

IMPACT OF TRADE UNIONISM AND COLLECTIVE BARGAINING IN NATIONAL BUILDING AND DEVELOPMENT

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Abstract

The paper examined the efficacy of 'collective bargaining, collective agreement and trade union in the resolution of industrial dispute in Nigeria and how it accounts for national development. A critical examination of the relationship between a worker and an employer revealed that one of the major problems which Nigeria has battled with till date is the concern of industrial disharmony in labour relations. It is discovered that the core causes of this disharmony has been the issue of collective bargaining and collective agreement vis-à-vis the activities of trade unions. No doubt, Nigeria has enacted many domestic laws, and also a party to several international treaties and conventions which core aim is to address the problems associated with the enforcement of collective bargaining and collective agreement, yet the problems persist. This largely is owned to the fact that in the Nigerian Legal System, legislations and court have not articulated fully the legal position of a collective bargaining and a collective agreement. Again, in the NLS, CB has witnessed and will continue to witness so much state's intervention in the form of policy and other influences, especially in the public sector. Failure to implement a conclusive collective agreement was also found to be another problem; which in most cases had led to strikes. is either the non-payment of wages or non-enforcement of collective agreements to inter alia pay wages. In so many instances, it is noted that even where an agreement has been duly entered into between workers and employers after bargaining, the workers may be constrained to embark on industrial action by the very fact of the failure on the part of the employer to honour and keep to the terms of the agreement. Strike or industrial action when embarked on, reduces the rate of production and movement of goods and services within the country, decrease in labour force, technology and human capital which can improve the economic and enhance national growth. It is recommended that to avoid strike or any other industrial action that will affect production and national

development, all parties to a collective bargaining or collective agreement should honour their sides of the bargain. The legislature should take initiative to enact laws that will make collective agreements justifiable and enforceable. The paper concluded that fusing the existing frameworks in Nigeria and that of international labour organisation will strengthen the enforcement of collective bargaining and collective agreement mechanism to meet with international best practices. The paper adopted the doctrinal methodology, where international legal instruments, domestic instruments for enforcement of collective bargaining and agreement in Nigeria, South Africa, Zimbabwe, England and United States of America were examined together with case laws, books, articles and media publications.

Keywords: *Collective Bargaining, Collective Agreement, Employee, Employer and National Development.*

1. Introduction

The main purpose of collective bargaining is to settle the terms and conditions of employment,¹ improve the terms and conditions of a contract of employment and a CA² and a trade union is the major means by which workers can achieve this end. A trade union ensures that workers conditions of work as contained in a worker's contract of employment, including mutual interest between employers and employees are settled in a structured and institutionalized way.³ TU enhances the notion of work place democracy and employees' participation in managerial decision making, resolution of disputes in controlled and institutionalized manner.⁴ One important justification for CB lies in its democratic features. It is without doubt that in the contemporary Nigerian society, an individual employee needs his job

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¹ OVC Okene, 'Collective Bargaining, Strike and the Quest for Industrial Peace in Nigeria' Nigeria' <<https://www.nigerianlawguru.com/articles/labour%20law/COLLECTIVE%20BARGAINING,%20STRIKES%20AND%20THE%20QUEST%20FOR%20INDUSTRIAL%20PEACE%20IN%20NIGERIA.pdf>> accessed 5 May 2022

² JZ Tavonga, 'Collective Bargaining and Collective Agreements in Africa Comparative reflections on SADC' <https://www.itcilo.org/sites/default/files/inline-files/WP%2011_TJ%20Zvobgo.pdf> accessed 5 May 2022

³ *Udoh v Orthopaedic Hospitals Management Board* (1990)4 NWLR (Pt. 142)53

⁴ J Grogan, *workplace* (Harpers Collins Publishers Limited, 2003)304.

with an employer more than the employer does. It is so because the employer can easily replace the employee with a substituted worker. The individual employee has no guarantee that if he or she leaves his or her current job, that he or she may find and get a job soon. It was because of this observation that Smith opines that in any case, in the event of conflicts the employer has more ability to sustain struggles than the individual employee.⁵ This makes the employment relationship to be clouded by inequality of bargaining power.⁶

