

Collective Bargaining: Received Orthodoxy Discarded in Public Sector Wage Determination

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Abstract

This paper considers government labour policy concerning wage determination vis-à-vis the reality on ground. Observing that government continues to embrace collective bargaining in principle but prefers using wage commission approach in determining wages. It then proffers explanation for the inconsistency. It surmises that, it could be sovereignty principle. In other words, it is beneath government to bargain with its subjects. It could be the fear that in the end collective bargaining could consume a lot of time and implementation of collective agreement may cost much more than government can safely pay. Also the declaration of most of public sector as essential services renders strike, which is an economic weapon used by workers, inconceivable.

Keywords: collective bargaining, received orthodoxy, discarded, public sector wage determination

1. Introduction

The phrase “collective bargaining” was first used by Beatrice Potter in her book “Co-operative Movement in Great Britain” in 1891. The phrase passed unnoticed but it later gained currency with the book “Industrial Democracy” which she co-authored with her husband Sydney Webb in 1897. Hence the authorship of the phrase is generally but inaccurately credited to the couple, Sydney and Beatrice Webb. They did not proffer any definition but offered explanations from which Allan Flanders was able to deduce the fact that they regarded collective bargaining as a collective equivalent of individual bargaining. Collective bargaining was first introduced in Nigeria as the Whitley Councils 1, 2 and 3. It is practised in the private sector of the economy but in the public sector, government and its agencies speak in glowing terms about the superiority of collective bargaining to other methods of wage determination but in practice government finds it expedient to adopt other means of wage determination. Other methods are either unilateral determination by one party or the use of wage commission approach which only call for memoranda from the public. But this does not amount to collective bargaining.

1.1 Historical perspective

The Provincial Wage Committee was introduced by the colonial government in Nigeria in 1937 to cater for wage determination of daily paid workers and in 1942 the committee was empowered to extend its purview to include the determination of salaried employees as well. As a result of the general strike of 1945, Tudor Davies Commission was set up to look into the causes of the strike and how to stem the tide of such strikes in future. The outcome of the recommendations of the commission was the setting up of Whitley councils 1, 2 and 3 in 1948 in line with what have been existing in Britain since 1919. That marked the beginning of collective bargaining in Nigeria.

2. Literature Review

2.1 What is Collective Bargaining?

The term was coined by Beatrice Potter in 1891 in her book Cooperative Movement in England. However, it was in the book Industrial Democracy which she co-authored with her husband Sydney Webb that the phrase became known. The Webbs did not give any definition of the concept but gave a series of examples to illustrate its meaning and it was not difficult to realize that they regarded collective bargaining as a collective equivalent and an alternative of individual bargaining. They also considered it as an economic process. Allan Flanders (1968) averred that collective bargaining is more of a political than economic process because of its rule making function and the power relationship involved. Many definitions have been proffered for collective bargaining and the points in these definitions are that it is an institutional relationship including negotiation, administration and implementation of contracts. It also incorporates dispute settlement procedure.

In the ILO Convention No. 154 of 1981 article 2, Collective bargaining is defined as extending to all negotiations which take place between an employer, a group of employers or one or more employers' organizations on the one hand, and one or more workers' organizations on the other, for

- (a) Determining working conditions and terms of employment; and/or
- (b) Regulating relations between employers and workers; and/or

- (c) Regulating relations between employers or their organizations and a workers' organizations or workers' organizations.

Davey (1982) defined collective bargaining as a continuing institutional relationship between an employer entity (government or private) and a labour organization (union or association) representing exclusively a defined group of employees (appropriate bargaining unit) concerned with the negotiation, administration, interpretation, and enforcement of written agreements covering joint understandings as to wages, rates of pay, hours of work, and other conditions of employment.

2.2 Functions of collective bargaining

It is a method of setting terms and conditions of work. It is a method of settling grievances and victimization and arbitrary discrimination of any sort. It does promote "the rule of law" in the workplace.

2.3 Collective Bargaining Theory

Walton and Mckersie (1965) propounded behavioural theory of labour negotiations. In this theory, labour-management negotiations consist of four subprocesses (i) Distributive bargaining (ii) Integrative bargaining (iii) Attitudinal Structuring and (iv) Intra-organisational bargaining.

2.3.1 Distributive Bargaining

Distributive bargaining is issue-oriented and the issue is wage or wage-related. It is generally likened to a situation where economic pie of a fixed size is to be shared between two contestants and the gain of a contestant is the loss of the other. It is a win-lose outcome. Hard bargaining almost without compromises is expected. Bluffing, grandstanding and acrimony cannot be ruled out. Sometimes it is accompanied with a strike.

