THE RIGHT OF COLLECTIVE BARGAINING: A FARCE OR LABOUR RIGHT IN NIGERIA*

Abstract

The illusory nature of the right of collective bargaining under the labour laws in Nigeria is hard to miss. While in one breath it may seem that the laws confer the right of collective bargaining on labour, the same laws by other provision appear to take away such rights with a vengeance.Thus, leaving the Nigerian workers with an overbearing legal framework for collective bargaining that approbates and reprobates, and an institutional framework empowered to severely constrain any lawful right of the workers to engage in collective bargaining. This paper, therefore, is a poignant critique on the state of the statutory control on the right of Nigerian workers to engage in collective bargaining. To achieve this task, it became imperative to consider a literature review on the conceptual and theoretical underpinning of collective bargaining. Following which the sources of the right of collective bargaining forming the basis upon which legal and institutional frameworks exist were also examined. Flowing from this background, this paper reveals that though the labour right of workers in Nigeria to bargain collectively for their welfare and conditions of service is recognised by law, it nevertheless falls short of the prescriptions of international labour standards on the right of collective bargaining. It is argued and posited that in the wake of the Constitution of the Federal Republic of Nigeria (Third Alteration) Act 2010 legal practitioners knowing their onions should be up and doing to locate the proper place of International labour standards in Nigeria's corpus juris.

Key words: Right, Collective bargaining, Labour, conditions of service, International Labour Standards

I.0 INTRODUCTION:

The common expectation of labour, in every conceivable labour clime, is the guaranteed improvement(s) of wages and other conditions of service, which ordinarily gives effect to a stable and adequate form of existence.[1] There is however no gainsaying that the realisation of this legitimate expectation hardly comes by on aplatter, as it more often than not conflict with the rent-seeking, expansionists-minded and profit-driven objectives of the employers.[2]

This reality is worse off and more glaring when gleaned from the level of the individual employee-employer relations, typified usually by the weak and unenviable positions of the individual employee vis-à-vis the employer.[3] Aware of this uneven power relations position, the worker is readily enamored with all or any opportunity/platform to act in concert with others of his like in pursuit of the common expectation and aspirations of a better and more secured living condition. As it were, the willingness of the worker to act in concert with other

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[1] P Davies and M Freedland, *Kahn-Freund's Labour and the Law* (Sweet and Maxwell, 1983) cited in OVC Okene, *Labour Law in Nigeria: The Law of Work* (3rd edn, Claxton and Derrick Ltd. 2012), 208.Also see OVC Okene 'International Labour Standards and the Challenges of Collective Bargaining in Nigeria [2009] *Recht in Africa*, 107.

[2]It is apposite to mention here that quite apart from the instances where specific attributes will be given, the term employer, in this work, shall refer both to the State as an employer in the public sector and private sector employers

[3]A Fox, *Beyond Contract, Work, Power and Trust Relations* (Faber and Faber, 1974) cited in OVC, Okene (n.1) 102.

workers in the form of trade unions appears to definitively command the attention of employers and governments in civilised climes; setting the stage in most cases for the recognition of collective bargaining as a right, as well as engendering the entrenchment of supportive legal framework.

However, in the case of Nigeria, this neat and unblemished pattern of recognition of workers right to bargain collectively seems improbable. Hence, the central question which this paper seek to answer, albeit modestly is, 'is there a right availing Nigerian workers to bargain collectively? If so, to what extent is it secured by law?

2.0 Conceptual and Theoretical Framework

One writer after another have tried to give precise and tightly delimited definitions of the concept of collective bargaining, yet each attempt easily affirms the view that the concept is not amenable to a precise definition.

