

# STUDIES AND COMMENTS

## Negotiation within labor relations

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### **Abstract**

*Negotiation is the process we use in order to obtain things that we want and are controlled by others. Any desire we intend to fulfill, any need that we are obliged to meet is a potential bargaining situations. Between groups and individuals, negotiation occurs naturally, as some have one thing that the other wants and is willing to bargain to get it. More or less we are all involved in negotiations: closing a contract, buying a thing, obtaining sponsorships, collective decision making, conflict resolution, agreement on work plans. Within the field of labor relations, negotiation can occur on the occasion of closing / amending employment contracts or in order to regulate employment or work relations. Moreover, used properly, the negotiation can be an effective tool for solving labor disputes, with benefits for both involved parties. This paper aims to present negotiating principles and steps to follow in planning and preparing negotiations and the negotiating techniques that can lead to a successful negotiation based on a well-developed plan.*

**Keywords:** *negotiation, social partners, labor contract, labor conflict, negotiation techniques.*

**JEL classification:** *K31*

## **1. Negotiation notion and characteristics**

### **1.1. The concept of negotiation**

Widely, the negotiation represents the action of dealing, discussing with the purpose of reaching to an agreement. The Explicative Dictionary of the Romanian Language defines the negotiation as being the action of negotiating and its results. To negotiate supposes to deal with somebody towards closing an economic, politic, cultural convention; to intermeditate, to close a deal, to run several commercial operations.

Negotiation assumes successive discussions, a verbal communication partners with equal rights and obligations. Negotiation appears as a “concentrated form of inter-human communication where two or several parties disagreeing wish to reach to a settlement for a common issue of reach a common purpose”; “to

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negotiate means to communicate hopping to find consent, an agreement”<sup>2</sup>. The communication process implies: exchange of information, developing some proposals, expressing certain opinions, the existence of several disagreements, solving the misunderstandings and finally, to close the deal<sup>3</sup>.

Negotiation represents a type of human interaction where the partners are linked through common interests, but also separated by disagreements in connection to solving these interests. The negotiation involves persons or groups that wish for a material good or advantage which they can achieve, by developing specific strategies, based on a certain type of communication<sup>4</sup>.

Negotiation is the process in which two or more parties, with common and conflicting goals, discuss the possibilities of a potential agreement<sup>5</sup>.

Gavin Kennedy<sup>6</sup> gave several definition of negotiation. “Negotiation is the process by which we pursue the terms for getting what we want from people who want something from us.” Another definition is “a process of adjusting both parties’ views of their ideal outcome to an attainable outcome.”

Negotiation in conflict resolution is defined as “a process of resolving conflict between two or more parties whereby both or all modify their demand to achieve a mutually acceptable compromise”<sup>7</sup>.

### 1.2. Characteristics of the negotiation

According to some authors’ opinion<sup>8</sup>, the negotiation comprises certain defining characteristics as type of interrelation: the involved parties’ interdependence, the existence of some divergent opinions or interests and the parties’ will to cooperate in order to find a mutual advantageous solution for solving the problem.

In another opinion<sup>9</sup>, whether individual and private or professional, negotiation has the same basic characteristics: it involves two or more parties, there is a conflict of interests between the parties, there is also a common interest between the parties, negotiation is a voluntary process, when we negotiate, we expect to give and to take, successful negotiation involves the management of tangibles as well as of intangibles.

<sup>2</sup> Claudia-Ana Moarcăș Costea, *Comunicare și comportamentul în negocierea contractelor*, Artprint Printing House, 2005, pp. 85-88, cited by Alexandru Athanasiu, Luminița Dima, *Dreptul muncii*, All Beck Printing House, Bucharest, 2005, p. 262.

<sup>3</sup> Alexandru Athanasiu, Luminița Dima, *op.cit.*, p. 262.

<sup>4</sup> Viorica Aura Păuș, *Comunicare și resurse umane*, Polirom Printing House, Iași, 2006, p. 266.

