

Employee Relations Processes

Key concepts and terms

- Arbitration
- Aspiration grid
- Bargaining
- Check-off system
- Collective agreement
- Collective bargaining
- Conciliation
- Convergent negotiation
- Dispute resolution
- Divergent negotiation
- Employee relations
- Employee relations climate
- Harmonization
- Industrial relations
- Mediation
- Negotiation
- New-style agreements
- Partnership agreements
- Procedural agreements
- Single status
- Single-table bargaining
- Single-union deal
- Substantive agreements

Learning outcomes

On completing this chapter you should be able to define these key concepts. You should also know about:

- Employee relations policies
- Union recognition
- Dispute resolution
- Negotiating and bargaining
- Managing without unions
- Handling employment issues
- Employee relations strategies
- Collective bargaining outcomes
- Informal employee relations procedures
- Managing with unions
- The state of employment relations

Introduction

Employee relations processes consist of the approaches, methods and procedures adopted by employers to deal with employees either collectively through their trade unions or individually. As described in this chapter, many of these processes are concerned with industrial relations and include dealings between management and trade unions involving collective agreements, collective bargaining, disputes resolution and handling issues concerning the employment relationship and the working environment. This chapter starts with a review of employee relations policies and strategies and the employee relations climate. It then covers the various processes of union recognition, collective bargaining, negotiating and the state of employment relations.

Employee relations policies

Approaches to employee relations

1. Adversarial: the organization decides what it wants to do, and employees are expected to fit in. Employees only exercise power by refusing to cooperate.
2. Traditional: a good day-to-day working relationship, but management proposes and the workforce reacts through its elected representatives.

3. Partnership: the organization involves employees in the drawing up and execution of organization policies, but retains the right to manage.
4. Power sharing: employees are involved in both day-to-day and strategic decision making.

Adversarial approaches are less common now than in the 1960s and 1970s. The traditional approach is still the most typical but more interest is being expressed in partnership, as discussed later in this chapter. Power sharing is rare.

Nature and objectives of employee relations policies

Against the background of a preference for one of the four approaches listed above, employee relations policies express the philosophy of the organization on what sort of relationships between management and employees and their unions are wanted, and how the pay–work bargain should be managed. A social partnership policy, as described in Chapter 54, will aim to develop and maintain a positive, productive, cooperative and trusting climate of employee relations.

The objectives of employee relations policies may include maintaining good relations with staff and their unions, developing a cooperative and constructive employee relations climate, the effective management of the work process, the control of labour costs, and the development of an engaged and committed workforce.

When they are articulated, policies provide guidelines for action on employee relations issues and can help to ensure that these issues are dealt with consistently. They provide the basis for defining management’s intentions (its employee relations strategy) on key matters such as union recognition and collective bargaining.

Policy areas

The areas covered by employee relations policies are shown below.

Areas covered by employee relations policies

- Trade union recognition – whether trade unions should be recognized or de-recognized, which union or unions the organization would prefer to deal with, and whether or not it is desirable to recognize only one union for collective bargaining and/or employee representational purposes.

- Collective bargaining – the extent to which it should be centralized or decentralized and the scope of areas to be covered by collective bargaining.
- Employee relations procedures – the nature and scope of procedures for redundancy, grievance handling and discipline.
- Participation and involvement – the extent to which the organization is prepared to give employees a voice on matters that concern them.
- Partnership – the extent to which a partnership approach is thought to be desirable.
- The employment relationship – the extent to which terms and conditions of employment should be governed by collective agreements or based on individual contracts of employment (ie collectivism versus individualism).
- Harmonization of terms and conditions of employment for staff and manual workers.
- Working arrangements – the degree to which management has the prerogative to determine working arrangements without reference to trade unions or employees (this includes job-based or functional flexibility).

When formulating policies in these areas organizations may be consciously or unconsciously deciding on the extent to which they want to adopt the HRM approach to employee relations. As described in Chapter 54, this emphasizes commitment, mutuality and forms of involvement and participation, which means that management approaches and communicates with employees directly rather than through their representatives.

Policy choices

The following four policy options for organizations on industrial relations and HRM have been described by Guest (1995).

1. The new realism – a high emphasis on HRM and industrial relations

The aim is to integrate HRM and industrial relations. A review of new collaborative arrangements in the shape of single-table bargaining (IRS, 1993) found that they were almost always the result of employer initiatives, but that both employers and unions seem satisfied with them. They have facilitated greater flexibility, more multi-skilling, the removal of demarcations and improvements in quality. They can also extend consultation processes and accelerate moves towards single status.

2. *Traditional collectivism – priority to industrial relations without HRM*

This involves retaining the traditional pluralist industrial relations arrangements within an eventually unchanged industrial relations system. Management may take the view in these circumstances that it is easier to continue to operate with a union, since it provides a useful, well-established channel for communication and for the handling of grievance, discipline and safety issues.

3. *Individualized HRM – high priority to HRM with no industrial relations*

According to Guest, this approach is not very common, except in North American-owned firms. It is, he believes, 'essentially piecemeal and opportunistic'.

4. *The black hole – no industrial relations*

This option is becoming more prevalent in organizations in which HRM is not a policy priority for management but where they do not see that there is a compelling reason to operate within a traditional industrial relations system. When such organizations are facing a decision on whether or not to recognize a union, they are increasingly deciding not to do so.

Employee relations strategies

Employee relations strategies set out how employee relations policy objectives are to be achieved. The intentions expressed by employee relations strategies may direct the organization towards any of the following.

Employee relations strategy areas

- Altering the forms of recognition, including single-union recognition, or derecognition.
- Changes in the form and content of procedural agreements.
- New bargaining structures, including decentralization or single-table bargaining.
- The achievement of increased levels of commitment through involvement or participation.
- Deliberately by-passing trade union representatives to communicate directly with employees.

