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Research Article

Towards An Enforceability Of Collective Bargaining Agreements In The Nigeria Public Sector

Rabiu Isa[1*], Zuryati Bt Mohamed Yusoff[2], Ani Munirah Muhammad[3]

[1*]University Utara Malaysia (UUM), Nigeria Police Academy, Kano-Nigeria
[2]School of Law, Universiti Utara Malaysia (UUM)), Email: zuryati@uum.edu.my
[3]School of Law, Universiti Utara Malaysia (UUM), Email: animunirah@uum.edu.my

***Corresponding Author**: Rabiu Isa
*Email: barrrabiu@yahoo,com; barrabiu2@gmail.com

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ABSTRACT

The utilization of collective bargaining mechanisms as a means of determining wages and resolving job conditions is widely employed in both the public and commercial sectors. Nevertheless, the government often has challenges in fulfilling agreements negotiated with its unionized staff while engaging in bargaining processes. This paper investigated the recurring phenomenon of governments in Nigeria consistently failing to uphold collective bargaining agreements that have been mutually agreed upon with employees about terms and conditions of employment, as well as other employment-related issues. This study uses a combination of primary and secondary sources in the form of doctrinal legal research methods, including textbooks, case laws, legislation, journals, and online articles, to gather relevant data. Within the realm of public service in Nigeria, a multitude of instances may be observed when the government has exhibited a lack of commitment to fulfilling agreements that were willingly established with its employees. The prevailing disposition exhibited by consecutive Nigerian administrations prompts one to contemplate the possibility that even when the government opts to engage in discussions with workers, it harbours the underlying intention of disregarding the agreements struck during these conversations. In several cases, the government has resorted to rejecting any type of agreement with employees, even going so far as to disavow such arrangements. The failure of employers to uphold collective bargaining agreements aimed at addressing working conditions has significantly contributed to the prevalence of industrial action in both the public and private sectors in Nigeria. This paper postulates that adhering to agreements arising from these discussions has the potential to significantly decrease the occurrence of wage-related industrial discontent, hence promoting a satisfactory degree of industrial harmony within the public sector of Nigeria.

Keywords: collective bargaining agreement, employment, public sectors, labour relations, industrial action.

Introduction

In the context of labour relations, parties participate in collective bargaining to achieve agreements that allow labour and management to jointly regulate employment. Employers and trade unions negotiate on a wide range of topics that directly affect certain worker segments daily. They also hold extensive, recurring conversations about terms and conditions of employment that touch the workforce as a whole. The foundation of collective bargaining is the belief that employees can accomplish more by banding together as a group than by working alone to enhance benefits and rights at work. A collective bargaining agreement is a written contract that lays out a set of guidelines that all parties involved in labour relations are required to abide by. A collective agreement can be categorised as either procedural or substantive (Agbakwuru, 2015). Procedural agreement

refers to the rules that regulate the procedures for job-related issues. Possible concerns may encompass matters of membership in the National Joint Industrial Council, the primary national entity responsible for negotiations, as well as negotiation strategies, meeting protocols, quorum prerequisites, agreement durations, and internal grievance mechanisms.

Conversely, a substantive agreement pertains to matters that typically revolve around several issues, including compensation improvements and the upgrading of job terms and working circumstances. These criteria may include factors such as the number of hours worked, the amount of vacation time allowed, the contributions made towards a pension, and any other issues that the parties concerned may agree upon. A recurring pattern of labour disruptions has plagued each administration of the Nigerian government since 1999. In Nigeria, it has been a recurring pattern for successive administrations to disregard collective wage agreements that were established during prior negotiations in favour of engaging in negotiations with trade unions. Potentially, the Nigerian Public Service's inability to prevent strikes and social anarchy is due to the violation of collective bargaining agreements. Undoubtedly, the main factor that triggers most strikes in Nigeria is either the failure to pay wages or the lack of implementation of collective agreements, which include salary settlements and other work requirements (Chigozie Uzoh & Chigozie, 2016). Since 1999, there have been 15 documented strikes by Nigerian academic staff at public universities. They went on strike for a total of almost 50 months during that time. This is almost equivalent to one-fifth, or 20%, of the years that Nigeria has had democracy since 1999. The Federal Government's unwillingness to abide by an agreement signed with the Academic Staff Union of Universities (ASUU) in 2009 has resulted in one strike at Nigerian universities every five years since 1999 (Chigozie Uzoh & Chigozie, 2016). The unfavourable trend results in sluggish economic growth due to a substantial decrease in productivity. A commonly acknowledged premise in the field of industrial relations is that resolving grievances necessitates the existence of a collective bargaining issue. This issue acts as a prerequisite for both the employers' union and the employees' union to address and resolve the situation.

