

## REVISITING THE RIGHT TO STRIKE IN NIGERIA VIS A VIZ THE TRADE UNIONS (AMENDMENT) ACT 2005 AND THE TRADE DISPUTES ACT 2006<sup>1</sup>

### Abstract:

Trade unionism is no longer alien to many countries that have made copious provisions in their Constitutions as well as adoption of the Conventions of International Labour Organisation on Labour matters. In Nigeria, the principal legislations dealing with trade unions are the Trade Union (Amendment) Act 2005 and the Trade Disputes Act 2006. Unfortunately, there are incessant strike actions embarked upon by several unions and organisations in Nigeria. This paper in the main considered the causes of trade disputes; the relevant statutory provisions for settlement of disputes and the right to strike under the two principal legislations. It further reviewed the provisions of the Constitution of the Federal Republic of Nigeria on the operations of trade unions. By way of conclusion, this paper offered some measures to be seriously taken by unions, organisations and employers when confronted with trade disputes with a view to achieving amicable settlement. The paper also recommended the need for Emphasis had also been made in this paper to encourage workers to be more involved in collective bargaining and its enforcement mechanisms within the organization.

**Keywords:** Trade Unions, Legislations, the Constitution, Trade Disputes, collective bargain/agreement and Right to strike.

### 1.1. Introduction:

In Nigerian today, there are many trade unions that have been formed with the mandate to regulate the activities and conduct of their members on the one hand and the desire to have a working relationship with their employers through collective bargaining and trade agreements that would guide both the employers and the employees. This is principally with a view to enthrone good industrial relationship. With the same aspiration to model a working instrument for the employers and employees, the Trade Union Act and Trade dispute Act were enacted to among other things control the relationship between workers and employers.

The problem in trade disputes arises from:

- (a) Failure in negotiations between employers and employees
- (b) Conflict in industrial relations
- (c) Failure to comply or adhere to trade agreements reached by parties sequel to negotiations
- (d) Constant demand for improved working conditions
- (e) Unilateral introduction of unacceptable policies that adversely affect the rights of the employees, for instance, reduction in wages and salaries, downsizing by declaring some workers redundant, refusal to pay minimum wage of N18,000 as nationally adopted or even proscription of trade unions arbitrarily.

Having said these so far, this paper will proceed to deal with the authority to form trade unions; conceptual clarifications; an overview of the right to strike as provided by the Trade union Act and the Trade Disputes Act on comparative analysis; suggestions on how to settle trade disputes and lastly conclusions.

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### **2.1.1. Authority to form or belong to Trade Unions:**

Some legislation have specifically made provisions regarding qualifications for belonging to or forming trade unions in Nigeria. This segment will consider the statutory requirements to that effect as follows:

(a) The Constitution of the Federal Republic of Nigeria, 1999 as altered.

Section 40 of the Constitution provides:

Every person shall be entitled to assemble freely and associate with other persons, and in particular he may form or belong to any political party, trade union or any other association for the protection of his interests.

The above provision recognizes the fact that trade unions are potent forces in industrial relations, though not without limitations. Their existence is potentially to ensure industrial harmony and progress and most particularly to protect their interest democratically. We therefore, unequivocally say that trade unions acting within the law are concomitantly entrenching industrial democracy. This status is supported by provisions of sections 39 of the same Constitution which guarantees freedom of expressions and the press. including freedom to hold opinions and to receive and impart ideas and information without interference. In the same way there are limitations associated with this freedom of expressions. What is significant here is that the Unions are clothed with the constitutional force to express themselves albeit within the confines of the law and in the interest of the welfare of its members. The right to speak out when oppressed or faced with obnoxious or arbitrary policies enunciated by the employers is paramount. The freedom to express itself gives the union the leverage and boldness to embark on negotiations and collective bargaining to protect the interest of its members.

### **(b). Conventions and Treaties:**

Some International Conventions, Treaties and Protocols support the right of members to form or join associations or unions. For instance Article 8 (1) of the International Covenant on Economic, Social and Cultural Rights (ICESCR) copiously enjoins member States who have ratified the Covenant to guarantee the right of every individual to form or join a trade union. Article (8)(1) (a) of the Covenant Provides this:

The right of everyone to form trade union and join trade union of his choice, subject only to the rule of the organization concerned; for the promotion of his economic and social interest. No restriction may be placed on the exercise of his right other than those prescribed by law and which are necessary in a democratic society in the interest of national security or public order or for the protection of the right and freedom of others.

