



AN APPRAISAL OF COLLECTIVE BARGAINING AS A MEANS FOR THE SETTLEMENT OF LABOUR DISPUTES IN NIGERIA

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ABSTRACT

The employer-employee relationship is characterized by dispute, as the employers want to improve productivity and turnover while the workers desire better salaries and good working conditions. This competitive quest always results in labour disputes. This paper is an appraisal of collective bargaining as a means of settlement of labour disputes in Nigeria. For sustainable industrial peace and development in Nigeria, hence, suitability of the institutional mechanism for collective bargaining and examination of the enforceability or otherwise of collective agreement are the objectives of this study. Collective bargaining is the process of negotiation on the terms and conditions of employment between an employer or employers' organization and workers or workers' organization. This research work adopted a doctrinal research methodology where statutes and case laws relating to the areas of research were analyzed. Nigeria is a member of the International Labour Organisation and section 254C (b) and (e) of the Constitution of Federal Republic of Nigeria 1999 (as amended) enjoins the National Industrial Court to interpret and apply international conventions, treaties and protocols relating to industrial relations and workplace and apply international best practices and standards yet Nigerian Courts still hold the view that collective agreement is not enforceable except it is incorporated in the contract of employment. It is recommended that the National Assembly should enact legislation to regulate the practice of collective bargaining, which should establish an independent institution with legal personality to be known as the 'Collective Bargaining Commission' to coordinate, manage and supervise collective bargaining in Nigeria.

Keywords: Collective Bargaining, Labour Dispute and Collective Agreement

INTRODUCTION

Like in every human relationship, dispute is inevitable in employment relationships. As the employer seeks improved productivity and to maximize profit, the employees on their part want better salaries and good working conditions. These competitive quests often lead to labour disputes. There is no gainsaying that labour dispute is a common phenomenon in both public and private sector employment relations. The International Labour Organisation (ILO) has adopted a Convention which stipulates a framework for member states to enact laws that would foster



dispute-resolution mechanisms.¹ It is in response to the disputes that the government as the regulator of industrial relations, developed some mechanisms for speedy and amicable settlement of labour disputes. Collective bargaining is one of these mechanisms.

Effective collective bargaining builds trust, fosters peace and mutual respect between employers of labour, employees and their unions and also contributes to stable and productive labour relations. Again, collective bargaining is important in employment relations as it is a channel through which the voices of workers are heard which in turn enhances workers' well-being, and institutionalizes the resolution of disputes. The process of collective bargaining creates opportunities for workplace participation and for employees' voices to be heard.²

Through collective bargaining, the employer and workers' union set out the process or means of resolution of internal disputes. Sometimes, the internal dispute settlement must be exhausted by the labour and management before embarking on a strike or lockout. Therefore, collective bargaining aims to promote industrial peace, harmony, economic growth and stability in the country.³

To resolve labour disputes to ensure stable development in the economy and encourage industrial peace and harmony, employers and workers are encouraged to resort to collective bargaining as a means of settling their disputes. Despite these measures, there have continued to be incessant labour disputes interfering with industrial peace and sustainable development in Nigeria. This research work seeks to appraise collective bargaining as a means of settlement of labour disputes in Nigeria.

CONCEPTUAL CLARIFICATION

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¹ International Labour Organisation on Collective Bargaining Convention No. 154, 1981, Article 2

² EO Olowu "Dispute Settlement" *Law and practice industrial/labour practice* (Nigeria institute of advance legal workshop; Lagos, 1997) 8-10

³ Y.M. Yusuf, Legal aspect of labour relations in Nigeria, *International Comparative Law Quarterly*, supplementary publication 1965(2) 94.



Dispute: The word “dispute” is defined as an argument or a disagreement between two people, groups, or countries, a discussion about a subject where there is disagreement.⁴

Labour Dispute: According to Black’s Law Dictionary labour dispute is a controversy between an employer and its employees concerning the terms or conditions of employment of those who negotiate or seek to negotiate the terms or conditions of employment.⁵ Labour dispute means a dispute between a trade union or group of employees and an employer or employers’ organization which relates to:

- a. The interpretation or application of a contract of employment, a collective agreement or an arbitral award.
- b. A change of the existing terms and conditions of employment or work.
- c. Any other matter that may be subject to collective bargaining.⁶

