COLLECTIVE BARGAINING DYNAMICS IN THE NIGERIAN PUBLIC AND PRIVATE SECTORS

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ABSTRACT

The objective of this paper is to examine the dynamics of collective bargaining machinery in both the public and private sectors in Nigeria; with a view to bringing to the fore the peculiarities associated with both sectors with regard to the practice of bargaining. To achieve this objective, the paper adopts a theoretical approach. The author observes that the practice of industrial relations as a discipline and that of collective bargaining in particular emanated from the private sector the world over. Thus, much of the practices of public sector collective bargaining are modelled after the private sector collective bargaining. However, in Nigeria, the obverse is the case as collective bargaining gained its root in the public sector owing to the near absence of private sector at the turn of the century. However, in Nigeria, the public sector pays lip-service to the collective bargaining machinery. Governments at all levels (Federal, State and Local) have continued to set aside collective bargaining and to give wage awards to score political points in spite of its commitment to the ILO Convention 98 to freely bargain with workers. The State or the government in the course of regulating wages and employment terms and conditions revert to the use of wage commissions. Thus, wage determination is by fiat. This preference for wage commissions can at best be regarded as a unilateral system as collective bargaining is relegated to the background.Wage tribunals or commissions offer little opportunity for workers' contribution in the determination of terms and conditions of employment and can hardly be viewed as bilateral or tripartite. Thus, the State preference for wage commissions is anti-collective bargaining. In spite of Nigeria's commitment to Conventions of the ILO with particular reference to such Conventions as 87 of 1948 and 98 of 1949 which provide for freedom of association and the right of workers to organize and bargain collectively. Thus, the use of wage commissions is antithetical to collective bargaining.

Keywords: *Collective Bargaining Dynamics, Public and Private Sectors*

INTRODUCTION

According to Rose (2008), the term collective bargaining was originated by Webb and Webb to describe the process of agreeing terms and conditions of employment through representatives of employers (and possibly their associations) and representatives of employees (and probably their unions). Rose (2008) posits that collective bargaining is the process whereby representatives of employers and employees jointly determine and regulate decisions pertaining to both substantive and procedural matters within the employment relationship. The outcome of this process is the collective agreement. Collective bargaining as one of the processes of industrial relations performs a variety of functions in work relations. It could be viewed as a means of industrial jurisprudence as well as a form of industrial democracy. It is a means for resolving workplace conflict between labour and management as well as the determination of terms and conditions of employment. Davey (1972) views collective bargaining as "a continuing institutional relationship between an employer entity (government or private) and labour organization (union or association) representing exclusively a defined group of employees of said employer (appropriate bargaining unit) concerned with the negotiation, administration, interpretation and

enforcement of written agreements covering joint understanding as to wages/salaries, rates of pay, hours of work and other conditions of employment". International Labour Organisation (ILO) (1960) views "collective bargaining as negotiations about working conditions and terms of employment between an employer, a group of employers or one or more employers' organization, on the one hand and one or more representative workers' organization on the other, with a view to reaching agreement".

The term public sector comprises the government as employer at the federal, state and local government levels as well as the parastatals, the universities and the state-owned companies. The public sector constitutes the largest employer of labour in the country in spite of the recession in the economy. Modern trade unionism began in Nigeria in the public sector. As Damachi and Fashoyin (1986) observe that trade unionism and labour relations originated in the civil service in 1912; but it is in this sector that unions are weaker and labour relations marginally practised. The weakness of the unions in this sector was attributed to a well documented problem of union factionalism, multiplicity and leadership squabbles which characterised Nigerian unions up to the mid-1970s.

Omole (1987) raises the issue of the interesting features of industrial relations in the developing countries when compared to the practice in the developed countries. In the developed countries, industrial relations practice in the public sector was modelled after the practice in the private sector. In the developing countries, the opposite was the case especially with Nigeria where industrial relations system in the private sector of the economy developed from the practice in the public service. To account for the trend, he states that the idea of bargaining for more by workers emerged first in the private sector in developed countries and its law and procedures are well-established. In Nigeria, the origin of trade unionism can be traced to the public sector, which arose during the colonial rule when paid employment was first introduced into the country by the colonial administrators.