The above provision of ICESCR is in pari-material with the provisions of Section 40 of the 1999 Constitution of Nigeria as altered and reproduced above.

The provisions of Article 2 of the International Labour Organisation Convention 87 on Freedom of association and Protection of the Rights to organize one of 1948 states:

“Workers and employers, without distinction whatsoever, shall have the right to establish and subject only to the rules of the organization concerned, to join organisations of their own choosing without previous authorization.”

The provisions of the ILO (supra) is even more forceful with the addition “without previous authorization”. Responding to the ILO Models and general approach to the principle of freedom of association, Bokolo P.S Giame, Ufuoma V. Awhefeada and Omerionwan K. Edu <sup>2</sup> opined in very illuminating words as follows:

“The respect for freedom of association around the world is a fundamental and unavoidable requirement for the International Labour Organisation because it is one of the most essential characteristic, namely tripartism, and the important responsibilities based on the Constitution and ILO instruments that employers and workers organisations are called upon to exercise within the organization itself as well as within the different member States”.

In Nigeria the application of these statutory provisions are further made manifest by the fact that within some organisations or parastatals there are internal arrangements for workers to jettison their membership of Nigeria Labour Congress (NLC) and form unions within their organization as an avenue to seek redress and pursue the welfare of their members internally.

We think without mentioning the parastatals where such practice happens we are in total support of the new trend and innovation which is very encouraging to minimise strike actions as we can see in the subsequent segments of this paper. The rationale of this lies in the fact that in Nigeria, organisations are categorized as Special class; „A“ Class, „B“ Class, „C“ Class, etc. This categorization also follows with huge disparity in the wages, salaries and general emoluments. Accordingly, it is difficult for staff of Nigerian National Petroleum Company (NNPC); Central Bank of Nigeria (CBN), Niger Delta Development Corporation (NNDC) etc to proceed on strike along with lesser organisations with little or no pay under the aegis of Nigerian Labour Congress. When NLC as a Nigerian Labour Union is on strike these big organizations mentioned here are apathetic to join. They don’t see the for strike.

Furthermore, the African Charter on Human and Peoples Right (Ratification and Enforcement) Act 1981 in its Article II provide thus:

Every individual shall have the right to assemble freely with others. The exercise of this right shall be subject only to necessary restrictions provided for by law in particular those enacted in the interest of national security, the safety, health and rights and freedom of others.

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<sup>2</sup> See **Giame, B.P.S, U.V, and Edu, O.K** (2020) An Overview of the Right to Strike in Nigeria and Some Selected Jurisdiction. *Beijing Law Review*, 11, 464 488. <https://doi.org/10.4236/bir.2020./2029>

From the foregoing statutory provisions restrictions are placed on areas concerning security, safety, health and generally essential services. It really makes sense and there is apparently nothing that can genuinely temper with all those solemn provisions giving priority to essential services to the entire community. We shall explain more on this aspect concerning the meaning and components of essential services for purposes of emphasis.

### **3.1.1 CONCEPTUAL CLARIFICATIONS:**

In this part the paper has embarked on generous explanation and meaning of terms and in some cases attempts have been made to define certain terms as postulated by several authors and jurists.

#### **(a) Trade Union.**

A combination of workers of the same trade or of several allied trades, for the purpose of securing by united action the most favourable conditions regarding wages, hours of labour etc for its members.<sup>3</sup>

The Trade Union Act defines trade union to mean “any combination of workers or employers, whether temporary or permanent, the purpose of which is to regulate the terms and conditions of employment of workers, whether the combination in question would or would not, apart from this Act, be an unlawful combination by reason of any of its purposes do or do not include the provision of benefits for its members<sup>3</sup>.”

This definition offered by the Trade Union Act is to our mind suggestive of an ambiguity to the effect that a trade union is one whether it offers as its purposes the benefits for its members, or not. If that is the case the very essence of forming a trade union will be defeated and indeed would have no meaning if it would not incorporate in its provisions benefits of its members. We strongly believe that the last leg of the definition ought to be properly couched to always emphasis on the interest of members.

