COLLECTIVE BARGAINING AS A CORPORATE GOVERNANCE TOOL FORINDUSTRIAL DEMOCRACY: THE NIGERIAN EXPERIENCE

By

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Introduction

Corporate governance is a relatively novel concept in academic circles. The term was first used in 1960 by Elles Robert to denote the structure and functioning of corporate polity[1]. Although academic efforts at formulating a theoretical basis for corporate governance is a recent initiative, the question of how best to manage corporate enterprises effectively is as old as the history of the company itself. A company is a team production entity with a long list of contributors of different resources, making it necessary to ensure the protection of the underlying interests of relevant stakeholders. These stakeholders are the shareholders, directors, employees, creditors, suppliers, customers, and host communities.

Whilst corporate governance discourses tend to focus on the interest of shareholders, it is becoming increasingly argued that increasing shareholders' wealth at the expense of other stakeholders can create moral hazards and companies can avoid this by adopting metrics that are important to both shareholders and other stakeholders[2]. Company employees are important stakeholders because their stake is critical to the wellbeing of the enterprise at large[3]. It is, therefore, widely acknowledged that

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[1]Elles, R. cited by Saswati, P.M. 'Corporate Governance : A Need for Adoption of Realistic Methods Rather than
Mere Theoretical Suggestions' Available at http://www.siv-go.org/index.php. visited on 15/02/13

[2]Garcia, M. *et al* 'Performance Metrics : Balancing the Needs of Creditors and Shareholders' (2010) *Towers Watson Research Ideas* p.1

[3] Brett, H.M. 'Strategies for Employee Role in Corporate Governance' (2011) 46 *Wake Forest Law Review* p. 1

employees are the backbone of the enterprise and the ones that can make and mar the business of the company[4].

Employee satisfaction contributes immensely in boosting the morale of workforce. This point is summarily captured in the aphorism 'a contented cow gives more milk'. A proper direction to this is embedded in principles of corporate governance formulated by the Organisation for Economic Cooperation and Development (OECD) which maintains that performance-enhancing mechanisms for employee participation should be permitted to develop in a corporate enterprise[5]. A key corporate governance tool for achieving this is by promoting a strong labour voice in the pursuit of legitimate demands for the furtherance of better working conditions by and for employees. The essence of this is expressed in the theory of industrial democracy.

The mechanism of collective bargaining stands out as a veritable tool for ensuring industrial democracy and peaceful labour relations between management and workforce. That notwithstanding, the legal status of a collective agreement which is the end product of collective bargaining remains open to debates owing to the common law position which maintains that collective agreements are only binding in honour only. It is against this backdrop that this article sets out to examine the mechanism of collective bargaining and its impact on industrial democracy in Nigeria.

The Concept of Collective Bargaining in Corporate Governance

Corporate governance is a wide and encompassing term involving all sets of procedures and processes according to which a corporate enterprise is directed and controlled[6]. It is founded on the agency model that assumes a two-tier form of corporate control that is; managers and owners[7]. Corporate law generally recognises shareholders as the principal and management as the agent. As

[4]Michalowicz, M. 'The Three Secrets of Extreme Loyal Employees' Available at www.openforum.com/articles/the3- se accessed on 08/10/13

[5]Business.Gov.in 'OECD Principles of Corporate Governance (2004)' Available at http://business.gov.in/corporategovernance accessed on 08/02/13

[6]OECD Web Pages Available at http://state.oecd.org/glossary... accessed on 08/02/13

[7]Dan, D. 'Rethinking the Agency Model of Corporate Governance and Global Regulations' Retrieved from http://citation.allacademic.com on 24/03/13

agents, company managers are engird by a number of duties among which is the duty to protect the interest of employees[8]. Given the pragmatic daily convergence between employees and management, it becomes necessary to find a way of moderating the relationship between management and employees for industrial harmony to prevail. The legal relationship between employers and employees, gives rise to certain rights and obligations, which usually are set out in the individual's contract of employment. In addition to the rights and obligations spelt out in the contract of employment, certain terms are negotiated between management and trade unions on behalf of the employer and employees respectively. This is typically done through the mechanism of collective bargaining.