<sup>5</sup> Don Hellriegel, John Slocum, Richard Woodman, *Organizational Behaviour*, West Publishing Company, SUA, 1992, p.478, cited by Ion-Ovidiu Pânișoară, *Comunicare eficientă*, IInd edition, revised and updated, Polirom Publishing House, Iași, 2004 p. 180.

<sup>6</sup> Gavin Kennedy, *The perfect negotiation*, Random House, 1992, pp.5-6, Ruxandra Constantinescu-Ștefănel, *Negotiation and conflict management*, 2nd edition, Editura ASE, Bucharest, 2012, p. 9.

<sup>7</sup> Ruxandra Constantinescu-Ștefănel, *op.cit.*, p. 9.

<sup>8</sup> Dragoș Vasile, *Tehnici de negociere și comunicare*, Expert Printing House, Bucharest, 2000, pp.138-142, cited by Viorica Aura Păuș, *op.cit.*, p. 266.

<sup>9</sup> Ruxandra Constantinescu-Ștefănel, *op. cit.*, p. 10.

Starting from the above mentioned characteristics, it seems that the negotiation:

- Involves **two or several parties**. Negotiation may be interpersonal or intergroup.
- Involves the existence of a **conflict** of interests between the parties.

*The disagreements* represent a second condition for negotiating. If the interaction between the parties is consensual, the negotiation loses its object. In wage negotiation, following the changing needs psychological rule, it's installed a balance period when the need is being considered satisfied and after that a new need intervenes for the same party and the negotiation is resumed in order to obtain new salary rights.

The disagreements may refer to a conceptual field (different thoughts, conceptions on life, multicultural conflicts) or to obtaining a material good. Sometimes both of these elements mix together, giving the negotiation a more complex characteristic (for instance, the trade-unions negotiation has as objective not only improving the work conditions, but also the labor protection and security, developing new undertakings sectors)<sup>10</sup>.

- Implies the existence of a **common interest** between the parties, therefore the negotiation involves *interdependence*.

Interdependence arises from the existence of a conflict of interest or from the participation in a common project in which each party wants to be involved, initially starting on different conceptual positions or needs. At managerial level, the manager has certain requirements to subordinates, but can not dispense with their role in the hierarchy. On the other hand, they need remuneration for their work, under contractual limits negotiated with the employer (or imposed by the employer with the employee's consent without thereby to become immutable). The joint project is the common interest of all is the well-functioning of the company or organization, without which both would be affected<sup>11</sup>.

- Negotiation is a **voluntary process**. The parties enter this process either because they think this is the only way to get what they want or because they prefer to search for an agreement rather than to fight openly<sup>12</sup>.

No party can be obliged to accept the negotiation and each can redraw if doesn't agree with the negotiation terms and doesn't see possible closing a deal.

The parties' cooperation makes possible the values exchange based on principles agreed by both parties, and through specific mechanisms known and accepted by the partners. Negotiation is not the same thing with the one way value transfer from a party to another, but involves mutual adjustment to the identified needs, subsumed to different levels of expectations, but not independent. Thus, the employer's refusal to negotiate the wages rights may lead to strike, within certain legal conditions, which may deeply affect the employers' interest<sup>13</sup>.

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<sup>10</sup> Viorica Aura Păuș, *op.cit.*, pp. 266-267.

<sup>11</sup> *Ibidem*, p. 266.

<sup>12</sup> Ruxandra Constantinescu-Ștefănel, *op.cit.*, p.10.

<sup>13</sup> Viorica Aura Păuș, *op.cit.*, p. 267.

- Negotiation consists in **making offers and counter-offers**. Taking into consideration that the parties have different objectives, the agreement can be reached if the parties are willing to make concessions<sup>14</sup>.
- Negotiation involves **the management of tangibles** (e.g. price, wages and terms of the agreement) as well of **intangibles** (i.e. psychological motivations). Intangible factors can have an enormous influence on the negotiation process.

