Effectiveness of Collective Bargaining as a Tool for Industrial Disputes Resolution

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Abstract

This paper examines the effectiveness of collective bargaining as a tool for industrial disputes resolution. A descriptive survey design was used for the study. A sample of four academic trade unions and 16 chapters of the unions in south west Nigeria was drawn using a proportionate stratified random sampling technique. Also, simple random sampling was used to select 65 respondents from each chapter, which amounted to 1,040 respondents all together. The study developed and used a questionnaire entitled “Collective Bargaining and Industrial Dispute Resolution Questionnaire (CBIDRQ)” with correlation coefficient (r) of 0.77 and complemented with structured interviews. The Pearson product moment correlation coefficient (r) was employed to analyse the data. While the null hypotheses developed for the study were tested at the 0.05 level of significance, the findings revealed that there is a significant relationship between collective bargaining and arbitration; collaborative law; mediation and conciliation. It is, therefore, recommended among other things that governments, business organizations, employers of labour, employees, organizations and all stakeholders in industrial relations should endeavour to embrace collective bargaining as the machinery to resolve industrial disputes, so as to promote industrial harmony, enhance employees’ performance, increase productivity and improve the living standards of the generality of the people.

Keywords: dispute resolution, employees, industrial conflict, negotiation, trade unions
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1. Introduction

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 realising this main objective. By forming associations and banding together, workers have a more effective basis to realise improvements in working conditions. At times, a general discontentment is discoverable among workers with regards to their job prospects in terms of remuneration, social regards, their performance and other issues. Right from the colonial period, the average Nigerian worker had always been in conflict with the employer due to the unsatisfactory condition of the job or the inability of the employer to meet the needs of the worker. Agitations for better working conditions have resulted in industrial disputes culminating in strikes, work to rule, lock outs and other actions. Although many reasons could be advanced for industrial unrest, the fact remains that Nigerian workers have tended to replicate their colonial condition of service for Civil Servants. The workers’ collective demand for wage increase dates back to the early 40s. In fact, in 1942, due to the inflationary spiral of that period, the needs and agitation of workers during the Second World War resulted in the “cost of living allowance” granted to workers.

However, with the dawn of independence in 1960, it was expected that the conditions of service would have improved considerably, but this was not a reality. In fact, the matter was made worse by the civil war (1967-1970) which disrupted the implementation of the country’s social, political and economic development programmes. The war put every Nigerian, especially the workers, in a state of fear and suspense. The prosecution of the war worsened the condition of the workers as
they had to face a lot of hardship including high inflation. A number of rights and privileges of workers were withdrawn. In fact, there were occasions for wage freezes and suspension of workers. Also, the biggest cause of frustration which brought a lot of changes in the Nigerian workers’ attitude to work came in the 70s just immediately after the civil war and, coincidentally, during the period of the oil boom. During this period, the Federal Military Government embarked on a programme of reconciliation reconstruction and rehabilitation, popularly called the 3Rs (Obadara, 1997).

With the dawn of a new civilian regime in 1979, there were expectations of better packages for Nigerian workers. However, this was not realised as workers’ promotions were virtually based on political consideration. In such a situation, workers tend to become disgruntled, frustrated and demoralized. As Nigerian workers resigned themselves to their fate, they were getting more and more dissatisfied with their job with every passing day. There are always conflicts and disagreements between employers and employees, either on wages or on the general condition of service of the workers. In a bid to check this, workers experiencing conflicts come together and form unions (i.e. trade unions). Trade comes together, thus realizing the amount of influence they can wield as a group for effective industrial relations.

The government as a pacesetter and the largest employer of labour should lead other employers in its policy implementation. The government restructured the trade unions in both the public and private sectors to enhance the effectiveness of collective bargaining processes, but the government seldom uses the machinery in the public sector in comparison to other approaches obtained in the private sector. This scenario gives the government room for unilateral determination of terms and conditions of employment which is a negation of the “partnership in progress” doctrine outlined in the National Labour Policy. As Fashoyin (1992) observes, the inequities associated with unilateral decision-making and the unwillingness of the public employer to use the bargaining machinery has made
striking to be the means of ensuring favourable employment conditions in the public sector that is crucially important. Besides, labour-management negotiations are achieved through informal means or through political pressure mounted by the unions. The existing statutory machinery for the settlement of disputes, as could be found in the Trade Disputes Act 1976 and all subsequent amendments, has not been effective in terms of delays experienced by aggrieved parties as well as on the cumbersomeness of the procedure. Oftentimes, judgements drag on for years and justice delayed is justice denied. Further, the statutory dispute settlement procedure has not fostered an industrial harmony to a large extent (Chidi, 2010). The statutory settlement mechanism is exemplified by mediation, conciliation, industrial arbitration panel and the national industrial court.

