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Collective Bargaining and Settlement of Industrial Dispute in Nigeria Public Sector: A Vital Instrument for Organizational Peace

***Lawal, Moshood Kayode; **Ajibade, Qadri Tunde; & **Oluyemi, Oladele Taiwo**

**Department of Local Government Studies, the Oke-Ogun Polytechnic, Saki **Department of Public Administration, the Oke-Ogun Polytechnic, Saki*

Abstract

Conflict is part of human relations and it is a way of life that no one can avoid. It occurs since the time when a man discovers a certain level of independence. Since the civil war, labour management conflict has assumed an unprecedented proportion. A public policy is designed to deal with the conflict situations in employment and it has become more interventionist and revolutionary. Hence, collective bargaining is a source of solving the problems of employees in a work situation collectively. The paper adopts the use of the secondary method of data collection. The paper discusses the conceptual analysis of relevant keywords such as the historical perspective of collective bargaining, bargaining power, factors affecting collective bargaining and the conditions favourable for collective bargaining. It also deals with the nature and dimensions of industrial dispute, causes of industrial dispute and its settlement procedures in Nigeria. The paper concludes that regular use of collective bargaining in most public organizations can go a long way in averting negative effect on organizational productivity apart from the legal and institutional arrangement for the dispute settlement. Therefore, the paper recommends the use of collective bargaining because it is a flexible and dynamic as well

as a continuous process that can establish regular and stable relationships between worker's organizations and management.

Keywords: *Industrial dispute, Collective bargaining, Peace, Public Sector, Nigeria.*

Introduction

The idea of collective bargaining arose occurred in trade unionism in the nineteenth century and continues to be an issue of great importance to workers because what takes place in workplace affect their status, wealth and health. Collective bargaining rests on a number of arguments each of which falls into moral, economic or political spheres

The right to collective bargaining has recognition in international human rights conventions. Article 23 of the Universal Declaration of Human Rights identifies the ability to recognize trade union as a fundamental human right (United Nations General Assembly, 1948).

The declaration recognizes the collective bargaining as an essential right of workers (International Labour Organisation, l998). Hence, International Labour Organisation [ILO] (1960) cited in Ekwoaba, Ideh & Ojikutu (2015) states that collective bargaining is negotiation of working conditions and terms of employment between workers, a group of workers or one or more employers' organizations on one hand, and one or more representatives of workers' organizations on the other hand with a view of reaching agreement on working conditions and terms of employment and or regulatory relations between employers and employees, and or regulatory relations between employers or their organizations and a workers' organization or worker's organizations. The stand of ILO is that collective bargaining is the core value that is connected to the freedom of association and the right to strike. (Akenbode, 2019)

The Supreme Court of Canada broadly reviewed the rationale for regarding collective bargaining as a human right in June 2007. The court observed that: The right to bargain collectively with an employer enhances the human dignity, liberty and autonomy of workers by giving them the opportunity to influence the

establishment of workplace rules and thereby gain some control over a major aspect of their lives. Collective bargaining is not simply an instrument for pursuing external ends... rather (It) is intrinsically valuable on an experience in self-government.., collective bargaining permits workers to achieve a form of workplace democracy and to ensure the rule of law in the workplace. Workers gain a voice to influence the establishment of rules that control a major aspect of their lives (Supreme Court of Canada, 2007).

Thus, collective bargaining is the fundamental instrument that workers' representatives and their employers use not only to consider the demands of the employees but also to resolve conflict for the achievement of organizational goals and objectives. (Anyim, Elegbede & Gbamujo-Sheriff, 2011).

Collective bargaining is a mechanism of creating working conditions, wages and other aspects of employments by way of negotiation between employers and the representatives of employees organized collectively (Abercrombic et al 1980, cited in Nwadiro (2011). It is taken to be a weapon employed by workers to enable them participate in industries, extension of the rights of citizenship into the economic sphere and the resolution of conflict in organizations. Collective agreement is the result of this process. It is the fundamental principle on which trade union system rests. It does not require either side to agree to proposal to make concession but does create procedural guidelines on good faith bargaining (Abel, 2014). As one of the processes of industrial relations, collective bargaining performs a number of functions in work place. It could be seen as a way of industrial jurisprudence as well as a form of industrial democracy. It brings about industrial harmony in workplace based on mutual agreement between employees of labour union leaders and their members. It gives rise to better understanding which in turn facilitates the process of communication. It is a mechanism for resolving conflict at workplace between management and labour as the as assessment of conditions and terms of employment (Ayim, Elegbede, & Gbamujo-Sherif, 2011).

