

# Collective Bargaining and the Nigerian Industrial Relations System-Conceptual Underpinnings

EBONG, EDEM ASUQUO<sup>1</sup>, NDUM, VICTOR ETIM<sup>2</sup>

<sup>1,2</sup> *Institute of Public Policy and Administration, University of Calabar, Cross River State, Nigeria*

**Abstract-** *Collective bargaining is the life wire of industrial democracy. A proper understanding of the laws regulating the interactions between human beings in the workplace is germane to the smooth running of organisations both in the public and private sectors. This is because of the important role of workers in contributing to socio-economic well-being and progress while also promoting industrial peace, harmony and peaceful co-existence within and outside the world of work. It is against this background that this paper is developed. It looks at the whole web of issues revolving around collective bargaining in the private and public sector in Nigeria, legal framework of collective bargaining, roles of parties and procedures for dispute resolution. Recommendations made would transform the Nigerian industrial relations system and enhance industrial harmony.*

**Indexed Terms-** *Collective Bargaining, Dispute, Employer, Employee, Industrial Relations.*

## I. INTRODUCTION

Collective bargaining is the process of negotiation on a whole range of issues bordering on the regulation of the terms and conditions of employment between workers and employers or government, aimed at collective agreement. It is seen as the most rational process of determining and reviewing the terms and conditions of employment. The process manifests the power relationship between the employers and the trade unions. Collective bargaining goes beyond the process of negotiation between unions and employers on issues directly affecting conditions of employment. It is also a means of limiting unilateral decisions and actions by employers and governments. Strong, stable, well focused and democratically run unions expand the scope of collective bargaining and thereby strengthen industrial democracy.

According to Okey, Ayang and Ndum (2012), the aim of every society is to prepare every citizen to take his/her place functionally in the society. This implies that as there are ailing problems in the society threatening to annihilate the being of man, collective bargaining comes in to solve such problems by appeasing such forces. It serves as a vehicle for bringing these aims into reality. In Nigeria for example, there is the ailing problem of several dimensions of conflict arising from the existing threat of unemployment, underemployment and job insecurity. This situation is an indication of an unfulfilled goal of education

It is a truism to indicate that if there are no rules or laws in a society or country, there will be anarchy. So it is in the work place. If there are no rules or grievance procedure, the average worker may take the law into his hands. So also can the employer become unpredictable. All these will lead to the disruption of work or services. Usually, the employer gives to staff what is called the Staff Handbook. It normally contains what the employer expects of the worker and what the management assumes to be its obligations. Such handbooks are usually one-sided and dictatorial. Since they are normally imposition by the employer with little or no worker input, such rule books are subject to abuse. Nigerian labour law provides for automatic recognition of trade unions for collective bargaining purposes. This means that the employer must recognise registered trade unions in his establishment and bargain with such unions in their bid to safeguard their economic interests in employment. The duty to recognise a trade union is coterminous with the duty to negotiate with it and conclude agreements. Thus, a refusal by an employer to recognise and bargain with a union or adhere to the agreement arrived at could lead to strikes by the workers to realise such improvements in working conditions.

Omole (1987) raised the issue of the interesting features of industrial relations in the developing countries when compared to the practice in the developed countries. In the developed countries, industrial relations practice in the public sector was modelled after the practice in the private sector. In the developing countries, the opposite was the case especially with Nigeria where industrial relations system in the private sector of the economy developed from the practice in the public service. To account for the trend, he stated that the idea of bargaining for more by workers emerged first in the private sector in developed countries and its law and procedures are well-established. In Nigeria, the origin of trade unionism can be traced to the public sector, which arose during the colonial rule when paid employment was first introduced into the country by the colonial administrators.

