

# Collective Bargaining and Dispute Settlement in the Food, Beverage and Tobacco Industry in Lagos State, Nigeria

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## Abstract

This paper examines collective bargaining and dispute settlement in the Food, Beverage and Tobacco Industry in Lagos State, Nigeria. Collective bargaining as one of the processes of industrial relations performs a variety of functions in workplace relations. It could be viewed as a means of industrial jurisprudence (rule making process in industry) as well as a form of industrial democracy. It is also a means for resolving workplace conflict between labour and management as well as the determination of terms and conditions of employment. Industrial disputes are inevitable in the Food, Beverage and Tobacco Industry. Industrial or trade disputes have both costs and benefits to the three social partners and the society at large. These social partners are the government, labour and management. However, it should be noted that from experience the costs of industrial disputes have always outweighed the benefits. Trade disputes as exemplified by strikes, to a large extent have a great bearing on the smooth and orderly development of the economy and the maintenance of law and order in the society. Thus, because of the adverse implications of industrial disputes, affected parties often seek speedy settlement of such disputes whenever they arise. The grievance procedure forms part of the procedural agreement of the collective bargaining agreement, which deals with such matters as the methods to be used and the stages to be followed in the settlement of disputes in the workplace. However, the grievance procedure is limited for use within the organisation. In the event that this procedure fails to settle the issue at dispute, then the parties can resort to the external machinery as provided by public policy as exemplified by mediation, conciliation, arbitration and the National Industrial Court (NIC). The existing statutory machinery for the settlement of disputes has not been effective in terms of delays experienced by aggrieved parties as well as cumbersomeness of the procedure. Oftentimes, judgements drag on for years and justice delayed is justice denied. More so, the statutory dispute settlement procedure has not fostered industrial harmony to a large extent. From the foregoing, it is recommended that the adoption of collective bargaining and Alternative Dispute Resolution (ADR) should be given due consideration by the parties in the Food, Beverage and Tobacco Industry to settle industrial disputes whenever they arise.

**Keywords:** Collective Bargaining, Dispute, Settlement, Food, Beverage and Tobacco Industry.

## 1. Introduction

Collective bargaining as one of the processes of industrial relations performs a variety of functions in workplace relations. It could be viewed as a means of industrial jurisprudence (rule making process in industry) as well as a form of industrial democracy. It is also a means for resolving workplace conflict between labour and management as well as the determination of terms and conditions of employment. The term “collective bargaining was originated by the Webbs to describe the process of agreeing terms and conditions of employment through representatives of employers (and possibly their associations) and representatives of employees (and probably their unions)” (Rose, 2008, p.274). Rose (2008) posits that collective bargaining is the process whereby representatives of employers and employees jointly determine and regulate decisions pertaining to both substantive and procedural matters within the employment relationship. The outcome of this process is the collective agreement. In the Food, Beverage and Tobacco Industry collective bargaining takes place between the workers’ union which is the National Union of Food, Beverage and Tobacco Employees (NUFBTE), the senior staff union which is the Food, Beverage and Tobacco Senior Staff Association (FOBTOB) and the industry/sectoral employers’ association which is the Association of Food, Beverage and Tobacco Employers (AFBTE). AFBTE has about 80 member companies as of 2011 (AFBTE Annual Report, 2011).

Industrial disputes are inevitable in the Food, Beverage and Tobacco Industry. According to the human relations theory of conflict, conflict is a natural occurrence in all groups and organisations. Since conflict is inevitable, the human relations view advocates acceptance of conflict. Its proponents argue that it cannot be eliminated and there are even times when conflict may benefit a group’s performance. Industrial or trade disputes have both costs and benefits to the three social partners and the society at large. These social partners are the government, labour and management. However, it should be noted that from experience the costs of industrial disputes have always outweighed the benefits. Trade disputes as exemplified by strikes, to a large extent have a great bearing

on the smooth and orderly development of the economy and the maintenance of law and order in the society (Anyim, Chidi & Ogunyomi, 2012). Thus, because of the adverse implications of industrial disputes, affected parties often seek speedy settlement of such disputes whenever they arise.

The objective of this paper is to examine collective bargaining and dispute settlement in the Food, Beverage and Tobacco Industry in Lagos State, Nigeria.

## 2. Literature Review

This section examines the origin, conceptual issues and theoretical underpinnings germane to the study.

### 2.1 Origin and Conceptual Issues

Collective bargaining as a concept was coined in 1891 by Beatrice Webb (then Beatrice Potter) in her work on Cooperative Movement in Great Britain (Webb & Webb, 1897). The term was also contained in their book titled "Industrial Democracy" first published in 1897. The goals of collective bargaining according to Kahn-Freund (1972) are industrial peace treaty and at the same time a source of rules and conditions of employment for the distribution of work and for the stability of jobs. Davey (1972) views collective bargaining as a continuing institutional relationship between an employer entity (government or private) and labour organisation (union or association) representing exclusively a defined group of employees of said employer (appropriate bargaining unit) concerned with the negotiation, administration, interpretation and enforcement of written agreements covering joint understanding as to wages/salaries, rates of pay, hours of work and other conditions of employment. The International Labour Organisation (1960):

Defines collective bargaining as negotiation of working conditions and terms of employment between an employer, a group of employers or one or more employers' organisations, on the one hand; and one or more representative workers' organisations on the other, with a view to reaching agreement (p.3).

