THE OBJECTIVES OF COLLECTIVE BARGAINING IN NIGERIA: A NOTE

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THE OBJECTIVES OF COLLECTIVE BARGAINING
IN NIGERIA: A NOTE

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Collective bargaining involves a process of negotiation and conclusion of collective agreements on the demands of workers concerning certain improvements in the terms and conditions of employment. Two essential conditions for collective bargaining to occur include the freedom to associate and the recognition of trade unions by employers.

The principal purpose of collective bargaining is to settle the terms and conditions of employment. An improvement in the terms and conditions of workers' employment is the chief task of trade unions, and collective bargaining is the major means whereby trade unions can ensure that the terms and conditions of employment given to their members are adequate. The primary aim of workers engaging in collective bargaining has been expressed thus:

"By bargaining collectively with management, organised labour seeks to give effect to its legitimate expectations that wages and other conditions of work should be such as

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1 Section 91 of the Labour Act 2004 defines collective bargaining as the process of arriving, or attempting to arrive, at a collective agreement. In the same Act, a collective agreement is described as an agreement in writing regarding working conditions and terms of employment concluded between: (a) an organisation of workers or an organisation representing workers or an association of such organisations of the one part; and (b) an organisation representing employers or an association of such organization of the other part. See: H. Arthurs, "Understanding Labour Law: The Debate on Industrial Pluralism" (1985) 1 Current Legal Problems, p. 83; E. Cordova, "Collective Bargaining" in R. Blanpain (ed.), Comparative Labour Law and Industrial Relations, 2nd ed., (Deventer: Kluwer, 1985), p. 308. "Bargaining" as a term has been defined as the process by which the antithetical interests of supply and demand of buyer and seller are finally adjusted so as to end in the act of exchange. See R.H. Maciver, and C.H. Page, Society (London: Macmillan Press, 1953), p. 5.


3 Udo v. Orthopaedic Hospitals Management Board (1990) 4 NWLR (pt.142) 53. As Lord Donovan put it for the Privy Council "it is of course true that the main purpose of most trade unions of employees is the improvement of wages and conditions. See Collymore v. Attorney-General of Trinidad and Tobago [1970] AC 538, 547. It is true that trade unions may have other purposes, powers and functions but the main purpose for their existence is workers' welfare, based primarily on terms and conditions of employment. Other purposes and powers are merely ancillary or complementary to the main purpose.
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to guarantee a stable and adequate form of existence and as to be compatible with the physical integrity and moral dignity of the individual, and also that jobs should be reasonably secure.  

It is because of the apparent imbalance of power between employees and employers that has necessitated the desire of workers to come together. Workers have generally realised that bargaining collectively is their only chance of having a semblance of an equal relationship with their employer. They realise that against the power of employers the individual worker has almost no bargaining power and that the chances of improving conditions of work are slim. Workers have resorted to collective action because by banding together they are able to consolidate their strength far more effectively than they could as individuals. Here, power stands against power. As the Donovan Commission noted:

"Properly conducted, collective bargaining is the most effective means of giving workers the right to representation in decisions affecting their working lives, a right which is or should be the prerogative of every worker in a democratic society."

More specifically, there are four broad objectives of collective bargaining, namely: the settlement of trade disputes; democracy in the workplace; redistribution; and the maintenance of efficiency. The following sections examine these four objectives.

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5 The worker as an individual has to accept the conditions which the employer offers. The ensuing relationship, as Kahn-Freund puts it, is “between a bearer of power and one who is not a bearer of power.” Thus, it is through workers acting in solidarity that a semblance of parity is struck, making collective bargaining viable. See: O. Kahn-Freund, Labour and the Law (London: Stevens and Sons, 1977), p. 8. See generally, B. Gennigon, A. Odero and H. Guido, “ILO Principles Concerning Collective Bargaining” (2000) 138.1 International Labour Review, pp. 33-55.


8 Royal Commission on Trade Unions and Employers’ Associations, Cmd 3623, 1968.

9 The ILO has declared that trade unions “fulfil three important functions. The first is a democratic function: allowing all those who have work or want to work to have a say in their working life. The second is of course an economic function: helping to find the best possible balance in the production and distribution of the fruits of growth. The third which derives from the first two is a social function: ensuring that all those who work find their place in society; these organizations can certainly help to eradicate poverty, as well as combat the social exclusion of the most vulnerable, inner-city violence, social tensions
SETTLEMENT OF TRADE DISPUTES

One principal and significant function of collective bargaining is the settlement of trade disputes. Collective bargaining is essentially a rule-making process. It lays down rules to be observed when labour is bought and sold, in the same way that the state by legislation may regulate jobs. The parties to collective bargaining conclude procedural arrangements which regulate their own relationship, such as their behaviour in settling disputes.

The major interest of trade unions is to secure wage concessions from employers through collective action. Where the employer fails to concede to the demands of the workers this could lead to strike action. Thus, collective bargaining provides the mechanism for dispute settlement by negotiation of terms and conditions of work. Negotiation within the framework of collective bargaining must be conducted with a view to reaching an agreement. Collective bargaining therefore provides an inducement by which union and management can accommodate each others’ views through compromise and persuasion. This quality is an important aspect of the system and provides the underlying basis for industrial peace.

