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Industrial Relation

Module 2

MBA 833 Industrial Relations
Module 2

Course Developer/Writer
Abdullahi S. Araga, National Open University of Nigeria

Course Editor
Caroline Aturu-Aghedo, National Open University of Nigeria

Course Coordinator
Dr. O. J. Onwe, National Open University of Nigeria

Programme Leader
Dr. Osoba Samson B., National Open University of Nigeria

Credits of cover-photo: Mr. Gbenga Aiyejumo, National Open University of Nigeria.

National Open University of Nigeria - 91, Cadastral Zone, Nnamdi Azikiwe Express Way, Jabi, Abuja, Nigeria

www.nou.edu.ng centralinfo@nou.edu.ng
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Unit 1 Framework for Discipline and Disengagement of Employees from Organisations

1.0 Introduction

The organisation's disciplinary system is meant to provide the necessary mechanisms by which management can keep employee conduct in line with the organisation's requirements. Discipline and dismissal are therefore, important devices with which every manager ensures that the erring employees are subjected to necessary checks.

Nevertheless, the termination or dismissal of an employee should always be fair. A disciplined workforce is a perquisite for the successful operation of any organisation. Hence, misconduct and poor performance cannot be tolerated, and employees must do their daily work satisfactorily.

2.0 Objectives

At the end of this unit, you should be able to:

- explain the term organisational discipline
- describe the difference between positive and negative discipline
- explain the basic principles of fair dismissal
- identify and discuss the reasons for disengagement of employees from organisation.

3.0 Main Content

3.1 Organisational Discipline

Organisational discipline refers to the use of systematic procedure, based on appropriate policy, to ensure the orderly behaviour of the employees. Hence, discipline in organisation is meant to promote good order and behaviour by enforcing acceptable standards of conduct.

Organisational discipline can be enforced with the use of appropriate measures such as sanctions, encouraged by example or through appropriate motivation so as to imbibe in the employees' or organisation members' own sense of appreciating what is fitting and proper.

In another perspective, a distinction is made between methods of maintaining sensible conduct and orderliness which are technically co-operative, and those based on warnings, threats and punishments.

In organisations, some mature workers accept the idea that obeying the laid down instructions and fair rules of conduct are normal responsibilities that are part of their jobs. Many employees can therefore, be counted on to exercise self-discipline. Such employees believe in performing their work properly, in coming to work on time, in following the

superior officer's instructions, and in refraining from offences such as fighting, drinking at work, or stealing.

It can be expected that it is a normal human tendency to subordinate one's personal interests and personal idiosyncrasies to the need of the organisation. Once the employees are aware, through publication, of what is expected of them and feel that the rules are reasonable, self-disciplined behaviour becomes a part of the group norms; the way in which employees behave as a work group, and their collective attitudes.

There are many types of disciplinary problems in job situations which may confront the managers or superior officers but there are some other ones which stem from employee behaviour off the job.

Such disciplinary problems may be excessive drinking, the use of drugs or some form of narcotics, or involvement in some form of law breaking activity. In these circumstances, whenever an employee's off-the-job conduct has an impact upon performance on the job, the organisation must be prepared to deal with such problem within the scope of the disciplinary process.

In any organisation, any disciplinary action must be undertaken with sensitivity and sound judgement on the manager's part. Fundamentally, the purpose of discipline is not punishment or retribution. Therefore, disciplinary action must have as its goal the improvement of the future behaviour of the employee and other members of the organisation. In essence, the purpose of discipline is to encourage the avoidance of similar occurrences in the future on the part of the employees.

3.1.1 Positive or Constructive Discipline

This form of discipline relates to the use of laid down procedures, systems and equipment in the workplace which are designed specifically so that the employee has no option but to act in the desired manner to complete a task safely and successfully.

An instance is a situation whereby a machine may be designed as to shut off automatically if its safety guard is not put in place by the worker. Another instance is that a system may be designed to include check and controls at each stage so that no task can be forgotten, or ill-performed, in a way that would impact on further tasks.

Hence, it can be appreciated that positive discipline thrives on encouragement towards self-discipline on the part of the employees. This is ensured by the organisation through creating conducive atmosphere for the employees to exhibit appropriate behaviour and attitudes towards discharging their responsibilities to the organisation.

3.1.2 Negative Discipline

This form of discipline involves the promise of sanctions designed to make the employees choose to behave in a desirable way. In essence it involves the use of threat of punishment on disciplinary problems or misdemeanours as may be committed by the employees.

Disciplinary action, therefore, may be deterrent in nature, by the use of warnings or reformative, calling attention to the offence, so that such an offence will not happen again. The negative discipline is predicative on the use of articulated and punitive measures which could be meted out to likely offenders among the workers.

Negative discipline, for all intents and purposes, is meant to be a wholly negative or punitive matter. It is just a warning of punishment on disciplinary problems and not essentially meant to harm the offenders.

Hence, negative discipline thrives on the use of appropriate policy measures as normally enunciated as the organisational rules and regulations, and made available to the employees in the condition of service. This is essential because the employees should be aware of what is required of them in terms of behaviour and attitudes appropriate to the organisational setting.

Self-Assessment Exercise

Differentiate between positive discipline and negative discipline.

3.2 Disciplinary Action on Disciplinary Problems

3.2.1 Progressive Disciplinary Action

The generally consensus is that disciplinary action should be devoid of dismissal on first offence except for gross misconduct. Hence, many organisations have accepted the ideal of progressive discipline, which provides for an increase of the severity of the penalty with each offence.

The following is a list of suggested steps of progressive disciplinary action, which is workable if implemented faithfully.

1. Informal talk

This is used when the infraction is of a relatively minor in nature and when the employee's record has no previous marks of disciplinary action. An informal, friendly talk suffices to clear up the situation of minor cases. Hence, the manager or the superior officer discusses with the erring employee his or her behaviour in relation to standards which prevail within the organisation.

2. Oral warning

This is a reprimand, which is a form of interview between the employee and the superior officer, the latter emphasising the undesirability of the subordinates repeated violation, and that ultimately it could lead to serious disciplinary action. It means that this is used in the instance of a repeated offence by the employee.

3. Written warning

A written warning or official warning is of a formal nature because it intended to become part of an employee's record. Written warnings are particularly important and necessary in non-unionised situations, so that the document can serve as evidence in case of grievance procedures.

4. Suspension

Disciplinary layoff as it is also known, suspension becomes necessary if the employee has committed repeated offences and previous steps were to no avail. Suspension or the disciplinary layoffs usually extends over several days or weeks.

Basically some employee may not be impressed with oral or written warnings, but they will find a disciplinary layoff without pay a rude awakening. In a situation where such sanctions are not provided for in the contract of employment, they may amount to constructive dismissal.

5. Demotion

Demotion involves the loss of both pay and status as a result of grave infraction or repeated misdemeanour. Demotion, if it is extended over a period of time, becomes a form of constant punishment.

Hence, it is likely to bring about dissatisfaction and discouragement among the workers, and the demoted employee may easily become demoralised. Therefore, most organisations use it sparingly and avoid demotion or downgrading as a disciplinary measure. Demotion, like other disciplinary measures above may amount to constructive dismissal.

6. Dismissal

Dismissal is a drastic form of disciplinary action, and therefore, it is normally meted out to erring employee as a last resort. Hence, it is normally reserved for most serious offences.

For the organisation, demotion involves waste of industrial resource, the expense of training a new employee, and disruption caused by changing the composition of the work team. The action may also affect the morale of the work group of the affected employee.

Self-Assessment Exercise

Using your organisation as a case study, give reasons which may necessitate sidestepping the above process in disciplinary action on a worker.

3.2.2 Relationship Management in Disciplinary Action

More often than not, imposing disciplinary action tends to breed resentment since it is an unpleasant experience. Therefore, the challenge is to apply the necessary disciplinary action so that it will be least resented by the employees.

There are some basic rules, which if applied in disciplinary situations will help reduce the degree of resentment inherent in all disciplinary actions. Such steps are as follows:

1. Immediacy

Immediacy rule implies that after noticing the offence, the manager or the superior officer proceeds to take disciplinary action as speedily as possible, while at the same time avoiding haste and on-the-spot emotions which might lead to unwarranted actions. The required action is investigation where possible, before action is taken.

2. Advance warning

It is essential that all employees are made aware in advance what is expected of them and what the organisational rules and regulations are. This is necessary in order to maintain proper disciplinary and to have employees accept disciplinary action as fair.

It means that the employee must be informed clearly that certain acts will lead to disciplinary action. This makes many organisations to have a disciplinary section in an employee handbook containing the conditions of service.

It behoves on the organisation to make sure that each employee is also informed orally of what is expected of them in term of discipline. Some policy provisions can also be included in the recruitment literature and employment contracts.

3. Consistency

This rule implies that each time an infraction occurs appropriate disciplinary action is taken. Inconsistency in the application of discipline tends to lower the morale of employees and diminishes their respect for the authority.

Inconsistency in the application of disciplinary action can also breed contempt for the organisational rules and regulations by the employees. It can also lead to feeling of insecurity and anxiety by the employees, which tend to create doubts in their minds as to what they can and cannot do.