Collective bargaining is useful for the setting of rules that govern the workplace, and so it is viewed as a means of industrial jurisprudence. It is useful for resolving disputes as well as in setting employment terms and conditions. On the other hand, negotiation consists essentially of advancing proposals, discussing them, receiving counter proposals and resolving differences (Yoder & Staudohar, 1982). The bargaining process involves the two sides in making a concerted effort to resolve their differences by negotiation which is a kin to haggling of prices in the market place. A bargain is struck when both sides in industry have negotiated and reached an agreement. That is to say, collective bargaining is equal to negotiation plus agreement. Put in a simple mathematical model  $B = N + A$  and  $N = B - A$  where  $B =$  Collective bargaining;  $N =$  negotiation and  $A =$  Agreement. Reaching agreement is perhaps what makes negotiation equal to bargaining. Otherwise, when negotiation goes on endlessly without concrete agreement, then no bargain could have been struck (Fajana, 2000). The outcome of collective bargaining is the collective agreement which must be enforced by both parties. Collective bargaining is used to resolve issues of divergent interests involving the parties. Collective bargaining is commonly adopted in unionised companies where the pluralistic ideology is practised.

### 2.2 Theoretical Framework of Collective Bargaining

To improve and further our knowledge and understanding of the concept of collective bargaining, it is important to have knowledge of collective bargaining theories. Some of these theories enable us to explain some aspects of union and management behaviour as well as the functioning of collective negotiations. The following theories are discussed: (i) Chamberlain and Kuhn trichotomy theory (ii) Sidney and Beatrice Webb theory (iii) John Thomas Dunlop theory (iv) Allan Flanders theory and (v) Hugh Clegg theory of collective bargaining.

- **Chamberlain and Kuhn Trichotomy Theory**

Chamberlain and Kuhn in their book titled Collective Bargaining written in 1965; argue that collective bargaining theories can be grouped into three broad categories.

- ❖ Marketing theory
- ❖ Industrial governance or governmental theory
- ❖ Industrial management or managerial theory. These theories are expatiated upon below.

**Marketing theory:** The marketing theory of collective bargaining, views collective bargaining as a process by which labour is bought and sold in the market place. The labour contract with individual worker is replaced with collective bargaining. In the process, terms and conditions of employment are agreed between workers and employers. This contractual agreement does not only relate to present employees but also to those who will be employed in future (Fajana, 2000). However, if the tenure is stated, then the agreement covers the employees who take up job within the tenure of the agreement. Consequently, collective bargaining may be viewed as the

process by which terms and conditions governing the supply and demand for labour for current and future employees are determined.

**Industrial governance:** This is also called governmental theory of collective bargaining and is viewed as a rule making process by which rules governing the relations between management and trade unions are made. Thus, the provision of constitutional functions is the basis of the governmental theory of bargaining. It is obvious here that collective bargaining is viewed as a political phenomenon, and it performs for industry what the legislative process performs for the nation or society.

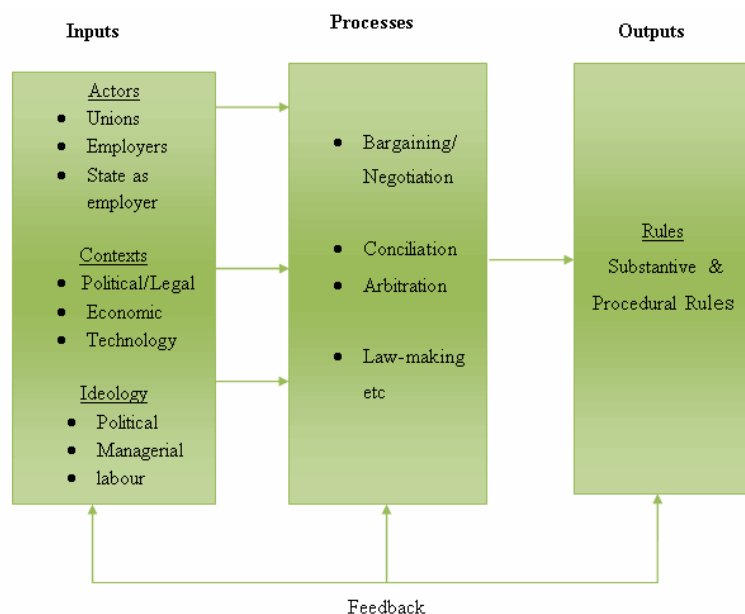
**Industrial management or managerial theory:** This theory views collective bargaining as a means through which trade unions are involved in sharing managerial prerogatives or functions. This suggests the existence of a functional relationship between the unions and employers. It examines the ways in which unions and management can combine to reach decisions on matters where both parties have vital interests. In the absence of bargaining, management may insist on using its prerogative to manage the company, thereby precluding the input of workers. Thus, managerial theory can lead to the furtherance of industrial democracy.

• **The Sidney and Beatrice Webb Theory**

Webb and Webb (1897) view collective bargaining as one of the three main methods used by trade unions to achieve their basic aim of improving the condition of their members' working lives. The other two methods are mutual insurance (such as cash benefits for sickness, industrial injury, retirement or death) and legal enactment (lobby for legislative changes in favour of union members). These methods are also in Rose (2008). According to the Webbs, collective bargaining is taken as an alternative to individual bargaining. They view collective bargaining as an economic institution, with trade unions acting as a labour cartel by controlling entry into trade. The Webbs observed that terms and conditions of employment can be determined in four main ways: unilateral determination by the employer, unilateral determination by workers, unilateral determination by the State, as well as joint determination by the three social partners. They view all previous three methods as unsatisfactory whereas, collective or joint determination by the three social parties is more satisfying and leads to lasting satisfaction by the parties.

• **Dunlop Theory**

Dunlop views collective bargaining as the means of rule making which regulates or governs the work place. His theory of collective bargaining can be found in his industrial relations system. The rules could be substantive and procedural rules which are the outcomes of collective bargaining. The Dunlopian model is depicted in Figure 1.



