

INTERROGATING ALTERNATIVES TO STRIKE ACTIONS IN THE PUBLIC SECTOR IN NIGERIA

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ABSTRACT

From the time of the industrial revolution, and the contemporary world, a significant method through which wage-earners express discontentment has been through the means of strike action. In Nigeria, in the last two years or so, things have gone sorely awry in the country with industrial harmony becoming one of the victims of tenuous governance. Apart from the grave state of national insecurity, strikes have continued to threaten the sanctity of essential services provided in the education, health, judiciary and oil sectors in Nigeria. This deluge of strikes has often been accompanied by hardships and pains suffered by the generality of Nigerians, more so that the national economy is largely driven by informal sector operators who provide almost everything for the survival and thriving of their businesses. Although many scholars may have worked on strikes and their socioeconomic impact on the nation's development process, not quite known studies have focused on alternatives to strike actions in the public sector in Nigeria. Therefore, this study attempts to interrogate alternatives to strike actions in the public sector in Nigeria, as a gap to fill in the existing literature. While the study explores a historical research approach to enable the interpretation of the past and prediction of the future development of the phenomenon of the strike, the theoretical thrust of the paper is the relative deprivation theory with its roots in the work of Robert Gurr. While some alternatives to strike actions were suggested, the paper concludes that both labour and government must always aim at achieving mutually satisfactory outcomes in trade dispute settlement in the interest of the public good.

Introduction

In recent years, there has been a plethora of strike actions in Nigeria with the rising and falling of every month. For a nation almost lost in the deep of insecurity due to the apparent cluelessness and failure of the controlling security forces, coupled with an economy that is near suffocated, fears and anxieties are not by the least misplaced. Indeed, witnessing strikes or hearing threats of strikes, like the drums of war, daily, could only heighten such fears, especially where centres of activities are concentrated in the informal sector of the economy estimated at 80.4 per cent¹

Sadly, a greater percentage of this deluge of strikes takes place in the public sector, especially by employees working in establishments categorized as “essential services.” More worrisome is the truth that each public sector strike action is accompanied by untold hardships, frustration, pains and misery, leaving people to be more vulnerable in a traumatized economy. In this regard, in the last few months, the sanctity of essential services provided in education, health, judiciary and oil sub-sectors in Nigeria has been threatened by several strikes called and prosecuted by trade unions in those sub-sectors.

For instance, when the Academic Staff Union of Universities (ASUU) was calling off its one-year antique strike in 2020, there came the Academic Staff Union of Polytechnics (ASUP); then the National Association of Resident Doctors (NARD)

¹ Adepoju Adenuga, “80. 4% of Nigerian Employment in Informal Sector, Says W’ Bank, “*The Punch*, Wednesday, May 12, 2021, 24.

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strikes in 2021; and several threats by the National Union of Petroleum and Natural Gas (NUPENG) and Petroleum and Natural Gas Senior Staff Association of Nigeria (PENGASSAN). Judiciary Staff Union of Nigeria (JUSUN) were resolute and militant in their nationwide strike action of 2021. Still, another nationwide strike action commenced on 14 February 2022 and has continued without the potential for timely resolution of disputed issues.

Although some scholars may have worked on strikes and their socio-economic effects on the nation's development process, they sparsely interrogate alternatives to strikes in the public sector. However, the studies by Harrison² and Kheel³ appear to be on point about this study; but they are, nevertheless, content and context-specific due to the fact time of study and environment of study. Thus, this current study attempts to interrogate alternative dispute settlement procedures to strikes in the public sector in Nigeria, as a gap to fill in the existing literature. While the study explores a historical research approach to enable an interpretation of past strike events and predict future development of the phenomenon of a strike⁴, the theoretical thrust of the work is the relative deprivation theory which is pronouncedly postulated by Gurr.⁵ While the paper

² Damon W. Harrison Jr., "The Public Employment Experience," in *Kentucky Law Journal*, vol. 63, Iss.2, Article 5, (1974), 430.

³ Theodore W. Kheel, "Strikes and Public Employment," in *Michigan Law Review* vol. 67, Issue 5, 1969, 931-942

⁴ Samuel F. Ogundare, *Study Guides on Educational and Social Research* (Ibadan; Franco-Ola Publishers, 2013), 470

⁵ Ted Gurr, *Why Men Rebel*, (Princeton, N.J: Princeton University Press, 1970).

makes recommendations, it concludes that, in preference to outlawing the right to strike moves in the public service, both the government and labour have to determine to work collectively and ensure that they both aim at achieving mutually satisfactory outcomes in trade dispute settlement in the benefit of actors in industrial relations system and the public good.

The Inevitability of Industrial Conflict

Most scholars, writing from the sociological perspective and the reality of everyday life, agree that conflict is endemic in every society. The reason may not be farfetched; so much that human beings will naturally have different opinions, convictions, desires, priorities and of course, idiosyncrasies. To extend this, it can be said that industrial relations has both the contexts of conflict and harmony. That is, both labour and government know that, occasionally, conflict may arise in their relationships, but the ultimate desire is to reach a harmonious position at the end. This is just the environment in which they operate and exist.

In this regard, Dahrendorf is saying, “The intensity of struggle in a capitalist society was accelerated through the advanced function of authority and different elements of social status, specifically incomes.”⁶ For him, domination meant off for the capitalists, a high income, even as subjection concerned, for labour severe material difficulty. Thus, as a consequence, there

⁶ Ralf Dahrendorf, *Class and Class Conflict in Industrial Society* (London: Routledge & Kegan Paul, 1976), 242.

has been a clear correlation between the distribution of authority and social stratification.⁷

Interpreting the historical perspective of the strike, Dahrendorf states:

As industry associations stabilize, a situation of organization gradually emerges, with both capital and labour forming organizations (employers associations and unions) to defend what now has clear interests. Labour disputes enter a palpable stage in which strikes and lockouts are the most obvious symptoms. Under the special circumstances of capitalist society, the conflict fronts that characterize industry and society were the same, so the conflict was unusually intense.⁸

From the narrative above, it could be said that the issue at stake is beyond the concept of strike, because industrial conflict appears more encompassing, embracing both phenomena of strikes and lockouts. While a strike is a partial cessation of work to meet demand, a lock-out is an action taken by an employer to prevent employees from working in a given work organization.