4. Impersonality

Basically, an employee is bound to nurse some resentment towards the superior officer who has taken disciplinary action against him or her. Therefore, the degree of resentment can be reduced by making disciplinary action as impersonal as possible. This is done by ensuring that penalties are directly related to the act of misdemeanour and based on the personality involved, and once disciplinary action has been taken, no grudges should be borne.

5. Privacy

It is a general rule that disciplinary action should be taken in the private, in order to avoid the spread of conflict and the humiliation or martyrdom of the employee concerned. The exception is a situation where the superior's authority is challenged directly and in public.

Self-Assessment Exercise

Discuss the procedure necessary towards ensuring that attendant effect of disciplinary action is eliminated.

3.2.3 Disciplinary Interview

The interview is an interactive session within which the erring employee is given a fair hearing on the case under consideration. It is always necessary to embark on adequate preparation for the interview session.

The preparation for the disciplinary interview involves: gathering of the facts about the alleged infringement; determination of the organisation's position; and identification of the aims of the interview. Basic issues to be taken into consideration for the interview are:

- How valuable is the employee to the organisation potentially?

- How serious is the employee's offence or lack of progress?
- How far is the organisation prepared to go to help the employee improve or discipline him or her further?
- Is the aim of the interview punishment or deterrent?
- What are the specific standards of future behaviour or performance required?

The basic procedure in terms of the content of the interview is as follows:

- The superior officer explains the purpose of the interview.
- The charges against the erring employee are delivered, clearly, unambiguously and devoid of personal emotion.
- The superior officer explain the organisation's position with regard to the issues involved – such as disappointment, concern, need for improvement, impact on others.
- The organisation's expectations with regard to future behaviour or performance clearly explained.
- The employee be given an ample opportunity to comment, explain, justify or deny; ensuring that he or she is not made to feel hounded or hunted.
- The organisation's expectations in terms of new standards of behaviour from the employee should be reiterated.
- Reasons behind any penalty to be imposed on the employee explained.
- Organisation's appeal procedure explained to the erring employee; that he or she has the right of appeal to higher authority if unfairly treated.
- Summary of the proceedings by the superior officer.

It is advisable that the records of the interview be kept in the employee's file and for the formal follow-up review and any further action necessary.

Self-Assessment Exercise

State why it is necessary to conduct disciplinary interview for an erring employee.

3.3 Basic Principles of Fair Dismissal

1. Substantive fairness

This relates to the reason for the dismissal, which must be a fair one. In terms of common law, an employer does not have to give any reason whatsoever for dismissing an employee. The only obligation in terms of common law is to give the employee the required notice agreed on in the contract of employment and the employer must provide the employee with a fair reason for dismissal.

Considerations which indicate substantive fairness include the following:

- actual breaking of a workplace rule by the employee
- the reasonability and validity of the rule
- communication of the rule to the employee

- consistency in applying the rule
- appropriateness of dismissal as punishment for the transgression
- the seriousness of the misconduct
- the nature of the post and of the employee
- the employee's circumstances
- the employer's circumstances.

2. Procedural fairness

This relates to the way in which an employee is dismissed. In most cases, an employer has to give the employee opportunity to state his or her case in reply; an opportunity to defend himself or herself. In other cases, employers have to consult employee representatives such as trade unions. A dismissal has to be both substantively and procedurally fair to qualify as a fair dismissal.

The employer has to take a number of procedural steps before dismissing an employee for misconduct. All such steps are related to procedural fairness; essentially indicative of the fact that the employer must be given a chance to defend himself or herself.

The steps involved are as highlighted below:

- Investigate the matter.
- Notify the employee in advance of the complaint or charge against him or her, and of the outcome of the investigation.
- An employee is entitled to state his or her case in reply to a charge, usually in the form of disciplinary hearing.
- Give the employee a reasonable period of time to prepare a response to the complaint.
- An employee is entitled to be assisted or represented by a trade union official or fellow employee but not normally by a legal representative.
- An employee must be notified in writing of the employer's decision.
- The employee must be given the opportunity to appeal against the decision of the management or the employer.
- If the employee is to be dismissed, the employer must give reasons why dismissal is regarded as the most appropriate punitive measure.
- Disciplinary hearing may not be necessary in some cases. The best example of such cases is a situation of a "crisis-zone" case where the employer dismisses employees and transports them from the company's premises because a strike has become violent and has caused loss of life and damage to property.
- The employer can also ignore procedural guidelines where the employee waives his or her right to a hearing.

Self-Assessment Exercise

Differentiate between substantive fairness and procedural fairness in dismissal process.

3.4 Reasons for Disengagement of Employees

3.4.1 Disengagement on Ground of Misconduct

Dismissal as a result of employee's behaviour relates to the employee's conduct. In such a case, the employer would reason that the employee should be dismissed on account of some or other form of misconduct or misbehaviour. Instances are insubordination, assault on a fellow employee, theft of company property, frequent lateness for work, or intimidation of co-workers.

Formal procedures do not have to be involved every time a rule is violated or a standard is not met. Informal advice and correction is the best and most effective way for an employer to deal with minor violations of work discipline. Dismissal should be reserved for cases of serious misconduct or repeated offences.

The principle of progressive discipline means that the punishment becomes proportionately more severe as the seriousness or frequency of the misconduct increases. For example, an employee may receive oral warning on the first occasion of lateness to work, a first written warning on the second occasion, and a final written warning on the third occasion. When the employee arrives late the fourth time, dismissal might follow.

Nevertheless, some forms of misconduct are so serious that they normally warrant dismissal the very first time they occur. Such offences may include the following:

- theft or unauthorised possession of company property
- gross dishonesty or negligence
- wilful damage to the employer's property
- physically assaulting the employer
- physically assaulting a fellow employee
- physically assaulting a client or customer
- gross insubordination.

3.4.2 Disengagement for Incapacity

Capacity refers to the employee's ability to do his or her work. For the employer to dismiss an employee on ground of incapacity, the reasoning will be that the employee does not have the ability to do the work and should therefore be dismissed. Incapacity usually falls into one of two categories such as poor work performance or medical unfitness due to ill-health or injury.

Dismissal for incapacity must be both substantively and procedurally fair just like the case of dismissal on the ground of misconduct. The employer must prove that there is a reason for the dismissal; that the employee fails to meet a required standard, and that the employee is in fact aware of what is expected of him or her.

Procedurally, an employee must be given an opportunity to improve, and dismissal should only be considered an appropriate sanction for poor work performance if there are no other alternatives such as warnings, change of status and a transfer to another department, among others.

3.4.3 Disengagement on Account of Poor Work Performance

Basically, employer may require a newly-recruited employee to serve a period of probation before the appointment of the employee is confirmed. The purpose of probation is to give the employer an opportunity to evaluate the employee's performance before confirming the appointment.

Probation should not be used to deprive employees of the status of permanent employment. For example, a practice of dismissing employees who complete their probation periods and replacing them with newly-recruited employees constitutes an unfair industrial practice.

The period of probation should be determined in advance and be of reasonable duration. The length of the probation period should be determined in relation to the peculiar nature of the employee's work.

3.4.4 Disengagement on Account of Ill-Health or Injury

Incapacity arising from ill-health or injury may be either temporary or permanent where an employee is temporarily unable to work in these circumstances, the employer must investigate the degree of incapacity or injury. If the employee is likely to be absent for an unreasonable long period, the employer must investigate all possible alternatives before considering dismissal.

Relevant factors that must be taken into account include the nature of the work, the possibility of appointing a temporary replacement for the ill or injury employee. In case of permanent incapacity the employer must investigate the possibility of alternative work for the employee, or must consider whether or not the employee's duties or work circumstances can be adapted to accommodate his or her disability.

3.4.5 Disengagement for Operational or Business Reasons

Disengagement for operational reason is also called a "no-fault" dismissal because it relates not to employee's conduct or ability but solely to the organisation's operational requirements. The reasons for termination can be purely economic such as economic downturn resulting in low revenue. Other examples include: the employer no longer trusts the employee; the employee's presence has a negative effect in the workplace (called incompatibility), etc.

Self-Assessment Exercise

Enumerate and explain the reasons which may necessitate disengagement of employees from an organisation.

4.0 Conclusion

Based on the above analysis, you can appreciate the fact that discipline is very strategic to organisational operations. More so, the two basic disciplinary approaches are very important in mounting checks and balances on the behaviour and attitudes of the employees.

You can also appreciation the fact that dismissal as an extreme disciplinary action which can be meted out to an employee is normally used as the last resort and in extreme cases. Hence, you have been introduced to such topical issues in order to equip you with such knowledge for managing disciplinary cases in your own organisational setting.

5.0 Summary

This study unit has been used to discuss the peculiar role of organisational disciplinary in the management of industrial relations. Hence, you have been exposed to the various approaches to discipline in organisation and the procedure for ensuring progressive disciplinary action on erring employees. Other topics discussed include basic principles of fair dismissal, progressive disciplinary action, disciplinary Interview and the reasons which can make the employers to disengage employees from the organisation. Lastly, relationship management in disciplinary action is also considered.

