

AN ANALYSIS OF THE EFFICACY OF COLLECTIVE BARGAINING AND AGREEMENT IN THE RESOLUTION OF INDUSTRIAL DISPUTE IN NIGERIA

By

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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, Zimbakwe, 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

It is an indubitable fact that the right to form or belong to a trade union is one of the basic rights recognized both by national and international law.¹ In ours, the right is fully stipulated in the Constitution.² Notwithstanding, it shall be argued that it is one thing to provide for the rights, and, another thing, to create a conducive system or environment for the actual exercise or enjoyment of the right. According to Oputa, JSC in *Osawe v Registrar of Trade Unions*³, right to assemble freely, to associate with other people and to form trade union no doubt exists. However, His Lordship observed that the freedom to exercise that right is an entirely different thing because that freedom exists inside and not outside all existing and relevant laws.

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¹ Constitution of the Federal Republic of Nigeria 1999 (as amended); Trade Unions Act 2004; Constitution of the Federal Republic of Nigeria (Third Alteration) Act, 2010; The African Charter on Human and Peoples Rights 1981; International Labour Organisation Convention; International Law Organisation Collective Bargaining Convention, 1981 (No. 154) and others.

² *Ibid*, CFRN 1999(as amended), s 40

³ (1985) 1 NWLR (Pt. 4) 755

According to Osabuohien⁴ the primary aim of a collective bargaining is to create a harmonious workplace that ensures that the workers' aspirations are considerably satisfied and the employer's expectations are relatively met. This means that a harmonious relationship is very paramount in any business organisation for high productivity; as it makes both worker and employer to work hard in ensuring that the vision of the organization is pursued with utmost dexterity.⁵

CB is the process of arriving at or attempting to arrive at Collective agreement.⁶ It extends to all negotiations which takes place between an employer, a group of employers or one or more employers' organisations, on one hand, and one or more workers' organisations, or the other, for (a) determining working conditions and terms of employment; and/or (b) regulating relations between employers and worker; and/or (c) regulating relations between employers or their organization and/or (d) regulating relations between employers or their organization and a workers' organizations.⁷ Also, CA is an agreement in writing regarding working conditions and terms of employment concluded between an organisation of workers or an organisation representing workers (association of such organisations) of the one part; and an organisation of employers or an organisation representing employers (or an association of such organisations) of the other part.⁸

2. Purposes of Collective Bargaining and Collective Agreement

Davies and Freedland noted that, by bargaining collectively with management, organised 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 individual, and also that jobs should be reasonably secure.⁹ Thompson writes that the primary aim of CB is to serve as a means of institutionalising the inevitable clashes of interests that arises between capital and labour.¹⁰ According to Arthurs,

⁴ E S C Osabuohien, E.S.C (2005) "Advent of Private Universities in Nigeria and Effects on the Endangered Species." (2005) (2) (1 &2) *International Journal of Research in Education* 78-87

⁵ (n 5)

⁶ Labour Act, Cap L5 LFN 2004, s 91

⁷ International Labour Organisation Collective Bargaining Convention, 1981 (no. 154), article 2

⁸ (n 12)

⁹ P Davies and M Freedland, 'Kahn-Freund's Labour and the Law' (London: Sweet and Maxwell (1983) 69

¹⁰ C Thompson, 'Industrial Law' (Juta & Co. Ltd 1989) 281.

the world of work was historically characterised by domination and exploitation...the practice of CB was therefore introduced to correct these defects.¹¹ Okene opines that the formation of the several trade unions we have today is necessitated by the apparent imbalance of power between the employees and employer.¹² That this necessitated the desire of workers to come together, having appreciated that bargaining will give them near equal relationship with their employer.¹³ Employees realized that against the power of employers, the individual worker has almost no bargaining power and the chances of improving conditions of work is slim, but workers can best strengthen their negotiating position by amalgamating and bargaining collectively with employers. Workers have resorted to collective action because by banding together, they are able to consolidate their strength far more effectively than they could as individuals.¹⁴

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 in the ultimate the right to strike.¹⁵ 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.¹⁶ 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.¹⁷ 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

¹¹ H. Arthurs, 'Understanding Labour Law: The Debate on Industrial Pluralism' (1985) 1 Current Legal Problems 84

¹² 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

¹³ *Ibid.*

¹⁴ M Oslon, 'The Logic of Collective Action' (Harvard Press, 1905) 20

¹⁵ J Wood, 'The Collective Will and The Law' (1988)(17) *Industrial Law Journal* 6

¹⁶ *Ibid.*

¹⁷ (n 12)

contributing factor to social stability.¹⁸ Summarily, the following are the objectives or functions of collective bargaining in employment relationship;

2.1 Workplace Democracy

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 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, 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.¹⁹ This makes the employment relationship to be clouded by inequality of bargaining power.²⁰ 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.