- Increasing the extent to which management controls operations in such areas as flexibility.
- Developing a 'partnership' with trade unions, recognizing that employees are stakeholders and that it is to the advantage of both parties to work together (this could be described as a unitarist strategy aiming at increasing mutual commitment).
- Generally improving the employee relations climate, as discussed below, to produce more harmonious and cooperative relationships.

Employee relations climate

The employee relations climate of an organization represents the perceptions of management, employees and their representatives about the ways in which employee relations are conducted and how the various parties (managers, employees and trade unions) behave when dealing with one another. An employee relations climate may be created by the management style adopted by management (see below) or by the behaviour of the trade unions or employee representatives (cooperative, hostile, militant, etc) or by the two interacting with one another. It can be good, bad or indifferent according to perceptions about the extent to which:

- management and employees trust one another;
- management treats employees fairly and with consideration;
- management is open about its actions and intentions – employee relations policies and procedures are transparent;
- harmonious relationships are generally maintained on a day-to-day basis, which results in willing cooperation rather than grudging submission;
- conflict, when it does arise, is resolved without resort to industrial action and resolution is achieved by integrative processes that result in a 'win-win' solution;
- employees are generally committed to the interests of the organization and, equally, management treats them as stakeholders whose interests should be protected as far as possible.

Management style

The term 'management style' refers to the overall approach the management of an organization adopts to the conduct of employee relations. It was defined by Purcell (1987) as 'the existence of

a distinctive set of guiding principles, written or otherwise, which set parameters to and signposts for management action in the way employees are treated and particular events handled’.

Purcell and Sisson (1983) identified five typical styles:

1. Authoritarian – employee relations are not regarded as important and people issues are not attended to unless something goes wrong.
2. Paternalistic – in some ways this resembles the authoritarian style but a more positive attitude to employees is adopted.
3. Consultative – trade unions are welcomed and employee consultation is a high priority.
4. Constitutional – there is a trade union presence but the management style tends to be adversarial.
5. Opportunistic – management style is determined by local circumstances which determines whether or not unions are recognized and the extent to which employee involvement is encouraged.

Purcell (1987) gave further attention to management style. He described two major dimensions: 1) individualism, which refers to the extent to which personnel policies are focused on the rights and capabilities of individual workers, and 2) collectivism, which is concerned with the extent to which management policy is directed towards inhibiting or encouraging the development of collective representation by employees and allowing employees a collective voice in management decision making. According to Purcell, style is a deliberate choice linked to business policy. Organizations may choose to focus on one or both aspects. Not all firms have a distinctive preferred management style.

Improving the climate

Improvements to the climate can be attained by developing fair employee relations policies and procedures and implementing them consistently. Line managers and team leaders who are largely responsible for the day-to-day conduct of employee relations need to be educated and trained on the approaches they should adopt. Transparency should be achieved by communicating policies to employees, and commitment increased by involvement and participation processes. Problems that need to be resolved can be identified by simply talking to employees, their representatives and their trade union officials. Importantly, as discussed below, the organization can address its obligations to the employees as stakeholders and take steps to build trust.

An ethical approach

Businesses aim to achieve prosperity, growth and survival. Ideally, success should benefit all the stakeholders in the organization – owners, management, employees, customers and

suppliers, but the single-minded pursuit of business objectives can act to the detriment of employees' well-being and security. There may be a tension between accomplishing business purposes and the social and ethical obligations of an organization to its employees. The chances of attaining a good climate of employee relations are slight if no attempt is made to recognize and act on an organization's duties to its members.

An ethical approach will be based on high-commitment and high-involvement policies. The commitment will be mutual and the arrangements for involvement will be genuine, ie management will be prepared not only to listen but to act on the views expressed by employees or at least, if it cannot take action, the reasons will be explained. It will also be transparent and, although the concept of a 'job for life' may no longer be valid in many organizations, at least an attempt will be made to maintain 'full employment' policies.

Union recognition

An employer fully recognizes a union for the purposes of collective bargaining when pay and conditions of employment are jointly agreed between management and trade unions. Partial recognition takes place when employers restrict trade unions to representing their members on issues arising from employment. Full recognition therefore confers negotiating (and representational) rights on unions. Partial recognition only gives unions representational rights. The following discussion of union recognition is only concerned with the much more common practice of full recognition. Unions can be de-recognized, although as noted by Blanden *et al* (2006) this is happening less frequently.

Factors influencing recognition or de-recognition

Employers are in a strong position now to choose whether they recognize a union or not, which union they want to recognize and the terms on which they would grant recognition, for example a single union and a no-strike agreement.

When setting up on greenfield sites, employers may refuse to recognize unions. Alternatively, they hold 'beauty contests' to select the union they prefer to work with and which will be prepared to reach an agreement in line with what management wants.

An organization deciding whether or not to recognize a union will take some or all of the following factors into account:

- the perceived value or lack of value of having a process for regulating collective bargaining;
- if there is an existing union, the extent to which management has freedom to manage, for example to change working arrangements and introduce flexible working or multi-skilling;

- the history of relationships with the union;
- the proportion of employees who are union members and the degree to which they believe they need the protection their union provides; a decision on de-recognition has to weigh the extent to which its perceived advantages outweigh the disadvantages of upsetting the status quo;
- any preferences as to a particular union, because of its reputation or the extent to which it is believed a satisfactory relationship can be maintained.

In deliberating recognition arrangements, employers may also consider entering into a ‘single-union deal’, as described below.

Collective bargaining arrangements

Collective bargaining involves employers and unions reaching agreement on terms and conditions of employment and the ways in which employment issues such as disputes, grievances and disciplinary matters should be resolved. Bargaining arrangements result in collective agreements, which are formal agreements between management and trade unions dealing with terms and conditions of employment or other aspects of the relationships between the two parties. They may be substantive agreements dealing with terms and conditions of employment, or they may be procedural agreements dealing with the procedures for collective bargaining – these are sometimes called framework agreements because they provide a structure for the bargaining process.