Section 48 (1) of the Trade Disputes Act, 2004 defined trade disputes to mean a dispute between employers and the workers or between workers, which is connected with employment or non-employment or the terms of employment and/or physical condition of work of any person. Under the National Industrial Court Act, Trade dispute has the same definition above but it includes ‘conclusion or variation of collective agreement and alleged disputes.’⁷ Under the Trade Union (Amendment) Act 2005, dispute means any labour dispute arising from the negotiation, application, or interpretation of a contract of employment or collective agreement under this Act or any other enactment or law governing matters relating to terms and conditions of employment.⁸

It is worthy of note that the term labour dispute is often used interchangeably with trade dispute. However, labour dispute is a broader term which refers to a dispute between workers and

⁴ A Hornby Oxford Advanced Learner’s Dictionary (10thedn, Oxford University Press 2020) 423

⁵ BA Garner, *Black’s Law Dictionary* (10thedn, Thomson Business 610, Upperman drive, St. Paul United States of American)

⁶ ILO Draft for member country, [www.ilo.org>dialogue>ifpdial](http://www.ilo.org/dialogue/ifpdial), accessed 5/3/2025

⁷ National Industrial Court Act 2006, S 59

⁸ Trade Union (Amendment) Act 2005, s.9



employers in a dependent or subordinate relationship, whether at an individual level or collective level.⁹

Collective Bargaining

The concept of collective bargaining is derived from a combination of two words: ‘Collective and Bargaining’. Collective refers to group action through representation. From a 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 represents the Union. Bargaining as a term is synonymous with negotiation. Collective Bargaining involves a process of negotiation and conclusion of collective agreements on the demands of workers concerning certain improvements in the terms and conditions of employment.¹⁰

Collective bargaining was coined in 1891 by Beatrice Webb in her book on comparative movement in England.¹¹ Although collective bargaining had undergone considerable refinement, Sydney and Beatrice Webb also viewed the process ultimately as a compromise between the claims of the employers and unions to exercise unilateral control over the work situation.¹²

By bargaining collectively with management, organized labour seeks to give effect to its legitimate expectations that wages and other conditions of work should be such as to guarantee a stable and adequate form of existence and as to be compatible with the physical integrity and moral dignity of the individual, and also that jobs should be reasonably secure.¹³

The principal purpose of collective bargaining is to settle terms and conditions of employment. An improvement in the terms and conditions of workers’ employment is the chief task of trade unions, and collective bargaining is the major means whereby trade unions can ensure that the terms and conditions of employment given to their members are adequate. The primary aim of workers engaging in collective bargaining has been expressed thus:

⁹ INE Worugji, "Institutional Mechanism for the settlement of labour dispute in Nigeria; The prospect for industrial peace", *Nigerian Journal of Labour law and industrial relations* (2003) 2 (1), 47, 51-52.

¹⁰ OVC Okene, *Labour Law and Industrial Relations in Nigeria* (4th edn. Faculty of Law, RSU, 2019) 214.

¹¹ Dafe Ootobo, *Industrial Relations theory and controversies*, (Malthouse Press Limited 2005), 155

¹² Ibid

¹³ P. Davies, and M. Freedland, *Kahn-Freund's Labour and the Law*, (London: Sweet and Maxwell 1983), 69.



By bargaining collectively with management, organised labour seeks to give effect to its legitimate expectations that wages and other conditions of work should be such as to guarantee a stable and adequate form of existence and to be compatible with the physical integrity and moral dignity of the individual, and also that jobs should be reasonably secure.¹⁴

Collective bargaining is a process of negotiation on terms and conditions of employment between employers and employees.¹⁵ Collective bargaining means the process of arriving or attempting to arrive at a collective agreement.¹⁶ From the definition above, it is clear that collective bargaining may not necessarily lead to collective agreement as the bargaining process may end up in dispute or inconclusive.

Davey defined collective bargaining as a constitutional relationship between an employer entity (government or private) and labour organization (union or association) representing exclusively a defined group or employee of said employer (appropriate bargain unit) concerned with the negotiation, administration, interpretation and enforcement of written agreement covering joint understanding as to wages or salaries, rate of pay, hours of work and other conditions of employment.¹⁷

Collective Agreement: Collective agreement is defined as a contract between an employer and labour union regulating employment conditions, wages, benefits and governance.¹⁸ According to Worugji, collective agreement is the ultimate end of collective bargaining.¹⁹ Collective agreement results from successful collective bargaining. The International Labour Organization (ILO) defines collective agreement as all agreements in writing regarding working conditions and terms of employment concluded between an employer, a group of employers or one or more employers' organizations on the one hand and one or more representatives of workers, organization or in the

¹⁴ P. Davies, and M. Freedland, *Kahn-Freund's Labour and the Law*, (London: Sweet and Maxwell 1983), 69.

