

COLLECTIVE BARGAINING, STRIKES AND THE QUEST FOR INDUSTRIAL PEACE IN NIGERIA*

1. Introduction

Nigeria has recently witnessed a huge increase in the number of industrial actions. No day passes in Nigeria without strikes or threats of strikes in one form or another.¹ What was once thought to be a 'British disease'² seems to have become a Nigerian disease. In fact, strikes have become so endemic in Nigeria that even our courts would be prepared to take judicial notice of them.³ This development, however, is not very healthy. In the first place, it destroys the desired growth and development in the economy and secondly, Nigeria's desire to encourage foreign investment will be hindered as no serious foreign investor will be willing to put down investments in a country bedevilled by bitter industrial disputes and strikes over wages and conditions of service. The implication of withdrawal of foreign investments may appear as another indication of a nose-diving economy.⁴

There is a firm international consensus that the right to freedom of association enables the workers to aggregate, join and form trade unions for the protection of their economic and other interests.⁵ Freedom of association is the key enabling right and the gateway to the exercise of a range of other rights at work.⁶ When workers join and form trade unions they are entitled to recognition for the purpose of collective bargaining with the employer with a view to improving the terms and conditions of the employment of workers. Thus, recognition of the workers right to freedom of association carries with it the recognition of the right to collective bargaining, as one of its important components.

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¹ See for example, 'Nigeria Faces General Strike' <http://www.chinadaily.com.cn/english/doc/2004-10/11/content_381370.htm> Strikes threatens Nigeria's oil production <http://www.chinadaily.com.cn/english/doc/2004-10/11/content_381370.htm> 10 June, 2007; General Strike Stops Nigeria <<http://www.socialistparty.org.uk/2004/352/index.html?id=np4.htm>> 10 June, 2007; Nigeria: 'A Strike For Democracy' <<http://www.socialistparty.org.uk/2004/352/index.html?id=np4.htm>> 10 June, 2007; Nigeria: 'ASUU strike continues' <<http://allafrica.com/stories/200705160726.html>> 10 June 2007.

² The widespread perception was that Britain compared with other countries had a particularly high level of strikes, such that industrial action came to be known as the 'British disease'. See S. Honeyball and J. Bowers, *Textbook on Labour Law* (Oxford: Oxford University Press, 2004), p. 389. Indeed, as far back as 1880 at the beginning of his learned lecture on Strikes to the Royal Statistical Society in Britain, George Phillips intoned, "Striking has become a disease, and a very grave disease, in the body social". See L. H. Itaimson and C. Tilly., (eds.) *Strikes, Wars and Revolutions in an International Perspective* (Cambridge: Cambridge University Press, 1989), p. 81.

³ See P. Ehi Oshio, "Bank Strikes and the Law in Nigeria", in E. Chianu (ed.) *Legal Essays in Honour of Professor Sagay* (Benin City: Dept of Public Law, University of Benin), p. 171.

⁴ See S. O. Koyonda, "Enforcement of Collective Agreements in Nigeria: Need for Legislative Intervention" (1999) 3: 2 *Nigerian Law and Practice Journal*, p. 37

⁵ For detailed discussion, see L. Swepston, "Human Rights and Freedom of Association: Development Through ILO Supervision," 137:2 *International Labour Review* 169-194 (1998); Gillian Morris, "Freedom of Association and the Interests of the State," in K.D. Ewing, C.A. Gearty, and B.A. Hepple, (eds.), *Human Rights and Labour Law: Essays for Paul O'Higgins* (London and New York: Mansell Publishing Limited, 1994), p. 2; Sheldon Leader, *Freedom of Association: A Study in Labor Law and Political Theory* (New Haven and London: Yale University Press, 1992), pp. 123-265; W.B. Creighton, "Freedom of Association," in R. Blanpain, (ed.), *Comparative Labour Law and Industrial Relations* (Deventer: Kluwer, 1990), Chapter 17; R. Ben-Israel, *International Labour Standards: The Case of the Freedom to Strike* (Deventer: Kluwer, 1988 C.W. Jenks, "International Protection of Freedom of Association For Trade Union Purposes," 87:1 *International Labour Review* 1-115 (1955).

⁶ Press Release (ILO/00/17): Pioneering ILO Global report calls for more widespread respect for rights at work <www.ilo.org/public/english/bureau/inf/pr/2000/17.htm> Last accessed 10 June 2007. See also, "Your Voice at Work: First global report on Freedom of Association and Collective Bargaining" <www.ilo.org/public/english/bureau/inf/download/magazine/pdf/mag35.pdf> Last accessed 10 June 2007

Collective bargaining constitutes an important means by which workers seek to satisfy their economic and social interests. Successful collective bargaining is crucial to the attainment of industrial peace in Nigeria. Nigerian labour law provides for automatic recognition of trade unions for collective bargaining purposes. This means that the employer must recognise registered trade unions in his establishment and bargain with such unions in their bid to safeguard their economic interests in employment. The duty to recognise a trade union is coterminous with the duty to negotiate with it and conclude agreements. Thus, a refusal by an employer to recognise and bargain with a union or adhere to the agreement arrived at could lead to strikes by the workers to realise such improvements in working conditions.

Thus, while the constant strikes in Nigeria may affect growth and development in the economy, the question here is why do workers go on strike? What is it that motivates strikes? Or to put it another way, why is there lack of industrial peace in Nigeria? The main justification for industrial action is the failure of collective bargaining. When workers and employers engage in collective bargaining there is no guarantee that the outcome will always be successful. Even where bargaining is successful there is similarly no guarantee that the resulting agreement will be honoured. Consequently, unsuccessful bargaining or failure to adhere to agreed terms naturally lead to industrial action and the dislocation of industrial peace. Clearly the cause of the incessant strikes and lack of industrial peace in Nigeria is the failure of collective bargaining.

The aim of this article is to consider the role of collective bargaining and strikes in the quest for industrial peace in Nigeria. In the first part we shall examine the concept, rationale and purposes of collective bargaining. The second part considers the link between collective bargaining and the right to strike and the third part considers some of the factors that provoke workers to undertake industrial action. This article argues and demonstrates that collective is a veritable instrument of industrial peace but that the lack of industrial peace in Nigeria is due to the aloof attitude of employers in Nigeria to sincerely negotiate and implement concluded agreements. The article argues that such behaviour is a violation of the principle of collective bargaining in international law and this gives legitimacy to incessant strikes. The article further argues that if industrial peace must be achieved in Nigeria then employers, including the government, must take collective bargaining and the negotiation and implementation of agreements very seriously.

2. CONCEPT OF COLLECTIVE BARGAINING

Collective bargaining involves a process of consultation and negotiation of terms and conditions of employment between employers and workers, usually through their representatives. It involves a situation where the workers union or representatives meet with the employer or representatives of the employer in an atmosphere of mutual cooperation and respect to deliberate and reach agreement on the demands of workers concerning certain improvements in the terms and conditions of employment. Under Nigerian law, Section 91 of the Labour Act⁷ defines collective bargaining as the process of arriving or attempting to arrive at a collective agreement.⁸

⁷ Chapter L.1 Laws of the Federation of Nigeria 2004. 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 organizations of the one part; and (b) an organisation representing employers or an association of such organization of the other part. See *ibid*.

⁸ Collective bargaining has also been defined as 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 organisations. See Ministry of Labour (UK) Industrial Relations Handbook revised edition

Two essential conditions for collective bargaining to occur include the freedom to associate and the recognition of trade unions by employers. This means that workers must be at liberty to associate and to join or form trade unions in order to be able to bargain collectively. There seems to be an established link between freedom of association and collective bargaining, since there would be no point in giving workers the right to organize if they could not bargain collectively. Collective bargaining is recognised and protected by the ILO and generally in international law⁹.