The objective of this paper is to examine the dynamics of collective bargaining machinery in both the public and private sectors in Nigeria; with a view to bringing to the fore the peculiarities associated with both sectors with regard to the practice of bargaining

COLLECTIVE BARGAINING IN THE PUBLIC SECTOR

The practice of industrial relations as a discipline and that of collective bargaining in particular emanated from the private sector the world over. Thus, much of the practices of public sector collective bargaining are modelled after the private sector collective bargaining. However, in Nigeria, the obverse is the case as collective bargaining gained its root in the public sector owing to the near absence of private sector at the turn of the century (Fashoyin, 1992). However, in Nigeria, the public sector pays lip-service to the collective bargaining machinery. Governments at all levels (Federal, State and Local) have continued to set aside collective bargaining and to give wage awards to score political points in spite of its commitment to the ILO Convention 98 to freely bargain with workers. The State or the government in the course of regulating wages and employment terms and conditions revert to the use of wage commissions. Thus, wage determination is by fiat. This preference for wage commissions can at best be regarded as a unilateral system as collective bargaining is relegated to the background. Wage tribunals or commissions offer little opportunity for workers' contribution in the determination of terms and conditions of employment and can hardly be viewed as bilateral or tripartite. Thus, the State preference for wage commissions is anti-collective bargaining. In spite of Nigeria's commitment to conventions of the ILO with particular reference to such conventions as 87 of 1948 and 98 of 1949 which provide for freedom of association and the right of workers to organize and bargain collectively. This stance of the State has stifled effective collective bargaining in the public sector. The following wage commissions or committees of inquiry were instituted during the colonial and post independence era for the purpose of wage determination and other conditions of service in the public sector. Chidi (2008a) opines that the use of adhoc commissions in addressing workers' demands such as wage determination and other terms and conditions is unilateral and undemocratic as it negates good industrial democratic principles. Thus, it is antithetical to democratic values. The following wage commissions have been used in Nigeria for wage determination and for the setting of employment terms and conditions in the public sector.

Commission	**Year Instituted**
Hunt commission	1934
Bridges commission	1941
Tudor Davis commission	1945
Harragin commission	1946
Miller commission	1947

Whitley commission	1948
Gorsuch commission	1955
Mbanefo commission	1959/1960
Morgan commission	1964
Adebo commission	1971
Udoji commission	1974
Onosode commission(for parastatals)	1981
Cookey commission (for varsities)	1981
Adamolekun commission (for Polytechnics TTC& TC	1981
Ukandi Damachi commission	1990
Minimum Wage commission	1999
Ufot Ekaette Presidential committee on Monetization Of Fringe Benefits in the Public Service.	2002
Pension Reform commission	2004.
Onosode commission(for universities)	2009

It was only in 1981 under the Shagari civilian administration that a tripartite wage bargaining took place following the general workers strike of May 1981 organized by the NLC occasioned by the demand of the NLC for wage review. This led to the minimum wage of ₦125. Damachi led tripartite minimum wage committee inaugurated by the Babangida regime on January 30, 1990; which was manipulated by President Babangida who determined the minimum wage of ₦250. The constitutional Government of Obasanjo like its military predecessor the Abubakar regime also avoided any tripartite collective bargaining in the fixing of the 1999 national minimum wage of ₦7, 500 and recently the fixing of ₦18, 000 national minimum wage which was passed into Law in 2011 was not based on collective bargaining. The government merely consulted with officials of the NLC without carrying on board private sector employers and state governments who were to implement the wage awards at the state and local government levels. This exclusion generated serious conflicts at those levels as state governments expressed inability to pay, and consequently conceded to various shades of collective bargaining and agreements. It should be noted that the preference of State for wage commissions was inherited from the colonial administrators. Collective bargaining in the public sector is carried out at three complementary levels through the machinery known as National Public Service Negotiating Councils (NPSNCs) The National Public Service Negotiating Councils is subdivided into three councils.