WORKPLACE DEMOCRACY

Perhaps the most important justification for collective bargaining lies in its democratic attributes. It is understandable that the individual employee needs his job with an employer more than the employer may need him. This is because the employer can easily replace the employee with a substitute worker. The individual employee has no guarantee of finding a job if he decides to leave his employment. In any case, in the event of conflicts the employer has a greater ability to sustain struggles than the individual employee. This is why the employment relationship is often characterised by inequality of bargaining power. This inequality means that individual employees are not able to take part in decisions that affect their working lives. But by joining forces and

13 Ibid.
14 Ibid.
15 Ibid.
acting in concert workers can have the power to change this situation as the employer will certainly be concerned about the possibility of losing all of his employees, even if not permanently.\textsuperscript{19} Besides, a trade union can also provide financial support to sustain the period of struggle. Collective bargaining therefore enables workers to acquire some bargaining power – a "countervailing power" to that of their employer.\textsuperscript{20} This is not to say, however, that the employer and the employees now possess equal bargaining power, but that the imbalance of power can be expected to be highly reduced under a regime of collective bargaining.\textsuperscript{21}

More particularly, there are two separate attributes of collective bargaining that bring out its democratic nature. One is that collective bargaining has a "civilizing impact upon the working life and environment of employees" or subjects the employer to "a rule of law."\textsuperscript{22} Employees are generally subject to the control and command of their supervisors and managers. Their career prospects are in many cases dependent on decisions taken by the managers in the workplace. Collective agreements set rules on how workers should be treated. There are rules, for instance, on promotion, increases in salary or wages, and discipline. Without workplace rules being made through collective bargaining and being enforced through procedures for arbitration, managerial decisions concerning employees may not meet the demands of justice and fairness.\textsuperscript{23} This transforms the situation of individual employees, as they are no more subject to the whims and caprices of their employers. With collective agreements, management decisions must comply with the rules set out in the agreement. Collective bargaining therefore ensures that employers do not act like dictators, but are subject to the "rule of law."\textsuperscript{24} This makes the relationship between the parties more democratic.

The second attribute of collective bargaining is that it gives employees the ability to voice their views and concerns and to participate generally in the self-governance of the workplace.\textsuperscript{25} When acting collectively employees have the opportunity to convey their dissatisfaction and voice their concerns without fear of losing their jobs,\textsuperscript{26} unlike the

\textsuperscript{19}Ibid.
\textsuperscript{23}Ibid.
\textsuperscript{24}Ibid.
situation when an employee is acting individually. Thus, with a collective voice employees can, without fear of losing their jobs, bring about changes in a broad range of issues in the workplace, such as in the way in which they are being treated, the way the workplace operates and the future management of the firm.27 Thus corporate decisions on important issues are taken after negotiations with a compromise struck between the interests of management and those of the employees. This gives the workers the opportunity to actively participate in the formulation of decisions on matters that affect their lives. This can be seen as a form of democratic self-government.

RE-redistribution of Power

A third function of collective bargaining is to redistribute power and resources from employers to employees.28 This function is based on the fact that employers, as noted above, usually possess superior bargaining power as against individual employees, and, because of this power imbalance, the resulting terms and conditions of employment are unfair and unjust.29 This assumption is based on the theory of redistributive justice and underlies most regulations that allow and promote collective bargaining.30 Through collective bargaining workers appear to improve their conditions at the expense of the employer’s profits through redistribution from the employer’s profits to the employees’ higher wages.31 Collective bargaining is also credited for reducing inequalities by creating pay policies that limit managerial discretion.32 In addition, collective bargaining has enabled unions to standardise wages across firms within the same industry.33 Collective bargaining is thus a useful mechanism for reducing inequality by redistributing power and resources.

PROMOTION OF EFFICIENCY

Another function of collective bargaining is that it helps to promote economic efficiency by limiting industrial conflict in the workplace.34 Most laws which promote collective bargaining were designed to limit industrial conflict which is seen as inimical to

29 Ibid.
30 See, for example, the U.S. National Labour Relations Act 1935 S. 1 U.S.C 151 which declares that the Act is intended to redress the inequality of bargaining power.
33 Ibid.
34 Ibid.
efficiency. Through collective bargaining there is an information-flow between workers and from workers to management. Morale is higher, and firm-specific investments are increased. This is because collective bargaining gives job security and there is every motivation for workers and management to cooperate to increase productivity.

Other efficiency attributes of collective bargaining can be seen in the fact that it can also improve the administration and enforcement of workers' rights, facilitate investment in the training of workers, and restrict management from discriminating between workers or taking opportunistic decisions, such as firing senior workers just before they become eligible for pension rights. In fact, it is generally recognised that trade union ability to enforce collective agreements has created the possibility of improved labour contracts and arrangements and higher economic efficiency.

Despite its acclaimed functions, the institution of collective bargaining has been criticised for various reasons. Critical labour law theorists regard collective bargaining as a tool by which capital continues to dominate labour. According to Klare:

"Collective bargaining law articulates an ideology that aims to legitimate and justify unnecessary and destructive hierarchy and domination in the workplace ... [and] has evolved an institutional architecture, a set of managerial and legal arrangements that reinforces this hierarchy and domination."

Another criticism against collective bargaining often advocated by developing countries is that freedom of association for trade union purposes is a hindrance to economic development. Such an argument is usually put forward to justify restrictions on the right to organize and the right to collective bargaining. However, this view may not be entirely correct. In fact, an ILO sponsored study on the issue reveals that there is

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35 See, for example, the U.S. National Labor Relations Act s.1 29 U.S.C. s 151 which states that "the refusal by some employers to accept the procedures for collective bargaining leads to strikes and other forms of industrial strife and unrest, which...impair the efficiency...of commerce".


no contradiction between the demands of economic development on the one hand and freedom of association for trade union purposes on the other. 52

Despite these criticisms, however, collective bargaining seems to be the best mechanism for attaining peace in the relationship between employers and employees, in particular in respect of providing an effective forum for negotiating the terms and conditions of employment. Collective bargaining provides a measure to check the concentrated power of capital, and ensures equilibrium of forces in the labour management relationship in order to avoid exploitation. 43

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