

A Practical Guide to Negotiating Collective Agreements with Trade Unions in Malaysia

Preface

The main objective of this book is to provide employers, employees, HR/IR practitioners and other stakeholders with a practical guide on collective agreement (CA) preparations and negotiations in unionised companies. Stakeholders include professionals in the judicial services, lawyers, consultants, advisors, unionists, lecturers, students and other interested parties in the Malaysian Industrial Relations Systems. It offers a comprehensive understanding and holistic approach on preparing and managing collective agreement (CA) negotiations with trade unions in Malaysia. The author had negotiated and concluded more than thirty (30) Cas involving national and in-house trade unions in Malaysia without any major trade dispute.

This practical guide discusses methodically the whole spectrum of collective bargaining and CA negotiations from a company's perspective. It includes planning, preparing, costing and executive CA strategy and techniques. The techniques discussed in this book can be easily be applied to CA negotiations with national and in-house trade unions in Malaysia. The company's chief negotiator must vary and adapt his negotiation style to be in sync with the union's chief negotiator. He must focus on bargainable issues that are pertinent, significant and most applicable to the union concerned during CA negotiations.

On pre-collective bargaining, it stresses the importance of selecting an experienced chief negotiator to lead the negotiating team. It highlights the need to review the company's financial position and performance in the three (3) years prior to CA renewal. The conducting of surveys on practices of companies in similar industries are essential to establish industry norms. The consumer price index (CPI) increase over the last three (3) years prior to CA renewal must be established to understand the inflation rate. It shares a practical method in computing the cost impact of salary and benefits items proposed by the union and management for the three (3) year period. This is to be presented to management to obtain a CA mandate. A compendium of Industrial Court awards on CA trade disputes, including recent ones, is included for reference and guidance. A spreadsheet of union versus company's proposal with exact wordings is included to help the company's negotiator detect any changes inserted by the union.

On CA negotiations, it discusses the need for a preliminary discussion to understand the union's proposal and issues. This is done prior to submitting the company's counter proposal to the union. It highlights the importance of listening carefully and attentively to the union's reasoning and response to the company's counteroffer. It reiterates the advantage of having all agreed items signed at the end of each session to be exchanged in the next CA session. It offers insights on the passing of signals and watching out for signals from the union to trade concessions and reciprocate. Interesting and practical approaches on testing of assumptions, managing the final momentum and communicating finality of packages offers are discussed. It stresses the importance of recognising tacit signs of acceptance and the advantage of a break before positioning to conclude the CA with the union.

On conciliation proceedings following a deadlock in CA negotiations, it explains the role and styles employed by conciliators to amicably resolve the dispute. It advocates the importance of leaving some bargaining chips for good trading room during conciliation at the Industrial Relations Department. It highlights the forms of industrial actions that are likely to take place after a CA deadlock is declared. It provides stakeholders in our IR system with an overview of the laws governing picketing, strikes and lockouts.

Where picketing actions gain intensity, the company's negotiator may consider requesting the Minister of HR to appoint a Board of Inquiry or to refer the dispute to the Industrial Court. This is to militate against prolonged picketing by the union that could escalate into a strike. It highlights the importance of understanding judicial precedents on CA trade disputes enunciated by the Industrial Court. This will greatly help the company's negotiator prepare reasons, arguments and justification on CA disputes in support of the company's bargaining position.

However, this book does not discuss how a company can effectively manage or stave off a union's claim for recognition. It also does not discuss the preparations of a contingency plan or effective countermeasures in response to industrial actions including picketing or strike. Such matters are outside the scope of this book as they are more effectively discussed and managed via advisory and consultancy work.

After conclusion of the CA, copies of the CAs are to be delivered to the Registrar of the Industrial Court. The signed and stamped copy of the CA will be brought to the notice of the Court for cognisance. A post-mortem on the entire CA negotiations process and analyses of difficult issues and clauses with team members are paramount. This is to avoid difficulties and help pave the way for better performance in future CA negotiations. A post CA briefing session with department managers and supervisors is critical to ensure correct interpretation and implementation of the CA. It is important to always maintain an effective and open communications with employees and trade union officers. This is to build rapport, engagement, trust and foster a conducive and harmonious working relationship. The book concludes with the author's findings on the correlation, validity and application of the collective bargaining theories discussed in Chapter 3 during CA negotiations with unions in Malaysia.

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