

**A CRITICAL EXAMINATION OF COLLECTIVE BARGAINING AND ITS ROLE
IN LABOUR RELATIONS IN NIGERIA**

BY

**Sylvia Osaro EBHOMAN
MA/LAW/68319/2013-2014
M13CL8074**

**BEING A PROJECT PRESENTED IN THE FACULTY OF LAW,
AHMADU BELLO UNIVERSITY, ZARIA IN PARTIAL FULFILLMENT FOR THE
AWARD OF MASTER OF ARTS IN LAW (M.A.)**

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

NOVEMBER, 2015

DECLARATION

I, **Sylvia Osaro EBHOMAN** hereby declare that the work in this project titled: “**A Critical Examination of Collective Bargaining and its Role in Labour Relations in Nigeria**” has been carried out by me. The information derived from other literatures have been duly acknowledged. No part of this thesis has been previously presented for another Degree, or Diploma at this or any other institution.

Sylvia Osaro EBHOMAN

Date

CERTIFICATION

This project titled: “**A Critical Examination of Collective Bargaining and its Role in Labour Relations in Nigeria**” by Sylvia Osaro EBHOMAN meets the regulations governing the award of the Master of Arts in Law (M.A.) of the Ahmadu Bello University, and is approved for its contribution to knowledge and literary presentation.

Prof. A. M. Gurin,
Project Supervisor

Date

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

Date

Prof. Y. Y. Bambale
Dean, Faculty of Law

Date

External Examiner

Date

Prof. Kabir Bala
Dean, School of Postgraduate Studies

Date

DEDICATION

This project work is dedicated to God Almighty through Our Lord Jesus Christ, the Author and Finisher of our Faith. He stood by me and gave me strength.

ACKNOWLEDGEMENT

My profound gratitude goes to God Almighty for granting me good health and resources for the completion of my project.

My gratitude goes to my supervisor Professor A. M. Gurin for his guidance. He has put so much knowledge in reshaping this work to bring out the best in it. May GOD reward him.

My very special thanks goes to the following persons who were my source of courage: Mr Seyi Oluwehimi, Zakari Ali Mohammed and my daughter Osasenaga K. Leticia.

My gratitude goes to Barrister Musa Audi, Barrister Jimi Kadiri, Ahjia Barrister Hadiza Uwa, Doctor Sulaiman Onimisi Ohida, Barrister Henry T. Ebu, and Deacon Barrister Peter Abulu for their encouragement.

TABLE OF CASES

Agu v. Okewebe (1991) - - - - -	43
Akabeze v. Akabeze (1992) 2 NWLR (Pt 221) - - - - -	43
Australian Railway Union v. Commissioners (1930) 44 C.L.R 319 - - - - -	45
Crofter Hand Wooven Harris Tweed Co. v. Veitch (1941) UKHL 2- - - - -	71
Edwards v. Cardiff City Council [1979] JRLR 303 - - - - -	67
Ifeany v. Ojibah (1991) 5 NWLR (pt. 1919) 261 - - - - -	43
Joseph Larbi v. Opanin Kwasi (1950) 13 WACA 81 82 - - - - -	43
Management of Union Bank of Nigeria Limited v. National Union of Banks, Insurance and Financial Institutions Employees 1982/83 N.I.C.L R 213 - - - - -	78
Marsden v. Fairet,, Stainless Ltd [1979] IRLR 103 - - - - -	67
Morgan v. Fry (1967)2 ALL ER 386 - - - - -	70
Nigeria Insurance (Employers) Association v. Nigerian Union of Bank, Insurance and Allied Workers - - - - -	34
Nigerian Breweries Limited v. Nigerian Breweries Management Association - - - - -	35
Nigerian Petroleum Refining Company Ltd. v. Petroleum and Natural Gas Senior Staff Association 1982/1983 N.I.C.L.R 275- - - - -	37
Nigerian Sewing Machine Manufacturing Company Ltd v. National Union of Shop and Distributive Employees - - - - -	36
Opraji v. Ohanu (1999) 9 NWLR (Pt. 618) 290 - - - - -	43
Rookes v. Barnard (1964) 1 ALL ER 367 - - - - -	69
Stratford (J.T) and sons Ltd v. Lindley (Supra) - - - - -	69
Tramp Shipping Corporation v. Greenwich Inc (1975) 2 All E.R 989.-991 - - - - -	65

LIST OF STATUTES

Companies and Allied Matters Act

Companies Income Tax Act

Constitution of the Federal Republic of Nigeria 1999 (as amended)

Criminal Code Act

Labour Act

National Industrial Court Act

National Minimum Wage Act

National Salaries, Income and Wages Commissions Act

Trade Disputes (Essential Services) Acts

Trade Disputes Acts

Trade Union (Amendment) Act

Trade Unions Acts

LIST OF ABBREVIATIONS

&	-	-	-	-	-	And
AGP	-	-	-	-	-	Attorney-General of Federation
ALL FWLR	-	-	-	-	-	All Federation Weekly Law Report
Anor	-	-	-	-	-	Another
CA	-	-	-	-	-	Court of Appeal
Cap	-	-	-	-	-	Chapter
Ed	-	-	-	-	-	Edition/Editor
Eg	-	-	-	-	-	Example
Etc	-	-	-	-	-	and so on
FSC	-	-	-	-	-	Federal Supreme Court
Ibid	-	-	-	-	-	In the same source as previously cited
ILO	-	-	-	-	-	International Labour Organization
JCA	-	-	-	-	-	Justice Court of Appeal
LFN	-	-	-	-	-	Laws of the Federation of Nigeria
Ltd	-	-	-	-	-	Limited
MJSC	-	-	-	-	-	Monthly Judgment of the Supreme Court
NIC	-	-	-	-	-	National Industrial Court
NLC	-	-	-	-	-	Nigeria Labour Congress
No	-	-	-	-	-	Number
NRNLR	-	-	-	-	-	Northern Region of Nigerian Law Report
NWLR-	-	-	-	-	-	Nigerian Weekly Law Report
Op. Cit-	-	-	-	-	-	Opere Citato (In the work already cited)
Ors	-	-	-	-	-	Other
P	-	-	-	-	-	Page

Paras	-	-	-	-	-	Paragraph
Pp	-	-	-	-	-	Pages
Pt	-	-	-	-	-	Part
SC	-	-	-	-	-	Supreme Court
SCNJ	-	-	-	-	-	Supreme Court of Nigeria Judgment
TUC	-	-	-	-	-	Trade Union Congress
UK	-	-	-	-	-	United Kingdom
USA	-	-	-	-	-	United States of America
v.	-	-	-	-	-	Versus
Vol.	-	-	-	-	-	Volume
WACA	-	-	-	-	-	West African Law Report
WNLR-	-	-	-	-	-	Western Nigeria Law Report

ABSTRACT

Just as it is common for conflicts to arise in every human relationship, the relationship between an employer and an employee is not left out in this. The importance of collective bargaining is so enormous in order to bring about amicable settlement of trade disputes. It was discovered in this work that, countries the world over have at one time been faced with the challenges of industrial frictions. An objective of this research work is to educate society and stakeholders on the need for parties in industrial relation to resolve whatever disputes amicably. This is not undermining the rights of employees to embark on strike or other forms of settlements in driving home their grievances. It was recommended that labour laws in Nigeria should be strengthened to enhance the swift and amicable settlement in Trade Disputes.

TABLE OF CONTENTS

Title Page	-	-	-	-	-	-	-	-	-	i
Declaration	-	-	-	-	-	-	-	-	-	ii
Certification	-	-	-	-	-	-	-	-	-	iii
Dedication	-	-	-	-	-	-	-	-	-	iv
Acknowledgement	-	-	-	-	-	-	-	-	-	v
Table of Cases-	-	-	-	-	-	-	-	-	-	vi
List of Statutes	-	-	-	-	-	-	-	-	-	vii
List of Abbreviation	-	-	-	-	-	-	-	-	-	viii
Abstract	-	-	-	-	-	-	-	-	-	ix
Table of Content	-	-	-	-	-	-	-	-	-	xi

CHAPTER ONE

GENERAL INTRODUCTION

1.1	Introduction	-	-	-	-	-	-	-	-	1
1.2	Statement of the Problems	-	-	-	-	-	-	-	-	2
1.3	Aim and Objectives of the Research	-	-	-	-	-	-	-	-	6
1.4	Significance of the Research	-	-	-	-	-	-	-	-	7
1.5	Scope of the Research-	-	-	-	-	-	-	-	-	8
1.6	Research Methodology	-	-	-	-	-	-	-	-	8
1.7	Literature Review	-	-	-	-	-	-	-	-	9
1.8	Organizational Layout	-	-	-	-	-	-	-	-	15

CHAPTER TWO

COLLECTIVE BARGAINING

2.1	Introduction	-	-	-	-	-	-	-	-	16
2.2	History of Collective Bargaining	-	-	-	-	-	-	-	-	16

2.2.1	Meaning of Collective Bargaining	-	-	-	-	-	-	21
2.2.2	Types of Collective Bargaining	-	-	-	-	-	-	22
2.2.3	The Concept of Collective Bargaining	-	-	-	-	-	-	24
2.2.4	Characteristics of Collective Bargaining	-	-	-	-	-	-	25
2.5	The Structure of Collective Bargaining	-	-	-	-	-	-	29
2.6	Subject-Matter of Collective Bargaining	-	-	-	-	-	-	32

CHAPTER THREE

THE LAW AND COLLECTIVE BARGAINING

3.1	Introduction	-	-	-	-	-	-	41
3.2	Collective Bargaining	-	-	-	-	-	-	51
3.3	Public Sector Wage Policy	-	-	-	-	-	-	51
3.4	Private Sector Wage Policy	-	-	-	-	-	-	52
3.5	Current Laws in Labour Relations	-	-	-	-	-	-	55
3.6	The Scope of the Trade Dispute Act	-	-	-	-	-	-	56
3.6	Current Developments in Wage Policy Formulation	-	-	-	-	-	-	57
3.7	Relationship among Unions and Collective Bargaining	-	-	-	-	-	-	62

CHAPTER FOUR

INDUSTRIAL DISPUTES

4.1	Introduction	-	-	-	-	-	-	64
4.2	Expression of Industrial Disputes	-	-	-	-	-	-	64
4.3	Strikes	-	-	-	-	-	-	65
4.4	Meaning of Strike	-	-	-	-	-	-	66
4.5	The Strike Theories	-	-	-	-	-	-	69
4.6	The Right to Strike	-	-	-	-	-	-	71
4.7	International Labour Law and the Right to Strike	-	-	-	-	-	-	72

4.8	Statutory Rules Limiting Strikes	-	-	-	-	-	-	-	72
4.9	Lock-Outs	-	-	-	-	-	-	-	78
4.10	Meaning of Lock-Out	-	-	-	-	-	-	-	79
4.11	Effect of Lock-Out on Contract of Employment	-	-	-	-	-	-	-	79

CHAPTER FIVE

CONCLUSION, FINDINGS AND RECOMMENDATIONS

5.1	Conclusion	-	-	-	-	-	-	-	81
5.2	Findings	-	-	-	-	-	-	-	84
5.3	Recommendations	-	-	-	-	-	-	-	84
	Bibliography	-	-	-	-	-	-	-	86

CHAPTER ONE

GENERAL INTRODUCTION

1.1 Introduction

Collective bargaining is an industrial practice made to enhance harmony by mutual settlement of trade disputes between an employer and workers or their respective unions. The term collective bargaining is applied to the arrangement under which wages and conditions of employment are settled by a bargain in form of an agreement made between employers or associations of employers and workers organizations. The International Labour Organization Convention¹ enjoins members of the organization to take measures appropriate to national conditions however necessary to encourage and promote the full development and utilization of machinery for voluntary negotiation between employers and workers with a view to regulate the terms and condition of employment by means of collective agreements.

The practice of collective bargaining has long been accepted by all side to the employment relationship. This is mainly because the interest of government employees and trade unions rest on the process of consultation and discussion which is the foundation of democracy in industry.

Collective bargaining includes all methods by which groups of workers and relevant employees come together to attempt to reach an agreement in matters under discussion by a process of negotiation, such matters are often regarded as constituting a challenge which generates into a competitive rivalry and usually the method of reaching a decision is compromise.

These methods or process are considered collective because it replaces the individual workers feeble attempts to gain improvement for himself and is instead based upon a joint or collective effort and experience many workers channeled through their union and enhance

¹ International Labour Conventions and Recommendations 1919-1991, 1436-47, Volume 2 (1963-1991). Geneva International Labour Office.

by their collective strength and it is bargaining because in most times the process fit into the practical solutions. It is a general presumption in industrial relations that for an issue of collective bargaining to arise in the first place there must be grievance on the side of the workers unions or the side of the employers union to consider its settlement. This research will examine the nature of grievance of industrial conflict and such similar trade disputes with a view to identify the role of collective bargaining in settlement of this dispute and also in keeping harmony in labour relations.

1.2 Statement of the Problems

The main purpose of collective bargaining remains to settle terms and conditions of employment. As Lord Donovan put it for the Privy Council, it is of course true that the main purpose of most trade unions of employees is the conditions. In the course of this research work, the following research problems have been highlighted,

- a. Status have always taken a hand in regulating the minimum terms and conditions of employment, although statutory regulations have been inadequate not only in respect of the quality and quantity of its provisions but also with respect to the area or subject matter covered. Thus, matters such as job security, redundancy, health, welfare and safety of workers have not received as much statutory intervention as modern employment conditions would appear to demand.
- b. The question of employees participation in decision making at his place of work, often referred to as industrial democracy, has received only rudimentary attention and only in company law.
- c. Status gave rather early attention to the protection of certain categories of employees.

Every human society and culture creates some kind of labour relations system or system of relations between (on the one hand) the people who head the organizations and direct the activities which provide goods and services society needs and (on the other hand)

the people who do the work. Historians have described various forms of these relations taken in different societies over the course of time, such as slave, the feudal and the capitalist system.

The conflict between capital and labour is inherent in an industrial society and therefore in the labour relationship, conflicts of interests are inevitable. This is an industrial society represents Conflict of legitimate expectation of the management, on the other hand, e.g. desire to maximize profits, and the legitimate expectation relations refers to the relationship between an employer and an employee and the various means and rules for regulating such a relationship. One of the devices evolved for settlement or industrial disputes is collective bargaining, collective bargaining means the joint determination by employees and employers relationship such problems include wage rates and wage systems, hours and overtime, holiday, discipline, workloads and work retirement. By bargaining collectively with organized labour, management seeks to give effect to its legitimate expectations that the planning of production, distribution etc should not be frustrated through interruptions of works. On the other hand, through collective bargaining, organized labour seeks to give effect to its legitimate expectations that wages and other conditions of work should be such as to guarantee physical integrity and moral dignity of the individual, and also that Jobs should be reasonably secured. The legal climate is one of the principle conditioning the effectiveness and scope of collective bargaining.

Collective bargaining flourishes under a favourable legal climate and is retarded in a hostile legal environment.

The common law doctrine of conspiracy and the injunction issued by equity courts denied workers the opportunity to resort to collective action to improve their economic lot. Nigerian Government enacted number of legislations such as the labour Act of 1974.² The

² Cap 198 laws of federation or Nigeria 1990.

trade dispute Act of 1977³ and the trade union Act of 1973⁴, the purpose of which was to encourage the practice and procedure of collective bargaining and to protect the right of workers to full freedom of association. In order to achieve these ends, the trade union Act of 1973⁵ via section 24 of the Act provided for recognition of a registered representative trade union. The recognition of a workers organization is a necessary prerequisite in the negotiation process. To have fair and meaningful collective bargaining and employer or employer's organization must acknowledge its readiness to deal with a trade union for the purpose of negotiating the terms and condition of employment.

The international labour organization conversation to take measure appropriate to national conditions wherever necessary to encourage and promote the full development and utilization of machinery for voluntary negotiation between employers and workers with a view to regulate the terms and conditions of employment by means of collective agreements.

The practice of collective bargaining has long been accepted by all sides to the employment relations ship.

This is mainly because the interest of government employees and trade unions rest on the process of consultation and discussion which is the foundation of democracy in industry. Collective bargaining includes all methods by which groups of workers and relevant employees come together to attempt to reach an agreement in matters under discussion by a process of negotiation such matters are often regarded as constituting a challenge which generates into a competitive rivalry and usually the method of reaching a decision is compromise. This method or process is considered collective because it replaces the individual workers feeble attempts to gain improvement for himself and is instead based upon to join or collective effort and experience many channeled through their union and enhanced

³ CAP 434 L.F.N 1990

⁴ CAP 437 L.F.N 1990

⁵ Supra

by their collective strength and it is bargaining because in most times the process fit into the practice solution and because there is a constant process of give and to be of experience, view and positions.

It is a general presumption in industrial relations that for an issue of collective bargaining to arise in the first place there must be grievance on the side of the workers unions or the side of the employers union to consider its settlement.

This research will examine the nature of grievances of industrial conflict and such similar trade disputes with a view to identify the role of collective bargaining in settlement of a dispute and also in keeping harmony in labour relations.

This research will also examine the effectiveness of the legislation on recognition and how it affect negotiation process. Although collective bargaining process embraces a wide variety of the problems of employment, it by no means solves each and every issue or employment. There are a variety of employments issues which cannot be solve through the framework of collective bargaining, for example few collective bargaining systems (if any) would require management to consult with the union prior to the investment of new capital on the business. Collective bargaining system moreover cannot provide the answer to each human problem of unemployment. Some of them are disposed with the aid of outside interference in the form of mediation, conciliation or arbitration.