#### **(b) Worker.**

Means any employee that is to say any public officer or any individual (other than a public officer) who has entered into or works under a contract with an employer, whether the contract is for manual labour, clerical work or otherwise, express or implied, oral or in writing and whether it is a contract of service or of apprenticeship.<sup>4</sup>

#### **(c) Essential Services.**

1. The public service of the federation or of a state which shall for purposes of this Act, include service in a civil capacity, of persons employed in the armed forces of the federation, or any part thereof, and also, of persons employed in an industry or undertaking (corporate or incorporate) which deals or is connected with the manufacture or production of materials for use in the armed forces of the Federation or any part thereof.

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<sup>3</sup> See Black's Law Dictionary Sixth Edition, Page 1494 See Section 1 (1) of the Trade Unions Act.

<sup>4</sup> See Section 48 (1) of the Trade Dispute Act, 2006.

2. Any Service established, provided or maintained by the Government of the federation or a state, by a local government council, or any municipal or statutory authority, or by private enterprise:

- (a) For, or in connection with the supply of electricity, power or water or of fuel of any kind:
- (b) for, or in connection with, sound broadcasting or postal, telegraphic, cable, wireless or telephonic communication.
- (c) For maintaining parts, labours, docks or aerodromes, or for, or in connection with, transportation of persons, goods or livestock by road, rail, sea, river or air;
- (d) for or in connection with the burial of the dead, hospitals, the treatment of the sick, the prevention of disease, or any of the following public health matters, namely sanitation, road-cleansing and the disposal of night-soil and rubbish;
- (e) for dealing with-outbreaks of fire.

3. Service in any capacity in any of the following organisations:-

- (a) the central Bank of Nigeria
- (b) The Nigeria Security Printing and Minting Company Limited.
- (c) Anybody corporate licensed to carry on banking business under the Banks and other

Financial Institutions Act.<sup>5</sup>

**(d). Strike**

The act of quitting work by a body of workers for the purpose of coercing their employer to accede to some demand they have made upon him, and which he has refused..... A combination to obtain higher wages, shorter hours of employment, better working conditions or some other concession from employer by the employees stopping work at preconcerted time, and it involves a combination of persons and not a single individual. A combined effort among workers to compel their employer to the concession of a certain demand, by preventing the conduct of his business until compliance with the demand.

..... The term strike includes any strike or other concerted stoppage of work by employees (including a stopped by reason of the expiration of a collective-bargaining agreement) and any concerted slow – down or other concerted interruption of operations by employees.<sup>6</sup> We have taken pains to reproduce the lengthy definition or meanings ascribed to the term strike by the learned authors of Black’s Law Dictionary for purposes of comparison with the provisions of the Act and other authorities.

For instance the Trade Disputes Act in its interpretation section<sup>7</sup> defines “strike” to mean the cessation of work by a body of persons employed acting in combination refusal or a concerted refusal or a refusal under a common understanding of any number of persons employed to continue to work for an employer in consequences of a dispute, done as a

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<sup>5</sup> See the First Schedule (Section 48) of the Trade Disputes Act, 2006. We shall make our observations on the definition of essential services as herein provided.

<sup>6</sup> See Black’s Law Dictionary, Six Edition (with Pronunciations) Centennial Edition (1891 – 1991) Page. 1423

<sup>7</sup>Further See Section 48 (1) of the Trade Dispute Act 2006

means of compelling their employer or any person or body of persons employed, or to aid other workers in compelling their employer or any person or body of persons employed, to accept or not to 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; and
- (b) “refusal to continue to work” includes a refusal to work at usual speed or with usual efficiency;
- (e) “trade dispute” means any dispute between employers and workers which is connected with the employment or non-employment, or the terms of employment and physical conditions of work of any persons.

From the definitions offered by the Black’s Law Dictionary and the Trade Disputes Act 2006, there is a lot of inconsistencies and confusions even as B.P.S, Giame, A whefeada, & Edu. O.k (supra) referred to as the position of Lord Denning, M.R. in TRAMP SHIPPING COMPANY V. GREENWISH MARINE INC-where lord Denning defined strike as follows:

Strike is a concerted stoppage of work by men, done... with a view to improving their wages or conditions of employment, or giving vent to a grievance or making a protest about something or otherwise supporting or sympathizing with other workmen in such endeavor.

Like they rightly observed, Lord Denning has expanded the scope of the definition and meaning of strike to include “protest” over conditions of service as well as sympathy strike. As it is common practice recently that when Nigerian Labour Congress embarks on Strike, other trade unions may join on sympathy basis even though they have no complaint to pursue at their places of work. We condemn sympathy strike as it occasions unnecessary economic loss and encourages laziness.