In the next study unit, you will be taken through retrenchment and redundancy; some other forms of disengagement of the employees from the organisation but for different reasons which are not associated with misdemeanour.

6.0 Self-Assessment Exercise

1. Enumerate and discuss the stages involved in progressive disciplinary procedure.

2. Identify the steps to be taken in disciplinary action towards ensuring procedural fairness.

7.0 References/Further Reading

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Unit 2 Retrenchment and Redundancy

1.0 Introduction

Fundamentally, organisations go through evolution and therefore changes are part and parcel of the organisational development. Furthermore, organisations operate in dynamic environment, compelling them to go through frequent changes, which manifest in the form of reorganisation, restructuring or reengineering.

The implication, for instance, is that as the technological environment changes the organisation is compelled to adapt to such change in order to survive. This leads to structural changes in the operational modality of the organisation, and some of the workers would be laid off through the declaration of redundancy.

The impact of industrial competition may spell misfortune for the business enterprise to the extent that it may find it very difficult to generate enough revenue to cover cost of operation. Hence, the use of retrenchment policy to reduce the staff strength in order to save cost and keep float in terms of operation.

The impact of the economic downturn as a result of the cyclical nature of the business cycle may compel a business entity to divest its interest from some operations. This leads to excess personnel, which would make the declaration of redundancy inevitable. Hence, some workers would be made redundant and therefore lose their jobs.

The above exposition means that retrenchment and redundancy are inevitable features of the industrial and organisational operations. The government as a social contract is not insulated from the inevitability of retrenchment of workers as we have witnessed over the years in Nigeria.

Therefore, this unit will expose you to the twin considerations of retrenchment and redundancy.

2.0 Objectives

At the end of this unit, you should be able to:

- explain the term retrenchment
- discuss the difference between retrenchment and redundancy
- identify and discuss the basic principles of retrenchment
- explain the basic conditions for valid redundancy.

3.0 Main Content

3.1 Retrenchment of Employees

A retrenchment procedure involves reducing the total number of employees employed by the organisation. A distinction must be drawn between retrenchment and redundancy.

Redundancy is not the result of poor economic conditions. It arises out of changes which management introduces in the economic work environment, with such changes leading to the falling away of posts, technological changes, mechanisation, and the like.

Retrenchment, in contrast, occurs when an employer simply cannot provide an employee with work owing to economic condition beyond the employer's control. In the public service it is normally attributed to the reform agenda or policy of the government, which may not be borne out of economic reason.

The implication of the above is that the common law workers who are employed in the private sector or even in government establishment but whose terms of employment are governed or regulated by contract alone and not by statute can be declared redundant by their employers.

The reason for that type of treatment by the private sector employers is largely because the relationship between such employees and their employers is described as that of master-servant relationship.

Self-Assessment Exercise

Outline the merits and the demerits of the downsizing exercise in the public service of the country.

3.2 Basic Principles for Retrenchment

3.2.1 Substantive Fairness

The substantive fairness of a dismissal for operational reasons is determined by the reason for the retrenchment or redundancy. The employer must have a valid economic reason for terminating the services of employee. Such valid reason can be the introduction of new technology, the restructuring of the company, the downsizing of the enterprises, or a desire to increase profit. Retrenchment is essentially a result of employees having become redundant; the employer no longer needs the industrial potential of the particular employees(s).

It is unfair to retrench employees in order to avoid a disciplinary hearing, or to retrench a large number of employees in order to get rid of a particular trade union.

The following are some of the circumstances that can give rise to retrenchment:

- A decline in production occurs, or the demand of goods decreases or buying power declines on account of poor economic conditions.
- Organisations or industries change their activities, thus making certain posts redundant.
- The employer decides to rationalise or relocate the enterprise.
- The business is taken over and certain work is no longer required.

3.2.2 Procedural Fairness

Since the retrenchment of workers is a drastic step, it is essential that the employer first investigates all other possibilities for reducing his or her workforce before resorting to retrenchment.

Such other methods include the following:

- Not appointing new employees to do the same work in the section where the employer intends reducing the number of employees.
- Acceding to requests by older worker to take early retirement.
- Reducing costs by introducing shorter working hours, cutting back on overtime, and dividing up the work and by transferring employees.
- Retraining employees so that they can do work which has become available as a result of vacancies.
- Introducing a shorter working week, such has been done in some industry, which sometimes works only four days a week.
- Temporarily closing a plant or a part of an enterprise.
- Compelling employees to take all their accumulated leave.

Self-Assessment Exercise

Differentiate between procedural fairness and substantive fairness in the retrenchment of workers from an organisation.

3.3 Critical Considerations in Retrenchment and Redundancy

The critical considerations in retrenchment and redundancy are as follows:

1. Consultation in the retrenchment procedure

Basically consultation is a process that takes place at various stages of the retrenchment programme. Where employees are represented at plant level, consultation may take place when determining the general policies and procedures for retrenchment. This type of consultation will most likely culminate in a general agreement pertaining to retrenchment, thus eliminating the need for repeated consultation of this nature.

Employees representatives will want to know in what circumstances the employer will regard retrenchment as essential. It is also advisable to agree on mutually acceptable standards or methods for verifying such circumstances. Consideration must be given to possible alternatives to retrenchment. But the most important issues during this phase are the negotiation of mutually acceptable criteria for selecting employees for retrenchment, and reaching agreement on the exact steps and procedures which must be followed in the case of the actual retrenchment process.

2. Criteria for selection on retrenchment

The question as to what criteria should be accepted for selecting employees for retrenchment is often one of the most controversial ones in the debate about retrenchment. The policy of "last in, first out" or "LIFO" is frequently adopted in this regard. The "LIFO" principle rewards length of service and is the most objective criterion. Moreover, it is the easiest to apply. It also prevents any favouritism or discrimination against trade union members. Yet one could argue that "IFO" operates to the disadvantages of trade unions, for often, their members are the younger employees.

Apart from the "LIFO" principle, special circumstances must also be taken into account, for example the need to retain specific skills in order to ensure the efficient operation of business in future.

Criteria that must be objectively considered in making the selection include: the abilities, experience, skills and occupational qualification of the individual employees; the length of service; age of the employee; and family circumstance (e.g. single breadwinners, disability), among others.

3. Severance pay for retrenchment

The amount of the severance pay in the case of retrenchment is normally negotiated by the employer, the employees and the particular trade union and or workplace forum as the case may be.

4. Notice to employees on retrenchment

The issue of the period of notice which must be given to employees remains one of the most controversial aspects of the retrenchment procedure. To avoid a decline in morale and productivity, employers try to delay giving notice to specific employees who are to be retrenched until the last possible moment. Although their reasons for doing so are sound, trade unions insist that adequate notice be given to such employees.

One of the reasons why trade unions do this is the severe psychological effect which sudden notice has on employees. To know that one will be without work in a few days has a considerable blow to most employees. However, some managers believe that the speedily breaking of the relationship is preferable to a long, drawn out or gradual separation. Nevertheless, other reasons for giving f adequate notice are also advanced by employee representatives, such as that those concerned will have an opportunity to find alternative work, and that there is sufficient time to identify those cases where retrenchment will result in considerable hardship.

5. After-care for retrenched employees

Once dismissals resulting from retrenchment or redundancy have been finalised, it is essential that all necessary assistance be given to employees in claiming unemployment payouts and other benefits. Even where the paper work has been done before the actual retrenchment takes place, there will always still be enquiries and problems.

Employers should also keep on assisting those concerned to find other meaningful employment if possible. For these reasons, among others, it may be necessary in the case of either partial retrenchment or total closure (and especially in case of mass retrenchments) to establish a temporary after-care, either as part of the human resource or personnel department or entirely independent of the employer's other business operations.

6. The undertaking to re-employ employees

Many trade unions demand that preference be given to retrenched employees where vacant posts arise in the organisation in future. The appropriate procedure would be to inform the trade unions concerned of the vacant posts and to give them an adequate opportunity to contact retrenched employees who could possible fill such posts. The demand that reappointment be offered is a reasonable one, but is one that must be carefully considered.

7. Retrenchment policy and procedure

It is advantageous for an organisation to have a retrenchment policy irrespective of whether or not there is a trade union, since it is preferable to have some policy or procedure in place rather than stumbling and rummaging about for solutions when management is faced with the reality of retrenchments.

Many companies that have agreements with trade unions have agreed on retrenchment policies and procedures. Nevertheless, those companies which do not have a significant trade union presence should consider having policies and procedures in place. These could take the form of guidelines, or could be elevated to an official policy which is made known to employees or employee representatives.

A clear and fair retrenchment procedure is a prerequisite for ensuring consistency in the retrenchment of employee. It is a formal procedure which foresees the possibility of a reduction in the workforce which will regulate it. Such a procedure lays down principle and practices which will ensure that, when retrenchment stare the company in the face, the necessary information is provided, that there is consolation, and that objective selection takes place when retrenching employees.

Self-Assessment Exercise

Enumerate and discuss the critical considerations involved in the retrenchment of employees from an organisation.

