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LABOUR LEGISLATION AS A BOTTLENECK IN CONSIDERATION OF LABOUR PRODUCTIVITY DURING COLLECTIVE BARGAINING NEGOTIATIONS: EVIDENCE FROM SELECTED ORGANIZATION IN KERICHO COUNTY, KENYA

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Abstract

This paper examines the role of Labour productivity as a parameters to be considered during collective bargaining negotiations over compensation and Labour legislation as a bottlenecks that make Labour productivity not to be considered as a key parameter during collective bargaining negotiations in selected organizations in Kericho County,Kenya. The research used a triangular design approach where the research targeted employer representatives, trade union officials in selected organizations and ministry of Labour officials who take part in compensation negotiations in the selected organizations in Kericho County, Kenya. The target population was 158 respondents and a sample of 42 was purposively selected. Questionnaires and interview schedules were used to collect data. Data was analysed using descriptive and inferential statistics. This paper demonstrates that Labour productivity is not the key parameter that is considered during compensation negotiations in the sampled organizations in Kenya and identifies the other parameters considered. In addition the findings indicate that Labour Legislation is a significant bottleneck to the consideration of Labour productivity during collective compensation *negotiations with r= 0.400, β=0.702, P value<0.05. This paper demonstrates that mainstreaming Labour productivity as a key parameter during compensation negotiations can help to ensure that there is no pay productivity gap which is detrimental to economic growth.*

Keywords: Labour Productivity, Collective bargaining negotiations, Labour Legislation bottlenecks, compensations

INTRODUCTION

Employee compensation is set either through a process of posting or bargaining (Brenzel, Gartner, Schnabel, 2013). In wage posting the employer defines a job in terms of responsibilities and skills required and unilaterally set the wage/salary attached to the job, while wage bargaining involves the employer giving an offer and the potential employee making a counter-offer signalling the start of a bargaining process until an agreement is reached, this process is equally used in negotiating for revision of wages/salary levels for existing employees. During collective bargaining, both the employer and the trade union advance different arguments in support for their offer and demands respectively. Employees through their unions usually advance arguments like cost of living, inflation, pay levels of similar organizations, government legislation on minimum wages, education and professional qualification of employees as justification for their demand for raise in pay levels. Employers on their part usually focus on profits, competitiveness and sustainability

Collective bargaining which is a feature of free market economy involves determining Labour wages/salaries through haggling by employers and workers' union over the distribution of output proceeds. The risk in this process is that special interests may prevail over the general interest (Eggelte, Jansen, Schotten&Dicou, 2014). The arguments advanced by both parties, are often considerations which are not related to the essence of why the employees were hired in the first place, that is productivity, but related to the working environment and the living conditions/ cost of living.

According to a study in South Africa by Maloa (2011), the strong determinants of employee compensation include employee skill, performance and pay /grade structure while external equity and tenure factors are marginal predictors of employee compensation. According to Biesebroeck (2015) in a research on the "link between wages and productivity", productivity indicators need to be considered during compensation negotiations so as to ensure that wages do not increase more rapidly than Labour productivity leading to financial crisis in organizations or eroding competitiveness, but instead the gains made from increase in labour productivity should be shared fairly between the employers and the employees so as to also ensure there is no decrease in real wages despite of an increase in labour productivity

In a research by Garnero, Rycx and Terraz (2018), on "Productivity and wage effects of firm level collective agreements: Evidence from Belgium linked Panel Data", collective bargaining plays a key role in providing a collective voice for their members during bargaining so as to get favourable terms and conditions of service, however unions can also use their collective strength to raise wages across industries which is not accompanied by increase in labour productivity, and this can be detrimental to organizations

Problem Statement

Kenya has witnessed numerous industrial unrest in the recent past with trade unions agitating for increase in salary and wages for their members. This has led to a situation where there has been a gap between pay and labour productivity levels, a situation which can erode the competitiveness of organizations. Kenya's Wage Guidelines (G.o.K.2005) identify productivity as a wage compensable factor, however despite this, labour productivity not to be considered as a key parameter during collective bargaining negotiations over compensation. This poses the risk of eroding the sustainability of organizations and the economy at large due to productivity wage gaps. According to Brill,Holman, Morris, Raichoudhary and Yosif (2017), increase in labour productivity should lead to increase in compensation, however there still exists a productivity pay gap.