Based on the processes and functions, collective bargaining is supposed to be effective yardstick for resolving conflicts in organizations. Evidence available, however, indicates that this has not always been the position. This according to Nwadiaro (2011), is that: In some cases, the crises which lead to collective agreement in labour relation between employees (union) and their representatives are not always successfully addressed. What can be deduced from the above observation is that disagreements, walkout, work-to-rule

scenario, deadlock and negligence of agreement reached would take place instead of settlement of dispute. Government has attitudinal indifference towards collective bargaining. For example, in Nigeria, it seems that government at times speak from both sides of the mouth in her effort to embracing collective bargaining in Nigeria. A case in point the Federal Government's disagreement over the negligence of agreement reached through collective bargaining process with the Academic Staff Union of Universities (ASSU) in 2009 in finding a lasting solution to the Union's demands. However, part of the agreement reached has been met by the Federal Government in the recent past, but other substantive issues particularly infrastructural development and financial autonomy are still issues of disagreement. In 2017, the Federal Government set up a team to renegotiate the 2009 Federal Government –ASSU agreement. Collective bargaining has no final form. It adapts itself to the changing economic, legal and social environments. It has varied largely from organization to organization and between and within unions.

Conceptual and Theoretical Framework

Collective Bargaining

The concept of "collective bargaining" is derived from a combination of two words: Collective and Bargaining. Collective refers to group action through representative. From management perspective, the concept denotes the management's delegates at the bargaining table while from the angle of workers, it connotes a local firm membership which represent the Union. Bargaining as a term is synonymous with negotiation. There is element of flexibility in the place of fixed position. The term according to Rose (2O08) was originated by Webb to describe the process of agreeing terms and conditions of employment via representatives of employers (and possibly their association) and employee representatives (probably their unions). Collective bargaining in the view of Rose (2008) is the process whereby representatives of employees and employers determine and regulate decisions concerning both substantive and procedural issues within the employment relationship. The result of this process is collective agreement. Collective agreement is enshrined in Article 2 of the Right to organize and Collective Bargaining Convention of 1948. In terms of the Act, collective agreement mean, any agreement in writing for the settlement of dispute relating to terms of employment and physical conditions of work concluded between: (a) an employer a group of employers

or organizations representing workers or the duly appointed representative of anybody or workers. Webb & Webb (1965) used the term to describe negotiation on conditions of service and terms of employment between employers and employees or between employers' association and trade unions. Flowing from this definition, collective bargaining covers all arrangements in which workers do not enter into negotiation with their employers by themselves but such negotiation is carried out collectively through their representatives Extensive issues such as job grading and classification, wages, hours of work, promotions, increments, retirement, annual leave, etc are covered by the process of collective bargaining. Negotiable issues that is capable of resulting in industrial disputes fall within the domain of collective bargaining. Sociopolitical matters like the election tribunal are also by extension part of collective bargaining.

The averment of Eze (2005) is in agreement with Otobo (2005) who stated that collective bargaining was used by Sydney and Beatrice Webb to cover negotiations between workers' group and management as opposed to individual bargaining. It is in line with this theory that Chamberlain and Kuhn (1965) admit that collective bargaining performs three main functions as a mechanism of contracting for sale of labour (marketing concept), as a form of industrial government (governmental theory) and a method of management (industrial management concept).