2.2 Gives Confidence

The second attribute of CB is that it gives employees the ability to voice their views and concerns and to generally participate in the self-government of the workplace.²¹ When acting in concert, employees have the confidence to convey their dissatisfaction and voice their concerns without fear of losing their jobs²², unlike when an employee acts individually. Thus with a collective voice, employees can bring about changes in a broad range of issues in the workplace about the way they are treated, the way the workplace operates and the future and management of the firm.²³ Furthermore, by acting collectively employees

¹⁸ ILO, 'World Labour Report 1997-98: Industrial Relations, Democracy and Social Stability' (Geneva: International Labour Office, 1997) 27.

¹⁹ A. Smith, *The Wealth of Nations* (Harmondsworth: Penguin 1970) 169

²⁰ (n 4)

²¹ (n 12)

²² P. C. Weiler, 'Governing the Workplace; the Future of Labour and Employment Law (Cambridge: Harvard, 1990) 181

²³ S Webb and B Webb, 'Industrial Democracy' in OVC Okene, 'Collective Bargaining, Strike and the Quest for Industrial Peace in Nigeria' Nigeria'

can bring about joint management by threatening the employer with the withdrawal of their services.

Nwauzi and Soibi stated that, it is only through CB that employees have full opportunity through their union and the employers or employers union or representatives to meet, discuss, bargain and negotiate with a view to agreeing on the terms and conditions of the employment contract or relationship.²⁴ Okene noted that this corporate decisions on important issues are taken after negotiations with a compromise struck between the interest of management and those of the employees. This gives the workers the opportunity to actively participate in the formulation of decisions on matters that affect their lives. This can be seen as a form of democratic self-government.²⁵

2.3 Redistribution of Power

A second function of CB is to redistribute power and resources from employers to employees. This function is based on the fact that the employers, as we have seen so far, usually possess superior bargaining power as against individual employees and because of this power imbalance, the resulting terms and conditions of employment are unfair and unjust.²⁶ This assumption apparently is based on redistributive justice and in fact underlies most regulations that allow and promote collective bargaining. Through CB, workers appear to improve their conditions at the expense of the employer's profits through redistribution from the employer's profits to the employees' higher wages.²⁷ CB is also ascribed for reducing inequalities by creating pay policies that limit managerial discretion, enabled unions to standardise wages across firms within the same industry and serves as a useful mechanism to reduce inequality by redistribution of power and resources.

<<https://www.nigerianlawguru.com/articles/labour%20law/COLLECTIVE%20BARGAINING,%20STRIKES%20AND%20THE%20QUEST%20FOR%20INDUSTRIAL%20PEACE%20IN%20NIGERIA.pdf>> accessed 5 May 2022

²⁴ L O Nwauzi and G I Soibi, 'Collective Bargaining and Collective Agreement under the Nigerian Labour Law' *African Journal of Professional Research and Human Development* (2010) (6) (2) 102-108;102

²⁵ (n 24)

²⁶ (n 12)

²⁷ D. Belman, 'Unions, The Quality of Labour Relations, and Firm Performance', in L Mishel and P B Voos (ed), *Unions and Economic Competitiveness* (Armonk, M.E, Sharp 1992) 41; K.G. Dau-Schmidt, 'A Bargaining Analysis of American Labor Law and the Search for Bargaining Equity and Industrial Peace' (1992) (91) *Michigan Law Review*, 419