**(e) “Collective Agreement”**

Means any agreement in writing for the settlement of disputes and relating to terms of employment and physical conditions of work concluded between –

- (a) an employer, a group of employers or organisations representing workers or the duly appointed representative of any body of workers on the one hand.
- (b) One or more trade unions or organisations representing workers, or the duly appointed representative of any body of workers, on the other hand.

Collective bargaining is recently taking a centre position in trade relations. It has become the bedrock of trade unionism in Nigeria as well as other countries who are signatories to the International Labour Organization (ILO) conventions and declarations. It is essential that collective bargaining gives birth to effective collective agreement in most cases as instruments for settlement of disputes.

(f) **Lock-out.**

This means the closing of a place of employment, or the suspensions of work, or the refusal by an employer to continue to employ any number of persons employed by him in consequences of a dispute, done with a view to compelling those persons, or to aid another employer in compelling persons employed by him, to accept terms of employment and physical conditions of work.<sup>7</sup>

Our worry with this definition/meaning is that it does appear that the concept of lock-out encourages forced labour which is unconstitutional. We are, therefore, of strong view that lockout should not be preached in contemporary Nigeria. It is antithesis to the principle of freedom of association in and collective bargaining by trade unions.

(g) **Industrial Relations.**

The term includes all phases of relations between employer and employee, including collective bargaining, safety, employee benefits etc.<sup>8</sup> In real terms industrial relations can be translated to a tripartite relationship that brings three parties together and that is to say the workers or their representatives (like union) the owners of the work and government or its agency. In this relationship the parties come together and set up rules and regulations guiding the organization and the job.

(h) **Picketing**

This is another term that refers to the action of striking workers who venture to prevent other persons who are directly or not directly affect by pending strike coercing them to join the strike action. Furthermore, we say that this is not acceptable as it violates true freedom of association and the principle of collective bargaining. We submit that trade unions are independent and are bound by their individual rules and regulations, there should therefore not suffer any external interference.

(i) **Disputes of right and Disputes of interest:**

Disputes of right means any labour dispute arising from the negotiation, application, interpretation of a contract of employment or collective agreement under this Act or any other enactment or law governing matters relating to terms and conditions of employment<sup>9</sup>. Disputes of interest, on the other hand are concerned with “negotiations of new rights or quest for variation of already existing contract of employment or collective agreements. In further explaining on the distinction between dispute of right and dispute of interest Gogo George Ofuturu<sup>10</sup> said:

“In terms of the mechanism for the resolution of labour dispute, an important aspect of the distinction between disputes of right and dispute of interest is that disputes of right are subjected to arbitration and adjudication procedures, while dispute of interest are left to

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<sup>7</sup> See section 48 of the Trade Dispute Act, 2006.

<sup>8</sup> See Black's Law Dictionary (supra) page. 778

<sup>9</sup> See Section 31 (9) (a) of the Trade Unions (Amendment Act) 2005 /

<sup>10</sup> Gogo George Otuturu: Trade Union (Amendment) Act 2005 and The Right To Strike In Nigeria: An International Perspective NJURW vol. 8 No.4,2014.

be regulated through collective bargaining and the respective powers of employees, which could include strike and lockouts;

### **3.1.1 RIGHT TO STRIKE**

The crux of the matter and problem in this paper is basically about strike essentially with questions like why strike, legitimacy of strike, procedure for strike, who can go on strike, how can it be resolved or settled etc. Effort had been made in this paper to present various definitions of strike as offered by learned authors. The effect is that there is no universally accepted definition of strike. But it does appear that for purpose of this paper we would adopt the definition in section 48 of the Trade Disputes Act, 2006 which includes “cessation of work” and “refusal to continue to work”. We note that in labour relations there is a current practice whereby trade unions evolve collective bargaining as supplementary instrument to existing contract of employment. The concept of collective bargaining developed as a panacea to the difficulties posed by individual contracts of employment. Section 91 of the Labour Act refers to collective bargaining as the process of arriving or attempting to arrive at a collective agreement while collective agreement means: an agreement in writing regarding working conditions and terms of employment concluded between:

- (a) an organization of workers or an organization representing workers (as an association of such organizations) of the one part; and
- (b) an organization of employers or an organization representing workers (or an organization of such organizations) of the other part.

