



ROUNDTABLE ON STRIKE AND COLLECTIVE BARGAINING

July 29th 2010

COMMUNIQUE

INTRODUCTION

In every modern economic system, it is inevitable that forces of labour and capital would have dissenting views with each side resorting to measures through which it can press home its demands. In this vein, collective bargaining and strikes are important mechanisms through which the worker can engage the employer in a dialogue to meet its demands. Strikes if unregulated may spiral out of control with attendant consequences for the polity.

In recognition of the importance of creating a stable work environment in Nigeria, the Nigerian Institute of Advanced Legal Studies, in fulfillment of its mandate under the auspices of Babatunde Adejumo Centre for Industrial and Labour Law, organized a one-day Roundtable on the Right to Strike and Collective Bargaining. In attendance were stakeholders and interested persons of the society and diverse walks of life. Notably, there were representatives from the PENGASSAN, NURTW, RATTAWU, National Library of Nigeria, ABCON, National Orthopaedic Hospital, National Industrial Court, Nigerian Insurers' Association of Nigeria, private legal practitioners and members of the academia.

Perspectives at the roundtable included:

- international and Regional Instruments Affirming the Right to Strike
- restrictions and Limitations on the Exercise of the right to strike
- picketing and the right to strike
- overview of strikes and collective bargaining in Nigeria
- trade unions and collective bargaining

OBSERVATIONS

The Roundtable observed as follows:

1. The right to strike is seen as a fundamental right.
2. In Nigeria, the current law regulating the right to strike is Section 31(6) of the Trade Unions Act Cap.T14 LFN 2004.
3. The right to strike is recognized internationally but it is not absolute.
4. According to the International Labour Organization (ILO), the right to strike is the most visible form of collective industrial action that workers employ to express their grievances and to force the employers to the bargaining table. It is a weapon of last resort.
5. Picketing is a form of industrial action.
6. There is no express recognition of the right to strike in any of the core ILO Conventions and recommendations which are the primary source of international labour law.
7. Picketing is a form of industrial action. The adverse impact of industrial action can be felt by all, including individuals.
8. In general, picketing is a form of protest in which people (called picketers) congregate outside a place of work or location where an event is taking place. Often, this is done in an attempt to dissuade others from going in ("crossing the picket line"), but it can also be done to draw public attention to a cause.
9. Picketing is a common tactic used by trade unions during strikes who will try to prevent dissent members of the union, members of other unions and unionized workers from working. Those who cross the picket line and work despite the strike are known pejoratively as scabs.
10. Picketing is also used by pressure groups across the political spectrum.
11. Informational picketing, mass picketing, secondary picketing, disruptive picketing and recognitional picketing are types of pickets.
12. Picketers normally endeavour to be non-violent.
10. Picketing can have a number of aims, but is generally to put pressure on the party targeted to meet particular demands. This pressure is achieved by harming the business through loss of customers and negative publicity, or by discouraging or preventing workers from entering the site and thereby preventing the business from operating normally.
11. Industrial action plays an important role in collective bargaining. So, one's view of collective bargaining may influence one's view on industrial action.
12. The treatment of industrial action depends on whether the approach adopted is that of a rights theorist or that of an economist.
13. Where the right to strike is linked to collective bargaining, implications may arise as to the scope of the right.
14. Where the right is linked to civil and political rights, a preliminary difficulty is that civil and political rights instruments in existence simply do not mention expressly the right to strike.
15. Justifications advanced for limiting the right to strike include:
 - (a) To prevent disorder or crime where picketing and other demonstrations organized during a strike may involve the commission of criminal offences if violence or serious disruption ensues.
 - (b) Certain groups may be barred from taking industrial action e.g. security agencies and those engaged in essential services.
 - (c) The need to protect the rights and freedom of others e.g. employers, other workers, consumers and the public at large.
16. Incomplete or asymmetric information and the problem of commitments are a number of reasons often accounted for failure of collective bargaining and hence the resort to strikes.
17. Trade dispute immunities are meant to establish equilibrium in labour relations by allowing trade unions to organize and to mobilize their members in support of collective bargaining over pay and conditions without the constant threat of illegality. But for most of its history, the trade dispute immunity has been disregarded with hostility by the courts.
18. Strike must be successful or else the union may be smashed.
19. The laws on strike are not favorable to workers as the laws are generally based on the unsatisfactory principle of "No Work No Pay".
20. Strike is a weapon of negotiation that ought not to go on indefinitely, but strikes in Nigeria are embarked on, indefinitely, because of the Government's perceived lack of interest in negotiation and dialogue.