This inequality means that individual employees are not able to take part in decisions that affect their working lives in the Organisation where they belong. It is by joining forces and acting in concert, that they can be able to change this situation as the employer will certainly be concerned about the possibility of losing all or a considerable number of his employees even if not permanently. In addition, a trade union can also provide financial support to sustain the period of struggle. It is because of this assertion that Klare stated that communally bargaining therefore enables workers to acquire some bargaining or countervailing power to that of their employer.⁷ This does not mean, however that the employer and the employees now possess equal bargaining power, but the imbalance of power can be expected to be highly reduced under a regime of collective bargaining.

It is noteworthy that there are two separate attributes of collective bargaining that bring out its democratic nature. One is that CB has a civilizing impact upon the working life and environment of employee or subjects the employer to a rule of law.⁸ Employees are generally subject to the control and command of their supervisors and managers. Their career prospects are in many cases dependent on decisions taken by the managers in their workplaces. It is CB and CA that set rules on how workers should be treated. These rules range from rules on promotion, increase in salary or wages, discipline to right to join or form TU amongst others. Without workplace rules being made through CB and enforced through procedures for arbitration, managerial decisions concerning employees may not meet the demands of justice and fairness. This

⁵ A. Smith, *The Wealth of Nations* (Harmondsworth: Penguin 1970) 169

⁶ (n 5)

⁷ K Klare, 'Countervailing Workers Power as a Regulatory Strategy' in H. Collins et al. (eds.) *Legal Regulation of the Employment Relation* (London: Kluwer, 2000) 63-70

⁸ A Flanders, 'Management and Unions; the Theory and Reform of Industrial Relations' (London: Faber and Faber, 1970)41-42

transforms the situation of individual employees, as they are no more subject to the whims and caprices of their employers to some extent. With CA, management decisions must comply with the rules set out in the agreement. CB then ensures that employers do not act like a dictator, but act subject to a 'rule of law' created by CB which further cement and makes the relationship between parties to be democratic.

It is opined that a 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. According to John Wood, the fundamental existence of every worker, the very purpose expressed in the phrase 'unity is strength' depends on the right to act collectively to assert certain rights in the organisation.⁹ The first is a democratic function, that is, allowing all those who have work or want to work to have a say in their working life.¹⁰ The second is of course an economic function, which is helping to find the best possible balance in the production and distribution of the fruits of growth.¹¹ The third which derives from the first two is a social function; and it targets at ensuring that all those who would like to work find their place in society; these organizations can certainly help to eradicate poverty as well as combat the social exclusion of the most vulnerable, inner-city violence, social tensions and unrest, and indeed be a contributing factor to social stability.¹²

This paper examines the impact of trade unionism and collective bargaining in national building and development using Nigeria as a case study. It will also examine whether or not the Nigerian Legal System has provided an adequate environment for the actualization of the aims and objectives of the concept or principles of CB and CA. This evaluation will be done in comparison with the experience or practices of other principle in other jurisdictions.

2. Impact of Trade Unionism and Collective Bargaining in National Building and Development

National building is not explicitly placed on the shoulders of the elites or the leaders, it is a collective task and so encourages a general co-operation

⁹ J Wood, 'The Collective Will and The Law' (1988) (17) *Industrial Law Journal* 6

¹⁰ *Ibid.*

¹¹ (n1)

¹² ILO, 'World Labour Report 1997-98: Industrial Relations, Democracy and Social Stability' (Geneva: International Labour Office, 1997) 27.

of all stakeholders and citizens in order to boost the economic, social and political status of a country.¹³ The status of trade unionism as a form of nationalist movement has contributed immensely to national development. It is observed that right from the inception of the first trade union organization, there has been series of restructuring in the various trade unions that has emerged in subsequent years. Okolie noted that this flowed from the passage of the trade union ordinance in 1938 in which there was a formal recognition of trade unionism.¹⁴