Collective bargaining is very internationally recognized as in most cases the parties of a collective bargaining easily reach a compromise and concession leading to perfection of agreements that at the end stop conflicts or become less severe and less complicated. It is, therefore, when there is failure to meet the elements of both collective bargaining and collective agreement that strike is contemplated. Such failure of collective bargaining and agreement results into conflict and accordingly trade disputes. In *Attorney-General of Oyo State Vs. Nigeria Labour Congress*<sup>11</sup> it was held that:

For a dispute to be declared a trade dispute within the meaning of section 48 of the Trade Dispute Act, the following ingredients must be present:

- (a) There must be a dispute
- (b) The dispute must involve a trade
- (c) The dispute must be between:
  - (i) employers and workers
  - (ii) workers and workers
- (d) The dispute must be connected with
  - (i) the employment or non-employment
  - (ii) the terms of employment
  - (iii) physical condition to work of any person.

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<sup>11</sup> (2003) 8 NWLR (Part 821) 1. See also, Sam Erugo: Introduction to Nigerian Labour Law 2<sup>nd</sup> Edition 2019 page 349 - 350

Sam Erugo summarized it that before a dispute would qualify as a trade dispute it must be between a worker and worker, between worker and his trade union and the dispute must have some industrial coloration.<sup>12</sup>

### **Prohibitions and Mandatory Provisions on Right to Strike.**

Generally, as a departure from the colonial era when strike was seen as a crime against the state and the master, the situation has changed dramatically by the enactment of international conventions and national laws. A plethora of decided cases have supported strike as a potent apparatus to pursue interests. In *Union Bank of Nigeria Ltd. V. Edet, Uwaifo*, JCA clearly stated the position this way:

“ it appears that whenever an employer ignores or breaches a term of that agreement resort could only be had, if it all, to negotiation between the union and the employer and ultimately to a „strike“ should the need arise and it be appropriate”.

Furthermore, in *Crofter Harris Tweed Co. Ltd Vs. Veitch*<sup>13</sup> the court per Lord wright said that the right to strike is the essential element in the principle of collective bargaining. It is an essential element not only of the unions“ bargaining itself, it also a necessary sanction for enforcing agreed rules.

However, the provisions of the Trade Dispute Act have copious mandatory requirements that must be following before embarking on strike.

#### *(i) Obligation to deposit collective agreements with the Minister:*

Section 3 (1) of the Trade Disputes Act provides that “where there exists any collective agreement for the settlement of a trade dispute, at least three copies of the said agreement shall be deposited by the parties thereto with the minister.

subsection 3 (3) gives the Minister the power to make an order upon receipt of copies of the collective agreement in respect thereof which order shall be binding on the employers and workers to whom they relate.

Under subsection (4), failure to comply with the terms of the Minister’s order is an offence liable upon conviction to a fine of N100 or imprisonment for a term of six months.

From the wordings of these section it appears that the decisions of the Minister (i.e order) is final unless he decides to refer the dispute to the Industrial Arbitration Panel pursuant to sections 5 and 9 or reference to a board of inquiry under section 33 of the Act.

#### *(ii) Procedure before dispute is reported:*

Here, sections 4 and 5 are very important and mandatory. For instance section 4 (1) makes it imperative that in the face of an existing agreed means of settlement, the parties shall first attempt to settle it by that means. If the attempt fails or where there is no such agreed means, the parties shall within 7 days from the date the dispute arose meet together to

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<sup>12</sup> Sam Erugo, Ibid, p.350

<sup>13</sup> (1942) | All ER 142 at 159

appear before a mediator mutually agreed and appointed by them with the aspiration to settle the dispute amicably.

(iii) *Reporting of Dispute if not amicably settled:*

Section 6(1) the Trade Dispute Act further provides: if within seven days of the date on which a mediator is appointed in accordance with section 4(2) the dispute is not settled, the dispute shall be reported to the Minister by or on behalf of either of the parties within three days of the end of the seven days. Under section 6 (2) the report to the Minister shall be in writing and shall record the points on which the parties disagreed including a description of the steps already taken by the parties to reach amicable settlement.