Collective bargaining involves the following main features:

- parties – at least two sides;
- an agreed procedure whereby the parties relate to each other – and the negotiation of framework agreements and consultation;
- outcomes – a collective agreement;
- the existence of sanctions designed to change the attitude or position of the other party.

The considerations to be taken into account in developing and managing collective bargaining arrangements are the level at which bargaining should take place, single-table bargaining where a number of unions are recognized in one workplace, and dispute resolution.

Bargaining levels

There has been a pronounced trend away from multi-employer bargaining, especially in the private sector. This has arisen because of decentralization and a reluctance on the part of central management to get involved.

Single-table bargaining

Single-table bargaining brings all the unions in an organization together as a single bargaining unit. The main reason organizations advance for wanting this arrangement is their concern that existing multi-unit bargaining arrangements not only are inefficient in terms of time and management resources but are also a potential source of conflict. They may also want to achieve major changes in working practices, or introduce harmonized or single-status conditions which, it is believed, can only be achieved through single-table bargaining.

Marginson and Sisson (1990), however, identified the following critical issues that need to be resolved if single-table bargaining is to be introduced successfully.

SOURCE REVIEW

Requirements for single-table bargaining to be introduced successfully, Marginson and Sisson (1990)

- The commitment of management to the concept.
- The need to maintain levels of negotiation that are specific to particular groups below the single bargaining table.
- The need to allay the fears of managers that they will not be able to react flexibly to changes in the demand for specific groups of workers.
- The willingness of management to discuss a wider range of issues with union representatives – this is because single-table bargaining adds to existing arrangements a top tier in which matters affecting all employees, such as training, development, working time and fringe benefits can be discussed.
- The need to persuade representatives from the various unions to forget their previous rivalries, sink their differences and work together (not always easy).
- The need to allay the fears of trade unions that they may lose representation rights and members, and of shop stewards that they will lose the ability to represent members effectively.

These are formidable requirements to satisfy, and however desirable single-table bargaining may be, it will never be easy to introduce or to operate.

Collective bargaining outcomes

The formal outcomes of collective bargaining are substantive agreements, procedural agreements, single-union deals, new-style agreements, partnership agreements and employee relations procedures.

Substantive collective agreements

Substantive agreements are the outcome of collective bargaining. They set out agreed terms and conditions of employment covering pay and working hours and other aspects such as holidays, overtime regulations, flexibility arrangements and allowances. They are not legally enforceable. A substantive agreement may detail the operational rules for a payment-by-results scheme, which could include arrangements for timing or re-timing and for payments during waiting time or on new work that has not been timed. Substantive agreements can also deal with the achievement of single status or harmonization.

Single status is the removal of differences in basic conditions of employment to give all employees equal status. This leads to harmonization, ie the adoption of a common approach and criteria to pay and conditions for all employees. Many organizations such as local government authorities negotiated a single-status deal, which means putting all employees into the same pay and grading structure.

Procedural collective agreements

Procedural agreements set out the methods to be used and the procedures or rules to be followed in the processes of collective bargaining and the settlement of industrial disputes. Their purpose is to regulate the behaviour of the parties to the agreement, but they are not legally enforceable and the degree to which they are followed depends on the goodwill of both parties or the balance of power between them. Procedural and substantive agreements are seldom broken and, if so, never lightly – the basic presumption of collective bargaining is that both parties will honour agreements that have been made freely between them. An attempt to make collective agreements legally enforceable in the 1971 Industrial Relations Act failed because employers generally did not seek to enforce its provisions. They readily accepted union requests for a clause in agreements to the effect that: ‘This is not a legally enforceable agreement’, popularly known as a TINALEA clause.

A typical procedure agreement contained the following sections:

- a preamble defining the objectives of the agreement;
- a statement that the union is recognized as a representative body with negotiating rights;
- a statement of general principles, which may include a commitment to use the procedure (a no-strike clause) and/or a status quo clause that restricts the ability of management to introduce changes outside negotiated or customary practice;

- a statement of the facilities granted to unions, including the rights of shop stewards and the right to hold meetings;
- provision for joint negotiating committees (in some agreements);
- a grievance or disputes procedure (see Chapter 61);
- provision for terminating the agreement.

The scope and content of such agreements can, however, vary widely. Some organizations have limited recognition to the provision of representational rights only, others have taken an entirely different line in concluding single-union deals which, when they first emerged in the 1980s, were sometimes referred to as the ‘new realism’.

Single-union deals

Single-union deals have the following typical features:

- a single union representing all employees, with constraints put on the role of full-time union officials;
- flexible working practices – agreement to the flexible use of labour across traditional demarcation lines;
- single status for all employees – the harmonization of terms and conditions between manual and non-manual employees;
- an expressed commitment by the organization to involvement and the disclosure of information in the form of an open communication system and, often, a works council;
- the resolution of disputes by means of devices such as arbitration, a commitment to continuity of production and a ‘no-strike’ provision.

Single-union deals have generally been concluded on greenfield sites, often in the UK by Japanese firms. A ‘beauty contest’ may be held by the employer to select a union from a number of contenders. Thus, the initiative is taken by the employer, which can lay down radical terms for the agreement.

New-style agreements

The so-called ‘new-style agreements’ emerged in the 1990s. As described by Farnham (2000), a major feature of these agreements is that their negotiating and disputes procedures are based on the mutually accepted ‘rights’ of the parties expressed in the recognition agreement. The intention is to resolve any differences of interests on substantive issues between the parties by

regulations, with pendulum arbitration (see later) providing a resolution of those issues where differences exist. New-style agreements will typically include provision for single-union recognition, single status, labour flexibility, company council and a no-strike clause to the effect that issues should be resolved without resource to strikes. The term is not much used nowadays – some or all of these provisions may still be included in agreements but they are not described as ‘new-style’.

