KWASU Journal of Business and Private Law, 1(1)

The Adequacy of Nigerian Law in Fostering Industrial Peace through Collective Bargaining **

Abstract

The interests of the trade unions and management are diametrically opposed, because the success of one party is a cost at the expense of the other party. For instance, if the union succeeds in its agitation and obtains a higher pay package, it reduces the profit posted by the management at the end of the accounting period. However, the management and employees (represented by the unions) must accommodate each other, as one cannot exist without the other. The article elucidates the functions of trade unions and the major causes of industrial disputes between the unions and the management. The article also addresses, using case law and statutes, the legal and industrial relations processes leading to collective bargaining and agreements, and the legal value of the collective agreement. The article found that collective agreements are mere gentlemen's agreements. The author therefore advocates, among other remedies, the need for the extant laws to be amended in such a way that collective agreement become a legally binding document.

Keywords: Industrial peace, collective bargaining, trade unions, employee(worker), employer

1. Introduction

Industrial relations or employment relations is the multidisciplinary academic field and practice that studies the employment relationship that is, the complex inter- relations between the employers (represented by the management or the Employers' Association) and the employees (represented by the trade unions) and the state (represented by government functionaries). The importance of these three parties- the employers and the trade unions and the state need not be overemphasized. However, it is the workers' unions and its officials that are usually at the receiving end, suffering deprivations such as imprisonment, harassment, persecution, proscription of the unions, etc. Sometimes, the Nigerian state being the largest employer of labour doubles as an employer and an umpire in the industrial relations system. The central issue in industrial relations is the perennial problem of the employees willing to obtain high wages for putting in as fewer as possible hours while the employers strive to pay as little as possible for longer hours.[1] In order to foster industrial peace,

* Oyesola Animashaun, PhD, ACIT, BL; Associate Professor, Department of Business & Private Law, Faculty of Law, Kwara State University, Malete, PMB 1530, Ilorin, Nigeria. E mail address: anitrust2@gmail.com; oyesola.animashaun@ kwasu.edu. ng.

** A part of this paper was presented at the NLC Ogun State Workshop Tagged "Knowledge Driven Strategy as a Mechanism for Effective Labour Leadership and Collective Bargaining" Held at Ikogosi Warm Spring Resort, Ekiti State from 22-26 February 2022.

[1] Oyesola Animashaun and Olawale Shabi, Fundamentals of Industrial Relations (Hybrid

then there must be a compromise between the parties who have varied and usually conflicting motives, but cannot do without each other.[2]

2. Historical Overview of Trade Unionism in Nigeria

Trade union movements in Nigeria started as a result of agitations for the social well- being of workers who were mere servants under the British colonial masters. Although, it will be erroneous to say that no trade union had existed in Nigeria before the advent of colonization and the introduction of the formal employment relations. Labour relations had existed in informal forms in Nigeria before colonization- these include family union, communal union; and artisans' communalism like blacksmiths, market women and coppersmiths informal trade associations. These Associations exercised oversight functions on errant members; members were sometimes sanctioned for unethical trade behaviour such as poor services or non-delivery of items already paid for.[3] However, modern day unionism started in Nigeria in 1912 with the formation of the Nigerian Civil Service Union. Trade unions exist to regulate the terms and conditions of employment of workers; once this function is absent, then, the association will not be considered as a trade union. This function was succinctly affirmed by Oguntade JCA (as he then was) in *Udoh & 2 ors v. Orthopedic Hospitals Management Board & another.*[4]

Primarily, the reason for the existence of a trade union is to regulate the terms and conditions of employment of workers. This is another way of saying that trade unions are to ensure that the terms and conditions given to workers by employers are suitable.

Thus, the function of a trade union is primarily for the regulation of the terms and condition of employment of workers; and sometime for political actualization of the workers' self-centered objectives, as trade unions have been found in some cases, to have become more political in their agitations in Nigeria. In the latter case, the unions were agitating against the decline in the standard of living of its members and the public. For instance, trade unions usually opposed the federal government from increasing the price of petroleum products or increasing electricity tariff during the outbreak of COVID-19 when most workers have lost their livelihood.

3. Statutory definition of a trade union

2000) 4.

2 Ibid.

3 J. I. Roper, Labour Problems in West Africa (Penguin 1958) 2.

4 (1993) 7 NWLR (Pt. 254) 488.