¹⁵ OVC Okene, 'The internationalization of Nigerian Labour law: Recent development in freedom of Association' *University of Botswana Law Journal* [2008] (7) 81;

¹⁶ Labour Act Laws of the Federation Cap L1 2004, s.91

¹⁷ HW Davey, *Contemporary Collective Bargaining* (5thedn, Eaglewood Cliff, New Jersey, 1972) 64

¹⁸ BA Garner, *Black's Law Dictionary* (10thedn, Thomson Business 610, Upperman Drive St. Paul, United States of America) 280

¹⁹ INE Worugji, *Modern Labour law in Nigeria* (Malthouse Press Limited, 2021) 326



absence of such organization, the representative of the workers duly elected and authorized by them in accordance with national laws and regulations.²⁰

Collective agreements refer to any agreement for the settlement of disputes relating to the terms of employment and physical condition of work concluded between an employer or group of employers and one or more trade unions or organizations representing workers.²¹ A collective agreement is an agreement in writing for the settlement of a trade dispute relating to terms of employment and physical condition of work and concluded between an employer or group of employers on the one hand and one or more trade unions representing workers on the other hand, and one or more organizations, representatives of workers or lawfully appointed representatives or anybody of workers on the other hand.²²

The collective agreement is a by-product of avoluntary negotiation between employers or employers' organizations and workers' organizations with a view to regulating the terms and conditions of employment.²³ It represents the agreements (contracts) reached between an employer and a labour union during the process of bargaining, which has been reduced into writing.

COLLECTIVE BARGAINING AND LABOUR DISPUTE IN NIGERIA

The term "collective bargaining" as earlier stated means a group action through representation and bargaining means negotiating, and it involves proposals and counter-offers. Thus, collective bargaining means group negotiations between the employer and the employees' organisation on issues relating to their terms and conditions of employment.

Collective bargaining which is the basis of collective labour relations became not only a major source of terms and conditions of employment but also the contractual foundation of the employer and union relation.²⁴ Collective bargaining involves any form of negotiation or discussion, formal or informal, with a view to reaching agreement. Collective bargaining is the most effective means of giving workers, the right to representation in decisions affecting their

²⁰ International Labour Organisation recommendation No.98, 1949

²¹ VA Odunaiya, *law and practice of industrial relations in Nigeria* (Lagos; passfield publishers, 2006), 325

²² Trade Dispute Act 2004 ss.3 and 48 (1) (a) (b)

²³ International Labour Organisation *Right to Organise and Collective Bargaining Convention*, No. 98, 1949, Art. 4.

²⁴ INE Worugji, *Modern Labour Law in Nigeria*, (Malthouse Press Limited, 2021), 325



working lives, a right which is or should be the prerogative of every worker in a democratic society.²⁵ Collective bargaining is the process of negotiation between an employer or group of employers on the one hand and one or more trade unions on the other, designed to produce a collective agreement which would have many functions.²⁶ Thus, the concept of determination of terms and conditions of employment through collective bargaining became a matter of particular importance in labour and industrial relations law.²⁷

Collective bargaining involves a process of negotiation and the conclusion of collective agreements on the demands of workers concerning certain improvements in terms and conditions of employment.²⁸ Collective bargaining is a constitutional relationship between an employer entity (government or private) and labour organisation (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 or salaries, rate of pay, hours of work and other conditions of employment.²⁹ Under the ILO collective bargaining convention, collective bargaining means all which takes place between an employer or one or more employers' organisations on the one hand, and one or more workers' organisations on the other hand for: (a) determining working conditions and terms of employment, (b) regulating relations between employers and workers (c) regulating relations between employers or their organizations and workers or workers' organisation.³⁰

In Nigeria, the right to bargain collectively is recognized under our laws. The Constitution guarantees freedom of association, thus, section 40 of the constitution of the Federal Republic of Nigeria 1999 provides that 'Every person shall be entitled to assemble freely and associate with other persons and in particular he may form or belong to any political party, trade union or any other association for the protection of his interest.' The Labour Act defines collective bargaining

²⁵ Royal Commission on Trade Unions and employees' Association Cmnd 3623, 1968

²⁶ S Deakin and GS Morris, *The Legal Framework of collective bargaining in Nigeria in Essays in Honour of Judge T. O Elias* (2022) 64.

