

## EVALUATION OF LEGAL FORMS AND MECHANISM FOR SETTLEMENT OF TRADE DISPUTE IN INDUSTRIAL RELATIONS IN NIGERIA

By

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### *Abstract*

*It is not all conflicts that lead to industrial action or trade dispute. Failure or inability of the parties to resolve an emergency conflict may lead to trade dispute which may result to industrial action. Trade dispute is common in workplace in Nigeria. The objective of trade union is to protect the interest of their members. This includes all employment related matters such as salaries, wages, promotions and other industrial issues. Employees tend to seek for improved welfare. Therefore, there are laid down laws meant for trade dispute settlement. The breach of collective agreement leads to trade dispute. It is upon this background that the writer examines the evaluation of legal forms and mechanism for the settlement of trade dispute in industrial relations in Nigeria. The writer also recommends possible ways by which industrial conflicts will be minimized in Nigeria.*

*Key Words:* Mechanism, Trade Dispute, Collective Bargaining, Collective Agreement

### **Introduction**

Basically, one of the expectations in employment relationship is to have a harmonious and continuing relationship<sup>1</sup>. Trade Union represents its members in negotiations with employers or government which may result in collective agreement<sup>2</sup>. Most of the issues negotiated deals on the wages, welfare and working conditions of workers<sup>3</sup>. Although base on the

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<sup>1</sup> O. A Orifowomo and M A O Ashiru, Settlement of Trade Dispute: Nigeria's Labour Court in Perspective (2015) 37 *Journal of Law, Policy and Globalization*, 152.

<sup>2</sup> E A Oji and O A Amucheazi, Employment and Labour Law in Nigeria (Mbeyi and Associates (Nig) Ltd (2015) 239.

<sup>3</sup> *Ibid.*

interest of workers and employers, it is not all conflicts that result in industrial actions but on the failure of the parties to resolve any issue arising from the conflict may lead to trade dispute<sup>4</sup>. Trade Union encounters conflicts in workplace. Nigerian laws have provided legal, institutional and administrative mechanisms for the resolution of trade disputes in industrial relations in Nigeria.

One of the aims of industrial relations is to maintain production efficiency as workers desire good working conditions. Industrial disputes have been found to be inevitable in both formal and informal sectors of Nigeria. It is evident that employment and non-employment issues are the major problem responsible for the industrial disputes in Nigeria. It is clear that unresolved conflicts of interest between employer and employee would lead to industrial dispute. It is necessary that parties to dispute resolve it through the various legal forms and mechanism as provided by the law.

### **What is Trade Dispute**

Disputes between employers and employees in industrial relations are common. The principal legislation governing trade dispute in Nigeria is the Trade Dispute Act. In the case of *National Union of Road Transport Workers v Ogbode*<sup>5</sup> Justice Niki Tobi as he then was in the context of section 47 (1) of the Trade Dispute Act,<sup>6</sup> the judge stated that the phrase “trade dispute” conveys the element of disagreement which must affect trade, meaning an occupation of employment as a means of procuring livelihood. That a trade dispute may be in contemplation or may have already been in existence when the dispute is impending, it could be seen to be contemplated or likely to occur or on the other hand a trade dispute may exist whenever there is a difference between the parties.<sup>7</sup>

Section 48 of the Trade Dispute Act<sup>8</sup> defined “Trade Dispute as” any dispute between employers and workers or between workers and workers, which is connected with the employment or non-employment or the terms of employment and physical conditions of work of any person.

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<sup>4</sup> O. A. Orifowomo and M A O Ashiru, Settlement of Trade Dispute: Nigeria’s Labour Court in Perspective

(2015) 37 *Journal of Law, Policy and Globalization*, 152.

<sup>5</sup> (1998) 2 NWLR (Pt 537) 189 CA. The analysis of Justice Nike Tobi as he then was at the Court of Appeal on the Meaning of Trade Dispute in reference to S. 47(1) of the Trade Dispute Act 1976

<sup>6</sup> Trade Dispute Act, Cap 432, No 7 of 1976 S. 47(1)

<sup>7</sup> Trade Union Act, of 1973 S. 55

<sup>8</sup> Trade Disputes Act Cap T8 LFN 2004 S.48(1), Section 51 of Trade Unions Act 1973

Section 54 of the National Industrial Court Act<sup>9</sup> defined it as to mean “any dispute between employers and employees, including disputes between their respective organizations and federations which is connected with:

- a. The employment or non-employment of any person
- b. Terms of employment and physical conditions of work of any person
- c. The conclusion or variation of a collective agreement and
- d. An alleged dispute<sup>10</sup>.

In the case of *National Union of Road Transport Workers vs. Ogbodo*<sup>11</sup> the Court in this case defined the word “dispute”, the court was of the view that dispute means to make a subject of argument, to contend for to oppose by argument; or to call in question. It also means an argument or quarrel. It was also stated in the case that for there to be a dispute, there must be some basic ingredients such as:

- a. There must be a dispute
- b. The dispute must involve a trade and it must be between employers and workers or workers and workers
- c. The dispute must be connected with the employment or non-employment in terms of employment or physical condition of work of any person<sup>12</sup>.