Section 1(1) of the Trade Union Act,[5] defines 'a Trade Union' as "any combination of workers or employers, whether temporary or permanent, the purpose of which is to regulate the terms and conditions of employment of workers whether the combination in question would or would not, apart from this fact, be an unlawful combination by reason of any of its purpose, do or do not include the provision of benefits for its members". Section 1(2) of the Trade Union Act goes further to state that the fact that a combination of workers or employers has purposes or powers other than the purpose of regulating the terms and conditions of employment of workers shall not prevent it from being registered under the Act. Similarly, section 29(1) of the Trade Union Act provides that a trade union can be described as an organization that either "consists wholly or mainly of workers or employers of one or more descriptions and whose principal purpose is the regulation of relations between workers and employers or employers association or consists of constituent or affiliated organizations or representatives of such constituent or affiliated organizations and whose established purpose is the regulation of relation between workers and employers or workers and employers' associations.

It is clear from the above provisions, that, for an association to qualify as a trade union in Nigeria, the combination must be of workers or employers and its *raison d'etre* must be for regulating the terms and conditions of employment of workers. Both workers and employers can form separate trade unions, that is, employees' trade union or workers' trade unions or employers' association. However, both the employees and the employers cannot combine to form a trade union. The Trade Union Act defines a worker as 'any employee, that is to say, any member of the public service of the federation or of a state or any individual (other than a member of any such public service) who has entered into or works under a contract with an employer whether the contract is for manual labour, clerical work or otherwise, expressed or implied, oral or in writing and whether it is contract personally to execute any work or labour or a contract of apprenticeship'.[6] However our discussion in this treatise shall be confined to trade unions including workers' or employees' association, but to the exclusion of employers' association.

3.1 Legal status of a trade union upon registration

The law requires that a trade union must be registered before it can be allowed to perform any act in furtherance of its purposes. The principal purpose is to regulate the terms and conditions of employment of workers. Section 3(1) of

5 T14 LFN, 2004.
6 See section 51 of the Trade Union Act, 2004

the Trade Union Act prescribed that an application for the registration of a trade union must be made to the Registrar of Trade Union in the prescribed form and signed by at least fifty members of the union in the case of union of employees and by at least only two members in the case of a union of employers. Section 3(2) of the Act provides that no trade union will be registered except with the approval of the Minister of Labour and Productivity; and that no trade union shall be registered to represent workers or employers in a place where there already exists a trade union.[7] In *Osawe v Registrar of Trade Union,*[8] it was held by the Supreme Court that where the Registrar is satisfied that a registered trade union will adequately cater for the interest of applicants who desire to register a new trade union, the Registrar may not proceed with the application for registration. Thus, by virtue of section 3(2) of the Act, the Registrar of Trade Unions, on receiving an application to register any trade union, must ensure that there is no registered trade union in existence which caters for the same interest as the one applying for registration.

Upon Registration, a trade union is conferred with the status of an incorporated body; it acquires all the attributes of an incorporated body. It can sue and be sued in its registered name, it can hold property in its name, and it continues in perpetuity no matter the changes in its membership.[9] In *Bonsor v. Musicians Union*[10] Lord Keith stated that a registered trade union is treated as an incorporated association and that members are liable to pay subscriptions and levies under the union rules, but they are not liable for the debts of their union, nor could their personal property be available for an unsatisfied judgment debtor. However, 'the ILO's insistence on freedom of association is not to be taken as an endorsement for mushroom associations, or weak and powerless unions, that will not be able to protect the interests of their members through constructive engagement with employers in collective bargaining and, when necessary, industrial action'. [11] The ILO recognizes that its labour standards in the form of conventions and recommendations are products of consensus and are expressly made subject to local conditions and circumstances. Such conditions and circumstances may limit right to freedom of association.

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7 See the recent registration of rival unions in Nigerian universities by the federal government -such as Congress of National Universities Academics (CONUA) National Association of Medical and Dental Academics (NAMDA) to lessen the impact of Academic Staff Union of Universities (ASUU)

8 (1985) 1 NWLR 755

9 E.E. Uvieghara, 'Nigerian Labour Law (Malthouse Press Ltd 2001).

10 (1956) AC 104

11 C.K Agomo, 'Nigerian Employment and Labour Relation Law and Practice' (Publication Press 2011).

The Trade Union Act is the principal Act that regulates the activities of trade unions in Nigeria. The Act has five parts: Part I (i.e. section 1 – 29) deals with registration of combinations as trade union, cancellation of registration, dissolution of trade union membership, exclusion of persons convicted of certain offences and disqualification from holding office in a trade union. Section 15 & 16 specifically provides that trade union dues are not to be applied for political purposes and certain proceedings. Section 17 of the Principal Act has been amended by section 4 of the 2005 Amendment Act.

Section 24 of Trade Union Act (TUA) provides that for the purpose of collective bargaining, all registered unions shall constitute an electoral college to elect members who will represent them in negotiation with the employer. Section 23 of TUA grants immunity for the unions and its officials when torts such as the tort of inducing breach of contract between employees and employer, tort of intimidation and tort of conspiracy is committed in contemplation or furtherance of a trade dispute.

