STRIKE AS A LABOUR UNION TOOL IN NIGERIA: REFLECTIONS ON TRADE UNION ACT, 2005

INTRODUCTION:

The Year 2005 brought with it the Trade Union (Amendment) Act which introduces some further elements of democracy in Unionism, as well as additional prohibition on the already prohibited work stoppages in Nigeria. It aims at regulating the relationships between labour and government as partners in development. This paper intends to explore the effects of the law on Nigeria's trade unions and workers, as a whole.

It is well known that trade unionism all over the world emerged for improving the economic, living and working conditions of workers. Therefore, industrialization and the ever increasing huge corporations require organized labour to deal with it for effective collective bargaining. Workers through their union representatives' seek to obtain an equitable share in the profits made by the employer in order to improve their working and living standards out of the wealth they help to generate.

Labour and management, therefore are two bearers of great social powers who have certain interests to protect. Their expectations of interests have no known bounds and often lead to conflicts[1]. It is such conflicts that the law seeks to regulate while striking a balance to protect the legitimate expectations of the public by providing constant supplies of goods and services.

If management expects the production and distribution of goods and supply of services to go on as planned or based on calculated costs and risks to be steady, labour would interrupt such plan through strikes in order to obtain steady increase of wages, reasonable standard of living and job security.[2]

Strike, when necessary involves the interruption of economic process in the workplace as a method of inducing pressure collectively by workers on their employers. The workers acting in "concert" aims at protecting their lives and that of their families against downward trend of real wages and loss of job. Sir Otto Kahn Freund referred to these interests as "platitudinal confrontation of expectations and interests".[3] Thus, trade unions without the power to withdraw their labour would become impotent.

What is strike?

S. 47(1) of the Trade Dispute Act, Cap 432, Laws of the Federation, 1990 defines strike as:

> Cessation of work by a body of persons employed acting in combination, or a concerted refusal of persons employed to continue to work for an employer or any person or body of persons employed, or to aid other

workers in compelling their employer or any persons or body of persons employed, to accept or not to accept terms of employment and physical conditions of work, and in this definition:-

(a) "cessation of work" includes deliberately working at less than usual speed or with less than usual efficiency", and

(b) "refusal to continue to work" includes a refusal to work at usual speed or with usual efficiency.

Strike actions as a means of maintaining equilibrium in Industrial relations.
Strike actions therefore have prominence in industrial relations as it introduces an equilibrium in labour-management relations. However, strike actions tend to result in higher loss to the management, as it tends to slow down production. The consequences of strikes are the waste of human and other resources, leading to loss of mandays as production of goods and services is reduced or hampered resulting in economic and social stunted growth and unrest.

The factors leading to work-stoppages are many and varied. These include non-payments of festival bonus, leave allowances, vehicle loans, medical scheme, payments of salaries and arrears. Prominent amongst the factors are better wages and conditions of employment, union recognition, breach of existing collective agreements and redress of industrial grievances, among others.

The public or the consumers of goods and services also have legitimate expectations from Labour and management. They expect to have the flow of goods and services without interruption at a stable and affordable price.

Kinds of strike

There are four principal kinds of strikes that labour uses as tools for inducing recognition aimed at achieving concessions. Workers may organize any one of the following strikes (as a bearer of power) in the industry through mobilization of the workforce, and in some cases the populace.

General Strike

General strike coverage cuts across the society and it is to induce Government or National Assembly/Parliament to take certain action(s). Gouldner[4] explained that strikes are not homogeneous industrial events as they involve a cessation of work, a break down in the flow of consent and an open expression of aggression and remain a social phenomenon of enormous complexity.

Otto Kahn Freund[5] a renown writer in Labour Law in England observed that the "truth of the matter is that once again we are faced with the quagmire of mixed motives and in search of a test which would enable us to disentangle the manifold purposes that determine human action. A general strike may have political and social objectives. The question to ask is whether the workers embarked on strike in order to maintain their wages and other things." If they are supported by workers in other industries, we can say they are on strike for sympathy and Freund said such a strike is in effect a sympathetic strike.

