# The Principle of Collective Bargaining in Nigeria and the International Labour Organization (ILO) Standards

Robinson Monday Olulu[1], UDEORAH, Sylvester Alor F.[2]

[1, 2] *Ph.D, Department of Economics, University of Port Harcourt, Port Harcourt, Nigeria*

***Abstract*: - In workplace relations, there exists diverse interest with the employer on one hand driven by the quest for profits and control while the employees on the other hand drive by desire to increased wages, benefits, inclusion and expression which generally results in conflicts. However, employer, employees and their unions have, beyond the quest for and reception of fundamental freedoms and rights, also evolved ways of engagement with a view to resolving diverse issues of interest through voluntary negotiations. They are therefore unanimous that collective bargaining is a useful panacea in the workplace for industrial peace. Bargaining has therefore gone from the individual employer/employee relation to standard workplace concept in line with the emergence of fundamental freedoms and trade unionization. This paper looks at the concept of collective bargaining within the context of the international labour organization and the application, challenges and limitations of the same concept in Nigeria.**

***Keywords:*** **Collective Bargaining, International Labour Organization, Employee, Employer, Conflict, Negotiation**

## I. INTRODUCTION

Freedom of association is a right cherished by all human beings. This right amongst its other benefits ensures that workers in organizations can meet and seek to project and protect their rights and benefits as it relates to their employment conditions. Collective bargaining ensures that employers and workers have equal voice in negotiations, the outcome of which are fair and equitable bargain. The result of collective bargaining is a collective agreement. However, the scope of the agreement is limited by the provisions of the law. Thus, collective agreement cannot accomplish by contract what the law prohibits. To achieve efficiency and equity in the workplace, both the interests of the employer and the employee must be protected and this can only be achieved via collective bargaining.

The term 'collective bargaining' is made up of two words; 'collective' which means a 'group action' through representation and 'bargaining' which means 'negotiating', and it involves proposal and counter-offers. Thus, collective bargaining means group negotiations between the employer and the employee on issues relating to their work situation.

The Labour Act defines collective bargaining as the process of arriving or attempting to arrive at a collective agreement (S. 91). Okene (2011) describes collective bargaining as a 'process of negotiation and conclusion of collective agreements on the demands of workers concerning certain improvements in the terms and conditions of employment. Black's Law Dictionary defines collective bargaining as 'negotiations between an employer and the representatives of organized employees to determine the conditions of employment; such as wages, hours, discipline, and fringe benefits.

The Collective Bargaining Convention (1981, No. 154) explains the term collective bargaining as extending to all negotiations which take place between an employer, a group of employers or one or more employers' organizations, on the one hand, and one or more workers' organizations, on the other hand, for determining working conditions and terms of employment, and/or regulating relations between employers and workers, and/or regulating relations between employers or their organizations and a workers' organization or workers' organizations. Collective bargaining thus involves a situation where representatives of organized employees meet with the employer or its representatives in an atmosphere of mutual cooperation and respect, to deliberate and reach agreement on issues affecting both parties.

The concept of collective bargaining has gained acceptance and international recognition in both private and public sector; however, the principles that underlay the practice have been applied differently in countries over the world. This research seeks to state the practice of collective bargaining as stipulated in the International Labour Organization (ILO) recommendations viz-as-vis its empirical application in Nigeria, and its effects on Nigerian workers.

This paper is divided into five sections; the legal framework of collective bargaining in the context of ILO standard is the second section; while section three analyzed collective agreement in Nigeria. Section four considers collective agreements in other jurisdiction - 'South Africa'. Section five is the recommendation and conclusion.

## II. THE LEGAL FRAMEWORK OF COLLECTIVE BARGAINING UNDER ILO STANDARD

Three major international instruments have been adopted by members of the ILO with the aim of promoting collective

bargaining amongst member states. They include; (a) Collective Bargaining Convention (No. 154); (b) Collective Bargaining Recommendation (No. 163); and (c) The Right to Organize and Collective Bargaining Convention (No. 98).