3.2 Cancellation of Registration

Section 7 of the Trade Union Act provides for six grounds under which the Registrar of Trade Union must cancel the registration of trade union. Any of these six grounds must be proved to the satisfaction of the Registrar:

(a) that the registration of the trade union was obtained by fraud or as a result of a mistake; or
(b) that any of the purpose of the union is unlawful; or
(c) that, after receipt of a warning in writing from the Registrar, the union has deliberately contravened or continued to contravene any provision of the Act or the regulations; or
(d) that the principal purpose for which the union is in practice being carried on is a purpose other than that of regulating the terms and conditions of employment of workers; or
(e) that the union though still in existence, has ceased to function; or
(f) that the union has ceased to exist.

The Registrar must send a notice in the prescribed form to the trade union at its registered office whenever the Registrar proposes to cancel the registration of any trade union.

3.3 Membership of trade union

Freedom of Association is a constitutional right guaranteed by the Constitution of the Federal Republic of Nigeria, (CFRN) 1999. Other international instruments such as the African Charter on Human and Peoples' Rights;

Universal Declaration of Human Rights, 1948; ILO Conventions guarantee peoples' right to associate with others, join or form political parties, trade union etc. however, fundamental right to freedom of association is not absolute; this is demonstrated in the Trade Union Act which excludes certain categories of workers from forming or belonging to any trade union. Section 11 of the Act excluded certain workers such as members of the Nigeria Army, Navy or Air Force, the Nigerian Police Force, the Customs and Excise Department, the Immigration Department, the Prison Services and the Customs Preventive Service, the Nigerian Security Printing and Minting Company Ltd, the Central Bank of Nigeria and every Federal or State Government establishment, the employees of which are authorized to bear arms. The Minister of Labour and Productivity is empowered to specify by order, any other such establishment from time to time.

Section 3(3) & (4) of the Act provides that any employee who is a projection of management is prohibited from union membership where, and only where, membership will lead to a conflict of his loyalties to either the union or his employer. For the purpose of determining projection of management, a person whose status, authority, powers, duties and accountability, as reflected in the conditions of service, are such as normally inherent in a person exercising executive authority may be recognized as a projection of management. The rationale for excluding members of the Armed Forces and arms bearers from joining or forming trade unions is based on the fact that with guns in their hands, they could cause greater harm and danger to their employers. [12]

Freedom of Association for trade union is guaranteed by the provision of section 12(4) of Trade Union Act. It provides that: "*Notwithstanding anything to the contrary in this Act; membership of a trade union by employees shall be voluntary and no employee shall be forced to join any trade union or be victimized for refusing to join or remain a membe*r". [13]

3.4 Voluntarism

The concept of voluntarism cannot be examined without recourse to the history of trade unionism in Nigeria. Trade union started in Nigeria in 1912 with the formation of the Nigerian Civil Service Union. Between 1912 and 1937, only three unions were functioning in the country; they were Nigerian Civil Service Union formerly known as Southern Nigeria Civil Service Union; the Railway

[12] J.E.O. Abugu, Notes on Trade Union Law in Nigeria (Faculty of Law, University of Lagos 2010).

[13] Section 12 of the Trade Union Act is in agreement with section 40 of the CFRN, 1999 ILO Convention 87 and 98 of 1948 and 1949 respectively. See also section 2 of the Trade Union (Amendment) Act 2005.

Workers' Union and the Nigerian Union of Teachers. The growth of trade unionism was primarily as due to the enactment of the Trade Union Ordinance, 1938 which later metamorphosed into the Trade Union Act. The Ordinance guaranteed freedom of association and trade union's right.[14]

The right to freedom of association is fundamental and constitutional; it is also guaranteed by international treaties and ILO conventions.[15] The concept of voluntarism is the pivot upon which collective bargaining operates as a tool of industrial negotiation. Voluntarism has its ideological foundation in a libertarian socio-political system based on the absence of coercion by any arbitrary state or collective body. It is a philosophy which holds that all forms of human associations should be voluntary. The function the state performs is to act as mediator between labour and employers. Voluntarism is based on good faith which allows trade unions and employers to negotiate and regulate their conditions of work without interference from the state or its agents. The central principle of voluntarism is free collective bargaining between trade unions and employer or body of employers, which is regulated by the Constitution of the Federal Republic of Nigeria, 1999; the Trade Union Act, 1976, Trade Union Amendment Act, 2005, the National Industrial Court Act, 2006; The Trade Dispute Act which provides for steps to be taken in settlement of industrial disputes and other procedural rules like the ADR Instrument, 2015. The principle of voluntarism may also be guided by the ILO Conventions 87 and 98 of 1948 and 1949 respectively.