Furthermore, not all collective bargaining comes to a happy end, at times the process is often jotted by recourse to strikes and lock-out by the organized labour and management respectively. It is argued that the tread of a strike or lock-out and stoppage itself, are prods which stimulate management and unions to round a peaceful solution to the problems or employment.

However, despite the role of strike and lock out plays in industrial relations as a tool or economic weapon to the union and management respectively, it has a negative effect on

the economy of the nation by reducing the amount of revenue to be generated, and impairing the distributions of goods and services incessant industrial actions also scare away potential foreign investors. There is need therefore for government to foster the disputes. It is in view of this that the federal government enacted the trade Union Act of 1976.⁶ This legislation regulate outlawed certain types of strikes. It is the task of this thesis to examine the effectiveness of the strikes control legislation.

There is an argument advance against statutory regulations of collectives bargaining or as it is sometimes called state intervention in industrial relations matters. The fear as to the rigidity of statutory regulation which is held not only by trade unions but also by academic labour lawyers⁷ is one that attracts much sympathy.

The basic and fundamental objective to statutory regulation of collective bargaining, (collective bargaining) is by nature a changing one.

However, it should be pointed out that there is a need for an established legal framework on which labour disputes and collective bargaining practices and procedures are to be based after all the essence is of law is for regulation of human conduct, and to serve as an instrument of social engineering.⁸ It is important to note that if legislation must remain under Benson E. (1988) the law of industrial conflict, Macmillan press ltd, Hong Kong.

Constant review, therefore there is a need for research on the role of collective bargaining as a mode of settling industrial dispute under the Nigerian law.

1.3 Aim and Objectives of the Research

Employer/Employee relationship is one that is crucial in the growth of every economy. In this relationship, conflicts are inevitable, hence, the need for an avenue to resolve such conflicts. The **Aim** and **Objectives** of this research work are;

⁶ Supra

⁷ Freeman, M.D.A (1994) LLOYD'S introduction

⁸ To Jurisprudence. Sweet & Maxwell, London P. 5

- a. To appraise the importance of collective bargaining as a negotiation tool, as well as other means of settling industrial disputes in Nigeria.
- b. Similarly, this work is expected to provide for the parties involved in collective bargaining a guideline for peaceful resolution of industrial conflicts.

1.4 Significance of the Research

Nigeria is a country in the throes of economic dependency, which therefore need an active and efficient industrial relations policy that will rejuvenate and place the country on the path of prosperity. Collective bargaining are conducive to industrial peace, which in turn promote accelerate industrial and economic growth, there are understandings of the system (i.e collective bargaining) will provide a machinery for it manipulation toward industrial peace and increase the desirable industrial development of the country.

The further attractions to this research stem from the fact that law is dynamic in nature, therefore; there is a need for constant evaluation of its efficiency.

Since in Nigeria, as an act of public policy, collective bargaining has been promoted by legal support in form of enforcement of one more of its prods, e.g recognition i.e the willingness of an employer to bargain with a particular union, it is important to evaluate the success of the law.

Much of the criticism of our system of industrial relations has focused on the frequency of strikes. On their present scale they are certainly a nuisance and a fault in the system.

Legal sanctions at present do not curb or deter trade unions from breaching industrial peace. Therefore there is need to explore the reasons why the law is less erective. Also this research will be significant in a number of ways including the following

1. It will provide parties to a trade dispute or involved in an industrial action either a valuation pieces or information on issues affecting collective bargaining.

2. It will serve as a useful guide for the legislators and law makers in the event that laws or polices may be made concerning collective bargaining.

This research will therefore, add to the existing knowledge in the development of industrial relations in Nigeria. The research will also serve as a starting point for further researches.

1.5 Scope of the Research

Collective bargaining belongs to the domain within the scope of sociology and business administration. In conducting this research, emphasis will be on the legal aspect of collective bargaining. It is not within the purview of this research to describe the typical industry practice in Nigeria. And although no attempt will be made to construct a representative sample of industrial relations practice, data on collective bargaining that are relevant will be presented.

The study examines the ROLE of collective bargaining in settling industrial disputes in Nigeria. While the SCOPE of the thesis is limited, geographically to Nigeria, efforts will be made to illuminate the study by making use of relevant available materials from other countries. This is because collective bargaining is comparatively new here in Nigeria, therefore, the wealth of experience on the subject matter from England and United State of America where the practice of collective bargaining originate will be useful in analyzing and evaluation of the practice in Nigeria.

The research will be constraint to the materials available

1.6 Research Methodology

The research is mainly a doctrinal i.e. it is library oriented. The study will examine the various statutory provisions that regulate collective bargaining in Nigeria alongside development in other countries.

Some of the statutes that will be reviewed are the trade dispute Act, 1975⁹ Trade union Act 1973¹⁰, the labour Act. 1974¹¹ and income board Act of 1977¹², all this and the decisions based on them will constitute the primary authority of the research work. Also, literature review, of industrial relations textbooks and journals, and personal interviews will be used in this research and all would constitute the secondary authority of research work.

1.7 Literature Review

Goldberg, Sanders et al in Dispute Resolution observed that where parties to an ongoing collective bargaining agree to settle their differences, the ability of each party to compromise position is to greatly enhance and that can quickly bring the dispute to an end. This is in fact a true portrayal of the scene in collective bargaining. Unless parties to a dispute resolution agree to put their differences aside, the dispute will not be resolved.

Thus the most important element in collective bargaining is the sincere willingness of the parties to want to or to agree to settle.

Fashoyin, T. in industrial law in Nigeria observed that the most reason on why collective bargaining fails is mainly because parties fail to take the necessary steps that will ensure the terms become binding and obligation on them.

This goes to show that unless a legally binding clause is inserted in collective agreement, it cannot be enforceable. Chioma Kanu Agomo in Nigeria Employment law and practices, says collective agreement are not legally binding in honour only.

Unfortunately, parties are not always faithful when it comes to honoring the reasonable expectations of the other parties to a collective agreement. He also stated that collective bargaining is collective dialogue or collective negotiation between the employers representatives and the workers representatives with a view to reaching a collective

⁹ Supra

¹⁰ Supra

¹¹ Supra

¹² Cap 372 LFN 1990.

agreement. On the issue under negotiation, section 48 of the National Industrial Court Act (NICA) 2006 defines collective agreement for the purpose of the Act as “any agreement in writing for the settlement of dispute and relating to terms of employment.

It is pertinent at this juncture to note that Sec. 3 (1) of the Trade Dispute Decree (Act) provides the procedures to be followed for the settlement of a trade dispute which exist or is apprehended, thereby ousting the right of a 10. Sec. 3 of the Trade Dispute Decree Act 1969. Now Trade Dispute Act, T.8. LFN, 2 court 2004.

Court or approach industrial Arbitration Panel (I AP) of National Industrial Court (NIC) the minister of labour which may lead to delay of justice and abuse of procedure. However, E. E. Uvieghara in his book labour law in Nigeria he did not stress it.

He also stated that to what extent the employer can control his employee in the manner in which the work contracted is to be carried out. He further observed that if the employer has a great level of control over his employee, then the relationship has passed the control test.

He concluded that an employee is a servant who is subject to the command of his employer as to the manner he shall do his work.

This writer agrees with the position of the author stated above because a worker or an employee who cannot be subject to the command of his employer will be liable for breach of duty to obey his employer.

More so, the Nigeria court have not made any judicial pronouncement as to the correct position in order to vest the prima facie right on the party to approach for court redress where there is need without the instrumentality of the minister of labour.

Though the Act did not exclude the workers fundamental human right guarantee in the Constitution of the federal Republic of Nigeria 1999. Chapter 4.

But the workers right against his employer which may suffer temporally as the case may be.

Today E.E Uvieghara labour law in Nigeria is one of the most comprehensive books on collective bargaining and industrial democracy. The Collective Agreements, 1979-2003 presented by the National Union of Textile, Garment and Tailoring workers of Nigeria¹³. The preamble contains this agreement made between the National Union of Textile Garment and Tailoring Workers Employers Association. The intention of both parties to this agreement is to promote and improve relations between the association and the union and to work for increased productivity. It is agreed that should any disagreement arise between the association and the Union the parties shall endeavour to resolve this immediately through constitutional means as provided for in the procedural agreement. (Kyoto University Research Repository, Authors: A. Iyee, Emmanuel R. The African Study Monographs) Economic Reforms¹⁴ and the quest for efficiency in public administration call for the decentralization of collective bargaining and wages in the Nigerian public sector, but the efforts to decentralize has translated into both a protracted industrial relations crisis and inter-governmental conflict. This situation is traced to the failed effort at institutionalizing collective bargaining and consolidation of the unified wage structure in the public sector by the resort to ad-hoc wage commissions. The distorted federalism and intergovernmental relations under the military in Nigeria complicated the situation.

Another review is a report of the committee on *Minimum wage*, the conceptual clarifications are that the concept and practice of fixing and paying a national minimum wage by nations is a global policy, this is evident in the various international conventions and recommendations *on* national minimum wage adopted by most countries of the world, including Nigeria. By conventional definition, a minimum wage is the minimum amount of

¹³ Collective Agreements, 1979 to 2003, National Union of Textile Workers of Nigeria, Nulgtw N, 2004.

¹⁴ Kyoto University Research Information Repository Emu R. "The African Study Monographs"

money an employer of labour' is required to pay the lowest paid worker or employee in an establishment per hour or per-week or per-month or per-annum. This minimum wage is usually backed by an Act. In the case of Nigeria, the current minimum wage was reviewed from N250 per month in 1999 to N5, 500 per month in the year 2000.

The primary cause for the review of title national minimum wage was the federal government's response to the agitation by organized labour force under the Umbrella of the Nigerian Labour Congress (NLC) and also, the *Trade Union Congress of Nigeria*.¹⁵

The arguments for wage indexation and the imperative current review of national minimum wage were articulated by the Nigerian Law Congress and the trade union Congress in a demand made to the federal government through the secretary to the government, it is however important to note that the policy formulation as a principal component of welfare improvement and poverty reduction, these policies can have both positive and negative effects in the economy.

On 8th of January 2009, the House of Representatives in support of the current agitation, passed for a 2nd reading a Bill seeking to increase the national minimum wage for workers from N5, 500 per month to N30, 000 per-month; the committee noted that there was need to obtain and carefully examine current data on some key macro-economic indices which work together to dictate the pace of the welfare of the citizenry in order to come up with a fair and reasonable National minimum wage.

The Nigerian Labour Congress¹⁶ outlines and explains collective bargaining as the process for negotiations on a whole range of issues bordering on the

Regulation on the term and conditions between workers and employers of government, aimed at collective agreement, collective bargaining is seen as the most rational

¹⁵(TUC) Trade Union Congress of Nigeria.

¹⁶ NLC Nigerian Labour Congress – Yusuf Aboki-An introduction to Legal Research Methodology; a guide to writing long essays, thesis, dissertation and articles

process of determining and reviewing the terms and conditions of employment, the process manifests the power between the employees and the trade unions, collective bargaining goes beyond the process of negotiations between unions and employers on issues directly affecting conditions of employment. The Nigerian Labour Congress (NLC) also sees it as a means of limiting unilateral decisions and actions by employers and government, strong, stable, well focused and democratically run unions expands the scope of collective bargaining and thereby strengthening industrial democracy, so below are the numerous roles the NLC plays in the area of collective bargaining;

- a) Provides support data for negotiations through research.
- b) Continually reviewing the national minimum wage and ensuring that it's negotiations involves broader consultations with all stakeholders as influencing labour legislations.
- c) Ensuring acceptance of collective agreements in all sectors of the economy.
- d) Intervening in industrial disputes with the aim of strengthening its affiliates.
- e) Enhancing the bargaining capacity of affiliates
- f) Ensuring adequate protection for negotiators against possible victimization.
- g) And ensuring that collective bargaining is gender sensitive and serve to enhance interest of women.
- h) Ensuring that collective bargaining take into account the need to protect industry and work organization.

The research method I have chosen for my long essay is basically the doctrinal research method, the laws which government employment and labour in Nigeria occupy a position of considerable importance, since workers are occupying the fore front of national growth and development as well as *the* general well being of the nation's citizenry. So the labour force, if not properly regulated, may affect not only national economy of Nigeria,¹⁷ but

¹⁷E. E. Uvicghara, Labour Law in Nigeria

will also discourage any foreign investments. Even the constitution¹⁸ seeks to ensure that the Nigerian worker is able to participate fully in the economy, the source of labour law in Nigeria include the constitution of the Federal Republic of Nigeria, Legislation and *the* common law, these sources I believe will be of immense help to my dissertation which centers on not only the wage policy formulation, but also collective bargaining and the role labour law or Nigerian law plays in ensuring that the right and privilege of workers are not taken for granted.

In conclusion, a perfect model of collective bargaining is that both sides of industry are allowed largely to determine the scope of relations between theory the state's role is primarily to facilitate this process, existing laws that have been created and promulgated in Nigeria include;¹⁹

1. Trade Dispute (Emergency provisions) Decree No. 1 of 1968 amended in 1969 with further changes in 1970.
2. The Trade union Decree No. 31 of 1973
3. The Wage boards and Industrial Councils decree No of 1973
4. The Trade Union Dispute Decree No.7 of 1976.
5. The Trade Dispute Decree (Essential Services) Decree No. 25 of 1976
6. The Trade Dispute (Amended) Decree No. 54 of 1977
7. Trade Union Central Labour Organizations (special provisions Decree No. 4 of 1976).
8. Minimum Wage Act 1981 Trade Disputes Act 1978.
9. Trade disputes Act 1978

¹⁸The Constitution of the Federal Republic of Nigeria 1999.

¹⁹A paper presented at a workshop, held in Kano on Wednesday, 31st July 1996

1.8 Organizational Layout

The research work comprise five chapters, in chapter one, the reader is introduce to the research by way of a general introduction, the problems, the research will solve, the objective of the research the methodology and literature reviews.

Chapter two contains the conceptual clarification of the research by giving meaning to key terms used in the research.

Chapter three deals with the uses of collective bargaining in labour relations.

Chapter four considers the enforcement of the terms of collective bargaining.

Chapter five concludes the research with findings and recommendations.

CHAPTER TWO

COLLECTIVE BARGAINING

2.1 Introduction

Having examined the broad structure of industrial relations in the preceding chapter, we now turn to what is undoubtedly the core of the research work. The word bargaining suggest a spirit of give and take not in the sense in which management sometimes describes it, but one in which both parties have to make concessions in order to win other demands. Under collective bargaining, workers are bound together to present their demand with a single voice, a voice that is far more powerful than that of a single worker speaking on his own behalf. We shall begin within this chapter, a brief history of collective bargaining. We shall also focus on the concept and certain institutional mechanisms that are crucial for the effective functioning of the collective bargaining process.

2.2 History of Collective Bargaining

The history of collective bargaining is largely a history of unionism. The two are inseparably intertwined. In a historical recital one may emphasize either unionism per se, or its major facet, collective bargaining. The emphasis lies here on collective bargaining. Both Labour unions and collective bargaining are products of a modern Industrial society. Their history in Nigeria, which was as a result of colonial rule, stretches no further than one hundred years.

Between 1900 and 1914 economic activities were mostly restricted to the buying and exportation of agricultural and the construction of roads, railways lines and public works.

When the first World War broke out, in 1914, the Administration found itself in a difficult position for prices of goods had shot up, workers were protesting against the fall in real wages, conscript had to be paid. This was better represented by the imperial Exchequer thus;

*I have explained that British merchants engaged in the export Trade made large profits at the beginning of the war... and later on the import trade, from which substantial sums accrued to the imperial Exchequer in the Form of Excess profit Tax. In these profits the local government has not attempt to participate except to the extent of imposing moderate export duties on palm-oil, kernel, and cocoa...*²⁰

Intensified workers protest force the administration to grant war bonus. Its attempts to extend taxation to other categories of the population sparked off series of riots, the most prominent being- the Aba Women Tax Riot of 1929.

The earliest evidence of joint negotiation or consultation in Nigeria was in 1937 when the colonial government established the Provincial Wage Committees throughout the country, the function of these committees was to undertake periodic reviews for daily paid employees in the public service.²¹ Until 1941, the committees were composed exclusively of government officials and wage determination was therefore unilateral. However perhaps because of growing agitations and dissatisfaction among workers, the committees were expanded to include worker's representatives. The enactment of the Trade Unions Ordinance of 1938 and the experience of the Railway Workers' Union encouraged workers in Other Government departments and in industry to form Unions and seek registration so as to secure legal authority to engage in collective bargaining with their employer or to seek amelioration of grievances relating to wages or other conditions of employment. By the end of 1940, 14 trade Unions representing 4,629 workers had been registered. By December 1941 the number of registered Unions increased to 41 with a total membership of 17,521.10.²² There had been a general satisfaction with the existing wage rates and general condition of employment, but by 1941 the hardships imposed on the workers by war conditions had become the principal grievance.

