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COLLECTIVE BARGAINING, HARMONY AND INDUSTRIAL DEVELOPMENT IN NIGERIA

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ABSTRACT

This paper examines critically the concept of collective bargaining in relation to industrial peace, harmony and development in Nigeria, a developing country. It brings to light the two popular strategies involved in collective bargaining, i.e. the win/lose strategy and win/win strategy, and the models underlying them. Based on the critical examination, the paper reveals that for industrial harmony and development to occur, the principle and practice of collective bargaining must be ensured at organizations employing engineering labour and others alike.

1. Introduction

The central concern in both private and public sectors industrial relation is how to ensure harmony and industrial peace. The best way to ensure harmony and industrial peace is to have an open communication. The actual concern of industrial relation is how to reconcile the interests of management and that of the workers for the overall good of an organization. This can be facilitated through the establishment of an effective communication channel between the two groups i.e. employers and employees. This communication channel can lead to what is called **collective bargaining.** Therefore, collective bargaining is a term applied to those arrangements under which wages and conditions of employment are settled by a bargain in the form of an agreement made between employers or association of employers and workers organization(s). The agreement, which is thus the product of the process, is termed collective agreement and it normally covers a great variety of matters such as rate of wages, hours of work, holiday, sick pay, overtime conditions, procedure for settlement of grievances etc. Others see collective bargaining as a machinery for discussion and negotiation, whether formal or informal between employer(s) and workers' representatives, aimed at reaching mutual agreement or understanding on the general employment relationship between the employers, and workers. The conclusion of an agreement is not a necessary determinant of collective bargaining. Thus, the Labour Act of 1974[1] defines collective bargaining as "the process of arriving at or attempting to arrive at, a collective agreement". The aims are to accommodate, reconcile and often times compromise the conflicting interests of the parties. Collective bargaining is therefore a cushion to this conflict of interests and, while it does not remove conflict, it facilities its accommodation, to enable the two sides work together harmoniously.

In several work satiations, collective bargaining has become, so to speak, the guiding principle of Labour Relations. It is a method through which the wage rates and other employments conditions are determined. It also establishes a set of rules guiding relations between the parties during the life of a collective agreement, as well as providing for an orderly method of settling grievances that are bound to occur from time to time. In this light, a collective bargaining process can be seen as the foundation of industrial democracy. As argued, in the Nigerian case, "collective bargaining is the only viable form of worker(s) participation in decision–making in the foreseeable future"[2]. It subsists, therefore, as a form of industrial democracy, but only if all sides - labour, management and government subscribe to and believe in democratic extension of political democracy in the larger society.

The earliest evidence of joint negotiations or consultations in the country was in 1937, when the colonial government established the provincial Wage Committees throughout the country. The function of these committees was to undertake periodic wage reviews for daily-paid employees in the public services. Until 1942, the committees composed exclusively of government officials and, wage determination was therefore unilateral. However, perhaps because of growing agitation and dissatisfaction among workers, the committees were expanded to include workers representatives. This could be regarded as the beginning of collective bargaining in

Nigeria although the committees were advisory in nature.

However, following the general strike of 1945 and the growing disenchantment of trade unions, it became apparent that the provincial. Wage Committees were grossly inadequate in meeting the aspirations of workers. Therefore, the Whitley council system, which had been in use in the United Kingdom, was introduced in Nigeria in 1948. The recommendation for its introduction was made by the British Ministry of Labour and National Services. Basically, there were three councils catering for "senior staff", "junior staff" and "industrial (technical) employees". Each council functioned as a negotiating as well as a dispute settling machinery in the public service. These were a dismal failure by 1949 because "they became consultative instead of negotiating bodies, suffered difficulties over representation and broke down completely because of staff side dissatisfaction over progress in negotiation"[3].

In view of the failure of the Whitley System, the Udoji Commission of 1974 undertook a restructuring of the machinery and recommended the establishment of three National Public Service Negotiation Councils which were to concern themselves with 'matters relating to wages arbitration and centralization of the machinery for negotiation', though the bodies have made a little impact to date.

Over the years, collective bargaining has acquired greater significance in both private and public sectors, in response to general and external forces. Internal forces derived from the tendency of management to force unilateral decisions on workers and have increased awareness among workers of the benefits of collective action for improving their employment conditions. External forces derived mainly from public policy which has enhanced the organizational capabilities of both sides to engage in bargaining[4].

As a result of these, a phenomenal increase in collective bargaining activity has been witnessed since the late 1970's. It is a common knowledge for example that between 1979 and 1981, various industrial union and employer's association concluded no fewer 17 multi-employer collective agreements. And of course from that time to the present, countless agreements have been reached labour and employers in the country, although implementation is another thing altogether.

