

**AN APPRAISAL OF TRADE DISPUTES SETTLEMENT MECHANISMS IN
NIGERIA**

BY

**Buhari ZAILANI
(LL.M/LAW/36659/2012-2013)**

**DEPARTMENT OF PUBLIC LAW
AHMADU BELLO UNIVERSITY
ZARIA**

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**BEING A DISSERTATION SUBMITTED TO THE SCHOOL OF
POSTGRADUATE STUDIES, AHMADU BELLO UNIVERSITY, ZARIA, IN
PARTIAL FULFILLMENT OF THE REQUIREMENTS FOR THE AWARD OF
DEGREE OF MASTER OF LAWS, LL.M**

NOVEMBER, 2016

DECLARATION

I declare that this dissertation entitled: *An Appraisal of the Trade Disputes Settlement Mechanisms in Nigeria*, has been written by me. The work has never been presented anywhere. All quotations and references have been fully acknowledged.

Buhari ZAILANI

Signature

Date

CERTIFICATION

This dissertation entitled: *An appraisal of the trade disputes settlement mechanisms in Nigeria* by Buhari ZAILANI (LLM/LAW/36659/2012-2013) meets the regulations governing the award of the degree of Master of Laws-LL.M, of Ahmadu Bello University, Zaria, and it is approved for its contribution to knowledge and literary presentation.

Prof. J.A.M Audi
Chairman, Supervisory Committee

Signature

Date

Prof. Bala Babaji
Member, Supervisory Committee

Signature

Date

Dr. K.M. Danladi
Head, Department of Public Law

Signature

Date

Professor S. Z Abubakar
Dean, School of Postgraduate Studies

Signature

Date

DEDICATION

This work is dedicated to my parents whose guidance and support has shaped my attitude in life.

ACKNOWLEDGEMENTS

I hereby acknowledge the contributions and assistance of people whose efforts saw this work into fruition. Prominent among whom are Professor (Mrs) J.M. A. Audi and Prof. Bala Babaji who supervised the work from its beginning to its present form. I am especially indebted to Dr A. M. Madaki and Dr. A. I. Bappah for their invaluable contributions to the success of this exercise. My lecturers who exhibited an interest in my progress and who deserve appreciation are Professors M. T. Ladan, Y. Y. Bambale, Ibrahim Ahmed Aliyu, Sani Idris and Bashir Yusuf Ibrahim.

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Trade Disputes Act, Cap. T8, LFN, 2004

Trade Union Act, Cap. T14, LFN, 2004

Trade Unions (Amendment) Act, No. 1, 2005

Trade Union (Central Organisations) (Special Provision), Decree, 1976

LIST OF ABBREVIATIONS

ACAS	-	Advisory Conciliation and Arbitration Service
ADR	-	Alternative Dispute Resolution
ASUP	-	Academic Staff Union of Polytechnics
ASUU	-	Academic Staff Union of Universities
CAC	-	Conciliation and Arbitration Committee
COEASU	-	Colleges of Education Academic Staff Union
DSM	-	Trade Dispute Settlement Mechanism
IAP	-	Industrial Arbitration Panel
ILO	-	International Labour Organisation
JAC	-	Joint Action Committee
LFN	-	Laws of the Federation of Nigeria
NIC	-	National Industrial Court
NICA	-	National Industrial Court Act
NICN	-	National Industrial Court of Nigeria
NLC	-	Nigerian Labour Congress
NWLR	-	Nigeria Weekly Law Reports
NLRB	-	National Labour Relations Board
SSANU	-	Senior Staff Association of Nigerian Universities
TDA	-	Trade Disputes Act

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ABSTRACT

In Nigeria, in spite of the statutory mechanisms put in place to mitigate disputes, the phenomenon has been on the increase and on a consistent basis. The statutory dispute settlement procedure has not fostered industrial harmony to a large extent. Consequently, how to achieve effective settlement of trade disputes has, over the years, posed great challenges to industrial relations in Nigeria. The objective of this dissertation therefore is to appraise the effectiveness of trade disputes settlement mechanisms in Nigeria. The doctrinal method has been adopted for this research. Thus, the research analyzed materials derived from both primary and secondary sources. The primary sources include statutes and judicial decisions while the secondary sources include books, journals, articles, newspapers and internet materials. The dissertation found among others that, the framework of substantive law established by the state for the resolution of trade disputes in Nigeria lack some critical components of trade disputes resolution. For instance, section 25 (1) and (2) of the Trade Unions Act granted recognition to registered trade for purpose of collective bargaining, but N1, 000 fine section provided for non-compliance is inadequate to serve as deterrence. Additionally, the law has not set up an independent an agency that would monitor whether or not the employers have really accorded recognition to employees for bargaining purposes. It is also found that the process of mediation and conciliation at the ADR Centre established in the NIC is likely to be unattractive for workers because of the overbearing influence and discretion exercise by the President of the NIC. Against this background therefore, the dissertation recommends that section 25 (2) of the Trade Union Act should be amended to allow the sanction for the refusal by employers to recognize trade union for bargaining purposes to be determined based on the financial strength of each organization. Furthermore, there is need for the Government to set up an independent agency like the ACAS and NLRB to monitor whether or not the employers in the country grant trade union due recognition for bargaining. Additionally, the NIC Alternative Disputes Resolution (ADR) Centre Instrument need to be amended to make the appointment of the Director of the Centre to be done subject to the confirmation of the senate and to provide a fixed Panel for the ADR Centre with its membership drawn from the Nigerian Labour Congress and Trade Union Congress. This way, workers would feel adequately represented.

CHAPTER ONE

GENERAL INTRODUCTION

1.1 Background to the study

Contract of employment is indispensable in economic growth and development of every modern society as it regulates and coordinates the efforts of labour and management (social partners) toward production of goods and services essential to the needs of individuals and the society. In Nigeria, these goods and services constitute an important source from where income is generated to sustain the economy and to enhance the citizen's well-being. Central to the existence of a productive employment relation however, is an atmosphere of harmonious co-existence characterized by mutual respect between the parties who appreciate that they need each other as management alone cannot create wealth. However, the emergence of free market economy has brought with it complexities in labour management relationship, which is being fraught with perennial conflicts of interests and mutual suspicion, with each party standing astute to wield its own weapon to protect its perceived interest in the relationship. This near hostile relationship usually results in trade disputes culminating in strikes, which have almost crippled the economy in the country.¹

Industrial actions involve the interruption of economic process in the workplace as a method of inducing pressure collectively by workers on their employers.² These actions have both costs and benefits to the three social partners (government, labour and management) and the society at large. For instance, most trade disputes aim at changing

¹Ogbuanya, N.C.S. (2012) *Arbitration as a means of settlement of Trade Disputes – The Nigerian Experience*, In: *Contemporary Issues in the Administration of Justice*. Treasure Hall Konsult, p. 174.

² Audi, J. A. M. (2005) *Strike as a Labour Union Tool in Nigeria: Reflections on the Trade Union Act, 2005*, *Ahmadu Bello University Law Journal*, Vol. 23-24, P.94.

the bargaining position of the workers. Labour union mandate its members to embark on strike, in the hope that it will pressurize management to take a desired course of action in line with labour demands for improvement in conditions of services, better living standard of workers and their families.³ However, it should be noted that the costs of industrial disputes have always outweighed the benefits. Trade disputes as exemplified by strikes, to a large extent, have a great bearing on the smooth and orderly development of the economy and the maintenance of law and order in the society. They sometimes arouse public resentment because they may hurt the public more than the parties involved in the dispute. For instance, strikes have a dramatic effect on the public, particularly in essential industries. The costs of strikes include loss of production or output; disruption in essential services (oil, electricity, education, and banking); capacity under-utilization; scarcity and high costs of essential items; unemployment and manpower contraction amongst others.⁴ A strike-prone country is not likely to attract foreign investors as this index has become one of the major considerations for foreign industrialists and multinational corporations. However, it may be instructive to state that, whether dispute staged is adjudged to be successful or not, it is obvious that some damage must have been done and parties and the public have to bear the costs.⁵

It is well known that trade unionism all over the world emerged for improving the economic, living and working conditions of workers through collective bargaining. To achieve this, workers' rights and interests are legally protected nationally and internationally not just as producer of national wealth but also as citizens. Such rights are

³ Ibid.

⁴ Adeleke, M.O. (2010) *Lagos State Multi-Door Courthouse: An Appraisal*, Essays in Honour of Governor Babatunde Raji Fashola (SAN), p. 317.

⁵ Chukwudi, F. A., Chidi, O. C., and Ogunyomi, O. P. (2012) *Trade Disputes and Settlement Mechanisms in Nigeria: A Critical Analysis*, Interdisciplinary Journal of Research in Business, Vol. 2, Issue. 2, p. 8.

conferred on workers and their organizations taking into consideration their special role and the need to protect them from extreme abuse and exploitation in the hands of profit-conscious employers often backed by a collaborative state.⁶ For instance, Article 23 of the United Nations Universal Declaration of Human Rights⁶ guarantees everybody the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment, as well as, the right to form, and join trade unions for the protection of rights. Similarly, Article 4 on the rights to organize and collective bargaining⁷ has granted workers the right to adequate protection against acts of entire union discrimination in respect of their employment.

In Nigeria, section 40 (1) of the Constitution⁹¹ pluralized the word “interest” to emphasize that a trade union may bargain with the employer on behalf of the workers for variety of interest. For instance, it may be financial interests, political interests, economic interests, the physical conditions of work or national interests. Furthermore, the government realizes the effects of trade dispute and all its attendant consequences. Hence, it has provided legislations that provide for various legal mechanisms for effective settlement of trade disputes for the overall growth and development of economy. For instance, section 4 (1) of the Trade Dispute Act⁸ for instance required disputants to always resort to agreed means of settling their dispute whether such agreed means is by virtue of a collective agreement between the parties or any other agreement. Where the voluntary method fails, the parties are expected to refer the dispute to National

⁶Adewuni, (2007) Protecting Workers Rights in the Export Processing Zones: Challenges for labour movement, *Labour Law Review, NJLL & IR*, Vol. 1, No. 3, p. 77.

⁶1948.

⁷ Geneva International Labour Organization, 1998 .

⁹¹Federal Republic of Nigeria, Cap. C23, LFN, 2004 (as amended).

⁸ CapT8, LFN, 2004.

Industrial Court (NIC) for adjudication. The statutory settlement mechanism is exemplified by collective bargaining (negotiation) Mediation, Conciliation, Industrial Arbitration Panel and the National Industrial Court. In labour relations, a pre-condition to the exercise of the right to collective bargaining is for the employer or his association to recognize the union as a bargaining agent. In Nigeria section 25 (1) and (2) of the Trade Unions Act⁹ has obliged employers recognize registered trade unions. Recognition connotes the willingness of an employer to bargain with a union.¹⁰

1.2 Statement of the Problem

The framework of substantive law established by the state for the resolution of trade disputes in Nigeria lacks some critical components of trade disputes resolution. For instance, the N1, 000 fine provided by section 25 (2) of the Trade Unions Act,⁹⁴ as sanction for refusal by an employer to recognize a registered trade union in Nigeria, is highly doubtful whether it can serve as deterrence. Furthermore, the law has not stated how and who would monitor whether or not there is compliance with this provision of the law. Secondly, section 4 (1) and 18 (1) of the Trade Dispute Act⁵ requires disputants to always resort to the process of collective bargaining in settling their dispute. However, in Nigeria the government does not lead by example in its labour policy implementation. For instance, the government instituted collective bargaining process but it seldom respects the call for negotiation or complies with collective agreements reached with trade unions. This questions the possibility of ever allowing collective bargaining to achieve its intended purpose. Additionally, litigation has generally proven to be largely

⁹Cap. T14, LFN, 2004.

¹⁰Kahn-Freund, O. (1965) Report on the Legal Status of Collective Bargaining and Collective Agreement in Great Britain, In: Kahn-Freund, O. Temple Gardens, London, p. 28.

⁹⁴ Cap. T14, LFN, 2004.

⁵Ibid.

ineffective in resolving trade disputes because apart from being adversarial in nature, it is often very rigid as parties are often bound by decisions not of their own choices.

Furthermore, section 24 of the Trade Unions (Amendment) Act¹¹ obliged all registered trade unions for the purposes of collective bargaining to constitute Electoral College to elect members who will represent them in negotiations with the employer. The problem with this section is that it does not prescribe the modalities for setting an electoral college. This gap may give room for the state or employers to manipulate the criteria for the selection of bargaining agents and consequently, generate more industrial strife than it is intended to resolve. Finally, it is doubtful if ADR Centre at the NIC would be attractive for workers to refer a trade dispute for settlement because of the overbearing influence of the President of the NIC. For instance, the President determines whether any extension would be granted to initial stipulated period for settlement. He also constitutes the panel for any ADR process based on his discretion. The exercise of such enormous powers by the President of the NIC is capable of affecting the trust and confidence workers may have in the ADR process, considering that the President of the NIC, who established the ADR Centre, is an employee of the government. It is against this background that following questions become imperative:

1. Can the substantive law on trade disputes in Nigeria guarantee effective settlement of trade disputes in the country?
2. What are institutional challenges inhibiting effective settlement of trade disputes in Nigeria?

¹¹S. 24(1) Trade Union (Amendment) Act 2005.

1.3 Aim and Objectives of the Research

The aim of this study is to critically examine the effectiveness of the trade disputes settlement mechanisms (DSM) in Nigeria, with a view to making recommendations that would enhance industrial peace and consequently guarantee uninterrupted supply of goods and essential services in the country at an affordable price. The research aimed at realizing this through the following specific objectives:

1. To assess the effectiveness of the mechanism of Trade Disputes Settlement in Nigeria.
2. To identify and examine the institutional challenges to effective conflict resolution in reducing the growing dissonance in labour-management relations in Nigeria.
3. To advance recommendations for the efficient and effective settlement of trade disputes in Nigeria.

1.4 Justification of the Research

A study on resolution of trade disputes in labour relations is of great significance given the consequences of such disputes on the economic development of the nation. In other sense therefore, the study provides information for understanding how most conflicts arise in industrial establishment and degenerate into industrial disputes. It also provides information on effective negotiation procedure and disputes resolutions between various parties in labour relations.

Furthermore, the employers, government, employees and the society at large also stand to benefit from this work, in that relative industrial peace in the economy will no doubt guarantee a steady supply of goods and services at an affordable price and

consequently prevent social unrest. This work is equally beneficial because it provides additional reference material for students, lawyers, parties in industrial relations and the interested public.

1.5 Research Methodology

Doctrinal method has been adopted for this research. Being library oriented, the research analyses materials derived from both primary and secondary sources. The primary sources include information from national and international legal instruments on trade disputes settlements as well as local and foreign judicial decisions. While the secondary sources include books, journals, articles, news papers and internet materials. These materials provide the basis for analyzing the effectiveness of trade disputes settlement mechanism in Nigeria.

1.6 Scope of the Study

This research is restricted to the examination of the effectiveness of the trade dispute settlement mechanism in Nigeria. A trade dispute is very wide area in law. There are a lot of legal instruments, institutional mechanisms, and case laws as well as policy framework at the national level to regulate trade disputes in labour relation in Nigeria. Specifically, the research will examine the mechanism of trade dispute settlement as provided under section 4 (1) of the Trade Disputes Act.¹² These include collective bargaining (negotiation) mediation, conciliation, industrial arbitration panel and the national industrial court as well as the NIC ADR Centre. Though, territorially the research is limited to Nigeria, reference is made to other jurisdictions for guidance, where necessary.

¹²Cap T8, LFN, 2004.

1.7 Literature Review

Generally, much has been written on labour management relationship. For instance, Aturu¹³ has given support to the legislative definitions of trade dispute contained in section 47 of the Trade Dispute Act¹⁴. That section defines a trade dispute as “any dispute between employers and workers or between workers and workers, which is connected with the employment or non-employment, or the terms of employment and physical conditions of work of any person”. The author maintained further that the following elements must be present before a dispute can qualify as a trade dispute: the dispute must be between employers and workers or workers and workers, the dispute must be connected with the employment or non-employment of any person; or the dispute must be connected with the terms of employment or physical conditions of work of any person. This work has no doubt provided a basis for appreciating the concept and nature of labour disputes. However, the traditional concept of labour dispute needs to be expanded beyond the parameter of being a dispute between employer and employees on terms and conditions of employment for the following reasons: First, most labour disputes in Nigeria are directed at the government, even when the government cannot be categorically regarded as the employer of the workers concerned. Secondly, there were certain government policies in Nigeria which though outside the scope of the workers’ employment, but which have directly affected the terms and conditions of their employment. Thus, relying on the traditional concept of labour disputes cast a further doubt as to the legal meaning of the term “labour dispute” in Nigeria.