The efficacy of collective bargaining hinges on the reciprocal commitment of both parties to engage in authentic negotiations and their readiness to meet the obligations outlined in the mutually agreed-upon agreement. Both the public and private sectors are equally subject to regulation when it comes to complying with the conditions of signed agreements. The situation of collective bargaining in the Nigerian public sector is currently seen as regrettable and worrisome. Ibietan (2013) stated that there is a weak foundation for collective bargaining in Nigerian public sector organisations. He further stated that managers or employers in some public organisations frequently engage in dishonesty or purposeful disregard for agreements reached via the cooperative process of collective bargaining. Fajana and Shadare (2012) asserted that although there have been notable policy advancements in collective bargaining in Nigeria, its level of seriousness and effectiveness in many economic sectors has been deficient. Therefore, this paper analyses the implementation of collective bargaining agreements within the context of Nigeria, with a specific focus on their enforceability within the Nigerian public sector. The paper contributes by assessing and examining the obstacles that continue to impede the enforcement of collective bargaining agreements (CBAs) by the contracting parties and proposing potential recommendations. The structure of the paper includes a discussion on the evolution, nature, and scope of collective bargaining in Nigeria, followed by an examination of the legal framework of collective bargaining, the bargaining parties, the subject matter of bargaining the enforceability in Nigeria, and lastly, the conclusion.

Evolution of Collective Bargaining in Nigeria

It is believed that collective bargaining started in the public sector, where modern trade unionism first emerged and thrived in Nigeria. According to Fashoyin (1999), the reason for this was that at the beginning of the 19th century, the private sector was almost non-existent in Nigeria. The historical reality that Nigeria's public sector is where collective bargaining originated has been confirmed by other academics (Onah, 2008; Uvieghara, 2001; Ojo, 1998). However, in developed nations, the scenario is reversed; collective bargaining first emerged in the private sector and then extended to the public sector (Anyim, Elegbede and Gbajumo-Sherrif, 2011).

Nevertheless, the Hunt Commission—which was founded in 1934—was the first recognised organisation to engage in collective bargaining inside the Nigerian public sector. Worker representatives were added to the organisation in 1942. However, neither the workers' body nor the commission offered any channels for resolving problems (Okogwu, 1992). To promote the establishment of the Whitely Councils and departments, the Cowan Commission was established in 1951. According to Omole and Adegoke (1997), the departments continued to act as internal bodies for handling complaints and offering guidance, while the Whitley Councils served as the means for collective bargaining in the public sector. Notwithstanding this arrangement, the labour sector had several protests and periods of discontent, which resulted in the establishment of many inquiry commissions until the National Public Sector Negotiation Councils (NPSNCS) were established in 1974.

The federal and state governments, representing the public sector, and the eight (8) civil service unions formed the framework for collective bargaining through the NPSNCS. In actuality, though, the NPSNCS had little impact on the efficacy of collective bargaining; rather, it only changed the scope and structure of such agreements in Nigerian public sector organisations. Instead of using collective bargaining, governments formed the Ad-hoc Wages Commission to regulate employment conditions. Positive industrial relations concepts that collective bargaining seeks to build are undermined by the undemocratic and unilateral usage of the Ad-hoc Commission to decide on compensation and other job conditions while giving worker requests priority. (Chidi, 2010).

The pattern of collective bargaining practices showed very little shift even after the 2005 Trade Union Amendment Act and the 2006 Government White Paper were released by the Presidential Committee on the consolidation of Emoluments in the Nigerian public sector, which was led by former acting president Shonekan. This should apply to all public sector organisations. Despite the change in status, it seems that collective bargaining will still not be able to be implemented effectively. Workers' participation in decision-making through collective bargaining mechanisms is not attractive to management in Nigerian public organisations. Management only tries to persuade the union or workers' representatives to concur with its choice; it has the final say. (Longe, 2014).

Literature Review

The term "collective bargaining" was initially used in 1891 by Beatrice Webb during her study on the cooperative movement. It is important to note that this concept is not exclusive to Africa or Nigeria. It is of Anglo-Saxon origin. She did not provide a precise definition, but she interpreted collective bargaining as a negotiation process between employers and workers when both parties act together and come to a mutual agreement, as opposed to individual bargaining (Ibietan, 2013). Since then, there have been significant improvements made to the word "collective bargaining."

Flanders (1970) offered the conventional definition of collective bargaining as a social activity that methodically resolves conflicts through agreement-making. This definition aims to clarify that it is a means of bringing equity and civility into work environments as well as a controlled approach to resolving disputes. According to Rose (2008), collective bargaining is a process whereby representatives from both the employer and the employees talk to one another to settle disagreements about the formal and informal aspects of the employment relationship.

To put this into practice, it can be proposed that the collective bargaining framework incorporate practices like dispute resolution, concordance economic actions, and settlement procedures (Fajimi & Momoh, 2021). Flippo (1984) defined collective bargaining as a procedure when representatives of commercial (or public) organizations and labour organizations get together to try and work out a contract or agreement that outlines the parameters of the relationship between the union and its members. Henry (2002) interprets the notion as allowing representatives of the employer and employees to collaborate in making decisions on wages, hours, and working conditions. Yoder defines collective bargaining as the process where representatives of workers negotiate with one or more employers to establish the terms and conditions of employment.