(iv). *Reference of Dispute to Arbitration Tribunal if Conciliation Fails.*

Section 9 of the Act established a twelve member Arbitration Panel to be appointed by the Minister. For purposes of settlement of a dispute the chairman of the Industrial Arbitration Panel shall constitute an arbitration tribunal in accordance with subsection (4) of section 9. Where the arbitration tribunal fails to agree on the award, the matter shall be decided by a majority of them. Provided that the Arbitration and Conciliation Act shall not apply to any proceedings of an arbitration tribunal appointed under section 9 of the Act or to any award made by such a tribunal<sup>14</sup> the award shall be made within 21 days of the constitution of the tribunal or such other period as the Minister may allow in any circumstances and a copy of the award shall be sent to the Minister and not to the parties but the Minister shall where necessary order reconsideration of the award<sup>16</sup>.

(v) *Reference of dispute to National Industrial Court if tribunals award is objected to.*

In the event of notice of an objection to the award by an arbitration tribunal, the Minister shall forthwith refer the dispute to the National Industrial Court established by this Act. And by subsection (2) the award of the National Industrial court shall be binding on the employers and workers to whom it relate.<sup>17</sup>

(vi) *Interpretation of award of arbitration tribunal or national industrial court.*

Section 15(1) provides:

“if after an award of –

- (a) an arbitration tribunal appointed under section 9 of this Act; or
- (b) the National Industrial court, has become binding on the employees and workers to whom it relates, any question arises as to the interpretation of the award may make an application to the National Industrial Court for a decision on that question.

<sup>15</sup> We are of the view that an award of the National Industrial Court should be tested on appeal by an aggrieved party rather than declaring it binding and perhaps final, although the Act did not use the word final neither did it say appeal shall lie

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<sup>14</sup> See Sections 12, (1) & (2) of the Trade Disputes Act,

2006 <sup>16</sup> See section 13 (1), (2), (3) & (4) of the Act <sup>17</sup>

See Section 14 (1) (2) & (3) of the Act.

<sup>15</sup> The question is whether sending the Award back to the National Industrial Court for determination is right. Is the court not functus officio?

to the superior court. Going by the Nigerian jurisprudence, an appeal shall lie from the National Industrial Court to the Court of Appeal as per order 64, National industrial Court of Nigeria (Civil Procedure) Rules, 2017.

Be that as it may we find comfort in attesting to the fact that sections 4, 6, 9, 13 and 15 of the Act encourages alternative dispute resolution mechanism to be explored first. This is a very healthy approach to the settlement of trade disputes, before embarking on strike action.

*(vii). Does Section 18 of the Trade Dispute Act ban strike actions.*

This has in recent times taken jurisprudential space and discourse to the effect that there is sharp division in that some argue that section 18 has banned strike while others take the position that it did not. To do justice by joining in the discourse in this paper, we take the step to fully reproduce the provisions of section 18.

(1) An employer shall not declare or take part in a lock-out and a worker shall not take part in a strike in connection with any dispute where:

- (a) the procedure specified in sections 4 or 6 of this Act has not been complied with in relation to the dispute; or
- (b) a conciliator has been appointed under section 8 of this Act for the purpose of effecting a settlement of the dispute; or
- (c) the dispute has been referred for settlement to the Industrial Arbitration Panel under section 9 of this Act; or
- (d) an award by the arbitration tribunal has become binding under section 13(3) of this Act; or
- (e) the dispute has subsequently been referred to the National Industrial Court under section 14 (1) or 17 of the Act.
- (f) the National Industrial Court has issued an award on the reference.

Going further, subsection 2 slams on any person who contravenes section 19(1) with ridiculous criminal sanctions of N100 or 6 months imprisonment thereby making it a criminal offence.

Accordingly, non-compliance with section 18 (1) is viewed very seriously. We are of the view that section 18(1) constitutes conditions precedent before legitimate strike can be embarked upon by the workers or any lock-out action by the employers. In other words once workers comply with either Section 4 or 6 of the Act, they can go ahead with strike actions as being in line with the international labour standards.

