The African Journal of Labour Studies

978-33651-7-7 Volume 1 Number 1 January 2002

Published and Printed by
ALAFAS NIGERIA COMPANY
2, Ogundipe Bye Pass, Off Liberty Stadium Road, Ibadan

1-17
24-33

GOVERNMENT POLICY AND COLLECTIVE BARGAINING PROCESS IN NIGERIA

BY
PROF. M.O. AKINTAYO
University of Ibadan
And
J.O. ADEYEYE Esq.
Ade-Banuso Consults, Lagos.

INTRODUCTION:-

In a book titled law and National Labour Policy, Archibald Cox singled out the four principal concern of national labour policy as: (i) Union Organisation, (ii) negotiation of collective bargaining agreements, (iii) administration of labour agreements and (iv) internal union affairs. In this paper our focus will be on collective bargaining.

Collective Bargaining has been defined simply as a process of making rules which will govern employment relations. It is a process of working out the rights and interest of both the employer and trade union. Our attention has been called to the fact that collective bargaining is not the only means of regulating employment relations. Three principal methods can be identified: (i) Unilateral union regulation: This is a situation where unions formulate their own rules, specifying terms on which their members could accept employment. This feature is observable in craft unions and association of trademen or guild of tradesmen such as Painters, Plumbers, Goldsmiths etc.

(ii) Statutory Regulation: For any years in Nigeria the Government has adopted a policy of allowing free and voluntary collective bargaining, free of any statutory regulations, to characterise industrial rela-tions practice in the country. At this time Professor Adeogun has this to say:

"There are no statutory provisions which regulated the collective bargaining process and ensure the observance of agreements reached by the negotiating parties..." Any statutory intervention that took place whenever it did, were designed to strengthen the processes of collective bargaining and industrial relations or to serve as substitute for non-existent or non-functioning of collective bargaining. One such statutory intervention was the labour (Amendment) ordinance No. 17 of 1932 which provide that whenever the Governor considers

that in any part of Nigeria the w paid to any labourers or cl: of labourer engaged in any particular occupation were in some cases unreasonably low, the Governor may by Order of Council fix the minimum wages which were to be paid to such labourers.

(iii) Collective Bargaining: This is the third method of regulating terms and conditions of employment between the employers and the organised union representatives. In this paper our attention will henceforth be turned to the National Policy as it affects the process of determining the terms and condition of employers and the union representative. We will start with an historical review of Government labour policy before independence, between independence and 1975 when the Government restructured the system if collective bargain. The period between 1975 and now will then be xtrayed. We will then examine some of the contending issues in the areas of Government policy and collective bargaining, issues such as the right to strike, the scope of bargaining, trade desputes and bargaining process etc.

1. HISTORICAL REVIEW OF GOVERNMENT LABOUR POLICY

Labour Policy Before Independence

During the pre-independence period, the Nigerian labour policy was based on the British model of industrial relations. In this time the principal labour laws that influenced labour relations were:

(i) the Trade Union Act 1938
(ii) the Trade Disputes (Arbitration and Inquiry) Act of 1941.

Primarily the Trade Union Act 1938 gave legal status to Unions.It guaranteed unfet tered freedom of Association and Trade Union rights. It made it compulory for employers to recognise Unions and required all Unions to be reg istered with the Director of Trade Unions in the then Labour Depart ment.

The Trade Disputes (Arbitration and Inquiry) Act of 1941 on the other hand was directly concerned with the settlement in labour disputes. In 1948, the Government set up the Whitley Council with the sole purpose of ascertaining the

workers' opinions on the question of wages and conditions of service.

The Whitley Council is a machinery for Collective bargaining and similar bargaining machinery exists in the private sector although the scope was severely limited. On the effectiveness of Whitley Council the Morgan Commission Report had this to say-

> It seems very odd that despite the establishment of the Whitley Councils since 1948 for negotiation between Government and employees, practically every major demand by workers for wage increase or reviews since the second world war has been settled; not through this collective industrial machinery but by special committees, commissions or arbitrations.

Some major events occurred during the period.

First, in 1954 when the Action Group won the election in the then Western Region, it recommended an award of minimum wage per day for all daily paid workers throughout the Region.

