COLLECTIVE BARGAINING: A PANACEA TO INDUSTRIAL HARMONY

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Abstract

All workers throughout the world are alike in the sense that they desire recognition, fair wages and salaries, security of job, satisfaction in place of works, redress for wrongs and better working conditions. The employers on the other hand try as much as possible to maximizing profit at all cost. These divergent interests have often led to strain relationship between workers and employee, sometimes ending up in strike or other industrial actions. Collective bargaining plays a vital role in preventing and resolving this strain relationship between the Workers and Employers. It is a potent instrument in the resolution of trade disputes, particularly disputes connected with strikes and lockouts, which are the most disruptive of all industrial disputes. The articles examines the relevance of collective bargaining, its effectiveness as well as the deficiency in preventing and resolving trade disputes, which are inimical to social economic development of the country, Nigeria. In adopting the doctrinal method of research, the article revealed that collective bargaining system of resolving trade disputes is not proactive enough, hence the unprecedented proportions of industrial actions in Nigeria. The article indentified some deficiency in collective bargaining procedures and suggests inter-alia the need for collective

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bargaining to be encouraged, Workers and Employers should imbibe the sanctity of collective bargaining agreements and the enforceability of collective agreement should not be based on honour.

Introduction

No doubt it is the desire of every human being to have and enjoy a stable, suitable environment and society. But for a man to have such a society disputes and conflicts cannot be ignored, they must be properly managed and resolved. Trade dispute is one aspect of known disputes in modern society. Despite all the elaborate statutory provisions enshrined in Labour legislations of various countries in the world for ensuring industrial peace, hardly any week or month passes now without industrial actions or threat of it in one form or another.[1]

The workers are interested in protecting their lives and that of their families against downward trend of their real wages and loss of job by using their strength collectively. But the management expects the production and distribution of goods and supply of services not to be interrupted and to maximize profits. Due to these divergent interests which exist between them dispute become inevitable in both public and private sectors of the industry. It is also note worthy that complexities in labour management relationship have been heightened by the emergence of free market economy especially in the developing nations which has given rise to the formation of organized labour and trade unionism.

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[1] Such Labour Legislations includes- Trade Dispute Act Cap. 8 L.F.N. 2004; Labour Act Cap. L1 L.F.N 2004: Trade Union Act Cap. T14 L.F.N 2004 and British Trade Union and Labour Relations (Amendment Act) 1976.

Although, several means of dispute settlement are being evolved from such legal expedition, yet the appropriateness of a particular means is of great importance for effective and efficient resolution of the dispute.[2] Then, how effective is collective bargaining in resolving trade disputes in Nigeria? In what areas are collective bargaining deficient and what are the possible solutions? The articles examines these and related issues in the light of academic and related judicial opinions.

Concept of Collective Bargaining

Traditionally courts are not suitable places to resolve trade disputes it can better be resolved through collective bargaining. Thus, Dau-Schmidt K. G.[3] opines that,

> Agreements to arbitrate disputes under the collective bargaining agreement are the logical low-cost cooperative solution to the problem of contract enforcement. Resorting to economic warfare or costly litigation to resolve contract disputes is a positional externality that wastes the cooperative surplus. Thus, courts properly should enforce and encourage agreements to arbitrate while prohibiting or severely limiting the parties' recourse to economic or legal weapons. Moreover, the rationale for such provisions under the bargaining theory is that they will discourage wasteful strategic behavior and promote industrial peace, precisely the rationale given by the Court in developing this doctrine.

In order to avoid frequent conflicts between the employees and employers, statutes have provided some machinery whereby

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2 Mark H. Nicholas G, International Commercial Arbitration, LLP, (1996) p. 3.

3 Dau-Schmidt K. G. "A Bargaining Analysis of American labour Law and the Search for Bargaining Equity and Industrial Peace", in Economic of Labour and Employment Law, Vol. 1, cited J.J. Donohuc III, Edwaed Elgar Publishing Limited, Montpellier Parade, Cheltenham, UK, 2007 p. 159.

organized labour leaders can sit down with the employers and iron out their differences in an atmosphere of mutual trust and understanding. This is termed collective bargaining in the industrial world. Some of these industrial negotiations are products of business practice while others are laid down by statutes.

The International Labour Organization Convention No. 98.[4] enjoins members of the Organization to take measures appropriate to national conditions where necessary, to encourage and promote the full development and utilization of machinery for voluntary negotiation between employers or employers' organization and workers' organization, with a view to the regulation of terms and conditions of employment by means of collective agreements.

The concept of collective bargaining was first coined in the 18th century by two British historians who were members of the British Labour Movement. They were Sidney Potter and Beatrice Webb. During this period, union or group demands were regarded as final by members and were not subjects to the spirit of give and take as implied on the spirit of collective bargaining. During this period, many countries whose employees might not necessarily be members of any union usually approached their employers with a "take it or we go on strike" package of demands. On the other hand, the employers approach was equally unilateral because employee-employer relationship was a matter between him (employer) and each individual worker.

In Britain for instance, the Government had to pass a law the Combination Act of 1789 which made it an offence punishable with three months imprisonment, for any person who joined another person to bargain for increase in wages or in the reduction in the hours of work. Thirty five (35) years later, precisely in 1824, the combination Act was repealed, but was still bothered with legal

[4] Article 4; Nigeria ratified the Convention on 17th October, 1960.

restrictions in collective bargaining. Many workers were therefore unwilling to join trade union which lacked cohesion, stability and authority to negotiate binding agreements. As the growth of industries continued, skilled craftsmen in engineering, woodwork and printing in other trade emerged and it became difficult for most employers who have such skilled workers to ignore their worker demands since they could not easily replace them in the events of dismissals as the unskilled ones. Consequently, the stage was now set for the development of collective bargaining.