However, eminent scholars such as Srivastava[4], Odumosu[5], Harbison[6], Mill[7],Uvieghara[8], Omole[9], Fashoyin[10], Okene[11], Adeogun[12], inter-alia, considers collective bargaining as a process dealing with the issues of terms of employment and conditions of services and by which agreement are reached on these issues between the employer(s) and trade union(s) involved. Apparently, this process applies to those arrangements under which wages and working conditions are negotiated and settled by a bargain, with a view to reaching an agreement between the employers or associations of employers and workers' organisations.[13] According to Fahoyin, the aim of this process is to accommodate, reconcile and oftentimes compromise the conflicting interests of parties.[14]

Collective bargaining has also been described as a rule-making, rule-interpretation and rule-implementation mechanism. This view is consistent with the position of eminent scholars like Flanders[15], Fashoyin[16], Ogunniyi[17], Dunlop[18], among others. According to Dunlop[19:]

> In several work situations, collective bargaining
> … also establishes a set of rules guiding relations between the parties during the life of collective agreement, as well as providing for an orderly method of setting grievances that are bound to occur from time to time.

[4]SC Srivastava, *Industrial Relations and Labour Law* (4th edn, Vikas Publishers, 2000) 116.
[5]I Odumosu, 'Landmarks in Nigeria Labour Law' [1987] OAU. Inaugural lecture series 86, 7-8.
[6]FH. Harbison, *Goals and Strategy of Collective Bargaining* (Harper and Bros, 1951) cited in SC Srivastava (n.4).
[7]DQ Mills, *Labor-Management Relations* (4th edn, Mchraw-Hill Inc.1989)217.
[8]EE Ovieghara, *Labour Law in Nigeria* (Matthouse Press Ltd. 2001) 388
[9] MAC Omole, *Industrial Relations and the Nigerian Economy* cited in EF Miepiri, Legal Considerations of Collective Bargaining in Nigeria (Unpublished LLB Long Essay 1991) 1.
[10]T Fashoyin, Industrial *Relations in Nigeria* (2nd edn, Longman Nigeria, 1992) 103.
[11]OVC Okene, Labour Law in Nigeria: the law of work. (n.1).
[12]A.A. Adeogun,'The legal Framework of Industrial Relations in Nigeria' [1969] (3) *Nigeria Law Journal*, 33.
[13]International Labour Office: A Workers Education Manual' (Geneva 1960) 3. Also see Ministry of Labour (G.B) Industrial Relations Handbook (Revised edn, 1961) cited also in EE Uvieghara (n.8)
[14]TFashoyin, Industrial Relations in Nigeria (n.10), 103.
[15]Alan Flanders in E.F. Miepiri (n.9).
[16]Tayo Fahoyin (n.10).
[17]O Ogunniyi, *Nigerian Labour and Employment Law in Perspective* (2nd edn, Folio Publishers Ltd. 2004) 395.
[18]JT. Dunlop, *Collective Bargaining: Principles and Causes,* (Chicago Irivim 1949) 29-34.
[19]*Ibid*

Other scholars such as Golden[20] see collective bargaining as a resources distributive medium. In other words, collective bargaining is employed as a measure to distribute equitably the benefits derived from industry among employer(s) and employees. Agreeing with this view, Flanders posited that collective bargaining is the only liberal instrument which can best ensure equitable distribution of economic resources in the industry. This view also finds support from Okene who identifies the redistribution of power and resources from employers(s) to employees as a clear objective bargaining.[21]

While the foregoing conceptualises collective bargaining, in the context of labour relations, as involving definite parties[22]; being the employers(s) and the employees'/employees organisation , the subject matter; being terms and conditions or employment and finally the object; being to reach agreement regarding wages and other employment conditions, none of these definitions seem to have speculated and/or theorized that collective bargaining is a 'right' that can be appropriated by the employees or available to parties involved in a collective bargaining. Hence, our attention now turns to consider available statutory definition(s) under the Nigerian legal regime.

Section 91 of the Labour Act[23] defined collective bargaining as the process of arriving or attempting to arrive at a collective agreement. This rather terse definition by itself does not reveal much besides acknowledging that 'collective agreement; which is sufficiently described under the same section; is the likely outcome of collective bargaining. In other words, collective bargaining does not necessarily lead to agreement, perhaps where bargaining breaks down.