According to Ewepu (2010) the problem in Nigeria is not far-fetched; it is basically inched on insincerity and politics on the part of government, also impatience on the part of workers. Collective bargaining has become an instrument of political manipulation. From the point of appointing and constituting government representative to the bargain, deceit or insincerity is manifested. Most times after the Nigeria Labour Congress reaches an agreement with government, the terms and conditions of the agreement are not implemented, rather thrown into the thrash.

It is pertinent to state that if government continues to be insensitive and insincere to labour decisions reached, the consequences will be grave. Firstly, there will never be industrial peace and harmony which could trigger violent demonstrations and strikes.

Secondly, companies which manufacture and trade loses billions of naira as production and sales are brought to a halt. Besides, foreign and local investors are scared away as such economy shows a convincing degree of instability and insecurity. Generally, it slows down development.

It is glaring that Nigerian government is aware of the scenario, as the present administration of President Muhammadu Buhari clamour for change in every sector of the economy and to achieve its dream of being among the 20 most industrialised nations by the

year 2020. It is imperative to state that collective bargaining should be a driving force and catalyst in labour management, i.e government should endeavour to boost workers' confidence in implementing all agreement reached on labour issues. Trust and cordiality should be enhanced and enshrined in the relationship.

If government makes collective bargaining effective, it will drastically reduce friction in industrial relations, strikes will be eradicated, all forms of agitations will reduce.

The objective of this paper is to examine the dynamics of collective bargaining machinery in both the public and private sectors in Nigeria; with a view to bringing to the fore the peculiarities associated with both sectors with regard to the practice of bargaining.

## II. CONCEPTUALIZING COLLECTIVE BARGAINING

Collective Bargaining embodies negotiation between employers and workers on terms and conditions of employment. It involves the setting of terms and conditions of employment and the procedure for resolving workplace conflicts. Collective Bargaining and negotiation are often interchangeably used. Collective bargaining describes the process of reaching understanding between two parties in workplace. Negotiation on the other hand is the act and the skill of gaining concession and reaching consensus. Workers however must note that with the principle of consensus, one of the parties emerges with some advantages over the other. In the private sector, the management represents employers, while in the public sector the government as an employer is represented in the Negotiating Council by the Head of Service. The trade unions represent workers in both sectors. The outcome of the negotiation between employer and trade unions is the signing of a contract, referred to as the "Collective Agreement". The contract, which is binding on both parties, is usually made up of two parts. Substantive Agreement which deals with terms and conditions of employment including issues such hours of work, wages, allowances and other benefits and Procedural Agreement concerned with issues of rules and regulations governing interaction between employers

and workers' unions; for example, union recognition, and composition of the negotiating council, disciplinary procedures.

Collective bargaining as one of the processes of industrial relations performs a variety of functions in work relations. It could be viewed as a means 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. It also ensures redistribution of power and maintenance of efficiency.

According to Rose (2008), the term 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 associations) and representatives of employees (and probably their unions). Rose (2008) posited 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 this 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 means 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.

Modern trade unionism began in Nigeria in the public sector. As Damachi and Fashoyin (1986) observed 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 practised. The weakness of the unions in this sector was attributed to a well-documented problem of union factionalism, multiplicity and leadership squabbles which characterised Nigerian unions up to the mid-1970s.

Collective bargaining involves a process of consultation and negotiation of terms and conditions of employment between employers and workers, usually through their representatives. It involves a

situation where the workers union or representatives meet with the employer or representatives of the employer in an atmosphere of mutual cooperation and respect to deliberate and reach agreement on the demands of workers concerning certain improvements in the terms and conditions of employment.

Under Nigerian law, Section 91 of the Labour Act defines collective bargaining as the process of arriving or attempting to arrive at a collective agreement. Two essential conditions for collective bargaining to occur include the freedom to associate and the recognition of trade unions by employers. Collective bargaining is recognised and protected by the ILO and generally in international law. The ILO Convention 98 on the Right to Organise and Collective Bargaining which was adopted in 1949 is the main source of workers right to collective bargaining. Apart from Convention 98, there are numerous other Conventions and Recommendations which promotes collective bargaining between workers and their employers such as Convention No. 154 Collective Bargaining Convention 1981, Convention No. 135 Workers' Representative Convention 1971, and Convention No. 151 on the right of public employees to organize (.ILO, 1998).