²⁰ Crowder, M. (1986) Lugard and Colonial Nigeria-Towards An Identity? History Today. Vol. 36

²¹ Federal Research Division of the Library of Congress. The Country Study Series. Published 1988-1999

²² Fashoyin, T. (1992) *Industrial Relations in Nigeria*, Longman Nigeria Ltd, Ibadan, p.69

In July, 1941, a representative held in Lagos and attended by the representatives of the Railway Workers' Union, the Post and Telegraphs Workers' Union, and the Public Works Department Workers' Union, founded the African Civil Servants Technical Workers' Union (ACSTWU) 'to protect the interest of African technical workers and establish better understanding between them and the Nigerian Government.'²³

Soon after its inauguration, the **Africa Civil Servant Technical Workers Union** (ACSTWU) in collaboration with the Nigerian Union of Railway workers began to agitate for the grant of a **Cost of Living Allowance** (COLA) which was then known as 'war bonus.' The agitation eventually led to the appointment in November of that year of a committee of inquiry with the following terms of reference:

To consider the adequacy or otherwise of the rate of pay of labour and of African Government Servants and employees in the Township of Lagos having regard to any increase in the cost of living which may have occurred since the outbreak of war, and to make recommendations as follows:

- i. Whether a temporary increase by way of bonus or other addition to pay should be made;
- ii. Whether any other form of relief is desirable such as for example,
 - (a) Free meals at work;
 - (b) Provision of cheap meals on purchase;
 - (c) Stricter price control;
 - (d) Rent restriction;
 - (e) Provision of quarters or assisted schemes.

The Committee had as its Chairman A.F.B., Bridges, Senior District Officer, and Comprised 18 other members including such prominent trade unionists as J. A. Ojo president

²³ Ibid

of the Civil Service Union (CSU), and C. Enitan Brown, Secretary African Civil Servants Technical Workers' Union (ACSTWU). This, for academic purposes, could be regarded as the beginning of collective bargaining in Nigeria.²⁴

The Bridges Committee Report was published in July 1942, and among its recommendations were:

- (I) That a scheme for the issue of a daily free meal at work to labour, both Government and non-Government, be considered as early as possible in consultation with the principal commercial employers of labour, accredited representatives of the labour population and representatives of the market women's societies.
- (ii) That the provisions of good, cheap meals on purchase for the employees of Government and commercial firms be considered at the same time, such a Scheme should not be regarded, however, as an alternative to the provision of daily free meals for labour.
- (iii) That the existing organization for the control of prices generally be strengthened and that closer attention be given to the problem of controlling the prices of local foodstuffs if possible in co-operation with the local societies of market women.
- (iv) That the provision of quarters or assisted schemes for tenements for the proper population be given early consideration.
- v) That commercial employers be urged to raise the wages of their labour where they are considerably low.²⁵

Based on the Bridges Committee's recommendation the Government awarded the cost of living Allowance throughout the country. In 1948, as an aftermath of the 1945 general strike, the Whitley Council system which had been in use in the United Kingdom was introduced in Nigeria. The general strike lasted for 44 days but in the regions It dragged on

²⁴ Ibid

²⁵ Ibid

for as long as 52 days. According to Labour Department Annual Report for 1945, the total numbers of workers involved was 42,951. With the exception of essential services like electricity and the hospital, the strike hit practically all the technical and industrial establishments of the Government. It was in response to the strike and the growing disenchantment of trade unions that the Whitley Council system was introduced.²⁶

Basically, there were three councils catering for Senior, junior staff and industrial (technical) employees respectively. Their functions included the determination of the general principles governing conditions of service like recruitment, hours of work, promotions, discipline, tenure, remunerations and superannuation. They served as a negotiating as well as dispute-settling machinery in the public service. Whitley was structurally different government from the traditional bargaining machinery in that it was an all-embracing machinery covering federal, state and sometimes local government employees. Decisions were taken by agreement and not by vote, but such decisions were subject to approval by the Governor.

The Whitley system failed in many government establishments after barely a year of existence. There were several reasons for this. First, instead of serving as bargaining machinery, they were used as consultative bodies. Secondly, there were problems of representation on sides, indecision, red-tapism and lack of government support. Thirdly, they were rendered useless because decisions on wages and conditions of employment were generally made by semi-political wage commissions, particularly for public employees.

However, despite, the failure of these councils, the need for a body that will act as a negotiation medium was felt by the legislators. The Wages Boards and Industrial Councils Act of 1973 recognized the importance of such a body as a voluntary machinery to bring about collective bargaining.

²⁶ Uvieghara, E.E (1996) *Trade Unions Laws in Nigeria*, Ethiope Publishing Company, Benin-City, p.88

Section 18 of the Wages Boards and Industrial Councils Act of 1973 provides that employers and workers in an industry may establish a joint industrial Council for the purpose of negotiation and reaching agreements relating to such matters as are considered by those employers and workers to be matters for negotiations.

Section 18 (2) requires that upon the establishment of such a council, its agreed constitution and functions and agreed by the joint Industrial council on any matter “concerning wages or conditions of employment for workers” in any industry, are to be registered with the Minister who may thereafter make an order declaring such provisions to be binding on the workers to whom they related, and that effect shall be given to them.

Regrettably, these ‘councils’ are not widely in used for negotiation, as a result considerable strains and stresses were brought upon collective bargaining. Notwithstanding, over the years, collective bargaining has acquired greater significance in both the private and public sector of the Nigerian economy this was as a result of increase awareness among workers of the benefit of collective action for improving their employment conditions’

2.2.1 Meaning of Collective Bargaining

Tayo Fashoyin, an industrial relations expert, defines collective bargaining as a machinery for discussion and negotiation, whether formal or informal, between employer(s) and workers representatives, aimed at reaching mutual agreement of place to conclude that the variety of definition of collective bargaining is an attestation to the flexibility, dynamism and complexities of its nature.²⁷ on the general employment relationship between the employer(s) and workers Another careful attempts to analyze the nature of collective bargaining has been set forth by Neil Chamberlain. Chamberlain has suggested that collective bargaining can be analysed as functioning in three different fashions, depending upon its setting. He suggested that it might be viewed as (1) an exchange

²⁷ Fashoyin, T op cit, p.268

relationship between the two parties, that is, it furnished the means for selling labour; (2) a constitutional system in industry where the union shares with management; and (3) a method by which the union can join management in making joint decisions on issues concern to both parties.

Joseph Shister, an industrial relations expert, has argued that the differentials established by Chamberlain are not operationally meaningful. He has suggested instead that collective bargaining can best be analysed by listing its principal characteristics. In any such list Shister would include the fact that collective bargaining involves group relationships, that it is both continuous and evolutionary, that it interacts with the socio-economic climate, that it is private but at prints involves government action, and that it varies from setting to setting.

The Nigerian Labour Act of 1974, defines it as “the process of arriving at or attempting to arrive at, a collective agreement’

Although all these definitions have elements in common, they emphasize quite. Different aspects of the bargaining process. It is submitted that this is so because collective bargaining has different meanings to different persons. Another reason is that collective bargaining is dynamic and not static. And it will not be out of place to conclude that the variety of definition of collective bargaining is an attestation to the flexibility, dynamism and complexities of its nature.

2.2.2 Types of Collective Bargaining

Much controversy exists over what activities collective bargaining embraces. Depending upon whether one adopts a broad or a narrow point of view, the process of bargaining variously includes (1) negotiation of contracts, (2) settlement of grievances, (3) Strikes and lock-outs. Most persons agreed that collective bargaining involves the negotiation of contracts. There is far less agreement on the other two possible elements. Let us briefly consider these three parts of collective bargaining.

Perhaps negotiation of contracts is the most significant factor. It provides the general structure of wages, hours, and working conditions within which the parties will operate for the ensuing year (or sometimes longer). No contract has even been negotiated, however, which covered all points of controversy between the parties or which possessed foresight to cover conflicting views arising from the day-by-day operation of the enterprise. Collective bargaining to cover these situations must be broader than contract negotiation. By necessity collective bargaining must provide for adjustment of grievances. In the negotiation of the contract, in the handling of grievances, or in the consideration of problems not covered by these two processes, the parties may reach an impasse. At this point the raw economic force of strikes and lockouts could be employed. More often, these two, especially the former i.e. strikes, are most visible aspect of Nigerian industrial relations. Virtually all aspect of the Nigerian economy at one time or the other has being touched by strikes action; ranging from doctors' strikes, teachers' and of recent the Police's strike.

The resort to force through strikes and lockouts may or may not be included as an element in collective bargaining, depending upon one's point of view. Some specialists, e.g. Neil Chamberlain, claim that strikes and lockouts lack the mutuality which characterizes collective bargaining. As Neil Chamberlain indicates, "they are manifestations of bargaining power rather than of collective bargaining. Others, like Edward Wright Bakke and Clark Kerr, claim that strikes or lockouts are collective action; that in an overwhelming number of instances they result in an agreement; and that collective bargaining would be hollow and meaningless without these ultimate economic sanctions. It is the threat of strikes and lockouts with their economic liabilities which often times bring the parties to agreement. A good case for this point of view, is the improved conditions of service of Nigerian universities academicians and of recent that of members of the junior ranks in the Nigerian Police, which is a dividend of the strikes of the former and for the latter as a result of threatened strike. The

author of this research work, therefore, believes that strikes and lockouts should be considered as an aspect of collective bargaining. This position is well supported by Bakke and Kerr:

Implicit in the whole process is the ultimate resort to force. Nearly all bargaining takes place under the implicit if not explicit threat of a strike or a lockout. The threat of warfare, backed by both the ability and willingness to fight, is the primary bargaining weapon of each side²⁸.

A more blunt statement of the relationship of economic sanctions to collective bargaining has been made by Charles O. Gregory, a Labour Law expert:

The backbone of collective bargaining has always been economic coercion, which includes union recourses like strikes, boycotts, and picketing, as well as employer recourses like shutdowns, lockouts and farming out work. Naturally a good deal of collective bargaining takes place around a conference table, but those who believe that such parliamentary procedure is all there is to collective bargaining are just kidding themselves. Possibly the word "bargaining" is a misleading term for this whole process, and terms like "hold up" or "starve out" may be more accurate.²⁹

2.2.3 The Concept of Collective Bargaining

Like so many other terms in the social sciences, the meaning of collective bargaining at first glance appears to be deceptively simple. As one pursues the subject more intensively, however, one soon discovers that there is much beneath the surface that is never made apparent by merely reading a newspaper account of negotiations between a union and its management.

The term collective bargaining is in itself misleadingly concise. Few individuals, even those who have never been exposed to the study of industrial relations, could fail to note the significance of the world collective as distinguished from individual bargaining.

²⁸ (1949) *Unions, Management and the Public*, Vol. 3, Sage publications, New York, p. 43

²⁹ (1949) *The Collective Bargaining: Its Nature and Scope*, 1949 WASH . U.L.Q. 003. Retrieved from: http://www.openscholarship.wustl.edu/law_lawreview/vol1949/iss1/1

Under collective bargaining, workers are bond together to present their demands with a ‘single voice, a voice that is far more powerful than that of a worker speaking on his own behalf.

The word bargaining suggests a spirit of give and take — not in the sense in which management sometimes describes it, as a process by which they give and the union takes — but one in which both parties have to make concessions in order to win other demands. But this simplified distinction between individual and collective bargaining fails to take note of a number of the important changes that occur when bargaining on a collective basis begins. First of all, while the term collective bargaining is on the surface self— descriptive, it is misleading in the sense that the workers, as a group, don’t really bargain with the employer. Instead, they elect representatives who speak on the group’s behalf and negotiate a contract for the group. As the scope of the bargaining unit broadens, to an industry wide, regional, or national basis, the individual workers becomes more and more divorced from the bargaining process. For example a university lecturer, not involved in the management of ASSU at the federal level, will certainly not be aware of the intricacy of the negotiation between the union and the federal government. Furthermore although the term seems self-descriptive, it has not been easy to define precisely what collective bargaining is or to analyse its functional purpose.

2.2.4 Characteristics of Collective Bargaining

A tree is known by its fruits. Collective bargaining may be best known by its characteristic. Some of these characteristics are.

(a) Collective Bargaining is an Art, not a Science

There are specific procedures which can be followed. Certain “bench marks” may also be observed. But with all, the procedures are so fluid, the practices so varied, and the “bench marks” so changing, that collective bargaining lacks the characteristics of a science,

indeed, the human element is such that it can only be an art. It is an advanced form of “human relations” and we use this term in its full connotation. To substantiate this point, one need only witness the bluffing, oratory, dynamics, bulldozing, surprise tactics, exaggeration, emotional displays, reticence, and coyness, mixed in explicable pattern, which characterize a bargaining session.

(b) Collective Bargaining is Industrial Democracy at Work

Collective bargaining is industrial government through consent of the governed — the labourers. It is the extension of the basic principles and practices of democracy into industry. It is completely in harmony with our philosophy of government that a person should have a voice in his economic destiny.

Collective bargaining is not merely signing of an agreement granting seniority, vocations, and ages increases. It is not a mere sitting around the table discussing grievances. Basically, it is the democratic joint formulation of “company policy” on all matters that directly affect the worker in the plant. Collective bargaining is self- government in operation. It is the projection of policy by management with labour given a right to be heard. It is the establishment of factory law based upon consent.

Collective bargaining also possesses a series of checks and balances not unlike those written into the constitution. Collective bargaining determines the rules and regulations (or industrial laws) under which the parties will operate. In this function, it is legislative.

(c) Collective Bargaining is Dynamic

Bargaining is still in its lusty youth but is rapidly nearing full maturity. During its entire life span, it has been changing, growing, and developing. Geographically and industrially, collective bargaining has been extended to larger and larger number of workers. The process of negotiation itself has been altered. Factual bargaining has been substituted for the emotional approach. From individual plants, negotiation has spread to an industry-wide

basis. Types of arguments used have changed. From the simple topics of wages, hours and working conditions, bargaining. Has spread its coverage to a host of other issues. Preparation for bargaining has evolved from unorganized hit-or-miss tactics to a thorough and - systematic study carried on during the entire course of the year. From an exposed and vulnerable status, collective bargaining has developed into one of the most protected rights of our day.

(d) Collective Bargaining is a Method of Developing an Industrial Jurisprudence.

In addition to state and national labour legislation, there exists the law of the plant. These law stems from several sources, primarily it comes from the contract, but secondarily from grievance procedure, from arbitration, and from varied Negotiations on daily problems affecting the workers.

Moreover, many of the rules, regulations, and ‘understandings’ for the conduct of plant labour relations are not written and hence partake of the character of common law. Thus there develops around each industrial unit a body of regulations partly composed of statutory law (the contract, the arbitration award, and other written documents) and partly of

Common Law (decisions on grievances, precedent -setting actions by supervisors, understandings, varied agreements - all largely informal and unrecorded). To the entire body of regulations, one may apply the term “industrial jurisprudence”, an apt expression attributed to Sumner Slichter

“... it is a method of introducing civil rights into industry, that is, of requiring that management be conducted by rules rather than by arbitrary decision. In this latter aspect, collective bargaining becomes a method of building up a system of “industrial jurisprudence.”

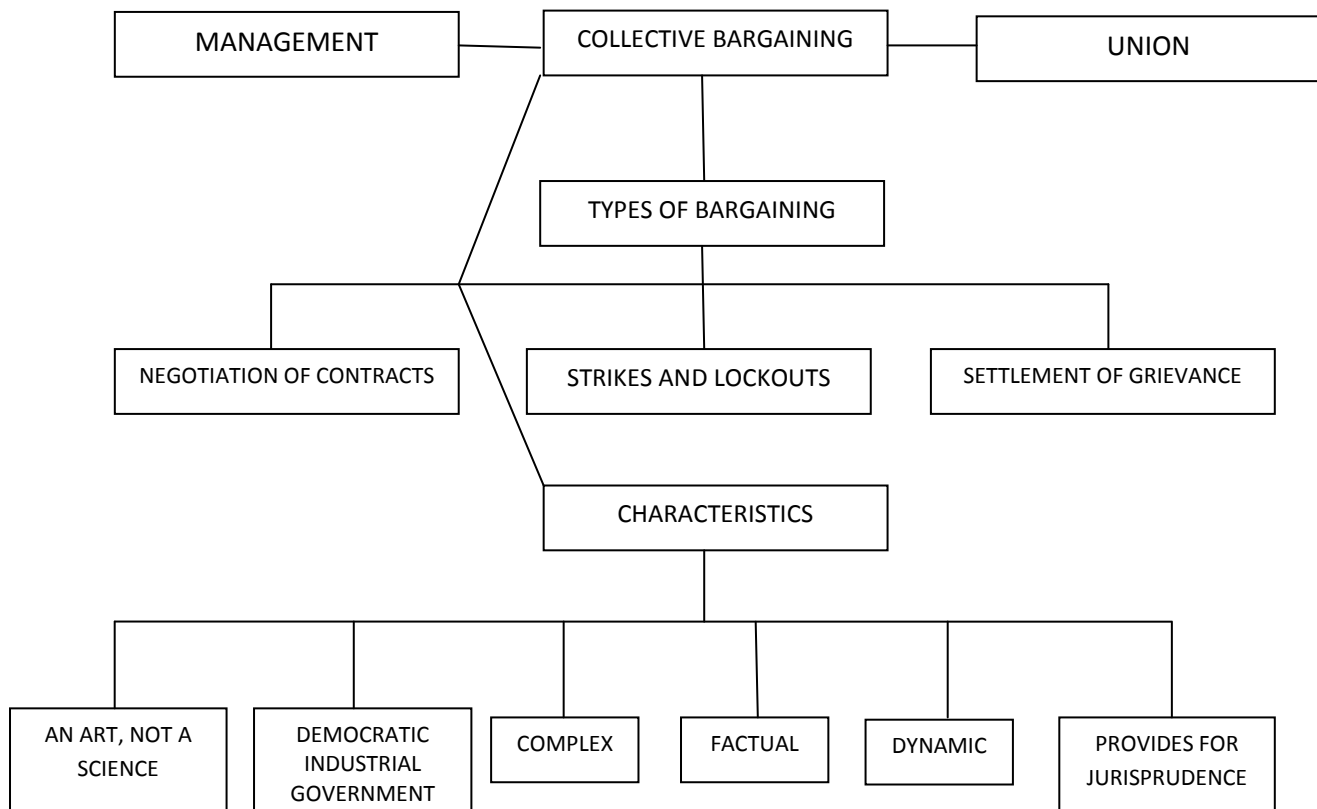
(e) Modern Collective Bargaining is Largely Factual

Negotiation goes emotional only upon occasion, not as a general rule or practice. Though it will always involve a nice balance of human relations, bargaining today is based

first of all upon facts. Both union and management have within their organisation or at their disposal experts on various phases of bargaining information. These may include accountants, economists, statisticians, lawyers and research personnel, who collect, interpret and analyse data and put them into the form most useful for bargaining purpose. Inaccuracy, misrepresentation, or estimates are in poor taste in collective bargaining.

