

## AN OVERVIEW OF COLLECTIVE LABOUR RIGHTS IN EMPLOYMENT RELATIONSHIP IN NIGERIA

Princess Adaeze Chuku - Ashiegbu\*

### Abstract

*Human existence would have been barbaric and life- brutish, short and nasty but for the institutionalization of laws to govern and regulate human conducts in the family, work place, in human association, interrelationship and in business. There is no branch of law which touches more closely the ordinary man in his everyday life than the subject of Labour Law. Labour law is introduced in every society to operate according to the pattern of their labour force and without its regulation through laws governing labour relations, there will not be in place, good, convenient and harmonious working environment to ensure productivity. In furtherance of the task of the law as an instrument of social engineering in the society, means of social control, a guarantee peaceful coexistence in line with the cravings of the utilitarian movement, labour law which is also referred to as industrial law in some climes operates directly in human industrial and occupational relations to guarantee and enhance, fair treatment, fair play, work place, safety, human dignity in labour, employers and employees' relationship. The paper deals with workers' right to freedom of association, the concept of collective bargain and agreement, its effect, legal status of collective agreement in a contract of employment, strike as an industrial action and its factors and recommendations.*

### 1.0 Introduction

No man can employ another, or be employed without immediately bringing himself within the operation of labour law".<sup>1</sup> Labour law is the field of law governing the relationship between employers and employees. It is the law governing the dealings of employers and unions that represent employees.<sup>2</sup> In the words of Deakinb and Morris, labour law is the normative framework for the existence and operation of all the institutions of the labour market: the business enterprise, trade unions, employers' associations and the state, in its capacity as regulator and as employer.<sup>3</sup> Labour law stems from the idea of the subordination of the individual worker to the capitalist enterprise; it is above all the law of dependent labour, and hence it is specific to those categories of economic relationship which involve the exchange of personal service or services for remuneration.

\* LL. B (RSU), LL.M (RSU), PhD Research Candidate (RSU) and Lecturer II in the Department of Business Law, Faculty of Law, Rivers State University, Port Harcourt, Rivers State, Nigeria.

<sup>1</sup> K C Henry, M P, 'The Place of Labour Law in English Jurisprudence' [1925] *Economica*, No.13, 28

<sup>2</sup> B A Garner (ed.), *Black's Law Dictionary*, (9<sup>th</sup> edn., Minn: West Group, 1998), 952

<sup>3</sup> S Deakinb and G S Morris, *Labour Law* (London: Butterworths 2001) 1

The concept of labour relations and the rights resulting therefrom were regulated by the common law principles which were with many lacunas. This propelled the intervention of legislation in a bid to strike a balance between the rights of the employer and that of the employee. These rights included the rights to: freedom of association, collective bargaining and agreement, and the right to strike. These rights are collective so also is the observance of it. Labour law regulates the relationship between employee and employer organisations, and the rights deriving from the organisations. These include the rules governing the conclusion and termination of collective labour agreement, the industrial peace obligation resting on the two sides in an industry during the terms of collective agreement and the system in place for dispute resolution, including mediation in conflicts of interest and the settlement of disputes over the interpretation of collective agreement in labour law and relations.<sup>4</sup>

## 2.0 Right to Freedom of Association

By virtue of section 40 of the Constitution of the Federal Republic of Nigeria, 1999,<sup>5</sup> which stipulates thus: “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 of any association for the protection of his interests” Section 40 holds great significance for Nigerian workers, for it gives labour movement a constitutional right to associate<sup>6</sup> and, in particular, to join or form trade unions for the protection of one’s interest<sup>7</sup>. Undoubtedly, the right to associate and carry out trade union activities is a condition precedent for the protection of workers’ rights<sup>8</sup>. The constitution<sup>9</sup> by section 46 further provides for access to the court to remedy any breach of the right to associate. The foregoing section provides that “Any person who alleges that his right to form, join or belong to a trade union of his choice has been or is being or likely to be infringed may apply to a High Court in the state in which the infringement is threatened or has occurred for redress”.

But it is one thing to theoretically provide for rights and freedoms and another to create an environment conducive to guarantee the actual exercise and enjoyment of the rights<sup>10</sup>. Upon the preceding *Oputa, JSC*, in *Osakwe v Registrar of Trade Unions*<sup>11</sup> has this to say: “[T]hat right to assemble freely, to associate with other people and to form... trade union no doubt exists. But the freedom to exercise that right is an entirely different thing. That freedom exists

<sup>4</sup>Collective labour rights, <<https://www.bull.no/expertise/discipline/employment-law-and-pensions/collective-labour-law-collctive-agreement>> accessed 9 December, 2022

<sup>5</sup> Constitution of the Federal Republic of Nigeria, 1999 (as amended), s40

<sup>6</sup> O V C Okene, *Labour and Industrial Relations in Nigeria* (4th ed., Zubic Infinity Concept, 2019) 173; *Basorun v Industrial Arbitration Tribunal* Unreported, Suit No.LD/105/71, High Court of Lagos State, in E E Uvieghara, *Labour Law in Nigeria* (Lagos and Oxford, 2001) 319

<sup>7</sup> Okene, (n 6)

<sup>8</sup> B Molatlhegi ‘*Workers Freedom of Association in Botswana*’ [1998] 42(1) *Journal of African Law*, 64; K W Wedderburn, ‘Labour Law, Corporate Law and Worker’ [1993] 3 *Industrial Law Journal*, 542; K W Wedderburn, ‘Freedom of Association and the Philosophies of Labour Law’ [1989] 18 *Industrial Law Journal*, 16

<sup>9</sup> (n6)

<sup>10</sup> S Erugo, *Introduction to Nigerian Labour Law* (2nd ed., Princeton and Associate Publishing Co. Ltd 2019) 317

<sup>11</sup> [1985] 1 NWLR (Pt. 4) 755; *Registered Trustees of National Association of Community Health Practitioners of Nigeria and Ors v Medical and Health Workers of Nigeria and Ors* [2008] 1 (Pt. 111) 1

within and not outside all existing and relevant laws.” Thereupon, in *Anigboro v Sea Trucks (Nigeria) Ltd*,<sup>12</sup> The Court of Appeal held that: by virtue of section 37 of the Constitution of Nigeria, 1979 (now section 40 of the Constitution of the Federal Republic of Nigeria, 1999), the right to form or join a trade union is exclusively that of the individual citizen and not that of his employer. His employer has no business forming a trade union let alone compelling his workers to join it. It further held that this constituted a violation of the right of association of the workers, as it is not for the employer to choose a Trade Union for his employees<sup>13</sup>.