Partnership agreements

Partnership agreements are based on the concept of social partnership, as discussed in Chapter 54. The TUC has been enthusiastic in its support of them. In industrial relations a partnership arrangement is one in which both parties (management and the trade union) agree to work together to their mutual advantage and to achieve a climate of more cooperative and therefore less adversarial industrial relations. A partnership agreement may include undertakings from both sides; for example, management may offer job security linked to productivity and the union may agree to new forms of work organization that might require more flexibility on the part of employees.

Five key values for partnership have been set down by Rosow and Casner-Lotto (1998):

1. Mutual trust and respect.
2. A joint vision for the future and the means to achieve it.
3. Continuous exchange of information.
4. Recognition of the central role of collective bargaining.
5. Devolved decision making.

Their research in the United States indicated that if these matters were addressed successfully by management and unions, then companies could expect productivity gains, quality improvements, a better motivated and committed workforce and lower absenteeism and turnover rates.

Forms of partnership agreements

There is no standard format for partnership agreements although they tend to have a number of common features which, as listed by Reilly (2001), are:

- Mutuality – both sides recognize that there are areas of commonality, of shared interest.
- Plurality – it is recognized that there are areas of difference as well as areas of common interest.

- Trust and respect – for the intentions of the other side and for legitimate differences in interests.
- Agreement without coercion – there is an intention to solve problems through consensus, recognizing business and employee needs.
- Involvement and voice – opportunities are provided for employees to shape their work environment and have their opinions heard.
- Individualist and collectivist dimension – this is achieved through direct and indirect (ie representative) forms of employee involvement.

Benefits of partnership agreements

The benefits of partnership agreements include management and unions working together, cooperation and mutuality being preferable to an adversarial approach and conflict in the employment relationship. Change is introduced through discussion and agreement rather than by coercion or power. Any additional costs arising from single status can be offset because single status facilitates improved customer service. Partnerships can also promote openness on problems of mutual concern, provide effective communication between employer and union, and involve union and employees in proposals for change at an early stage, as well as help promote employment security.

The effectiveness of partnership agreements

Partnership agreements sound like a good thing but Bacon and Storey (2000) concluded from their research that ‘although some companies may espouse partnership, there is evidence that underlying attitudes towards joint governance may be little changed’. Research by Kelly (2004) into 22 UK firms with partnership agreements found that in industries marked by employment decline, partnership firms often have shed jobs at a faster rate than non-partnership firms. However, in expanding sectors, partnership firms have created jobs at a faster rate than non-partnership firms. There is no discernible impact of partnership on either wage settlements or union density. He concluded that: ‘Because of the evidence on labour outcomes, and given the economic and institutional constraints on partnership agreements, they [the agreements] seem unlikely to figure as a major component of the revitalization of the union movement.’

An analysis by Guest *et al* (2008) of evidence from the 2004 Workshop Employee Relations Survey suggested that partnership practice remains relatively undeveloped and that it is only weakly related to trust between management and employee representatives and to employees’ trust in management. Direct forms of participation generally have a more positive association with trust than representative forms. The case for partnership and more particularly representative partnership as a basis for mutuality and trust is not supported by this evidence.

On the other hand, studies by Haynes and Allen (2001) at Tesco and Legal and General have highlighted potential benefits for unions and employees. However, as Roche and Geary (2004) found from their research, the outcomes are likely to be linked to the nature of the specific agreements, rationale, context, business environment, day-to-day processes and relationships within organizations espousing partnership, rather than the actual text of an agreement.

Employee relations procedures

Employee relations procedures are those agreed by management and trade unions to regulate the ways in which management handles certain industrial relations and employment processes and issues. The main employee relations procedures, as described in Chapter 61, are those concerned with grievances, discipline and redundancy. Disputes procedures are usually contained within an overall procedural agreement. In addition, agreements are sometimes reached on health and safety procedures.

Dispute resolution

The aim of collective bargaining is, of course, to reach agreement, preferably to the satisfaction of both parties. Grievance or negotiating procedures provide for various stages of ‘failure to agree’ and often include a clause providing for some form of dispute resolution in the event of the procedure being exhausted. The processes of dispute resolution are conciliation, arbitration and mediation.

Conciliation

Conciliation is the process of reconciling disagreeing parties. It is carried out by a third party, often an ACAS conciliation officer, who acts in effect as a go-between, attempting to get the employer and trade union representatives to agree on terms. Conciliators can only help the parties to come to an agreement. They do not make recommendations on what that agreement should be; that is the role of an arbitrator.

The incentives to seek conciliation are the hope that the conciliator can rebuild bridges and the belief that a determined, if last minute, search for agreement is better than confrontation, even if both parties have to compromise.

Arbitration

Arbitration is the process of settling disputes by getting a third party, the arbitrator, to review and discuss the negotiating stances of the disagreeing parties and make a recommendation on the terms of settlement that is binding on both parties who therefore lose control over the settlement of their differences.. The arbitrator is impartial and the role is often undertaken by ACAS officials, although industrial relations academics are sometimes asked to act in this

capacity. Arbitration is the means of last resort for reaching a settlement, where disputes cannot be resolved in any other way.

Procedure agreements may provide for either side unilaterally to invoke arbitration, in which case the decision of the arbitrator is not binding on both parties. The process of arbitration in its fullest sense, however, only takes place at the request of both parties who agree in advance to accept the arbitrator's findings. ACAS will only act as an arbitrator if the consent of both parties is obtained, conciliation is considered, any agreed procedures have been used to the full, and a failure to agree has been recorded.

The notion of pendulum or final offer arbitration emerged in the 1980s and 1990s. It increases the rigidity of the arbitration process by allowing an arbitrator no choice but to recommend either the union's or the employer's final offer – there is no middle ground. The aim is to get the parties to avoid adopting extreme positions. The benefit of signing up to pendulum arbitration as the final stage of a disputes procedure is the so-called 'shock effect' of the likelihood of entering a win/loss scenario. This, it is argued, provides a strong incentive for the parties to settle their differences themselves. The threat of pendulum arbitration coming into play should reduce the gap in the position between the parties; the smaller the gap the greater the risk of not settling and being exposed to an 'all or nothing' situation.