¹³ Aturu, B. (2005). *Nigerian Labour Laws: Principles, Cases, Commentaries and Materials*. Lagos: Frankad Publishers.

¹⁴ Cap T8, LFN, 2004,

Most writers agree that some conflicts are both inevitable and necessary in effective organizations. Robbins¹⁵, for instance argued that, it is not natural for an untrained or inexperienced person to avoid threatening situations. He maintained that it is generally acknowledged that conflicts represent the most severe test of a manager's interpersonal skills. The author concludes that the task of the effective manager therefore is to maintain an optimal level of conflicts focused on productive purposes. It is important to add however that, in reality, the number of industrial conflicts fluctuates with the movement of the business cycle. In a democratic setting, conflict is never eliminated but could be better regulated. Conflict is accepted as an inevitable consequence of a complex society predicated on a complex culture. The number of conflicts and the issues involved will differ in historical periods as well as the techniques for carrying them out. Like other institutional frameworks, it needs be emphasized that industrial conflict is not static but it is a phenomenon passing through an evolutionary process.

Iwuji¹⁶ posits that labour dispute is an unavoidable evil in any modern organization, particularly in large ones. It is a product of industrialization. Work relations themselves are inevitable source of dispute. The author describes disputes as a vital process towards seeming adjustments of expectation to economic realities. He concluded that the conflict taking place in industrial relations between those who buy labour and those who sell it is seen as a permanent feature of capitalism, merely reflecting the predominant power base of the bourgeois and the class relations of capitalist society generally. However, while it is true that if conflicts are constructively managed, they can have positive outcomes, it is

¹⁵Robbins S. P. (1974). *Managing Organizational Conflicts: A Non-Traditional Approach*, Englewood Cliffs, N. J: Prentice Hall.

¹⁶Iwuji E. C. (1987). "Settlement of Trade Disputes" in D. Otopo and M. Omole (eds) *Readings in Industrial Relations in Nigeria*, Lagos, Malthouse Publishing, Ltd, p.213.

imperative to state further that some industrial conflicts may have serious economic repercussions while others do not have any significant effect on the economy. In similar vein, conflict organized during recession or depression period of an industry will have no appreciable impact on management or perhaps on the economy. Management therefore would have been successful in curbing or checking the effects of the union's economic weapon (strike). Where a harmonious relationship exist between parties, both union and management will be opposed to the use of strike except as a last resort and this vital point differentiates strikes which are regarded as the costliest and extreme form of industrial conflict from other forms of conflict. Strikes may be the most overt and the most significant aspect of industrial conflict, but they are unfortunately only part of the phenomenon of conflict.

Allen¹⁷ sees class conflict as permeating the whole of society and is not just an industrial phenomenon. The author however argued that trade unionism is a social as well as industrial phenomenon. He maintained that trade unions are by implication, challenging the property relations whenever they challenge distribution of the national product. The author concludes that by looking at the role trade union which he says is challenge all the prerogatives which go with the ownership of the means of production, not simply means of production, not simply the exercise of control over labour power in industry among others. The author seems to concentrate only on the negative effects of organisational conflicts. Role of Trade Unions in Nigerian Industrial Relations observed the trends of unionism and lapses in the attainment of harmony between trade unions and

¹⁷Allen V. I. (1971). *The Sociology of Industrial Relations*: London: Longman.

employers. Dahida¹⁸ observed that trade dispute is a common occurrence in both private and public sectors owing to the fact that the goals and objectives of staff and management in any given organization differs. For instance, the employees tend to seek for improved welfare while the management may desire high turn-over and improved productivity. The continuous desire of each party (employee and employer) to achieve individual or collective objectives may end up in trade dispute. This work however tend to narrow the incidences where trade dispute could arise to lack of improved welfare. The work fails to examine other issues that could give rise to trade disputes in an industrial establishment such obnoxious policies.

In the views of Otobo¹⁹, conflict may be organized or unorganized. Organized conflict has to do with a conscious strategy designed to change the situation identified as the source of conflict. In unorganized conflict, the workers react spontaneously to the situation in the only way open to them as individuals. According to the author, it could be through outright sabotage or indiscipline. He argued that, where workers experience sufficiently acute deprivations, unrest will be expressed in one form or the other. The circumstance of the case will however influence what form the expression of the conflict will take. However, the work did not pay attention to why, in most cases, the white-collar workers (office staff) have been identified with organized conflict, while the blue-collar workers (technicians), with both organised and unorganized conflict. There is also the need to expand examination of conflict to include the total range of behaviour and attitude that express opposition and divergent orientations between individual owners and

¹⁸Dahida D. P.,(2013) A Comparative Analysis of Trade Disputes Settlement in Nigerian Public and Private Universities, *Journal of Law, Policy and Globalization* ,Vol.18.

¹⁹Otobo, D. (1987). "Strikes and Lockouts in Nigeria: Some Theoretical Notes". In: D. Otobo and M. Omole (eds) *Readings in Industrial Relations in Nigeria*, Lagos: Malthouse Publishing Ltd

managers on one hand and working people and their organization on the other. From motivation studies, we can infer that, job or salary dissatisfaction is likely to result into certain outcomes. A worker who is satisfied would take time off to look for alternative jobs, thereby increasing his/her absence from work. He or she might just wilfully, without official release, be absent from work, especially where strong sanctions are not imposed to check frivolous absences.

In discussing the types of trade disputes, Bassey, et al,²⁰ seem to limit trade disputes into two categories. The authors classified trade as Interest Disputes and Grievance or Right Disputes. The learned authors maintained that interest disputes also called “economic disputes”, arise out of terms and conditions of employment either out of the claims made by the employees or offers given by the employers. Such demands or offers are generally made with a view to arrive at a collective agreement. While grievance or right disputes arise out of application or interpretation of existing agreements or contracts between the employees and the management. They relate either to individual worker or a group of workers in the same group, however, beyond these categories of trade disputes mentioned by the authors, it is important to also note that, workers could embark on industrial disputes not necessarily for any of the reasons they mentioned, but purely on solidarity basis.

Leonard²¹ explained that, Nigeria does not have a regulated market for trade union activism. He maintained that though, Nigeria’s law and policy directives by government

²⁰A. O., Ojua, T. A., Archibong, E. P., & Bassey, U. A. (2012), “The Impact of Inter-Union Conflicts on Industrial Harmony: The Case of Tertiary Institution in Cross River State Nigeria” *Malaysian Journal of Society and Space*, 8(4).

²¹Leonard C. Opara., (2014), “The Legal Frame Work of Trade Union Activism and the Role of National Industrial Court (NIC) in Handling Trade Disputes”, *International Journal of Humanities and Social Science*, Vol. 4 No. 3.

have encouraged trade union negotiations and collective bargaining in trade dispute resolutions and settlements. The author further discussed the various legal issues that are encountered in trade union and the role of National Industrial Court in trade dispute settlement and how it can effectively manage trade union activism and concluded that a Labour Court of Appeal to be provided in the Constitution since it is a specialized court mainly for labour and industrial workers. The author however fails to advance cogent reasons why he feels that the Labour Court of Appeal if established would be more effective than the NIC. The problem inhibiting effective resolution of trade disputes in Nigeria does not necessarily have to do with establishment of Labour Court of Appeal, but whether the existing mechanism of trade disputes settlement in Nigeria are flexible enough as to allow the agreement or wishes of the parties to determine the outcome of the settlement.

Agbi²² noted that, it is better to handle and manage conflicts before they get out hand. The author explains that conflict management is the process of limiting the negative aspects of conflict while increasing the positive aspects of conflict. He opined that the aim of conflict management is to enhance learning and group outcomes, including effectiveness or performance in organizational setting. He further observed that in order to prevent organizational conflict, the application of conflict management strategy is imperative. The author suggested that since conflict is inevitable, management must find ways of properly managing conflicts in an equitable way so that the aggrieved employee or group of employees usually a union would not result to strike or other forms

²²Agbi, S (2013), Conflict Management and Collective Bargaining in Workplace: A case study of the University of Abuja Teaching Hospital Gwagwalada Abuja, Being a Paper Presented at Workshop on Labour- Management Relations at the University of Abuja Teaching Hospital Conference Hall. 27th Wednesday, November 27, 2013.

or industrial action. It is indeed necessary, as pointed out by the learned author that, conflict in a workplace can be managed if the management is able to nip the issues resulting to grievance at the bud. However, the work appears to be limited in scope as it has not explain in detail the conflict management strategy needed to effectively manage conflict in an industrial establishment. As part of mechanism for resolution of trade disputes in Nigeria, Chidi²³, define the term collective bargaining as the process of agreeing terms and conditions of employment through representatives of employers (and possibly their associations) and representatives of employees (and probably their unions). She further posits that collective bargaining is the process whereby representatives of employers and employees jointly determine and regulate decisions pertaining to both substantive and procedural matters within the employment relationship. The outcome of this process is the collective agreement. Collective bargaining as one of the processes of industrial relations performs a variety of functions in work relations. It is a means for resolving workplace conflict between labour and management as well as the determination of terms and conditions of employment. It important to point out also that, collective bargaining could also be viewed as a means of industrial jurisprudence as well as a form of industrial democracy. The author has also not shown to what extent collective bargaining has been effective in the resolution of trade disputes in Nigeria.

Jide²⁴ examined the effectiveness of collective bargaining as conflict resolution mechanisms. The author argued that even though the history of collective bargaining in Nigeria is traceable to the public sector, the machinery has performed relatively poorly

²³Chidi, O. C. (2008). "Industrial Democracy in Nigeria: Myth or Reality?" *Nigerian Journal of Labour Law & Industrial Relations*. Vol.2 N01. March, pp.97-110

²⁴Jide I., (2013), "Collective Bargaining and Conflict Resolution in Nigeria's Public Sector", *Ife Psycholog IA*, 21(2),

due to the uniqueness and employment practices of government as an employer of labour and its regulatory role. The author therefore recommends the introduction of extra-statutory methods and incentives comparable to those in the private sector to motivate workers in order to elicit hard work and maximum display of initiative. These can be in form of merit awards, productivity bonuses, vacation travel/leisure incentives, children education subsidies and other desirable schemes. In addition, periodic review in remuneration and other welfare packages should be initiated without the workers agitating for them. While an effective implementation of the above recommendation would no doubt reduced the incidences of industrial disputes in Nigeria, the author did not avert his mind on the fact that the problem of collective bargaining in Nigeria starts with recognition of trade union for bargaining purposes. Though, the law accords recognition to registered trade union to bargain with the employer, it is however not clear as to subject matter they can bargaining on, whether it should include merit award or not.

Njoku and Nwosu²⁵ posit that the role of government can be seen in providing a level playing field for the interested “publics” in industrial relations through the recognition of collective bargaining as a means of settling conflicts. Despite its potential in fostering industrial harmony, bargaining is less effective in Nigeria; particularly in the public sector. This is so, because government has always resorted to the use of ad-hoc committees or commissions in settling workers’ demands. In the same vein, Anyim, and Chidi,²⁶ opined that the use of ad-hoc commissions in addressing workers’ demands such as wage determination and other terms and conditions is unilateral and undemocratic as it

²⁵Njoku, I.A. &Nwosu, C. (2007). ‘State, Industrial Relations and Conflict Management’. *Nigerian Journal of Labour Law & Industrial Relations*. Vol. NO 2, April, pp.148-156

²⁶Anyim, C.F., Chidi, O. C., Ogunyomi, O.P (2012), Trade Dispute and Settlement Mechanism Nigeria: A Critical Analysis, *Interdisciplinary Journal of Research in Business*, Vol. 2 (2):01-08

negates good industrial democratic principles. The authors concluded that this practice is antithetical to democratic values. They suggested that social dialogue should be vigorously pursued and embraced by all stakeholders to manage conflict at all times. The authors however, fail to offer any alternative to the social partners in case if the social dialogue at workplace fails. A major alternative in such a circumstance is reference to National Industrial Court. Ifeanyichukwu et'al²⁷ explained that National Industrial Court (NIC) is a specialized labour court set up to deal with labour related matters. The authors argued that the need for NIC was predicated on the fact that the conventional courts and the system of law they administer, which is essentially based on common law principles are ill-suited for the challenges labour related matters. Furthermore, labour issues are pure economic matters which require equitable approach rather than purely legalistic approach. They further maintained that, the Act establishing the NIC gave it exclusive jurisdiction on matters relating to or connected with any labour, employment, trade unions, industrial relations disputes and matters arising from the workplace, conditions of service, including health, safety, welfare of labour, employees, workers and matters incidental thereto or connected therewith. They concluded by explaining the role of NIC in the resolution of trade disputes in Nigeria to include advisory, adjudicative, and interpretation and application of awards and judgment. However, the authors did not dwell more on the question as to why despite the existence of NIC in Nigeria, trade disputes seem to be on the increase. In other word, why would workers prefer to embark on strike rather than submit a trade dispute to the NIC?

²⁷Ifeanyichukwu O., et'al, (2016), "The Role of National Industrial Court in Sustaining Harmony in Nigerian Health Sector: A Case of University of Abuja Teaching Hospital", *Journal of Management and Sustainability*; Vol. 6, No. 1.

Another option where social dialogue in a workplace fails, is Alternative Disputes Resolution (ADR). Ukonu and Emerole²⁸ define ADR as a term used to describe various different methods of resolving legal disputes without litigation. The authors explained that ADR approaches seek to involve the disputing parties in the resolution of their conflict, thereby increasing the probability that each of them will be more satisfied with the outcome than a situation in which a manager or a trial judge imposes a decision. The learned authors further enumerated and explained the major ADR process such as negotiation, conciliation, mediation and arbitration. They concluded by suggesting that, grievances should be treated with urgency. Prompt treatment of grievances will help to foster a productive, equitable and harmonious workplace. This work has addressed an important aspect of this research. Though, it is limited in scope as it has not examine in particular, the legal challenges of the National Industrial Court ADR Center in the resolution of trade disputes in Nigeria.

1.8 Organizational Layout

This research work is divided into five chapters. Chapter one deals with the general introduction and preliminary issues such as aim and objectives, scope of the study, methodology, justification, statement of the problem and literature review. Chapter two examines the meaning of trade disputes, position of the law on trade disputes and the role of trade unions in trade disputes. Chapter three analyses the causes and effects of trade disputes in Nigeria. Chapter four examines the mechanisms through which disputes are settled. It starts with voluntary methods, statutory, mediation, conciliation, arbitration,

²⁸Ukonu, I. O., and Emerole, G. A., (2015) "Conflict Management and Alternative Dispute Resolution Mechanisms in the Health Sector: A Case of University of Abuja Teaching Hospital" *European Journal of Business and Management*, Vol.7, No.27.

industrial arbitration panel, National Industrial Court and the ADR Centre established under the NIC. Chapter five summarizes the work, highlights the major findings and makes recommendations.

CHAPTER TWO

HISTORICAL DEVELOPMENT AND CONCEPTUAL DISCOURSE ON TRADE DISPUTES IN NIGERIA

2.1 Introduction

In every industrial establishment, there are three main industrial relations actions or parties and the first two of action are the employer,(manager) and labour (trade union). The interaction of these parties could produce both agreement, and disagreement or conflict resulting from differences in interest and aspirations as both the employer and employee often have divergent interests on issues touching on wages, conditions of work, and terms of employment among others. For instance, the employer who provides the capital and forms the organization expects maximum profit, and would not want anything to hamper it. He expects uninterrupted and unhindered production and distribution of goods and services. The employees who provide the service to the employer expect security of tenure, health facility, insurance, improved standard of living and for his life and immediate family and a steady increase in remuneration. With these divergent interests, conflict between the employer and the employee becomes imminent and unavoidable.²⁹ Unfortunately, some of these conflicts are resolved on the basis of compromise, while some end up in trade disputes.

2.2. Meaning of Trade Dispute

Trade dispute has been defined by section 48 of the Trade Dispute Act,³⁰ to mean: “any dispute between employers and workers which is connected with the employment or no-employment or the terms of employment and physical conditions of work of any

²⁹Chinyere, E., Collective Bargaining as a solution to Industrial Disputes. Available @ www.nigerianobservernews.com/1192008/features/index.html, accessed on 11th October, 2015. 10:07 A.M.