21. Strike is like a gun in the hands of a pacifist.
22. For strike to be effective, it has to achieve its purpose otherwise the cause is lost.
23. Strike is used to persuade employers to engage in collective bargaining with the employee.
24. Collective bargaining means reaching a collective agreement and it democratizes the workplace. It can be mutually beneficial to employers and workers and enhances productivity.
25. The strike action is in a large sense a continuation of collective bargaining; it takes off where collective bargaining fails or where collective agreements are not implemented.
26. Strike is a coalition of the willing; as such workers are notified to join the strike action.
27. That collective agreements reached in Nigerian are usually not observed by the government.
28. That Government should re-negotiate on collective agreements reached with Labour which there are grey arrears rather than renegeing on the agreement totally with labour, instead of backing out of the agreement totally.
29. In the case of industrial relations, workers can be temperamental so it is pertinent that agreements mutually reached should be implemented to the letter.
30. In the private sector, some employers get involved in all manner of methods to stop unionization of workers.
31. That the banks do not follow industrial relations principles and do not involve in collective bargaining, given the recent trend of communicating employee's retrenchment by simply "logging" them out of the company's system.
32. The industrial relations system in Nigeria has been negatively affected by the general resort to violence, military rule and unaccountable governance.
33. Reckless or unreasonable strikes are usually met with use of force by the authorities concerned.

RECOMMENDATIONS

1. Collective agreement should be reviewed rather than being repudiated.
2. There is a need to demilitarize the industrial relation system in Nigeria.
3. The outcome of dialogue should be respected otherwise collective bargaining or dialogue loses its value or relevance.
4. Industrial relations should be made to have a local or Nigerian perspective.
5. There must be a distinction between a dispute of interest and dispute of right for a right to go on strike, based on them, to be meaningful.
6. Lawmakers should review the existing labour laws and endeavor to make them more relevant and realistic.
7. There should be regulatory reforms of the laws protecting workers' rights in Nigeria.
8. The right to strike should be properly enforced by re-visiting the existing laws; there should be expressions in various legislations recognizing the right to strike.
9. Balloting before strike should be based on a simple majority of votes cast.
10. There should be no impositions of penal/criminal sanctions against strikes.
11. There should be restrictions regarding compelling non-union members to participate in a strike action.
12. The right to strike should be expressly protected by our legislation both locally and internationally.
13. There should be more commitments and proper information for the effectiveness of collective bargaining.
14. The jurisdiction of the court to handle industrial issues should be left exclusively to the National Industrial Court.
15. Labour organisations should be able to put in place factors or instruments that would enable the effective implementation of the agreement reached between the various labour organization/pressure groups and the government.
16. Credible persons should be appointed to occupy offices concerning labour and other government positions for accountability.
17. The government of the day should have the workers' interest at heart.
18. Enforcement of the existing laws on expatriate quota should be reviewed with a view to limiting the influx of expatriates into the country at the detriment of the Nigerian Citizenry and workers.
19. Organized labour should begin now to initiate legislation for the betterment of the employees.
20. There is need for security of employment as the Common law rule empowers the employer to "hire and fire" and this creates disharmony for the security of employment.
21. The National Assembly should amend the Constitution to include the National Industrial Court as a superior court of record in the country.
22. There should also be laws regulating casualization of workers as this will go a long way in protecting the workers' rights and interests.
23. Organized labour should employ effective legislative advocacy and initiate legislations/bills to regulate labour activities in the country, as most of our labour laws were/are inherited Common Law from England.
24. Labour and government should employ a measure of security of employment for workers.
25. There should be principles put in place for effective collective bargaining and strike actions.
26. There should be specialized court/practitioners to regulate and enforce labour laws.
27. Labour leaders/organizations should take the issue of law reforms seriously.
28. There should be social dialogue always between the employers and the workers against strike.
29. The practice of employing contract and casual workers which engenders redundancy of regular employees at the workplace should be discouraged.
30. There should be a legal framework to govern casualization contract and outsourcing of workers in the area of contract of employment, generally based on international best practice as contained in the ILO Conventions.
31. Nigeria should express reservation categorically on any treaty or convention at the conference stage before ratifying and adopting same.
32. Nigeria cannot renege on obligations flowing from conventions it has ratified.

Signed:

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Director General,