1. **Unit—II :** Industrial Disputes -Nature of Industrial Dispute, Causes of Industrial Dispute,
2. Types of conflict Resolution – Statutory & Non-Statutory
3. Collective Bargaining – Meaning, Characteristics, Need, Importance, Process, Pre-requisites

**Industrial Dispute :** As per section 2 (K) of industrial dispute or difference between employers and employees employers and employers or employees and employees which is connected with the employment or non employment or the terms of employment or with the condition of labour of any person.

1. There must be a **dispute or difference the dispute or difference must be between employers and employees employee and employees, employers and employers.**
2. The dispute must be connected with **employment or non employment or terms of employment** or with the conditions of labour of any person.
3. The existence of **a grievance is necessary** and it must be communicated to the employer.

The dispute which has resulted in strained relations is a controversy in which the workman is directly or substantially interested. It must also be a grievance felt by the workman which the employer is in a position to remedy.

# Causes of industrial unrest in India can be classified mainly under four heads they are

1. **Financial Aspects**
   1. Demand for increase of **wages**, salaries and other perks. workers demand goes on increasing with the increase in cost of living
   2. Demand for more **perks, and fringe benefits**.
   3. Issue of **bonus** also has become a contentious one, even though Bonus Act has come fixing minimum rate payable as 8.33% of their total salary in spite of profit or loss incurred by the industry.
   4. Incentives **festivals allowances**, concessions etc requires a hike every now and then, workers compare these benefits with other industries and demand them – without comparing the capacity of the industry where they are working.
   5. Irrational wage, wage system and structure not mutually acceptable
   6. **Close mindedness of employers** and employees one thinking to extract maximum work with minimum remuneration, other thinking to avoid work and get more enhancements in pay and wages.
   7. Unjustifiable **profit sharing,** and not considering workers as a co-shares of the gains of the industry.

# Non financial aspects

* 1. **Working hours, rest hours, Traveling hours** are source of disputes.
  2. If houses are provided some section of workers want to include travel time also as working hours.
  3. Introduction of **machines, computers modernization, automation** – In effect any act of management which may result in economy in man power is resisted
  4. Introduction of new technology or automation mechanization, Computerization etc. without **proper consultations, preparations and discussion** with workers and creating climate.
  5. More facilities like **free meals free group travel** etc are sought every now and then
  6. Poor working environment, low presence of safety, hygiene conditions vitiated atmosphere for smooth working
  7. Nepotism, unequal workloads, disproportionate responsibilities.

# Administrators Causes

* 1. Non implementation of agreements **awards and other local settlements** – with full sprit
  2. stifling with recognition of labour unions though registered
  3. Attempt to weaken existing trade unions and trying to foist fake unions
  4. Frequent union rivalries over membership foisting up of fake unions.
  5. Militancy of the unions
  6. Un-healthy working conditions
  7. Lack of skill on the part of leaders supervisors
  8. Disproportionate works loads
  9. favoritism
  10. nepotism attitude of management in recruitment, promotion, transfer etc
  11. Instead of re deployment or skill improvement easier way of retrenchment forced voluntary retirement schemes (V.R.S) are adopted.
  12. Lack of control over the situations erosion of discipline, which rebounds.

# Government and political pressures

* 1. Industrial unions affiliating with political unions which are in power, resulting in frequent shift of loyalty and resultant unrest
  2. Politician influencing workers group
  3. Some time unions, workers strike against mergers, acquisition, taken over, dis investments policies, of government and private sectors.

# Other causes of strained relations.

* 1. Refusal to have workers participation in the running of the industry.
  2. Non adherence to laid out ,standing orders, grievances procedures
  3. Adoption of unfair labour practices either by employer or employees and unions.
  4. Refusal to have free frank and transparent collective bargaining.
  5. Poor human relations, and lack of dexterity on the part of management personnel
  6. Attitude of government and political parties who may indirectly control the unions for their own gains or to get a hold on the industry.

# Suggestions for the improvement of industrial relations and reduce disputes

1. Trade unions should be strengthened democratically so that they can understand and toe with the main stream of the national industrial activities. They can drop the somehow survive attitude by promising impossible and consequent perpetual strain
2. Employers should have more transparency in their dealings with workers to build confidence and have progressive outlook
3. They should have open minded flexible collective Bargaining
4. Workers should be allowed to participate in the management through forums, committees and councils
5. Sound labour policy
6. Proper leadership and communication
7. Enforcement of discipline
8. Try to have union within workers
9. Equity in distribution of wealth by acknowledging workers as team members

**Types of conflict Resolution**

* **Non statutory Machineries used for Handling Industrial Disputes in India**

1. **Worker’s Participation in Management**
2. **Collective Bargaining**
3. **Grievance Procedure**
4. **Triparties Bodies**
5. **Code of Discipline**
6. **Standing Orders**

* **Statutory Settlement Authorities**

1. **Works Committee**
2. **Joint Management Councils (JMCs)**
3. **Conciliation:Conciliation Officer, Board of Conciliation**
4. **Court of Inquiry**
5. **Voluntary Arbitration**
6. **Adjudication:Labour courts, Industrial tribunals, and National tribunals.**

**PREVENTIVE MACHINERIES USED FOR HANDLING INDUSTRIAL DISPUTES IN INDIA**

Some of the major preventive machinery for handling industrial disputes in India are as follows:

* + - 1. Worker’s Participation in Management
      2. Collective Bargaining
      3. Grievance Procedure
      4. Tripartite Bodies
      5. Code of Discipline
      6. Standing Orders

Lasting industrial peace requires that the causes of industrial disputes should be eliminated. In other words, preventive steps should be taken so that industrial disputes do not occur. But if preventive machinery fails, then the industrial dispute settlement machinery should be activated by the Government because non-settlement of disputes will prove to be very costly to the workers, management and the society as a whole.The preventive machinery has been set up with a view to creating harmonious relations between labour and management so that disputes do not arise.

