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COLLECTIVE BARGAINING AND COLLECTIVE AGREEMENT : A CRITICAL APPRAISAL OF THE STRUCTURAL AND PRACTICAL DISSONANCE IN COLLECTIVE RELATIONS NIGERIA

ABSTRACT

This paper is an in-depth and critical analysis of the laws of collective labour relations in Nigeria. This study represents a contemporary appraisal of industrial rules on collective bargaining and collective agreement, with due consideration of the recurrent breakdowns of interactions among parties to employment in Nigeria. This research emphasizes the incessant strike actions by the Academic Staff Union of Universities (ASUU), which have almost become a plague in the Nigerian educational sector. It is ironic that the warring parties have met several times over the years and are yet unable to proffer a permanent solution to the menace of strike actions. A collective agreement between the trade Union and the Nigerian Federal Government in 2009 remains the subject matter of the protracted dispute over years. While recognizing the efforts by both parties to resolve their conflict, one may also be tempted to querry the goal, sincerity and commitment of both parties in reaching a permanent solution. If there is a collective agreement, it would be presumed that parties intend to keep to it. However, the Nigerian experience has shown just the opposite. This paper makes a detailed presentation of the laws on collective bargaining and agreement in Nigeria, then concludes that despite attempts to formalize rules on collective relations, the requirement to keep the "gentleman" and "Good faith" essence of collective activities is still the sacrosanct route to industrial peace. Where parties are not willing to keep good faith, collective relations are at best tedious, but cosmetic approach to resolving industrial relations.

Keywords: Collective Bargaining, Collective Agreement, Employment, Good Faith, ASUU, Nigerian Federal Government.

1. INTRODUCTION

The term "Collective Bargaining" was used first by Sidney and Beatrice Webb in 1891. Although rooted in economic theory,[1] "collective bargaining" has become absorbed into legal parlance. Sidney and Beatrice perceived collective bargaining as the process whereby the terms and conditions of employment are agreed upon through the representatives of employer(s) and the employees.[2] The concept of collective agreement has evolved through the centuries and has become a matter for international discussions. In Susan Hayter's view (2011), Collective bargaining is a process of negotiation between the representatives of an employer (or employers) and of workers. Adebayo and Toyosi (2021), observed that effective collective bargaining being a product of industrial democracy has a very great impact on the growth and economy of a nation. Indeed, the effective recognition of the right to collective bargaining is a fundamental principle and right at work (ILO 2015)

Flowing directly from the process of collective bargaining is a consequent called "collective Agreement". This is the culmination of any successful collective bargaining. It denotes a contract between multiple parties, most especially where one side consists of many people or entities with a common interest.[3] The basic aim of collective agreement is to raise the living standard of workers, and give them confidence and self-respect.(Ajie and Gabriel-Whyte). A collective agreement exists only where there is a successful attempt of peaceful settlement of industrial duty and the goal of collective bargaining is to conclude a collective agreement (ILO 2015)

Without any gainsaying, international labour standard recognizes and promotes the use of collective bargaining and collective agreement to achieve greater productivity in all sectors of employment.[4] For example, the ILO Convention No 98 requires the government, workers and

[1] Sidney and Beatrice Webb "Industrial Democracy" Longmans, Green and Co, London 1897

[2] ibid

[3] Black's Law Dictionary 11th edition 2019 @ 330

[4] Some ILO convention touching on Collective bargaining and collective agreement included 1998 ILO Declaration on Fundamental Principles and Rights at Work (amended in 2022) and Right to organize and collective Bargaining

employers organizations to develop and utilize machinery to promote voluntary negotiations. It is trite to note that Nigeria, being a member of ILO has amended her laws to fit into the international standards. Interestingly, in Nigeria, the legal status and the reality of collective agreement are still quite dicey. Consistent breakdown of industrial peace in Nigeria raises questions on the purpose of and commitment to collective agreement in the country.

This study explains the terms collective bargaining and Agreement, their essence and benefits in industrial relations and the statutory and judicial procedures for collective negotiations in Nigeria. The study also describes the ASUU-federal government condrum, and the theoretical basis for existing regimes to work.

