

## **NEW TRENDS IN ENFORCEMENT OF COLLECTIVE AGREEMENT IN THE 21ST CENTURY INDUSTRIAL RELATIONS NIGERIA**

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### **Abstract**

*Industrial relations and contract of employment are both institutional and individual in nature. At the level of the individual, he contracts with the employer at a personal law of contract of employment level while it is also institutional because trade union(s) formed by the cooperation and collaboration of aggregate of employees take advantage of the constitutional right to freedom of association among other rights. Enforcement of collective agreement voluntarily entered into by the employer and trade union ought to be mutual and devoid of bottlenecks at the time of enforcement. The essence of this paper is to ascertain and determine whether there are new trends and techniques for enforceability of collective agreement in the 21st century Nigeria. The methodology adopted in this paper is doctrinal as we examined the current statutes governing collective agreements, case laws, and opinions of scholars as regards collective agreement in the past, present and recommendations for the future. The paper further examined the status quo of collective agreements especially as it regards its enforcement by suggesting removal of bottlenecks which may stampede its smooth enforcement by the parties for their mutual benefits.*

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### **1.0 Introduction**

Collective agreement is a product of collective bargaining. It is in furtherance of the exercise of the right of the workers to association under section 40 of Constitution of the Federal Republic of Nigeria, 1999. Collective bargaining and collective agreement are of universal practice and recognized by the International Labour Organisation. Traditionally, collective agreement is a gentleman agreement which is binding in honour. In 1994, the ILO supported the right to strike in furtherance of breach of collective agreements by employers in an organization.<sup>1</sup> In Nigeria clauses such as ratification or adoption clauses in furtherance of enforcement of Industrial relations has helped to ensure the enforcement of collective agreement between the trade union and employers.

It is apposite to state at this stage that the essence of this paper is not collective bargaining which is a precursor to collective agreement. The focus of this paper is rather, on collective agreement. The first part of this paper deals with the conceptual framework for collective bargaining and collective agreement in Nigeria while the second part deals with classification and types of collective agreements. The third part succinctly gave an overview of the functions of collective agreement in industrial relations while the fourth part will examine judicial attitude towards enforcement of collective agreement. The fifth part will address the issue of enforceability and challenges of enforcement of collective agreement and the last of the paper will proffer contemporary solutions to enforcement of collective agreement for harmonious industrial relations for growth and development of Nigeria.

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<sup>1</sup> ILO Policy Guide on Collective Bargaining, 2015, Geneva. Convention No 154 of the ILO.

## 2.0 Conceptual Framework for Collective Agreement

Collective bargaining is a process of negotiations between employers and the representatives of a unit of employees aimed at reaching collective agreements which regulate working conditions. Collective agreements usually set out wage scales, working hours, training, health and safety, overtime, grievance mechanisms and rights to participate in workplace or company affairs. The Labour Union may negotiate with a single employer (who is typically representing a company's shareholders) or may negotiate with a group of businesses, depending on the country, to reach an industry wide agreement. The ILO has defined collective agreement as all agreements in writing regarding working conditions and terms of employment concluded between an employer, a group of employers, or one or more employers organizations, on the one hand and one or more representative workers organisations or in the absence of such organizations, representatives of the workers duly elected and authorised by them in accordance with national laws and regulations, on the other.<sup>2</sup> The International Labour Organization (ILO) states that, workers' and employers' organisations shall have the right to draw up their constitutions and rules, freely elect their representatives, organise their administration and activities as well as formulate their programmes.<sup>3</sup>

The Black's Law Dictionary defines collective agreement as a contract between multiple parties, especially where one side consists of many people or entities with a common interest, as when an association or other organisation acts on behalf of its members.<sup>4</sup> Collective agreements are usually between Trade Union or a Union and an employer and are quite

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<sup>2</sup> *Ibid.*

<sup>3</sup> C154- Collective Bargaining Convention, 1981 (No. 154). [https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100\\_INSTRUMENT\\_ID:312299:NO](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100_INSTRUMENT_ID:312299:NO) accessed 2 January 2024. In Adebayo J A & A T Toyosi, Collective Bargaining and Collective Agreement in Nigeria: Bindingness and Enforceability, Nnamdi Azikiwe University, NAU.JCPL Vol. 8 (3) 2021, p.

