COLLECTIVE BARGAINING AGREEMENTS: EXAMINING THEIR BINDING EFFECT AND ENFORCEABILITY

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Abstract
Peaceful dialogue, a cornerstone of conflict resolution in society, is a vital mechanism employed in the industrial sector, where it is referred to as collective bargaining. This process culminates in the establishment of collective agreements, which are intended to promote harmony and stability in the workplace. However, despite the significance of collective bargaining, the industrial sector is often plagued by factors that undermine peace and growth, including government attitudes and the non-implementation of collective agreements. These challenges have far-reaching implications for the growth and development of a country, underscoring the need for effective enforcement mechanisms. This paper examines the binding nature and enforceability of collective agreements, a pressing issue that has generated considerable controversy in the industrial sector, particularly with regards to the rights of employees. The study employs a doctrinal legal research methodology, drawing on primary and secondary sources, including textbooks, case laws, statutes, journals, and online articles. The research concludes that collective agreements are binding on employers, regardless of whether they are incorporated into individual contracts of employment or whether individual employees are signatories to the agreement The paper recommends that the Supreme Court reconsider its position in BPE v Dangote Cement Plc, which is seen as contradictory to the spirit of the Third Alteration amendment to the Constitution of the Federal Republic of Nigeria 1999, s254C(1). Furthermore, the paper emphasizes the need for the government to prioritize workers' welfare, recognizing that this is a crucial factor in promoting peace, growth, and development in the country.

Keywords: collective bargaining, collective agreement, trade union, workers, employers

1. Introduction

Collective bargaining is a cornerstone of industrial democracy enables employees and employers to negotiate employment terms collectively, fostering workplace harmony. In Nigeria, this process results in collective agreement which despite their significance, are often undermined by non-implementation and governmental inaction.

The common law position on collective agreement are that it is a mere gentlemen's agreement which is unenforceable unless reduced into individual employment contract of employees who wish to benefit from it and that non-signatories to a collective agreement cannot enforce it because they are non-privy to it. The Third Alteration Act, 2010, gave the National Industrial Court (NIC) the power to interpret and apply collective agreement, the court has since then been enforcing the said power in plethora of cases such as *Dennis & 1677 Orsv First Franchise Service Ltd and Ors.* This paper reveals whether the common law position is still applicable today or not. This paper critically examines the binding nature and enforceability of collective agreements, addressing persistent controversies in industrial sector.

2. Literature Review

2.1 Conceptual Framework

Collective Bargaining: To a layman, collective bargaining may be interpreted as a gentleman's dialogue between two or more persons over any issue(s) in order to arrive at an acceptable agreement. In order words, it is a process of arriving at a mutual agreement by parties to it.

However, in legal parlance, collective bargaining is defined as 'collective dialogue, or collective negotiation between the employers' representatives and workers' representatives with a view to reaching a collective agreement on the issue under negotiation.'[4] Defined by the Labour Act (2010,S91) as a "process of arriving at a mutual agreement". It is the process by which workers' union negotiates their terms of employment with their employers.

The law mandates all registered trade unions under the employment of an employer to constitute an electoral college to elect body who will represent them in negotiations and collective bargaining.

Such registered trade union must be recognized by employers whose employees are members of the trade union. As a result of this, collective bargaining is extended to:

All negotiations which take place between an employer, a group of employers or one or more employers' organisations, on the one hand, and one or more workers' organisations, on the other, 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 organisations and a workers' organisation or workers' organisations.

The Constitution of the Federal Republic of Nigeria guarantees the right to peaceful assembly and association, it allows every person to assemble freely and associate with other persons, right to form or belong to any trade union or other association for the purpose of protecting his right. This right is protected whether the person works under public or private establishment, they are entitled to join any trade union and participate in collective bargaining.