Yet on conflict, Dahrendorf lamented that, in the lack of a democratic structure that puts both parties of a conflict on an equal footing, the subjected class (that is labour) sporadically became a suppressed class facing the absolute domination of the incumbents and stood as a solid but helpless bloc. Therefore, as a result of the hardening of these class fronts,

⁷ Ibid.

⁸ Ibid; 243.

there were widespread demands for a permanent and revolutionary change of existing structures.

He went on to say that the fact that economic demands can provide tangible benefit content should not lead to the false assumption that the satisfaction of these demands precludes the cause of conflict. In his own opinion, social conflict is as universal as power relations and necessarily coordinated associations. Because the distribution of power is the basis and cause of its occurrence, he argues that the only significant factor in the persistence of potential conflicts of interest between governments as employers of workers and unions as workers' representatives in the industrial relations system is the potential for people in positions of authority to claim that it is a beneficial interest.⁹

Cited by Dahrendorf, Talcott Parsons states that "he believes that class conflict is endemic in our contemporary industrial type of society."¹⁰ Thus, crystalizing the thoughts of Dahrendorf and Parsons, it would be seen that the source for seeking militancy fervour begins with labour's realizing the systematic suppression agenda of the capitalists in an emerging industrial society, ultimately increasing their potential for more power and profits. This happened in Nigeria before the political independence and the long-range militarization of governance in the country.

⁹ Ibid., 252-253

¹⁰ Ibid. 267.

Conceptualizing Government, Public Sector, Labour and Strike

As a way of placing this work in its deserving perspective, it is required that we define some concepts embodied thereof. They are as follows:

Government: Speaking, the government could be regarded to be a territory or domain with elected or appointed leadership who make authoritative decisions that are binding on citizens and residents within its boundaries. However, for this study, the obligations under chapter Two (2) of the 1999 Constitution of the Federal Republic of Nigeria, with the title, “*Fundamental Objectives and Directive Principles of the State Policy*” would be applied. Section 14 (1) states that the Federal Republic of Nigeria shall be a State based on the principles of democracy and social justice. Section (2) states,

It is hereby, accordingly, declared that:

- (a) sovereignty belongs to the people of Nigeria from whom through this Constitution derives all its powers and authority;
- (b) security and welfare of the people shall be the primary purpose of government; and
- (c) participation by the people in their government shall be ensured by the provisions of this constitution.

Based on these provisions, it means that government is a moral agent, and must be morally responsible for the welfare treatment of all citizens.

Public Sector: For this paper, the public sector is as conceptualized by Fashoyin, stating that, “It is an all-embracing entity covering, as it were, all agencies and institutions or organizations whose principle benefactor is government, whether at the federal, state or local government level.”¹¹

Labour: Due to the central place the subject of labour occupies in the industrial relations system, several authors have placed their minds and thoughts on what labour means and symbolizes. Engels’ conceptualization of “labour” is stimulating. He views labour as “the primary basic requirement for all human existence, and this to such an extent that, in a sense, we can say that labour created man himself.”¹² According to Adam Smith, “The real price of everything is the effort and effort is the toil made to get whatever is of value to the person who wants to get it. Labour is the first price, the first purchase - the money paid for everything.”¹³ The concern of Smith is that labour is the painful exertion that we undergo to ward off pains of a greater amount or to procure pleasure which leaves a balance of favour.¹⁴ Simply put, for this paper, labour is the combination of workmen to fight tendencies of

¹¹ Tayo Fashoyin, *Industrial Relations in Nigeria* (2nd edition,) (Ikeja, Lagos: Longman Nigeria Plc, 1992), 154.

¹² Fredrick Engels, *Dialectics of Nature* (New York: International Publishers, 1940) 279.

¹³ Adam Smith, *The Wealth of Nations* (Harmondsworth, Middlesex: Penguin Books Ltd, 1982), 133

¹⁴ Ibid.

their employers, and engaging in activities that would protect and continuously improve their working conditions as a group or union. Thus, about the collective life of a people, it embraces politics, interests and conflicts that may ensure us cause of relationships.

Strike:

There are as many definitions of strike as the number of scholars writing on the subject. But for contextual relevance, we will adopt the definition contained in the labour law of Nigeria. Section 47 of the Trade Disputes Act states that:

Strike connotes the cessation of work by a body of persons employed acting in concert, or concerted or under collective agreement refusal by a large number of workers to continue working for their employer as a result of a dispute, done as a means of compelling their employer or any person or body of persons employed not to accept or accept terms of employment and physical conditions of work; and in this definition (a) “cessation of work” includes deliberately working at less than usual speed or with less than usual efficiency; (b) “Refusal to continue to work” includes a refusal to work at usual speed or with usual efficiency.”¹⁵

Commenting on this definition, Okeke noted that three elements could be distilled. They are one, the element of

¹⁵ Trade Disputes Act, 1976, s. 47.

concerted action; two, the stoppage of work; and three, the purpose of the cessation must be in connection with a dispute involving the terms of employment and physical conditions of work.¹⁶ This writer agrees with the three elements.

However, Waterman has synthesized opinions on strikes in the following way:

Strikes can form bewildering kind of sizes, shapes and meanings. They involve inventorizing as mini-usings of scale, scope, paperwork, political or legal repute and impact. paperwork could range from off those of the work-to-rule or simple withdrawal of labour to the career, work-in or take over. Scale can vary from the smallest work to the economic, countrywide or international. The scope can enlarge from wages and situations to an alternate in the political or social order. Status can be constitutional, illegal or insurrectionary. Effects may be disintegratory – dividing or destroying the political or social strata - or integratory –leading to the incorporation of the workers into the present society.¹⁷

Having regard to the above, it can be said that strikes occupy a special space in the discussion of workers' impact on the political and socio-economic life of any society.

