WORKERS' PARTICIPATION AT THE WORKPLACE: BETWEEN COLLECTIVE BARGAINING AND INDUSTRIAL DEMOCRACY PRACTICE IN NIGERIA

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Abstract

Collective bargaining has always been the major vehicle for workers' participation in the workplace. Through collective bargaining, the terms and conditions of employment are settled. The scope of collective bargaining is restricted only to issues that pertain to the terms and conditions of employment. The South African model of collective bargaining is worthy of note as it features less governmental interference and more bargaining power on the workers. On the other hand, the current practice of industrial democracy generally provides that workers should be given opportunity to be involved in the management of their work places alongside their employers. In practical terms, this means that employers have to consult the employees before taking decisions on vital issues in the workplace. This is best practiced in Germany where there are statutory provisions in the Work Constitution Act of 1972 and in the Co-determination Act of 1976 appointing specified number of employees into supervisory boards and work council boards where they take joint decisions with their employers as regards the management of the workplace. This article argues that the concept of industrial democracy is unethical on the part of the employer and discourages free enterprise and should not be entrenched in Nigeria. It concludes by recommending proposals that will aid the effective practice of collective bargaining in Nigeria.

Keywords: Workers, Employers, Workers' Participation, Collective Bargaining, Industrial Democracy

1. Introduction

There are several ways by which workers can participate in decision making in their places of employment. The two popular forms are collective bargaining and industrial democracy. The idea of workers' participation has been predominantly expressed in the form of collective bargaining in most industrialized countries, since collective bargaining has been regarded as the orthodox and almost exclusive way of expressing the worker's voices.[1] However, after the mid 1960's and especially after 1970, renewed interest in workers' participation (apart from collective bargaining) has emerged. This may be as a result of the need to cope with contemporary problems that collective bargaining cannot solve. One of such is industrial

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1 Hanani, T, 'Workers' Participation in the Workshop and the Enterprise' in R. Blanpain and Ors (eds*) Comparative Labour Law and Industrial Relation* (Kluwer Law and Taxation Publishers 1982) 243.

democracy. While collective bargaining is limited to settling terms and conditions of employments, industrial democracy contemplates workers' participation in a process by which their taking part in decision making transcends the specific contents of their job description.[2] This article discusses these two forms of workers' participation in our Nigerian workplaces and suggests the best suitable model for Nigerian employers and their workers.

2. Collective Bargaining

2.1 Meaning of Collective Bargaining

Webb,[3] father of industrial relations in Britain and originator of the expression in the nineteenth century has this view about the concept of collective bargaining;

> In organized trades, the individual workman applying for jobs accepts or refuses the terms offered by the employer without communication with the fellow workmen, and without any other consideration than the exigencies of his own position. For the sale of labour, he makes, with the employer a strictly individual bargain. But if a group of workmen consent together and send representatives to conduct the bargaining on behalf of the whole body, the position is at once changed. Instead of the employer making a series of separate contracts with isolated individuals, he meets with a collective will and settles, in a single agreement, the principles upon which, for the time being, all workmen of a particular group or class or grade will be engaged.

After this definition was proffered, several other authors have posited various definitions of the term. Collective bargaining is a process of negotiation and conclusion of collective agreements on the demands of workers concerning certain improvements in the terms and conditions of employment.[4] It has also been defined as the process through which the antithetical interests of employers and employees are harmonized through discussions and negotiations.[5]Collective bargaining can also be defined as the process or the exercise in which workers, through their trade unions, try to reach an agreement with their employers on wages payable, working conditions and terms of employment, relation between employers and workers and other benefits which they will enjoy in exchange for labour.[6] A statutory definition is provided in Section 91 of the Labour Act 2004 which defines collective bargaining as the 'process of arriving or attempting at a collective agreement.'[7]

From the above definitions, it can be gleamed that collective bargaining is basically a process of negotiation between employers and their workers on work-related issues. It is a process where representatives of organized workers meet with the employer or his representative, to deliberate and reach agreement in work-related issues affecting both parties.