3.4 Redundancy

In general terms redundancy refers to a situation of loss of employment by the employees as a result of circumstances beyond the control of the organisation. In some other instance, redundancy can arise as a result of reorganisation, which makes the jobs of certain category of workers irrelevant in the new dispensation occasioned by a change of business line or divestment from a subsidiary by a diversified company.

In the eye of the Industrial Act, redundancy means an involuntary and permanent loss of employment caused by an excess of manpower. A situation of excess manpower in an organisation can be caused by a variety of factors such as technological advancement or reduction in production as a result of downturn in the economy.

According to Aturu (2005), it is not a voluntary or forced resignation, nor is it a dismissal from service. It is not a voluntary or forced resignation; and it is not a termination of appointment as known in public service. It is rather a form unique only to its procedure whereby an employee is quietly and lawfully relieved of his post. Benefits payable in a redundancy situation are governed by the employment contract. Thus an employee has no

right not to be declared redundant outside his term of employment or collective agreement that is applicable to him or her.

Furthermore, where an employee is declared redundant, the determination of his employment is not wrongful and he would not be entitled to damages. Nevertheless, the procedure stipulated in the Industrial Act must be complied with before the organisation reaches its decision to declare a particular worker redundant.

3.5 Conditions for Valid Redundancy

1. Excess of manpower

An employer cannot terminate a worker's contract of employment on the ground of redundancy unless there is an excess of manpower. Nevertheless, according to Aturu (2005), it is submitted that complete cessation of business or intention to cease to carry on business cannot lead to redundancy.

The contention is that the Industrial Act strictly defines the term and any extension of it to a situation not expressly mentioned would amount to importing extraneous matters to what is otherwise an ambiguous provision.

2. Consultation of the trade union

The employer is under an obligation to inform the trade union or workers' representatives of the reasons and the extent of the anticipated redundancy. This is a condition which is regarded as being precedent.

The implication is that the condition ought to take place at the earliest opportunity if it is too meaningful at all. Nevertheless, some employers have cause to refuse to recognise trade unions in their organisations in spite of the legal provision for compulsory recognition of the unions.

3. Principle of 'Last In, First Out'

The principle holds that in the event of redundancy the most recently employed persons shall be required to leave the organisation concerned, while the most senior workers shall be retained, subject to the skills, abilities and reliability of the workers.

The general opinion is that it may be relatively easy to determine the relative skills and abilities of workers compared to the determination of the reliability of a worker, a highly subjective criterion, which can lead to favouritism.

It is argued that there is no basis for the use of a subjective criterion like reliability in a consideration which is supposed to be an objective principle. The principle seems to support the view that redundancy does not apply to cessation of business as there would be no need to retain any worker in such a case.

4. Negotiation of redundancy benefits

The Minister of Labour is empowered by the Industrial Act to make regulations providing generally or in particular cases for the compulsory payment of redundancy allowances to workers affected by a declaration of redundancy.

In the absence of such regulation on payment of redundancy benefits, the workers and their employers have to negotiate payment terms on their own accord on the basis of collective bargaining or at best falling back on the individual contract of employment. According to Aturu (2005), in few cases the employers have to resort to a provision in the Industrial Act which enjoins the employer to use his best endeavours to negotiate redundancy payments with any discharged workers who are not protected by regulations made by the Minister.

Aturu (2005) holds the view that the provision of the Act seems to make the worker to be at the mercy of the employer in industries where there is collective bargaining process. This is because what an employer may consider to be fair payments for redundancy may fall short of reasonable efforts to negotiate adequate redundancy benefits.

Self-Assessment Exercise

List and explain the conditions for valid redundancy.

4.0 Conclusion

The above discussion has exposed you to the twin considerations of retrenchment and redundancy as they relate to the tenure of the employees in organisations both in the public and private sectors. The unit has portrayed that retrenchment and redundancy are inevitable in the life of an organisation as a result of mainly exogenous dictates of the operating environment.

Nevertheless, it is instructive to note that such considerations cannot be meted out to the employees without recourse to the provisions of the Industrial Law and the regulatory measures of the Labour Minister as they relate to the case of redundancy in particular.

5.0 Summary

This unit has been used to discuss the intricacies of redundancy and retrenchment of workers as the situation arises in the organisational operations. In addition, the unit has also treated issues which must be considered whenever organisations are embarking on retrenchment or the declaration of redundancy. The unit also explained the issues relating to the regulation of redundancy by the Labour Minister in terms of benefits which may accrue to the employees in the redundancy.

In the next unit, you will be exposed to the discussion on the management of the employees' grievances, which are inevitable in organisational setting and operations.

6.0 Self-Assessment Exercise

1. a. Differentiate between retrenchment and redundancy.

b. Mention the demerits of the frequent retrenchment exercise in the public service in the country.

2. Outline and discuss the factors to be considered when an organisation is embarking on retrenchment exercise.

7.0 References/Further Reading

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Unit 3 Management of Employee Grievances

1.0 Introduction

In organisational setting the employees are bound to encounter some problems which may bother on denial of rights, witch- hunting, sexual harassment, and all forms of discrimination, among others. When such situation arises, the appropriate channel through which the affected employees can seek redress is the focus of this unit.

Therefore, in this unit, you are being exposed to the appropriate procedure through which aggrieved employees can express their grievances instead of resorting to petition writing, which is never in the best interest of neither the employee nor the superior officer or any other culprit involved.

2.0 Objectives

At the end of this unit, you should be able to:

- explain the term grievance
- discuss the grievance procedure
- mention and discuss the basic phases of grievance interview
- identify the features of a good grievance procedure.

3.0 Main Content

3.1 Grievance and Grievance Procedure

A grievance occurs when an employee feels that he or she is being wrongly treated by his her colleagues or the superior officer. This can arise out of the feeling of being picked on, unfairly appraised in the annual performance report, and unfairly blocked for promotion or discrimination against on grounds of race, tribe, sex, religion, cultural practice, and the like.

For the purpose of harmonious interrelationship in the organisational setting, an employee who has a grievance should be opportune to pursue it and request to have the problem resolved. Some grievances should be capable of resolved informally by the individual employee's manager or superior. Nevertheless, if an informal and immediate solution is not possible, the case should be made to go through a formal grievance procedure.

3.1.1 Inherent Issues in Grievance Procedure

A formal grievance procedure should be instituted as a policy (necessarily in writing) and made available to all the employees to serve as a guide for pursuing grievances. The entrenched grievance procedures should incorporate the following things:

1. State what grades of employees are entitled to pursue a particular type of grievance.

2. State the rights of the employee for each type of grievance.

For instance, an employee who has not been considered for promotion might be entitled to a review of his annual appraisal report. Alternatively, he can be allowed to attend a special appeals promotion board if he has been in his current grade for at least a certain number of years.

1. State what the procedures for pursuing a grievance should be.
2. Distinguish between individual grievances and collective grievances.
3. Collective grievances might occur when a group of workers or work group considers that it is being unfairly treated.
4. Allow for the involvement of an individual's or group's trade union or staff association representative.

A grievance procedure may even be initiated through the union or association rather than through official grievance procedures. The involvement of the representative implies that there will be a common view on the appropriate procedures to take in the resolution of the matter.

6. State time limits for initiating certain grievance procedures and subsequent stages of them.

For instance, an employee who is not considered for promotion is required to make his appeal within a certain time period of his review, and his appeal to higher authority within a given period after the first grievance interview.

There should also be time scales for the management to determine and communicate the outcome of the complaint to the employee.

7. Requirement of written records of all meetings concerned with the case, to be made and distributed to all the participants.

3.1.2 A Typical Grievance Procedure

A typical grievance procedure goes though the following stages:

1. The aggrieved individual discusses the problem with a staff, union representative or a colleague. If his case seems a good one, he should take the grievance to his immediate boss.

2. The first interview will be between the immediate boss unless he is the subject of the complaint, in which case it will be the next level up and the employee, who has the right to be accompanied by a colleague or representative.

3. If the immediate boss cannot resolve the matter, or the employee is otherwise dissatisfied with the first interview, the case should be referred to his own superior and, if necessary, in some cases to an even higher authority.

4. Cases referred to a higher authority should also be reported to the personnel department. Line management might decide to ask for the assistance or advice of a personnel manager in resolving the problem.

5. The case should be treated with dispatch and the outcome communicated to the aggrieved employee immediately.

Self-Assessment Exercise

Explain the issues which are associated with grievance procedure.

3.2 Grievance Interview

It is a healthy practice that the manager should have some idea of the complaint and its possible source prior to the grievance interview. Normally the grievance interview itself goes through three stages as enumerated and discussed below.

1. Exploration

The problem of the aggrieved employee has to be explored: in terms of the background, the facts, and the causes manifest and hidden.

At this stage, the manager should simply try to gather as much information as possible, without attempting to suggest solutions or interpretations. Hence, the situation must be seen to be open.

2. Consideration

Under this stage, the manager takes time to: check the facts; analyse the causes of the problem of which the complaint may be only a symptom; and evaluate options for responding to the complaint, and the implication of any response made.

It may be that the information obtained can be used to clear up the misunderstanding, or the employee will withdraw his complaint. Nevertheless, the manager can adjoin the meeting for some days in order to get extra information and consider extra options.