The first recorded collective bargaining was in Philadelphia in the United States of America in 1789 when the Journeymen Corwainers were locked out by their employers for refusing cuts in wages. The Journeymen had to sue for peace and present an offer of compromise. This led to a committee of employers and that of workers. A compromise agreement was reached by striking a balance between the 'workers' offer and above the proposed cuts of the employers.[5]

Definition of Collective Bargaining

Collective Bargaining are those arrangements under which wages and conditions of employment are settled by a negotiation, in the form of an agreement made between employers or associations of employers and workers' organizations.[6]

Collective Bargaining may be defined as the process of working out a *modus Vivendi* between two parties – employer and trade union organization in matters appertaining to terms and conditions of employment i.e. the rights and interests of both parties, or

[5] Idubor R., *Employment and Trade Dispute Law in Nigeria,* 1st Ed., Akure, Sylva Publication Ltd. p. 169.

[6] Ministry of Labour (G.B) *Industrial Relations Handbook,* revised edition, 1961, at p. 18.

simply, the process of making rules which will govern employment.[7]

According to Black's Law Dictionary Collective Bargaining means:

> Negotiations between an employer and the representatives of organized employees to determine the conditions of employment, such as wages, hours, discipline, and fringe benefits

According to Davey[8] collective bargaining is;

> A continuing institutional 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 bargaining unit) concerned with the negotiation, administration, interpretation and enforcement or written agreements covering joint understandings as to wages or salaries, rates of pay; hour of work and other conditions of employment.

In the same vein, Article 2 of convention 154 of 1981 of the International Labour Organization[9] provides that;

> The term "collective bargaining" extends to all negotiations which take place between an employer, a group of employers or one or more employer's

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[7] Bryan A Garner, Black's Law Dictionary, 9th Ed, U.S.A, Thomson Reuters, 2009.

[8] Davey H.W. *Contemporary Collective Bargaining*, 3rd Ed, New Jessey, Englewood Cliff, 1972 p. 64

[9] International Labour Organization (ILO) was established by the League of Nations in 1919 and became in 1946, the specialized agency of the United Nations.

> organization, on the one hand, and one or more workers organization on the other for;
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> (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 organization and 'workers' organization or workers organizations.

Similarly, the Labour Act[10] also proffered a workable definition to the term 'collective bargaining' section 91 of the said Act defines 'collective bargaining' as;

> The process of arriving or attempting to arrive at a collective agreement.

From the above definitions collective bargaining has three major characteristics: Firstly, collective bargaining involves employees acting together. This is usually done through the formation of a trade union and entrusting it with the task of bargaining on their behalf. In other words collective bargaining requires that there should be a representative workers' organization which can be a party to such negotiation. Secondly, collective bargaining is embarked upon in order to secure a collective agreement.

Thirdly, another characteristic of collective bargaining is that it is a process of negotiation between two parties; bargaining also involves negotiation about working conditions and terms of employment of people who are affected by it.

There are two types of bargaining procedure. They are;

(1) Contractual/Static Method: This refers to the coming together of the employer or employers association and the

[10] Cap. L 1 Laws of t he Federation of Nigeria, 2004.

union or unions to negotiate and arrive at an agreement. Here the employer and representatives of the workers meet to negotiate for the purpose of settling trade disputes. It is called "static" because after the conclusion of the agreement, it remains the only agreement that binds the parties. The body is dissolved after the conclusion of the collective agreement. They renew their negotiation as the need arises either because the time for the expiration of the agreement approaches or if there is no time limit that either side desires a change.

(2) Institutional Method/Dynamic Method: it consists in the creation of a permanent bilateral body, known as joint industrial council, a conciliation board or a joint committee in which both Labour and management are represented by an equal number of members; sometime with, an independent chairman presiding. Here both Labour and management join together to set up an Institution and a Constitution. The bilateral agreement is open to interpretation or modification; hence it is an open ended agreement. Also a time limit is usually not fixed for its operation.

Wages Board System

The law has always provided a framework to encourage, promote and assist meaningful collective bargaining. It is generally accepted that trade unions, especially trade unions of employees are vital, if not an indispensable component of the collective bargaining machinery. Hence, the statutory law has always made provisions to ensure the existence of trade union. The statute has always taken a vital step in regulating institutionalize collective bargaining. This institutionalized collective bargaining includes statutory provisions on minimum wages and conditions, pensions and gratuities, training of employees and settlement of industrial disputes.

Machinery for the fixing of minimum wages has long been institutionalized by law. The first statute was the Labour

(Amendment) Ordinance No. 17 of 1932 which amended the Labour Ordinance No. 1 of 1929 to confer power on the Governor in Council to fix minimum wages where the Governor found that wages of any class of labourers were unreasonably low. These powers were later enacted as the Labour (Wages Fixing and Registration) Ordinance No. 40 of 1943. The Governor in Council was empowered to fix a minimum wage for any occupation in Nigeria or any part of Nigeria in which he was satisfied that the wages were unreasonably low. The order fixing such minimum wage could include the fixing of minimum wages for piece-work, time work or the minimum wage to be paid to any special classes of employees within the occupation. The Governor however, could act only upon the recommendation of a Labour Advisory Board. The provisions of the 1943 Ordinance were later incorporated into the Labour Code Ordinance 1945.

