AN APPRAISAL OF THE EFFECT OF STRIKE OF PUBLIC SERVICE PROVIDERS ON THE GENERAL PUBLIC

By

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Abstract

In recent years, countries around the world have witnessed a number of industrial conflicts due to the competing interests that permanently exist in industrial establishments varying in their forms and enormity. Nigeria has been no exception, having suffered its fair share of these industrial conflicts. Labour management conflicts have assumed unprecedented proportion. Public policy designed to deal with conflict situation in employment became more interventionist and revolutionary. This article adopted the doctrinal research method as it examined the various legislations and legal journals on the effect of strike action of service providers on the general public with comparative reference to other jurisdictions. The central aim of this paper is an appraisal of the impact strike actions had on the public with specific focus on service providers. This article recommends that there should be a clear-cut dispute resolution mechanism in organisation (both public and private) to always endeavour to nip strike actions in the bud to minimize the agonies of the general public. Furthermore, all collective agreement should be formally registered with the Ministry of Employment labour and Productivity after the necessary approval, and finally, there is need to consistently and considerably reduce the time-lag for the final resolution of trade dispute which by nature requires speed as the law currently stands.

Keywords: *Strike, Service Providers, General Public*

Introduction

The right to strike is a universal democratic right of all employees, regardless of where they are employed: private or public sector.[1] Depending on the degree of realisation of this right in a state, it is accordingly evaluated on the scale of democracy. Therefore, it is submitted that the right to strike is a fundamental measure of democratic values of a society. There is no real democracy without the right to strike. The right to strike is governed by international legal instruments (Conventions) of the United Nations, the International Labour Organisation and other regional bodies like the European Union and African Union. The right to strike is a keystone of modern industrial society. No society which lacks that right can be democratic. Any society which seeks to become democratic must secure that right.[2]

The question as to whether employees have a fundamental right to strike has been the object of considerable academic debate and is a point on which the courts have made plethora of pronouncements on.[3] There is no doubt that workers throughout the world are alike in the sense that they desire recognition, satisfaction, fair wages and salaries, job security, redress of wrongs and good working

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[1] B Barber, 'The Future of Trade Unionism' available at <https://www.tuc.org.uk> accessed 10 May 2024.

[2] L. MacFarlane, *The Right to Strike.* (Penguin Books 1981) 12; J. E. O. Abugu, 'Nearly Always, A Strike or Lockout is Unlawful in Nigeria' [2015] 6(1) *The GravitasReview of Business and Property Law*, 1.

[3] P I Azubuike, 'The Right to Industrial Action: A Comparative Review of International Labour Standards' [2019] (5)(2) *The Gravitas Review of Business and Property Law*; 46.

conditions.[4] But often the employer and the union (representing workers) find themselves in sharp disagreement. Such friction or disagreement gives rise to trade disputes and strikes.[5]

The right to strike is a crucial weapon in the armoury of organised labour. The right is a result of several years of struggle by the working class. The history of this struggle is one of constant class battles, fierce reprisals by management and the authorities against strikers and heroic self-sacrifice by workers. The right to strike has now been accepted as an indispensable component of a democratic society and a fundamental human right.[6] Strike is an essential tool of trade unions all over the world for the defence and promotion of the rights and interests of their members, and is a necessary counter-veiling force to the power of capital. The strike plays the same role in labour negotiations that warfare plays in diplomatic negotiations.[7] Take away the right to strike and workers and their trade unions will be lame ducks. The importance of the right to strike in industrial relations cannot be over-emphasised. In his famous statement in 1942 Lord Wright observed that:

'Where the rights of labour are concerned, the rights of the employers are conditioned by the rights of the men to give or withhold their services. The right of workmen to strike is an essential element in the principle of collective bargaining. It is, in other words an essential element not only of the union's bargaining process itself, it is also a necessary sanction for enforcing agreed rules.'[8]

In the case of *NUMSA v Bader Pop (Pty) Ltd*[9] the Constitutional court of South Africa held that the right to strike is of both historical and contemporaneous significance. In the first place, it is of importance for the dignity of workers who in our constitutional order may not be treated as coerced employees. Secondly, it is through industrial action that workers are able to assert bargaining power in industrial relations. The right to strike is an important component of a successful collective bargaining system.

