Perspectives on Strikes, Collective Bargaining and The Quest for Industrial Peace in Nigeria

Olu Awolowo
Department of Public Law, Faculty of Law, Olabisi Onabanjo University,
Ago Iwoye, Ogun State, Nigeria.
Corresponding authour: olu_awo@yhoo.com

OIDA International Journal of Sustainable Development, Ontario International Development Agency, Canada
ISSN 1923-6654 (print) ISSN 1923-6662 (online) www.oidaijsd.com
Also available at http://www.ssrn.com/link/OIDA-Intl-Journal-Sustainable-Dev.html

Abstract: Hardly is there a day in Nigeria when there are no news on the pages of newspapers that a labour union or the other is giving ultimatum to the government of its intention to embark on strikes. In fact, strikes have become so rampant in Nigeria that even our courts will be prepared to take judicial notice of them. The strike embarked upon by (ASUU) Academic Staff Union of Nigerian Universities some time ago, spanning almost six (6) months is a pointer to this fact. Some health workers are also currently on strike and this has affected the operations of most public health institutions in the country. The above observation therefore underscores the urgent consideration of collective agreements as a conflict resolution mechanism in labour matters. This paper therefore considers the issue of collective agreements and contracts of employment under the Nigerian law and the urgent need for reforms. Efforts are made to discuss the legal status of collective agreements and the impact of statutes on collective agreements. The issue of the controversies surrounding the enforceability of collective agreements and the general attitude of the courts are also considered in this work. The article concludes that, if industrial peace and harmony is to be achieved, employers, including the government and all the stakeholders should take collective bargaining and its implementation very seriously. Necessary suggestions and recommendation are also made in this work.

Keywords: Strikes, Collective Bargaining, Collective Agreements, Industrial Peace, Contract of Employment.

Introduction

It is inconceivable and indeed ironical that despite efforts of the government at encouraging the use of collective bargaining in resolving industrial disputes in view of its advantages, the general attitude of the courts has been that of reluctance to enforce the outcome of collective bargains.

"Collective bargaining gives employers and representatives of employees avenue to maximize the process of consultation and discussion which is the foundation of democracy in industry. It is a surprise that the courts withhold enforcement from the fruit of these strenuous bargains" (Chianu, E., 2004) [i].

The position of the report of the Commission on the Review of Wages, Salaries and Conditions of service of the Junior employees of the Government of the Federation and in Private Establishments in its report also support the relation (1963-1964). states there of collective bargaining to industrial peace that "Government encourages collective bargaining in the belief that it more successfully guarantees industrial peace and ensures stability in Labour- management relations than compulsory measures enforced by legislation (Yesufu, T. M. 1965).[ii]

It is against this backdrop that this work is conceived. This paper attempts a critical analysis of collective agreements and contracts of employment, considers the functions and legal status of collective agreements in relation to contracts of employment, impact of statutes on the enforcement of collective agreements, the circumstances in which an employee in a contact of employment can enforce the terms of a collective agreement. This article further observes that collective agreement is a veritable tool for achieving industrial peace and deplores the attitude of the courts in their reluctance and or refusal to enforce collective agreements. The writer is therefore of the opinion that if industrial peace and harmony are to be achieved, then all stakeholders, including the employers, government, employees and indeed the judiciary must take the principle of collective bargaining and its implementation very serious

Definition of Basic Terms and Concepts

In order to fully appreciate the issues discussed in this paper, it is expedient to attempt a definition and or the meaning of the following terms.

Collective Bargaining

Collective bargaining involves a process of consultation and negotiation of terms and conditions of employment between employers and workers, usually through their representatives. It involves a situation where the workers union or representatives meets with the employer or representatives of the employer in an atmosphere of mutual cooperation and respect to deliberate and reach agreement on the demands of the workers concerning certain improvements in their terms and conditions of employment. It has also been defined as those arrangements under which wages and other conditions of employment are settled by negotiations and agreement between an employer or association of employers and workers organization[iii].