2. **Political Strike**

Political strikes are the most frequent industrial actions. Its basic objective is to induce change in governmental policies or that of local government or industries. The strike is so termed because it is targeted to a policy. For example, workers may strike in protest against a government decision to raise school fees, health services' fees or against fallen standards in academics. The possible causes of strikes are limitless, ranging from most trivial to one aimed at bringing down the management or even overthrow the constitution and the prevailing economic system. Thus, trade union or the masses or both are involved in political strike. For example, teachers' strike against cut in educational expenditure which would result in fewer textbooks and lack of research grant, the conflict therefore, relates to workers own condition or difficulty caused to teachers. Furthermore, where the government is the employer and the conflict relates to conditions of the workers, the strike is aimed to secure a change in that government policy, it then becomes a trade dispute.

3. **Sympathy Strike**

It is a strike not concerned with a particular union's members directly but one embarked upon in support of workers in a different industry. The purpose of sympathy strike, is when there is a win and the same demand arises they would be in a stronger position to also win the same concession because of the already established precedent. In the case of **Thomson D. C. & Co ltd v. Deakin**[6], the English Court of Appeal recognized the right of the employees of Bowaters to go on strike in sympathy with the workmen of Thomson Ltd who were in dispute with their employers over their right to join a union.

4. **Wild Cat Strike**

It is called wild cat strike because no reason or notice is given before going into action. It violates the contract of employment. Due to shifting of power base to national union executive, the local union officials tend to prove that power still lies with them. They may tend to organize many spontaneous strike actions without approval of the national union. Such strikes are illegal as the law is not complied with, thus, the parties would be held liable to pay damages at the end of the day. For instance, in 1986, the Petrol Tankers Union (NUPENG) went on strike in order to express their discontent with the behaviour of union leaders. It was alleged that the leaders/officials were pursuing their self-interest tussles to the detriment of members' interests. The state had to intervene.

GOVERNMENTS' DESIRE TO INTRODUCE INDUSTRIAL PEACE AND HARMONY IN EMPLOYMENT RELATIONSHIP THROUGH LEGISLATION

The Law, generally has to play an important role in order to reduce the frequency and magnitude of work stoppages for maximum production, economic growth and social tranquility. However, in order to achieve the desired peace in Industrial relations, the law has to firstly, provide an acceptable and workable settlement mechanism capable of winning the confidence of both labour and management since neither party nor the government desires the collapse of the Industry. Thus, Nigeria in seeking to industrialize must also seek to promote peace and harmony by considering the conflicting interests while striking a balance as the task of conciliation is the responsibility of the government, which is the sovereign. Secondly, for the creation of industrial peace, there has to be fair institutional variables; the conditions of work, wages; work ethics and productivity of labour as well as sanctity of collective agreements.

For the first time the Nigerian Government provided legislative enactment for collective bargaining in industrial relations in 1941[6] in order to improve the unjust conditions of the workers at that period. It however failed to provide the much desired industrial peace as it did not provide any code of behaviour for the attainment of such peace.

In the late 1960's, labour enactment owing to the civil war shows clearly the role government played in Nigeria's Industrial relations, for example, the Trade Disputes Decree of 1968 suspended the 1941 Act which was based mainly on collective bargaining principle. The preamble provides that:-

> "it is expedient during the present state of emergency in Nigeria to make transitional provisions for the settlement of trade disputes, arising within the period of such emergency"[7].

This law introduced compulsion in the settlement of labour disputes in Nigeria. The government was unwilling to negotiate with labour as an attempt to adjust the economic conditions brought by the war. The law did not prevent the occurrence of strikes and each strike had great consequence on the nation's economy.