The right to strike is thus so important to the functioning of a democratic society that its removal would be unjustified. Since the Nigerian civil war, labour management, have assumed unprecedented proportions. Public policy designed to deal with the conflict situation in employment became more interventionist and revolutionary. These conflicts arise from inherent opposing interest of employees in work relation. Given the inevitability of conflict, the actors, particularly, the government have evolved ways and means through legal development, scuttle, impeach, curtail, encapsulate, eradicate and even

[4] Section 18 of the Labour Act Cap. L6 LFN 2004.
[5] O. V. C.Okene, 'The Status of the Right to Strike in Nigeria: A Perspective from International and Comparative Law' [2007] 4, *African Journal of International and Comparative Law*, 28.
[6] O Kahn-Freund and B A Hepple, 'Laws Against Strikes' (1972) *Fabians Research Series*; 4; R Ben-Israel, 'International Labour Standards: The Case of the Freedom to Strike' [1988] *Kluwer Planx Law Review*; 13; V A Leary, 'The Paradox of Workers Rights as Human Rights' in L A Compa, and S F Diamond (eds), *Human Rights, Labour Rights and International Trad*e (New York: McGraw Hill Publishers 1996) 96; J Gross, *Workers' Rights as Human Rights* (New York: Cornell University Press 2003) 162; R J Adams, '*Labour Rights as Human Rights: Implications of the International Consensus'* [1999] (4)(6) *Pennsylvania Journal of Development Law; 211* <http://www.hartford-hwp.com/archives/26/094.html> accessed 12 April 2020; B Barber, 'The Future of Trade Unionism' available at <https://www.tuc.org.uk> accessed 10 May 2020.
[7] J G Getman and F R Marshall, 'The Continuing Assault on the Right to Strike' [2000- 2001] (79)(3) *Texas Law Review*; 703 – 704.
[8] *Crofter Hand Woven Harris Tweed Co v Veitch* [1942] I All ER 142; [1942] AC 435
[9] [2003] 3 SA 513

lay down legislature procedures to either averts or resolve the resulting governance and industrial dispute. This legal development provides a meaningful approach to the accommodation of Conflict between employers and the employees. There is a little doubt, that since 1968, the role of the State in handling industrial conflict has become more interventionist in both principle and in practice. However, experiences with the various legislation and laws put in place raises several questions of appropriateness in modern society, such as ours. It will be seen that even though the principal legislation, the Trade Dispute Act, 1976 did not explicitly remove the right to strike, a strike is practically impossible if all the steps are taken at appropriate times.

In case of essential services, however, strike is explicitly prohibited. The evidence shows however, that strike have occurred in large numbers, whether in the private or public sectors, or in the so-called essential services. Of great shock, was the recent strike action embarked by men, officers, rank and file of the Nigeria Police Force in Ondo State in 2014. The doors are not closed. Industrial conflict is obvious due to the competing interests that permanently exist in industrial establishments. The employer who owns capital wants to make the greater profitable use of the labour, whereas on the other hand, the labour wants better conditions of service for itself at a minimal cost and the government being the citizen's watch-dog cannot allow the conflicting interests adversely affect the state economic activities. It has through legislations provided avenues and legal framework to forestall breakdown of the economic sustenance of the country and as well, provided procedures for the regulations and settlement of the industrial conflict in order to have industrial harmony between the employers and the employees to better and safeguard the economy. These competing interests which characterizes the relationship between the management and the labour that is the employer and the employee has made one to the "uneasy bed-follow". These competing and conflicting interests, no doubt, have often led to frequent industrial conflicts all over the world, particularly, in Nigeria.

Legal Framework on the Right to Strike in Nigeria

The following legal framework will be considered in this paper;

1. Constitution of the Federal Republic of Nigeria 1999 (as amended)

Since the attainment of independence in 1960, the constitution has always guaranteed freedom of association. The Nigerian constitution aptly provides that every person shall be entitled to assemble freely and associate with other persons, and in particular he may form or belong to any political party, trade union or any other association for the protection of his interests.[10] There is no doubt that this provision is a guarantee of a fundamental right to form or belong to a trade union of one's choice. Therefore, any person who alleges that his right to form, join or belong to a trade union of his choice has been infringed may apply to the High Court for a redress.[11]

The provision guaranteeing freedom of assembly and association is a summation of two International Labour Organisation Conventions namely convention 87 of 1948 and convention 98 of 1949 which

[10] CFRN 1999, S. 40
[11] *Ibid,* S. 46.