In 1955, the Colonia Government set up a wage Commission headed by Mr. Gorsuch. Its terms of reference included a review of salaries and wages of all employees in the public sector.

At this particular time Regional Government employees were earning different salary scales from their counterparts at the Federal level. Salary scales of the Federal Government employees were higher than those of the Regional Governments. One of Gorsuch Commission's term of reference was therefore to recommend a unified salary scale for all Government employees.

In order to carry out this assignment, the Commission's members (all British Nationals) collected memoranda from workers' and employers representatives all over the country. On the basis of their findings, the Commission recommended a 10 percent wage increase for all workers in the civil service.

In 1958 the Federal Government passed one further legislation – the wages Board Act. It went further to establish wage Advisory Councils. The purpose of the Act was to empower the Government to fix wages. The functions of the Wages Advisory Councils on the other hand was to settle all disputes

that might have arisen from wages in all sectors of the economy.

It is pertinent to know that the British model of Industrial Relations along which the Nigerian Industrial Relations has been patterned, was based on the doctrine of volunteerism. Specifically this model stressed the freedom of labour and management to determine the conditions under which labour would work. This period of history of the Nigerian labour movement has been characterised as the "Liassez – Fair Period". The role of Government was generally confined to reinforcing and supplementing the voluntary agreements reached by labour and management themselves. The Government did not intervene in the broad area of industrial relations. Rather public policy provided the guidelines under which negotiations would take place.

1960 – 1975 Period.

This period marked significant developments in Government labour policy.

The Gorsuch Commission wage award in 1955, left significant wage differentials between the highest paid staff and the lowest paid staff in the public sector. The ratio was 48:1. So a Commission on as Mbanefo Commission was appointed in 1960 to rectify the anomaly.

In 1964, the Federal Government set up the Morgan Wage Commission to review the wages and salaries of junior employees in the public sector. Two primary reasons have given for the setting up of this Commission. First it was aimed at enabling the junior workers recover some of the purchasing power of their earnings. The period was marked by high and rising prices of essential goods. Secondly, another reason that prompted the setting up of the Commission was the general strike which occurred in 1964.

The wages Advisory Council was reconstituted into Federal Labour Advisory Council in 1965. The change was aimed at reducing the number of wages Advisory Councils. It was also suggested that the change was necessitated because of the inertial and inefficiency of the Wage advisory Councils. The new body was found ineffective also on several counts:

(i) First, no specific functions were assigned to it.

(ii) Secondly, members opinions were not regarded as representing the official reviews of labour and management.

(iii) Thirdly, the council could consider only matters that were referred to it by Minister of Labour, thus limiting their statutory power. The Mbanefo Commission of 1960 recommended an average of 15 percent increase in wages for workers in the public sector. The award was very controversial because it left the wage differentials in the public sector.

Mbanefo's controversial wage awards and the ineffectiveness of the wage councils, presumably contributed to the trade disputes and strikes during the 1960 – 65 periods.

The period 1965-70 marked the end of the Laissez-Faire Government policy and the beginning of the Interventionist policy period in Nigerian labour policy. In 1967 in particular the Nigerian Public Policy took a new direction when the Military took over the administration of the country. The military method was different because it brought radical changes to Nigerian Labour Policy.

These radical changes were reflected by the following decrees. When the Military took over the administration of the country in 1966, all the existing labour laws were replaced with new labour decrees. The first of these decrees was the Trade union Disputes (Emergency Provisions) Decree of 1968. Although the purpose of this decrees was to provide voluntary measure for the settlement to negotiate. But inspite of the decree, many cases of industrial disputes occurred this signifying the ineffectiveness of the decree.

Therefore in 1969, the decree was amended as the Trade Disputes (Emergency Provisions Amendment) Decree No. 53 of 1969. The 1969 decree put a ban on strikes and lockouts.

The decree also stated that the approval of the Federal Military Government is required before an employer can grant a general or percentage wage increase to any group of employees. This meant that all collective agreements were made subject to the approval of the Federal Government.

Between 1970 and 1975 two significant events occurred in Nige

ria that had significant effect on National labour policy. First the Nigerian Civil war ended in January 1970. Secondly the Government leadership changed hand with the overthrow of Gowon's administration in 1975.