In 1948, the government set up the Whitley Council with the sole object of ascertaining the workers' opinions on the question of wages and conditions of service. The Whitley Council was machinery for collective bargaining and similar bargaining machinery existed in the private sector although the scope is severely limited. Again in 1957, the Wages Board Ordinance was enacted which was also later repealed by the Wages Board and Industrial Councils Act No. 1 of 1973, now refers to as W1 Laws of the Federation of Nigeria, 2004 which sought to rectify some of the weaknesses in the machinery with respect to the private sector. The Act re-enacts the main provisions of the Wages Boards Act 1957 but it however contains some vital innovations.

The Act provides for the establishment of a National Wages Board. Thus, section 1(1) Wages Boards and Industrial Council Act, 2004 provides as follows;

> The Minister may by order direct that an industrial wages board be established to perform, in relation to the workers described in the order and their

> employers, the functions specified in the subsequent provisions of this Act, if he is of the opinion that wages are unreasonably low or that no adequate machinery exists for the effective regulation of wages or other conditions of employment of those workers:
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> > Provided that no such order shall be made in respect of local government workers.

The main functions of the Board include the followings;

(a) to examine the application to all unskilled workers of any agreed minimum wage rate in any specified area;
(b) to examine from time to time the adequacy of minimum wage rates for unskilled workers in the light of any recommendations received from area minimum wages committees;
(c) to consider any matter referred to it by the Minister with reference to the minimum rates of unskilled workers in any area for which an area minimum wages committee has been set up; and
(d) to report and make recommendations accordingly to the Minister.[11]

The Board is also empowered with the responsibility for considering the recommendations of the area minimum wages committees in the state and may recommend to the Minister minimum wages to be paid by employers to workers in a specified area or locality including recommendations for the cancellation or variation of wages fixed earlier by it under section 10 of the Act.

By virtue of section 1 of the Act the Minister is empowered by order to direct the establishment of Industrial Wages Boards. There are two ways in which Industrial Wages Board may be

[11] Section 16 (2) W1, LFN, 2004.

established. The first is that the Minister by order direct that an Industrial Wages Board be established in relation to the workers described in the order itself and their employers if he is of the opinion that wages are unreasonably low or that no adequate machinery exists for the effective regulation of wages or other conditions of employment of the workers.

The second procedure is that if the Minister is of the opinion that wages are unreasonably low or no adequate machinery exists for the effective regulation of wages or other conditions of employment of any workers, he may refer the question whether an Wages Board should be established with respect to any of those workers and their employers to a commission of inquiry.

The Commission of Inquiry must publish its terms of reference and state a period of not less than forty days within which it will consider written representation, if any. It may also hear oral evidence and embark on such investigations as appear to it to be necessary in carrying out it assignment and it must consider any written representative made to it.[12]

If the Commission is of the opinion, with respect to the workers with whom it is concerned, that wages are not unreasonably low or that there exists adequate machinery for regulating the wages or other conditions of employment of those workers, and that there is no reason to believe that the machinery is likely to cease to exist or cease to be adequate for that purpose, it must report accordingly to the Minister.[13] Furthermore, it may include in its report any suggestions which it may think fit to make as to the improvement of that machinery.[14] Note that where any such suggestion are so included, the Minister may take such steps as may appear to him to

[12] Ibid Section 13 (1).
[13] Ibid section 4 (1) (b) W1, LFN 2004.
[14] Ibid

be expedient and practicable to secure the improvements in question.[15]

Section 4(3) further provides as follows;

> If the Commission is of Opinion with respect to the workers with whom it is concerned that:
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> (a) wages are unreasonably low; or
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> (b) adequate machinery for regulating the wages or other conditions of employment doest not exist; or
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> (c) existing machinery is likely to cease to exist or cease to be adequate for that purpose, and that as a result reasonable standards of wages or other conditions of employment are not being or will not be maintained, the commission may make a report to the Minister accordingly and may include in its report a recommendation (in this Act referred to as "an Industrial Wages Board Recommendation") for the establishment of an Industrial Wages Board in respect of those workers and their employers.

Where the Minister receives an Industrial Wages Board recommendation, he may, subject to the Act, if he thinks fit, make an Industrial Wages Board order giving effect to the recommendation.[16] Alternatively, the Minister may refer the report

[15] Ibid section 4(2).
[16] Ibid section 4(4).

back to the Commission and the Commission must then reconsider it having regard to any observations made by the Minister and must make a further report which may similarly be referred back to the Commission. Section 5 of the Act provides that, making any Industrial Wages Board order whether under section 4 of the Act or not, the Minister must publish a notice in the Federal Gazette of his intention to make the order.

The notice must contain the text of the proposed order and shall specify the time, which must not be more than forty days from the date of publication within which an objection with respect to the order shall be made to the Minister. It shall require that every objection should be in writing and must state the specific grounds of objection and the omission, addition or modification asked for. Further- more, the Minister shall consider any such objection made by or on behalf of any person appearing to him to be affected, being an objection sent to him within the time specified in the notice, but shall not be bound to consider any other objections.[17]

Section 5(5) further provides as follows:

> After considering all the objections which, under this section, he is required to consider, the Minister may;
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> (a) make the order without amendments; or
> (b) make the order with such amendments as he considers necessary or expedient; or
> (c) Refrain from making the order.