**Source:** Adapted from Rose, E.D. (2008). *Employment Relations*. (3<sup>rd</sup> ed.). London: Pearson Education Ltd.

**Fig.1: Model of an Industrial Relations System**

- **Allan Flanders Theory**

Flanders (1970) defines collective bargaining as a social process that continually transforms disagreements into agreements in an orderly fashion. Flanders considered collective bargaining to be more of a political than economic process, involving rule making and power relationships. Flanders assumption is that basically, collective bargaining is an institution for job regulation. This institution can only function effectively in those countries that have achieved reasonable level of unionisation. The key to collective bargaining is the acceptance of the freedom of association. This freedom can be entrenched in legislation, statutory order, policy statements and such other policies of the government in the form of trade union laws. The rules can also appear in the form of collective agreements and arbitration awards. Rules also evolve from social organisations like customs and practices among cohesive workforce. Rules can also emerge from management decisions. Flanders concludes that since collective bargaining rules define the rights, obligations and privileges of workers jointly and severally, they are a means of preventing discrimination, victimisation and favouritism. The greatest advantage of collective bargaining as identified by Flanders is that it has become an institution for the promotion of lawful employment relations. According to Flanders, both procedural and substantive rules are derived from the rule making process of bargaining.

- **Hugh Clegg Theory**

Clegg (1960) views collective bargaining as a form of industrial democracy. The concepts of political/parliamentary democracy and industrial democracy are not synonymous. While political/parliamentary democracy deals with the government of a country or state, industrial democracy is concerned with the government of the workplace or industry. Many a time, the concept of industrial democracy has been equated with workers' participation. Industrial democracy is broader than workers participation. Industrial democracy could be viewed from two perspectives. These are workers' participation and workers' control (Chidi, 2008). Industrial democracy according to Marsh (1971) as cited in Otobo (2005):

Is an expression with a number of meanings and usages all concerned with the role and status of workers in industrial society, and all implying, to a greater or lesser extent, the participation of those who work in industry in determining the conditions of their working lives (p.149).

Hence, industrial democracy may imply workers participation in the form of joint consultation, co-ownership and co-determination. According to Clegg, collective bargaining as a form of industrial democracy is analogous to parliamentary democracy, except that trade unions are oppositions that could never replace or become government. That is, management in industry. However, presenting collective bargaining as parliamentary democracy has received mixed reactions from industrial relations experts. Otobo (2005, p.155) argues that "one should not liken collective bargaining to parliamentary democracy, if trade unions are an opposition that can never become government."

- **Pre-requisites for Effective Bargaining**

The International Labour Organisation (ILO) has listed the following pre-requisites for effective bargaining:

- Freedom of association
- Favourable political and economic conditions
- Power relationship
- Joint authorship of rules
- Stability of workers' organisation
- Avoidance of unfair labour practices on the part of both parties
- Recognition of trade unions
- Willingness of the parties to give and take
- Ability of the parties to negotiate skillfully
- Willingness to observe or implement the collective agreement that has emerged

### **3. The Structure of Collective Bargaining**

The term bargaining structure according to Farnham and Pimlott (1990, p.149) describes the "stable or permanent features that distinguish the bargaining process in any particular system". It is a framework in which negotiation between employers and trade unions takes place and this involves four (4) distinct but related features: bargaining level, bargaining unit, bargaining scope and bargaining form.

- **Bargaining Level**

Bargaining level describes the zone at which collective bargaining takes place or is conducted within an organisation (Fashoyin, 1992). Essentially, we have the industry-wide bargaining. This is also called centralised, centripetal or multi-employer bargaining. There is also the domestic or company level bargaining. This is also called decentralised, branch, enterprise, centrifugal or single-employer bargaining. Since 1978, collective bargaining in Nigeria has been multi-employer bargaining or industry-wide bargaining.

- **Bargaining Unit**

Bargaining unit refers to the specific group of employees and employers covered by a particular agreement or set of agreements. Collective bargaining takes place between one trade union and one employer or between one trade union and two or more employers or between two or more trade unions and one employer or two or more trade unions and one employer or two or more trade unions and two or more employers. Thus, bargaining unit refers to the composition of the parties involved in the negotiation. According to Fashoyin (1992, p.118), “the bargaining unit means any configuration, including workers and employers that is involved or covered by a collective agreement.” There is difference between bargaining unit and negotiating unit. Negotiating unit are representatives of workers nominated to represent them at the bargaining table.

- **Bargaining Scope**

This refers to the scope of issues involved in negotiation or collective agreements. Thus, bargaining scope is used to indicate the range of subjects covered within a particular bargaining unit by its collective agreements. The bargaining scope will be better understood in the course of discussing the contents of collective agreements.

- **Bargaining Form**

Bargaining form refers to the ways in which an agreement or a set of agreements is recorded whether it is written or formally signed like in Nigeria or unwritten and informal.

#### **4. Behavioural Theory of Labour Negotiations/Collective Bargaining Behaviour**

Several writers have advanced models of collective bargaining behaviour. While it may be appropriate to describe collective bargaining as a struggle or an interplay of power relationship during which the union seeks more concession and management wanting to give less, it must be stated that the behaviour of the parties during negotiation are conditioned by the issues to be negotiated. In a collective bargaining situation, there are usually two major groups of issues: the conflict issues where both parties have divergent interests such as wages, hours of work, pension etc, and the non-conflict issues where both parties have mutual interests such as health and safety, canteen facilities, staff school to mention a few. Walton and Mckersie (1965) identified four models of bargaining behaviour. These models are also called the sub-processes of collective bargaining as contained in their book, titled “A Behavioural Theory of Labour Negotiations.” These are distributive bargaining posture or strategy, integrative bargaining posture of strategy, intra-organisational bargaining posture or strategy and attitudinal structuring posture or strategy.