2. ESSENCE AND REQUIRMENETS FOR COLLECTIVE BARGAINING AND AGREEMENT

Before the enactment of statutes containing provisions on collective agreement in Nigeria, collective agreement was generally regarded as a gentleman's agreement.[5] This perception was a direct influence of the English common law which was adopted in Nigeria as a colonial heritage.[6] The effect of this is that collective agreement is not generally enforceable except where it has been incorporated into the contract of employment by the parties.[7] Over time, the enactment of statutes has boosted the legal status of collective agreement. This is notwithstanding the fact that parties still have difficulties in enforcing statutory provisions in these regards. By virtue of Section 48 of the Nigerian Trade Dispute Act, collective agreement as the following features

a. it is an agreement in writing for the settlement of disputes
b. The agreement relates to terms of employment and physical conditions of work
c. it is concluded between
    i. an employer, a group of employers or organizations representing workers, or the duly appointed representative of any body of workers, on the one hand; and
    ii. one or more trade unions or organizations representing workers, or the duly appointed representative of any body of workers

The condition for the rule above to manifest is as expressed by the Court of appeal in Oguejiofor v. Siemens Ltd.[8] That, a collective agreement becomes enforceable only upon incorporation into the contract of service of individual employee.[9] This position prescribes the need for parties to take extra steps of good faith towards legalizing their agreements. The implication of this is that a collective agreement only becomes binding when it has been made an enforceable part of the existing contract between the parties. The ideal preferences for collective agreements in

Convention, 1949 (No. 98)

[5] J.D Akpan "Nature of Collective Agreement in Nigeria: A panoramic Analysis of Inherent Implementation Challenges" Global Journal of Politics and Law Research, vol 5, No. 6, pp 19-28, 2017
[6] See Balogun v. Union Bank (2016) LPELR-41442(CA)
[7] B.P.E v Dangote Cement Plc1 (2020) 5 NWLR (PT. 1717) 322.
[8] (2007) LPELR-8401(CA)
[9] See Osoh&Ors v Unity Bank Plc (2013) 9NWLR (Pt 1358)

industrial relations are due to its non litigious characteristics. Apart from the fact that it is mostly a product of negotiation, other essence of collective agreement are;

2.1. Evidence of The Mutual Agreement Of Parties

By International standard, and as also obtainable under most legal systems of the world, collective agreements are required to be in writing.[10] In Nigeria, collective agreement must be in writing.[11] Aside the requirement of writing, Section 3 of Trade Dispute Act[12] also makes it obligatory for parties to deposit copies of their collective agreements with the Minister. Among other things, this makes it possible to present the written and executed agreement as evidence before the court or any other authority as may be necessary.[13] Collective agreement therefore qualifies as a potential documentary evidence of the agreement of the parties thereto.[14]

2.2. Foster Amicable Settlement Of Dispute

The initiation of a collective bargaining, prima facie proves that parties intend to settle their disputes amicably. Collective agreement is essentially based on the negotiations of the parties[15] Such a written agreement contains the amicable terms of dispute settlement. Moreover, the signing of the document proves that the agreement was entered into voluntarily and that the parties intend to be bound thereby. The ILO convention[16] provides that measures appropriate to national conditions shall be taken, where necessary, to encourage and promote the full development and utilization of machinery for voluntary negotiation between employers or employers' organizations and workers' organizations, with a view to regulate the terms and conditions of employment by means of collective agreements. Collective bargaining therefore affords the parties the platform of peaceful settlement through negotiation and in the case of a successful negotiation, through the execution of a collective agreement

2.3. Regulatory Functions

Collective agreement can serve as a regulatory measure in industrial relations. In the recent case of Chima Eze Chukwu v Tecon Oil Services Nigeria Ltd[17], the court noted that two issues stood out for deliberation in this case; first is whether by virtue of section 254 (C) (J) (i) of the Constitution of Nigeria 1999 (as amended by the 3rd Alteration) collective agreements continue to be binding in honour only and only enforceable upon incorporation; and second, whether in the present case, the collective bargain agreement had become enforceable in favour of the Claimant. It was held that the creation of the Court, and the powers donated to it by the National Industrial Court Act 2006, and the Constitution of the Federal Republic of Nigeria (as amended by the 3rd Alteration Act) 1999 intentionally created a new legal regime in industrial relations; including the enforceability of collective agreements. Accordingly, the court held that the act of

[10] See The ILO instrument “Collective Agreements Recommendation, 1951 (N0. 91)”
[11] ibid
[12] By virtue of this section parties are required to deposit three (3) copies with the Minister
[13] Evidence Act (2011) provides for the use of documentary evidence in Nigeria.
[14] See Evidence Act, s83 on documentary evidence
[15] See Collective bargaining: a policy guide / International Labour Office, Governance and Tripartism Department (GOVERNANCE), Conditions of Work and Equality Department (WORKQUALITY) - Geneva: ILO, 2015.
[16]Right to organize and collective Bargaining Convention, 1949 (No. 98), article 4
[17] NICN/LA/27/2017 unreported. Available at https://www.nicnadr.gov.ng/judgement/details.php?id=5799

the defendant which was inconsistent with the collective agreement relied upon be the plaintiff was held to be illegal. In the case above, collective agreement performed a regulating role and constituted a yardstick for determining the validity of the actions of the parties thereto.