3. Reply

The manager, having reached and reviewed his conclusions, reconvenes the meeting to convey and, if necessary, justify his decision, hear counter-arguments and appeals. The outcome, agreed or disagreed, should be recorded in writing.

Basically, grievance procedures should be seen as an employee's right. In this wise, managers should be given formal training in the management of grievances and their procedure based on laid down organisation policy.

Managers and superior officers in organisations are implore to realise that the grievance procedures are beneficial for the organisation, and therefore are not a threat to them.

Self-Assessment Exercise

Discuss the stages involved in grievance interview.

3.3 Features of a Good Grievance Procedure

- Be in writing.
- Specify to whom they apply; all or some of the employees.
- Be capable of dealing speedily with grievance matters.
- Indicate the remedy to which the aggrieved employee is entitled.
- Allow the employees to state their case exhaustively.
- Allow the aggrieved employee to be accompanied by a fellow employee or union representative.
- Ensure that every grievance is properly investigated before any action is taken.
- Ensure that the employee is informed of the reasons for any decision taken on his case.
- All proceedings must be recorded and the final outcome distributed to the relevant persons such as the personnel manager, the aggrieved employee, and his immediate boss.
- Provision for the right of appeal to the higher authority, and specification of the appeal procedure.

4.0 Conclusion

From the foregoing analysis, you can appreciate the fact that employees do have some problems which are related to the organisational setting and operations that need the management attention. The employees are bound to encounter some problems which may bother on denial of rights, witch-hunting, sexual harassment, and all forms of discrimination, among others.

Therefore, you are been exposed to the intricacies of what it takes to handle employees grievances so as to equip you with such knowledge in dealing or resolving issues bordering on employees' problems in organisational setting.

You can also appreciation the fact that appropriate handling of employee grievances is an important requirement in ensuring organisational harmony and cordial personal interrelationship among the employee subsystem in the organisation, hence, the need for an appropriate policy on how to deal with employees' grievances and operational problems.

5.0 Summary

The study unit has been used to discuss the appropriate procedure for dealing with peculiar problems and operational grievances of the employees in the organisation. You have been exposed to the various strategies for encouraging the employees to follow laid down grievance procedure in order to avoid petition writing in the organisation.

Other topics discussed in this unit include inherent issues in grievance procedure, grievance interview and features of a good grievance procedure.

In the next study unit, you will be taken through methods and styles of collective bargaining; collective bargaining being very strategic in the management of employees conditions of service in organisations as well as in resolving disputes between the employees and the organisation.

6.0 Self Assessment Exercise

1. Enumerate and discuss the stages involved in grievance interview.
2. What are the inherent features of an appropriate grievance procedure?

7.0 References/Further Reading

Aturu, B. (2005). *Nigerian Industrial Laws: Principles, Cases,Commentaries and Materials.* Lagos: Frederick Ebert Stiftung.

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Unit 4 Methods and Styles of Collective Bargaining

1.0 Introduction

In order to avoid industrial disharmony, organisations use to institute some defined measures though which the management team and the representatives of workers meet from time to time to discuss issues of common interest.

You will understand that industrial harmony can only be achieved in an atmosphere of mutual trust and understanding between the management and the workers occasioned by constant interaction of their representatives.

The appropriate forum for such mutual interaction is the subject matter of this study unit. Therefore, the issues that are discussed in this unit are the basic ways through which employers and employees can meet to regulate the environment of work, the job itself and the inherent benefits and cost to both parties.

Such basic methods of mutual interaction between the management and the unions are in the areas of deputation, joint consultation and collective bargaining. All these three issues are discussed in this unit but an elaborate analysis is devoted to the subject of collective bargaining since it constitutes the main preoccupation of the unit.

2.0 Objectives

At the end of this unit, you should be able to:

- identify and discuss the basic methods of mutual interaction
- between management and workers
- explain the meaning and nature of collective bargaining
- identify and explain the critical factors for effective collective bargaining
- list and discuss the various methods/styles relevant to collective bargaining
- discuss the peculiar nature of collective bargaining in public sector in Nigeria
- explain the procedures relevant to collective bargaining.

3.0 Main Content

3.1 Forums of Interaction between Management and Employees

From the introductory part of this study unit you have been exposed to the various ways through which organisation can ensure industrial harmony. The three aspects of such basic methods are discussed herein.

3.1.1 Deputation

According to Akubuiro (2003), deputation is commonly used in organisation where the workers are non-unionised or ineffectively unionised. Under this scenario, the workers are granted freedom to express their views only on the basis of symbolic gesture. The ultimate decisions are still the prerogative of the employer or management.

Hence, the responsibility of the operational decisions is entirely that of the employer or management and not that which is shared by both the management and the workers.

3.1.2 Joint Consultation

Akubuiro (2003) posits that joint consultation involves mutual interaction between the representatives of both management and workers for the purpose of exchanging information, considering suggestions or proposals and repercussions of the results of the decisions as may be taken.

Under this forum, discussions are normally depersonalised and the sense of responsibility for such decisions is shared by those who partake in the deliberations.

For the purpose of joint consultation, some employers in allied trade form themselves into joint industrial councils while the workers form a joint consultative committee. The purpose for the existence of a joint consultation body is to provide a forum for regular contact between management and workers as a means of improving conditions of work and by extension the level of productivity.

The other reason for the formation of a joint consultation is the essence of the need to meet the workers' demand regarding closer participation and better insight into the management of the organisations in which they work.

3.1.3 Collective Bargaining

The other forum through which both the management and the employees do interact towards ensuring industrial harmony is the collective bargaining. Collective bargaining, as a forum of interaction between industrial and management, is a practice by which employers and employees meet at regular intervals or regularly to agree on the terms under which the employees shall render their services in the organisation.

The essence of the forum therefore, is to discuss in an atmosphere which is devoid of rancour, the conditions of service of the employees and the issues arising thereof from time to time. Thus it means that the management is compelled under this practice not to wait until this industrial crisis or disputes before engaging the employees' representatives in meaningful dialogue towards ensuring industrial harmony.

The nature, methods and styles of collective bargaining, among others issues, are discussed in the subsequent sections of this unit.

Self-Assessment Exercise

Differentiate between deputation and joint consultation.

3.2 Nature of Collective Bargaining

Collective bargaining is regarded as the practice by which employers and employees meet in conference to agree from time to time to agree upon the terms under which industrial shall be performed.

According to Akubuiro (2003), collective bargaining can be viewed as a process which determines under what terms industrial will be bought and sold and under what terms industrial will continue to be supplied to a particular company. The implication is that each individual employee's contract has been replaced by company agreement with union, and whatever is agreed by the union and management also binds not only present employees but also future ones.

In another perspective, Akubuiro (2003) espouses that collective bargaining includes all methods by which groups of workers and relevant employers come together to attempt to reach agreement in matters by a process of negotiation, matters discussed here generate a relationship of rivalry and decisions are reached through concessions and compromise.

In an all-inclusive definition of collective bargaining, Davey as quoted by Egbo (1987) views it as those formal and informal processes of accommodation through which an employer, or a group of employers and their organised workers attempt to establish a mutual set of relationships which will allow them to achieve their respective goals. It involves the formulation of industrial agreements (contracts), the application of those agreements to the production processes involved, and the solution of the inevitable differences which arise over their interpretation and application.

The process of collective bargaining involves negotiations about working conditions and terms of employment between an employer and union for the purpose of reaching mutual agreement. It means that under the collective bargaining issues of divergent or congruent interest can be discussed. Hence, the parties at dispute see themselves as opponents.

3.2.1 Items of Collective Bargaining

The issues or items for collective bargaining whether negotiable or non-negotiable are normally categorised into three distinct groups.

Mandatory items: These are the items that both management and unions have accepted to constitute the issues of negotiation. An important example is the issue of wage regulation. Another example of mandatory issues is the condition of service.

The number of mandatory items which are accepted by both parties for negotiation largely depends on the arm twisting tactics of each party. This is the ability of union to convince management to accept on one hand and management resistance against unions desires on the other.

Voluntary items: These are the items which neither party in the dispute can be compelled against its wish to accept for negotiation. Examples of such issues are fringe benefits like car loan, housing scheme, bonus, transport scheme, long service award, death benefit, shift work, and medical care.

In essence, voluntary items are regarded as middle range issues for which neither party can be forced against its wish to negotiate upon or sign for in the process of negotiation. By implication, such items are not binding on the employer.

Exclusive items: These are issues which are exclusive prerogative of the management of the organisation which fall under the procedural agreements. Hence, the unions are not supposed to interfere with them because they are under the ambit of the functional responsibility of the management.

Examples of exclusive issues are employment, promotion, transfer, termination, suspension, and discharge. In some cases, the unions may be allowed to have consultation with the management on such issues but the management still reserves the right to take exclusive decisions on them without recourse to the unions.

Self-Assessment Exercise

Identify the items that are normally involved in collective bargaining.