Collective Agreement

Collective agreement is defined by the Trade Dispute Act as[iv] "any agreement in writing for the settlement of disputes and relating to terms of employment and physical conditions of work concluded between (a) an employer, a group of employers or one or more organizations representing employers on one hand and (b) one or more trade unions or organizations representing workers or the duly appointed representative of any body of workers, on the other hand".

Consequently, a collective agreement is any agreement made by or on behalf of a trade union or trade group on the one hand and one or more employers or employers" associations on the other part, relating to one or more of the matters contained in Section.47 (1) of the Trade Disputes Act. Essentially, a collective agreement lays down the guiding procedures which will govern the relationship between the parties, by providing, for example, for the constitution of any joint body, or the procedure to be adopted in the event of a dispute or disagreement. It also lays down pattern of the terms and conditions of employment which are to cover union members [v].

Contract of Employment

A contract of employment is defined as "any agreement, whether oral or written, express or implied whereby one person agrees to employ another as a worker and that other agrees to serve the employer as a worker"[vi]
The contract of employment deals with the relationship between an employer and employee. It is also called a contract of service but this is different from a contract for services, under which an independent contractor is engaged. The contract of employment is the bedrock or foundation upon which an employee must base his case.[vii]

Collective Agreements and Contracts of Employment

The issue for determination here is whether an employee can directly enforce the terms of a collective agreement, though he was not a party to it. It is pertinent to also quickly look at the impact or effect of statutes on the enforcement of collective agreements as this will enable us to clearly provide an answer to the aforementioned issue.

Section 22(1) of the Trade Union Act[viii] provides that "Nothing in this section shall enable any court to entertain any legal proceedings instituted for the purpose of directly enforcing any agreement…..or of recovering damages for any breach" of the agreements mentioned in S.22(2). Section 22 (2) (d) prohibits the enforceability of any agreement made between one trade union and another. Such agreements by virtue of subsection (1) can neither be directly enforced nor damages recovered for their breach. It would appear that since a trade union by virtue of Section (1) subsection (1) of Cap 437 means any combination of workers or employers, therefore an employer's association is a trade union and any collective agreement between a trade union of workers and a trade union of employers will be caught by the provisions in S.22 (1) and (2) (d).

Section 22 (3) further provides that "Nothing in this section shall render unlawful any agreement mentioned in S. 22 (2). Consequently, a collective agreement between one trade union and another is lawful. Although, agreements may not be directly enforceable, they are nevertheless unlawful by reason of the provisions in subsection 3 stated above. It must also be stated that Section 22 (2) (d) does not in any way affect a collective agreement between a trade union of workers and a single employer or a number of single employers.

Section 17 (1) of the Labour Act 1974[ix] provides that except where a collective agreement provides otherwise, every employer shall provide work suitable to the employee's capacity everyday the employee presents himself and is fit for work. According to Chianu[x] this provision is indicative of the fact that parliament really intends collective agreements to be binding and that in no known decision has reference been made to this provision to urge Nigerian judges to enforce collective agreements. It is therefore appropriate to consider the common law as well as the position of the judiciary on the enforceability or otherwise of collective agreements vis a- vis contracts of employment.

The common law position on the issue of enforceability of collective agreement is that such agreements are binding in honour only and that the parties under such agreements does not intend to create legal relations. The leading English case which Nigerian courts have consistently applied over the years is the case of **Ford Motor Co Ltd. v. Amalgamated Union of Engineering and Foundry Workers**[xi], In this case, the Ford Motor Company negotiated an agreement with nineteen trade unions which provided that "at each stage of the procedure set out in this agreement, every attempt will be made to resolve issues raised and that until such procedure has been carried through there shall be no stoppage of work or other unconstitutional action". In 1969, an application for interlocutory injunction restraining two major industrial unions from calling an official strike contrary to the 1955 agreement was brought before Geoffery Lane. J. The court was called upon to determine whether the parties intended the agreement to be legally binding. His Lordship held that they did not because there was "a climate of opinion adverse to enforceability"[xii] at the time, and having so found, the plaintiffs failed in their application.
As to whether an employee can enforce the terms of a collective agreement against his employer and vice versa, the courts in Nigeria have consistently maintained that the enforcement of collective agreements will only be possible when they are expressly incorporated into the contract of employment. In **U.B.N Ltd V. Edet**[xiii], the plaintiff contended that her dismissal was wrongful because it was in breach of a collective agreement between her employers and her trade union, Uwaifo JCA, while holding that there was no breach of the collective agreement opined as follows:-