Chapter IV of the CFRN, 1999 does not provide for the right to collective bargaining expressly, however, the right to freedom of association[16] covers collective bargaining, which is free from any form of interference. The concept of voluntary collective bargaining has long been accepted by all parties in industrial relations scheme.[17] Voluntary collective bargaining has been recognized in government policy since 1948, through the Whitely Councils and the Joint Industrial Councils. This recognition accounted for the reason for government's issuance of an official policy on collective bargaining. The government thus observed and declared as follows:

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[14] See A.G. Hoplains, 'The Lagos Strike of 1897- An Exploration in Nigeria Labour History; Past and Present' 1966 133-135. In 1897 artisan workman in public works departments embarked on a three-day strike from 9th of August to 12th August, 1987 which was in protest against arbitrary working hours invoked by the colonial matters.

[15] See Article 10 of the African Charter on Human and Peoples' Rights, 1981; Conventions 87 and 98 of the International Labour Organization, 1948 and 1949 respectively.

[16] Section 40 of the CFRN 1999.

[17] See E.E. Uvieghara, *Nigerian Labour Law* (Malthouse Press Ltd, 2001)

'We have followed in Nigeria the voluntary principles which are so important an element in industrial relations in the United Kingdom...compulsory methods might occasionally produce a better economic or political result, but labour-management must, I think, find greater possibilities of mutual harmony where results have been voluntarily arrived at by free discussion between the two parties. We in Nigeria, at any rate, are pinning our faith on voluntary methods'.[18]

The importance of voluntary collective bargaining cannot be over-emphasized. Thus, Davies submitted that 'By bargaining collectively with management, organized labour seeks to give effect to its legitimate expectations that wages, and other conditions of work should be such as to guarantee a stable and adequate form of existence and as to be compatible with the physical integrity and moral dignity of the industrial and that jobs should be reasonably secure.'[19] Similarly, it has been noted that 'properly conducted collective bargaining is the most effective means of giving workers the right to representation in decisions affecting their working lives, a right which is or should be the prerogative of every worker in a democratic society.[20] Voluntary collective bargaining is gaining more popularity in industrial relations as it aids and develop workplace democracy; redistribution of power and resources from employers to employees. It lessens the employers bargaining power over individual employees. Voluntary collective bargaining also aids the promotion of efficiency by limiting industrial conflicts in the workplace. Industrial conflict is inimical to efficiency of labour and productivity. Voluntary collective bargaining aids settlement of industrial disputes without the stress and the need to embark on industrial actions.

3.5 Union Rules Book

Section 4(1) of TUA provides for the union rules. Every trade union shall have registered rules, which shall contain provisions with respect to the various matters mentioned in the First Schedule of the Act and where the Registrar registers a union, he must, at the same time register its rules and members upon request, shall be sent a copy of the rules on payment of a sum not exceeding fifty kobo. It is submitted that the provision ought not to have mentioned a particular amount, or even so, such amount may be reviewed from time to time by the Minister of Labour and Productivity. The rule book or constitution of a

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[18] For details, see International Labour Office Ministerial Conference Record of Proceedings, (38th session, Geneva, 1955) 33.

[19] P. Davies. Friedland, Kahn Frund's Labour and the Law (Sweet and Maxwell 1983) 69.

[20] See Donovan Commission 'Royal Commission on Trade Unions and Employers' Association, 3623 of 1968.

trade union is regarded by the courts as a contract document containing the terms of agreement between the members and union and defining the rights and obligations of parties. The status of the rule book was settled in the case of *Bonsor v. Musicians Union.*[21] In *Nigeria Civil Service Union & Anor v. O.G. Essen & Anor,*[22] the Court of Appeal held that the constitution of a union is a contract document between the members of the union, and that the members have subsumed several rights into the letters of the constitution.[23]

4 Collective bargaining and collective agreements

Industrial conflicts are inevitable, thus, there must in place mechanisms to address or avoid frequent conflicts. Some of the processes through which industrial conflicts are resolved include collective bargaining and the end product of collective bargaining is collective agreement.

4.1 Collective Bargaining

Collective bargaining involves negotiations and deliberations on the improvement of the working conditions of employees generally. International Labour Organization (ILO) Collective Bargaining Convention No. 154 adopted in 1981 defines collective bargaining in its Article 2:[24]

The term collective bargaining extends to all negotiations between employers. A group of employers or one hand, and one or more workers' organizations on the other, for (a) determining the working conditions or terms of employment and or (b) regulating relations between employer or their organizations and a workers' organization or workers' organizations

Improved conditions of employment, favourable terms and conditions of employment are the major targets of collective bargaining.[25] Thus, it is paramount that workers must have an institution which could act as check or place some restrictions on the power of the employers, notwithstanding what may be the contents of the individual's contract of employment. The unions are able to influence the welfare of their members through the mechanisms and principles enshrined in collective bargaining.[26]

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21 (1956) AC 104.

