COLLECTIVE BARGAINING AND COLLECTIVE AGREEMENT IN NIGERIA

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ABSTRACT

Collective bargaining is very important in industrial relations, a proper understanding of the relationship between the employers and workers is necessary to foster growth and productivity. The need for harmony and a peaceful working relationship is important for economic growth, there is also a need to bridge the gap between the employers and the workers especially as it relates to distribution of resources, the issue has always been the outcome of bargaining as workers are most times at a cross road when it comes to enforceability of a collective agreement and it is based on this premise that this paper is developed. This research looked at the issues in collective bargaining in Nigeria, the history of collective bargaining, actors in collective bargaining, procedure in dispute resolution, stages of collective bargaining in Nigeria, enforceability of collective agreement and the challenges of collective bargaining. The paper also compared the practice of Collective Bargaining in other jurisdictions and that of Nigeria and part of the findings was that while collective agreements are not enforceable in Nigeria, in other jurisdictions collective agreement is enforceable so long as the parties intended for it to be binding. The paper also shows the lessons that Nigeria can learn from the other jurisdictions. It is based on these facts that the paper recommends that collective bargaining should be enshrined in the constitution as a right.It also recommends the enforceability of collective agreement to ensure industrial peace and harmony.

Keywords: Collective Bargaining, Collective Agreements, Industrial Relations

INTRODUCTION

Collective Bargaining is the joint determination by employees and employers of the problems of the employment relationship which includes wages, hours and overtime and workers retirement and so on.[1] Before the enactment of statute containing provisions on collective bargaining in Nigeria, collective bargaining was regarded as a manifesto devoid of sanctions. However, over time and with the recent laws on labour relations in Nigeria the status of collective bargaining has

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[1] Davis and M. Freeland, *Labour and the Law* (Sweet and Maxwell, 1983) 69.

been boosted, it is however not without hitches especially when it comes to the enforceability of collective agreement.[2]

HISTORY OF COLLECTIVE BARGAINING IN NIGERIA

The colonial government established Provincial Wage Committees across Nigeria in 1937. Their purpose was to conduct periodic reviews for daily paid employees in the public service. This was the first instance of joint negotiation in Nigeria. The Trade Unions Ordinance was passed in 1938 and the Railway Workers Union's success inspired workers in other government agencies and in business to organise unions and apply for registration. This gave them the right to bargain collectively with their employers or to seek redress for complaints about their pay or other working conditions. By the end of 1940, about 14 trade unions had been registered and they were representing 4,629 workers. In December 1941, the number of registered trade unions rose to 41 with 17, 521 members overall.[3] The salary and working conditions had generally been viewed favourably till the war broke out.

The African Civil Servants Technical Workers Union (ACSTWU), established in July 1941 was attended by representatives of the railway workers union, the Postal Workers Union and Public Works Department Workers union was created to protect the interest of African Technical Workers and establish better understanding between them and the Nigerian government.[4]

After its creation, the ACSTWU, in collaboration with the Nigerian Union of Railway Workers started to lobby for the grant of a 'cost of living' allowance (COLA) also called war bonus at the time. After much agitation, a Committee of Enquiry was set up to look into whether or not

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[2] A E Adegbite, '*Collective Bargaining and Collective Agreement*: A Critical Appraisal and Practical Dissonance in Collective Relations in Nigeria'
[3] T Fashoyin, *Industrial Relations in Nigeria*, (Longman Nigeria Ltd, 1992) 69.
[4] Ibid.

the rate of pay for labour was adequate, given any potential increase in the living expenses since the start of the second world war.

The government distributed a 'cost of living' allowance across the nation after the enquiry in accordance with the Committee's proposal. The Whitley Council system which had been in use in the United Kingdom was implemented in Nigeria in 1948 as a result of the general strike that had occurred in that country in 1945. The strike mostly affected the government's technical and industrial enterprises with the exception of critical services like power and the hospital. The Whitley Council System was implemented in response to the strike and the rising tension of trade unions.[5]

In essence, there were three Councils each serving senior, junior and industrial staff members. They were responsible for establishing the fundamental rules controlling things like hiring, working hours, promotions, discipline, pay. In the public sector they acted as a bargaining tool and dispute resolution tool. The Whitley Council was structurally distinct from the conventional negotiating apparatus in that it covered all federal, state and even local government personnel decisions were made by consensus and not by vote and those decisions were subject to the Governor's approval.