- **Distributive Bargaining Strategy**

Whenever the parties in a collective bargaining face a conflict situation and neither party is willing to concede since such a concession will represent a loss for one party and a gain to the other, Walton and Mckersie (1965) suggested that the best bargaining strategy to use is distributive bargaining. The two parties bargain over the division of a pie and the gain of one party is the loss of the other. In real-life negotiations, most of the substantive issues fall into this category. Since there is a fixed supply of a resource over which both parties are bargaining and as long as no party wants to lose out completely the best strategy is to bargain to distribute the resource in a manner that is consistent with the bargaining power of the parties. Thus, a union may make a demand for 100 per cent salary increase. Since management would not be willing to grant 100 per cent salary increase nor could it walk away without any salary increase no matter how small, it must bargain to meet the union’s demand at a percentage point.

Therefore, the function of distributive bargaining strategy is to resolve a pure collective bargaining issue, that is; issue where both parties have divergent interests. Distributive bargaining is the classic type of ‘win-lose’ negotiations. In most cases, the outcome is a zero-sum game or fixed-sum game because one party’s gains represent loss to the other.

- **Integrative Bargaining Strategy**

In integrative bargaining, both parties offer solutions that could increase the size of the pie (Fashoyin, 1992). The objectives of the parties need not necessarily be divergent, as in the case of distributive bargaining. “Safety and security issues, which protect the health and security of workers and at the same time help management in many ways, are a typical example (Fashoyin, 1992, p.139).” Thus, integrative bargaining strategy is deployed on collective bargaining issues where both parties have mutuality or commonality of interests. Here, the feelings and suggestions of both parties are integrated into a common solution to the problem. The essence of integrative bargaining is cooperative bargaining towards solving a common problem in a mutually beneficial manner. The

main object therefore is to attain a consensus involving equal sacrifice by both parties. For instance, a 50 per cent increase in salary would be merged with a corresponding increase in working hours or productivity gains. This is the classic type of “win-win” negotiation. In this process, there would be no loss or gain incurred by both parties. Therefore, the process can be described as a non-zero sum game or variable-sum game.

- **Attitudinal Structuring Strategy**

The outcome of attitudinal structuring is that you get what you give out, that is, it is what you sow that you reap. Thus, the outcome of collective bargaining is often the result of the general atmosphere created by the parties and their behaviour towards each other before and during negotiations. If the management creates an atmosphere of cooperation, trust and confidence, the union’s attitude and response will be cooperative and friendly. Attitudinal structuring therefore refers to influencing the parties’ interpersonal relationships particularly those of the negotiating team. Emphasis is placed on cultivating attitudes that are conducive to reaching agreement. Key elements include cooperativeness, accommodation, trust and mutual respect. Thus, the nature of relationship whether based on friendliness or hostility between both parties will to a large extent affect the negotiation process. Thus, it is argued that success or failure can be predetermined, depending on how the attitude of both parties has been restructured before negotiation.

- **Intra-Organisational Bargaining Strategy**

Intra-organisational bargaining strategy refers to the internal bargaining within each side of the bargaining unit. It also means bargaining within one’s own group or constituency. The major thrust here is that both parties should be able to achieve a consensus at the end of the negotiation. Management team may meet among themselves so as to determine the reasonable level of concession that can be profitably made. Similarly, for trade unions in particular; intra organisational bargaining helps to minimise dissatisfaction which may occur when demands made on management do not reflect the interests of all interest groups within the union. Failure to ensure that popular demands are made may lead to factionalisation or balkanisation of the union. Finally, the theoretical framework presented by Walton and Mckersie helps us to understand the importance of the influences on the negotiation process and the complex behavioural issues in union/management relations.

## **5. Collective Bargaining Agreements**

Collective bargaining is not an end in itself but a means to an end. Collective bargaining gives rise or birth to collective agreement, which according to the ILO is a crucial aspect of the collective bargaining process. That is, workers and their employers embark on collective bargaining with a view to reaching agreement. Collective agreements can be subsumed under two broad categories. These are:

- Substantive agreements
- Procedural agreements

Substantive agreements refer to wages, working hours and other terms and conditions of employment. Whereas, procedural agreements, deal with such matters as the methods to be used and the stages to be followed in the settlement of disputes, periodicity of meetings, and the duration of the existing agreement. Procedural agreements are those that deal with procedures governing the employment relationship and concern issues such as renewal clauses, grievance procedures, as well as contract amendment or renegotiation.

### **5.1 Contents of a Collective Agreement**

Collective agreement contains both the procedural and substantive issues as exemplified by the following: recognition clause, scope of agreement, management clause, declaration of principles, change of designation, probation and probationary employees; stoppages of work, interpretation as well as implementation of collective agreement. Joint consultative committee meetings between the company and the union, grievance procedure, check-off dues, meal allowance, electricity or utility allowance, furniture loan, hours of work, public holidays, annual leave, accident at work, maternity leave and benefits, acting allowance and disciplinary procedure. Retirement and gratuity, contributory pension scheme, duration of agreement, termination of employment, promotion and merit increase, rent subsidy, annual increments rate, shift work and allowance, field allowance, vehicle loan and transport allowance, wages and salaries, end-of-year bonus, redundancy benefits, exclusion of new demands etc. Fashoyin (1992, p.129) observes that in any collective agreement there are three distinct issues namely:

- **“Negotiable or Mandatory Issues:** This refers to those issues which management and union have agreed to negotiate upon. While no law explicitly specifies these issues, wage and salary issues and a host of other conditions of employment are recognised by the Labour Act of 1974 as falling within the collective bargaining process some of these issues have been mentioned above.
- **Voluntary or Discussion Issues:** These are those middle-range issues which are neither mandatory nor exclusive to management, but upon which both sides can discuss. Expectedly, the number of issues in this category is generally few. The issues include the following; shift work, housing scheme, end-of-year gifts, payment of union officials during union meeting, long service awards to mention a few. Also, issues between the mandatory and voluntary categories overlap; this indicates the degree of variation in bargaining relationships.
- **Managerial Issues:** These are those issues on which management exercise full control in decision making, such as appointments, promotion, demotion, staff control and discipline, termination, dismissal and retirement of staff, transfer and posting, introduction of technical improvement and decision to modify, extend, curtail or cease operation. A number of agreements recognise the right of the union to consult on the managerial issues and, more often than not, unions find a way of influencing decisions on some of these managerial issues.”