For some inexplicable reason, it would appear that no other legislation in Nigeria attempted to define the concept of collective bargaining besides merely making direct use and references to the term.[24] This is even so in respect of legislations which deals more in substance with the subject-matter of collective bargaining than the Labour Act.[25]

Regardless of this gap even in the statutory definition of collective bargaining, it is believed that the institution of collective bargaining and the right thereof - to appropriate or participate in it - remains central in the industrial relations system of Nigeria.[26] However, the key character of the institution, it would appear, reflects a system which though encourages free negotiation is highly constrained by extant legal and Institutional frameworks. Thus, we now turn to see presently where this right lies.

3.0 The legal and institutional framework for collective bargaining:

There is indeed no controversy, at least theoretically, that the right of workers to engage employer(s) collectively on issues of terms and conditions of employment through bargaining is one that has since been recognised globally, and unequivocally embedded in most

[20]CS Golden, Causes of Industrial Peace under Collective Bargaining, USA, the National Planning Association, 1949.
[21]OVC Okene Labour Law in Nigeria (n.1) 213; OVC Okene, International Labour Standards (n.1) 180.
[22]This is without prejudice to the fact that a statutory backed collective bargaining conducted under the Wages Boards and Industrial Council Act 2004 will in addition to the employer(s) and employees organization as parties, usually include not more than three independent persons appointed by the Minister; Wages Board and Industrial Council 2004, s.24(7) and schedule 1; See also O.V.C. Okene Labour Law in Nigeria (n.1) 217; E.E. Uvieghara (n.8)396.
[23]Cap. LI. LFN 2004.
[24]Trade Dispute Act 2004,, ss.3 and 16; Trade Union Act 2004 s.25; Trade Union (Amended) Act 2005, s.5
[25]This would include the Trade Dispute Act 2004 and the Wages Boards and Industrial Council Act 2004
[26]OVC Okene, 'International Labour Standards and the Challenges of Collective bargaining in Nigeria' (n.1) 105.

international instruments. As far back as the late 1940's through to these modern times, the United Nations (UN) through the instrumentality of the International Labour Organization (ILO), as well as other regional organisations have, interestingly, not grown weary of the resolve of reaffirming the veracity of the right to collective bargaining in any industrial relations environment. Today there is a considerable volume of international and regional instruments particularly from the stable of the ILO, which have elevated the right of collective bargaining to the status of human.[27] Thus, Okene stated poignantly:

> International consensus on the status of the right to collective bargaining as fundamental human rights has evolved. A number of human right instruments acknowledges the existence and protection of the right to collective bargaining both at the International and regional level …[28]

Generally, these instruments either directly or otherwise have not only asserted the right of workers, everywhere, to establish, organise and participate in trade unions independent of government encumbrances and control but also declares national governments obligations to promote, encourage and provide the enabling environment for the flourishment of collective bargaining on one hand and on the other to respect the rights of the parties to do so freely.[29] The confluence of these international and regional labour standards[30] should be respected and enforced by nations, especially by those which have ratified them.

Although Nigeria has ratified these instruments in question[31], there applicability and enforcement were until recently strictly subject to the constitutional provision of s.12of the 1999 constitution; which requires that a legislative incorporation of these instruments into the law of Nigeria must peremptorily follow their ratifications.[32]But with the promulgation of s.234(1)(f)(h) and (2) of the 1999 Constitution (Third Alteration) Act 2010, it is contended here that these labour related instruments having been ratified by Nigeria, now enjoys or ought to enjoy the status of direct applicability within Nigeria's domestic jurisdiction. Thus, like all other domestic legislations, they fall within the judicial power of the appropriate courts in Nigeria that should observe and enforce their observance directly where the need arises. This view is supported by the case of *Aero Contractors Co. of Nigeria Ltd.* v *Nationals Association of Aircraft Pilots and Engineers (NAAPE) &Ors,*[33] where it was held that by virtue of s.234(1)(f)(h) and (2) of the 1999 Constitution (Third Alteration) Act, the National Industrial Court is conferred with the powers to adjudicate on matters bordering on the application of International labour instruments ratified by Nigeria.