## 2. Negotiation within labor relations

### 2.1. Negotiation within the labor relation between the employee and the employer

Negotiation within the labor relation between the employee and the employer can constitute an effective instrument for achieving the involved parties' objectives on the occasion of closing, amending, terminating the individual labor contract and also in solving the individual labor conflicts.

According to art. 16 para.1 of the Romanian Labor Code<sup>15</sup>, the individual labor contract is closed based on mutual consent between parties. Closing such a contract requires a negotiation in order to establish the clauses accepted by the parties.

The existence of an individual negotiation between the employee and the employer also resides from the content of art. 17 para. 6, art. 20 and art. 21 of the Labor Code which expressly refer to the term of negotiation, establishing a certain legal framework for developing negotiation. The analysis of these articles reveals that the negotiation can be use in closing and amending the individual labor contract. A reason for negotiation can also exists when terminating the individual labor contract, reasoning also sustained by article 55, letter b) of the Labor Code that allows the termination of the individual labor contract based on the parties' agreement, at the date established by them.

The Labor Code foresees some essential clauses<sup>16</sup> mandatory included within the individual labor, as it follows:

- the parties identity;
- the place of work or in the absence of stable location, the employee's possibility to work within different places;
- the headquarters or, if the case, the employer's domicile;
- the job position in accordance with the Romanian jobs classification or with other regulatory acts and also the job description;
- the professional assessment criteria applicable within the unit;
- the job related risks;
- date on which the contract is to produce effects;

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<sup>14</sup> Ruxandra Constantinescu-Ștefănel, *op.cit.*, p. 51.

<sup>15</sup> Law no. 53/2003 republished within the Romanian Official Journal no. 345/18.05.2011.

<sup>16</sup> Art. 17 paragraph 3 of the Labor Code.

- the contract's duration, in case of a fixed-term labor contract or a temporary contract;
- amount of annual leave the employee is entitled to;
- the conditions of the notice and its duration;
- base salary, other components of the wage and salary payment frequency to which the employee is entitled to;
- normal working period of time in hours / day and days / week;
- an indication of the collective labor agreement governing the working conditions of the employee;
- the duration of the probation period.

Even these essential elements can be the object of some negotiation between the employee and the employer (e.g. the job position, the date on which the contract is to produce effects, wages rights).

The parties can also negotiate other specific clauses, as they are presented within article 20 para. 1 of the Labor Code (the professional training clause, the non-competing clause, the mobility clause, the confidentiality clause), without considering this enumeration as being limitative. Both the employee and the employer can propose any other clause for negotiation, within the legal framework.

According to article 41 of the Labor Code, the individual labor contract can be amended only based on the mutual agreement between the parties and the negotiation target certain elements, such as: the contract's duration, the place of work, the type of work, the working conditions, the wage, the working time and the leave time.

Nevertheless, the negotiation between the employee and the employer must take into account two aspects, namely: the individual labor contract's clauses can not contain contrary provisions or rights under the minimum level established by legal framework or by the collective labor contracts<sup>17</sup> and the employees can not renounce to their rights recognized by the law because any transaction having as objective the renouncement of the employees' rights recognized by the law or the limitation of these rights is null<sup>18</sup>.

While the common rule is that the rights and obligations related to the work relations between the employee and the employer are established in accordance with the legal provisions, through negotiation, within the collective labor contracts and individual labor contract<sup>19</sup>, there are some personnel categories for which different regulatory rules apply to the working relations. For instance, in what concerns the public servants, the work relations arise and are exercised based on the assignment administrative document, issued according to the law<sup>20</sup>. The public servants' rights and obligations are comprised within the Law no. 188/1999 and also within special statutes for the public servants from within certain public

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<sup>17</sup> Art. 11 of the Labor Code.

<sup>18</sup> Art. 38 of the Labor Code.

<sup>19</sup> Art. 37 of the Labor Code.