The major activity of trade unions in most countries became a collective bargaining over pay and conditions, with trade union officers also acting to resolve any grievances of individual members, or of small groups, within the workplace. Collective bargaining according to Flanders (1970) is a social process that "continually turns disagreements into agreements in an orderly fashion." In industrial relations, collective bargaining involves workers organizing together (usually in unions) to meet, discuss and negotiate upon the work conditions with their employers. Such bargaining normally results in a written contract setting forth the wages, hours and other conditions which the parties agree on for a stipulated period (Bureau of Labour Statistics, 2008). It is the practice in which union and company representatives meet to negotiate a new labour contract (O’Sullivan & Sheffrin, 2003). In various national labour - and employment - law contexts, the term collective bargaining takes on a more specific legal meaning. In a broad sense, however, it implies the coming together of workers to negotiate their employment conditions.

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. Consequently, 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.

Okere (2008) claimed that collective bargaining is a term generally used as negotiation of working conditions and terms of employment between employers, a group of employers or one or more employers’ associations on the one hand and one or more representative workers organizations on the other, with a view to reaching agreement. Reaching agreement is perhaps what makes negotiation equal to bargaining (Fajana, 2006). Otherwise, when negotiations go on endlessly without concrete agreement, no bargain could have been struck. A collective agreement therefore functions as a labour contract between an employer and one or more unions. Collective bargaining consists of the process of negotiation between representatives of a union and employers (generally represented by management, in some countries or by an employers’ organization) in respect of the terms and conditions of employment of employees, such as wages, hours of work, working conditions and grievance-procedures, and about the rights and responsibilities of trade unions. The parties often refer to the result of the negotiation as a collective bargaining agreement (CBA) or as a collective employment agreement (CEA).

Adodo (2005) conducted a study on collective bargaining in formal organizations in Nigeria and concluded that the bargaining process represents negotiations on issues which both the trade union and the management have divergent positions. He found that the process is based on the principle that workers have a right to make a contract with their employers with regards to wages and other conditions of
service and that the employers recognise that right. Contrary to Adodo’s position, Omole, Noah and Powell (2006) conducted a state-by-state analysis of the impact of collective bargaining among teachers on workers performance. The results of their findings according to them show that bargaining among workers and management does not have any significant effect on the workers’ welfare as most agreements reached during collective bargaining are not implemented. They discovered that most union leaders sell out to management during negotiations. Fashoyin (2004) pointed out that negotiation is concerned about improvement of workers’ welfare that will enhance their socio-economic status. In other words, the ability of union to negotiate issues that will directly lead to enhanced socio-economic status of their members in both social and economic activities without engaging on strikes will be satisfactory.

2. Purpose of the Study

The study examined the effectiveness of collective bargaining as a tool for industrial disputes resolution among the trade unions in Nigeria. Specifically, it explored the relationship between collective bargaining and various methods of dispute resolution such as arbitration, collaborative law, mediation and conciliation with the aim of using its findings to make useful recommendations on how adequately to negotiate issues that will directly lead to enhanced socio-economic status of the union members without engaging on strikes

3. Methodology

The study used a descriptive survey design to establish the relationship between collective bargaining and industrial dispute resolution. The population consists of trade unions in Nigeria; while due to size of trade unions in Nigeria it has been narrowed down to four academic trade unions, namely: Academic Staff Union of Universities (ASUU), Academic Staff Union of Polytechnics (ASUP),
Colleges of Education Academic Staff Union (COEASU), and the Nigeria Union of Teachers (NUT) using sixteen (16) chapters, that is, four chapters of each trade union in south west Nigeria as the population sample. The sample was drawn using a proportionate stratified random sampling technique. Also, simple random sampling was used to select 65 respondents from each chapter, which amounted to 1,040 respondents all together. A self-developed questionnaire entitled the “Collective Bargaining and Industrial Dispute Resolution Questionnaire (CBIDRQ)” with correlation coefficient (r) of 0.77 was used and complemented with structured interviews. The Pearson product moment correlation coefficient (r) was employed to analyse the data. The null hypotheses developed for the study were tested at .05 level of significance. The following research hypotheses were explored in this study:

Ho1: There is no significant relationship between collective bargaining and arbitration.

Ho2: There is no significant relationship between collective bargaining and collaborative law.

Ho3: There is no significant relationship between collective bargaining and mediation.

Ho4: There is no significant relationship between collective bargaining and conciliation

4. Findings

The results of the study are presented below according to the hypotheses generated for the study.

Ho1: There is no significant relationship between collective bargaining and arbitration
The results in Table 1 above show that the calculated $r$ - value = 0.244 and the tabulated $r$ - value = 0.049 at the 0.05 level of significance. The calculated $r$ - value is greater than the tabulated $r$ - value. Consequently, the null hypothesis, which states that there is no significant relationship between collective bargaining and arbitration is rejected. So, that there is a significant relationship between collective bargaining and arbitration is supported.

