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## **A Different Point of View in Collective Bargaining: Legal Perspective versus Business Perspective**

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### **Abstract**

This paper aims to describe the different point of view in collective behavior between legal context and business context. As in business context, in which collective bargaining concerns about a monetary system, a group of farmers can use collective bargaining as a tool to deal with injustice negotiation. Nowadays, a number of goods and services produced/provided are discovered to be determinate; namely, higher or lower wage of the workers, resulted from winning or losing the collective bargaining will affect to the price of goods sold or services provided. Collective bargaining is not an obsolete idea. The way to use it advantageously is depended on how much power bargainers realize they have. The strategy of collective bargaining in both legal and business perspective may be similar in some ways; but however, the format of conducting it may be different. In conclusion, to sustain the relationship between employees and employer or buyers and seller is to maximize both parties profit. When the needs of both parties are fulfilled, the outcomes will generate benefit for the society and all stakeholders.

**Keywords** Collective Bargaining, Bargaining, Business Negotiation, Legal Negotiation, Negotiation, Labor Law, Employment Law, Law

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## **The Nature of Collective Bargaining**

In our daily life, we have to face the chance to bargain. No matter how good in bargaining we are; reaching an agreement is the best way to sustain the relationship with the antagonized party. Notwithstanding, there are various kind of bargaining depended on the situation we cope with, such as bargaining in business perspective (haggling with the seller), integrative bargaining, distributive bargaining, collective bargaining, and so on. It is dubious that what the differences among these bargaining are; the function and the role they play; the similarity in their characteristics. This is still questioning for individuals in this cradle of humanity.

Even though, there are a number of research studying in collective bargaining, for example, Weldon (1953) discusses about collective bargaining and its economic effects; Jensen (1963) criticizes the process of collective bargaining and questions its obsolescence; Alexander (1971) studies about conglomerate mergers and collective bargaining during year 1948-1968; Glassman (1972) does a research on a public sector's collective bargaining and attempt and to suggest some brand-new directions for future research; Craypo (1975) explores the collective bargaining in Litton Industries and General Electric Company during year 1969-1971; Gilson et al. (1997) explain the theory of collective bargaining and including the use of it in USA and internationally; Matsa (2010) reports on the usage of debt financing to improve firm's bargaining position; De Jong (2011) studies the competition and the innovative intentions in Dutch enterprises where intentions correlate with the bargaining power of suppliers; Foster et al. (2011) explore the attitudes of New Zealander employers to collective bargaining and the union agents; Katchanovski et al. (2011) investigate the attitudes of employees towards collective bargaining in universities in USA and Canada. However, the academic papers examining the different point of view in collective bargaining in legal perspective and business perspective are still limited. As a result, the organization of this be paper will be arranged from: firstly, the characteristics of collective bargaining will explained; secondly, the collective bargaining in legal and business perspective will be discussed; thirdly, the process and result of legal/business collective bargaining will be explored; and, finally, the conclusion of this academic paper will be discussed.

### ***The Characteristics and Core of Collective Bargaining***

The collective bargaining emerges when both parties try to seek the maximum profit they may earn as a monetary or non-monetary return. Raison d'être, collective bargaining always has the opponent (Jensen 1963). In law, the collective bargaining represents the conflict in mutual agreement between worker and employer. Its necessity is that the activity of worker representation prevents workplace conflict as well as promotes social integration among workers (Gilson et al. 1997). As in business context, in which collective bargaining concerns about a monetary system (Weldon 1953), a group of farmers, or even people in community can use collective bargaining as a tool to deal with injustice negotiation or in order to protect the rights of the consumers.

### ***The Impact of Collective Bargaining***

Nowadays, a number of goods and services produced/provided are discovered to be determinate (Weldon 1953); namely, higher or lower wage of the workers, resulted from winning or losing the collective bargaining will affect to the price of goods sold or services provided somehow. Matsa (2010) also supports that manufacturers sometimes attempt to reduce the impact of bargaining on profits; namely, firms increase the worker wage and increase the cost of product as well. That is, at any level of wages earned among workers in the industry, it will affect to the purchasing power (Weldon 1953). Therefore, winning or losing collective bargaining will have the impact of both legal act and business move. Apart from economic condition, collective bargaining also affects to the society since it is often a source of the demonstration (Weldon 1953).

Ipsa facto, if the existence of collective bargaining is gone, some employers may take advantages of their employees such as providing pure condition workplace, using child labor, or not providing medical insurance for their workers. In business view, department stores can takes advantages from the farmers by asking for unreasonable price for the agricultural products farmers produced due to their powerful power in bargaining. Thence, farmers have to sell their products in very cheap price anyway since buyers will always buy in a big bulking. In addition, the concept of cooperatives nowadays will never occur if the injustice bargaining is never happened. As a result, the existence of collective bargaining affects to individuals as a whole and it is one of the factors in progressing worker's rights and better consumers' economic and social status.

