COLLECTIVE BARGAINING – WAY OF PREVENTING LABOR DISPUTES

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Abstract
Labor disputes are triggered, in most cases, by claims of economic or professional interests. Employees may have the belief that they are frustrated due to the granting of rights, ensuring optimal labor conditions or compliance with the terms of the collective agreement, becoming thus concerned about claims or even the onset of labor disputes. Through collective bargaining, these conflictive guidelines can be prevented or resolved at the optimum time.

Keywords*: collective bargaining, labor disputes, employees, rights*

Introduction

Economic and professional motivations (incentives) include: salary, bonuses, profit sharing, lending, the existence of a health insurance system, facilities for career development, ensuring compatibility between the qualifications, skills and abilities of the employee and the job characteristics etc.

- Why should the manager get involved in the knowledge and materialization of his own employees' motivation?

The answer to this question has been given from totally opposed points of view. Therefore, according to the theory of D. Mc Gregor[1], the manager has to use the motivational lever because in the employees' personality structure there are negative traits that have to be correlated. For example: people do not like work; people are reluctant to work, if possible; people are less ambitious; people prefer to be led, directed; people are selfish and indifferent to the needs of the organization they belong to; people do not take responsibilities; they are concerned about their safety in work processes; people are opposed to changes; people must be controlled and, if appropriate, punished; people only want to maximize their material gains, neglecting the psycho-social needs.

Paper content
1. Identifying organizational priorities

Labor disputes can be prevented if the manager tries to systematically identify priorities established to meet organizational objectives through the practical use of the following guiding principles or ideas[2]:

1. labor division – specialization of functions and separation of powers which allow each person to work in a particular area and thereby increase efficiency;

2. authority and responsibility – right to give orders and responsibility for using this right;

3. *discipline* – understood as submission, diligence, respect; it is practiced by subordinates only if their bosses exercise their roles in a competent way;

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[1] See also Mc Gregor Douglas, *Leadership and Motivation*, (M. I. T. Press, 1966), p. 76 and the following.

[2] See Gazier, B., *Strategiile resurselor umane*, (Institutul European, Bucureşti, 2003), p. 79.

4. unit of command and action – embodied in what is called "linear hierarchical management", according to which a subordinate doesn't receive orders from more than one boss;

5. direction unit –people engaged in the same type of activities should be reported to the same objective, under a single plan that special programs can be derived from; in a more direct way, as Fayol's own words: "one boss and one program for an amount of operations having the same body ... a body with two heads is a monster ";

6. the staff's rightful remuneration – is a highly important motivational factor, although there is not a perfect remuneration system;

7.centralization and decentralization – decided by the type of company and the quality of its employed personnel; their aim is „the best possible use of the whole staff's knowledge";

8. hierarchy – the same hierarchical level but belonging to a different hierarchical line necessary to ensure unity; important is also the presence of cooperation or bridging ties between the departments / individuals from the same hierarchical level but belonging to a different hierarchical line;

9. order – concerns the rational use of materials and human resources and is achieved by means of plans for using time and materials or by selecting and organizing people; "a place for each person and each person in his place";

10. equity – involves a combination of goodwill and spirit of justice in the treatment of subordinates;

2. Avoiding authority abuse in favor of harmony

Normally, managers are assigned a degree of formal authority by the top echelon of their leaders. In the spirit of this authority, the manager can make decisions and employ the organization's resources. However, the authority over personnel is relevant to the granting of rewards and imposing of penalties. Because the authority is officially sanctioned by the organization through labor disputes, it is very important for managers to substitute to the formal authority an authority derived from personal competence. In this sense, Max Weber has become an author recognized for contributions to the development of management, one of the reference names for organizational psychology, his contribution to the foundation of a formal type of organization, "bureaucratic organization", being essential. What causes people to obey orders, do what is required? – Weber asked himself. In this context, he operates the distinction between *power* (the ability to force people to obey in spite of their resistance) and *authority* (voluntary fulfillment of orders received by people under consideration of their superiors' legitimacy). Based on how the authority is recognized, Weber described three types of authority, organization and default organization. The first type was called *charismatic* authority - from the Greek *charisma* which means grace, exceptional personality traits - accepted and respected by people because of their faith in the supernatural, extraordinary powers of a certain person. The second type of authority is the *traditional* one, based on the common past, tradition and customs. The third type is the *rational-legal* authority, founded on the belief in the value of laws and regulations. The practice of one or other of these types of authority determines the appearance of distinct forms of organization and management. For example, charismatic authority relationships usually lead to organizational hierarchies based on leaders and their followers or disciples, lack of orders and commands, which are the inspiration of the leader, irrational decisions are frequently met, the subordinates' behavior is dependent on the leadership.