(e) Collective Bargaining is Complex

There is little that is simple about collective bargaining. The preparation, the topics considered, the parties represented, the techniques involved, and the result achieved are complex. To prepare adequately for bargaining, one must accumulate data, analyse and interpret them for bargaining purposes, and verify their sources. The process of bargaining is subject to constant changes directed toward its improvement. Thus no matter how one looks at collective bargaining, it appears complex. The complexity results from both the increasing scope of collective bargaining and its content.



The Elements of Collective Bargaining

2.5 The Structure of Collective Bargaining

The bargaining structure may be defined as the compass of employees and employers that are covered by a collective bargaining, whether directly or indirectly. From these definitions, three critical overlapping dimensions of the bargaining structure emerge and these are crucially important in understanding how the collective bargaining process works in Nigeria. These are (1) the bargaining unit, (2) the level at which bargaining takes place, and (3) the area of impact of the collective agreement.

1. The Bargaining Unit.

The bargaining unit means any configuration, including workers and employers that is involved or covered by a collective agreement. Coverage may be at the level of the industry, firm or plant. In Nigeria, the national and industrial structure of unions constitutes a decisive factor in the determination of the bargaining unit. With the unions drawing their membership from all companies within a particular industrial jurisdiction, the collective agreement that emerges naturally covers all employers in the national or industrial union. The distinction between ‘national’ and ‘industrial’ unions is made to differentiate between (industrial) unions which cover an entire industry, such as banking, insurance and financial institutions, and the (national) unions which operate in single organizations, such as the Nigerian Railway Corporation or the Nigerian Port Authority.

On the other hand, the structure of employers constitutes another decisive factor. The advent of employers’ associations naturally widens the bargaining unit, through industry-wide or multi-employer bargaining arrangements. This becomes inevitable as firms in a competitive market seek to remove wages from the competition. Infact, this consideration was the main force behind the formation of the employers’ association in the banking industry in 1963. The association was formed to discourage the practice of a union reaching agreement with one of the employers and then ‘whipsawing’ it to other banks.

Furthermore, the application of standard conditions of service on all branches of a particular company, irrespective of labour market considerations, has inevitably made the multi-employer agreement more prominent, both in the private and public sectors. Within this structure, the National Joint Industrial Council is made up of the industrial or national union on the one hand, and the employer(s) who engage the services of the union members, on the other.

2. The Level of Bargaining

The level of bargaining refers to the zone at which negotiation takes place. Put differently, it describes the category of workers and employers directly covered by a collective bargaining. In Nigeria, four overlapping alternatives are conceivable. These are (1) the industry level, usually between an industrial union and an industrial employers' association, from which the multi-employer agreement emerges; (2) the company level, (where a multi-employer agreement is not use), between the industrial union and individual employers, as is the practice in the oil industry; (3) the branch (enterprise) level, between the branch of the industrial union and the company management, and (4) the plant level, between the plant unit of the branch union and the plant management.

Meanwhile, it should be noted that while it is theoretically possible for bargaining to take place at other levels, such as between a confederation of employers, (e.g. NECA) and the central labour union (e.g. NLC), such arrangement is not common. - However, where it takes place, matters of principle are main subjects of discussion. An example is the discussion between the NECA and the NLC in January, 1988, on the mode of negotiations that followed the removal of wage freeze in that year on the other hand, negotiations between NLC and the government, such as the discussion in 1987 on whether or not the petroleum subsidy should be removed, are not included in this frame work, because such negotiations are generally of a political nature.

3. Area of impact of The Agreement.

The area of impact is defined as the size or proportion of employees and employers that are effectively covered by a collective agreement of which, sometimes, not all of them are party to. In other words, the area of impact defines an agreement reached between say, company A and union A which, somehow, is implemented or enforced on company B and Union B. In such a case, it is often said that the area of impact of the agreement is wider than the bargaining unit. In Nigeria, there are at least two ways in which this can happen.

The first is provided for in statute. Thus, under the Wages Boards and Industrial Council Act of 1973, the Minister of employment is empowered to enforce an agreement which had been concluded between an employer and a union elsewhere on other employer(s) in the same industry, provided that the former represents a significant proportion of the industry. The ‘principle of extension’ can be applied if it occurs to the Minister that the other employer has no adequate machinery for the determination of wages and condition of service or that, perhaps for the same reason, wages are unreasonably low. This provision has however scarcely been used.

The second and more common practice is, admittedly, by default. It occurs when salary awards made by government appointed commission or tribunal to workers in the public sector are, through the coercive power of the strike, extended Union of Petroleum and Gas Workers (**NUPENG**), and Petroleum and Gas Senior Staff Association (**PENGASSAN**), on the other. In this situation, the employers maintain close interaction before conceding to the demands of the unions. It is most probable that the more the unions attempt to use ‘whipsawing’ tactics in their bargaining strategy, the more the need for centralized bargaining will be felt by the employers.

Public Policy

Historically, public policy has favoured centralised bargaining arrangement. It could be recall that the Whitley Council System (discussed earlier in this Chapter) were aimed at bringing several employers together to determine common terms of employment. Similarly, the Trade Unions Act of 1973 encouraged the formation of industrial unions whose bargaining strategy would inevitably be to achieve uniformity in wages. Also the Wages, Board and Industrial Councils Act of 1974³⁰ provided for a joint industrial councils for employers to negotiate agreements on matters of mutual interests.

This trend in public policy initiatives reached a climax in 1978 with the restructure of unions which has made the resurgence of multi-employer bargaining one of the most important features of our industrial relations practice today.

2.6 Subject-Matter of Collective Bargaining

The issues discussed in collective negotiations and included in collective agreements are known as the subject-matter of collective bargaining. The subjects matter of collective bargaining has steadily widened since the early days of collective bargaining. Wage rates, hours of work, the number of categories of employees to be employed, the nature of technological improvements to be introduced and other similar matters have all along been acknowledged as appropriate subjects for collective bargaining. Social security measures which were at one time deemed to be voluntary grants by the management and hence not suitable subject to be discussed in bargaining, have also been brought within the purview of collective bargaining. Management representatives seek to define and limit the scope of collective bargaining in concrete terms. They want to draw a line between management functions or management rights (usually known as prerogatives) not subject to contractual rule-making and matters properly amenable to joint decision making. Union representatives

³⁰ Hukla, B.M and Shukla, B (1992) *Collective Bargaining*, Tata Negraw Hill Publish Co. ltd, New Dellin, P. 66

on the other hand, have been arguing that collective bargaining must remain a fluid, and dynamic process. They contend that it is not only unwise but in fact impossible to limit the scope of collective bargaining.

Thus, it is seen that unions try to bring as many matters under collective bargaining as possible whereas the management intends to retain these subjects under “management prerogatives’ For analytical purposes, we can examine the nature of negotiable and non-negotiable issues under three distinct categories viz

- (1) Mandatory or negotiable issues;
- (2) Voluntary or discussion issues, and
- (3) Managerial issues.

1. MANDATORY OR NEGOTIABLE ISSUES

These refers to those issues which management and union have agreed to negotiate upon. While no law explicitly specifies these issues, wages issues and a host of other conditions of employment are recognised by the Labour Act of 1974 as falling within the collective bargaining process. However, through custom and past practice, certain issues have become mandatory for negotiation. Table 3-2 below provides a listing of such issues.

1. Wages and Salaries	12. Pension and gratuity
2. Hour of Work	13. Disciplinary procedure
3. Sick Leave	14. Annual Cash payment
4. Out of station allowance	15. Extra duty allowance
5. Shift and night allowance	16. Car/Moto-cycle award
6. Leave allowance	17. Overtime rates
7. Annual leave	18. Transport allowance
8. Transfer leave	19. Maternity leave

9. Housing allowance	20. Transport facilities
10. Redundancy (Principle)	21. Long Service award.
11. Acting Allowance	

Table 3-2 Mandatory or Negotiable Issues

Sometimes issues are not easily resolved as to whether or not they are negotiation or not, they are resolved upon arbitration.

In the case of the *Nigeria Insurance (Employers) Association v. Nigerian Union of Bank, Insurance and Allied Workers*, one of the issues raised before the National Industrial Court (N.I.C) was the question of whether or not pension and gratuity were negotiable between the parties. The Court held that pension and: gratuity is negotiable at company level.

2. VOLUNTARY OR DISCUSSION ISSUES

These are both middle—range issues which are neither mandatory no: exclusive to management, but upon which both parties can discuss. More importantly, neither party can compel the other either to negotiate or implement whatever decisions are reached at the discussion. The number of issues in this category are generally few.

1. Shift work	5. Long service awards
2. Housing Scheme	6. Medical Scheme
3. Year-end gifts	7. Death benefit
4. Payment for union officials during union meetings	8. Car loans
	9. Pension Scheme

Table 3-3 Voluntary or Discussion Issues

The reader will observe overlapping between the mandatory and voluntary categories, an indication of the degree of variation in bargaining relationships.

All the same, because of the quest of the union to influence decisions on the voluntary issues, its goal is usually to reduce the number of issues in this category and, correspondingly, increase the number of mandatory issues.

Thus, on the issue of ‘medical scheme,’ in the case of *Nigerian Breweries Limited v. Nigerian Breweries Management Association*, the point in dispute referred to the industrial Arbitration Panel (I.A.P) was whether the provision of medical facility was negotiable or not negotiable. The LA.P. made an award in favour of the respondents to the effect that the appellants and respondents should negotiate a medical scheme for managers and assistant managers. The appellants objected to this award, and appealed to the National Industrial Court (N.I.C.).

It was submitted on behalf of the appellants that there was no agreement between the parties starting what was negotiable and what was not, and that if all matters of employment were negotiable certain prerogatives of management would be eroded. The appellants, acting on that principle, made housing loan scheme, - medical scheme, car loan and end-of year bonus non-negotiable items while pension was made negotiable.

For the Association, it was submitted that there was a difference between “discussion” and “negotiation”, and that when a matter is classified for discussion the appellant do not listen to the association. On the other hand, when a matter is for negotiation, then the appellants take the view of the respondents seriously. Consequently, the respondents submitted that if medical scheme is classified as a matter for consultation the appellants would not do anything. From these arguments, the Court drew certain interference out in the judgment and consequently came to the conclusion that “the Medical Scheme” should be a matter for consultation between the appellants and respondents.

On “Percentage Commission,” in the case of the Nigerian Sewing Machine Manufacturing Company Ltd v. National Union of Shop and Distributive Employees. The

appellants' main ground of appeal against the award of the L.A.P. was that their decision to introduce the points system in replacement of the percentage commission is a matter of company policy over which they had exclusive prerogative. According to them such a matter of policy is subject to negotiation with the policy makers, On the other hand, the respondents contended that the issue concerns the terms and conditions of employment of the workers which a lawful trade union is empowered to regulate by negotiation in accordance with section 1 of the Trade Unions Decree No. 31 of 1973. The Court upholds this submission.

However, a more contentious issue was whether ex-gratia Productivity Bonus, is subject to negotiation or not, *in the Management of Union Bank of Nigeria Limited v. National Union of Banks, Insurance and Financial Institutions Employees*,³¹ the learned counsel for the appellants, maintain that the ex-gratia Productivity Bonus claimed by the respondents is a fringe benefit and that, in the absence of any legal definition under the Productivity, Price, Income Board (PPIB) Act of 1977,³² fringe benefit should be regard as any incidental benefit paid to gratia productivity bonus claimed by the respondents is "income" within subsection (1) of section 4 of the PPIB Act, 1977, which refers to "wages or other forms of income," that it is obvious from the Income Policy Guidelines that the Makers of the document had in mind the same subsection which refer to wages and other forms of income, while the Guidelines refer to fringe benefits which constitute other forms or income; and the restriction that any revision of fringe benefits or, introduction of new ones, requires for its validity, the express approval of the Minister of Employment, Labour and Productivity.

On the other hand, the respondents maintain that they are not asking for wages, salaries, income or fringe benefits but are claiming a share in the surplus profit as declared by the Management which is a once-and-all payment. Their counsel further submitted that fringe benefits are payments apart from wages and salaries, made to workers at a fixed time

³¹ 1982/83 N.I.C.L R 213

³² cap 372 LFN 1990

referable to the year, the productivity bonus is not an income within the 1980 Income Policy Guidelines Paragraph A (Vi) of which refers to increases in wages, salaries and fringe benefits, that is, things of a permanent nature which are already known unlike productivity bonus which is not of a permanent nature; that the limits set on wages and salaries are restriction and revisions of fringe benefits, or introduction of new ones under the Guidelines, do not apply to productivity bonus; nor does it require the Minister's approval.

The Court held that ex-gratia Productivity Bonus is a fringe benefit under the Incomes Policy Guidelines, payment of which requires the approval of the Minister of Employment, Labour and Productivity.

It is submitted that neither the Incomes Policy Guidelines nor the decision of the N.I.C. in the above case preclude negotiation on 'wages, fringe benefits and salaries, but that the outcome of such negotiations that will altered the existing salaries structure, must seek for the Minister's approval for its implementation. This seems to be the reasons behind the award of the Nigerian Industrial Court, in the case of *Nigerian Petroleum Refining Company Ltd. v. Petroleum and Natural Gas Senior Staff Association*.³³ This case involves the interpretation of article 7 of the collective Agreement between the parties within the context of salary negotiation. This Article stipulates that there shall be salary negotiation in the company whenever there is a general wage increase or new conditions of service in the public sector. On the other hand Article 4(b) of the same collective agreement provides that all matters concerning salaries etc shall be the subject of negotiation between the parties. The Company relied on Article 7 under which it seeks discussion over salaries etc, while the union maintains that Article 4(b) must be complied with by the company by entering into direct negotiation with it to agree on the increase in wages etc. The company submitted that if Article 7 should apply the outcome of the negotiation will still need the approval of the

³³ 1982/1983N.I.C.L.R 275

Minister of Employment, Labour and Productivity under the Income Policy Guidelines and that therefore any effort to negotiate need the approval of the Minister of Employment, Labour and Productivity under the Incomes Policy Guidelines and that therefore any effort to negotiate will be an exercise in futility. It was, however, submitted on behalf of the workers that Article 7 is simply salary review, as indicated by the heading of that Article, a sort of unilateral action by the company whereas under Article 4(b) it is salary negotiation involving two parties and that the Incomes Policy Guidelines preserved this aspect of collective bargaining in industrial relations and also that Article 4(b) is mutually exclusive of Article 7. Counsel for the union further submitted that the Income Policy Guidelines has no force of law with the coming into operation of the Economic Stabilization Act of 1982.

That Court held that the Income Policy Guidelines made under the Prices, Productivity and Income Board Act of 1977 is in no way affected by the Economic Stabilization Act of 1982 and does not invalidate the Prices, Productivity and Income Board Act of 1977 and that the Incomes Policy Guidelines still constitute a valid statutory instrument which does not in any way prohibit salary negotiation between the parties. The Court held further that the provisions of Article 4 (provides the general principles of the day-to-day relationship between the parties, notwithstanding the apparently mandatory language in Article 4(b) is couched, and that notwithstanding the restrictive nature of the circumstances, Article 7 which is binding on both parties provides the basis for the exercise of the right to open negotiations on salaries and fringe benefits. The Court therefore upheld the position of the union parties would not be an exercise in futility.

3. MANAGERIAL ISSUES

These are those issues on which management exercise full control in decision-making. While most procedural agreements recognize managerial exclusive right, the specific issues are usually not stated. The common practice is to state as follows:

*.....the union undertakes not to interfere with the normal functions of management which give member companies of the Association the sole right and responsibility to conduct their business in such a manner as they consider fit and to engage, promote, demote, transfer, and terminate the service of any employee*³⁴

It should be noted that conspicuous trends in collective bargaining is the expansion in the number and type of subjects with which collective bargaining is concerned. The history of collective bargaining has thus been a step-by-step admission into areas once held to be the sole preserve of management. “In fact, unions at one time or another, in one industry or another, have negotiated with employers on virtually every subject which customarily is embraced in that esoteric premise, ‘the sole prerogatives of management.’³⁵The Federal Government of Nigeria concession on the autonomy of Nigeria Universities is an evident of the encroachments of collective bargaining into the domain of the employers prerogatives.

It should be noted that the extension of subject matter for bargaining has not been uniform. Aggressive unions have won more concessions than passive ones. Conversely, certain employers have remained adamant against the extension of collective bargaining into new fields. For example, the Academic Staff Union of Universities, (ASUU) had more success stories in terms of concession than the Academic staff union of Polytechnics (ASUP) due to the more aggressive stands of the former.