³⁰Cap T8, LFN, 2004.

person.” Furthermore, section 54 (1) of the National Industrial Court Act³¹ defines trade dispute as ...any dispute between employers and employees including disputes between their respective organizations and federations which is connected with:

- i. The employment or non-employment of any person,
- ii. Terms of employment and physical conditions of work of any person,
- iii. The conclusion or variation of a collective agreement, and
- iv. Alleged dispute.

It appears that NIC Act has adopted a comprehensive approach to the meaning of trade dispute in Nigeria. From the above definition, it follows that trade disputes may not only be restricted to disputes between the employer and the workers as required under section 48 of the TDA, but can also including disputes involving their respective organizations particularly where it is connected to terms and conditions of employment, as well as disputes relating to the conclusion or variation of collective agreement and an alleged disputes.

Flowing from the above definitions, it can be deduced that trade disputes usually arise from interaction between the organized labour and employers. There are two basic elements which could be deduced from the above definitions. First, is the subject matter of the dispute, this can further be classified into three perspectives. First, the subject matter may involve the employment or non-employment, or the term of employment or the condition of work of any person. Secondly, the parties to a trade dispute, which may involve employers and workers, or workers and workers. The existence of these two elements is a necessary condition in determining what constitutes trade disputes in

³¹ 2006.

Nigeria. In *National Union of Electricity Employees v. Bureau for Public Enterprise*³² the Supreme Court, in following its earlier decision in *National Union of Road Transport Workers v. Ogbodo*,³³ held that in determining the existence or otherwise of trade dispute, all the ingredients mentioned in section 48 of the Trade Disputes Act are necessary.

It must be pointed out also that, by virtue of the above definitions, trade dispute in a statutory sense can come into existence only when the dispute is between an employer and his workers or between workers and workers irrespective of the absence of trade union as a party or its intervention. Consequently, the status of an intra-union dispute which is connected to terms and conditions of employment remains confusing because while it may not qualify as a trade dispute within the context of the Act as stated above, judicial authorities appear to hold otherwise. For instance, in *Nigerian Union of Journalist v. Olufunke and anor*³⁴, the court is of the view that an intra-union dispute related to terms and conditions of employment can qualify as a trade dispute. The court held that an action calling for an account by union officials are an intra-union dispute involving a trade dispute. The court reasoned further that, check-off dues and hence its account are a term of employment under section 3 of the Labour Act, 1990, which requires the employer to make deduction from wages of workers and pay same to the relevant union; and so any dispute on an account of the check-off dues is a trade dispute.

Nowadays, the traditional notion of trade dispute as being a dispute between workers and their employers or between workers and workers may hardly be sustained, considering the fact that in certain instances, industrial action may be aimed at the government and the government may not be the employer of the workers. In circumstances like these, it may be argued that, such a dispute cannot be classified as between the employers and the workers. In England, this

³²(2010) 41 NSCQR (pt 1) 611.

³³(1998) 2 NWLR (pt 537) 189.

³⁴Olukole Kehinde (ed) Digest of the Judgments of National Industrial Court (1978-2006) P.374.

exception is found under section 244 (1) of the Trade Union and Labour (consolidation) Act³⁵ and is particularly relevant to the Education Sector. Under this provision, a dispute arising from matters referred to a Minister of the Crown are treated as trade dispute, notwithstanding that the Minister is not the employer.

2.3 Parties to a trade dispute

For a dispute to qualify as a trade dispute within the meaning of the Act, there must be proper parties. This shows that the parties to a trade disputes must be clearly defined in order to fully understand what kind of dispute constitutes a trade dispute. From the position of section 48 of the Trade Disputes Act³⁶ and section 54 (1) of National Industrial Court Act³⁷ the dispute may involve “employers and workers” or “workers and workers”. Thus, anyone of the two sets of people above may constitute the required parties to a trade dispute. It follows however that in statutory sense, disputes between employer and another employer would not constitutes trade disputes whether or not it is connected to the terms and conditions of employment. Thus, in *Onumalobi v. NNPC*³⁸, it was held that, a dispute between an employer and another employer is not a trade dispute. Furthermore, it is generally observed that in most cases, a trade dispute involves employers and trade unions rather than the individual workers as contemplated by the Act. This raises the question whether a trade union can be a proper party in a trade dispute. Judicial authorities seem to answer this question in the affirmative. Thus, a trade dispute will exist between an employer and a trade union that takes over a dispute on behalf of its member. Lord Wright in *N.A.L.G.O. v. Bolton Corporation*³⁹ stated that “it would be strangely out of date to hold that a trade union cannot act on behalf of its members in a trade dispute or that a

³⁵ 1955

³⁶ Cap T8, LFN, 2004.

³⁷ 2006.

³⁸ (1999) 12 NWLR (633) 628

³⁹ (1943) AC 166 at 169

difference between trade union acting for its members and their employer cannot be a trade dispute”.

2.3.1 Worker

Section 91 of the Labour Act⁴⁰, defined a “worker” to mean any person who has entered into or works under a contract with an employer, whether the contract is for manual labour or clerical work or is expressed, implied or oral, written, and whether it is a contract personally to execute any work or labour. The foregoing also includes all other sorts of contract by any person for a reward. This definition simply suggests that the term “worker” is wider than the traditional concept of employee as understood under common law. Here, the term worker will necessarily include persons employed under both contract of service and those employed under contract for service. Thus, the term “worker” here is used to include permanent employees or what is called office holders. Section 55 (1) of the Trade Dispute Act⁴¹, defines a worker as any employee who is a public officer or any individual (other than public officer) who has entered into or works under a contract with an employer, whether the contract is for manual labour, clerical or apprentices. It follows therefore that, every employee is a worker, but not all workers are employees. Section 2 (1) of the British Industrial Relation Act⁴² it defines it as “...any person, including an apprentice, employed by an employer under a contract of employment to work for hire or reward and, for the purposes of any proceedings in relation to a trade dispute, indicates any such person who has been dismissed, discharged or retrenched in connection with or as a consequence of that dispute or whose dismissal, discharge or retrenchment has led to that dispute”.

⁴⁰ Cap L1, 2004

⁴¹Cap T14, LFN, 2004.

⁴² 1967.

Thus, the fact that a worker has been dismissed is not a valid ground to refuse to regard the worker as an employee, for his reinstatement may be the cause of a legitimate trade dispute, and in certain circumstances, the worker in respect of whom a dispute may arise must not necessarily be in the employer's business⁴³. For instance, strike in sympathy with the workers of another employer may come within this perspective. In *Thomson (D.C.) and Co. Ltd. v. Deakin*⁴⁴, the Court of Appeal recognized the right of the employees of Bowaters to go on strike in sympathy with the workmen of Thomson Limited who were then engaged in a dispute with their employer over the question of their right to join a union.

The National Industrial Court Act adopted the term employees instead of worker and equally brings casual or temporary workers within the purview of the protection accorded to workers in full term employment. Section 54 of the Act⁴⁵ defines employee as a person employed by another under oral or written contract of employment whether on a continuous, part-time, temporary or casual basis and include a domestic servant who is not a member of the family of the employer. The major challenge however is that, the Act did not provide a legal framework for regulating the terms and conditions of the casual or temporary worker arrangement. This gap has been supplemented by section 7(1) of the Labour Act⁴⁶ which provides that a worker should not be employed for more than three months without the regularization of such employment. After three months every worker including the casual or contract worker's employment must be regularized by the employer by giving a written statement stating the terms and conditions of employment. It is unfortunate however that, there are instances in some enterprises in Nigeria where workers have worked for more than three

⁴³Emiola, E.op.cit. p.197.

⁴⁴(1952) Ch. 646, (1952) 2 ALL E.R. 361

⁴⁵National Industrial Court Act, 2006.

⁴⁶Cap L1, 2004.

months as casual or contract workers without being given permanent status. Regrettably, some employers circumvent the law by regularly laying off their employees every three months and asking them to re-apply for re-engagement.⁴⁷

2.3.2 Employer

Employer has been defined by section 54 of the National Industrial Court Act⁴⁸ as any individual or body corporate or unincorporated who has entered into contract of employment to employ any other person as an employee or apprentice. Similarly, section 91 (1) of the Labour Act⁴⁹ defines an employer as “any person who has entered into a contract of employment to employ any other person as a worker either for himself or for the service of any other person and includes the agent manager or factor of that first mentioned and the personal representatives of a deceased employer”.

From the above definitions, it appears that, employing the services of another person is the major factor for determining what constitutes an employer. However, due to the prevalence of sub-contracting in labour relations, the determination of who is an employer, based on the above criteria may raise practical problems. For instance, where a contractor employed a worker based on an agreement that the person will work for a probationary period before being transferred to the main employer. If however the appointment was wrongly terminated, the determination of who is an employer for the purpose of an action for unlawful termination may not be easy because though, the contractor is the actual employer, but the main employer could also be considered as an employer in this circumstance since he equally stands the chance to benefit

⁴⁷Orifowomo, O. A. (2007) *Perspectives on the Casualisation of Workers under Nigerian Labour Laws*, *East African Journal of Peace and Human Rights* ,13/1/108.

⁴⁸Ibid.

⁴⁹Cap L1, LFN, 2004

from the services of the worker.⁵⁰ Thus, the researcher of the considered opinion that in determining who is an employer in practical sense, the following factors should be taken into consideration: the source of the employee's remuneration and where the financial burden falls; the normal indicators of employment such as employment agreement, collective agreements and statutory pay roll deductions; who directs the activities of and controls the employee and has the power to hire, dismiss and discipline, and who stands to benefit from the services of the worker.

2.4 Subject Matter of Trade Dispute

The subject matter of a trade dispute is three dimensional matters. For example, based on section 48 of the Trade Disputes Act considered above, for a particular issue to be a matter of a trade dispute, it must be connected with the employment or non-employment of the workers or the terms of employment and the physical conditions of work of any person.

2.4.1 Employment or non-employment

In the context of the definition of trade dispute under section 48, the word "employment" is wide enough to include dispute of every nature connected with the employment of workers by their employers. This definition covers every dispute between the employer and his workman or workmen which is connected with the service of such workmen, or with the benefits and privileges incidental to that service⁵¹.

The term "non-employment" is also not defined in the Act, however, it connotes negative of employment. It can come into being in various forms. For instance, it will arise when the employer dismisses an employer, or decline to employ him or contemplates turning him out who is already in employment, or refuses to give work to

⁵⁰Okpara, R. op.cit.no.50.

⁵¹An understanding of collective agreements, Trade Disputes and Industrial Relations, available @ www.unioncimb.org.my/home, accessed on 14th October, 2015. 10:01. A.M.

an employee who is entitled to work, or suspends him⁵². Employment or non-employment of a person therefore, will necessarily be concerned with the initial engagement or continued employment or the reinstatement of any person.⁵³ Employment is non-employment of a person will necessarily be concerned with the initial engagement or continued employment or re-instatement of any person in an employment.⁵⁴ Therefore, the question whether a worker may be employed or continue in employment is within the contemplation of a trade dispute. For instance, in *Iron and steel Senior Staff Association v. Management of critical Hope Nigeria Limited*,⁵⁵ a case which arose from a number of awards by the Industrial Arbitration Panel. The claim of the Appellant was for non-payment of redundancy benefit, the National Industrial Court held that, it had jurisdiction over the case, as the matter was a trade dispute within the Trade Dispute Act, 1976 and it was irrelevant that the person affected left the employment of the Respondent. The Court further held that, once the Association had taken the issue of redundancy payment with the employer and the parties were not in accord, there was a valid trade dispute which can be the subject of an action before the court.

2.4.2 Terms of employment

“Terms” in a contract of employment are either expressed or implied. In either case, terms in a contract of employment often cover issues concerning wages, hours of work, holidays with pay, sickness benefits grading, promotion and mode of dismissal. It usually includes not only existing terms or rights but also revised or negotiated future rights. It may also include

⁵² Ibid.

⁵³ Emiola, A. op.cit., p. 197

⁵⁴ Kanyib, B.B. (2001) *Trade Union and Industrial Harmony: The Role of the NIC and IAP*, A paper presented at the 2001 Annual Conference of Nigeria Bar Association under the theme *The Law, Democracy and National Development*, held at the Cultural Centre Calabar, From 27 to 31 August, 2001. p. 17.

⁵⁵ (1978) NICLR 192

dispute, over an agreement of workers to join or not to join a trade union.⁵⁶ Most of these terms are nowadays expressly provided for in the employment contract, and it should be remembered that, a term will only be implied in a contract of employment if it is reasonable in the circumstance to do so. It must be emphasized also that, the phrase terms of employment within the context of Section 48, may be extended beyond those terms specifically incorporated in the contract of employment to include terms accepted by both parties through custom and practice of a particular trade.⁵⁷

It may be argued that terms of employment also need to be extended to cover any matter which though not directly connected to the employment, but which has the capacity to affect not only the immediate terms and conditions of work but other wider societal interests. In Nigeria, unfortunately, the courts have always taken a position against this line of reasoning. For instance, in *Federal Government of Nigeria and anor v. Oshiomhole and anor*⁵⁸, the plaintiff instituted an action at the Federal High Court, Abuja seeking the court to restrain the defendant from embarking on strike action, to protest the increment in fuel pump price which according to the plaintiff, the matter is out of the terms of the defendant's employment. The court accordingly gave an order on the ground among others that, the right to freedom of association and assembly guaranteed under section 40 of the 1999 Constitution (as amended) do not extend to issues not arising from contract of employment. The researcher is of the opinion that this decision is unsatisfactory, because as noted elsewhere in this work, section 40 (1) of the constitution⁵⁹ pluralized the word "interest" to emphasize that a trade union may bargain (including embarking

⁵⁶ S. 12 (4) Trade Union (Amendment) Act LFN 2005, confers the right to join a union and provided further that no employee shall be forced to join any trade union or be victimized for refusing to join or remain a member

⁵⁷Emiola, E. Op.cit.no.58.

⁵⁸Unreported Suit No.FHC/ABJ/CS/52/2004.

⁵⁹Federal Republic of Nigeria, Cap C23, LFN, 2004 (as amended).

on strike which is often used as an instrument of collective bargaining) with the employer on behalf of the workers for variety of interest. For instance, it may be financial, political, economic, or national interests or the physical conditions of work. Thus, there is no doubt that, the conservative approach to the definition of terms of employment as maintained by the court would have the capacity to affect not only the immediate terms and conditions of work of Nigerian workers but their wider societal interests.

2.4.3 Conditions of work.

Although, the phrase condition has not been judicially interpreted, it is however, believed that the term will include “safety and physical comfort” at work place. It has been described as the physical conditions under which a workman works.⁶⁰ Thus, dispute as to conditions of employment would seem to relate to such things as welfare provisions, safety arrangements, canteen and health facilities, ventilation, the problem of over-crowdedness, and rest period; sanitary provisions and other such matters as may be provided for by legislation or as may be established by trade practice.⁶¹

2.5 The historical origin of trade dispute in Nigeria.

Trade dispute generally originate from the interaction within an organized labour market.⁶² From the historical perspective, the origin of trade dispute in Nigeria can be traced to a number of factors; first, the emergence of wage employment and secondly, the rise of trade unionism. The arrival of the European in the early part of 17th century actually marked the beginning of the real wage employment as foreign currencies and investments began to be introduced into Nigeria. The growth of these investments gradually gave rise to the need for

⁶⁰Emiola, A. op.cit., p. 196.

⁶¹Oguniyi, O., (1991) *Nigerian Labour and Employment Law in Perspective*, Folio Association Limited, Ikeja, Lagos , p. 282.