They further opined that collective bargaining is a means of purchasing labour in the labour market with the aid of employment contract, having rule making process that governs trade unions and management relationship particularly in the spheres of reaching decision on matters of interest to all focal partners. Collective bargaining may be a source of competitive advantage when used in the resolution of any form of industrial conflict in organizations. Selig Pernman (1936) defines it as all techniques whereby an inferior class or group carries on a never slacking pressure for a bigger share in social sovereignty as well as for more welfare, security and liberty for its individual members. Collective bargaining as a technique of the rise of a new class is quite different from the class struggle of the Martians. It is nominalist instead of realist. It is pragmatic and concrete instead of idealist and abstract. It is much less concerned into algebraic formular summarizing up back economic trends then with the problems of building discipline in organisation and of training leadership. It derives its emotional impetus not from the desire to displace or abolish the old

ruling class but from the wish to bring one‘s own class abstract of the superior class to gain equal rights as a class and equal consideration for the member of the class.

Collective bargaining manifests itself equally in legislation, court litigation, politics, education, government administration and propaganda. When collective bargaining is a social change, it encompasses more than the direct clash between management and trade unions. It refers to the rise in politics and social power attained by employees and their organization. Hence, in a marked sense, collective bargaining is not an abstract class struggle, but it is rather down-to-earth and tangible. The inferior class is not interested in abolishing the old ruling class but merely to become equal with it. Its purpose is to acquire large measure of political and economic control over important matters in the field of its most drastic interest and to be respected in other spheres of decision-making.

According to Rose (2008), collective bargaining was originated by Webb and Webb to describe the process of agreeing terms and conditions of employment through representatives of employers (and possibly their association) and representatives of employees (and probably their unions). Rose (2008) posits that collective bargaining is the process whereby representatives of employers and employees jointly determine and regulate decisions pertaining to both substantive and procedural matters within the employment relationship.

The outcome of the above process is the collective agreement. Collective bargaining as one of the processes of industrial relations performs a variety of functions in work relations. It could be viewed as a mean of industrial jurisprudence as well as a form of industrial democracy. It is a means for resolving workplace conflict between labour and management as well as the determination of terms and conditions of employment. Davey (1972) views collective bargaining as “a continuing institutional relationship between an employer entity (government or private) and labour organization (union or association) representing exclusively a defined group of employees of said employer (appropriate bargaining unit) concerned with the negotiation, administration, interpretation and enforcement of written agreement covering joint understanding as to wages/salaries, rate of pay, hoursof work and other conditions of employment.”

International Labour Organization (ILO) (1960) views “collective bargaining as negotiations about working conditions and terms of employment between an

employer, a group of employers or one or more employers' organization, on the one hand and one or more representative workers' organization on the other, with view to reaching agreement".

The term "public sector" comprises the government as employer at the federal, state and local government levels as well as the parastatals, the universities and the state-owned companies. The public sector constitutes the largest employer of labour in the country in spite of the recession in the economy. Modern trade unionism began in Nigeria in the public sector. Damachi and Fashoyin(1986) observe that trade unionism and labour relations originated in the civil service in 1912; but it is in this sector that unions are weaker and labour relations marginally practiced. The weakness of the unions in this sector is attributed to a well documented problem of union factionalism, multiplicity and leadership squabbles which characterized Nigerian unions up to the mid-1970s.

In Nigeria, the issue of collective bargaining is provided under the Labour Act Cap 198 Laws of the Federation 1990. Collective bargaining is defined by the Act as the process of arriving or attempting to arrive at a collective agreement while collective agreement means, "an employment in writing regarding working conditions and terms of employment concluded between;

a. an organization of workers or an organization representing workers (or an association of such organization) of the one part and
b. An organization of employers or an organization representing workers (or an association of such organizations) of the other part (S.91, LabourAct 1990).

Section 47 of the Trade Dispute Act 1990 provides a contrast definition. This notwithstanding, both definitions refer to collective bargaining as negotiation between employers and their employees collectively, represented by unions, for the settlement of terms and conditions of employment. The end result is an agreement. As an aspect of labour relations, collective bargaining provides the forum for a bargain or negotiation and leads eventually to rule making or agreement between the parties, thus creating some forms of social order in the relationship.