<sup>20</sup> Art. 4 of the Law no. 188/1999 on public servant's statute published within the Romanian Official Journal no. 600/08.12.1999, amended and updated.

services (the specialty structures from within the Romanian Parliament; the specialty structures from within the Presidential Administration; the specialty structures from within the Legislative Council; the diplomatic and consular services, the custom authority; the police and other structures from within the Ministry for Internal Affairs; other public services established by the law).

In what concerns the individual labor conflicts, the court has the competency to solve them<sup>21</sup>. Nevertheless, nothing stops the parties to find an amiable alternative to solve the conflict.

**Table no. 1 - Negotiation within the labor relation between the employee and the employer**

Involved parties	Premises that might lead to negotiation	Negotiation's object
Employee vs. Employer	<ul style="list-style-type: none"> <li>• Closing</li> <li>• Amending</li> <li>• Terminating the individual labor contract</li> </ul>	The individual labor contract's clauses
	Individual labor conflicts <sup>22</sup>	<ul style="list-style-type: none"> <li>• Denial of some rights or failure to fulfill obligations that arise from the individual labor contracts or collective labor contracts or agreements and the public servants' work relations, and also from law or other regulatory acts;</li> <li>• Damages caused by the parties by failure or improper performance of the obligations set by the individual labor contract or work relation;</li> <li>• The nullity of the individual labor contracts or certain clauses of these contracts;</li> <li>• The termination of work relations or some of their clauses<sup>23</sup>.</li> </ul>

## 2.2. Negotiation within the collective labor law

In the field of labor relations, the collective bargaining represents a process through which it's performed the social dialogue necessary between the social partners in order to establish the work legal terms. Mainly, the collective negotiation represents a process that brings together the social partners through which there are developed and applied some basic rules that set up the legal

<sup>21</sup> Art. 208 of the Law no. 62/2011, republished.

<sup>22</sup> Art. 1, letter p) of the Law no. 62/2011, republished.

<sup>23</sup> Art. 161 of the Law no. 62/2011, republished.

framework for the employees and especially conditions related to closing, executing and terminating the labor contract.

The collective bargaining and implicitly closing the collective labor contracts is a result of the necessity of developing and applying certain rules required for the legal terms of the working relations and for governing, especially, the closing, execution and termination of individual labor contract<sup>24</sup>.

#### **A. International legal framework**

At international level, there are several acts that regulate the collective bargaining.

In order to harmonize national laws on labor and their uniform application, the International Labor Organization adopted so far 189 conventions and 201 recommendations which refer, inter alia, to issues that aim the social partners (trade-unions, employers) including collective bargaining and tripartite consultations.<sup>25</sup>

Thus, the International Labor Organization has developed a series of conventions within the social dialogue domain that Romania has ratified: Convention no. 87/1948 on freedom of association and protection of the right to organize<sup>26</sup>, Convention no. 98/1949 on right to organize and collective bargaining<sup>27</sup>, Convention no. 135/1971 on workers' representatives protection within undertakings and facilities to be granted to<sup>28</sup>, Convention no. 144/1976 concerning the tripartite consultations destined to promote the application of international labor legal provisions<sup>29</sup>, Convention no.154/1981 concerning the promotion of collective bargaining<sup>30</sup>.

Art. 5, para. 2, letter e) of the Convention no. 154/1981 foresees that measures adapted to national conditions shall be taken to promote collective bargaining, one objective of these measures being that „ the bodies and procedures for the settlement of labor disputes should be so conceived as to contribute to the promotion of collective bargaining.”

Also, article 6 refers to the fact that „ The provisions of the Convention do not preclude the operation of industrial relations systems in which collective bargaining takes place within the framework of conciliation and/or arbitration machinery or institutions, in which machinery or institutions the parties to the collective bargaining process voluntarily participate.”

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<sup>24</sup> Alexandru Athanasiu, Luminița Dima, *op.cit.*, p. 262.

<sup>25</sup> Ion Traian Ștefănescu, *Tratat teoretic și practic de drept al muncii*, Universul Juridic Publishing House, Bucharest, 2012, p. 60.