The Collective Bargaining Convention (No. 154) and its accompanying Recommendations (No. 163) were adopted in 1981 to complement Convention (No. 98). They set out the types of measures that can be adopted by member states to promote collective bargaining and the aims of these measures. The practice of collective bargaining in the context of the ILO involves; parties to collective bargaining; recognition of the union/worker's organization; workers covered by collective bargaining; subjects covered by collective bargaining, the principle of good faith; the role of procedures to facilitate negotiation; the principle of free and voluntary negotiations and the level of negotiations.

*Parties to Collective Bargaining*

By the ILO standards, collective bargaining involves a bipartite relationship (between two parties). It does not deal with tripartite relations where the government is also a party. This is because, the aforementioned ILO Convention on collective bargaining strive to create a balance between government intervention to encourage collective bargaining (by establishing an enabling framework) and the freedom of the parties to conduct autonomous negotiations. Specifically, the parties to collective bargaining are; one or more employers; or one or more employers' organizations, on the one hand; and one or more workers' organizations, on the other.

From the above, collective bargaining should be done between employers' organizations and workers' organization. However, in the absence of workers' organizations, negotiations may be done with the workers' representatives. Nevertheless, where this is done, appropriate measures should be taken to ensure that the existence of these representatives is not used to undermine he position of the workers' organizations concerned. According to the Committee on Freedom of Association, 'direct negotiation between the organization and its employees, by-passing representative organizations where these exist, might in certain cases be detrimental to the principle that negotiation between employers and organizations of workers should be encouraged and promoted. It was also emphasized by the committee that 'direct settlements signed between an employer and a group of non-unionized workers, even when a union exists in the undertaking does not promote collective bargaining as set out in Article 4 of Convention (No. 98).

It is important to state here that for workers' organizations to sufficiently represent the interest of the workers, they have to be independent and in particular must not be 'under the control of employers' organizations'. They must also be able to organize their activities without any interference by the public authorities which would restrict this right or impede the lawful exercise thereof.

*Recognition of the Union/Workers' Organization*

Having stated that collective bargaining consists of the right of trade unions to negotiate the conditions of the employment of workers, it is important to note that the recognition of the right of unions to join in the bargaining process and negotiate on behalf of workers is a *sine qua non* in the procedure for collective bargaining. The employer/employers' organization must first recognize the workers' union as the sole bargaining agent for the employees within the bargaining process before collective bargaining can progress. It is also noteworthy that trade unions/workers' organization may represent only their members or all the workers in the bargaining union concerned. Where the trade union represents the majority of the workers, it enjoys the right to be the exclusive bargaining agent on behalf of all the workers in the bargaining unit. However, as noted by the Committee on Freedom of Association, a provision in a national law which stipulates that a collective agreement may be negotiated only by a trade union representing an absolute majority of the workers in an enterprise 'does not promote collective bargaining in the strict sense of Article 4 of Convention (No. 98)'. In Nigeria, an employer has a legal obligation to recognize a trade union that has more than one of its members in the employment of that employer as the sole bargaining agent for the employees within the bargaining unit in relation to the terms and conditions of employment.

*Workers Covered by Collective Bargaining*

Generally, the Right to Organize and Collective Bargaining Convention (No. 98) provides that workers shall enjoy adequate protection against acts of anti-union discrimination in respect of their employment. However, Article 5. of the Convention provides that 'the extent to which the guarantees provided for in this convention shall apply to the armed forces and the police shall be determined by national laws or regulations.' Furthermore, Article 6 of the Convention excludes explicitly 'public servants engaged in the administration of the state' form its scope thus, they are not entitled to engage in collective bargaining.

Notwithstanding the above, in 1981, Collective Bargaining Convention (No. 154) made remarkable improvements by including the whole public service (with the exception of the armed forces and the police) in the collective bargaining process. The only condition is that special modalities of application can be fixed by national laws or regulations or national practice. Also, the Labour Relations (Public Service) Convention ( No. 151) requires states to promote machinery for negotiation or such other methods that will allow representatives of public employees to participate in the determination of the terms and conditions of employment in the public service.