⁶²Andrew, O.O. (2012) *The National Industrial Court: Regulating Dispute Resolution in Labour Relations in Nigeria*, @www.gamji.com/article800/NEWS, 12th April 2012

employment of labour and this in turn laid the foundation of modern industrial structure.⁶³ The emergence of the modern industrial structure necessitated the influx of men into the paid employment. But the problem of the rising cost of living and the inadequacy of wages to keep pace with the rise in price, as well as the inequality in bargaining power of an individual employee who cannot influence the amount of wage payable or resist if his employer demands of him an excessive number of working hours, or to force his employer to install safety devices and other protection against industrial hazards or accidents, made collective action by workers inevitable. Consequently, this has and subsequently, prepared the ground and basis for the rise of modern trade unionism.⁶⁴

Though, the origin of trade union movement in Nigeria could be traced to pre-colonial period. At this time, there existed guilds, mutual aids group and professional or occupational craft union. However, these were not, in modern sense of it, fully fledged trade unions. Rather, most of them were mainly workers' associations. Consequently, the first set of trade unions in Nigeria were modeled after British unions. At the earliest period of colonialism, Nigerians were discouraged from belonging to unions, as union membership was regarded as anti-colonial attitude.⁶⁵

The first trade union in Nigeria was found in 1912; when the government employees formed a civil service union. At this period, trade union could not take the pattern of radical organisations because of the paternalistic nature of colonial governments which was the largest employer of public labour. In 1914, this organisation became the Nigerian Union of Civil Servants after the amalgamation of the Northern and Southern Protectorates. In 1931, two other

⁶³Ibid.

⁶⁴Ibid.

⁶⁵ Yusuf N. "Trade Union movement and workers emancipation within the context of contrasting political climate in Nigeria, Department of Sociology, University of Ilorin, available @ unilorin.edu.ng/publications/union.html, Accessed on 18th October, 2015. 2: P.M.

major unions were founded – the Nigerian Railway Workers Union and the Nigerian Union of Teachers (which included private schools).⁶⁶ Legalization of unions in 1938 was followed by rapid labour organization during World War II as a result of passage by British government of the Colonial Development and Welfare Act of 1940, which encouraged the establishment of unions in the colonies. The Defense Regulation of October 1942 made strike and lock-out illegal for the duration of the war, and denied African workers the Cost of Living Allowances (COLA) that European civil servants received. In addition, the colonial government increased the wages only modestly, although the cost of living rose to 74% from September 1939 to October 1943. In June and July of 1945, 43,000 workers most of them were performing services indispensable to the country's economic and administrative life, went on strike that lasted more than forty days. In large part, as a result of the strike's success, the labour movement grew steadily and by 1950, there were 144 unions with more than 144,000 members.⁶⁷

Although, the labour movement was federated in 1941, the period from the end of World War II to 1964 was characterized by numerous splits, regroupings and further fragmentation. Factionalism was rampant, engendered by the reluctance of the colonial office to strengthen union rights, dependence on foreign financial support, the thwarting of labour's political objectives by nationalist leaders, and ideological differences. The most visible manifestation of labour problem was the dispute over whether to affiliate with the East European Socialist Oriented World Federation of Trade Unions, based in Prague or the more capitalist oriented International Confederation of Free Trade Unions, headquartered in Brussels.⁶⁸

⁶⁶History of Trade Unionism in Nigeria, available @ www./Q/history-of-trade-unionism-in-nigeria. accessed on 12th October, 2015. 4: 12. P.M.

⁶⁷Ibid.

⁶⁸Yusuf , N. op.cit. p.23.

In 1963, union members numbered 300,000 or 1.6 percent of the labour force. Despite this low level of organization, labour discontent worsened as the gap between supervisors and daily wage earners widened. For instances, in 1964, supervisors were paid thirty three times as much as daily wage workers and semi-skilled workers in public service. After independence, many workers had begun to feel that the political leadership was making no effort to reduce the inequalities of colonial wage and benefit structure. Corruption and suspicious consumption were perceived to be widespread among politicians. On April 1963, pay rise for Minister and members of Parliament further fuelled labour resentment, because rank and file civil servants had been working without wage increase since 1960. The five super ordinate central labour organizations consequently, formed the Joint Action Committee (JAC) to pressure the government to raise wages. Numerous delays in the publication of a government commission report on wages and salaries provided partial impetus for a JAC to mobilize general strike of 800,000 supporters, most of them non-unionist which lasted twelve days in June 1964. Although, the strike demonstrated its victory into a permanent political strength; labour unity disintegrated in the face of overtures by political parties to segment of organized labour as the federal elections of December 1964 neared.⁶⁹

As a result of the irrational structure of trade unions in Nigeria, the government decided to follow the policy of guided democracy in labour relations. One of the measures to remedy the situation was the reorganization of trade unions on “industrial line”. The idea behind this effort was to reduce the number of trade unions and do away with the problem of trade union rivalry. Accordingly, the federal government by virtue of the powers conferred on it by the Trade Union (central organization special provision Decree 1976) appointed an administrator of Trade Union Affairs, assisted by four other experts, with the following terms of reference:

⁶⁹ Ibid.

- i. Take all steps to effect the formation of a single central labour organization to which shall be affiliated all trade unions in Nigeria
- ii. Take all steps as administrators may consider necessary to encourage and effect the formation, whether by amalgamation or federation of existing trade unions or otherwise of strong and effective trade unions.

At the end of the administrator's assignment, forty union of workers and twenty eight associations of employees emerged. At the apex of the pyramid, is a new central labour organization. The Nigerian Labour Congress; inaugurated by the consensus of the union of workers on 28th February, 1978. Since the coming into effect of the Trade Union (Amendment) Act and until the enactment of the Trade Union (Amendment) Act 2005, the Nigerian Labour Congress has continued to be the only central labour organisation in Nigeria unions.⁷⁰

The development of Trade Unionism in Nigeria was triggered by constant struggle for the improvement of terms and conditions of work. This led to many industrial disputes generally manifested by strikes. Notwithstanding, the prohibition and restriction placed on strike, Nigerians suffer more strikes since 1968, during 1976 and after. In fact, the promulgation of the Trade Dispute Decree 1975, made teachers throughout the federation to go on strike all the resident medical doctors, Academic Staff Union of Universities, the Central Bank employees as well as the Nigerian Labour Congress went on strike. Similarly, numerous strikes occurred in 1980 – 1982, and in May, 1981, the NLC mobilised 700,000 of 1 million unionised Nigerian workers for a two day strike. This trend continued unabated even after the return of democratic rule in Nigeria. It is on record that six months after Nigeria's return to democracy in 1999, the Nigerian Union of Teachers, the National Union of Banks, Insurance and Financial Institutions Employees and the Nigerian Labour Congress went on strike to press for improved conditions of

⁷⁰Ibid.

employment.⁷¹ In fact, in 2012 the Nigerian Labour Congress, Trade Union Congress, as well as some civil society organisations embarked on a one-week general strike to protest the petroleum subsidy removal by the Federal Government.

⁷¹Audi, J.A.M., (1993) *Strikes and the Law in Nigerian*, *Law in Society Journal of Law Student Society*, Ahmadu Bello University Zaria, vol. 2 p. 77 - 78

CHAPTER THREE

FORMS AND CAUSES OF LABOUR DISPUTES

3.1 Introduction

In practice, labour disputes generally originate from interactions within an organized labour market. These disputes often have unique characteristics that influence the nature of the parties' response. For instance, employees may protest against the actions of an employer if they feel they are being treated unfairly. In the same vein, employers may take action if they believe employees are not acting in the interests of the business. Either way, industrial action is a sign of poor employment relations. Government monetary and physical policies also play a significant role in developing this framework.⁷² Union activity, such as pension issues and employment conditions usually contribute to the balance of the framework. The role unions play in negotiating disputes between employers and their members is also a key feature of these relationships.⁷³ It is the breakdown in this negotiations process that produces postures which leads to dispute, which sometimes are expressed in the strike, lock-out, picketing or any other form of workers' reaction to unfavourable working condition to force the other party into submission. Thus, one obvious approach to arrangement of "types of labour disputes" would be in terms of the forms of pressure exerted by one side or the other. Pressure moves in labour disputes are what the public see; they are the matters which receive the greatest attention from the press. Using this approach, it may be noted that labour disputes are at times accompanied by strikes, picketing, slowdowns, boycotts, lockouts,

⁷² Andrew, O. O., *The National Industrial Court Regulating Dispute Resolution in Labour Relations in Nigeria*. Available at <http://www.metinpoyn.com/article/the-national-industrial-court-regulating-dispute-resolution-in-labour-relations-in-nigeria>. accessed on 23rd October, 2015, 4:12 P.M.

⁷³Ibid.

or absenteeism. However, we would be concerned here only with the analysis only to strike, lockout and picketing.

3.1.1 Strike and Lockout

The commonest type of labour disputes is strike. A strike involves the withdrawal from work of a group of employees to disrupt business operations as a means of expressing dissatisfaction with some aspect of employment relations. Section 48(1) of the Trade Disputes Act⁷⁴ defines a strike as the cessation of work by a body of persons employed acting in combination, or a concerted refusal under a common understanding of any number of persons employed to continue to work for an employer in consequence of a dispute, done as a means of compelling their employer or person or body of persons employed, to accept or not to accept terms of employment and physical conditions of work. The section further defines cessation of work as including “deliberately working at less than usual speed or with less than usual efficiency. It goes further to define refusal to continue to work as including “refusal to work at usual speed or with usual efficiency. This definition presupposes a dispute based on a trade dispute and nothing more. It does not contemplate a social, economic or political disagreement or misgiving of workers. The definition, therefore, is narrower than the one at the common law. In *Tramp Shipping Corporation v. Greenwich Marine Inc.*⁷⁵, Lord Denning defined a strike action broadly as:

A concerted stoppage of work by men done with a view of improving their wages or conditions of employment, or giving vent to a grievance or making a protest about something or the other, or supporting or

⁷⁴Cap. T8 LFN 2010.

⁷⁵(1975) All E.R. 898 at 990.

sympathizing with other works in such endeavour. It is distinct from stoppage brought about by external event such as a bomb scare or by apprehension of danger.

Although this definition is wider than the one given under section 48(1) of the Trade Disputes Act, the first segment of the definition which hinges a strike on a trade dispute and the last segment thereof which exclude external factors like bomb scare, etc agree with the said section 48(1) of the Act. In the broadest sense, a strike is a deliberate concerted work stoppage. To constitute a strike in this sense, there must be a common cessation of work and the work stoppage must be deliberate. It follows that a cessation of work by a single worker cannot be a strike, nor does it amount to a strike if a group of employees stopped working due to an external event, such as a bomb scare or apprehension of danger.

On the other hand, lockout means the closing of a place of employment, or the suspension of work, or the refusal by an employer to continue to employ any number of persons employed by him in consequence of a dispute, done with a view to compelling those persons, or to aid another employer in compelling persons employed by him, to accept terms of employment and physical conditions of work.⁷⁶ It is extreme measures where employers physically prevent their employees from working by locking the gates to the work premises. Thus, while workers use strikes to express their grievances the employers make use of lockouts. The employers resort lockouts to compel the workers to accede to their own requests or condition. By denying access to the building, managers

⁷⁶S. 48, Trade Disputes Act, Cap T8 LFN, 2004. See also *Oshimohole v. Federal Government of Nigeria* (2005), N.W.L.R. (Pt 09 07) 414.

effectively cut off the workers' source of income and thereby force them to accept a management decision, negotiate or face a drawn-out dispute and financial difficulties.

Strike and lockout have been generally recognized as a legitimate means of defending social parties' occupational interests. The right to strike for instance has been recognized as an essential element in the principle of collective bargaining. Without it, organized labour is powerless to deal with management at arm's length. As far as labour relation is concerned, the right of the employers are conditioned by the rights of the workers to give or withhold their services. The right of the workmen to strike is an essential element in the principle of collective bargaining.⁷⁷ Indeed, it is arguable that the right to strike is an integral part of the right ingrained in the personal status of a citizen to choose for himself whom he will serve which distinguished him from a slave.⁷⁸ This must include the right to withhold service during a strike because man cannot be compelled to serve a master against his will.

In Nigeria, organised labour has right to embark on, organize or participate in strike action. Though the Constitution does not expressly provide for the rights of citizens to embark on protests, the right to freedom of expression⁷⁹ and right to peaceful assembly and association⁸⁰ create room for the expression of whatever ill-feelings the average citizen may have about the administration of the country including his views on government policies such as that by which the federal government removed the subsidy

⁷⁷ *Crofter Hand Woven Harris Tweed Co. Ltd. & Ors v. Veitch & Anor* (1943) 1 All E.R. 142, 158 – 159; (1942 A.C. 435 at 463; *Stratford & Sons Ltd. v. Lindley* (1965) A.C. 269; *Torquary Hotel Co. Ltd. v. Consuis* (1969) 2 Ch. 106. See also *K.K.W. Wedderburn* (1962) 25 M.L.R. 513.

⁷⁸ *Nokes v. Doncaster Amalgamated Collieries* (1940) A.C. 1014.

⁷⁹ Section 39 (1) Constitution of the Federal Republic of Nigeria, Cap C23, LFN, 2004. (as amended).

⁸⁰ *Ibid.* S. 40 (1) (as amended) guarantees that “everyone shall be entitled to assemble freely and associate with other persons, and in particular he may form or belong to any political party, trade union or any other association for the protection of his interests.”

that hitherto existed on petrol. Outside the Constitution, there are a number of legal instruments both national and international which grant freedom or right of association to workers or employees. A few of them will be highlighted below. The African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act⁸¹ makes provisions for the individual's right to free association. Article 10 (1) of the said Charter provides: Every individual shall have the right to free association provided that he abides by the law. Article 15 further that, every individual shall have the right to work under equitable and satisfactory conditions and shall receive equal pay for work. In the same vein, is the provision of Article 8 (1) (d) of the International Covenant on Economic, Social and Cultural Rights to which States Parties to the Covenant undertake to ensure the recognition of the right of trade union to embark on strike.⁸²

The combined effect of section 40 of the Constitution of the Federal Republic of Nigeria 1999 (as amended), the provisions of Articles 10(1) and Article 15 of the African Charter on Human and Peoples' Right and Article 8 (1) (d) of the International Covenant on Economic, Social and Cultural Rights, can by necessary implication be said to be a legal framework upon which workers or employees derive the right to embark on strike. However, the right to strike must be exercised within the confines of the law which make the right possible in the first place. It is therefore imperative that, in going about strike, the citizen must be wary of trampling upon the rights of persons who may not share his view or opposition to the position of government or where they do, who may not agree with him as to how best to make their displeasure known to government.

⁸¹Cap A9 LFN 2010

⁸²www.ohchr.org/EN/Professionalinterest/Pages/CESCR.aspx accessed on 13th October, 2015. 2:30 P.M.

3.1.1.2 Restriction to the Right to Strike and Lockout in Nigeria

Prior to 1968, the right to strike and lockout were well entrenched in Nigeria's labour relations system. However, this right was abrogated during the Nigerian Civil War of 1967 – 1970, culminating in a ban by the Federal Military Government due to the critical need during the civil war, to sustain production and for industrial stability to strengthen the war effort.⁸³ The idea of restriction on the right to strike by workers or to declare a lockout by employers was first introduced by section 16 of Trade Disputes (Emergency Provisions) Decree No. 21 of 1968, which was amended in 1969 introducing a total ban on strikes.

However, the Trade Disputes Act⁸⁴ later reversed the total ban on the right to strike and lockout and allowed for its exercise only subject to some stringent conditions. For instance, section 18 of the Act provides that, an employer shall not declare or take part in a lockout and a worker shall not take part in a strike in connection with any trade dispute where- the procedure specified in section 4 or 6 of this Act has not been complied with in relation to the dispute; or a conciliator has been appointed under section 8 of this Act for the purpose of affecting a settlement of the dispute, or the dispute has been referred for settlement to the Industrial Arbitration Panel under section 9 of this Act; or an award by an arbitration tribunal has become binding under section 13(5) of this Act; or the dispute has subsequently been referred to the National Industrial Court under section 14(1) or 17 of this Act; or the National Industrial Court has issued an award on the reference. The Act further provides a fine of N100 or imprisonment for a term of six months or in the case of a body corporate, to a fine of N1, 000. Furthermore, section 41 (1) of the Act

⁸³Audi, J.A.M., (1993) *Strikes and the Law in Nigeria*, Ahmadu Bello University Law Students Journal, Vol. 2, p. 73.

⁸⁴Cap T8, LFN, 2004.

made a similar provision though relating to workers in essential services. The section prohibits workers in essential services from embarking on strike unless they have given 15 days warning of such strike, failing which workers would be liable on conviction to a fine of N100 or imprisonment for six month. To further provide a disincentive to strike, section 42 (1) of the Trade Disputes Act⁸⁵ provides the principle of “no work, no pay”.