The Court in *Ogbodo's*<sup>13</sup> case stated that the dispute must involve trade which invokes the conciliation and arbitration jurisdiction provided in the Trade Dispute Act<sup>14</sup>. This occurs on the prove of basic elements or dimensions which are the subject matter, which incorporate the employment and non-employment, terms of employment, conditions of work of any person and proper parties<sup>15</sup> which shall be considered distinctively below:

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<sup>9</sup> National Industrial Court Act 2006 S. 54; Act No 1, 2006 published in the Federal Republic of Nigeria

Gazette No 38 Vol 93 of 16<sup>th</sup> June 2006, which came into force on the 14<sup>th</sup> of June, 2006

<sup>10</sup> The definition is as contained in S. 48(1) of the Trade Dispute Act Cap T8, LFN 2004

<sup>11</sup> (1998) 2 NWLR (Pt 537) 189, This principle was also adopted in a later reported case of N.N.B Plc v.

Osoh (2001) 3 NWLR (pt 729) 232; *Apena v. NUPPPP* (2003) 8 NWLR (pt 822) 426

<sup>12</sup> *Ibid.*

<sup>13</sup> (1998) 2 NWLR (pt 537) 189 CA.

<sup>14</sup> Cap T8 LFN 2004; O O Orifowom and M A O Ashiru, ‘Settlement of Trade Disputes: Nigeria’s Labour Court in Perspectives (2015) 37 *Journal of Law, Policy and Globalization*, 152.

<sup>15</sup> *New Nigerian Bank Plc v. Osoh* (2001) 13 NWLR (pt 729) 232; A Emiola, *Nigerian Labour Law*

a. **Subject Matter of Trade Dispute:** The subject matter of Trade Dispute incorporates employment or non-employment or terms of employment or the conditions of work of any person. The employment or non-employment of a person has to be connected with the initial engagement or continued employment or the re-instatement of any person<sup>16</sup>. This means that the dispute must be connected with the employment of the person or continue in such employment<sup>17</sup>. In the case of *Iron and Steel Senior Staff Association v. Management of Critical Hope Nigeria Limited*,<sup>18</sup> this case which arose from a number of awards by the Industrial Arbitration Panel. The claim of the appellant was for non-payment of redundancy benefit, the National Industrial Court held that it had jurisdiction over the case as the matter was a trade dispute within the Trade Dispute Act 1976 and it was irrelevant that the person affected left the employment of the respondent. The Court further held that once the association had taken the issue of redundancy payment with the employer and the parties were not in accord, there was valid trade dispute which can be the subject of an action before the Court.

Terms of contract mostly cover express or implied terms in a contract concerning wages, hours of work, holidays with pay, sickness benefits grading, promotion and mode of dismissals. This includes existing terms or right but also negotiated future rights. This may include an agreement of workers to join a particular trade union.<sup>19</sup> In conditions of work, it has been accepted to include safety and physical conditions under which a workman works.<sup>20</sup> Though there is no clear interpretation judicially on conditions of work of workmen as the legislative made a distinction between the expressions by using both separately as terms of employment to be distinct from conditions of work.<sup>21</sup>

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(4<sup>th</sup> edn: Emiola Publisher Limited 2008) 517

<sup>16</sup> O V C Okene, *Labour Law in Nigeria* The Law of work (Claxton and Derrick Limited 2012) 294; A Emiola *Nigerian Labour Law* (Emiola's Publishers Limited 2008) 518

<sup>17</sup> *Ibid.*

<sup>18</sup> (1978) NIC LR 192

<sup>19</sup> A Emiola, *Nigerian Labour Law* (Emiola Publishers Limited 2008) 518; *Anigboro & Ors vs. Sea Trucks Limited* (1995) 6 NWLR (pt 399) 35, *Agbai & Ors. v. Okabne & Ors* (1991) 7 NWLR (Pt 204) 391.

<sup>20</sup> This includes health, welfare and other facilities that makes the comfort of the worker

<sup>21</sup> O V C Okene, *Labour Law in Nigeria: The Law of work* (Claxton and Derrick Limited 2012) 295

b. **Parties to Trade Dispute:** For any issue or matter to be seen as a trade dispute, it must involve two or more parties. These parties are employers and workers or workers and workers<sup>22</sup>. A worker has been defined as any member of public service of the federation of a state or an individual (other than a member of any such public service) who has entered into a contract with an employer, whether the contract is for manual labour, clerical work or otherwise, expressed or implied, oral or in writing or whether it is a contract personally to execute any work or a contract of apprenticeship<sup>23</sup>.

An employer means “any person who has entered into a contract of employment to employ any other person as a worker either for himself or for the service of any other person and includes the agent, manager or factor of the first mentioned person and the personal representatives of a deceased employer<sup>24</sup>. That an employee or worker has been dismissed is not the bases to refuse to regard the worker as an employee as his reinstatement may well be the cause of a legitimate trade dispute<sup>25</sup>.

### **Purpose of Trade Dispute**

One of the fundamental objectives of a trade dispute must be to promote the interests of the workers concerned. The object of any trade dispute must be that of genuine trade interest and even then, the dispute may not come within the protection of the Act unless the dispute is actual, impending or probable<sup>26</sup>.

The dispute must be in furtherance of the lawful interest of the workers as was held in the case of *Isaac Jeje vs. Kasumu Kadiri*<sup>27</sup> where the court held that in the circumstance where the purpose is not legitimate, the workers will lose the legal shield provided by the Act.

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<sup>22</sup> *Apena v National Union of Printing Publishing and Paper Products* (2003) 8 NWLR (pt 837) 382

<sup>23</sup> Trade Union and Labour Relations Act 1974, Section 30, S. 54 of the Trade Union Act, Cap T14 LFN

2004, S. 53 Ordinance, No 46 of 1957

<sup>24</sup> Labour Act, Cap L1 LFN 2004, s 91; *Onumalabi v N.N.P.C* (1943) AC 166 at 169.