$H_{02}$: There is no significant relationship between collective bargaining and collaborative law.

Table 2: Relationship between Collective Bargaining and Collaborative Law; source: Original Research
The results in Table 2 above show that the calculated $r$ - value $= 0.236$ and the tabulated $r$ - value $= 0.049$ at the 0.05 level of significance. The calculated $r$ - value is greater than the tabulated $r$ - value. Consequently, the null hypothesis, which states that there is no significant relationship between collective bargaining and collaborative law is rejected. So, that there is a significant relationship between collective bargaining and arbitration is supported.

Ho$_3$: There is no significant relationship between collective bargaining and mediation.

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<th>Mean</th>
<th>Std. Dev.</th>
<th>df</th>
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Table 3: Relationship between Collective Bargaining and Mediation; source: Original Research

The results in Table 3 above show that the calculated $r$ - value $= 0.213$ and the tabulated $r$ - value $= 0.049$ at the 0.05 level of significance. The calculated $r$ - value is greater than the tabulated $r$ - value. Consequently, the null hypothesis, which states that there is no significant relationship between collective bargaining and collaborative law is rejected. So, that there is a significant relationship between collective bargaining and mediation is supported.

Ho$_4$: There is no significant relationship between collective bargaining and conciliation

<table>
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Table 4: Relationship between Collective Bargaining and Conciliation; source: Original Research

The results in Table 4 above show that the calculated $r$ - value $= 0.441$ and the tabulated $r$ - value $= 0.049$ at the 0.05 level of significance. The calculated $r$ - value is greater than the tabulated $r$ - value. Consequently, the null hypothesis, which states that there is no significant relationship between collective bargaining and collaborative law is rejected. So, that there is a significant relationship between collective bargaining and conciliation is supported.

5. Discussion of Findings

The study recorded the significant relationships between collective bargaining and arbitration; collaborative law; mediation and conciliation. This implies that collective bargaining is an effective tool for industrial dispute resolution. These results might not be unconnected with the fact that arbitration, collaborative law, mediation and conciliation are statutory settlement mechanisms. The findings from this present study corroborate Benjamin and Hideaki (2004), who observed that collective bargaining is, essentially, a recognised way of creating a system of industrial jurisprudence. It acts as a method of introducing civil rights in the industry; that is, the management should be conducted by rules rather than arbitrary decision-making. Collective bargaining constitutes an important means by which workers seek to satisfy their economic and social interests. Consequently, successful collective bargaining is crucial to the attainment of industrial peace in Nigeria.

Arbitration is a form of alternative dispute resolution (ADR), which is a legal technique for the resolution of disputes outside the courts,
wherein the parties to a dispute refer it to one or more persons (the "arbitrators," "arbiters" or "arbitral tribunal"), by whose decision (the "award") they agree to be bound. It is a settlement technique in which a third party reviews the case and imposes a decision that is legally binding for both sides (O’Sullivan & Sheffrin, 2003). Arbitration is most commonly used for the resolution of commercial disputes, particularly in the context of international commercial transactions. The use of arbitration is far more controversial in consumer and employment matters, where arbitration is not voluntary but is instead imposed on consumers or employees through fine-print contracts, thereby denying individuals their right to access the courts.

Arbitration can either be voluntary or mandatory and can be either binding or non-binding in nature. Non-binding arbitration is, on the surface, similar to mediation. However, the principal distinction is that whereas a mediator will try to help the parties find a middle ground on which to compromise, the (non-binding) arbitrator remains totally removed from the settlement process and will only give a determination of liability and, if appropriate, an indication of the quantum of damages payable (Buhring-Uhle & Kirchhof, 2006).

Collaborative law refers to a new method of solving legal disputes that avoids traditional court proceedings. Rather than filing a lawsuit, each side voluntarily agrees to a series of sit-down negotiations between the parties, their attorneys and any number of experts and therapists trained in the subject matter of the dispute. These meetings allow the parties openly to exchange information and discuss the matter with an understanding that nothing communicated will later be used against them in court. The collaborative law process is founded on good faith. By taking a cooperative approach, rather than an adversarial one, parties can resolve difficult issues that would otherwise lead to expensive and time-consuming litigation. People tend to use collaborative law to settle highly emotional cases such as business partnership dissolutions, wrongful discharge claims and so forth.
In industrial relations, mediation offers an informal method of dispute resolution, in which a neutral third party, the mediator, attempts to assist the parties in finding resolution to their problem through the mediation process. Although mediation has no legal standing per se, the parties can (usually with assistance from legal counsel) commit agreed points to writing and sign this document, thus producing a legally binding contract in some jurisdictions specified therein. Mediation differs from most other conflict resolution processes by virtue of its simplicity and in the clarity of its rules. It is employed at all scales from petty civil disputes to global peace talks (Boulle, 2005). It is thus difficult to characterize it independently of these scales or specific jurisdiction - where 'mediation' may in fact be formally defined and may in fact require specific licenses (Cremin, 2007).

