

Collective bargaining and Social Dialogue

1. Labour relations

According to ILO ¹, the term labour relations, also known as industrial relations, refers to the system in which employers, workers and their representatives and, directly or indirectly, the government interact to set the ground rules for the governance of work relationships.

In the Professional firms context, the term *Labour Relations* is preferred to *Industrial Relations* due to the specific focus of Industrial Relation to "industrial" context rather than professionals one.

Labour Relation also describes a field of study dedicated to examining such relationships.

A labour relations system reflects the interaction between the main actors in it: the state, the professional associations, trade unions, employees (who may participate or not in unions and other bodies affording workers' representation), professional themselves (who may be part or not in Professional Associations).

Individual employment relationships between Employees or Professionals and the Professional Firm, is usually referred to as "employment relations".

There is general agreement that the field embraces collective bargaining and mechanisms for resolving collective and individual disputes. The wide variety of labour relations systems throughout Europe has meant that comparative studies and identification of types are accompanied by caveats about the limitations of over-generalization and false analogies.

The governance of professional firm workplace should be considered different from those studied by labour relations such as paternalistic, institutional or participative. Knowledge workers are different from workers tour court. This terms is use not in the way Peter Drucker popularized it such as employees dealing with data acquisition, analysis and dissemination but il the sense used in the Lisbon Strategy as workers needed to make the EU, the most competenze and dynamic knowledge-based society in the world capable of sustainable economic growth with more and better jobs and greater social cohesion. As as result, professionals and their employee are the best example to interpret the knowledge workers, in terms of ICT fluency, data management, language skills, cultura and civil awareness, numeracy, scientific literacy. In short, skills and resilience for a world of changes d illustrated in the EU 2020 and future of work.

Both private and public interests are at stake in any labour relations system in the liberal professional context.

The state is an actor in the system as well, although its role varies from active to passive, according to the traditions in the European Countries.

A labour relations system incorporates both societal values (e.g., freedom of association, a sense of group solidarity, search for maximized profits) and techniques (e.g., methods of negotiation, work organization, consultation and dispute resolution).

Different systems should be distinguished on the basis of having centralized collective bargaining, bargaining at the sectoral or industrial level or bargaining at the territoriale level.

Even the more classic portrayals of labour relations systems are not by any means static characterizations, since any such system changes to meet new circumstances, whether economic or political. This is true for Professionals Sector where the impact of the digitalisation is even more acute. Technological development has brought changes in the content and organization of work that also have a crucial impact on the extent to which collective labour relations can develop and the direction they take.

Professional sector is influenced by forces of international competition that impact on the business model of the professional firm.

¹ A. Trebilcock, Labour Relations and Human Resources Management; <http://www.ilocis.org/documents/chpt21e.htm>

Labour Relations deals with Human resources management (HRM). HRM is defined as “the science and the practice that deals with the nature of the employment relationship and all of the decisions, actions and issues that relate to that relationship”. It encapsulates Professionals-formulated policies and practices that see the utilization and management of employees as resource in the context of a firm’s overall strategy to enhance service delivery.

Actors in the Relation System are the state, professional associations and employees’ representatives. As the source of legislation, the state exerts an inevitable influence on the emergence and development of a labour relations system. Laws can hinder or foster, directly or indirectly, the establishment of organizations representing workers and employers. Legislation also sets a minimum level of worker protection and lays down “the rules of the game”. Through the development of its labour administration, the state also has an impact on how a labour relations system may function. If effective enforcement of the law is afforded through a labour inspectorate, collective bargaining can pick up where the law leaves off.

Professional are providers of work while the classic definition of a trade union is a continuous association of wage earners for the purpose of maintaining or improving the conditions of their employment. Three main functions (to some extent overlapping) are common to all employers’ organizations and trade unions: defence and promotion of their members’ interests, representation in the political structure and provision of services to their members.

A trade dispute refers to any dispute between and among employees and professionals relating to employment, non-employment, terms of employment or conditions of work. A Collective Agreement is an agreement between professionals association and trade union on employment, non-employment, terms of employment or conditions of work. The duration of a collective agreement is specified and by law shall not be less than two years or more than three years.

2. Collective Bargaining in the Liberal Professionals Sector

While Labour Relations is a general set which includes both Social Dialogue and Collective Bargaining, Collective Bargaining is an autonomous component which depends on Labour Relations but has a negotiating nature.

Meaning. Collective bargaining “extends to all negotiations which take place between Professionals Associations, on the one hand, and one or more workers’ organisations, on the other” , for:

- (a) determining working conditions and terms of employment; and/or
- (b) regulating relations between Liberal Professions Firms and Employiyees; and/or
- (c) regulating relations between Professionals Associations or their organisations and a employees’ organisation or workers’ organisations”.