The International Labour Organization (ILO) states that, Workers' and employers' organisations shall have the right to draw up their constitutions and rules, freely elect their representatives, organize their administration and activities as well as formulate their programmes. The public authorities are to refrain from any interference which may restrict the right to freedom of association or prevent its lawful exercise. Workers' and employers' organizations should not be liabletodissolutionorsuspensionbyanyadministrativeauthority.Theyshouldhavetheright to establish and join federations and confederations of such organization. They also have the right to affiliate with international organisations of workers and employers.

ILO also states that workers shall be adequately protected from anti-union discrimination in respect of their employment particularly from acts calculated to subject their employment to the condition that they shall not join any union or that they must relinquish their membership of any trade union. Both workers' and employers' organizations are to be adequately protected from any act of interference by each other or each other's agents or members. Employees' organisations are to be

completely independent and free of domination, control, support and interference by employers' organisations; that is, acts which are designed to place the establishment of employees' organizations under the domination of employers or employers' organisations, or to support employees' organizations by financial or other means for the purpose of placing such organisations under the control of employers or employers' organisations.

This right is extended to public employees. They are to be adequately protected from anti-union discrimination in respect of their employment particularly from acts calculated to subject their employment to the condition that they shall not join any public employees' organisation or that they shall relinquish membership of such organization already associated with; acts calculated to cause their dismissal or otherwise prejudice them as a resul tof membership or participation in normal activities of a public employees' organisation. They are to enjoy complete independence and non-interference from public authorities. A public employee's organization is that which is established for the purpose of promoting and defending the interests of public employees.

As a matter of practice in the private sector, negotiable issues are usually contained in a 'procedural agreement'[12] which is a standard manual for negotiating parties. It lays down issues for negotiation at different levels and matters of management.

2.1 Types of Collective Bargaining

Collective bargaining can be employed at different levels depending on the circumstances, the common types usually take place at: enterprise level; industrial level and national level.

a) Enterprise Collective Bargaining: It involves employees and employer(s) within the same company or enterprise. A form of in-house peaceful dialogue between the employer(s) and his employees. It is not very common because, employers of labour will rather give their workers individual contracts of employment which may vary according to the position and educational level of each employee.
b) Industrial Collective Bargaining: This is intra-industry dialogue usually between many employers or their representatives and union of employees. It is a common type of collective bargaining; therefore, employers may adopt it

as staff handbook or workbook. Industries normally have local or state chapters which may engage in this type of bargaining so it is only applicable within such state or locality. But where it is the national body, it means the resultant agreement will be of national application, it will therefore double as national collective bargaining.

c) National Collective Bargaining- this is the most common type of collective bargaining. It usually transpires between the national body of an association, organization or a union and the federal government being the largest employer of labour or other national body of employers' association/organization or their representatives in the private sector. The resultant agreement is also normally adopted as staff handbook in various establishments. The activities of Academic Staff Union of Universities (ASUU), Nigerian Labour Congress (NLC), National Association of Resident Doctors of Nigeria (NARD), Judiciary Staff Union of Nigeria (JUSUN) and other proactive trade unions are note worthy in this regard.

The industrial relations framework within which collective bargaining process takes place are such machineries/institutions which afford parties to it of voluntary participation such as negotiation, arbitration, mediation and conciliation. Collective bargaining in itself cannot stand alone, it has to be assembled in a document and activated by means of collective agreement, arbitration award, court judgement etc.

2.2 Parties to Collective Bargaining

A bargaining process cannot be carried out without the active participation of the key players most especially the necessary parties which are:

a. Employees: This is one of the necessary parties to a collective bargaining without which any agreement reached will be unacceptable. Examples of those who can bargain on behalf of employees are; group of employees, employees' organisation/union representing employees or association of organisation representing employees.

b. Employers: Examples are; an employer, group of employers, employers' organisation/union representing employers or association of organization representing employers. This is also a necessary party to collective bargaining.

c. Third parties: this usually occur where the issues for bargain are national issues cutting across both public and private sector such as deliberation on national minimum wage, the government, organized labour and the private sector will engage in round table dialogue to arrive at a tripartite agreement.