2.4 Promotion of Efficiency

Finally, CB helps to promote economic efficacy by limiting industrial conflict in the workplace.²⁸ As a matter of fact, most laws which promote collective bargaining were designed to limit industrial conflict which is seen as inimical to efficiency.²⁹ Through CB there is an information flow between workers and from workers to management, morale is higher, and firm-specific investments are increased. This is because CB gives job security and there is every motivation for labour and management to cooperate to increase productivity. Other effectiveness of CB can be seen in the fact that it can also improve the administration and enforcement of workers rights, facilitate investment in training of workers, restrict management from discriminating between workers or opportunistic decisions such as firing a worker just before they become eligible for pension rights. This according to Freeman and Medoff, it is commonly recognised that the ability of trade unions to enforce collective agreements created the possibility of improved labour contracts and arrangements and higher economic efficiency.³⁰

3. Parties to Collective Bargaining

Robinson and Udeorah opined that by the ILO standards, CB involves a bipartite relationship, that is a relationship between two parties.³¹ To them, it is not a tripartite relationship; where the government is also a party.³² This is because, the 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. Precisely, the parties to CB are; one or more employers; or one or more employers' organizations, on the one hand; and one or more workers' organizations, on the other. 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

²⁸ (n 13)

²⁹ (n 23)

³⁰ R B Freeman and J L Medoff, 'What Do Unions Do? (New York: Basic Books, 1984) 11

³¹ M.O Robinson and S A Udeorah, 'The Principle of Collective Bargaining in Nigeria and the International Labour Organization (ILO) Standards' International Journal of Research and Innovation in Social Science (2018)(2)(5) 63-67;64

³² *Ibid.*

should be taken to ensure that the existence of these representatives is not used to undermine the position of the workers' organizations concerned. 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'. 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. Also, it is worthy to note that the recognition of the right of unions to join in the bargaining process and negotiate on behalf of workers is a sine qua non in the procedure for a CB. The employer/employers' organization must first recognize the workers' union as the sole bargaining agent for the employees within the bargaining process before CB can progress. It is also noteworthy that trade unions/workers' organization may represent only their members or all the workers in the bargaining union concerned.³³ Where the trade union represents the majority of the workers, it enjoys the right to be the exclusive bargaining agent on behalf of all the workers in the bargaining unit.³⁴

4. Subject Matter of a CB and CA and its Coverage in the Private and Public Sectors

By the provision of section 33 of the Grenada Labour Relations Act 1999³⁵ every trade union the rules of which authorise it to negotiate on behalf of its members, or group of trade unions acting jointly for the purposes of collective bargaining, that is sufficiently representative of the employees in a bargaining unit, shall be entitled to bargain collectively with the employer or employers' organization concerned on wages, terms and conditions of employment, relations between the parties and other matters of mutual interest. Zimbabwe's Labour Relations Act of 1985 provides that a collective labour agreement is an agreement relating to terms and conditions of employment and work concluded between, on the one hand, the representatives of one or more trade unions or occupational groupings of workers and, on the other, one or more occupational organizations of employers or any other grouping of employers or one or more employers individually,³⁶ while the Labour Relation Act of Côte d'Ivoire of 1995

³³ (n 31), 64

³⁴ *Ibid.*

³⁵ Grenada Labour Relations Act 1999, section 78

³⁶ Zimbabwe's Labour Relations Act of 1985

provides that the sum of the salaries, the length of the workday, breaks and vacations and other work conditions may be established in the collective settlement.³⁷

Generally, the subject matter of a CB is classified into the mandatory subjects, which are those that have direct impact on workers. These include wages, hours or working conditions and other terms and conditions of employment.³⁸ These are subjects over which the parties must bargain if a proposal is made by either party. This does not mean that the parties have to reach agreement on such proposals, but rather that they have to engage in the process of bargaining in good faith over the subject.³⁹ Mandatory subjects may be bargained to impasse. It is also legal to strike (or to lock-out) to obtain a mandatory subject of bargaining.⁴⁰ Some other examples of mandatory subjects are wages Jury duty pay Shift premiums, bereavement pay, overtime, on-call pay Premium pay and others.

