INTERNATIONAL JOURNAL
OF ADMINISTRATION AND DEVELOPMENT STUDIES

A PUBLICATION OF THE DEPARTMENT OF PUBLIC ADMINISTRATION
UNIVERSITY OF MAIDUGURI, NIGERIA.

Volume 3, No. 1, March, 2012 ISSN 2141-5226

INTERNATIONAL JOURNAL OF ADMINISTRATION AND DEVELOPMENT STUDIES

Volume 3, Number 1, March, 2012

A PUBLICATION OF THE DEPARTMENT OF PUBLIC ADMINISTRATION,
FACULTY OF MANAGEMENT SCIENCES
UNIVERSITY OF MAIDUGURI,
P.M.B 1069, MAIDUGURI, BORNO STATE, NIGERIA

ISSN: 2141-5226

International Journal of Administration and Development Studies is published bi-annually by the Department of Public Administration, University of Maiduguri-Nigeria.

Published & Printed for the Copyright Owner By:
MIKE-B PRESS & PUBLICATION CO.
KADUNA.
TEL: 08032816536, 08028314367

INTERNATIONAL JOURNAL OF ADMINISTRATION AND DEVELOPMENT STUDIES, VOLUME 3, NUMBER 1, MARCH, 2012

THE LEGAL FRAMEWORK OF COLLECTIVE BARGAINING IN THE NIGERIAN PUBLIC SECTOR – A PROCESS APPROACH

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Abstract

This paper is directed at exploring the legal framework of collective bargaining in the Nigerian public sector using a process approach. The objective of the paper is to highlight the weaknesses of the legal framework within which collective bargaining operates in Nigeria. In other words, there are legal provisions regulating collective bargaining and industrial relations generally, but these laws are not completely capable of stopping conflicts in the workplace. This gap highlights the issue of implementation of laws in achieving smooth industrial relations process/system and ultimately guaranteeing industrial peace through harmonious work relations. The data utilised in this paper were collected mainly from secondary sources and the analytical method is central to the facts and opinions obtained from these sources. The paper concluded that the effective practice of collective bargaining and sanctity of its provisions and processes could offer a durable approach to achieving harmonious work relations in the public sector. It recommended among others that government should learn to honour valid agreements reached with unions and to respect and uphold its own laws.

Key Words: Legal framework, Collective bargaining, Public Sector, Trade dispute.

INTRODUCTION

One major highlight of the legal frame work of collective bargaining in the Nigerian public sector is the movement from the principle of voluntarism to that of interventionism which underscored the regulatory role of government in industrial relations. This projected government not only as been responsible, but responsive and alive to its role as reinforced above. It is observable that Girigiri (2002:16)) contended that these legislations "amount to ... curtailment of the processes of collective bargaining because of

elements of compulsion in them". The loophole however, remains the ineffectiveness of the legislations in stemming incidences of strike and other forms of industrial action arising from a culture of impunity by the unions and government (as employer). This point was emphasised by late Justice Akinola Aguda as contained in Fashoyin (1999: 198).

The employer as mentioned above is government. Experience has shown that in Nigeria, government can be ubiquitous and omnipotent. It is therefore not surprising that the author observed that public sector "as used in Nigeria, is an all-embracing entity covering, as it were, all agencies and institutions or organisations whose principal benefactor is government, whether at the federal, state or local government level (Fashoyin, 1999:154).

Apart from the role of government as an employer of labour, its place as third party of interest with the regulatory functions it plays in the Nigerian industrial relations system evoke considerable interest.

CONCEPTUAL FRAMEWORK / LITERATURE REVIEW

Collective bargaining which is mostly concerned with the work relationship between unions representing employees and employers (or their management representatives) is an indispensable ingredient or part of an effective industrial relations system.

It involves the process of union organization of employees, negotiation, administration and interpretation of collective agreements covering issues such as wages, hours of works, separation, work and its allocation between workers or group of workers (Ngu, 1994:123). It also includes procedural agreement and other conditions of employment, engaging in concerted economic action and dispute settlement procedures/conflict management and resolution.

The origin of collective bargaining in Nigeria is traceable to the public sector, and as Fashoyin (1999:104) recorded, "...this was as a result of the near absence of a private sector at the turn of the (19th) century". He corroborated that British Bank of West Africa (now known as First Bank of Nigeria) founded in 1894 was not unionized until 1942. Even the Royal Niger Company (now UAC of Nigeria) with vast political and commercial interests in Nigeria was not organized until 1946. Fashoyin noted "...ironically, the machinery has performed relatively poorly..." The emphasis here is that the history of collective bargaining is traceable to the public sector, but the machinery of collective bargaining has performed rather

poorly in the sector. Elsewhere, he attributed this relative poor performance of the machinery and practice of collective bargaining to "...the uniqueness of the employer" (Fashoyin, 1999:154).

