

The Effectiveness of Collective Bargaining in Nigerian Public Service

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Abstract

Collective bargaining is a process of negotiations between employers and a group of employees aimed at reaching agreements that regulate working conditions. This paper give a detailed explanation on the nature of industrial conflicts, perspectives of industrial conflicts, types and forms of industrial conflict. The paper notes that collective bargaining has a great potential for minimizing conflict, and redressing confrontational attitudes and acrimony inherently associated with the employment relationship, thereby promoting industrial peace and ultimately economic growth. It observes that collective bargaining in the public sector is faced with fundamental and practical difficulties which make the future of bilateral relationship entirely discouraging. The paper concludes that the need for the promotion of collective bargaining and effective mechanisms for the resolution of labour disputes as tools for the maintenance of harmonious relations between employers and employees and that collective bargaining can only function effectively if it is conducted genuinely by all the parties to the bargaining process.

Introduction

The role of collective bargaining as an effective tool for industrial democracy and social justice has been recognized for many years. It is against this background that collective bargaining forms one of the most important gradients of promoting and strengthening social dialogue. Collective bargaining has the potential of reducing conflict through the resolution of labour disputes, and can promote workplace democracy and ensure the recognition and protection of the worker's rights. Whilst most of the countries have legislation and even Constitutions that commit to collective bargaining, the levels of implementation are quite varied and seem to be determined by the levels of economic and political development of the different countries. The success and/or failure of the bargaining process, it has emerged, has been dependant on the level of maturity and strength of the workers' and employers' organizations or their representatives (Fashoyin, 1992).

Collective bargaining has a great potential for minimizing conflict, and redressing confrontational attitudes and acrimony inherently associated with the employment relationship, thereby promoting industrial peace and ultimately economic growth. On its own, it can serve as a mechanism for labour dispute resolution by setting out procedures for resolution of labour disputes in collective bargaining agreements. One of the virtues of collective bargaining is that disputes are solved at source, a factor that does not leave the bitterness associated with such adversarial processes of dispute resolution as adjudication (Lord, 1999).

Omole (1987) raises 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 states 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.

Conceptualisation

Many scholars view collective bargaining in different perspectives. ILO (1960), sees collective bargaining as negotiation of working conditions and terms of employment between employers, a group of employers or one or more employers' organizations on the one hand, and one or more representative workers organizations on the other with view to reach agreement. There are two key words that are noteworthy in the concept of collective bargaining, these according to Fashoyin (1992) are; Negotiation and Agreement. It takes two processes for collective bargaining to be perfect. Any negotiation that does not result to agreement is incomplete bargaining. This is because collective bargaining does not stop at the stage of negotiation rather it extends to the stage of agreement which must be jointly signed by both parties, that is, employers and workers

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) posits that collective bargaining is the process whereby representatives of employers and employees jointly determine and regulate decisions pertaining to both substantive and procedural matters within the employment relationship. The outcome of 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.

Fashoyin (1992) in his own view sees collective bargaining as machinery for discussion and negotiation, whether formal or informal, between employer(s) and workers representatives, aimed at reaching mutual agreement or understanding on the general employment relationships between the employer(s) and workers.

Convention No. 154, adopted in 1981, defines collective bargaining in Article 2 as follows:

The term "collective bargaining" extends to all negotiations which take place between an employer, a group of employers or one or more employers' organisations, on the one hand, and one or more workers' organisations, on the other, for: (a) determining working conditions and terms of employment; and/or (b) regulating relations between employers and workers; and/or (c) regulating relations between employers or their organisations and a workers' organisation or workers' organisations (ILO, 1996:93).

Murphy (2006) opined that collective bargaining is essentially an autonomous system of making job rules between employers and trade unions. It is a process of a party in industrial relations making proposals and demands to the other, of discussing, criticizing, explaining, exploring the meaning and the effects of the proposals and seeking to secure their acceptance. It includes making counter proposals or modifications for similar evaluation. Akpala (2008) stated that the essence of collective bargaining is to reach agreement. He defined collective bargaining as the process of negotiation between workers and employers through their organizations of contract of employment for the best possible working conditions and terms of employment.

The rationale of collective bargaining is agreement, but if an agreement was not reached, the action, which took place, is not less collective bargaining than if the process had ended in an agreement. Bacci (2000) noted that collective bargaining takes place when one collective action is involved, whether or not agreement is reached, so long as the parties have made genuine efforts to reach agreement.