The Whitley system was abandoned by numerous government agencies due to a number of factors. Firstly, they were employed as advisory committees rather than as a negotiating body, secondly issues with indecision, red tapism, lack of representation on some sides and even lack of government backing arose. They became useless especially for public workers, decisions on pay and working conditions were typically decided by semi political wage commissions.

The need for a body that will serve as a negotiation medium was recognised by the legislators despite the failure of these Councils. The relevance of such a group as a voluntary

[5] E E Uvieghara, *Trade Unions Law* (Ethiope Publishing Company, 1996) 88.

mechanism to promote collective bargaining was acknowledged by the Wages Board and Industrial Councils Act of 1973.

Employers and employees in certain industry may organise a combined industrial council under section 18 of the Wages Board and Industrial Councils act of 1973 in order to negotiate and come to agreement on issues that they both deem appropriate. The Councils were not used for negotiations but workers became more aware of the advantages of collective action, hence collective bargaining gradually gained more prominence in both the private and public sectors of the economy.

ACTORS IN COLLECTIVE BARGAINING

The term 'Actors in Industrial Relations' was first used by John Dunlop in his work 'Industrial Relations System' published in 1958. He proposed that certain actors, contexts and ideology are combined to establish rules to govern the actors at the workplace. According to Dunlop, there are three actors; that is, the employers, labour unions and government as the key actors in a modern industrial relation system. He argued that the actors cannot act independent of each other. Dunlop views industrial relations as a sub system of a wider society or entire social system.[6]

1. THE ROLE OF TRADE UNIONS IN COLLECTIVE BARGAINING

Where there is a dispute, the trade union plays a major role in settling such dispute by standing as a representation during negotiations. Trade unions bargain on behalf of the workers on issues that are usually resolved through collective bargaining like matters that arise daily within the workplace affecting particular sections of the workforce and terms and conditions of employment affecting the whole workforce. It is worthy of note that a collective bargaining agreement cannot accomplish by contract, what the law prohibits. The unions help the workers negotiate some benefits like higher pay, job protections and a collective voice against oppression, exploitation and intimidation by the employers.

[6] T A kochan, *Introduction to Collective Actors in Industrial Relations: What Future?* (Verlag Barbara Budrich 2004) 6.

They promote and protect the interest of the employees especially during the process of bargaining. The unions help to advocate for worker friendly policies and legislations at the federal level. The core of collective bargaining is the negotiating process, the unions represent the employees during negotiation and after negotiation if an agreement is reached by both the union and the employer then the agreement becomes a collective agreement. They also represent members during disciplinary or grievance hearing. The unions help to present a collective, strong and united front in collective bargaining activities. The unions help to protect their members help unjust, inhuman and unfair treatment from their employers by being a voice of the employees. The unions negotiate with the employers in order to foster a peaceful and harmonious relationship between the workers and their employers.

2. THE ROLE OF THE EMPLOYERS OR THE EMPLOYERS' ORGANISATION IN COLLECTIVE BARGAINING

The employers or their organization are important when it comes to bargaining. The employers protect their interest during the bargaining process, the organization acts like a union for the employers. The employers through negotiation determine the terms and conditions of employment, they are involved in the bargaining process to strengthen their position as it relates to labour matters and also conclude on collective agreement.The employers or their organization liaise with the workers' union to initiate steps that would make bargaining hitch free.

3. THE ROLE OF THE STATE IN COLLECTIVE BARGAINING

The State plays a major role in collective bargaining, from making policies that will be favourable to the public to ensuring that conflicting parties settle their industrial disputes to protect public interest. The warfare between the collective labour and employers is considered not to be in the interest of the public. Therefore, the government must intervene through the law and policies to balance the conflicting interest of labour and management and to minimize the adverse effect of the industrial conflict on the economy. This is where the State or government comes in as an actor in collective labour and industrial relations. The State acts as a regulator of industrial relations and as an arbiter in case of a dispute. In Nigeria generally, asides being an arbiter, the State (government) is the highest employer of labour and must through negotiations determine the terms and conditions of employment.[7]

The legal framework within which industrial relation must function is determined by the government, an example is the working hours for employees, the safety of an employee and his work place and so on. The State also sets guidelines and standards for collective bargaining. It ensures that both parties engage in the bargaining process in good faith and adhere to principles of fairness and integrity, this is however not the case in Nigeria as the government usually makes agreement with the unions with the intention of not fulfilling their end of the agreement. The State is not strictly speaking a single actor but is comprised of different agencies that has its own functions. The State is comprised of the different agencies of government that carry out the will of the government and implement its policies.[8]

4.