2.1 The ILO and Collective Bargaining

The International Labour Organisation is the pre-eminent authority on international labour standards. The ILO provides the major human rights instruments that guarantees and advances the right to collective bargaining throughout the whole world. In the 1944 Declaration of Philadelphia which is now part of the ILO Constitution the role of the ILO in the promotion of collective bargaining was acknowledged. The Declaration affirmed “the solemn obligation of the international Labour Organisation to further among the nations of the world programmes which will achieve...the effective recognition of the right of collective bargaining.”¹⁰

The ILO Convention 98 on the Right to Organise and Collective Bargaining which was adopted in 1949 is the main source of workers right to collective bargaining. Apart from Convention 98, there are numerous other Conventions and Recommendations which promotes collective bargaining between workers and their employers such as Convention No. 154 Collective Bargaining Convention 1981, Convention No. 135 Workers’ Representative Convention 1971, and Convention No. 151 on the right of public employees to organise.¹¹

HMSO, 1961, at P.18; See also section 178(1) of the Trade Unions and Labour Relations (Consolidation) Act, 1992. ILO Collective Bargaining Convention No. 154, adopted in 1981, defines collective bargaining in Article 2 as follows: “The term collective bargaining extends to all negotiations which take place between an employer, a group of employers or one or more employers’ organisations, on the one hand, and one or more workers’ organisations, on the other, for: (a) determining working conditions and terms of employment; and/or (b) regulating relations between employer or their organisations and a workers’ organisation or workers’ organisations.” See ILO: International Labour Conventions and Recommendations, 1977-1995 (Geneva, 1996d), p.93. For further definitions of collective bargaining, see Ogunniyi, O., *Nigerian Labour and Employment Law in Perspective* (Lagos: Folio Publishers, 1991), p. 276; T. Fashoyin, *Industrial Relations in Nigeria* (Nigeria: Longman Nigeria Limited, 1992), p. 103; E.E. Uvieghara, *Labour Law in Nigeria* (Lagos and Oxford: Malthouse Press Ltd, 2001), p. 388; H. Arthurs, “Understanding Labour Law: The Debate on Industrial Pluralism” (1985) 1 *Current Legal Problems* 83; E. Cordova, “Collective Bargaining” in Blanpain, R., (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. Macwer, and C.H. Page, *Society* (London: Macmillan Press 1953), p. 5.

⁹ See for example, Article 6(1) - (3) of the European Social Charter 1964 (Revised 1996). The African Charter on Human and Peoples’ Right 1981 does not specifically provide for the right to collective bargaining or for trade union rights for that matter, it is submitted that a conjoint reading of Articles 10, 5, and 15 of the Charter provides support and basis for collective bargaining. Notwithstanding the absence of direct provision on trade union rights in the African Charter of Human and Peoples’ Rights, the Commission has provided detailed guidance on trade union rights in its Guidelines for the Submission of State Reports. Under the Guidelines, States are obliged to provide information on laws, regulations and court decisions that are designated to promote, regulate or safeguard trade union rights, which include the right of trade unions to function freely, collective bargaining and the right to strike. See Promotion, Protection and Restoration of Human Rights (Guidelines for National Periodic Reports) ACHPR DOC. AFR/COM/HRP.5 (IV) (Oct. 1988), Section 11 (10) – (16), reprinted in African Commission on Human and Peoples Rights, Documentation No. 1: Activity Reports (1988-1990), p. 45. See also V.O. Nmeielle, *The African Human Rights System: Its Laws, Practice, and Institutions*, (Kluwer: Martinus Nijoff Publishers, 2001), p. 36. For more discussion, see generally R. Murray and M. Evans, *Documents of the African Commission on Human and Peoples’ Rights*, (London: Hart Publishing, 2001), pp. 127-204.

¹⁰ ILO: *Constitution of the International Labour Organisation and Standing Orders of the International Labour Conference* (Geneva, 1998), pp. 23-24.

¹¹ See also Recommendation 91: Collective Agreements Recommendation 1951, Recommendation 92: Voluntary Conciliation and Arbitration Recommendation 1951, Recommendation 94: Co-operation at the Level of the Undertaking Recommendation 1952, Recommendation 113: Consultation (Industrial and National Levels)

The ILO has consistently considered freedom of association and the right to collective bargaining to be among the core rights that are at the heart of ILO's mission. Outside these Conventions and Recommendations, the significance of the right to collective bargaining has severally been acknowledged by the ILO Committee on Freedom of Association. Several years ago the Committee declared that:

*The right to bargain freely with employees with respect to conditions of work constitutes an essential element in freedom of association, and trade unions should have the right, through collective bargaining or other lawful means; to seek to improve the living and working conditions of those whom the trade unions represent and public authorities should refrain from any interference which would restrict this right or impede the lawful exercise thereof.*¹²

Recently, in June 1998, the ILO adopted the Declaration on Fundamental Principles and Rights at Work. The Declaration embodies the principles of eight fundamental Conventions and all member States are required to observe these principles regardless of ratification, as a condition of membership. As stated in the Declaration: "all Members, even if they have not ratified the [fundamental] Conventions, have an obligation, arising from the very fact of membership in the Organisation, to respect, to promote and to realise, in good faith and in accordance with the Constitution, the principles concerning the fundamental rights which are the subject of those [fundamental] Conventions."¹³ The principles referred to in the Declaration include freedom of association and the effective recognition of the right to collective bargaining, the elimination of forced and compulsory labour, the effective abolition of child labour and equal remuneration and elimination of discrimination in occupation and employment.

There can be little doubt that the ILO has demonstrated its support for collective bargaining as a means through which the protection of the economic and social interests of workers can be achieved. Though not specifically mentioned in Convention 87 or 98, a long tradition of ILO jurisprudence has also established the right to strike as an essential component of collective bargaining. We shall return to this link between collective bargaining and the right to strike shortly.

Recommendation 1960, Recommendation 130: Examination of Grievances Recommendation 1967, Recommendation 143: Workers' Representatives Recommendation 1971, Recommendation 163: Collective Bargaining Recommendation 1981, Recommendation 129: Communication within the Undertaking Recommendation 1967 and OECD Guidelines for Multinational Enterprises 1976; revised in 2000.

¹² ILO Report No. 44, Case No. 202, Para. 137 (1960)

¹³ ILO 1999a Freedom of Association: An Annotated Bibliography (Geneva 1999), p. 51; see also H. Kellerson, "The ILO Declaration on Fundamental Principles and Rights: A Challenge for the Future" (1998) 137:2 *International Labour Review* pp. 223-227; B. Gernigon, A. Otero, and H. Guido, "ILO Principles Concerning Collective Bargaining" (2000) 139:1 *International Labour Review* pp. 33-55

2.2 Collective Bargaining Framework in Nigerian Law

As a former British colonial territory, Nigeria inherited certain socio-economic and political values and institutions. Nigeria's industrial relations system is one of such British colonial legacies. It was fashioned in line with the British industrial relations system whose " main feature is the voluntary machinery which has grown up over a wide area of employment from industry-wide collective bargaining and discussion between employers' associations and trade unions over terms and conditions of employment."¹⁴

It was this basic characteristic of the British industrial relations system that is, the doctrine of voluntarism that was entrenched in Nigeria's industrial relations. Okotie-Eboh, Nigeria's Minister of Labour in the First Republic, perhaps, puts the picture clearly when he stated:

*We have followed in Nigeria the voluntary principle which was so important an element in industrial relations in United Kingdom...compulsory methods might occasionally produce a better economic or political result, but labour-management must, I think, find greater possibilities, mutual harmony where results have been voluntarily arrived at by free discussion between two parties. We in Nigeria, at any rate, are pinning our faith on voluntary methods.*¹⁵

It was against this background that the principle of free and voluntary collective bargaining was pursued. Thus non-interventionism and voluntary collective bargaining prevailed to a great extent as the main method of regulating labour relations in Nigeria. However it must be noted that statutory intervention has taken place principally designed to strengthen the process of collective bargaining and industrial relations or to serve as substitutes for non-existent or non-functioning collective bargaining.¹⁶

Under Nigerian Labour Law, the most important step in the collective bargaining procedure is for the employer or the employers' association to recognise the trade union as a bargaining agent for the employees within the bargaining unit, in relation to terms and conditions of employment. Section 24 of the Trade Unions Act provides 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. Similarly, for the purpose of representation at Tripartite Bodies or any other body the registered Federations of Trade Unions shall constitute an electoral college taking into account the size of each registered Federation, for the purpose of electing members who will represent them.¹⁷ Where a trade union is recognised, the next step is for a recognition agreement to be drawn up to determine how the negotiations will be conducted, the composition of the machinery and other procedural matters.

Once a trade union has been recognised and a recognition agreement is drawn up between the parties bargaining can then proceed as provided by the law. In this regard,

¹⁴ Clegg, H., *The System of Industrial Relations in Great Britain*, (Oxford: Basil Blackwell, 1976), p.20

¹⁵ International Labour Office Ministerial Conference Record of Proceedings, 38th Session, Geneva (1955), p.33; Similar views were expressed by Prime Minister Tafawa Balewa. See Annual Report of the Department of Labour 1954 -5, Para. 20.