It would appear, and indeed we hold thus that the implication of this decision is that with particular respect to matters relating to or connected with or pertaining to the application or

[27]These include but not limited to: The ILO Freedom of Association and Protection of the right to Organise Convention 1948 (No.87); the Right to Organize and collective Bargaining Convention 1949 (No. 98); the Universal Declaration of Human Rights, 1948; the International Covenant on Economic, Social and Cultural Rights (ICESCR)1966; the International Covenant on Civil and Political Rights 1966; the African Charter of Human and Peoples Charter 1961(Revised 1996),the European Community Social Charter of Fundamental Social Rights of Workers 1989; Collective Bargaining Convention 1981 (No.158).

[28]OVC. Okene, International Labour Standards and the Challenges of Collective Bargaining (n.1) 99.

[29] See (n.27) particularly ILO Conventions (No. 87) and (No.98).

[30]OVC Okene, International Labour Standards, (n.1)

[31]see(n.27)

[32]*Abacha* v. *Fawehinmi* (2000) 6 NWLR (Pt 660) 228; *Ogugu* v. *State* (1994) 9 NWLR (Pt 366) 1; Under International Law this approach is called the theory of Dualism, where international treaties or protocols ratified by a nation does not automatically become part of the domestic law of the nation or applied domestically unless translated into one by an Act of the national legislature of that nation.

[33]Suit No.NICN/LA/120/2014.

interpretation of International labour standards such as ILO Conventions No. 87 and 98, Nigeria can now be said to have adopted the monist approach. Hence s.12 of the Constitution 1999 (as amended) becomes inapplicable particularly with respect to International labour standards, inclusive of those essentially acknowledging the veracity of collective bargaining.[34]

At the national level, it can safely be argued that although the right to collective bargaining is not expressly provided for in the Constitution, it is, to say the least, traceable to the Constitution. The fact of the right to collective bargaining not being directly enshrined in the 1999 Constitution has received considerable strictures from notable scholars including Okene who noted that although there is no express constitutional provision in Nigeria on the right to collect bargaining, s.17(3)(b) and (c) of the Constitution 1999 appears to permit the enactment of collective bargaining legislation or allow for the achievement of a just, humane, safe and healthy work conditions for employees' through collective bargaining.[35]

Quite apart from the inference made from s.17(3)(b)and (c) of the Constitution by the erudite Professor, we posit that similar inferences, as we shall see presently, can also be made from ss.34(1)(b)(c);39(1) and 40 of the Constitution. Section 34(1)(b) and (c) of the 1999 Constitution prohibits involuntary servitude and forced labour and by so doing rules out any relationship between employer(s) and employees' that might translate to unfair labour practice.[36]Although it does not seem that the term unfair labour practice has been defined in any legislative enactment in Nigeria, there is no doubt that any arrangement by government or employers of labour to deny employees' the right to bargaining collectively in respect of the terms and conditions of their employment, whenever the need arises, will amount to servitude, forced labour and unfair labour practices. Similarly s.39 of the Constitution guarantees freedom of expression and so by inference ensures that both the trade unions and employers have a high degree of latitude in voicing their collective opinion and aspirations in labour matters of concern through voluntary collective bargaining mechanism or agreements.[37]

The right of workers to bargaining collectively can also be inferred to from S.40 of the Constitution which provides for right of workers to form or join a trade union for the protection of their interests. This Constitutional power accorded workers, is in fact an indispensable component or the backbone of collective bargaining.[38] To put it more clearly, freedom of association implies freedom of trade union to engage in trade union activities to protect the interest of its members and which by necessary implication includes the right to collective bargaining.[39]

[34] It is acknowledged by this paper that the above position is unlikely to hold the same weight for non-labour /industrial relations related international standards to which Nigeria has ratified. The correct position may be that Nigeria like some nations adopts both monism and dualism. By virtue of s.254C (1)(f)(h) and (2), it is a monist nation with respect to labour/employment related international instruments. But on all other non-labour related international instruments ratified by Nigeria, it remains a dualist nation subject to s.12 of the CFRN, 1999 (As Amended)

[35]O.V.C. Okene, International Labour Standards and the Challenges of Collective Bargaining in Nigeria, (n.1)105.