Another potent factor in the extension of subjects for collective bargaining has been the influence of legislation and the liberal attitude taken by the Nigerian Industrial Courts. The Trade Disputes Act of 1976³⁶ seems to give indication to the parties to discuss any proper

³⁴ Fashoyin T. (1992) op. cit,

³⁵ Chamberlain N. (1964) *The Nature and Scope of Collective Bargaining*, the Quarterly Journal of Economic vol 58, NO,3 May 1944 pg 363-363

³⁶ Cap 432 LFN1990

subject when made an issue. This is deductible from construing “collective agreement” by virtue of section 47(1) of the Nigerian Trade Dispute Act of 1976³⁷ which provides that:

*“Collective agreement means any agreement in writing for the settlement of disputes and relating to terms of employment and physical’ conditions of work.”*³⁸

As the focal point of the collective bargaining process is a written document duly signed by representatives of labour and management. A literal interpretation of Section 47(1) on collective agreement would provide that the issues to be covered under collective bargaining are to be decided by the parties. The N.[C in its interpretation, has been liberal. For example, the Court declared pension and gratuity to be a proper subject for bargaining.³⁹

What effects has this extensive development of topics had upon collective bargaining? The possibility for the introduction of almost any subject directly or indirectly connected with Labour —Management relation has resulted in a distinct bargaining advantage for the union and has greatly increased the significance of collective bargaining as a process. On the other hand, some disadvantages have appeared. The present uncertainty about the fields in which the parties are legally required to bargain has injured bargaining efforts. Management approaches the bargaining table with caution and reservation, not knowing what demands may arise, without adequate time to evaluate their long — and short-term possibilities or to prepare defensive argument and counterproposal. As a consequence, both delay and ineffective bargaining have been experienced. This feeling of uncertainty

³⁷ Supra

³⁸ Supra, 47(1)

³⁹ Nigeria insurance (Employers) Association v. Nigerian Bank Insurance and Allied Workers, Supra.

CHAPTER THREE

THE LAW AND COLLECTIVE BARGAINING

3.1 Introduction

The Wages Board and Industrial Council Act,⁴⁰ generally vests in an industrial wages board the power to “recommend Statutory minimum wages as prescribed by the Act to be paid either generally or in any particular work” or conditions of employment other than wages”⁴¹ where such a recommendation is made, the Minister may give effect to the statutory minimum wages” or statutory minimum conditions⁴² if he thinks fit to do so although no such order can authorize payment of wages less than statutory minimum wages clear of all deductions.

Where a Statutory minimum wage has been embodied in an order, the employer is bound to pay a wage not less than that embodied in that order and he will be committing a criminal offence if he fails to obey the order.

To make sure that no employer toys with the provisions of the Act, the minister of labour is armed with the power⁴³ to appoint a labour officer or inspector to act as watch dog. Among the new powers conferred on the labour officer or inspector under section 22 of the Act is the right to examine any person whom he has reasonable cause to believe to be or to have been a worker” to whom an order of statutory minimum wages or conditions applies “with respect to any matters under the Act and requires every such person...So examined. to sign a declaration of truth of the matter in respect of which he is examine⁴⁴ the officer may also order any person or body of person found to have contravened any of the provision of

⁴⁰ Cap W1 LFN, 2004

⁴¹ Sec 9(1)

⁴² Sec. 10 (4) several ministerial order have been under similar provisions of the wages Board. Act 1957 in the form of condition employment orders and although the principal Act has been repealed. The orders are saved by Sec by 26(1) of this Act

⁴³ Ss 12, 21(4)

⁴⁴ S. 21 (1) (3) (c)

the Act to take ‘remedial action’ within a reasonable period of time as may be specified⁴⁵ and many institute civil proceedings where these become appropriate.

What is intended to be achieved by this legislative measure is the maintenance of fair wages in industry not less favourable than wages and conditions recognized in collective agreements by unions and employers’ associations in the trade or industry. Hence, the employer is obliged to display a notice⁴⁶ at every place of work concerning any agreement or order regarding minimum wages.

In general, however, the worker is entitled to sue his employer for breach of contract to recover any underpayment below the statutory minimum wages notwithstanding that the labour officer is also given power under section 21 (4) to sue on his behalf.

It has been observed that “the constitution of the National Wages Board and Area Minimum Wages Committees⁴⁷ itself shows that it can be a training ground for bargaining and as the process of stimulating collective bargaining goes on, industries can reach the stage where in some parts the statutory wage regulation is still critical, while in some sectors autonomous collective negotiation forges ahead⁴⁸. The functions of the Board includes; to examine the application to all unskilled workers of any agreed minimum wage rate in any specified area, to examine from time to time the adequacy of minimum wage rates for unskilled workers in the light of any recommendations received from area minimum wages committees, to consider any matter referred to it by the Minister with reference to the minimum wage rates of unskilled workers in any area for which an area minimum wages committee has been set up, and to report and make recommendations accordingly to the Minister. For it is where negotiations break down that the government machinery for conciliation between the parties comes into operations.

⁴⁵ S . 15 (c) sec 5.22 & for offences general

⁴⁶ S. 22 (3)(d)

⁴⁷ Section 16 Wages Board and Industrial Council Act, 1973, Cap W1 LFN,2004.

⁴⁸ Wedderburn. The Worker and law. 1st Ed., 134

Conciliation and Arbitration

The Trades Disputes Act 1976⁴⁹ gives the minister of labour power to intervene in an industrial dispute, existing or apprehended, with the object of promoting settlement by reconciliation. Under the Act⁵⁰ the parties are required to meet first on their own or under a mediator⁵¹, failing which the Minister may appoint a conciliator⁵² to inquire into the causes and circumstances of the dispute and take whatever steps it might consider expedient for the purpose of enabling the parties to meet together by themselves or their representatives.

Under customary law or common law arbitration, a party to the dispute may reject the award of an arbitrator. Controversy, however, surrounds the point at which an award may be rejected. It is the view of the courts that a party could reject an award after the award had been made;⁵³ while another view is that “where two parties to a dispute voluntarily submit their matter in controversy to arbitration... and agreed expressly or by implication that the decision of the arbitrators would be accepted as final and binding, it is no longer open to either party to subsequently⁵⁴ back out of such a decision.” It means that after the award no party can reject it. The latter position is justifiable as more equitable. It is possible, for instance, to argue that a claim is stale or that a party is estopped from rejecting an award he voluntarily submitted to arbitration. Industrial arbitration, however, is somewhat different. Russell observes⁵⁵ that such “arbitration differs from legal proceedings proper only in the choice of tribunals” and that “all ordinary defenses are available” — including the equitable defence of

⁴⁹ Now Cap. T8 Laws of the Federation of Nigeria, 2004

⁵⁰ The Act repeals the Trade Disputes (Arbitration and Inquiry) Act 1941 at p. 1 The essence of arbitration is that some dispute is referred parties for settlement

⁵¹ S. 3(2)

⁵² S. 6(1)

⁵³ Joseph Larbi v. Opanin Kwasi (1950) 13 WACA 81. 82: Agu v. Okewebe (1991) 3 v Akabeze (1992) 2 2 NWLR (Pt 221)

⁵⁴ Ifeany Ojibah v (1991) 5 NWLR (pt. 1919) 261:

⁵⁵ Ifeany Ojibah v (1991) 5 NWLR (pt. 1919) 261: Opraji v. Ohanu (1999) 9 NWLR (Pt. 618)290: Russell on arbitration at p 1 observes’. “the essence... of arbitration is that some dispute is referred by parties for settlement to a tribunal of their own choosing instead of to a court

estoppel. But it is also different from statutory arbitration, whether in commercial transactions or industrial disputes.

Prior to the enactment of the Act of 1976⁵⁶ the practice was for the chairman of the conciliation panel to be “mutually agreed.” Such a conciliator was to be appointed at the request of either the employers or the workers. But under the 1976 statute⁵⁷, the disputants are given no role to play in the matter. The great defect in this process is that the parties or any of them may refuse to cooperate with a conciliator because there is no legal compulsion to cooperate or even give the conciliator encouragement of a possible settlement. Thus a conciliation effort may turn out to be a waste of time and expense.

Section 7(1) of the Act, however, provides that the minister “shall refer the dispute for settlement to the industrial arbitration panel” established under the Act⁵⁸. The Parties may then constitute an arbitration tribunal⁵⁹ consisting of equal numbers of representatives of employers and Workers⁶⁰ drawn from the separate panels of employers and workers compiled under section 43 of the Act. As with conciliation, an arbitration tribunal is appointed with the sole object of restoring industrial harmony.

The amphibian nature of arbitration in the process of industrial peace—making is unique in a number of respects. ‘First. Arbitration is much wider in scope than bare conciliation in that. It can make a decision which will bind the parties once the decision is accepted.’⁶¹

⁵⁶ Trade Dispute Act, Cap T8, LFN, 2004

⁵⁷ Section 14.

⁵⁸ Section 9.

⁵⁹ S 7(2) Halsbury’s Law of England 3rd., Ed/. defines an arbitration as a “person to whom a reference of a dispute between not less than two persons” is made for his determination after hearing both sides in judicial manner “by a person’s other than a court of competent jurisdiction ”

⁶⁰ S.7 (4) (c)

⁶¹ S. 9(3).

But it is less than a court because an arbitrator must enjoy the cooperation of the parties⁶² who are entitled to reject his decision⁶³ Thus although the arbitrator can compel or summon a party to appear before him, the outcome of the proceedings will depend on the acceptance of the decision by all parties to the dispute.

Who may sit with the arbitrator as assessors? There can be no dogmatic answer to this question. But there are statutory⁶⁴ and judicial⁶⁵ authorities to suggest that an interested party may be profitable to serve as assessor... That, probably, is why the law provides that where an arbitrator sits with assessors the award of that panel shall be that of the arbitrator alone. In some cases, therefore, it may be prudent to have more than one arbitrator. In such cases, the arbitrators are required to be nominated by the parties to the dispute in equal numbers with an independent chairman to be appointed by the chairman of the industrial arbitration panel But “if all the members of the arbitration tribunal are unable to agree as to their award, the matter shall be decided by the votes of a majority of them.”⁶⁶

Where the chairman — who will probably be the only neutral person — casts his vote may well be of the utmost importance to the contesting parties. It should always be borne in mind that in all cases where it becomes necessary to appoint an arbitration tribunal under the Act, the consent of the parties is no longer essential.

Section 12(4) of the Trade Disputes Act 1976 provides:

“if no notice of objection to the award of the tribunal is given to the minister⁶⁷ within the time and in the manner specified in the notice...⁵³ the [minister] shall publish in the Gazette a notice confirming the award and the award shall be binding on

⁶²S. 7(2) Russell Arbitration at p.1 observes: The essence ... of arbitration is that some dispute is referred by the parties for settlement to a tribunal of their own choosing instead of a court.”

⁶³ Ss. 9(2)(c).10(1)

⁶⁴ S. 7(5)

⁶⁵ 48 Australian Railway Union v. Commissioners (1930) 44 C.L.R 319.

Per Isaacs C.J (at pp. 354. 361): “I in relation to industrial disputes it is important to observe that ... the term arbitration is large enough to include the decisions of persons selected either voluntary or compulsory as arbitration who represent the viewpoint of the disputants. And even if they are directly interested”

⁶⁶ S. 7(6).

⁶⁷ Word and brackets supplied by the reform Commissioner. Which appeared in the original ^{decree}

the employers and workers to whom it relates as from the date of the award (or such earlier or later date as may be specified in the award)."

But where an award is rejected, the aggrieved party may now "appeal ... from the decision of an arbitral tribunal to the by National Industrial Court⁶⁸ as may he provided under its rules 'or any enactment⁶⁹ and in every civil cause or matter commenced! in the court, law and equity shall be administered.⁷⁰

The minister is vested generally with the power to appoint a hoard of inquiry into disputes in any trade or industry at his absolute discretion. Unlike a conciliator or arbitrator, the chairman and members or the hoard may he appointed without reference to the parties.⁷¹In proceedings before an arbitration tribunal, either party is entitled to he represented by a legal practitioner, but legal representation before a board of⁷² inquiry is at the discretion of the board⁷²

One or other of the four methods of voluntary settlement of industrial disputes have been employed in the past, the choice being determined by the nature and gravity of the situation.

A board of inquiry had to be appointed to inquire into the circumstances of the dispute which led to the Iva Valley coalmines disaster in 1949, and a similar body investigated the causes of the June general strike of railway men in 1945. In lesser cases, officials of the ministry (formerly department) of labour were, and are still being appointed, such as in the recognition dispute between the International Institute of Tropical Agriculture and their workers in 1972.

⁶⁸ This is the notice required to be given to the parties under s. 12 (2) of the Act

⁶⁹ National Industrial Court Act 2006. S.7(4)

⁷⁰ Ibid: s. 12(1).

⁷¹ S. 32(1)

⁷² S. 37.

Some of these efforts have yielded fruitful results: others, however, failed to achieve the desired objectives, particularly where opposing parties had taken irreconcilable positions. And being voluntary, there is nothing anyone can do about it since there is no legal duty on the part of any of the parties to accept the findings of a conciliator, much less of a mediator.

Statutory Compulsion

The inability to force any of the parties to come to terms with their opponents or compel obedience to the adjudication of an independent peace-maker had apparently created a yawning gap in the process of industrial relations. It seemed something had to be done, at least, to ensure that the freedom to bargain was exercised within the law. Hence, legislation again had to be employed as a means of bringing about a change of attitude to industrial negotiation. The first of such enactments which made the most far-reaching incursions into the voluntary nature of our industrial Practice was the Trade Disputes (Emergency Provisions) Decree 1968, Part I of which laid down the procedure for the settlement of trade disputes. That decree has now been repealed⁷³ by the Trade Disputes Act 1976 which also re-enacted all the essential and major provisions of the 1969 Decree,⁷⁴

However, it is not that the procedure whereby workers and their employers resolve their differences has been interfered with; the right of free negotiation is still much preserved. But the 1976 Act provides that where there is any written collective agreement for the settlement of trade disputes within a trade or industry, at least three copies of such an agreement must be deposited by the parties with the federal minister of labour.⁷⁵ Thereafter, the minister may order that all or part of the agreed terms be binding on the parties.⁷⁶ In effect, either party may take legal action to enforce the agreement; this is a big dent in the common law principle that a collective agreement is generally not enforceable.

⁷³ Trade Dispute Act s.51 Sch. 2.

⁷⁴ The trade Disputes (Emergency Provisions) (Amendment) (No.2) Decree 1969 (N0.53)

⁷⁵ Trade Dispute Act 1976. S. 2(1) Cap T8, LFN, 2004

⁷⁶ S. 2(3)

The Act still keeps the trade union out of the business. For, apart from section 24(4) of the Act which deals with the granting of consent to the publication by the minister of confidential matters relating to the all affairs of “any trade union” in the report of a board of inquiry, there is nowhere else that the new Act specifically mentions a “trade union” as a party to the resolution of any dispute. Indeed, section 2(3) expressly stipulates that the terms of such “agreements stated in the order shall be binding on the *employers and workers* to whom they relate.” But this is only a tentative conclusion in view of the provision of section 3(1) which refers, in connection with collective agreement, to “organizations of workers”⁷⁷

Obligation to Negotiate

For a start, section 3 of the Act makes it obligatory for Parties to a trade dispute to meet within seven days of the existence of a trade dispute and negotiate a settlement either by themselves or under mediators. Where the parties are unable to reach an agreement, any of the parties intending to press the matter further is required to declare a trade dispute and notify the minister within fourteen days of the failure to resolve the dispute by negotiation.

At that stage, three courses of action will be open to the minister. First, he may appoint a conciliator along the line provided for by section 6(1) of the Trade Disputes Act I 1976 with the sole object of bringing about an amicable settlement. The second option open to him is to refer the dispute to a board of inquiry which is required to report to the minister.⁷⁸ Examples of such a reference are the case of the Lagos State doctors against the government of Lagos State, and the case of the Association of Consultants of Lagos University Teaching Hospital against the University of Lagos under the 1969 Decree.⁷⁹

⁷⁷ See now 33(1)(i) of the Trade Act 1973 (as amended) which makes the registration of a federation of trade unions conditional on its object being to “to represent the interest of employees s.

⁷⁸ s. 32

⁷⁹ See p. 483. *Infra*

Thirdly, the minister may refer the (Dispute to the industrial arbitration panel⁸⁰, which must appoint an arbitration tribunal to try and find a way out of the stalemate.

The award of the arbitration tribunal is required to be released within forty-two days of its appointment and is binding on the parties after the award has been confirmed in an order made by the minister of labour. Under the 1968 decree the question of disputed awards was referred back to the industrial tribunal for re-interpretation. An example of such a reference was in respect of Part of the award of the tribunal in the dispute declared by the Railway and Port s Staff Union against the Nigerian Ports Authority.

In 1970, the minister of labour had referred the dispute to the industrial arbitration tribunal. The tribunal examined the issue and forwarded its determination to the minister. Both parties disputed part of the award. The award in dispute was in respect of the union's demand for a "39-hour week for the staff" of the traffic department."

The tribunal rejected this claim but went on to say that in "compensation thereof the tribunal awards an allowance of one-eighth of the salary of the staff of the traffic department of the Ports Authority who work a 44-hour week."

