**COURSE CODE:CPE 505**

**COURSE TITLE: ENGINEERING LAW**

**NUMBER OF UNITS: 2 Units**

**COURSE DURATION: 2 hours per week. Week 5**

**COURSE LECTURER:**

**TOPIC: COLLECTIVE BARGAINING**

**INTENDED LEARNING OUTCOMES**

At the completion of this topic, students are expected to:

1. What Collective Bargaining is

2. What the end product of CB is

3. Know the role of Trade Unions in reaching Collective Agreement and during collective Bargain.

4. Understand and know the function of Collective bargaining and the issues involved in CB.

5. Answer questions on the topics in the interactive session.

**COURSE DETAILS:**

**RESOURCES**

**Lecture time:**

Tuesady 10:00 am-12:00 noon.

 Employment and Trade Dispute Law in Nigeria by Richard Idubor.

 Industrial/ Labour Law (Theory and Practice) by Barr Nwokike, Livinus Ifeatu,JP.

 Employment & Labour Law In Nigeria. By Elizabeth A. Oji, Offornze D. Amucheazi.

COLLECTIVE BARGAINING

The term collective bargaining was coined in the 18th century by two British labour movement historians to describe a bilateral negotiation process between labour that is trade union and management. CB is a secondary aspect of industrial or labour relations that supports the primary aspect of labour relations contained in individual contract of employment which is mainly tilted in favour of the employer.

DEFINITION OF COLLECTIVE BARGAINING.

Several authors and scholars of labour law has attempted the l definition of the term CB which are mostly directed at describing the aspect of the ultimate purpose and process of the institution.

According to Davey, Collective Bargaining is

A continuing institutional relationship between an employer entity (Government or private) and Labour organization (Union or Association) representing exclusively, defined group or employee of a said employer ( appropriate bargaining unit) concerned with the negotiation administration, interpretation and enforcement or written agreement covering joint understanding as to wages or salaries rates of pay; hours of work and other conditions of employment.

In this definition, the administration of the agreement reached in collective bargaining is part of the collective bargaining.

Scrutton defines collective bargaining as

The practice of settling wages claims, conditions of work, productivity and related matters through bargaining between trade unions representing employees and organizations representing employers.

The Black’s Law dictionary defines CB as “negotiation between an employer and the representative of organized employees to determine the conditions of employment such as wages, hours and fringe benefits.

Section 91 of the Labour Act which is the definition section of the Act defines collective bargaining as “ the process of arriving or attempting to arrive at a collective agreement.

A Nigerian scholar offornze defined CB as a procedure embarked in at arriving at collective agreement between employers and ac credited representatives of employees concerning wages, hours of work and other conditions of employment.

CB is negotiation between employers and employees (who are usually represented by a trade union) about terms and conditions of employment. The bargaining process is concerned with wages, working hours, fringe benefit, job security, safety and other matters relating to working conditions. Any of these labour matters may be the subject matter of a CB. Negotiations in CB is as a matter of practice and procedure , involves representatives of management and union. Where an organization is involved, government officials and mediators sometimes participate in the negotiation.

Collective Agreement is the aftermath or end result of CB. CA is any agreement in writing for settlement of dispute relating to terms of employment and physical condition of work concluded between an employer, group of employers, representatives on the one hand and one or more trade union or organizations representing workers.

collective agreement means “an agreement in writing regarding working conditions and terms of employment concluded between

1. An organization of workers or an organization representing workers (or an association of such organization of the one part and
2. An organization of employers or an organization representing workers (or an association of such organizations) of the other part.

FUNCTIONS OF C**B**

1. CB creates equality of bargaining power by adjusting the terms of individual contract of employment.
2. CB serves as an important means of conflict resolution between employers and employees.
3. CB provides an avenue of negotiation that unifies labour relations and produces industrial peace.
4. CB promotes industrial relation
5. CB is a method used by trade unions representing employees to enhance the terms and conditions of employments of their members.
6. Where a collective agreement is reached after a CB it modifies the individual contract of employment rather than replacing because it did not create
7. the existing employer employee relationship.

CB is specifically an industrial relations mechanism or tool, and is an aspect of negotiation applicable to employment relationship. As a process the two are in essence the same and the principle applicable to negotiations are relevant to CB as well. The efficacy of bargaining is rested on the existence of a virile union of employees; the union always has collective interest since the negotiations are for the benefit of several employees. Trade unions are important in reaching negotiation.

TYPES OF ISSUES OF CB.

The subject matter of CB must be working conditions and terms of employment, there is no restriction as to what this could cover, it covers a great variety of matters excluding the terms and conditions that are not negotiable one of such are conditions and terms specifically enshrined for the protection of workers and guaranteeing minimum standard terms and conditions of employment of workers.

CB deals generally with two types of issues which are the procedural issues and the substantive issues.

PROCEDURAL ISSUE.

The procedural issues are of direct concern to the organization which is parties to the agreement. It deals with the procedure of reaching the substantive agreement and it is the best rules and procedure that enables smooth negotiation of the substantive issues that constitute substantive agreement.

SUBSTANTIVE ISSUE.

These are of more immediate concern to the workers covered by the agreement. It deals with terms and conditions of employment eg wages and salaries, hours of work, housing allowance, transport allowance, transfer allowance, overtime rate, sick leave, maternity leave, redundancy benefits, out of station allowance, shift allowance etc.

LEGAL STATUS AND ENFORCEABILITY OF CA.

The legal status, Justitiability and enforceability of agreement reached in CB are affected by both commom law principles regulating formation of contract enforceable at law. At common law CA is binding in honour . The position of the law of contract to CB and CA is to first presume nonexistence of intention to be legally bound by CA. As a general rule, CA are usually non justiciable and devoid of legal sanctions the reason for this position of law is because there is usually no intention to create no legal intention by the parties. CA is at best a gentleman’s agreement. This was the position of the court in Nigeria Arab Bank Ltd v. Shuiabu(1991)4 NWLR (part 186).where the respondent who was dismissed from service due to misconduct had sought to rely on CA between their registered union and the employer. The court held that the respondent being a third party and not privy to a CA cannot benefit from the terms of the agreement. This is because the unions is not seen as acting as the employee’s agent during negotiation with the company.

On the issue of whether CA are enforceable or not brings to mind the principle of privity of contract which is the principle that determines the person who has the legal status to enforce a CA. CA are usually between unions and the employers which is distinct from the individuls or employees who have individual contract of employment for workers for whose benefit the agreement were supposedly made. Individually the employees are not parties to CA but collectively and by virtue of being members of the unions, they are parties to the agreement.

Under the present common law of contract, only parties who are privy to a contract can sue to enforce the contract other persons are regarded as strangers to the contract cannot be sued nor can they sue to enforce it. This position is same both at law and in equity, a person who is not privy to a contract cannot enforce or enjoy benefit accruing to him from a contract to which he is not a party to. This same principle is what applies to CA therefore employee despite members of trade unions are not parties to CA and therefore cannot enforce the agreement in court.

Some statutes such as the Trade Union’s Act by virtue of section 22(1)provides that nothing in this sub section shall enable any court of Law to entertain any legal proceedings instituted for the purpose of directly enforcing any legal proceeding instituted for the purpose of directly enforcing enforcing any agreement or recovering or recovering any damages for any breach of such agreement.

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