22 (1985) 3 NWLR (pt. 12) 306.

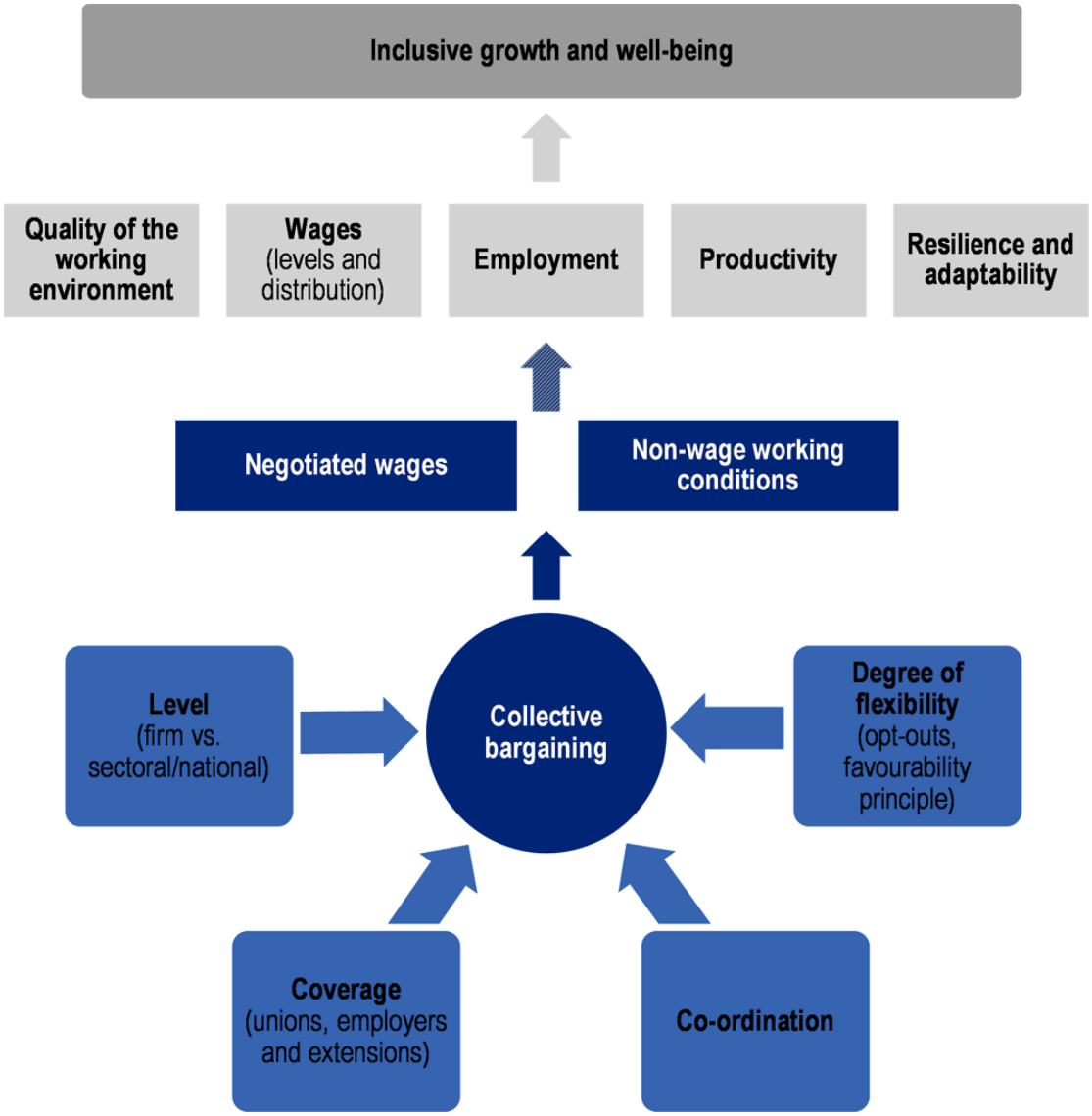
23 See *Alex Elufioye & Ors v. Ibrahim Haliru* & Ors.

24 See ILO Convention and Recommendations, 1977-1995 (Geneva International Labour Office, 1996) 93; See also Beatrice Webb, History of Trade Unionism (Longman 1926).