### ***1.Worker’s Participation in Management:***

Workers’ participation in management is an essential ingredient of Industrial **democracy.** The concept of workers’ participation in management is based on **Human Relations approach to Management** which brought about a new set of values to labour and management. Traditionally the concept of Workers’ Participation in Management (WPM) refers to participation of **non-managerial employees in the decision-making process** of the organization. Workers’ participation is also known as ‘labour participation’ or ‘employee participation’ in management. **In Germany it is known as** **co-determination while in Yugoslavia it is known as self- management.** The International Labour Organization has been encouraging member nations to promote the scheme of Workers’ Participation in Management. Workers’ participation in management implies **mental and emotional** involvement of workers in the management of Enterprise. It is considered as a mechanism where workers have a say in the decision.

The philosophy underlying workers’ participation stresses:

1. Democratic participation in decision-making;
2. Maximum employer-employee collaboration;
3. Minimum state intervention;
4. Realization of a greater measure of social justice;
5. Greater industrial efficiency; and
6. Higher level of organizational health and effectiveness.

It has been varying understood and practiced as a system of joint consultation in industry; as a form of labour management cooperation; as a recognition of the principle of co- partnership, and as an **instrument of industrial democracy.** Consequently, participation has assumed different forms, varying from mere voluntary sharing of information by management with the workers to formal participation by the latter in actual decision-making process of management. It is a method whereby the workers are allowed to be consulted and to have a say in the management of the unit. The important schemes of workers’ participation are: **Works committee, joint management council (JMC), shop council and joint council.**

### ***2.Collective Bargaining****:*

“Collective Bargaining” is the process of **negotiating terms of employment and other conditions of work between the representatives of management and organized labour.** When it is free of intimidation and coercion and is conducted in good faith, collective bargaining culminates in a workable contract i.**e., labour contract.**

A labour contract is a collective agreement between the representatives of labour and management for the **sale of labour services at designated wage rates, hours of work, and other terms of employment and conditions of work for a stated period of time.**

The contract usually calls for **joint enforcement and administration of the agreement**. Responsible labour leaders and employers are increasingly settling their differences around **the conference table** rather than through industrial warfare. The process of bargaining the settlement of disputes is often facilitated through outside assistance in the form of conciliation, mediation, or arbitration.

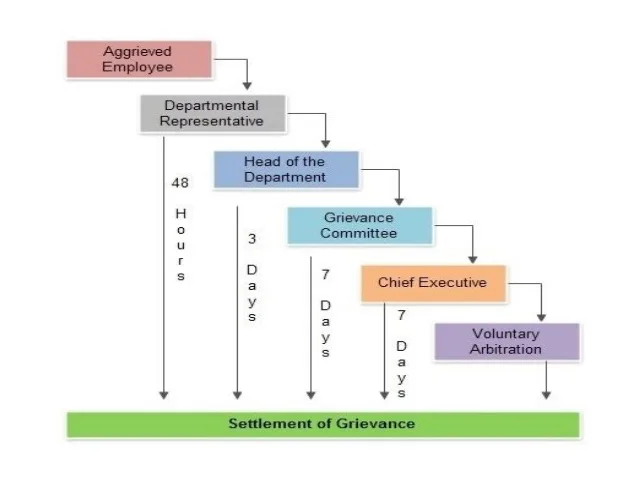
#### Requirements for Successful Negotiations:

1. The representatives or spokesmen of management and labour must have **sufficient authority** to bind each side in the negotiation. The representatives must hav**e a thorough knowledge o**f the company’s wage scale and the wage scales of the industry and the area.
2. They should be well **versed in all points at issue and know past court decisions** relating to similar cases. They should study all the proposed clauses to the contract and arrive at tentative agreements. The **negotiators sign an agreement only after all outstanding issues are settled.**
3. Contract provisions in labour agreements generally stipulate details concerning union membe**rship; the duration of agreement; the procedure for termination or amendment; wages and hours; overtime; shift differentials; insurance and other benefits; seniority; grievance procedure; and conditions for hire, promotion, or dismissal**.

### ***3.Grievance Procedure:***

Grievances a**re symptoms of conflicts** in the enterprise. So, they should be handled very promptly and efficiently. Coping with grievances forms an important part of a manager’s job. The manner in which he deals with grievances determines his efficiency in dealing with the subordinates. A manager is successful if he is able to build a team of satisfied workers by removing their grievances. This would help in the prevention of industrial disputes in the organization.

A grievance procedure **specifies the steps** involved, the persons to be associated at each step and the method of their selection, the manner in which grievances are to be placed, the extent of authority vested at each level, the sanction behind decisions and the rights and obligations of the parties.



1. An aggrieved employee shall first present his grievance **verbally** in person to the officer designated by the Management for this purpose. An answer shall be given to him within 48 hours of the presentation of the complaint.
2. If the worker is not satisfied with the decision of this officer or fails to receive an answer within the stipulated period, he shall in person or by his departmental representative, if required, present his grievance to the **head of the department** designated by the management for this purpose. And he will get the answer **within 3 days** of the presentation of his grievance.
3. If the decision of the departmental head is unsatisfactory, the aggrieved worker may request the forwarding of his grievance to the Grievance Committee, which shall make its recommendations to the management within 7 days of the worker’s request. The final decision of the management shall be communicated to the worker within the stipulated period (3 days) by the Personnel Officer.
4. A revision of his grievance can be done if the decision is not satisfactory. The management shall communicate its decision within a week.
5. If no agreement is possible the union and the Management may refer the grievance to voluntary arbitration within a week from the date of receipt by the worker of the management’s decision.

In the above-mentioned procedure the following points should be noted:

* Calculating the various time intervals under the above clauses, holidays shall not be included.
* The Management shall provide the necessary clerical and other assistance for the smooth functioning of the grievance machinery.
* During the working time, the concerned person may go for enquiry with the Labor/personnel Officer, provided the he has taken permission from his supervisor. Hence he may not suffer any loss of payment.