Collective bargaining requires patience by parties because it is usually long and tortuous and results are normally unpredictable. Decisions are reached after discussions. Such decisions are arrived at by unanimity and parties usually agree that while negotiations are in progress, there should be no strike or

lockouts and that participants on the union side should not be victimized for their part in the negotiations. The government rarely intervenes in collective bargaining and if voluntary negotiations break down, parties are expected to follow the requirement of the trade disputes DecreeNo 7 of 1990 that provides for a voluntary collective bargaining and parties are required by the decree to exhaust their grievance procedures where they exist before resorting to other methods of dispute resolution. From the above facts, collective bargaining to a certain degree does work in Nigeria. It is seen as a national alternative to strike and lockouts in the midst of collective bargaining.

Bargaining Power

Power means ability of one individual to influence others and affect behaviours. It refers to the individual capacity to influence the behaviour of another individual (says B) so that he can act in agreement with A's directive. When this takes place, behaviour is changed unilaterally. Bargaining power is therefore defined as the ability to influence the other side to take a decision that it would not have made. Fox and Flanders cited in Ogunbamero (2011) note that power is the crucial variable that determines the outcome of collective bargaining. Hawkins (1976) posited that what constitute a fundamental test of bargaining power is whether the cost to one side in accepting a proposal from the others higher than the cost of not accepting it.

Historical Perspective of Collective Bargaining In Nigeria

The center of the British voluntarist employment relations is collective bargaining. It is also seen as effective instrument of protecting interest of workers as well as the most effective instrument of preventing and settling industrial disputes (Webbs,1902, cited in Olusoji, Owoyemi & Onakala, 2014). Unfortunately, it is a nudiustertian prodigy in Nigeria. Before the emergence of collective bargaining, the most common method of bargaining was the organization–based pattern-negotiation between management and house unions. What followed recently was the industrial-based bargaining pattern-negotiations between industrial associations of employers and the industrial trade unions (Oribabor, 1984). Before the announcement of the two Nigerian Trade Disputes (emergency provisions) Degree, No. 21 and 83 of 1968 and 1969 respectively, the system of collective bargaining in Nigeria was not controlled by law in spite of the fact that it existed as far back as 1938. The

Trade Union Ordinance of 1938 gave legal teeth to trade unionism (Egbo, 1968). From 1938 to the mid 1960's, Fashoyin (1980) states that the Nigerian system of collective bargaining was neatly depicted by a reliance on the principles of the British Voluntarist employment relations practice. There was escalation in the number of trade unions because of the legal recognition given to trade unionism in 1938 (Egbo, 1968). Fourteen trade union were registered with about 4,629 members in 1940, just two years after the enactment of the ordinance. The number of trade unions rise to 732 with over 70,000 members by 1971 (Fashoyin, 1987). The creation of a voluntary system for the peaceful adjustment of industrial conflicts was another key feature of the British voluntarism employment relations practice introduced to Nigeria (Flanders, 1974).

Yusuf (1982) observed that as far back as 1941, the Trade Disputes (Arbitration and Inquiry Ordinance of 1941) made provision for the conciliation and arbitration services, although it was devoid of stipulation for irresistible urge on the parties to adopt any particular procedure to the bargaining relation (Yesufu,1982).

Otobo (1987) suggest that bargain was done with available power of emulation, arbitration, lockouts, persuasion, strikes or other advisory procedures. Unluckily, the result of such bargaining was not legally held by the parties. There was no formally recognized single body of the employers and thus the employers' choose to fall back to individually and autonomy while bargaining with employees as the Nigeria Employers' Consultation Association (NECA) was created in 1957 (Fashoyin, 1980). The employers had their way because the house unions were inexperienced, inefficient, uneducated and not potent. As a result, they were not forced to join an association because the employers were able to influence the unions to their benefit (Becham &Tega, 1969). Special commissions or administrative agencies were formed mainly to handle employment related issues of 1948. The 1955 government official policy on collective bargaining and the Whitley councils and the joint industrial councils were such bodies (Yesufu, 1967).