<sup>26</sup> Ratified by Romania through Decree no. 213/1957, published within the Romanian Official Journal no.4/18.01.1958.

<sup>27</sup> Ratified by Romania through Decree no. 352/1958, published within the Romanian Official Journal no.34/29.08.1958.

<sup>28</sup> Ratified by Romania through Decree no.83/1975, published within the Romanian Official Journal no 86/02.08.1975.

<sup>29</sup> Ratified by Romania through Law no. 96/1992, published within the Romanian Official Journal no.237/24.09.1992.

<sup>30</sup> Ratified by Romania through Law no. 112/1992, published within the Romanian Official Journal no.302/25.11.1992.

Even though, the conventions are instruments adopted by the International Labor Organization that set up legal obligations for the ratifying states, the organization's recommendations within the labor relations field, even if they are not subjected to ratification, they comprise guidelines, goals, address certain preferences to Member States, without creating genuine obligations<sup>31</sup>.

*The International Labor Organization's Recommendation no. 163/1981* related to the collective bargaining, correspondent to the ILO Convention on promoting collective bargaining no. 154/1981, foresees the necessity of instituting settlement procedures for the labor conflicts in order to help the parties in finding solutions for those conflicts, no matter if such a conflict arisen during the collective bargaining, in relation to the interpretation and application of the collective agreements or it's related to the Recommendation no. 130/1967 on solving complaints. The settlement procedure of this sort of conflicts must be established so that the social partners to have the possibility of regulating the conflict directly and through dialogue and negotiation.

At European level, the European Social Charter revised<sup>32</sup> contains provisions related to the right of association and the right to collective bargaining.

Article 6 of the Charter refers to the means of collaboration that must be undertaken by the social partners, in order to ensure the effective exercise of the right to collectively bargain, namely:

- a) joint consultation between workers and employers;
- b) to promote, where necessary and appropriate, machinery for voluntary negotiations between employers or employers' organizations and workers' organizations, with a view to the regulation of terms and conditions of employment by means of collective agreements;
- c) to promote the establishment and use of appropriate machinery for conciliation and voluntary arbitration for the settlement of labor disputes.

In accordance with article 276 of the Labor Code, complying with international obligations assumed by Romania, the labor legislation must be permanently harmonized with the European Union's regulations, with the International Labor Organization's conventions and recommendations, with the international labor framework.

### **B. National legal framework**

At national level, the right to collective negotiation is guaranteed by the Romanian Constitution, as it's being stated within art. 41 para. 5: "The right to

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<sup>31</sup> Monica Gheorghe, *Căi amiabile de soluționare a conflictelor de muncă*, Universul Juridic Publishing House, Bucharest, 2010, p. 77; Ion Traian. Ștefănescu, *Tratat de dreptul muncii*, Wolters Kluwer Publishing House, Bucharest, 2007, p. 48; Andrei Popescu, *Drept internațional și european al muncii*, C.H. Beck Publishing House, Bucharest, 2008, pp. 67-68; Nicolae Voiculescu, *Drept comunitar al muncii*, Wolters Kluwer Publishing House, Bucharest, 2009, p. 50.

<sup>32</sup> Amended on 03.05.1996, ratified by Romania through Law no. 74/1999, published within the Romanian Official Journal no.193/04.05.1999.

collective bargaining within the labor domain and the mandatory characteristic of the collective conventions are guaranteed”.

As stated within art. 1 letter b) point (iii) of the Social Dialogue Law no. 62/2011 the collective bargaining represents the negotiation between the employer or the syndicate and the trade union or the employees’ representatives which has as objective the regulation of the labor or work relations between the two parties and also any other agreements related to a common interest issue.

The collective bargaining is mandatory only at unit level, except the case when the unit has less than 21 employees<sup>33</sup>. *Per a contrario*, the collective bargaining is not mandatory in any other case, but an option, the opportunity of such a negotiation being assessed by the social partners.