¹⁶ O.V. Okeke, "The Status of the Right to Strike in Nigeria: A Perspective from International and Comparative Law" in *African Journal of International and Comparative Law*, 15(1), (2007), 31.

¹⁷ Peter Waterman, "Third World Strikes: An Invitation to Discussion," *Development and Change* 7(1976), 334.

Theoretical Perspective and Assumptions

Although there are different theories scholars have used to anchor their studies on the concept of strikes, this study sought to use the Relative Deprivation model as a framework to explain the occurrence of strikes in the public sector in Nigeria. Ted Gurr is our point of reference, who in his classical work, asserted that the primary source of the human capacity for conflict to arise is the frustration-aggression mechanism.

Explaining his proposition with the term or concept of “relative deprivation,” Gurr says that this happens due to the discrepancy between what people think they deserve, and what they think they can get. The thesis statement, therefore, is, “The potential for collective conflict varies strongly with the intensity and scope of relative deprivation among members of a collectivity.”¹⁸ He emphasizes that just as frustration produces aggressive behaviour on the part of an individual, so too does relative deprivation predicts collective violence by social groups.¹⁹ The relevance of this theoretical model to our present study is that most strike actions recorded in Nigeria, both in the public and private sectors, have largely been triggered by a high intensity of frustration, exploitation and deprivation suffered by workers from their employers, and the progressive efforts of the government to weaken labour for militancy. In essence, any regime or government that does little or nothing towards relieving the sense of deprivation among employees in the public sector against the better conditions enjoyed by their colleagues in the private sector will likely face violence against itself, which is why there is a high

¹⁸ Gurr, 24.

¹⁹ Ibid.

incidence of strikes in the public sector in Nigeria. Another theorist who aligns with Gurr is Nagel,²⁰ who finds a correlation between inequality and discontent.

Assumptions: For this study, a few assumptions have been made which include:

1. Only a small portion of people's experience and knowledge about alternatives to strike actions in the public sector may have ever been put into writing. Some practitioners and management representatives may have, in the course of handling worker grievances, used or suggested alternative dispute settlement methods to strike, and this could help in providing tremendous information for this work.
2. The more working people support each other, the more they stick together, and the more they fight for interests shared by all workers, the more power they have to achieve their goals.²¹
3. The more working people see their actions as part of an overall struggle for social power between themselves and those who control their labour, the more they can fight particular battles in a way which strengthens their ability to make still further gains in the future - perhaps even taking complete control of their labour and its fruits.²²

Trade Unions and Right to Strike

²⁰ J. Nagel, "Inequality and Discontent: A Non-Linear Hypothesis," in *World Politics*, vol. 26, 472.

²¹ Jeremy Brecher, *Strike!* (Greenwich, Connecticut: Fawcett Publications, Inc; 1974), 8.

²² Ibid.

With the promulgation of Trade Unions (Amendment) Decree No 22 of 1978 (now Act), the story of trade unions in Nigeria changed. This is because, by its intervention, the government reorganized the labour movement, by restructuring over 1000 minuscule unions into 42 industrial and craft unions, all compulsorily affiliated to the Nigeria Labour Congress (NLC) created by the same law.

To define a Trade Union, we shall adopt Trade Unions Act 1973's definition. According to the law, it is:

The aggregate of people or employers whether transient or permanent, the intention of that is to modify the phrases and situations of employment of workers, whether the mixture in query would or now not, other than this Act, be an illegal aggregate through the motive of any of its functions being in restraint of trade; and whether its purposes do or now not include the supply of benefits for its participants.

There are two significant things from this definition. One, the definition would appear to have been derived from the British legal system, a great influencer on the Nigerian industrial relations system as a former colonial master. Two, most scholars draw their insights and conclusions of what a trade union is from this legal definition. For instance, Ubeku asserts that in law, the essential concern of trade unions is the regulation of the terms and conditions of employment. He adds that, as in several other countries, the trade unions in Nigeria

have spread their scope to include their place and relevance in society.²³ The expanded scope as suggested by Ubeku may include protesting or pursuing a strike to pressure the government to reverse what labour might perceive as obnoxious legislation or policies, that are capable of worsening the living condition of the majority of Nigerians, such as a sudden hike in the electricity tariff or increase in fuel price.

About the right to strike, it must be noted that trade unions and strikes are inextricably linked. Thus, a strike is one of the weapons used by a trade union to fight for its members' rights when the need arises. It could be deduced that the right to form or belong to a trade union is stated in section 40 of the 1999 Constitution of the Federal Republic of Nigeria which explains thus:

Everyone has the right to freely assemble and associate with others, in particular, to form or become a member of a political party, trade union or other association for the defence of his interests. However, the provisions of this section shall not affect the powers conferred by this Constitution on the Independent National Electoral Commission regarding political parties not approved by this Commission.

Though our concern here is about the freedom to form a trade union, it is unfortunate that many successive governments (military and civilian) have always placed limitations on the way trade unions carry out their functions as materially required. Despite this attitude of the government, Scholars still

²³ Abel K. Ubeku, *Industrial Relations in Developing Countries: The Case of Nigeria* (London: Macmillan Press, 1983), 120.

emphasize that the primary responsibility of the trade union is the welfare of its members. Flanders reiterates that trade unions are loyal to their members. He notes that trade unions collect dues from their members and demand loyalty. That is, to protect interests as they see fit, not the “true” or “better” interests defined by others.²⁴

Yet, on the issue of the right to strike, Okeke cited the International and Regional Instruments for the right to strike. He explains that The International Covenant on Economic, Social and Cultural Rights of 1996 is a key international human rights instrument that explicitly recognizes the right to strike in Article 8(1) (d) of the Covenant. The right to strike is guaranteed and exercised by the laws of the state concerned. Article 2(1) of the Convention also states that “Each State Party to this Convention shall, by all right means recognize the covenant, including the use of legislative measures. Progressively, we promise to take steps to make this happen.”²⁵ This law compliments No. 87 of the 1948 ILO Convention which refers to the application of Articles 3 and 8 of the Freedom of Association and Protection of the Right to Organize by different member states. Thus, apart from the exclusion of the police and armed forces and employees in the essential services, each member state of the ILO should permit the right to strike people in paid employment.

