Collective Bargaining Dynamics in the Upstream Oil and Gas Industry. The Nigerian Experience

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Abstract

This paper set out to examine collective bargaining dynamics in the Nigerian upstream oil and gas industry. The objective is to examine collective bargaining mechanism in the oil and gas sector and to identify best practices which could foster industrial peace in this strategic sector of the Nigerian economy for sustainable national development. Collective bargaining in the upstream oil and gas companies is done at the company level. Collective bargaining issues in the upstream oil and gas industry transcend the conventional compensation, benefits and working conditions of union members; the unions have been very strident in stretching discussions and negotiations to issues like expatriate quota utilization, promotions, performance management, and forms of employment relationships. This is a unique feature of collective bargaining in the oil and gas sector. It is hereby recommended that employers in this sector should endeavour to form combinations for the purpose of achieving industry-wide bargaining which many have argued would engender enduring industrial peace in this strategic sector of the Nigerian economy. More so, both the NUPENG and PENGASSAN should always encourage and engage in social dialogue and collective bargaining to resolve their problems with management in the spirit of give and take. Their demands should be backed up with facts and
figures and they should avoid adversarial and confrontational strategies in negotiations with management at all times if enduring industrial harmony and sustainable national developments are to be realised.

**Key words and phrases: Collective bargaining, dynamics, oil and gas industry, Nigerian experience.**

**Introduction**

Collective bargaining as one of the processes of industrial relations performs a variety of functions in work relations. It could be viewed as a means of industrial jurisprudence as well as a form of industrial democracy. It is a means for resolving workplace conflict between labour and management as well as the determination of terms and conditions of employment. Collective bargaining has gained root in the Nigerian upstream oil and gas industry and has been deployed in the regulation of employment relationship in this strategic sector of the economy. The Nigerian economy depends largely on oil and export earnings from oil production account for over 90% of export earnings (ICFTU, 2005). There is therefore, the need to ensure peaceful and harmonious industrial relations climate for the benefit of relevant stakeholders comprised of the employers, workers represented by their unions, the government, host communities, the customers, the society and the international community at large through effective collective bargaining.

The oil and gas sector has experienced incessant industrial crises over the years arising from interests and rights disputes as well as the crises in the littoral states, that is; the Niger Delta area instigated by the agitations of host communities where oil and gas are produced and exploited. The upstream oil and gas industry is characterized by expatriate quota abuse, delay and non-implementation of collective agreements, bad faith bargaining and all shades of unfair labour practices like casualisation, outsourcing, contract staffing and various forms of labour flexibility (Ogbeifun, 2008). These key employment issues are the brainchild of globalisation and have always attracted the attention and condemnation of the unions in the sector. Some of these issues have fuelled dramatic and recurrent industrial action in the upstream oil and gas industry in Nigeria. It has been observed that owing to the strategic importance of this sector to national economic development, the two trade unions in this sector namely National Union of Petroleum and Natural Gas Workers (NUPENG) and Petroleum and Natural Gas Senior Staff Association of Nigeria (PENGASSAN) which are the bargaining agents for workers in this industry have
gained considerable bargaining power and they have repeatedly exploited this to their advantage in the cause of championing the demands of their members. This is evident in the quantum of pecuniary and non-pecuniary benefits that the unions in this sector have secured for their members in the past and in recent times. The National Union of Petroleum and Natural Gas Workers (NUPENG), one of the 29 industrial unions currently affiliated to the Nigeria Labour Congress (NLC) organises and represents the interests of the junior workers (blue-collar workers) in the oil and gas industry and the Petroleum and Natural Gas Senior Staff Association of Nigeria (PENGASSAN) organises and represents the interests of senior workers (white-collar workers) and is affiliated to the Trade Union Congress (TUC). The Trade Union Congress replaced SESCAN (Senior Staff Consultative Association of Nigeria) and came into existence by the enactment of the 2005 Trade Union Amendment Act.

The objective of this paper is to examine collective bargaining dynamics in the oil and gas sector and to identify best practices which could foster industrial peace in this strategic sector of the Nigerian economy for sustainable national development.

