COLLECTIVE BARGAINING IN THE PUBLIC SERVICE: International and Domestic Trends

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Overview

• Introduction
• Origins and rationale for collective bargaining
• Contemporary international trends
• Domestic trends
• Key lessons for the future
• Conclusion
Introduction

- How would the workplace look without collective bargaining?
- “A war of every man against every man” – Thomas Hobbes
- Trade unions “the sword of justice and defender of vested interest” – Allan Flanders
- Collective bargaining (CB) brought justice, stability and peace in workplace
ORIGINS AND RATIONALE FOR COLLECTIVE BARGAINING

• CB was first used as a concept in 1891 Beatrice Webb
• But CB has been hallmark of trade unionism before then
• Brought mutual benefit for workers and employers alike
• The voice of the meek is as strong as that of assertive employees
International Labour Organisation (ILO)

- ILO has been champion on collective bargaining at international level and is not ambivalent about the right of public employees to CB
- In 1948 – Convention 87 on Freedom of Association and Protection of the Right to Organise was adopted
- 1949 – Convention 98 on Right to Organise and Collective Bargaining was adopted
- 1978 – Convention 151 on Labour Relations (public service) Convention officially recognised the right of public servants to collective bargain
- 1981 – Convention 154 on Collective Bargaining was an apogee in extending the right of public servants to engage in CB
- ILO considers CB “an instrument that can lead to harmonious work environment, more effective and efficient services and above all, to decent working conditions that respect the right of public employees”
United States of America

- High unionisation in public sector
- 37% of public service employees (7.6 million workers) members of unions
- Not ratified ILO core conventions
- CB characterised by three principles
  1) Decentralised
  2) Majority rules
  3) Substantive issues (wages, benefits) not part of CB process
- Three permutations in way States view CB
  a. 100% pro CB allow unions to collect mandatory agency fees
  b. CB compulsory in public service but agency fees prohibited
  c. CB banned and under siege (unions not recognised at local gov. level)
- 2008 financial crisis worsened matters for CB in USA – workers forced to take furloughs
- Future viability of multi-year agreements in doubt following financial crisis
- Public sector employees have no right to strike – Federal government employees required to take oath disavow strike action – penalty: immediate dismissal
United Kingdom

- UK has about 5.7 million public sector employees (19.1% of employed people)
- 59% are union members
- 64% are covered by Collective Agreements
- UK ratified all core ILO conventions
- Major agreements are concluded at national level
- Treasury represented in negotiations and set limits for government reps
- Collective Agreements subject to Cabinet approval
- Usually 1 year although 2 and 3 year agreements are common
- Scope wide-ranging and detailed – covering all issues including bicycle allowances
- Privatisation and outsourcing of work affecting CB
- Right to strike protected by common law but sections of public employees prohibited from engaging in strike action
- Criminal offence to induce police and prison officers to take industrial action
Germany

• 2.7 million public sector workforce
• Ratified core ILO conventions
• Employer associations at Federal, state and municipal level – entitled to enter into CB
• However, collective agreements made applicable with approval of Federal Parliament and Federal Council
• Right to strike protected by Federal constitution
• Only strike (coercive strike) to attain collective agreement legal although warning strikes are also permitted
• Collective agreement a peace obligation
• Requirements for referenda before strike action, although self imposed by unions
• Duration usually one year
Brazil

• 11 million public sector employees
• Only ratified Convention 98 and 151
• Collective bargaining semi-decentralised – 40% of public sector bargain occurs at federal level
• In 2003 a Permanent Collective Bargaining Forum was established and is located in Ministry of Planning
• Forum has ten sectors representing different ministries
• Sectors have no authority to conclude agreements that have financial implications
• Bill regulating collective bargaining in public sector yet to be passed into law
• Social dialogue mechanism to address labour disputes introduced in 2012 - consensus driven and parties should agree on mediator who should come from civil society
• Outsourcing of government work, privatisation and rise of informal work have affected unions and collective bargaining
• Unions demanding that collective bargaining be extended to subcontracted employees
China