2.4. Prevention Against Resort To Self Help And Illegal Actions In Work Place

The constitution of the Federal Republic of Nigeria, makes provision for and guarantees the fundamental right to fair hearing.[18] After the process of a collective bargaining, parties are afforded the legal and reasonable basis of enforcing their collective agreements.[19] In this regard the Trade Dispute Act prohibits resort to illegal strikes without prior efforts to negotiate or reconcile.

3. BENEFITS OF COLLECTIVE BARGAINING AND AGREEMENT

Without gainsaying, the benefits associated with collective bargaining cannot be overemphasized. The International communities, being aware of the great impact collective bargaining in industrial relations, have published various international instrument to protect and promote the interest of labour, recognizing and advocating for respect for collective bargaining.[20] Some apparent benefit of collective bargain and agreement are:

a. it promotes the fundamental right to freedom of association. The fundamental right to freedom of association is the very basis for trade Unionism.[21] The ability of a trade union to secure their rights and privileges through collective bargaining is evidence of the respect for their fundamental right. On the other hand, preventing the association or frustrating the purpose may be a technical denial of their freedom of association.
b. it prevents break down of law and order in the industries - The institution of a collective bargaining for the purpose of peaceful settlement can contribute significantly to the prevention break down of order over industrial disputes. This is because parties who are in the process of an amicable settlement are more likely to conduct themselves well in order not to defeat the purpose of the process.
c. it facilitates peaceful settlement of industrial dispute-when one party calls for a collective bargaining, it is an indication that peaceful settlement is desired. Rather than going to court, collective bargaining process present a platform for parties to settle their dispute amicably in a peaceful manner. This is therefore preferred when compared to the court system which involves a third party and is adversarial.
d. it preserves relationship by encouraging mutual settlement without the influence a third party -instituting a case in a court generally stirs odd feelings. In most cases, each party wants to win. Especially in an adversarial legal system like Nigeria. On the other hand, the use of collective bargaining procedure helps parties to preserve their relationship and could also set the stage for better future relations.

[18] CFRN 1999 as amended s36
[19] Chima Eze Chukwu V Tecon Oil Services Nigeria Ltd Supra
[20] See Labour Relations (Public Service) Convention, 1978 (No. 151), Collective Bargaining Convention, 1981 (No. 154), Right to Orgainise and Collective Bargaining Convention, 1949 (No. 98) and so on.
[21] See the Constitution of the Federal Republic of Nigeria (CFRN) s40

e. it fosters better industrial relations and performance and so on.-When parties are able to resolve their conflict amicably, it improves the industrial atmosphere and therefore culminating in greater productivity.
f. It prevents costly and protracted labour dispute-Successful collective bargain culminates in a collective agreement. This is less costly and prevents court actions which are generally known to be slow and tardy. It also prevents protracted labour dispute by offering a platform for mutual and amicable settlement.

4. PROCEDURES IN COLLECTIVE BARGAINING AND AGREEMENT INCLUDING THE PRINCIPLES OF NEGOTIATION

Collective bargaining is not alien to the Nigerian jurisprudence. Indeed, there are multiple legislations providing for collective bargaining in Nigeria.[22] Yet, it is not fallacious that these legislations mostly contain glossy provisions without addressing the procedural and practical aspects of collective bargaining and agreement**.** This is a wide gap in the law and can be accounted for lack of good faith and the resultant chronological failure of collective agreements. In most cases, one party is forced to concede to the demand of the other.

In more developed countries[23] the legislations on collective bargaining and agreement are more detailed and encompassing and industrial actions are strictly regulated[24] The United State National Labour Relation (NLRA) is indeed an encompassing legislation on collective bargaining containing provisions on the reasons, legality or otherwise of industrial actions. For example Section 1 of the National Labour Relations Act inter alia provides:

> *"It is declared to be the policy of the United States to eliminate the causes of certain substantial obstructions to the free flow of commerce and to mitigate and eliminate these obstructions when they have occurred by encouraging the practice and procedure of collective bargaining and by protecting the exercise by workers of full freedom of association, self- organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection."*

By virtue of Section 7(d) of the above Act, it is the Obligation of the employer and the Trade Union to bargain collectively. Parties are statutorily obliged to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement or any question arising there under, and the execution of a written contract incorporating any agreement reached if requested by either party, but such obligation does not compel either party to agree to a proposal or require the making of a concession.