2.3 Importance of Collective Bargaining

The importance of collective bargaining in industrial relation cannot be over-emphasized. For instance;

a. It aids industrial harmony between employers and employees as agreement is reached by mutual understanding.
b. It facilitates effective communication between the parties for better relations.
c. It is a very vital instrument used by workers‘ representatives and their employers to consider the demands of the employees and the offer brought forward by the employers towards the achievement of organizational goals and objectives.
d. It is a fundamental instrument for peaceful resolution of conflict between the parties.
e. It can help to maintain or reduce industrial actions such as strike, lockout etc. so it has a way of stabilizing the industry which will eventually affect the economy of the country.
f. It reduces or eradicates inequality at workplace while enhancing job security as every worker is treated equally. It creates a kind of industrial or trade uniformity most especially in the workers ’condition of service e.g. retirement age, leaves, promotion, allowances, wages and salary, discipline etc.
g. It is the most popular and effective way of achieving improved workers’ condition of work.

2.4 Factors Militating Against Effective Collective Bargaining

a. Government attitude: In Nigeria, government is the largest employer of labour so they usually accept and act on conditions favourable to them. Even where the government is a neutral party, its activities and policies may affect the bargaining parties; for instance, the recent continuous increase in the price

fuel, electricity tariff and naira depreciation has affected the prices of commodity, increased cost of living and as well affected many jobs as many employers could not meet up with the demands of their staff. Also, many state governments are yet to implement the minimum wage agreement entered into by the representatives of federal government, organized labour and the private sector (Tripartite Committee) which later metamorphosed into National Minimum Wage Act, 2019.Those that have implemented it just recently did, including the federal government so employers of labour in the private sector could not be penalised for not implementing it.

b. Non-implementation of resultant collective agreement: When either party refuses to honour its own part of the agreement, it frustrates the whole process and discourages future call for negotiation or bargain. It is also worthy of note that the federal government has been reneging on their agreement with ASUUsince2009.
c. Impasse situation: in some occasions, negotiation between the bargaining parties goes sour, parties are therefore unable to reach an agreement. This also discourages future call for dialogue.

3. Methodology

This doctrinal research analyzed:

a. Primary sources; Labour Act, Trade Union Act, Court Judgments
b. Secondary Sources; Journals, Text books, Online articles
c. Comparative analysis; Nigeria vs. ILO standard and other jurisdiction

4. Result and Discussion

4.1 Enforceability of Collective Agreement

At common law, collective agreement is seen as gentlemen's agreement and therefore not legally enforceable. It is a simple agreement which lacks the parties' intention to create a legal relation, a very important element of a valid contract[27] and offends the principle of privity of contract as it is usually between organization or association of employers and trade unions, so the individual employee is no privy to it. This is the major reason for many industrial actions as one of the parties especially the employer, may refuse to honour it.

Courts are also weary of enforcing collective agreements except where they are expressly incorporated in individual contracts of service. Such is the court's position in *Union Bank of Nigeria v Edet* where it was held that employees cannot litigate over an alleged breach of terms of collective agreement which has not been adopted by parties as forming part of terms of employment. One may need to ask why parties enter into collective agreement when it is ordinarily unenforceable? The answer is not far-fetched, it is because being gentlemen's agreement, some parties still protect their integrity by honouring their words.