¹⁶ See O. Ogunniyi, *Nigerian Labour and Employment Law in Perspective* (Lagos: Folio Publishers, 1991), p. 277.

¹⁷ Section 24(1) and (2) These new provisions are by virtue of section 5 of the Trade Union (Amendment) Act 2005.

the Wages Board and Industrial Councils Act 1990¹⁸ provides for three bargaining fora in Nigeria. The three fora have appropriate wages and conditions of service as their main objective. Bargaining can be effected by Industrial Wages Boards, National Wages Board and Area Minimum Wages Committees or by Joint Industrial Councils.¹⁹

2.3 Purposes of Collective Bargaining

The principal purpose of collective bargaining is to settle and determine terms and conditions of employment. Improvements 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.²⁰ 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 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.*²¹

It is because of the apparent imbalance of power between the employees and employer that has necessitated the desire of workers to come together. Workers appreciate that bargaining will give them near equal relationship with their employer. They realise that against the power of employers, the individual worker has almost no bargaining power and the chances of improving conditions of work is slim. Workers can best strengthen their negotiating position by uniting and bargaining collectively with employers. 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.²² 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.*²³

¹⁸ Chapter 466, Laws of the Federation of Nigeria, 1990

¹⁹ Sections 16, 18 and 27 of the Wages Board and Industrial Councils Act, 1990

²⁰ 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) A.C. 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. See also *Udoh v. Orthopaedic Hospitals Management Board* (1990) 4 NWLR (Pt. 142) 53.

²¹ P. Davies, and M. Freedland, *Kahn-Freund's Labour and the Law*, (London: Sweet and Maxwell 1983), p. 69. Thompson writes that the primary aim is "To serve as a means of institutionalising the inevitable clashes of interests that arises between capital and labour" See Thompson, C., *Industrial Law*, (Juta & Co. Ltd 1989), p. 281. According to Arthurs "The world of work was historically characterised by domination and exploitation. The practice of collective bargaining was therefore introduced to correct these defects" see H. Arthurs, "Understanding Labour Law: The Debate on Industrial Pluralism" (1985) 1 *Current Legal Problems* 84

²² Oslon, M., *The Logic of Collective Action* (Harvard: Harvard Press, 1905), P.20 As Sir John Wood put it "Their fundamental existence, their very purpose expressed in the phrase "Unity is strength" depends on the right to act collectively- in the ultimate the right to strike"²². See Wood, J., Sir, "The Collective Will and The Law" (1988) Vol. 17 *Industrial Law Journal*, P.6. See also Weiler, P., *Reconcilable Differences: New Directions in Canadian Labour Law* (Cassel: Toronto, 1980), p. 25; Pencavel, J., "The Legal Framework for Collective Bargaining in Developing Economies (1996), P. 10

²³ <<http://www.econ.stanford.edu/faculty/workp/soup97008.pdf>> Last accessed 20 June 2006.

Royal Commission on Trade Unions and Employers' Associations, Cmnd 3623, 1968

More specifically, we can identify four broad objectives or functions of collective bargaining to be the need for democracy in the workplace, redistribution, and the maintenance of efficiency.²⁴

²⁴ The International Labour Organization 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 would like to 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 and unrest, and indeed be a contributing factor to social stability.” See *ILO, World Labour Report 1997-98: Industrial Relations, Democracy and Social Stability* (Geneva: International Labour Office, 1997), p. 27.

2.3.1 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 jobs if he decides to leave his employment. In any case, in the event of conflicts the employer has more ability to sustain struggles than the individual employee.²⁵ This is why the employment relationship is often characterised by inequality of bargaining power.²⁶ This inequality means that individual employees are not able to take part in decisions that affect their working lives. But by joining forces and acting in concert, workers can be able to change this situation as the employer will certainly be concerned about the possibility of losing all of his employees even if not permanently. Besides, a trade union can also provide financial support to sustain the period of struggle. Collectively bargaining therefore enables workers to acquire some bargaining power-“countervailing power” to that of their employer.²⁷ This is not to say however that the employer and the employees now possess equal bargaining power, but the imbalance of power can be expected to be highly reduced under a regime of collective bargaining.²⁸

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.”²⁹ 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 on promotion, increase in salary or wages, discipline, among other. Without workplace rules being made through collective bargaining and enforced through procedures for arbitration, managerial decisions concerning employees may not meet the demands of justice and fairness. This transforms the situation of individual employees, as they are no more subject to the whims and caprices of their employers. With collective agreement, management decisions must comply with the rules set out in the agreement. Collective bargaining therefore ensures that the employers do not act like a dictator, but is subject to a ‘rule of law’. This makes the relationship between the parties to be democratic.

The second attribute of collective bargaining is that it gives employees the ability to voice their views and concerns and to generally participate in the self-government of the workplace. When acting collectively employees have the opportunity to convey their dissatisfaction and voice their concerns without fear of losing their jobs³⁰, unlike when an employee is acting individually. Thus with a collective voice employees can bring about changes in a broad range of issues in the workplace such as how the way they

²⁵ See A. Smith, *The Wealth of Nations* (Harmondsworth: Penguin 1970), p. 169.

²⁶ See, for example, P. Davies and M. Freedland, *Kahn-Freund's Labour and the Law* (London: Steven and Sons, 1983), p. 18

²⁷ See J.K. Galbraith, *American Capitalism: The Concept of Countervailing Power* (Boston: Houghton Mifflin, 1956), chapter 9.

²⁸ See K. Klare, “Countervailing Workers Power as a Regulatory Strategy”, in H. Collins *et al.* (eds.) *Legal Regulation of the Employment Relation* (London: Kluwer, 2000), pp. 63-70.

²⁹ See A. Flanders., *Management and Unions: The Theory and Reform of Industrial Relations* (London: Faber and Faber, 1970), pp. 41-42; P. Weiler, *Reconcilable differences: New Directions in Canadian Labour Law* (Toronto: Carsell, 1980), pp. 30-31; A. Cox, *Law and the National Labor Policy* (Westport: Greenwood, 1983), p. 12.

³⁰ See R.B. Freeman and J.L. Medoff, *What Do Unions Do?* (New York: Basic Books, 1984), chapter 5 See also P.C. Weiler, *Governing the Workplace: The Future of Labour and Employment Law* (Cambridge: Harvard, 1990), p. 181.

are being treated, the way the workplace operates and the future and management of the firm.³¹ Furthermore, by acting collectively employees can bring about joint management by threatening the employer with the withdrawal of their services. Thus corporate decisions on important issues are taken after negotiations with a compromise struck between the interest 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.

2.3.2 Redistribution of Power

A second function of collective bargaining is to redistribute power and resources from employers to employees. This function is based on the fact that the employers, as we have stated 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. This assumption seems to be based on redistributive justice and in fact underlies most regulations that allow and promote collective bargaining.³² 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.³³ Collective bargaining is also credited for reducing inequalities by creating pay policies that limit managerial discretion.³⁴ Also collective bargaining has enabled unions to standardise wages across firms within the same industry.³⁵ On the whole, collective bargaining is acclaimed to be a useful mechanism to reduce inequality by redistribution of power and resources.

2.3.3 Promotion of Efficiency

A third function of collective bargaining is that it helps to promote economic efficiency by limiting industrial conflict in the workplace. As a matter of fact, most laws which promote collective bargaining were designed to limit industrial conflict which is seen as inimical to efficiency.³⁶ 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 labour 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 training of workers, restrict management from discriminating between workers or opportunistic decisions such as firing some workers just before they become eligible for pension rights. In fact, it is generally recognised that the ability of trade unions to enforce collective agreements created the possibility of improved labour contracts and arrangements and higher economic efficiency.³⁷

³¹ See S. Webb and B. Webb, *Industrial Democracy* (London: Longmans Green and CO., 1926), Chapter IV.

³² See, for example, the U.S. National Labor Relations Act 1935 S. 1 U.S.C 151 which declares that the Act is intended to redress the inequality of bargaining power.