No doubt, the law lays down the mode of registration of trade unions and prescribed the rights and obligations of unions in the employer employee relationships. It is stated that the same law which laid down the foundation was also prepared to recognize the existence of a worker's organization that fulfils the minimum standards stipulated in the law.¹⁵ Ubeku opined that with the legal basis of the unions, there was the grant of a cost of living allowance (COLA) to government employees in June 1942, the general strike of 1945 and the Enugu shootings of 1949.¹⁶ According to Ubeku, the grant was given to encourage trade unionism which was out rightly formed to cater for the welfare of the members for efficiency, effective productivity and national development. It is noted that though there was some infiltrations, as not all the unions that were formed then that were genuine, apart from this bad impression about some of these unviable unions, the emergence of the NLC produced much positive effects.¹⁷ The NLC became the back bone of the efficiency of these unions. They used their power to discipline any union which does not produce results. This is without prejudice to some unions like ASUU that at certain instances have accused NLC of politicizing the process of any dispute resolution between the union and the government.¹⁸

Be that as it may, the totality of records on the activities of trade unionism have shown that they have contributed immensely to national development. Experience has also shown that the NLC as the centre point of all trade unions now acts as a check on all governmental policies.

¹³ C N Okolie, 'Impact of Trade Unionism and Collective Bargaining in Nigerian Development' <file:///C:/Users/HP/Downloads/57929-Article%20Text-101928-1-10-20100816%20(1).pdf> accessed 20 June 2022

¹⁴ (n 13), 143

¹⁵ A K Ubeku, *Industrial Relations in Developing Countries; the Case of Nigeria*. (London: Macmillan Press, 1983) 134

¹⁶ *Ibid.*

¹⁷ (n 4), 144

¹⁸ *Ibid.*

Okolie opined that in recent times, the government and its agencies have introduced moribund and non-progressive policies or impositions which has caused a major setback in the workers efficiency and productivity.¹⁹ The NLC and other trade unions have in most times won the support of international organizations like the UN as regards the sustenance and adoption of the standard of workers welfare scheme, the UNESCO'S mandate that every nation must set aside 26% of their annual budget for education and the ILO'S support for improved workers wages for efficient productivity.²⁰

Talking about TU contribution to national building, it has been observed that for any economic, social or political development, the welfare of the workers (skilled/professionals) must be a determinant factor which the government both state and federal must consider. Thus a good working condition and welfare package can influence the level of productivity in any country's economy. It is the collective effort of the members of these trade unions and the strength of their bargains with the government that has sustained the effectiveness and productivity witnessed in the country. Arguing further on the importance of CB for nation building, it is orated that it has helped in no small measure to reduce the wave of strikes in the country.²¹ CB has really helped the employers to gain insights into the problems and aspirations of the workers, while the workers on their own come to know more about the economic and technical problems of management. It is also wise to note that through the time consuming and tortuous process of collective bargaining emotionally charged work people and employers or their representatives have time to cool off and soften their problems. CB have also helped to pave way to industrial democracy in Nigeria. This is rather very controversial among many critics who are of the view that the government more often than not tends to give effect to the decisions of such agreements in a negative way as could be seen in many workers face off with the government or other employers.

Notwithstanding the angle it is considered, it is obvious that CB promotes uniformity of incomes among those engaged in similar occupations, thus ensuring economic balance among workers. This informed the recent face-off between the Academic Staff Union of Universities and the Federal

¹⁹ *Ibid.*

²⁰ (n19).

²¹ F Sola, *'Industrial Relations in Nigeria; Theory and Features'* (Lagos: Labofin and Coy, 2000) 112

Government in which the government refused to honour the union's bid for a uniform income among the lecturers in both state and federal universities.²² Despite the above, the effect of trade unionism in national building calls for co-operative spirit in other to maintain a stable and sustainable economic, social and political development of the country. Although there has been records of misdirection and misplaced priority by some of the unionists, but with the recent socio-economic development in Nigeria, one can imagine the influence trade unionism could have in the country if proper guidance and support are given to them by the government or other superior authorities or agencies. CB as we have seen or discussed becomes the best measure in the process of dispute resolution. The resultant effect of the above is that if majority of the terms of a CB or CA are honoured, it leads to an increase in national productivity and national development in general. Thus, apart from the ugly pursuit and non-implementation of certain agreements reached during CB, trade unionism and CBP have contributed immensely to nation building and national development.