Nigeria ratified within two weeks of independence.[12]The combined effects of these two conventions ratified by Nigeria is that it provides for a wide range of rights necessary for growth and development of industrial relations by trade unions. These includes the right to form an organization voluntarily without prior authorization, right to draw up their rules and elect their representatives,[13] organize their activities and public authorities must refrain from any interference which would restrict their rights, trade unions must not be made liable to be dissolved or suspended by administrative authority and their organizations must have the right to establish and join federations, confederations and to affiliate with international organization of employees and employers.

However, the fundamental right to form trade unions is not an absolute one. The CFRN 1999 provides for derogation on grounds of public safety, public order, public morality or health, in the interest of defence or for the purpose of protecting the rights and freedom of other persons.[14] The derogation thus permitted is by law and such law must meet the criterion stipulated, that is, being reasonably justifiable in a democratic society for any one of the grounds stipulated above. The National Industrial Court in the case of *Nigeria Civil Service Union v Association of Senior Civil Servants of Nigeria*,[15] held that the "right to freedom of association guaranteed under the constitution are qualified and not absolute rights, thus, the right to associate with other persons to form a trade union must be within the limits by the Trade Union Act". The combined effect of section 40 of the CFRN 1999, the provisions of articles 10(1) and 15 of the African Charter on Human and Peoples' Right (Ratification and Enforcement) Act,[16] and Article 8 (1) (d) of the International Covenant on Economic, Social and Cultural Rights can by necessary implication be said to be a legal framework upon which workers or employees derive the right to embark on strike.

2. Trade Dispute Act, 1976 (as amended)[17]

The Trade Dispute Act, 1976, is the current legislation put in place to streamline and codify all pre-existing laws governing industrial relations. The Trade Disputes Act collectively set aside the Trade Disputes Act; Trade Disputes (Arbitration and inquiry) Act; and the Trade Disputes (Emergency Provisions) Act. The Act provides the procedures to be followed for the settlement of disputes which exists or is apprehended, section 3(1) and section 3(2) of the Act, the parties to the dispute are enjoined to first attempt to settle it by any existing agreed means for the settlement means of disputes. If the attempts fail or if no such agreed means exist, the parties must within seven days of the failure or within seven days of the date on which the dispute arose or was first apprehended where no means for settlement exists, Section 3(2) of the Trade Dispute Act provides that the presidency of mediator mutually agreed upon and appointed by or on behalf of the parties with a view to amicable settlement of the dispute. Section 5(1) of the TDA provides that if the mediator appointed cannot settle that dispute,

[12] *Incorporated Trustees of Independent Petroleum Association v Alhaji Ali Abdulraham Himma & 2 Ors (Unreported* suit No. FHC/ABJ/CS/313/2004 of 23/1/2004; O Akande, 'Development in Commercial Business and Trade Laws' in A. Aguda, *The Challenges of the Nigerian Nation* (Ibadan: Heinemann Nigeria Ltd 1985) 156

[13] *Anene v J Allen & Co. Ltd* Unreported Suit No. 88/1964/2/65

[14] Section 46, Constitution of the Federal Republic of Nigeria 1999 (As Amended)

[15] (2004) 1 NWLR (Pt. 873) 429; *Broom v DPP* (1974) 1 ALL ER 314

[16] Cap. A9 LFN 2004

[17] Cap T8 Laws of the Federation of Nigeria, 2004

then it should be reported to the Minister or his permanent secretary by or on behalf of either of the parties.

Sections 5(2), 7, 8, 16 and or 32[18] of the TDA empowers the Minister in charge of Labour matters to refer a dispute to the Industrial Arbitration Panel (IAP) and also to refer certain types of disputes directly to the National Industrial Court (NIC) and to appoint a body of inquiry. The Minister may refer to a dispute directly to the IAP, the Minister is empowered by virtue of section 4 of the TDA to apprehend a trade dispute.