[22] Examples are The Labour Act, The Trade Dispute Act, Trade Union Act and so on
[23] The National Labour Relation Act (NLRA) of the United State, 1935, is essentially dedicated to matters relating to and arising from collective bargaining and agreement. See also Charter of Rights and Freedoms in 1982 applicable in Canada
[24] Ibid s11

There is an additional Proviso, that where there is in effect a collective- bargaining contract covering employees in an industry affecting commerce, the duty to bargain collectively shall also mean that no party to such contract shall terminate or modify such contract, unless the party desiring such termination or modification.[25]The NLRA also equally provides for the procedure to adopt in choosing the representatives of the employer and the employee for the purpose of holding a collective bargaining[26]

Similarly, the Canadian law provides for the "Effect and interpretation of collective agreement. Section 56 of the Canadian Labour Code[27] provides that a collective agreement entered into between a bargaining agent and an employer in respect of a bargaining unit is binding on the bargaining agent, every employee in the bargaining unit and the employer. Collective bargaining and other Union-Management relationship in Canada are also strictly regulated by statutes. The initiation of the collective bargaining, the conduct and timing of the bargaining process, the agreement and others are strictly regulated[28]

In the Nigeria case, there are no specific statutory provisions on the process and procedure of collective bargaining, parties generally adopt the regular procedure for negotiation. Moreover, collective bargaining has been described in the context of a negotiation[29] Hence, the procedures of negotiation generally apply.

Harry, Thomas and Alexander[30] describes a 3-level circle procedure for a typical labour negotiation. This includes

a. Early Stages
b. Middle Stages
c. Final stages

According to them, the Early stage is the initial stage of a traditional negotiation and involves many people in the intra-organizational preparation. On the part of the Union, it is their duty to develop the proposals of the Union for presentation for the employer. The proposal will be eventually presented, opening the ground for deliberations. It is at this point that the speakers for each side will present their strong argument. The grandstanding of each is mostly displaced here.

The middle stages of negotiations involve more serious consideration of various proposals. Some important tasks performed in the middle stages of bargaining are

> (1) developing an estimate of the relative priorities the other side attaches to the outstanding issues;

[25] NLRA S7d
[26] See s9
[27] Revised Statute of Canada (R.S.C.), 1985, c. L-2
[28] Farrell, Michael (2008) "Collective Bargaining in Canada," Journal of Collective Bargaining in the Academy: Vol. 0, Article 47.
[29] Ibid ILO 2015
[30] Katz, Harry C., & Kochan, T. A., & Colvin, A. J. S. (2015). The negotiations process and structures [Electronic version]. In Labor relations in a globalizing world (pp. 79-101). Ithaca, NY: ILR Press, an imprint of Cornell University Press. Retrieved [insert date], from Cornell University, ILR School site: http://digitalcommons.ilr.cornell.edu/articles/1040

(2) estimating the likelihood that an agreement can be reached without a strike; and

(3) signaling to the other side which issues might be the subject of compromise at a later stage of the process

At the final stage, the process both heats up and speeds up. Further discussions of the issues may take place between two individuals or small groups of representatives from both sides, perhaps in conjunction with a mediator. Each side tries to make the other side concede and most importantly the try to reach an agreement so as prevent an impasse.

Arun Kumar[31] identified 4 stages of collective bargaining, which are

a. Preparation for negotiation
b. Negotiation
c. Signing the Agreement
d. Follow-up action for implementation

The preparation involves consultation with the members for information and bargaining approaches; union bargaining team, data collection, formulation of charter of demands, etc - Pre-planning. Negotiation is the stage parties bring their different propositions to the table for discussion. If this stage is successful, parties the proceed to reduce their agreement is not writing which is followed by execution and implementation of the collective agreement.