Council I: Used by the management (official) side represented by the Establishments Departments of the Federal and State Governments. On the workers (staff) side the the Association of Senior Civil Servants of Nigeria (ASCSN) whose members are drawn from grade levels 07-14 at the Federal and State Civil Services. The ASCSN approximates the senior staff association in the private sector.

Council II: Used by the management (official) side, this is made up as in council I above. On the staff side, two unions NCSU (Nigerian Civil Service Union) and NUCSTSAS (Nigerian Union of Civil Service Typists, Stenographic and Allied Staff). Employees covered by this council are drawn from the clerical, secretarial, executive and non-industrial cadres usually on grade levels 01-06.

Council III: Used by the management side as in councils 1&2 above. On the staff side are five unions namely:

- The Civil Service Technical Workers Union of Nigeria (CSTWUN)
- Printing and Publishing Workers Union (PPWU)
- National Association of Nigerian Nurses and Midwives (NANNM)
- Medical and Health Workers Union
- Customs Excise and Immigration Staff Union (proscribed in 1988).

It should be noted that bargaining issues (scope of bargaining) in the public sector are spelt out in the constitution of the NPSNC. This constitution approximates the procedural agreement in the private sector and it is applicable to practically all employers in the public sector. It should be noted that the above applies to the

pure Civil Service. The National Joint Industrial Council (NJIC) applies to parastatals such as Power-Holding Co. of Nigeria Plc (formerly NEPA); Universities, NRC, Nigerian Ports Authority etc as well as NITEL to mention a few. Thus collective bargaining in the public sector is faced with practical difficulties one of these difficulties concerns the issues of bargaining. Many of the substantive issues which are within the scope of the NPSNC are decreed either by legislative or executive acts or through political commission periodically set up by government as employer of labour. Also, promotion, discipline, transfer etc have traditionally been regulated by civil service rules. Thus, both methods of job regulation are quite distinct from collective bargaining as they represent management position. This represents the uniqueness of collective bargaining in public employment. Thus, the role of NPSNC in Nigeria is virtually irrelevant owing to the decisive role and influence of other government agencies. These developments have undermined the relevance of collective bargaining in the public sector.

Damachi and Fashoyin (1986) criticize the structure of bargaining in the public sector in which the same management negotiates with each level of union. They noted that the exceptions where negotiations or consultations take place at departmental or ministerial level and also that the creation of two central negotiating councils for junior staff in the civil service is at variance with the structure of management. They argue that since industrial union structure is the basis for organization of workers, one council would seem sufficient for all the junior workers. Damachi and Fashoyin (1986) in terms of representations at negotiations, see bargaining machinery at which not less than 20 members on each side participate as unwieldy.

The second feature observed by these authors which seems to be amusing but instructive is the fact that the staff side in the civil service is the official or management side as senior civil servants in council I represents the official or management side when negotiating with members in councils II and III. The triangular relationship seems to have created room for ripple effect in which whatever concession made by the official side to the unions in councils II and III will also be extended to the official side members in council I. In sum both sides can be seen as working towards the same end. It can also be seen that the dilemma arising from conflict of interest in civil service labour relations perhaps accounts for reluctance or lukewarm attitude of the public employer to effectively employ collective bargaining for adjusting conditions of service in the public sector. Adeogun (1987) appears to lay credence on the foregoing points when he asserts that government as the largest employer of labour set up machinery for determination of workers wishes in relation to their wages. But regrettably, the then Whitley councils now known as National Negotiating Councils have hardly been used for the negotiation of wage increase or reviews commission which undoubtedly have brought strains and stresses upon collective bargaining in the public sector.