Fashoyin (1980) posits that inclusion of military into Nigerian politics made interference of government in Nigeria's employment/industrial relation practice more common. The military was very distrustful of the trade union leaders due to the fact that the unions can be transformed into an antagonistic group to canvass for representative democracy and the politicians too can easily

influence the trade union leaders as obtained in colonial era. The process of collective bargaining was not given much favourable circumstance to prosper or grow vigorously as there was steady molestation of trade union leaders and the most outspoken and skilled labour leaders were excoriated or anathematized for life (Yesufu, 1982). Most of the bargaining were carried out between the in-house and their employers.

Unluckily, for cultural reasons, the workers did not fight or confront their employers as according to Fashoyin (1980), it is against the culture of most ethnic groups in Nigeria to contend in physical conflict or confront someone who is providing one with his/her bread. Another impediment to the process of collective bargaining was the mode of recruitment. Ubeku (1984) points out that majority of Nigerian personnel managers are expected to negotiate on behalf of the management with the workers they had hire. It is clear without any fear of controversies that workers are not interested in confronting their kinsmen for cultural reasons. This makes the economic/industrial democracy unpredictable in work environments in United Kingdom as was and still in Nigeria. The reason could be the larger society where there is various military intervention which failed introduced political democracy (Yesufu, 1982 cited in Olusoji, Owoyemi & Onakala, 2014).

Factors Affecting Collective Bargaining

The nature of the state affects collective bargaining: The nature of state determines the role government can play in any state because government as an institution of the state is an apparatus of the ruling elite. The interest of ruling class is always protected by the government. It therefore follows that the use of collective bargaining in organization is affected by this role. The government possesses the power to dominate decisions honouring or dishonouring of any agreement depend on the interest government has for it. The government may decide to honour any agreement if it deems it necessary and may decide to disregard it if it's not in her favour. Although, government seems to be neutral, the bargaining process may be characterized by obstacles flowing from the government in form of income guidelines, determination, arbitrarily increase in the prices of essential commodities, promulgation of decrees and draconic laws, etc. The government watches what goes in the bargaining, process and determine what is employed because government is under the controlof the state.

Success of collective bargaining must be honoured by the parties involved by the government. The government plays the piper and must dictate the tune. A case in point is the implementation of increase in the price of petroleum products in 1999 from ₦28,000 that it was in 1986 to ₦30 million naira. Thus represented 15,000% increase between 1986 —2000. Immediately after the government announced national minimum wage for state and federal government workers, The Nigeria Labour Congress (NLC) leadership embarked on industrial action. Compromised was reached between Federal Government and NLC that led to reduction in the pump price of various petroleum products. (On June 3, 2000, an agreement was signed between the federal government and the NLC and the strike was called off. Surprisingly, in February 2001, the Obasanjo government reneged on the agreement. The prices of petroleum products were increased and implemented on 1st of January, 2002. Kerosene price was increased from ₦7.00 to ₦24.00; Diesel was moved from ₦21 to ₦26 while fuel price was increased from ₦22 to ₦26 per litre. The Nigeria Labour Congress (NLC) went on strike, demanding a reversal of the price increase. The Federal Government took the action of NLC to Abuja High Court and later government won the case implying that the strike was illegal. The court order was obeyed by the NLC and it consequently called off the strike on 17th January, 2002. In June 2004, the Obasanjo regime came up with its big hammer when it noted that the NLC (the umbrella trade union body) was growing powerful. He decentralized and scrapped the fuel subsidies in Nigeria because he felt that NLC did not want to be democratic and was overstepping its powers in trying to overthrow government. Obasanjo subsequently sent a Bill to the National Assembly for an act to amend the Trade Union Act the amendment of cap 437, LNF, 1996 No. 4 1996 NO 1. After passing the necessary reading section 17, 30, 34 and 42 were amended. A new subsection 4 was inserted while Section 16A and substituted sections 16A and 24, and deleted Section 33 while the existing section 34 to 54 of the Principal Act were renumbered as Sections 33 to 53, respectively.

Chief Obasanjo assented to the act referred to as Trade Union (Amendment) act 2005 on 30th March, 2005. The outcome of the new Act was the birth of two things among others: The expanded registration of federal trade unions, voluntary rather than mandatory contribution of check-off dues to trade unions. This gave rise to the formation of parallel trade union to the Nigeria Labour Congress (NLC) such as Trade Union Congress (TUC), etc.