- Workforce of over half a billion (750 million people)
- 69.2 million public sector employees by 2002
- 15.5 million employed in SOEs
- 3.8 million in subsidiaries of SOEs
- 7.1 million civil service (administration of national government)
- Not ratified ILO conventions
- China’s constitution guarantees freedom of speech, association, demonstration, etc.
- Labour law grants workers right to join and form trade unions, but not explicit about right of public servants to CB
- Civil servants prohibited from taking strike action
- Although China adopted tripartite mechanism to manage industrial relations, it falls short of ILO requirements
- CB gaining momentum in private and public sector
- Agreements between 1 and 3 years
Nigeria

• 2.6 million public sector employees in 2005
• Ratified core ILO conventions
• Constitution enshrines right of workers to fair labour practices
• Right to strike not protected by constitution but provided for in *Trades Union Act of 2005*
• *Act* enjoins unions to compile rules book containing provisions to regulate strike action, including requirements for members of unions to vote through secret ballot their approval/disapproval of strike action
• Complete ban on strikes by public servants
• All public services prescribed as essential services by *Trades Dispute Act*
• CB coordinated by National Public Service Negotiating Council which has three sub councils designed to cover different categories of public sector employees - CB centralised
• Duration between 1 and 3 years
• Provision for mediation and referral of issues to Industrial Arbitration Panel and Industrial Court
DOMESTIC TRENDS: Going against the tide?

- International trends show decentralisation of CB, but SA has centralised system
- PSCBC coordinates work of sectoral bargaining councils in one forum
- PSA opposed to suggestions to downsize and right-size bargaining unit in Public Service
- Already in 1999, union density in Public Service stood at 96%
- By 2007 public sector trade union membership exceeded 1 million with similar density
Emerging trends

• Majoritarian principle its major weakness
• Workers’ committees elected outside ambit of union representation
• Proliferation of new unions and splinters from big unions pose new challenges
• Marikana agreement flies in face of agreements reached through CB structures
• Workers achieved better deal than what CB structures could give them
KEY LESSONS FOR THE FUTURE

• Ratification of ILO not the end, domestic law necessary to regulate industrial relations
• Though decentralised in some countries, the hand of national government remains influential player in determining and concluding collective agreements
• Although scope varies between countries, the wider the coverage and the more detailed the better
• Multi-year agreements becoming less preferable and less reliable in aftermath of global financial crisis
• Collective bargaining under siege as a result of financial crisis, outsourcing of work, casualization of labour and privatisation
• Collective bargaining without right to strike – as in USA, China and Nigeria – tantamount to collective begging
• Making collective agreements relevant and at pace with economic demands should be a priority
• PSA will support multi-year agreements if there is firm commitment by employer to implement decisions
• Building capacity within unions and structures of bargaining councils
• PSA proposes that next agreements should include capacity development workshops to groom new teams of negotiators for the future
• Parties, especially employer, should negotiate in good faith
• Collective bargaining must be inclusive system, and mechanisms must be found to allow minority unions to have a voice in bargaining process
• Political cohesion in parliament crucial for speedy implementation of collective agreements
CONCLUSION

• Without CB, workplace would be a jungle – only fittest survive while meek suffer in perpetuity
• Unions – sword of justice and defender of vested interest – have made it possible for workers to have equal voice in advancing their interests
• Not important whether CB centralised or decentralised. What matters is whether it advances rights of workers to fair labour practices. Does it change employment conditions of workers for the better?
• CB clearly under siege after global financial crisis
• Global trend swayed towards year-on-year agreements as multi-year agreements are becoming less reliable
• New trend of outsourcing government work – aka tender system – not unique SA phenomenon. Crucial lesson for unions: How to adapt and represent best interest of this new type of worker
• Future of CB certain - no better mechanism to guarantee workplace peace than through CB. Eroding CB would be returning to Hobbes state of nature – war of every man against every man
Thank you