<sup>4</sup> Black's Law Dictionary 11<sup>th</sup> Edition (West Publishing Company) p. 330

distinct from the individual contract of employment of the workers for whose benefits the agreements are supposedly made.<sup>5</sup>

According to Chambers Dictionary, ‘collective agreement is an agreement reached by collective bargaining.<sup>6</sup> In other words, a collective agreement is a result of collective bargaining. A collective agreement is reached or attempted to be reached in accordance with section 91 of the Labour Act, which is seen as a framework for resolving trade disputes. Understanding the importance of collective bargaining elevates one's status as parties to the agreement.

The New Webster Dictionary of English Language defines collective agreement as a contract between an employer and a trade union. It is an agreement on wages and working conditions within an industry<sup>7</sup>. Osborn's Concise Law Dictionary states that collective agreement is an agreement and arrangement formed by and on behalf of trade unions, employers, or employers' associations and dealing to specific employment difficulties.<sup>8</sup>

Most at times, the terms and conditions of employment for workers in a bargaining unit are outlined in a collective agreement, which is a written agreement between the employer and a union.<sup>9</sup> The terms and conditions of employment are agreed upon through collective bargaining between the employer and the union. The types of terms and conditions covered by a collective agreement typically include wages and benefits, as well as terms and conditions of employment that relates to job posting, obligations and responsibilities of the employees and the unions, and a

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<sup>5</sup> Sam Erugo *'Introduction to Nigerian Labour Law'* 2nd edn (Princeton and Associates Publishing Co Limited 2019) p. 341

<sup>6</sup> Chambers Dictionary, Revised 13th edn (Chambers Harrap Publishers Limited 2016) p. 309

<sup>7</sup> New Webster Dictionary of English Language (International Edition publisher; Lexicon International Publishers Guild group of New-York INC 2004) P. 192

<sup>8</sup> Osborn's Concise Law Dictionary 12<sup>th</sup> Edition (Thompson Reuters legal Limited 2009) p. 92

<sup>9</sup> *Human Resources; Labour Relation – Frequent Asked Questions* <[Https://www.uoguelph.ca](https://www.uoguelph.ca)> last accessed on 26 April, 2022.

dispute resolution process (usually as grievance and arbitration procedure).<sup>10</sup> The Labour Act defines it as ‘an agreement in writing regarding working conditions and terms of employment concluded between-  
(a) an organization of workers or an organization representing workers (or association of such organizations) of the one part; and  
(b) an organization of employers or an organization representing employers (or an association of such organizations) of the other part’.<sup>11</sup>

Traditionally, collective agreements may entail special rights for the employees from the employers or management. Such rights may also include pay holiday and special holidays, pay during special leave and maternity leave, notice period and special termination processes, and special compensation rules.<sup>12</sup> Collective Agreements are negotiations reached between trade unions and employers; these agreements set down the rights of both employees and the trade union in the workplace.<sup>13</sup> Therefore, every union relationship will usually result in a collective agreement. In a unionized workplace, collective bargaining is a fundamentally significant component of the working relationship. These agreements may be negotiated by the parties involved or may be imposed by law or by binding arbitration. In a unionized workplace, the parties will look to the collective bargaining agreement as their first port of call for resolution when a disagreement arises. Due to the basic significance of a collective agreement in a unionized environment, parties frequently disagree on how to interpret them. Each side contends with each other to interpret the document in their favour.<sup>14</sup>

Collective agreements aim to raise the living standard of workers, give confidence and self-respect to workers as individuals, and eliminate

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<sup>10</sup> *Ibid.*

<sup>11</sup> Labour Act, s. 91

<sup>12</sup> NJORD Law Firm; *Employment and Labour Law* ‘Collective Agreements’<<https://www.njordlaw.com>> last accessed 26 November, 2023.

<sup>13</sup> Employment Law; *Union and Labour Issues – What is Collective Agreements?*<<https://www.legallie.ca>> last accessed on 26<sup>th</sup> of December, 2023.