Fashoyin (1986) defined collective bargaining as machinery for discussion and negotiation, whether formal or informal between employers and workers representatives, aimed at reaching mutual

agreement or understanding the general employment relations between employers and workers. The conclusion of an agreement, he further argued, is not a necessary determinant of collective bargaining. He drew reference from labour Act of 1974 which defined it as the process of arriving at or attempting to arrive at a collective agreement. According to labour Act the aims are to accommodate, reconcile and often time compromise the conflicting interests of the parties and while it does not remove conflict, it facilitates the accommodation, to enable the two sides work together harmoniously. Collective bargaining is therefore standard setting machinery which constitutes an important source of regulation governing wages, salaries and other employment conditions mutually agreed between labour and management and in conformity with public policy (Yesufu, 1984).

Collective bargaining is a process of negotiations between employers and a group of employees aimed at reaching agreements that regulate working conditions. The interests of the employees are commonly presented by representatives of a trade union to which the employees belong. The collective agreements reached by these negotiations usually set out wage scales, working hours, training, health and safety, overtime, grievance mechanisms and rights to participate in workplace or company affairs (Buidens, 1981).

Chamberlain and Kuhn (1995), viewed collective bargaining as a means of contracting for the sale of labour, form of industrial government and a system of industrial relations. Sidney and Beatrice (1911), conceptualize collective bargaining as an economic activities institution, with trade unionism acting as a labour cartel by controlling entry into trade. Dunlop (1958) sees collective bargaining as the means of rule making which governs the workplace. According to Armstrong (2006), collective bargaining can be regarded as an exchange relationship in which wage-work bargains take place between employers and employees through the agency of a trade union.

The term public sector comprises the government as employer at the federal, state and local government levels as well as the parastatals, the universities and the state-owned companies. The public sector constitutes the largest employer of labour in the country in spite of the recession in the economy. Modern trade unionism began in Nigeria in the public sector. As Damachi and Fashoyin (1986) observe that trade unionism and labour relations originated in the civil service in 1912; but it is in this sector that unions are weaker and labour relations marginally 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.

Above all, one can deduce that collective bargaining is an important mechanism in guiding the rules that govern the workplace. It is also an important source of regulating wages, salaries and other employment conditions between labour and management and in conformity with public policy.

The Historiography of Collective Bargaining in the Public Sector

The fight in Wisconsin has focused the nation's attention on collective bargaining and its role in a democratic society. Other states facing fiscal crises are watching the battle there. Unfortunately, because of the highly partisan nature of the fight in Wisconsin, the debate has shed more heat than light. The modern system of collective bargaining was developed during the 1930s to address the imbalance of power between employers and employees. The Wagner Act, passed in 1935, created a system of collective bargaining which levelled the playing field and provided a structure that reduced labour strife and unrest. This law gave most workers in the private sector the right to form unions, bargain and strike.

In the decades that followed, private sector unions won wage gains that increased the standard of living of American workers. These workers became active consumers, buying goods and services that created more jobs and more profits. The result was an era of unmatched prosperity and the emergence of an American middle class that was the envy of the world. Government employees, however, were not covered by the Wagner Act and, without the ability to bargain, their living standards fell further behind their private sector counterparts. In the 1950s, '60s, and '70s, these workers pushed for collective

bargaining rights and in 1959 Wisconsin became the first state to grant this right to public employees. Today, most states allow at least some state and local government workers to bargain collectively. The emergence of public sector bargaining helped government workers make up much of the pay gap that had developed between them and private sector workers. Millions of public employees were brought into the middle class. (<http://www.mbaknol.com>)

Collective Bargaining in the Nigerian 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. However, 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. The following wage commissions or committees of inquiry were instituted during the colonial and post independence era for the purpose of wage determination and other conditions of service in the public sector. Chidi (2008a) opines 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. The following wage commissions have been used in Nigeria for wage determination and for the setting of employment terms and conditions in the public sector.

Commission	Year Instituted
Hunt Commission	1934
Bridges Commission	1941
Tudor Davis Commission	1945
Harragin Commission	1946
Miller Commission	1947
Whitley Commission	1948
Gorsuch Commission	1955
Mbanefor Commission	1959/1960
Morgan Commission	1964
Adebo commission	1971
Udoji commission	1974
Onosode commission (for parastatals)	1981
Cookey commission (for varsities)	1981
Adamolekun commission (for Polytechnics TTC& TC	1981
Ukandi Damachi commission	1990
Minimum Wage commission	1999
Ufot Ekaette Presidential committee on Monetization Of Fringe Benefits in the Public Service.	2002

Pension Reform commission

2004.