Talking about its coverage, Katz once stated that developments in the public sector are important for the spread of collective bargaining.⁴¹ He noted that this is important because a number of governments have placed various restrictions on the conduct of bargaining in public sector. It is also seen that in the Public sector, there are demarcations in bargaining strength or right. For instance, in Nigeria and many other countries of the world, certain government agencies are not allowed to take part or push for any serious negotiation on their salaries, and even when they do, strike or industrial action is never an option. In addition, over the last few decades, trade unions have found it easier to organize employees in the public than in the private sector.⁴² Decker observed that the public sector employees face many of the same employment as private sector employees.⁴³ He further noted that many public sector employees are either members of, or represented by a union or makes up a greater percentage of the overall workforce population, that the public sector will

³⁷ Labour Relation Act of Côte d'Ivoire of 1995, section 104

³⁸ (n 31), 64

³⁹ *ibid.*

⁴⁰ *ibid.*

⁴¹ H Katz, 'Decentralisation of Collectivc Bargaining; A Literature Review and Comparative Analysis' (1993) (47) (1) *Industrial arid Labor Relations Review*, 3-22

⁴² (n 41)

⁴³ F S Decker, 'Collective Bargaining in the Public Sector Employee' <

https://www.researchgate.net/publication/233886106_Collective_Bargaining_in_the_Public_Sec tor_2007 accessed 27June 2022

also be represented by union or unions more than their private sector counterparts.⁴⁴In context, the public sector includes public administration, education, health, social services and other public activities such as postal services and transport.

Beginning with the role collective bargaining plays as a means for employment regulation in the public sector, it is noted that three types of arrangements can be distinguished. Firstly, it is the sole or predominant mode of employment regulation.⁴⁵ Alternatively, employment conditions may be governed either exclusively or predominantly by statute, with only consultative rights conceded to trade unions. Finally, statutes and collective agreements can coexist as two types of regulation applying to distinct groups of public employees. It is noted that in the Nordic and Anglo-Saxon countries as well as France, a large part of public employees are covered by CA.⁴⁶ In some cases, however, bargaining outcomes still require approval by statute.⁴⁷ CB appears to be most developed in Sweden, where since 1966 public employees enjoy broad bargaining rights, including within certain limits, the right to engage in industrial action.⁴⁸ In the Netherlands, free collective bargaining has now replaced previous arrangements whereby public sector trade unions only had a consultative role.⁴⁹ In the United Kingdom, a special arrangement involves employees covered by Pay Review Bodies has been reported to be the other of the day.⁵⁰ This also consist of representative from unions, employers and government departments which are only entitled to submit recommendations to the government.

⁴⁴ (n 42).

⁴⁵ P Kenyon and P E T Lewis, 'Union Membership and the Legal and Institutional Environment; Labour Market Policy in Australia and the United Kingdom' (1993) (2) Australian Economic Review, 48-60.

⁴⁶ *Ibid.*

⁴⁷ (n 45)

⁴⁸ A Kjellberg, Sweden; Can the Model Survive?

<file:///C:/Users/HP/Downloads/AndersKjellbergsPublicationsinEnglishGermanandItalian.pdf>
accessed 21 July 2022

⁴⁹ *Ibid*

⁵⁰ *Ibid*

5. Enforceability of Collective Agreement

At common law, CA which is an end product of a CB is seen as a gentlemen's agreement and therefore not legally enforceable except where parties have adopted it into their terms of employment.⁵¹ In the recent case of *B.P.E v Dangote Cement Plc*,⁵² the apex court reiterated this old common law position to wit; that a collective agreement is not enforceable except where it has been incorporated into the contract of employment by the parties. This troubled the attention of Chukuma that in his work he did a critical analysis of the likely effect of the above decision on lawyers and scholars that may seek to rely on the above case to argue that the incorporation of a collective agreement into the terms of employment is a fundamental requirement without which its enforcement is not possible.⁵³ The effect of the above decision was considered vis-a-vis the constitutional functions of the NIC which has made its position clear through some of its decisions that it can enforce a collective agreement even in the absence of incorporation by parties. It is argued that the statement of the NIC to the effect that despite the decision of the SC, she can still give effect to a CA whether incorporated or not is hazy in view of the fact that all decisions of the NIC are appealable to Court of Appeal and may be overturned thereat. The question is, will Court of Appeal likely endorse the position of the NIC which is particularly saddled with this task, or rather reiterate the old common law position in line with the Supreme Court's decision in BPE's case? The following are the ways a CA can be enforced:

(a) By leaving at least three copies of the collective agreement with the Minister of Labour and Employment.