3.2.2 Related Terms in Collective Bargaining

1. Bargaining power

The term, according to Akubuiro (2003) is the ability to control the setting of wages, sometimes within given limits. In another perspective this is the proprietary ability to withhold production or products pending the negotiations for transfer of ownership of wealth. In another view, it is regarded as monopoly power, which is related to and possessed by the organisation. Accordingly, the bargaining power, since it is prerogative of the employer, denotes power to exploit. Hence, it is the relative power of contracting parties particularly the company, to influence the wage in the light of all prevailing factors.

Bargaining power also refers to the monopoly of wealth as it is related to the organisation's ability to exploit and impose costs. Since it is the power to exploit, an increase in bargaining power means increased capacity to exploit. According to Slitcher, bargaining power is the cost of A imposing a loss to B.

2. Cost of agreeing and disagreeing

A union's bargaining power at any point is the management willingness to agree to union's terms, and such management willingness to agree in turn depends upon the cost of disagreeing with union's terms relative to the cost of agreeing to them.

In a situation where the cost of disagreeing is less in relation to that of agreeing, then union's bargaining power is enhanced and vice versa. The parties involved in collective bargaining can change this power through the use of tactics with which to influence each other.

Furthermore, the usual shifts in economic conditions, public opinion and government influence can affect bargaining power or actually change it. By and large, the nature of demands made which occasioned collective bargaining and the costs of agreement or disagreement normally affect and indeed change bargaining power.

3. Union tactics and cost of disagreeing

The Trade unions normally use strike to withhold their industrial until their terms are met. On the other hand, employers make use of lockout to withhold employment until their terms are accepted.

For all intents and purposes, both the union and employer usually suffer some cost which comes in form of wage loss by the union and cessation of operations by the employer. The implication is that while union seeks to strengthen strike, the employer will seek to weaken it.

The unions normally use tactics such as timing of strike, skill level of workers in the union, ability to provoke sympathetic action from other people, and the sympathy strikes, that is, the secondary boycotts.

4. Management tactics and cost of disagreement

Management has the capacity to increase cost of disagreement to unions through lockout by withholding employment except on terms agreeable to management necessarily with due cognisance to the prevailing market conditions.

The management of an organisation can also use its financial muscle to take strike insurance policy. Management is also at liberty to sack the employees and replace them with others or machines. Management can also weep up or resort to public opinion, government or political pressure.

5. Strength of the union

The strength of the union in negotiation depends on some factors, which are as highlighted below:

- persuasive or coercive skills of the union executives
- membership strength of the union
- prevailing economic condition in the country
- purse or financial resources of the union
- workers willingness to embark on strike
- ability of the union to call members on strike
- goals of the bargaining parties.

Self-Assessment Exercise

List and explain the related terms in collective bargaining.

3.3 Critical Factors for Effective Collective Bargaining

According to Akubuiro (2003), there are desirable conditions which are imperative for effective collective bargaining. They are as follows:

1. Faith in Collective Bargaining

Both parties in dispute must be convinced and ready to accept that collective bargaining offers a good means of regulating employment conditions in addition to the use of deputation and joint consultation.

2. Favourable political climate

This is the prevailing political climate, which must be favourable to both parties in dispute. For instance, the government must believe in the efficacy of collective bargaining as a veritable means of resolving trade dispute by both the employers and the trade unions.

In a particular situation where the government does not encourage the institution of collective bargaining such as the use of restrictions on trade unionism, the use of collective bargaining may bring only a limited success.

The government can only encourage collective bargaining through policy measures on the form and contents of agreement in negotiation.

3. Freedom of association for the workers

The institution of collective bargaining can only thrive if the workers are free to promote trade unionism among themselves and also at liberty to join trade unions of their choice. The government can encourage freedom of association for the workers at the instance of an enabling legislation for the formation of associations.

4. Stability of trade unions

The workers' organisations in form of trade unions must be strong enough to stand the test of time. Such strength will make the employers to accord them recognition and hence, grant them the right to represent their members (the workers) in the process of collective bargaining for the negotiation of favourable terms or conditions of their service.

5. Willingness to give and take

For a collective bargaining to be meaningful and achieve the desired result, both parties must engage in voluntary and cooperative method of bargaining. Hence, either party regards their organisation as a veritable ingredient for earning their livelihood.

It means both parties will only present core demands as basis for negotiation and in the process of bargaining one party will agree to reduce its demand in return for some concession from the other party. Naturally one party will win more concessions than the other, which actually depend on relative strength of the two parties, the prevailing economic conditions, and skill in negotiation.

6. Recognition of trade union

A trade union that is recognised by the management can muster the necessary authority and power to negotiate on behalf of the workers in the process of collective bargaining.

7. Joint authorship of agreement

It is usually desirable and ideal for both parties to jointly sign agreement arrived at during the negotiation to indicate the willingness of both parties to honour the terms contained

therein. The refusal of any party to sign the agreement can lead to creation of loophole for the subversion of the agreement.

8. Avoidance of unfair trade practices

In an atmosphere of restricted trade practices, the practice of collective bargaining will be distorted. Such unfair trade practices include breaching of anti-union contracts by the unions, transfer of union activists due to union activities and denial of trade union officials of their rights because of involvement in union affairs.

6.0 Self-Assessment Exercise

List and explain factors which are imperative for effective collective bargaining.

3.4 Methods of Collective Bargaining

1. Contractual method

Under this method the employer and the representatives of the workers meet for negotiation for the purpose of settling trade disputes. They bargain and if they succeed, they conclude a "collective agreement" which is a "social treaty."

The agreement becomes "static" because after the conclusion of the agreement, it remains the only agreement that binds the parties. The agreement remains static even when situation, or circumstances, surrounding the agreement changes.

2. Institutional method

Under this method industrial and management come together to set up an institution and a constitution. The body known as a consultative committee consists of an equal number of representatives while passing a resolution; the bilateral agreement is open to interpretation or modification. Hence, it is an open-ended agreement. Also a time limit is usually not fixed for its operation. Therefore, this agreement cannot be enforceable under the law of contract.

Self-Assessment Exercise

List and explain the methods which can be used in the process of collective bargaining.

3.5 Styles of Collective Bargaining

The following are some methods which are normally adopted in collective bargaining:

1. Conjunctive bargaining style

This method is in tandem with the absolute requirements that some agreements be reached so that the operations on which both parties have depended may continue to function or exist. In terms of bargaining relationship between both parties in dealing with matters of

divergent interest, each party tries to secure some advantage to the extent of its relative bargaining power.

Furthermore, each party normally strives to aim for maximum advantage possible without much regard for the effect on the other party. The method is capable of being used to establish a system of industrial jurisprudence whereby employer and employee resolve their dispute rationally and peacefully.

This method is weak in terms of complete incapacity to satisfy the objectives of both parties. In addition, there is the problem of rigidity, which tends to reduce benefits and the needed cooperation. This method of collective bargaining is widely practiced in US.

2. Distributive bargaining style

This method of bargaining is somehow similar to the conjunctive bargaining since each party is only interested in what it can achieve even at the expense of the other party.

In essence, the method implies that one party strives to gain at the direct expense of the other party. This style is normally used when the issues at stake are in areas of monetary benefits, rest time, hours of work, and overtime pay, among other similar grounds of negotiation.

3. Cooperative bargaining style

Cooperative bargaining method arises because of one party's sympathetic regard for the other and its voluntary choice of the other as partner; the management and the workforce regarding each other as partners in progress in their organisational setting.

This method is normally adopted to ensure that the objectives of both parties are satisfied. Hence, the method enables both parties to share their rewards. The method is employed to ensure maximum cooperation by both parties. The method ensures that each party is depending on the other, so that both parties can achieve their objectives more effectively, by winning the support of the other.

Under this method of bargaining, each party to the dispute depends on the other party for fruitful result since they can only achieve success with the cooperation of each other. The method is particularly useful when the issues at stake are of common interest to both parties.

4. Integrative bargaining style

This method of bargaining is like the cooperative bargaining. Under this bargaining method, the emphasis is on common interests in its form of bargaining as greater consciousness means that each party will gain the cooperation of the other.

Some unions have conducted themselves in this manner for the purpose of joint protection of the industry from competitors or joint demand for special concessions from the government. More so it is not unusual, for instance, in the American system for the trade unions and industry spokesmen to come together in order to lobby for public subsidies and special legislation in favour of their industry.

In this style, both parties to the dispute have mutual recognition of each other's purpose and therefore, both parties will be prepared to make concession. This method of bargaining

becomes useful in period of economic recession resulting in shifting grounds on several issues under dispute.

5. Fractional bargaining style

Fractional method of bargaining involves the sectional activities of some work groups who, because of either their strategic location in the work flow or special skill, seek supplementary agreements on behalf of the group alone.

Such groups of workers are usually cohesive with their informal authority structure. Examples of such groups of workers in the public sector in Nigeria are the lecturers and medical doctors.

In the event of the representatives (particularly the executives) trying to follow a policy of a particular local trade union which runs counter to the group interest, the members of the work group will simply ignore the elected officials and follow an informal spokesman.

Given that a work force is made up of a collective of different work groups, it may be easier to appreciate such interest which accompanies bargaining and implementation of collective agreements.

6. Connective bargaining style

This method or style of bargaining implies that each party comes in to bargain in such a manner that it strives to achieve its best while aiming at maximum result with minimum cooperation.