### **Collective Bargaining in Bidimensional Perspective**

Due to the collective bargaining process, the negotiation will tie with tripartite group; namely, there are three groups of individual concerned such as workers, union, and employer. That is, in working atmosphere, the practice of bargaining is not fixed as dyadic haggling like collective bargaining in business perspective. In addition, even though activists nowadays try so difficultly to make the voice of consumers heard; or, union balances any worker's wage to equal the addition to output which the previous worker hired contributed (Weldon 1953). The imbalance power in bargaining still occurs. It is true that collective bargaining emerges in both legal and business form. This makes collective bargaining distinguishable from the other type or method of bargaining. This section will explain the process of bargaining in bipolar form.

#### ***How collective bargaining works in legal/business form***

Gilson et al. (1997) mention that the duty to bargain collectively does not mean that the agreement will be reached; because, the point of collective bargaining is that either party is free to decide whether the proposals made to it are satisfactory (Jensen 1963). Moreover, Jensen (1963) also supports that the unique characteristics of collective bargaining in legal context is that collective bargaining process works because the parties have a program and

power not a process of reasoning, nor economic analysis and persuasion. On the other hand, in business-related collective bargaining, unlike the legal collective bargaining, the agreement must be made between a group of potential buyers and sellers. Sellers hardly have the sole or dominating power. For example, by the roles of suppliers and buyers, suppliers' power may be limited due to buyers' more powerful position (Jensen 1963). However, the advantage position will be reversed if the sellers are a group of farmers and rice millers; namely, farmers (as sellers) can use collective bargaining power to gain higher price of their rice produced each ton. As a result, in business form, collective bargaining can perform in both buyer and seller position; whereas, the position on collective bargainers in employment condition (legal form) cannot be reversed. This is one big different between legal and business perspective.

### **Collective Bargaining: The Tug of War**

Collective bargaining performs a fundamental and valuable function which cannot be fulfilled; namely, it performs that function more compatible with democratic way of regulating employment conditions (Jensen 1963). The bargaining power of workers' union can arise from the changes in unemployment insurance system (Matsa 2010). It is quite difficult sometimes to determine who should be the winner or loser in this tug of war. This section will explain the negotiation between two parties in both legal way and economic way.

#### ***Negotiation between employer and employee/ buyer and seller***

There is another one different point between negotiating collectively between employer and employee and between buyer and seller; namely, employer is not allowed to implement his final offer of collective bargaining since it will destroy the purpose of collective bargaining (Gilson et al. 1997). In business perspective, a buyer rejecting the offer from a seller does not mean any harm for him unlike employee rejecting the offer from his employer that can lead to losing jobs. For example, a research by Gilson et al. (1997) mention that half of negotiators admitted that their employer had had impasse or implementation in the collective bargaining; that is, employer has more plausibility to win the negotiation. However, employees and unions still can coordinate their bargaining efforts or consolidate their bargaining units in order to offset the collective bargaining disadvantages (Craypo 1975). Again, there is another question arises in our mind. Could it always be win-win outcome among the collective bargainers? In answering this question, we have to admit that the concept of collective bargaining is not the same among countries. It seems wishful thinking but we have to realize the facts. For example, in USA, collective bargaining law states that worker cannot bargain with his employer since the bargaining power of employer is too great (Gilson et al. 1997). Thence, in this case of legal perspective, the win-win outcome will never occur. While, in Europe, Australia, and New Zealand, the collective bargaining is allowed to relief employees' frustrated desires for control (Gilson et al. 1997).

## Epilogue

Collective bargaining is not an obsolete idea (Jensen 1963); and, its behavior is influenced by the legal requirement to bargain collectively in a good faith (Foster et al. 2011). The way to use it advantageously is depended on how much power bargainers realize they have. The strategy of collective bargaining in both legal and business perspective may be similar in some ways; but however, the format of conducting it may be different. Nonetheless, both legal and business collective bargaining have at least a correlation between them. For example, Matsa (2010) states that the negotiated wage is increasing in workers' bargaining power, it also is increasing the intermediate cash flow, and is decreasing in the level of debt. Consequently, it affects to the whole society. Even though, there are some differences between legal collective bargaining and business collective bargaining. But however, the best way to sustain the relationship between employees and employer or buyers and seller is to maximize both parties profit. When the needs of both parties are fulfilled, the outcomes will generate benefit for the society and all stakeholders.

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