*Subjects Covered by Collective Bargaining*

As already mentioned, ILO instruments (Convention Nos. 98, 154, and Recommendation 163) focus the content of

collective bargaining on 'terms and conditions of work and employment' and on the regulation of the 'regulations between employers and workers and between organizations of employers and of workers'. Notwithstanding this, some writers have opined that the concept of working conditions is not limited to traditional working conditions (working time, overtime, holiday periods, wages, etc), but also covers certain matters which are normally included in conditions of employment such as promotions, transfers, dismissal without notice, etc. The ILO Committee of Experts indicated that, 'it would be contrary to the principles of convention No. 98 to exclude from collective bargaining certain issues such as those relating to conditions of employment and measures taken unilaterally by the authorities to restrict the scope of negotiable issues are often incompatible with the convention. Furthermore, the Committee on Freedom of Association also noted that certain matters can also reasonably be regarded as outside the scope of negotiation such as matters pertaining essentially to the management and operation of government business. However where these policies have important consequences on conditions of employment, it is suggested that they should be the subject of collective bargaining.

*The Principle of Good Faith*

In order for collective bargaining to function effectively, it should be conducted in good faith by both parties. The Committee on Freedom of Association has established the following principles;

i. Good faith entails genuine and constructive negotiations which are a necessary component to establish and maintain a relationship of confidence between the parties.
ii. The principle that both employers and trade unions should negotiate in good faith and make efforts to reach an agreement means that any unjustified delay in holding negotiations should be avoided.
iii. Both parties should make every effort to reach an agreement (or settlement as the case may be).
iv. Agreements should be binding on parties.

*The Role of Procedure to Facilitate Negotiation*

Collective bargaining can be facilitated through Conciliation (entails bringing parties together to discuss their positions), mediation (entails issuing recommendations or proposals which are not binding upon the parties), and arbitration (entails the submission of both parties to the decision of an arbitrator). The above mechanisms should be voluntary nevertheless, they may be imposed by the law or by the authorities after a certain period has elapsed. In line with this, the ILO Committee on Freedom of Association has emphasized that all legislation establishing machinery and procedures for arbitration and conciliation designed to facilitate bargaining between parties must guarantee the autonomy of the parties.

*The Principle of Free and Voluntary Negotiation and the Level of Negotiation*

The ILO Committee on Freedom of Association has noted that for collective bargaining to be effective, it must assume a voluntary character and not entail recourse to measures of compulsion, which would alter the voluntary nature of such bargaining. By the ILO instruments, there is no formal obligation to negotiate. Nevertheless, the ILO has considered that the criteria established by law should enable the most representative organizations to take part in collective bargaining which implies the recognition or the duty to recognize such organizations. Again, the ILO Committee on Freedom of Association has noted that employers should recognize for collective bargaining purposes, the workers' organizations which are representative of the workers employed by them. Also, the ILO Committee of Expert does not consider the prohibition of unfair labour practices in the process of negotiation to be an infringement on the voluntary nature of collective bargaining, and excepts the imposition of certain sanctions in the event of conduct which is contrary to good faith or which constitutes unfair practice in the course of collective bargaining, provided they are not disproportionate.

With regard to the level of bargaining, the Collective Bargaining Recommendation (No. 163) provides that 'measures adapted to national conditions should be taken, if necessary, so that collective bargaining is possible at any level whatsoever, including that of the establishment, the undertaking, the branch of activity, the industry, or the regional or national levels. Thus collective bargaining should be possible at any level and legislation should not make it compulsory for collective bargaining to take place at a higher level or in a particular sector. Accor to the ILO Committee of Experts, the choice should be made by the parties themselves as they are in the best position to decide the most appropriate bargaining level. In line with this, the ILO Committee on Freedom of Association did not consider the refusal by employers to bargain at a particular as an infringement of freedom of association. Where the issue of the level at which bargaining should take place is determined by a body that is independent of the parties, the ILO Committee on Freedom of Association has noted that the body concerned should be truly independent.

## III. COLLECTIVE BARGAINING IN NIGERIA

All over the world, the practice of industrial relations and collective bargaining emanated from the private sector. However, in Nigeria, the reverse is the case. The reality is that government (federal, state and local) has continued to pay lip service to mechanism of collective bargaining. Collective bargaining in Nigeria evolved through government intervention unlike other countries where the concept evolved from the private industrial sector. Essentially, collective bargaining and collective agreement have been the product of government interventionist actions since the 1960s which was affirmed by the government in 1963. Beyond this, Nigeria has

had a plethora of legislations and statutes bordering on collective bargaining. They include; Trade Dispute Act, 2004; Trade Dispute (Essential Services) Act, 2005; The Labour Act, 2004; Industrial Arbitration Act; Trade Unions Act.