Collective bargaining represents the backbone of the employer-employee relationship. It is widely accepted as the most important instrument for the determination of wages, employment conditions and the regulation of employer-employee relations. In practice, collective bargaining is a process of obtaining concessions and reaching compromises on employment and working conditions (ILO, 2002).

### III. COLLECTIVE BARGAINING FRAMEWORK IN NIGERIAN LAW

The primary law governing trade disputes in Nigeria is the Trade Unions Act, Cap 437, Law of the Federation of Nigeria, 1990. In Nigeria, the issue of collective bargaining was provided for under the labour Act Cap 198 Laws of the Federation 1990. Collective bargaining was defined by the Act as the process of arriving or attempting to arrive at a collective agreement while collective agreement means, "an agreement in writing regarding working conditions and terms of employment concluded

between; an organization of workers or an organization representing workers (or an association of such organization of the one part and an organization of employers or an organization representing workers (or an association of such organizations) of the other part (Okolie,2012).

However, Salamon (2000) opines that collective bargaining is a method of determining terms of employment and regulating the employment relationship, which utilises the process of negotiation between representatives of management and employees and results in an agreement which may be applied uniformly across a group of employees.

It must be noted that statutory intervention has taken place principally designed to strengthen the process of collective bargaining and industrial relations or to serve as substitutes for non-existent or non-functioning collective bargaining.

Under Nigerian Labour Law, the most important step in the collective bargaining procedure is for the employer or the employers' association to recognise the trade union as a bargaining agent for the employees within the bargaining unit, in relation to terms and conditions of employment. Section 24 of the Trade Unions Act provides that for the purposes of collective bargaining all registered Unions in the employment of an employer shall constitute an electoral college to elect members who will represent them in negotiations with the employer. Similarly, for the purpose of representation at Tripartite Bodies or any other body the registered Federations of Trade Unions shall constitute an electoral college taking into account the size of each registered Federation, for the purpose of electing members who will represent them. Where a trade union is recognised, the next step is for a recognition agreement to be drawn up to determine how the negotiations will be conducted, the composition of the machinery and other procedural matters.

Once a trade union has been recognised and a recognition agreement is drawn up between the parties bargaining can then proceed as provided by the law. In this regard, the Wages Board and Industrial Councils Act 1990 18 provides for three bargaining fora in Nigeria. The three fora have appropriate wages and

conditions of service as their main objective. Bargaining can be effected by Industrial Wages Boards, National Wages Board and Area Minimum Wages Committees or by Joint Industrial Councils (Okene, 2011)

A perfect model of collective bargaining is that both sides of industry are allowed largely to determine the scope of relations between them. The state is expected to only facilitate this process. Therefore, laws are provided precisely for that. However, while the laws are expected to facilitate settlement of disputes, in feeling of freedom of Association and of democracy, in many cases, they are not.

Labour movements, the world over, aim at addressing the needs of the working class, while employers of labour are primarily concerned with maximising profits. The existence of these two interest groups in an industrial establishment has often resulted in trade disputes. Quite often, the disputes are resolved on the basis of compromise, while many others end in lock-outs, work-to-rule and strikes. The Nigeria Labour Congress (NLC) and the Trade Union Congress (TUC), the two main central labour organisations in the country, had in the past organised and led Nigerian workers on strikes over issues they claimed were of public interest. But recent strikes by workers in some sectors of the economy have raised the question over the rationale of using strike as an instrument for settling industrial dispute. Strike should be used as a last resort in settling industrial disputes, after all other avenues of negotiation had failed (Elele, 2008).