2. Legal Status of Collective Bargaining

Essentially speaking, bargaining is a rule-making process and it is a system of arriving at a common decision between two parties. Thus, it lays down the rules to be observed when labour is bought and sold, in the same way that a state, by legislation, may regulate jobs. Therefore, collective bargaining is itself a way of job regulation with the representatives of employers and employees jointly sharing the responsibility for the content of the rules and their observance thereof.[5]

It is clear from the foregoing that the first step in collective bargaining is the recognition of trade unions (as defined by the Trade Union Act)[6] by the employers. With the enactment of the Trade Union Ordinance in 1938[7] which removed the unions from the pale of common law illegalities and conferred some immunities and advantages upon them, especially in relation to industrial actions, the Government had hoped that strong and independent trade union would thereby emerge[5].

Between 1938 and 1973 employers had the liberty of deciding whether or not to recognize trade union and, where they refuse to dialogue with union that was the end of the matter unless they were numerically influential enough to gain recognition by an act of industrial action, real or threatened. The Trade Union Act of 1973 sought to come to the aid of trade unions by providing in sections 22 and 23 thereof, the condition under which a compulsory recognition order could be given in favour of a union against an employer. However, the Trade Union (Amendment) Act of 1978 repealed the two sections and substituted it with a new section 22. The section provides for the recognition of trade union upon registration by employers. However, they must satisfy the condition of having more than one person as members[5]. Subsequently, deliberate refusal by employers to recognize the union constitutes an offence, punishable on summary conviction by a fine of ₦1,000.00. It may well be that there is a need to amend the section to make it clear that quite apart from the imposition of fine, the employer has not purged himself of the offence and he remains liable to recognize the Union. It needs to be emphasized that the law does not as yet compel either side of the industry to set up collective bargaining machinery which are purely voluntary, even with the enactment of the Wages Boards and Industrial Councils Act of 1973[8]. The Act only comes into effect after the establishment of the machinery by the parties.

3.0 Strategies in Negotiations

It is an obvious fact that negotiation strategies and counter strategies are essential tools in changing relationships, - the goal of any negotiation. As with most tools, they can be and are often abused. Basically there are two strategies employed during negotiation[9]. These are:

3.1 The Win/Lose Strategy

This is a strategy which is used to achieve satisfaction of the player's needs at the expense of the other side, and it is a good symptom for industrial dispute. The foundation of this strategy is formed by the following models.

i) J. Pen's Model: During bargaining, the right is recognized of both management and labour to exercise what power is available to them without undue restriction or control by outside parties or agencies, provided both parties use this power responsibility and reasonably in the face of problems and conflicts.

ii) Mctersie Walton's Model: The relative attractiveness of any settlement (i.e. benefit derived versus cost of achieving) is viewed by each side in terms of the probability of achieving that settlement. Each side has a target point, which defines complete success in the bargaining and, a resistance point which defines minimum success. The bargaining process then becomes the process of manipulating the opponent's utilities and his probability of achievement.

iii) Carl Steven Avoidance Model: In this model, each party has a range of alternatives between two unattractive extremes. One extreme is represented by the terms of the agreement most fovourable to him, while the other unattractive extreme is the opponent's demand or goal. Generally, the tendency to avoid this second extreme is greater than the desire to avoid the other extreme.

3.2 The Win/Win Strategy

In this strategy, each party is dependent on the other, and as a matter of fact, can achieved, its objectives more effectively if it wins the support of the other. This strategy ensures an atmosphere of mutual trust, confidence and respect in the work place, because both management and employees see themselves as partners in progress. Ideally, this is the strategy that would ensure the must cherished industrial peace in Nigeria.

4.0 **Bargaining Process**

Collective bargaining as a tool of industrial relations could be regarded as one of the greatest potentials for successful developments in Nigeria.

In recent years, collective bargaining has become the most accepted way of settling industrial conflict in professional, managerial as well as governmental organizations[10]. Accordingly, "collective bargaining is a standard–setting machinery, which constitutes an important source of regulation governing wages, salaries and other employment conditions mutually agreed upon by labour and management and in conformity with public policy"[11]. This clearly shows that the process of collective bargaining would be upheld by all organizations if they are to maintain a peaceful working atmosphere for both the management and the workers. It has become the guiding principle of labour relations, because all conditions of employment including wage rates are purely determined by collective bargaining. There are three major factors that greatly influence the collective bargaining process in Nigeria. These are the Government, the Employers and the Trade Unions. Government has been an active participant in collective bargaining in any industrial relations process. This is mainly because it is the major employer of labour. The promulgation of the 1973 Trade Union Decree "attempted to streamline the trade unions and withdraw their registration certificates because government did not consider their primary functions to be within the ambit of trade unionism". This did not portray government's commitment to ensuring a conductive industrial setting. Perhaps, government's wisest decision was the Trade Union (Amendment) Decree No.22 of 1978 which amended the 1973 trade union Decree which:-

a) Made it compulsory for the employer to recognize a registered trade union;

b) Put the minimum registrable number of workers at 50;

c) Streamlined, for the first time, the union organization into-
   i. Industrial union,
   ii. Senior Staff Association; and
   iii. Employer's Organizations.

d) Created the Nigerian Labour Congress (NLC) as the central labour organization in Nigeria. It also listed, for the first time, the 42 industrial union of workers and the 19 Senior Staff Association which would form the focus of collective bargaining throughout the country[12].