Collective bargaining is negotiation in which employees do not bargain individually, and on their own behalf, but they do so collectively through their representatives which in most cases is a trade union[9]. Collective bargaining is geared towards collective agreement with the aim to settling conflicting positions between employers and employees. In respect of corporate bodies, the deal is struck between management and trade unions for and on behalf of the enterprise and workers respectively.

The practice of collective bargaining is a fundamental feature of the corporate scene and a very important moderating instrument in labour relations. The effectiveness of workers' negotiating capacity largely depends on their ability to constitute themselves into a formidable force capable of exerting remarkable influence on the employer. The right to form trade unions[10] in Nigeria is a constitutional recognition of the vulnerability of employees, for the fact that they can hardly make any meaningful impact in terms of influencing management's decisions where they are not organised as a trade union with power of collective bargaining. Consequently, the Constitution guarantees the a fundamental right to form or join a trade union of one's choice and any denial of this right may be challengeable on the ground of

[8]Section 279 (4) Companies and Allied Matters Act Cap C20 Laws of Federation of Nigeria, 2004

[9]Opara, L. *et al* 'The Legal Effect of Collective Bargaining as a Tool for Democratisation of Industrial Harmony'
(2004) Vol. 3 No. 1 *European Journal of Humanities* p.1168

[10] See section 40 Constitution of Federal Republic of Nigeria, 1999 as amended

unconstitutionality even where it purports to be by law[11]. This is to allow the achievement of individual potential through inter-personal relationships and collective action. The centrality of trade unions in the operationalisation of collective bargaining requires further elucidation.

Trade Union as a Platform for Workers' Participation in Corporate Decision-Making

The internal dynamics of large corporations recognises and legitimates centralised management both in terms of control and as regard corporate decision-making. This invariably requires a visibly strong and effective trade union with the recognition that corporate governance relates to all matters pertaining to labour including organising workers, collective bargaining and public policy advocacy. In a way, trade unions help in reinforcing worker representation in corporate decision-making. Trade unions, at the enterprise level and above, do more that simply bargain over wages. They negotiate over broader workplace terms and conditions affecting their members. They may also negotiate pension and health-care entitlements and the systems that govern their provisions[12]. These issues are often handled through workplace committee structures that report to the board, and whose negotiated outcomes frequently guide board decision-making[13]. A trade union is, therefore, central in any system of checks and balances that gives workers a voice in corporate decision-making, particularly on matters that affect the welfare of employees.

By virtue of section 2 (1) of the Trade Union Act[14], workers are allowed to constitute themselves for the purpose of functioning as a trade union, if they are registered as such. An application for registration of a trade union is made to the Registrar of Trade Unions in the Federal Ministry in charge of Labour and Productivity[15].Once a trade union is duly registered, all its

[11]Kenen, E.A. 'An Appraisal of the Constitution of Federal Republic of Nigeria, 1999 as a Source of Labour Law and Relations' (2002) Vol.1 No. 1 *Benue State University Law Journal* p.206

[12]Committee on Workers' Capital Global Unions Discussion Paper 'Workers' Voice in Corporate Governance: A
Trade Union Perspective' September, 2005 p. 18

[13]Ibid

[14]Cap T14 Laws of Federation of Nigeria, 2004

[15]Section 46 Trade Union Act, 2004

activities in reasonable contemplation or furtherance of trade disputes cannot ground a civil suit[16]. This provision accords trade unions substantial legal protection while pursuing demands that are in the legitimate interest of workers. By so doing, it insulates employees from victimisation by employers.