This definition is the adaptation from Article 2 of the Collective Bargaining Convention, 1981 (No. 154).

Collective bargaining is concerned with bipartite relations (between two independent parties). The parties to collective bargaining are: one or more Professionals Associations and one or more employees’ organizations.

When referring to the parties to collective bargaining, ILO instruments refer to “one or more workers’ organisations” (see for example Convention No. 154). Most labour laws use the terms “trade unions” or “labour unions”. Convention No. 98 uses the terms “trade union membership”, “union activities” and “workers’ organisations” interchangeably to refer to the same institutions.

Since Collective bargaining is a process of negotiation, negotiation involves any form of discussion, formal or informal, with a view to reaching an agreement. For collective bargaining to be effective, it is important that these negotiations be conducted in good faith. Collective bargaining involves a process of joint decision making that helps to build trust and mutual respect between the parties and enhance the quality of labour relations.

Focus. The focus of collective bargaining is on working conditions, terms of employment, and the regulation of relations between employers or employers’ organizations and one or more trade unions.

Working conditions and terms of employment could include issues such as wages, hours of work, annual bonus, annual leave, maternity leave, occupational safety and health, and other matters. Issues relating to relations between the parties could include matters such as facilities for trade union representatives, procedures for the resolution of disputes and consultation, cooperation and information sharing, among others.

Goal. The goal of collective bargaining is to conclude a collective agreement. The ILO defines collective agreements as “all agreements in writing regarding working conditions and terms of employment concluded between an employer, a group of employers or one or more employers’ organisations, on the one hand, and one or more representative workers’ organisations, or, in the absence of such organisations, the representatives of the workers duly elected and authorised by them in accordance with national laws and regulations, on the other”².

It is important that collective agreements:

- bind the signatories and those on whose behalf they are concluded;
- apply to all workers of the classes concerned in the undertakings they cover unless the agreement specifically provides for the contrary; and
- take precedence over individual contracts of employment, while recognizing stipulations in individual contracts that are more favourable to workers.

The free and voluntary nature of collective bargaining implies that bargaining outcomes contained in collective agreements are generated by the parties themselves, not imposed on them.

Difference between collective bargaining and other forms of social dialogue. The ILO defines social dialogue as all types of negotiation, consultation or simply exchange of information between, or among, representatives of governments, employers and workers, on issues of common interest³. It encompasses bipartite or tripartite consultations and negotiations taking place at all levels. Collective bargaining is at the heart of social dialogue. It is a substantive process involving negotiations between one or more employers or employers’ organizations and one or more trade unions, with a view to reaching a collective agreement that regulates the terms and conditions of employment and relations between the parties. While it may be related to other processes, such as consultation and tripartite social dialogue, it remains a unique and distinct form of social dialogue. Consultation involves the sharing of information and listening to the views of those concerned on matters of common interest, before taking a decision. It can enrich communication at the enterprise level, build a common understanding of problems or issues, and add value to decisions normally considered the prerogative of management. Consultation may be carried out on a bipartite or tripartite basis, and at the enterprise, industry and/or national level. The scope of issues for consultation is normally wider than that for collective bargaining. By contrast, collective bargaining involves a bipartite process of joint decision making on terms and conditions of employment and relations between the parties. While consultation can complement the process of collective bargaining, it is not a replacement for collective bargaining.

With the ILO definition in mind, the meaning adopted of Social Dialogue in this project is extended to all forms of:

- a) information exchange,
- b) communication, formal and informal,
- c) social interactions,
- d) collaboration process,

² This definition comes from Part II.2.(1) of the Collective Agreements Recommendation, 1951 (No. 91).

³ ILO, Social Dialogue, Finding a common voice, Geneva, 2005.

European Commission defines European Social Dialogue as discussions, consultations, negotiations and joint actions involving organisations representing the two sides of industry (employers and workers). It takes two main forms:

- a tripartite dialogue involving the public authorities,
- a bipartite dialogue between the European employers and trade union organisations. This takes place at cross-industry level and within sectoral social dialogue committees; <http://ec.europa.eu/social/main.jsp?catId=329&langId=en>

- e) cooperation initiatives;
- f) negotiation,
among Social Partners.

Collective Bargaining is a different and autonomous category of social dialogue even all categories above mentioned are interrelated, interdependent and indivisible.

Parties. Tripartite social dialogue involves three groups: employers' organizations, trade unions and governments. It includes negotiations, consultations or exchanges of information and views between representatives of these three groups. By contrast, collective bargaining is bipartite; it involves one or more employer or employers' organizations, and one or more trade unions. The government is a party to collective bargaining only in its capacity as an employer in the public sector. Tripartite social dialogue can complement collective bargaining. For example, tripartite consultations can be particularly useful when public authorities decide to design or adjust policies, laws and institutions related to collective bargaining. Such consultations also help frame the economic and social context within which collective bargaining takes place.