It covers both the public and the private sector workers and employers all of which must comply with these provisions. The only exception to the binding rules of the TDA are categories listed as essential services and members of any other service of the federal or state government authorized to bear Arms, the Nigerian Army, Navy, and Air Force are all inclusive.[19]

The rationale behind the exclusion of these category of workers is however unclear. Sections 1(1) and (2)[20] envisages the international resolution of disputes arising from which the matter is to be referred to the Minister of Labour to mediate or to appoint a conciliator to inquire into the causes and circumstances of the disputes and circumstances of the disputes to negotiate with parties with the aim of resolving the issues at stake.

3. Trade Union (Amendment) Act 2005

The Act is named the Trade Union (Amendment) Act, 2005. It amended the Trade Unions Acts of 1978 and 1996 as amended to further bring about among other things, the democratization and liberation of Labour movement and trade unionism in Nigeria and through the expansion of opportunities such as the registration of Central Labour Organisations and the granting of freedom to employees to decide which unions they wish to join.[21]

The principal Act has 54 sections but only eight (8) sections were affected by the 2005 Amendment. Those affected are sections 12, 16a, 17, 24, 30, 33, 34 and 42. It is, however, pertinent to mention here that the Trade Unions Amendment Act of 2005 does not replace the principal Act which is known as the Trade Union Act. The affected areas included areas of voluntarism, payment of due, collective bargaining, representation, ban on strike or lock-out, registration of more central labour organisations and personal freedom (non-compelling Act). They are briefly explained below:

i. **Voluntarism:** Section 2 of the 2005 amendment explains that membership of a trade union by employees shall be voluntary and no employee shall be forced to join any trade union or be victimised for refusing to join or remain a member.

ii. **Payment of Due:** Section 4 of the 2005 amendment expresses that Trade Unions shall pay to the appropriate registered federation of trade unions out of the contributions received from their

[18] *Ibid*
[19] Trade Dispute Act, Sections 49 (l) and 48(l) (2)
[20] *Ibid*
[21] *Maritime Workers Union of Nigeria v Nigeria Labour Congress* (2005) 4 NWLR (Pt. 1027) 282

members, such sum as may, from time to time, be specified in the constitution of the registered federation of trade union concerned.

iii. **Collective Bargain:** Section 5 of the 2005 amendment points out that for the purposes of collective bargaining, all registered unions in the employment of an employer shall constitute an electoral college to elect members who will represent them in negotiations with the employer.

iv. **On Representation:** Section 5 states that for the representation of tripartite bodies or any other body, the Federations of Trade Unions shall constitute an electoral college taking into account the size of each registered federation.

v. **Ban on Strike or Lockout:** Section 6 expresses that no person, trade union or employer shall take part in a strike or lockout or engage in any conduct in contemplation or furtherance of a strike or lockout unless:

a. The person, trade union or employer is not engaged in the provision of essential services.

b. The strike or lockout concerns a labour dispute that constitutes a dispute of right.

c. The strike or lockout concerns a dispute arising from a collective and fundamental breach of contract of employment or collective agreement on the part of the employee, trade union or employer.

d. The provisions for arbitration in the trade Disputes Act Cap 432 1990 have first been complied with, and

e. In the case of an employee or a trade union a ballot has been conducted in accordance with the rules and constitution of the trade union at which a simple majority of all registered members voted to go on strike.[22]

vi. **Registration of more central labour organisation**: Section 8 of the (2005) points to the following: A federation of trade unions may be registered by the Minister of Labour and Productivity if:-

(a) its main objective is to represent the interest of employees;

(b) it is made up of 12 or more trade unions none of which shall have been a member of another registered federation of trade unions;

(c) it has been established by resolution of the national delegates conference of the trade;

(d) it has adopted a name that does not resemble the name of another federation of trade unions;

[22] *Charle Edeka v Emerging Market Tele. Service Ltd* (2012) 7 NWLR (Pt. 778) 37

(e) it has adopted a constitution and or rules in accordance with the first schedule of this Act;

(f) it has a head office in the Federal Republic of Nigeria; and

(g) it has submitted to the Minister of Labour and Productivity an application in the prescribed form signed by at least two trade unions wishing to become its members.[23] Further, Section 8(2) states that, upon receipt of an application as required by Subsection (1) of this section, the registrar shall within 90 days if satisfied that all requirements with respect to the registration of the Trade Unions have been met, register the federation concerned and evidence such registration with the issuance of a certificate of registration. Personal Freedom/Non Compelling Act: Section 9 provides that:-

(h) no person shall subject any other person to any kind of constraint or restriction of his personal freedom in the course of persuasion.