In 2005, the Trade Unions Act⁸⁶ was amended introducing a new subsection 6 to section 30 of the principal Act.⁸⁷ The said subsection provides that:

No person, trade union or employer shall take part in a strike or lock-out or engage in any conduct in contemplation or furtherance of a strike or lockout unless: the person, trade union or employer is not engaged in the provision of essential services; the strike or lockout concerns a labour dispute that constitutes a dispute of right; the strike or lockout concerns a dispute arising from a collective and fundamental breach of contract of employment or collective agreement on the part of the employee, trade union or employer; the provisions for arbitration in the Trade Disputes Act, Cap. 432, Laws of the Federation of Nigeria, 1990 have first been complied with; and in the case of an employee or a trade union, a ballot has been conducted in accordance with the rules and constitution of the trade union at which a simple majority of all registered members voted to go on strike.

Subsection 7 makes the contravention of the foregoing provision of subsection 6 an offence and liable on conviction to a fine of N10, 000 or six months imprisonment or to both the fine and imprisonment. It is worthy of note that, attaching criminal sanctions to a lawful withdrawal of labour do not help the development of healthy industrial relations; on the contrary, it will embitter the workers the more. Furthermore, provisions like these may not be unconnected with the attempt to prevent strikes that unions have organized in recent years over government decisions to raise the price of petroleum. The

⁸⁵Ibid.

⁸⁶Trade Unions (Amendment) Act, 2005.

⁸⁷Ibid.

court clearly demonstrated this in the case of *Attorney General of the Federation v. Nigerian Union Congress & anor*⁸⁸ where the claimant applied to the National Industrial Court for an order restraining the defendants from embarking and/or inciting the general public to embark on strike general strikes, street protests, mass rallies, or any other action that would be inimical to the economic affairs of the Federal Republic of Nigeria, arguing that the economic activities within the country would be adversely affected as the same would be the case with health and safety of the citizenry, if the threatened strike is allowed to hold. After going through the application and following an earlier decision of the Federal High Court in the case of *Oshiomhole & anor v. Federal Government of Nigeria*⁸⁹, the court granted the order stating that though, the purported action of the respondents seems to gear towards achieving better socio-economic conditions for their members and the generality of the citizenry of this great nation, but maintained that embarking on strike will compound the problem instead, meaningful dialogue and rather than strikes, will achieve more positive result to the satisfaction of the parties and the general citizenry.

In the case of *Oyo State Government v. Alhaji Bashir Apapa and 3 Ors*⁹⁰, the matter arose due to disagreement between the parties over salaries, incomes and wages increase. It all started when the Federal Government approved a new salary structure for the Federal Public Service. Consequently, their state counterpart in Oyo State agitated for the same. The respondents succeeded in their agitation through negotiation, giving rise to an agreement reached with the government on October 2, 2007. The Labour Union had embarked on strike during the agitation, which was called-off after the agreement. Part of

⁸⁸Unreported suit No.NICN/ABJ/03/2012.

⁸⁹Unreported Suit No.FHC/ABJ/CS/52/2004.

⁹⁰(Unreported) Suit No. NIC/36/2007, the judgment of which was delivered on July 15, 2008.

the agreement was that the workers would be paid the wage increase and the arrears of their remuneration during strike. The applicant, among other things, sought for:

- a. A declaration that the strike action by the workers under the Trade Disputes Act is illegal.
- b. A declaration that the public officers in the employment of Oyo State Government are not entitled to wages and remuneration during the period of their strike.
- c. A declaration that the strike action called by the NLC, Oyo State branch on behalf of the public servants in Oyo State is *ultra vires*.

While arguing the legality or otherwise of strike action embarked upon by the workers, the applicant cited the provision of section 6(a) of the Trade Unions (Amendment) Act, 2005 which states that: “no person, trade union or employer shall take part in a strike or lock-out or engage in any conduct in contemplation or furtherance of a strike or lock-out unless, the person, trade union or employer is not engaged in the provision of essential services”. The applicant therefore, argued that by virtue of the foregoing provision, the law has placed a ban on strike and lock-out for people engaged in ‘*essential services*’ and since the public service of a state is included in the definition of essential service, the strike action by the respondent is illegal and bound by section 43 of the Trade Disputes Act, the workers should forfeit their remuneration. The applicant further argued that there cannot be wages increase except in accordance with section 19 of the Trade Disputes Act, on the ground that the court does not have the power to grant or approve any general or percentage wage increase, except with the approval of the Minister of Labour.

The court, however, declined to comment on the legality or otherwise of the strike action, observing that it will be academic to remark on the legality or otherwise of the strike since the parties have partly settled and the strike was called-off before judgment in this matter. Meanwhile, the court went further to say that, whether or not the respondents who went on strike are entitled to salaries for the period of the strike, remains the question. In deciding on this question, the court alluded to Annexure 1 (agreement between the parties) specific to the fact that payment of arrears will be made. On the construction of section 43 of the Trade Disputes Act, the court referred to its case of *Senior Staff Association of Nigeria Universities (SSAN) v. Federal Government of Nigeria*,⁹¹ where it had held that it is not out of place nor unlawful for an employer to choose to dispense with the “no work, no pay rule” under section 43(1) (a) of the Trade Disputes Act. In the same vein, it is lawful for workers to agree with their employer that wages will be paid and no other detriment suffered even when strike action is embarked on. Applying this principle to this case, the court therefore held that, it is lawful for the applicant to agree to pay the respondents salaries even for the period when they were on strike. The court had cause to hold as follows: ...Section 42(1) (a) of the TDA is self-executory. Its implementation, without more, does not depend on a further enquiry in the manner that the appellant canvasses. A strike, whether legal or not, falls squarely within the ambit of the said section and for which the strikers are disentitled from wages and other benefits envisaged by the section. This statement of principle accords with the International Labour Organization (ILO) jurisprudence on the matter where at Paragraph 588 of the freedom of Association: Digest of Decisions and Principles of the Freedom of

⁹¹(Unreported) Suit No. NIC/8/2004, delivered on May 8, 2007

Association Committee of the Governing Body of the ILO, Fourth (revised) edition, Geneva, the norm is that salary deductions for days of strike give rise to no objection from the point of view of freedom of association principles. And to the learned authors, Bernard Gernigon, Alberto Odero and Horacio Guido – ILO Principles Concerning the Right to Strikes (1998) International Labour Review Vol.137 No. 4 at P.471, the Committee of Experts on the Application of Conventions and Recommendations (CEACR) of the ILO has refrained from criticizing the legislation of member states which provide for wage deductions in the event of strike action and has indicated that, as regards strike pay in general, the parties should be free to determine the scope of negotiable issues. It is in this light and given the self-executory nature of the said section 42(1)(a) that, it is perfectly lawful for an employer to choose to dispense with the ‘no work, no pay rule’. In other words, strike pay is lawful if an employer chooses to pay same and not to penalize the strikers in any other way for the strike. In the same vein, it is lawful for workers to agree with their employer that, wages will be paid and no other detriment suffered even when strike actions are embarked on. The court while arriving at the above decision emphasized that, the application of section 43(1)(a) is self-executory and does not require court order to take effect, otherwise it will defeat the principle of harmonious labour relations upon which the International Labour Organization principle on the matter is hinged.

What is however evident is that legislations for prohibition of strikes in Nigeria are completely worthless as they are incapable of being enforced particularly as it relates to imprisonment of workers. Hence, in the above case, the defendant did not only refuse appearing before the NIC, but also went ahead to carry out their planned protest. This has

gone to show that compulsory method of dispute settlement is incompatible with contract of employment.

There is no doubt however that, the stoppage of work initiated by the union will affect not only the parties but the society as a whole because the employers' business may be shut down with the attendant loss of revenue, the employees will suffer hardship because they will be out of work and will be deprived of their earnings and the uninterrupted flow of goods and services to the public at an affordable price can no longer be guaranteed. The question may therefore arise as to why do workers choose to bear the economic loss rather than accept the offer of the employer? The workers resort to industrial action to force the employer to reach a mutually acceptable agreement about the terms and conditions of employment. In this sense, the economic purpose of strike action plays an important role in collective bargaining. Thus, industrial action or likelihood of its occurrence is seen as one of the necessary conditions for collective bargaining to exist.

The right to strike is part of the consequence of unilateral regulation of conditions of employment. It is a necessary part of the process toward securing what workers could not get through negotiation. In *Union Bank of Nigeria Limited v. Edet*⁹², the court in confirming the link between the right to strike and collective bargaining said that whenever an employer ignores or breaches of a term of that agreement resort could be heard, if at all, to negotiation between the union and the employer and ultimately to a strike action should the need arise and if it be appropriate.

It must however be noted that, the right to take industrial action must be seen as a weapon of last resort which is to be employed when all other means of achieving an

⁹²(1993), 4 NWLR (pt 287), 288,

agreement or resolving dispute over the implementation of an agreement has failed. The provisions aimed at amicable settlement of trade disputes are to the effect that a strike action should be the very last in the collective bargaining process. Thus, while strike is a legitimate and unavoidable weapon in the hands of labour, it is equally important that the unnecessary and hasty use of this weapon should be discouraged. It would not be right for labour to think that, any kind of demand for a strike can be commenced without exhausting the available avenues for the resolution of the conflict.⁹³ This is important because the cessation or stoppage of work whether by the employees or by the employer is detrimental to the economy and to the well being of the society as a whole.

3.1.2. Pickets

Pickets are protests that occur outside or at the gates of a workplace, and are generally associated with strike action. Union members and other workers form a picket line to prevent other workers or supplies from entering the building in an attempt to disrupt business. Pickets are therefore another dramatic way for workers to express their dissatisfaction with management and can cause significant production losses for a business if prolonged. When a strike is called, unionists engage in picketing, barricading of entrance that may prevent other lawful activities. Questions have arisen as to whether there is liability to such actions. In Nigeria⁹⁴ as in the UK⁹⁵, the right to strike stems from the immunities granted to workers and trade unions against civil and criminal liabilities

⁹³ Hobson, R. (1996) *The Condition of Industrial Peace* In: Cocker, S., *The Industrial Court and Labour Relations in Kenya*, *East African Law Journal*, vol. 2, p. 257

⁹⁴ S. 43 (1) of Trade Union Act Cap T14 LFN 2004 which provides that, it shall be lawful for one or more persons; acting on their own behalf or on behalf of a trade union or registered Federation of Trade Unions or of an individual employer or firm in contemplation or furtherance of a trade dispute, to attend at or near a house or place where a person resides or works or carries on business or happens to be, if they so attend merely for the purpose of peacefully obtaining or communicating information or of peacefully persuading any person to work or abstain from working.

⁹⁵ Trade Union and Labour Relations Act 1974 (as amended in 1976)

for engaging in industrial action. Undoubtedly, no sane society will permit organized labour or any group of persons, masquerading under the guise of exerting group pressure, to press home some point or gain advantage, to infringe on its criminal or penal laws without the necessary sanctions. In *Mogul Steamship Co. Ltd. v. McGregor, Gow & Company*,⁹⁶ Lord Halsbury aptly summed up the position thus: “Intimidation, violence, molestation, or the procurement of people to break their contracts, are all of them unlawful acts; and I entertain no doubt that a combination to procure people to do such acts is a conspiracy and unlawful”. In Nigeria, section 43 of the Trade Unions Act⁹⁷ provides that it shall be lawful for one or more persons, acting on their own behalf or on behalf of a trade union or of an individual employer or firm in contemplation or furtherance of a trade dispute, to attend at or near a house or place where a person resides or works or carries on business or happens to be, if they so attend merely for the purpose of peacefully obtaining or communicating information or of peacefully persuading any person to work or abstain from working. Accordingly, subsection 2 of this section provides that the doing of anything declared by subsection (1) of this section to be lawful shall not constitute an offence under any law in force in Nigeria or any part thereof and in particular shall not constitute an offence under section 366 of the Criminal Code or any corresponding enactment in force in any part of Nigeria. In addition apart from government control through the use of the instrumentality of penal laws, government also has the right to use the civil law to control excesses in this regard. Comparatively, civil law is more lenient with picketers than criminal or penal law. Section 44(1) of the Trade Unions Act provides that an act done by a person in contemplation or furtherance of a

⁹⁶(1892) A.C. 25 at p. 37.

⁹⁷Cap T14, 2004. Criminal Code, Cap C 38 LFN 2010, Penal Code, Cap. P3 LFN 2010 and the Public Order Act Cap P 42 LFN 2010.

trade dispute shall not be actionable in tort on any one or more of the following grounds only, that is to say-

- (a) That it induces some other person to break a contract of employment; or
- (b) That it is an interference with the trade, business or employment of some other person or with the right of some other person to dispose of capital or his labour as he wishes; or
- (c) That it consists in his threatening that a contract of employment (whether one to which he is a party or not) will be broken; or
- (d) That it consists in his threatening that he will induce some other person to break a contract of employment to which that other person is a party.

Additionally, section 24 (1) of the Trade Unions Act provides that, an action against a trade union (whether of workers or employers) in respect of any tortuous act alleged to have been committed by or on behalf of the trade union in contemplation of or in furtherance of a trade union dispute shall not be entertained in any court in Nigeria.

However, subsection 2 of this section 44 of the Trade Union Act makes it clear that nothing in subsection (1) of this section shall prevent an act done in contemplation or furtherance of a trade dispute from being actionable in tort on any ground not mentioned in that subsection. Generally, what is clear from the provisions are: first the word “peacefully” used in subsection (1) of section means that no action will accrue to an aggrieved person in the instances cited in paragraph (a) – (d) of that subsection even if the picketing acts consist of the use of force. Secondly, only those acts mentioned in paragraphs (a) – (d) are not actionable; any other unlawful act is actionable against the picketers. Flowing from this, if the acts are not done “in contemplation or furtherance of

a trade dispute”, then the exclusionary provisions of paragraphs (a) – (d) of section 44(1) would be inapplicable.

From the above, it is safe to generally conclude that, organized labour has no right to picket on an organization if its demands are not based on a trade dispute. Secondly, the activities of the picketers must be within the confines of the law. In *Piddington v. Bates*⁹⁸ members of a particular union had gathered in a place for a peaceful picket over a trade dispute. The respondent, a police officer, directed that only two picketers should picket per each door of the premises picketed. The appellant, who disagreed, gently pushed aside the policeman and went about his picketing activities. On a charge of obstructing a police officer in the lawful discharge of his duties, the court convicted the appellant, saying that what he did came under the contemplation of the definition of ‘obstructing’ a police officer. On appeal, the appellate court held, that the respondent police officer was perfectly doing his lawful duties when he directed that only two persons should picket per door, because the officer had suspected a likely breach of the peace if many persons were allowed to picket per door. In Nigeria, *Garba & ors .v University of Maiduguri*⁹⁹ is an authority that students should not come together under the cover of unionism to engage in criminal acts of arson, looting and assault. The Supreme Court allowed the appeal of the students on the ground that the disciplinary board that “tried” and “convicted” them was incompetent in law to do so, since those acts committed by the students were criminal in nature, hence ought to have been tried by a regular court or tribunal established by law.

⁹⁸(1960) 3 All E. R. 60.

⁹⁹(1986) 1 NSCC 245.

3.2 Causes and effects of trade disputes in Nigeria.

One serious cause of industrial disputes in Nigerian is wrong placement in organizational priorities on the part of the management. When employers place higher premium on capital input far above the workers without appreciating that the latter makes the former productive, that would brood industrial rancour.¹⁰⁰ This connotes that poor remuneration may be a strong cause of industrial crisis. Low level of workers' motivations with respect to remuneration (both promptness and total package) has been a bone of contention between the workers and employers. For instance, on 30th June, 2015, the resident doctors of the Lagos State University Teaching Hospital embarked on strike to demand for improved working conditions.¹⁰¹

Closely related to this is the fact that the wave of globalization (trade liberalization amongst various economies of the world in global trade relations) has created inequality in bargaining power between corporations and workers.¹⁰² This has intensified different forms of competition, resulting in stronger responses from labour by stimulating quest for information.¹⁰³ This portrays that, increased international competition resulting from increased interdependence between different economies of the world would exert pressure that would result in increased labour market flexibility and dampened labour protection. This is because when employers tend to have strong bargaining power, they may become authoritative which will affect the management style

¹⁰⁰Fashina, D.(2001) "Nigerian Tertiary Education: What Future" in S. Jegede, A. Ale and E.Akinola (eds.), *Nigeria's Tertiary Institution and Human Rights*, Ikeja: Committee for Defence of Human Rights (CHDR), Pp.18-24

¹⁰¹See www.ngguardiannews.com/2015/06/luth-resident-doctors-begin-indefinite-strike/ accessed on 4th November, 2015. 11:59. A.M.