Where the Minister makes an Industrial Wages Board order, he shall publish it in the Federal Gazette and such order shall come into operation on the date on which it is so publish or on such later

[17] Ibid section 5(4).

date as may be specified therein. It is pertinent to note that if at any time the Minister considers that the wages or other conditions of employment of workers to whom an Industrial Wages Board order relate or the machinery for the regulation of those wages or conditions have been so altered as to render the Industrial Wages Board unnecessary, he may by order abolish the Industrial Wages Board in question.[18]

An industrial wages board may recommend the wages to be paid by the employers to their workers described in the order establishing the Board.[19]

Section 8(2) further provides as follows:

> Before recommending any wages under subsection (1) of this section, the industrial wages board shall;
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> (a) publish a notice of the wages it proposes to recommend and the manner in which and the time (not being less than forty days from the date of the notice) in which objections to the recommendation may be lodged; and
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> (b) Consider any objections which may be lodged in accordance with the notice.

Apart from fixing wages, a board may also, if the Minister has given his permission for it to consider the making of a recommendation for a condition or conditions of employment

[18] Ibid section 6.
[19] Ibid section 8(1).

either generally or for any particular work, make such a recommendation for workers to whom the Board refers.[20]

Before recommending however, the board must publish a notice of the condition which it proposes to recommend and the manner in which and the time, not being less than forty days from the date of the notice in which objections to the recommendation may be lodged. The Board must consider any objections which may be lodged in accordance with the notice.[21]

Section 10(1) and (2) provides as follows;

> (1) Where an Industrial Wages has recommended any wages or any other conditions of employment, or the cancellation or variation of any such wages or conditions fixed under subsection (2) of this section, the board shall forthwith send notification thereof to the Minister; and the notification may include a statement of the date from which the board recommends that the wages or condition, or the cancellation or variations; as the case may be, shall become effective. The Minister, on receipt of a notification under this section with respect to any matter, shall by order fix the wages or conditions, or approve
> (2) the cancellation or variation, as the case may be:

Provided that;

> (a) The Minister may, if he thinks fit, refer the recommendation back to the industrial wages board;

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[20] Ibid section 9(1).
[21] Ibid section 9(2).

(b) The board shall thereupon reconsider it having regard to any observations made by the Minister and may, if it thinks fit, re-submit the recommendations to the Minister either without amendment or with such amendments as it thinks fit, having regard to those observations; and

(c) Where recommendations are so re-submitted, the like proceedings shall be had thereon as in the case of original recommendations.

Wages and conditions fixed by order of the Minister are known as Statutory Minimum Wages and Statutory Minimum Conditions respectively. An employer is under obligation to pay the workers wages not less than the Statutory Minimum Wages, clear of all deductions, except those required by law or in respect of contributions to provident or pension funds or schemes agreed to by the workers and approved by the Governor of the appropriate state, if the employer fails to do so, he shall be guilty of an offence and on conviction shall be liable to a fine not exceeding ₦200 and in the case of a continuing offence to a fine not exceeding ₦50 for each day or period during which the offence continues.[22]

In the same vein, an employer must in cases in which the Statutory Minimum condition is applicable, apply to the worker a condition not less favourable to the worker that the Statutory Minimum condition and if the employer fails to do so, he shall be guilty of an offence and on exceeding ₦200, and in the case of a continuing offence to a fine not exceeding ₦50 for each day or period during which the offence continue.[23]

The court may by the conviction adjudge the employer convicted to pay in addition to any fine, such sum as appears to the court to be due to the worker on account of wages, the wages being

[22] Ibid section 12(1).
[23] Ibid section 12(3).

calculated on the basis of the Statutory Minimum Wages or in the case of Statutory Minimum conditions, such sum by way of compensation as may appear to the court to be due to the worker by reason of the failure.[24]

It is pertinent to note that the power of the court to order such payment is not in derogation of the right of the workers to recover wages or any sum as may be due to him by any other proceedings in a court of competent Jurisdiction. Furthermore, any agreement for the payment of wages or the application of any other condition of employment in contravention of the provisions of section 12 (2) and (4) shall be void.

Section 13 of the said Act however, provides exemption to the said provisions as follows;

> (1) If the Minister is satisfied that any worker employed or desiring to be employed in an occupation to which Statutory Minimum Wages are applicable is affected by any infirmity or physical injury which renders him incapable of earning the Statutory Minimum Wages, the Minister may, if he thinks fit, grant to the worker (subject to such conditions, if any, as he may impose) a permit exempting the worker from the provisions of this Act relating to the payment of wages less than the Statutory Minimum Wages; and while the permit is in force and any conditions imposed thereon are complied with, the employer shall not be guilty of an offence if he pays to the worker less wages than the Statutory Minimum Wages.
> (2) A permit granted under this section may be so granted as to have effect from the date on

[24] Ibid section 12 (2) and (4).

> which the application therefore was made to the Minister, and may be suspended or revoked at any time by the Minister.