In the NLS, before any CA entered into by an employer and employee will be enforced, at least three copies of the CA must be left with the Minister of Labour and Employment who has the discretion to specify the particular part of the agreement that will be binding on the parties to the agreement.⁵⁴ This condition placed by the law is apt because when there is

⁵¹ J A Adebayo and A.T Toyosi, 'Collective Bargaining and Collective Agreement in Nigeria: Bindingness and Enforceability' < file:///C:/Users/HP/Downloads/6.pdf> accessed 27 June 2022

⁵² (2020) 5 NWLR (PT. 1717) 322.

⁵³ V O Chukwuma, 'B.P.E V Dangote Cement Plc (2020) 5 NWLR (PT. 1717) 322: The Enforceability of Unincorporated Collective Agreements In Nigeria.' UNILAG Law Review (2021)(4)(2) 254-267;254

⁵⁴ TDA, Cap T8, LFN 2010, s2.

a trade dispute, the Minister's intervention is based on the terms of the agreement that was presented to him.

(b) By seeking the intervention of the court for the interpretation or enforcement of the relevant terms of collective agreement.

The second step that must be taken where there is a conclusive CA is approaching the court, the National Industrial Court having the exclusive jurisdiction to determine or interpret any question relating to CA, terms of settlement of trade dispute, constitution of trade unions/associations and other civil causes or matters relating to or connected with: dispute arising from national minimum wage; registration of collective agreement; any labour, employment, trade unions, industrial relations arising from workplace or conditions of service.⁵⁵ If the interpretation is done successfully by the court, then upon the said interpretation, the CA becomes binding.

(c) By Acting or Relying on the Terms of the Collective Agreement either Expressly or by Conduct.

Another condition or step that must be taken is that a party wishing to rely on a conclusive CA, must expressly or by conduct rely on the said CA. The court In *ACB v. Nwodika*⁵⁶ held that the position in law as regards CB a fortiori Exh.E is that whether they are binding on the individual employee and employer depends on a number of factors such as their incorporation into the contract of service if one exists, the state of the pleadings, the evidence before the court, and perhaps the conduct of the parties. In *Cooperative and Commerce Bank (Nigeria) Ltd v Okonkwo*⁵⁷ the court held that the collective agreement relied upon by the employer in dismissing the employee is also enforceable by the employee in instituting the action. Where it is evident that the parties have activated the benefits of a collective agreement, even if it is by conduct, the court will infer the intention to create a legal relation from such attitude and hold the agreement, being a contract as binding on them.⁵⁸

⁵⁵ Constitution of the Federal Republic of Nigeria 1999(as amended), s 254C

⁵⁶ (1996) 4 NWLR (Pt 443) 470

⁵⁷ (2001) 15 NWLR (Pt 735) 114

⁵⁸ *ibid.*

(d) By proving that the terms of the collective agreement forms part of the custom and usage in that trade.

Where there is evident before the court that the terms of the collective agreement forms part of the custom and usage in that trade, it will be held as binding on the parties. In the case of *Rector Kwara State Polytechnic v. Adefila*, the court held that in determining the enforceability of a Collective Agreement, that if parties follow a certain course of action plainly because of a collective agreement, such as payment of wages at new rates, that provision of the collective agreement will be considered as incorporated in the contract of employment.

Despite the above, it is seen that courts' decisions on a CBA isn't coherent. In *B.P.E v Dangote Cement Plc*,⁵⁹ the apex court reiterated that a collective agreement is not enforceable except where it has been incorporated into the contract of employment by the parties. In support of its decision, the Supreme Court, per Galumje (JSC), pointedly held as follows: Any collective agreements, except where they have been adopted as forming part of the terms of employment are not enforceable. The enforcement of such agreement is by negotiation between the parties to the agreement. The court stated that in the instant case, there was no evidence that the exhibits referred to as entitling them to certain payment were adopted as forming part of the employment of the 4th - 9th respondents (that is, the plaintiffs/respondents). The exhibits are therefore not enforceable. The failure to act in strict compliance with the exhibits is non justiciable.⁶⁰