²⁴ Allan Flanders, “What are Trade Unions For?” in W.E.J McCarthy (Ed), *Trade Unions* (London: Penguin Books Ltd; 1978), 19.

²⁵ Okeke, 33-34.

But in Nigeria, while section 17 of the Trade Disputes Act could be used to argue that the government has not outlawed strikes in the public sector, the truth is that the government has not stopped doing anything legally or politically to cripple the right to strike. The Nigerian law intends that striking workers should maintain the status quo and sustain collective bargaining while procedures such as conciliation, arbitration or reference to the National Industrial Court are already in place. Section 17 (3) of the same law could be frustrating to the striking workers. It states as follows:

Under Article 12 of this Act, if a dispute is settled by agreement or arbitration by the above provisions of this Act, it shall be considered settled for this Act. Accordingly, any further trade disputes regarding the same matter (including commercial disputes relating to the interpretation of an arbitration award made as described above resolving the original dispute) will be considered separate disputes for this section.

Analytically, the intention of the government by this legal provision is to prohibit the right of employees in essential services to go on strike, or at least to make it difficult to sustain their union's call for a strike. This is despite the ILO's review of the concept of "Essential services" in 1994, "Essential services" are only those services whose interruption endangers the life, personal safety or health of the whole or part of the population."²⁶ The action of the Federal government of Nigeria

²⁶ Freedom of Association and Collective Bargaining: 1994 Report Part 4B, para. 159.

in every relevant instance has never been based on the evaluation of the spirit and letter of this international policy review.

Impressionistically, Adeogun, quoted in Fashoyin reiterated the inevitability of strikes despite government legislation and the accompanying stiff penalties for default or infringement. He puts it this way:

Despite these harsh penalties, the fact that workers still engage in industrial action is a vivid reminder of what a strike is. It concerns real or imagined dissatisfaction arising from working life. Except quick and effective systems are developed to resolve such grievances, strikes are sure to occur just to bring them to the attention of governments and society at large. Therefore, a total ban on strikes is unachievable.²⁷

In practice, it would seem that the government has accepted the truism that strikes in the public sector cannot be banned, no matter the extraordinary strategies put in place to do so.

Finally, trade unions and strike actions would continue to occupy significant space in our labour-management relations because, as noted by Roberts, “To a growing number of people, trade unions are seen as an essential buffer against inflation and unemployment, providing shelter, a standard of living, jobs and wages from the arbitrary upheavals of the crisis-ridden

²⁷ Fashoyin, 199.

economy.”²⁸ This suggests that, in the absence of organized labour, exploitation of workers by the government as employers would know no bounds.

Creating Bases for Prohibition of Strikes by Public Sector Employees

Before considering the anti-strike philosophy of most governments, let us look at the five (5) types of strike isolated by *The Encyclopedia of World Problems & Human Potential*.

They are:

1. A sympathy or solidarity strike in support of other sectors of workers striking.
2. A rotating or checkerboard strike, affects first, one area of production, then another so that the work schedule is disrupted.
3. A slow-down or work-to-rule results in a slow-down strike, which allows work to continue but at a reduced pace.
4. Wildcat strikes are called by local union affiliates but not officially sanctioned by the union as a whole (and generally discouraged at union headquarters).
5. Stop work, is when an employee stops work but does not leave the workplace.²⁹

What is common to all of them is that there is an economic loss which can occasion irreparable loss. The above listing is in

²⁸ Robert Taylor, *the Fifth Estate* (London: Routledge & Kegan Paul Ltd; 1980), 24-25.

²⁹ The Encyclopedia of World Problems & Human Potential-<https://www.uia.org>, accessed, 30/5/2021.

addition to a general strike or total work boycott which has a great impact on the economy and the people in general.

As for why governments pursue anti-strike philosophy for public sector employees, Harrison identified four possible reasons which appear to be strengthened by the common law provisions. They are:

1. Strikes weaken the absolute power of government.
2. It prevents legislative control of the budget and the establishment of public policies.
3. They allow public employees to apply a disproportionate extent of comparison to the services they carried out.
4. It weakens the democratic forms of government's basic principles.³⁰

According to him, it is generally accepted that they affect goods and services necessary for the sustenance of social order and the protection of the public welfare. Even at that, he reasoned that it would be unfair to deny public employees the right to fight for unfavourable conditions of service while their private sector counterparts are permitted to use strikes to fight for improvement in their working conditions. The problem, he argued, is that alternative dispute settlement procedures available do not appear to be effective.³¹ All being said, the truth remains that the arguments are not acceptable to labour

³⁰ Harrison, Jr. 466.

³¹ Ibid.

and industrial relations experts and practitioners in Nigeria given the obvious injustice that applies in the treatment of employees working in the public sector vis-à-vis the leverage enjoyed by other colleagues in the private sector because they practice collective bargaining.

Trade Disputes Legislation and Public Sector Collective Bargaining

About trade disputes and strikes in the public sector, government conceives the whole public sector as essential services, and this limits the practical application of collective bargaining in that sector. The increase in strike actions among the public sector in the early eighties through the nineties appears to stimulate government response by way of developing workable approaches in dealing with issues relating to labour management in the public sector. Yet, the response cannot be said to be working as should be.