²⁷ INE Worugji, *Modern Labour Law in Nigeria*, (Malthouse Press Limited, 2021), 326

²⁸ OVC Okene, *Labour Law and Industrial Relations in Nigeria* (4thedn. Faculty of Law, RSU, 2019) 214

²⁹ HW Davey, *Contemporary Collective Bargaining* (3rdedn Englewoodcliff, New Jersey), 69

³⁰ ILO C154, Collective bargaining Convention 1981, Art.2



as the process of arriving at or attempting to arrive at a collective agreement,³¹ thus collective bargaining is standard-setting machinery, which constitutes an important source of regulation of wages, salaries, bonuses, allowance and other employment conditions mutually agreed between the employer of labour and workers. It also establishes a set of rules guiding relations between the parties during the life of a collective agreement, as well as providing for an orderly method of settling grievances that are bound to occur from time to time.

The two essential conditions for collective bargaining to occur include the freedom of association and the recognition of trade unions by employers. This means that workers must be at liberty to associate and join or form trade unions in order to be able to bargain collectively.

As regards the recognition of trade unions for the purpose of collective bargaining, the Trade Union Act 2005 provides thus:³² (1) 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 (2) For the purposes 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.

It is important to state that for workers' organizations to sufficiently represent the interest of the workers, they have to be independent and indeed must not be under the control of employers' organizations. Also, they must be able to organize their activities without any interference from the public authorities. The Right to Organize and Collective Bargaining Convention,³³ provides that workers shall enjoy adequate protection against acts of anti-union discrimination in respect of their employment. According to Odigie, Collective bargaining has four stages, the first stage is the establishment of the organization for bargaining, where there is no organization. The second stage is the formulation of demands and limit of concessions to be made, intended to change or introduce

³¹ Constitution of Federal Republic of Nigeria 1999 (as amended), s.40

³² Labour Act Cap L1, Laws of the Federation of Nigeria, 2004, S.91

³³ Right to organize and collective bargaining No.96, 1949, Art.4



new terms or conditions of employment. The third stage is the actual negotiation, and the fourth stage is the administration of the agreement reached.³⁴

Purpose of Collective Bargaining: The purpose of collective bargaining remains to settle terms and conditions of employment. An improvement in the terms and conditions of workers' employment is the chief task of Trade Unions and collective bargaining is the major means whereby trade unions can ensure that the terms and conditions of employment given to their members are adequate.³⁵ *Lord Donovan in Collymore v Attorney General of Trinidad and Tobago*³⁶ stated that the main purpose of most trade unions of employees is the improvement of wages and conditions of employment.³⁷ As it is said, the primary purpose of collective bargaining is to regulate the terms and conditions of employment of workers. It is in the process of achieving this objective that the workers and the employers get involved in collective bargaining.³⁸ Kahn-Freund posited that: "By bargaining collectively with management, organized labour seeks to give effect to its legitimate expectations that wages and other conditions of work should be such as to guarantee a stable and adequate form of existence and as to be compatible with the physical integrity and moral dignity of the individual, and also that jobs should be reasonably secure."³⁹

It is a result of the inequality of power between employers and employees that necessitated the desire of workers to come together, workers have generally realized that bargaining collectively is their only chance of having a semblance of an equal relationship with their employer. They realize that against the power of employers, the individual workers have almost no bargaining power and that the chances of improving conditions of work are slim.⁴⁰ Workers have resorted to collective action because by bonding together they are able to consolidate their

³⁴SA Odigwe, *State Intervention in Industrial Relations in Nigeria*, (Warri: Exco-Sivo press), 91

³⁵*Udoh v. Orthopaedic Hospital Management Board* (1990), 4 NWLR (PT. 142) 53

³⁶(1970) AC 538, 547

³⁷INE Worugji, *Modern Labour Law in Nigeria*, (Lagos: Malthouse Press Limited, 2021), 325

³⁸P. Davies, and M. Freed Land, Kahn-Freud's *Labour and the Law* (London: Sweet and Maxwell 1983), 69

³⁹O Kahn-Freud, *Labour and the Law* (London: Stevens and sons, 1977) 6

⁴⁰M Oslon, *The Logic of Collective Action* (Havard: Havard Press, 1905), 20



strength far more effectively than they could as individuals.⁴¹ Bargaining collectively demonstrates the saying “Unity is Strength.”