Clearly there is a lack of codification of the various legislations as touching collective bargaining. This has whittled down the effect of the machinery of collective bargaining in the industrial labour relations. It is noteworthy that all the aforementioned legislations give primacy of authority to the Minister of Labour who controls and influences collective bargaining and collective agreements were reached. A clear example is the Academic Staff Union of Universities (ASUU) and Federal Government of Nigeria collective agreement reached in 2009 which implementation is yet to be enforced. The requirement that all collective agreements need to be received and approved by the Minister of Labour Employment and Productivity, who has the power to order the enforceability of some or all of the sections has whittled the efficacy of collective bargaining as a tool for resolution of matters in industrial relations.

Nigeria being a member of the ILO and having ratified some of the Conventions on Collective Bargaining seems to be making little effort to utilize the machinery of collective bargaining in line with ILO standards.

In the public sector which constitutes the largest employer of labour in the country for example, whilst the ILO recommends voluntary collective bargaining, successive Nigerian governments have made use of adhoc commissions in the determination of wages and conditions of service of workers. Some of these commissions include; the Morgan Commission of 1963-64, the Wages and Salaries Review Commission (Adebo Commission) of 1970-71, Public Service Review Commission (Udoji Commission) of 1972-74, Pension Reform Commission of 2004, Wages and Salaries Review Commission (Shonekan Commission) of 2005-2006, Onosode Commission (for parastatals) of 1981, Adamolekun Commission (for Polytechnics) of 1981, Ukandi Damachi Commission of 1990, Minimum Wage Commission of 1999, Ufot Ekaette Presidential Committee on Monetization of Fringe Benefits in the Public Service of 2002, Onosode Commission (for universities) of 2009. There is also the National Public Service Negotiating Council (NPSNC), the institution saddled with the responsibility of collective bargaining. Bargaining in the public sector usually occurs at three levels; the Federal, State and Ministerial level. At the federal level, bargaining is further split into three categories; those representing Senior Staff on grade levels 10-14; Junior Staff on grade levels 01-06; and the Technical Staff.

Thus, in contrast with ILO standards which prescribes that parties should be free to determine the bargaining levels, the Nigerian government unilaterally decides for her workers. Also, in the public sector, negotiable issues are spelt out in the National Public Service Negotiating Council (NPSNC). Many of the substantive issues which are within the scope of the NPSNC are made either by legislative or executive acts or through political commission periodically set up by government as employer of labour. This restricts the scope of the negotiable issues. Also, issues bordering on promotion, discipline, transfer etc. have traditionally been regulated by civil service rules. These affect the voluntariness of collective bargaining in the public sector.

In the Private Sector, the right to collective bargaining is restricted by the requirement for government approval. Every agreement on wages must be registered with the Ministry of Labour, Employment and Productivity who decides whether the agreement becomes binding according to the Wages Board and Industrial Councils Act. It constitutes an offence for an employer in the private sector to effect an increase in wages without the approval of the minister of the ministry in question.

Negotiable issues in the private sector are contained in the procedural agreement which contains guidelines on the standards, methods and levels to be followed by the negotiating parties. It contains the subjects for negotiation at each level and also defines issues of management prerogatives on which bargaining is not allowed. This affects the scope of negotiating issues and limits the freedom of workers to bargain.

*Limitations/Challenges of Collective Bargaining in Nigeria*

One basic limitation to collective bargaining being a principle of International Law is the National Laws of respective member state which tend to limit the application of International legislations. In Nigeria, though collective bargaining and collective agreements are stipulated in several legislations and statutes, it cannot be said that the application of same is according to the tenets and principles of the International Labour Organizations based on the following reasons:

i. The stipulation of compulsory arbitration between employers and workers by the Trade Union Act rather than negotiation with a penalty of fine or imprisonment for failure to comply with National Industrial Court award.
ii. The requirements to register every agreement on wages at the Ministry of Labour and Productivity as bindingness for same.
iii. Commonality of anti-unionism act (regulatory obstructions, state interference in labour matters and shutdowns).
iv. Employers interference and discrimination against employees, unions and ultimately collective bargaining.
v. Restriction on the right to strike; Trade Unions (Amendment) Act 2004 with respect to check-off payments conditional on a 'Non-Strike' clause during the lifetime of collective bargaining or collective agreement.