To ensure neutrality during collective bargaining, section 3 (3) of the Trade Union Act, excludes management staff from membership of trade unions. The policy rationale behind this provision is to avoid conflict of interest which may weaken the bargaining powers of trade unions. For example, during collective bargaining, management always stands on the side of the corporation and may want to influence trade unions to concede some of their demands thereby compromising the integrity and essence of trade unionism. This provision was considered in the case of *National Union of Petroleum and Natural Gas Workers v NNPC*[17], where the court held that:

> On the whole, I conclude that the best approach to the matter will be to take the case of a staff and to test it as separate claim. It is impossible to make a blanket ruling that the position held by certain staff will not lead to a conflict of loyalty…. A staff is a management staff only where he exercises executive authority as a matter which is determined by the staff's status, authority, powers, duties and accountability.

During collective bargaining between a trade union and management, both parties strive to strike a favourable deal for those they represent. It follows that a management staff who also doubles as a union member or leader will be walking a tight rope if he fails to satisfy both the interest of the company and that of the workers. The law is also meant to ensure that the employee party to a collective bargain should remain an organised association of such firmness that it can be able to act decisively concerning collective agreements and in the same spirit, represent its members effectively and ensure out-of–court enforcement of the terms of a collective agreement.

Where a collective agreement is duly negotiated and implemented, it serves an important corporate governance

[16]Section 24(1) and (2) Trade Union Act, 2004
[17]Unreported Suit No. LD/13/82/232

purpose; that of ensuring industrial harmony. In this way, employees can also become a major component of the decision-making mechanism of a corporate enterprise. Thus, employees' attitude, opinion and level of satisfaction can easily be surveyed by management. This in turn boosts productivity and corporate performance. This form of participation is important as it aligns with the cardinal principle of industrial democracy that those affected by corporate decisions should participate in making such decisions.

The foregoing analysis makes it evident that the mechanism of collective bargaining is accordingly recognised under Nigerian law, but whether this mechanism is properly placed in terms of its legal framework so as to perform effectively the corporate governance functions highlighted above, remains a legitimate concern. This, calls for an examination of the legal status of collective agreements taking into consideration the fact that non-enforceability may weaken its potency.

The Legal Status of Collective Agreements

At common law, collective agreements are considered ordinarily unenforceable or non-justiciable unlike every other agreement[18]. The effect of this is that a collective agreement which is the end product of extensive collective bargaining is merely treated as a gentleman's agreement which can only be binding in honour. This is based on the assumption that no contract is legally binding unless there existed at the time of making the contract, an intention to create legal relations. This principle is no doubt an important ingredient for the enforceability of contracts. Over the years, the principle has played a significant role in the formulation of a theoretical framework relating to the legal status of collective agreements, the result of which is evident in many court decisions maintaining that collective agreements cannot be enforced for want of intention to create legal relations.

In *Dalrymble v Dalrymble*[19], Lord Stowell relied on this essential requirement, when he held that enforceable contracts

[18]Iwunze, V. 'The General Unenforceability of Collective Bargaining under Nigerian Labour Jurisprudence: The
Paradox of Agreement Without Agreement' (2013) Vol. 4 No.3 *International Journal of Advanced Legal Studies & Governance* p.2
[19](1811) 2 Hag. Con. 5 at 105

must not be mere matters of pleasantry and badinage, never intended by the parties to have any serious effect whatsoever. The English case of *Ford v Amalgamated Union of Engineering and Foundary Worker*[20] appears to be more illustrative on this rule. In that case, the plaintiff in 1955 negotiated an agreement with 19 trade unions which *inter alia* provided that 'at each stage of the procedure set out in this agreement, every attempt will be made to resolve issues raised and until such procedure has been carried through, there shall be no stoppage of work or other unconstitutional action'. In 1968an application for injunction was brought to restrain two major industrial unions from calling an official strike contrary to the 1955 collective agreement. The main issue in the application was whether the parties intended the agreement to be legally binding. It was held that there was no intention that the agreement would be legally binding on the parties.