Organizational efficiency and optimum climate in which conflicts of interest can be avoided are ensured in Max Weber's conception by meeting the following general principles of management:

- *express principle of division* of work between members of the organization which allows each person to know their responsibilities and specialization as a result of their enforcement;

- *principle of authority's hierarchy* in the virtue of which authority is given by position, each inferior position being under the control and leadership of the superior one;

- *principle of formal rules and regulations rationally established* (laws, decrees, regulations) which ensure the transformation of the authority's legitimacy into the legality of the general rule ;

- *principle of impersonality and impartiality* derives from the fact that the relationships between the members of organization and those between them and clients or beneficiaries are formal, official and based on rules unlike the impersonal activity, where the hatred and lack of passion, affection or enthusiasm derive not from a person's qualities, but from the hierarchical position and the system of formal rules;

- *principle of promotion* ensures the career ladder, the promotion being made according to the criterion of age, competence proved during the activity's performance or by combining these two criteria;

- *principle of efficiency* appears as a corollary of all the others, the efficiency of bureaucratic organization resulting from, as Weber himself says, its technical superiority versus any other kind of organization.

Compliance with these principles of bureaucratic organization leads to the emergence of numerous *positive effects*: increasing focus from the members on short segments of activity, but clearly demarcated between them, fact which fosters accurate and quick decisions; disciplining the organization's members (through the establishment of official contacts); reducing conflicts (if formal rules are respected); protecting the organization's members against abuse of authority (by prescribing behaviors); creating a feeling of safety (by anticipating behaviors regulated by rules, norms and not by intuition, improvisation); promoting objectivity (through impartiality).

3. Use of economic and professional motivation

Meeting the organization's strategic objective implies making a positive motivation for all employees, i.e. performing successful management concerning human resources[3].

Motivation is achieved through participatory management, knowing that major management decisions taken only in an authoritarian manner are subject to critical comments, generate dissatisfaction and are disputed.

A manager is efficient if he uses the interaction and masters the science of motivating the personnel.

Motivation is the sum of internal and external energies that initiate and direct human behavior towards a goal which, once attained, will result in satisfying a need. The reasons which animate people are an expression of their needs and expectations. Needs are defined as deficiencies that an individual feels at a time, and expectations are individual beliefs in the existence of opportunities that can be obtained by a certain level of effort and performance.

Primary internal energies that determine the motivation are simple: basic or primary needs (food, sleep, shelter), need for security and the need for recognition and belonging to the group; the internal energies are psychological self-esteem, self-affirmation and self-determination. These needs are highly variable in type and intensity, they are incentives for group work, though people don't always aware them and are strongly influenced by the environment in which individuals operate. External energies that influence motivation are the result of the manager-employee connection and are characterized by a pronounced dynamism that both "sides" can and should seize. On the other hand, social conditions and processes in general, the influences of friends, family, particularly natural and cultural factors, including organizational ones, can determine the magnitude of motivation for professional achievements of each employee.

In practice, people are characterized by very different levels of aspiration, what motivates one employee may not be sufficient for another.

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[3] See also Stanciu, Şt., *Managementul resuselor umane*, 2001, p. 160 and the following.

Therefore, the motivation process must be strictly personal, which represents an important effort for the employer. Typically, basic needs, once satisfied, leave open the expression of the higher-order needs that are the real means of affirming the human personality.

It was concluded that motivating factors, exclusively pecuniary, which could increase the subjective value of work, taking into account the particularities of situations and persons to whom the successful business managers focus, are: appreciating the employees' success, the permanent information about the organization's performance, establishing professional goals which should incite, encourage initiative, the statutory teamwork climate, increasing the degree of autonomy and decision of the working teams, attract gifted staff etc. Among these factors, recognition of individual success and encouragement of communication in the workplace are critical in obtaining the successful participation of employees.

