OVERVIEW

- INTRODUCTION
- COLLECTIVE BARGAINING
- COLLECTIVE AGREEMENT
- COLLECTIVE BARGAINING IN PUBLIC SECTOR
1. INTRODUCTION
1.1 DEFINITION

According to Industrial Relations Act 1967, collective bargaining:

- Negotiating with a view to the conclusion of a collective agreement
- It is a process by which representatives of employer(association) to decide upon employees’ wages, working hours and other terms and conditions of work
2. COLLECTIVE BARGAINING
2.1 PURPOSE

- To negotiate with employer for improvement in wages and other terms and conditions of work
- To protect employees' rights by making provisions to check any abuse of power by employer and prevent from unjustly acting
- To allow employees to participate in decision-making in areas which are of vital interest to them
2.2 EXAMPLES OF BARGAINING ISSUES

- Salaries
- Allowances
- Working hours
- Annual increment
- Rest days/public holidays
- Annual leave
- Sick leave/maternity benefits
- A grievance procedure
- Recognition
2.3 PROCEDURES

- Section 13 of Industrial Relations Act 1967 provision:
  - Once employees union has been accorded recognition by employer, either party may, at any time, invite the other party to commence collective bargaining. Invitation must be in writing and set out the proposals for collective agreement.
  - The party to whom the invitation is made (invitee) must, within 14 days of its receipt, reply in writing, to the party who make the invitation (inviter), notifying acceptance or otherwise.
  - If invitation has been accepted, collective bargaining must commence within 30 days of receipt of acceptance.
If invitation has been made and

- Not accepted within 14 days or has been refused by employer or,
- Accepted but collective bargaining has not commenced within 30 days inviter may file complaint in writing to Director General of Industrial Relations

The Director General is authorized to take necessary steps to get parties to commence collective bargaining. If despite his effort, there is still refusal for collective bargaining, the trade dispute shall remain exist.
2.4 MANAGERIAL PREROGATIVES

- Section 13(3) of Industrial Relations Act 1967: It is important to note that there is a list of non-bargainable subjects on which collective bargaining is not possible if employer refuse to bargain on these subjects.

- These matters are referred to as “managerial prerogatives”
- Promotion by an employer of any workman from lower grade to higher grade.
- Transfer by an employer of a workman within the organization of an employer’s profession, business, trade of work, provided that such transfer does not entail a change of detriment of a workman in regards to his term of employment.
- Employment by an employer of any person in the event of a vacancy arising in his establishment.
- Termination by an employer of the service of a workman by reason of redundancy of reorganization of an employer’s profession, business, trade of work.
- Dismissal and reinstatement of a workman by an employer.
- The assignment or allocation by an employer of duties or specific tasks to a workman that is compatible with the terms of employment.
If invitation has been made and accepted and collective bargaining has commenced and successfully concluded, end result is collective agreement.
3. COLLECTIVE AGREEMENT
3.1 DEFINITION

- An agreement in writing concluded between employer or representatives of employer on one hand and representatives of employees on the other hand, relating to the terms and conditions of employment.

- It regulates the relationship between employer and employees for a set period of time.
3.2 CONTENTS OF A COLLECTIVE AGREEMENT

- (Section 14 of IRA) For the Industrial Court to take cognizance of the agreement, Collective Agreement must fulfill certain conditions:
  - It must be executed in writing and must be signed by parties to it
  - It must set out terms and conditions of employment
  - It must specify names of parties to the agreement
  - It must specify duration of the collective agreement, which cannot be less than 3 years
  - It must prescribe the procedure for modification and termination of agreement
  - It must prescribe the procedure to be used to settle any dispute over the interpretation and implementation of agreement
  - It must not include items which are considered managerial prerogatives
A collective agreement shall not contain any terms or conditions of employment less favourable than the terms and conditions legislated by the EA 1955.
3.3 EFFECT OF COLLECTIVE AGREEMENT

- Collective agreement has been approved by Industrial Court is deemed to be an award of the Court and is binding on parties to the agreement.
- For such duration, collective agreement shall be implied term of contract between employer and employees.
4. COLLECTIVE BARGAINING IN PUBLIC SECTOR
4.1 REASONS WHY IR IN PUBLIC SECTORS IS CONSTITUED DIFFERENTLY

- The government is the largest employer and therefore terms and conditions of employment granted to public sector employees influence the terms paid out in private sector.

- Any increase in wages paid out in public sector would have immediate financial implications on the country.
4.2 PUBLIC SERVICE DEPT

- Public service dept or JPA, which is under Prime Ministers Dept, act as Personnel Department for Federal Gov and looks after practically every public sector employees from their recruitment right through to their retirement
- Responsible for all planning and implementation of personnel-related functions in the public service
- Activities include supervising and National Jpint Councils
Divided into:

- Recruitment
- Services
- Wages and allowances
- Training and career dev
- Pensions
- Negotiations
- Institut Tadbiran Awam Negara(INTAN)
- Administration

JPA is headed by Director General of Public Services
4.3 PUBLIC SERVICES TRIBUNAL

- Published by Public Services Tribunal Act 1977
- Consists of persons who have experience and knowledge in matters of administration and appointed by Yang Dipertuan Agong
- Its role to determine any dispute in regards to anomalies and implementation of Cabinet Report in salaries and terms and conditions of employment
- Such anomalies were first referred to JPA and later Public Service Tribunal
- PST decision is final and shall be binding on the government and shall not be challenged and questioned in any court
4.4 NATIONAL JOINT COUNCILS

- Established to serve as forums for discussion between unions representing employees in the public sector and their employer (gov)
- Its function is to provide a channel of communication for the government to receive feedback from unions in public service on the views of the public sector employees
- The constitution of these councils does not allow any negotiation take place
4.5 SALARIES COMMISSION

- Appointed periodically by the Federal Gov to review salaries and other TAC of employment in public sector and report findings to gov