Onosode commission (for universities)

2009

It was only in 1981 under the Shagari civilian administration that a tripartite wage bargaining took place following the general workers strike of May 1981 organized by the NLC occasioned by the demand of the NLC for wage review. This led to the minimum wage of N125. Damachi led tripartite minimum wage committee inaugurated by the Babangida regime on January 30, 1990; which was manipulated by President Babangida who determined the minimum wage of N250. The constitutional Government of Obasanjo like its military predecessor the Abubakar regime also avoided any tripartite collective bargaining in the fixing of the 1999 national minimum wage of N7, 500 and recently the fixing of N18, 000 national minimum wage which was passed into Law in 2011 was not based on collective bargaining. The government merely consulted with officials of the NLC without carrying on board private sector employers and state governments who were to implement the wage awards at the state and local government levels. This exclusion generated serious conflicts at those levels as state governments expressed inability to pay, and consequently conceded to various shades of collective bargaining and agreements. It should be noted that the preference of State for wage commissions was inherited from the colonial administrators. Collective bargaining in the public sector is carried out at three complementary levels through the machinery known as National Public Service Negotiating Councils (NPSNCs) The National Public Service Negotiating Councils is subdivided into three councils.

Council I: Used by the management (official) side represented by the Establishments Departments of the Federal and State Governments. On the workers (staff) side the the Association of Senior Civil Servants of Nigeria (ASCSN) whose members are drawn from grade levels 07-14 at the Federal and State Civil Services. The ASCSN approximates the senior staff association in the private sector.

Council II: Used by the management (official) side, this is made up as in council I above. On the staff side, two unions NCSU (Nigerian Civil Service Union) and NUCSTSAS (Nigerian Union of Civil Service Typists, Stenographic and Allied Staff). Employees covered by this council are drawn from the clerical, secretarial, executive and non-industrial cadres usually on grade levels 01-06.

Council III: Used by the management side as in councils 1&2 above. On the staff side are five unions namely:

- ❖ The Civil Service Technical Workers Union of Nigeria (CSTWUN)
- ❖ Printing and Publishing Workers Union (PPWU)
- ❖ National Association of Nigerian Nurses and Midwives (NANNM)
- ❖ Medical and Health Workers Union
- ❖ Customs Excise and Immigration Staff Union (proscribed in 1988).

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. It should be noted that the above applies to the pure Civil Service. The National Joint Industrial Council (NJIC) applies to parastatals such as Power-Holding Co. of Nigeria Plc (formerly NEPA); Universities, NRC, Nigerian Ports Authority etc as well as NITEL to mention a few. Thus collective bargaining in the public sector is faced with practical difficulties one of these difficulties concerns the issues of bargaining. Many of the substantive issues which are within the scope of the NPSNC are decreed either by legislative or executive acts or through political commission periodically set up by government as employer of labour. Also, promotion, discipline, transfer etc have traditionally been regulated by civil service rules. Thus, both methods of job regulation are quite distinct from collective bargaining as they represent management position. This represents the uniqueness of collective bargaining in public employment. Thus, the role of NPSNC in Nigeria is virtually irrelevant owing to the decisive role and influence of other government agencies. These developments have undermined the relevance of collective bargaining in the public sector (Fashoyin, 1992).

Damachi and Fashoyin (1986) criticize the structure of bargaining in the public sector in which the same management negotiates with each level of union. They noted that the exceptions where negotiations or consultations take place at departmental or ministerial level and also that the creation of two central negotiating councils for junior staff in the civil service is at variance with the structure of management. They argue that since industrial union structure is the basis for organization of workers, one council would seem sufficient for all the junior workers. Damachi and Fashoyin (1986) in terms of representations at negotiations, see bargaining machinery at which not less than 20 members on each side participate as unwieldy.

The second feature observed by these authors which seems to be amusing but instructive is the fact that the staff side in the civil service is the official or management side as senior civil servants in council I represents the official or management side when negotiating with members in councils II and III. The triangular relationship seems to have created room for ripple effect in which whatever concession made by the official side to the unions in councils II and III will also be extended to the official side members in council I. In sum both sides can be seen as working towards the same end. It can also be seen that the dilemma arising from conflict of interest in civil service labour relations perhaps accounts for reluctance or lukewarm attitude of the public employer to effectively employ collective bargaining for adjusting conditions of service in the public sector. Adeogun (1987) appears to lay credence on the foregoing points when he asserts that government as the largest employer of labour set up machinery for determination of workers wishes in relation to their wages. But regrettably, the then Whitley councils, now known as National Negotiating Councils have hardly been used for the negotiation of wage increase or reviews commission which undoubtedly have brought strains and stresses upon collective bargaining in the public sector.