(i) No trade or registered federation of Trade Unions or any member thereof shall in the course of any strike action compel any person who is not a member of its union to join any strike or in any manner whatsoever prevent aircrafts from flying or obstruct public highways institutions or premises of any kind for the purpose of giving effect to the strike.

4. **Universal Declaration of Human Rights, 1948 (UDHR)**

The right to strike is one of the most important international labour standards. Internationally, this right is regulated and governed by several international legal instruments of the UN, the ILO and other regional instruments, which provide that the right to strike gets universal character. The Universal Declaration of Human Rights does not mention the right to strike directly, but this right derives indirectly from the right of "everyone to peaceful assembly and association".[24] Another important international legal instrument of the United Nations that explicitly regulates the right to strike is the International Covenant on Economic, Social and Cultural Rights which shall be discussed hereunder.[25]

5. The International Covenant on Economic, Social and Cultural Rights, 1966 (ICESCR)[26]

Article 8 of The International Covenant on Economic, Social and Cultural Rights states that States Parties to the Covenant are obliged to provide 'the right to strike if exercised according to the laws of each particular state'[27] giving the opportunity of States Parties to the covenant by law to limit the right to strike of the employees in the armed forces, police and bodies of state administration.[28] It is worthy of note that Article 2 (1) of the covenant provides that "each State Party to the present covenant undertakes to take steps, with a view to achieving progressively the full realization of the rights recognised in the covenant by all appropriate means, including the adoption of legislative measures."

[23] *National Union of Gold, Silver and Allied Trade v Albury Brothers Ltd* (1979) ICR 84; *Paddington v Bates* (1960) 3 ALL ER 660; Art. 36 of the America Convention on Human Rights.
[24] International Covenant on Economic, Social and Cultural Rights Council, Art 8, para D
[25] *Hunt v Broom* (1974) 2 WLR 58
[26] B Gernigon and others, 'ILO Principles Concerning the Right to Strike' <https://www.citeseerx.ist.psu.edu> accessed 10 October 2023.
[27] Convention No. 87 of the ILO 1948, art 3 point 1
[28] *Ibid* (n 19)

6. International Labour Organization Conventions

The International Labour Organisation (ILO) is the United Nation's agency responsible for upholding global labour standards.[29] The ILO represents a specialised organisation of the United Nations that has a special place in shaping labour standards internationally. ILO has adopted several international legal instruments relating to the right to strike. The most important of these are the Convention No. 87 'Freedom of Association and Protection of the Right to Organise' of 1948, Convention No. 98 on the 'Right to Organize and Bargain collectively' and the 1949 Recommendation No. 92 on "Voluntary Conciliation and Arbitration'.[30]

The International Labour Organisation Convention 87 provides that workers shall have the right to establish and join organisations of their own choosing; and that 'workers and employers' organisations shall have the right to draw up their constitutions and rules, to elect their representatives in full freedom, to organise their administration and activities and to formulate their programmes'.[31] Whilst the Convention does not set out an express right, it is, however, impliedly protected as are the essential means available to workers and their organisations for the promotion and protection of their social and economic interests. This view is held by the committee of experts of the ILO who have stated on a number of occasions that English law fails to provide adequate protection of their right to strike by its limited definition of trade disputes and by the restrictions on secondary action.[32]

ILO jurisprudence makes clear that the right to union membership is not restricted to the right to hold a membership card. It holds that the right to membership also involves the right, through union membership, to protection of the members' interests by the union. It has also determined that Convention 87 involves a right to strike. The ILO 'has always regarded the right to strike as constituting a fundamental right of workers and of their organisations…,' and '... has always recognized the right to strike by workers and their organizations as a legitimate means of defending their economic and social interests'. "The right to strike is one of the essential means through which workers and their organizations may promote and defend their economic and social interests."