<sup>25</sup> Trade Union Act Cap T14 LFN 2004, s 42 (1) (c)

<sup>26</sup> *Benis Brewery Co. Ltd v. Hogan* (1945) 2 All E.R 570; *Henley vs. Thornton* (1957) A Emiola, Nigeria

Labour Law (Emiola's Publisher Limited 4<sup>th</sup> edition 2008) 524

<sup>27</sup> (1987) 4 NWLR (pt 65) 460

## **Mechanisms for the Settlement of Trade Dispute**

Parties have every opportunity to settle any dispute that may arise. In the case of *N.U.R.T.W. vs. Ogbodo*<sup>28</sup>, the court held that for parties to take benefit of the facilities provided for under the Act, there must be a collective agreement which must have been deposited in the ministry. It is not necessary that parties must go through all the necessary procedures as provided by the Act to settle any dispute<sup>29</sup>. The following are the different procedures of settling disputes by parties.

### **Settlement by Parties (Grievance Procedure)**

By the provisions of the Act<sup>30</sup>, parties to a trade dispute are at liberty to settle any dispute either by the means stated in the collective agreement<sup>31</sup>. These could be by negotiations, or other procedure as contained in the collective agreement. Parties are to enter into collective agreement which states the procedures by which disputes are to be settled. The agreements are to be deposited with the Minister for Labour and Productivity<sup>32</sup>. The grievance procedure is basically established by the collective agreement and there are instances where employers lay down a dispute procedure as part of the working rules by the management<sup>33</sup>. This procedure provided by the collective agreement is imposed on the parties by themselves without the interference of a third party.

### **Mediation**

The parties upon the failure of the internal resolution by the parties, the parties are to within seven days resolve the dispute on the presidency of a mediator as mutually agreed by the parties.<sup>34</sup> The parties can represent themselves or by their representatives<sup>35</sup>. A trade dispute can be

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<sup>28</sup> (1998) 2 NWLR (pt 837) 189; *NNB Plc v Osolo* (2001) 13 NWLR (pt 729) 232

<sup>29</sup> Kanneke Lukman Kale, 'An examination of Laws and procedures Regulating Trade Dispute in Nigeria

Thesis submitted to Faculty of Law, University of Illorin, May 2011

<sup>30</sup> Trade Dispute Act 2004, s 4(1)

<sup>31</sup> *Ibid.*

<sup>32</sup> *Ibid*, s 3(1) (a) and (b)

<sup>33</sup> I N E Worugji, 'Settlement of Trade Dispute under the Nigerian Labour Law: The Missing Link (2003) 6 *University of Maiduguri Law Journal*, 14; O V. C Okene, 'Mechanism for Resolution of Labour Disputes in Nigeria: A critique (2010) 3 (2) *Kogi State University B1-annual Journal of Public Law*, 47.

<sup>34</sup> Trade Dispute Act Cap T8 LFN 2004, s 4(2)

<sup>35</sup> *Ibid*, s 4(2)

apprehended by the minister in which case, the minister can inform the parties or their representatives of his apprehension and of the steps he proposes to take for the purpose of resolving the dispute<sup>36</sup>. Where the dispute cannot be settled within seven days from the date of appointment of the mediator, the dispute shall be reported to the minister in writing within three days of the end of the seven days<sup>37</sup>. The report shall disclose the points on which the parties disagree and describe the steps already taken by the parties to reach a settlement<sup>38</sup>.

It is important to note that on the requirement of the parties to agree on the appointment of a mediator may be difficult because which of the parties will recommend, the relationship of the parties and the mediator, how can the parties appoint an independent mediator that will balance the interest of the parties without any form of bias. The minister has the right to apprehend a trade dispute<sup>39</sup>, by stepping in, the minister informs the parties in writing of his proposition to take several steps in settling its dispute which includes the appointment of a conciliator, reference to the Industrial Arbitration Panel or Board of Inquiring<sup>40</sup> and National Industrial Court.

### **Settlement by Conciliation**

The Minister has the power under the Act to appoint a fit person to act as conciliator for the purpose of effecting a settlement of the dispute<sup>41</sup>. The conciliator has the responsibility to inquire into the causes and circumstances of the dispute and by negotiating with the parties endeavour to bring about a settlement<sup>42</sup>. A person appointed as conciliator has seven days within which to settle the dispute, where the dispute is settled within the specified days, the conciliator is to furnish to the minister a memorandum of the terms of the settlement signed by the representatives of the parties and from the date on which the memorandum is signed (or such earlier or later date as may be specified

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<sup>36</sup> *Ibid*, s 5(1)

<sup>37</sup> *Ibid*, s 6(1)

<sup>38</sup> *Ibid*, s 6 (2)

<sup>39</sup> Trade Dispute Act Cap T8 LFN 2004 S. 5(2)(a)(b) and (c); The Minister to apprehend a trade dispute means to understand and or to recognize the trade dispute. The Minister power in apprehend a trade dispute and deal with it through the steps as listed in the section.

<sup>40</sup> Trade Dispute Act Cap T8 LFN 2004, s 33 (1) and (2)

<sup>41</sup> *Ibid*, s 8 (1)

<sup>42</sup> *Ibid*, s 8 (2)s

therein) the terms recorded herein shall be binding on the employers and workers to whom those terms relate<sup>43</sup>.