#### Importance of Grievance Procedure:

Establishment of grievance procedure in industrial or other organizations has several advantages, the more notable among these are as follows:

1. It **does away with the uncertainty i**nvolved in locating the authority or person to be approached for the redressal of the grievance. In absence of a formalized procedure, there will be no wonder if the aggrieved employee approaches the supervisor, departmental head, manager, union leader and fellow workers all at a time.
2. Both the workers and the management are **relieved of the tension and worry,** which might otherwise, would have resulted from haphazard handling of grievances.
3. As most grievance procedures involve **the participation of workers**’ representatives and those of the management, the decisions taken have a greater amount of acceptability. These also instill confidence in each other.
4. A grievance procedure also contains elements **of fairness and objectivity**. In absence of the procedure, the decision of the authority empowered to take decisions may be arbitrary and biased.
5. The procedure ensures **uniformity** in the handling of grievances. All concerned including the aggrieved workers, supervisors, managerial personnel and union leaders know well that grievances would be processed through the established channels, and no other method could be invoked.
6. As the procedure is generally adopted under **collective agreements, statutory provisions, tripartite conclusions or standing orders,** it has also the element of permanence.
7. Grievance procedure also **minimizes the time and effort** in the processing of grievances. Unplanned handling of grievances involves unnecessary wastage of time and energy.

### ***4.TRIPARTIES BODIES***

Tripartite bodies formed with the representatives o**f employers’ organizations, employees’ organizations and Government to** study the industrial relations climate of different industries and help to ensure peace and harmony in industries.

It began as a statutory organization by the recommendation of the Whitey Commission to the ILO in 1931.The purpose of tripartite consultative machinery is to **bring the parties together for mutual settlement of differences** in a spirit of cooperation and goodwill. These committees have been constitute to suggest ways and means to prevent disputes. It includes **Indian Labour Conference, Standing Labour Committee, Industrial Committees and Tripartite Committee on International Labour Organisation Convention**s. The representatives of workers and employers are nominated to these bodies by the Central Government in consultation with all India organisations of workers and employers.

#### Purpose of Tripartite Body:

1. Bring the aggravated parties together for mutual settlement of differences, and encourage a spirit of cooperation and goodwill.
2. Promote uniformity in labor laws and legislation.
3. Discuss all matters of All India importance as between employers and employees.
4. Determine a plan for settlement for all disputes.

## *Bipartite Bodies*

With the beginning of industrialization of India, labor relations in Indian industries have also been largely influenced by Indian democracy. Groups like **Works Committee and Management Council** were established to democratize Indian industrial relations. The bipartite consultation machinery was established around 1920, during the time when a few joint committees were setup by the Government of India. These joint committees were also introduced in TISCO in Jamshedpur.

***5.Code of Discipline:***

Discipline is very essential for a healthy industrial atmosphere and the achievement of organizational goals. An **acceptable performance from subordinates** in an organization depends upon their willingness to carry out instructions and the orders of their superiors, to abide by the rules of conduct and maintain satisfactory standards of work. The term ‘discipline’ can be interpreted. It c**onnotes a state of order** in an organization.

Code of discipline forms the Gandhian approach to industrial relations to bind employees and trade unions to a moral agreement for promoting peace and harmony.National representatives of both employers and trade unions were parties to it. This code was a unique formulation to voluntarily regulate labour management relations. The code of discipline defines duties and responsibilities of employers and employees/workers.

The **objectives of** the code of discipline are:

1. To ensure that employers and employees recognize each other’s rights and obligations
2. To promote constructive cooperation between the parties concerned at all levels
3. To secure settlement of disputes and grievances by negotiation, conciliation, and voluntary arbitration
4. To eliminate all forms of coercion, intimidation, and violence in industrial relation
5. To avoid work stoppages
6. To facilitate the free growth of trade unions
7. To maintain discipline in industry.

**Sign and Symptoms of Misconduct Every act of indiscipline is called misconduct.** The main acts of misconduct are given as:

1. Disobedience or wilful insubordination.
2. Theft, fraud or dishonesty in connection with the employers business or property.
3. Wilful damage or loss of employer’s goods or property.
4. Taking or giving bribe or any illegal gratification.
5. Habitual absence without leave or absence without leave for more than ten days.
6. Habitual late attendances.
7. Frequent repetition of any act or omission for which fine may be imposed.
8. Habitual negligence or neglect of work.
9. Habitual breach of any law applicable to the establishments.
10. Disorderly behaviour during working hours at the establishment.
11. Striking of work or inciting others to strike in contravention of the provisions of any law.

# Procedure for Disciplinary Action

The procedure for taking disciplinary action involves the following steps:

* 1. **Preliminary Investigation:** First of all a preliminary enquiry should be held to find out the misconduct behaviour or situation.
  2. **Issue of a charge sheet:** Once a m**isconduct or indiscipline is identified**, the authority should proceed to issue of charge sheet to the employee. Charge sheet is merely a **notice of the charge** and provides the employee an opportunity to explain his conduct. Therefore, charge sheet generally called as **show cause notice**. In the charge sheet each charge should be clearly defined and specified.
  3. **Suspension Pending Enquiry:** In case the **charge is grave, a suspension order may be given to the employee along with the charge sheet**. According to the industrial employment (Standing orders) Act, 1946, the suspended worker is to be paid a **subsistence allowance** equal to **one-half** of the wages for the **first 90 days of suspensions** and **three-fourths of the wages** for the remaining period of suspension if the delay in the completion of disciplinary proceedings are not due to the workers conduct.
  4. **Notice of Enquiry**: In case the **worker admits the charge, in his reply to the charge sheet, without any qualification, the employer can go ahead in awarding** the punishment without further enquiry. But if the worker **does not admit the charge and the charge merits major penalty**, the employer must hold enquiry to investigate into the charge. Proper and sufficient advance notice should be given to the worker of the enquiry.
  5. **Conduct of Inquiry:** The inquiry should be conducted by an impartial and responsible officer. He should proceed in a proper manner and examine witnesses. Fair opportunity should be given to the worker to **cross- examine** the management witnesses.
  6. **Recording the findings:** The **enquiry officer must record all the conclusion and findings.** As far as possible he should refrain from recommending punishment and leave it to the decision of the appropriate authority.
  7. **Awarding Punishment:** The management should decide the punishment on the basis of **finding of an enquiry, past record of worker and gravity of the misconduct.**
  8. **Communicating Punishment:** The punishment awarded to the worker should be communicated to him quickly. The letter of communication should contain reference to the charge sheet, the enquiry and the findings. The date from which the punishment is to be effective should also be mentioned.