> *"No individual employee can claim to be a party to that agreement. In other words, no privity of contract arises between an individual employee and his employer by virtue of the agreement. It appears that whenever an employer ignores or breaches a term of that agreement resort could only be had, if at all, to negotiation between the Union and the Employer, and ultimately, to a strike action should the need arise…. It is not for an individual employee to found a course of action on the agreement to which he is not a party"*[xiv].

In practical terms, it is difficult if not impossible for collective agreements to be incorporated into the contract of employment because most of them are made subsequent to the commencement of the employer-employee relationship. In the case of **Texaco (Nig) Plc v. Kehinde**[xv], the employer/employee relationship started in 1981, while the collective agreement was made in 1989 and yet the court held that it was not incorporated into the contract of employment. The view of non-enforceability has therefore been severally criticized by many academics who consider that the issue should now be critically be looked at to really ascertain
the true intention and indeed the conduct of the parties to the agreement after it has been signed, instead of the general view that such an agreement is not enforceable once it is not incorporated into the contract of employment. Indeed, Wedderburn[xvi] was of the view *that "the question of enforceability of collective agreements is not yet finally closed, but until there is more certainty on the point of incorporation, it can only be regretted that the common law doctrine of privity seems to create some uncertainty about this section of the law"*[xvii].

Essentially, there is no reason why collective agreements should not be enforceable where there is evidence to the effect that both parties to the agreement have relied on it. This is in view of the Court of Appeal's decision in **Cooperative and Commerce Bank (Nig) Ltd v. Okonkwo**[xviii], the letter of dismissal stated that the employee was being dismissed for violating a clause in the collective agreement. At the trial, the employee sought to rely on the collective agreement but the employer objected and stated that the agreement was unenforceable. **Akpabio JCA** dismissed the employer's objection since the employer had relied on the collective agreement to dismiss the employee. The decision is undoubtedly more progressive than the observations of **Edozie JCA in African Continental Bank v. Nbisike**[xix] that the agreement was not enforceable notwithstanding the fact that both parties had in the course of their relationship relied on the collective agreement. Rather, the learned Justice of the Court of Appeal preferred the views expressed in "Chitty on Contract" that "the legal status of such an agreement is doubtful"[xx].

There is therefore no doubt that the views expressed by **Ubaezonu JCA in African Continental Bank v. Nwodika**[xxi] is more instructive and should guide the courts in deciding whether or not a collective agreement is

binding. The learned Justice of the Court of Appeal observed that whether or not a collective agreement is binding on an employer in an individual employee's action should depend on (a) its incorporation into the contract of service if one exists (b) the state of pleadings (c) the evidence before the court and (d) the conduct of the parties. In actual fact. Common law agreements have always been founded on both express and implied terms.
Moreover, most of the Nigerian cases where the issue of enforceability of collective agreements have arisen, the position of the employees had always been that they were entitled to certain procedural conditions precedent to termination or dismissal[xxii] and there is no ambiguity whatsoever about such provisions that the courts should be reluctant to enforce them.

It must also be emphasized that one of the reasons why the courts have often refused to enforce collective agreements is based on the principle of privity of contract. This is because the agreement in question is between the employer's association on one hand and the trade unions on the other hand, the individual employee who is seeking to enforce the agreement is a stranger to the transaction, hence could not enforce the contract based on the privity rule[xxiii].