<sup>14</sup> Collective Agreement|Toronto Labour Lawyer Advising Employers on Collective Agreement Interpretation <<https://www.grosman.com>> last accessed 21 April, 2022.

ignorance and illiteracy that hold down workers in the developing countries of the world and enable them to enjoy human dignity.<sup>15</sup> This is because it successfully guarantees industrial peace and harmony and ensures stability in labour management than compulsory measures enforced by legislation.<sup>16</sup> The protection of employees' interests in labour relations through the bargaining process has been accomplished more than any other way by collective agreements, which have shown to be a true tool of industrial harmony and understanding.

The United Nations Guiding Principles under Principle 12 and relevant Commentary state that, 'The responsibility of business enterprises to respect human rights refers to internationally recognized human rights is understood at a minimum standard and is inclusive of those expressed in the International Bill of Human Rights and the principles concerning fundamental rights set out in the International Labour Organization's Declaration on Fundamental Principles and Rights at Work.<sup>17</sup> All these culminate in implementable collective agreement by the parties. Section 7 of the National Industrial Court Act empowered the NIC to interpret collective agreements while section 254C(j) of the Constitution empowered the NIC to not only interpret, but also to apply collective agreements.<sup>18</sup>

In addition, Akinkunmi posits that collective agreement is the negotiation relating to terms of employment and condition of work between an employer, a group of employers, better still, an employers' organisation on

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<sup>15</sup> Vincent Iwunze 'The General Unenforceability of Collective Agreements under Nigerian Labour Jurisprudence: The Paradox of Agreement without Agreement' (2013) p. 2<[https://heinonline.org/hor-cgi-bin/get\\_pdf.cgi?handle=hein.journal/ijalsg4&section=16](https://heinonline.org/hor-cgi-bin/get_pdf.cgi?handle=hein.journal/ijalsg4&section=16)> last accessed 13<sup>th</sup> April, 2022.

<sup>16</sup> Ibid

<sup>17</sup> OECD, Guidelines for Multinational Enterprises, Commentary on Employment and Industrial Relations, 43–46

<sup>18</sup> Adebayo J A and Toyosi A T 'Collective Bargaining and Collective Agreement in Nigeria: Bindingness and Enforceability' (2021) Vol.8, No. 3 Nnamdi Azikiwe University, Awka Journal of Commercial and Property Law <<https://journals.unizik.edu.ng/index.php.jcpl>> last accessed 16th of April, 2022. p.74-75

the other hand and representative of workers' organisation on the other hand, with burden to reach an acceptable end called collective agreement.<sup>19</sup> Akinkunmi posits further that collective bargaining is a right enforceable by the ILO.<sup>20</sup> Two international instruments provided for the right to collective bargaining are the European Social Charter and the ILO Conventions. Under this instrument, the right of workers to collective bargaining can also be derived from other instruments which generally grant freedom of association and the protection of workers and trade union rights. ILO in 1985 provided mechanisms for the right of workers to freedom of association is guaranteed and protected under the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant of Economic, Social and Cultural Rights, and the European Convention on Human Rights" and the American Convention on Human Rights. This was implemented and expanded in Article 6(1)-(3) of the European Social Charter 1964, Article 23(4) and Article 22(1).

From the array of definition and explanation of collective agreement above, there are some key components or contents of a collective agreement which are as follows:

- a. The collective agreement must be in writing. The bargaining process must be documented by the parties and the issues agreed on must be reduced into writing. It may be stored electronically or physically because of ongoing global digitalization efforts.
- b. The collective agreement must be the outcome of a collective bargaining and it must be mutually agreed upon.
- c. All necessary parties must be duly and ably represented in the collective bargaining that gave rise to the collective agreement. Where any party; that is, employee or employer is not present or duly represented, such agreement is not acceptable. Parties are to ensure that those present are those authorized

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<sup>19</sup> Akinkunmi F A, Critics of Effectiveness of Collective Agreement in Nigeria's Public Sector. *Nigerian Journal of Industrial Education and Labour Relations*, Vol. 5. No. 1 & 2, 2021

<sup>20</sup> *Ibid.*

and with authority to attend such collective bargaining processes throughout the duration of the negotiation.

d. Collective agreement is usually geared towards settlement of issues relating to working conditions and terms/contracts of employment.<sup>21</sup>

### **3.0 Classification of Collective Agreement**

Collective Agreement may be categorised into two, namely: procedural collective agreement and substantive collective agreement<sup>22</sup>;