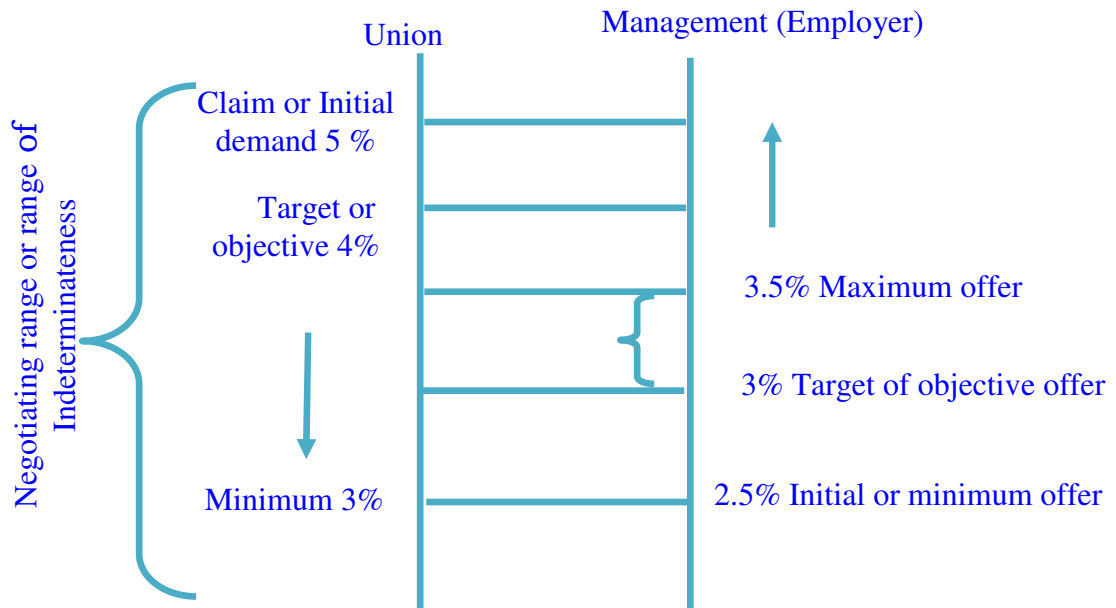
## 6. The Practical Process of Collective Bargaining and the generalised Bargaining Model

In the bargaining process, it is usual for the two sides, that is, the union and management to make offers and demands. According to Warr (1973) union negotiators base their bids or claim/initial demand on a number of factors such as company’s profitability, cost of living, bargaining power and equity of differentials. Equity of differentials is of two types, horizontal and vertical equity. The principle of horizontal equity which is contained in such slogans as “equal pay for equal work” implies that a group of workers who have similar skills and job position but are in different establishments would fight to earn approximately the same wages. On the other hand, vertical equity persists when the more highly skilled occupational groups pressurise the employer to maintain the gap between their earnings and those of other groups-the unskilled or semi-skilled workers. Thus, the existence of such grades of labour as highly skilled, semi-skilled and unskilled would necessarily bring differential pay rates into existence. The other three factors are self explanatory. In most bargaining process, trade unions usually initiate actions by serving a list of demands on their employer, except under the system pioneered by General Electric Company in the United States in the 1950s. The system called “Boulwarism” is named after Lemuel Boulware General Electric Company’s Vice President of Industrial Relations and the architect of the policy (Katz & Kochan, 2004). According to Katz and Kochan (2004), Boulwarism is a new form of non-union human resource management practice. It is a practice whereby the employer first makes an offer based on researched-based and industry-average rates of pay to which organised labour or union would respond (Fajana, 2000). But because such rates were based on an honest study of existing trends, workers could hardly have anything to object. Over time, this custom/practice had become widely adopted first in America and later in global workplaces (Fajana, 2000).

Employees’ initial demands are usually inflated because of the belief that employers are likely to negotiate such demands downwards. However, employees have a minimum point below which they will not accept the employer’s offer. They also have an objective or target point as well as a maximum point or initial demand or claim, which is strategically not disclosed except to a few trusted union negotiators. Similarly, employers have a maximum point, an objective or target point as well as its initial offer or minimum point. Ordinarily, negotiation involves coming up on the side of the employer and going down on the part of the union until a bargain is struck. The probability of striking a bargain depends on two important ranges namely:

- The range of indeterminateness or the negotiating range.
- The range of practical bargaining or settlement range.