Further, section 9(6)<sup>14</sup> provides that: No contract shall-

- (a) make it a condition of employment that a worker shall or shall not join a trade union or shall not relinquish membership of a trade union; or
- (b) cause the dismissal of or otherwise prejudice, a worker-
  - (i) by reason of trade union membership, or
  - (ii) because of trade union activities outside workers hours or, with the consent of the employer, within worker hours, or
  - (iii) By reason of the fact that he has lost or been deprived of membership of trade union or has refused or been unable to become or for any other reason is not, a member of trade union.

This is another pointer to the fact that workers are guaranteed the right to associate for the protection of their economic and other interests without fear of any sanction<sup>15</sup>. Thus, protection is given to an employee who is dismissed by the employer because the employer believes, reasonably or unreasonably, that the employee belongs, or has belonged, to a Trade Union or any other association of employees. Not only that, the employer is forbidden to dismiss the employee for taking part in the formation or in the lawful activities of such organisation, such as exercising the right to strike, provided such activities are lawful and are exercised outside working hours or within working hours with the employer’s permission<sup>16</sup>.

Similarly, a further manifestation of the right inherent in the principle of voluntarism is that no employee should be compelled by law or otherwise to join or form a trade union<sup>17</sup>. There is allowed room for the conscientious objector who for religious or other reason may wish to object out<sup>18</sup>. That freedom to be neutral must be recognised<sup>19</sup>. This may be contrasted with the common law position that recognised the right of the unions to establish and maintain a closed

<sup>12</sup> [1995] 6 NWLR (Pt. 399) 35; *Egri v Uperi* (1973) 1 SC 299

<sup>13</sup> *Etianam v Registrar of Trade Union* (Unreported) Appeal No LD/38A/69 High Court, Lagos.; E E Uvieghara, *Trade Union Law in Nigeria* (Benin-City: Ethiopia Publishing Corporation, 1976) 95

<sup>14</sup> Labour Act, Cap L1, Laws of Federation of Nigeria, 2004

<sup>15</sup> Okene (n 6) 174

<sup>16</sup> *Ibid*

<sup>17</sup> *Nestoil Plc v NUPENG* [2012] 29 NLLR (Pt. 82) 90; *NASU v University of Agriculture Abeokuta* (Unreported Suit No NIC/LA/15/2011

<sup>18</sup> *ibid*, paras., C-E

<sup>19</sup> (n11) 318

shop<sup>20</sup> which is a form of union security agreement under which the employer agrees to hire union members only, and employees must remain members of the union at all times in order to remain employee. A closed shop arrangement will no doubt be unconstitutional today<sup>21</sup>. But it is doubtful whether the constitutional right and freedom under section 40<sup>22</sup> is adequate to protect the worker from discrimination or termination of his employment by the employer on the account of union membership<sup>23</sup>. In resolving the above the learned author opined that:

Another indicator of the protection of the right to associate is the safeguard against other prejudices, such as taking actions short of dismissal on account of union membership or activity. For example, the Act deters demotions or transfers that are targeted on employees because of their Trade Union membership or activities. Most importantly, this protection would also help to ensure that employers who are anti-unions do not have the freedom to treat or offer non-unionists more favourable treatment than union members.<sup>24</sup>

The court is therefore given the constitutional power to annul and invalidate any governmental or other actions that violates the right of association in Nigeria... the courts must fearlessly ensure that the Constitution is respected and complied with<sup>25</sup>. As the American Supreme Court<sup>26</sup> per Hugo Black pointed out that “Courts stand as havens of refuge for those who might otherwise suffer because they are helpless, weak, outnumbered, or victims of prejudice or public excitement”. Please note that, the right does not include freedom to proliferate and duplicate unions and efforts in places where they already exist. Directing his forensic eloquence to such development, Anigololu, JSC, had stated that:

“...the proliferation of the trade unions clearly lends itself to chaos in labour circles- a fact which has the tendency of destabilizing society by its tendency to wild-cat strikes and work stoppages called by all sorts of desperate and unviable trade unions. It is therefore in the interest of public order that systematised, cohesive, and responsible trade unions be established for the good of the society....”<sup>27</sup>

Thus, the freedom to join a trade union or choose which union to join is limited to the unions empowered to operate within a clearly defined jurisdictional scope. Thus, Voluntarism as

---

<sup>20</sup> *Reynolds v Shipping Federation Ltd* [1924] 1 Ch. 28

<sup>21</sup> (n11) 318

<sup>22</sup> Okene (n6)

<sup>23</sup> (n11) 318

<sup>24</sup> Okene, (n 6) 174

<sup>25</sup> K Eso, *Thoughts on Law and Jurisprudence* (Lagos: MIJ Professional Publishers Ltd; 1990) 170-171

<sup>26</sup> *Chambers v Florida* U.S. 227, 241 [1940]

<sup>27</sup> *Osakwe v Registrar of Trade Unions* (n12)

established by the 2005 Trade Unions (Amendment) Act must exist within and not outside all existing relevant laws<sup>28</sup>.