Theoretical and Conceptual Framework of Collective Bargaining

According to Rose (2008), the term collective bargaining was originated by Webb and Webb (1920) to describe the process of agreeing terms and conditions of employment through representatives of employers (and possibly their associations) and representatives of employees (and probably their unions). Rose (2008) posits that collective bargaining is the process whereby representatives of employers and employees jointly determine and regulate decisions pertaining to both substantive and procedural matters within the employment relationship. The outcome of this process is the collective agreement. Salamon (2000) opines that collective bargaining is a method of determining terms of employment and regulating the employment relationship, which utilises the process of negotiation between representatives of management and employees and results in an agreement which may be applied uniformly across a group of employees. Davey (1972) views collective bargaining as “a continuing institutional relationship between an employer entity (government or private) and labour organization (union or association) representing exclusively a defined group of employees of said employer (appropriate bargaining unit) concerned with the negotiation, administration, interpretation and enforcement of written agreements covering joint understanding as to wages/salaries, rates of pay, hours of work and other conditions of employment”.
International Labour Organisation (ILO) (1960) views “collective bargaining as negotiations about working conditions and terms of employment between an employer, a group of employers or one or more employers’ organization, on the one hand and one or more representative workers’ organization on the other, with a view to reaching agreement”. International Labour Organization (2002) succinctly captures the essence of collective bargaining as follows:

“Collective bargaining represents the backbone of the employer-employee relationship. It is widely accepted as the most important instrument for the determination of wages, employment conditions and the regulation of employer-employee relations. In practice, collective bargaining is a process of obtaining concessions and reaching compromises on employment and working conditions. As a tool for the practice of industrial relations, collective bargaining may be interpreted in either a broad or a narrow sense. In its broad sense, it involves a process of interest accommodation through direct or indirect bipartite and tripartite dealings. By contrast, in its narrow sense, collective bargaining is a process of negotiation between employers, individually or as a group, and trade unions. The outcome of such negotiations is an obligatory document, a collective agreement that determines wages and other conditions of work. Importantly, the concept of collective bargaining has expanded considerably in recent years to encompass more than just the negotiation of collective agreements. It involves a continuous process of discussion, consultation and bargaining between employers and workers on a wide range of issues, such as job classification, termination of employment, recruitment and promotion, bonuses and benefits, and sickness pay” (p. 20)

Odigie (1993) citing Chamberlain and Shulman (1949) opined that “the heart of collective agreement, indeed, of collective bargaining is the process for continuous joint consideration and adjustment of plant problems”. The emphasis of collective bargaining is based on reconciliation of divergent interests or demands. With respect to collective bargaining theory, the main contributors are the Webbs, Chamberlain and Kuhn, Walton and Mckersie and Flanders. The Webbs (1902) regarded collective bargaining as one of the three main methods used by trade unions to achieve their basic aim of improving the conditions of their members’ working lives (Rose, 2008 & Fajana, 2000). Chamberlain and Kuhn (1965) viewed collective
bargaining as a means of contracting for the sale of labour (marketing theory), a form 
of industrial government (governmental theory) and as a method of management 
(managerial theory). Walton and Mckersie (1965) identified four models of bargaining 
behaviour. These are distributive bargaining, integrative bargaining, intra- 
organisational bargaining and attitudinal structuring. Flanders (1970) views collective 
bargaining as “a social process that continually transforms disagreements into 
agreements in an orderly fashion”. From the forgoing therefore, it is discernible that 
collective bargaining is a rule-making process; it is also a means for resolving 
industrial conflict as well as a means for determining terms and conditions of 
employment. The product of collective bargaining is a collective bargaining 
agreement (CBA) which may be in the form of procedural agreements or substantive 
agreements. Procedural agreements focus on the relationship between 
management and the employees or their representatives and the procedures to be 
adopted for resolving individual or group disputes. The substantive aspects of the 
agreement relate to salaries/wages, hours of work and other terms and conditions for 
employment.

The Nigerian Oil and Gas Industry
The oil and gas industry is strategic to national development and growth in Nigeria. 
Oil and gas constitute about 90% of Nigeria’s foreign exchange earnings and 83% 
of its GDP (Ogbeifun, 2008). A brief historical excursion indicates that oil exploration 
started in 1908 in Lagos and Okitipupa coastal areas both in Western Nigeria by the 
Nigerian Bitumen Company established by a German Consortium. Between 1908 
and 1956, various exploration and exploitation continued in various parts of Nigeria. 
In 1956, oil was discovered in commercial quantity at Oloibiri, present day Bayelsa 
state (Ihua, Ajayi and Eloji, 2009); in the Niger Delta region of Nigeria by Shell 
D’Arcy. This development heralded Nigeria’s membership of Organisation of 
Petroleum Exporting Countries (OPEC) in 1971. The exploration of oil and gas is 
predominantly concentrated in the Niger Delta where multinational companies and a 
few of the indigenous ones are engaged in production and exploration of oil and 
gas. The oil and gas industry comprises the upstream, the downstream and service 
sectors. The upstream sector focuses on mining, exploration, production and 
exportation and is dominated by multinational companies. Chevron, Shell, Agip, Elf, 
Texaco, Esso-Mobil inter alia belong to the upstream sector. A few indigenous 
upstream oil and gas companies exist in line with the provision of local content
policy of the government. The downstream sector is involved in refining of crude oil into usable products through distillation, conversion and other special treatments to arrive at petroleum products and gas. It is also involved in distribution of products. Petrochemical plants and fuel stations belong to this sector. The service sector provides technical and consultancy services to aid the upstream sector in drilling, exploration and production activities. The Nigerian government is a major investor in the production activities of the upstream sector and its activities are co-ordinated mainly by the Nigerian National Petroleum Corporation (NNPC). The Department of Petroleum Resources (DPR) acts as the regulatory agency for the oil and gas sector. In Nigeria, aside from the NNPC and the DPR, the Ministry of Energy, the Federal Ministry of Environment, the Federal Inland Revenue Service and the Niger Delta Development Commission are the principal government agencies responsible for oil and gas matters.