Stages for collective bargaining may also be divided into the following parts;

a. Consultation/Preparatory Stage

This is a preparatory stage. This stage will cover necessities such as consulting research, engaging an expert, internal consultation, preparation of notices, formal request for a meeting and so on. In the case of a case trade dispute, the law enjoins parties to attempt to settle their dispute amicably at first.[32] Where there is an existing agreement between parties on the method to adopt for amicable settlement of dispute, it is the duty of parties to attempt to settle through the agreed means first. Such agreement may stipulate certain preliminary steps to be taken by the parties before a meeting can be instituted. Such may include, issuing a notice to the other party asserting the dispute and requesting for settlement through the agreed means. Consultation stage is personal to both sides. This is also where each side prepares its own case before a formal meeting. It is at this stage that parties also determine their negotiation strategy, the Best Alternative To Negotiated Agreement (BATNA) and the Worst Alternative To Negotiated Agreement (WATNA)[33]

b. First Meeting

The is the initial meeting of parties. This meeting is schedule by the parties to apprehend the dispute and to seek for way forward. Both sides present their cases. In many cases, the problem

[31] Arun Kumar "Sharing in the gains of growth: Negotiating Decent Work-Decent Work" ACTRAV-ILO-Bangkok
[32] Trade Dispute Act, s4
[33] Negotiation strategy could be – Evade, Insist, Comply, settle strategy. See John F. Kennedy "An Overview of Negotiation Strategies" USAF Negotiation Center of Excellence. Available at http://negotiation.au.af.mil/

may be too weighty to be determine at the first meeting or both parties may have need to return to its larger community to be able to make a decision

c. Second Meeting/Negotiation Stage

At the stage, parties are more familiar with the issues and the negotiation can be more intense. This is where parties get more strategic about the settlement of dispute. it is important for the representative of each side to stick only to is acceptable to the sect they represent. E.g the Minister representing government should not agree to a proposition that may not be workable on the side of the government.

d. Agreement and Execution Stage

This stage is the product of a successful negotiation. If parties are able to agree, then the agreement is reduced into writing and signatures appended by the appropriate persons. The stage is very important. The law expressly requires any collective agreement to be in writing.[34]

e. Implementation Stage

It is a general principle of law that agreement must be kept. This is also in the maxim "pacta sunt servander". It can be presumed that parties to an agreement intend to keep the parts. The same is applicable in a collective agreement. It is presumed that parties would keep their parts. Even under common law, where a collective agreement is not enforceable by action, it is still referred to as a gentleman's agreement. Meaning that although there is no intention to create legal obligation, parties are entering the agreement in good faith.It is worthy of note that modern law however makes collective agreement enforceable[35]

5. NIGERIAN STATUTE ON COLLECTIVE BARGAINING AND AGREEMENT

As noted early, there are multiple statutes in Nigerian making provisions on collective bargaining and agreement. Some to be discussed in this paper are

5.1. The Trade Dispute Act.

This is an Act to provide for the settlement of trade disputes and other ancillary matters in Nigeria[36] Disputes settlement under the Act can take following procedure.

a. Resolution by the parties themselves[37]
b. Resolution by a conciliator[38]
c. Resolution by arbitration[39], and
d. Resolution by court.[40]

[34] Trade Dispute Act, s48
[35] See the National Industrial Court Act
[36] See preamble to the Act
[37] S4
[38] S5
[39] S7 and 8
[40] S17

Section 4 of the Act provides

> *if there exists agreed means for settlement of the dispute apart from this Act,* ***whether by virtue of the provisions of any agreement*** *between organisations representing the interests of employers and organisation of workers or any other agreement, the parties to the dispute shall first attempt to settle it by that means.*

In essence, the Act promotes amicable resolution of dispute in the first place. This can take the form of a collective bargaining which may result in collective agreement. Also, section 48 defines collective agreement as thus

> *any agreement in writing for the settlement of disputes and relating to terms of employment and physical conditions of work concluded between-*
>
> *(a) an employer, a group of employers or organisations representing workers, or the duly appointed representative of any body of workers, on the one hand; and*
> *(b) (b) one or more trade unions or organisations representing workers, or the duly appointed representative of any body of workers, on the other hand;*

S 16 provides on the Interpretation of agreements. It provides inter alia that "notwithstanding anything in the foregoing provisions of this Act, the Minister or any party to a collective agreement may make an application to the National Industrial Court for a decision of that Court as to the interpretation of any term or provision of the collective agreement".

The Act indeed contains certain provisions on industrial negotiations and agreement. However, the provisions are superficial, addressing the matter only from the standpoint of post negotiation stage. Hence there is no substantive guide as to the procedure to be adopted in setting up a collecting bargaining or reaching a collective agreement

5.2. The Labour Act

This is the most comprehensive statute on labour and industrial matters in Nigeria. The Act is divided into four (4) parts containing provisions on employment, recruitment for employment, employment of special class of people and so on. It is worthy of note that the Act does not categorically apply to all forms of employment. Section 91 of the Act defines collective agreement. Aside this definition, no further provision of the Act delves into the practice and procedure of collective bargaining and agreement, except in the case of reference.[41]

5.3. The National Industrial Court Act

[41] See S1(2) for example.