The style becomes useful in a situation where one party will be interested in seeing that organisational operations are on course but will not like to lose out either.

7. Individual bargaining style

The method involves an individual employee seeking an improvement on the prevailing conditions of his employment. This is done mainly by the white collar job holders particularly in the middle and top management hierarchy in organisations.

As you can observe, employers generally tend to institutionalise individual bargaining for middle and higher members of management. More so, the Nigerian government has through measures, insisted on different workers' organisations for both white collar and manual workers, while the former group is prevented from affiliating with the Nigeria Industrial Congress.

Self-Assessment Exercise

List and explain the various styles inherent in collective bargaining.

3.6 Collective Bargaining in the Public Sector in Nigeria

The nature of collective bargaining in the public as observed by Fashoyin (1987) is quite different from what obtains in the private sector. Since the creation of the public sector, the

main policies on employee-government relations have been embedded in the civil service regulations, the document which was previously known as the general order.

The civil service rules as obtained in the present day public sector regulate most of the conditions of employment which suffice for the collective bargaining process in the public sector. Therefore, the issues of collective bargaining which constitute the conditions and terms of service for the civil servants in the civil service regulations are in areas of wage increase, grievance procedures, promotion, discipline, leave, terminal benefits, and pension, among other similar issues.

The crucial fact that must be pointed out is the absence of any machinery for government employees to participate in the determination of these conditions of service as contained in the civil service regulation.

The government also uses another approach in place of collective bargaining in form of the wages commission, which the government has used over the years to regulate salaries and allowances of the public workers. The most recent one is the Shonekan Commission which has resulted into consolidated salaries for the public workers in January 2007.

The Nigerian government has used so many wage review commissions since the colonial era; the major ones which are Tudor Davies 1945, Harraigin 1946, Miller 1947, Gorsuch 1955, Mbanefo and Morgan 1959, Adebo 1970, and Udoji 1972.

The use of the wages commission to regulate salaries and allowances has been rationalised that the government has the right to set wage rate in any establishment where either the wages are unreasonably low or where no adequate machinery is available for adjusting wages and conditions of service. However, the scope of this study text does not cover the argument for and against the use of such commissions to regulate terms of remuneration for the public workers.

3.7 Procedure for Collective Bargaining

According to Akubuiro (2003), procedure for collective bargaining refers to the ways through which both the management and union should ensure that strikes and other forms of industrial disputes are avoided.

Various forms of industrial disputes are as highlighted below:

Economic disputes: These are the issues that affect employee compensation in form of salaries, incentives, fringe benefits and other related allowances which are financial in nature.

Legal disputes: These are the union-management disagreements which border on the interpretation and authorship of agreement.

National disputes: These are the political issues affecting the whole nation normally handled by the umbrella union such as the Nigeria Labour Congress. Examples of such issues are deregulation of the petroleum products pricing or the downstream sector of the industry, national electoral process and other government policies affecting the whole country.

The laid down procedures are not the same for all industries and such procedures for collective bargaining are the ones being used to settle the major types of disputes, which are

discussed below. According to Akubuiro (2003) the prescribed procedures for collective bargaining, which are necessary for ensuring industrial harmony are as analysed below. The procedure is a process structured out in stages.

Stage 1: Union recognition stage

The important thing herein is the recognition of the workers' union by the management. The industrial laws in Nigeria permit workers to form and register trade unions in any organisation. The minimum number of workforce in an organisation that can form a trade union is 50 employees.

Once the union has been formed and registered with the appropriate authority, the employer is duty bound to accord it recognition and work with it for the good of the organisation.

Stage 2: Pre-negotiation stage

At this stage, both the union and the management are expected to draw and study an agenda for the process of collective bargaining. Each party is expected to generate authentic information for the purpose of balanced argument in the collective bargaining exercise. Both parties are expected to study their respective bargaining power in terms of numeric, financial, skills of the executives, and the like. At times the union use consultants and engage in espionage activities on the firm in order to generate relevant data for the purpose of meaningful negotiation.

Stage 3: Selection stage

This involves the selection of those that will represent both parties at the collective bargaining forum. People with qualities such as tactic, boldness, great wit, wisdom, good character, skilfulness, and fearlessness are to go for the negotiation. Therefore, the most qualified persons to represent the union may not be its executives but other members of the union.

The union may be compelled to engage the services of industrial experts to do the bargaining on their behalf but necessarily in their presence. The management team is also to make use of its knowledgeable members or a panel of experts for the negotiation. The actual representation is a function of agreement by both parties.

Stage 4: Negotiation stage

The major preoccupation under this stage involves strategising towards the bargaining process taking into consideration the basic policies to be respected. More so, decisions on the possible concessions or compromise to be conceded are made.

Stage 5: Contract stage

The collective bargaining itself takes place under this stage. Traditional styles of backbiting, hitting the table, shouting, bluffing, and holding back concessions are the norms in the process of negotiation for the collective bargaining. Nevertheless, in the modern-day collective bargaining, the norms are concession, compromise, mutual negotiation and discussions for beneficial decisions.

The watchword is being ethical conscious in terms of behaviour of the negotiators and the central focus revolves around level of productivity, organisational image, and the future of both the workers and business. This mutual understanding normally leads to the drawing up and signing of contracts, which are the procedural agreements, reached by both parties and must be jointly appended to by the representatives of both parties necessarily after a careful perusal.

Under this stage, the main styles of collective bargaining can be used. You will recall that these approaches include voluntary bargaining style, cooperative bargaining style, conjunctive bargaining style, and lastly by adhering to the laid down legal framework.

Self-Assessment Exercise

Discuss the procedure through which collective bargaining takes place.

4.0 Conclusion

From the analysis above, it is clear that collective bargaining is sine qua non to industrial harmony. This is because such process affords both the trade union and the management to discuss on how the condition under which the workers operate is conducive for ideal level of productivity, and at the same time afford the workers the opportunity to fulfil their aspirations in the organisation.

Furthermore, collective bargaining presupposes that the representatives of both parties meet on a regular basis to rob minds towards avoiding unnecessary bickering and strikes which do not benefit either party. Both union and the management can at times use such forum to lobby and in extreme cases pressure the government into acceding to the wish of the organisation, which benefits the two parties in the final analysis.

5.0 Summary

The analysis of the concept of collective bargaining in this unit has afforded you the opportunity to understand that it is possible for an organisation to operate without disruptions of operational activities. Such industrial harmony can be guaranteed with the use of collective bargaining. Hence, the unit has been used to expose you to the essence of collective bargaining, its process, critical factors for effective collective bargaining, methods of collective bargaining, procedure for collective bargaining, and lastly the peculiar nature of collective bargaining in the public sector in Nigeria.

In the next study unit, you will be taken through the principles of negotiation and role of negotiators in the process of collective bargaining.

6.0 Self Assessment Exercise

1. Identify and explain the critical factors for effective collective bargaining.

2. Mention and discuss the various methods and styles which can be adopted in the process of collective bargaining.

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Unit 5 Nature and Principles of Negotiation in Collective Bargaining

1.0 Introduction

It is well known that conflict between management and labour is one of the central issues in the management of industrial relations. Workers' participation, communication, the handling of problems and grievances, and discipline are all designed to keep conflict levels as low as possible. But, this is not necessarily enough. Basic principles necessary for successful negotiation must be recognised. Furthermore, those officials chosen for negotiation must possess some qualities and skills imperative for successful negotiation.

Therefore, in this unit, you are introduced to the basic principles of negotiation as well as the role of negotiators for effective negotiation in collective bargaining.

2.0 Objectives

At the end of this unit, you should be able to:

- explain the concept of negotiation as it relates to collective bargaining
- outline and discuss the four broad categories of principles underlying negotiation
- describe the typical steps of the negotiation process
- analyse the roles and tasks of the negotiators
- identify and discuss the qualities and skills of successful negotiators.

3.0 Main Content

3.1 Negotiation in Collective Bargaining

In this unit we shall deal with aspects of collective bargaining in areas of negotiation process, dynamics of a negotiation situation, and principles of negotiation initiators.

Negotiation is an integrative part of collective bargaining, for the term "negotiation" relates to the actual, practical implementation of the concept "collective bargaining." Our focus is this unit is thus on negotiation as such or "in its own right." Clearly, then, we do not regard the concepts "negotiation" and "collective bargaining" as synonymous.

All of us negotiate with other people virtually every day. Sometimes, these negotiations are complex, and sometimes they are very simple.

Of course, at home we negotiate with our families about which friends to visit or which television programmes to watch, and the children negotiate about which games to play. At work, we negotiate, among other things, with our superiors about matters such as time off or how to cope with budgetary restraints. Generally speaking, negotiation is thus a broader (more general) concept than collective bargaining, because negotiation takes place in every

sphere of life. Unlike collective bargaining, negotiation is not restricted to the sphere of industrial or industrial relations. Collective bargaining is a concept that is used, among other things, to refer to negotiations between the representatives of the parties.