#### IV. PARTIES AND THEIR ROLES IN COLLECTIVE BARGAINING

There are usually three parties in collective bargaining which include:

Workers or their representatives for example, the Trade Unions; workers or their representatives (collate collective demands of workers, represent the interests of workers in the Collective Bargaining processes oversee the implementation of Collective Agreements. Employers or their representatives, for example Employer Association. The employers may be government for public sector or private employer. (represent the interest of the employers against the

demands of the workers, implement Collective Agreements). The third party is usually the government agencies or ministries such as the Ministry of Labour or the Industrial Arbitration Panel (IAP). Government agencies come in if there are needs for interpretation of clauses or resolutions of conflicts arising out of the process of Collective Bargaining. Protect the interest of the Public and serve as the impartial arbiter in case of disputes. It should be noted that usually, the workers/their representatives and employers/their representatives are consistently visible in the collective bargaining processes.

#### V. COLLECTIVE BARGAINING IN THE PUBLIC SECTOR

The practice of industrial relations as a discipline and that of collective bargaining in particular emanated from the private sector the world over. Thus, much of the practices of public sector collective bargaining are modelled after the private sector collective bargaining. In Nigeria, the obverse is the case as collective bargaining gained its root in the public sector owing to the near absence of private sector at the turn of the century (Fashoyin, 1992).

However, in Nigeria, the public sector pays lip-service to the collective bargaining machinery. Governments at all levels (Federal, State and Local) have continued to set aside collective bargaining and to give wage awards to score political points in spite of its commitment to the ILO Convention 98 to freely bargain with workers. The State or the government in the course of regulating wages and employment terms and conditions revert to the use of wage commissions. Thus, wage determination is by fiat. This preference for wage commissions can at best be regarded as a unilateral system as collective bargaining is relegated to the background. Wage tribunals or commissions offer little opportunity for workers contribution in the determination of terms and conditions of employment and can hardly be viewed as bilateral or tripartite. Thus, the State preference for wage commissions is anti-collective bargaining.

In spite of Nigeria's commitment to conventions of the ILO with particular reference to such conventions as 87 of 1948 and 98 of 1949 which provide for freedom of association and the right of workers to organize and

bargain collectively. This stance of the State has stifled effective collective bargaining in the public sector. Chidi (2008) opined that the use of adhoc commissions in addressing workers' demands such as wage determination and other terms and conditions is unilateral and undemocratic as it negates good industrial democratic principles. Thus, it is antithetical to democratic values.

Collective bargaining in the public sector is carried out through the machinery known as National Public Service Negotiating Councils (NPSNCs). It should be noted that bargaining issues (scope of bargaining) in the public sector are spelt out in the constitution of the NPSNC. This constitution approximates the procedural agreement in the private sector and it is applicable to practically all employers in the public sector

Banjoko (2006) saw government as having arrogated to itself the role which both employers and employees ought to perform in industrial relations. Even though government as a state authority set up councils to negotiate for salary increases and other conditions of employment in the public sector, events in recent years have shown that government had taken over the system of wage fixing in Nigeria. Instead of allowing collective bargaining to prevail, government resorted to establishing wage tribunals as a means of fixing and reviewing wages.

#### VI. COLLECTIVE BARGAINING IN THE PRIVATE SECTOR

Collective bargaining in the private sector is used to conclude collective agreement, settle disputes or reach a common understanding on issues. Parties draw procedural agreements which determine what matters to negotiate at the central level through the National Joint Industrial Council or Joint Negotiation Council and those to be treated at the company level. For instance, the Main Collective Agreement (1990) between the Nigerian Employers Associations of Banks, Insurance And Allied Institutions (NEABIAI) and the Association of Senior Staff of Banks, Insurance And Financial Institutions (ASSBIFI) listed the following issues as subjects for negotiations: salaries, hours of work, leave and leave conditions, disciplinary procedure, principle of redundancy,

allowances, inconveniences, transport, housing, acting, relief – duty, utility, sickness benefit, medical scheme, principle of loan, lunch subsidy, membership of social clubs, entertainment expenses, burial expenses, staff conversion, equity participation and end of year payment.