With the end of the war in 1970, the various governments focused attention on the need to restore a stable industrial atmosphere necessary for satisfactory socio-economic reconstruction. Importantly the Government recognized that there had been a drastic fall in the real income of workers as result of inflation caused by war expenditure. During the 1970/71 fiscal year therefore the Government set up Adebo Wage Commission to review wages and salaries of workers in both the private and the public sectors. It is significant to note that this was the first time when the government openly included the private sector in its wage and salary Review Commission.

The Commission's main objective was to develop a suitable pay system for the working class. Subsequently the Commission recommended an average wage increase of 30 percent for workers in both the private and the public sectors. This report was highly controversial and consequently resulted in several industrial strikes.

In 1973, the Federal Military Government repealed the 1968/69 Trade Disputes (Emergency Provisions) Decrees and promulgated the Wages Boards and Industrial Councils Decree. The main purpose of this decree was to assist workers where the unions are weak or non-existent. Three bodies were established under the decree.

(i) The National Wages Board
(ii) Area Minimum Wages Committee
(iii) Joint Industrial Councils.

Each of this bodies was given a specific assignment. The National Wages Board was to recommend to the Labour Commissioner the minimum wage rates that should be paid to the unskilled workers throughout the country.

The Area Minimum Wages Committee was to recommend to the National Wages Board the minimum wage rates that should be paid to unskilled workers in a particular area or region.

The Joint Industrial Council served as a negotiating mechanism

between employers and workers organisations for the determination of wages and conditions of employment.

Other important labour law was the Trade Union Act, 1973. This act, among order things, excluded employees of some specified establishment from organizing as labour Unions. It banned strikes and lock-outs. It precluded any employee convicted of criminal offences or loss than 21 years of age from holding trade Union offices. The decree also increased the number of employees who can form trade Union from 5 to 50. It required that no member of the Union shall take part in a strike unless the majority of the members have in a secret ballot voted in favour of a strike.

In 1974/75 the then existing four Central labour organisations were reconstituted into one central union known as the Nigerian Labour Congress.

The then existing central labour organisations were:-

(1) United Labour Congress of Nigeria (ULCN)
(2) The Nigerian Trade Union Congress. (NTUC)
(3) The Nigerian Workers Council (NWC)
(4) The Labour Unity Front (LUF)

Government also announced what it called a New Labour Policy in 1975. This new policy banned affiliation with all foreign trade union organisations and banned those association operating in Nigeria. The reason given was that it was aimed at guaranteeing public order, national security as well as removing from trade union movement Ideological Influences that have plagued the Unity of Nigeria trade Unions for more than a quarter of century.

In the same year, Government ordered a judicial probe into the activities and assets the main trade union organisations and their leaders. Apparently the Government decision to institute a probe was based on the rumours that some trade Union leaders engaged in large scale misappropriation and embezzlement of Union funds. After the Tribunal's findings, eleven influential Union leaders were banned from future participation in the trade Unionism in the country.

In 1974/75 fiscal year the Federal Military Government appointed Udoji Commission to review the

wages and salaries of workers in the public sector. This was to correct some of the obvious inconsistencies in the ADEBO Commission's award that made the public sector employees to feel that they should have received a higher wage increase than their counterparts in the private sector. There were also intra-group salary differentials which were not defendable. In respect of the private sector, the commission made no specific recommendations by which wages were to be raised. It simply recommended that increases in the private sector should be similar to those of the public sector. It was in response to these various workers discontents that the Federal Government appointed the Udoji Commission.

Like the previous Commissions, Udoji award were controversial. Although it made very generous wage increases to various categories of workers (the average was 35%) the award gave rise to very many strike actions involving workers in both the private and the public sectors.

Thus far it would have become clear to us that the various government policy up to 1975 did not foster genuine leadership in collective bargaining. The National Labour Advisory Councils and the National wages Advisory Council functioned in advisory capacity and their wage recommendations were subject to Government's approval. And in any case their recommendations were not derived from negotiations with the Unions but rather on what the councils felt was good enough. However, wage Commissions have become most popular method of setting wages and other conditions of employment in the public sector of Nigeria. The Commissions wage awards often restricted to the Public sector, usually formed the basis upon which wages are also set in the Private Sector.