³³ See D. Belman, "Unions, The Quality of Labour Relations, and Firm Performance", in L. Mishel and P.B. Voos (ed), *Unions and Economic Competitiveness* (Armonk, M.E, Sharp 1992), p. 41; K.G. Dau-Schmidt, "A Bargaining Analysis of American Labor Law and the Search for Bargaining Equity and Industrial Peace" (1992) 91 *Michigan Law Review*, p. 419

³⁴ See R.B. Freeman and J.L. Medoff, *What Do Unions Do?* (New York: Basic Books, 1984), chapter 5

³⁵ *Ibid.*

³⁶ 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".

³⁷ See R.B. Freeman and J.L. Medoff, *What Do Unions Do?* (New York: Basic Books, 1984), p. 11 chapter 5; J. Stiglitz, "Democratic Development as the Fruits of the Labor" Keynote Address, *Industrial Relations Research Association*, Boston, January 2000) (available at < www.irra.uiuc.edu > Accessed 20 September, 2006; See also, ILO:

2.3.4 Settlement of Trade Disputes

One of the several functions 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 in winning wage concessions from employers through collective action. Where the employer fails to accede to the demands of the workers this could lead to strike action. Thus collective bargaining provides the mechanism for dispute settlement by negotiation on working conditions and terms of employment. Negotiation within the framework of collective bargaining must be conducted with a view to reaching an agreement. Collective bargaining therefore provides inducement by which union and management can accommodate each others view through compromise and persuasion. This quality is an important aspect of the system and provides the underlying basis for industrial peace, among its other several functions.

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. The lion continues to take the lion share. According to them:

*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.*³⁸

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 argument is usually put forward to justify restrictions on the right to organize and the right to collective bargaining.³⁹ However, this view may not be entirely correct. In fact, an ILO sponsored study on the issue reveals that there is no contradiction between the demands of economic development on the one hand, and freedom of association for trade union purposes on the other.⁴⁰

However, notwithstanding these misgivings, collective bargaining seems to be the best mechanism for attaining peace in the relationship between employers and employees and is particularly an effective forum for adjustments and agreement on terms and conditions of employment. Collective bargaining provides a measure to check the

Your Voice at Work 2000, Part I < www.ilo.org/public/english/standards/decl/publ/reports/index.htm > Last visited 20 September 2006

³⁸ See Karl E. Klare, "Labour Law as Ideology: Toward a New Historiography of Collective Bargaining Law" (1981) 4 *Industrial Relations Law Journal* 450. See D.M. Beatty, "Ideology, Politics and Unionism", in K.P. Swan and K.E. Swinton, *Studies in Labour law*, (Toronto: Butterworth 1983), p. 299, pp. 325 ff.

³⁹ See, for example, S. Kuruvila, and C.S. Venkataratnam "Economic Development and Industrial Relations: the case of South and Southeast Asia" (1996) 27 *Industrial Relations Journal*, 14

⁴⁰ G. Caire, *Guy Freedom of Association and Economic Development* (Geneva: ILO, 1977) (Preface by Valticos affirming that "there can be no justification for sacrificing either economic development or freedom of association")

concentrated power of capital and thus help to ensure equilibrium of forces in labour management relationship to avoid exploitation. Collective bargaining is the most consolidated and powerful institution contributing to bringing some equilibrium to unbalanced economic situations.⁴¹

Collective bargaining is crucial in a very practical way. It makes real difference to the experience of workers and is recognised as an instrument for social justice. On the whole, it seems that the benefits of collective bargaining far outweigh the shortcomings. Indeed a growing body of evidence suggests that freedom of association and the right to collective bargaining contribute to improving economic and trade performance and do not have the negative effects predicted by some economic theorists.⁴²

3. COLLECTIVE BARGAINING AND STRIKE ACTION

*The right to strike is essential to the process of collective bargaining. It is what makes collective bargaining work. It is to the process of collective bargaining what an engine is to a motor vehicle.*⁴³

This part of the article seeks to establish the inter-link between collective bargaining and the right to strike. The question may be asked whether there is indeed any connection between collective bargaining and the right to take collective action. To put it another way, what is the legitimacy of industrial action as a tool in collective bargaining? As we have earlier stated, the right to collective bargaining is intimately related to and dependent on the right to freedom of association and the right to strike. Strikes and collective bargaining help to redistribute the grossly unequal power between the parties. Workers exert economic pressure through industrial action in order to balance the unequal bargaining powers between an employer and an employee and this enhances social justice in the workplace. Collective bargaining will not be effective without a credible threat of industrial action.

Furthermore, it is recognised that collective bargaining between the workers union and the employer deals with the terms and conditions under which labour will be supplied by employees and purchased by employers and the two parties have very different perspectives on this subject. Since the employers have the rights of property and of capital, they are able to propose the terms upon which they will purchase labour for its operations. In turn, the employees have the collective right to withdraw their labour rather than to accept the employer's offer.

Without doubt, the stoppage of work initiated by the union will affect both sides. The employers operation may be shut down with the attendant loss of revenue and the employees will suffer hardship because they will be out of work and will be deprived of their salaries and wages. Both sides will be naturally hurt economically. The question may therefore arise as to: why do workers choose to bear the economic loss rather than accept the offer of the employer? The workers resort to industrial action to force the employer to reach a mutually acceptable agreement about the terms and conditions of employment. In this sense the economic purpose of strike action plays an important role in collective bargaining. Thus industrial action or the likelihood of its occurrence is seen

⁴¹ B. Hepple, *Social and Labour Rights in a Globalised Economy* (Oxford: Oxford University Press, 2002), p. 645.

⁴² See ILO: Report of the Director-General, *Organizing for Social Justice*, 2004, para. 50. See also Toke Aidt and Zafiris Tzannatos, *Unions and Collective Bargaining* (World Bank, 2002), p. 4 (the authors have noted that comparative studies reveal little systematic difference in economic performance between countries that provide for freedom of association and the right to collective bargaining, and those that do not.)

⁴³ *NUMSA & Others v. Bader Bop (Pty) Ltd & Others* (2003) 24 ILJ (CC) 305 at 367, per Ngcobo, J.

as one of the necessary conditions for collective bargaining to exist. The right to industrial action is, as it were, built into the bargaining process.⁴⁴ As has been noted:

*The strike is itself a part of the bargaining process. It tests the economic bargaining power of each side and forces each to face squarely the need it has for the other's contribution. As the strike progresses, the worker's savings disappear, the union treasury dwindles, and management faces mounting losses. Demands are tempered, offers are extended, and compromises previously unthinkable become acceptable. The very economic pressure of the strike is the catalyst which makes agreement possible. Even when no strike occurs, it plays its part in the bargaining process, for the very prospect of the hardship which the strike will bring provides a prod to compromise. Collective bargaining is a process of reaching agreement, and strikes are an integral and frequently necessary part of that process.*⁴⁵

The right to strike is not only a logical step in the collective bargaining system, but also part of the price paid for industrial self-regulation of conditions of employment. It is a necessary part of the process toward securing adjustment of expectations of economic realities. This view was acknowledged by Lord Wright in his famous dictum in 1942. As he put it for the House of Lords, "Where the rights of labour are concerned, the rights of employers are conditioned by the right of men to give or withhold their services. The right of the 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 unions bargaining power, that is for the bargaining process itself, it is also a necessary sanction for enforcing agreed rules"⁴⁶. Supporting the connection between collective bargaining and the right to strike Adeogun notes that:

*The freedom to strike and lockout is a concomitant of the collective bargaining process in that the system succeeds only to the extent that the two parties 'collective' parties are unmistakably aware of the strength of either party to organise successful industrial action to make the other party negotiate or to compel observance of the agreements reached.*⁴⁷

⁴⁴ It is one of the ironies of collective bargaining that the attainment of the object of industrial peace should depend on the threat of conflict. The reason for this dependence is a functional one. The freedom to threaten strike action and, if needs be, to carry out the threat, is protected because, in an imperfect world, the system of collective bargaining requires it. See Myburg, J.F., "100 Years of Strike Law" (2004) 25 *Industrial Law Journal*, p. 966

⁴⁵ Sykes, E.I., *Strike Law in Australia* (London: Sweet and Maxwell, 1982), p. 3.