Generally, collective bargaining can be seen as a process and as a method. As a process, it is dynamic (moving in ideas) and can be employed as a conflict resolution technique. As a method, it can be viewed as a technique used by trade union (leaders) and managers of organisations to establish and maintain cordial work relations (Ngu, 1994:124).

Uvieghara (2001:388) opined that "the term 'collective bargaining' is applied to those arrangements under which wages and conditions of employment are settled by a bargain, in the form of an agreement made between employers or associations of employers and workers' organizations". He expatiated that "the long term interest of government, employers and trade unions alike would seem to rest on the process of consultation and discussion which is the foundation of democracy in industry". If the objective of Collective bargaining is to "reach agreement by bargain", why does conflict arise in work relations? Elele (2008) attempted an explanation by alluding to the differences in interest and goals of the union and employers. The puzzle that must be addressed in Uvieghara's submission is the reference to collective bargaining as the foundation of industrial democracy.

Expatiating on the understanding of Beatrice and Sidney Webb on collective bargaining, Flanders (1968) in Ojo (1998:137) emphasized the "rule making process" of collective bargaining which according to the author transcends negotiation of economic terms of a contract and defines the rights and relationship among workers, union officials and employers. This rule making process of collective bargaining confers the jurisprudence status on it in labour relations.

Cole (2005:415) progressed by typologising agreement into procedural and substantive. Procedural agreements "are formal, written procedures that act as a voluntary code of conduct for the parties concerned..." The parties concerned are managers and employees together with their union representatives. Substantive agreements "are formal, written agreements containing the terms under which, for the time being, employees are to be employed". Such agreements run for limited or specified period of time. Fashoyin (1999:126 -127) building on Flanders referred to substantive

agreements as collective agreements which deals with "wage and working hours or to other job terms and conditions in the segment of employment covered by agreement". Procedural agreement "...deals with such matters as the method to be used and the stages to be followed in the settlement of disputes, or perhaps the facilities and standing to be accorded to representatives of parties to the agreement". Procedural agreements can be timeless (not time bound) and could function as the operative and recital clause to most industrial relations policies of organisations.

Onah (2008) joined other scholars in stating the ideal that "collective bargaining process is the foundation of industrial democracy", but it is relieving that he added that unilateral regulation or primacy of wage commissions which has become a norm in the Nigerian Public Sector vitiates the ideal. Indeed, that industrial democracy cannot take firm footing in the Nigerian work/labour relations is systemic, this is reinforced by the fact that the democratic experience is wobbling despite the "rule of law" mantra.

The author stated conditions for collective bargaining and gave types/strategies for collective bargaining as: centralised or regulated and decentralized or deregulated. In centralized or regulated collective bargaining, the umbrella employers association negotiates collectively with unions as representatives of workers. This has the advantage of setting the baseline or minimum upon which individual employer can negotiate with house or enterprise unions. Deregulated bargaining is a process whereby an employer of labour negotiates wages and other conditions of service directly with representatives of workers (house unions) within the overall economic condition prevailing in the country. The rationale and driving force for deregulated bargaining is the ability to pay principle (Onah, 2008:385-387).

METHODOLOGY

The data utilised in this paper were collected mainly from secondary sources namely: textbooks, journals, magazines, newspapers, and internet. The data were collected, analyzed and conclusions drawn there from. In other words, the analytical method / approach is central to the facts and opinions obtained from these sources. This approach guided the submissions made in the paper.

DISCUSSION AND FINDINGS

LEGAL FRAMEWORK OF COLLECTIVE BARGAINING IN NIGERIA

The importance of law and the role of government in the practice of Collective bargaining cannot be overemphasized in an effective and efficient industrial relations system. Uvieghara (2001:389) buttressed that "...the law has always provided a framework to encourage, promote and assist meaningful collective bargaining".

In locating the role of government not just as an employer of labour "employing two-thirds of wage-earning Nigerians" (Onah, 2008:381), but as the third party "of interest" in collective bargaining, the author averred that "...government has been responsible for the introduction of a number of legislative measures designed to encourage the growth and development of trade unions".

The above point was taken further by Uvieghara (2001:389) when he affirmed that "it is generally accepted that trade unions, especially trade unions of employees are a vital, if not an indispensable component of the collective bargaining machinery". He corroborates thus; "Hence the statutory law has always made provisions to ensure the existence of vigorous trade unions."

Girigiri (2002:4) converges with Onah (2008:382) on the colonial origin of these laws. Apart from stating that these laws are embodied into the country's public labour policy, Onah (2008) established that the laws were modelled after similar laws in Britain with dogmatic entrenchment of the doctrine of voluntarism into Nigeria industrial relations system. He affirmed that "this part of the country's colonial legacy...has proved incongruent in our situation".