What one can be deduced from the foregoing discussion is that the state is employing coercive power to make collective bargaining ineffective. This implies that government has to avoid commitment to collective bargaining and is not an effective mechanism for resolving conflict in organizations.

The Ibrahim Babangida regime (1985-1992) brought the NLC under its control as part of its hegemonic agenda (Lakemfa, 1997 cited in Nwadiro, 2011). This was achieved through the adoption of a static corporation strategy in the combination of cooperation, regression and buying off. Abacha administration was not totally different from Ibrahim Babangid‘ regime in labour matters. Abacha‘s administration dissolved the National Executive Council of NLC and appointed a sole administration. The government also dissolved the National Union of Petroleum and Natural Gas workers (NUPENG) and Petroleum and Natural Gas Senior Staff Association of Nigeria (PENGASSAN). The dissolution was an example of the travails of congress, its leadership, affiliates and state councils under military regime. Labour leaders were unlawfully detained or incarcerated. Union meetings, seminars and other activities of congress and its components were invaded and disrupted by security forces. All manners of legislation to check the activities of unions were invoked with full force by the military. A decree came into effect that proscribed a section of the movement from holding leadership position in congress. (Nwadiaro, 2011)

Abdulsalam Abubakar’s regime amended Decree No2. 1996 and No. 1 of 1999. Decree 9, 10 and 24 were replaced with the main aim of democratizing trade unionism in Nigeria. Granted the fact that some of the post 1993 legislative restriction has been removed, the Workers’ movement in Nigeria is yet to enjoy the degree of freedom of association it possessed after Nigeria independence in 1980

Adeogu (1975) observed that government attitude in the aspect of collective bargaining is ineffectively: According to him:

> *It seems very odd that despite the establishment of Whitley Councils since 1948 negotiation between the government and its own employees, practically every major demand by workers to wage increase or review since the second world war has been settled, not through this collective industrial machinery but by arbitration.*

However, the attitudinal indifference of government towards collective bargaining is manifest but easily discerned by many in field of industrial relation. In this regard, Ornolayole (1981 as cited in Damachi (1989) has this to say:

> *We do not believe government practices ardently what it preaches vigorously. Government preaches the doctrine of collective bargaining which it says is the cornerstone of industrial relation in this country. It does not appear to us that government practices it or strongly and stringently as it advices the private sector to do. Otherwise, why is it that there are more collective agreements reported by the Ministry of Labour in reports of issue resolved by 13 employers associate than those registered by the public sector? The Ministry can tell us how many agreements have been reported by the total public sector within the last five years*

The indifference of government towards collective agreement reached with ASUU in 2009 was demonstrated by current regime of Muhammadu Buhari's decision to review the agreement is seen by many as consistent inconsistencies in governments.

The agreement was reached after two years of negotiation between ASUU and the federal government. The agreement reached at the negotiation included conditions of service for university lecturers, funding of universities, university autonomy and academic freedom and issues that require legislations to implement. (www.premiumtimes.ng.com). Unfortunately and sadly, the Buhari regime sets up a team to renegotiate the 2009 Federal Government/ASUU agreement (Musari, 2009.). According to the then national chairman of ASUU, Prof. Abiodun Ogunyemi the body will negotiate with the government team based on the principle of collective bargaining, if what they offer does not satisfy the demands of the university lecturers. (Ogunyemi, 2017).

In the public sector, for instance, the government has arrogated to itself the role which both employers and employees supposed to perform in industrial relations (Bajoko, 2006). As a state authority, government set up machinery i.e. councils to negotiate salary increase and other conditions of service in the public sector. However, government has taken over the responsibility of wage fixing in Nigeria going by events in recent years. Imafidon (2006) correlates the

current position of government in wage fixing when he advances the argument that collective bargaining has been relegated to the background in Nigeria because government resorts to creating wage tribunal as a mechanism of fixing and reviewing wage. In support of Imafidon (2006), Chidi (2010), Ayim, Elegbede, Gbamujo-Sheriff (2011) opine that the use of ad-hoc commission in addressing workers' demand such as wage determination and other term and conditions of employment is unilateral and undemocratic as it violates good industrial democratic principles. Nigeria's determination of minimum wage has always been carried out without any effective tripartite collective bargaining, the latest being the new minimum wage Nigerians are expecting from the current regime of Muhammudu Buhari. The development only makes it antithetical to democratic value, but has also undermined the importance of collective bargaining in Nigeria's public sector. The implication of government action is that there are industrial disputes and work stoppage in the Nigerian economy as every effort to address or adjust wages over the years because wage determination policy in Nigeria is not effective and definite (Kester, 2006).