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2 Okene, OVC, *Labour Law in Nigeria (Selected Essays)* (1st Edition, Zubic Infinity Concept, 2019). 433.

3 Webb,S and Webb, B, *Industrial Democracy* (London, Longmans, 1897) 18.

4 Okene, OVC, *Labour Law and Industrial Relations in Nigeria* (4thedn, Zubic Infinity Concept 2019) 214.

5 Nwazuoke, T, *Introduction to Labour Law* (Olabisi Onabanjo University Press 2002) 110.

6 Iwunze, V, 'The General Unenforceability of Collective Agreements under Nigerian Labour Jurisprudence: The Paradox of Agreement without Agreement' [2013] (4)(3) *International Journal of Advanced Legal Studies* 1.

7 Labour Act Cap L1 LFN2004.

2.2 History of Collective Bargaining

Collective bargaining appeared at the early stages of the Industrial Revolution as a means of fixing wages and a few other conditions of employment. It was mainly conceived in order to replace unilateral decision-making by the employer and to overcome the weak bargaining position of individual workers.[8] Despite its noble purpose, it was not able to play an important role during the 19th century mainly because the bargaining agent on the workers' side (the trade union) was not recognized by most governments and employers and also because legal systems were not yet able to comprehend the nature of the agreement that usually came out of such negotiations. The negotiations were conducted under a tensed atmosphere with threats of strikes or lockouts and were frequently concluded by a mere collation of workers likely to be subsequently disbanded.[9]

When trade unions grew in strength and were able to obtain recognition, at the turn of the century in some European countries and some few decades later in other industrialized and developing countries, collective bargaining promptly acquired sizeable dimensions and became a key element of industrial relations systems.[10]

2.3 Functions of Collective Bargaining

The principal function of collective bargaining is to settle the terms and conditions of employment.[11] The primary aim of workers engaging in collective bargaining has been expressed thus;

> By bargaining collectively with management, organized labour seeks to give effect to its legitimate expectations that wages and other conditions of work should be such as to guarantee a stable and adequate form of existence and as to be compatible with the physical integrity and moral dignity of the individual, and also that jobs should be reasonably secure.[12]

Another function of collective bargaining includes the settlement of trade disputes. In fact the Trade Disputes Act 2004 provides for collective bargaining as the first step in the settlement of trade disputes. It is where collective bargaining has failed that the disputing parties can proceed to other trade dispute resolution mechanisms.[13] Collective bargaining also encourages work-place democracy by giving employees the ability and platform to voice their views and concerns and to participate generally in the governance of the workplace.[14]

2.4 Collective Bargaining in Nigeria

Parties to collective bargaining are usually the employers or their unions and the workers' union. However, there is government intervention especially in the public sector which constitutes the

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[8] Cordova, E, 'Collective Bargaining' in R. Blanpain and Ors (eds) *Comparative Labour Law and Industrial Relation* (Kluwer Law and Taxation Publishers 1982) 220.

[9] Ibid. 221.

[10] *Ibid.*

[11] (n.4). 214.

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

[13] Okere, E.N.A and Chuku, P.A, 'An Appraisal of the Trade Dispute Resolution Mechanism in Nigeria' [2018] (4) *Section on Legal Practice Journal* 91.

[14] (n.4).218.

largest employer of labour in the country. Rather than allow workers' union to bargain, government usually set up ad-hoc commissions in the determination of wages and conditions of service of workers.[15]

The workers' trade union must first be recognized by the employer or his organization as the sole bargaining agent of the worker. Section 25(1) of the Trade Unions (Amendment) Act provides that the recognition of a trade union as a bargaining agent by the employer is compulsory.