Negative motivation was based on threats, punishment, blame, financial penalties etc. Applying these tools should be limited, because there are a number of issues that reduce their efficiency:

- the sanctions have low motivational effects because they are considered by employees to be exaggerated;

- the sanctions cannot be applied in an objective way with the same intensity for individuals being in different situations, but having made the same mistake;

- the frequently application of sanctions induces a state of tension;

- the organization cannot be developed on a culture with negative valences.

It was demonstrated that the application of negative motivational factors led systematically to reduced job performance of individuals; the expected results have been obtained only by applying the means of positive stimulation.

In C. Lane's opinion[4], factors determining job satisfaction can be classified as: economic and professional motivations; social reasons; motivations related to self-realization; psychological motivations; psycho-social reasons.

Economic and professional motivations (incentives) include: salary, bonuses, profit sharing, lending, the existence of a health insurance system, facilities for career development, ensuring compatibility between the qualifications, skills and abilities of the employee and the job characteristics etc.

 - Why should the manager get involved in the knowledge and materialization of his own employees' motivation?

The answer to this question has been given from totally opposed points of view. Therefore, according to the theory of D. Mc Gregor[5], the manager has to use the motivational lever because in the employees' personality structure there are negative traits that have to be correlated. For example: people do not like work; people are reluctant to work, if possible; people are less ambitious; people prefer to be led, directed; people are selfish and indifferent to the needs of the organization they belong to; people do not take responsibilities; they are concerned about their safety in work processes; people are opposed to changes; people must be controlled and, if appropriate, punished; people only want to maximize their material gains, neglecting the psycho-social needs.

Same D. McGregor leaves this slightly fatalistic theory and encourages the manager to use, however, work motivation if he wants performance and to prevent conflicts because: people are not lazy; people do not dislike working; people have the ability to automotive; people are stimulated by responsibilities; people are involved in changes, having the ability to imagine and create; people do not like to be controlled; in addition to basic needs and security, individuals also need self-determination and self-improvement; physical effort and intellectual effort at work are just as necessary as recreation and entertainment.

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[4] Quoted in Bosche, M. , *Les salaries et la participation*, (Paris, 1992), p. 85
[5] See also Mc Gregor Douglas, *Leadership and Motivation*, (M. I. T. Press, 1966), p. 76 and the following.

Another opinion (Gelenier)[6], considers that motivational procedures of the employed staff must be determined by knowing the following principles: employee performance is dependent on job satisfaction; people prefer to work in autonomous groups; people prefer to take decisions by consensus; people accept participatory management; people prefer informal associations.

These findings have established a distinct theory called the theory of expectations (V. H. Vroom is one of its representatives), which received two types of modeling:
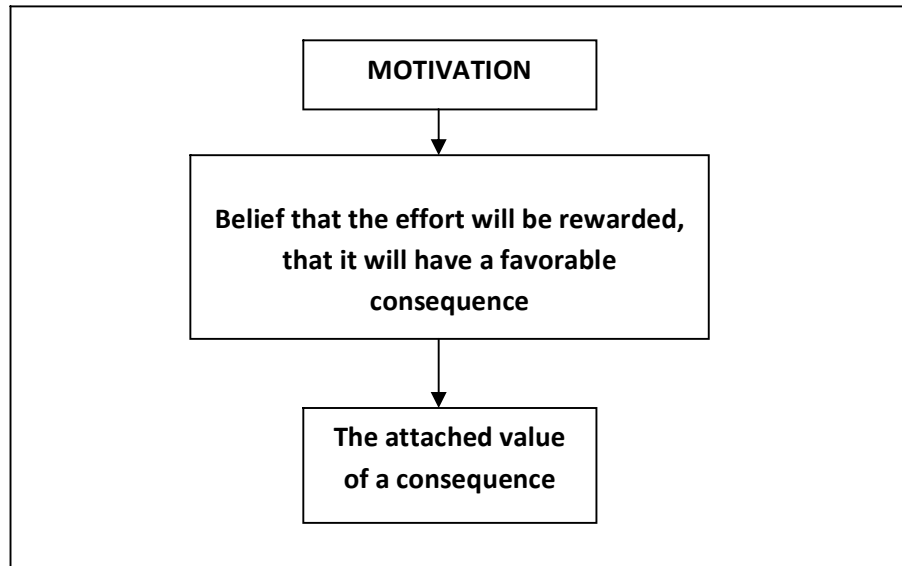