Any breach by any person or party of the terms as contained in the memorandum is an offence and is punishable on connection with fine of N200 and in the case of an employer or an organization representing employers a fine of N2000<sup>44</sup>. It is very dramatic for an option of fine of N200 for workers and N2000 for employers at this present dynamic society in this 21<sup>st</sup> century. This option of fine does not have any effect at this present-day society when we have multinationals that controls over billions of dollars. This calls for a review of our laws. Employers like Chevron, Shell, Total, Elf etc, and these options of fine may not make any meaning to them since they are capable of settling the fine whenever the breach of it will always be to their advantage.

In a case the conciliator is unable to reach settlement, within seven days of his appointment, or where the conciliator is satisfied that he will not be able to reach negotiation or settle the parties the conciliator must report to the minister<sup>45</sup> who is to refer the dispute to Industrial Arbitration Panel. This method is of statutory method by which the parties are compelled to adhere to. The conciliator is unknown to the parties, and the “fit” person is as to the “wills” of the minister as the law did not make any statutory definition as to a “fit” person to be appointed as conciliator. This indeed is one of the challenges of dispute settlement on the parties by conciliation.

### **Settlement by Industrial Arbitration Panel**

The Minister is duly bound by the Act<sup>46</sup> to refer the dispute to Industrial arbitration Panel within fourteen days of the receipt of the report of the conciliator.<sup>47</sup> The Industrial Arbitration Panel consist of a chairman and a vice chairman and ten other members, at least two must represent the interests of employers while at least two must represent the interests of workers.<sup>48</sup>

An Arbitration Panel may consist of the following which are:

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<sup>43</sup> Trade Dispute act 2004 Cap T8 LFN 2004 S.8 (3)

<sup>44</sup> *Ibid*, s 8 (4).

<sup>45</sup> *Ibid*, s 8 (5).

<sup>46</sup> *Ibid*, s 9 (1);

<sup>47</sup> *Ibid*.

<sup>48</sup> *Ibid*, s 9 (2)

- a. A sole arbitrator selected from among the members of the Panel by the Chairman of the Industrial Arbitration Panel.<sup>49</sup>
- b. A single arbitrator selected among the members of the Panel by the Chairman and assisted by assessor<sup>50</sup> and
- c. One or more arbitrators nominated by or on behalf of the employers concerned and an equal number of arbitrators nominated by or on behalf of the workers concerned, all nomination being made from among the members of the panel and prescribed over by the chairman or vice chairman.<sup>51</sup>

An Arbitration Panel is to make its award within 21 days of being constituted or such other period or extension as the minister may permit in any particular case<sup>52</sup>. The award of the Panel shall be sent to the minister, on receipt of the award from the arbitration tribunal, the minister may cause it to be given to the parties or their representatives and to be published in such other manner as the minister may think fit by setting out the award in a notice or specifying the time not being more than seven days from the publication of the notice) within which the manner in which notice of objection to the award may be given to the Minister by or on behalf of either party to the dispute and excepts where notice of objection to the award is given within the time in the manner so specified by one or both of the parties.

The award will be confirmed by the minister.<sup>53</sup> Where the minister considers the award not to be desirable, the minister can on his own volition send the award back to the tribunal for reconsideration<sup>54</sup>. In view of the subject matter to the dispute, the chairman of the panel can constitute an arbitration tribunal in accordance Section 4, a – c of the Trade Dispute Act<sup>55</sup> either by a sole arbitrator, single arbitrator or more arbitrators nominated on behalf of the employers.<sup>56</sup>

Apart from the National Industrial Court, Arbitration is another method whereby the decision or award is legally binding on the parties. The

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<sup>49</sup> *Ibid*, s 9

<sup>50</sup> Trade Dispute Act Cap T8 LFN 2004

<sup>51</sup> *Ibid*.

<sup>52</sup> *Ibid*, s 13

<sup>53</sup> *Ibid*, s 13 (2) (a) – (c)

<sup>54</sup> *Ibid*, s 9 (3)

<sup>55</sup> Trade Dispute Act Cap T8 LFN 2004

<sup>56</sup> *Ibid*, s 9 (3)

award is also enforceable. It cannot be used against third parties that are not part of the agreement. Most disputes can be resolved through arbitration except cases such as injunctive relief, matters that may result to imposition of fine or imprisonment or matrimonial matters<sup>57</sup>. The panel is not a court and it is not bound by previous decisions, the consequence of which does not allow for predictability and certainty in the proceedings thereby leading to different decisions on the same sets of fact. This problem of lack of precedent may lead to the parties not having the trust on the panel as the right machinery for resolving their disputes<sup>58</sup>.

### **National Industrial Court**

The National Industrial Court is conferred with the jurisdiction on the settlement of trade disputes, interpretation of collective agreements and matters connected therewith.<sup>59</sup> The establishment of the National Industrial Court Act repealed part 11 of the Trade Dispute Act. Section 7 of the National Industrial Act<sup>60</sup> provides for the jurisdiction in Civil Matters and case related to labour trade unions and Industrial relations, environment, conditions of work health, safety and welfare of the workforce<sup>61</sup>.

The National Industrial Court is conferred with the duty to the interpretation of collective agreement on application of the minister or any party to the collective agreement applies for. The National Industrial Court shall determine any dispute referred to it within 30 working days from the day it begins to consider such trade dispute and any appeal on questions of fundamental right as in Chapter IV of the Constitution of the Federal Republic of Nigeria 1999 shall lie as of right to the Court of Appeal<sup>62</sup>. An appeal from the decisions of the Industrial Arbitration Panel shall lie as of right to the court in matters of dispute conferred upon by Section 22 of the Trade Dispute Act<sup>63</sup>.