Prior to the amendment of the Constitution of the Federal Republic of Nigeria, 1999; collective agreement is treated as binding and enforceable though not automatic. This is just a step away from the common law position as parties who intend to enforce it still have to take any of the following steps:

a) By leaving at least three copies of the collective agreement with the Minister of Labour and Employment who has the discretion to specify the particular part of the agreement that will be binding on the parties to the agreement.[29] This step is relevant when there is a trade dispute, the Minister's intervention is based on the terms of the agreement.
b) By seeking the intervention of the court for the interpretation or enforcement of the relevant terms of collective agreement. The court here is the National Industrial Court having the exclusive jurisdiction to determine or interpret any question relating to collective agreement, terms of settlement of trade dispute, constitution of trade unions/associations and other civil causes or matters relating to or connected with: dispute arising from national minimum wage; registration of collective agreement; any labour, employment, trade unions, industrial relations arising from workplace or conditions of service. Upon the said interpretation, the collective agreement becomes binding.
c) By acting or relying on the terms of the collective agreement either expressly or by conduct. The court in *Cooperative and Commerce Bank (Nigeria) Ltd v Okonkwo* held that the collective agreement relied upon by the employer in dismissing the employee is also enforceable by the employee in instituting the action. Where it is evident that the parties have activated the benefits of a collective agreement, even if it is by conduct, the court will infer the intention

to create a legal relation from such attitude and hold the agreement, being a contract as binding on them.

d) By proving that the terms of the collective agreement forms part of the custom and usage in that trade. Where this is evident before the court, it will be held as binding on the parties.
e) By reliance on principal-agency rule. Here the union will be regarded as acting in the capacity of an agent to the members.

In the recent times, particularly upon the coming into force of the Third Alteration Act, 2010, the National Industrial Court has been proactive in enforcing the provisions of collective agreement; this is because the court is a very special one. Third Alteration Act, 2010 which activated the jurisdiction of the NIC not only to interpret collective agreements as stipulated by Trade Dispute Act but also to apply it. Section 254C (1)(j)(i) states that the NIC shall have and exercise jurisdiction to the exclusion of other courts in civil causes and matters relating to the determination of any question as to the 'interpretation and application of any' collective agreement. This means that parties no longer have to incorporate the terms of collective agreement in contracts of employments before it can be enforceable. This is a giant stride from the common law position and the NIC have been applying the law. All a claimant who wishes to enforce a collective agreement has to do is to show a sufficient nexus between him and the said collective agreement i.e., to proof his membership of the said trade union. This is the position of court in *Dennis & 1677 Ors v First Franchise Service Ltd and Ors.*

In that case, the Claimants, Lijoka Olaniyi Dennis and 1677 others who were all junior staff members of the 1st Defendant, First Franchise Service Ltd (FSFS), but deployed to the defunct Enterprise Bank Ltd (EBL) as contract staff who in 2012 decided to outsource the Claimants' employment to other companies without terminating their employment and paying their terminal benefits.

The Claimants protested against the said action through their union's domestic branch and this led to the agreement between their union and EBL to suspend the outsourcing pending the outcome of an ongoing negotiation between Mainstreet Bank, National Union of Banks, Insurance and Financial Institutions Employees

(NUBIFIE), Association of Senior Staff of Banks, Insurance and Financial Institutions (ASSBIFI), Federal Ministry of Labour and Nigeria Labour Congress (NLC) due to the fact that Mainstreet Bank had similar issues with its staff.
At the end of the said negotiation, a collective agreement was reached that 100% gratuity to both existing and existed staff of Mainstreet Bank including those that are less than 5 years in the Bank's service using basic salary, transport allowance, housing allowance and lunch subsidy as components of the said gratuity. The said collective agreement referred to as 'Ministerial Agreement' was admitted in evidence as 'Exhibit C3'. Based on 'Exhibit C3', the Claimants again through their union's domestic branch (NUBIFIE) entered into another agreement, 'Exhibit C4' with EBL to the effect that EBL shall pay the Claimants one year gratuity as their terminal benefits in line with the terms and components of 'Exhibit C3'.