This Act was enacted to provide for the establishment of the National industrial court as a superior court f record and for related matters.[42] Section 7(1) of the Act confers jurisdiction on the National Industrial court in the following matters;

a. Relating to-
    i. labour, including trade Unions and Industrail relations: and
    ii. environmental and conditions of work, health, safety and welfare of labour, and matters incidental thereto: and
    iii. to the grant of any order to restrain any person or body from taking part in any strike, lock-out or any industrial action, or any conduct in contemplation or in furtherance of a strike, lock-out or any industrial action.

    Also,

    Relating to the determination of any question as to the interpretation of
    i. any collective agreement,
    ii. any award made by an arbitral tribunal in respect of a labour dispute or an organizational dispute
    iii. the terms of settlement of any labour dispute, organizational dispute as may be recorded in any memorandum of settlement.
    iv. any trade union constitution, and
    v. any award or judgement of the court

Before the enactment of the Act, the applicable principle of law on collective agreement is that it is merely a gentleman's agreement and hence not enforceable. This was the position of the court in many cases. However, with the provisions of above section on collective agreement, indeed shows that the court has a wider cope of authority and can enforce such agreements.[43]

5.4. The Constitution Of The Federal Republic Of Nigeria

This is the grundnorm of Nigerian legal rules. It is the source from which every other law derives validity.[44] Upon the enactment of the Third Alteration Act and the establishments of the National Industrial Court as a superior court of record in Nigeria, the court has been empowered to determine any question as to the interpretation of any collective agreement and relating to the registration of a collective agreement.[45]

[42] See preamble
[43] S7 NIC Act 2006
[44] S1(3)
[45] NIC Act

6. THE GOODFAITH THEORY-PACTA SUNT SERVANDER AND THE ASUU/FEDERAL GOVERNEMNT CONDRUM

Pacta sunt servanda a latin phrase means "agreements must be kept". It is a fundamental principle in law and morality. To Hans Wehberg, the concept is one of the few rules for the ordering of society, that have such a deep moral and religious influence[46]. The term further related to the general principle of fair dealings, correct attitudes and moral behavior in all circumstances where agreements are made. The position is not withstanding the legal obligations of parties and their intention to be bound by law. Debates have however existed on how good faith should be evaluated and measured[47]. Nevertheless, the term good faith elicit the basic principles for the manifestation and success of collective agreements which is inimical to what obtains in all human interactions. These basic requirements are that parties to agreement should have a sincere intention, be fair, open, and honest, regardless of the outcome of their interactions. Apposite to these characteristics are negative and frustrating agenda as perfidy, deceit, sharp diplomacy, pretense, bad faith, rigidity and stubbornness. Where parties to agreement ignore the fundamentals of bargaining, there is bound to be breakdown of industrial relations, irrespective of the periods for which meetings and negotiations are slated. In this regard, it is trite to note that within a period of 23 years, ASUU has embarked on 16 strikes[48].While some were short-lived, others lasted months. The last ASUU strike in February 2022 lasted 8 months. The reason for these timeless strikes boils down to an agreement/Memorandum of Understanding entered into by the Union and the Federal Government of Nigeria. ASUU claims are that, the Nigerian Government has failed to keep its part of their agreement.

Where it has become impossible to act out positions already entered in agreements, the sincerity of a party or both parties to the agreement becomes questionable. Where the party in breach is the employer, especially the government, the tendencies for laws to achieve purposes that good faith has failed to enable remains null. This is because statutory interventions attribute the[49] Positive Theory, of the impact of a commandment of a superior being to an inferior being and enforced by sanction." By positive theory, the following are essential features of law

a. the existence of a superior being
b. the existence of an inferior being, and

[46] Wehberg, H., 'Pacta Sunt Servanda', *The American Journal of International Law* 53, no. 4 (1959), accessed 10 February 2022

[47] *Mackaay, Ejan (2011). "Good Faith in Civil Law Systems – A Legal-Economic Analysis". SSRN Electronic Journal: 157–170. doi:10.2139/ssrn.1998924. ISSN 1556-5068. S2CID 144021119*

[48] Deborah Tolu-Kayode "Asuu Embarks on 16 strikes in 23 years over 13-year MOU" available at https://punchng.com/asuu-embarks-on-16-strikes-in-23-years-fg-lecturers-disagree-over-13-year-mou/#:~:text=Due%20to%20the%20failure%20of%20the%20Federal%20Government%20to%20implement,called%20off%20in%20January%202011.