Negotiable Issues

The focus of collective bargaining is on working conditions, terms of employment and the regulation of relationships between employers or employers’ organizations and one or more trade unions. Therefore, terms of employment to be negotiated include salary, allowances, wages, bonuses, pension and other financial benefits. Working conditions include hours of work, overtime, annual leave, maternity leave, casual leave, transport, sick leave, accommodation, occupational safety, health, and severance benefit welfare. Non-employment issues such as work changes, job security, personal issues career issues, promotion and discipline,⁴² issues relating to relations between the employer and workers’ organization include facilities for trade union representatives, procedures for the resolution of disputes, consultations, cooperation and information sharing, among others.⁴³ The list and contents of what could fall within the negotiable issues have become flexible these days,⁴⁴ thus it depends on the strength and capacity of the union to exert pressure on the employer. Every worker is entitled to work in environments where risks to his health and safety are properly controlled. It is the responsibility of the employers to protect the health, safety and welfare of their workers. Welfare means anything done for the comfort and intellectual and social improvement of employees over and above the wages paid which is not a necessity of the industry.

FUNCTIONS OF COLLECTIVE BARGAINING

⁴¹ FC Nwoke, *Rethinking the Enforceability of Collective Agreements in Nigeria*, (2000) Modern Practical Journal of finance and Investment, 372

⁴² B A Garner, *Black’s Law Dictionary* (10thedn, Thompson business 610 Oppreman, United State of America), 280

⁴³ INE Worugji, *Modern Labour Law in Nigeria*, (Lagos: Malthouse Press Limited, 2021), 326

⁴⁴ Trade Dispute Act, Laws of Federation Cap T8, 2004, S.48 (1) (a) and (b)



Collective bargaining performs several functions in labour relations. One of the functions of collective bargaining is the settlement of labour disputes.⁴⁵ Thus, collective bargaining provides the mechanism for dispute settlement by negotiation of terms and conditions of work. Collective bargaining therefore provides an inducement by which each other's views through compromise and persuasion.⁴⁶

Collective bargaining ensures workplace democracy: Apparently, the most important justification for collective bargaining lies in its democratic attributes.⁴⁷ The employment relationship is often characterized by inequality of bargaining power. This inequality means that individual employees are not able to take part in decisions that affect their working lives. But by joining forces and acting in concert, workers can have the power to change this narrative as the employer will certainly be concerned about the possibility of losing all his employees even if not permanently.⁴⁸ Besides, a trade union can also provide financial support to sustain the period of struggle.

Collective bargaining therefore enables workers to acquire some bargaining power “countervailing power” to that of their employer.⁴⁹ This is not to say however, that the employer and the employees now possess equal bargaining power, but the imbalance of power can be expected to be highly reduced under a regime of collective bargaining.⁵⁰ Another function of collective bargaining is to redistribute power and resources from employers to employees.⁵¹ This function is based on the fact that employers, as noted above, usually possess superior bargaining power as against individual employees and because of this power inequality, the resulting terms and conditions of employment are unfair and unjust.⁵² Through collective bargaining, workers appear to improve their conditions at the expense of the employer's profits through redistribution from the employer's profit to the employee's higher wages.

⁴⁵Ibid

⁴⁶Ibid, OVC Okene, *Labour Law in Nigeria*. (Selected Essays) (Owerri: Zubic Infinity Concept 2019), 128

⁴⁷ A Smith, *The Wealth of nations* (Harmondsmith: Penguin, 1970), 169

⁴⁸ JK Galbrath, *America Capitalism: The Concept of Countervailing Boston*, Houghton), 9

⁴⁹ K Khare, “*Countervailing workers power as a Regulatory Strategy*”, (London: Kluwer, 2000). 63-70

⁵⁰ K G Dau-Schmidt, “*A bargaining Analysis of America Law and the search for bargaining Equity and Industrial Peace*” *Michigan Law* (1992) [91] Review 419

⁵¹Ibid

⁵² INE Worugji, *Modern Labour Law in Nigeria*, (Lagos: Malthouse Press Limited, 2021), 325



Collective bargaining performs the function of promoting economic efficiency by limiting industrial conflict in the workplace.⁵³ Most laws which promote collective bargaining were designed to limit industrial conflict which is seen as inimical to efficiency.⁵⁴ Through collective bargaining, there is an information flow between workers and from workers to management, morale is higher, and firm-specific investment is increased. This is because collective bargaining gives job security and there is every motivation for the labour and management to cooperate to increase productivity.

Collective Agreement: Collective agreement is defined as a contract between an employer and labour union regulating employment conditions, wages, benefits and grievances.⁵⁵ Collective agreement is the ultimate end of collective bargaining.⁵⁶ Collective agreement is a by-product of voluntary negotiation between employers or employer's organization and workers' organizations with a view to regulating the terms and conditions of employment. Under the Trade Dispute Act,⁵⁷ collective agreement means any agreement in writing for the settlement of disputes relating to terms of employment and physical conditions of work concluded between:

- a) An employer, a group of employers or organization representing workers, or the duly appointed representative of any body of workers, on the one hand.
- b) One or more trade unions or organisations representing workers, or the duly appointed representative of any body of workers, on the other hand.