In the Nigerian upstream oil and gas companies we have the following categories of employment relationships (Imafidon, 2009):

- **Regular Employees**
  These are the direct employees of the companies that have the standard contracts of employment. These are both national employees and expatriates seconded from home office or other company locations. The national employees are in three categories: managerial, senior and junior staff. The managerial (typically about 10% - 15% of the regular employees) are not unionized. The senior staff, (typically about 75% - 80% of the regular workforce) are unionized by the Petroleum and Natural Gas Senior Staff Association (PENGASSAN) while the junior staff (typically about 5% - 10% of the regular workforce) are unionized by the National Union of Petroleum and Natural Gas Workers (NUPENG).

- **Labor Contract Employees**
  These are employees who work side by side with regular employees but do not have a direct employment relationship with the oil and gas companies. They are obtained for renewable fixed durations through third parties. These third parties are basically “body shops”, not professional manpower service institutions. They are equally unionized by the two unions referred to above and carry out periodic collective bargaining for enforceable collective agreements.

- **Service Contract Employees**
The oil and gas companies issue out a myriad of service contracts for different kinds of work to be carried out by service companies in aid of oil and gas exploration/production business. In some cases, the employees of these service companies are embedded in the principal oil and gas companies because of the nature of the service that their primary companies are rendering to the oil and gas companies.

- **Casual Employees**

Casual employees are daily paid employees who are hired for three months fixed duration and released afterwards. They are meant to be used for non-continuous work.

These four categories of employees in the upstream oil and gas companies work side by side but are governed by varying levels of compensation and welfare benefits, worker protective systems etc. The issues of the employment relationships in the upstream oil and gas companies form a significant portion of the sources of work stoppages and other forms of industrial disharmony in the sector.

**Features of Collective Bargaining in the Upstream Oil and Gas Industry**

Since 1978, the structure of collective bargaining in the Nigerian private sector has been predominantly multi-employer (sectoral) bargaining, i.e. at the industry level as a result of the birth of industrial unionism through legislation. Company level bargaining exists as well, but sectoral or industry-wide bargaining is dominant. Company level bargaining is what obtains in the Nigerian oil and gas sector. This appears to be a general trend in oil and gas companies in some other countries.

“Collective bargaining may be organized at the national, sectoral, enterprise or at factory level or at a combination of these levels. In the oil and gas industries, there is a clear trend towards decentralization by emphasizing enterprise-level bargaining. Negotiations at the enterprise level, which can mean at the company division level or even at the plant level have been reported to the ILO by Argentina, China, Finland, Japan, Malaysia, Philippines, Poland, Romania, Singapore, Thailand and Turkey” (International Labour Organization, 2002). In the upstream oil and gas industry in Nigeria, collective bargaining at the company level occupies a pride of place in the determination of employment terms and conditions. This is so because, in the Nigerian oil and gas sector there is no serious singular employers’ body for regulating terms and conditions of employment and as such, enterprise/company bargaining has flourished. In the private sector, with the exception of the oil and gas
industry and print media industries, there exists an industry-wide national joint negotiating council for each sector. The national joint negotiating councils have functioned relatively well except that collective agreements freely entered into are subject to ministerial approval by the Minister of Labour and Productivity. Collective bargaining in the upstream oil and gas companies is done at the company level. It is the only industry in Nigeria where collective bargaining is done solely at the company level (Imafidon, 2009). PENGASSAN, with current membership strength of 21,000 in 101 branches (PENGASSAN Website, 2009) and NUPENG are the only two unions to which all the represented employees in the industry belong. There are chapters of the umbrella unions at the company levels and these chapters are the vehicles for collective bargaining with the management of the respective companies. Almost all the upstream companies run a two year cycle on collective agreement tenures. Typically, there are wage re-openers (i.e. collective bargaining strictly focused on the cash items of the collective agreements) one year into the two-year agreements (PENGASSAN CBA, 2007). The collective bargaining process in the upstream oil and gas industry transcends the traditional compensation, benefits and working conditions of union members; the unions have been very strident in stretching discussions and negotiations to issues like expatriate quota utilization, promotions, performance management, forms of employment relationships etc (Imafidon, 2009, Fajana, 2009). This is a unique feature of the oil and gas sector. Unions in the other sectors stay closer to the traditional content of collective bargaining than the oil and gas.