3. An Analysis of Collective Bargaining and Collective Agreement in International Labour Organization

It is seen that three major international instruments have been adopted by members of the ILO with the aim of promoting collective bargaining amongst member states. These instrument are (a) Collective Bargaining Convention (No. 154); (b) Collective Bargaining Recommendation (No. 163); and (c) The Right to Organize and Collective Bargaining Convention (No. 98).²³ The Collective Bargaining Convention (No. 154) and its accompanying Recommendations (No. 163) were adopted in 1981 to complement Convention (No. 98). These conventions establishes measures and create corresponding responsibilities that member states should adopt to promote collective bargaining and the aims of the measures so created.²⁴ The exercise of collective bargaining in the context of the ILO involves; parties to collective bargaining; recognition of the union/worker's organization; workers covered by collective bargaining; subjects covered by collective bargaining, the principle of good faith; the

²² (n 4), 146

²³ M O Olulu and S A Udeorah, The Principle of Collective Bargaining in Nigeria and the International Labour Organization (ILO) Standards' (2018)(2)(5) International Journal of Research and Innovation in Social Science, 63

²⁴ *Ibid.*

role of procedures to facilitate negotiation; the principle of free and voluntary negotiations and the level of negotiations. The ILO recommends that CB should also be within two parties; a bipartite relationship. It does not deal with tripartite relations where the government is also a party. This is because, the aforementioned ILO Convention on collective bargaining strive to create a balance between government intervention to encourage collective bargaining (by establishing an enabling framework) and the freedom of the parties to conduct autonomous negotiations.²⁵ Specifically, the parties to collective bargaining are; one or more employers; or one or more employers' organizations, on the one hand; and one or more workers' organizations, on the other.²⁶

From the above, collective bargaining should be done between employers' organizations and workers' organization. However, in the absence of workers' organizations, negotiations may be done with the workers' representatives. Nevertheless, where this is done, appropriate measures should be taken to ensure that the existence of these representatives is not used to undermine the position of the workers' organizations concerned. According to the Committee on Freedom of Association, 'direct negotiation between the organization and its employees, by-passing representative organizations where these exist, might in certain cases be detrimental to the principle that negotiation between employers and organizations of workers should be encouraged and promoted is what is obtainable in such situation.

It was also emphasized by the committee that 'direct settlements signed between an employer and a group of non-unionized workers, even when a union exists in the undertaking does not promote collective bargaining as set out in Article 4 of Convention (No. 98). It is important to state here that for workers' organizations to sufficiently represent the interest of the workers, they have to be independent and in particular must not be 'under the control of employers' organizations.²⁷ They must also be able to organize their activities without any interference by the public authorities which would restrict this right or impede the lawful exercise thereof.

²⁵ (n 14)

²⁶ International Labour Organisation Right to Organise and Collective Bargaining Convention, 1949 (No.98)

²⁷ (n 14)

4. The Impact of the International Labour Organization provision on Collective Bargaining and Collective Agreement and Attitudes of the Member States

The ILO Declaration on Fundamental Principles and Rights at Work of 1998 institutionalizes collective bargaining as a fundamental right accepted by member States from the very fact of their membership in the ILO, and which they have an obligation to respect, promote and to realize in good faith. However, Tavonga noticed that CB, and all legal frameworks at large are faced with challenges in adapting to the vastly changing conditions within each of the countries of ILO and the world at large.²⁸ He noted that this is due to globalization and technological advances.²⁹ In light of this observation, Tavonga recommended that domestic legal frameworks and courts should protect the institution of collective bargaining as a social imperative but autonomy should remain with workers and employers as to the bargaining process itself. Collective bargaining has proven to be the only democratic tool at the disposal of workers to negotiate their terms and conditions of employment effectively without imbalance with their employers.³⁰ With the exception of workers who may be excluded from the scope of Convention No. 98 – namely the armed forces, police and public servants directly engaged in the administration of the State, the right to collective bargaining covers all other workers in public and private sectors who must benefit from it. Iwunze noted that the socio-economic dynamics prevalent in countries importing international and regional collective bargaining frameworks into domestic law differ with each country as observed above and same has further resulted in characteristics such as massive poverty, income inequality, large-scale labour migration, a vast informal (or non-standard) sector within the labour markets.³¹ Same phenomena has also resulted in a lack of effective enforcement or diluted impact of collective bargaining.