In construing the award, the Ports Authority took the view that the award was meant for only the "quay staff" who were doing a 44-hour week but were 39-hour staff, But the union contended that the award was not limited to the quay staff alone but included "all staff of the traffic department" The tribunal itself admitted that there was an ambiguity in the award, which required interpretation. The award was, therefore, remitted back to the tribunal for reinterpretation. Now, the rejection of an award or any dispute as to the interpretation of an award, is to be referred on appeal to the National Industrial Court,⁸¹ that "all matters in dispute between the parties may be completely determined."⁸²

⁸⁰ S.8 (1).(3)

⁸¹ National Industrial Court Act 7.8

⁸² Ibid., 14

Generally the award as interpreted, is to be treated as part of the original award⁸³ and has to be confirmed again by the minister, such as award becomes binding on both the workers and the employers concern.

Restriction on Bargaining

In spite of the general purport of the 1968 Decree to streamline the process of collective bargaining in order to create a congenial atmosphere for negotiation, the right of free bargaining was severely restricted under a later statute.⁸⁴

An employer is precluded from granting a general or percentage increase in wages to his workers without the prior approval of the government.⁸⁵ Nor could the industrial arbitration tribunal grant an effective increase without similar approval.⁸⁶

It seems, then, that the 1969 Decree took with one hand the benefits which the earlier decree of 1968 had conferred on the working class by the order. The position was awkward and would need to be rectified if, as was once suggested, the element of “compulsion introduced into our industrial relations should be made a permanent feature of our system.”

The tribunal which formally came into being in 1970 consisted of the chairman, a vice - chairman and five other members appointed by the minister.⁸⁷ It functioned in much the same way as an arbitration tribunal under the new Trade Disputes Act 1976 with (subject to the tribunal’s discretion) facilities for legal representation and presentation of the parties’ cases,

It would appear that the main object of the tribunal was to serve as an adjunct to the 1968 Decree. The most significant additions were the attempt to peg wages,⁸⁸ the power of detention vested in the inspector—general of police and the chief of staff of the armed

⁸³ Trade Dispute Act, s 14 (2)

⁸⁴ Trade Disputes (Emergency Provision) (Amendment) (No. 2) Decree 1969

⁸⁵ *ibid.*, s 5 (1)

⁸⁶ S. 5 (2)

⁸⁷ S. 3(2)

⁸⁸ s 35

forces⁸⁹ and the total ban imposed on strikes and lockouts.⁹⁰ The provisions as to wage restriction, however, disappeared with the repeal of both the 1968 and 1969 legislation, only to reappear in 1977 by an amendment to section 18 of the Trade Disputes Act 1976.

3.2 Collective Bargaining

The term collective bargaining is applied to the arrangement under which wages and conditions of employment are settled by a bargain in form of an agreement made between employers or associations of employers and workers organizations.

Collective bargaining includes all methods by which groups workers and relevant employees come together to attempt to reach an agreement in matters under discussion by a process of negotiation such matters are often regarded as constituting a challenge which generate into a competitive rivalry and usually the method of reaching a decision is compromise.

This method or process is considered collective because it replaces the individual workers feeble attempts to gain improvement for himself and instead based upon to join or collective effort and experience many workers channeled through their union and enhanced by their collective strength and it is bargaining because in most times the process into the practical solution and because there is a constant process of give and to be of experience

3.3 Public Sector Wage Policy

In effect are determined wage or income policies in the present public sector. Government had always mediated in the distribution of incomes through adoption of direct and formal guidelines aimed at controlling income. It had concerned itself with the need for controlling macro-economic policies, ensuring that income adjustments fall in line with increases in productivity, commonly referred today as income policies.⁹¹

⁸⁹ S. 6

⁹⁰ S. 1 (1)

⁹¹ Afolabi L, Mortuary Economics, Heinemann Educational Books (Nig. Plc, Intec Printers Ltd. Ibadan PTF Low Prices Edition, (1999) p.85

These policies are usually focused on both inter personal and inter factorial distribution in the economy. Personal incomes (wages and salaries) fall within the four-factor incomes which policies are usually employed to monitor and control each of the sources of incomes. The other 3 factors incomes include interest (arising from capital), rent (assessing from land), and profit (raising from entrepreneur ability).⁹²

This work is however concerned with government intervention in personal incomes policies because it is the most sensitive part of the factor incomes. Government wage review of September 1998 affected public and formal private sector wage distribution in Nigeria. It was found that prior to the introduction of the wage review, public sector wage structures for urban employees were inferior to those of the formal private sector for the same genre of employees. This can be understood as there was a wage freeze policy in Nigerian public sector from 1993 to August 1998. It took the public sector one year to fully comply with even the minimal requirement (minimum wage) of the wage review. This was due to the lack of funds that afflicted most public sector employers after the requirement of the wage reviews were made mandatory, public sector wage structures were found.

It is here expected that collective negotiations would have archived the desired results particularly where income control policies have failed to achieve set targets. Collective bargaining processes are imperative when other methods or measures have been adopted to achieve the goal of controlling disposable income. Such measures as taxation in the form of direct personal income and tax adjustments in form of incomes policies.

3.4 Private Sector Wage Policy

The general focus of state policy since 1960 to date is a reflection of the colonial state in advocating voluntary collective bargaining for the private sector. The general focus of state policy since 1960 to date is a reflection of that of the colonial state in advocating voluntary

⁹² Ibid. p.85

collective bargaining for the private sector only. Otobo sees this as a marked political preference for a free and private enterprise. Since then there has been an upsurge in disenchantment to organized labour over falling purchasing power of wage earners, coupled with the lack of institutional avenues for dialogue for rectifying the situation. The National provident fund scheme was established in 1961 essential for the private sector.⁹³ Contributions to the fund were made by both employers and employees. The main benefits were retirements, survivorship and invalidity benefits often took a long time to be paid and sometimes claims were not met at all. The Nigerian Social insurance Trust Fund was therefore established in place of the NPF.⁹⁴

The new Fund covers ever person who is employed (i) by a company incorporated under the Companies and Allied Matters Act or (ii) by a partnership or (iii) in any other case, where the number of persons employed is not less than five.

The effectives of income policies and inflation on the incidence of strikes in Nigeria for the 1950-1985 periods are examined. Studies have analyzed extensively the determinants of strike activity in developed countries, however, relatively little empirical analysis of strike determinants in less developed countries exists. An attempt is made to fill this gap by including key economic organizational and institutional variables into a model that is capable of predicting the variation in strikes in Nigerian, a developing country with a growing unionized sector. The estimated results of the model show that strikes in Nigeria are positively influenced by the level of inflation, the level of union membership income policies and time trend.

Recent national wage policy was passed on Monday July 20, 2009 by the former minister of Labour, Mr. Kayode Adetokumbo he lamented the series of industrial actions by

⁹³ National Provident Fund Act Cap. 273 Las of the Federation of Nigeria, which was enacted in 1961, No. 20 of 1961

⁹⁴ Nigeria Social Insurance Trust Fund Act 1993 No. 73 S. 42 repealed Cap. 273

various unions and associations in the country, pointing out the need for concrete steps to be taken by all stakeholders to halt the trend in the interest of the country and the people, the minister stressed the need for strengthening of labour administration in the country and the institutionalization of certain structures in the system that would forestall the incessant agitations and resultant strike and save the country for a national wage policy that would give both the government and the labour on the issue of wage increase, saying the absence of such a policy over the years had been responsible for disjointed wage negotiations and resultant strained government/labour relations. The minister further stated that since there was no structure that reviewed minimum wage, the government had put together a national committee on minimum wage and painstakingly it will be put in place and institutionalized, the minister stated that the current agitation for wage and labour would have been taken care of. The government acknowledged the pressure which the current high inflation and the impact of the global economic meltdown had put on the average Nigeria worker who had desired increase purchasing power, expressing regret that the country's dwindling resources would not allow government to respond adequately to the various needs, the government must not only lead the way to implement its policies on employment, but must also lead the way to generate employment and by that the private sector would now key into it, however the current minister of labour and productivity, Mr. Chukwuemeka Wogu has stated that another minimum wage will be based on availability and affordability of resources. The head of service Mr. Steve Orosanye stated that "increase in the salaries of civil servants will go along with increased productivity".

The above statements are pointer to the fact that the Goodluck Jonathan government⁹⁵ like the previous governments is not rendering to pay living wage to workers or even increase the minimum wage to N52,200 as demanded by the Nigeria Labour Congress (NLC).

⁹⁵ Obasanjo's Administration

The arguments supporting the arguments that resources are not available to pay and a such cannot afford any wage increment have always been used to pay unwarranted attention, jumbo allowances to privileged few individuals including political office holders. ‘Besides the argument of government on productivity should be held by labour with suspicion, it could mean to retrench workers on account of salary increase to demand salary increase before raising the question of productivity? No doubt, it is not that workers have not been productive. Rather, this is an attempt to make a worker to pay for the salary by doing the jobs of two or more so that the government can shed the workforce.

The DSM scribe called on labour leadership to ensure that no single worker loses his/her job on the account of a new minimum wage, arguing however that the leadership of the NLC and TUC should put in a measure of force in the struggle for the new minimum wage in order to achieve the desired result by coming up with a programme of struggle that will involve the mass mobilization of workers and warning strike to win a living house. We hereby call the government to immediately implement a living wage to Nigeria workers and also invest massively in masses’ we/I-beings, industries and the past. Kayode also maintained that the government was already ready and willing to negotiate with the ASSU, thus confirming his assurance, besides, Prince Kayode said the federal government labour relations standing committee, was one of the committees established with the approval of Late President Umaru Musa Yar’adua in response to the incessant strikes and industrial conflicts in the country and was charged with the responsibility to institutionalize a forum for a effective government - labour dispute solution machinery.

3.5 Current Laws in Labour Relations

The Trade Dispute Act, TDA 1976, now Cap. 437 (Cap. T 8 LFN 2004), laws of the Federation 2004, which derived from the Revised Edition 9Lagos of the Federation, Decree

1990, is the current legislation put in place to streamline and codify all pre-existing laws government industrial relations.

The Act collectively set aside the Trade Disputes Act Cap 202; Trade Disputes (Arbitration and inquiry) Act Cap. 201; Trade Disputes (Emergency Provisions Act) No.

The Act provides the procedures to be followed for the settlement of disputes which exists or is apprehended, S. 3(1) and S.3(2) of the Act, the parties to the dispute are enjoined to first attempt to settle it by any existing agreed means for the settlement means of disputes. If the attempts fail or if no such agreed means exist, the parties must within seven days of the failure or within seven days of the date on which the dispute arose or was first apprehended where no means for settlement exists, Section 3(2) of the same Act provides that the presidency of mediator mutually agreed upon and appointed by or on behalf of the parties with a view to amicable settlement of the dispute. The section 5(1) of the Trade Dispute Act provides that if the mediator appointed cannot settle that dispute, then it should be reported to the Minister or his permanent secretary by or on behalf of either of the parties.

Also sections 5(2), 7, 8, 16 and or 32⁹⁶ as may appear appropriate. The above sections respectively empower the minister to a conciliator, refer a dispute to the Industrial Arbitration Panel (IAP), refer certain types of disputes directly to the National Industrial Court (MC) and to appoint a body of inquiry.

A minister may refer to a dispute directly to the IA?, the minister is empowered by virtue of section 4 of the Act to apprehend a trade dispute.

3.6 The Scope of the Trade Dispute Act

It covers both the public and the private sector workers and employers all of which must comply with these provisions. The only exception to the binding rules of the Act are members of the customers preventions services and members of any other service of the

⁹⁶ Trade Dispute Act, Cap. 8 L.F.N, 2004

federal or state government authorized to bear Arms, the Nigerian Army, Navy, air force all inclusive (S.49(1))⁹⁷, and S.48(1) (2)⁹⁸ of the Act.

The rationale behind the exclusion of these category of officer is however unclear, S. 1(1) and (2)⁹⁹ envisages the international resolution of disputes arising failing which the matter is to be referred to the minister of Labour to mediate or to appoint a conciliator to inquire into the causes and circumstances of the disputes and circumstances of the disputes to negotiate with parties with the aim of resolving the issues at stake.

3.6 Current Developments in Wage Policy Formulation

It is hard to find a country in the world that has no income policy of a sort; and Nigeria is not an exception. Research findings in the course of this work however have revealed that there has been no major or radical development in income policy formulation in recent times. In other words, prevailing policies have their antecedent dating back to the 1970s. Today, there are no clear cut guide lines on wage policies other than wage fixations or reviews by subsequent wage boards and they more or less reflect on both the public and private sectors of the economy.

For as long as 20 years, the productivity, prices and income board¹⁰⁰ was the only regulatory administrative organ for formulation and implementation of income policy in Nigeria, the board went a long way in formulating wage plans, its functions are,

- a. To advice the federal and state government on national income policy.
- b. To calculate growth data available for general wage increases.
- c. To inform the government of current new trends in wages and advice on guidelines within which increasing wage should be confined.
- d. To encourage research on wages structure (include industrial, occupational

⁹⁷ Ibid

⁹⁸ Ibid

⁹⁹ Ibid

¹⁰⁰ Afolabi, L. Monetary Economics, Heinemann Educational Books (Nig. Plc, PTF Low Price Edition (1999), p.90

- e. renewal and any other sunder factors).
- f. Income distribution
- g. To examine and advice on any matter referred to it by the federal and state government concerning any of the functions conferred on it or pursuant to the decree.¹⁰¹ The board was structured on 4 operational arms and which are still relevant and functional till date
 - i. The public Service Ray Research Unit.
 - ii. The Income Analysis Unit
 - iii. The wages and productivity unit, and
 - iv. The price intelligence agency

The board provides guidelines on “any question relating to wages or other form of income or to prices the board was repealed and¹⁰²Productivity, prices and incomes Board Act, dissolves the board established under that Act and establishes National Salaries, income and wage commission to advice the federal and state governments Of national income policy.¹⁰³

The income policy in any counter refers to government measures (outside the traditional fiscal and monetary policies) designed to influence the pattern of prices and income in the economy. This is just to ensure that the determination of wage and non-wage income follows some form of established criteria with a view to avoiding conflict with the economic, social and political goals in the country. In other words, it is a short term measure designed to achieve such macroeconomic growth and goals as economic growth, income distribution, price, stability and full employment of resource.¹⁰⁴

¹⁰¹ Ibid p. 90

¹⁰² p.90

¹⁰³ ibid

¹⁰⁴ S. 5 (l) National Minimum Wage Act, Cap. 267 as amended by the National Minimum Wage (Amendment) Act. 2000.

Due to the limited effort expended in the use of incomes policy as a tool for attaining macro-economic objectives, the practice at best, has tended to suggest incomes policy as a tool for regulating wages¹⁰⁵ To this end, incomes policy vary in their formulation and applications, ranging from their strict statutory enforcement at one end of the spectrum to voluntary or mere moral suasion at the other end. In order to give prominence to income polices and a scientifically established wage determination system in the country, the Udogi Commission had recommended the establishment of a wage commission. To this end, in 1977, the federal government established a productivity income and wages Analysis agent to collect and analyse statistics on wages, income and price changes, in both the public and private sectors as a permanent institution to replace the institutionalized culture of ad-hoc wage commission to resolve wage and salary problems. Nevertheless, wage review commissions committee¹⁰⁶ still continues to feature in the process of government determination of Lagos. The productivity, price and income department being of the operational departments is mandated to carry out functions that will promote schemes for raising productivity in all sectors of the economy, monitoring the movement of all forms of non-wage incomes and prices as well as their efforts on worker's wages and salaries. It is also saddled with the responsibility of interpreting the relationship that exists between productivity and workers salaries. The department has two divisions namely - Prices and income; and¹⁰⁷ - Productivity

Some of the functions of the department as stipulated by the Commission's Act include;

- i. Advises the federal governments on national income policy.

¹⁰⁵ Uvicghara, E. Egerton, Mali.housc Press Ltd. Ikcja, Lagos, Nigeria (2001) p.40

¹⁰⁶ Ibid p.401

¹⁰⁷ Dept. of Productivity, Price and Income

- ii. Recommends the proportion of income growth which should be utilized for general wage increase
- iii. Determines and keeps the federal government informed on a counting basis on the movement of all forms of income and propose guidelines relating to profits, dividends and all incomes other than wages
- iv. Encourages research on wages structure (industrial, occupational and regional and any similar factor), income distribution and household Consumption patterns.
- v. Keeps price under continuous surveillance, interpret price movements and relate them to other departments in the national economy.
- vi. Determines and promotes schemes for raising productivity in all sectors of the economy.
- vii. Informs and educates the public on prices, wages and productivity, their relationship with one another and their interplay in determining standard of living and real economic growth
- viii. Develops and installs effective machinery for assembling data on a continuous basis on economic variables and levels of pay in the private sector on which the public sector salary and other benefits can be reviewed annually.
- ix. Examines and advices on any matter referred to the commission by federal and state governments concerning productivity and income.

Other activities of the commission include;

- i. Evaluating on continuing basis incomes earned in the informal sector as well as the savings and expenditure patterns of this sector.
- ii. Promoting and assisting to implement schemes for raising productivity in the public and private enterprises

- iii. Making inquiries into the various aspects of income distribution as well as changes in the pattern of distribution of income in the form of wages, profits, rents, dividends and collecting related data.
- iv. Conducting researches relating to interpersonal and regional distribution of income and collecting related data
- v. Analyzing profits, rents, dividends and other non-wage incomes in order to create and/or determine the appropriate incomes guidelines.
- vi. Evaluating trend in wages, productivity and economic growth with a view to providing information that will be benefit permissible increase in wages in the private sector.
- vii. Studying and interpreting price movements.
- viii. Collaborating with other agencies to develop a national incomes policy.
- ix. To ensure credible machinery for continuous wage indexing for real and effective wage determination.