Banjoko (2006) sees 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. Consequently, collective bargaining has been relegated to the background in Nigeria (Imafidon, 2006). Kester (2006) stated that Nigeria has no definite and effective wage determination policy hence the industrial relations system has been witnessing a spate of industrial unrest and tensions at every attempt to adjust wages and over the years, issues relating to wages have dominated industrial disputes and work stoppage in the Nigerian economy.

Yesufu (1984)'s account, the inauguration of the Department of Labour in 1942 by the colonial government inspired the labour officers to peruse private employers to establish standing committees for joint consultations and collective bargaining. Besides, the 1948 Annual Report of the Department of Labour showed that such committees were already in existence in private industries. Imoisili (1986) acknowledges, the 1978 restructuring of the trade unions along industrial lines and the creation of trade unions of employers made NECA to recognise itself to adapt to the new systems of unionism. Unlike the workers' NLC, the NECA is not a trade union but its governing council is made up of representatives of affiliated industrial employers' associations which are trade unions. The industrial employers' associations are responsible for collective bargaining with their industrial union of workers (junior and senior staff) while NECA serves as advisory body for all its affiliating employers on industrial relations matters with the government, NLC and ILO.

With the abolition of house unions and the creation of industrial unions "industry wide bargaining has been the vogue as the representative cut across the affiliating companies. A group of employers now engage in bargaining rather than a single employer. It is equally instructive to note that not all employers can meet the demands of their workers but with the advent of multi-employer bargaining "the management of small companies are able to meet such demands.

Concluding Remarks

The need for the promotion of collective bargaining and effective mechanisms for the resolution of labour disputes as tools for the maintenance of harmonious relations between employers and employees cannot be overemphasized. While acknowledging the importance of sustained economic growth, it has to go hand in hand with decent wages, improved quality of life, and respect for human dignity which is a basic human right. Traditionally, collective bargaining is an entirely voluntary process, but depending on the level of maturity of trade unions in a particular country, it might be prudent for the State to compel parties to bargain in order to promote collective bargaining.

Collective bargaining is a means of regulating relations between management and employees and for settling disputes between them. It is based upon the realization that employers enjoy greater social and economic power than individual workers. The contract of employment is by nature imbalanced due to the fact that its content is largely determined by the employer by virtue of him owning the means of production and this places him/her in a stronger bargaining position. As employees need work more than the employer needs the services of a particular employee, they tend to accept any terms and conditions offered to them, even if they turn out to be exploitative.

Collective bargaining has a great potential for minimizing conflict, and redressing confrontational attitudes and acrimony inherently associated with the employment relationship, thereby promoting industrial peace and ultimately economic growth. On its own, it can serve as a mechanism for labour dispute resolution by setting out procedures for resolution of labour disputes in collective bargaining agreements. In the context of collective bargaining and labour disputes resolution, alternative disputes resolution (ADR) mechanisms contribute to the promotion of collective bargaining through the resolution of labour disputes within the framework of conciliation and/or arbitration processes in which parties to the collective bargaining agreement participate. The quality of collective bargaining agreements is important for meaningful protection of employee rights. The advent of globalization has also brought tremendous pressure on countries of the world.

Collective bargaining in the public sector is faced with fundamental and practical difficulties which make the future of bilateral relationship entirely discouraging. However, in Nigeria, the machinery has become increasingly irrelevant owing to the decisive role and influence of other governmental agencies. Contrary to expectations that the consolidation of the unions will enhance the influence of the bargaining machine, the structure is unwieldy, while the unions, though fewer than before remain largely disunited and lacking solidaristic effort. These developments have undermined the relevance of collective bargaining and, correspondingly, enhances sectional bargaining at departmental or ministerial level. They have also led to separate negotiations and lobbying by each union on issues that affects their respective members. Evidently, the challenge posed by unfavourable economic conditions, varying development policies and priorities accorded them as well as political imperatives facing each employer in the public sector, have significantly undermined both the unified salary system and centralised wage determination.

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