In the private sector for a larger part of this period, the public policy was weak in ensuring a proper collective bargaining process. As a result of ineffective Government Labour Policy, many Unions suffered from chronic structural and organisational problems. There was the fundamental problem of Union multiplicity and the resultant small and ineffective Union membership. This structural weakness was attributed to the weakness of the law. The

result was that they had no proper organisation for formalising or instituting appropriate collective bargaining process.

The employers on their own capitalised on the Union organisational weaknesses and in most cases refused to negotiate with the Unions. Similarly the employers did not see any need to come together or to organised themselves to form Employers Associations.

This need was not felt until the Union's started to amalgamate for the primary purpose of negotiation but particularly after the emergence of the Nigerian Labour Congress.

Another weakness of national labour policy was its attitude to the use of collective bargaining machinery. It was true that as far back as 1948, public policy had consistently stressed the importance of collective bargaining as the most appropriate machinery for wage determination in both the public and the private sectors through the Whitley Councils and the Joint Industrial Councils. However, official support for the use of these machineries in term of actual use has been a complete disappointment.

In 1955 for example the Government issued the following policy statement:-

> We have followed in Nigeria, the voluntary principles which are so important and relevant in industrial relations in the United Kingdom. If free collective bargaining, which is one of the main purposes of trade Union Organisation should disappear, then with in would go (in a democratic society) a large proportion of Union membership and one of the principal elements which sustain free association of workers.

Most experts and practitioners of Industrial Relations would probably endorse this declaration. Yet the Government as the single largest employer in the country and naturally a model for smaller employers has consistently ignored collective bargaining process and has systematically employed adhoc wage commissions and tribunals for setting wages and other conditions of employment in the Public Sectors. Directly and indirectly therefore the actions of Government

have done much to undermine the potential for collective bargaining both in the public and in the private sectors. With the exception of the Mogan Commission of 1963/4 which permitted considerable trade union input, wage commissions are by nature unilateral wage determination and therefore contradict public policy on collective bargaining.

Wage Commissions, by our own experiences have shown to be distablizing, crisis – proned and inflationary. In contrast, collective bargaining provides an orderly method of resolving the conflicting interests of the parties in the settling of wage rates and conditions of service.

1975 and beyond

Between 1975 and 1978 significant developments in Industrial Relations occurred – reflecting a new socio-economic philosophy. Emanating from this philosophy was the introduction of a new labour policy on December 4, 1975.

Its objective include:

(a) The need to give a new sense of direction and a new image to the Trade Union Movement in Nigeria;

(b) The need to rationalise the structure and organisation of trade unions and to ensure that they are self-sufficient financially in future...

(c) The need to provide facilities for trade union education in order to improve the quality of trade union leaders and the general knowledge and understanding of the purposes of trade unions by the rank and file members of these organisations.

In line with Government new philosophy for social order the government revoke the certificates of the existing 4 central labour organisations and commissioned an administrator of trade unions to restructure the unions along industrial line. It was this exercise that produces the existing 42 industrial unions and a single trade union center, the Nigeria Labour Congress.

By this exercise the entire industrial relations system and the collective bargaining machinery in particular were completely transformed. Thus the Federal Military Government in 1976 promulgated the Trade Disputes Act of 1976. The Act established the formal procedures for settlement of trade dis

putes. Two important Institutions were created under the Act.

(i) Industrial Arbitration Panel (IAP) under section 7 of the Trade Dispute Act of 1976 was established. The Min ister is required to refer all disputes for settlement to this panel.

(ii) Under Section 14, the Act provided for the establish ment of a National Industrial Court for Nigeria, which the laws have granted exclusive representation for the industrial unions and automatically unions have de facto the right to negotiate agreements. The absence of these facilitating gestures had caused innumer able crises in industrial relations but their recognition amounts to a major break-through in collective bargaining.