Another reason behind the non-enforceability of collective agreements at common law is based on the absence of privity of contract between individual employees and the employer, since a collective agreement is usually negotiated between management on the one hand and workers' union on the other hand[21]. This rule was considered in the case of *Dunlop Pneumatic Tyre Co. Ltd v Selfridge Ltd*[22], where the court held that:

> My lords in the laws of England, certain principles are fundamental. One is that only a person who is a party to a contract can sue on it. Our law knows nothing of a *jus quaesitum tertio* arising by way of contract. Such a right may be conferred by way of property, as for example under a trust, but it cannot be conferred on a stranger to a contract as a right in *personam* to enforce the contract[23].

There are well known exceptions to the doctrine of privity of contract. These include; agency, assignment of contractual obligations, novation, contracts running with land, contracts of insurance, charter parties and trustees[24]. Obviously, the right of an

[20](1969) 1 WLR 339
[21]Iwunze, V. op cit p. 3
[22](1915) A.C 847
[23]At 853
[24]See Sagay, I *Nigerian Law of Contract* (Ibadan: Spectrum Books, 1993) p. 489

individual employee to enforce a collective agreement entered between a trade union of which he is a member and his employer for his benefit is not one of the exceptions[25]. Thus in *New Nigerian Bank v Egun*[26], it was held that in the absence of privity of contract between the respondent employee and the appellant employer, the respondent could not claim under a collective agreement between his union and the appellant.

It is not clear what the situation would be if it is actually the workers' union seeking to enforce the terms and conditions of a collective agreement, for the reason that the privity defence will not avail the employer. Curiously, this position has not been tested by the courts. This is perhaps due to the fact that trade unions have been made to perceive their role as being restricted to out-of-court settlement of industrial disputes owing to the rigidity of the common law rule which insists on the presence of intention to create legal relations as the basis for non-enforceability of collective agreements. It is, therefore, believed that if this obstacle is cleared, the second obstacle may also cease to have relevance, where an action for the enforcement of a collective agreement is brought under the name of a trade union which is party to the agreement.

It has been pointed out that the rigidity of the twin common law rules of privity of contract and intention to create legal relations accounts for the non-enforceability of collective agreements. This position creates certain setbacks for employees, particularly the fact that it encourages employers to be nonchalant and insensitive to the need for ameliorating the working conditions of employees both as a matter of social welfare and responsible corporate citizenship. A hidden cost is that employees become less enthusiastic about the enterprise which may lead to turn-over squeeze. The non-implementation of a collective agreement can also induce the spirit of strikes, thus disrupting industrial peace which is the most cherished factor of corporate governance. More worrisome is the fact that strikes are capable of creating poor corporate reputations following outcries by employees and their unions.

The Nigerian Experience

[25]Iwunze, V. op cit p.3
[26][2011] 7 NWLR (Pt. 711) 1

Common law is an important source of labour law and relations in Nigeria. This is based on the country's colonial experience which had as a major consequence, the importation of English law, one of its components which is common law. Being a common-law jurisdiction, it is only natural that common law rules governing collective agreements could have permeated the Nigerian legal environment as a guiding compass for the courts when called upon to adjudicate on collective agreements. In that regard, Nigerian courts have systematically adhered to the common-law rule of non-enforceability of collective agreements on the bases of lack of intention to create legal relations and want of privity of contract. The Supreme Court of Nigeria considered the issue of privity of contract in the case of *Osoh & Ors. v Bank PLC*[27]. Here the appellants' employments were terminated by the respondent on the ground that the appellants' services were no longer required. The appellants contended that the termination of their employments was wrongful because under a collective agreement, between the appellants' trade union and the Nigerian Association of Bank Insurance and Allied Institutions (of which the respondent was a member), the respondent could only determine the appellants' employment on the ground of redundancy. The appellants also argued that under the same agreement, the respondent had wrongly computed the terminal benefits. The Supreme Court held that there was want of privity of contract between the appellants and the respondent and as such the appellants could not enforce the collective agreement against the respondent.