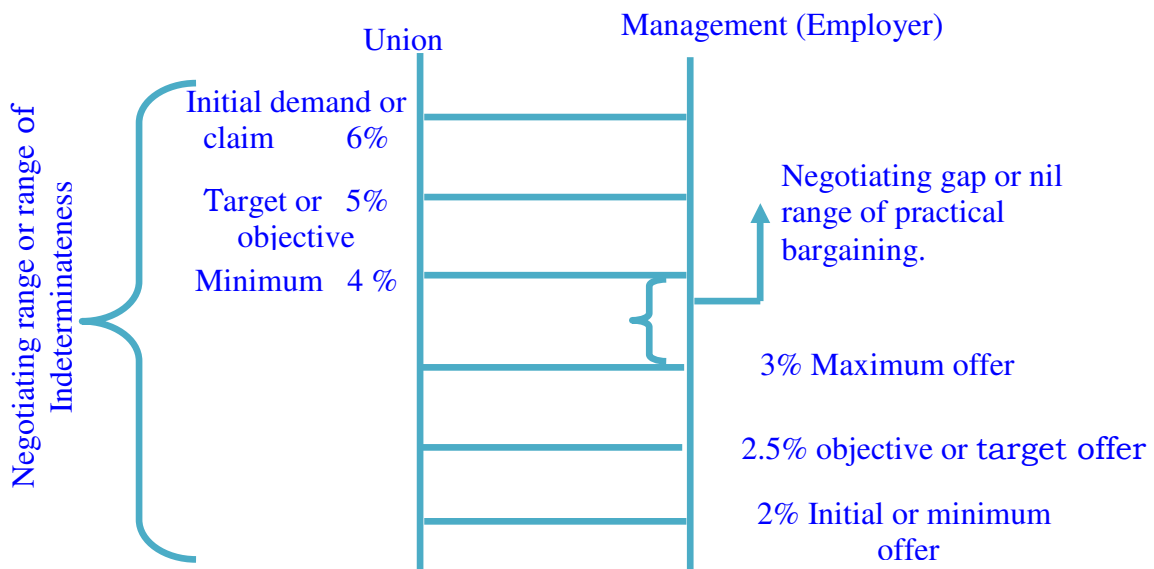
The range of indeterminateness or negotiating range is the point between the union’s claim or initial demand and the employer’s initial offer, whereas, the range of practical bargaining or settlement range is the distance between the employer’s maximum and employees’ minimum. For a bargain to be struck, the two ranges must overlap. When the two ranges fail to overlap, an impasse or deadlock can result from the bargaining relationship. For proper understanding of the discussion on the practical process of collective bargaining, it will be ideal to depict the generalised bargaining model.



Source: Adapted from Fajana (2000) and Armstrong (2006)

**Fig.2: The generalised Bargaining Model 1**

Above model shows negotiating range with settlement range or range of practical bargaining. When the employer's maximum exceeds the union minimum, this indicates settlement range and there is possibility of settlement or a bargain here, as there is an overlap in the ranges. A second scenario is depicted to differentiate the above model and to determine the possibility of an impasse or deadlock in the bargaining process.



Source: Adapted from Fajana (2000) and Armstrong (2006)

**Fig.3: The generalised Bargaining Model 2**

Above model shows negotiating range with a negotiating gap or range of indeterminateness with nil range of practical bargaining. When the employer's maximum is less than the union minimum, this indicates negotiating gap or nil range of practical bargaining. In this scenario there is possibility of an impasse or deadlock. Here there



is no overlap in the range. Finally, it should be noted that negotiating range is the same as range of indeterminateness which is described by the point of initial demand or claim of the union and the initial offer of the employer or management. The settlement range is the same as the range of practical bargaining which is described by the distance between the union's minimum and the employer's maximum. The range of practical bargaining is the zone where agreement is possible. It must be understood that in real-life negotiations, the minimum and maximum points of the parties are not known. Perhaps, the employer might know his maximum but the union often does not have an upper limit.

### **7. Collective Bargaining in the Food, Beverage and Tobacco Industry**

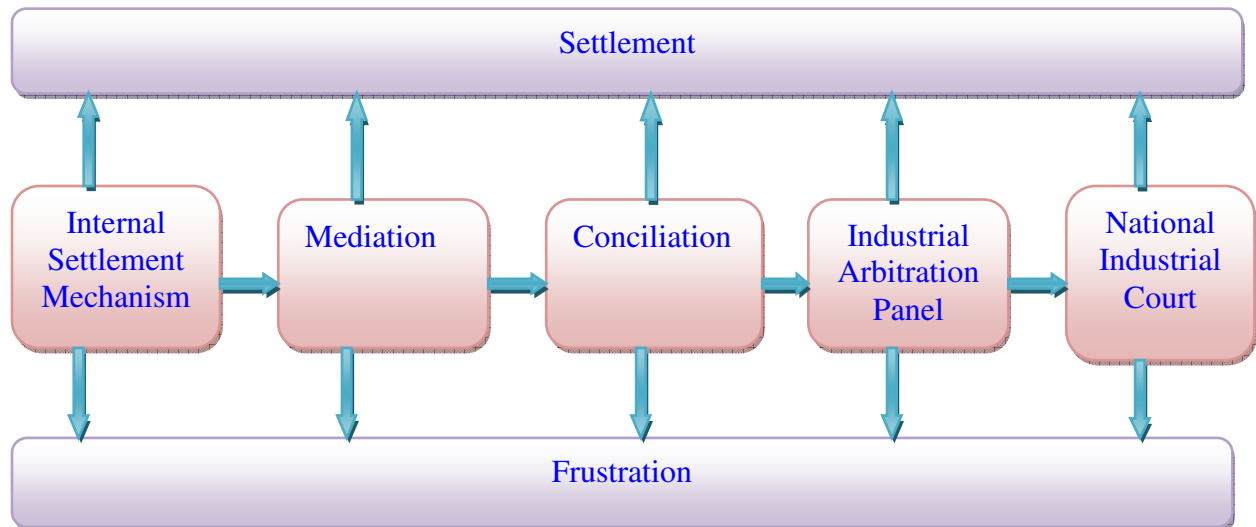
In Nigeria, collective bargaining occupies a pride of place in the determination of employment terms and conditions in the private sector otherwise called the organised private sector (OPS). Since 1978, the structure of collective bargaining in the private sector has been predominantly multi-employer bargaining at the industry level. In some industries, collective bargaining has been recognised as inevitable. The negotiating body for multi-employer bargaining is known at the National Joint Industrial Council (NJIC) consisting of an equal representation of the employers and labour unions. All procedural agreements embody what is commonly referred to as the Constitution of the NJIC. At the company level, another relevant body for consultation is the Joint Consultative Committee (JCC). Thus, collective bargaining in the private sector may take place between the representatives of employer association and trade union within the industry. In the Food, Beverage and Tobacco Industry, for instance; collective bargaining takes place between the workers union, National Union of Food, Beverage and Tobacco Employees (NUFBTE) or the senior staff union- the Food, Beverage and Tobacco Senior Staff Association (FOBTOB) and the industry employers' association-the Association of Food, Beverage and Tobacco Employers (AFBTE) which has about 80 member companies as of 2011 (AFBTE Annual Report, 2011). Items that may be negotiated at the industry-wide levels (nationally negotiated items) may include wages and salaries, overtime, hours of work, annual leave, allowance and bonuses to mention a few. Items negotiated at the enterprise or company level between each company and the respective unions may reflect such items that have elements of peculiarity among firms in the industry. These may include shift arrangement, end of year bonus, pension and long service awards. FOBTOB has since 1980, signed a Procedural Agreement with the Association of Food, Beverage and Tobacco Employers (AFBTE) to govern the relationship between the two bodies and have jointly negotiated and signed into place a Collective Agreement on Conditions of Service for its members in the industry. This Agreement represents acceptable minimum standards for the industry subject to improvements from company to company depending on favourable business conditions.