In 1976 a Trade Disputes Decree (now Act) was promulgated, which gave birth to the National Industrial Court. The Trade Disputes Act was further amended in subsequent years, the 2005 amendment being the recent one. Similarly the Trade Union Act has undergone similar reviews and changes.

Prohibition on Strikes and the right to withdraw labour by workers

It is necessary to understand at the outset that strike is only one important aspect of labour relations and it would be absurd to think of industrial relations solely in terms of strike. It is as though one is thinking of commerce in terms of insolvency and bankruptcy or international relations safety in terms of war. Strike is therefore dreadful as its consequences on the nation's economy, peace and tranquility has made it necessary to curtail its occurrences through regulations.

Section 17 of the 1976 Trade Disputes Act prohibits strikes or lock –outs, if connected with trade dispute in which no attempt is made to settle such through conciliation and mediation. The law provides for settlement processes up to arbitral stage, which ought to be reported to the minister at the outset of a dispute. Sections 40 and 41 require notice by workers in "Essential Services." These sections prohibit strike in this area in addition to the blanket prohibition in Section 17. The sections refers to situations endangering human life or when the strike endangers public safety or causes serious bodily injury, i.e. they refer to the disorder consequent to strike.

Section 17 thus provides that, the president may:

> "If satisfied that any Trade Union Association or any of the members of it are employed in an essential service is or has been engaged in acts calculated to obstruct or disrupt the smooth running of any essential service or has where applicable failed to comply with the procedure specified in the Trade Disputes Act, 1990 in relation to the reporting and settlement of, he may order it to be published in the official gazette, proscribe the Trade Union Association and the proscribed organization shall from that date cease to exist".

Even though the 1999 Constitution of Nigeria has provided for freedom of Association under sections 40 and 41, there is no fundamental right to go on strike in times of war and other public emergency threatening the public interests, national security, or morals in democratic society. Under section 45, the right to form an association or organization is subject to regulation of an overriding interest.

Section 45 provides that:

> Nothing in this Constitution shall invalidate any law that is reasonably justified in a democratic society in the interests of defence, public safety, public morality, public order or public health.

Collective bargaining

The Law in Nigeria did not define "Collective bargaining" as a process, but merely mentions it at various provisions. For example the Trade Disputes Act, 1976, Cap. 432 speak of "Collective agreements" as a process of settling trade disputes. Similarly, the Trade Union Act, 1973, Cap 437 speaks of "Recognition" of registered Union. It is implied here that recognition of trade union aims to lead to collective bargaining which is "negotiation" or known as Collective agreement. Although Labour provision does define collective bargaining, the English Industrial Relations Act defines it as:

> "negotiation" in respect to terms and conditions of employment, or with respect to making variations or recessions or procedural agreement, or with respect to

any matter to which a procedural agreement may relate[8], collective bargaining is a flexible system of settling trade disputes. It involves the balancing of the two great social powers of labour and management from time to time. Through this method the discretion of employer in the area of unilateral decisions affecting the welfare of the workers' is now restricted, hence, ensuring workers participation in the management of industries which in turn ensures Industrial democracy.

The new Act introduces also a pattern of operation for the Trade Unions and a new structure for the unions. The saw gave way for a new structure of unions, namely the Trade Union Congress body to compete with the NLC which was a Union of Junior Cadre.
The Senior Staff Association of Nigeria workers have now become unionized for an effective collective bargaining. It is another Central Labour Organisation.

Sections introduced by the 2005 Trade Unions' Act and furtherance of the Trade Unions in Nigeria

1 Section 12(4)

It deals with voluntary membership. This section aims at making membership of trade union voluntary. The statutory voluntary provisions for membership of a union contain implications for the trade union and workers. It emphasise the freedom of association, which is an integral part of the basic human rights, upheld by the International Labour Organizations by Convention (No. 47), it is also a constitutional fundamental right. This freedom is akin to the freedom to engage in any lawful occupation, to enter into any contract for goods, contract for labour, etc. Thus, the provision re-affirms the right of workers in their work which may or may not lead to joining a trade union. The right of workers in their work presupposes that they have a right to work not only within the context of the employer's power against arbitrary or capricious dismissal but also the union should not have an unfettered right to compel a worker to join or be expelled from union membership arbitrarily.