However, in most other jurisdictions, the privity rule has either been abolished or consigned to the dustbin of history in the interest of justice, equity and mutual understanding of the parties. Statutes have also been enacted to confer on a stranger to contract the right to enforce a term intended for his benefit[xxiv].

Also most modern legal systems have a much more flexible attitude to the issue of who can enforce a contract. In the United States Of America (U.S.A.), contract law allows a thirty party who is expressly described as the intended beneficiary of a contract to enforce those rights. In fact, in some USA cases, third parties have been allowed to enforce contracts that do not expressly name them, where the purpose of the contract is clearly to benefit someone in their position[xxv]. Catherine Elliot and Frances Quinn in their book[xxvi] succinctly concluded that "the sheer number of exceptions to privity mean that in practice it causes fewer problems than might be expected, but many critics have argued that rather than complicate the law with so many exceptions, which are difficult for the commercial world to follow, it might be better to abolish the doctrine completely in relation to contractual benefits"[xxvii].

In view of the aforementioned and the attitude of courts in other jurisdictions, there is no justifiable reason why the Nigerian courts should not make collective agreements enforceable on the ground that a union member is not a party to the contract. Moreover, it must be said that where an employer terminates an employee's employment without following the terms and or procedure laid down in the collective agreement, the employee should be in a position to make a case for the declaration of the procedure to be a nullity.

Conclusion

This paper has considered the issue of collective agreements and contracts of employment under the Nigerian law. In so doing, modest efforts have been made to inquire into the legal status of collective agreements as well as the impact of statutes on the enforcement of collective agreements. The crucial question begging for an answer is and will always be, what is the essence of collective bargaining if there is so much controversy trailing the enforcement of its outcome, which is the collective agreement? Why is it therefore necessary to go through the rigours of collective bargaining when there is no guarantee that the resulting agreement will be honoured. Naturally, an unsuccessful bargaining and failure to comply with the agreed terms will lead to industrial unrest and upheaval[xxviii].

Of course, there is no doubt that resort to industrial action and strikes appear to be the most potent means and option open to workers to enforce collective agreements concluded with the employers who often treat workers with disdain, disrespect and sheer insensitivity. In view of the above, this writer strongly believes that the courts have an important role to play in ensuring that collective agreements are enforceable unless a contrary intention is expressed in the agreement. As explained in the article, it is unreasonable to conclude that collective agreements are enforceable only when they are expressly incorporated in the individual contract of employment if there is evidence to the effect that both parties have relied on the agreement. Suffice to say therefore that, whether or not a collective agreement is binding on an employer in an individual employee's action should depend inter-alia on its incorporation into the contract of service if one exists, the facts as contained in the pleadings, the evidence before the court and the conduct of the parties[xxix]. We also believe that it is necessary to learn from other jurisdictions which have since seen the doctrine of privity of contract on which principle the non-enforceability of collective agreements is anchored as illusory and indeed not in the interest of the contracting parties.

It is apposite to note that if collective agreements are to achieve their desired objectives which includes the settlement and determination of terms and conditions of employment and as "a means of institutionalizing the inevitable clashes of interests that arises between capital and labour"[xxx], there is need for judicial intervention and

positive attitude on the part of Nigerian judges towards the enforcement of collective agreements as against their hitherto hostile attitude. In fact, Professor Chianu observed that "What is painful is that the Nigerian courts manifest a fundamentally hostile attitude towards collective agreements without at the same time bending over backwards in questions of individual employment to be helpful to the employee. To the employee they are as restrictive as possible while they give the widest possible interpretation to managerial prerogative"[xxxi] . The above view of the learned Professor indeed represents the actual state of things on this issue. This writer accordingly agrees with him.