The foregoing decision of the apex court of the country clearly sets a judicial foothold for the non-enforceability of collective agreements in Nigeria. By this decision, the Supreme Court plainly recited the old common law folklore with employees being at the receiving end. This means that whilst collective bargaining is a mechanism coexisting with the right of workers to organise themselves into trade union, this right remains elusive as courts are not inclined to giving effect to it. Apart from the judicial reluctance to enforce collective agreements, certain institutional and political concerns may also be at play. This stems from the fact that most cases of non-implementation of collective agreements are recorded in the public service where the government is the employer. The political lukewarm is currently

[27][2013] 9 NWLR (Pt. 1358) 1

replicated in the disinclination to pursue reforms that can ensure the enforceability of this specie of agreements. The reasons for the persistent strike actions in the educational, health and other sectors of the public service can, therefore, attributable to the ineffectiveness of the mechanism of collective bargaining in addressing the problems of employees.

Having said that collective agreements are not enforceable in Nigeria as a general rule, it requires clarity to mention that there are some limited instances in which these agreements can be enforced as exceptions to the general rule.

Exceptions to the Rule

One of the instances where a collective agreement can be enforced is when the collective agreement is incorporated into the contract of employment of a worker. *Union Bank of Nigeria v Edet*[28], is an illustration of this line of reasoning by the courts. In that case, the respondent's employment was terminated with one month notice. He contended that under a collective agreement between his union and the appellant, he was supposed to be given three written warnings before his employment could be terminated and that the requirement of the agreement was not complied with by the appellant. In dismissing the claim, the Court of Appeal per Uwaifo J.C.A held that:

> Collective agreements, except where they have been adopted as forming part of the terms of employment, are not intended to give, or capable of giving individual employees a right to litigate over an alleged breach of their terms as may be conceived by them to have affected their interest nor are they meant to supplant or even supplement their contract of employment[29].

However, some criticisms have continued to trail this position, based on its inherent impossibility to operate.In this vein, Iwunze [30] argues that the Nigerian position that a collective agreement is not enforceable by an individual employee unless it is incorporated into his individual contract of employment creates a rather impossible situation. This impossibility is to be found in a situation where a collective agreement postdates the employees'

[28][1993] 4 NWLR (Pt. 287) 288
[29]At 291
[30]Iwunze, V. op cit p. 5

contract of employment. This problem arose in *Texaco (Nig) PLC v Kehinde*[31]. In that case, the employee's contract of employment commenced in 1981, yet the employee sought to claim under a collective agreement between the employer and his union entered much later after his employment had commenced. It was held that the claim was not maintainable because the collective agreement was not incorporated into the employee's contract of employment.

Apart from the challenge of incorporating collective agreements into contracts of employment for the reason that one usually pre-exists the other, another practical challenge lies in the unwillingness of the employers to incorporate such agreements. This is always done with the intention of avoiding liability that may arise from alleged breach. For an employee who is desperately in need of a job, pressing on the incorporation of collective agreements into a contract of employment may also be an unaffordable luxury. Moreover, ignorance on the part of new job seekers also plays into the hands of employers. Due to these practical challenges, employees remain vulnerable. For these reasons, the rule of privity of contracts as relates to collective agreements has been undergoing serious developments by way of reforms in other jurisdictions so as to make the position of employees more considerate. The position in other jurisdictions appears in the subsequent part of this work.

Another circumstance in which a collective agreement may be enforced by a Nigerian court is where one of the parties to it had already relied on it. The effect is that where an employer had placed reliance on the terms of a collective agreement in arguing his case, he would not be heard to say that the agreement upon which he has already relied is unenforceable by the employee because it is not incorporated into his contract of employment[32].