As the aforementioned definitions make evident, collective bargaining entails discussions between employers and employees through each party's representative to come to a mutually advantageous agreement. It is a means of achieving industrial democracy in the workplace, provided that all parties are willing to understand and adhere to the conditions and provisions of the agreement. Thus, collective bargaining encourages the resolution of conflicts (Murton, Inman and Ossullivan, 2010).

The Labour Act, 2004's Section 91 defines collective bargaining as the process of reaching or attempting to attain a collective agreement; nonetheless, there is no clear meaning of the term in Nigerian law. This suggests that when disagreements are settled through collective bargaining, a collective agreement outlining the rights and obligations of labour and management is created. The aforementioned makes it clear that the method is a crucial industrial rule-making technique in which management in work-related organisations makes decisions in consultation with employees. Collective bargaining, as defined by the International Labour Organisations Law (ILO Law), is the process of negotiating between an employer or a group of employers' organisations and one or more workers' groups.

The purpose of these negotiations is to decide on terms of employment and working conditions, as well as to regulate the relationship between employers and workers. Therefore, the genuine desire or agreement of the parties to settle is the most crucial component of collective bargaining. Fashoyin, asserts that the main reason for the breakdown of collective bargaining is the parties' incapacity to undertake the necessary measures to ensure that the agreements can be legally enforced against them. This demonstrates that a collective agreement cannot be enforced unless a legally binding provision is included. Khan-Freund, a prominent figure in labour and industrial relations, argues that collective agreements should not be considered contracts because the parties involved do not have the intention for them to be. To raise a legally enforceable contract in Great Britain and other countries, the so-called "Intention to create legal relations" is essential. He concluded that the prevailing opinion seems to be that collective agreements are only legally obligatory in good faith and cannot be enforced through the use of injunctions or damages claims. He continued by going over a few of the legal barriers that prevent an individual employee or employer from enforcing a collective agreement as well as the rare situations in which it might be (for example, when the agreement was implicitly included as terms of the employment contract).

According to Pitt, G., before collective bargaining agreements may be legally enforced, two significant issues need to be resolved. One issue is the legal theory known as "privity of contract," which states that only parties to a contract may enforce it. Consequently, an employee who is a member of a union does not have the authority to enforce it. The fact that collective bargaining agreements are not contracts is the second and earlier issue.

Emiola, examined the two essential principles of collective bargaining and collective agreement. He argued that it would be impractical to definitively assess the enforceability of a collective agreement in Nigeria. He maintains the conviction that, as a universally accepted standard, such an agreement cannot be legally binding. His view was based on his findings that the Nigerian labour law does not currently make collective agreements enforceable. Additionally, the notion of agency, which would help employees obtain legal ability, is challenging to apply in the context of trade unions and their members. Emiola and Uvieghara had similar opinions when Uvieghara characterized the current legal system's refusal to recognize collective bargaining as illogical given that it is a crucial source of employment terms and conditions. However, the knowledgeable author noted that a collective agreement can be rendered legally binding in at least two ways.

Firstly, as stipulated by law, any collective agreement must have three copies lodged with the Ministry of Labour by the parties involved within 14 days of its implementation. The conditions of the agreement, or any part of them, may be made obligatory on the employers and employees to whom they apply by an order issued by the Minister. Anybody who disobeys the order, in this case, commits an offence and faces eviction, a fine of N100, or six months in jail.

The second occasion that the learned scholar noted was when the participants to the collective agreement stipulated in the agreement that it would be enforceable by law. Nevertheless, he explicitly stated that the agreement would have legal force for all parties involved, albeit the principle of privity of contract could potentially hinder an individual employee from implementing its provisions. The author continued by outlining the situations in which a single worker would have the authority to implement a collective agreement. This could be accomplished by explicitly or implicitly stating in an employee's employment contract that his employment would be governed by a particular collective agreement or any future collective agreements that the business enters into. While the expert examined some sections of the Trade Disputes Act concerning the enforcement of collective agreements, he did not investigate the National Industrial Court's jurisdiction under the same Act and its implications for the enforceability or non-enforceability of collective agreements.

Erugo noted that the legal validity of collective agreements is shaped by both legal requirements set by statutes and customary legal principles about the creation of contracts. According to him, the result of this is that collective agreements lack legal validity. Like Khan-Freund, he based his argument on the much-debated concept of "absence of intention to create legal relations," which is considered a vital requirement for a legally enforceable agreement.

According to Agomo, collective agreements are only legally binding in good faith and are not enforceable. Regrettably, parties to a collective agreement are not always faithful in upholding the fair expectations of one another. Furthermore, the Nigerian court has not issued a legal decision clarifying the precise procedure to establish the initial right for a party to seek court intervention without involving the Minister of Labour.