## 2.1 Limitation to the Right to Freedom of Association

Although, the human right and particularly the rights to freedom of association are natural and inalienable one, however, the exercise of these rights is delimited under the 1999 Constitution,<sup>29</sup> to checkmate its applicability.

Similarly, the right to join or form trade unions in line with section 40<sup>30</sup> is not allowed for some categories of persons who because of their occupational responsibility or for purposes of state security, state development, public policy etc., are prohibited from combining, organising or becoming members of a trade union. The following categories of persons are prohibited from forming or joining a trade union:

- a. Persons under twenty-one (21) Years of Age:
- b. A person under the age of sixteen shall not be capable of being a member of a trade union, and a Person under the age of 21 shall not be capable of being an official of a trade union.
- c. Persons of or above the age of sixteen but under the age of 21 may be a member of a trade union unless the rules of the union provided otherwise, may enjoy all the rights of a member and may effectually sign any agreement or other document and give any receipt which may be required to be signed or given by the rules of the union for the purpose of this Act or the Regulations.<sup>31</sup>
- d. Some Public Servants:

Persons employed in the following establishments are prohibited from combining, organising or becoming members of a Trade Union:

- a) The Nigerian Army, Navy or Air Force;
- b) The Nigerian Police Force;
- c) The Customs Service, the Immigration Services and the Prison Services;
- d) The Customs Preventive Service;
- e) The Nigerian Security Printing and Minting Company Limited;
- f) The Central Bank of Nigeria;
- g) The Nigerian Telecommunications Limited;

<sup>28</sup> *PERESSA v SSACGNOC* [2009] 14 NLLR (Pt. 39) 306, 342 paras D-F, *NCSU v ASCSN* [2004] 1 NLLR (Pt. 3) 429

<sup>29</sup> Section 45 (1) 1999, Constitution of the Federal Republic of Nigeria provides that “nothing in sections 37, 38, 39, 40 and 41 of this Constitution shall invalidate any law that is reasonably justifiable in a democratic society- (a) in the interest of defence, public safety, public order, public morality or public health; or (b) for the purpose of protecting the rights and freedoms of other persons.”

<sup>30</sup> *ibid*

<sup>31</sup> See section 20 (1) and (2) of the Trade Union (Amendment) Act, Cap T14, LFN, 2004

- h) Every Federal or State government establishment, the employees of which are authorised to bear arms; and
- i) Such other establishments the Minister may from time to time, by order specify.<sup>32</sup>

However, section 11 (2), provides thus “it shall not be lawful for persons employed in any of the establishments to which subsection (1) of this section relates to combine, organise themselves, or to be members of a trade union, for purposes of employment, but nothing in this section shall be construed as preventing the setting up of joint consultative committees in the establishments concerned.

Arguably, it may be said that the provisions of Trade Union Act, with regard to membership of Trade Unions (as in sections 20 and 11) are in conflict with section 40 of the 1999 Constitution. However, it would appear that the provisions are nevertheless valid and saved by section 45 of the 1999 Constitution. Thus, in *Cheranci v Cheranci*<sup>33</sup> it was held that the restriction of the freedom of children to associate was justiciable and reasonable in the interest of the society.

Also, where a right of membership of a trade union is granted to the persons mentioned in section 11 of the Trade Union Act, it therefore follows that; they shall have as corresponding right, and particularly, the right to strike actions. To the foregoing effect, it is submitted that the occurrence of strike in these sectors would endanger the public health and the safety of the community and that it would be reasonable to prohibit strikes in these services<sup>34</sup> by prohibiting or withdrawing from them the right of membership of a trade union.

Recall that the essence of sections 11 and 20 of the Trade Unions Act was not to discriminate persons mentioned in its provisions; rather their right of non-membership to a trade union or to form one is for public interest as aforementioned. Also, in disregarding the non-admittance of persons into a trade union or restricting their rights to form one on discriminatory ground section 12 (1)<sup>35</sup> has this to say: “a person who is otherwise eligible for membership of a particular trade union shall not be refused admission to membership of that union by reason only that he is of a particular community, tribe, place of origin, religion or political opinion.”

The provisions of section 12 of the Trade Union Act displays that every eligible person is entitled to membership of a trade union, except the categories of persons mentioned in sections 11 and 20 of the Trade Union Act, and that nobody shall be deprived of the right to join a trade union based on ethnicity, religious or political affiliations as such reasons shall be irrelevant

---

<sup>32</sup> *ibid*, 11(1)

<sup>33</sup> [1960] NNLR, 24

<sup>34</sup> O.V.C. Okene, “*Labour and Industrial Relations in Nigeria*” (4th ed.; Zubic Infinity Concept, 2019) 269

<sup>35</sup> (n176)

and immaterial not only upon the authority of section 12<sup>36</sup> but also supremely upon the incontestable and unflinching provision of section 42.<sup>37</sup>

The provision of the law providing for membership of Trade Union did not make it automatic for applicants. Therefore, a Trade Union may regulate its membership by providing criteria for such purpose, thereby, making it mandatory that one can only be a member when he satisfies such criteria. However, such criteria shall only stand when it does not fall under the disowned circumstances outlined in sections 12 of the Trade Union Act, and 42 of the 1999 Constitution.