**RED - HOT STOVE RULE**

Douglas McGregor has suggested this rule to guide managers in enforcing discipline. The rule is based on an analogy between touching **a ‘Red hot stove’ and violating rules of discipline**. When a person touches a hot- stove,

1. The burn is immediate
2. He had warning that he knew that he would get burn if he touched it.
3. The effect is consistent everybody who touches red-hot stove would be burned.
4. The effect is **impersona**l. A person is burned because he touches the hot stove not because of who he is.
5. The effect is commensurate with the gravity of misconduct. A person who repeatedly touches the hot stove is burnt more than one who touched it only once.

The **same should be with discipline**. The disciplinary process should begin immediately after the violation of rules/regulations is noticed. It must give a clear warning that so many penalties would be imposed for a given offence.

***6.Standing Orders:***

Essentially, the term ‘Standing Orders’ refers to the r**ules and regulations which govern the conditions of employment of workers.** These standing orders are binding on the employer and the employees.

This Act provides for the framing of standing orders in all industrial undertakings employing **100 or more workers.** The Act covers employment matters like **classification of employees, i.e., permanent, temporary, probationers, etc., shift working, hours of work; attendance and absence rules; leave rules; termination, suspension, and disciplinary action**, etc. These orders regulate the **conditions of employment, discharge, grievances, misconduct, disciplinary action, etc.** of the workmen employed in industrial undertakings.

The **Labour Commissioner or the Deputy Labour Commissioner or the Regional Labour Commissioner** certifies the Standing Rules.

Once the Standing Orders **are certified, it is binding on the employees** and the employers to abide by these Orders. Violation of Orders mentioned therein invites Penalties. The Industrial Employment (Standing Orders) Act, 1946 has been amended from time to time.

Under the Industrial **Employment Standing Orders Act, 1946,** it was made obligatory that Standing Orders would govern the conditions of employment.

The Standing Orders regulate t**he conditions of employment from the stage of entry in the organization of the stage of exits** from the organization. Thus, they constitute the regulatory pattern for industrial relations. Since the Standing Orders **provide Do’s and Don’ts,** they also act as a code of conduct for the employees during their working life within the organization.

**Statutory Settlement Authorities**

1. Works Committee
2. Joint Management Councils (JMCs)
3. Conciliation:Conciliation Officer, Board of Conciliation
4. Court of Inquiry
5. Voluntary Arbitration
6. Adjudication:Labour courts, Industrial tribunals, and National tribunals.

This machinery has been provided under the Industrial Disputes Act, 1947. It, in fact, provides a legalistic way of setting the disputes. As said above, the goal of preventive machinery is to create an environment where the disputes do not arise at all.

Even then if any differences arise, the **judicial machinery** has been provided to settle them lest they should result into work stoppages. In this sense, the nature of this machinery is curative for it aims at curing the aliments.

1. **Works Committee.-**

In the case of any industrial establishment in which **one hundred** or more workmen are employed or have been employed on any day in the **preceding twelve months**, the appropriate Government may by general or special order require the employer to constitute in the prescribed manner a Works Committee consisting of representatives of employers and workmen engaged in the establishment so however that the **number of representatives of workmen on the Committee shall not be less than the number of representatives of the employer**. The representatives of the workmen shall be chosen in the prescribed manner from among the workmen engaged in the establishment and in consultation with their trade union, if any, registered under the Indian Trade Unions Act, 1926 (16 of 1926 ).

#### **Joint Management Councils (JMCs):**

The Second Five Year Plan recommended the setting up of joint councils of management consisting of **representatives of workers and management.** The Government of India deputed a study group (1957) to study the schemes of workers participation in management in countries like U.K., France, Belgium and Yugoslavia.

**The report of the study group was considered by the Indian Labour Conference (ILC) in its 15th session in 1957 and it made certain recommendations:**

(1) That workers’ participation in management schemes should be set up in selected undertakings on a **voluntary basis.**

(2) A **sub-committee consisting of representatives of employers, workers and government** should be set up for considering the details of workers’ participation in management schemes. This committee should select the undertakings where workers’ participation in management schemes would be introduced in the first stage on an experimental basis.

**Objectives:**

**The objectives of Joint Management Councils are as follows:**

(i) To increase the **association of employers and employee** thereby promoting cordial industrial relations;

(ii) To improve the **operational efficiency** of the workers;

(iii) To provide **welfare facilities** to them

(iv) To educate workers so that they are well equipped to participate in these schemes

(v) To satisfy the **psychological** needs of workers.

A tripartite sub-committee was set up as per the recommendations of Indian Labour Conference which laid down certain criteria for selection of enterprises where the JMCs could be introduced.

**They are:**

(i) The unit must have **500 or more employees;**

(ii) It should have a fair record of industrial relations;

(iii) It should have a well organised trade union;

(iv) The management and the workers should **agree to establish** JMCs;