However, when EBL credited the accounts of each of the Claimants with the sum of money calculated as one-year basic salary, transport allowance, housing allowance and lunch subsidy as full and final settlements of their gratuity; the Claimants contested that the said gratuity was paid without any regards to their respective years of service hence the Claimants instituted the action against the Defendants, demanding the outstanding balance of their respective terminal benefits.
The court held that the Defendants complied with the terms of 'Exhibit C4' and that the Claimants did not prove in detail how they arrived at the sum claimed to be the outstanding balance of their respective terminal benefits being a special damage which requires specific proof so the suit was dismissed. The court also held that:

> *To this court, to activate the interpretative jurisdiction of the NIC for the purpose of interpreting a collective agreement, there must be a sufficient nexus between the applicant and the collective agreement in question. It is not enough that the applicant benefits from the collective agreement without more. That to be so entitled, there must be proof that the beneficiary is a member of the signatory trade union to the collective agreement. Thus, where a trade union may not want to come to court on behalf of its aggrieved members regarding the interpretation of a collective agreement, the said members may apply directly to the NIC and will be accorded recognition upon*

> *proof of membership of the said union that signed the collective agreement and the reluctance of the union to approach the court on their behalf.*

The above reasoning of the court is meant to review the common law position that only the parties to the collective agreement (often a trade union and an employer/employer's union) or the minister of Labour can activate the interpretative jurisdiction of NIC. The court held that individual union members not being signatories to collective agreements may seek its interpretation irrespective of the fact that collective agreements are usually signed on their behalf in representative capacity.

The reasoning of the court is also *in tandem* with the ILO position that, collective agreements are binding on their signatories and all persons on whose behalf the agreement is entered, so parties bound by it cannot impute terms contrary to the said collective agreement in a contract of employment. Such stipulations contrary to the collective agreement are null and void which should be automatically replaced with corresponding stipulations of the said collective agreement. The stipulations in the collective agreement must apply to all workers of the class concerned establishments covered except if otherwise specifically stated. It then means that the argument that individual employees who are non-signatories to collective agreement cannot enforce it will no longer hold water.

It is however worthy of note that the requirement for proof of membership only applies to senior staff members of workers as junior staff members are presumed to be union members based on eligibility unless they relinquish their membership of the union individually in writing.

On the issue of application of collective agreement, the court applied the decision in *Chiazor v*
*Union Bank of Nigeria Plc*and went further to
state that:

> *The point is that section 254C(1) cannot authorize this Court to interpret and apply collective agreements if the intention is not that collective agreements are thereby binding and enforceable.*

> *Interpretation ('the action of explaining the meaning of something' by the New Oxford American Dictionary) implies a declaration of rights; and application ('the action of putting something into operation' by the New Oxford American Dictionary) implies that the interpretation would be binding and enforceable. What all of this means is that the argument of the defendants as to collective agreements being gentleman's agreements cannot stand the current constitutional ethos of section 254C(1) in terms of the mandate granted this Court to interpret and apply them. It must also be appreciated that the rule which saw collective agreements as gentleman's agreements is a common law rule, which is rigid and had worked hardship in the world of work. It is this rigidity of the rule and the hardship it worked in the world of work that led to the present constitutional provision allowing this Court to interpret and apply collective agreements. No other court in Nigeria is given this mandate.*

It is to be noted that problem may arise in respect of the doctrine of '*stare decisis*' as a result of the recent Supreme Court decision in *BPE v Dangote Cement Plc* where the court applied the common law position that collective agreements are not enforceable except where they have been incorporated by the parties and that enforcement of such agreement is only by negotiation between the parties to the agreement. Litigants, lawyers, employers and scholars may capitalise on the effect of this apex court's decision to argue that the incorporation of a collective agreement into the terms of employment is a fundamental requirement without which its enforcement is not possible.