Additionally, while section 12<sup>38</sup> prohibits the refusal to admit a person to membership on discriminatory grounds, it does not confer on an applicant a right of automatic membership nor does it in any way curtail the power of the trade union to restrict its membership by stipulating special conditions or qualifications for admission to membership, such as, for example, where membership of it is restricted to particular trades or industry or restricted in terms of inter-union rules.<sup>39</sup>

Notably, what section 12 of the Trade Union Act prohibits is the refusal to admit a person on discriminatory grounds. Therefore, the onus is on the person who alleges discrimination to prove that the cause of refusal of his admission to the union's membership was discriminatory.<sup>40</sup> Thus, the mere fact that the applicant was unable to meet the basic general requirements of membership because they were too strict or harsh, cannot be considered a discrimination ground within the purview of section 12 of the Trade Unions Act.<sup>41</sup>

## 2.2 The Scope of Right to Collective Bargaining and Collective Agreement

In every contract and particularly contract of employment under labour/industrial law, that is regulated by the terms and conditions formed and agreed by the parties to it, those terms and conditions serve as the rights of the parties to the contractual agreement, that the breach of one or all of it by any of the parties amounts to the infringement of the contractual right of the other, hence, the need to seek for redress. Naturally, the right of collective bargaining and collective agreement inheres in these persons by virtue of being humans and not even a legislation no matter how unambiguously worded can strip them off these rights otherwise, chaos and public unrest shall be inevitable in the labour environment. The principal purpose of collective bargaining is to settle the terms and conditions of employment. Collective agreements which is a by-product of collective bargaining, serve as a source of labour law since it provides rules

---

<sup>36</sup> Ibid

<sup>37</sup> (n174)

<sup>38</sup> (n176)

<sup>39</sup> Article 3 (1) of Convention 87; see also, *Faramus v Film Artistes' Association* [1964] AC, 935

<sup>40</sup> *Solicitor-General Western Nigeria v Adebonojo* [1971] 1 All NLR 178, 191; see also, A Emiola, *The Public Servant and The Law* (Ibadan: University of Ibadan Press, 1982) 64

<sup>41</sup> *Faramus v Film Artistes' Association*.

which regulate the employee-employer relationship by incorporating the terms of the collective agreement into the contract of employment.

The right to collective bargaining is “a voluntary negotiation between employers or employers’ organisations and workers’ organisations with a view to regulate the terms and conditions of employment- which ends in a collective agreement”<sup>42</sup> which when adhered to produces a harmonious working output between the employers’ and workers’ organisations, respectively.

### 3.0 The Functions of Collective Bargaining in Employment Relations

The following three issues are considered as functions of collective bargaining in employment relations: Settlement of Trade Disputes, Redistribution of Power and Promotion of Efficiency.

1. Settlement of Trade Disputes: Significant with collective bargaining is the settlement of trade disputes<sup>43</sup> and it is seen essentially, as a rule making process by the parties to it which regulate their own relationships such as their behaviour in settling disputes.<sup>44</sup> Collective bargaining therefore, provides an inducement by which union and management can accommodate each other’s views through compromise and persuasion. It provides industrial peace.<sup>45</sup>

Workplace Democracy:

Due to the inequality of the bargaining power between the employer and employee, collective bargaining becomes necessary in every contract of employment, to enable workers acquire some bargaining power- a “countervailing power” to that of their employer.<sup>46</sup> 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.<sup>47</sup> Therefore, it gives the workers the opportunity to actively participate in the formulation of decisions on matters that affect their lives.<sup>48</sup>

2. Redistribution of Power: The function of collective bargaining here is based on the fact that employers as commonly known possess superior bargaining power as against the individual employees, and, because of this imbalance, the resulting terms and conditions of employment are unfair and unjust.<sup>49</sup> Invariably, collective bargaining is a veritable tool for power and

---

<sup>42</sup> Right to Organise a Collective Bargaining Convention, 1949 article 4, in M J D Akpan, ‘Nature of Collective Agreement in Nigeria: A Panoramic Analysis of Inherent Implementation Challenges’ (2017) Vol. 5, *Global Journal of Politics and Law Research*, 19. See I.L.O. Convention 98, 1949

<sup>43</sup> F C Nwoke, ‘Rethinking the Enforceability of Collective Agreement in Nigeria’ 4(4) *Modern Practice Journal of Finance and Investment Law* (2000) 372; A A Adeogun, ‘The Legal Framework of Collective Bargaining in Nigeria’ in D Otobo and M Omole (eds.) *Readings in Industrial Relations in Nigeria* (Lagos and Oxford: Malthouse Press Ltd, 1987) 90

<sup>44</sup> Adeogun, (n 43)

<sup>45</sup> Nwoke, (n 43)

<sup>46</sup> J K Galbraith, *American Capitalism: The Concept of Countervailing power* (Boston: Houghton Steven and Sons, 1983) 18

<sup>47</sup> K Klare, ‘Countervailing Power as Regulatory Strategy’, in H Collins (ed.) *Legal Regulation of Employment Relation* (London: Kluwer, 2000) 63-70

<sup>48</sup> (n179) 219

<sup>49</sup> K G Dau-Schmidt, ‘A Bargaining Analysis of American Labour La and Search for Bargaining Equity and Industrial Peace’ (1992) 91 *Michigan Law Review*, 419

resource distribution from employers to employees.<sup>50</sup> It is also credited for reducing inequalities by creating pay policies that limit managerial discretion.<sup>51</sup> More so, collective bargaining is significant with its enablement to unions to standardized wages across firms within the same industry.<sup>52</sup>

3. Promotion of 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.<sup>53</sup> In fact, it is generally recognised that Trade Union's ability to enforce collective agreements has created the possibility of improved labour contracts and arrangements and higher economic efficiency.