Banjoko (2006) sees government as having arrogated to itself the role which both employers and employees ought to perform in industrial relations. Even though government as a state authority set up councils to negotiate for salary increases and other conditions of employment in the public sector, events in recent years have shown that government had taken over the system of wage fixing in Nigeria. Instead of allowing collective bargaining to prevail, government resorted to establishing wage tribunals as a means of fixing and reviewing wages. Consequently, collective bargaining has been relegated to the background in Nigeria (Imafidon, 2006).

As Kester (2006) observes, Nigeria has no definite and effective wage determination policy hence the industrial relations system has been witnessing a spate of industrial unrest and tensions at every attempt to adjust wages and over the years, issues relating to wages have dominated industrial disputes and work stoppage in the Nigerian economy.

In a chat with Ejiofor, S.O.Z. General Secretary of Amalgamated Union of Public Corporations, Civil Service Technical and Recreational Services Employees (AUPCTRE), he states that Council III essentially deals with industrial workers in the civil service, i.e. Technical, Technological and related cadres; i.e. blue collar workers. Council I and II essentially deals with white collar civil service employees; i.e. employees whose conditions of service are regulated by the Civil Service Commission and the Office of the Head of Service of the Federation. Therefore he opined that the name of the Council is misleading as its jurisdiction does not cover Parastatals.

From Yesufu (1984)'s account, the inauguration of the Department of Labour in 1942 by the colonial government inspired the labour officers to peruse private employers to establish standing committees for joint consultations and collective bargaining. Besides, the 1948 Annual Report of the Department of Labour showed that such committees were already in existence in private industries. As Imoisili (1986) acknowledges, the 1978 restructuring of the trade unions along industrial lines and the creation of trade unions of employers made NECA to recognise itself to adapt to the new systems of unionism. Unlike the workers' NLC, the NECA is not a trade union but its governing council is made up of representatives of affiliated industrial employers associations

which are trade unions. The industrial employers' associations are responsible for collective bargaining with their industrial union of workers (junior and senior staff) while NECA serves as advisory body for all its affiliating employers on industrial relations matters with the government, NLC and ILO.

With the abolition of house unions and the creation of industrial unions' industry wide bargaining has been the vogue as the representative cut across the affiliating companies. A group of employers now engage in bargaining rather than a single employer. It is equally instructive to note that not all employers can meet the demands of their workers but with the advent of multi-employer bargaining' the management of small companies are able to meet such demands.

COLLECTIVE BARGAINING IN THE PRIVATE SECTOR

Collective bargaining in the private sector is used to conclude collective agreement, settle disputes or reach a common understanding on issues. Parties draw procedural agreements which determine what matters to negotiate at the central level through the National Joint Industrial Council or Joint Negotiation Council and those to be treated at the company level. For instance, the Main Collective Agreement (1990) between the Nigerian Employers Associations of Banks, Insurance And Allied Institutions (NEABIAI) and the Association of Senior Staff of Banks, Insurance And Financial Institutions (ASSBIFI) listed the following issues as subjects for negotiations: salaries, hours of work, leave and leave conditions, disciplinary procedure, principle of redundancy, allowances, inconveniences, transport, housing, acting, relief – duty, utility, sickness benefit, medical scheme, principle of loan, lunch subsidy, membership of social clubs, entertainment expenses, burial expenses, staff conversion, equity participation and end of year payment.

At the company level, matters of mutual interest affecting the efficiency of the company and the welfare of employees are discussed by parties. On what constitute items for negotiation at the central level and those at company level, Imoisili (1986) observes that the items may not be necessarily mandatory or voluntary or exclusively managerial rather, it is the relative bargaining strength of the parties that determines items for negotiation and those for discussion. Furthermore, where the union is worried that its branches will not be strong enough to get a good deal from their respective employers at the company level, it will insist that such a matter be earmarked for negotiation at the central level. In similar vein, if the unions in the branches are strong and could handle thorny issues at their own advantage, they are given autonomy and as many items as possible are shifted to the branches or company level. Imoisili (1986) observes that in general, issues concerning wages, the major fringe benefits, working hours etc tend to be negotiated at the central level while items that are peculiar to each company (canteen facilities, shift arrangement, home ownership schemes etc) tend to be discussed at plant level. The procedural agreement also included checks and balances to safeguard the interest of both parties.