Furthermore, it is observed that lack of up-to-date information about the legislative provisions of many countries, together with their interaction with ILS in domestic courts, with respect to collective bargaining makes it very difficult for international mechanisms to review the extent to which the law provides a permissive climate for collective bargaining. Tavonga

²⁸ (n 8)

²⁹ *Ibid.*

³⁰ (n 19)

³¹ (n30)

observes that in most African countries, dispute resolution and collective bargaining processes have been dominated by the State through its respective Ministry responsible for labour and/or employment affairs.³² This is usually through its conciliation and mediation services, such as the National Employment Councils of Zimbabwe, Labour Office of Malawi, Ministry of Employment (MELSD) of Botswana and also prior to the matter being attended to by the judicial services.³³ He further noted that in light of each countries collective bargaining processes, an employer's commitment to respect the human rights of workers and to the right to work with dignity will provide a relatively conducive environment for exercising the right to freedom of association and the right to engage in collective bargaining across all levels.³⁴

The central role played by CB in the world of work cannot be overemphasized. Historical events show that the relative weakness of CB structures in a country contribute to dilapidated society and an exploited labour. Its future thus rests in the link between democratic government and the role played by trade union movement in building democratic societies as acknowledged in several international instruments. It is seen that where CB is effective, it contributes to social justice, respect for fundamental human rights, labour rights and advances decent work for all. This does not suggest that CB is the answer to all of society's challenges and inequalities. However, CB plays a key role in helping to create sustainable development, protection of fundamental human rights, labour rights and maintain democratic societies.

Considering some of the challenges that may be encountered by some developing countries, Tavonga envisages a situation where the legal frameworks in some countries will respond to employers and workers by taking into account the ever-changing global environment with its emerging trends and values.³⁵ It is noted that the dynamism of social dialogue is uneven across some countries, investing in effective and inclusive dialogue is in the best interests of all. Tavonga noted that the ILO 'decent work' country programs, implemented in all the countries mentioned above, institutionalize the importance of sustainable enterprises in creating greater employment and income opportunities for

³² (n 8)

³³ *ibid.*

³⁴ (n 19)

³⁵(n 8), 34

all workers within the region.³⁶ With an emphasis on the examples discussed, the concept highlights workers' right to pursue both their material well-being in conditions of freedom and dignity, of economic security and equal opportunity. The example of Zimbabwe shows how equal opportunity without the guarantee of economic security cannot exist, since both are mutually symbiotic. It also shows the need for effective mechanisms for good governance in addressing socio-economic issues. The capacity to negotiate collectively between bipartite parties at enterprise or sectoral level and tripartite parties at national level is vital to combatting the socio-political and economic challenges.

No doubt, some African countries still have unstable economic conditions. But in the few where the fundamental rights of workers have been defined and respected, collective bargaining functions in such a way as to enable real improvement in employment conditions, fair distribution of resources and socio-economic development. This leads to the promotion and realization of ILO core labour standards, which are freedom of association and the effective recognition of the right to collective bargaining, elimination of discrimination in respect of employment and occupation, elimination of all forms of forced or compulsory labour and the effective abolition of child labour. Tavonga in his work also evaluated the influence of emerging economies in countries such as Brazil, China, India, South Africa and Turkey on freedom of association rights and the effective recognition of the right to collective bargaining within Southern African.³⁷ He noted that a serious analysis of the relationship between labour and capital in Africa cannot ignore the role played by foreign direct investors and the global economy. We have to understand that foreign political and economic history has profoundly shaped Africa's pattern of underdevelopment. Agencies such as the International Monetary Fund (IMF) and the World Bank have a dominant agenda in Africa. In certain cases, also, countries restructure their economies to adopt neoliberal reforms or others.