Every employer of workers in respect of whom an industrial wages board order has been made or a notice of intention to make an order has been published has a duty to keep such records of wages or conditions of employment as are necessary to show that the provisions of the Act are being complied with respect to persons in his employment. Thus, Section 15 of the Act provides as follows;

> It shall be the duty of every employers of workers in respect of whom an Industrial Wages Board has been made or a notice has been published under section 5(1) of this Act;
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> (a) To keep such records of wages or conditions of employment as are necessary to show that the provisions of this Act are being complied with as respects persons in his employment, and to retain the records for a period of three years after the period to which they refer; and
> (b) To cause to be kept posted in some conspicuous place at or near the place of employment of persons in his employment in such manner and in such form as may be approved by the Minister
> (i) a copy of every notice relating to wages or conditions of employment of the aforesaid workers which is published by an Industrial Wages Board as

required by this Act and a copy of every order made by the Minister relating to the wages or conditions of employment of the said workers; or

(ii) Such abstract from every such notice or order as the Minister may approve. And, if he fails to do so, he shall be guilty of an offence and on conviction shall be liable to a fine not exceeding ₦100 and to a daily penalty not exceeding ₦10.

No doubt the purpose of Industrial Wages Board is to create room for negotiation between the employers and workers but its effectiveness in law and practice is another thing to be considered in the next chapter.

In order to prevent industrial actions in Nigeria, the Wages Board and Industrial Councils Act also makes provisions for other machinery for settling of the terms and conditions of employment of workers. The Minister may by order establish a board to be known as the National Wages Board, for the Federation and may after consultation with the Governor of a State, set up an Area Minimum Wages Committee for the State.[25]

The members of National Wages Board are appointed by the Minister after consultation with such central organization as appear to him to represent the interests of those concerned. The board shall consist of three persons appointed as being independent persons, three persons representing the Federal Government as an employer of labour, three persons representing central organization of

[25] Ibid Section 16(1).

employers, five persons representing central organization of workers and three representatives from each area Minimum Wages Committee, appointed on a tripartite basis as representing governmental employers, private employers and workers respectively.[26]

The Minister shall appoint the Chairman of the board from among the independent members and may also appoint from among the independent member a Deputy Chairman to act in the absence of the Chairman. The Minister shall appoint a secretary who must be a labour officer.[27] The members of a board hold office on such conditions as may be determined by the Minister and their remuneration and allowance, if any may be as approved by the Federal Ministry of Finance and subject to any regulation made under the Act.[28]

The functions of the board are carefully enumerated in Section 16(2) of the Act as follows;

It shall be the function of the board:

(a) To examine the application to all unskilled workers of any agreed minimum wage rate in any specified area;
(b) To examine from time to time the adequacy of minimum wage rates for unskilled workers in the light of any recommendations received from area Minimum Wages Committees;
(c) To consider any matter referred to it by the Minister with reference to the minimum wage rates of unskilled workers in any area for which an area Minimum Wages Committee has been set up; and

[26] Ibid Section 13 first schedule.
[27] Ibid Section 17.
[28] Ibid section 18.

(d) To report and make recommendations accordingly to the Minister.

The board shall have all such powers as are reasonably necessary for the proper exercise of its functions such as carry out specific investigations on matter refer to it by the Minister and call for oral or written information which it considers necessary for the effective exercise of its functions.

The Area Minimum Wages Committee on the other hand shall consist of an independent Chairman appointed by the Minister after prior consultation with the Governor of the State for which the committee is set up, three members representing governmental employers of whom one member shall represent the Federal Government as an employer of Labour and the other two members shall represent other governmental employers, three members representing private employers and three members representing the workers.[29]

Apart from the regular members, an Area Minimum Wages Committee may co-opt additional members for any particular purpose, but no such co-opted members shall have the right to vote.[30]

The members of the committee are appointed by the Minister after prior consultation with the Governor of the appropriate state.[31] The Chairman and other members of the Board including co-opted members of the Committee shall be paid such remuneration and allowance, if any, as may be approved by the Minister with the concurrence of the Federal Ministry of Finance.

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29 Ibid Section 19 of first schedules.
30 Ibid Section 20.
31 Ibid section 2.

The functions of the Minimum Wages Committee shall include the followings:

(a) To make recommendation to the board on the Minimum Wages of unskilled workers in the committee's area;
(b) To carry out specific investigations on matters referred to it by the Board;
(c) To submit to the Board report, minutes and any other information it considers desirable for the effective exercise of the Board's functions; and
(d) To determine urban and rural sub-area in its area.

In executing its functions of reporting and make recommendation to the Minister, the Board may recommend Minimum Wages to be paid by the employers to workers in any specified area and any such recommendation may include a further recommendation to council or vary any wages fixed by the minister on the recommendation of Industrial Wages Board.[32]

The Wages Board and Industrial Councils Act also established Joint Industrial Council under section 18. According to Section 18 (1) "Employers and Workers in an Industry may establish a Joint Industrial Council (referred to in this section and section 19 of this Act as "a Council") for the purpose of negotiating and reaching agreement relating to such matters as are considered by those employers and workers to be matters for negotiating". Where a Council is established, it must register its agreed Constitution and functions with the Minister and any changes agreed upon from time to time must also be so registered.[33]

[32] Ibid Section 17 (1) of the Act.
[33] Ibid Section 18(2).

Section 18(3) further provides as follows:

> Where a Council has agreed on any matter concerning wages or conditions of employment for any specified workers or groups of workers in an industry, it shall register the agreement with the Minister for his information; and the Minister may by an order declare that the provisions of any agreement or part thereof in pursuance of this subsection shall be binding on the workers to whom they relate, and that effect shall be given to them, accordingly.