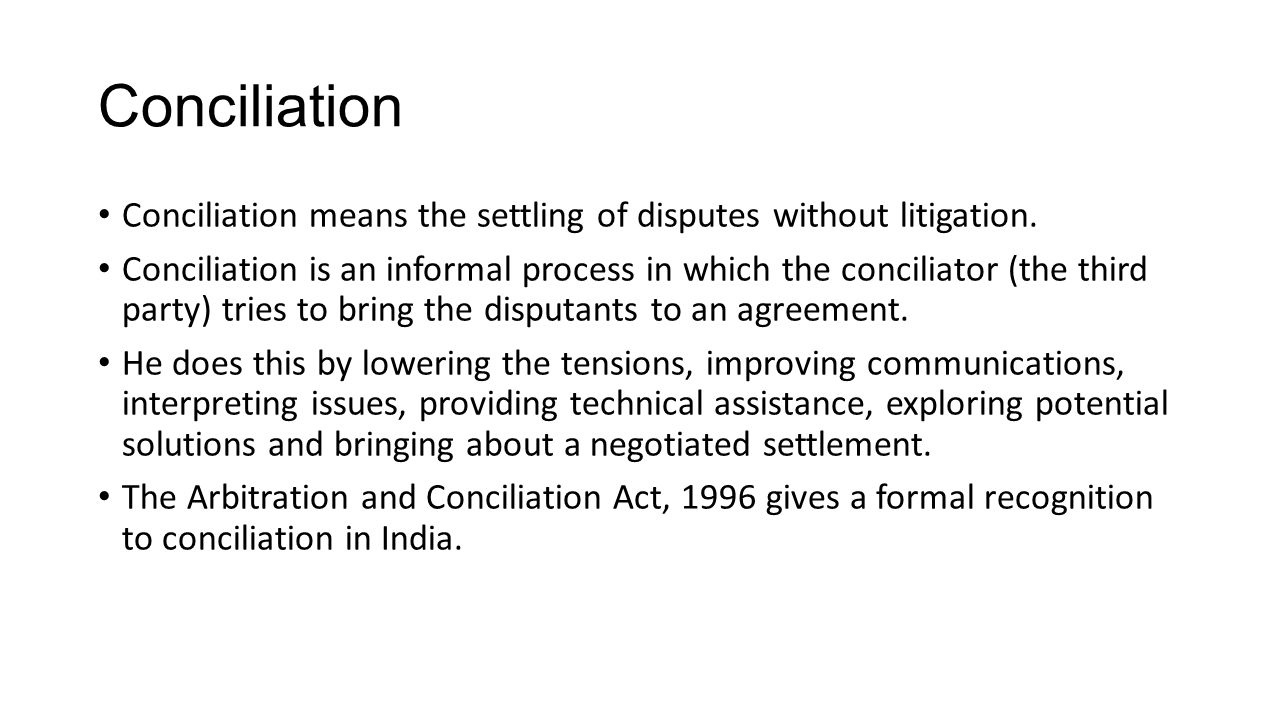
(v) Employers (in case of private sector) should be members of the leading employers’ organisation; and

(vi) Trade unions should be affiliated to one of the Central federations.

It was observed by the sub-committee that if the workers and employers mutually agree they can set up JMCs even if these conditions are not met.

The sub-committee also made recommendations regarding their composition, procedure for nominating workers’ representatives, the membership of JMCs etc. The details of these aspects have to be worked out by the parties themselves. A draft model was drawn up regarding the establishment of JMQs. The sub-committee was later reconstituted as the “Committee on Labour-Management Co-operation” to advice on all matters pertaining to the Scheme.

# Conciliation:



Conciliation is the **“**practice by which the services of a **neutral party** are used in a dispute as a means of **helping the disputing parties to reduce** the extent of their differences and to arrive at an amicable settlement of agreed solution.”

The **Industrial Disputes Act, 1947 provides for conciliation, and can be utilised either by appointing conciliation officers (permanently or for a limited period) or by constituting a board of conciliation.** This conciliation machinery can take a note of a dispute or apprehend dispute either on its own or when approached by either party.

With a view to expediting conciliation proceeding, time-limits have been prescribed—**14 days in the case of conciliation officers and two months in the case of a board of conciliation,** settlement arrived at in the course of conciliation is binding for such period as may be agreed upon between the parties or for a period of 6 months and with continue to be binding until revoked by either party. The Act **prohibits strike and lock-out during the pendency** of conciliation proceedings before a Board and for seven days after the conclusion of such proceedings.

## Conciliation Officer:

The law provides for the appointment of Conciliation Officer by the Government to conciliate between the parties to the industrial dispute. The Conciliation Officer is **given the powers of a civil court, whereby he is authorised to call the witness the parties on oath.** It should be remembered, however, whereas civil court cannot go beyond interpreting the laws, the conciliation officer **can go behind the facts and make judgment** which will be binding upon the parties.

On receiving information about a dispute, the conciliation officer **should give formal intimation in writing to the parties** concerned of his intention to commence conciliation proceedings from a specified date. He should then start doing all such things as he thinks fit for the purpose of persuading the parties to come to fair and amicable settlement of the dispute.

Conciliation is an **art where the skill, tact, imagination and even personal influence** of the conciliation officer affect his success. The Industrial Disputes Act, therefore, does not prescribe any procedure to the followed by him.

The conciliation officer is required to **submit his report to the appropriate government** along with the copy of the settlement arrived at in relation to the dispute or in case conciliation has failed, he has to send a detailed report giving out the **reasons for failure of conciliation.**

The report in either case must be submitted **within 14 days of the commencement** of conciliation proceedings or earlier. But the time for submission of the report may be extended by an agreement in writing of all the parties to the dispute subject to the approval of the conciliation officer.

If an agreement is reached (called the **memorandum of settlement), i**t remains binding for such period as is agreed upon by the parties, and if no such period is agreed upon, for a period of **six months** from the date on which the memorandum of settlement is signed by the parties to the dispute, and continues to be binding on the parties after the expiry of the period aforesaid, until the expiry of two months from the date on which a notice in writing of an intention to terminate the settlement is given by one of the party or parties to the settlement.

## Board of Conciliation:

In case **Conciliation Officer fails to resolve the differences between the parties, the government has the discretion to appoint a Board of Conciliation.** The Board is tripartite and ad hoc body. It consists of a **chairman and two or four other members.**

The chairman is to be an **independent person** and other members are nominated in equal number by the parties to the dispute. Conciliation proceedings **before a Board are similar to those that take place before the Conciliation Officer.** The Government has yet another option of referring the dispute to the Court of Inquiry instead of the Board of Conciliation.

The machinery of the Board is set in motion when a dispute is referred to it. In other words, the Board does not hold the conciliation proceedings of its own accord. On the dispute being referred to the Board, it is the duty of the Board to do all things as it thinks fit for the purpose of inducing the parties to come to a fair and amicable settlement. The Board must **submit its report to the government within two months of the date** on which the dispute was referred to it. This period can be further extended by the government by two months.

# Court of Inquiry:

In case of the failure of the conciliation proceedings to settle a dispute, the government can appoint a Court of Inquiry to enquire into any matter connected with or relevant to industrial dispute. The court is expected to **submit its report within six months.** The court of enquiry may consist of **one or more persons** to be decided by the appropriate government.