In Nigeria, collective bargaining focuses on the terms and conditions of work and employment.[16] This includes issues such as working time, overtime, holiday periods, wages, promotions, transfers, and dismissal without notice among others.[17] In the public sector, negotiable issues are spelt out. However, many of the substantive issues which are within the scope of the Council are made either by legislative or executive acts or through political commissions periodically set up by Government as employer of labour. In addition, issues bordering on promotion, discipline, transfer have traditionally been regulated by Civil Service Rules. These restrict the scope of collective bargaining in the public sector.[18]

In the private sector, the scope of collective bargaining is somewhat broad. Collective bargaining in the private sector is used to arrive at a collective agreement and settle trade disputes. For instance, the Main Collective Agreement of 1990 between the Nigerian Employers' Association of Banks, Insurance and Allied Institutions and the Association of Senior Staff of Banks, Insurance and Financial Institutions listed the following issues as subjects for negotiations; salaries, hours of work, leave and leave conditions, disciplinary procedure, principle of redundancy, allowances, inconveniences, transport, housing, acting, relief – duty, utility, sickness benefit, medical scheme, principle of loan, lunch subsidy, membership of social clubs, entertainment expenses, burial expenses, staff conversion, equity participation and end of year payment. However, one militating factor about collective bargaining in the private sector is the provision that increase of wages cannot be enforced without the approval of the Minister of Labour. This is contrary to the International Labour Standards.[19]

The Committee on Freedom of Association observes that in order for collective bargaining to be effective, it should be done in good faith by both parties.[20] Bargaining in good faith implies that the employer should recognize the trade union as a bargaining agent. Both parties are required to engage in a full and rational discussion of their bargaining differences. This entails timely, genuine and constructive negotiations and a conscious effort to reach an amicable agreement. This was succinctly described in *United Electrical, Radio and Machine Workers of America v.*

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15 (n.4). 66.

16 Collective Bargaining Convention, 1981 (No.154. art. 2.

17 Olulu R.M et, al 'The Principle of Collective Bargaining in Nigeria and the ILO Standards' [2018] (2)(4) *International Journal of Research and Innovation in Social Science* 63; C. W. Summers, *Freedom of Association and Compulsory Union Membership in Sweden and the United States*(University of Pennsylvania Law Review 1964) 65.

18 *Ibid.*

19 Francis, A.C. et, al 'Collective Bargaining in the Nigerian Public and Private Sectors' [2011] (1)(5) *Australian Journal of Business and Management Research* 5) 63.

20 Freedom of Association: Compilation of Decisions of the Committee on Freedom of Association 2018 (6thedn, International Labour Office) 786.

De Vilbiss Canada Ltd[21] where the Ontario Labour Relations Board summed up the duty to bargain in good faith this way:

> [Good faith] imposes an obligation upon both employers and trade unions to enter into serious discussion with the shared intent to enter into a collective bargaining agreement. Once a trade union is certified as the exclusive bargaining agent of employees within an appropriate bargaining unit the employer of those employees must accept that status of the trade union. It cannot enter into negotiations with a view to ridding itself of the trade union.

On the other hand, elements of bad faith conduct include cancelling bargaining sessions, being unavailable for bargaining, imposing conditions on bargaining, refusing to provide information, refusing to meet or choosing unreasonable meeting sites, surface bargaining, by-passing the union or direct dealing, making unilateral changes, withdrawing accepted offers and refusing to sign collective agreements.

It is evident that collective bargaining is not done in good faith in Nigeria both in the public and private sectors. In the private sector, there is the issue of employers' interference and discrimination against workers and their unions and ultimately, little respect for their collective agreements. For the public sector, the Government has also been lukewarm in complying with their collective agreements especially in the health and academic sectors.[22] This has earned the country several blacklisting by the International Labour Organization for violating trade union rights. There is need for strengthening national capacity to curb this**.**

Bargaining in the public sector usually occurs at three levels; federal level, state and ministerial levels. At the federal level, bargaining is further split into three categories; those representing senior staff on grade level 10-14, junior staff on grade levels 01-06 and the technical staff.[23]

In the private sector, there are two negotiating levels which are the central level and the plant level. Parties draw procedural agreements to determine what matters to negotiate at the central level through the National Joint Industrial Council or Joint Negotiating Committee and those to be treated at the plant level. The procedural agreements also include checks and balances to safeguard the interest of both parties. On what constitutes items for negotiation at the central level and those at plant level, it is usually the bargaining strength of the parties that determines levels of negotiation. Where the union is worried that its branches will not be strong enough to get a good deal from their respective employers at the company level, it will insist that such a matter be earmarked for negotiation at the central level. In similar vein, if the unions in the branches are strong and can handle thorny issues at their own advantage, they are given autonomy and as many items as possible are shifted to the branches or company level. In that regard, issues concerning wages, fringe benefits and working hours tend to be negotiated at the

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21 [1976] 2 CLRBR 101.