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<sup>57</sup> K L Kale, 'An Examination of Laws and Procedure Regulating Trade Dispute in Nigeria Project submitted to Faculty of Law, University of Illorin, May 2011

<sup>58</sup> *Ibid.*

<sup>59</sup> Trade Dispute Act Cap LFN 2004, S. 20 (1)

<sup>60</sup> National Industrial Act 2006, S. 7

<sup>61</sup> *Ibid.*

<sup>62</sup> Trade Dispute Act Cap T8 2004 S. 21 (2) and (3); The Constitution of the Federal Republic of Nigeria

1999 as (Amended) Chapter IV

<sup>63</sup> *Ibid.*, s 22

### **Board of Inquiry**

The Minister may cause inquiry to be made into the causes and circumstances of the dispute and if he thinks fit, may refer any matter appearing to him to be connected with or relevant to the dispute to a board of inquiry appointed for the purpose by the minister.

The board shall inquire into the matter referred to it and report thereon to the minister in cases where dispute exists or apprehended<sup>64</sup>. It is also within the power of the minister to refer any other matter connected with industrial conditions in Nigeria to a board of inquiry appointed for such purpose and the board shall report back to the minister<sup>65</sup>. The board of inquiry is consisting of the chairman and other persons as the minister may think fit<sup>66</sup>. The board of enquiry shall forthwith submit a report to the minister whether interim or minority report which the minister may cause to be published in any manner the minister thinks fit on the information obtained or conclusions reached by the board of inquiry in the cause of the inquiry<sup>67</sup>.

### **Collective Bargaining and Collective Agreement**

Collective bargaining and collective agreement are of two segments. The process of negotiations and the conclusion which may be put into writing as the collective agreement.<sup>68</sup> Section 91 of the Labour Act<sup>69</sup> defined collective bargaining “as the process of arriving or attempting to arrive at a collective agreement. Strike is an integral to the system of collective bargaining.<sup>70</sup> The law has always provided a framework to encourage,

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<sup>64</sup> Trade Dispute Act Cap T8 LFN 2004 S.33 (1)

<sup>65</sup> *Ibid*, s 33 (2)

<sup>66</sup> *Ibid*, s 33 (3)

<sup>67</sup> *Ibid*, s 34 (1) – (3); O V C Okene, Labour Law in Nigeria. The Law of Work (Claxton and Derrick Limited 2012) 207, Gwyneth Pitt, ‘Employment Law (Sweet and Maxwell Limited 1997) 107; A Emiola, ‘Nigerian Labour Law (Emiola’s publishers’ Limited 2004 4<sup>th</sup> ed. 2008) 459; E A Oji and O O Amucheazi, ‘Employment and Labour Law in Nigeria (Mbeyi & Associates (Nig) Limited 2015) 211.

<sup>68</sup> Labour Act, Cap LFN 2004; O V C Okene, Labour Law in Nigeria. The Law of Work (Claxton and Derrick Limited 2012) 207, Gwyneth Pitt, ‘Employment Law (Sweet and Maxwell Limited 1997) 107; A Emiola, ‘Nigerian Labour Law (Emiola’s publishers’ Limited 2004 4<sup>th</sup> edition 2008) 459; E A Oji and O D Amucheazi, ‘Employment and Labour Law in Nigeria (Mbeyi and Associate (Nig) Limited 2011).

<sup>69</sup> Cap L1 LFN 2004.

<sup>70</sup> K J Selala, ‘The Right to Strike on the Justine of Collective Bargaining in South African: an Exploratory Analysis (2014) Vol. 3 No. 5 International Journal of Social Science, 115.

promote and assist meaningful collective bargaining. Employees are a vital component of the collective bargaining machinery.<sup>71</sup>

The major purpose of collective bargaining is to settle the terms and conditions of employment.<sup>72</sup> Most workers have resorted to several industrial actions because of the short fall on the improvements on the conditions and welfare of workers. The parties to collective bargaining provide the various mechanisms on how any arising dispute could be settled<sup>73</sup>. The right to bargain collectively stems from the principle of freedom of association and the right to organize. By engaging in collective bargaining 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 forms of existence and as to be compatible with the physical integrity and moral dignity of the individuals and jobs should be secured.

Once parties cannot settle the end of it, it is to engage in industrial actions. An industrial action such as strike provides the bargaining power to drive meaning and fair collective bargaining.<sup>74</sup> Collective bargaining process is focused basically on wages, working hours, fringe benefits, job security, safety and other matters relating to working conditions. It fulfils several functions in industrial relations.<sup>75</sup>

The inequalities in the employment relationship are to some extent levelled out by workers joining together into trade unions who can then negotiate with employers on equal terms.<sup>76</sup> There is always a collective interest since the negotiations are for the benefit of several employers where collective bargaining is not for one employer but for several collective interests which become a feature for both parties in the bargaining process.<sup>77</sup> In collective bargaining certain essential conditions

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<sup>71</sup> E E Uvieghara, *Labour Law in Nigeria* (Malthouse Press Limited 2001) 389.

<sup>72</sup> O V C Okene and B C Edie Amadi, 'The Objective of Collective Bargaining in Nigeria: A Note (2014) 6 (1) *Port Harcourt Law Journal*, 321.