The above provision is no doubt, ambiguous, as observed by Uvieghara E.E.[34] "The effect of this provision is not quite clear. It may mean either that the agreement or part of it so declared, is binding only on the workers who must then give to it accordingly or that, although, binding only on the workers to whom it relates, effect must be given to it by the employers. He further opined that the latter interpretation is obviously preferable but it will put undue strain on the words employed by the provision".

A Council which reaches an agreement may apply to the Minister of Labour to have the terms of such agreement extended to cover other employers and workers within the Industry to which the agreement relates.[35] While Section 19(2) provides as follows;

> The Minister, upon receipt of an application under subsection (1) of this section, shall satisfy himself that the organizations of employers and workers concerned represent a sufficient proportion of the employers and workers in the Industry in question, having regard to its individual circumstances, and on being so satisfied shall publish a notice in Federal Gazette

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[34] *Labour Law in Nigeria*, Ikega, Malthouse Press Ltd, 2001, P. 402.
[35] Ibid Section 19(1).

(a) Specifying the terms of the agreement and indicating his intention to make an order extending all or any of the terms of the agreement of such employers and workers engaged in the industry (which shall be specified in the order) as are not parties to the agreement; and

(b) Specifying the time, being not more than forty days from the date of publication, within which any objection to his intention shall be made to him.

Every objection must be in writing and shall state the specific grounds of the objection and the omission, additions and modification asked for and the Minister shall consider any objection made by or on behalf of any person appearing to him to be affected. After considering all the objections the Minister may make the order without amendments or make the order with such amendments as he considers necessary or expedient or refrain from making order.[36] Where the Minister makes an order he must specify the employers and workers to whom the agreement is to be extended. The order must be published in the federal Gazette and it comes into operation on the date of publication or on such later date as the order may specify.[37] The wages or conditions of employment fixed by an order made as effect as if they were Statutory Minimum Wages or Statutory Minimum conditions, as the case may be, fixed upon the recommendation of an Industrial Wages Board. It is pertinent to note however, that there is provision in the Act exempting an employer from an order. Thus, section 20 of the Act provides as follows;

(1) An employer affected by an order made under section 19 of this Act, may appeal in writing to the Minister for a permit of exemption from the

[36] Ibid section 19(4).
[37] Ibid S. 19(5).

order; and on receipt of such an appeal the Minister may reject it or refer it to any person appointed by himself for investigation.

(2) Where the appeal is referred pursuant to subsection (1) of this section, having regard to the grounds of the appeal and the circumstances of the employer, such person or persons shall submit report to the Commissioner within sixty days from the date of their appointment.

(3) On receipt of such report the Minister may either reject the appeal or issue an exemption permit accordingly, specifying in the permit the Minimum Wage and conditions or the Minimum Wage or conditions of employment which shall apply to the workers engaged by the employer concerned

A successful Collective Bargaining gives birth to a collective agreement which simply put, is the written document containing the conditions agreed thereto by the parties. A collective agreement is defined in section 47 (1) of the Trade Dispute Act[38] as;

> As any agreement in writing for settlement of disputes relating to terms of employment and physical condition of work concluded between:
>
> (a) An employer, a group of employers or one or more organizations, representative of employers, on the one hand; and,
>
> (b) One or more trade unions or organizations representing workers, or the duly appointed representative of any body of workers, on the other hand.

[38] Cap. T8 LFN, 2004.

While the section 91 of Labour Act defines 'collective agreement' as;

> An agreement in writing regarding working conditions and terms of employment concluded between:-
>
> (a) An organization of workers or an organization representing workers (or an association of such organization) of the one part and
>
> (b) An organization of employers or an organization representing employers (or an association of such organizations) of the other part.[39]

Collective agreements, however, are not intended or capable of giving individual employees a right to litigate over an alleged breach of their terms as may be conceived by them to have affected their interest, nor are they meant to supplant or even supplement their contract of service. In other words, failure to act in strict compliance with collective labour agreement is not justifiable. Its power of enforcement lies in some measures.[40] Hence, it is pertinent to discuss the enforceability of collective agreement.

Enforceability of Collective Agreement

Despite all the encouragement given to the process of collective bargaining both in law and practice, it is pertinent to ask whether a collective agreement in Nigeria is enforceable in the court of Law? It would be unreasonable to give a firm answer one way or the other, it is however safe to say that such an agreement as a matter of general principle not enforceable in court of Law. Hence, in *Rector Kwara State Polytechnic v. Adefila*[41] the court held that collective agreement is not intended or capable of giving individual

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[39] Cap L1 Laws of the Federation of Nigeria 2004.

[40] See The *Rector, Kwara State Polytechnic & Ors against Adefila & Ors* [2008] All FWLR [pt 431] p. 914 at p. 918.

[41] (2008) All FW.L.R (pt 431) P.914.

employee a right to litigate over an alleged breach by their terms as may be conceived by them to have affected their interest nor are they meant to supplant or even supplement their contract of service. In other words, failure to act in strict compliance with collective labour agreement is not justifiable.[42] In short, its power of enforcement lies in some measures. For instance, the provisions of the Wages Board and Industrial Council Act[43] and the Trade Disputes Act[44] Indirectly makes it enforceable wages agreement once the term of such agreement have been confirmed by an order of the Minister of labour. Section 18(3) of the Wages Board and Industrial Council,[45] empowers the Minister of Labour to make binding by order either part of or the whole of any collective agreement registered with him by a joint Industrial Council. Similarly, section 19 of Wages Board and Industrial Council Act also empower the Minister of Labour to extend to employers or workers within the same industry but who are not part to it the terms of collective agreement of a Joint Industrial Council.[46] Under section 2(3) of the Trade Dispute Act,[47] the Minister of labour may by order make binding on the parties to a collective agreement, either in part or in whole.