22 Fajana, S, 'International Labour Standard and Occupational Health and Safety' [1998] An Unpublished Seminar Paper Delivered at a SESCAN Programme.

23 (n.19). 63.

central level while items that are peculiar to each company such as canteen facilities, shift arrangement and home ownership schemes tend to be discussed at company level.[24]

At the end of the collective bargaining process, it is expected that the parties will arrive at a collective agreement. However, such collective agreements were not enforceable under the common law. This was based on the presumption that there is usually no intention to create legal relation by the parties and agreement to create legal relations is one of the cardinal requirements for an enforceable contract. In *Nigeria Arab Bank Ltd v Shuaibu*[25], it was held that 'collective agreement is at best a gentleman's agreement, an extra-legal document devoid of sanctions. It is a product of trade union pressure.' The closest extent the Nigerian Labour law has gone to attach legal enforceability to a collective agreement is in the provision of Section 3(3) of the Trade Disputes Act 2004 which is to the effect that a collective agreement in respect of a trade dispute shall only be binding on the employers and workers to whom it relates if it has been confirmed by the Minister of Labour and Employment. This provision only applies to a collective agreement emanating from a trade dispute and not every collective agreement. However, this issue of unenforceability of collective agreements is usually resolved by incorporating the collective agreement into the contract of employment.[26]The courts also view a collective agreement as binding where evidence exists to show that the employers have acted upon the agreement.[27]

The unenforceability of collective agreement has now been put to rest by virtue of section 254C(I) of the CFRN 1999. The National Industrial Court regards all collective agreements as binding and enforceable by the parties regardless of whether or not it was incorporated into the contract of employment once the worker can show that he is a member of the trade union that was a party to the collective agreement.[28]

2.5 Collective Bargaining in South Africa

There are several examples to be learnt from the South African practice of collective bargaining. In the first instance, the workers' right to freedom of association and collective bargaining is a constitutional right. The right to bargain is explicitly provided in the Constitution. This is unlike the Nigerian position where although the right to join trade unions is an aspect of the right of freedom of association, collective bargaining is not specifically provided as a constitutional right. Section 23(5) of the South African Constitution provides that every trade union, employer's organization and employers shall have the right to engage in collective bargaining. This was upheld in *Sansdi v Minister of Defense and Others.*[29]This right is also protected by the Labour Relations Act of South Africa just as it is provided in our Labour Act. However, the South African Act maintains a liberal approach to collective bargaining. Parties are allowed to determine their own bargaining arrangements and are given incentives for participating in

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[24] Ibid.

[25] (1991) 4 NWLR (Pt. 186) 450.

[26] *National Coal Board v Gallery* (1958) 1 All E.R. 91.

[27] *Shuaibu v. Union Bank of Nig. Plc.* (1995) 14 NWLR (Pt. 388) 113.

[28] *Gbadegesin v. Wema Bank Plc* (2009) 15 NLLR (Pt. 40) 1.

[29] 2003 (9) BCLR 1058.

collective bargaining.[30] This is a lesson for our Nigerian jurisprudence where, rather than encourage collective bargaining, the right is stifled. Section 4 of the Labour Relations Act provides that every worker has the right to participate in joining or forming a trade union. A worker shall not be prejudiced from seeking employment because of his past, present or anticipated membership and participation in trade union activities.[31] However, the Act does not apply to workers in the National Defense Force, National Intelligence Agency and the South African Secret Service.[32] In Nigeria, members of the Armed Forces and Police are also exempted from exercising this right and this is in line with the International Labour Standards.