#### 4.0 Effect of Collective Bargaining on Contract of Employment

Every contract of employment is made manifest through a collective bargaining which its resultant effect is a collective agreement that stipulates the terms and conditions of work between the employer and employee. Meanwhile, in the absence of an express collective agreement, it is assumed to be implied as the right of employees to good terms and working conditions is sacred and cannot be compromised for anything not promoting their welfare. Further, Professor Okene observed that:

It is the principle of the common law that a contract of employment like any other contract is strictly the affairs of the employer and the worker. Thus, a collective agreement cannot create a contract of employment but once the latter has been brought into existence by the act of the parties their rights and obligations may be governed by the collective agreements. A collective term may be expressly incorporated into the individual contract of employment if the parties so desire. Such a collective term then becomes ipso facto part of the individual contract of employment. Note that the incorporation must be by clear and unambiguous words.<sup>54</sup>

In *Pearson v William Jones Ltd*,<sup>55</sup> the collective agreement read thus “any overtime working is in accordance with the provisions of national agreements currently between the Engineering Employer's and the Confederation of Ship Building and Engineering union”. This is a good

---

<sup>50</sup> *ibid*

<sup>51</sup> R B Freeman and J I Medoff, ‘*What Do Unions Do?*’ (New York: Basic Books, 1984) 5

<sup>52</sup> *ibid*

<sup>53</sup> *Ibid* F C Nwoke (note 189 at 93

<sup>54</sup> O.V.C. Okene, ‘*Labour and Industrial Relations in Nigeria*’ (4th ed.; Zubic Infinity Concept, 2019) 224-225

<sup>55</sup> [1967] 2 All ER, 1062

example of express incorporation which contrasts with another case, *Camden Exhibition and Display Ltd v Lynott*,<sup>56</sup> where the collective agreement was found to be obscure. Again, in lending his voice of erudition to the earlier mentioned, Professor Okene opined thus:

Note that even where the contract of employment is silent on the collective agreement, it can still operate as an implied term. An implied term cannot however be invoked to contradict the express words of the contract of employment. Where a worker joins a going enterprise, he may in law be found irrespective of his knowledge to have taken his employment on the same term whatever they were as the other workers had.<sup>57</sup>

A collective agreement can therefore, be a legal code in that it prescribes the contents of the existing contract of employment and determines beforehand the contents of those who are yet to come.<sup>58</sup> Furthermore, where the employer has consistently observed certain collective terms and procedures it may be implied into the individual contract of employment by usage or custom which the employer may have intended to be so binding. In *Daniel v Shell BP Petroleum*<sup>59</sup>, it was decided that a custom or a trade practice may be presumed to have been incorporated into the terms of employment where no express provision is agreed.

However, it has been established in the case of *Grief v Imperial Tobacco Co Ltd*<sup>60</sup>, that not every custom or usage that can have such legal effect as seen above. Here, the plaintiff brought an action against his employers who were defendants claiming part of a bonus which had been withheld from him and other worker who had participated in a strike. It was held by the court that there was no implied term in *Grief's* contract which entitled him to the full bonus. More so, the company had made it clear that the payments were not intended to be more than gifts. According to the court, mere repetition of gratuitous payment cannot convert that which is gratuitous into a contractual obligation.

## 5.0 Legal Status of Collective Agreement

One recurring question in the regime of collective bargaining is the status of agreement reached, the legal enforceability or justiciability of such collective agreement.<sup>61</sup> Noting that

---

<sup>56</sup> [1966] 1 QB, 55

<sup>57</sup> Ibid OVC Okene (at note 205) *Sagar v Ridehalgh and Sons Ltd* [1930] ALL ER, 288; [1931] 1 CH, 3; *National Coal Board v Gallery* [1958] 1 All ER, 91

<sup>58</sup> (n205) 225

<sup>59</sup> Ibid, 226

<sup>60</sup> [1962] 1 All NLR, 19

<sup>61</sup> [1963] *Guardian Newspaper* 30 April... 162, in O V C Okene, 'Labour and Industrial Relations in Nigeria' (4th ed.; Zubic Infinity Concept, 2019) 226

<sup>61</sup> S Erugo, *Introduction to Nigerian Labour Law* (2nd ed., Princeton and Associate Publishing Co. Ltd, 2019) 340

collective bargaining is a rule-making process, should the rules made not be enforceable for a consummation of parties' agreement? It does appear that it would be save to adopt the rules made on grounds of it being a bye-product of *consensus ad idem*. Rules made by the parties should be observed, and respected and may be enforceable but whether such may be enforceable by court process is a further question determined by the general rules of contract and sometimes statute as Okene observed.<sup>62</sup> The precise legal status of collective agreements is affected by both common law principles regulating formation of contracts enforceable at law and statutory provisions. The result of this is that as a general rule, collective agreements are non-justiciable and devoid of legal sanctions.<sup>63</sup>

The general position of the law as to collective agreement is as a result of its vision to the effect that the parties did not intend to create legal relations, therefore, never intended to be legally bound by an agreement resulting from the foregoing. The court in *Nigeria Arab Bank Ltd v Shuiabu*,<sup>64</sup> observed that "collective agreement is at best a gentleman's agreement, an extra-legal document devoid of sanctions. It is a product of trade unionists' pressure." The question whether collective agreements are contracts *stricto sensu* and therefore enforceable came up the first time in *Ford Motor Company v Amalgamated Union of Engineering and Foundry Workers*<sup>65</sup>, where the court per Mr. Justice Geoffrey Lane held that the parties could not enforce the collective agreement as contract as the court found no contractual intent. He noted that without such intention to create legal relations there is no contract only an unenforceable gentleman's agreement.

The legal status of collective agreement shall be considered in two headings namely:

- a. Under the Common Law
- b. Under the Statute.