Methodology

This paper utilized doctrinal legal research. The article employed qualitative legal research. Data was gathered using a library-based method. The main data were collected from legal statutes, conventions, and case law. The secondary data were obtained from sources such as journal articles, law textbooks, newspapers, and credible websites. The content analysis approach was used to thoroughly and analytically investigate both primary and secondary material.

International Law and Public Sector Collective Bargaining

Article 23 of the Universal Declaration of Human Rights stresses the importance of the right to collective bargaining for all employees, especially those working for the federal government.

These claims are backed by the 1998 International Labour Organisation ([LO) Declaration on Fundamental Principles and Rights at Work (Chigudu, 2015). The 1948 Convention on the Freedom of Association and Protection of the Right to Organise (No. 87) was adopted by the International Labour Conference. The conference acknowledged that employees in both the public and private sectors have the right to organise. According to Article 2 of this Convention, employers and employees alike shall have the freedom to form organisations of their choosing without prior permission.

According to Article 9 of Convention No. 87, national legislation or regulations will determine the extent to which the rights established in the Convention will apply to law enforcement and the armed forces. A new tool designed to assist collective bargaining was the Right to Organise and Collective Bargaining Convention, 1949 (No. 98). The Conference was presented with it for debate. It was recognised that public sector collective bargaining possesses unique qualities shared by the majority of nations, albeit to varying degrees. One of the reasons was that a state should assume the dual duties of employer and legislator. There were times when these roles overlapped and contradicted one another. Second, because the state is an employer, the electorate holds it responsible for the management and distribution of its revenue, even though it depends mostly on tax revenue. Finally, public employees are not allowed to exercise their right to free association or engage in collective bargaining due to legal and cultural norms. The Convention leaves it to national laws to determine whether the guarantees it offers apply to high-level employees whose tasks involve policymaking or management or to employees whose functions are particularly confidential, except law enforcement and uniformed personnel. Articles 4 and 5 of Convention No. 151 mandate that member states take action to

guarantee that public employees are protected against acts of anti-union discrimination both legally and practically and that public employees' organisations are protected against acts of intervention by a public authority in the establishment, management, or operation of these organisations.

Collective Bargaining Agreement Under Nigerian Laws

Collective bargaining is an important part of the system that exists in Nigeria for the management of industrial relations. In the Constitution of the Federal Republic of Nigeria, which was ratified in 1999, it is stated that one of the government's economic objectives is to prioritise its efforts towards guaranteeing that working conditions are fair and compassionate, and that there are sufficient amenities for leisure and social, religious, and cultural activities. The well-being, security, and prosperity of all individuals in employment are protected and not put at risk or maltreated, even though there is no express language establishing the freedom of collective bargaining (Alor et al., 2018).

The objective of constitutionalizing labour laws is to achieve a fair equilibrium between the unequal negotiating power of employers and employees about issues related to social justice, social dialogue, social protection, social exclusion, and workplace security concerns. Furthermore, it serves as a recognition of the workers' constitutional entitlement to a secure working environment, while also aiming to mitigate the increasing instances of labour rights infringements caused by the elimination of national borders due to globalisation and the rise of multinational corporations without a specific national identity (Dumebi et al., 2020).

Thus, all workers in Nigeria have the right to fair labour practices, which include the right to adequate working conditions and the freedom to form, join, or participate in trade union activities. In a same vein, employers are free to form, join, and take part in an employers' association that includes collective bargaining actions and projects (Opute & Mahmoud, 2022) The freedom of workers and employers, acting alone or through an employers' organisation, to hold fruitful discussions to settle new labour-related issues within the purview of a trade union is recognised by the Constitution as a means of further safeguarding the rights and interests of both sides in an employment agreement.

Thus, it would seem that this constitutional authority allows legislation about collective bargaining to be passed to help attain these goals through the use of collective bargaining. Nigeria's collective bargaining system is distinguished by its unwavering adherence to the concept of "voluntarism." The concept of voluntary collective bargaining has been universally acknowledged by all parties involved in an employment relationship for a significant amount of time. (Uvieghara, 2001). The government established "Whitely Councils" and Joint Industrial Councils in 1948 to facilitate voluntary collective bargaining in the public and private sectors (Yesufu, 1984).

The government's policy of promoting unrestricted and voluntary collective bargaining has frequently been restated. In addition, the Trade Disputes Act 2004 establishes a structure for the voluntary negotiation of agreements among groups in Nigeria. Furthermore, the Wages Boards and Industrial Councils Act 2004 serves as a valuable supplement to collective bargaining, enhancing the conditions of workers, particularly within the private sector (Omodu, 2021). The legislation established Industrial Wages Boards of impartial individuals, alongside delegates from both employers and labour. The Act also confers upon the Minister of Labour the power to establish an Area Minimum Wages Committee for the State and a National Wages Board for the Federation, with the requirement of consulting with governors at the highest level. In situations where there is insufficient equipment to effectively manage salaries and other labour conditions, the primary focus of these committees is to control worker standards. Although collective bargaining has been endorsed, it seems that the government has not allowed the practice to grow because it is still in violation of international collective bargaining standards. (Omodu, 2021)