The issue of bargaining itself is another problem facing collective bargaining. In Nigeria, many of the substantive issues which are within the domain of the NPSNL are decreed either by executive or legislative acts or via political body like commission periodically created by government as employer of labour. Civil service rules regulate discipline, promotion, transfer of staff. Management position is represented by both method of job regulation devoid of collective bargaining. The role of NPSNL in Nigeria is totally and completely irrelevant because of the influence and role of other government agencies. These developments according to Ayim, Elegbede, & Gbamujo-Sheriff, 2011 have undermined the relevance of collective bargaining in the public sector.

In the light of the above, government intervenes in collective bargaining. The government does not act as a watchdog for the enforceability of any agreement reached. Most negotiations are entered into by an agent of the government on its behalf as well as the employees of the government. The major reason is not to prevent a situation of making government a judge in its own case which will go against the principle of public policy. But in most cases, the reverse is the case. The agent acting on the order of the government cannot contract on her behalf and the government is not willing to be bound by such agreement. The government is right to play a regulatory and mediatory role in collective agreement. Non-strike clause is imputed in the agreement but government is not

willing to implement the agreed terms in order to avoid the strike situation. Government inefficiency and insensitivity result in an increase of industrial dispute in Nigeria. According to Vanguard (2001):

It is true that some of the collective agreements have reopener clauses. For as many of that have re-opener clauses, are couched in terms which allow them to have re-opener clauses, the union will be bound by it, those that do not have re-opener clauses cannot be bound by what government has done because government is not the employer of workers in private sectors (Vanguard, 2001,). There is also fear of official intimidation/victimization by government employers. Employers adopts divide and rule strategy to manage workers.

Conditions Favourable For Effective Collective Bargaining

Within the organization, there are some conditions which are favourable for the birth and development of collective bargaining. They are as follows:

Employers should appreciate the importance of trade union for bargaining process; What must be bargained on must have subject matter; The parties in the process must have adequate degree of freedom to associate and organize employers into independent trade union; the parties must possess necessary skill and knowledge to manage the intricacies of the bargaining process; the parties for bargaining should not be more than two. For example, bargaining to occupy management and trade union leaders should bear this in mind; Negotiation should be in good faith and the parties should accept the agreements entered into as having a binding force on each other. However, Niland (1979) has posited that collective bargaining in its pure form, consists of five necessary conditions:

i. Dispute negotiation between management and unions. Third party intervention is allowed only on a voluntary basis, as agreed by the parties.
ii. There is substantial uncertainty at the commencement of negotiation as to the final result.
iii. Both parties have a philosophical commitment to direct negotiations and approach the process in good faith.
iv. Where disagreements over terms of settlements continues, the parties themselves are responsible for resolving conflicts, at least until the public welfare is threatened.

v. The parties negotiate from reasonably even bases of power, observes as the ability to assess the terms and condition of work. Ideal type of collective bargaining rests on the above conditions. In reality, few situations exist where these conditions have been met. (Niland, 1979).