The court of enquiry is required to submit its report within a period of six months from the commencement of enquiry. This report is subsequently **published by the government within 30 days of its receipt.**

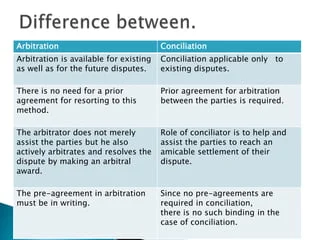
Unlike during the period of conciliation, **workers’ right to strike, employers’ right to lockout, and employers’ right to dismiss workmen, etc. remain unaffected** during the proceedings in a court to enquiry.

**A court of enquiry is different from a Board of Conciliation**. The former aims at inquiring into and **revealing the causes** of an industrial dispute. On the other hand, the latter’s basic objective is to promote the settlement of an industrial dispute. Thus, a court of enquiry is primarily fact-finding machinery.

# Voluntary Arbitration:

On **failure of conciliation proceedings, the conciliation officer many persuade the parties to refer the dispute to a voluntary arbitrator.** Voluntary arbitration refers to getting the disputes settled through an **independent person chosen by the parties involved mutually and voluntarily.**

In other words, arbitration offers an opportunity for a solution of the **dispute through an arbitrator jointly appointed by the parties** to the dispute. The process of arbitration saves time and money of both the parties which is usually wasted in case of adjudication.



The provision for voluntary arbitration was made because of the **lengthy legal proceedings and formalities and resulting delays** involved in adjudication. It may, however, be noted that arbitrator is not vested **with any judicial powers.**

He **derives his powers to settle the dispute from the agreement** that parties have made between themselves regarding the reference of dispute to the arbitrator. The arbitrator should **submit his award to the government.** You can usually expect to hear the arbitrator's decision **within 45 days** of the arbitrator closing the proceedings. However, this timescale is usually set by agreement between you, the other party and the arbitrator.

An “arbitral award” is the decision made by the majority members of an arbitral tribunal, which is **final and binding on the parties**. Section 35 provides that an arbitral award shall be “final and binding” on the parties and persons claiming under them

Voluntary arbitration is one of the **democratic ways f**or setting industrial disputes. It is the best method for resolving industrial conflicts and is a close’ supplement to collective bargaining. It not only provides a voluntary method of settling industrial disputes, but is also a **quicker way** of settling them.

## **Example -ARBITRATION, MEDIATION, CONCILIATION AND ALTERNATE DISPUTE RESOLUTION CENTER (GCCI-ADRC)**

<https://www.gujaratchamber.org/arbitration.php>

# Adjudication:

The ultimate remedy for the settlement of an industrial dispute is its reference to adjudication by **labour court or tribunals** when conciliation machinery fails to bring about a settlement. Adjudication consists of settling disputes through intervention by the third party **appointed by the government.** The law provides the adjudication to be conducted by the Labour Court, Industrial Tribunal of National Tribunal.

A dispute can be referred to adjudication if the **employer and the recognised union agree** to do so. A dispute can also be referred to adjudication by the **Government even if** there is no consent of the parties in which case it is called ‘compulsory adjudication’. As mentioned above, the dispute can be referred to three types of tribunals depending on the nature and facts of dispute in questions.

# These include:

1. Labour courts,
2. Industrial tribunals, and
3. National tribunals.

The procedure, powers, and provisions regarding commencement of award and period of operation of award of these three bodies are similar. The **first two bodies can be set up either by State or Central Government but the national tribunal can be constituted by the Central Government only**, when it thinks that the adjudication of a dispute is of national importance. These three bodies are into hierarchical in nature. It is the Government’s prerogative to refer a dispute to any of these bodies depending on the nature of dispute.

## (а) Labour Court:

A labour court consists of **one person** only, who is normally a sitting or an **ex-judge of a High Court**. It may be constituted by the appropriate Government for adjudication of disputes which are mentioned in the second schedule of the Act.

# The issues referred to a labour court may include:

1. The propriety or legality of an order passed by an employer under **the Standing Orders.**
2. The application and interpretation of Standing Orders.
3. **Discharge and dismissal o**f workmen and grant of relief to them.
4. Withdrawal of any statutory concession or privilege.
5. **Illegality or otherwise of any strike or lockout.**
6. All matters **not specified in the third schedule** of Industrial Disputes Act, 1947. (It deals with the jurisdiction of Industrial Tribunals).

**Industrial and Labour Court**

**Industrial Court, Ahmedabad**

**Address** : B-Block 3rd Floor, Apna bazar, Lal Darwaja,Ahmedabad.

## Industrial Tribunal:

Like a labour court, an industrial tribunal is also a **one-man body.** The matters which fall within the jurisdiction of industrial tribunals are as mentioned in the second schedule or the third schedule of the Act. Obviously, **industrial tribunals have wider jurisdiction than the labour courts.**

Moreover an industrial tribunal, in addition to the **presiding officer, can have two assessors to advise him in the proceedings;** the appropriate Government is empowered to appoint the assessors.

# The Industrial Tribunal may be referred the following issues:

1. Wages including the period and mode of payment.
2. Compensatory and other allowances.
3. Hours of work and rest intervals.
4. Leave with wages and holidays.
5. Bonus, profit sharing, provident fund and gratuity.
6. Shift working otherwise than in accordance with the standing orders.
7. Rule of discipline.
8. Rationalisation.
9. Retrenchment.
10. Any other matter that may be prescribed.

## [Central Government Industrial Tribunal-cum-Labour Courts (CGITs)](https://cgit.labour.gov.in/" \o "The in file Open in new window" \t "/home/akanxagalande/Documents\\x/_blank)

****CGIT-cum-Labour Court,**** B-Block 7th floor, Multi Stared Building, Lal Darwaja AHMEDABAD – 380001****Tele/Fax - (079)- 25505506 RLC Ahmedabad Tel./faxNo.25504560****

## National Tribunal:

The Central Government may constitute a national tribunal for adjudication of disputes as mentioned in the second and third schedules of the Act or any other matter not mentioned therein provided in its opinion the industrial dispute involves **“questions of national importance”** or “the industrial dispute is of such a nature that undertakings established in **more than one state are likely to be affected by such a dispute”.**

The Central Government may **appoint two assessors to assist the national tribunal**. The award of the tribunal is to be **submitted to the Central Government** which has the power to modify or reject it if it considers it necessary in public interest.