25 See the dictum of Lord Donovan in *Colli-more v Attorney Geneva of Trinidad and Tobago* (1970) AC. 538, 547; See also *Udoh v Orthopedic Hospitals Management Board* (1990) 4 NWLR (Pt. 142) 53.

26 John Wood "Collective Will and the Law" (1988) 17 *Industrial Journal*, 6; see also M

Figure 1: Collective Bargaining, Labour Market Performance and Inclusive Growth



Source: Oliver Denk, Andrea Garnero, Alexander Hijzen and Sébastien Martin 'The role of collective bargaining systems for labour market performance in OECD' (2019), *Negotiating Our Way Up: Collective Bargaining in a Changing World of Work* (OECD Publishing) https://doi.org/10.1787/1fd2da34-en accessed 13 April 2024.

Emiola stated that, 'bargaining is the process of negotiating an agreement on the basis of 'give and take'.[27] Collective bargaining has been described as a means whereby terms and conditions of employment are settled by negotiation

Oslon, The Logic of Collective Action' (Harvard Press 1905) 20.

[27] Akintunde Emiola, 'Nigerian Labour Law (Emiola Publishers Ltd. 2008).

producing an agreement between employers and workers' organization.[28] Collective bargaining is collective dialogue, or collective negotiation between the employers' representatives and the workers' representatives with a view to reaching a collective agreement on the issues under negotiation.

Collective bargaining as indicated in Figure 1 above depicts the parties to include the unions and the employers and the coordinator which may be a government agency. Collective bargaining may be done at the firm, sectoral, regional or national level. It stated that collective bargaining involves the negotiation of wages and non-wage working conditions, and if properly managed could lead to high productivity, sustainable and inclusive growth for the firm and improved well-being of the individual employee and the union. Negotiation itself is a dispute resolution mechanism under Alternative Dispute Resolution. Negotiation entails the parties discussing and agreeing to terms or reaching mutually acceptable resolution. This method involves discussions, concessions, compromises, communications, persuasion and bargaining. Thus, bargaining could also mean negotiation.

The Trade Dispute Act provides for a mechanism through which leaders of a trade union or representatives of workers can sit down with the management round a negotiation table and iron out their differences in an atmosphere of mutual trust, freedom of contract and understanding. Thus, collective bargaining entails voluntariness of parties; this principle recognizes the rights of the parties to negotiate the terms and conditions of their employment. Under section 24(1) of TUA elected members who are elected through electoral college will represent workers in negotiations with the employer. Thus, statutory, collective bargaining has been recognized as a veritable tool for the management of industrial relations and industrial disputes. Section 2 and 39(1) and (3) and 3 and 40(1) and (3), of the Trade Disputes Act, [29] the provisions require parties to any collective agreement to deposit three copies of such agreement with the Minister of Labour and Employment and/or Commissioner in charge of welfare of Labour at the State level, for an order before such collective agreement could become enforceable at law as between the employer and employees concerned. The decision in the said case certainly worked hardship both on the employer and employees as well as their representative unions concerned.

4.2 Types of Collective Bargaining

[28] See section 91(1) Labour Act.
[29] Cap T8 LFN 2004.

It is important to distinguish it between collective bargaining and collective agreement. There are also different types of collective agreements, which refer to the outcome of collective bargaining. For instance, there are single union deals, multiple-unions deals, procedural agreements, and substantive agreements.[30] All of which refer to the agreement that has taken place as a result of the collective bargaining process.

4.2.1 Distributive Bargaining: is defined as a negotiation process by which one party benefits at the others expense. An instance of this is the redistribution of income in the form of higher wages, higher bonuses, or higher financial benefits. In this type of bargaining, the trade union needs to have enough market power to win the negotiation. The employer will want to pay as little in wages. Yet in order to convince them to pay more, the trade unions may need enough members to provide a significant incentive. In other words, a trade union that has 100 percent of the employers' workforce or those in the strategic sector of the economy has significant power e.g. Nigeria Union of Petroleum and Natural Gas Workers (NUPENG). Should they call a strike, it would cause severe disruption to the employer and the national economy. Consequently, any distributive bargaining will be skewed significantly in favour of this union.

4.2.2. Integrative Bargaining: whereby both sides aim to benefit in what is seen as 'win-win' bargaining. Both parties may bring together a list of demands by which an agreement is reached that benefits both parties. For example, unions may advocate for greater levels of staff training. Now this may cost the business more, but the latter will benefit from greater levels of productivity in the long run. If workers are better trained, they are equally going to be more productive and suffer less from industrial accidents. So the business and the unions/workers may gain as a result.