Industrial Dispute Settlement Procedure in Nigeria

Aderibigbe (2014), account of industrial dispute resolution in Nigeria clearly identified gaps in law limits, judicial interpretation of various parts of the NIC Act and TDA. In perspective, the law made provisions for both voluntary and statutory machineries of industrial disputes in Nigeria. These are briefly discussed below:

i. Internal/Voluntary Machinery: In the public sector, joint negotiating machinery 'Joint National Public Service Negotiating Council' with three arms namely National Public Service Negotiation Councils I, II, and III. These arms are visible in public sector to address thorny issues and both sides are adequately represented on the councils. Whereas in the private sector, the size and level of business structure would determine the process. For instance, aggrieved employees could meet directly with the employees in question to resolve the issue. However, where it could not be resolved, if they are in the same unit or department, issue can be brought to the notice of their supervisor for resolution. If still not resolved, it can get to the manager, HR/Industrial Relations Department, etc. If in a unionized organization, the issue can be taken to union for resolution as well. It is only when internal machinery has failed to resolve issues that external (statutory) comes in.

ii. External (Statutory) Machineries: Both public and private sectors are subjected to external machineries upon the failure of the internal machineries to resolve issues between or among the disputants. At this point, the Minister of Employment, Labour and Productivity through the commissioner would declare an industrial dispute and take charge of the thorny issue by informing the disputants in writing with a view to resolving it. Discretion is allowed to decide the level to refer the issue to in the statutory machinery such as board of inquiry, conciliation, arbitration panel, National Industrial Court.

(a) Board of Inquiry: Upon the declaration of industrial dispute or where the Minister of ELP apprehends one, he may use personal discretion to constitute a board of inquiry to look into the causes and circumstances of the dispute, especially where it involves general public. The board may consist of one

person or group with a chairman as the Minister of ELP deems fit. Board report shall be sent to the Minister of ELP who may cause it to be published to an employer or a union. Minister of ELP can make board findings binding on the disputants or refer the dispute to IAP or NIC.

(b) Conciliation: Alternatively, Minister of ELP, upon the declaration of industrial dispute can appoint a fit person as a conciliator to settle industrial dispute. It is therefore the responsibility of such conciliator to inquire into the causes and circumstances of the dispute in order to settle it by coordinating negotiations between or among the disputants. It is expected that the assignment must be concluded within 7days and where compromise is reached such is communicated the Minister of ELP detailed in a memorandum starting the terms of the settlement reached, duly signed by the disputants whilst agreed terms shall be binding on them. On the contrary, where the conciliator is unable to settlement the dispute within 7days, report should be made available on the reasons for the impasse.

(c) Arbitration: At the instance of 'contrary report', that is conciliator is unable to settle the industrial dispute, the Minister of ELP shall refer the dispute to Industrial Arbitration Panel (IAP) for possible settlement within 14days of the receipt of the contrary report. IAP shall consist of a chairman, vice-chairman and at least ten members, two of whom shall represent the employers and another two the workers with the mandate to settle any industrial dispute referred to the panel. It is expected that the panel will make an award within twenty-one days or such longer period for the purpose of settling a dispute. The award of the Panel shall be forwarded to the Minister of ELP. Position of the Minister of ELP could be any of the following: i) where the Minister is not satisfied with the award, he may refer it to the panel for reconsideration. It is expected of the panel to complete the reconsideration within 42days or as specified by the Minister of ELP. ii) where the Minister of ELP is satisfied with the award, copies of the award is sent to the disputants and he will direct that the award be published in government gazette, stating that the award would be confirmed if no objection is received from any of the disputants within 7days from notice date. When no notice of objection is received within the stipulated period, a notice confirming the award in government gazette is confirmed. By this confirmation, the award is binding on the disputants and any disregard will attract stiff penalty.

(d) National Industrial Court (NIC): At the instance of objection to the award of IAP within stipulated period, the Minister of ELP shall refer the dispute to the National Industrial Court (NIC). The NIC shall re-consider the dispute, call for evidences as deemed necessary and give a ruling that is final and binding on the disputants. The NIC is made up of judges (The President and 4 other members).

Conclusion

Conflict is said to occur when one party perceives the action of another party as blocking the opportunity for the attainment of a goal. In a manner to satisfy the desires or needs of parties in a conflict situation, collective bargaining is a useful mechanism for dispute settlement in Nigeria public sector because it is a flexible and dynamic process wherein no party adopt a rigid attitude. Apart from the legal and institutional management for the settlement of dispute, collective bargaining also establishes relationship between workers organization and the management. With these, the use of collective bargaining as a means for the settlement of dispute usually lead to win-win outcome resolution whereby both parties are satisfied.

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