Collective agreements are of two parts; the substantive and procedural agreements. The substantive agreement relates to wages/salaries, hours of work and terms and conditions of employment whilst the procedural agreement pertains to procedures to be followed in the event of dispute resolution, periodicity of meetings, and duration of agreement inter alia. Most labour-management tensions are recurrent in their nature because contracts are regularly renegotiated. In the oil and gas sector this is embarked upon every 2 years. According to Sloane and Witney (2004), no contractual issue can ever be said to have been permanently resolved. In most cases the unions present a bloated list of demands which is greeted with management’s counter offers that are usually lower than the union’s demands. In many negotiations, parties exhibit adversarial behaviour leading to a climate of distrust, animosity and suspicion which often lead to conflict. According to Dubin
(1954) as cited in Rose (2008), collective bargaining is the great social invention that has institutionalised industrial conflict. This implies that without collective bargaining, industrial conflict would threaten not only the industrial order but also social stability. But owing to the varied interests of the parties and their bargaining powers a consensus is usually arrived at and in most cases is in favour of the unions especially in the oil and gas sector because of the volatile nature of this sector. Since the employers in the upstream oil and gas industry dread to shut down production for a minute many strike ultimata by the unions are averted by management by urgently meeting the demands of the unions even when such demands are exorbitant and unrealistic because of the catastrophic effects of industrial action in the oil and gas industry be it the upstream or downstream sector. Ubeku (1983) has this to say regarding the impacts of strikes on the state/society. “ Strikes, especially major ones, in a developing country like Nigeria always have a dramatic effect on the public. This is particularly so in the case of certain essential industries. In 1975, a single strike action by tanker drivers who deliver fuel and diesel oil from the ports and the only refinery at Port Harcourt to all parts of the country virtually paralyzed the whole nation. Passenger transport was grounded and industries could not function”. The strategic position occupied by the oil and gas industry in Nigeria has given the unions in the upstream and downstream sectors enormous advantages and as such could bring economic activities to a total halt whenever their demands are delayed or are not met. Wages and conditions of employment in the Nigerian upstream oil and gas sector have been determined over time more by the bargaining power of the unions than the traditional market oriented supply-and-demand determinants. This is true for both the international and the indigenous oil companies (Imafidon, 2009). The unions’ enormous bargaining power and steadfastness in protecting the interests of their members are likely to be sustained into the future.

Conclusion and Recommendations

This paper set out to examine collective bargaining dynamics in the Nigerian upstream oil and gas industry. Collective bargaining trends in the oil and gas industry has its own uniqueness comparable to other industries in the private sector. Company level bargaining is what obtains in the Nigerian oil and gas sector as opposed to industry-wide bargaining. This appears to be a general trend in oil and gas companies in some other countries of the world. Collective bargaining issues in
the upstream oil and gas industry transcend the conventional compensation, benefits and working conditions of union members; the unions have been very strident in stretching discussions and negotiations to issues like expatriate quota utilization, promotions, performance management, and forms of employment relationships. This is a unique feature of the oil and gas sector. Unions in the other sectors stay closer to the conventional issues of collective bargaining than the oil and gas. In many negotiations, parties exhibit adversarial behaviour leading to a climate of distrust, animosity and suspicion which often lead to conflict. But owing to the varied interests of the parties and their bargaining powers a consensus is usually arrived at and in most cases is in favour of the unions especially in the oil and gas sector because of the volatile nature of this sector. It is hereby recommended that employers in this sector should endeavour to form combinations for the purpose of achieving industry-wide bargaining which many have argued would engender enduring industrial peace in this strategic sector of the Nigerian economy. More so, both the NUPENG and PENGASSAN should always encourage and engage in social dialogue and collective bargaining to resolve their problems with management in the spirit of give and take. Their demands should be backed up with facts and figures and should avoid adversarial and confrontational strategies in negotiations with management at all times if enduring industrial harmony and sustainable national developments are to be realised.

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