However, the evidence from the Workshop Employee Relations Survey (2004) is that the full version of pendulum arbitration as defined above is rare.

Mediation

Mediation is a form of arbitration, although it is stronger than conciliation. It takes place when a third party (often ACAS) helps the employer and the union by making recommendations which, however, they are not bound to accept. Mediation means that the employer retains control of the situation by being free to reject or accept the mediator's recommendations. It is cheap and informal relative to an employment tribunal and offers a quick resolution to problems, privacy and confidentiality.

Informal employee relations processes

The formal processes of union recognition, collective bargaining and dispute resolution described earlier in this chapter provide the framework for industrial relations in so far as this is concerned with agreeing terms and conditions of employment and working arrangements and settling disputes. But within or outside that framework, informal employee relations processes are taking place continuously.

Informal employee relationships happen whenever a line manager or team leader is handling an issue in contact with a shop steward, an employee representative, an individual employee or

a group of employees. The issue may concern methods of work, allocation of work and over-time, working conditions, health and safety, achieving output and quality targets and standards, discipline or pay (especially if a payment-by-results scheme is in operation, which can generate continuous arguments about times, standards, re-timings, payments for waiting time or when carrying out new tasks, and fluctuations or reductions in earnings because of alleged managerial inefficiency).

Line managers and supervisors handle day-to-day grievances arising from any of these issues and are expected to resolve them to the satisfaction of all parties without involving a formal grievance procedure. The thrust for devolving responsibility to line managers for HR matters has increased the onus on them to handle employee relations effectively. A good team leader will establish a working relationship with the shop steward representing his or her staff, which will enable issues arising on the shop floor or with individual employees to be settled amicably before they become a problem.

Creating and maintaining a good employee relations climate in an organization may be the ultimate responsibility of top management, advised by HR specialists. But the climate will be strongly influenced by the behaviour of line managers and team leaders. The HR function can help to improve the effectiveness of this behaviour by identifying and defining the competencies required, advising on the selection of supervisors, ensuring that they are properly trained, encouraging the development of performance management processes that provide for the assessment of the level of competence achieved by line managers and team leaders in handling employee relations, or by providing unobtrusive help and guidance as required.

Other features of the industrial relations scene

There are three features of the industrial relations scene that are important, besides the formal and informal processes discussed above. These features are union membership arrangements within the organization, the 'check-off' system, and strikes and other forms of industrial action (which should more realistically be called 'industrial inaction' if it involves a 'go slow' or 'work to rule').

Union membership within organizations

The closed shop, which enforced union membership within organizations, has been made illegal. But many managers prefer that all their employees should be in the union because on the whole it makes their life easier to have one channel of representation to deal with industrial relations issues and also because it prevents conflict between members and non-members of the union.

The 'check-off' system

The 'check-off' is a system that involves management in deducting the subscriptions of trade union members on behalf of the union. It is popular with unions because it helps to maintain membership and provides a reasonably sure source of income. Management has generally been willing to cooperate as a gesture of good faith to their trade union. They may support a check-off system because it enables them to find out how many employees are union members. Employers also know that they can exert pressure in the face of industrial action by threatening to end the check-off. However, the Trade Union and Employment Rights Act 1993 provides that if an employer is lawfully to make check-off deductions from a worker's pay there must be prior written consent from the worker and renewed consent at least every three years. This three-year renewal provision may inhibit the maintenance of the system.

Strikes

Strikes are the most politically charged of all the features of industrial relations. The Conservative Government in the 1980s believed that 'strikes are too often a weapon of first rather than last resort'. However, those involved in negotiation – as well as trade unions – have recognized that a strike is a legitimate last resort if all else fails. It is a factor in the balance of power between the parties in a negotiation and has to be taken into account by both parties.

Unlike other Western European countries, there is no legal right in Britain for workers or their unions to take strike action. What has been built up through common law is a system of legal liability that suspended union liability for civil wrongs, or 'torts', as long as industrial action falls within the legal definition of a trade dispute and takes place 'in contemplation of furtherance of a trade dispute'.

The Conservative Government's 1980s and 1990s legislation has limited this legal immunity to situations where a properly conducted ballot has been carried out by the union authorizing or endorsing the action and where the action is between an employer and their direct employees, with all secondary or sympathy action being unlawful. Immunity is also removed if industrial action is taken to impose or enforce a closed shop or where the action is unofficial and is not repudiated in writing by the union. The impact of this law is to deter the calling of strikes without careful consideration of where the line of legal immunity is now drawn and of the likely result of a secret ballot. But the secret ballot can in effect legitimize strike action.

The number of strikes and the proportion of days lost through strike action have diminished significantly in the UK since the 1970s. This reduction has been caused more by economic pressures than by the legislation. Unions have had to choose between taking strike action, which could lead to closure, or survival on the terms dictated by employers with fewer jobs. In addition, unions in manufacturing found that their members who remained in jobs did well out of local productivity bargaining and threatened strike action.

Negotiating and bargaining

Collective bargaining requires the exercise of negotiating and bargaining skills. This section covers the processes of negotiation and bargaining and the conventions and skills involved.

The process of negotiation

Negotiation takes place when two parties meet to reach an agreement concerning a proposition, such as a pay claim, one party has put to the other. Negotiation can be convergent when both parties are equally keen to reach a win-win agreement (in commercial terms, a willing buyer/willing seller arrangement). It can be divergent when one or both of the parties aim to win as much as they can from the other while giving away as little as possible. This can become a zero-sum game where the winner takes all and the loser gets nothing although, fortunately, this is seldom the case in pay negotiations.

Negotiations in an industrial relations setting differ from commercial negotiations, as shown in Table 55.1.