With the benefit of hindsight, collective bargaining in the public sector dates back to 1948. However, it cannot be said to have produced the desired result even though it was accepted as a major element of the industrial relations system. Even in 1955, the then Prime Minister, Tafawa Balewa, expressed the desire to implement collective bargaining in the public sector because, according to him, doing otherwise “economic disasters can lead to political influences and considerations on wage setting with serious negative consequences for the development of healthy trade unions.”³² The outcome of this and subsequent pronouncements is the continued use of *ad-hoc* wage-fixing commissions.

³² Annual Report of the Department of Labour, 1954/1955, Lagos, para.20.

For instance, between 1916 and 1982, about seventeen (17) wages and salary commissions had been appointed on an ad-hoc basis to do what collective bargaining was supposed to have done. They include Cameron Carr Committee (1916); Bratt Committee (1919); Hunt Committee (1934); The Bridges Committee (1940); Harragin Commission (1946); Tudor Davies Commission (1946); Miller Commission (1946); Cowan Commission (1948); Gorsuch Commission (North and Eastern Regions) 1948; Mbanefo Commission (1958-1959); Morgan Commission (1958-1959) Western Region; Morgan Commission (1964); Adebo Commission (1970-71); Udoji Commission (1974); Cookey Commission (1981) for Universities; Onosode Commission (1981) for Parastatals; and Adamalekun Commission (1982) for other tertiary institutions.³³

In 1987, announcing the annual budget, former military Head of State, Ibrahim Babangida, introduced decentralization of collective bargaining in the public sector. This was an attempt to reverse a hitherto existing situation whereby the Federal government would negotiate and impose conclusions reached on the three tiers of government. This policy decision did not work. Abiodun, however, noted that the ideal thing to make the system work was to focus on a properly instituted culture of collective bargaining by first negotiating a procedural agreement to guide the parties. This is one way of enhancing the principle of tripartism which is based on mutual respect as

³³ Dafe Ootobo, "Bureaucratic Elites and Public Sector Bargaining in Nigeria," in Dafe Ootobo & Morakinyo Omole (Eds), *Readings in Industrial Relations in Nigeria* (Lagos: Malthouse Press Limited, 1987), 164-166.

the fulcrum for industrial peace and harmony.³⁴ Olaniyan, while commenting on collective bargaining in the public sector, stated that, because of the government's dual role of employing workers and keeping its sovereign powers, it is difficult, unlike in the private sector, to identify the actual ownership. Consequently, he noted, the relationship that exists between the government and its employees becomes fluid and impersonal. He further reasoned that, where collective bargaining assumes the position of the relative power relationship between labour and management, the government considers such relationship as a challenge to its massive sovereign powers. The summary is that the attitude of the government which exposes her as faceless in its bargaining role can be said to run contrary to the spirit of collective bargaining.³⁵

Regarding trade dispute settlement, there has been Government legislation which tends to regulate the practice of industrial relations concerning industrial conflict. While some are to protect the weak and check abuses, there are others to eviscerate the militancy potential of trade unions as organizations to protect workers' rights and promote their welfare. Significant government laws that regulate trade dispute settlement in Nigeria are Trade Disputes (Amendment) Act 1977; Trade Disputes (Amendment) Act 1989; Trade Disputes (Amendment) Act 1992 and National Industrial Act 2006. There is also the Trade Disputes (Essential Services) Act 1976.

³⁴ Taiye Abiodun, "Assessing Decentralization in Nigeria: What is the Future of Industry- Wide Collective Bargaining" in *Business and Management Journal*, (January-March, 1999), 67.

³⁵ Banji Olaniyan, "Collective Bargaining in the Civil Service: The CSTWUN Experience," in Tayo Fasholyin (ed.), *Collective Bargaining in the Public Sector in Nigeria* (Lagos; Macmillan, 1987), 160.

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The summary of this legal framework is as follows: Parties in a trade conflict attempt to resolve the conflict through negotiation within seven days of its existence, and where the conflict cannot be resolved, it is referred to as a mediator acceptable to the two parties. If this procedure fails, either party may declare a trade dispute. With a party declaring a trade conflict, the Minister of Labour may refer the case to Industrial Arbitration Panel or appoint a Conciliator or set up a Board of Inquiry to examine the dispute. Under this arrangement, conciliation and arbitration have been made mandatory. The decision of the enabling law is expected to be final if the award of the IAP is not satisfactory to either party, and either decides to refer the conflict to the National Industrial Court. It is also important to note that Annual Incomes Policy Guidelines by Government and National Minimum Wage Act could be used to influence the practice of industrial relations in Nigeria.

The counsel of Lev is important where the bargaining procedure for the public sector fails. According to him, if public employees are to be deprived of the strike power, they must be conceded a substantial equivalent which most nearly achieves for them the benefits of strike leverage. Such concession should not be less than the installation of machinery which will get for public employees the wages and benefits extracted from employers in the private sector through the use of the strike weapon.³⁶ Instructively, this is not the case with us

³⁶ Edward R. Lev, "Strikes by Government Employees: Problems and Solutions," *American Bar Association Journal*, vol. 57, No. 8, (1971), 771.

in Nigeria where the position of the government is that of the winner-takes-.