The purpose of this research is to investigate the labour legislation bottlenecks that make Labour productivity not to be considered as a key parameter collective bargaining negotiations as well as identify the other key parameter that are considered during collective bargaining negotiations. Specific Objectives of the study are:

i. To examine Labour productivity considerations during collective compensation negotiations in selected organizations in Kericho County, Kenya
ii. To establish Labour legislation bottlenecks limiting the use of Labour productivity during collective compensation negotiations in selected organizations in Kericho County, Kenya

Limitations of the Current Study

This study limited itself to the parameters that are considered during collective bargaining negotiations and to Labour Legislation as a bottlenecks in using Labour productivity as a key parameter during collective bargaining negotiation. The Study limited itself to selected organizations that had trade unions and focused on the Labour players in Kericho County. The study also limited itself to Kericho County, one of the 47 counties in Kenya.

Labour Productivity and Collective Compensation Negotiations

Labour productivity is a measure of economic performance and efficiency where Labour input can be measured by the total number of hours worked and the output produced. It is the measure of how labour is used and reflects the" time, effort and skills of the workforce" (Freeman, 2008). Labour productivity demonstrates business efficiency, especially for organizations which are Labour-intensive. Labour productivity is important because Labour costs are usually a significant part of total costs within an organization in the form of the wages.

This implies that the increase of wages should be supported by higher growth of Labour productivity. In a research paper by Tomassetti, William and Veersma (2015), on a "Comparative report on Collective Bargaining and Labour Productivity in Germany, Italy, the Netherlands, Poland, Spain and the UK", there is a strong relationship between Labour hours and compensation with these two factors being the major issue during collective bargaining so as to maintain competitiveness and sustainability. This helps to ensure that increase in wages is proportional to increase in labour productivity which is critical for economic growth and competitiveness

In Kenya collective bargaining at industry and national level has played a key role in generating collective bargaining agreements that have resulted in higher wages and salaries for their members. However according to Omolo (2010) despite the important role played by productivity in enhancing organizations competitiveness, sustainability, profitability and employment creation, it has not been mainstreamed during collective bargaining negotiations in many sectors of Kenya's economy. Labour productivity as a key parameter for wage compensation and as a determinant of Labour effectiveness and efficiency has not been effectively integrated into the country's wage determination systems. Despite Kenya having Wage Guidelines that identify productivity as a key compensable factor, few parties to collective bargaining consider Labour productivity (Wage guideline, 2005, Republic of Kenya). This is due to lack of a productivity measurement and compensation criteria that is generally agreed upon by the parties to the collective agreements as well as the absence of a legislative framework to support mainstreaming of productivity during collective compensation negotiations in the country.

According to an ILO report (2017), on "Sectoral collective bargaining, productivity and competitiveness in South Africa's clothing value chain: manufacturers between a rock and a hard place" there has been a decrease in real wages and an increase in Labour productivity or value added per worker in most developing and developed countries. South Africa is one good example where over a 32 year period (1982 to 2014) real wages have more or less remained the same despite increase in productivity. This has been attributed to a number of reasons such as a decrease in trade union membership and decline in trade union bargaining power. Considering Labour productivity during compensation negotiations would therefore help to ensure fair gain sharing due to increase in productivity between the employers and the workers. A research by Magati and Nganga (2012) concluded that wages in Kenya are awarded either as a result of negotiations by collective bargaining parties or being granted by the Industrial Court of Kenya which has made wage increases to be out of pace with GDP growth and productivity trends.

Labour Legislation Bottlenecks

From a legislative perspective, it is critical to assess whether labour legislation has the intended effects on bargaining outcomes in terms of ensuring that labour productivity is considered during collective bargaining. According to Cramton, Gunderson and Tracy (1995) in the research paper on" The Effect of Collective Bargaining Legislation on Strikes and Wages; Canadian perspective" effective Labour legislation should have a positive effect on bargaining outcomes in terms of efficiency in bargaining, or in reducing strike activity. Variations in the bargaining rules as determined by labour legislation are also likely to influence the balance of power between the union and the firm, and hence affect wage settlements