5. Conclusion

No doubt, CB and CA if properly exploited in industrial relationship or workplace is an effective and a peaceful instrument for industrial democracy. The principle create room for fair representation of all parties.

³⁶ (n 35)

³⁷ (n 8)

CB and CA regulate arbitrariness in industrial relations and improve employee-employer relationship. It also gives opportunity for updating workers' condition of work from time to time to international standard as expected all over the world. It should be borne in mind that the making of a contract requires the mutual assent of two or more persons, one of them ordinarily making an offer and another accepting the offer. Upon accepting the offer, for instance, an employee accepting to work for employer, a contract of employment is formed with all the dos and don'ts in a contract of employment fully stipulated. It is noted that at this early stage of the relationship, the employer must always be in total control; deciding in totality the rights and future of the employees. It is only via CB and CA that an employee can create a different term of contract and curb the excesses of the employer.

It is seen that the importance of CB and CA is embedded in the number of industrial issues it can solve. Industrial dispute (ID) is the difference between labour and management on employment matters. It is a disagreement between worker's union and management on issues concerning the conditions of work. Okafor and Bode in their work stated that ID usually arise from a complaint or a grievance which is left unsettled or unattended to by the authority or management that is charged with the responsibility for settling the grievance at the primary level. ID is 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. Harmonizing all these interests is the cardinal object or function of a CB and a CA. Unresolved conflicts of interests between employer and employee are the perfect definitions of industrial disputes. It is pertinent to state that failure or inability of industrial participants to resolve conflict result in industrial dispute, which itself could lead to industrial action. It is also deciphered that ID involves employer and worker or worker and worker on terms of employment and non-employment. These are the subjects of a CB and CA.

Another importance of CB and CA is that it amounts to international best practices or international labour standards. These are seen as practices that conform with best practices in labour circles as may be stipulated by domestic or international instruments. According to Ofoha, unfair labour practices can be described as all dispute that relate to remuneration, job security, health and safety, social security and working hours amongst others. He noted that one of such unfair labour practice is unfair dismissal. International labour standards refer to conventional rules agreed upon by international actors, resulting from a series of value judgments, set forth to protect basic worker rights, enhance workers' job security, and improve their terms of employment on a global scale. ILS are methods or techniques which have been generally accepted as

superior to any alternatives because they produce results which are superior to those achieved by other members or because they have become standard ways of doing things. CB is the process by which opportunity is given to workers or workers union and the employers or employers union or representatives to meet, discuss, bargain and negotiate with a view to agreeing on some new terms and conditions of the employment contract or relationship, while CA is the outcome of such bargain, discussion or negotiation. Whatever that is agreed in that meeting or discussion is called collective agreements. No doubt, CB provides a Nigerian worker, through the trade unions with greater leverage and equality of negotiating power in the bargaining process with employers. It is seen that in the modern day economy and industrial relationship, CB is not only used to provide agreement with respect to the contract of employment, it is also used to settle disputes and to reach a common understanding on issues in a business organisation.

6. Recommendations

1. In addition to the several ILO Recommendations and the Constitution of the Federal Republic of Nigeria (Third Alteration) Act, 2010, it is hereby advised that the Supreme Court should reconsider its position in *B.P.E V DANGOTE CEMENT PLC*³⁸ in their subsequent decisions by deciding that a willful CA enter into by employee and employer should be enforceable without a need for incorporating its terms in contract of employment so as to align with international best practices.
2. It is also recommended that the ILO and the International Law Commission should ensure that member states are not only signatory to their conventions and recommendations, but that they also comply with the provision therein. On this score, the organization needs to monitor member states and in case of default, impose stiffer punitive measures to compel them to honour their undertaking at the international level.
3. The government at all levels should prioritize workers' welfare. This should also be made applicable to employers in the private sectors in order to give room for inclusive growth in the country. They should respect and honour every agreement made with workers in order to redeem their image and assuage whatever reactions that will come from workers.

³⁸ (2020) 5 NWLR (PT. 17)