## 6.0 Collective Agreement under the Common Law

Essentially, the prevailing attitude and industrial practice in the work environment at the earliest period influenced the judge-made laws which led to negative perception about the workers in favour of the employers' interest under the pains of 'he who hires reserves the right to fire off the employees at will'.<sup>66</sup> Subsequently, this general attitude and perception about employees at work environment crystalized into the common law principle that collective agreements were not and are not enforceable at law between the parties thereto<sup>67</sup> and even if it is enforceable, the question of who has the locus to so enforce continues to resonate. This arises

<sup>62</sup> *ibid*

<sup>63</sup> *Texaco v Kehinde* [2002] 6 NWLR (Pt. 768) 224, *Nwajagu v BAICO* [2000] 14 NWLR, (Pt. 687) 36

<sup>64</sup> [1991] 4 NWLR (Pt. 186) 450

<sup>65</sup> [1969] 2 QB, 303; *ACB v Nwodika* [1996] 4 NWLR (Pt. 443) 470

<sup>66</sup> M J D Akpan, 'Nature of Collective Agreement in Nigeria: A Panoramic Analysis of Inherent Implementation Challenges' (2017) Vol. 5, *Global Journal of Politics and Law Research*, 20

<sup>67</sup> *Ford v AUEF* [1969] 2 QB 303

because the sacred doctrine of privity of contract would deny an individual employee right of enforcement. This propelled the court to in *Union Bank of Nigeria Ltd v Eder*<sup>68</sup> per Uwaifo JCA state that:

Collective labour agreement is not justiciable. It is a collective agreement between employers and employees in their capacities as bodies of certain institutions... 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 that agreement... it is not for any individual employee to found a cause of action on the agreement to which he is not a party.

Remarkably, in Nigeria, common law principle has been adopted by the courts with additional requirement that before collective agreement could be enforceable, such agreement must not only be in writing but it must also be incorporated into the terms of the existing employment of each of the employee concerned.<sup>69</sup> Also, in *Mrs. Risi Shuiabu v Union Bank of Nigeria Plc*<sup>70</sup>, the Court of Appeal accepted that a collective agreement, which was pleaded by the plaintiff and admitted by the defendant, was binding on the parties. It would appear that there is a progressive paradigm shift in judicial attitude on the issue of enforceability of collective agreements.<sup>71</sup> In a plethora of cases, the courts have held that where the employer has placed reliance on the collective agreement in arguing his case, he would not be heard to say that the agreement upon which he has already relied on is unenforceable by the employee because it is not incorporated into his contract of employment.<sup>72</sup> In *Nwobosi v ACB Ltd*,<sup>73</sup> the defendant bank had pleaded a particular collective agreement in defense and the court found same was binding on the parties. Subsequently, the court in *ACB Ltd v Nwodika*,<sup>74</sup> adopted the foregoing position where it held the bank's adoption of the collective agreement to be binding.

## 7.0 Collective Agreement under the Statutes in Nigeria

In Nigeria, industrial relations matter is placed on the Exclusive Legislative List; therefore, the National Assembly is exclusively legally empowered to legislate on such subject-matter.<sup>75</sup> The intervention of the law came through or upon the establishment of the Trade Disputes Act to make collective agreement binding upon fulfillment of certain conditions. By virtue of its

<sup>68</sup> [1993] 4 NWLR (Pt. 287) 288; *NNB Plc v Egun* [2001] 7 NWLR (Pt. 711) 1; *Afribank Plc v Osisanya* [2000] 1 NWLR (Pt. 624) 598; *Nigeria Society of Engineers v Mrs Bimbo Ozah* [2015] 16 NWLR (Pt. 1454) 76; *Unity Bank Plc v Solomon Owie* [2011] 5 NWLR (Pt. 1240) 273 and *Unity Bank of Nigeria Plc v Samuel Chinyere* [2010] 10 NWLR (Pt. 1203) 453

<sup>69</sup> *Osoh v Unity Bank Plc* [2013] 9 NWLR (Pt. 1358) 1

<sup>70</sup> [1995] 4 NWLR (Pt. 388) 173

<sup>71</sup> V Iwunze, 'The General Unenforceability of Collective Agreements under Nigerian Labour Jurisprudence: The Paradox of Agreement without Agreement' (2013)(4), *International Journal of Advanced Legal Studies and Governance*, 5

<sup>72</sup> *ibid*

<sup>73</sup> [1995] 6 NWLR (Pt. 404) 658

<sup>74</sup> [1996] 4 NWLR (Pt. 443) 470

<sup>75</sup> Section 4 (2) Constitution of the Federal Republic of Nigeria, 1999, as amended; see also 2<sup>nd</sup> schedule, part II, item 34

section 3(1), where there exists any collective agreement for the settlement of a trade dispute, at least three copies of the said copies of the said agreement shall be deposited by the parties to the Minister. It went further in its subsection (3) to provide that, subject to the provisions of this Act, the Minister may, upon receipt of copies of collective agreement deposited in accordance with subsection (1) of this section, make an order, the terms of which may in respect of that agreement specify that the provisions of the agreement or any part thereof as may be stated in the order, shall be binding on the employers and workers to whom they relate. Instructively, if any person fails to comply with the terms of the said order, he shall be guilty of an offence and be liable on conviction to a fine of N100 or to imprisonment for a term of six months.<sup>76</sup> In *PENGASSON v Schlumberger*<sup>77</sup> where the National Industrial Court held that:

...common law rule as to the non-binding nature of Collective Agreements cannot override the statutory provisions of the Trade Disputes Act and the National Industrial Court Act which empower this court to interpret and enforce Collective Agreements. Collective Agreements are, therefore, not only binding on the parties that sign them, but are enforceable as such in this court”.

## 8.0 Right to Strike

Upon the existence of contract of employment between the employer(s) and the employees and the failure of the employer(s) to maintain and fulfill the terms and working conditions that became part of the said contract, and upon resort to negotiations and other means of resolution and consistent failure on the part of the employer(s) to implement the terms of the contract, strike becomes a last resort to the employees to force the implementation of the terms and working conditions of the contract of employment as agreed by the parties to the contract.