A Collective Agreement on consequential adjustment in salaries was reached in December, 2000 as a result of the introduction of the new National Minimum Wage by the Federal Government on the 1<sup>st</sup> of May, 2000. To reach an agreement on this matter, the Association had to embark on a nation-wide strike. A new Collective Agreement on the review of salaries and fringe benefits was consequently signed on the 11<sup>th</sup> of April, 2002 with 32 per cent increase in salaries. In 2004, Collective Agreement was signed with 25 per cent increase in basic salaries among other increases on the allowances. Year 2006 witnessed the implementation of 24 per cent increase in salaries and fringe benefits. In November, 2010; another increment of 25 per cent was recorded. FOBTOB signed an agreement with AFBTE to annualise gratuity in the industry rather than have the gratuity scheme scrapped. The extant Collective Agreement with NUFBTE and FOBTOB was renewed in November, 2012.

### **8. Grievance Procedures/Settlement of Workplace Disputes in the Food, Beverage and Tobacco Industry in Nigeria**

The grievance procedure forms part of the procedural agreement of the collective bargaining agreement, which deals with such matters as the methods to be used and the stages to be followed in the settlement of disputes in the workplace. Most collective agreements incorporate the grievance procedure to be applied in the event of disputes. However, the grievance procedure is limited for use within the organisation. In the event that this procedure fails to settle the issue at dispute, then the parties can resort to the external machinery as provided by public policy as exemplified by mediation, conciliation, arbitration and the National Industrial Court (NIC). This is otherwise called the statutory mechanisms for the settlement of trade dispute in Nigeria. A trade dispute is defined "as any dispute between employers and workers or between workers and workers, which is connected with the employment or non-employment, or the terms of employment and the physical conditions of work of any person" (Aturu, 2005, p.109). Many a time these procedures have been employed in the Food, Beverage and Tobacco Industry in Nigeria to settle trade disputes. The statutory procedures to be followed in settling dispute could be found in the Trade Dispute Decree No. 7, of 1976; as amended by the Trade Dispute (Amendment) Decree No. 54 of 1977. This decree acknowledges the role of voluntary grievance procedures in the settlement of trade dispute and accordingly requires parties to a dispute to first attempt settling their disagreement by the

existing agreed procedures for settlement of dispute. However, in the event that the grievance procedures fail to resolve the dispute, then the parties shall report the dispute to the Minister of Labour and Productivity. The following entails the external settlement procedures which are formal in nature: (i) mediation (ii) conciliation (iii) Arbitration (iv) National Industrial Court (v) Board of Enquiry. There is also the informal machinery.



**Source:** Adapted from Fajana (2006)

**Fig.4: Model of Disputes Settlement Mechanisms in Nigeria**

- **Mediation**

Under the Trade Dispute Act, if the attempt to settle the dispute via an enterprise's own machinery and procedures fails, or if no such agreed means of settlement exists, the parties shall within seven (7) days of the failure (or where no such means exist within seven (7) days of the date on which the disputes arise or is first apprehended) meet together either by themselves through their representative under the presidency of a mediator mutually agreed upon and appointed by or on behalf of the parties, with a view to peaceful settlement of the dispute. Where this fails any of the parties intending to pursue the matter further is required to declare a trade dispute and inform the Federal Ministry of Labour and Productivity within fourteen (14) days of the failure to settle the dispute in writing. It should be noted that the above procedures notwithstanding; where a trade dispute is apprehended by the Ministry of Labour and Productivity, the Minister may in writing inform the parties of his apprehension and of the steps he intends to take in order to resolve the dispute.

- **Conciliation**

When mediation fails, the Minister of Labour and Productivity may appoint a conciliator from among a crop of professional labour officers in the Ministry for the purpose of settling the dispute (Section 6 of the Act). The conciliator is expected to enquire into the causes and circumstance of the dispute and by negotiating with the parties endeavour to effect a settlement. If settlement of the dispute is reached within fourteen (14) days of the appointment of a conciliator, the conciliator shall forward a memorandum of the terms of the settlement duly signed by the disputing parties or their agents to the Minister. However, if conciliation fails to resolve the dispute, then the Minister is informed within 21 days of the end of the conciliation meeting. The Minister then refers the dispute to the next stage in the settlement procedure which is Arbitration.