In Kenya, legislation on Labour and compensation negotiations is found in the Kenyan constitution of 2010, the Labour laws of 2007 and 2019, relevant regulations and statutes as well as guidelines from ILO conventions which ensure workers have the rights to form trade unions, right to recognition of these trade unions, rights for collective bargaining and right to fair working conditions and wages, while employers have the rights to form employer associations . The Labour laws and statutes include the Employment Act, 2007 and 2019, the Labour relations Act 2007, the Labour institution Act 2007, the Occupational health and Safety Act 2007, the Work Injuries and Benefits Act, 2007 as well as the wage guidelines and the Industrial Relations Charter. These laws provide the legislative framework for collective bargaining in Kenya as well as the establishment of labour institutions to advice, regulate on labour matters as well as to assist in resolving and adjudicate labour disputes. In addition, the Constitution of Kenya created the Salaries and Remuneration Commission to provide advice to the Labour relation players and the labour and employment court on matters to do with wages and salaries.

Further, the wage guidelines as provided by the ministry of Finance in Kenya, outlines the compensable factors for negotiations one of which is performance or productivity and the ability of the employer to pay for the purpose of sustainability (Wages guidelines, 2005), however lack of well constituted and legislated wage determinations that are based on productivity are still lacking to guide compensation negotiations. The Wage guidelines (2005) has provided guidelines for the determination of wage awards which are in line with increase in productivity in Guideline no. 2. This is to ensure competitiveness and sustainability where wage adjustments are based on the growth in productivity of an organization. The wage Guideline no. 3 stresses that the wage increase should be sector or industry specific and should be based on the actual returns on that particular sector or industry from increased productivity, and should not be based on other sectors or industries. While Kenya's Wage Guidelines (2005) identify productivity as a wage compensable factor, not many parties to collective bargaining have productivity clauses in their collective bargaining agreements.

The Labour Relations Act 2007, provides guidelines for collective bargaining however it does not give specific guidelines on the parameters that should be considered during collective bargaining, nor does it mention anything on productivity or labour productivity considerations during collective bargaining. In addition, the industrial court under the Labour Institutions Act 2007, is bound by any guidelines or directives relating to wages and salary levels issued by the ministry of finance, such as Kenya's Wages guidelines, however the same requirement has not been made to the trade unions and employer unions, which limits the use of these guidelines during collective compensation negotiations. According to Sen (2018) on "Productivity effects of Labour Legislation, Evidence from India", Labour legislation that increases a trade union's power or increases "regulatory burden" of the employers acts as a bottleneck by lowering productivity in an organization.

According to Goldberg *et al* (1975), in their book on "Collective Bargaining and Productivity", legislation plays a key role in entrenching productivity during compensation negotiations. This is evidenced by an example of the tripartite Presidential Advisory Committee on Labour Management Policy which was established in the USA in 1961 by an executive order and was given the mission of advising on policies to promote collective bargaining, industrial peace, sound wage and price policies, improved standards of living, and increased productivity. Although Kenya has established the Salaries and Remuneration Commission (S.R.C.) to advice on sound remuneration, it faces challenges on compliance with the advisories it gives due to other government agencies or courts that give contradictory advisories or guidelines (Salaries and Remuneration Commission (2019) on "The Public Sector Wage Bill").

RESEARCH METHODOLOGY

The research used a triangular design approach where the research targeted employer representatives, trade union officials in selected organizations and ministry of Labour officials who take part in compensation negotiations in the selected organizations in Kericho County, Kenya. The target population was 158 respondents who were mainly officials of trade unions, employer associations and senior management as well as an official from the ministry of labour and state protection. A sample size of 42 respondents who take part in compensation negotiations was selected using stratified purposive sampling. Data was collected using questionnaires and interview guides, which were tested for validity through extensive discussion with productivity and compensation experts, and reliability by pilot testing where a Cronbach alpha value of 0.843 was obtained. The data was analysed using descriptive and inferential statistics

FINDINGS AND DISCUSSIONS

Labour Productivity Considerations during compensation negotiations

The respondents were asked to identify the factors that determine wage/salary levels during compensation negotiations. Table 1 provides a summary of the responses about the factors that are considered during compensation negotiations. From the findings; government legislation on minimum wage was identified as the highest parameter that was considered during wage/ salary compensation negotiations at 94%, followed by cost of living index at 88%. Internal equity took the third position at 71% while employee education took the forth position at 66% and Labour productivity took the fifth position at 63% respectively. This findings indicate that Labour productivity is not a major parameter that is considered during compensation negotiations in many organizations in Kenya. The respondents were also asked to identify the reasons why Labour productivity is not considered as a major parameter during compensation negotiations, some of the major issues that were identified were: lack of information or data on productivity, lack of know-how on how to calculate labour productivity for some sectors for example those in the service industry or knowledge industry, lack of guidelines on how to use labour productivity during compensation negotiations, organizations affordability and sustainability as well as lack of accountability by the organizations.