Trade unions should rather make the union worth joining by all workers. Even though in England the "closed shop" system applies as it evolved through struggles, the system does not permit workers to choose whether to join or not join a union. The workers must join a union if they wish to secure a job and retain it.

The statutory provisions in the areas of trade unions are derived from historical cases which have now become legislations. One of such cases is **Quinn V. Leathem**[9] in which Leathem employed a non-union member contrary to the requirement of the "closed shop" system which binds them. The union asked him to dismiss the workers but he refused to do so, rather he offered to pay the union his arrears of subscriptions, if they agree to admit him into the Union. The officials rejected the offer and the union threatened to call a strike unless supplies of meat to Leathem were cut off by Munce and Munce agreed. The House of Lords held that the union had acted not for any purpose of advancing their own interests as workers but for the sole purpose of injuring the plaintiff in his trade. Conversely, one can hold that to act against a worker who is not a member of a union who does not authorize payment of his dues on his behalf, would amount to "injuring the worker in his work/trade, which the law has protected. Furthermore, belonging to a Union or not and taking part in strike, raises the question of disciplinary action to be taken against such workers and the incorporation of the terms of collective agreement or concessions provided by employer. First, strike in law is a breach of contract of employment.

A case to illustrate this is **Easterman v National and Local Govt. Officer Association.**[10] Nalgo was in dispute with the local authorities over the level of the London Weighing allowance, Nalgo held a ballot, in accordance with its rules, to discover its members views about the possibility of selective strike action. Only 49% were in favour of it. However members of the union branches affected by the claim were instructed not to volunteer to assist returning officer in the elections and to withdraw any assistance already made. The plaintiff refused to withdraw the offer of assistance and was requested to attend a disciplinary meeting to consider whether such conduct merited expulsion. The Court of Appeal ruled that 49% support for strike might be justification for making recommendation for strike, but it was not a warrant for an order to strike with the threat in the background of expulsion for any member who had voted against the strike. Thus, disobedience like this does not demonstrate any unfitness to be a member of Nalgo.

New Section 16A provides:

Remit such deductions to the registered office of the trade union within a reasonable period as prescribed by the Registrar. The implication of making deductions by employer introduces a bureaucratic process which may lead to delays in remittances for whatever reasons. The term "reasonable period" not so properly defined could be grossly abused which may lead to internal crisis affecting the financial stability of the Union, leading to its weakness.

For a union to be strong and self reliant, it need strong financial base for its operation.

New Section 17(1) provides:

That contribution of dues be paid to an appropriate registered Federation of Trade Union as specified in the Constitution of the FTU concerned. Federation of Trade Union provides support and assistance to numerous branch Unions who are entitled to receive deductions from their branch members. The funds given to FTU are aimed at further strengthening the top Union, to represent workers at the high level of negotiations with employer, as outlet of demands, emotions, sentiments, frustrations, etc. which may lead to dispute, in the course of dealing with such numerous unions who are eager for results.

New Section 24 says:

That for the purpose of collective bargaining all registered unions ... shall constitute an electoral college to elect members who will represent them in negotiation with the employer. One of the aims of this section is to form the basis for "statutory bargaining representatives" of the workers, thus, making collective bargaining a creation of statute. In the U.S.A., the National Labour Relations Board 1955 made provisions for statutory bargaining representatives" with the employer. Failure by the employer to bargain with the statutory union, would entitle the Union to approach the Board which will order the employer to recognize the union for negotiation. If it still refuses, the union can go to court to seek an injunction and if the employer refuses, the court will commit the employer for "contempt" thereafter, the employer will be bound with regulations not of his choice. The "statutory representatives" is what might be referred to as "Union, government and democracy system."