<sup>73</sup> F C Nwoke, 'Rethinking the Enforceability of College Agreement in Nigeria' (2000) 4 (4) *Modern Practice Journal of Finance and Investment Law*, 372.

<sup>74</sup> E A Oji and O D Amucheazi, 'Employment and Labour Law in Nigeria (Mbeyi and Associates (Nig) Ltd 2015) 212-216.

<sup>75</sup> M Sergeant, *Employment Law* (Pearson Education Limited 2003) 436

<sup>76</sup> E A Oji and O D Amucheazi, 'Employment and Labour Law in Nigeria (Mbeyi and Associates (Nig) Ltd 2015) 212-216.

<sup>77</sup> *Ibid.*

need to be satisfied, such as the existence of the freedom of association and a labour law system. The beneficiaries of collective bargaining are in daily contact with each other, negotiation take place in the back ground of a continuing relationship which ultimately motivates the parties to resolve the specific issues.<sup>78</sup>

**Section 48 of the Trade Dispute Act<sup>79</sup>** defined collective agreement as any agreement in writing for the settlement of disputes and relating to terms of employment and physical condition of work conclude between an employer, a group of employers or organizations representing workers or the duly appointed representative of any body of workers or the other hand. The writer shall in this paper consider collective bargaining and agreement in the private and public sector and the enforceability of the agreements.

### **Private Sector**

In the private sector, parties which include labours and management draw out procedural agreements which determine the matters to negotiate for<sup>80</sup>. This dispute can be settled through the National Joint Industrial Council<sup>81</sup> or Joint Negotiation Council and such cases that can within the management and the representative of labour. The Wages Board and Industrial Councils established under the Boards and Industrial Council Act 2004<sup>82</sup> is also vested with such jurisdiction.

The Industrial wages board consists of independent member, employers and workers representatives. Collective bargaining can be done through the National Wages Board for the Federation or the Area Minimum Wages Committee for the state<sup>83</sup>. There are matters which can be discussed and settled easily by the parties without any reference to the board. It is the relative bargaining strength of the parties that determines items for negotiation and those for discussion. Mostly issues concerning wages, the major fringe benefits, working hours etc may be negotiated through the National Joint Industrial Council<sup>84</sup>.

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<sup>78</sup> *Ibid.*

<sup>79</sup> Trade Dispute Act Cap LFN 2004, s 48.

<sup>80</sup> *Ibid.*

<sup>81</sup> Wages Boards and Industrial Councils Act 2004, Section 16, 18 and 27

<sup>82</sup> *Ibid*, s 3

<sup>83</sup> *Ibid*, s 6 (1) and 9 (1); O V C Okene, *Labour Law in Nigeria: The Law of Work* (Claxon and Derrick Limited 2012) 217

<sup>84</sup> A C Francis, E Tunde and M A Gbahumo-Sherrif, 'Collective Bargaining Dynamics in the Nigeria, Public and Private Sectors' (2011) 1 (5) *Australian Journal of Business and Management Research*, 63-70.

In other to promote cooperation in labour matters among unions, the industrial bargaining will prevent the unfair exploitations of a weak employer by a powerful union, making uniform conditions of service in industry will lead not only to an equitable system of remunerations for all employees in the industry but will also contribute towards the maintenances of stable and reasonably contended labour force on the hope of economic growth<sup>85</sup>.

### **Public Sector**

Both the state and federal government have continued to set aside collective bargaining, and to give wages award to score points in spite of its commitment to the ILO convention 98 to freely bargain with workers. The state or the government in the course of regulating wages and employment terms and conditions revert to the use of wage commissions<sup>86</sup>. Wage Commissions may not be active which affects the existing collective bargaining arrangement in the public sector. This has made the bargaining process to be weak and ineffective.

The establishment of an Industrial Wages Board Act provides for the setting up of the National Wages Board and an Area Minimum Wages Committee in each state of the Federation<sup>87</sup>. The main purpose of these boards was to regulate wages, in states and federations depending on the grade level.

### **Enforceability of Collective Agreement**

There has been diverse argument by scholars as to the enforceability of collective agreement in Nigerian Court. The question, whether collective agreement forms part of contract of employment has been very controversial. By the definition of collective agreement under the Trade Dispute Act<sup>88</sup>, it is an agreement in writing relating to terms of employment and physical condition of work concluded between an employer, a group of employers or one or more organization representative of employers on the other hand and more or more organization, representative of workers or the lawfully appointed representative or anybody of workers on the other hand.

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<sup>85</sup> *Ibid*: A O Diali, 'Industry-Wide Employers Combinations – the Nigerian Bakers Employers Model in PERMAN' (1977) Vol. 4, 11.

<sup>86</sup> *Ibid*.

<sup>87</sup> Wages Boards and Industrial Councils Act Cap W1 LFN 2004, ss 16 (2) (4) and 17 (1)

<sup>88</sup> Trade Dispute Act Cap T8 LFN 2004, s 48.

Section 3 of the Trade Dispute Act<sup>89</sup> further stated that such collective agreement shall be deposited of not less than three copies of the agreement with the minister and Section 3 (3)(1) of the Trade Dispute Act<sup>90</sup> states that upon depositing the copies of the agreement, the agreement shall remain binding on the employers and workers to whom they relate. The word 'binding' means any of the parties can take legal action against each other but can the agreement be enforceable.