[49] Available at http://www.koeblergerhard.de/Fontes/AustinJohnTheprovinceofjurisprudencedetermined1832.pdf

c. enforcement of law by sanction

A challenge to penalizing parties that fail to keep their words after industrial negotiations is that, the procedure engaged in before agreement suggests that inter alia, that there is a level playing ground for the party. The concept elevating the government as superior to her employees in this regard does not apply. It is also unlikely that statutes can be manipulated to stretch the extent that parties have inherently refrained from tolling. In addition, employment relations thrive better in non litigious and peaceful atmosphere. Apart from extreme circumstances the law restrains from making contracts for parties.

The above situation therefore subjects the essence of collective relations in industrial environment both at law and in morals to the acknoleged nexus between the efficiency of statutes and the conduct of the people.[50]Eugene Ehrlich is foremost jurisprudent of this school of thought in Europe. Ehrlich explained that the society itself is the center of legal development rather than the legal rules[51] In essence, this theory posits that it is the society's conduct and value that determines law. Roscoe Pound is another prominent American jurisprudent of sociological school explained the development of law through two chief elements[52], that is

- the enacted or imperative element, and
- the traditional or habitual element.

He explained further that the latter is the older or historical element, upon which juristic development of the law proceeds by analogy. The two are however intertwined as they regulate the lives of the people. In this regard, there is no gainsaying that the ASUU federal government strife in Nigeria, just as the other several industrial actions bother on the failure of parties to honor their agreement.[53] The foremost importance of a collective Agreement is to serve as a guide for the relationship between an employer of labor and the body (Union) of its employees and usually to solve some specific problems. From the wording of the Trade Disputes Legislation around the world over, it can be presumed that it is normally intended that every duly executed collective agreement thereto and without more should be or ought to be implemented. The implementation is usually carried out by the employer. The employer may be the national, state or local governments and/or their ministries, departments or agencies. The essence of implementation of an agreement of this nature is to afford the employees the benefit of reaping the fruits of effective representation of their trade unions pursuant to the collective agreement[54]

The questions to be ask are that, has it become the habit of the Federal Government to dishonor agreements with trade Unions? Can instances of dishonor be as consistent as the extent of and

[50] See Abiola Sanni "Introduction to Nigerian Legal Method" Obafemi Awolowo University Press Limited, Ile-Ife 3rd Ed. 2017, p 19

[51] Ehrlich cited by Elise Nalbandian "Introductory Concept on Sociological Jurisprudence: Jhering, Durkheim, Ehrlich" MIZAN LAW REVIEW Vol. 4 No.2, Autumn 2010

[52] Roscoe Pound "Theories of Law" Yale Law Journal

[53] See Nigeria Labour Congrees strike on Minimum Wage available at https://guardian.ng/news/minimum-wage-labour-threatens-indefinite-nationwide-strike/

[54] J.D Akpan "Nature of Collective Agreements In Nigeria: A Panoramic Analysis of Inherent Implementation Challenges" Global Journal of Politics and Law Research Vol.5, No.6, pp.19-28, November 2017

numbers of ASUU strikes that have ensued in the past decades? Has the intervention of laws, statutes and the judiciary has been severely retarded by party's uncooperative initiatives?

The practical impact of lack of implementation cannot be overemphasized. In Nigeria, especially in the public sector, non-implementation of collective bargaining has occasioned certain negative actions including protest, lock out, strike and so on. Political will is therefore both the denominator and numerator for policy, decisions or agreements implementation[55] especially in Nigeria where the government is the largest employer of labor. Unfortunately the incapacity of laws and parties to resolve the crisis has had overwhelming effects such as;

a. Disruption of Academic Programmes

University education takes 4-5 years in Nigeria. However, the reoccurring ASUU strike has led to a situation whereby student stayed longer in school, even though they have no fault. The last ASUU strike lasted 8 months which is more than 2 semesters together. The effect of this is that student have lost almost a whole academic year and therefore would stay longer in school than they ordinarily ought to.

b. Stalled Trade and Economy

The close down of universities apparently means a close down of most businesses on campuses. As a result, the strike does not only affect the academics but also the economy of Nigeria. According to the estimation of Professor Akpan Ekpo, a former director-general of the West African Institute for Financial and Economic Management, economic activities at Nigerian universities have dropped by between 60% and 80% since the strike began, with several SMEs impoverished[56]this is a big challenge in a country with over 30 universities under ASUU.

c. Demoralization of Students

The reoccurring ASUU strike has indeed contributed to the demoralization of Nigerian in a research carried out on the effect of ASUU strike on student, Caleb (2016) noted that the strike has a negative effect on student that even bright students end up graduating with poor grade[57] it is no news that students are mostly idle during strike periods and it is possible that some of them involve themselves in illegal or immoral acts.