It should be noted that every award of a Labour Court, Industrial Tribunal or National Tribunal **must be published by the appropriate Government within 30 days from the date of its receipt.** Unless declared otherwise by the appropriate government, every award shall come into **force on the expiry of 30 days from the date of its publication** and shall remain in operation for a period of one year thereafter.

**Collective Bargaining**

The term **“Collective Bargaining**” was identified by Sydney and Beatrice Webb in 1897. Probably, it means, “to bar the gains (of others), collectively.”

It can be defined as the **process through which representatives of management and union meet to negotiate a labour agreement.** This means that both management and labour are required by law to negotiate **wages, hours, and terms and conditions of employment “**in good faith”. **Good faith bargaining** is a term that means both parties are communicating and negotiating and that are being matched with counter proposals with both parties making every **reasonable effort to arrive at agreements**. It does not mean that either party is compelled to agree to a proposal.

#### Role of the Personnel Director:

Collective bargaining, a top management function, is generally the responsibility of **operating executives, with the personnel director** participating in a merely advisory capacity. When the personnel director takes an active role in negotiations, he should be given the title of vice-president. After a labour contract has been signed, the personnel director plays an active role in implementing the agreement, usually interpreting the contract provisions to foremen and supervisors, handling or participating in the grievance procedure, reviewing discharge and transfer cases, and activating various labour-management committees..

# Objectives of Collective Bargaining

The objectives of collective bargaining, according to the Guide, include the recognition of union as an authority in the workplace, improvement of workers standards of living and enlargement of their share in the profit of the enterprise, expression of the worker’s desire in a concrete form to be treated with due respect and attainment of democratic participation in decision influencing their working conditions, development of orderly practices for sharing in these decisions and settlement of disputes which may stem in the day-to-day working of the enterprises and accomplishment of broad general objectives including defending and promoting the workers interest throughout the country. According to De-Cenzo and Robbins, the objective of collective bargaining is to agree upon an acceptable contract to management, union representative and the union membership. The purpose of collective bargaining is to attain industrial peace not at any price. Rather, it aims at the commonly held goals of a free society. In fact, the major function of collective bargaining is to generate pressures for enhancement of the dignity, worth and freedom of individual workers.

# Scope of Collective Bargaining

According to Monappa, the scope of collective bargaining agreements now covers issues such as **wages, bonus, overtime, paid holidays, paid sick leave, safety wear, production norms, hours of work, performance appraisal, workers participation in management, hiring, firing of job evaluation norms and modernization**. The scope of collective bargaining varies from organization to organization and industry to industry depending upon existence of strong and matured union and its leadership trust and confidence between union and management, past history and present status of organization with respect to negotiation and their implementation.

# Characteristics of Collective Bargaining

Randle observes: “A tree is known by its fruit. Collective bargaining may best be known by its characteristics.” The main characteristics of collective bargaining are:

1. It is a **group action** as opposed to individual action and is **initiated through the representatives** of workers. On the management side are its delegates at the bargaining table; on the side of workers is their trade union, which may represent local plant, the industry membership or nation-wide membership.
2. It is **flexible and mobile, and not fixed or static**. It has fluidity and ample scope for a compromise, for a **mutual give-and-take** before the final agreement is reached or the final settlement is arrived at.
3. It is a **bipartite process**. The employers and the employees are the only parties involved in the bargaining process. There is **no third party intervention**. The conditions of employment are regulated by those directly concerned.
4. It is a **continuous process** which provides a mechanism for continuing and organised relationships between management and trade unions. “The heart of collective bargaining is the process for a continuing joint consideration and adjustment of plant problems.”
5. It is **industrial democracy at work. I**ndustrial democracy is the governance of labour with the consent of the governed workers. The principle of arbitrary unilateralism has given way to that of self government in industry. Collective bargaining is not a mere signing of an agreement granting seniority, vacations and wage increases. It is not a mere sitting around a table, discussing grievances. Basically, it is democratic: it is a **joint formulation** of company policy on all matters which directly affect the workers.
6. Collective bargaining is **not competitive process** **but is essentially a complementary process,** i.e. each party needs something that the other party has, namely, labour can make a greater productive effort and management has the capacity to pay for the effort and to organize and guide it for achieving its objectives.

### **Need/Importance:**

The need for and importance of collective bargaining is felt due to the advantages it offers to an

Organization

**1. Collective bargaining develops better understanding between the employer and the employ­ees:**It provides a platform to the management and the employees to be at par on negotiation table. As such, while the management **gains a better and deep insight** into the problems and the aspirations of die employees, on the one hand, die employees do also become better informed about the organisational problems and limitations, on the other. This, in turn, develops better understanding between the two parties.

**2. It promotes industrial democracy:**Both the employer and the employees who best know their problems, participate in the negotiation process. Such participation breeds the democratic process in the organisation.

**3. It benefits the both-employer and employees:**The negotiation arrived at i**s acceptable t**o both parties—the employer and the employees.

**4. It is adjustable to the changing conditions:**A dynamic environment leads to changes in employment conditions. This requires changes in organisational processes to match with the changed conditions. Among other alternatives available, collective bargaining is found as a better approach to bring changes more amicably.

**5. It facilitates the speedy implementation of decisions arrived at collective negotiation:**The direct participation of both parties—the employer and the employees—in collective decision making process provides an in-built mechanism for speedy implementation of decisions arrived at collective bargaining.

# PROCESS OF COLLECTIVE BARGAINING

Collective bargaining has **two faces: a) The negotiation state; and b) The stage of contract** administration. The process of collective bargaining involves six major steps

1. **Preparing for negotiations**
2. **Identifying bargaining issues.**
3. **Negotiating**
4. **Settlement and contract agreement**
5. **Administration of the agreement.**

One bargaining environment is the **type of bargaining structure** that exists between the union and the company.

The four major types of structures are:

1. One company dealing with a single union,
2. Several companies dealing with single union,
3. Several unions dealing with a single company, and
4. Several companies dealing with several unions.

The bargaining process is comparatively simple and easy if the structure is of first type and becomes difficult and complicated in the remaining.