5. PROCEDURE IN COLLECTIVE BARGAINING

Collective bargaining as we have discussed earlier is not alien to Nigerian jurisprudence, trade disputes are inevitable in industrial relations hence the Trade Dispute Act[9] is the statute that contains the requirement for ensuring industrial harmony through collective bargaining in Nigeria. These statutes do not however address the practical aspects of collective bargaining and agreement but only addressed the procedure when negotiation has failed.

The Nigerian law acknowledges the role of voluntary grievance procedure in settling trade dispute in collective bargaining, parties generally adopt the regular procedure for negotiation hence the general procedure for negotiation apply here. The grievance procedure is a kind of charter, a self-imposed bilateral treaty between union and management whereby the parties undertake to resolve all grievance through the stated procedure.[10] This grievance procedure which is also referred to as

[7] T Fashoyin, *Indusrial Relations in Nigeria* (Longman Publishers Nig Ltd 1992) 311.
[8] D Jeong, *'The Role of the State in Industrial Relations'* (2010).
[9] Trade Dispute Act Cap T8 Laws of the Federation of Nigeria 2004.
[10] R. Idubor, Trade Disputes Settlements Machinery in Nigeria: The Need for a Review (2006)(6) *University of Benin Law Journal.*

the internal machinery procedure is in conformity with the requirements in section 4(1) of the Act[11] which provides that any dispute arising in the industry must first be settled under internal machinery and only when this fails can the statutory approach be adopted.

In a trade dispute where decisions reached after negotiation are not implemented, the workers will have no choice than to think of alternative to have their needs met.A situation where only workers fail to urge their employers to meet their demands for a certain number of years, such workers will have no option but to embark on a strike.

7. STAGES OF COLLECTIVE BARGAINNING

The first stage which is the consultation or preparatory stage covers necessities such as issues the union want to bargain on, their needs and what they expect the outcome to be, engaging an expert for document review, preparation of notices, formal request for a meeting and so on. In the case of a trade dispute, the law enjoins parties to settle their dispute amicably.[12] Where there is an existing agreement between the parties on the method to adopt for amicable settlement of dispute, it is the duty of the parties to first try to settle using the agreed method. In this case, the agreement may stipulate certain steps to be taken by the parties before a meeting can be instituted such as sending a notice to the other party and hinting on settlement of the dispute.

The second stage is the first meeting between the parties, where both sides present their cases and seek for a way forward, then another meeting is held and at this stage the meeting is intense since parties are already familiar with the matters for discussion. Where parties are able to have a successful negotiation and agree, then, the agreement between both parties is put into writing and all parties concerned sign the agreement. The law in Nigeria expressly states that the collective bargaining agreement must be in writing.[13]

[11] TDA 2004 (n 9), s 4 (1).
[12] Ibid, s 4.
[13] TDA 2004 (n 9), s 4.

The next stage is the implementation stage where parties are to implement the terms agreed upon, this stage is usually where the problem lies especially as collective bargaining agreement are usually referred to as gentlemen agreement devoid of any sanctions. There are situations where the government reneges on agreement they made and have totally neglected to implement the agreement they signed. This is the case of the Academic Staff Union of Universities on the agreement they entered into with the Federal Government in 2009 which has not been implemented and this has resulted to incessant strike action because the government has failed to honour the agreement. The fact that the supreme court has held that collective agreements are mere gentleman's agreement has made the enforceability of collective agreement a *herculian* task.

Where there is no agreed means of settling trade dispute or the application of the means of settling trade dispute has failed in Nigeria, the parties shall within seven days of the failure (or if no such agreement, date on which the dispute first arises) have a meeting with a mediator mutually agreed upon by the parties with a view to amiably settling the dispute.[14] If the dispute is not settled within 7 days of the date on which the mediator is appointed, the dispute shall be reported to the Minister in writing within 3 days of the end of the 7 days.[15] The report shall be in writing, disclosing the points of disagreement and the steps already taken by the parties to reach a settlement.[16]

The Minister may appoint a conciliator who shall inquire into the causes and circumstances of the dispute and by negotiating with the parties, endeavour to bring about a settlement of the dispute.[17] If the dispute is settled within 7 days of his appointing a Conciliator, then a memorandum of report stating the facts of the terms of settlement will be sent to the minister, if a settlement is not reached within 7 days of the appointment, the conciliator shall report same to the minister.