The idea is to prevent "conscript army" by making membership voluntary characterized with an elective democracy for decision making.

But the Nigerian Law lacks the obligation for the system to oblige the employer particularly the government to bargain nor implement the agreement effectively for industrial peace as in the case of the USA Taft-Hartley Act of 1947.

Allen puts it thus:

> Trade union organisation is not based on theoretical concepts prior to it, that is on some concept of democracy, but on the end it serves. In other words, the end of trade union activity is to protect and improve the general living standards of its members and not to provide workers with an exercise in self-government.[11]

Also Martin has pointed out that:

> In practice government concern with ensuring that trade unions operate according to a particular conception of democratic procedures becomes indissolubly linked with government desire to achieve specific outcome: the desire to promote democracy becomes linked to the desire to produce a specific outcome..[12]

Thus, the modern trade union definition goes beyond "a continuous association of wage earners for the purpose of maintaining or improving conditions of their working lives" as the government imposes restrictive conditions on the conduct of trade union business on well as on the regulation between workers and workers.

Section 30 with new subsections (6) (7) (8) and (9):
These provisions aim at totally prohibiting strikes and lock-outs whether in an "Essential service" sector or otherwise, person, trade union or employer engaged in an essential services are prohibited from embarking on industrial actions of any kind, strikes or lock-outs that concerns a dispute of right is similarly prohibited; or collective and fundamental breach of contract of employment or agreement is also prohibited; and that ballot to support the strike action by a simple majority of registered members has been mandatorily undertaken at meeting.

We noted at the outset that the Trade Disputes Act, 1976, (Laws of the Federation) has already prohibited strikes in all sectors as well as in "Essential service."
Section 17 of that Trade Disputes Act has placed a blanket prohibition on all strikes and lock-outs. Its purpose was and is still to curtail industrial work-stoppages and to ensure industrial peace for increased production.

That notwithstanding, Nigeria has suffered more strikes. The teachers in the Federation, Companies, Resident Medical Doctors, Central Bank employees, the Academic Staff Union of Universities, the Labour Congress, all went on strikes.

This made it pertinent to take a look at the Law and provide more effective law. Thus, in 1977 Section 42 of the Trade Disputes Act became enacted. It provides thus:

> Notwithstanding anything, contained in the Act or any other law, any worker that takes part in a strike shall not be entitled to any wages or other remuneration for the period of the strike and any such period shall not count for the purpose of reckoning the period or continuous employment and all rights dependent on continuity of employment shall be prejudicially affected.

The same section provides that locked out workers shall be paid for the period they were locked out. The provision is based on the point that law cannot prevent the occurrence of strikes but can curtail it in such manner. We have seen that the law can be used to prohibit strikes but cannot prevent it. The prohibition is merely repeated in the new Trade Union Act. The section under study also provides for sanction for contravening the prohibition against strikes and lock-outs; workers or employers shall on conviction pay a fine of N10, 000 or six months imprisonment or both.

The above provision is to further buttress the point that there is a total ban on strikes and lock-outs. 'What government, the largest employer of labour requires, is the compliance with the statutory provisions for the settlement of disputes as contained in the new Trade Disputes Act: What happens if government is the defaulting party? And if the government pays the fine, what would it be required to do next? Would it be allowed to persist with its attitude?