From the above decision of the Supreme Court, particularly as it relates to CA, three points can be deduced, namely: (1) that a CA is not enforceable unless it has been adopted/incorporated by the parties; (2) that the enforcement of a CA is by way of negotiation; and (3) that the failure to act in strict compliance with a CA is not justiciable. This simply means that the Supreme Court adopted a common law approach when it arrived at the above points. Given the recentness of this outline by the apex court, it is obvious that we are back to the old common law rule where a CA is, at best, treated as a gentleman's agreement. But, with the current stance of the NIC in the case of *PENGASSAN v Mrs Oil Nigeria Plc & 4 Ors.*⁶¹, it does not appear so. In this recent case of the NIC, responding to an invitation by the defendant who had asked the court to hold that a CA was only a gentleman's agreement and as thus not enforceable. The court held that

⁵⁹ (2020) 5 NWLR (PT. 1717) 322.

⁶⁰ *UBN Ltd v. Edet* (1993) 4 NWLR (Pt. 287) 288.

⁶¹ NICN/LA/595/2012, delivered on 27 May 2020, para. 50.

she was not oblivious of the argument of the learned Counsel to the 1st - 3rd Defendants that the 3 exhibits put up for interpretation and enforcement are at best gentleman agreement or CA which remain for all intents and purposes unenforceable.⁶² The exhibits are no doubt evidence of voluntarily entered agreement creating rights and obligations.⁶³ The rights and obligations created are not illegal and all the parties have capacity to enter into same.⁶⁴ The parties to these agreements have not argued against their being parties to these agreements. The agreements are not inhibited by any vitiating elements. What then is to render them unenforceable? The court having considered the above elements and the intervention of Section 254C, Constitution of the Federal Republic of Nigeria, 1999 (Third Alteration) Act, 2010, the held that CA are now enforceable.

Indeed, if they are not to be enforceable the power conferred on this Court by the Constitution would have been of no meaning. Chukwuma stated that from the above decision, it is clear that the NIC is not disposed to accept arguments that tend to bring back the old common law principle as regards the unenforceability of CA generally.⁶⁵ Summarily, the current position of the Court with respect to applicability of Collective Agreement has been analysed thus, in *Valentine Ikechukwu Chiazor v. Union Bank of Nigeria Plc*⁶⁶ the Court relying on the case of *Aghata N. Onuorah v. Access Bank Plc*⁶⁷ held that in both *Aghata N. Onuorah v. Access Bank Plc* and *Samson Kehinde Akindoyin v. Union Bank of Nigeria Plc*⁶⁸, this court stated the position of the law as to the applicability of a CA to an employee, and indeed the extent to which an employee can rely on one. For instance, actual proof of membership is the key to recovery under a CA. Proof of that membership of a trade union has to be by direct documentary evidence.

In *Stephen Ayaogu and 16 Others v. Mobil Producing Nigeria Unlimited and Blue Chip Services Limited*⁶⁹ the court held that:

⁶² (n 61)

⁶³ *Ibid*

⁶⁴ *Ibid*

⁶⁵ (n 46), 259

⁶⁶ Unreported Suit No. NICN/LA/122/2014 delivered on 12th July 2016

⁶⁷ (2015) 55 NLLR (Pt. 186) 17

⁶⁸ unreported Suit No. NICN/LA/308/2013, the judgment of which was delivered on 15th April 2015.

⁶⁹ NIC/LA/38/2010 [2017] NGNIC 10 (27 October 2017

The NIC has held in several of his judgement that given its power and jurisdiction to interpret and apply CA under section 254C of the CFRN 1999(as amended) presuppose that CA are now binding as against those they relate to. The NIC stated that in this instant case, the evidence before the Court shows that the claimants were drivers and technicians; as such they were junior employees in which event, they were eligible to be members of the trade union in question since eligibility is the yardstick for being members of a trade union for junior staff, the claimants automatically are presumed to be members of the trade union unless they specifically and in writing opt out.⁷⁰

In light of the above, it appears that the NIC which has been given the power to interpret and apply CA under section 254C of the CFRN 1999(as amended) and other relevant laws will continue to enforce any CA willfully entered into by parties. As the court's mind was agitated in *PENGASSAN v Mrs Oil Nigeria Plc & 4 Ors.*⁷¹ that it inquired about the validity or otherwise of the CA and found that it was voluntary entered into by parties to create rights and obligations which was not illegal and that all the parties have capacity to enter into same and gave judgment, it is hope that all the courts in Nigeria will continue in this gesture.