[14]Ibid, s 4(2).
[15]Ibid, s 6(1).
[16]Ibid, s 4(2).
[17]Ibid, s 8(1) & (2).

The Minister, within 14 days of the receipt of the report stating that mediation has failed shall refer the matter to the Industrial Arbitration Panel which shall constitute a tribunal for itself.[18] The tribunal by virtue of section 13 of the Act shall make its award within 21 days of it been constituted or such longer period as the minister may allow in the circumstance. The Board of Inquiry, although, not frequently used is usually another means to resolve trade disputes, where a dispute exist, the minister may cause an inquiry to be made into the circumstance and cause of the dispute by a Board of Inquiry which shall make inquiry into the matter and report to the Minister its findings.[19]

The disputants without prejudice to the afore mentioned procedure, have the right to apply to the National Industrial Court directly. They do not need the input of the Minister but either party can approach the NICN to appeal the decision of the Arbitration Panel in trade dispute matters. [20]The Jurisdiction and powers of the NICN, by virtue of section 254 C (4) of the 1999 Constitution (as amended) is the court vested with the rights to entertain any application for the enforcement of the award, decision, ruling or Order made by any Arbitral Tribunal or Commission, Administrative Body or Board of Inquiry relating to, connected with, arising from or pertaining to any matter within the jurisdiction of the court. The NICN has the power to entertain matters arising from employment or the interpretation of a collective agreement and as such where parties are not comfortable with the outcome of an Arbitration Panel they can approach the court to seek redress. This was the decision of the court in *Hoteland Personal Services Staff Association v Capital Hotels Plc & Ors.*[21]The NICN is also enjoined by the Constitution to follow international best practices in matters relating to labour in Nigeria.

[18] TDA 2004 (n 9), s 9.
[19]Ibid., s 32(1).
[20] National Industrial Court Act 2017, s 7.
[21] Unreported, Suit No. NIC/2M/95.

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9. ENFORCEABILITY OF COLLECTIVE BARGAINING AGREEMENT IN NIGERIA

Collective bargaining was seen as a gentleman's agreement at common law and therefore not legally enforceable. It was seen as a simple agreement which lacks the parties intention to create a legal relation which is an important element of creating a valid contract and offends the principle of privity of contract as it is usually between an organization or association of employers and trade unions hence the individual employee is not privy to the agreement.[22] This is because generally, a contract cannot be enforced by a person who is not a party to it, even if the contract is made for his benefit and purports to give him the right to sue upon it. The first case where the question came up on whether or not collective agreement is a contract was the case of *Ford Motors Co Ltd v Amalgamated Union of Engineering and Foundry Workers.*[23]The main issue in the case was whether the parties intended for the agreement made in 1955 to be legally binding. Geoffrey Lane J who presided over the case held that there was 'a climate of opinion adverse to enforceability' of collective agreements. Parties to the agreement never intended to be bound by the agreement and hence the plaintiffs case failed.

At common law, before a contract can come into effect, the parties must intend to create legal relations, where the parties expressly state to be bound by such agreement then, the court will give effect to it. However, such intentions were rare which made the agreements not binding.[24]Nigeria being a common law country has consistently followed the common law doctrine of privity of contract. Due to the absence of privity of contract, collective agreements are not enforceable. The courts are also weary of enforcing collective agreements except where they are expressly incorporated in individual contract of service. This was the decision of the court in *Union Bank Nig Ltd v Edet.*[25] This position of law is no longer followed *stricto sensu* as steps have been laid down by statute that a collective agreement must pass through before it becomes binding on

[22] E Chianu, *Employment Law* (Bemicov 2004) 75.
[23] (1969) 1 WLR 339.
[24] Norman Selwyn 'Collective Agreements and The Law' (1969)(32) *Modern Law Review,* 377-396.
[25] (1993)4 NWLR (PT 287) 288.

the parties concerned.[26]In recent times, particularly with the powers conferred on the National Industrial Court by the Constitution, the court has been proactive in interpreting and enforcing collective agreement. Section 254C (1)of the Constitution[27] confers exclusive jurisdiction on the NICN on civil matters relating to interpretation and application of any collective agreement.