[36]DQ Mills, (n.7) 98: see also, s.254C (i)(f)CFRN 1999 (As Amended).

[37]*Ibid*

[38]SC Srivastava, (n.4) 33.

[39]*Schmidt and Dalstrom*v. *Sweden* (1980) EHRR 637

Similar to s.40 of the Constitution, s.5 of the Trade Union (amendment) Act provide for the mandatory recognition of registered trade 'union in the employment of an employer for the purposes of collective bargaining. Also, the Trade Dispute Act[40], particularly s.3, encourages and provides a legal framework for voluntary collective bargaining in Nigeria.

Further to the above, government has by legislative enactment, under the Wages Boards and Industrial Councils Act (WBIC Act)[41] created the right for employers and employees in various industries to voluntarily establish institutional framework(s)in the form of 'Joint Industrial Councils[42] for the purposes of collective bargaining. In the same token, the Wages Boards and Industrial Councils Act empowers the Minister to create certain institutional framework called Industrial wages boards[43], the National Wages Board[44]and Area Wages committees[45] respectively where and when he thinks it is appropriate to do so. By the Wages Boards and Industrial Councils Act, it is the principal function of the boards or committees (the membership of which is appointed by the minister), when set up, to propose and recommend wage structures or the cancellation or variation of existing fixed wages or any other condition of employment to the Minister (or Governor of a State as the case may be).[46]

These legal and institutional frameworks, laudable as they appear to support the right to collective bargaining are however not unqualified. The provisions relevant to the right to freely engage in collective bargaining are to various degrees stifled and subjected to various statutory refrain and limitations. It is to these express or indirect limitations, which in many fundamental instances violates international labour standards that we shall turn to critique presently.

4.0 Legal Arguments and Criticisms

From the shy and/or lack of an express constitutional pronouncement on collective bargaining to the less than audacious provisions of labour relations enactments; from statutory-backed restrictions of trade unions activities, inclusive of the right to strike, to the embracement of compulsory adjudicatory-styled dispute settlement system, and then to the lukewarm or cavalier attitude towards the enforcement of international labour standards, the right of collective bargaining in Nigeria is diminished and, to say the least, seem like a shadow of the real thing. Upon this background, our task here is to critically re-examine some of the laws and sections already mentioned, in order to highlight the issues therein.

4.1 Constitutional Provision and The Right of Collective Bargaining

As stated earlier, the right of collective bargaining is not expressly contained in Nigeria's 1999 Constitution. It is generally a derivative of the constitutional provision for the right of workers, *inter-alia*, to form and join trade unions for the protection of their interests.

Flowing from this, the argument that constitutionally, no positive right to collective bargaining exist or is available to employees in Nigeria can be developed. This argument can be made more veritable if one follows the reasoning in the persuasive authority of *Schmidt*

[40]Cap T8 LFN 2004
[41]Cap W1 LFN 2004.
[42]*Lbid*, s.18
[43]*Lbid*, s.1
[44]*Ibid*, s.16
[45]*Lbid*, s.16
[46]*Ibid*,ss 8, 9 and 10; E.E. Uvieghara (n.8) 392-404; Oladosu Ogunniyi (n.17) 397-400.