Triggers for Strike Actions in the Public Sector

Strikes are known to be triggered by several factors which can be traced to the perspectives or behaviour exhibited by actors in the industrial relations system of any country. For this study, a trigger is any thinking, action, inaction or even body language which tends to initiate, influence, reinforce or provoke the cause or incident of an industrial conflict, the absence of which would have prevented a strike to occur or its impact be neutralized. Some of them are listed below:

1. Executive recklessness is demonstrated by making unguided and unseasoned statements before or in the course of a trade dispute. For instance, in a face-off between the Kaduna state government and labour in May 2021, the governor, El-Rufai, declared, “The Kaduna State Government sees the activities of the NLC as mob robberies that kidnap and terrorize our citizens. Although the bandits use weapons illegally, the NLC’s mob activities serve a similar purpose; to hold hostage the freedom, economic interests, livelihoods and resources of the people of Kaduna State.”³⁷ This statement provoked the NLC to be more resolute and become more militant. However, the federal government intervened to douse tension.
2. Similar to this, is the Minister of Labour’s several threats to union leaders to act responsibly, and the threat at each strike action to implement the method of “No Work, No pay,” even where he has found it almost impossible to

³⁷ “Salvo,” *The Punch*, Wednesday, May 19, 2021, 48.

implement. Generally, the incivility of Government functionaries and political leaders promotes labour's aggressive and recalcitrant behaviour at the "negotiation" or discussion table.

3. Deliberate misinformation or lie by Government representatives. A statement was credited to the Minister of Labour in April 2021 during the strike action by the National Association of Resident Doctors. He claimed that resident doctors in the United States and other developed countries are not paid by their employer (that is government), whereas in Nigeria they are paid, and are always complaining. The statement was found to be false.³⁸ This made the dispute to be more difficult to settle and the strike prostrated. This type of behaviour often betrays the incompetence and insensitivity of the country's political office holders, especially those in sensitive positions.
4. Deliberate non-implementation of collective agreements or signed memorandum of understanding, memorandum of action, and memorandum of Terms of Settlement. This is common with the way the Federal Government treats the case of ASUU.
5. Government's delay in explaining its policies, especially those that will have financial costs for the livelihoods of the majority of Nigerians operating in both the formal and informal sectors.

³⁸ Eniola Akinkuotu, "Nigeria Medical Association Slams Ngige for Saying US, UK, Don't Pay Resident Doctors," *Sunday Punch*, April 4, 2021, 43.

6. Another way of contributing to the intensity of strike actions is the apparent revealing of poor trade union education, incompetence, and irresponsibility. Sometimes we see union leaders removed for lack of accountability for union funds.
7. Cynical scrambles for privileges and status as happened during the 1981 general strike.³⁹
8. As a deliberate action to scuttle the process and procedure for grievances and settlement of same, the government might choose the step that ought to come last to confront a fresh trade dispute, especially where it has the advantage to manipulate the judicial process at the IAP. Rather than this action or strategy helping to stave off a strike action by labour, it further aggravates the anger of workers.
9. Another unethical strategy by the government to gain an upper hand over labour, which often backfires, is the use of intimidation and bullying employed by their agent's provocateurs. In September 2020, ahead of protests against planned NLC and TUC strikes and rising electricity and fuel prices, the Nigerian police said they would use the law to do so and urged organizers and activists to support the plan.⁴⁰ This is wrong because it is only the court of competent jurisdiction that can enforce its judicial decision or pronouncement by invoking

³⁹ Dafe Otobo, "The Political Clash in the Aftermath of the 1981 Nigerian General Strike," in Dafe Otobo & Morakinyo Omole (Eds), *Readings in Industrial Relations in Nigeria* (Lagos: Malthouse Press Ltd; 1987), 264.

⁴⁰ Olalekan Adetayo, et al, "Strikes: We will Enforce the Law, Police Warn NLC, TUC," *Sunday Punch*, September 27, 2020, 1.

relevant contempt procedure or any other means by which its decision can be enforced.

10. Unintentional promotion of leapfrogging is another trigger. Beyond being deliberate, employers could promote leapfrogging. Leapfrogging, according to the *Dictionary of Human Resources and Personnel Management*, is “pay demands where each section of employees asks for higher pay to do better than another section, which then asks for further increases in turn.”⁴¹ Practically, the government as employers in the university and health sectors could be said to encourage or promote leapfrogging. For instance, when lecturers go on strike, the government is often seen holding meetings with ASUU and signing agreements with the union without taking into consideration the effect or consequence of such agreements on other composite unions operating within the university system. We have three other unions like NASU, SSANU and NATS. Often irked by concessions granted to ASUU while on strike, other unions mentioned above do embark on separate strikes to demand adjustments and consequential differences to their salaries and allowances. There is a similar trend between the Nigerian Medical Association (NMA) and Joint Health Sector Union (JOHESU) in the health sector, all explaining the reason for incessant strikes in the two critical service sectors in Nigeria. The

⁴¹ A Ivanovic & P.H Collin, *A Dictionary of Human Resources and Personnel Management* (3rd edition) (London: Bloomsbury Publishing Plc, 2003) 154.

situation could be positively addressed if there is re-adjustment or realignment in the structure of the unions operating within the same economic or service system, and encouragement of discussions and negotiations on working conditions to cover all the groups' interests at the same time. This industrial relations arrangement is likely to prevent leapfrogging and stem the incessant strike actions currently being witnessed in these two sectors operating as "essential services."

The Discourse of Alternative Dispute Settlement Procedures

Despite Government's regarding strike actions in the public sector as illegal, the practical experience is that strikes in the sector continue to occur. The reason is that strike action is still regarded as a vital tool by civil servants and trade unions because "no other satisfactory and effective alternative procedures have been implemented."⁴² We see serious disruptions in social and economic lives in Nigeria even when Government has invoked provisions in the Trade Disputes law to neutralize workers' strike actions, especially general strikes. As a measure to dissuade workers and their leaders from rushing to call a strike each time a dispute exists, some dispute settlement procedures have been legally installed by the Federal government since the early 60s. For this paper, alternative dispute settlement procedures will be discussed under two categories, which are statutory and non-statutory dispute resolution procedures.

Statutory Dispute Resolution Procedure

⁴² Harrison, 452.