In South Africa, there are four levels of collective bargaining. This includes the multinational, national, sectoral and plant level.[33] Thus, workers in every sector of the economy have access to collective bargaining.[34] In Nigeria, workers in the public and private sectors are provided with different levels of negotiation according to their cadre.

3. Industrial Democracy

3.1 Meaning of Industrial Democracy

The term industrial democracy is a term 'generally used to refer to workers' participation and co-determination procedure at the management board level, which suggest that workers' influence in the decision making process should be institutionalized.'[35] It has also been defined as 'employee participation in corporate decision making other than by the process of collective bargaining.'[36] This definition, while recognizing the formalized procedure of workplace participation of workers which is collective bargaining, highlights other forms by which workers can exert influence in the decision-making process. It can also be defined as a set of social and institutional devices by which subordinate employees, individually or collectively, become involved in one or more aspects of organizational decision making within the enterprise in which they work.[37]

It has been argued that industrial democracy serves to give employees a sense of belonging in the organization they work in and a sense of commitment to the decisions taken and that in its absence, they consider themselves to be just employees, having no commitment to the objectives or policies, plans and programmes of the organization.[38] This may, in the ultimate analysis, hinder the effective working of the organization and its growth.

3.2 History of Industrial Democracy

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30 Godfrey, S. et, al 'The State of Collective Bargaining in South Africa: An Empirical and Conceptual Study of Collective Bargaining' [2007] *SSRN Electronic Journal.*

31 Labour Relations Act No.6 of 2014. S.5(2)(b).

32 *Ibid*. s.2.

33 *Ibid*. ss.27, 28, 37 & 38.

34 Weiss, 'Workers' Participation: Its Development in the European Union' [2000] *International Law Journal* 737.

35 Betten, L. 'The Right to Strike in Community Law' (North-Holland: Elsevier Science Publishers 1988) 120.

36 Adeogun, A.A.'From Contract to Status in Quest for Security' (Lagos: Lagos University Press 1986) 53.

37 Ogunyemi, K.A.A. 'The Extent of Industrial Democracy in the Nigerian Banking Industry: A Case Study of First Bank of Nigeria Ltd, Ibadan Zone'[1988]. Unpublished M.Ed. Dissertation. University of Ibadan, Ibadan. 65.

38 Averinemi, A. 'Impact of Workers Participation in Management on Industrial Relations' [2012] (1) (2) *International Journal of Scientific Research*, 92.

The idea of industrial democracy is not new. The demand for workers' participation in or control of industrial decisions has its roots in the earliest days of the Industrial Revolution. As workers became conscious of themselves as members of a class, they began to take concerted action against industrial conditions and the new capitalist power. Cotton millworkers and coal miners in England and weavers in Scotland engaged in the first large-scale strikes in 1808 to get relief from starvation wages and crippling working conditions. Intolerable conditions gave birth to the socialist movement of Robert Owen in the decade from 1820 to1830, to the Chartist Movement in the 1840s, to Co-operative Movement and the Friendly Societies, the writings of Karl Marx, socialism, syndicalism, guild socialism and the British Labour Party. In each stage of the workers' movement throughout the world there has been the demand for reform of the capitalist system of revolution to overthrow it and create a new society.[39]

During the 1970s, a movement towards a wider notion of workplace participation started gathering steam in Britain. Developments during the 1970s made it clear that collective bargaining on its own would not cope with the ultimate power of management to close down an enterprise, to shift activities to other areas, or to introduce major changes closer forms of participation were needed. This led to the Trade Union Congress in 1974 pressing for legislative rights to board level representation for organized workers' participation.[40]

3.3 Industrial Democracy in Nigeria

In Nigeria, industrial democracy is seen as a new demand by labour to advance its participatory rights at workplace and societal levels. It has little or no succinct legislative backing in that there is no statute that provides for employees' participation in the management of a business or company. Notwithstanding this fact, traces of industrial democracy can be found in some statutory provisions.