- **Arbitration**

This marks the beginning of the judicial processes for resolving conflict. Unlike conciliation, arbitration is not voluntary to the extent that an award rather than mere recommendation is made to which the parties must comply unless an appeal is filed. Thus, if the conciliator fails to reach settlement within fourteen (14) days of his/her appointment, he/she shall report the situation to the Minister of Labour and Productivity who will then refer such disputes to the Industrial Arbitration Panel (IAP) within fourteen (14) days of the failure of the conciliator. The arbitrators at the IAP are drawn from government, employers and workers representative with a legal person as the chairman. Notice of the award of IAP is usually communicated to the Minister of Labour and Productivity within 42 days, who in turn sends a copy of the award to the parties or their representatives. Any objection to the IAP award by any of the parties should be communicated to the Minister in the specified manner within 21 days, otherwise the Minister if satisfied with the award must proceed to confirm it and the award shall be binding on

both parties to whom it relates and published in a public gazette. IAP could be likened to the civil courts but unlike the civil courts, litigant cannot go to it directly. It must be done through the Minister of Labour. The arbitrators listen to the two sides and call for evidence when necessary and make decision or award which is binding on the parties unless an appeal is filed. Thus, if the parties object to the award, the Minister refers the dispute to the National Industrial Court (NIC) for final determination.

- **National Industrial Court**

If the disputing parties do give a notice of objection to the Minister within 21 days of the release of arbitration award, the Minister shall forthwith refer the dispute to the National Industrial Court (NIC). The NIC has exclusive jurisdictions to make awards for the purpose of settling trade disputes; to determine questions as to the interpretation of any collective agreements. The court has appellate jurisdiction in respect of cases which have been heard by the IAP and to which objection has been raised. There is no appeal to any other body as this is the apex court for the settlement of trade disputes. The award of the NIC is final and binding on the parties in dispute. The NIC is made up of a president and 4 other members making a total of 5 members. The NIC was established by the Trade Dispute Act of 1976, now Trade Disputes Act, Cap 432 Laws of the Federation of Nigeria 1990, but was first inaugurated on the 5<sup>th</sup> of June, 1978. The NIC is the final arbiter of industrial conflict or dispute. In 1992, the Trade Disputes Act was amended by the Trade Disputes (Amendment) Decree No. 47 of 1992. This amendment divests the regular courts of jurisdiction to entertain cases on trade disputes and intra or inter-union disputes. By virtue of the amendment, appeals from the decision of the National Industrial Court are heard by the Court of Appeal, provided such appeals border on fundamental human rights or fundamental human rights cases as contained in Chapter IV of the 1999 Constitution of the Federal Republic of Nigeria. With the NIC Amendment Act (2006), the NIC is now a superior court of record just like the State High Courts, Federal High Courts, Court of Appeal and the Supreme Court for labour matters. As a superior court of record, the NIC will no longer be subject to the supervisory jurisdiction of the State and Federal High Courts. It no longer shares jurisdiction with the High Courts and enjoys exclusive jurisdiction over labour, trade union and industrial relations matters. Unlike, under the old Trade Dispute Act, with the 2006 NIC Amendment Act, a party can approach the NIC as a court of first instance. A party does not need to first go to the IAP before having access to the NIC. With respect to the relationship between the NIC and the Minister of Labour and Productivity, in the new 2006 Act, the NIC has no direct relationship with the Minister. An individual has the right to refer the decision of the Industrial Arbitration Panel (IAP) to the NIC and not through the Minister.

- **Board of Enquiry or Investigation and Formal Enquiry**

The Trade Dispute Act empowered the Minister of Labour and Productivity to set up a board of enquiry to look into the causes and circumstances of trade disputes. The board serves as a means of informing the government and members of the public regarding the facts and the underlying causes of trade disputes. The Minister is able to set up the board of enquiry without the consent of the disputing parties. The board is appointed as a last resort when the dispute is likely to have serious effects on public interests and it is necessary to clear the air and dispose of it expeditiously. The board's duty would be to enquire into the matter referred to it and to report thereafter to the Minister of Labour.

- **Informal Machinery**

Aside from the statutory procedures highlighted above, some unions and management agree that certain influential personalities be involved in settling their disputes. Such people may be state governors, natural rulers or religious leaders. They may be brought in at any stage of the dispute. The confidence reposed in such people stems from the cultural imperative of Nigerians where a lot of respect is bestowed on elders and natural rulers. From personal insights, Nigeria Employers' Consultative Association (NECA) has deployed Alternative Dispute Resolution (ADR) to assist settle trade disputes involving their members. In some other cases the State makes available its police to play conflict regulating roles (Fajana, 1992).

## **9. Conclusion and Recommendations**

This paper set out to examine collective bargaining and dispute settlement in the Food, Beverage and Tobacco Industry in Lagos State, Nigeria. Collective bargaining as one of the processes of industrial relations performs a variety of functions in workplace relations. One of such functions is the settlement of workplace disputes between labour and management. Industrial disputes are inevitable in the Food, Beverage and Tobacco Industry. However, it should be noted that from experience the costs of industrial disputes have always outweighed the benefits. Trade disputes as exemplified by strikes, to a large extent have a great bearing on the smooth and orderly development of the economy and the maintenance of law and order in the society. Thus, because of the adverse implications of industrial disputes, affected parties often seek speedy settlement of such disputes whenever they arise. The grievance procedure forms part of the procedural agreement of the collective bargaining agreement, which deals with such matters as the methods to be used and the stages to be followed in

the settlement of disputes in the workplace. Most collective agreements incorporate the grievance procedure to be applied in the event of disputes. However, the grievance procedure is limited for use within the organisation. In the event that this procedure fails to settle the issue at dispute, then the parties can resort to the external machinery as provided by public policy as exemplified by mediation, conciliation, arbitration and the National Industrial Court (NIC). The existing statutory machinery for the settlement of disputes has not been effective in terms of delays experienced by aggrieved parties as well as cumbersomeness of the procedure. Oftentimes, judgements drag on for years and justice delayed is justice denied. More so, the statutory dispute settlement procedure has not fostered industrial harmony to a large extent. From the foregoing, it is recommended that the adoption of collective bargaining and Alternative Dispute Resolution (ADR) should be given due consideration by the parties in the Food, Beverage and Tobacco Industry to settle industrial disputes whenever they arise.

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