⁴⁶ *Crofter Hand Woven Harris Tweed Co. Ltd v. Veitch* (1942) A.C. 435, 463 This view was also re-echoed by the Constitutional Court of South Africa recently in *NUMSA V Bader Bop (Pty) Ltd 2003 (3) SA 513*. As the Court stated "[The right to strike] is of both historical and contemporary 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 bargaining system." Justifying workers resort to industrial action to protect their interests, Klare also argues that "so long as massive inequalities of power in the workplace exist, employees will have a need for autonomous organisation to aggregate their interest and voices, and to identify and articulate their collective needs independent of employer domination. Autonomous organisation is needed to maximise employees' collective strength, and to allow pursuit of independent, concerted action to protect their interests." See Klare, K.E., "Workplace Democracy & Market Reconstruction: An Agenda for Legal Reform" (1988) 38(1) *Catholic University Law Review*, p. 4; See also William B. Gould IV, "Reflections on Workers' Participation, Influence and Power Sharing: The Future of Industrial Relations" (1989) 58 *Cincinnati Law Review* pp. 381-395

⁴⁷ A. A. Adeogun, "Industrial Relations and the Law", in T.O. Elias, (ed.) *Law and Development* (Lagos: University of Lagos Press, 1972), p. 122

In *Union Bank of Nigeria Ltd. V. Edet*⁴⁸ the court in confirming the link between the right to strike and collective bargaining said that whenever an employer ignores or breaches a term of that agreement resort could only be had, if at all, to negotiation between the union and the employer and ultimately to a strike action should the need arise and it be appropriate.⁴⁹ There are numerous examples of the nexus between industrial action and collective bargaining in Nigerian labour law. According to Emiola:

*But it does happen on occasions that parties to collective bargaining take positions which neither help the speed of negotiations nor make agreement easily possible. Attitudes might have hardened due to the historical antecedent of the disputes or to the fundamental nature of the issues involved. In such cases, strikes or lockouts are sometimes the inevitable consequence.*⁵⁰

Fashoyin submits that the right to strike is the ultimate weapon used by workers during collective bargaining. As he stated:

*Conceptually, the right to strike can be seen as an essential characteristic of collective bargaining. This is so because the ability of the union to bring direct economic pressure on the employer depends largely on the availability or use of the strike weapon...the presence or threat of a strike induces the parties to engage in continuous dialogue for a search for an agreement. That is to say when workers are certain that they can strike or employers are conscious of its occurrence, the seriousness of the dispute is intensified and, correspondingly, the bargaining power of the employees is increased.*⁵¹

There can be no doubt that the right to strike is very important instrument in the collective bargaining in order to ensure the economic right of workers. A denial of the right would lead to a massive deterioration of the bargaining power of workers as they cannot equally match the strength of management in the inevitable conflict of interests between the parties. The right to strike will give the workers more power to meet the needs of maintaining equilibrium in industrial relations. Kahn-Freund has expressed a similar view:

*In the context of the use of the strike as a sanction in industrial relations, the equilibrium argument is the most important... the concentrated power of accumulated capital can only be matched by the concentrated power of the workers acting in solidarity.*⁵²

⁴⁸ (1993) 4 NWLR (Pt 287) 288 at 291

⁴⁹ *Ibid.*

⁵⁰ A. Emiola, *Public Servant and the Law* (Ile-Ife: University of Ife Press, 1985), p. 67

⁵¹ T. Fashoyin, "Collective Bargaining in the Public Sector: Retrospect and Prospects" in T. Fashoyin (ed.) *Collective Bargaining in the Public Sector in Nigeria* (Lagos: Macmillan Nigeria Publishers, 1987), p.12. Overall, there can be little doubt as to the link between collective bargaining and industrial action. As the US Supreme Court also noted in *NLRB v. Insurance Agent's Int'l Union*, 361 U.S. 477, 489 (1960): "the presence of economic weapons in reserve, and their actual exercise on occasion by the parties is part and parcel of the collective bargaining system." See also K. Block, "The Legal Status of Strikes in the U.S.S.R." (1991) 12:133 *Comparative Labor Law Journal*, 133 at p. 143; G. England, "Some Thoughts on Constitutionalizing the Right to Strike" (1988) 13 *Queen's Law Journal*, p. 177

⁵² O. Kahn-Freud and B. A. Hepple, *Laws Against Strikes* (London: Fabian Research Services 305, 1972), p. 5. As Grunfeld noted "...if one set of human beings is placed in a position of unchecked industrial authority over another set, to expect the former to keep the interest of the latter constantly in mind and, for example, to increase the latter's

However, the cardinal interest of unions is to win wage and other concessions from employers through collective action. Collective bargaining ought to achieve this but where, as it often happens, the employer fails or neglects to implement the terms of an agreement commonly arrived at after negotiations between the parties, the union will be left with the weapon of industrial action as an alternative. Industrial action or the threat of it is therefore justified as a legitimate purpose and technique both for achieving an agreement and for resolving disputes over the implementation of an agreement.

Without any doubt, collective bargaining will not be effective without a credible threat of damaging industrial action. The right to industrial action is the only legitimate weapon which strengthens the power of the workers at the bargaining table.⁵³ Without it organised labour is powerless to deal with management at arms length. Clearly if workers could not, in the last resort, collectively refuse to work, they could not bargain collectively.⁵⁴ In the absence of such a right 'collective bargaining' would amount to 'collective begging'.⁵⁵

earnings as soon as the surplus income is available...is to place on human nature a strain it was never designed to bear."⁵² See C. Grunfeld, *Modern Trade Union Law* (London: Sweet and Maxwell, 1966), p. 33

⁵³ Lending support to necessity of the right to strike in collective bargaining, Lord Wedderburn of Charlton further rationalised: "To protect such a right is not to approve or disapprove of its exercise in any particular withdrawal of labour, it is to recognise the fact that the limits set to the right to strike and to lockout are one measure of the strength which each party can in the last resort bring to bear at the bargaining table. The strength of a union is bound to be related to its power and its right to call out its members, so long as any semblance of collective bargaining survives." See Wedderburn, K.W., *The Worker and the Law* (London: Penguin Books, 1986), p. 245.

⁵⁴ O. Kahn-Freud, *Labour and the Law*, (London Stevens and Sons, 1983), p. 292

⁵⁵ A.J.M. Jacobs, 'The Law of Strikes and Lock-outs' in R. Blanpain and C. Engels (eds.), *Comparative Labour Law and Industrial Relations in Industrialized Market Economies* (5th edn., Deventer: Kluwer, 1993), P.423) Perrins asserts that it is an arguable question whether industrial action should be allowed only as a last resort and whether collective bargaining is the best means of settling terms and conditions of employment. He however agrees that collective bargaining necessarily involves the freedom to take industrial action, see B. Perrins, *Trade Union Law* (London: Butterworth 1985), p. 22

3.1 Weapon of Last Resort

It must be noted that the right to take industrial action is seen as only a weapon of last resort (*ultima ratio*) which is to be employed when all other means of achieving an agreement or resolving disputes over the implementation of an agreement has failed. Thus, while strike is a legitimate and unavoidable weapon in the hands of labour, it is equally important that indiscriminate and hasty use of this weapon should not be encouraged. It will not be right for labour to think that any kind of demand for a 'strike' can be commenced without exhausting the available avenues for resolution of conflicts.

This is very important because the cessation or stoppage of work whether by the employees or by the employer is detrimental to the production and the economy and to the well being of the society as a whole. It is particularly for this reason that provision is usually made for peaceful investigation, settlement arbitration and adjudication of dispute between the employer and the employees. Strike or lockout is not to be resorted to because the concerned party has a superior bargaining power or the requisite economic muscle to compel the other party to accept its demands. In fact it has been argued that strike is not a viable means of resolving labour disputes and should be discarded:

*A strike appears to be primitive or crude means. Resort to such crude and primitive means and methods were necessary in the early stages when better and refined means and methods were not made available to labour statutorily or otherwise. In the context of availability of superior and refined means of resolving employer-employee differences, resort to strike ... would appear to be a retrograde step, and to make such resort compulsory in any industry makes it worse ... The emphasis should now be more on methods such as direct negotiations, arbitration or adjudication.*⁵⁶

Strikes have also been attacked on the ground that it is unjust, in that it is an appeal to force in a matter of disputed right; it is inhuman, because of the misery it causes to workers; it is wasteful of the resources of capital and labour; it is wicked because it stirs up hate; it is anti-social in that it denies and disrupts the solidarity of the community.⁵⁷

These views cannot be overlooked. This is because strikes cause tremendous damage to the economy of a country. Labour relations are vital to national prosperity in a period when a small strike may dislocate industry over a vast area.⁵⁸ To attain the smooth running of industries which are the backbone of national economies, industrial peace has to be maintained. It is important therefore for trade unions and workers to endeavour to ensure that agreed methods of dealing with disputes are strictly complied with and that statutory machinery are exhausted without interruption to production before strike action is taken

⁵⁶ Indian National Trade Union Congress, Conclusions and Recommendations of National Commission on Labour: A Digest with Minutes of Dissent, August 1969 p. 77-78; quoted in B.W. Wolkinson and S. Dayal, "Strikes in India's Industrial Relations System: INTUC's Policy and Practice," (1972) 8 *Indian Journal of Industrial Relations*, p. 431, 446 n. 12

⁵⁷ R. Hobson, "The Conditions of Industrial Peace" cited in S. Cockar, "The Industrial Court and Labour Relations in Kenya" (1996) 2 *East African Law Journal*, pp. 257 and 258. As H. M. Hyndman also enthused, "Can anything be more foolish, more harmful, more, in the widest sense of the word, unsocial than a strike---? I have never yet advocated a strike" See Margaret Morris, *The British General Strike 1926*, p. 15.