Section 18 (3) makes a settlement agreement or acceptance of an award made by an arbitration tribunal under section 13 to have ended the dispute and so any further trade dispute involving the same matters shall be treated for the purposes of this section as a different trade dispute. We agree with the conclusion that the dispute shall become an end. However, we strongly take the position that any further trade dispute involving the same subject matters should be prohibited as it will indirectly encourage multiplicity of actions. In the case of:

*Federal Government of Nigeria & Minister of Education Vs. Academic Staff Union of Universities (ASUU)*,<sup>16</sup> the Minister of Labour and Employment acting on the powers conferred on him by section 17 of the Trade Disputes Act, referred the trade dispute (arising from workers of essential services) direct to the National Industrial Court for its determination. This was in relation to the ASUU strike which was on going. Government filed an application seeking interlocutory injunction restraining the Respondents (ASUU) from continuing with the indefinite strike action pending the determination of the suit/referral to the Court. After hearing arguments from both sides on highly contested “issues by learned Senior Advocates, the court made reference to section 18 of the Trade Dispute Act which prohibits workers from taking part in strike in connection to a trade dispute already referred to the National Industrial Court under section 14(10) of the Act. The court consequently held that section 18(1)(e) of the trade Disputes Act connotes a mandatory obligation or duty on the part of employers and employees not to declare or partake in any strike when dispute has been referred to the court, and where such lock-out or strike is ongoing at the time of the referral, it shall cease or abate pending the determination of the suit.

We are at *ad idem* with the decision and conclusion reached by the court as it is absolutely in tandem with the provisions of the Act.

In conclusion on this we respectively opine that section 18 of the Act doesn't ban strike action but creates conditions precedent or pre-strike action procedure. Indeed it also encourages settlement through conciliators, arbitrators and mediators while embarking on strike should constitute a last resort.

This position is supported by the often cited case of *ECHE V. STATE EDUCATION COMMISSION*<sup>17</sup> which was a case where mediation failed between post primary and public primary schools teachers in Anambra state, Araka, CJ held when one of the conditions enumerated in section 17 (now section 18(1)) has been complied with, strike action can be said to be lawful. We are further of the view that the various arguments against strike including the various provisions posed as conditions precedent are useful in the circumstances.

We say so because the effect of strike actions emanating from a proliferation of trade unions in Nigeria signals danger actions emanating from a proliferation of trade unions in Nigeria signals danger and economic disaster where strike is not restricted. The socio-economic impact of strike in Nigeria is very debilitating and it is worse with the school system where Academic Staff Union of University (ASUU) would be on strike for 9 months, too bad.

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<sup>16</sup> Unreported Case: Suit. NICN/ABJ/270/2022 delivered on Wednesday 21<sup>st</sup> day of September 2022. Justice P.I Hamman further held that the strike action which had not ended can be stopped.

<sup>17</sup> (1983) 1 FNR 386

*(viii) Strike by workers in essential service.*

The meaning of essential services had been provided in the early segment of this paper. Section 41(1) of the Trade Dispute Act 2006 (under consideration) provides:

Without prejudice to section 18 of this Act if any worker employed in any essential service ceases, whether alone or in combination with others to perform the work which he is employed to perform without giving his employer at least fifteen days' notice of his intention to do so, he shall, unless he proves that at the time when he ceased to perform that work he did not know, or had no cause to believe, that the probable consequences of his or their doing so would be to deprive the community or any part of community either wholly or to a substantial extent of that or any essential services, be guilty of an offence and be liable on conviction to a fine of N100 or to imprisonment for term of six months. We make haste to take the view that section 41 (1) of the Act as reproduced is confusing, verbose and does not make sense. In determining whether the worker had cause to believe or know the probable consequences of his action, what will be the yardstick, is it objective or subjective reasoning.

However, the first leg of the provision created the condition and indeed the offence of failure to give 15 days' notice before ceasing to work. On the other hand the second leg provides a defence for defaulting essential service worker. The defence is unnecessary. How can an electricity operator cease to go to work without knowing that the consequence of his action is total blackout. How can a locomotive driver stop work without knowing that automatically travellers would be badly affected and stranded, etc. Consequently, we suggest that the second leg of the said section 41(1) be expunged.

Furthermore, under section 41(3) no criminal proceedings shall be instituted unless the consent of the Federal Attorney General or that of the State is first sought and obtained. The general impression is that the law makers did not intend to make the provision enforceable. What this means is that private prosecution is also foreclosed since everything is in the hand of the Attorney General at federal and state levels. Section 42(1) makes similar provision to those of Section 41(1) in respect of workers ceasing to work in circumstances involving danger to person or property. It is only an offence if at the time when the worker ceases to perform that work he knows or has reasonable cause to believe that the probable consequences of his or their so doing will be to endanger human life etc.

