opening the restaurant for weekend dinners. He is desperate to pay off Mr. Takahashi's debt and knows that if he doesn't pay up soon, the business will go under. He requires an article in the Collective Agreement which will ensure there will be an adequate number of workers for these shifts. He will not accept a Collective Agreement that does not address this issue.

*Remember if the parties are unable to reach an agreement, there will be either a lockout or a strike (which neither party wants). The Employer's bargaining team must work with the Union to reach an agreement that both Robert and the majority of the workers agree with. If either Robert or the workers reject the offer, there will be a lockout or a strike.

Although Robert may feel certain priorities are important at the outset of negotiations, it's possible you will need to compromise on his priorities. It is your job as part of the Employer's bargaining team to sell the compromised deal you have brokered to Robert. Part of the assignment will be to explain why you made the choices you did. Good luck!

Collective Agreement

between

Takahashi Ontario Restaurant Inc.
(hereinafter referred to as the "Employer")

and

Takahashi Solidarity Workers' Union
(hereinafter referred to as the "Union")

May 1, 20XX

Preamble

The purpose of this Collective Agreement between the Employer and the Union is to maintain harmonious working relations between the Employer and its Employees.

Article 1 – Term

1.1 This Collective Agreement is valid for a term of _______ months.

Article 2 – Pay

2.1 With respect to pay, the Employees of Takahashi will receive

Article 3 – Weekend Shifts

3.1 *With respect to shifts, the Employees of Takahashi will work*

Article 4 – Other Issues

4.1

4.2

4.3

For the Union	For the Union	For the Employer	For the Employer
For the Union	For the Union	For the Employer	For the Employer