⁵⁸ See E. Chianu, *Employment Law* (Bemicov Publishers Nig. Ltd, 2004), p. 277.

Thus, initially, employees must resort to dispute settlement and alternative mechanisms provided by law such as the requirement to give notice, cooling off periods, submission to arbitration and conciliation or to an industrial court. In the case of Nigeria, an elaborate provision is made for arbitration procedures under sections 1-18 of the Trade Disputes Act.⁵⁹ These requirements have already been discussed in chapter two of the thesis. Before any strike action is taken workers must exhaust any procedures for peaceful settlement of disputes. It is only when the alternative mechanisms have totally failed to provide any amicable settlement, can employees resort to a strike as a last resort.

4. SOME FACTORS THAT GIVE RISE TO STRIKES

*The only man who desires a strike for fun is the man who wants to go to hell for a pastime*⁶⁰

As noted above, the cardinal interest of unions is to win wage and other concessions from the employer through collective bargaining, failing which strike action could ensue. The question may be asked here as to what specific factors provoke workers to undertake industrial action in collective bargaining. We have seen that the right to strike is embedded into the collective bargaining process. Where the bargaining takes place smoothly and the parties arrive at a mutual agreement, it may then be difficult for workers to embark on industrial action. This part of the article seeks to specifically identify and explain some of the factors which easily make recourse to industrial action possible in the collective bargaining process. Several years ago Kahn-Freund noted that:

*Everyone, except those on lunatic fringe, wants to reduce their number and magnitude. But people do not go on strike without a grievance, real or imaginary...Sometimes they have ample justification...sometimes they do so wantonly. The important thing to do is to find out why strikes occur.*⁶¹

Expressing a similar view on the rationale for strikes Adeogun stated that “they are about grievances, actual or imagined, arising from industrial life.⁶² However, in an unashamedly capitalist society like Nigeria, where there is ostentatious display of wealth by the rich, where the majority of the workers eke a living out of their wages while their employers live in absolute affluence with the widest ostentation, it is submitted that workers’ grievances can hardly be described as “imagined.”⁶³

Indeed, the Nigerian experience shows that the weapon of strike is often the only instrument left in the hands of employees to compel a recalcitrant employer to recognise and bargain with their union or representatives, to comply with the terms of a collective agreement or to generally make improvements regarding the terms and conditions of the employment of workers.

4.1 Refusal to recognise a union or workers group as a collective bargaining party

⁵⁹ Chapter T.8 Laws of the Federation of Nigeria 2004. See also Section 6 of the Trade Union (Amendment) Act 2005.
⁶⁰ 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), p. 30
⁶¹ O. Kahn-Freund, *Labour and the Law* (London: Stevens and Sons, 1972), p. 227. See also P. Davies and M. Freedland, *Kahn-Freund’s Labour and the Law* (London: Stevens and Sons, 1983), p. 291
⁶² A. A. Adeogun “Strikes- The Law and the Institutionalization of Labour Protests in Nigeria”, (1980) 16:1 *Indian Journal of Industrial Relations*, p. 1.
⁶³ Aguda has expressed a similar view. See T.A. Aguda, *Nigeria in Search of Social Justice through the Law* (Lagos: Nigerian Institute of Advanced Legal Studies, Occasional Paper No. 1, 1994)

It is legitimate to have a strike in order to either achieve union recognition for collective bargaining purposes within the workplace or improve collective bargaining arrangements. The issue of recognition is crucial to the whole process of collective bargaining. Freedom of association would be meaningless to workers if employers were entitled to refuse to recognise their organisations for purposes of bargaining. This would defeat the purpose of the existence of trade unions, which is the protection of their members' interest. Before bargaining can take place, the employer must have to recognise the trade union or workers' representatives as the sole bargaining agent for the employees within the bargaining unit, in relation to terms and conditions of employment. The ILO Committee on Freedom of Association has clearly declared that recognition by an employer of the main unions represented in his undertaking, or the most representative of these unions, is the very basis for any procedure for collective bargaining on conditions of employment in the undertaking.⁶⁴ Where there is no union organisation in an industry, the representatives of the unorganised workers duly elected and authorised by the workers will conduct bargaining on their behalf.⁶⁵ More importantly, 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 workers and their organisations.⁶⁶

As we have discussed, recognition of a trade union or workers group is a *sine qua non* in the procedure for collective bargaining. Once the trade union is recognised, a recognition agreement will be drawn up and will address issues such as the negotiation machinery, matters for negotiation, and those for consultation, which are non-negotiable. It seems that matters for negotiation must end up in an agreement between the parties. In *National Union of Gold, Silver and Allied Trade v. Albury Brothers Ltd*⁶⁷, It was held that recognition entailed not merely a willingness to discuss but also to negotiate. That is to negotiate with a view to striking a bargain. Section 18 of the Wages Boards and Industrial Councils Act⁶⁸ provide that employers and workers in an industry may establish a joint industrial council for the purpose of negotiation and reaching agreements relating to such matters as are considered by those employers and workers to be matters for negotiations. Thus, where recognition is not given or is withdrawn, the union will be unable to bargain on behalf of its members with the employer or employers' group and this often provoke the union to embark on industrial action.

This fact was confirmed by the National Industrial Court in *Stadium Hotel v. National Union of Hotels and Personal Services Workers*⁶⁹ where the Court found and held that the main cause of the strike was non-recognition of the respondents by the appellants. Similarly in *Nigerian Sugar Company Limited v. National Union of Food, Beverages and Tobacco Employees*⁷⁰ the National Industrial Court held that primary responsibility for the strike action that took place rested with the first party who, for no cogent reasons, bluntly refused to recognise the second party and imposed, contrary to the Union's Constitution, an executive or caretaker committee on the workers. The Court was of the view that it is contrary to good union practice for management to get itself mixed-up in its workers' unions internal affairs in such a manner as to either subjugate the union to

⁶⁴ Committee on Freedom of Association: Digest of Decisions 1996, para 822; see also Committee on Freedom of Association: Digest of Decisions 1985, para. 618

⁶⁵ *Ibid*, paras. 785 and 786

⁶⁶ Committee on Freedom of Association: 2006 Digest of Decisions, para 535
⁶⁷ (1979) ICR 84

⁶⁸ Chapter 466 Laws of the Federation of Nigeria 1990

⁶⁹ (1978/79) NICLR 18

⁷⁰ (1978/79) NICLR 12-13

its own whims and caprices or to frighten the workers from making what they consider to be legitimate demands, whether or not such demands will be met.⁷¹ Naturally, therefore, the exercise of economic power in the form of a strike is perceived as a union's most appropriate and powerful response to an employer who refuses to accord recognition to the union for collective bargaining purposes. This position is also supported by the ILO which has ruled that the fact that a strike is called for recognition of a union is a legitimate interest which may be defended by workers and their organizations.⁷²

4.2 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 rise to industrial action. Workers and trade unionists are entitled to always demand and negotiate for the improvement of the terms and conditions of their employment in a market economy like that of Nigeria.. Workers would always demand for increases in their salaries and wages consistent with inflation trends. As stated earlier, this is one of the chief roles of collective bargaining. Where the employer fails to accept the unions demand or refuses to negotiate with them, workers resort to industrial action would be inevitable to achieve that aim.