and Dahlstrom v *Sweaden*[47] where it was held by the European Court of Human Right that "while Article 11 of the European Convention of Human Rights (ECHR) specifically mentions the right to join trade union as a species of a more general right of association, it does not imply or necessarily include the right to strike." Even though the main contention in the case dealt with the right to strike and not that of collective bargaining, it is not far-fetched, as agreeable by scholars, that the rights to 'collective bargaining' and 'strike' are co-join twins which are natural consequences of each other. As Okene puts it, the right… to strike is an essential element in the principle of collective bargaining.[48]

This correlation between both rights was also buttressed in the South African case of *NUMSA & Ors* v *Bader Bop (Pty) Ltd and* Ors[49] where it was said that "the right to strike is essential to the process of collective bargaining, it is what makes collective bargaining work. It is to the process of collective bargaining what an engine is to a motor vehicle".

Unlike the Nigerian Constitution, the South African Constitution[50] in s.23(5) expressly created a right to collective bargaining, and by so doing not only made it a constitutional issue, but one that unequivocally enjoys a fundamental human right status like the right to life, right to freedom of expression, right to ownership of property *inter-alia*. In the wordings of s.23(5) of the South Africa Constitution:

> Every trade Union, employers' organization and employer has the right to engage in collective bargaining...

What is deducible from the foregoing is, not only is collective bargaining not a positive right in Nigeria, the evolving consensus on the status of the right to collective bargaining as a fundamental human right may not as such have a place in Nigeria. Admittedly, this is debatable and remains a thesis worth going through the crucible of the Courts in the land. We hope it happens real soon.

4.2 Statutory Restrictions:

Though there are no express statutory restrictions on the right of workers to engage in collective bargaining, there are nevertheless certain statutory restrictions and/or prohibitions placed on the activities of trade unions that definitely impede the right to collective bargaining. A good example is the attempt by a combination of s.31(6)(d) of the Trade Union Act and ss.5, 6,7,8,9,14, 17, and 33 of the Trade Dispute Act[51] to impose a compulsory arbitration cum adjudicatory system of trade dispute settlement tantamount to taking away workers right to strike. Undoubtedly, this attempt by the Act to take away the right to strike is a subterfuge for denying workers their collective right to freely and periodically engage employers on matters of better wages and conditions of employment. This is because, as Okene graphically pointed out, apparently supporting the views of Jacob[52] and Collins and Others[53]:

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[47](1980)1, EHRR 637 Cited in OVC Okene, "The Status of the Right to Strike in Nigeria: A Perspective from International and Comparative Law" (2007) (15) *African Journal of International and Comparative Law*, 38.
[48]OVC Okene, 'Derogation and Restrictions on the Right to Strike under International Law: The case of Nigeria' [2009] (13)(4) *The International Journal of Human Right*, 553.
[49](2003) 24 IlJ (cc) 305 at 367 cited in O.V.C Okene, (n.47) 38.
[50] Act 108, 1996
[51] Cap LFN 2004
[52]AJM Jacobs, 'The Law of Strikes and Lock-outs' in R. Blanpain and C. Engels (eds) *Comparative Labour Law and Industrial Relations in Industrialized Market Economics* (5th edn, Deventer; Kluwer, 1992)
[53]H. Collins and K.D. Ewing and A. McColgan, Labour Law: Text and Materials (Oxford and Port-Land 2005) cited in OVC. Okene(n.48).

> Collective bargaining would be rather empty in substance if the employer could say: "This is my offer-take it or leave it", of if the employer could say: "I am proposing to change the terms of existing collective agreement and there is nothing you can do about it, whether you agree or not. The strike enables workers collectively to put pressure on the employer in pursuit of what they see as a just cause and away of resisting what they see as unjust action by the employer.