Interrogating alternatives to strike actions in the public sector in Nigeria

In the labour legislation, five methods of dispute resolution procedures could be identified as follows:

1. Mediation

This is a process by which an outside party helps both parties to a dispute reach a voluntary settlement. It is used for internal machinery prescribed by the law when negotiation has failed. Trade Disputes Act requires the parties to submit their dispute to a mutually acceptable mediator. Ideally, this method is expected to work because parties agreed on who their mediator should be; but unfortunately, it is hardly used in the public sector. In some saner democracies, such as the United States, the method is quite popular to resolve industrial conflicts. Impressionistically, in the public sector, the Minister of Labour often appears impatient to await the outcome of mediation; that is, what the agreement should be, but is always quick to apply the conciliation option, and possibly, arbitration which, to government, could be cheaper and more available to it.

2. Board of Inquiry

This is like fact-finding machinery that applies in other countries. Sections 23 and 24 of the Trade Disputes Act provide for a Board of Inquiry as a method of providing facts that could help in dispute settlement. Primarily, it finds and supplies facts about a particular dispute. The challenge it has is that, while it may facilitate negotiation to take place between parties to a dispute, it does not serve as machinery for dispute settlement. Fashoyin gave an instance of the failure of this method when he reported that in 1978, the National Union of Teachers (NUT) rejected the idea of referring a dispute involving her with the Lagos state to a board of inquiry

because the Board was merely going to investigate the cause of the dispute which was already known.⁴³ What that suggests is that the machinery hardly works.

3. **Conciliation**

Trade Disputes Act 1976 also provides for the settlement of trade disputes, especially when either party to a dispute has written to declare a trade dispute. Government, at this stage, statutorily intervenes through the Minister of Employment, who within 7 days of receipt of a written report of declaration of a trade dispute, appoints an officer of his ministry to secure settlement. Essentially, the conciliator is to facilitate communication between the two parties. Sometimes a conciliator helps to facilitate settlement, while at other times, he is unable to do so, and the matter goes back to the Minister who uses his discretion to approach the next stage of statutory intervention. As for conciliation, when settlement is secured and the Minister endorses the agreement reached, decisions become binding on the parties to a dispute. Severally, we have seen government, even as a guardian of the law, violating the sanctity of the agreement reached using this procedure, even though it is minimally used.

4. **Arbitration**

Procedurally, and in line with the extant law, within 7 days of receipt of a report from a conciliator, the Minister must refer unresolved disputes to the Industrial Arbitration Panel (IAP) which has 21 days, unless an extension is granted, to give its award. The award of the IAP is sent to the Minister who publishes it and allows 21 days for either party to object if

⁴³ Fashoyin, 194.

necessary. If no objection is raised within the stipulated time, the Minister confirms the award which then becomes binding. Nevertheless, it must be noted that most of the time the IAP does not conclude its intervention within the stipulated time, and thus seeks extensions. This sometimes makes parties impatient and agitating, especially the union which consequently chooses to proceed on strike. In the case of public sector unions, they are highly sceptical about the impartiality of the IAP in its awards because of the membership structure of the panel which is skewed. This machinery, again, never stems from the rising incidence of strike actions in the public sector. Thus, Fashoyin argued that, to the extent that parties either ignore this statutory machinery or dispute their awards, to that extent, it can be said that it has only made a marginal contribution to the growth and practice of industrial relations in Nigeria.⁴⁴

5. The National Industrial Court (NIC)

When bargaining fails, especially when the decision of the IAP is contestable, the NIC has the responsibility to bring sanity to labour-management relations in Nigeria. And so, one of the introductions in the Trade Disputes (Amendment) Act 1976 is the National Industrial Court. With the enabling law, it exclusively has jurisdiction to make awards in the settlement of a trade dispute; determine the interpretation of its award, the collective agreement of the IAP or the terms of settlement of any trade dispute. The NIC has the major jurisdiction to settle disputes which emanate directly from the end of the Minister of

⁴⁴ Tayo Fashoyin, "Arbitration in Nigeria, *Indian Journal of Industrial Relations*, 13 (2), (October, 1977), 155.

Employment. In the case Minister refers a dispute to it directly, the court performs appellate functions. Unlike the IAP, the NIC announces its awards and is final.

While it may be argued that the intervention through this statutory procedure is tacitly in support of collective bargaining in the public sector, the NIC is strongly hamstrung by bureaucratic processes and red tape. For instance, the President of the Court, Benedict Kanyip, said on October 5, 20, 20 that a total of 6,095 cases were pending in the court's docket. He gave the detailed statistics as follows:

According to the figures, 6,596 cases were heard in national courts (NICs), with Lagos, Abuja, Port Harkot and Ibadan leading the number. The total number of cases currently under consideration is 6095. This means that 501 cases were completed between March 13 and September 30, 2020. Litigants have not yet accepted the use of the mediation mechanism of the Court's Alternative Dispute Resolution Center for the resolution of labour and employment disputes. For example, between March 2019 and March 2020, the accused and the defence counsel agreed to send only 66 files to the centre. Only 18 cases were settled.⁴⁵

What the statistics narrated above suggests is that as determinate as this third-party intervention could be for the resolution of a trade dispute before leading to a strike, bureaucratic tendencies and other extraneous factors have become reasons for its often-alleged inefficiency and ineffectiveness. This is somewhat challenging as part of the explanation for the high incidence of strike actions in the

⁴⁵ Ade Adesomoju, "6,095 Labour Cases Pending at Industrial Court," *The Punch*, Tuesday, October 6, 2020, 7.

public sector and the apparent shortcomings of statutory dispute resolution procedures in Nigeria.

Non-Statutory Dispute Resolution Procedure

Apart from the statutory dispute resolution procedures discussed above, other procedures can be explored to reduce, if not eliminate site sites in the public sector. They include the following:

(a) **A No-Strike Policy in Difficult Times**

A pact could be negotiated and signed between labour and management which shall provide a framework or policy for non-strike-action. There should be a procedure force management and implementation. Similar to this is the no-strike policy of one of the four (4) labour centres (United Labour Congress) during the civil war in Nigeria between 1967 and 1970. The situation Nigeria has found itself in now is no less described as an emergency in terms of both security ad economy.