The enforceability of collective agreement used to be by only members or parties to the agreement (Trade Union representatives, and the employer or Minister of Labour) who could activate the interpretative Jurisdiction of the NICN. This is mainly because a party who is not a signatory to an agreement could not bring an action or seek redress on a contract that he is not a party to. However, the court has moved from that and has given judgments in cases where union members who are not parties or signatories to the agreement come before it, this is in tandem with the ILO position that collective agreements are binding on their signatories and all persons on whose behalf the agreement is entered.[28]

Enforceability of collective agreement in Nigeria is a problem. There are instances where the court had declared the agreement as mere gentleman's agreement and except where it has been adopted as a part of the terms of employment is not enforceable. This was the decision of the court In *BPE v Dangote Cement Plc.*[29] Reiterating the decision in *Union Bank v Edet*, while there are instances where the NICN has tried to rely on the ILO position that collective agreements are binding on their signatories and all persons on whose behalf the agreement is entered. The court in *Dennis & 1677 ORS v First Franchise Service Ltd and Ors*,[30]pointed out that section 254C (1) of the Constitution cannot authorize the court to interpret and apply collective agreements if the intention is not that collective agreement should be binding and enforceable. The court went further to say that the rule which saw collective agreement as a gentleman's agreement was a common law rule and had caused hardship on workers hence the constitutional provision allowing the court to interpret collective agreement. This may however create problems especially when it comes to the doctrine of *stare decisis*. the supreme court had applied the common law rule in the case of

[26] TDA 2004 (n 9), s 2.
[27] Constitution of the Federal Republic of Nigeria 1999 (as amended) (1999 CFRN).
[28] Collective Agreements Recommendation 91.
[29] (2020) 5 NWLR (PT 1717) 322.
[30] Unreported, Suit No NICN/LA527/2013 delivered on February 6, 2019.

BPE v. Dangote Cement Plc[31] where the court stated that collective agreements are not enforceable except they have been incorporated by the parties and that enforcement of such an agreement is only by negotiation between the parties to the agreement or a strike action should the need arise. This decision points to the rule that collective agreement must be incorporated into the terms of employment before it can become enforceable. Collective agreement has been said not to be coterminous with a valid contract even though the terms of the agreement are written, reason being that collective agreements are known to cover many kinds of agreements on topics and matters that are not really amenable to be described as contracts, not having created legal relation. The court in *Osoh v. Unity Bank Plc*[32] stated the rationale behind the attitude of the court in the enforcement of collective agreement, it was stated that the courts show a reluctance to enforcing collective agreements on grounds of privity of contract, that the terms of the agreements are not negotiated by any of the parties in their individual capacity for their sole benefit hence and such individuals were not privy to the agreement.

The general rule is that collective agreements are gentleman's agreement and not justiciable and are devoid of legal sanctions this was also stated in *Nigerian Arab Bank ltd v. Shuaibu*[33], the court went further to say it was a product of trade union pressure. Collective agreements are treated as agreements without any legal significance until they are translated into contractual relationship between the employer and the employee by incorporating the agreement into the contract of employment.[34]

Collective agreements between employer and employees or between an employer and union of employees are not justiciable except where it is incorporated expressly or by necessary implication into the contracts of employment of the employees. Where the terms of agreement are incorporated into the terms of agreement, it becomes binding on both the employers and the workers and a breach of the terms is a breach of contract of employment. This means that failure to act in strict compliance with a collective labour agreement is not justiciable, its enforcement lies

[31] (n33).
[32] (2013)9 NWLR (PT1358) 9
[33] (1991) 4 NWLR (PT 186) 450
[34] Elizabeth A. Oji '*Employment and Labour Law in Nigeria* (Lagos: Mbeyi & Associates Nig Ltd) p. 226

in negotiation between the employers and the union, this is the reason why we have incessant strike actions in Nigeria which the workers use as a means to press home their demands. This is contrary to the provisions of the ILO of which Nigeria is member that collective agreement is binding on parties.

The third alteration of the 1999 constitution (as amended) expanded the jurisdiction of the NICN and gave it exclusive jurisdiction to interpret any question relating to or the application of any collective agreement and other labour related matters. This has made the enforceability of collective agreements go through a lot of changes aimed at bringing it to international standards. These changes are still subject to the court's interpretation especially as there is no statutory provision on the enforceability of collective agreement. The NICN by virtue of the third alteration now regards collective agreements as binding on the parties regardless of whether it is incorporated into the contract of employment once the party can show that he is a member of the said trade union.[35]This is in line with the ILO's convention on the right to bargain.