Table 55.1 Industrial relations negotiations/commercial negotiations

Industrial relations negotiations	Commercial negotiations
<ul style="list-style-type: none"> ● Assume an ongoing relationship – negotiators cannot walk away ● The agreement is not legally binding ● Conducted on a face-to-face basis ● Carried out by representatives responsible to constituents ● Make frequent use of adjournments ● May be conducted in an atmosphere of distrust, even hostility 	<ul style="list-style-type: none"> ● Negotiators can walk away ● The contract is legally binding ● May be conducted at a distance ● Carried out directly with the parties being responsible to a line manager ● Usually conducted on a continuing basis ● Usually conducted on a ‘willing buyer/willing seller’ basis

In negotiations on pay or other terms and conditions of service, management represents the employer’s interests and employee representatives represent the interests of employees. Both sides are of equal status.

Negotiations take place in an atmosphere of uncertainty. Neither side knows how strong the other side’s bargaining position is or what it really wants and will be prepared to accept. Negotiations are conducted in four stages.

1. Initial steps

In a pay negotiation, unions making the claim will define three things: a) the target they would like to achieve, b) the minimum they will accept, and c) the opening claim they believe will most likely lead to achieving the target. Employers define three related things: a) the target settlement they would like to achieve, b) the maximum they would be prepared to concede, and c) the opening offer that will provide them with sufficient room to manoeuvre in reaching their target. The difference between a union's claim and an employer's offer is the negotiating range. If the maximum the employer will offer exceeds the minimum the union will accept, the difference will be the settlement range, in which case a settlement will be easily reached. If, however, the maximum the employer will offer is less than the minimum the union will accept, negotiations will be more difficult and a settlement will only be reached if the expectations of either side are adjusted during the bargaining stage. The extent to which this will happen depends on the relative power of the two parties.

Preparation for negotiation by either party involves:

- deciding on the strategy and tactics to be used;
- listing the arguments to be used in supporting their case;
- listing the arguments or counter-arguments the other party is likely to use;
- obtaining supporting data;
- selecting the negotiating team, briefing them on the strategy and tactics, and rehearsing them in their roles.

2. Opening

Tactics in the opening phase of a negotiation can be as follows:

- open realistically and move moderately;
- challenge the other side's position as it stands; do not destroy their ability to move;
- observe behaviour, ask questions and listen attentively in order to assess the other side's strengths and weaknesses, their tactics and the extent to which they may be bluffing;
- make no concessions at this stage;
- be non-committal about proposals and explanations – do not talk too much.

3. Bargaining

After the opening moves, the main bargaining phase takes place in which the gap is narrowed between the initial positions, and there are attempts to persuade each other that their case is strong enough to force the other side to close at a less advantageous point than they had

planned. Bargaining is often as much about concealing as revealing – keeping arguments in reserve to deploy when they will make the greatest impact.

The following tactics can be employed:

- always make conditional proposals: ‘If you will do this, then I will consider doing that’ – the words to remember are: ‘if... then...’;
- never make one-sided concessions: always trade off against a concession from the other party: ‘If I concede x, then I expect you to concede y’;
- negotiate on the whole package: negotiations should not allow the other side to pick off item by item (salami negotiation);
- keep the issues open to extract the maximum benefit from potential trade-offs.

There are certain bargaining conventions that experienced negotiators follow because they appreciate that by so doing they create an atmosphere of trust and understanding, which is essential to the sort of stable bargaining relationship that benefits both sides. Some of the more generally accepted conventions are:

- Whatever happens during the bargaining, both parties are hoping to reach a settlement.
- Negotiators should show that they respect the views of the other side and take them seriously even if they disagree with them.
- While it is preferable to conduct negotiations in a civilized and friendly manner, attacks, hard words, threats and controlled losses of temper may be used by negotiators to underline determination to get their way and to shake their opponent’s confidence and self-possession. But these should be treated by both sides as legitimate tactics and should not be allowed to shake the basic belief in each other’s integrity or desire to settle without taking drastic action.
- Off-the-record discussions (‘corridor negotiations’) can be mutually beneficial as a means of probing attitudes and intentions and smoothing the way to a settlement, but they should not be referred to specifically in formal bargaining sessions unless both sides agree in advance.
- Each side should be prepared to move from its original position.
- It is normal, although not inevitable, for the negotiation to proceed by alternate offers and counter-offers from each side, which lead steadily towards a settlement.
- Third parties should not be brought in until both sides agree that no further progress can be made without them.
- Concessions, once made, cannot be withdrawn.

- If negotiators want to avoid committing themselves to ‘a final offer’ with the risk of devaluing the term if they are forced to make concessions, they should state as positively as they can that this is as far as they can go. But bargaining conventions allow further moves from this position on a quid pro quo basis.
- Firm offers must not be withdrawn.
- The final agreement should mean exactly what it says. There should be no trickery and the agreed terms should be implemented without amendment.
- So far as possible the final settlement should be framed and communicated in such a way as to reduce the extent to which the other part loses face or credibility.

When bargaining, the parties have to identify the basis for a possible agreement; that is, the common ground. One way of doing this, as described by Gennard and Judge (2005), is to use the aspiration grid technique. The grid sets out the parameters for the anticipated outcome of the negotiations. It shows the expected issues one of the parties is prepared to trade as well as the anticipation of the attitude to the bargaining agenda of the other party. The grid gives the parameters within which the forthcoming bargaining sessions might be expected to develop. It helps to identify the information required from the other party and the information required to be conveyed by one party to the other party. If the receipt of this information shows expectations as to the behaviour of the other party to be wrong, then the aspiration grid has to be reassessed and modified.