From an industrial relations perspective, however, negotiation is a narrower concept than collective bargaining, and this might cause confusion. In the context of industrial relations, collective bargaining includes actual negotiation: collective bargaining refers to the whole system and process, including broader institutional or structural arrangements, and is designed to structure and facilitate interactions between the parties. In this sense, negotiation is only a part of collective bargaining, namely that part concerned with the actual execution of certain issues of the collective bargaining arrangements.

In the light of this, we need to make it clear that negotiation is an extremely important part of life in general and of collective bargaining in particular. Really, competent negotiators are rare, and specialised and intensive training is needed to make one a successful, professional negotiator.

Self-Assessment Exercise

Explain the concept of negotiation in the realm of collective bargaining.

3.2 Basic Principles of Negotiation in Collective Bargaining

Before proceeding to discuss the details of the negotiation process, you need to understand all the basic principles that underlie successful negotiation. All the parties in negotiation should be aware of these basic principles. Such principles are important and, while not strictly prescriptive, can probably contribute to a more successful negotiation.

These principles include the following:

1. Always try to strengthen the relationship of trust

Since, normally, the parties are in regular contact and have to maintain a sound collective relationship over long periods, they should be careful to do the following:

a. Never give misleading information. Both parties know that a certain amount of bluffing may take place during negotiations, but deliberate deception will prevent a relationship of trust from developing.

b. Implement and honour all agreements. This really is the absolute minimum. “If this is not done, the relationship of trust will either be gravely damaged or it will never come about in the first place.

c. Keep to official and unofficial codes, procedures and rules.

d. Protect the confidentiality of information shared between the parties.

e. Keep to negotiation rituals, customs and processes.

f. Try to conclude agreements within the mutually agreed period.

g. Record agreements in writing at regular intervals, especially during the initial phases of collective relations.

h. Offers that are made or accepted should never be withdrawn.

2. Accept the basic principles of any negotiation process in good spirit

According to this principle, the parties should act as follows:

a. All parties should be prepared to negotiate.

b. Compromise is necessary. All parties should be prepared to understand the viewpoints of others and should be prepared to modify their original demands and/or offers.

c. Agenda should be exchanged in good time, giving everybody sufficient opportunity to study the discussion points and to prepare.

d. Precedents will be created over a period of time, because there are usually items arising from or relating to similar items in previous agreements.

e. All parties must be committed to reaching agreement. Without such a commitment, negotiations cannot take place in good faith.

f. Avoid excessively legal or technical approaches, for such approaches tend to have a negative effect on the development of a sound, long-term collective relationship.

g. Complex technical details should not be included in the final agreements.

3. Accept the other party's negotiating status

This implies the following, among other things:

a. Acknowledge and respect the other party's independence, and admit that there are some basic differences between the parties.

b. Accept that negotiators can only negotiate if they have a mandate from their constituencies. Respect the mandate not only of your constituency, but also that of the other party.

4. Accept the realities of power, including the fact that each party potentially has the power to "disadvantage" the other

The balance of power between parties ultimately plays a fundamental role in the success or otherwise of negotiations. The greater the power of one party, the better that party's chances of manipulating things and "winning" in divisive types of negotiations. However, some aspects of power commonly characterise both parties:

a. The support which the media (such as the press and television) can give to either party.

b. The ability (financial and otherwise) of either party to take legal action (if this is necessary) in order to "win."

c. The state of the economy probably favours either the employers (downswing) or the trade unions or employees (upswing), adding yet another element of power to the proceedings.

Self-Assessment Exercise

List and explain the main principles of negotiation in collective bargaining.

3.3 Trade Union Power in Collective Bargaining

Power usually refers to the ability to achieve the outcome it wants or to force the other to modify its expectations. As a result, the perceptions that parties have of the relationship of power between them will considerably affect the tactics and strategies they use. Trade union power includes the following:

- Trade union membership largely determines the trade union's power base as opposed to that of management.
- A trade union's power may also be increased by an ability to form coalitions with other trade unions and trade union federations.
- A trade union's power can be considerably enhanced by the power to draw other organisations and industries into sympathy strikes or go-slows.
- The type of industry in which a trade union operates may also be a source of power to it (e.g. if the company produces a raw material which other companies need for the manufacture of their own products).
- Trade unions may also have excellent financial resources which they can use to acquire information, appoint consultants and support striking workers.
- International contact and support can do much to enhance the power of a trade union.
- The better the skills of its skilled members, and the scarcer the skills they supply, the greater the trade union's power. This is one of the reasons why the organisation of skilled workers into trade unions is becoming so important.

Self-Assessment Exercise

Explain the various ways through which trade union can exert their power in the process of collective bargaining.

3.4 Types of Negotiators in Collective Bargaining

As mentioned earlier, the groups of people involved in negotiation within the context of industrial relations, and who are most interested in the negotiations, are usually the teams of negotiators. For them, the actual negotiation meetings are the climax of the collective bargaining process.

1. The chief negotiator

The chief negotiator usually plays the key role in communications, debates and argumentations. He or she helps to find common ground, to understand and persuade people, and to move them towards an agreement. The chief negotiator is also the person who has to signal that agreement has been reached.

2. The recorders

The job of recorders is normally to record important developments, arguments and events forming part of the negotiation encounter. They take notes on the movements and positions

of the other parties, enabling negotiators to check the development of patterns until such time as all conclusions and agreements have been recorded.

3. The analysts

Analysts make a careful and critical analysis of the strategies and tactics deployed by the parties. They endeavour to identify the interests and true reasons that underlie the various arguments and tactics. They perform all sorts of calculations and cost calculations in respect of contracts, and they interpret the potential effects of proposals, demands and requests. They also try to identify the flaws in arguments, and they notify recorders and chief negotiators of these.

4. The observers

Observers generally attend negotiations in a purely passive role, to observe events and to learn. Often, they have to play more supportive, active role in observing actions and reactions and bringing these to the attention of the analysts.

Self-Assessment Exercise

Discuss the various types of negotiators in collective bargaining.

3.5 Tasks of a Negotiator

According to Salamon (1992), the chief task of any negotiator in the context of collective bargaining is ultimately to reach an agreement that is acceptable to all the parties. This task includes the following functions:

- Advising the chief negotiator about the bargaining objectives and strategies of the various interest groups, thus enabling him or her to make the necessary preparations for dealing with these.
- Arranging and conducting the negotiation meetings.
- Stating, explaining and defending the cases of interest groups.
- Listening to, examining and trying to understand the other party's case.
- Deciding when to affirm and/or adjust negotiating positions, and when to deploy which tactics within the broad, predetermined strategy.
- Consulting the chief negotiators, apprising them of progress being made in the negotiations, and discussing this with them to ensure that the real interests of groups are served and that negotiation objectives are adjusted where necessary.
- Trying to influence other parties/negotiators and persuading them to modify their views and review their interests so that the parties can come closer to an agreement.
- Trying to establish and maintain sound, long-term personal relations with the negotiators of the other party.

3.6 Qualities and Skills of Successful Negotiators

To be successful, negotiators would do well to note the following essential qualities dealt with in the works of Salamon (1992), Kniveron (1974) and Alfred (1984):

- well trained and knowledgeable about the intricacies of negotiation have good social and interpersonal skills
- enjoy working with people, especially in difficult circumstances
- be good planners, which also means that they should have information-processing skills
- have a positive attitude, trying to reach common objectives (egocentric people are rarely successful negotiators)
- be good communicators, capable of listening with an open mind and expressing themselves clearly
- be highly trained in the use of persuasive skills
- be alert, noticing what happens (and does not happen!) around them
- be discrete and have good analytical skills and judgment
- be patient and capable of handling stress
- be able to control their emotions (in order words, keep their heads in difficult circumstances)
- have good conceptual skills in order to link up the various elements and keep visualising the "bigger picture"
- be able to concentrate on long-term rather than on immediate objectives
- be flexible thinkers with an open mind, but at the same time purposeful and persevering
- be creative so that they can formulate counter-proposals and alternative arguments
- be intellectually astute and fast thinkers, but not the kind of people who act hastily
- have a good sense of humour
- be reasonable, willing to compromise where necessary
- be able to remain in the background when necessary, and should not be constantly on the defensive or quick to take offence
- be diplomatic, honourable and trustworthy
- be able to deal firmly with facts, but be gentle with people
- be people of integrity - without this quality, it is impossible to achieve long-term success in negotiations.

4.0 Conclusion

You can appreciate from the foregoing analysis that negotiation is very critical to collective bargaining. In this unit, you have learned a number of issues that relate to negotiation and the basic approaches to negotiation. You have also learned about the roles and qualities of the negotiators who normally represent various parities in collective bargaining.

5.0 Summary

You should know by now that negotiating in the industrial relations context is an art and takes a lot of practice. Incompetence in this area can be costly. It may mean that unhealthy levels of conflict persist; agreements may not be reached or else those collective (or individual) agreements that are reached may have negative effects for the organisation in its pursuit of success.

In the next study unit, you will be taken through the various stages involved in the negotiation process in collective bargaining.

6.0 Self-Assessment Exercise

1. What do we mean when we say that "negotiation" is at one and the same time a more inclusive and also a narrower concept than "collective bargaining"? Explain in detail.
2. List fifteen qualities and abilities of typically "successful negotiators."

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