Employers' Associations developed rapidly, especially in industries that hitherto had no such organisations. Most of the associations that are now operating are in business to advance good labour relations, in sharp contrast to the negative anti-union tactics among individual employers in the past. Thus, most of these associations now have fulltime executive secretaries who have both academic and professional qualifications in industrial relations. In earlier time despite similarities in labour markets in which companies are based and near-uniformity in product markets, companies always made a point of their individuality in labour relations even though a strong tendency towards uniformity in wage structure may exist, especially among firms in the same industry. However, with the emergence of industrial unions, this insistence on individuality or company-bycompany bargaining has now virtually disappeared, paving way for industry-wide bargaining.

Government went ahead to provide initial financial assistance to trade unions (and the NLC) to set up their administrative and functional machinery. Though critics may see this governmental gesture as an interference on the independence of the labour movement.

In the Nigerian industrial relations scene today there is a fundamental structural change in collec-

tive bargaining towards negotiation between an industrial union and employers' association at the national or industrial level. The exceptions are the few cases where employers associations are non-existent in which case company-based negotiation takes place. Therefore current emphasis is on industry-wide bargaining, particularly on mandatory subjects.

One major Government policy in the late 80's which had major impact on collective bargaining process is the promulgation on the 29th February 1988 the National Economic Emergency Power (Nigerian Labour Congress) order 1988 under the powers conferred on the Government by the National Emergency Powers Decree of 1985. the order became necessary to bring orderliness to Nigeria Labour Congress which had been turned apart on ideological basis and which was unable to effectively organize a Delegate Conference in Kano in 1981, Enugu in 1984 and in Bening in 1988.

The order had the effect of removing the officers of the factions, appointed an administrator for the Congress and order the administrator to organise a special delegate Conference within six months to choose a new National Executive Council.

Some Contending Issues.

In this paper we intend to generate some discussions on issues which to my mind are very important for collective bargaining process but on which we have not reached any consensus. For lack of time we have restricted the paper to only a few of such issues.

Trade Disputes and the Bargaining Process.

Section 55 of the Trade Union Act 1973 defined a Trade Dispute as – "any dispute between employers and workers or between workers and workers which is connected with the employment or non-employment or terms of employment or conditions of work of any persons".

From this definition, it must be seen that for a disoute to be regarded as a trade dispute, it must

(i) be a dispute between employers and workers or between workers and workers (the parties to the disputes).

(ii) be connected with employment or non-employment or terms of

employment or condition of employment (the subject matter).

In all developed nations the law about strike is a matter of great political concern and is therefore central to Government policy and law. Hence the various Labour Legislations have been aimed principally at ensuring as far as possible, industrial peace and minimum industrial conflict through strikes.

Trade disputes could occur concerning employment or non-employment (withdrawal or non-withdrawal of labour) term of employment (e.g wages, salaries grading etc) and conditions of employment, (welfare provision, canteen, health facilities etc).

For a Union to be protected in an industrial action, the union's action must be in contemplation or in furtherance of a trade dispute.

Strike or Industrial Action

The best known form of industrial action is the strike. This can be described as a deliberate and concerted withdrawal of labour. The use of the term "industrial action" which is surely a wider term than just strikes point to the fact that workers may protest and indeed do protest in ways other than by a concerted stoppage of work. For example workers may decide to-work to the rule or go slow. In some countries with relatively more advanced industrial relations practice workers have introduced the practice of working to contract by withdrawing their enthusiasm and cooperation. This withdrawal of goodwill can be manifested by a refusal to work voluntary overtime, or take part in extra hours even when overtime is compulsory or where it is widely used. Withdrawal of goodwill could also be manifested by the refusal to continue to provide a service which may not be contractually required but which has become sufficiently well established in practice so much that employers bank on it or heavily rely on it for the arrangement of their affairs or the execution of some vital projects.

These are some of the variety of methods adopted by workers to express their dissatisfaction or protest or to press their claim for better or informed conditions.

Have Workers got a Fundamental Right to Strike?

The Court of Appeal in the UK

adopted the following definition of strike as:

A stoppage of work by men — with a view to improving their wages or conditions of employment or giving vent to a grievance or making a protest about something or supporting or sympathising with other workmen in such endeavour. It is distinct from a stoppage which is brought about by external event such as a bomb scare or by apprehension of danger". (Per Lord Denning M.R. at P. 990).