The National Industrial Court Act defines collective agreement as any agreement in writing regarding working conditions and terms of employment concluded between:

- a) An organisation of employers or an organization representing employees (or an association of such organisation) of the other part.

⁵³ Collective Bargaining: A policy guide

⁵⁴ INE Worugji, *Modern Labour Law in Nigeria*, (Lagos: Malthouse Press Limited, 2021), 325

⁵⁵ National Industrial Court Act 2006, S.54

⁵⁶ International Labour Organisation on collective bargaining Recommendation 1951, 91, para.2

⁵⁷ INE Worugji, *Modern Labour Law in Nigeria*, (Lagos: Malthouse Press Limited, 2021), 326



- b) An organisation of employees or an organisation representing employees (or an association of such organisations) of the other part.⁵⁸

The International Labour Organisation (ILO) defines collective agreement as all agreements in writing regarding working conditions and terms of employment concluded between an employer, a group of employers or one or more employers organizations, on the one hand, and one or more representative workers' organisation or, in the absence of such organisations, the representatives of the workers duly elected and authorized by them in accordance with national laws and regulation.

It can be seen that a collective agreement must be in writing concerning issues of terms and conditions of employment between the employers and worker's organisation or persons duly authorized to represent the workers. Therefore, collective agreements result from successful collective bargaining. Collective agreement performs two major functions in industrial relations. Firstly, collective agreements regulate the relations between employers and trade unions, that is the procedural or contractual function of the collective agreement.

The procedural function takes various forms such as the establishment of joint machinery for negotiation of terms and conditions of employment or the establishment of mechanisms for dispute. Settlement, to limit industrial actions until all the internal procedures have been exhausted.⁵⁹ Another function is the regulation of the terms of individual contracts of employment, the normative function through which issues relating to salaries and wages, working hours, holidays and other allowances and related matters are settled.⁶⁰

International Labour Organization Standard

ILO was established in 1919 as one of the specialized agencies of the United Nations. ILO is the supreme body of the International Labour Standard and by its conventions and recommendations provides the legal framework to guide member states to enact domestic laws and provide

⁵⁸Ibid

⁵⁹ INE Worugji, *Modern Labour Law in Nigeria*, (Lagos: Malthouse Press Limited, 2021), 326

⁶⁰Ibid



mechanisms to facilitate the practice of collective bargaining, for example, convention 154 of Collective Bargaining 1981, Right to organize convention No.87, 1948 and Recommendation on collective agreement No.91, 1951. ILO sets standards that are generally accepted as codes of best practices, therefore ILO acts as a watchdog of Labour Standards.⁶¹

The ILO has consistently considered freedom of association and the right to collective bargaining to be among the core rights that are at the heart of ILO's mission. Apart from Conventions and Recommendations, the ILO Committee on Freedom of Association has severally acknowledged the importance of collective bargaining and the right to strike when the committee declared thus:

The right to bargain freely with employers with respect to conditions of work constitutes an essential element in freedom of association, and trade unions should have the right, through collective bargaining or other lawful means, to seek to improve the living and working conditions of those who the trade union represent and public authorities should refrain from any interference which would restrict this right or impede the lawful exercise.⁶²

The practice of collective bargaining under the ILO context involves parties to collective bargaining, recognition of the union/workers' organization, workers covered by collective bargaining: subjects covered by collective bargaining, the principle of good faith, the role of procedures of facilitate negotiation: the principle of free and voluntary negotiations and the level of negotiations.

Article 6 of the right to organize and collective bargaining, No.98, 1949 excludes public servants engaged in the administration of the state to form its scope. Thus, they are not entitled to engage in collective bargaining. Notwithstanding the above provision, the collective bargaining convention⁶³ made remarkable improvements by including the whole public service, with the exception of the armed forces and the Police, in the collective bargaining process. It is clear that collective bargaining extends to all negotiations between employers and workers in respect of

⁶¹ Freedom of Association and Collective Bargaining: A primer on freedom of Association <[http://www.clearedclothes.org/code/freedom of Association.html](http://www.clearedclothes.org/code/freedom%20of%20Association.html)> 30/9/2024

⁶² F Tayo, *Industrial Relations in Nigeria* (Lagos: Longman, 1992) 103

⁶³ Collective bargaining convention No.154, 1981



terms and conditions of employment. It must be stated that no Nigeria law clearly defined the term "collective bargaining", although section 91 of the Labour Act 2004 merely defined collective bargaining as the process of arriving or attempting to arrive at a collective agreement, this definition is not elaborate, detailed and comprehensive, like the definition of collective bargaining under ILO Convention on collective bargaining.