Similarly, Uvieghara in the most apposite and agreeable view stated thus:"...the introduction, since 1968 of what is in effect, compulsory arbitration of trade dispute would appear to have had a negative effect on collective bargaining, not only in the public, but also in the private sector."[54]

Even more austere are the provisions of s.18 of the Trade Dispute Act[55] and s.6(a) of the Trade Union (Amended) Act[56] which clearly prohibits strike actions and by implication limits the tool of collective bargaining. As stated before, the right of workmen to strike is an essential element in the principle of collective bargaining.[57] Collective bargaining will not be effective without a credible threat of industrial action.[58] Thus, the connection or link between the right to strike and collective bargaining is easy to understand.[59]

Another area worthy of consideration is the provisions of s.3 of the Trade Dispute Act. While the section recognises collective agreement as the result of a voluntary collective bargaining between independent parties, it however tended to dwindle and undermine the efficacy and viability of the free enterprise relationship that results in the agreement, by unreasonably empowering the Minister to intermeddle and unilaterally determine what parts or provisions of the agreement will become binding on the employers and employees to whom the agreement relates. We posit that this defeats the essence of the free-enterprise relationship that ought to be the cornerstone of collective bargaining.

In a similar vein, the Wages Boards and Industrial Councils Act[60], which sought to institutionalise collective bargaining in Nigeria, have by the Act vested too much control in government through the Minister. For instance, by the provisions of the Act, the constitution of industrial wages boards[61] within the private sector or the national wages board and area minimum wages committees[62] within the public sector is seemingly within the discretionary power of the Minister or as he thinks a fit.[63] What is more, even the acceptance of recommendations on wage structures or wage variations and other working condition is totally within the discretion of the Minster.[64]The recommendation(s) cannot have the force of law without an order of the Minster fixing the recommended wages and conditions.

[54]E.E Uvieghara (n.8)
[55]Cap T8 LFN 2004
[56]Cap 2005; there is no doubt that a combination of s.18 TDA and s.60 TU (Amendment) Act has put a paid to any alluding to the existence of the right to strike in Nigeria.
[57]See(n.49).
[58]KW Wedderburn, *The Worker and the Law* (Penguin Books, 1965)
[59]OVC Okene,(n.48)
[60] Cap W1 LFN 2004
[61]WBIC Act 2004, s.1
[62]WBIC Act 2004, s.16
[63]WBIC Act 2004, s.5(5)(a)(c) and (2)
[64]WBIC Act 2004, s.4(4); WBIC Act 2004, s.10.

In the case where employers and employees in an industry establishes a 'joint industrial council' permitted under the Act, any wage agreement resulting from such council's negotiations must be given a nod in the form of a declaration order by the Minister before they become binding.[65] This provision in itself can by no means be supportive of the theoretical understanding of collective bargaining. Rather, it is an intrusive provision that defeats a process that is meant to accommodate two voluntary parties.

Furthermore, it is seen that the Wages Boards and Industrial Councils Act is contrived in such a manner that the Minister has the ultimate (or too much) powers to manipulate and determine the constitution and membership of a National Wages board; as well as all other wages committees. This can be gleaned from a conjoin reading of s.16 and the first schedule of the Act particularly paragraphs 13 to 16. We argue that the power bestowed on the Minister by the provisions is likely to impact disfavoured union leaders influence who should be on the board to do the bidding of the appointing authority. Quiet apart from this, the Federal Government over the years seem to have stripped workers in the public sectors of their right to collective bargaining through the regular use of ad hoc review commission which practically inhibits collective bargaining. As Uvieghara puts it:

> … in the public sector, there has not always been meaningful bargaining within the sector. The phenomenon of appointment, on almost a regular basis, of commissions to review and recommend wages and other conditions of employment of public servants is a clear manifestation of the absence of collective bargaining in the public sector. [66]