4.2.3 Productivity Bargaining: involves both parties negotiating around productivity and pay. Unions may suggest that higher salaries would boost productivity, but management may resist this and suggest target-orientated bonuses or new ways of improving the process. Unions may suggest new ways of organizing the work force than may increase productivity and therefore create value to the firm. In turn, employers will increase employees' wages as a result. Simply put, productivity bargaining is where both parties agree to

[30] Paul Boyce 'Types of Collective Bargaining' (2021) https://boycewire.com/ collective- bargaining-definition-types-and-examples/ accessed 8 February 2024.

changes that would boost productivity in return for higher wages or other benefits.

4.3.4. Composite Bargaining: refers to a negotiation that focuses on a number of elements that are not related to pay. They are generally related to employee welfare and job security. For instance, it covers factors such as working conditions, policies, recruitment, and disciplinary processes. The aim is to ensure a mutually beneficial long-term relationship between the employer and employees. It does this by highlighting issues that employees may have, which may impact their long-term future at the company. Organizations want to retain talent, particularly if it has invested time and money in training them. Factors such as workload and working conditions can impact on this long-term relationship, so it is in the best interest of both parties to ensure that the employees are happy.

4.3.5. Concessionary Bargaining: Concessionary bargaining is based on unions giving back previous benefits to the employer. For instance, trade unions may agree to lower wages in return for job security. This may come during an economic decline whereby job security is more important to the unions than higher wages. Overall, this may actually benefit the company as they won't have to pay for so many redundancies and can keep loyal and experienced workers in the organization. The main aim of concessionary bargaining is to strengthen the business in order to ensure its survival alongside its employees. Thus, unions give back previous benefits in order to secure the businesses' long-term future and therefore its members.

5. Processes of collective bargaining

5.1. Preparing for Negotiations

This covers a number of areas that union members are most concerned with. For instance, the lack of canteen in the workplace may be an issue, or alternatively, workers want to get paid extra to work Saturdays and Sundays. Whatever the key issues, the first stage would be to compile these ready for the negotiation.

5.2. Proposing Key Demands

The list of key items or key demands are highlighted by the union members, compiled, deliberated and agreed upon by union leadership. It may include items that are 'red lines' by which the negotiation must start with. Often this would be wages or key benefits to the employees. Negotiations break down if these are not met. There may also be some conditions by which the unions

would ask their members to strike if certain criteria are met. For instance, this may be a set minimum wage or a higher wage for overtime.

5.3. Negotiation

This stage usually involves meetings whereby the details of demands of the parties are discussed. Both or either party may request certain parts of the deal be included or left out. As part of the process, both parties may take time to gather information on whether a specific course of action would be best. For instance, both parties would have done their homework on an increase in employees' salary by 10 percent- is it possible? Where is the fund coming from? In turn, the negotiation will continue for days, even weeks or a party may seek for an adjournment till a later day until an agreement is reached or negotiations completely break down.

5.4. Agreement Reached

An agreement is usually reached in principle and it is at this stage by which the more intricate details are hammered out. In short, this stage is where the agreement is put into place and the final details are arranged.

5. 5. Administration of Agreement

It is at this stage by which unions will look to hold the employer to account and ensure the agreement is being implemented. For instance, are workers getting paid the agreed minimum salary? Or, has the firm built the newly requested canteen on time and to an agreed upon quality. Furthermore, some agreements may have a set expiry date by which another set of negotiations will take place. Thus, the collective bargaining system can be seen as a continuous process.

6. Processes of making and status of Collective Agreements

Section 54 of the National Industrial Court of Nigeria Act (NICN Act) 2006 defines "collective agreement" as "any agreement in writing regarding working conditions and terms of employment concluded between an organization of employers or an organization representing employers, of the one part; and an organization of employees or an organization representing employees, of the other part'. The end product of collective bargaining is collective agreements.[31] When parties to collective bargaining meet and negotiate, a compromise is reached; this compromise which entails "give and take" for amicable resolution is what is termed collective agreement. The law provides that such an agreement must have copies and three of these copies must be deposited with the Minister of Labour and Productivity within 14 days of reaching the

[31] See Convention 98 of International Labour Organization on right to organize and collective bargaining.

agreement. The Minister of Labour and Productivity has the power to make an order directing that the terms of the agreements or any part of it be binding on the employers and employees to whom the agreement relate.[32]