## 8.1 Factors that give Rise to Strike

“The only man who desires a strike for fun is the man who wants to go to hell for a pastime”<sup>78</sup> “People do not go on strike without a grievance, real or imagery... sometimes they have ample justification... [s]ometimes they do so wantonly. The important thing to do is to find out why strikes occur”.<sup>79</sup> Evidently, strike serves as a tool in the hands of the employees to necessitate the implementation of the ingredients of the collective agreement between them and the employer. Sadly, this is the odd which has formed a suzerain situation and bedeviled the

<sup>76</sup>Trade Disputes Act, Cap T8, LFN, 2004, s 3(4)

<sup>77</sup> [2008] 11 NLLR (Pt. 29) 164, 183, paras B-H, and *Senior Staff Association of Nigerian Universities v Federal Ministry Education* (Unreported) NICN/ABJ/82/2016 judgment delivered on 5 December, 2016 by a panel of three judges of NICN

<sup>78</sup> W Payne, Leader of busmen’s rank and file movement in 1936-7 as quoted in Knowles, K G J C *Strikes: A Study in Industrial Conflict* (New York Philosophical Library, 1952) 30

<sup>79</sup> O Kahn-Freund, *Labour and the Law* (London: Stevens and Sons, 1972) 227; P Davies and M Freedland, *Kahn-Freund’s Labour and the Law* (London: Stevens and Sons, 1983) 291. Expressing a similar view on the rational for strikes, Adeogun noted that “they are about grievances, actual or imagined arising from industrial life”. See A A Adeogun, ‘Strikes- The Law and the Institutionalisation of Labour Protest in Nigeria’ (1980) 16(1) *Indian Journal of Industrial Relations*, 1

Nigerian educational system for months.<sup>80</sup> Some factors that give right and rise to strike are considered as follows:

- a. Refusal to Recognise a Union or Workers Group as a Collective Bargaining Party: The essence of collective bargaining will be worthless without recognition to the union by the employer, which serve the interest of its members for whose sake the negotiation is initiated. Freedom of association will be meaningless to workers if employers were entitled to refuse to recognise their organisation for purposes of bargaining.<sup>81</sup> This would defeat the purpose of the existence of trade unions, which is the protection of their members' interest.<sup>82</sup>

This fact was confirmed by the National Industrial Court in *Stadium Hotel v National Union of Hotels and Personal Services Workers*<sup>83</sup> where the court found and held that the main cause of the strike was non-recognition of the respondents by the appellants. The ILO has accepted that the fact that a strike is called for recognition of a union is a legitimate interest which may be defended by the workers and their organisations.<sup>84</sup>

- a. Refusal to Accede to Unions Demand/Failure of Negotiation: Workers or unions' unaccepted demands for higher wages, benefits, or other contract improvements tend to give to industrial action... where the employer fails to accept the unions' demands or refuses to negotiate with them.<sup>85</sup>

This has been the trend in Nigeria labour atmosphere as the employer (federal government) is in constant default of not granting the employees demands. The foregoing has led to too many industrial actions and of recent was that embarked by the Nigerian Labour Congress in March of 2020 that lasted for over seven months.

- b. Failure to Implement Collective Agreement: Contract of employment is made manifest upon the terms and conditions resulting to collective agreement by the parties, and the failure to implement it generates a strike action. Thus, the strike to compel an employer or employee to accept or not to accept terms of employment and physical condition of work is a strike used as an instrument of collective bargaining.<sup>86</sup> In apparent recognition of this fact the court in the case of *Union Bank of Nigeria Ltd v Edet*<sup>87</sup> noted that: "whenever an employer ignores or breaches a term of that agreement resort could only

<sup>80</sup> National Industrial Court Decision Between FGN and Anor. v ASUU(suit No: NICN/AB/270/2022)

<sup>81</sup> O V C Okene, *Labour Law in Nigeria: Selected Essays*, (Zubic Infinity Concept, 2019) 173

<sup>82</sup> *ibid*; ILO Committee on Freedom of Association: Digest of Decisions, 1996, para 822; see also Committee on Freedom of Association: Digest of Decisions 1985, para 618

<sup>83</sup> [1978/9] NICLR, 18; *National Union of Gold, Silver and Allied Trade v Albury Brothers Ltd* [1979] ICR, 85; *Nigerian Sugar Company Ltd v National Union off Food, Beverages and Tobacco Employees* [1978/9] NICLR, 12-13

<sup>84</sup> ILO Committee on Freedom of Association: 2006 Digest of Decisions, para 535

<sup>85</sup> *Ibid* (at note 235) 175

<sup>86</sup> *ibid*, (at 178)

<sup>87</sup> [1993] 4 NWLR (Pt. 287) 288, 291

be had, if at all, to negotiation between the union and employer and ultimately to a strike action should the need arise and it be appropriate.”

## 8.2 Restrictions to Right to Strike

The right to strike is an inherent right of employees without which they will remain slaves to the employers. Thus, it will be unjust if this right is prohibited or derogated by any law of a country, without a justifiable reason akin to human right protection. Derogation or prohibition of the right to strike is beyond restriction and where such is permitted by any law; it affects the rights of all the workers to strike. On the other hand, if national law does not permit such a total abolition of the right to strike, then any curtailment could only be restriction, rather than a derogation or prohibition.<sup>88</sup>

On the principle of the right to strike, the ILO has agreed that it is permissible for certain temporary restrictions to be placed upon its exercise. Such restrictions may consist in the requirement of prior notification to the authorities or the exhaustion of the existing procedures for negotiation, conciliation and arbitration before a strike may be called.<sup>89</sup> The ILO, for example, allows national laws or regulations to determine the extent to which the armed forces and the police are to be covered by the guarantees provided in Convention No. 87.<sup>90</sup> The ILO has, therefore, refused to object to legislation banning strikes by such personnel<sup>91</sup> because they are essential service providers.<sup>92</sup>

Apart from the persons recognised by the ILO, to allow national laws prohibit their rights to strike, because of their status as essential workers, the only manner to restrict or prohibit industrial action (strike) is by the incessant fulfillment and implementation of the terms and conditions of the collective agreement by the employers, otherwise, strike action shall be continuously inevitable as it is the only industrial tool available to the employees to enforce collective agreement and demand an improved better labour environment.