2.3.2 Integrative Bargaining

Integrative bargaining is also issue-oriented process. The issue is of mutual benefit both to the management and the union hence attempt is made to increase the size of the pie. In other words, win-win outcome results. For instance, if management introduces subsidized staff canteen, workers benefit by eaten in hygienic environment, management time is saved as workers do not need to leave the employment premises to buy food outside. If new technology is introduced productivity is increased more profit is expected and employer is more disposed to pay higher wages.

Katz et al. (2000) pointed out that integrative bargaining could be difficult in the sense that those things impeding productivity are not always obvious. Also when the economic pie has been increased, to share the pie distributive bargaining is the only available means.

2.3.3 Attitudinal Structuring

Attitudinal structuring describes the atmosphere prevailing at the negotiating table and the tactics that the parties can employ in order to change the atmosphere. It is the degree of trust that the two sides feel or develop toward each other. Unlike distributive and integrative bargaining it focuses on the quality and type of relationships between the two parties at the bargaining table. It refers to influencing the other party's interpersonal relationships particularly the chief negotiator. Emphasis is placed on cultivating attitudes that are conducive to reaching agreement. Cooperativeness, trust, accommodation and mutual respect must be the order of the day.

2.3.4 Intra-organisational Bargaining

Intra-organisational bargaining is bargaining within one's constituency. This shows that neither the management side nor the union side is homogenous. On each side are individuals with conflicting views and interests. It is important that each side must resolve its internal conflicts before presenting a common front before the other party. Intra-organisational bargaining is the only subprocess that takes place outside the bargaining table.

2.4 Neil Chamberlain's Trichotomy of Views

Chamberlain (1951) proposed that collective bargaining could be viewed in terms of what he referred to as (i) Marketing theory (ii) governmental theory and (iii) managerial theory. Each reflects a stage in the historical development of collective bargaining. The marketing theory is premised on the need to balance bargaining inequality between the two parties. The governmental theory focuses on the need to share industrial sovereignty and the managerial theory is based on the principle of mutuality, that is those that are integral to the conduct of an enterprise should have a voice in decisions affecting them.

3. Methods of wage determination in the Nigerian public sector

For analytical purpose Fashoyin (1991) claims that three subsystems exist for use in the public sector and they are (1) the collective bargaining sub-sector (2) the administrative sub-sector and (3) the wage commission subsector. Government as the employer of labour decides which of the sub-systems to use and its decision is influenced by the subject in dispute, the nature of pressure mounted by the unions and/or non-civil service employers and the disposition of government. Hence there is no hard and fast rule as to the suitability of each of the three subsystem for determining a particular condition of employment. However, experience shows that subjects such as review of

fringe benefits, hours of work and wages are more likely to be undertaken by either the collective bargaining or administrative subsystems and between the two methods, the administrative subsystem is more frequently used than the collective bargaining subsystem.

3.1 The Collective Bargaining Subsystem

As explained earlier on, an elaborate institutional arrangement for collective bargaining was first introduced in the public sector in 1948 under the Whitley Councils system. This was followed a few years later by the introduction of Joint Industrial Councils both in public corporations and boards, and in the private sector. The Whitley councils and its successors were introduced to serve as machinery for regulating wide range of employment conditions in the civil service. Two distinct and semi-independent bargaining machinery exist in the sector. The first is the highly politicized National Public Service Negotiating Council (NPSNCs) 1, 2 and 3 for use in the civil service at both the federal and state levels e.g. both the federal and 36 state governments and federal capital negotiate with the Association of Senior Civil Servants of Nigeria in Council 1. While the same group of employers negotiate with the Nigerian Civil Service Union in Council 2. The second is the National Joint Industrial Councils (NJIC) which are for use in non-civil service organization in the public sector. Here individual employer in what might be called 'industrial groups' negotiate with the industrial union(s) in that group. Thus the Academic Staff Union of Universities and the Non-Academic Staff Union of Nigerian Universities negotiates with about 60 universities in a NJIC. On the other hand, the Nigerian Railway Corporation (NRC) negotiates with the Nigerian Union of Railwaymen, while the Nigerian Ports Authority negotiates with the Nigerian Ports Workers' Union. These sets of negotiations in the NJIC are in principle independent of negotiations in the civil service but there is considerable extension of the decisions or 'agreements' that transpired in the civil services' NPSNC negotiations to employers and employees in the NJIC machinery.

3.1.1 The Scope of Bargaining

Bargaining issues in the public sector are spelt out in the constitutions of NPSNCs and the NJICs. Generally the NPSNC/NJIC have 3 functions.

1. General responsibility for negotiating all matters affecting the conditions of service of civil servants
2. Advise the government where necessary of the best means of utilizing the ideas and experience of civil servants with a view to improving productivity, and
3. Review the general conditions of civil servants e.g. recruitment, hours of work, promotion, discipline, salary, fringe benefits and superannuation, provided that in matters relating to recruitment, discipline and promotion, the council shall restrict itself to general principles.