Impact of Strike Action of Service Providers on the General Public

With the experience of increased incidence of strike in Nigeria one can easily deduce the following as the effect of strike in Nigeria industrial relation:

1. **Strike chokes Productivity:** Whenever workers of a particular industry embark on strike, production in that industry is suspended until the strikers return to work.

2. **Strike brings Poverty and Agony:** Reduction in production of goods and services as a result of strike may in most cases result to poverty and agony. This is because when employers do not receive the services of their employees, they will not pay and the team population of workers in that industry or establishment will be affected.

[29] Akanle (n 3) 31
[30] Gernigon (n 19)
[31] *Ibid*
[32] *Ibid*

3. **Strike leads to Insecurity:** Strike has been seen as a viable cause of insecurity in Nigeria which has caused loss of lives and properties as a result of the activities of striking workers.

4. **Strike leads to Death:** Many workers have been shot to death before now as a result of recklessness of security operatives who may in the guise of dispersing striking workers shot an innocent citizen; though in some cases the shooting may be unintentional.

5. **Despite the above negative consequences, strike brings government nearer to workers:** It presses for the release of incarcerated union members, and an effective strike has the tendency of introducing changes that can be protected by law.

Conclusion and Recommendations

Industrial conflict is an integral part of organizational relationship as labour management relationship is fraught with perennial conflicts of interests and mutual suspicion, with each party standing astute to wield its own weapon to protect its perceived interest in the relationship. However, these conflicts if not effectively regulated often results in trade disputes culminating in strikes, which have almost crippled the economy in the country. Attempts have been made to regulate these actions through legislations that provides for negotiated settlements and adjudication. However, despites these effort industrial actions in the country seem to be on the increase.

Therefore, objectives and principle of industrial democracy and workers' participation in management were fairly being followed in most Nigerian public and well-established private sector enterprises, through collective bargaining. Actually, industrial democracy and worker's participation in management is the participation of workers through their representation as is done in collective bargaining. This is the involvement of workers in whatever is being done that is understood as democratisation or participation be it information sharing, decision making, profit sharing or even productivity target setting through their representatives. Collective bargaining is 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 associations of employers and workers organisation.

Recommendations

Having concluded that the limitation to freedom to strike is not justifiable to the extent that strikes are prohibited following some legislative enactments and legal development: the following reforms are recommended and discussed below:

1. An important conclusion that may be drawn from the above analysis and research is that the resort to formal third-party intervention appears to be on the ascendency and this practice does not credit to the collective bargaining process. The decisive role of the third party, particularly, arbitration and Conciliation may often have negative impact on the collective bargaining process. If the third-party decision have be found to be frequently more favorable to one side than the other, the unwillingness of the other party to discuss the point in dispute with the other may indicate that the former anticipates a bigger gain and in such situation, the independent party is more likely to ignore the bilateral grievance procedure. it is therefore, recommended that the third party should be seen more to be neutral in all its dealings. That the collective

agreement should continue to be subject to the supervisory role and approval of the federal Ministry of labour in respect to the level of wages and other moments as mirrored in the growth of pattern of the national economy to prevent hyper-inflation and its impacts on the peasant farmers and unemployed, and its consequent vicious circle on the socio-economic life of the populace.

2. That all collective agreement should be formally registered with the Ministry of Employment labour and Productivity after the necessary approval. Therefore, the agreement should be legally enforceable and not just binding in honour.

3. That in order to protect the employees from the antics of certain erratic employers which on one hand include arbitrary dismissal action and the protections of the employers and the general economy against the disruption actinides of some ill-motivated, radical and dare-devil union officials. In other hand, a law should be passed such that where an employee is dismissed unfairly, he should be reinstated by the IAP, provided that the dismissal action was not over just cause such as, laziness, theft or other prove cases of misconduct.

4. That the Industrial Arbitration Panel (IAP) and the National Industrial Court (NIC) should regard them as confirmation of collective bargaining process and as such, should place much premium on fact rather than lay emphasis on legal formalism.