Under the common law, a collective agreement is not regarded as contractually binding on the parties thereto. In *Ford Motors Co. Ltd v Amalgamation Union of Engineering and Founding Wor*kers,[33] it was held that collective agreement does not intend to create legal relations except in certain public boards or corporations. The legal implication of this is that, collective agreements are binding in honour only and their enforcement must depend on industrial and political pressure. The law on collective agreement has changed slightly from what it used to be at common law. At common law, collective agreements are unenforceable. They are at best considered as gentleman's agreements. In *Union Bank of Nigeria v. Edet,*[34]; *ACB v Nsibike*[35] and *Nigeria Arab Bank Ltd v Shuiabu,*[36] it was held that collective agreement made between one or more trade unions on the one side and one or more employers' association on the other side, are not generally intended to create legal relation except in the case of certain public boards or corporation, they are at best, a gentleman's agreement, an extra-legal document totally devoid of sanction. Although, Nigerian courts have held in other cases that collective agreements regulate industrial and labour relations.[37] In *Daodu v UBA,*[38] it was held that if a collective agreement is incorporated or embodied in the terms and conditions of a contract of service whether expressly or by implication, they would be bound by it.[39] In *Afribank (Nig) Plc v. Kunle Osisanya,*[40] the court held that, collective agreement will be enforceable where they have been adopted as forming part of the terms of employment. Thus, once collective agreements are incorporated into individual's contract of employment, they become binding and enforceable.

Most of the strike actions in Nigeria were products of poor implementation of the provisions of collective agreement or outright neglect of the workers' plight. Under collective bargaining, leaders of a union articulate their grievances and negotiate with employers for an amicable settlement. The

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32 See section 2 Trade Union Act.
33 (1969) 1 All E.R. 494.
34 (1993) 4 NWLR 288; See also *ACB v. Nsibike* (1995) 8 NWLR (PT 416) 725.
35 (1995) 8 NWLR (Pt. 416) 725.
36 (1999) 4NWLR (PART 186) 450.
37 See *Cooperative & Commercial Bank (Nig.) Ltd & Anor v. Keneth C Okonkwo* (2005) 3 NWLR (Pt. 7) 109.
38 (2004) 29 WRN 53.
39 See also *Abalogu v. Shell* (1999) 8 NWLR (pt. 613) 12.
40 (2000) 1 NWLR (pt. 642) 598.

employers, in most cases the governments in Nigeria violate the collective agreement with impunity. According to a report obtained from the Trade Union Services and Industrial Relations (TUSIR) Department of the Federal Ministry of Labour, about 103 labour complaints and trade disputes was recorded by August 2021.[41] And of these, 14 resulted in strike actions. The total number of disputes that would have led to strikes which was resolved was only seven. However, about 74 per cent of these disputes are public sector-based, while 26 per cent is from the private sector.[42] These statistics contextualize the problem and offer evidence of the prevalence of industrial conflicts in Nigeria. A cursory look at both the traditional media and social media recently will show an avalanche of news briefs pertaining to strike actions. And, it is pertinent to state that some labour unions are synonymous with strike actions. Probably the Academic Staff Union of Universities (ASUU) with perennial strike actions will collect the first prize. Other labour unions in Nigeria are quickly catching up with ASUU in this position includes the National Association of Resident Doctors (NARD). NARD, with 16,000 doctors in its membership, represents about 40 per cent of doctors in Nigeria. NARD went on strike ostensibly to push the government to honour its agreement on pay arrears, hazard allowance, as well as insurance benefits to families of doctors who have died of COVID-19. Interestingly, the NARD went on strike four times since the coronavirus pandemic reached Nigerian shores in 2020.

7. Conclusion

What then is the purpose of the process of collective bargaining if the end product –collective agreement is a gentleman's agreement? Regrettably in Nigeria, most agreements entered on behalf of the government are not usually honoured, a situation which creates a doubt on the frequent calls for negotiations in the face of any industrial dispute. The government is supposed to serve as a regulatory and mediatory body even for other sectors of the economy in their face off with their workers. The Federal Government very well imputes the non-strike clause in the agreement but will not be willing to carry out the agreed terms in order to avoid the strike situation. This insensitivity of the government has caused an incessant growth of industrial disputes in Nigeria. The violation of the sanctity of collective agreement made the unions to violate the non-strike clause in the Trade Dispute Act which implores the unions to follow the route of mediation, conciliation, and

41 Dakuku Peterside 'Striking at the soul of the nation' *The Premium Times* 30 August 2021 https://www.premiumtimesng.com/opinion/481985-striking-at-the-soul-of-the-nation-by-dakuku-peterside.html accessed 7 February 2022.

42 Ibid.

arbitration and litigation before going for industrial action. For industrial actions to be reduced to a minimum, all the stakeholders and parties to collective bargaining should comply with the bargaining resolutions. Public officials should be abreast of government revenue projections and should never enter into agreements that they know the government may not keep in the long run. Similarly, unions should be reasonable, responsible and present a united front in negotiations.