In practice the issues for negotiation are fewer than what the above guidelines suggest. In general substantive issues such as salary and fringe benefits are excluded from negotiation. They are regulated by the Administrative or the Wage Commission Subsystems. Therefore, the focus of negotiations fall squarely on the application and enforcement of personnel policies and practices conveyed to individual public sector employers through Establishment Circular.

3.2 The Administrative Subsystem

The Administrative Subsystem comprises the civil service rules which are found in all civil services. In Nigeria, these rules limit the type of issues that could be bargained upon. Issues such as basic transport allowance, house rent, furniture allowance, rent and so forth are not negotiated but regulated by civil service rules. Here there is unilateral decisions of employers by administrative fiat. This practice was very commonplace in the military era. The councils when they meet do not have the political authority to commit management. The agreement reached at the NPSNCs is sent to National Council of Establishment (NCE) for approval, amendment or rejection and in turn to the ministerial council which has political authority to commit the state, as employer.

In practice and very frequently initiative to review employment conditions may originate from the ministerial level or the very top hierarchy of government. Aspects of employment conditions to be reviewed would have been identified and decided (at least in principle) while the NCE through the Establishments Department prepares the full details of decisions required, the NPSNC may be constituted to discuss it, simply to inform the unions and possibly to discuss the mode of implementation.

3.3 The Wage Commission Subsystem

A wage commission is an ad hoc body appointed by government, as employer, to receive petitions and memoranda from labour and other interested groups or individuals. Usually the final recommendation or award is the commissions, while the government reserves the right to accept, modify, or reject such recommendations.

While there is no explicit public policy on the use of wage commission, it has since the colonial era, formed part of government approach to dealing with industrial relations issues. The explanation is the tendency of political leaders to use the wage issue to achieve specific or general political objectives. Given that government revenues and expenditures are distributed on competing interests, who gets what becomes decisions which are influenced

by political considerations and the competing demands for public expenditures. In this perspective, the determination of wages and other conditions of employment in the sector is inevitably a political matter. Besides, the government, particularly unstable economy, may use the compensation system as a means of gaining support of labour even if this support only amounts to labour being submissive or unfrontational with the ruling elite.

4. Reasons for government's unwillingness to use collective bargaining

Many reasons have been adduced for government's unwillingness to use collective bargaining for wage determination. One of such reasons is the right to strike which is effective in the private sector. This right to strike has to be amended to take care of essential services in the public sector. The latter is further complicated by the absurdity in declaring the whole of the sector as essential services. Government as an employer has the right to lock-out its employees but it does not want the employees to withdraw their services when the need arises hence the countervailing force is denied! Another complication is that government is both an employer of labour as well as a sovereign! The sovereignty doctrine asserts that a governmental source of law/power exists that is final and definitive. According to Moskow, Loewenberg and Koziana, the theoretical application of the sovereignty doctrine permits only unilateral action by the government employer to establish the terms and conditions of employment. Thus, any system of collective bargaining whereby such terms are determined jointly is incompatible with the doctrine. (Herman, E.E. et al. 1992)

"The State (Government) is sovereign, sovereignty being defined "as the supreme, absolute and uncontrollable power by which any independent state is governed..." Therefore the establishment of proper collective bargaining in the public sector constitutes an infringement on governmental power and the sovereignty of the State itself."

Another reason for unwillingness on the part of government to use collective bargaining in the public sector is the unwieldiness of the negotiating teams. As more and more states are created in the country the problem of states representation in the federal negotiation becomes more and more. It was not too pronounced with the 12 state structure but from 19 state structure to the current 36 state structure it is grotesque. A situation where there will be 36 members from the union side and 36 members from the employer's (government) side at the bargaining table is no longer a negotiation but a conference!

Damachi and Fashoyin (1986) pointed out another reason which is that a dilemma arising from conflict of interest in civil service labour relations has to do with the fact that management in the civil service is, in fact, the employee and concessions to the latter are often applicable to management as well.

It is not far-fetched that the profit motive in the private sector is not in the public sector where the services are utilitarian hence government fight shy of any wage determination machinery that may increase cost and collective bargaining is likely to increase cost!

5. Conclusion

Government should not be ostensibly populist by acknowledging the superiority of collective bargaining as the best method of wage determination without explaining that there are problems in the way of government adopting this method in the public sector. A situation where government declares in its labour policy that collective bargaining is the best method of wage determination and yet acts at variance with this declaration is embarrassing! It is necessary for government to state categorically those things standing in government's way of not using collective bargaining even though it is considered the best method of wage determination.

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