Obviously, the collective bargaining obligation doesn’t suppose the obligation of reaching an agreement, which will contravene to the contractual freedom. The negotiation may or may not be successful, two possibilities arising from this perspective, such as:

- a) the happy ending of the negotiation leads to closing the collective contract;
- b) the negotiation failure can lead to triggering a collective labor conflict<sup>34</sup>.

Another aspect related to the negotiation within the collective labor law refers to the negotiation as means to settle collective labor conflicts.

As a particularity for the public sector, through the collective labor contracts there cannot be negotiated clauses related to financial rights, other than the ones foreseen by the legislation for each personnel category<sup>35</sup>. Therefore, within the public sector, the collective labor conflicts cannot have as source salary claims, others than the ones established by the law.

**Table no. 2 - Negotiation within the collective labor law**

Involved parties	Premises that might lead to negotiation	Negotiation’s object
Employer  Syndicate  vs.	Collective bargaining	<i>Claims:</i> <sup>36</sup> ✓ Salary reasons (non-payment of compensations, of indexations, of wages in time, of holidays bonuses); ✓ Labor organization (revision of labor norms, organization of working time, schedule, lack of position file); ✓ Working conditions (lack of normal labor and

<sup>33</sup> Art. 129 paragraph 1 of Law no. 62/2011 republished.

<sup>34</sup> Raluca Dimitriu, *Legea privind soluționarea conflictelor de muncă –Comentarii și explicații*, C.H. Beck Publishin House, Bucharest, 2007, p. 34.

<sup>35</sup> Art. 138 paragraph 1 of the Law no. 62/2011, republished.

<sup>36</sup> Source: National Institute for Statistics and Ministry of Work, Family, Social Protection and Elderly Persons; reference period: 2002-2010.

Involved parties	Premises that might lead to negotiation	Negotiation's object
Trade-union  Employees' representatives		<p>social conditions, promotion in higher wage classes);</p> <ul style="list-style-type: none"> <li>✓ Working time (lack of days-off, additional hours and leaves, shifts);</li> <li>✓ Social rights (lack of some social security measures at economic units level, own systems of social insurance, dwellings, treatment tickets, funds for social actions);</li> <li>✓ Trade-union life (conditions for union activity, employers involvement in the union activity, measures of leaders sanction, lack of transparency, presence of leaders at negotiations);</li> <li>✓ Labor force use (lack of employment loading, redistribution of staff, redundancies and sending in unemployment, retirement of those entitled, job stability);</li> <li>✓ Technical and material conditions (lack of orders and contracts, lack of material base, inadequate technical situation of outfits, supplies);</li> <li>✓ Other claims (changes in organizational structures, negotiation of collective contracts).</li> </ul>
	Collective labor conflicts <sup>37</sup>	<ul style="list-style-type: none"> <li>✓ The lack of agreement between the social partners in relation to the beginning, development and closure of the negotiation concerning the collective labor contracts of agreements;</li> <li>✓ The employer's or syndicate's refusal to start the negotiation of a collective labor contract or agreement, when such a contract or agreement doesn't exist or the previous one is obsolete;</li> <li>✓ the employer's or syndicate's refusal to accept the employees' claims;</li> <li>✓ The lack of agreement concerning the closure of a collective labor contract or agreement until the date mutually agreed by the parties in order to finalize de negotiations.</li> </ul>

<sup>37</sup> Art. 1 letter o) and art. 161 of the Law no. 62/2011, republished.

### 3. Negotiation techniques

Negotiations from different areas have different objects, involve different parties and may need different strategies, techniques, tactics and arguments<sup>38</sup>.

Negotiation depends on a series of factors. The negotiations can be influenced by the organizational culture which may either favor the conflict or the cooperation.

Michel Delahaye tries to predict the negotiation difficulty degree based on several factors and criteria: type of agreement (criteria: object, strategic importance, complexity, national or international), conditions of negotiation (criteria: contract assignment, way of negotiating, number of parties), parties' identity (criteria: legal status, nationality, quality of the opponent), parties' relationships (criteria: parties' positions, size, negotiation atmosphere)<sup>39</sup>.