Fig. no. 1 – Adapted after Variant no. 1 regarding the "Waiting modeling" in the opinion of V. H. Vroom, quoted by Gelenier in *Strategie de l enreprise et motivation des hommes, p. 183*
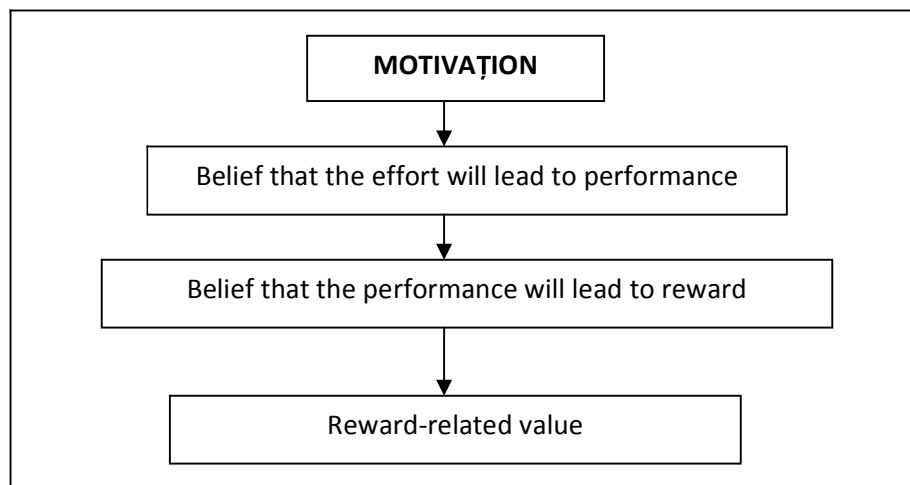

Fig. no. 2 – Adapted after Variant no. 2 regarding the "Waiting modeling" in the opinion of V. H. Vroom, quoted by Gelenier in *Strategie de l enreprise et motivation des hommes, p. 185*

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[6] See also Gelenier, O., *Strategie de l entreprise et motivation des hommes, (*Edition Hommes et tehniques, Paris, 1984), p. 171

In contrast, in a theory of efficacious conditioning, along with objective stimuli, the subjective ones were also highly appreciated, leading the assessment model to be expressed by the following causal relationship:
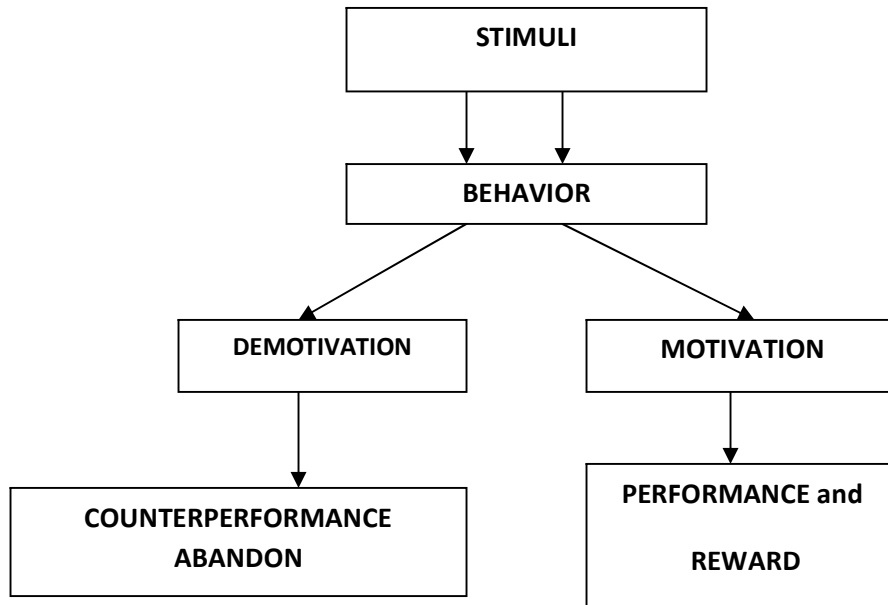
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Fig. no. 3 – Waiting modeling according to the efficacious conditioning by Mc Gregor Douglas, *Leadership and Motivation, p. 172*

The equity theory[7] operates with input quantities (qualifications, skills, abilities, experience, talent, leadership, productivity etc.) and output values (rewards, recognition, prestige, esteem etc.).