Several scholars and jurist such as O Kahn-Freud<sup>91</sup> has argued that collective bargaining cannot be enforced by court because they are not contracts in the legal sense of it. The writer shall consider several theories in determining the enforceability of collective agreement.

### **The Agency Theory**

This theory postulates that the trade union or its officials negotiates on behalf of its members or employees. That is the union act as the agent of the workers. For this reason, an agency relationship exist between the officials of the union and any other person appointed for the purpose of negotiating with the employer or a group of them and any resolution arising there from will have an effect on the contract of employment<sup>92</sup>. In the case of *Edward v. Skyways Ltd*<sup>93</sup> the Court held that the terms as negotiated forms and applied to individual contract of employment. Also in the case of *Heaton Transport Limited vs. TGWN*<sup>94</sup> the Court held that by the action of trade unions, an approval has already been given to their officials on the basis that the union acts as agent of its member. A contrary decision was held in the case of *Burton Group Limited vs. Smith*<sup>95</sup> where the employment Appeal Tribunal dismissed the fact that agency relationship arising solely by virtue of trade union membership. The Court held that agency does not stem from the mere fact that the union representatives have agreed to the arrangements but any agency must be derived from particular facts of the case and does not arise automatically from the relationship of union and member.

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<sup>89</sup> *Ibid*, s 3

<sup>90</sup> *Ibid*, s 3 (3) (1)

<sup>91</sup> O Khan – Freud, *Legal Framework in Slanders and H Cheggbed: The System of Industrial Relations in Great Britain* (Oxford: Oxford University Press 1954) 57

<sup>92</sup> F C Nwoke, 'Rethinking the Enforceability of Collective Agreements in Nigeria (2000) Vol. 4, No 4 *Modern Practice Journal of Finance and Investment Law*, 359

<sup>93</sup> (1964) 1 NLR 349

<sup>94</sup> (1973) AC 15

<sup>95</sup> (1977) 1 RLR 15; F C Woke, 'Rethinking the Enforceability of Collective Agreements in Nigeria' (2000) 4 (4) *Modern Practice Journal of Finance and Investment Law*, 359.

### **The Representative Theory**

Workers can be represented by a group of persons appointed by the workers or trade union. In *Nelson Wollet v Post Office*<sup>96</sup>, the Lord Justice Brown was of the view that the basis of good relations involving a state industry or national agreements is predicated on the collective agreement being regarded by all as binding. This principle of primacy over collective agreement was confirmed in the case of *Land and Wilson vs. West Yorkshie Metropolitan Country Council*.<sup>97</sup> This further shows that non-union members will be bound by the agreement if they accept individual contract of employment. Apart being employed by the agreement, the terms will not bound non-union members. Though this theory has also been criticised by several scholars. Drake<sup>98</sup> in his view argued that the process needs to draw distinction not found in practice between terms and conditions of employees who are union members and employee who are non-union members.

In most cases in Nigeria, the Common Law principle was followed as to the fact whether the contract of employment is strictly the affairs of the employer and the workers<sup>99</sup>.

From the point of privity of contract, the trade unions are never part of the contract of agreement though they negotiate for and on behalf of the workers but once the resolution of the negotiation are brought into existence by the act or conduct of the parties, such acts may be governed by collective agreement<sup>100</sup>. These terms may also be incorporated into individual contract of employment where the parties intend to so do.<sup>101</sup> Incorporation in respect to collective agreement is made part of the contract of employment in order that it may have legal effect<sup>102</sup>. These incorporations could be either express incorporation, implied incorporation and incorporation by statutes as will be considered in this paper.

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<sup>96</sup> (1978) 1 RLR 548.

<sup>97</sup> (1979) 1 CR 452.

<sup>98</sup> C D Drake, *Labour Law* (3<sup>rd</sup> edn, London: Sweet and Maxwell, 1981) 9; F C Nwoke, 'Rethinking the Enforceability of Collective Agreement in Nigeria (2000) 4 (4) *Modern Practice Journal of Finance and Investment Law*; O V C Okene, *Labour Law in Nigeria: The Law of Work* (Claxton and Derrick Limited 2012) 220.

<sup>99</sup> F C Nwoke, 'Rethinking the Enforceability of Collective Agreement in Nigeria (2000) 4 (4) *Modern Practice Journal of Finance and Investment Law*; O V C Okene, 'Labour Law in Nigeria: The Law of Work (Claxton and Derrick Limited 2012) 220.

<sup>100</sup> *Ibid.*

<sup>101</sup> *Ibid.*

<sup>102</sup> *Ibid.*; O V C Okene, 219-223

(a) **Express Incorporation** – in the case of *National Coal Board v Gallay*<sup>103</sup> the Court held that collective agreement which provided that colliery disputes would work ‘such days or part days’ in each week as may reasonably be required by the employer could be regarded as being part of the individual contract of employment because the contracts of the deputies referred to the collective agreement as being the source of the terms of their contract. Similarly, in *Camden Exhibition and Display Limited vs. Lynnot*,<sup>104</sup> the Court found that a rule forbidding overtime bans contained in a collective agreement to which a written statement referred had become part of the contract of employment. Also, in the case of *Robertson vs. British Gas Corporation*<sup>105</sup> the Court held that the employee’s letter of appointment was a binding contract which entitled him to an incentive bonus scheme. The collective agreement had no legal force as between the signatories; it was incorporated into the employee’s contract.