3. Collective Bargaining Components

Collective Bargaining Framework include the following components:

- Rounds: Each round of negotiations conducted in good faith affirms the legitimacy of the parties involved to represent their members, respect commitments made and be bound by a collective agreement. Parties that respect each other as legitimate representatives are more inclined to justify their demands, share information, engage in problem solving, make proposals, and fully explore the range of solutions to their issues in common or at variance.
- Parties involved: Parties are those actors that sign the Agreement also known as signatory "parties".
- Population covered: both Professionals and Employees (Interprofessional) reflect a number of people involved.
- Recognition: This is about the sources of recognition.
- Bargaining level: Collective bargaining can be carried out at local or national level.
- Subjects and issues for collective bargaining:
 - a) Duration of agreement
 - b) Wages
 - c) Work conditions
 - d) Labour relations
 - e) Role of Government
- Dispute prevention and Dispute resolution. This refers to types of Conciliation and Mediation mechanism set out outside the Collective Agreement.
- Applicability: this concerns the effect and binding rules set out in the Agreement.

Machinery. While Collective Bargaining Components are tangible aspects, machinery refers to intangible factors of Collective Bargaining, such as trust, attitude or conduct.

- Trust: Collective bargaining is a process of negotiation. Parties typically start off from very different positions. The process typically involves the justification of demands and positions taken, the sharing of information, debate and trade-offs in order to arrive at a collective agreement. For collective bargaining to be effective, it is important that negotiations be conducted in good faith. Negotiating in good faith builds trust between the parties and is at the core of sound and harmonious industrial relations. This does not mean that the negotiating parties always agree or can always accommodate the interests of the other party. Instead, good faith is reflected in the persistent and constructive efforts of the parties to negotiate with each other, and in their commitment to implement a collective agreement they have concluded.
- Attitude. Often, a "Take it or Leave it" attitude is adopted. At an individual level, representatives may come from different occupational backgrounds, hold different values, beliefs and ideologies, and have different personalities, expertise and negotiating skills. They may not possess the same information or have a shared understanding of the issues at stake. This can result in highly adversarial negotiations, and a deteriorating labour relations climate. Public

authorities have an important role to play in encouraging parties to engage in good faith in constructive and informed negotiations.

- **Conduct:** Rather, the focus is on the conduct of the parties during the negotiations; parties are expected to: a) attend and participate in meetings at reasonable times; confer in good faith; b) give genuine consideration to the proposals made by the representatives of the other party in bargaining; c) respond in a timely manner to proposals for the agreement made by the representatives of the other party in bargaining; d) and make every reasonable effort to conclude a collective agreement.

Reliable information framework. Social Partners have an important role to play in making relevant and reliable information generally available. This helps the bargaining parties to motivate their proposals and to place them in context.

Figure 2 Examples of macro and sectoral information (ILO, Collective Bargaining, 2015)

CONCEPT	INDICATORS	PURPOSE
General economic indicators	<ul style="list-style-type: none"> ✓ GDP growth ✓ Sectoral composition of growth ✓ Investment ✓ Trade: exports and imports ✓ Inflation ✓ Share of wages in GDP (total/sector) ✓ Consumption ✓ Income distribution ✓ Poverty threshold and rate 	<p>Understanding the overall economic environment:</p> <ul style="list-style-type: none"> ✓ Economic growth (total and per capita) ✓ International competition ✓ Structure of the economy ✓ Cost of living ✓ Relationship between wages and productivity growth ✓ Inequality ✓ Poverty and dependency ratios
Labour market characteristics (by sex)	<ul style="list-style-type: none"> ✓ Employment ✓ Employment status ✓ Unemployment ✓ Summary of measures by level of educational attainment ✓ Trends in wages and labour compensation ✓ Wage distribution ✓ Labour productivity ✓ Hours of work 	<p>Assessing labour market performance:</p> <ul style="list-style-type: none"> ✓ Job growth or contraction ✓ Educational attainment and job prospects ✓ Developments in labour productivity ✓ Growth in average wages ✓ Wage inequality ✓ Gender pay gap ✓ Quality of employment
Industry characteristics	<ul style="list-style-type: none"> ✓ Employment and output by industry ✓ Number and size of companies ✓ Investment ✓ Unit labour costs, labour productivity and comparative figures for a region or group of countries 	<p>Understanding an industry's performance:</p> <ul style="list-style-type: none"> ✓ View on the dynamics shaping the industry ✓ Industry share of total output and growth ✓ Competitive position of industry vis-à-vis other countries