Collective Bargaining in Nigeria's Public Sector

The origins of industrial relations, particularly collective bargaining, can be traced back to the private sector on a global scale. As a result, many collective bargaining processes in the public sector are based on practices that originated in the private sector. In contrast, in Nigeria, where the private sector nearly disappeared at the beginning of the 21st century, the practice of collective bargaining originated in the public sector (Fashoyin (1999)). The Nigerian public sector, however, only recognises the existence of the collective bargaining mechanism. Federal, state, and local governments have pledged under ILO Convention 98 to hold open and unfettered talks with workers, yet they have persisted in ignoring collective bargaining and awarding pay to score political points. The state or government once again uses pay commissioners to control wages and terms and conditions of employment (Ebong & Ndum, 2020).

Therefore, fiat determines pay. The inclination towards wage and salary commissions may be considered, at most, a unilateral arrangement, given the subordinate position of collective bargaining. Wage tribunals or commissions provide minimal avenues for worker participation in the process of determining terms and conditions for employment and are in no way similar to bilateral or tripartite agreements. Therefore, the state opposes collective bargaining and prefers salary commissions. Nigeria has demonstrated that it upholds ILO agreements, specifically 87 of 1948 and 98 of 1949, which safeguard employees' freedom of association, capacity to form unions, and right to participate in collective bargaining.

The stance taken by the state has made it more difficult for public sector unions to negotiate successfully. According to Chidi, using ad hoc commissions to handle worker requests—like setting pay and other terms and

conditions—is undemocratic and biased since it violates the fundamentals of just industrial democracy. It defies democratic ideals as a result (Chidi, 2008)

The National Public Service Negotiating Councils (NPSNC) are the organisations that are responsible for carrying out collective bargaining in the public sector. It is essential to have a clear understanding of the fact that the constitution of the NPSNC outlines the areas and boundaries of bargaining in the public sector (Ibietan, 2013). This charter, which applies to almost all employers in the public sector, is comparable to the procedural agreement in the private sector. Banjoko, thought that the government was assuming the role that businesses and employees should have in labour relations. Even though the government established committees to negotiate pay hikes and working conditions in the public sector, recent events have revealed the government's control of Nigeria's pay-fixing system (Paul et al., 2013). Instead of giving priority to collective bargaining, the government chose to establish wage tribunals to determine and assess salaries.

Parties to Collective Bargaining

In the realm of collective bargaining, it is typical for there to be three separate parties involved. These parties typically include employees or their representatives, such as trade unions, employers, and governmental organizations (Alor et al., 2018). The trade unions have the responsibility of collecting and uniting the collective requests of employees, protecting their interests during negotiations, and ensuring the correct implementation of collective agreements. Conversely, the employers in question could be private companies or governmental bodies that work in the public sector. Finally, governmental organisations or ministries like the Ministry of Labour or the Industrial Arbitration Panel (IAP) usually make up the third party. When it comes to collective bargaining, it is typical to have three different parties involved in the process. (Eremwari, 2022)

The International Labour Organisation (ILO) has established guidelines that state collective bargaining requires a bipartite association, which consists of two different parties. This framework does not apply to situations involving tripartite relationships in which the government is a participant. However, discussions can still be held with employee representatives if workers' groups are not present. If this action is taken, appropriate protocols must be put in place to stop the exploitation of these representatives in a way that compromises the status of the pertinent labour organisations. Direct negotiations between an employer and its employees may compromise the promotion and facilitation of negotiations between worker organizations and employers, according to the Committee on Freedom of Association (CFR), unless representative organizations are involved when appropriate. The committee emphasized that even if there is a union within the organization, direct settlements—as described in Article 4 of Convention (No. 98)—between an employer and a group of non-unionized employees do not effectively promote collective bargaining (Alor et al., 2018).

It is critical to stress the importance of labour unions actively advancing the interests of their members. They must be self-reliant and, in particular, resist the influence of labour unions. Individuals must be free to plan their events without involvement from the state, which could restrict or obstruct this freedom. From an agency doctrine perspective, it is clear from the collective agreement that there is an explicit purpose to broaden its scope to encompass both existing and prospective members of a trade union. Hence, each member of the trade union possesses an indisputable entitlement to initiate legal proceedings under this collective agreement. The soundness of this hinges on the assumption that an agent can only act on behalf of a principal, who can be unambiguously identified at the time the agreement is made.

Generally speaking, a collective agreement only protects the signatory organizations. trade unions and employers' associations as well as their members. An individual trade union member's ability to enforce or litigate a collective agreement depends on whether the union acted solely in its capacity, as an agent for its members, or with the intention that the doctrine of agency applies in situations where the interests of future members of a signatory trade union are not expressly addressed. Deciding the basis of agency in these kinds of situations is difficult because it has to take into account the terms and conditions that will apply to trade union members in the future as well as those who are already members. Recognising the role government agencies play in addressing the need to interpret provisions and settle disputes that may emerge throughout the collective bargaining process is also crucial. Some examples of such organisations include the Ministry of Labour and the Industrial Arbitration Panel (IAP). These organisations work to protect the public interest and act as impartial dispute resolvers. It's critical to recognise that representatives of employers and employees frequently attend collective bargaining sessions regularly, along with workers.