- i. **Procedural Collective Agreement:** This states the mode and procedure of performing some actions; it is written and outlines the steps to be taken on a given issue. It may be seen as a code of conduct for membership and administration to prevent arbitrary use of power. It deals with issues like settling a dispute between parties, representation arrangement, rules and regulation of membership, discipline and suspension.
- ii. **Substantive Collective Agreement:** This type of agreement deals with terms of employment of an employee like wages and salaries, allowances, pension arrangement, termination of employment, leave. This is the content of the collective agreement per se. It is the document that must reflect the intention of the parties and must be scrutinized by legal minds in the organization and the trade union to ensure mutual understanding for hitch-free enforcement.

### **3.1 Parties to Collective Bargaining and Collective Agreement in Nigeria**

A bargaining process cannot be carried out without the active participation of the critical players, most especially the necessary parties. However, in the case of collective agreement, the parties are as follows:

- a. **Employees:** This is one of the necessary parties to collective bargaining without which any agreement reached will be unacceptable. Examples of those who can bargain on behalf of

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<sup>21</sup> *Op cit.* (n 3), p. 75

<sup>22</sup> Bamidele Aturu ‘*Nigerian Labour Laws* (Nigeria; Frankad Publishers 2005) p. 227

employees are; a group of employees, an employee's organisation/union representing employees or an association of an organisation representing employees.

- b. **Employers:** Examples are; an employer, group of employers, employers' organisation/union representing employers or an association of organisations representing employers. This is also a necessary party to collective bargaining.
- c. **Third parties:** This usually occurs where the issues for bargain are national issues cutting across both public and private sectors such as deliberation on national minimum wage, the government, organised labour, and the private sector will engage in roundtable dialogue to arrive at a tripartite agreement.

#### **4.0 An Overview of the Functions of Collective Agreement in Industrial Relations**

Fajana<sup>23</sup>enumerates the functions of collective bargaining agreements to the workers, the employers and the State. To the workers, collective bargaining is the alternative to and a replacement for weak individual attempts at bargaining. The terms and conditions are encoded in a collective agreement, and the provisions bind present and future employees unless otherwise reviewed as far the employee is concerned. In the words of Eruo, the precise legal status of collective agreement is affected by both Common law principles regulating the formation of contracts enforceable at law and statutory provisions and the result of this is that, as a general rule, collective agreements are non-justiciable and devoid of legal sanction. Collective agreement allows the employees to participate in the management functions of their organisations. In other words, the absence of collective bargaining implies that managerial prerogatives would dominate most labour matters.

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<sup>23</sup> Fajana. S. 'Industrial Relations in Nigeria 'third edition (Lagos; Longman Publishers, 2006) pp.18

Also, collective agreements help to save the cost of negotiating with each worker and simplify the salary administration system. It is also a preventive mechanism for industrial disputes which might have emanated without an option of a collective agreement and enables general industrial harmony, and saves the cost of strikes and lock-outs. Lastly collective agreement is a grievance procedure which prevents the deployment of multiple standards by management in treating indiscipline and avoiding compatibility issues which may be raised by workers if individual bargaining had been used. Obiora posits that the unique feature of collective agreement is tied to the fact that there is no contract of employment that can possibly reduce all its terms in a single document, or envisage all the terms that should form part of the contract in the future.<sup>24</sup>

## **5.0 Judicial Attitudes towards Enforcement of Collective Agreements in Nigeria**

Due to different interpretation given to collective agreements and the differences in the facts culminating in the cases which comes before the courts, there is a need to restate and review previous judicial pronouncements on case laws which affect enforcement of collective agreement. The law recognizes an employee's right to file a lawsuit challenging the enforceability of a collective bargaining agreement when that agreement has been explicitly or implicitly incorporated into the employment contract or service terms, or later adopted by an employer as a component of the service terms. Obiora espoused that there are several inconsistencies on the interpretation of collective agreements by the courts in Nigeria.<sup>25</sup>

In *Nigeria –Arab Bank Ltd. v Shuaibu*<sup>26</sup> the court held that the legal statuses of collective agreement are doubtful and at best known as a