The idea of "notice" of 15 days to our mind is very crucial and will enable the employer to either negotiate with the workers or make alternative arrangement to get other workers to take over pending the settlement of the dispute. Issues concerning essential services and workers dealing with circumstances involving danger to person or property should not be toyed with.

#### **4.1.1 CONCLUSION AND RECOMMENDATION.**

In this segment we will first of all reflect on the causes of strike in the Nigerian society.

(i) **Multiplicity of Trade Unions:**

We think that there is multiplicity of trade unions in Nigeria. Because of the freedom to form associations and trade unions as enshrined in section 40 of the 1999 Constitution, it has opened a floodgate of all manner of Trade unions. The corollary being that there is constantly unreasonable strike action from various groups. For instance there are many trade unions in the oil sector instead of having a strong union that would effectively co-ordinate, articulate and channel their complaints when they arise with one voice.

(ii) **Sympathy Strikes:**

There is this common practice of what is christened sympathy strike. For instance when Academic Staff Union of Nigerian Universities (ASUU) is on strike, the non-academic staff union join in what is termed sympathy strike, we have already said that this should be discouraged and banned.

(iii) When there is deadlock or breakdown of negotiation or collective bargaining between the employers and employees.

Negotiation and or collective bargaining or collective agreement are veritable tools for settlement of disputes. It also paves the way for successful mediation, arbitration and conciliation where the need arises. However, failure to utilize the benefits of peaceful settlement and flagrant disobedience to the terms and conditions of employment and collective bargain/agreement often lead to strike action<sup>18</sup>. Regarding the cause of Asuu strike, Alexander Yohanna and Audu Diggah referred to Njure (2021)<sup>19</sup>, listed the causes as follows.

- (a) The need for the renewal of the university system
- (b) Inability of the Federal government to fulfill the conditions included in the 2004 agreement reached between the two sides (ASUU and FG).
- (c) Payment of Earned Academic Allowances and Salaries.
- (d) Federal Government's failure to adhere to agreed terms.
- (e) Inadequate pay packages and poor welfare packages.
- (f) Displeasure in the harsh and unfriendly policies by government and employers
- (g) Government inability to set up a visitation panel to tertiary institution.

There may be additional causes of strike actions in Nigeria to those listed above but most importantly parties should obey the agreement they have reached.

The author finally submits that there exists the right to strike under section 18(1) of the Trade Disputes Act 2006 save that there are conditions precedents have to be followed. The imposition of these conditions is to stop any frivolous and unreasonable strikes. Furthermore, the conditions under section 18(1) would encourage settlement of disputes through conciliation, arbitration and mediation.

The Registrar of Trade Unions should be loathe and weary in registering groups that have similar aims and objectives to those already in existence and within the same sector.

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<sup>18</sup> See Eche V.State Education Commission, ibid

<sup>19</sup> [Africascholarpublications@gmail.com](mailto:Africascholarpublications@gmail.com) 2022 vol. 24 No. 8

For instance in the case of *OSANE V. REGISTRAR OF TRADE UNIONS*<sup>20</sup> Hon. Justice Sylvester Umaru J.S.C cited with approval the dictum of Kazeem, J.S.C in a similar circumstances and held thus:

In the opinion of the author, this new provisions make it mandatory for the Registrar of Trade Unions on receiving an application to register any trade union, to ensure that there is no other registered trade union in existence which caters for the same interest as the one applying for registration. If there is, it becomes incumbent in my view, for the Registrar, as the custodian of such information, to decline to proceed to put into effect the machinery for registration of the new trade union as set out under section 5 (2) of the Trade Union Act.

Nigeria should continue to welcome legitimate strike actions as in section 18(1) of the Trade Dispute Act, the spirit of section 40 of the 1999 Constitution and Article 11 of the African charter on Human and Peoples rights (Ratification and Enforcement) Act together with Article 8(1)(a) of the International Convention on economic, Social and Cultural Rights. All these national and International legislations are antidotes for any attempt by government to ban or negatively restrict strike actions. Implicitly, denying workers the right to strike will be doing riot to the basis of their existence as a trade unions as guaranteed by the Constitution and International Conventions. Infact to do that would put workers at the mercy of employers who would leverage on such misnomer to downsize, reduce wages unilaterally or even terminate or dismiss at will. That day should never be thought about nor to happen in this 21st century.

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<sup>20</sup> (1985) INWLR (Part 4) at 755. See also Sam Erugo *ibid* at 324.