Subject Matter of Bargaining

The ILO conventions, particularly Convention Nos. 98 and 154, along with Recommendation 163, highlight the importance of collective bargaining in regulating work and employment conditions, as well as the relationships between employers, workers, and their representative organisations. Some authors have argued that working conditions include more than just the usual aspects of a job, such as regular hours, overtime, vacation, and salary (Alor & Udeorah, 2018). They argue that it also includes aspects commonly linked to employment circumstances, such as advancements, relocations, and sudden termination. According to the Committee of Experts of the International Labour Organisation states that the restrictions imposed unilaterally by the authorities to narrow the range of issues that can be discussed are frequently incompatible with the convention, and it would be against the principles of Convention No. 98 to exclude some issues, like those about employment conditions, from collective bargaining

Additionally, the Committee on Freedom of Association has emphasised that certain issues, including those primarily about the administration and operation of government operations, are lawfully excluded from negotiations. It is recommended that if these policies significantly impact working conditions, efforts be made to resolve them through collective bargaining.

The Nigerian Courts and the Conundrum of Common Law Position

Common law rules state that unless collective agreements are converted into individual employment contracts, they cannot be enforced in courts or tribunals (Adebayo, 2021). The case of *Ford Motor Co. Ltd. v. Amalgamated Union of Engineering and Foundry Workers*[1] clarified the stance in question, which is based on traditional common law (Iwunze, 2013). In 1955, the plaintiff engaged in negotiations with 19 trade unions and reached an agreement that stipulated that during the negotiation process, there should be no cessation of work or any other action that violates the constitution. The main question in the application was whether the parties intended for the agreement to have legal force; it was concluded that there was no such intention. To stop two significant industrial unions from officially declaring a strike in defiance of the 1955 collective bargaining agreement, a request for an injunction was made in 1968. As a result, CBAs could only be included in a specific employment contract before a court would consider them for execution (Emuobo Emudainohwo, 2020). Collective agreements are not enforceable under common law since there is no aim of establishing legally enforceable obligations between the parties(Adebayo, 2021).

The idea that the goal to establish formal ties is subordinated to collective agreements stems from the pressure that trade unionists apply. Collective agreements have been interpreted in a variety of ways, including "gentlemen's agreements," "extra-legal documents lacking sanctions," deals based solely on honour, contracts containing false pledges, and labour relations manifestos (Adebayo, 2021). Most labour regulations in Nigeria are a legacy of our colonial past since certain British labour law concepts have had a significant influence on local labour policy.

Therefore, the prevailing perspective on the enforcement of collective agreements in Nigeria continues to align with the principles of common law (Akintunde Emiola,2008.). Until now, domestic courts have regarded collective agreements as unenforceable contracts that may only be enforced if they are integrated or included in the terms or conditions of service. Incorporation serves as a means of validation. Arising from the decision in *Ford*, the Nigerian Court of Appeal in the case of *Union Bank Plc. v Edet*, restated the legal principle that collective agreements do not confer individual employees with the right to pursue legal action regarding perceived breaches of their terms unless these agreements have been explicitly incorporated into their employment contracts (Okwara, 2021)

Thus, the courts in Nigeria have persistently applied the principle of common law when it comes to the determination of its enforceability. Similarly, in *Texaco Nigeria Plc vs. Kehind,* the Court of Appeal reaffirmed this common law position, holding that employees cannot sue for alleged breaches of collective agreement terms that have not been captured in the contract of employment as one of the terms forming part of it. Chukwuma, (2020) Furthermore, the Supreme Court of Nigeria reiterated this common law position in *Bpe Vs. Dangote Cement Plc.* In support of its decision, the Supreme Court, per Galumje (JSC), pointedly held as follows:

"Collective agreements are unenforceable until they are incorporated into the terms of employment through adoption. The parties to the agreement negotiate over whether or not the agreement will be enforced. The exhibits mentioned as entitling them to a particular amount in the present case are not supported by any evidence and were not employed by the 4th–9th respondents (the plaintiffs/respondents). As a result, the exhibits are not binding."

However, in a twist of direction, the National Industrial Court of Nigeria (NICN), a specialised superior court for labour matters and disputes in the case of *Valentine Ikechukwu* **vs.** *Union Bank of Nigeria***,** affirmed that CBAs are legally enforceable agreements between employer and employee and that incorporation into the individual employment contract of the employee as a condition for validity is no longer tenable. Regarding the enforceability of collective bargaining agreements in employer-employee relations to compel parties to comply with the terms, Nigerian courts have not consistently rendered consistent rulings (Chukwuma, 2020).