At the company level, matters of mutual interest affecting the efficiency of the company and the welfare of employees are discussed by parties. On what constitute items for negotiation at the central level and those at company level, Imoisili (1986) observes that the items may not be necessarily mandatory or voluntary or exclusively managerial rather, it is the relative bargaining strength of the parties that determines items for negotiation and those for discussion. Furthermore, where the union is worried that its branches will not be strong enough to get a good deal from their respective employers at the company level, it will insist that such a matter be earmarked for negotiation at the central level. In similar vein, if the unions in the branches are strong and could handle thorny issues at their own advantage, they are given autonomy and as many items as possible are shifted to the branches or company level. Imoisili (1986) observed that in general, issues concerning wages, the major fringe benefits, working hours etc tend to be negotiated at the central level while items that are peculiar to each company (canteen facilities, shift arrangement, home ownership schemes etc) tend to be discussed at plant level. The procedural agreement also included checks and balances to safeguard the interest of both parties. To promote co-operation in labour matters among unions.

#### VII. PROCEDURES FOR RESOLUTION OF INDUSTRIAL DISPUTES

What then are the legal requirements for ensuring industrial harmony? The Trade Dispute Act, 1990, acknowledges that trade disputes are inevitable in industrial organisations. It, however, stipulates that the first step in resolving disputes is for both the workers and the management to enter into collective bargaining toward resolving any crisis internally.

The Act says that when bargaining fails, the matter should be taken to the Ministry of Labour for mediation within 14 days. The law further indicates

that if the mediation fails, the issue should be taken to a Conciliator (a superior officer in the ministry) who should resolve the dispute within 14 days.

It also stipulates that if the Conciliator is incapable of resolving the dispute within the period, the matter should be moved to the Industrial Arbitration Panel (IAP) where an award would be given. The award, it notes, involves the signing of a communique after an agreement that must be binding on the employer and the workers. The Act adds that if an issue arises as to the interpretation of the award, the minister or any party to the award may make an application to the National Industrial Court for a decision. The Act states that the decision of the Court is final.

A situation where workers fail to urge their employers to meet their demands for up to three years, such workers will have no option than to embark on strike under the situation. Whenever decisions reached after negotiations in a trade dispute are not implemented, workers will have no choice than think of an alternative which, will be embarking on a strike. It is often advised that the public and private sectors should effectively utilise the National Joint Industrial Court and the National Employers' Consultative Association (NECA) to manage industrial disputes (Elele, 2008).

#### CONCLUSION

This paper sets out to examine collective bargaining dynamics in the Nigerian public and private sectors. There is marked difference in the manner bargaining is practised in both sectors. It is a truism that trade unionism in Nigeria started first in the public sector but collective bargaining is known to be more pronounced in the private sector than the public sector. Government arrogation to itself of the task of wage fixation rather than allowing collective bargaining to perform this vital function has been adduced as one of the reasons for this trend.

Both Nigerian Labour law and International law recognise the right of workers to bargain collectively for the protection of the legitimate interests of workers. Indeed, that the ILO has declared its support for collective bargaining as a means through which the protection of the economic and social interests of

workers can be achieved. It is the failure of collective bargaining that justifies workers resort to industrial action.

#### RECOMMENDATIONS

The following recommendations are worthwhile.

- Government should set up machinery including labour leaders to review all past agreement reached and to come out with a concrete decision to implement them in order to avert future agitations and industrial unrest.
- Government should adequately put in place measures to meet workers demand before announcing any package for workers in order to avoid failure and disappointment that could look deceptive and insincere.
- Strike can reasonably be averted if the government and all parties in the bargaining process can be genuinely sincere to each other. Whenever agreement is reached, parties should be committed and faithful in keeping to their parts.

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