According to the employees, the output has to be consistent with the input as a measure of their own activity, but also compared to the balance of other employees. The stability of their own balance (input quantity – output values) is the premise of the positive motivation, and the stability of the others' balance represents the equity confirmation in the personnel policy practiced by the organization - which reinforces positive motivation.

4. Negotiation efficiency

Negotiation involves a series of discussions and talks, a verbal communication between two partners with equal rights and correlative obligations.

The manager achieves by means of negotiation a series of operations: obtaining information, claims or demands, giving information and solutions, developing proposals, expressing opinions, accepting compromises. In order to make the negotiation efficient, the manager has to master the art of verbal communication[8], as resulted from the following specifications.

Triggered communication process gives hope to the discussion partners who achieve the following goals[9]: the received message is correctly received; the content of the message is understood and integrated to their own information sphere; the proposals made in the message are

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[7] See Nothstine, W. L. , *Arta convingerii*, CODECS, (Bucureşti, 1998), p. 161
[8] See Voiculescu, D., *Negocierea – formă de comunicare în relaţiile interumane*, (Editura Ştiinţa, Bucureşti, 2002), p. 24
[9] See Belu, C., Belu A., *Negocierea contractului colectiv de muncă*, (Editura Reprograph, Craiova, 2002), p, 34-49

reported to the "landmark" data of the field and eventually accepted; the partner reacts as to the anticipated direction: changes point of view, position, attitude etc.

Each social dialogue partner can make use of a range of strategies to win the adherence of the other and hence the transformation of his own goal into a common one:

a) how he summarizes and argues the message in order to gain the partner's confidence ;

b) to ensure the partner that his interests are not affected by the content of the proposed message, there are no disadvantages that would mark his socio-economic balance but, on the contrary, he only has to gain through peace and social harmony which condition the economic performance;

c) depending on the stage reached in the communication process he should know when to say: "I wish to inform you," I wish to consult you"," want to work with you" or "want you to be convinced".

d) Communication style and strategy determine with certainty the success or failure, disappointment or fulfilling within the complex process of negotiating the social dialogue. The talent to negotiate inevitably implies two capabilities: the ability to know the man and the ability to use information. Taken in interaction, these capabilities mean "can" and by solving the equation of negotiation we do not except anything else rather than "want."

Under the first landmark, participants in the negotiations must take into account the following:

- formulate a correct view on the level of knowledge, sphere and depth of information of your partners on the issue that is the object of the negotiation;

- establishing an order, a logical sequence in presenting ideas statements, proposals, avoiding the mixture of words, the chaos of ideas;

- the clarity of statement or proposal must be accompanied by a coherent argument and approval;

- avoid staining the language or using neologisms that are difficult to understand.

Communication must take place within the time limits and by respecting the partner who is expected to provide "something." This requirement includes the following:

- each partner must know that there is a certain way to tell a word, to use a particular formula or expression and that is called common sense or civility, and 'civility is not money that enriches him who receives it, but he who gives it';

- tone, speech, expression, irony can result in a state of tension and anger and can thus transform the negotiating into an unnecessary and messy discussion;

- argument and demonstration through various means to induce the partner into a state of appreciation and fair assessment of his social position when negotiating;

- consistency in carrying out the negotiation, trust in the communication process, so that the partner feels the want to end the discussion with a common target and not stop in a spontaneous way the social dialogue.

The series of discussions and negotiations, proposals and counter-proposals, interruptions and reversals, justify the understanding of the term negotiation as a "transaction whose terms have not yet been fixed, but are due to be fixed[10]".