From the above provisions, it is pertinent to state that as a general rule, the collective agreement is not enforceable in law until further steps are taken as provided in the above provisions in the relevant statues.

As stated earlier, collective agreements are not enforceable but are generally binding in honour only. Even though a contract of agreement is not compulsorily subjected to the term of collective

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[42] Emiola A.; *Nigeria Labour Law, 4th ed, Ogbomoso,* Emiola Publishers Limited, 2008 p 431.
[43] Cap.W1,LF N, 2004
[44] Cap. T8, LFN, 2004.
[45] Cap. W1 LFN 2004.
[46] Ibid.
[47] Cap. T8 LFN 2004.

agreement, it has its own special utility. No doubt, employer and workers do in the majority of cases honour their "gentleman's agreement". Furthermore, collective bargaining played an important role in ensuing industrial harmony in labour relations, that is, between the employees and employer. It plays a vital role in reconciliation of divergent interests between the employers and employees. Collective agreement therefore, is enforceable in practice either through incorporation in the contract of employment or implied by custom. Collective terms are in fact usually incorporated into contract of employment. Quite often this is done by express terms, although they may be incorporated by inference.

In a case like this, the collective terms are automatically transmitted from collective terms to individual level. Thus, in *National Coal Board v. Galley*[48] mining deputies stipulated that their wages were to be subject to the "national agreement for the time being in force" in the industry. The Court of Appeal held that it was unnecessary to decide the question of incorporation since both employers and workers had accepted and acted on the terms of the agreement which, has been expressly provided that these terms should form part of the contract of employment. In the *Bank of the North Ltd v. Adegoke*[49] it was held that where a collective agreement is incorporated or embodied in the condition of a contract of service, whether expressly or impliedly it will be binding on the parties. Similarly, in *Oguejiofor v. Siemens Ltd*[50] the court held that where a collective agreement is incorporated or embodied in the conditions of a contract of service whether expressly or by necessary implication it will be binding on the parties and not otherwise.

Furthermore, in *Rector Kwara State Polytechnic v. Adefila*[51] the court reiterated that it is definitely necessary to expressly adopt the

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48 (1958) 1 All E. R.91.
49 (2008) All F W L R (pt398) p. 263.
50 (2008) All F W L R (pt 398) p. 378.
51 (2008) All F W L R (pt 431) P. 914.

provisions of the collective labour agreement either in the letter of appointment or subsequent communication varying the terms of employment before the employee can enforce its contents against the employers. According to Agube J.C.A

> "the extreme conservative position that collective agreement are not enforceable seems to have been imported from Britain where by English common Law, collective agreements are not generally enforceable contacts. Even a statutory attempt by the Industrial Relation Act, 1971 to presume the contractual status of collective agreement proved abortive and it was repealed.
>
> But in modern times this country had through Legislation attempted to water down this extreme conservatism as far as enforceability of collective agreement is concerned; The Wages Boards and Industrial Council's Decree 1973. By sections 13 and 15 and the Trade Dispute Decree, 1976 now (Trade Dispute Act Cap, 432) and section 19(1) and 20 which established the National Industrial Court and vests it with the jurisdiction to interpret collective agreements; the enhancement of the court's jurisdiction by the National Assembly in recent time. The above notwithstanding, the Nigerian courts still savoured in the euphoria of unenforceability of collective agreements …"[52]

This position of the law as stated by learned Justice Agube as it relates to the attempted legislation to water down this extreme conservatism of non enforceability of collective agreement in Nigeria can be illustrated by various provisions of industrial Act.

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[52] Ibid pp. 919-920.

For instance, section 18(3) of the Wages Boards and Industrial Council Act,[53] provide as follows.

> Where a council has agreed on a any matter concerning wages or conditions of employment for any specified workers or groups of workers in any industry, it shall register the agreement with Minister for his information, and the Minister may by an order declare that the provisions of any agreement or part thereof in pursuance of this subsection shall be binding on the workers to whom they relate, and that effect shall be given to them, accordingly.

Similarly, section 7 (1) (c) of National Industrial Court Act, 2009 also provides inter –alia as follows;

> The court shall have and exercise exclusive jurisdiction in civil cause and matters-relating to the determination of any as to the interpretation of;-
>
> 1. any collection agreement,
> 2. any award made by an arbitral tribunal in respect of a labour dispute or an organizational dispute.
> 3. The terms of settlement of any labour dispute, organization dispute as may be recorded in any memorandum of settlement.
> 4. Any trade union constitution
> 5. Any award or Judgement of the court.

There is no doubt that by these provisions, the National Industrial Court has the power to interpret the provisions or terms of collective agreement and by extension has jurisdiction to enforce them.

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[53] Cap. W1 L F N 2004.