Recently, for example, the Non-Academic Staff Union of Educational and Associated Institutions (NASU) was forced to embark on industrial action to demand for the implementation of the nationally approved 12.5% salary increase and allowances in Osun State owned tertiary institutions which the State government⁷³ had failed to implement. Before the strike, the NASU made efforts to request for negotiation with the government but this was refused. As the General-Secretary of NASU noted:

*NASU National Secretariat made a number of correspondences to the government of Osun State, requesting for audience to meet and resolve the issues in dispute. Surprisingly however, no single response has come from the government till date. Consequently, NASU members have been forced by the prolonged inaction of the government to embark on the ongoing strike action in the four state owned tertiary institutions to press home their demands.*⁷⁴

This instance demonstrates clearly that the blatant refusal of the employer to accede to the demands of the workers or negotiate with them with a view to an amicable settlement, is often the course of industrial actions. Despite the workers' strike action they still conveyed their preparedness to negotiate with their employers to resolve the strike at the earliest opportunity. This intention was emphasised by the General-Secretary of NASU when he said "The governor should shelve unnecessary protocol and meet with NASU for a dialogue aimed at resolving the issue in dispute amicably, in the interest of industrial peace, harmony, good governance and fair labour practices...we are confident that His Excellency will lend his listening ears to good spirited individuals and groups, and tackle this problem once and for all."⁷⁵

It seems a sad reflection that workers will very often have to practically beg their employers to negotiate and/or accede to their legitimate claim to improvements in their

⁷¹ *Ibid.*, p. 13

⁷² Committee on Freedom of Association: 2006 Digest, para. 535.

⁷³ The government is the employer here.

⁷⁴ See V. Ahiuma-Young, "NASU seeks end to industrial crisis in Osun", *Vanguard* (Nigeria) 01 June 2006.

⁷⁵ *Ibid.*

welfare. In the NASU case here, for example, it was obvious that their counterparts in similar establishments were already freely enjoying the nationally approved wage increase. Why does it have to depend on the Governor's "listening ears to good spirited individuals and groups" to give the workers what apparently is their entitlement, in this case, the 12.5% salary increase already being enjoyed by workers in other states. It will be difficult to deny the action taken by the workers here as been legitimate.

An employer who refuses to bargain must accept the fact that it may be faced with the threat of a strike. Strikes are ultimate weapons, which are only resorted to by workers when all other means of struggle and negotiation have failed completely. This often happens when employers appear to show complete insensitivity to the genuine demands of workers. In 1993, for instance, when the employers refused to negotiate the demand by junior workers in the public services for a 45% increase in wages the workers were forced to embark on industrial action. It was after the industrial action commenced that the employers became compelled to revert back to collective bargaining and after six days, a mutually acceptable agreement was reached and the strike was called off.⁷⁶

The right to strike is indeed a potent weapon in the armoury of workers against an arrogant and intransigent employer. Without the right to strike workers and their unions will be lame ducks. One of the most famous and successful industrial actions was staged by the Nigerian Labour Congress (NLC) in 2000 which sought for better wages for workers in the public service. The government had promised to bargain with the NLC with a view to arriving at an agreement on the issue but had vacillated on the issue. It took the strike action by NLC for government to negotiate and arrive at a National Minimum Wage of N7, 500 (Seven thousand five hundred naira).⁷⁷

Another example of the potency of industrial action in improving the terms and conditions of employment of workers was the face-off between the management and the journalists of the Guardian Newspapers. The Nigerian Union of Journalists had been battling the management of the Newspaper house for improved conditions of service for its workers and the recognition of all labour unions operating in the Newspaper house which were banned by the management, all to no avail. This forced the Nigerian Labour Congress (NLC) to instruct the workers to embark on strike action on September 4, 2000. The NLC President also directed the National Union of Petroleum and Natural Gas Workers (NUPENG) to stop the supply of diesel and petroleum products to the paper house.⁷⁸ This was apparently done in a bid to make the strike effective and arm twist the management of the Newspaper house to accede to the demands of the workers. And it succeeded. The management had no choice but to listen to their workers and implement their demands.

Again, in 2002, the Nigerian Labour Congress (NLC) put up a demand for 25% pay rise for workers in public services in Nigeria from the Federal Government, as employer. Rather than negotiate with the union as promised, the Government tried to adopt numerous delay tactics in the hope of frustrating the unions demand. The union was not happy over the employer's recalcitrance to dialogue, and threatened to embark on industrial action. The union gave the employer 14 days notice of its intention to

⁷⁶ J. B. Oladokun, "Strike and the Trade Union", *Daily Times* (Nigeria) March 2 1993, p. 15

⁷⁷ See "Two sides of the same coin", *News watch*,(Nigeria) September 18, 2000, p. 21

⁷⁸ See "Guardian without angels", *ibid.*, p. 27

commence industrial action if nothing was done to address its demands. As the Acting – President of the NLC said:

If the federal government continues to decline to negotiate and to give a chance for a peaceful resolution of this matter within the next three weeks (14 days from now), all workers in the country are directed to embark on a total one-day warning strike on Wednesday July 10, 2002.⁷⁹

Apart from the refusal by the employer to negotiate or accede to the demands of the workers, other instances of refusal to bargain can take the form of disputes about appropriate bargaining levels and bargaining units, or even disputes about issues on which the parties are to negotiate.

Without any doubt refusal to bargain with the workers by the employers relating to their terms and conditions of employment is a veritable ground for much industrial tension and action in Nigeria. It has led to a “strike now, negotiate later” situation in labour relations in Nigeria. As Roper⁸⁰ once noted “at a certain stage, it became evident that strike action was the only method available to establish the right to negotiate, or to bring in a conciliation officer in order to ensure a discussion of grievances” Recourse to industrial action is therefore justified to compel employers to discuss and settle workers grievances. Even the current ASUU strike is predicated on the failure of the employer (Federal government) to negotiate and accede to the demands of university lecturers.

4.3 Failure to Implement Collective Agreement

There can be no doubt that the real cause of most strikes in Nigeria is either the non-payment of wages or non-enforcement of collective agreements to *inter alia* pay wages. Even where an agreement has been duly entered between the workers and employers after bargaining, the workers may be constrained to embark on industrial action by the very fact of the failure on the part of the employer to honour and keep to the terms of the agreement. Thus the strike to compel an employer or employee to accept or not to accept terms of employment and physical conditions of work is a strike used as an instrument of collective bargaining. In apparent recognition of this fact the court in the recent case of *Union Bank of Nigeria Ltd. v. Edeh*⁸¹ noted that “whenever an employer ignores or breaches a term of that agreement resort could only be had, if at all, to negotiation between the union and the employer and ultimately to a strike action should the need arise and it be appropriate”⁸²

Clearly the failure of the employer to honour agreements has led to industrial action. For example, the Senior Staff Association of Utilities, Statutory Corporations and Government Companies (SSAUSCGOC) and National Union of Postal and Telecommunications Employees (NUPTE) embarked on industrial action to demand the payment of outstanding arrears of four months salaries and allowances owed to them by their employer. The workers were not happy that even after an agreement was entered into, the employer to pay their wages following negotiations the employer has failed to keep to it.⁸³ The workers were thus forced to embark on strike action as they had no

⁷⁹ V. Ahiuma-Young, “14 Days to National Strike on 25% Pay Rise”, Vanguard, (Nigeria) June 27, 2002.