Negotiation technique includes the following requirements as well, which the partners have neglected at the moment of triggering the conflicts of interest within the health organizations we have studied:

- social dialogue, namely negotiation, must start in a moment considered optimal by both partners, that is, when social and economic context does not disturb by nature of the problems the content of negotiations, when partners were relieved of other tasks that could mark the availability for negotiation, when the legal norms of negotiation work through disposition and coercion;

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[10] See S. Ghimpu, Al. Ţiclea, *Dreptul muncii, (*Editura All-Beck, Bucureşti, 2001), p. 761

- at the negotiating table all documentation relevant to matters subject to negotiation must be provided. Collection and submission of complete and accurate information is a prerequisite for concluding the agreement and particularly for its observance;

- because the conduct of negotiations may cause changes in the content of ideas, proposals and arguments, each partner must set a realistic limit of possibilities, depending on which they may or may not accept the compromise;

- differences in views and meanings in an argument are inherent during a negotiation, therefore, in such cases, the following methods are recommended: using an objection to bring into question the argument used by another partner in a different meaning; reformulating the objection by means of a gradual analysis and approach, trying in this order to get a punctual settlement as well; postponing the resolution of disagreements for another time or for a later stage, when other tangential proposals will be cleared and accepted; predisposition to reward, i.e. providing equivalent benefits, which otherwise would not have been obtained.

Mayer has elaborated a model of trust moderators[11]. Thus, he considered that when a person assumes the risk of investing confidence and the result is positive, then each other's appreciation increases, while if the result is negative, the conclusions are clearly unfavorable to the person who invested in that trust.
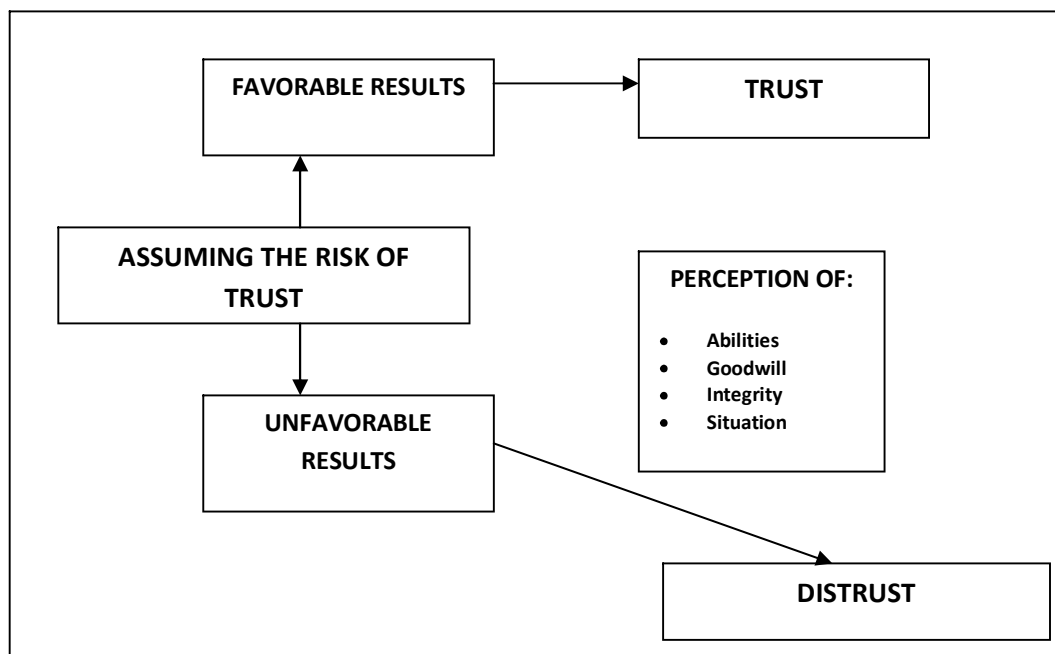

Fig. no. 4. – Adapted after ***Model of trust moderators*** (by Mayer, Davis and Schooman, in the paper *"An integration model of organizational trust"* vol. 20, p. 547)

Trust is an inherent result of communication and interpretation processes being a known fact that in the context of confidence the manager and employees are likely to negotiate and accept apparent compromises.

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[11] See Mayer, R. C., Davis J. H., Schoorman F. D., *"An integration model of organizational trust" The Academy of Management Review,* (Briarcliff Manor, vol. 20, 1995), p. 709-835

Bargaining laws in this matter – By means of art. 2 of Convention no. 154/1981 of the International Labor Organization, collective bargaining is a term applicable to all negotiations which take place between a person who employs, a group of persons who employ or more organizations of employers, on the one hand, and one or more workers' organizations, on the other hand, in order to: fix the working conditions and employment setting, and / or regulate the relations between those who employ and / or regulate the relations between employers or their organizations and those engaged in one or more workers' organizations.