These finding are supported by the research done by Omolo (2010) which concluded that “despite the significant role of productivity in promoting enterprise competitiveness, economic growth and employment creation, the same has not been mainstreamed in all sectors of Kenya’s economy”.

Table 1: Factor that determine wage/salary levels during compensation negotiations

Factor that determine wage/salary levels during compensation negotiations	Yes	No	Total
Labour productivity	63%	37%	100.0%
Labour market forces	78%	22%	100.0%
Employee education	66%	34%	100.0%
Cost of living index	88%	12%	100.0%
Government minimum wage legislation	94%	6%	100.0%
Internal equity	71%	29%	100.0%
External equity	59%	41%	100.0%

Labour Legislation Bottlenecks

Descriptive Analysis

From the respondents 57.2% agreed (28.6% strongly agreed and 28.6% agreed) that Labour laws should reviewed to include a clause on inclusion of productivity of employees during salary/wage negotiations between employers and trade unions, while 17.1% were neutral and 17.1% also strongly disagreed. On whether negotiating parties should ensure that salary negotiations between trade unions and employers favour both sides by considering productivity of employees and sharing the gains, 91.4% of the respondents agreed((45.7 Strongly agreed and 45.7% agreed), while 5.7% disagreed and 25.7% strongly agreed, in addition 42.9% agreed that lack of a productivity policy, legal and institutional Framework to ensure Labour productivity is considered during salary negotiations has limited use of Labour productivity during compensation negotiations and 14.3% strongly disagreed while 8.6% were neutral. Few respondents disagreed that Legislation on wage control based on productivity of employees can help can ensure that Labour productivity is considered during compensation negotiations with 14.3% disagreeing, 17.1% strongly agreeing and 40% agreeing respectively. 80% of the respondents agreed (31.4% strongly agreed, 48.6% agreed) that Legislation that supports joint union-management partnership can have a positive effect on the inclusion of productivity of employees during compensation negotiations while 14.3% were neutral. In addition 82.8% of the respondents agreed (31.4% strongly agreed, while 51.4% agreed) that lack of legislation requiring salary negotiating parties to comply with advice given by SRC (Salaries and Remuneration Commission) has hindered considerations of productivity and sustainability of organizations, while 5.7% disagreed and 11.4% were neutral respectively. 45.7% of the respondents strongly agreed while 22.9% agreed that Laws requiring employers/industry to share data and information with trade unions can help to ensure consideration of productivity of employees during negotiations for salary and wages, however 5.7% disagreed while 25.7% of the respondents were neutral.

These findings imply that Labour legislation plays a key role in the use of Labour productivity during compensation negotiations and lack of facilitative laws can act as a bottleneck. This findings agree with a research done by (Cramton, Gunderson and Tracy ,1999) which showed that effective Labour legislation has a positive effect on bargaining outcomes in terms of efficiency in bargaining.

In addition the findings also mirror the expectations as outlined in the Wage guidelines (2005) issued by the Ministry of Finance which has provided guidelines for the determination of wage awards which are in line with increase in productivity in Guideline no. 2. This is to ensure competitiveness and sustainability where wage adjustments are based on the growth in productivity of an organization. However lack of a framework on how to factor in productivity as well as lack of a statutory requirement that industry shares data on productivity, has hampered the inclusion of productivity during compensation negotiations in some industries. This is also in line with the ILO recommendations on the need for laws that stress on good faith bargaining and sharing of data for collective bargaining purposes so as to ensure efficient and effective collective bargaining.