¹⁰²Aremu, J.A. (2006) "Ethical Dimensions of Globalization: Developing Countries' Perspective", *Globalization Review*, Vol.2 Nos.1&2, Pp.1-29.

¹⁰³Kanfam, B. (2000) "The Case of the Company Union", *Labor History*, Vol.41, Pp.321-350.

and work rules. The above had been corroborated by the high level of unemployment in the country, which makes employers to believe that they can always replace workers that do not comply with their domineering initiatives.¹⁰⁴ Then workers are provoked to join force to resist such propensities of the employer, thereby straining the strand of industrial tranquillity that hitherto existed. This is because it intensifies the strength and strategies of workers as well, thereby prompting them to rely on the tools of trade unionism to push forth their rights and privileges that are been dampened.¹⁰⁵ Though the workers may not be able to stop work, their attitudes towards their work will be negatively affected leading to other forms of grievance expressions such as lateness, absenteeism, high rate of turnover, sabotage, among others, which will ultimately affect productivity.

Secondly, industrial crisis could also result from conflict of opinions when there is asymmetric information between the workers and employers. This arises from clash of interests during the process of negotiation and incompatibility resulting from incomplete means in the pursuance of their respective goals. The cardinal interest of union is to win wages and other concessions from the employer through collective bargaining failing which trade dispute and consequently industrial action could ensue. The right to industrial action is embedded into the process of collective bargaining, hence, where bargaining takes place smoothly and the parties arrived at a mutual agreement, it may be difficult for workers to declare trade dispute or embark on industrial action. But where the employer fails to accept the union's demands or refuse to negotiate with them, the

¹⁰⁴Mas,A (2004) 'Labor Unrest and the Quality of Production: Evidence from the Construction Equipment Resale Market', *Industrial Relations/Labor Economics Seminar*, Berkeley: Princeton University., p.23

¹⁰⁵Kim,D and Kim S, (2003) 'Globalization, Financial Crisis, and Industrial Relations: the Case of South Korea', *Industrial Relations*, Vol.42, No.3, Pp.341-367.

workers resort to industrial action would be inevitable to achieve that aim¹⁰⁶. For instance, in July 2015, the members of NLC and the National Union of Electricity Employees picketed the office of the Port Harcourt Electricity Distribution Company over the company's refusal to stop casualization of workers.¹⁰⁷

Another source of the crisis is the breach of collective agreement that has been reached.¹⁰⁸ Ideally, once decisions are reached via the process of collective agreement (or by other means) each party is supposed to adhere strictly to the terms and conditions. Employers (and government) have in most cases been guilty of this, due to their seemingly stronger force. Apart from the above factors, one major causes of labour dispute in Nigeria is the non-implementation of collective agreement. Even where an agreement is duly entered between the workers and employers after bargaining, the workers may have no choice than to embark on industrial action if the employer failed to honour and keep to the terms of the agreement. In recognition of this fact the court in the case of *Union Bank of Nigeria Ltd v. Edit*¹⁰⁹ noted that whenever an employer ignores or breaches a term of collective agreement, resort could be had, if at all, to negotiation between the union and the employer and ultimately to strike action should the need arises and if it be appropriate. Unfortunately, this has been the trend this country. Recently for instance, the Academic Staff Union of Universities (ASUU) and the Academic Staff Union of Polytechnics (ASUP) embarked on strike in 2013 and the Colleges of Education

¹⁰⁶Okene, O. V. C., "Collective Strikes and The Quest for Industrial Peace" available @ www.nigerianlawguru.com, accessed on 22nd October, 2015. 1: 23. A.M.

¹⁰⁷See The Nation, available @ thenationonlineng.net/workers-picket-electricity-company-in-bayelsa/ accessed on 4th November, 2015. 10:48. A.M.

¹⁰⁸Committee for Defence of Human Rights (CDHR) (2002) *2001 Annual Reports on the Human Rights Situation in Nigeria*, Ikeja: CDHR.

¹⁰⁹(1993) 4 NWLR (pt 287) 288 .

Academic Staff Union (COEASU) strike in 2014¹¹⁰. On October, 20th 2015, Ekiti State University was shut down as Non-Academic Staff protested unpaid salaries.¹¹¹ This is in addition to the strike embarked upon on October, 2015 by the Academic Staff of Tertiary Institutions in Nasarawa State over unpaid salaries.

Labour dispute may equally arise where workers are denied recognition for the purpose of collective bargaining within the workplace. Recognition of trade union within an industrial establishment is the gateway through which the right to collective bargaining flows. Hence, where it is withdrawn or not given, the union will be incapable of bargaining with the employer on behalf of their members and, this has often forced trade unions to embark on strike either to demand for recognition. For instance, in *Nigerian Sugar Company Limited v. National Union of Food Beverages and Tobacco Employees*¹¹², The National Industrial Court held that the primary responsibility for the strike action that took place rested with the first party, who, for no cogent reasons, refused to recognize the second party and imposed contrary to the union's constitution, an executive committee on the workers. The court was of the view that, it is contrary to good union practice for management to get itself mixed up in its workers' union internal affairs in such a manner as to either subjugate the union to its owned whims and caprices or to frighten the workers from making what they consider to be legitimate demands, whether or not such demands will be met. It follows from the above case therefore that, trade dispute or the exercise of economic pressure in form of strike, has often been the natural response to an employer who refuses to accord recognition to union for collective bargaining purposes.

¹¹⁰ Adavbiele, J. A. (2015), *Implications of Incessant Strike Actions on the Implementation of Technical Education Programme in Nigeria*, *Journal of Education and Practice*, Vol.6, No.8, p.136.

¹¹¹ Oluwole, J. (2015), *Ekiti Varsity shut as Non-Academic Staffs protest unpaid salaries*, available @ premiumtimesonlineng.com/regional/ssouth-west/ accessed on 4th November, 2015. 11:18. A.M.

¹¹² (1979) NICLR. 18

Closely related to the above, is the fact that trade dispute could also arise from application or interpretation of collective agreement or contract of employment or under the Act or any other enactment or law governing matters relating to terms and conditions of employment. At the time of concluding the collective agreement, the union and the employer or the employers' association may have been confident that they both agreed on the meaning of a particular clause. However, when it is time to implement this part of the agreement, it may become evident that the two parties may not agree on what should be the correct interpretation. Furthermore, most modern construction contracts incorporate into the contract certain general conditions, special conditions, project plans and specifications. Any of these documents may also include, by reference, certain construction industry trade standards. It is almost inevitable that during the course of construction, there will be a dispute concerning the interpretation of inconsistencies and ambiguities in the contract, plans, conditions and/or specifications¹¹³.

There is no doubt however that, trade dispute initiated by workers will affect the parties, the society, as well as the employers' business. For instance, in 2014, just within the period of 10 days, Nigeria loses about N50 billion as result of strike embarked upon by the freight forwarders that grounded the APM Terminal and Apapa Port.¹¹⁴ In educational sector, these incessant strike actions have led to school disruption and stress among all concerned stakeholders. This often causes a big setback in educational industry in Nigeria. The case is virtually the same in the health sector. Such actions do not only paralyze goods and service delivery, but also loss of lives

¹¹³ Williams, C. L. "If there are Dispute concerning ambiguity in a contract, whose interpretation should prevail?, An Overview of Contract Rules of Interpretation available @ www.inf/constructlaw.com/cm/Article24.asp, accessed on 10th April, 2012. 4:56 P.M.

¹¹⁴Uche, S. (2014) *Agents' Strike: Nigeria Loses N50in 10 days*, The Sun, available @sunnewsonline.com/agents-strike-nigeria-loses-n50-in-10-days/ , accessed on 4th November, 2015. 10:29 A.M.

in extreme cases. This therefore underlines the importance of effective trade disputes resolution in Nigeria.

CHAPTER FOUR

COLLECTIVE BARGAINING IN NIGERIA: PROSPECTS AND CHALLENGES

4.1 Introduction

From the previous discourse, it is shown that, conflict is an integral part of organizational life. However, unless these disputes are resolved promptly, industrial peace may be disturbed with some negative effect on productivity and by extension, on the economy as a whole. Furthermore, the ability to resolve disputes and conflict amicably and expeditiously under the law distinguishes a civilized society from a primitive one because lack of effective conflict resolution mechanisms is a feature of a failed state and an indicator of under development. To this end, legal science has considered it imperative to devise various mechanisms for dispute settlement. In Nigeria, the mechanisms put in place for the resolution of labour disputes accord recognition to collective bargaining.¹¹⁵ This chapter therefore seeks to examine the effectiveness of collective bargaining and other forms of trade disputes resolution mechanisms in the settlement of trade disputes in Nigeria.

4.2 Collective Bargaining

Section 91(1) of the Labour Act¹¹⁶ defines collective bargaining as the process of arriving or attempting to arrive at collective agreements. Article 2, ILO Collective Bargaining Convention defines collective bargaining as a “negotiations which take place between an employer, a group of employers or one more employers’ organizations, on one hand and one or more workers’ organization on the other, for: (a) determining

¹¹⁵Cap T8, LFN, 2004.

¹¹⁶ 4 of the Trade Disputes Act, Cap L1, LFN, 2004,

working conditions and terms of employment; and (b) regulating relations between employers or their organizations and worker's organization"¹¹⁷. Collective bargaining is a process whereby employees and employers enter into dialogue and consultations with a view to arriving at collective agreements aimed at regulating conditions.

In practical terms, collective bargaining process allows the workers and employer or their representatives to meet in an atmosphere of mutual respect and cooperation to deliberate and reach agreement on demands of workers concerning improvements in the terms and conditions of their employment. It constitutes one of the core labour tools by which union and management can accommodate each other's views through compromise and persuasion, and in the process, institutionalize disputes settlement method through dialogue¹¹⁸. Collective bargaining has been an important pillar of modern industrial relations¹¹⁹ because it supplements the regulations of the labour laws according to the needs and specific nature of each establishment.¹²⁰ Thus, by engaging in collective bargaining with management, the organized labour seeks to give effect to its legitimate expectations that wages and other conditions of work should be such that can guarantee a stable and adequate form of existence, compatible with their physical integrity¹²¹. In this sense, collective bargaining is not only restricted to negotiations between employer and unions, but also include the process of solving labour management conflict. It is in view

¹¹⁷ No.154, 1981, see also Uvieghara, E. E."Labour Law in Nigeria" Malthouse Press, Lagos, (2001) p.388.

¹¹⁸ Health Service and Support facilities subsector, Bargaining Association v. British Columbia (2007) SCC, 27 available at www.ehlaw.ca/whatsnew/1107/focus11073.shtml, accessed on 14th October, 2015. 2:03P.M.

¹¹⁹Tymmy. Collective Bargaining and Collective Agreements under Nigeria Labour Law" @www.minfobarrel.com/collective-bargaining-and-collective-agreements-undernigeria-law, accessed on 14th October, 2015. 2:03P.M.

¹²⁰Pitt, G. (2000) *Employment Law* (4thed),London, Sweet & Maxwell, p.135.

¹²¹Okene, O. V. C. "Collective Strikes and The Quest for Industrial Peace" available @www.nigerianlawguru.com, 30th September, 2015. 3:05. P.M.

of this that, section 4 (1) of the Trade Disputes Act¹²² encourages the process of collective bargaining in the hope that it will provide a forum for the employers and union to meet and examine issues of mutual interest especially those considered vitally important to the parties, and subsequently arrived at a mutual agreement that can help in preventing the dislocation of industrial peace in the country.

Traditionally, the key issues for collective bargaining are often wages, working hours, training and education, safety, healthy and equal treatment. However, with the increasing importance of collective bargaining as a stabilizing force for enhancing economic growth and development, the subject matter of collective bargaining has expanded beyond the traditional terms and conditions of employment, to assume an institutional form. It has become more dynamic and flexible. In fact, collective bargaining has succeeded in occupying spaces which go beyond the determination of working and physical conditions in an organization which were previously considered to be the exclusive domain of consultation¹²³. It has, in certain cases been extended to aspects of social and economic policy which have an impact on living and working conditions and touched upon subjects such as employment, inflation, training, and certain obnoxious government policies.

The need for collective bargaining is necessitated by the apparent imbalance of power between the employees and the employer. Workers appreciate that uniting and bargaining collectively with the employer will give them an almost equal relationship

¹²²Cap T8, LFN, 2004.

¹²³Garnigon, B. et al (2000) *Collective Bargaining: ILO Standards and the Principles of the Supervisory Bodies*, @ www.wcms_087931.pdf, Saturday 12th October, 2015. 2:38. P.M.

with the employer since as an individual, a worker's bargaining power has only a slim chance of improving his conditions of work¹²⁴.

4.2.1 Conditions for Collective Bargaining

The functions of collective bargaining can only be realized if the bargaining takes place effectively. An important factor necessary for bargaining to take place is freedom of Association. In Nigeria, the exercise of collective bargaining is constitutionally linked to the right of workers to organize and form trade unions for the protection of their interests¹²⁵. It is well known that trade unionism all over the world emerged for improving the economic, living and working conditions of workers¹²⁶ through collective bargaining. It is in recognition of this, that section 40 (1) of the Constitution¹²⁷ specifically granted workers in Nigeria the right to form any association for the protection of their interests. Thus, collective bargaining process in Nigeria is based on the principle that, workers have the constitutional right to form trade unions to negotiate and agree with their employers as to wages and conditions of work. Furthermore, this constitutional backing strengthens and enables collective bargaining to provide opportunity for a constructive dialogue which helps workers to harness energy to focus on solutions that result in benefits to the organization and to the society at large.

Secondly, once the workers have exercised their constitutional right to form trade unions, an important step in the process of collective bargaining is for the employer or his association to recognize the union as a bargaining agent. Recognition connotes the

¹²⁴Okene, O. V. C. op.cit.p.6

¹²⁵ S.40(1) Constitution of the Federal Republic of Nigeria 1999 (as amended) see also ILO Committee on Freedom of Association, Report No. 44, Case No.202, Para 137 (1960) see ILO convention on Freedom of Association and Protection of the Right to Organize, 1987.

¹²⁶ Audi, J. A. M. (2005-2006) *Strike as a Labour Union Tool in Nigeria: Reflections on the Trade Union Act, 2005*, *Ahmadu Bello University Law Journal*, Vol. 23-24, p.94.

¹²⁷Federal Republic of Nigeria, Cap C23, LFN, 2004 (as amended).

willingness of an employer to bargain with a union¹²⁸. It is in fact the gateway through which the right to collective bargaining flows. Recognition of trade union may serve two useful purposes, i.e, recognition for additional conditions which have not been there before and, recognition to bring in certain categories of workers who were not unionized. However, for whatever purpose it is intended, recognition would not be regarded as real unless there is some collective bargaining process after the formal statement that the employer recognized the union. This explains why the law seeks to compel employers to recognize trade unions¹²⁹.

In Nigeria, the question of recognition is regulated by section 25 (1) and (2) of the Trade Unions Act.¹³⁰The Act has specifically restricted the issue of recognition to registered trade unions. It provides that, where there is trade union which persons in the employment of the employer are members, the trade union shall, without further assurance, on registration in accordance with the provisions of this Act, be entitled to recognition by the employer, and where an employer deliberately refuses to recognize any registered trade union to which his employees are members, such an employer shall be guilty of an offence and liable on summary conviction to a fine of N1, 000. Unfortunately, this fine is unlikely to deter. In fact it tends to trivialize the matter as it is too small to command compliance. Furthermore, the law has not provided an agency that would be charged with the responsibility of ensuring whether there is compliance with the recognition law in Nigeria or not. In Britain, with the enactment of the Industrial Relations Act 1971 and its subsequent repeal by the Employment Protection Act of 1975,

¹²⁸ Freund, O.K. (1977) *Labour and the Law* (2nd edition), London, Stevens & Sons, p.68.

¹²⁹ Audi, J.A. M.(1995) *Comparative Law on Recognition of Trade Union with Particular reference to Nigeria*, *University of Jos Law Journal*, Vol. 5, p.135.