This position of the law is further reiterated in section 254C (1)(j) of the 1999 Constitution (as amended) for avoidance of doubt it provides as follows;

> "Notwithstanding the provision of section 251,257,272 and anything contained in addition to such other Jurisdiction as may be conferred upon it by an Act of National Assembly the National Industrial court shall have and exclusive of any other court in civil cause and matter. Relating to the determination of any question as to the interpretation and application of any;
>
> 1. Collective agreement
> 2. Award or order made by an arbitral tribunal in respect of a trade dispute or a trade union dispute
> 3. Award or Judgement of the court
> 4. Terms of settlement of any trade dispute
> 5. Trade union dispute or employment disputes may be recorded in a memorandum or Settlement. Trade union constitution, the constitution of an association of employers or any association relating to employment, labour, industrial relations or workplace. Dispute relation to or connected with any personal matter arising from any free trade zone in the Federation or any part thereof.

Apart from incorporating a collective agreement into a contract of employment for it to be enforceable, it can also be implied. Before it can be implied however, the probability that the parties intend it to form part of the contract of employment must be highly inferred form the intention of the parties. In short, implication must arise inevitably to give effect to the intention of the parties.

In *Batise v. John Holt & Co*[54] which contained no express incorporation, the court held that the agreement would be deemed to have been incorporated where the parties had been acting on its terms.

From the above court's decision it would appear that the knowledge of the parties is a very relevant factor in determining the question whether or not a term is to be presumed incorporated into a contract of employment. Collective agreement can also be metamorphosed into a custom.

Thus, in *Daniels v. Shell B.P Petroleum Development Co*[55] it was decided that a custom or trade practice may be presumed to have been incorporated into the terms of employment where no express provisions are agreed. Suffice to say that most of the customs are often a direct result of collective agreement. In view of the decision of the Court of Appeal in the case of *Sagar v. Ridehalgh & Sons Ltd*.[56] It is possible for worker to be subject to a term of collective agreement even though he might have known nothing about it. In the words of Wedder Burn[57]

> It is plain after terms of a collective agreement have been acted on by an employer for a period it is much easier to imply them by practice or even custom into a worker's contract. Where that is so, the inclination of the English lawyer is normally to imply the term into contract of all worker-union and non-unionist alike.

By virtue of section 254C (1)(c) and (j) (i), (iv)-(v) of the 1999 Constitution (as amended) which gives the NICN the powers to interpret and apply any type of collective agreement and to restrain

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54 (1973) 8 CCHCJ 6.0
55 (1962) 1 All N L R 19.
56 (1931) 1Ch. 310.
57 Wedderburn C. K., *The Worker and The Law* (1st Ed) 1965 p. 116.

anybody from engaging in strikes and lockouts can be enforceable at the court of law, that is, NICN without taking any further steps or measures. Hence, Oluwakayode O. Arowosegbe[58] opines that;

> These are the surest ways to economic growth and development as no nation can thrive in an atmosphere of disregard to lawful agreements and in the midst of strikes, lockouts and general industrial disharmony.

To prevent strikes and lockouts and their disruptive effects on the economy therefore, employers and employees must imbibe the sanctity of collective bargaining agreements. It is worthy to note that any type of industrial action is a child of an industrial dispute or trade dispute. What is important is that, the process of industrial disputes resolution mechanisms under the Act is to be initiated upon the existence of trade dispute. The major actors in any industrial dispute settlement or resolution are the workers, employer(s) and the government as the regulators of industrial relations.

Conclusion

Disputes, unlike wine, do not improve by aging and various things causes industrial disputes. The primary interest of trade unions is to win wages concession from employers through collective action. Collective bargaining therefore provides the mechanism for dispute settlement by negotiation on working conditions and terms of employment. It provides forum by which the union and management can accommodate each other view through compromise and persuasion. This quality is an important aspect of the system and provides the underlying basis for industrial peace and harmony among its other vital several functions. Collective

[58] Oluwakayode O. Arowosegbe,"National Industrial Court and the Quest for Industrial Harmony and sustainable Economic Growth and Development in Nigeria*" Nigerian Journal of Labour Law and Industrial relations, (NJLIR) Vol. 5, No. 4*, 2011.P. 22.

bargaining process has been institutionalize in Nigeria, this provide for the establishment of Wages Board System, National Wages Board, Area Minimum Wages Committee and Joint Industrial Council.

It is therefore pertinent to encouraged collective bargaining process and parties should be made to always obey collective agreement. The decisions[59] that collective agreement is only binding in honour[60] are not encourage, therefore it should be jettison. Experience has shown that most of the strike action embarked upon by Nigerian Workers, especially those between the Federal Government and Academic Staff Unions of Universities, bother on alleged disregard or no implementation of collective bargaining agreements.[61] It is become imperative, therefore Trade Disputes Act should be amended by the National Assembly and enact a provision making collective bargaining agreement binding on the parties concerned without further measures or steps been taken.

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[59] Supra *Rector Kwara State Polytechnic v. Adefila* & Ors (2008) All F.W.L.R (pt. 431) p. 914.

[60] *African Continental Bank PLC v. Benedict Nbisike* (1995) 8 NWLR (Pt. 416) 725; *Adegnoyega v. Barclays Bank Ltd*, (1977) 3 CCHCJ/477; *Batise v. John Holt & Co*., (1973) 8 CCHCJ/61; *National Coal Board v. Galley*, (1958) I All E.R. 91; (1958) I W.L.R. 16; *Union Bank of Nigeria v. Edet* (1993) 4 NWLR (Pt. 287) 288, per Akintan JCA at p. 304

[61] Oluwakayode O. A., "National Industrial Court And The Quest For Industrial Harmony And Sustainable Economic Growth And Development In Nigeria" *Nigerian Journal of Labour Law And Industrial Relation, Vol. 5, No. 4*, 2011,p.21.