From all indications, making a historical analysis of labour policies in Nigeria, it is observed that labour policies undergo a five year periodic reviews and adjustments. This is peculiar to wages in public sector. It is also coincidental that major governmental policies are formulated for a development plan period. In Nigeria a development plan period is five years¹⁰⁸ It is within these plan periods that most labour laws are formulated. This is why the first five periods marked a significant epoch in labour history. Notwithstanding that the period 1955-1960 did not reflect major changes in colonial labour policies with regard to collective bargaining, settlement of trade disputes and trade union activities. The existence of legislations such as the Trade Union 1938 and the Trade Disputes (Arbitration and inquiry) Act of 1938 gave legal status to unions, made it compulsory for employers to recognize

¹⁰⁸ Gbosi. A.N, Labour Policy in Nigeria 1955-1975 in Quarterly Journal of Administration, Vol. XX No. 34 April/July (1985) pp.133-135

unions and also required all trade unions to be registered with the Directors of Trade Unions in the Labour Department (now Ministry of Employment Labour and productivity).

3.7 Relationship among Unions and Collective Bargaining

Collective labour relations find practical expression primarily through the well-known phenomenon of voluntary collective bargaining. And collective bargaining itself, for it to be meaningful, is in turn, dependent not only on the existence of trade unions, especially trade unions of employees, but also upon the vigor and independence of the unions. Therefore, there can be no doubt that the extent to which the law gives support to the formation and existence of strong and vigorous trade unions to that extent does it give effect and meaning to collective bargaining.

The law has provided a framework to encourage, promote and assist meaningful collective bargaining.¹⁰⁹ It is generally accepted that trade unions, especially trade unions of employees are vital, if not an indispensable component of the collective bargaining machinery. Hence the statutory law has always made provisions to ensure the existence of vigorous trade unions. There are also statutory provisions which neutralize some of the common law wrongs which will otherwise hinder the unions in participating fully and actively in collective bargaining. In 1973, statutory provision was made for the first time, for the compulsory recognition of registered trade unions by employers, obviously, for the purpose of collective bargaining. And as we have seen a major restructuring of the unions was undertaken in 1976-1978 in order to create larger and more viable unions. The first statute on settlement of trade dispute enacted in 1941, gave maximum support to collective bargaining.¹¹⁰

Today, however, employers as well as government are anxious to promote peaceful industrial relationship a system of rationalized collective bargaining between themselves and

¹⁰⁹ Annual Report of the Department of Labour, 1954/55, para 20

¹¹⁰ Uvicghara Op. cit. p.314

organized workers. The desire for unity among the unions was largely responsible for the current status of Nigerians Labour Congress NLC.

CHAPTER FOUR

INDUSTRIAL DISPUTES

4.1 Introduction

The growth and advancement of every economy lies on the effective contributions of the labour force. Just like it is applicable in every human relationship, conflicts between employers and employees are a common phenomenon. The cravings for better conditions of service have led to several frictions between these parties.

4.2 Expression of Industrial Disputes

Industrial disputes assume different forms under different circumstances. The form of expression is determined, just as their causes, by a complex mechanism of economic, political, technical, managerial and psychological factors. But the most common ways of demonstrating disputes or collective grievance is the use of the lock-out and strike weapons.

The Strike and lock-out are weapons of last resort. Essentially, it is the ultimate power of union officials and their rank and file members to disrupt production, services or the conduct of an enterprise by the withdrawal of labour which prevents even the most enlightened managerial regime from becoming mere paternalism, in industrial relations management prerogative power to lock-out employees is equivalent to the employees' right to strike.

Both labour and management have certain interest to protect; management expects to secure labour at the price that would allow a reasonable margin for investment. Also workers expect real wages to increase steadily, to have a reasonable standard of living and to have job security. Furthermore, management expects the production and distribution of goods and supply services which is planned on a calculated cost and risk not to be interrupted. The public or the consumers too are into without expectation. They expect to have the flow of goods and services without interruption and at a stable price.

The consequences of strikes and lock-outs are the waste of human and financial resources, leading to loss of man days as production is considerably reduced or hampered resulting in economic and social stunted growth and unrest. Labour law therefore, has to play an important role in order to reduce the frequency and magnitude of work stoppages for maximum production, economic growth and social tranquility. For achieving the desired peace in industrial relations, law has to provide firstly, an acceptable and workable settlement mechanism capable of winning the confidence of both labour and management since neither party nor the government desires the collapse of the industry. Thus, any nation that seeks to promote peace and harmony would have to consider the conflicting interests when striking a balance, as the task of reconciling the use of strike and lock-outs, as ultimate sanctions is the sole responsibility of the government, which is a sovereign as well as the major employer of labour.¹¹¹ Secondly, for the creation of industrial peace there, has to be fair institutional variables; the conditions of work, wages, work ethics and productivity of labour as well as sanctity of collective agreements, etc.

4.3 Strikes

The unpalatable side of industrial relations and one which the public often associate unions with, is the strike. The strike indicates a breakdown of cordial relationship between labour and management and is usually the one aspect of industrial relations that invites the most negative commentary. Yet the strike, distasteful as it is, performs various useful functions for the two sides of industry.¹¹²

When a union calls out its members on strike, it is in the belief that the strike will exert pressure on the employer (and sometimes indirectly on government) to take a desired

¹¹¹ *Tramp Shipping Corporation v. Greenwich Inc* (1975) 2 All E.R 989.-991. (Iranil)

¹¹² Section 47(l) of the Act extends strike to "o slow s.47(l)(b). Quare if "work to rule' collies with n the definition

action, such as conceding a demand for improvement in terms of employment, or ameliorating an unsatisfactory working conditions.

Most strikes involve attempts by the union to change the bargaining position of the management. When properly used, a strike can force management to concede the demand of the union. Apart from the use of the strike by the workers to win substantive demands, a strike may be used to effect a change in the structure of bargaining, such as changing from enterprise bargaining to multi- employers bargaining, or vice versa. In spite of the usefulness of the strike option in union-management relationships, it imposes cost both on the two sides of industry and the economic as a whole the cost of strikes to the union and its members represents loss of income to both, in addition to social costs, represented by the bad image which it imposes on them. On the employers' side, the costs of the strike are in terms of lost output and profit, as well as the social stigma which it imposes. For the economy, loss in productivity, which affects the Gross Domestic Product, constitutes the most significant quantitative cost to society.

The significance of this loss in national output in one firm is more worrisome because it often leads to a chain of events in other establishment. For example, a strike of some duration at a cement factory may adversely affect other establishments. Suppliers to the factory would have to curtail or suspend operation.

4.4 Meaning of Strike

‘Strike’ is defined as the cessation of work by a body of persons employed and acting in combination, or a concerted refusal, or a 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 any person or body of persons

employed to accept or not to accept terms of employment and physical conditions of work.¹¹³ In this definition, ‘cessation of work’ includes deliberately working at less than usual speed or with less than usual efficiency while ‘refusal to continue to work’ includes a refusal to work at usual speed or with usual efficiency.¹¹⁴

Strike is a breach of contract by the employee which entitles the employer to dismiss him, provided the employer dismisses all those who are actually on strike at the date of their dismissal and does not offer to re-engage some of them within three months after their dismissal. In this event, the industrial tribunal has no jurisdiction to decide whether or not the dismissals are fair or unfair. This is the “no picking or choosing” rule.¹¹⁵

But the law will not protect an employer if he seeks to dismiss after the strike is over. Thus, if employees go on strike but subsequently decide to return to work, the employer is no longer entitled to dismiss them. And if he does, the court would hold the dismissals unfair.¹¹⁶

Employees who are engaged in the provision of essential services as defined by section 7 (1) (a-c) of the Trade Disputes (Essential Services) Act Cap T9, Laws of the Federation of Nigeria 2004 must follow the procedure laid down by law for the settlement of trade disputes. Where a particular group of such employees fails to do so, the group may be proscribed. Thus, if the President is satisfied that any trade union or association any of the members of which are employed in any essential services is or has been engaged in acts calculated to disrupt the economy, obstruct or disrupt the smooth running of essential services or has willfully failed to comply with the procedure laid down in the Trade Disputes Act for

¹¹³ Section 48 of the Trade Disputes Act, Cap. T8, Laws of the Federation of Nigeria, 2004-Oshiomole v F.G.N. (2005) 2 NWLR (Pt. 907) 414CA

¹¹⁴ Supra

¹¹⁵ Section 62 (1) (6) of the English Equipment (Consolidation) Act 1978. See also Marsden v. Fairet,, Stainless Ltd [1979] IRLR 103, Edwards v. Cardiff City Council [1979] JRLR 303

¹¹⁶ Heath Longman (Meat Sak’Snllell) Ltd [1973] 12 All ER 1228, [1973] 1 CR 407

the settlement of trade disputes, he may by order published in the Federal Gazette proscribe the union or association.¹¹⁷

Employees who are engaged in the provision of essential services include but not limited to: (a) members of the armed forces or persons employed in the armed forces of the Federation or any part thereof; (b) persons employed in public or private enterprises responsible for the supply water, electricity, fuel, sound, broadcasting, postal, telegraphic, cable, wireless or telephonic communications (c) persons employed for maintaining ports, harbours docks, or aerodromes or transportation services; (d) persons employed in connection with burial of the dead, hospitals, the treatment of the sick, the prevention of disease; (e) fire fighters; (f) person employed in Central Bank of Nigeria, Nigeria Security Printing and Minting Company Ltd. Banks and other Financial Institutions etc.

Similarly, a member of staff, whether teaching or non- teaching, employed in any primary secondary or tertiary educational institution in Nigeria is prohibited from embarking on an industrial action in the form of a strike, sit-down strike, work to rule or any other kind of industrial action which is calculated to disrupt the smooth running of teaching or educational Services in any of those institutions where such a member of staff continues or persists in any such industrial action for more than one week, he is denied to have resigned his appointment but without prejudice to any accrued rights. Also, such a member of staff is required to vacate such accommodation as would have been provided by the institution for him.¹¹⁸

One element of the concept of a strike is equally important; a strike presupposes concerted action. Parallel actions of isolated individuals do not amount to a strike. A number

¹¹⁷ Section 7(1) (n)-(b) (i-nj) (c) (i-i ii) of the Trade Dispute (Essential Services) Act, 7976

¹¹⁸ Section 2(1) (2) (3) of the Teaching Etc. (Essential Service) Act 1993 No. 30 Section 7(1) (1,) (vi) of the Trade Dispute (Essential Service) Act, Cap. T9, Laws of the Federation of Nigeria, 2004 Section 2 of the teaching Etc. (Essential Service)(Amendment) Act, No. 44 1993

of employees, annoyed by some act of the employer, all giving notice, may do as much damage to the employer as a strike, but unless [they act in agreement it is not a strike.

A strike may thus be defined in terms of concerted action and of cessation or refusal of work that is in terms of means, not in terms of ends. Men may strike in order to protest against the enactment of a statute, against an unpopular measure of foreign policy, or against new tax. The strike is always a phenomenon of Industrial relations, but it can be used as political weapon. However, much the idea of freedom to strike is linked by tradition with the processes of collective bargaining, it would be wrong to define it exclusively in these terms.

4.5 The Strike Theories

Strike involves the cessation of work by workers who have some grievances to address with the employer. The first is the theory relating to a unilateral suspension of contractual duties ‘involving a breach of contract. This theory originated in the Obiter dicta of Lord Justice Donovan (as he then was) in *Rookes v. Barnard*¹¹⁹ in which the lord of Justice said

*There can be few strikes which do not involve a breach of contract by the strikers It would, however, be affectation not to recognize that in the majority of strikes one can terminate the contract is either given or expected*¹²⁰

Both Lord Devlin and Lord Evershed expressed general agreement with him. The case reached the House of Lords and it was later adopted by Lord Denning in *Stratford (J.T) and sons Ltd v. Lindley*¹²¹. Lord Justice Donovan had said that if an employee refuses to carry on working under his contract of employment, this gives the employer the option either to ignore the breach and insist upon performance of it or alternatively to accept such a fundamental breach as a repudiation of the contract and treat himself as no longer bound by it. Lord Devlin agreed that “the object of a strike notice was to break the contract by

¹¹⁹ (1964) 1ALL ER 367

¹²⁰ Supra

¹²¹ (1965) AC 269

withdrawing labour but keeping the contract alive long as long as the employers tolerate the breach without excising their right of rescission.

What the judges are saying is that the notice of a strike is fundamental breach as to entitle the employer to determine the contract without any further formalities. This theory thus treats the contract as voidable once the notice is handed in breach of the established procedure. A strike without notice will fall within this category as the absence of due notice will constitute “unlawful “interpretation of the rule in *Rookes v. Barnard*.¹²²

The second theory is that which says that a due notice strike amount to a notice to terminate the contract. This is the more tradition approach and was accepted by Russel H, L.J., in *Morgan v. Fry*.¹²³ The Lord Justice gave his authority and distinguished the case of *Rookes v. Bernard*¹²⁴ and said that there was unlawful means in that case “because the pressure of intimidation Could not have been applied without breach of the (‘no strike’) clause preventing, as it did, concerted due termination of contract.”

It should be remembered that in order to take effect as a notice of termination the notice of itself be long to determine the contract whether or not there is industrial action; otherwise the strike notice will be unlawful because of its insufficiency.

The third theory, propounded by Lord Denning, is that which treats a strike or notice in terms of the suspension of the contract. If the strike takes place the contract of employment is not terminated, it is suspended of the contract. A notice of strike employment is not if the strike takes place the contract or employment is not terminated. It is suspended during the strike and revives when the strike is over”¹²⁵ it is respectfully submitted that the suspension theory reflects the true intention of both employer and employees. The last thing men on

¹²² Supra

¹²³ (1967)2 ALL ER 386

¹²⁴ Supra

¹²⁵ Supra

strike desire is to lose their and associated pension rights, the employer on his part hopes that the contract of employment will continue with perhaps modified terms.

4.6 The Right to Strike

A labour law on collective bargaining have often times confers on employees the right to strike. Thus, Lord Wright in the case of *Crofter Hand Wooven Harris Tweed Co. v. Veitch*,¹²⁶ opined that the rights of the employer are conditioned by the rights of the men to give or withhold their services. The right to strike is an essential element in the principle of collective bargaining.¹²⁷

To protect such a right is not, of course, to approve (or disapprove) of its exercise in any particular withdrawal of labour. it is to recognize the fact that the limit set to the rights to strike and lock-out are one measure of the strength which with each party can in the last resort bring to bear at the bargaining table. Happily, Bargaining table does not always come to that last resort. The right to strike has been justified by four arguments. These are the Equilibrium argument, the autonomy argument, the voluntary labour (or Benthamite) argument and the psychological argument. In the context of the Use of the strike as a sanction in industrial relations, the equilibrium argument is much more important of the four, it was stated as long ago as 1896 by Oliver Wendell Holmes, an American Supreme Court Judge, in a classic passage of a dissenting opinion in the *Supreme Judicial court of Massachussetts*, Combination on the one side is patent arid powerful. Combination on the other is the necessary and desirable counterpart, if the battle is to be carried on in a fair and equal way.... If: it be true that working men may combine with view, among other things, to getting as much as they can for their labour, just as capital may combine with a view to getting the greatest possible return, it must be true that when combined with view, other things to getting

¹²⁶ (1941) UKHL 2

¹²⁷ Supra

as much they can for their labour, just as capital may combine with a view to getting the greatest possible return, it must be true that when combined they have the same liberty.

4.7 International Labour Law and the Right to Strike

Aside from strikes, there are other forms of industrial actions. These other forms would be highlighted in due course.

The right to strike is considered nationally and internationally as a fundamental right. What is the basis of this assumption? The search for an answer must begin from the international and regional level. The fundamental question that demands an answer is whether international labour law recognizes the right to strike. We need to start this chapter with this issue because of its significance in the determination of what amounts to international best practice in the management of industrial or labour disputes.

According to the ILO, the right to strike is the most visible form of collective industrial action where the workers would express their grievance and to force the employer to the bargaining table. Fundamental as it is declared to be, there is no express provision of that right in the Constitution of the ILO, or in any of the core labour conventions namely, Convention No. 87 (1948) on Freedom of Association and the Protection of the Right to Organize; and Convention No. 98 (1949) on the Principles of the Right to Organise and to Bargain Collectively. However, the ILO Committee of Experts on Freedom of Association has consistently held that the right to Strike is one of the essential means available to workers and their organizations for the promotion of their economic benefits. These include assaults, rioting, criminal libels, breaches of the peace and indeed all-criminal offences.

4.8 Statutory Rules Limiting Strikes

Beginning with the Trade Disputes (Emergency Provisions) Decree of 1968¹²⁸ all through to the end of the military regime, laws have been enacted which sought to limit or

¹²⁸ Cap T9 LFN, 2004

abrogate completely resort to strike actions. The most stringent provision was section one of the Trade Disputes (Emergency Provisions) Decree 53 of 1969 which prohibited strikes absolutely. The prohibition was total and severe penalties of imprisonment without option of fine were laid down. Section 6 of the 1969 gave power to detain persons involved in strikes.

The position is now governed by section 17 of the Trade Disputes Act of 1976 which provides that:

- a) An employer shall not declare or take part in a lock-out and a worker shall not take part in a strike in connection with any trade dispute where — (a) the procedure specified in section 3 or 5 of this Act has not been complied with, in relation to the dispute; or
- b) a conciliator has been appointed under section 7 of this Act for the purpose of affecting a settlement of the dispute; or
- c) the dispute has been referred for settlement to the Industrial Arbitration Panel under section 8 of this Act; or
- d) an award by an arbitration tribunal has become binding under section 12(3) of this Act; or
- e) The dispute has subsequently been referred to the National Industrial Court under section 13(1) or 16 of this Act; or
- f) The National Industrial Court has issued an award on the reference.