The converse of the strike is the lockout. By section 37 of the Trade Disputes Act 1978, "lockout is the closing of a place of employment or the suspension of work or the refusal by an employer to continue to employ any number of persons employed by him in the consequences of a dispute".

Although Section 13 of the Trade Dispute Act of 1976 virtually banned strikes and lockouts, workers have continued to exercise from time to time their right to withdraw their services whenever they felt that the circumstances of the occasion justified such actions. Whether or not workers have such a right as claimed has been subject to considerable academic debate and is a point on which even judicial opinions have continually deferred.

In a leading case in Britain Lord Wright declared – "the right of workmen to strike is the essential element in the principle of collective bargaining. It is, in other words, an essential element not only of the Union's bargaining power, that is for the bargaining process itself, it is also a necessary sanction for enforcing agreed rules". At least two contending issues can be raised with regard to this conclusion. First even if we accept this position for the employees in the private sector, can the employees in the public sector be allowed the same kind of right? And what happens to the sovereignty of Government and the essentiality of certain Government functions.

Secondly, how do we treat such a right in relation to the contract of employment?

In some academic discussions it has been suggested that strike notice is a notice of intention of a breach of contract. But in one important case Lord Denning advanced the view that if a strike takes place the contract of employment is not termi

nated but suspended for as long as the strikes lasts and is reviewed again when the strike is over. He felt that a strike notice of proper length is lawful.

This matter was discussed at length by the Donovan Commission (Royal Commission) on Trade Unions and Employers Association in 1965-1968. It was clearly the view of the Commission that at common law a contract cannot be terminated unilaterally and if an employee refuses to carry an working under the contract of employment, his employer had the option:

(i) either to ignore the breach of the contract and to insist upon its perfomance,

(ii) or alternatively to accept such a fundamental breach as a repudiation of contract and to treat him self as no longer bound by it.

In short the Commission seemed to have accepted that refusals to work during a strikes did not involve self-dismissal of the strikers but left the parties (employers and the workers) to the contract hoping that the strike would one day be settled and the contract be alive unless and until the employer exercises is right to dismiss the employee.

This theory recognised that an employer may choose to dismiss his employees who go on strike but may well choose to ignore the breach and insist on performance. In effect, the theory is that a strike notice is a threatened fundamental breach rendering the contract voidable and a strike without notice will constitute a breach and an adoption of unlawful means. Thus when workers walk out of their jobs without proper notice and in disregard to the laid down procedures they are committing a breach of their contract.

The debate concerning the right of a worker to strike remains unsettled particularly whether a strike is a suspension of obligations under a contract of employment (Denning's theory) or constitutes a unilateral repudiatory breach which the employer has the option to accept or reject (Supreme Court of Nigeria theory).

From experience we know that workers who go strike do so to press home their demand for certain benefits. They have no intention whatsoever of abandoning their jobs or permanently severing their

we always have strikes. Something then is wrong with either the law or with the operators of the law or both.

Conclusion

We have attempted to cover only some of the important areas of the subject matter. Some of the issues omitted might be considered very important by others. For example we have left out a consideration of the essential services and the impact of collective bargaining process in the industries or establishment involved. We recognise the importance of such and other issues. The problem is that each of these issues is broad enough for a paper. In the circumstance, we have the option to select few issues and treat them to some length. We have decided to do exactly this. Even here there are limitations as to how far we can go.

We believe, however, that the paper has stimulated enough interests for further discussions.

References

1. Akintayo, M.O. (1986) "Strike in an ailing economic and the contempory instruments for solving it, the Nigerian experience.
2. Fashoyin, Tayo (1980): Industrial Relations in Nigeria, Longman Group Ltd.
3. Federal Rebuplic of Nigeria Public service Review commission: Main Report, Lagos, Federal Ministry of Information printing Division 1974.
4. High Armstrong clegg (1976) Trade Unionism Under Collective Bargaining, Oxford, Hasil Blackwell.
5. Sonubi, O. (1982) "The Role of Trade Unions in Industrial Relations" proceeding of Industrial Relations (23-28 August 1982).
6. Thomas .A. Kochen (1980) Collective Bargaining and Industrial Relations: Home wood Illionois