To promote co-operation in labour matters among unions, Diali (1977) acknowledges that industry – wide bargaining will prevent the unfair exploitation of a weak employer by a powerful union. Besides, uniform conditions of service in industry will lead not only to an equitable system of remuneration for all employees in the industry but will also contribute immensely towards the maintenance of a stable and reasonably contended labour force by minimizing the unhappy tendency of experienced staff hoping from one establishment to another for purely economic reason. Critically speaking, the industry – wide bargaining tends to be too unwieldy and could possibly lead to neglect of the interests of some sections of the workforce with its attendant repercussions. Furthermore, the welfare of the more productive workers could be neglected in an attempt to treat their conditions of service with those of the less productive employees in the industry.

Akintayo (1983) also agrees with Diali (1977) on the advantages of multi-employer bargaining by stating that bargaining on a market wide basis permits the pooling of bargaining strength and provides each small employer with access to expect services in the negotiation and administration of the collective agreement. He also adds that the system will give greater protection to the workers, establishing more uniform conditions and guaranteeing the same advantages to all employers including those less capable of defending themselves effectively in their own undertakings. Aside from the benefits of multi-employer bargaining, Akintayo (1983) enumerates some problems associated with the system which include ability or inability of some of the affiliating companies to pay the agreed rates arising from the negotiations. The companies that cannot pay may resort to manpower contraction and this will lead to reduction in union membership and reduce the bargaining power of the union. Therefore, it will be advisable for the unions to keep in mind the repercussions or effects of high wage rate on smaller companies with inability to pay. To check the foregoing trend, the rates agreed by parties must be tied to ability to pay by the affiliating companies in the multi-employer bargaining. Considering the sheer size involved in the multi-employer bargaining, wage gains in the process of bargaining may create inflationary trends. The same is true of industry-wide work stoppage which could create discomfort for the

innocent public. However, parties recognize that periods of slump and recession must receive equal consideration with periods of boom and consequent profitability in business (Anyim, 1999).
The Government White Paper on the Report of the Presidential Committee on the Consolidation of Emolument in the Public Sector (2006) headed by Chief E.A.O. Shonekan which outlines the features of the Collective Bargaining Reform in the Public Sector seems to have addressed some of the problems in its findings and recommendations as contained in the White Paper. The content of the report which is being sent to the National Assembly for passage before implementation is discussed in the subsequent paragraphs.

The existing Collective Bargaining arrangement in the public sector is seen to be weak and ineffective as the previous arrangement whereby the Public Service Negotiating Councils I, II, and III are used to negotiate in a consultative process with management side without securing adequate mandate before it enters into negotiation is unhealthy. The Collective Bargaining Units/Structure in each sub-sector of the public sector shall be created in the following order and conditions.

(a) The Head of the Civil Service of the Federation, Federal Civil Service Commission, Bureau of Public Service Reforms (BPSR), National Pension Commission (PENCOM) and some selected Ministries shall constitute the management side. There shall be collegiate representation of all Industrial unions in the Civil Service.
(b) The management should be given sufficient mandate in order to negotiate with the various unions in the public sector in good faith.
(c) The role of management as a representative of the sovereign authority of state should be separated from that of public sector employer in the course of Collective Bargaining.
(d) In line with Section 2 and 3 of the 1999 Constitution of the Federal Republic of Nigeria, the principle of Fiscal Federalism makes the Collective Bargaining Structure to be separated from the Federal, State and Local Government Councils.

In justifying the above structures, it is felt that there is a need for a shift away from unduly autocratic command systems to democratic systems that promote the mutual interests and well-being of the employees and employers and advanced the interest of the enterprise. This ultimately results in higher productivity, enhanced personnel, global trend by encouraging productivity driven collective Bargaining processes in the Public Institutions.