4. Closing

There are various closing techniques:

- Make a concession from the package, preferably a minor one, which is traded off against an agreement to settle. The concession can be offered more positively than in the bargaining stage: ‘If you will agree to settle at x then I will concede y.’
- Do a deal, split the difference or bring in something new, such as extending the settlement timescale, agreeing to back-payments, phasing increases, or making a joint declaration of intent to do something in the future.
- Summarize what has happened so far, emphasize the concessions that have been made and the extent of the movement from the original position, and indicate that the limit has been reached.
- Apply pressure through a threat of the dire consequences that will follow if a ‘final’ claim is not agreed or a ‘final offer’ is not accepted.

Employers should not make a final offer unless they mean it. If it is not really their final offer and the union calls their bluff, they may have to make further concessions and their credibility

will be undermined. Each party will attempt to force the other side into revealing the extent to which they have reached their final position. But negotiators should not allow themselves to be pressurized; they have to use their judgement on when to say 'this is as far as we can go'. That judgement will be based on their understanding that the stage when a settlement is possible has been reached.

Negotiating and bargaining skills

The skills required to be effective in negotiations and bargaining are:

- Analytical ability – the capacity to assess the factors that affect the negotiating stance and tactics of both parties.
- Empathy – the ability to put oneself in the other party's shoes.
- Interactive skills – the ability to relate well with other people.
- Communicating skills – the ability to convey information and arguments clearly, positively and logically.
- Keeping cards close to the chest – not giving away what you really want or are prepared to concede until you are ready to do so (in the marketplace it is always easier for sellers to drive a hard bargain with buyers who have revealed somehow that they covet the article).
- Flexible realism – the capacity to make realistic moves during the bargaining process to reduce the claim or increase the offer, which will demonstrate that the bargainer is seeking a reasonable settlement and is prepared to respond appropriately to movements from the other side.

Managing with unions

Ideally, management and trade unions learn to live together, often on a give and take basis, the presumption being that neither would benefit from a climate of hostility or by generating constant confrontation. It would be assumed in this ideal situation that mutual advantage would come from acting in accordance with the spirit as well as the letter of agreed joint regulatory procedures. However, both parties would probably adopt a realistic pluralist viewpoint, recognizing the inevitability of differences of opinion, even disputes, but believing that with goodwill on both sides they could be settled without recourse to industrial action.

Of course, the reality in the 1960s and 1970s was often different. In certain businesses, for example in the motor and shipbuilding industries, hostility and confrontation were rife, and newspaper proprietors tended to let their unions walk all over them in the interests of peace and profit.

Times have changed. Trade union power has diminished in the private sector if not in the public sector. Management in the private sector has tended to seize the initiative. They may be content to live with trade unions but they give industrial relations lower priority. They may feel that it is easier to continue to operate with a union because it provides a useful, well-established channel for communication and for the handling of grievance, discipline and safety issues. In the absence of a union, management would need to develop its own alternatives, which would be costly and difficult to operate effectively. The trade union and the shop stewards remain a 'useful lubricant'.

Alternatively, as Smith and Morton (1993) suggest, the management perspective may be that it is safer to marginalize the unions than formally to de-recognize them and risk provoking a confrontation: 'Better to let them wither on the vine than receive a reviving fertilizer.' However, an alternative view was advanced by Purcell (1979), who argued that management will have greater success in achieving its objectives by working with trade unions, in particular by encouraging union membership and participation in union affairs.

The pattern varies considerably but there is general agreement based on studies such as the Workplace Industrial Relations Survey that employers have been able to assert their prerogative – 'management must manage' in the workplace. They seem generally to have regained control over how they organize work, especially with regard to the flexible use of labour and multi-skilling. The 'status quo' clause, typical of many agreements in the engineering industry, whereby management could not change working arrangements without union agreement, has virtually disappeared.

Four types of industrial relations management have been identified by Purcell and Sisson (1983):

1. Traditionalists, who have unitary beliefs and are anti-union with forceful management.
2. Sophisticated paternalists, who are essentially unitary but they do not take it for granted that their employees accept the organization's objectives or automatically legitimize management decision making. They spend considerable time and resources in ensuring that their employees adopt the right approach.
3. Sophisticated moderns, who are either constitutionalists, where the limits of collective bargaining are codified in an agreement but management is free to take decisions on matters which are not the subject of such an agreement; or consultors, who accept collective bargaining but do not want to codify everything in a collective agreement, and instead aim to minimize the amount of joint regulation and emphasize joint consultation with 'problems' having to be solved rather than 'disputes' settled.
4. Standard moderns, who are pragmatic or opportunist. Trade unions are recognized, but industrial relations are seen as primarily fire-fighting and are assumed to be non-problematic unless events prove otherwise. This is by far the most typical approach.

On the whole, pluralism prevails and management and unions will inevitably disagree from time to time on employment issues. The aim is to resolve these issues before they

become disputes. This means adopting a more positive partnership approach. Where collective agreements are being made, a cooperative or integrative bargaining philosophy can be adopted that is based on perceptions about the mutual interdependence of management and employees and the recognition by both parties that this is a means to achieve more for themselves. As Ackers and Payne (1998) emphasize: 'Partnership offers British unions a strategy that is not only capable of moving with the times and accommodating new political developments, but allowing them a hand in shaping their own destiny.'

Managing without trade unions

Millward *et al* (1992) established from the third Workshop Industrial Relations Survey that the characteristics of union-free employee relations were as follows.

SOURCE REVIEW

Characteristics of union-free employee relations, Millward *et al* (1992)

- Employee relations were generally seen by managers as better in the non-union sector than in the union sector.
- Strikes were almost unheard of.
- Labour turnover was high but absenteeism was no worse.
- Pay levels were generally set unilaterally by management.
- The dispersion of pay was higher, it was more market-related and there was more performance-related pay. There was also a greater incidence of low pay.
- In general, no alternative methods of employee representation existed as a substitute for trade union representation.
- Employee relations were generally conducted with a much higher degree of informality than in the union sector. In a quarter of non-union workplaces there were no grievance procedures and about a fifth had no formal disciplinary procedures.
- Managers generally felt unconstrained in the way in which they organized work.
- There was more flexibility in the use of labour than in the union sector, which included the greater use of freelance and temporary workers.
- Employees in the non-union sector are two and a half times as likely to be dismissed as those in unionized firms and the incidence of compulsory redundancies is higher.