Subsection 2 of section 17 of Trade Disputes Act 1976¹²⁹ imposes the following criminal sanctions for violations: in the case of individuals, a fine of N100 or six months imprisonment; whilst in the case of a body corporate, a fine of N1 ,000.00.

The section in an attempt to streamlined strikes actions, has left an ample room for maneuvering of workers to embark upon a strike, without the visitation of the wrath of the law, for example, before a dispute is referred to the Industrial Arbitration Panel; or when an award is made by the Panel before it becomes binding upon the parties; or when The issue is

¹²⁹ Cap T8 LFN, 2004

pending before the Minister of Labour either before mediation or when it fails; etc. And furthermore the penalty imposed by section 17(2) of the Trade Disputes Act 1976 is not likely to have any effect on the trade unions, the penalty of N1,000 is too inconsequential as a deterrent.

Whilst section 17 of the Trade Disputes Act 1976 deals with strike actions generally, the provisions of the Trade Disputes (Essential Services) Act No. 23 of 1976 as amended by Act 69 of 1977¹³⁰ are aimed in the main at public sector employees. Section one of the principal Act confers powers on the Head of State (the President) to proscribe any trade union or association whose members are employed for essential service who:

- (a) is or has been engaged in acts calculated to disrupt the smooth running of any essential service; or*
- (b) has where applicable willfully failed to comply with the procedure specified in the Trade Dispute Act 1976 in relation to the reporting and settlement of trade disputes.*

Section 3 provides that at least six months must elapse before a similar body can be registered and by virtue of section 4 no person who was an official of the body at the date of proscription can ever be an official of any union in any essential service. Essential service has defined widely to mean:

- a. the public service of the Federation or of a state which shall for the purposes of the Act include service in a civil capacity, of persons employed in the Armed Forces of the Federation or any part thereof and also, of persons employed in an industry or undertaking (corporate or incorporate) which deals or is connected with the manufacture or production of materials for use in the armed forces of the federation or any part thereof.

¹³⁰ Cap T9 LFN, 2004

- b. Any service established provided or maintained by the Federation or of a state, by a local government council, a town council or any municipal or statutory, or by private enterprise —
 - i. for, or in. connection with supply of electricity power or water, or of fuel of any kind;
 - ii. for, or in connection with, broadcasting or postal telegraphic, wireless telephone communications;
 - iii. for maintaining ports, harbors, docks or aerodromes, or for, or in connection with transportation of persons, goods or lives tock by road, rail, sea, river or air;
 - iv. for or in connection with, the burial of the dead, hospitals, the treatment of the sick, the prevention of disease, or any of the following public health matters, namely; sanitation, road cleaning and the disposal of night soil and rubbish,
 - v. for dealing with outbreaks of fire;
- c. Service in any capacity in any of the following organizations.
 - i. the Central Bank of Nigeria
 - ii. the Nigerian Security Printing and Mining company Limited.
 - iii. anybody corporate licensed to carry on banking business under the Banking Act of 1969.

Even under the Military regime this lethal power was used very sparingly, it would seem only in cases repeated, flagrant and deliberate infractions of the machinery laid down for the settlement of trade disputes.

Two questions must be posed here. The first is, does proscription simpliciter deter strike action by public employees? It must be remembered that there need not be a trade union for strikes to take place, a point well illustrated by the history of the disputes in the Central Bank of Nigeria. Although Section 11 of the Trade Unions Act of 1973¹³¹ prohibits

¹³¹ Cap T14, LFN, 2004

workers of the Central Bank from joining or forming unions, strike actions have been taken by them. After all, the right to organize and the right of strike are quite different things. The power conferred on the President by section one of the Trade Disputes (Essential Services) Acts of 1969 may be said to constitute an encroachment upon the right guaranteed by section 40 of the Constitution. Can the Act be justified under section 45(1) of the constitution as a law reasonably justifiable in a democratic society? This looks a bit rather far fetch. Therefore subject to the caveat that the right guaranteed by section 40, of the Constitution is an individual one and not a collective right, so that individual persons can validly sue for infringement actual or threatened, S. 45(1) of the constitution cannot avail the lawful and legitimate application of the trade Disputes (Essential Services) Act 1976. But even if the Act could still be validly applied today, it is submitted that the government must clearly be able to distinguish between the official actions of the union for which the union must accept responsibility and other unauthorised actions as where a branch of the union resorts to an industrial action without (he blessing — express or tacit of the union. In the latter case, it will be wholly unjustifiable to proscribe the union on account of the unauthorized acts of some of its more militant members.

Section 40 of the Trade Disputes Act of 1976¹³² makes it an offence for any worker employed in any essential service to cease, whether alone or in combination with others, to perform the work which he is employed to perform without giving to his employer at least fifteen days' notice of his intention to do so, unless he proves that at the time when he ceased to perform that work he did not know, or had no cause to believe, that the probable consequence of his or their doing so would be to deprive the community or any part thereof either wholly or to a substantial extent of that or any other essential

¹³² Cap T8, LFN, 2004

service. Under section 41 of the Trade Disputes Act¹³³, it is also an offence for any worker to cease, whether alone or in combination with others, to perform that work for which he is employed without giving his employer at least fifteen days' notice of his intention to do so, and at the time when he ceases to perform that work he knows or has reasonable cause to believe that the probable consequence of so doing will be to endanger human life, or seriously to endanger public health including the health of the inmates of a hospital or similar institution, or to cause serious bodily injury to any person or persons or to expose any valuable property whether real or personal, to destruction or serious injury.

Each of the offence created by sections 40 and 41 of the Trade Disputes Act 1976 is punishable upon conviction with a fine of N100 or imprisonment for six months or both. The offences under the two sections may be committed either individually, that is, by a single employee or collectively in the event of a strike. The minimum period of notice to terminate the employment is fifteen days regardless of the length of notice normally required to terminate the contract. It should be noted under the Trade Disputes Act 1976; sections 40 and 41 in particular, there are nothing which says that workers employed in essential services cannot go on strike. They can do so within the limits allowed by section 17(1) of the Trade Disputes Act 1976 provided that they have given at least fifteen days' notice of their intention to do so to their employees. This mandatory notice gives an opportunity to the direct public employer and the government to take measures to ensure that the public can still enjoy the particular essential service after the strike could have begun. It is also aim at curbing wildcat strikes where public employees spring a surprise on their employer. Thirdly, the giving of notice affords minister an opportunity to intervene in the dispute with a view of resolving or at least containing it before the notice runs out.

¹³³ Supra

Section 42(1) of the Trade Disputes Act, 1976, provides that where a worker takes part in a strike he shall not be entitled to any wages or other remuneration for the period of the strike and any such period shall not count for the purpose of reckoning the period of continuous employment and all rights dependent on continuity of employment shall be prejudicially affected accordingly. Under this section the level or amount of wages payable to the strikers is exposed to deductions. This provision is almost similar to the English principle laid down in the case of, *Morgan v. Fry*¹³⁴ that treats a strike as a suspension of the contract of Employment i.e. the suspension of contract theory. Where Lord Denning held that, if the strike takes place, the contract of employment is not terminated. It is suspended during the strike and revives when the strike is over.¹³⁵ The effect of section 42(1) of the trade Disputes Act 1976 in curtailing strikes is minimal, this is because the workers vehemently opposed its implementation and the employers on their part lacks the will to enforce the provision of the section. For example, the management of Ahmadu Bello University sought to enforce the provision of section 42(1) of the Trade Dispute Act 1976, after a strike action embarked by the Academic Staff Union of Universities, A.B.U. Chapter. The University lectures resisted its enforcement and threaten to further embark upon strike if their salary is tampered with. The management thereafter rescinds its decision in the interest of peace. In the case of the *Management of Union Bank of Nigeria v. National Union The Bank Insurance and Financial Institutions the National Industrial*, Court decline to make an award for the enforcement of the provision of section 42(1) TDA 1976, on the ground that such deductions would not promote peace in the Bank.

4.9 Lock-Outs

In industrial relations management prerogative power to lock-out employees is equivalent to the employees' right to strike. Management or employers do not usually need to

¹³⁴ Supra
¹³⁵ Supra

have recourse to locking out their labour force. Usually, it is open to them to wait for their labour force to strike, if that of strength is their intention

4.10 Meaning of Lock-Out

The Trade Disputes Act 1976¹³⁶ defines a lock-out as:

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 work¹³⁷

As with strike, the concept of lock-out has two elements, one is the closure of a place of employment, or the prevention of employees from continuing with the contract of employment by the employer and the other element is that it must be in consequence of a trade dispute. Thus, shutting, down completely or partially of employment, simpliciter, will not amount to lock-out.

A lock-out, may thus be defined in terms of industrial dispute in terms of ns. And like strike, the ends of lock-out varies, employers may lock-out employees with the view of effecting changes in physical conditions of work or to fight against unpopular fiscal policy of the government.

4.11 Effect of Lock-Out on Contract of Employment

Section 42(1) (b) of the Trade Disputes Act 1976 provides that:

Notwithstanding any contained in this Act or in any other law, where any employer locks out his workers the workers shall be entitled to wages and any other applicable remuneration for the period of the lock-out and the period of the lock-out shall not prejudicially effect any rights of the workers being rights dependent on the continuity of period of employment.¹³⁸

¹³⁶ Section 48, Cap T8, LFN, 2004

¹³⁷ Supra

¹³⁸ Cap T8, LFN, 2004

The period of all lock-outs count towards the period of continuous employment: Thus if employees are dismissed as a tactic to get them to accept new terms of employment, the employer may be treated as having conducted a lock-out and the employees would be entitled to wages and other applicable remuneration for the period of the lock-out.

CHAPTER FIVE

CONCLUSION, FINDINGS AND RECOMMENDATIONS

5.1 Conclusion

From the analysis provided with respect to collective bargaining and industrial democracy, one can determine the extent of protection that is accorded to the workers and to the management, it would be correct in our view that the protection via the bargaining accorded to both parties if weighed on a scale, it would be discovered that the balance tilts in favour of management. For instance the award made by the court (NIC) National Industrial Court ranging from respect of salary, productivity bonus, welfare, matters of wrongful dismissal connected with strikes, lock-out and other categories of union activities, the workers were deprived “reward” for good performance on the ground that the consent of the Minister of Labour was not sought for. The Trade Dispute ‘Act accorded collective agreements recognition in S. 3(1) thereby strengthening the efficacy of trade union operation.’

Similarly, in a bid to avoid frequent conflicts a few procedures have to be adopted in industrial negotiation. Some of these are products of business, while others are laid down by law. Statutes have provided some mechanisms whereby leaders of a trade union organisation can sit down with the management round a negotiating table and deliberate on issues affecting them.

Since the Nigerian legislation on labour management relationship is inadequate, there is need to provide a protective legislation in this arrear for law is a technique for the regulation of social order which directs the behaviour of people as employment relationship is one of subordination and super ordination, labour law must arrive at balancing the powers of both forces within the broad framework of societal interest. Collective bargaining between two interest groups is concern, it is a remedy to some industrial relations and it also seeks to

bring about social justice in industry by the socio-economic disparities and inequalities existing in an industry. It is our view that since disagreement between employers and employees is a permanent one, the Nigerian legislation in labour management should be geared towards achieving the industrial democracy it needed for economic growth and development. This is because even the settlement mechanisms such as the Industrial Arbitration Panel (IAP) and National Industrial Court (NIC) have factors which stood against their success as analysed in chapter 4 above.

To crown it all the employers and employees should try as much as possible to strike a balance on wages, accommodation, transport, bonus, leave allowance, rest day, sick pay in order to achieve peace and harmony in the industry as analysed in chapter 3 of this work. To this end, collective bargaining and industrial democracy under the labour law for analysis has been a topic of discourse. While some academics hold the view that the concept of industrial democracy and workers' participation in management does not exist in the Nigerian enterprises, others think it very much exist in Nigerian enterprises and establishments. This argument is the basis for choosing this topic.

Therefore, objectives and principle of industrial democracy and workers' participation in management were fairly being followed in most Nigerian public and well-established private sector enterprises, through collective bargaining. Actually, industrial democracy and workers' participation in management is the participation of workers through their representation as is done in collective bargaining. This is the involvement of workers in whatever is being done that is understood as democratisation or participation be it information sharing, decision making, profit sharing or even productivity target setting through their representatives. Collective bargaining is applied to those arrangements under which wages and conditions of employment are settled by a bargain. In the form of an agreement made between employers or associations of employers and workers organisation.

The government continues to pursue its policy of industrial self government; whereby it encourages employers and workers to try to settle questions of wages and conditions of employment by collective bargaining and only intervenes as the last resort or in the public interest as an impartial conciliator or arbiter. Nonetheless, the law has always provided a framework to encourage promote and assist meaningful collective bargaining. Industrial democracy seems to be a mirage in various organisations or establishments in Nigeria but because of the recent government various interventions through its laws accorded trade union recognition today.

More so, some contentious issues in the Nigerian industry has been addressed by the government. For instance, the Obasanjo administration has really settled the issue of retirement pension by making it obligatory for employer who can engage workers up to 5 and above thereby contributing 7.5% and the employee contributing 2.5% of its salary. Also, salary increment was in a way settled temporary based on agreed percentage but the implementation became a problem because of government deliberate refusal though the private organisations implement it. It is obvious from prevailing circumstances that industrial democracy and collective bargaining is applicable in Nigeria because workers do go on strike following unfavourable government decision or employer decision against them; such as the present National Union of Teachers (NUT) strike and the looming health workers strike and the recent Academic Staff Union of Universities (ASUU) strike.

It is arguable that both collective bargaining and joint negotiations through industrial democracy have not provided appropriately for the workers' intention or their desire to influence the decision which they consider to be negative. As it is now it can be deduced that industrial democracy involves a mutual process through which labour, and management solve problems of mutual concern jointly with bearable conflict.

To crown it all, the success of the process, however depends to a large extent on the capacity to be involved or participate in joint consultation, effective bargaining in decision making at all levels.

5.2 Findings

1. To achieve industrial peace and harmony, it is the findings of this researcher that government must be prepared to allow the industrial court and arbitration panels to be independent, a situation where if the minister of labour does not refer cases to the Industrial Arbitration Panel (IAP) nobody can, show that the minister may use its discretion and refer only cases favourable to the government to the panel.
2. It is also the findings of the researcher that the National Industrial Court enforces its awards which has considerably undermined its very existence and this can be remedied by giving the court the same status as the Supreme Court of Nigerian in industrial matters staffed with bailiffs and other officers who may when necessary even detain property of defaulters.
3. It is the findings of the researcher that the National Industrial Court is centralized thereby making it difficult for employees with good cases to seek redress.

5.3 Recommendations

1. To achieve industrial peace, government should enact more adequate laws that can withstand the test of time as to induce or compel employers to recognise unions as it was the case in America and Britain. More so impose fine for any non-compliance from employers.
2. Also, the government should enact laws enabling enforceability of collective agreements when the need arises. It is not democratic to argue that an agreement entered into by government and a union is an “agreement of imperfect obligation” as Professor Ben Nwabueze tried to argue during the action embarked upon by

Academic Staff Union of Nigerian Universities (ASUU) for a noncompliance with their agreement by government since it is only the government that has the sole power to make such laws. The recent warning strike embarked by ASUU came from such noncompliance by the federal government to agreement reached with the union.

3. It is surprising that the Trade Dispute Act instill the Minister of Labour unfettered powers in S. 5 and 7 irrespective of his unattended, industrial relations background. The powers bestowed on the minister should be drastically cut down.

BIBLIOGRAPHY

- Adeogun A. A., "The Legal Framework of Industrial Relations in Nigeria", Nigeria Law Journal, vol. 3, 1979
- Amadi O.S.A legal Guide to Trade Unions -1999
- Ananaba W., the Trade Union Movement in Nigeria 1970
- Beal and Begin: The Practice of Collective Bargaining, Richard, D. Irwin Inc. 1982
- Cho. F. F. Lecture Note on Recognition of Trade Union, A. B. U. Zaria 2003/2004
- Clive Jenkins and Barrie Sherman Collective Bargaining, Routedledge and Kegan Paul, London, Henkey and Boston, Published 1977
- E. E. Uvieghara: Labour Law in Nigeria, Maithouse Press Limited, Ikeja, Nigeria, 2001
- Emiola, A. Nigerian Labour Law, P. 215, Ibadan University Press, 1979
- J. A. A. Audi, "Strike as a Labour Union Tool in Nigeria, Reflection on Trade Union Act, 2005, Article published in Collective Bargaining and Industrial Democracy Under The Labour Law in Nigeria ABU, Law Journal, Zaria, Nigeria, 2005/06, Pg. 94-108
- James Femowale, P. The Concept of Collective Bargaining in Wage Policy Formulation under the Nigerian Labour Law
- Kenneth O. Warner: Edited Collective Bargaining in the Public Service, Theory and Practice, Public Personnel Association, Chicago, 1967
- M. M. Audi, Lecture Note on Labour Law A. B. U., Zaria 07/2008
- Otto, K. F. Labour and the Law, 2nd Edition, 1977, published P. 49
- Thomas A.K, collective bargaining and industrial relations 1980
- Vincent A, A managing the Nigerian workers, Lagos 1984