The collective bargaining system in the Ministries, Departments, Agencies and Parastatals is weak and poorly structured. For unionized establishment, the Board/Management and the Unions shall constitute the bargaining machinery best suited for the establishments/sector to determine the procedural agreement and negotiable issues relevant to their institutions to facilitate smooth industrial/labour relations. For Extra-Ministerial departments, Agencies, Commissions and Parastatals, the top management and each of these establishments as determined by the Board shall constitute the management side, while the union side shall be the representative unions that exist in such establishments.

The report covered the bargaining machinery at the Primary and Secondary levels of Education which is perceived to be weak and poorly structured. The Education Management Boards and Unions of the institutions shall negotiate to determine collective bargaining machinery best suited for the sector, procedural agreement and issues to be negotiated at the National and Institutional levels to stabilize industrial relations atmosphere.

Aside from the primary and secondary levels of education, the report extends to the tertiary institutions where collective bargaining machinery is adjudged to be over centralized and consequently does not promote harmonious industrial relations. The management of the tertiary institutions shall negotiate with each of the unions to determine Collective Bargaining machinery best suited for the sector, procedural agreement and issues to be negotiated at the National and Institutional levels in order to facilitate and stabilize the industrial relations atmosphere.

In addition, there shall be the representation of all registered and officially recognized unions existing in each institution which shall form the union side for matters that are of common interest. However, certain issues peculiar to Unions/Associations existing in such institutions shall be negotiated with the specific Unions/Associations concerned.

To ameliorate the dearth of requisite skills for collective bargaining, capacity building programmes on collective bargaining shall be conducted by the Ministry of Labour and Productivity in collaboration with the Office of Head of Service of the Federation to ensure the development of effective Collective Bargaining competencies in the public sector.

The Establishments in the essential services without Trade Unions shall form Joint Consultative Committee (JCCs). Also unionization issues of Essential Service Workers shall be addressed through the setting up of Joint Consultative Pay Review Bodies in line with the leading practices.

There should be frequent stakeholders meetings and sensitization workshops to promote industrial harmony. There should also be regular and frequent consultations between Employers and Employees in the public sector to proactively discuss and resolve issues as this would promote industrial harmony and higher productivity. The timing of negotiation for Collective Agreement should take into account the timing of the Budgetary Process. In this respect the office of the Head of Service of the Federation and the Budget Office will ensure that scheduled negotiations are turned to precede the annual budgetary process. The expectation that a trade dispute may likely erupt seems to necessitate parties to engage in collective bargaining. In other words and by implication, trade dispute is a continuation of the bargaining process in another form. It is truism that trade unionism in Nigeria started first in the public sector but collective bargaining is known to be more pronounced in the private sector than the public sector. Government arrogation to itself of the task of wage fixation rather than allowing collective bargaining to perform this vital function has been adduced as one of the reasons for this trend. In the private sector, the multi-employer bargaining permits pooling of bargaining strength but regrettably the problem rests in the inability of the smaller or weaker companies to pay the agreed rates arising from the negotiations. To check the conflict situation the trend may generate and also to avert the interference by third party agreed rates should be tied to ability to pay by affiliating companies.

CONCLUSION

This paper set out to examine collective bargaining dynamics in the Nigerian public and private sectors. There is marked difference in the manner bargaining is practised in both sectors. It is a truism that trade unionism in Nigeria started first in the public sector but collective bargaining is known to be more pronounced in the private sector than the public sector. Government arrogation to itself of the task of wage fixation rather than allowing collective bargaining to perform this vital function has been adduced as one of the reasons for this trend. The collective bargaining system in the Ministries, Departments, Agencies and Parastatals is weak and poorly structured. It is recommended that the use of wage commissions be jettisoned and collective bargaining should be given prominence in the determination of employment conditions in the public sector.

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