The survey concluded that many of the differences that exist between unionized and non-unionized workplaces could be explained by the generally smaller size of the non-union firms and the fact that many such workplaces were independent, rather than being part of a larger enterprise. Another characteristic, not mentioned by the survey, is the use by non-unionized firms of personal contracts as an alternative to collective bargaining.

The state of employment relations

A survey conducted in 2008 (CIPD, 2008e) revealed what was on the whole a satisfactory state of employment relationships, as summarized below.

SOURCE REVIEW

2008 Survey of Employment Relations, CIPD – main findings

- Nearly two-thirds of unionized employers describe the relationship between management and the unions as either positive or very positive.
- About a quarter of respondents that recognize unions report that the relationship between management and the unions is neither positive nor negative, while 9 per cent of employers describe relationships with the unions as negative or very negative.
- Half of unionized employers describe personal relations between managers and unions as good, and 44 per cent said they are variable.
- Just 2 per cent of employers say personal relations between managers and union officials are bad, and 3 per cent report they are non-existent.
- Just over 40 per cent of unionized organizations say their relationship with the unions has changed in the last year, with manufacturing and production and public services organizations most likely to report change.
- Among employers citing changes in union relations, 42 per cent report that the relationship has become more negative and 41 per cent of respondents say the opposite.
- Nearly 60 per cent of respondents in organizations that recognize unions think that unions exert a significant or very significant influence on their organization. Just over 40 per cent of respondents say that unions exert little or no significant influence.

- Public sector respondents are most likely to see union influence as strong, with almost three-quarters reporting union influence as significant or very significant.
- A positive net balance of respondents say union influence has become weaker over the last two years.
- Nearly half of respondents that recognize unions say unions take a constructive line when change is proposed, always (6 per cent) or usually (41 per cent). Four in ten employers say unions respond constructively sometimes, 12 per cent report that unions take a constructive line rarely, and just 2 per cent say unions never respond constructively.

Handling employment issues

Management should never act without establishing a just cause for action after a thorough investigation. If it establishes there is a fair and just cause to act, then in carrying out that action it must behave in a fair, reasonable and consistent manner. Employment law says that if management does not behave on the basis of just cause and reasonable behaviour in accordance with the principles of natural justice, then the law will make it do so. For example, the law on dismissal says you must have a fair reason to dismiss (eg unsatisfactory behaviour, lack of capability or redundancy) and in carrying out the dismissal, management must behave reasonably (that is, be procedurally correct).

Employee relations processes – key learning points

Employee relations policies

Employee relations policies express the philosophy of the organization on what sort of relationships between management and employees and their unions is wanted, and how they should be handled. They cover trade union recognition, collective bargaining, employee relations procedures, participation and involvement, partnership, the

employment relationship, harmonization and working arrangements.

Employee relations strategies

Employee relations strategies set out how employee relations policy objectives are to be achieved. They cover union recognition, procedural agreements, bargaining structures and other matters concerning relationships with unions and employees such

Employee relations processes – key learning points (continued)

as involvement, communication and partnership.

Union recognition

An employer fully recognizes a union for the purposes of collective bargaining when pay and conditions of employment are jointly agreed between management and trade unions. Partial recognition takes place when employers restrict trade unions to representing their members on issues arising from employment.

Collective bargaining outcomes

These include procedural agreements, substantive agreements, single-union deals, new-style agreements, partnership agreements and employee relations procedures.

Dispute resolution

Dispute resolution processes comprise conciliation, arbitration and mediation.

Informal employee relations

Informal employee relationships happen whenever a line manager or team leader is handling an issue in contact with a shop steward, an employee representative, an

individual employee or a group of employees.

Negotiating and bargaining

Negotiations take place in four stages: initial steps, opening, bargaining and closing.

Managing with unions

Working with unions has often meant conflict in the past, but while conflict can never be avoided, a positive partnership approach can be adopted.

Managing without unions

Millward *et al* (1992) established that the characteristics of union-free employee relations were that employee relations were generally seen by managers as better in the non-union sector than in the union sector, employee relations were generally conducted with a much higher degree of informality than in the union sector, managers generally felt unconstrained in the way in which they organized work, and there was more flexibility in the use of labour than in the union sector, which included the greater use of freelance and temporary workers.

Questions

1. You are the people resourcing manager in a medium-sized engineering firm that carries out sub-contract work for the aerospace industry in the UK and abroad. Manufacturing

Questions (continued)

operations are fully computerized and sophisticated capacity planning systems are in use. A trade union representing manufacturing staff (terms and conditions have been harmonized) is recognized. It is quite militant and hotly opposes any attempt to vary custom and practice. The firm's order book is reasonably full and the long-term forecast is good, but demand is subject to marked fluctuations. The manufacturing director e-mails you to say that it will be essential to prepare plans for making short-term adjustments to available capacity. From his previous experience he believes that the ways of doing this include: altering the total hours worked by changing the number of shifts or overtime; employing part-time staff to cover peak demand; scheduling work patterns so that the total workforce available at any time varies in line with varying demand; using outside contractors; adjusting the process, perhaps making larger batches to reduce set-up times; and adjusting equipment and processes to work faster or slower. He asks you to advise him on what the IR implications would be of any of these actions. He also wants your views on how to avoid any negative reactions from the union.

2. From the managing director of a subsidiary company: 'I am due to negotiate with the unions on their pay claim next week. This is my first experience of negotiation. Could you advise me on the approach I should adopt?'
3. From your chief executive: 'What is the case for and against our entering into a partnership agreement with the trade union? I would be interested in any evidence you can get from research or experience elsewhere.'

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