ENFORCEABILITY OF COLLECTIVE AGREEMENT

The collective agreement is the fundamental instrument of industrial harmony and understanding, ensuring that employees' interests in labour relations are protected through the bargaining process. However, the current position of Nigerian law on the enforceability of collective agreements has hindered its benefits to the workers. It is on this background that the enforceability of collective agreement shall be considered under the common law, case law and statute.

At common law, collective agreements are considered unenforceable or non-justiciable, unlike every other agreement, the reason being that parties to the collective agreement do not have the intention to enter legal relations. Again, common law regards collective agreement as a gentleman's agreement which is binding only in honour. Thus, this flows from the principle that no contract is legally enforceable unless there is an intent in it, an intention to create legal relations. Emphasizing the essential of an intention to enter legal relations for the enforceability of a contract, *Lord Stowell in Dalrymble v Dalrymble*⁶⁴ stated that enforceable contracts 'must not be ... mere matters of pleasantry and badinage, never intended by the parties to have any serious effect whatsoever.'

Also, the reason for the non-enforceability of a collective agreement under common law is that there is no privity of contract between individual employees and the employer or employers' association as a collective agreement is always between employer or employers' organisation on the one hand and the workers' union on the other hand. Thus, an individual employee not being

⁶⁴ (1811) 2 Hag. Con. 5 at 105



party to the agreement is not allowed to enforce it. The doctrine of privity of contract as laid down in *Dunlop Pneumatic Tyre Co. Ltd v Selfridge Ltd*,⁶⁵ where it was held:

That is the law of England, certain principles are fundamental, one is that only a person who is a party to a contract can sue for it. Our law knows nothing of a *jus quaesitum tertio* arising by way of contract, such a right may be conferred by way of property as for example, under a trust, but it cannot be conferred on a stranger to a contract as a right *in personam* to enforce the contract. Even though, there are exceptions to this common law principle, the right of an individual employee or worker to enforce collective agreement entered between a trade union of which he is a member and his employer for the worker's benefits is not one of the exceptions.⁶⁶

In Nigeria, courts are weary of enforcing collective agreements, as it is not intended to create legal obligations and cannot be enforced in a court of law.⁶⁷ The principle in Dunlop's case was adopted in the Nigerian case of *New Nigeria Bank PLC v Egun*.⁶⁸ It was held that in the absence of privity of contract between the respondent employee and the Appellant employer, the respondent could not claim under collective agreement between his union and the Appellant.

Similarly, the Supreme Court affirmed the above position in *Bureau of Public Enterprises v Dangote Cement PLC & Ors*⁶⁹ when it held that a collective agreement, except where it has been adopted as a part of the terms of employment is not enforceable.

It can be said that for a collective agreement to be enforceable, it must be incorporated into the contract of employment of the individual employee who seeks to rely on it in the claim of a right otherwise the claim will fail. This is because of the doctrine of privity of contract, therefore individual employee who is not a party to the collective agreement is not allowed to enforce it notwithstanding that the agreement was made for his benefit. It can be argued that an individual

⁶⁵ (1915) A. C 847

⁶⁶ I E Sagay, *Nigeria Law of Contract* (Ibadan: spectrum books, 1993) p.489, the Exceptions to the Doctrine of Privity of contract include agency, Assignment of Contractual Obligations novation, Contract running with land Contracts of Insurance, Charters Parties and Trust

⁶⁷ FC Nwoke, Rethinking the Enforceability of Collective Agreement in Nigeria (2001) *Nigerian Education Law Journal* [14] 1, 103

⁶⁸ (2001) 7 NWLR (part 711) p.1, *Osoh & Ors. V Unity Bank Plc* (2013) 9 NWLR (pt.1358) 1 (2001) 15 NWLR (pt. 735) 114, *Union Bank of Nigeria v Edet* (1993) 4NWLR (part 287), 288-291

⁶⁹ (2020) 5 NWLR (part 1717) 322 at 329



employee who has shown sufficient membership of a labour organization by participating in Union activities and payment of union's dues or levies and in some cases, these dues are deducted directly from workers' salaries, therefore such workers should be allowed to take advantage of the collective agreement reached between his union and employer, by relying on it to enforce any breach of same by the employer. In other words, it is argued here that as much as a worker can identify as being a member of a workers' union that reached a collective agreement with his employer, then he can enforce it without the collective agreement necessarily being incorporated into his contract of employment.