In the first instance, Section 1 of the Wages Boards and Industrial Council Act, 2004 empowers the Minister to appoint some employees into the Wages Board to represent their fellow employees. The article contends that the appointment of workers' representatives in the Wages Board does not constitute their participation in management because their involvement is limited to issue of wages which at best is collective bargaining.

Section 305(4) of the Companies and Allied Matters Act2020 enjoins directors to have regard to the interest of the company's employees, while performing their duties. The section provides that 'the matters to which the director of a company is to have regard in the performance of his functions include the interests of the company's employees in general, as well as the interest of its members.' By this provision, directors have an obligation to operate a labour policy that will be in the interest of the employees and not just the members of the company. However, this directive is made in the passive form. It does not command directors to expressly pursue the interest of the workers in this regard.

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[39] McCaffrey, G. 'Industrial Democracy' [1972] (27) (3) *Industrial Relations Industrielles*308.

[40] B. Hepple and S. Fredman, 'Labour Law And Industrial Relations in Great Britain' 1992 Kluwer Law and Taxation Publishers.

Furthermore, under the provision of section 385(5) CAMA, directors are enjoined to state in their reports amongst other matters, the involvement of employees in the affairs, policy and performance of the company. It provides that;

> Part III of the Fourth Schedule to this Act applies as regards the matters to be stated in the director's report relative to the employment, training and advancement of disable persons, the health, safety and welfare at work of the employees in the affairs, policy and performance of the company.

This provision is not enough to guarantee employees' participation in the decision making process of the company because it merely enjoins directors to give report of its occurrence.

Section 7(4) of the Privatization and Commercialization Act 2004 provides that the allotment of shares under sub-section (2) of the section shall give priority to subscription by workers and management as well as non-management of the particular enterprises to be privatized. This entails that where a company is to sell its shares, it should be offered first to the workers. By buying the shares, they become members of the company and have invariably sit on the management board of the company. Even though the above section appears to be beneficial to the employees but there is no compelling force in the company to ensure employees becomes at least members of the company, even if they do not exercise control.

These provisions on industrial democracy have basically no effect because most of the provisions are couched passively and there is no compulsion or check on the companies to ensure that they comply with the provisions.

3.4 Industrial Democracy in Germany

The best model of Industrial Democracy is as practiced in Germany and is termed Co-determination. The concept of co-determination (*Mitbestimmung*), in its formal sense, had its origin as early as in 1835 when Prof. Van Mohl, a national economist, advocated for the association of worker representatives in industry as their spokesmen. It is said that the pioneers of co-determination, were motivated by two reasons. The first reason was to mitigate or reduce antagonism between employers and their employees in their factories. The second reason was an inspiration from some liberal employers who regarded their employees as equal citizens and not as subordinates. Prominent examples of those late 19th century entrepreneurs were Ernest Abbe who introduced independent works representatives in Jena, and Heinrich Frese who established constitutional factory by conceding to his employees the right to participate in wage-fixing and dismissal.[41]

The present system of co-determination had its real origin when the trade unions were revived after the Second World War. The trade union's demand for parity co-determination led to the passing of the Co-Determination Act of 1951. It introduced co-determination on the basis of parity restricting it to the coal, iron and steel industries.[42] Subsequently, in 1952 the Works

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[41] (n.34).

[42] Meissel, R and Fogel, M 'Co-Determination in Germany: Labor's Participation in Management' [1975] (9) (1) *American Bar Association Journal* 22.

Constitution Law was passed making it applicable to all industries. This law gave certain co-determination rights to the works councils. The Works Constitution Law was modified in 1972 which further extended the co-determination rights of the works councils to various personnel and economic matters. It became a matter of debate till 1975 whether co-determination should be extended to all industries and, if so, in what form. In April, 1976, all the parties concerned came to an agreement and a new law was passed extending co-determination to all industries. The law came into force in July 1976.[43]