Davison (1977:49) submitted that the following laws govern collective bargaining/industrial relations in Nigeria:

- Labour Decree Number 21 of 1974 which commenced on 1st August, 1974. Under this law, contracts of employment were to be formalized not later than three months into employment.
- Trade Unions Decree Number 31 of 1973 which became operational on 01/11/73. It was promulgated to take care of the structure and

functions of trade unions; union membership and registration of trade unions.

- Wages and Industrial councils Decree 1 of 1973 which was signed on 12/01/73. The law provides that different sections can commence on different dates.
- Trade Disputes Decree number 7 of 1976 which came into effect on 1st January 1976. This decree marked an attempt by the Nigerian Government to formulate comprehensive trade dispute legislation. It repealed the dispute settlement legislations before it and sought to encourage collective bargaining.
- Trade Disputes (Essential Services) Decree number 23 of 1976 which became operational on 21st May 1976. This decree made provision for banning with penalty for strike actions in the essential services of the public sector. The Head of state is also empowered to proscribe a trade union/association when he deems it necessary.

The above legislations repealed some adjoining/allied laws which became incongruous with them. Details of these are contained in Davison (1977:49-50).

Girigiri (2002:7) gave a more detailed account of the legal provisions regulating collective relations in employment as follows:

- The Trade Union Ordinance of 1938- It recognized organization of workers and empowered employers to form associations to represent their interest in labour relations.
- The Trade Dispute (Arbitration and Inquiry) Ordinance of 1941- It accorded the state right of intervention in labour disputes.
- The Labour Code Ordinance of 1945 – The intention of this law was to protect the employee against the abuses of management in the employment process.
- The Wages Board Ordinance of 1957- It prescribed machineries for the determination of conditions of work between unions and their management. In cases where conditions of work are poor, non-existent or. ineffective, government was empowered to prescribe wages and other conditions of employment. This was an attempt to

overcome the inadequacies of the Labour (Wages Fixing and Regulations) ordinance No. 40 of 1943.

Others are:

- The Trade Disputes (Emergency Provisions) Decree 21 of 1968; amended in 1969 with further changes in 1970. Under this law, the written collective agreements reached between parties in employment must be deposited with the Commissioner (now Minister) of Labour and Productivity who is required to issue an order making the document legally binding.
- The Trade Union Decree 31 of 1973 - (as highlighted above).
- The Wages Boards and Industrial Council Decree 1 of 1973. This decree was promulgated to make negotiation mandatory in the collective bargaining process, thereby plugging the loopholes in the previous legislations in this regard.
- The Trade Disputes Decree 7 of 1976 (as amended in 1977) – The decree made provision for an Arbitration Panel and National Industrial court among other features.
- The Trade Dispute (Essential Services) Decree 23 of 1976
- The Trade Disputes (Amendment) Decree 54 of 1977 – It included loss of pay by striking workers for the period of strike and payment to workers by an employer for periods of lock-out.
- The Trade Union Central Labour Organisations (Special Provisions) Decree 44 of 1976.

Fashoyin (1999:87-91) noted the following additions to the above legislations. The Trade Unions Ordinance of 1938 was amended in 1973. The initial law recognised organisations of workers and also empowered employers to form organisations representing their interests in labour relations matters. This law put union membership at minimum of five workers. The 1973 Act superseded that of 1938 by stipulating increase in union membership to fifty workers. It also made major and fundamental requirements in the internal administration of unions in the areas of union democracy and accountability.

The Trade Disputes (Arbitration and Inquiry) Ordinance of 1941 was enacted to grant right of intervention to the state in labour disputes

following the perception of government that the joint machinery for settling grievances had failed. The law made provisions for the resolution of disputes/conflicts through the machinery of inquiry, conciliation and arbitration. The Minister of Labour, in exercising his powers under the ordinance was obliged to seek the consent of parties in dispute "who were at liberty to submit themselves to a settlement machinery or accept an award" (Fashoyin, 1999:89). This act was based strictly on the principle of voluntarism by the government in labour relations. However, from this point, government gradually moved from voluntarism to interventionism, subsequent legislations (that of 1968 and 1976) reflected this reality and incorporated fundamental changes into the legislation. Government now has greater leeway to intervene in the management/resolution of conflicts

The Labour Code Ordinance was intended to accord employee protection against abuses of management in the general area of employment. Apart from stipulating minimum standards of employment which every employer must follow, some categories of employment could be formalized, while others are not. This lacuna opened employees to employers excesses and highhandness. Also there was neither protection for the employee in the exercise of his right as a union member, nor were guidelines specified on method and determination of redundancies. The 1974 Labour Act comprehensively reviewed the Labour Code Ordinance of 1945 and plugged the loopholes. Under the 1974 Act, contracts of employment were to be formalised not later than three months into employment and it must specify details of employment. Notice of severance of employment contract by either party must be in writing, and should be determined by length of service.