A recent decision of the National Industrial Court of Nigeria has almost changed the narrative since the Nigerian Labour Court was recognised as the only specialised court for resolving labour disputes and other concerns. In *Valentine Ikechukwu v. Union Bank of Nigeria*, the National Industrial Court of Nigeria (NICN) upheld the legal enforceability of CBAs as agreements between employers and employees. It also ruled that the incorporation of CBAs as a requirement for their validity into each employee's employment contract is no longer acceptable. The NICN's stance in this case appears to be at odds with earlier rulings from the appellate courts, such as the Supreme Court of Nigeria (SCN) and Court of Appeal, in the later rulings in *Union Bank of Nigeria v. Edet* and *Bpe vs. Dangote Cement Plc*, which disregarded the NICN's logic. As a matter of hierarchy, all Supreme Court rulings serve as precedents for all of our subordinate courts, including the National Industrial Court. However, being a superior court of first instance, the NICN has exclusive jurisdiction over labour matters by CFRN 254(Chukwuma, 2020).

Therefore, it is important to assess now how the common law stance, which the Supreme Court reiterated in the *BPE* case, has affected Nigerian labour law. Do subordinate courts have to abide by the latest ruling of the Supreme Court? Supreme Court rulings are final and binding on all lower courts, including the Appeal and National Industrial Courts. The reason behind this is that, according to the legal hierarchy, the Supreme Court is above all inferior courts (Victor Obinna Chukwuma, 2021). Okene, (2010) In practical terms, governments continue to dishonour CBAs. One of the main issues affecting the efficacy of CBAs in Nigeria is the government's reluctance to implement them due to judicial inconsistency. Furthermore, collective agreements are not intended to enhance or replace the terms stated in employee service contracts. This legal ruling presents two distinct ramifications. The initial implication is the necessity of establishing a connection between collective agreements and contracts of employment to ensure the enforcement of collective agreements. Ibsen & Keune, (2018) The concept of privity of contract states that an employee seeking to enforce a collective bargaining agreement is viewed as an outsider to both the collective bargaining agreement and the process itself. It is possible for an employment contract to contain an implicit or explicit reference to a collective agreement. The demand for incorporation has its own set of obstacles. The primary obstacle arises from the inherent difficulty of integrating collective agreements into employment contracts, as the majority of such agreements are often established after the beginning of the employer-employee relationship.

Implementation Challenges of Public Sector Collective Bargaining Agreements

The fact is that collective bargaining has little success, despite its many advantages and vital function in any organisation in any country, particularly in Nigeria. There are several reasons for this. Following are few, though not exclusive, reasons for Nigeria's collective bargaining's lack of success:

Procedural bottleneck

Ogancha, (2020) one of the most serious issues affecting the effectiveness of CBAs in Nigeria is government interference through the Minister of Labour. The current labour law requires parties to submit copies of signed CBAs to the Minister of Labour, thereby authorising ministerial intervention in the CBAs process. Section 3(1) of the Trade Dispute Act mandates that parties to CBAs provide the Ministry of Labour with three duly signed copies of the agreements within a maximum of fourteen days after the endorsement of the agreement.

The Minister is the only person who has the ability and discretion to make an order specifying that the entirety of the provisions of the CBAs or any part of them are obligatory on the parties to whom they pertain (Ogancha, 2020). Tunde, (2021) this provision has the legal implication that the consent or approval of the Minister must be sought and obtained before any CBAs are legally binding. He has the right to decide otherwise or on whichever aspect he deems fit. The preceding gives rise to a few concerns. What will happen in a situation where CBAs are reached between employees and government institutions? The question here is whether the minister, as a government representative, can exercise his discretionary powers judiciously and without bias. Allowing the Minister of Labour to sanction CBAs in which the government is a party contravenes the basic tenet of natural justice encapsulated in the dictum “Nemo judex in causa sua." It is meant to represent the phrase “a judge in his case(Tunde, 2021). Considering the frequency of industrial disputes witnessed in Nigeria for decades as a result of the aforesaid ministerial requirements for CBAs implementation, CBAs are less effective as a way to settle labour disputes in Nigeria. It is undesirable to give a member of the government who has, from previous experience, been a party to collective bargaining the opportunity to decide the fate of such an agreement, thereby setting up an irony of agreement without the agreement.

Multiplicity of trade unions

Another major problem bedevilling CBAs in Nigeria is related to the diversity of trade unions in Nigeria’s public sectors. Uzoh et al., (2018) to start with the public universities in Nigeria, four trade unions are operating within Nigeria’s public university system. As a direct consequence of this, there is a certain degree of competition among them. This competition is most pronounced among the academic and non-teaching staff unions. Whenever a particular union can negotiate successfully with the government over a particular matter and obtain a concession from the government, Consequent to their demands, the other labour unions will demand concessions from the government without delay. This can be regarded as one of the causes of the strike in the public sector. The competing nature of these interests makes it difficult to find common ground, leading each union to look out for its own best interests (Uzoh et al., 2018). The recent strike by the non-academic staff unions in Nigerian universities over earned allowances and other demands, which lasted for over three and a half months, is a case in point.