Table 2: Descriptive analysis on Labour Legislation Bottlenecks

	SD	D	neither A or D	A	SA	Total
Bargaining rules as determined by labour laws are likely to affect wage settlements	20.0%	5.7%	5.7%	37.1%	31.4%	100.0%
The Labour laws should reviewed to include a clause on inclusion of productivity of employees during salary/wage negotiations between employers and trade unions	17.1%	8.6%	17.1%	28.6%	28.6%	100.0%
Negotiating parties should ensure that salary negotiations between trade unions and employers favour both sides by considering productivity of employees and sharing the gains	0.0%	5.7%	2.9%	45.7%	45.7%	100.0%
Lack of a productivity policy, legal and institutional Framework to ensure Labour productivity is considered during salary negotiations has limited use of Labour productivity during compensation negotiations	14.3%	8.6%	8.6%	42.9%	25.7%	100.0%

Table 2…

Legislation on wage control based on productivity of employees can help to ensure that Labour productivity is considered during compensation negotiations.	0.0%	14.3%	17.1%	40.0%	28.6%	100.0%
Legislation that supports joint union-management partnership can have a positive effect on the inclusion of productivity of employees during compensation negotiations	0.0%	5.7%	14.3%	48.6%	31.4%	100.0%
Laws requiring employers/industry to share data and information with trade unions can help to ensure consideration of productivity of employees during negotiations for salary and wages	0.0%	5.7%	25.7%	22.9%	45.7%	100.0%

Inferential Analysis

The relationship between Labour legislation bottlenecks and Labour productivity considerations during collective compensation negotiations was analysed using Pearson correlation tested at 0.01 Alpha Level. The results established that that there exists a moderate positive and statistically significant relationship between Labour legislation bottlenecks and Labour productivity considerations during compensation negotiation compensation negotiations ($r=0.400$; $p<0.05$). This implies that an increase in Labour Legislation bottlenecks will lead to an increase in collective bargaining negotiations that don't consider Labour productivity. Regression coefficient was also determined to establish the relationship between the predictor variable (Labour Legislation bottlenecks) and the dependent variable (Labour productivity considerations during collective compensation negotiations). Labour legislation bottlenecks had a positive beta coefficients of $\beta = 0.702$. This implies that for every 1 unit increase in Labour Legislation bottlenecks, there is an increase in collective bargaining negotiations that don't consider Labour productivity.

These findings are in agreement with a research by Mugati and Muthoni (2012) which established that lack of a clear policy framework to provide guidelines on how to mainstream Labour productivity during collective bargaining negotiations has acted as a limiting factor in making Labour productivity to be a key parameter to be considered during compensation negotiations. Biesebroeck (2015) in a research on the link between wages and productivity concluded that productivity indicators need to be considered during compensation negotiations so as to ensure that wages do not increase more rapidly than Labour productivity leading to financial crisis in organizations or eroding competitiveness.

Table 3: Pearson Correlation and Regression Coefficient for Labour Legislation bottleneck

Model	Unstandardized Coefficients		Standardized Coefficients	t	Sig.
	B	Std. Error	Beta		
(Constant)	3.613	.982		3.679	.001
Labour Legislation Bottlenecks	.702	.192	.526	3.660	.001

Pearson Correlation (r) .400*

Dependent variable; Collective Bargaining negotiations

CONCLUSION AND RECOMMENDATIONS

From the findings the research concluded that Labour productivity is not considered as a key parameter during compensation negotiations in most of the organizations and sectors that were sampled, with government regulations on minimum wage and cost of living index being given more consideration. This state of affairs was found to have contributed to the high wage bill currently found in most organizations that were sampled, which was found to be unsustainable and eroding the competitiveness of most of the organizations sampled.

The research also concludes that Labour legislation bottlenecks contribute to collective bargaining negotiations where Labour productivity is not considered as a key parameter during compensation negotiations. This is because of lack of legislation that requires trade unions or employer organizations to be legally bound by the wages guidelines that require collective bargaining parties to consider productivity and labour productivity during collective bargaining negotiations. Although the industrial court under the Labour Institutions Act 2007, is bound by any guidelines or directives relating to wages and salary levels issued by the ministry of finance, such as Kenya’s Wages guidelines, the same requirement has not been made for the trade unions and employer unions, which limits the use of these guidelines during collective compensation negotiations. In addition the Salaries and Remuneration commission whose mandate is to advise on remuneration faces challenges on compliance with the advisories it gives due to other government agencies or courts that give contradictory advisories or guidelines. This state of affairs was found to have contributed to a high wage bill currently found in most organizations that were sampled, that were not commensurate with the levels of productivity and labour productivity. This study recommends on the need to mainstream Labour productivity as a key parameter during compensation negotiations so as so foster and encourage greater productivity and sustainability.

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