## 8.3 Effect of Strike on Contract of Employment

It is a fundamental principle of common law in Nigeria that a strike action amounts to a breach of contract which makes the employee liable to dismissal by the employer.<sup>93</sup> Since strike involves refusal to work the classical view is that such action amounts to a breach of the duty to serve the employer faithfully, within the requirements of the contract, thereby causing harm

<sup>88</sup> R Birk, ‘Derogation and Restrictions on the Right to Strike under International Law’, in *Labour Law, Human Rights and Social Justice*, ed. R Blanpain (The Hague: Kluwer International, 2001) 101

<sup>89</sup> ILO, *Digest of Decisions and Principles of the Freedom of Association Committee*, 5<sup>th</sup> ed., para 549

<sup>90</sup> See Article 9(1)

<sup>91</sup> ILO, *Digest of Decision and Principles of the Freedom of Association Committee*, 3<sup>rd</sup> ed, para 221

<sup>92</sup> O V C Okene, *Labour and Industrial Relations in Nigeria* (4th ed., Zubic Infinity Concept, 2019) 269

<sup>93</sup> *Simmons v Hoover* [1977] 1 All ER, 777; *Anene v J Allen and Co Ltd* [1975] 5 UILR, (Pt. iv) 404

to his business, hence the employee(s) dismissal irrespective of the fact of whether the employee(s) gives notice<sup>94</sup> or not to the employer.

Similarly, in *Management of Gulf Oil Company of Nigeria Ltd v NUPENG*<sup>95</sup> four union officials were dismissed for participating in a strike. The National Industrial Court upheld their dismissal for breach of contract of employment.

However, the dismissal of workers because of strike is a serious violation of international law<sup>96</sup> because strikers want to continue with the existing but improved contracts of employment<sup>97</sup>, hence the strike action. Further, when workers are dismissed for having exercised the right to strike, the conclusion is that they have been punished for their Trade Union Activities and discriminated against.<sup>98</sup>

## 9.0 Conclusion

Labour rights are invariably the crux of every contract of employment and require no alternative, substitution or subjection to any other except in preservation and protection of human rights subject to natural justice. A friendly labour environment can only be achieved when employers regard, observe and respect collective labour rights of the employees and implement agreed rules as detailed in this chapter. In the next chapter summary of finding, conclusion and recommendation shall be considered.

## 10.0 Recommendations

This paper recommends the following as a means of ensuring fair and smooth labour practice to enhance productivity and healthy working environment in Nigerian.

1. One of the defects of the Nigerian labour jurisprudence is the inability of an employee, who is a member of a labour union with which his employer entered into a collective agreement with to enforce same. It is hereby suggested that a law be made to give the individual employee the *locus standi* to seek redress and enforce his or her rights to enforce those agreements, mostly, where the violation of it by the employer affects his rights.
2. Every person has an incontestable inalienable right of access to the court to seek redress upon perceiving infringement or after an infringement of his or her rights. Thereupon,

<sup>94</sup> K Forster, 'Strikes and Employment Contracts' (1972) 34 *Modern Law Review*, 275

<sup>95</sup> [1987] NICLR, 134; *Secretary of State v ASLEF* (No.2) [1972] 2 ALL ER, 949; *Miles v Wakefield DC* [1987] ICR, 386 per Lord Templeman; *Federated Motor Industries (Division of UAC Ltd) v Automobile Boatyard, Transport Equipment and Allied Workers Union* [1978/9] NICLR, 152-169; *Grizi (Nigeria) Ltd v Grizi (Nigeria) Ltd Group of Companies Workers' Union* [1978] NICLR, 204

<sup>96</sup> ILO: Digest of Decisions and Principles of the Freedom of Association Committee Fifth (Revised) edition (Geneva: International Labour Office, 2006), paras. 661-666

<sup>97</sup> *Boxfoldia Ltd v The National Graphical Association* [1988] ICR, 753, 756; per Saville, J; E Sykes, *Strike Law in Australia* (London: Sweet and Maxwell) 57

<sup>98</sup> (n243) 662

section 2(1) of Trade Disputes Act, 2004 that prohibits an individual's right of court access on matters of trade disputes, inter or intra union disputes is unconstitutional and should not be allowed to thrive.

3. The collective agreement between the (union of) employee and the employer encompasses the terms and conditions of employment, wages etc. However, section 19 of the Trade Disputes Act 2004 restricting the powers of the employer to increase wages except as approved by the Minister and that where the employer or a corporate body, *suo moto* does such increment it becomes an offence punishable by imprisonment or payment of fine should be repealed as a recalcitrant Minister will keep increment of the employees' wages stagnant amidst economic meltdown and poor working condition.
4. The refusal and neglect of employers to play by the rules should be criminalized: Interestingly, the new section 254C (5) of the 1999 Constitution has decorated the National Industrial Court of Nigeria (NICN) with criminal jurisdiction to entertain criminal matters emanating from the workplace. The refusal of the employer to recognise a union or workers group as a collective bargaining party; his refusal to accede to the agreed demands of the union or failure to accept negotiation; and failure to implement collective agreements which can be some factors that give rise to a strike action. Seeing that the action of strike has an adverse effect on the contract of employment, thereby straining the relationship between the employer and the employee. Therefore, some factors that give rise to strike as outlined above should be made a crime by a statute to defeat the aforementioned negativities, to ensure robust growth and development of the Nigerian economy.
5. There should be a review of the Acts regulating labour relations in Nigeria, especially as it has to do with sections providing for payments of fines as a punishment for an offence, as the amounts for the fines are not contemporaneous with modern society. For instance, the ₦100 fine imposed by section 3(4) of the Trade Dispute Act, 2004.