The proliferation of labour unions is one of the reasons for the cyclical crisis of industrial disputes in Nigeria. The multiplicity of such unions has the disadvantage of promoting disharmony, which ultimately compromises labour unions in their CBAs and other industrial relations obligations (Onyebuchi & Lucky, 2019). Furthermore, the existence of multiple trade unions discourages the government from engaging in collective bargaining agreements with all of them to meet their demands. By implication, this renders CBAs less effective and makes it challenging for the government to utilise collective bargaining machinery in determining employees’ work conditions, as the government finds it appropriate to deal with a group rather than negotiate with different unions. Even where the government bargained with these unions, the agreement would not be implemented(Paul et al., 2013).

Good faith

The effectiveness of collective bargaining is contingent upon the parties engaging in negotiations with a genuine commitment to reaching a mutually agreeable resolution. Once a trade union has received proper recognition, it may reasonably be anticipated that the employer will be willing to engage in sincere talks with the union(Alor & Udeorah, 2018). However, most employers are not willing to negotiate voluntarily and faithfully. This has made it necessary to impose on employers both the duty to engage in collective bargaining and the commitment to do so faithfully (Chigozie Uzoh & Chigozie, 2016). Engaging in negotiations with a lack of sincerity and honesty has resulted in a state of discord within the industrial sector and has hindered economic progress. The parties involved in the collective bargaining process have demonstrated a lack of commitment to fulfilling their obligations (Lee & Research Online, 2005). This is evident in the unethical negotiating practices that are prevalent, including tactics such as intimidation, walkouts, and a failure to provide complete and transparent information necessary for facilitating a productive negotiation process. In this regard, parties are obligated to show sincerity with each other from the beginning of the negotiation to the conclusion and execution stages. This entails a lot of covenants. One duty encompasses several obligations, one of which is the covenant to bargain directly with the representatives of a union and the responsibility not to circumvent the union of employees and negotiate with the workers. The employer is obligated not to make specific changes without first bargaining with the union.

Based on the aforementioned, the ILO Committee of Freedom of Association (CFA) mandates that employers and trade unions are required to engage in negotiations sincerely and genuinely, to come to a consensus. It is expected that any unwarranted postponement of negotiations should be avoided. Furthermore, both parties are expected to exert their utmost efforts to achieve an agreement or settlement, as appropriate. Nevertheless, it is worth noting that the inclusion of the “obligation to bargain in good faith” is not explicitly stated within the existing employment and collective bargaining regulations in Nigeria, such as the Trade Disputes Act. This phenomenon is also observed in the majority of other nations. This particular challenge seems to be one of the obstacles that necessitate resolution within the context of the Cost-Benefit Analysis (CBA) procedure. The low negotiating power of public workers who are chosen or appointed to represent the government during negotiations is often blamed for the perceived insincerity in the collective bargaining agreement (CBAs) process. A legally enforceable agreement cannot be formed because government delegates are unable to engage in honest and determined negotiations with workers or their unions. It is common to see this behaviour in both public and private settings.

Thus, a significant barrier arises when an entity responsible for guaranteeing the implementation of CBAs demonstrates a lack of transparency and genuineness, endangering the peace in the workplace (Opute & Mahmoud, 2022). Even before the agreement is signed, there is a lack of political will among the authorities responsible for implementing the CBAs. The authorities viewed the exercise as a ritual to douse the aggrieved workers’ impending tension. Across the public and private sectors, bad faith bargaining by the parties to the CBAs involved in the negotiating process is relatively prevalent; for this singular reason, Nigeria’s education and health sectors have always been on strike. It is a prevalent observation that employers in Nigeria often exhibit a lack of motivation and attitudes conducive to the seamless, efficient, and timely execution of finalised collective agreements. The lack of political will, absence of transparency, and insincerity exhibited by the authorities tasked with the responsibility of implementing collective agreements pose significant challenges to adherence to these agreements (Omodu, 2021). Consequently, this jeopardises the maintenance of peace within the work A

Conclusion And Recommendations

The paper has established that despite the enormous function of collective bargaining in ensuring democracy and harmony in Nigeria's Public sector labour matters, its implementation has suffered from inconsistencies from the court, absence of good faith, the problem of multiplicity of trade unions and government interference. These issues continue to question the extent of its efficacy as a vehicle for labour agreements.

In light of these difficulties, the paper suggests that the Supreme Court of Nigeria's ruling be reviewed to bring about a more uniform approach from the courts to prevent uncertainty and conflicts. The statutory limitation of government engagement in labour conflicts is necessary. It is recommended that the provision mandating submission to the Minister of Labour for the resolution of trade disputes, as stipulated in Section 3(3) of the Trade Dispute Act 2004, be eliminated to align with international labour norms. These standards advocate for the binding and enforceable nature of agreements reached between involved parties.

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