Co-determination exists at the establishment level by work councils and at the enterprise level by employee representatives on supervisory and management boards. Under German law, each company has a two-tier board system consisting of a supervisory board and a management board. The supervisory board consists of employees' and shareholders' representatives.[44] The employees' representatives on the supervisory board are elected by the employees of the company. The number of members may range from a minimum of three to a maximum of twenty depending on the size of the enterprise. Supervisory boards with twenty members are prescribed for companies employing more than twenty thousand workers.[45] The board takes decisions on important matters such as the closure of plants, opening of new plants, large investments, and major changes of products.[46]

On the other hand, the main responsibility of the management board is the day-to-day operations of the enterprise. Though the management board usually makes the major policy decisions on such things as mergers, takeovers, closure of plants, increase of capital and overall manpower planning, the supervisory board has to formally approve such decisions.[47]
The point must be made that the supervisory board and the management board have different and defined responsibilities and a member of one board may not be a member of the other. The management board represents and manages the enterprise while supervisory board has two basic functions of electing members of the management board and supervising and controlling their activities.

Another level of participation is at the Works Council. The Works Council plays an important role in workers' participation and in maintaining sound industrial relations. The works council is not a management body like the supervisory board or the management board. Its representatives are elected by secret ballot by the entire work-force, both unionized and non-unionized. The constitution and functions of a works council are governed by the Works Constitution Act of 1972. Under this Act, every plant employing more than five employees is required to elect a works council. In firms with several establishments, a central council has to be established. The number of representatives on the council may vary from one to thirty-five depending on the size of the plant.[48]

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43 *Ibid.*

44 Work Constitution Act 1972.

45 Section 7 Co-determination Act of 1976.

46 Davies, P. 'The Representation of Workers in the United Kingdom from Collective Laissez-Faire to Market Individualism.' [1994] (15) (2) *Comparative Labour Law Journal*, 169.

47 *Ibid.*

48 (n.38).

The employers and works council members work together in trust and mutual understanding within the framework of existing collective agreements. The employer and works council meet once in a month to hold discussions and settle disputes. The work council has the right to decide with the management, certain issues concerning job evaluation, working hours, welfare, training, recruitment and dismissal, vacations, transfers, location of new plants, and changes in production methods. It has co-determination rights, cooperation rights, and rights of information. It is much closer to the workers, and is the most important body for co-determination in Germany.[49]

The works council is responsible to the works assembly which may adopt its own resolution which is to be followed by the works council. The employer and his representatives may also be invited to the meetings and they are entitled to address the Assembly.[50]

In the public service, the Federal Staff Representation Act 1974 governs co-determination. Under the law, personnel committees (known as Personnel Councils) have to be constituted within all departments of federal administration and undertakings on lines similar to work councils. There is a system of graduated representation at all levels and the rights of participation are differentiated into the rights of co-determination and rights of consultation.[51]

3.5 Pros and Cons of Practicing Industrial Democracy

Industrial democracy is a term generally used to argue that workers are entitled to a significant voice in the decisions affecting or concerning the establishment, business or trade in which they work. Flowing from the popular meaning of democracy which is 'government of the people, by the people and for the people, it presupposes that industrial democracy would mean management of a unit of people in an industrial setting. This will include the owners, the managers, the employees, the customers, the suppliers, the society and state as a whole. Unfortunately, political thinkers, social scientists, administrators and social commentators have so far thought only of the employees and not others in their concern for industrial democracy whereas the rest of the other concerned parties are left out.

One of the advantages of industrial democracy is that the employer and employee relationship will translate to partnership which is expected to yield better working relationship and improve performance for the industry.[52] This will engender achievement of organizational objectives since both parties will perceive each other as partner in progress committed to the same set of organizational objectives. Another advantage is improved decision making process. It is a common saying that two good heads are better than one. Industrial democracy enhances communication between the employer, management and employee thereby reducing industrial

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[49] Industrial democracy: Historical development and current challenges, <www.econstor-cubistream> accessed on 16/11/2022.

[50] (n.2). 436.

[51] (n.2). 437.

[52] *Ibid.*

dispute.[53] The impact of this is that there is increased job satisfaction on the part of the employees which leads to increased productivity at the workplace.