It is however opined that, though the NIC being a lower court and bound by the apex court's decision in *BPE*, may still distinguish the decision, being that the cause of action arose long before the advent of Third Alteration to the 1999 Constitution and it will not be counted against the NIC as a disrespect or gross insubordination to the apex court. The court will be safe to apply the principle in *Dennis'* case above that:

> *The defendants' counsel had contended that the current state of the law on collective agreements as espoused by the Supreme Court in Akauve Moses Osoh & Ors v. Unity Bank Plc [2013] 9 NWLR (Pt. 1358) 1 at 29 is that collective agreements are not legally binding and cannot create legal obligations unless the collective agreement has been incorporated into the employee's contract of employment. This argument of the defendants' counsel reveals the uncritical citation and application of case law by counsel, and hence reading case law authorities out of context. The point I seek to make here is that the cause of action in Osoh arose in 1994, when the action was filed at the High Court of Edo State, Benin long before the Third Alteration to the 1999 Constitution came into being… As at 1994, when the cause of action arose in Osoh, there was no provision of law that permits the interpretation and application of collective agreements as we have under section 254C(1) of the 1999 Constitution. Whatever it was in 1994, section 254C(1) of the 1999 Constitution as inserted by the Third Alteration to the 1999 Constitution has altered that position; as such Osho as cited and applied by the defendant's counsel is distinguishable..*

In the United States, collective agreement is automatically binding and enforceable by parties to it upon due execution. It may only be challenged through the internal grievance machinery or arbitration.[43] Dispute may arise as a result of determination of terms of employment or collective agreement, such may be adequately resolved by way of negotiation between the parties or through independent and impartial machinery of Alternative Dispute Resolution (ADR), such as mediation, conciliation and arbitration, established in such a manner as to ensure the confidence and voluntary participation of the parties involved.

5.0 Conclusion and Recommendations

5.1 Conclusion

Collective bargaining in industrial relations is the process by which employees or their representatives and employers or their representatives meet to dialogue on

issues relating to employment relations with the aim of reaching a fair agreement. Where such agreement is reached, it is called collective agreement. Without collective bargaining, there can be no collective agreement. Collective bargaining and collective agreement have both proved to be effective and peaceful instruments for industrial democracy as they allow fair representation of all parties. They regulate arbitrariness in the industrial sector and improve employee-employer relationship. They also give opportunity for updating workers' condition of work from time to time to international standard.

Under the common law, collective agreement is not enforceable unless incorporated in contracts of employment. This position was too rigid and hard on employees. The Third Alteration Act, 2010 was enacted in order to ameliorate the effect of common law position by empowering the NIC with the jurisdiction of interpreting and applying collective agreement. Thus, collective agreement is enforceable without incorporation in contracts of employment. Also, workers do not need to be signatories to collective agreements before they can enforce same. All that is required of a plaintiff is to satisfy the court of his link with the trade union that entered the collective agreement on his behalf.

Nigerian government, being the highest employer of Labour in the country have failed to recognize the fact that peaceful co-existence in the industrial sector is positively relevant to the growth of the national economy and development. Workers' welfare is usually relegated and they usually renege on their agreements with workers' unions. This account for the periodic strike actions embarked upon by workers in the country, cited examples in this paper are ASUU, NARD and JUSUN recent strikes which affected lives, livelihood and income. If the government continues this way, they will be regarded as "anti-workers' welfare

5.2 Recommendation

The following were recommendations based on the above discussion:

a) The Supreme Court should reconsider its position in *BPE* in their subsequent decisions by deciding that collective agreement is enforceable without any need to incorporate its terms in contract of employment so as to align with

international best practices. As the apex court, they have to clear the confusion they created in the Nigerian legal system by their recent decision in *BPE* in order to make it easy for lower courts to stand by their decisions.

b) ILO should conduct follow up research to ensure that member states not only ratify their conventions and adopt their recommendations, but that they also comply with them. They should impose stiffer punitive sanctions for member states who refused to implement the conventions and recommendations being ratified or adopted as the case may be.

c) The government at all levels should prioritise workers' welfare. This should also be made applicable to employers in the private sectors in order to give room for inclusive growth in the country. They should respect and honour every agreement made with workers in order to redeem their image.

d) Other laws should be amended in line with the Third Alteration Act, 2010 in order to make collective agreements automatically enforceable as we have in the United States.

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