Mediators use appropriate techniques and/or skills to open and/or improve dialogue between disputants, aiming to help the parties reach an agreement (with concrete effects) on the disputed matters. Normally, all parties must view the mediator as impartial. Disputants may use mediation in a variety of disputes, such as commercial, legal, diplomatic, workplace, community and family matters. A third-party representative may contract and mediate between unions and employers of labour, as an example. When a workers’ union goes on strike, a dispute takes place and the employer of labour hires a third party to intervene in attempt to settle a contract or agreement between the union and the employer of labour.

Conciliation sometimes serves as an umbrella-term that covers all mediation and facilitative and advisory dispute-resolution processes. Conciliation is also an ADR process whereby the parties to a dispute (including future interest disputes) agree to utilise the services of a conciliator, who then meets with the parties separately in an attempt to resolve their differences. S/he does this by lowering tensions, improving communications, interpreting issues, providing technical assistance, exploring potential solutions and bringing about a
negotiated settlement. Conciliation differs from arbitration in that the conciliation process, in and of itself, has no legal standing, and the conciliator usually has no authority to seek evidence or call witnesses, usually writes no decision and makes no award (Charlton & Dewdney, 2004). Conciliation also differs from mediation in that the main goal is to conciliate, most of the time by seeking concessions. In mediation, the mediator tries to guide the discussion in a way that optimizes parties’ needs, takes feelings into account and reframes representations. In conciliation the parties seldom, if ever, actually face each other across the table in the presence of the conciliator.

Collective agreements are of two parts; the substantive and procedural agreements. The substantive agreement relates to wages and salaries, hours of work and terms and conditions of employment whilst the procedural agreement pertains to procedures to be followed in the event of dispute resolution, periodicity of meetings and duration of agreement *inter alia*. Kornhauser, Dubin and Ross (1954), as cited in Rose (2008), claimed that collective bargaining is the great social invention that has institutionalised industrial conflict. This implies that, without collective bargaining, industrial conflict would threaten not only the industrial order but also social stability.

Gomez-Mejia, Luis, Balkin and Cardy (2003) explain that parties are said to be showing good faith in bargaining when they are willing to meet and confer with each other at a reasonable time and place; they are willing to negotiate over wages, hours and conditions of employment; they sign a written contract that formalizes their agreement and binds them to it; and each party gives the other adequate notice of termination or modification of the labour agreement before it expires. Similarly, there should also be genuine willingness on the part of the parties to give and take at the bargaining table, cooperation and consideration of fairness under the process.

Collective bargaining is, therefore, a rational process in which it appeals to facts and to logic that reconciles conflicting interests in the
light of the common interest of both parties (Bendix, 2011). Hence, the application of the agreed set of rules to govern the substantive and the procedural terms of employment relationship between the employer and employee will influence the industrial relations environment. The amount of trust built up between management and the trade union representatives, in particular, and management and workforce generally, during the process is a major factor in the quality of industrial relations. Where the trust is high, it is less likely that one side or the other will resort to sanctions (Cole, 2002).

6. Conclusion

Collective bargaining is an effective tool for dispute resolution in every organization while confrontation, demonstration or strike actions are injurious not only to the employers and the employees but also to society at large. Collective agreement can be reached through any of these alternative dispute resolutions: arbitration, collaborative law, mediation and conciliation. Collective bargaining is the process of arriving or attempting to arrive at a collective agreement. This present study’s result observed that collective bargaining is significantly related to arbitration, collaborative law, mediation and conciliation; there is no doubt that collective bargaining is an effective tool for dispute resolution.

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 relationships such as their behaviour in settling disputes. Collective bargaining, therefore, provides inducement by which union and management can accommodate each other’s view through compromise and persuasion. This quality is an important aspect of the system and provides the underlying basis for industrial peace, among its several other functions. The right to collective
bargaining contributes to improving economic and trade performance and it is recognised as an instrument for social justice.

7. Recommendations

From the findings of this study, it is revealed that collective bargaining is the most effective approach to resolving industrial disputes at the workplace. Based on this, the following recommendations were proffered:

- Governments, business organizations, employers of labour, employees, organizations and all stakeholders in industrial relations should endeavour to embrace collective bargaining as the machinery to resolve industrial disputes so as to promote industrial harmony, enhance employees’ performance, increase productivity and improve the living standards of the generality of the people;
- It should be noted that 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 and
- Collective bargaining is highly imperative to achieving social, political and economic transformation through increased productivity, job security, motivation and involvement in trade union activities. Consequently, it should be employed by all stakeholders in human resource management as one of the most effective approaches to resolve industrial disputes.

8. References