7. **INTERNATIONAL STANDARD ON COLLECTIVE AGREEMENT**

The concern in any collective bargaining is not only a national issue. It is an issue for international concern which has been addressed by different international institutions of which Nigeria is also a signatory. Particularly, the International Labour Organization (ILO) has issued certain recommendation towards promoting process of collective bargaining and the eventual enforcement of the fruit thereof, that is, the resultant Collective agreement.

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[55] ibid

[56] Afeez Bolaji "Businesses Feel the Crunch of University Staff Strike" available at https://www.universityworldnews.com/post.php?story=20220829041909795

[57]C.SIngyefu "Asuu Strike And Academics Performances Of Taraba State University Students" available at https://www.academia.edu/37837070/asuu_strike_and_academics_performances_of_taraba_state_university_students_docx

A major principle under ILO law[58] as recommended by the Committee on Freedom of association (CFA) is the principle of bargaining in good faith. This is a duty to be observed in the course of the collective bargaining before even reaching an Agreement. The CFA emphasizes the duty of parties to a collective bargaining to negotiate in good faith. In addition, it defines good faith as making efforts to reach an agreement, conducting genuine and constructive negotiation, avoiding unjustified delays, complying with the agreement concluded on and applying them in good faith.[59]

It is apposite to note that this duty of good faith cannot be overemphasized. The process of reaching collective agreement is most times a hectic process, it is incredulous to see that even after this rigorous course, certain employers would still not implement the agreement. In most cases, the employer does this only to appease the aggrieved union of employees especially when there is an ongoing industrial action.

8. CONCLUSION AND RECOMMENDATIONS

This research has revealed that the Nigerian legal framework on collective agreements and related matters is more glossy than adequate, especially when compared with the level of conformity with international standards. Also, when compared other legal systems around the world, it can be seen that the Nigerian legal framework is less detailed. The recurrent problems with the enforcement of collective agreement have shown further that the use of collective bargaining and agreement may not be significantly effective until a landmark legal paradigm shift occurs.

That Nigerian law makers should consider passing an all-encompassing single legislation to address the issues of collective bargaining, collective agreement and other related matters. New legislations should contain express provisions on issues such as the constitution of a bargaining committee, the limitation of bargaining power, government intervention. The law can codify all existing laws relating to collective bargaining and collective agreement and clarify any incoherent or abstract provisions. In addition to penalties as introduced to enforce submission of copies of agreements to the Minister, Labour Law agenda should promote such concepts as fairness, good faith, and correct behavior as being inviolable in order to attain a serene and sustainable industrial atmosphere in Nigeria. Notwithstanding the efforts of law, these principles must be seen to manifest in the individuals that constitute the collective interactions in Nigeria. This is with major emphasis on good governance by reliable leaders who are conversant with International Standards for Industrial Relations.

No doubt, asides the general effect of the reoccurring strike on different aspect of lives, the occurrence of the strike, over the same matter or agreement for more than a decade is a blatant display no regard for “good faith” which is the basis of any collective agreement. No doubt, the efforts of both parties towards achieving a permanent solution to this menace have been continuously mocked. What is the purpose of undergoing a strenuous exercises without the

[58]See Collective Agreement recommendation,91 of 1951 (ILO)

[59] Bernard Gernigon, Albert Odero and Horacio Guido “ILO principles concerning collective baragaining” International Labour Review, vol 139 (2000) No 1

intention of executing or performing the agreement reached? On the one hand, ASUU's continuous agitation could be a show of the desire of the Union to achieve their goals at all cost. On the other hand, the federal Government seems to be less passionate about this agreement, and perhaps is only interested in finding a temporary relief as against a permanent resolution. This has led to various renegotiation of the same agreement at different times.[60]

[60]2009 ASUU/FGN Agreement was preceded with other similar agreements which have been negotiated over time. See 2001 ASUU/FGN Agreement.