Employer's Altitude in Promoting Peaceful and healthy working environment.
Most of the employers are the government, the settlement of disputes agencies are government owned and the Laws have Lee-ways to lead to failures. The questions that are worth raising in at the end are: How speedy would the process of settlement of trade disputes be henceforth when there are disputes bristling with sensitive issues that affects the lives of workers and their families against the purse of the government. It is expected that there should be speedy settlement in order to avert the loss of man-days. Also, how acceptable and workable are the disputes settlement agencies in Nigeria? Workers are usually suspicious of Trade Disputes Settlement Agencies being part of government responsible for implementing the social and economic policies as the largest employer and the sovereign. Once the dispute goes to the National Industrial Court, the decision becomes final and binding because the parties had the chance initially to settle their disputes amicably and voluntarily but failed to do so. While at the NIC, the parties have no choice, they are going to be bound by decisions not of their own choices since the government does not desire the collapse of the economy. An ultimate question again is, how fair the wages, salaries and other conditions of work are. Do employers (the government) really respect and implement collective agreements made when due? Or do workers themselves have to ask for it through strike?. Tied to the issue of wages, salaries and improved conditions of work is the cost and prices of goods and services which is desirable in order to point out adjustments that should be made in the incomes of the workers. A suitable working environment needs to be created for an egalitarian society. The above questions point to some of the crucial problems that lead to strikes on the part of the workers, against the employer.

Another fundamental problem facing labour unions is the issue of implementation of awards and agreements made through the NIC and other governmental agencies. A favourable award may be made to the Union or their workers against a state/federal or government agency which may claim having financial constraints, therefore, unable to comply with an award or may decide to claim being financially handicapped. Again, the workers may be faced with another set of problem of filing another case suing for debts arising from the NIC's awards which are most times not forthcoming, and the process of recovering debts in the court is known to be slow.

Collective bargaining and its prerequisites
It is well known that an individual worker has unfavourable position in the bargaining process with his/her employer. It must be recognized that he/she will endeavour to foster his/her interests by acting in "concert" with fellow workers, This unitary aspect of organized workers is an essential element of collective bargaining, which is the normal process for resolving disputes between employer and employees.

prerequisites of Collective bargaining
For a trade union to protect its legitimate expectations and to put pressure on employer to think in terms of human values in the management of people in the form of stable, guaranteed and secured job, it must be strong and self reliant. It must be strong in terms of numbers to provide funds in the form of dues, awareness, education and orderliness

to be capable of withstanding the art of "negotiation" The Trade Disputes Act, 1990 provides for collective bargaining as the first normal and voluntary process of settlement of disputes followed by conciliation when negotiation fails. Conciliation strictly speaking is close to negotiation. The next voluntary process is mediation. Compulsion begins where mediation stops. The TDA therefore has two features for settlement of disputes which are voluntary and compulsory methods.

Collective bargaining becomes eroded when the parties go for adjudication where consent of the workers become irrelevant to the award granted while freedom to take industrial action is restricted.

The size of the union funds would be affected when many workers are ununionized but do not pay dues, levies and fines. If there are large numbers of workers outside the registrable union sphere, creates a division in the workforce giving rise to factions who might be willing to work when strike action ensues, or affect the attainment of simple majority at voting because of the "divide".

The inequality in bargaining powers is concealed by the principle of "free contract" where supposedly two equal bargaining parties are expected to interact. Actually, one can really say that the relationship between labour and management is one of subordination and inequality.

The 2005 Trade Union Law has in effect done away with the provisions of the Penal code (S. 96 (2) and the Criminal Code (s. 158 (A) which guarantees criminal immunity for criminal conspiracy against workers who go on strike. It also out lawed the trade unions civil immunity granted in 1973 for civil conspiracy. The law aimed to regulate, support and restrain the power of organized labour even though it appears as though labour and management voluntarily and equally entered into a contract.

Methods used for collective bargaining

There are two methods of collective bargaining, which are "contractual" (static) and institutional (dynamic) The contractual agreement requires the meeting of the employers and the representatives of the workers for bargaining. The collective agreement becomes a contract and it remains the only agreement that binds the parties. It remains static even when situations or circumstances surrounding the agreement changes. The "Institutional" method consists of an equal number of representatives of the parties. The agreement reached is an open ended one and open to interpretation or modification without time limit. Thus, the coming together of the parties for negotiation presupposes that both parties are "willing" to bargain collectively. This "willingness" indicates "recognition" of the trade union. Hence willingness is a prerequisite of collective bargaining.