The collective bargaining agreement to which I refer requires measures adapted to national circumstances, in order to promote collective bargaining for achieving the following objectives (art. 5):

- the collective negotiation has to be possible for all those who employ and for all categories of workers engaged in the targeted branches of activity;

- the collective bargaining has to be progressively extended to all fields covered by this term's definition;

- to encourage the development of procedure rules agreed by both employers and employees organizations;

- the collective bargaining should not be impeded by the inexistence of some regulatory rules or the insufficiency or improper character;

- regulatory bodies and procedures of labor conflicts should be conceived in such a manner that would allow them to contribute to the promotion of collective bargaining.

Moving from the bipartite system was done by means of the regulation contained in art. 7 of the Convention: "The measures taken by public authorities to encourage and promote the development of collective bargaining will be subject to prior consultation and, whenever this is possible, to agreements between public authorities and organizations of employers and workers".

Stages of collective bargaining - Collective bargaining process is complex and can be analyzed on separate stages: preparation of negotiations, the initiative and start of negotiations, progress and conduct of negotiations, completion of collective bargaining.

a) *Preparation of negotiation* - is a step that must stand out in the mind of each participant in collective bargaining, being achieved through a thorough documentation and information relating to: external developments (if possible) and the internal structure of the economic or social life, which relate to the subject of negotiation; the techniques and procedures for conducting the communication and negotiation process; the clause terms upon which has been decided to be carefully changed (if they existed in the old contract in an inconvenient text, which is disadvantageous) or inserted (ascertained over time that their presence could be beneficial); the objectives that might concern the employer and their compatibility with his own interests; the frame in which the negotiations take place, the component of the negotiators' team, the evidence that could be invoked in support of proposals etc.

b) *Initiative and start of negotiations* – According to the text art. 3   par.   1 of Law. 130/1996 which states: "Collective bargaining at enterprise level is compulsory unless the unit has fewer than 21 employees", we deduce: collective bargaining is binding at one level, between the four levels at which collective agreements can be concluded: establishment level (not the branch level, or national group of units); mandatory collective bargaining is required by units law, and at their level, only those units that have a flock of more than 21 employees can make use of it; collective bargaining is possible - not required - at the level of professional branches, group of units, as well as at the level of a unit with a flock of less than 21 employees.

c) *Commencement of collective bargaining*. The start of collective bargaining, meaning the first meeting of the parties, seeks to define the immediate benefit: the information which the employer must provide the union delegates or employees and when he will meet these obligations; the information required has to enable a comparative analysis of the employment situation, the classification of occupations and professions, the salary level, the length and organization of working

time (we consider that the comparative analysis referred to in Art. 4   par.   2 letter A of the Act targets the already existing 'variables' and the estimated ones concerning the employer); the place where meetings will take place and a schedule of these meetings (i.e. dates and times agreed for dialogue). Running of negotiations is the dialogue core, the essential part of the negotiation process. According to the schedule established during the first meeting, each party attempts to synchronize their views, to present their arguments in a favorable atmosphere for the negotiation, to create a "plan" of the clauses, to confirm their availability for mutual understanding.

After a phase of probing and exploring, each side "dares" to submit their application or claim, after which they 'surrender' themselves to the negotiation, demonstrating from time to time that they can give up as well, seeking compensatory options or raising awareness towards the "subjective areas" with really optimistic and realistic promises.

Deferrals of sensitive issues are not excluded nor arrangements between partners, so that every one should be able to achieve at least one goal (the one which is thought to bring maximum benefits). The effort of persuasions is materialized in clauses.

Conclusions:

Negotiation necessarily involves meetings, consultations and negotiations between partners, which can not be held otherwise than through communication.

The agreement, convention or understandings as purposes of negotiation within the social dialogue involve the cooperation of social partners, i.e. a process of communication.

The language used in negotiation must be reported to two landmarks: the correct use of information and the avoidance of ambiguity; civility and respect towards your partner.

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