⁸⁰ J. I. Roper, *Labour Problems in West Africa* (England: Penguin Books, 1958), p. 71

⁸¹ (1993) 4 NWLR (Pt 287) 288 at 29107/06/2006

⁸² *Ibid.*

⁸³ See A. Ogidan, “NITEL Workers Begin Strike over Unpaid Salaries”, *Guardian* (Nigeria), 5 June 2006

other alternative by which to press home their legitimate claims. In their view, the employer had “exhausted their patience and abused offers of responsible negotiations.”⁸⁴ As the Secretary-General of the SSAUSGOC union lamented:

*Since December 2005 till date, the management of NITEL has reached various agreements with our unions on how to alleviate the problems in NITEL and pay all outstanding debts to the workers. Unfortunately the management reneged on all these...the workers had been groping under the deluge of rhetoric and delays from the authorities.*⁸⁵

It is hardly to be expected that workers will fold their hands and suffer in silence when they have negotiated and had been promised of the due payment of their entitlements by the employer to no avail. Industrial action in such a situation will therefore be justified to enforce the agreement earlier concluded between the parties. As the Secretary-General of SSAUCGOC further bemoaned:

*All we hear from our members are stories of unpaid debts, hunger, and death, ejection from apartments, sickness and children being sent out of schools. These are enough to task the toughest of men...hence the resort to industrial action*⁸⁶

There are indeed many examples in Nigerian labour law where workers have used industrial action to compel observance of the agreement reached between them and the employers. In 1964, for example, there was a General Strike by the entire body of Nigerian workers over the refusal of the Government to publish the Report of the Morgan Commission on the Review of wages and salaries as requested by the workers.⁸⁷ The workers had waited for nine months for the report to be published to no avail. The strike lasted for thirteen days and was called off when the Government yielded to the demands of the workers.⁸⁸

Recently, following the demand for increase in salary and wages by workers in the Federal Civil Service, the Federal Government set up a Presidential Panel on Wage Review headed by Chief Ernest Shonekan which has recommended that the National minimum be raised from the present N7,500 (Seven thousand five hundred naira) to N75,000 (Seventy-five thousand naira). As the Presidential Panel explained “it was necessary to scale up the minimum wage in view of the prevailing economic realities which has incapacitated the purchasing power of workers.”⁸⁹ Will industrial action by workers to demand for this payment be legitimate? There can be no doubt that workers will eagerly be expecting prompt implementation of this negotiated wage review and any undue delay will precipitate into industrial action to realise the same. It is submitted that industrial action to demand for the implementation of this wage review will be justified because it is a result of collective bargaining between the employers’ representative and

⁸⁴ *Ibid.*

⁸⁵ *Ibid.*

⁸⁶ *Ibid.*

⁸⁷ *Annual Report of the Federal Ministry of Labour* 1964-5, Para. 159

⁸⁸ *Ibid.* See also H. Abdulram, “Government and Workers Strike” *Daily Times* (Nigeria) 9 February 1994; A. A. Adeogun, “Industrial Relations and the Law” in T. O. Elias, (ed.) *Law and Development* (Lagos: University of Lagos Press 1972), p. 125; A. Ahiauzu, *The African Industrial Man* (Port Harcourt: CIMRAT Publications 1999), p. 144-145.

⁸⁹ G. Timothy, “Shonekan Panel Recommends N 75,000 Minimum Wage”, *Leadership* (Nigeria) Thursday, 8 June 2006.

the workers unions. The employers cannot renege on it. It is similar to the Morgan Commission Report where worker were able to successfully carry out industrial action to implement the review of their wages. So if the employers refuse to pay the new salary, industrial action will definitely force them to succumb.

Industrial action no doubt has become a crucial means of conducting industrial relations in Nigeria. It seems that only the presence of industrial action can force most employers to respond to the needs of the workers. Again in 1982, for example, there was a nation-wide strike by workers in the National Electric Power Authority (NEPA) over the refusal of the management to honour the agreement reached between the former and the employees' union. The resort to industrial action by the employees forced the management to respond quickly to the agreement.⁹⁰

Another clear example was the industrial action embarked upon by the Academic Staff Union of Universities (ASUU) in 1992 to press for the implementation of the Collective agreement it had entered with the Government as employer, for improved conditions of service, increased funding and autonomy of the university system in Nigeria. The Government reneged on the said collective agreement for no apparent justification and ASUU embarked on industrial action which lasted for over six months. Frantic attempts by the Government to proscribe ASUU and frustrate the industrial action did not succeed. The strike only came to an end when the Government called for fresh negotiations whereby they complied with most of ASUU demands.⁹¹ Furthermore, The Academic Staff Union of Polytechnics (ASSUP) recently felt compelled to embark on strike action over the non-implementation of the agreements the federal Government had with it since 2001. The ASSUP is embittered by the fact that the government had continued to dribble the union on the agreements and can no longer tolerate the state of affairs.⁹²

Clearly therefore resort to industrial action seems to be the most effective and justifiable means available to the workers to enforce concluded agreements with the employers if they continue to dribble the workers and fail to honour agreements entered with them. It is difficult to explain why employers treat workers in such manner. One wonders the justification for this kind of behaviour on the part of employers. Could it be because they are required to pay more money? Workers deserve to be paid their due remuneration to be able to meet up with the challenges of life as human beings with some dignity. This point has been re-emphasised by the African Commission on Human and Peoples' Rights which has ruled that unremunerated work is tantamount to a violation of the right to respect for the dignity inherent in the human being.⁹³ Numerous other instances can

⁹⁰ Similarly in May 1981, it was the two day nation-wide strike instigated by the Nigeria Labour Congress that induced the Federal Government to enact the National Minimum Wage Act 1981, Chapter 267 Laws of the Federation of Nigeria 1990.

⁹¹ See P.C. Ugochukwu, and N. O. Obiari, "The Socio-Legal Implications of the Academic Staff Union of Universities (Proscription and Prohibition from Participation in Trade Union Activities) Decree, 1992", *Justice Journal* (1992) Vol. 3 No. 4 & 5, pp. 63-68

⁹² See Y. Kolawole, "Nigeria: Poly Lecturers May Embark on Strike" *This Day* (Nigeria) May 28, 2006.

⁹³ See Communications 54/91, 61/91, 98/93, 164/97- 196/97 and 210/98, Malawi African Association, Amnesty International, Ms Sarr Diop, Union interafricaine des Droits de l'Homme and RADDHO, Collectif des veuves et Ayants-droit, Association Mauritanienne des Droits de l'Homme v. Mauritania, Thirteenth Activity Report 1999-2000, Annex V, Para. 135. See generally R. Murray and M.D. Evans, (eds.) *The African Charter on Human and Peoples' Rights* (Cambridge: Cambridge University Press, 2002). See also V. O. Nmehielle, *The African Human Rights System: Its Laws, Practice and Institutions* (Kluwer: Martinus Nijhoff Publishers, 2001)

be given⁹⁴ but suffice it to say that failure to honour collective agreements by the employer is definitely an invitation to industrial action by workers.

Conclusion

This paper has examined the role and functions of collective bargaining and strikes in the quest for industrial peace in Nigeria. Workers all over the world desire recognition, better salaries and wages and great improvements in the terms and conditions of work. Workers have formed associations for the purpose of realizing this main objective. By forming associations and banding together workers have a more effective basis to realise improvements in working conditions.

Both Nigerian Labour law and International law recognise the right of workers to bargain collectively for the protection of the legitimate interests of workers. Indeed, that the ILO has declared its support for collective bargaining as a means through which the protection of the economic and social interests of workers can be achieved.

The main duty of trade unions is to represent the interest of their members in negotiations with the employer in order to achieve the desired improvements in working conditions. But this aim is sometimes frustrated by the employer. What can unions do in such a situation? As we have seen, the natural reaction is to resort to industrial action to force the employer to accede to their demands. It is the failure of collective bargaining that justifies workers resort to industrial action.

But strike and strife are indeed ill winds which blow neither the employers nor workers any good. Strikes disrupt not only the business of the employers and cause the workers loss of wages but also invariably disorganises the economy of the state and social order in some cases. Moreover, strike is a double edged industrial sword; apart from its effect on the national economy, a great deal of wage earning man hours is lost, just as the employer loses its regular income. In the process, the state sustains loss of national revenue in the form of tax or profit.⁹⁵ In our view, the only way to achieve industrial peace in Nigeria is for the employers to always promptly review, negotiate and implement collective agreements entered with workers concerning improvements in wages and general working conditions. The employers must accept and respect the fact that collective bargaining is the only viable and practical means of ensuring peace in the industry. Otherwise we will continue to exercise fears over the continuous state of a prostrate industrial sector as workers will continue to use strike as a weapon of last resort in collective bargaining.

⁹⁴ See, for instance, "Nigeria Strike call targets shell"< <http://www.energybulletin.net/2971.htm>> Accessed 11 June 2006. See also M. E. Aluko, "Two Strikes against Halliburton in Nigeria"< <http://www.energybulletin.net/2971.htm>> Accessed 11 June, 2006.

⁹⁵ See A. Emiola, "The Legal Approach to Industrial Relations in Nigeria" (1998) 2 *Cal L.J.*, 1 at p. 35. See also S. 42(10) Trade Disputes Act which declares 'No work No pay' and a break in continuity of employment.