Similarly, the doctrine of estoppel can be invoked against an employer, thereby allowing for the enforceability of a collective agreement. This happens where the provisions of a collective agreement have been acted upon by management in the past in a manner that suggests that it is binding such as taking benefit of it against the employees. Thus, in *Adegboyega v Barclays Bank of*

[31][2001] 6 NWLR (Pt. 708) 224

[32]See *Cooperative and Commerce Bank (Nig) Ltd v Okonkwo* [2001] 15 NWLR (Pt. 735) 114

Nigeria[33], Akibo Savage J held that where an employer acted on a collective agreement in such a way as to create the impression that it is binding, the agreement will be taken to have been impliedly incorporated into an individual employee's contract of employment. This is because the court will not allow a party to approbate and reprobate at the same time[34].

Under the Trade Disputes Act[35], the Minister in charge of Labour and Productivity may make an order specifying that provisions of a collective agreement or any part thereof be binding on the employer and workers to whom they relate. This is another exception to the common law rule against the enforceability of collective agreements. This is done on the deposit of three copies of the agreement with the Ministry[36]. This provision recognises collective bargaining as an important mechanism for resolving industrial disputes and is commendable on its face value. Where an order has been made by the Minister, any defaulting party may be guilty of a crime and upon conviction, liable to a fine of ₦100 or imprisonment of six months[37]. In the context of its intrinsic value, certain salient observation may be made about this provision. First, whereas there is an obligation on the employer to submit copies of a collective agreement to the Minister, there is no corresponding duty on the Minister to make an order that the agreement or part thereof should be binding on the parties thereto. This in a way creates room for lobby. The second issue lies with the penalty regime for non-observance of an order of the Minister. It is submitted that the miniscule ₦100 fine can hardly serve any meaningful purpose in terms of ensuring compliance. Thus, this fine should be reviewed upward.

Moreover, from the manner section 3 of the Trade Dispute Act is couch, it is doubtful if in addition to the non-observance of the order of the Minister sustaining a criminal charge, same can also ground a civil action for the enforcement of the collective agreement by an individual employee where his conditions of service are affected. This point appears not to have been tested by the courts. But it is obvious that resolving the issue in the negative will be to halt legitimate proceedings seeking to enforce collective

[33](1977) 3CCHCJ 497
[34]See *Halshall v Brizell* (1957) Ch. 197
[35]Section 3 (3) Trade Disputes Act, Cap T8 Laws of Federation of Nigeria, 2004
[36]Ibid section 3 (1)
[37]Ibid section 3 (4)

agreements, thus making the position of employees almost as precarious as it has always been under common law.

Another salient point deducible from section 3 above is that it does not provide the relevant parameters which should be used by the Minister in deciding whether or not to order that a collective agreement should be binding on the parties. This means that such a decision is entirely based on the Minister's discretion, thus, paving way to arbitrariness. Moreover, it has been the traditional role of the courts to adjudge whether a contract is legally binding or not. In carrying out this functions, judges who are appointed to man the courts, by virtue of their training and practical experience, are well endowed with the ability of ascertaining the enforceability of contracts. It is doubtful if the Minister in charge of Labour and Productivity is better equipped to determine the enforceability of a contract than the courts. It is submitted that this role has been and continues to be better performed by the courts rather than an administrative officer of government. Interestingly, the Minister's order is capable of being enforced by the courts, which is an indirect enforcement of collective agreements. The question is what stops the courts from enforcing collective agreements originally?

The Position in other Jurisdictions

In England, the current position is that a collective agreement is enforceable if it is in writing and provides expressly that it is legally binding on the parties thereto[38]. This is reform in good course but it does not amount to foolproof result of the desired legal reform. This provision insists on the express stipulation in the collective agreement that it is legally binding. It is not even sufficient to state that the agreement is binding *simpliciter* as it can be interpreted to mean 'binding in honour'. A major problem with this approach is that it tends to circumvent the cardinal rule that the intention to create legal relations can be implied from the language and words used in a contract and not necessarily express terms.