6. Factors Militating against the Effectiveness of a Collective Bargaining and ways of Promoting Collective Agreement in the Nigerian Legal System

According to Iwunze, the Nigerian government is the largest employer of labour in the country, so they usually accept and act on conditions favourable to them.⁷² Even where the government is a neutral party, its activities and policies may affect the bargaining parties. The government has been complacent about the implementation of a conclusive CB and CA. For instance, in Nigeria, many state governments are yet to implement the minimum wage agreement entered into by the representatives of federal government, organised labour and the private sector (Tripartite Committee) which later metamorphosed into National

⁷⁰ (n 84)

⁷¹ NICN/LA/595/2012, delivered on 27 May 2020, para. 50.

⁷² V Iwunze, "The General Unenforceability of Collective Agreements under Nigerian Labour Jurisprudence: The Paradox of Agreement Without Agreement" *International Journal of Advanced Legal Studies and Governance* (2013) 4(3) 4

Minimum Wage Act, 2019.⁷³ Those that have implemented it recently, did that for political reason.

Another serious factor mitigating or limiting the collective bargaining process is that, the principle being a principle of International Law, National Laws of respective member state tend to limit the application of International legislations to avoid cost.⁷⁴ In Nigeria, CB and CA are stipulated in several legislations and statutes, it cannot be said that the application of same is according to the tenets and principles of the International Labour Organizations. Collective bargaining could be seen as the numerous activities or processes leading up to the conclusion of a CA.⁷⁵ The framework within which collective bargaining must take place if it is to be viable and effective is based on the principle of the independence and autonomy of the parties and the free and voluntary nature of the negotiations; it requires the minimum possible level of interference by the public authorities in bipartite negotiations and gives primacy to employers and their organizations and workers' organizations as the parties to the bargaining. The ILO has also encouraged tripartite national agreements which are similar to those reached within the Organization by representatives of workers, employers and governments.⁷⁶ The following are the measures by which a CB process and a CA can be promoted. Firstly, measures must be adopted to facilitate the establishment and growth of voluntary as well as independent representative employers' and employees' organisations probably from the national level,⁷⁷ secondly, a suitable measures for proper recognition of representative employers' and workers' organisations for the purposes of collective bargaining based on objective criteria must also be adopted. Finally, measures that will make CB possible at all levels with parties co-ordinating themselves during negotiations.⁷⁸

⁷³ (n 30).

⁷⁴ (n 30),66

⁷⁵ Collective Agreements Recommendation, 1952 (No. 91); Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87); Right to Organise and Collective Bargaining Convention, 1949 (No. 98); Workers' Representatives Convention, 1971 (No. 135) and the Voluntary Conciliation and Arbitration Recommendation, 1951 (No. 92)

⁷⁶ B Gernigon and others, 'ILO principles concerning collective bargaining' International Labour Review (2000) (139)(1)

⁷⁷ Collective Bargaining Recommendation, 1981 (No. 163)

⁷⁸ *ibid.*

Conclusion and Recommendations

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 workers 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.⁷⁹ 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.

The paper makes the following recommendations:

1. Capacity building programmes on collective bargaining should be conducted by the ministry of labour and productivity in collaboration with major trade union in the federation to reduce lack of requisite understanding and skills for collective bargaining.
2. That there should be a review of all legislations which subject a CA freely entered into by Employer's management and employee unions that will be approved by the Minister of Labour and productivity or in any other form which has been inimical to the actualization of the intendment of the principle of CB and CA or the several ILO Conventions.
3. In the private sector, collective bargaining should exist in all industries involving the real industrial unions, employers associations and corresponding senior staff. However, there shall be one industry, one union, and one collective bargaining instrument.
Finally, that government must aid collective bargaining by way of re-examining its present imposition of compulsory arbitration and restricting its use to exceptional cases which negate meaningful collective bargaining exercises.

⁷⁹ E.E Okafor and A.S Bode-Okunade, A. S. (2005). An introduction to industrial and labour relations.