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<sup>24</sup> Obiora S F, Dialectics on the Principle of Enforcement of Collective Agreements in Nigeria: A Reappraisal. *E-Journal of International and Comparative Labour Studies*, Vol. 11 No. 03/2022, p. 76

<sup>25</sup> *Ibid.*

<sup>26</sup> (1991) 4 NWLR (pt.186) p.363

gentleman's agreement. It is extra-legal, devoid of sanctions and also a product of trade unionists pressure. The court has in a different occasion held that there is no legal compulsion on either the employee or the employer to enter into collective agreement except in the case of certain public boards or corporations. They are not meant to establish legal relationships. Collective bargaining agreements are therefore only enforceable in honour.<sup>27</sup>

In determining whether a collective agreement has been incorporated into a contract of employment, the National Industrial Court will take into account various factors, including their quintessence into the contract of employment, if one exists, the state of the adjurations, the exhibit before the court, and the attitudes of the employees and employers.<sup>28</sup> The NIC further held that the old position which treated collective agreements as binding in honour only is a common law principle which the NIC is empowered to relax by virtue of sections 13 and 15 of the NIC Act, where the principle appears to be in conflict with the rules of equity. Therefore, based on the above points, the NIC is fully empowered to apply a collective agreement once it is established that the parties are bound by the agreement

In *ACB v Nwodika*,<sup>29</sup> it was held that the position of law in relation to "Collective Agreements" as a *fortiori* is that they are binding on the individual employee and employer it depends on several elements namely; their incorporation into the employment contract, the state of the pleadings, the deposition before the court, and the attitude of the parties." In *Rector Kwara State Polytechnic v. Adefila*,<sup>30</sup> the enforceability of a collective agreement was determined; it was held that a collective agreement provision will be deemed to be incorporated into the

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<sup>27</sup> *Bertram B. Nwajagu v British American Insurance company (Nigeria) Limited* (2000) 14NWLR (pt.687) p.356

<sup>28</sup> Chukwuma V. O., The Enforceability of Unincorporated Collective Agreements in Nigeria (2021) *UNILAG Law Review* Vol. 4 No. 2, p.

<sup>29</sup> (1996) 4 NWLR (PT 443) 470

<sup>30</sup> (2007) 15 NWLR (PT 1056) 42

employment contract if parties take a specific action explicitly because of the collective agreement, such as paying wages at new rates.

In recent times, the position of the court concerning the pertinence of Collective Agreement has been restated in *Aghata Onuorah v Access Bank Plc*.<sup>31</sup> Moreover, in *Stephen Ayaogu and 16 Others v Mobil Producing Nigeria Unlimited and Blue Chip Services Limited*<sup>32</sup> the Court held that unlike what obtains in the past, the court has been conferred with authority and jurisdiction to expound and apply collective agreements as provided for in section 254C of the Constitution of the Federal Republic of Nigeria, 1999 (3rd Alteration). Collective agreements are now legally enforceable against those they relate to. In that case, the deposition before the Court reveals that the claimants were drivers and technicians; moreover, they were lower-ranked employees, and thus in event, they were entitled to be members of the trade union in question. Considering the fact that eligibility is the criteria for being members of a trade union for junior staff, the claimants automatically are presumed to be members of the trade union unless they opt-out in writing. There is no corroboration before the Court that they seceded. The court also referred to similar decisions in the cases of *Aghata N. Onuorah v. Access Bank Plc*<sup>33</sup> and *Mr Valentine Ikechukwu Chiaazor v Union Bank of Nigeria Plc*<sup>34</sup> where the judgment which was delivered on 12th July 2016 is to the effect that the applicants are allowed to rely on Exhibits C1 and C2 in proving their dispensation to the claims for redundancy in this case.

Where the Collective Agreement was not distinctly enforced into the Employment Contract, it appears that the Court's position on the enforceability of collective agreements has evolved to include actual proof of membership in a trade union evidenced by direct documentary evidence. This is in light of the Court's authority and jurisdiction to

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<sup>31</sup>(2015) 55 NLLR (pt.186) 17 and <https://www.linkedin.com/pulse/shift-position-national-industrial-court-collective-agreements-dansu> last accessed 3rd January, 2024.