Recognition of Trade Union

Recognition as the "willingness" for a union to bargain collectively with the employer would be real when it actually leads to negotiation which is the aim of the exercise. Recognition therefore has crucial significance in industrial relations. Because of this, law provides support for unions which has been recognized and help for unrecognized unions to achieve recognition.[13]

Recognition raises two question: Recognition for whom and for what?

The question for whom has been settled by s. 24(1) of the Trade Disputes (1976) Act, 1990. It provides recognition for registered unions in the employment of the employer.

Subsection (2) Provides that:

> If an employer deliberately fails to recongise any registered trade union pursuant to the provision of subsection (1) of this section, shall be guilty of an offence and be liable on summary conviction to a fine of ₦1, 000.00.

The sum payable as fine by employer is unrealistic in view of modern economic realities. If the employer fails to pay the fine, what next, there is no policy directive to that effect. The employer may persist in his attitude of refusing to recognize the union for negotiations. There is no agency responsible for supervising the result of compliance or otherwise with the law on recognition. In England, the Conciliation, Arbitration Committee (CAC) constituted under the Employment Protection Act, 1975 is empowered to make an award with the obligation to recognize the union and to observe the terms with the conditions which were the subject-matter of any claim for recognition. Thus, a unilateral compulsory recognition" can be ordered by CAC to be implemented by Arbitration Conciliation Advisory Services Board, (ACAS).

The problem in Nigeria is not the absence of law to induce employer and government to negotiate, but the absence of an effective and serious law capable of obliging or leading labour and employer to meet and "negotiate"

Though the Act in Nigeria provides for statutory recognition for registered unions, it is silent on matters for the recognition of unions which has to be fought for through the National Industrial Court. The NIC awards on the subject-matters of negotiation are the topics on which unions are either recognized for or not, depending on the given award.

The Law on recognition lacks the impetus to induce the employers to recognize registered unions nor help in ascertaining the matters of recognition for unions to know. The aim of the law was to compel and induce employers to negotiate with the registered unions concerned in order to curtail the occurrences of strikes. It has not really helped the situation as it should because the workers still have to struggle for recognition way up to the NIC.

Furthermore the policy which prohibited wage increase without the consent of the Minister of Labour and Productivity also added to the industrial crisis. This was the Income Policy Guideline's enactment under the Productivity, Prices and Incomes Board

Act of 1977. The Board was set up by the government to advise the Federal Government on wages and means of enhancing productivity in both public and private sectors of the economy. The freezing of wage and salary increase was founded in the famous case of **Management of Union Bank of Nigeria V. National Union of Banks, Insurance and Financial Institution.**[14]

In that case the court awarded that no "Income" shall be paid to workers without the consent of the Minister. The Court added that even though the parties were bound by collective agreements, they were subject to existing government guidelines.

Consequently, wages or salaries increase were regulated by S. 18 (1) as follows:

> No employer shall grant a general or percentage wage increase to any group of employees without the approval of the Minister of Labour.
>
> Contravention by Individual is three (3) years imprisonment and corporate body a fine of N25,000.
>
> No Court or tribunal has power to such without the consent of the Minister.

The law seeks to prevent increase of wages and salaries in the private sector when there is not such increase in the public sector.

Consequently, the extent of the right for negotiation is limited by the Government Guidelines; this has by so doing exerted control over the payment of wages, salaries, or any thing that would constitute "income" in order to have a uniform income depending on the class of workers in Nigeria.

Strike as a Tool for Labour. To what extent?

> The freedom of employees to combine and to withdraw their labour is their ultimate safeguard against the inherent imbalance of power between the employer and the individual employee. This freedom has to come to be accepted as a hall mark of a free society.[15]

That was a statement by English Government Green Paper on Trade Union immunities. It was supported by a rider, that:

> To protect such a right is not to approve, or disapprove, or any particular withdrawal of labour or of the conduct of any particular dispute. But it does recognize the fundamental importance of that feedom in a democratic society.[16]

The importance, of freedom for unions to go on strike however, leaves open certain questions of how far it should be protected or limited by law. Many past industrial actions were illegal; while employers rarely had anything to fear from a lock-out except a claim for damages for breach of an employment contract if they failed to give proper notice or did not comply with the instrument of termination. Thus, it is for the unions to struggle out of the various traps set by the Labour Acts.