¹³⁰ Cap. T14, LFN, 2004.

the stage was set aimed at ensuring that the employer actually proceeded to bargain with union. The Advisory Conciliation and Arbitration Service (ACAS) was constituted with the power to oblige an employer to recognize and bargain with trade unions in his establishment. Where the employer still refused to recognize the trade unions as recommended by ACAS, the Conciliation Arbitration Committee (CAC) was empowered to provide sanction against such employer. This sanction is form of unilateral arbitration which is to be obtained by the workers against the employer refusing to bargain with the trade union.¹³¹ With the repeal of the Employment Protection Act, recognition ceased to be compulsory and statutory tort thereby became established for failure to recognize, negotiate and consult with the trade unions. Where this attitude of employer directly affects anyone, that person may institute a legal action¹³².

ACAS is an independent, impartial, publicly-funded body, with delivery staff located across England governed by a Council. It is made up of leading figures from business, unions, independent sectors and academics. It is saddled with responsibilities of power improving organisations and working life through better employment relations. It works with employers, employees and employee representatives to solve problems and improve performance through the provision of up-to-date information, independent advice, and high quality training and conflict resolution services¹⁷.

¹³¹Pitt, G. (200) *Employment Law*, Sweet and Maxwell, London, p.147, Audi, J. A. M. (2005-2006) *Strike as a Labour Union Tool in Nigeria: Reflections on the Trade Union Act, 2005*, *Ahmadu Bello University Law Journal*, Vol. 23-24, p.94, see also Audi, J. A. M. (1995), *Comparative Law on Recognition of Trade Union with Particular reference to Nigeria*, *University of Jos Law Journal*, Vol. 5, p.135.

¹³²Kate, H. "Discrimination Law Review Team Women and Equality Unit Communities and Local Government and ACAS Statutory Code of Practice on Disciplinary and Grievance Procedures, www.acas-statutory-code-of-practice-on-disciplinary-grievances-procedure.com, accessed on 20th February, 2014.

Similarly, in the U.S.A. National Labour Relations Act of 1935 conferred on the employees a legal right to bargain collectively through representatives of their choice. The Taft-Hartley Act of 1947 imposed a corresponding obligation on the employers to bargain with the workers and refusal to bargain was considered an unfair labour practice. The same Act created the National Labour relations Board (NLRB) and empowered it to order an employer to bargain with a union. USA used recognition to solve the issue of who is to be recognized. The National Labour Relations Board provides procedural rules on matters like election at the plant level, to be organized by the NLRB. Later, an innovation was added where the “majority unions” became the “statutory bargaining representatives” of all the workers in the plant regardless of whether they were affiliated or not. The law also prohibited discrimination by the majority union on ground of race, creed, etc in representing the workers. The process for compelling recognition may lead to contempt proceeding by the court where an employer does not comply with an earlier order of National Labour Relation Board and the court. Thereafter, the employer will be bound by regulation not of their own choices because they refused to recognize the union¹⁸.

Though the law in Nigeria has provided for the recognition of registered trade unions, it is however silent on the subject matters for recognition and these are issues that matters most to workers. Consequently, this has to be sought through collective bargaining or the NIC. Unfortunately, even at the court, what constitute the subject matters for recognition seems to depend on the fact and circumstances of each case. For

¹⁸ Audi .A.M., “Strike as a Labour Union Tool in Nigeria: Reflections on the Trade Union Act, 2005” *Ahmadu Bello University Law Journal*, (2005-2006), Vol. 23-24, p.101.

instance in *Nigeria Breweries Ltd v. Nigeria Breweries Management Association*¹³³ the Industrial Arbitration Panel had held that medical scheme was a negotiable matter, but the National Industrial Court took a different view holding that, having regard to the history of negotiations in Nigeria Breweries Ltd. and the exact wording of the recognition agreement, the medical scheme should be a matter for consultation between the management and union. Decisions like these will no doubt increase the incidences of industrial unrest in the country as trade unions would rather prefer to embark on strike than to go court. For instance, on 30th June, 2015, the resident doctors of the Lagos State University Teaching Hospital embarked on strike to demand for improved working conditions.¹³⁴

Another factor necessary for affective collective bargaining is trust and confidence. Trust and confidence are very important elements in any credible medium of dispute resolution¹³⁵. In Nigeria, one of the challenges inhibiting collective bargaining is how to earn the trust and confidence in the employer's (government) relationship with workers across the country. This is born out of the frequent violation of collective bargaining process or agreements by government. For instance, the Academic Staff Union of Polytechnics (ASUP) was constrained to embark on strike action to demand the implementation of an agreement it entered with the Federal Government in 2009. The union had earlier suspended its 81-day-old strike in July 2013, but the Federal Government failed in its promise to tackle the relevant issues within the one-month time frame given by the union. The Chairman of the Union noted that: "Principally in 2009,

¹³³ (1978/79) NICLR, P. 35

¹³⁴ See www.nguardiannews.com/2015/06/luth-resident-doctors-begin-indefinite-strike/ accessed on 4th November, 2015. 11:59. A.M.

¹³⁵ ASUU Strike: "As Federal Government Loses another Opportunity to Earn Trust" available @www.thisdaylive.com, accessed on 25th, 2014.

we entered an agreement with the government which was supposed to be renegotiated in 2012. Between 2009 and 2012, nothing was done about the agreement... We called off the 81-day old in 2013 because the Joint Committee on Education of the Senate and the House of Representatives intervened. There were 13 issues in the earlier agreement we signed in 2009, but the government decided to pick out four which it said it could handle within a short time. The union vowed to continue the strike until their demands are met¹³⁶. To regulate these, government must restore trust confidence in the collective bargaining process by showing a renewed commitment in the implementation of collective agreements entered with other trade unions.

One major challenge in the process of collective bargaining is that the principles of collective bargaining presupposes that both employer and employees are equal, whereas is the relationship subordination and subjugation. The employers who in most cases are the government tend to have more bargaining powers than the employees. Consequently, in many instances, employers have not shown the willingness to respond promptly to labour's request for negotiation. If however the request is eventually honoured, there is no guarantee that the outcome will be successful. If however the bargaining is successful, there is similarly no guarantee that the agreement would be implemented.

4.2.2 The Legal Status of Collective Agreements.

One of the aspects of British industrial relations which Nigeria inherited is the non-binding nature of collective agreement¹³⁷. At Common Law, collective agreements are not regarded as a legally binding contract for two reasons. First, is the doctrine of the

¹³⁶Adams, B. Ibrahim, "Strike: ASUP, COESU Strike ground Education Sector" Osun Defender. Available @ www.osundefender.org/?p=146341, accessed on 16th March, 2014

¹³⁷Emiola, A. "Nigerian Labour Law", Ibadan. University Press.(1979) p.187.

Privity of contract under which a contract of employment is regarded as an affair strictly of the employer and worker, and the trade unions which are the principal negotiators on behalf of the workers cannot enforce such contract because they are not parties to it¹³⁸, consequently, only parties to a collective agreement can benefit or suffer from it¹³⁹. Therefore, unless this basic element of the general rule of contract can be established, the common law courts regard collective agreements as binding in honour only. The second reason is that the parties to collective agreements do not normally intend to create legal relations.¹⁴⁰ What remains confusing however is that, in English Law there is no requirement that an intention to create legal relations must be shown before a contract can be established. Unfortunately however, in Nigeria, the High Court which hitherto exercises jurisdiction on labour matters in Nigeria had consistently insisted on the strict compliance with the common law position, as shown above. This was exemplified in the case of *Rector Kwara State Poly v. Adefila*¹⁴¹ and *Nwajagu v. BAICO (Nig) Limited*¹⁴². It was held these in cases that collective agreement is document totally devoid of sanctions and such agreement cannot be made the basis of an action by an employee unless it is incorporated into the contract of service of such an employee, expressly or impliedly.

However, the National Industrial Court which is conferred with exclusive jurisdiction by section 254 (c) of the Constitution¹⁴³ and section 7 (1) National Industrial Court Act¹⁴⁴

¹³⁸Spring v. National Amalgamated Stevedores and Dockers Workers (1956) 2 All E.R 221.

¹³⁹National Union of Hotel and Personal Service Workers v. Paliso Nigeria Limited & Pellegrini Nigerian Catering Limited. Unreported Suit No. NIC/5/2004

¹⁴⁰Ford Motor Co. v. Amalgamated Union of Engineering and Foundry Workers (1969) 2 Q.B. 303, *Balfour v. Balfour* (1919) 2 Q.B. 571, see also Paul, A. 'Principles of Nigerian Business Law', ARC Publication Ltd, Kaduna (2014), p.42 and Kahn-Freund, O. Report on the Legal Status of Collective Bargaining and Collective Agreement in Great Britain, In: Kahn-Freund, O. Temple Gardens, London (1965) p. 25-26,

¹⁴¹(2007) , 15 NWLR (pt 1056)42.

¹⁴²(2000) 14 NWLR (pt 687) 356.

¹⁴³ Federal Republic of Nigeria, Cap. C23, LFN, 2004 (as Amended).

on all labour matters including interpretation of collective agreement in Nigeria, seems to adopt the position that the sanctity and binding effect of collective agreements is accepted without more, so that once the court's jurisdiction to interpret a collective agreement is activated under section 16 & 20 Trade Disputes Act¹⁴⁵, there is often no question as to it being binding in honour only. It is deemed to be legally binding for all intents and purposes.¹⁴⁶ What is however obvious from the decisions of the court is that in enforcing collective agreement, emphasis is often placed on some structural requirement for validity. For instance, in *Association of Senior Staff of Banks, Insurance and Financial Institutions v. Nigerian Employers Association of Banks, Insurance and Allied Institutions*¹⁴⁷, it was held that before a collective agreement can be enforced at the NIC, the terms of the agreement must be clear, precise, unambiguous and signed by the parties. Similarly, in *Lasisi Gbadegesin v. WEMA Bank Plc*¹⁴⁸, in resolving whether the two versions of collective agreements submitted before the court were valid and enforceable, the court held that none of the version was valid and enforceable, because the first is unsigned and is incomplete with several pages missing. And that, the second agreement ends at page 54, but it again has another signature at page 41 and that passage of the second document from page 19 – 54 is hand written.

The position adopted by the NIC regarding the status of collective agreement in Nigeria is commendable considering that the process of arriving at such agreement usually entails great financial cost, time and energy, this is in addition to the fact that,

¹⁴⁴2006.

¹⁴⁵ Cap T8 LFN, 2004.

¹⁴⁶Kanyip, B.B. Kanyip, B.B., Reforming the Labour Laws: A peep through Honourable Justice Uwais' Lenses, @ www.nicn.gov/k8.phb, accessed on 7th October, 2014

¹⁴⁷Unreported suit No.NIC/15/1989/1990.

¹⁴⁸Ibid..

most collective agreements are usually entered into on matter relating to legitimate expectations of the workers and their families. Thus, to suggest that such agreements are binding in honour, is an outright invitation of industrial unrest at workplace. Unfortunately however, the current legislations on Trade Disputes in Nigeria have not taken a definite stand in line with the position of the NIC, regarding the legal status of collective agreements in Nigeria.

4.2.3 Status of Collective Agreement under the Statutes in Nigeria

Section 3 (1-3) of the Trade Dispute Act¹⁴⁹ requires that, where there exist a collective agreement for the settlement of trade dispute, at least three copies of the said agreement be deposited by the parties thereto with the Minister within fourteen days of its execution upon the receipt of which the Minister may declare the term of the said agreement or any part thereof as binding on the employer and workers to whom they relate and thereafter, any party in default will be guilty for an offence and liable on conviction to a fine of N100, or six month imprisonment. The effect of this is that either party may take legal action to enforce the agreement once it is confirmed by the Minister. Unfortunately however, in Nigeria, government is both the regulator of the economy and the largest employer of labour. Thus, the fact that Minister of Labour is an agent of the government has cast doubt on the possibility of the Minister confirming agreements which may not serve the interest of the government. Secondly, the Act has not shown a genuine willingness to compel the parties to comply with the term(s) of collective agreement as confirmed by the Minister of Labour because the fine of N100 as a sanction is too small to command compliance. Again, it is not clear whether the N100 fine is to

¹⁴⁹ Cap T8, LFN, 2004.

apply for each day the default continues or it should apply once for the entire period of the default lasted.

Collective agreement, being an important mechanism in regulating labour relations, the constitution and the National Industrial Court Act contained statutory provisions which seem to be of the effect that its legal effect is statutorily guaranteed and it is intended to be applied in the settlement of labour dispute. For instance, section 245 (1) of the Constitution¹⁵⁰ has elevated the NIC to the status of a Superior Court of Record. Section 254 (c) of the Constitution¹⁵¹ and section 7 (1) National Industrial Court Act¹⁵² further confer on the court exclusive jurisdiction on any matter relating to the interpretation of collective agreement in Nigeria. These provisions go to show that both collective agreements on terms and conditions of employment and collective agreement for the settlement of trade disputes could be subject of litigation before the NIC. This argument is supported by the fact that the jurisdiction of the court has been expanded to include all labour matters. Furthermore, given the expanded jurisdiction conferred on the court, section 23 (2) (b) of the Trade Union Act³⁹ which prohibits the court from entertaining any suit instituted for the purpose of enforcing any collective agreement made by a trade union, federation of trade unions or central labour organisation will be of no effect.

Though, both the Constitution and NIC Act did not categorically or in clear terms confer on the court NIC the jurisdiction to enforce collective agreement, it could still be argued that the interpretative jurisdiction of the court carries with it the enforcement

¹⁵⁰ Federal Republic of Nigeria, Cap. C23, LFN, 2004 (as Amended).

¹⁵¹ Ibid.

¹⁵² 2006.

³⁹ S.23 (2) (b) Trade Union Act Cap T14, LFN, 2004.

jurisdiction. Of what importance is the jurisdiction to interpret collective agreement if it is not to enforce it? However, it would have been better if the Act has expressly made collective agreement enforceable as provided under the Schedule 1 to the British Employment Relation Act¹⁴ which provides that if an employer is required by the law to recognize a particular trade union, then any collective agreement made with that union is legally enforceable even if not specifically stated to be so.

4.3 National Industrial Court

The desire to curtail industrial actions given their attendant affects on the socio-economic stability of the nation led to the establishment of the National Industrial Court (NIC).¹⁵³ The objective behind establishing the court is to create a specialized court to handle special matters which are connected with the economic growth, industrial relations development, peaceful co-existence between and among labour and employers of labour as well as labour policy formulator, that is, the government.¹⁵⁴ The idea of having a labour and industrial court is not peculiar to Nigeria. African countries such as Kenya, South Africa, Malawi, Liberia, Botswana, Lesotho and other countries such as Great Britain, Germany, Italy, Belgium, Trinidad and Tobago, have established courts that deal with labour, including trade union and industrial relations matters between employers and employees and their associations. Experience has shown that the

¹⁴Schedule 1 to the British Employment Relations Act, 1999. Cited in Waudet'al, 'Waud's Employment Law: The Practical Guide for Human Resources Managers', Kogan Page (2007) , p.27 . Available @ www.essays.uk.com/essays/law-employment-essays/identification-of-collective-agreements

¹⁵³See section 7 National Industrial Court Act, 2006, see also Dayo A.,(2012) *Appraisal of the Role of the National Industrial Court in Resolving Labour, Trade Union and Industrial Disputes*, Bloomfield, available @ www.bloomfieldlaw.com/The%20Industrial%20Court-%20Trade%20Dispute%20Resolution.pdf, accessed on 30th October, 2015. 12:39. P.M.

¹⁵⁴“National Industrial Court of Nigeria”, available at <<http://nic.gov.ng/History.html>, accessed on 29th October, 2015. 11:17. A.M.

establishment of these courts in these jurisdictions has largely been responsible for the industrial growth, peace and tranquillity in those countries.¹⁵⁵

The NIC was established by the Trade Disputes Decree.¹⁵⁶ However, one of the challenges of the court then was its status. In view of this apparent shortcoming, the President of the Court (Hon. Justice B.A. Adejumo) among others, made effort to ensure that the court is given its proper place in the Constitution to enable it performs a proper role in the society. He welcomed the idea of the Review of the Constitution in 2006, and in February, 2006, the Joint Committee on constitutional reform was presented with memorandum for inserting the National Industrial Court into the Constitution as a superior court of record. The Bill to that effect was assented to by Chief Olusegun Obasanjo, President of the Federal Republic of Nigeria on June 14, 2006.¹⁵⁷

Unfortunately however, this development did not resolve the contention surrounding the status of the National Industrial Court. Section 1(3) of the National Industrial Court Act¹⁵⁸ provides that the court shall be a superior court of record and, except as may be otherwise provided by any enactment or law, the court shall have all the powers of the High Court. However, section 6 of the Constitution¹⁵⁹ stipulates that the courts listed in section 6 (5) (a)-(i) shall be the only superior courts of record in Nigeria. Unfortunately, the National Industrial Court is not one of those listed in that section and, it is a trite law that any legislation that is inconsistent with the constitution is void to the extent of its

¹⁵⁵Adejumo, B. A. (2007) *The Impact of National Industrial Court in the Administration of Justice in a Developing Economy like Nigeria*, University of Jos Journal of Contemporary Legal Issues, Vol. 11, p.6.