What is more, the International Labour Organization Recommendation regarding Collective Agreements provide that Collective Agreements should bind the signatories and those on whose behalf the agreement is concluded and stipulations and or provisions in contracts of employment which are contrary to the provisions in the collective agreements are regarded as void and automatically replaced by the stipulations of the collective agreement[xxxii].
It is therefore on the basis of the foregoing expositions that it has become absolutely necessary and expedient for all necessary stakeholders to take the principle of collective bargaining and implementation of collective agreements arising there from very seriously. Ultimately, the much touted inequality in the bargaining powers of the employee and employer will be greatly reduced if not eradicated.[xxxiii]

Furthermore, strikes and industrial disputes are ill winds that blow neither the employers nor workers any good. It not only disrupts the business of the employers and causes the workers loss of wages; it dislocates the economy of the country and social order in most cases. It is therefore the firm view of this writer that there is the urgent and dire need for employers of labour to review, negotiate and implement collective agreements entered with their workers regarding improvement in their wages and working conditions.
Definitely, the controversy rages on and the last is yet to be heard on the issue of enforceability or otherwise of collective agreements. The suggested reforms will however, be of immense benefit to all the stakeholders and indeed the objectives of collective bargaining will be achieved. There is however the urgent and dire need for judicial intervention in this area of the law to resolve once and for all the contending issues.

About the Authour:
Olu Awolowo esq
LL.M (Lagos), BL, ACIS (London):, Department of Public Law, Faculty of Law, Olabisi Onabanjo University, Ago Iwoye, Ogun State, Nigeria. Email: olu_awo@yahoo.com

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ii. Yesufu T.M, (1965), "Legal Aspects of Labour Relations in Nigeria" (2) International and Comparative Law Quarterly. Supplementary Publication No 10, 94.
iii. See Ministry of labour (UK) Industrial Relations Handbook 1961, P.18. See also Article 2 of the international labour organization Convention (ILO) 154 of 1988. And Section S.90 of the Labour Act Cap L1 Laws of the Federation of Nigeria 2004. The labour Act merely defines collective bargaining as the process of arriving or attempting to arrive at a collective agreement, Article 2 of the ILO Convention gives a more comprehensive definition that the terms "extends to all negotiations which take place between an employer, a group of employers or one or more employers organizations, on the one hand for (a) determining working conditions and terms of employment and/or (b) regulating relations between employers and workers and/or (c) regulating relations between employers or their organization and a workers organization or workers organizations
iv. Section 47 (1) of the Trade Disputes Act Cap T8
v. Professor Adeogun, (1985), "Essays in honour of judge T.O Elias'' in The whole essence of collective bargaining: Editor Omotola, 182-183.
vi. See Section 91 (1) of the Labour Act Cap L1, LFN 2004
vii. See Union Bank of Nigeria V. Edet (1993) 4NWLR (PT.287)288. See also the views of this writer, Olu Awolowo in his article 'Termination of an employee after notification of his impending retirement': A review of Ibama V. Shell Petroleum Dev. Coy. in Nig. Journal of Labour Law and Industrial Relations Vol 5, No 2(2011), 36. It is pertinent to note that at common law, an employer is vicariously liable for the civil wrongs or torts of his employees but not for those of independent contractors. See generally the case of Davies V. New Meton Board Mills (1959) A.C.
viii. Cap. L1, Laws of Federation of Nigeria (LFN) 1990