10. CHALLENGES OF COLLECTIVE BARGAINING AND COLLECTIVE AGREEMENT IN NIGERIA

11. Refusal to Accede to Unions Demand/Failure of Negotiation

In Nigeria, the unions or workers requests for increased pay, benefits or good working conditions are usually unmet, unions constantly demand and bargain for better terms of employment in order to meet with the rising inflation in the country but their demands are usually not considered. The main purpose of collective bargaining is to negotiate favourable terms of work but this is not usually the case in Nigeria. Workers usually resort to industrial action to accomplish their goal where the employers or government refuse to negotiate or meet their demands.

The Academic Staff Union of Universities (ASUU) is an example of a union that has frequently demanded for the implementation of the collective agreement by the government and

[35] Gbadegesin v. Wema Plc (2009) 15 NLLR (Pt 40) 1.

has embarked on several strikes just to get their demands met. This has changed the industrial relations in Nigeria to 'strike and let the government come and negotiate' which is the opposite of what collective bargaining is about, at this point it is clear that strike action and other industrial actions is the language the employers understand especially the government and the available means to bring parties to negotiate or for parties to discuss their grievances.

12. Refusal to Recognise a Union or Workers Group as a Party During Bargaining

In order to engage in collective bargaining, a trade union or other workers' organization must be recognised. In *National Union of Gold, Silver and Allied Trade v. Albury Brothers Ltd,*[36]it was decided that recognition required both a discussion and a negotiation ready attitude. In cases where recognition is revoked, the union will be unable to negotiate on behalf of its members with the employer or group of employers which usually prompts the unions to take industrial action. In the case of *Bemil Group Ltd v. National Union of Hotels and Personal Services Workers*[37]the management of the company had refused to recognise and allow its workers to belong to the union, the matter had gone to arbitration but the appellant displeased with the outcome went to court, NICN sitting in Lagos stated in its judgment that the law that grants compulsory recognition of trade unions must apply to the employees of the Bemil company.

13.

14. Employers Failure to Implement Collective Agreement

The failure to pay wages or failure to enforce collective agreement among other things, is the underlying cause for concern for most workers in Nigeria. The fact that employers fail to uphold and abide by the terms of the agreement even though one has been properly entered into between the parties after negotiations usually forces the workers to take matters into their own hands by embarking on a strike action. A strike employed as a tool for collective bargaining is one that

[36] (1979) ICR 84
[37] Unreported (Suit No. NIC/13/2006)

forces an employer or workers to accept or reject terms of employment and physical conditions of work.

The Court stated this in *Union Bank v. Edet*[38]that whenever an employer ignores or breaches a term of agreement, resort could be had by negotiation between the union and the employer and ultimately to a strike action should the need arise. Where the workers have been promised that their entitlements would be paid and such is not paid, the workers would not be expected to suffer in silence hence the industrial action to uphold the earlier reached agreement between the parties.

The ASUU strike of 2022 demanding for the implementation of the agreement signed with the government in 2009 is an example, the government refused to implement the agreement both parties had agreed, the union went on strike and the strike lasted for eight months subsequently the matter went to National Industrial Court, the court in validating the no work no pay the government had implemented against the members asked the workers to call off the strike immediately.[39]

15. **Absence of Budgetary Provision**

The government typically engages in collective bargaining without proper planning and adequate financial provision for the process, they hastily try to bargain with the unions when they see that the unions are about to embark on a strike, this they do to protect the economic activities of the country but after negotiation, implementing the terms agreed on becomes a huge problem. This also relates to the private sector, no plans made for workers or their unions and they only try to bargain when there is an industrial dispute.

The following factors also pose as a challenge to collective bargaining in Nigeria, they include:

Weak Unions

[38] (n33).
[39] Premium Times, May 3 2023.

Collective bargaining process mainly depends on the strength of unions. Trade unions of today are marked with inter and intra-union rivalry, weak financial position and non-recognition by their employers. Weak trade unions cannot initiate strong arguments during negotiations, an example is the disagreement usually seen by members of the Nigeria Labour Congress, where some unions embark on strike to enforce their agreement while others refuse to show solidarity.