The employers of labour who form another factor in collective bargaining process have dominated a strategic position in this system. Many employers have decided to form Employers' Association which present counterpoint in any collective bargaining process. Trade Unions vary considerably in strength and organizational ability. It is a known fact that in any collective bargaining process, the trade union basically presents the genuine wishes of its members. Similarly, the bargaining procedures vary according to the issues raised and the strength of the trade union. In a nutshell, collective bargaining process is basically an act that involves two or more actors that negotiate to find a lasting solution to any industrial dispute. With this, it is expected that a conducive working environment would prevail where all parties work towards the achievement of the organization goals.

4.1 Bargaining Procedure

Basically, the first decision to be taken in any bargaining procedure is the selection of the venue. In small organization or plants, the negotiation takes place in the premises. It is believed that-

> "Bargaining within the company premises has the advantage of administrative convenience, as secretarial or clerical support can be obtained without delay … transport and venue hire costs are avoided. The parties can easily contact their constituencies as often as necessary"[11]

However, this system has been faulted in the sense that is brings unnecessary pressures from any side and negotiators may feel intimidated during the bargaining process. But in a multi-employer bargaining, where many negotiators from various companies come together, it is necessary for the negotiation to take place in a neutral ground usually in hotels or public places. "The advantage of choosing a neutral place is that it is free from frequent interruption and gossip; negotiators could also feel relaxed without undue pressure from their constituencies"[11] This system has also been blamed since pressure would be mounted on the negotiators to reach agreement as soon as possible to reduce costs.

Both the union and management are free to select who actually would represent them at the negotiating table. Changes are usually avoided because of the need to maintain consistency and to remove suspicious. The bargaining procedure may also reflect the size and composition of each team. In a multiemployer bargaining, the employer's teams may reflect the various product groups, while the union is usually represented by national officers and some branch leaders. Ideally, the leader of each team is the chief spokesman. But mostly on the employer's side, if the leader is incompetent, any capable member would be employed to anchor the discussion. However, in the union where leadership is mostly political, the leader sees himself as the legitimate voice of the membership.

4.2 Negotiations

Usually at the bargaining of every negotiation, the agenda is agreed upon by both parties. Although there is no common pattern or approach for negotiations, first, minor issues are tackled before the major ones. This system "helps to create good will among the negotiators"[11]. The time and duration of the negotiation are fixed by the teams and as negotiation advance, marathon meetings are common in order to beat the deadline for which the negotiation was fixed. In the course of the negotiation, arguments and counter argument are made in exploration of each other's positions, through probing and inquiries. As it continues, rapport among the negotiators improves and the path to agreement becomes less rough.

4.3 The Agreement

This is almost the last step of collective bargaining process where a final resolution is reached (i.e. an agreement) between the disputing parties. This agreement is then put into writing usually by the management side. However, it was argued that "the exact wording of the agreement may be a subject of further negotiation as the parties try to ensure that ambiguity which could hurt their respective positions is reduced to the minimum"[11]. The collective agreement is believed to be the conclusions reached between the union and management which shall form the employment condition of the affecting workers.

The duration of the agreement is usually short especially in this period of economic recession. When the time lapses, the agreement must be reviewed to avoid fresh crises. A unilateral refusal by one of the parties, especially the employer, to a dialogue with a view to reviewing the agreement may lead to fresh industrial crises. The Academic Staff Union of Universities (ASUU)/Federal Government of Nigeria (FGN) 1996 industrial crisis was a typical example of such situations. The same can be said of all other agreements that were denied review or were unilaterally breached.

5. Conclusions

The procedural agreement governing collective bargaining process differs according to different organizations which depend on the size of the workers, the existing union in the organization and of course the economic dictates of the country at large. While the workers are always aiming at the "wage" to satisfy their basic needs, the employer has his mind directly focused on the profit to be generated by his organization. The outcome of these divergent interests amounts to incessant crises and industrial disputes, thus, the need for collective bargaining. As could be seen in the foregoing, collective bargaining has become an important and even a critical concept in industrial relations. It is the only means through which the demands for the workers could be met, aspirations of the employer satisfied and most importantly, goals of the organization achieved as well as harmony and industrial development ensured.

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