In connection with the labor relations, we may underline the **negotiation's essential elements**, as it follows:

✓ **The involved parties:** the employee, the trade-union or the employee's representatives, on a hand, and the employer, the syndicate, on the other hand.

✓ **The position and the power of negotiation:**

According art. 5 para. 1 of the Labor Code, the labor relations are governed by the equality of treatment principle for all employees and employers.

Article 131 paragraph 1 of the Romanian Social Dialogue Law and article 229 para. 3 of the Labor Code stipulate that the negotiation of clauses and closing the collective labor contracts implies that the parties are equal and free.

The relation between the employee and the employer involves a juridical and economical subordination defined by the fact that the employee is working under the authority of the employer, which has the power to give orders and directives to the employee, to control the fulfillment of the work tasks and to sanction the misconducts, but also to ensure the employee's means of existence (by the successive payment of the salary) in exchange for the performed work<sup>40</sup>.

✓ **The negotiation context** can be divided in several components, each of them having the potential of influencing and of structuring the strategies and the processes (the general and particular negotiation environment, the negotiation behavior of the involved parties, the negotiation circumstances)<sup>41</sup>.

<sup>38</sup> Ruxandra Constatinescu-Ștefănel, *op.cit.*, p. 21.

<sup>39</sup> Michel Delahaye, *La négociation d'affaires*, Dunod, Paris, 2002, pp.60-61, cited by Ruxandra Constatinescu-Ștefănel, *op.cit.*, p. 25.

<sup>40</sup> Alexandru Țiclea, *Tratat de dreptul muncii – Legislație. Doctrină. Jurisprudență*, VIth edition, revised and updated, Universul Juridic Publishing House, Bucharest, 2012, p. 333.

<sup>41</sup> Dragoș Vasile, *op.cit.*, p. 176, cited by Viorica Aura Păuș, *op.cit.*, p. 268.

In order to ensure the negotiation success, this has to be thoroughly planned by taking into account several directives: establishing the negotiation's objectives, clarifying priorities, establishing secondary zones of interest and gathering relevant information for the negotiation.

In all case concerning the negotiation of the individual labor contracts, the collective bargaining and the negotiation as instrument for settling the collective labor conflicts, the legislator instituted the obligation for the employer to inform the employees about the working conditions and the elements related to the labor relations<sup>42</sup>, to inform and consult the trade-unions and the employees' representatives by sending the information that would allow them to get used to the issue in question and to exam it well-aware of the fact and through exchange of opinions within the social dialogue framework<sup>43</sup>.

The negotiations' success is not due to chance, but comes from a well-elaborated plan. In order to come up with a plan that leads to the negotiation's success, within the specialty literature<sup>44</sup>, there were proposed several *steps to follow*:

- ✓ **Preparing the negotiation** supposes gathering the information in relation to the problem in question, establishing the bargaining objectives and assessing relative strength and weak points. With regards to establishing the negotiation's objectives, Jean Hiltrop and Sheila Udall<sup>45</sup> identify three categories of objectives that has to be taken into consideration: a first line objective (the best possible outcome), a last line objective ( the less good result, but still acceptable), a target objective (the expected outcome).
- ✓ **Developing a strategy.** There are several types of strategies<sup>46</sup>, among which we mention the following: among which we mention the following: collaborating, compromising, accommodating, controlling and avoiding. The collaboration is seen suitable when the issue is too important and cannot be avoided; the compromise when although the negotiation's object has a certain importance, but the involved parties' relationship is more important; accommodating when the problem is more important to one part than to another one; controlling when a quick decision is vital and the party taking the decision is stronger than the other one; avoiding when the problem is not important.
- ✓ **Starting the negotiation process.**
- ✓ **Expressing the disagreement and triggering the conflict.** After the problems have been defined, it's absolutely necessary to emphasize the areas where the disagreements or conflicts appear. Only after achieving

<sup>42</sup> Art. 40 para. 2 letter a) of the Labor Code.