Absence of Political Will

The intention of the draftsmen saddled with the responsibility of drafting any legislation relating to tradedispute is the implementation of every collective agreement once agreed on. The implementation of suchduly executed agreement is the duty of the employer. Employer as referred to in this work may be thefederal, state or local governments as well as their ministries, departments or agencies and also private employers. It is onlywhen such agreement is implemented that the employees can be said to have benefited from theproper representation of the union they belong. Where the agreement is not implemented the employeesmay begin to lose their confidence in the leaders and members of their unions and begin to suspect thatthey might have been compromised by the employers during negotiation.It is very common to observe that employers in Nigeria lack the will and attitude towards smooth,effective and prompt implementation of concluded collective agreements. This is very common to bothprivate and public sectors. As a result of this lack of political will, lack of transparency and insincerity on the part of the authorities saddled with the responsibilities of ensuring that collective agreement is implemented, it becomes a great challenge.

16. COMPARATIVE ANALYSIS

17. Britain

In Britain, voluntarism is the key framework for effective collective bargaining. The Trade Union and Labour Relations (consolidation) Act 1992[40]is the law governing collective bargaining in Britain. This Act was a major codification of labour relations in the unions recognized by the employers are the unions for bargaining decent wages, the terms and conditions of employment,

[40] S. 70 (1).

increment and so on. Britain like Nigeria does not have a particular statute for collective bargaining but they have the Trade Union and Labour Relations (consolidation) Act which covers the workers right to negotiate and bargain collectively. In Britain, the terms negotiated and agreed on would only become enforceable on the bargaining parties if it is in writing and stated expressly that parties intend for it to be legally enforceable. The Act does not provide for the obligation to bargain but it facilitates collective bargaining, leaving the remaining duties to the bargaining parties. The Act provides for a wide range of negotiable matters to be covered during the bargaining process[41]unlike in Nigeria where the bargaining issues are subject to restrictions.

There has also been a shift form the common law rule of unenforceability of collective agreement through legislation in Britain, a third party can now enforce a contract either where his name is mentioned in the contract or he stands to benefit from the contract, a collective agreement is presumed enforceable where it is in writing and provides expressly that parties intend for it to be legally binding. In Nigeria, the collective bargaining agreement is only binding where the terms of the agreement are incorporated into the contract of employment or implied from the conduct of the parties for it to be enforceable.

18. **South Africa**

The South African legal framework and its labour relations framework are amongst the most progressive when it comes to labour relations. The south Africa constitution entrenched the right of workers to form unions and to engage in collective bargaining.[42]The law that governs labour relations in south Africa is the Labour Relations Act. This law recognizes and provides the legal basis for the negotiation, conclusion and enforcement of collective agreements. The act also provides a framework for which collective bargaining can be carried out. Collective bargaining is also contained in constitution of South Africa, bargaining councils are also created to help resolve industrial disputes through bargaining and other labour related matters. Collective agreements are enforceable in South Africa, the Labour Relations Act provides for its enforceability and the bargaining councils are responsible for its enforcement. Where parties make an agreement, that

[41] S. 181, Trade Union and Labour Relations (Consolidation) Act.
[42] S. 23 (5).

agreement becomes binding on all workers in the sector for which the agreement was made whether they were a party to the agreement or not. South Africa also has a Commission for Mediation and Arbitration (CCMA) which is saddled with the responsibility of settling labour disputes. South African law on collective bargaining is in line with global best practice and the ILO recommendation that collective agreements should be enforceable.

Collective Bargaining is a fundamental right and rooted under the ILO conventions and was also reaffirmed as such in the 1998 ILO Declaration on Fundamental Principles & Rights at Work. The ILO recommends that collective agreements should be binding on parties and those on whose behalf it is made and cannot be contracted out. It should be made justiciable where parties can enforce the terms of agreements through legal means if they so wish, this is however not the position in Nigeria, collective agreements become binding and enforceable if it is contained in the contract of employment.

19. **Lessons for Nigeria**

1. The bargaining council in south Africa makes bargaining easy, the council is an independent council that intervenes in labour related matters and also negotiates with the union and not the government of the day. The CCMA in South Africa also places a strong emphasis on mediation and arbitration as a means of settling disputes instead of resorting to strike actions.
2. In South Africa, when bargaining parties agree on terms of employment, they are bound by it, the right to bargain is a right all members belonging to a union have.
3. In these jurisdictions, the right to bargain is given statutory flavour while in Nigeria there is neither a statutory law on collective bargaining nor the enforceability of collective agreement.