Recommendations

It is desirable to provide a suitable Institutional variable for employees, such as fair wages, salaries, work ethics, sanctity of collective bargaining and conditions of work, as well as put in place a market index or some means of measuring market costs in order to determine wages and salaries, which could guide the government in regulating them.

Delays in settling disputes and implementation of agreements should be drastically minimized by tackling trade disputes speedily because they relate to sensitive issues affecting the purse of the nation as well the lives of workers and their families.

An effective agency for implementations of NIC awards through a workable and acceptable settlement process like the Conciliation Advisory Committee (CAC) of England would be welcome as it provides a definite place for recovering awards made to labour.

Workers should be compensated for long delays caused to them in cases where they win concessions, without speedy payments.

Conclusion

The denial of the right to go on strike by the Trade Disputes Act appears to give effect to the constitutional provision which is that the right to go on strike is subject to an overriding interest. The government by restricting strike has shown its concern for Industrial peace by using law as a panacea for industrial actions, but how effective would that be? The freedom to go on strike is necessary under the principle of collective bargaining as the ultimate sanction. It has been observed that countries that have bias for compulsory methods of settlement of disputes, like India, Australia, New Zealand and Nigeria, have witnessed greater number of strikes than countries where collective bargaining system operates like in the USA, France and Finland.[17]

The industrial liberties that permits collective bargaining and withdrawal of labour, rests entirely upon "immunities" against civil and criminal responsibilities.

The British White Paper of 1981 explained the situation as thus:

> Immunities are not simply legal privilege which could be abolished outright. Without some legal protection– however circumscribed. It would be impossible for trade

unions or individuals to organize industrial action without risk of civil proceeding, and the ultimate safeguard of a collective withdrawal of labour would be effectively nullified.[16]

The total prohibition or ban on strike is something that detracts from the Common Law. It merely restored the attack upon the right to strike.

ENDNOTES AND REFERENCES

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1Fruend, O. K.: Labour and the Law, 2nd ed. London Steves and Sons, 1977, pp 48-49

2Audi. J.A.M, Strike and the law in Nigeria, Ahmadu Bello University Law Society Journal, Vol. 9-10, A.B.U. Press 1991-92, p. 97

3In Labour and the Law, 2nd ed. London Sevens and sons, 1977, Pp. 48-49

4Wildcat strike, Harper and Row, New York 1954 Pp. 56-66

5Freund, O. K. Legal Frame Work, in Labour Text and Materials by Paul, D. and Mark, F. P. 622.

6(1952) Ch 646, (1952) 2 ALL ER 361

7Decree of June 1, 1968, NO. 21

8Section 167 of the Industrial Relation, 1971, England.

9(1901) A.C. 495.

11(1974) 1 CR 635.

12Allen V. Power in Trade Unions (1954), P. 122.

13Martin. R. in P. Fosh, and C. Littler (eds), Industrial Relations and the law in the 80s (1985), Pp. 79-80.

14Audi. J.A.M. Comparative Law on Recognition of Trade Unions with particularly reference to Nigeria, in University of Jos Law Journal. Vol. 5 UJLJ October 1995. p. 153.

151978-79 NICLR. Pp. 45-50

16Government Green Paper on Trade Union Immunities in England in 1981.

Lord Wedderburn, The Worker and the Law, (third edition), Penguin Books, 1986, P. 512

Dyhani, S. N, Labour Management Relations in Cochin University Law Review, Industrial Relations Law, vol. vi, June & Sept. 1982, P. 364

Trade Union Immunities (Cmnd 8128, 1981) PARA 384