## IV. LESSON FROM OTHER JURISDICTION: SOUTH AFRICA

South Africa Labour Relations (LRA) Act 66 of 1995 makes provision for collective bargaining. In South Africa the central pillar of collective bargaining has historically been provided by industrial and bargaining council systems. These statutory councils, which are an innovation of the new Labour Relations Act, appear to have a more limited appeal. Outside the statutory system, bargaining takes place at enterprise and plant levels as well as in non-statutory centralized bargaining forum.

The Labour Relations Act retains a voluntarist approach to bargaining in which the parties will determine their own bargaining arrangement through the exercise of power. Also underpinning collective bargaining is a protected right to strike that is given to unions that follow the statutory procedure which is not so in other climes.

Furthermore, participation on a bargaining council in South Africa remains voluntary but the Act provides a number of inducements for unions and employers to participate. Also, it is particularly the ability of the council to have its agreement extended to all the employers and employees within its jurisdiction. The Act provides the Minister of Labour with a discretion in cases where a party has no representation.

The principle of collective bargaining in South Africa appear similar the difference being that the constitution of South Africa makes express provisions for collective bargaining.

## V. RECOMMENDATIONS

There should be a codification of the Labour Laws touching on industrial relations and collective bargaining unlike the present situation where the concept is found in different statuses. Collective bargaining in industrial relations should be given statutory recognition like in South Africa.

The enormous powers of the Minister of Labour to convoke arbitrations and appoint conciliators should be cut down. We recommend the South Africa model of a central joint negotiation council where members must not be government employers but elected through representative exercise by way of voting/elections. Their appointment and election should have statutory function.

The interventionist actions of government in labour disputes should be restricted by statute. The requirement of submitting to the Minister of Labour for settlement of trade dispute as required by the Trade Dispute Act 2004 Section 3(3) should be expunged to be in line with international labour standards, which prescribes that once agreements are concluded by parties, they should become binding and enforceable.

There must be a law to give effect to the enforcement of collective agreement beyond the approval of the minister. This issue has not been settled in Nigeria despite the provisions of the Trade Dispute Act.

There should be periodic training of workers and their representatives on the principles of collective bargaining.

The courts in the exercise of judicial activism must try to capture collective bargaining in judicial decisions that will stand the test of time. Judges must speak from the bench through judgments to enhance the effectiveness of collective agreement.

## VI. CONCLUSION

Collective bargaining is an important mechanism in promoting industrial democracy, the safeguard of which should be encouraged by an enabling framework provided by government through legislations. The private sector should be encouraged to participate in free voluntary collective bargaining with little or no government interference. In the public sector, modalities should be put in place to ensure that public employees across all sectors are free to participate in collective bargaining as this advance productivity of labour which in turn aids socio-economic development.

## REFERENCES


[1]. Chidi, O.C. (2008). Industrial democracy in Nigeria: A myth or reality? Nigerian Journal of Labour Law and Industrial Relations, 2(1).

[2]. Francis, A.C. et al. (2011). Collective bargaining dynamics in the Nigerian public and private sector. Australian Journal of Business and Management Research, 1(5).

[3]. Herzog, P. (1986). The legal nature of collective agreement. American Journal of Comparative Law, 34.

[4]. Ibietan, O. (2012). The legal framework of collective bargaining in the Nigerian public sector: A process approach. International Journal of Administration and Development Studies, 3(1).

[5]. Nwoke, F.C. (2000). Rethinking the enforceability of collective agreements in Nigeria. Modern Practice Journal of Finance and Investment Law, 4(4).

[6]. Okene, O.V.C. (2011). Labour law in Nigeria: The law of work. Claxton and Derrick Ltd.

[7]. Okene, O.V.C. International Labour Standards and the challenges of collective bargaining in Nigeria. Caribbean Law Review Journal.

[8]. Ovieghara, E.E. (2011). Labour law in Nigeria. Malthouse Press. Ltd.

[9]. Sargeant, M. (2003). Employment law (2nd Ed.). Edingburgh: Pearson Education Ltd.