Another circumstance, where the court will be amiable or agreeable to enforce the collective agreement is where the employer has relied on the collective agreement to argue his case, therefore the employer will be estopped from saying that the collective agreement is unenforceable by an employee because it is not incorporated into his contract of employment. This was the position of the court in *Cooperation and Commerce Bank (Nig) Limited v Okonkwo*,⁷⁰ the Appellant dismissed the Respondent and the letter of dismissal alleged that the employee was dismissed for flouting a clause in the country-wide collective agreement, at trial, the employee sought to rely on the same collective agreement but the employer objected on the ground that the collective agreement was unenforceable.

The court of Appeal held, that having relied on the collective agreement to dismiss the employees, the employer was estopped from arguing that the agreement was unenforceable. Apparently, where the provisions of a collective agreement have been relied upon by employer in the past in a manner that suggests that it is binding, such as taking benefit of it in the past against an employee, the agreement would be enforceable without the necessity of it being incorporated into an individual employee's contract of employment.

Under statute, section 3 (1) of Trade Dispute Act 2004 provides that where there exists any collective agreement for settlement of a trade dispute, at least three copies of the said agreement shall be deposited by the parties thereto with the minister, subsection 3 states that upon the receipt of copies of a collective agreement deposited in accordance with subsection 1 of this section, make

⁷⁰ (2001) 15NWLR (part 735), 114



an order, the terms of which may in respect of that agreement specify that the provisions of the agreement or any part thereof, be binding on the employers and workers.⁷¹

By leaving at least three copies of the collective agreement with the Minister of Labour and Employment who has the discretion to specify the particular part of the agreement that will be binding on the parties to the agreement. This step is relevant when there is a labour dispute, the Minister's intervention is based on the terms of the agreement. It is obvious that the minister of labour and employment may be reluctant or even decline to order that any part of the provision of collective agreement should be binding on the parties where the Federal Government being an employer of labour is involved. Again, considering the enormous functions of the minister of labour and employment, the minister would not always attend to all collective agreements arising from numerous labour disputes.

CONCLUSION

Collective bargaining as a means of settlement of labour dispute in Nigeria. Despite successful negotiation and execution of collective agreement by employer and workers' organisations, enforcement of same becomes another problem in Nigeria. The TDA require the collective agreement executed by the parties to be deposited with the Minister of Labour and Employment within thirty (30) days of its execution. This activates the right of the parties to enforce or take legal action on the collective agreement once the Minister of Labour confirms the collective agreement or any part thereof. This constitutes a bottleneck on the collective bargaining mechanism, as the government being an employer of labour continues to interfere with the collective bargaining process or in the event that the Minister of Labour and Employment refuse to make an order for collective agreement to be binding on the parties.

By ILO Convention 154 on Collective Bargaining 1981, the collective agreement is enforceable and also supersedes any terms and conditions contained in a contract of employment that is inconsistent with the collective agreement. Nigeria is a member of the International Labour Organisation and section 254C (b) and (e) of the Constitution of Federal Republic of Nigeria 1999

⁷¹ Trade Dispute Act Laws of the Federation Cap T8, 2004, S.3(1) and (3)



(as amended) enjoins the National Industrial Court to interpret and apply international conventions, treaties and protocols relating to industrial relations and workplace and apply international best practices and standards yet in Nigeria, collective agreement is not enforceable except it is incorporated in the contract of employment.

RECOMMENDATIONS

1. The National Assembly should enact legislation to regulate the practice of collective bargaining, which should establish an independent institution with legal personality to be known as the ‘Collective Bargaining Commission’ to coordinate, manage and supervise collective bargaining in Nigeria.
2. It will be expedient for the National Assembly to adopt the provisions of Convention 154, of the International Labour Organization on Collective Bargaining 1981, in the proposed legislation, this will bring Nigerian Labour law and industrial practice in line with the International Labour Standard and eliminate the difficulty of enforcement of collective agreement.
3. It is recommended that collective agreement should be binding and enforceable by the employer, employers’ organization, worker and workers’ Union provided such employer or workers can show sufficient membership of the organisation to the collective agreement, regardless of whether the collective agreement is incorporated or not in contract of employment. Also, the collective agreement should supersede any terms and conditions contained in the contract of employment that is inconsistent with the provision of collective agreement.