In the United States of America, courts have evolved certain theories which have become guiding rules for the enforceability of collective agreements. These rules have

[38]See section 179 (1) and (2) of the English Trade Union and Labour Relations (Consolidation) Act, 1992

culminated into a consistent judicial attitude capable of circumventing the privity doctrine. The first rule is based on the theory of 'custom and usage'. This theory maintains that if an employee sues an employer for breach of the terms of a collective agreement, he is only saying that the terms of his employment, by custom and usage, equate to those bargained by the union[39]. The second theory is premised on the rule of agency. It stipulates that a trade union acts as agent of the principals who are members of the union so that whenever it bargains with the employer, it is in fact bargaining for its members[40]. This form of creative judicial activism is desirable in Nigeria as a way of ensuring better protection for corporate employees.

In Malaysia, collective agreements are absolutely legally binding and enforceable under the Industrial Relations Act. The position under the Act is that terms and conditions of a collective agreement are implied into a contract of employment between workmen and their employers, and employers are bound by the collective agreement unless varied by a subsequent agreement or decision of court[41].

A point to note is that where collective agreements are binding and legally enforceable, it makes employers more responsive to the working conditions of employees, the corporate governance effect of which is made manifest in harmonious labour relations. An enabling statutory framework and liberal judicial approach on collective agreements can, therefore, contribute significantly in maintaining inter-party dialogue and cohesive labour relations between employers and employees. It must be reiterated that inasmuch as collective agreements are designed to settle industrial disputes among other things, they may also fuel industrial disputes where agreed terms and conditions are persistently violated by employers. This has been a recurring issue in Nigeria, where employees have had to embark on strikes as a result of the failure of employers to fulfill their promises under collective agreements.

This has reduced the mechanism of collective bargaining with its ensuing negotiations to a sort of tactical maneuver

[39]Iwunze, V. op cit p. 6
[40]Gregory, C.O. 'The Enforcement of Collective Agreements in the United States: Current Problems' (1968) p. 160
[41]See section 17 (2) Industrial Relations Act, 1967

employed by employers to halt legitimate demands of employees. Unfortunately, this tactic is known to serve only short-term purposes as the long-run brings with it more tense labour disputes resulting to industrial actions such as strikes and picketing. In Nigerian public Universities and other higher institutions of learning, the strain in labour relations between trade unions such as the Academic Staff Union of Universities (ASUU) on the one hand and government on the other hand is largely due to failure on the part of the later to honour the terms of collective agreements. It is hard to imagine how this scenario will disappear from the system without mutations in the public/legal perception of collective agreements. This calls for a total paradigm shift from the current position which regards collective agreements as non-enforceable to that which gives binding force to these agreements and for courts to enforce them as if they were ordinary contracts.

Conclusion

This article has carefully examined the mechanism of collective bargaining within the context of corporate governance. It posits that the mechanism serves certain important corporate governance purposes to wit; it helps in ensuring industrial democracy by providing an opportunity for employees to participate in corporate decision-making. It also ensures industrial peace by providing a platform for dialogue as a way of settling industrial disputes. Collective bargaining is also important in that it enables employers to improve the working conditions of employees as a way of guaranteeing job satisfaction, thereby, improving productivity. Negotiations under collective bargaining yield collective agreements between management and workers. That notwithstanding, is it obvious that the non-enforceability of collective agreements works to whittle down the import of embarking on collective bargaining through negotiations. It is, therefore, submitted that the Nigerian position is anachronistic and somehow out of tune with the dictates of good corporate governance, and should as a matter of course be jettisoned in the interest of industrial democracy. By this, Nigerian courts are called upon to embrace the kind of creative activism that has been demonstrated in other jurisdictions such as the United States of America with the view to upholding and safeguarding the enforceability of collective agreements.

Finally, collective bargaining should be made an important component of corporate governance regulation. In this regard, companies should be made to include in their annual returns to the Corporate Affairs Commission, information showing their level of implementation of collective agreements. Where that has not been done, the annual returns should carry accompanying notes, stating and explaining reasons for non-implementation. This disclosure mechanism will enable the Corporate Affairs Commission to gauge the level of compliance with the terms and conditions of collective agreements and to direct the defaulting companies on the line of action to take as corrective measure.