(b) **Non-Stoppage Strike or Semi- Strike**

This is recommended by Harrison.⁴⁶ Essentially, this is not a strike. Instead, it is an alternative method designed to lock out the parties at the cost of a strike without stopping work at the same time.

(c) **Income-Work Time Gradual Pressure Strike**

This is another procedure suggested by Harrison as a possible alternative to strike action in the public

⁴⁶ Harrison, 451.

sector.⁴⁷ According to him, it connotes a strike more than a semi-strike. This procedure permits the employees to technically reduce the number of hours of work each week following a bargaining impasse. However, workers' salaries would not be reduced for the fewer hours worked but would be less than full-time earnings. The money withheld weekly is to be used on any other projects. Since Nigerian public sector employees' salaries are paid every month, this procedure can be only adapted to suit the peculiar reality of the country's wages and salaries administration if it would be considered.

(d) **Constructive Confrontation Mechanism**

Hoover and DiSilvestro have said that a constructive confrontation system is a course of action that shows leaders how to use confrontation constructively to increase accountability and decrease conflict in their organizations. They clarified that confrontation is not to be confused with conflict, but a means to communicate face-to-face with a means to achieving peace in the organization.⁴⁸ The authors explain that the conditions are simple, and they include; (1) There must be an agreement between the parties that describes the implementation, including expectations, methods and actions; (2) all parties must challenge each other to ensure that progress and achievements are made; and (3) all parties to the covenant must celebrate the

⁴⁷ Ibid.

⁴⁸ John Hoover & Roger P. DiSilvestro. *The Art of Constructive Confrontation* (Hoboken. New Jersey: Wiley & Sons, Inc., 2005) ix.

successful completion of each designated step in the process.⁴⁹ The benefit of this system is that, in a convivial atmosphere, labour and management will agree to work together by understanding possible areas of conflict in future and how best to make things work together better for the parties. In essence, there is a need to go beyond the traditional method or procedure of confronting each other through strikes or violent protests.

(e) **Opinion Leaders' Intervention Group**

This is a group of opinion leaders and respected men and women in the society who would be constituted as a standing Group to discuss with labour and government when there is a threat of breakdown in negotiation between parties to a trade dispute. People to be appointed to such a group should not have political affiliation and should not be religious fundamentalists.

Could Alternative Procedures Strike in the Public Sector Work in the Face of Continued Government Exploitation?

Ordinarily, Government should accept a strike to be lawful or legal if it has followed all the provisions of both the Trade Unions and Trade Disputes Acts. In practice, this does not happen; the government as an employer hardly accepts any worker strikes as legal. More often than not, we see the government violating collective agreements and memoranda of

⁴⁹ Ibid., xi.

understanding or action without giving reasons for doing so, or at best, supplying casual or whimsical explanations that the economy can no longer sustain the cost implication expected from honouring the agreements. In reaction, workers become restive to fight for their rights rather than wait to be dribbled by an unwilling employer.

In the circumstance, Adeogun opined that strikes might be inevitable despite government legislation and the accompanying stiff penalties for default or infringement. He put it this way:

The fact that workers took industrial action despite these harsh punishments reminds us what a strike is. These deal with definite or imagined grievances arising in industrial life. Except for a prompt and effective system of redressing these grievances is established, strikes will inevitably draw attention to the grievances of the government and society as a whole. A complete ban on strikes is therefore unrealistic.⁵⁰

Since collective bargaining has not been effective in the public sector to determine and regulate employment conditions, it is more likely that strikes would be used by workers to pressure the government to negotiate their demands. Therefore, in a situation where effective collective bargaining is lacking and the government is merely using *ad-hoc* committees to decide salaries and wages of public sector employees in contrast to collective bargaining procedure

⁵⁰ A.A. Adeogun, "Strikes – the Law and Institutionalization of Labour Protests in Nigeria." in *Indian Journal of Industrial Relations*, 16, 1 (July 1980), 11-12.

permitted in the counterpart private sector, strike actions are bound to be on the surge. It can thus be said that workers' combinations in the public sector, into fighting unions, may have resulted from the oppression and frustration often suffered from inequality and economic immoderation.

In sum, the government's reliance on legal prohibitions, penalties and unilateral fixing of salaries and wages of public sector employees has not worked and will not work to stop workers from asking for their right to better conditions of service. The answer is that bargaining in the public sector should be given the same opportunity such as the private sector has received. In essence, there is no alternative. In a politically democratic society, principles of fairness, equity and justice must apply to all sectors of the economy regarding the issue of collective bargaining.

Conclusion and Recommendations

Having examined in detail, the right to strike and alternative dispute settlement procedures in the Nigerian public sector, this paper has proven that the reliance on legal prohibitions and penalties has not worked. Thus, outlawing strikes in the public sector is not the answer, but to accord the sector the same collective bargaining status enjoyed by the private sector in the struggle for improved working conditions. Failing to do this might suggest allowing trade unions to use strikes as the last resort when other procedures have failed.

Assuredly, if statutory dispute resolution procedures are enhanced and non-statutory ones are embraced, strike actions

in the public sector could be substantially mitigated. It is also important to recommend that the Federal Republic of Nigeria Government should activate National Labour Advisory Council to ensure regular engagement between government and labour. This creation of the colonial government worked during their time. Again, the sanctity of dialogue should be maintained where parties should realize that dialogue does not lie in the garrulous exhibition of sardonic wisdom by either party, but in the judicious display of ability to show the distinction between strengths and weaknesses, between harmony and discord, between objectivity and subjectivity, between compromise and rigidity, between appearance and reality and between the sublime and the ridiculous.

Finally, adequate and relevant training should be given to government representatives who interact with trade union leaders in the public sector so that they can understand and appreciate trade objections about the protection of members' welfare and rights. Similarly, union leaders should improve their negotiation skills and decorum at the negotiation table.