Another striking area in this debate can be seen in the area of compulsory recognition of registered trade unions by employers. It is generally accepted that trade unions, especially trade unions of employees are vital, if not an indispensable component of the collective bargaining machinery.[67] Hence, s.5 of the Trade Union (Amended) Act provided for the compulsory recognition of registered trade unions for the purpose of collective bargaining. There is no doubt that this provision by far represents the most positive proclamation of the existence of the right to collective bargaining in Nigeria. However, the problem is that contrary to the internationally accepted "most representative union" principle[68] adopted by most countries, the Act proposes an arrangement that is controversial, likely-problematic and prone to abuse by employers. As Okene has noted, the statutory arrangement where all the registered unions in the employment of an employer is made to constitute an electoral college to elect member who will represent them in negations with the employer raises a number of concerns, and is one of the several challenges of collective bargaining in Nigeria.[69] In other words, the provisions of s.5 of the Trade Union (Amended) Act which neither prescribed the modalities for constituting the electoral college nor prescribed the procedure to resolve any dispute on which union should represent employees in collective bargaining is bland and leaved much to confusion rather than enhance collective bargaining.

5. Summary of Recommendation

It is ordinarily common to find in a work such as this, recommendations seeking for a review, amendment or even repeal of a law in order to remedy the hardship or mischief unleashed on

[65]WBIC Act 2004, ss. 18 and 19
[66]E.E. Uvieghara (n.8) 389
[67]OVC Okene, 'International Labour Standards (n.1) 113-114.
[68]For an elaborate explanation of this principle, including the majoritarian principle see O.V.C. Okene (n.1) 113
[69]OVC Okene, 'Internationalisation of Nigerian Labour Law: Current Developments in Workers Freedom of Association' [2016](2)(2) *Port Harcourt Journal of Business Law*, 5-8

concerned citizen by the law. While we very much agree to that and hereby recommend that the 1999 Constitution of Nigeria be amended along the lines of the South Africa Constitution in respect of collective bargaining, it is more important to state the following:

1) That the solution to this rather obscure right of collective bargaining severely limited by extant labour statutes does not lie in the hand of the National Assembly whose members are perhaps too busy caring about issues of their huge emoluments and membership of juicy house oversight committees, to bother about legislating on the right of workers to collective bargaining.
2) The practical solution lie with legal practitioners who knowing their onion should practice the law with versed knowledge and depth to locate the proper place of international labour standards within Nigeria's corpus juris; and in so doing call the courts, at every opportunity, to unravel the obscurity which the right to collective bargaining have faced within the Nigerian legal system.

The inspiration for the views in (2) above stems from the postulates of Wortley which stated thus:

> The function of the Lawyer is not only to know the law - for this he is paid, for this he comes into the legal world-but the task of the lawyer is to resolve conflicts when the law is not clearly knowable and when prediction cannot be certain.[70]

6. Conclusion

What can be deduced from the foregoing is that while the Federal Government has over the years touted itself through policy statements to be in support and to encourage voluntary collective bargaining system in the work industry[71], the law of the land in varying subterfuges seems to be in discordant tunes. This as we have tried to show in this paper manifests itself in the major legislations dealing with labour and trade union matters. And the more than partial meddlesomeness and stringent governmental controls introduced by these legislations mainly derogates from known and acceptable international labour standard on collective bargaining rights.

Thankfully, with the audacious pronouncement of the National Industrial Court on the nexus of s.254C(1)(h)(f) and (2) of the 1999 Constitution and International Labour Standards in the Aero Contractors case, there seem to be some bright lights in the horizons for workers to properly utilize what should more appropriately be their statutory right to bargaining collectively towards the enhancement of their wages and conditions of employment.

[70]B.A Wortley, 'Some Relections on Legal Research after Thirty Years (1982)24, *Journal of Indian Lail Institute*<heinonline.org> Accessed 15August, 2017.

[71]E.E. Uvieghara (n.8) 388; O.V.C. Okene, 'International Labour Standards (n.1), 105; For example, in the Third National Development Plan 1975-1980, Government Policy Statement was thus: Government continues to pursue its policy of industrial self-government, whereby it encourages employers and workers to try to settle questions of wages and conditions of employment by coolective bargaining and only intervenes in the last resort or in the public interest as an impartial conciliator or arbiter. Third National Development Plan 1975-80, Vol. 283, para 2(e)