¹⁵⁶No. 7 of 1976, which later became the Trade Disputes Act Cap T8 Laws of the Federation of Nigeria 2004.

¹⁵⁷Kanyip, B.B. "Overview of the Trade Dispute Act and its application to Trade Disputes, available @ www.nicn.gov.ng/kd.php, 19th October, 2015. 1:11. P.M.

¹⁵⁸ National Industrial Court Act, 2006.

¹⁵⁹ Federal Republic Nigeria, Cap C23, LFN, 2004, (as Amended).

inconsistency.¹⁶⁰ Consequently, section 1 (3) of the National Industrial Court Act is unconstitutional for being inconsistent with the Constitution. However, despite this, the Court of Appeal in *Kalango v. Dokubo*¹⁶¹ held that though, the National Industrial Court is not one of those specified in section 6(5) of the Constitution as the only superior courts of records; it is nevertheless not an inferior court. This confusion was later cleared by the Supreme Court in the case of *National Union of Electricity Employees v. Bureau of Public Enterprises*¹⁶² when the Court finally confirmed that the NIC is a subordinate court and that it had no exclusive jurisdiction on the matters assigned to it by the NICA and other enabling Act on that behalf. The Court held that, the least that has changed is that state High Court under section 272 of the Constitution now has power to deal with trade disputes it has previously lacked and, that the mere arrogation to the NIC the status of superior court of records does not by that reason make the court a superior of record without due regards to the amendment of the provisions of section 6(3) and (5) of the constitution which listed the only superior courts of records known to the constitution without including the NIC; until the constitution is amended, it remains a subordinate court to the High Court.

The decision in effect meant that all the States High Courts, the Federal High Courts and the High Court of the FCT share the concurrent jurisdiction with the NIC on subject matters on which it sought to have exclusive jurisdiction. It equally meant that all these courts can review the decisions of the NIC on application by either party. In essence, the basis for the establishment was effectively put on hold at least for the time the decision lasted. However, the National Assembly rose up to the challenge by exercising its powers

¹⁶⁰Ibid.

¹⁶¹(2003) 12 WRN 32.

¹⁶² (2010) NSCQR(pt.1) 611.

under section 4 (2) and 9 (1) (2) of the constitution by setting in motion the processes of amending the constitution to cure the problems confronting the NIC. A new dawn came for the NIC on the 4th of March 2011 when the president assented to the Constitution (Third Alteration) Bill, 2010 which amended section 6 of the 1999 Constitution among others to include the NIC in the list of the superior court of records in Nigeria with exclusive jurisdiction on all labour matter¹⁶³.

In addition to the exclusive jurisdiction confers on National Industrial Court in civil cases and matters by Section 254 (c) (1) of the Constitution, the National Industrial Court of Nigeria also has power to deal with any matter connected with or pertaining to the application of any International Convention, Treaty or Protocol of which Nigeria has ratified relating to labour, employment, workplace, industrial relations or matters connected therewith. With this provision, it is observed that the court can now compete favourably with its foreign counterpart in term of wide power to deal with bilateral agreement between Nigeria and foreign countries on labour and industrial relations. Central to this is the labour relations within the confine of the International Labour Organization (ILO).

4.3.1 Resolution of Trade Disputes at the National Industrial Court

In resolution of trade disputes, section 13 of the National Industrial Court Act¹⁶⁴ empowered the court to administer both law and equity. However, where there is conflict between the provision of law and equity, section 15 of the Act allows the court to give priority to equity. Furthermore, in the settlement of any trade dispute, the cardinal objective of the court is to promote reconciliation among the parties and encourage as

¹⁶³ 245 & 254 Constitution of Federal Republic of Nigeria, Cap C23, LFN, 2004. (as amended).

¹⁶⁴ National Industrial Court Act, No.1, 2006.

well as facilitate amicable settlement of such disputes.¹⁶⁵ However, under section 13 of the Act, has power to grant any such remedy as a party may appear to be entitled to in respect of any claim brought before the court so that such claim or matter may be completely and finally determined in such a way that all multiplicity¹⁶⁶ of legal proceedings concerning any of those matters is avoided. In addition, the court may grant injunction in all cases in which it appears to the court to be just and convenient to do a so. It is imperative that any matter brought before the court is not only thoroughly and finally determined, but the decision is also satisfactory since the decision of the court is not subject to appeal¹⁶⁷ except where the matter bothers on any question of fundamental rights as contained in Chapter IV of the Constitution of the Federal Republic of Nigeria, 1999 (as amended).

Going by these provisions, the general expectation of course is that the role of the NIC in the settlement of trade disputes is to promote reconciliation between the parties. This can most be achieved through Alternative Disputes Resolution (ADR) processes and adjudicate. To start with, adjudication is where part of the problem lies. This medium is characterized by adversarial process which invariably makes the process too often seen as a battle field and hardly ends in win-win situation as the winner take it all. Most often, the conduct, pace and extent of litigation and the final decision are imposed on the parties. Contract of employment is a voluntary relationship. Parties to it often require a settlement mechanism that would allow their agreement and wishes to determine the

¹⁶⁵ Ibid. S.15.

¹⁶⁶ Ibid. S.16(1)

¹⁶⁷ Ibid. S. 9 (1)

outcome of the settlement. Hence, in Nigeria, most times injunctions issued by the NIC are not respected by workers.¹⁶⁸

This has gone to show that compulsory method of dispute settlement can hardly guarantee industrial harmony in Nigeria. The challenge is that, in Nigeria, government is not the regulator of the economy but also the largest employer of labour. Thus, using the court which is an agency of the government to settle a trade disputes involving the government as a party invariably means the government is a judge in their own case. Situations like this cast a serious doubt on the possibility of the workers obtaining a fair decision. We have shown above that in developed countries like Britain and America, independent agencies are often used to settle labour disputes. This has helped in reducing to the barest minimum any over bearing influence the government or employers could have on the process of trade disputes settlement.

4.3.2 Establishment of an ADR Centre for the NIC

Alternative Dispute Resolution (ADR) is a range of mechanisms designed to assist disputing parties in resolving their disputes without the need for formal judicial proceedings. They are those mechanisms that are used to resolve disputes faster, fairer, and without destroying on-going relationships.¹⁶⁹In the light of these hindrances that adjudication presents to the settlement of trade disputes, it becomes almost inevitable that recourse should be made to ADR. The argument here in effect is that the perennial conflicts between labour and management cannot be contained without putting in place an effective, quick, result-oriented, private and technical means of settlement of disputes.

¹⁶⁸*Attorney General of the Federation v. Nigerian Union Congress &anor*, Unreported Suit No. FHC/ABJ/CS/52/2004, and *Oshiomhole & anor v. Federal Government of Nigeria* Unreported suit No. NICN/ABJ/03/2012.

¹⁶⁹Akinbuwa, A.A., (2010) *Citizens Mediation Center and Multi-door Courthouse in Lagos State” in Law, Politics and Development*, NBAIkeja Branch, p. 327.

ADR options like arbitration and mediation have what it takes to respond to the challenges of trade disputes settlement. This is because ADR options are generally considered to be conciliatory in nature, less costly, time-saving, encourage the use of expertise and preserves established relationships while the dispute is being sorted out.¹⁷⁰

Alternative dispute resolution as a non-adversarial way of resolving disputes is increasingly being used in the public and private sectors, especially in developed countries. ADR helps parties resolve their differences without resorting to litigation. Instead, it looks at needs, interests and solutions, and can promote healing. It is voluntary, timely, confidential, and based on mutual agreement. Unlike the conventional courts, it is designed to yield solutions that are adapted to the particular circumstances of individual cases, as it is about solving problems rather than imposing solutions through litigation.¹⁷¹

Section 254(3) of the Constitution¹⁷² permits NIC to establish within its premises, an Alternative Dispute Resolution (ADR) Centre to aid in the speedy disposition of cases that come to the court provided that nothing shall prevent the NIC from exercising appellate and supervisory jurisdiction over an arbitral tribunal or commission, administrative body, or board of inquiry in respect of any other matter as may be prescribed by an Act of the National Assembly or any Law in force in any part of the Federation.

Settlement at the ADR Centre can take different forms, including mediation, conciliation and arbitration. For instance, Article 4 (4) (c) of the NIC Alternative

¹⁷⁰ For more on ADR options, see “Alternative Dispute Resolution” at: www.sparc-nigeria.com/SJG1, accessed on 31st October, 2015. 7:07. A.M.

¹⁷¹ Ibid.

¹⁷² Federal Republic of Nigeria, Cap C23, LFN, 2004 (as amended)

Disputes Resolution (ADR) Centre Instrument (the Instrument)¹⁷³ reassert the powers of the IAP created under section 9 (2) of the Trade Disputes Act¹⁷⁴, to resolve disputes and further established the ADR Centre for the purposes of resolving disputes through the mechanism of mediation and conciliation. The powers of the ADR however do not extend to resolution of disputes relating to interpretation or challenge of the court or consideration of interlocutory application.¹⁷⁵ The Instrument allows referral of matter to the ADR Centre by either the NIC or parties at any stage but before the judgment is delivered.¹⁷⁶ Any matter referred to the Centre must be concluded within 21 working days from the day Centre commences the settlement. However, where the disputes is not resolved within 21 working day, the duration may be extended for 10 working days provided the Director of the Centre makes such request to the President of the NIC not later than five days before the expiration of the 21 working days.¹⁷⁷

Article 2 of the Instrument also established the NIC Alternative Disputes Resolution Centre Rules¹⁷⁸ which provides for the Rules to govern the practice and procedure of the ADR Centre of the NIC. For instance, Order 4¹⁷⁹ stipulates the procedures to be followed by the panel in the conduct of mediation and conciliation, including the power the panel to call non-parties as witnesses during mediation or conciliation. It also requires that attendance of the parties at every session of the proceedings. In the event where the procedural provisions in the Rules are inadequate, the ADR Centre is empowered on the

¹⁷³NIC Alternative Disputes Resolution (ADR) Centre Instrument, 2015.

¹⁷⁴Cap T8, LFN, 2004.

¹⁷⁵Article 4 (8) NIC Alternative Disputes Resolution (ADR) Centre Instrument, 2015.

¹⁷⁶Ibid. Article 4 (18)

¹⁷⁷Ibid. Article 4 (26)

¹⁷⁸NIC Alternative Disputes Resolution (ADR) Centre Rule, 2015.

¹⁷⁹Ibid.

approval of the President of the NIC to adopt such procedure as will do substantial justice between the parties.¹⁸⁰

An Arbitral Panel has powers to adjourn a proceeding, however, a matter cannot be adjourned for a period exceeding three working days.¹⁸¹ Upon resolution of disputes, parties are enjoined to execute term of settlement reached before the panel after each party has perused and reflected on the settlement terms agreed upon by the parties. Upon conclusion of the mediation or conciliation session, the panel is required to submit its final report on the dispute settlement and the record of proceedings to the referring court.¹⁸²

It should be noted however that, despite the importance of ADR, there few issues capable of undermining its effectiveness. First, the ADR Centre is not independent as the government funds and appoints the Director of the Centre, furthermore, the level of discretion giving to the President of the NIC under the Instrument is so overbearing that it is likely to make the ADR Centre unattractive for workers. For instance, under Article 4, he determines whether the final extension of time for settlement would be giving. Additionally, under subsection 8 of Article 4, he is empowered to constitute a panel of not less than three officers in any ADR process. The parties have no say in the choice of the officers as it is entirely subject to the discretion of the president of the NIC. In fact, the Article did not provide a guide or designate a particular class of persons (judges) to be appointed which means that it is up to the president to appoint whoever he wants. The exercise of such enormous powers by the President of the NIC is capable affecting the trust and confidence workers may have in the ADR process considering that President of

¹⁸⁰Ibid. Order 1.

¹⁸¹Order 4, Rule 8.

¹⁸²Order 5.

the NIC, who established the ADR Centre, is an employee of the government and heading an important agency of the government-the NIC. Secondly, section 254(3) of the Constitution¹⁸³ empowered the NIC to exercise appellate jurisdiction on the decision of Arbitral Panel of the ADR Centre. But it is doubtful if the workers would be willing to refer the dispute for adjudication at the NIC where they would be bound by decisions that are not of their own choices.

¹⁸³ Federal Republic of Nigeria, Cap C23, LFN, 2004 (as amended)

CHAPTER FIVE

SUMMARY AND CONCLUSION

5.1 Summary

This dissertation examines the effectiveness of trade disputes settlement mechanisms in Nigeria in view of the prevalence of industrial actions in the country with all its attendant consequences. Though, conflict is an integral part of organizational relationship as labour management relationship is fraught with perennial conflicts of interests and mutual suspicion, with each party standing astute to wield its own weapon to protect its perceived interest in the relationship. However, these conflicts if not effectively regulated often results in trade disputes culminating in strikes, which have almost crippled the economy in the country. Attempts have been made to regulate these actions through legislations that provides for negotiated settlements and adjudication. However, despites these effort industrial actions in the country seem to be on the increase.

5.2 Findings

The following findings were made:

1. It is found that the framework of substantive law established by the state for the resolution of trade disputes in Nigeria lack some critical components of trade disputes resolution. For instance, section 25 (1) and (2) of the Trade Unions Act granted recognition to registered trade for purpose of collective bargaining, but N1, 000 fine section provided for non-compliance is inadequate to serve as deterrence.

2. It also found that in Nigeria, the law has not set up an independent agency that would monitor whether or not the employers have really accorded recognition to employees for bargaining purposes. In Britain, and America this is achieved through the Advisory Conciliation and Arbitration Service (ACAS) and the National Labour Relations Board (NLRB) respectively.
3. Additionally, for the purpose of collective bargaining, section 24 of the Trade Unions (Amendment) Act requires registered trade union to constitute an electoral college to elect members who will represent them in negotiations with the employer. However, the section did not provide guidelines for constituting an electoral college. This gap may open up opportunities for the state or employers to manipulate the criteria for the selection of representatives for negotiations.
4. Furthermore, adjudication as a process of trade disputes resolution has not been effective in Nigeria because it is adversarial nature which invariably degenerates into an environment in which the litigation process is too often seen as a battle field. Above all, this process hardly ends in win-win situation as the winner takes it all.
5. The process of mediation and conciliation at the ADR Centre established in the NIC is likely to be unattractive for workers because it is not independent and the overbearing influence and discretion exercise by the President of the NIC. This is of particular concern because the President of the NIC who established the ADR Centre is also an employee of the government and heading an important government agency-the NIC. For instance, the president constitutes the panel in

any ADR process based on his discretion also determines the final extension of time required to settlement.

5.3 Recommendations

In view of the above findings, the following recommendations are worth nothing:

1. Section 25 (2) of the Trade Union Act should be amended to require that the sanction for the refusal by employers to recognize trade union for bargaining purposes be determined based on the financial strength of each organization as well as to set up an independent agency like the ACAS and NLRB to monitor whether or not the employers (government) are really granting employee due recognition for bargaining purposes and to have a unilateral power to issue sanction against a non-complying employer.
2. Section 24 of the Trade Union (Amendment) Act should be further amended to provide for the guideline for constituting Electoral College for bargaining purposes. This way, the possibility of preventing strife among the employees or manipulating the process by the employer would be avoided.
3. There is need for employers to respect the process and outcome of negotiated settlement in order to achieve peace in the economy as workers would hardly rely on adjudication through the NIC because apart from its adversarial character and its winner takes it all syndrome, the workers do not have confidence in the NIC as they see it as an agency of the government who in Nigeria, are the same as the employers.
4. The NIC Alternative Disputes Resolution (ADR) Centre Instrument should be amended to make the appointment of the Director of the Centre to be done

subject to the confirmation of the senate and to reduce the extent of the discretionary powers exercise by the President of the NIC by providing a fixed Panel with its membership drawn from the Nigerian Labour Congress and Trade Union Congress. This way, the workers would be confident in the system.

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