The policy of voluntarism underlined the 1957 Wages Board Ordinance prescribing machineries for use in the determination of conditions of work between labour and management. Where the machinery was non-existent or ineffective, government was empowered to prescribe wages and other conditions of employment, especially if government is convinced that conditions of work are unreasonably poor. An advantage which government took too far to legitimize the primacy of Wage Commissions with the attendant unilateral action that amounts to "sour taste" for the practice of collective bargaining in the public sector. Girigiri (2002:10) posits "...thus, essentially the 1957 ordinance was a marriage of collective bargaining and statutory labour regulation".

As a result of internal bickering, poor leadership and immaturity that characterized the nearly one thousand unions and no less than twenty central trade unions between 1942 and 1975, the federal government in a bold display of the policy of state intervention in labour relations promulgated the Trade Union Central Labour Organisations Decree 44 of 1976. This decree cancelled the registration of the existing four labour centres and also appointed Mr. M. O Abiodun as Administrator of Trade Unions "to take all necessary steps to effect the formation of a single central labour organization to which shall be affiliated all trade unions in Nigeria..." (Fashoyin, 1999:49).

The Administrator produced a structure comprising of 42 industrial unions (junior staff) to be affiliated to the Nigeria Labour Congress; 19 Senior Staff Associations (including four professional associations) and 9 Employers Associations. The Trade Union (Amendment) Decree number 21 of 1978 ratified these.

Uvieghara (2001:390) however added that "a further restructuring took place in 1996 resulting in only twenty-nine unions of those employees who would fall within the general description of junior workers". These legislations were designed to give bite to government's policy on labour relations aimed at strengthening the machinery of collective bargaining, which scholars like Ojo (1998:141) deprecated.

Edeh and Eme (2009: 43 – 58) presented an illuminating discourse or a further amendments to the 1996 Trade Union Act via the 2005 Trade Union (Amendment) act. Resulting from the conviction of the (then) leadership of NLC to make the civilian administration of President Olusegun Obasanjo responsive and sensitive to the yearning / pains borne by the populace, NLC under the leadership of Adams Oshiomhole called out the Nigerian workers on a number of strike, which the presidency viewed as "unions overstepping their powers in wanting to change government policy" (Edeh and Eme, 2009:52).

Consequently, a bill from the presidency was forwarded to the National Assembly seeking to democratise trade unions and stop incessant strikes. NLC viewed this as an attempt to "crush the trade union". A thorough examination of government action / intention amounts to balkanization of union and a recur to the pre - 1976 situation with a net effect on whittling down its powers and rights which contravenes not only some provisions of the 1999 constitution of the Federal Republic of Nigeria but ILO conventions 87 and 98 to which Nigeria is a signatory since 1948. The implication of these is that government finds it difficult to honour agreements reached through consensual process of bargaining and does not respect and uphold its own laws.

CONCLUSION

The thrust of this paper is that effective application of laws backed by sincerity of purpose on the part of government can enhance the practice of collective bargaining and an efficient industrial relations system. The paper attempted an exploration of laws regulating industrial relations practice from colonial period to date.

From the synthesis of positions taken by some scholars, it is deductible that some of these legislations amount to a curtailment of the collective bargaining processes in view of the element of compulsion built into them. However, from the benefit of hindsight, the movement from the principle of voluntarism to interventionism became necessary to project government not only as being responsible, but responsive and alive to its regulatory role and in fostering better industrial relations practice and atmosphere.

The paper also highlighted the gap in implementation of laws as a result of the ineffectiveness of the legislations in stemming incidence of strike and other forms of industrial action, which is attributable to a culture of impunity by the unions and employer. This is a carryover from military incursion to governance in Nigeria.

RECOMMENDATIONS

1. The paper recommends that there should be a continuous deepening of democratic culture and practices as necessary platforms upon which the mechanisms, processes and provisions of collective bargaining can be built and sustained.
2. As a corollary, democratic institutions such as the legislature, judiciary and other watchdog organizations require further strengthening and their independence must be guaranteed. The judiciary for instance must faithfully play its roles as bastion of democracy and the "last hope of the oppressed".
3. Government must learn to honour valid agreements reached with the unions through the consensual process of collective bargaining and should respect and uphold its own laws. It is through these, that labour jurisprudence could offer a durable approach to achieving harmonious work relations in Nigerian Public Sector.

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