<sup>32</sup> Supra

<sup>33</sup> [2015] 55 NLLR (Pt. 186) 17

<sup>34</sup> Unreported Suit No. NICN/LA/122/2014

interpret and apply collective agreements under section 254C of the Constitution of the Federal Republic of Nigeria, 1999 (3rd Alteration).

In *Ngiangia T. Iboma & 4 Ors v Ports & Terminal Operator Ltd & 2 Ors*,<sup>35</sup> it was held that failure to rigorously conform by the terms of the collective bargaining agreement was declared to be non-justiciable. Its ability to enforce its terms is limited to situations when parties have consented to be bound by the Collective Bargaining Agreement, such as when employees have previously received compensation under such an arrangement.

In *Akauve Moses Osoh & Ors v Unity Bank Plc*,<sup>36</sup> a collective agreement was defined as ‘any agreement in writing for the settlement of industrial disputes; relating to terms of employment and physical conditions of work concluded between; an employer, a group of employers or one or more organisations representative of employers, on the one hand, and one or more trade unions or organisations representing workers, or duly appointed representative of any body of workers on the other hand.’<sup>37</sup>

In the case of *Nigeria-Arab Bank Ltd v Shuaibu*, a collective agreement is at best a “gentleman’s agreement, an extra-legal document totally devoid of sanctions, a product of trade unionist’s pressure.<sup>38</sup>

Aturu opined that collective agreements are essential in the collective bargaining process. He further stated that at the end of a negotiation, parties are usually reduced to writing agreements reached on matters they have bargained. Those agreements are generally either procedural or substantive agreements. Procedural or recognition collective agreements deal with how the bargaining groups relate, such as the procedure for settlement of grievances. Substantive collective bargaining regulates work conditions and issues such as wages, overtime and bonuses.<sup>39</sup>

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<sup>35</sup>(2020) JELR 80394 (NICN)

<sup>36</sup>*Akauve Moses Osoh & Ors v Unity Bank Plc* [2013] 9 NWLR (Pt. 1358) 1

<sup>37</sup>Per Chukwuma-Eneh, JSC (as he then was) Olumide Babalola ‘Casebook on Labour Law and Employment Law {1995 – 2013}’ (Noetico Repertum Inc 2014) p. 202

<sup>38</sup>*Nigeria-Arab Bank Ltd v. Shuaibu* [1991] 4 NWLR (Pt 186) 450, 469

<sup>39</sup>Bamidele Aturu ‘Nigerian Labour Laws’ first edition (Frankad Publishers 2005) p. 227

## 6.0 Challenges of Enforcement of Collective Agreement in Nigeria

Adebayo and Toyosi in their paper explained that government attitude towards implementation of collective bargaining is a major factor which inhibits collective bargaining.<sup>40</sup> The learned authors argued that many state governments are yet to implement the minimum wage agreement entered into by the representatives of federal government, organised labour and the private sector (Tripartite Committee) which later metamorphosed into National Minimum Wage Act, 2019.<sup>41</sup>

We respectfully agree with the view of the learned authors because incessant breach of collective agreement is synonymous with past government in Nigeria. The privity of contract Clause has been a challenge for the smooth enforcement of the collective agreement as contract strictly between the labour union and the employer. Therefore, allowing individual personalities to benefit therefrom may pose some challenges especially with literal interpretations

A major challenge to enforcement of collective agreement especially as between a trade union and an employer is the fact that parties to the collective agreement are the only ones bound by it. Until the 3<sup>rd</sup> alteration of the 1999 constitution which has now empowered the National Industrial Court of Nigeria to apply and by implication enforce collective agreements, the Supreme Court has in a b=number of cases as shown above shied away from giving biting teeth to enforcement of collective agreement in certain deserving instances.

The challenge of judicial precedent of decision of the Supreme Court and the need to tow the same part by the lower court especially the national industrial Court of Nigeria is another challenge which enforcement of collective agreement faces in Nigeria.