<sup>43</sup> Art. 1 letter b) points. (i) and (ii) of the Law no. 62/2011 republished.

<sup>44</sup> Ruxandra Constantinescu-Ștefănel, *op.cit.*, p. 37.

<sup>45</sup> Jean Hiltrop, Sheila Udall, *Arta negocierii*, Teora Publishing House, Bucharest, 1998, cited by Ion-Ovidiu Pânișoară, *op.cit.*, p. 182.

<sup>46</sup> Ruxandra Constantinescu-Ștefănel, *op.cit.*, p. 44-45.

this thing it's possible to solve the conflicts in a manner acceptable for both parties.

- ✓ **The negotiation itself**<sup>47</sup> involves obtaining concessions and out coming deadlocks.

Within a negotiation it's important to use the arguments of both parties; the conclusions to be express in a common language, to avoid dilution of the arguments and the use of direct and categorical arguments and the questions must be addressed in an open manner and positive atmosphere of mutual respect<sup>48</sup>.

- ✓ **Reaching an agreement** involves expressing an agreement and ensuring its application.

In relation to the *negotiation techniques and tactics*, there are many approaches<sup>49</sup>: deceptive techniques (using lies, fake non-verbal messages, appearing weak, misrepresenting values of the objectives, false disinterest in dealing, false disinterest in making concessions, false demands and concessions), whose main goal is to conceal one's negotiation strategies and objective and to mislead the other party about the negotiation's stake, pressure techniques (intransigence, creating physical discomfort), aggressive and competing techniques (aggressive behavior, threats and warnings), defensive techniques (changing the subject, making promises, dealing with inflexible positions).

Among *tactics of negotiation*<sup>50</sup>, we can find the following ones:

- *The "salami" technique* (or mosaic) is used in order to achieve an objective step by step and not all in once.
- *The „silencer" technique* supposes diminishing the other ones position by using strategies to make that party quiet.
- *The method of fait accompli* is a very risky approach, and one addressing it takes the risk of generating conflicts.
- *The standard procedure* is used in order to convince others to do or not to do certain things based on so called usual practice. Most of the times this technique works because it is presumed that it's the safest in order to achieve what it's has to be achieved, being used also by others. The arguments are supported by documents.
- *The concealment* means to give the impression that you want something when actually the objective is totally different.
- *The apparently retreat* may include among adjournment and dissimulation also a certain dose of delusion. The negotiator can simulate the redraw from the discussion, when actually the interest still exists. The purpose is to obtain a concession.
- *The good person and bad person*. One of the team members adopt a tough line, while the other stay friendly and willing to close the deal.

<sup>47</sup> Ion-Ovidiu Pânișoară, *op.cit.*, p. 182.

<sup>48</sup> Ibidem, p. 184.

<sup>49</sup> Ruxandra Constantinescu-Ștefănel, *op.cit.*, pp. 57-67.

<sup>50</sup> Ion-Ovidiu Pânișoară, *op.cit.*, pp. 177-178.

When “the bad person” leaves the room for a few minutes, the “good person” presents an offer than given the negative circumstances of the negotiation seems even too good to be refused.

- *The limited authority.* The argument of limited authority is destined to force the acceptance of one position, by pretending that any other one would require superior level approvals. In this case the negotiation can be annulled, but there is also a possibility that the partner to revise the position.

#### 4. Conclusions

Either that we speak about negotiation in connection to closing, amending or terminating individual labor contracts, collective bargaining or solving labor conflicts, of personal or professional nature, individual or collective, this communication process and exchange of information related to a common interest may be an effective instrument for improving the relations between the involved parties, as long as the parties are willing to collaborate.

The negotiation supposes a soft procedure, accomplished with a minimum of costs and formalities, it takes place between the parties and doesn't imply the intervention of a third party who has the legal authority to impose certain solutions that the social partners must respect and not always lead to developing harmonious professional and personal relations.

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