ix. Cap 198 Laws of Federation of Nigeria 1990
x. Ibid at pg 74
xi. (1969) IWLR 339.
xii. Ibid at 355
xiii. (1993) 4 N.W.L.R (PT287) 288 at 299
xiv. See also Chukwumah V. Shell Petroleum Nig ltd (1993) 4 NWLR (PT289) 512,543-544;-New Nigerian Bank V. Osoh (2001) 13 NWLR (PT729) 232 (CA).
-Abalogun V. Shell Petroleum ltd (1999) 8 NWLR (PT613)12
xv. (2001) 6 NWLR (PT708) 224 (CA).
xvi. Wedderburn, K.W.(1965), " The worker and the Law" Penguin, London, 1st Edition: 107
xvii. Cooper and Wood, (1986) " Outlines of Industrial Law" 5th Edition : 104
xviii. (2001) 15 NWLR (PART 735) 114
xix. (1995) 8 NWLR (PART 416) 725, 741
xx. See Chitty on Contract, 23rd ed, London, Sweet and Maxwell pg 337-338 where it was stated that "In modern conditions many employees are covered by collective agreements made between one or more trade unions on the one side and one or more employers' associations on the other …. Much of the procedure of this collective bargain is governed by practice, not strict law and there is no legal compulsion on either the employees or employers to enter into collective bargaining…. There is no reported case on the legal status of such a collective agreement and the majority opinion of those concerned with such agreements is that they are not intended to create legal relations. This means that they are binding in honour only, and that their enforcement must depend on industrial and political pressure:"
xxi. (1996) 4NWLR (PART 443) 470, 473-474
xxii. Union Bank of Nigeria ltd V. Edet (supra),Texaco Nig Plc V. Kehinde (supra), Afribank (Nig) Plc V. Obisanya (2000)1 NWLR (PART 642) 598.
xxiii. See Tweddle V. Atkinson (1861) IB & S 393, Beswick V. Beswick (1968) A.C 58,
Makwe V. Nwukor (2001) 6 MJSC 182, Oshevire ltd V. Tripoli Motors (1997) 5 NWLR (PT 503),
Dunlop Tyre coy V. Selfridge ltd (1915) AC 847 .
Lord Haldane made an instructive pronouncement thus "My lord's, In the law of England certain principles are fundamental. One is that only a person who is a party to a contract can sue on it. Our law knows nothing of jus quaesitum tertio arising by way of contract. Such a right may be conferred by way of property as for example, under a trust, but it cannot be conferred on a stranger to a contract as a right in personam to enforce the contract".
xxiv. See the English Contracts (Rights of Third Parties) Act 1999. For a discussion of the Act, see Kincaid, P,"Privity Reform in England" (1999) 116 Law Quarterly Review, 43; Mitchell, C, "Privity Reform and the Nature of Contractual Obligations," (1999) 19 Legal Studies, 229, MacMillan, C, "A Birthday Present for Lord Denning: the Contracts (Rights of Third Parties) Act 1999," (2000) 63 Modern Law Review, 721, Andrews, N, " Strangers to Justice No Longer: The Reversal of the Privity Rule Under the Contracts (Rights of Third Parties) Act 1999" (2001) 60(2) Cambridge Law Journal, 353. Much earlier, the privity rule was abolished in Israel: Contract (General Part) Law.
xxv. See Ratzlaff V. Franz foods (1971) 250 ANC l003, 468 SW 2d 239.
xxvi. Elliot C, Francis Quinn, (1996). "Contract law" 2nd Edition: Pearson Education ltd, 186
xxvii. (supra)
xxviii. See Okene, O. "Collective bargaining, strikes and the quest for Industrial peace in Nigeria" (2008) .Nigerian Journal of labour law and industrial relations Vol.2 No.2, 39-40. See Koyonda S.O "Enforcement of collective agreements in Nigeria: Need for legislative intervention" (1999), PortHarcourt law Journal, 47: See also the views of Ubaezonu JCA in African Continental Bank V. Nwodika (Supra).
xxix. Koyonda S.O, (1999). "Enforcement of collective agreements in Nigeria" in Need for Legislative intervention: PortHarcourt Law Journal, 47. See also Ubaezonu JCA in African Continental Bank V. Nwodika (Supra).
xxx. Thompson C. (1989). " Industrial Law" Jute & CoLtd, 281
xxxi. (supra)
xxxii. De Givry J, (1958). "Comparative Observations on legal effects of Collective Agreements" 21 Modern Law Review, 501.

xxxiii. In the words of Roper J.I, "Labour Problems in West Africa" (1958 Penguin, London). 8, The employment relationship "implies a relation of undefined authority on the side of the employer, and undefined subordination on the side of the workman. It is a relation which inevitably gives rise to the need for guarantees against abuse, and a relation which the trade unions seek to improve"