On the other hand, where industrial democracy is not practiced, there may be low productivity and industrial conflict and this will lead to a sour relationship between the employers and the employees.

Nonetheless, inasmuch as industrial democracy is much better and wield more job satisfaction for the workers and make them work better, the interest of the employers should also be considered. It is inequitable to set up a company, employ workers, pay them their salary and yet give them opportunity to sit on the management board and take decisions affecting one's company especially as these workers are outsiders.[54] This also has long term effects on the workers as it may kill their desire to set up their own enterprises. This will kill business drives and is thus not good for a mixed economy like that of Nigeria.

4. Conclusion

There is a lacuna in the concept of industrial democracy. Only workers' participation and interest are captured. The interests of employers, who are the originators and owners of the business where the workers work, are not captured. This one-sided emphasis is inequitable. Real industrial democracy exists when major policy decisions in an industrial unit are taken by a body comprising representatives of all parties concerned, each having an equal voice in an environment that enables free and frank expression of power, rather than adjudicating for employees alone to be heard.

In Nigeria, many labour unions have been actively advocating for the emulation of the German co-determination model to be adopted.[55] Nevertheless, the present concept of industrial democracy seems to be an over-kill. Putting workers to sit on the board of their employers' businesses is self-serving and over-reaching and will discourage workers from setting up their own businesses. This will lead to a stunted economy. Collective bargaining, whose purpose is to ensure that the terms and conditions of employment are favourable to workers is sufficient to press home their demands if done effectively. It is therefore, not necessary to enforce the practice of industrial democracy in Nigeria.

Secondly, in Nigeria where collective bargaining has not taken firm roots due to numerous restrictions placed on it, it is premature to canvass for industrial democracy. This will amount to fighting several battles at the same time. Emphasis should be placed on ensuring that collective bargaining is effectively practiced by removing all legal and administrative bottlenecks placed on it. To achieve this, the following actions are recommended to be taken;

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[53] Bhatti, K.B and Quareshi, T.M 'Impact of Employee Participation on Job Satisfaction, Employee Commitment and Employee Productivity' [2007] (3) (2) *International Review of Business Research Papers,* 54.

[54] Smith, A et. al, 'The Rejection of Industrial Democracy by Merle and Means and the Ideology of Managerialism' [2008] (43) (1) *Economic and Industrial Democracy* 89.

[55] (n.2).

a) The minimum number of workers required to set up a trade union which is the vehicle for collective bargaining should be reduced from the present fifty members to five members. This high minimum threshold practically restricts the rights of workers to form trade unions particularly in small work places with few workers.
b) Government intervention in determining the parties to collective bargaining and fixing bargaining levels particularly in the public sector by setting up ad-hoc commissions disenfranchises the workers of the right to choose their representatives should be rejected. These commissions, rather than being impartial, pander to the dictates of the government due to undue influence or the desire to elicit gains from the government. The South African approach that allows workers to determine their own bargaining arrangements should be adopted.
c) Trade unions should not use corrupt union leaders who conspire with employers against their colleagues. Union leaders are sometimes offered bribes that quadruple their monthly salary for simply accepting and justifying the employer's offer. In such cases, the employer is set to win because the little bribe he gives to the union leaders may be nothing compared to the super profit he is set to lose if the demands of the workers are met. Bargaining agreements are biased towards the employer because the leaders or representatives of workers are accepting bribes
d) Most trade union members do not pay membership dues especially where the dues are not deducted automatically from their salary. Lack of finance impedes the unions from effectively carrying out their responsibilities. Trade unions, like every organization, needs finance for its administration. This includes costs of planning meetings, strikes, peaceful demonstrations and lock-outs. Also, some workers show apathy and indifference to union issues. They have no special interest in the activities of the organizations and so they are rare guests at meetings.

If these recommendations are implemented, collective bargaining in Nigeria will be effective and workers' interests will be sufficiently protected. There will be no reason for workers to clamour to be included in the managerial aspect of their workplaces. Conclusively, it is unjust for any legal system to enable laws that will aid workers to usurp powers from their employers.