The administrative challenge of making the Minister of Labour at the Federal level or the Commissioner for Labour (if any) at the state level, a third party to see to the enforcement of collective agreement is a clog on wheel of progress in enforcing collective agreement in Nigeria. This is especially as it relates to collective agreement to which the Federal Government of which the Minister is a

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<sup>40</sup> Adebayo J A & Ajibade T T, Collective Bargaining and Collective Agreement in Nigeria: Bindingness and Enforceability, Nnamdi Azikiwe University, NAU.JCPL Vol. 8 (3) 2021, p. 73

<sup>41</sup> *Ibid*, p. 73

part of, a party to the industrial dispute. There is a need to amend this provision of the law which makes the Minister of Labour a neutral third party as a requirement for enforceability, the innocent employees are at the mercy of an unwilling third-party, the Minister or Commissioner of Labour as the case may be, to make an order upon the deposit of at least three copies of such agreement within 30 days of its execution.<sup>42</sup>

### **7.0 New Trends towards Enforcement of Collective Agreement in Nigeria**

We are unable to agree with the Supreme Court that the common law position on the huge task of enforceability of collective agreement still stands because going by new trends in labour movement. This paper therefore recommends as follows:

- i. Collective agreement need not be incorporated into an employee's contract of employment before it can be enforced by the court.<sup>43</sup> However, it is advised that legal units of the employers and the legal officers or representatives of labour unions must collaborate to insert enforceable clauses in the Collective Agreement between concerned parties.
- ii. Section 254C of the Constitution of the Federal Republic of Nigeria, 1999 (3rd Alteration) Act, 2010 collective agreements are now enforceable and a departure from the common law position because the constitution is supreme and the legislative intention towards entering into a binding agreement in form of collective agreement backed up with the above stated force of law cannot be vitiated or departed from especially where there is nothing before the court or the parties in Alternative Dispute Resolution to render the agreement unenforceable. The courts

<sup>42</sup> Trade Disputes Act, s. 3 (1)

<sup>43</sup> *BPE v Dangote Cement Plc* (2020) 5 NWLR (PT. 1717) 322 and more especially the analysis of Chukwuma in *BPE V Dangote Cement Plc* (2020) 5 NWLR (PT. 1717) 322: The Enforceability of Unincorporated Collective Agreements in Nigeria (2021) *UNILAG Law Review* Vol. 4 No. 2, p.

are enjoined to uphold purposive rule of interpretation in giving life to the intention of the parties to collective agreement. Submissions such as declaring void, collective agreement freely entered into by the parties and especially where it is not expressly stated to be an agreement binding in honour should be discountenanced by the courts and arbitral bodies so that courts such as the National Industrial Court will not be belaboured not to depart from common law position already applied by a higher court.

- iii. Adoption of class action and reliance on fundamental rights enforcement procedure Rules towards enforcement of the right to freedom of association should not be defeated on the altar of technical interpretation of an agreement voluntarily entered into by the parties. In this wise both employer association and employees association should seek for expert input while executing collective agreement.
- iv. There is need for higher collaboration among trade unions to fight for one another and the need to resist divide and rule practice among employers. The same applies to employers, bodies such as National Employers Consultative Assembly.
- v. Regional representatives of the ILO has crucial roles to play in ensuring seamless enforcement of collective agreements through persuasive, collaborative and skillful to ensuring that parties exhibit corporate integrity as a tool for corporate governance by complying with the spirit and letters of collective agreements voluntarily signed by them for industrial harmony and productivity.

## **8.0 Conclusion**

The essence of this paper is not to make a case for the enforcement of collective agreement against employers as a party to the bargain but to appraise contemporary legal discourse towards assisting the parties and the stakeholders such as the courts to give effect to the legislative intent of

section 254C of the 3<sup>rd</sup> alteration to the 1999 constitution. The deduction from this paper would benefit the citizens of Nigeria, especially the employers and employees because in our view, improving the working and living conditions of workers is a catalyst for economic growth.

Collective agreement gives workers a better representation and promoting industrial democracy. Collective agreement helps to facilitate the speedy implementation of decisions arrived at collective negotiation. Such a vital agreement should not lack mechanism for enforcement by all stakeholders in industrial relations. This is because it assists organizations in ensuring that collective bargaining adheres to and implements all the Collective Bargaining Agreements (CBAs) and helping the industrial relations to promote the interest of the employees and the management to gain the goodwill and trust of its employees. By implication, this will engender a productive and healthy economy and rapid national growth. Having underscored the importance of this vital agreement, it is apposite to adhere to the above suggestions geared towards modern implementation of collective agreement by all parties concerned.