# A.Negotiation Stage

At the negotiation stage, certain proposals are put forward which explore the possibility of their acceptance and have the way to mutually agreed terms after careful deliberation and consideration. The negotiation stage itself involves three steps namely **preparation for negotiation, identifying bargaining issues and negotiating.**

# 1. Preparation for negotiation

Careful advance preparations by employers and employees are necessary because of the complexity of the issue and the broad range of topic to be discussed during negotiations. Effective bargaining means preparing an orderly and factual case to each side. Today, this requires much more skill and sophistication than it did in earlier days, when shouting and expression of strong emotions in smoke filled rooms were frequently the keys to getting one’s proposals accepted.

# From the management side the negotiations are required to:

1. Prepare specific proposal for changes in the contract language.
2. Determine the general size of the economic package the company proposes to offer.
3. Prepare statistical displays and supportive date for use in negotiations, and Prepare a bargaining book for company negotiations, a compilation of information on issues that will be discussed, giving an analysis on the effect of each case, its use in other companies, and other facts.

# From the employee’s side:

The union should collect information in at least three areas:

1. The financial position of the company and its ability to pay.
2. The attitude of the management towards various issues in past negotiation or inferred from negotiations in similar companies.
3. The attitudes and desires of the employees. The other arrangements to be made are selecting the negotiators from both sides and identifying a suitable site for negotiation.

# Identifying Bargaining Issues:

The major issues discussed in collective bargaining fall under the following four categories:

# Wage related issues:

This includes such topics as how basic wage rates are determined, cost of living adjustments, wage differentials, overtime rates, wage adjustments and the like.

# Supplementary economic benefits:

These include such issues as pension plans, paid vacations, paid holidays, health insurance plans, retrenchment pay, Unemployment pension, and the like.

# Institutional issues:

These consist of the rights and duties of employers, employees, unions, employee’s stock ownership schemes, and the like.

# Administrative issues:

These include such issues as seniority, employee discipline and discharge procedures, employee health and safety, technological changes, work rules, job security, and the like. While the last two categories contain important issues, the wage and benefit issues are the ones which receive the greatest amount of attention at the bargaining table.

# Negotiating:

Preparations have been made and issues being identified, the next logical step in collective bargaining process is negotiation. The negotiating phase begins with **each side presenting it**s initial demands. The negotiation goes on for days until the final agreement is reached. But before the agreement is reached, it is a battle of wits, playing on words, and threats of strikes and lockouts. It is a big relief to everybody when the management representatives and the union finally sign the agreement. The success of negotiation depends on skills and abilities of the negotiators. At times, negotiations may breakdown even through both the labour and the management may sincerely want to arrive at an amicable settlement. In order to get negotiations moving again, there are several measures that are usually adopted by both the parties, which sometimes even includes unethical measures

1. Through third party intervention such as arbitration and adjudication,
2. Unions tactics likes strikes and boycotts, and
3. Management strategies such as lockouts, splitting the union, bribing union leaders and using political influence.

# (B) Contract Administration

When the process of negotiation has been completed, it is time to sign the contract, the terms of which must be sincerely observed by both the parties. The progress in collective bargaining is not measured by the more signing of an agreement rather, it is measured by the fundamental human relationships agreement. Once an agreement is signed, both the trade union and the management are required to **honour it in letter and spirit. T**he union officers and company executives should explain the terms and implications of the contract to employees and supervisors with a view to **ensuring t**hat the day to day working relationship between workers and management is guided by that contract. It is important that contract must be clear and precise. Any ambiguity leads to grievances or other problems. The whole process of contract administration is identified by two steps, namely settlement and contract agreement

* 1. e. settlement of disputes by collective bargaining and find a solution as an contract agreement between union and management and administration of agreement i.e. implementation according to the letter and spirit of the provisions of the agreement.

**######In order to make collective bargaining effective the following pre-requisites must be satisfied:**

#### **1. A Favourable Political Climate:**

Collective bargaining is the best method of regulating employment condition. Therefore, government remove all legislative restriction which hamper collective bargaining. It can also confer a right to bargain collectively lay down the form and content of collective agreement register. These agreements assist in their enforcement.

#### **2. Fair Labour Practices:**

Both the employer and the trade union should avoid unfair labour practices. Collective bargaining is possible only in an atmosphere of mutual recognition and respect. Management must recognize and accept the worker’s right to organise and fight for justice. Similarly worker and their union must recognise and accept the employer’s right to manage. In the absence of such recognition, collective bargaining is a mere trial of strength.

#### **3. Freedom of Association:**

Collective bargaining is not possible if employees are not free to form trade union as they please. A strong trade union, is required to bargain with the employer for their own interest, an equal basis. Trade union must be stable and strong enough to honour the collective bargaining agreement. In some of the countries government opposed, the action taken by employers against the right of workers to form their union.

#### **4. Continuous Dialogue:**

For successful collective bargaining, continuous dialogue between the employer and employee is necessary. As highly controversial issues are easily solved through continuous dialogue.

#### **5. Problem-Solving Attitude:**

For successful collective bargaining, both employer and employee must adopt a problem-solving approach rather than fighting approach. The teams should consist of persons with an analytical mind, objective outlook and cool temper. And they have an intimate knowledge of operation, working condition and other relevant factors. They must have full authority to speak and take decision on behalf of their sides.

#### **6. Availability of Data:**

The employer must ensure that all the required records are readily available. Facts and figures concerning rates of pay, fringe benefits, manpower forecast, technological changes etc. provide a rational basis for negotiations. But unless the trade union believes in the data and accepts the same, collective bargaining process may be hampered.

#### **7. Recognition of Union:**

Employers should be required by law to give recognition to representative trade union. It is in the interest of an employer to recognise a strong union, to avoid strikes and to safeguard against undercutting labour standards.

#### **8. Willingness to Give and Take:**

Both employers and union leaders should bargain in a spirit of compromise and reciprocity. If either party adopts an adamant attitude, bargaining will not be possible. Willingness to give and take does not mean that concession made by one side must be marked by equal concession by the other side. One party may win concessions over the other depending upon their relative strength. But exaggerated demands must be toned down to reach an agreement.