This principle was also enunciated in the case of *The Registered Trustees of the Planned Parenthood Federation of Nigeria & Anor v Dr. Jimmy Shogbola*<sup>106</sup> in this case the courts set out the steps to follow in determining the principle of incorporating the contract of employment whether it be express or implied. It is necessary to note that once collective agreements are incorporated into the individual contract of employment, they form part of that contract and cannot be unilaterally altered.<sup>107</sup>

(b) **Implied Incorporation** – Terms of collective agreement may impliedly be incorporated into the individual contract of employment.<sup>108</sup> The terms which must be incorporated must be in accordance with the intentions of the parties and not contrary to the express terms of the contract.<sup>109</sup> Generally, in Nigeria, the Court is against the principle of implied incorporation except such terms have been expressly incorporated. Following the decisions in the case of *Luxor (Eastbourne) Ltd v Cooper*<sup>110</sup> and the case of *Shirlaw v Southern Foundries*<sup>111</sup> for the term of

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<sup>103</sup> (1958) 1 WLR 16.

<sup>104</sup> (1968) 1 QB 555.

<sup>105</sup> (1931) A C 83; F C Nwoke, (n 99).

<sup>106</sup> (2005) 1 WRN 15 at 167; *National Coal Board v Galley* (1958) 1 WRR 16,

<sup>107</sup> (n 99).

<sup>108</sup> *Ibid.*

<sup>109</sup> *Orman v Sardle Sportswear Ltd* (1963) 3 All ER 105

<sup>110</sup> (1941) AC 108, 137.

collective agreement to be implied it must be reasonable and each case is depending on the facts and circumstances of the case.<sup>112</sup>

The Supreme Court in the case of *Ihezukwu vs. University of Jos*.<sup>113</sup> The Court in its wisdom opined that a contract of employment must be construed in accordance with the express terms and no term is to be implied where its effect will be to alter the provision of the contract. This is because implied terms merely compliment the express provisions of the contract but cannot override them.

**c) Incorporation by Statute** - Most statutes structure the patterns of collective agreement or issues that can be governed by the terms of collective agreement. This shows that the incorporation of terms of collective agreement is effected by the statutes.

Section 23 (2) of the Trade Unions Act<sup>114</sup> prohibits the court from entertaining any legal proceeding instituted for the purpose of directly enforcing “any agreement such that every party thereto is one or other of the following, that is a trade union, a federation of trade unions or the central labour organization. Where there is any collective agreement between two separate unions, such agreement will be binding and enforceable between them.

By Section 3(3) of the Trade Dispute Act<sup>115</sup>, collective agreement for the settlement of trade disputes may be enforceable if copies of such agreements had been deposited with the minister and the minister had made order for the provisions of the agreements or any part thereof to be binding on the employers or workers to whom they relate.<sup>116</sup> It will be interesting to note that the National Industrial Court by the third alteration to the 1999 constitution now regards collective agreements as binding and enforceable by the parties to it, irrespective of the fact whether or not it is incorporated into the employees contract of employment, the important thing is that once any party can show that he

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<sup>111</sup> (1939) 3 KB 206.

<sup>112</sup> See *O’Brien v. Associated Fire Alarms Ltd* (1968) 1 WLR 1961

<sup>113</sup> (1990) 4 NWLR (PT 146) 600

<sup>114</sup> Cap T14 LFN 2004

<sup>115</sup> Cap T8 LFN 2004

<sup>116</sup> *E A Oji and O D Amucheazi, Employment and Labour Law in Nigeria* (Mbeyi and Associates (Nig) Limited 2015), 230 -237.

is a member and a signatory of a trade union to the collective agreement.<sup>117</sup>

Nigeria has ratified the Right to organize and collective bargaining convention 1949 (No 98) which recognized collective agreements as valid and binding. Collective agreement provides methods by which disputes between the parties will be settled. Collective agreements limit the settlement of disputes through trade action such agreement have the effect of guaranteeing industrial peace for the duration of the agreement<sup>118</sup>. One of the fundamental objectives of trade unions is to replace terms and conditions of employment by individual agreement with collective bargaining. It creates some forms of balance of power between the bargaining strength of the individual and the employer.<sup>119</sup>

### **Conclusion**

It is difficult to have any organization without workers asking for a better package, welfare, wages and improved salary. The process of dispute settlement promotes harmony. The interest of all trade unions is the welfare of its members. Any breach of collective agreement leads to trade dispute. Despite these entire mechanisms, trade dispute is a common occurrence in industrial sector. Most employers find it difficult to engage in settlement they seem not to be in their interest. The writer found out that despite all these mechanism as statutorily provided, some organizations don't seem to adhere strictly to any of the procedures. Even as though, it is not necessary the parties must go through all the procedures. The worst scenario is the dispute involving any arm of the government. Most government institutions are not objective, sincere and resolute in settlement of trade dispute. The dispute resolution machinery has increasingly failed to bring about timely agreements and reduce of workers lost due to work stoppages. Parties to trade dispute are enjoined to seek resolution of the dispute.

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<sup>117</sup> *Ibid.*

<sup>118</sup> *Ibid.*

<sup>119</sup> *Ibid*, 237.

### **Recommendations**

1. There should be regular meetings or interactive forums between the employers and employees where they can table issues and challenges in their workplace in both private and public sector.
2. Unions in any organization should adopt any of the mechanism that is easier and best for the settlement of trade dispute and should be reflected in the collective agreement.
3. There should be reasonable time frame in which any of the dispute mechanism can apply.
4. There can be established Industrial Relations Commission.
5. Government Influence in the Settlement of trade dispute should be controlled.